Keynote Speech of Ms. Teresa Cheng, SC*

Inaugural Symposium on Maritime Cooperation and Ocean Governance

5 November 2020 (Thursday)

Outline

---

* Ms Teresa Cheng, SC is Secretary for Justice of the Hong Kong Special Administrative Region of the People's Republic of China. Before joining the HKSAR Government, Ms Cheng was a Senior Counsel in private practice. She is also a chartered engineer, chartered arbitrator and accredited mediator, and was also one of the founders and Chairman of the Asian Academy of International Law. Ms Cheng would like to thank Mr Ian Li, Acting Senior Government Counsel, for his assistance in preparing this speech.

I. Introduction

1. Good afternoon Dr. Wu [Dr. Wu Shicun, President, National Institute for South China Sea Studies], Madam Arroyo [H.E. Madam Gloria Macapagal Arroyo, Former Philippine President], Mr. Lodge [Mr. Michael Lodge, Secretary-General, International Seabed Authority], Distinguished Guests, Esteemed Panelists, Ladies and Gentlemen,

2. May I first thank the organisers for inviting me. I am honored to speak alongside top experts in this Inaugural Symposium on Maritime Cooperation and Ocean Governance. Technology has made it possible for us all to participate in the event amidst this new normal under COVID-19.

3. The themes of discussion of this Inaugural Symposium are well chosen and timely. Being in this part of the world, the situation in the South China Sea is particularly relevant and is the most obvious issue that should be addressed. Central to this is the ASEAN-China relationship.

II. China-ASEAN relations in the context of the South China Sea

A. The "Declaration on the Conduct of Parties in the South China Sea" ("DOC")

4. The *"Declaration on the Conduct of Parties in the South China Sea"* ("DOC") was concluded between the People's Republic of China ("PRC") and ASEAN in November 2002 in Phnom Penh, Cambodia, after negotiations lasting for several years.

5. It is useful to recall the preamble of the DOC, with the PRC and ASEAN noting, among others:

"Reaffirming their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighborliness and mutual trust; and Cognizant of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region."

6. The focus on the DOC has recently been on its effect in resolving the South China Sea conflict between China and some members of ASEAN. However, I would encourage you to step back and look at the content and purpose of the DOC, as the DOC is not just a dispute settlement mechanism, but a declaration of cooperation, collaboration and commitment. Article 6 of the DOC lists out the cooperative activates that both sides may pursue, such as marine environmental protection, marine scientific research, safety of navigation and communication at sea, and combating transnational crime. Cooperation between the two sides has always been the intent of the DOC, with the Chairman of the 8th ASEAN Summit in 2002 noting that the DOC *"provides for confidence-building activities between ASEAN and China"*[1]. With this in mind, it is evident that the dispute settlement provisions are only there as a safeguard to regulate behavior and to avoid loopholes. The main crux of the DOC is to promote common interests and collaboration in the South China Sea region.

7. From the international law perspective, there may be two ways to look at the nature and legal effect of the DOC. While the traditional view is that the DOC is not a treaty in the traditional sense of public

[1] 2002 Press Statement by the Chairman of the 8th ASEAN Summit, 6th ASEAN+3 and ASEAN+China Summit at Phnom Penh, 4 November 2002 (found at https://asean.org/?static_post=press-statement-by-the-chairman-of-the-8th-asean-summit-the-6th-asean-3-summit-and-the-asean-china-summit-phnom-penh-cambodia-4-november-2002-3) at paragraph 28.

international law and is only a non-binding political statement and therefore would not create international binding legal effect, one could also look at the DOC as not a bilateral treaty *per se*, but as a series of unilateral declarations made by both sides.

8. According to the International Law Commission's *"Guiding principles applicable to unilateral declarations of States capable of creating legal obligations"* [2] ("Guiding Principles"), declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations[3], taking into account their content, the factual circumstances in which they were made, and of the reactions to which they gave rise[4]. In the *Nuclear Tests* case, the International Court of Justice ("ICJ") also held that a unilateral declaration is binding when the State proclaiming it intends to undertake a legal obligation[5].

