

A new legal arrangement for the South China Sea?

Thao N.H., Amer R.

Faculty of Law, Vietnam National University, Hanoi, Viet Nam; Center for Pacific Asia Studies,
Department of Oriental Languages Stockholm University, Stockholm University, Stockholm, Sweden

Abstract: The South China Sea has long been regarded as a major source of tension and instability in Pacific Asia. Since 1990, many bilateral and multilateral efforts to manage the possible conflicts in the region have been recorded. The purpose of this article is to analyze and assess the progress made in terms of conflict management among the claimants. © Taylor & Francis Group, LLC.

Author Keywords: Dispute management; South China Sea; Spratlys

Index Keywords: conflict management; dispute resolution; international law; legal system; policy making; Pacific Ocean; South China Sea; Spratly Islands

Year: 2009

Source title: Ocean Development and International Law

Volume: 40

Issue: 4

Page : 333-349

Link: Scopus Link

Correspondence Address: Thao, N. H.; Faculty of Law, Vietnam National University, Hanoi, Viet Nam;
email: nguyenhongthao57@gmail.com

ISSN: 908320

DOI: 10.1080/00908320903077209

Language of Original Document: English

Abbreviated Source Title: Ocean Development and International Law

Document Type: Article

Source: Scopus

Authors with affiliations:

- Thao, N.H., Faculty of Law, Vietnam National University, Hanoi, Viet Nam
- Amer, R., Center for Pacific Asia Studies, Department of Oriental Languages Stockholm University, Stockholm University, Stockholm, Sweden

References:

- Rosenberg, D., Chung, C., Maritime security in the South China Sea: Coordinating coastal and user state priorities (2008) *Ocean Development and International Law*, 39, p. 51
- Rosenberg, D., Chung, C., Maritime security in the South China Sea: Coordinating coastal and user state priorities (2008) *Ocean Development and International Law*, 39, pp. 51+56+58. , Note
- Djalal, H., Townsend-Gault, I., Preventive diplomacy: Managing potential conflicts in the South China Sea (1999) *Herding Cats: Multiparty Mediation in a Complex World*, pp. 107-133. , ed. C. A. Crocker, F. O. Hampson and P. Aalland (New York: United States Institute of Peace Press)

