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DISPUTE OF THE EAST VIETNAM SEA – PRINCIPLES AND SOLUTIONS FROM POLITICAL AND LEGAL PERSPECTIVES

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ABSTRACT:

The paper describes a general situation of dispute of the East Vietnam Sea and suggests an approach of solving the dispute from legal-political perspectives, that is solving the dispute of the East Vietnam Sea by peaceful solutions based on international laws.

laws.

INTRODUCTION:

The territorial sovereignty dispute in the East Vietnam Sea (Bien Dong, in Vietnamese, it is also called The South China Sea) is one of the controversial issues, which has attracted international community's attention and participation. However, in order to solve this issue, it is required that countries and related parties fully adhere to the principle of peacefully resolving disputes on the basis of international law including the United Nations Convention on the Law of the Sea 1982 (UNCLOS).

Recently, in the framework of the 18th Shangri-La Dialogue in Singapore, Ngo Xuan Lich, Minister of the Ministry of National Defense of Vietnam affirmed, "The East Vietnam Sea is one of the regions that harbors a wide range of disputes and strategic competition from economy to military and diplomacy as well as an important geopolitical position, so there are certain latent risks of conflict. If we are bound to uphold international law, take high responsibility, and have sufficient willingness, the East Vietnam Sea will surely become a sea of peace, cooperation, and development. Vietnam highly appreciates the progress made by parties in the negotiation of the Code of Conduct of the Parties (COC) in the East Vietnam Sea. An early construction of a substantive, abiding and effective COC would contribute significantly to maintaining peace, stability, freedom, security, and safety of navigation and overflight in the East Vietnam Sea. Vietnam has been and will be working with related countries, persistently promoting and

pursuing the resolution of disputes in the East Vietnam Sea by peaceful means on the basis of international law”.

RESEARCH METHODS:

Based on our studies of the East Vietnam Sea for past 30 years, in foreign countries and in Vietnam, especially under the period we undertook tasks of scientific research and international cooperation at Law University in Ho Chi Minh city (from 1996 to 2004), we describe a general situation of dispute of The East Vietnam Sea and suggest some solutions for solving this problem. By using methods of systematic analysis and correlative comparison, the author suggests solutions to solve the dispute problem from legal-political perspectives, that is solving the dispute of the East Vietnam Sea by peaceful solutions based on international laws.

RESULTS:

1. The dispute situation of the East Vietnam Sea:

The dispute situation in the East Vietnam Sea has been very complicated in recent years, especially Hoang Sa Islands (Paracel Islands) and Truong Sa Islands (Spratly Islands), which are the hotspots of tension and instability in the region (Nguyen Xuan Te, 2019). It is a concern not only for Vietnam but also for other countries in the East Vietnam Sea and the international community. China's actions towards countries in the East Vietnam Sea, particularly Vietnam, are generalized as follows:

The dispute in the East Vietnam Sea firstly associated with the event in 1909 when China launched an expedition to Hoang Sa Islands (It previously belonged to Vietnam) and Vietnam was colonized by French at that time (Nguyen Xuan Te, 2019). After 1954, under the Geneva Accords, Hoang Sa Islands and Truong Sa Islands belonged to and were controlled by the government of the Republic of Vietnam (Nguyen Xuan Te, 2019). In 1956, when the French expeditionary military forces withdrew from Vietnam, Philippines claimed their sovereignty over Truong Sa Islands (Nguyen Xuan Te, 2019). And also in the year of 1956, the People's Republic of China occupied Phu Lam Island in Hoang Sa Islands and then Taiwan occupied Ba Binh Island in Truong Sa Islands, the territorial sovereignty dispute was raised fiercely (Nguyen Xuan Te, 2019).

Before 1974, the dispute in the East Vietnam Sea occurred while Vietnam was in a state of war (Nguyen Xuan Te, 2019). The Group of Crescent Islands of Hoang Sa Islands and some of Truong Sa Islands at that time ruled by the Republic of Vietnam's government had clashes with the navy of the People's Republic of China and the whole Hoang Sa Islands was occupied by China (Nguyen Xuan Te, 2019).

After the victory of the historical General Offensive and Uprising in the spring of 1975, Vietnam was reunified, independent and entirely unified. A series of events occurring in the East Vietnam Sea proved that China wanted to monopolize the East Vietnam Sea despite the disapproval of Vietnam and international public opinion, disregarding the 1982 United Nations Convention on the Law of the Sea (Nguyen Xuan Te, 2019).

On May 8th 1992, the Chinese government allowed Crestone Energy Corporation to explore for oil and gas in an area of 10,000 nautical miles of the Tu Chinh bank which was claimed to belong to Vietnam's continental shelf (the Chinese called it North Vanguard bank) (Nguyen Xuan Te, 2019). This area is located away about 160 nautical miles from the coast of Vietnam and more than 600 nautical miles from Hai Nam Island – China's nearest territory without dispute. At the same time, the Chinese government announced to use the navy to protect the exploitation in this area (Brice M. Clagett, Covington, Burling, & Washington, 1995).

In 1994, when Vietnam started to explore the Tu Chinhbank, the Chinese warships closely monitored the exploration activity (Brice M. Clagett et al., 1995).