9. It is evident that both the PRC and ASEAN wish to commit to the

---

[2] The International Law Commission's "Guiding principles applicable to unilateral declarations of States capable of creating legal obligations" can be found at https://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf.

[3] See Guiding Principle 1, which reads: *"Declarations publicly made and manifesting the will to be bound may have the effect of creating legal obligations. When the conditions for this are met, the binding character of such declarations is based on good faith; States concerned may then take them into consideration and rely on them; such States are entitled to require that such obligations be respected."*

[4] See Guiding Principle 3, which reads: *"To determine the legal effects of such declarations, it is necessary to take account of their content, of all the factual circumstances in which they were made, and of the reactions to which they gave rise."*

[5] *Nuclear Tests (Australia v France) Case*, ICJ Judgment of 20 December 1974, found at https://www.icj-cij.org/public/files/case-related/58/058-19741220-JUD-01-00-EN.pdf. The Court held at paragraph 43 that:

> *"It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding."*

This was quoted and endorsed in the recent ICJ case of *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile)*, judgment of 1 October 2018, found at https://www.icj-cij.org/public/files/case-related/153/153-20181001-JUD-01-00-EN.pdf, at paragraph 146.

peaceful cooperation and resolution of disputes in the South China Sea region, as set out in the Preamble of the DOC. This can also be seen in the text of the DOC, with Article 4 stating that *"[t]he Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned…"*. Judge Xue Hanqin of the ICJ also makes this point, and concluded that the ICJ would have very much treated this sort of declaration as having some obligation or legal force. She characterized the DOC as follows:

"What is at issue with the question of the DOC is whether the parties to the instrument have undertaken international obligations to conduct their acts in the South China Sea in accordance with the DOC, regardless of its title or form. ASEAN member States may recall the background in which the DOC was negotiated and concluded…Clearly, all the parties to the DOC undertook international obligations to observe the DOC."[6]

10. This was also the view of Former Deputy Prime Minister and Former Minister of Foreign Affairs of Thailand Dr. Surakiart Sathirathai at a public international law colloquium on maritime disputes settlement, where I recall him highlighting that the DOC has to be legally binding. He gave the example that throughout ASEAN's history, they do not typically sign treaties, and usually have declarations. These declarations are, however, highly observed and adhered to and referred to by states within the ASEAN context[7].

---

[6] Speech by H.E. Xue Hanqin titled "Judicial Practice of the International Court of Justice in the Settlement of Territorial and Maritime Disputes and a Few Observations on the Arbitral Awards in the South China Sea Case", at the Public International Law Colloquium on Maritime Disputes Settlement held in Hong Kong, 2016, organized by the Chinese Society of International Law and the Hong Kong International Arbitration Centre, found at the proceedings at pp.34-35.

[7] Closing remarks by Ms Teresa Cheng, SC at the Public International Law Colloquium on Maritime Disputes Settlement held in Hong Kong, 2016, organized by the Chinese Society of International Law and the Hong Kong International Arbitration Centre, found at the proceedings at p.436.

11. Whatever the status of the DOC and notwithstanding some views that the DOC is seen to be ineffective with its slow implementation, it cannot be denied that the DOC represents a significant step in establishing a rule-based environment. It provides a system for orderly governance, regulation and co-operation for the common good in the region, backed by a dispute settlement mechanism to be conducted directly between related States as a safeguard against non-compliance of this regional order agreed by China and ASEAN in the South China Sea.

