

# The Recognition of Vietnam's Sovereignty in the South China Sea and Vietnam's Attitude Towards Sea Dispute Settlement\*

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## INTRODUCTION

National sovereignty and territorial integrity are solemn matters, of which a nation's territory and borders are closely related. Modern international law and practice recognize the integrity of a nation's border and territory. After the Second World War, the 1945 United Nations Charter included in Article 2, paragraph 4, a stipulation on the prohibition of the use of force to violate the territory of a nation. The steadfast, persistent and fierce resistance of colonized countries after the Second World War, in which Vietnam was the vanguard with the victory of Dien Bien Phu, resulted in a more specific and comprehensive resolution of the UN on this issue.

Situated in Indochina, Vietnam has a total land border of 4,550 km with China to the north, Laos and Cambodia to the west, and the South China Sea to the east. Vietnam stretches 1,650 km from the 23°23' to 8°27' north latitude, in an S shape. The widest part on land is about 500 km and the narrowest is about 50 km.

Vietnam borders the sea to the east, south and south west, with a coastline of 3,260 km from Mong Cai (in the north) to Ha Tien (in the south). The South China Sea within Vietnam's sovereignty contains the continental shelf and is surrounded by islands and archipelagoes. Within the Tonkin Gulf alone, there are a group of 3,000 islands in Ha Long Bay, Bai Tu Long, Cat Hai, Cat Ba and Bach Long Vi islands. Further to the south are the Spratly and Paracel Archipelagoes. To the south west and south, there are the island groups of Con Son, Phu Quoc and Tho Chu.

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Given this favourable geographical position, Vietnam has a lot of potential for the socio- economic development both on land and sea. Having a large area of the South China Sea within its borders, Vietnam has been exploiting her sea for her own benefit, including fishing and other activities within her territory and in accordance with international law.

### **The role of the South China Sea**

The South China Sea is a large sea with a total area of 3.5 million square meters. Given the abundance of its natural resources, the South China Sea has an integral role in the economic development of many countries in the region. The South China Sea is rich in bio-resources and is considered one of the major fishing grounds of the world. Its continental shelf contains a lot of mineral resources, especially a large oil reserve of 640 million tons and natural gas reserves of 930 billion cubic meters. Some experts estimate that the total oil reserve in the South China Sea may reach 42.7 billion tons. There also exists 116 different minerals, of which 69 reserves and 1,400 exploitable positions have been identified.

The South China Sea is also situated within a strategic transportation route, including oil-transportation routes to the US and Japan. The South China Sea is one of the busiest sea routes in the world and an important part of the route connecting West Europe-Middle East and the Far East. It is also a buffer zone for China, Japan and Korea to link with South East Asia, South Asia, West Asia, Africa and Europe. Notably, the Spratly Archipelagos have a crucial position on the sea route from the Pacific to the Indian Ocean.

More than half of bulk-oil carriers of the world travel through the South China Sea. The quantity of oil transported through the South China Sea is 5 times greater than through the Suez canal and 15 times greater than Panama canal. Ninety percent of Japan and Korea's imported oil, 98 % of Taiwan's and 88% of China's comes through the South China Sea, of which 48% comes from the Middle East, 22% from Asia-Pacific countries and 18% from Africa. Therefore, the South China Sea plays a crucial role in energy security of East Asia and South East Asian countries.

Its sky also covers important air routes. Most of the air transportation for Vietnam, China, Japan, Korea and South East Asian countries passes through this area. The West Europe–Middle East–Far East air route, one of the busiest in the world, also passes through the South China Sea.

Therefore, the South China Sea has become a special and topical one in recent years and has involved most of the countries in the region namely China, Taiwan, Philippines, Indonesia, Malaysia, Thailand, Cambodia, Brunei, as well as countries outside the region such as Japan, Korea, the US and Russia.

Among these countries, Vietnam is under direct influence with several

complicated problems. Each country has its own interest and strategy and is yet to reach a compromise with the others in resolving these issues, especially in regard to territory and sea resources. Therefore, settlement of disputes on the South China Sea would bring about substantial benefit for the parties concerned and make a significant contribution to peace in the region and the world.

### **Legal background to define Vietnam's sovereignty in the South China Sea**

Based on international law, the UN Charter and the 1982 Law of Sea Convention, Vietnam has promulgated several legal documents in order to define her sovereignty over the territorial sea, the continental shelf and the exclusive economic zone, including:

- The Declaration, dated 12 May 1977, from the Government on the territorial sea, the adjacent sea area, the exclusive economic zone and the continental shelf of the Socialist Republic of Vietnam.
- The Declaration, dated 12 November 1982, on the baselines of Vietnam.
- The Law on National Borders of 2003.

These documents state specifically that the width of Vietnam's territorial waters is 12 miles, the exclusive economic zone together with the territorial sea's width is 200 miles from the base line. They also bear many other legal stipulations regarding the management, exploitation and the protection of rights in the South China Sea. These documents are totally in accordance with international law and the 1982 United Nations Convention on the Law of the Sea.

### **About bilateral and regional treaties on sea delimitation**

These treaties pave the way for cooperation in dealing with issues of national sovereignty on territorial waters and at the same time, help to further consolidate the solidarity and friendship between Vietnam and the neighbouring countries, thus avoiding any harm to the good relations that currently exist with other ASEAN member countries. These treaties include:

- The Agreement on the common historic waters between Vietnam-Cambodia, dated 7 July 1982.
- With Malaysia: The Memorandum of Understanding, dated 5 June 1992, stipulates the scope of the "identified zone". Within this zone, Vietnam and Malaysia have nominated their respective representatives (PETROVIETNAM and PETRONAS) to carry out exploration and exploitation activities. On 29 July 1997, the first ton of oil was produced in Bunfa Kekwa oil field, marking an important success for both sides in the joint management and exploitation of natural resources, as well as providing invaluable experiences in solving disputes in other areas.

- In the Gulf of Thailand: Vietnam has an overlapping sea zone with Thailand, Malaysia and Cambodia. With a total area of 300,000 square km, the Gulf of Thailand is valuable in many ways and consequently, disputes are unavoidable. Vietnam has settled the sea delimitation with Thailand in this Gulf and the two countries are heading toward joint exploitation in the Gulf. Both countries signed the Agreement on the delimitation of the exclusive economic zone and the continental shelf on 9 August 1997. This was one of the first agreements reached in the Gulf of Thailand and opened a new chapter in Viet-Thai relations.

- Vietnam and China in the Gulf of Tonkin: The Agreement on the Delimitation of the Gulf of Tonkin and the Agreement on Fishery Cooperation were signed in 2000 by both countries in accordance with basic principles of the 1982 Law of the Sea Convention.

