

# REPUBLIC OF VIETNAM

## PRO-TEMP LEADERSHIP COMMITTEE

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### A REBUTTAL TO CHINA'S POSITION PAPER ON THE PRESENCE OF THE HYSY 981 DRILLING RIG IN VIETNAMESE WATERS

#### I. Position of China CNOOC's HYSY 981 drilling rig in Vietnamese waters

"On 2 May 2014, a Chinese company's HYSY 981 drilling rig started its drilling operation" at a location in the South China Sea (aka Eastern Sea to the Vietnamese) with coordinates well within Vietnam's continental shelf: 15°29 North and 110°12 East, corresponding to Lot 143 of Vietnam's EEZ (exclusive economic zone). This location is only 119 nautical miles from Ly Son island off the coast of Vietnam near Da Nang.

This is a blatant violation of Vietnam's EEZ which extends 200 nautical miles from a baseline along the coast of Vietnam and which is based on a continental shelf defined as "a generally shallow, flat submerged portion of a continent, extending to a point of steep descent to the ocean floor." This condition is clearly not obtained in the case of China's EEZ.

#### II. China's provocation

With the placing of HYSY 981 drilling rig well within Vietnam's EEZ, China's action has been described as "provocative" by many nations on earth and not by Vietnam alone. China claims that "Vietnam sent a large number of vessels, including armed vessels, to the site" to forcefully disrupt the Chinese operation. It cites a figure of "63 Vietnamese vessels in the area at the peak": even if this is true, it is less than half of the amount of Chinese vessels, estimated at 130 including some much larger than the Vietnamese ones, sent to surround the rig and prevent Vietnamese authorities from coming close and legitimately asking that the rig be moved out of Vietnamese waters. Such a large Chinese presence cannot escape aerial surveillance and photographing by hundreds, if not thousands, of international observers.

China further accuses Vietnam of "condoning anti-Chinese demonstrations" aimed at "companies of China" but it contradicts itself when it mentions that the demonstrations were also against companies of "several other countries."

#### III. China's admission

In its position paper, China admits that "the waters between China's Xisha [Hoang Sa to the Vietnamese or Paracel in international atlases] Islands and the coast of the Vietnamese mainland are *yet to be delimited*. *The two sides have not yet conducted delimitation of the Exclusive Economic Zone (EEZ) and continental shelf in these waters. Both sides are entitled to claim EEZ and continental shelf in accordance with the UNCLOS.*" (Emphasis added.) Having said that, how can it go on saying: "However, these waters will *never* become Vietnam's EEZ and continental shelf no matter which principle is applied in the delimitation." (Emphasis added.) What a beautiful contradiction that flies in the face of reason!

#### IV. Xisha Islands are NOT part of the Chinese territory

China's position paper merely avers that "Xisha Islands are an inherent part of China's territory, over which there is no dispute." Then what does the above paragraph mean when it is written by apparently the same author(s)?

China fraudulently claims that it is "the first [country] to discover, develop, exploit and exercise jurisdiction over the Xisha Islands." Nothing is further from the truth when, in the very next sentence, the position paper says that even as late as 1909, a Chinese commander merely "led a military inspection to the Xisha Islands and reasserted China's sovereignty *by hoisting the flag and firing a salvo on the Yongxing Island.*" What a ridiculous claim! That is not how an international claim to sovereignty is validated, especially when the island was not even inhabited at the time anyway!

## **V. Recent history**

When "Japan invaded and occupied the Xisha Islands during the Second World War" (1939), only France protested on behalf of its protectorate, Vietnam. Earlier, France had claimed sovereignty over this archipelago on the basis of the Nguyen Dynasty's claims under Emperors Gia Long (1802-1820) and Minh Mang (1820-1840), and in 1932 France annexed the islands and built a lighthouse and weather station on Pattle Island in 1937. After Japan's surrender in 1945, China's nationalist government tried to reclaim some islands (November 1946) but the San Francisco Peace Conference (September 1951) approved by 46/51 votes Vietnam's claim over both the Paracel (Xisha, Hoang Sa) and Spratly (Nansha, Truong Sa) Islands.

In 1959, Beijing established the Administration Office for the Xisha, Zhongsha and Nansha Islands. But as early as 1933, Emperor Bao Dai already issued a decree (No. 10) affecting the Paracel Islands (Xisha, Hoang Sa) to the authority of the province of Thua Thien and on 13 July 1961, President Ngo Dinh Diem of the Republic of Vietnam signed a decree-law assigning those islands to the administration of the province of Quang Ngai in Central Vietnam. Vietnam's navy patrolled the islands and Vietnam's meteorological service ran the weather station on Pattle Island without interruption or interference from any country all the way until January 1974 when the Paracels (Hoang Sa) were attacked by the Chinese navy in the waning days of the Vietnam War and taken over after an uneven battle with the South Vietnamese navy sent out to defend the islands.

## **VI. Hanoi's role in the dispute over the islands**

From the above it can be seen that nothing is further from the truth than the allegation that "Vietnam had officially recognized the Xisha (Hoang Sa, Paracel Islands) as part of China's territory since ancient times." To quote a couple of pro-Chinese officials to the effect that "the Xisha Islands and Nansha Islands are historically part of Chinese territory" is meaningless since they did not represent in any way the official position of the Vietnamese government, not even of Hanoi, and also because such pronouncements are simply incorrect, not supported by any documentation that could be found in Vietnamese sources.

