



Cooperative Research Report on Joint Development in the South China Sea: Incentives, Policies & Ways Forward

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Part I: Background and Significance

By **Xue Song** (China)

Joint development may be defined as an inter-governmental arrangement of a provisional nature between two or more countries, designed for functional purposes of joint exploration for and/or exploitation of onshore or offshore hydrocarbon resources. It is especially crucial in areas with overlapping or disputed claims or in areas where countries have not achieved agreement on delimitation^①.

The concept of joint development has been accepted as a provisional arrangement of a practical nature for countries with boundary disputes to manage their disagreements, without sacrificing their boundary claims. It is also encouraged by the United Nations Convention on the Law of the Sea (UNCLOS) to manage boundary dispute. Successful joint development creates a benevolent atmosphere for claimants to negotiate on delimitation issues, while allowing conflicting parties to reap economic benefits from the exploitation of natural resources at the same time.

Since the 1950s, more than twenty joint development agreements were signed worldwide. The Gulf of Thailand, in particular, has witnessed the successful implementation of several joint development agreements, to which many had yielded positive political and economic outcomes. These successes can serve as reference points for conflicting parties to co-manage tensions pending for the eventual settlement of disputes.

A good case in point is the South China Sea dispute, wherein claimants - Brunei, China, Malaysia, the Philippines, and Vietnam – have each used different interpretations of history and of the international laws to support their boundary claims. While peaceful negotiations or arbitration had previously been attempted, the boundary issue remains largely unresolved. The South China Sea continues to suffer from conflicts due to sensitive issues like the freedom of navigation operations and illegal fishing. If left unresolved, the lasting tension may inflict further damage to the mutual strategic trust in the region - putting peace, cooperation and development in peril.

^① This definition is adopted and revised based on the definition proposed by Miyoshi, see Masahiro Miyoshi, *Maritime Boundary Delimitation*. Ibru, 1999, p. 3.

Despite the competitive nature of the dispute, it is fortunate that all South China Sea claimants still share a similar vision of peace, development and cooperation. The claimant states are actively searching for solutions to their maritime disputes. Joint development may, therefore, be reconsidered by the South China Sea claimants as an ad-hoc arrangement to prevent potential conflicts and to promote a win-win situation.

In fact, joint development in the South China Sea is not without precedence. During the late 1980s, Chinese leader Deng Xiaoping once proposed to manage the South China Sea's problems by putting the disputes aside to prioritize joint development. In March 2005, national oil companies from China, the Philippines and Vietnam signed *A Tripartite Agreement for Joint Marine Scientific Research in Certain Areas in the South China Sea*. This marked a positive start for other claimants to follow. In November 2018, China and the Philippines signed a *Memorandum of Understanding on Cooperation on Oil and Gas Development*. Other claimant countries, including Vietnam, Thailand, Brunei and Malaysia, all have successful experience with joint development in disputed waters. The experience and lessons of commercialization between Malaysia, Vietnam and Thailand could be adopted for future joint development in the South China Sea.

In the spirit of joint development, some countries advocate the concept of cooperative development, which has a more elastic meaning than joint development. Cooperative development pertains to areas with or without boundary disputes. The subjects of cooperative development could be either states or companies and be implemented in consistency with one claimant state's laws. Cooperative development enables a broader framework for claimant countries to work together to exploit hydrocarbon resources.

Considering each claimant's familiarity with joint development, the drafting of ASEAN-China Code of Conduct (CoC), and the relatively calm maritime situation since 2017, there is much hope for the conducive rounds of joint development dialogues between the claimant states.

In this *Cooperative Research Report on Joint Development in the South China Sea: Incentives, Policies & Ways Forward*, eight authors from six countries (Brunei, China, Indonesia, Malaysia, the Philippines and Vietnam) will provide a comprehensive analysis on each coastal country's incentives and policies toward joint development in the South China Sea.

The *Cooperative Research Report* represents a consensus of eight scholars among coastal states in the South China Sea, including Brunei, China, Indonesia, Malaysia, the Philippines and Vietnam. The report is a fruitful result from the half-day panel discussion, titled “*Joint Development in the South China Sea*”, a roundtable of the 2019 Shanghai Forum held on 26th May 2019, at Fudan University. Through intensive discussion, the scholars agreed on the existence of several bottlenecks that have prevented joint development in the South China Sea from moving forward. A few practical policy suggestions have also been proposed by the participating scholars to deal with these bottlenecks. It is, thus, anticipated that this *Cooperative Research Report* could clear some misunderstandings and doubts concerning joint development, as well as shed light on creative ways to promote joint development in the South China Sea.

