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Vietnam's South China Sea Territorial Disputes: A Path to Resolution

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

01 November 2013

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Abstract

Vietnam's South China Sea Territorial Disputes: A Path to Resolution. The territorial disputes in the South China Sea intensified after the introduction of the United Nations Convention on the Law of the Sea III (UNCLOS III). Numerous Southeast Asian nations have legitimate territorial claims based on international law. Vietnam lays claim to much of the Paracel and Spratly Islands through historical and geographical provisions of the law. However, Vietnam's claims put the country at odds with China, who claims the vast majority of the South China Sea, its features, and the seabed itself. China's aggressive posture towards Vietnam threatens regional stability and inhibits Vietnam's access to the region's natural resources. For Vietnam to realize its potential it must achieve a solution. Through diplomatic efforts, international arbitral efforts, and with American assistance, Vietnam can successfully resolve its territorial disputes with China before China significantly expands maritime capacity. The United States, with its increasing emphasis on the region, has a vital role to play. The United States should support Vietnam's legitimate territorial claims and ensure that international law is upheld. These efforts are complimentary to the United States' strategy of containing China and consistent with America's global interests.

INTRODUCTION

The Socialist Republic of Vietnam is the 13th largest country in the world by population with over 86 million people.¹ Vietnam sits on the far eastern coast of the Indochina peninsula in Southeast Asia. This elongated country has a 4,550 kilometer land border with China to the north and Laos and Cambodia to the west. The 3,260 kilometer eastern border of Vietnam runs along the western portions of the South China Sea.²

With its geographically strategic position and its rise as a middle power, Vietnam has unrealized economic potential. However, for Vietnam to fully realize its potential it must have access to the rich resources of the South China Sea. Vietnam's territorial disputes with China over the South China Sea limit the country's economic potential and present a significant obstacle to Vietnam exploiting the region's resources. China's threatening posture, combined with the complex nature of the disputes, makes resolution a serious challenge. However, for Vietnam to reach its economic potential and continue its rise as a regional power, a solution to its territorial disputes with China must be reached. Through diplomatic efforts, international arbitral efforts, and with American assistance, Vietnam can successfully resolve its territorial disputes with China before China significantly expands maritime capacity. The United States, with its increasing emphasis on the region, has a vital role to play. The United States should support Vietnam's legitimate territorial claims and ensure that international law is upheld. These efforts are complimentary to the United States' strategy of containing China and consistent with America's global interests.

BACKGROUND

Due to Vietnam's ancient history, steeped in conflict, the country has an intense desire to defend its sovereign territory. The first Vietnamese state, Van Lang State, was

formed in the 7th Century B.C. in response to foreign invasion.³ All the way up until the 19th Century, Vietnam struggled against foreign domination, most often at the hands of various Chinese Dynasties.

In the 19th Century, the French colonized Vietnam. The French occupation led to numerous resistance movements among Vietnam's people, most significantly the formation of the Communist Party in 1930. Near the end of World War II, the Japanese occupied Vietnam, replacing the French who had been forced to abandon the colony. The post-World War II peace accords expelled the Japanese and temporarily divided the country into North Vietnam, or the Democratic Republic Vietnam (Communist), controlled by China, and South Vietnam, or the Republic of Vietnam, with a French-supported government. In this capacity, the French resumed its occupation of South Vietnam. In 1945, Vietnam formally declared its independence from the French and officially formed the Democratic Republic of Vietnam.⁴ A bloody nine-year conflict with the Communists ensued, which resulted in French defeat.⁵ North Vietnam attempted to reunite the country and bring South Vietnam under Communist rule, but the South rejected the unification. From the mid-1960s until the mid-1970s the United States intervened in an unsuccessful effort to stop forced unification with the North and stop the spread of Communism. In 1976, the Democratic Republic of Vietnam subsumed the Republic of Vietnam and the Socialist Republic of Vietnam was officially established.⁶ The 19th Century French administration of Vietnam, and the division of North and South Vietnam are factors in the legitimacy of Vietnam's territorial claims.

ANALYSIS OF VIETNAM'S TERRITORIAL DISPUTE

Vietnam's territorial claims to numerous islands in the South China Sea and Gulf of Thailand are evident in the following quote from the Vietnam government-produced, *The Socialist Republic of Viet Nam Basic Information*:

Viet Nam's territorial waters in the Eastern Sea extend to the east and southeast, including the continental shelf, islands and archipelagos. There is a group of around 3,000 islets belonging to Viet Nam in the Tonkin Gulf, including Ha Long Bay, Bai Tu Long Bay, Cat Hai, Cat Ba and Bach Long Vi Island. Farther in the Eastern Sea are Hoang Sa Archipelago (Paracel Islands) and Truong Sa Archipelago (Spratly Islands). To the west and southwest there are groups of Islands including Con Son, Phu Quoc and Tho Chu.⁷

The United States Department of Defense's Vietnam Country Handbook provides a basic overview of the complexity of the situation.

The Paracel Islands are occupied by China but, claimed by Vietnam and Taiwan. The most serious border dispute is over the Spratly Islands. The Islands are located in the South China Sea, which is one of the world's busiest international sea lanes. They are part of a region that contains oil and gas resources. They are strategically located near large, energy-consuming countries. Six nations have competing claims for the territory in the South China Sea that could potentially threaten Southeast Asia's long-term stability. China, Vietnam, and Taiwan all have claims based on history. Malaysia, Philippines, and Brunei have claims based on international law. Without China's cooperation, a solution is impossible, Beijing refuses to accept a multi-lateral solution. There appears to be no sign of resolution.⁸