- Rosenberg, D., Chung, C., Maritime security in the South China Sea: Coordinating coastal and User State Priorities (2008) *Ocean Development and International Law*, 39, p. 59
- Sakhuja, V., Maritime power of people's Republic of China: The economic dimension (2001) *Strategic Analysis: A Monthly Journal of the IDSA*, 26. , www.ciaonet.org/olj/sa/sa_feb01sav01.html, February, available at (accessed on 22 October 2008)
- Rosenberg, D., Chung, C., Maritime security in the South China Sea: Coordinating coastal and user state priorities (2008) *Ocean Development and International Law*, 39, pp. 51-52
- Bateman, S., Clashes at Sea: When chinese vessels harass US ships (2009) *RISIS Commentaries*, 27. , www.rsis.edu.sg/publications/Perspective/RSIS0272009.pdf, Note, see, available at the Web site of the S. Rajaratnam School of International Studies, Nanyang Technological University, Singapore at (accessed on 5 May 2009)
- Foreign ministry spokesperson Ma Zhaoxu's remarks on US navy surveillance Vessel's activities in China's exclusive economic zone (2009), www.fmprc.gov.cn/eng/xwfw/s2510/t542172.htm, NoteBlanche, B., Blanche, J., Oil and regional stability in the South China Sea (1995) *Jane's Intelligence Review*, 7 (11), p. 511. , Note
- U.N. convention on the law of the sea (1833) *U.N.T.S.*, 397
- Thao, N.H., Amer, R., The management of Vietnam's maritime boundary disputes (2007) *Ocean Development and International Law*, 38 (3), pp. 306-309. , For a more detailed overview of the claims, see
- Jinming, L., Dexia, L., The dotted line in the Chinese map of the South China Sea (2003) *Ocean Development and International Law*, 34 (3-4), pp. 287-295. , For an analysis of the "nine dotted lines," see no
- NoteHurng-yu, C., A comparison between Taipei and peking in their policies and concepts regarding the South China Sea (1993) *Issues and Studies*, 29 (9), pp. 22-58. , Note
- Ho, J., Chan, J., On the issue of piracy in Southeast Asia (2007) *Report on Armed Robbery and Piracy in Southeast Asia 2006*, , (Singapore: S. Rajaratnam School of International Studies).More generally on piracy
- Keyuan, Z., Seeking effectiveness for the crackdown of piracy at Sea (2005) *Columbia Journal of International Affairs*, 59 (1), pp. 117-134. , see, no
- Amer, R., (2002) *The Sino-Vietnamese Approach to Managing Boundary Disputes*, 3 (5), pp. 8-29. , For details, see, *Maritime Briefing Durham: International Boundaries Research Unit, University of Durham*
- Dzurek D., J., China occupies mischief reef in latest spratly gambit (1995) *Boundary and Security Bulletin*, 3 (1), pp. 65-71. , For an analysis of the 1995 Mischief Reef incident
- The law of the people's Republic of China on its territorial waters and their contiguous areas (1992) *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, , For the full text of, see, (28 February)
- People's Republic of China-law of the people's Republic of China on the territorial sea and contiguous zone (1993) *International Journal of Marine and Coastal Law*, 8 (1), pp. 158-161. , See also
- (1996) *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, , 2614 G/10-12 (17 May)
- (1998) *British Broadcasting Corporation, Summary of World Broadcasts, Part Three, Far East*, , 3283 B/6 (20 July), For a reproduction of the Chinese language version as well as an unofficial English language translation of the law
- Keyuan, Z., (1998) *Maritime Jurisdiction over the Vessel-Source Pollution in the Exclusive Economic Zone: The Chinese Experience*, pp. 29-36. , see EAI Working Paper No. 6 Singapore: East Asian Institute, National University of Singapore
- Djalal, H., The South China sea-the long road towards peace and cooperation (2008) *Security and International Politics in the South China Sea: Towards a Co-operative Management Regime*, pp. 175-189. , See, in ed. Sam Bateman and Ralf Emmers, (London: Routledge)
- Thao, N.H., Vietnam and the code of conduct for the South China Sea (2001) *Ocean Development and International Law*, 32 (3-4), pp. 124-125. , Note