- The Agreement on the Delimitation of the Continental Shelf between Vietnam and Indonesia dated 26 June 2003.

- Most importantly, Vietnam and countries in the region participated in the Declaration on the Conduct of Parties in the South China Sea (DOC) on 4 November 2002. Some of the main components of this DOC are: “reaffirm commitments to the objectives and principles of the UN Charter and the UN’s 1982 Convention on the Law of the Sea”, “refrain from living activities in islands, sand strips and low islands”, “commitment to the settlement of disputes in a peaceful manner” and “respect the rights to free movement on sea and in the sky over the South China Sea”. ASEAN countries have subsequently set up a mechanism to monitor the situation in the sea. Although negotiation on it was dragged on for a long period of time, the DOC is not a treaty with substantively negotiated terms. This declaration is applied to the whole South China Sea and is not confined to the Gulf of Thailand or the Spratly Archipelagos only. DOC is a major breakthrough for cooperation and peaceful settlement of conflicts in the region, of which Vietnam has made significant contribution.

## **OVERVIEW OF VIETNAM’S LAWS ON THE SEA**

Vietnam has numerous regulations concerning the sea, such as: the 1992 Constitution, Laws, Decree to international treaties with aims to formulate and protect Vietnam’s sovereignty so as to exploit and utilize natural resources in the sea. All the documents comply with international regulations and treaties, some of which are as follows:

## 1. 1992 Constitution

There are 12 Chapters and 147 Articles in the Constitution. Article 1 of Chapter 1 states that:

*"The Socialist Republic of Vietnam is an independent and sovereign country enjoying unity and territorial integrity, including its mainland, islands, territorial waters and air space."*

## 2. The 2003 Law on National Borders

There are 6 Chapters and 41 Articles, with some relevant articles on the sea as follows:

*Standpoint:* The national border of Vietnam is inviolable and must be respected. The works of construction, management and protection of the national borders of Vietnam have significant meaning within Vietnam's territorial integrity and national sovereignty, helping to maintain political stability and socio-economic development and strengthen national defence and security.

*Chapter 1 :* - There are 14 Articles on topics such as legal regime with national borders, including formulation, management and protection of national borders. All legal regimes, management and protection of the contiguous zone, the exclusive economic zone and the continental shelf of the Socialist Republic of Vietnam are in line with the 1982 UNCLOS and international treaties to which Vietnam is a party.

National borders in the sea have been defined and marked by co-ordinates on sea maps, including borders outside the territorial sea of Vietnam and its islands, in accordance with the 1982 UNCLOS and international treaties undertaken by the government of Vietnam.

Borders of the contiguous zone, the exclusive economic zone and the continental shelf of Vietnam clarify the sovereign rights and jurisdiction of the Socialist Republic of Vietnam in accordance with 1982 UNCLOS and international treaties undertaken by the government of Vietnam.

Sea border areas in Vietnam are calculated from the national border in the sea to the administrative zones of communes and towns located near the sea, islands and archipelagos.

The internal water of Vietnam includes:

1. Water zone located inside the baselines of Vietnam;
2. Port water areas.

The territorial sea of Vietnam extends up to 12 nautical miles from the baseline, this includes the territorial sea of the land, islands and archipelagos.

*Chapter 2* has 10 Articles focusing on legal regime on national border, border areas, such as innocent passage of foreign ships/carriers in Vietnam's territorial sea must abide by Vietnamese regulations and international treaties undertaken by the government of Vietnam. Submarines and similar transportation

vessels must navigate on the surface and display their national flag.

Overseas ships/carriers operated by nuclear power, ships carrying radioactive substances and other dangerous substances passing through Vietnam's territorial sea must have full legal documents and be equipped with special preventive measures in accordance with Vietnamese regulations and international treaties undertaken by the government of Vietnam. Such ships/carriers must obtain permission from the Vietnamese authorities when operating in Vietnam's territorial sea.

*Chapter 3* has 10 Articles on topics such as dispute settlement procedures related to national border must abide by Vietnamese laws and international treaties undertaken by the government of Vietnam.

*Chapter 4* has 3 Articles covering topics such as management on national defense, formulate and guide the implementation of policies and strategy on national border; negotiate, sign and implement international treaties on national border; international cooperation in the works of construction, management and protection of national border.

*Chapters 5 and 6* : Reward, violation settlement and implementation of the code.

### **3. Decree No. 161/2003/ND-CP dated 18 December 2003, promulgated by the Government to stipulate regulations on sea-borders**

The Decree has promulgated some regulations as follows:

Activities conducted by Vietnamese/overseas people, carriers, ships in the border areas with aim to manage and protect national border in the sea; maintain social security, order and safety in the sea border areas.

People, ships and carriers; export/import and transit of goods through sea routes in accordance with Vietnam's regulations and international treaties undertaken/signed by the government of Vietnam.

Legal management and protection regime for the contiguous zone, the exclusive economic zone and the continental shelf of the Socialist Republic of Vietnam have particular regulations which are in line with the 1982 United Nation Convention on the Law of the Sea (1982 UNCLOS) and other international treaties that have been undertaken or signed by the Government of Vietnam.

*Chapter 1* has 9 Articles, with the following contents: Activities conducted by Vietnamese/overseas people, ships and carriers in the sea border areas; investment and construction for the sea border areas in order to strengthen its capacities; construct infrastructural structures for management works and sea protection; Vietnamese/overseas people and ships/carriers must abide by this Decree and related regulations promulgated/signed by the government of Vietnam.

*Chapter 2* has 3 Articles – Regulations for Vietnamese people and ships/carriers operating in sea border areas covering topics such as: requirements for legal documents for Vietnamese people and ships/carriers operating in the sea border areas; people and ships/carriers with missions to explore and conduct scientific research, survey marine geological area and minerals in the sea border areas must have permission from state authorities.

*Chapter 3* has 9 Articles- Regulations for overseas people and ships/carriers operating in sea border areas with contents such as: Requirements for legal documents for overseas people and ships/carriers operated in the sea border areas; Overseas ships/carriers operated in the sea border areas must display their national flag and Vietnamese flag; the transportation of the ships/carriers must not result in any harms in Vietnam territorial sea; Overseas ships/carriers must abide by 1982 UNCLOS, related regulations and other related regulations on the prevention of sea collision and regulations/laws and international treaties undertaken by the government of Vietnam. In the case of overseas ships/carriers showing clear risks of causing pollution, they must change their route out of Vietnamese territorial sea; Overseas people and ships/carriers when conducting activities of investigation, exploration, exploitation, research, catching of fish and mineral resources etc. must get permission from Vietnamese authorities.

