THE SOUTH CHINA SEA: TOWARDS A COOPERATIVE MANAGEMENT REGIME

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CONFERENCE REPORT

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MARITIME SECURITY PROGRAMME
S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES,
NANYANG TECHNOLOGICAL UNIVERSITY

OPENING REMARKS

AMBASSADOR BARRY DESKER,
DEAN OF S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES, NTU SINGAPORE
WELCOMING THE PARTICIPANTS

In his opening address, **Ambassador Barry Desker,** Dean of the S. Rajaratnam School of International Studies, Nanyang Technological University, remarked that, for a long time, the idea of maritime security revolved around the use of navies and defence forces to protect the nation and its national maritime interests against threats primarily of a military nature. Today, the term "maritime safety" should be perceived as part of a comprehensive concept of security that includes maritime safety services, marine environmental protection, marine aids to navigation and services, and hydrographic surveying. Ambassador Desker noted that the South China Sea has long been regarded as a major source of tension and instability in East Asia, and conflict over disputed claims in the South China Sea has been a significant challenge for regional relations. While the strategic significance of the South China Sea endures, non-traditional challenges have also started to emerge. He was of the opinion that although it is primarily the responsibility of the littoral states to establish an effective management regime for the South China Sea, other regional countries have a vested interest in that outcome. It is thus comforting to know of the recent progress with cooperative management in the South China Sea and its stakeholders being able to establish effective functional cooperation.

In conclusion, Ambassador Desker hoped that the conference would help to move the process of promoting functional cooperation. He also expressed his hope that the conference would be able to contribute to existing maritime security literature and policies, as well as broaden the network of scholars and analysts engaged in the study of maritime security issues.

SESSION I: BACKGROUND TO THE SOUTH CHINA SEA DISPUTES

DR. SAM BATEMAN, SENIOR FELLOW,
S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES,
NTU, SINGAPORE

Sam Bateman began the first session by noting that it has been a while since there have been any intense discussions on South China Sea issues. It was therefore timely for a stock-take on the level of progress that had been achieved in the cooperative management of the South China Sea.

1. Islands, Rocks and Shoals: A Geo-Political Overview of the South China Sea

DR. CLIVE SCHOFIELD
QE II RESEARCH FELLOW, CENTRE FOR MARITIME POLICY, UNIVERSITY OF WOLLONGONG, AUSTRALIA

In his presentation, **Clive Schofield** examined the geographical nature of the features that form the South China Sea islands and the geopolitical tension among claimant states. He noted that conflicting definitions of what constitutes an island or rock further complicates the already complex jurisdictional and sovereignty claims made to the South China Sea maritime space. In Schofield's opinion, the perceived hydrocarbon-rich Spratly Islands warranted a review of regional energy security concerns as such considerations, among many other factors, seem to have an important role in the geopolitical calculations of the claimant states.

Schofield informed that the most contested archipelagos of the South China Sea are the Spratly Islands and the Paracel Islands, though the actual contested area also extends to the isolated features of the Pratas Island and Scarborough Shoal. The actual problems of such disputes are multi-dimensional. He also highlighted the complexity of overlapping jurisdictional and sovereignty claims made to insular features found in the South China Sea as littoral states constantly test the limit and definition of claimable maritime teritories. Schofield stressed that states are inextricably linked to their territory and any potential loss of claimed territory, however slight, can be construed as a threat to a state's sovereignty, security and integrity.

Schofield concluded that the uncertainties of the Spratly Islands disputes are unlikely to be cleared or resolved soon. The features of the Spratly Islands, he emphasized, are generally of minimal intrinsic value and uninhabitable. Their capacity to generate massive maritime zones has been exaggerated since most of the features may not even qualify as an island. In essence, he opined that sovereignty and nationalistic concerns lie at the heart of the South China Sea disputes.

2. The South China Sea Dispute: An International History

PROFESSOR GEOFFREY TILL
JOINT SERVICES COMMAND AND STAFF COLLEGE, UNITED KINGDOM

Geoffrey Till traced the historical origin of the South China Sea disputes. He noted that there were no strategic interests in the islands of the South China Sea until the post-Cold War era. States' attitudes towards their stakes on the islands of the South China Sea reflect, in his opinion, the shifts in significance attached to the islands and changes in the global security environment. Therefore, the history of the South China Sea disputes can be better understood and studied when the following three "political eras" are considered: pre-modern, modern and post-modern.

Till highlighted that, during the pre-modern period, the islands in the South China Sea were essentially *res nullius*, i.e. territories that belonged to no one and are "acquirable by appropriation". Very simply, there were no significant disputes over the islands. The modern era, Till informed, comprises of the European, post-European, Cold War and post-Cold War periods. In general, the intensity of the South China Sea disputes was conditioned by, first, shifts in the global, and not just regional, political landscape, and, second, the strategic interests of claimant states. Till opined that in this post-modern era, the strategic and symbolic values attached to the South China Sea islands will, in a less Westphalian state-centric twenty-first century political environment, gradually decrease.

