Shared Stewardship: A Solomonic Solution to the South China Sea Conflict

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The Biblical story of King Solomon and the two mothers is not immediately recognisable as a source of insight for resolving the territorial disputes in the South China Sea (SCS). After all, international geopolitical conflicts are more complex than domestic ones. More importantly, these conflicts occur in a structurally different political order: no sovereign like Solomon exists in the international political order who can make a final, authoritative, and enforceable decision on inter-State disputes.

However, these limitations do not render the story useless. As a metaphor, this story enables "a 'mental excursion' away from the hard facts to other realms of thought and other disciplines that are somehow related." This excursion allows "the mind to consider new perspectives from other experiences" (Spector 2). Thus, the story can serve as a metaphorical tool to conceive a possible way out of the SCS impasse. This protracted and dangerous impasse requires inspiring narratives that can serve as an alternative to the narrative of territorial sovereignty that created the conflict. Solomon's story is one of these narratives. The narrative of (nationalistic) territorial sovereignty, undergirding the claims of all the SCS claimants, recommends a course of action akin to splitting the baby King Solomon recommended to resolve the dispute of two mothers competing over a child.

The rest of this essay will unfold this way. Following this introduction, I will narrate the story of King Solomon and the two mothers and distill the insight useful to the SCS conflict: the idea of the superordinate interest. I will then present a brief historical background of the SCS dispute; then, I will apply Solomon's wisdom. This application will gesture the move away from the narrative of territorial sovereignty into a narrative of shared stewardship. Then after a brief explanation of what stewardship entails, as well of how the UN Convention on the Laws of the Sea (UNCLOS) endorses something akin to shared stewardship, I will explore the institutional implications of shared stewardship. I will conclude by suggesting that a SCS Stewardship Council, akin to the Arctic Council, needs to be established in order to institutionalise the shared stewardship of the SCS.

Solomon's Decision

According to the Bible, King Solomon was a powerful monarch who once ruled Israel. Famous for his wisdom, he was consulted by two women who were both claiming to be the real mother of a child. They lived in the same house and gave birth within the same period. One baby died.

The first woman claimed that the living child was hers and alleged that, while she was asleep, the second woman took her child away from her. The second woman told King Solomon that the first woman was lying. The living child was hers, she protested. Faced with an impasse, King Solomon devised a creative way of resolving the dispute. He asked for a sword and proposed to cut the child in two so each woman could equally share him. The first woman gave up her claim so that the child could live. On the other hand, the second woman agreed with Solomon. King Solomon gave the child to the first woman.

The issue of whether the first woman is the biological mother of the child is not a decisive factor in this decision. What guides King Solomon's decision to give the child to her is the best interest of the child. The best interest of the child is

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to be whole so it can live. This interest is the superordinate interest: it supersedes any of the women's self-interest because satisfying this interest is a necessary condition for the women to be able to achieve their own self-interest. Thus, the woman whose self-interest coincides with the superordinate interest is declared the mother, regardless of whether or not she gave birth to the child. This also implies that if both of the women gave up their claims so the child could live, King Solomon might have enjoined them to end their dispute and just share the custody of the child.

A Brief History of the SCS Conflict: From a Shared Resource to Apple of Discord

Just like any sovereignty disputes, the SCS conflict can be approached in three ways: pursue a national perspective; use international law as a lens; or consider the conflict as a product of the "changes in the international system and in the balance of power" (Tønnesson 560-601). I will take the last approach because it provides a panoramic view of the conflict. More importantly, it avoids the tendency of reducing the SCS conflict into a legal problem. This legal reductionism, as will be shown by this section, is counterproductive.

Following Tønnesson (2002), I divide the history of the SCS into five crucial periods: pre-modern; the colonial condominium period; decolonisation and cold war; Sino-American rapprochement and cooperation; and the Re-emergence of China. Each period represents different stages in the development of international relations and configurations of the balance of power in this region.

In the pre-modern period (before 1842), the notion of territorial sovereignty as we know it was not yet introduced in the region. The SCS mainly functioned as a trade route. Its islands were "mainly seen as a source of danger." With perhaps the exception of the claims made by various pre-Vietnam state regimes over the Paracels, which started from 1802, most of the "islands were discovered, described, and to some extent exploited, but they were not claimed or disputed over in a legal sense." Hegemony "shifted" among different Asian and European powers (Tønnesson 574).

