Functional Cooperation in the South China Sea
Roundtable on “Functional Cooperation in the South China Sea” at Myanmar Institute of Strategic and International Studies (Myanmar ISIS) 3-4 July 2014 Yangon, Myanmar
The South China Sea issues have cast a cloud over ASEAN-China relations and created tensions in the region, which could open the way to more involvement of outside powers and the internationalization of a regional dispute.

Efforts have to be exerted by all well-meaning parties to de-escalate and de-politicize the issues in order to prevent the area from becoming a new international flashpoint.

The Roundtable on Functional Cooperation in the South China Sea held in Yangon, Myanmar on 3 July 2014 was an attempt to bring together personalities from claimant states, academic experts, as well as economic practitioners to exchange views and continue a dialogue on alternative approaches to foster better understanding and mutually beneficial cooperation in the South China Sea.

The importance of the vast South China Sea, which covers an area of 2,590,000 square kilometres, is manifest to all. It contains some of the world’s most important shipping lanes with more than half of the world’s shipping tonnage and over 117,000 vessels sailing through it every year, with estimated oil reserves of 11 billion barrels and 190 trillion cubic feet of natural gas, in addition to other marine and fishery resources.

The current transport and connectivity importance of the South China Sea, and the potentialities of its vast natural resources, can either be a source of friction or a platform on which to build cooperation.

In addition to providing accurate factual information and examples of best practices, it is to be hoped that the Roundtable held in Yangon will serve to foster trust and confidence so that functional cooperation in areas such as fisheries, oil and gas exploration, disaster relief and environmental protection can be pursued among interested parties and the benefits reaped from “low-hanging fruits” in parallel with formal states negotiation on maritime boundary demarcation and consultations on a code of conduct.

I would like to thank the Myanmar Institute of Strategic and International Studies (M-ISIS) for the cooperation extended to the Asian Peace and Reconciliation Council (APRC) and the Saranrom Institute of Foreign Affairs Foundation (SIFAF) in organizing the Roundtable in Yangon, which was especially appropriate since Myanmar is the current Chair of ASEAN.

I would also like in particular to thank senior members of the APRC, namely, His Excellency José Ramos-Horta, former President of Timor-Leste, His Excellency Tan Sri Dato’ Seri Syed Hamid Albar, former Foreign Minister of Malaysia, and His Excellency Mr. Li Zhaoxing, former Foreign Minister of China for their valuable presence and contributions at the Roundtable. I wish to express our appreciation for all the speakers and their valuable presentations.

The APRC delegation was also accorded the honour of a courtesy call on His Excellency U Thein Sein, President of the Republic of the Union of Myanmar, in Nay Pyi Taw on 4 July 2014. The main conclusions of the Roundtable were presented to the President, and it was indeed gratifying that he very kindly endorsed them.

Although the Roundtable was held under Chatham House rules, this booklet is an attempt to compile the main points raised, on a non-attributable basis, as well as the presentations made by academic experts and practitioners of joint development projects. It is hoped that the booklet will add to the store of knowledge on the South China Sea and facilitate further understanding and cooperation in the future.
U Nyunt Maung Shein
Chairman of Myanmar Institute of Strategic and International Studies

Myanmar Institute of Strategic and International Studies (Myanmar-ISIS) is proud to jointly organize with the Asian Peace and Reconciliation Council (APRC) and the Saranrom Institute of Foreign Affairs Foundation (SIFAF) a roundtable on “Functional Cooperation in the South China Sea” at the Myanmar ISIS conference room in Yangon on 3 July 2014.

The South China Sea disputes have been major concerns of the countries in the region and the international community as a whole. Myanmar has cordial relations with all the claimants involved in the South China Sea disputes. Myanmar wishes to see the disputes resolved peacefully in a manner which would be fair and just to the claimants. Myanmar, as incumbent ASEAN Chair, takes every opportunity to facilitate meetings between the claimants. The roundtable, held in closed session, was one such event. The roundtable did not attempt to find solutions to sovereignty and territorial issues, which are very complex. Rather, it attempted to explore prospects for functional cooperation in any one area or more between or among the claimants for mutual benefit or for the benefit of all involved pending the solutions on sovereignty and territorial issues.

The concept of functional cooperation is not new. Both the Declaration on the Conduct of Parties in the South China Sea (DOC), signed by ASEAN and China on 4 November 2002, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which all the claimants are parties to, provide for functional cooperation.

Very eminent statesmen of our region contributed their invaluable knowledge and wisdom at the roundtable to help explore the possibilities of functional cooperation in the South China Sea. Several prominent experts presented their studies and suggestions regarding the matter.

The South China Sea is big enough for all the countries along its coasts to peacefully co-exist. The South China Sea has both living and fossil resources for all these countries to enjoy fairly in accordance with the principles of international law and 1982 UNCLOS.

It is an ardent wish of the three co-organizers that the claimants are able to identify common ground in any area(s) of common interest on possible functional cooperation in the South China Sea. Any functional cooperation among them will not only benefit the peoples concerned but could decrease the tensions already there or reduce the potential risks to further escalation of tensions. Myanmar-ISIS wishes them good luck!

U Nyunt Maung Shein
Chairman
Myanmar Institute of Strategic and International Studies

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Programme

Day 1: 2 July 2014

19.30 Welcoming Dinner hosted by Myanmar ISIS
Venue: Inya Room, Hotel Sedona (11th Floor)

Day 2: 3 July 2014

09.00 Welcoming Statement by H.E. U Thant Kyaw, Deputy Minister for Foreign Affairs of Myanmar
Venue: Myanmar ISIS

09.15 Welcoming Remarks by U Nyunt Maung Shein, Chairman of Myanmar ISIS

09.25 Introductory Remarks by H.E. Professor Dr. Surakiart Sathirathai, Chairman of the APRC, former Deputy Prime Minister and Minister of Foreign Affairs of Thailand

09.35 Remarks by H.E. Mr. Li Zhaoxing, APRC Council Member, former Minister of Foreign Affairs of China

09.45 Comments by other APRC Council Members

10.45 Group photo session
Coffee Break

11.00 Moderator: H.E. U Khin Maung Win, former Deputy Minister for Foreign Affairs of Myanmar
Presentation by Dr. Mark J. Valencia, Maritime Policy Analyst, Kaneohe, Hawaii, on “Joint Development Possibilities in the South China Sea: What, Where, By Whom and How?”
11.30 Discussion and Q & A on the presentation

12.30 Luncheon
Venue: The Padonmar Restaurant

14.30 Presentations by
1. Datuk Rosli bin Boni, Chief Executive Officer, Malaysia-Thailand Joint Development Authority (MTJDA)
2. Dr. Nuntasak Chenboonthai, Deputy Chief Executive Officer, Malaysia-Thailand Joint Development Authority (MTJDA)
3. Mr. Kanok Intharawijitr, Senior Vice President, Myanmar Asset; seconded as General Manager, PTT Exploration and Production (PTTEP) International Limited, Myanmar
4. Dr. Vasco Becker-Weinberg, Legal Adviser to the Secretary of State of the Sea of the Portuguese Government, on “Joint Development of Hydrocarbon Deposits in the Law of the Sea”

16.45 Discussion and Q & A on the presentations

17.45 Conclusion of the Roundtable

20.00 Dinner hosted by APRC and SIFAF
Venue: Mingalar Hall, Kandawgyi Palace Hotel

Day 3: 4 July 2014

11.00 Courtesy Call by APRC Delegation on H.E. U Thein Sein, President of the Republic of the Union of Myanmar, the Presidential Office, Nay Pyi Taw

Roundtable on “Functional Cooperation in the South China Sea”
3 - 4 July 2014, Yangon, Myanmar
organised by Saranrom Institute of Foreign Affairs Foundation (SIFAF), Asian Peace and Reconciliation Council (APRC) and Myanmar Institute of Strategic and International Studies (Myanmar ISIS)

List of Participants

APRC (Asian Peace and Reconciliation Council)
1. H.E. Professor Dr. Surakiart Sathirathai, Chairman
2. H.E. José Ramos-Horta, Vice-Chairman
3. H.E. Li Zhaoxing, Council Member
4. H.E. Tan Sri Dato’ Seri Syed Hamid Albar, Council Member
5. H.E. Mr. Weerasak Kowsurat, Council Member
6. Dr. Sorajak Kasemsuvan, Council Member
7. Mr. Juha Christensen, Academic Adviser to the Chairman of APRC
8. Mr. Virasakdi Futrakul, Council Member
9. Dr. Kobsak Chutikul, Secretary-General

Myanmar ISIS (Myanmar Institute of Strategic and International Studies)
1. U Nyunt Maung Shein, Chairman
2. U Khin Maung Lynn, Joint Secretary-1
3. U Ba Hla Aye, Joint Secretary-2 and Director of Strategic and Policy Studies Department
4. Daw Than Than Htay, Member
5. Daw Maran Ja Tung, Member
6. Dr. Chaw Chaw Sein, Member
### SIFAF (Saranrom Institute of Foreign Affairs Foundation)

1. Dr. Thana Duangrat, Director and Committee Member of Saranrom Institute of Foreign Affairs (SIFA)
2. Professor Dr. Likhit Dhiravegin, Committee Member of SIFA
3. Professor Dr. Chaivat Khamchoo, Committee Member of SIFA

### Myanmar

1. H.E. U Thant Kyaw, Deputy Foreign Minister
2. H.E. U Khin Maung Win, former Deputy Foreign Minister
3. U Aye Lwin, former Director-General of ASEAN Department of Ministry of Foreign Affairs
4. U Wynn Lwin, former Ambassador and Myanmar ISIS Senior Member
5. U Kyaw Tint Swe, former Ambassador
6. U Thaung Tun, former Ambassador and Myanmar ISIS Advisor
7. Dr. Khin Maung Nyunt, Myanmar ISIS Senior Member
8. Professor Kyi Kyi Hla, Myanmar ISIS Senior Member
9. U Denzil Abel, Myanmar ISIS Senior Member

### China

1. Mrs. Jianwei Li, Director, Research Center for Maritime Economy, National Institute for South China Sea Studies

### Indonesia

1. Professor Dr. Hasjim Djalal, Senior Advisor to the Minister for Maritime Affairs and Fisheries

### Malaysia

1. Dr. Tang Siew Mun, Director (Foreign Policy and Securities Studies), the Malaysian Institute of Strategic and International Studies (ISIS Malaysia)

### Philippines

1. The Hon. Mr. Raphael Lotilla, former Secretary of Energy
2. Professor Aileen San Pablo Baviera, Editor-in-Chief, Journal of Asian Politics and Policy

### Vietnam

1. Professor Nguyen Van Chinh, Deputy Director of the Center for Asian and Pacific Studies, Vietnam National University

### Experts

1. Dr. Mark J. Valencia, Maritime Policy Analyst, Hawaii
2. Dr. Vasco Becker-Weinberg, Legal Adviser to the Secretary of State of the Sea, Portugal
3. Datuk Rosli bin Boni, Chief Executive Officer, Malaysia-Thailand Joint Development Authority (MTJA)
4. Dr. Nuntasak Chenboonthai, Deputy Chief Executive Officer, Malaysia-Thailand Joint Development Authority (MTJA)
5. Mr. Kanok Intharawijitr, Senior Vice President, Myanmar Asset; seconded as General Manager, PTT Exploration and Production (PTTEP) International Limited, Myanmar

### Accompanying Persons

1. Mr. Zhou Xinzheh, Deputy Secretary-General of the China Association for International Friendly Contact (CAIFC)
2. Mr. Wang Yu, Assistant to the President of CAIFC
3. Mr. Li Chun, Director of Department of Asian Affairs of CAIFC
4. Mr. Luo Li, Staff of Department of Asian Affairs of CAIFC
5. Ms. Jiang Juan, Assistant to H.E. Li Zhaoxing
6. Mr. Suresh Kumar, Assistant to H.E. Tan Sri Dato’ Seri Syed Hamid Albar
7. Mr. Cassiano Da Costa Oliveira, Assistant to H.E. José Ramos-Horta
8. Mr. Sidonio Correia Freetas, Assistant to H.E. José Ramos-Horta

APRC Secretariat Staff
1. Ms. Duangkaew Noppornprom
2. Ms. Panrawee Meesupya
3. Mr. Satta Chairasmisak
4. Mr. Nuttachai Na Lampang
5. Mr. Itsaraphan Chawankul
6. Ms. Surachanee Sriyai
Welcoming Statement by
Deputy Foreign Minister U Thant Kyaw

H.E. Dr. Surakiart Sathirathai, Chairman of Asian Peace and Reconciliation Council, and President of Saranrom Institute of Foreign Affairs Foundation

Esteemed Members of APRC and SIFAF, Distinguished Participants, Ladies and Gentlemen,

Mingalaba. Auspiciousness to you all.

At the outset, I would like to welcome to Myanmar esteemed Chairman and members of APRC and SIFAF and distinguished participants from abroad.

I would further like to thank H.E. Dr. Surakiart Sathirathai and fellow members of APRC and SIFAF for gracing this event with their presence which testifies to the importance of the subject to be deliberated.

I would like also to thank APRC, SIFAF, and Myanmar ISIS for jointly organizing this important event. I wish you all an enjoyable stay in Myanmar.

The South China Sea disputes have been major concerns of the countries in the region and the international community as a whole. Myanmar has cordial relations with all the competing claimants involved.

Myanmar wishes to see the competing claims resolved peacefully in a manner which would be fair and just to the parties concerned. Myanmar, as incumbent ASEAN Chair, would like to take every opportunity to facilitate meetings between and among the claimants.

This roundtable in one such event. Sovereignty and territorial issues related to the South China Sea are very complex. This roundtable will not attempt to find solutions to any of these sovereignty and territorial issues. Rather, the purpose of this roundtable is to try to explore prospects for functional cooperation between or among the claimants in any one or more individual areas of contention. The purpose in to establish the groundwork leading to the mutual benefit or the benefit of all involved.

The concept of functional cooperation is not new. Both the Declaration on the Conduct of Parties in the South China Sea (DOC), signed by ASEA and China on 4 November 2003, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), to which all the claimants are parties, provide for such cooperation.

The DOC sets out a number of confidence-building measures and also provides for the possibility of exploring and undertaking cooperative activities pending settlement of the disputes. Article 6 of the DOC listed the following areas for possible cooperation:

- marine environmental protection;
- marine scientific research;
- safety of navigation and communication at sea;
- search and rescue operation; and
- combating transnational crime.