- Treaty of amity and cooperation in Southeast Asia www.aseansec.org/1217.htm, available at the ASEAN Web site at, (accessed on 13 November 2008)Thao, N.H., Vietnam and the code of conduct for the South China Sea (2001) *Ocean Development and International Law*, 32 (3-4), pp. 125-126. , The text of the 1992 Association of Southeast Asian Nations (ASEAN) Declaration is reproduced as an appendix to, no Reproduced in Nguyen
- Thao, N.H., Vietnam and the code of conduct for the South China Sea (2001) *Ocean Development and International Law*, 32 (3-4), pp. 126-127. , Note
- Thao, N.H., Vietnam and the code of conduct for the South China Sea (2001) *Ocean Development and International Law*, 32 (3-4), pp. 113-115. , Note
- Thao, N.H., Declaration on parties' conduct in south China sea (the east sea)-a step towards the establishment of the code of conduct for the region (2002) *Vietnam Law and Legal Forum*, 9 (99), pp. 19-21
- Thao, N.H., The declaration on the conduct of parties in the south China Sea:A Vietnamese perspective, 2002-2007 Djalal, H., *The South China sea-the long road towards peace and cooperation* (2008) *Security and International Politics in the South China Sea: Towards a Co-operative Management Regime*, pp. 207-222. , See, in ed. Sam Bateman and Ralf Emmers, (London: Routledge)
- Thao, N.H., The 2002 declaration on the conduct of parties in the south China sea: A note (2003) *Ocean Development and International Law*, 34 (1-2), pp. 282-285. , www.aseansec.org/13165.htm, Note
- Thao, N.H., Amer, R., The management of Vietnam's maritime boundary disputes (2007) *Ocean Development and International Law*, 38 (3), pp. 305-324. , Note, see
- McDorman, T.L., Malaysia-Vietnam (1998) *International Maritime Boundaries*, pp. 2341-2344. , The text is reproduced as an appendix to in ed. J. I. Charney and L. M. Alexander *The Hague: Martinus Nijhoff*
- (2000) *Law of the Sea Bulletin*, 39, p. 23. , The text is reproduced in
- NoteThao, N.H., Maritime delimitation and fishery cooperation in the tonkin gulf (2005) *Ocean Development and International Law*, 36 (1), pp. 41-44. , The text is reproduced as an appendix to
- Thao, N.H., Maritime delimitation and fishery cooperation in the tonkin gulf (2005) *Ocean Development and International Law*, 36 (1), pp. 35-41. , The text is reproduced as an appendix to
- Tripartite agreement for joint marine seismic undertaking in the agreement area in the South China sea. answer to correspondent by Mr. Le Dzung, the spokesman of the vietnamese ministry of foreign affairs on 14th March 2005 www.mofa.gov.vn/en/ttbaochi/pbnfn/ns050314164241/, Information derived from, (accessed on 22 March 2005)Abigail, L.H., RP, *China, Vietnam pursue spratlys project* (2007) *Philippines Daily Inquirer*, , www.business.inquirer.net/money/topstories/view_article.php?articleid=48824, (2 November), available at the Web site of *Inquirer.net* at, (accessed on 22 October 2008)
- China Philippines, Vietnam Sign joint south China sea oil search accord (2005) *Manila Times*, p. 14. , March
- Tripartite agreement for joint marine seismic undertaking in the agreement area in the South China sea. answer to correspondent by Mr. Le Dzung, the spokesman of the vietnamese ministry of foreign affairs on 14th March 2005 (2005), www.mofa.gov.vn/en/ttbaochi/pbnfn/ns050314164241/, Information derived from accessed on 22 MarchThao, N.H., Declaration on parties' conduct in south China sea (the east sea)-a step towards the establishment of the code of conduct for the region (2002) *Vietnam Law and Legal Forum*, 9
- Report of the second meeting of the ASEAN-China joint working group on the implementation of the declaration on the conduct of parties in the South China sea (2006), Sanya City, Hainan, China, 8-9 FebruaryThao, N.H., Declaration on parties' conduct in south China sea (the east sea)-a step towards the establishment of the code of conduct for the region (2002) *Vietnam Law and Legal Forum*, 9