Part II: Incentives and policies of the coastal states in the SCS

Incentives and Policies for Joint Development in the SCS: Perspectives from Brunei Darussalam

By **Jolene H.Y. Liew** (Brunei)

As a small state constrained by its limited influence and resources, Brunei Darussalam may not be in its best capacity to propose any robust resolution to solve the SCS issue. That said, however, Brunei has always been supportive of any conciliatory arrangements that are favorable toward the long-term maintenance of peace and stability in the region. One way to reflect so is by examining the Sultanate's incentives and policies toward joint development in the SCS.

To date, Brunei has witnessed three ongoing cases of bilateral joint development/cooperation in the SCS with Malaysia, China, and Vietnam respectively. While established, Brunei's joint development/cooperation experiences with each country vary in pace and intensity, ranging broadly from the oil and gas industry to the fisheries industry.

Brunei's incentives to jointly develop resources in the SCS can be understood in two ways – economic and strategic. Economically, Brunei has been pushing hard to diversify its economy away from the oil and gas industry since the mid-1970s. Nevertheless, despite several development initiatives, results have not been particularly encouraging. Facing three compounding effects - unstable oil market, a slow foreign investment growth (especially in non-oil and gas sector) and a contracting national GDP - Brunei must be pragmatic to seize every appropriate opportunity available to reach its diversification goals. In this regard, joint development in the SCS forms an integral part of Brunei's wider economic diversification strategy.

Strategically, it is also in Brunei's interest to maintain friendly neighboring ties and foster deeper understanding and strategic trust with its neighboring “competitors”.^① Since the majority of the ASEAN claimants are also Brunei's top economic partners,

① Ministry of Foreign Affairs, Brunei Darussalam. “Foreign Policy”. Retrieved from: <http://www.mfa.gov.bn/Pages/Foreign%20Policy.aspx>

it would only be logical for Brunei to approach the maritime issue in a peaceful manner. As for China, although it is not an ASEAN member, its role in driving the region's economic growth is commendable. Also, being an Asian powerhouse, joint cooperation with China would present Brunei with the best opportunity to learn and understand more from its giant northern neighbor. After all, there is so much more to achieve together (rather than to fight one another for) – ASEAN Community Vision 2025, ASEAN-China Strategic Partnership 2030, and China's BRI – to name a few.

In relations to its strategy/policy toward joint development in the SCS, Brunei has long insisted on managing and solving the maritime issue “through *peaceful dialogue* and *consultations* by sovereign states *directly* concerned”.^① Brunei's low-key approach, often referred to as “quiet diplomacy”, is very much influenced by the Malay culture, which emphasizes greatly on consensus rather than dispute.

As a moderate Muslim state, Brunei firmly believes that by keeping the SCS issue to only a selected few, it can prevent the already complex maritime issue from deteriorating further, whilst allowing all parties concerned to “save face” at the same time – arguably an essential component of Asian politics. Ultimately, there exists a thin dividing line between “silent for the causes of war” and “silent for the causes of peace”. Brunei Darussalam (i.e. the abode of peace) is and will always be - as its name reads - an avid defender of the latter.

To reiterate in another circular way, policymakers in Brunei recognized that for complex geopolitical disputes like the SCS, greater cooperation beyond the confines of words and practice of self-restraint against unilateral action, are the two most effective techniques to calm the troubled waters down.

^① Ministry of Foreign Affairs, Brunei Darussalam. (2018). “Joint Statement Between Brunei Darussalam and the People's Republic of China”. Retrieved from: <http://mfa.gov.bn/Lists/Press%20Room/news.aspx?id=710>

Incentives and Policies for Joint Development in the SCS: Perspectives from China

By **Qi Huaigao** (China)

China is one of the earliest initiators of joint development among the South China Sea coastal states. The idea of joint development was proposed by Chinese leader, Deng Xiaoping, as a way to solve the Nansha (Spratly) Islands problems with the Philippines leaders in their June 1986 and April 1988 meetings.^①

Since 2017, the Chinese government has actively promoted joint development with other coastal states in the South China Sea. China and Vietnam, for instance, agreed to follow up on the inspection work carried out in the waters outside the mouth of the Beibu (Tonkin) Gulf, as stated on their joint statement in November 2017.^② China and the Philippines also signed a *Memorandum of Understanding on Cooperation on Oil and Gas Development* in November 2018.^③

There are both economic and strategic incentives behind China's push for joint development in the South China Sea. China's economic incentives include: the domestic demand for energy, the "21st Century Maritime Silk Road" construction, Hainan's pilot free trade zone construction, and the establishment of common markets with the coastal states of the South China Sea.

China's strategic incentives include: achieving its goal of becoming a leading maritime power, playing a constructive role in maintaining a peaceful and stable South China Sea, developing good relations with the coastal states, and mitigating the intensity of Sino-U.S. competition, particularly in the South China Sea.

