

# **China, Vietnam and the South China Sea Disputes: Assessing the Implications of the May-June 2011 Incidents**

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## **Abstract**

The paper outlines and examines how China and Vietnam deal with tensions relating to their territorial disputes in the South China Sea. It looks specifically at the tension caused by incidents in late May and early June 2011 and how the tension was brought under control by the two countries. These developments are then examined in the broader context of the Sino-Vietnamese approach to managing border disputes in the period since full normalisation of relations in late 1991, both progress made in terms of conflict management and challenges faced in terms of tension are addressed. The implications and lessons drawn from the developments in May-June 2011 and from the broader period since late 1991 is outlined. Furthermore, the challenges for China and Vietnam to properly manage their disputes and related tension in the South China Sea are discussed.

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## **China, Vietnam and the South China Sea Disputes: Assessing the Implications of the May-June 2011 Incidents<sup>1</sup>**

### **Purpose and structure**

The paper outlines and examines how China and Vietnam deal with tensions relating to their territorial disputes in the South China Sea. It looks specifically at the tension caused by incidents in late May and early June 2011 and how the tension was brought under control by the two countries. These developments are then examined in the broader context of the Sino-Vietnamese approach to managing border disputes in the period since full normalisation of relations in late 1991, both progress made in terms of conflict management and challenges faced in terms of tension are addressed. The implications and lessons drawn from the developments in May-June 2011 and from the broader period since late 1991 are outlined. Furthermore, the challenges for China and Vietnam to properly manage their disputes and related tension in the South China Sea are also discussed.

The paper is structured in the following way. First the May-June 2011 incidents are outlined through the official perspectives of China and Vietnam, respectively. Second, the way in which the incidents were managed in late June 2011 is outlined. Third, relevant developments since July 2011 are outlined. Fourth, the approach to manage territorial disputes between China and Vietnam since full normalisation in late 1991 is outlined and analysed. Fifth, the lessons that can be drawn from recent incidents within the broader context of earlier tension as well as the overall management process are outlined. Sixth, concluding observations are drawn based on the main findings of the paper.

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<sup>1</sup> The paper is partly based on a Seminar by the author on the topic: “Assessing the Implications on the May-June Incidents in the South China Sea for Sino-Vietnamese Relations”, organized by the Diplomatic Academy of Vietnam on 9 September 2011. The author greatly benefited from the comments and question from the participants.

## **The incidents of May and June 2011**

The first indication of an incident in the South China Sea came on 28 May when the Spokesperson of China's Ministry of Foreign Affairs spoke on China's: "Maritime Law Enforcement and Surveillance on the South China Sea".<sup>2</sup> First, it was stated that China "holds a consistent and clear-cut position on the South China Sea issue". Second, it was emphasized that China "opposes Vietnam's oil and gas exploration activities within the waters under the jurisdiction of China which undermine China's rights and interests as well as jurisdiction over the South China Sea". In addition it was stated that such activities "violate the bilateral consensus on the South China Sea issue". Third, it was stated that the "actions taken by China's competent authorities are regular maritime law enforcement and surveillance activities in the waters under the jurisdiction of China". In addition it was stated that China "has been committed to peace and stability of the South China Sea". Furthermore, it was emphasised that China "stand ready to make joint efforts with relevant parties to seek proper solutions to relevant disputes and conscientiously implement" the Declaration on the Conduct of Parties in the South China Sea (DOC), "with a view to safeguarding the stability of the South China Sea in real earnest".<sup>3</sup>

On 29 May Vietnam's Ministry of Foreign Affairs held a press conference relating to what was referred to as the "May 26 incident" during which Vietnam claimed that a "Chinese maritime surveillance vessel cut the exploration cables of Binh Minh 02 seismic vessel of Viet Nam National Oil and Gas Group (PVN) while it was conducting seismic survey in the continental shelf of Viet Nam".<sup>4</sup> The Spokesperson of Vietnam's Ministry of Foreign Affairs

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<sup>2</sup> "Foreign Ministry Spokesperson Jiang Yu's Remarks on China's Maritime Law Enforcement and Surveillance on the South China Sea", from the website of the *Ministry of Foreign Affairs of the People's Republic of China* (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t826601.htm>) (accessed on 13 July 2011).

<sup>3</sup> Ibid.

<sup>4</sup> "Press Conference on Chinese maritime surveillance vessel's cutting exploration cable of PetroViet Nam Seismic Vessel", from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110530220030/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110530220030/newsitem_print_preview)) (accessed on 13 July 2011).

stated that Vietnam was “resolutely opposed to the China’s act that damaged and hindered the Viet Nam’s normal survey and exploration activities within the Vietnamese continental shelf and exclusive economic zone, inflicting severe damages on Viet Nam National Oil and Gas Group”. Furthermore, it was stated that China’s “act” was a “serious violation of the sovereign and jurisdiction rights of Viet Nam to its continental shelf and exclusive economic zone”. It was also not in line with the 1982 United Nations Convention on Law of the Sea (1982 UNCLOS) and was “against the spirit and literature of” the DOC. It was also stated that Vietnam “asks China to immediately cease and refrain from recurrence of acts that infringe upon Viet Nam’s sovereign and jurisdiction rights to its continental shelf and exclusive economic zone and to compensate for the damages caused to Viet Nam”. In response to the May 28 remark made by the Spokesperson of China’s Ministry of Foreign Affairs, it was stated that Vietnam “refute the statement”.<sup>5</sup>