- McIntyre, D., China oil consumption jumps (2008), www.bloggingstocks.com/2008/06/11/china-oilconsumption-jumps/, Note, available at (accessed on 22 October 2008)Oil gas resources and shipping terminals in South China sea (2006), www.oilgasarticles.com/articles/474/1/Oil-Gas-Resources-and-Shipping-Terminals-in-South-China-Sea/Page1.html, 9 May, available at, (accessed on 22 October 2008)Blanche, B., Blanche, J., Oil and regional stability in the South China Sea (1995) *Jane's Intelligence Review*, 7 (11), p. 511. , Note
- Jinming, L., Dexia, L., The dotted line in the Chinese map of the South China Sea (2003) *Ocean Development and International Law*, 34 (3-4), pp. 287-295. , For an analysis of the "nine dotted lines," see no
- McCartan, B., Roiling the waters in the spratlys (2008) *Asia Sentinel*, , www.asiasentinel.com/index.php?option=com_content&task=view&id=1026&Itemid=31, (4 February), available at, (accessed on 22 October 2008)
- Vietnam's action on nansha islands infringe in China's sovereignty, fm spokesman (2007), www.english.peopledaily.com.cn/200704/10/eng20070410365316.html, Regarding BP-Conoco Phillips, see, (10 April), available at the Web site of the Peoples Daily (English ed.) at (accessed on 16 January 2009)Symon, A., China, Vietnam spar over gas (2007) *Asia Times Online*, , www.atimes.com/atimes/SoutheastAsia/IE01Ae01.html, See also, (1 May), available at, (accessed on 22 October 2008)
- Airy, A., ONGC's Vietnam foray illegal says China *The Financial Express*, , www.financialexpress.com/news/ONGCs-Vietnam-foray-illegal-says-China/246000/, On the ONGC, see, available at the Web site of at, (accessed on 16 January 2009)
- China confirms telling exxon to end vietnam oil deal www.reuters.com/article/rbssEnergyNews/idUSPEK26391320080722, On Exxon, see, available at the Web site of Reuters at, (accessed on 16 January 2009)Yin, W., CNOOC plans \$29 billion south China sea exploration (Update 2) (2008), www.bloomberg.com/apps/news?pid=20601080&sid=aXVBSht6cbY&refer=asia, (last updated 24 November), available at the Web site of Bloomberg at, (accessed on 2 February 2009)McCartan, B., Roiling the waters in the spratlys (2008) *Asia Sentinel*, , www.asiasentinel.com/index.php?option=com_content&task=view&id=1026&Itemid=31, 4 February available at (accessed on 22 October 2008)
- Secret Sanya-China's new Nuclear naval base revealed (2008) *Jane's Security News*, , www.janes.com/news/security/jir/jir080421_1_n.shtml, (21 April), available at, (accessed on 22 October 2008)
- Kim, S.K., Understanding maritime disputes in northeast Asia: Issues and nature (2008) *International Journal of Marine and Coastal Law*, 23 (2), pp. 213-247. , Note, see
- van Dyke, J.M., Bennett, D.L., Islands and the delimitation of Ocean space in the south China sea (1993) *Ocean Yearbook*, 10, p. 54. , propose a 12-mile territorial sea for all rocks and other features in the Spratly Islands area
- van Dyke, J.M., Brooks, R.A., Uninhabited Islands: Their impact on the ownership of the Ocean's resources (1983) *Ocean Development and International Law*, 12 (3-4), p. 265. , See also
- NoteAmer, R., (2002) *The Sino-Vietnamese Approach to Managing Boundary Disputes*, 3 (5), pp. 8-28+43-45. , Note, University of Durham
- Dalangin-Fernandez, L., House oks baselines on 3rd reading: Disputed Islands included in Nat'l territory (2009), www.newsinfo.inquirer.net/breakingnews/nation/view/20090202-187025/House-OKs-baselines-bill-on-3rd-reading, (2 February), available at the Web site of Inquirer.net at, (accessed on 2 February 2009)Foreign ministry spokesperson Jiang Yu's remarks on the South China sea issue (2009), www.fmprc.gov.cn/eng/xwfw/s2510/t535094.htm, (3 February), available at the Web site of the Ministry of Foreign Affairs of the People's Republic of China at, (accessed on 6 February 2009)Regular press briefing by MOFA's spokesman on 5th february 2009 www.mofa.gov.vn/en/ttbaochi/pbnfn/ns090205173454, Note available at the Web site of the Vietnam Ministry of Foreign Affairs at, (accessed on 6 February 2009)Deposit by the republic of the

