

## THE SINO-VIETNAMESE APPROACH TO MANAGING BORDER DISPUTES – LESSONS, RELEVANCE AND IMPLICATIONS FOR THE SOUTH CHINA SEA SITUATION<sup>1</sup>

*A/Prof. Ramses Amer*

*Senior Research Fellow, Center for Pacific Asia Studies (CPAS), Department of  
Oriental Languages, Stockholm University, Sweden*

### ABSTRACT

The paper has two main aims. First, to outline and examine the Sino-Vietnamese approach to managing border disputes. Second, to assess the lessons, relevance and implications of the Sino-Vietnamese approach on the South China Sea situation. The paper provides an overview of the Sino-Vietnam approach to managing border disputes in the period since full normalization between China and Vietnam in late 1991. This overview includes both progress made in terms of conflict management and challenges faced in terms of tension. The lessons drawn from the Sino-Vietnamese approach and experience are derived from the overview. This is followed by a discussion relating to

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<sup>1</sup> This paper forms part of the author's on-going research on relations between China and Vietnam. The sections dealing with developments up to mid-2004 are partly derived from early publications primarily Ramses Amer, "Sino-Vietnamese Relations: Past, Present and Future", in *Vietnamese Foreign Policy in Transition*, edited by Carlyle A. Thayer and Ramses Amer (Singapore: Institute for Southeast Asian Studies; and, New York: St Martin's Press, 1999), pp. 74-94 (hereafter Amer, *Sino-Vietnamese Relations*); and, Ramses Amer, "Assessing Sino-Vietnamese Relations through the Management of Contentious Issues", *Contemporary Southeast Asia*, Vol. 26, No. 2 (August 2004), pp. 321-323 (hereafter Amer, *Assessing Sino-Vietnamese*). Information is also derived from two papers from 2008: Ramses Amer, *Vietnam's Relationship With China – Examining Existing and Potential Challenges*, paper prepared for the Panel on: "International relations between Vietnam and the other regional countries", The Third International Conference on Vietnamese Studies (VNS2008), Organised by Vietnam Academy of Social Sciences and Vietnam National University, Hanoi 4-7 December 2008 (hereafter Amer, *Vietnam's Relationship with China*); and, Ramses Amer, *Sino-Vietnamese Relations – Issues of Contention and Approaches to Management*, paper prepared for the International Workshop on "Viet Nam, East Asia, & Beyond", Organised by Southeast Asia Research Center (SEARC), City University of Hong Kong, Hong Kong, China, 11-12 December 2008; and, from a paper from 2009: *The China-Vietnam Relationship – An Update*, paper prepared for the International Workshop on "Refugee Politics and the Chinese / Vietnamese Diaspora - 30 Years after the 'Vietnamese boatpeople' in Hong Kong", Organised by SEARC, City University of Hong Kong, Hong Kong, China, 16-17 October 2009.

both the relevance and the possible implications of the Sino-Vietnamese experience and the lessons drawn from it on the situation in the South China Sea. The paper is concluded by a summary of the main findings and some concluding remarks.

## **PURPOSE**

The paper has two main aims. First, to outline and examine the Sino-Vietnamese approach to managing border disputes. Second, to assess the lessons, relevance and implications of the Sino-Vietnamese approach on the South China Sea situation. The paper provides an overview of the Sino-Vietnam approach to managing border disputes in the period since full normalization between China and Vietnam in late 1991. This overview includes both progress made in terms of conflict management and challenges faced in terms of tension. The lessons drawn from the Sino-Vietnamese approach and experience are derived from the overview. This is followed by a discussion relating to both the relevance and the possible implications of the Sino-Vietnamese experience and the lessons drawn from it on the situation in the South China Sea. The paper is concluded by a summary of the main findings and some concluding remarks.

## **THE SINO-VIETNAMESE APPROACH TO MANAGING BORDER DISPUTES**

### **Border and territorial disputes**

During the process leading up to the full normalisation of relations border and territorial disputes were not resolved. If a resolution of the territorial disputes had been a precondition for full normalisation of bilateral relations then the later would not have been possible back in 1991. Thus, to put the territorial disputes aside and aim for a resolution in the longer-term perspective made full normalisation a reality in early November 1991.<sup>2</sup> Thus, after full normalisation of relations in early November 1991 China and Vietnam had to deal with the following border and territorial disputes: overlapping sovereignty claims to the Parcel and Spratly archipelagos; overlapping claims to water and continental shelf areas in the South China Sea and in the Gulf of Tonkin; and disputes relating to some areas along the land border.

### **An overview of developments since full normalisation of relations in late 1991**

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<sup>2</sup> For details on the territorial disputes during the normalisation process see Amer, *The Sino-Vietnamese Approach*, pp. 7-8.

Sharp differences relating to all the territorial disputes were prevalent from May to November 1992. Differences relating to oil exploration in the South China Sea and the signing of contracts with foreign companies for exploration were prevalent during the periods April-June 1994, April-May 1996, and March-April 1997. In 1998 there was no extended period of tension relating to the border disputes but shorter periods can be noted such as in January along the land border and in the South China Sea in April, May, July, and September. In 1999 focus was on reaching a settlement of the land border dispute and this resulted in the signing of a Land Border Treaty on 30 December 1999. In 2000 focus was on settling to Gulf of Tonkin disputes and this resulted in the signing of the Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin on 25 December 2000. During both these years there was no noticeable tension relating the disputes in the South China Sea.<sup>3</sup> Developments in the 2000s displays that this pattern of interaction relating to the disputes in the South China Sea has continued to prevail with continued dialogue and only limited period of tension caused by the disputes in the area. In addition the Land Border Treaty was ratified in 2000 while the Tonkin Gulf agreement was ratified in 2004.<sup>4</sup> The demarcation process of the land border was completed at the end of 2008.<sup>5</sup>

### ***Management through negotiations***

In order to manage their territorial disputes China and Vietnam have initiated a system of talks and discussions which was both highly structured and extensive and from bottom to top it looked as follows: Expert-level talks; Government-level talks, i.e. Deputy/Vice-Minister; Foreign Minister-level talks, and, High-level talks, i.e. Presidents,

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<sup>3</sup> For a more detailed analysis of the events relating to the territorial disputes in Sino-Vietnamese relations from late 1991 to the end of 2000 see Amer, *The Sino-Vietnamese Approach*, pp. 8-35 and 49-58. Unless otherwise stated information is derived from Ibid., pp. 8-58.

<sup>4</sup> Information derived from Ramses Amer and Nguyen Hong Thao, "Vietnam's Border Disputes: Legal and Conflict Management Dimensions", in *The Asian Yearbook of International Law*, Vol. 12 (2005-2006), General Editors, B.S. Chimni, Miyoshi Masahiro and Thio Li-ann (Leiden and Boston: Martinus Nijhoff Publishers, 2007), pp. 117-121 (hereafter Amer and Nguyen, *Vietnam's Border Disputes*).

<sup>5</sup> "Joint Statement: On the completion of the demarcation and markers placement on the entire land border line between Vietnam and China" ([http://www.mofa.gov.vn/en/cn\\_vakv/ca\\_tbd/nr040818094447/ns090106100042](http://www.mofa.gov.vn/en/cn_vakv/ca_tbd/nr040818094447/ns090106100042)) (accessed 8 January 2009). See also "China-Vietnam, Land Boundary Survey Work Completed 2008/12/31". From the website of the *Ministry of Foreign Affairs, People's Republic of China* (<http://www.fmprc.gov.cn/eng/zxxx/t530192.htm>) (accessed on 8 January 2009); and, "Vietnam and China fulfil land border demarcation". From the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/life/010109/life\\_biengioi.htm](http://www.nhandan.com.vn/english/news/life/010109/life_biengioi.htm)) (accessed on 8 January 2009).