Though he speculated that the pace of globalization and economic needs would drive the need for states to cooperate in several areas, Till concluded that national concerns would continue to work their way into the South China Sea disputes.

3. The Contribution of the South China Sea Workshops: Importance of a Functional Approach

PROFESSOR IAN TOWNSEND-GAULT
FACULTY OF LAW,
UNIVERSITY OF BRITISH COLUMBIA, CANADA

Ian Townsend-Gault shared his experiences in organizing the South China Sea Workshops (hereinafter called "The Workshop Process") with the conference participants. These Track Two workshops were, in his opinion, vital on two key grounds. First, they facilitated frank and non-confrontational dialogues between the individual claimant states. Second, the workshops created and explored alternative avenues for cooperation.

He explained that, in promoting the idea of cooperation, the workshops had aimed to move states from engaging in forceful exchanges to peaceful joint development in the South China Sea region. The workshop process tried to move beyond the fixation of sovereignty issues and worked on getting states to take a functional approach towards non-traditional security concerns, namely, scientific marine research, environmental and ecological research, sea-lanes of communication management, living and non-living resource management and conservation, and institutional mechanisms for cooperation.

Essentially, by providing the grounds for cooperation on non-traditional security issues without focusing on jurisdictional and sovereignty issues, claimant states were given a platform to talk about the disputes in a non-confrontational and informal "off-the-agenda" basis. Townsend-Gault was of the opinion that the workshop was a step towards a peaceful response, if not resolution, to the conflicts in the South China Sea region.

Townsend-Gault concluded that the non-traditional security sectors that the workshops have chosen to focus on are important. They do not play second fiddle to sovereignty and jurisdictional concerns, which have been commonly perceived as the primary South China Sea issue. He remarked that, instead of constantly focusing on the sovereignty-dispute deadlock, the workshops have shown that much more could be achieved if resources and attention are diverted to functional areas of cooperation instead.

4. Maritime Territorial Disputes and Their Impact on Maritime Strategy: A Historical Perspective

DR. BRUCE ALLEN ELLEMAN
U.S. NAVAL WAR COLLEGE, RHODE ISLAND

Bruce Elleman traced the history of regional maritime territorial disputes and argued that disputes in the South China Sea have a significant impact on regional maritime strategies. He was of the opinion that the South China Sea Islands are generally of minimal intrinsic value. However, strategically and politically, they are important for the extensive maritime resource ownership and territorial space that they could potentially generate.

In general, Elleman stressed that most of the territorial claims in the South China Sea region are based on historical rights but, gradually, principles in international law, such as the United Nations Convention on the Law of Sea (UNCLOS), have been used by states to support their maritime claims. Efforts to approach the South China Sea disputes peacefully and amicably were given a boost when the Declaration on the Conduct of Parties in the South China Sea took form in 2002. However, Elleman cautioned that the materialization of the declaration does not suggest that all territorial claims have been dropped or all maritime disputes have been resolved.

As the South China Sea is likely to remain as contentious waters with a global impact on trade and diplomatic relations, Elleman was most concerned with the growth of the People's Liberation Army Navy (PLAN) and China's maritime strategies. China seems determined to uphold its claims over the South China Sea even by force when necessary. Therefore, Elleman concluded that the American and other regional governments must be prepared to react to unilateral actions pursued by China.

Commentary

DR. MARK J. VALENCIA
VISITING SENIOR FELLOW,
MARITIME INSTITUTE OF MALAYSIA

Mark Valencia commented that the first session of the conference broadly covered the geopolitical, historical and workshop process aspects of the South China Sea disputes. On Schofield's presentation, he noted that there might be other resources beyond oil reserves, such as ocean thermal and wind energy generation potential, that the South China Sea could be endowed with and be tapped on. In relation to Article 121 of UNCLOS, he remarked that three fundamental questions are worth pondering: (i) what features are capable of satisfying the condition of Article 121 (ii) the amount of legal weight that should be afforded to claims that fit the description of Article 121; and (iii) the amount of weight that should be given to claims justified by Article 121 versus expanded continental shelf claims?

Till's presentation highlighted the roles and concerns of such major powers as China, Japan and the United States over the South China Sea geo-political landscape. He had explored their impact on the island claims and Valencia observed that history has shown that the fear of other states gaining access to unknown strategic resources has often generated clashes over the rights to the ownership of the islands.

Elleman's presentation served to remind, in Valencia's opinion, that China may want to maintain full naval presence in the South China Sea region. However, China's lack of capacity and the presence of the U.S. Navy might contain China's domination of the region. Currently, it seems that China is keen to resolve the disputes through peaceful negotiations. This is evident in the "soft diplomatic" approach it has adopted towards the ASEAN countries.

