

Conflict or Cooperation? The Implications of China's New Fishing Regulations

Wendy Wan-Chun HO¹

Abstract

The new Chinese fishing regulations, which were passed by the Hainan province in 2013 and went into effect in 2014, has exemplified the growing assertiveness of China and intensified the heated South China Sea disputes. The South China Sea has been a productive fishing ground and full of aquaculture resources. Nonetheless, in recent years, fishing in the area has become a politically sensitive topic due to the geopolitical tensions and security concerns among the claimant states. This article intends to provide an analytical review of the current fight for fishing rights in the South China Sea and to offer possible solutions. The article argues that solving fishing disputes through multilateral cooperation, rather than unilateral actions, in the South China Sea is an urgent task and a win-win solution. First, the article attempts to analyse the new Chinese fishing regulations and the impact on future multilateral cooperation in the South China Sea within the context of the 1982 UNCLOS and international law. It further looks into the implications of the burgeoning Asian economic integration for future joint actions to conserve and manage marine resources in the area. Lastly, the article explains Taiwan's position in current South China Sea disputes and explores Taiwan's role in shaping a multilateral fishery management scheme in these disputed waters.

Keywords

UNCLOS, South China Sea, EEZ, fishery resources, conservation, cooperation

1. Introduction

The South China Sea (SCS) – which comprises a stretch of about 1.4 million square miles in the Pacific Ocean encompassing an area from Singapore and the Malacca Straits to the Strait of Taiwan, spanning west of the Philippines, north of Indonesia and east of Vietnam – is one of the world's most resource rich regions. The SCS is also located on a major international shipping route between the Indian Ocean and Northeast Asia. This semi-enclosed area, as defined in Article 122 of the United Nations Convention on the Law of the Sea (UNCLOS), is home to hundreds of thousands of marine

¹ Wendy Wan-Chun Ho is an Assistant Professor of Law at Soochow University Law School in Taipei, Taiwan. She earned her LL.M. degree from Duke Law School and her S.J.D. from University of Wisconsin-Madison Law School in the United States. Her areas of research interest include international trade law and the law of the sea. This article reflects the law, jurisprudence and doctrine in place as of May 2015.



species and encompasses a tremendous diversity of ecosystems.² Its rich marine resources provide its bordering states with food security and serve as an important source of economic growth contributing to income and employment. For example, it is estimated that the bordering countries of the SCS produce nearly a quarter of the world's caught tuna, including three quarters of the world's production of canned tuna.³ The SCS has proved to be a productive fishing ground and is full of aquaculture resources. Nonetheless, in recent years, fishing in the area has become a politically sensitive topic due to the geopolitical tensions and security concerns among the claimant states.⁴

The bordering states have sought every opportunity not only to claim sovereignty in the territorial disputes but also to fight for exclusive rights to the rich maritime resources in the SCS. While vast benefits are generated by fishing in the SCS, the area's integrity is threatened due to destructive fishing methods, decades of intensive fishing and marine pollution. The ongoing tensions in the area have also hindered comprehensive surveys and cooperation schemes in the exploration and conservation of fishery resources in the region. According to a recent study conducted by the Asia-Pacific Fishery Commission (APFC) of the Food and Agriculture Organization of the United Nations (FAO), China is by far the largest producer of captured fish in the region (15.7 million tonnes) representing 32 per cent of the total regional production.⁵ The same report also estimated that the majority of the stocks or species groupings in the SCS subregion are overfished or fully-fished. In some cases, the species groups are even scored as depleted.⁶ The maritime disputes of the SCS are developing as areas of acute tension and political conflict. Nonetheless, the common interest of fishery conservation has often been overlooked. The lack of an agreement among the claimant states to manage jointly the fishery resources in the area has jeopardised the sustainability of the marine resources in the SCS.

The new Chinese fishing regulations, which were passed by the Hainan province and went into effect in 2014, have exemplified the growing assertiveness of China and intensified the heated SCS disputes. Since the announcement of the new fishing regulations of the Hainan Province, the regulations have been criticised as provocative by other claimant states in the SCS and the United States. The announcement of the new fishing regulations also raised concerns about China's effort to exercise jurisdiction over all fishing activities in the disputed SCS.⁷

2 Alberto A Encomienda, 'The Marine Environmental Protection in the South China Sea: An UNCLOS Paradigm' in Myron H Nordquist and others (eds), *Recent Developments in the Law of the Sea And China* (Martinus Nijhoff 2006) 173; United Nations Convention on Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 397, art 122.

