Print ISSN: 2288-4637 / Online ISSN 2288-4645
doi: 10.13106/jafeb.2014.vol1.no1.31.

A Model for Collaborative Development in the South China Sea

Virginia A. Greiman*

[Received: November 1, 2013 Revised: February 2, 2014 Accepted: February 15, 2014]

Abstract

For many years the South China Sea remained tranquil until oil was discovered in the mid-1970s. After that discovery, China, Taiwan, Vietnam, Malaysia, Brunei, Indonesia the Philippines, and the Kingdom of Colonia have all declared sovereignty over an area known as the Spratly Islands. Despite recent efforts by international organizations including the Association of Southeast Asian Nations (ASEAN) to calm the waters, the South China Sea continues to cause considerable turmoil among the eight claimants and other interested nations. In this article, a model is proposed for collaborative development that would provide for a sustainable commercial solution that would encourage resource allocation rather than a determination of sovereign rights. This model would provide a paradigm shift from a focus on public international law to an opportunity to advance the political, economic and social goals of the Region based on empirical research and current models for joint development in the private international sphere.

Keywords: South China Sea; Spratly Islands; Sovereignty; Joint Development.

JEL Classification: K33, F51, F55, O19.

1. Introduction

Prior to the territorial disputes in the South China Sea (SCS), the Asian Pacific Region was positioned to emerge as an economic world power. However, since the 1980s the conflicts over maritime rights, air zones, fishing, and natural resources has caused the region to be plagued with military and political conflicts that have impacted the road to economic and social prosperity. These tensions were evidenced most recently by the Philippines initiation of arbitration against China under the United Nations Convention on the Law of the Sea (UNCLOS) (Akande, 2013), and the conflict caused by overlapping air zones claimed by China, Japan and South Korea.

To resolve their differences in the SCS, the claimants have resorted to bilateral negotiations, consultations, and informal regional discussions, but most of these efforts have proved futile. The legal scholarship has demonstrated repeatedly the difficulty of sustaining a sovereignty argument that would satisfy all the disputants under various international norms and treaties including the international law of the territorial sea and the law of Exclusive Economic Zone (EEZ). The purpose of this paper is to introduce a model for resource extraction and shared production in the South China Sea to peacefully resolve claims based on the building of a collaborative relationship among the disputing claimants.

1.1 Approach

The approach offered here attempts to balance the interests of the national intelligence community for a secure ocean policy in the SCS, the government's right to exploit its natural resources, and the local community interests in economic and social development. This article does not seek to advance the interest of one claimant at the expense of the other, but will instead focus on a framework for resolving these disputes through private bilateral agreements among the parties without interference from third parties. The goal is to generate discussion and opportunity for the development of an open, transparent, and equitable process that may serve as a model for resolving disputes for all parties in the Region. The development framework outlined in this article is intended for policy makers, government officials, project professionals and developers, academicians and students, and all those engaged in the process of finding better solutions to the problems in the South China Sea. The framework includes the development of economic and social policies that will not only provide resources for decades to come, but will also provide sustainable solutions to the poverty and depravation of the people throughout Southeast Asia and the surrounding region.

1.2. The South China Sea Claimants

In the face of some peace-making progress, the South China Sea and its petroleum resources continue to be among the

* Administrative Sciences Department, Metropolitan College, Boston University [808 Commonwealth Avenue, Boston, MA 02215, USA
Tel: (+1 617) 353-6860 Fax: (+1 617) 353-6840 E-mail: ggreiman@bu.edu and greiman@law.harvard.edu]

most contentious and volatile in the Region subject to overlapping territorial claims by eight Asian governments: (the "claimants" or the “disputants”). As described in Table 1, each of the claimants has alleged rights to all or part of the territory commonly called the Spratly Islands and surrounding territories in the South China Sea. The Spratly Islands consist of hundreds of small islets, coral reefs, sandbars, and atolls covering 180,000 square kilometers and different countries refer to the islands by different names (See Dubner, 1995). The numerous claims overlap and result in considerable tension in Southeast Asia (Saleem, 2000). Some of the claimants base their entitlements on historical evidence of discovery and occupation, while other claimants rely on legal arguments. Several incidents of armed conflict have occurred and regional security issues are a key factor and concern in the disputes. Table 1 attempts to provide an overview of the major claims as described in the literature and historical documents and some of the primary sources of these claims recognizing that a complete compilation would require volumes of data including government reports, maps, presidential decrees, orders, case decisions, treaties, and other historical records. Moreover, this paper does not take a position on these claims.