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Prime Ministers, and Secretary-Generals of the Chinese Communist Party (CCP) and the Communist Party of Vietnam (CPV).<sup>6</sup>

The talks at the expert- and government-levels deserve further attention in order to ascertain the progress made up to the end of 2000. Talks at the expert-level were initiated in October 1992; up to late 1995 the talks focused mainly on the land border and the Gulf of Tonkin issues. The talks at the government-level began in August 1993 and the thirteenth round of talks was held in January 2007.<sup>7</sup> The first achievement was the signing of an agreement on 19 October 1993 on the principles for handling the land border and Gulf of Tonkin disputes. It was further agreed to set up joint working groups at the expert-level to deal with the two issues. The joint working group on the land border held sixteen rounds of talks from February 1994 to the signing of the Land Border Treaty in December 1999. The joint working group on the Gulf of Tonkin met seventeen times from March 1994 to the signing of the Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin in December

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<sup>6</sup> See Amer, *The Sino-Vietnamese Approach*, pp. 9-141 and 50-58; Amer, *Assessing Sino-Vietnamese*, pp. 329-331; Amer and Nguyen, *Vietnam's Border Disputes*, pp. 118-122; Ramses Amer and Nguyen Hong Thao, "The Management of Vietnam's Border Disputes: What Impact on Its Sovereignty and Regional Integration?", *Contemporary Southeast Asia*, Vol. 27, No. 3 (December 2005), pp. 433-434; and, Ramses Amer and Nguyen Hong Thao, "Vietnam's Border Disputes - Assessing the Impact on Its Regional Integration", in *Vietnam's New Order: International Perspectives on the State and Reform in Vietnam*, Edited By Stéphanie Balme and Mark Sidel (Houndmills, Basingstoke, Hampshire and New York: Palgrave Macmillan, 2007), pp. 74-76.

<sup>7</sup> On 12-14 August 2009 Government-level talks were held in Hanoi. Reports do not indicate which round this corresponds to. 'Vietnam, China hold government-level border talks' (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns090814100851>) (accessed on 25 August 2009); and, "Heads of Chinese Vietnamese Government Delegations on Border Negotiation Hold Consultation on Maritime Issues". From the website of the *Ministry of Foreign Affairs of the People's Republic of China* (<http://www.fmprc.gov.cn/eng/wjbj/zjzg/yzs/gjlb//2792/2794/t578647.htm>) (accessed on 25 August 2009)). Previously, the thirteenth round of government-level talks we held in Beijing on 19-20 January 2007 ("Vietnam and China issue joint press communiqué". From the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/190507/domestic\\_pr.htm](http://www.nhandan.com.vn/english/news/190507/domestic_pr.htm)) (accessed on 26 September 2007), and, "Viet Nam, China hold government-level border negotiations". From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns070122102447>) (accessed on 3 June 2008)). At a meeting in Hanoi on 27-29 November 2007 between the Vietnam and Chinese delegations to the 'Sino-Vietnamese Government Border and Territory Negotiation' it was agreed that the fourteenth round of talks at the government-level would be held in 2008 ("Viet Nam, China: early completion of border demarcation". From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns071130094901>) (accessed on 26 May 2008)).

2000. Talks at the expert-level on the disputes in the South China Sea proper, the so-called “sea issues”, were initiated in November 1995 and the eleventh round of talks was held in July 2006.<sup>8</sup>

The negotiation process resulting in the signing of a treaty relating to the land border on 30 December 1999 reflected the substantially higher degree of progress made in negotiations on the land border as compared with talks on other border disputes up to the end of 1999. In 2000 the negotiations on the Gulf of Tonkin issue was stepped up with a view of reaching an agreement within that year. This goal was reached on 25 December 2000. Thus, the deadline for resolving the land border and the Gulf of Tonkin issues, were met in 1999 and 2000, respectively.

Less progress has been achieved with regard to the disputes in the South China Sea proper, i.e. the competing sovereignty claims to the Paracel and Spratly archipelagos as well as the overlapping claims to waters and continental shelf areas to the East of the Vietnamese coast. Talks have been initiated but the parties have yet to agree on which disputes to include on the agenda, with Vietnam pushing for the inclusion of the Paracels as an issue alongside that of the Spratlys, whereas China only wants to discuss the latter issue. To further complicate matters, China seems to view the disputes over water and continental shelf areas as part of the Spratly conflict or at least as overlapping with areas within the so-called “nine-dotted lines” claim as displayed on China’s official maps, whereas Vietnam views them as separated from the conflict over the Spratlys. It seems as though Vietnam does not want to initiate talks relating to the areas of overlapping claims in the South China Sea proper as it would be interpreted as giving legitimacy to China’s claims to those areas, in other words Vietnam rejects the claims made by China’s through its “nine dotted lines”.<sup>9</sup> Thus, of the three South China Sea issues to be addressed by the two countries there is only agreement on putting one on the agenda for talks, namely the

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<sup>8</sup> The eleventh round of talks on “sea issues” was held in 10-12 July 2006 (“Vietnam and China show goodwill on sea issues”. From the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/130706/domestic\\_vn.htm](http://www.nhandan.com.vn/english/news/130706/domestic_vn.htm)) (accessed on 8 August 2008)). At a meeting in Hanoi on 27-29 November 2007 between the Vietnam and Chinese delegations to the “Sino-Vietnamese Government Border and Territory Negotiation” it was agreed that the twelfth round of talks on the ‘Sea Issues’ would be held in 2008 (“Viet Nam, China: early completion of border demarcation”. From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns071130094901>) (accessed on 26 May 2008)).

<sup>9</sup> Author’s discussions with Vietnamese officials in Hanoi in September and November 1997, in December 1998, and in May 1999.

Spratly archipelago, which is a multilateral conflict situation involving other claimants as well.

### ***The Land Border***

The Land Border Treaty was the first major achievement in the overall process of managing and eventually resolving the border disputes between China and Vietnam. The negotiation process with regular rounds of talks of the joint working group on the land border did not differ much in frequency up to 1998. During 1999 the joint working group on the land border met on four occasions, i.e. four round of talks, and the duration of each round was no shorter than two weeks on any of these occasions. This increase in the number and in the duration of the round of talks can be attributed to the political pressure to reach a common understanding and to provide the political leaders with the basis on which to sign a treaty on the land border issue.

Reaching an agreement was by no means a simple task given the geographical characteristics of the border areas which encompasses both mountainous terrain which are not easily accessible and other parts are made up of rivers which present their own sets of issues to be settled. Adding to the natural difficulties are the movements of border marks over the decades and activities carried the population and local authorities in the border area that have impinged on the borderline. This was clearly displayed by incidents and the tension they caused in late 1997 and early 1998.<sup>10</sup> Also the military clashes along the border during the second half of the 1970s – in particular in connection with the Chinese attack on Vietnam in February and March 1979 – had left some areas in dispute along the border. Among the more notable such areas were some 300 meters between the provinces of Guangxi and Lang Son, which prevented the re-opening of the railway between the two countries during the first half of the 1990s, eventually an agreement was reached to do so in February 1996.<sup>11</sup> The area had been under Chinese control since early

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<sup>10</sup> Information about serious tension relating to an area along the land border suddenly surfaced in an interview by *Vietnam News Agency* with Ngo Dinh Tho, Deputy-Chairman of the People's Committee of Quang Ninh Province, aired in a broadcast by *Voice of Vietnam* on 22 January 1998. According to the Vietnamese official, in May 1997 China built a one kilometre long stonewall in a river which is shared by Dong Mo in the district of Binh Lieu in Quang Ninh Province on the Vietnamese side, and the district of Fangcheng in Guangxi Province on the Chinese side. (*BBC/FE/3133 B/8-9* (24 January 1998)). The Chinese response came on 24 January when a spokesman for the Ministry of Foreign Affairs stated that the "truth of the matter" was that since August 1997, the Vietnamese had been building an embankment and increased the height and consolidated a check dam in the area and by so doing artificially changed the alignment of the boundary river (*Ibid.*, 3134 G/1 (26 January 1998) report carried by *Xinhua News Agency*).

<sup>11</sup> The agreement on opening the railway links between the two countries related to two links linking Dong Dang and Lao Cai on the Vietnamese side with Pingxing and Shanyao respectively on the Chinese side,

1979 and Vietnam had accused China of occupying it, including Vietnam's pre 1979 end-station.

