

RESEARCHERS AT SINGAPORE'S *INSTITUTE OF SOUTHEAST ASIAN STUDIES* SHARE THEIR UNDERSTANDING OF CURRENT EVENTS

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## **South China Sea Disputes Keep Vietnam-China Relations Cold**

*By Le Hong Hiep [Guest Writer]*

### EXECUTIVE SUMMARY

1. Since bilateral normalizations began two decades ago, Vietnam's relations with China have developed rapidly and comprehensively. However, future prospects remain uncertain due to disputes between the two countries in the South China Sea.
  2. What makes the quarrels so highly relevant is that they have proved intractable, leaving the possibility of a solution a matter of almost infinite uncertainty. The intractability of the disputes is rooted in their complicated nature as well as setbacks plaguing possible settlements.
  3. Joint efforts to manage and resolve the disputes have brought about some positive results, but only concerning the less complex dispute over the Tonkin Gulf.
  4. Other disputes over the Paracels and the Spratlys as well as maritime boundaries in the sea remain persistent for various reasons, and perpetuate bilateral tension.
  5. How Vietnam-China relations will develop hinges on how these disputes develop. If poorly managed, they can well erupt into an armed conflict and plunge the two countries into a new cycle of confrontation and hostility, which will undoubtedly be devastating not only to the two parties but to the whole region as well.
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## INTRODUCTION

Despite recent significant improvements in bilateral relations, a number of problems still exist which can threaten Vietnam's relations with China in the long term. Disputes in the South China Sea [Biển Đông, or East Sea, in Vietnamese] stand out as the single most challenging one. Resurfaced recently, the disputes have not only remained the most serious sticking point in bilateral relations but have even pitted the two countries against each other in deadly armed confrontation on a number of occasions as well. The management and resolution (if ever) of the disputes therefore bear significant implications for the future relations between the two growing economies.

This paper provides an analysis of how the South China Sea disputes has been a constant irritant to Vietnam–China relations. Accordingly, the paper will first be examining factors that make the disputes intractable. Next, it will review joint efforts to manage and resolve the disputes, their successes as well as limitations. Finally, it will discuss some recent developments which show how serious a challenge the disputes have been to bilateral relations.

## INTRACTABLE DISPUTES

Vietnam's South China Sea disputes with China can be divided into two separate but related categories. The first is related to their respective sovereignty claims over the Paracels and the Spratlys. While the quarrel over the Paracels is just between the two of them, the Spratlys row is multilateral, involving also the Philippines, Malaysia, Brunei and Taiwan. At the same time, the two also have a dispute over maritime boundaries in the sea. What makes these disputes highly relevant for the future bilateral relations is that they have proved intractable, leaving the possibility of a solution a matter of almost infinite uncertainty.

The obstinacy of the disputes, to be sure, is rooted in their complicated nature as well as setbacks suffered by possible settlement arrangements.

First, both their claims, especially those regarding the sovereignty of the two archipelagos, are mainly grounded in historical evidence that both sides present. The assessment of such evidence is undoubtedly a very complicated and painful enterprise. That said, it should be stressed that such an endeavor is not impossible if both submit themselves to a jointly agreed competent arbitration authority. While an evaluation of each country's claims as well as their bases is beyond the scope of this paper, it is important to point out that China has always refused to seek international arbitration regarding its claims in the area.<sup>1</sup> Such an attitude generates the

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*1* Recently, China has rejected the proposal by the Philippines to bring their territorial dispute to the International Tribunal on the Law of the Sea, through which the Philippines was seeking to challenge the validity of China's claims based on the nine-dotted line.

impression that China may feel the historical as well as legal bases of its claims to be weaker than those of other claimants, especially Vietnam.<sup>2</sup> Nevertheless, given the complicated nature of the disputes that make a mutually acceptable solution through bilateral negotiation almost impossible, the use of international arbitration remains the most important, if not the only feasible measure, for reaching a permanent peaceful solution to the dispute.