B. The Code of Conduct for the South China Sea ("COC")

12. The DOC set into motion the subsequent negotiation of the *Code of Conduct for the South China Sea* ("COC") between the two sides, with the first step being the negotiation of a Framework of the COC which was endorsed by the foreign ministers of ASEAN and China in Manila on 6 August 2017. ASEAN foreign ministers said they were "encouraged" by the adoption of the Framework, which would *"facilitate the work for the conclusion of an effective COC on a mutually-agreed timeline."*[8], while State Councilor and Foreign Minister of the PRC Wang Yi described the Framework as bringing *"stability to the issue, demonstrating a positive momentum. This shows our common wish to protect the peace and stability in the South China Sea."*

13. In 2018, a Single Draft Negotiating Text of the COC was announced. While negotiations are still ongoing, it can be seen that the parties are not shy in tackling the difficult issues such as regarding the scope of the COC, dispute settlement, and the role of third parties. It can be seen in the Single Draft Negotiating Text of the COC that there is a recognition of a duty to cooperate and promote practical maritime

[8] Joint Communiqué of the 50th ASEAN Foreign Ministers' Meeting, Manila, Philippines, 5 August 2017 (found at https://asean.org/storage/2017/08/Joint-Communique-of-the-50th-AMM_FINAL.pdf) at 195.

cooperation in various areas[9]. While these areas are still subject to negotiation, it is evident that all parties are of the view that broad cooperation in the South China Sea forms the basis of peace and stability and building trust in the region.

14. While some have noted the relative slowness of the negotiation of the COC, it cannot be stressed enough that the COC represents an agreement between a large number of stakeholders on topical issues that go to the heart of different interests in the South China Sea. Both the PRC and ASEAN have expressed their intentions to successfully conclude the COC. The negotiations would have been taken further but for the COVID-19 pandemic. Notwithstanding this, during the most recent ASEAN Regional Forum held in September earlier this year, foreign ministers from ASEAN called for an expedited negotiation of the COC[10]. Similarly, at the virtual international symposium themed "The South China Sea: From the Perspective of Cooperation" held in September this year, Foreign Minister Wang Yi emphasized that China's biggest strategic interest in the South China Sea is safeguarding its peace and stability, and stating that countries directly concerned in the South China Sea issue should resolve their disputes through consultations and negotiations[11].

15. While the conclusion of the DOC represents a significant milestone in China-ASEAN relations, the subsequent ongoing negotiation of the COC, starting with the successful conclusion of the Framework and Single Draft Negotiating Text, points to a landmark agreement which denotes an ever closer cooperation and collaboration between the two sides in ensuring a peaceful and stable South China Sea.

---

[9] While the Single Draft Negotiating Text of the COC has not been published publically, Carl Thayer has provided a brief commentary to the text in https://thediplomat.com/2018/08/a-closer-look-at-the-asean-china-single-draft-south-china-sea-code-of-conduct/.

[10] See the Chairman's Statement of the 27th ASEAN Regional Forum held in Hanoi, 12 September 2020, at https://asean.org/storage/2020/09/Final-27th-ARF-Chairman-Statement_as-of-13-September-2020-clean.pdf, at paragraph 10.

[11] https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1811781.shtml.

III. The Asian Culture

16. It would be an understatement to say that the Asian culture has a drastically different approach to building friendly relationships with neighbouring states and settling disputes as compared to other parts of the world. This different approach calls for deeper understanding of each other, and not resorting to direct confrontation. As noted by the Secretary-General of the Asian Peace and Reconciliation Council Mr. Sorajak Kasemsuvan:

> *"Culture could influence the attitude and behavior of States and statesmen in dealing with international law…Their respective cultural pattern, local wisdom, political doctrine and the local way of life may affect the interpretation and negotiation of international law and international treaties in individual countries."*[12]

A. The Treaty of Amity and Cooperation in Southeast Asia ("TAC")

17. The *"Treaty of Amity and Cooperation in Southeast Asia"* ("TAC") was concluded on 24 February 1976 in Bali, less than 10 years after the founding of ASEAN in 1967. The TAC demonstrates the values which emanate from the shared Asian mindset and culture, with Article 13 of the TAC stating that parties to disputes, especially disputes likely to disturb regional peace and harmony, shall *"refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations"*. Article 15 of the TAC also provides that should direct negotiations fail to produce a solution, the High Council shall recommend to the parties appropriate means of settlement such as good offices, mediation, inquiry or conciliation.

