

**SOME BASIC CONTENT IN THE NEGOTIATION PROCESS MARITIME DELIMITATION  
BETWEEN VIETNAM AND MALAYSIA****\*Master Le Van Bao**

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**Abstract**

Sea delimitation is a process of negotiation and cooperation between countries with contiguous seas, it is necessary to conduct cooperation to delimit the sea area in an equitable manner, for mutual benefits. The process of sea delimitation must be based on the international legal system of the sea, international practices and practices on maritime delimitation, especially the provisions of the United Nations Convention on the Law of the Sea 1982-UNCLOS. Vietnam and Malaysia are two countries with contiguous seas, so both sides have an urgent need to negotiate maritime delimitation, in order to ensure the interests of both sides, and at the same time contribute to preserving a peaceful environment peace and stability in the contiguous waters between the two countries as well as in the East Sea.

**Keywords:** Sea delimitation, Vietnam, Malaysia.

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**INTRODUCTION**

In general, maritime delimitation is understood as the process of demarcating the boundary line dividing the seas between two or more countries concerned. The issue of maritime delimitation is posed to countries with adjacent or opposite seas. The delimitation of the sea is aimed at clearly defining the maritime boundary dividing the sea areas under national sovereignty or defining the boundary line dividing the sea areas under national sovereignty. Delimitation of the sea is an important issue in the law of the sea. This issue is not only meaningful for each maritime state in determining national territorial boundaries, but also plays a role in establishing order at sea. Besides, maritime delimitation is also a sensitive issue because it is directly related to national sovereignty and interests. Therefore, in order to avoid a situation of conflict, the maritime delimitation must be conducted in a reasonable manner, respecting international law and practice in the countries. Sovereignty and national borders are one of the key issues and the top concern of all peoples. Coastal States located opposite or adjacent to each other, when determining the extent of the same sea and continental shelf in accordance with the provisions of UNCLOS and depending on the distance between the coasts of the countries located opposite or adjacent to each other, have created overlapping internal waters, overlapping territorial seas, overlapping exclusive economic zones and overlapping continental shelves. The delimitation of Vietnam's maritime boundaries with relevant countries is a very important and sacred issue because it concerns sovereignty, national jurisdiction, and national interests. The delimitation requires strict application of international law and practice in specific natural conditions and circumstances, each country has to protect its sovereignty and interests; at the same time, must respect the legitimate rights and interests recognized by international law and practice of neighboring countries. The fine settlement of the plan to demarcate the maritime border between Vietnam and the relevant countries is both a thorough grasp and a

demonstration of the correct policy of the Party and State in solving the border issue with Vietnam. Neighboring countries, while negotiating a settlement in the spirit of respecting independence, sovereignty, equality, in accordance with international law and practice, in accordance with objective circumstances, in order to reach a public solution acceptable to all parties. The negotiation results have helped step by step to clearly define the scope and legal regime of Vietnam's seas, create favorable conditions for the use, exploitation and management, and contribute to socio-economic development. Association of the country, strengthen friendly cooperation relations with neighboring countries, reduce the risk of disputes and conflicts, maintain peace and stability in the surrounding waters of the country. The delimitation of Vietnam's sea boundary with relevant countries also has an important meaning in the management of marine fishing activities, contributing to the prevention and reduction of violations by Vietnamese fishermen and fishing vessels waters of other countries for illegal fishing. Maritime delimitation is an international activity aimed at delineating maritime boundaries including internal waters, territorial seas, maritime boundaries including exclusive economic zones and continental shelves between two or more countries with coastlines opposite or contiguous through mediation negotiations or international arbitration mechanisms. On that basis, countries organize, manage, protect and exploit resources in sea areas under their national sovereignty according to delimited maritime boundaries and maritime boundaries, contributing to the construction of a marine environment security, safety, peace and stability at sea. With respect to the delimitation of the territorial sea, Article 15 of UNCLOS stipulates that: When two States have adjacent or opposite coasts, neither State shall have the right to extend its territorial sea beyond the median line, unless reverse agreement. With regard to delimiting the boundary of the exclusive economic zone and the continental shelf, Articles 74 and 83 of the UNCLOS provide: mutual representation is carried out by way of agreement in accordance with international law as stated in article 38 of the Statute of the International Court of Justice, in order to arrive at a just

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solution. Thus, the basic principle in maritime delimitation is the principle of agreement and the principle of fairness. However, in fact, due to many reasons, there has not been an agreement and agreement between the countries to delimit the entire system of border lines and sea boundaries, leading to complicated and prolonged disputes, especially over the sea waters of the East Sea. In particular, some major countries not only did not comply with the principles of agreement and fairness, but also subjectively imposed, drew their own borders and maritime boundaries, violated or even ignored provisions in the provisions of the Articles of Association of UNCLOS, destabilizing maritime security, leading to many consequences in the overall relations between countries in the region. Therefore, the United Nations - the highest international legal organization, should promote its role in maintaining international law to ensure fair rights for maritime states. On the other hand, countries also need to strengthen their fight against ideas and actions of hegemony and power at sea, affecting the peaceful and stable environment of the region.

