



Research Article

VIETNAM'S STANDPOINT ON CURRENT DISPUTES OVER MARITIME SOVEREIGNTY ISSUES IN THE EAST SEA

Submission Date: January 10, 2023, **Accepted Date:** January 15, 2023,

Published Date: January 20, 2023 |

Crossref doi: <https://doi.org/10.37547/tajjir/Volume05Issue01-01>

Journal Website:
<https://theamericanjournals.com/index.php/tajjir>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Ms. Le Lan Anh

Senior Researcher, Vietnam Institute Of Americas Studies Of Vietnam Academy Of Social Sciences, Vietnam

ABSTRACT

The East Sea, with its characteristics and advantages, has become a place of fierce competition between large and small countries with the goal of gaining many benefits in this area. Therefore, this is considered a disputed area in both the past and present. Disputes in the East Sea are always a hot topic because they involve the interests of many involved countries. For Vietnam, a maritime country that relies heavily on resources from the sea as well as maritime trade, the East Sea has become even more important to ensure the national security of this country. This article focuses on assessing the important role of the East Sea, examining disputes between countries, and clarifying Vietnam's standpoint, as well as historical and legal evidence on maritime sovereignty disputes issues in the East Sea.

KEYWORDS

Disputes in the East and South China Seas, Maritime Sovereignty, China, and Vietnam.

INTRODUCTION

The important geostrategic role of the East Sea

With its location on the arterial maritime route connecting the Pacific and Indian Oceans, Europe and Asia, the Middle East and Asia, the East Sea is of great significance to the world, especially to countries that are of great interest such as Vietnam, China, Malaysia, and the Philippines. Besides, the resources that the East Sea possesses are extremely abundant, which is a benefit that any country wants to have a share of.

The East Sea is an area containing extremely rich marine natural resources, providing abundant seafood for humans. In this region, the world's leading fishing and aquaculture countries such as China, Thailand, Vietnam, Indonesia, and the Philippines, of which China is the world's largest fishing country (about 4.38 million tons/year), the whole fishing area is about 7%-8% of the total fishing area in the world.¹

The East Sea is considered one of the five largest oil and gas basins in the world. The continental shelf areas with high oil and gas potential are the Bruney-Saba, Sarawak, Malay, Pattani Thai, Nam Con Son, Mekong, Red River, and Chau Giang estuaries. Currently, most of the countries in the region exploit and produce oil and gas from the sea, such as China, Vietnam, Malaysia, Brunei, Indonesia, and Thailand... According to the assessment of the U.S. Energy Information Administration (EIA), in total, the South China Sea has about 11 billion barrels of oil and 190 trillion cubic feet of natural gas rated as proved or probable reserves. These levels are comparable to Mexico's proven oil reserves and roughly two-thirds of Europe's proven natural gas reserves, excluding Russia.² According to

China's assessment, oil and gas reserves in the East Sea are about 213 billion barrels, of which oil reserves in the Spratly Islands can reach 105 billion barrels. With this reserve and exploitation, the output can reach about 18.5 million tons per year, which can be maintained in the next 15-20 years. In addition, there are many areas with great oil and gas potential being explored.³

The East Sea is one of the world's busiest trade routes, connecting: (i) Western Europe and North America via the Mediterranean, Suez Canal, and Middle East to India, East Asia, Australia, and New Zealand; (ii) East Asia via the Panama Canal to the east coast of North America and the Caribbean; (iii) East Asia via the Panama Canal to the east coast of North America and the Caribbean; and (iv) East Asia via the Panama Canal to Australia and New Zealand. Every day, about 150-200 ships pass through the East Sea, of which about 50% have a tonnage of over 5,000 tons, and more than 10% have a tonnage of 30,000 tons or more. Many countries in East Asia have their economies vitally dependent on this sea route, such as Japan, Korea, Taiwan, Singapore, and even China. It is an essential route for transporting oil and commercial resources from the Middle East and Southeast Asia to Japan, Korea, and China. More than 90% of the world's commercial transport is carried out by sea, and 45% of it passes through the East Sea.

The advantages of the East Sea that caused conflicts of interest between several countries have overlapping territorial claims to portions of the East Sea.

