

Vietnamese Position Regarding China's South China Sea Policy of "Set Aside Dispute and Pursue Joint Development"

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Abstract: The joint development model has been implemented for a long time in the world, for example, the Svalbard Treaty of 19 December 1920. Since the treaty was born, so far, in the world, more than 100 joint development agreements have been signed and implemented. Paragraph 3 of Article 74 of The United Nations Convention on the Law of the Sea in 1982 stipulate that "Pending agreement, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation." It is an important legal basis for the formation of joint development agreements between countries. Joint Development has the same meaning as the "dilution" and "softening" of conflicts and tensions between the countries concerned. Joint development is, in fact, an appropriate solution that can be applied to the provisional settlement of disputes in the South China Sea area and is currently under discussion by the parties. Mutual awareness has opened the prospect and favorable conditions for conducting joint development cooperation activities in the region. Negotiations on specific issues for the implementation of this option as one of the possible solutions to conflicts that need to be considered include Vietnam. However, it should be noted that around the issue of joint development in the South China Sea, the point of view of China is different from that of other countries. China was the first country to propose joint development in the Spratly Islands area formally, and so far, seems to follow a policy of "Set aside dispute and pursue joint development" to solve the Spratly problem. What is interesting in this view is the general premise "sovereignty belongs to China." Vietnam and some other disputants cannot accept this standpoint. *What do Vietnam government need to do in implementing the joint development agreement in the South China Sea while maintaining the sovereignty of the parties to the dispute?* This article puts forward some solutions for Vietnam in solving this problem. To implement the joint development solution in the South China Sea, the first thing that Viet Nam must mention is the issue of sovereignty of Vietnam. Vietnam will only implement joint development if China respects Vietnam's sovereignty over the Paracel Islands and the Spratly Islands as well as its sovereign rights and jurisdiction over the exclusive economic zone-EEZ and continental shelf adhered to the United Nations Convention on the Law of the Sea 1982.

1 INTRODUCTION

The joint development model has been implemented for a long time in the world, for example, the Svalbard Treaty of 19 December 1920. Since the treaty was born, so far, in the world, more than 100 joint development agreements have been signed and implemented. Paragraph 3 of Article 74 of The United Nations Convention on the Law of the Sea in 1982 stipulate that "Pending agreement, the States concerned, in a spirit of understanding and

cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation." It is an important legal basis for the formation of joint development agreements between countries. Joint Development has the same meaning as the "dilution" and "softening" of conflicts and tensions between the countries concerned.

This solution may temporarily shelve disputes that may prolong political-diplomatic relations

between countries that limit the state of tensions that lead to the arms race or lead to armed conflict. In the post-Cold War, countries in the Asia-Pacific region have promoted cooperation in the exploitation and development of joint ocean management cooperation. These processes have made the maritime security environment seem more peaceful. The positive benefit of the joint development model is that it contributes to building confidence in reducing disputes and developing economic and political cooperation for participating countries. On the other hand, joint development is a temporary solution that does not affect the final allocation, so it can also meet the demand for exploiting natural resources for economic growth (Nguyen, 2013).

Joint development is, in fact, an appropriate solution that can be applied to the provisional settlement of disputes in the South China Sea area and is currently under discussion by the parties. Mutual awareness has opened the prospect and favorable conditions for conducting joint development cooperation activities in the region. Negotiations on specific issues for the implementation of this option as one of the possible solutions to conflicts that need to be considered include Vietnam.

However, it should be noted that around the issue of joint development in the South China Sea, the point of view of China is different from that of other countries. China was the first country to propose joint development in the Spratly Islands area formally, and so far, seems to follow a policy of "Set aside dispute and pursue joint development" to solve the Spratly problem. What is interesting in this view is the general premise "sovereignty belongs to China." Vietnam and some other disputants cannot accept this standpoint.

What do Vietnam government need to do in implementing the joint development agreement in the South China Sea while maintaining the sovereignty of the parties to the dispute? This article puts forward some solutions for Vietnam in solving this problem. To implement the joint development solution in the South China Sea, the first thing that Viet Nam must mention is the issue of sovereignty of Vietnam. Vietnam will only implement joint development if China respects Vietnam's sovereignty over the Paracel Islands and the Spratly Islands as well as its sovereign rights and jurisdiction over the exclusive economic zone-EEZ and continental shelf adhered to the United Nations Convention on the Law of the Sea 1982.

2 JOINT DEVELOPMENT

The concept of joint development first appeared in international law in the 1970s. There are various definitions of joint development in relevant legal literature. In a broad sense, joint development agreements can be defined as cooperative efforts between two or more States for the exploration and exploitation of mineral resources that straddle a maritime boundary or are found in areas of overlapping claims (Becker-Weinberg, 2014).

The concept of joint development contains several characteristics (Keyuan, 2006

- It is an arrangement between two countries.
- It is usually concerned with an overlapping maritime area;
- It can be used as a provisional arrangement pending the settlement of the boundary delimitation disputes.
- It is designed to develop the mineral resources in the disputed area jointly.