In addition Vietnam raised three points. First, that the area where Vietnam “conducted exploration activities situates entirely” in the Exclusive Economic Zone (EEZ) and the “200-nautical mile continental shelf” of Vietnam. It was clarified that this was in “accordance” with the 1982 UNCLOS. Furthermore, it was stated that the area “is neither a disputed area nor is it an area “managed by China””. According to Vietnam “China has deliberately misled the public into thinking that it is a disputed area”. Second, it was stated that Vietnam “always complies with the common perception of senior leaders of the two countries that all disputes be resolved through peaceful measures and acts that further complicate the situation be avoided”. It was further stated that “there is no such common perception that states China has the right to hinder Viet Nam’s activities within” the EEZ and continental shelf of Vietnam. Finally, Vietnam stated that it was “China’s act that goes against the common perception of senior leaders of the two countries”. Third, Vietnam pointed to a contradiction in China’s position by stating that “while China calls for addressing related disputes through peaceful measures, it is its own acts that are complicating the situation in the East Sea”, i.e. the South China Sea.<sup>6</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

On the issue of the extent of China's claims in the South China Sea the Vice Chairman of the National Border Committee of Vietnam, Nguyen Duy Chien, stated that China's "nine-dash line in the East Sea, aka "Bull tongue-shaped line", is completely legally groundless and is in contrary to" the 1982 UNCLOS to "which China is a party". He further stated that China's "claim encroaches the exclusive economic zones and the continental shelves of many regional countries, including Viet Nam, and thus are rejected by many countries".<sup>7</sup>

On 30 May, the website of *Nhan Dan* carried information about the press conference at the Ministry of Foreign Affairs of Vietnam with similar content.<sup>8</sup> In addition *Nhan Dan* carried information provided by the Deputy General Director of "PetroVietnam" who "briefed reporters" about the:

"incident when PetroVietnam-owned Binh Minh 02 ship was blocked and threatened as well as had its cables cut by three Chinese marine surveillance vessels while conducting explorations at 12 degrees 48'25" north latitude and 111 degrees 26'48" east longitude, some 116 nautical miles off Dai Lanh cape in the central coastal province of Phu Yen".<sup>9</sup>

The Deputy General Director "emphasised that the sea water where PetroVietnam's ship was operating is deep inside Vietnam's continental shelf." He also added that "PetroVietnam has conducted seismic surveys in the area for numerous times".<sup>10</sup>

On 2 June in a note from the Ministry of Foreign Affairs of Vietnam to China's Embassy in Hanoi, Vietnam protested against "Chinese marine forces using weapons to threaten Vietnamese fishermen who were conducting their normal, legal activities in the waters of Vietnam's Truong Sa archipelago", i.e. Spratly archipelago. In the report an incident that took

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<sup>7</sup> Ibid.

<sup>8</sup> "Vietnam demands China stop sovereignty violations", from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmmlink/nhandan-online/homepage/politics/external-relations/vietnam-demands-china-stop-sovereignty-violations-1.298258?mode=print#t3WoXu5UctyZ>) (accessed 13 July 2011).

<sup>9</sup> Ibid. The Deputy Director of PetroVietnam was also quoted as saying that: "It is impossible to cut cables at a depth of 30m under the water without special equipment," (Ibid).

<sup>10</sup> Ibid.

place on 1 June was highlighted. Vietnam claimed that “three Chinese military vessels used guns to threaten the crew of PY 92305TS fishing boat of central Phu Yen province while they are fishing in the waters of Vietnam’s Truong Sa archipelago”, i.e. Spratly archipelago.<sup>11</sup>

In response to news carried on June 5 by “several means of communications abroad on “demonstrations protesting China” in front of the Chinese Embassy in Hanoi and the Chinese Consulate General in Ho Chi Minh City”, Vietnam moved to clarify that “a few people spontaneously gathered and went pass” the Embassy in Hanoi and the Consulate General in Ho Chi Minh City. They did so in order to “show their patriotic spirit and awareness of protecting the national sovereignty, and express attitudes to oppose Chinese marine surveillance vessels’ cutting of surveying cables of the Binh Minh 02”. It was further stated that “these people” held the view that the “Chinese marine surveillance vessels’ actions seriously violated Vietnam’s sovereignty and jurisdiction rights to its” EEZ and continental shelf. It was also clarified that they had “gathered in order, expressed attitudes in a gentle manner, and self-dispersed after hearing explanation from relevant Vietnamese functioned agencies and mass organisations”.<sup>12</sup>

China’s response to the demonstrations was much more moderated than the response to the demonstrations back in late 2007.<sup>13</sup> In fact, on 7 June, in response to a question about

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<sup>11</sup> “Vietnam protests China’s threats to its fishermen”, from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmlink/nhandan-online/homepage/politics/external-relations/vietnam-protests-china-s-threats-to-its-fishermen-1.298856?mode=print#lUkNBmgbAQRV>) (accessed 13 July 2011).

<sup>12</sup> “Wrong news on gatherings to protest China”, from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmlink/nhandan-online/homepage/politics/external-relations/wrong-news-on-gatherings-to-protest-china-1.299145?mode=print#liR9HgBO7nMN>) (accessed 13 July 2011); and “Concerning news on gatherings to protest China”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110606144348/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110606144348/newsitem_print_preview)) (accessed 13 July 2011).

