JOINT DEVELOPMENT FROM THE CHINA’S VIEW AND “COOPERATION FOR MUTUAL AGREEMENT AT SEA” FROM THE VIETNAM’S STANCE IN THE SOUTH CHINA SEA

Nguyen Hong Thao¹
Ton Nu Thanh Binh²

ABSTRACT

Despite the UNCLOS providing a legal framework for joint development, the international practice of joint development takes various forms and accommodates different interests of the coastal states, especially in the South China Sea – home to complicated maritime and territorial disputes. This paper identifies the differences between the interpretation and application of China and Vietnam of the notion Joint Development and explains how such actions correlates with the countries’ maritime claims in the South China Sea. It argues that, although the UNCLOS provides Joint Development to be a provisional arrangement applied in overlapping maritime areas without prejudice to the final delimitation, states

¹ Member of International Law Commission of the United Nations (2017-2021); Member of the Asian Society of International Law (AsianSIL); Member of the Vietnam Association of jurists; Lecturer of International law at the Diplomacy Academy of Vietnam and the National University of Vietnam.
² Undergraduate (Bachelor of Law) 2015-2019, Diplomatic Academy of Vietnam; Research Intern at Ministry of Foreign Affairs of Vietnam, Department of International Law & Treaties.
bordering the South China Sea usually invoke Joint Development to reinforce their claims in territorial sovereign disputes. In particular, China’s policy of “Sovereignty to China, Set aside dispute and pursue joint development”, which was tailored from the Joint Development notion, is adopted to legitimize China’s unlawful claims in the South China Sea; on the other hand, Vietnam-developed policy of “Cooperation for mutual development” is consistent with the UNCLOS and can be a model for other claimant states in the South China Sea who want to foster beneficial cooperation at sea while preserving their legitimate sovereign rights.

INTRODUCTION

Being one of the large semi-enclosed seas in the world, the South China Sea has long been regarded as home to most disputes in the Asia Pacific region, due to its geopolitical location and abundant resources. The South China Sea plays a significant role in global navigation as it provides the linkage between the Pacific Ocean and Indian Ocean. Every year, the Malacca Strait serves as the sea route for more than half of global trade and the majority of oil imports from the Middle East to China, Japan and South Korea. In terms of resources, the South China Sea provides 12% of global fish products, which are of crucial importance to food security and economic development of China, Vietnam and the Philippines;\(^3\) while non-

\(^3\) Sharif Mustajib, *Geopolitical and Strategic Landscape of South China Sea*,
living resources like oil and gas or new energy source - flammable ice⁴ are essential for the energy needs of an industrializing country like China.⁵

It is thus not surprising that states bordering the South China Sea want to gain control over the adjacent maritime spaces and natural resources. They all have competing claims on maritime zones and territories which lead to a complicated network of disputes. To reduce tension and promote the settlement of disputes many peaceful means and initiatives have been forwarded,⁶ including the arbitral solution.⁷ However, because of various reasons, those attempts have not given any expected result.

Under the United Nations Convention on Law of the Sea (hereinafter, ‘UNCLOS’), joint development is a provisional arrangement of a practical nature and, during this transitional period, for the purpose of jointly exploring and exploiting resources in an overlapping maritime area without prejudice to the final delimitation. This arrangement, however, is interpreted in different ways by States bordering the South China Sea. China, for example, put forward the joint development proposal as “Sovereignty to China, set side dispute and pursue joint development” (Zhuquan zai wo, gezhi zhengyi, gongtong kaifa), with the first area proposed being Vanguard Bank (Tu Chinh bank by Vietnamese), located inside the Chinese-claimed nine-dash line but on the continental shelf naturally prolonged from the mainland of Vietnam. Between 2005 and 2008, another attempt was undertaken through the Tripartite

