NOTE

VIETNAM'S BORDER DISPUTES: LEGAL AND CONFLICT MANAGEMENT DIMENSIONS*

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1. INTRODUCTION

The main purpose of this study is to examine the progress made in managing Vietnam's border disputes. Another purpose is to analyze the challenges that lie ahead relating to those border disputes that are still unsettled. Both the legal and the conflict management dimensions of the disputes are addressed and analyzed.

The agreements reached between Vietnam and neighbouring countries are identified and outlined. The remaining disputes are identified in relation to the nature of their respective differences. The continuity and changes in the approaches to dispute settlements are analyzed. The degree of success in managing the border disputes is assessed. The challenges of managing the remaining unsettled disputes are discussed.

2. VIETNAM'S BORDER DISPUTES

The following overview of how Vietnam's border disputes have been and are being handled is divided into two sections. The first section deals with the border disputes that have been formally settled through agreements or through joint-develop-

* This study draws on earlier and on-going research carried out by the two authors individually on Vietnam's territorial disputes as well as on other aspects of the developments in the South China Sea. This empirical portion and the analysis of the management of border disputes are a revised and updated version of the corresponding parts in Ramses Amer and Nguyen Hong Thao, "The Management of Vietnam's Border Disputes: What Impact on Its Sovereignty and Regional Integration?", 27 *Contemporary Southeast Asia* (2005), at 429-452. A travel grant from The Swedish School of Advanced Asia-Pacific Studies (SSAAPS) made possible a working visit by Amer to Vietnam in March, 2006 during which an earlier version of this manuscript was discussed. The views expressed in this study represent only those of the two authors.

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ment arrangements. These settled disputes are outlined in chronological order according to the year in which they were settled or the first agreement was reached. The second section outlines the unresolved border disputes.

2.1. Settled border disputes

- On 18 July 1977 Laos and Vietnam signed a treaty delimiting their land boundary. Following the completion of the demarcation process a complementary treaty was signed on 24 January 1986. On 1 March 1990 an additional protocol was signed as was, on the same day, an agreement on border regulation.¹
- On 7 July 1982 Vietnam and the then People's Republic of Kampuchea (PRK) signed an agreement on "historic waters" in the Gulf of Thailand.² On 20 July 1983 the two countries signed a Treaty on the principles for the settlement of border problems and an Agreement on border regulations.³ On 27 December 1985 the two countries signed the Treaty on the Delimitation of the Vietnam-Kampuchea Frontier.⁴ On 10 October 2005 the two countries signed a Supplementary Treaty to the 1985 Treaty.⁵
- On 5 June 1992 an agreement was reached between Malaysia and Vietnam to engage in joint development in areas of overlapping claims to continental shelf areas lying to the south-west of Vietnam and to the east-north-east off the east coast of Peninsular Malaysia.⁶

¹ For details on the settlement and demarcation of the land border between Laos and Vietnam see Gay, Bernard, *La nouvelle frontière lao-vietnamienne. Les accords de 1977-1990*. Histoire des frontières de la péninsule indochinoise – 2, Travaux du Centre d'histoire et civilisations de la péninsule indochinoise publiés sous la direction de P.B. Lafont (Paris: L'Harmattan, 1995). See also a report carried by the *VNA News Agency* reproduced in *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, 2975 B/6-7 (19 July 1997) (hereafter "BBC/FE").

² For the full text of the Agreement of 7 July 1982 see *BBC/FE/7074 A3/7-8* (10 July 1982). The text of the Agreement has also been reproduced in an English-language version as "Appendix 2" in Kittichaisaree, Kriangsak, *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia* (Singapore, Oxford and New York: Oxford University Press, 1987), at 180-181.

³ *BBC/FE/7393 A3/1* (23 July 1983). See also Quang, Nghia, "Vietnam-Kampuchea border issue settled", 4 *Vietnam Courier* (1986), at 8-9.

⁴ For reports from Vietnam and the PRK announcing the signing of the Treaty and for details see *BBC/FE/8143 A3/1-3* (30 December 1985). See also Quang, *loc. cit.*, n. 3, at 8-9.

⁵ "PM Khai holds talks with Cambodian counterpart". From the website of the *Ministry of Foreign Affairs of Vietnam* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns05101140825>) (accessed on 23 October 2005)

⁶ Information derived from the website of the *Ministry of Foreign Affairs of Malaysia* (<http://www.kln.gov.my/>). See also Amer, Ramses, "Vietnam and its neighbours: the border dispute dimension", 17 *Contemporary Southeast Asia* (1995), at 306 (hereafter Amer, "Vietnam and its neighbours"). See also Nguyen, Hong Thao, "Joint development in the Gulf of Thailand", 7-3 *Boundary and Security Bulletin* (1999), at 79-88 (hereafter Nguyen, "Joint development"); and Nguyen, Hong Thao, "Les délimitations maritimes concernant le Vietnam: accords conclus et

- On 9 August 1997 Thailand and Vietnam reached an agreement delimiting their continental shelf and Exclusive Economic Zones (EEZ) boundaries in a disputed area in the Gulf of Thailand to the south-west of Vietnam and to the north-east of Thailand.⁷
- On 30 December 1999 China and Vietnam signed a *Land Border Treaty* settling the land border dispute between the two countries.⁸
- On 25 December 2000 China and Vietnam signed the *Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin* settling their maritime boundary disputes in the Gulf.⁹ On the same day the two countries signed an agreement on fishery co-operation in the Gulf of Tonkin.¹⁰ On 29 April 2004 the two countries signed the Supplemen-

negociations en cours", in *Le Vietnam et la mer*, ouvrage coordonné par Monique Chemillier-Gendreau (Travaux du colloque organisé les 16 et 17 juin 2000 par l'Association d'Amitié Franco-Vietnamienne) (Paris: Les Indes Savantes, 2002), 53-56 (hereafter Nguyen, "Les délimitations").

