

A Chinese Perspective on Establishing a Cooperation Mechanism in the South China Sea

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Since mid-2016, the situation in the South China Sea, as a whole, has remained stable and continued to develop in a positive direction. As a result of China's efforts, claimants of the South China Sea are now on the correct path towards peace, resolving their disputes through negotiation and cooperation. Nevertheless, we must maintain a cautiously optimistic attitude, guarding against lingering uncertainties that may still stir up the situation. In order to maintain the current positive momentum and create a more favorable environment for cooperation and development in this region, coastal countries should now consider establishing a new cooperation mechanism in the South China Sea.

Recent Developments in the South China Sea

Since 2010, the South China Sea issue has ranked high on any listing of the world's geopolitical hotspots, where fractious territorial disputes have very nearly pushed the region to the edge of armed conflict on multiple occasions. However, since mid-2016, the waters of the South China Sea have been fairly tranquil. There have been no major incidents or crises, and more often than not, good news concerning collaboration and cooperation among the claimants has emerged.

As a direct result of several agreements reached by ASEAN and China during the ASEAN meetings and the East Asia Summit held in Vientiane,

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Laos in September 2016, there has been a systematic ebbing of tensions in the South China Sea. The ASEAN countries and China adopted the Joint Statement on the Application of the Code for Unplanned Encounters at Sea (CUES) in the South China Sea as well as the Guidelines for Hotline Communications among Senior Officials of the Ministries of Foreign Affairs in Response to Maritime Emergencies. They also called for a full implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC) and a continuation of negotiations aimed at the Code of Conduct in the South China Sea (COC).

On May 18-19, 2017, following progress made during the 23rd China-ASEAN Senior Officials' Consultation and the 14th Senior Officials' Meeting on the Implementation of the DOC held in the Chinese city of Guiyang, senior officials from China and ASEAN countries agreed on a framework for the COC. All parties also agreed to continue to implement the DOC and reaffirmed plans to resolve disputes through negotiation, manage differences with a regional framework of regulations, deepen maritime cooperation, and move forward the negotiations on the COC to safeguard peace and stability of the region.¹ In August, during the ASEAN Foreign Ministers' Meeting and Related Meetings held in Manila, foreign ministers from ASEAN states and China endorsed the framework for the COC. During the 20th ASEAN-China Summit held in Manila on November 13, leaders of China and ASEAN countries formally announced the start of negotiations on the COC.

The positive trajectory of the China-Philippine relationship is another significant step forward in the South China Sea situation. After the Arbitral Tribunal at The Hague issued its ruling in favor of the Philippines on July 12, 2016, the newly installed Philippine President Rodrigo Duterte decided to toss the ruling aside, achieving immediate results in the form of a breakthrough in China-Philippine relations. During Duterte's visit to China in October 2016, leaders from both countries agreed to handle maritime

1 "China, ASEAN Countries Agree on COC Framework," *Xinhua*, May 18, 2017, http://news.xinhuanet.com/english/2017-05/18/c_136295814_2.htm.

disputes in an appropriate manner. In recognition of these efforts, China made some arrangement for the Filipino fishermen's fishing in "the relevant part of waters of Huangyan Island."² On May 19, 2017, the first meeting of the China-Philippine bilateral consultation on the South China Sea was held in Guiyang. With a common desire for constructive interaction, the two parties reaffirmed their commitment to address territorial and jurisdictional disputes by peaceful means, and held discussions regarding the promotion of next-step practical maritime cooperation and the possible establishment of technical working groups. On July 25, Chinese Foreign Minister Wang Yi met with President Duterte in the Philippines, and the two sides expressed interest in joint exploitation of natural resources in the disputed South China Sea.

Causes for Recent Cooling Down

Overall, the contentious issues that once beleaguered the South China Sea have cooled down and stabilized. However, it is instructive to review the causes of this respite and ask ourselves whether anything has really changed and whether the lull can continue.³

First, since the Arbitral Tribunal issued its ruling in July 2016 (which was overwhelmingly in favor of the Philippines), China, in terms of its relations with ASEAN, has made great efforts to reverse the narrative and justify its legitimate claims and actions in the South China Sea. China has advocated for the implementation of the DOC, pushed forward negotiations on the COC, and fully embraced the hand that President Duterte extended. China also continues to promote the dual-track approach, wherein disputes are addressed properly through negotiation and consultation among countries directly concerned, allowing China and

2 Ramses Amer and Li Jianwei, "Managing the China-Philippine Dispute in the South China Sea," *China-US Focus*, June 1, 2017, <http://www.chinausfocus.com/foreign-policy/managing-the-china-philippines-dispute-in-the-south-china-sea>.