The subjects of Vietnam's territorial disputes with China are the Paracel Islands and the Spratly Islands. (See Figure 1) Both of the island clusters sit within 200 nautical miles of Vietnam's coastline, and inside Vietnam's internationally recognized Economic Exclusion Zone (EEZ). The South China Sea online journal, *BienDong.Net*, in a recent article, meticulously lays out Vietnam's historical claim to these areas. The earliest evidence cited by the article is a 17th Century Vietnam government document, *The Book of the South's Maps*, which shows both island clusters as part of the Quang Nam Province. It goes on the state that, "Every year, in the last month of winter, the Nguyen kings send eighteen boats

there to collect ship-wrecked cargoes, mainly jewelries, coins, arms, and ammunitions.”⁹ Similarly, the work of Vietnam government scholar, Le Quy Don (1726-1784) entitled *Miscellany on the Pacification at the Frontier*, included both features under the jurisdiction of the same province.¹⁰ From the 17th century until present, the Vietnamese government has documented evidence of continuous governance of these areas. Also compelling is the evidence provided by early Western navigators and missionaries. The earliest example is a letter from a missionary sailing from France to China aboard the ship *Amphitrite* in 1701 who wrote, “Paracel is an archipelagoes belonging to the Kingdom of An Nam”.¹¹ It should be noted that at the time “Paracel” encompassed both Paracel and Spratly. Both J. B. Chaigneau, a French advisor to Emperor Gia Long, and Bishop J. L. Taberd, an early French missionary to Vietnam, included Paracel and Spratly as part of Vietnam’s territory in their correspondence with the French Government in the early 1800s.¹² Furthermore, during both periods of French occupation of Vietnam, the French administered the Spratly and Paracel Islands as part of Vietnamese territory including naval expeditions to survey, mark, and erect navigational aids.¹³ Despite the strength of Vietnam’s claim to the islands, China also claims them as part of its larger claim to the entire South China Sea as sovereign territory.

China contends that its sovereignty of the Spratly and Paracel Islands is also a historically based claim. China claims to have discovered the islands in the 2nd century BC and that the islands have been marked on China’s maps since the Eastern Han Dynasty. At its surface, the most compelling basis for China’s historical claim is a formal letter from North Vietnam’s Prime Minister Pham Van Dong in 1958 acknowledging China’s sovereignty of the islands.¹⁴ However, it should be noted that the islands were consistently under the control of South Vietnam provinces, and in 1958 the country was divided. In

essence, North Vietnam was not in a position to speak for South Vietnam's territorial boundaries. Thus the legitimacy of this evidence is questionable.

The most modern definitive evidence of sovereignty comes from the post-World War II 1951 Treaty of San Francisco. At this conference territories that had been occupied by the Japanese were returned to countries deemed to be the rightful owners. The Soviet Union proposed returning the Spratlys and Paracels to the Chinese. However, this proposal was nearly unanimously rejected by the delegates. In rebuttal, the head of the State of Vietnam delegation convincingly argued that both the Spratlys and the Paracels were Vietnamese territory. His declaration was unopposed by the 51 delegates in attendance. The subsequent Treaty of San Francisco of 1951 did not include the Spratly or Paracel Islands in the list of territories to be returned to China.¹⁵ A French international lawyer who has studied the case on behalf of the United Nations, Professor Monique Chemillier-Gendreau, summarizes the implications of the San Francisco Treaty as such:

The very terms of the peace treaties with Japan, the declarations made in them or from which these treaties stem, signify that Nationalist China, which after 1949 took over the mantle of continuity from the former single Chinese Government, did not make any claim to the archipelagos on the occasion of the Cairo communique' (Allied policy on Japan's territories) and bilaterally recognized Japan's renunciation without putting forward a claim of its own. These two elements, the latter having all the solemnity of treaty instruments and the former substantial political force, warrant the conclusion that at that time the Republic of China ceased asserting rights to the disputed islands.

Additionally she points out that while China has documents about the islands since 1930, Vietnam has official papers dating back to the 17th century.¹⁶ Three years later, the Geneva Agreement of 1954 reaffirmed the sovereignty of Vietnam over the Spratly and Paracel archipelagos.¹⁷ And from 1954 to present, Vietnam has continuously claimed the islands in every appropriate official forum and has vigorously protested every foreign incursion.

CHINA'S CURRENT POSTURE

Early in the 1970s, the discovery of hydrocarbon resources in the South China Sea intensified the existing territorial disputes in the region. At the same time, the United Nations Convention on the Law of the Sea III (UNCLOS III) was in development. UNCLOS III would allow states to make territorial claims to vast areas well beyond the 12-nautical mile territorial sea. In a 1974 naval clash, China's navy engaged and soundly defeated South Vietnam's naval vessels near the Paracels. Within weeks the Chinese sent forces to occupy the islands near the site of the engagement.¹⁸ In response, South Vietnam sent forces to occupy numerous islands within the Spratlys. The Chinese issued a stern official warning that claimed "indisputable sovereignty" over these same islands "and their surrounding area". South Vietnam countered with reaffirmation of their possession of both the Spratlys and Paracels. This letter from South Vietnam also addressed the previous naval engagement calling it a "gross violation of Vietnamese sovereignty" and "defiance of the law of nations and the Charter of the United Nations" by China.¹⁹ In 1977 and 1979, both countries exchanged similar statements asserting sovereignty over the Spratlys and Paracels. Of note in China's 1979 statement regarding the Spratlys and Paracels was that, "the nature resources [sic] in these areas are China's property".²⁰ In 1987, China again occupied numerous islands in the Spratly area. As a result, in March of 1988, another naval engagement occurred and nine of Vietnam's ships were promptly sunk by the Chinese. China then began marking numerous features and building permanent structures on many of the islands.²¹ In 1992, China contracted two oil companies to drill inside of Vietnam's EEZ. Vietnam protested and the Chinese warned that they would use their naval forces to enforce the contract.²² Since ratifying UNCLOS III, China has repeatedly continued to take aggressive enforcement

actions throughout the region. In the most recent example, which occurred in 2012, a Chinese surveillance ship intentionally cut the seismic cables of a Vietnamese ship operating only 65 miles from Vietnam's coast and over 325 miles from China's Hainan Island.²³

