Resolving or Managing International Issues by Multilateral Cooperation

Panel 8: Looking to Future Cooperation
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One of the most important long-term goals in the Asia-Pacific region is the resolution of the numerous pending maritime boundary disputes between the States.

Driving the disputes are underlying geopolitical strategy, military power projection, and living and non-living resource exploitation interests.

These disputes are a source of constant tension and often lead to incidents in the disputed waters. They hinder the stability of the area and the effective management and use of marine resources in general.
Law of the Sea Challenges and Goals in the Asia-Pacific

Models for conduct of international relations

1. The disputes and/or their underlying drivers remain unresolved
2. The disputes and/or their underlying drivers are resolved through the use of force

Only viable conduct of international relations:
3. The disputes and/or their underlying drivers are resolved through the rule of law

- the Asia-Pacific will remain less stable and resource exploitation inhibited
- the Asia-Pacific will become more stable and resource exploitation facilitated
International cooperation can only be achieved on an effective and durable basis through the rule of law.

- The rule of law requires the fulfilment of legal obligations.
- The bases of international cooperation and the rule of law are good faith and trust.
- China is viewed by its neighbours as not observing the rule of law because it is ignoring the award in the Annex VII arbitration with The Philippines.

Why will China’s neighbours want to enter into new international law agreements in relation to the SCS when China did not comply with its international law obligations under UNCLOS in relation to the SCS?
Law of the Sea Challenges in the Asia-Pacific

Effective and sustainable use of resources

- Illegal, unregulated and unreported ("IUU") fishing.
- Marine resources within national jurisdiction.
- Marine resources in areas beyond national jurisdiction.

SUSTAINABLE DEVELOPMENT GOAL 14
Conserve and sustainably use the oceans, seas and marine resources for sustainable development
IUU, international shipping, pollution and illegal trade affect the sensitive marine environment.
Law of the Sea Challenges in the Asia-Pacific Region

Ensuring maritime security

- Shipping routes in the Asia-Pacific are among the most important in the world.
- Factors that undermine maritime security:
  - national tensions and sea incidents, especially in “grey zones”;
  - inadequate and uncoordinated response to humanitarian disasters;
  - illegal migration; and
  - piracy and terrorism.
Law of the Sea Challenges in the Asia-Pacific

Addressing the effects of Climate Change

- Rising sea levels
- Disappearing islands
- Changing baselines
- Warming ocean temperatures and ocean acidification
- Threat to marine biodiversity, dying coral reefs etc.

Source: https://revisesociology.com

Source: https://www.quora.com/
Multilateral cooperation in the Asia-Pacific
The Asia-Pacific Fishery Commission ("APFIC")

- 21 Asia-Pacific contracting States.
- Promotes the full and sustainable utilisation of living aquatic resources and finds solutions to emerging regional fisheries issues.
- Raises awareness, develops policy formulations and advice, promotes sustainable fisheries management tools, prepares studies, implements projects and builds partnerships.
Multilateral cooperation in the Asia-Pacific

Regional plan of action to eliminate IUU Fishing ("RPoA")

- 11 Asia-Pacific contracting countries and four participating regional fisheries organisations.
- Aims to enhance and strengthen the overall level of fisheries management in the region in order to sustain fisheries resources through the adoption of responsible fishing practices.
- Actions for the conservation of fisheries resources and their environment, managing fishing capacity, and combating IUU fishing.
Multilateral cooperation in the Asia-Pacific
Agreement on Combating Piracy and Armed Robbery against Ships in Asia ("ReCAAP")

- Government-to-Government agreement to promote and enhance cooperation against piracy and armed robbery against ships in Asia.

Information Sharing Centre

Collection of information about incidents of piracy and armed robbery

Capacity building
Multilateral cooperation in the Asia-Pacific

Asia-Pacific Economic Cooperation ("APEC") Ocean and Fisheries Working Group ("O FWG")

- Facilitates trade and investment opportunities that:
  - **ensure** the conservation and sustainable use of marine resources; and
  - **protect** marine ecosystems.

- Advances a common approach to preventing illegal fishing and related trade.
Multilateral cooperation in the Asia-Pacific

The North Pacific Marine Science Organisation ("PICES")

- Promotes and coordinates marine research in the North Pacific and its adjacent seas.
Multilateral cooperation in the Asia-Pacific

The Southeast Asian Fisheries Development Center ("SEAFDEC")

- Promotes and facilitates actions among its Parties to ensure the sustainability of fisheries and aquaculture in Southeast Asia.
Multilateral cooperation in the Asia-Pacific

INFOFISH and INFOYU

- Part of the FAO INFONetwork global project; and
- Provide marketing information and technical advisory services to the fishery industry in the Asia-Pacific.
Multilateral cooperation in the Asia-Pacific
International Sea-Bed Authority and the regional Asia-Pacific Group

- Regulates deep seabed mining and ensures that the marine environment is protected from any harmful effects which may arise during mining activities, including exploration.
Established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (2004).

