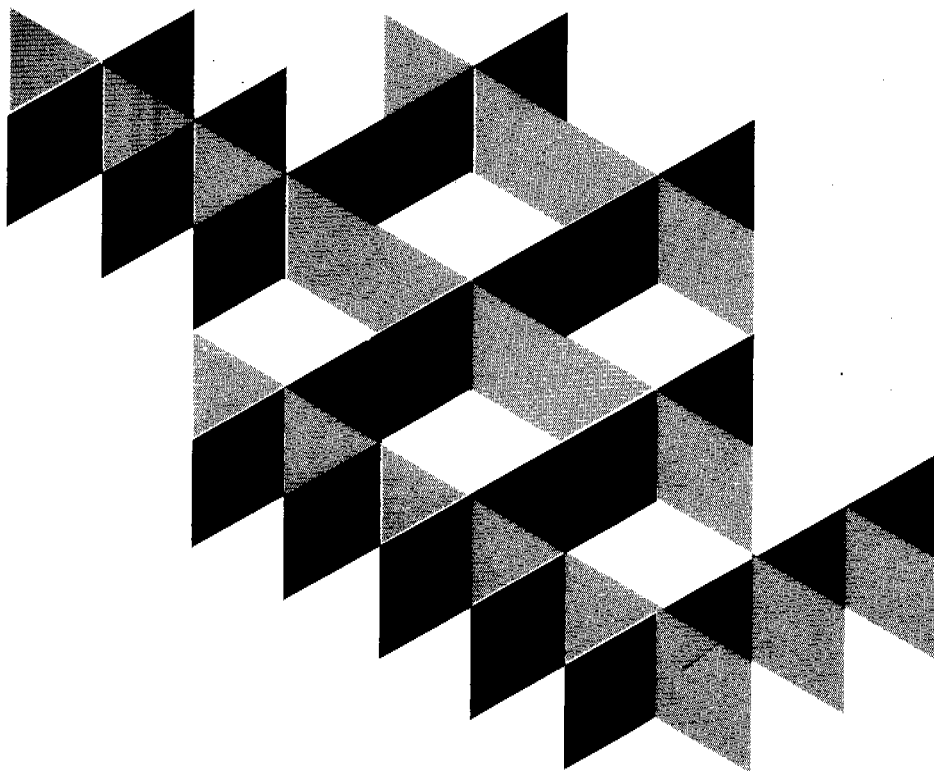


Limits in the Seas

No. 99

STRAIGHT BASELINES:

VIETNAM



This paper is one of a series issued by The Geographer, Bureau of Intelligence and Research of the Department of State. The aim of the series is to set forth the basis for national arrangements for the measurement of the territorial sea or the division of the maritime areas of coastal nations.

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The Socialist Republic of Vietnam on May 12, 1977, issued a declaration on its territorial sea, contiguous zone, exclusive economic zone, and continental shelf. The declaration claimed straight baselines, from which these maritime limits would be measured. On November 12, 1982, the Vietnamese Council of Ministers issued a declaration on the baseline which would be used to measure the breadth of the territorial sea, thus implementing the 1977 declaration. It gave specific geographic coordinates for the system of straight baselines. The full text of these two declarations follows:

STATEMENT ON THE TERRITORIAL SEA,
THE CONTIGUOUS ZONE, THE EXCLUSIVE ECONOMIC ZONE,
AND THE CONTINENTAL SHELF OF VIETNAM¹

The statement which is dated May 12, 1977, and has been approved by the Standing Committee of the SRV National Assembly, reads in full as follows:

The Government of the Socialist Republic of Vietnam,

After approval by the Standing Committee of the National Assembly of the Socialist Republic of Vietnam,

Declares that it has defined the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of the Socialist Republic of Vietnam as follows:

1. The territorial sea of the Socialist Republic of Vietnam has a breadth of 12 nautical miles measured from a baseline which links the furthest seaward points of the coast and the outermost points of Vietnamese offshore islands, and which is the low-water line along the coast.

The waters on the landward side of the baseline constitute internal waters of the Socialist Republic of Vietnam.