Thus, all the presentations of this session concluded that history does not provide solutions to the disputes, and historical data are likely to be interpreted differently. Arguably, Article 121 of UNCLOS might not be the answer to all as it is open to various interpretations as well. To date, it is not clear if the cooperative measures formulated during the workshop process could be applied across the board. Valencia concluded that the South China Sea disputes would be a long-persisting problem with no definite solutions.

Discussion

SPEAKERS FOR SESSION 1

There were comments from conference participants that India's and Japan's responses to China's naval development were not mentioned in the presentations. The responses to the question were for one, China has at times not been very specific or clear in its views on the region. Next, China's military developments can also be seen as a dialectical response to both India's and Japan's defence strategies in the region. Moreover, the geopolitics of the South China Sea has always been marked by great ambiguity and uncertainty. Claimants have justified their territorial rights and military presence in the region based on a number of reasons. Thus, it is not possible to seek any immediate solution or resolution to the disputes.

There was a query on the workshop process and whether it should be seen as the pull factor for regional cooperation. In response, it was noted that cooperative developments resulting from the workshop dialogues is an indication that most states have moved beyond adopting a purely realist approach to the South China Sea disputes. But there were criticisms from the participants that International Law has not been applied to the best advantage in resolving the conflict and not enough efforts have been made to explore other ways of resolving the disputes. In general, it was agreed that it is probably difficult to back away from or drop any claims that have already been made and for such claims to be defended forcefully.

SESSION II:
THE ENVIRONMENT, RESOURCES AND MARINE SCIENTIFIC RESEARCH

1. The UNEP/GEF South China Sea Project: Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand

DR. MIGUEL D. FORTES
MARINE SCIENCE INSTITUTE,
UNIVERSITY OF THE PHILIPPINES

Miguel Fortes supported the call by the earlier speakers for further cooperation and focus on issues that require no boundaries. He gave an overview of the UNEP/GEF South China Sea (SCS) Project on "Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand". On the geographical features of the seas of East Asia, degradation is largely man-made. The project seeks to deal with four major areas of concern: (i) the loss and degradation of coastal habitat; (ii) over-exploitation of fisheries in the Gulf of Thailand; (iii) land-based pollution; and (iv) regional coordination, including facilitation of national-level execution and securing inter-country agreement on project-related matters.

Fortes shared that some of the major outcomes of the project include initiatives and plans that are in place to deal with the issues at hand. These include strategic action programmes and recommended frameworks that have been put in place to improve regional cooperation in the management of the environment of the South China Sea.

He concluded by saying that the UNEP/GEP SCS project is the first attempt to develop regional coordinated programmes of actions designed to reverse environmental degradation in the South China Sea. Its outcomes to date give a clearer picture of the strategic significance of the SCS in the context of the current regional coastal and marine environmental resources. It is developing a framework for regional cooperation to address environmental problems of the South China Sea.

2. Fisheries Management in the South China Sea

DR. DAVID ROSENBERG
MIDDLEBURY COLLEGE, VERMONT,
AND EDITOR, THE SOUTH CHINA SEA
WORLD WIDE WEB VIRTUAL LIBRARY, USA

David Rosenberg's presentation outlined the distinctive characteristics that make the South China Sea a fertile ecosystem and among the world's most productive fishing grounds. He also briefed on how fish-catch rates and patterns have changed in recent decades, and described the adverse pressures on fishery resources and habitats. Rosenberg was of the opinion that, in addition to the over-exploitation of fisheries, land-based pollution also weakens sustainable fisheries, and directly threatens the commercial fishing industry as well as the coastal communities that depend on fishing for their livelihood.

One of the initial and persisting problems in the South China Sea is the difficulty in determining sustainable fish-catch rates. However, it was not a deterrent to efforts based on the basic principles to limit fishing areas to feeding grounds, limit the seasons for fishing, limit the catch size and limit access to plan signatories. Ultimately, the key to success for these efforts is to have cooperative management among the coastal states. To achieve that, states would have to put aside historical conflicts and territorial disputes, and avoid possible "tragedy of the commons" in their common waters.

Rosenberg gave a brief account of some notable attempts within the region to slow down the pressure on declining fishery resources. The range of efforts mentioned—be it unilateral or multilateral (government-business-NGO efforts)—indicates that there is no single path to sustainable fisheries management, and it may still be a long way before the South China Sea can fully achieve sustainable fisheries.

3. Cooperative Development of the Oil and Gas Resources in the South China Sea

PROFESSOR ZOU KEYUAN
HARRIS PROFESSOR OF INTERNATIONAL LAW,
UNIVERSITY OF CENTRAL LANCASHIRE,
UNITED KINGDOM

Zou Keyuan's presentation essentially proposed a new model for oil and gas development in the South China Sea. He conceded that his thesis was rather hypothetical as it was essentially based on the assumption that the resources are in fact available in abundance and attainable in the near future. Although one cannot at this point exclude the oil and gas potential in the South China Sea, the possibility that it may not be in the vicinity of the Spratly Islands is quite significant.