China's policies toward joint development in the South China Sea are as follows.

First, the Chinese government regards joint development as a way to manage disputes in the South China Sea and foster a favorable environment for the final resolution of

① Chinese Ministry of Foreign Affairs. (2016). "China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea," http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1380615.shtml.

② Xinhua. (2017). "China, Vietnam Reach Consensus on Trade, Maritime Cooperation: Joint Statement," *Xinhua net*, Retrieved from: http://www.xinhuanet.com/english/2017-11/13/c_136749356.htm

③ Chinese Ministry of Foreign Affairs. (2018). "Memorandum of Understanding on Cooperation on Oil and Gas Development between the Government of the People's Republic of China and the Government of the Republic of the Philippines," Retrieved from: https://www.fmprc.gov.cn/nanhai/eng/zcfg_1/t1616644.htm

these disputes.^①

Second, joint development and cooperation between China and the state concerned shall be conducted in accordance with the respective national laws and regulations of both countries and international law, including the 1982 UNCLOS, and without prejudice to the respective positions of the two countries on sovereignty rights and jurisdiction.^②

Third, joint development is a provisional arrangement that conflicting states establish prior to the final settlement of maritime disputes, without prejudice to the final delimitation.^③

Fourth, the Chinese government is against any unilateral exploitation of resources in waters that have overlapping claims of maritime rights and interests. In July 2017, Chinese Foreign Minister Wang Yi stated unilateral exploitation in the overlapping waters will only complicate and escalate the maritime tension, leading to no exploitation by all parties.^④

Fifth, concerning the working mechanism of cooperation on oil and gas development between China and the Philippines, both governments will establish an Inter-Governmental Joint Steering Committee and one (or more) Inter-Entrepreneurial Working Group.^⑤

Sixth, in the process of negotiating for the oil and gas cooperation between China and the Philippines, China authorizes the China National Offshore Oil Corporation (CNOOC) as the Chinese representative for each Working Group.^⑥

① Chinese Ministry of Foreign Affairs. (2016). “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea”.

② Chinese Ministry of Foreign Affairs. (2017). “Joint Statement between the Government of the People's Republic of China and the Government of the Republic of the Philippines, Retrieved from: https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1511299.shtml

③ Chinese Ministry of Foreign Affairs. (2016). “China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea”.

④ Chinese Ministry of Foreign Affairs. (2017). “Chinese Foreign Minister and Philippine Foreign Secretary Talk About the Joint Exploitation of South China Sea,” Retrieved from: http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1480543.shtml

⑤ Chinese Ministry of Foreign Affairs. (2018). “Memorandum of Understanding on Cooperation on Oil and Gas Development between the Government of the People's Republic of China and the Government of the Republic of the Philippines”.

⑥ Chinese Ministry of Foreign Affairs. (2018). “Memorandum of Understanding on Cooperation on Oil and Gas Development between the Government of the People's Republic of China and the Government of the Republic of the Philippines”.

Incentives and Policies for Joint Development in the SCS: Perspectives from Indonesia

By **Evi Fitriani** (Indonesia)

Since it began several decades ago, the South China Sea disputes have attracted Indonesia's attention not only because of the sea's geographical proximity with the country's northern territory but also because of the impacts of the disputes on Southeast Asian region and the Association of Southeast Asian Nations (ASEAN). The disputes among five claimant states, namely China, Vietnam, the Philippines, Malaysia and Brunei –the last four claimants are the ASEAN member states, over a vast water area right at the center of Southeast Asia have created flashpoints, endangering the regional stability as well as economic development and friendly climate among neighboring countries in the region. As the biggest country in Southeast Asia and one of founding countries of the ASEAN, Indonesia have encouraged all conflicting parties to restraints from unilateral actions and the use of force and to turn the disputing sea into a cooperation area. Thus, Indonesia has long been the proponent of joint development in the South China Sea.

There are strategic and political incentives for Indonesia in promoting joint development in the South China Sea. Strategically, joint development in the disputing area would calm down the flashpoints in the region, one of the biggest security threats for Indonesia. It would also mitigate the potency of conflict escalation that can endanger Indonesian territory. Joint development could also serve as impetus for confidence building and development of strategic trust among disputing countries and, hopefully, can avoid the development of tension among contesting big powers in the region. As a strong promoter of stability in the region, Indonesia perceives those strategic incentives in line with its national interest. Politically, joint development could also provide incentives for Indonesia in several ways: promoting atmosphere of friendship and cooperation among the ASEAN countries as well as between the ASEAN countries and external countries, enhancing the ASEAN unity and solidarity, and reflecting confidence on Article 33 of the UNCLOS on “joint development and joint cooperation” -Indonesia was one of initiator of the convention in 1982.