In December 2007, China announced their decision to establish Sansha as a city-level administrative unit including Hoang Sa Islands and Truong Sa Islands that other countries claimed their sovereignty over these islands, which resulted in harsh reaction from Vietnamese people with various demonstrations (BBC Vietnamese, 2007).

At the end of 2008, China fired warning shots and pressured Exxon-Mobil Corporation to withdraw from the joint venture project with Vietnam although it was claimed that the project was implemented in Vietnam's waters of the continental shelf and exclusive economic zone (EEZ) (BBC Vietnamese, 2008).

In June 2009, Malaysia and Vietnam submitted to the Commission on the Limits of the Continental Shelf (CLCS) the joint report on expanded continental shelf in the southern area of the East Vietnam Sea. The area was defined beyond 200 nautical miles from the baselines of Malaysia and Vietnam and beyond the boundaries agreed with related countries. This is the reason why the two countries stated that their joint report would not affect the delimitation of the marine boundaries between countries with opposite or adjacent coasts (Nguyen Xuan Te, 2019).

After that, the People's Republic of China sent a Note Verbale No. CML/17/2009 objecting to the joint Submission of the Socialist Republic of Vietnam and Malaysia, in particular, attached the map, which showed the "nine-dashed line" to claim "China's indisputable sovereignty over the islands in the East Vietnam Sea and the adjacent waters, sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof" (Nguyen Xuan Te, 2019).

On July 23rd 2010, at the ASEAN Regional Forum, the Secretary of State Hillary Clinton made a statement regarding the resolution of the East Vietnam Sea dispute: "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." (Clinton, 2010). Shortly after that, the Minister of Foreign Affairs of the People's Republic of China reacted fiercely to the statement and then the Chinese Navy conducted a live-fire exercise in the East Vietnam Sea as a sign to gain prestige.

As a consequence, on May 2nd 2014, China installed the Hai Duong 981 oil rig in the continental shelf – exclusive economic zone of Vietnam (Nguyen Xuan Te, 2019); published vertical territorial map showing a 10-segment nine-dashed line that almost covered entirely the East Vietnam Sea; continued to expand, construct and alter the status of some parts in Truong Sa Islands of Vietnam which were occupied by China; announced the law "military security" in the East Vietnam Sea that took effect since August 1st, 2014 (Nguyen Xuan Te, 2019).

On July 12th, 2016, the Permanent Court of Arbitration (PCA) located in the Hague – the court heard the lawsuit of the East Vietnam Sea dispute (The Republic of the Philippines v. The People's Republic of China) and handed down the ruling which fully supported nearly all of the Philippines' 15 submissions and represented an important advance in the interpretation and clarification of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (Nguyen Xuan Te, 2019).

In Chinese stance, after the PCA issued the decision, China not only rejected the ruling, but also stepped up the deployment of military forces in the Truong Sa Islands and showed military ostentation (China posted a video of two J-11 fighters and one H-6K bomber over Scarborough Shoal on July 18th, 2016) (Nguyen Xuan Te, 2019). Facing tensions in resolving disputes in the East Vietnam Sea, in the framework of the 18th Shangri-La Dialogue in Singapore, Nguyen Phu Trong, the General Secretary and President of Vietnam, affirmed, "resolutely and persistently

fighting to firmly defend the independence, sovereignty and legitimate interests of Vietnam in accordance with international law.”(Ngo Xuan Lich, 2019).

2. Principles of resolving disputes in the East Vietnam Sea from a political – legal perspective:

Under UNCLOS 1982, coastal states have the right to claim maritime zones under national sovereignty(United Nations, 1982), maritime zones under national sovereignty and jurisdiction rights(United Nations, 1982), exclusive economic zones, and continental shelves. This is clearly stated in the principle of “the land dominates the sea”, by which land territory is the basis for the establishment and expansion of national sovereignty and national sovereign rights over the sea. It should be noted that territorial area does not play an important role because sovereignty over that territory is the basis for the expansion of national power to the sea(United Nations, 2013, p. 51).

The exclusive economic zone is a sea zone beyond and adjacent to the territorial waters, extending seaward to a distance of no more than 200 nautical miles out from the baseline(United Nations, 1982). In the exclusive economic zone, the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds(United Nations, 1982).

The continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial water throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial water is measured where the outer edge of the continental margin does not extend up to that distance(Nguyen Xuan Te, 2019). In accordance with the UNCLOS 1982, Article 76, the inner limits of the continental shelf are the national maritime boundaries (the outer limits of the territorial water). These boundaries are defined differently in two cases: (i) the outer edge of the continental margin does not extend up to a distance of 200 nautical miles from the baselines and the breadth of the shelf extending up to that distance(paragraph 1); (ii) When the outer edge of the continental margin extends beyond 200 nautical miles from the baselines, coastal States determine the maritime boundaries based on the geologic features of the continental shelf, by either: the “continental slope” method whereby the coastal State delineates the fixed points not more than 60 nautical miles from the foot of the continental slope (paragraph 4, a, ii), or “the thickness of sedimentary rocks” method whereby the coastal State determines the thickness of sedimentary rocks provided that the thickness must be at least one percent of the shortest distance from such point to the foot of the continental slope (paragraph 4, a, i)(United Nations, 1982). In the event that the outer limits of the continental shelf of the coastal State are determined by these two methods, they shall not exceed 350 nautical miles from the baselines or shall not exceed 100 nautical miles from the 2,500 metre isobath, which is a line connecting the depth of 2,500 metres (paragraphs 2 and 5). The coastal State has an obligation to inform the Commission on the Limits of the Continental Shelf of the establishment of the limits of its continental shelf when that continental shelf extends beyond 200 nautical miles from the baselines from which the breadth of the territorial water is measured (paragraph 8)(United Nations, 1982).

