



Research Article

INTERNATIONAL LAW OF THE SEA ON THE SETTLEMENT OF SOVEREIGNTY DISPUTES IN THE EAST SEA AND VIETNAM'S PARTICIPATION

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

Submission Date: March 30, 2022, **Accepted Date:** April 10, 2022,
Published Date: April 23, 2022 |
Crossref doi: <https://doi.org/10.37547/tajssei/Volume04Issue04-03>

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ABSTRACT

Firmly protecting the sovereignty of the sea and islands is the responsibility of every maritime country; this is also an important factor in firmly protecting the country's sovereignty. In the context of the world and region's complicated and unpredictable arising challenges, the role of international law of the Sea is a key factor for countries to be able to resolve disputes with relevant countries in the East Sea in accordance with international law. The article explains the role of the use of international law of the Sea in settling disputes related to maritime sovereignty between States; Besides, the article analyzes Vietnam's views on settling disputes related to sovereignty over sea and islands; In particular, the article clarifies Vietnam's application of international law in settling disputes and asserting Vietnam's sovereignty over the sea and islands.

KEYWORDS

International law of the Sea, Sovereignty, East Sea, Vietnam.

INTRODUCTION

The year 2021 marks the continuing interest of the East Sea in many countries and international forums with

the common perception that it emphasizes respect for the role of international law, especially the 1982

UNCLOS. UNCLOS stands for the United Nations Convention for the Law of the Sea. It is an international agreement or treaty which establishes rules and guidelines for using the world's oceans and seas, so as to use and conserve marine resources and to secure the preservation and protection of all the living beings of the sea. The Treaty was signed on 10 December 1982 in Montego Bay, Jamaica, as a result of the United Nations Conference on the Law of the Sea, which took place from 1973 to 1982, and came into force in 1994.

Vietnam is a maritime country, with a coastline of more than 3,260 km, with 4000 large and small islands. Recognizing the importance of the sea and islands, Vietnam has actively participated in the negotiation process to build UNCLOS. After UNCLOS was ratified, Vietnam was one of the first 107 countries to sign and soon carry out ratification procedures. On June 23, 1994, the National Assembly of the Socialist Republic of Vietnam issued a Resolution on the ratification of UNCLOS. By ratifying UNCLOS, Vietnam has made clear its will to exercise its rights within the limits allowed by UNCLOS, taking into account the freedoms of other States.

State sovereignty over the sea according to international law

The 1982 United Nations Convention on the Law of the Sea (hereinafter referred to as the Convention for short) clearly stipulates the sea areas contiguous to the coastal state's territory, including internal waters; territorial sea; contiguous zone; exclusive economic zone, and continental shelf. The coastal state has sovereignty, sovereign rights, and jurisdiction over the above seas, specifically:

Internal waters: is the water area located inside of the baselines of the territorial sea (specified in Article 2 of the Convention), including seaport waters, ship basins,

estuaries, bays, waters located in between the land territory and the baselines from which the breadth of the territorial sea is measured. In the internal waters, the coastal state exercises complete, absolute, and complete sovereignty in the land territory.

Territorial sea: each state has the right to determine the breadth of its territorial sea, which does not exceed 12 nautical miles from the baselines. The outer boundary of the territorial sea is a line running parallel to the baselines and equidistant from the baselines for a maximum distance of 12 nautical miles. The outer boundary of the territorial sea is considered the national boundary line at sea.

Contiguous zone: means an area outside the territorial sea and contiguous to the territorial sea, the extent of which does not exceed 24 nautical miles from the baselines. In the contiguous zone, the coastal state exercises exclusive and limited jurisdiction over foreign vessels.

Exclusive economic zone: means a sea outside the contiguous zone, under a separate legal regime, under which the sovereign rights and jurisdiction of the coastal state, as well as the rights and freedoms of other States, are governed by the appropriate provisions of the Convention.

