

VIETNAM - MALAYSIA COOPERATION ON MARITIME DELIMITATION***Le Van Bao**Faculty of International Studies, University of Social Sciences and Humanities, Vietnam National University,
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Abstract

Vietnam has a long coastline and a large sea area with many islands and two archipelagos of Hoang Sa and Truong Sa. Therefore, the central goal of Vietnam in the process of building and developing the country is protecting the integrity of its territory, sea area and airspace. In particular, Vietnam always attaches importance to cooperation with regional countries to carry out this task. According to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the boundaries of Vietnam's exclusive economic zone and continental shelf are expanded and adjacent to many countries. Besides the sea areas that have been clearly demarcated with Thailand and Indonesia, Vietnam is still in negotiation with China, Cambodia and Malaysia about remaining sea areas. In order to create a legal basis for the management and exploitation of its sea areas, contribute to creating a common security and order environment at sea and international maritime, consolidate and develop friendly and cooperative relations with other countries, Vietnam and neighboring countries have been cooperating in negotiations to sign maritime delimitation agreements. Typical of these is the cooperation in maritime boundary delimitation between Vietnam and Malaysia. This article aims to present and analyze the cooperation on maritime delimitation between Vietnam and Malaysia from the perspective of international studies.

Keywords: Cooperation, maritime delimitation, Vietnam, Malaysia

INTRODUCTION**Vietnam and Malaysia's policies on foreign affairs and maritime delimitation**

Vietnam's policies on foreign affairs and maritime delimitation: Although Vietnam's foreign policy has undergone certain adjustments over historical periods, the guiding ideology throughout is to firmly maintain the principles of independence, self-reliance, promoting internal strength combined with international cooperation, principles of relations with major countries, approaches to the world situation, the times, etc. Since the 6th National Congress in 1986, Vietnam has implemented Open Door Policy with the principle in foreign policy of "multilateralization and diversification of international relations" [Communist Party of Vietnam, 1987, p. 30], "ready to be a friend, a reliable partner of all countries in the international community, striving for peace, independence and development", then the 13th Congress set the policy on "promoting and elevating multilateral foreign relations, closely coordinating with bilateral relations, performing well international responsibilities, especially in ASEAN... maintaining peace, security, safety, freedom of navigation and aviation in the East Sea, settling disputes by peaceful means on the East Sea international legal basis, especially UNCLOS 1982" [Communist Party of Vietnam, 2021, pp. 282-283]. In the relation with Malaysia, Vietnam values and hopes to strengthen strategic partnership with Malaysia, agrees to enhance political trust and increasingly deepen and comprehensively develop the Vietnam - Malaysia strategic

partnership; affirms that the Communist Party of Vietnam, the National Assembly, the Government and people of Vietnam attach great importance to promoting the Vietnam - Malaysia Strategic Partnership to develop stably, sustainably and long-term; Vietnam and Malaysia demonstrate a relationship of trust and closeness, mutual support and active cooperation at regional and international forums such as the United Nations, ASEAN, APEC, etc. Vietnam's basic stances and goals on the East Sea issue and cooperation in maritime delimitation and settlement of maritime disputes are to affirm sovereignty over the two archipelagos of Hoang Sa and Truong Sa, commit to "working with relevant parties, through negotiations on the basis of respecting each other's independence and sovereignty, in accordance with international law and international practices, to resolve issues related to each party's maritime zones and continental shelves"; "advocates resolving territorial sovereignty disputes as well as other disagreements related to the East Sea through peaceful negotiations in the spirit of equality, understanding and mutual respect, respect for international law, especially UNCLOS 1982, respect for the sovereignty and jurisdiction of coastal countries over their EEZs and continental shelves"; affirms "resolve disputes related to seas and islands with other countries by peaceful means, in accordance with UNCLOS 1982, international law and practice".

Malaysia's policies on foreign affairs and maritime delimitation: Historically, Malaysia has made adjustments to its foreign policy to adapt to new situations, but in general, it has adhered to the basic principles of foreign policy based on respect for independence, sovereignty and territorial integrity, supporting peaceful coexistence and resolving disputes amicably, aiming to promote national interests and protect Malaysia's sovereignty and territorial integrity [Ministry of Foreign Affairs Malaysia, 2021, p.12]. Since taking office as the 10th Prime Minister of Malaysia (in November 2022),

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Prime Minister Anwar Ibrahim has continued to pursue a traditional foreign policy, implementing a balanced policy between the West and the East, avoiding any stances considered provocative [Bernama, 2024]. In particular, prioritizing relations with ASEAN countries and the Muslim community, balancing relations with major countries, cooperating well with the US and Europe, and maintaining excellent bilateral relations with China, South Korea and Japan.