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. Those rights are exclusive, exist ipso facto and ab initio and do not depend on occupation, effective or notional, or on any express proclamation(United Nations, 1982). This means that even if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities, or

make a claim to the continental shelf, without the express consent of the coastal State(United Nations, 1982).

In the exclusive economic zone and continental shelf, coastal States have the privilege of constructing, permitting, and regulating the construction, exploitation, and use of artificial islands, equipment, and structures. The coastal State also has special jurisdiction over the above structures, including issuing and enforcing legal documents related to customs, tariffs, health, security, and immigration(United Nations, 1982).

In terms of geographical position, the exclusive economic zone and the continental shelf are not part of the national territory (the coastal State has no sovereignty, but only exercises sovereignty and jurisdiction) but also not part of the international sea. In terms of legal status, it is the specific sea zone that includes the rights of coastal States and others: on the one hand, coastal States are ensured to have exclusive rights in the construction and installation of artificial structures and the exploitation and use of natural resources; on the other hand, other States are granted certain freedom of the high seas such as freedom of navigation. This simultaneously settles two issues raised in the legal regulations of these seas that are to expand the sovereign right and jurisdiction of the coastal State and ensure the relative stability of the sea where the community's general benefit should be respected(Nguyen Xuan Te, 2019).

In accordance with the regulations of UNCLOS, Vietnam has determined a system of baselines, including the baseline along the continental shelf and baseline used to measure the territorial water breadth of Hoang Sa Islands and Truong Sa Islands(Viet Nam, 1997). For the system of the baseline along the continental shelf, Vietnam applies the method of straight baseline connecting the selected points at the lowest tidal line along the coast and near-shore islands consisting of 10 segments which are connected by 11 points from A0 (located in the historical waters of Vietnam and Cambodia) to A11 (in the Gulf of Tonkin). Except for point A8 located on Dai Lanh Cape (Phu Yen), the remaining points are on coastal islands(Viet Nam, 1997).

Pursuant to Article 33 of UNCLOS, the actual breadth of the contiguous waters will depend on the breadth of the territorial water determined by the coastal State. On the basis of establishing a territorial water that is 12 nautical miles wide from the baseline, Vietnam declares that the contiguous waters to the territorial water is the waters adjacent to and out of Vietnamese territorial water, with the breadth of 12 nautical miles from the outer boundary of the territorial water(Quoc Hoi, 2012).

In addition to the contiguous zone, the exclusive economic zone is also recognized in Part 5 of UNCLOS, whereby the exclusive economic zone covers the contiguous zone with the inner boundary being the national sea border and the outer boundary being a line where each point on that line is not more than 200 nautical miles from the nearest point of the baseline. In accordance with the above provisions of UNCLOS, Vietnam claims the exclusive economic zone as the contiguous waters outside the territorial water, merging with the territorial water into a sea zone with a breadth of 200 nautical miles from the baseline(Viet Nam, 1997).

Together with the exclusive economic zone, Vietnam defines the continental shelf as the seabed and submarine subsoil, adjacent to and outside the territorial water of Vietnam, of the whole natural extension of the mainland territory, of Vietnamese islands and archipelagos to the outer edge of the continental margin(Nguyen Xuan Te, 2019). In case the outer edge of the continental margin is less than 200 nautical miles from the baseline, this continental shelf may be extended to 200 nautical miles from the baseline. If the outer edge of the continental margin exceeds 200 nautical miles from the baseline, this continental shelf may extend no more than 350 nautical miles from the baseline or not more than 100 nautical miles from the 2,500 meters deep

straight line¹. The above determination is completely consistent with the provisions of Article 76 on the continental shelf of UNCLOS(Viet Nam, 1997).

In recent years, Vietnam has used diplomatic measures to claim China to stop the violation. Vietnam has repeatedly sent diplomatic notes and had over 30 diplomatic meetings with the Chinese authorized agencies to claim China to withdraw drilling platforms and the ships from Vietnamese waters, to stop the actions which infringe on Vietnam's sovereignty and jurisdiction(Nguyen Xuan Te, 2019).In the sea, Vietnam's forces of marine law enforcement, including the ships of the Vietnam marine police and fisheries resources surveillance force firmly upholding Vietnam's rights recognized by UNCLOS, claim Chinese ships to comply with international laws and withdraw from Vietnamese waters. Thus, Vietnam exercises its rights on the basis of the provisions of international law and in accordance with the Charter of the United Nations and relevant provisions of UNCLOS, of the Declaration on the conduct of the Parties in the East Vietnam Sea, and of other agreements between the two nations settled by peaceful means without using force in international relations(Nguyen Xuan Te, 2019).

