Legal Dilemmas and Regime-Building in the East Asia Maritime Conflicts
Xu, Qi

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Chapter 6
The Presence of Third States in the Maritime Dispute Settlement of the SCS and the Application of a Multivariate Regime Theory

6.1 Introduction

In previous chapters, the background of the SCS disputes was elaborated. From the 1970s to the present, discussions among governments and academics have constantly been concerned with the settlement of territorial and maritime disputes in the SCS. At the governmental level, it should be pointed out that negotiation and consultation become the primary means for claimant States to resolve territorial and maritime conflicts, in spite of some countries resorting to judicial dispute settlement. Notably, multilateral and bilateral modes are concurrently coexisting in the management of the SCS conflicts. China and ASEAN States in 2018 established the Guidelines for Hotline Communications among Senior Officials of the Ministries of Foreign Affairs of ASEAN Member States and China, and they issued a Joint Statement on the Application of the Code for Unplanned Encounters at Sea in the SCS. Vietnam and China reached two agreements relating to maritime boundary and fishery cooperation in the Gulf of Tonkin (Beibu Bay) in 2000 and are currently continuing negotiations regarding the delimitation on demarcation of the sea area beyond the mouth of the Gulf of Tonkin as well as associated joint development prospects. After the SCS

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826 The SCS issue has been frequently discussed by all claimant States, which are all the members of the Association of Southeast Asia Nations (ASEAN). Since 1997, China has joined in the ASEAN Regional Forum (ARF). In addition, China and ASEAN States regard the ASEAN-China Summit and the ASEAN-China Senior Officials’ Meeting on the Implementation of the DOC as multilateral forums to pursue the management of SCS disputes. Through lengthy negotiations, China and ASEAN States agreed to reach the Declaration on the Conduct of Parties in the SCS (DOC) in 2002. Now, China and the ASEAN are accelerating the final agreement on the Code of Conduct (COC) in the SCS. Once it is successfully passed, it will be perceived as a substantial achievement in the SCS region. Bilaterally, China is mainly dealing with Vietnam and the Philippines via diplomatic channels in the delimitation of maritime boundaries and joint development regarding oil and gas resources in the SCS.


Arbitration, China and the Philippines have established a bilateral consultation mechanism on the SCC, and in 2018 the two sides signed the Memorandum of Understanding (MOU) on Cooperation on Oil and Gas Development. At the academic level, scholars from international relations and international law have actively paid due regard to the SCS region. International relations scholars seem more enthusiastic about which international relations theory is suitable to explain the SCS conundrum. international law scholars perceive international law, including the UNCLOS, as an international legal regime to handle regional disputes, and they delve into how to interpret and apply those legal principles, rules, and norms to the SCS conflicts. This is seen particularly in the ongoing debate regarding two arbitral awards of the SCS Arbitration. Due to the interplay among political and legal factors, joint research between international relations and international law is recommended by scholars.


However, this chapter argues that a legal dilemma still exists in addressing the SCS maritime delimitation disputes in light of the presence of third States. The SCS Arbitration cannot resolve overlapping maritime boundaries among bordering States and, to some extent, complicates the settlement. Based on the fourth chapter, the multivariate regime theory falls within the applicable scope to accommodate and balance the interests and rights of surrounding States in the same region. As observed in the fifth chapter, the multivariate regime theory is not to replace the role of law but to supplement it. International legal regime mandates international courts and tribunals or two disputing States refrain from reaching maritime zones where third States are involved. In the SCS, the legal method keeps third States from being affected, but no concrete measures are taken to properly handle the distribution of rights and interests in a transboundary disputed area. As a complementary way, a cooperation regime for taking care of community interests may be more desirable.

This chapter is consistent with the theoretical framework established in the fourth chapter. At first, it looks into how international law deals with the presence of third States in bilateral delimitation among neighboring countries after the SCS Arbitration. It is conceivable that international law may take on its insufficiencies in the protection of third States’ rights and interests when the delimitation is carried out. Afterwards, there is a second section with two parts. For one thing, on the basis of multivariate regime theory, this section apprises the effectiveness of established maritime regimes, determines which regime models there are and explains why a multivariate regime remains absent. For another, this section argues how multivariate regime theory may assist the SCS bordering States in handling transboundary maritime conflicts in the undelimited areas, particularly in fisheries and marine environment governance. To be more tangibly illustrated, this section intends to combine the BRI with the SCS and assess the possibilities of how an emerging regional governance mechanism contributes to establishing a multivariate maritime regime. Finally, it is concluded that a multivariate regime in the SCS may offer possible solutions to afford appropriate protection against potential prejudices third States may suffer in the process of maritime delimitation.

6.2 Maritime delimitation and the presence of third States in the SCS: Prospects and dismay after the SCS Arbitration

The overarching structure of this section discusses how to carry out the delimitation task, with references to the SCS Arbitral Award. The following analysis contains several schemes of delimiting the SCS among different countries. During the delimitation process, the presence of third States may create judicial dilemmas for delimitation in the SCS. The first part will give an overview of a new delimitation framework that developed after the MA. The second will elaborate on how relevant countries can carry out bilateral delimitation and how the presence of third States poses potential obstacles to fulfilling this task. In the end, this section briefly makes some concluding remarks.

6.2.1 An overview of the new delimitation framework following the SCS Arbitration

On the one hand, the second chapter has underlined that, given the compliance with the MA, overlapping maritime zones between the Philippines and China may largely vanish. Since none of maritime features are entitled to TS, EEZ and CS, overlapping maritime entitlements between China and the Philippines and other neighboring States, including Vietnam, Malaysia, Brunei, and Indonesia, may disappear as well. Additionally, “the text and context of the Convention was clear in superseding any historic rights that China may once have had in the areas that now formed part of the exclusive economic zone and continental shelf of another State”. Accordingly, potential overlaps between zones of Chinese historical rights claims and the EEZ and CS of other States will disappear. Furthermore, overlaps between China’s TS generated by certain rocks occupied by it and the Philippines’ 200-NM EEZ from its archipelagic baseline will engender new overlapping entitlements. Likewise, Vietnam’s TS generated by its controlled rocks will overlap with China’s TS generated by its controlled larger features and with the Philippines’ 200-NM EEZ. Furthermore, Mischief Reef and Second Thomas Shoal, occupied by China, are located in the EEZ and CS of the Philippines and are subject to its sovereign rights and jurisdiction. Consequently, this will deprive Vietnam’s and China’s sovereignty over the Spratlys as a unit. Gaven Reef (South) and Hughes Reef as LTEs lie within 12-NM TS of Namyyit Island and Sin Cowe Island, controlled by Vietnam; therefore, they are attributed to Vietnam’s sovereignty, but this concurrently derogates China’s sovereignty claim. To sum up, the MA redefines sovereignty and maritime delimitation between two original litigants and third States.

Although the Philippines in its Application actually confined the disputed zone to its claimed WPS, it indeed produces spillover effects upon third States. According to the expert report submitted by Lindsay Parson on behalf of the Philippines, it delimits two lines representing potentially the outer limits of China’s CS and the Philippines’ CS beyond 200 NM. This research’s legal basis is the defragmentation of the Spratlys as a unit and the Tribunal’s ruling is clearly in favor of Lindsay Parson’s hypothesis and the Philippines’ proposition. Therefore, at least one potential overlap regarding the CS beyond 200 NM between Vietnam and the Philippines is likely to be formulated. Moreover, as pointed out by Alex Oude Elferink, “in the case of Viet Nam’s submission there also exists a potential overlap with the CS extending from China’s Hainan Island and in the case of the joint submission there exists a potential overlap with the continental shelf of Brunei and that of Philippines”. In brief, potential overlaps of CS beyond 200 NM complicate maritime delimitation after the SCS Arbitration.

6.2.2 Maritime delimitation between China and the Philippines, between Vietnam and the Philippines, and between China and Vietnam

According to the MA, Mischief Reef, Second Thomas Shoal, Subi Reef, Gaven Reef South, and Hughes Reef are LTEs without any entitlements. Additionally, Mischief Reef, Second Thomas Shoal, and Hughes Reef are subsumed into the 200-NM EEZ of the Philippines. Scarborough Shoal, Johnson Reef, Courteron Reef, Fiery Cross Reef, Gaven Reef North, and McKennan Reef are defined as rocks. Moreover, the rest of potentially larger features in the Spratlys are defined as rock as well. Accordingly, in regard to the delimitation between China and the Philippines after the SCS Arbitration, this becomes a delimitation between several isolated features with 12-NM TS occupied by China and the coast of the Philippines’ archipelago. Though the Philippines can claim 12 NM from several rocks it controls, no weight may be given in light of the Philippines’ official position. Therefore, Loaita Island may be given no effect in the

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835 The Philippines v. China, Supplemental Written Submission of Philippines, Vol. 1, at 39-40, para. 8.9 (PCA. 2015). “In the case of the mainland, Hainan and the Paracel Islands, for example, the limit of the continental margin extends to 237 M from the Paracels. In the case of the Pratas Islands, the limit of the continental shelf extends to 230 M (and most of this lies within 200 M of Taiwan).” The Philippines’ CS beyond 200 NM is measured from the archipelagic baseline of the Philippines’ mainland territory (Philippines’ Islands). The overlap may occur between Vietnam and the Philippines.


838 Ibid., at 174, 474, paras. 383, 1203 B (4)-(7).

839 Ibid., paras. 643-5.

840 Specifically, they are Itu Aba occupied by China; Northeast Cay, Thitu Island, West York Island, Loaita Island, and Nanshan Island controlled by the Philippines; and Southwest Cay, Sand Cay, Namit Island, Sin Cowe Island, Amboyna Cay, and Spratly Island controlled by Vietnam.
bilateral delimitation. Nevertheless, Itu Aba, Gaven Reef, and McKennan Reef with merely 12-NM TS have an overlap with the 200-NM EEZ and CS of the Philippines. Meanwhile, Vietnam’s 12-NM TS generated by Sand Cay and Namyit Island may largely overlap with the Philippines’ EEZ and CS. In particular, the vast majority of an overlap between Vietnam and the Philippines actually covers the scope of an overlap between China and Philippines.

This indeed gives rise to some difficulties: First, an overlap between TS and EEZ/CS seems alien to regular maritime delimitation methods; since the delimitation under Articles 15, 74, and 83 of UNCLOS, they are TS v. TS, CS v. CS, and EEZ v. EEZ between State A and State B. In other words, whether the three-stage approach is directly applicable is uncertain. Second, given this delimitation approach may be applied, the scope of the relevant area to be delimited may difficult to be ascertained. Vietnam’s 12-NM TS as a third State overwhelmingly overlap with superimposed zones between China’s TS and the Philippines’ EEZ and CS. Such a great portion of a third party’s entitlement being involved may pose an insurmountable obstacle to determining the relevant area to be delimited. Third, in line with international case law, in order not to prejudice the rights and interests of a third State, the China-Philippines presumed maritime boundary could not encroach into Vietnam’s TS generated from Sand Cay and Namyit Island. Notwithstanding, the extensive trilateral overlap may paralyze the delimitation process. Fourth, the TS of McKennan Reef as a single feature occupied by China formed an enclave falling within the Philippines’ 200-NM EEZ. If the delimitation result is fully recognized, China’s absolute sovereignty over McKennan Reef itself, internal waters, and 12-NM TS may conflict with the Philippines’ exclusive rights in its 200-NM EEZ and CS.