In relations with Vietnam, Malaysia always attaches importance to developing relations between the two countries, which can be seen by the fact that Vietnam is currently Malaysia's only strategic partner in ASEAN. During the visit of Malaysia's Prime Minister Ismail Sabri Yaakob to Vietnam from March 20 to 22, 2022, he affirmed that Malaysia always gives high priority to further strengthening close cooperation with Vietnam, Malaysia's only strategic partner in Southeast Asia. Malaysia always attaches importance to the strategic partnership with Vietnam, hopes to promote bilateral cooperation in the fields of economy, trade, investment and people-to-people exchange, and expressed its willingness to promote tourism cooperation and maritime cooperation with Vietnam. Regarding the East Sea issue, maritime delimitation and settlement of maritime disputes, since the time of President Najib Razak, Malaysia's policy in general has been quite "quiet", always tactful, and avoiding confrontation with China as much as possible. Under Prime Minister Mahathir's tenure (May 2018 - March 2020), Malaysia has taken a tougher approach to the East Sea issue, more resolutely enforced sovereignty, promoted the role of ASEAN, international law, non-alignment and criticized major countries for militarizing and complicating the East Sea dispute. Since Prime Minister Anwar Ibrahim took office, Malaysia has determined to make efforts to protect its sovereignty, sovereign rights, and national interests in the East Sea, while seeking to resolve disputes related to sovereignty in a constructive spirit, in accordance with the principles of international law, including UNCLOS 1982.

In general, on the East Sea issue, although there are differences in approaches and considerations of core interests, the views of Vietnam and Malaysia are basically similar, affirming the importance of maintaining peace, security, stability, safety, freedom of navigation and aviation in the East Sea, peacefully resolving disputes, not threatening or using force, in accordance with the principles widely recognized by international law, including UNCLOS 1982. In addition, the two sides also agreed to maintain solidarity, unity, and promote ASEAN's central role in resolving the East Sea issue. This creates the basis and solid foundation to ensure the steady development of the Vietnam - Malaysia strategic partnership, and facilitate the two countries's coordination in stances, enhancement in maritime cooperation in general and cooperation in maritime boundary delimitation in particular.

The situation of the maritime border dispute between Vietnam and Malaysia

In the East Sea, Vietnam and Malaysia currently have three disputed areas, including the overlapping continental shelf area in the Gulf of Thailand (consist of the overlapping continental shelf area dispute between Vietnam and Malaysia and the overlapping continental shelf area dispute between Vietnam -

Malaysia - Thailand) and the disputes over entities in the south of Vietnam's Truong Sa archipelago, specifically as follows:

Dispute over the overlapping continental shelf area in the Gulf of Thailand

Regarding the overlapping continental shelf area dispute between Vietnam and Malaysia: At the mouth of the Gulf of Thailand, Vietnam and Malaysia have an overlapping continental shelf area of about 2,800 km², about 200 km in length, with an average depth of about 50 m and a relatively flat seabed. The overlapping area between the two countries was formed by the continental shelf boundary line declared by the Republic of Vietnam government in 1971 and the continental shelf boundary line shown on the new Map of the Continental Shelf and EEZ (Beta Baru) of Malaysia published in 1979. The overlapping area of the continental shelf between Vietnam and Malaysia is not large but is assessed to have great potential for oil and gas, estimated at about 1.1 trillion ft³ [Nguyen Hong Thao, 1999, p.81].

The cause of the overlapping area of the continental shelf between Vietnam and Malaysia at the mouth of the Gulf of Thailand originated from the Republic of Vietnam government in 1971 drawing a median line taking into account the islands of Vietnam and Malaysia, thereby determining the median line between Hon Khoai Island of Vietnam and Redang Island of Malaysia. On December 21, 1979, Malaysia published a new Map showing its continental shelf claim, in which the outer boundary of the claim is the median line between Redang Island of Malaysia and Cape Ca Mau of Vietnam. However, Malaysia did not take into account the effect of Vietnam's coastal islands. The reason for the above difference is that the Republic of Vietnam government took into account Hon Khoai Island and the islands of both sides, while Malaysia only took into account its coastal islands and ignored Vietnam's Hon Khoai Island (6.5 nautical miles from shore).

Since the 1980s, realizing the great potential for oil and gas in the Gulf of Thailand, Malaysia has stepped up oil and gas exploration and exploitation activities. Notably, the Malaysian national oil and gas corporation Petronas signed three oil and gas exploration and exploitation contracts with foreign companies, allowing the companies to conduct exploration and exploitation in areas overlapping the continental shelf with Vietnam. Responding to Malaysia's unilateral action, on May 30, 1991, the Vietnamese Ministry of Foreign Affairs sent a diplomatic note to the Malaysian Ministry of Foreign Affairs, clearly expressing its stance of not accepting the unilateral granting of a license to a third party by either country to conduct oil and gas exploration and exploitation activities in the overlapping area. In addition, Vietnam also expressed its goodwill in negotiating the delimitation of the continental shelf boundary with Malaysia on the basis of respecting sovereignty and common interests in accordance with international law. In response to Vietnam's above move, all projects signed by Petronas Malaysia with foreign partners must be stopped and await the results of negotiations with Vietnam.

