

# **Dispute Resolution in the South China Sea: from “Joint Development” to “Joint Protection”**

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## **1. Introduction: Natural Resources in the SCS**

The South China Sea (SCS) is a semi-enclosed sea bordered on the north by China, on the west by Vietnam, on the east by the Philippines, Malaysia, and Brunei, on the south by Indonesia and Malaysia. There are more than 200 disparate islands, atolls, reefs and shoals in the SCS: the Paratas Islands in the northeast, the Paracel Islands in the west, the Macclesfield Bank and Scarborough Shoal in the middle, and the Spratly Islands in the south.

The South China Sea, as the third largest marginal sea, abounds with energy resources such as oil, natural gas and combustible ice. Sometimes this region is referred to as a “Second Persian Gulf”. Vast mineral riches are thought to lie beneath the sea, but it is difficult to determine the amount of oil and natural gas in the SCS because of under-exploration and territorial disputes. The SCS has been proven oil reserves of about 7.7 billion barrels. About a decade ago, it was estimated that the unproven oil resources were ranging from 105 billion barrels of oil to 213 billion barrels, and natural gas reserves were about 266 trillion cubic feet.<sup>1</sup> However, recent estimation of undiscovered resources in the SCS has reduced to between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas.<sup>2</sup>

The SCS is also one of the most important and abundant commercial fisheries in the world. Shared stocks of pelagic fish such as scads and mackerels, and highly migratory species such as tuna and tuna-like stocks are the most common commercial stocks in this region.<sup>3</sup> According to a Chinese study, species abundance in the SCS region includes: 1,027 fish, 91 shrimp and 73 cephalopod species in the Northern continental shelf; approximately 205 fish and 96 shrimp species in the continental slope, and more than 520 fish species around the islands and reefs of the Southern

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<sup>1</sup> “South China Sea Region,” United States Energy Information Administration, February 2001, <http://www.eia.doe.gov/emeu/cabs/schina.html>

<sup>2</sup> “South China Sea,” United States Energy Information Administration, February, 2013, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>

<sup>3</sup> Kuan-Hsiung Wang, “Bridge over Troubled Waters: Fisheries Cooperation as a Resolution to the South China Sea Conflicts,” *The Pacific Review* 14, no. 4 (2001).

waters.<sup>4</sup>

## **2. Sovereignty Disputes in the SCS**

At the same time, the SCS is also the largest and the most complicated sovereignty-disputed water, in which China, Vietnam, the Philippines, Malaysia, Indonesia and Brunei have long claimed sovereignty over overlapping areas.

There are several disputed sites in the SCS. The main concern is the Spratly Islands, which consist of at least 190 barren islets and partially submerged reefs and rocks that cover an area of approximately 390,000 sq. kilometers. China and Vietnam claim the entire area; the Philippines, Malaysia, and Brunei claim some parts.

China refers to the Spratly Islands as the Nansha Islands and claims sovereignty over the islands and most of the SCS based on historical grounds, by referring to archaeological finds and ancient documents.<sup>5</sup> China's claim originates with the Han Dynasty (206 B.C. to 220 A.D.) and the use of the SCS by Chinese fishermen and merchants since then. The first official claim by China dates from an 1887 treaty with France dividing the Gulf of Tonkin, which Beijing interprets as extending to include all the islands of the SCS, although China has yet to clearly delineate its claim.<sup>6</sup> In 1947, China produced a map with 9 undefined dotted lines, and claimed all of the islands within these lines, and this claim remains till now.

Vietnam also claims all the Spratlys, asserting that it gained sovereignty over the Spratlys and Paracels when it gained independence from France. However, Vietnam and China have resolved their disputes over areas in the Gulf of Tonkin. In December 2000, they signed an agreement which delineated the boundary between their EEZs, opening the way for oil and gas exploration.<sup>7</sup>

The Philippines officially claimed 8 islands that it refers to as the Kalayaan in 1971. It asserted that those islands were not part of the Spratly Islands and had not belonged to anybody, thus were open to be claimed. They were designated as part of Palawan Province in 1972. The Philippines also has a dispute with China over the Malampaya and Camago gas fields and Scarborough Shoal.<sup>8</sup>

Malaysia's claim is based on a continental shelf that projects out from its coast and includes islands and atolls south and east of Spratly Island. It has occupied three

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<sup>4</sup> Jin Xianshi, "Marine Fishery Resources and Management in China" (paper presented at the ICFO Seminar, Qingdao, China, 25-29 October (2000).