⁷ BBC/FE/2996 B/4-5 (13 August 1997). See also Nguyen, Hong Thao, "Vietnam's first maritime boundary agreement", 5-3 *Boundary and Security Bulletin* (1997), at 74-79 (hereafter Nguyen, "Vietnam's First"); Nguyen, Hong Thao, "Vietnam and Thailand settle maritime disputes in the Gulf of Thailand", 2 *The MIMA Bulletin* (1998), at 7-10; and Nguyen, "Les délimitations", *loc. cit.*, n. 6, at 51-53.

⁸ "The Land Border Treaty" was announced to have been officially signed at Hanoi on 30 December 1999. See "Viet Nam, China sign land border treaty", *Vietnam News Agency (VNA)* (30 December 1999). From the website of *Vietnam News Agency* (<http://www.vnagency.com.vn/Asp/Readnews4.asp?FileN=frac3012.020>) (accessed on 31 December 1999); and, "Signature du traité sur la frontière terrestre Vietnam-China", *Agence vietnamienne de l'information (AVI)* (30 décembre 1999). From the website of *Vietnam News Agency* (<http://www.vnagency.com.vn/asp/Tthoisuf4.asp?stq=2>) (accessed on 31 December 1999). See also "Vietnam, China sign land border treaty", 146 *News Bulletin* (31 December 1999). From the website of *Nhan Dan* (<http://www.nhandan.org.vn/english/19991231/index.html> and <http://www.nhandan.org.vn/english/19991231/bai-news6.html>) (accessed on 27 January 2000).

⁹ The "Agreement on the Demarcation of Waters, Exclusive Economic Zones and Continental Shelves in the Bac Bo (Tonkin) Gulf" (name used in Vietnamese sources at the time of signing) was officially signed on 25 December in Beijing. See "Viet Nam, China sign joint statement for comprehensive cooperation" (25 December 2000). From the website of the *Ministry of Foreign Affairs of Vietnam* (<http://www.mofa.gov.vn:8080/.../6279f8d7fcf98966c7269c10028184c?>) (accessed on 28 December 2000). See also "China, Viet Nam sign agreements", 44(2) *Beijing Review* (11 January 2001), at 9-10. The full text of the Agreement has been reproduced in two recent studies. See Zou, Keyuan, "The Sino-Vietnamese agreement on maritime boundary delimitation in the Gulf of Tonkin", 34 *Ocean Development and International Law* (2005), at 22-24 (hereafter Zou, "The Sino-Vietnamese"); and Nguyen, Hong Thao, "Maritime delimitation and fishery cooperation in the Tonkin Gulf", 34 *Ocean Development and International Law* (2005), at 41-44 (hereafter, Nguyen, "Maritime delimitation").

¹⁰ For details on the fishery agreement, see Zou, Keyuan, "Sino-Vietnamese fishery agreement for the Gulf of Tonkin", 17 *The International Journal of Marine and Coastal Law* (2002), at 127-148. For broader studies on both agreements see Nguyen, "Les délimitations", *loc. cit.*, n. 6, at 67-74; and Nguyen, Hong Thao, "The Gulf of Tonkin: A case study of dispute settlement", in Askandar, Kamarulzaman (ed.), *Management and Resolution of Inter-State Conflicts in Southeast Asia*, (Penang:

tary Protocol to the Agreement on Fishery cooperation in the Tonkin Gulf and the Regulations on preservation and management of the living resources in the Common Fishery Zone in the Gulf of Tonkin.¹¹

- On 11 June 2003 Vietnam and Indonesia signed an agreement on the delimitation of their continental shelf boundary in the area to the north of the Natuna Islands.¹²

2.2. Unsettled border disputes

- Despite the agreements of the 1980s between Cambodia and Vietnam the periods of tension since the 1990s relating to the border disputes displayed that there was still a need to address their border disputes.¹³ The agreement Supplementary Treaty to the 1985 Treaty has settled the land border dispute; however, the maritime disputes are still awaiting resolution.¹⁴
- Between Malaysia, Thailand and Vietnam there is a multilateral dispute relating to an area of overlapping claims in the Gulf of Thailand.¹⁵
- Between Malaysia and Vietnam the major dispute relates to Vietnam's sovereignty claim to the whole Spratly archipelago, which overlaps the Malaysian claim to

Southeast Asian Conflict Studies Network, 2003), at 207-214 (hereafter Nguyen, "The Gulf of Tonkin").

¹¹ "Viet Nam, China ink deal on fisheries in Tokin Gulf" (1 May 2004). From the website of the *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 the website of the *People's Daily Online* (English version) (http://english.people.com.cn/2004004/30/eng20040424_142001.html) (accessed on 4 October 2004).

¹² For information about the recent agreement with Indonesia see "Vietnam-Indonesia boundary agreement benefits regional stability", in 1306 *News Bulletin* (27 June 2003). From the website of *Nhan Dan* (<http://www.nhandan.org.vn/english/20030627/index.html> and <http://www.nhandan.org.vn/english/20030627/bai-news3.html>) (accessed on 22 December 2003).

¹³ The agreements between Vietnam and Cambodia reached in the 1980s remained not recognized by all parties within Cambodia for most of the 1990s. New bilateral talks on the status of the borders between these countries have been initiated towards reaching a solution to the outstanding disputed issues. This has thus far resulted in the Supplementary Treaty of October 2005 relating to the land border. Therefore, in the context of this study the maritime disputes between Vietnam and Cambodia are not considered as resolved and they are listed among the as yet unsettled disputes.

¹⁴ For details on the disputes between Cambodia and Vietnam relating to the land and maritime areas see Amer, Ramses, "The border conflicts between Cambodia and Vietnam", 5(2) *Boundary and Security Bulletin* (1997), at 80-91 (hereafter Amer, "The border conflicts"); and Amer, "Vietnam and its neighbours", *loc. cit.*, n. 6, at 299-301. For information on the maritime dispute see also Nguyen, "Les delimitations", *loc. cit.*, n. 6, at 59-63.

¹⁵ For an overview of the maritime conflicts and co-operative agreements in the Gulf of Thailand see Prescott, Victor, *The Gulf of Thailand* (Kuala Lumpur: Maritime Institute of Malaysia (MIMA), 1998). The area is currently included in the JDA between Malaysia and Thailand, but is recognised by the two countries as claimed by Vietnam (Amer's discussions with officials in Bangkok in December 1998, April 1999, and November 2000).

the southern part of the archipelago.¹⁶ These parts of the Archipelago are also claimed by China and partly claimed by the Philippines.