- Philippines of a list of geographical coordinates of points, pursuant to article 47, paragraph 9, of the convention (2009), www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PHL.htm, Note Foreign ministry spokesperson ma zhaoxu's remarks on Philippine president arroyo signing baselines act (2009), www.fmprc.gov.cn/eng/xwfw/s2510/t542168.htm, (13 March), available at the Web site of the Ministry of Foreign Affairs of the People's Republic of China at (accessed on 5 May 2009) Note Deposit by the republic of the Philippines of a list of geographical coordinates of points, pursuant to article 47, paragraph 9, of the convention (2009), www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PHL.htm, Note (2002) Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan, , www.icj-cij.org/docket/files/102/7714.pdf, (Indonesia/Malaysia), Judgment of 17 December available at the Web site of the International Court of Justice at (accessed on 22 October 2008)
- (2008) Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, , www.icj-cij.org/docket/files/130/14492.pdf, (Malaysia/Singapore) Judgment of 23 May, available at the Web site of the International Court of Justice at (accessed on 22 October 2008)
 - (2002) Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan, p. 149. , www.icj-cij.org/docket/files/102/7714.pdf, (Indonesia/Malaysia), Judgment of 17 December available at the Web site of the International Court of Justice at (accessed on 22 October 2008)
 - (2002) Case Concerning Sovereignty over Pulau Ligitan and Pulau Sipadan, pp. 147-148. , www.icj-cij.org/docket/files/102/7714.pdf, (Indonesia/Malaysia), Judgment of 17 December available at the Web site of the International Court of Justice at (accessed on 22 October 2008)
 - (2008) Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), , www.icj-cij.org/docket/files/130/14492.pdf, Note
 - (2008) Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), , www.icj-cij.org/docket/files/130/14492.pdf, Note
 - (2008) Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), , www.icj-cij.org/docket/files/130/14492.pdf, Note
 - Thao, N.H., Vietnam and the code of conduct for the South China Sea (2001) *Ocean Development and International Law*, 32 (3-4), p. 109. , Note
 - Beckman, R.C., Legal regimes for cooperation in the South China sea Djalal, H., *The South China sea-the long road towards peace and cooperation* (2008) *Security and International Politics in the South China Sea: Towards a Co-operative Management Regime*, pp. 222-236. , See, in ed. Sam Bateman and Ralf Emmers, (London: Routledge)
 - Park, C., Malaysia-Thailand (gulf of Thailand continental shelf) (1979) (1993) *International Maritime Boundaries*, pp. 1099-1110. , See, in J. I. Charney and L. M. Alexander, (Dordrecht: Martinus Nijhoff)
 - Kittichaisaree, K., (1987) *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia*, pp. 100-103+189-194. , (Oxford: Oxford University Press)
 - McDorman, T.L., Malaysia-Vietnam (1998) *International Maritime Boundaries*, pp. 2341-2344. , See, The text is reproduced as an appendix to in ed. J. I. Charney and L. M. Alexander *The Hague: Martinus Nijhoff*
 - Thao, N., Vietnam and joint development in the gulf of Thailand (1998) *Asian Yearbook of International Law*, pp. 142-148
 - Thao, N.H., Maritime delimitation and fishery cooperation in the tonkin gulf (2005) *Ocean Development and International Law*, 36 (1), pp. 35-41. , See, The text is reproduced as an appendix to
 - Djalal, H., Townsend-Gault, I., *Preventive Diplomacy: Managing potential conflicts in the south China Sea* (1999) *Herding Cats: Multiparty Mediation in a Complex World*, pp. 107-133. , ed. C. A. Crocker, F. O. Hampson and P. Aalland New York: United States Institute of Peace Press

