



VIETNAM'S CONFLICT RESOLUTION STRATEGY IN THE SOUTH CHINA SEA: DIALOGUE AND MEDIA OVER LEGAL ACTION

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Abstract:

Territorial disputes in the South China Sea can be seen as one of the most complex issues among states in the contemporary world due to the involvement of many parties. However, despite the presence of peaceful conflict resolutions, which are regulated under international law, the positive result is still miles apart. This article examines why the Vietnamese Government does not choose to bring the dispute to the International Court of Justice (ICJ), which is regarded as a legal action to solve the conflict between the two countries, as the Philippines did. Instead, remedies such as dialogue and media take precedence over all others. In the end, the settlement for both countries, based on the model of Peter Wallensteen in the South China Sea, is also discussed. The author approaches the South China Sea dispute between Vietnam and China from realism and neo-liberalism's perspective and will collect the primary data from legal sources, official statements and secondary data in an effort to examine the strategic decisions of the Vietnamese Government toward China concerning the territorial dispute. The paper's finding reveals that legal action is less likely to be used by the Vietnamese Government to tackle conflict in the South China Sea due to the limitations of international law, the asymmetrical and interdependent Vietnam - Sino relations throughout history, and the strategic foreign policy of Vietnamese Government towards China. There is a tendency that the Vietnam Government will keep negotiating with China by using peaceful resolutions such as dialogue and media. At the same time, the Vietnam Government will draw attention from international communities against China's assertiveness for not complying with international law as well as strengthen external defense with other powers. Using the international court will be the last resort in solving the territorial conflict between Vietnam and China.

Keywords: South China Sea, territorial dispute, lawsuit, peaceful conflict resolution

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1. Introduction

The South China Sea has recently become a dangerous flashpoint in Asia because it involves many states actors such as China, Vietnam, the Philippines, Taiwan, Malaysia, and Brunei. There is a likelihood that these international disputes will be escalated into full-scale war in Asia if there are no proper solutions to solve the conflict. In Vietnam, after China moved the oil rig HD 981 into Vietnam's economic zones (EEZ) according to the United Nations Convention on the Law of the Sea 1982 (UNCLOS), there was a rise of nationalism against China's assertive actions in the South China Sea (Tran T. , 2018). Furthermore, since 2016 when the Philippines won the lawsuits over the South China Sea, the issue of filing a case against China over the South China Sea has been debated by some scholars. For example, Ho believed that Vietnam should solve the conflict by taking legal action rather than trying to persuade China to a negotiated settlement (Ho, 2019). The author is strongly convinced by the idea of justice and legitimate evidence of Vietnam (Ho, 2019). Likewise, Professor Ngo, who is working at the University of Maine in America, suggesting the Vietnam Government should bring the dispute to the General Assembly of the UN to draw attention from international communities (Phan, 2014). In contrast, Dr. Tran, former head of Vietnam's border affairs committee argued that Vietnam Government should take a very cautious approach to the dispute settlement based on legal action since filing the case against China is unlikely to be beneficial to Vietnam as a whole (Crispin, 2016). Thus, there is no consensus among scholars about the issue of filing a case or negotiation over the maritime dispute between Vietnam and China. However, few empirical studies have been conducted concerning the reluctance of Vietnam to file a case against China. The objective of this paper, therefore, aims to answer the reasons why the Vietnam government does not choose to sue China as a conflict resolution despite the fact that it is one of the peaceful mechanisms to solve the conflict among states under international law, as the Philippines did. Afterwards, some feasible solutions will be analyzed based on the seven mechanisms of conflict resolution methods of Peter Wallensteen in order to find appropriate solutions to tackle the dilemma regarding the disputes between Vietnam and China in the South China Sea (Wallensteen, 2002).

2. Literature review

The 21st century witnesses the rise of China as a superpower in the world. We can explain this phenomenon based on the realism theory that emerged in the early XX century. According to Morgenthau, states struggle for power; therefore, international politics is "*the concept of interest defined in terms of power*" (Morgenthau, 1985). This means that national interests are the top priority for their survival. As a result, there is no room for cooperation, but national security remains as the highest priority for states actors. In the case of the territorial dispute between Vietnam and China over the South China Sea, it is clear that China, on the one hand, maximizes its power to gain control in the region of

the South China Sea. On the other hand, China seeks to build close ties concerning economics and politics in ASEAN, especially in Vietnam. Therefore, realism theory appears to be silent on explaining this phenomenon. On the contrary, neo-liberalism believes that states tend to cooperate with each other to gain “mutual win” rather than involving themselves in conflicts (Boonpriwan, 2012). In this case, how the neo-liberalism explains the Sino and Vietnam War in 1979 and the Gac Ma Battle in 1988 despite the fact that both countries share the common Communist regime type? How can China agree to cooperate by sharing natural resources equally in the South China Sea? For these reasons, the theory of realism and liberalism are not mutually exclusive interpretations of international relations since human social behavior itself is a mixture of assertiveness and cooperation. It seems that the relations, as well as the cooperation between Vietnam and China, can be described by the following words: complex, uncertain, and changeable over decades, not only because of the marine dispute, but also the national hatred in the past.