---

9 Ministry of Foreign Affairs of Republic of China (Taiwan), “針對南海議題，政府近年來均秉持「主權在我、擱置爭議、和平互惠、共同開發」基本原則積極作為，以表達我國嚴正立場與落實主權行使及維護。
Joint Marine Seismic Undertaking (JMSU) between the state-owned oil corporations of China, Vietnam and the Philippines in certain areas in Spratlys.\textsuperscript{11} In 2011, the Philippines suggested a proposal – Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC) with an aim to “segregate” disputed areas from non-disputed areas, and to “establish a joint agency to manage seabed resources and fisheries”.\textsuperscript{12} All endeavors were unsuccessful due to their lack of mutual consents and legitimacy. Vietnam has been putting forth the new concept on “cooperation for mutual development at sea” to cover all kinds of development, from joint development to joint venture in the maritime areas under national jurisdiction.\textsuperscript{13} “On the


\textsuperscript{13} Vietnam has proposed ”cooperation for mutual development” several times in meetings with China. In August 2011, during the second Vietnam-China Defence-Security Strategic Dialogue at deputy ministerial level, Vietnam Deputy Minister of National Defence Nguyen Chi Vinh addressed Vietnam's willingness to "cooperate for mutual development with China in really disputed areas" in
same bed but different dreams” have been usual phenomena in bilateral China-Vietnam talks relating to “joint development”.

Recently, several signals to revive the “joint development” idea are seen among claimant States. The Philippines did not hide their ambition to "aggressively" pursue joint exploration in the West Philippine Sea (hereinafter, ‘South China Sea’) with China at the second meeting of their bilateral consultation mechanism on the South China Sea, held in Manila on February 13, 2018. By proposing this ‘60-40’ sharing deal, the Philippines impliedly confirmed the future project based on the joint venture sharing model to be subject to the country’s sovereign right over their continental

---

14 The difference in China and Vietnam’s stance was demonstrated in the case of Rosneft Vietnam, a unit of Russia oil firm, drilling in the Red Orchid gas field. China claimed the exploration and exploitation activities were conducted in waters subject to “China’s sovereign and jurisdictional rights”, while Rosneft stated the drilling block was “within Vietnam’s territorial waters”. Russia did not want the project to be terminated under China’s pressure as this would harm the partnership between two countries. See James Pearson, Exclusive: As Rosneft’s Vietnam unit drills in disputed area of South China Sea, Beijing issues warning, https://www.reuters.com/article/us-rosneft-vietnam-southchina-sea-exclusive-as-rosnefts-vietnam-unit-drills-in-disputed-area-of-south-china-sea-beijing-issues-warning-idUSKCN1II09H?il=0 accessed May 19, 2018


shelf. However, it could be explained as tacit recognition of the JD area as disputed zone where China had sovereign right. This can be contrary to the 2016 arbitration ruling regarding China’s nine-dash line claim. Meanwhile, in November 2017, during a state visit of China President Xi Jinping to Vietnam, the two sides have successfully issued a joint statement on promoting the talk on “cooperation for mutual development” in the waters of the Gulf of Tonkin. Accordingly, Hanoi and Beijing will cooperate in joint survey and protection of marine resources, while initiating joint projects in other areas, within the framework of the Working Group on cooperation for development at sea.

It is argued that the term “joint development” in Articles 73 and 84 of UNCLOS is interpreted by China and Vietnam differently. China developed the notion “Sovereignty to China, set aside dispute and pursue joint development”, while Vietnam adopted the notion “cooperation for mutual development”. What are the differences

18 The South China Sea Arbitration ruled that China’s claim within the nine-dash line was unlawful to the extent that it exceeded China’s maritime entitlements under UNCLOS. See The South China Sea Arbitration, n.5, para 646. See also Richard Java Heydarian, Asia Maritime Transparency Initiative, The Perils of a Philippine-China Joint Development Agreement in South China Sea, https://amti.csis.org/perils-philippine-china-joint-development-scs/ accessed May 18, 2018
between these two approaches? How does each country interpret and utilize the term “joint development” in Articles 73 and 84 for their benefits? This paper will enlighten this nuance through three parts. It discusses the meaning and usage of “joint development” in international law and practices in the first part. The Chinese policy of “Sovereignty to China, set aside dispute and pursue joint development” is presented in the second part. The final part is an analysis of the Vietnamese policy of “cooperation for mutual development” in comparison with the Chinese one.