Hoang Sa Islands is part of Vietnamese territory, so China is not allowed to quote Hoang Sa Islands as a basis for establishing maritime zones because Hoang Sa Islands is a part of Vietnam's territory. In this regard, China only makes claims without specifically legal evidence and with inconsistent, ambiguous, and fallacious arguments.Meanwhile, Vietnam has obviously historical and legal evidence to confirm sovereignty over the Hoang Sa Islands and Truong Sa Islands(Nguyen Xuan Te, 2019).

In the June 8th, 2014 Declaration, China especially quoted Prime Minister Pham Van Dong's Official Letter sent to Prime Minister Zhou En-lai on September 14th, 1958, to interpret Vietnam's recognition of China's sovereignty over Hoang Sa Islands. China stated that in the Declaration on Territorial water of September 4th, 1958, the Chinese Government determined the breadth of China's territorial water as 12 nautical miles, applicable to all islands of China, including Tay Sa Islands and Nam Sa Islands (Vietnam's Hoang Sa Islands and Truong Sa Islands)(Nguyen Xuan Te, 2019). The 1958 Official Letter recognized and approved of the decision on China's territorial water, so it was the acknowledgment and approval of China's territorial policy because the territorial policy originated from territorial sovereignty. It is an inappropriate and inconsistent explanation with the provisions of International Law(Nguyen Xuan Te, 2019). First of all, the analysis and explanation of a text must closely follow and are based on its content and sentences of that text and then can be complemented by other factors such as textual context. Therefore, we are able to find the deviation of the above argument as follows:

Firstly, China's Declaration dated September 4th, 1958 is the declaration of territorial water as the declaration of the waters, but not the declaration of territorial sovereignty. The 1958 official letter clearly stated the recognition and approval of the 12 - nautical mile breadth of the territorial water that China claimed(Pham Van Dong, 1958). Thus, it is not possible to agree with the approval of the territorial breadth with the recognition of territorial sovereignty. Concerning it, Professor Monique - Gendreau has a viewpoint that Prime Minister Pham Van Dong's official letter is only the recognition and approval of the Declaration of territorial water, dated September 4th, 1958, by the Government of the People's Republic of China and does not assert the recognition of China's claims to Hoang Sa Islands and Truong Sa Islands(Nguyen Xuan Te, 2019).

Secondly, the 1958 Declaration of Territorial water is the unilaterally legal act of China. Thus, according to the regulations of international laws, thisDeclaration is bound only byChina,

¹ The Government 's Declaration dated May 12, 1977, on Vietnam's territorial water, contiguous zone, exclusive economic zone, and continental shelf, article 4: the Law of the National Border 2003, article 4, clause 4; the Law of the Sea of Vietnam 2012, article 17.

it does not automatically take effect on other States (Nguyen Xuan Te, 2019). In the dispute resolution judgement of Dec. 18th, 1951 on the fisheries zone between the United Kingdom and Norway, the International Court of Justice of the United Nations stated that “There are always international aspects in the delimitation of waters; it can not depend on the unique will of a coastal State as specified in law of a State. If the declaration of delimitation is an unilaterally legal act (...), on the contrary the value of such an act for other States is adjusted by international law” (United Nations, 1951, p. 132).

With the nature of unilateral declaration, China can make claims to islands that are subject to a dispute with other States but the declaration does not create for China the sovereignty right over these islands. According to the principle that land dominates sea and territorial water is established from mainland or islands, the unilateral declarations of territorial water establishment does not empower the territorial sovereignty to the State making this declaration. China’s unilateral declaration of establishment of the territorial water over Truong Sa Islands and Hoang Islands does not create the title of sovereignty for China and has no effect over Vietnam. Therefore, China’s decision to support the 12-nautical-mile territorial breadth has no meaning in recognizing territorial sovereignty (Nguyen Xuan Te, 2019).

When China only emphasizes and separates the term “recognition and approval”, it means that China has deliberately deduced it. It is necessary to explain those terms in the whole content of the text. In the official letter 1958, the reserved opinion was specified clearly in paragraph 3, under which the Government of the Democratic Republic of Vietnam instructed state agencies to respect China’s 12-nautical-mile breadth of territorial water (Nguyen Xuan Te, 2019). Thus, the official letter doesn’t mention territorial sovereignty and only recognizes and agrees with the 12-nautical-mile breadth of China’s territorial water. That is further reinforced when we consider the context of contemporary history related to Vietnam’s situation and the codification process of international sea (Nguyen Xuan Te, 2019).

For the Government of the Democratic Republic of Vietnam, the above events were in the period of 1956-1965 during the struggle against US’s intervention. Therefore, China’s support and the cohesion between Vietnam and China are of great importance in the struggle against the US. In that context, the official letter from Prime Minister Pham Van Dong was aimed at responding to China’s requests to support their struggle against the US’s maritime policy. The official letter indicates a more political commitment than a legal one, it is a form of which socialist States often choose to exercise solidarity in thought (Nguyen Xuan Te, 2019).