By the same token, in the northern part of the Spratlys, Sand Cay, Namyit Island, and Sin Cowe Island controlled by Vietnam are individual features as rocks where TS may overlap with the Philippines’ EEZ. Meanwhile, TS of Sandy Cay and Namyit Island may largely overlap with TS of Itu Aba Island and Gaven Reef occupied by China. So as not to prejudice the rights and interests of a third State (China), a Vietnam-Philippines hypothetical maritime boundary may not encroach into Vietnam’s TS. Thus, it may avoid trespassing on China’s TS. Such a doctrine may lead bilateral delimitation into a deadlock. Sin Cowe Island as a rock constitutes an enclave in the Philippines’ EEZ. It is perceived that Vietnam’s claimed sovereignty over Sin Cowe Island itself, internal waters, and 12-NM TS may conflict with the Philippines’ exclusive rights in its 200-NM EEZ and CS. In short, the presence of third States may extensively hamper the delimitation between China and the Philippines as well as Vietnam and the Philippines.
With regard to maritime delimitation between China and Vietnam, there are two maritime domains to be delimited between two States. For one thing, “China’s claims to ‘historical waters’ in the SCS proper overlaps with the claims to EEZ and continental shelf areas of Vietnam”. In accordance with the MA, there is no need to delimit an overlap between China and Vietnam regarding historical rights and the EEZ and CS. For another, TS of Fiery Cross Reef and Cuarteron Reef occupied by China is simultaneously located in the CS beyond 200 NM jointly claimed by Vietnam and Malaysia. Therefore, there may be no overlapping EEZ within 200 NM between China and Vietnam. The rest of the maritime features occupied by China, even those with TS, may have no overlap with Vietnam’s EEZ and CS within and beyond 200 NM. It is argued that two enclaves with 12 NM may be formed by Fiery Cross Reef and Cuarteron Reef and become two maritime boundaries between Vietnam and China. Nevertheless, it is discerned that a full recognition of 12-NM TS of two features may possibly meet the Vietnam-Malaysia hypothetical maritime boundary with regard to overlapping CS beyond 200 NM. The full recognition of China’s 12-NM TS depends on how Malaysia claims its CS beyond 200 NM in this rectangular area. Without identifying Malaysian entitlements, it is very unlikely delimitation between China and Vietnam could happen.

6.2.3 Maritime delimitation between China and Malaysia, between China and Brunei, between Vietnam and Malaysia, and between Vietnam and Brunei

Malaysia considers itself to “have overlapping maritime entitlements (including an extended CS) in the areas of some of the features that the Tribunal has been asked to clarify”. Nonetheless, the MA may conflict with such a claim and largely diminish overlapping areas between China and Malaysia. Fiery Cross Reef and Cuarteron Reef are located in Malaysian CS beyond 200 NM, thus, two circular lines may become underlying maritime boundaries between China and Malaysia. But a full recognition of 12-NM TS of two enclaves may possibly meet the Vietnam-Malaysia hypothetical maritime boundary regarding overlapping CS beyond 200 NM. This will depend on how Vietnam claims its CS beyond 200 NM in this rectangular area. Without identifying Vietnamese entitlements, it may be not possible to carry out the delimitation between China and Vietnam.

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Two existing areas may be delimited between Vietnam and Malaysia without the presence of China’s historic rights as ruled by the MA. The first part concerns a commonly shared CS beyond 200 NM according to a CLCS joint submission by two States. Given that a delimitation task may be fulfilled and there is only a single CS in international law, it constitutes a CS v. CS delimitation, which falls within the provisions of Article 83, so that a three-stage approach may be adopted. Nevertheless, the delimitations of CS beyond 200 NM related to three adjudicated cases are only implemented between adjacent States. Whether such a delimitation method can be unconditionally applied in the opposite States has not yet been settled. The pending case between Nicaragua and Colombia before the ICJ concerns just such an issue, and it remains to be seen what decision will be made. The delimitation of CS beyond 200 NM between Vietnam and Malaysia may be deemed unpredictable and uncertain.

Furthermore, part of Brunei’s potential CS within 200 NM may overlap with CS beyond 200 NM in Vietnam-Malaysia’s CLCS joint submission, and may even overlap with Vietnam’s CS within 200 NM. Consequently, Brunei’s CS within 200 NM may divide Vietnam-Malaysia’s boundary into two sectors. So as not to infringe the potential CS of Brunei as a third State, the terminus of the Vietnam-Malaysia CS boundary may fall short of a hypothetical Vietnam-Malaysia-Brunei tripoint. In the meantime, the second part indicates an overlap between 12-NM TS of Vietnam and 200-NM EEZ. In terms of the MA, Vietnam’s controlled features—Amboyna Cay and Barque Canada Reef, which are outside of its CS beyond 200 NM but located in the 200-NM CS of Malaysia—may be identified as rocks. If the delimitation framework is possible, Vietnam’s sovereignty over two features, associated internal waters, and 12-NM TS may conflict with Brunei’s exclusive rights in its 200-NM EEZ and CS. Additionally, three States simultaneously have overlaps with each other. Without maritime delimitation between Vietnam and Brunei, it is not practically feasible to settle the delimitation between Vietnam and Malaysia regarding that particular overlap. Therefore, bilateral delimitation seems very unlikely, and a tripartite delimitation may be necessary through negotiations.

6.2.4 The delimitation between Philippines and Malaysia, Vietnam and Indonesia, and China and Indonesia

The Philippines has not delimited maritime boundaries with Malaysia in the SCS or in the Sulu Sea. According to the MA, no involvement of Chinese historical rights would interfere with the delimitation between the two States. As regards the SCS part, the delimitation is intertwined with the sovereignty of Sabah, as was reflected in Malaysia’s communication to the Tribunal. Given the sovereignty of Sabah is not disputable and belongs to Malaysia, it is likely to delimit a maritime boundary between the two States. In light of the standard in the MA, Commodore Reef, controlled by the Philippines, and some insular features controlled by Malaysia may only be defined as LTEs with no legal effects in the delimitation process. Accordingly, the two parties may demarcate a strict equidistance line between them. Provided the controversy concerning the sovereignty of Sabah continues, the chances of fulfilling the delimitation task may not be very promising.

In 2003, Indonesia and Vietnam concluded an agreement concerning the delimitation of the CS boundary. Some scholars believe China “has not reacted publicly to” the Indonesia-Malaysia CS Agreement in 1969 and the Indonesia-Vietnam CS Agreement. Nevertheless, China’s Note Verbale in 2011 to the Philippines reaffirmed China’s historical rights within the nine-dash line in the SCS. In addition, China also expressed the position that China and Indonesia “have overlapping claims for maritime rights and interests” in the southern part of the SCS. Such public statements may indicate that China realizes that overlapping maritime entitlements exist and require maritime delimitation, without taking cognizance of Indonesia’s maritime boundaries.

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848 “Communications received with regard to the joint submission made by Malaysia and Viet Nam: China,” Commission on the Limits of the Continental Shelf, CML/8/2011, April 4, 2011, accessed July 14, 2018, http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf. As claimed by China, China’s sovereignty and related rights and jurisdiction in the SCS are supported by abundant historical and legal evidence. Here, related rights and jurisdiction with historical evidence means China’s historic rights in the SCS.


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with Malaysia and Vietnam. Notably, Ted L. McDorman and Clive Schofield comment that “the Indonesia-Vietnam Agreement creates a continental shelf boundary which essentially links the northern end points of the two boundary sections of the 1969 Indonesia-Malaysia Agreement and completes the delimitation of continental shelf boundaries in the area around the Natuna Islands”.

Moreover, the eastern limit of that boundary takes the rights and interests of Malaysia into account and does not extend to a third State’s maritime zone. Since the MA may reject the presence of historic rights claimed by China, the Indonesia-Vietnam CS boundary gains support from it. In the same vein, the Indonesia-Vietnam EEZ boundary, even if incomplete, can use the MA as a basis to clarify that no third States are involved and the boundary continues to be delimited.

Their CS boundary “reflects an equidistance line at the western end and a deflection from the equidistance line throughout most its length stretching to the east”, as indicated by David Colson and Robert Smith. Specifically, “Indonesia secured full effect for its islands in the western part of the delimitation line which is based on equidistance” and “appears to have preserved its seabed energy resource interests with respect to prospective areas of seabed in the vicinity of the Natuna Islands group”. At the eastern part of the boundary, the delimitation line departs from a provisional equidistance line, as Indonesia’s island groups are more offshore than those of Vietnam and “are given partial weight”. In light of the MA, none of the maritime features in the Spratlys are islands under Article 121, but rocks with at most 12-NM TS. Though Vietnam and Indonesia are not parties to the arbitration, and not bound by the MA, both are parties to the UNCLOS and positively deem the Convention as a safeguard of their maritime rights and jurisdiction. In particular, Vietnam did not rule out the possibility of going to a court or a tribunal to justify its position. Therefore, if they respect the role of the UNCLOS in the settlement of maritime disputes, it is possible for two States to modify their previous position on the legal status and entitlement of some features in their CS Agreement and give reduced effect in the delimitation. In other words, those with full effects may be given partial weight, while other features with partial weight may be regarded as having no effect at all. However, whether they really make such modifications remains unknown. As regards the Vietnam-Indonesia EEZ boundary, two States have undergone 10 rounds of technical meetings to discuss the issue of

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851 Ibid., 4309.
852 Ibid., 4310.
853 Ibid.
delimitation.\footnote{Nouvarah Ahdiba, “Indonesia, Vietnam Discuss Cooperation in Fisheries and Maritime Affairs,” \textit{Voice of Indonesia}, April 18, 2018, accessed July 14, 2018, http://voinews.id/index.php/component/k2/item/1239-2018-0417-news-indonesia-vietnam-discuss-cooperation-in-fisheries-and-maritime-affairs.} Compared with single maritime boundary delimitation in international case law and state practice, the Vietnam-Indonesia EEZ delimitation is a separate process and may not follow the same approach as the CS boundary. Moreover, the Tribunal’s decision on the legal status and entitlement of maritime features in the Spratlys might be taken into account, signaling that the UNCLOS and international rule of law should be respected and obeyed in the SCS. Provided two parties agree to apply the interpretation of Article 121 by the Tribunal to bilateral delimitation, individual offshore features may at most generate 12-NM TS. If this happens, Indonesia may find itself situated in a less favorable position, since Indonesia’s islands are more offshore than those belonging to Vietnam. Whether Indonesia will follow such a ruling remains far from clear. From this perspective, it is remarked that the SCS Arbitration indeed produces negative impacts on the delimitation process of the SCS region.