3. Material and Methods

The current study employed qualitative research that is based on the method of data collection, including primary data from legal sources, official statements, and secondary data from books, press, media and the internet. As Kumar defined, qualitative research aims to “*describe the variation and diversity in a phenomenon, situation or attitude with a very flexible approach so as to identify as much variation and diversity as possible*” (Kumar, 2011, p. 11). In a similar vein, Vanderstoep and Johnson (2009) state that observations, interviews, and/or the analysis of some type of text are the core methods of qualitative research and texts includes speeches, visual representations, written texts, artifacts of a culture or a cultural group (Vanderstoep & Johnston, 2009). In this research, legal sources and official statements come from the spokesperson of the Ministry of Foreign Affairs of Vietnam and the head of state can be considered as primary data.

Secondary sources can be seen as a method of data collection such as Government or semi-government publications, early research, personal records, and mass media (Kumar, 2011). To strengthen the argument, the researcher will make use of secondary sources such as textbooks, scientific articles, government reports, as well as newspaper and online sources.

4. Results and Discussion

The year of 2014 marked the escalation in Sino-Vietnam relations when China moved HD oil rig 981 to the EEZ of Vietnam. After 75 days, China withdrew the HD oil rig 981 from the water dispute due to a huge storm and international pressure (Perlez, 2014). In the following years, China exercised its power by building artificial islands and high frequency-radar in the Spratly Islands (Stinson, 2017). It can be said that the militarization of China escalates international tensions between China and Vietnam, China and Asian countries as well as China and other countries such as US and Japan. However, the

Vietnam government still insists on calling China to negotiate as the first step to solving this complicated dispute instead of suing China at the international court as the Philippines did in 2013. The success of the Philippines in the arbitration over the South China Sea was a valuable lesson to Vietnam and there is a belief of nationalists that Vietnam may have a chance to win based on its solid evidence regarding the Spratly Islands in comparison with China's evidence (Thai, 2014). China claimed that they are the first nation to discover the Spratly Islands, while Vietnam insisted that the Spratly Islands were a part of Vietnam's territory under Emperor Minh Mang (Pedrozo, 2014). In order to reinforce their arguments, China proved that Pham Van Dong, Prime Minister of the Vietnam Democratic Republicⁱⁱ, already acknowledged China's territory over the Spratly Islands via a diplomatic note in 1958 (Asia News Monitor, 2014). However, the Spratly Islands were under the administration of the Vietnam Republicⁱⁱⁱ at that time. How the Prime Minister of Pham Van Dong under the Vietnam Democratic Republic gave away something that he did not possess? (Tran H., 2014). It could be said that it is not easy to justify the legal evidence of both sides, Vietnam and China since this is a long-complicated story under international law. Due to the constraint of the paper, the author will not justify this issue. In this writer's view, it is argued that the Vietnamese Government has some rational reasons for not pursuing legal action against China at the international court despite the fact that the Vietnamese Government did not rule out the possibility of using legal action against China. In 2014, Prime Minister Nguyen Tan Dung responded to reporters that *"Vietnam is considering various defense options, including legal actions in accordance with international law"* (Asia News Monitor, 2014). Later, the Vietnamese Government reaffirmed its stance towards China's assertiveness in the South China Sea that *"Vietnam claims sovereignty and sovereign rights over the two islands Hoang Sa (Paracels) and Truong Sa (Spratlys) in accordance with international law"* and Vietnam is seeking for peaceful resolutions to solve the marine dispute. This position remained unchanged for centuries, as the spokesperson of the Ministry of Foreign Affairs of Vietnam, Le Thi Thu Hang publicly declared in many press conferences. Of course, there are underlying reasons behind why the Vietnamese Government is less likely to use legal actions against China.

4.1 Legal barriers

The first reason for reluctance to go to court is the presence of legal barriers. We can examine the story of the Philippines to identify the fact that China consistently asserts resolving the dispute through bilateral negotiations rather than going to court. The evidence was that the Philippines sued China under the Annex VII of the UNCLOS (Rapheal, 2010). This is the only tribunal that allows nonappearance from one side in the arbitration proceedings (Linh, 2018). Furthermore, the decision of the "arbitral tribunal"^{iv} shall be final and binding without appeal (PCA, n.d.). However, the importance is that

ⁱⁱ Vietnam Democratic Republic is the North Vietnam.