<Table 1> The Claimants

Claimant	Claim	Sources
Brunei	Does not claim any of the islands based on occupation, but claims part of the South China Seas nearest to it as part of its continental shelf and Exclusive Economic Zone (EEZ) relying on a 1954 British decree fixing Brunei’s maritime boundaries.	UNCLOS Articles 76 and 77; Liu, 1996; Mito, 1998; Joyner, 1998; CIA Factbook, 2012.
China	Refers to the Spratly Islands as the Nansha islands, and claims all of the islands and most of the South China Sea for historical reasons dating back to expeditions by the Han Dynasty in 110 AD and the Ming Dynasty from 1403-1433 AD. In 1947, China produced a map with 9 undefined dotted lines, and claimed all of the islands within those lines. A 1992 Chinese law restated its claims in the region. In 1974, China enforced its claim upon the Paracel Islands (Xisha Islands) by seizing them from Vietnam.	Law of the PRC on the Territorial Sea and the Contiguous Zone (1992); Law on the Exclusive Economic Zone and the Continental Shelf of the PRC (1998); maps; navigational records; surveys; Chang, 1991; Bennett, 1991; Cordner, 1994; Shen, 2002; Li & Li, 2003; Dutton, 2011.
Kingdom of Colonia St John (Colonia)	Claims are based upon the discovery of Colonia by a Philippine explorer in 1956 and on occupation and continual peaceful governance (Cloma Claim). Colonia consists of islands and reefs of 64,976 sq. nm in the Spratlys. It contends the deed of cession in 1974 given under duress to Marcos was invalid as Cloma had no rights to the deed as all sovereignty resided in the King.	Proclamation establishing Freedomland, 1956; Charter, 1956; Map of Freedomland; Proclamation of Renunciation, 1974; Succession Deed, 1974; Deed of Cession, 1974; Decree of name Change, 1974; Arreglado, 1982; Yorac, 1983; Colmenares, 1990; Bautista, 2006; Duong, 2007.
Indonesia	Does not claim any of the Spratly Islands. However, Chinese and Taiwanese claims in the South China Sea extend into Indonesia's EEZ and continental shelf, including Indonesia's Natuna gas field.	EIA, 2013; Duong, 1997; Saragosa, 1995
Malaysia	Claims are based upon the continental shelf principle, and have clearly defined coordinates and has occupied three of these islands, and has built a structure one atoll.	UNCLOS Art. 76; Malaysian map of 1979; Cordner, 1994, p. 67; Murphy, 1995; Liu, 1996; Valencia, 1997, p. 36; Duong, 1997; Mito, 1998.
Taiwan	Taiwan's claims are similar to those of China, and are based upon similar principles. Taiwan has continuously occupied the Island of Itu Aba since 1956.	Law of the PRC on the Territorial Sea and the Contiguous Zone (1992); Law on the Exclusive Economic Zone and the Continental Shelf of the PRC (1998); maps; navigational records; surveys; Bennett, 1991; Chang, 1991; Cordner, 1994, p. 62; Murphy, 1995; Valencia, 1997, p. 29; Chen, 2002; Dutton, 2011.
Philippines	The Philippines Spratly claims have clearly defined coordinates, based both upon the proximity principle as well as on the explorations of a Philippine explorer in 1956 (Cloma claim) asserted also by the Kingdom of Colonia. In 1971, the Philippines officially claimed eight islands that it refers to as the Kalayaan, partly on the basis of this exploration, arguing that the islands: 1) were not part of the Spratly Islands; and 2) had not belonged to anybody and were open to being claimed.	Philippine Constitution; Philippine National laws including Republic Act No. 3046 as amended; Republic Act No. 5446; Presidential Proclamation No. 370; Presidential Decree No. 1599. Dellapenna, 1970, 1971, p. 54; Bernas, 1987; Marlay, 1997; Bautista, 2011; Mito, 1998; Article 1, 1987
Vietnam	Vietnamese claims are based on history and the continental shelf principle. Vietnam claims the entire Spratly Islands as an offshore district of the province of Khanh Hoa. Vietnamese claims also cover an extensive area of the South China Sea, although they are not clearly defined. The Vietnamese have followed the Chinese example of using archaeological evidence to bolster sovereignty claims.	See generally Nguyen, 2012; National Committee, 2011; Chiu, 1975, p. 8; Valencia, 1997, p. 30-32; Beller, 1994, p. 305; Chang, 1991; Cordner, 1994, p. 65; Nguyen, 2001;

1.3. Kingdom of Colonia St. John (Colonia)

One of the lesser known, but significant claimants in the South China Sea is the Kingdom of Colonia St. John (Colonia), commonly known as the "Cloma Claim." Since the majority of scholarly work omits discussion of this claim, and because it has a direct impact on the resolution of all claims, particularly the claim of the Philippines, it is important to highlight it here. Colonia, formerly known as the "Free Territory of Freedomland," consists of more than 100 islands and reefs in the South China Sea approximately 65,000 nautical miles in a general trapezoidal shape. According to historical documents, Tomas Cloma, a Philippine citizen of considerable prominence and director of the Philippine Maritime Institute discovered and mapped the islands from 1947, and proclaimed the establishment of the government of Freedomland in 1956 (Arreglado, 1982; Yorac, 1983; Colmenares, 1990; Bautista, 2006; Duong, 2007; Proclamation of Freedomland, 1956). Colonia is unique among the South China Sea claimants in that it represents a government established de facto in nature in order to promote the general welfare and the ideals of liberty, justice and peace in the great society of nations for the benefit of all mankind (Colonia Constitution, 1974).

Moreover, under its Constitution it renounces war completely and adopts international neutrality as its policy together with the accepted principles of international law as the law of the country. In April 1974 Cloma asked the Supreme Council to issue a proclamation changing the name of the country from Freedomland to Colonia and to elevate its status from a principality to the Kingdom of Colonia (Proclamation, 1974). That having been done, Cloma resigned as head of State due to his advanced age in favour of Prince John de Mariveles (Succession, 1974). According to Colonia's historic documents, in November 1974 Cloma was arrested under a trumped-up charge and was forced to sign a Deed of Cession to Philippine President Marcos. Colonia's historic records reflect that the Deed of Cession has never been recognized in international law and Colonia alleges that it has been continuously and peacefully occupied and governed as a Kingdom in accordance with its Constitution (Deed of Cession, 1974; Succession Deed, 1974).