The Socialist Republic of Vietnam exercises full and complete sovereignty over its territorial sea as well as the superjacent air space and the bed and subsoil of the territorial sea.

2. The contiguous zone of the Socialist Republic of Vietnam is a 12-nautical-mile maritime zone adjacent to and beyond the Vietnamese territorial sea, with which it forms a zone of 24 nautical miles from the baseline used to measure the breadth of the territorial sea.

1. Foreign Broadcast Information Service (FBIS), Daily Report: Asia & Pacific, May 24, 1977.

The Government of the Socialist Republic of Vietnam exercises the necessary control in its contiguous zone in order to see to its security and custom and fiscal interests and to ensure respect for its sanitary, emigration and immigration regulations within the Vietnamese territory or territorial sea.

3. The exclusive economic zone of the Socialist Republic of Vietnam is adjacent to the Vietnamese territorial sea and forms with it a 200-nautical-mile zone from the baseline used to measure the breadth of Vietnam's territorial sea.

The Socialist Republic of Vietnam has sovereign rights for the purpose of exploring, exploiting, conserving and managing all natural resources, whether living or non-living, of the waters, the bed and subsoil of the exclusive economic zone of Vietnam; it has exclusive rights and jurisdiction with regard to the establishment and use of installations and structures, artificial islands; exclusive jurisdiction with regard to other activities for the economic exploration and exploitation of the exclusive economic zone; exclusive jurisdiction with regard to scientific research in the exclusive economic zone of Vietnam; the Socialist Republic of Vietnam has jurisdiction with regard to the preservation of the marine environment, and activities for pollution control and abatement in the exclusive economic zone of Vietnam.

4. The continental shelf of the Socialist Republic of Vietnam comprises the seabed and subsoil of the submarine areas that extend beyond the Vietnamese territorial sea throughout the natural prolongation of the Vietnamese land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline used to measure the breadth of the Vietnamese territorial sea where the outer edge of the continental margin does not extend up to that distance.

The Socialist Republic of Vietnam exercises sovereign rights over the Vietnamese continental shelf in the exploration, exploitation, preservation and management of all natural resources consisting of mineral and other non-living resources, together with living organisms belonging to sedentary species thereon.

5. The islands and archipelagos, forming an integral part of the Vietnamese territory and beyond the Vietnamese territorial sea mentioned in Paragraph 1, have their own territorial seas, contiguous zones, exclusive economic zones and continental shelves, determined in accordance with the provisions of Paragraphs 1, 2, 3 and 4 of this statement.

6. Proceeding from the principles of this statement, specific questions relating to the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf of the Socialist Republic of Vietnam will be dealt with in detail in further regulations, in accordance with the principle of defending the sovereignty and interests of the Socialist Republic of Vietnam, and in keeping with international law and practices.

7. The Government of the Socialist Republic of Vietnam will settle with the countries concerned, through negotiations on the basis of mutual respect for independence and sovereignty, in accordance with international law and practices, the matters relating to the maritime zones and the continental shelf of each country.

DECLARATION ON BASELINE OF TERRITORIAL WATERS²

The Government of the Socialist Republic of Vietnam on November 12 issued the following declaration on the baseline used to measure the width of Vietnam's territorial waters:

In furtherance of Paragraph 1 of the declaration of May 12, 1977 of the Government of the Socialist Republic of Vietnam concerning the territorial waters, the contiguous zone, the exclusive economic zone and the continental shelf which was already approved by the Standing Committee of the National Assembly of the Socialist Republic of Vietnam.