In addition, the content of the 1958 official letter on recognizing the 12-nautical-mile breadth of China’s territorial water should be placed in the context of the codification of international law of the sea. After the failure of the La Haya Conference for the Codification of International Law 1930, the First United Nations Conference on the Law of the Sea was held in Geneva in 1958, with the adoption of four international treaties: Convention on the Territorial water and the Contiguous Zone, Convention on the Seas, Convention on Fishing and Conservation of the Living Resources of the High Sea and Convention on the Continental Shelf (United Nations, 1958). However, the Conference still could not reach an agreement on determining the breadth of the territorial water. Each State unilaterally made various claims: The US claimed a 3 nautical-mile breadth of territorial water, some States claimed a 4.5 nautical-mile breadth, and China claimed a 12 nautical-mile breadth. In the above context and in the relationship with China, the Democratic Republic of Vietnam supported the trend of determining the 12 nautical-mile breadth of territorial water so accepted and agreed with the breadth declared by China. It is the historical context and content of the 1958 official letter.

The 1958 official letter takes effect on the reported content in it: It is the agreement of China’s 12-nautical-mile breadth of territorial water, which does not mean to renounce or recognize territorial sovereignty. This is clearly demonstrated in both practical and legal

aspects(Pham Van Dong, 1958). In 1954, Vietnam was temporarily divided into North Vietnam and South Vietnam by 17th parallel. An important international legal basis for this situation is the Geneva Conference on the issue of the reconstitution of peace in Indochina, with the signing of the Geneva Agreement on July 21st, 1954. In the final declaration of the Geneva Conference, the members of the Conference committed to respect for Vietnam's independence, sovereignty, national unity, and territorial integrity (Point 7)(Geneva Agreements, 1954). However, based on the circumstances at that time, the government of the Republic of Vietnam temporarily controlled the territory from the 17th parallel to the south; the government of the Democratic Republic of Vietnam temporarily controlled the territory from the 17th parallel to the north. This statement emphasized that the military demarcation line was only temporary and in no case was defined as a political boundary or a national border line (Point 6)(Geneva Agreements, 1954).

Hoang Sa Islands and Truong Sa Islands are located south of 17th parallel so they are temporarily under the control of the Republic of Vietnam government. On the basis of the provisions of the Geneva Agreement, the government of the Republic of Vietnam continued to exercise Vietnamese people's long-standing sovereignty over Hoang Sa Islands and Truong Sa Islands through administrative management documents as well as sovereignty enforcement activities in reality. Therefore, the navy of the Republic of Vietnam fiercely fought to protect territorial sovereignty against China's invasion of Hoang Sa Islands in 1974. Occupying Hoang Sa Islands by force seriously violated the provisions of international law so China's current presence in Hoang Sa Islands does not give rise to the title of sovereignty over China(Nguyen Xuan Te, 2019).

Thus, from the international legal perspective, Vietnam's unity is legal. The Socialist Republic of Vietnam was established on the basis of the unification of the Republic of Vietnam (Republic of South Vietnam) and the Democratic Republic of Vietnam. Therefore, as the legal representative of Vietnam, Socialist Republic of Vietnam Government automatically is entitled to receive the rights and the obligations of the Republic of Vietnam and the Democratic Republic of Vietnam and is also the subject exercising sovereignty over the entire territory of Vietnam including Hoang Sa Islands and Truong Sa Islands(Nguyen Xuan Te, 2019).

The issue of Tri Ton Island (belonging to Hoang Sa Islands) and the right to establish surrounding seas: according to UNCLOS regulations, in addition to the terrestrial territory, the geological structures at sea as an extension of mainland territory play a certain role in determining maritime zones. These structures are divided into the groups as follows: (i) An archipelago means a group of islands including parts of islands, contiguous waters, and other natural components interrelated to the extent of forming a geographic, economic, and historic unity (Article 46.b); (ii) An island is a naturally formed area of land surrounded by water, which is still above water level at high tide. An island consists of surrounding waters that are similar to the mainland territory (Article 121, Clause 1.2); (iii) a rock island which cannot sustain human habitation or economic life of their own will have no exclusive economic zone or continental shelf (Article 121, Clause 3); (iv) An shoal is a naturally emerged land surrounded by the sea, which is exposed at low tide and submerged at high tide (Article 13, Clause 1)(Quoc Hoi, 2012). Areas of land that are completely submerged under the sea are determined as part of the seabed and do not play any role in marine planning. Thus, the use of the concepts of islands, rock islands, shoals, coral cays, and banks in Hoang Sa Islands and Truong Sa Islands is only relative and not in the sense of UNCLOS but in the way of using common language.

Pursuant to the UNCLOS regulations, even at the highest tide, the geological structures of Hoang Sa Islands is higher than the sea surface and can benefit from regulations of rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. Analyzing the legal status of Hoang Sa Islands, most researchers have the view that they only have the legal status of the rock island specified in Article 121, Clause 3

of UNCLOS (United Nations, 1982). These rock islands have very small areas. Tri Ton Island with an area of about 0.5 square kilometer is the southernmost geological structure of Hoang Sa Islands, which is from 4 meters to 6 meters above the sea surface. Observers have recorded that it is impossible to sustain human or own economic life on these rock islands. Therefore, Tri Ton has only the breadth of the territorial water that does not exceed 12 surrounding nautical miles (Coquia J.R, 1990).