3 Ian Storey, "Choppier Waters Ahead in the South China Sea?" *China-US Focus*, July 12, 2017, <https://www.chinausfocus.com/peace-security/choppier-waters-ahead-in-the-south-china-sea>.

ASEAN countries to work together towards peace and stability in the South China Sea. At the same time, as of mid-2016, China's reclamation of some South China Sea islands came to an end. Through these measures, China is trying to convey goodwill to the region and persuade other claimants to return to the negotiating table.

Second, the Philippines and Vietnam, the two countries once most outspoken against China in this dispute, have adjusted their South China Sea policies with new leaders in office. These countries understand that escalating the situation is not beneficial to the interests of any party, and that continued provocation would lead the region into further conflict.

In particular, the new government of the Philippines has dramatically changed its policy and now considers a cooperative partnership with China as its top priority. Under President Benigno Aquino III, the Philippines adopted an overwhelmingly pro-US foreign policy, and came into confrontation with China following the Huangyan Island and the Ren'ai Reef incidents. The subsequent international arbitration unilaterally initiated by the Philippines further led to an unprecedented nadir in bilateral ties. Since assuming office, President Duterte has embraced an independent and pragmatic foreign policy, and in a bid to put the derailed relationship back on track, chose China as the destination for his first overseas visit outside of ASEAN. As a result of the change in Duterte's approach to the dispute, the atmosphere of Sino-Philippine relations have reached levels of positivity not seen since the mid-2000s.⁴

Third, inaction by the United States in the South China Sea in the latter stages of the Obama administration and the first few months of the Trump presidency has allowed for hitherto unseen levels of open dialogue and unencumbered regional dispute resolution. Since taking office, domestic politics have occupied the majority of President Trump's attention. During the first year of his administration, he has failed to deliver an ideal performance in the diplomatic field. In a region that his predecessor

4 Ian Storey, "Choppier Waters Ahead in the South China Sea?"

President Barack Obama placed such a high value on, President Trump, lacking an Asia-Pacific policy team, can hardly articulate, let alone formulate a regional strategy or policy. Moreover, it is said that in order to get China to tighten the screws on North Korea, the Trump administration restrained itself from provoking China in the South China Sea.⁵ The White House, it was revealed, had refused to give the green light to Pacific Command's request to conduct further Freedom of Navigation Operations (FONOPs) on three separate occasions.⁶

Uncertainties Likely to Stir up Instability

Although good news and positive signals have emerged in the region, fundamental disputes and contradictions have not yet been resolved. None of the Southeast Asian claimants has altered claims in the South China Sea, and most of the factors that have led to the current cooling down mentioned above are not sustainable. The situation in the South China Sea is still fraught with uncertainties.

One major uncertainty concerns the domestic political situation of relevant ASEAN countries. Within the governments of Vietnam, the Philippines, Malaysia, Indonesia and other countries, there are differing attitudes, opinions, and policies regarding China's role both in the region and within their respective nations. For example, the internal disagreements within the Philippine administration on policies pursued vis-à-vis China and the United States are clearly visible in the sometimes contradictory statements between the president and the Ministry of Defense, which has revealed the limits of the Sino-Philippine rapprochement. And irrespective of Duterte's pledge to "separate" from America and pursue alliance-like relationships with China and Russia, the United States remains the Philippines' indispensable

5 "South China Sea: US Warship Challenges China's Claims with First Operation under Trump," *CNN*, May 25, 2017, <http://edition.cnn.com/2017/05/24/politics/south-china-sea-us-mischief-reef/index.html>.

6 Steven Stashwick, "US Freedom of Navigation Challenges in South China Sea on Hold," *The Diplomat*, May 8, 2017, <https://thediplomat.com/2017/05/us-freedom-of-navigation-challenges-in-south-china-sea-on-hold>.



Then Vice Foreign Minister of China Liu Zhenmin at the 14th Senior Officials' Meeting on the Implementation of the DOC in Guiyang, May 18, 2017. Agreement on a framework for the Code of Conduct in the South China Sea (COC) by China and ASEAN countries lays solid foundation for future negotiations.

security partner, as the violent siege at Marawi in Mindanao attests.⁷

Southeast Asian countries are still sticking to a balanced foreign policy between China and the US. The diplomatic interactions among Southeast Asian countries and the Trump government remain relatively frequent, demonstrated by the fact that leaders from Vietnam, Malaysia, Singapore and Thailand have all visited the United States in the past year. Southeast Asian countries are visibly concerned about America ignoring the region, and hope that the United States will remain as a regional moderator and security guarantor.