6.2.5 Summary

This section focuses on how to implement maritime delimitation of the SCS, particularly the Spratlys area, if the ruling were applicable. It is observed that the China-Philippines, China-Vietnam, and China-Malaysia hypothetical boundaries may suffer from a new overlapping situation which may not fall within the UNCLOS and it is unlikely to be resolved by a three-stage approach in international case law. In addition, the exclusive nature of one State’s sovereignty over internal waters and TS of some rocks may conflict with the same nature of exercising sovereign rights and jurisdiction of another State in the EEZ and CS, which potentially creates new trouble to be tackled in the future. According to Jun Qiu’s comments regarding submissions on the CS beyond 200 NM submitted by Vietnam and Malaysia, “these submissions raise a question of whether a coastal State can extend its continental shelf across neighboring land territory” and “the UNCLOS does not have a definite answer to the questions which arise from this type of dispute”.\footnote{Jun Qiu, “The CLCS Modalities for Handling Submissions Involving Disputes and Their Possible Application to the South China Sea,” \textit{Chinese Journal of International Law} 14, Issue 1 (2015): 148.} Here, it is exactly the same situation. Similar consequences can also be seen in the Vietnam-Philippines and Vietnam-Malaysia hypothetical boundaries. Regarding newly defined rocks by the Tribunal, among Vietnam, China, and the Philippines, a large overlap between one State’s TS and another State’s TS and EEZ may make the delimitation quite challenging. Demarcating a small segment may be of little assistance in handling the big picture. In the Spratlys, numerous features are insular and isolated from each other. Some features currently controlled by one State as LTEs may fall within and be subsumed into the EEZ/CS of
another State, which results in the loss of sovereignty of that State. Sovereignty dispute is of great sensitivity among littoral States, and delimitations might not avoid this issue. Accordingly, the MA may increase the difficulty in delimiting maritime boundaries. Last but not least, if the MA really helps neighboring States in the SCS to reduce their maritime conflicts, non-party States may modify their previous positions and adjust them to showcase their respect for and compliance with the UNCLOS and international law. However, the reality may be the opposite. In the southern part of the SCS, the identification of some maritime features in the Indonesia-Vietnam CS boundary agreement is inconsistent with the SCS arbitral ruling. The ongoing Indonesia-Vietnam EEZ boundary negotiation may take the decision into account, but it may be less favorable to Indonesia. One might say that it is questionable whether such a ruling really has a role to play in future delimitation. It is concluded that maritime delimitation based on the MA of the SCS Arbitration may not be free of doubt and may create new challenges for the settlement of maritime boundary disputes in the region. In the following section, it is stated that obstacles to legal means may be reduced by transboundary governance via the establishment of the multivariate regime model based on multivariate regime theory. Such a regime intends to assist states to focus on common interests that are shared by disputing parties and third States in the SCS as a whole.

**6.3 International regime-building in the SCS: Accommodating the maritime rights and interests of surrounding States in the SCS**

The previous section discusses that the SCS Arbitration cannot help solve such a legal dilemma but may create a new delimitation framework. The presence of third States constitutes a main hindrance to carrying out bilateral delimitation in the SCS. In order to balance the maritime rights and interests of all parties in the SCS area, an effective cooperation regime which contains common maritime rights and interests shared by all stakeholders must be established. Based on discussions presented in the fourth chapter of the present work, the third section here gives an overview of status quo regional arrangements in the SCS, particularly for fishery management and the marine environment. First, this section analyzes whether current arrangements fall within the regime formation models clarified in the fourth chapter. If so, which theoretical model has been established? Second, since the multivariate regime theory proves to be a suitable regime setting in a multistate-disputed area, it is elaborated that this theory is applicable, and this section will show it can be used to setup a multivariate maritime regime in the SCS. Third, as one of claimant states, China’s SCS policy influences regional peace and stability. The geographic scope of the BRI as China’s recent foreign policy has covered the SCS region and the BRI itself have been considered to be an
international regime. It would be meaningful to examine which specific regime model the BRI fits into. This part will focus on this issue and will use the multivariate regime theory to interpret the BRI and discuss its application with the SCS.

6.3.1 Regime settings in the SCS

Different international relations theory schools have expressed their different views to understand the SCS conflicts and dispute settlement. According to an overview of IR literature in recent years, there are three main international relations theories, including realism, liberalism, and constructivism. The fifth chapter reviewed how the three mainstream international relations theories are applied in NEA. The same approach will also be adopted in this chapter. Specifically, realist scholars discuss the SCS power struggle and consider China to be a regional hegemon against other bordering States as well as the US as a global hegemon in the international system. Liberalist scholars draw attention to the role of institutions, rules, and norms in regulating the behavior of neighboring States and ensuring the respective pursuit of their self-interest in the SCS. Constructivist scholars focus on how China builds up its identity and changes the knowledge of other States on Chinese identity in the SCS. As a result, a detailed examination of international relations mainstream theory models and the SCS will be presented below. Based on general remarks which have been made, it will further contend how international relations regime models are applied in the SCS and elaborate which regime model in international relations is in use and which model needs to be shaped.

6.3.1.1 Prevalent international relations theories in the analysis of the SCS maritime conflicts

The primary reason that international relations theorists are concerned with the SCS is “the rise of China as an economic and military power”, as pointed out by Andy Yee.

After the “Reform and Opening-up” policy was launched in 1978, China kept a long-standing low-key stance in the SCS conflict and intended to focus on domestic economic development. Nevertheless, the situation seems to have changed when China’s GDP growth surpassed that of Japan and it became the second largest economic

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entity in 2010. At this point, the “Asia-Pacific Rebalance” strategy was issued by the Obama Administration and the US declared it would give its allies in Southeast Asia financial, military, and security support, in order to counter China’s increasing influence in the region. In the context of competition between the big powers, regional tension is growing increasingly severe. For instance, there was a standoff regarding the Scarborough Shoal between China and the Philippines in 2012, because the Philippines arrested Chinese fishermen and directly clashed with Chinese coast guard. Because of the deployment of the Hai Yang Shi You 981 oil rig in the disputed area, Vietnam and China experienced a standoff until China withdrew the oil rig. From 2013 to 2016, the Philippines unilaterally sued China by resorting to arbitration under Annex VII of the UNCLOS, and it finally obtained a sweeping victory. However, economically, China discouraged Chinese tourists from traveling to the Philippines and banned the importation of bananas, which gave rise to economic loss for the Philippines. Additionally, to safeguard and demonstrate its sovereignty over the Spratlys, China implemented massive land reclamation projects. China’s transition from the low-key actions to active engagement in the SCS triggers realists to delve into potential impacts on the region. For one thing, China and the US as two great powers become more and more competitive in the SCS under the Trump Administration. For another, the rivalry between China and some other countries, particularly Vietnam and the Philippines, is fluctuating. Internationalizing the SCS disputes is one of Vietnam’s SCS strategies, and the US, Japan, and Russia were invited to participate in military, oil, and gas development in the disputed maritime zones. As external interference from other States can distract China and force China to compete with them in different directions, such a strategy is apparently advantageous when China’s comprehensive national strength is situated at a lower level. However, when China’s economic and naval power strengthens and narrows the gap with the US, China can concentrate on the actions of neighboring countries without fearing increasing external influences.


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Defensive realism, as argued by Klaus Raditio, “contends that power maximisation can be a ‘risky business’, since more power does not necessarily mean more security.” By further points out that there is a security dilemma between China and SEA countries, since all states have upgraded their military capacity and can hardly be reconcilable. He further points out that, due to its expanding power, “China will take advantage of its rapid rise, as well as its increasing military strength to threaten its neighboring countries”. Similarly, Renato De Castro asserts that “a big power applying a realpolitik approach against a small power may force the latter to reciprocate in kind despite the asymmetry in the two countries’ power relations”. Therefore, realist theory in the SCS explains the comparison of state power, and regional states only pursue an increase of military and naval capacities to maintain own safety and security and to avoid the breakout of armed conflicts. In other words, the security situation in the SCS accords more with the offensive realist theory.

From a liberal perspective, regional institutions and rules and norms are of significance in the management and regulation of the behavior of neighboring States in the SCS. Feng Zhang reveals that “institutionalist theory is most useful for explaining Chinese policy between the late 1990s and 2008, when China adopted a largely institutionalist approach to the South China Sea disputes”. Nevertheless, the status quo has changed gradually since then, and China is adopting an increasingly tougher position in the SCS. Joseph Nye criticizes China’s provocations in the SCS and claims such actions are in variance with the UNCLOS and hinder US freedom of navigation. Renato De Castro acclaims the Philippines’ “liberal-legal approach” as a small power against China by bringing its conflicts with China to the ASEAN or resorting to UNCLOS compulsory

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866 Raditio, “China’s Shifting Behaviour in the South China Sea,” 310.
867 Ibid., 312-3.
871 Zhang, “Chinese Thinking on the South China Sea,” 464.
arbitration for the purpose of resolving longstanding maritime disputes with China. Moreover, Katherine Morton observes that “a liberal maritime order is underpinned by the common interest and by international law that seeks a fairer distribution of ocean benefits between naval powers and coastal states”. China’s current approach and its interaction with the US and other neighbors in the SCS indicate that “the fragility of the existing rules-based maritime order is of primary concern”. In general, liberalist scholars are straightforwardly critical of Chinese recent actions in the SCS and have largely ascribed to China the negative consequences of noncompliance with international law and the UNCLOS.

Constructivists focus on how the SCS neighboring countries shape their own images and build up their various identities in the process of conflicts and cooperation. Rising nationalism internally in some countries like China, Vietnam, and the Philippines is frequently taken into account. The expression of nationalism is a double-edged sword. On the one hand, it can support a country’s countermeasures against another state. On the other hand, excessive nationalism makes a state’s government unlikely to surrender and compromise, and it can even lead to a deadlock in achieving resolutions to ongoing conflicts. Timo Kivimäki indicates that “interdependence creates an identity where the common interests of all of the ASEAN become relevant, rather than a simple focus on national interests”. Apart from that, Feng Zhang also observes that, in the SCS, “at the heart of the debate, is the fundamental question of China’s identity as a rising power”. Rex Li similarly expounds that Chinese activities in the SCS “should be perceived as part of an on-going process of identity construction”. China wants to “construct the identity of a global power that has full command of the sea in East Asia and beyond” and “reshape the US-led regional security order”. Even if China perceives itself as a rule follower with respect to and compliance with international legal rules, constructivists are inclined to regard China as a challenger and revisionist against status quo rules and norms.

874 Morton, “China’s Ambition in the South China Sea,” 912.
875 Ibid., 940.
876 Truong and Knio, The South China Sea and Asian Regionalism,” 4, 73.
878 Zhang, “Chinese Thinking on the South China Sea,” 465.
879 Li, “China’s Sea Power Aspirations and Strategic Behaviour in the South China Sea,” 117.
880 Ibid.
To briefly sum up, when international relations theorists are concerned with the SCS issue, the rise of China becomes the primary driving force to be deeply examined. It is closely interconnected with power balance, respect for, and compliance with established rules and norms, and the perception of identity and position in the region. Power struggle changes in the SCS give rise to more and more regional arrangements to manage the increasing number of bilateral or multilateral clashes. To be observed, although power competition is inescapable, international and regional institutions and rules and norms help keep the SCS away from the risk of large-scale armed conflicts, and maintain, to some degree, peace and security. Meanwhile, China and other SEA countries are gradually adapting themselves to evolving perceptions of their identities: China changed its attitude from passive respondent to active participant by supporting ASEAN-related forums; SEA countries have also modified their positions from serious suspicion to increasing but somewhat slow-building confidence and trust. The next part will carefully appraise regional arrangements in the SCS and will make some observations on these arrangements based on the multivariate regime theory put forth in the fourth chapter.