<sup>13</sup> For details see Ramses Amer, “The Sino-Vietnamese Approach to Managing Border Disputes – Lessons, Relevance and Implications for the South China Sea Situation”, in *The South China Sea: Cooperation For Regional Security and Developments, Proceedings of the International Workshop, co-organized by the Diplomatic Academy of Vietnam and the Vietnam Lawyers’ Association, 26-27 November 2009, Hanoi, Vietnam*, Edited by Tran Truong Thuy (Hanoi: The Gioi and Diplomatic Academy of Vietnam, 2010), p. 266 note 52. (hereafter Amer, *Sino-Vietnamese 2010*)

China's reaction to reports that "large-scale demonstrations broke out in Vietnam in protest of China's recent activities in the South China Sea", the Spokesperson of China's Ministry of Foreign Affairs answered that "China has indisputable sovereignty over the South China Sea islands and adjacent waters. China and Vietnam have reached important common ground many times on properly handling maritime issues and safeguarding stability of the South China Sea". He also added that: 'We hope that Vietnam makes concrete efforts to nail down such consensus'.<sup>14</sup>

On 9 June in response to a question from the media relating to a new incident in the South China Sea, the Spokesperson of Vietnam's Ministry of Foreign Affairs gave the following answer:

"At 6 a.m. June 9, 2011, the Viking II, a vessel hired by Viet Nam National Oil and Gas Group, was conducting 3D seismic exploration in Block 136/03 (coordination: 6 degrees 47.5' North and 109 degrees 17.5' East) within the continental shelf of Viet Nam when Chinese fishing vessel No 62226, supported by two Chinese Yuzheng fishery administration vessels No 311 and No 303, cut off Viking II, then veered with acceleration. Despite warning flares from the Vietnamese side, vessel 62226 headed on and rammed exploration cables of the Viking II. Its specialized cable slashing device was consequently trapped in the Viking II's cables, jamming Viking II operation. As soon as that happened, Chinese Yuzheng 311 and 303, together with several Chinese fishing vessels, rushed to rescue Vessel 62226."<sup>15</sup>

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<sup>14</sup> "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on June 7, 2011", from the website *Ministry of Foreign Affairs of the People's Republic of China* (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t829435.htm>) (accessed 13 July 2011).

<sup>15</sup> "Foreign Ministry Spokesperson Nguyen Phuong Nga answers question from the media at the Press Conference on June 9th 2011 concerning the Viking II incident", from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110610100618/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110610100618/newsitem_print_preview)) (accessed 13 July 2011); and "Regular Press Briefing by MOFA's Spokesperson Nguyen Phuong Nga on June 9th, 2011", from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110610145220/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110610145220/newsitem_print_preview)) (accessed 13 July 2011).

It was also clarified that the location where Viking II was operating was within Vietnam's "200-nautical mile-continental shelf". The Spokesperson further stated that the "action by the Chinese fishing and fishery administration vessels was totally intentional, thoroughly deliberated and planned and seriously infringes upon Viet Nam's sovereign and jurisdiction rights". It was also stated that the action "violates" both the 1982 UNCLOS and the DOC. Furthermore, it was "against the common perception of senior leaders of the two countries on maintaining peace and stability in the East Sea", i.e. the South China Sea. The Spokesperson noted that it was the second "incident" since 26 May and stated that "these systematic acts by the Chinese side aim at disputing an undisputed area with a goal to materialize its "the nine dotted line" claim" and this was "unacceptable" to Vietnam. Finally, it was stated that Vietnam both "opposes" the action and "asks" China "to immediately end and refrain from recurrence of actions that violate Viet Nam's sovereign and jurisdiction rights to its continental shelf and exclusive economic zone". Finally, it was stated that in the afternoon of 9 June Vietnam had "made representation with the Embassy of China" to "lodge" a protest against China's "action".<sup>16</sup>

China's response came as an answer by the Spokesperson of China's Ministry of Foreign Affairs on 9 June to a question relating to Vietnam's accusations against China.<sup>17</sup> The Spokesperson started by stating that the "Vietnamese remarks do not tally with the fact". Then continued by reiterating that China "has indisputable sovereignty over the Nansha Islands and the adjacent waters", i.e. the Spratly islands. In relation to the events that had occurred the Spokesperson noted that Chinese fishing boats "have been operating in the waters off Wan'an

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<sup>16</sup> See note 14. The website of *Nhan Dan* carried a report on the statement made by the Spokesperson of the Ministry of Foreign Affairs of Vietnam with similar factual content but with some variation in the wording see "China asked to stop harassing Vietnam's ships", from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmmlink/nhandan-online/homepage/politics/external-relations/china-asked-to-stop-harassing-vietnam-s-ships-1.299666?mode=print#xAuU3G0kacQU>) (accessed 13 July 2011).

<sup>17</sup> "Foreign Ministry Spokesperson Hong Lei's Remarks on Vietnamese Ships Chasing away Chinese Fishing Boats in the Waters off the Nansha Islands", from the website of the *Ministry of Foreign Affairs of the People's Republic of China* (<http://www.fmprc.gov.cn/eng/xwfw/s2510/2535/t829427.htm>) (accessed 13 July 2011).

Bank for generations” and they were “conducting normal operation in the above waters on the morning of June 9” when the Chinese fishing boats were “illegally chased away by armed Vietnamese ships”. According to the Spokesperson during the chase “the fishing net of one of the Chinese fishing boats tangled with the cables of a Vietnamese oil and gas exploration vessel which was operating illegally in the same waters”. Then, the Vietnamese vessel “dragged the Chinese fishing boat for more than one hour”. In this situation the Chinese fishermen “were forced to take the initiative to cut off the fishing net so as to separate the two vessels”. According to China the action of the Vietnamese vessel “seriously endangered Chinese fishermen's lives”. The Spokesperson stressed that “Vietnam grossly infringed China’s sovereignty as well as maritime rights and interests by exploring oil and gas illegally in the Wan’an Bank waters and chasing away Chinese fishing boats”. Furthermore, China urged Vietnam to “stop all actions that violate China’s sovereignty, endanger Chinese fishermen’s life and property safety, and complicate and expand disputes”. Finally, the Spokesperson said that China “hopes that the Vietnamese side makes due efforts to safeguard peace and stability of the South China Sea”.<sup>18</sup>

### **Reducing tension and management of the incidents**

After this public display of differences and tension relating to the activities in the South China Sea the two countries took action to reduce the level of tension. Vietnam dispatched a Special Envoy to Beijing to discuss the situation with the Chinese leaders. The Special Envoy was Deputy Minister of Foreign Affairs, Ho Xuan Son, who held talks with his Chinese counterpart, Zhang Zhijun, and met with “Chinese State Councillor”, Dai Bingguo, in Beijing on June 25.<sup>19</sup> According to Vietnamese reports<sup>20</sup> the two sides concurred that the bilateral relationship

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<sup>18</sup> Ibid.