Zou gave a brief overview of the current oil and gas exploration and production activities in the South China Sea. Conflicts of interest exist as all of the explorations were unilateral in nature. Therefore, the concept of joint development, which has been provided for under international law since the 1970s, may be the only solution. This would involve agreement between two or more states to develop and share in an agreed proportion through interstate cooperation and national measures in a designated zone of the seabed. In fact, there have been many discussions with regards to joint development in the South China Sea within the Asian region and, most importantly, one of the main proponents embroiled in the disputes (China) has often reacted favourably towards the idea of joint development.

Zou, however, warned that the idea might not be as easily realized as it was made out to be. Some reasons for this are: (i) ASEAN states have good reasons to be suspicious of the Chinese position; (ii) most of the disputes in the South China Sea involve multiple claims; thus no two states are able to exclude the others from being interested. Even if an agreement is established, joint development would only be an interim measure, pending settlement of the disputes. Despite the remaining concerns that he had, Zou concluded on a positive note that as long as China and a unified ASEAN front can treasure the opportunity to form some kind of joint development anchored by strong political will, long-term peace and security in the South China Sea is definitely achievable.

Commentary

DR. FRANCES B. MICHAELIS
EDITOR, UN ATLAS OF THE OCEANS, AUSTRALIA

Frances Michaelis commented that while the papers presented explored the relationship between traditional and non-traditional security issues, she saw a need to further broaden the discussion that followed as the issues in the area of fisheries and offshore oil and gas sectors also apply equally to other resource-extraction sectors. She challenged participants to think more broadly on these issues and suggested that the real question at hand is to

MR. JOSHUA HO (RIGHT) COORDINATOR, MARITIME SECURITY PROGRAMME, RSIS, WITH DR. VIJAY SAKHUJA, VISITING SENIOR RESEARCH FELLOW, INSTITUTE OF SOUTHEAST ASIAN STUDIES, NUS

what extent do the disputes in the South China Sea disadvantage the environmental management regimes of the sea. Michaelis was of the opinion that ultimately, the issue is not the lack of agreements among the parties but their multiplicity and the difficulty with enforcement of national and international regimes.

Discussion

SPEAKERS FOR SESSION 2

Many agreed that joint development is one of the most viable solutions to the problems in the South China Sea. Although it has been tabled and discussed many times within the region, it has over time faced immense resistance from various parties at different occasions and for different reasons. Most importantly, it cannot be a temporary arrangement as it would involve huge commitments and, if unsuccessful, could have severe repercussions. Interestingly, it was pointed out that even though China has long been favourable towards the idea of joint development, and has in fact made several proposals based on such initiatives, one should take note that the area involved would almost always involve the continental shelf belonging to another coastal state and never one of its own. This act raises the question of China's sincerity and actual intent.

The concept of joint development is still a credible one as there have been instances where such projects were successful. However, one participant was also quick to qualify that such examples would usually be limited to localities that are least controversial. Be that as it may, there is no lack of examples of joint development projects in highly contentious waters, though those would involve constant renegotiations to appease interested parties.

Another issue that was widely discussed is the regional capacity to maintain an environmental management programme in the South China Sea. Although the UNEP/GEF project is still ongoing, member states need to contribute towards that cause. Essentially, without the necessary technical capacity and strong political will, sustainability of the effort will prove to be challenging.

SESSION III: THE STRATEGIC SIGNIFICANCE OF THE SOUTH CHINA SEA

1. The Spratlys Dispute in China-Southeast Asia Relations: A Case of Lower Securitization

ASSOCIATE PROFESSOR RALF EMMERS
HEAD OF GRADUATE STUDIES,
S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES,
NTU, SINGAPORE

Ralf Emmers essentially argued that the Spratly Islands dispute is today characterized by a lower degree of securitization. He made it clear that he was not suggesting that the territorial dispute has been removed from the security discourse and it was important to note that the shift in perception has occurred despite the absence of significant changes in the circumstances pertaining to the dispute, as well as in the absence of major progress in conflict management and resolution.

To explain the shift along a securitization spectrum from a higher to a lower degree, Emmers opined that it involves the following combination of wider domestic and regional development: (i) the gradual change in how Southeast Asian policy elites perceive China; (ii) the weakness of China's power projection in the South China Sea, though the gradual improvement has been a cause for concern within the region; (iii) the various claimants states refraining from playing the nationalism card in recent years; (iv) limited proven oil and gas reserves of the South China Sea playing a role in the de-escalation; and (v) the restrained involvement of the United States being another source of stability in the South China Sea.

Emmers concluded that the factors mentioned were variables. Therefore, although an armed conflict seems unlikely in the short term, the risk of miscalculation or accidents could lead to limited confrontation.