6.3.1.2 Regional arrangements in the SCS contested zones: An analysis of international relations regime models

As observed by Same Bateman, “there is still no effective regime in the South China Sea for cooperative marine management and good order at sea” in various aspects. He also observes that “it would have been better for regional maritime security if the Philippines had not launched its unilateral action” as regards the SCS Arbitration. It is frequently said that the UNCLOS imposes a legal obligation upon contracting parties to cooperate in a semi-enclosed sea without further clarifications on how to cooperate. Nonetheless, UNCLOS remains far from acknowledging the establishment of a legal regime for cooperation, which lays bare legal dilemmas in addressing the SCS dispute. Nevertheless, it is not likely to draw a conclusion that no certain regimes are set up at all. Therefore, such a gap may be filled by a broader understanding on regime-building in the SCS from the perspective of international relations. In this chapter, it is argued that some regimes relating to transboundary maritime governance by taking the

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883 Sam Bateman, “Maritime Boundary Delimitation, Excessive Claims and Effective Regime Building in the South China Sea,” in Major Law and Policy Issues in the South China Sea: European and American Perspectives, ed. Yann-huei Song and Keyuan Zou (Farnham, United Kingdom: Ashgate, 2014), 131. Those fields in relation to the South China Sea contain “the safety and security of shipping; the preservation, protection and conservation of the marine environment; the exploration and exploitation of marine resources; the prevention of illegal activity at sea; and the conduct of marine scientific research”.
common interests and rights of all bordering States into account are sporadically formulated. Nonetheless, they are not systematic and coordinated and cannot constitute a comprehensive multivariate regime. This section will respectively examine why three constitutive elements (the power-based regime model, the self-interest–based regime model, and the knowledge-based regime model) are partially absent and incomplete in the SCS. There will be three parts in this section: the first will evaluate the SCS situation and specify what regime settings are needed after the SCS Arbitration; the second part will give an overview of regime models in the SCS; and the third part will make some observations on the current regime settings.

6.3.1.2.1 An appraisal of the SCS situation after the SCS Arbitration

To illuminate, on the road to the establishment of maritime regimes in the SCS, negotiation and consultation at the bilateral or multilateral level are the main channels. In the East Asian region, as Judge Owada points out, “it is the cultural heritage of this region that tends to tilt towards the direction of reconciling differences through negotiation and accommodation, rather than through adjudication on the basis of a clear-cut application of the law”. Judge Paik emphasizes that “the supposed cultural factor in explaining the Asian or East Asian reluctance toward international law or adjudication should not be exaggerated” and he is “cautiously optimistic” about East Asia’s active participation in international adjudication. The cautious attitude means that the impacts on dispute settlement that are exerted by East Asian culture regarding negotiation and consultation cannot be overlooked. An overview of “diplomatic practice of Asian countries” consolidates the view that observation and compliance with agreed-upon interstate rules and principles do not specifically require clearly legal binding instruments in the strictest sense. Declarations by negotiation and consultation which are reaffirmed and obeyed by regional States for consecutive years equally have legally binding force, which is particularly seen among SEA States and China in the framework of ASEAN.

During the SCS Arbitration, the Philippines’ unilateral lawsuit against China pushed forward, while China strongly launched land reclamation activities that led to increasing concerns from neighboring ASEAN States. Additionally, the US carried out freedom of navigation exercises in the SCS, although such operations have raised continuous objections from China. Ostensibly, such a direct confrontation arises from a lack of mutual trust between China and ASEAN States and China and the US. What is more, China and the Philippines during that period rarely held negotiations and consultations regarding the SCS issue. After the case, the two countries restarted negotiations due to a shift in Philippine foreign policy under Duterte’s administration. Subsequent to such a breakthrough, China and ASEAN also made some progress in regional security cooperation, just as was briefly introduced in the beginning of this chapter. It is noted that negotiations on the Code of Conduct in the South China Sea (COC) have experienced several rounds and China hopes to finalize the complete draft of the COC in three years. The COC, if concluded, would lay the foundation for the establishment of cooperation regimes in the region. Shicun Wu advocates that the COC “should have some legally binding force” so as to “provide a mechanism to manage maritime crises”, without touching upon territorial sovereignty and maritime jurisdiction. At this point, to achieve the establishment of an interstate cooperative regime, highly sensitive topics, i.e., traditional security, may be shelved, whereas low-sensitivity issues involving

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common rights and interests, i.e., non-traditional security matters, can be put on the table. China and neighboring ASEAN States have made joint efforts in some specific areas in which maritime rights and interests are commonly shared, particularly in marine environmental protection. The UNCLOS stipulates various jurisdictional rights in relation to fisheries, hydrocarbon resources, marine environment, law enforcement, etc. A multilateral overlap in the SCS region is unprecedented, which indicates the exercise of overlapping discretion from coastal States themselves. While the delimitation is pending, so as to reconcile jurisdictional conflicts, relevant stakeholders should converge on commonly shared rights and interests. Maritime delimitation in the SCS, the Spratlys in particular, may not effectively take the rights and interests of third States into account. Finding solutions to accommodate the commonly shared rights and interests of relevant States at least assists in reducing potential conflicts resulting from absolute and exclusive utilization of coastal jurisdiction. When two States are in the process of dispute settlement, in pursuit of a cooperative maritime regime, paying due regard to the rights and interests of third States in common requires negotiations and consultations.

6.3.1.2.2 An overview of status quo regime models in the SCS

According to Anu Bradford, since regime theory can “explain the structure and the function of particular international rules and institutions and analyze the ways international regimes can shape international law and international relations in general”, it is rules, norms, and principles as components of regimes that have a role to play. To concretely examine international relations regime models in the SCS, the first step is to figure out which type among the three theoretical models exists, and the second pertains to what principles, rules, and norms are contained therein.

To be submitted, China-ASEAN’s Dialogue Relation was constructed in 1991 and has developed rapidly under the ASEAN-China Strategic Partnership (ACSP), which was established in 2003. The ASEAN-China Relation covers eleven priority areas of cooperation, and the ACSP in particular contains “political and security cooperation, economic cooperation, and social-cultural cooperation”. The ASEAN member States

894 “Regime Theory” by Anu Bradford.
897 “Joint Declaration of The Heads of State/Government of the Association of Southeast Asian Nations and The People’s Republic of China On Strategic Partnership for Peace and Prosperity,” Association of Southeast Asian
and China “implement the concept of enhancing mutual trust through dialogue, resolving disputes peacefully through negotiations and realizing regional security through cooperation”. Additionally, their work is based on “consensus” towards securing peace and stability in the SCS, focusing on non-traditional security issues. Accordingly, the principles of trust and consensus are essential to develop cooperation, which means neighboring countries and China should find their common interests and rights in this maritime domain. The ACSP recommends non-security issues be a priority in order to implement cooperation, since commonly shared security interests and rights are closely tied to each State. In view of Robert Keohane and Lisa Martin’s definition of institution, “persistent and connected sets of rules, formal and informal, that prescribe behavioral roles, constrain activity, and shape expectations”. Such a partnership “fits the broader definition of an international institution”. Rules agreed upon by ASEAN and China regarding cooperation in the non-traditional security field are specified in the process of strengthening and consolidating bilateral strategic relationships. For one thing, regional and international forums are frequently utilized to look into concrete rules and norms in non-traditional cooperation. For another, plenty of official documents like declarations, joint statements, and memorandums of understanding have been revealed for non-traditional security.

Specifically, ASEAN members are making consistent efforts to improve the organization’s role on the global stage internally and externally. At the highest official level between ASEAN and China are the ASEAN-China Summit, the ASEAN Post Ministerial Conference with China, the ASEAN-China Joint Cooperation Committee, the ASEAN Plus Three (China, South Korea, Japan, APT), the East Asia Summit (EAS), and the ASEAN Regional Forum (ARF), and they are very closely related to ASEAN. In addition, there are also broader international platforms, like the Asia Cooperation Dialogue, the APEC, the Asia-Europe Meeting (ASEM), and the Forum of East Asia–Latin America Cooperation. Second, affiliated with the highest official level forums, ASEAN States and China hold various talks, which consist of the ASEAN-China Ministerial Meeting (ACMM), the ASEAN-China Senior Officials’ Consultation Meeting (ACSOCM), the ASEAN Plus Three Ministerial Meeting (APTMM) and the ASEAN Plus Three Ministerial Meeting (APTSOM), the East Asia Summit Ministerial

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898 Association of Southeast Asian Nations, “Joint Declaration on Strategic Partnership for Peace and Prosperity.”
899 Ibid.
Meeting and the Senior Officials’ Meeting, and the ASEAN Regional Forum Ministerial Meeting and Senior Officials’ Meeting. Moreover, those specific government organs shoulder the responsibility of implementing specific cooperation instruments, such as the Manila Plan of Action to advance the Phnom Penh Declaration on the East Asia Summit Development Initiative (2018-2022) in the EAS (Manila POA), the Plan of Action to Implement the Joint Declaration on the ASEAN-China Strategic Partnership for Peace and Prosperity (2016-2020) (POAACSP), the ASEAN Plus Three Cooperation Work Plan 2018-2022, the Hanoi Plan of Action to Implement the ASEAN Regional Forum Vision Statement, and ARF Work Plans.\textsuperscript{902}

In brief, these implementation measures contain actions to be taken in order to coordinate or reconcile maritime interests and rights between ASEAN countries surrounding the SCS and China through bilateral and multilateral cooperation. In the Manila POA, enhancing cooperation on maritime connectivity is called upon, in which the development of “environmental- and user-friendly port infrastructure” is suggested.\textsuperscript{903} To be recalled, Aldo Chircop contends that “there is sedimentation and extensive pollution from land-based activities, much of which has resulted from rapid industrialization and urbanization of coastlines, agriculture, and aquaculture”.\textsuperscript{904} An environmentally friendly port construction may help reduce the discharge of land-based marine pollutants. In terms of POAACSP, regarding the implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC), States are required to “push forward the full and effective implementation of the DOC in its entirety” through the ASEAN-China SOM and the ASEAN-China Joint Working


\textsuperscript{903} Association of Southeast Asian Nations, “Manila Plan of Action to advance the Phnom Penh Declaration”.

All States have agreed to collaborate on joint cooperative projects and activities, as well as maritime security, and to take measures related to building up mutual trust and confidence. Moreover, POAACSP has proposed cooperative forums and specified measures to address non-traditional security cooperation, finding solutions to draw attention to commonly shared threats and challenges rooted in their maritime jurisdictional interests.

Currently, there are several platforms for ASEAN States and China to cooperate in SCS non-traditional security issues, including ACMM and ASEAN-China Senior Officials’ Meeting for transnational crimes consultations, and APTMM and APTSOM for transnational crimes. In addition, ASEAN and China signed an MOU and an action plan for implementation on cooperation in the field of non-traditional security issues that contains very specific articles to strengthen security cooperation. According to the MOU, information exchange, personnel exchange and training, law enforcement cooperation, and joint research are identified as common interests for mid- and long-term cooperation. To strengthen maritime cooperation in non-traditional security, it is suggested that all parties shall establish a collection of their domestic legal instruments and signed international agreements for mutual exchanges and sharing. This would lay the foundation for coordinated law enforcement activities at sea among neighboring States against the IUU fishing, transnational crime, illicit trafficking, etc., and reduce potential conflicts with each other in carrying out law enforcement rules and regulations. The MOU provides that China shall take the lead in organizing personnel exchange and training to exchange law enforcement experiences. In the meantime, law enforcement actions are executed in line with domestic laws but have to respect the

905 Association of Southeast Asian Nations, “Plan of Action on ASEAN-China Strategic Partnership for Peace and Prosperity (2016-2020).”
906 Association of Southeast Asian Nations, “Plan of Action to Implement the Joint Declaration”. According to this document, there are provisions for the sharing of information and exchange of experiences and practices, capacity-building efforts against transnational crimes, and cooperation and coordination of law enforcement agencies.
907 Ibid.
908 Ibid.
910 Ibid.
911 Ibid.
912 Ibid.
mutual sovereignty and equality of other States in a restrained way. Joint research covers support from scientific experts and scholars in non-traditional security issues by sharing research results, and periodic visits to exchange views. ASEAN and China also agree to promote military exchanges and cooperation via the “ASEAN Defence Ministers’ Meeting Plus framework including through the ASEAN-China Defense Ministers’ Informal Meeting”, maritime security is clearly covered inside the framework. A 2018 maritime drill held by ASEAN member States is an example of taking confidence-building measures in the SCS security cooperation.

