

QUY HOÀ BÌNH VÀ PHÁT TRIỂN VIỆT NAM



# VIỆT NAM VÀ BIỂN ĐÔNG



NHÀ XUẤT BẢN GIÁO DỤC VIỆT NAM

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## FOREWORD

*Over recent times, the situation in the East Sea<sup>1</sup> has become increasingly complicated and tense, threatening regional peace, stability and development, and causing great concern among public opinion in region and the world.*

*For a better understanding by people at home and abroad of issues related to the East Sea and the Hoàng Sa (Paracel) and Trường Sa (Spratly) archipelagos, as well as Vietnam's stand and policies on settling disputes in the East Sea, the Vietnam Peace and Development Foundation is publishing this pamphlet, with the hope of making clearer the substance of the problem and soliciting sympathy and support for efforts toward an East Sea of peace and development.*

THE VIETNAM PEACE AND DEVELOPMENT  
FOUNDATION

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<sup>1</sup> In Vietnam, the South China Sea is called “Biển Đông” (East Sea).

## **1. Position and importance of the East Sea**

The East Sea is a semi-enclosed sea, encompassing an area of around 3,500,000 square kilometers, bordering it are 8 ASEAN countries (Brunei, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam) and China. It is an area of strategic importance to Asia-Pacific countries and others in the world.

Lying on the maritime artery linking the Pacific Ocean with the Indian Ocean, and Europe and the Middle East with Asia, the East Sea has been considered the second busiest sea lane in the world. Passing through the East Sea are 150-200 ships daily, about 50% of which with a capacity of over 5000 tons each, and more than 10% of which over 30,000 tons each. Through the East Sea, oil and other commercial materials are channeled from the Near and Middle East and Southeast Asia to Japan, the Republic of Korea, and China. Over 90% of world commercial traffic goes by sea, and 45% of which through the East Sea. Thus, the Sea is of tremendous importance to many countries, especially those in the region, in terms of geo-strategy, security, maritime communication, and economy.

The East Sea holds huge marine reserves, living (aquatic products) and non-living (oil, gas, minerals) alike, vital to life in coastal countries and their economic development. It is seen as one of the five largest oil and gas basins of the world. Continental shelves with great oil and gas potentials include those in Brunei-Sabah, Sarawak, Malaya, Pattani Thai, South Côn Sơn, and the Mekong River, Red River and Pearl River estuaries. According to foreign reports, there may be considerable deposits of gas hydrate, too.

## **2. The East Sea's importance to Vietnam**

Vietnam has a 3,260-km coastline and over 3,000 islands, including 2 offshore archipelagos – the Hoàng Sa (Paracel) and Trường Sa (Spratly). Of the 63 provinces and province-equivalent cities of Vietnam, 28 border the sea. The East Sea has not only supplied marine products for coastal inhabitants for thousands of years, but also provided Vietnam with conditions to develop local economies, outlets to regional and international markets, channels for exchange and integration with other cultures, and a crucial defense line.

Economically, the East Sea facilitates the development of Vietnam's cutting-edge industries, such as aquaculture, oil and gas, marine communication, shipbuilding and tourism. The natural conditions of the coasts offer Vietnam's maritime communication tremendous potentials: ten deep-water and numerous medium-sized ports, with a total capacity of 50 million tons of cargoes a year.

Marine resources abound in the East Sea. In Vietnamese waters, some 11,000 living species have been identified, including 6,000 species of seabed animals, 2,400 species of fish (130 with commercial value), 653 species of seaweeds, 657 species of animal ephemera, 537 species of vegetal ephemera, and 225 species of shrimps. Fish reserves are estimated at 3.1-4.1 million tons, of which 1.4-1.6 million tons are exploitable. The abundant marine resources have helped

make aquaculture a leading economic sector ranking third in the country in term of export value.

Oil and gas represent the largest natural resource in Vietnam's continental shelf. Many deposits have been identified as potentially sizeable and conveniently exploitable, such as in the Cửu Long and South Côn Sơn basins.

Vietnam's waters provide favorable conditions for developing tourism, already a significant contributor to the country's economy.

Besides, in coastal areas lie large potentials of sandy minerals, such as titanium, zircon, zin, gold, iron, manganese, kaolin, and rare earth.