Regarding the overlapping continental shelf dispute between Vietnam - Malaysia - Thailand: The overlapping continental shelf area between the three countries of Vietnam - Malaysia - Thailand was formed from the claim line of the Republic of Vietnam government in 1971 and the northern boundary of the joint development area between Malaysia and Thailand in

1979 [Ana Placida D. Espina, 2012, p.13]. Currently, the overlapping continental shelf area between the three countries of Vietnam - Malaysia - Thailand has only determined the geographical coordinates and the overlapping area is about 875 km². Although the area is small, it has great potential for oil and gas exploitation.

Territorial sovereignty and EEZ disputes between Vietnam and Malaysia in the southern area of the Spratly Islands:

Before 1971, Malaysia had not paid attention to the islands in the Spratly Islands area of Vietnam. On February 3, 1971, the Malaysian Ambassador in Saigon sent a diplomatic note No. EJ-7/71 to the Ministry of Foreign Affairs of the Republic of Vietnam, in which he asked whether the islands located in the territory of a new country, the Republic of Morac-Songhrati-Meads, previously known as the Kingdom of Humanity in the East Sea at 9° North latitude, 112° East longitude, belonged to the sovereignty of the Republic of Vietnam or whether the government of the Republic of Vietnam had any claims. In response to the Malaysian note, on April 20, 1971, the Ministry of Foreign Affairs of the Republic of Vietnam sent Note No. 1858/AC/TBD to the Malaysian Embassy in Saigon, affirming that the Spratly Islands between 110° and 113° East longitude, 8°10' and 11° North latitude belong to Vietnamese territory. The islands described by Malaysia as the Republic of Morac-Songhrati-Meads in the above note are part of the Spratly Islands. The Government of the Republic of Vietnam rejects all claims by any other country to the Spratly Islands and Malaysia has not responded.

In 1978, during the official visit to Malaysia of Vietnamese Prime Minister Pham Van Dong from October 12 to 16, 1978, Malaysian Prime Minister Mahathir Mohamad raised the issue of sovereignty over An Bang Island in the Spratly Islands, but Prime Minister Pham Van Dong affirmed that the Spratly Islands, including An Bang Island, belonged to Vietnam's sovereignty, and at the same time expressed his view that all disputes and misunderstandings between the two countries would be resolved through negotiations. Thus, since 1971, Malaysia had intended to debate the sovereignty over Vietnam's Spratly Islands, but it was not until December 1979 that the Malaysian government published a map that included the southern area of the Spratly Islands, including An Bang and Thuyen Chai Islands, into Malaysian territory. According to the new Map issued by the Malaysian National Mapping Department on the continental shelf and EEZ in 1979, Malaysia's national territory includes 11 coral islands in the southern area of Vietnam's Truong Sa archipelago.

On February 1, 1980, Malaysia officially announced the new Map to affirm its sovereignty over the islands and coral reefs in the South of Vietnam's Truong Sa archipelago, including Comondore Reef (Vietnam calls it Cong Do Reef), Amboyna Cay (Vietnam calls it An Bang Island), Marivales Reef (Vietnam calls it Ky Van Reef), Swallow Reef (Vietnam calls it Hoa Lau Reef), Louisa Reef (Vietnam calls it Lu Isa Reef), Royal Charlotte Reef (Vietnam calls it Sac Lot Reef), Ardasier Reef (Vietnam calls it Kieu Ngua Reef), Dallas Reef (Vietnam calls it Suoi Cat Reef), Erica Reef (Vietnam calls it En Ca Reef), Barque Canada Reef (Vietnam calls it Thuyen Chai Reef) and a sandbar Investigator Shoal (Vietnam calls it Tham Hiem Reef). Among the islands, rocks and coral reefs mentioned above is An Bang Island, where the Vietnamese Navy has officially established a garrison since 1977.

Malaysia's above statement has met with opposition from countries in the region due to its overlap with the statements of Vietnam, the Philippines and China. From March to April 1980, the Vietnamese Ministry of Foreign Affairs twice sent diplomatic notes protesting Malaysia's publication of a map violating Vietnam's Spratly Islands waters, while reaffirming its indisputable sovereignty and having long exercised that sovereignty over the Spratly Islands, including An Bang Island. Malaysia also sent a diplomatic note to the Vietnamese Embassy in Kuala Lumpur, rejecting Vietnam's viewpoint and affirming Malaysia's sovereignty over An Bang Island.