<sup>5</sup> Stein Tonnesson, "The History of the Dispute," in Timo Kivimaki (ed.), *War or Peace in the SCS?* NIAS Press (2002), pp.6-23.

<sup>6</sup> Ralph A. Cossa, "Security Implications of Conflict in the South China Sea: Exploring Potential Triggers of Conflict," *Pacific Forum CSIS Special Report*, March (1998).

<sup>7</sup> Erik Kreil, "South China Sea," [http://www.eia.doe.gov/emeu/cabs/South\\_China\\_Sea/pdf.pdf](http://www.eia.doe.gov/emeu/cabs/South_China_Sea/pdf.pdf).

<sup>8</sup> Stein Tonnesson, "Locating the South China Sea," in Paul Kratoska, Henk Schulte Nordholt, and Remco Raben (eds.), *Locating Southeast Asia: Geographies of Knowledge and Politics of Space*, Ohio University Press (2005).

of these islands that it considers situated on its continental shelf although boundary lines are simply drawn perpendicularly from two extreme points on the Brunei coastlines.<sup>9</sup>

Brunei, the latest State to become involved with the SCS disputes, does not claim any of the islands, but does claim part of the SCS as its continental shelf and EEZ on the basis of the LOSC. In 1984, it declared an EEZ that includes Louisa Reef which is in the Southern part of the Spratly Islands.<sup>10</sup>

The Paracels are the second island group whose sovereignty is in dispute. The Paracels consist of about thirty-five islets, shoals, sandbanks, and reefs with approximately 15,000 sq. kilometers of ocean surface. All the islands are now controlled by China, but also claimed by Vietnam. The islands are a continuing source of tension between China and Vietnam, especially with regard to the arrest of Vietnamese fishing vessels.<sup>11</sup>

Scarborough Shoal is another disputed feature claimed by China and the Philippines. Scarborough Shoal is a large atoll with a lagoon of about 150 sq. kilometers, surrounded by reef. Most of the reef is either completely submerged or above water only at low tide, but it contains several small rocks which are above water at high tide.<sup>12</sup>

### **3. Escalation of Tensions and Resources at Stake**

In order to promote a peaceful atmosphere for the settlement of sovereignty disputes in the SCS, relevant coastal states<sup>13</sup> signed a framework instrument “Declaration on the Conduct of Parties in the South China Sea” in 2002. As a political declaration, it provides some general standards designed to avoid unilateral conduct by States pending the final settlement of disputes<sup>14</sup> and calls on the adoption of a code of conduct in the SCS in the future.<sup>15</sup>

However, as a legally binding Code of Conduct is still in absence, the non-binding Declaration in practice does not work effectively. Recently, for example,

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<sup>9</sup> Hasjim Djalal, “South China Sea Island Disputes,” *Raffles Bulletin of Zoology Supplement* No.8 (2000).

<sup>10</sup> “South China Sea,” United States Energy Information Administration, February 2013, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>.

<sup>11</sup> Leszek Buszynski, “The South China Sea: Oil, Maritime Claims, and U.S.-China Strategic Rivalry,” 35 *WASH. Q.* 139 (2012).

<sup>12</sup> Zou Keyuan, “Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?” *Ibru Boundary Security Bull.*, Summer (1999).

<sup>13</sup> China and the member states of ASEAN, including Vietnam, the Philippines, Malaysia, Indonesia, Brunei, Singapore, Cambodia, Thailand, Myanmar and Lao

<sup>14</sup> E.g., Article 5 reads, “The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays and other features and to handle their differences in a constructive manner.”