- Between the Philippines and Vietnam there is a dispute in the South China Sea where Vietnam's sovereignty claim to the whole Spratly archipelago overlaps the Filipino claim to the major part of it.¹⁷ These parts of the Archipelago are claimed by China and also partly claimed by Malaysia.
- Between China and Vietnam the overlapping sovereignty claims to the Paracel and Spratly archipelagos are still unresolved. The same applies to China's claims to historical waters within the so-called dotted line to the east of the Vietnamese coast in South China Sea.
- Between Brunei Darussalam and Vietnam a potential overlapping claim to the 200-mile EEZ could emerge if the two countries began to assert such claims over islands and reefs both claim in the South China Sea.¹⁸

3. BETWEEN CONFLICT MANAGEMENT AND TENSION

3.1. The 1970s

The developments since the end of the Vietnam War in 1975 show that during the latter half of the 1970s Vietnam and Laos reached agreements relating to their land border with the demarcation being finalized in 1986. A closer look at this process shows that before 1945, the two countries were different administrative parts of French Indochina. After gaining independence in 1954 the two countries opted to recognize the colonial administrative limits as boundaries. In June 1956, when the Prime Minister and the Minister of Foreign Affairs of Laos visited Hanoi, the two sides agreed to open negotiations on boundary demarcation. The wars in Laos and Vietnam prevented such negotiations prior to the 1970s. During the 1970s negotiations the two countries agreed to use the colonial administrative lines drawn on the 1:100,000-scale map of Bonne printed by the Indochina Geography Institute in 1946. In essence, Laos and Vietnam agreed to apply the *uti possidetis* principle in the process of demarcating their land border. The negotiations resulted in the two agreements of 1977 and 1986. Laos and Vietnam utilized the principle of *uti possidetis* even before that principle became universally accepted through a decision by the International Court of Justice in 1986. In other words, the two countries made a

¹⁶ Amer, "Vietnam and its neighbours", *loc. cit.*, n. 6, at 305-306; Prescott, J.R.V., *The Maritime Boundaries of the World* (London and New York: Methuen, 1985), at 218-222 (hereafter Prescott, *The Maritime Boundaries*); and Valencia, Mark J., *Malaysia and the Law of the Sea. The foreign policy issues, the options and their implications* (Kuala Lumpur: Institute of Strategic and International Studies (ISIS Malaysia), 1991), at 54-66.

¹⁷ *Ibid.*, at 54-66; Amer, "Vietnam and its neighbours", *loc. cit.*, n. 6, at 306-308; and Prescott, *The Maritime Boundaries*, *op. cit.*, n. 16, at 218-222.

¹⁸ Valencia, *op. cit.*, n. 16, at 48-50 and 66-67.

contribution to the development of international law.¹⁹ Officially, the two countries did not refer to any border dispute between them, yet the outcome of the demarcation process demonstrated that some differences existed and were resolved in the negotiation and demarcation processes.²⁰

3.2. The 1980s

During the 1980s there were the agreements between Vietnam and the then PRK in 1982, 1983, and 1985. No progress was made in negotiating the border disputes with member-states of the Association of South-East Asian Nations (ASEAN) or with China. The Cambodian conflict prevented progress to the extent that no talks, apart from those with Indonesia and Cambodia, on border issues took place between Vietnam and its other neighbours for the duration of the Cambodian conflict 1979-1991.

3.3. The 1990s

3.3.1. Members of ASEAN

The 1990s witnessed considerable progress in negotiations. A joint development agreement (JDA) was reached with Malaysia in 1992 over an area of bilateral dispute in the Gulf of Thailand. The process of negotiations between Vietnam and Thailand eventually resulted in the agreement on maritime boundaries of 1997 over the areas of bilateral dispute in the Gulf of Thailand. In 1995 Vietnam and the Philippines agreed on a 'code of conduct' to be observed by the two countries in the South China Sea.²¹ More notable progress during the 1990s was the initiation of trilateral talks between Vietnam, Malaysia, and Thailand relating to an area of the Gulf of Thailand where the claims of the three countries overlap. These talks were made possible by the maritime boundary agreement between Vietnam and Thailand in 1997.²²

In the case of the JDA with Malaysia, both Vietnam and Malaysia made unilateral claims to the continental shelf in the 1970s. The then Republic of Vietnam (South) (ROV) did so in 1971, and Malaysia in 1979; they thus created an area of overlapping

¹⁹ *Frontier Dispute Case (Burkina Faso v. Republic of Mali)*, ICJ Rep. 1986.

²⁰ For details on the settlement and demarcation of the land border between Laos and Vietnam see Gay, *op. cit.*, n.l.

²¹ Amer, Ramses, "Expanding ASEAN's conflict management framework in Southeast Asia: The border dispute dimension", 6 *Asian Journal of Political Science* (1998), at 46.

²² Amer, Ramses, "Conflict management within the Association of Southeast Asian Nations (ASEAN): assessing the adoption of the 'Rules of Procedure of the High Council of the Treaty of Amity and Cooperation in Southeast Asia'", in Askandar, Kamarulzaman (ed.), *Management and Resolution of Inter-State Conflicts in Southeast Asia* (Penang: Southeast Asian Conflict Studies Network, 2003), at 117-118.

claims. The 1992 JDA implied that Malaysia agreed to nominate the Petroleum Nasional Berhad (PETRONAS) and Vietnam, the Vietnam Oil and Gas Corporation (PETROVIETNAM) to undertake, respectively, the exploration and exploitation of petroleum in the "Defined Area" and to enter into appropriate commercial arrangements. Four years after the conclusion of the commercial arrangement, on 29 July 1997, the first petroleum was extracted from the Bunga Kekwa field.²³