In the next two years, the dispute between the two countries did not have any new developments. On January 3, 1982, the Vietnamese Navy discovered a 10-meter high landmark with a lighthouse and a Malaysian flag on Swallow Reef, but it was uninhabited. However, Vietnam did not immediately protest. However, on November 12, 1982, Vietnam issued a statement on the baseline to calculate the width of Vietnam's territorial waters. On February 23, 1982, Malaysia sent a diplomatic note to the Vietnamese Ministry of Foreign Affairs protesting the above statement, emphasizing sovereignty over the three islands of An Bang, Cong Do and Hoa Lau, affirming that these islands are part of Malaysia's territory and believing that any disagreements on border issues between the two countries can be resolved through peaceful negotiations, in accordance with international law and practice.

In May 1983, Malaysia officially sent military forces to occupy Hoa Lau Reef in Vietnam's Truong Sa archipelago. Before that, preparations for the occupation of Hoa Lau Reef had been directed by Malaysia's armed forces since August 21, 1981. After occupying Hoa Lau Reef, from the end of 1983, Malaysia began to deploy the construction of solid infrastructure on the reef and was completed on April 17, 1984. At the same time, the Malaysian Prime Minister designated it as an Offshore Station of the Royal Malaysian Navy, which later became an important logistics point for Malaysia to occupy four other entities: Terumbu Ubi, Terumbu Matanani, Terumbu Siput and Terumbu Peninjau [BA Hamzah, Adam Leong, Vivian Forbes, 2020, p.13, 25].

On September 7, 1983, the Vietnamese Ministry of Foreign Affairs exchanged a diplomatic note with the Malaysian Ambassador in Hanoi, Abdul Halim Bin Ali, protesting Malaysia's erection of a landmark and then sending troops to Hoa Lau Reef in Vietnam's Truong Sa archipelago, and affirming Vietnam's sovereignty over the Truong Sa archipelago, including Hoa Lau Reef, and requesting Malaysia to destroy the landmark and immediately withdraw its troops from Hoa Lau Reef, ending all future violations of Vietnam's sovereignty. However, Malaysia not only did not withdraw its troops but also actively deployed construction, consolidated its occupied positions, and occupied a number of Vietnamese reefs such as Ky Van Reef (Marivales Reef) and Kieu Ngua Reef (Ardasier Reef) in 1986.

In March 1998, Malaysia built a number of structures on Thuyen Chai Reef (Barque Canada Reef) and Tham Hiem Shoal (Investigator Shoal). In early 1999, Malaysia continued to occupy and build a two-story building, a helipad, a jetty and a radar station on the two islands, claiming that these two islands did not belong to the Spratly Islands and that Malaysia occupied them. The construction of structures on them was not for oil and gas exploration and exploitation but for scientific

research purposes. Malaysia's actions were protested by Vietnam, the Philippines and China. As of 2003, Malaysia had occupied 8/11 islands and coral reefs including Ardasier Reef, Dallas Reef, Erica Reef, Louisa Reef, Marivales Reef, Royal Charlotte Reef, Swallow Reef and Investigator Shoal. The remaining three islands were occupied by the Philippines, one island is Commandore Reef (Vietnam calls it Cong Do Reef) and two islands are occupied by Vietnam, An Bang and Bai Thuyen Chai.

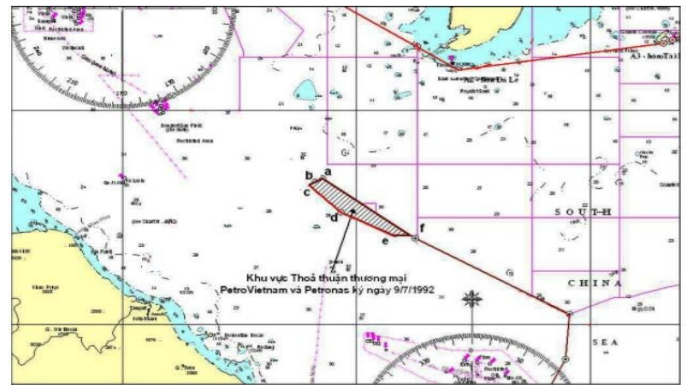
Vietnam - Malaysia cooperation on maritime delimitation

Cooperation on maritime delimitation in the Gulf of Thailand

Vietnam - Malaysia cooperation on maritime delimitation: Based on the guiding principles in bilateral relations and goodwill in maritime delimitation through negotiation, mutual benefit, which were established by the senior leaders of the two countries, during the official visit to Malaysia by Vietnamese Prime Minister Vo Van Kiet (January 1992), the senior leaders of the two countries approved an agreement on maritime delimitation cooperation, emphasizing joint exploitation of the overlapping area. During the process of joint exploitation in the overlapping area, experts from Vietnam and Malaysia will coordinate with each other to jointly draw the maritime delimitation line in the overlapping area between the two sides.