<sup>15</sup> Article 10 of the 2002 Declaration.

unilateral exploration activities have caused escalating tensions in the region. The Philippines has offered 15 exploration contracts over the next few years for offshore exploration off Palawan Island in an area claimed by China.<sup>16</sup> Vietnam is cooperating with India to exploit oil and gas in contested waters,<sup>17</sup> and in response, China has opened nine blocks for exploration in waters also claimed by Vietnam.<sup>18</sup>

These non-cooperative activities in highly contested places have only served to fan the fire of controversy in the SCS. As a counter measure, claimants began to use governmental vessels to harass other parties' oil exploration activities in disputed areas. A recent report stated that two Chinese maritime surveillance vessels cut off the exploration cables of a Vietnamese oil survey ship searching for oil and gas deposits in the SCS,<sup>19</sup> which was declared by China as "completely normal marine enforcement and surveillance activities in China's jurisdictional area."<sup>20</sup>

Even worse, in 2012, triggered by a fishery dispute, Chinese and Philippine vessels sustained a standoff for several months in the water of Scarborough Shoal. After the Scarborough Shoal incident, the Philippines have recently filed UNCLOS arbitration with China over the SCS although China refused to accept the jurisdiction of such arbitration.<sup>21</sup>

This situation of 'disorderly resources development' not only increases the risk of military conflicts in this area, but also threatens to undermine the fragile ecosystem of the SCS. If there is no cooperation between coastal States, pollution from oil drilling operations and other mineral extraction projects will likely expand rapidly across the whole maritime space. If this were to happen, the environment of the SCS would suffer continuous deterioration and living resources therein would become depleted.

Living resources depletion would also result from overfishing. Economic expansion and population growth in recent years have created excessive demands on the SCS fishery resource by coastal states. At the same time, due to sovereignty disputes, there are no clear EEZ boundaries in the SCS waters. This situation makes

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<sup>16</sup> "China to oppose Philippine moves to exploit oil , gas in South China Sea alone," TOPCO, <http://www.topcoevents.com/topco/industry-news/industry-news/View.aspx?nid=4605>

<sup>17</sup> "India Faces Standoff With China on Sea Oil," Asian Wall Street Journal, September 23, 2011, <http://www.environmentportal.in/news/india-faces-standoff-china-sea-oil>

<sup>18</sup> "China opens some offshore blocks for foreign investment," CNOOC website: <http://www.cnooc.com.cn/data/html/news/2012-06-23/chinese/322013.html>

<sup>19</sup> Alex Watts, "Tensions rise as Vietnam accuses China of sabotage," The Sydney Morning Herald, June 2, 2011, <http://www.smh.com.au/world/tensions-rise-as-vietnam-accuses-china-of-sabotage-20110601-1fgno.html>.

<sup>20</sup> "China reprimands Vietnam over offshore oil exploration," Reuters, May 28, 2011, <http://af.reuters.com/article/energyOilNews/idAFL3E7GS07E20110528>.

<sup>21</sup> Julian Ku, "Game Changer? Philippines Seeks UNCLOS Arbitration with China Over the South China Sea," <http://opiniojuris.org/2013/01/22/game-changer-philippines-seeks-unclos-arbitration-with-china-over-the-south-china-sea/>

effective fishery governance impossible, which causes competing and even illegal fishing activities in disputed waters. Global International Waters Assessment (GIWA) characterizes the SCS as severely impacted in terms of overfishing, with severe socioeconomic and community consequences, excessive bycatch and discards, and destructive fishing practices, which include cyanide and dynamite fishing, and the use of small-meshed nets. These impacts show no change.<sup>22</sup>

As an overall evaluation of the ecosystem of the SCS, the United Nations Environment Program has concluded that more than 80 percent of the region's coral reefs are at risk, mostly from human activities. Only a third of the region's mangrove forests, the shoreline swampland that serves as a nursery for marine life, remain. Rising levels of sedimentation and nutrients, along with destructive fishing practices, have devastated sea-grass communities, which serve as a key breeding ground. Two-thirds of the major fish species and several of the region's most important fishing areas are fully or over-exploited. Nursery and breeding grounds are being destroyed or degraded.<sup>23</sup>

#### **4. Possible Solutions: “Joint Development” and “Joint Protection”**

Given the complex nature of the territorial and maritime disputes in the SCS, it is not the right time to reach a final resolution now. However, there are two possible temporary solutions to the impasse in the SCS: the principle of “joint development (of resources)” and the principle of “joint protection (of the environment)”.

From the 1970s onwards, first raised by former Chinese leader Deng Xiaoping, China has long proposed the principle of “shelving disputes and seeking joint development” as a solution to the SCS dispute.<sup>24</sup> This principle is consistent with UNCLOS articles providing for “provisional arrangements of a practical nature” pending the final delimitation of boundaries: “the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.”<sup>25</sup>

The concept of joint development of natural resources appears to have emerged in the 1950s.<sup>26</sup> From then on, some marine boundary agreements began to include a

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<sup>22</sup> GIWA, “Challenges to International Waters: Regional Assessments in a Global Perspective,” United Nations Environment Programme (2006).