Another important uncertainty is that policies regarding the Asia-Pacific region in general and the South China Sea more specifically have yet to take shape under the Trump administration. But what is clear is that the

7 Ian Storey, "Choppier Waters Ahead in the South China Sea?"

US interests in the South China Sea have not changed, and disagreements between China and America concerning the right of innocent passage through territorial seas and the holding of military activities or operations in the Exclusive Economic Zone (EEZ) of another country continue to threaten regional stability.

In addition, President Trump has increased military investment into the Asia-Pacific region, showing quite clearly that he intends to dominate security within the Asia-Pacific region through force. In America's 2018 budget outline, \$54 billion was added to the defense spending,⁸ a majority of which will be deployed to the Asia-Pacific region.

In recent months, America has enhanced military activities in the South China Sea. The US Navy has resumed FONOPs in the region, and the frequency has surpassed even that of the Obama era. At the Shangri-La Dialogue in Singapore in early June 2017, US Defense Secretary James Mattis said, "The United States remains committed to protecting the rights, freedoms and lawful uses of the sea, and the ability of countries to exercise those rights in the strategically important East and South China Seas."⁹ These words are a familiar refrain, and reflect the fact that as yet there remains no substantial change in US South China Sea policy.

Moreover, since an agreed-upon COC framework has been developed, the negotiation of a final COC text will step into "deep waters." Defining both the scope of application and the precise nature of the COC will be vital for the successful conclusion of COC negotiations. Disagreement over whether the COC should be legally binding even within ASEAN will restrict future COC negotiations. It is more than likely that the various differences and contradictions between China and ASEAN on issues related to the COC will continue to surface, challenging the mutual trust and confidence between China and ASEAN in the future.

8 "Trump Proposes \$54 Billion Defense Spending Hike," *CNN*, March 16, 2017, <http://edition.cnn.com/2017/03/16/politics/donald-trump-defense-budget-blueprint/index.html>.

9 "Remarks by Secretary Mattis at Shangri-La Dialogue," June 3, 2017, <https://www.defense.gov/News/Transcripts/Transcript-View/Article/1201780/remarks-by-secretary-mattis-at-shangri-la-dialogue>.

Importance of Cooperation Mechanism

The South China Sea is of strategic importance because of its geographic position and wealth of resources. With more than 100,000 vessels passing through each year, it is a critical shipping hub between the Pacific and Indian Oceans, ranking among the world's most important maritime corridors. It is also home to abundant fisheries, as well as oil, gas and tourism resources. About 20 percent of the world's fishery resources are located in the region, as well as approximately 11.2 billion barrels of oil and 190 trillion cubic feet of natural gas reserves. Currently, about 2,000 oil and gas wells are in operation in the area.¹⁰

The South China Sea is a typical closed or semi-closed sea, where coastal countries are highly dependent on marine resources. Peace and stability is crucial for the security, development and prosperity of all coastal states and the well-being of their peoples. However, overfishing and illegal, unregulated and underreported (IUU) fishing activities represent a “critical threat” to biodiversity. The wider ecosystem has also suffered the effects of pollution from agriculture and coastal development. Each decade, 30 percent of seagrass, 16 percent of mangrove, and 16 percent of live coral cover is lost due to unsustainable use by the more than 270 million people that live along the coast.¹¹ Therefore, there is a pressing need for cooperation on environmental protection and fishery management in the region.

At the same time, for historical reasons and because there are so many countries in the South China Sea area, relevant states in the region are entangled in complicated disputes over territory, maritime rights and interests.¹² In recent years, the South China Sea has become one of the

10 Hai Min and Zhang Aizhu, “Cooperation in the South China Sea under International Law.”

11 Somboon Siriraksophon, “South China Sea countries to cooperate on integrating fisheries and marine ecosystem management,” UNEP.org, November 1, 2016, <http://www.unep.org/northamerica/news/2016/south-china-sea-countries-cooperate-integrating-fisheries-and-marine-ecosystem-management>.

12 Hai Min and Zhang Aizhu, “Cooperation in the South China Sea under International Law,” *China International Studies*, January/February 2014, pp.88-106.

world's most contested bodies of water. Political trust among regional countries has declined and doubts have increased. With tensions rising across the region, the potential for a conflict in and around the sea has risen significantly in past years.