Indonesia has carried out several policies toward joint development in the South China Sea. Firstly, as a non-claimant state, Indonesian encourages all disputing countries to take peaceful ways and friendly negotiation and turn the conflict area into

cooperation zone.^①

Secondly in 1990, Indonesia initiated annual informal South China Sea Workshop (SCSW) that involved not only government officials but also scholars and other relevant peoples from disputing countries.^② The purpose was to provide an open and friendly forum to manage the South China Sea disputes. This workshop has survived for 29 years and had produced cooperative spirit and important points that later became the main ideas and content of the ASEAN declarations on the South China Sea. As early as the second workshop in 1991, the SCSW has explored area of cooperation in the South China Sea. The workshop recommended cooperation to promote safety of navigation and communication, to coordinate search and rescue, to combat piracy and armed robbery, to promote the rational utilization of living resources, to protect and preserve marine environment, to conduct marine scientific research, and to eliminate illicit traffic in drugs in the South China Sea.^③

Third, Indonesia supports the efforts to seek peaceful solution on the South China Sea as one of substantial cooperation programs in the ASEAN Political and Security Community (APSC).^④ The Ministry of Foreign Affairs of Indonesia has strived to include the management of the disputes and joint development in the area as one of precondition to achieve security community in Southeast Asia.

Fourth, as the chair of the ASEAN in 2011, Indonesia managed to push all the ASEAN member states to agree upon the *Guidelines for the Implementation of Declaration on Conduct of Parties in the South China Sea* (DOC) in July 2011 and to start discussion on the elements of *regional code of conduct* (COC) in the South China Sea.^⑤

Fifth, Indonesia recommends that the South China Sea area has to be managed by all stake holders through joint development for the stability and prosperity of the region.^⑥ This policy is the result of the SCSW in 2018 in Manado, Indonesia.

In closing, Indonesia has strong incentives to encourage joint development and cooperation in the South China Sea that relevant to the country's and the ASEAN

① <https://kemlu.go.id/portal/id/read/101/view/laut-china-selatan>

② <https://kemlu.go.id/portal/id/read/101/view/laut-china-selatan>

③ Hasjim Djalal, "The South China Sea Issues and International Law", Papers presented at the Soochow University, Taipei, 14 April 2016.

④ <https://kemlu.go.id/portal/id/read/122/view/tentang-asean>

⑤ <https://kemlu.go.id/portal/id/read/120/view/capaian-keketuaan-indonesia-di-asean-tahun-2011>

⑥ <https://www.antaraneews.com/berita/747057/kemlu-lcs-harus-dikelola-melalui-kerja-sama-seluruh-pihak-berkepentingan>

interests. As early as 1990, Indonesia has initiated the SCSW, an annual informal meeting that has identified several areas of cooperation for the stake holders of the South China Sea. What we need now is political commitment and strategic trust of all parties to undertake the joint development and cooperation.

Incentives and Policies for Joint Development in the SCS: Perspectives from Malaysia

By **Ngeow Chow Bing** (Malaysia)

As of today, Malaysia has had four examples of maritime joint development. The first example is the Malaysia-Thai Joint Development Authority in the Gulf of Thailand. Malaysia and Thailand have an overlapping continental shelf claim area of around 7250 km square. Both countries signed an MOU in 1979 to lay down the principles of joint development. In 1990, the MOU was replaced by a formal government-to-government agreement, which established the Joint Development Authority as a bilateral organization, with detailed provisions on the representation, functions, powers, taxation, sharing of proceeds, and other aspects of the joint development. It is the first joint development project and a very successful one.

Malaysia's second joint development is with Vietnam. In 1992, both sides reached an MOU to designate their overlapping continental shelf claims (about 2000km square) as Commercial Arrangement Area (CAA). The CAA was developed by the respective national oil companies rather than managed directly by their respective governments. In this sense, the Malaysia-Vietnam joint development is commercially-driven, without direct governmental involvement. The CAA is adjacent to the Malaysia-Thai Joint Development area, right next to the Gulf of Thailand and the western edge of the SCS.

Malaysia established its third joint development with Brunei during an Exchange of Letters between the two countries leaders in 2009. Malaysia's 1979 map positioned Malaysia's maritime boundaries as enclosing those of Brunei's, which later became the source of contention between Brunei and Malaysia. The Exchange of Letters settled the maritime dispute between both countries and designated two oil blocks outside the territorial seas of Brunei as Commercial Arrangement Area (CAA). The CAA between Brunei and Malaysia is also co-managed by their respective national oil companies. In this respect, Malaysia-Brunei joint development followed the Malaysia-Vietnam model.