In terms of national security and defense, the East Sea plays a very important role as the country's eastern defense line. The islands and archipelagos in the East Sea, especially the Hoàng Sa and Trường Sa, are of great significance not only to overseeing maritime traffic in the East Sea but also to ensuring Vietnam's strategic security.

### **3. Vietnam's waters in the East Sea**

#### **a. Legal framework for Vietnam's waters**

The Vietnamese State has promulgated many sea-related legal documents, such as the Statement of the Government of the Socialist Republic of Vietnam dated May 12<sup>th</sup>, 1977 on its territorial sea, contiguous zone, exclusive economic zone and continental shelf; the Statement of the Government of the Socialist Republic of Vietnam dated November 12<sup>th</sup>, 1982 on the baseline from which the breadth of its territorial sea is measured; the Law on National Borders, the Maritime Law, the Petroleum Law; and Government Decrees detailing the treatment of administrative offenses in activities related to the sea, such as environment, aquaculture, maritime communication, oil and gas, and national security and defense in Vietnam's waters.

#### **b. The internal waters of Vietnam**

The internal waters of Vietnam are waters on the landward side of the baseline from which the breadth of Vietnam's territorial sea is measured. The baseline of Vietnam is a straight baseline joining the furthest seaward points of its coastal islands. Within its internal waters, the State of Vietnam exercises the same full and absolute sovereignty as with its inland waters.

#### **c. The territorial sea of Vietnam**

The territorial sea of Vietnam has a breadth of 12 Vietnam exercises its full and integral sovereignty over its territorial sea, as well as the airspace over the territorial sea, foreign ships shall enjoy the right of innocent passage.

#### **d. The contiguous zone of Vietnam**

The contiguous zone of Vietnam is a zone contiguous to the outer limit of Vietnam's territorial sea, and extends 12 nautical miles from it. In the zone contiguous to its territorial sea, the State of Vietnam exercises its control necessary to protect its security and its customs and

fiscal interests, and to ensure respect for sanitary, migration and immigration regulations within its territory or territorial sea.

#### **e. The exclusive economic zone of Vietnam**

The exclusive economic zone of Vietnam is adjacent to its territorial sea, and forms with it a sea area extending to a distance of 200 nautical miles beyond the baseline from which the breadth of its territorial sea is measured.

In its exclusive economic zone, the State of Vietnam exercises its sovereign rights for the purposes of exploring, exploiting, conserving and managing the natural resources (whether living or non-living) of the waters superjacent to the seabed, of the seabed and of its subsoil. The State of Vietnam exercises its exclusive rights and jurisdiction over other activities for the economic exploration and exploitation of its exclusive economic zone.

In its exclusive economic zone, the State of Vietnam exercises jurisdiction over all scientific researches, and its right to protect the environment from pollution.

#### **f. The continental shelf of Vietnam**

The continental shelf of Vietnam comprises the seabed and subsoil of the submarine areas that extend to a distance of 200 nautical miles beyond the baseline from which the breadth of the territorial sea of Vietnam is measured. In compliance with the stipulations of the 1982 United Nations Convention on the Law of the Sea, Vietnam in 2009 submitted to the UN Commission on the Limits of the Continental Shelf two National Reports on the defined area of continental shelf beyond 200 nautical miles: a partial submission related to the North Area, and a joint submission with Malaysia related to the South Area.

In its continental shelf, the State of Vietnam exercises full sovereign rights for the purposes of exploring, exploiting, conserving and managing all natural resources, including non-living resources and living organisms belonging to sedentary species.

### **4. Delimitation of marine boundaries with neighboring countries.**

Due to concrete conditions in the East Sea, Vietnam's exclusive economic zone and continental shelf overlap those of certain neighboring countries. The overlapping zones are between Vietnam and China in the Bắc Bộ (Tonkin) Gulf and a small area off the Gulf (South of Côn Cỏ Island, and where the coast of China's Hainan Island lies opposite that of Vietnam's Quảng Trị Province), between Vietnam and Cambodia, Thailand and Malaysia in the Gulf of Thailand, and between Vietnam and Indonesia in the South of the East Sea.