3 Song Yann-huei, 'A Marine Biodiversity Project in the South China Sea: Joint Made in the SCS Workshop Process' (2011) 26(1) *The International Journal of Marine and Coastal Law* 119, 121.

4 *ibid* 143.

5 UN FAO (Asia-Pacific Fishery Commission), 'Regional overview of fisheries and aquaculture in Asia and the Pacific 2012' (2012) 15 <www.fao.org/docrep/017/i3185e/i3185e00.pdf> accessed 20 July 2015.

6 *ibid*.

7 Taylor Fravel, 'Hainan's New Fishing Rules: A Preliminary Analysis' (*The Diplomat*, 10 January 2014) <<http://thediplomat.com/2014/01/hainans-new-fishing-rules-a-preliminary-analysis/>> accessed 30 May 2015.



This article intends to provide an analytical review of the current fight for fishing rights in the SCS and to offer possible solutions. It argues that solving fishing disputes through multilateral cooperation, rather than unilateral actions, in the SCS is an urgent task and a win-win solution. Despite the complicated territorial claims, the unity of ASEAN countries within the increasing Asian economic integration provides a good opportunity to induce China to form a cooperative framework for marine resource management in the disputed area. First, the article attempts to analyse the new Chinese fishing regulations and its impact on future multilateral cooperation in the SCS within the context of the 1982 UNCLOS and international law. It further looks into the implications of the burgeoning Asian economic integration for future joint actions to conserve and manage marine resources in the area. Lastly, the article explains Taiwan's position in current SCS disputes and explores Taiwan's role in shaping a multilateral fishery management scheme in these disputed waters.

2. The new Hainan fishing regulations

2.1 The purpose

The Hainan Provincial People's Congress amended the Hainan Province's implementation regulations (banfa, 办法) of China's national fishery law on 29 November 2013 and they took effect on 1 January 2014.⁸ The new Hainan fishing regulations were passed to implement China's national fishery law in the province of Hainan. Article 1 of the Hainan fishing regulations states that one of the main purposes of the regulations is to secure and enhance the conservation and exploration of fishery resources in accordance with the rules under China's national fishery law. This provision of the new Hainan fishing regulations echoes the statement in Article 1 of China's national fishery law. It shows that the law seems to be formulated for the purposes of enhancing the protection, development and reasonable utilisation of fishery resources, developing artificial cultivation, protecting fishery workers' rights and interests, and boosting fishery production, so as to meet the requirements of the socialist construction and the needs of the people.⁹

2.2 The scope of the regulations and the fishery: do the regulations cover the South China Sea?

Although China has not been able to provide concrete statements to support its territorial and maritime claims (referred to as the 'U-shaped line' or 'dashed line') in the SCS, China has still been

⁸ No. 16 Announcement of the Standing Committee of the People's Congress of Hainan Province, 29 November 2013 (CN) <www.hainan.gov.cn:1500/data/law/2013/12/1900/> accessed 1 June 2015.

⁹ Art 1 of the China's national fishery law provides that 'the law is formulated for the purpose to enhance protection, value-added development and appropriate utilization of fishery resources, to develop artificial cultivation, to protect the legal rights of the producers of fishery products, to promote the development of fishery products in order to satisfy the socialist construction and the people's needs.' (translation by the author) 'Fisheries Law of the People's Republic of China' <www.soa.gov.cn/zwgk/fwjgwywj/shfl/201211/t20121105_5200.html> accessed 1 May 2015.



insistent of its jurisdiction in the area.¹⁰ In the new Hainan fishing regulations, Article 2 defines the scope of application of the new regulations. It provides that the fishing regulations apply to the methods of fishery production, management and conservation and other fishery related activities conducted in the internal waters, tidal flats and all other maritime areas within the jurisdiction of Hainan. According to China's claim, the jurisdiction of Hainan province covers Hainan Island, the Xisha (Paracel) Islands, the Zhongsha (Macclesfield) Islands and the Nansha (Spratly) Islands as well as their surrounding sea areas.¹¹ China further set up Sansha city to administer the Xisha, Zhongsha and Nansha islands and their surrounding waters in the SCS in 2012.¹²