The South China Sea can be categorized as a semi-enclosed sea as defined in Article 122 of UNCLOS. Article 123 “Co-operation of States bordering enclosed or semi-enclosed seas” of UNCLOS, states that “States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organisation:

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;
d) To invite, as appropriate, other interested States or international
organisations to cooperate with them in furtherance of the provision of this article."

Very eminent statesmen of our region are present here despite their busy schedules to pool their knowledge and wisdom to help explore the possibilities of functional cooperation in the South China Sea.

Experts from all the countries involved in the South China Sea disputes are also here to present their views and study the ideas and suggestions regarding the matter.

This roundtable is a TRACK II event and, therefore, candid and constructive discussions and suggestions are going to be heard.

Whatever suggestions are put on the table, it is the sovereign prerogative of the claimant concerned to make the final decision.

I wish this roundtable the best of luck in its deliberations.

Thank you for your kind attention.
and SIFAF also would like to jointly organize with Myanmar ISIS a roundtable in Myanmar which could be beneficial for the claimant countries. This roundtable, a Track II event, is the product and I would like to express my sincere thanks to the co-organizers APRC and SIFAF.

As the title of this Roundtable depicts, we are going to explore possibilities of functional cooperation between or among the claimants pending the solution of sovereignty and territorial issues. It is an ardent wish of the three co-organizers that suggestions on possible functional cooperation to be made deserve serious consideration by the claimants. Any functional cooperation between or among the claimants which could be achieved as a result of this Roundtable will not only benefit the peoples concerned but could decrease the tensions already there or reduce the potential risks to further escalation of tensions.

The South China Sea is big enough for all the countries along its coasts to peacefully co-exist. The South China Sea has both living and fossil resources for all these countries to enjoy fairly in accordance with the principles of international law and 1982 UNCLOS. Myanmar, as a friend of China and all fellow ASEAN claimant States as well as an incumbent ASEAN Chair, will contribute to that effect.

I join the Deputy Minister in wishing this Roundtable every success.

Thank you for your kind attention.

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Introductory Remarks by
H.E.Professor Dr. Surakiart Sathirathai
Chairman of the Asian Peace and Reconciliation Council (APRC)
Former Deputy Prime Minister and Minister of Foreign Affairs of Thailand

Honorable APRC Council Members,
Your Excellency Deputy Foreign Minister U Thant Kyaw,
Chairman U Nyunt Maung Sein,
Distinguished participants,

On behalf of the APRC and SIFAF, I would like to express our heartfelt thanks and deep appreciation to Myanmar-ISIS for helping to make possible this Roundtable on Functional Cooperation in the South China Sea.

The statements by His Excellency Deputy Foreign Minister U Thant Kyaw -- and the welcoming remarks by U Nyunt Maung Sein, Chairman of Myanmar-ISIS, clearly indicate that the South China Sea is currently an issue that has wide-ranging implications for the peace, security and prosperity of this region, indeed for the international community as a whole.

The historical, geographical and legal dimensions, which intersect with multiple and overlapping boundary claims, make the South China Sea a sensitive potential international flashpoint.

It threatens to cast a long shadow over China-ASEAN relations, and could serve as an excuse for involvement of powers from outside the region, creating a new ‘international situation’ of permanent tension and even strife. This is something we should avoid at all costs.
Despite being a non-claimant state, but as the current Chairman of ASEAN, Myanmar bears a special responsibility to help address the issue and prevent the escalation of such implications. Likewise, although a non-claimant state, Thailand also bears a responsibility as current coordinator of the ASEAN-China dialogue to help ensure that the South China Sea issues do not disrupt the mutually beneficial relations and understanding that ASEAN enjoys with China.

ASEAN, China and friends in and outside the region, too, have the responsibility to ensure that tension or armed conflict will not take place nor bear adverse impacts on the implementation of the ASEAN Economic Community and hinder the free flow of goods, services, capital and investment, and skilled labour. Tension in the South China Sea will certainly affect the business community's confidence inside and outside the ASEAN region on the emerging Regional Comprehensive Economic Partnership (RCEP), the world's would-be largest free trade area, encompassing 16 countries: ASEAN, China, Japan, South Korea, India, Australia and New Zealand.

It is gratifying, therefore, that gathered at this Roundtable today are a group of men and women of goodwill from all the claimant states, together with former senior policy-makers, well-respected academics, recognized experts from outside the region, as well as practitioners in the field of functional cooperation. The diverse and comprehensive composition of this Roundtable indeed makes it truly a One-and-a-half Track event, in-between the Track One of governmental negotiations and the Track Two of academic and research sessions.

We are gathered not necessarily as representatives of any country or organization. We are not here to argue on legal claims or to negotiate or to reach agreed conclusions, but to explore with open minds the possibilities that exist for functional cooperation in the South China Sea based on factual data and practical experiences.

We are gathered here in order to explore practical and sustainable solutions to the looming crisis in the South China Sea. It is no secret that should the situation in the South China Sea be allowed to escalate into further confrontation, we shall risk turning the South China Sea into a Sea of conflict, armed brinkmanship and possible war disrupting global trade and vital lifelines for the Asia-Pacific region.

Since issues of territorial sovereignty and perceived national interests are involved, the danger is that a lack of progress, inadvertent actions, or continued stand-off can stoke nationalistic sentiments on all sides. This would prove difficult to keep in check and would further hamper an amicable solution in both the short and longer term. It is perhaps time for all sides to take one step back in order to obtain a better view of the larger picture and of the possible ways forward. The situation has first to be de-politicized. A shared vision of shared opportunity has then to be created.

More than half of the world’s annual merchant fleet tonnage -- about 5.3 trillion US dollars in value -- passes through the Malacca, Sunda, Lombok and Makassar straits linking the Indian Ocean with the South China Sea. Over one third of the global crude oil and over one half of the global liquid natural gas are transported daily through the South China Sea to provide about two-thirds of the energy supply of Northeast Asia. The South China Sea forms a vital link in the global supply chain.

The energy reserves in the South China Sea are also abundant. Proven oil reserves are about 7.7 billion barrels and estimated reserves range from 28 billion barrels to 130 billion barrels. If the latter estimate were to turn out to be accurate, then the oil reserve of the South China Sea would be second only to that of Saudi Arabia. As for the natural gas reserves, the estimates range between 266 trillion cubic feet to about 900 trillion cubic feet. Dr. Mark Valencia could certainly elaborate further on the natural resources available in the area.
In addition to these energy reserves, the South China Sea holds one third of the world’s marine biodiversity providing seafood to 1.5 billion people living around it. Given these enormous energy and marine resources, the South China Sea has the potential to be the hub of an economic revolution for its littoral and hinterland states, lifting them up to greater prosperity and well-being.

However, economic considerations based on projected natural resources in the area, the vital importance to international shipping lanes, as well as the political considerations based on new balance-of-power calculations in the region, have added to the complexities, and make it difficult to rely on any single approach in reaching a resolution of the situation.

Notwithstanding, mechanisms for conflict avoidance are also actively being sought. On the formal governmental track, discussions on territorial boundary issues take place. Running parallel to that track is the second track whereby the Declaration on the Conduct of Parties in the South China Sea has been concluded and where consultations on a follow-up Code of Conduct are being held. These should continue. But in my humble opinion, these two tracks need to be supplemented and complemented with a third track that focuses on functional cooperation. Functional cooperation will turn potential conflicts and tension on territorial claims into potential cooperation.

Chinese statesman Deng Xiao-ping once advised that all parties should shelve their territorial claims for the time being and concentrate on cooperation for mutual benefits. To shelve the territorial claims is not to relinquish them. Look at the Antarctica. The nations claiming their pieces of territory on that continent have not relinquished their territorial claims but have cooperated in environmental conservation and scientific exploration.

Why can’t the South China Sea’s littoral countries explore somewhat similar cooperation with each other, for example on renewing the fishery stocks, navigation safety and scientific exploration? These kinds of functional cooperation can be undertaken simultaneously while the governmental negotiations to delimit maritime boundaries and the ASEAN-China negotiations on the Code of Conduct of the Parties in the South China Sea continue. An important benefit of this functional cooperation is to contribute to the positive atmosphere of mutual trust in the two governmental tracks, thereby facilitating the eventual success of those negotiations, and avoiding a make-or-break situation.

There are many examples from various regions of the world of the kind of joint development areas (JDAs) being created and sectoral, functional cooperation being undertaken whilst pending the formal delimitation of maritime boundaries. They conform with the framework of “provisional arrangements of a practical nature” as provided for under Article 74(3) and 83(3) of the 1982 UN Convention on the Law of the Sea. Dr. Vasco Becker-Weinberg would be able to expand further on this point.

Japan and Korea agreed in 1974 on joint development of the southern part of the continental shelf of the two countries. An agreement was signed in 1989 between Australia and Indonesia to create a zone of cooperation in the area between East Timor and Northern Australia, and in 2002 the Timor Sea Treaty was signed between East Timor and Australia. In 1992, an MOU between Malaysia and Vietnam for the exploration and exploitation of petroleum in the continental shelves of the two countries was signed. China has signed joint development agreements with Japan and Vietnam in overlapping or adjacent maritime areas.

Back in 1979, Thailand and Malaysia agreed on a Joint Development Area for exploration and extraction of oil and gas in overlapping maritime areas in the Gulf of Thailand with profit-sharing arrangements which is still functioning amicably to this day even without a formal sea boundary agreement. *Brothers drinking from the same
well" is the motto of the Malaysia-Thailand Joint Development Authority. Datuk Rosli bin Boni, the CEO of the Authority would be able to provide us with details of some of the practical, day-to-day arrangements.

In the South China Sea, there are of course many areas of multiple overlapping claims by more than two claimant states. But this should not be an insurmountable obstacle. Indeed it should be seen as a good test for the ingenuity of international lawyers, as well as an opportunity to spread the risks and burdens among a larger number of stakeholders, to attract more multinational investment, to create economies of scale, and thus to enlarge the potential pie for all concerned. Nowadays there are many business models that could be adapted to suit the situation in the South China Sea. For instance, instead of discussing the area to be delimited as a basis for profit sharing, capital investment, special and differential treatment for certain claimant states, management participation and in kind contribution can altogether form basis for profit sharing formula.

There is no one single comprehensive solution for a complex situation. We must first ‘dis-aggregate’ the problem, break it down into more manageable portions. International practices show that cooperation can range from environmental protection, research on marine life, management of sustainable fisheries, joint investment ventures, and joint management of maritime navigation leading all the way up to joint development areas of oil and gas.

To explore and discuss in a concrete manner the possibilities and potentials of such functional, sectoral cooperation, a mechanism for alternative dialogue may need to be established. A Forum on Functional Cooperation could be established bringing together representatives of national and regional stakeholders, corporations, state enterprises, investors, academic institutions, and business people, to identify, implement and manage functional cooperation activities.

Excellencies, distinguished participants,

The South China Sea is a vast region, much of which has yet to be fully explored. In many ways it is a new frontier, traversed only in passing. Globalization, technological advances, economic necessities, and geo-political imperatives have now caught up with it, and are threatening to churn up huge waves of misunderstanding and acrimony. We must act quickly to ensure that these do not gather into a devastating tsunami. We must calm the waters by swamping the area with a network of continuing dialogues on all tracks, of technical exchanges, of functional cooperation, and of informal consultations among all stakeholders that can help to foster trust and confidence. Dialogue on functional cooperation is less confrontational than claims on sovereignty. It will create a comfort level among claimant states allowing them to feel that the South China Sea issue is a discussable agenda. It is a confidence building process which will complement the atmosphere in the discussions on territorial boundary and on the Code of Conduct in the South China Sea.

After all, I firmly believe that no one, claimant or non-claimant state alike, wishes to see the South China Sea becoming a crucible of conflict. With goodwill from all around and proper management, the South China Sea must and will become the Sea of Partnership, Peace and Prosperity.

Thank you very much for your attention.
Remarks by
H.E. Li Zhaoxing
former Minister of Foreign Affairs of China and APRC Council Member

Standing here before you all, I suddenly find myself one of the happiest persons in the world. The reason for this is that all of a sudden I have found myself promoted into at least two new positions. The first is as President of the China Association for Friendly Contact and the second is as the newest member from China to the APRC. This not only gives me great personal pleasure but it also allows me to be here today not only with so many friends but also with so many teachers.

I have a fellow countryman whom, of course, I never met but whom I greatly respect. He was born in 551 B.C. and was called Confucius. He taught us that there were two categories of people that one should always be grateful to and should never forget to thank. The first category is one’s parents and older relatives. The second category is one’s teachers. Confucius once said that all other persons are our teachers from whom we can always learn new things. This is what I have found ever since I arrived here last night in this beautiful city of Yangon and especially at last night’s dinner. Not only was the food excellent but I also learned a lot from my fellow diners. I thank our hosts sincerely for this.

For example, last night I learned something new from His Excellency Mr Ramos-Horta, the former President of East Timor. When I was young I was a student of etymology but I never knew the origin of the name of that good country, Timor Leste. But President Ramos-Horta told me that Timor also means “East”. So Timor Leste actually means “double East” and in China we like “the East”. We Chinese people always thought to unite China and drive away the Western Colonialists and stand up proudly in “the East”. Now I have a friend and teacher from the “East-East”. Thank you Mr President.

I know Myanmar well and can’t remember how many times I have visited this great neighbour of ours. But I have never before learned the etymology of the name, Myanmar. Again a neighbour at the dinner last night taught me that Myanmar, in Burmese, signifies many good things; such as fast, efficient, strong and other positive qualities. So I envy the people of Myanmar that your country has such a grand and glorious name. I also now learn that the forum where we are now, this Roundtable, has been really well planned in three important aspects.

Firstly the meeting place is very well chosen. About half a century ago the then Chinese Foreign Minister wrote a poem praising the friendship between Myanmar and China saying that while we Chinese live on the upper reaches of the river and our friends in Myanmar live in the lower reaches, we share a great affection for each other. We drink water from the same good river, our shared “mother river”. So it is only natural that I am very happy to be here in Yangon.

Not so long ago, we in Asia celebrated the emergence of the Five Principles of Peaceful Coexistence. These five basic principles came about thanks to the efforts of our leaders from China, from Myanmar, from India and from many other countries in our shared Asian region. President Xi Jinping in his policy statements has often referred to these five principles. They are still relevant and significant in trying to resolve the difficulties we face today. History has
still not reconciled its many contradictions. The international order, politically, geographically and territorially is not yet rational nor working for the benefit of the democratic peoples all over the world. So we need to re-read and be guided by the basics of the Five Principles of Peaceful Coexistence. Accordingly, the initiative for this forum in Yangon is a very timely and wise idea.