*Chapter 4* has 13 Articles – Management and protection of sea border, with some contents as follows: the Government of Vietnam shall control/conduct activities of management and protection of national sea borders and maintain security and social order in the sea border. The monitoring, checking, supervising and arresting of ships/carriers violating Vietnamese regulations must be in line with Vietnamese laws and international treaties undertaken by the government of Vietnam. Overseas people and ships/carriers, when passing through the border of Vietnam, must present related documents concerning their activities with the Border Security Unit and they must be supervised by Border Army. Regulations. Activities conducted by Vietnamese/overseas people and ships/carriers in sea ports and military ports shall be promulgated by the government and ministry/provincial authority according to their jurisdictions.

*Chapter 5* has 3 Articles – Regulate the implementation of the Decree. Besides, to manage sea border areas, the Decree also promulgated specific communes, districts belonging to sea border areas.

#### **4. Declaration dated 12 November 1982 regarding the baseline**

On 12 November 1982, the government of Vietnam issued a Declaration on baselines to measure the limits of its territorial sea and reassured the standpoint of “negotiation” to address all relevant disputes. With the standpoint, Vietnam has successfully negotiated and addressed lots of issues relevant to sea delimitation

such as: International treaty on sea delimitation with Thailand in 1997, International treaties on the Gulf of Tonkin and Fishing Cooperation with China in 2000. On 14 March 2005, the Triple Arrangement of Vietnam-China-the Philippines on the geological surveillance of the Spratly Islands was signed after long discussions with the principle of protecting sovereignty, the exclusive economic zone and the continental shelf of Vietnam's islands. This Arrangement is considered a solution contributing to the maintaining of peace and stability in the region. Currently, Vietnam continues to promote negotiations on the delimitation in the gate of the Gulf of Tonkin with China, sea delimitation with Cambodia and joint development and exploitation of oils in the overlapping zone among Vietnam, Thailand and Malaysia (started in 1998).

#### **5. Declaration dated 12 May 1977**

On 12 May 1977 the government of Vietnam announced the territorial sea extension up to 12 nautical miles, the continuous zone extends up to further 12 nautical miles, Vietnamese Exclusive Economic Zone up to 200 nautical miles; Vietnam's continental shelf extends up to the fringe of the continental shelf. In case the fringe of continental shelf does not extent up to 200 nautical miles, 200 nautical miles shall be applied for such areas.

In addition to the above mentioned documents, Vietnam has promulgated various regulations, directly and indirectly related to the development and management of the sea, such as: 1993 Oil Code (supplemented and amended in 2008), Law on environmental protection 2005, Maritime Law 2005, Law on Aquaculture 2003 and Law on Water resource 1998.

## **II. NEGOTIATING, SIGNING AND PARTICIPATION IN INTERNATIONAL TREATIES**

### **1. With Cambodia**

On 7 July 1982, both governments signed the agreement on forming the joint historical water territory and agreed that they shall negotiate at a suitable time for defining the borderline on the sea and consider the line Brèvière drawn in 1939 as the administrative line to divide islands between the two countries.

The Prime Ministers of the two countries agreed to set up a working group to discuss and settle the border division between Cambodia and Vietnam and the necessary solutions to maintain the security and stability in the border region with a view to building a permanent peace and friendship border between the two countries.

Under the agreement between the Prime Ministers of both countries and on the occasion of the Prime Minister Ung Huot's visit to Vietnam early in June



1998, the united expert group on Vietnam – Cambodia border met in Phnom Penh from 16–20 June 1998. During the meeting, the two sides decided to keep implementing the treaties and agreements on the borders of both countries, which were signed in 1982, 1983 and 1985. The two sides spent much time debating several issues regarding their opinions on water and land borders with a view to building a permanent peace and friendship border between two countries.

**The Agreement on Historical Water Territory of the Socialist Republic of Vietnam and the People's Republic of Cambodia dated 7 July 1982.**

The Agreement comprises 3 articles as follows:

*Purpose*

To consolidate and develop the special relationship of Vietnam and Cambodia in the spirit of peace, friendship and co-operation, Vietnam and Cambodia signed the treaty on 18 February 1978.

To settle issues on water territory between the baseline of Kien Giang province, Phu Quoc island to Tho Chu archipelago of Vietnam and the baseline of Kampot province to Poulowai island group of Cambodia. It includes the water territories, which belong to Vietnam and Cambodia for a very long time and it is defined on the basis of their special geographic characteristics as well as their important role to the economy and defence of each country.

*Content*

The water territory between the baseline of Kien Giang province, Phu Quoc island and Tho Chu archipelago of Vietnam and the baseline of Kampot province to Poulowai island group of Cambodia is the historical water territory of two countries under the limited internal water regime (according to East Greenwich meridian):

To the north-west, it is limited by the line connecting co-ordinates "09°54'2 north latitude – 102°55'2 east longitude" and 09° north latitude – 102°57'0 east longitude" in Kol Sès (Cambodia) to co-ordinate "10°32'4 north latitude – 103°48'2 east longitude" on the coastline of Kampot province (Cambodia).

To the north, it is limited by the coastline of Kampot province from the co-ordinate "10°32'4 north latitude – 103°48'2 east longitude" to the landmark on the baseline of the land borderline between Vietnam and Cambodia.

To the south-east, it is limited by lines from the coastline borders between Vietnam and Cambodia to the co-ordinate "10°04'2 north latitude – 104°02'3 east longitude" in An Yen cape on Phu Quoc Island (of Vietnam) and rounding the north bank of the island to Dat Do Island at co-ordinate "10°02'8 north latitude – 103°59'1 east longitude. It stretches to co-ordinate "09°18'1 north latitude – 103°26'4 east longitude on Tho Chu Island (Vietnam) to co-ordinate "09°15'0 north latitude – 103°27'0 east longitude" on Hon Nhan Island in the

Tho Chu archipelago in Vietnam.

To the south-west, it is limited by the line from co-ordinate “09°55’0 north latitude – 102°53’5 east longitude” in Poulo Wai island to co-ordinate “09°15’0 north latitude – 103°27’0 east longitude” in Hong Nhan of Tho Chu archipelago in Vietnam.

The patrol and guard in this historical water territory is shared by both sides. The fishing of local people in this territory is still in compliance with traditional customs. Both sides will go into negotiation before exploiting mineral resources in this territory.

## **2. With Malaysia**

There is an overlapping water territory covering the exclusive economic zone and continental shelf with an area of around 28,000 km<sup>2</sup>. This water territory was found by the boundary zone of the continental shelf and was announced in 1971 by the former Saigon Authority. The boundary of the continental shelf was described in Malaysia’s water territory map and was announced in 1979. The difference derived from the fact that the former Saigon Authority included Hon Khoai island and other islands of the two countries, however Malaysia only counted the sea islands and ignored Hon Khoai of Vietnam (Hon Khoai is about 6.5 nautical miles far from the mainland).