China's potentially unlawful actions can be explained as enforcement of its "U-Shaped Line" claim. This line encompasses nearly the entire South China Sea and overlaps several countries' internationally recognized EEZs. A map showing this line was first produced in 1947, and the area inside the line was referred to as China's "historical claim".²⁴ In August of 2013, China published a new version of the same map. Referencing the new map's legend reveals that the dashed line constitutes a "national boundary". (See Figure 2) China gave the map a degree of official status by attaching it to a 2011 correspondence with the United Nations. In that correspondence, China claims, "indisputable sovereignty over the islands within the South China Sea and adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof."²⁵ Author James R. Holmes, in *The Diplomat* states that, "China views the South China Sea, to name one contested expanse, not as commons but as offshore territory".²⁶ Since 1987, China has issued an annual "White Paper" that communicates official government policies on foreign affairs. In the July 2013 White Paper, China blames its neighbors for "seriously infringing upon China's sovereignty and territory" and stresses its total commitment to protecting its "sovereign and territorial integrity."²⁷ Additionally, the paper categorizes Vietnam's new National Law of the Sea, as a "violation of China's sovereignty over the Hoang Sa and Truong Sa", despite the fact that Vietnam's national law complies with international law. Despite the fact that China recently agreed on the need for an Association of Southeastern Asian Nations (ASEAN) Code of Conduct in the South China Sea, it apparently has no

intention of conceding or sharing any of the area inside its “U-Shaped line”. China’s belligerent words and deeds suggest that Vietnam cannot accept the status quo if it hopes to exploit the resources within its own EEZ. Vietnam must adopt and quickly implement a broad strategy to resolve its territorial disputes with China.

VIETNAM’S DIPLOMATIC LINE OF EFFORT

First, Vietnam must expand diplomatic efforts to strengthen relationships with regional neighbors. Both Japan and the Philippines have troublesome territorial disputes with China and both countries have taken actions to assert their territorial claims. Additionally, both Japan and the Philippines have impressive economies and significant influence among ASEAN nations. As such, expanding relationships with these nations should be a diplomatic priority of Vietnam. However, Vietnam’s territorial claim of all of the Spratly Islands presents an obstacle to dramatic improvements in regional relationships. The Philippines, Brunei, and Malaysia all claim portions of the Spratlys.²⁸ Vietnam should initiate efforts to resolve these disputes in accordance with UNCLOS III and ASEAN arbitration. Solving even these less serious disputes will be difficult, and concessions may be unpalatable to some in Vietnam’s government. However, Vietnam’s territorial disputes with China pose a more serious threat to Vietnam’s territory and resources. Regional solidarity is critical to Vietnam effectively addressing the disputes with China. Vietnam can likely solve these smaller disputes with minor concessions, and should do so in order to gain the full backing of its neighbors before hoping to address its more serious disputes with China.

Another diplomatic line of effort by Vietnam should be its continued cooperation with ASEAN to develop a code of conduct for the South China Sea. This ASEAN effort has been in the concept stages for several years. Most recently the ASEAN forum met in China

for high level talks that culminated in September 2013 with agreements to seek “gradual progress and consensus through consultations”.²⁹ It is likely that China is making an attempt to put ASEAN countries at ease through this show of apparent willingness to negotiate. However, many doubt that China will agree to any code of conduct that nullifies its U-shaped claim.³⁰ To date, China, with its vastly larger size and dominant navy, has effectively protected its claims throughout the region through force. Holmes, of *The Diplomat*, cautions ASEAN nations that any code of conduct that does not lock in the provisions of UNCLOS III is worthless and likely counterproductive, legitimizing the status quo and China’s illegally seized possessions.³¹ While there is precedent for nations to make use of treaties to codify territorial gains, a code of conduct consistent with UNCLOS III highlights the illegality of China’s claims and exerts additional pressure on China to comply with international law.

Perhaps the most important diplomatic step by Vietnam is to embrace the support of the United States. Despite China’s warnings to South China Sea nations against “internationalizing” the regional disputes, Vietnam should seek the United States’ support.³² Publicly, Vietnam has indicated that it will not be a pawn in the United States’ efforts to contain China, or be forced to choose one super power over the other. Gaanashree Wood, an international lawyer writing for the online journal, *The World Outline* states, “The Philippines and Vietnam are worried that when push comes to shove, the US will hesitate to militarily defend them against China. The Chinese and American economy [sic] are too closely intertwined and the US has too much to lose from its beneficial relationship with China, much more than with any of its other allies in the region”.³³ The United States must allay concerns like those expressed above in order to encourage Vietnam’s acceptance of

American support. And arguably, American support is critical to Vietnam's other essential line of effort designed to address territorial disputes with China.

VIETNAM'S ARBITRAL LINE OF EFFORT

Perhaps the most concrete step for Vietnam to take to resolve its territorial disputes was suggested by Secretary of State Hillary Clinton in July of 2010 at the annual ASEAN Forum.

The United States supports a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion. We oppose the use or threat of force by any claimant. While the United States does not take sides on the competing territorial disputes over land features in the South China Sea, we believe claimants should pursue their territorial claims and accompanying rights to maritime space in accordance with the UN convention on the Law of the Sea. Consistent with customary international law, legitimate claims to maritime space in the South China Sea should be derived solely from legitimate claims to land features.³⁴