1. JOINT DEVELOPMENT IN INTERNATIONAL LAW AND PRACTICES

One of the first agreements on joint development of oil resources recorded was the 1958 Bahrain–Saudi Arabia boundary agreement.²⁰ At the same time, agreements on joint development in the fields of management of fishery activities and natural resources proliferated. Two examples of which are the Agreement between the Czechoslovak Republic and the Austrian Federal Government concerning the Principles of Geological Cooperation, and Agreement between the Government of the Czechoslovak Republic and the Austrian Federal Government concerning the Working of Common Deposits of Natural Gas and Petroleum, both signed on

January 23, 1960. Onaroto, W.T. was the first author to mention the concept “joint exploration” at sea in 1968 in his work ‘Apportionment of an International Common Petroleum Deposit’. Thirty years later, a Japanese author, Masahiro Miyoshi defined joint development as “an inter-governmental arrangement of a provisional nature, designed for functional purposes of joint exploration for and/or exploitation of hydrocarbon resources of the seabed beyond the territorial sea.”

The International Court of Justice in North Sea Continental Shelf case, having examined the practices of the United Kingdom and Norway in 1965 and 1967, suggested the possibility that States, failing a delimitation agreement, “decide on regime of joint jurisdiction, user, or exploitation for the zones of overlap or any part of them”. The arbitral award in the 2007 Guyana v. Suriname case referred to Rainer Lagoni’s definition of joint development as “the cooperation between States with regard to exploration for and exploitation of certain deposits, fields or accumulations of nonliving

---

resources which either extend across a boundary or lie in an area of overlapping claims”.

This definition has three remarkable points: firstly, it only covers joint development on non-living resources, excluding fishery activities; secondly, it only applies among States, excluding cooperation between oil and gas companies and States; finally, areas for joint development are those with overlapping claims or those that have a boundary line crossed by deposits, fields or accumulations of resources.

Thus, the concept of “joint development” has been widely used in international law and practice since the 1960s, although without

---


27 See, e.g. Joint Exploitation agreements in the absence of a boundary agreement: (1) Agreement between the State of Kuwait and the Kingdom of Saudi Arabia Relating to the Partition of the Neutral Zone, 1 July 1965; (2) Agreement between Sudan and Saudi Arabia Relating to the Joint Exploitation of the Natural Resources of the Sea-bed and Sub-soil of the Red Sea in the Common Zone, 16 May 1974; (3) Agreement between Japan and the Republic of Korea concerning Joint Development of the Southern Part of the Continental shelf Adjacent to the Two Countries, 30 January 1974; (4) Memorandum of Understanding between Malaysia and the Kingdom of Thailand on the Establishment of A Joint Authority for the Exploitation of the Resources in the Sea-bed in A Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, 21 February 1979; (5) Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in An Area between the Indonesian Province of East Timor and north Australia, 11 December 1989 (replaced by Australia-East Timor agreement on maritime delimitation of 30 August 2017); (6) Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in A Defined Area of the Continental Shelf involving the Two Countries, 5 June 1992; (7) Management and Cooperation agreement between the Government of
a concrete definition regarding constitutive elements, scope and subject (hydrocarbon resources or fisheries or both). Joint development was not an obligation binding upon states, rather it was an initiative motivated by their economic drives.

It was not until 1982 that joint development at overlapping seas


had a concrete legal basis in international law. Articles 74 and 83 of the UNCLOS set forth “joint development” (JD) as a type of “provisional arrangements of a practical nature”, applied during a “transitional period”, awaiting “the final delimitation”. Several inferences can be drawn from these provisions: 1) JD is an agreement between states; 2) JD is a provisional solution of a practical nature; 3) JD only applies in maritime areas awaiting delimitation, not in areas that have been delimited; 4) JD can be applied to both living resources (Article 83) and non-living resources (Article 74); 5) JD only occurs in the exclusive economic zones and continental shelves; 6) JD is for mutual benefits; 7) JD is without prejudice to states’ position in delimitation. 8) JD, as a provisional measure, is designated to be applied for maritime areas having overlapped legal titles accorded in conformity with the UNCLOS,