In May 1992, Vietnam and Malaysia signed an agreement for joint exploration and exploitation cooperation of the overlapping water territory. Under this agreement, oil companies from the two countries were entrusted with signing the trade arrangement and conducting the exploration and exploitation cooperation, then sharing products. The division of overlapping territory would be settled later. The cooperation of the oil industry between the two countries is still going on.

In addition, the area of overlapping water territory between Thailand and Malaysia is about 7,250km<sup>2</sup>, of which 800km<sup>2</sup> relate to Vietnam. Thailand, Malaysia and Vietnam agreed to discuss the joint exploitation of overlapping water territory together.

For quite some time Vietnam and Malaysia’s governments have made the affirmation that they will solve all disputes between the two countries through peaceful negotiation and in compliance with international law.

## **3. With the Philippines**

The Philippines have no sovereignty over Spratly archipelago. The Philippines were taken over by the US from Spain under the Paris agreement signed in 1898 between the US and Spain. Philippines archipelago was defined in the map together with the agreement accordingly. As a result, the Philippines do not delimitate any island of the Spratly archipelago in its sea map .

Since 1951, the Philippines have disputed ownership of the Spratly archipelago with the statement from the Philippine's President that Spratly archipelago must belong to them because it is near to the Philippines.

In the early 1979, the Philippines promulgated a decree signed by President Marcos on 11 Jun 1978 that it considered Spratly archipelago (except Spratly Island) as its territory and named Spratly archipelago as Kalayaan.

From 1978 to 1994, Vietnam and the Philippines have had meetings at levels of Ministry of Foreign Affairs, Prime Minister and President to reach an agreement that both countries will settle all disputes via peaceful negotiation in the spirit of mutual friendship, conciliation and belief.

On 7 Nov 1995, Vietnam and the Philippine's Ministry of Foreign Affairs agreed on 9 basic behaviour principles to deal with the disputed water territory including:

- The two parties agreed to seek a solution to the dispute of sovereignty over Spratly archipelagos through peaceful means.
- To keep restraint or not to use armed force, promoting bilateral or multilateral co-operation on environmental protection, scientific research, meteorology, anti-disaster, salvage, anti-pirate and control of environmental pollution, protection of marine resources in the Spratly archipelago.
- Ensuring free maritime activity as stipulated by international laws.
- To reinforce co-operation and to settle all disputes over the sovereignty of the Spratly archipelago.

From the end of April to May 1996, the two countries successfully conducted a joint survey on marine science at the Spratly archipelago and the South China Sea. These scientific surveys on the archipelago and the South China Sea will continue. Vietnam-the Philippines United Committee - led by the two countries' Minister of Foreign Affairs - convened in January 1997 in Hanoi and reached an agreement on several measures to gain trust between the two sides, including the mutual exchange of visits by army commanders and encamped forces on the archipelago.

#### **4. With Thailand**

There is an overlapping water territory between Vietnam and Thailand. It starts from the outer limits of Vietnam's continental shelf, which was announced in 1971 by the former Saigon authority, and the outer limits of Thailand's continental shelf, which was proclaimed in 1973. The overlapping water territory is attributed to the fact that while Vietnam claims full authority of Tho Chu Island (because Tho Chu Island had a population of about 500 people and had an independent economy at that time) Thailand still denies Vietnam's claim. After the agreement on historical water territory was signed between Vietnam and

Cambodia in 1982 (in which, the sovereignty of islands between the two countries was defined; Wai Island is under the sovereignty of Cambodia). The overlapping water area between Vietnam and Thailand is about 6,000 km<sup>2</sup>..

**The Agreement on defining the boundary on the sea in the Gulf of Thailand dated 8 September 2007 between the Socialist Republic of Vietnam and Thailand.**

The Agreement comprises of 6 articles as follows:

*Purpose*

To consolidate the existing friendship and relationship between Vietnam and Thailand and to define the sea boundary between the two countries in the Gulf of Thailand at the overlapping water territory in accordance with the two countries' claims on the continental shelf.

*Content*

The sea boundary between Vietnam and Thailand is the line connecting point C with point K. This line is defined by the following co-ordinates:

**Point C:** Latitude 07°49' 00.000" N  
Longitude 103°02' 30.000" E

**Point K:** Latitude 08°46' 54.7754" N  
Longitude 102°12' 11.5342" E

Point C is the northern pole point of the joint development zone and is defined according to the agreement between Thailand and Malaysia on setting up a Joint Authority for natural resources exploitation in the sea bed of the overlapping areas of continental shelf between the two countries in the Gulf of Thailand. Point K is a point that is in the border on the sea between Vietnam and Cambodia.

The borderline on the sea is the boundary between the continental shelves of Vietnam and Thailand and is the boundary between exclusive economic zones of Vietnam and Thailand also.

All parties will negotiate with Malaysia to settle the overlapping continental shelf areas between the three countries. All parties recognize their jurisdiction and sovereignty respectively towards the continental shelf and exclusive economic zone, in accordance with the boundary on the sea that is defined by this agreement.

If there is any oil or natural gas field or mineral mine in the sea bed across the boundary, all sides will inform each other of all information and will negotiate the best way to effectively exploit the above-mentioned resource. The profit gained from the exploitation will be equally shared.

All disputes relating to the interpretation and application of the agreement will be peacefully settled via discussion and negotiation.

## 5. With Indonesia

The distance between Vietnam and Indonesia is about 250 nautical miles, starting from Con Dao to North Natuna. These are the two farthest islands of the two countries. Therefore, there has been no dispute relating to the border of the two countries (the distance between Vietnam's coastline and Bornéo coastline is more than 400 nautical miles). Now, due to the development of the international law of the sea, the two countries have to define the boundary of the continental shelf and exclusive economic zones.

In 1978 Vietnam and Indonesia started negotiations. Vietnam's viewpoint is to respect the definition of the continental shelf in the 1982 United Nations Convention on the Law of the Sea, which states that the continental shelf is the natural prolongation of the mainland. Thus, the outer limit of the continental shelf should be defined on the basis of the gap dividing the natural prolongation of the two continental shelves. The difference in opinion of the two countries created a disputed water territory with an area of around 92,000 km<sup>2</sup>.

On 6 July 2003, after rounds of negotiation, a treaty was signed between the Socialist Republic of Vietnam and the Government of the Republic of Indonesia to define the boundary of the continental shelf and is considered a legal base for defining the boundary of continental shelf and other overlapping water territories (this treaty has been in effect since 6 May 2008).