1.4. Colonia's Sovereignty

Though not a member of the United Nations, Colonia remains a viable actor in the South China Sea under international law. United Nations membership is not a prerequisite for sovereignty under customary international law and the United Nations Charter recognizes the obligation of its UN members to protect the rights of non-member states, particularly to protect them from aggression by other states (Bederman, 2010). Colonia's sovereignty has been recognized through its trade and contractual commitments with other nations including Malaysia and the Philippines, through the maintenance of Consulates in various regions of the world, and through its continuous and peaceful governance for the benefit of mankind.

1.5. Overlapping Claims

All claimants have overlapping and conflicting claims, yet they all share a mutual interest in exploiting the resources of the South China Sea through joint development. Scholars and commentators have offered options and recommendations for addressing these claims, both bilaterally and multilaterally, with various opinions why some claims are legally stronger than others (Guoxing, 1995; Duong, 2007). One approach offered is to create separate joint development zones for each area of overlapping claims instead of creating a single zone (Valencia et al., 1997; Mito, 1998). The first rule of international law involving opposite or adjacent States maritime delimitation is that the States involved should negotiate in good faith to reach a result (Bederman, 2010). A more pragmatic approach would be for each of the claimants to consider bilateral negotiations and set aside legal issues for a more practical commercial resolution. If the estimates by the U.S. Energy Information Agency (EIA, 2013) and other seismic research is correct, that trillions of dollars of oil, gas and carbon deposits reside in the South China Sea, a commercial development agreement would be a more efficient and equitable approach as all claims of sovereignty would be frozen for the duration of the agreement, or until a more permanent solution could be established.

2. The Spratly Islands

The Spratly Archipelago is a group of approximately 100 plus islands, reefs and shoals spread over approximately 180,000 square kilometers in the southern part of the South China Sea (Chandler, 1993). There are no indigenous inhabitants, but there are scattered garrisons occupied by military personnel of several claimant states (CIA, 2012). The crux of the Spratly Islands dispute centers on the potential wealth and strategic military value of the Islands. While twenty-five percent of the world's oil production passes through the area en route from the Middle East to Japan and the United States, control of the Spratly Islands could serve as a means to impact oil transports both in Southeast Asia and the remainder of the industrialized world because ownership and control of the Spratly Islands provides sovereign rights over the adjacent waters and seabed. Many analysts consider the South China Sea area, which encompasses the Spratly Islands, to have vast riches of oil and natural gas (EIA, 2013; BP, 2012; USGS, 2010). Estimates of oil and natural gas vary widely, from U.S. estimates of up to 28 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves to Chinese estimates in November 2012 of 125 billion barrels of oil and 500 trillion cubic feet of natural gas (EIA, 2013). In addition, many analysts believe it is one of the most lucrative fishing areas in the world with an annual value estimated in the mid-1990s at three billion U.S. dollars. Some have argued that the strategic value exceeds the value of the natural resources in the area, thus giving the ownership of

rights to these islands significant political advantage (Beller, 1994).

3. The Law of the Sea

The Sea maintains much power in the world. It covers three-fifths of the earth's surface, it is the major means of transport for trade and commerce and the ability to "project" force over ocean areas remains one of the central tenets of military doctrine for the United States and all great powers (Bederman, 2010). Consequently, there is much at stake in the Law of the Sea. The Law of the Sea Treaty is an agreement drawn up by the United Nations and ratified by 165 states (162 UN member states) and the European Union that governs the oceans (UNCLOS, 1994). The treaty has been described as a "constitution of the oceans" and was negotiated in the 1970s and early 1980s. Its official title is the United Nations Convention on the Law of the Sea (UNCLOS).

The UNCLOS came into force in 1994. Although the United States now recognizes the UNCLOS as a codification of customary international law, significantly, the Treaty has never been ratified by Congress although Presidents Clinton, Bush '43 and Obama have encouraged the U.S. Senate to accede. According to some scholars, this reluctance is largely due to the congressional concerns that UNCLOS would lessen the private sector's chance for profitability with respect to deep seabed mining together with the United States' overall concern for its maritime regulation on account of national security interests (Duong, 2007).

Importantly, only after sovereignty over land or an island has been established can a State apply UNCLOS to resolve sea-use rights; creating a serious concern as to its application to the Spratly Island disputes (Duong, 1997). Second, like many international agreements, the Convention on the Law of the Sea lacks an enforcement mechanism, and because of this, there is no guarantee that China will comply with the "compulsory" procedures outlined in the Convention (Whiting, 1998). Even if the Association of Southeast Asian Nations (ASEAN) submit the dispute for arbitration as a group, it is not clear that China will comply with an arbitrated settlement.

4. Alternative Dispute Resolution for the South China Sea

Many disputes remain unresolved, because there is no immediate political or economic incentive for countries to pursue a remedy. Collaborative development agreements on the other hand have been effective in resolving disputes because they are not mandated by law, but require voluntary participation by the parties. Some examples include, the Indonesia-Australia "Timor Gap" Treaty of 1988, the Japan-South Korea Agreement of 1974 involving the East China Sea, and the Malaysia-Thailand Treaty on the Establishment of the Joint Authority of 1990. In 1976, in order to tackle potential disputes, the members of the ASEAN worked out the Treaty of Amity and Cooperation ("TAC") which under Article 13 provides: "If case disputes on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations."

