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## South China Sea Cooperation: We Should Not Wait for Another Disaster

By Hasjim Djalal and Ian Townsend-Gault

### **Synopsis**

*Cooperation between the littoral states in the search for Malaysia Airlines flight 370 in the South China Sea has prompted calls for more joint activities amongst them. The South China Sea Workshop Process started in 1989 identified many such opportunities. It may be time to revisit them.*

### **Commentary**

IN THE aftermath of the initial search for Malaysia Airlines flight 370 in the South China Sea, commentators have drawn attention to the need for ASEAN countries to work closely together to respond to such emergencies. They have also touched on the fact that territorial and jurisdictional disputes did not prevent the littoral states from engaging in a broad range of cooperation. This raises the question: Is this not a strong basis for regional cooperation in the South China Sea?

### **Reviving the South China Sea Workshop Process**

The answer, of course is an emphatic yes. We have been making this argument since 1989, when we took the first steps to initiate what was to become the South China Sea Workshop Process. The central premise of the initiative was to have maritime cooperation over as broad a range of areas as possible to defuse the essentially divisive claims and counterclaims to sovereignty over the disputed islands.

While any form of cooperation was thought desirable as an end in itself, the 60 plus meetings in the decade that followed the First Workshop in 1990 tended to look at areas where cooperation was an absolute requirement to achieve a given objective.

With the passage of time, the extent of the work carried out under the aegis of the Workshop Process has perhaps been forgotten. Perhaps the time has come to revive the process. So what can be done? One immediate step perhaps is to re-examine some of the themes for cooperation identified by the leading experts of the South China Sea region and see how far they have developed over time.

### **Process in preventive diplomacy**

A number of scholars, including ourselves, had described the Workshop Process in some detail in published works. It was and is an organic and highly responsive exercise in informal preventive diplomacy. It did not

address issues of sovereignty and jurisdiction per se – that would have been entirely pointless.

Cooperation, however, was not a “second best” choice. Issues of the protection and preservation of the marine environment, safety in navigation and shipping, the promotion of marine scientific research and the institution of the sustainable development of resources are hardly trivial.

The South China Sea is semi-enclosed within the meaning of the 1982 United Nations Convention on the Law of the Sea which was ratified by and is binding on all the littorals. While the applicable regime lacks teeth and specificity, the states bordering such bodies of water are encouraged to cooperate in areas such as marine scientific research, the protection and preservation of the marine environment, and the sustainable exportation of living resources. This was the thinking which was to lead to the evolution of concepts such as the large marine ecosystem and single ecosystem management.

The position was that pursuing uncoordinated and possibly incompatible management strategies on the part of the littorals is fraught with danger. But unilateral control lies at the heart of the modern law of the sea. Cooperation cuts across this deeply entrenched notion. Although benign and a good end in itself, cooperation is sometimes regarded with suspicion, if not outright hostility by some. This is exacerbated by the fact that it is not always clear to states at the outset as to what regional cooperation in a given field might entail.

It should be stressed that the Workshop participants agreed on numerous occasions that there were no practical barriers to cooperation. It is reasonable to take this to mean that the existence of disputes concerning sovereignty and maritime jurisdiction did not in and of itself preclude the possibility of joint action for the common good in the South China Sea. Furthermore, as many participants remarked, the various proposals for cooperation advanced in the Workshop had already been implemented in other marine areas, and the South China Sea region was lagging behind – seriously so, in some respects.

### **What's at stake**

From the very beginning the “oil factor” would loom large over all discussions. However, as the 1990s wore on, doubts began to be expressed by some as to whether the most optimistic views of the hydrocarbon potential of the South China Sea was not in fact exaggerated. It was pointed out, for example, that there were no independent and verifiable estimates because the requisite amount of exploration had simply not been undertaken.

For some, this indicated the effect of the “El Dorado Factor”, the commonly held desire to believe the best and to disbelieve the worst about the resource potential of a given area. This is precisely what is happening in the Arctic today. An expert body publishes estimates hedged with clear conditions, but the popular media promptly delete the careful qualifications and represent what “might be” as what “is”. Recently published studies have revised these hydrocarbon estimates downwards significantly.

Set against this are arguments such as those by Yu Humming of the United Nations Environment Programme at a Group of Experts Meeting in Shanghai in 1999. Dr Yu pointed out that the renewable non-fish resources of the South China Sea had been largely ignored. Yet their dollar value seen over the years would outweigh that of the most optimistic estimates of hydrocarbons.

Furthermore, several of us working on South China Sea issues became increasingly concerned that the human security or food security issues were likewise being ignored or relegated to secondary or tertiary importance. For instance proposals for a Marine Park in an area of the Spratly islands was not simply an exercise in conflict avoidance or environmental do-good, but was backed by solid ecological considerations.

To many of us, these did not seem to be in the least hypothetical. They were not likely to grab headlines, but we hoped to shift the debate to a higher plane. The mere possibility of mass starvation is hardly a trivial matter.

### **Lesson from MH370**

It came as no surprise when the search for the missing Malaysia Airlines plane found oil slicks and debris in the South China Sea. It has long been known that tankers clean out their empty tanks and other oil contaminated water there, possibly thinking that they cannot be detected by national authorities because of the jurisdictional impasse.

The tragic circumstances surrounding MH370 notwithstanding, the missing airliner saga may well trigger renewed attention on the importance of cooperation in the South China Sea. Our purpose is to remind the scholarly community and governments that a great deal of work on this has already been done, and it is available to them. What have been achieved can be built on.

We do not, therefore, have to re-invent the wheel. But now is the time to start.

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