### **The Agreement on defining the boundary of continental shelf dated 26 July 2002 between the Socialist Republic of Vietnam and the Government of the Republic of Indonesia.**

The Agreement comprises 6 articles as follows:

#### *Purpose*

To consolidate and develop the existing relationship between Vietnam and Indonesia and to define the boundary of the continental shelf between the two countries.

#### *Content*

The boundary of the continental shelf between Vietnam and Indonesia is defined by line-segments connecting the points with co-ordinates as follows:

Point	Latitude	Longitude
20	06°05' 48"N	105°49' 12"E
H	06°15' 00"N	106°12' 00"E
H 1	06°15' 00"N	106°19' 01"E
A 4	06°20' 59, 88"N	106°39' 37, 67"E
X 1	06°50' 15"N	109°17' 13"E

The location of points and line segments on the sea will be defined by methods that were agreed upon by the authorized agencies of both sides.

The authorized agency for the Socialist Republic of Vietnam is the Department of Survey and Map under the Ministry of Natural Resources and Environment. The authorized agency for Indonesia is the Department of Water, Map and Ocean under the Indonesian Navy.

Both sides will exchange and consider the viewpoint of the other in order to match its policies with international law on the protection of the marine environment.

If a discovery of oil, natural gas field or mineral mine is made across the boundary of the seabed, both sides will inform each other of all related information and come into negotiations with a view to effectively exploiting the above-mentioned resource and on sharing benefits gained from these exploitations.

All disputes arising during the implementation of the agreement will be peacefully settled via negotiation.

## **6. With the People's Republic of China**

### **(1) Agreement between the Socialist Republic of Viet Nam and the People's Republic of China on the Delimitation of the Territorial Sea, the Exclusive Economic Zone and the Continental Shelf between the Two Countries in the Tonkin Gulf**

The Gulf of Tonkin (Beibu) is enclosed by Vietnam and China, it is 123,700 square kilometres in area, the widest part being 320 kilometres (176 nautical miles) and the narrowest being about 220 kilometres (119 nautical miles). The coast of Vietnam on this side is about 763 kilometres, the Chinese side is about 695 kilometres. There are 2,300 Vietnamese coastal islands and islets in the Gulf. Of particular importance is the 2.5 square km Bach Long Vy Island, which is located near the middle of the inner Gulf of Tonkin - 110 km from the nearest Vietnamese coastline and 130 km from Hainan Island.

The Gulf of Tonkin is strategically important for Vietnam and China in terms of security and defence. The features of the Gulf of Tonkin are that the width is quite narrow, and there was not a delimitation between the two countries. According to the UNCLOS 1982 of the United Nations, the whole of the Gulf is an overlapping area, which badly affects the relationship between the two countries

#### *Vietnam's viewpoint on delimitation of the Gulf of Tonkin*

Based on the "Agreement of Principle" between the two countries which was concluded on 19 October 1993, Vietnam affirms the standpoint of delimitation of the Gulf of Tonkin based on international practice and law, and

also mentions conditions and situations in the Gulf of Tonkin that it is concerned about in order to obtain a fair resolution which the two countries can accept.

*Specific contents of Delimitation*

- Scope of delimitation of the Gulf of Tonkin: The definition of the delimitation area needs to be based on objective natural conditions and comply with legal standards. The Gulf of Tonkin is enclosed by the islands of Vietnam and China. In the south of the Gulf of Tonkin – the mouth (estuary) – is Con Co Island which lies next to the coastline and is also the point which defines the width of the territorial waters of Vietnam. So the defining limit of the south of the Gulf of Tonkin mouth is the line which is connected by Con Co Island (that belongs to Vietnam) and Oanh Ca Cape (the nearest point of Hainan, China) suitable with specific features of the Gulf of Tonkin and legal standards.
- Delimitation of the exclusive economic zone and the continental shelf: The Gulf of Tonkin is a narrow sea, the widest part is not more than 400 nautical miles. Consequently, it does not include high seas, according to the 1982 UNCLOS. In fact it has become a customary rule of law recognized and applied widely in international practice. At first, Vietnam suggested using a single boundary for the exclusive economic zone and the continental shelf for the practical convenience of control and co-operation of the two countries later.

Negotiations for fisheries co-operation are also conducted in parallel with the Agreement of Delimitation for the Gulf of Tonkin. However, until April 2000, Vietnam agreed to negotiate on fisheries co-operation. Over 6 rounds of negotiations at specialist level, the two countries agreed to create a joint fishery zone from 20° latitude to the line that encloses the Gulf's mouth. This zone is about 30.5 nautical miles from the boundary of each side and the area covered is 33.5 thousand square kilometres, 27.9% of the area. The term of this Zone is 15 years (12 formal years and can be extended to another 3 years automatically afterwards)

Three key principles of the Common Fishery Zone are:

- Each country has the right to inspect and control the fishing boats which are allowed to enter the Common Fishery Zone for fishing;
- The product of fishing and quantity of boats which are allowed to enter the Common Fishery Zone for fishing is based on the principle of equality, based on products of fishing determined through periodic joint investigation;
- Each party has the right to co-operate with a third party for fishing in the Common Fishery Zone. The two Parties agreed to establish the Sino-Vietnamese Joint Committee for Fishery in order to build a

scheme related to the Common Fishery Zone

**(2) Agreement between the Socialist Republic of Viet Nam and the People's Republic of China on the Delimitation of the Territorial Sea, Exclusive Economic Zone and Continental Shelf between the Two Countries in the Tonkin Gulf, effective 30 June 2004.**

The conclusion of this Agreement is important to Vietnam and the relationship between Vietnam and China. With this Agreement, Vietnam definitively resolves the second issue of three borders, territory issues which have existed between the two countries (boundary on land, Beibu Gulf and South China Sea). The clear delimitation of the boundary of territorial waters outside the estuary of Bac Luan, the scope of the exclusive economic zone and the continental shelf between the two countries in the Tonkin Gulf makes it easy to have control and maintain stability in the Tonkin Gulf, to contribute and strengthen the confidence and promote co-operation on all aspects between the two countries.

The Agreement includes 11 Articles with the contents as follow:

*The aim*

Desiring to strengthen and enhance the traditional bonds of friendship between the two countries and the peoples of Viet Nam and China, and to maintain the stability and promote the development of the Gulf of Tonkin.

*The principle*

Basing themselves on the principles of mutual respect for independence, sovereignty and territorial integrity, non-aggression, no interference in one another's internal affairs, equality, mutual benefit, and peaceful coexistence;

In the spirit of mutual understanding and accommodation, and friendly consultations for an equitable and reasonable solution to the delimitation of the Gulf of Tonkin.