Thus, China has no legal basis to install the HD 981 oil rig and conduct oil and gas exploration activities at a distance of 17 nautical miles from Tri Ton (belonging to Hoang Sa Islands of Vietnam). With the actual position of the HD 981 oil rig, the installation and operation of this oil rig are completely located in Vietnam's exclusive economic zone and continental shelf. China has violated the regulations of UNCLOS to unilaterally install the HD 981 oil rig and conduct oil and gas exploration activities in waters under the right of Vietnam's sovereignty and jurisdiction (Nguyen Xuan Te, 2019).

In accordance with the regulations of UNCLOS, Vietnam exercises sovereignty rights over the exclusive economic zone and the continental shelf for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil (United Nations, 1982).

As a coastal state, Vietnam is recognized by UNCLOS for having an exclusive privileged authority over natural resources in the exclusive economic zone and continental shelf. Other States are obliged to respect Vietnam's sovereignty rights and must not conduct exploration and exploitation of the above natural resources without Vietnam's consent. Hence, the installation of the HD 981 oil rig to conduct exploration activities is a serious violation of UNCLOS regulations and the direct infringement of Vietnam's sovereignty rights established according to the regulations of UNCLOS (United Nations, 1982).

Clause 1, Article 73 of UNCLOS states that "In the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, The coastal State may take necessary measures, including boarding, inspection, arrest and judicial proceedings to ensure compliance with the laws and regulations adopted by it in conformity with this Convention". Thus, in the exclusive economic zone and continental shelf, Vietnam has a separate jurisdiction to prevent and punish violations of the law on exploration, exploitation, management, and conservation of natural resources, including both living and non-living resources of the waters superjacent to the seabed and of the seabed and its subsoil. China has committed the violation of unilaterally installing the HD 981 oil rig and carrying out activities to illegally exploit natural resources in the exclusive economic zone and continental shelf and has infringed upon the jurisdiction rights of Vietnam (Quoc Hoi, 2012). In addition, Vietnam has the separate jurisdiction over the act of violation in the followings:

Firstly, in the exclusive economic zone and the continental shelf, Vietnam has rights to exercise jurisdiction over the installation and use of artificial islands, equipment and structures at sea, marine scientific researches, and protection and preservation of marine environment. Therefore, operating in Vietnam's waters, foreign vessels, organizations and individuals are not allowed to illegally construct, install or use equipment and artificial structures, and drill or dig unlawfully; conduct unlicensed scientific researches, which pollute marine environment; illegally store, use or trade weapons, or explosives, or noxious substances as well as other means and equipment possible to harm humans or natural resources and pollute marine environment (Quoc Hoi, 2012).

Secondly, the jurisdiction is enforced over vessels, organizations, and individuals with activities as threat of sovereignty and harmful propaganda to the defense and security of Vietnam (Quoc Hoi, 2012). China not only illegally installed the HD 981 oil rig but also mobilized a large force of ships to obstruct the marine law enforcement of Vietnam's functional

ships in ensuring the exercise of sovereignty rights and jurisdiction in the exclusive economic zone and continental shelf of Vietnam. This violation has increased when China always keeps more than 100 ships of all kinds, including military ships, etc. and continuously conducts activities to hamper and crash into ships of Vietnam marine police and fisheries resources surveillance force (Nguyen Xuan Te, 2019).

As a member of UNCLOS, China is obliged to conscientiously and willingly comply with the regulations of the Convention (Pacta Sunt Servanda Principle), and which is also the fundamental principle of international law and is legalized in the 1969 Vienna Convention on the International Treaties (Article 26) (United Nations, 1982). China's actions have seriously infringed upon Vietnam's sovereignty rights and jurisdiction in the exclusive economic zone and continental shelf of Vietnam as well as the Pacta Sunt Servanda principle and the UNCLOS regulations. With the above action, China has also infringed upon the agreement with ASEAN countries recorded in the Declaration on the Conduct of Parties in the East Vietnam Sea (DOC). In the above-mentioned statement, China has made a commitment to promote the environment of peace, friendship, and harmony in the East Vietnam Sea with ASEAN countries and to settle disputes by peaceful means without threats or the use of force, and through consultation and friendly negotiation between States with directly related sovereignty in accordance with universal principles of international law, including the United Nations Convention on Law of the Sea 1982. Although it is not legally binding, the above Declaration has shown China's will and commitment to resolving conflicts in the East Vietnam Sea (Nguyen Xuan Te, 2019).

Facing China's infringement in waters under the sovereignty right and jurisdiction of Vietnam, Vietnam has the right to take necessary measures in accordance with the regulations of UNCLOS to protect the legal rights and interests and force violators to comply with and respect them (United Nations, 1982). As a peaceful nation, a member of the United Nations Charter as well as the Declaration on the Conduct of Parties in the East Vietnam Sea, Vietnam always complies with the regulations of international law, perseveres with the path of peace, and resolves issues arising on the basis of equality and mutual respect. In fact, strictly complying with the above principles, Vietnam marine police and fisheries resources surveillance force's ships persistently implement their marine law enforcement according to the UNCLOS regulations to claim China to remove the HD 981 oil rig and all military ships together with marine police and fisheries resources surveillance force operating illegally in the exclusive economic zone and continental shelf of Vietnam (Nguyen Xuan Te, 2019).