4.1. Hybrid Institutions

An emerging area in international development is the concept of alternative dispute resolution through the development of hybrid institutions to resolve important public interest concerns, such as poverty, labor, health and environmental issues (Odumosu, 2006, 2007). These dispute resolution processes are unique because they are developed by the stakeholders to the project and enforced pursuant to the commitments of the parties. As reflected in empirical studies, dispute resolution mechanisms that are 1) developed incrementally through an inclusive political process; 2) accountable and transparent; 3) sensitive to local context; and 4) require inputs from and are responsive to a broad cross-section of society, have far greater chances of success than those imported from western cultures and forced upon local communities (Greiman, 2011; Adler et al., 2009). These institutions have been used to promote the general welfare of the citizens of the developing world - an important consideration in the development of the South China Sea.

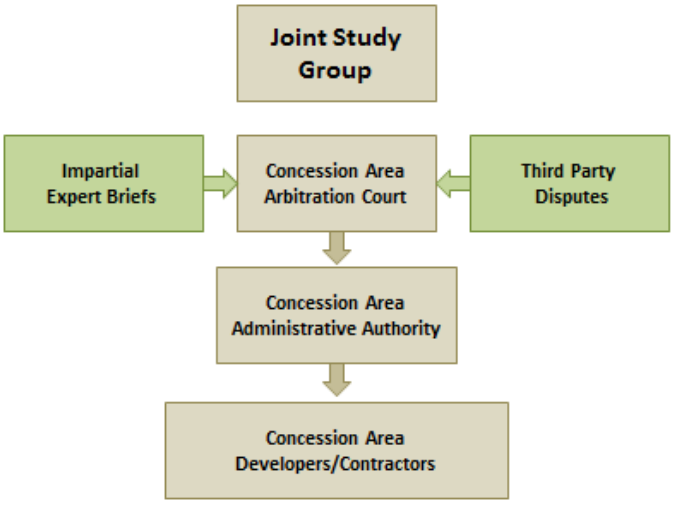
4.2. Development through Joint Collaboration

In the past two decades scholars have offered up various models to resolve the Spratly Disputes including adjudication under international law, bilateral investment treaties, national legislation, and arbitration. A few of the most appealing models recommend a dispute resolution mechanism based on trust, transparency and joint development. These models include: (1) a 40 year joint development agreement modeled after the Timor Gap Treaty (Mito, 1998); (2) the resolution of the Spratly disputes through joint development to enhance their collective modernization drive (Liu, 1996); (3) resolution of the sovereignty issues directly by the parties involved through peaceful means (Nguyen, 2012); and, (4) development of the idea of a Spratly joint management authority based on fairness and efficiency (Cui, 2003). These models all represent the importance of shared responsibility and joint authority which could be implemented through joint development agreements, various bilateral or multilateral treaties, or through memorandums of understanding executed by each country. Commentators have referred to the Timor Gap Treaty which served to strengthen previously strained relations between Australia and Indonesia as a "triumph of compromise," and an "imaginative approach to breaking the deadlock in boun-

dary negotiations" (see Mito, 1998). Another interesting analogy for the South China Sea is the Svalbard Treaty commonly known as the Spitsbergen Treaty signed in Paris 9 February 1920. The Treaty presently has 40 member nations and recognizes the sovereignty of Norway over the Arctic archipelago of Svalbard, at the time called Spitsbergen. The treaty regulates the demilitarization of the archipelago. The signatories were given equal rights to engage in commercial activities (mainly coal mining) on the islands. As of 2012, Norway and Russia are making use of this right.

4.3. Conflict Management

As the waters of the South China Sea have grown more turbulent, efforts by ASEAN and China to calm them have proved disappointing and the only existing conflict management mechanism is the 2002 Declaration on the Conduct of Parties in the South China Sea (DoC) described by one Southeast Asian Scholar as "a non-binding, essentially toothless agreement which has yet to be operationalized" (Storey, 2013b). In September 2012, China's Vice Minister of Foreign Affairs, Minister Fu Ying stated, "What's the point of a CoC when the DoC is not faithfully observed?" This sent a strong but important message that until basic rules are perceived to be observed by all parties further negotiations will be difficult. Critical requirements for a code of conduct for the South China Sea must contain specific provisions prohibiting the countries from claiming new territory, granting oil exploration outside the concession agreement, and expanding military forces in the disputed region. Until all parties are confident that their concerns matter there will be no movement on a code of conduct.