<sup>19</sup> It appears as though China dispatched representatives to Vietnam earlier in June although they were not officially publicized at that time (Author’s discussion with officials and researchers in Hanoi in September 2011).

<sup>20</sup> “Vietnam advocates maintaining peace, stability in East Sea”, from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmmlink/nhandan-online/homepage/politics/external-relations/vietnam-advocates-maintaining-peace-stability-in-east-sea-1.301810?mode=print#iBVJGR3mS4Ww>) (accessed 17 July 2011); and

“develops in a healthy and stable manner, meeting the common aspirations and fundamental interests of the Vietnamese and Chinese people and benefiting peace, stability and development in the region”. The two sides also “underlined the need to persist in directing” the “comprehensive strategic cooperative partnership” in order to develop it in line with the motto of “friendly neighbourliness, comprehensive cooperation, long lasting stability and looking forwards to the future” and the spirit of “good neighbours, good friends, good comrades and good partners”. In relation to the situation in the South China Sea the two sides “emphasised the necessity to actively implement the common perception of the two countries’ leaders, peacefully solving the two countries’ disputes at sea through negotiation and friendly consultation; employing effective measures and working together to maintain peace and stability”. The two sides also agreed on the “need to steer public opinions along the correct direction, avoiding comments and deeds that harm the friendship and trust of the people of the two countries”. Furthermore, the two sides agreed to “speed up the tempo of negotiations so as to early sign an “Agreement on basic principles guiding the settlement of sea issues between Viet Nam and China””. Finally, it was agreed to “boost the implementation” of the DOC and of “follow-up activities so that substantial progress will soon be achieved”.<sup>21</sup>

On June 27, Deputy Minister of Foreign Affairs, Ho Xuan Son, was interviewed and he gave more information about his talks in Beijing. In addition he was asked about the “progress of negotiations on the “Agreement on basic principles guiding the settlement of sea issues between Viet Nam and China””.<sup>22</sup> He answered that after the completion of the demarcation of

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“Press interviews Deputy Minister of Foreign Affairs Ho Xuan Son on meeting with Chinese State Councillor”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110628095717/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110628095717/newsitem_print_preview)) (accessed 13 July 2011).

<sup>21</sup> See note 20.

<sup>22</sup> “Vietnam advocates maintaining peace, stability in East Sea”, from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmlink/nhandan-online/homepage/politics/external-relations/vietnam-advocates-maintaining-peace-stability-in-east-sea-1.301810?mode=print#iBVJGR3mS4Ww>) (accessed 17 July 2011); and “Press interviews Deputy Minister of Foreign Affairs Ho Xuan Son on meeting with Chinese State Councillor”, from the website of *Viet Nam Ministry of Foreign Affairs*

land border in late December 2008, the two countries agreed to “shift the focus of territorial border negotiations to sea issues”. He continued by explaining that the two sides had agreed that “before solving practical issues” it was “necessary to negotiate to sign the Agreement on basic principles guiding the settlement of sea issues”. He argued that that they “are major and important orientations that the two sides need to observe”. He outlined that “between early 2010 and now”, the two sides “have held six working-level rounds of negotiations”. They had exchanged views on “some basic principles” including the “common awareness of the two countries’ high-level leaders”, international law, including the 1982 UNCLOS and the DOC. He also explained that “issues relating to Viet Nam and China only are solved bilaterally and issues relating to other sides are discussed by related sides”. Finally, he said that the “seventh round of negotiations” was scheduled to be held in Hanoi in the “coming time”.<sup>23</sup>

On 28 June the Spokesperson of China’s Ministry of Foreign Affairs replied to a question about China’s “comment” on the “consensus” reached between China and Vietnam on the South China Sea “issue” in connection with the visit by the Special Envoy from Vietnam. The Spokesperson answered that in connection with the visit the two sides had “an in-depth exchange of views on the current South China Sea issue, arriving at important consensus”. According to the Spokesperson the two sides “agreed to resolve disputes through friendly consultation rather than take actions that may complicate and expand the situation, and oppose external forces’ interference in the China-Vietnam dispute so as to jointly safeguard peace and stability of the South China Sea”. The two sides also “vowed to steer public opinions so as to avoid words or deeds that impair the friendship and mutual trust between the two peoples”. The Spokesperson also stated that China believed that the “consensus will be conducive to the sound and stable development of China-Vietnam relations as well as the proper settlement of the South China Sea issue”. Finally, it was stated that China was hopeful that Vietnam would

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([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110628095717/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110628095717/newsitem_print_preview))  
(accessed 13 July 2011).

<sup>23</sup> See note 22.

make “joint efforts” with China to “implement relevant consensus in real earnest and safeguard peace and stability of the South China Sea”.<sup>24</sup>

### **Subsequent developments**

The two most significant developments since late June 2011 have been the “Agreement on basic principles guiding the settlement of sea-related issues” signed in Beijing on 11 October 2011<sup>25</sup> and the first high-level summit between the two countries since 2008, which took place on 11 to 15 October when the Secretary-General of the Communist Party of Vietnam (CPV), Nguyen Phu Tong, visited China.