Article 2 of China's national fishery law provides that the law applies to fishery production activities conducted in internal waters, tidal flats, territorial seas, the exclusive economic zone and all other waters within the jurisdiction of China. Article 14(3) of the implementation rules of China's national fishery law classifies the inshore and offshore fishing grounds of the SCS. It explains that the 'inshore fishing grounds' refer to the area on the Eastern side of 112 degrees East Longitude and inside the waters of 80 meter isobaths and the Western side of 112 degrees East Longitude and inside the waters of 100 meter isobaths of the SCS. The areas outside the inshore fishing grounds are thus the 'offshore fishing grounds'. Since the article does not set the outer limit of the offshore fishing grounds, the fishing grounds identified here in fact cover almost all areas of China's disputed 'U-shaped line' in the SCS and encroach on both Vietnam's and the Philippines' claims of exclusive economic zone (EEZ) areas.¹³

Additionally, China proclaimed 200 nautical miles of the EEZ and continental shelf in its declaration upon ratification of the 1982 UNCLOS in 1996.¹⁴ China further enacted its Exclusive Economic Zone and Continental Shelf (EEZ/CS) Law in 1998 to ensure its sovereign rights and jurisdiction in its claimed EEZ and continental shelf. Article 2(1) of the EEZ/CS Law clarifies that China's EEZ extends as far as 200 nautical miles measured from the baseline. Article 3 emphasises that China enjoys sovereign rights to conserve, explore and exploit marine resources and has the right to exercise jurisdiction over marine scientific research and the protection of the marine environment in its EEZ. Article 5 further requires that foreign individuals or organisations conducting fishing activities in

10 Robert Beckman, 'The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea' (2013) 107 AJIL 142, 155.

11 Decision of the 7th National People's Congress of the People's Republic of China on the Establishment of the Hainan Province, 13 April 1988 (CN); 'Geographical location of Hainan Province described by the government of Hainan' <http://en.hainan.gov.cn/englishgov/AboutHaiNan/200909/t20090910_7125.html> accessed 2 June 2015.

12 'China establishes Sansha City' (*Xinhua News*, 24 July 2012) <http://news.xinhuanet.com/english/china/2012-07/24/c_131734893.htm> accessed 30 May 2015.

13 It is noteworthy that China and Vietnam reached a maritime delimitation agreement relating to the Gulf of Tonkin in 2000. The two sides also signed a fishery agreement the same year to cooperate in managing, conserving and exploiting the fishery resources in the Gulf of Tonkin (Beibu Gulf). Map of China's Dashed Line is available at <www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf> accessed 25 July 2015.

14 United Nations Division for Ocean Affairs and the Law of the Sea, China's Declaration upon Ratification of UNCLOS (7 June 1996) <www.un.org/depts/los/convention_agreements/convention_declarations.htm#China Upon ratification> accessed 2 June 2015.



China's EEZ to seek approval from Chinese authorities and to comply with Chinese laws.

Also Article 2 of China's Territorial Sea and Contiguous Zone Law states that the land territory of China includes the Dongsha islands, Xisha islands, Zhongsa islands, Nansha islands and all other islands belonging to China. By specifically identifying the names of the islands in the SCS, China affirmed its sovereignty over these islands. The claim is reiterated in China's Notes Verbale in 2009, in which it insisted that 'China has indisputable sovereignty over the islands in the SCS and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters.'¹⁵ China's 2011 Notes Verbale further clarified that China has indisputable sovereignty over Nansha Island. China's Nansha Island is fully entitled to territorial sea, EEZ and continental shelf based on the UNCLOS and China's EEZ/CS Law and Territorial Sea and Contiguous Zone Law.¹⁶

Therefore, under current Chinese laws, the maritime areas administered by the Hainan province constitute about 2,000,000 square kilometres, which is more than half of the SCS and covers all islands in the area. Regardless of the conflicting claims in the SCS, the scope of application of the new Hainan fishing regulations, according to China's claim, covers the disputed areas.¹⁷ With respect to the fishery administration, the structure of China's fishery management is a mixture of central and provincial governments' responsibilities. The central and provincial governments cooperate to carry out national fishery law enforcement. Article 6(3) of the new regulations states that in addition to specific sea areas designated to the fishery administration authority by the State Council, fishing production in the rest of the sea areas is administered and supervised by the fishery administration agency under the provincial government. Article 6 of the implementation rules of the national fishery law requires the fishery administration authority under the State Council to establish a fishery management agency in the sea area of the SCS. Hence, both Hainan province and the central government have the responsibility to administer and manage fishing activities and production in the SCS. The administrative areas of the provincial and central governments is defined based on the classification of the inshore and offshore fishing grounds described in the previous paragraph. The provincial government is entitled to administer fishing activities within the waters enclosed by a trawler restriction line and the inshore fishing grounds, while the central government governs the offshore fishing grounds.¹⁸