Following that, from June 3 to 5, 1992, in Kuala Lumpur, representatives of the Vietnamese and Malaysian governments held the first round of negotiations to cooperate in resolving the issue of overlapping maritime zones between the two sides. At the negotiations, Vietnam's stance was based on the principle of fairness, in accordance with international law and practice, taking into account the special circumstances of each country's coastal terrain in the delimitation area. While Malaysia used the method of a median line from its coastal islands and the Vietnamese coast, ignoring Hon Khoai Island, it agreed to apply a temporary solution of joint cooperation in the overlapping area, without affecting the drawing of the final delimitation line, and the distribution of profits must be fair. Based on the fact that both countries are members of UNCLOS 1982, Vietnam and Malaysia both accepted to apply the principles of international law and the provisions of UNCLOS 1982 to delimit the sea.

From the results achieved in the first round of negotiations, Vietnam and Malaysia agreed to apply the provisional settlement principle stipulated in Articles 74 and 83 of UNCLOS 1982, that is, the boundary is drawn and clearly marked on a nautical chart of appropriate scale to determine its location, in some cases the drawing of the outer boundary or these planning lines can be replaced by lists of geographical coordinates of points. On that basis, the two sides quickly reached an agreement to apply a joint exploitation model for the defined area in the spirit of understanding and cooperation. Based on that spirit, on June 5, 1992, Vietnam and Malaysia officially signed the Memorandum of Understanding on the Joint Exploitation Agreement on Overlapping Areas (MOU) limited by straight lines connecting 6 points marked from point a to point f, with some key contents as follows:



Source: Department of Law and International Treaties, Ministry of Foreign Affairs.

Figure 1. Vietnam - Malaysia Joint Exploitation Area according to the Agreement on Joint Exploitation on Overlapping Areas dated June 5, 1992

Regarding general provisions: Vietnam and Indonesia agree to cooperate in oil and gas exploration and exploitation in the overlapping maritime areas between the two countries, based on the following main principles: Equal sharing of costs and profits between the two parties; Oil and gas exploration and exploitation activities will be carried out by Petronas (Malaysia) and Petrovietnam (Vietnam) on the basis of commercial arrangements after being approved by the governments of both parties; This agreement does not prejudice the position of each party on the overlapping area; If the oil and gas field is partly located across the overlapping area and partly located on the continental shelf of Malaysia or Vietnam, the two parties will agree to explore and exploit; The management and supervision of oil and gas activities in the overlapping area will be discussed and agreed upon by the two parties.

Regarding the Trade Agreement: To carry out joint exploration and exploitation work in the overlapping area between the two countries, on July 9, 1992, Petronas of Indonesia and Petrovietnam of Vietnam signed a Trade Agreement [Nguyen Ba Dien, 2007, p.4] (see also Figure 2.1), including the following main contents: - Petrovietnam and Petronas have equal responsibilities, obligations and rights; Agree to continue collecting taxes stipulated in the contract signed with contractors (signed by Malaysia since 1989), including resource tax, profit tax, export tax, and additional payments. Previously, the contractor paid to the Malaysian Government, but now it is divided equally between Vietnam and Malaysia; The revenues stipulated in the contract include oil profit sharing, scientific research fund contributions previously paid to Petronas, but now it is divided equally between Vietnam and Malaysia. The revenues for the Vietnamese side will be fully paid by Petronas, and this part will not be taxed by the Malaysian Government; Regarding the operating mechanism: The two sides established a Joint Committee at a high level. This Committee handles high-level issues and establishes a Coordination Committee. Depending on the needs of the Coordination Committee, subcommittees on law, economics, trade, and technology may be established; The Coordination Committee performs specific tasks approved by the Joint Committee, which are to determine the contributions of the parties; monitor the activities of contractors; resolve the provision of services between the two countries, etc.;

The committees operate on a consensus mechanism. If there are disagreements, they will be resolved from low to high in the spirit of friendly and fair reconciliation. If they cannot be resolved, they will be brought to the international commercial court for arbitration; Petrovietnam and Petronas will jointly conduct audits of the contractor's activities to determine benefits; Petrovietnam and Petronas will jointly make decisions in the Coordination Committee to approve the contractor's work and financial plans. Although Petronas is authorized to manage the contractor through the contract's Executive Committee, Petrovietnam still has the right to attend the Executive Committee's meetings; The contractor consists of five members: Hamilton Oil Corp (as operator), Enterprise Oil, IPL, Norcen, and Carigali.