Secondly, the theme of this Roundtable is particularly well chosen. This forum will focus on cooperation and sharing the mutual benefits of joint development. We will be able to have an in depth discussion of the possibilities of shared cooperation in a number of areas. Again President Xi Jinping put forward the concept of the New Asia Spirit outlook at the Fourth Conference on Interaction and Confidence Building Measures in Asia. This concept highlights common comprehensive and sustainable conditions for enhanced regional security.

Last but not least, the format for our meeting is well chosen. A Roundtable symbolizes equality, friendship and goodwill. So again I am very happy to be here with you all. Personally I will let you know that I slept very well last night. This is quite rare for me, particularly since it was raining. It is simply because Yangon is very near the sea and its altitude is almost the same as my home town. I was born by the coast of the Eastern China Sea and I grew up there. When I was child I remember my Mother telling me: “My child, the sea and ocean are your home. You should love the sea, take care of the sea and make friends through the sea”. So again, I am very happy to be here in Yangon.

Let us now talk about the South China Sea. Whenever I view the sea or whenever I hear about the South China Sea, a few lines from William Shakespeare’s Sonnets come to mind. “Shall I compare thee to a summer’s day?” By “thee” I mean the South China Sea. “Thou art more lovely and more temperate.” The great English poet and playwright did not stop there. He went on to write that unfortunately sometimes “Rough winds do shake the darling buds of May”. So generally speaking this is a pretty apt description of the current situation in the South China Sea. It is a good sea, a peaceful sea. Navigation is free there and just as many economists have rightly said, it is big enough for all bordering coastal states to co-exist in peace and friendship together. But we also have to admit that sometimes “rough winds” are shaking “the darling buds” of the South China Sea.

This is why we are gathered here today; to try to find ways and means to resolve current contentious issues and further tap the potential of the South China Sea so that we can all enjoy even better prosperity and safer surroundings for all our peoples. We should never forget that we are working for the benefit of our peoples. This should give us a sense of pride and a sense of fulfilment. This makes me think of another short poem. “Are there people on Mars? Are there people on the Moon? There are people on Earth. That is why the Earth is most precious and that is why we must love the Earth.”

These words remind me of President Xi Jinping when he said: “The people’s pursuit of a happier life is our working target.” I believe that we here, who are sitting around this table, have as our target the common good of the people who live around the South China Sea and, even wider, the common interests of all the peoples of the world.

Dear friends, not so long ago I visited a region of South China called Tianmen province. The local fishermen there told me that they call the South China sea “their ancestors’ sea”, where they have been for successive generations over many centuries. So in both historical and legal perspectives, China enjoys sovereignty over the South China Sea’s islands and their adjacent waters. We can talk at length about history but I will try to be very brief. As early as 221 BC, the Emperor Qin Shi Huang, who unified China for the first time, named one part of Southern China “the South China Sea province”. This particular example reminds us that Chinese
people were the first to discover the South China Sea. In the year 1405 AD, one hundred and fifty nine years before William Shakespeare was born, China's great sailor, Zheng He, started his historic journey from Nanjing and sailed into the Indian Ocean via the Straits of Malacca.

What I want to briefly say is that after World War II, China as one of the victorious powers, regained sovereignty over Xisha Island from the hands of the Japanese aggressors. This was in line with the Cairo Declaration by the Allied Powers of 1 December 1943. I have visited the spot where the Cairo meeting was held and where the joint Allied communique was made public. This was subsequently confirmed by the Potsdam Declaration on 26 July 1945. The Chinese Government then sent some of its naval vessels to assert sovereignty over the islands and adjacent waters. A number of public documents in many countries clearly record that Nansha and Xisha and adjoinging islands belong to China. For many years after World War II this was not in dispute and no other country bordering the South China Sea raised objections to China's sovereignty over these islands.

Currently, however, this sovereignty is being disputed by a few bordering countries. China wants to enjoy peaceful coexistence with these countries. We have never acted hostilely towards them and we stand ready and willing to resolve such disputes through bilateral consultation. We are making every effort to promote mutually beneficial cooperation and friendly relations with the peoples of these countries. Our efforts to promote a Declaration by all the countries bordering the South China Sea raised objections to China's sovereignty over these islands.

China has exercised great restraint and patience and continued to insist that disputes over sovereignty should be resolved through dialogue and consultation. In 2011 China offered to establish a China-ASEAN Maritime Cooperation Fund. This demonstrated China's determination and sincerity to work jointly with ASEAN countries and actively implement the agreed Code of Conduct and by so doing promote further pragmatic cooperation in the South China Sea. It is self evident that China's position poses no threat to ASEAN or other Asian countries. Tankers bearing oil from the Gulf region pass through the South China Sea safely and without interruption. Every year over 100,000 commercial vessels pass through the South China Sea without incident. Currently all Asian countries are enjoying stable economic development with foreign trade continuing to grow, thereby demonstrating the existing freedom and safety of navigation through the South China Sea.

Is there therefore any need to increase the safeguards for freedom of navigation? In seeking such moves some countries have motives and agendas of their own that are less than transparent. We should be on the alert about this because we know that there are also self-inflicted problems by these countries such as piracy and other forms of transnational crime. All sides should therefore adopt a measured and reasoned approach to improving security in the region and join together in a pact that guarantees freedom of navigation and safety for all on a sustainable and lasting basis.
My dear friends and colleagues, Asian issues should be dealt with by Asian peoples themselves. Asia’s security and stability should be safeguarded by Asian countries, acting in a spirit of Asian friendship. Through closer cooperation the issues can be resolved. I want to share with you a thought that I learned many years ago from my English teacher, a very kind American lady. She asked me to recite a poem by an American writer. While she was a good teacher I was unfortunately not a good pupil. That is why I can only really remember one line of the poem. It is this: “Let us work together to make each tomorrow be better than today.” In this spirit I wish this forum of ours every success. Let us apply ourselves. Let us speak our minds, compare notes, learn from each other, find common ground and then work together to put the good ideas we uncover into action, so that each tomorrow of the South China Sea will be more peaceful and more beautiful. Let the South China Sea produce more wealth and contribute more to the common interests of all the coastal countries and, more widely, to the peoples of the whole world.

I thank you all very much for your kind attention and hopefully, in the future, we will meet each other again and again. I also wish all of my old colleagues a long and productive life. We still have a lot to do together. For now let us be happy and always meet each other with a smile.

Again my thanks to you all.

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Executive Summary

On July 3rd, 2014, in Yangon, the Asian Peace and Reconciliation Council (APRC) / the Saranrom Institute of Foreign Affairs Foundation (SIFAF) and the Myanmar Institute of Strategic and International Studies (Myanmar ISIS), co-hosted a roundtable entitled “Functional Cooperation in the South China Sea”.

The roundtable considered functional cooperation to consist of practical efforts that enhance good neighbourliness and mutual-trust, thereby contributing to the mitigation, the diffusion and the de-escalation of existing tensions in the South China Sea. Such functional cooperation could begin on matters of mutual concern of all States, such as the peaceful use of the oceans; the safety of navigation; the sustainable exploitation of marine living resources; the preservation and protection of the marine environment; the use, operation, removal and decommissioning of offshore installations and structures in accordance with the applicable international regulations.

The roundtable shared the view that functional cooperation fosters peaceful coexistence between States of the South China Sea and prosperity of all States, thus contributing to regional and global stability. It also considered that mutual-trust and restraint, the encouragement of exchanges between States, academics and experts, and the involvement of the relevant stakeholders including of private entities are of great importance to achieve functional cooperation.

The roundtable recalled the Pancasila Principles and the advice given by the Chinese statesman, Deng Xiaoping, to shelve the sovereignty claims and to concentrate on cooperation. In this spirit, the roundtable examined the different possible areas of cooperation and in particular the management and conservation of fishery resources and possible models for joint development of offshore hydrocarbon deposits, taking into consideration those currently existing in the Asia-Pacific region.
In view of Myanmar's Chairmanship of ASEAN this year, the roundtable considered that the upcoming ASEAN Summit meetings in November offer a valuable opportunity for the participating States to express their support for functional cooperation in the South China Sea, thereby contributing positively to the bilateral negotiations on the delimitation of maritime boundaries and the ASEAN-China discussions on the Code of Conduct of the Parties in the South China Sea.

Functional Cooperation as the Path to Progress in the South China Sea

Objectives of the Roundtable

A roundtable on “Functional Cooperation in the South China Sea” was held at the Myanmar Institute of Strategic and International Studies in Yangon, Myanmar on July 3, 2014. The Asian Peace and Reconciliation Council (APRC) / the Saranrom Institute of Foreign Affairs Foundation (SIFAF) and the Myanmar Institute of Strategic and International Studies (Myanmar ISIS), co-organized the meeting involving a select group of regional and international experts.

The meeting began with reiteration of the importance of the South China Sea (SCS) not only to the region but to the international community as a whole. The SCS is a vital link in energy flows and the global supply chain. With its potential wealth of living and nonliving resources, it can be a hub of economic transformation for littoral states and other nearby states. Countries in the region should help ensure that the disputes over territory and maritime jurisdiction do not disrupt regional peace and stability, nor have adverse impacts on ASEAN-China relations, the ASEAN Economic Community or the Regional Comprehensive Economic Partnership.

Regional states have long recognized the desirability of cooperation on functional issues as an approach to mitigating territorial disputes such as those in the SCS. This was articulated in the 1982 U.N. Convention on the Law of the Sea (UNCLOS), and the 2002 ASEAN-China Declaration of Conduct of Parties in the SCS (DOC), among others. Among the functional areas of mutual concern and benefit that have been identified for cooperation are the promotion of peaceful uses of the oceans; safety of navigation; the sustainable exploitation of marine living resources; the preservation and protection of the marine environment;
as well as the proper management of offshore installations and structures in accordance with applicable international regulations.

The organizers of this Roundtable thus set the meeting’s objective as exploring the reinvigoration of regional dialogue on functional cooperation in the SCS. Such a dialogue may help in depoliticizing and desecuritizing the disputes, while encouraging regional states to begin crafting a shared vision of common opportunity.

It was suggested that a Track 1.5 forum on functional cooperation be established, complementing the ongoing Code of Conduct (COC) and DOC consultations whose primary objective is to institute conflict avoidance measures and agreed rules of engagement. The forum could contribute to calming the tensions in the neighborhood, even as some countries pursue the challenging tasks of delimiting maritime boundaries. Aside from government officials acting in their personal or informal capacities, academics, experts, businessmen and other stakeholders should become involved.

Different approaches and priorities

The SCS being a semi-enclosed sea (as defined in Art.122 of UNCLOS), littoral states are expected to cooperate on functional matters, including initiatives that may lead to the joint development of resources. It was Deng Xiaoping who first proposed the formula of “shelving the sovereignty disputes and pursuing joint development” for the SCS. Chinese President Xi Jinping, in a speech in February 2014 recommended a return to the Five Principles of Peaceful Coexistence (FPPO), which are: mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other’s internal affairs, equality and mutual benefit, and peaceful coexistence.

Chinese leaders have stated that they are willing to resolve the disputes through bilateral consultations and then promote mutually beneficial cooperation. The Chinese government has established a Maritime Cooperation Fund for this latter purpose. On the other hand, some other states prefer seeking redress through international legal institutions, due to a serious trust deficit in the region and perceived asymmetry should they enter into bilateral negotiation processes.

The Roundtable remarked on how geopolitical trends are adding new layers of complexity to the already intractable sovereignty problems. Under such circumstances, functional cooperation in certain areas may provide “low-hanging fruit” that will help states begin developing habits of working together in the SCS.

Challenges and obstacles to functional cooperation

An observation was made that past efforts in promoting functional cooperation in the SCS in general, and joint development of resources in particular, have ended in failure, because of states’ insistence on sovereignty and because of the lack of political will. The workshop series “Managing Potential Conflicts in the South China Sea”, organized by the Indonesian Foreign Ministry with Canadian assistance, for example, has been going on for twenty-four years but has moved only incrementally on the agenda of functional cooperation. This shows also that the types of cooperation or “low-hanging fruit” discussed in the past may not have been considered interesting or worthwhile activities by the states themselves.

Many functional cooperation proposals such as resource assessments, sharing of scientific knowledge, etc. had been worked out in the past, but some became stuck with technicalities or simply lacked political support from the governments concerned. Domestic politics has sometimes had a negative influence. Perhaps under the current regional environment, there will be more interest and political support for different types of functional cooperation.
Discussions at the Roundtable then turned to the concept and practice of ‘joint development’ (JD), with presentations made based on actual experiences elsewhere in the region, including the Malaysia-Thailand Joint Development Authority. Experts at the Roundtable noted that there is no single formula for joint development, but rather there are sufficiently varied examples to demonstrate that creative solutions are possible, through persistent dialogue backed by strong political will by leaders. Some successful JDs required establishment of joint entities, but others did not. Some were approached through commercial rather than governmental agreements. Most of these practical arrangements were quietly negotiated outside of the public limelight.

Past obstacles to successful joint development, specifically of hydrocarbon resources, include a lack of accurate data on reserves, the high costs of exploring offshore in very deep waters, and the complexity of having more than two claimants in some areas. For fisheries cooperation, territorial sovereignty concerns have also prevented agreement.

Agreement on a regional Code of Conduct may help stabilize the security environment for functional cooperation, but the current COC negotiations have to move faster than the pace of escalation of tensions if the COC is to be useful. Nationalistic discourses are not helpful, while attempts to occupy or extend presence on land features do nothing to strengthen legal claims yet do much to stoke tensions. In the meantime, the region should work to avoid perceptions that some are behaving like bullies towards others, while other states should continue to support peaceful diplomatic approaches and take care not to complicate matters.

Prospects and opportunities for functional cooperation

One Roundtable participant noted that there may be some differences in the primary interests of the claimants and littoral states; for some it may be access to the energy or fisheries resources, while for others, security and strategic objectives may prevail. Continuing dialogue and discussion can help identify these underlying interests, and the possible trade offs and compromises that may help satisfy the needs and alleviate the fears of the states involved. Functional cooperation may then be pursued in this context.

It was noted that the Philippines and Indonesia have recently concluded a maritime boundary delimitation agreement, after decades of talks. Other countries have yet to begin such negotiations in their overlapping areas. These processes should be encouraged, following the principle that “good fences make good neighbors”. The outcomes can help further define and limit the areas for possible functional cooperation.

Moreover, there are already certain rules in place that appear to favour functional cooperation. For instance, coastal states have certain mandatory obligations, including in the UNCLOS and IMO conventions, such that even if states cannot agree among themselves, each of them is bound by the law whereby failure to comply with said obligations becomes actionable. Even the exercise of restraint is an obligation actionable under international law. In addition, under international law states can be and have been sued for failing to cooperate, i.e. failing to sit down and establishing rules of engagement or codes of conduct. In this context of encouraging rule-based behaviour, some participants remarked that the non-binding ASEAN-China Declaration of Conduct should be elevated or transformed into a legally binding Code of Conduct.