Under UNCLOS and customary international law, non-living marine natural resources in the seabed and subsoil of the territorial sea or archipelagic water are subject to the sovereignty of the coastal State. The coastal State exercises sovereign rights to explore or exploiting such resources in its exclusive economic zone (EEZ) or continental shelf, including beyond 200 nm. Despite these rules being clear and straightforward, legal and practical problems occur in two particular situations: first, if an offshore hydrocarbon deposit straddles a boundary line and, second, if such resources are found in a maritime area that is claimed by two or more States. These problems arise mainly in the case of oil and gas because of the migratory nature of these resources. To satisfactory solutions for these problems, States have developed joint development agreements in their practice, a concept that was first applied to the management of fisheries⁶ and also to the development of onshore resources. Hence, joint development may be briefly described as a cooperative effort for the internationalization of marine natural resources between two or more States for the exploration and exploitation of offshore hydrocarbon deposits that straddle a boundary line or that are found in maritime areas of overlapping claims (Becker-Weinberg, 2014).

3 THE SITUATION IN THE SOUTH CHINA SEA

The South China Sea which is hosting as it does 20 disputes, may be viewed as one of the “hot” regions in the world regarding overlapping maritime claims (Nguyen, 2017).

The East Sea is a vast ocean stretching from the west bank of Singapore in Southeast Asia to Taiwan (Map 3.1), with an area of about 3,939,245 square kilometers. It includes more than 200 islands, some

submerged with rocks and reefs. It contains a diverse array of ecosystems and resources, especially strategic resources such as hydrocarbon energy, giant oil fields, and seafood-rich fishing grounds.²⁶ As maritime transportation developed, with the cooperation of countries in many geographic areas, the South China Sea became the shortest arterial route linking the Pacific Ocean and India. This bridge facilitated trade between China and India, between Southeast Asia and the Middle East and East Asia.

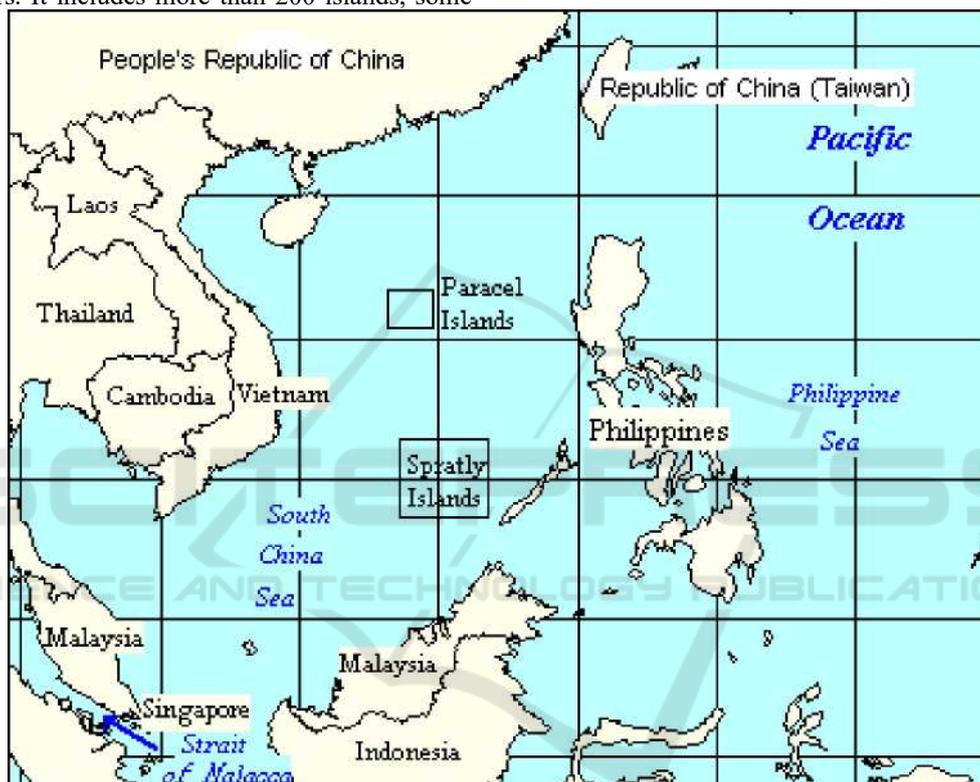
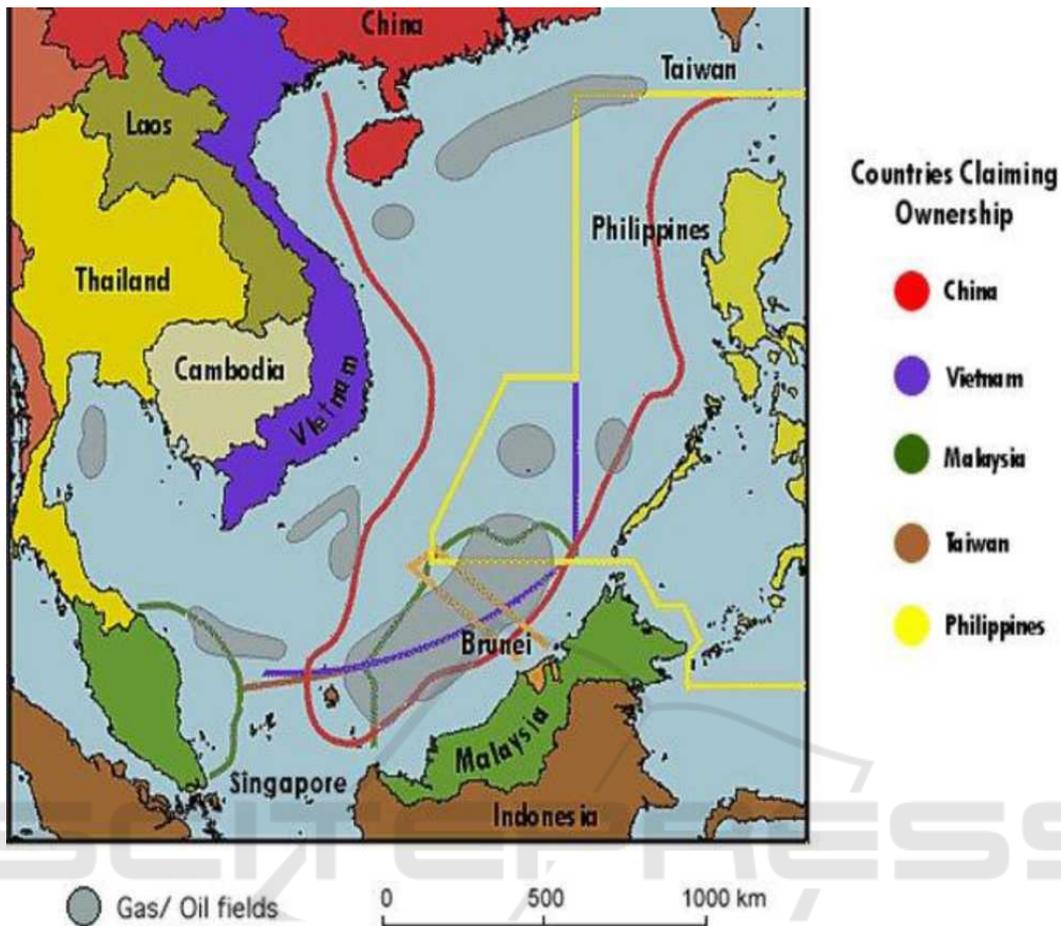