After 4 years of implementing the Commercial Agreement between Indonesia's Petronas and Vietnam's Petrovietnam, on July 29, 1997, the first tons of oil extracted from the overlapping area (Bunga Kekwa/Raya Complex) were exported and profits were equally divided between both parties in accordance with the 1992 cooperation agreement. In 2014, the joint oil and gas exploitation project between Petrovietnam and Petronas in the overlapping area at sea is expected to exploit 29,000,000 barrels of oil/day. The success of the project has prompted both sides to commit to early implementation of the establishment of the Joint Exploitation Cooperation Committee (March 2016) and created momentum for the two governments to approve the extension of the oil and gas product sharing contract for Block PM3CAA in the Vietnam - Malaysia overlap area until 2027. For the oil and gas product sharing contract for Block PM3CAA in the Vietnam - Malaysia overlap area, the parties to this contract currently include PetroVietnam, Petronas, Petronas Caligali and the Oil and Gas Exploration and Production Corporation (PVEP) and Repsol. This is a project that brings commercial benefits to both Vietnam and Malaysia, to the contract contractors and has made significant contributions to Vietnam's gas industry. Up to now, the oil wells in the overlapping areas between the two countries are continuing to operate effectively, affirming that the policy of cooperation in oil and gas exploration and exploitation in the overlapping areas between Vietnam and Malaysia is completely correct, contributing to raising the level of comprehensive cooperation between Vietnam and Malaysia, strengthening security and stability for the region and the world.

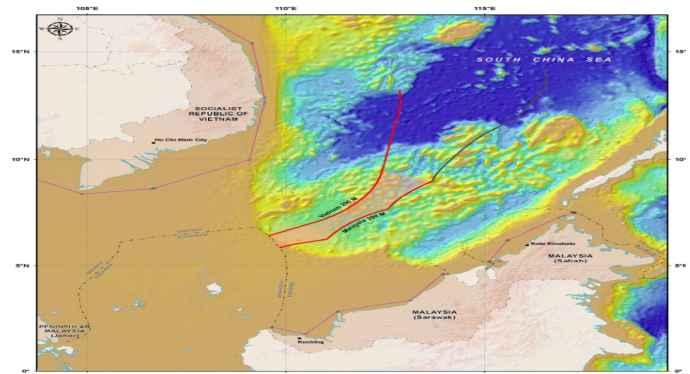
Cooperation between Vietnam - Malaysia and Thailand on delimitation of overlapping continental shelf boundaries: According to the Agreement on delimitation of maritime boundaries between Vietnam and Thailand signed on August 9, 1997, the two countries agreed to work with Malaysia to resolve the overlapping issues between the three countries through negotiations. Therefore, in 1997, the three countries of Vietnam, Malaysia and Thailand agreed to jointly resolve the outstanding issues in the overlapping areas, conduct negotiations to determine the overlapping areas and agree on the principle of joint exploitation. Accordingly, the first meeting between the three countries took place in February 1998 and the second meeting was held in the second half of 1998 to discuss the possibility of joint exploitation of the overlapping area. Based on the results achieved between the parties in the official and unofficial negotiation rounds in 1998 and 1999, the three parties signed the Vietnam - Malaysia - Thailand Joint Exploitation Agreement in the overlapping area between the three countries. The three countries agreed that the

overlapping area between the three parties was too small and agreed to cooperate in joint exploitation. The three parties also agreed to determine the overlapping area created by the claim line of the Republic of Vietnam government and the northern boundary of the Malaysia - Thailand joint development area.

To date, Vietnam, Malaysia and Thailand have not yet restarted negotiations to concretize the joint exploitation cooperation in the overlapping continental shelf area in the Gulf of Thailand. However, if the tripartite commitment becomes a reality, this will be the first commitment to a multilateral agreement in joint development cooperation [Ana Placida D. Espina, 2012, p.14].

Cooperation in maritime delimitation in the area south of the Spratly Islands

In 2009, Vietnam and Malaysia agreed to jointly submit a Joint Report on the continental shelf beyond 200 nautical miles of the two countries to the United Nations Commission on the Limits of the Continental Shelf (CLCS) in the waters south of the East Sea, located between the two opposite coastlines of the two countries. In the Joint Report, Vietnam and Malaysia agreed on a Defined Area which is the area considered to be the continental shelf beyond 200 nautical miles of the two countries (see Figure 3.2.1).



