



**China's Maritime Territorial Disputes:
Origin, Application and Evaluation
of the 'Joint Development' Formula**

by

Pakchai D. Wicaksono

22 October 2012

	<u>Section</u>	<u>Page</u>
1.	Introduction	<u>1</u>
2.	Origin of the JD formula	<u>1-2</u>
3.	Pushing factors towards initiation and implementation of the formula	<u>2-4</u>
3.1	<i>Legal background</i>	<u>2-3</u>
3.2	<i>Economic concern</i>	<u>3</u>
3.3	<i>Balance of power and regionalization of territorial disputes</i>	<u>3-4</u>
4.	Application of the JD formula in China-Vietnam and China-Japan territorial disputes	<u>4-8</u>
4.1	<i>How the formula works?</i>	<u>4-5</u>
4.2	<i>China-Vietnam territorial disputes in SCS</i>	<u>5-7</u>
4.3	<i>China-Japan territorial disputes in ECS</i>	<u>7-8</u>
5.	Evaluation of effectiveness of the formula in resolving territorial disputes	<u>8-13</u>
5.1	<i>Unilateral actions by concerned parties to consolidate existing sphere of control</i>	<u>9-10</u>
5.2	<i>Legal constraint</i>	<u>11</u>
5.3	<i>National sentiment in domestic realm</i>	<u>11-12</u>
5.4	<i>“China-threat” theory and geopolitics</i>	<u>12</u>
5.5	<i>Interplay of Great Power politics</i>	<u>12-13</u>
5.6	<i>Taiwan issue</i>	<u>13</u>
6.	Conclusion	<u>13-14</u>
	Bibliography	<u>15-19</u>

=====

Pakchai D. Wicaksono is an independent researcher in international affairs. His affiliations include two Hong Kong-based associations for China study (as executive director) and global political economy (as research director) respectively, a collective commentary blog on current affairs (as executive editor and co-writer), and a London-based international institute for strategic studies (as member).

(1) Introduction

Territorial dispute has always been a major aspect of inter-state relations, especially for states bordering multiple neighbours. With a land boundary of 22,117 km which claims to be the longest in the world, China borders 14 countries on land and has overlapping maritime claims in respect of Exclusive Economic Zone (EEZ) and continental shelf with 8 countries.¹ China has so far been successful in settling land boundary disputes with all its neighbours except India. However, the situation is much more complicated in the sea. While China has already promulgated a number of laws governing its territorial sea, EEZ and continental shelf,² the delimitation of its maritime frontier remains an outstanding issue which does not only affect China's effective control and exploitation of its waters but also cultivation of stable relationships with neighbouring states. The formula of "seeking joint development while shelving the issue of sovereignty" (擱置主權爭議，尋求共同開發) (hereinafter the JD formula), which was initiated by Deng Xiaoping, the then paramount leader of China in 1980s, has been serving as the guiding principle of the Chinese government in dealing with its territorial disputes since the reform era. In this paper I shall try to assess the effectiveness of the JD formula by first tracing its origin and various pushing factors towards its initiation and implementation. The application of this formula will then be reviewed with reference to China's territorial disputes with Vietnam and Japan in South China Sea (SCS) and East China Sea (ECS) respectively to see if any progress has ever been made. In the last part of this paper, I shall give an evaluation to the overall effectiveness of the formula by pointing out various constraints that have prevented it from achieving permanent and peaceful settlement of territorial disputes.

(2) Origin of the JD formula

During his visit to Japan in November 1978, Deng Xiaoping talked about the territorial dispute between China and Japan over Diaoyutai Islands (or Senkaku Islands named by Japanese government)³ in ECS and said it would be better to shelve

¹ 14 countries bordering China on land: Afghanistan, Bhutan, Burma, India, Kazakhstan, North Korea, Kyrgyzstan, Laos, Mongolia, Nepal, Pakistan, Russia, Tajikistan, and Vietnam; 8 countries with overlapping maritime claims with China: Brunei, Indonesia, Japan, Malaysia, North Korea, the Philippines, South Korea, and Vietnam (in addition to Taiwan), see CIA The World Factbook (2011).

² Examples include "Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf" and "Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone", see MSA/PRC (2011).

³ The name "Diaoyutai Islands" is used for convenience of presentation in this paper.

the issue and leave it to the next generation to resolve.⁴ Later in 1984, Deng presented the JD formula for the first time at the 3rd Central Advisory Commission plenary meeting of the Communist Party of China.⁵ In 1990, President Yang Shangkun and Premier Li Peng formally raised this formula during their respective visits to Indonesia and Singapore.⁶ Since then the formula was repeatedly put forward by Foreign Minister Qian Qichen and his successors as the official stance of China on maritime territorial disputes.⁷

(3) Pushing factors towards initiation and implementation of the formula

Owing to the enclosed nature of China's decision making process, the formulation of the JD formula may not be easily known, if not impossible. Notwithstanding, there are a number of factors that to varying degrees contribute to its initiation and implementation.