Vietnam's President Truong Tan Sang, speaking at the Center for Strategic and International Studies (CSIS) during his July 2013 visit to Washington said, "The position of Vietnam is we always oppose the nine-dash line of China because it's a groundless claim – legally and practically." He stated that Vietnam's legal scholars are unable to find any legal or scientific foundation for China's claim. Ultimately, he suggested that CSIS research the basis of China's claim and offer their findings to the international community.³⁵ In July of 2013, a United Nations arbitration tribunal convened in the Hague in response to a lawsuit filed in January by the Philippine Government against China under Article 287 and Annex VII of the 1982 UNCLOS III. Thus far, the five-member tribunal has approved a set of procedural rules that will govern the process.³⁶ Prior to the Philippines taking legal action against China, it took significant diplomatic efforts to first solidify support from the United States and Japan. The United States increased military aid from 12 million dollars in 2011 to 30 million dollars in 2013, with an agreement to provide 50 million dollars in 2014.³⁷ In

addition, the United States plans expand its presence in the country and construct new air and sea bases. Finally, the United States will conduct more regional exercises and more frequently visit Philippine sea ports as a part of a strategy to, “strengthen defense capacity of allies and share its responsibility for regional security”.³⁸ Likewise, Japan has offered public statements of support for the Philippines’ arbitral steps. Japan has also stepped up military aid and agreed to enhance regional security cooperation.³⁹

However, as expected in response to the Philippines’ action, China has, “made all attempts to isolate, criticize and threaten the Philippines”, in an effort to pressure the Philippines into dropping the suit and deter other South China Sea nations from taking similar action.⁴⁰ Despite the fact that China has ratified UNCLOS III, it has refused to accept the authority of any agency or forum to settle its territorial disputes. Reflecting this view, China’s defense minister General Chang Wanquan recently reiterated this stance by rejecting any “multi-lateral approach” to the competing territorial claims. China has repeatedly said that it will work only with the countries directly involved.⁴¹ In other words, China refuses to acknowledge any United Nations or ASEAN authority on the matter, and is not open to any multi-lateral negotiation.

During President Sang’s visit to the United States in July of 2013, he was asked if Vietnam would follow the Philippines’ arbitral precedent to settle its territorial disputes. He refused to comment.⁴² Any reluctance on the part of Vietnam is understandable for two reasons - China’s attempts to pressure the Philippines, and uncertain international resolve for enforcement of any tribunal decision. Vietnam should recognize that regardless of the enforceability of the United Nations tribunal ruling, a decision that invalidates China’s claim increases pressure on China to comply with international law. Likewise, a tribunal ruling

against the “U-Shaped claim” compels the United States and other nations to throw their support behind Vietnam. The United States’ role begins with eliminating any uncertainty regarding its support for upholding international law.

THE UNITED STATES’ ROLE

Southeast Asian countries intimidated by China’s military might and aggressive posture would be expected to turn to the United States to counter China’s influence in the region. In most cases, they do so with understandable caution and discretion. China’s history of aggression in the South China Sea calls for a firm stance from the United States. Raul Pedroza, of the United States Naval War College, states that, “If the United States is to reassert its role in the Pacific and counter China’s growing dominance, it must increase its naval presence in the region and be prepared to demonstrate U.S. support for its regional partners with action.”⁴³ Pedroza is critical of the United States’ decision to appease China’s 2010 demands to keep the U.S.S. George Washington out of its Exclusive Economic Zone saying, “This type of appeasement is not only unproductive; it unnecessarily short sells the capabilities and reach of the U.S. naval forces”.⁴⁴ He points out that while the United States has been adamant about its freedom of navigation throughout the South China Sea, that it has done little to demonstrate its resolve.⁴⁵ In conjunction with its renewed emphasis in the Pacific, the United States should increase the presence of its capital ships in the region. Additionally, the United States should join Southeast Asian nations in protesting China’s unlawful assertions of sovereignty over the South China Sea. Lai, in his *Asia-Pacific: A Strategic Assessment*, makes note of officials in the Obama administration who, “strongly urge the Obama administration to be more assertive in Southeast Asian affairs”, due to their concerns over China’s military build-up posing a threat to regional stability and United

States' navigational freedom. These critics "urge the U.S. Government to modify its strategy to support Vietnam, the Philippines, and Malaysia on their claims".⁴⁶

There is a risk of miscalculation, and the United States' overt support of Vietnam could escalate tensions with China. However, inaction by the United States is arguably encouraging China's aggression. To avoid miscalculation, the United States should clearly articulate to China that the United States intends to uphold international law, and that it hopes to do so without armed conflict.

South China Sea territorial disputes should be settled via UNCLOS III. For the United States to lend the most credible support to Vietnam, it should ratify UNCLOS III. After all, how can the United States forcibly argue that nations should observe and abide by international law that it has not ratified? As Army General Martin Dempsey, the chairman of the Joint Chiefs of Staff argues, "it gives us the framework to counter excessive claims by states seeking to illegally restrict movement of vessels and aircraft". He goes on to state, "As a party to the convention, we can help resolve conflicts, strengthen alliances and foster innovative partnerships."⁴⁷ Once the United States has ratified UNCLOS III, it can press for much needed improvements. As it is currently written, UNCLOS does not clearly specify how to resolve overlapping 200 nautical mile Economic Exclusion Zones of two or more nations who are less than 400 miles apart. China's application of archipelagic state baselines and continental shelf extensions from uninhabitable features, make it clear that the law could benefit from revision. Without ratifying UNCLOS III it would be difficult for the United States to champion efforts to improve it.

The United States should also increase military-to-military activities with Vietnam and consider military sales of select weapon systems. A recent article in the Joint Forces

Quarterly suggests the United States take a two-pronged approach to the region by, “defining acceptable behavior for China while strengthening deterrence”. The authors argue that selling high-tech, high-impact deterrence weapons to Vietnam would help justify “hedging” on America vice China. A state-of-the-art regional Intelligence, Surveillance, and Reconnaissance (ISR) system that tracks Chinese military activities is one example listed. Late generation, multi-role, rapidly deployable deterrence missiles are another.⁴⁸

Finally, the United States should take a regional approach to the South China Sea disputes. In addition to supporting Vietnam, the Philippines, and other nations with legitimate territorial claims, the United States should support Japan’s desire to expand its defense capabilities. Japan’s current defense capabilities are limited by the constraints placed upon it via its 1947 constitution. Japan’s ability to protect its sovereignty of the Senkaku Islands requires it to modernize and expand its defense capabilities.⁴⁹ The United States should assist Japan in this effort. Doing so will assist Vietnam in resolving its territorial disputes with China by providing another counter to China’s regional influence.