ⁱⁱⁱ Vietnam Republic is the South of Vietnam or Vietnam Cong Hoa.

^{iv} It is an ad hoc arbitration which is in accordance with Annex VII of UNCLOS.

this arbitral tribunal does not have jurisdiction over the territory issues; therefore, the Philippines cleverly avoided mentioning the territory issues by submitting the case for the interpretation and application of UNCLOS only (Proelss, 2018). We all know a predictable scenario that China never accepts the final decision made by the tribunal. China's position paper declared that "*The unilateral initiation of the present arbitration by the Philippines will not change the history and fact of China's sovereignty over the South China Sea and the adjacent waters...*" (Shannon, 2014). There is an assumption that China accepts the decision, but who is able to force China into adhering to the judgment in an anarchy of international society? Indeed, this is the limitation of international law as it mainly depends on the volunteers of states actors.

Regarding Vietnam, the only legal way to solve the territory issues over the South China Sea is the ICJ and the International Tribunal for the Law of the Sea (ITLOS). The essential prerequisite is that the consent of both parties is required. How can Vietnam prosecute a lawsuit without the presence of China? Furthermore, there is a common rule in any dispute that both parties shall seek a solution as a peaceful settlement prior to going to court^v. Therefore, there is a likelihood that the court will return the submission to ask for a peaceful settlement between conflicting parties. As a result, the cost to hire legal expertise for proceeding documents would be a burden on the budget of the government without the guarantee of winning the lawsuit. In order to file a case against China, the Philippines government put a lot of effort in the phase of preparation. For instance, the Philippines took more than two years to work with experienced experts who were hired from the US and Britain. It is calculated that about 7 million USD was paid to Foley Hoag LLP, a famous law firm of the US by the Philippine Government (Talmon, 2022). Additionally, in order to bring the dispute to the court, it requires more consensus and coordination from inside the Government. To the Philippines, the new president, Rodrigo Duterte, seems to avoid confrontation with China since this country is also a big trading partner of the Philippines. Rodrigo Duterte wants to befriend with China in the hope of receiving promising deals from this country (Winston, 2020). It can be inferred that it not easy to negotiate with the spoilers and the opposition prior to filing the case against China at the ICJ, according to the theory of Putnam regarding two-level games (Putnam, 1988). More importantly, the success of the Philippines at the Permanent Court of Arbitration in The Hague has a positive impact to a certain extent since it navigates the flow of public opinion on the right track. In other words, the victory of the Philippines influenced the attitudes of other countries toward China's territorial's claims. Everyone regards China as a superpower, yet China has no sense of "fair play". Moreover, it is able to put China on the defensive because there is a possibility that China might become less aggressive in the South China Sea. Thanks to the Philippines, Vietnam is able to gain what they want. That is, the world realizes China is a free rider in the international communities. Thus, it seems unnecessary for Vietnam to repeat a similar action to gain something that they already had from the practice of the Philippines.

^v Article 281, 282. UNCLOS 1982

4.2 The asymmetrical and interdependent Vietnam - Sino relations

Another reason why Vietnam has refrained from suing China is due to the complicated and interdependent relationship between Vietnam and China throughout history. As Keohane and Nye demonstrated that actors who possess lower levels of dependence within an interdependent relationship are often able to leverage this dynamic as a means of exerting power during negotiations surrounding a given issue, and potentially impacting other related issues (Nye & Keohane, 2011). It should be noted that Vietnam was invaded and occupied by imperial China for a thousand years. On the one hand, Vietnam respected China to guarantee its survival, but on the other hand, Vietnam always tried to escape from the dominance of China. In the past, Vietnam had to pay tribute to China's Emperor so that its independence could be guaranteed in return. However, Vietnam seemed not to be afraid of waging war as a last resort to safeguard its territory from the invasion of China. Therefore, the Vietnam - Sino relation can be described as asymmetrical relations because of the undeniable influence of China over the last four decades.

