The South China Sea: Cooperation for Regional Security and Development *

By:

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The efforts to develop cooperation for regional security and development, so far, has involved some formal approach of ASEAN and some informal approach by academic institutions and some informal unofficial approach by some South China Sea officials in their personal capacities. The formal approach has resulted in the Declaration of Conduct by the Foreign Minister of ASEAN and China in 2002 as well as by China and the Philippines, the Philippines and the Vietnam in formulating some confidence building measures or Code of Conduct between them. The informal approach has been initiated by Indonesia through the Workshop Process on Managing Potential Conflicts in the South China Sea since 1990. It should be noted however, that while the formal approach excludes Chinese Taipei in the process, but include Myanmar as an ASEAN Member although it is not located in the South China Sea, the second informal approach, however, includes Chinese Taipei as an “entity” in the South China Sea issues although no states around the South China Sea area has any diplomatic relations with the Chinese Taipei.

The informal workshop on the South China Sea was not intended to solve territorial disputes among the various Claimants, but aimed to achieve 3 things: (1) devising cooperative programs, in which all participants can take part, (2) promoting dialog among the directly interested parties, so that they could find out solution to their problems, and (3) to develop confidence building process so that everyone will feel comfortable with one another.

Since the beginning, the South China Sea Workshop had formulated and agreed on some basic principles for Managing Potential Conflicts. The 2nd Workshop in Bandung in July 1991 had recommended to the relevant governments which later on became elements for various declaration or Code of Conduct in the SCS, such as:

a. Without prejudice to territorial and jurisdictional claims, to explore areas of co-operation in the South China Sea.
b. Such areas of cooperation may include cooperation to promote safety of navigation and communications, to coordinate search and rescue, to combat piracy and armed robbery, to promote the rational utilization of living resources, to protect and preserve marine environment, to conduct marine scientific research, and to eliminate illicit traffic in drugs in the South China Sea.

c. In areas where conflicting territorial claims exist the relevant states may consider the possibility of undertaking cooperation for mutual benefit including exchanges of information and joint development.

d. Any territorial and jurisdictional dispute in the South China Sea area should be resolved by peaceful means through dialogue and negotiation.

e. Force should not be used to settle territorial and jurisdictional disputes.

f. The parties involved in such dispute are urged to exercise self-restraint in order not to complicate the situation.

Experiences with regard to the South China Sea issues indicated that technical and scientific cooperation is relatively easier to achieve than resources distribution, and more difficult with regard to the territorial as well as sovereignty and jurisdictional issues. With regard to the promotion of cooperation, for instance, it has been agreed to work out a number of cooperative engagement and some of them had been implemented, such as the bio-diversity expedition, and some of them are being implemented, such as the monitoring of sea level rise, and the environmental monitoring. Also the joint training programs by China and Chinese Taipei for South East Asian Network of Education and Training (SEANET) are also being jointly implemented by Chinese Taipei (2010) and by China (2011) at the cost of each one of them, and participated by all South China Sea participants.

With regard to the promotion of dialog between the parties, China and Vietnam had been able to agree on the maritime delimitation in the Gulf of Tonkin (Beibu) and in some instance, some joint cooperation on fisheries in the area. Vietnam and Indonesia had also agreed on the delimitation of their respective continental shelf in the southern part of the South China Sea, north of Natuna.
With regard to the promotion of Confidence Building Process, ASEAN and China, as indicated above, had also agreed on the Declaration of Conducts with China in 2002. China and the Philippines (in 1995), as well as Vietnam and the Philippines (in 1996) had also agreed on some kind of Code of Conduct between them. Most of the contents of these Declaration of Code were similar to the Workshop Statement in 1991. In the past, there has also been some understanding not to occupy new features and not to increase military presence in the South China Sea. It should be noted, however, that recently some of those agreed conducts have not been observed by some participants.

