

## **The South China Sea : Practical solutions post-Arbitration Ruling**

Sam Bateman\*

The recent ruling by an Arbitral Tribunal in The Hague addressing the dispute between China and the Philippines in the South China Sea has been regarded as a major defeat for China. Although China does not accept the ruling, there are encouraging indications that the stakeholders will exercise self-restraint over activities that could complicate or escalate the disputes and affect peace and stability. Potentially, the ruling provides opportunities for fresh negotiations and dialogue leading to practical solutions to easing tensions in the South China Sea. In a recent encouraging move, the Philippines has initiated new negotiations with China on their sovereignty dispute.

Constructive dialogue is required rather than destructive criticism and provocations. This dialogue should focus on functional cooperation for activities, such as marine scientific research, fisheries management, protecting and preserving the marine environment, maritime law enforcement, and search and rescue. Unfortunately the need for these forms of cooperation has been lost in recent rhetoric on the South China Sea. This situation is largely the result of the increased levels of distrust that have become apparent in the South China Sea in recent years.

A ‘chicken and egg’ situation has emerged in the South China Sea. What comes first – maritime cooperation as a maritime confidence-building measure (MCBM), or strategic trust? This dilemma has arisen partly because the concepts involved mean different things to different people. One school of thought is that arrangements for functional cooperation on ‘softer’ issues, such as fisheries management, marine scientific research and marine environmental protection are MCBMs or trust-building measures. The conflicting school believes strategic trust is a prerequisite of cooperation – that there cannot be cooperation without trust. Thus the strategic trust currently lacking between China, Japan and the United States, as well as between ASEAN and China, has become an obstacle to cooperation. But trust is essential for good order at sea and effective maritime management.

China has put forward proposals for cooperation in the South China Sea, such as the ASEAN-China Maritime Cooperation Fund that provides for the establishment of expert committees on marine scientific research, environmental protection, search and rescue and transnational crime. Also, at the Boao Forum in 2016, China announced the establishment of the China-Southeast Asian Research Centre for the South China Sea that would conduct and coordinate research on resources, the marine environment and so on. However, the ASEAN claimants have been slow to embrace these Chinese proposals, appearing to believe that greater trust is required before there can be cooperation. They do not trust China to do what is right.

In this context, trust means some concessions by China with regard to its sovereignty claims in the South China Sea, or at least some indication of preparedness to compromise following the arbitration ruling. Unfortunately the ‘means’ of resolving the situation in the South China Sea, primarily agreement on a Code of Conduct and dispute resolution, have become more important than the ‘ends’, which should be the effective management regimes for the South China Sea and activities within it. These regimes must be based on cooperation, but in

another paradox, there is some reluctance to cooperate among the claimant states because of a fear that cooperation could prejudice their sovereignty claims.

While this “chicken and egg” situation exists between trust and cooperation, little is being done to protect sensitive marine habitats of the South China Sea, manage its fish stocks, prevent transnational maritime crime, or conduct the scientific research necessary to effectively manage the sea and its resources. Cooperation is not just something that is necessary – it is also an obligation. The littoral countries to the South China Sea are all parties to the 1982 UN Convention on the Law of the Sea (UNCLOS) and thus have a clear obligation under Part IX of that treaty to cooperate in managing the sea and activities within it.

A way forward is evident with getting out of this dilemma. Trust should not be seen as a prerequisite of cooperation. While it is possible that part of the current situation may be due to differences of interpretation and understanding with some subtleties of trust and confidence being ‘lost in translation’, there is also a pressing need to get back to basics. Maritime cooperation should be accepted as an MCBM that helps build trust and confidence. Cooperation on managing the South China Sea and its resources should proceed even as disagreements are negotiated at the political level and the sovereignty disputes remain unresolved.

A practical solution could include taking a ‘dual track’ approach to trust. Trust could be thought about at two levels. At a higher level, strategic trust between major powers and neighbours with sovereignty disputes is what is missing at present. At this level, trust is mainly about traditional security, sovereignty, conflict prevention, dispute resolution, and so on, but it also serves to prevent the required civil maritime cooperation. A practical solution may be to build trust at an operational rather than strategic level. This would mean operational trust between civil agencies to allow essential and obligatory civil maritime cooperation to proceed without prejudice to sovereignty claims. Operational trust would overcome the problem that with current levels of strategic distrust in the region, civil maritime cooperation has been both ‘politicized’ and ‘militarized’. In the long-run, greater operational trust could lead to greater strategic trust.

The practical solution of building operational trust might include the establishment of a forum specifically for managing civil maritime cooperation in the South China Sea. This should make a clear distinction between naval cooperation and civil maritime cooperation with coast guards used for implementing measures such as cooperative marine safety, law enforcement and search and rescue rather than navies. The recent proposal for an ASEAN coast guard agencies forum potentially provides the basis for the recommended forum. The Chinese Coast Guard could be invited to join this forum.

The bottom line is that China and ASEAN should now be given space to work out their differences and explore cooperation for managing the South China Sea without pressure or provocation from extra-regional/non-littoral powers. They should work on practical solutions to resolve the situation in the South China Sea while recognizing that the sovereignty disputes are unlikely to be resolved in the foreseeable future or a Code of Conduct agreed. There is no strategic imperative for powers outside of the South China Sea to take any action, including no extant threat to freedoms of navigation and overflight that warrant confrontational assertions of these freedoms. Dialogue between ASEAN and China must now be given the chance to work.

---

*\* Sam Bateman is a Senior Fellow in the Maritime Security Programme at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University. He is a former Australian naval commodore with research interests in regimes for good order at sea.*