<sup>23</sup> United Nations Environment Program, “Asian Nations Put Quarrels Aside to Save South China Sea,” Environment News Service, March (2001).

<sup>24</sup> Ministry of Foreign Affairs of China, “Set Aside Dispute and Pursue Joint Development,” <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18023.htm>.

<sup>25</sup> UNCLOS Articles 74(3), 83(3).

<sup>26</sup> Hazel Fox, “Joint Development of Offshore Oil and Gas: A Model Agreement for States with Explanatory Commentary,” British Institute of International and Comparative Law (1989), p.54.

joint development arrangement, *e.g.* the 1958 Saudi Arabian-Bahrain Agreement, the 1969 Abu Dhabi-Qatar Agreement, the 1974 French-Spanish Bay of Biscay Agreement, the 1974 Sudan-Saudi Arabian Agreement, the 1974 Japanese-South Korean Agreement and the 1989 Australian-Indonesian Agreement, *etc.* However, despite these successful precedents, there is no common or uniform definition of joint development of natural resources.<sup>27</sup> It is usually used as a “generic term” and extends from unitization of a single resource straddling an international boundary to joint development of a shared resource where boundary delimitation is shelved because it is not feasible or possible to reach an agreed boundary at the time.<sup>28</sup>

Generally, boundary delimitation is a competition of to win or to lose, but in the mode of “joint development”, parties can share resources and reach a win-win result. In areas with multiple claimants, such as the SCS, it may be difficult for the parties to resolve the disputes through negotiation, especially if sovereignty disputes are also involved. Hence it is generally agreed that the most viable interim solution for managing the disputes in the SCS is for the claimants to set aside the sovereignty disputes and jointly develop the natural resources.<sup>29</sup>

“Joint protection” is another wise option for the disputants. This principle derives from three essential principles in international environmental law: the principle of “sustainable development”, the principle of “preventive action” and the principle of “cooperation.”

The concept of “joint protection” consists of two parts: to protect resources as well as environment, and to take cooperative actions for such protection. “Sustainable development” demands states to ensure the development and use of their natural resources in a manner that is sustainable;<sup>30</sup> while “preventive action” requires the prevention of damage to the environment and otherwise to reduce, limit or control activities that might cause or risk such damage.<sup>31</sup> Therefore, coastal states are obligated to protect natural resources and prevent pollution in the SCS, so that this rich ocean can be utilized in a sustainable way. However, these obligations cannot be fully carried out by any state individually, because most marine areas are in dispute and they are not peacefully controlled by one state. Further, as the SCS is a semi-

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<sup>27</sup> Thomas Mensah, “Joint Development Zones as an Alternative Dispute Settlement Approach in Maritime Boundary Delimitation” in Ranier Lagoni and Daniel Vignes (eds.), *Maritime Delimitation*, Martinus Nijhoff Publishers (2006), p.146.

<sup>28</sup> Leonardo Bernard, “Prospect for Joint Development in the South China Sea,” submitted paper for the “Managing Tensions in the South China Sea” conference, June (2013).

<sup>29</sup> Leonardo Bernard, “Prospect for Joint Development in the South China Sea,” submitted paper for the “Managing Tensions in the South China Sea” conference, June (2013); Robert Beckman, “The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea,” *AJIL* Vol.107, No.1 (2013).

<sup>30</sup> Philippe Sands & Jacqueline Peel, *Principles of International Environmental Law*, Cambridge University Press (3<sup>rd</sup> ed., 2012), p.206.

<sup>31</sup> *Ibid*, p.200.

enclosed sea,<sup>32</sup> constituting an independent Large Marine Ecosystem (LME), any measure of protection without cooperation of other littoral states would become useless. Thus, effective protection actions depend on cooperation by all coastal states. This is why the principle of protection needs an emphasis on “joint”.

The principle of “joint protection” is also consistent with UNCLOS Article 123, which requires “States bordering an enclosed or semi-enclosed sea”: (1) to coordinate the management, conservation, exploration and exploitation of the living resources; (2) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (3) to coordinate their scientific research policies and undertake where appropriate joint programs of scientific research; and (4) to invite, as appropriate, other interested countries or international organizations to cooperate with them for the implementation of this article.<sup>33</sup>

For littoral states, “setting aside disputes, cooperating in resources conservation and environmental protection” is also a win-win option pending the final dispute settlement, because in the long run, sustainable development would benefit all the coastal states for future generations. Without this principle, even “joint development” would become meaningless, since who would be interested in exploring waters with resources depletion?