The last concerns a Fisheries MOU between Malaysia and Indonesia. Technically, the MOU is not a joint development per se, but a kind of quasi-joint exploitation of fisheries resources. The dispute between Malaysia and Indonesia occurs in the Strait of Malacca, with an overlapping claim area of about 14,300km square. This particular

overlapping area is rich in fisheries resources, and so, it is not uncommon to hear both governments chasing away fishing vessels of the other side in the disputed area. Indonesia, however, has been more assertive as it has arrested Malaysian fishermen and detained fishing vessels. The 2012 MOU signed by both countries stipulates that the respective law enforcement authorities will no longer arrest and detain (but chasing works still occur), effectively creating a common fisheries area in the disputed zone.

These four cases show that Malaysia is not averse to joint development. Economic exploitation clearly plays an important role in Malaysia's decisions to support joint development. Another major incentive would be to maintain good neighborly ties with its maritime neighbors. However, this does not mean Malaysia will simply accept any form of joint development proposal. Establishing what constitutes the disputed area and what has been the basis of such a dispute are important. All boundary disputes between Malaysia and its immediate ASEAN neighbors arise from differences over the application of the same set of international maritime laws. But in the case of the SCS, it could be problematic because China's claim is based on legal principles that are different from those of Malaysia.

Nevertheless, this does not mean that Malaysia will completely rule out joint development in the SCS. A "Commercial Arrangement Area" run by national oil companies seems to be the preferred model. Perhaps, several "Commercial Arrangement Areas" (bilateral or even trilateral), serving the purpose of joint development can be negotiated within the SCS.

Incentives and Policies for Joint Exploration in the SCS: Perspectives from the Philippines

By **Aaron Jed Rabena** (the Philippines)

The South China Sea (SCS) disputes is a major irritant in the Philippines-China relations. Philippine policy or attitude towards Joint Exploration (JE) in the SCS varies and depends on the China policy of the sitting government. For example, ever since the idea of JE was brought up in the 1980s by the Chinese leader Deng Xiaoping, the last time a clear effort on the same was made was during the time of then President Gloria Macapagal-Arroyo (GMA), which resulted in a trilateral Joint Marine and Seismic Undertaking (JMSU) between China, the Philippines, and Vietnam. The successor of GMA, Benigno Aquino III, never entertained the idea of JE with China, but instead, openly and legally challenged China's claims for most of his term by going to an international tribunal for arbitration. But even when President Duterte was only a presidential candidate campaigning in 2016, he had already offered to do JE with China.^①

There are certain reasons or incentives for why President Duterte wants to pursue JE with China: to avoid armed/unarmed confrontation with China, to ease regional geopolitical tensions, to engage in conflict management, and to pursue preventive and economic diplomacy.^② Furthermore, with additional sources of energy, inflation can be tamed as prices of oil decrease. The signed MOU on Oil and Gas Development signals the current policy tone and legal preference of the Duterte Administration on JE in the SCS.

The Philippines lacks the capital and proper technology to extract hydrocarbon resources, which makes the presence of a foreign partner crucial. Moreover, the Philippines' Luzon Island's major source of oil will soon be depleted. According to the Philippine Department of Energy (DOE), the country's primary source of liquefied natural gas (LNG), the Malampaya gas field, which supplies around 50 percent of Luzon's island energy requirements, is expected to be depleted by 2027.

While the Philippines under the President Duterte government are supportive towards

① Pia Ranada. (2018). "Oil is everything" – Duterte's rhetoric on West PH Sea joint exploration," Rappler.

Retrieved from:

<https://www.rappler.com/newsbreak/iq/216586-duterte-rhetoric-west-philippine-sea-joint-exploration>

② Aaron Rabena. (2018). "Duterte's push for joint exploration in the South China Sea," The Strategist, January 31, 2018. Retrieved from: <https://www.aspistrategist.org.au/dutertes-push-joint-exploration-south-china-sea/>

a JE with China, the rollout is not without challenges. Presently, there are at least three challenges for Manila that must be overcome before the Philippines-China joint development comes to fruition.

First, to many Filipinos, China continues to be perceived as an unpopular partner. In a recent survey by the Social Weather Stations (SWS), only 40 percent of Filipinos believe that China has good intentions for the Philippines. From another survey, 71 percent of Filipinos urges the Duterte government to defend Philippine maritime claims by taking the issue to international institutions such as the UN and ASEAN. On the contrary, traditional partners such as the US and Japan are seen as more favorably.