The “Agreement on basic principles guiding the settlement of sea-related issues” states that the government-level delegations of both countries “agree that the satisfactory settlement of sea-related issues between Vietnam and China is suitable for the basic interests and common aspirations of the two countries’ people and helpful for regional peace, stability, co-operation and development.” They also agree that on the basis of “common perceptions of the Vietnamese and Chinese leaders reached on sea-related issues and “The 1993 Agreement on Basic Principles for the Settlement of Border Territory Issues between the Socialist Republic of

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<sup>24</sup> “Foreign Ministry Spokesperson Hong Lei’s Regular Press Conference on June 28, 2011”, 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/t835066.htm>) (accessed 13 July 2011).

<sup>25</sup> “Vietnam, China sign agreement on basic principles guiding settlement of sea issues”, from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmLink/nhandan-online/homepage/politics/external-relations/vietnam-china-sign-agreement-on-basic-principles-guiding-settlement-of-sea-issues-1.315961?mode=print#kCbNEux9Ixhg>) (accessed 21 October 2011) (hereafter *Vietnam, China sign agreement*). As noted above six rounds of talks had been held by late June and a seventh round was held in late July-early August 2011 (“Regarding the 7th Round of working-level negotiation on the Agreement on basic principles guiding the settlement of sea issues between Viet Nam and China”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns110805164907/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110805164907/newsitem_print_preview)) (accessed 21 October 2011)).

Vietnam and the People's Republic of China", to solve sea-related issues pursuant to" a set of "principles" divide into six points.<sup>26</sup>

First, in the context of the overall collaboration between the two countries and by "persistently pursuing friendly talks and negotiations to properly settle sea-related issues", they would contribute to make the South China Sea a "territory of peace, friendship and co-operation and contributing to the development of the Vietnam-China comprehensive strategic co-operative partnership, as well as to regional peace and stability."<sup>27</sup>

Second, in the "spirit of fully respecting legal evidence regarding other relevant factors such as history" while "taking into account each other's reasonable concerns", the two sides agreed that through "constructive attitude and an attempt to expand common perceptions, narrow differences and continuously accelerate negotiations". Furthermore, "Based on a legal regime and principles defined by international law, including" the 1982 UNCLOS, the two sides would be "making efforts to seek basic and long-term solutions acceptable to both sides for sea-related disputes".<sup>28</sup>

Third, the two sides agreed to "seriously abide by agreements and common perceptions reached by their high-ranking leaders and seriously implement the principles and spirit" of the DOC in their negotiations on "sea-related issues". In that context it was emphasised "that sea-related disputes between Vietnam and China, the two sides shall solve them through friendly talks and negotiations" while those "relating to other countries shall be settled through negotiations with other concerned parties".<sup>29</sup>

Fourth, the two sides agreed to "actively discuss transitional and temporary measures that do not affect the stances and policies of the two sides" in the "process of seeking basic and

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<sup>26</sup> *Vietnam, China sign agreement.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

long-term solutions for sea-related issues, in the spirit of mutual respect, equal and mutually beneficial treatment”.<sup>30</sup>

Fifth, it was agreed to deal with “easy issues first and difficult issues later”. The two sides would be “speeding up the demarcation of territorial waters off the Tonkin Gulf” and they will be “actively discussing co-operation for mutual development on these waters”. They would promote co-operation in “less sensitive fields, such as sea-related environment protection, sea-related science research, search and rescue at sea, and prevention and minimisation of damage caused by natural disasters”. In order to “enhance mutual trust to facilitate the settlement of more difficult issues.”<sup>31</sup>

Sixth, the two sides agreed to hold “periodical meetings between heads of government-level border negotiation delegations twice a year and extraordinary meetings if necessary.” They also agreed to “set up a hotline mechanism between the government-level delegations to exchange and properly deal with sea-related issues in a timely manner”.<sup>32</sup>

The Secretary-General of the CPV met with Hu Jintao, President of China and Secretary-General of the Communist Party of China (CPC), with Prime Minister, Wen Jiabao, with the Chairman of the Standing Committee of the National People’s Congress, Wu Bangguo, with the Chairman of the National Committee of the Chinese People’s Political Consultative Conference, Jia Qingling, with Vice President. Xi Jinping, and, with Vice Prime Minister, Le Keqiang.<sup>33</sup>

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> The visit was widely publicized by official sources in both China and Vietnam. For China see the websites of the *Ministry of Foreign Affairs of the People’s Republic of China* (<http://www.fmprc.gov.cn>) and of the *International Department Central Committee of the CPC* (<http://www.idcpc.org.cn>). For Vietnam see the websites of *Viet Nam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en>) and of *Nhan Dan* (<http://www.nhandan.com.vn>).

In the Joint Statement<sup>34</sup> issued in connection with the high-level summit considerable attention is devoted to maritime issues. It is stated that the two sides “exchanged views in a sincere and straightforward manner on the sea issue, stressing their political will and determination to settle disputes via friendship negotiation and talks in order to maintain peace and stability in the East Sea”, i.e. the South China Sea. It was further stated that the “Leaders of the two Parties and the two countries will maintain regular exchanges and dialogues on the sea issue between Vietnam and China and timely direct the proper settlement of the sea issue from the political and strategic height”. The two sides also made a “positive assessment on the signing of the “Agreement on basic principles guiding the settlement of sea issues” saying that it has an important steering significance for the satisfactory handling and settlement of the sea issue.” They also “vowed to make exerted efforts to seriously implement this agreement.” The two sides agreed to “speed up negotiations on the sea issue, seek basic and long-term solutions acceptable to both sides”. They would also “actively discuss to find transitional and temporary measures that do not affect each side’s stance and policies, including research and discussions on co-operation for mutual development.” The two sides also stated that they “will firmly speed up negotiations on the demarcation of areas beyond the mouth of the Tonkin Gulf and actively discuss co-operation for mutual development on this area.”<sup>35</sup> Finally, it was stated that:

“Before achieving a definite settlement of the sea-related disputes, the two sides will together preserve peace and stability in the East Sea, maintain a cool-headed and restrained attitude, avoid taking any acts that can complicate or expand the disputes, prevent hostile forces from sabotaging the relationship between the two Parties and two countries, deal with emerging issues with a constructive attitude, preventing them from affecting the relations between the two Parties and two countries as well as peace and stability in the East Sea.”<sup>36</sup>

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<sup>34</sup> “Vietnam-China joint statement”, from the website of *Nhan Dan* (<http://www.nhandan.com.vn/cmlink/nhandan-online/homepage/politics/external-relations/vietnam-china-joint-statement-1.316664?mode=print#Jw6skFJ2b85x>) (accessed 21 October 2011).