## **5. Strategy Shifting: from “Joint Development” to “Joint Protection”**

As a theoretically wise solution, “joint development” is even believed by most observers as the only realistic prospect.<sup>34</sup> However, three decades have passed since first advised by Deng Xiaoping, this proposal has not yet secured any joint development agreements nor promoted substantial cooperation as to the SCS disputes. Some disadvantages of “joint development” in the SCS area may give an explanation for such a phenomenon.

First, since the SCS dispute is amongst at least 5 claimants with different political and economic background, it is difficult to reconcile different interest expectations. Abovementioned successful joint development agreements are all between only two parties. In a multiparty dispute scenario, it is hard to achieve consensus from all parties, and even if two disputants reach a bilateral agreement, such agreement is likely to be opposed by other disputants and hard to be enforced.

Second, to “shelve disputes” towards “joint development” is not an easy task,

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<sup>32</sup> The South China Seas is one of the world’s semi-enclosed seas, which are “surrounded by two or more States and connected to another sea of the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.”

<sup>33</sup> UNCLOS Article 123.

<sup>34</sup> Robert Beckman, “The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea”, AJIL Vol.107, No.1 (2013).

because it involves a large amount of disputed islands. Development cooperation in sovereignty-disputed areas is highly sensitive insofar as claimant states remain adamant that they have undisputed sovereignty over the area in question.<sup>35</sup> The nature of the SCS dispute is not one just over natural resources, but a comprehensive dispute concerning territory sovereignty, marine resources, strategic position, and even national security. Sharing resources cannot satisfy other factors of claimants' demands. Among these national interests, most disputants would give a priority to territory sovereignty rather than sharing resources, because they all have a long history of being occupied or colonized by big powers. For them, giving up the hard-line stance on sovereignty issue may face strong opposition from nationalists.<sup>36</sup>

Moreover, although "shelving dispute" is a provisional arrangement and would be without prejudice to final delimitation of boundaries, it is not free from risk. One party's good faith for setting aside dispute might be taken advantage by another party's unilateral action. This can be illustrated by aforementioned unilateral actions by some disputants even after they have promised to "exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability."<sup>37</sup> Therefore, lack of enough incentive makes "shelving disputes" more like a diplomatic language rather than a substantial appeal, which actually impedes realization of "joint development."

Third, the attraction of oil and gas resources in the SCS is decreasing. Latest research shows the previous speculation that the SCS constitutes a 'second Persian Gulf' lacks substance. According to the US Energy Information Administration (EIA), the estimation of undiscovered resources in the SCS are only between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas, which are similar to the European supplies.<sup>38</sup> Contrary to popular belief, most of SCS's oil and gas resources are actually located in non-disputed territory, closer to the shores of coastal states.<sup>39</sup> Factors such as technological challenges, inadequate seismic studies, plus huge costs and political risks also contribute to the lack of willingness to joint explore resources in the SCS disputed area.

Last but not least, one practical obstacle to any joint development arrangements being negotiated in the SCS is that there will have to be an agreement on the geographic area or areas which will be subject to joint arrangements. It will be

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<sup>35</sup> Schofield and Storey, "The South China Sea Dispute: Increasing Stakes and Rising Tensions," The Jamestown Foundation Occasional Paper (2009), pp.24-25.

<sup>36</sup> This is why China also emphasizes "sovereignty residing with us" when proposes "shelving disputes and seeking joint development."

<sup>37</sup> "Declaration on the Conduct of Parties in the South China Sea" (2002), Article 5.