The Land Border Treaty was ratified in 2000. First, the Standing Committee of the National People's Congress in China ratified the Treaty on 29 April and then Vietnam did likewise on 9 June through a decision by the National Assembly. This was followed by the exchange of letters of ratification in Beijing and the Treaty took effect on July 6.<sup>12</sup>

As the Treaty did not encompass any demarcation such a process had to be carried out. Consequently, the two countries established a Joint Committee for the demarcation of the land border. It held its first meeting in Beijing between 19 November and 1 December 2000. The Joint Committee would work with the demarcation of the border and with the plating of "landmarks".<sup>13</sup> The demarcation process was initiated and the first "double markers" along the border were "planted" on 27 December 2001 and the first "single marker" was "planted" on 4 January 2003.<sup>14</sup> The demarcation process was officially concluded at the end of 2008.<sup>15</sup>

Of considerable interest in the context of the Land Border Treaty is that in August 2002 Vietnam published the text of the Treaty although it did not include any maps.<sup>16</sup> In September 2002 one of Vietnam's Vice-Foreign Ministers Le Cong Phung provided information about the Treaty. He outlined the background to the negotiation process, the process itself, and the mechanisms and principles used in settling disputed areas along the border. The core disputed areas – referred to as "Areas C" – encompassed 164 areas covering 227 km<sup>2</sup>. Of these areas some 113 km<sup>2</sup> were defined as belonging to Vietnam

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thus connecting the provinces of Lang Son and Guangxi, and the provinces of Lao Cai and Yunnan, respectively (*BBC/FE* 2477 B/3; 2494 B/5 (23 December 1995); and, 2524 B/1 (1 February 1996)).

<sup>12</sup> For details see Amer, *The Sino-Vietnamese Approach*, pp. 27-35.

<sup>13</sup> *BBC/FE/4016 G/3* (6 December 2000). Report carried by the website of the *Voice of Vietnam* (in Vietnamese). See also "Viet Nam and China meet on borderline demarcation" (1 December 2000). From the website of *Vietnam News Agency (VNA)* (<http://www.anagency.com.vn/Asp/Readnews4.asp?FileN=>) (accessed on 2 December 2000).

<sup>14</sup> "First single marker planted on Vietnam-Chinese border line" (4 January 2003). From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn:8080/Web%20server/ForeignPolicy.nsf/f6f55a44edc7e3b4c7>) (accessed on 4 April 2003).

<sup>15</sup> See note 4.

<sup>16</sup> The full text of the Land Border Treaty without maps has been published as "The Land Border Agreement between the Socialist Republic of Vietnam and the People's Republic of China", in *Công Báo / Official Gazette of the Socialist Republic of Vietnam*, No. 41 (25 August 2002), pp. 3- 16. According to the text of the Treaty reproduced in the *Official Gazette* it was signed on 12 December 1999.

and around 114 km<sup>2</sup> as belonging to China. He stated that the outcome of the negotiations “conformed” with principles agreed upon thus “ensuring fairness and satisfaction for both side”.<sup>17</sup>

### *The Gulf of Tonkin*<sup>18</sup>

The negotiation process on the Gulf of Tonkin with regular rounds of talks of the joint working group did not differ much in frequency on a yearly basis up to 1999. The developments during 2000 displayed that an increase occurred with five rounds of expert-level talks held during that year, in March, May, June, September, October-November, and late November, respectively, as compared to only one round of talks during the whole of 1999. The Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin signed on 25 December 2000<sup>19</sup> differs from the Land Border Treaty in that it does stipulate the coordinates for the tracing of the maritime boundary between the two countries in the Gulf of Tonkin while the later only sets the stage for a demarcation process that had to be carried out.

The crucial issue was how to reach an agreement on a mutually acceptable framework or model for dividing the Gulf. As displayed by the outcome of the negotiations, once such an agreement was reached the tracing of the maritime boundary would not be problematic as it connects the specific coordinates agreed upon.

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<sup>17</sup> The Vice-Minister also gave a detailed response to the accusations by overseas Vietnamese that the Vietnam had given up large areas of land to China as part of the Land Border Treaty. He refuted the accusations as “untrue and groundless”. The full interview with Vice-Foreign Minister Le Cong Phung is published as “Vice-Foreign Minister on Vietnam-China Land Border Treaty”, *Vietnam Law & Legal Forum*, Vol. 9, No. 97 (September 2002), pp. 21-23. Vietnamese officials also refuted such accusations in discussions with author in Hanoi in July-August and in November 2002.

<sup>18</sup> On the management of the Gulf of Tonkin dispute and related developments in the context of Vietnam’s other maritime disputes see Nguyen Hong Thao and Ramses Amer, “The Management of Vietnam’s Maritime Boundary Disputes”, *Ocean Development and International Law*, Vol. 38, No. 3 (July 2007), pp. 305-324.

<sup>19</sup> For detailed analyses see Nguyen Hong Thao, “The Gulf of Tonkin: A case Study of Dispute Settlement”, in *Management and Resolution of Inter-State Conflicts in Southeast Asia*, Edited by Kamarulzaman Askandar (Penang: Southeast Asian Conflict Studies Network, 2003), pp. 207-214 (hereafter Nguyen, *The Gulf of Tonkin*); and, Nguyen Hong Thao, “Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf”, *Ocean Development and International Law*, Vol. 34, Issue 1 (January-March 2005), pp 25-44 (hereafter Nguyen, *Maritime Delimitation*). See also Zou Keyuan, “The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin”, *Ocean Development and International Law*, Vol. 34, Issue 1 (January-March 2005), pp. 13-24.

The core issue to be settled in the Gulf of Tonkin was which principle should be used in order to divide the Gulf. In this context the impact of islands was of crucial importance and in particular the Vietnamese controlled Bach Long Vi Island. The first question was whether or not it qualifies as an island according to the provisions of the 1982 United Nations Law of the Sea Convention (UNCLOS). If it did, as argued by Vietnam, then it was entitled to full maritime zones and more importantly would it impact on the tracing of a line of equidistance if this principle was applied in the Gulf of Tonkin.

Logically Vietnam would take the position that Bach Long Vi Island should have its full impact in any agreement on how to divide the Gulf. On the other hand China had an interest in minimising the impact that the Island would have on any agreed delimitation. This could be done by either arguing that Bach Long Vi is not an island in accordance with the provisions of UNCLOS or by arguing that its impact should be minimised and possibly even be disregarded.<sup>20</sup> For China to argue that it was not an island would have been counterproductive as China had earlier controlled the island and has claimed that the island was inhabited before it was handed-over to Vietnam in the late 1950s.<sup>21</sup>

An assessment of the agreed coordinates indicates that the impact of Bach Long Vi was not “valued” fully in the delimitation. However, Bach Long Vi was given a quarter of impact, i.e. 15 nautical miles from the island.<sup>22</sup>

Another potentially complicating factor in the negotiations was the status of the Sino-French Agreement of 1887. Vietnam would probably have favoured using it to delimit the Gulf of Tonkin since it would generally be to its advantage. China would have opposed using it and argue that the 1887 Agreement was only intended to determine the administrative control over the islands in the Gulf and did not apply to the water and the seabed in the Gulf.<sup>23</sup> The agreement reached indicates that if the status of the Sino-French Agreement of 1887 was brought up during the negotiations, both sides eventually agreed

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<sup>20</sup> The legal terminology used in this context is derived from Zou Keyuan, “Maritime Boundary Delimitation in the Gulf of Tonkin”, *Ocean Development and International Law*, Vol. 30, Issue 3 (1999), p. 246. Information pertaining to possible impact of Bach Long Vi Island on boundary delimitation is also derived from *Ibid.*, pp. 245-247.

<sup>21</sup> Information derived from *Ibid.*, pp. 245-246 and 253.

<sup>22</sup> Nguyen, *The Gulf of Tonkin*, pp. 210-213.

<sup>23</sup> For an argument along similar lines with a parallel being drawn to the “Breviée Line” drawn in 1939 in the Gulf of Thailand see Zou, *op. cit.*, pp. 238-240.

that it would not have an impact on the delimitation of maritime zones in the Gulf of Tonkin.