Source: <https://iuscogens-vie.org/2019/04/28/133/>

Figure 3.2.1. Continental shelf area beyond 200 nautical miles of Vietnam and Malaysia according to the Joint Report of the two countries to the CLCS

However Vietnam and Malaysia acknowledge the existence of disputes regarding the delimitation of the continental shelf in the Defined Area, based on Article 76(10) of UNCLOS 1982 and other relevant provisions of the Convention and the CLCS Procedures, both countries agree that these disputes do not affect the consideration of the Joint Report by the CLCS. On that basis, Vietnam and Malaysia request the CLCS to consider the Joint Report and make recommendations so that the two countries can accurately determine the boundaries of the Defined Area, in accordance with the provisions of UNCLOS 1982.

According to Vietnam and Malaysia, the submission of the outer continental shelf boundary dossier is a legitimate implementation of the obligations of the UNCLOS 1982 member states as well as the CLCS procedural rules, these boundaries are completely beyond 200 nautical miles from the baselines of the two countries and beyond the continental shelf boundaries agreed with the relevant countries; These submissions do not affect the delimitation of the sea between

States with opposite or adjacent coasts [Commission on the Limits of the Continental Shelf, 2009, p.19].

In protest against the Joint Report of Vietnam and Malaysia, China sent two consecutive Notes Verbales No. CML/17/2009 and No. CML/18/2009 to the CLCS, in which it announced its claim of sovereignty over the islands in the East Sea and the adjacent waters of these islands, and claimed sovereignty and jurisdiction over the relevant sea areas, seabed and subsoil of these sea areas. In addition, China attached to the Note of Objection to the Joint Submission of Vietnam and Malaysia a map showing the “nine-dash line” but did not explain China’s claim on this map. In response to China’s claim, Vietnam sent Note No. 86/HC-2009 to the Secretary-General of the United Nations, affirming that Vietnam has undeniable sovereignty over these archipelagos. China’s claim to the islands and adjacent waters in the South China Sea as illustrated in the maps attached to Notes CML/17/2009 and CLM/18/2009 has no legal, historical or factual basis and is therefore invalid. Regarding this issue, Indonesia and the Philippines sent notes to the United Nations Secretary-General to protest China’s “nine-dash line” claim in July 2010 and April 2011, respectively.

On August 4, 2009, the Philippines continued to send Note No. 000819 to the CLCS, in which it protested the Joint Report of Vietnam and Malaysia on the grounds that the “Defined Area” that Vietnam and Malaysia agreed upon in the Joint Report overlaps with the continental shelf beyond 200 nautical miles of the Philippines and the dispute between the Philippines and Malaysia regarding sovereignty over a number of islands within the Defined Area, including North Borneo Island. In addition, the Philippines also requested the CLCS not to consider the Joint Report of Vietnam and Malaysia until the above disputes are resolved [Permanent Mission of the Republic of the Philippines to the United Nations, 2009].

Based on the objections of China and the Philippines to the Joint Report of Vietnam and Malaysia, the CLCS decided to postpone the consideration of the Joint Report of Vietnam and Malaysia [Commission on the Limits of the Continental Shelf, 2009, p.20].

In order to promote comprehensive cooperation with Malaysia, resolve outstanding issues in bilateral relations related to maritime delimitation cooperation and sovereignty disputes in the East Sea, during the visit to Malaysia from August 7 to 8, 2015 of Prime Minister Nguyen Tan Dung, the two countries' senior leaders agreed to bring the traditional bilateral relationship to a new level and officially establish the Vietnam - Malaysia Strategic Partnership. Regarding maritime cooperation and maritime delimitation, the two sides agreed to have a cooperation mechanism at the Deputy Foreign Minister level to resolve maritime and ocean issues, and coordinate to resolve violations by fishermen in the spirit of friendship and cooperation.

To promote negotiations on the delimitation of overlapping maritime areas between Vietnam and Malaysia, at a meeting with Malaysian Foreign Minister Dato'Sri Anifah Aman on the sidelines of the ASEAN Foreign Ministers' Retreat (AMM Retreat) held from February 5-6, 2018 in Singapore, Deputy Prime Minister and Foreign Minister Pham Binh Minh suggested that the two countries strengthen coordination to resolve issues arising at sea, soon agree and sign agreements to

establish hotlines, conduct joint patrols at sea and actively promote negotiations on the delimitation of overlapping maritime areas.