To sum up, it is remarked that some cooperative mechanisms do exist for the purpose of transnational governance in the SCS. In the liberalist view, since the establishment of certain institutions in which rules and norms are contained maximizes their own interests and ensures their goals will be respected and achieved, these mechanisms reflect the self-interest regime model. International agreements, like those for other semi-enclosed seas, are applicable in the region, which makes the SCS not a place for international anarchy. Bordering countries are subject to the rights and obligations put forth in international legal instruments and international institutional frameworks between ASEAN and China. Because power distribution at the regional level becomes incomplete, the power-based regime model can be regarded as partially established.

6.3.1.2.3 Some observations on current regime-building in the SCS

To illustrate, bilaterally, China mainly engaged with the Philippines and Vietnam on delimitation and joint development in certain overlapping areas. Vietnam and the Philippines had discussed the possibility of maritime delimitation, while Vietnam and Indonesia eyed early delimitation of their EEZ. But less information has been revealed on how they will deal with the presence of third States. ASEAN member States definitely follow the ASEAN framework to implement cooperation projects within the region. Current fields of non-traditional security across the border do not seem very concerned with the (marine) environment and fisheries. The POAACSP declares that

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913 Ibid.
914 Ibid.
915 Ibid.
916 Ibid.
919 Association of Southeast Asian Nations, “Plan of Action on ASEAN-China Strategic Partnership for Peace and Prosperity (2016-2020).” According to the ACSPPOA, those fields are mainly concerned natural disasters, counter-terrorism, cyber-crimes and transnational crimes, and human trafficking, etc.
ASEAN States and China should “deepen existing cooperation by further exploring areas of cooperation through proposals and initiatives”. Thus, it may be argued that the marine environment and fisheries should draw more attention as striking security matters.

1) Transboundary fisheries and marine environment management in the SCS

Notably, as revealed by Lim Kheng Swe, Hailong Ju, and Mingjiang Li, “the fact that fishing resources in China’s offshore waters have largely depleted further drives the Chinese fishing community southwards to the South China Sea for a better catch”. Hongzhou Zhang finds that “as overfishing and pollution continue to deplete fish stocks in China’s coastal waters and inshore waters, an ever-greater share of the future demand could be sought from contested waters of the South China Sea”. Kuan-Hsiung Wang also asserts that “a maritime boundary cannot entirely protect a state’s fishery resources from encroachment, because fishery resources can migrate beyond the state’s jurisdiction, and overfishing beyond its borders could also have great impact on the fish stocks within its jurisdiction boundaries”. To be noted, fisheries belong to the section of Food, Agriculture and Forestry, while marine environment protection falls within social and cultural cooperation in the ACSP. It is demonstrated that “exchange of advanced applicable technology and capacity building” is necessary and advocates “responsible fishing practices” as well as combating the IUU fishing and ensuring the sustainability of fisheries. Notwithstanding that ASEAN and ARF participating countries have made a statement on countermeasures against the IUU fishing, ASEAN-China bilateral documents at the highest official level do not provide as many specified measures concerning fisheries as do regarding non-traditional security, including marine environmental protection matters. This is a blind spot which needs to be addressed. In addition, fishing is equally indispensable for ASEAN surrounding countries in the SCS. Inside and outside the ASEAN, there are some regional RFMOs in operation, including the Asia-Pacific Fishery Commission (APFC) under FAO, the UNEP/FAO South China Sea Fisheries Development and Coordinating Programme (SCSFDCP), the Southeast Asia Fisheries Development Center (SEAFDEC), and the COBSEA. However, one of
The biggest flaws is that some RFMOs cannot cover all regional countries and fail to effectively deal with transboundary fishery problems in the SCS. Specifically, Brunei is not part of the APFIC; China, Indonesia, and Vietnam are not the members of SCSFDCP, and the SEAFDEC does contain China as a member. As highlighted by Kuan-Hsiung Wang, without the full participation of regional States, the “ability to coordinate fisheries activities in the Southeast Asian Seas area would be almost nonexistent”. Different from prior RFMOs, COBSEA concerns “the impact of fisheries and aquaculture practices on the environment rather than the effects of the environment on fisheries and aquaculture”. Accordingly, fishery management can hardly become the focus of COBSEA. Institutional shortcomings have direct impacts upon the efficiencies of current RFMOs on transboundary fishery management in the SCS.

With respect to environmental protection, under the ACSP, a concrete road map is the ASEAN-China Strategy on Environmental Cooperation 2016-2020, in which the ASEAN-China Environmental Cooperation Forum (ACECF) and the China-ASEAN Environmental Cooperation Centre (CAECC) are two cooperative forums. ACECF is an annual activity for policy-makers, entrepreneurs, academics, and experts from ASEAN, China, and international and domestic organizations to “conduct high level policy dialogue, promote pragmatic cooperation and exchanges”, while CAECC performs its duty as a permanent institution for environmental protection collaboration. CAECC individually or jointly holds various seminars, workshops, conferences, or meetings to discuss different approaches to environmental protection between ASEAN and China, and the marine environment is not excluded. A vast belt of sea bordered by some of the ASEAN States and China requires protection and safeguarding with collective efforts the SCS properly constitutes a marine ecosystem. CAECC has launched cooperative efforts on biodiversity and ecological conservation with support from the UNEP and ASEAN, and established joint policy research initiatives, like the China-ASEAN Environment Outlook, to analyze major problems, and summarize the main policies, measures, best practices, and policy recommendations

926 Wang, “A Study on the Experiences in Managing Regional Fishery Resources in East Asia,” 75-6.
928 Wang, “A Study on the Experiences in Managing Regional Fishery Resources in East Asia,” 78.
for promoting green development of two entities. In both cases, marine environmental protection is reasonably covered. In the following years, ASEAN and China have agreed to deepen cooperation in “policy dialogue and exchange, environmental data and information management, Environmental Impact Assessment, biodiversity and ecological conservation, promoting environmental industry and technology for green development, environmentally sustainable cities, environmental education and public awareness, institutional and human capability building”. As a result, there are indeed some cooperative mechanisms between ASEAN States and China in marine environmental protection. They are confirmed in the Declaration for a Decade of Coastal and Marine Environmental Protection in the South China Sea (2017-2027). In addition to these channels, some regional environmental organizations should be noted. PEMSEA and COBSEA contribute to regional environmental governance. Like RFMOs in the SCS, not every bordering country joins the two institutions, and this absence by some countries may produce adverse effects on the implementation of the SCS environmental projects, since Brunei remains absent in both institutions. PEMSEA adopts the integrated coastal management approach which makes some progress but focuses more on land-based environmental concerns. Sea-based environmental pollutions should draw more attention because they are easily transnational and need coordination on the exercise of each State’s own jurisdiction.

2) Institutional problems of the power-based and self-interest – based regime models and absence of the knowledge-based regime model in the SCS

Some IR scholars regard the interplay between China and ASEAN via ASEAN-led multilateral forums as an institution-balancing approach or strategy to address the SCS concerns. As elaborated by Huiyun Feng and Kai He, the motivation that China adopts this approach is to “establish and strengthen non-US-involved multilateralism, to minimize its potential losses in the security arena”. In other words, such a method may help dilute power influences, including those from China and the US, and “might

932 Ibid.
933 Ibid.
937 Feng and He, “China’s Institutional Challenges,” 24.
be effective in reducing the sense of a mutual threat among states by establishing official and unofficial codes of conduct.\textsuperscript{938} During the SCS Arbitration, due to Chinese assertive actions, some disputing States in ASEAN intended for ASEAN to put pressure on China. There is no doubt that China was not pleased with that and China-ASEAN cooperation was indeed affected.\textsuperscript{939} After the ruling, owing to the Philippines’ diplomatic shift, China and ASEAN’s relationship is booming and relevant cooperation is accelerating accordingly. Thus, China-ASEAN cooperation in the ASEAN-led fora does not seem very consistent, which reflects the weakness of a multilateral institution. Laura Southgate and Nicholas Khoo’s research contends that “ASEAN’s autonomy is highly dependent on the convergence of interests between ASEAN and an external actor”.\textsuperscript{940} It would be possible to seek more convergence of interests between ASEAN and China and to assist ASEAN to optimize the effectiveness of these multilateral institutions.

Furthermore, ASEAN in addressing the SCS issue utilized ASEAN-led institutions to socialize China and make it accept ASEAN-set norms and rules. Nevertheless, David Guo and Han Xiong observe that “China willingly took the role of norm-taker to accommodate to the ‘ASEAN Way’ of multilateral diplomacy” by direct bilateral or multilateral negotiations.\textsuperscript{941} Such cooperation in the mutual socialization process is largely carried out in accordance with superficially non-binding documents. As David Arase observed, “China-ASEAN security cooperation lacks these formal institutional traits”, in the absence of “treaty-based institutions, formal voting procedures, and binding rights, rules and obligations for members”.\textsuperscript{942} A stronger and more robust regional institution that merely belongs to the SCS needs to be established. As a material power, China has to take more measures to increase transboundary cooperation with ASEAN, so as to make ASEAN and its neighboring States in the SCS believe its motivation for cooperation is to provide more public good rather than regional threat. Consequently, the three-year negotiation on the COC between China and ASEAN is of great significance to “create a cooperative management regime to prevent any escalation of the conflict”, as declared by Renato De Castro.\textsuperscript{943} In addition, See Seng Tan explicitly indicates that there is an “image of overlapping concentric circles of memberships of various regional institutions in Asia, where ASEAN is more often than

\textsuperscript{939} Swe, Ju, and Li, “China’s Revisionist Aspirations in Southeast Asia,” 188-9.
\textsuperscript{942} Arase, “Non-Traditional Security in China-ASEAN Cooperation,” 808.
not pictured as the common point where all those circles intersect and converge”.944 Therefore, overlapping functions of various ASEAN-led cooperation fora need to be taken into serious consideration as an emerging institutional qualm for applicable maritime regimes in the SCS.

Furthermore, based on the complex interdependence theory, Michael Magcamit and Alexander Tan emphasize the importance of deepening regional economic development and increasing mutually economic interdependence between ASEAN and China. “As economic and social connections continue to advance and prosper necessities towards greater institutionalization of cooperative decision-making process will grow and may pave the way for the creation of more sophisticated frameworks for regional political cooperation”.945 Jihyun Kim confirms that as well, “Sino-ASEAN cooperation would be the key not only to strengthened economic ties between China and the regional entity but also to building the trust necessary to reduce tensions in the area”.946 It is ASEAN-China institutional cooperation that has to rely on closer economic relations and can be upgraded by consistent financial support from developing economy among the nations involved.