These overlapping zones are of bilateral nature. On the basis of stipulations by the 1982 United Nations Convention on the Law of the Sea, Vietnam and some other countries have managed to settle gradually the issue and clearly delimitate the overlapped areas.

### **a. Delimitation of sea boundary with Thailand**

Talks for the delimitation of overlapping seas between Vietnam and Thailand were conducted from 1992 to 1997. On August 9<sup>th</sup>, 1997 in Bangkok, the representatives of the Governments of the Socialist Republic of Vietnam and the Kingdom of Thailand signed an Agreement on delimitation of sea boundary between the two countries in the Gulf of Thailand. Since then, naval forces of the two countries have conducted several joint patrols to enhance security at sea. After ratification by both sides, the Agreement has become effective and been deposited at the United Nations.

### **b. Delimitation of territorial seas, exclusive economic zones and continental shelves with China in the Bắc Bộ (Tonkin) Gulf**

On October 19<sup>th</sup>, 1993, an Agreement on basic principles for settlement of border and territorial issues between Vietnam and China was signed, stating: *“The two sides shall apply international law, consult international practices, follow the principle of equity, and take into account all related situations in the Gulf to reach an equitable solution”*.

From 1992 to 2000, different rounds of negotiations, official and non-official, were held between Vietnam and China at the levels of government negotiation delegations, joint working groups, non-official joint working teams, and experts’ teams.

On December 25<sup>th</sup>, 2000, an Agreement on delimitation of territorial seas, exclusive economic zones and continental shelves in the Bắc Bộ Gulf was signed between Vietnam and China. The two sides were committed to respect each other’s sovereignty, sovereign rights and jurisdiction over the territorial seas, exclusive economic zones and continental shelves in the Bắc Bộ Gulf. In case of stretching-over oil and gas reserves, the two sides shall, through friendly consultations, seek agreement for exploitation and equitable distribution of benefits. After ratification by both sides, the Agreement has become effective and been deposited at the United Nations.

### **c. Delimitation of continental shelves with Indonesia**

From 1978 to 2003, Vietnam and Indonesia held different rounds of negotiations at the levels of government negotiation delegations, expert delegations, and retreats of Heads of expert delegations. On June 26<sup>th</sup>, 2003, the representatives of the Governments of the Socialist Republic of Vietnam and the Republic of Indonesia signed an Agreement on delimitation of continental shelves between two countries. After ratification by competent authorities of both sides, the Agreement has become effective and been deposited at the United Nations.

### **d. Related transitional agreements**

**Vietnam and Malaysia** have overlapping continental shelves and exclusive economic zones in the Gulf of Thailand. The overlapped area is not large, but has oil and gas potentials. On June 5<sup>th</sup>, 1992, the two Governments signed an MOU on cooperation for joint exploration and exploitation of the overlapped area as a temporary solution pending a definitive delimitation of the boundary. Cooperation shall be realized on the principles of equal share of

expenses and equitable distribution of profits; exploration and exploitation operations shall be carried out by Petrovietnam and Petronas on the basis of commercial arrangements. Such arrangements have been signed by the two petroleum corporations. Vietnam and Malaysia shall come to a definitive delimitation of boundary in overlapped area at a later stage.

**Vietnam and Cambodia** have overlapping territorial seas, exclusive economic zones and continental shelves in the Gulf of Thailand. In 1982, an Agreement on historical waters was signed between the two countries, stipulating notably: the two sides agree to conduct joint patrol and control in the historical waters; sea fishing there by local people of the two countries shall continue following practices hitherto, while exploitation of other natural resources shall be agreed upon by the two sides, and in case of no agreement, neither side should act unilaterally. Over recent times, naval forces of the two countries have conducted a number of joint patrols in historical waters.

According to the 1983 Treaty on principles for settlement of border issues between Vietnam and Cambodia, negotiations shall be conducted at an appropriate time for the delimitation of sea boundary between the two countries in these historical waters, in the spirit of equality and mutual respect.