The Government of the Socialist Republic of Vietnam hereby defines the baseline used to measure the width of the territorial waters of Vietnam:

1. The baseline used to measure the width of the territorial waters of the continental part of Vietnam is constituted by straight lines linking the points the coordinates of which are mentioned in the Annex enclosed in this declaration.
2. The baseline used to measure the width of the territorial waters of Vietnam going from point 0 -- the meeting point of the two baselines used to measure the width of the territorial waters of the Socialist Republic of Vietnam and that of the People's Republic of Kampuchea, located on the high sea and on a straight line linking the Tho Chu Archipelago to the Poulo Wai Island -- to Con Co Island the coordinates of which are defined in the above-said Annex, is drawn on maps of the 1/100,000 scale of the Vietnam People's Navy published prior to 1979.
3. The Bac Bo Gulf is a gulf situated between the Socialist Republic of Vietnam and the People's Republic of China. The maritime frontier drawn in the gulf between Vietnam and China is defined in Article 2 of the Convention on the Delimitation of the Frontier between Vietnam and China signed on June 27, 1887 between France and the Qing Dynasty. The waters in the part of the gulf belonging to Vietnam constitute the historic waters pertaining to the juridical regime of the internal waters of the Socialist Republic of Vietnam. The baseline from Con Co Island to the opening of the gulf will be defined following the settlement of the question of the opening line of the gulf.

2. FBIS, Daily Report: Asia & Pacific, November 16, 1982.

4. The baseline used to measure the width of the territorial waters of the Hoang Sa and Truong Sa Archipelagoes will be determined in an ensuing text in conformity with Paragraph 5 of the declaration of May 12, 1977 of the Government of the Socialist Republic of Vietnam.

5. The waters situated on this side of the baseline of the territorial waters facing the coast and islands of Vietnam form the internal waters of the Socialist Republic of Vietnam.

6. The Government of the Socialist Republic of Vietnam will solve with the countries concerned through negotiations on the basis of mutual respect for each other's independence and sovereignty and in conformity with international law and practice the differences concerning the sea zones and the continental shelf of each country.

ANNEX

Coordinates of the Points on the Baseline for Measuring the Width of Vietnam's Territorial Waters (Enclosed in the Declaration of November 12, 1982 of the Government of the Socialist Republic of Vietnam).

<u>Points</u>	<u>Geographic Names</u>	<u>Latitude N</u>	<u>Longitude E</u>
0	On the southwestern demarcation line of historic waters of the S.R.V. and the P.R. of Kampuchea		
A.1	At Hon Nhan Island, Tho Chu Archipelago, Kien Giang Province	9°15.0'	103°27.0'
A.2	At Hon Da Island southeast of Hon Khoai Island, Minh Hai Province	8°22.8'	104°52.4'
A.3	At Tai Lon Islet, Con Dao Islet in Con Dao-Vung Tao Special Sector	8°37.8'	106°37.5'
A.4	At Bong Lai Islet, Con Dao Islet	8°38.9'	106°40.3'
A.5	At Bay Canh Islet, Con Dao Islet	8°39.7'	106°42.1'
A.6	At Hon Hai Islet (Phu Qui group of islands), Thuan Hai Province	9°58.0'	109° 5.0'
A.7	At Hon Doi Islet, Thuan Hai Province	12°39.0'	109°28.0'
A.8	At Dai Lanh point, Phu Khanh Province	12°53.8'	109°27.2'
A.9	At Ong Can Islet, Phu Khanh Province	13°54.0'	109°21.0'
A.10	At Ly Son Islet, Nghia Binh Province	15°23.1'	109° 9.0'
A.11	At Con Co Island, Binh Tri Thien Province	17°10.0'	107°20.6'

ANALYSIS

Vietnam's claimed straight baseline system is illustrated on the attached map, which has been constructed from U.S. DMAHTC chart No. 550.

The straight baseline system described in the November 12, 1982, declaration consists of one continuous system with 10 segments and 11 basepoints.³ The system is incomplete in areas that abut Kampuchean and Chinese maritime jurisdictions. The declaration, however, indicates the Vietnamese understanding of the bases upon which these will be determined. The baseline systems for the Vietnamese-claimed Paracel Islands (Hoang Sa) and Spratly Islands-Dangerous Ground (Truong Sa) are also left to future delimitation.⁴

The text of the declaration does not indicate the type of lines (i.e., rhumb or geodetic) to be used in connecting the points. For convenience, rhumb lines are used in the depiction on the accompanying map; however, all distance measurements are made along geodetic lines. The total length of the 10 segments is 846.0 nautical miles (nm). The mean distance between consecutive basepoints is 84.6 nm and ranges from 2.0 to 161.8 nm. All but two of the basepoints are on islands. These island basepoints average 39.4 nm from the nearest mainland points and are a maximum of 80.7 nm from the mainland at point A6 (Hon Hai Islet). The internal waters claimed within this incomplete baseline system enclose approximately 27,000 sq nm (93,000 square kilometers)--an area equal to that of the State of Maine or Indiana.