¹Research on East Sea.vn, *East Sea - geostrategy and potential*. <https://vkssoctrang.gov.vn/71-bd-chitiettin.html> accessed March 8, 2022

²EIA (2013), Contested areas of South China Sea likely have few conventional oil and gas resources,

<https://www.eia.gov/todayinenergy/detail.php?id=10651#>, accessed July 12, 2022

³Research on East Sea.vn, *East Sea - geostrategy and potential*. <https://vkssoctrang.gov.vn/71-bd-chitiettin.html> accessed March 8, 2022

The location of the East Sea also makes it militarily strategic, and valuable for national security. Disputes among nations generally center on land features in the East Sea. Six nations actively claim parts or all of the South China Sea and its land features. These agreements include China, Taiwan, Vietnam; Spratlys: China, Taiwan, Vietnam, Brunei, Malaysia, and the Philippines. Almost all of the South China Sea, its land features, and resources are China's.

Current sovereignty disputes in the East Sea

In the East Sea, there are currently two types of disputes, including disputes over overlapping continental shelves and exclusive economic zones, and the Spratly Islands (Hoang Sa) and Paracel Islands (Truong Sa) are two of the most disputed areas⁴. Because the width of some areas in the East Sea (such as the Gulf of Tonkin and the Gulf of Thailand) is narrower than 400 nautical miles, parts of the exclusive economic zone and continental shelf of neighboring countries overlap⁵.

Disputes in the South China Sea are diverse. First, there are conflicts over sovereignty, involving China, Brunei Darussalam, Malaysia, the Philippines, Taiwan, and Vietnam. Although there are many disputes over the claims of Southeast Asian countries, the power asymmetry between China and other claimants, and China's assertion of sovereignty over most of the

areas, with the vast area, is the central feature of the disputes.

In the north, Vietnam has an overlapping continental shelf and exclusive economic zone with China in the Gulf of Tonkin, as well as a small area outside the mouth of the Gulf, while in the south, it has an overlapping area in the Gulf of Thailand with Cambodia, Thailand, and Malaysia, as well as an overlapping area with Indonesia in the East Sea. Other East Sea coastal countries also have some overlapping continental shelf and exclusive economic zones, such as between Malaysia and Thailand, between Thailand and Cambodia, and between Indonesia and Malaysia. These overlapping areas have been and are gradually being satisfactorily resolved by Vietnam and relevant countries in accordance with the provisions of international law of the sea.⁶ These overlapping areas have been and are gradually being satisfactorily resolved by Vietnam and relevant countries by the provisions of the International law of the Sea.

The Hoang Sa and Truong Sa archipelagoes include many small coral reefs in the middle of the East Sea. Currently, the two archipelagoes are the focus of complicated disputes between several countries along the East Sea. The dispute over sovereignty over the Paracel Islands involves Vietnam and China, while the dispute over sovereignty over the Spratly Islands involves five countries. The six parties are Vietnam, China, the Philippines, Malaysia, and Brunei.

⁴ EIA (2013), Contested areas of South China Sea likely have few conventional oil and gas resources, <https://www.eia.gov/todayinenergy/detail.php?id=10651#>, accessed July 12, 2022

⁵ Ramses Amer and Nguyen Hong Thao (2007), Vietnam's Border Disputes: Legal and Conflict Management

Dimensions. *Brill*. Asian Yearbook of International Law, Volume 12.

⁶ Ramses Amer and Nguyen Hong Thao (2006), Settlement of Vietnam's border disputes: Favorable Conditions for Stability and Development, <https://vietnamlawmagazine.vn/settlement-of-vietnams-border-disputes-favorable-conditions-for-stability-and-development-3224.html>

For the settlement of territorial sovereignty disputes, international law has established the principle of establishing sovereignty as the principle of real possession and exercise of state power in a real, continuous and peaceful manner. This principle has been applied by countries and international jurisdictions to settle many disputes over territorial sovereignty around the world. Vietnam also raised historical and legal evidence to prove Vietnam's sovereignty over the Hoang Sa and Truong Sa archipelagoes.

The historical and legal sources of Vietnam's sovereignty in the East Sea

Historical sources of Vietnam's sovereignty:

The historical sources that Vietnam has gathered are very diverse. The maps of Vietnam in the 17th century indicated the two archipelagos were originally called by a short name, Golden Sand, and recorded in the territory of Binh Son district, Quang Ngai province; many ancient documents of Vietnam affirm that the State of Vietnam sent the Hoang Sa Team to exploit this archipelago (to collect goods and tools on afloat ships and catch fish); many ancient documents and foreign maps also show the Hoang Sa and Truong Sa archipelagoes under Vietnamese sovereignty. Other important historical documents proving the sovereignty of Vietnam over Hoang Sa and Truong Sa are relevant to some notable authors and works, including:

1. The Compendium of Thien Nam Tu Chi Lo, the letter of Do Ba Tu Cong Dao, compiled in 1686.
2. Phu Bien Tap Luc by Le Quy Don, compiled in 1776
3. The imperial calendar and the charter of the author Phan Huy Chu, compiled in 1821.