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The Roundtable referred to a number of issues – among them climate change, sea level rise, ocean acidification, disaster response and prevention, oil spill response – that are expected to have the most impact on developing countries and which should be less controversial subjects for cooperation. Coastal fishing communities will be the first to be affected by such developments, just as they
are affected by the territorial disputes, and their welfare must be properly addressed through cooperative measures. The use and operation of offshore installations, as well as the establishment of safety zones around them and their decommissioning, are also matters of great concern even at the global level.

One resource person opined that no single country, no matter how extensive or how strong its claim to the oceans, will want or should take the responsibility for managing all of these concerns. Another participant said that UNCLOS is after all a product of the assertion of rights of developing states, including entitlement to the exclusive economic zone (EEZ), continental shelf (CS) and their resources. These developmental concerns and interests should continue to unite the region’s countries.

Addressing the disputes and working toward better management of the SCS may require a three-track parallel process: continuing efforts to resolve conflicts over sovereignty; negotiations for a Code of Conduct in order to promote stability and order; and a new dialogue on functional cooperation. The first track, if it can lead to clear maritime boundaries, would be the best approach for the long term. However, if there can be no clear boundary, then joint development may be the better approach. Without either clear boundaries or cooperative arrangements, the resources of the ocean cannot be managed effectively and utilized sustainably. And without predictable rules of conduct, states and other stakeholders will hesitate to invest in cooperation arrangements.

One expert, however, noted that in many instances, there is no need or obligation for states to undertake maritime boundary delimitation. It may also be the case that once a joint development zone is established, delimitation becomes easier because the economic interests are already being addressed separately through the JD mechanism.

The Roundtable also underscored the important role of private entities, such as oil industry players and other nongovernmental stakeholders, in carrying out the JD or other functional cooperation initiatives as binding international agreements.

In sum, there are many ways to be creative, and finding out what best suits the various countries’ interests would seem to be a task that could well be performed by a regional forum on functional cooperation in the SCS.

Notes prepared by
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Presentations
Dr. Mark J. Valencia is an internationally known maritime policy analyst, political commentator and consultant focused on Asia. He has been a speaker at such high-level meetings as The World Knowledge Forum in Seoul and the Bo’ao Forum for Asia hosted by China. He was a Senior Fellow with the East-West Center for 26 years where he originated, developed and managed international, interdisciplinary projects on maritime policy and international relations in Asia. Most recently he was a Visiting Senior Scholar at China’s National Institute for South China Sea Studies.

Dr. Valencia has also been an Associate of the National Asia Research Program co-sponsored by the National Bureau of Asia Research and the Woodrow Wilson Center, a Visiting Senior Fellow at the Maritime Institute of Malaysia and a Visiting Senior Scholar at Japan’s Ocean Policy Research Foundation.

Dr. Valencia has published some 15 books and about 100 peer-reviewed journal articles. He is also a very frequent contributor to prominent public media with op-eds in the Far Eastern Economic Review, International Herald Tribune, Asia Wall Street Journal, Japan Times, Straits Times, South China Morning Post and Washington Times.
Functional Cooperation in the South China Sea

**METHANE HYDRATES**

- A Taiwanese team discovered volcanoes in the South China Sea near Hainan Island, apparently extinct but in the past they probably looked like this—why is this significant? Metallic sulfides

**CONTINENTAL SLOPE**

**OTEC**

-WIND AND WAVE ENERGY

**WHERE?**

- 1. AREA OF GOOD POTENTIAL
- 2. IF FOR HYDROCARBONS—SHALLOW TO MODERATE WATER DEPTH
- 3. PREFERABLY IN AN AREA CLAIMED BY ONLY TWO COUNTRIES

-WHO?

- WHO IS PARTIALLY DEPENDENT ON THE “WHAT” AND “WHERE”
- AGAIN IT IS EASIER IF THERE ARE ONLY TWO PARTIES
- BECAUSE OF CHINA’S CLAIM TO HISTORIC TITLE TO THE RESOURCES ONE OF THE PARTIES WOULD LIKELY BE CHINA
- THERE ARE SEVERAL PROMINENT POSSIBILITIES DEPENDING ON THE “WHAT”

-THE HOW (SHARING)

- FAIR AND EQUITABLE IS IN THE EYES OF THE BEHOLDER

---FOR HYDROCARBONS—PERHAPS CHINA/PHILIPPINES ON REED BANK; CHINA/VIETNAM ON VANGUARD BANK; CHINA/BRUNEI NEAR RIFLEMAN BANK
---FOR METHANE HYDRATES—CHINA/VIETNAM/MALAYSIA ON ‘EXTENDED CONTINENTAL SHELF’
---FOR OTEC—CHINA AND TAIWAN NEAR TAIPING DAO
**THE HOW**

- For some—but not all—of the following proposed sharing schemes to work there must first be agreement that the individual Spratlys and Scarborough Shoal only generate 12NM territorial seas not EEZs or continental shelves and that these 12NM territorial seas are excluded from the joint development schemes.

- It must also be agreed that China and Taiwan would be considered one China in terms of its claims and shares—both by the other claimants and by China /Taiwan.

- The claimants/occupiers of features could also agree that they be demilitarized and designated as environmentally protected areas.

- The sorting out of the sovereignty claims would be left for future generations to resolve.

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**OPTION I**

Allocate jurisdiction in the entire South China Sea to equidistance lines from claimed baselines ignoring the Spratlys, the parcels and Scarborough Shoal.

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**OPTION II**

Allocate jurisdiction out to 200NM only giving full effect to China occupied parcels agree to jointly develop/manage the area beyond 200NM or just that beyond possible extended continental shelf claims.

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**OPTION III**

Allocate jurisdiction out to a line equidistant between the collective Spratlys or legitimate islands and legitimate baselines ignoring Scarborough Shoal. Then agree to bi- and multilateral joint development arrangements beyond the equidistance line based on the overlap of claims to each subarea.
DETAILS OF OPTION III

- **1.** CHINA/TAIWAN WOULD BE A MEMBER OF ALL JOINT DEVELOPMENT COMPANIES

- SHARES, BENEFITS AND COSTS AND VOICE/VOTE IN THE OPERATIONS OF EACH JOINT DEVELOPMENT COMPANY WOULD BE SHARED EQUALLY AFTER ALLOCATING 5% OF THE PROFITS TO A SOUTH CHINA SEA COMMON HERITAGE CORPORATION(SOCOHECO) WHICH WOULD FACILITATE, COORDINATE, AND HARMONIZE THE OPERATIONS OF THE MULTIPLE JOINT DEVELOPMENT ARRANGEMENTS


- OTHER JD ARRANGEMENTS COULD BE BETWEEN CHINA, MALAYSIA AND THE PHILIPPINES; CHINA, MALAYSIA AND VIETNAM; AND CHINA AND BRUNEI. ONE SMALL AREA WOULD INVOLVE ALL CLAIMANTS.

- THIS APPROACH WOULD SATISFY CHINA’S DEMAND THAT THE ISSUES BE RESOLVED BETWEEN IT AND EACH OF THE CLAIMANTS WHILE GIVING THE OTHER CLAIMANTS AN OPPORTUNITY TO INFLUENCE DECISIONS IN AREAS THEY CLAIM IN COMMON WITH CHINA

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OPTION IV

**ALLOCATION OF TWO ‘DONUTS’ AND A ‘DONUT HOLE’ BASED ON CHINA’S 9-DASHED LINE AND THE LINE EQUIDISTANT BETWEEN LEGITIMATE BASILINES AND THE SPARATLY ISLANDS IGNORING SCARBOROUGH SHOAL BUT GIVING FULL EFFECT TO THE CHINA-OCCUPIED PARCELS**

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DETAILS OF OPTION IV

- **1.** ALLOCATE 100% OF JURISDICTION FROM LEGITIMATE BASILINES OUT TO CHINA’S 9-DASHED LINE TO THE APPROPRIATE COASTAL STATES

- **2.** ALLOCATE A TOKEN 1% OF RESOURCES BETWEEN CHINA’S 9-DASHED LINE AND A LINE EQUIDISTANT BETWEEN THE SPARATLY’S AND CLAIMED BASILINES IGNORING SCARBOROUGH SHOAL BUT GIVING THE CHINA-OCCUPIED PARCELS FULL EFFECT. IN THIS ZONE CHINA WOULD RECEIVE 1% OF EACH RESOURCE AND CONTRIBUTE 1% TO ITS DEVELOPMENT—OR AS AN ALTERNATIVE CHINA WOULD HAVE THE RIGHT OF FIRST REFUSAL FOR CONVENTIONAL COMMERCIAL ACCESS—SIMILAR TO MALAYSIA-BRUNEI AGREEMENT

- PARTIES AGREE TO MULTIPLE JD AND MANAGEMENT ARRANGEMENTS BEYOND THE EQUIDISTANT LINE, BASED ON THE OVERLAP OF THE CLAIMS TO EACH AREA

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OPTION V

- **1.** TWO ZONES OF SHARING A AND B—TO BE COORDINATED BY SOCOCHECO

ZONE A: THE AREA BETWEEN THE EQUIDISTANCE LINE AND THE 200NM LIMIT FROM LEGITIMATE BASILINES—SPLIT IS 10% FOR CHINA AND 90% FOR EACH CLAIMANT

ZONE B: THE AREA BEYOND 200NM—VARIOUS POSSIBLE SHARING SCHEMES—

USING THE EQUIDISTANT LINE MEANS THAT THE CLAIMS TO THE FEATURES ARE RECOGNIZED AND THAT THEY HAVE AN EFFECT BUT NOT SUPERIOR TO THAT OF THE “MAINLAND” BASED CLAIMS: INDEED IT COULD BE A QUARTER EFFECT WHICH OF COURSE WOULD SHRINK THE COMMONS AREA AND ENLARGE THE 10/90 SPLIT AREA

- THIS ARRANGEMENT WOULD OBLIGE THE NEED TO SORT OUT WHICH OF THE FEATURES IS A “LEGAL” ISLAND; IT IS ALSO CONSISTENT WITH LEGAL PRECEDENTS; AND THE AREA ENCOMPASSED IS MUCH LESS THAN THAT ENCLOSED BY THE NINE DASHES
1. B THE AREA BEYOND 200NM FROM LEGITIMATE BASELINES

- THE SPLIT COULD BE EQUAL FOR ALL 5 CLAIMANTS — 20 PERCENT EACH
- ANOTHER ALTERNATIVE WOULD BE SHARES BASED ON COASTLINE LENGTH — 31% CHINA/TAIWAN; 26% VIETNAM; 21% PHILIPPINES; 20% MALAYSIA; 2% BRUNEI
- WHOLE AREA MANAGED BY SOCOHECO

NB: Participants commented that the use of the name of Taiwan is “inappropriate”
By Mark J. Valencia & Hong Nong

The increasingly complex and bitter conflict in claims to parts of the South China Sea has so far been immune to diplomatic solutions. One way forward is to explore the various formulas for joint development of the area in a fair and cooperative manner, write Mark J. Valencia and Hong Nong.

JOINT DEVELOPMENT — putting aside overlapping boundary claims and co-operating to explore and exploit resources in a defined area — has long been proposed as an interim practical measure to reduce tensions over maritime boundaries in the South China Sea. But several fundamental questions must be addressed before joint development can proceed. These include: What is to be jointly developed? Where is the joint development going to take place? Who is going to do it and how will the investment, profit, management and decision-making be shared in a given project?

THE WHAT
The “what” of joint development is not as obvious or straightforward as it may seem. Of course, the immediate focus will be on living resources, primarily fish — and on oil and gas. But in the not-too-distant future, attention will extend and perhaps even shift to wind and wave energy, methane hydrate (“flammable ice” deposits that are found under the continental slope), and ocean thermal energy conversion (OTEC), which exploits the difference between surface and deep water temperatures. Other resources may be discovered or made valuable by technological advances such as fresh water and hydrogen extracted from seawater and genetic resources.

Fishermen from all littoral countries have been fishing in the South China Sea beyond the territorial sea limit of 12 nautical miles for thousands of years. Traditional fishing rights are recognized under the 1982 United Nations Convention on the Law of the Sea (Article 69 (4)). Under UNCLOS, A report by the US Energy Information Administration earlier this year illustrated how most of the abundant oil and natural gas deposits in the South China Sea are thought not to be in the most disputed areas, but around the sea’s edges.
Functional Cooperation in the South China Sea

Contradicts previous studies by countries in the East Malaysia and Brunei. However, the US study appears to rule this out. Moreover, to minimize political and procedural complications it should preferably be in an area claimed by only two countries. There are several potential areas that meet these criteria, chiefly the western portion of the continental shelf to its southeast around Vietnam, and the nationalistic feistiness of the Aquino administration vis-à-vis China following incidents at the Scarborough Shoal and Reed Bank. The claimants to these features could also agree that they be demilitarized and designated as environmentally protected areas.1

The possible options are:

1 In the alternatives in Section 1, there must first be agreement that the Spratlys and Scarborough Shoal can only generate territorial seas of 12 nautical miles, not 200-nautical-mile EEZs or continental shelves, and that these territo-rial areas are not to be included in joint devel-opment schemes. The claimants to these features could also agree that they be demilitarized and designated as environmentally protected areas.

Allocate jurisdiction in the entire South China Sea to equidistant lines, ignoring the Spratlys and Scarborough Shoal but giving full effect to the Chinese-occupied Paracels.6 It is tempting to suggest that the allocation of the islands, reefs and rocks also be according to these lines. But that would ignore the legal and political realities of these sovereignty disputes.

Allocate jurisdiction in the South China Sea out to 200 nautical miles from legitimate base-lines, ignoring the Spratlys and Scarborough Shoal but giving full effect to the Chinese-occupied Paracels.6 It is tempting to suggest that the allocation of the islands, reefs and rocks also be according to these lines. But that would ignore the legal and political realities of these sovereignty disputes.

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Functional Cooperation in the South China Sea

Based on the areas of overlap of the original claims, China/Taiwan would be a member of all joint development companies. Shares, benefits, costs and a say in the operation of each joint development company would be apportioned equally after allocating 5 percent of the profits to a South China Sea Common Heritage Corporation (SOCOHECO) that would facilitate, coordinate and harmonize the operations of multiple joint development arrangements for resource exploitation within the area of shared management.