2. Claimants' Policies on the South China Sea

DR. CRAIG A. SNYDER
SENIOR LECTURER, SCHOOL OF INTERNATIONAL AND POLITICAL STUDIES, DEAKIN UNIVERSITY, AUSTRALIA

Craig Snyder's presentation explored the policies of the claimants to the territorial disputes in the South China Sea, focusing principally on the dispute over the Spratly Islands. He qualified that he would not be commenting on the domestic and foreign policies of the claimant states but to make some observations as an outsider. Snyder adopted the realist power-politics approach and also the neo-liberal institutionalist approach to explain the behaviour of ASEAN states and how policymakers often choose different approaches (either multilateral or bilateral) to deal with different situations.

He remarked that the multilateral approach has had some success in the South China Sea through joint development and increased transparency among the claimants. For example, after more than a decade of engagement with ASEAN, China is now moving towards this approach, often referred to as the "smile diplomacy". The Philippines, on the other hand, has been one of the strongest supporters of a multilateral approach, being the first to call for a regional code of conduct. In addition to the various multilateral discussions, several bilateral and trilateral initiatives have also been developed. These range from bilateral codes of conduct for state action in the area to the establishment of bilateral working groups to discuss territorial boundary issues. While other claimants have engaged each other on a bilateral basis, the primary proponent of the bilateral process has been China.

In conclusion, Snyder opined that the power-politics theory best explains state behaviour in the South China Sea, i.e. all states seek to maximize their own power. For example, by adopting the strategy of a cooperative hegemon, China could shape the multilateral mechanism to achieve its policy objective while conceding only limited power or influence to the smaller states. The Philippines and Vietnam seek the multilateral approach to enhance their national objectives while adopting the hedging strategy to engage China on a bilateral basis. Malaysia, on the other hand, has assumed a pragmatic position as it feels that it is able to reach a bilateral deal with China. Ultimately, the ASEAN nations seek to engage China in the multilateral forum with the hope that the rules and norms of the institution will, over time, be gradually integrated into the official Chinese thinking that could eventually provide real restraint in its behaviour.

3. The Declaration on the Conduct of Parties in the South China Sea

DR. NGUYEN HONG THAO
LECTURER, UNIVERSITY OF HANOI, VIETNAM

Nguyen Hong Thao argued that, due to the strategic and economic importance of the South China Sea to most Asian countries, both claimant and non-claimant states would have an interest to seek the peaceful settlement of disputes and promote region-wide cooperation. Therefore, he highlighted the importance of implementing the "Declaration on the Conduct of Parties in the South China Sea" (hereinafter called "DOC").

Nguyen remarked that the DOC is the first political document relating to the South China Sea. It was concluded between ASEAN and China, and it was an important contribution to the maintenance of peace and security in the region and in promoting development and cooperation. The DOC was gradually being recognized as a guideline for behaviour and state-to-state relations over the South China Sea issues. He informed that the objective in implementing the DOC is twofold: to formulate trust and confidence among the claimants, and to lead to the establishment of a Regional Code of Conduct in the South China Sea. Unfortunately, when he explored how each signatory interprets and implements the DOC, he found no uniformity and most would still prioritize according to their own interest.

In conclusion, Nguyen opined that the implementation of the DOC has had its fair share of advantages and challenges. Therefore, ASEAN member countries must unify their position on the implementation of the DOC and be proactive in engaging China to do so as well. In order to transform the South China Sea into a sea of peace, all parties concerned must practise self-restraint and follow the provisions and guidelines provided in the DOC.

Commentary

DR. LI MINGJIANG
ASSISTANT PROFESSOR,
S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES,
NTU, SINGAPORE

In his commentary, **Li Mingjiang** flashed out some of the points for discussion that would follow the presentations. Li pointed out that all three presenters generally agreed that the intensity for actual conflict in the South China Sea has been reduced significantly. However, he was of the opinion that the concept of securitization would have little to do with matters relating to both conflict management and resolution. Li further noted that although Emmers was a bit sceptical about the usefulness of the DOC, it might well be the best option for the parties involved as it reflects the willingness to maintain the status quo, which may in turn be the basis for future cooperation.

Even though the presenters agreed that China is a major factor when considering the issues in the South China Sea, Li had a different opinion when it came to weighing the key elements of the China factor. He was of the opinion that although China is weaker in terms of naval power than it used to be, it has in recent years garnered far more authority in those waters; this has been brought about by a change in political conditions.

Li also touched on the point that both bilateral and multilateral approaches are equally important. Perhaps a study of the causal relation of both approaches might be useful as the adoption of one could theoretically lead to the practice of another. He also raised the point that, due to the economic interdependence and consensus among the various parties in the region, they all should place priority in their own social and economic development. New developments in the South China Sea region have received favourable reaction, a good example being the initiative on the "Pan-Tonkin Gulf Economic Region".