Globalization has led to increasing interdependence in both economics and politics, making the world more connected in the 21st century. The Vietnam - Sino relation is not an exception on account of China's huge investment in Vietnam in many fields and vice versa. According to the Ministry of Industry and Trade of Vietnam reports, the figures for imports from China grew from 84.2 USD billion in 2020 to nearly 99.39 USD billion in 2021 (Ministry of Industry and Trade of the Socialist Republic of Vietnam, 2022). Likewise, Vietnam's exports to China also increased from 41.4 USD billion in 2019 to 50.16 USD billion in 2021 (Ministry of Industry and Trade of the Socialist Republic of Vietnam., 2022). Furthermore, the data from The Ministry of Planning and Investment Portal showed that China became the third out of tenth countries which have a massive direct investment (FDI) in Vietnam, with total registered capital up to 2.4 billion USD in 2020 (Report on foreign direct investment in the first 11 months of 2020, 2020). This means that trade ties between Vietnam and China steadily continue to develop, and the two countries increasingly become interdependent. Winning the lawsuit may result in economic retaliation by China the Vietnam Government always tries to avoid. Hence, it is understandable that Vietnam's Government never expects to confront China directly due to the economic interdependence as explained. It can be said that Vietnam's foreign policy reflects its tradition and culture since the Vietnamese people have a very popular adage that "*Never trouble trouble till trouble troubles you*". In fact, in this asymmetrical relationship, the Vietnam government carefully bears in mind that they hold a different level of power in comparison with their giant neighbor, China. In other words, Vietnam might have more loss than gain in case they trouble China with legal action without its acceptance. Additionally, Vietnam underwent protracted series of wars with France and USA for 17 years; thus, most of the Vietnamese people are obsessed by the idea of having a new war. For these reasons, we can understand the reasons why Vietnam's Government did not bring the dispute to the international court despite the fact that Vietnam has never

changed its stance over the territory, particularly the Paracels and Spratlys Islands in the South China Sea.

4.3 Vietnam's foreign strategy towards China on maritime dispute

Last but not least, we can see that the Vietnam government's stance is to solve the South China Sea conflict by a peaceful means via negotiations and enhancement of external defense relationships. In doing so, Vietnam calls on the presence of great powers such as the US and Japan to maintain peace and stability in the South China Sea. In 2017, President Trump visited Ha Noi which led to a three-year plan for defense cooperation between the US and Vietnam in the period of 2018 - 2020 (US Embassy & Consulate in Vietnam, 2018). In the same year, Vietnam received 10.25 million to uphold its rights and enhance freedoms in its own territorial waters under the Southeast Asia Maritime Security Initiative (SAMSI) (US Embassy & Consulate in Vietnam, 2018). Similarly, Japan transferred six patrol ships to Vietnam in order to support Vietnam in enforcing its marine capability (Panda, 2017). Recently, the Japanese and Vietnamese defense ministers agreed to seek a peaceful resolution for the Southeast Asian country's territorial dispute with China in the South China Sea, according to Japanese ministry officials in May 2019 (Kyodo, 2019). With respect to bilateral negotiations with China, both countries agreed to sign an agreement on basic principles guiding the settlement of maritime issues, which was issued in Beijing in Oct 2011. Accordingly, talks and negotiations will be implemented as the top priority to solve the sea conflicts between the two parties (Nhân Dân, 2013). Due to the legal binding of this agreement, the Vietnam Government is likely to seek negotiations with China prior to going to the court as a last resort. At the same time, Vietnam's Government seems to be more prudent in navigating the relationships with Japan and USA to avoid damaging the bilateral relation with China. This also explains the reason why the Vietnam Government is reluctant to pursue a foreign policy of "leaning on one side," such as Japan-US relations. Vietnamese history showed the fact that Vietnam suffered more than gained benefits once it leaned on one side, regardless of China, France, and the USA. Another scenario is that winning the lawsuits might worsen the relationship between Vietnam and ASEAN because there are overlapping claims in the Spratly Islands between ASIAN countries. Needless to say, Vietnam never expects to have any clash within ASEAN. This point of view was also stated in the ASEAN - Republic of Korea Ministerial Meeting in August 2022. Through this conference, Vietnam keeps supporting the idea that all ASEAN countries restrain from aggressive actions and resolve the maritime dispute by using peaceful settlement in accordance with UNCLOS 1982 (Giao, 2022).

It can be said that the dispute between China and Vietnam over the South China Sea can be seen as one of the most severe conflicts in the regions of Asia in the 21st century. The disputes are not simply about *Geopolitik* but also *Realpolitik* and *Capitatik*. This shows the fact that China is rising as a superpower in world politics. We can clearly see the rational calculations of states actors as well as their unpredictable behavior under the anarchy of international relations. China, on the one hand, tries to exercise its power

to become hegemony in the South China Sea. On the other hand, there is room for cooperation and trading with each other. Therefore, the theories of realism and liberalism might not be sufficient to justify the South China Sea disputes because states seem to change their policies depending on the context. This is the reason why the South China Sea dispute still remains unsolved.