The situation in the South China Sea is cooling down at present, yet remains potentially combustible. In light of this fact, it is both timely and appropriate to have a discussion about how to maintain the current levels of relative stability for as long as possible, minimize the possibility of deterioration, and shape a new form of regional governance that will be acceptable to and beneficial for the parties concerned. Besides the COC negotiations, there are several other goals that merit serious efforts, such as promoting concrete regional cooperation and establishing a workable mechanism in the South China Sea. In such a mechanism, regional coastal states will strengthen the management and protection of the South China Sea through practical cooperation, so as to deepen mutual trust, increase predictability, clarify intentions, and create a favorable environment for the eventual settlement of relevant disputes through negotiation and consultation.

China and ASEAN countries signed the DOC in November 2002. With regards to cooperation in the South China Sea, Article 6 of the Declaration clearly states: "Pending a comprehensive settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following: a. marine environmental protection; b. marine scientific research; c. safety of navigation and communication at sea; d. search and rescue operations; and e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms."¹³

For either enhancing environmental governance or addressing security challenges, relevant countries are all intent on effectively managing and protecting the area. Policy-makers and diplomats have tried to resolve the challenges in the region, and scholars have advocated a myriad of

13 "Declaration on the Conduct of Parties in the South China Sea," http://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2.

mechanisms as well, but few efforts have paid off. Nevertheless, endeavors aimed at peaceful resolution of regional challenges must continue, especially now that the COC negotiations are making progress. It is the right time to consider establishing cooperation mechanisms in the South China Sea.

China's Endeavors for Promoting Cooperation

China has always shown a dedication to pushing forward bilateral and multilateral maritime cooperation with ASEAN countries. In recent years, China and other coastal states have reached bilateral cooperation agreements in various fields. For example, China and Malaysia signed the Marine Science and Technology Cooperation Agreement in 2009, which covers a variety of issues, such as ocean policy, ocean management, environmental protection, scientific research and survey, disaster prevention and mitigation, and data exchanges. In 2012, the foreign ministers of China and Indonesia signed the Memorandum of Understanding on Maritime Cooperation and established a fund, which China invested 1 billion yuan to stimulate, for bilateral maritime cooperation. During Chinese Premier Li Keqiang's official visit to Vietnam in October 2013, the two countries agreed to establish a joint working group for maritime development, under the framework of government-level border negotiation delegations.

In terms of multilateral cooperation, as the largest coastal state of the South China Sea, China has the responsibility to provide public goods and promote maritime cooperation in the region. In November 2011, while attending the 14th China-ASEAN Summit in Indonesia, then Premier Wen Jiabao announced China's pledge to invest the China-ASEAN Maritime Cooperation Fund, which is dedicated to boosting cooperation on maritime scientific research and environmental protection, navigation safety and search and rescue, and the fight against transnational crimes. The fund has received more than 3 billion yuan from China and has played a positive role in promoting cooperation among relevant parties in the South China Sea.

Under cooperation mechanisms such as APEC, the East Asian Leaders'

Meetings, and the China-ASEAN cooperation framework, China has established multiple platforms for dialogue and cooperation. Examples include the Seminar on Marine Environmental Protection, the Ocean Cooperation Forum, the China-ASEAN Marine Cooperation Center, and the East Asian Ocean Cooperative Platform. The Chinese government has also implemented the Framework Plan for International Cooperation for the South China Sea and its Adjacent Oceans.

Since the launch of the Belt and Road Initiative in 2013 by President Xi Jinping, China has continuously enriched the content of maritime cooperation under the framework of the 21st Century Maritime Silk Road. On June 20, 2017, China issued the Vision for Maritime Cooperation under the Belt and Road Initiative, to synchronize development plans and promote joint actions among countries along the 21st Century Maritime Silk Road. In this document, green development, ocean-based prosperity, maritime security, innovative growth and collaborative governance were raised as five priorities of future maritime cooperation. It is also mentioned that a China-ASEAN cooperation mechanism for marine environmental protection will be established.¹⁴ In coordination with Chinese governmental efforts, the Asian Infrastructure Investment Bank (AIIB) and the Silk Road Fund are also prepared to support relevant cooperation projects.

Meanwhile, China is urging all ASEAN nations to consider the prospect of a new cooperation mechanism. On March 25, 2017, Chinese Vice Foreign Minister Liu Zhenmin delivered a keynote speech entitled “Steadily Promote Cooperation among South China Sea Coastal States” at the South China Sea session of the Boao Forum for Asia Annual Meeting.¹⁵ In that speech, he pointed out that “now is the right time to launch cooperation among South China Sea coastal States”. He said that the South China Sea coastal states should “draw upon the successful experience of other regions, and

14 “Vision for Maritime Cooperation under the Belt and Road Initiative,” *Xinhua*, June 20, 2017, http://news.xinhuanet.com/english/2017-06/20/c_136380414.htm.