In the case of the agreement with Thailand it can be noted that the Gulf of Thailand is a semi-enclosed sea, long but narrow, with an average width of 215 nautical miles. Therefore, based on the provisions of the 1982 United Nations Convention on the Law of the Sea (1982 UNCLOS) the whole Gulf is subject to the jurisdictional claims of coastal states up to 200 nautical miles. Both Vietnam and Thailand made unilateral claims to the continental shelf in the early 1970s. The ROV did so in 1971 and Thailand in 1973, thus creating an area of overlapping claims. Each country failed to take into account off-shore features along the coast of the other country when making these claims. In addition, overlapping claims to EEZ led to problems with illegal fishing.²⁴ In 1992 negotiations were initiated and after five years the two sides agreed to settle both the continental shelf and EEZ disputes through delimiting a single maritime boundary. The agreement of 9 August 1997 reaffirms the tendency to using a single boundary for both the continental shelf and the EEZ in zones that extend for a distance of less than 400 nautical miles between opposite coasts. It is also of relevance in the context of the effects on islands of the international law of maritime delimitation. In the case of Vietnam it was the first agreement on maritime delimitation.²⁵

3.3.2. China

Following full normalization of bilateral relations between China and Vietnam in November 1991, the border disputes caused a fluctuating level of tension during the 1990s. In order to address this situation the two countries developed a system of talks at the expert, governmental, and high levels to deal with the tensions and with the border issues as such. Talks at the expert level were initiated in October 1992. The talks at the governmental level began in August 1993, and the twelfth round of talks was held in December 2005.²⁶ Talks at both levels led to a notable decrease in tension by the end of the decade, and also to the agreement on a Land

²³ Nguyen, Hong Thao, *Le Vietnam et ses différents maritimes dans la mer de Bien Dong (Mer de Chine méridionale)* (Paris: Edition A. Pédone, 2004), at 99-108.

²⁴ For an overview of the interplay of negotiations and tension in the period 1992-1995 see Amer, "Vietnam and its neighbours", *loc.cit.*, n. 6, at 309-311.

²⁵ For more detailed analyses, see *ibid.*, at 88-99 and 107-108; and Nguyen, "Vietnam's first", *loc.cit.* n. 7, at 74-78.

²⁶ The twelfth round of talks was held in Hanoi on 8-10 December 2005, "Viet Nam, China to complete landmark demarcation in 2008", From the website of the *Ministry of Foreign Affairs of Vietnam* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns051212154021>) (accessed on 9 January 2006).

Border Treaty at the end of 1999 that entered into force on 6 July 2000 when the two countries exchanged documents relating to the ratification of the agreement in Beijing.²⁷ The talks on the Gulf of Tonkin were also well underway by the end of the decade. In late 2000, the two countries signed the *Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin*.²⁸ This agreement entered into force on 30 June 2004 when the two countries exchanged documents relating to the ratification of the agreement in Hanoi.²⁹ The ratifications proceeded; the entry into force of the agreement was made possible by the completion of the talks on an additional protocol to the agreement of fishery co-operation signed on the same day in December 2000 as was the boundary agreement. Agreeing on the protocol constituted a prerequisite to proceeding with the ratification of the maritime boundary agreement.

However, talks on the so-called “sea issues” (South China Sea – East Sea, according to Vietnam), initiated in November 1995 and with the tenth round of talks held in June 2005,³⁰ have made very little progress. This is due in part to disagreement over determining the issues to be included in the agenda, with Vietnam pushing for the inclusion of the issue of the Paracels, on the one hand, and China insisting that this topic should be excluded, on the other. Nevertheless, the level of tension relating to the disputes in the South China Sea has been considerably reduced since 1999 – a trend that has continued to prevail into the subsequent millennium.³¹

The negotiation process relating to the land border dispute did not, despite regular rounds of talks of the joint working group, change significantly in frequency before 1998; however, during 1999 the joint working group on the land border met on four

²⁷ The joint working group on the land border dispute held sixteen rounds of talks from February 1994 to the signing of the *Land Border Treaty* in December 1999. For details about the talks as well as the ratification process in 2000, see Amer, Ramses, *The Sino-Vietnamese Approach to Managing Boundary Disputes*, 3(5) *Maritime Briefing* (Durham: International Boundaries Research Unit, University of Durham, 2002), at 13-31. (hereafter Amer, *The Sino-Vietnamese Approach*)

²⁸ The joint working group on the Gulf of Tonkin dispute 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. For details about the talks and the context in which they took place, see Amer, *The Sino-Vietnamese Approach*, *op. cit.*, n. 27, at 11-34 and 50-58.

²⁹ “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) (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://english.people.com.cn/200407/01/eng20040701_148157.htm) (accessed on 3 October 2004).

³⁰ The tenth round of talks on “sea issues” was held in Beijing on 21 and 23 June 2005. “Vietnamese and Chinese experts hold talks on sea issues”. From the website of the *Ministry of Foreign Affairs of Vietnam* (<http://www.mofa.gov.vn/en/nr04087104143/nr040807105001/ns050627151155>) (accessed on 24 July 2005).

³¹ For more details on the management on the border disputes between China and Vietnam, see Amer, *The Sino-Vietnamese Approach*, *op. cit.*, n. 27 and Amer, “Assessing Sino-Vietnamese relations through the management of contentious issues,” 26 *Contemporary Southeast Asia* (2004), at 328-345 (hereafter Amer, “Assessing Sino-Vietnamese”).

separate occasions, and each round lasted at least two weeks on any of these. This increase in the number and in the duration of the rounds of talks can be attributed to the political pressure to reach a common understanding and to provide the political leaders with the basis on which to sign a treaty.³²

Reaching an agreement was by no means a simple task given the geographical characteristics of the border areas: these encompass both mountainous terrain, not easily accessible, and other parts including rivers – which present their own sets of issues to be settled. Other difficulties are posed by the movement of border markings and activities carried out by the population and local authorities in the border area. This was clearly shown in incidents and the resulting tension in late 1997 and early 1998.³³ Also, the military clashes along the border during the second half of the 1970s – in particular, in connection with the Chinese attack on Vietnam in February and March 1979 – had left some areas in dispute along the border. Among the more notable such areas were some 300 metres between the provinces of Guangxi and Lang Son, which prevented the re-opening of the railway between the two countries during the first half of the 1990s. An agreement was eventually in February 1996 reached to do so.³⁴