The increased number of rounds of expert-level talks and indeed of government level talks in 2000 is evidence of the complexities involved in reaching a mutually acceptable compromise in order to sign the delimitation agreement by the end of 2000. The political pressure to reach an agreement before the end of the year did generate increased activity to reach this goal. The agreed co-ordinates indicate that the two sides ended up with an agreement on a line of equidistance, albeit modified, having sorted out their differences relating to the question of how islands should impact on the delimitation, in particular Bach Long Vi Island.<sup>24</sup>

Although the issue of fishing in the Gulf of Tonkin is not directly linked to the question of border disputes it is still relevant. It is therefore interesting to note that the two countries held six rounds of talks between April and December 2000 on the issue of fishing. The Agreement on Fishing Cooperation in the Gulf of Tonkin signed on 25 December 2000 included regulations for the establishment of joint fishing areas, cooperation in preserving and “sustainably” exploiting the aquatic resources in the Gulf and regulations for fishing cooperation and scientific research.<sup>25</sup>

In order for the two agreements – signed on 25 December 2000 – to enter into force it was necessary to complete talks on a Supplementary protocol to the agreement on fishery co-operation. At the tenth round of Government-level talks held in Hanoi in January 2004 it was reported that the two sides had “appreciated” the progress made in the settlement of technical issues relating to fishery. Furthermore, the two sides “showed their determination to complete the subsequent work in order to put the Agreement on Delineation and the Agreement on Fishery Co-operation in the Tonkin Gulf into reality in

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<sup>24</sup> For an argument relating to the fairness of the outcome see Nguyen, *The Gulf of Tonkin*, p. 210.

<sup>25</sup> Information derived from: “Bac Bo Gulf Demarcation Agreement Satisfies both Viet Nam and China, Says Foreign Ministry Spokeswoman” (4 January 2001). From the website of *Vietnam News Agency (VNA)* (<http://www.anagency.com.vn/Asp/Readnews4.asp?FileN=frac0401.012>) (accessed on 5 January 2001); and, “L'accord de délimitation du Golfe du Bac Bo est une solutions equitable et satisfaisante” [The Agreement on the Delimitation of the Gulf of Tonkin is an Equitable and Satisfactory Solution] (4 janvier 2001). From the website of *Agence vietnamienne de l'information (AVI)* (<http://www.anagency.com.vn/Asp/Readnews4.asp?FileN=frac0401.011>) (accessed on 5 January 2001). See also “Bac Bo Gulf demarcation agreement satisfies both Vietnam and China: FM spokeswoman”, *News Bulletin*, No. 409 (5 January 2001) (English language bulletin). From the website of *Nhan Dan* (<http://www.nhandan.org.vn/english/20010105/bai-news1.html>) (accessed on 30 January 2001). On the fishery agreement see also Zou Keyuan, “Sino-Vietnamese Fishery Agreement for the Gulf of Tonkin”, *The International Journal of Marine and Coastal Law*, Vol. 17, No. 1 (January 2002), pp. 127-148.

the first half of 2004.”<sup>26</sup> The progress in the talks on the Supplementary protocol on fishing was publicly displayed in reports from the ninth round of talks at vice-ministerial level on the issue held in Hanoi on 21-24 February 2004.<sup>27</sup> The agreement on the additional protocol was eventually signed in Beijing on 29 April.<sup>28</sup> This paved the way for the ratification of the Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin. It was ratified by the National Assembly of Vietnam on 15 June 2004<sup>29</sup> and ratified by the 10th Standing Committee of the National People’s Congress of China at its tenth meeting held from 21 to 25 June 2004.<sup>30</sup> Both the boundary agreement and the fishery agreement entered into force on 30 June 2004.<sup>31</sup>

The completion of the ratification process has been followed by the initiation of expert-level talks on the delimitation of the area out of the entrance of the Gulf of Tonkin – also referred to as the mouth of the Gulf of Tonkin. The first meeting of the expert-level

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<sup>26</sup> The tenth round of government-level talks were held in Hanoi on 9 January 2004 (“Vietnam, China hold border talks and political exchanges”, *News Bulletin*, No. 1500-1501 (10-11 January 2004) (English language bulletin). From the website of *Nhan Dan* (<http://www.mofa.gov.vn/en/nr04087104143/nr040807105001/ns050627151155>) (accessed on 24 July 2005).

<sup>27</sup> “Vietnam, China continue fishing co-operation talks”, *News Bulletin*, No. 1546 (25 February 2004) (Section on Economy) (English language bulletin). From the website of *Nhan Dan* (<http://www.nhandan.org.vn/english/20040225/economy.html>) (accessed on 15 September 2004).

<sup>28</sup> “Protocol on China-Vietnam agreement on fishery cooperation in Beibu Bay signed”. From *People’s Daily Online* (English version) ([http://english.people.com.cn/200404/30/eng20040430\\_142001.html](http://english.people.com.cn/200404/30/eng20040430_142001.html)) (accessed on 4 October 2004); and, “Viet Nam, China ink deal on fisheries in Tokin Gulf” (1 May 2004). From the website of *Vietnam News Agency* (<http://vietnamnews.vnagency.com.vn/2004-04/30/Stories/07.htm>) (accessed on 1 May 2004).

<sup>29</sup> “NA endorses landmark Tonkin Gulf agreement”, (17 June 2004). From the website of *Vietnam News Agency* (<http://vietnamnews.vnagency.com.vn/2004-06/16/Stories/05.htm>) (accessed on 3 October 2004).

<sup>30</sup> “China’s legislature approves Beibu Gulf demarcation agreement between China, Vietnam”. From *People’s Daily Online* (English version) ([http://english.people.com.cn/200406/26/eng20040626\\_147587.html](http://english.people.com.cn/200406/26/eng20040626_147587.html)) (accessed on 4 October 2004).

<sup>31</sup> “Vietnam, China exchange documents ratifying Tonkin Gulf demarcation agreement”. From the website of *Nhan Dan* ([http://www.nhandan.org.vn/english/news/010704/domestic\\_vietnamchina.htm](http://www.nhandan.org.vn/english/news/010704/domestic_vietnamchina.htm)) (accessed on 19 July 2004); and, “Two China-Vietnam Beibu Gulf agreements take effect”. From the website of the *People’s Daily Online* (English version) ([http://english.people.com.cn/200407/01/eng20040701\\_148157.html](http://english.people.com.cn/200407/01/eng20040701_148157.html)) (accessed on 3 October 2004). See also “VN – China gulf pact to enhance relations”, *Vietnam Law & Legal Forum*, Vol. 10, No. 118 (June 2004), pp. 8-10. For an analysis of the implications of the entry into force of the two agreements see Nguyen, Nguyen, *Maritime Delimitation*, pp. 25-44.

working group was held in January 2006 in Hanoi and the fifth meeting was held in Hanoi in January 2009.<sup>32</sup>

Despite these positive developments there have been a few incidents in the Gulf of Tonkin that have caused tension. The first was a shooting incident that led to the death of at least eight Vietnamese in the Gulf of Tonkin in January 2005. This highlighted the need to enhance the collaboration between the countries in managing the situation in the Common Fishery Zone.<sup>33</sup> This process is well underway as indicated in the Joint

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<sup>32</sup> On the initiation of talks see “Vietnam and China hold talks on sea delineation”, From the website of *Nhan Dan* ([http://www.nhandan.com.vn/engligs/news/200106/domestic\\_vnandchin.htm](http://www.nhandan.com.vn/engligs/news/200106/domestic_vnandchin.htm)) (accessed on 23 January 2006); and, “Viet Nam, China meet for talks on shared sea border” From the website of *Vietnam News Agency* (<http://vietnamnews.vnagency.com.vn/showarticle.php?num=01POL200106>) (accessed on 22 January 2006). On the most recent round of talks see “Vietnam, China discuss water demarcation off Tonkin Gulf”. From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns090108101946>) (accessed on 8 January 2009).

