



30
2014

ISSUE
ALERT

The South China Sea's commons: Behind and beyond sovereignty disputes

by Eva Pejsova

Tensions over conflicting sovereignty claims in the South China Sea, exacerbated by China's increasingly assertive behaviour and unilateral expansion of its economic activities in the disputed waters, regularly make the headlines. The territorial rows, however, divert attention from more mundane, yet no less important maritime security issues, which, if neglected, may have grave repercussions for regional stability. Overfishing, illegal, unreported and unregulated (IUU) fishing, marine pollution, and the degradation of unique natural habitats are acute problems with lasting consequences. Although the need for cooperation and sustainable management of common resources is well reflected in relevant international legal regimes, the level of compliance of the littoral states remains low.

The shallow tropical waters of the South China Sea are one of the richest and biologically most diverse large marine ecosystems (LME) in the world, home to a variety of species, coral reefs, mangroves and wetlands. The Sea is also an important source of livelihood and economic activity for regional countries, which are dependent on its fisheries, trade and hydrocarbon reserves. The right to harvest the South China Sea's resources is one of the main drivers behind territorial disputes. But if a balance between ownership, responsible stewardship and sustainability is not achieved, there will be not only little to fight over, but also serious additional problems to solve.

What is at stake?

Rapid industrialisation and economic and population growth, alongside a lack of political will to address environmental issues, are now placing serious pressure on the region's maritime commons. According to the Food and Agriculture Organization (FAO), the South China Sea is among the most overexploited ecosystems in the world, accounting for over 10% of global fishery production. Since 1970, ever-rising catch volumes have depleted the regional fish stock by 40% and eradicated over 80% of large predatory fish. Intensive aquaculture and coastal development have led to the loss of 65% of coastal mangrove forests, which prevent sediment erosion, and provide shelter and nursery grounds for young pelagic fish such as tuna.

The competition over resources is encouraging the recourse to increasingly 'efficient' – yet strikingly unsustainable – fishing techniques, such as cyanide and dynamite fishing and bottom trawling. China, which claims almost 90% of the South China Sea, is engaged in large-scale industrial fishing in the area, deploying its first 'factory ship' in 2012. This vessel is capable of processing over 2000 tons of seafood per day and, using a fleet of support ships, can operate for nine months at a time without interruption.

Coastal pollution and the depletion of traditional fishing grounds are forcing fishermen to venture



farther into disputed areas, raising the likelihood of clashes with the law enforcement agencies of rival claimants. Now regular skirmishes between Vietnamese, Philippine and Chinese fishing vessels have cost hundreds of lives over the years and continue to stir up domestic and diplomatic tensions. Politicising the matter further, official maritime authorities now accompany and intervene on behalf of fishing fleets, protecting even ships engaged in illegal activities (as could be seen in the case of Chinese poachers of endangered green sea turtles, arrested by the Philippine coast guard).

Legal obligations

By its very nature, the South China Sea can only be managed through an ecosystem-based approach and effective cooperation between the littoral states. Neither fish nor pollution recognise and respect international political borders, nor do they distinguish between historical and legal claims. Article 123 of the UN Convention of the Law of the Sea (UNCLOS) urges countries bordering enclosed and semi-enclosed seas to cooperate as much as possible in the 'management, conservation, exploration and exploitation of living resources.' In case of unresolved territorial claims, Articles 74(3) and 83(3) call for states to implement practical measures and functional arrangements for joint development of resources, pending the resolution of the dispute.

At a regional level, the 2002 Declaration of Conduct (DOC) of Parties in the South China Sea is the first political document concluded between ASEAN and China aimed at easing tensions in the contested waters. Emphasising the need for peaceful settlement of disputes, it specifically encourages cooperation in less controversial areas, such as marine environment protection, scientific research, safety of navigation, Search and Rescue (SAR) and combatting transnational crime (drug and arms trafficking, smuggling, and piracy). None of these provisions, however, is legally binding or enforceable, leaving implementation dependent on the political mood and priorities of the day. Despite the existence of these mechanisms, there is very little cooperation, largely due to a lack of awareness and the belief that relative gains and unilateral exploitation of resources can substantially enrich national economies, as well as the insistence on building fences at sea.

Practical implications

The lack of trust, coordination and cooperation in maritime affairs also leads to problems of a practical nature. As seen recently in the cases of Typhoon Haiyan or the search for missing flight MH370,

regional partners struggle with an effective response in the event of natural disasters or large SAR operations.

Considering the density of maritime traffic – encompassing commercial ships, fishing vessels and law enforcement agencies – the risks of accidental collisions, oil spills or shipwreck are real. The growing concentration of naval hardware in the region, including submarines (which operate with difficulty in the warm shallow waters), is an additional source of concern. Finally, risks of accidental and incidental oil spills from offshore construction and infrastructure also abound.

The South China Sea is home to one of the world's most important Sea Lines of Communication (SLOCs), connecting the economic powerhouses of North-East Asia with the Middle Eastern oil terminals and European markets. The need to keep regional waters safe, stable and open is therefore in the interest of all players, including the EU.

Viable solutions

Collective action remains one of the major challenges of international relations, especially when countries with differing sizes, political systems, levels of economic development and strategic interests are involved. Successful examples of regional regimes for sustainable management of maritime commons do exist, however, and some of them can be found also in the European context.

The Mediterranean Action Plan (MAP) is often cited as one such initiative which brings together countries with strikingly different political and economic backgrounds in order to address marine pollution. In the Baltic Sea, disputes are mitigated through bilateral and multilateral agreements initiated by marine experts and scientists, and then approved by policymakers. Last but not least, the Antarctic Treaty Meetings (ATM) framework has banned all military activities on the basis of environmental concerns.

The negative socio-economic consequences of marine environmental degradation and resource depletion deserve greater focus due to their potential to undermine internal stability and exacerbate international tensions. At the same time, cooperation in environmental and other functional areas can serve as building blocks to also achieve more 'traditional' security – provided its benefits are sufficiently understood by all parties.

Eva Pejsova is a Programme Associate at the EUISS.