<sup>38</sup> "South China Sea," United States Energy Information Administration, February, 2013, <http://www.eia.gov/countries/regions-topics.cfm?fips=SCS>

<sup>39</sup> *Ibid.*



difficult to agree on the areas subject to joint development in the SCS unless agreement can be reached on the status of the geographic features and the maritime zones to which such features are entitled. Uncertainty as to the status of the features and the maritime zones they generate is a serious obstacle to the claimants reaching agreement on the areas subject to joint development.<sup>40</sup>

By contrast, the above mentioned disadvantages and obstacles can be removed by application of the principle of “joint protection”. Thus, it is time to reconsider the application of “joint development” principle and give some priority to “joint protection” principle, in order to encourage cooperation and alleviate tensions. The advantages of prior application of “joint protection” principle in the SCS are as follows:

Firstly, unlike “joint development” as an optional arrangement for disputants, “joint protection” is also an obligation for all littoral states, if not under article 123 of the UNCLOS,<sup>41</sup> but under principles of “sustainable development”, “preventive actions” and “cooperation” in international environmental law.<sup>42</sup> In this sense, there is no need to reconcile willingness of states, since they are obligated to jointly protect environment and natural resources in the SCS.

Secondly, “joint protection” is of low political sensitiveness but holds a moral high ground. Taking cooperative measures to protect the SCS has no direct correlation with sovereign claims, thus it is not easy to be affected by domestic political pressure. The first cooperation precedent in the SCS is the China-Philippine-Vietnam Trilateral Agreement for Joint Marine Seismic Undertaking, which illustrates that it is easier to achieve successful cooperation in fields with low political sensitiveness. Further, connected with sustainable development and environmental protection and reflecting the common interests of the human race, it is highly consistent with the morality requirement in international law, and thus become more acceptable for the claimants and the international community.

Thirdly, in contrast to “joint development”, there is no obstacle for disputants to define the geographic area for “joint protection”, because in general the whole semi-enclosed SCS should be protected cooperatively. Sometimes, it may need to divide different marine protected areas, but work of geographic division only relies on ecological and bio-geographical criteria which have been well established by

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<sup>40</sup> Leonardo Bernard, “Prospect for Joint Development in the South China Sea,” submitted paper for the “Managing Tensions in the South China Sea” conference, June 2013.

<sup>41</sup> The wording in the first sentence of that article is “should” rather than “shall”. Natalie Klein, “Provisional Measures and Provisional Arrangements in Maritime Boundary Disputes” (2006) 21 Int’l J Mar & Coast L 423, p.444.

<sup>42</sup> Philippe Sands & Jacqueline Peel, *Principles of International Environmental Law*, Cambridge University Press (3<sup>rd</sup> ed., 2012), pp.200-217.

international organizations such as the UNEP.<sup>43</sup>

Finally and most importantly, “joint protection” can be used as a method to build confidence and to promote trust.<sup>44</sup> Lacking of trust and confidence to solve disputes is the key problem as to the SCS impasse. Unilateral actions taken by some disputants have done great harm to mutual trust in this region. Joint protection measures focus on the sustainable development of SCS ecosystems and benefit the common interests of all parties concerned, which will in turn contribute to trust-building and cooperation among the SCS complaints. Starting from joint protection, parties could construct mechanism for dialogue, improve mutual understanding, and experience the benefits from cooperation. All these elements would help to create peaceful and mutual-trust atmosphere for disputes settlement.

The purpose of “joint protection” is not to substitute “joint development.” Its significance lies in two aspects. On the one hand, protection measures aiming to conserve natural resources and good environment for further generations leave an abundant and healthy SCS for “joint development” in the future. On the other hand, “joint protection” arrangements give disputants an opportunity to start cooperation, to regain mutual trust, and to avoid unhealthy unilateral actions, which is a vital precondition for “joint development”. So application of “joint protection” principle in the present stage serves as a transitional arrangement towards “joint development” and the final dispute settlement.

Under the principle of “joint protection”, measures should be taken in various areas such as fishery conservation, protection of endangered species, prevention and mitigation of marine pollution. Littoral states should take into serious consideration on following cooperative mechanisms suggested by scholars, including but not limited to: establishing Regional Fisheries Management Organizations (RFMOs) to make decision and to enforce fishery conservation regulations in the SCS;<sup>45</sup> instituting Marine Protected Areas (MPAs) to protect not only fish stocks, but also fragile, rare and critical habitats of the marine environment;<sup>46</sup> carrying out an annual assessment on the status of the SCS environment by an international panel of scholars; setting up rapid mechanisms to respond to oil spills or other environmental threats that may

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<sup>43</sup> Hai-Dang Vu, “A Bilateral Network of Marine Protected Areas between Vietnam and China: An Alternative to the Chinese Unilateral Fishing Ban in the South China Sea?”, Submitted paper for the Third International Workshop “The South China Sea: Cooperation for Regional Security & Development”, Hanoi, Vietnam, Nov. 3-5, (2011).