For violations of foreign vessels committed in the exclusive economic zones and continental shelf of Vietnam, Vietnam's maritime patrol and control forces have the right to inspect and capture these vessels, and in necessary cases, they can chase vessels committing violations for trial in accordance with law. This chase is conducted after the sea patrol and control forces send out a signal of request to vessels with violations or signs of violations to stop for inspection but they do not comply with it. The chase can be continued beyond the boundaries of the exclusive economic zone and the continental shelf if it is conducted continuously and not paused. The chase right of the Vietnamese maritime patrol and control forces ends when the chased vessels enter the territorial waters of another country (United Nations, 1982).

If China does not stop the violations, Vietnam has the right to bring the case to the international jurisdiction agency according to the procedures specified in Part XV of UNCLOS in order to force China to comply with the regulations of UNCLOS in which China is a member. In fact, the combination of diplomatic struggle and legal struggle has been applied by many countries including Southeast Asian countries and can be the basis for reference and application of their experience for Vietnam (Nguyen Xuan Te, 2019).

3. Method of resolving disputes by peaceful means from a political - legal perspective:

Vietnam and China are bound by the principle of peaceful settlement of international disputes in accordance with the United Nations Charter and international customs (Nguyen Xuan Te, 2019). Moreover, the principle of peaceful settlement of disputes in the East Vietnam Sea has been recognized and repeated many times in bilateral and regional documents. In 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the East Vietnam Sea (DOC). Vietnam and China are bound by the principle of peaceful settlement of international disputes in accordance with the United Nations Charter and international customs. Moreover, the principle of peaceful settlement of disputes in the East Vietnam Sea has been recognized and repeated many times in bilateral and regional documents. In 2002, ASEAN and China signed the Declaration on the Conduct of Parties in the South-East Asia Sea (DOC). The parties reaffirmed their commitment to abiding by the fundamental principles of international law and “resolving disputes by peaceful means without the use of force and by consultation and friendly negotiations between directly related States” (ASEAN and China, 2002). They are also committed to “willingness to continue dialogue and consultation on relevant issues through mutually agreed manners including regular consultations pursuant to this statement, for the purpose of encouraging transparency and good neighborliness, establishing harmonious cooperation and mutual understanding, and facilitating the peaceful settlement of disputes between the parties” (ASEAN and China, 2002).

In addition, to ensure peace in the region and in the South-East Asia Sea, it is necessary to emphasize that States are obliged to settle disputes by peaceful means and in any case do not use force. Specific measures for peaceful settlement of international disputes are listed in Article 33 of the Charter of the United Nations, including negotiation, mediation, conciliation, enquiry, resort to regional agencies or arrangements, judicial settlement, arbitration, and other peaceful means of their own choice. States have the right to choose consistent measures for them. International law rarely requests a certain compulsory measure and even if it does so, their freedom of choice is fundamentally ensured. For example, the 1982 United Nations Convention on the Law of the Sea regulates binding compulsory procedures (court and arbitration), but also allows member states to choose other measures such as the right to rule out mandatory procedures in some cases. The principle of peaceful settlement of disputes is recognized and always goes with the principle of prohibiting the threat to use force or use of force (United Nations, 1982).

In the Charter of the United Nations and the peaceful settlement of disputes, Article 1 of the Charter of the United Nations clearly recognizes the purpose of this organization: “To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace” (United Nations, 1945, article 1). For the peaceful settlement of international disputes, Article 33 of the Charter of the United Nations provides that “The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” (United Nations, 1945, article 33).

Thus, according to the United Nations Charter, the peaceful measures to settle international disputes are listed under the following groups:

- The first is a group of diplomatic measures, including: negotiation, approval (by the committee), enquiry, mediation, and conciliation. These measures are either directly implemented by the two parties or with the participation of a third party in the settlement of

disputes between related parties. The mediators sit in the negotiation together and sometimes also act as the chair, reconcile the views of the parties, and offer practical solutions to resolve disputes.

- The second is the group resorting to international organizations or regional international treaties.

- The third is the group of judicial measures including settlement by arbitrators or courts.

The United Nations has the six main organizations: The General Assembly consisting of all the member states of the United Nations, the three organizations with special specialized functions comprising a certain number of member States (Security Council, Economic and Social Council, Trusteeship Council), and the two organizations not including member States, whose members are individuals (the Secretariat and the International Court of Justice). According to the Charter of the United Nations, Security Council of the United Nations is the permanent political leadership organization of the United Nations (United Nations, 1945, article 39).