*The contents*

In this Agreement, the Gulf of Tonkin is a semi-enclosed gulf bordered by the continental coastlines of Viet Nam and China to the North, the Lei Zhou peninsula and Hainan Island of China to the East, Viet Nam to the West and by the straight lines connecting the outermost point of the Yieng Ge cape, Hainan island of China, and defined by the geographical coordinates of Latitude 18°0' 19" N, longitude 108°41' 17" E, crossing Con Co island of Viet Nam to a point situated on the coastline of Viet Nam specified by the geographical coordinates of latitude 16°57' 40" N and longitude 107°08' 42" E.

The two parties agreed on the delimitation line of the territorial sea, the exclusive economic zone and the continental shelf between the two countries



defined by the straight lines connecting the following 21 points specified by coordinates and in the sequence given.

The two parties shall respect the sovereignty, sovereign rights, and jurisdiction of each other over their respective territorial sea, exclusive economic zone, and continental shelf in the Gulf of Tonkin as provided for in this Agreement

If any single petroleum or natural gas structure or field, or other mineral deposit of whatever character, extends across the delimitation line defined in Article II of this Agreement, the two contracting parties shall, through friendly consultations, reach agreements as to the manner in which the structure, field, or deposit will be most effectively exploited as well as on the equitable sharing of benefits arising from such exploitation.

The delimitation of the territorial sea, exclusive economic zone, and continental shelf between the two countries in the Gulf of Tonkin in accordance with this Agreement shall not affect or prejudice each contracting party's position on provisions of the international law of the sea.

Any dispute between the two Parties arising out of the interpretation and implementation of the Agreement shall be settled through friendly negotiations and consultations.

**(3) Agreement on fishery co-operation in the Gulf of Tonkin between the Governments of the People's Republic of China and the Socialist Republic of Vietnam, effected 30 June 2004.**

The Agreement includes 22 articles, which regulate the following aspects:

*The aim*

For the purpose of maintaining and developing the traditional neighbouring and friendly relationship between the two countries and peoples, and to preserve and sustainably utilizing the marine resources in the Agreed Water Area in the Gulf of Tonkin.

*The principle*

The Parties shall undertake fishery cooperation in the Agreed Water Area based on the mutual respect for sovereignty, sovereign rights, and jurisdiction. Such fishery cooperation shall not affect the sovereignty of the two countries over their respective territorial seas and other rights and interests enjoyed by the two countries in their respective exclusive economic zones.

Both Parties have agreed to establish the Common Fishery Zone within a 30.5 nautical mile area of the exclusive economic zones of the two countries. The area is from the demarcation line determined in the Delimitation Agreement for the Gulf of Tonkin, north to the closing line of the Gulf of Tonkin, and south of 20° N.

The Parties shall respect the principle of equality and mutual benefit and shall determine annually the quantity of operating fishing vessels for each party in the Common Fishery Zone through the Sino-Vietnamese Joint Committee for Fishery in the Tonkin Gulf established pursuant to Article 13 of this Agreement. This agreement is based on the allowable catch determined on the basis of the results from joint regular surveys on fishery resources and the impact on respective fishing activities of both parties, and the need for sustainable development.

*The contents*

Both Parties shall have a licensing system for fishing activities conducted by their own fishing vessels in the Common Fishery Zone. Fishing permits shall be issued in accordance with the quantity of fishing vessels determined by the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin. The names of the fishing vessels granted permits shall be notified to the other party. Both Parties shall be obliged to educate and train their fishermen who conduct fishing activities in the Common Fishery Zone.

Fishing vessels which intend to enter the Common Fishery Zone for fishing activities shall apply for the permit from the relevant authority of their own countries and may enter the Common Fishery Zone for fishing activities only after they have obtained this permit. The fishing vessels of the Parties for fishing activities in the Common Fishery Zone shall mark themselves in accordance with the regulations set forth by the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin.

The Parties shall establish a buffer zone in order to avoid disputes caused by mistaken illegal entry of small fishing boats of one party into the territorial sea of the other.

Each Party, if it finds that small fishing boats of the other party are conducting fishing activities in its area of the buffer zone, may send a warning, or take necessary measures to order them to leave that area. But by so doing the Party shall restrain its action not to detain or arrest the vessels in question, nor to use force. If there is any dispute relating to fishing activities, it shall be reported to the Sino-Vietnamese Joint Committee for Fishery for settlement. If there is any dispute beyond fishing activities, it shall be settled by the relevant authorities of the two countries in accordance with their domestic law.

The Parties have decided to establish the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin (hereinafter referred to as the Joint Fishery Committee) in order to implement this Agreement. The Joint Fishery Committee shall consist of two representatives respectively appointed by both Governments and several committee members. The Joint Fishery Committee will make detailed regulations on its operational mechanism.

When the nationals and fishing vessels of one Party need assistance due to

distress or other emergencies in the sea area of the other, the other Party shall be obliged to render salvage and protection, and notify the relevant department of the counterpart Party of the events. When the nationals and fishing vessels of one Party seek refuge due to bad weather or other emergencies, they may take refuge in the area of the other Party in accordance with the annex to this Agreement and the regulations of the Joint Fishery Committee, and after making contact with the other Party. During the refuge, the nationals and fishing vessels shall abide by the relevant laws and regulations of the other Party, and obey the management of the relevant department of the other Party.

Any dispute resulting from interpretation or application of this Agreement between the two parties shall be settled through friendly consultation.

## **7. The Declaration on the Conduct of Parties in the South China Sea (DOC)**

Starting from the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region; on 4 November 2002 during the Eighth ASEAN Summit in Phnom Penh, ASEAN and China signed The Declaration on the Conduct of Parties in the South China Sea (DOC), with commitment to enhance the principles and objectives of the Joint Statement of ASEAN and of the People's Republic of China in 1997 and desiring to enhance favourable conditions for a peaceful and durable resolution of divergences and disputes among all countries concerned.

According to the DOC, the parties agreed to avoid conduct which may cause tension and conflicts in the South China Sea. In order to obtain this result, all parties had some concessions. The final document had the name of Declaration on the Conduct (DOC), which did not reflect the initial expectations of all parties. However, the People's Republic of China agreed to continue negotiating in order to progress and build a code which has much more relevance. This document also made no mention of the Paracel and Spratly Archipelagos, which was the requirement of some countries of ASEAN (Vietnam among them), it only mentions the South China Sea in general. Countries of ASEAN agreed to cancel the phrase "not to build new grounds" in the area where the Philippines required it. This Declaration was general and not well defined, however the drafting of the Declaration is an important step in the dialogue progress between China and ASEAN. If parties seriously implement the Declaration, it will help them to avoid conflicts in the South China Sea and to keep the stability of the region.