Seeks to address problems in the management of high seas fisheries resulting from IUU fishing, excessive fleet capacity, vessel re-flagging to escape controls, unreliable databases and insufficient multilateral cooperation in respect to conservation and management of highly migratory fish stocks.
The annual forum provides an opportunity for Coast Guard representatives from six countries (Canada, China, Japan, Korea, Russia and the United States) to discuss mutual priorities on:

- fishery enforcement;
- maritime security;
- illegal trafficking;
- joint operations; and
- emergency response activities.
Multilateral cooperation in the Asia-Pacific Association of Southeast Asian Nations ("ASEAN")

- 2002 "Declaration on the Conduct of Parties in the South China Sea" and Joint Working Group;
- 31st ASEAN Summit in November 2017, ASEAN member States and China declared that the 2017-2027 is the Decade for the Protection of Coastal and Marine Environment in the South China Sea; and
- Negotiations for a Code of Conduct in the South China Sea.
Means of multilateral cooperation in the Asia-Pacific

International Maritime Organisation ("IMO") in the Asia-Pacific and particularly sensitive sea areas ("PSSAs")

- PSSAs are areas of ecological, socio-economic or scientific significance. A PSSA is subject to specific protection measures that control maritime activities in that area.

- PSSAs in the Asia-Pacific include:
  - the Great Barrier Reef in Australia and its proposed extension;
  - the Jomard Entrance in Papua New Guinea; and
  - Tubbataha Reefs Natural Park and the Sulu Sea in Philippines.
Means of multilateral cooperation in the Asia-Pacific
Food and Agriculture Organisation Agreement on Port-State Measures to Prevent, Deter and Eliminate IUU ("PSMA")

- The PSMA establishes robust and harmonised port-State measures;
- Stipulates minimum port-State measures but States may adopt stricter measures
In 2017 the Preparatory Committee reported to the General Assembly on its work for an:

“International legally binding instrument under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction”
Means of multilateral cooperation in the Asia-Pacific

UNCLOS (e.g., dispute resolution)

- Article 283 of UNCLOS provides that the parties to a dispute shall first exchange views regarding settlement by negotiation or other peaceful means.
- Article 287 of UNCLOS provides that the parties may choose between different means for the settlement of disputes concerning the interpretation or application of UNCLOS.
  - the International Tribunal for the Law of the Sea;
  - the International Court of Justice;
  - an arbitral tribunal constituted in accordance with Annex VII to UNCLOS; or
  - a special arbitral tribunal constituted in accordance with Annex VIII to UNCLOS for specific categories of disputes.
Means of multilateral cooperation in the Asia-Pacific

World Heritage Convention and World Heritage Maritime Programme

- Safeguards the long-term preservation of World Heritage marine sites, facilitates a reporting and solution management network and optimises training for the management of World Heritage Marine Sites.

- Work to explore the potential of the World Heritage Convention in the High Seas and the marine areas beyond national jurisdiction.
Leading intergovernmental forum promoting cooperation, coordination and interaction among the Arctic States, Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, such as:

- sustainable development in the Arctic; and
- Environmental protection in the Arctic.

Ottawa Declaration (1996):

- Member States;
- Permanent participants;
- Observer status.
Other regional models of multilateral cooperation

The Union for the Mediterranean

- Intergovernmental Euro-Mediterranean organisation between all the countries of the European Union and 15 countries of the Southern and Eastern Mediterranean.

- It aims to enhance regional cooperation, dialogue and the implementation of concrete projects and initiatives, including:
  - Promoting integrated water resources management, access to water resources and affordable water services;
  - Protecting the Mediterranean Sea and environment; and
  - Promoting green and blue economy.
Other regional models of multilateral cooperation

Caribbean Regional Fisheries Convention ("CRFM")

- Inter-governmental organisation tasked with promoting and facilitating the responsible utilisation of the region's fisheries and other aquatic resources.

- The CRFM consist of three bodies:
  1. the Ministerial Council;
  2. the Caribbean Fisheries Forum; and
  3. the CRFM Secretariat.
Other regional models of multilateral cooperation

Indian Ocean Rim Association

- Inter-governmental organisation whose Member States are littoral States of the Indian Ocean.
- Six priority areas, among which:
  - maritime safety and security;
  - fisheries management;
  - disaster risk management;
  - blue economy etc.
Other regional models of multilateral cooperation

The General Fisheries Commission for the Mediterranean (“GFCM”)

- Ensures the conservation and sustainable use at the biological, social, economic and environmental level, of living marine resources and the sustainable development of aquaculture in the Mediterranean and in the Black Sea.
Other regional models of multilateral cooperation

International Commission for the Conservation of Atlantic Tuna ("ICCAT")

- Responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas.
Other regional models of multilateral cooperation

Inter-American Convention for the Protection and Conservation of Sea Turtles ("IAC")

- Multilateral legal framework for countries in the Americas and the Caribbean to take actions for the benefit of sea turtles.
- The IAC promotes the protection, conservation, and recovery of sea turtles and those habitats on which they depend on.
Other regional models of multilateral cooperation

The Northwest Atlantic Fisheries Organisation ("NAFO")

- Operates to ensure the long term conservation and sustainable use of the fishery resources in its area of competence.
- The NAFO regulated fishery takes place in the NAFO Regulatory Area, which is part of the area lying beyond coastal States’ fisheries jurisdiction.
- The NAFO operates with respect to most fishery resources of the Northwest Atlantic except salmon, tunas/marlins, whales, and sedentary species (e.g. shellfish).
Other regional models of multilateral cooperation

The Sargasso Sea Commission

- Multilateral regime for the management and protection of the Sargasso Sea, an area of the High Seas.
- The Sargasso Sea Commission exercises stewardship over the Sargasso Sea.