Figure 1 : Map 1 (<https://upload.wikimedia.org/wikipedia/commons/5/53/SouthChinaSea.png>)

Map 1 showed that the South China Sea lies in a unique geographical position, one of the most important strategic areas in the world, surrounded by many countries. Based on Map 2, we find a whole dispute between the six conflicting claimants, including Vietnam, Malaysia, Philippines, Brunei, Taiwan, China. Except for Brunei having a narrow claim and less overlap, all of them had conflicting claims.



Source: <http://www.businessinsider.com/china-sends-4-oil-rigs-to-south-china-sea-amid-regional-tensions-2014-6>

Figure 2: Map 2

Via map 2, we can see the overlapping about the claim of South China Sea presently of all concerned countries. For example, the red line represents China's claim that partially covered the entire South China Sea. In particular, this claim to Vietnam's nearly total conflict, including the Paracels and Spratlys, entered China's territory, becoming the region's most considerable sea dispute. On the other hand, the claim of Vietnam to Malaysia has a rather substantial interference, the interference range mainly in Spratlys; the interference lies in the claim area of China. Also, the overlapping claims in the broad area take place on the Spratly Islands, becoming islands of disputes that may trigger tensions. Philippine claims are like overlapping sections. Thus, the great importance and serenity of the South China Sea cover the underlying tension that arises from claims and counter-claims of

territorial overlap to these regions and points. The history of longstanding conflicts in the region left behind the legacy of conflicts and tensions in the sea that threaten peace in the region.

Table 1: A historical chronology of historical events related to the Paracels and Spratlys in Vietnam