The Declaration specified co-operation requirement in 5 fields:

- Protection of the environment
- Marine science research
- Maritime safety and security
- Search and rescue on the sea

- Protest of transnational criminality, including and without limit to the dealing of drugs, buccaneer, armed robbery, and traffic in arms.

These co-operation fields were regarded as delicate issues and a method to assist in building trust between the parties. These co-operation fields were regulated in the UNCLOS 1982 and in practice they were bilaterally or multilaterally deployed between the countries in the region.

The DOC also defined the general principle for co-operation as “Form, scope and position of bilateral and multilateral co-operation need to be unanimous by all concerned parties”.

### III. VIETNAM’S POSITION REGARDING THE SETTLEMENT OF SEA DISPUTES

#### 1. General position

Vietnam’s viewpoint on settling disputes in the sea is through “negotiation”, settling all disputes by peaceful means on the basis of international regulations and practices, especially 1982 UNCLOS and the spirit of the 2002 Declaration on the conduct in the South China Sea (DOC) which aims to maintain peace and stability so as to seek basic long-term solutions, which can be accepted by all parties concerned.

In order to implement Article 1 of DOC, Vietnam undertakes to apply international regulations to promote relationships amongst nations as stated in the Charter of United Nations, principles on peaceful living as well as other acceptable principles in international law, such as:

*The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;*

*The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;*

*The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;*

*The duty of States to co-operate with one another in accordance with the Charter;*

*The principle of equal rights and self-determination of peoples;*

*The principle of sovereign equality of States.*

Vietnam always complies with Article 4 of DOC, which states that the parties have an obligation to settle disputes on territory by peaceful means, the principle that all parties shall refrain in their international relations from the

threat or use of force against the territorial integrity.

To implement Article 7 of DOC, once again Vietnam assures that all parties should negotiate relevant matters. DOC's principles must be implemented to promote good, long-term, transparent relationships in a co-operative manner. This is a key method that Vietnam uses to promote the South China Sea to make it a peaceful, stabilized and developed region, by facilitating long-term peaceful solutions.

## **2. About Sovereignty over the Spratly and Paracel Archipelagos**

The policy of Vietnam in addressing disputes with China is mostly by peaceful means and negotiations. Vietnam firmly pursues "peaceful solutions" stipulated in the Arrangement on 19 October 1993, which is to continue negotiating all matters in the South China Sea so as to seek stable and fair solutions, avoiding threats to damage relationship between the two countries. The Spokesman of the Vietnam Ministry of Foreign Affairs said "For the South China Sea, we assure that Vietnamese policy is through negotiation to settle all conflicts by peaceful means based on international regulations and practices, especially 1982 UNCLOS and the spirit of the 2002 DOC. Consequently, Vietnam's stance is quite open, peaceful and respectful of international law.

## **3. Other matters**

Vietnam has promoted and formulated its policies to implement international commitments for matters in the South China Sea in an appropriate manner. Some successes have been achieved in the negotiations and implementation of DOC. Currently, the Code of Conduct in the South China Sea is being negotiated and promoted. The co-operation for exploration and exploitation of mineral resources was developed, on 14 March 2005, three oil and petroleum companies from Vietnam (Petro Vietnam), China (CNOOC) and the Philippines (PNOC) have signed an arrangement on seismic surveys in the overlapping areas in the South China Sea. The vital matter in the South China Sea is how to share interests/benefits of exploiting mineral resources in the East Sea in a suitable and fair manner to avoid conflicts for peace, stability, co-operation and development in the region and in the world.

## **IV. CONCLUSION**

Due to the historical process over nearly 100 years in the South China Sea, and individual nations' general trend toward the sea, in combination with the development of international regulations on the sea, especially 1982 UNCLOS, as well as geographical features of the South China Sea, Vietnam and other neighbouring countries still have disputes that need to be addressed.

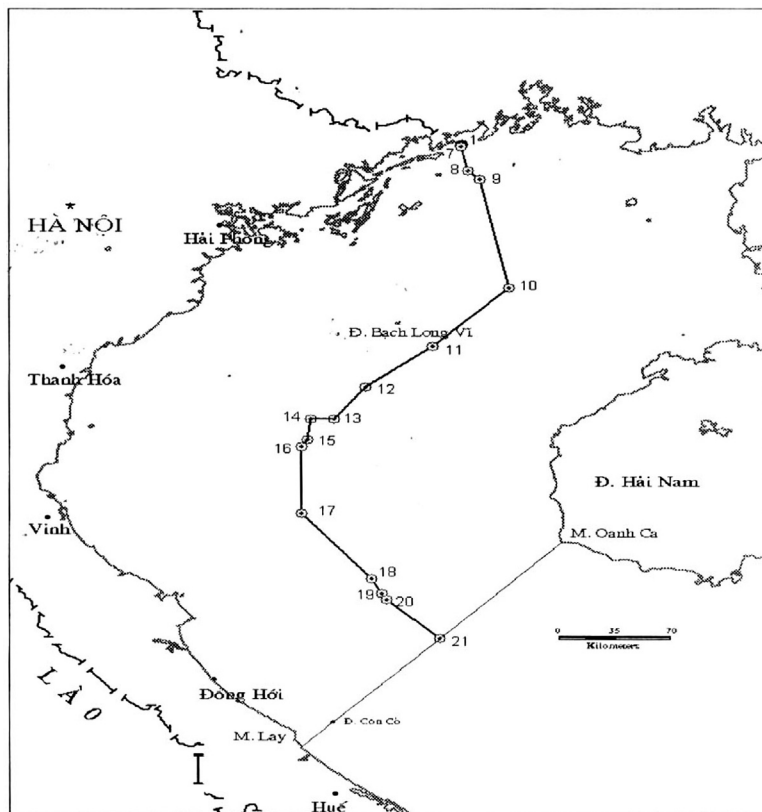
As a member of the 1982 UNCLOS, Vietnam has obligations to adjust and promulgate domestic regulations in line with the spirit of the 1982 UNCLOS. One of the most important actions for Vietnam is to readjust and supplement the regulations on the straight baselines of Vietnam. In fact the system of Vietnam's straight baselines has not been completed as yet. First Vietnam shall supplement the straight baseline regulations in the Gulf of Tonkin. The adjustment of the baseline system in the Gulf will provide the legal basis for the work of management and protection of the sea of Vietnam in the Gulf of Tonkin.