Second, while international legal rules governing territorial sovereignty disputes, especially those on territorial acquisition, have been well-defined and caused little controversy, those governing the arbitration of maritime claims in the case of the South China Sea disputes are less so. This is due to the different views on the status of features forming the two archipelagos and their maritime entitlements. According to Article 121 of the UN Convention on the Law of the Sea (UNCLOS) on the regime of islands, any feature in the South China Sea will be considered an island and entitled to its own exclusive economic zone (EEZ) and continental shelf only if it is “a naturally formed area of land, surrounded by water, which is above water at high tide”, and can “sustain human habitation or economic life of their own”. In its two submissions to the Committee on the Limits of the Continental Shelf (one jointly with Malaysia, one on its own) in early May 2009, Vietnam implicitly held the position that features in the two archipelagos do not meet criteria set out under Article 121, and thus they possess no EEZ or continental shelf of their own.

However, in its *Note Verbale* to the UN Secretary General protesting the joint submission by Malaysia and Vietnam, China stated that it “has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof”. It can be inferred from China’s statement that China views at least a number of features in the South China Sea to be qualified islands and thus entitled to their own territorial sea, EEZ and continental shelf (Beckman, 2010). Such different views derive from divergent interests of the two countries: While China wants to maximize the disputed areas to include the EEZ and continental shelf of other claimants, Vietnam seeks to minimize them to protect its economic interests in its lawful EEZ and continental shelf. Obviously, such differing views can also be settled through an arbitral process. However, as the judgments offered by such a process are likely to be based on the interpretation of Article 121 rather than concrete evidence that can be verified on factual basis, not only China but also Vietnam may feel discouraged from taking that path for fear of being disadvantaged.

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<sup>2</sup> For analyses of the weight of Vietnam’s and China’s claims, see Valencia, Van Dyke, & Ludwig (1999, pp. 17-76), and especially Nguyen (2012). If official maps were to be used as the main evidence verifying historical bases of a disputant’s claims and its government’s exercise of sovereignty over the disputed territories, China’s claims that the Paracels and Spratlys had belonged to China “since ancient times” would be seriously undermined. For example, the Chinese official map titled *Huang chao zhi sheng yu di quan tu* and published by the Qing imperial government in 1904 shows that the two archipelagos were not part of China’s territory. Meanwhile, the two archipelagos have long been included in Vietnamese official maps, such as the *Dai Nam nhat thong toan do* published by the Nguyen Dynasty as early as 1838.

Third, the dispute is made ever more intractable by the infamous nine-dotted line that China has been using to assert its claims. As China has never clarified the meaning as well as the legal basis of the line, scholars have tried to interpret what it is that China actually wants to claim in at least four different ways:

1. it defines Chinese sovereignty over only the islands enclosed by the line (e.g., Gao, 1994);
2. it claims China's sovereignty of all islands and its rights to their adjacent waters (e.g., Zou, 1999);
3. it represents China's traditional maritime boundary in the South China Sea (e.g., Li & Li, 2003); and
4. it delimits China's historic waters (e.g., Yu, 2003) or the scope of China's historic rights (e.g., Zou, 2001).

The *Note Verbale* mentioned above did add some light to China's claims and the meaning of the nine-dotted line, but failed to completely remove the obscurity shrouding it (Thang & Thao, 2012). It asserted that China not only had "sovereignty over the islands in the South China Sea and the adjacent waters", but also enjoyed "sovereign rights and jurisdiction over the relevant waters". The terms "adjacent waters" and "relevant waters" are rather ambiguous, leaving one to wonder whether these waters correspond to those defined under the UNCLOS, or whether they refer to the entire water column enclosed by the nine-dotted line. As the nine-dotted line cuts deep into Vietnam's EEZ and continental shelf, the ambiguity around its meaning makes it difficult even to define clearly the disputed areas, thereby further straining efforts to manage and settle the dispute.

## MANAGING THE DISPUTE

The unresolved claims have undergone different phases of actual developments over the last four decades, ranging from joint efforts of peaceful dispute management to lethal armed confrontation. The worst episode took place before bilateral normalization in 1991, when two brief armed clashes actually took place. The first was in February 1974 when China invaded the south-western (Crescent) group of the Paracels then held by South Vietnamese forces.<sup>3</sup> Since then, Vietnam has continuously confirmed its undisputable sovereignty of the Paracels and requested China to open negotiation to peacefully resolve the dispute, to which China has persistently turned a deaf ear. The second incident took place in the Spratlys 14 years later. On 14 March 1988, Chinese warships opened fire on three Vietnamese naval ships and a group of mostly unarmed combat engineers who were trying to

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<sup>3</sup> An account of the naval clash can be found in Lo (1989, pp. 53-83).

build new structures on the Johnson South Reef. The clash claimed 64 Vietnamese lives and resulted in the sinking of two Vietnamese ships and serious damage to the third.<sup>4</sup> The clash was also the most violent episode in a campaign that China started in late 1987 to establish for the first time a physical presence in the Spratlys. The timing of both incidents shows that China intentionally exploited Vietnam's weaknesses of internal division in 1974 and international isolation in 1988 to advance its strategic interests in the South China Sea.