(3.1) Legal background

When talking about maritime territorial disputes across the world, in most cases they refer to two issues: sovereignty of (often uninhabited) islands and delimitation of EEZ and/or continental shelf. Concerning the former, the United Nations Convention on the Law of the Sea (UNCLOS), the international regime of which defines the rights and responsibilities of sovereign states in the sea, makes no mention of how to resolve island sovereignty dispute.⁸ Meanwhile, no international law is dedicated to resource exploitation in maritime areas in dispute.⁹ Articles 74(3) and 83(3) of UNCLOS only stipulate that states with overlapping claims of EEZ or continental shelf "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".¹⁰ Ren Huaifeng of China's National Institute for the SCS Studies argues that the JD formula consists of four characteristics, namely, non-determination of sovereignty of areas in dispute, emphasis on cooperation in these areas, transient nature for resolving resources exploitation only but not for the dispute itself, and prevention of unilateral actions by

⁴ He (2007:326).

⁵ He (2007:326); Ren (2007:317).

⁶ He (2007:327); Ren (2007:318).

⁷ He (2007:327); Zhang (1996:26-27).

⁸ UN (2011).

⁹ Ren (2007:321).

¹⁰ UN (2011).

the states concerned.¹¹ According to Ren, the rationale behind the JD formula is to emphasize China's indisputable sovereignty over the territories while seeking joint development in consideration of interests of concerned states.¹² In this sense, China does intend to make use of the formula to strive for a win-win situation in territorial disputes under the spirit of UNCLOS.

(3.2) Economic concern

If one considers the aforesaid legal argument rather idealistic, economic factor would give a more convincing account of the subject. The initiation of the JD formula in early 1980s is closely related to China's pressing need for cultivation of peaceful environment and trading ties with other countries to facilitate its domestic reform and development. In an analysis of Sino-Japanese relations, Min Gyo Koo of Yonsei University argues from liberal peace perspective that "economic interdependence fosters peaceful relations by giving states an economic incentive to avoid costly military disputes",¹³ which is proved by the on-going efforts of both Chinese and Japanese leadership to de-escalate five rounds of clashes in the Diaoyutai Islands disputes since 1968.¹⁴ Meanwhile, a similar trend takes place in China's relations with Vietnam and other members of the Association of Southeast Asian Nations (ASEAN), especially since late 1990s that marked an overall improvement in China-ASEAN relations.¹⁵ Now that ASEAN and Japan have become the second and third largest trading partners of China,¹⁶ in addition to the launching of the ASEAN-China Free Trade Area (FTA) on 1 January 2010,¹⁷ the high degree of economic interdependence between China and these countries prompts both sides to seek peaceful solution to boundary issues.

(3.3) Balance of power and regionalization of territorial disputes

In the absence of an overarching authority in present international order which is still state-centered, countries must maximize their own power and security in order to survive. This brings about tendency towards balance of power in the sense that less powerful states will come together to challenge the stronger one. Owing to relatively inferior economic and military capabilities, Vietnam and other smaller

¹¹ Ren (2007:322).

¹² Ren (2007:318).

¹³ Min (2009:206).

¹⁴ Min (2009:213-227).

¹⁵ Baviera (2004:517).

¹⁶ Jingji Cankao Bao (2010).

¹⁷ BBE News (2010).

claimant states in SCS are all concerned about China's attitudes and possible acts towards the SCS issue.¹⁸ With Vietnam joined ASEAN in 1995, the China-Vietnam dispute in SCS has to certain extent put under the context of China-ASEAN relations.¹⁹ In view of the new situation, China changed its strategy from bilateral dealings with individual countries to multilateral negotiation with ASEAN in acknowledgement of inevitable "regionalization of the Spratlys issue".²⁰ Even in the case of Diaoyutai and delimitation of ECS, one can find some sort of balance-of-power dynamic in force between China, Japan, Taiwan and US (to be discussed in latter parts of this paper).

In a nutshell, the various legal, economic and political factors mentioned above have pushed China to refrain from taking forceful means and resort to peaceful solution to territorial disputes.

(4) Application of the JD formula in China-Vietnam and China-Japan territorial disputes

(4.1) How the formula works?

According to the study of Wu Shicun and Hong Nong, there are basically four types of joint development models at work in disputed areas around the world.²¹ In East Asia, there are two models in existence, namely Japan-South Korea Arrangement in the Sea of Japan and Malaysia-Thailand Joint Development Area in the Gulf of Thailand.²² All these models of cooperation are "temporary interest arrangement" based on "compromise between political entities that acknowledge existence of disputes".²³

From my point of view, the application of the JD formula consists of different levels. As a prerequisite, the states concerned should first agree to sit together to discuss basic principles of handling a particular dispute. By keeping dialogue on the issue, governments seek to adopt confidence building measures to prevent further conflicts. It is only on this basis that they could proceed to negotiation of concrete terms of joint development. As shown in its relations with Vietnam and Japan, China has

¹⁸ Zou (2006:165-166).

¹⁹ Baviera (2004:508).

²⁰ Zou (2006:165-166).

²¹ Wu and Hong (2006:152).

²² Zou (2006:159).

²³ Wu and Hong (2006:152).

attempted to apply the JD formula to the territorial disputes in SCS and ECS and made some progress.

(4.2) China-Vietnam territorial disputes in SCS

As neighbours for centuries, China shares both land and maritime boundaries with Vietnam. The territorial disputes had led the two countries to be engaged in several conflicts in 1970s and 1980s. Agreement was finally reached on the land portion after decades of conflicts and negotiations.²⁴ Since this portion is less relevant to joint development, the focus of analysis here will be put on disputes in SCS including Gulf of Tonkin, Paracels and Spratlys.