2.3 Major disputed content of the new Hainan fishing regulations

The most controversial part of the new Hainan fishing regulations is that they require foreigners and foreign ships in the SCS to seek approval from the Chinese authority. According to Article 35 of the new regulations, all foreigners and foreign fishing vessels conducting fishing production and fishing resource surveys in the jurisdictional waters of the Hainan province must receive approval

15 People's Republic of China, Note Verbale (7 May 2009) CML/18/2009.

16 People's Republic of China, Note Verbale (14 April 2011) CML/8/2011.

17 See (n 13).

18 Guifang Xue, *China and International Fisheries Law and Policy* (Martinus Nijhoff 2005) 87.



from the relevant department of the State Council. This requirement was adopted to comply with Article 8 of China's national fishery law because the old Hainan fishing regulations (Article 21) only required that all vessels from other provinces and foreign vessels conducting fishing activities in Hainan jurisdictional waters seek approval from the relevant 'provincial authority' instead of the 'national authority'.¹⁹ Nonetheless, after the announcement of the new fishing regulations, neither the central government nor the provincial government of Hainan further specified which department of the State Council is entitled to grant approval and oversee the application process.

The Hainan regulations do not mention the legal liability of foreign fishing vessels that do not comply with the approval requirements. Nevertheless, Article 46 of China's national fishery law clearly indicates that foreigners and foreign fishing vessels conducting fishing activities and fishery resource surveys without prior authorisation may be expelled. The fishing catches and fishing gear are subject to confiscation and a 50,000 Yuan fine (in Renminbi currency) may be imposed. In a serious case, the fishing vessels may be confiscated and criminal charges may be filed.

After the new Hainan fishing regulations came into effect in 2014, the State Oceanic Administration announced that China planned to establish a regular patrol system in Sansha city to secure China's maritime interests. In May 2015, the city of Sansha commissioned an advanced law enforcement ship vessel with the support of the Ministry of Agriculture and the State Oceanic Administration to patrol the waters around Macclesfield Bank, claimed by China as Zhongsha.²⁰

3. Current EEZ regime under the UNCLOS

To assess the Hainan fishing regulations involves a discussion of the issues of delimitation and the management of marine resources under the current UNCLOS EEZ regime. In an area of overlapping jurisdictions and shared resources, the implementation of the EEZ is likely to result in conflicts and controversies in fisheries policy because different countries have different perspectives on values regarding fishery resources and various capacities in regulating fishery activities.

3.1 The current EEZ regime under the UNCLOS

The 1982 UNCLOS, which China signed in 1982 and ratified in 1996,²¹ creates a legal framework to govern the oceans and seas throughout the world. This universal legal structure has had significant influence on the structure of the international fishery regime and national fishery polices. The creation of the EEZ regime under the UNCLOS has emasculated the principle of freedom of fishery on the high seas. The new regime also represented a major shift in the regulation of oceans activities

19 The original Hainan fishing regulations were passed in 1993 and first amended in 2008.

20 Ben Blanchard and Huang Yan, 'China to start regular patrols from island in South China Sea' (*Reuters*, 21 January 2014) <www.reuters.com/article/2014/01/21/us-china-seas-idUSBREA0K0G220140121> accessed 1 June 2015.