More serious is the fact that "on 4 September 1958, the Chinese government issued a declaration, stating that the breadth of the territorial waters of the People's Republic of China shall be 12 nautical miles and making it clear that 'this provision applies to all the territories of the People's Republic of China, including the Xisha Islands'." On 14 September, Premier Pham Van Dong of the government of the Democratic Republic of Vietnam (i.e. North Vietnam) sent a diplomatic note to Premier Zhou Enlai of China, stating that "the government of the Democratic Republic of Vietnam recognizes and supports the declaration of the government of the PRC on its decision concerning China's territorial sea made on September 4, 1958" and that "the government of the DRV respects this decision."

However, it should be noted that according to the Geneva Ceasefire Agreements of 20 July 1954, which divided Vietnam into two zones, the DRV (i.e. North Vietnam) did not have jurisdiction over the Paracel Islands, which being south of the 17th Parallel, belonged to the authorities of South Vietnam (officially, Republic of Vietnam). Hence, Pham Van Dong's diplomatic note could be said to be "null and void."

As for two other pieces of evidence quoted by the Chinese position paper, they are hardly reliable. One, a 9th-grade geography textbook printed in 1974 is clearly unreliable when besides saying that Xisha (Tay Sa in Vietnamese, i.e. Hoang Sa to the Vietnamese) and Nansha (Nam Sa, i.e. Truong Sa to the Vietnamese) belong to an arc of islands defending China, it also cited a non-existent chain of islands ("Hoanh Bo") as belonging to the same arc. As for the World Atlas printed in May 1972 it could very well be a product of China printed for a Vietnamese publishing house as was common at the time.

## **VII. International Treaties and China's obligations under these treaties**

Leaving aside the continuous historical sovereignty of Vietnam over the Paracel Islands, which is much more substantial and better documented than the Chinese claims (until the beginning of the twentieth century, not only maps show Hainan as the southernmost territory of China, Chinese authorities even refused to accept responsibility for shipwrecks happening in the Paracel Islands), there are at least five international treaties to which China was a signatory and/or guarantor and therefore cannot deny its obligations under these treaties.

First is the Tientsin Treaty of 1885 between France and the Qing government of China which recognized the sovereignty of France over Vietnam. Under this treaty, France inherits all the territorial rights belonging to the kings of Annam (i.e. Vietnam), which of course included the Paracel and Spratly Islands,

which were under Vietnamese jurisdiction since at least the seventeenth century, a fact recognized by multiple maps drawn up by Europeans in the seventeenth to the twentieth centuries--including recent National Geographic and Google maps. It is on the basis of this treaty that France claimed sovereignty over the Paracels in 1932 and subsequently built a lighthouse and meteo station on Pattle Island in this chain of islands. This meteo station was run uninterruptedly by French and subsequently Vietnamese personnel all the way until January 1974 when the Chinese navy came and occupied the Paracels (Xisha, Hoang Sa) by force.

Second is the attribution of the Paracel and Spratly Islands to Vietnam at the San Francisco Peace Conference of September 1951. The Soviet Union's proposal that these islands be turned over to China was rejected overwhelmingly but when Vietnamese premier Tran Van Huu claimed those islands for Vietnam, it was passed by a majority of 46 over 51 votes.

Third was the Geneva Agreements of July 1954, co-chaired by Great Britain and the Soviet Union, which divided Vietnam into two parts at the seventeenth parallel. The Paracel and Spratly Islands, being south of the seventeenth parallel, went to the southern administration which later became the Republic of Vietnam. And on the strength of that attribution, the Republic of Vietnam administered these islands, specifically the Paracels until January 1974 when they were taken over by China by force, and the Spratly Islands until the end of the Vietnam War (April 1975). China was a big player at Geneva and it was China which forced Hanoi to accept the division of the country at the conference, meaning that it must be fully aware of the fact that the Paracel and Spratly Islands went to and belonged to South Vietnam.

Fourth was the Paris Peace Agreement of January 1973 in which the very first article says: "The United States *and all other countries* respect the independence, sovereignty, unity, and *territorial integrity* of Viet-Nam *as recognized by the 1954 Geneva Agreements on Viet-Nam.*" (Emphasis added.) Thus, there cannot be a redefinition of the territorial integrity of the country known as South Vietnam, alias the Republic of Vietnam.

Fifth and last is the Act of the International Conference on Viet-Nam (2 March 1973), signed by twelve governments, including China, "in the presence of the Secretary-General of the United Nations" (Kurt Waldheim), which guarantees the correct implementation of the Paris Peace Agreement. At least three articles in this Act repeat the formula of "the fundamental national rights of the Vietnamese people, *i.e.* the independence, sovereignty, unity, and territorial integrity of Viet-Nam, to the right of the South-Vietnamese people to self-determination": Article 2 says that as the Paris Peace Agreement responds to the aspirations of the Vietnamese people, it is recognized as "a major contribution to peace... and [to] the improvement of relations among countries. The Agreement and [its] Protocols should be strictly respected and scrupulously implemented." Article 4 says that "the [twelve] Parties to this Act... shall strictly respect the [Paris Peace] Agreement and the Protocols by refraining from any action at variance with their provisions." And Article 5 says that "for the sake of a durable peace in Viet-Nam, the Parties to this Act call on all countries to strictly respect [the same]."

It is thus irrefutable that China's occupation by force of the Paracel Islands (Xisha, Hoang Sa) in January 1974 represented a violation of at least five international treaties, of which it was a signatory and/or a guarantor. And China's introduction of HYSY 981 drilling rig into Vietnam's EEZ and its continental shelf constitutes a further violation by China of Vietnamese territorial integrity, to which it is committed by its signature put on the International Act on Viet-Nam of 2 March 1973.