The sovereignty dispute of SCS is a by-product of Cold War thanks to the unclear disposition of the tiny islands in this area in the 1952 Treaty of San Francisco between Japan and the Allied Powers. Both the Communist regime in Beijing and the Nationalist government in Taipei were not invited to participate in the treaty negotiation.²⁵ The nature of the SCS dispute has since shifted from Cold War confrontation to resource consideration.²⁶ According to a source, it is estimated that the SCS area contains “over 172 billion barrels worth of oil and 10 trillion stere of natural gas”.²⁷ A large quantity of gas hydrate (“flammable ice”), which is regarded as a substitute of traditional fuel, is also found in this region.²⁸ As China and Vietnam are developing countries that rely heavily on energy import, both turn their eyes to the rich oil and gas reserves in SCS to support their industrialization process and hence are vigorous in exercising control over this area. Despite engaging in countless conflicts against Vietnam (including a naval battle in 1988) over the years, in consideration of the need to concentrate resource and attention to economic development, China took several attempts to seek peaceful solutions to the disputes by putting the JD formula into practice.

In the northwestern corner of SCS, after 30 years of negotiation an agreement on the maritime boundary delimitation in the Gulf of Tonkin between China and Vietnam was finally signed on 25 December 2000.²⁹ Article 7 of the agreement provides for both sides to pursue joint development in area straddling the demarcation line of the

²⁴ Ifeng.com (2009).

²⁵ Hara (2007:157).

²⁶ Hara (2007:157).

²⁷ Wu and Hong (2006:148).

²⁸ Wu and Hong (2006:148).

²⁹ Yang (2006:511-512).

gulf.³⁰ This agreement is so far the most successful attempt by China and Vietnam to settle their maritime territorial disputes. In the Hanoi Joint Declaration issued in October 2005, both countries agreed to maintain negotiations to resolve maritime disputes peacefully.³¹

The situation in other parts of SCS (most notably Paracels and Spratlys) is more complicated as the disputes involve not only China and Vietnam but many other countries, namely the Philippines, Brunei, Malaysia, Indonesia and Taiwan. As mentioned above, the SCS issue became “regionalized” especially since the acceptance of Vietnam by ASEAN. The Chinese government put forward the JD formula to the ASEAN countries as its official stance on the SCS dispute and received some positive responses from the latter. An informal workshop on Managing Potential Conflict in the SCS (MPCSCS), which was sponsored by Canada and hosted by Indonesia, was convened in 1990.³² The workshop was attended by officials and academics from all claimant countries (including China and Vietnam) in private capacities to “explore ways to engender cooperation among the nations bordering on the South China Sea”.³³ A total of 6 meetings were held in Indonesia between 1990 and 1995.³⁴ Meanwhile, there were also various “Track Two” platforms dedicated to mutual sharing of views on the subject.³⁵

Although such unofficial attempts possessed no authority, they helped to foster further dialogue and negotiations between claimants. It also laid foundation for the China-ASEAN Declaration on the Conduct of Parties in the SCS announced in November 2002.³⁶ Apart from this, both sides also signed the Joint Declaration on Cooperation in the Field of the Non-traditional Security Issues and the Treaty of Amity and Cooperation in Southeast Asia.³⁷ As Aileen Baviera puts it, the Declaration “marked the beginning of new efforts to further institutionalize cooperative and consultative mechanisms for dealing with the disputes”.³⁸ Indeed, since the 2002 Declaration China and Vietnam had accelerated the pace of negotiation. In December 2004, meetings were held in Hanoi and Beijing to discuss the “shelving sovereignty” idea. Both sides agreed to joint exploitation of cross-boundary oil and

³⁰ Zou (2006:165); MFA/PRC (2011).

³¹ Yang (2006:111).

³² Baviera (2004:513); Zou (2006:162).

³³ SCSIWG (2011).

³⁴ Zhang (1996:25-26).

³⁵ Baviera (2004:513-517).

³⁶ ASEAN (2011).

³⁷ Wu and Hong (2006:153).

³⁸ Baviera (2004:517).

gas in the Gulf of Tonkin and applying the same principle to other areas of dispute.³⁹ Three months later, oil companies of China, Vietnam and the Philippines signed the Joint Marine Seismic Undertaking (JMSU) in Manila to conduct joint seismic research in designated area in SCS.⁴⁰ Ongoing talks on territorial dispute and joint development were held between China and Vietnam from 2005 onwards which are still underway.⁴¹

(4.3) China-Japan territorial disputes in ECS

Concerning China and Japan, they have three major territorial disputes, namely sovereignty over Diaoyutai Islands, overlapping claims of EEZ and continental shelf in ECS, and China's query about the Japanese claim to a 200nm EEZ surrounding the uninhabited island Okinotorishima in Pacific Ocean.⁴² As the last one has nothing to do with China's own territorial claim, only the first two will be discussed here.