As the Treaty encompassed no demarcation, such a process had to be carried out. Consequently, the two countries established a Joint Committee for the demarcation of the land border. It held its first meeting in Beijing between 19 November and 1 December 2000. The Joint Committee would focus on the demarcation of the border and on the planting of “landmarks”.³⁵ The first “single marker” was “planted” on 4 January 2002.³⁶ The on-going demarcation process between China and Vietnam is expected to be finalized in 2008 “at the latest”.³⁷

In August 2002 Vietnam published the text of the Treaty, although it included no maps.³⁸ In September of the same year, Le Cong Phung, a Vice-Foreign Minister, gave additional information about the Treaty. He outlined the background to the negotiation process, the process itself, and the mechanisms and principles used in

³² For details see Amer, *The Sino-Vietnamese Approach*, *op. cit.*, n. 27, at 26-29.

³³ For details see *ibid.*, at 22-24.

³⁴ For details see *ibid.*, at 9 and 16-17.

³⁵ BBC/FE/4016 G/3 (6 December 2000). Report carried by the website of the *Voice of Vietnam* (in Vietnamese). See also “Viet Nam and China meet on borderline demarcation”, *Vietnam News Agency (VNA)* (1 December 2000), From the website of the *Vietnam News Agency*, (<http://vnagency.com.vn/Asp/Readnewse4.asp?Filn=>) (accessed on 2 December 2000).

³⁶ “First single marker planted on Vietnam-Chinese border line” (4 January 2003). From the website of the *Ministry of Foreign Affairs of Vietnam* ([http://www.mofa.gov.vn:8080/Web%20 server/ForeignPolicy.nsf/f6f55a44edc7e3b4c7](http://www.mofa.gov.vn:8080/Web%20server/ForeignPolicy.nsf/f6f55a44edc7e3b4c7)) (accessed on 4 April 2003).

³⁷ “Viet Nam, China to complete landmark demarcation in 2008”. From the website of the *Ministry of Foreign Affairs of Vietnam* (<http://www.mofa.gov.vn/en/nr040807104143/nr040807105001/ns051212154021>) (accessed on 9 January 2006).

³⁸ The full text of the Land Border Treaty without maps has been published as “The Land Border Agreement between the Socialist Republic of Vietnam and the People’s Republic of China”, in *Công Báo / Official Gazette of the Socialist Republic of Vietnam*, No. 41 (25 August 2002), at 3- 16.

settling disputed areas along the border. The core disputed areas – referred to as “Areas C” – encompassed 164 areas covering 227 km². Of these areas some 113 km² were defined as belonging to Vietnam, and around 114 km² as belonging to China. Le Cong Phung stated that the outcome of the negotiations “conformed” with principles agreed upon and in so doing they ensured “fairness and satisfaction for both sides”.³⁹

The negotiation process relating to the delimitation of the Gulf of Tonkin with regular rounds of talks of the joint working group differed little in frequency on a yearly basis up to 1999. The developments during 2000 showed that an increase occurred, with six 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 1999.⁴⁰

The core issue in the negotiations be settled in the Gulf of Tonkin revolved around the principle to be applied in order to divide the Gulf. In this context the impact of islands was of importance, in particular, the Vietnamese-controlled Bach Long Vi Island. The first question was whether or not it qualified as an island according to the provisions of the 1982 United Nations Law of the Sea Convention (1982 UNCLOS). If it did, as was argued by Vietnam, then it was entitled to full maritime zones and – more importantly – the extent of the effects and thus impact it would have on the tracing of a line of equidistance if this principle were applied in the Gulf of Tonkin. An assessment of the agreed coordinates indicates that the impact of Bach Long Vi was not ‘valued’ fully in the delimitation. However, it was partly ‘valued’ as it was awarded a quarter of the impact, i.e. 15 nautical miles.⁴¹

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 her own advantage. China would have opposed using it and argued that the 1887 Agreement was intended only to determine administrative control over the islands in the Gulf.⁴² The agreement reached indicates that if the status of the *Sino-French 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.

The agreed co-ordinates indicate that the two sides reached an agreement on a line of equidistance after having settled their differences relating to the question of

³⁹ The Vice-Minister also gave a detailed response to the accusations by overseas Vietnamese that the Vietnam had given up large areas of land to China. He refuted the accusations as “untrue and groundless”. For details, see “Vice-Foreign Minister on Vietnam-China land border treaty”, 9(97) *Vietnam Law & Legal Forum* (2002), at 21-23.

⁴⁰ For details, see Amer, *The Sino-Vietnamese Approach*, *op. cit.*, n. 27, at 31-35.

⁴¹ Nguyen, *The Gulf of Tonkin*, *loc. cit.*, n. 10, at 210-213.

⁴² For an argument along similar lines having parallels with the *Brevie Line* drawn in 1939 in the Gulf of Thailand, see Zou, Keyuan, “Maritime boundary delimitation in the Gulf of Tonkin”, 30 (3) *Ocean Development and International Law* (1999), at 238-240.

how islands should have an impact on the delimitation, in particular Bach Long Vi Island.⁴³

The maritime boundary agreement over the Gulf of Tonkin reaffirms the Vietnamese position of using a single line for both the continental shelf and an EEZ in an area at a distance of less than 400 nautical miles between opposite coasts. The Boundary Agreement is also relevant from the following perspectives: the effects of islands, both coastal and outlying (Bach Long Vi); the role of low-tide elevations in delimitation; the issues of the outlet of a boundary river; and the question of a closing line for the Gulf.⁴⁴

The agreement on fishery is an example of a twin-step solution for settling fishing disputes and delimiting an EEZ. The EEZ can be divided, yet the application of the fisheries regime can be delayed in order to minimize economic dislocation for states. In the case of the Gulf of Tonkin, the regime of the EEZ as regards fisheries will be applied only after four years for the Transitory Fishery Zone and fifteen years for the Common Fishery Zone.⁴⁵