<Figure 1> Model for Joint Development

5. A Model for Joint Development

There are many possibilities for the structuring of a joint development agreement including public private partnerships, highly leveraged financial structures, and privately financed equity ownership with government oversight. However, the Spratly Island disputes are unique in that they involve at least eight claimants with long held positions on their rights to the vast resources and the benefits of sovereignty in the South China Sea. To resolve these disputes one must look beyond traditional dispute resolution mechanisms to create an environment free of pressures from international courts and influence from the developed world. Thus, a collaborative agreement outside of the international arena must be developed to assist these claimants in resolving the rights to these resources in a peaceful manner. Figure 1 diagrams an approach to joint development that would allow the parties to begin the process of resource development and allocation, while not limiting rights they may claim to sovereignty in the future. The approach would consist of the following steps:

5.1. Establishment of a Joint Study Group

As a prelude to a cooperative environment in the South China Sea, an essential first step is the establishment of a joint study group (JSG) to develop the framework and to establish guidelines for promotion of dialogue and identification of specific projects in the region. The guidelines would include building a code of conduct for dispute resolution, granting exploration concessions, and developing measures to prohibit future territorial claims until existing claims are resolved. Though a multilateral approach is highly recommended, bilateral agreements could be effective in building confidence and encouraging claimants to participate in developing a framework and guidelines. The joint study group would consist of representatives from each claimant to develop a joint study agreement (JSA). The group could also consist of experts or government representatives in the technical fields essential to determining the key matters for decision. The group would review such matters as the methodology for determination of the Spratly Island Concession Area (SICA), the allocation of the interests of the participants in the development, the contributions of the claimants to the cost of the study and the options to acquire an interest in the JSA. Once the Agreement is awarded a determination would be made by the group as to the right to gather and evaluate data relating to the petroleum potential of the concession area. Upon completion of the JSA, the Joint Study Group would develop the dispute resolution process and the legal and procedural framework for the Arbitration Court, the Concession Area Administrative Authority and the Joint development Concession Area as shown in Figure 1.

5.2. Allocation of Interests

The most difficult tasks of the Joint Study Group will be the determination of the Spratly Island Concession Area (SICA) and the allocation of the assets from the SICA. This will be a negotiated process among the parties to develop a "Concession

Agreement" with the strategy of involving all potential claimants at the outset, particularly with reference to overlapping claimants. The parties to the "Concession Agreement" would contribute the territory for exploration, and the private sector and any governments willing to commit public funds would contribute the development finance. The SICA would be unrestricted and open to exploitation by all claimants, under license and royalty with disputes regarding development rights to be adjudicated by the Concession Area Arbitration Court. To the extent that the parties cannot agree on the allocation of assets, and a decision is made to proceed with the exploitation process, the Concession Area Arbitration Court would be available to hear "third party claims" as described below.

5.3. Concession Area Arbitration Court

A Concession Area Arbitration Court (CAAC) would be established to resolve claims that arise from the concession agreement as well as third party disputes that may arise during the course of the concession as described below. For example, assuming a bilateral agreement, each claimant will select their own arbitrator while the third arbitrator would be selected by the arbitrators, or the claimants. Rules of arbitration would be agreed upon by the claimants such as sharing of costs, choice of law, rights of appeal, confidentiality requirements and other essential provisions. Alternatively, the parties could choose arbitration procedures established by prominent arbitral organizations such as the London Court of Arbitration, the International Court of Arbitration (ICC), or the International Center for Investment Disputes (ICSID), a member of The World Bank Group. The arbitrators would have the option to receive briefs from impartial experts approved by the arbitration court as well as briefs from third party claimants as defined in the Concession Area Arbitration Court Procedures.

Third Party Claims. The rapid rise of private investment arbitration in the international legal order has been accompanied by mounting public concern over the system's legitimacy and accountability (Levine, 2012). The involvement of a State in the investment context can lead to arbitral decisions that affect a significantly broader range of actors than the two parties to the agreement, as recognized by tribunals such as ICSID. These broad range of actors are commonly known as "third party participants" or "third party claims." In the SCS disputes, the concern over "third party claims" is well founded. Third party claimants might be defined as disputants who are not part of the concession area agreement, or those who want to provide information on issues involving protection of the welfare such as environmental, human rights, health and safety and labor law concerns (Tienhaara, 2007). These types of claims are commonly asserted by non-governmental organizations, local communities or other parties in interest. Regardless of how claims are classified, the arbitration process should be structured to encourage transparency and the broadest possible participation necessary to avoid confrontations under international law in international courts or arbitral organizations.

5.4. Concession Area Administrative Authority

The Concession Area Administrative Authority (CAAA) would be made up of representatives appointed by the Arbitration Court to oversee the exploration activities and to ensure accountability through enforcement of the obligations of the developers and contractors set forth in the Concession Area Agreement and related contracts. Since they would serve as an oversight authority for the development they should be representative of the expertise needed for the particular development project and would be accountable to the Concession Agreement's sponsoring organization.

5.5. Concession Area Developers/Contractors

Developers and contractors would be selected through an open procurement process established in the Joint Development Concession Agreement that would encourage transparency and a fair and a competitive process in compliance with international standards recognized by the World Bank, the Organization for Economic Cooperation and Development (OECD) and other respected development organizations.

6. Incentives to Resolve Claims

Since China has indicated its preference to negotiate bilaterally, a joint development agreement will not succeed without China's cooperation. To ensure settlement of claims through a peaceful, voluntary, negotiated process, incentives must exist that will encourage the claimants with diverse interests and multiple overlapping claims to come to the table. To better understand the motivation of the various parties to settle these disputes through a joint development agreement, a few examples are offered here.