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

## **Putting the incidents into context and within the China-Vietnam approach to managing territorial disputes<sup>37</sup>**

### *Context, progress and challenges*

Following full normalisation of relations between China and Vietnam in November 1991, sharp differences relating to all the territorial disputes, i.e. overlapping claims to the Paracel and Spratly archipelagos, to water and continental shelf areas in the South China Sea and in the Gulf of Tonkin, and to areas along the land border, caused tension 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 led to tension during the periods April-June 1994, April-May 1996, and March-April 1997. During 1998 there was not any extended period of tension relating to the territorial disputes but shorter periods can be noted such as in January along the land border and in the South China Sea during the months of April, May, July, and September. In 1999 there was no noticeable tension relating the disputes in the South China Sea.<sup>38</sup> Developments during the major part of the first decade of 21<sup>st</sup> century displayed that the pattern of interaction relating to the disputes in the South China Sea continued to prevail with dialogue and only limited period of tension caused by the disputes in the area.<sup>39</sup> However, during the period 2009-2011 tension caused by developments in the South China Sea have periodically increased.

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;

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<sup>37</sup> The land border dispute and the settlement of that dispute in late 1999 will not be included in this overview and analysis for details about the land border issue see Ramses Amer, *The Sino-Vietnamese Approach to Managing Boundary Disputes*, Maritime Briefing, Vol. 3, No. 5 (Durham: International Boundaries Research Unit, University of Durham, 2002), pp. 8–29 and 38–40 (hereafter Amer, *The Sino-Vietnamese 2002*).

<sup>38</sup> For details see Amer, *The Sino-Vietnamese 2002*, pp. 8–58.

<sup>39</sup> For an overview of incidents up to 2009 see Amer, *Sino-Vietnamese 2010*, pp. 264–267.

Foreign Minister-level talks, and, High-level talks, i.e. Presidents, Prime Ministers, and Secretary-Generals of the CPC and the CPV.<sup>40</sup>

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>41</sup> There have also been meetings and talks that are not included in the official rounds in July in 2007,<sup>42</sup> in November 2007,<sup>43</sup> in August 2009,<sup>44</sup> in November 2009,<sup>45</sup> and the most recent one in April 2011.<sup>46</sup>

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<sup>40</sup> See Amer, *The Sino-Vietnamese Approach 2002*, pp. 9–14 and 50–58; Ramses Amer, “Assessing Sino-Vietnamese Relations through the Management of Contentious Issues”, *Contemporary Southeast Asia*, Vol. 26, No. 2 (2004), pp. 329–331; 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. 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 (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>41</sup> The thirteenth round of government-level talks we held in Beijing on 19 and 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)).

<sup>42</sup> On 21 to 23 July 2007 Chinese and Vietnamese “government officials” met in Beijing for discussions on “border and territorial issues” (“Vietnamese and Chinese negotiators meet on territorial issue”, from the website of *Nhan Dan* ([http://www.nhandan.com.vn/english/news/250707/domestic\\_va.htm](http://www.nhandan.com.vn/english/news/250707/domestic_va.htm)) (accessed 26 September 2007) and “Vietnamese, Chinese negotiators meet on territorial issue”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/tt\\_baochi/pbnfn/ns070816153712/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns070816153712/newsitem_print_preview)) (accessed 3 June 2008)).

<sup>43</sup> A meeting was held in Hanoi on 27 to 29 November 2007 between the Vietnamese and Chinese delegations to the “Sino-Vietnamese Government Border and Territory Negotiation” (“Viet Nam, China: early completion of border demarcation”, from the website of *Viet Nam Ministry of Foreign Affairs*

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 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 2000.<sup>47</sup> Talks at the expert-level on the disputes in the South China Sea

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([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns071130094901/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns071130094901/newsitem_print_preview)) (accessed 26 May 2008).

<sup>44</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”, from the website of *Viet Nam Ministry of Foreign Affairs* (<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/wjb/zzjg/yzs/gjlb/2792/2794/t578647.htm>) (accessed on 25 August 2009)).

<sup>45</sup> On 18 November 2009 Government-level talks were held in Beijing. Reports do not indicate which “round” it corresponded to (“Chinese and Vietnamese Governments Sign Land Border Demarcation Documents”, from the *Ministry of Foreign Affairs of the People’s Republic of China* (<http://www.fmprc.gov.cn/eng/wjb/zzjg/yzs/gjlb/2792/2794/t628682.htm>) (accessed 14 March 2011) and “Major accords end Viet Nam-China land border negotiations”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns091119104634/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns091119104634/newsitem_print_preview)) (accessed 14 March 2011)).

<sup>46</sup> On 18 April 2011 the Heads of the government delegation met in Hanoi (“Viet Nam, China talk border-related issues”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110419090108/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns110419090108/newsitem_print_preview)) (accessed 20 April 2011)).