## **5. Vietnam's sovereignty over the Hoàng Sa (Paracel) and Trường Sa (Spratly) archipelagos**

### **a. Overview of the Hoàng Sa and the Trường Sa**

The Hoàng Sa archipelago consists of over 30 islets, coral reefs, cays, shoals and banks subdivided into two groups – the An Vĩnh (Amphitrite) Group in the East and the Luỹ Liềm (Crescent) Group in the West, about 120 nautical miles from Lý Sơn Island (Quảng Ngãi province)

The Trường Sa archipelago consists of over 100 islets, coral reefs, cays and banks, about 248 nautical miles from Cam Ranh and 203 nautical miles from Phú Quý Island (Bình Thuận province)

The two archipelagos have as a common geological feature tiny coral island structures. The largest coral island in the Hoàng Sa is Phú Lâm (Woody) Island with an area of about 1.5 square kilometer. The largest coral island in the Trường Sa is Ba Bình (Itu Aba) Island with an area of about 0.5 square kilometer.

### **b. Vietnam is the first State to have established its sovereignty over the Hoàng Sa (Paracel) and Trường Sa (Spratly) archipelagos, and the only State to have exercised continuous and peaceful administration of the islands in conformity with stipulations of international law.**

By the early 17<sup>th</sup> century, the Hoàng Sa and Trường Sa had been *res nullius*. In the first half of the 17<sup>th</sup> century, the Nguyễn Lords organized the Hoàng Sa (Golden Sand) Brigade, with men recruited from An Vinh village, Bình Sơn district, Quảng Ngãi Prefecture, to retrieve



cargoes from wrecked ships, catch precious aquaproducs, make measurements and drawings, plant trees, and set up landmarks on the islands. In the geographical knowledge of the time, the name Hoàng Sa Archipelago covered both Hoàng Sa (Golden Sand) and Vạn Lý Trường Sa (Ten Thousand-Mile Sandbank).

In the first half of the 18<sup>th</sup> century, the Nguyễn Lords organized in addition the Bắc Hải (North Sea) Brigade, with men recruited from Tứ Chính hamlet, Cảnh Dương village, Bình Thuận prefecture, to go to the Trường Sa with the same mission as the Hoàng Sa Brigade.

The activities of Nguyễn Lords in the Hoàng Sa and Trường Sa were not only recorded in historical writings by Vietnamese scholars, e.g. *Toàn tập thiên nam tứ chí lộ đồ thư* (Collection of Route Maps of Southern Country, Complete Works, 1986) by Đỗ Bá alias Công Đạo, or *Phủ biên tạp lục* (Miscellanies on the Government of the Marches, 1776) by Lê Quý Đôn, but also jotted down by foreigners who resided and did business in Vietnam.

In the period of French domination, the French Government further consolidated Vietnam's sovereignty over the Hoàng Sa and Trường Sa. In 1925 and 1927 in particular, France conducted surveys and patrols in the Hoàng Sa. From 1930 to 1933, French forces were stationed in the Trường Sa. Then, for administrative convenience, France in 1933 merged the Trường Sa archipelago into Bà Rịa Province, and in 1938 made the Hoàng Sa an administrative unit of Thừa Thiên province. Furthermore, France set up landmark, lighthouses, and meteorological and telecommunication stations on the two archipelagos. In international relations, France on many occasions protested against China's claims over Hoàng Sa archipelago.

In 1950, France officially handed the administration of the Hoàng Sa archipelago over to the Bảo Đại Government. At the 1951 San Francisco Conference, the representative of the Bảo Đại Government reaffirmed Vietnam's age-old sovereignty over the two archipelagos without meeting opposition or reservation from any other participant. The Conference also turned down the proposal for Japan's returning the Hoàng Sa and Trường Sa archipelagos to China. In terms of administration, the Government of the Republic of Vietnam in 1956 placed the Trường Sa under Phước Tuy province, and in 1961 moved the Hoàng Sa from Thừa Thiên to Quảng Nam province.

In the process of liberation of South Vietnam and reunification of the country, Vietnamese naval forces in April 1975 liberated the islands occupied by the Saigon forces, i.e. Trường Sa (Spratly Island), Sơn Ca (Sand Cay), Nam Yết (Namyit Island), Song Tử Tây (Southwest Cay), Sinh Tồn (Sin Cowe Island) and An Bang (Amboyna Cay). Meanwhile, the Provisional Revolutionary Government (PRG) of the Republic of South Vietnam issued a declaration confirming Vietnam's sovereignty. Vietnamese Government has promulgated important Trường Sa are inseparable parts of Vietnamese territory, and that Vietnam has full sovereignty over these two archipelagos in line with stipulations by international law and international practices.