6.1. Collective Interest in Maintaining Peace and Stability

In November 2002, China signed a Declaration of Conduct (DoC) in the SCS with the ASEAN confirming the principle of friendly negotiations contained in the 1992 Declaration. The DoC is often praised as the first step toward a peaceful settlement (Dosch, 2011). Then, in 2003, China acceded to the Treaty of Amity and Cooperation (TAC), with the members of ASEAN which is an impressive testament to the determination of its 'good neighbor' policy and inclination to peace. In April 2011, China's President Hu Jintao called on other Asian nations to forge better cooperation regarding security matters involving territorial claims over the Spratly Islands to avoid disagreement. Taiwan's Foreign Ministry spokesperson, James Chang, supported this statement by saying that all countries involved

should “first shelve their disputes and then seek to solve the issue peacefully.” In September 2012, China’s President Xi Jinping, when he was the leader-in-waiting, expressed his support for a peaceful solution stating: “The more progress China makes in development and the closer its links with the region and the world, the more important it is for the country to have a stable regional environment and a peaceful international environment” (Beijing, 2012).

6.2. Expansion of Trade and Source of Hydrocarbons

Asia’s robust economic growth has boosted the demand for energy in the region. The U.S. Energy Information Administration (EIA) projects total liquid fuels consumption in Asian countries outside the OECD to rise at an annual growth rate of 2.6 percent, growing from around 20 percent of world consumption in 2008 to over 30 percent of world consumption by 2035. Similarly, non-OECD Asia natural gas consumption grows by 3.9 percent annually, from 10 percent of world gas consumption in 2008 to 19 percent by 2035. EIA expects China to account for 43 percent of that growth (EIA, 2013). The South China Sea offers the potential for significant natural gas discoveries, creating an incentive to secure larger parts of the area for domestic production.

6.3. Land Border Treaties and Oil Surveys

In 1999, Vietnam signed a land border treaty with China and in 2000 another treaty on the demarcation of the Gulf of Tonkin which came into effect in 2004. These treaties have narrowed the scope of territorial disputes at least between these two countries relating to the Paracel and Spratly archipelagos. In March 2005, the State-owned oil companies of China, Vietnam and the Philippines signed an agreement with regard to the conducting of oil pre-exploration surveys and marine seismic activities in the Spratly Islands. Moreover, China through its National Offshore Oil Corporation (CNOOC), China Petroleum & Chemical Corporation (Sinopec Group) and China National Petroleum Corporation (CNPC) is responsible for developing South China Sea’s resources (EIA, 2013). According to its 2011 annual report, CNOOC produced an average of 193,000 barrels per day in the South China Sea for that year (CNOOC, 2011). These initiatives are indicative of the political will of the States concerned to develop the disputed area jointly.

Partnerships should continue to be developed in the South China Sea to expand testing and exploration in accordance with a detailed code of conduct and oil exploration agreement.

6.4. Privatization of the Development and Dispute Resolution Process

Another important impetus for joint development is China’s clear intentions not to internationalize dispute resolution in the SCS. For example, in July 2012 at the 19th ARF Foreign Ministers’ Meeting held in Phnom Penh, Chinese foreign Minister, Yang Jiechi, declared that “China hopes that all parties will do more to enhance mutual trust, promote cooperation, and create necessary conditions for the formulation of the CoC” (Ministry of Foreign Affairs, the People’s Republic of China, 2012). Any effort to internationalize the disputes such as the recent filing of arbitration by the Philippines provides additional reasons for China to delay further talks on the CoC with ASEAN (Storey, 2013a). A collaborative development agreement would serve important interests of all the claimants, and as a result, the likelihood of compliance is high (Liu, 1996).

6.5. Building Confidence and Exploiting Socio Economic Opportunity

The purpose of signing joint development agreements is to guarantee the disputing parties' right to benefit from the natural resources in the disputed area. The successful arrangement of economic interests around the Spratly Islands would help China as well as the other claimants to build up their confidence in avoiding conflicts. Claimants like Colonia whose underlying vision embedded in its Constitution is to utilize its resources for the benefit of mankind would play an important role in moving forward charitable giving to alleviate poverty in the Southeast Asia Region.

6.6. Advancement of Technology and Investment Opportunities

All of the claimants are developing countries that could use the Spratlys' natural resources to advance their technology and attract investment. None of these countries currently have the capital or technology necessary to exploit these resources. The claimants would have a strong interest in adhering to a joint development agreement because it could assist in building their economies and the rule of law.

6.7. Developing Strong Bilateral Relations

China has repeatedly expressed its interest in bilateral cooperation. Beijing has significantly strengthened its position in the region by developing a tightening network of bilateral relations with individual ASEAN members. The current strategy of maintaining peace and order in the SCS is based on bilateral negotiations initiated and facilitated largely by China (Dosch, 2011).

6.8. Enhancing Goodwill and Building a Trade Block

China stands to gain significant goodwill in South East Asia by adhering to a joint development agreement and cooperating with the much smaller claimants and it would enhance China’s potential for building a trading block similar to the EU and NAFTA. Such a trading block would enable all countries to

participate and to enter into a treaty that would provide numerous benefits to growth and expansion through free trade and reduced trade barriers, and agreed upon trade policies that would enhance both social and economic growth in the region.

7. Conclusion

The most realistic solution to the conflicts in the South China Sea is collaborative agreements for joint development. Joint development agreements between the claimants will not only reap the benefits of exploitation but can lead to better preservation of the environment, fairer distribution of the resources and better use of the water spaces by the impacted communities. Moreover, the resolution of the Spratly disputes will promote greater economic and military security in Southeast Asia. The Model for Joint Development presented in this paper would focus on resource allocation in accordance with a negotiated concession agreement, rather than decades of fruitless litigation over sovereignty. Until the disputing parties in the South China Sea agree to mutually beneficial joint development arrangements, the waters in the South China Sea will remain turbulent.

