

Vietnam's First Maritime Boundary Agreement

Nguyen Hong Trao

Introduction

On 9 August 1997, in Bangkok, the Foreign Minister of the Socialist Republic of Vietnam (SRV), His Excellency Nguyen Manh Cam, and his counterpart, His Excellency Prachuab Chaiyasan, the Foreign Minister of the Kingdom of Thailand, signed an agreement settling the maritime boundary between the two countries in the Gulf of Thailand. In so doing they ended a dispute which has existed for more than 26 years. It also constitutes the first maritime boundary pact that Vietnam has concluded with a neighbouring country.

The Gulf of Thailand is a semi-enclosed sea of about 300,000 square kilometres, bordered by the coasts of Thailand (1,560km) Vietnam (230km), Malaysia (150km) and Cambodia (460km). Entry to the Bien Dong Sea (South China Sea) is through a 400km (215 nautical miles (nm))-wide mouth between Point Ca Mau and Point Trenggranu. The Gulf is long but narrow with an average width of 385 km (215nm). This means that based on the United Nations Convention of the Law of the Sea (UNCLOS) of 10 December 1982, the entire Gulf is subject to claims by the coastal states of up to 200 nautical miles. As a result, both Vietnam and Thailand had the right to extend their respective sea areas and create an overlap of about 6,500 square kilometres.

Dispute process and legal positions:

Maritime delimitation is closely linked to the possession of natural resources and has particular influence on petroleum and fish resources. In the Gulf, Thailand was the first country to initiate petroleum exploration and development. On 23 January 1968, five months after having ratified the 1958 Geneva Convention on the Continental Shelf, Thailand allowed companies to bid on oil and gas exploration and exploitation rights for the first time. However, offshore petroleum development only began to boom after Thailand promulgated Law No. 2514 on Petroleum on 26 March 1971. Natural gas was firstly discovered in 1972 by Union Oil in blocks 12 and 13. These areas have since been developed.

On 18 May 1973, Thailand unilaterally set the limit of its continental shelf in the Gulf of Thailand. This

was a median line between the Thai coast and important offshore Thai islands on one side such as Ko Phangun, Ko Samui and the coast; and the Cambodian coast and Cambodian islands such Rong and Salem and Vietnam's coast, Phu Quoc island and the Point de Ca Mau. It represented the maximum possible Thai claim by exploiting the "special circumstances" clause contained in Article 6 of the 1958 Geneva Convention on the Continental Shelf. In drawing this limit, Thailand intentionally ignored offshore natural formations such as the Ko Kra and Ko Losin rocks of Thailand, the Vietnamese Tho Chu archipelago and Poulo Wai Island of Cambodia.

In contrast the claim of South Vietnam in 1971 constituted a median line between offshore of the islands of Tho Chu and Poulo Wai and the opposite coast of Thailand without taking into account Ko Kra and Ko Losin rocks of Thailand.

The claims are different due to the positions of both sides based on the location of offshore formations. Tho Chu is far from Phu Quoc island at 55nm while Ko Kra and Ko Losin are located 26 and 37nm from Thailand's coast respectively.

UNCLOS III, in emphasising the role of islands, seriously affected the dispute. Article 121 of UNCLOS 1982 generates maritime zones for islands many times greater than their actual sizes. A small island such as Tho Chu of 10km² and a population of 500-600, has a right to claim an EEZ of 200nm or continental shelf more than 500nm². This was a reality which could not be ignored.

In the period of 1977 to 1982, the SRV approved several legal acts concerning the Vietnamese sea area in the Gulf. These were the statement of the Government of the Socialist Republic of Vietnam of 12 May 1977 on the territorial sea, the contiguous zone, the EEZ and the continental shelf of Vietnam; the Government of the SRV's declaration of 12 November 1982 on the baseline of Vietnam's territorial waters and the agreement of 7 July 1982 on the historic waters of Vietnam and Cambodia.

In these acts, Vietnam didn't draw any official limits for its EEZ or the continental shelf. The Government of the Socialist Republic of Vietnam

showed its willingness to peacefully resolve disputes with the countries concerned, through negotiations on the basis of mutual respect for independence and sovereignty in accordance with international law and practices, relating to the maritime zones and continental shelf of each country. However, in practice, Hanoi accepted the earlier 1971 claim of South Vietnam to the continental shelf which did specify limits to offshore jurisdiction.

On 22 November 1982, the Ministry of Foreign Affairs for Thailand declared an objection to the Vietnamese baseline and reserved "*all its rights under international law in relation to the sea areas in question and the airspace above them*"¹ on behalf of its country.