Since bilateral normalization in 1991, tensions between the two countries over the South China Sea have been fluctuating and efforts to better manage the disputes have produced mixed results. In October 1992 and February 1993, the two sides conducted two rounds of negotiation that resulted in the 19 October 1993 agreement on fundamental principles governing the solution of border and territorial issues between the two countries. Following the agreement, the two sides started negotiations on the delimitation of the Tonkin Gulf and, separately, on the demarcation of their land border. After seven rounds of negotiation at the governmental level and eighteen rounds of negotiations at joint working group level, plus nearly twenty other non-official meetings over seven years, the agreement on the delimitation of the Tonkin Gulf was signed in Beijing on 25 December 2000 (Thao, 2005, p. 28). Another agreement on fishery cooperation in the Gulf was also signed at the same time after only eight months of negotiation. Both agreements came into force in 2004 and have actually permanently settled one of the disputes between the two countries.

Other disputes, however, remain intractable, and efforts for resolving them have witnessed little progress. The bilateral expert-level meetings on "maritime issues" launched in November 1995 were cancelled in 2006 after eleven rounds, due to the lack of progress.<sup>5</sup> One of the main reasons for this was the two countries' disagreement over the meeting agenda. Vietnam had insisted on the inclusion of the Paracels, which China had consistently refused to do (Thao & Amer, 2007, p. 313). Before the meetings were cancelled, the two sides began another round of negotiations in January 2006 on the delimitation of the sea area beyond the mouth of the Tonkin Gulf (BBC, 2006). They quickly ran into a stalemate again. While Vietnam preferred delimitation of the sea area before the two countries could undertake joint development, China insisted on the opposite.

In August 2009, in an effort to break the stalemate, the two agreed to start negotiating on basic principles guiding the settlement of sea issues. This followed a meeting between Vietnamese Deputy Foreign Minister Ho Xuan Son and his Chinese counterpart Wu Dawei in Ha Noi. Negotiations officially started in early 2010. After seven rounds of negotiation at expert level and a few other rounds at

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*4 Some authors have reported a death toll of 73 on the Vietnamese side. However, the real death toll was most probably 64. Nine Vietnamese soldiers were captured alive and released in 1991. Six Chinese were also killed in the clash.*

*5 The author is grateful to Dr. Nguyen Dang Thang for his kind help in verifying this information.*

deputy foreign minister level, an agreement finally took shape and was signed on 11 October 2011 on the occasion of VCP General Secretary Nguyen Phu Trong's official visit to Beijing.<sup>6</sup> Under the agreement, the bilateral expert-level meetings on "maritime issues" were revived in a new format which consists of two simultaneous series of meetings, one on the delimitation and joint development of the sea area beyond the mouth of the Tonkin Gulf,<sup>7</sup> and the other on bilateral cooperation in "less sensitive" fields in the South China Sea.<sup>8</sup>

This agreement is reminiscent of the 19 October 1993 accord on fundamental principles governing border and territorial issues, which ultimately resulted in the conclusion of two bilateral treaties on land border demarcation and Tonkin Gulf delimitation in 1999 and 2000, respectively. The agreement therefore raised hopes that similar positive results would ultimately be achieved regarding remaining maritime disputes. However, given the much more complex nature of these, especially due to the actual occupation of the two archipelagos, the possibility of a permanent solution is highly unlikely in the near to mid-term future.

While bilateral efforts have witnessed slow progress, multilateral efforts have also not produced anything impressive. The most significant multilateral tool for the two sides to manage their disputes has been the 2002 ASEAN–China Declaration on the Conduct of Parties in the South China Sea (DOC). The DOC, as a non-binding political document, has shown many weaknesses in maintaining stability and reducing tension between claimant parties.<sup>9</sup> The overdue Code of Conduct of Parties in the South China Sea (COC), which is expected to be more legally binding than the DOC, has failed to take shape despite the enormous effort invested by ASEAN states, especially Vietnam and the Philippines. This failure is mainly due to China's reluctance to be constrained by such an instrument. What should also be noted is that even when a COC is eventually established, it is in essence just a tool to manage the disputes, not to settle them. As long as the disputes persist, relations between claimant states in general and between Vietnam and China in particular, will continue to be tense.

