

Humpty-Dumpty and Joint Development in the South China Sea

adapted from

**Joint Development in the South China
Sea: Selected Issues**

JD: Variants on a Theme

- * Broad concept: private company participation
- * Narrow concept: inter-governmental cooperation
- Narrower: cooperation in lieu of a maritime boundary

China's policy

- * Deng Xiaoping's wisdom:

'set aside dispute and pursue joint development'

- * A narrow concept?

China's practice: inclusive or elusive?

- China-Japan Principled Consensus in 2008
- Delimitation *at the same time* with joint development of the waters outside the Gulf of Tonkin (cf China-Vietnam Fisheries Cooperation Agreement in 2000)
- Chinese-Bruneian joint ventures?
- CNOOC's participation in Reed Bank exploitation under Philippine laws?

JD: Three legal issues

- * Valid title as a basis for joint development
- * Adjacency as a basis for maritime entitlement
- * UNCLOS as the legal framework for maritime entitlement

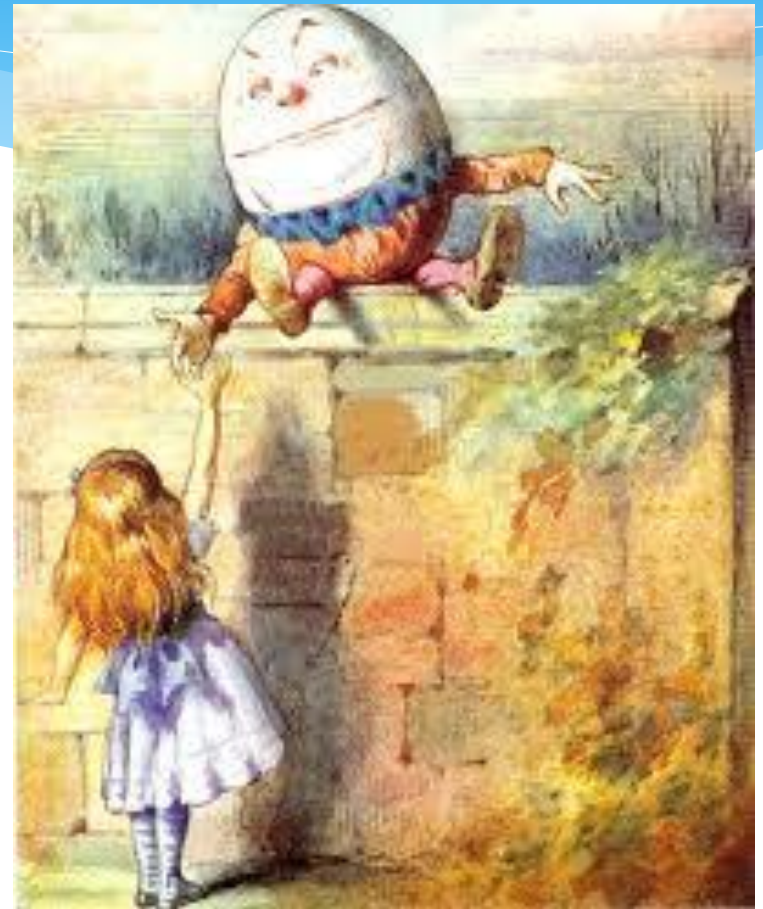
Situation in the South China Sea

- * Interpretation of Article 121 of UNCLOS determines the extent of maritime entitlement
- * 9-dash line claim vs ‘without prejudice clause’

Consistency

Humpty Dumpty to Alice:

"When I use a word, it means just what I choose it to mean—neither more nor less."