In spite of the fact that the Declaration on the Vietnamese Sea was announced by the government of Vietnam in 1977, so far Vietnam has not defined specific borders in the South Western Sea of Vietnam. As a member of the 1982 UNCLOS, Vietnam is in the process of researching and claiming her sea borders, including the continental shelf beyond 200 nautical miles from the baseline in accordance with the 1982 UNCLOS. Besides, Vietnam shall review all documents on the legal regime on the sea of Vietnam with the aim to adjust unsuitable regulations. Vietnam will formulate a legal system on the sea in accordance with the 1982 UNCLOS in the near future.

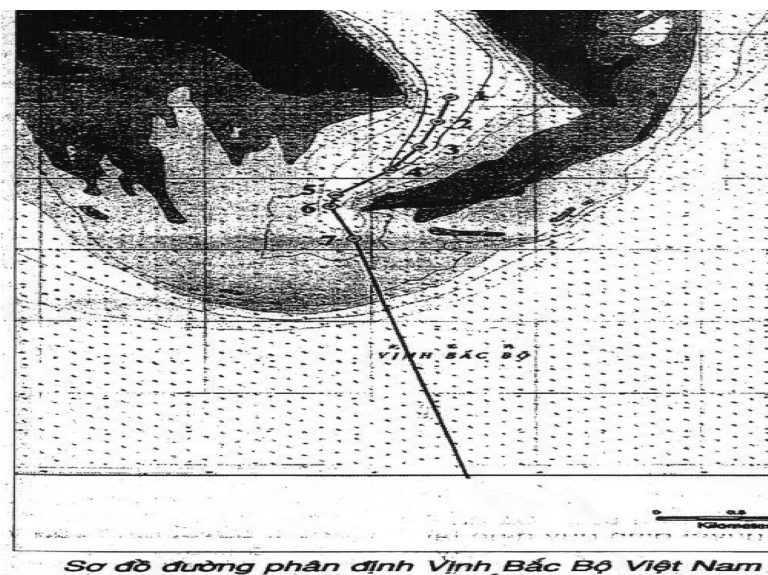
The Recognition of Vietnam's Sovereignty in the South China Sea and Vietnam's  
Attitude Towards Sea Dispute Settlement

APPENDIX:

Map of delimitation The Gulf of Tonkin between Vietnam and China 2000



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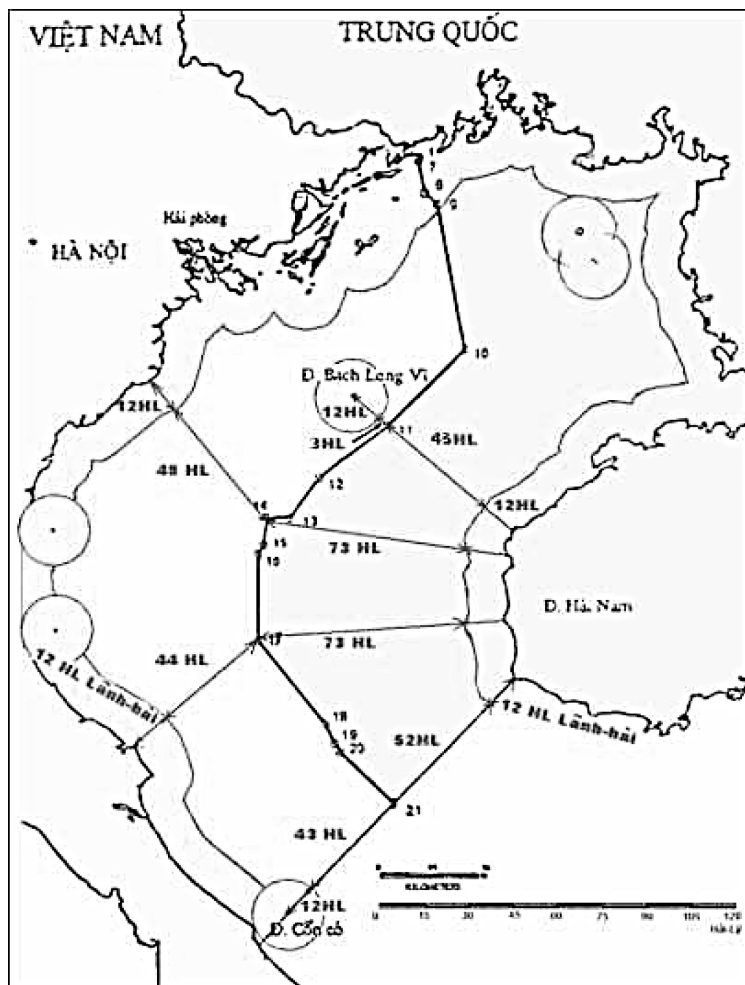


Source: Introduction about some basic issues of Law of the Sea of Vietnam  
 Border Board of Ministry of Affair Publishing house: National Political  
 Publishing House

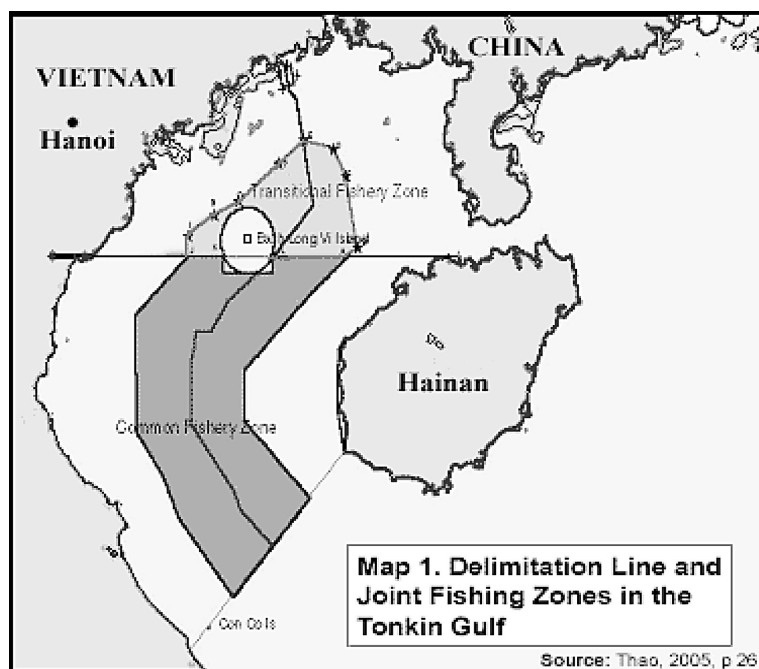


The Recognition of Vietnam's Sovereignty in the South China Sea and Vietnam's Attitude Towards Sea Dispute Settlement

Map of delimitation The Gulf of Tonkin between Vietnam and China 2000



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Source: <http://www.atimes.com/atimes/China/images/china-sea-fishing-1.gif>