During the colonial condominium period (1842-1941), Britain, France, the Netherlands, Japan, and the United States reigned over the SCS. This was the time European colonial powers introduced to the region the concept of freedom of navigation and applied in the region "the modern concept of territorial sovereignty" forged by the post-Napoleonic wars settlement (Branch 277-297). The British claimed the Spratly Islands and Amboyna Cay, and included them in their "annual edition of the British Colonial Office list." Fearing Japanese expansion, France claimed the Paracels and the Spratlys, without the British protesting it. However, Japan resisted and "officially claimed the Spratlys as part of the Japanese empire, placing it under the Governor General of Taiwan. France and other Western powers, including the US, delivered protests in Tokyo, but the US did not protest on anyone else's behalf, just against the unilateral Japanese action." This launched the French-Japanese rivalry over the SCS islands. However, during World War II, Japan emerged as the region's hegemon; it utilized the Spratlys as a strategic military post, as well as exploited it for its guano. After invading all the SCS coastal states, the SCS became a "Japanese Lake" (Tønnesson 574-578).

After World War II, the end of Japanese hegemony created a vacuum of power. The wave of decolonisation created newly independent states (1942-1968). Besides pursuing most of the territorial aspirations of their European colonisers, along with China, these newly created states scrambled for the SCS islands with the prospect of enjoying their resources, especially oil and gas. "The Philippines moved in from the east, South Vietnam from the west, Malaysia and Brunei from the south" and China/Taiwan from the north (Tønnesson 586).

Among them, China/Taiwan, South Vietnam, and the Philippines have the most ambitious claims. Empowered by historical arguments and ambiguous treaties with Japan, Taiwan was the first to assert comprehensive sovereignty over the region. Guided by its "One China" policy, the People's Republic of China simply considered Taiwan's claims as its own. Inheriting France's territorial assertions, South Vietnam followed suit. In the 50's, the Philippines joined the fray. Encouraged by the Philippine Vice President, the Cloma brothers claimed that the islands were rendered "res nullius" after Japan abandoned them and thereafter occupied a number of islands and called them Kalayaan. Taiwan, Vietnam, and France filed a diplomatic protest in Manila. The first two took further actions by beefing up their presence in their occupied features (Chang 20-38).

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Still in the 50's, the Sino-Soviet alliance brought the Cold War to Asia. However, this alliance "entered a period of crisis during the 1960s." Fearing Soviet expansionism, China formed a de facto alliance with the US. Meanwhile, Vietnam "invited the Soviet navy…to take over the former French, Japanese, and US facilities in Cam Ranh Bay." China took advantage of its rapprochement with the US and expanded its naval presence in the SCS. In the 70's after China gained full control of the Paracels, the unified Vietnam retaliated by occupying more islands in the Spratlys. This is the reason why Vietnam dominates the Spratlys. Vietnam occupies the most number of features in the Spratlys: Vietnam currently occupies 23 features in the Spratlys – almost equivalent to the combined occupied features by the Philippines (9), China + Taiwan (8), and Malaysia (7). Arguably, the aid flowing from the Soviet Union made this dominance possible. However, after Mikhail Gorbachev "scaled down the costly Soviet deployments abroad and signalled reductions in Soviet support to Vietnam," Vietnam found itself vulnerable without a powerful enabler (Tønnesson 584-588). The fall of the Soviet Union tipped the balance of power in favour of China, leading to a "dramatic increase in China's naval activities in the Spratlys" (Chang 25).

During the period of Sino-American rapprochement, two events intensified the power struggle over the SCS islands: the 1973 oil crises and the introduction of the 200 nautical mile Exclusive Economic Zone (EEZ), which became part of the UNCLOS, ratified by all the SCS states. The former gave economic incentives to the littoral states to be more assertive with their territorial aspirations. Meanwhile, the EEZ concept embedded in the UNCLOS added a new layer to the conflict; it gave the conflicting states a new set of fangs.