References

Adler, D., Sage, C., & Woolcock, M. (2009). Interim institutions and the development process: Opening spaces for reform in Cambodia and Indonesia. 4 Brooks World Poverty Institute. Univ. of Manchester.

Akande, D. (2013). Philippines initiates arbitration against China over South China Sea dispute. Talk, Blog of *the European Journal of International Law.*

Association of Southeast Asian Nations (2002). *Declaration on the conduct of parties in the South China Sea* (November 4, 2002).

Arreglado, K. J. (1982). Historic, legal, and political background. Foreign Service Institute. Philippines.

Bautista, L. B. (2011). Philippine territorial boundaries: Internal tensions, colonial baggage, ambivalent conformity. *Journal of Southeast Asian Studies,* 16(December), 35-53.

Bautista, L. B. (2006). Thinking outside the box. *Philippine Law Journal,* 8(4).

Bederman, D. J. (2010). *International law frameworks,* 3rd ed. New York: Foundation Press.

Beijing (Reuters). Comments from China's president, Xi Jinping, when he was the leader-in-waiting, speaking at the opening of a trade fair in southern China for Association of South-East Asian Nations, September 21, 2012.

Beller, R. D. (1994). Analyzing the relationship between international law and international politics in China's and Vietnam's territorial dispute over the Spratly Islands. *Texas International Law Journal,* 29(Spring), 293.

Bennett, M. (1991/1992). The people's republic of China and the use of international law in the Spratly Islands dispute. *Stan. J. Int'l L.* 28, 425.

Bernas, J. G. (1987). *The constitution of the republic of the Philippines: A commentary.* Manila, Philippines. Rex Book Store.

British Petroleum Statistical Review of World Energy (2012).

Chandler and Chiew (1993). Unsettled maritime boundaries: The Gulf of Thailand and South China Sea. *Inst. For Int'l Research,* Asia Pac. Oil and Gas Tax Issues.

Chang, T. K. (1991). China's claim of sovereignty over Spratly and Paracel Islands: A historical and legal perspective. *Case W. Res. J. Int'l L.,* 23, 412.

Charter of The Free Territory of Freedomland (1956). 6th day of July, 1956, Executed by Tomas Cloma President, Tomas Cloma & Associates. (On file with author).

Chiu, H., & Park, C. H. (1975). Legal status of the Paracel and Spratly Islands. *Ocean Dev. & Int'l L.J.* 3

Central Intelligence Agency *World Factbook:* Spratly Islands (2012).

CNOOC Annual Report (2011). China National Offshore Oil Corporation.

Colmenares, S. F. (1990). *Philippine territorial claims.* Philippine Studies Colloquium.

Cordner, L. G. (1994). The Spratly Islands dispute and the law of the sea. *Ocean Dev. & Int'l L.* 25, 61

Cui, W. (2003). Multilateral management as a fair solution to the Spratly disputes. Vanderbilt *Journal of Transnational Law,* 36(May), 799.

Decree of Change of Name to Colonia (1974). With Resignation of Tomas Cloma as Head of State, and with Appointment of John Barnes as Head of State, position Absolute, August 24, 1974.

Deed of Cession Executed by Tomas Cloma & Associates (1974). December 1974 (on file with author).

Dellapenna, J. W. (1970-1971). The Philippines territorial water claim in international law. *Journal of Law & Economic Development,* 5, 45-61.

Dutton, P. (2011). Three disputes and three objectives: China and the South China Sea, *Naval War College Review,* 64(4).

Dosch, J. (2011). The Spratly Islands dispute: Order-building on China's terms? *Harvard International Review.*

Dubner, B. H. (1995). The Spratly "Rocks" dispute - A "Rockapelago" defies norms of international law. *Temple International and Comparative Law Journal,* 9(Fall), 291.

Duong, W. N. (2007). Chinese law in the global context: Following the path of oil: The law of the sea or Realpolitik--What good does law do in the South China Sea territorial conflicts? *Fordham International Law Journal,* 30(4), 1098.

Duong, W. N. (1997). The long saga of the Spratlys Islands: An overview of the territorial disputes among Vietnam,

China, and other ASEAN nations in the South China Sea. *Texas Transnational Law Quarterly* 13(November), 26.

Energy Information Administration of U.S. (2013). *South China Sea overview,* February 7.

Greiman, V. (2011). Twenty-seventh international law symposium: The public private conundrum in international investment disputes: Advancing investor community partnerships. *Whittier L. Rev.* 32, 395.

Guoxing, J. (1995). Maritime jurisdiction in the Three Chiona Seas: Options for equitable settlement, institute on global conflict and cooperation. *Policy Paper,* 19.

Joyner, C., (1998). The Spratly Islands Dispute in the South China Sea: Problems, Policies, and Prospects for Diplomatic Accommodation. *Int'l J Mar. & Coast. L.,* 53, 204.

Levine, E (2012). Amicus Curiae in international investment arbitration: The implications of an increase in third-party participation. *Berkley J. Int'l Law,* 29, 200.

Li, J., & Li, D. (2003). The dotted line on the Chinese map of the South China Sea: A note. *Ocean Dev. & Int'l L.,* 34, 290.