- Guoxing, J., (1995) Jurisdiction in the Three China Seas: Options for Equitable Settlement, pp. 25-26. , www.igcc.ucsd.edu/pdf/policypapers/pp19.pdf, Note
- NoteTo, L.L., (1999) China and the South China Sea Dialogues, , (Westport, CT: Praeger)
- Thao, N.H., China's 'Nine Broken Line' in the Bien Dong Sea (South China Sea) in the Light of International Law (1997) Vietnam News, 4. , See, for example 18 May
- Bao, L., The Spratly Islands Question Surfaces Again (1998) Vietnam Law and Legal Forum, 1 (88), pp. 19-21. , (January)
- Amer, R., (2002) The Sino-Vietnamese Approach to Managing Boundary Disputes, 3 (5), pp. 43-45. , Note
- Tripartite agreement for joint marine seismic undertaking in the agreement area in the South China sea. answer to correspondent by Mr. Le Dzung, the spokesman of the vietnamese ministry of foreign affairs on 14th March 2005 (2005), www.mofa.gov.vn/en/ttbaochi/pbnfn/ns050314164241/, See, Information derived from accessed on 22 March 2005
- Syyap, M.P.J., PNOOC Submits Disputed Oil Exploration to House, Confidentiality Clause Prevents Exposure (2008), www.gmanews.tv/story/93049/PNOOC-submits-disputed-oil-exploration-to-House-confidentialityclause-prevents-exposure, Note
- Ho, A.L., Labog-Javellana, J., Arroyo Hit on Spratlys Deal. Drilon: Her Lawyer Worried Pact Basis to Impeach (2008) Philippines Daily Inquirer, , www.newsinfo.inquirer.net/inquirerheadlines/nation/view/20080307-123244/Arroyo-hit-on-Spratlys-deal, 7 March available at the Web site of Inquirer.net at 22 October
- Colmenares, N., Spratlys Deal Unconstitutional: Joint Marine Seismic Undertaking Void (2008), www.gmanews.tv/story/85173/Spratlys-deal-unconstitutional-Joint-Marine-Seismic-Undertaking-void, (17 March), available at the Web site of GMA News and Public Affairs at, (22 October 2008)
- Ho, A.L., Labog-Javellana, J., Arroyo Hit on Spratlys Deal. Drilon: Her Lawyer Worried Pact Basis to Impeach (2008) Philippines Daily Inquirer, , www.newsinfo.inquirer.net/inquirerheadlines/nation/view/20080307-123244/Arroyo-hit-on-Spratlys-deal, (7 March), available at the Web site of Inquirer.net at, (22 October 2008)
- Answer to Correspondent by Mr. Le Dzung, the Spokesman of the Vietnamese Ministry of Foreign Affairs on 9 September 2004 www.mofa.gov.vn/en/ttbaochi/pbnfn/ns041028222202, available at the Web site of the Vietnam Ministry of Foreign Affairs at, (accessed on 29 September 2004)
- Japan Reach Principled Consensus on East China Sea Issue (2008), www.news.xinhuanet.com/english/2008-06/18/content8394206.htm, (18 June), available at the Web site of China View at, (accessed on 22 October 2008)
- (2008) Joint Press Conference by Minister for Foreign Affairs Masahiko Koumura and Minister of Economy, Trade and Industry Akira Amari (Regarding Cooperation Between Japan and China in the East China Sea), , www.mofa.go.jp/announce/fmpress/2008/6/0618.html, (18 June), available at the Web site of the Ministry of Foreign Affairs of Japan at, (3 November 2008)
- Shan, Z., China and Japan agree on Joint Gas exploration in East China Sea, agreement met with online criticism and group protest (2008) Epoch Times, , www.en.epochtimes.com/news/8-6-27/72597.html, (27 June), available at the Web site of the Epoch Times at, (accessed on 22 October 2008)
- CNOOC to share investment, risk on development of East China Sea (2008) China Daily, , www.chinadaily.com.cn/bizchina/2008-06/27/content_6801444.htm, (27 June), available at the Web site of China Daily at, (accessed on 3 November 2008)
- China's Rights over Chunxiao Not Negotiable (2008) China Daily, , www.chinadaily.com.cn/bizchina/2008-06/25/content6794064.htm, (updated 25 June), available at the Web site of China Daily at, (accessed on 3 November 2008)
- CNOOC to share investment, risk on development of East China Sea (2008) China Daily, , www.chinadaily.com.cn/bizchina/2008-06/27/content_6801444.htm, (27 June), available at the Web site of China Daily at, (accessed on 3 November 2008)
- Jianjun, G., Joint Development in the East China Sea: Not an Easier Challenge than Delimitation (2008) International Journal of

Marine and Coastal Law, 23 (1), pp. 39-75. , Note

- Valencia, M.J., Van Dyke, J.M., Ludwig, N.A., (1997) Sharing the Resources of the South China Sea, , See, for example, (The Hague: Martinus Nijhoff)
- Valencia, M.J., (1991) Malaysia and the Law of the Sea: The Foreign Policy Issues, the Options and Their Implications, , See, for example, (Kuala Lumpur: Institute of Strategic and International Studies (ISIS Malaysia))
- Djalal, Townsend-Gault, (2008) Case Concerning Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), , www.icj-cij.org/docket/files/130/14492.pdf, See, Note