On 19 August 1992, Thailand added the rocks Ko Kra and Ko Losin to their baseline announced previously on 11 June 1970. Bangkok seemed to insist on including uninhabitable formations of 1.5m above water at high tide, without appreciable economic life of their own, in the delimitation and at the same time on reducing the role of offshore islands belonging to other countries.

The geological structure of the Gulf shows a possible presence of oil and gas. The 1971 claim line of South Vietnam covers most parts of the northern Malay basin, while the Thai claim encloses parts of the north-west. The western parts of blocks 15, 16 and structure B of Thailand, where great discoveries of natural gas have occurred, overlap the area claimed by Vietnam. Reserves of gas extracted from sites in the Vietnam–Thailand overlapping area could possibly be as much as 200 billion cubic metres (bcm). Due to the dispute, exploration and development of oil and gas in this area have been suspended.

In order to resolve this issue, Thailand proposed an open negotiation with Vietnam on maritime delimitation. The Vietnam–Thailand joint communiqué of 12 January 1978 showed that both sides had agreed to negotiate on the issue of the maritime boundary. However, the dispute over settlement of the Cambodian conflict led to the suspension of this attempt.

In June 1990, Thailand granted an 8,000km² oil concession to CFP-Total, including the blocks Total-1-B 14, Total-1-B 15 and Total-1-B 16, which overlapped with blocks 40, 46, 51, 54, 55 and 58 that Vietnam had offered to Petrofina at the same time. In June 1993, Total drilled wells off Ton Sak-1, a structure located in the East of Bangkok and

near by the 1971 line. In 1994, Total drilled consecutive wells Ton Sak-3, 4, 5 to find condensed gas. The dispute pushed the two sides to the negotiation table again.

The Negotiation Process

On 15 November 1990, a Minister of Thailand's Prime Minister's office, during an official visit to Vietnam, proposed a joint development in the overlapping area to the Minister of Foreign Affairs of Vietnam, Nguyen Co Thach. In turn, the Prime Minister of Thailand in his official visit to Vietnam on 17 September 1991 showed a desire to find a solution to the delimitation of the continental shelf between the two countries.

In October 1991, at the first meeting of the Thai-Vietnamese Joint Committee on economic, scientific and technological cooperation, the two sides adopted a protocol concerning maritime delimitation as follows:

- a) *both sides should cooperate in defining the limits of the maritime zones claimed by the two countries;*
- b) *both sides should try to delimit the maritime boundary in the overlapping area between the two countries; and*
- c) *such delimitation should not include the overlapping zones which are also claimed by any third country.*

Both sides also agreed that, pending such delimitation, no development activities or concessions in the area of overlap should be assigned or awarded to any operator. The two sides informed each other that there are no development activities or concessions in the area claimed by Vietnam which overlaps the Joint Development Area between Thailand and Malaysia.

In this context the Thai side proposed that failing the attempt in 'b' the two sides might consider implementing the Thai concept of [a] joint development area.²

Delimitation of their EEZs is also a priority of both governments. Illegal fishing of Thai fishermen in the maritime zones of neighbouring countries causes not only deterioration of the natural resources of these countries but is also necessarily prejudicial to the prestige of the Thai government.³ Thailand has continually expressed its desire to conclude an agreement concerning fisheries and a determination

of the EEZ limit with Vietnam. These are efficient measures for prevention of illegal fishing. On 23 February 1981, the Kingdom of Thailand stated the existence of their EEZ, without stipulating its exact dimensions.

Two major maritime problems existed between Thailand and Vietnam: delimitation of the continental shelf and delimitation of EEZ.

On 7-10 September, 1992, the first meeting at an expert level, on the delimitation of the continental shelf in the Gulf of Thailand between the Socialist Republic of Vietnam and Kingdom of Thailand was held in Bangkok. The Vietnamese side proposed the delimitation of the overlapping area limited by 1971 and 1973 claim lines, on the basis of international law and practices, according to Articles 74 and 83 of UNCLOS 1982, in order to achieve an equitable solution. The Thai delegation stated that the 1971 Vietnamese continental shelf claim produced an excessive distortion, caused by the inclusion of Tho Chu. In Thailand's view, the 1973 Thai continental shelf boundary claim should have been taken as the basis from which the negotiations for delimitation would continue. In other words, the Thai side didn't consider the existence of the overlapping area included between the 1971 and 1973 lines or the ramifications of Tho Chu Island in their delimitation. At the second meeting held in Hanoi from 20-23 May 1993, in order to break the deadlock in the negotiations, the Vietnamese delegation suggested dividing the overlapping area bounded by the 1971 and 1973 claim lines in half, but the Thai side remained inflexible.