A number of lessons have been learned from the management of potential or actual conflicts in South China Sea. Some of these lessons learned may also be useful to other regions. Some of these lessons maybe repetitious with other cases, but that may indicate its relevance in dealing with the management of potential conflicts.

There are other forums that have been dealing with the South China Sea issues, such as the ASEAN-China dialogue and the informal discussion in ARF and CSCAP. However, participants of the SCS Workshop Process have agreed that those various forums should not replaced the workshop process and they agreed that the workshop process should continue and should be supported by all the coastal states or authorities of the South China Sea.

I. Some lessons that I have learned from 20 years of managing the SCSW Process are:

1) The parties to the disputes must realize that the outbreak of the conflicts, especially armed conflict, will not settle the disputes and will not bring benefits to either parties; in fact, they may only bring mutual damage or loss to the parties. I hope that the leaders around the SCS area have slowly learned this lesson.

2) The existence of political will to settle the disputes peacefully, and to take measures so that the continuation of the disputes would not escalate into armed conflict. The parties must realize that the solution of the disputes would be more in their interest than in their continued prolongation. I am afraid that despite plenty of
statement s to settle the dispute peacefully, in reality not much efforts or progress being achieved on this point.

3) **One of the most difficult lessons is that the parties should not legislate any territorial claims and should not involve as much public opinion as possible**, especially in the area where the claims are clearly disputed. Legislating territorial claims and seeking support through public opinion tend to harden the position of all sides, making it more difficult to seek solutions or compromises or even temporary solutions like 'joint developments'. It seems to me that this lesson is very hard to learned.

4) **There is the need to increase 'transparency' in national policy, legislation, and documentation, and more frequent meetings, formal or informal, among the legal officers of the various regional countries** in order to exchange their documentation and information as well as their legislative planning. Successful efforts often begin by informal efforts, either through track-two process or through informal track-one process. After those efforts indicate some possible success, a more formal 'track one' approach can be attempted. In relation to the SCS, it is not easy to understand and solicit explanation what are actually being claimed (the sea itself or the features, or the rights of the features to claimed maritime areas) and what are the precise limits of those claims and their legal basis for those claims.

5) **Preventive Diplomacy should be undertaken by all parties who have interests in the solution of the problems**, either regionally or internationally. Solutions that take into account only national as well as regional interests but ignore the interests of states outside the region would not be an effective long-term solution. This is of course should not be interpreted as internationalizing the issues.

II. Several basic principles for launching an informal initiative should also be observed.
1) **Use an all-inclusive approach.** Do not exclude any directly interested countries or parties in the process.

2) **Start with less sensitive issues** with which participants feel comfortable discussing, without incurring the animosity of their respective governments or authorities. Oil and natural resources, for example, proved to be a sensitive topic; environmental protection is a more comfortable topic.

3) **The participants should be senior or important personalities in their governments or authorities,** although they are participating in the process in their private capacities.

4) At least during the initial stage, **there is no need to institutionalize the structure of the process or create a permanent mechanism.** The process should be kept as flexible as possible.

5) **Differences should not be magnified and cooperation should be emphasized.** Bringing 'provocative' international attention too early, or immediately internationalizing the process, may be detrimental in the long run.

6) In view of the delicacies and sensitivity of some issues, **it is wise to start with what is possible and follow a step by step approach,** taking into account the principles of cost effectiveness.

7) It should be understood **that the process of managing potential conflicts is a long-term continuing process,** where lack of immediate concrete results should not be cause for despair and frustration.

8) **Keep the objectives simple.** As stated above, the South China Sea workshops have three objectives: to learn how to cooperate; to encourage dialogue between the
directly involved parties, and to **develop confidence building** so that the participants feel comfortable discussing difficult issues

9) **The roles of the initiator, the interlocutor, or the convener of the process as well as the roles of disinterested supporters and sponsors are very crucial.** The initiator, the convener, or the interlocutor, must be impartial, have patience and dedication as well as tenacity and sufficient knowledge of the delicate issues involved. At the same time, he or she must be able to retain the respect and the continued support and cooperation of all participants. He must have the interests of all in mind and should be motivated by the general good, rather than sectoral or group interests, although he must be aware of all those conflicting interests and should be in the position to accommodate them. He or she should strive to arrive at the decision by consensus.