[12] Speech by Mr. Sorajak Kasemsuvan titled "The Art of Dispute Resolution from an Asian Perspective", given at the 2019 Colloquium on International Law: "Synergy and Security: The Keys to Sustainable Global Investment" organized by the Asian Academy of International Law and the Chinese Society of International Law, found at the proceedings at p. 165.

While the TAC's goal of the establishment of a High Council comprising of representatives from each contracting party to the TAC[13] is a lofty goal which is yet to be realised especially in light of the expansion of contracting parties from outside Asia, the intent and spirit of how to resolve disputes under the TAC should be applauded.

B. ASEAN-China Strategic Partnership Vision 2030 Statement

18. The PRC also shares these Asian values encapsulated in the TAC, noting on many different occasions that the PRC's relationship with ASEAN is based on a community of shared future and values. As noted in paragraph 4 of the ASEAN-China Strategic Partnership Vision 2030 Statement:

"Advance a strategic partnership that continues to adhere to the fundamental principles, shared values and norms that have guided ASEAN-China Dialogue Relations since its establishment in 1991, including those enshrined in the Charter of the United Nations, the ASEAN Charter and the [TAC], the Five Principles of Peaceful Coexistence, ... as well as universally recognised principles of international law;"[14]

19. The essence of this value of a shared future is the conciliatory approach to developing friendly relationships with neighboring states and dispute settlement. Littoral states in the South China Sea all have a similar culture and subscribe to this approach to a certain extent. Due to this similarity, there can be no doubt that given enough time, differences between littoral states in the South China Sea can be negotiated and settled upon.

[13] Article 14 of the TAC.
[14] The ASEAN-China Strategic Partnership Vision 2030 Statement can be found at https://asean.org/storage/2018/11/ASEAN-China-Strategic-Partnership-Vision-2030.pdf.

C. *The Five Principles of Peaceful Coexistence*

20. This approach is also congruent to the principle of peaceful coexistence as envisaged under the United Nations Charter, which originated in the Five Principles of Peaceful Coexistence originally set out in the *Sino-Indian Pancha Shila Agreement*[15] of 1954, and culminated in widespread international acceptance by the passage of the *"Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"*[16], passed by the United Nations General Assembly in 1970.

21. The Preamble of the Five Principles of Peaceful Coexistence reiterates the principles of mutual respect for each other's territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence. Similarly, the *Friendly Relations Declaration* emphasises, among others, the principles of refraining from the threat or use of force, settling international disputes by peaceful means, cooperation with one another, and the sovereign equality of States. As President Xi Jinping notes, *"The Five Principles of Peaceful Coexistence give concrete expression to the purposes and principles of the UN Charter and facilitate their implementation. The key elements of the Five Principles, namely, "mutual" and "coexistence", demonstrates the new expectations the Asian countries have for international relations and the principle of international rule of law that give countries rights, obligations and responsibilities"*[17].

---

[15] Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India, signed at Peking on 29 April 1954.

[16] *"Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations"*, adopted by the United Nations General Assembly on 24 October 1970 (resolution 26/25 (XXV)).

[17] Address by President Xi Jinping at meeting marking the 60th Anniversary of the Initiation of the Five Principles of Peaceful Coexistence, 28 June 2014, at https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1170143.shtml#:~:text=Echoing%20th

D. Jurisdiction or lack thereof on boundary disputes

22. The "Western approach" which is more confrontational and tend to resort to legal action may be not a final resolution to a dispute between states[18]. It provides answers to legal questions but the political or sovereignty differences remain. The territorial and boundary disputes relating to sovereignty in the South China Sea are complex, as the consequences in question directly affect the relationships between neighboring states. Whatever the result of such adversarial process, diplomatic relations are bound to be affected, and antagonistic actions at borders may occur.