<sup>33</sup> In January 2005 Vietnam’s Ministry of Foreign Affairs issued official statements in reaction to the shooting and killing of Vietnamese fishermen in the Gulf of Tonkin. The first statement was made 13 January and stated that Chinese vessels had shot dead nine Vietnamese fishermen, injured “many” others and damaged their equipment. Furthermore, Vietnam had requested China to take “active measures” to prevent and put an end to such activities as well as the carry out and investigation and “severely punish the killers” (“Concerning the fact that the Chinese vessels shot to dead Vietnamese Fishermen. Answer to Correspondent by Mr. Le Dzong, the Spokesman of the Vietnamese Ministry of Foreign Affairs on 13<sup>th</sup> January 2005”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns050120164827](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns050120164827)) (accessed on 22 March 2005). In another statement by Le Dzong on January 20 he specified that the incident had occurred on January 8 and apart from the nine deaths and the injured, China had captured “a number” of Vietnamese fishermen. He reiterated the earlier Vietnamese demands. He also demanded that the Vietnamese who were being held be allowed to return to Vietnam, that Vietnamese officials be allowed to visit the injured and detained fishermen, and, that a meeting be held the Sino-Vietnamese Joint Fishery Committee to discussion measures to stabilise the situation (“Chinese coastly guards’ killing of innocent Vietnamese fishermen violates international law”, (20 January 2005). From the website of *Nhan Dan* (<http://www.nhandan.com.vn/engligs/news/200105/china.htm>) (accessed on 11 March 2005)). China had a diametrically different view on the course of events. On 18 January, in response to a question relating to the events of 8 January the Spokesman of China’s Ministry for Foreign Affairs Mr. Kong Quan stated that several Chinese fishing boats had been had been “robbed and shot at by three unidentified armed ships”. This occurred on the Chinese side in the Gulf of Tonkin. When China dispatched “police ships” they were shot at and this compelled the Chinese maritime police to “take necessary actions”, which resulted in the death of “several armed robbers”, one “pirating” ship and eight “robbers” where captured and their weapons confiscated. During interrogations the captured “robbers” had disclosed that they were Vietnamese and confessed to have carried the robberies. Finally, he stated that China was ready to collaborate with Vietnam in order to both take “concretely effective measures” and strengthen co-operation in “combating the maritime crimes” in order to jointly safeguard security and stability in the Gulf of Tonkin. (“Foreign Ministry Spokesman Kong Quan’s Comment on the Case of Armed Robbery in the Beibu Gulf”, (18 January 2005). From the website of the *Ministry of Foreign Affairs*

Communiqué issued in connection with President Tran Duc Luong's visit to China in July 2005. In the Communiqué it was stated that the two countries would "exert joint efforts to ensure marine security and order in fishery development" in the Gulf. Furthermore they agreed to "conduct joint patrol between the two countries' naval forces".<sup>34</sup> This commitment was realised on 28 April 2006 by the first joint patrol exercised by the Chinese and Vietnamese navies.<sup>35</sup> A second incident occurred in early January 2008, but it was of a less serious nature than the one in 2005.<sup>36</sup>

### The South China Sea

If attention is turned to the situation in the South China Sea proper it can be noted that talks were initiated at a later stage than in relation to the land border and Gulf of Tonkin issues, respectively. It can also be noted that much still remains to be achieved before the disputes in the South China Sea can be resolved. In view of the reoccurring periods of tension relating to actions carried out in the South China Sea during the 1990s, the two parties needed to strive for the establishment of mechanisms and principles regulating their behaviour in the South China Sea that would prevent the re-occurrence of periods of tension.

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of the People's Republic of China (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t180157.htm>) (accessed on 22 March 2005)).

<sup>34</sup> "Vietnam and China issue joint statement". From the website of *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns050726144049>) (accessed on 26 July 2005).

<sup>35</sup> "Vietnam, China make first joint navy patrol". From the website of the *Communist Party of Vietnam* ([http://www.cpv.org.vn/details\\_e.asp?topic=68&subtopic=167&leader\\_topic=282&id=BT3040634973](http://www.cpv.org.vn/details_e.asp?topic=68&subtopic=167&leader_topic=282&id=BT3040634973)) (accessed on 4 August 2006)). See also "Vietnam, China make first joint navy patrol". Article carried in the *Shanghai Daily* on 29 April 2006 and reproduced on the website of the *China Internet Information Center* (<http://www.china.org.cn/english/2006/Apr/167254.htm>) (accessed on 4 August 2006).

<sup>36</sup> China's Foreign Ministry announced on 7 January that Chinese fishing boats had been "robbed by Vietnamese armed ships" in the common fishing waters in the Gulf of Tonkin. ("Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on January 17, 2008" (17 January 2008). From the website of the *Ministry of Foreign Affairs of the People's Republic of China* (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t401163.htm>) (accessed on 4 June 2008)). In Vietnam's response it was highlighted that "there were no Vietnamese armed ship attacking Chinese fishing vessels". According to Vietnam it had only been a "clash" between four Chinese and three Vietnamese fishing vessels caused by the fact that their "fishing net sets got intertwined" and after they had "successfully separated their sets, all the vessels resumed their normal fishing activities." It is also notable it was stated that: "Vietnam consistently pursues the policy of cooperating with China in handling all arising matters to maintain peace and stability in the Tonkin Gulf" ("Vietnam advocates cooperating with China to maintain peace and stability in the Tonkin Gulf. Ministry of Foreign Affairs' Spokesman – Mr. Le Dzung Answers Question on 17 January 2008". From the website of *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns080118114339](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns080118114339)) (accessed on 26 May 2008)).

The initiation of expert-level talks in 1995 was the first obvious move towards an institutionalised form of conflict management of their disputes in the South China Sea. The noticeable shift in how to deal with actions taken by the other party in the South China Sea came in relation to a dispute in May 1998 relating to the activities of a Chinese exploration ship in areas of the South China Sea claimed by Vietnam. This issue was settled without leading to the deep tension that characterised an incident which was also caused by the activities of a Chinese exploration ships in March-April 1997.<sup>37</sup> As the public statements were fewer in connection with the May 1998 incident it is difficult to fully assess how the more successful management of the incident was brought about. Obviously less public rhetoric and more restraint by the two parties were a contributing factor. Judging from the Vietnamese official explanation, its approach by “diplomatic negotiations” and patience in dealing with China did bear fruit in connection with the May 1998 incident.<sup>38</sup>

An additional observation that can be drawn from the developments in 1998 is that both China and Vietnam were more reluctant to engage in longer periods of accusations and counter-accusations in connection with incidents in the South China Sea that caused tension in bilateral relations. However, this did not imply that either side refrained from publicising their discontent or from protesting against actions carried out by the other party. The difference in 1998 as compared to earlier years was that the

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<sup>37</sup> On 15 March 1997 the *Voice of Vietnam* announced that China had sent “Kanta Oil Platform No 3” together with two “pilot ships Nos 206 and 208” to carry out exploratory oil drilling in areas lying within Vietnam’s continental shelf (*BBC/FE* 2870 B/4 (18 March 1997); and, 2871 B/4 (19 March 1997)). The first official Chinese reaction came on March 18 when a Spokesman of the Ministry of Foreign Affairs said that China’s “normal operation” within its EEZ and continental shelf was “indisputable” (*Ibid.* 2872 G/1 (20 March 1997)). The bilateral dispute continued throughout March. Then, according to information carried by the Voice of Vietnam on 9 April, quoting a Vietnamese expert, the Chinese “rig” and its “tugboats” had been withdrawn from Vietnam’s EEZ and continental shelf since 1 April (*Ibid.*, 2889 B/3 (10 April 1997)).