4. Dai Nam Thuc Luc Tien Bien, compiled in the period 1844 - 1848.
5. Dai Nam Thuc Luc Chinh Bien, compiled in the period 1844 - 1848.

During the French invasion of 1975, France took many actions to strengthen Vietnam's sovereignty over the two archipelagos of Hoang Sa and Truong Sa by patrolling, controlling, and sending out troops to occupy the islands based on representing the Hue court. In the 50s of the 20th Century, taking advantage of France's withdrawal from Indochina under the Geneva Agreement (1954), China occupied the eastern group of islands of the Paracels in 1956. In 1974, China used its air force and navy to occupy the western part of the Paracels. Meanwhile, Beijing is building a military installation, including an airfield and an artificial harbor, on Woody Island, the largest of the Paracels. In 1975, when the Saigon government collapsed, the State of Vietnam took over the islands in Truong Sa, establishing Hoang Sa and Truong Sa districts. Before 1988, China had not been present in the Spratly Islands in general or Fiery Cross Reef in particular. Until the end of January 1988, China used force to illegally occupy Fiery Cross Reef under the sovereignty of the State of Vietnam.

Legal sources of Vietnam's sovereignty:

The 1982 Law of the Sea Convention allows coastal states to have the right to use continental shelf status for exploration and exploitation of resources. Geographically, Tri Ton Island, in the Hoang Sa archipelago, is only 135 nautical miles from Quang Ngai, and Hoang Sa is only 160 nautical miles from the Vietnamese mainland. Therefore, the Hoang Sa archipelago is located on the continental shelf of Vietnam as regulated by UNCLOS 1982. In the Truong Sa archipelago, in terms of geology and seabed

topography, the Truong Sa islands are the natural continuation of the Vietnamese mainland from the mainland to the sea. Moreover, Tu Chinh and Truong Sa (Spratly) islands are only 150 to 200 nautical miles from the Vietnamese mainland, within the continental shelf of Vietnam.

On March 30, 2020, the Note Verbale No.22/HC-2020 of the Permanent Mission of the Socialist Republic of Vietnam to the United Nations concisely explains Vietnam's positions over various matters of the East Sea dispute. This note was submitted in the context of the legal battle in the East Sea becoming more intense when Malaysia submitted a report on the boundary beyond the continental shelf extending to the northern area. In the field, the situation has also become tense, especially after the Haiyang Dizhi 8 ship and Chinese fishing boats violated the Exclusive Economic Zones of many coastal countries, including Indonesia, Malaysia, and Vietnam.

In that context, Vietnam's Note No. 22/HC-2020 plays a particularly important role in clarifying Vietnam's claims and stance in responding to the notes of other claimants and expressing concern points for emerging problems. In particular, China's notes contain content that seriously violates Vietnam's sovereignty, legitimate rights, and interests in the East Sea. Overall, the circulation of Note 22 is a natural and inevitable diplomatic response to political and diplomatic statements that may be detrimental to Vietnam's legitimate interests in the United Nations, the most important forum in the world. The note affirms the

consistent stance on many agreements in the East Sea with many similarities with the Award 2016 of the Arbitral Tribunal on the East Sea case. The main contents of the Award 2016 of the Arbitral Tribunal are:

First, "the waters of permanently floating features in the Hoag Sa and Truong Sa shall be determined in accordance with Article 121(3) of the Convention." According to Article 121(3), maritime entitlements to features are provided under relevant articles of the United Nations Convention on the Law of the Sea (UNCLOS), to which all South China Sea claimants are members. According to UNCLOS, features above water at high tide (high-tide features) can generate maritime zones, while the others cannot.⁷ An "island", which is a naturally formed area of land, surrounded by water and above water at high-tide, has a territorial sea (12 NM), an exclusive economic zone (EEZ), and a continental shelf (200 NM). However, islands that "cannot sustain human habitation or economic life of their own" are called "rocks." Rocks have neither an exclusive economic zone nor a continental shelf, but they generate an entitlement of 12 nautical miles into the territorial sea.⁸ A low-tide elevation, which is a feature above the water at low-tide but under the water at high-tide, generally has no maritime zone of its own.⁹ Submerged features do not generate maritime entitlements.