---


29 Under the UNCLOS, a coastal state is entitled to claim a 12-nautical mile territorial sea (Article 3), a 200-nautical mile exclusive economic zone (Article 55), and a continental shelf that extend throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines where the outer edge of the continental margin does not extend up to that distance (Article 76). Accordingly, when the distance between two opposing coastlines is smaller than double the breadth of each of the said above zone, an overlapping zone exists and constitutes a disputing area. Establishing joint development in these areas are consistent with the UNCLOS. Examples in the South China Sea include the Sino-Vietnamese Agreement on
for territorial sovereign disputes settlement.

However, the practice of applying JD in East China Sea and South China Sea present a different picture, where JD is usually invoked for the disputes related to island sovereignty settlement.

2. CHINA’S “SET ASIDE DISPUTE AND PURSUE JOINT DEVELOPMENT”

In order to conduct exploration and exploitation activities in the midst of disputes in the South China Sea and East China Sea, China has advanced the policy of “Set aside dispute and pursue Joint Development” and has been actively implementing this policy in its international relations. The full formula Sovereignty to China, Set aside dispute and pursue Joint Development” continues to be maintained in the internal cycle.\(^{30}\) It is worth looking at the disputes involving China in the South China Sea and East China Sea to understand how the Chinese policy of Joint Development is based on its claims and how other countries react.

2.1 Overview of disputes in the South China Sea and East China Sea

In the South China Sea, China has long maintained its position that it has sovereign rights and jurisdiction in waters within the nine-dash line based on “abundant historical and legal evidence”,\(^ {31}\) as well


\(^ {30}\) Supra note 8

as sovereignty over Spratly Islands, which is entitled to 200 nautical mile EEZ and continental shelf.\textsuperscript{32} This position is protested by other States bordering the South China Sea.\textsuperscript{33} They strongly opposed the nine-dash line claim in the South China Sea\textsuperscript{34} and the so-called

\begin{flushright}
\end{flushright}

\textsuperscript{32} Note Verbale No. CML/8/2011 of the Chinese Mission to the United Nations (English Translation), New York, 14 April 2011, the 5\textsuperscript{th} paragraph. See also Nguyen Hong Thao & Ramses Amer (2011) “Coastal States in the South China Sea and Submissions on the Outer Limits of the Continental Shelf”, Ocean Development & International Law, 42:3, p. 258.

\textsuperscript{33} Note Verbale No. 480/POL-703/VII/10 dated July 8th, 2010, of the Permanent Mission of the Republic of Indonesia to the United Nations


\textsuperscript{34} Hong Thao, China's "nine broken lines" in the Bien Dong Sea (South China Sea) in the light of international law, Vietnam New May 18, 1997 Nº 2073 (265). Nguyen-Dang Thang & Nguyen Hong Thao (2012) “China's Nine Dotted Lines in the South China Sea: The 2011 Exchange of Diplomatic Notes Between the Philippines and China”, Ocean Development & International Law, 43:1, 35-56.
“historic interest” which is at variance with international law. Moreover, Vietnam and Malaysia implicitly recognized that the features in Spratly Islands are incapable of generating their own EEZ or continental shelf, as they only claimed EEZ and continental shelf generating from the mainland, in accordance with UNCLOS.

The 2016 South China Sea arbitration has made a historic conclusion that all high-tide features in Spratly Islands had only 12-nautical mile territorial sea, while denying the low-tide elevations the legal status of rocks. In addition, China’s claim of historic rights in the nine-dash line was found “contrary to the Convention and

38 South China Sea Arbitration, n.5, para 646.
without lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention.”\(^{39}\) Therefore, any attempt to claim an EEZ or continental shelf for the entities in Spratly Islands is unlawful.\(^{40}\) China, however, still advanced the policy of “set aside dispute and pursue joint development” based on claims of 200 nm maritime zones generated from features in Spratly Islands or on the nine dashed line, in order to create overlapping zones with maritime areas extended from the mainland of other States. The aim of this policy is to claim the right on exploration and exploitation of oil and gas in the continental shelves from the mainland of other countries.