FACTOR TIME

China’s leaders prefer to shelve its territorial disputes and delay any potential showdown until the country has fully developed as a maritime superpower. “With respect to timing, Chinese leaders wish they would not have to come to a showdown with the other disputants in the next 30 years, so they will have time to turn China into a true great power.”⁵⁰ China’s fully developed maritime power would serve as strong deterrence to its

regional neighbors and put China in a favorable position to deal with external influence from the United States. Additionally, China needs a stable regional environment to continue its economic rise, which is essential to its military build-up. Therefore, a delay by Vietnam in addressing the dispute favors China. A counterargument can be made that the longer China's South China Sea claims remain disputed and unsettled, the more precarious and less legitimate those claims are. However, the simple fact that China is currently impeding Vietnam's use of its own EEZ makes a strategic delay by Vietnam ill-advised.⁵¹ Additionally, with a prompt action, Vietnam can capitalize on the recent arbitral precedent of the Philippines to create a cumulative regional effort to invalidate China's U-shaped line claim.

CONCLUSION

For Vietnam to continue to grow in prosperity and fuel its economic growth it must have access to the abundant natural resources in the South China Sea. Vietnam has legitimate territorial claims to the Paracel and Spratly Islands based on international law. However, China lays claim to nearly the entire South China Sea. Despite China having ratified UNCLOS III, the country's expansive territorial claims directly conflict with the laws of the same treaty. China's aggressive enforcement of its "indisputable sovereignty" over the contested area highlights the need for resolution of these territorial disputes.

If Vietnam is to succeed in these efforts it must rapidly adopt a broad strategy that includes diplomatic and arbitral efforts, as well as the support of the United States. As China increases its maritime capacity over time, Vietnam's chances for successful resolution decline. Vietnam must first solve its less threatening territorial disputes and strengthen relationships with its ASEAN partners and the United States. Vietnam should then take

arbitral action through the United Nations tribunal. China can either abide by the results of the tribunal or face increasing international pressure and potentially sanctions. The Philippines' recent diplomatic and legal efforts provide useful precedent.

The United States has a role in settling the disputes as well. The United States should not choose a particular side in the dispute; rather it should side with international law and its enforcement. If the United States finds Vietnam's claims legitimate, America should provide clear and tangible support for Vietnam in its territorial disputes. The United States should sign UNCLOS III and then lead efforts to improve the legislation.

Finally, these actions should be taken before China significantly increases its maritime military capacity. China prefers to "shelve" the dispute. And while China continues to gain military might in the interim, the chances for a solution diminish.

RECOMMENDATIONS

- Vietnam should work with ASEAN countries and regional neighbors to settle its less serious disputes with Malaysia, Brunei and the Philippines. Solving these disputes is critical to gaining regional support. As such Vietnam must be willing to make reasonable concessions. Having territorial disputes with multiple neighboring countries could reflect poorly on Vietnam by creating the impression that Vietnam is the source of the disputes. Eliminating these conflicts through concessions reflects favorably on Vietnam and further isolates China.
- Vietnam should follow the precedent established by the Philippines. Vietnam should request the support of the United States. Once gained, it should pursue arbitration through the United Nations tribunal. International law appears to be on Vietnam's side and a ruling by the tribunal highlights the illegitimacy of China's "U-shaped line" claim. This step brings

additional pressure on China to comply with international law, even if China refuses to acknowledge the tribunal's authority, and even if the United Nations is unable to enforce its decision.

- CDR, USPACOM should work with Vietnam's military leaders to design a military-to-military engagement plan. This plan should include bilateral exercises with the United States as well as multi-lateral exercises with other regional partners. The primary objective of PACOM's military engagement plan with Vietnam should be to strengthen the United States' relationship with Vietnam and foster Vietnam's enhanced relationships with its neighboring countries. Additionally, this military engagement plan should demonstrate the United States' resolve in its support for Vietnam and encourage military-to-military sales.

-CDR, USPACOM should coordinate with Vietnam's military leaders to develop a proposal for increased United States Naval presence inside Vietnam's internationally recognized EEZ and where Vietnam has active fishery or hydrocarbon interests. The primary objective of this PACOM effort should be to discourage China from enforcing its claims inside of Vietnam's EEZ. PACOM's plan and intentions for naval presence must be clearly communicated to China in order reduce the chances of miscalculation or misinterpretation.