Perhaps another 5 percent of the profits could be distributed to non-claimant South China Sea countries. Alternatively, the profits could be distributed — but to South China Sea countries only (including landlocked Laos) — according to the formula in Article 82 of UNCLOS for resource exploitation beyond 200 nautical miles, i.e. annual payments after the first five years with respect to all production at a site. For the sixth year, the rate of payment is 1 percent of the value or volume of production at the site. The rate increases by 1 percent for each subsequent year until the 12th year and remains at 7 percent thereafter.

The largest of the multiple joint development zones would be that between China and Vietnam in the west and between China and the Philippines in the east. Other significant joint development arrangements would involve China, Malaysia and the Philippines; China, Malaysia and Vietnam; and China and Brunei. The most complex would be a small area that would involve all claimants. Given the petroleum geology of the South China Sea, the most likely prospect would be the China-Vietnam area around Vanguard Bank, the China-Philippine area on Reed Bank and the deep water China-Malaysia and China-Brunei areas.

Under this model, the SOCOHECO would have a Chinese as its head because of China/Taiwan's membership in every joint development company. The members of each joint company board would be those countries that claim the area covered under the deals. Although a joint development company would exist on paper for each of the areas, it would become operational only when and if a simple majority of the claimants to that area agreed to make it operational. This approach would satisfy China's demand that the issues be resolved between it and each of the claimants, while giving the claimants an opportunity for influencing decisions in areas they claim in common with China and others.

2) Allocate two “donuts” and a “donut hole” based on China's nine-dashed line claim, the line equidistant between legitimate baselines that conformed with Article 7 of UNCLOS and the Spratly Islands (ignoring Scarborough Shoal) but giving full effect to the Chinese-occupied Paracels (See Figure 2).

3) Allocate a 100 percent of the jurisdiction from legitimate baselines out to China's nine-dashed line claim to the appropriate coastal states.

4) Allocate a 1 percent of resources between China's nine-dashed line claim and a line equidistant between the Spratlys and claimed baselines, ignoring Scarborough Shoal but giving the Chinese-occupied Paracels full effect. In this zone China would receive 1 percent of each resource and contribute an equivalent amount to its development. Another way to do this would be to give China first refusal on conventional commercial access to the resources in the area. Such “sharing” would recognize China's claim to resources but provide only token shares of resources in EEZs claimed by others.

4) Agree to multiple joint development and management arrangements beyond the equidistant line, based on the pattern of claimants to each sub-area (Figure 3).
Global Asia in Focus: Ending the South China Sea Impasse

**SHARING RESOURCES IN THE SPRATLIES AREA**

This map shows the sharing of EEZ and continental shelf resources around the Spratly Islands once a line of equidistance has been drawn between the Spratlys and legitimate baselines. There could be a joint development arrangement for each subzone of overlap.

**Consequence of the Line from**

7. Taiwan and China would be treated as one entity and would have to negotiate a split between themselves.
8. These schemes only show the range of possibilities. For example, the area for joint development could be reduced to that within a line connecting the outermost Spratly Islands, and the allocated resources included as part of China in the sharing scheme.

As for the Paracels and their effect on allocation, they could be ignored, or their area shared or split by Vietnam and China/Taiwan.

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**REMAINING QUESTIONS**

1. This variant would have two zones of sharing, to be co-ordinated by a SOCOHECO (see Figure 1).

Zone 1: The area between the equidistance line and the 200 nautical-mile limit from legitimate baselines. The split here could be 10 percent for China and 90 percent for each claimant. Using the equidistance line means that the various claims to the features are recognized and that they have an effect, but not one superior to claims from the “mainland.” This arrangement would render unnecessary negotiation or adjudication regarding which of the features is a “legal” island. Sorting out the sovereignty of the many islands and rocks — and which are which — would truly be something for future generations to tackle.

Zone 2: The area beyond 200 nautical miles from legitimate baselines. Here the split would be equal for all five claimants, i.e. 20 percent each, and the SOCOHECO would manage the area on behalf of all claimants. Another alternative would be to base the share allocation on the length of coastline that a claimant has in the South China Sea, a common factor in international maritime boundary judgments. The shares would then be: 31 percent for China/Taiwan, 26 percent for Vietnam, 21 percent for the Philippines, 20 percent for Malaysia and 2 percent for Brunei. Under this system, China/Taiwan would not be able to pass or block decisions in the SOCOHECO even by a simple majority and would thus require the co-operation of at least one other claimant (except Brunei) to do so. On the other hand, if Vietnam, Malaysia and the Philippines voted together they could constitute a majority.

**DEMILITARIZATION AND NON-NUCLEARIZATION**

In conjunction with the establishment of the South China Sea Common Heritage Corporation, the area of shared management should also be an agreed demilitarized zone of peace, extending the ASEAN Zone of Peace, Freedom and Neutrality to the whole of the South China Sea, and thereby helping achieve one of ASEAN’s (and China’s) stated objectives: removing opportunities for great power intervention and interference in regional affairs. Because all the claimants except China/Taiwan are parties to the Treaty on the Southeast Asia Nuclear-Weapon-Free Zone, which includes the EEZs of the parties, the treaty’s provisions could be extended to the Spratly features and the area of shared management.

Mark J. Valencia is Visiting Scholar at the National Institute for South China Sea Studies (NISCSS), an academic institute attached to the Hainan Provincial Government. Hong Nong is Assistant President and Associate Professor, NISCSS.
Datuk Rosli Bin Boni
Chief Executive Officer,
Malaysia-Thailand Joint Development Authority (MTJA)

Roslil Boni has served as the CEO at Malaysia-Thailand Joint Authority for the last 1.5 years. He also serves as a director in the board of Petronas Gas Berhad, a public listed company in Kuala Lumpur Stock Exchange.

He is a Petroleum Engineer with 31 years of experience in the petroleum industry. He graduated with BSc in Petroleum Engineering from University of Wyoming, USA in 1979. He started his career with Petronas in 1980 until his official retirement from Petronas in May this year. Throughout his 31 years career with Petronas, he had spent many years in drilling, wireline, well completion, well testing, production operations, field development projects, human resources and oversea assignment in France, United Kingdom, and Bahrain.

He is a member of Society of Petroleum Engineer (SPE). He has served in committee of various SPE forums and workshops.
Dr. Nuntasak Chenboonthai
Deputy Chief Executive Officer,
Malaysia-Thailand Joint Development Authority (MTJA)

Dr. Nuntasak Chenboonthai serves as Deputy Chief Executive Officer, Malaysia-Thailand Joint Development Authority (MTJA). He holds a Bachelor of Science in Petroleum Engineering from Chulalongkorn University and Master’s Degree as well as Doctoral Degree in Petroleum and Natural Gas Engineering from New Mexico Institute of Mining and Technology, USA.

Dr. Chenboonthai has 25 years of experience in the petroleum industry. He began his career in 1989 as a Petroleum Engineer. From 2004 to 2008, he served as the Assistant Manager in the Exploration and Production Department of Malaysia-Thailand Joint Authority (MTJA). Before taking up the Deputy Chief Executive Officer position, he served as Director, Production Engineering Group Department of Mineral Fuels from 2009 to 2012.

Strength in Collaboration – The Success Story of Malaysia-Thailand Joint Authority

Presented by Datuk Rosli Boni
CEO, MTJA

Roundtable on “Functional Cooperation in the South China Sea”
3rd – 4th July 2014
Yangon, Myanmar

Joint Development Area (JDA)

- The overlapping area located in offshore continental shelf of South China Sea is claimed by both Malaysia and Thailand.

- The area is about 7,250 sq.km in about 50 m water depth.

- The overlapping area is prolific for the deposits of hydrocarbon.
Strength in Collaboration – The Success Story of Malaysia-Thailand Joint Authority

Phase 1 1970’s – Overlapping Area

- The overlapping area was claimed by both countries and sovereignty boundary was disputed.
- Petroleum Concession and Production Sharing Contracts (PSC) were awarded to Operators in the overlapping area.
- Discussion on finding solution to the sovereignty and borders dispute proved difficult.
- Both Governments suspended all Exploration and Production (E&P) activities in the overlapping area until the boundary issues are resolved.

Phase 2 1980’s – Concept and Establishment

- Agreed to a unique model to explore and exploit hydrocarbon in the overlapping area while the border dispute is being resolved.

- The MOU of the unique model was signed and ratified by both Countries in 1979.
- A Joint Committee was set up to implement the MOU. Sub-committees were formed to oversee issues e.g. legal, technical, revenue and tax, customs and excise, organization and draft of Production Sharing Contract (PSC).
- Both Cabinets approved the Malaysia-Thailand Joint Authority Act 1990 (Act 440) in Malaysia and the Thailand-Malaysia Joint Authority Act B.E. 2533 in Thailand.

MTJA Act 1990

- MTJA is a statutory body to assume all rights and responsibilities on behalf of the two Governments over the JDA
- To explore and exploit the non-living resources i.e. petroleum within the JDA
- Duration of the MTJA is 50 years effective from 1979. The MTJA will automatically dissolved once the boundary dispute is settled.
- Formation of MTJA Joint Authority (the MTJA Board) comprised of 7 members from each countries and co-chair by two Co-Chairman
- Setting up MTJA Management to support the Joint Authority. The key management positions are made up of Secondees from both Governments on a 4-year rotation period.
- All benefit and cost are shared equally

MTJA awarded 3 PSCs to-date:

   - Operator is Carigali Hess Operating Company (CHOC).
   - Area size is 2,940 sq.km

2. Block B-17 & C19 PSC (1994)
   - Operator is Carigali PTT Operating Company (CPOC)
   - Area size are 3,740 and 570 sq.km respectively

   - Operator is Carigali PTT Operating Company (CPOC)
   - Area size is 2900 sq.km
**Strength in Collaboration – The Success Story of Malaysia-Thailand Joint Authority**

**PSC Fiscal Terms**

- Royalty: 10%
- Cost Recovery: Max. 50%
- Profit Split: 50:50 (MTJA : Contractors)
- Research Cess: 0.5% (of Cost Gas + Profit Gas)
- Export Duty: 10% (of profit share)
- Petroleum Income Tax
  - 1st 8 yrs of production: 0%
  - Next 7 yrs of production: 10%
  - Subsequent yrs: 20%
- PSC Contract Duration: up to 35 yrs

**MTJA Organization Relationship**

**Phase 3 1990’s – Exploration and Gas Discovery**

- Significant reserve of gas was discovered in Block A-18, Block B-17 & C-19 and Block B-17-01

  - MTJA signed the Gas Sales Agreement (GSA) with Buyer, PETRONAS and PTT for Block A-18 in 1994 and Block B-17 & C-19 in 2005
  - The GSA is for 25 years.

**Phase 4 - 2000 Onwards (Gas Development and Production)**

- Gas reserves discovered from 27 gas fields is about 4.88 Trillion Cubic Feet (Tcf) with contingent resources of 4.17 Tcf
**Strength in Collaboration – The Success Story of Malaysia-Thailand Joint Authority**

**Gas Reserves – 4.88 TCF**

- **No. of Well Drilled & Facilities in JDA**
  - 72 Exp/J App. Wells
  - 213 Dev. Wells
  - 2 CPP
  - 1 Riser Platform
  - 18 Wellhead Platform
  - 2 FSO

**Phase 4 - 2000 Onwards (Gas Development and Production)**

**Achievement to date:**

- Gas reserves discovered from 27 gas fields is about 4.88 Tcf with contingent resources at 4.17 Tcf
- Block A-18 production first came on stream in 2005. The production from Block B-17 & C-19 came later in 2010.
Strength in Collaboration – The Success Story of Malaysia-Thailand Joint Authority

1) Trans Thailand-Malaysia Pipeline
- Subsea pipeline (34" x 267km) from JDA A-18 to Gas Separation Plant (GSP) at Songkhla.
- 120 MMscf fuel used by Chana Power Plant.
- Balance of the gas sent to Malaysia PGU-III system through Changlun.

2) Northern Pipeline
- Subsea pipeline (42" x 727km) from JDA Block A-18 (connected with 24" lateral pipeline from JDA B-17) to GSP at Rayong through PTT Riser Platform (PRP).

3) Pipeline (EVA Project) - Under Construction
- Subsea pipeline (24" X 72 km) from JDA of Block B-17 to Pipeline Tie In Systems (PLTS) and thru 28” X 290 km pipeline to Kerteh Terminal.

Phase 4 - 2000 Onwards (Gas Development and Production)

Achievement to date:
- Gas reserves discovered from 27 gas fields is about 4.88 Tcf with contingent resources at 4.17 Tcf
- Block A-18 production first came on stream in 2005. The production from Block B-17 & C-19 came later in 2010.
- Daily gas production averages 1.2 Bcfd and condensate production is about 15 Mmbld.
- The cumulative gas sales and condensate production reached 2.49 Tcf and 31.3 Mmbls
- Cumulative remittance to both Governments amounted to USD 5 billion

Gas Sales and Condensate Production Profile:

Phase 4 - 2000 Onwards (Gas Development and Production)

Achievements to date:
- Gas reserves discovered from 27 gas fields is about 4.88 Tcf with contingent resources at 4.17 Tcf
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- Cumulative remittance to both Governments amounted to USD 5 billion
- MTJA signed two (2) Unitization Agreements
Unitization in Block A-18

- MTJA signed two (2) Unitization Agreements:
  1) Bumi Vs. Bumi South - MTJA Block A-18 and PETRONAS Block PM301
  2) Suriya Vs. Suriya Selatan - MTJA Block A-18 and PETRONAS Block PM2

- Negotiation of 3rd Unitization Agreement for Bulan South – Bakawali field.

Phase 4 - 2000 Onwards (Gas Development and Production)

**Achievements to date:**

- Gas reserves discovered from 27 gas fields is about 4.88 Tcf with contingent resources at 4.17 Tcf
- Block A-18 production first came on stream in 2005. The production from Block B-17 & C-19 came later in 2010.
- Daily gas production averages 1.2 Bcf/d and condensate production is about 15 Mbbld.
- The cumulative gas sales and condensate production reached 2.49 Tcf and 31.3 Mbbld
- Cumulative remittance to both Governments amounted to USD 5 billion
- MTJA signed two (2) Unitization Agreements
- Third Supplementary Agreement (SA3) to the Gas Sales Agreement of Block A-18 for an additional Gas Sales of 70 – 90 MMscfd for one (1) year period
- Fourth Supplementary Agreement (SA4) to the Gas Sales Agreement of Block A-18 for an additional Gas Sales of 100 MMscfd for five and a half (5½) year period

- MTJA Board celebrated 100th Meeting in December 2012
Strength in Collaboration – The Success Story of Malaysia-Thailand Joint Authority

Essence of Success of MTJA

- Both Governments have strong desire to benefit from the petroleum resources in the JDA.
- Willingness to share and compromise to achieve win-win solution.
- MTJA Act 1990, passed by respective Cabinets, provides strong legal framework.
- MTJA Board functioned in a very focus, balanced and collaborative manners.
- Strong MTJA Management team staffed with experienced government Secondees.
- PSC operators are competent and experience in delivering results in petroleum industry.