Time	Event
1931	China delegates the right to exploit the Hoang Sa archipelago to Anglo Chinese Development Company. France objected by claiming the historical and geographical rights of the An Nam nation (Vietnam's name at this time) in this territory.
1932	France proposed to bring this case to the International Court China opposed this proposal
1933	The Vietnam official declaration of
1937	France undertook to study the feasibility of constructing marine and airborne structures on Paracel islands and built a lighthouse on Paracel island.
1938	France established a regular presence in the Paracel islands and sent a guard unit to the islands. According to the Decree dated June 15, 1938, Jules Brevies - the Governor of Indochina, established an administrative agency on the Paracel islands.
1939	On May 5, Jules Brevies revised the previous decree. On 04-04, the French Government issued a statement protesting the Japanese government's control over the Spratly Islands.
1946	France sent a reconnaissance team to Spratly islands and Paracel islands, but only garrisoned for a few months. China landed on the Woody Island of Paracel islands in November 1946 and Itu Aba of Spratly islands in December 1946
1947	On January 17, the government of the Republic of China sent troops to Woody island of Paracel islands again. The French government protested and sent a division to put a military post in the Paracel Islands. In negotiating, the French Government requested this problem must be sent to the International Arbitration Tribunal. The Republic of China government rejected the proposal. On December 1, Mr. Chiang Kai-shek signed an ordinance naming Paracel islands and placing them in Chinese territory.
1949	The establishment of the People's Republic of China regime has dramatically altered the international environment of the dispute. During this time, the office clerk of Bao Dai - the king of Vietnam currently, at a press conference in Saigon, publicly reaffirmed Vietnam's rights over the Paracel Islands.
1950	The Government of France officially transferred control over the Paracels to the Bao Dai government. At this point, it appears that there is no military presence in the Spratly Islands. The authorities of the Republic of China moved to Taiwan, and they were forced to withdraw from Woody Island in April and Itu Aba Island in May
1951	On July 15, the President of the Philippines, Mr. Quirino claimed many islands on the Spratly Islands. Announced on the draft peace treaty with Japan, on August 15, Mr. Chou Enlai affirmed "the longstanding rights" of China over the Paracel and Spratly Islands. On November 24, Xinhua News Agency disputed France's rights and ambitions of the Philippines and unequivocally affirmed China's right. On September 7, Spokesman of the Bao Dai government at the San Francisco conference confirmed Vietnam's sovereignty over Paracel and Spratly islands. No delegates commented on this statement.
1956	On March 15, 1956, a Filipino Thomas Cloma and his companions landed on some of the Spratly Islands, claiming 33 islands in a 65,000-square mile area, and naming it Kalayaan (English name is Freedom). This behavior was based on the argument for the right of detection and occupation. However, the Ambassador of Taiwan in Manila reaffirmed Republic of China's rights from the 15th century. After that, a unit was sent to the Itu Aba Island of the Spratly Islands and has been maintained since then until now. In October, the Taiwanese Navy intervened in place against Thomas Cloma. In January 1956, the South Vietnamese government brought the armed forces to replace French units in the Paracel Islands. However, then, China's army landed in the eastern part of the Paracels. On May 29, Beijing reaffirmed its rights. On May 31, the Chinese government announced that it would not tolerate any acts of infringement of the rights of the People's Republic of China on the Spratly Islands. On June 1, the South Vietnamese government's Foreign Minister, Vu Van Mau, reaffirmed Vietnam's rights over the two archipelagos. Later, France reiterated to the French the rights that France had in 1933. Following this statement, a South Vietnamese naval unit landed on the main island of the Spratly Islands, erected a beer and scissors. The Taiwanese government strongly opposed the behavior of the South Vietnamese government.
1958	On September 4, the Government of the People's Republic of China issued a declaration defining the width of the territorial sea to 12 nautical miles. On 14-9, the note of the Prime Minister of the Democratic Republic of Vietnam (Southern Vietnam) on the approval of the declaration of China.
1971	The Philippines occupied several islands on the Spratly Islands. Taiwan returned to the Spratly Islands and established a continuous presence on the Itu Aba island.

	<p>After the incident that Taiwan fired on several Philippine fishing boats, Philippine requested Taiwan to withdraw from Itu Aba Island and occupy the Nanshan Island, Northeast Cay island, Loaita island, Thitu island. On July 13, the Foreign Minister of Saigon (Southern Vietnam), in Manila, recalled Vietnam's claims. On July 17, Xinhua News Agency condemned the Philippines and repeated China's claims to the archipelago.</p>
1974	<p>On January 15, China sent troops to the western islands of the Paracel Islands that were previously occupied by Southern Vietnam's government. In the following days, they supported this action with a vigorous naval deployment.</p> <p>On 18 January, the Ambassador of Taiwan in Saigon, in a diplomatic note, reaffirmed the claim of the Republic of China.</p> <p>Through the diplomatic message sent to the signatories of the Paris Agreement, on March 2-3, Southern Vietnam's government reiterated its recognized territorial integrity.</p> <p>On July 2, the South Vietnamese government at the 3rd Sea Law Conference accused China of using force to occupy the Paracel islands and assert that the Paracels and Spratlys are Vietnamese. Then, Saigon took action for the reinforcements in the Spratly Islands. The Philippines opposed this move.</p>
1975	<p>On May 5, 1975, the Northern Vietnam's Navy regained control of the islands of the Spratly Islands from the Saigon Army (Southern Vietnam).</p> <p>On September 10, China sent a note to Vietnam, stressing that two archipelagoes are always the territory of China.</p>
1977	<p>Vietnam issued the first statement on the baselines for establishing the territorial waters, the contiguous zone, the exclusive economic zone and the continental shelf.</p>
1978	<p>Philippines issued the Presidential Decree No. 1599, which uses the Filipino name Kalayaan to refer to the Spratly Islands and asserts that the Spratly Islands are legally not of any country, but due to its proximity, the vital importance of security, essential needs, useful occupation and control, the Philippines has established legal sovereignty over the archipelago.</p>
1979	<p>Malaysia published a map of the continental shelf, including three islands of the Spratly Islands. Malaysia claimed the Spratly Islands are territorially based on the extension of the continental shelf. In an ordinance in February, the Philippines claimed almost all the Spratly Islands in its archipelago.</p> <p>In March 1979, the Ministry of Foreign Affairs of Vietnam released a Memorandum of Understanding on the Vietnam-China border, including 9 accusing China of illegally occupying the Paracel Islands of Vietnam on 19 and 20 January 1974.</p> <p>In July 1979, the Chinese Foreign Ministry published a paper to prove that Vietnam had recognized China's sovereignty over these two archipelagos.</p>
1982	<p>In June, Xinhua reportedly established a significant port in Hao Sa Taiwan decided to place the Paracel islands and Spratly islands under their jurisdiction. At the same time, the Kaohsiung City government approved a three-year plan to build ports and settle in Itu Aba island.</p> <p>On November 12, Vietnam stated baselines to calculate the breadth of the territorial sea.</p>
1983	<p>Malaysia occupied and formally proclaimed rights to the Swallow Reef island of Spratly Islands. They said that Swallow Reef Island has long been a part of Malaysian territory. The Vietnamese Foreign Ministry objected to Malaysia's actions and protested all Malaysian rights to the islands claimed by Malaysia as part of its territory.</p> <p>At the second Asia-Pacific Aviation Conference, China released two maps of the sea border that border most of the South China Sea.</p>
1984	<p>In June, the 2nd Conference of the 6th Chinese National Congress approved the establishment of the Hainan administrative area comprising both the Xisha and Nansha Islands (i.e., the Paracel and Spratly Islands) in Guangdong province of China</p>
1988	<p>In April 1988, China occupied six groups of islands and reefs following a clash with the Vietnamese navy, including the Fiery Cross Reef, Cuarteron Reef (London Reef), Gaven Reef, Hughes Reef, Johnson Reef (Johnson South Reef), Subi Reef.</p> <p>In April, the Philippine government elected a mayor for a captured island town in the Spratly Islands.</p> <p>Malaysia's Foreign Minister insisted that the Swallow Reef, Mariveles Reef, Ardasier Reef and Louisa Reef are located on Malaysia's continental shelf.</p>
1989	<p>In May, China occupied an additional small island and then placed the sovereign stele on the islands and reefs captured in the Spratly Islands.</p> <p>In August, Vietnam completed the construction of a service-economic-scientific-technical cluster on the Spratly Islands</p>
1992	<p>On February 25, 1992, China adopted the Territorial and Contiguous Land Law, asserting its ownership of the Paracel and Spratly islands and much of the South China Sea. In this law, China has the right to use force to impose its sovereignty over islands as well as claimed territorial waters.</p> <p>In May 1992, China signed an agreement with a small American company called Crestone Energy</p>

