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# Territorial Dispute between China and Vietnam in the South China Sea: A Chinese Lawyer's Perspective

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*Although China and Vietnam are involved in both territorial and boundary disputes in the South China Sea, at present, managing the territorial dispute over the Spratly Islands is more significant than anything else. Analysis of the dispute based on international law, particularly on the ICJ case law, may help the two sides to manage their dispute in a new perspective and generate political willingness to negotiate the joint development area instead of the sovereignty over the islands. China's policy that the joint development area around the disputed islands is negotiable is quite a positive signal for peace in the South China Sea and provides a practical basis for new negotiations between China and Vietnam.*

## Keywords

South China Sea, Spratly Islands, Territorial Dispute, Joint Development, ICJ

## 1. Introduction

The disputes in the South China Sea are extremely complicated. They involve as many

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as six parties, namely, mainland China, Taiwan, Malaysia, Vietnam, the Philippines and Brunei. They make claims either in whole or in part to the small islets and their surrounding water areas. Each of them is unswervingly strengthening its claims due to the prospect of rich oil and gas deposits around the islands and the strategic location of the area. The disputes between China and Vietnam in this area are regarded as the most critical source of potential conflict. The two nations have been vigorous in claiming sovereignty over all features in the Spratly Islands and Paracel Islands; both were drawn into military conflicts in 1974 and 1988. In 2010, when Vietnam signaled its willingness to allow U.S. involvement, China immediately responded by declaring that the South China Sea is part of its 'core interests.'<sup>1</sup> It indicates that Chinese interest in this area should be protected at all cost. However, China and Vietnam are still trying to seek measures to avoid future military conflict.

There are two major disputes existing in the South China Sea between China and Vietnam: the dispute over the sovereignty of the islands and the maritime delimitation. Unless the fundamental and intractable disagreements on sovereignty over the islands can be resolved, it will not be possible to negotiate any boundary agreements in areas of the South China Sea. At present, attention is highly concentrated on the territorial dispute between China and Vietnam over the Spratly Islands because of its high risk of war. The dispute over sovereignty is governed by customary international law on the acquisition of territory as articulated by international courts and tribunals in cases concerning sovereignty disputes. If the political will can be generated to use international law, particularly the case law of the International Court of Justice ("ICJ") to justify their claims and manage the dispute, there would be a window of opportunity to pursue progress.

The main objective of writing this paper is to propose the way for the peaceful resolution of disputes in the South China Sea from a Chinese lawyer's perspective. This paper is composed of five parts including Introduction and Conclusion. Part II will examine the different versions of sovereignty disputes over the islands on the South China Sea. In this paper, the author will compare the positions of both China and Vietnam based on the historical and positive evidences. Part III will analyze the cases of international courts regarding maritime territorial disputes and applies them to the

<sup>1</sup> When U.S. Secretary of State Hillary Clinton said on July 23, 2010 in Hanoi that she aligned the United States firmly with South East Asia's approach to overlapping claims in the South China Sea. In response, China immediately described the South China Sea as a 'core interest,' complaining 'encirclement' and criticizing unwarranted interference by the US in matters that do not concern it. See Vaudine England, *Why are South China Sea tensions rising?*, BBC NEWS (Sept. 3, 2010), available at <http://www.bbc.co.uk/news/world-asia-pacific-11152948> (last visited on Jan. 31, 2012). See also Toshi Yoshihara & James Holmes, *Can China Defend a 'Core Interest' in the South China Sea?*, 34 THE WASHINGTON Q. 46 (2011).