CHAPTER 7

Environmentally Sustainable Seabed Activities in the South China Sea

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The Challenge

The South China Sea conflicts on maritime boundaries and claims over islands and other features and their adjacent maritime areas have not discouraged coastal States from undertaking seabed activities in disputed maritime areas, namely the exploration and exploitation of mineral resources and the respective placement and operation of offshore installations and structures.¹

In times where the thirst for fossil fuels continues to grow, the speculative role played by the oil factor in the South China Sea disputes is unlikely to drop as claimant States compete to secure exclusive access to maritime areas considered to have great mineral resource potential. In several instances, States’ actions have resulted in confrontation, threatening not only regional stability but also the lives of fisherman and all those undertaking offshore activities in these areas. Coastal States have also resorted on occasion to the occupation by military force of many islands and features in order to hypothetically strengthen their claims to the respective maritime areas.²

Considering this context and the fact that there is generally a lack of information with respect to the location of offshore installations and structures in the region, including regarding their decommissioning or removal,³ the

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³ Supra note 1, p. 270.
environmental risks traditionally associated with the exploration and exploitation of mineral resources, as well as the construction and operation of offshore installations and structures increases significantly. As a result, in addition to the threats to the stability of the greater Asia-Pacific region resulting from the aforementioned hostile actions by coastal States, the undertaking of seabed activities in disputed maritime areas of the South China Sea and the placing and operation of installations and structures in these areas without the adequate implementation of safety measures, constitutes a considerable danger to the marine environment. It is also a threat to other uses of the sea, including to navigation and the conservation and maintenance of fish stocks. In this sense, seabed activities taking place in disputed maritime areas of the South China Sea constitute both a regional and global concern, particularly when considering the interconnectivity of the marine environment and the fact that the greater part of the world's goods are transported using the shipping routes that go through this region.

As the delimitation of maritime boundaries and the settlement of sovereignty claims over islands and other features either by agreement or compulsory dispute settlement mechanism is rather unlikely, it would seem that the only possible way to move forward would be for coastal States of the South China Sea to reach an understanding on functional cooperation, which would essentially allow these States to manage the disputes and adopt measures that protect and preserve the marine environment from pollution by seabed activities, while safeguarding other activities and uses of the sea. Ideally, claimant States of the South China Sea could enter into provisional arrangements, such as joint development agreements, that could ultimately allow for the undertaking of seabed activities in disputed maritime areas, without hindering their respective sovereignty claims. However, this has not been an easily attainable task despite several attempts having been made to encourage coastal States to adopt similar cooperative regimes in disputed maritime areas of the South China Sea. In fact, in recent years there have been a considerably small number of agreements signed between different claimant States, particularly when comparing with the extent of existing and potential disputes in the South China Sea. The main impediment of the South China Sea disputes to the implementation of provisional arrangements, or for that matter, to the settlement of the disputes whether by a maritime delimitation agreement or compulsory settlement mechanism, has been the lack of clarification by certain coastal States with respect to the maritime area which they consider to be disputed, as well as the legal title upon which they establish their claims. Both the identification of the disputed maritime area and of the legal title supporting States' claims are essential elements, seeing that the rights of coastal States