The UNCLOS was adopted in 1982 and entered into force in 1994. Within that time period, a number of actions were taken by the littoral states that were aimed at supporting their claims or weakening the claims of others." These included "the deployment of military troops to additional features in the Spratly area, the enactment of domestic maritime legislation, and the signing of contracts with foreign companies to explore and exploit hydrocarbons." Eventually, this intensified scramble for the SCS islands lead to the March 1988 naval battle between China and Vietnam after the former "established a physical presence there in the previous year" (Song and Tønnesson 243). Perhaps fearing that the Sino-Vietnamese naval clash would be a prelude to a division of the features of the SCS only among these two after the dust settled, other claimants became more assertive about their claims. They beefed up their military presence in their occupied features, leading to a series of violent clashes, pitting the Philippines against Taiwan, and the Philippines against Malaysia.

The Superordinate Interest

The conflict of the SCS states is akin to the dispute of the two women claiming the same child. However, in the SCS context, there are multiple mothers.

One way of resolving this conflict is to settle the territorial disputes by letting an "impartial third party" determine who is the rightful mother of the SCS features. Cohen (2014) argues that this is preferable because "imaginative judgments of the International Court of Justice as well as the awards of international arbitration tribunals" were able to produced "carefully-balanced compromises that reflect the complexity of the claims considered." But the cases Cohen have in mind may have been easier to resolve by taking a legal approach because the balance of power in these cases is not at stake. Cohen's may also be overly optimistic about the benefit of having an impartial arbitrator. As what Song and Tønnesson (2013) caution, it is "impossible" to determine whether arbitration of the SCS conflict "will weaken or strengthen the role of international law as an instrument of peaceful conflict management and resolution." After all, UNCLOS "has exacerbated disputes over sovereignty to islands by encouraging overlapping zone claims" (258).

Cohen does not mention the cases he is referring to, but they might be the decisions of the tribunals which employed a technique of delimiting maritime boundaries equitably among the competing parties, such as Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States); and Delimitation in the Area Between Greenland and Jan Mayen (Denmark v. Norway).

The technique uses "coastline lengths to check the 'equity' of an allocation of maritime space." The coastlines are

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simplified by "straightening out the indentations to find a 'general direction line' so a country does not gain an advantage over its neighbour simply because its coast is more irregular" (Valencia, van Dyke, and Ludwig 137).

Clagett (1995) attempted to apply this technique to the SCS context. Accordingly, 30% of the Spratly Islands will go to the Philippines, 27% to Vietnam, 26% to China/Taiwan, 13% to Malaysia, and 4% to Indonesia (375-388). Besides including a non-claimant (Indonesia) as a recipient, the problem with this allocation system is it might not equitably divide what these states are after: the resources of Spratly Islands. Furthermore, dividing the SCS islands "might accentuate rather than resolve strategic concerns, as well as exacerbate such disputes if the recognised owners one day insist on claiming EEZs and continental shelves extending from the islands" allocated to them (Valencia, van Dyke, and Ludwig 133).

This divide and allocate approach is akin to splitting the child. Applying the gist of Solomon's decision, a more constructive approach to the SCS conflict should not start from the self-interests of the states but from the superordinate interest, i.e. the best interest of SCS. One such superordinate interest is the environmental protection of the SCS (Kao, Pearre, and Firestone 283-295). After all, the "main value" of the SCS islands, especially the Spratlys, "is to serve as a natural habitat for a variety of fish, birds, and other organisms" (Tønnesson 584-588). Realising this superordinate interest is a necessary condition for the competing coastal states and, most specially, their coastal communities, to sustainably enjoy the bounties of the SCS.

Establishing maritime boundaries would be "dysfunctional" for the management of the marine environment of the SCS (Valencia, van Dyke, and Ludwig 133). This is because the boundaries of any ecosystem, such as the SCS are ecologically rather than politically and economically determined. Consequently, the best option for the competing states is to have an integrated approach to managing the marine environment and resources of the SCS (Kao, Pearre, and Firestone 287). If the SCS states will insist on pursuing their self-interests, which is driven by their desire to increase their relative share of SCS' bounty, they will tragically compromise the best interest of the sea, which in turn will preclude them from enjoying its resources in the long run. Thus, the Solomonic solution to the SCS impasse is this: The SCS littoral states must find the political will to transcend the logic of territorial sovereignty and proceed to establish a multilateral framework through which they will pursue the shared stewardship of SCS.