\(^{39}\) *Ibid*, para 278.

\(^{40}\) Although the Award is only legally binding between China and the Philippines, its legal reasoning can be applied by for similar disputes, such as the one between China and Vietnam, Malaysia and Brunei.
Award’s effect on Maritime zones in the South China Sea

Source: Nguyen Dang Thang
China applied the same approach in the East China Sea. While Japan delimits its claim in the East China Sea using a median line, China claims jurisdiction over the entire East China Sea based on the natural prolongation of its continental shelf.\(^{41}\) Consequently, when China engaged in production activities in Chunxiao (Shirakabain Japanese) gas field, which lies mainly on the Chinese side of the Japanese-claimed median line, Japan protested. It was concerned that the Chunxiao field may extend into the Japanese EEZ.\(^{42}\)

2.2 Implementation of “Set aside dispute and pursue Joint Development”

On September 24, 1975, Chinese Vice Premier Deng Xiaoping put forward the initial idea of “setting aside disputes” in his meeting with General Secretary of the Communist Party of Vietnam, Le Duan, as he persuaded “between us there is still dispute on Xisha Islands and Nansha Islands…, of course this problem can be discussed later”.\(^{43}\) In his visit to Japan on October 25, 1978, Chinese Vice Premier Deng Xiaoping further developed this idea with Japanese Prime Minister Takeo Fukuda: with regard to the issue of the Diaoyu Island/ Senkaku Island, “the next generation … can find a way acceptable to both sides to settle this issue”; “both China and

---


\(^{42}\) *Ibid.*

Japan should place priority on the overall interests of the two countries”. The concept “Set aside dispute and pursue joint development” was publicly announced for the first time in August 1990, in Premier Li Peng’s official visit to Indonesia. He announced that the People’s Republic of China “is willing to support the joint efforts of South East Asian countries in setting aside disputes to pursue joint development of the Nansha Islands”.45

On May 8, 1992, China National Offshore Oil Corporation (CNOOC) entered into an oil development contract with an US company, Crestone Energy Corporation. The contract covers an area of 25,155 square kilometers, named Wan An Bei-21. This area is the Vanguard Bank, third-fourth of which is within the 200 nautical-mile radius measured from Vietnam’s coastline, while the rest wholly lies in Vietnam’s extended continental shelf. China claimed that this area is within its nine-dash line claim and within the 200 nautical-mile radius measured from Spratly Islands. On May 16, 1992, Vietnam’s Ministry of Foreign Affairs issued a statement, condemning the contract for infringing Vietnam’s exclusive economic zone and continental shelf.46 China proposed “setting aside dispute and

46 Statement of the Ministry of Foreign Affairs of the Socialist Republic of Vietnam on the Agreement between Chinese and US Oil Companies for the
pursuing joint development” in response. This proposal was observed by Vietnam as an attempt to legitimize China’s nine-dash line claim, which would infringe Vietnam’s sovereign rights and jurisdiction recognized under the 1982 UNCLOS.

2.3 Legality and Implications for Vietnam

“Set aside dispute and pursue Joint Development” stems from the concept “joint development” in international practice but was tailored with another meaning by China. It includes three elements: 1) The territories concerned belong to China’s sovereignty; 2) the dispute is set aside; 3) the parties pursue joint development.47 This concept is inconsistent with international law and the UNCLOS in at least 4 respects. Firstly, the concept stresses that sovereignty belongs to one country and no overlapping claims exist, which is contrary to the very rationale of “setting aside dispute”. Secondly, the concept allows extending disputes to relevant territories rather than setting aside disputes. Thirdly, it links the issue of delimitation of overlapping areas, which is in accordance with UNCLOS, with sovereignty disputes. Finally, the concept promotes joint development in maritime areas where China enjoys no legitimate right under the UNCLOS to legitimize its claims.