23. A more fundamental problem is whether a particular court or arbitral tribunal has the jurisdiction to adjudicate upon boundary disputes. In the *Chagos Marine Protected Area Arbitration*[19] between Mauritius and the United Kingdom, the Tribunal was asked to rule upon, among other things, questions regarding the sovereignty of the Chagos Archipelago, which was packaged as questions regarding whether the United Kingdom was a "Coastal State" under UNCLOS.

24. The Tribunal by a majority held that they did not have jurisdiction to decide on sovereignty issues, yet in substance it can be said that the Tribunal's powers on jurisdiction has nevertheless been evidently expanded[20]. Article 297(1) of UNCLOS[21] has generally been

is%20historical%20trend%2C%20China,mutual%20benefit%2C%20and%20peaceful%20coexistence.

[18] For example, both the ICJ case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* and the *Chagos Marine Protected Area Arbitration* did not result in a final resolution of the issue, and instead led to the parties in each case going back to negotiations– see Ms Teresa Cheng's remarks in her interview with CNN regarding the South China Sea Arbitration at https://edition.cnn.com/videos/tv/2016/07/12/exp-ns-stout-cheng-south-china-sea.cnn.

[19] *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, https://pca-cpa.org/en/cases/11/.

[20] The compulsory jurisdiction of UNCLOS courts and tribunals over "any dispute concerning the interpretation or application of [UNCLOS]" as provided under section 2 of Part XV is subject to section 3 of that same Part.

[21] Article 297(1) of UNCLOS provides:

understood as limiting the compulsory jurisdiction of Part XV courts or tribunals over disputes concerning the exercise by a coastal State of its sovereign rights and jurisdictions in the Exclusive Economic Zone and on the continental shelf to the exhaustive list of subject-matters in its sub-paragraphs (a) to (c)[22]. However, the Tribunal in the *Chagos Island Arbitration* adopted a rather interesting interpretation of Article 297(1), and noted that this provision is merely a "jurisdiction-affirming provision" that did not include any limitation to the jurisdiction exercised by a Part XV court or tribunal[23]. Professor Stefan Talmon analysed examples of anomalies that this interpretation would create, and opined:

"[t]his opens up the possibility of Part XV courts and tribunals exercising jurisdiction over a wide range of disputes relating to the exercise by the coastal State of its sovereign rights or jurisdiction provided for in the Convention"[24].

"1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:

(a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;

(b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or

(c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention."

[22] See Stefan Talmon, "The Chagos marine protected Area Arbitration: A Case Study of the Creeping Expansion of the Jurisdiction of UNCLOS Part XV Courts and Tribunals", Bonn Research Papers on Public International Law, Paper No 9/2016, 16 June 2016, at 21.

[23] Chagos Marine Protected Area Arbitration, Award, paragraph 317.

[24] Stefan Talmon, "The Chagos marine protected Area Arbitration: A Case Study of the Creeping

25. The danger of such expansive interpretation of jurisdictional provisions could result in Tribunals exceeding the mandate given by the contracting parties under UNCLOS, thereby undermining its legitimacy and authority.

26. Another example is the *South China Sea Arbitration*[25]. In a Public International Law Colloquium on Maritime Disputes Settlement in Hong Kong, experts have expressed doubts as to the Tribunal's jurisdiction in this arbitration, pointing, in particular, to the fact that China has made a reservation under Article 298 and repeatedly objected to the jurisdiction of the Tribunal. One such critic is His Excellency Abul Gadire Koroma, former judge of the ICJ, where he notes:

> *"As we are all aware, China repeated stated that it will, "Neither accept nor participate in the arbitration unilaterally initiated by the Philippines". It is also on record as far back as 2006…that the Chinese Government excluded this case by making a declaration under Article 298 of the UNCLOS.*
>
> *…*
>
> *I wish to observe here that the issue of jurisdiction, which a tribunal or a court has to take into consideration, whether there is appearance or non-appearance, is not just a matter of cliché, and it is not just a matter of procedure. There is substance embedded in that expression. That is to say, if a tribunal or a court is not entitled to enter into the merits of the case, then it should not even entertain the jurisdiction of the matter.*
>
> *…*
>
> *In my view anyway…the Tribunal has no legal right to decide the*

Expansion of the Jurisdiction of UNCLOS Part XV Courts and Tribunals", Bonn Research Papers on Public International Law, Paper No 9/2016, 16 June 2016, at 22.