3. On December 6, 1982, the United States conveyed to the Socialist Republic of Vietnam an aide-memoire protesting this baseline system. On February 1, 1983, the Socialist Republic of Vietnam rejected the US protest in an aide-memoire.

4. The Paracel Islands are also claimed by China; part or all of the Spratly Islands-Dangerous Ground is claimed by China, Malaysia, the Philippines, and Vietnam. For details of the respective claims, see "Letter dated 11 February 1980 from the Permanent Representative of China to the United Nations addressed to the Secretary-General" and accompanying annex (A/35/93), UN General Assembly, 35th session, February 12, 1980; FBIS, "Government Affirms Claim to Disputed Islands," Daily Report: Asia & Pacific, September 12, 1983; Diane C. Drigot, "Oil Interests and the Law of the Sea: The Case of the Philippines," Ocean Development and International Law, 12 (1982): 23-70; and "Letter dated 1 October 1979 from the Permanent Representative of Viet Nam to the United Nations addressed to the Secretary-General," and accompanying enclosure (A/34/541), UN General Assembly, 34th session, October 19, 1979.

The distances between consecutive basepoints and the distances from the mainland coast to offshore basepoints are shown below.

BASEPOINT	DISTANCE BETWEEN POINTS (nm)	DISTANCE TO MAINLAND (nm)
A1		80.7
A2	99.2	11.0
A3	105.2	50.5
A4	3.0	51.1
A5	2.0	51.5
A6	161.3	74.2
A7	161.8	-
A8	14.8	-
A9	60.2	7.6
A10	89.5	14.1
A11	149.0	13.9
Mean -	84.6	39.4
Total -	846.0	

The straight baseline system specified in the 1982 declaration implements the earlier statement on Vietnam's territorial waters (May 12, 1977). Shortly after the 1982 declaration, a discussion of the declaration appeared in the authoritative Nhan Dan, which elaborated the baseline declaration.⁵ The following analysis makes use of the Nhan Dan article, which as the official daily publication of the Communist Party of Vietnam must be viewed as reflecting official Vietnamese positions. The text of the

5. Hai Thanh (pseud.), "The Base Line of Vietnam's Territorial Waters," Nhan Dan (Hanoi), November 15, 1982 (trans. Joint Publication Research Service, Southeast Asia Report, No. 1237, January 12, 1983).

declaration makes reference to "the Convention on the Delimitation of the Frontier between Vietnam and China signed on June 27, 1887 between France and the Qing Dynasty." In addition to the 1887 Convention, the Nhan Dan article makes specific reference to Article 4 of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, Article 7 of the 1982 Convention on the Law of the Sea,⁶ and an agreement on the common historic waters between the SRV and the People's Republic of Kampuchea signed on July 7, 1982.⁷ In claiming straight baselines, the Nhan Dan article also refers to the state practice of Burma, Malaysia, and Thailand.

Gulf of Thailand

According to the declaration, the yet-to-be-defined terminus in the Gulf of Thailand, point 0, is:

"...located on the high sea and on a straight line linking the Tho Chu Archipelago to the Poulo Wai Island...."

A similar definition is given in the Nhan Dan article, which includes a specific reference to the agreement on common historic waters between Kampuchea and Vietnam. Although Vietnam is not a party to the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone, the Nhan Dan discussion of the baseline declaration cites this convention, particularly Article 4. Vietnam has signed, but not ratified, the 1982 Convention on the Law of the Sea, which is also cited in Nhan Dan. The Vietnamese-proposed point 0 is neither a high-tide elevation nor a low-tide elevation with a permanent structure; therefore, a basepoint at point 0 appears to be in violation of both conventions cited above.⁸

6. The US has not signed the 1982 Convention, which is not yet in force.

7. Agreement on the Historical Waters of the Socialist Republic of Vietnam and the People's Republic of Kampuchea, signed July 7, 1982, Ho Chi Minh City (trans. in FBIS, Daily Report: Asia & Pacific, July 9, 1982). This agreement was denounced by the Foreign Ministry of the Coalition Government of Democratic Kampuchea on January 10, 1983 (see FBIS, Daily Report: China, January 19, 1983).