Second, the Philippines is also facing domestic and international legal impediments in pushing a successful JE with China. Domestically, the 1987 Philippine Constitution provides that when it comes to exploration, development, and utilization of Philippine national resources, 60 percent of net profits should go to Filipinos and only 40 percent to foreign partners. Internationally, the PCA Ruling is also important to consider because it ruled that China's 9-dash-line and historic claims are invalid under UNCLOS and that certain maritime features such as Reed Bank are well-within the Philippine Exclusive Economic Zone.

Third, the legal question of who will secure the area in the event of JE implementation (actual exploration and development of resources) remains an open question as joint securing of the extraction zone could mean that the Philippines does not have "exclusive" and "full control" over its resources.

Vietnam's Policies and Laws for Joint Development in the South China Sea

By **Bui Thi Thu Hien (Vietnam)**

Vietnam is a neighboring country in the SCS with a long coastline and many islands. The economic structure of Vietnam depends on the ocean, the Communist Party of Vietnam (CPV), and Vietnamese Government, which attach great importance to the policies of ocean protection, management and development. Though the Vietnamese Government is in favor of joint development, it has not developed a single policy for it. Under the guidance of the CPV, the relevant laws and regulations reflect Vietnam's encouragement and support for joint development.

The guiding policy of the CPV

During its 8th Plenum, the 12th Party Central Committee passed *Resolution 36/NQ-TW*^① on "Strategy for the sustainable development of Vietnam's marine economy until 2030, with a vision until 2045," as part of the country's goal to become a powerful maritime state with a sustainable developed economy. Under this resolution, Vietnam will proactively practice a marine ecological culture by adapting to climate change; precluding pollution and degradation of the marine environment, coastal landslide and erosion; and restoring and conserving endangered marine ecosystems. The achievements of modern science and technology will act as the direct factor in boosting the sustainable development of Vietnam's marine economy.

Vietnamese laws

The Article 6 "International cooperation on maritime matters" of the *Law of the Sea of Vietnam* (2012) stipulates that:

The State of Vietnam strongly promotes international cooperation on maritime matters with countries and regional and international organizations on the basis of international law and respect for independence, sovereignty and territorial integrity, equality and mutual benefit.

International cooperation on maritime matters includes: maritime and oceanic surveys

① The Resolution on the strategy for the sustainable development of Viet Nams marine economy by 2030, with a vision to 2045 (Resolution No. 36-NQ/TW), signed by General Secretary Nguyen Phu Trong of the Communist Party of Viet Nam Central Committee on October 22, 2018.

and researches; scientific, technical and technological applications; climate change response, natural disaster prevention, control and warning; protection of marine biodiversity and ecology; prevention and combat against marine environmental pollution, treatment of waste discharged from maritime economic activities, and response to oil spill incidents; search and rescue at sea; prevention and combat against crimes at sea; sustainable exploitation of marine resources and development of sea tourism.^①

In addition to the *Law of the Sea*, the *Petroleum Law* (Article 3, No. 12), the *Navigation Law*, *Fisheries Law*, the *Law on Natural Resources and Environment of Sea and Islands* (Article 4, No. 5), the *Tourism Law*, and the *Mineral Law* all reflect the spirit of encouraging international cooperation.

Government Regulations

According to the Vietnam Investment Law, provincial governments, especially those in the coastal areas, have also promulgated policies to encourage and attract foreign investment. For example, Quang Ninh Province has introduced regulations to encourage foreign investment in the tourism industry and Haiphong encourages foreign investment in the construction of seaports.

In short, under the guidance of CPV, the national government and local governments have paid attention to the international cooperation of marine development. As a neighboring country in the SCS, Vietnam supports and attaches great importance to marine joint development.

^① According to the *Law on Natural Resources and Environment of Sea and Islands* (Article 4 & 19, No. 5) and the *Petroleum Law* (Article 3, No. 12), Vietnam cooperates with foreign enterprises on Oil and Gas Development.

Part III: Policy Recommendations: Clearing Bottlenecks for Joint Development

By **Qi Huaigao** (China), **Xue Song** (China), **Jolene H.Y. Liew** (Brunei), **Evi Fitriani** (Indonesia), **Ngeow Chow Bing** (Malaysia), **Aaron Jed Rabena** (Philippines), **Bui Thi Thu Hien** (Vietnam), **Hong Nong** (China)

Given the challenges faced by the South China Sea coastal states, below are eight policy recommendations proposed by the eight authors from six countries based on consensus.