21 See China's Declaration upon Ratification of UNCLOS (n 14).



and access to marine resources. This revolutionary change in the law of sea allows coastal states to have sovereign rights and jurisdiction for the purposes of exploiting and exploring marine resources in the area. In effect, the vast majority of the ocean fishing resources has been handed to the coastal states.²²

3.2 Sovereign rights on the living resources

The key provision in the UNCLOS regarding the EEZ regime is Article 55, which clearly states that the EEZ is a *sui generis* regime that belongs to neither the high seas nor to the sovereignty of coastal states. It provides that 'the exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the right and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.'²³

With regards to the rights and duties of the EEZ, Article 56 UNCLOS further provides that the coastal states have 'sovereign rights' to explore, exploit, conserve and manage the living natural resources in the EEZ. Additionally, the provision also indicates that the coastal states have jurisdiction, but not sovereign rights, with regards to marine scientific research. The term 'sovereign rights' indicates that the coastal states do not have sovereignty over the EEZ, but they do have all other rights to adopt necessary measures for the conservation and use of natural resources in the EEZ. The sovereign right of the EEZ is exclusive but not preferential.²⁴

3.3 Conflicts in the EEZ: the delimitation of the maritime boundary

With respect to the delimitation of the EEZ, Article 74 UNCLOS provides that the delimitation of the exclusive economic zone 'shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.'²⁵ Under the current law of the sea regime, the principle that maritime delimitation is governed by international law is well-established, instead of being left for each coastal state to determine for itself.

Nonetheless, the UNCLOS contains no provisions addressing the issue of how to settle the conflicting sovereignty claims over land or land features in the seas. As in the case of *Pedra Branca*, the ICJ pointed out that states need to first determine which one has sovereignty over the island before

22 R R Churchill and A V Lowe, *The Law of the Sea* (Manchester University Press, first published 1983) 160-62.

23 *ibid* 166.

24 See Malcolm D Evans, 'Maritime Boundary Delimitation: Where Do We Go from Here?' in David Freestone, Richard Barnes and David M Ong (eds), *The Law of the Sea: Progress and Prospects* (OUP 2006) 138.

25 Churchill and Lowe (n 22) 191.



they can proceed with negotiation on a delimitation agreement.²⁶ Hence, maritime boundaries cannot be delimited until the sovereignty issue is decided. Article 74(2) UNCLOS further provides that if an agreement of delimitation cannot be reached through negotiation, the states can resort to the mechanism of compulsory binding dispute settlement provided for in Part XI of the UNCLOS. However, Article 298 provides that states have a right to opt out of the compulsory dispute settlement procedures in respect of disputes concerning the interpretation or application of the provisions on maritime boundary delimitation.²⁷ Furthermore, Article 74(3) provides that:

Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, 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.

Thus, states unable to reach a delimitation agreement may work together to establish a joint area to manage and exploit fishery resources.²⁸

4. Conservation and management of fishery resources in the EEZ

The establishment of the EEZ regime has significantly altered the distribution of fishery resources. Nonetheless, the rules under the UNCLOS provide little guidance regarding the extent to which the coastal states may regulate foreign vessels in its EEZ for the purpose of marine conservation, not to mention in the area of overlapping EEZs claimed by different countries.

The establishment of the EEZ regime also entitles the coastal states to manage and monitor the fishery resources. An effective mechanism to conserve and manage fisheries in the EEZ is of fundamental importance since over 90 per cent of commercial fisheries are located within the EEZs. The coastal states are entitled to the sovereign right to manage the marine resources within their EEZ. These rights are also subject to a number of duties. Article 61 UNCLOS provides that the coastal states bear the duties to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal states and competent international organisations, whether subregional, regional or global, shall cooperate to adopt international instruments to achieve the above stated goals and to determine the total allowable catch (TAC) of the living resources in the EEZ. The coastal states are also required to 'promote the objective of optimum utilization of the living resources in the exclusive

²⁶ *Case Concerning Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rock and South Ledge (Malaysia/Singapore) (Merits)* [2008] ICJ Rep 12.

²⁷ Churchill and Lowe (n 22) 454-55.

²⁸ *ibid* 198-99.



economic zone without prejudice to article 61.²⁹

Additionally, the UNCLOS gives the coastal states broad discretion to take measures in regulating fishing activities conducted by foreign vessels. Article 62(4) elaborates the types of laws and regulations that the coastal states may employ for the purposes of conservation and utilisation of the living resources. These include licenses, fees and remuneration, species restrictions and catch quotas, age and size of the fish, fishing seasons and areas, permitted vessels and equipment, required information, fisheries research, observers or trainees, landing, joint ventures, training and transfer of technology, and enforcement. Article 62(5) requires the coastal states to give due notice of conservation and management laws and regulations.