3.3.3. South China Sea

In the context of the multilateral dispute relating the Spratly archipelago and the broader issue of the situation in the South China Sea, Vietnam is actively involved in the ASEAN-China dialogue. The most tangible outcome of that dialogue was the signing of the "Declaration on the conduct of parties in the South China Sea" (DOC) on 4 November 2002, during the Eight ASEAN Summit in Phnom Penh, Cambodia. The DOC is seen as an important step in the process aiming at establishing and agreeing on a 'code of conduct' in the South China Sea. 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 UNCLOS.⁴⁶

In this context, the agreement between the Chinese National Offshore Oil Company (CNOOC) and the Philippines National Oil Company (PNOC) on 1 September 2004 on the seismic survey of the South China Sea is of interest.⁴⁷ The area of the

⁴³ For more detailed analyses, see Amer, IBRU; Nguyen, "The Gulf of Tonkin", *loc. cit.*, n. 10, at 207-214; Nguyen, "Maritime delimitation", *loc. cit.*, n. 9, at 25-44; and, Zou, 'The Sino-Vietnamese', *loc. cit.*, n. 9, at 13-24.

⁴⁴ For more details, see Nguyen, "Maritime delimitation", *loc. cit.*, n. 9, at 28-30.

⁴⁵ For more details, see Nguyen, "Maritime delimitation", *loc. cit.*, n. 9, at 30-32.

⁴⁶ Nguyen, Hong Thao, "Vietnam and the code of conduct for the South China Sea", 32 *Ocean Development and International Law* (2000), at 105-130. See also Nguyen, Hong Thao, "Declaration on parties' conduct in South China Sea (the East Sea) – a step towards the establishment of the code of conduct for the region", 9(99), *Vietnam Law & Legal Forum* (2002), at 19-21.

⁴⁷ The official announcement of the agreement was made by the Philippines on 6 September 2004 ("RP-China agreement on joint marine seismic undertaking in the sea constitutional – Rumulo / DFA hails PGMA's successful state visit to China; Signed agreements to boost trade and investment between RP and China" SAF-AGR-524-04, September 2004, Press Release, Department of Foreign

seismic survey covers some parts of the Spratly archipelago. Vietnam has officially stated that the agreement has been concluded without consulting other parties. It has “requested” China and the Philippines to inform Vietnam about the content of the agreement. Vietnam also reiterated its claims to sovereignty over both the Spratly and the Paracel archipelagos. Finally, it called on all other signatories to join Vietnam in “strictly implementing the DOC”.⁴⁸

In 2005 there were further developments. First, on 7 March it was announced by the Department of Foreign Affairs of the Philippines that the Maritime and Ocean Affairs Center, Department of Foreign Affairs of the Philippines, would host the Third Philippines-Vietnam Joint Oceanographic Marine Scientific Expedition in the South China Sea (JOMSRE-SCS III) between 6-9 April 2005.⁴⁹ On 11 March the Spokesman of China’s Ministry of Foreign Affairs announced in response to a question on China’s views on the reports that the two countries would conduct “joint marine research” in the South China Sea. He expressed China’s “concern” about the joint marine research and that the “relevant parties” would follow the “principles enshrined in the Declaration on the Declaration on Conduct of parties in the South China Sea” in their marine research.⁵⁰ Second, on 14 March a “Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea” was signed between the CNOOC, PETROVIETNAM, and the PNOOC. The term of the agreement is three years. The signing of the agreement “would not undermine the basic position held by the Government of each party on the South China Sea issue”.

Affairs. From the website of the *Department of Foreign Affairs* (<http://www.dfa.gov.ph/news/pr/pr2004/sep/pr524.htm>) (accessed on 29 September 2004).

⁴⁸ Vietnam’s reaction to the agreement between China and the Philippines came on 9 September 2004 in response to a question raised by the correspondent of *Agence France Press* to the Spokesperson of the Ministry of Foreign Affairs of Vietnam (“Answer to correspondent by Mr. Le Dung, the spokesman of the Vietnamese Ministry of Foreign Affairs on 9th September 2004”). From the website of the *Ministry of Foreign Affairs of Vietnam* (http://www.mofa.gov.vn/en/tt_baochi/pbfnf/ns041028222202) (accessed on 29 September 2004).

⁴⁹ Information derived from “DFA-MOAC To host third joint scientific research expedition in the South China Sea”, SAF-AGR-133-05 (17 March 2005), Press Release, Department for Foreign Affairs. From the website of the *Department of Foreign Affairs* (<http://www.dfa.gov.ph/news/pr/pr2005/mar/pr133.htm>) (accessed 17 March 2005). The Vietnamese counterpart was the Academy of Science and Technology of Vietnam. See “Information on Vietnam-Philippines joint scientific expedition in April 2005 in the East Sea. Answer to correspondent by Mr. Le Dung, the spokesman of the Vietnamese Ministry of Foreign Affairs on 15th March 2005”. From the website of the *Ministry of Foreign Affairs of Vietnam* (http://www.mofa.gov.vn/tt_baochi/pbfnf/ns050315170200/) (accessed on 22 March 2005).

⁵⁰ Information derived from “Foreign Ministry spokesman Kong Quan’s comment on Philippines-Vietnamese joint marine research in the South China Sea, 2005/03/11”. From the website of the *Ministry of Foreign Affairs of the People’s Republic of China* (<http://www.fmprc.gov.cn/eng/xwfw/s2510/t186844.htm>) (accessed on 11 March 2005).

However, the parties expressed their “resolve to transform the South China Sea into an area of peace, stability, cooperation and development”.⁵¹

3.3.4. *Indonesia*

Vietnam's negotiations with Indonesia in the 1990s did not bring about a breakthrough in the negotiations on their border dispute. The two countries failed to capitalize on the traditional good bilateral relations. Furthermore, the impact of the Asian Financial Crisis on Indonesia brought other, more pressing, needs onto the agenda for the Indonesia leaders. Thus, no progress was made in negotiating the border disputes, yet stability was maintained. This state of affairs continued to prevail into the early 2000s⁵² until a breakthrough was made in 2003; it led to the agreement of June 2003 settling the border dispute between the two countries. However, the pressing domestic issues to be dealt with by Indonesia have prevented the ratification of the agreement and it has thus not yet entered into force.