5. Recommendations

Based on Peter Wallensteen's conflict resolution mechanism, the writer would discuss some feasible solutions to solve the dispute between Vietnam and China over the South China Sea. The first solution is that both parties should change their priorities to leave room for formal negotiation with concession. This step is very important because states can exchange information to speed up efficient negotiations. In fact, the DOC^{vi} and COC^{vii} are the positive outputs of negotiation between China and Vietnam and China and Asia. However, the COC is still vague because it leaves a blank space on the issue of territories (Tran T. T., 2022). Currently, Vietnam is attempting to negotiate with China to seek conflict resolution by peaceful means. At the same time, Vietnam and ASEAN are seeking a solution to make COC as a legal binding document, instead of a declaration as DOC. Nevertheless, the negotiation has a possibility of entering a deadlock since China still denies revealing any information on the COC until now. Another solution is sharing the assets. Both countries might come up with a solution to share the abundant natural resources in the disputed water. However, it is not easy since the dispute involves many third parties. The question is how to distribute the resources fairly to the concerned parties? Furthermore, China is trying to detain the foreign oil firm in drilling at the disputed water between Vietnam and China. In 2018, Rosneft, an oil and gas state company in Russia, showed their concern about doing business with Vietnam because they were afraid of upsetting Beijing (Pearson, 2018). It now seems certain that the theory of liberalism cannot explain the rationally calculated strategies and uncooperative attitudes of China in the South China Sea. More importantly, it is a crucial resolution to avoid spoilers since these spoilers might result in a negative impact on the relations between the two countries as well as increase a socio-economic instability in Vietnam. In Vietnam, there was a rise of nationalist sentiment in 2014 when China deployed the HD oil rig 981 to the EEZ of Vietnam. At that time, many Vietnamese workers tried to burn out Chinese factories and destroyed their assets as a way to express their discontent with China's Government. It is estimated that more than 100 people were injured in the riot. More than 15 factories were set on fire in Binh Duong and Ha Tinh industrial parts (Dasgupta, 2014). As a result, Vietnam's Government had to compensate Chinese firms for the damage they had caused. After the events of HD oil rig 981 occurred in rapid sequences, there was a stand-off between Vietnam - Sino diplomatic relations which lasted for five months (Nguyen & Ngo, 2014). It cannot be denied that the factor of

^{vi} Code of Conduct

^{vii} Declaration of Conduct

extreme nationalism is an extremely important issue that Vietnam's Government needs to take into consideration carefully. The extreme nationalism also resulted in a negative impact on Chinese people who are living in Vietnam as their second homeland. Pew Research conducted a survey of Vietnamese's view of Chinese people. The data showed that 78% of Vietnamese people had an unfavorable view of China in 2014 and 74% in 2015 respectively (Tran T. T., 2022). According to the General Statistics Office of Vietnam, the Hoa, Chinese immigrants or ethnic minority groups living in Vietnam remain about 823,071 people, and they account for approximately 1% of the Vietnamese population as of 2009 (Nguyen P. D., 2013). The Vietnam Government's attitudes towards the settlement of Chinese in Vietnam had changed consistently over the history of the country. However, after the Doi Moi 1986, the Hoa communities are equally treated by Vietnam's Government since they have the right to vote, to join the communist parties, and to become government officials (Duong, 2014). Nowadays, most of the Hoa is peaceful coexistence under the Vietnam administration. Despite the fact that they are less likely to become spoilers in the relations between Vietnam and China, the Vietnam Government should keep an eye on this sensitive issue to prevent the extreme nationalism that may provoke an internal conflict between the Hoa communities and Vietnamese people.

6. Conclusion

In conclusion, it seems that bringing the disputes to ICJ might not be a durable conflict resolution due to the anarchy and the "voluntary obligations" of international law, interdependent Vietnam - Sino relations regarding economics, and the prudent diplomacy of the Vietnam Government towards China. Therefore, Vietnam Government tends to attempt to negotiate with China by using peaceful settlements such as talks and dialogue rather than using legal actions. At the same time, the Vietnam Government is attempting to draw attention from international communities against China's assertiveness for not complying with international law. For these reasons, using the international court will be the last resort in solving the territorial conflict in the South China Sea from Vietnam's perspective. In general, it is not easy to deal with the dispute over territories between states because it requires more effort such as cooperation, goodwill, compromises, confidence-building measures, and creative strait in diplomatic policy between different parties, not only the conflicting parties but also the third parties, concerned parties and other international organizations.

Conflict of Interest Statement

The author declares no conflicts of interest.

About the Author

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