[25] *The South China Sea Arbitration (The Republic of Philippines v The People's Republic of China)*, at https://pca-cpa.org/en/cases/7/.

matter, which was submitted before it, because China had not given its consent to the Tribunal to do so."[26]

27. The above two examples illustrate that judicialisation in fora such as arbitration may create more problems than it intends to solve and puts the legitimacy of the whole process into question.

IV. The potential impact of external influences on maritime security

28. It is in the interests of those involved in the South China Sea to focus on common interests and avoid disputes. However, it is also undeniable that there are other external factors which could contribute to the escalating tensions in the region.

29. The "Freedom of Navigation Operations" ("FONOPS"), according to the United States Department of Defense, aims to *"challenge excessive maritime claims made by a wide variety of coastal states, including allies, partners, and competitors. They are not focused on any particular claimant, and they are not tied to current events"*[27]. In reality, irrespective of the position of the determination of sovereign claims in the South China Sea, FONOPS would inevitably amount to illegal intrusions into the territorial waters of a state, whether it is Chinese, Vietnamese, Malaysian, Indonesian, or otherwise.

30. FONOPS disrupts the maritime security in the region and creates an impediment to developing common interests. Further, if the United States are seriously concerned about "excessive maritime claims" as

[26] Speech by H.E. Abul Gadire Koroma in the panel session titled "Special Panel on the South China Sea Arbitration Initiated by the Republic of the Philippines", at the Public International Law Colloquium on Maritime Disputes Settlement held in Hong Kong, 2016 organized by the Chinese Society of International Law and the Hong Kong International Arbitration Centre, found at the proceedings at pp.411-414.

[27] Department of Defense Report to Congress – Annual Freedom of Navigation Report Fiscal Year 2019 at https://policy.defense.gov/Portals/11/Documents/FY19%20DoD%20FON%20Report%20FINAL.pdf?ver=2020-07-14-140514-643&timestamp=1594749943344.

set out under UNCLOS, one wonders why it does not ratify UNCLOS and challenge these claims under the dispute settlement provisions provided therein. In any event, it is questionable whether FONOPS are compliant with UNCLOS.

31. These forays of the United States tend to escalate tensions when collaboration should be the focus of all littoral states. Maritime security is no longer just about military threats and sovereignty at sea, but also encompasses other threats such as marine pollution, maritime safety, and illegal, unreported and unauthorised fishing. These non-traditional maritime security issues are equally important, as it goes to the protection of the South China Sea as a valuable economic and natural resource for all littoral states.

V. <u>Focus on common interests and not differences</u>

32. In this light, I would submit that countries within the region should focus on common interests and not differences. We should endeavor to shift our attention from boundary and maritime claims to building trust and cooperation for the mutual benefit and peaceful co-existence in the South China Sea. As the late Mr Sam Bateman, who was scheduled to speak in the next session, wisely notes: *"A fixation on resolving sovereignty claims reinforces distrust and inhibits cooperation, whereas cooperative activities on 'softer' issues could help build operational trust even though strategic trust is absent."*[28]

A. <u>The Mediterranean experience</u>

33. The Mediterranean perspective may be instructive since that particular region is also home to many countries and competing claims. Bordered by 21 countries from Europe, North Africa, and the Middle

[28] Sam Bateman, "Building Cooperation for Managing the South China Sea Without Strategic Trust, Asia & the Pacific Policy Studies, vol. 4, no. 2 at 256.