3.3.5. *Cambodia*

The 1990s also witnessed the re-emergence of the border issues in Vietnam's relations with Cambodia. In particular the land border issue caused periods of tension in bilateral relations, with leading Cambodian politicians openly accusing Vietnam of border violations. Vietnam has repeatedly rejected such accusations. The initiation of renewed talks on the border issues in the late 1990s led to no agreement by the end of the decade. Doubt was first cast on the status of the agreements of 1982, 1983, and 1985 by the Cambodian side. By the late 1990s, however, the agreements seem to have become acceptable to both sides as the basis for further talks. The bilateral talks progressed into the year 2000 and a Vietnam official stated that an agreement would be reached by the end of that year.⁵³ However, this did not materialize, and for a few years talks were more sporadic. Eventually, the two countries managed to make progress in the talks on the land border and on 10 October 2005 they signed

⁵¹ Information derived from “Tripartite Agreement for joint marine seismic undertaking in the agreement area in the South China Sea. Answer to correspondent by Mr. Le Dung, the spokesman of the Vietnamese Ministry of Foreign Affairs on 14th March 2005”. From the website of the *Ministry of Foreign Affairs of Vietnam* (http://www.mofa.gov.vn/tt_baochi/pbfnf/ns050314164241/) (accessed on 22 March 2005).

⁵² For details on the nature of the dispute and talks up to 2000, see Nguyen, “Les délimitations”, *loc. cit.*, n. 6, at 56–58.

⁵³ For references to a settlement of the border issues between Vietnam and Cambodia by the end of 2000, see “Vietnam, Cambodia meet on border issues”, 344 *News Bulletin* (1 November 2000) (English language bulletin). From the website of *Nhan Dan* (<http://www.nhandan.org.vn/english/20001101/index.html> and <http://www.nhandan.org.vn/english/20001101/bai-news1.html>) (accessed on 15 December 2000); and, “Viet Nam, Cambodia to solve border issue this year, affirms Vietnamese Deputy Prime Minister” (3 November 2000). From the website of the Ministry of Foreign Affairs of Vietnam (<http://www.mofa.gov.vn:8080/.../302e3aad9ebfd3c7c725698c000552b2?>) (20 December 2000).

a Supplementary Treaty. Both countries completed their respective ratification processes on 29 November 2005; following the exchange of ratification documents, the Supplementary Treaty entered into force in 6 December 2005.⁵⁴ Cambodia and Vietnam expect their demarcation to be completed in December 2008.⁵⁵

A closer look at the agreements of the 1980s display that in the agreement of 1982 the “historic waters” were defined as being located between the coast of Kien Giang Province, Phu Quoc Island and the Tho Chu islands on the Vietnamese side, and between the coast of Kampot Province and the Poulo Wai islands on the Cambodian side. The agreement stipulated that the two countries would hold, “at a suitable time”, negotiations to determine the maritime frontier in the “historic waters”. Pending such a settlement the two countries would continue to regard the Brevie Line drawn in 1939 as the diving line for the islands within the “historic waters”, and the exploitation of the zone would be decided by “common agreement”.⁵⁶ In the 1985 Treaty on the Delimitation of the Vietnam-Kampuchea Frontier the principle *uti possidetis* would be applied. Furthermore, the common land border would be based on the administrative lines drawn on a 1:100,000-scale map in use before 1954 or up to that year.⁵⁷

To use maps printed in the 1950s presented the two countries with some problems: one was that the maps did not incorporate any geographical changes to have occurred since then. Moreover, the acknowledgement that these two kinds of maps (Bonne, and UTM) were of the same validity in delimitating and demarcating the boundary line caused difficulties when the demarcation was to be carried out in areas where there were divergences between these maps or between the maps and the geographical conditions, particularly in the Mekong River delta where floods cause annual changes. The 1985 Treaty delimited most of the boundary line, but due to the factors mentioned above, there were still some provisional elements that needed further field surveys. The Supplementary Treaty of 2005 was a necessary step not only to reconfirm the validity of the 1985 Treaty, but also to settle remaining delimita-

⁵⁴ “New achievement in Vietnam-Cambodia relations”, From the website of *Nhan Dan* (http://www.nhandan.org.vn/english/news/081205/domestic_new.htm) (accessed on 9 January 2006).

⁵⁵ “New achievement in Vietnam-Cambodia relations”, (http://www.nhandan.org.vn/english/news/081205/domestic_new.htm) (accessed on 9 January 2006); and “Vietnam and Cambodia discuss master plan on border demarcation”. (http://www.nhandan.org.vn/english/news/231205/domestic_vn.htm) (accessed on 9 January 2006). Both from the website of *Nhan Dan*.

⁵⁶ BBC/FE 7074 A3/7-8, Kittichaisaree, *op. cit.*, n. 2, at 180-181. Interestingly enough, the “full text” of the Agreement transmitted by the official Cambodian news agency (SPK) on July 8 omitted the sentence: “Patrolling and surveillance in these historical waters will be jointly conducted by the two sides”, which was included in Article 3 of the version published by the Vietnamese News Agency and reproduced in Kittichaisaree’s study (BBC/FE/7074 A3/8, 7076/A3/7; and Kittichaisaree, *op. cit.*, n. 2, at 180-181).