15 “Steadily Promote Cooperation among South China Sea Coastal States,” March 25, 2017, www.fmprc.gov.cn/mfa_eng/wjbxw/t1448860.shtml.

without prejudice to the parties' respective claims, work together to initiate and establish a relevant cooperation framework.” Such a framework can bring relevant states together in practical and institutionalized cooperation in fields such as disaster prevention and reduction, maritime search and rescue, protection of marine environment and biodiversity, marine scientific research and navigation safety. It is clear that the establishment of a South China Sea cooperation mechanism has been on the agenda of the Chinese government for quite some time.

What to Learn from Arctic Cooperation?

According to Article 123 of the United Nations Convention on the Law of the Sea (UNCLOS), “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and [...] endeavor, directly or through an appropriate regional organization: (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area; (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.”¹⁶ As such, pragmatic cooperation between signatory states not only conforms to the common interests of all parties, but is also a legal obligation.

The coastal states of many closed or semi-closed seas, such as the Caribbean Sea, the Mediterranean Sea, the Baltic Sea, the Black Sea and the Caspian Sea, have established kinds of cooperation mechanisms. Existing experience of ocean governance regimes elsewhere in the world could provide valuable lessons for the South China Sea. Given the similar attributes related to sovereignty disputes, strategic significance and military

16 UNCLOS, http://www.un.org/depts/los/convention_agreements/texts/unclos/part9.htm.

concerns, the mechanism in the Arctic Ocean, namely the Arctic Council, as a relatively mature model with a successful practice record, may provide an important example for the South China Sea region in the establishment of a cooperation mechanism.

Similarities between the Arctic and the South China Sea

The Arctic Ocean and the South China Sea have some commonalities in terms of multi-state territorial claims, as well as maritime rights and delimitation. There are overlapping claims between Russia and Denmark for the seabed under the Lomonosov and Alpha-Mendeleev Ridges under consideration by the Commission on the Limits of the Continental Shelf, and Canada has also submitted another competing claim to extend the outer limits of its continental shelf. Much like the South China Sea, there have been clashes between the coastal states in the Arctic in the past as well. For example, from 1958 to 1961 and in 1976, there was a state of armed conflict and diplomatic breakdown between the United Kingdom and Iceland over fishing rights. In August 2007, Russia formally staked its claim to a large portion of the Arctic Ocean that includes the North Pole, by planting a flag on the floor of the ocean, which aroused strong opposition from other Arctic countries.

Both the South China Sea and the Arctic are important fishing grounds: approximately ten percent of the global catch is made in the South China Sea and five per cent in the Arctic.¹⁷ In recent years, the diminishing ice cap has caused a growing emphasis on the exploration of oil and gas reserves, international waterways, and commercial activities in the Arctic. The prospects of seasonally ice-free Arctic trade routes and rich natural resources have aroused considerable interest around the world. In both the Arctic and the South China Sea, the perception that the ocean floor is rich in energy resources is an important driver of disputes.¹⁸

17 "Reversing Environmental Degradation Trends in the South China Sea and Gulf of Thailand," UNEP, May 22, 2009, <http://www.unep.org/eou/Portals/52/Reports/South%20China%20Sea%20Report.pdf>.

18 Ian Storey, "Arctic Lessons: What the South China Sea Claimants can Learn from Cooperation in the High North," *ISEAS Perspective*, 2013 #65.

Of course, the Arctic Ocean and the South China Sea are different in terms of their geography, climate, population and geostrategic importance. The Arctic is ice-covered after all and is home to only 4 million people, which, at least for now, limits commercial navigation, whereas the South China Sea is the second most used sea-lane in the world and is bordered by 10 nations with a combined population of approximately 1.9 billion.¹⁹ Moreover, all of the coastal countries in the South China Sea are in competition to secure the largest share of maritime rights allowable under the UNCLOS, and their exclusive economic zones seriously overlap, whereas the delimitation of maritime boundaries are almost resolved in Arctic region, and the Arctic states are genuinely committed to resolving their disputes using existing international legal frameworks.²⁰

Despite the differences, the examples of cooperation in the Arctic region could still provide useful clues to facilitate the establishment of a workable cooperation mechanism for all parties in the South China Sea, as long as they are willing and agree to set aside their disputes and work together to advance specific issues for regional benefits.²¹

The successful experience of the Arctic Council

The Arctic Council is a regional forum that currently consists of eight Arctic states (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States) and six indigenous groups (Aleut, Athabaskan, Gwich'in, Inuit, Russian Association of Indigenous Peoples of the North, and Saami). The Council first originated as the Arctic Environmental Protection Strategy (AEPS). In 1991, the Arctic states met in Rovaniemi, Finland and signed the Declaration on the Protection of the Arctic Environment, also known as the Rovaniemi Declaration, in which they adopted the AEPS. The

19 Scott J. Shackelford, "Time for a South China Sea Council," *HuffPost*, https://www.huffingtonpost.com/scott-j-shackelford/time-for-a-south-china-se_b_3442529.html.