<sup>44</sup> Scott Snyder, Brad Glosserman and Ralph A. Cossa, “Confidence Building Measures in the South China Sea,” Summary report of the Pacific Forum CSIS, Honolulu, Hawaii, August (2001).

<sup>45</sup> Pakjuta Khemakorn, “Sustainable Management of Pelagic Fisheries in the South China Sea Region”, United Nations, New York, (2006).

<sup>46</sup> Hai-Dang Vu, “A Bilateral Network of Marine Protected Areas between Vietnam and China: An Alternative to the Chinese Unilateral Fishing Ban in the South China Sea?”, Submitted paper for the Third International Workshop “The South China Sea: Cooperation for Regional Security & Development”, Hanoi, Vietnam, Nov. 3-5, (2011).

endanger the rich bio-diversity of the SCS;<sup>47</sup> defining Particularly Sensitive Sea Areas (PSSAs) to control and prevent pollution from navigating vessels,<sup>48</sup> *etc.*

These measures can be realized by reaching bilateral or multilateral agreements. The purpose of such agreements is to bind the contending states in a web of norms that can reinforce their commitment to peaceful modes of settling the conflict and call for the institution of rules and guidelines imposing limits on resource extraction and censuring ecologically hazardous activities in the SCS.

## 6. Conclusion

The long-pending boundary delimitation disputes and longstanding tensions in the SCS have left a vacuum in the protection of valuable and fragile SCS ecosystem. Compared with resolving struggles over energy resources, reaching cooperation on marine environmental protection is substantially easier. Therefore, the “joint protection” principle starting from the perspective of sustainable development of all SCS ecosystems, though unable to completely resolve the SCS impasse, can nonetheless play a significant role in mitigating the situation. At the present stage, when “joint development” remains stagnant, the application of “joint protection” provides a new perspective for CSC states to shelve disputes temporarily and to seek best solution in the long run.

Recently, China has realized the significance of the principle of “joint protection”. The State Oceanic Administration of China has published a cooperation framework plan on the SCS (2011-2015). This plan emphasizes six areas for cooperation, including oceanic and climate change, marine environmental protection, marine ecosystems and biological diversity, disaster prevention, study of regional oceanography and marine policy and management.<sup>49</sup> Following this plan, China has signed some cooperation documents with some SCS states, such as Malaysia, Indonesia and Thailand.<sup>50</sup> This case shows a good trend of “joint protection” in the SCS. If this trend continues, it may help to break the impasse of the SCS dispute.

As a new approach, strategy shifting from “joint development” to “joint protection” could only be understood and accepted by contending states in the context of transformation of thinking mode. As Professor HONG said, “The transformation of ways of thinking is a foundation to lead policy and research direction in promoting peace

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<sup>47</sup> Scott Snyder, Brad Glosserman, and Ralph A. Cossa, “confidence Building Measures in the South China Sea,” Summary report of the Pacific Forum CSIS, Honolulu, Hawaii, August (2001).

<sup>48</sup> GUAN Song, “Particularly Sensitive Sea Area: A Possible Approach of Cooperation in the South China Sea,” *China Oceans Law Review*, Number 2 (2012).

<sup>49</sup> “Cooperation framework plan on South China Sea published to mark World Oceans Day,” CCTV news, June 8<sup>th</sup>, 2012, <http://english.cntv.cn/program/newshour/20120608/110224.shtml>

<sup>50</sup> State Oceanic Administration of China, “China makes four major achievements on cooperation with SCS states” [http://www.ml原因.gov.cn/xwdt/hyxw/201212/t20121228\\_1170951.htm](http://www.ml原因.gov.cn/xwdt/hyxw/201212/t20121228_1170951.htm)

and cooperation in the South China Sea.”<sup>51</sup> A rich, healthy and peaceful SCS is the common heritage not only for states in the region but also for the whole international community. If disputants keep this notion in mind, settlement of the SCS disputes may not be too far away.

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<sup>51</sup> HONG Nong, “Beyond Oil and Gas: Alternative Fields and Models of Joint Development,” International Conference of Recent Development of the South China Sea Dispute and Prospects of Joint Development Regime, Haikou, China, December 6-7, (2012).