Last but not least, there are numerous academic entities which are concerned with the SCS dispute settlement and cooperation. Following from Peter Haas’s theory, “epistemic communities are networks — often transnational — of knowledge-based experts with an authoritative claim to policy relevant knowledge within their domain of expertise”.947 In the SCS, there are various intellectual groups that actively engage in regional dispute settlement and maritime cooperation, including international relations scholars, fishery experts, marine environmental scientists and engineers, etc. Some of them are affiliated with the respective governments, while some are non-governmental. One representative epistemic community may be “Managing Potential Conflicts in the South China Sea Workshops (MPCSCSW)”, which have gathered scholars from international relations, marine environment, navigation, shipping, and communication and international law.948 The workshop annually only holds a two-day conference but has set up several working groups to carry out concrete work. The MPCSCSW contributes a lot to SCS conflict prevention and resolution and sets an example for SCS epistemic community development.


945 Magcamit and Tan, “East and South China Seas Maritime Dispute Resolution and Escalation,” 122.


947 Haas, “Epistemic Communities,” 168.

Nevertheless, there are some problems to be taken into account. First, many think tanks related to regional security and international affairs have quite diverse opinion and their views are inconsistent with each other within the groups, thus there appear to be difficult in seeking common interests regarding regional peace and security. Epistemic communities assist policy- or decision-makers to identify state interests and preferences and frame the policy debate. Lacking a consciousness of regional common interests across international relations scholarly communities may have adverse impacts on the policy-making of different States. Second, although marine environmental scientific groups have launched various transboundary cooperative efforts in the ASEAN-led forums, UNEP-affiliated programs, and other international environmental organizations, their work has some overlaps and it needs systematic coordination. Since RFMOs do not cover all regional States, epistemic cooperation may be equally affected. Third, a more integrated epistemic community in the SCS that includes international relations theorists, marine scientists, and engineers could be anticipated. After more than thirty years of development, the MPCSCSW has confronted a series of obstacles, and the effectiveness of managing SCS disputes is diminishing. Judge Gao indicates that first, practical experience proves that the outcome and role of the MPCSCSW is finite and it has even become a “talking shop”; second, the workshops lack long-term and stable financial support; and third, it has drawn less attention from Western countries, and external powers are more directly engaged in the region. From now on, to cement coordination and consistency, epistemic communities may put more pressure on neighboring countries’ governments to deal with transnational common interests in the SCS.

6.3.2 The application of the multivariate regime theory in the SCS

The previous analysis demonstrates that the multivariate maritime regime is far from being established to address commonly shared maritime rights and interests in a multistate-disputed zone. The power-based regime model in the SCS should consolidate its ability in the balance and distribution of States’ power. The self-interest–based regime model in the SCS should strengthen the normative capacity of institutions to ensure their own maritime rights and interests are respected and should uplift economic interdependence to avoid possible regional conflict escalation. Since two regime models are closely related to States’ actions as rational decision-makers, relevant proposals which serve to set up a multivariate maritime regime should equally integrate the

949 Haas, “Epistemic Communities,” 168.
power-based and self-interest–based regime models together. So as to exercise a more powerful influence upon the decision-making process of neighboring States, the knowledge-based regime model in the SCS should call for the establishment of an epistemic community, including international relations theorists, fisheries, maritime environment scientists, etc. Moreover, in combination with the BRI as a recent regional grand strategy, this section will test whether the BRI works or not within the multivariate regime theory. It is argued that the BRI can be regarded as a form of a multivariate regime and may be considered to deal with issues of the SCS transboundary marine governance.

6.3.2.1 The application of the multivariate regime theory regarding the management of transboundary fisheries and marine environmental protection in the SCS

6.3.2.1.1 The power-based and self-interest–based regime models regarding the management of transboundary fisheries and marine environmental protection

In the proposal of “a pragmatic dispute management regime” for the SCS, Nong Hong considers “environmental security as a driving force of cooperation” in the SCS and “fisheries cooperation as a start of the SCS disputes resolution”. In the same vein, the establishment of a multivariate regime in the SCS is suggested to start with two fields as typical instances of transboundary marine governance. With regard to fisheries, at first it is the SCS RFMO that must be set up in the future to coordinate the fishing activities of different States. Jon Van Dyke reveals that “no effective organization to manage the shared fisheries has been established”. Such a joint management organ can enhance institutional ability by allocating quotas, normalizing and harmonizing fishery rules and regulations, collectively gathering data, carrying out scientific survey, and training fishermen fishing skills, etc. Hongzhou Zhang suggests the development of regional “aquaculture” and taking “demand-side measures which reduce incentives for overfishing and illegal fishing.” Such measures may be more effective if a RFMO can be formulated. Second, ASEAN and its member States that are in dispute should maintain an institutional strategy to manage fishery relationships with China, since

951 Hong, Exploring Maritime Dispute Management in the South China Sea,” 155-9.
952 Jon M. Van Dyke, “Regional cooperation in the South China Sea,” in: The South China Sea: A Crucible of Regional Cooperation or Conflict-making Sovereignty Claims, ed. C.J. Jenner and Tran Truong Thuy (Cambridge, United Kingdom: Cambridge University, 2016), 277.
953 Kuan-Hsiung Wang, “Fishery Resources Management in a Disputed Maritime Zone: A Political and Legal Analysis,” in Arbitration Concerning the South China Sea: Philippines versus China, ed. Shicun Wu and Keyuan Zou (London, United Kingdom: Routledge, 2016), 212. Hongzhou Zhang remarks that, “it might be easier to start with some of the low-hanging fruits, such as fishery survey and research, search and rescue, fishing labour, intraregional fishery trade, and investments in onshore storage and processing sectors”. Zhang, “Fisheries Cooperation in the South China Sea,” 76.
954 Zhang, “Fisheries Cooperation in the South China Sea: Evaluating the Options,” 76.
China affirmatively supports “ASEAN Centrality in the evolving regional architecture and all ASEAN-led mechanisms and fora”. Kei Koga observes that “ASEAN has attained the power of legitimacy by creating regional norms multilaterally, and attracted the involvement of great powers in ASEAN-led multilateral political games”. ASEAN states, especially the SCS bordering countries, may take the lead in the establishment of norms and standards combatting the IUU fishing in the SEA region.

In the context of the ARF statement on cooperation to combat the IUU fishing, ASEAN-China may use negotiations and consultations to work out more specific steps against the IUU fishing, which may help to establish a more effective fishery regime or institution alongside the SCS. Third, Hongzhou Zhang states, “regional efforts are needed to promote economic development in other sectors in the coastal regions”. It is enlightening to help fishermen in the region work in industries other than fishery, and gradually reduce their reliance on regional inshore and distant fishing. China and ASEAN have to focus more on regional economic integration, such as establishing the Regional Comprehensive Economic Partnership (RCEP) and improving people’s standard of living as well as their income from other fields of marine economy. A stronger institutional arrangement may assist all parties in regulating their behavior and they may not abuse their power in order to engage in IUU fishing and to pursue their own fishery interests.

To safeguard rights and interests commonly shared by littoral States, it is necessary to explore different institutional arrangements in resolving the SCS environmental conundrum, especially more binding and legal mechanisms which stipulate reciprocal obligations. First, it is advised to establish a regional environmental management organization (REMO) in the SCS. Bai Jiayu and Hu Huijun suggest that “through the Arctic Council, member States have collaborated to protect the Arctic environment and promote sustainable regional development”. Thus, it is compulsory to “unify national perceptions and integrate the common interests of the neighboring States” surrounding the SCS, so as to form “a cooperative environmental governance regime to protect the marine and coastal ecosystem.” Therefore, the REMO is obliged to take an integrated

955 Association of Southeast Asian Nations, “Plan of Action on ASEAN-China Strategic Partnership for Peace and Prosperity (2016-2020).”
958 Zhang, “Fisheries Cooperation in the South China Sea,” 76.
approach to deal with transboundary environmental concerns. Second, as clarified in the fifth chapter, the LME approach constitutes a prevailing method to preserve and protect the marine environment. Leaving jurisdictional limits within the meaning of politics and law aside, this approach relies on “ecological rational that processes which influence the structure and function of biological communities need to be managed at an appropriate scale”, as stated by Michelle Lim and Nengye Liu. The SCS constitutes an LME and is quite suitable for the application of the LME approach, with the assistance of a REMO and a stronger scientific community. The LME approach is an integrated transboundary scheme from purely ecological and scientific perspectives and benefits regional transboundary marine environmental preservation and protection in the SCS.

Third, among the urgent marine environmental issues, transboundary marine pollution and marine biodiversity are prominent. As pointed out by Kuan-Hsiung Wang, “land-based pollution, sea-based pollution and habitat loss have together produced serious environmental degradation” in the SCS. Regional transboundary anti-pollution rules and regulations from different States are sporadic and need to be coordinated and unified, for the purpose of building up a robust legal framework under international conventions on marine pollution, including the UNCLOS and MARPOL of IMO. ASEAN member States and China should strengthen their transboundary governance ability in the ASEAN-China cooperative framework of the environment and ASEAN-led multilateral fora. Particularly, these platforms should not be confined to action plans but must enhance their rulemaking and lawmaking capacity, such as through consistent “rules, standards and recommended practices and procedures to prevent, reduce and control pollution of the environment from these activities”, as illuminated by Youna Lyons.

As regards transboundary marine biodiversity conservation, Keyuan Zou proposes the establishment of the “Spratlys International Marine Peace Park”, while Nguyen Chu Hoi and Vu Hai Dang call for building a regional network and management regime of MPAs for sustainable development. Notably, how to ascertain their geographic scope and regulate the exercise of each State’s jurisdiction have to be determined through negotiation and consultation at multilateral fora.

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6.3.2.1.2 Epistemic community-building in the management of transboundary fisheries and marine environmental protection: The knowledge-based regime model

The priority of building up the epistemic community in the SCS is to avoid fragmentation and formulate a solid union. There are some proposals which can be taken into account. First, with the establishment of a regional management organization, a specific branch, either a commission or a committee, may assist various people from different disciplines to closely collaborate on some transboundary issues. Second, as pointed out by Masaru Yarime and Aitong Li, “a common understanding of the problems and authoritative and concordant advice” on the management of transboundary fisheries and marine environment protection as security concerns in the SCS has to be constructed among scholars from different disciplines. By way of a coordinated voice, the epistemic community might help convey harms on marine environment and facilitate policy-makers in understanding the seriousness of transboundary marine environment protection. Third, even if a holistic organization that grows out of the epistemic community from diverging disciplines is not seen in the near future, such an organ consisting merely of fishery experts or environmental scientists or engineers may be set up in the foreseeable future. Capacity-building is essential for the SCS epistemic communities to strengthen their bargaining power against policy-makers in general, in order to compel them to restrain themselves.

To address common rights and interests shared by more than two littoral States in the SCS, the power-based and self-interest regime models have structural flaws, and the knowledge-based regime model is far from maturity. The final outcome is apparently that the multivariate maritime regime has not been set up adequately. To be submitted, the aforementioned policy recommendations aim to improve some incomplete maritime regime settings in the SCS. Those possible measures are not intended to replace status quo mechanisms, instead they can be invoked to fill in some loopholes based on the multivariate regime theory.