In terms of administration, in 1982 the Government of the Socialist Republic of Vietnam established the island district of Trường Sa under Đồng Nai Province, and the island district of Hoàng Sa under Quảng Nam – Đà Nẵng province. Following an administrative boundary remapping, the island district of Hoàng Sa now belongs to Đà Nẵng city and the island district

of Trường Sa to Khánh Hòa province. In April 2007, for more efficient administration, the Vietnamese Government decided to establish in the Trường Sa island district a township (on Trường Sa) and two communes (on Song Tử Tây and Sinh Tồn, respectively).

Thus, Vietnam has ample legal and historical evidence to assert its sovereignty over the Hoàng Sa and Trường Sa. Vietnam is the only State that has occupied and governed the two archipelagos peacefully, continuously, and in accordance with stipulations by international law.

## **6. Vietnam's stand on peaceful settlement of disputes in the East Sea**

- Vietnam stands for solving all disputes related to the East Sea, including disputes concerning sovereignty over the Hoàng Sa (Paracel) and Trường Sa (Spratly) archipelagos, by peaceful means, in conformity with the United Nations Charter and international law, especially the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The 1982 UNCLOS is the fruit of a long and arduous process of negotiation and agreement by the international community, including China, Vietnam and other countries bordering the East Sea. Rational and fair, the Convention constitutes an important legal basis for countries concerned with seas and islands.

The above-mentioned stand has been reaffirmed by the National Assembly of the Socialist Republic of Vietnam in its Resolution ratifying the 1982 UNCLOS, in other Vietnamese sea-related legal documents, as well as in statements by Vietnamese leaders and representatives at various multilateral and bilateral forums.

- Disputes involving only two countries, e.g. those between Vietnam and China concerning sovereignty over the Hoàng Sa archipelago or overlapping continental shelves and exclusive economic zones in the area off the Bắc Bộ (Tonkin) Gulf, shall be settled bilaterally between Vietnam and China. Similarly, disputes concerning overlapping continental shelves and exclusive economic zones between Vietnam and Cambodia, or Vietnam and Malaysia in the Gulf of Thailand shall be settled bilaterally between Vietnam and each of these neighboring countries, respectively.

- Sea-related disputes involving several countries, e.g. those concerning sovereignty over the Trường Sa (Spratly) islands, shall be discussed between the countries concerned, namely Vietnam, China, Malaysia and the Philippines.

## **7. Vietnam's stand on maintenance of peace and stability in the East Sea**

- Peace and stability in the East Sea are directly linked to peace and stability in the region and the world. Should conflicts break out in the East Sea, they would negatively affect not only the interests of the 9 countries bordering the Sea, but also those of many other countries.

- Maintenance of peace and stability in the East Sea is an objective and inevitable requirement for ensuring peace and stability in the region, meeting the common aspirations and interests of the countries bordering the Sea and many others.

- Therefore, discussions in the framework of ASEAN, ARF, and other sea-related legal forums on peace and stability in the East Sea, as well as other issues of common interest like

environmental protection, freedom and safety of navigation, marine scientific research, are inevitable and necessary, and require support and contributions from all countries. Participation and contribution from regional and non-regional countries targeting enhancement of peace and stability in the East Sea are highly valued and always welcomed by ASEAN member states, including Vietnam.

## **8. Vietnam's stand on promotion and full implementation of the Declaration on the Conduct of Parties in the East Sea (DOC), and advance toward a Code of Conduct in the East Sea (COC)**

a. The 2002 Declaration between ASEAN and China on the Conduct of Parties in the East Sea (South China Sea) (DOC) contains important commitments on maintaining peace and stability in the East Sea, notably:

- The commitment to resolve disputes in the East Sea by peaceful means, in accordance with principles of international law, the United Nations Charter, the 1982 United Nations Convention on the Law of the Sea, and the five principles of peaceful co-existence;

- The commitment to refrain from activities that would complicate the situation in the East Sea, including refraining from expanding occupation;