Discussion

It was agreed that the DOC is indeed an important document, even though it could have been more useful in a practical way. In itself, the document is not as significant as the message that it relays, i.e. the ability of ASEAN to engage China and China's willingness to accept multilateral approaches. However, some seemed to be of the opinion that the DOC is as far as the parties are ready to agree upon. To put in place a code of conduct that is potentially binding and involve sanctions would be highly problematic within the ASEAN context. A more practical and realistic approach would probably involve deeper functional cooperation among the parties in all areas.

Many were rather optimistic of the economic situation in the region and believed that with greater economic interdependence among the various parties, these countries would have more reasons to work things out. What is also needed is a conflict resolution mechanism to prevent the escalation of any potential conflict. Others were less than enthusiastic for the prospect for peace with increased economic interdependence as, theoretically, no causation has been established between economic interdependence and peace. In fact, there have been many examples in the region of conflict intensifying between states despite increasing economic interdependence.

Considering that there are in fact favourable circumstances in the South China Sea, as mentioned by Emmers, it is an indication that it might be time for some formal attempts to manage these conflicts rather than maintaining a collective position of avoidance. One of the main factors that may change the current stable condition is perhaps a change in China's position and policies and, to a lesser extent, U.S. foreign policy towards Asia, as it is not foreseeable that the United States would be involved in the sovereignty issues of another regional state.

SESSION IV:
GOOD ORDER AT SEA IN THE SOUTH CHINA SEA

1. The South China Sea: The Long Road Towards Peace and Cooperation

PROFESSOR DR. HASJIM DJALAL
DIRECTOR, CENTRE FOR SOUTHEAST ASIA STUDIES, JAKARTA, INDONESIA

The South China Sea workshop process (Workshop Process) had been able to both facilitate and set the foundation for regional cooperation but **Hasjim Djalal** shared with the conference participants that the achievement was not attained easily. The sensitivity of the South China Sea territorial issues and the general lack of political will among ASEAN countries generally meant that the workshop organizers had to tread carefully and design dialogue topics that would bring the countries together and not widen any diplomatic or political fissure. At the onset of the Workshop Process, confronted with a series of political and military hostilities in the region, Djalal expressed that it is obvious that the road towards peaceful and cooperative development in the South China Sea region would be a long and challenging one.

Djalal noted that political development and even military clashes in the Southeast Asian region gave rise to the need for the Workshop Process to concentrate on peace and cooperation-building efforts. Within 16 years from its inception in 1990, the workshop process has successfully set the pace for cooperation within the South China Sea region. However, Djalal informed that several challenges had to be overcome before any progress could be attained. He also revealed that there were areas where developments had stalled as there was simply no easy nor direct solution to the obstacles met.

He concluded that there is also a need to engage workshop participants in an inclusive manner. No participant should be excluded in any dialogue as he felt that this would push back any attempt for any regional or collective development in the area.

2. Legal Regimes for Cooperation in the South China Sea

ASSOCIATE PROFESSOR ROBERT BECKMAN
VISITING SENIOR FELLOW,
S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES, NTU, SINGAPORE

Robert Beckman looked into the limitations of international law in solving the sovereignty disputes over the South China Sea islands. He noted that no provisions were made in the 1982 United Nations Convention on the Law of the Sea (UNCLOS) that specifically deal with and address the South China Sea disputes. Moreover, the compulsory dispute settlement process covered in Part XV of the UNCLOS does not apply and cover boundary delimitation disputes that need to be viewed together with island-sovereignty claims. China, Beckman informed, has opted out of Part XV of the UNCLOS.

In summary, Beckman highlighted that there are legal uncertainties surrounding the status of some of the geographic features in the South China Sea and the maritime zones that can be claimed around them. He reasoned that this is also why the claimants prefer to negotiate cooperative arrangement on the management and use of the South China Sea rather than seek legal resolution through the international court. States with sovereignty claims over geographic features in the South China Sea should also review their use of the straight baseline method as it would be a mistake to assume that the islands are entitled to the same delimitation boundary rights accorded to continental shelf territories.

He concluded that in order to promote good order at sea, there are two main areas that states could consider. First, there is a need for a protocol or a code of conduct. Very simply, he explained that this means that a clear policy of self-restraint between contesting claimant states and rules on the engagement of patrol vessels should be established. Second, there is a need to manage and preserve the living resources, protect the marine environment and deal with the problem of illegal, unreported and unregulated fishing in the disputed areas of the South China Sea.

3. The South China Sea: From Hostility to Stability

COLONEL (RETD) RAMLI HAJI NIK
SENIOR RESEARCHER,
MARITIME INSTITUTE OF MALAYSIA

Ramli Haji Nik commented that the South China Sea is an important sea-lane of communication (SLOC). Thus, given the economic value of the South China Sea, he argued that current joint-development projects have now transformed the South China Sea into an area of peace and stability. From a political perspective, he opined that the U.S. engagement with China has also contributed to the stability in the region.