	Corporation to explore and exploit oil and gas in the Vanguard Bank on the Vietnamese continental shelf. On May 10, a spokesman of the Chinese Ministry of Foreign Affairs reacted negatively by saying that the Blue Dragon area is near the Nansha Islands. The agreement between the American Oil Company and Vietnam in Blue Dragon bank was illegal.
1996	“On 15 May 1996, China took a new step forward by unilaterally drawing straight baselines (from which the breadth of the territorial sea is measured) around the Paracel islands. China’s establishment of these baselines around the Paracel archipelago seriously violates the territorial integrity of Vietnam. Putting aside the issue of territorial sovereignty, China’s drawing of the baselines for the Hoang Sa archipelago is not in conformity with the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).” (Nguyen, 2001)
2007	China approved the establishment of the administrative district of Sansha County in Hainan Province, which directly manages three archipelagos, including the Paracels and the Spratlys. This action led to protests against China in Vietnam. The Vietnamese Foreign Ministry has formally opposed China's doing.
2009	On March 10, President of Philippines, Mr. Arroyo signed the Act No. 9522 on the new baseline (the old baseline in 1968), which managed the Spratly Islands and the Scarborough Shoal. China, Taiwan, and Vietnam protested. On May 6, Malaysia and Vietnam submitted a joint report to the continental shelf extending south of the South China Sea to the Commission on the Limits of the Continental Shelf - CLCS. On May 7, China sent the Diplomatic note CML/17/2009 and CML/18/2009 to the General Secretary of the United Nations, which included a map of the Nine-dash line (Vietnamese calls cow tongue line). On May 8, Vietnam and Malaysia sent a Diplomatic Note to the United Nations to protest China. On July 8, Indonesia which is a non-dispute submitted to the United Nations, concludes that China’s Nine-dash line has no legal basis. On August 4, the Philippines officially sent a note to the General Secretary of the United Nations that they opposed the report on the extended continental shelf of Vietnam in the north and Vietnam and Malaysia in the south. Vietnam and Malaysia oppose the Philippines's Diplomatic note.
2011	On April 5, the permanent mission of the Philippines in the United Nations sent a note to protest the Diplomatic Note on 7 May 2009 of China. In particular, the Philippines does not accept the content about China's indisputable sovereignty over the islands in the South

China Sea and adjacent waters, as well as sovereign and jurisdictional rights over waters, the seabed, and its subsoil.

On April 10, the Chinese Foreign Ministry said that the Philippine Note Verbal was unacceptable. Of the four notes to the United Nations against China's Note of 7 May 2009, China only sent a letter replying to the Philippines's note to the United Nation Secretary- General, Mr. Ban Ki Moon

On April 14, China sent a note to protest to the Philippines's note vigorously. This note stressed that The Philippine occupation of several islands and reefs of the Nansha Islands as well as other related acts constitute a violation of China's territorial sovereignty.

On 3-5 May, the Vietnamese delegation to the United Nations sent a letter to the United Nations' Department of Oceans and Laws, asserting Vietnam's absolute sovereignty over the two archipelagos: Paracel and Spratly.

By the end of July, the ASEAN has implemented the DOC (Declaration on the Conduct of Parties in the South China Sea) with China but is still at the level of a political document. Moreover, the target audience is just around the Spratly Islands, measures deployed solely for cooperative exploitation or scientific research. The main issue of the South

China Sea dispute is not directly mentioned.

In the Paracel Islands, China claims that it is a territory under Chinese sovereignty, which is different from ASEAN's understanding that it is also subject to dispute. However, with the recent achievements in implementing the DOC to a COC (The Code of Conduct for the South China Sea), it can be seen as an appropriate transition in the context of tense competition.