- The commitment to intensify efforts to build trust and confidence, to explore or undertake cooperative activities in less sensitive issues, like safety or navigation, scientific research, combating crime, advance toward a Code of Conduct (COC)

b. The working out and signing of the 2002 DOC result from common efforts by both ASEAN and China. They marked a positive and contributive step toward maintaining peace and stability in the East Sea. Not only the ASEAN member states, China and other regional countries but also many others in the world (the United States, Australia, Russia, India, Japan, the Republic of Korea, ect.) have expressed high appreciation of and warm support for the DOC. Many have called upon ASEAN countries and China to enhance efforts toward full implementation of their commitments, and realization of a Code of Conduct of Parties in the East Sea (South China Sea) (COC).

c. The 2002 DOC was signed by the representatives of the governments of China and ASEAN member states. Therefore, both ASEAN countries and China have the responsibility to implement fully the stipulations of the DOC and to work for a COC. Leaders of both ASEAN member states and China have affirmed their commitments to implement the DOC. The 18<sup>th</sup> ASEAN Summit in Jarkarta (May 2011) reconfirmed the determination to realize a COC in 2012 on the occasion of the 10<sup>th</sup> anniversary of the signing of the DOC.

## **9. Vietnam's stand on the "U-shaped line" claim in the East Sea**

a. China's "U-shaped line" (or "Nine-dotted line") claim in the East Sea was officially raised in May 2009 by the Chinese Permanent Mission to the United Nations following

Vietnam's submission to the UN Commission on the Limits of the Continental Shelf of two National Reports on the defined area of continental shelf beyond 200 nautical miles.

**b.** This “U-shaped line” covers nearly 80% of the East Sea without any legal basis or historical grounds because:

- It runs counter to the 1982 United Nations Convention on the Law of the Sea to which China is a party; the waters claimed by the “U-shaped line” cannot be China's territorial waters, or exclusive economic zone, or continental shelf.

- The “U-shaped line” claim has never been mentioned in any Chinese document concerning the law of the sea.

- The claim has been dismissed by the countries bordering the East Sea and non-regional countries alike.

- The claim encroaches upon the exclusive economic zones and continental shelves of Vietnam, the Philippines, Indonesia, Malaysia and Brunei.

**c.** Since China raised this claim at the United Nations, there have been objections from regional and non-regional countries. A few examples:

- Just one day after China raised the claim at the United Nations, Vietnam sent a note to the UN Secretary General, officially rejecting it. Vietnam has also reaffirmed its position through statements by the spokesperson of the Ministry of Foreign Affairs and in contacts with the Chinese side at different levels.

- In July 2010, Indonesia sent to the United Nations a note protesting against China's “U-shaped line” claim.

- In April 2011, the Philippines sent a note to the United Nations objecting the Chinese “U-shaped line” claim. Senior leaders of the Philippines have reiterated this objection on various occasions.

- In a note to the UN Secretary General, Malaysia has dismissed China's note to which was attached a “U-shaped line” map.

- Scholars from various countries (the USA, France, Belgium, Indonesia, etc...) have underlined the illegality of the “U-shaped line” claim. At international conferences as well as in scientific studies, researchers have emphasized that China should clarify the basis of the claim.

## **10. Vietnam's stand on the idea of “shelving disputes and seeking joint development” in the East Sea**

- Vietnam does not accept the idea of “*shelving disputes and seeking joint development*” in its 200-nautical mile continental shelf and exclusive economic zone, wherever there is no overlapping with any other country's continental shelf and exclusive economic zone. The simple reason is that wherever there is no overlapping, there cannot be any dispute, and another country has no reason to ask for “shelving disputes and seeking joint development” on Vietnam's continental shelf and exclusive economic zone.

- In cases of other countries' continental shelves and exclusive economic zones overlapping those of Vietnam, Vietnam could join other parties concerned in discussions for joint development as a temporary solution. In fact, Vietnam and Malaysia have agreed to exploit jointly oil and gas in the small overlapping area of their continental shelves in the Gulf of Thailand. Eventually, the two countries shall jointly delimitate definitely the sea boundary in this overlapped area.