8. J. R. V. Prescott, in The Political Geography of the Oceans (New York: Wiley, 1975), p. 95, addresses a similar claim by Ecuador in the Gulf of Guayaquil. An instance of a straight baseline segment between points in different states is discussed in Marjorie M. Whiteman, Digest of International Law, Vol. 4, pp. 184-85.

The apparent admission that the waters between the Tho Chu Archipelago and Poulo Wai Island are on the "high sea"⁹ would imply certain restrictions on the claimed internal waters. Even if these waters were now considered internal, Article 5 of the 1958 Geneva Convention calls for the maintenance of the "right of innocent passage" in former high seas areas.¹⁰ The use of the English term "high sea" in describing the location of point 0 also calls into question the basic tenet that these waters are "historic" (as discussed below).

The method by which this proposed point 0 is to be linked to the terminus of the Kampuchea-Vietnam land boundary is not specified, but it is related to the future division of the claimed historic waters.¹¹

Gulf of Tonkin

The Vietnamese appear to view the entire Gulf of Tonkin (Bac Bo Gulf) as internal historic waters of Vietnam and China. The author of the Nhan Dan article claims that the "Bac Bo Gulf is an historic gulf situated between Vietnamese and Chinese territories." The northern segments of the Vietnamese-claimed straight baseline in the gulf will, by the Vietnamese position, also serve as the boundary with the People's Republic of China in the gulf. The segment(s) connecting the Vietnamese claimed meridional boundary from the terminus of the land boundary to point A.11, near the entrance of the gulf, are explicitly left for future determination. However, the Vietnamese cite the 1887 Sino-French treaty as the basis for future delimitation.

9. The term "high sea" is in the original English, as broadcast.

10. "Where the establishment of a straight baseline in accordance with article 4 has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles 14 to 23, shall exist in those waters." (Article 5, paragraph 2, 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.)

11. "It was agreed that negotiation would be conducted to settle the question of the demarcation line in the historic waters in accordance with the SRV statement of 12 May 1977 and the PRK law of 31 July 1982. After that, the coordinates of point 0 would be established specifically." (Hai Thanh, "The Base Line of Vietnam's Territorial Waters.")

The entrance to the gulf, though the exact headlands are not well defined, exceeds 24 nm. The distance from Con Co Island to the nearest point on Hainan Island is approximately 112 nm. Under international law, such an overlarge bay can be closed and considered internal waters only if it has the characteristics of an historic bay.¹² The apparent claim to an historic bay includes several unusual aspects.

The concept of historic bays, though recognized in international law, is ill-defined. In attempting to define historic bays, one author suggests the following points:

"(1) The claimed water area ought to be adjacent to the coast of the claimant State.

"(2) The waters must be claimed by the coastal State a titre de souverain.

"(3) The pretended sovereignty has to be exercised effectively and for a sufficiently long period.

"(4) The so created situation ought to be a matter of common knowledge, at least for the directly interested States.

"(5) The international community of States, and certainly the directly interested nations must have acquiesced in the pretended territorial rights."¹³

The occurrence of claims to historic bays that are shared by more than one state is even less common than the relatively small number of single states claiming historic bays.¹⁴

The general norms for the concept of an historic bay, enumerated above, and the few case studies of bays bordered by more than one state suggest that, at a minimum, the states bordering the bay must all agree that

12. There is no clear distinction between "gulf" and "bay" in current international legal usage. See Mitchell P. Strohl, The International Law of Bays (The Hague: Martinus Nijhoff, 1963), pp. 54-65 and 233-329.