Despite both China and Japan have presented substantial amount of historical evidence to support their respective claims of sovereignty over Diaoyutai Islands,⁴³ these remote islets have for centuries not been the principal issue of Sino-Japanese relations. Similar to the situation of SCS, the contemporary dispute of Diaoyutai originated from the unclear disposition of the islands in the San Francisco Peace Treaty and the transfer of their "administrative right" alongside the sovereignty of Okinawa to Japan by US in 1972.⁴⁴ The issue was triggered by a resource survey conducted by United Nations Economic Commission for Asia and the Far East in late 1960s which reported discovery of rich oil and gas reserves in the vicinity of these islands.⁴⁵

The sovereignty dispute of Diaoyutai was further extended to the surrounding waters as both countries could not agree upon the delimitation of EEZ and continental shelf in ECS. It was caused by the ambiguity of UNCLOS which gives a littoral state the option to claim EEZ up to 200nm from its coastal baselines, or to the outer edge of its continental shelf (subject to a maximum of 350nm). With the widest distance of only 360nm between the coastlines of both countries, Japan asserts the median line principle of delimitation while China claims a full 350nm from its coastline based on

³⁹ Ren (2007:319).

⁴⁰ Ren (2007:319); Yang (2006:113).

⁴¹ Ren (2007:320).

⁴² Schoenbaum (2008:83).

⁴³ Zheng (2003:1-36).

⁴⁴ Hara (2007:183).

⁴⁵ Zhong Ri Guanxi Yanjiuhui (1972:2).

the natural continuation of its continental shelf.⁴⁶ In this regard, the Chinese claim may be undermined by the International Court of Justice (ICJ)'s Libya-Malta ruling which holds that states cannot claim over 200nm in an enclosed sea which is less than 400nm across.⁴⁷ Moreover, Japan may also make use of its Diaoyutai claim to strengthen its claim of ECS delimitation based on equidistant principle as the islands are located west of Okinawa Trough (natural end of China's continental shelf).⁴⁸ Notwithstanding, it is unlikely that the delimitation of ECS will be settled by legal means in foreseeable future owing to refusal of both sides to accept ICJ jurisdiction unconditionally.⁴⁹

According to Unryu Suganuma, the Diaoyutai dispute may be resolved in any of the four scenarios, namely joint development, unilateral development by Japan, the 3rd Sino-Japanese War, and settlement by ICJ decision.⁵⁰ Despite deep mistrust between both countries and Japanese concern about China's irredentist tendency, Suganuma opined that joint development is the most possible solution given China's commitment to the JD formula.⁵¹ While the sovereignty of Diaoyutai remains outstanding, a pact was made between China and Japan in June 2008 to jointly develop Chunxiao Gas Field in the disputed waters of ECS.⁵² The two governments also agreed to continue talks on joint development in other areas of dispute.⁵³

(5) Evaluation of effectiveness of the formula in resolving territorial disputes

As Wu Shicun and Hong Nong argue, a workable exploitation model "can only be set up when the disputing parties reach an agreement on mechanisms of cooperation and conflict management".⁵⁴ As discussed above, China has achieved some progress in dealing with territorial disputes in SCS and ECS. It reached consensus with disputants on broad principles of peaceful settlement of disputes and kicked off talks on joint development. No serious armed conflict occurred since the Sino-Vietnamese naval battle in 1988.⁵⁵ Apart from the Tonkin Delimitation

⁴⁶ Peterson (2009:442).

⁴⁷ Peterson (2009:456).

⁴⁸ Schoenbaum (2008:93).

⁴⁹ Chiu (1999:23-24).

⁵⁰ Suganuma (2000:159-162).

⁵¹ Suganuma (2000:159).

⁵² Storey and Thayer (2010:65).

⁵³ Xinhuanet (2008).

⁵⁴ Wu and Hong (2006:145).

⁵⁵ Baviera (2004:508).

Agreement, China also concluded 3 fishery agreements with Japan (1997), South Korea (2000) and Vietnam (2000) in respect of ECS, Yellow Sea and Gulf of Tonkin respectively.⁵⁶ By applying the JD formula, China was, to certain extent, successful in preventing escalation of conflicts that would worsen relations with its neighbours and be detrimental to its domestic reform and development. Nevertheless, various constraints have prevented it from achieving permanent and peaceful settlement of the territorial disputes.

(5.1) Unilateral actions by concerned parties to consolidate existing sphere of control

First of all, the JD formula calls on concerned states to shelve the issue of sovereignty as prerequisite for joint development. Nonetheless, it does not have authoritative measures to prohibit claimants from consolidating their existing sphere of control. Driven by energy demand to sustain economic growth, the states concerned (including China) seek to take unilateral actions to explore and exploit resources in disputed territories, hence hindering process of negotiation for joint development.

In SCS, as early as 1980s China had started oil survey in the disputed Spratlys area.⁵⁷ In 1992, China National Offshore Oil Corporation (CNOOC) signed a contract with Crestone Energy Corporation of US to jointly exploit gas and oil at Wan'an Tan in Spratlys.⁵⁸ In 1997, China even set up an oil rig on the continental shelf claimed by Vietnam.⁵⁹ Owing to Vietnam's strong opposition, China has so far not proceeded with actual exploitation in the Spratlys.⁶⁰ In response to China's action, Vietnam took steps to consolidate its control over the disputed territories. By mid-2000s, it has already offered contracts to 50 foreign oil companies since opening up the oil exploitation market, which has been a major source of its foreign exchange.⁶¹ No sign of improvement was shown even after the 2002 China-ASEAN Declaration. In April 2007, the Chinese government accused Vietnam of granting rights to an energy consortium led by British Petroleum (BP) to develop two gas fields in the Con Son Basin (another overlapping claim in Spratlys), with BP soon announcing suspension with speculation of pressure from China.⁶² Series of incidents in the following years, including the setting up of Sansha City by China to administer its SCS claims, firing

⁵⁶ Zou (2006:164).