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6 The Vietnamese text of the agreement is available in the *Official Gazette of the Socialist Republic of Vietnam*, No. 581+582 (11 November 2011): <[http://congbao.chinhphu.vn/loi-dung-van-ban-so-58\\_2011\\_TB-LPQT-\(2561\)?cbid=2552](http://congbao.chinhphu.vn/loi-dung-van-ban-so-58_2011_TB-LPQT-(2561)?cbid=2552)>.

7 As such, the meetings would replace the negotiation on the same matter that the two countries launched in 2006. The first round of the meetings was held in Ha Noi in May 2012 (Thanh Mai, 2012).

8 The term "less sensitive" is used to refer to the fields that are not necessarily related to the sensitive question of sovereignty and may serve to nurture mutual trust and cooperation between the two parties. The agreement names a number of such fields as marine scientific research and environmental protection, search and rescue at sea, and prevention and mitigation of damages caused by natural disasters.

9 For an analysis of the DOC's flaws, see Thang & Ha (2011).



## A CONSTANT IRRITANT

Since normalization in 1991, the South China Sea disputes have in fact made bilateral relations “warm outside but cold inside”. The most recent notable incidents include the cutting of a Vietnamese seismic survey ship’s cable by Chinese maritime surveillance vessels within Vietnam’s EEZ in May 2011; China’s offering of nine blocks within Vietnam’s EEZ to international bidders in June 2012; and when a Vietnamese trawler was fired upon by a Chinese patrol ship near the Paracels in March 2013. Such incidents have generated incessant tensions between the two countries.

For example, following the cable cutting incident, anti-China demonstrations broke out in Ha Noi on Sunday over 11 consecutive weeks in the summer of 2011. Vietnamese leaders also spoke strongly against China’s aggressive actions. President Nguyen Minh Triet stated that “we are ready to dedicate all to defend our native villages and defend sea and island sovereignty”, and Prime Minister Nguyen Tan Dung, in an address to the National Assembly, also openly denounced China’s use of force to seize the Paracels from South Vietnam in 1974, the first time a Vietnamese high-ranking leader had ever done so (Hiep, 2012, pp. 163-164). Incidents with Vietnam in the South China Sea have also generated hostile responses from China. For instance, commenting on the cable cutting incident, Chinese Major General Peng Guang Qian on 25 June 2011 threatened Vietnam that “China once taught Vietnam a lesson. If Vietnam is not sincere, it will receive a bigger lesson” and “if Vietnam continues to act tough, play with the knife, sooner or later it will get cut” (Faleomavaega, 2011). Similarly, following the artillery incident in March 2013, the *Global Times* ran an op-ed stating that “the Philippines and Vietnam would face more troubles if they choose to seek fierce confrontation with China” (*Global Times*, 2013).

One useful way to see how constant the South China Sea disputes present themselves as an irritant to bilateral relations is to look at statements issued by the spoke-person of Vietnamese Ministry of Foreign Affairs (MOFA). For example, although 2012 was a relatively calm year for the South China Sea, the bilateral disputes still featured prominently in 20 out of 49 press releases and statements of the MOFA spoke-person throughout the year. These statements addressed a multitude of incidents and problems related to the disputes, ranging from protesting China’s unilateral fishing moratorium and seizure of Vietnamese fishing boats, condemning Chinese offer of blocks within Vietnam’s EZZ for international bidding, to denouncing various activities China conducted with regards to the two archipelagos.<sup>10</sup> If the frequency of the South China Sea disputes being featured in the Vietnamese MOFA spoke-person is to be used as a barometer for Vietnam-China

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<sup>10</sup> Press releases and statements by the MOFA’s spoke-person are archived on its website at <[http://www.mofa.gov.vn/vi/tt\\_baochi/pbnfn](http://www.mofa.gov.vn/vi/tt_baochi/pbnfn)>

relations, there will be no doubt that the disputes are being the most important factor shaping the mood for the relations, and that the mood, at least over the last five years, has been going from bad to worse.

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