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Cooperation or Trust: What comes first in the South China Sea?

By Sam Bateman

Synopsis

Two opposing schools of thought are apparent in the South China Sea. One says cooperation will help build trust and the other claims that cooperation is not possible without trust. Must this necessarily be a chicken-and-egg issue?

Commentary

A 'CHICKEN AND EGG' situation has emerged in the South China Sea. What comes first – cooperation as a maritime confidence-building measure (MCBM), or strategic trust? This dilemma is largely explained by the reality that the concepts involved means different things to different people.

One school of thought is that arrangements for functional cooperation on issues such as resources management, marine scientific research and marine environmental protection are MCBMs or trust-building measures. The other school of thought is that this functional cooperation cannot proceed without strategic trust.

China's position

China is at the heart of the problem. Some commentators claim that the Chinese position is that MCBMs are not possible in the South China Sea without first building strategic trust. China is concerned about the US building up its military presence in the region, including in the South China Sea. It sees itself as the target of this build-up and does not trust any assurances by Washington to the contrary.

Thus the Military Maritime Consultative Agreement (MMCA) between the US and China remains ineffective. China views with deep distrust US arms sales to Taiwan and American surveillance and intelligence collection activities proximate to its coast.

However, other commentators have a different view. They believe that when China puts forward proposals such as the ASEAN-China Maritime Cooperation Fund and the establishment of expert committees on marine scientific research, environmental protection, search and rescue and transnational crime, it is actually proposing MCBMs.

This puts the onus back on the ASEAN claimants who, in being slow to embrace the Chinese proposals, appear to be also saying that some form of trust is required before there can be cooperation. In this context, trust might

mean some concessions by China with regard to its sovereignty claims in the South China Sea, or at least an unambiguous explanation of just what these claims are.

Reversing the order of cooperation and trust

The reversal of the order of cooperation and trust is evident in the way in which the focus of negotiations on a Code of Conduct for the South China Sea has shifted during the past decade. Article 6 of the 2002 ASEAN–China Declaration on the Conduct of Parties in the South China Sea (DOC) identified the activities now the subject of China’s expert committees, as well as the safety of navigation and communication at sea. The DOC requires cooperation pending a comprehensive and durable settlement of the disputes.

The ASEAN-China Joint Working Group on the Implementation of the DOC (ASEAN-China JWG) established in 2004 was tasked with formulating recommendations for developing cooperation. But the Guidelines for Implementing the DOC agreed in 2011 do not refer specifically to cooperation for management of the sea. Rather they identify MCBMs as the initial activities to be undertaken under the ambit of the DOC without actually specifying what form these measures might take.

Now negotiations between the claimants are focussed on agreeing a binding Code of Conduct for the South China Sea, the draft of which, according to reports, makes scant reference to the importance of cooperation and does not include any specification of possible MCBMs.

While this “chicken and egg” situation exists, little is being done to protect sensitive marine habitats of the South China Sea, manage its fish stocks, prevent transnational maritime crime, or conduct the research necessary to effectively manage the sea and its resources. The littoral countries to the South China Sea are all parties to the 1982 UN Convention on the Law of the Sea (UNCLOS) and thus have a clear obligation under Part IX of that treaty to cooperate on these activities.

Way forward: Back to basics?

Cooperation is not just something that is nice to have – it’s both an obligation and a necessity. Trust should not be seen as a prerequisite of cooperation. Without cooperation, fisheries are being over-fished, marine habitats are being destroyed, large areas of the South China Sea remain unsurveyed, and the littoral countries lack the scientific knowledge required for the effective exercise of their sovereign rights in adjacent waters.

Maritime cooperation can be hindered by the failure to acknowledge the interconnected nature of uses of the sea, and the qualifications to the exercise of sovereign jurisdiction at sea. In areas of overlapping jurisdiction, the maritime domain and its resources cannot be managed on the basis of national jurisdiction alone. Cooperation between neighbouring states is essential for good order at sea and effective maritime management.

A way forward is evident with getting out of this dilemma. While it is possible that part of the current situation may be due to differences of interpretation and understanding with some subtleties of trust and confidence being ‘lost in translation’, there is also a pressing need to get back to basics. Maritime cooperation is an MCBM that helps build trust and confidence. Cooperation on managing the South China Sea and its resources should proceed even as disagreements are negotiated at the political level and the sovereignty disputes remain unresolved.

The essential requirement to cooperate in managing the South China Sea and its resources should be separated from military CBMs and strategic trust. We should think differently about maritime cooperation as a MCBM on the one hand, and military measures on the other. We should detach cooperation from operational military MCBMs such as arrangements of the incidents at sea (INCSEA) type.

These two strands of thinking can be taken forward through different forums. The Expanded ASEAN Maritime Forum (EAMF) is appropriate for developing modes of maritime cooperation while the ASEAN Defence Ministers Meeting–Plus (ADMM-Plus) forum can deal with MCBMs related to military activities.

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