He remarked that the political will and concerted efforts of the ASEAN member states, China, Japan, South Korea and the United States have transformed the South China Sea into a region of stability and cordiality. In this spirit and given the paramount importance of the sea-lanes of communication in the new world order, the Malaysian Government has also committed itself to the construction of a 320-kilometre oil pipeline from Kedah (on the west coast of Peninsular Malaysia) to Kelantan (on the east coast) to facilitate the shipping of oil from the Middle East directly to the South China Sea region without the need to navigate through the Straits of Malacca. In essence, he concluded that the stable political and economic relations that most countries in the South China Sea now share have favourably contributed to the peace-building efforts and prosperity of the region.

Commentary

Sam Bateman, in his commentary of the session, queried the definition of "good order at sea". He wondered if good order at sea meant: (i) the absence of illegal activities; (ii) the presence of safe and secured shipping routes; and (iii) the ability of nations to agree to their legitimate interests according to international law.

According to Bateman, there is a relatively high level of illegal activities and marine pollution that is ongoing and there are no effective "safety at sea" and "search and rescue" mechanisms in place in the South China Sea. He, therefore, queried if there is any good order in the South China Sea region at all. He opined that the focus on global terrorism and the general lack of common interest in the development of the South China Sea might have inhibited "good order" in the South China Sea region.

Discussion

There were several questions on the workshop process. In essence, the conference participants wanted to know what needed to be changed and done differently if the Workshop Process were to be re-crafted and conducted all over again. Djalal felt that the workshop has been successful in minimizing the amount of forceful confrontation and heated exchanges among the claimant states. The peace-promoting mechanism of the workshop should persist and not change. As issues on territoriality continue to be a point of discontent among states, subsequent workshops should try to concentrate more on peace-building and cooperative projects. There were also comments from the conference participants that both Southeast and Northeast Asia lack a collective, substantial and binding treaty that would help to ensure maritime safety in the region. Economic development might drive cooperative measures in the region but there is still a general lack of political willingness by states to commit themselves to the joint development of the South China Sea region.

SESSION V:
LESSONS LEARNED AND IDENTIFICATION OF BEST PRACTICE

Drawn from the observation of the presentations and discussions, and keeping in mind the original intent of the workshop process, the conference participants agreed that a cooperative management regime should be encouraged through the workshop process. Although there is a need to deal with the sovereignty and territorial issues, there are ongoing projects that call for greater attention, for example, those dealing with environmental problems. Arguably, conditions in the South China Sea have been progressive, i.e. from the sea of confrontation and conflict to the current cooperative trend. As the region moves towards a lower state of securitization, it is still at a rather fragile position as fundamental conflicts remain and could intensify.

As China is now quite willing to be engaged at the informal multilateral level, some were optimistic that China and the ASEAN countries could one day work towards progress and peace in the region at an official level. It would mean increasing cooperation that already exists and expanding areas already included. Essentially, attempts to solidify the current conditions of peace would be in the interest of all regional states.

The workshop process could also help strengthen cooperative commitments in the region, especially if state is made to adopt a theme of interest to work on. More importantly, the region ought to look more closely at issues that are of common regional concern, of a certain degree of urgency and cannot be tackled by any individual state. Although there may be a stark gap between legal theories and the political reality of the situation in the South China Sea, the truth remains that states ought to shelve their sovereignty and delimitation issues and move towards cooperation and joint development.

PROGRAMME

Tuesday, 15 May 2007

1500 Arrival of speakers and commentators and registration

1730 Close of registration

1900 Welcome dinner for speakers and commentators
Café Brio's, Grand Copthorne Waterfront Hotel

Wednesday, 16 May 2007

0800 Registration

0830 **Opening Address:**
Ambassador Barry Desker,
Dean,
S. Rajaratnam School of International Studies,
Nanyang Technological University

0845 **Session I –**
Background to the South China Sea Disputes
Chairperson: Dr. Sam Bateman,
Senior Fellow,
S. Rajaratnam School of International Studies,
Nanyang Technological University

Islands, Rocks and Shoals: A Geo-Political Overview of the South China Sea
Dr. Clive Schofield,
QE II Research Fellow,
Centre for Maritime Policy,
University of Wollongong, Australia

The South China Sea Dispute: An International History
Professor Geoffrey Till,
Professor,
Joint Services Command and Staff College,
United Kingdom

0945 Break

1000 **Session I (Continued) –**
Background to the South China Sea Disputes
Chairperson: Dr. Sam Bateman,
Senior Fellow,
S. Rajaratnam School of International Studies,
Nanyang Technological University

The Contribution of the South China Sea Workshops – Importance of a Functional Approach
Professor Ian Townsend-Gault,
Faculty of Law,
University of British Columbia, Canada

Maritime Territorial Disputes and their Impact on Maritime Strategy – A Historical Perspective
Dr. Bruce A. Elleman,
U.S. Naval War College, Rhode Island