• These results were achieved despite the sovereign right and boundary issues of the overlapping area still being disputed.
• This success to date is realized through the “Strength in Collaboration”

Terima Kasih Thank you ขอบคุณครับ
Mr. Kanok Intharawijitr serves as Senior Vice President, Myanmar Asset; seconded as General Manager, PTT Exploration and Production (PTTEP) International Limited, Myanmar. He holds a Bachelor of Science in Geology.

Mr. Intharawijitr has 24 years of experience in the petroleum industry. He began his career in 1990 as a Geologist. From 2003 to 2010, he was appointed to various managerial-level positions abroad; such as, Myanmar and Malaysia. Before taking up the Senior Vice President, Myanmar Asset; seconded as General Manager, PTT Exploration and Production (PTTEP) International Limited, Myanmar, he served as the Vice President, Myanmar Operating Asset from 2010 to 2011.
Asian Peace and Reconciliation (APRC)

PTTEP in Joint Development Area (JDA)
July 3, 2014

AGENDA

- Overview
- Operations
- Conclusion & Recommendation

OVERVIEW

- PTTEP is concessionaire operate B14, B15, B16, B17 and B19 in Gulf of Thailand
- These blocks partially overlapped with Vietnam’s claim boundary to the east and Malaysia’s claim boundary to the south east
- After settlement on all disputed:
  1. Overlapping Area between Thai - Malaysia was agreed on Joint Development agreement to establish MTJA to explore and exploit resources in the Joint Development Area.
  2. Overlapping Area between Thai - Vietnam was agreed on maritime boundary

Thailand Overlapping Area

Overlapping Area between Thailand and Vietnam

Overlapping Area between Thailand and Malaysia
Functional Cooperation in the South China Sea

3 - 4 July 2014, Yangon, Myanmar

**Overlapping Area Thailand-Malaysia**

- Establish Malaysia Thai Joint Authority (MTJA) to explore and exploit resources in the Joint Development Area
- In 1994 PTTEP and Petronas Carigali agreed to establish Carigani-PTTEPI Operating Company Sdn. Bhd. To be an operator in B17 and C19

**MTJA Organization**

- Organization arrangement of MTJA and its link to Production Sharing Contractors in the JDA.

**Overlapping Area Thailand – Malaysia**

**MTJDA-B17**

- Block B-17 and B-17-01
- PSC
  - CPOC (Operator) 50%
  - PTTEPI 50%
  - Petronas Carigali 50%
- Signing Date 1994
- Production Startup Dec 2009
- Block area 4,700 km²
- Phase 1 Production
- DCQ1 335 mmscfd
- DCQ2 250 mmscfd

**MTJDA-B17**

- Block B-17 and B-17-01
- PSC
  - CPOC (Operator) 50%
  - PTTEPI 50%
  - Petronas Carigali 50%
- Signing Date 1994
- Production Startup Dec 2009
- Block area 4,700 km²
- Phase 1 Production
- DCQ1 335 mmscfd
- DCQ2 250 mmscfd
**Operations**

Overlapping Area Thailand-Vietnam

**Operations**

Overlapping Area Thai – Vietnam
- PTTEP operate in Thai side
- Set up Arthit Asset in Thailand
- Block 52/97 in Vietnam

**Operations**

Arthit
- Block B14A, B15A, B16A and B8/50
- Concessionaires
  - PTTEP (Operator) 80%
  - CHEVRON 16%
  - MOECO 4%
- Contract awarded 1998
- Production Startup Apr 2008
- Block area 3,681 km²
- Phase Production
- DCQ1 330 mmstdcfd
- DCQ2 220 mmstdcfd

**Conclusion & Recommendation**

- Clear Maritime boundary is the best for the settlement of overlapping claim between 2 countries
- Joint Development is good approach to settle all disputation on claimed boundary between the countries, if clear boundary cannot be agreed
- Without settlement of maritime boundary or Joint Development, natural resource underground will not be able to be produced for the benefits of 2 countries
- National Oil Company (NOC) from each country should be formed to operate in disputed area
Vasco Becker-Weinberg is currently deputy and legal advisor to the Portuguese Secretary of the Sea. Before joining the Government of Portugal, he practiced law for several years in a leading international law firm and was a fulltime scholar at the International Max Planck Research School for Maritime Affairs at the University of Hamburg. He has a law degree from the Portuguese Catholic University, a Masters from the University of Lisbon and a Ph.D. from the University of Hamburg. He has published several works in public international law and the law of the sea. His research has also focused on maritime disputes and the use and development of marine natural resources in disputed maritime areas. He has just recently written a book entitled “Joint Development of Offshore Hydrocarbon Deposits in the Law of the Sea” (Springer Verlag: 2014). He has further written on international dispute resolution, maritime law, international environmental law, maritime security and the use of force at sea. Over the years he has undertaken extensive research at prominent academic institutions and participated in important scientific meetings and conferences. He collaborates and frequently lectures in several Portuguese and foreign Universities and also at the Diplomatic Institute of the Portuguese Ministry of Foreign Affairs.
DISCLAIMER:
This presentation and the views expressed are exclusively of the responsibility of the author and do not represent the position of the Portuguese Secretary of State of the Sea or of the Government of Portugal.

Thank you!
Mineral resources clauses

- Outline of State practice
- Maritime delimitation agreements
- Joint development agreements
- Relevance of mineral resources clauses
- Obligation to include mineral resources clauses
- Non-compliance with mineral resources clauses
- States’ obligations in the absence of mineral resources clauses
  - Negotiate in good faith and of mutual-restraint
  - Share information

Transboundary hydrocarbon deposits

- Basis for joint development after the delimitation of maritime boundaries
  - Resource-efficiency
  - Access to resources that would otherwise be off-limits
  - Reinforcement of capabilities
  - Aiding in the delimitation of (partial) maritime boundaries
- States’ obligations
- Rights and freedoms of third States

Legal regime of offshore installations and structures

- Installations and structures within and beyond national jurisdiction
- Classification of oil rigs
- Construction and operation
- Removal and decommissioning
- States’ responsibility for pollution from seabed activities subject to national jurisdiction

Areas of overlapping claims

- Economic activities in disputed maritime areas
- Provisional arrangements of a practical nature (Article 83(3) of UNCLOS)
- Relevant aspects
- Conflicting titles
- Obligation to make every effort and of mutual-restraint
- Final delimitation of maritime boundaries
- Rights and duties of claiming States
- Rights and duties of other States
- Settlement of disputes (Part XV of UNCLOS)
- Identifying the joint development area
Areas of overlapping claims (cont.)

- Protection and preservation of the marine environment in disputed maritime areas
- Pollution from seabed activities
- Obligation to not cause transboundary harm or damage
- Essential legal and functional elements of joint development
- State participation in exploration and exploitation activities
- Creation of joint entities

The Asia-Pacific region

- A valuable case-study
- The Timor Sea
  - The Northeast China Sea
  - 1974 Japan-South Korea
- The Southeast China Sea
  - 1974 China-Philippines
  - 1974 China-Vietnam
- 1989 Brunei-Malaysia (?)
- Lessons learned

Access to operations

Safeguard of pre-existing rights

Taxation, sharing of costs and revenues

Employment, health and safety

Protection and preservation of the marine environment

Applicable law and settlement of disputes with and between operators
The Asia-Pacific region
- The Timor Sea
- The Northeast China Sea
- The Southeast China Sea
- Lessons learned

Conclusions
- There is no obligation to develop common offshore hydrocarbon deposits
- There is no consistent practice
- There is no obligation to enter into joint development agreements
- Cooperation is essential for resource-efficiency
- Joint development is economically-driven
- States’ obligations in the absence of agreement:
  - Due regard and mutual restraint
  - Negotiate in good faith
  - Cooperate and adopt procedural duties
Joint Development of Hydrocarbon Deposits in the Law of the Sea

Vasco Becker-Weinberg
Dr. iur. (Hamburg), Master of Laws (Lisbon)
Roundtable on
Functional Cooperation in the South China Sea
Yangon, Myanmar
3-4 July 2014

Outline:
The increase of claims by coastal States to extend jurisdiction over adjacent maritime areas may be partly attributed to the advancement and availability of the technology that allows for the exploration and exploitation of resources at depths that until a few years ago were unreachable to mankind. While most of the earth is covered by water, States’ aspiration to secure and control access to mineral resources has resulted, on many occasions, in conflict between different coastal States regarding the delimitation of maritime boundaries, as well as the sovereignty over islands and other features and their respective adjacent maritime areas.

This background is particularly prevailing in emerging economies with a growing population rate and consequential increase of urban centres, such as those of several coastal States of the South China Sea. Living resources are likewise valuable as an important source of protein and, therefore, aggravate the complexity of the overall context. Many of these intricate and potentially irreconcilable situations have contributed towards several of the existing conflicts in the South China Sea regarding the delimitation of maritime boundaries and are amongst the main reasons for enduring disputes.

When mineral resources straddle a maritime boundary line or are found in areas of overlapping claims, States are subject to certain obligations and to act in accordance with the principles of cooperation and to act in good faith. In the case of maritime areas that are claimed by two or more States, the legal regime requires that States make every effort to enter into interim measures, lacking, however, clarification as to the extent or content of these efforts. Also, in the case of mineral resources that straddle a maritime boundary, coastal States are not required by the United Nations Convention on the Law of the Sea (UNCLOS) to enter into an agreement regarding the exploration and exploitation of these resources, similarly as they are not bound to share the mineral resources that lie across the Area and areas subject to national jurisdiction.

The law of the sea merely requires the delimitation of maritime boundaries by agreement and does not address issues pertaining to territorial disputes. Additionally, States are often reluctant to submit disputes to international courts and tribunals, partly due to the uncertainty of its outcome, particularly as the presence of mineral resources is not given specific relevance by international jurisprudence when drawing a maritime boundary. States further complicate matters by adopting a nationalistic rhetoric, which may be difficult to retract from in order to achieve a resolution of the dispute, and also because of their ambition to guarantee exclusive control over maritime areas with great mineral resource-potential.

The concept of joint development is not regulated in UNCLOS or in related international legal instruments. UNCLOS also does not include any rules regarding seabed activities in disputed maritime areas. Notwithstanding, State practice has considered joint development a valuable alternative that allows for the development of mineral resources in areas of overlapping claims pending the delimitation of maritime
boundaries without hindering their claims, including in areas of the continental shelf beyond 200 nautical miles. Likewise, States have resorted to joint development agreements after the delimitation of maritime boundaries regarding transboundary mineral resources, even though mineral resources clauses included in delimitation treaties have, in most cases, a mere programmatic character, without predicting the sharing of resources. Similar joint development agreements could eventually be considered for the purpose of developing mineral resources in the Area that lie across the limits of national jurisdiction.

The law of the sea has not developed a rule requiring States to cooperate in the exploration and exploitation of mineral resources in the situations mentioned before, or to adopt conservation measures ensuring the efficient development of mineral resources and the avoidance of waste. Therefore the analysis of joint development of hydrocarbon deposits in the law of the sea as a particular example of cooperation between States is paramount in regions such as the South China Sea. To this effect, it is important to understand the origin and concept of joint development and the relevant distinctions between agreements signed before and after the delimitation of maritime boundaries. On the other hand, taking into consideration the characteristics of hydrocarbon deposits, particularly in what concerns the efficient development of these and the adoption of conservation measures, assessment must also be made of the relevance and legal nature of mineral resources included in delimitation treaties and joint development agreements, together with States’ obligation regarding transboundary mineral resources in the absence of such clauses. In this respect, it is also relevant to examine the role that international jurisprudence has given to mineral resources in maritime delimitation and what it has considered as being States’ obligations in situations where two or more States share common mineral resources. Furthermore, since the practice of joint development is conventional in its legal nature and, therefore, is subject to international law, the assessment of the power of coastal States to negotiate and enter into joint development agreements before and after the delimitation of maritime boundaries is a key element to understanding the legal basis for such regimes being implemented in disputed maritime areas.

Considering the challenges of the applicable legal framework, the ensuing question is whether functional cooperation is attainable in the context of the existing disputes of the South China Sea, and if joint development is the (only?) means to achieve it.
Welcoming Statement by 
H.E. U Thant Kyaw, 
Deputy Minister for 
Foreign Affairs of Myanmar
Remarks by H.E. Mr. Li Zhaoxing, APRC Council Member, former Minister of Foreign Affairs of China.
Interview by Sky Net and Nation
Functional Cooperation in the South China Sea

3 - 4 July 2014, Yangon, Myanmar
Functional Cooperation in the South China Sea

Introduction / Background

The South China Sea issue is a dispute involving territory and sovereignty over ocean areas and the Paracels and the Spratlys - two island chains claimed in whole or in part by a number of countries. Alongside the fully-fledged islands, there are dozens of uninhabited rocky outcrops, atolls, sandbanks and reefs, such as the Scarborough Shoal. The Spratleys are claimed by Brunei, China, Malaysia, the Philippines, Taiwan and Vietnam and the Paracels are claimed by China, Vietnam and Taiwan.¹

China claims by far the largest portion of territory - an area defined by the so-called "nine-dash line" which stretches hundreds of miles south and east from its most southerly province of Hainan. Beijing says its right to the area comes from 2,000 years of history where the Paracel and Spratly island chains were regarded as integral parts of the Chinese nation. In 1947 China issued a map detailing its claims. It showed the two island groups falling entirely within its territory. Those claims are mirrored by Taiwan.²

Vietnam disputes China’s historical account, saying China had never claimed sovereignty over the islands before the 1940s. Vietnam says it has actively ruled over both the Paracels and the Spratlys since the 17th Century - and has the documents to prove it. The other major claimant in the area is the Philippines, which invokes its geographical proximity to the Spratly Islands as the main basis of its claim for part of the grouping. Both the Philippines and China lay claim to the Scarborough Shoal (known as Huangyan Island in China) - a little more than 100 miles (160km) from the Philippines and 500 miles from China. Malaysia and Brunei also lay claim to territory in the South China Sea that they say falls within their economic exclusion zones, as defined by the UN Convention on the Law of the Sea (UNCLOS). Brunei does not claim any of the disputed islands, but Malaysia claims a small number of islands in the Spratlys.³

The map below sets out visually the various overlapping claims related to the South China Sea.