At the third meeting of 10 January 1995, the Thai delegation shifted to a more amiable position by accepting a rule of equitable solution, as proposed initially by Vietnam. The Thai side agreed to the use of the median line as a starting point, taking into account all the relevant factors so as to produce an equitable solution. However, both parties had dissimilar views on how to apply equitable principles, what relevant factors should be taken into account in delimitation and how to draw a median line, from opposite coasts or from opposite offshore islands.

In fact, delimitation of the continental shelf between Thailand and Vietnam consisted principally of the settlement of disagreements between the parties on how the existence of islands should affect delimitation: whether to give them no effect, partial effect or full effect. The legal wrangling on this point proved constant through consecutive

meetings: the fourth being on 5 June, 1995, and the fifth on 28-31 August, 1995.

The Thai delegation argued that the delimitation in the present case was between the Thai and Vietnamese coasts, and not between Thailand's coast and Tho Chu Island, because lying at a distance of 55nm from the coast, Tho Chu could cause a distortion of the boundary. In Thailand's view, to rectify this negative effect, an appropriate weight to Tho Chu should not be more than a one-quarter effect. However at the sixth meeting of 12 December 1995 in Hanoi, the Thai position became less flexible again. The Thai delegation suggested that the equitable boundary of the continental shelf between Thailand and Vietnam should be a median line adjusted by giving Tho Chu a one-third effect. However the method of accounting the Tho Chu effect was different between two sides.

Vietnam proposed the method of relocating Tho Chu along a line perpendicular to a line linking the southern tip of Phu Quoc to the Pointe de Ca Mau, while the Thai method depended on relocating Tho Chu on a line drawn to the nearest point on the mainland coast. The Thai side incidentally attempted to reduce the possible effect of Tho Chu, to lose the full effect of Phu Quoc and to gain more of the overlapping area. The Vietnamese side viewed this position as being contrary to equitable principles. The seventh meeting held in Chiang Mai, from 23-26 April, 1996, rested on maintenance of negotiations while waiting for a more stable environment to present itself within the Thai government.

After H.E. Mr. Chavalit Yongchaiyuth came to power, the relationship between the two countries was boosted to a new level, by the official visit of the Prime Minister of the Kingdom of Thailand to the SRV on 30-31 March, 1997. The results of the fourth meeting of the Thai-Vietnamese Joint Committee on economic, scientific and technological cooperation and the third meeting of the Thai-Vietnamese Joint Committee on Fisheries and Order at Sea on 5 May 1997 also did much to improve relations between the two countries. The negotiations on delimitation of the continental shelf reopened and the eighth meeting was held in Da Lat from 30 May-3 June 1997. The Thai side accepted the Vietnamese good will by proposing to settle definitively and simultaneously the pending issues of continental shelf and EEZ overlapping claims by a single boundary.

The Agreement and its Significance

The agreed boundary is the straight line from point 'C' (7° 49' 00"N; 103° 2' 30"E), the northernmost point of the Thai–Malaysia JDA of 1979 and which coincides with Point 43 of Malaysia's continental shelf claim advanced in 1979, to Point 'K' (8° 46' 54"N; 102° 12' 12"E) on the "working arrangement" line between Vietnam and Cambodia, agreed in 1991 as being equidistant from Tho Chu islands and Poulo Wai, giving two-thirds of the area of the existing overlapping continental shelf claims zone to Thailand and one-third of said area to Vietnam (see Figure 1). The said maritime boundary shall constitute the boundary of the continental shelf and shall also constitute the boundary of the EEZ between Thailand and Vietnam.

Each Contracting Party shall recognise and acknowledge the jurisdiction and the sovereign rights of the other country over the latter's continental shelf and exclusive economic zone within the maritime boundary established by the Agreement. If any single geological, petroleum or natural gas structure or field, or other mineral deposit of whatever character, extends across the boundary line, two Parties shall communicate to each other all information in this regard and shall seek to reach agreement as to manner in which the structure, field or deposit will be most effectively exploited and the benefits arising from such exploitation will be equitably shared.