⁵⁷ For reports from Vietnam and the PRK announcing the signing of the Treaty and for details, see BBC/FE/8143 A3/1-3. See also Quang, *loc.cit.*, n. 3, at 8-9.

tion issues and to move the demarcation process ahead.⁵⁸ Following the ratification of the Supplementary Treaty the two countries have agreed to push ahead with the demarcation process with the goal of completing it by the end of 2008.⁵⁹

4. BROADER TRENDS IN THE MANAGEMENT OF VIETNAM'S BORDER DISPUTES

From the above analysis it can be noted that the resolution of the Cambodian conflict in October 1991 was a watershed in the management of Vietnamese border disputes with other South-east Asian countries. Prior to this development Vietnam had settled its border dispute with only one country: Laos. As noted above the agreements reached with Cambodia in the 1980s have not resolved the border disputes, as is seen in the continued differences and renewed attempts at negotiations in the late 1990s and the early 2000s. Since the settlement of the Cambodian conflict, Vietnam agreed in 1992 on a JDA with Malaysia over areas of overlapping claims in an area of the Gulf of Thailand. Then, Vietnam and Thailand agreed on maritime boundaries between the two countries in the Gulf of Thailand in 1997. The agreements with Thailand have also paved the way for talks between Vietnam, Thailand, and Malaysia relating to the area of the Gulf of Thailand where the claims of the three countries overlap. Furthermore, the 1995 agreement with the Philippines on a 'code of conduct' to be observed in the South China Sea is another notable example of progress after the resolution of the Cambodian conflict.

In the case of the management of the border issues between China and Vietnam the normalization of bilateral relations certainly facilitates the management of the disputes. However, the most interesting feature is the fact that the full normalization took place without resolution of the border issues. This can best be understood in the light of the major efforts that both countries have invested in managing and resolving the border issues since full normalization. In other words, full normalization would not have been possible if resolving the border issues had been a pre-condition for full normalization.⁶⁰

⁵⁸ Nguyen, Hong Thao and Hoang Hai Oanh, "Legal aspects of the Supplementary Treaty to the 1985 Treaty on Boundary Delimitation between Vietnam and Cambodia", 12 (137) *Vietnam Law & Legal Forum* (January 2006), at 17-20.

⁵⁹ "Vietnam and Cambodia discuss master plan on border demarcation". From the website of *Nhan Dan* (http://www.nhandan.org.vn/english/news/231205/domestic_vn.htm) (accessed on 9 January 2006).

⁶⁰ For more detailed analyses of the normalization process *per se* and the way in which the border disputes were addressed during this process, see Amer, *The Sino-Vietnamese Approach*, *op. cit.*, n. 27, at 7-8; Sino-Vietnamese relations is derived from Amer, Ramses, "Sino-Vietnamese normalization in the light of the crisis of the late 1970s", 67 *Pacific Affairs* (Fall 1994), at 365-366 and 376-382; Amer, Ramses, "Sino-Vietnamese relations: past, present and future", in Thayer, Carlyle A. and Ramses Amer (eds.), *Vietnamese Foreign Policy in Transition* (Singapore: Institute for Southeast Asian Studies; and New York: St Martin's Press, 1999), at 73-77 and 105-108; and Amer, "Assessing Sino-Vietnamese", *loc. cit.*, 31, at 320-328.

Overall, Vietnam has made considerable progress in managing and resolving its border disputes. Some bilateral disputes still remain unresolved, yet these are managed through various measures such as a JDA, a code of conduct, and talks. The multi-lateral dispute over the Spratlys is more complicated due to the nature of the disputes. Thus far Vietnam has made the greatest progress in its bilateral agreements with the Philippines and China, respectively, when it comes to managing disputes in the area. Vietnam also contributes to the policy towards the South China Sea and the Association's attempts at promoting peace and stability in the area. Differences such as those between Vietnam and China relating to the Paracels, and also with regard to areas to the east of the Vietnamese coast and the west of the Spratlys, are likely to persist. However, both sides have made considerable progress in containing tension in recent years and have agreed on a number of measures to avoid and contain possible sources of tension.⁶¹

5. CONCLUDING OBSERVATIONS

Since the early 1990s, Vietnam has emerged as an active partner in settling border disputes by peaceful means in the region. During a period spanning only slightly longer than a decade, Vietnam has completed talks on six land and maritime disputes with the following countries: Malaysia, Thailand, China, Indonesia, and Cambodia. This is an impressive success rate in terms of the settlement of border disputes in the context of South-east Asia. Through these agreements, Vietnam has contributed to the development of international law such as the application of the *uti possidetis* principle, the equitable principle, the application of the single line for maritime delimitation, and in terms of the effects on islands of the maritime delimitation.

Could the progress in managing the border disputes be attributed only to Vietnam? The answer is no; credit has, though, to be given to Vietnam for striving to manage peacefully its border disputes with neighbouring countries. The policies implemented by Vietnam have positively contributed to the peaceful management of the disputes. Vietnam has also persisted in pursuing such policies in the context of those disputes that have yet to be settled.

Of course, the agreements with Cambodia, China, Indonesia, Laos, Malaysia, the Philippines, and Thailand, respectively, have been reached because these countries have also opted to pursue policies promoting negotiations on their border disputes with Vietnam. Thus, the peaceful management of Vietnam's border disputes is a result of the common interest between Vietnam and the neighbouring countries concerned to pursue such policies. It also reflects the vast improvement in overall relations between Vietnam and China, as well as among Vietnam and the member-states of ASEAN during the 1990s, i.e., after the formal resolution of the Cambodian conflict and the full normalization of relations between China and Vietnam in late 1991.

⁶¹ Amer, *The Sino-Vietnamese Approach*, *op. cit.*, n. 27, at 45-46.

Despite the positive developments the remaining disputes are a challenge. Vietnam and Cambodia must complete the demarcation of their land border and resolve their maritime disputes. Between Vietnam and China the demarcation of the land border must be completed. The two countries also need fully to implement the agreements reached relating to the Tonkin Gulf. Furthermore, Vietnam and China must continue bilateral talks on “maritime issues” (South China Sea/East Sea) and continue to strive for management of potential tension in the area; they need to refrain from any action that might cause tension. Vietnam and Indonesia need to complete the ratification process and proceed towards making their maritime agreements effective, i.e., these should enter into force. Vietnam must also pursue trilateral talks with Malaysia and Thailand on the area of trilateral dispute in the Gulf of Thailand. Finally, Vietnam and other concerned parties must continue to contribute to the peaceful management of the multilateral dispute over the Spratly archipelago in the South China Sea. The impact of the Tripartite Agreement among the national oil companies of China, the Philippines, and Vietnam on the South China Sea situation will have to be assessed in the years to come. It could potentially have a considerable impact on developments in the area.