6.3.2.2 Strengthening maritime regime-building for the SCS: The multivariate regime theory and the BRI Initiative

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965 Yarime and Li, “Facilitating International Cooperation on Air Pollution in East Asia,” 40.

966 Part of this section is from my joint paper with Nengye Liu, in which I am responsible for writing the part entitled “engagement with China in the South China sea”, including the EU-China 2020 Strategic Agenda and the Belt and Road initiative. For the full paper, please see: Nengye Liu and Qi Xu, “How Might the European Union Engage Constructively with China in the South China Sea?” Ocean Development & International Law 49, Issue 4 (2018): 301-12.
SCS tension has been a roller coaster ride in the years before and after the SCS Arbitration. In the meantime, the BRI has yielded some fruit and seems more and more attractive to countries participating in it. It was launched in 2013 as an economic vision for the opening of and cooperation “to promote the connectivity of Asian, European, and African continents and their adjacent seas”. The BRI’s framework is formulated into two parts: the Silk Road Economic Belt, which is a land-based route, and the 21st-Century Maritime Silk Road, which is a sea route. The initiative prioritizes five key areas: “policy coordination”, “facilities connectivity”, “unimpeded trade”, “financial integration”, and “people-to-people exchange”. To accelerate the implementation of the BRI, China held a Belt and Road Forum for International Cooperation in Beijing in May 2017, aimed at pushing forward the implementation of projects and the improvement of support systems. In addition, China has issued the VMCBRI, which provides a road map particularly for maritime cooperation with BRI partners, including ASEAN and its member States. In spite of making some progress, the initiative also poses challenges and uncertainties, including a lack of transparency and clarity respecting the rules, norms, and mechanisms. What is more, the Maritime Silk Road can be divided into two parts: the first is the construction of infrastructure, such as ports; the second is the establishment of social and institutional foundations of trade and investment promotion.


968 National Development and Reform Commission, “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road.” The Belt will “focus on jointly building a new Eurasian Land Bridge and developing China-Mongolia-Russia, China-Central Asia-west Asia and China-Indochina Peninsula economic corridors by taking advantage of international transport routes, relying on core cities along the Belt and Road and using key economic industrial parks as cooperation platforms”. “The Initiative will focus on jointly building smooth, secure, and efficient transport routes connecting major sea ports along the Belt and Road. The China-Pakistan Economic Corridor and the Bangladesh-China-India-Myanmar Economic Corridor are closely related to the Belt and Road Initiative, and therefore require closer cooperation and greater progress.”.

969 Ibid.


This chapter concerns multivariate maritime regime-building to manage common interests that are shared by disputing States and third States in the same zone. The current research on the BRI focuses on the construction of the Maritime Silk Road, and a primary research question is whether the MSRI and its VMCBRI suitably fit multivariate regime theory in international relations. If so, how the MSRI serves to address common maritime rights and interests in the SCS will be examined.

6.3.2.2.1 Will the MSRI and its VMCBRI together fit the multivariate regime theory?

The BRI is by nature an initiative; thus, concrete measures can hardly be clarified until relevant stakeholders carry out further negotiations and consultations on specific cooperative matters. Such a state-to-state relation model is not like Western-style models that fully stipulate rights and obligations before an agreement enters into force. Unsurprisingly, such an operation implemented by China causes doubts and questions from traditional international relations scholars. Jean-Marc Blanchard observes that “even if it does not have explicit political objectives there still are likely to be political consequences flowing from it”. It would be helpful to analyze some features contained therein and consider what the MSRI and VMCBRI politically mean for the SCS claimant States in SEA. It is also revealed by Shaofeng Chen that “the SCS dispute adversely affects some SEA countries’ support for the MSRI, but it is not a decisive dividing line”. Neighboring countries are worried that the MSRI may constitute a new leverage on China’s part against them and may dispel them to surrender their territorial and maritime claims. Nevertheless, one could argue that Chen’s research does not take the VMCBRI into account and that conclusion may not be complete. Jean-Marc Blanchard holds the similar view that “if the dispute (the SCS territorial and maritime quarrel) blew up, then that likely would mean the end of the MSRI’s prospects regionally”. Both scholars consider the SCS and the MSRI to be naturally conflicted and irreconcilable. The following remarks otherwise provide a different reasoning on the relation between the MSRI, VMCBRI, and the SCS, particularly illuminating the reconcilable aspect.

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975 Shaofeng Chen, “Regional Responses to China’s Maritime Silk Road Initiative in Southeast Asia,” Journal of Contemporary China 27, Issue 111 (2018): 361. His analysis further concludes that Vietnam and the Philippines are two swing States due to different attitudes of leadership; Brunei and Indonesia have rendered conditional support to the MSRI; Malaysia is strongly supportive of the MSRI.

976 Blanchard, “China’s Maritime Silk Road Initiative and Southeast Asia,” 338.
The multivariate regime theory consists a balance of of three regime theories and will test whether the VMCBRI as the core of the MSRI meets the conditions of power-based, self-interest-based, and knowledge-based regime models. Specifically, the principles of the VMCBRI contain four aspects. The first principle is “shelving differences and building consensus”, which accords with the consensus and respect enshrined by ACSP and ASEAN-led fora. The second principle is “openness, cooperation and inclusive development”, with the intention of seeking mutual political trust and coexistent interests. This is in line with one of the important purposes pursued by ACSP and ASEAN-led fora, namely, strengthening political trust. The third principle is “market-based operation and multi-stakeholder participation”, which matches economic cooperation demands between ASEAN and China which cover the marine economy, including fisheries and environmental governance. The third principle is “joint development and benefits sharing”, which declares that the will of countries along the Road will be respected, and the interests of all parties will be taken into account. Such wording remains consistent with ASEAN policy-making mechanisms based on consent as well the ACSP’s pursuit of cooperation. The framework of the VMCBRI is characterized by “the theme of sharing a blue space and developing the blue economy”. It aims to “build platforms for maritime cooperation and develop the Blue Partnership”, with the list of six cooperation priority areas, including “green development, ocean-based prosperity, maritime security, innovative growth and collaborative governance”. In addition, behind the scenes of each area, the VMCBRI has made a series of policy recommendations for promoting maritime cooperation in those fields where commonly shared interests are present. In the SCS, as stated in the previous section, ASEAN states and China agree to combat the IUU fishing and promoting environmental protection in the framework of ACSP and ASEAN-led fora. Comparatively, the VMCRI tilts toward a broader scope, and integrates maritime regime-building into construction of “a community of shared interests”.

The VMCBRI emphasizes common interests and mutual respect along the MSRI in accordance with international norms and rules. It appears not to be a one party-dominated structure, but equally distributes the benefits and risks of marine cooperation. The participation of multiple nongovernmental stakeholders, including civil society, industrial, and commercial sectors can serve to offset underlying negative impacts produced by a single power. Thus, the distribution of States’ power in the VMCBRI

977 Belt and Road Portal, “Vision for Maritime Cooperation under the Belt and Road Initiative.”
978 Ibid.
979 Ibid.
980 Ibid.
981 Ibid.
982 Ibid.
983 Ibid.
system is foreseeable. The convergences on common interests rather than existing differences (territorial and maritime clashes) are seen in ocean economy, transboundary marine environmental pollution and marine biodiversity, regional climate change, etc. The VMCBRI regards the ecosystem across an area like the SCS as being covered by the MSRI as a whole and intentionally dilutes the influential role of maritime boundaries. It is the integrated marine management approach that functions in the MSRI and aims to coordinate and collaborate policy, rules, and laws in different coastal States.

With respect to pursuing self-interest, the VMCBRI at the initial stage helps participating States increment their marine economic interests through cooperation and seek relative benefits within the regime. Last but not least, the VMCBRI refers to the importance of cooperation in the epistemic communities and proposes to establish the MSRI “think-tank alliance”. As previously pointed out, the SCS epistemic community requires better coordination, solid unity, and a consistent voice. Accordingly, the VMCBRI has the features of a knowledge-based regime model and values the function of the epistemic community in the policy-designing and decision-making processes of domestic governments. All in all, the VMCBRI as the basic document of the MSRI possesses the structures of three regime models, and therefore preliminarily reflects the formation of a multivariate regime based on the multivariate regime theory.

To illustrate, the BRI has been implemented for 5 years, and the VMCBRI is surely a long-term proposal for maritime cooperation for the SCS States. Just as observed by Katherine Tseng, “the Maritime Silk Road plan, which emphasizes common interests of co-prospect and co-existence, helps provide an alternative resolution”. Additionally, “it points a direction, that disputes can be resolved, eventually if not immediately, via a developmental plan that prioritizes cooperation and mutual prospect, by respecting a spirit of collaboration and collegiality that has long engrained in this region”. From the perspective of protecting underwater cultural heritage in the disputed waters, Ran Guo also suggests that the Maritime Silk Road Initiative “helps to remedy the defects of the present international maritime legal order”. Therefore, the VMCBRI under MSRI as a plan of action to be implemented may have promising impacts upon maritime regime building among the SCS coastal States.

984 Ibid.
986 Ibid.
6.3.2.2 How will MSRI and VMCBRI consolidate some maritime regimes under ACSP and ASEAN led-fora in the SCS?

According to the VMCBRI, six priority areas are enumerated for the future development and demonstrate the cooperative framework of the MSRI. First of all, the VMCBRI intends to achieve “green development” by “safeguarding marine ecosystem health and biodiversity, promoting the protection of regional marine environment, strengthening cooperation in addressing climate change, and strengthening international blue carbon cooperation”. The majority of cooperation patterns align marine economy with the sustainability of fisheries and environmental protection, in which China may take the lead in fields of technical assistance, financial investment, and knowledge- and experience-sharing related to marine industry. To be highlighted, China and the ASEAN have made progress in maritime connectivity and transport. In 2017, the ASEAN and China issued a statement on further deepening their cooperation on infrastructure connectivity, committing themselves “to explore ways to improve connectivity between both sides by synergising common priorities identified in the Master Plan on ASEAN Connectivity 2025 and China’s ‘Belt and Road’ initiative”.

Thus, there may be more cooperation projects on the way, including port construction. ASEAN States may initiate discussions with China on environmental standard-making of ports and formulate mutually accepted norms, in order to reduce potentially detrimental impacts upon the marine environment. The anticipated increase of ocean-related economy may tighten mutual ties between China and ASEAN member States and increases the necessity of marine cooperation.

988 Belt and Road Portal, “Vision for Maritime Cooperation under the Belt and Road Initiative.”
989 Ibid.
990 Ibid.
Third, so as to enhance maritime security cooperation, the VMCBRI considers taking five steps: “Strengthening cooperation in maritime public services, cooperation on maritime navigation security, conducting joint maritime search and rescue missions, jointly enhancing capabilities to prevent and mitigate marine disasters, strengthening cooperation in maritime law enforcement”. In contrast with previous measures agreed upon by China and ASEAN States, maritime public services cooperation becomes a new initiative. In addition, China clearly expresses its willingness to fulfill its “due international obligations” and join in “bilateral and multilateral navigation security and crisis-control mechanisms”. Therefore, ASEAN States may take notice of China’s attitudes towards international rule and international law, and grasp the opportunity to negotiate with China on an accepted maritime security cooperation instrument; Alternatively, during negotiations with China regarding the COC, the ASEAN also can engage actively in certain rules and clarify mutual international obligations as stated in the VMCBRI.