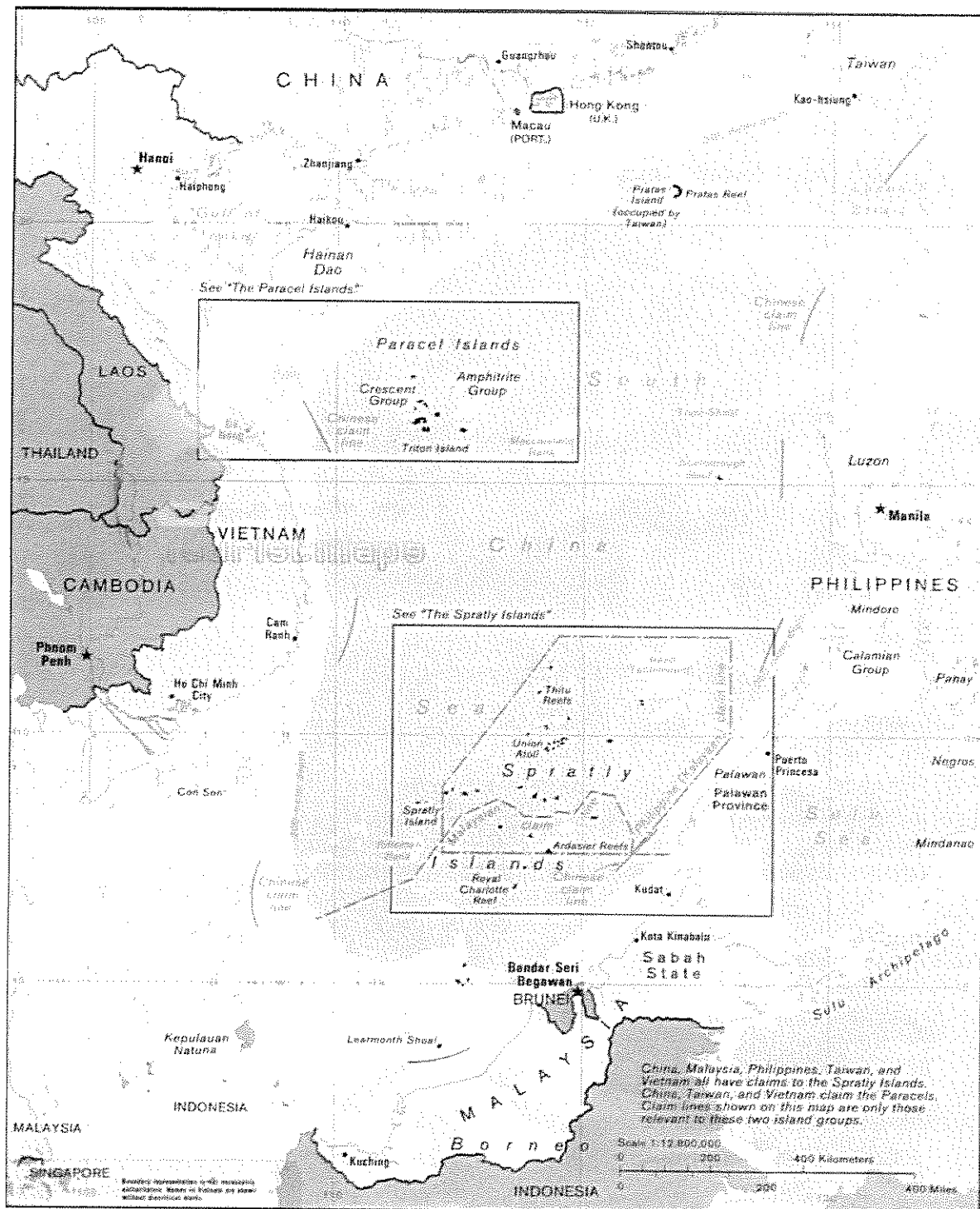


Figure 1 – South China Sea Map with Paracel and Spratly Islands

(Source: <http://www.fairobserver.com/360theme/hot-cauldron-about-boil-over-south-china-sea>)

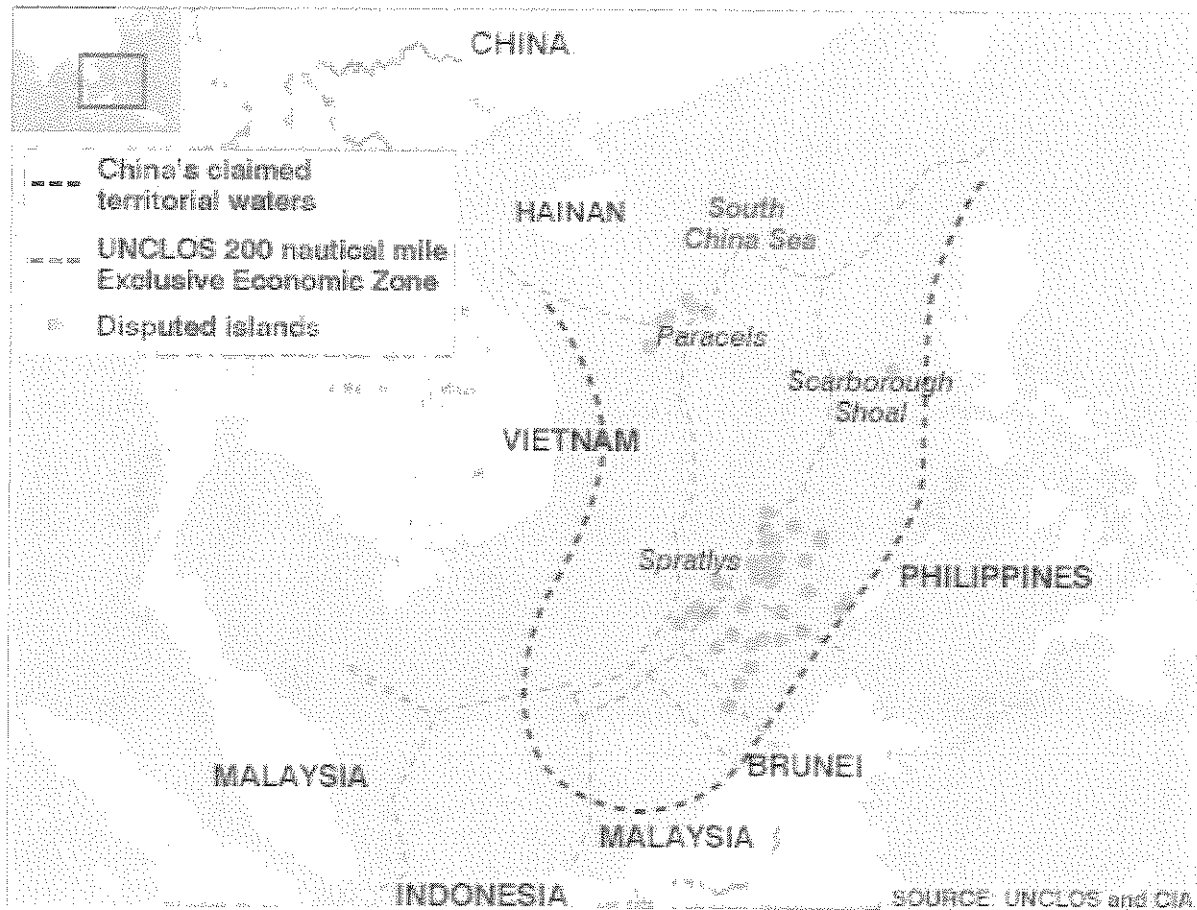


Figure 2 - China's "U-Shaped Claim" Line with conflicting proposed EEZs

(Source: <http://www.amchamvietnam.com/9411/stirring-up-the-south-china-sea-i-china/>)