Facing a challenge against its sovereignty and territory integrity, it is well-advised that Vietnam relies on international law and conforms to its policy of no use of force and peaceful settlement of dispute. Furthermore, Vietnam is willing to cooperate in settling disputes for the real benefits of the two countries and the regional community. In particular, Vietnam welcomes companies from China and other countries to “jointly develop” in Vietnam’s continental shelf, provided that such joint development adheres to Vietnamese law and regulations and international law. Thus, the policy of “Cooperation for Mutual Development” (CFMD) was developed as Vietnam’s counter policy against the Chinese “Set aside dispute and pursue joint development”. Over the years, CFMD has been reinforced to express the willingness of the government.

3. VIETNAM’S “COOPERATION FOR MUTUAL DEVELOPMENT AT SEA” IN COMPARISON WITH CHINESE “SET ASIDE DISPUTE AND PURSUE JOINT DEVELOPMENT”

“Cooperation for mutual development at sea” or “Cooperation for mutual development” in short, is a concept developed and utilized by Vietnam in negotiations with China from the end of 1990s until now. CFMD has five principal characteristics:

3.1 CFMD is a comprehensive solution that bases on principles of cooperation in UNCLOS 1982.

Accordingly, the parties all enjoy benefits in sustainable
management of the environment and sea resources, without impairing the parties’ positions in their dispute (if any). The Preamble of UNCLOS 1982 recognizes the “desirability” to establish “with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment”.48 Article 74 and 83 require that states, “in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature”, while continue to cooperate towards a final agreement on delimitation. States are also obliged to “cooperate with each other in the conservation and management of living resources in the areas of the high seas”,49 to manage resources in the Area,50 to protect and preserve the marine environment,51 and to cooperate in marine scientific research.52 Specifically, states bordering enclosed or semi-enclosed waters, of which Vietnam is an example, are required, under Article 123, to “endeavor, directly or through an appropriate regional organization, to coordinate the management, conservation, exploration and exploitation of the living resources of the sea”; as

48 UNCLOS, n.7, at Preamble, the 5th paragraph.
49 Ibid, Articles 118 and 119.
50 Ibid, Part XI.
51 Ibid, Part XII.
52 Ibid, Article 242.
well as protection of the marine environment and scientific research. As such, CFMD fulfills all the obligations of UNCLOS, as well as the principles of cooperation enshrined in the UN Charter\(^{53}\) and other documents of the United Nations.\(^{54}\) Furthermore, CFMD is in consonance with the interpretation of UNCLOS 1982 by the arbitration in \textit{South China Sea} case.\(^{55}\)

\textbf{3.2 While JD is both agreed upon and implemented by States, CFMD may involve the participation of private actors, such as companies.}

Companies may take part in the implementation phase of a CFMD agreement under the direction and auspice of their home states, as in the case of the Tripartite Agreement among China National Offshore Oil Company, Philippine National Oil Company, and PetroVietnam in certain areas in Spratly Islands.\(^{56}\) Moreover, members of a CMFD agreement can be disputing parties or non-disputing parties, while JD is a “provisional arrangement” between disputing parties awaiting a delimitation agreement.

\footnotesize{\begin{itemize}
  \item \textit{Charter of the United Nations}, 26 June 1945, 557 UNTS 143, Articles 1(3), 11, 13, 55.
  \item \textit{South China Sea Arbitration}, n.5, paras 946, 984-986.
\end{itemize}}
Accordingly, CFMD may take the form of a joint development, joint venture or other forms; and can be implemented in various ways, whether by an equitable contribution and management of the parties, or through an authorized third party. In an area subjected to a state’s non-disputing sovereignty or sovereign rights, CMFD may be implemented with the contribution of natural resources of one party and the contribution of technology and finance by the other one.

3.3 CFMD can be implemented in all sea areas.

These areas include not only areas subjected to the sovereignty or jurisdiction of one or more states (internal waters, territorial sea, exclusive economic zone, continental shelf) but also areas beyond 200 nautical miles (the high sea and the Area). As mentioned above, CFMD may take the form of a joint development in overlapping areas, disputing waters, or in oil fields crossing borders of different states. It can also take place within an area subject to the sovereignty of one State only.