The dispute in the South China Sea has been going on for a very long time since the dispute arose so far, with no official solution. This has become a standard feature in the maritime disputes, which contain significant strategic positions and vast reserves of resources combined with the participation of powerful nations. Example: Pinnacle Islands (Diaoyu Islands) dispute between China and Japan; Sovereignty disputes over the Arctic Sea between the five countries: United States, Nigeria, Denmark, and Canada; ...

The stance of nations is almost unchanged. As the importance of the South China Sea is rising, the evolution of disputes tends to increase in number and the time gap is decreasing gradually. This reflects the status quo that is being pushed up to the stress level for various reasons.

Countries have been trying to consolidate their

holdings. The expansion of China's claims widens the scope of the dispute. In particular, where the significant geographic location of the defense strategy and where resource exploration entails conflicting parties. Also, disputed geographic areas containing sovereignty-based elements that contain additional conflicting elements invoked by United Nations Convention on Law of the Sea - UNCLOS are disputed by the parties. Therefore, the complexity of the dispute is greatly enhanced by the existence of two different legal aspects on the same subject matter.

The resistance of the states to the firm claims is increasingly intense and drastic both regarding diplomacy and military, Vietnam, China, and the Philippines are the most influential performers. In that sense, diplomacy has become a place of intense struggle. On how to implement the solution, before 2013, the parties have not yet resolved to cooperate on the legal status of the South China Sea based on the Law of the Sea 1982, which is understood only through unilateral declarations.

Over time, China has become one of the most disputed countries in the region, with affirmative actions that tend to squeeze the rest. This has caused the South China Sea dispute to tend to form two opposite sides: China and ASEAN. This division is not yet present in the dispute resolution role as ASEAN has not yet demonstrated its unification; Looking at the objections of China's views in Table 1 shows the fragmentation between the disputed ASEAN states.

4 THE CONCEPT OF "SETTING ASIDE DISPUTE AND PURSUE JOINT DEVELOPMENT."

The concept of "setting aside dispute and pursuing joint development" has the following four elements.

The first point is "The sovereignty of the territories concerned belongs to China." Given "setting aside dispute and pursue joint development"¹⁶, Mr. Deng Xiaoping put forward a premise that China has indisputable sovereignty over the Nansha Islands, both Spratly islands, and Paracel islands. In February 1984, he declared a claim to the Spratly: It is a territory of China ... they have many times China's claim to sovereignty over whether the sovereign states belong to China. He further stated that sovereignty is not a matter that can be discussed and with the issue of their sovereignty, there are no concessions.

The second point is respecting the truth and putting aside the dispute. China maintains that the Pinnacle Island, the Spratly Islands, are an indispensable part of Chinese territory. However, because of the changes of the times, although the Nansha archipelago is the territory of China from the ancient times, but now the main islands of Nansha (Spratly) have been controlled by the four countries, five parties and the sea are divided by 6 nations, 7 parties and tends to expand, making the South China Sea the largest disputed area in the world. So China showed that "When conditions are not ripe to bring about an exact solution to the territorial dispute, discussion on the issue of sovereignty may be postponed so that the dispute is set aside. To set aside dispute does not mean giving up sovereignty. It is to leave the dispute aside for the time being."¹⁶

The third argument is for mutually beneficial cooperation. "The territories under dispute may be developed in a joint way"¹⁶. The Spratly islands located in the international maritime linkage linking the Pacific Ocean and the Indian Ocean, which is the corridor of East Asia and Oceania not only has abundant biological resources but is also rich in petroleum resources. Currently exploring eight oil reservoirs of about 30 billion tons is considered "the second Persian Gulf." The Chinese government emphasizes that the Spratly Islands are Chinese territory but that, to safeguard peace, the region that promotes development cooperation may first put aside disputes and jointly operate on the same principle. Beneficial benefits for mutual benefit. This is conducive to the friendly relationship between China and its neighbors, which is conducive to the peace and stability of the Asia-Pacific region in the interests of peace and development in the world.

The fourth point is toward a peaceful future. "The purpose of joint development is to enhance mutual understanding through cooperation and create conditions for the eventual resolution of territorial ownership"¹⁶. The purpose of joint development is to build a peaceful future through cooperation that enhances understanding and ultimately facilitates the proper resolution of sovereignty issues by peaceful means. Mr. Deng Xiaoping pointed out: In the international arena, it is best to apply a peaceful means of solving disputes. He also emphasized: Considering the relationship between countries should primarily work from the strategic interests of the country itself. He believes that to persevere in this way will find a solution to the whole. He believes that we will finally find a good solution. If this generation cannot solve it, the

next generation will be more intelligent and can find a solution.²⁷

At the international conference on "South China Sea: strengthening cooperation for security and development in the region"¹⁷ in Hanoi on 26-27 November 2009, Professor Ji Guoxing of Shanghai Jiaotong University, former director of the Asia-Pacific Department at the Shanghai Institutes for International Studies, reiterated China's policy of "Set aside dispute and pursue joint development". Professor Ji proposed that the parties to the dispute must first agree on a common framework for the exploitation of the entire South China Sea.¹⁷

He concluded by proposing that Vietnam and China discuss the possibility of jointly exploiting the Vanguard Bank, which is almost entirely within the 200-nautical mile exclusive economic zone from its undisputed territory¹⁸. Vietnam does not belong to the Spratly Islands, which are in a state of a sovereignty dispute. At a press conference in Hanoi on January 6, 2010, Chinese ambassador Sun Guoxiang also proposed the policy of "setting aside disputes": "China's top leaders have put forward a constructive initiative that is to put aside disputes and to pursue joint development"¹⁹ he said, adding that Vietnam and China should shelve the war and wait for a suitable condition.