Fully aware of the importance of maintaining peace, security, stability, safety, freedom of navigation and aviation in the East Sea, and peacefully resolving disputes in accordance with international law, from 2022 to 2023, senior leaders of Vietnam and Malaysia have carried out many activities to promptly initiate the process of cooperation in negotiating maritime delimitation between the two countries, typically: At the end of the visit to Vietnam by Malaysian Prime Minister Dato' Sri Ismail Sabri bin Yaakob from March 20 to 22, 2022, the leaders of the two countries issued a joint statement between Vietnam and Malaysia, reaffirming the importance of maintaining peace, security, stability, safety, freedom of navigation and aviation in the East Sea, peacefully resolving disputes, not threatening or using force, in accordance with the principles widely recognized by international law, including the 1982 UNCLOS. On July 21, 2023, at the meeting between National Assembly Chairman Vuong Dinh Hue and Malaysian Prime Minister Anwar Ibrahim during his visit to Vietnam, the two leaders discussed the importance of maritime and ocean cooperation; considered the establishment of a consultation mechanism on maritime issues and the establishment of a hotline against illegal, unreported and unregulated (IUU) fishing; and promptly initiated negotiations on the delimitation of overlapping areas at sea [Le Tuyet, 2023]. Thus, although Vietnam-Malaysia cooperation on maritime delimitation still has many unresolved issues, and there are different views on sovereignty, sovereign rights, and jurisdiction, the two sides are committed to strictly implementing the agreements reached, continuing to research and consult international experience to speed up the progress of negotiations on maritime delimitation on the basis of international law, especially the provisions of UNCLOS 1982.

Achievements

Through the signing of the Memorandum of Understanding on the Joint Exploitation of Overlapping Areas in 1992, it can be seen that Vietnam has always been a pioneer in applying the provisions of UNCLOS 1982, not only in maritime delimitation but also in measures for joint exploitation of marine resources in overlapping maritime areas. The 1992 Memorandum established the basis for implementing the joint exploitation cooperation project between Petrovietnam and Petronas. Up to now, the two countries have been carrying out very successful and long-term cooperation for development [Tran Huu Duy Minh, 2018].

Oil and gas cooperation is maintained by both sides based on the principles agreed upon by the leaders of Vietnam and Malaysia in advance, not affecting the delimitation line, and the distribution of profits must be fair. For maritime areas related to other countries, it is necessary to resolve through peaceful negotiations, avoiding the use or threat of force. A concrete proof of the results of commercial cooperation between Petrovietnam and Petronas is the signing and extension of the product sharing contract at Block PM3CAA in the overlapping area offshore Vietnam and Malaysia until 2027, contributing significantly to the development of the gas industry and ensuring Vietnam's energy security.

In addition, the determination of a temporary demarcation line by Vietnam and Malaysia and the implementation of cooperation activities for joint development in the overlapping sea area have helped the two countries increase their common awareness of resources and other economic benefits, as well as mutual understanding of each party's interests in the overlapping sea area, contributing to strengthening cooperation and avoiding conflicts or collisions in the overlapping sea area. At the same time, it creates a solid basis for conducting further negotiations on maritime demarcation, towards a final maritime boundary demarcation line between Vietnam and Malaysia in the future, bringing fair and reasonable benefits to both sides. In terms of international law, the results of the maritime delimitation negotiations between Vietnam and Malaysia have made certain contributions to the practice of maritime delimitation in the region, serving as a basis for the two countries in particular and the countries surrounding the East Sea in general to continue negotiating maritime delimitation with other neighboring countries in the region, while contributing to conflict prevention, helping to maintain a peaceful and stable environment in the region for Vietnam and other countries to develop together. Along with the signing of the Memorandum of Understanding between Vietnam and Malaysia in 1992, the two countries jointly submitted a Joint Report on the extended continental shelf area related to the two countries to the CLCS in 2009, demonstrating the spirit of peaceful settlement of disagreements and conflicts over overlapping maritime areas between the two sides and is also considered a model in resolving maritime sovereignty disputes between neighboring countries in the East Sea region. The maritime delimitation cooperation between Vietnam and Malaysia has contributed to the practical experience of the world and the region in resolving disagreements and disputes at sea.

Conclusion

In the period from 1992 to 2024, the viewpoints of Vietnam and Malaysia on the delimitation of the adjacent sea areas have been discussed and negotiated by both sides, on the basis of international law and international maritime law. However, due to the viewpoint of national interests, the two countries have only reached an agreement on exploiting the common overlapping area, but have not agreed to cooperate in negotiations to sign an agreement on the delimitation of the continental shelf in the Gulf of Thailand and to completely resolve disputes over sovereignty, sovereign rights and jurisdiction in the area south of Vietnam's Truong Sa archipelago. Although the issue of delimitation of the sea between the two countries still has many difficulties so far, both Vietnam and Malaysia have consistently maintained their viewpoints based on the basic principles of international law, especially the provisions of UNCLOS 1982 and the Declarations of the region on the East Sea such as DOC, and international practice and experience in delimitation of the sea.

This will be a necessary condition when the two countries converge enough factors to agree on views and positions on the final demarcation line to move towards completing cooperation in negotiating maritime demarcation in the future.

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