<sup>38</sup> On 20 May 1998 a spokesperson from the Vietnamese Ministry of Foreign Affairs stated that the Chinese ship “Discovery 08” was operating in the Spratly archipelago and even “deeply” into Vietnam’s continental shelf and that this was a violation of Vietnam’s territorial sovereignty (*Ibid.*, 3233 B/11 (22 May 1998)). The Chinese response came on May 21 when a spokesman for the Ministry of Foreign Affairs stated that China had “indisputable” sovereignty over the Spratly islands and their surrounding waters and that the presence of Chinese ships in these waters “for normal” activities was within China’s sovereign rights (*Ibid.*, 3235 G/1 (25 May 1998)). On May 22 the spokesperson for Vietnam’s Foreign Ministry said that the ship and two armed fishing vessels had withdrawn from Vietnam’s “sea area”. The Vietnamese approach to the problem was said to have been in line with the “persistent” policy of settling disputes through diplomatic negotiations. In this spirit Vietnam had “patiently” maintained contact with China on the operation of the Chinese ships in Vietnam’s “sea territory” (*Ibid.*, 3236 B/12 (26 May 1998)).

official complaint or accusation was stated on a limited number of occasions and then no further public statement on the incident in question was made. This prevented an escalation in accusations and counter-accusations from taking place and thus tension did not appear to have been as deep as for example in connection with the 1997 incident.

The developments in 1999 were further indications of the progress made in the management of the disputes between China and Vietnam in the South China Sea. The assessment that progress was made is based on the level of tension in the area in 1999, i.e. public protests or criticism of the actions taken by the other country. The only public protest was made by Vietnam in late March in response to a Chinese decision to temporarily ban fishing in the South China Sea.<sup>39</sup> This state of affairs could be explained in two ways. First, the two sides respected the status quo and refrained from actions that could have led to protest by the other side and consequently there was virtually no tension. Second, actions were carried out which may have caused tension but both sides opted to deal with the incidents without resorting to public protest or criticism against the other side. If the second line of explanation is pursued it would be an indication that the two sides took further steps to contain and defuse situations which could lead to tension during 1999.

This is in line with the provisions of the Joint Declaration of 27 February 1999, issued in the connection with the visit to China by the Secretary General of the CPV, relating to the mode of behaviour to be implemented in order to solve “any differences” in the South China Sea. According to Section 3 the two sides agreed to maintain the “existing negotiation mechanism on the sea issues”. They would try to find a “basic long-term solution” through negotiations. Pending a solution they would discuss the possibility of engaging in bilateral co-operation in such areas as “protecting the sea environment, hydro-meteorology, and natural calamity prevention and control”. They also agreed to refrain from “any actions” that could “further complicate or widen the dispute”, they agreed to refrain from the use or the threat of use of force, and to “promptly” conduct discussions and “satisfactorily” solve differences so that they would not affect the “normal development of bilateral ties”.<sup>40</sup>

During 2000 no incidents relating to the South China Sea caused tension in bilateral relations. In fact the two countries moved to put greater emphasis on conflict management in the South China Sea through continued talks, by exploring potential co-

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<sup>39</sup> Ibid., 3496 B/4 (30 March 1999). Report carried by *Voice of Vietnam*.

<sup>40</sup> “Vietnam-China Joint Declaration”, reproduced in *Vietnam Law & Legal Forum*, Vol. 5, No. 54 (February 1999), p. 13.

operation in certain fields and by exercising mutual self-restraint. This was most evidently displayed in the Joint Statement for comprehensive cooperation signed on 25 December 2000 by the two Foreign Ministers. Section IX is devoted to the South China Sea and the two sides agreed to: “maintain the existing negotiation mechanisms on marine issues and to persist in seeking a fundamental and everlasting solution acceptable to both sides through peaceful negotiations.” Pending a solution the two sides would actively explore possibilities of cooperating in “environmental protection, meteorology, hydrology, disaster prevention and mitigation.” They agreed not to take “actions to complicate or aggravate disputes” and not to resort to force or its threat. Finally, they would consult each other in a timely manner if a dispute occurs and adopt a constructive attitude when handling disputes in order to prevent them from impeding the development of bilateral relations.<sup>41</sup>

During the period 2001-2009 some incidents can be noted. During 2001 there were official statements by either side on four occasions – one by China and three by Vietnam – protesting about actions carried out by the other side. However, the complaints were limited to one statement and no further tension has officially been caused by the actions leading to the protests.<sup>42</sup> In 2002 Vietnam protested against a Chinese fishing ban in the South China Sea from 1 June to 1 August. Vietnam also protested against China’s “imposition of a sea ban” for firing exercise in maritime areas that included “sea and continental shelf” areas belonging to Vietnam.<sup>43</sup> This ban was enforced for about five days in June 2002. In 2003 Vietnam protested against a new Chinese “fishing ban” in the South China Sea for the period 1 June to 1 August.<sup>44</sup> Of a more serious nature was an

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<sup>41</sup> “Declaration Vietnam-Chine sur la coopération au nouveau siècle” [Vietnam-China Declaration on the Co-operation in the New Century] (25 décembre 2000). From the website of *Agence vietnamienne de l’information (AVI)* (<http://www.vnagency.com.vn/Asp/Redanewse4.asp?FileN=frac2612.001>) (accessed on 27 December 2000); and, “Joint Viet Nam-China Statement for Comprehensive Cooperation (take two)” (26 December 2000). From the website of *Vietnam News Agency (VNA)* ([www.vnagency.com.vn/Asp/Redanewse4.asp?FileN=frac2612.004](http://www.vnagency.com.vn/Asp/Redanewse4.asp?FileN=frac2612.004)) (accessed on 27 December 2000). See also “Vietnam, China sign joint statement”, *News Bulletin*, No. 399 (26 December 2000) (English language bulletin). From the website of *Nhan Dan* (<http://www.nhandan.org.vn/english/20001226/bai-news2.html>) (accessed on 28 December 2000).

<sup>42</sup> For details relating to these four incidents see Amer, *The Sino-Vietnamese Approach*, p. 35.

<sup>43</sup> “Answers by MOFA’s Spokeswoman Phan Thuy Thanh to Journalists on 31 May 2002”. From the website of the *Ministry of Foreign Affairs of Vietnam* (<http://www.mofa.gov.vn:8080/Web%20server/Press.nsf/3d74812854f0209480256889...>) (accessed on 2 January 2003).

<sup>44</sup> Vietnam’s position on China’s announcement of an on fishing in the South China Sea from 1 June to 1 August 2003 can be found in “Answer by the MOFA’s Spokeswoman Phan Yhuy Thanh to Correspondent on May 16 2003”. From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn:8080/Web%20server/Press.nsf/3d74812854f0209480256889...>) (accessed on 31 July 2003).

incident in 2004 related to activities carried out by China in areas of the South China Sea that Vietnam considers to be part of its continental shelf. According to Vietnam, China dispatch “KANTAN3” and oil drilling platform to start operation on 19 November 2004. Vietnam officially requested China not to dispatch the oil-drilling platform.<sup>45</sup> China refuted the Vietnamese request stating that the oil exploration was taking place within China’s “territorial waters”.<sup>46</sup> Eventually, China withdrew its drilling platform from the area.<sup>47</sup> In February 2005 Vietnam reaffirmed its sovereignty claim to the Paracel and Spratly archipelagos in response to reports that China had launched a “large-scale research on coral reefs” in the Paracels.<sup>48</sup> In late December 2006 Vietnam reaffirmed its sovereignty over the two archipelagos in response to information that China had “constructed sovereignty markers at some basepoints of territorial waters including those in Hoang Sa archipelago of Vietnam”, i.e. the Paracels. It was also stated that these activities “violates the sovereignty of Vietnam and therefore is completely invalid”.<sup>49</sup> In August 2007 Vietnam reasserted its sovereignty claims to the Paracels and Spratlys in reaction to a report that a “tourism development plan” that included visits to the Paracels had been approved in China.<sup>50</sup> In late 2007 two events led to Vietnamese official responses. First, on 23 November – in response to a military exercise by China in the

<sup>45</sup> “Nanhai 215 Vessel has hauled oil drilling platform KANTAN 3 of China to the continental shelf of Vietnam”. From website of *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns041119160109](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns041119160109)) (accessed on 22 March 2005).

<sup>46</sup> “China rejects Vietnam’s request to cease oil exploration”. From the website of *China Daily* ([http://www2.chinadaily.com.cn/english/doc/12004-11/23/content\\_394139.htm](http://www2.chinadaily.com.cn/english/doc/12004-11/23/content_394139.htm)) (accessed on 10 January 2005).