⁵⁷ Wu and Hong (2006:149).

⁵⁸ Wu and Hong (2006:149).

⁵⁹ Baviera (2004:509).

⁶⁰ Wu and Hong (2006:149).

⁶¹ Wu and Hong (2006:149).

⁶² Storey and Thayer (2010:62).

and detention of fishing boats by each other's navy and so on, further strained China-Vietnam relations.⁶³

While efforts were made by the parties concerned to avoid conflicts like the Tonkin Delimitation Agreement 2000 and the Philippines-China and Philippines-Vietnam codes of conduct of 1995 and 1995,⁶⁴ and even Article 5 of the 2002 China-ASEAN Declaration requires the states concerned to “undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability”,⁶⁵ the lack of control mechanism makes all these efforts futile and brings limited hope to final settlement of sovereignty disputes.

In ECS, as mentioned above, the delimitation of EEZ has been a major dispute between China and Japan. China's exploration activities in Chunxiao Gas Field near the median line claimed by Japan invited protests from the latter for fear of losing potential reserve.⁶⁶ Since 2003 several attempts were taken by China to conclude contracts with both domestic and foreign oil majors and construct drilling facility in the trouble waters.⁶⁷ The situation is even worse in the Diaoyutai case as Japan simply denies any territorial disputes there.⁶⁸ Since the handover of “administrative right” by US in early 1970s, the Japanese government has for decades never ceased to exercise effective control over these islets such as allowing rightist organizations to install lighthouse,⁶⁹ the September 2010 incident of detention of Chinese fishing boat captain,⁷⁰ arrest of Chinese civilians landing on the islands, and the plan for nationalization. Although the two countries had reached agreement on joint development, according to some coverage China has in recent years resumed exploring activities in Chunxiao Gas Field.⁷¹ In addition to subsequent events such as controversy over China's restriction on rare earth export and confrontation between patrol vessels of both countries, mistrust between both sides is deepened. The deterioration of Sino-Japanese relations could hardly bring joint development into reality in foreseeable future.

⁶³ Storey and Thayer (2010:61-64).

⁶⁴ Baviera (2004:511-512).

⁶⁵ ASEAN (2011).

⁶⁶ Zou (2006:156).

⁶⁷ Asia Times Online (2004).

⁶⁸ AM730 (2010).

⁶⁹ Chiu (1999:22-23).

⁷⁰ Lit (2010:9-10).

⁷¹ Wenweipo (2010).

(5.2) Legal constraint

Another seemingly minor but significant factor emerges from international law regime. The United Nations Commission for Limits of the Continental Shelf (UNCLCS) set 13 May 2009 as the deadline for states to lodge claims extending their continental shelf beyond the 200nm limit set by UNCLOS.⁷² In the disputed Spratlys waters, Malaysia and Vietnam submitted a joint proposal and Vietnam also presented a separate claim, both of which were quickly protested by China. When China followed suit, Vietnam raised its objection in return.⁷³ The legal requirement for states to declare their maritime claims makes the setting sovereignty aside principle not possible to achieve.

(5.3) National sentiment in domestic realm

Foreign relations are to certain extent reflection or extension of domestic politics. A country's stance and actions on territorial dispute are often determined by its socio-economic situation at home. In dealing with legitimacy problem, state elites in both countries may adopt aggressive policies towards territorial issues to "capitalize on nationalist and irredentist sentiments" from their people.⁷⁴ As reflected in a number of events like the anti-China protests in Vietnam in 2007,⁷⁵ and mass demonstrations in both China⁷⁶ and Japan⁷⁷ in the wake of the September 2010 incident and the Japanese plan for nationalization of the islands, the rise of nationalist sentiments may in turn force the leaders to insist on tough stance, thereby making any appeal to mutual cooperation increasingly difficult.

Even in the aforementioned China-Vietnam-Philippines tripartite JMSU which is widely praised as a successful example of application of the JD formula, it is also the national sentiments that led to its collapse. After signing of the undertaking, the Arroyo government in the Philippines was accused of making concessions on national interests by allowing other signatories to conduct seismic survey within the designated area in which 1/6 of it lies within Philippine territorial waters and outside the claims of China and Vietnam.⁷⁸ Under severe pressure and criticisms, the JMSU finally lapsed on 30 June 2008 when Manila announced that it would not be extended, hence

⁷² Storey and Thayer (2010:65).

⁷³ Storey and Thayer (2010:65).

⁷⁴ Min (2009:210).

⁷⁵ Storey and Thayer (2010:63).

⁷⁶ Zaobao.com (2010).

⁷⁷ The Wall Street Journal (2010).