Second, "groups of islands in the South China Sea (including the Paracels and Spratlys) have no baseline drawn by connecting the outermost points of the most distant features." Hoang Sa and Truong Sa are not

⁷S. Murphy, *International Law Relating to Islands*, (Brill/Nijhoff, 2017) 47

⁸Article 121 UNCLOS

⁹Article 13(2). However, where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

archipelagic states to apply the archipelagic baseline drawing method according to UNCLOS, so it is not possible to establish an archipelagic baseline system by connecting the outermost points of the islands of the furthest structure. This spirit has been confirmed by Vietnam in the Declaration of 1996 against China's straits system over Hoang Sa. The Arbitral Tribunal in the East Sea Case concluded that any way of drawing straight baselines in Truong Sa is also contrary to UNCLOS. In fact, the geographical structures of the Hoang Sa and Truong Sa have similarities, so it is appropriate for Vietnam to apply the Arbitral Tribunal's approach to the features in the Hoang Sa.

Third, "low-tide elevations or low-tide elevations are not subject to territorial acquisition and do not have a sea of their own." Currently, China claims several low-tide reefs or structures in the East Sea. As analyzed above, this is completely not allowed by UNCLOS 1982 because, as a rule, low-tide elevations or low-tide structures are not subject to territorial acquisition and do not have their own sea. The Arbitration Court 2016 also concluded that the features such as Vanh Khan (Mischief Reef), Co May (Second Thomas Shoal), Xubi (Subi reef), Nam Gaven (Gaven reef/South), and Tu Nghia (Hughes reef) are submerged and floating structures that are not subject to acquisition, and do not have their own sea area.

Fourth, "Vietnam opposes claims in the East Sea that exceed the limits set out in the Convention, including claims of historic rights; These claims have no legal value." Vietnam has repeatedly approved this position. On September 12, 2019, the Spokesperson of the Ministry of Foreign Affairs of Vietnam, Le Thi Thu Hang,

affirmed: "The 1982 UNCLOS clearly defines the scope and is the only legal basis for States to determine their entitlements to their sea regions. Therefore, no country can make claims to the waters in the East Sea area beyond the geographical and substantive limits set out in the UNCLOS. Unlawful and incompatible claims with UNCLOS 1982 cannot be used to assert the existence or overlap of seas."

In this regard, Vietnam's Note reflects the spirit of the Arbitral Tribunal's Award 2016. According to the Court's conclusion, China's claim of historic rights to living and non-living resources lying within the nine-dash line is inconsistent with the provisions of the Convention. The court held that the claim exceeded China's maritime limits allowed by UNCLOS.

Vietnam's standpoint to the current sovereignty disputes in the East Sea

Vietnam resolutely, persistently and firmly holds the following consistent stance on the East Sea issue:

First, maintain a consistent stance in favor of peaceful resolution of East Sea disputes based on international law, particularly the 1982 United Nations Convention on the Law of the Sea. In order to find a basic and long-term solution to the disputed issues in the East Sea, relevant parties must exercise restraint, refrain from taking any more unilateral actions that cause tension or complicate the situation, and make joint efforts to maintain peace and stability, refrain from using or threatening to use force, refrain from militarizing, and strictly comply with the Charter of the United Nations¹⁰.

¹⁰ Communist Party of Vietnam (2021), Vietnam's stance on the settlement of relevant disputes in the East Sea is clear and consistent, online newspaper, [https://dangcongsan.vn/thoi-](https://dangcongsan.vn/thoi-su/lap-truong-cua-viet-nam-ve-viec-giai-quyet-cac-tranh-chap-lien-quan-o-bien-dong-la-ro-rang-va-nhat-quan-585206.html)

[su/lap-truong-cua-viet-nam-ve-viec-giai-quyet-cac-tranh-chap-lien-quan-o-bien-dong-la-ro-rang-va-nhat-quan-585206.html](https://dangcongsan.vn/thoi-su/lap-truong-cua-viet-nam-ve-viec-giai-quyet-cac-tranh-chap-lien-quan-o-bien-dong-la-ro-rang-va-nhat-quan-585206.html), accessed June 12, 2022.

Second, disputes in the East Sea are extremely complicated: there are disputes involving two countries, such as the Hoang Sa issue between Vietnam and China, and disputes involving many parties in the region, such as the disputes involving Truong Sa; there are issues related to countries outside the region, such as peace, stability, security, and safety, freedom of navigation and overflight; and the uniformity and globality of the United Nations Convention on the Law of the Sea in 1982.