The continental shelf of a coastal State includes the seabed and subsoil thereof beyond its territorial sea, over the entire natural extension of its land territory to the outer coast. of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, when the outer edge of the continental margin of that State is closer. In the case where the outer edge of the continental margin of a coastal State naturally extends beyond a distance of 200 nautical miles from the baselines; this coastal state may determine the outer

limit of its continental shelf to a distance not exceeding 350 nautical miles from its baselines or a distance not exceeding 2,500 nautical miles from the isobath, consistent with the specific provisions on the determination of the outer limit of the continental shelf in the Convention and with the recommendations of the Commission on the Limits of the Continental Shelf established on the basis of Annex II to the Convention. The coastal state's rights to the continental shelf are not subject to actual or nominal occupation, nor to any express claim.

The settlement of maritime sovereignty disputes in the East Sea: The view from Vietnam

Vietnam is a maritime country, with a coastline of more than 3,260 km, with 4000 large and small islands, and has many benefits associated with the sea. Recognizing the importance of the sea and islands, Vietnam has actively participated in the negotiation process to build UNCLOS. After UNCLOS was ratified, Vietnam was one of the first 107 countries to sign and soon carry out ratification procedures. On June 23, 1994, the National Assembly of the Socialist Republic of Vietnam issued a Resolution on the ratification of UNCLOS. By ratifying UNCLOS, Vietnam has made clear the willingness to exercise the rights allowed by UNCLOS, taking into account the freedoms of other States. Along with ratifying UNCLOS, Vietnam also ratified a number of specialized maritime conventions on international navigation IMO, SOLAS convention on rescue at sea, London on November 1, 1974, convention on draft, MARPOL Convention of 2 November 1973 and its 1978 supplement on the prevention of marine pollution. On July 14, 1994, Vietnam submitted its instrument of ratification to the Secretary-General of the United Nations. On November 16, 1994, UNCLOS officially entered into force for Vietnam.

The situation in the East Sea in the past year has also raised many new concerns. Great power competition and the emergence of new cooperation mechanisms in the region pose new problems for the evolving regional architecture, especially the central role of ASEAN. While the United Nations Convention on the Law of the Sea (UNCLOS) 1982 is considered a common standard of conduct, there are still many countries' members' national laws or practices that are inconsistent with or contrary to UNCLOS 1982. Rights and interests the legitimate interests of coastal States have not yet been fully respected. This is clearly not conducive to trust and cooperation processes in the region.

In that context, Deputy Prime Minister of Vietnam Pham Quang Hieu affirmed that Vietnam's policy on the East Sea issue is always clear and consistent. Vietnam always persistently protects its legitimate and legitimate rights and interests together with other countries, settles the East Sea issue by peaceful means, in accordance with international law, especially UNCLOS 1982. In addition, Vietnam always welcomes the efforts of countries inside and outside the region to contribute to peace, stability, and cooperation in the East Sea.

In addition, Vietnam actively promotes negotiations with neighboring countries on maritime issues. In dealing with sea and island issues with China, Vietnam 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 in 1982.

Furthermore, Vietnam resolutely and persistently struggles to protect the sovereignty, sovereign rights, jurisdiction, and legitimate, and legitimate interests in the East Sea, persistently promote 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 in accordance with the current situation of Vietnam. In addition, Vietnam approves of the transparency of the East Sea dispute, protests, and resolutely rejects China's claim of the "nine-dash line" in the East Sea¹. According to Vietnam, this is a claim that has absolutely no legal basis, contrary to the Convention 1982, in which Vietnam and China are the members.