1. **Foster deeper mutual understanding.** Reaching agreements that are acceptable to all conflicting states require extraordinary compromises so claimants can adjust their positions in a manner that is consistent with their interpretations of both domestic and international laws. Doing so will require conflicting states to have a greater understanding of each other. Mutual understanding will help conflicting states strengthen their bonds with one another, and refrain them from taking any unilateral actions that are detrimental to the SCS's peace and stability.
2. **Improve Strategic Communications.** China needs to take into account the strong voice that it has to express before its domestic audience and its implications on external audiences (especially on smaller countries). China should understand that due to its large size and status as a great power, even the slightest shift in movement is enough to trigger fear among the smaller ASEAN claimants. ASEAN claimants should also refrain from their provocative statements and movements, which may result in strategic misunderstanding.
3. **Finalize the ASEAN-China Code of Conduct (CoC).** Deciding on a set of binding rules to regulate each country's actions in the SCS is conducive to creating benign bilateral relations, which serves as a prerequisite to joint development. If the finalization of the CoC is prolonged, this will only extend, if not increase the possibility of instability and uncertainty in the South China Sea.
4. **Start joint development in areas with only two claimants.** Presently, it is found that not all claimants have successfully conducted joint development yet. Those without one should work their way towards one. Realistically, claimants should start in areas that involve only two parties. A bilateral joint development has proven a much easier recourse insomuch that the maritime dispute is bilateral in

nature. Some promising areas for bilateral joint development include: outside the mouth of the Beibu (Tonkin) Gulf (claimed only by China and Vietnam), the Reed Bank (claimed only by China and the Philippines).

5. **Strengthen existing joint development models.** In some cases, joint development/cooperation between two (or more) conflicting parties have already been established, but lack major breakthroughs. In this regard, since platforms have already been established for claimant states to work on, claimants should make use of these existing cooperative platforms to co-manage maritime resources in mutually beneficial ways.
6. **Focus on less-sensitive areas of the South China Sea.** Since not all countries are ready to co-develop oil and gas resources in their EEZs, claimants could consider cooperating in less-sensitive areas of the South China Sea as starters. At present, marine research in the SCS remains at a very low, if not non-existent stage.

Claimants in the SCS can consider launching joint marine scientific research in the region as a form of pure environmental cooperation. Since cooperation in less-sensitive areas is not aimed at political nor economic interests, multilateral cooperation agreements should be easier to reach. Also, because cooperation would be on maritime sustainability – an increasingly prioritized policy area given the rising environmental problems today – this could enhance positive and responsible image of the partnering countries; in turn, laying a good foundation for future joint development in high-sensitive areas like the exploration and exploitation of oil and gas in the SCS.

The SCS coastal states could start with creating a fisheries agreement and mechanism for marine environmental protection. Illegal fishing is a common problem faced by the coastal countries in the SCS. In many situations, illegal fishing activities have damaged the marine habitats and coral reefs in the SCS. Establishing fisheries management areas and setting fishery quotas will allow states to make up for the reputational costs accrued due to their actions and also ensure the sustainability of marine resources in the SCS. Aquaculture (farmed fish), for instance, is a creative way to solve the fishing problems in the SCS.

The SCS coastal states may consider throwing open the entire South China Sea to traditional fishermen of all the littoral states. An authority or just an ad hoc body may be established to devise basic rules as to what constitutes traditional

fisheries and acceptable practices. Each claimant state may exercise jurisdiction over their relevant water area while allowing unimpeded passage for traditional / artisanal (not commercial) fisherfolks from the other coastal countries to fish in their own AND each-others' waters.

7. **Continue the positive trend of maritime security cooperation through various institutions.** In addition to the increasing strategic assertiveness and defence modernization that are creating strategic mistrust between the claimant states in the South China Sea, the perceived power and strategic competition between China and the United States in the region further complicate the existing regional tensions and distrust. Though joint development in the South China Sea has just not been a topic of comment or stand-alone statement or joint statement by the U.S. government, the U.S. further engagement and interference in the South China Sea affairs in the name of “freedom of navigation” will continue to prevail, which remains an uncertainty for a sound regional political environment crucial for the implementation of joint development. The claimants, while respecting the legitimate interests of the external countries in the South China Sea and ensuring the foreign energy companies’ lawful participation in energy exploration and exploitation in the region, shall foster deeper mutual understanding, and continue the positive trend of maritime security cooperation through various institutions, e.g. ASEAN-China Dialogue, China-ASEAN Maritime Cooperation Fund, the Belt and Road Initiative and South China Sea Workshop (SCSW). The ASEAN Political and Security Community (APSC) is also recommended as one of substantial cooperation programs to seek peaceful solution on the South China Sea.

8. **Discuss the feasibility of setting up a Spratly Resources Management Authority (SMRA).** An institution named “The Spratly Resources Management Authority” (SMRA) can be set up to co-manage resources in the sea of the Nansha Qundao (the Spratly Islands) in the future. The proposed SMRA will include: a Council of Ministers, a Secretary-General, a Secretariat, and six sub-commissions. A possible organizational structure of the SMRA is displayed in figure 1 below.