<sup>47</sup> In recent years China has sought to influence foreign oil companies not to work with Vietnam in exploring and exploiting oil resources in maritime areas of the Southeastern coast of Vietnam. For details see Nguyen Hong Thao and Ramses Amer, “The South China Sea: Seeking a New Legal Arrangement for Promoting Stability, Peace and Cooperation”, in *The Place of International Obligations in the Domestic Order of States*, IOES Monograph Series 7 (Kuala Lumpur: Institute of Ocean and earth Sciences, Universiti Malaya, 2008), p. 236; and, Nguyen Hong Thao and Ramses Amer, “A New Legal Arrangement For the South China Sea?”, *Ocean Development and International Law*, Vol. 40, Issue 4 (November 2009), p. 339.

<sup>48</sup> “Vietnam has sufficient evidence to affirm its sovereignty over the Paracel and Spratly. Answer to Correspondent by Mr. Le Dzung The Spokesman of the Ministry of Foreign Affairs on 17th February 2005”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns050217172425](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns050217172425)) (accessed on 3 June 2008).

<sup>49</sup> “Vietnam once again reaffirms its sovereignty over Hoang Sa and Truong Sa archipelagos. Statement by Mr. Le Dung, Spokesman of the Ministry of Foreign Affairs of Vietnam on 28 December 2006”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns061229101042](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns061229101042)) (accessed on 26 May 2008).

<sup>50</sup> “Vietnam reasserts its sovereignty over Hoang Sa and Truong Sa archipelagos. The Spokesman of the Ministry of Foreign Affairs Le Dzung on 15th August 2007”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns070816153712](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns070816153712)) (accessed on 3 June 2008).

Paracels – Vietnam reiterated in sovereignty claims to both the Paracel and Spratly archipelagos.<sup>51</sup> Then On 3 December Vietnam protested and once reiterated its sovereignty claim to the two archipelagos in response to the establishment by China – of what the Vietnamese called “San Shan city” – on Hainan Island to administer the Paracel and Spratly archipelagos.<sup>52</sup> On 12 March 2009 Vietnam once again reiterated its sovereignty claims to the Paracels and Spratlys in response to the announcement that “Zhou Jiang International Travel Agent” would start operation of tours to “Phu Lam Island” in the Paracels.<sup>53</sup> In early May 2009 Vietnam’s submitted a “Partial Submission” relating to Vietnam’s extended continental shelf in the “North Area”<sup>54</sup> as well as a “Joint Submission” together with Malaysia to the Commission on the Limits of the Continental Shelf.<sup>55</sup> Both submissions prompted China to protest and to reiterate its claims in the South China Sea.<sup>56</sup> In August 2009 the Vietnamese fishing boat “QNg 95031TS” and its

<sup>51</sup> “China’s military exercise in the Hoang Sa archipelago is a violation of Vietnam’s sovereignty”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns071126152905](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns071126152905)) (accessed on 4 September 2009).

<sup>52</sup> “Vietnam objects to China’s establishment of San Sha city on the Hainan Island. Ministry of Foreign Affairs’ Spokesman – Mr. Le Dzong Answers Questions on 3<sup>rd</sup> December 2007”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns071204135539](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns071204135539)) (accessed on 25 May 2008). In an unprecedented development protests were held outside the Chinese embassy in Hanoi and the Chinese consulate in Ho Chi Minh City prompting an official response by the Chinese Foreign Ministry stating that China was “deeply concerned over the recent developments in Vietnam” and warning that they could undermine bilateral relations (“Foreign Ministry Spokesperson Qin Gang’s Regular Press Conference on December 11, 2007”. From the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t389216.htm>) (accessed on 3 June 2008)).

<sup>53</sup> “Vietnam’s response to Zhou Jiang International Travel Agent’s announcement of the opening of a tour to Phu Lam Island of the Paracels. Ministry of Foreign Affairs’ Spokesman Mr. Le Dzong answers question on 12 March 2009”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns090313185303](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090313185303)) (accessed on 8 July 2009).

<sup>54</sup> “Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982. Partial Submission in respect to Vietnam’s extended continental shelf: North area (VNM). Part I – Executive Summary. VNM-N-ES-DOC April 2009”. From the website of the United Nations ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/vnm2009n\\_executivesummary.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/vnm2009n_executivesummary.pdf)) (accessed on 14 July 2009).

<sup>55</sup> “Joint Submission to the Commission on the Limits of the Continental Shelf pursuant to Article 76, paragraph 8 of the United Nations Convention on the Law of the Sea 1982 in respect to the southern part of the South China Sea. Part I: Executive Summary. Malaysia, Socialist Republic of Vietnam, May 2009”. From the website of the United Nations ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/mys\\_vnm2009executivesummary.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009executivesummary.pdf)) (accessed on 14 July 2009).

<sup>56</sup> China’s reaction to the Joint Submission was through a Letter from the Permanent Mission of the People’s Republic of China to the Secretary General of the United Nations, 7 May 2009, CML/17/2009 (in both Chinese original and English translation). From the website of the United Nations ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf))

crew were seized by China in the Paracels.<sup>57</sup> Vietnam requested their release through a diplomatic note to the Chinese Embassy in Vietnam. On 11 August China informed the Vietnamese Embassy that the boat and the crew had been released.<sup>58</sup> On October 21 Vietnam protested against the “inhumane acts by the Chinese armed officers against Vietnamese fishermen” who had sought “refuge” in the Paracel archipelago.<sup>59</sup>

Although the two countries have not agreed on a formal ‘code of conduct’, nor that one necessarily will be agreed upon, it is evident that fundamental principles that are essential parts of such a scheme had been agreed upon and are being implemented by China and Vietnam. The provisions relating to the South China Sea in the Joint Declaration of 27 February 1999 and in the Joint Statement of 25 December 2000, respectively, indicate that China and Vietnam have gradually agreed on an increasingly sophisticated and detailed conflict management scheme to be applied and observed in the South China Sea. The South China Sea situation has also featured prominently in the high-level meetings and talks during the 2004-2008 period.<sup>60</sup> The decrease in tension that

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(accessed on 14 July 2009). China’s reaction Vietnam’s Partial Submission was through a Letter from the Permanent Mission of the People’s Republic of China to the Secretary General of the United Nations, 7 May 2009, CML/18/2009 (in both Chinese original and English translation). From the website of the United Nations ([http://www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/chn\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf)) (accessed on 14 July 2009).

<sup>57</sup> “Requesting the Chinese side to immediately release 13 fishermen and their boat QNg 95031TS. Ministry of Foreign Affairs’ Spokesman Mr. Le Dzung answers question on 5 August 2009”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns090805154551](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090805154551)) (accessed on 25 August 2009).

<sup>58</sup> “China announced the release of ship QNg 95031 and all Vietnamese fishermen. Ministry of Foreign Affairs’ Spokesman Mr. Le Dzung answers question on 11st August 2009”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns090812104005](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns090812104005)) (accessed on 25 August 2009).

<sup>59</sup> “Vietnam’s Reaction to Inhumane Acts by Chinese Armed Officers toward Vietnamese Fishermen. Ministry of Foreign Affairs’ Spokeswoman Nguyen Phuong Nga Answers Question on 21<sup>st</sup> October 2009”. From the website of the *Vietnam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns091022101747](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns091022101747)) (accessed on 12 November 2009).

<sup>60</sup> The following key documents have been consulted: The Joint Communiqué from Prime Minister Wen Jiabao’s visit to Hanoi on 6-7 October 2004 (“China-Vietnam Issues a Joint Communiqué”. From the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (<http://www.fmprc.gov.cn/eng/wjb/zzjg/gjlb/2792/2793/t163759.htm>) (accessed on 3 June 2008)). The Joint Statement issued in connection with the visit of the then President of Vietnam Tran Duc Luong to China on 18-22 July 2005 (“Vietnam and China issue joint statement”. From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns050726144049>) (accessed on 26 July 2005)). The Joint Communiqué issued in connection with the visit by Nong Duc Manh Secretary General of the CPV to China on 22-26 August 2006 (“Vietnam-China joint communiqué”. From the website of *Nhan Dan* (<http://www.nhandan.com.vn/english/news/250806/>).

has been evident since 1999 indicates the agreements and the mechanisms therein are in fact being implemented and respected by the two sides. Thus, despite the lack in progress in the bilateral expert-level talks on “maritime issues”, the two sides have made some progress in terms of conflict management of their disputes in the South China Sea.