III. **After launching the informal process 20 years ago, I have also learned,**

Additional Lessons for the countries around the SCS:

1) **Bigger countries in the region should be mindful of the views of their neighbors** especially the smaller ones. The bigger countries should be careful so that they are not perceived to be dominating or bullying their smaller neighbors.

2) **Attempt should be made to broaden the participants in cooperative programs and deepen the areas of cooperation** while at the same time promote growth of the regional states. The more the cooperative effort develop economic, scientific, and technical contents for mutual benefits, the more likely the effort to be more successful.

3) **There should be more emphasis on regional and common interests.** The countries of the region should **learn how to pursue their national interests within their regional harmony**; in fact, they should perceive the pursuit of regional interests as part of their national interests.
4) **There should be a gradual progression of the concept of national resilience to the promotion of the concept of regional resilience and regional cohesion.** The positive experiences of ASEAN have been very instructive. The concept of **national resilience** teaches that the strength of a country depends on, and will be negatively affected by, its weakest links. **National resilience** will increase if the weakness in its component parts is remedied and the link and cohesion amongst all its components are strengthened. Equally, **regional resilience** will be negatively affected by instability in one or more of its national components and the degradation of the links and cohesion among its members.

5) **Another most difficult lesson is that the countries in the region should be less sensitive to the concept of “national sovereignty”, since more and more issues which in the past might be arguably of a national character, now they are becoming more and more regional** and having more regional implications, such as the environmental issues, some domestic political stability issues, and some severe human rights problems. ASEAN has been able to develop this notion from the concept of 'regional cooperation' to the concept of 'constructive engagement', later to the concept of 'enhanced inter-action' in the general interest of all and to create a sense of “Community”, either in political and security issues, in economic or social communities issues.

6) **Within the true sense of oriental good neighbor, the countries in the region should be able to be helpful to the neighbors in need if required.** Any 'aid' offered by the richer and stronger countries to the poorer and weaker countries in the region should not always be based on calculation of strict 'national and business interests', but also should have a strong element of 'do-good-ism' and 'disinterestedness', which in the end will promote a stronger regional cohesion.

7) **The countries in the region should avoid arms race amongst themselves; in fact, they should be able to coordinate their defense need**, thus bolstering regional
harmony and transparencies. There are a lot of non-military security cooperation that could be developed in the region, which in the end would avoid an arms race among them, such as in preventing piracy and armed robberies at sea, illegal traffic in drugs, refugee problems, international terrorism, smuggling, and others.

8) **Major external powers, wherever possible and practicable, should support the development of constructive atmosphere in the region for peace, stability, and progress.** The external powers, however, should not involve themselves in territorial or jurisdictional disputes, except requested by the parties concerned, or if the consequences of such disputes are such that they have already endangered or will be endangering peace and stability in the region.

9) **Countries in the region should exercise “preventive diplomacy”** by preventing dispute from becoming an open-armed conflict or by preventing a conflict from spreading or aggravating. **More dialogue and confidence-building measures or processes among all concerned parties,** assisted as appropriate by third party good offices, are necessary.

10) **Countries in the region should develop cooperative efforts** so that potential conflicts could be managed by converting them into actual cooperation. **Any potential conflicts also contain in themselves elements for cooperation.** Efforts to formulate and implement cooperative projects should move beyond the expression of political support to actual implementation by providing the necessary financial, technical, and administrative support.

