

Towards the Establishment of a Search and Rescue Cooperation Mechanism in the South China Sea:

Regulatory Framework, Challenges and Prospects



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Outline

1. *Why* a SAR Cooperation Mechanism in the SCS is needed?
2. *Regulatory Framework* for Establishing a SAR Cooperation Mechanism in the SCS
3. *Challenges* for Establishing a SAR Cooperation Mechanism in the SCS
4. *Prospects* for Establishing a SAR Cooperation Mechanism in the SCS
5. Conclusion

1. Why a SAR Cooperation Mechanism in the SCS is needed?

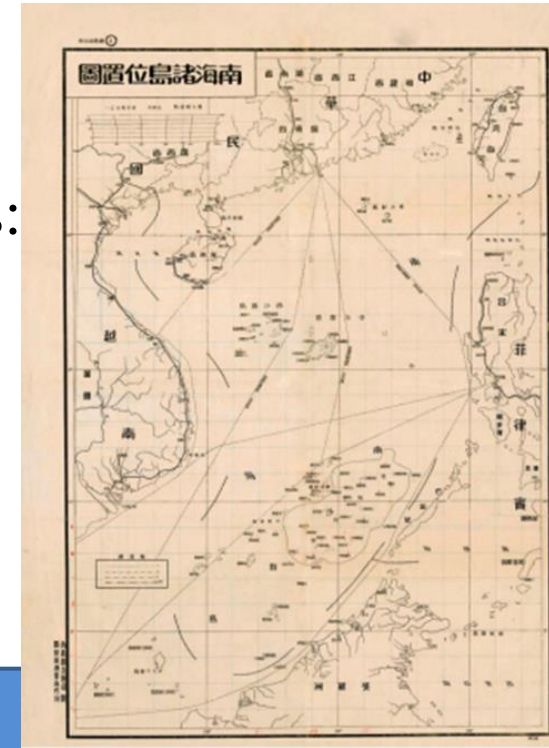
□ Coastal States of South China Sea:

- View 1: 7 countries. China (+Chinese Taipei), Vietnam, the Philippines, Brunei, Malaysia, Indonesia, Singapore [held by the IHO and some scholars]
- View 2: 9 countries. The Gulf of Thailand be included as a part of SCS, then + Thailand, Cambodia
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#For the purpose of Cooperative SAR Operations:

View 2 is preferable.

so as to achieve effective SAR cooperation.



1.1 SAR as an issue

- **A large volume of cargo** (valued at about \$3 trillion) carried on board ships transit through the South China Sea (SCS); the SCS is **a rich fishing ground** for many countries; The air space over the SCS experiences **a high volume of air traffic**; natural phenomenon in the SCS, eg, **typhoons and storms**, adversely impact maritime activity, particularly fishing.
- During the period from 24 May 1984 to 24 May 2014, at least 89 “very serious [maritime] casualties” occurred in the SCS.
- Given these conditions, the probability of accidents and incidents involving ships, aircraft and fishing vessels is high and thus **require search and rescue support to save persons in distress at sea.**

1.2 Necessity of establishing a SAR cooperation mechanism in the SCS

- The missing **Malaysia Airline MH370 incident in 2014** demonstrated the lack of coordination among coastal States in the South China Sea (SCS) with regard to the implementation of their duty to render assistance at sea.
- **Some coastal States of the SCS have not joined important international treaties relating to SAR operations**, which makes it imperative for them to collaborate on this issue through a regional cooperation mechanism.
- Some coastal States have joined some international conventions and agreements on SAR operations, such as the 2002 DOC; however, **some general regulations or recommendatory provisions are still to be implemented through regional cooperation of coastal States.**

1.2 Necessity of establishing a SAR cooperation mechanism in the SCS

- Notwithstanding sovereignty disputes, regional cooperation on the protection of the marine and coastal environment has been undertaken in the SCS since the 1980s; however, to date **regional cooperation on SAR operations has been insufficient.**
- Due to the unique geographic features of the region, such as its semi-enclosed nature and its importance as a global shipping channel, **regional cooperative SAR operations could benefit bordering states.**



2. Regulatory Framework for Establishing a SAR Cooperation Mechanism in the SCS

Table 1: Status of Ratification of main international instruments by coastal States in the SCS

Treaties /Instruments	China	Vietnam	Philippines	Brunei	Malaysia	Indonesia	Singapore	Thailand	Cambodia
1982 UNCLOS	√	√	√	√	√	√	√	√	Signed, not ratified
1944 Chicago Convention	√	√	√	√	√	√	√	√	√
1979 SAR Convention	√	√	✗	✗	✗	√	√	✗	✗
1974 SOLAS Convention	√	√	√	√	√	√	√	√	√
2002 DOC	√	√	√	√	√	√	√	√	√

Note: “√” indicates the sign and ratification by the State; “✗” indicates that the State has not signed or ratified the legal instrument.