### **Lessons from the Sino-Vietnamese Approach**

The Sino-Vietnamese approach to managing border and territorial disputes displays that it is possible to both resolve border issues through negotiations, i.e. land border and Gulf of Tonkin, and to considerably reduce tension caused by other disputes, i.e. in the South China Sea.

The two countries have actively sought to address the border and territorial issues and thus they have not avoided dealing with them. This is reflected in the fact that such issues have been on the agenda at high-level meetings since full normalisation of relations in late 1991. The establishment of the extensive system of talks at Expert-level; Government-level; Foreign Minister-level; and, High-level, displays both the importance of dealing with the border and territorial issues and the evident political ambition to address these issues.

The agreements relating to both the land border and the Gulf of Tonkin, respectively, are the end result of both political priorities and expert-level talks. Deadlines agreed by the leaders of the two countries served as necessary pressure in order to reach negotiated settlements at the expert-level.

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domestic\_commu.htm) (accessed on 26 June 2008)). The Joint Statement issued in connection with the visit to Vietnam by China’s President Hu Jintao on 15-17 November 2006 (“Vietnam-China Joint Statement”. From the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/171106/domestic\\_vnchi.htm](http://www.nhandan.com.vn/english/news/171106/domestic_vnchi.htm)) (accessed on 26 September 2007)). The Joint Press Communiqué issued in connection with the visit by Vietnam’s President Nguyen Minh Triet to China on 15-18 May 2007 (“Vietnam and China issue joint press communiqué”. From the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/190507/domestic\\_pr.htm](http://www.nhandan.com.vn/english/news/190507/domestic_pr.htm)) (accessed on 26 September 2007)). The Joint Statement issued in connection with the visit to China by the General Secretary of the CPV Nong Duc Manh on 30 May to 2 June 2008 (“Vietnam and China issue joint statement”. From the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/020608/domestic\\_vn.htm](http://www.nhandan.com.vn/english/news/020608/domestic_vn.htm)) (accessed on 4 June 2008)). The Joint Statement issued in connection with the visit to China by Vietnam’s Prime Minister Nguyen Tan Dung on 22-25 October 2008 (“Vietnam, China reach awareness to enrich partnership”. From the website of the *Vietnam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns081027154132>) (accessed on 27 October 2008)).

The fact that China and Vietnam have been so active in trying to both settle and manage their border and territorial issues is not unique to their bilateral relationship. In fact Vietnam has been very active in settling border and territorial disputes in the 1990s and 2000s. China has also been active in settling its land borders disputes with several neighbouring countries. It is notable that the agreement of 2000 relating to the Gulf of Tonkin was China's first relating to maritime delimitation.

The approach of China and Vietnam to manage relations relating to the South China Sea has been fairly successful over the last decade. To gradually agree on increasingly sophisticated measures and mechanisms for enhancing stability and collaboration in the South China Sea is one dimension of the Sino-Vietnamese approach. Another dimension is that the two sides have agreed on measures to regulate behaviour and courses of action in order to reduce the risk that tension will occur, to avoid actions that might cause such tension and to manage tension if such situations occur. These agreements imply that China and Vietnam have developed the elements of a 'code of conduct' in practice although it is not formally labelled as one. In other words there are alternative strategies to formal 'code of conducts'.

#### **Relevance for the broader South China Sea situation**

Given that China and Vietnam have extensive claims in the South China Sea area – including both the Paracel and Spratly archipelagos – their policies and actions relating to the South China Sea are of considerable relevance to the overall situation in the area.

Consequently, the Sino-Vietnamese approach to managing border and territorial issues is of relevance for the broader South China Sea situation. In particular the bilateral talks between China and Vietnam relating to the South China Sea are of considerable relevance.

The Sino-Vietnamese approach does display that border and territorial issues can be dealt with through formal negotiations. Furthermore, the bilateral relationship has been strengthened not weakened by the fact that dealing with such issues is firmly on the agenda at High-level meetings. The latter has of course been facilitated by the progress made in relation to the land border and Gulf of Tonkin issues as well as through the reduction in tension caused by the South China Sea disputes. Thus, the Sino-Vietnamese approach is highly relevant to examine also by other countries including other claimants in the South China Sea.

The Sino-Vietnamese approach adjusted to the specific conditions of other bilateral disputes in the South China Sea as well as to the multilateral dispute over the Spratlys could prove to be the most effective conflict management strategy in the current situation.

### **Implications for the broader South China Sea situation**

Through their policies and actions China and Vietnam, respectively, do have considerable impact on the South China Sea situation and to the developments in the area. Thus, the bilateral approaches and talks between China and Vietnam do have implications for the broader situation in the South China Sea. Less tension between China and Vietnam does contribute to peace and stability in the area.

Interestingly, the fact that the on-going talks on the so-called ‘South China Sea issues’ or ‘Sea issues’ between China and Vietnam do not indicate that the two parties have moved any closer to accepting the claims and the positions taken by the opposite side does contribute to alleviate fears among other claimants to the Spratlys that China and Vietnam might strike a bilateral deal to the detriment of the other claimants.

The broader implications of the peaceful management of the border and territorial disputes between China and Vietnam is that it creates favourable conditions for expanding economic interaction and co-operation in the field of regional security in the wider Pacific Asia, i.e. East- and Southeast Asia. A more specific positive impact on regional stability can be seen in the South China Sea where bilateral talks between China and Vietnam contributes to a more stable situation in the volatile area with bilateral and multilateral territorial disputes. Peaceful management also contributes to facilitating the interaction and on-going dialogue between the Association of South-East Asian Nations (ASEAN) and China.

### **CONCLUSIONS**

This paper has established that there are lessons to be learned from the Sino-Vietnamese approach to managing border and territorial issues. It has also been argued that the Sino-Vietnamese approach is both relevant and has implications for the broader situation in the South China Sea area.

A summary of the main achievements by China and Vietnam displays that the demarcation of the land border has been completed and is essential for the long-term stability in bilateral relations as well as for the continued expansion of the multifaceted cooperation between the border provinces of both countries. In the Gulf of Tonkin both the boundary agreement and the fishery agreement have entered into force. On-going talks and discussions on the remaining territorial disputes in the South China Sea is a further indication of the importance placed on managing and avoiding tension.

However, continued efforts are needed. In the Gulf of Tonkin successful completion of the negotiations on the delimitation of the so-called mouth of the Gulf is important. The continued implementation of the fishery agreement is essential. The collaboration relating to the maintenance of order in the Gulf through joint-patrols needs to be expanded. In the South China Sea it is essential to avoid future confrontation in the area, not only for bilateral relations but also for the stability in the region. It is also necessary to move both the bilateral and multilateral conflict management process forward. Although formal settlements of the disputes are unlikely in the current situation there is room for further progress both bilaterally and multilaterally in managing both disputes and the broader security situation in the South China Sea.

At the bilateral level if China and Vietnam could agree on the scope and the issues that are disputed it would be an important step forward as this would create a realistic agenda for expert-level talks and it would also contribute to the multilateral efforts. This should not be interpreted as an argument that either side should abandon their sovereignty claims to the Paracel and Spratly archipelagos, but rather that they should recognise that they have overlapping claims and that such situations need to be addressed.

At the multilateral level both countries are parties to the Declaration on the conduct of parties in the South China Sea (DOC) adopted by ASEAN and China on 4 November 2002.<sup>61</sup> Both China and Vietnam can positively contribute to the successful implementation of the DOC and also contribute to the process of further developing the conflict management mechanisms needed to maintain stability and avoid tension and confrontation in the South China Sea.

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<sup>61</sup> The full text of the “Declaration on the Conduct of Parties in the South China Sea” can be found on the website of the *Association of Southeast Asian Nations (ASEAN)* (<http://www.aseansec.org/13163.htm>, (printable version) <http://www.aseansec.org/13165.htm>) (accessed on 28 October 2008).



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