20 Ian Storey, "Arctic Lessons: What the South China Sea Claimants can Learn from Cooperation in the High North."

21 Ray Tsung-Han Tai, Nathaniel S. Pearre, and Shin-Ming Kao, "Analysis and Potential Alternatives for the Disputed South China Sea from Ocean Governance in the Polar Regions," *Coastal Management*, Vol.43, Issue 6, pp.609–627.

objectives of the AEPS revolved around the cooperation of the eight Arctic states to address environmental issues.

Beginning with environmental protection, the focus of cooperation gradually expanded to other relevant areas in the course of the implementation of AEPS, especially sustainable development, and ultimately promoted the establishment of an inter-governmental organization in the Arctic. On September 19, 1996, the Arctic states met in Ottawa, Canada and signed the Declaration on the Establishment of the Arctic Council. According to the Declaration, the Arctic Council was a cooperative forum, focusing on addressing issues of sustainable development and environmental protection in the Arctic region.

So far, the Arctic Council has developed into a mature mechanism. The membership of Arctic Council is divided into three categories: full member states, permanent participants and observers. Member states are the eight Arctic nations, and all decisions of the Council require the unanimous consent of eight members. Six indigenous peoples' organizations are granted Permanent Participants status, who have full consultation rights in connection with the Council's negotiations and decisions, but no voting right. Observers include non-Arctic states, inter-governmental organizations, inter-parliamentary organizations and non-governmental organizations. Observers may propose projects through an Arctic state or a Permanent Participant and provide views on the issues under discussion.²²

Ministerial-level meetings of the Arctic Council are the decision-making body, which are held biennially, and meetings of Senior Arctic Officials, the executive body, are convened between ministerial meetings. The chairmanship of the Council rotates every two years between the eight member states. In the past, the location of the Secretariat was rotated biennially with the chairmanship of the Council. At the Nuuk Ministerial Meeting in May 2011, Arctic Ministers decided to establish the standing Arctic Council Secretariat in Tromsø, Norway. The Secretariat became

22 The Arctic Council, <http://arctic-council.org/index.php/en/about-us/arctic-council/the-arctic-council-secretariat>.

operational on June 1, 2013.²³ By setting up the administrative office, the Arctic Council took a substantive step forward shifting from an inter-governmental forum to a governing body.

Besides progress on organizational structure, the Council has presided over the passing of three treaties in recent years: the 2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue, the 2013 Agreement on Cooperation on Marine Oil Pollution Preparedness and Response and the 2017 Agreement on Enhancing International Arctic Scientific Cooperation. Agreement on these treaties demonstrates that the Arctic Council has gained legal footing within the international community.²⁴ The Arctic Council has also actively developed its organization. The Arctic Economic Council was formally established in September 2014 to comprehensively manage the economic field and promote sustainable development in the Arctic.

It is safe to say that the Arctic Council has been successful in promoting institutional dialogue and has realized substantive cooperation between the Arctic states. Even though the Arctic Council enjoys a limited mandate from its member states, it has been successful in environmental governance and diffusing tensions, and the employment of mutually beneficial compromises and diplomatic solutions to maintain stability and predictability are preferred. Regarding the experience of the Arctic Council's development, there are many valuable insights that have been summed up by international scholars.

First, with the Arctic Council platform, the eight Arctic states has together built a regional consciousness and constructed the idea that the Arctic is of the Arctic countries. Although there are some disputes and struggles among several Arctic states, the common identity of the eight countries, to a certain extent, have increased mutual trust and facilitated cooperation. So it is easier for the Arctic nations to cooperate with regards to

23 The Arctic Council, <http://arctic-council.org/index.php/en/about-us/arctic-council/the-arctic-council-secretariat>.

24 Jeremy Rhee, "On Arctic Governance: Successes and Lessons for the South China Sea," *Brown Political Review*, April 16, 2017, <http://www.brownpoliticalreview.org/2017/04/arctic-governance>.

responsible stewardship and use UNCLOS and supplementing treaties as the legal basis.²⁵ Tackling the challenges through institutionalized cooperation is the mainstream of international politics in the Arctic.²⁶

Second, since its establishment, the Arctic Council has excluded sensitive security and political issues, limiting its responsibilities to promoting regional sustainable development and environmental protection, which has effectively avoided the extension of political confrontation to the Council and achieved great success in environmental protection and sustainable development. Now the Arctic Council has established six working groups to address issues related to environmental protection, namely the Arctic Contaminants Action Program (ACAP), the Arctic Monitoring and Assessment Program (AMAP), the Conservation of Arctic Flora and Fauna Working Group (CAFF), the Emergency Prevention, Preparedness and Response Working Group (EPPR), the Protection of the Arctic Marine Environment Working Group (PAME) and the Sustainable Development Working Group (SDWG).