Vietnam actively promotes negotiations with neighboring countries on maritime issues. In settling sea and island issues with China, Vietnam has persistently implemented the Agreement on Basic Principles guiding the Settlement of Maritime Issues between Vietnam and China, signed in October 2011, on the basis of international law. especially the United Nations Convention on the Law of the Sea (1982).

Third, Vietnam resolutely and persistently struggles to protect sovereignty over the Hoang Sa and Truong Sa archipelagos, as well as sovereignty and sovereign rights, jurisdiction and legitimate interests in the East Sea¹¹. Besides, Vietnam persistently promotes marine economic development in the exclusive economic zone and continental shelf in accordance with the provisions of the United Nations Convention on the Law of the Sea 1982 and the actual situation of Vietnam. In addition, Vietnam rejected China's "nine-dash line" claim in the East Sea. Moreover, Vietnam is willing to cooperate with relevant parties for mutual development to settle disputed areas in accordance with the provisions of international law, including the 1982 United Nations Convention on the Law of the Sea.

Vietnam will make efforts together with relevant parties to promote cooperation in marine safety, conservation of aquatic resources, marine scientific research, marine environmental protection, rescue at sea, and crime prevention at sea in order to build trust for the peace and prosperity of Vietnam in particular and of the region and the world in general.

Fourth, Fourth, Vietnam respects freedom of navigation and works with relevant parties to ensure the freedom, security, and safety of navigation and aviation for other countries passing through the East Sea in accordance with international law, and welcomes all countries' efforts and contributions to maintaining peace and stability, ensuring security, safety, and freedom of navigation in the East Sea, and ensuring Vietnam's stance on the East Sea arbitration and the use of international jurisdictions in settling disputes in the East Sea is clear and consistent.

CONCLUSION

Disputes in the East Sea are very complicated and cannot be resolved thoroughly overnight because they concern the core interests of the countries involved. The current international and regional context is undergoing and will undergo profound changes. In the short term, the regional situation is forecasted to remain relatively stable, but in the medium and long term, more and more risky and unpredictable factors are emerging, especially in terms of competition among major countries in the region. As a maritime country, maritime security is of special importance to Vietnam, having a great impact on marine economic development, ensuring national defense and security, and protecting the peaceful environment of the

¹¹ Department of Foreign Affairs of Quang Binh (2020), Resolutely fight for protecting Vietnam's sovereignty over sea and islands, <https://sngv.quangbinh.gov.vn/3cms/kien-quyet->

dau-tranh-bao-ve-chu-quyen-bien-dao-viet-nam.htm accessed Jun 11, 2022

country. Facing the sovereignty claims of a number of countries in the region, Vietnam has always shown perseverance and steadfastness in its consistent stance to settle disputes in the East Sea by peaceful means on the basis of international law, especially the United Nations Convention on the Law of the Sea 1982.

REFERENCES

1. Ramses Amer and Nguyen Hong Thao (2007), Vietnam's Border Disputes: Legal and Conflict Management Dimensions. Brill. Asian Yearbook of International Law, Volume 12.
2. Communist Party of Vietnam (2021), Vietnam's stance on the settlement of relevant disputes in the East Sea is clear and consistent, online newspaper, <https://dangcongsan.vn/thoi-su/lap-truong-cua-viet-nam-ve-viec-giai-quyet-cac-tranh-chap-lien-quan-o-bien-dong-la-ro-rang-va-nhat-quan-585206.html>, accessed June 12, 2022.
3. CRF (2020), China's Maritime Disputes:1895-2020, <https://www.cfr.org/timeline/chinas-maritime-disputes>
4. Department of Foreign Affairs of Quang Binh (2020), Resolutely fight for protecting Vietnam's sovereignty over sea and islands, <https://sngv.quangbinh.gov.vn/3cms/kien-quyet-dau-tranh-bao-ve-chu-quyen-bien-dao-viet-nam.htm> accessed Jun 11, 2022
5. EIA (2013), Contested areas of South China Sea likely have few conventional oil and gas resources, <https://www.eia.gov/todayinenergy/detail.php?id=10651#>, accessed July 12, 2022
6. Government News.2020. VN rejects China's so-called "nine-dash line" in East Sea. <https://en.baochinhphu.vn/vn-rejects-chinas-so-called-nine-dash-line-in-east-sea-11137738.htm>.
7. S. Murphy, International Law Relating to Islands, (Brill/Nijhoff, 2017) 47
8. Research on East Sea.vn, East Sea - geostrategy and potential . <https://vkssoctrang.gov.vn/71-bd-chitiettin.html> accessed March 8, 2022
9. The United Nations Convention on the Law of the Sea in 1982.