The South China Sea is a very important trade route with approximately 1/3 of the world’s shipping transiting its waters. As examples of its importance, it is noted that over 50% of India’s trade and almost 60% of Australia’s trade passes through the South China Sea. It is home to important fishing grounds that support the livelihoods of people across the region - it is believed to constitute over 10% of the total world fish catch.

The South China Sea is also believed to hold very significant energy resources. The US Energy Information Administration estimates there to be proven and probable reserves of approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas reserves. It notes, however, that it is difficult to estimate the amounts of oil and natural gas in the South China Sea because of under-exploration and territorial

² ibid
³ ibid
disputes. In addition to proved and probable reserves, the South China Sea may have additional hydrocarbons in underexplored areas. The U.S. Geological Survey (USGS) analysed the potential for undiscovered conventional oil and gas fields within several geologic provinces of Southeast Asia in 2010 as part of its World Petroleum Resources Assessment Project. The study included a significant area of the South China Sea, which the USGS estimates may contain anywhere between 5 and 22 billion barrels of oil and between 70 and 290 trillion cubic feet of gas in as-yet undiscovered resources (not including the Gulf of Thailand and other areas adjacent to the South China Sea). These additional resources are not considered commercial reserves at this time because it is unclear how economically feasible it would be to extract them. As the USGS assessment did not examine the entire area, undiscovered resources could be greater. In November 2012, the Chinese National Offshore Oil Company (CNOOC) estimated the area holds around 125 billion barrels of oil and 500 trillion cubic feet of natural gas in undiscovered resources, although independent studies have not confirmed this figure. It should be noted, however, that only a proportion of such estimated undiscovered resources are likely to prove commercially viable to develop.

Any sovereignty dispute between nations is likely to be accompanied by significant tensions, as each state will be very concerned on issues that impact upon national pride and ‘face’. In the case of the South China Sea, the scale and value of the natural resources involved can only exacerbate such tensions. It is perhaps not entirely surprising therefore that in recent decades there have been occasional conflicts between many of the parties involved in the sovereignty disputes. The most serious troubles in recent decades have involved Vietnam and China, for example when China seized the Paracels from Vietnam in 1974, killing more than 70 Vietnamese troops. In 1988 the two sides again clashed in the Spratlys. The Philippines has also been involved in a number of minor skirmishes with Chinese, Vietnamese and Malaysian forces.

Historically, China has sought to deal with the South China Sea issue on a bilateral basis with other States. Conversely, Vietnam and Philippines would prefer for ASEAN to present a united front and for there to be multilateral negotiations - although Brunei and Malaysia have not hitherto been particularly supportive of ASEAN ‘centrality’ on the South China Sea issue. However, it is important to recognise that the involvement of ASEAN in the formulation of the Declaration on the Conduct of Parties in the South China Sea (DOC), and signed by ASEAN and China on 4 November 2002, was an important development. The signing of the DOC at that time was a milestone event - an important ‘Confidence Building Measure’ (CBM). The DOC provisions - see also below - include a commitment by the signatory parties 'to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays and other features and to handle their disputes in a constructive manner.'

It is clear from the above that the sovereignty issues related to the South China Sea are complex and involve overlapping claims as between various States and with perhaps somewhat varying degrees of compelling related legal argument. This paper will not seek to address in any detail the legal and other arguments on sovereignty relating to the South China Sea. Instead, it will seek to focus on the prospects for Functional Cooperation.

However, before considering the options and possibilities for such functional cooperation, it is appropriate to record a few of the more recent developments relating to the South China Sea. These developments collectively herald a growing risk to regional security and wellbeing and constructive international relations as between China, ASEAN and other regional / world powers.

Recent Developments

China has been taking what many consider to be a much more aggressive stance

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including the introduction of a number of ‘administrative’ measures, which seek to promote its sovereignty position. In 2012, China formally established Sansha City, an administrative body with its headquarters in the Paracels to ‘oversee Chinese territory in the South China Sea’ - including the Paracels and Spratlys’. This move was, of course, opposed by both Vietnam and the Philippines. Hainan Province has also declared that as from 1 January 2014 all foreign fishing vessels, which want to operate in the South China Sea, will require prior permission from the Chinese authorities. There are also concerns in some quarters that China may seek to impose an Air Defence Identification Zone (ADIZ) for the South China Sea on a similar basis to that established for the East China Sea (and which ADIZ is vehemently opposed by Japan, South Korea and others, including the US and some ASEAN Members). While China has denied any such intention as regards an ADIZ for the South China Sea, it is probable that such concerns will continue - particularly if China’s general approach continues to be seen by many as being unduly aggressive and unreasonable i.e. in terms of the related displays of military strength, economic pressure, and ‘administrative’ decrees.

In January 2013, the Philippines instituted arbitral proceedings under Article 287 and Annex VII of UNCLOS. The Philippines is requesting the Tribunal, among other things, to declare that China’s claims in the South China Sea (or West Philippine Sea as much of it is referred to by the Philippines) and based on its ‘so-called nine-dash line’ are contrary to UNCLOS and unlawful. In April 2014, the Philippines submitted a Memorial to the Tribunal of almost 4,000 pages setting out its position. China has refused to participate in the Arbitration Proceedings and UNCLOS has no mechanism for enforcement of any decision it might make. However, should the Philippines case proceed and be successful at the Tribunal, as is perhaps less particularly without Chinese participation, it will arguably have established both a legal and public relations/moral high ground.

The 1st ASEAN Claimants Working Group Meeting was held in Manila on 18 February 2014 - Brunei did not attend. The meeting, however, did see the involvement of Malaysia alongside Philippines and Vietnam. Malaysia was reported to have abandoned its previously passive attitude toward China’s military activities in the South China Sea. The recent military exercises by China in oil-rich James Shoal, 80 kilometers from Malaysian Coast (at the farthest border of China’s 9-dash line map) may have been a factor in Malaysia’s changed approach.

On 12 March 2014, Indonesia announced that China’s nine-dash line map outlining its claims in the South China Sea overlaps with Indonesia’s Riau Province (including the Natuna Island chain). Indonesia’s declaration that it is a party to the South China Sea territorial disputes, and recent reports that it is expanding its military capacity, will serve to heighten tensions further with China.

The recent changes in the approach / position of Malaysia and Indonesia respectively may increase the prospects for a more ASEAN centric approach to the South China Sea issue - whether related to sovereignty and / or functional cooperation.

The most recent development in the South China Sea disputes has been of particular international concern. On 1 May 2014, China positioned an oil rig (HD-981) within Vietnam’s Exclusive Economic Zone in the South China Sea i.e. disputed waters. A reported 70 Chinese vessels were associated with the move of the oil rig, including PLA Navy Warships. The timing of this action - which later led to violent anti-Chinese riots in Vietnam with over 20 dead and over 100 injured - appears to raise certain questions as to China’s precise motivations having regard to the occasion of the ASEAN Summit in Myanmar just a week later. The positioning of the oil rig in disputed waters certainly overshadowed much of the 24th ASEAN Summit on 11 May 2014. It is perhaps interesting to speculate, for example, whether China intended to test Vietnam’s individual reaction and / or ASEAN’s collective reaction - and / or put pressure on Myanmar in its position as Chair of ASEAN.

While the ASEAN Chairman’s remarks in his opening and closing addresses refrained from commenting on the South China Sea issue, the Naypyitaw Declaration9 did include a reference to the South China Sea - "To strengthen cooperation for the full
and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) in accordance with universally recognized principles of international law including the 1982 UN Convention on the Law of the Sea (UNCLOS) especially calling on all parties to exercise self-restraint and non-use of force, as well as to refrain from taking actions that would further escalate tension and to work toward an early conclusion of the Code of Conduct in the South China Sea (COC) as reflected in the ASEAN’s Six-Point Principles on the South China Sea.” It is a tribute to Myanmar’s effective Chairmanship of the ASEAN Summit that they were able to lead and achieve a consensus on the South China Sea issue, which is one that has previously highlighted certain divisions as between ASEAN Members.

(ASEAN’s Six Point Principles comprise full implementation of the DOC, the guidelines for the implementation of the DOC, the early conclusion of a regional COC in the South China Sea, full respect of the universally recognised principles of international law including the 1982 UNCLOS, continued exercise of self-restraint and non-use of force by all parties, and peaceful resolution of disputes in accordance with the universally recognised principles of international law including the 1982 UNCLOS.)

Subsequent to the ASEAN Summit and in response to the oil rig dispute, Nguyen Tan Dung (the Prime Minister of Vietnam) has indicated that Vietnam is now considering legal action against China over the disputed waters in the South China Sea. No details have been provided of what legal action may be contemplated but a submission to UNCLOS on similar lines, and with similar objectives, to the submission made by the Philippines would clearly be one option.

The various recent actions by China have almost certainly had the effect of creating growing alliances and tactical coordination of activity both within ASEAN but also as between Japan and South Korea (with similar territorial disputes with China relating to the East China Sea) and various ASEAN Members (South China Sea). Inevitably the US (as a major ally to many of the States involved in both disputes and wishing to protect vital interests) has been and may be drawn further into the disputes. The US Ambassador stated (at a Myanmar ISIS arranged talk on 27 May 2014) that the US considers that it has substantial interests in the South China Sea. The Ambassador noted that $1.2 trillion of US trade passes through critical ASEAN sea lanes, that ASEAN includes two US treaty allies, that ASEAN is the United States’ fifth largest trading partner and fourth largest export market, that the US is the largest investor in ASEAN and ‘that economically, diplomatically, militarily, the United States has been, the United States is, and the United States will remain a resident Asia-Pacific nation.’ Such comments do not suggest that the US will allow its own interests and those of its treaty allies and ASEAN partners to be subverted. The Ambassador made clear that the US supports efforts by ASEAN and China to develop an effective Code of Conduct to promote a rules-based framework for managing the behaviour of the relevant countries in the South China Sea. He said he believed the negotiating process should be accelerated.

At the Shangri-La Dialogue held from 30 May to 1 June, the tensions between major powers were very much in evidence. Prime Minister Abe of Japan was the keynote speaker at the opening dinner and took the opportunity to criticise China’s approach to the various territorial disputes and to set out an enhanced role for Japanese security in the region. He also offered to provide patrol boats to the Philippines and Vietnam - a clear public linking of the various territorial disputes with China. Prime Minister Abe was followed by Chuck Hagel, the US Secretary of Defense, who used his speech to accuse China of “destabilising, unilateral actions” to assert its claims in the South China Sea. He also endorsed Mr. Abe’s speech and stressed the importance of America’s strategic “pivot” or “rebalance” towards Asia. Lieutenant-General Wang Guanzhong, deputy Chief of China’s PLA General Staff Department, departed from the speech he had prepared for the Dialogue. He accused Mr. Abe and Mr. Hagel, in effect, of gang up to antagonist China. He called their criticisms “simply unimaginable.” Mr. Hagel’s speech was “full of hegemony, full of words of threat and intimidation.” It was “not constructive”. In an obvious reference to Mr. Abe - and this was in his prepared remarks - General Wang said that China would never allow
“ruthless, fascist and militaristic aggression to stage a come back.”

The risks of further escalation of the South China Sea disputes - and the potential for misjudgements by one or more parties leading to dire consequences - are not inconsiderable. Regional security and sustainable economic growth and prosperity will be increasingly threatened unless mechanisms can be found to restore and rebuild confidence.

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

The DOC13 signed in November 2002 (and referred to above) set out a number of confidence building measures and also emphasised the possibility of exploring and undertaking cooperative activities pending a comprehensive and durable settlement of the disputes. The cooperative activities listed (under Article 6) include marine environmental protection; marine scientific research; safety of navigation and communication at sea; search and rescue operation; and combating transnational crime.

Guidelines for the Implementation of the DOC were finally agreed in November 2011 but added little to the original DOC. The Guidelines had been in discussion for over 6 years and when signed contained only one significant change from the original 2005 draft i.e. the amendment / deletion of a clause stating ‘ASEAN will continue its current practice of consulting among themselves before meeting with China’ - the original draft clause (objected to by China) was replaced by a general reference to the parties promoting ‘dialogue and consultations in accordance with the spirit of the DOC’. There had apparently been 21 different drafts between 2005 and 2011 essentially on this particular issue / wording - reflecting the differences in approach as between the bilateral discussions as preferred by China and the ASEAN way.14 The

Guidelines agreed in 2011 made reference to an eventual Code of Conduct - ‘The decision to implement concrete measures or activities of the DOC should be based on consensus among parties concerned, and lead to the eventual realization of a Code of Conduct.’ However, the DOC has still not been implemented and a Code of Conduct has still not been concluded. The reasons for this are not wholly clear but may reflect the view of one or more participants that a binding Code of Conduct is not in their best interest and / or will explicitly or implicitly affect their sovereignty claims and / or require cessation of certain current activities that would likely be in immediate violation of such a Code of Conduct depending upon its terms.

The Case for Functional Cooperation

As the DOC attests, the concept of functional cooperation in the South China Sea is not new. The DOC signed in 2002 listed a number of areas for functional cooperation - arguably the least controversial of potential areas where cooperation might be progressed, but nonetheless important in terms of confidence building measures.

In June 1986, Deng Xiaoping was reported to have told Philippines Vice President Salvador P. Laurel of China’s proposed formula to ‘shelve sovereignty issues and go for joint development.’ This concept had earlier been raised by Deng Xiaoping in connection with China’s sovereignty dispute with Japan over the Diaoyu / Senkaku Islands - ‘Our generation is not wise enough to find common language on this question...Our next generation will certainly be wiser. They will certainly find a solution acceptable to all.’ In the meantime, Deng proposed that China and Japan should jointly develop the area’s rich economic resources.

Deng Xiaoping’s approach was very pragmatic and fully recognised that sovereignty issues between proud nations were unlikely to be resolved in the near term. (It is possible, however, that the jury may still be out in terms of his comment that ‘the next generation will certainly be wiser.’)

The earlier part of this paper has detailed the importance of the South China Sea in terms of shipping routes and trade, marine environment, fishing, and energy resources. The risks associated with the continuing escalation of the various disputes relating to the South China Sea - i.e. in terms of regional and global security and...
sustainable economic growth and wellbeing have also been highlighted. Those risks would increase markedly should China’s position become even more isolated from its regional neighbours in ASEAN and other significant international players (including the US, India, Japan and South Korea where there are undoubtedly significant trade and other strategic interests at stake).