Third, the Arctic regime was established in a soft law format, where the nations initially gathered under the AEPS to formulate scientific approaches to combatting pollution in the Arctic region. “From this common concern, the council continues to use science as a common language for tackling contentious matters.”²⁷ Numerous researchers and scientists from around the globe have participated in the Arctic cooperation, and scientific cooperation has become an important aspect of Arctic governance. The Council’s heavy reliance on the world’s scientific community has often helped mitigate potential friction or antagonism.²⁸

Finally, the limited membership status of the Council could create a more collaborative atmosphere, because a smaller-sized group makes it

25 Daniel Thomassen, “What Can the South China Sea Learn from the Arctic?” GIMSEC, April 4, 2017, <http://cimsec.org/lessons-arctic-south-china-sea/31092>.

26 Sun Kai and Guo Peiping, “Research on Reform and Transformation of the Arctic,” *Journal of Ocean University of China (Social Science Edition)*, No.1, 2012.

27 Jeremy Rhee, “On Arctic Governance: Successes and Lessons for the South China Sea.”

28 *Ibid.*

more difficult for nation states to defy the will of the Council. On the other hand, in order to prevent centralization of power within the forum, the chairmanship of the Arctic Council is rotated among the eight member states every two years. The political structure of the Council allows for an equitable distribution of power among the members, which encourages countries to cooperate to the best of their abilities.²⁹

Suggestions for New South China Sea Cooperation Mechanism

So far, the coastal countries bordering the South China Sea have made initial attempts to work on maritime cooperation. In terms of mechanism construction, the Workshop on Managing Potential Conflicts in the South China Sea may be the only informal annual mechanism participated by all parties in the South China Sea. The Workshop was initiated by Indonesia and funded by Canada in 1990. China and ASEAN countries have consistently sent delegations composed of both government officials and scholars. This workshop includes extensive discussions on biodiversity research, the establishment of a marine database, tide and sea-level change studies, detection and training of the marine ecosystem, Southeast Asia's marine education and communication networks, among other issues. The Workshop has, to some extent, made positive progress and helped launch several projects.³⁰

However, there are some obvious deficiencies in this Indonesia-led workshop. First, it has produced limited outcomes and impact, which some scholars claim has become a “talk shop”; second, it has been beset with financial problems for a long time and is difficult to sustain; third, it has been abandoned by the West, and is not relied upon by the surrounding countries.³¹

29 Jeremy Rhee, “On Arctic Governance: Successes and Lessons for the South China Sea.”

30 Hai Min and Zhang Aizhu, “Cooperation in the South China Sea Under International Law,” *China International Studies*, January/February 2014.

31 Gao Zhiguo, “Review and Prospect of the Security Cooperation Mechanisms in the South China Sea,” *Journal of Boundary and Ocean Studies*, Vol.1, No.2, 2016.

Besides the South China Sea workshop, China, Japan, Korea, Singapore, Vietnam, Laos, Cambodia, Thailand, Myanmar, the Philippines, Brunei, and other countries concluded negotiations on the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia in 2004. The region is host to other cooperation mechanisms related to environmental protection as well, such as the East Asia Seas Regional Seas Program (EAS-RSP), the Partnership in Environmental Management for the Seas of East Asia (PEMSEA), and the United Nations Environment Program (UNEP)/Global Environment Facility (GEF) South China Sea Project.

Generally speaking, cooperation in the South China Sea still faces obstructions that must be overcome. While issues such as fisheries, the ecosystem, shipping and pollution have been discussed by scientists and at various levels of government, such cooperation has remained at an elementary stage.³² The main reason for the low level of capacity or authority of regional mechanisms in the high seas and disputed areas is that each claimant's objective is to prevent the presence of the others in such areas, which constitutes a significant cooperation gap in the region.³³ There is a need for all parties involved to follow the UNCLOS and relevant international laws to expand cooperation, enhance mutual trust, manage conflicts and differences, and jointly safeguard the marine environment.