In regards to rights, the SMRA will be authorized to: design independent plans for the exploration of oil and gas in the Spratly Islands; decide the distribution quota of oil and gas development in the sea of the Spratly Islands for member states; establish a unified technical standard for states’ energy trade; levy taxes,

collect loans, and grant funds for the oil and gas development; and impose penalties upon those enterprises that evade their pre-agreed obligations.

The decision making process of the SMRA should be made through unanimity, consensus, weighted voting or perhaps, a mix of the aforementioned methods. Decisions can be taken by a simple majority, a two-third or three-quarter majority, with or without equal or special veto powers.

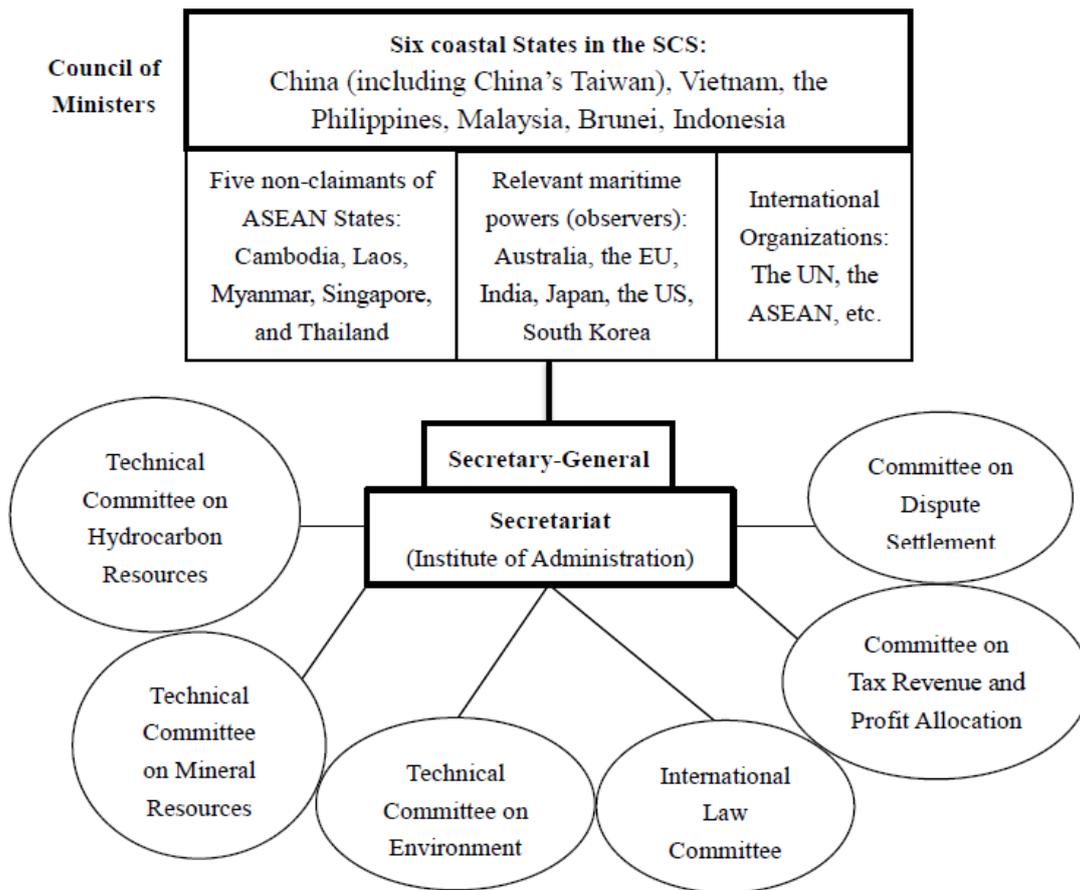


Figure 1: A possible organizational structure of the SMRA

Conclusion

To conclude, notwithstanding the challenges of reaching joint development in the South China Sea, the concept itself remains an attractive and durable template to peace. After all, joint development has proven to be quite the only realistic formula available that could reduce tension and boost diplomatic relations between the ASEAN claimant states and China. But, negotiating for joint development is never easy. It requires extraordinary amounts of sincerity, compromises, political will and goodwill from all claimant countries. Every claimant should, therefore, give joint development a chance to play its value-added role in helping claimants reach consensus with one another on disputed waters. Ultimately, increasing trends of cooperation and development should be the goal of an increasingly interconnected maritime East Asia.

Group photos



Group photo of the roundtable “Creative Thinking and Practical Policies of Joint Development in the South China Sea” (26 May 2019)



Group photo of cooperative research report release at Shanghai Forum 2019 closing ceremony (27 May 2019)

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