## **11. Vietnam's stand on Vietnamese fishermen's activities in the Hoàng Sa (Paracel) area**

- The Hoàng Sa (Paracel) and Trường Sa (Spratly) archipelagos both belong to Vietnam. For a long time, Vietnamese fishermen have been fishing normally in the Hoàng Sa area.

- Over the past two years, the Chinese side has intensified seizures, illtreatment and fines against Vietnamese fishing vessels and fishermen, who were fishing as usual in the Hoàng Sa area.

- Vietnam firmly demands that the Chinese side respect Vietnam's sovereignty over the Hoàng Sa archipelago, refrain from harassing Vietnamese fishing vessels and fishermen, and adhere to the shared perception not to complicate the situation in the East Sea.

## **12. Vietnam's stand on certain fundamental aspects of the East Sea issue**

- First, it should be made clear that the East Sea issue has different aspects: i) maintenance of peace and stability in the East Sea and freedom of navigation; ii) implementation of the Declaration on the Conduct of Parties in the East Sea (South China Sea) signed by both ASEAN and China in 2002; iii) sovereignty disputes over the Hoàng Sa (Paracel) and Trường Sa (Spratly) archipelagos.

- In substance, most of these aspects, namely maintenance of peace and stability in the East Sa, freedom of navigation, implementation of DOC, and sovereignty disputes over the Trường Sa archipelago, involve the interests of many countries and maintenance of peace and stability in the region and the world. They are inherently multilateral and international by nature.

- The sovereignty dispute over the Hoàng Sa archipelago alone is a bilateral dispute between Vietnam and China. Vietnam and China should resolve this dispute by peaceful means in accordance with the United State Charter. Among peaceful means, negotiations should be given priority; but should negotiations fail to achieve a solution, resort to international tribunals could not be ruled out.

- Vietnam persistently pursues a foreign policy of independence and autonomy, and does not rely on any country against or as a counterweight to any other country. Vietnam is interested in and ready to join all bilateral and multilateral efforts aimed at maintaining peace and stability in the East Sea on the basis of respect for international law and the legitimate interests all parties concerned.

- Vietnam attaches great importance to relations of friendship and cooperation with all other countries, especially neighbors, including China, on the basis of respect for each other's independence, sovereignty and territorial integrity, equality, mutually beneficial cooperation, in the interest of peace, stability and development in the region and the world.

### **13. Substance of the Agreement signed on October 11, 2011 between Vietnam and China on basic principles guiding the settlement of sea-related issues:**

- The two sides are committed to take international law, including the 1982 United Nations Convention on the Law of the Sea, as a basis for the settlement of sea-related disputes between the two countries.

- The two sides make a difference in the settlement of bilateral and multilateral disputes:

Bilateral sea-related disputes between Vietnam and China, such as dispute concerning sovereignty over the Hoàng Sa (Paracel) archipelago or dispute concerning overlapping continental shelves and exclusive economic zones in a small area off the Bắc Bộ (Tonkin) Gulf, shall be settled bilaterally between the two countries.

Disputes involving also other countries, such as disputes concerning sovereignty over the Trường Sa (Spratly) archipelago, shall be discussed with other related countries, too.

- The two sides agree to firmly speed up negotiations for the delimitation of overlapping continental shelves and exclusive economic zones in a small area off the Bắc Bộ (Tonkin) Gulf; while actively discussing cooperation for joint development in this area.

- The two sides agree to conduct periodical meetings between government level border and territorial negotiation delegations (headed by Deputy Ministers of Foreign Affairs) twice a year, and extraordinary meetings when necessary. There shall be a hotline mechanism to deal properly with sea-related issues.

### **14. Declaration on the Conduct of Parties in the East Sea (South China Sea) (DOC)**

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21<sup>st</sup> century-oriented partnership of good neighborliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favorable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
  - b. ensuring just and humane treatment of all persons who are either in danger or in distress;
  - c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
  - d. exchanging, on a voluntary basis, relevant information.
6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:

- a. marine environmental protection;
- b. marine scientific research;
- c. safety of navigation and communication at sea;
- d. search and rescue operation; and
- e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighborliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful of disputes among them;
8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;
9. The Parties encourage other countries to respect the principles contained in this Declaration;
10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

*Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.*