Sources: U.S. Fish and Wildlife Service and https://bamz.org/
Other regional models of multilateral cooperation

Port Management Association of Eastern and Southern Africa ("PMAESA")

- PMAESA is a non-profit, inter-governmental organisation made up of Port Operators, Government Line Ministries, Logistics and Maritime Service Providers and other port and shipping stakeholders from the Eastern, Western and Southern African and Indian Ocean regions.

- Its primary objective is to strengthen relations among member ports and promote regional cooperation and subsequently regional integration.
Other examples of multilateral cooperation

International Whaling Commission and the 1946 International Convention for the Regulation of Whaling ("IWC")

- Inter-governmental Organisation whose purpose is the conservation of whales and the management of whaling.
Other examples of multilateral cooperation

UN Fish Stocks Agreement

- United Nations Agreement for the Implementation of the Provisions of UCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("UN Fish Stocks Agreement").

- The conservation and management of fish stocks must be based on the precautionary approach and the best available scientific information.

- The Agreement provides a framework for cooperation and establishes detailed minimum international standards.
Other examples of multilateral cooperation

Climate Change and Law of the Sea

Article 192 UNCLOS

“States have the obligation to protect and preserve the marine environment.”
Other models of cooperation

Joint Development Zones ("JDZ")

1. Joint development of the continental shelf between Korea and Japan (1974);
2. Malaysia and Thailand JDZ (1979);
3. Barbados and Guyana Joint Regime for the exercise of jurisdiction in their EEZs in the area of bilateral overlap within each of their outer limits and beyond the outer limits of the EEZs of other States (2003); and
4. The Torres Strait JDZ for fisheries (New Guinea and Australia).
Other models of cooperation

Norway – Russia Maritime Delimitation Treaty – 2010 Arctic
Treaty

- Delimits maritime areas under national jurisdiction of Norway and the Russian Federation in the Arctic.
- Provisions on cooperation and joint regulation of fishing in the Barents Sea and on cooperation in the exploration and exploitation of transboundary hydrocarbon deposit.
Other regional models of multilateral cooperation

The 1920 Spitsbergen Treaty – the Svalbard Treaty

- 46 States Party from all continents, including from the Asia-Pacific (and China)
- Recognises Norway’s limited sovereignty. Allows sovereign rights by Norway in waters off the Svalbard Archipelago.
- Norway’s rights are limited (e.g. right of equal access by all ships etc.; no visas; not all Norwegian law applies)
- Signatories have rights to engage in commercial activities, including resource extraction
Law of the Sea Challenges and Goals in the Asia-Pacific

Conclusions

- Boundary and sovereignty disputes in the Asia-Pacific are underlined by geopolitical strategy, military power projection, and living and non-living resource exploitation interests.

- The South China Sea disputes in particular reduce the stability of the Asia-Pacific region generally.

- China’s response to the UNCLOS Annex VII Arbitration brought against it by the Philippines violates the rule of law. It therefore inhibits cooperation in the South China Sea and elsewhere with China on related issues.

- This prevents the effective management and use of the SCS’s marine resources.

- By maintaining the status quo or resolving the disputes through the use of force, both of these in violation of the rule of law, the Asia-Pacific region will remain less stable and SCS resource exploitation will be inhibited.
Law of the Sea Challenges and Goals in the Asia-Pacific

Conclusions

- The only durable solution will be the resolution of the dispute through the rule of law, so that the Asia-Pacific region becomes more stable and resource exploitation facilitated.

- Many alternatives are available to China to deal with the legal reality of the Annex VII arbitration award in ways consistent with China’s obligations under international law.
Law of the Sea Challenges and Goals in the Asia-Pacific

Conclusions

- Multilateral cooperation requires trust and good faith.
- Failure to follow the rule of law reduces good faith and trust.

Until China complies with its international law obligations arising from UNCLOS re the SCS, why would its neighbours want to enter into more international agreements about the SCS?
Law of the Sea Challenges and Goals in the Asia-Pacific

Conclusions

- Every State in the Asia-Pacific that has been subject to an adverse law of the sea / sovereignty / delimitation judgment or award against it has accepted that rule of law outcome except China.

- This includes:
  - Singapore;
  - Indonesia;
  - the United States;
  - Malaysia;
  - Japan;
  - The Netherlands
  - France
Law of the Sea Challenges and Goals in the Asia-Pacific

Conclusions

- If China's strategic objective in the SCS is to have access to natural resources ...

- Have China's tactics to-date re the SCS (which violate the rule of law) enabled it to achieve that objective?
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