⁷⁸ Storey and Thayer (2010:60).

bringing this multilateral attempt at joint development to an end.⁷⁹

(5.4) “China-threat” theory and geopolitics

Geopolitics also plays a part in restraining efforts to joint development. After three decades of reform, China has become a great power in East Asia. Apart from economic strength, China also started to modernize its naval capabilities.⁸⁰ It gives credence to “China-threat” theory and prompts other countries to seek balance-of-power against the rise of China in the region.⁸¹ In its 2009 report to US Congress on the development of China’s People’s Liberation Army (PLA), the US Defense Secretary warned that the rapid transformation of the Chinese armed forces was changing Asia’s military balance in favour of China.⁸² To safeguard own interests and security, other claimants in SCS develop their respective naval strength and take united action against possible southward expansion of China to fill the political vacuum left by US and USSR after the Cold War.⁸³ Meanwhile, the Japan Self-Defense Force (JSDF) has also been engaged in “a quiet arms race” with China by taking a proactive security and procurement strategy.⁸⁴ With China’s continuous military development and consistent reiteration of its indisputable sovereignty over the territories in question, any efforts to joint development shall be offset by geopolitical considerations of all claimant countries including China itself.

(5.5) Interplay of Great Power politics

The Asia-Pacific region has long been regarded by US as an area of its core interests. After a brief retreat following the end of the Cold War, US put its focus on this region again with claim of freedom of navigation and stability while declaring neutral in the territorial disputes.⁸⁵ From the Bush administration to the incumbent Obama presidency, the US government has been providing diplomatic backup to China’s competitors in SCS, such as supporting “Vietnam’s national sovereignty, security and territorial integrity” and reaffirming its alliance with the Philippines.⁸⁶ Moreover, US has also made use of the ASEAN Regional Forum (ARF) to express concerns over the SCS issue. It is only due to China’s objection to involvement of non-claimant

⁷⁹ Storey and Thayer (2010:61).

⁸⁰ Storey and Thayer (2010:67).

⁸¹ Baviera (2004:510).

⁸² Storey and Thayer (2010:67).

⁸³ Guo (2007:85-100).

⁸⁴ Hughes (2009:96).

⁸⁵ Guo (2007:104-106).

⁸⁶ Storey and Thayer (2010:66&68).

nations that the issue was not formally included in ARF agenda.⁸⁷ In ECS, Japan's military partnership with US is guaranteed by the Treaty of Mutual Cooperation and Security between the two nations, in particular Article V which requires common action by both countries in case of armed attack to "the territories under the administration of Japan".⁸⁸ All these developments show that US diplomatic and military involvements in both SCS and ECS pose additional constraints against China's efforts to settlement of sovereign disputes. In short, US attitudes and its influence on claimant countries could hardly be ignored.

(5.6) Taiwan issue

Amongst various factors affecting the effectiveness of the JD formula, the role of Taiwan is unique. Constitutionally speaking, the Taipei authority still claims itself as the legitimate central government of China and has the same claim of sovereignty over maritime territories as Beijing. It exercises effective control over two strategic positions in SCS, namely Pratas Islands at northeast SCS as well as Taiping Island, the largest island of the Spratlys. Besides, Diaoyutai Islands in ECS is nominally under the administration of Yilan County of Taiwan. Against such background, any attempts to resolving territorial disputes without Taiwan's participation would not be meaningful. There have been opinions about possible cooperation between China and Taiwan on the maritime disputes.⁸⁹ It seems that Taiwan does not oppose the JD formula and had even planned to set up oil exploration joint venture in SCS and ECS with oil companies from both sides of Taiwan Strait and foreign oil giants.⁹⁰ However, China has repeatedly raised objection to any official participation of Taiwan in the SCS and ECS negotiation with misgivings about possible recognition of Taiwan sovereignty. The exclusion of Taiwan from negotiation process will make all joint development proposals difficult to succeed.

(6) Conclusion

Like other kinds of inter-state issues, it has never been easy to find a permanent solution to territorial disputes. Even if one state possesses substantial evidence to justify its claim⁹¹ (sometimes may even receive support of individuals from disputing

⁸⁷ Baviera (2004:512-513).

⁸⁸ MFA/Japan (2011).

⁸⁹ Zou (2006:167).

⁹⁰ Baviera (2004:521); Zhang (1996:27).

⁹¹ See Zheng (2003:1-36) for evidence produced by China and Japan respectively on Diaoyutai, and Nanshaqundao Zaixian (2011) on SCS.

countries like Japanese scholar Kiyoshi Inoue who sided with China's position on the Diaoyutai dispute),⁹² it would still be insufficient due to the interplay of various factors ranging from national sentiments to resource and geopolitical considerations. The JD formula initiated by Deng Xiaoping and upheld by his successors is undoubtedly a positive attempt by China to seeking peaceful settlement of territorial disputes. As shown in the cases of China-Vietnam and China-Japan disputes in SCS and ECS respectively, some progress was made in confidence building amongst disputing nations by keeping dialogues and laying down broad principles for further cooperation and negotiation. It also helps to prevent large-scale armed conflicts in the disputed areas for more than two decades.