The South China Sea is the most important semi-enclosed sea in the Asia Pacific. Although the establishment of a council in the South China Sea that resembles the structure of the Arctic Council may seem unrealistic at present, the Arctic Council is an appropriate political model for the South China Sea countries to strive for. Based on the analysis above, lessons that can be drawn from the practices of Arctic governance and applied to the South China Sea are summarized as follows:

- (1) What is of utmost importance is that the primary concern of

32 Tom Naess, "Environmental Cooperation around the South China Sea: the Experience of the South China Sea Workshops and the United Nations Environment Programme's Strategic Action Programme," *The Pacific Review*, Vol.14, 2001.

33 Kao Shih-Ming, *Assessing Regional Cooperation Among All Parties as an Alternative to Sovereignty Disputes in the South China Sea*, Ph.D. Dissertation, University of Delaware, USA, 2011, p.137.

cooperation mechanisms in the South China Sea should not be to solve existing disputes, but to ease tensions and accumulate trust among all claimants through concrete and diversified cooperation and common development. It is necessary that all relevant parties show their political will to set aside disputes for promoting cooperation and achieve common benefits.³⁴

(2) The new cooperation mechanism should be initiated from less politically sensitive areas first with a limited mandate. Environmental protection and fishery management can be seen as a good starting point for the parties concerned, and cooperation should work towards agreements on scientific collaboration and issues such as scientific research before moving on to more difficult areas concerning territory and security. It should bring together relevant scientists and provide a new platform for technical cooperation. The main problem facing the South China Sea is whether common marine environmental problems can become the driving force for further cooperation within ASEAN and between ASEAN and China.³⁵

(3) It would be more feasible to organize the nations in the South China Sea around a soft law framework in early stages. Both soft law and hard law regimes can work to bring all states concerned together. The soft-law format of the Arctic “offers a more flexible and expedient way to address urgent issues, whereas the Antarctic hard-law regime is a stronger commitment, but reaching agreement among parties is difficult and slow.”³⁶ The neighboring countries of the South China Sea are accustomed to the application of political documents as frameworks for dispute resolution. Therefore, if the agreement is presented in the form of soft law, such as a declaration or memorandum of understanding, more coastal states will be receptive.

(4) When practices in the polar regions are taken as a model, consensus among bordering states is necessary to make the South China Sea a “zone of

34 Hong Nong, “Exploring a Pragmatic Settlement Regime for the SCS Dispute,” *Asia-Pacific Security and Maritime Affairs*, Vol.1, 2017.

35 Hong Nong, “Exploring a Pragmatic Settlement Regime for the SCS Dispute.”

36 Ray Tsung-Han Tai, Nathaniel S. Pearre, and Shin-Ming Kao, “Analysis and Potential Alternatives for the Disputed South China Sea from Ocean Governance in the Polar Regions.”

peace” similar to the Arctic. “A possible approach to this end is to initially confine this ‘zone of peace’ in a smaller area, for instance the most disputed Spratly Islands region, then expand throughout the South China Sea later.”³⁷

(5) As in the Arctic model, any cooperative mechanism established in the South China Sea should reserve voting and decision-making rights for bordering states, including China and ASEAN coastal countries and other ASEAN nations. Extra-regional actors who are important regional players and have significant interests in this region should be granted observer status without decision-making powers.³⁸

Conclusion

As the situation develops in the South China Sea region, a new order is taking shape. Promoting the implementation of the DOC and maritime cooperation among China and ASEAN countries is a process that is conducive to increasing political trust, and the building of an order in the interest of all parties leads to stability and prosperity in the region. As argued by Ouyang Yujing, Director-General of Chinese Foreign Ministry’s Department of Boundary and Ocean Affairs, “the COC framework aims to establish rules in the South China Sea for all the littoral countries”, and “it will be an important node in the shaping of order in the South China Sea”.³⁹

A cooperation mechanism in the South China Sea has both a rational legal basis as well as proper precedents. Of course, the political will of all parties is paramount to the success of such an endeavor. If all the parties in the South China Sea could look beyond issues of sovereignty or military confrontation to the potential advantages and benefits of cooperation, it can be expected that the South China Sea will become a more stable, prosperous and orderly place. 🇨🇳

37 Ray Tsung-Han Tai, Nathaniel S. Pearre, and Shin-Ming Kao, “Analysis and Potential Alternatives for the Disputed South China Sea from Ocean Governance in the Polar Regions.”

38 *Ibid.*

39 “Interview with Ouyang Yujing, Director-General of the Boundary and Ocean Department of the Ministry of Foreign Affairs,” June 6, 2017, http://news.ifeng.com/a/20170606/51201867_0.shtml.