Based on the essential and concrete content of the view "Set aside dispute and pursue joint development," we can see that the contents of this view inherit the basic theories of joint exploitation on the world and its features of Chinese. What is remarkable in this view is that the first point of sovereignty belongs to China. China claims to exploit the Spratly waters based on Chinese sovereignty over the islands. This is something that Vietnam and other disputants cannot accept. China affirms its

sovereignty without referring to the sovereignty of Vietnam and other claimants in the South China Sea.

Besides, China's policy of "Set aside dispute and pursue joint development," does not include the Paracel islands where, according to Vietnam, China occupied illegally. China claims that "It is known to all that China has indisputable sovereignty over the Xisha Islands and its adjacent islets. China and Vietnam have no dispute over this issue. The routine training of the Chinese navy is an ordinary activity within Chinese waters under China's sovereignty. Vietnam's protest is groundless."

Thus, Vietnam cannot unconditionally accept China's policy of "Set aside dispute and pursue joint development" with such preposterous sovereignty

claims!

China's policy of "Set aside dispute and pursue joint development" is in line with international law and practice as a provisional solution to complex disputes as disputed in some areas of the South China Sea. The key issue, however, is that China only wants to "Set aside dispute and pursue joint development" on the continental shelf that Vietnam and other coastal states enjoy legally in accordance with the international law. Thus, China claims that there is no international legal basis and it is difficult for any nation in the region.

Joint development is, in fact, an appropriate solution that can be applied to the settlement of disputes in some areas of the South China Sea and the involvement of relevant countries. Negotiations on specific issues for the implementation of this option as one of the possible solutions to conflicts that need to be considered include Vietnam. However, to implement the joint development solution in the South China Sea, the first thing that Viet Nam must mention is the issue of sovereignty of Vietnam. Vietnam will only conduct joint development on the basis that China respects Vietnam's sovereignty over the Paracel and Spratly archipelagos as well as Vietnam's exclusive economic zone - EEZ and continental shelf under of The United Nations Convention on the Law of the Sea in 1982.

5 SOME SUGGESTIONS FOR VIETNAM

Firstly, the negotiation, signing, and implementation of cooperation agreements for development should thoroughly grasp the principle of respect for Vietnam's sovereignty over Spratly and Paracel islands and other islands in accordance with the provisions of international law; especially within 200 nautical miles of Vietnam's exclusive economic zone and continental shelf under the 1982 United Nations Convention on the Law of the Sea.

Secondly, the signing of joint development agreement should adhere to the fundamental principles of the 1982 United Nations Convention on the Law of the Sea.

Thirdly, the content of development cooperation should be detailed on all issues related to development cooperation areas such as determining the scope of cooperation, the profit sharing ratio, the management model, the regulations on the rights and obligations of the construction and use of

environmental information exchange equipment. The experience of these issues can be seen from the Agreement between Senegal and Guinea Bissau; 1993 Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to Cooperation in Fisheries; Maritime

Delimitation Treaty between Jamaica and the Republic of Colombia 1993 ... At the same time, the agreement must stipulate provisions to ensure that: in the cooperative area, the parties have the right and equitable interest in exploring the exploitation of benefits from the construction and management of the facilities for the exploitation of research. Each activity ensures the participation of all stakeholders in carrying out their responsibilities. For joint development agreements, they should be taken to preserve fish species and other living resources.

Fourth, the rights and obligations of the parties to the treaty on joint development should state the rights and obligations of each of the cooperative areas. In the fishery sector, in addition to catching standards, it is necessary to regulate the number of fishing vessels per year.

Fifth, for the jurisdiction of the parties to the agreement on joint development, there should be detailed provisions on the rights and obligations of the parties in the implementation of their jurisdiction with the exploitation of resources on the cooperation. The principle of "joint exercise of jurisdiction" should be considered in any case to be a just principle which ensures the long-term cooperation of the parties. Also, the agreement should provide for the competence of States in maritime security and safety to facilitate safe and secure maritime operations.

Sixth, the development of a regional joint development model can be developed under the co-management model which was applied in the Agreement between Senegal and Guinea Bissau and many co-operation agreements as Japanese-China Fishery Coordination Association in Agreement on Fisheries between the People's Republic of China and Japan, 11 November 1997, the Japan-Republic of Korea Joint Fisheries Commission in Agreement Between Japan and the Republic of Korea Concerning Fisheries on 28th November 1998, Sino-Vietnamese Agreement on Fishery Cooperation in the Vietnam and China Fishery Agreement in 2000 ... This model must have a clear hierarchy of functions and responsibilities of each agency and the specialized agencies responsible for each of the issues.

Seventh, the financial terms must be explicitly

specified because the primary objective of countries is economic. The parties of joint development agreement should be based on the principle of equity to share financial interests and obligations. Member States will be entitled to surplus/deficit in the amount used.

The eighth issue is that the subject of applicable law and dispute resolution will be agreed upon by the two sides. However, it is necessary to strictly adhere to the principles prescribed by international law, considering the specific conditions of each region where joint development agreement takes place.