The Security Council of the United Nations shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken to maintain or restore international peace and security (United Nations, 1945, article 41). The measures that Security Council of the United Nations has the right to decide include: Firstly, Security Council of the United Nations calls upon members to apply economic measures and measures not involving the use of armed force such as embargoes, diplomatic relation severance to prevent or stop the aggression (United Nations, 1945, article 42). Secondly, Security Council of the United Nations shall take military actions against a State with acts of aggression such as using air, sea, or land forces if it deems necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of the member states of the United Nations (United Nations, 1945, article 43). All member states of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security (United Nations, 1945, article 47). Members shall hold immediately available national air-force contingents for combined international enforcement action (United Nations, 1945, article 45). The organization assisting Security Council of the United Nations to command the armed forces of the United Nations is Military Staff Committee consisting of the Chiefs of Staff of the permanent members of the Security Council (United Nations, 1945, article 47).

The United Nations Charter states that the member states of the United Nations agree to accept and carry out the decisions of the Security Council. While resolutions or decisions of other organizations are only recommendations for member states, Security Council of the United Nations is the only body that has the rights to make mandatory decisions for all member States (United Nations, 1945, article 25).

General Assembly of the United Nations is the body comprising all member states having the right to discuss any matter, except matters falling within the authority of the Security Council of the United Nations under the provisions of Article 12, make recommendations on such matters within the specified Charter or within the functions and powers of any agency of the United Nations (United Nations, 1945, article 10). The General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and make recommendations with regard to such principles to the member states or to the Security Council or to both. General Assembly may discuss any questions relating to the maintenance of international peace and

security and makes recommendations on them. If such a recommendation requires a follow-up action, General Assembly will bring it to Security Council. General Assembly can call the attention of Security Council of the United Nations to situations which are likely to endanger international peace and security (United Nations, 1945, article 11.3).

Thus, the role of General Assembly of the United Nations in dealing with issues to maintain world peace and security is too limited. In other words, General Assembly of the United Nations is not allowed to take coercive measures against States that violate the Charter. The only organization which has authority to implement the above measures, is Security Council of the United Nations.

The International Court of Justice (ICJ) has the function of dispute resolution between States and makes advisory conclusions on legal issues for organizations of the United Nations and professional organizations. Unlike other courts, ICJ only resolves disputes between States, which are only accepted and settled by the ICJ with all disputing parties' consent. The consent of the parties involved is approved through special agreements or the international treaties regulated by the parties, in which disputes will be resolved by the ICJ or ICJ jurisdiction is declared to be accepted unconditionally. Therefore, at the ICJ there are no plaintiffs and defendants, but only disputing parties (United Nations, 2013).

Through organizations of the United Nations, the resolution of international disputes requires the disputing parties to be favorable and fully agree to resolve disputes by meeting and exchanging disputes through a third party as a reconciling mediator, or an arbitrator, or a court.

At the 8th Annual Seminar on the East Vietnam Sea held by the Center for Strategic and International Studies (CSIS) at the end of July 2018 in Washington, Mr. Do Thanh Hai - Diplomatic Academy of Vietnam affirmed that: Vietnam are going to pursue the path of "persistent negotiation" with the disputing parties as China, Philippines, and Malaysia in order to gain a general solution to disputes in the East Vietnam Sea. In addition, Vietnam does not set aside legal measures like Manila which used to sue Beijing to the Permanent Court of Arbitration (PCA) in 2014. Vietnam supports Manila's lawsuit and reserves the rights of using Vietnam's basic principle to implement the negotiation under the international law, including United Nations Convention on the Law of the Sea 1982 (UNCLOS), while other factors are only complementary and consultation (Nguyen Xuan Te, 2019).

CONCLUSION:

Dispute resolution in the East Vietnam Sea is a long, difficult, and complicated process because it involves a lot of countries. Maintaining sovereignty in territorial integrity, peace and stability in the East Vietnam Sea is global issues. The resolution of disputes and problems arising in the East Vietnam Sea should be placed in the overall socio-economic development strategy of the country with peaceful foreign policy, independence, autonomy, multilateralism, and diversity in our relations with other countries. Faced with the above situation, Vietnam's policy is to resolve disputes in the East Vietnam Sea through peaceful means in mutual understanding and respect, and compliance with international laws, including UNCLOS 1982.

The issues related to the two countries Vietnam - China (The mouth of Gulf of Tonkin, Hoang Sa Islands) are solved bilaterally. The ones related to other parties (Truong Sa Islands) and to freedom of navigation request the discussion of the parties concerned. If the parties can not resolve them by negotiation, it is necessary to settle them by other methods such as mediation, or reconciliation, or by international arbitration organizations such as the International Court of Justice, the International Court of the Law of the Sea, and arbitral tribunals. Vietnam always highly appreciates the efforts and contributions of all countries inside and outside the region to the maintenance of peace and stability in the East Vietnam Sea. With

the above-mentioned spirit, Vietnam highly appreciates the international community's constructive contributions to protecting maritime security and safety and maintaining peace and stability in the East Vietnam Sea. Vietnam protests against the use of force or threats to use force, supports dispute resolution by related parties through peaceful means on the basis of international law and practice, including UNCLOS 1982, respects the rights of the coastal States to the exclusive economic zone and the continental shelf in accordance with international law, and fully and effectively implements the Declaration on the Conduct of Parties in the East Vietnam Sea (DOC).

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