It is, of course, difficult to extract fully the potential for functional cooperation and joint development from sovereignty issues. Vietnam has, for example, interpreted China’s concept of joint development as ‘What is mine is mine, what is yours is mine and we are willing to share.’ Notwithstanding the difficulties and problems there may be, all countries involved in the South China Sea disputes (whether directly or indirectly) have responsibilities related to the environment, the proper management and development of critical resources, regional and global security, sustainable economic growth, and the wellbeing of their citizens and neighbours. Alongside the undoubted challenges ahead there are also extraordinary opportunities - for all parties - in terms of furthering regional stability and security and ensuring access to critical resources across the region over the forthcoming decades - thus reducing, for example, the dependence on imported energy.

It is also important to recognise that there have already been a number of areas of functional cooperation related to the South China Sea and some of these will be referenced as this paper considers what areas might be explored in terms of functional cooperation and possible options in relation thereto.

Areas and Possible Options for Functional Cooperation

Functional Cooperation is multi-faceted and can cover a range of different activities. Countries may enter into arrangements voluntarily or in certain cases they may have a duty to cooperate in accordance with international agreements they have agreed / ratified (e.g. UNCLOS).

The South China Sea can be categorized as a semi-enclosed sea as set out in Article

122 of UNCLOS - an ‘enclosed or semi-enclosed sea’ means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Under Article 123 of UNCLOS, States bordering an enclosed or semi-enclosed sea are required to cooperate with each other in the exercise of their rights and in performance of their duties under UNCLOS and to this end they shall endeavour, directly or through an appropriate regional organisation:

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;

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

While the mechanisms and processes for cooperation may need to be determined and agreed, the above responsibilities apply to all South China Sea claimants irrespective of the issues of sovereignty and the nature of the territorial disputes.

Points b) and c) in Article 123 are also evident within the DOC i.e. in Article 6 - marine environmental protection and marine scientific research. These two issues are also a matter of significant public concern at national, regional and global levels. An example of such environmental concern can be identified in the Global Environmental Facility (GEF) 2010 report - ‘From Ridge to Reef’ - which report suggests that over 80% of reefs in the South China Sea are at risk and will collapse within 20 years unless sustainable practices are adopted. An obvious absence of cooperation by relevant States in such important marine environmental areas (with globally significant biodiversity) would not be seen to play well in the court of public opinion, whether at a national or international level.

15 Tran Trung Thuy, “Recent Developments in the South China Sea and Evolution of Vietnam’s Claims and Positions” (Presented at the Forum on South China Sea organized by the Carlos P. Romulo Foundation in Makati City on 17 October 2011)
These two areas may be among the least sensitive areas for prospective functional cooperation among the various parties involved in the South China Sea disputes. Substantive evidence of further progress in one or both of these areas would be extremely helpful as a confidence building measure and in lowering tensions generally in the South China Sea.

Item 4) in Article 123 of UNCLOS referenced above might also offer potential opportunities for considering the involvement of an appropriate international organisation to assist in discussions whether between the various parties directly - or at a Track 2 level. Possible organisations to become involved might include the UN, GEF (which is a partnership between the UN Development Programme, the UN Environment Programme, the World Bank, the UN Food and Agriculture Organisation, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the International Fund for Agricultural Development) or another party of significant international standing bringing appropriate skills and experience relevant to the issues of such functional cooperation.

Before considering the more difficult area for cooperation under Article 123 of UNCLOS as outlined in a) above, it is perhaps appropriate to comment on the other areas of functional cooperation identified within Article 6 of the DOC - i.e. the safety of navigation and communication at sea, search and rescue operations, and combating international crime. Substantive progress has been made in terms of cooperation in these areas as has been evident, for example, in the search for MH370. They are critical areas for functional cooperation but may be best dealt with in a different negotiating environment from issues involving marine environment and scientific research. Each functional ‘group’ has its own professional specialisms and focus. In this connection it is noted that at the 7th ASEAN-China Senior Officials Meeting on Implementation of the DOC held in April 2014, China suggested setting up three technical committees respectively covering - maritime search and rescue; combating cross-border crime; and maritime scientific research and environment protection.16

The meeting also discussed how the RMB 3 billion China-ASEAN Maritime Cooperation Fund (established in 2011 to assist cooperative measures under the DOC) might be utilised.

Consideration might also be given to creating a Code of Conduct (COC) specifically for one or more of the areas identified in Article 6 of the DOC. Progressing and highlighting successful cooperation and agreement on particular issues of critical national and regional concern may be preferable to a vacuum without evidence of progress and related Confidence Building Measures whether in relation to the DOC, the COC or otherwise.

Item a) in Article 123 referenced above is concerned with the coordination of the management, conservation, exploration and exploitation of the living resources of the sea. This is a significantly more complex area for functional cooperation having regard to the sovereignty disputes, the respective positions of the various parties, and recent developments in the South China Sea as outlined above. However, the duties and responsibilities of the various parties to cooperate are clear in Article 123 of UNCLOS - and these must be considered alongside the other drivers for cooperation, which include the proper management and development of critical resources, regional and global security, sustainable economic growth, and the wellbeing of citizens.

Functional Cooperation - Fisheries Management

As indicated above, the fishing resources of the South China Sea are critical to the food security of the region and the livelihoods of its peoples. In its report “The State of World Fisheries and Aquaculture 2012”, the UN Food and Agriculture Organisation found that in 2009, consumption of fish in Asia was 85.4 million tonnes, which accounts for two-thirds of total global fish consumption. Of the consumption of 85.4 million tonnes, just over 50% was from China (42.8 million tonnes).17 The FAO report also notes that 87% of all people involved in the fisheries sector were in Asia - i.e. 47.9 million.18 A specific breakdown for the South China Sea of fish consumption and labour is not available within the FAO report. However, as the South China Sea comprises approximately 10% of the global fish catch - the South China Sea will


18. ibid
represent a significant and likely representational proportion of these highlighted statistics.

Fish are not blessed either with passports or with a genetic make-up so as to be respectful of the territorial claims of sovereign states. In this respect, it is also noted that many of the key fish stocks within the South China Sea have a particularly migratory nature. As Schofield et al note in their paper ‘From Disputed Waters to Seas of Opportunity’ published in the National Bureau for Asian Research Special Report # 30 in July 2011, ‘fish stocks tend to migrate within and between national maritime jurisdictions and areas subject to multiple claims. This in turn dictates that these valuable resources can largely be considered ‘common pool’ resource and managed as a whole - something that is manifestly not occurring at present. In this context, the need for strict ecosystem-wide, and thus transboundary, management of these threatened resources is compelling.’ (The paper’s commentary as to ‘threatened resources’ was made with reference to an earlier FAO report in 2010, which report found that 85% of all marine stocks were either fully-exploited (53%) or over-exploited, depleted or recovering (32%). They also referenced the GEF report, which highlighted that the South China Sea had been recognised as an area of globally significant biodiversity and suggested that over 50% of reefs in the South China Sea will collapse within 20 years unless sustainable practices are adopted.)

Schofield et al made a compelling case in their paper for increased fisheries and marine cooperation in the South China Sea.

Regional fishery bodies (RFBs) are the primary organizational mechanism through which States can work together to ensure the long-term sustainability of shared fishery resources. The term RFB also embraces regional fisheries management organizations (RFMOs), which have the competence to establish binding conservation and management measures.

Issues of sovereignty do not need to be determined in order for an RFB to be formed and board membership could, for example, take into account a number of different elements - including relevant sovereign states participating on a 1:1 basis; or with weighted factors including for example current fleet operations or consumption factors; expertise; or a combination thereof.

Irrespective of sovereign claims, the effective management of the South China Sea’s fishing and marine resources is critical for all nations and best resolved by dialogue rather than by confrontation. In this respect, an RFB is a mechanism worthy of further discussion and exploration in terms of Functional Cooperation in the South China Sea.

Any such consideration of an RFB would need to take account of other existing cooperative initiatives and structures including the Asia-Pacific Fishery Commission, the Expanded ASEAN Maritime Forum (East Asia Summit Participating Countries), The South East Asia Networking on Education and Training (SEANET), and The Southeast Asia Fisheries Development Center (SEAFDEC).

Functional Cooperation - Energy Resources

When considering joint development of resources in disputed areas there are a number of potential models that may be used. Guo Rongxing identified five potential models in his paper ‘Territorial Disputes and Seabed Petroleum Exploitation.’ Three of the possible models are detailed below. The other two models identified by Guo Rongxing - Joint Authority and Trustee - are not felt to be realistic possibilities given the nature of the South China Sea claimant states and the prospective difficulties in coding decision-making to a Joint Authority or Trustee.

1. Solo development model

Under this model one state acts on behalf of all of the interested states related to a disputed area, and manages the exploration and exploitation of natural resources in the disputed area. The other states receive a share in the proceeds from the exploitation after costs are deducted.

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20. Ibid
The Australia-Timor L’Este Maritime Arrangements are an example of the solo development model. The treaties between Australia and Timor L’Este establish a framework for the exploitation of the Greater Sunrise gas and oil resources and sharing of revenues. The treaties between the two countries provided the opportunity to underpin further the income and development of one of Australia’s closest neighbours, while at the same time putting on hold the Parties’ claims to jurisdiction and maritime boundaries in the Timor Sea for fifty years. The specific agreement to sovereignty claims being put on hold for 50 years is worthy of highlighting.

2. Parallel Development Model

In this model each of the states interested in a disputed area conducts its own exploration and exploitation activities independently.

In his very helpful paper, Guo Rongxing observed “It seems that the petroleum exploration and exploitation in the South China Sea follows, at least partly, a “parallel model.” At present, each of the coastal states (including Brunei, Indonesia, Malaysia, Philippines, and Vietnam) has its own oil/gas operations in an area that is also claimed - wholly or partially - by one or more of the other states. Despite the territorial disputes and uncertainty over the South China Sea, these coastal countries have involved energy companies in exploration and exploitation in their respective claims. Cooperation arrangements between national petroleum companies, including Chinese state-owned oil companies, “have been negotiated which hold out the prospect of greater security, even in the absence of a settlement of the maritime claims” (Buszynski and Szalai, 2007, p. 1).”

There are, however, major potential problems with parallel development in disputed areas. International energy companies can become more resistant to participating in prospective developments if there are prospective short or medium-term uncertainties as to reactions by other claimants. This is particularly true if one or more other states have the ability to disrupt development and/or apply economic or other pressures on either or both of the development partners (sovereign state and energy company).

The issue of parallel development can also become problematic when development takes place in a disputed (or indeed undisputed area) but where drilling can affect resources in a related undisputed area i.e. part of the same field. In such cases there is an obligation for relevant states to cooperate both under international law and in terms of optimising economically and environmentally the resource development.

3. Joint Venture Model

This is perhaps the most popular option for the joint or cooperative development of disputed areas. In general, the joint venture model “consists of” an agreement establishing a system of compulsory joint ventures between the interested states and their ... nominated oil companies in designated joint development zones. In this model all subsequent contracts will follow the production-sharing principle of petroleum exploration and exploitation.

An example of a Joint Venture in ASEAN would be the 1992 Memorandum of Understanding (MOU) between Malaysia and the Socialist Republic of Vietnam. The MOU provided for the Exploration and Exploitation of Petroleum in an overlapping claim area of the continental shelf. This was designated as a joint development area by the two countries whereby all fossil fuel resources in the area is shared between Malaysia and Vietnam. Oil production began in 1997 from the Bunga Kelwa field.

Perhaps the most ambitious attempt at joint cooperation and development relating to disputed areas in the South China Sea was the Joint Marine Seismic

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Undertaking (JMSU) between the Philippines, China, and Vietnam.

The JMSU accord was originally a bilateral agreement signed in 2004 between the state-owned Philippine National Oil Company (PNOC) and the China National Offshore Oil Company (CNOOC). It provided for the parties to engage in joint research of petroleum resource potential of a certain area of the South China Sea. PetroVietnam came on board only in March 2005, turning the bilateral into a tripartite agreement. In a joint statement, the three state-owned oil companies declared that the signing of the tripartite agreement ‘would not undermine the basic positions held by their respective governments on the South China Sea’ (referring to the claims of sovereignty), but would help turn the disputed area into an area of "peace, stability, cooperation and development in accordance with the UNCLOS and the 2002 DOC." 25

Professor Baviera highlights in her excellent paper why the JMSU was allowed to lapse. These included, inter alia, that the criteria set out for joint development under the JMSU were always likely to prove problematical, constitutional issues relating to foreign ownership of resources, the impact of political turmoil and differences within the Philippines, and public concern that the area of coverage included parts of the Philippine territory which had not earlier been acknowledged by the Philippines as a disputed area, including Reed Bank. (Reed Bank is thus far the area of primary hydrocarbon interest near the Spratlys).

The importance of revisiting the possibility of joint development of energy resources including in the most contested areas of the Spratlys and Paracels cannot be understated. The JMSU may not have succeeded but the problems as to why it did not progress need to be further assessed and innovative solutions found to such problems. For the reasons set out in the paper above, all areas of functional cooperation in the South China Sea need to be explored and progressed. The inclusion of undisputed areas (and not just disputed areas) in multiparty or bilateral discussions should not be ruled out. Looking at the best way to develop critical resources that may well cross sovereign boundaries (whether disputed or otherwise) is sound in environmental, economic and geopolitical terms.

Conclusion and Opportunities for Myanmar and Myanmar ISIS

This paper has sought to provide background on the South China Sea disputes and recent developments. It has not sought to consider the legal and other arguments as regards sovereignty. The case for and the potential areas of Functional Cooperation have been considered with commentary as to difficulties and options.

Despite the difficulties there may be, all countries involved in the South China Sea disputes (whether directly or indirectly) have responsibilities related to the environment, the proper management and development of critical resources, regional and global security, sustainable economic growth, and the wellbeing of their citizens and neighbours. Effective and broad functional cooperation can further regional stability and security and ensuring access to critical resources.

Myanmar, in its role as ASEAN Chairman, may be able to build on its recent Summit success and explore with ASEAN partners the various possibilities to develop further functional cooperation in the South China Sea. Dialogue and progress in areas of functional cooperation may help reduce current tensions, risks and uncertainties.

Myanmar ISIS may also have a key role to play in bringing together experts and blue-sky thinkers in terms of the areas and options for Functional Cooperation. This role can be effected through various mechanisms including the forthcoming APRC / Myanmar ISIS / SIFAF Joint Roundtable on Functional Cooperation in the South China Sea to be held in Yangon on 3-4 July 2014.

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(Any views expressed in this paper are those of the author alone and do not represent the position of the Myanmar Institute of Strategic and International Studies nor of the Asia-Europe Institute, University of Malaya)
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