13. Leo J. Bouchez, The Regime of Bays in International Law (Leyden: Sythoff, 1964), p. 281.

14. Of the possible historic bays bordered by more than one state examined by Bouchez, the Gulf of Fonseca, Bay of Granville, Gulf of Aqaba, Palk Bay, and the Gulf of Manaar may be relevant to Vietnam's Gulf of Tonkin claim. Strohl examines the Gulf of Fonseca, the Gulf of Aqaba, Gibraltar Bay, and the Bay of Fundy.

the bay is an "historic bay." The Vietnamese claim to historic waters is questionable because China, which also borders the Gulf of Tonkin, does not claim the gulf as historic waters and disputes the Vietnamese claim to the meridional boundary within the gulf.¹⁵

The Basepoints and Segments

The relation of the baseline claimed by Vietnam to the coastline of Vietnam is shown on the attached chart. Several of the island basepoints used by Vietnam are at a considerable distance from the mainland. This is especially true of the Tho Chu Archipelago, the Con Dao group, and the Phu Quy group (Catwick Islands), all of which are at least 50 nm from the mainland and neighboring island groups. The 1958 Convention requires "a fringe of islands along the coast in its immediate vicinity" for a state to use straight baselines (emphasis added).¹⁶ The Nhan Dan article of November 15, 1982, states that "[a]lthough some base points are about 50-70 nautical miles from shore and more than 100 nautical miles from

15. The only bay the PRC explicitly claims as an historic bay is the Bo Hai. The Chinese use the term "territorial waters" for the area of the Gulf of Tonkin and dispute the 1887 Sino-French meridional line as a maritime boundary in the Gulf. (See "Letter dated 22 February 1983 from the Permanent Representative of China to the United Nations addressed to the Secretary-General" and accompanying documents (A/38/97), UN General Assembly, February 25, 1983; US Department of State, Office of The Geographer, Limits in the Seas No. 43, "Straight Baselines: People's Republic of China," July 1, 1972, and International Boundary Study No. 38, "China-Vietnam," December 15, 1978.

The relevant article of the 1887 Sino-French treaty is as follows:

"Les points sur lesquels l'accord n'avait pu se faire entre les deux Commissions, et les rectifications visées par le paragraphe 2 de l'Article III du Traité du 9 Juin, 1885, sont réglés ainsi qu'il suit:-

"Au Kouang-tong, il est entendu que les points contestés qui sont situés à l'est et au nord-est de Monkaï, au delà de la frontière telle qu'elle a été fixée par la Commission de Délimitation, sont attribués à la Chine. Les îles qui sont à l'est du méridien de Paris 105° 43' de longitude est, c'est-à-dire, de la ligne nord-sud passant par la pointe orientale de l'Ile de Teh'a-Kou ou Ouan-chan (Tra-co) et formant la frontière, sont également attribuées à la Chine. Les Iles Go-tho et les autres îles qui sont à l'ouest de ce méridien appartiennent à l'Annam."

16. Article 4. The same language is used in the 1982 Convention on the Law of the Sea.

each other, our stipulations on the baseline of [the] territorial waters do not conflict with the stipulations of international law and customs thus far." The article goes on to cite three examples of exceptionally long baselines digressing great distances from the coast: e.g., Burma, Malaysia, and Thailand.

The "low-water line along the coast," specified in paragraph 1 of the 1977 Vietnamese statement, is not used for any part of the claimed baseline system--only islands and single points on the mainland were used in the 1982 declaration.

Regarding the baseline system and its relation to the general direction of the coast, the Nhan Dan discussion concludes that

"Our baseline linking these base points does not deviate in any way from the general 's-shaped' direction of our coast...."

Although the baselines are s-shaped, it might be argued that they do not closely follow the direction of the coastline.¹⁷ Article 4 of the 1958 Geneva Convention requires that

"The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast...."

In several significant respects, geographic components of the straight baselines claimed by Vietnam do not appear to follow the convention signed by Vietnam or those conventions referenced in the article published in the official daily of the Communist Party of Vietnam.

17. For a comparative analysis of state practice and the general direction concept, see Prescott, pp. 81-95.