East[29], with volatile regions such as the Gaza Strip also having a coastline in the sea, the Mediterranean Sea region has seen its share of maritime disputes, most recently in the Aegean Sea between Greece and Turkey[30].

34. However, this has not stopped the Mediterranean Sea region from endeavoring closer cooperation, capacity building, and collaboration on other aspects of maritime security such as the marine environment, economic development, and human security.

35. The Mediterranean Action Plan culminated in the Barcelona Convention in 1978. The main objectives are, among others, to assess and control marine pollution, to ensure sustainable management of natural marine and coastal resources, and to protect the marine environment and coastal zones through prevention and reduction of pollution[31].

36. In 2008, the Union for the Mediterranean was created in Paris by 43 Euro-Mediterranean Heads of State and Government, which moves beyond the de-pollution of the Mediterranean Sea, and also seeks to improve and facilitate the movement of people and goods in the region, prevent, prepare and respond to natural and man-made disasters with the establishment of a joint civil protection programme, and promotes business development in the region. There is also a Euro-Mediterranean University established by the Union for the Mediterranean[32].

37. A few observations may be drawn from the regional order of the Mediterranean. First, it suggests that closer cooperation and

[29] See https://www.medqsr.org/mediterranean-marine-and-coastal-environment.
[30] See, e.g. https://www.dw.com/en/greece-turkey-agree-to-nato-deal-to-avoid-conflict-in-mediterranean/a-55127024.
[31] See https://ec.europa.eu/environment/marine/international-cooperation/regional-sea-conventions/barcelona-convention/index_en.htm.
[32] See https://ec.europa.eu/environment/enlarg/med/ufm_en.htm and https://ufmsecretariat.org/ for further information.

understanding can be achieved if the relevant parties focus on other aspects of maritime security and adopts a conciliatory approach. Secondly, it illustrates that littoral states can take the lead in building cooperation within the region, focusing on mutual interests and development, and fostering long term collaboration for peaceful co-existence. Thirdly, military instability and conflict may still be present, as demonstrated in the recent tensions between Greece and Turkey in the Aegean Sea, but this should not be the stumbling block for building co-operation by littoral states, focusing on common interests. With communication and common interest in mind, disputes may then be avoided or even if not, settled amicably using peaceful means as there would be enough trust and goodwill between them.

B. *Cooperation on different fronts*

38. The South China Sea situation has an additional advantage as compared to the Mediterranean region. The Asian culture and approach in building relationships with neighboring States and in avoiding and settling disputes will materialize in projects for mutual benefit and peaceful co-existence.

39. As discussed, stakeholders in the South China Sea should focus on common interests such as marine pollution and the environment, and utilizing the South China Sea for business and economic development. I am sure that speakers in the next two sessions will provide great insight as to what these collaboration on common interests might entail, including aspects such as fisheries management and conservation.

VI. Conclusion

40. The key to continued peace and security in the South China Sea lies not in the focus of disputes and dispute settlement and resolution, but

on exploring the opportunities in collaboration, cooperation and commitment in realizing the common interests of the littoral states. As demonstrated in our discussion of the DOC and COC, whether as a matter of legal obligation or simply the Asian culture, the main paradigm of the Asian approach is to foster mutual trust and cooperation through peaceful coexistence. Dispute settlement mechanisms are present only as a safeguard, and even when engaged, the key to maintaining long term relationships as neighboring states lies not in adversarial proceedings, but in conciliatory processes like negotiation or consultation. Yet, external actors and factors may continue to divert our attention. Focus should firmly be on the myriad of opportunities and benefits offered by the collaboration and cooperation in the South China Sea.

41. In short, the Asian approach of fostering relationships with neighboring states for mutual benefit and peaceful co-existence, and avoiding disputes instead of judicialising them, is to be preferred.

42. With that, I wish to express my best wishes to this inaugural symposium and particularly to the next two sessions. Thank you.