<sup>47</sup> The text of the Delimitation Agreement has been reproduced in Nguyen Hong Thao, “Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf”, *Ocean Development and International Law*, Vol. 34, Issue 1 (2005), 41–44 (hereafter Nguyen, *Maritime Delimitation*), and in Zou Keyuan, “The Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin” *Ocean Development and International Law*, Vol. 34, Issue 1 (2005), 22–24. (hereafter Zou, *The Sino-Vietnamese*),

proper, the so-called “sea issues”, were initiated in November 1995 and the eleventh round of talks was held in July 2006.<sup>48</sup>

Compared to the Gulf of Tonkin issues 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”. 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 Spratly archipelago, which is a multilateral conflict situation involving other claimants as well.

#### *The Gulf of Tonkin*<sup>49</sup>

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<sup>48</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)).

<sup>49</sup> This section is partly derived from Nguyen Hong Thao and Ramses Amer, “The Management of Vietnam’s Maritime Boundary Disputes”, *Ocean Development and International Law*, Vol. 38, Issue 3 (July 2007), pp. 312–313; and Ramses Amer and Nguyen Hong Thao, “Regional Conflict Management: Challenges of the Border Disputes of Cambodia, Laos, and Vietnam”, *Austrian Journal of South-East Asian Studies*, Vol. 2, No. 2 (December 2009), pp. 62–63. For a broader study on China and maritime delimitation including the Gulf of Tonkin see Zou Keyuan, “China and Maritime Boundary Delimitation: Past, Present and Future”, in *Conflict Management and Dispute Settlement in East Asia*, Edited by Ramses Amer and Keyuan Zou (Farnham and Burlington: Ashgate, 2011), pp. 149–169. For a broader study on Vietnam and maritime delimitation including the Gulf of Tonkin see

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 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.

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 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 the 1982 UNCLOS or by arguing that its impact should be minimised and possibly even be disregarded.<sup>50</sup> For China to argue that it was not an island would have been counterproductive

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Nguyen Hong Thao, "Vietnam and Maritime Delimitation", in *Conflict Management and Dispute Settlement in East Asia*, Edited by Ramses Amer and Keyuan Zou (Farnham and Burlington: Ashgate, 2011), pp. 171–199.

<sup>50</sup> The legal terminology used in this context is derived from Zou, *The Sino-Vietnamese*, p. 246. Information pertaining to possible impact of Bach Long Vi Island on boundary delimitation is also derived from *Ibid.*, pp. 245–247.

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>51</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>52</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>53</sup> The agreement reached indicates that if the status of the Agreement of 1887 was brought up during the negotiations, both sides eventually agreed 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>54</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*

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<sup>51</sup> Information derived from Ibid., pp. 245–246 and 253.

<sup>52</sup> Nguyen, *The Gulf of Tonkin*, pp. 210–213.

<sup>53</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, *The Sino-Vietnamese*, pp. 238–240.

<sup>54</sup> For an argument relating to the fairness of the outcome see Nguyen, *The Gulf of Tonkin*, p. 210.

*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>55</sup>

In order for the two agreements 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 issues. 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 the first half of 2004.”<sup>56</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>57</sup> The agreement on the additional protocol was eventually signed in Beijing on 29 April.<sup>58</sup> This paved the way for the ratification of the boundary agreement and the fishery agreement. On 30

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<sup>55</sup> Nguyen, *Maritime Delimitation*, pp. 35–41; and Zou Keyuan, “Sino-Vietnamese Fishery Agreement for the Gulf of Tonkin”, *The International Journal of Marine and Coastal Law*, Vol. 17, No. 1 (2002), pp. 127–148 (hereafter Zou, *Sino-Vietnamese Fishery*).

<sup>56</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>57</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>58</sup> “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). See also “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).

June 2004 both the boundary and fishery agreements entered into force following the completion of the ratification process.<sup>59</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 working group was held in January 2006 in Hanoi and the fifth meeting was held in Hanoi in January 2009.<sup>60</sup>

### *South China Sea proper*

Relating 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 Gulf of Tonkin. As noted above that much still remains to be achieved before the disputes in the South China Sea can be resolved. Of direct relevance in the context of this paper is how the two sides managed to bring the periods of deep tension in the 1990s under control through the establishment of mechanisms and principles regulating their behaviour in the South China Sea that would prevent the re-occurrence of periods of tension.

The initiation of expert-level talks in 1995 was the first obvious move towards an institutionalised form of management of disputes between China and Vietnam 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 response to a dispute in May 1998 relating to the activities of a Chinese

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<sup>59</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). See also: “Two China-Vietnam Beibu Gulf agreements take effect”, from the website of the *People’s Daily Online* (English version) ([http://www.english.people.com.cn/200407/01/eng20040701\\_148157.html](http://www.english.people.com.cn/200407/01/eng20040701_148157.html)) (accessed on 3 October 2004).

<sup>60</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 *Viet Nam Ministry of Foreign Affairs* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns090108101946>) (accessed on 8 January 2009).

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>61</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>62</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

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<sup>61</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 (*British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, 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>62</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)).

discontent or from protesting against actions carried out by the other side. The difference in 1998 as compared to earlier years was that the 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 some areas of the South China Sea.<sup>63</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 implement 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

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<sup>63</sup> Ibid., 3496 B/4 (30 March 1999). Report carried by *Voice of Vietnam*.

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>64</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-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>65</sup>

Although tension in recent years relating to the South China Sea has not deteriorated to the level of the 1990s it has still been a cause for concern. Vietnam’s submissions to the Commission on the Limits of the Continental Shelf (CLCS) in May 2009 – both individual and

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<sup>64</sup> “Vietnam-China Joint Declaration”, reproduced in *Vietnam Law & Legal Forum*, Vol. 5, No. 54 (1999), p. 13.