Commentator:
Dr. Mark J. Valencia,
Visiting Senior Fellow,
Maritime Institute of Malaysia

1145 Lunch

1245 **Session II – The Environment, Resources and Marine Scientific Research**
Chairperson: Dr. Mark J. Valencia,
Visiting Senior Fellow,
Maritime Institute of Malaysia

The UNEP/GEF South China Sea Project: Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand
Dr. Miguel D. Fortes,
Marine Science Institute,
University of the Philippines

Fisheries Management in the South China Sea
Dr. David Rosenberg,
Middlebury College, Vermont, and Editor,
The South China Sea World Wide Web Virtual Library, USA

Cooperative Development of the Oil and Gas Resources in the South China Sea
Professor Zou Keyuan,
Harris Professor of International Law,
University of Central Lancashire,
United Kingdom

Commentator:
Dr. Frances B. Michaelis,
Editor,
UN Atlas of the Oceans, Australia

1500 Break

1515 **Session III –**
The Strategic Significance of the South China Sea
Chairperson:
Associate Professor Robert C. Beckman,
Visiting Senior Fellow,
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Nanyang Technological University

The Spratly Dispute in China-Southeast Asia Relations: A Case of Lower Securitization
Associate Professor Ralf Emmers,
Head of Studies,
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Claimants Policies on the South China Sea
Dr. Craig A. Snyder,
Senior Lecturer,
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The Declaration on the Conduct of Parties in the South China Sea
Dr. Nguyen Hong Thao,
Lecturer,
University of Hanoi, Vietnam

Commentator:
Dr. Li Mingjiang,
Assistant Professor,
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1730 Conference Adjourns

Thursday, 17 May 2007

0900 **Session IV –**
Good Order at Sea in the South China Sea
Chairperson:
Associate Professor Ralf Emmers,
Head of Studies,
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The South China Sea – The Long Road Towards Peace and Cooperation
Professor Dr. Hasjim Djalal,
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Jakarta, Indonesia

Legal Regimes for Cooperation in the South China Sea
Associate Professor Robert C. Beckman,
Visiting Senior Fellow,
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1000 Break

1015 **Session IV (Continued) –**
Good Order at Sea in the South China Sea
Chairperson: Associate Professor Ralf Emmers,
Head of Studies,
S. Rajaratnam School of International Studies,
Nanyang Technological University

The South China Sea (SCS): From Hostility to Stability
Colonel (Retd) Ramli Haji Nik,
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Maritime Institute of Malaysia,
Kuala Lumpur, Malaysia

Commentator:
Dr. Sam Bateman,
Senior Fellow,
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1130 **Session V –**
Lessons Learned / Identification of Best Practice
Chairperson: Professor Geoffrey Till,
Professor,
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Panel:
Professor Dr. Hasjim Djalal,
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Professor Ian Townsend-Gault,
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Dr. Mark J. Valencia,
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1300 Lunch

1400 Conference Ends

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ABOUT RSIS

The S. Rajaratnam School of International Studies (RSIS) was established in January 2007 as an autonomous School within the Nanyang Technological University. RSIS's mission is to be a leading research and graduate teaching institution in strategic and international affairs in the Asia Pacific. To accomplish this mission, it will:

- Provide a rigorous professional graduate education in international affairs with a strong practical and area emphasis
- Conduct policy-relevant research in national security, defence and strategic studies, diplomacy and international relations
- Collaborate with like-minded schools of international affairs to form a global network of excellence

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RSIS offers an exacting graduate education in international affairs, taught by an international faculty of leading thinkers and practitioners. The Master of Science (MSc) degree programmes in Strategic Studies, International Relations, and International Political Economy are distinguished by their focus on the Asia Pacific, the professional practice of international affairs, and the cultivation of academic depth. Over 120 students, the majority from abroad, are enrolled in these programmes. A small, select Ph.D. programme caters to advanced students whose interests match those of specific faculty members. RSIS also runs a one-semester course on *'The International Relations of the Asia Pacific'* for undergraduates in NTU.

Research

RSIS research is conducted by five constituent Institutes and Centres: the Institute of Defence and Strategic Studies (IDSS, founded 1996), the International Centre for Political Violence and Terrorism Research (ICPVTR, 2002), the Centre of Excellence for National Security (CENS, 2006), the Centre for the Advanced Study of Regionalism and Multilateralism (CASRM, 2007); and the Consortium of Non-Traditional Security Studies in ASIA (NTS-Asia, 2007). The focus of research is on issues relating to the security and stability of the Asia-Pacific region and their implications for Singapore and other countries in the region. The S. Rajaratnam Professorship in Strategic Studies brings distinguished scholars and practitioners to participate in the work of the Institute. Previous holders of the Chair include Professors Stephen Walt, Jack Snyder, Wang Jisi, Alastair Iain Johnston, John Mearsheimer, Raja Mohan, and Rosemary Foot.

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