5. Assessment of the Hainan fishing regulations under the current UNCLOS EEZ regime

Setting aside the competing sovereignty claims over the islands and disputed maritime boundaries in the SCS, the Hainan fishery regulations are in fact compatible with the EEZ rules under the UNCLOS for the following reasons.

First, China is entitled to issue regulatory measures for the conservation and exploitation of marine resources within its claimed EEZ in the SCS. China has made a territorial claim over the islands in the SCS and claim 200 miles of the EEZ in its Territorial Sea and Contiguous Zone Law and EEZ/CS Law. China has further reiterated its territorial and jurisdictional claims in the area in the two Notes Verbales, from 2009 and 2011, submitted to the United Nations Secretary-General.³⁰ Therefore, the new fishery regulations govern the maritime areas that China claims as their territorial waters and EEZ.

Second, according to the statement above, the purpose of the new Hainan fishery regulations is to strengthen the regulation of fishing activities and to protect fish stocks in the SCS. From this point of view, the new regulations are compatible with the UNCLOS, which gives the coastal states the sovereign rights of exploitation and exploration of fishery resources in their claimed EEZ. Additionally, the coastal states enjoy broad discretion in adopting measures or instruments to regulate fishing activities in their EEZ. Hence, the requirement of the new fishing regulations, which asks foreign vessels to seek approval from Chinese authorities, is not a contravention of the UNCLOS.

Third, as a matter of fact, China has made no clear argument that the controversial 'dashed line' is intended to depict a unilateral maritime boundary claim. Even if the issue of maritime boundary de-

29 Ma Carmen A Ablan and Len R Garces, 'Exclusive Economic Zones and the Management of Fisheries in the South China Sea' in Syma A Ebbin, Alf Håkon Hoel and Are K Sydnes (eds), *A Sea Change: The Exclusive Economic Zone and Governance Institutions for Living Marine Resources* (Springer 2005) 146-49.

30 Masahiro Miyoshi, 'China's "U-Shaped Line" Claim in the South China Sea: Any Validity Under International Law?' (2012) 43 *Ocean Development & International Law* 1, 5-6.



limitation arises, the delimitation of maritime boundaries in the overlapping jurisdictions in the SCS requires China to negotiate and reach an agreement with other claimant states in the SCS under the current rules of the UNCLOS. However, it is unlikely that China and the claimant states will be able to reach a delimitation agreement in the near future due to the growing tensions in the area. China has made its refusal to participate in the proceedings of international tribunals clear.³¹ Therefore, before a final maritime delimitation can be decided by either an international tribunal or an agreement is made among claimant states, the bordering states cannot be prevented from claiming their EEZ and imposing regulatory measures in order to regulate the exploitation and exploration of marine resources in the SCS. In other words, as one of the claimant states in the SCS, China's actions with regards to the regulation of the fishery resources is not without legal grounds under the current EEZ regime. Nevertheless, China's regulations cannot prevent other claimant states from taking similar measures in regulating or conducting fishing or other related activities in their claimed EEZ.

Nevertheless, the above analysis is subject to several caveats. First, as discussed in the previous paragraph, the UNCLOS does not govern the issues of competing sovereignty claims over territorial disputes. Since sovereignty over the islands in the SCS is still in dispute, the overlapping EEZ claims cannot be examined and delimited under the UNCLOS. Second, China's claimed maritime zones in the SCS appear to overlap with those claimed by other bordering states. Hence, the kinds of rights and jurisdiction China can assert in the SCS remained unresolved.

6. Conclusion

Even though the new Hainan fishing regulations are compatible with current EEZ rules under the UNCLOS, this does not necessarily imply that China enjoys the exclusive right to exploit and manage fishery resources in the disputed SCS.

6.1 Conflict or cooperation: why is cooperation a better solution?

It is true that the new Hainan fishing regulations do not articulate new policy measures regarding foreign vessels in the disputed SCS. However, the intention of China to re-emphasise the old regulations at a time when tensions in the area are escalating is not trouble-free.³² In an area of overlapping jurisdictions and shared resources, the implementation of EEZs is likely to result in conflicts and controversies in fishery policy since different countries have different perspectives on values regarding fishery resources and various capacities in regulating fishery activities.

Acting alone without recourse to international cooperation and negotiation could undermine the international law of the sea regime and jeopardise political stability, economic development and

³¹ Beckman (n 10) 158.