11) **Countries in the region should develop various fora for dialogue,** either bilateral or multilateral, either formal or informal. The various fora for dialogue should hopefully in the end be able to produce a set of agreed “**code of conduct**” for the region. The contribution of track 2 activities to 'preventive diplomacy' should not be under-estimated.
12) **Countries should pursue various avenues of peaceful settlement of disputes through negotiation;** bilateral if the disputes are bilateral or multilateral if the disputes are multilateral. Since most of the parties are already members of the UN and parties to UNCLOS 1982, and all have pledged their commitments to peaceful settlements of disputes, they should put those commitments to actual practice by **solving their disputes by peaceful means as soon as possible.**

13) **Third party mechanism for disputes settlement should also be explored and utilized,** such as good offices, mediation, arbitration, and, if necessary, adjudication, through the International Court of Justice or the Law of the Sea Tribunal. The ASEAN TAC (Treaty of Amity and Cooperation, 1976) had already formulated certain mechanisms for dispute settlement among ASEAN countries, although they were never invoked. **A new mechanism for SCS as a whole should be considered,** either by drawing from the TAC or from other models.

14) **The countries in the region should attempt to settle their land, maritime, and jurisdictional boundaries as soon as possible** and respect the agreed boundaries. They **should not settle boundary problems through unilateral enactment of national legislation,** because enacting legislation tend to harden positions rather than enabling the parties to seek solutions. The delay in settling territorial and jurisdictional disputes would not be helpful in promoting regional peace and stability; in fact, the longer the delay, the more the position of each disputant will harden, making it more difficult to settle the dispute, detrimental to the countries concerned as well as to the region as a whole.

15) **In some disputed areas, the application of Joint Development concept might be useful** as long as the zone of the dispute, the subjects to be jointly developed, the mechanism for such a joint development, and the participants in such a joint development concept, can be identified, and the parties concerned are willing to negotiate seriously on the modalities for the Joint Development concept in a particular area.
While encouraging Track 1 activities in the Asia Pacific region to be more responsive and imaginative to deal with the potential conflict, more discussion by the Track 2 activities, including by academics and think tanks, could also be helpful.

The interests of non-regional countries should be taken into account, and their potential contribution to avoid conflict in the region should not be discarded altogether.

Recently there has been some suggestions that certain ASEAN countries should unite against China on the South China Sea territorial and jurisdictional issues (see for instance KOMPAS, 1 June 2011). This endeavor maybe difficult to achieve for several reasons;

a. Some ASEAN countries themselves are in dispute with each other, such as the Philippines and Malaysia. In fact, when Malaysia and Vietnam jointly submitted the limits of their continental margin in the South China Sea to the United Nations Continental Shelves Commission, it was “protested” by the Philippines and China.

b. Among the 10 ASEAN Countries, there are four countries that are involved in the territorial disputes in the South China Sea (Vietnam, Malaysia, Brunei, and The Philippines), the other six ASEAN countries (Indonesia, Singapore, Thailand, Cambodia, Laos, and Myanmar) are not involved or are not directly involved in the territorial dispute over features in the South China Sea. Except within the context of solidarity, the 6 may not have specific interest to get involved in the territorial dispute, except for the need to assure peace and stability in the region. It maybe possible, though, that the six ASEAN non claimants may take joint initiative to offer good offices to bring the four claimants to the negotiating table with the other two non ASEAN claimants.

c. The formation of an ASEAN “unity” against China would seem to be “a confrontational approach” than “co-operational”. The South China Sea workshop process has been motivated by “co-operational approach” within the
last 20 years in order to avoid the confrontative situation. Experiences have indicated that China seems to be more responsive to “co-operational” approach than “confrontational” approach.

d. Finally with regard to the possibility of developing joint development for the hydrocarbon resources in the South China Sea, this possibility exist if the countries concerned could take into consideration some lessons that I have enumerated above.

*some of the points learned in this paper has been published before in my book: Preventive Diplomacy in Southeast Asia, published by The Habibie Center, Jakarta 2003 and presented to the Study by the National Bureau of Research (NBR), Washington DC 2011 and to various other fora