2. Regulatory Framework for Establishing a SAR Cooperation Mechanism in the SCS

2.1 International treaties and other instruments

2.1.1 *1979 International Convention on Maritime Search and Rescue* (“SAR Convention”) and its Amendments, and the *1944 Convention on International Civil Aviation* (“Chicago Convention”)

- are the primary international treaties that provide multi-state coordination of SAR operations;
- *1979 SAR Convention*:
 - Annex Section 2.1.10 of states: "Parties shall ensure that assistance be provided to any person in distress at sea" as opposed to "Parties shall provide."
 - “3.1.1 Parties shall co-ordinate their search and rescue organizations and **should**, whenever necessary, co-ordinate search and rescue operations with those of neighbouring States .”

2. Regulatory Framework for Establishing a SAR Cooperation Mechanism in the SCS

➔ “*a coastal State’s only true obligation at international law is to enact laws*, and that the mere passing of legislation and setting of policy goals might be sufficient to extinguish that burden [under the 1979 SAR Convention]”. ---by: Amy E. Moen

•Ch 2, Art 2.1.8 provides that,

“2.1.8 Parties should seek to promote consistency, where applicable, between their maritime and aeronautical search and rescue services while considering the establishment of maritime search and rescue regions which shall be established by agreement in accordance with paragraph 2.1.4 or the reaching of agreement upon appropriate arrangements in accordance with paragraph 2.1.5.”

2. Regulatory Framework for Establishing a SAR Cooperation Mechanism in the SCS

- The 1979 SAR Convention has a “relatively low level of acceptance in the region, possibly because of **the costs involved in establishing a SAR infrastructure and a reluctance to allow searching ships or aircraft of another country access to sovereign waters or territory.**” ---by Sam Bateman
- 1944 Chicago Convention:
 - Provides general regulations *on aircraft in distress* (art. 25), *investigation of accidents* (art. 26), etc.
 - ICAO responsible for depicting aeronautical SAR regions.

2.1.2 *1974 International Convention for the Safety of Life at Sea* (SOLAS) and its Amendments

- Although SAR State has a “primary” responsibility to ensure “coordination and cooperation”, **this obligation is an obligation of conduct rather than obligation of result.**
- A rescue mission is not complete until that obligation is discharged. However, this regulation **does not address the question of “by which State rescued persons must be disembarked in the absence of agreement among affected States.”**

2.1.3 1982 UNCLOS

□ Article 98 Duty to render assistance

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;

2. Every coastal State shall promote the establishment, operation and maintenance of an *adequate and effective search and rescue service* regarding safety on and over the sea and, *where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States* for this purpose.

□ Article 123 “Cooperation of States bordering enclosed or semi-enclosed seas”

2.1.4 International aeronautical and maritime SAR manual

- the Manuals provide additional guidelines for implementing the 1979 SAR Conventions and other relevant treaties.

2.2 Regional treaties and arrangements

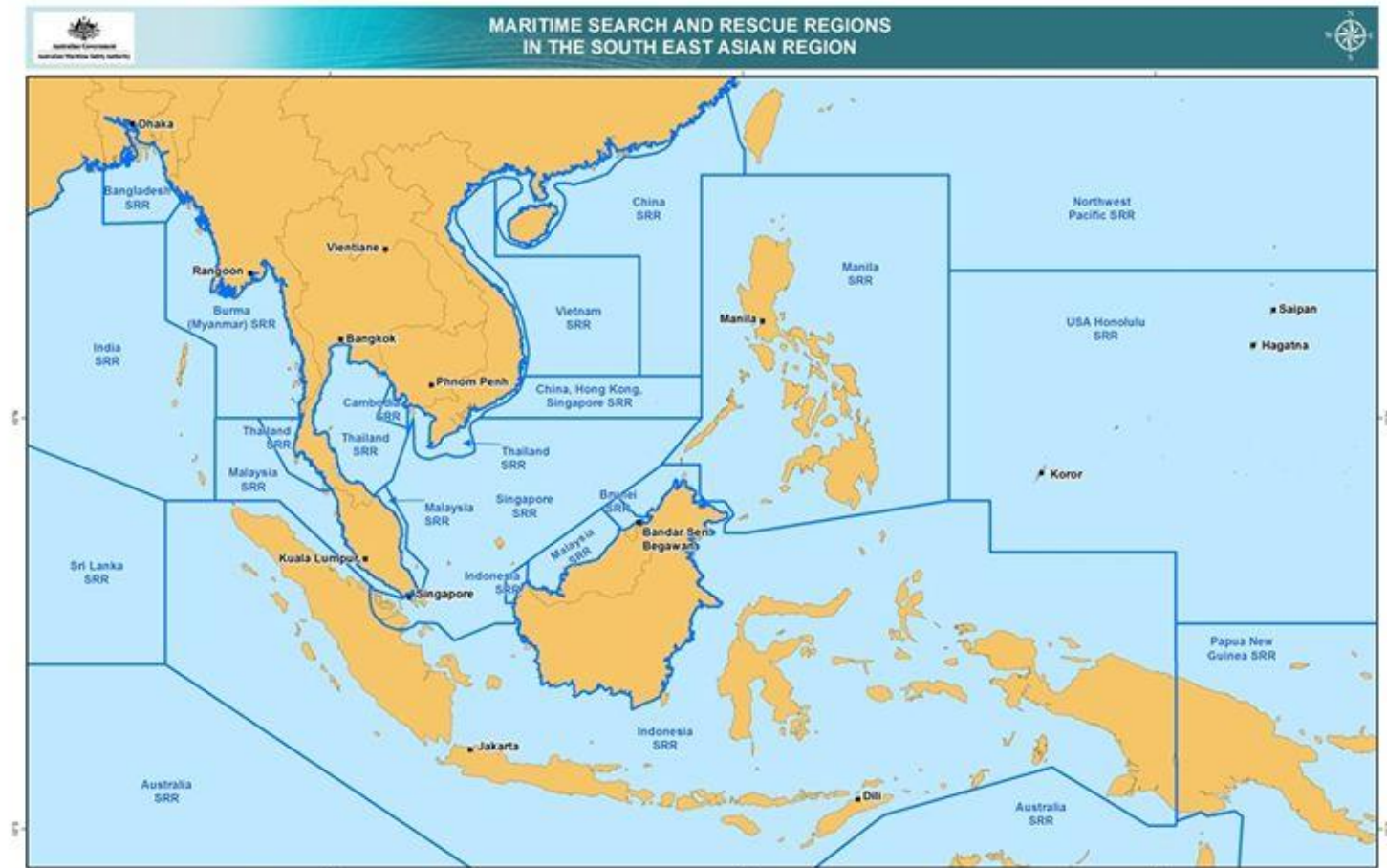
2.2.1 2002 Declaration on the Conduct of Parties in the South China Sea (2002 DOC)