Bridge Over Troubled Water

The difference between territorial sovereignty and stewardship lies in their assumption: stewardship assumes that "individual interests are so comingled as to defy separation," while territorial sovereignty does not assume this and thrives by excluding others (Hollis 2). In short: territorial sovereignty promotes separation, while stewardship requires cooperation.

Though the UNCLOS was created through the logic of territorial sovereignty, it also endorses something akin to shared stewardship, especially when it comes to enclosed or semi-enclosed seas.

Article 123 of the UNCLOS provides that:

States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

(a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;

(b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;

(c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area;

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(d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.

There have been several regional precedents to the cooperation required by UNCLOS; one of them is the Arctic Council (*see* Kao).

A South China Sea Stewardship Council?

One of the achievements of the end of the Cold War, the Arctic Council is a "'high level forum' for cooperation" of the eight states with sovereignty claims over territories in the Arctic: Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States. Created in 1996, the Council evolved from the Arctic Environmental Protection Strategy (AEPS) adhered to by the Arctic states in 1992, which was advocated by the 'Finish Government to initiate a process to address Arctic-wide environmental issues.'" Besides member states, the Council recognises several indigenous groups in the Arctic as permanent participants. Permanent participants do not have voting rights but they can attend all meetings, and like states they can "present proposals for cooperative activities" (Bloom 712-722).

SCS states should work together in establishing a similar multilateral arrangement; a South China Sea Stewardship Council (SCSC). VanderZwaag and Vu have suggested that the Arctic Council could serve as an inspiration to SCS states for their own regional cooperation framework. They have identified several important lessons that the SCS regional framework can learn from the Arctic Council model: "the debate regarding a legally-binding regional framework agreement; the potential of developing hard law agreements through soft law processes; the use of informal institutional mechanisms to facilitate regional cooperation; how to involve non-State actors in regional cooperation; the promotion of common regional interests in international fora; the potential usefulness of regional assessments and reviews; and the example of an advanced monitoring program" (204-205).

Establishing the SCSC need not start from scratch. SCS states can improve on existing multilateral frameworks in the region. There are plenty of initiatives in the SCS region that "have occurred or are currently being undertaken on a multilateral basis, even while sovereignty disputes have not been addressed" (Kao, Pearre, and Firestone 284). Two of which are the Coordinating Body on the Seas of East Asia (COBSEA), which implements the East Asian Seas Regional Seas Programme, which is one of the regional seas programmes of the UN Environmental Programme (UNEP); the other one is the Partnership in Environmental Management for the Seas of East Asia (PEMSEA), which is jointly implemented by Global Environment Facility (GEF), UN Development Programme (UNDP), and the International Marine Organization (IMO).

However, these mechanisms cover the broad geographic area of East Asia. Kao, Pearre, and Firestone point out that if these frameworks become the avenue for cooperation for SCS state, it will mean that "actors not directly involved in the South China Sea issues are potentially incorporated into the agreements" (Kao, Pearre, and Firestone 290). This can complicate the agreements related to the SCS region because the interests of non-SCS parties may conflict with those of SCS states. Thus, it is better to have a multilateral framework which only has SCS states as members but allows for permanent participants (such as Taiwan, and perhaps the coastal communities bordering the South China Sea) and observers.

Nonetheless, the existing frameworks are not useless. They can serve as a source of momentum for developing the SCSC. In establishing the SCSC, the SCS states can adopt the programme of environmental protection offered by COBSEA and PEMSEA, and then expand the scope of their cooperation "to include marine living resources, maritime safety, and maritime security" (Kao, Pearre, and Firestone 292).

Besides mustering the political will to transcend the logic of territorial sovereignty, another major impediment in realising the goal of shared stewardship of SCS is the deterioration of trust. Thus, it is crucial for SCS states to pursue confidence-building measures. In the 90's this has been achieved through track 2 diplomacy initiatives, such as the Managing Potential Conflicts in the South China Sea workshops hosted by Indonesia and funded by Canada (Tønnesson 592). Track 2 diplomacy initiatives like this should be reintroduced again, this time the goal is to explore

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ways of developing a multilateral framework for cooperation, such as the one proposed here. Discussions must not revolve on issues of sovereignty; they must centre on the idea of pursuing shared stewardship of SCS and explore the possibility of following the example of the Arctic states. Perhaps Member states of the Arctic Council can help fund and even host these discussions.

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