The maritime zone as a subject of the agreement of 9 August 1997 is determined without any prejudice to the rights of third parties; namely Cambodia and Malaysia. The Contracting Parties are to enter into negotiation with the Government of Malaysia in order to settle the tripartite overlapping continental shelf claim area of the Kingdom of Thailand, the Socialist Republic of Vietnam and Malaysia. The agreement of 9 August 1997 turns a new page not only in the history of Thai–Vietnamese relations but also in the history of the delimitation of the Gulf of Thailand. It exhibits the following prominent points:

This is the first agreement ending a marine dispute in all aspects in the

Gulf of Thailand. Apart from this Thai–Vietnamese dispute, there are pending issues of delimitation between Vietnam and Cambodia; Cambodia and Thailand; Vietnam and Malaysia; Thailand and Malaysia, Vietnam–Thailand–Malaysia and Vietnam–Cambodia–Thailand.

This is the first agreement on maritime delimitation concluded in South East Asia since UNCLOS 1982 came into force. It is also the first agreement on the delimitation of all maritime zones belonging to the coastal states concerned in the region. Before, there were some agreements on delimitation such as the Indonesia–Malaysia Continental Shelf Boundary Agreements of 27 October 1969 and 21 December 1971, the Thai–Indonesia Continental Shelf Boundary Agreement of 17 December 1971, the Thai–Malaysia Continental Shelf Boundary Agreement of 21 December 1971, the Memorandum of Understanding of 21 February 1979 between the Kingdom of Thailand and Malaysia on the Establishment of a Joint Authority for the Exploitation of the Resources of the Sea-Bed in the Defined Area of the Continental Shelf of the two

Figure 1



countries in the Gulf of Thailand, the Vietnam–Malaysia Memorandum of 5 June 1992 on joint development. These accords are solely focused on delimitation of the continental shelf. The Thai–Vietnamese agreement of 9 August 1997 is first to focus on delimitation of EEZ, either in the Gulf of Thailand or in the wider region. The goal of the agreement is delimitation of both continental shelf and EEZ.

The agreement of 9 August 1997 reaffirms the tendency of using a single boundary for both continental shelf and EEZ in zones where there is less than 400nm between opposite coasts. It raises some new issues concerning the effects of islands for the international law of maritime delimitation.

Although the period of existing unilateral claims has lasted many years, from 1971, the process of negotiations to arrive at a workable solution was relatively short. It is interesting to note that Thailand and Malaysia took more than 10 years to find a solution to their dispute over an overlapping area, by signing their Memorandum of Understanding of 21 February 1979. This established a Joint Authority, which was finally set up in 1992 for the exploitation of the area. In the case of Vietnam and Thailand, during the five years, from 1992 to 1997, with nine meetings, it proved possible to proceed rapidly to an equitable solution. This was done in a spirit of mutual respect and goodwill between the two countries, as well as in a sincere and friendly atmosphere of cooperation which hopefully will always characterise relationships between ASEAN members. The result of the Thai–Vietnamese negotiations reflects the determination of countries in this region to implement UNCLOS 1982, of which both Thailand and Vietnam are signatories. Vietnam was the first country to delineate its continental shelf and an EEZ of 200nm in the region in 1977, it continues to maintain its progressive role in settlement of pending maritime issues in the South China Sea.

For Vietnam, it's the first agreement on maritime delimitation concluded with a neighbouring country. Vietnam is the country involved in the highest proportion of maritime disputes in the region. Apart from Thailand, Vietnam has to resolve six of the 15 disputes in the Bien Dong Sea (South China Sea) with China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia and Cambodia. The agreement of 9 August 1997 certainly promotes further successful negotiations on maritime disputes between Vietnam and concerned countries in the spirit of Point 7 of the statement of the Government of the SRV of 12 May 1977 on the territorial sea, the contiguous

zone, the EEZ and the continental shelf of Vietnam. Point 7 emphasises the government of the SRV's commitment to the peaceful settlement of all maritime disputes.

The Thai–Vietnamese agreement on maritime boundary delimitation creates good conditions for future cooperation between the two nations. It also contributes to the strength, security and stability of maritime activities in the Gulf of Thailand and to peace, prosperity and the furthering of mutual interests and development within ASEAN. It also constitutes a precious gift to ASEAN on its 30 anniversary.

Notes

¹ Statement of 22 November 1985 by the MOFA of Thailand on the Vietnamese claims concerning the so-called historical waters and the drawing of baselines, A/40/1033.

² Protocol of the First meeting of the Thai-Vietnamese Joint Committee on economic, science and technology cooperation, Bangkok, October 1991.

³ McDorman, T. (1985) 'Thailand and the 1982 Law of the Sea Convention', *Marine Policy*, Oct.: 292-308.

LL.D. Nguyen Hong Thao is Deputy Director of the Marine Affairs Department, Continental Shelf Committee of the Government of Vietnam.