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# RSIS COMMENTARIES

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## China, Vietnam and the Paracels: Time for a Way Out?

By Li Jianwei

### *Synopsis*

*A long-term standoff between China and Vietnam over the HYSY 981 drilling rig is detrimental to bilateral relations. Diplomatic wisdom is needed so that both countries can adjust their tactics to bring the situation under control.*

### *Commentary*

THE CHINA-VIETNAM differences over the HYSY 981 oil rig have dragged on for over 40 days. The time has come for both countries that have successfully managed other disputes of a sensitive nature in the past, to seriously reconsider their tactics in the aftermath of the incident.

After all, the current standoff is detrimental to bilateral relations, which is the last thing that both governments want. The resulting tension is also causing unease in the Southeast Asian region.

### **China's position**

On 8 June 2014, China's Foreign Ministry released a statement, together with five supporting documents, to clarify to the international community its position on several issues relating to the operations of the HYSY 981 drilling rig.

In May 2014, a Chinese company's HYSY 981 drilling rig carried out a drilling operation inside the contiguous zone of Xisha Islands (Paracel Islands). The first phase started on 2 May and the second phase on 27 May. The two operational locations are 17 nautical miles from both Zhongjian Island (Triton Island) of Xisha Islands and the baseline of the territorial waters of Xisha Islands, while being approximately 133 to 156 nautical miles away from the coast of the Vietnamese mainland.

The drilling operation is a continuation of the routine process of exploration by the Chinese company and falls well within China's sovereignty and jurisdiction.

Regarding its sovereignty over the Xisha Islands, China was the first to discover, develop, exploit and exercise jurisdiction over the group. By the Northern Song Dynasty (960-1126 AD), the Chinese government had already established jurisdiction over the Xisha Islands and had sent naval forces to patrol the waters there. In 1909,

Commander Li Zhun of the Guangdong naval force of the Qing Dynasty led a military inspection mission to the Xisha Islands and reasserted China's sovereignty by hoisting the country's flag and firing a salvo on Yongxing Island (Woody Island).

In 1911, the government of the Republic of China announced its decision to put the Xisha Islands and their adjacent waters under the jurisdiction of Ya County of Hainan Island.

Japan occupied the Xisha Islands during the Second World War. After the war, in accordance with a series of international documents, the Chinese government sent senior officials on board military vessels to the Xisha Islands in November 1946 to hold a ceremony for receiving the islands, and a stone tablet was erected to commemorate the handover.

China's jurisdiction continued after the establishment of the People's Republic of China in 1949. In 1959, the Chinese government established the Administration Office for the Xisha, Zhongsha and Nansha Islands.

### **Pham Van Dong's diplomatic note**

In the rhetoric over the recent oil rig incident, Vietnamese former premier Pham Van Dong's 1958 diplomatic note to Chinese former Premier Zhou Enlai has once again been brought up. In the note Premier Dong stated that "the government of the Democratic Republic of Vietnam recognises and supports the declaration of the government of the People's Republic of China on its decision concerning China's territorial sea made on September 4, 1958" and "the government of the Democratic Republic of Vietnam respects this decision".

"The decision" refers to China's declaration issued on 4 September 1958. In the said declaration, it was stated that "the breadth of the territorial waters of the People's Republic of China shall be 12 nautical miles" and that "this provision applies to all the territories of the People's Republic of China, including ... the Xisha Islands".

It is understandable that Vietnamese representatives would try to minimise the importance of Pham Van Dong's diplomatic note and would want to provide an explanation of why this note does not weaken Vietnam's sovereignty claim over the Paracel Islands. However, the fact that Pham Van Dong himself in 1977 explained in his meeting with China's then Vice-Premier Li Xiannian actually weakens Vietnam's current arguments aiming to retract the content of Premier Dong's note. This is because in the said meeting, Dong asked "how should one understand our statements including the one in my note to Premier Zhou Enlai? One should understand it in the context of the historical circumstances of the time" and "in the war of resistance we of course had to place resistance to US imperialism above everything else".

It is evident that Dong recognised the impact of his statement on the sovereignty over the Paracels and Spratlys, but asked China to understand it in historical context. The argument runs counter to the international principle of "estoppel", which is, in a specific dispute, if a party has given tacit consent to or recognised another party's sovereignty over the disputed territory at a certain time, such recognition or acquiescence has a legal effect.

As a consequence the party that consented or recognised the sovereignty in question cannot deny the other party's sovereignty over the territory, and should respect the other party's entitlement. The fact that Pham Van Dong also served as premier of the re-unified Vietnam from the date of reunification up to 1986 further weakens Vietnam's argument over this issue.

### **A positive note**

In a recent RSIS commentary, "The Paracels: Forty Years On" by Vietnamese scholar Dr Nguyen Thi Lan Anh, the author mentions a successful case of maritime delimitation, namely the one between China and Vietnam in the Gulf of Tonkin in 2000. Anh argues that the principles practiced by the two countries in the Gulf of Tonkin case should be applied in the water area between Vietnam's coast and the Paracel Islands, of which Triton Island is a part.

Surely in the Gulf of Tonkin case the negotiators from both countries have followed the principles of international law, including the United Nations Convention on the Law of the Sea (UNCLOS), to reach an equitable solution acceptable to both countries, taking into account various relevant factors. The maritime boundary in the Gulf of Tonkin is China's first maritime boundary and the first maritime boundary between China and Vietnam. It will have implications for their future negotiation in relation to other parts of the South China Sea.

China recognises that the waters between Xisha Islands and the coast of the Vietnamese mainland are yet to

be delimited and both countries are entitled to claim EEZ and continental shelf in accordance with the UNCLOS. However, China holds the view that the waters around the Triton Island will not become Vietnam's EEZ and continental shelf no matter which principle is applied in the delimitation. Distance and location do matter.

To propose that the two sides engage in direct negotiation is a constructive and positive suggestion. China would be amenable to engage in direct negotiation with Vietnam, relating to a possible maritime delimitation in the area between Vietnam's coastline and Xisha Islands.

To reach an equitable and just solution would contribute to strengthen and deepen the relationship between the two countries. It would also be an important contribution to peace and stability in the South China Sea.

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