Notwithstanding the above, various factors as mentioned in preceding paragraphs have restrained the effectiveness of the JD formula. Despite several agreements were signed between China and other claimants over the years, no concrete achievement was made to put the joint development concept into practice.⁹³ While the JD formula is successful in maintaining (superficial) peace between countries, it has ironically given tacit consent to status quo as reflected by the fact that all claimants continue to consolidate their existing territorial gains, which may act counter to China's intention. Besides, despite China's persistent emphasis on peaceful development, anti-Chinese sentiments keep growing amongst international community. There even exists possibility for China and its neighbours to enter into vicious cycle of arms race. As Aileen Baviera argues, "[i]t will only be possible to begin considering the economic potential of the area and promoting its sustainable use when the perceptions of threats to security have been minimized".⁹⁴ It requires both China and other claimants to be more resolute and committed to finding mutually acceptable solutions. Indeed numerous proposals on joint development and/or sovereignty of the disputed areas have been published throughout the years. Amongst them the most notable ones include the setting up of a multilateral "Spratlys Development Authority" to administer the area concerned⁹⁵ and the exercise of "joint sovereignty" over Diaoyutai by China and Japan.⁹⁶ Only when such a breakthrough takes place, the on-going territorial disputes between China and its neighbours can be fundamentally resolved.

⁹² Inoue (1990:8).

⁹³ China and Vietnam did reach agreement on joint development in the Gulf of Tonkin. But since the delimitation of the Gulf has already been settled, it does not fall into the scope of "shelving the issue of sovereignty" in the discussion here.

⁹⁴ Baviera (2004:517).

⁹⁵ Baviera (2004:516).

⁹⁶ Jiang (2010:29).

Bibliography

- AM730. 2010. (November 15). "Japan intends to resume the cooperation in East China Sea. Minister of Foreign Affairs: Negotiation requires appropriate conditions" (日冀重開東海合作 外長：談判需合適環境). Retrieved <http://www.am730.com.hk/article.php?article=31767&d=1326>.
- Asia Times Online. 2004 (July 27). "Gas and oil rivalry in the East China Sea". Retrieved <http://www.atimes.com/atimes/Japan/FG27Dh03.html>.
- Association of Southeast Asian Nations (ASEAN). 2011. "Declaration on the Conduct of Parties in the South China Sea". Retrieved <http://www.aseansec.org/13163.htm>.
- Baviera, Aileen. 2004. "South China Sea: Managing Territorial and Resource Disputes", in *Searching for Peace in Asia Pacific: An Overview of Conflict Prevention and Peacebuilding Activities*, edited by Annelies Heijmans, Nicola Simmonds and Hans van de Veen. Boulder/London: Lynne Rienner, pp.505-523.
- BBC News. 2010 (January 1). "China and ASEAN free trade deal begins". Retrieved <http://news.bbc.co.uk/2/hi/business/8436772.stm>.
- Chiu, Hungdah. 1999. *An Analysis of the Sino-Japanese Dispute over the T'iaoyutai Islets (Senkaku Gunto)*, Occasional Papers/Reprints Series in Contemporary Asian Studies Number 1 – 1999(150). Baltimore: University of Maryland.
- CIA The World Factbook. 2011. "China". Retrieved <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>.
- Guo, Yuan (郭淵). 2007. *The Study of the Geopolitics of South China Sea* (南海地緣政治研究). Harbin: Heilongjiang University (黑龍江大學).
- Hara, Kimie. 2007. *Cold War Frontiers in the Asia-Pacific: Divided Territories in the San Francisco System*. London/New York: Routledge.

- He, Hairong (何海榕). 2007. "The legal interpretation of joint development" (對共同開發的法律解讀), in *China and the South China Seas Issues* (中國與南中國海問題), edited by Kuncheng Fu (傅崑成) and Binghe Shui (水秉和). Taipei: Askfor Bookstore (問津堂), pp.325-335.
- Hughes, Christopher W. 2009. "Japan's Military Modernisation: A Quiet Japan-China Arms Race and Global Power Projection", in *Asia-Pacific Review* 16:1, pp.84-99.
- Ifeng.com (鳳凰網). 2009 (November 19). "The surveying of China-Vietnam land boundary has been completed and highly appraised by both countries" (中越陸地邊界全線勘定雙方給予積極評價). Retrieved http://big5.ifeng.com/gate/big5/news.ifeng.com/world/200911/1119_16_144255_1.shtml.
- Inoue, Kiyoshi (井上清) (translated by Ying Hui 英慧). 1990. *The History and Issue of Sovereignty of Diaoyutai Islands* (釣魚列島的歷史和主權問題). Hong Kong: Cosmos Books (天地圖書).
- Jiang, Xun (江迅). 2010 (November 28). "The Inspiration of Joint Sovereignty of Diaoyutai" (釣島共同主權的靈感), in *Yazhou Zhoukan* (亞洲週刊) 24:47, p.29.
- Jingji Cankao Bao (經濟參考報). 2010 (July 14). "ASEAN surpasses Japan as China's third largest trading partner" (東盟超日本成中國第三大貿易夥伴). Retrieved http://jjckb.xinhuanet.com/gnyw/2010-07/14/content_237202.htm.
- Lit, Thekla (compiled). 2010 (October). "Diaoyu Islands Tension Swells", in *Chinese American Forum* XXVI:2, pp.9-10.
- Maritime Safety Administration of the People's Republic of China (MSA/PRC). 2011. "Laws and Rules". Retrieved <http://en.msa.gov.cn/msa/features/root/04/0401>.
- Min, Gyo Koo. 2009 (May). "The Senkaku/Diaoyu dispute and Sino-Japanese political-economic relations: cold politics and hot economics?", in *The Pacific Review* 22:2, pp.205-232.