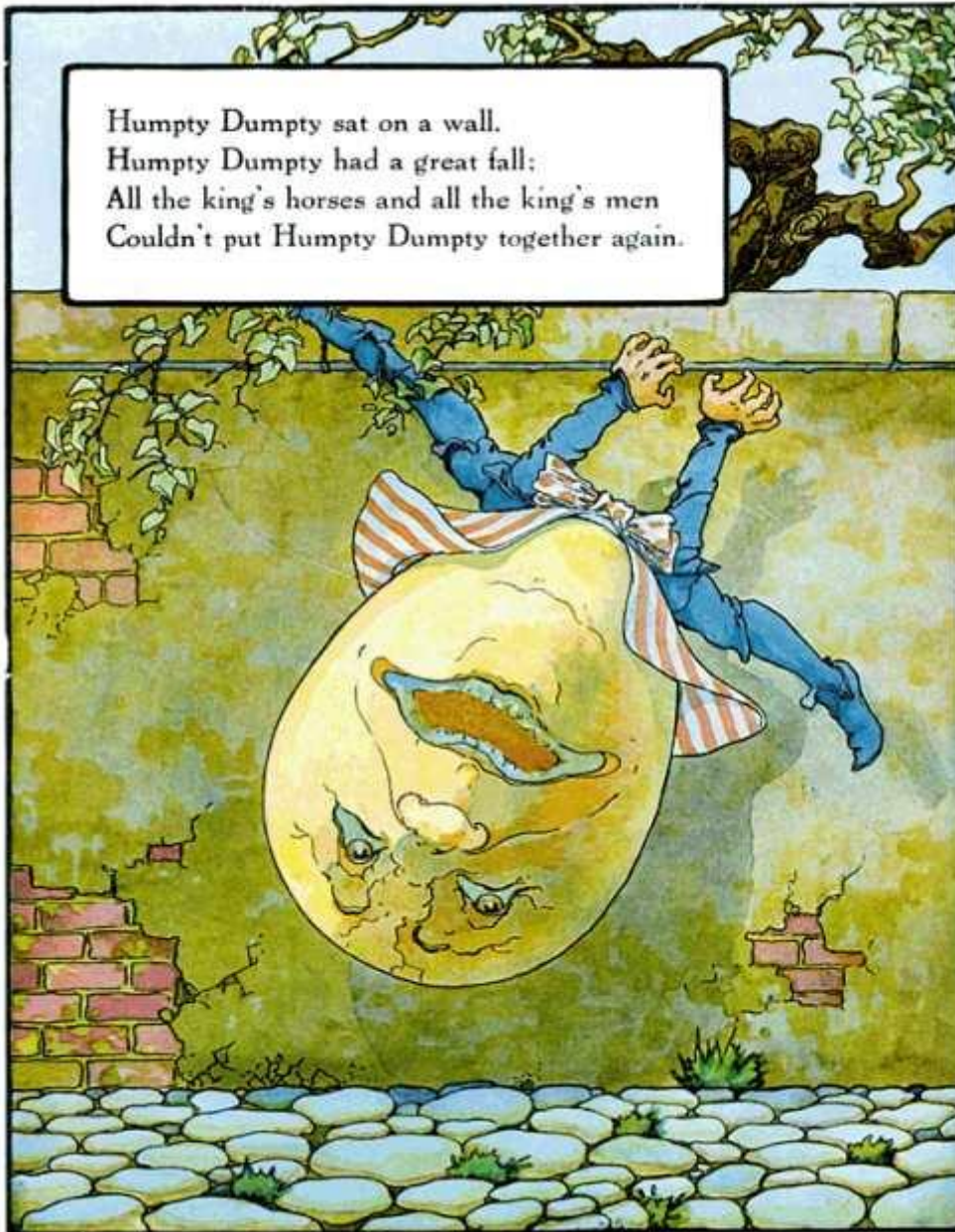
Interpretation of Article 121 UNCLOS

- * Article 121 should be interpreted in reasonable way, taking into account the rights and interests of others.
- * The distinction between “rocks” and “islands” in reflects the need to balance of the right of states to establish the exclusive economic zone and the interests of the international community for the sake of effective administration of ocean space.

Clarity of claims: How and Why?

- * Clarify is important, but more important is how to clarify
- Balance enshrined under UNCLOS needs to be kept
- Regional stability needs to be maintained

Humpty Dumpty sat on a wall,
Humpty Dumpty had a great fall;
All the king's horses and all the king's men
Couldn't put Humpty Dumpty together again.



Couldn't put Humpty together again!