³² Carl Thayer, 'China's New Fishing Regulations: An Act of State Piracy?' (*The Diplomat*, 13 January 2014) <<http://thediplomat.com/2014/01/chinas-new-fishing-regulations-an-act-of-state-piracy/>> accessed 1 June 2015.



environmental protection in the SCS area. Therefore, how to deal with the fishery issues in the SCS remains challenging and closely related to China's rise in the Asia-Pacific region.

As a matter of fact, the delimitation of overlapping EEZs can be more than drawing a boundary line.³³ Apart from the territorial and maritime disputes in the SCS, forming a cooperative regime in fishery resource conservation, as mentioned in Article 74(3) UNCLOS, is in fact a win-win solution for all. First, a cooperation regime would have little effect on the disputed claims over the maritime boundary, but it would help significantly with regard to easing the potential conflicts in the area. It is difficult to settle the overlapping maritime territorial disputes in the area of the SCS because the UNCLOS contains no provisions to deal with this type of case. Nonetheless, to form a regional or multilateral cooperation scheme intended to preserve the depleting fishery resources is not only an urgent task, but it is also a practical step towards reducing the increased tensions in the area and pave the way to peaceful solutions of the territorial claims. There is no doubt that the disputes of territorial claims and the overlapping jurisdictions in the SCS are unlikely to come to an end in the near future due to the complexity of the involved political and economic concerns. Yet a multilateral agreement regarding the exploration and management of marine resources in the area will neither jeopardise the Chinese territorial claims nor will it diminish Chinese assertions.

Second, a cooperation framework will enhance the conservation and preservation of the deteriorating fishery resources in the area. Aside from political concerns, the marine resources in the SCS are of great importance to the bordering countries from both an economic and an environmental perspective. Current fishery resources in the area are facing a crisis of depletion and overfishing. Hence, it is urgent for the bordering states to bring joint actions to manage and preserve fish stocks in the SCS.

Third, from the Chinese perspective, China's leadership in fostering the joint actions will provide clear and convincing evidence of China's willingness to comply with international law, will strengthen its leading position and garner support from its neighbouring states in the region.

6.2 Taiwan's perspective

Although the status of Taiwan as a country has remained questionable and its role in the various SCS disputes is often overlooked, it is impracticable to exclude Taiwan from the discussions surrounding SCS disputes due to Taiwan's active role in distant water fishing industries and Taiwan's long-term claims of territory and jurisdiction in the area.³⁴ Additionally, Taiwan has occupied Taiping Island (Itu Abu), the largest of the Spratly Islands since 1956.³⁵ For the past few years, Taiwan has

33 Churchill and Lowe (n 22) 198-99.

34 Fu-Kuo Liu, 'Taiwan's South China Sea policy Revival' in Pavin Chachavalpongpun (ed), *Entering Uncharted Waters? ASEAN and the South China Sea* (Institute of Southeast Asian Studies 2014) 223.

35 The Ministry of Foreign Affairs of the Republic of China (Taiwan), Statement on the South China Sea No. 001 (7 July 2015) <www.mofa.gov.tw/en/News_Content.aspx?n=1EADDCFD4C6EC567&s=EDEBCA08C7F51C98> accessed 15 July 2015.



remained mostly silent as tensions have risen among the claimants because of the blurry cross-straits relations. The recent conflicts in the SCS have not only jeopardised Taiwan's claims in the SCS, but they have also endangered the security and welfare of Taiwanese fishing vessels. In order to safeguard the benefits of Taiwan's fishing industry, the Taiwanese government took a proactive step and proposed a peace initiative in the SCS to avert the heated conflicts and reduce tensions.³⁶ Although China is unlikely to accept the plan, the idea is plausible. In fact, a joint agreement focusing on the management of fishery resources will be a more practical and less controversial way for Taiwan to have a say in current SCS debates. From a political perspective, the status of Taiwan as a fishing entity has been well-recognised by several international organisations. Moreover, for economic reasons, active participation in an international forum helps to secure Taiwan's economic interest in the SCS. Lastly, from a legal point of view, it is the duty of the coastal states to ensure the sustainability of fishery resources under the UNCLOS.

36 J R Wu, "Taiwan offers South China Sea peace plan to avert "major conflict" (*Reuters*, 26 May 2015) <<http://uk.reuters.com/article/2015/05/26/uk-taiwan-south-china-sea-idUKKBN0OB07T20150526>> accessed 1 June 2015.