NOTES

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1. *The Socialist Republic of Viet Nam: basic information*. (Ha Noi, 2010), 20.
 2. Ibid., 16.
 3. Ibid., 26.
 4. Vietnam Country Handbook: A field-ready reference publication. (Washington, 2004). 48.
 5. *The Socialist Republic of Viet Nam: basic information*. (Ha Noi, 2010), 26-7.
 6. Ibid., 27-8.
 7. Ibid., 17.
 8. Vietnam Country Handbook: A field-ready reference publication. (Washington, 2004). 7.
 9. "Vietnam Continuously Exercises Its Sovereignty Over Hoang Sa, Truong Sa Archipelagos," BienDong.Net (August 9, 2013), <http://www.southchinasea.com/documents/studies/313-vietnam-continuously-exercises-its-sovereignty-over-hoang-sa-truong-sa-archipelagos.html>, 1. (accessed September 19, 2013).
 10. Ibid., 1.
 11. Ibid.
 12. Ibid.
 13. Ibid., 7.
 14. Ibid., 2.
 15. Ibid.
 16. Ibid., 9.
 17. Ibid.
 18. Yann-huei Song and Stein Tonnesson, *The Impact of the Law of the Sea Convention on Conflict and Conflict Management in the South China Sea* (London: Taylor and Francis, 2013), 239.

-
19. Ibid., 240-1.
20. Ibid., 242.
21. Ibid., 250.
22. Ibid., 245.
23. Ibid., 255.
24. Euan Graham, "China's New Map: Just Another Dash?," Royal United Services Institute (September 3, 2013), <http://www.rusi.org/publications/newsbrief/ref:A5225D72CD72F8/#.UmSIVvmsim>, 1. (accessed September 6, 2013).
25. Yann-huei Song and Stein Tonnesson, 252.
26. James R. Holmes, "How China Sees the South China Sea," The Diplomat (September 29, 2013), <http://thediplomat.com/the-naval-diplomat/2013/09/09/how-china-sees-the-south-china-sea/>, 1. (accessed October 3, 2013).
27. "2013 White Paper of China: A Demonstration of Bellicose Policy on the East Sea," BienDong.Net (September 13, 2013), <http://www.southchinasea.com/analysis/539-2013-white-paper-of-china-a-demonstration-of-bellicose-policy-on-the-east-sea.html>, 1. (accessed September 19, 2013).
28. David Lai, *Asia-Pacific: A Strategic Assessment*, (Carlisle, PA: U.S. Army War College Press, 2013), 62.
29. Deep Pal, "A Code of Conduct for the South China Sea," The Diplomat (September 25, 2013), <http://thediplomat.com/flashpoints-blog/2013/09/25/a-code-of-conduct-for-the-south-china-sea/>, 1. (accessed October 3, 2013).
30. James R. Holmes, "ASEAN Should Reject a Code of Conduct in the South China Sea," The Diplomat (September 5, 2013), <http://thediplomat.com/the-naval-diplomat/2013/09/05/asean-should-reject-a-code-of-conduct>, 1. (accessed September 6, 2013).
31. Ibid., 2.
32. "2013 White Paper of China: A Demonstration of Bellicose Policy on the East Sea," BienDong.Net (September 13, 2013), <http://www.southchinasea.com/analysis/539-2013-white-paper-of-china-a-demonstration-of-bellicose-policy-on-the-east-sea.html>, 1. (accessed September 19, 2013).

-
33. Gaanashree Wood, "South China Sea Dispute: New Battleground for US-China Interests," *The World Outline* (August 27, 2013), <http://theworldoutline.com/2013/08/south-china-sea-dispute/>, 3. (accessed September 6, 2013).
34. Lai, *Asia-Pacific*, 66-7.
35. Parameswaran Ponnudural, "Viet Nam's Leader Rubbishes Beijing's South China Sea Claims," *Radio Free Asia* (July 25, 2013) <http://www.rfa.org/english/news/vietnam/sea-07252013220917.html>, 1. (accessed September 6, 2013).
36. *Ibid.*, 2.
37. "The Philippines To Use The U.S. And Japan's Support Against China's Pressure," *BienDong.Net* (September 21, 2013), <http://www.southchinasea.com/analysis/546-the-philippines-to-use-the-us-and-japans-support-against-chinas-pressure.html>, 1. (accessed October 3, 2013).
38. *Ibid.*
39. *Ibid.*, 2.
40. *Ibid.*, 1.
41. Julian E. Barnes, "China Rejects Multilateral Intervention in South China Sea Disputes," *The Wall Street Journal Online* (August 29, 2013), <http://online.wsj.com/news/articles/SB1000142412788732324904579042742806878158>, 1. (accessed September 19, 2013).
42. Parameswaran Ponnudural, "Viet Nam's Leader Rubbishes Beijing's South China Sea Claims," 2. (accessed September 6, 2013).
43. Raul Pedroza, "Beijing's Coastal Real Estate: A History of Chinese Naval Aggression," *Foreign Affairs* (November 15, 2010), <http://www.foreginaffairs.com/articles/67007/raul-pedroza/beijings-coastal-real-estate?page=sho>, 2. (accessed September 6, 2013).
44. *Ibid.*, 4.
45. *Ibid.*, 5.
46. Lai, *Asia-Pacific*, 63-4.
47. Jim Garamone, "Dempsey Urges Ratification of Law of the Sea Convention," *Armed Forces Press Service* (May 9, 2012),

<http://www.defense.gov/news/newsarticle.aspx?id=116265>, 1. (accessed October 3, 2013).