“The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.”

2.2.2 Code of Conduct in the SCS (COC)--- under negotiation

3. Challenges for Establishing a SAR Cooperation Mechanism in the SCS

3.1 Current SAR regions boundaries in the SCS are *inconsistent with national maritime boundaries*, and there are some *overlapping SAR regions*, which have caused difficulties for effective cooperation on SAR operations



Important Note
SRR boundaries plotted from coordinates contained in Appendix 2 of the IMO document "Maritime Search and Rescue Technical Arrangement for Cooperation Among Pacific Island Countries and Territories that Support International Shipping in the Pacific Ocean".
Map prepared 14 April 2016
AOLIA Reference: UN248355

Map Datum: WGS84
Coordinate Definition: GEOGRAPHIC
Map not to be used for navigation purposes.

Legend
--- Shared SRR - Australia and New Caledonia
--- SRR Boundary

3.2 Coastal States in the SCS *have differing legal obligations under international treaties relating to SAR operations*; Furthermore, the *current legal framework applicable to the SCS will not be sufficient* in supporting a SAR cooperation mechanism.

Eg, Philippines, Brunei, Malaysia, Thailand and Cambodia are not parties to *1979 SAR Convention*

3.3 Coastal States in the SCS have different setting of SAR agencies and *different capacities in providing SAR service*, which makes it difficult for them to collaborate in SAR operations.

Of the coastal States in the SCS, Singapore is the only developed country. Accordingly, a huge gap exists in the capacities of these coastal States in conducting SAR operations.

4. Prospects for Establishing a SAR Cooperation Mechanism in the SCS

4.1 Code of Conduct (COC)

- It is most likely that SAR issue will be included in the future COC.
- legally binding or not? Risk control mechanism or dispute settlement mechanism?

4.2 SCS Cooperation Council

- The current platforms are not effective in addressing this issue. Eg, ASEAN...
(--by Judge Zhiguo GAO)

4.3 Agreement on Cooperation on Aeronautical and Maritime SAR in the SCS?

- In this case, the *2011 Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic*, adopted under the auspice of Arctic Council, can be a good example.

Agreement on Cooperation on Aeronautical and Maritime SAR in the South China Sea?

□ Re-Delimitation of SAR Regions

- One principle: to the most extent render assistance to persons in distress at sea and **take the capacities of coastal States into consideration.**
- **Legal bases:** 1979 SAR Convention, Ch 2, Art 2.1.7, 2.1.8
 - (1) “2.1.8 Parties should **seek to promote consistency, ... between their maritime and aeronautical search and rescue services** while considering **the establishment of maritime search and rescue regions**”
 - (2) “The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States.”

- ❑ Request to Enter the Territory of a Party for Purposes of SAR Operations
- ❑ Cooperation among the Parties, including Exchange of Information on SAR operations, Joint SAR Exercise, and capability building
- ❑ Relationship with Non-Parties
- ❑ Funding
- ❑ Establishment of more *maritime SAR bases*
- ❑ The settlement of disputes through negotiations

As regulated in the 2011 Arctic Agreement, “*the Parties shall resolve any disputes concerning the application or interpretation of this Agreement through direct negotiations.*”

5. Conclusion

It is proposed that the coastal States of the SCS establish a regional SAR cooperation mechanism, possibly in the form of a regional treaty, as soon as possible. It is expected that in this way the assistance to the persons in distress can be rendered more effectively and efficiently.