As regards maritime research and rescue, and disaster prevention and mitigation, China may devote more on the sharing of information and knowledge, training on personnel, and technical support. But fishery law enforcement activities are independent of maritime law enforcement, and this is different from those prior documents jointly issued by the ASEAN and China. Fourth, cooperative measures in relation to innovative growth in the VMCBRI are closely interrelated with marine economy development. These measures include “furthering cooperation in marine scientific research and technological development, building platforms for marine technology cooperation, jointly building smart ocean application platforms, conducting marine education and cultural exchange, joint promotion of ocean related culture”.

Marine science and technology constitute an important driving force to marine economy, and the application of marine science and technology relating to sustainability would be of use for marine environmental protection. The VMCBRI also expects that more efforts will be made to promote the development of marine collaboration centers in general or those specializing in certain fields. Until now, China has only had two centers established with claimant States in the SCS: one is the China-Malaysia Joint Centre for Marine Scientific & Technology Co-research, the other is the China-Indonesia Center for Ocean and Climate. Predictably, more collaboration centers

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992 Belt and Road Portal, “Vision for Maritime Cooperation under the Belt and Road Initiative.”
993 Ibid.
994 Ibid.
995 Ibid.
likewise are likely to be established between the SCS littoral States and China with the help of the VMCBRI.

Fifth, in a broader sense, the VMCBRI calls for collaborative governance, in pursuit of the establishment of the Blue Partnership with States along the BRI as the “institutional framework for ocean cooperation”. These probable measures are “developing high-level dialogue mechanisms for marine affairs, developing mechanisms for cooperation in blue economy, jointly conducting marine spatial planning and application, strengthening cooperation through multilateral mechanisms, enhancing cooperation among think tanks, strengthening cooperation among non-governmental organizations”. The BRI and the VMCBRI reflect that the Blue Partnership is a flexible structure containing State actors and non-State actors and there are no certain treaties or conventions to be followed. Instead, based on mutual respect and consent from stakeholders along the MSRI, cooperative forms and methods will not comply with a fixed model and can be negotiable in light of concrete circumstances. Stronger capacity of epistemic communities on collaborative ocean governance is based on the establishment of the MSRI think-tank alliance. This is one lateral aspect of the integrated management approach and not confined to the jurisdictional scope. A united, consistent, and collaborative community will strengthen the influence of intellectual groups and externally put pressure on domestic governments in the search for effective measures of addressing transboundary marine fishery and environmental issues in the SCS.

Last but not least, as stated by Xudong Zhang, “such a partnership is mainly concerned with marine economy development, marine science and technology innovation, exploitation and utilization of ocean energy, marine sustainable fisheries, and other fields related to ocean sustainability”. For instance, in the 20th China-EU Summit in 2018, China and the EU agreed to establish a Blue Partnership “for the Oceans as a means to improve cooperation aiming at better ocean governance, sustainable fisheries, and a thriving maritime economy”. The BRI explicitly calls on participating countries to expand mutual investment and deepen and promote cooperation with China

997 Belt and Road Portal, “Vision for Maritime Cooperation under the Belt and Road Initiative.”
998 Ibid.
in developing the marine economy.\footnote{National Development and Reform Commission, “Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road.” “We should expand mutual investment areas, deepen cooperation in agriculture, forestry, animal husbandry and fisheries, agricultural machinery manufacturing and farm produce processing, and promote cooperation in marine-product farming, deep-sea fishing, aquatic product processing, seawater desalination, marine biopharmacy, ocean engineering technology, environmental protection industries, marine tourism and other fields.”} China attaches great importance to “expanding the blue economic space in the ocean, committing to develop ocean economy, exploiting marine resources, preserving marine ecology environment, safeguarding maritime rights, and establishing the maritime powerful nation”.\footnote{“Goals, Missions of China’s New Five-year Plan,” State Council of the People’s Republic of China, March 5, 2016, accessed July 25, 2018, english.gov.cn/news/top_news/2016/03/05/content_281475301749142.htm.} On the ASEAN side, Rajni Gamage holds the view that the blue economy is considered “gradually being adopted at the regional level by ASEAN (and the like) as its content and practice matures in the future, thereby gaining the institutional support and normative credibility which it requires for a more comprehensive implementation”.\footnote{Rajni Nayanthara Gamage, “Blue Economy in Southeast Asia: Oceans as the New Frontier of Economic Development,” \textit{Maritime Affairs: Journal of the National Maritime Foundation of India} 12, Issue 2 (2016): 6.} To enhance blue economy cooperation between the SCS littoral States and China requires consistent investment input not only from the countries themselves but also regional third-party institutions. So as to make it workable, the Asian Infrastructure Investment Bank, the Silk Road Fund, the China-ASEAN Investment Cooperation Fund, the Asian Development Bank, and the World Bank can become possible venues of financial support for the ASEAN-China blue economy cooperation.

6.3.3 Summary

This section has examined status quo transboundary maritime regime-building in the SCS. China and surrounding claimant States take advantage of multilateral and bilateral means to seek the convergence of common interests. Due to the presence of multiple states in the same maritime zone, except for the rights and interests within their own jurisdictional limits, transnational maritime interests in the overlapping zones belong to all regional states involved. At this point, the quest for multilateral fora is a necessity. Certain maritime regimes established by the SCS coastal States are characterized by ACSP and ASEAN-led fora relating to commonly shared maritime rights and interests. An overview of a series of documents from the ASEAN and China may indicate that such collaborative measures are a demonstration of mutual consent. However, based on the multivariate regime theory, the current regimes of the SCS are insufficient, since power-based and self-interest–based regime models are partially set up but the knowledge-based regime model is far from maturity. Some policy recommendations have been put forward to enhance regime-building ability in the SCS regarding transboundary marine environment and fishery cooperation as well as the epistemic
community. These measures all point to three regime models within the multivariate regime theory and are a further step forward toward the establishment of a multivariate regime. Moreover, in the context of recent changes in the SCS after the Arbitration, it is the MSRI of the BRI that becomes a focal point in the region. To implement the MSRI, the VMCBRI is deeply examined. Preliminary analysis defines the VMCBRI as a framework under the multivariate regime theory, since principles, norms and rules, and concrete proposals present transboundary features and convergence on common rights and interests. In addition, some additional proposals can be considered as the consolidation of existing regime, in order to deal with common rights and interests shared by all littoral States.

6.4 Conclusion

This chapter focuses on maritime conflicts of the SCS from the perspective of third States. There are mainly two aspects to examine in the dispute settlement and management in such a hot spot region. The first part answers the question of whether the SCS Arbitration really settles maritime delimitation between China and surrounding claimant States. Legally speaking, since the existence of third States as a relevant circumstance creates new delimitation dilemmas, this chapter argues that space for maritime delimitation of the SCS, particularly the Spratlys, is rather constrained. Given the SCS Arbitration MA was complied with by China and the Philippines, it is pointed out that the new delimitation framework may produce, namely, an overlap between TS of China over its occupied features and the 200-NM EEZ/CS of the Philippines. However, they may be entwined with TS of Vietnam’s controlled features, and the Vietnamese presence may hamper the delimitation between China and the Philippines. In the case that Vietnam, Malaysia, Brunei, and Indonesia resort to the MA for delimitation purposes, similar difficulties may arise as well. Between China and Vietnam in the delimitation of the Spratlys area, the delimitation faces the same problem as China and the Philippines. Among Vietnam, Malaysia, and Brunei, the MA may hardly deal with the existing overlap and may carry out the delimitation without taking the presence of third States into account. In addition, the Malaysia-Philippines maritime boundary cannot be resolved until the sovereignty of Sabah is determined. The MA may also affect the Indonesia-Vietnam CS agreement and the ongoing EEZ delimitation negotiation. Given they respect and take such a decision into account, the legal status and entitlement of some features may be modified and may not be in line with their pursuit of national interests. In short, judicial qualms arising out of the SCS Arbitration continue and emerging legal dilemmas may be unavoidable for disputing parties in the SCS. In addition, these disputes can serve as a driver for the creation of regional maritime bodies, which will in the end facilitate cooperation.
Providing that legal means may be insufficient in SCS delimitation dispute settlement, this chapter observes that the SCS region currently formulates certain maritime regimes addressing transboundary ocean-related issues established by ACSP and ASEAN-led multilateral forums. First, sheer reliance on the power-based regime model analysis may overlook mutual benefits obtained by China and ASEAN, tilting toward competitions among powerful countries such as US and Japan as external forces in the SCS. Past regional experience has revealed that the more frequent the external interference, the more inefficient the performance of ASEAN-China transboundary marine governance cooperation. Second, the status quo self-interest–based regime may be rather sporadic and redundant. A substantial number of signed documents from both sides cover transboundary governance, including fisheries and marine environmental protection. Consequently, diverse transboundary cooperation mechanisms which are formulated separately are affiliated with different organizational units but entrusted with similar tasks. Therefore, with references to the multivariate regime theory, power-based and self-interest–based regime models have some institutional problems to be addressed. Third, given the integration of epistemic communities in SCS interdisciplinary research has not acquired much attention, the knowledge-based regime model may be far from maturity.

In order to ensure the formation of a multivariate maritime regime in the SCS, one has proposed some policy recommendations. First, the SCS Regional Fishery Management Organization (RFMO) can be set up to coordinate fishing activities from bordering States, integrating sporadic RFMOs consisting of several States in the region. In addition, to effectively carry out transboundary fishery management with China, ASEAN member States, particularly disputing parties, should altogether play a more active role in making norms and standards against the IUU fishing. Meanwhile, the SCS bordering States need transnational cooperation on marine economy development, especially the diversification of marine industry to reduce people’s reliance on fishery. The increase of economic interdependence assists in convergence on commonly shared interests, and in strengthening cooperation between two sides by current institutions. Second, with respect to SCS transboundary marine environment cooperation, it is suggested that a regional environmental management organization be established. The LME approach should be adopted to manage the SCS marine ecosystem. In addition, rules, standards, norms, recommended practices, and operative procedures in addressing transboundary marine pollution must be coordinated and uniform. The establishment of Marine Peaceful Park and a network of MPAs may also contribute to the protection of transboundary marine biodiversity in the SCS. Fourth, in line with promoting certain
regional management mechanisms, setting up specific organizational entities or units across the region serves to gather scholars from various disciplines for some transboundary maritime issues. In particular, fishery and marine environment are two preferential fields in which to build up integrated epistemic communities. Their voice, with commonly shared understanding and coordinated policy advice, may attract the attention of government policy-makers and enhance the communities’ bargaining power against them in the implementation of policy recommendations. Fifth, in terms of recent political and economic developments, the VMCBRI as the core of the MSRI in the BRI should draw more attention and be explored as to how it will impact transboundary cooperation in the SCS. The VMCBRI is in possession of some basic elements of a multivariate regime and needs to be further developed. Relevant policy recommendations should be taken into account in the aspects such as achieving green development, ocean-related economy, maritime security cooperation, marine innovation growth, collaborative governance by establishing the Blue Partnership, and support for blue economy development. Its consistence with the established maritime regime under ACSP and ASEAN-led forums and supplementary proposals for cooperation can be regarded as consolidating the ongoing transboundary cooperation in the SCS.