Ministry of Foreign Affairs of Japan (MFA/Japan). 2011. "Treaty of Mutual Cooperation and Security between Japan and the United States of America". Retrieved <http://www.mofa.go.jp/region/n-america/us/q&a/ref/1.html>.

Ministry of Foreign Affairs of the People's Republic of China (MFA/PRC). 2011. "Agreement of the People's Republic of China and the Socialist Republic of Vietnam on the Delimitation of Territorial Sea, Exclusive Economic Zone and Continental Shelf in the Gulf of Tonkin between the Two Countries" (中華人民共和國和越南社會主義共和國關於兩國在北部灣領海、專屬經濟區和大陸架的劃界協定). Retrieved <http://big5.fmprc.gov.cn/gate/big5/www.mfa.gov.cn/chn/gxh/zlb/tyfg/t556665.htm>.

Nanshaqundao Zaixian (南沙群島在線). 2011. "The policies and positions of claimant countries" (聲索國政策與觀點). Retrieved http://www.nansha.org.cn/claimants_views.

Peterson, Alexander M. 2009. "Sino-Japanese Cooperation in the East China Sea: A Lasting Arrangement?", in *Cornell International Law Journal* 42:441, pp.441-474.

Ren, Huafeng (任懷峰). 2007. "The study of joint development in South China Sea" (南海共同開發研究), in *China and the South China Seas Issues* (中國與南中國海問題), edited by Kuncheng Fu (傅崑成) and Binghe Shui (水秉和). Taipei: Askfor Bookstore (問津堂), pp.316-324.

Schoenbaum, Thomas J. 2008. "Finding solutions to the disputes between China and Japan", in *Peace in Northeast Asia: Resolving Japan's Territorial and Maritime Disputes with China, Korea and the Russian Federation*, edited by Thomas J. Schoenbaum. Cheltenham/ Northampton: Edward Elgar.

South China Sea Informal Working Group (SCSIWG). 2011. "Introduction". Retrieved <http://faculty.law.ubc.ca/scs>.

Storey, Ian and Carlyle A. Thayer. 2010. "The South China Sea Dispute: A Review of Developments and Their Implications since the 2002 Declaration on the Conduct of Parties", in *South and Southeast Asia: Responding to Changing Geo-Political and Security Challenges*, edited by K.V. Kesavan and Daljit Singh. New Delhi: KW Publishers, pp.57-72.

Suganuma, Unryu. 2000. *Sovereign Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands*. Honolulu: University of Hawai'i.

The Wall Street Journal. 2010 (October 3). "Tokyo Protests Blast China's Response to Collision". Retrieved <http://online.wsj.com/article/SB10001424052748704419504575527664218726440.html>.

Wenweipo (文匯報). 2010 (November 27). "Japanese media: The ships of Chinese Academy of Sciences may go to East China Sea" (日媒：中科院船或赴東海). Retrieved <http://paper.wenweipo.com/2010/11/27/CH1011270016.htm>.

United Nations (UN). 2011. "United Nations Convention on the Law of the Sea". Retrieved http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm.

Wu, Shicun and Nong Hong. 2006. "The Energy Security of China and Oil and Gas Exploitation in the South China Sea", in *Recent Developments in the Law of the Sea and China*, edited by Myron H. Nordquist, John Norton Moore and Kuen-chen Fu. Leiden/Boston: Martinus Nijhoff, pp.145-154.

Xinhuanet (新華網). 2008 (June 18). "China and Japan reached consensus in principle on the issue of East China Sea" (中日就東海問題達成原則共識). Retrieved http://news.xinhuanet.com/newscenter/2008-06/18/content_8394191.htm.

Yang, Cuibo (楊翠柏). 2006. *The Maritime Delimitation between China and Other Countries around Nansha Islands* (中國與南沙群島周邊國家海域劃界研究). Hong Kong: Hong Kong News Publishing (香港新聞出版社).

- Zaobao.com (聯合早報網). 2010 (September 18). “Anti-Japanese protests were taken place in many parts of China during the 79th anniversary of the Mukden Incident” (9·18 事件 79 周年，中國多處出現反日示威). Retrieved <http://www.zaobao.com/special/hotspot/pages/hotspot100918hh.shtml>.
- Zhang, Wenren (張文仁). 1996. *The Study of the Issue of Sovereignty of South China Sea Islands* (南海諸島主權問題之研究). Taipei: Ministry of Foreign Affairs (外交部).
- Zheng, Hailin (鄭海麟). 2003. *The Sovereign Jurisdiction of Diaoyutai from the Perspectives of History and International Law* (從歷史與國際法看釣魚台主權歸屬). Taipei: Straits Review (海峽學術出版社).
- Zhong Ri Guanxi Yanjiuhui (中日關係研究會). 1972. *The Issue of Territorial Ownership of Diaoyutai* (釣魚台的領土權問題). Taipei: Zhong Ri Guanxi Yanjiuhui.
- Zou, Keyuan. 2006. “A New Model of Joint Development for the South China Sea”, in *Recent Developments in the Law of the Sea and China*, edited by Myron H. Nordquist, John Norton Moore and Kuen-chen Fu. Leiden/Boston: Martinus Nijhoff, pp.155-171.