3.4 CFMD has a large scope of implementation,

CFMD may cover exploration and exploitation of resources, protection and preservation of the marine environment, maritime search and rescue, disaster prevention and control, and repression of piracy, etc. These are consistent with the 1982 UNCLOS, as well as Declaration on the Conduct of parties in the South China Sea (DOC) and the forthcoming China-ASEAN South China Sea Code of Conduct (COC). Joint development, on the other hand, has been
largely focused on exploration and exploitation of resources to an extent that makes it more resemble “joint exploitation”.

3.5 CFMD is a permanent and long-term measure, while JD is a “provisional arrangement”.

In practice, due to its provisional nature, JD is often abused by States to delineate the disputing areas based on their excessive claims of maritime zones, which are contrary to international law. By contrast, CFMD needs a clear, defined area with sound legal basis for long-term cooperation.\(^{57}\) Thus, CFMD prevents the abusive behavior of States while aiming at sustainable development and mutual understanding rather than merely preventing the dispute from escalating or expanding to other fields.

The benefits that CFMD provide for Vietnam and other countries are threefold. Firstly, CFMD offers them the flexibility in dealing with the initiative “set aside dispute and pursue joint development” introduced by China. Vietnam can require China to cooperate in the exploration and exploitation of oil fields crossing the delimitation line in the Gulf of Tonkin. In doing so, Vietnam welcomes oil companies from China and other countries to partake in the exploration and exploitation activities in Vietnam’s territorial

\(^{57}\) Schofield, C. (2014). *Defining areas for joint development in disputed waters.* In S. Wu & N. Hong (Eds.), *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (pp. 78-98). London: Routledge, “It can also be remarked that an important purpose of establishing maritime joint development areas is to provide jurisdictional certainty and thus a sound basis for offshore resource development and management activities.”
sea in accordance with the 1982 UNCLOS, with due respect to Vietnam’s sovereignty and sovereign rights. In fact, Vietnam and China have signed the Sino-Vietnamese Agreement on Fishery Cooperation in the Gulf of Tonkin in 2000, accordingly each party contributed its own maritime zone (after delimitation) to constitute a joint fishery area, managed and overseen by the Joint Fishery Committee in the view of sustainable development. The Philippines can apply the same tactic. Secondly, CFMD helps Vietnam and the Philippines gain support from both within and outside the region, especially countries that involve in a multilateral dispute as the one in Spratly Islands. The Philippines, for example, has once again raised the possibility of joint development with China on hydrocarbon resources after the South China Sea ruling. At a plenary session of the One Belt and One Road Forum in Beijing on 14 May 2017, Philippine Special envoy Jose de Venecia expressed the Philippines’ willingness to convert “contested areas” in the South China Sea into “a zone of friendship”. However, any such joint development “would conform to Philippine law and wouldn’t lead to the loss of Philippine territory”. The concept of CFMD is found

also in agreements of other countries such as the 2008 Japan-China Joint Press Statement in the East China Sea of 18 June 2008 under the similar hat of “a joint development at the sites based on the principle of mutual benefit.”  

Finally, CFMD can be regarded as a contribution by Vietnam to the interpretation of the 1982 UNCLOS that is responsive to the current regional geopolitics and international law.

---

61 See note 21.
CONCLUSION

The South China Sea has always been and will continue to be of great concern to countries in the Asia-Pacific region. Among many peaceful means of dispute settlement, joint development remains a viable option for many countries. If applied in accordance with the UNCLOS, it can bring the disputing parties to cooperative projects with the aim of fulfilling their mutual benefits, while preserving the parties’ positions in the dispute. Being developed from the notion of “joint development”, CFMD is a measure that aims at sustainable, long-term, and comprehensive cooperation between States, as it allows a great flexibility for the parties to agree on the scope, subject, and methods of implementation, provided that they comply with international law, in particular the 1982 UNCLOS, on the basis of mutual trust, mutual benefits and benefits of the international community. For small claimant States in the South China Sea disputes such as the Philippines, Malaysia, Brunei and Vietnam with less military power than China, CFMD could be a powerful tool to bring the fruitful benefit in their international relations.