48. Keagle, Fisher and Johnson, "Enhancing the U.S. Rebalance Toward Asia: Elevating Allies," *Joint Forces Quarterly* 3d Quarter, no. 70 (2013): 59-60.

49. Justin Goldman, "An Amphibious Capability In Japan's Self-Defense Force: Operationalizing Dynamic Defense," *Naval War College Review* 66 no. 4 (2013): 117-119.

50. Lai, *Asia-Pacific*, 17.

51. *Ibid.*, 18.

BIBLIOGRAPHY

- "2013 White Paper of China: A Demonstration of Bellicose Policy on the East Sea." BienDong.Net (September 13, 2013). www.southchinasea.com/analysis/539-2013-white-paper-of-china-a-demonstration-of-bellicose-policy-on-the-east-sea.html, (accessed September 19, 2013).
- "Armed Clash in the South China Sea: Contingency Planning Memorandum No. 14." Council on Foreign Relations. (April, 2012). www.cfr.org/world/armed-clash-south-china-sea/p27883, (accessed October 20, 2013).
- Barnes, Julian E. "China Rejects Multilateral Intervention in South China Sea Disputes." The Wall Street Journal Online (August 29, 2013). <http://online.wsj.com/news/articles/SB10001424127887323324904579042742806878158>, (accessed September 19, 2013).
- Chen, Sharon, and Gopal Ratnam. "Vietnam Rises as Middle Power at Defense Summit." Bloomberg (August 28, 2013). <http://www.bloomberg.com/news/2013-08-27/vietnam-rises-as-middle-power-at-defense-summit-southeast-asia.html>, (accessed September 19, 2013).
- Garamone, Jim. "[CJCS General] Dempsey Urges Ratification of Law of the Sea Convention," Armed Forces Press Service (May 9, 2012). <http://www.defense.gov/news/newsarticle.aspx?id=116265>, (accessed October 3, 2013).
- Goldman, Justin. "An Amphibious Capability In Japan's Self-Defense Force: Operationalizing Dynamic Defense." *Naval War College Review* 66 no. 4 (2013): 117-134.
- Graham, Euan. "China's New Map: Just Another Dash?" Royal United Services Institute (September 3, 2013). <http://www.rusi.org/publications/newsbrief/ref:A5225D72CD72F8/#.UmSIVvmsim>, (accessed September 6, 2013).
- Holmes, James R. "How China Sees the South China Sea." The Diplomat (September 29, 2013). <http://thediplomat.com/the-naval-diplomat/2013/09/09/how-china-sees-the-south-china-sea/>, (accessed October 3, 2013).
- . "ASEAN Should Reject a Code of Conduct in the South China Sea." The Diplomat (September 5, 2013). <http://thediplomat.com/the-naval-diplomat/2013/09/05/asean-should-reject-a-code-of-conduct>, (accessed September 6, 2013).
- Keagle, James M., Richard D. Fisher, Jr., and Brian Johnson. "Enhancing the U.S. Rebalance Toward Asia: Elevating Allies." *Joint Forces Quarterly* 3d Quarter, no. 70 (2013): 59-65.
- Lai, David. *Asia-Pacific: A Strategic Assessment*. Carlisle: U.S. Army War College Press, 2013.

- Pal, Deep. "A Code of Conduct for the South China Sea." *The Diplomat* (September 25, 2013). <http://thediplomat.com/flashpoints-blog/2013/09/25/a-code-of-conduct-for-the-south-china-sea/>, (accessed October 3, 2013).
- Pedrozo, Raul "Pete," "Beijing's Coastal Real Estate: A History of Chinese Naval Aggression." *Foreign Affairs* (November 15, 2010). <http://www.foreignaffairs.com/articles/67007/raul-pedrozo/beijings-coastal-real-estate#>, (accessed September 6, 2013).
- "The Philippines To Use The U.S. And Japan's Support Against China's Pressure." *BienDong.Net* (September 21, 2013). <http://www.southchinasea.com/analysis/546-the-philippines-to-use-the-us-and-japans-support-against-chinas-pressure.html>, (accessed October 3, 2013).
- Ponnudurai, Parameswaran. "Vietnam's Leader Rubbishes Beijing's South China Sea Claims." *Radio Free Asia*. (July 25, 2013). <http://www.rfa.org/english/news/vietnam/sea-07252013220917.html>, (accessed September 6, 2013).
- Smith, Paul J. "The Senkaku/Diaoyu Island Controversy: A Crisis Postponed." *Naval War College Review* 66 no. 2 (2013): 27-44.
- The Socialist Republic of Viet Nam: basic information*. English ed. Ha Noi: Ministry of Foreign Affairs of Viet Nam, 2010.
- Song, Yann-huei, and Stein Tonnesson. *The Impact of the Law of the Sea Convention on Conflict and Conflict Management in the South China Sea*. London: Taylor and Francis, 2013.
- "Vietnam Continuously Exercises Its Sovereignty Over Hoang Sa, Truong Sa Archipelagos." *BienDong.Net* (August 9, 2013). www.southchinasea.com/documents/studies/313-vietnam-continuously-exercises-its-sovereignty-over-hoang-sa-truong-sa-archipelagos.html, (accessed September 19, 2013).
- Vietnam Country Handbook: A field-ready reference publication*.. Washington, DC: Dept. of Defense, 2004.
- Wood, Gaanashree. "South China Sea Dispute: New Battleground for US-China Interests South China Sea dispute: New Battleground for US-China Interests." *The World Outline* (August 27, 2013). <http://theworldoutline.com/2013/08/south-china-sea-dispute/>, (accessed September 6, 2013).
- Zhengyu, Wu. "Toward "Land" or Toward "Sea"?" *The High-Speed Railway and China's Grand Strategy*. *Naval War College Review* 66 no. 3 (2013): 51-66.