<sup>65</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).

jointly with Malaysia – prompted China to officially protest and oppose the submissions.<sup>66</sup> The second half of 2009 and 2010 has been marked by several arrests of Vietnamese fishermen by China leading to Vietnamese protests.<sup>67</sup> In response to the heightened tension the two sides have recently decided to “seek satisfactory solutions to existing issues relating to” the South China Sea. According to the official Vietnamese report the two sides also “reached consensus on speeding up negotiations on basic principles to settle sea issues, and satisfactorily settling fishermen and fishing boat issues”.<sup>68</sup> However, the official Chinese report does not mention anything about fishermen and fishing boats.<sup>69</sup> One reason for the discrepancy might be that the Chinese version mentions what Prime Minister Wen said and to which Vietnam’s Prime Minister agreed at the talks on 28 November 2010. Future developments will indicate if the parties will address the issues relating to fishing boats. There have been no officially publicized complaints by Vietnam relating to arrest of Vietnamese fishermen by the Chinese side since the talks in late October 2010.

### **Implications of May-June tensions and of recent developments**

The incidents in late May and early June 2011 resulted in deeper tension prompted by Vietnamese protest about China’s actions and with China complaining about Vietnamese

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<sup>66</sup> For details see Ramses Amer, “Vietnam in 2009 – Facing the Global Recession”, *Asian Survey*, Vol. 50, No. 1 (January-February 2010), p. 215 (hereafter Amer, *Vietnam in 2009*), and, Nguyen Hong Thao and Ramses Amer, “Coastal States in the South China Sea and Submissions of the Outer Limits of the Continental Shelf”, *Ocean Development and International Law*, Vol. 42, Issue 3 (2011), pp. 245–263.

<sup>67</sup> For details about incidents in 2009 see Amer, *Vietnam in 2009*, p. 16; and, Ramses Amer, “Dispute Settlement and Conflict Management in the South China Sea – Assessing Progress and Challenges”, in *The South China Sea: Towards A Region of Peace, Security and Cooperation*, Edited by Tran Truong Thuy (Hanoi: The Gioi and Diplomatic Academy of Vietnam, 2011), pp. 245–268.

<sup>68</sup> “VN sees cooperation with China as vital”, from the website of *Viet Nam Ministry of Foreign Affairs* ([http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns101029102131/newsitem\\_print\\_preview](http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns101029102131/newsitem_print_preview)) (accessed on 1 November 2010).

<sup>69</sup> “Wen Jiabao Meets with His Vietnamese Counterpart Nguyen Tan Dung 2010/10/29”, from the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (<http://www.fmprc.gov.cn/eng/wjb/zjg/yzs/gjlb/2792/2794/t765532.htm>) (accessed on 11 November 2010).

activities in the same area of the South China Sea. The heightened tension was brought under control by late June 2011. Talks on reaching an agreement on basic principles for the settlement of ‘sea-related issues’ continued and eventually this led to the signing of an “Agreement on basic principles guiding the settlement of sea-related issues” in Beijing on 11 October 2011. The signing took place in connection with the first High-level Summit since October 2008, when the Secretary-General of the CPV, Nguyen Phu Trong, visited China. In the Joint Statement issued in connection with the Summit territorial issues featured prominently and both sides stated among other things their “political will and determination to settle disputes via friendship negotiation and talks in order to maintain peace and stability” in the South China Sea.

The “Agreement on basic principles guiding the settlement of sea-related issues” has enhanced the mechanisms for management of sea-related issues and disputes through a de-facto bilateral “code of conduct” and the High-level Summit of October 2011 signals a renewed high-level push for better management of the sea-related issues after a three year pause. The combination of these two factors does create more conducive conditions to manage and reduce tension between China and Vietnam in the South China Sea. This addresses the need to enhance and expand the bilateral management approach relating to the South China Sea issues that was highlighted both by the May-June 2010 incidents and by the periodically increased tension relating to the South China Sea issues during the period 2009-2011. Periodic tension that was at the highest level for over a decade.

One issue that remains to be address is the lack of mutual agreement on the scope of talks on the South China Sea. Only the Spratlys is on the agenda. China opposes the inclusion of the Paracels. Vietnam opposes the inclusion of areas to the East of the Vietnamese coast which Vietnam claims as continental shelf and EEZ and which extend beyond the limit of the nine dotted-line claim by China.

## **Concluding remarks**

This paper has displayed that both China and Vietnam would like to manage and settle their disputes in the South China Sea peacefully. However, the disputes continue to cause periods

of tension between the two countries the recent most serious increase in tension in late May and early June 2011 has been the focal point of this paper. That tension was brought under control and this displays a familiar pattern of interplay between tension and management. In order to address the periods of tension the two countries have recently signed the “Agreement on basic principles guiding the settlement of sea-related issues”. That agreement is a major positive development and as argued above it is a de-facto bilateral “code of conduct” between China and Vietnam. The recent high-level summit is also an important factor in enhancing both the political will to address the disputed issues and to manage them. Whether or not the recent developments will bring an end to incidents is not evident given the fact there are some key differences in perceptions between the two countries relating to which areas in the South China Sea that are disputed. As has been the case since full normalisation of relations in late 1991 overlapping claims to maritime zones in the South China Sea to the East of the Vietnamese coasts – where Vietnam’s claims to EEZ and continental shelf overlap with China’s claims within the so-called ‘nine-dotted lines’ – will most likely be the subject of continued differences between the two countries and risk of incidents causing periodic tension in bilateral relations is likely to persist. Hopefully, the enhanced mechanisms agreed upon in the “Agreement on basic principles guiding the settlement of sea-related issues” and in the Joint Statement, will reduce the risk of renewed tension and if tensions do occur the more sophisticated mechanisms to deal with such situations will have a positive impact.

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