Liu, C. (1996). Chinese sovereignty and joint development: A pragmatic solution to the Spratly Islands dispute. *Loyola of Los Angeles International & Comparative Law Journal,* 18(September), 865.

Map of Freedomland, Prepared by the technical staff PMI nautical School, Tomas Cloma and Associates, Citizens of the Philippines

Marlay, R. (1997). China, the Philippines, and the Spratly Islands. *Asian Affairs,* 23(4), 195-210.

Ministry of Foreign Affairs People's Republic of China, The Issue of South China Sea, June 2000.

Ministry of Foreign Affairs People's Republic of China (2012). Foreign Minister of China, Yang Jiechi's statement on the South China Sea Issue, 12 July, Retrieved April 1, 2013 from http://www.fmprc.gov.cn/eng/zxxx/t950626.htm.

Ministry of Foreign Affairs of the PRC (2010). Foreign Minister Yang Jiechi refutes fallacies on the South China Sea Issue. 26 July

Ministry of Foreign Affairs of the Socialist Republic of Vietnam (1988), The Hoang Sa (Paracel) and Truong Sa (Spratly) Archipelagoes and International Law 32 [Vietnam White Paper].

Mito, L. A. (1998). The Timor Gap Treaty as a model for joint development in the Spratly Islands. *American University International Law Review,* 13, 727.

Murphy, B. K. (1995). Dangerous ground: The Spratly Islands and international law. *Ocean & Coastal L. J.,* 1, 187-188. (stating that Spratly Islands are also known as the Nansha Islands in China, the Truong Sa archipelago in Vietnam, and Kalayaan or "Freedomland" in the Philippines).

National Committee for Border Affairs & Ministry of Foreign Affairs & Socialist Republic of Viet Nam (2011). The indisputable sovereignty of Viet Nam over the Paracel Islands, *The Southeast Asian Sea Research Foundation,* June 08, retrieved from http://archive.is/fu20 on February 15, 2014.

Nguyen, H. T. (2012). Regional focus & controversy: Maritime and territorial dispute in the South China Sea: Vietnam's position on the sovereignty over the Paracels & the Spratlys: Its maritime claims. *Journal of East Asia & International Law,* 5(Spring), 165.

Nguyen, Q. N. (2001). *Tu lieu lich su ve hai quan dao Hoang Sa, Truong Sa cua Vietnam* (Historical documents on the Paracels and Spratlys Islands of Vietnam), BDHD01 32-50.

Odumosu, I. T. (2006/2007). The antinomies of the continued relevance of ICSID to the third world. *San Diego Intl, L. J.,* 8, 345-350.

Presidential Proclamation No. 370: Declaring as Subject to the Jurisdiction and Control of the Republic of the Philippines All Mineral and Other Natural Resources in the Continental Shelf of the Philippines (1968).

Presidential Decree No. 1596: Declaring Certain Areas Part of the Philippine Territory and Providing for their Government and Administration (1978).

Presidential Decree No. 1599: Establishing an Exclusive Economic Zone and for Other Purposes (1978).

Proclamation by Tomas Cloma of the creation, constitution and establishment of a government for the Archipelago of Freedomland, June 17, 1956.

Proclamation of Tomas Cloma renouncing his position, rights and prerogatives as Head of State and Chairman of the Supreme Council of State of Freedomland unto and in favor of John Barnes effective upon the acceptance of my letter of resignation and renunciation already submitted with the Council, August 24, 1974.

Republic Act No. 3046: An Act to Define the Baselines of the Territorial Sea of the Philippines (1961).

Republic Act No. 5446: An Act to Amend Section One of R.A. 3046 (1968).

Republic Act No. 9522, Republic Act No. 9522, An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for other purposes (2009).

Saleem, O. (2000). The Spratly Islands dispute: China defines the new millennium. *American University International Law Review,* 15(3), 572-582.

Saragosa, M. (1995). Beijing's South China Sea ambitions rattle Indonesia. *Fin. Times,* May 26, 4.

Shen, J. (2002). China's sovereignty over the South China Sea Islands: A historical perspective. *Chinese J. Int'l L.,* 1, 101-105.

Storey, I. (2013a). Manila ups the ante in the South China Sea. *China Brief,* 8(3), February 1.

Storey, I (2013b). Slipping away? A South China Sea code of conduct eludes diplomatic efforts. East and South China Seas Bulletin #11. Washington, DC: Center for a New American Security.

Succession Deed of Tomas Cloma as Head of State of the Kingdom of Colonia in Favour of Prince John de Mariveles (Succession August 24, 1974).

Treaty of Amity and Cooperation in Southeast Asia as Amended in 1987, 1998 and 2010 (signed into force 24 February 1976).

Tienhaara, K. (2007). Third party participation in investment-environmental disputes: Recent developments. *Eur. Cmty. & Int'l Envtl. L.,* 16, 230.

United Nations Convention on the Law of the Sea (1982). Opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).

U.S. Geological Survey (2010). World Petroleum Assessments Project.

Valencia, M. J., VanDyke, J. M., & Ludwig, N. A. (1997). *Sharing the resources of the South China Sea.* University of Hawaii Press.

Whiting, D. (1998). The Spratly Islands dispute and the law of the sea. *Denv. J. Int'l L. & Pol'y,* 26(Winter), 897.

Yorac, H. B. (1983). The Philippine claim to the Spratly Island group, *Philippine Law Journal,* 58.