Ninth, about the validity of the joint development agreement. A treaty on co-development requires this document to be valid from the time it is approved by the competent authority of each party and ceases to be useful when the parties have reached agreement in its determination. Treaties for joint development in the South China Sea should also be "open" to amendment and supplement by bargaining procedures. This is a simple rule that facilitates the suitable modification.

6 CONCLUSION

Joint development is the need and the suitable solution, which could nowadays be applied in settlement of disputes within some areas in the East Sea. However, Vietnam must be extraordinarily cautious and recognize China's ambition behind the policy of "setting aside disputes and pursue joint development."

REFERENCES

- Becker-Weinberg, V. (2014). *Joint Development of Hydrocarbon Deposits in the Law of the Sea*. Hamburg: Springer.
- Clagett, B. M. (1995). Competing Claims of Vietnam and China in the Vanguard Bank and Blue Dragon Areas of South China Sea". *Oil and Gas Law Taxation Review*.
- Fravel, M. T. (2011). China's Strategy in South China Sea. *Contemporary Southeast Asia*, 292-319.
- Gao, Z. and Jia, B.B. (2013). The Nine-Dash Line in the South China Sea: History, Status and implications. *The American Journal of International Law*, 98-124.
- Huang, Y. and Huang, M. (2013). Implementation of the Sino-Vietnamese Fishery Agreement: Mainly Chinese Perspective. *Beijing Law Review*, 103-119.

- Keyuan, Z. (2006). Joint Development in the South China Sea: A New Approach. *The International Journal of Marine and Coastal Law*.
- Nations, T. U. (1982). *The United Nations Convention on the Law of Sea*.
- Nguyen, B. D. (2013). *Joint development in maritime areas in international law and practice (Vietnamese)*. Hanoi: Information And Communications Publishing House.
- Nguyen, B. D. (2015). Legal Basis and Methods to Settle Peacefully International Disputes in Regard to Sovereignty over Sea and Islands (Vietnamese). *Vietnam National University of Science: Law Study*, 11-25.
- Nguyen, D. K. (2017). Vietnam's East Sea and the policy of China from an international relations perspective (Vietnamese). *Journal of Science - Ho Chi Minh City University of Education*, 168176.
- Nguyen, H. T. (2001). Vietnam and the Code of Conduct for the South China Sea. *Ocean Development and International Law*, 105-130.
- Okafor-Yarwood, I. (2015). The Guinea-Bissau-Senegal maritime boundary dispute. *Marine Policy*, 284-290.
- Qian Hongdao and Hamid Mukhtar. (2017). Joint Development Agreements: Towards Protecting the Marine Environment under International Law. *Journal of Law, Policy and Globalization*.
- Storey, I. J. (1999). Creeping Assertiveness: China, the Philippines and the South China Dispute. *Contemporary Southeast Asia*, 95-118.
- Vu, Q. V. (2010). Southeast Asian Sea Disputes: Finding Peace and Justice Based on Historical Evidence and International Law (Vietnamese). *Vietnamese Review Of Studies And Discussions*.
- Xue, G. (. (2005). Bilateral Fisheries Agreements for the Cooperative Management of the Shared Resources of the China Seas: A Note. *Ocean Development & International Law*.
- “Set aside dispute and pursue joint development”
http://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602665543/3604665547/t18023.shtml
- International Conference of East Sea
<http://vietnamnet.vn/chinhtri/200911/Hoi-thao-quoc-te-ve-Bien-Dong-880652/>
- Waiting for ripe conditions to settle the South China Sea disputes
<http://vietnamnet.vn/chinhtri/201001/Chodieu-kien-chin-muoi-giai-quyet-tranh-chap-bien-Dong-888092/>
- Settlement of the South China Sea disputes in the Chinese scholars' perspective
<https://baomoi.com/giai-quyet-tranh-chap-bien-dong-trong-mat-hoc-gia-trung-quoc/c/3590223.epi>
- Foreign Ministry Spokesperson Qin Gang's Regular Press Conference on 27 November 2007.
<http://big5.fmprc.gov.cn/gate/big5/tr.chinaembassv.org/eng/fvrth/t385091.htm>
- Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to Cooperation in Fisheries
<http://www.austlii.edu.au/au/other/dfat/treaties/1993/18.html>
- Agreement between the Government of Australia and the Government of the Republic of Indonesia relating to Cooperation in Fisheries
<https://iea.uoregon.edu/treaty-text/1992-australiaindonesiacooperationfisheriesentxt>
- Maritime Delimitation Treaty between Jamaica and the Republic of Colombia
<http://www.ecolex.org/server2neu.php/libcat/docs/TRUE/Full/Other/TRE-152748.pdf>
- Agreement Between Japan and the Republic of Korea Concerning Fisheries
https://en.wikisource.org/wiki/Agreement_Between_Japan_and_the_Republic_of_Korea_Concerning_Fisheries
- Fisheries agreement of Korea with Japan and China
<http://www.ilovesea.or.kr/eng/resour/territory4.do>
- Overview of the East Sea Dispute
<http://english.vietnamnet.vn/fms/in-focus/104409/overview-of-the-east-sea-dispute.html>
- Set aside dispute and joint development in Chinese style
<http://nghiencuubiendong.vn/nghien-cuu-vietnam/578-qqac-tranh-chp-cung-khai-thacq-kiu-trung-quc>