Moreover, at the 31st Meeting of the States Parties to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) took place at the UN headquarters in New York from June 21 to 25, Ambassador Dang Dinh Quy, Permanent Representative of Vietnam to the UN, reiterated that the 1982 UNCLOS is a comprehensive framework that regulates all activities in the oceans and seas. He highlighted Vietnam's efforts to promote negotiations on maritime border demarcation with regional countries, marine environment protection, and bilateral and multilateral cooperation in maintaining maritime security, fighting illegal, unreported, and unregulated fishing, and developing the sea-based economy. With regard to the East Sea issue, Mr. Quy stated all disputes must be settled by peaceful means on the basis of international law, including the UN Charter and the 1982 UNCLOS, with respect for diplomatic and legal processes, and without the use of force or threats to use force².

Vietnam applies international law of the Sea in dispute settlement involving the sovereignty over the Hoang Sa and Truong Sa archipelagos

According to Foreign Ministry Spokesperson of Vietnam Le Thi Thu Hang: Countries need to strictly comply with the international treaties to which they are members, especially the UNCLOS³. Vietnam resolutely and persistently takes measures in accordance with international law to enforce and protect Vietnam's sovereignty over Hoang Sa and Truong Sa archipelagos; sovereignty, sovereign rights, and jurisdiction over its maritime zones are determined in accordance with the provisions of UNCLOS. To supplement Vietnam's declaration of sovereignty over the Hoang Sa and Truong Sa archipelagos, Vietnam has provided much historical, geographical, and legal evidence, specifically as follows:

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 (Pattle) island 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

¹ 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>.

² Vietnam News. Việt Nam reaffirms importance of 1982 UNCLOS, especially in South China Sea issue. <https://vietnamnews.vn/politics-laws/979841/viet-nam->

reaffirms-importance-of-1982-unclos-especially-in-south-china-sea-issue.html.

³ Government News.2021. All countries must strictly comply with int'l treaties to which they are signatories. <https://en.baochinhphu.vn/all-countries-must-strictly-comply-with-intl-treaties-to-which-they-are-signatories-11142143.htm>

(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 Viet Nam to the United Nation concisely explains Viet Nam'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 tenser, especially after the Haiyang Dizhi 8 ship and Chinese fishing boats violated the Exclusive Economic Zones of many coastal countries, including Indonesia and 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 contents that seriously violate 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 at the United Nations, the most important multilateral forum in the world. The note affirms the consistent stance on many disputes 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 of 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.⁴ 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), exclusive economic zone (EEZ), and 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.⁵ A low-tide elevation, which is a feature above water at low-tide but under the water at high-tide,⁶ generally has no maritime zone of its own.⁷ 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 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 affirmed by

⁴ S. Murphy, International Law Relating to Islands, (Brill/Nijhoff, 2017) 47

⁵ Article 121 UNCLOS

⁶ Article 13(1) UNCLOS

⁷ Article 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.

Vietnam in the Declaration of 1996 against China's straight baselines 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 sovereignty over 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), 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 affirmed 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 forth in the UNCLOS. Unlawful and inconsistent claims with UNCLOS 1982 cannot be the basis for asserting that disputed or overlapping seas exist.”

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.

CONCLUSION

A very objective requirement for all countries having activities related to the East Sea is to comply with the common law that the international community, including the countries bordering the East Sea, UNCLOS 1982. When applying the Convention to exercise their sovereignty and sovereign rights over their internal waters, territorial sea, exclusive economic zone and continental shelf, the coastal states of the East Sea has an obligation to respect the sovereignty and sovereign rights of other countries over their territorial waters, exclusive economic zones, and continental shelves. The use of force or threat to use force to forcibly occupy another country's territory is prohibited by international law. Nor would force be the right way to settle disputes in the South China Sea. Vietnam respects the basic principles of international law, respect the Charter of the United Nations, respects the provisions of the United Nations Convention on the Law of the Sea in 1982. Vietnam always approves of settling disputes by peaceful means, practices fully implementing the commitments in the DOC, proceeding to develop a Code of Conduct in the East Sea - COC, working together toward turning the East Sea into a sea of peace, friendship and cooperation. This is considered to demonstrate the behavior of civilized countries, as well as respecting international law that Vietnam has recognized and signed.

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