Vietnam's position on the issue of maritime delimitation. Clause 3, Article 4 of Vietnam's Law on the Sea 2012 affirms that: The State settles disputes related to sea and islands with other countries by peaceful means, in accordance with UNCLOS, international law and practice. In the practice of delimiting the sea with relevant countries, Vietnam's consistent stance is based on international law and practice, especially UNCLOS, taking into account the natural circumstances and conditions in the delimited area to reach a fair solution that is acceptable to all parties. Maritime delimitation is the most important basis for maintaining stability and peace at sea so that countries can exploit resources from the sea to serve the cause of national economic development. Therefore, the United Nations and maritime states need to make efforts to delineate maritime boundaries and maritime boundaries based on the principle of agreement and fairness, contributing to building a safe, secure, and harmonious marine environment peace, stability and sustainability.

### **The process of sea delimitation between Vietnam and Malaysia**

In fact, the sea bordering Vietnam and Malaysia exists an overlapping sea on the continental shelf of the two countries, about 2,800 square kilometers wide. This area is located at the mouth of the Gulf of Thailand with a small depth, about 50 m on average, the seabed topography is relatively flat and homogeneous. The overlapping area is formed by the continental shelf boundary line announced by Vietnam in 1971 and the continental shelf boundary line shown on the Malaysian chart published in 1979. This area is narrow, with a width of less than 10 nautical miles and is about 100 nautical miles in length. Both sides use the median line method but from different base points. The Vietnamese line is drawn between the island of Hon Khoai, 6.5 nautical miles from the shore, and the coast of Malaysia. Malaysia's road is from two small islands, Redang Island and Tangon Island with the coast of Vietnam, omitting Khoai Island. On the basis that both countries are members of UNCLOS, both Vietnam and Malaysia accept to apply the principles of international law and the provisions of UNCLOS to settle maritime delimitation. In early 1992, during the visit to Kuala Lumpur by Vietnamese Prime Minister Vo Van Kiet, an agreement on conducting negotiations on the delimitation of the continental shelf between the two countries was approved. Vietnam and

Malaysia are both parties to UNCLOS, so the common principle to resolve the delimitation of the continental shelf and exclusive economic zone is the principle of fairness, which is recognized in Articles 74 and 83 of UNCLOS. The requirement of reality is that the two sides must sequentially negotiate, narrow down disagreements and conflicts, in order to find a fair solution that both sides can accept.

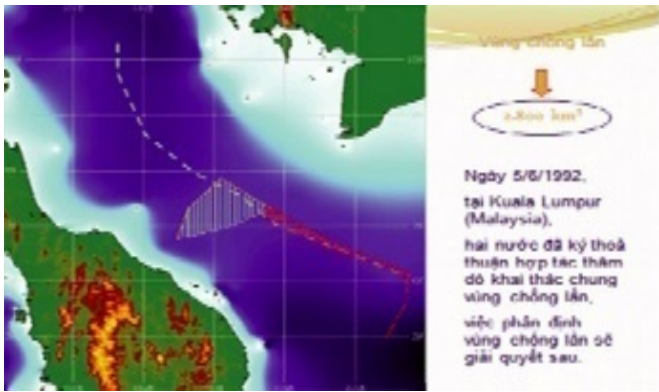
From June 3 to 5, 1992, in Kuala Lumpur, the first round of negotiations between Vietnam and Malaysia took place and was successful. On the basis of the content of that first round of negotiations, the two countries have step by step agreed to apply the principle of provisional settlement as provided for in Articles 74 and 83 of UNCLOS, that is, the line is drawn and indicated on a chart of appropriate scale to determine its position, in some cases the drawing of these external boundaries or planning lines may be replaced by lists of the geographical coordinates of points. On that basis, the two sides quickly came to an agreement to apply a common exploitation model to the defined area in the spirit of understanding and cooperation. With the spirit of friendship, respect for international law, international law of the sea and legitimate interests of both sides, on June 5, 1992, the two countries officially signed a Memorandum of Understanding. The content of the Memorandum of Understanding dated June 5, 1992, specified the scope of the defined area, and the two sides must appoint their representatives to conduct exploration and exploitation activities in the specified area and cooperate such exploitation shall not prejudice the final maritime delimitation planning outcome between the two countries.

Through the signing of the MoU on June 5, 1992, it can be seen that Vietnam has always been a leading country in applying the provisions of Articles 74 and 83 of UNCLOS, not only in maritime delimitation but also in measures to jointly exploit marine resources in overlapping seas. However, the reality shows that the Memorandum of Understanding cannot completely solve the issue of maritime delimitation between Vietnam and Malaysia. Reality shows that the two sides need to continue to negotiate peacefully and based on the content of UNCLOS and the Memorandum of Understanding to delimit the continental shelf and exclusive economic zone. In the current context, the two countries have a friendly and friendly relationship, both are active members of ASEAN, which is a favorable premise for the two countries to continue negotiating the maritime delimitation to come to an agreement final determination.

### **Practice of maritime cooperation between the two countries**

In this area, Malaysia has signed a contract to exploit oil and gas block PM3 with IPL Oil and Gas Company, of which about 1,800 km<sup>2</sup> is located in the overlapping area. To the east of the overlap, Malaysia agreed to the continental shelf boundary with Indonesia in 1969 (Mark J Valencia (1991), To the west of the delimited area, Malaysia and Thailand reached an agreement on February 21, 1979 to exchange letters of ratification on October 24, 1979 for a common development area with a term of 50 years. However, the large oil and gas potential discovered requires the two sides to soon find a viable solution to quickly exploit the oil while negotiating the delimitation takes time. In addition, with such a narrowly contested sea, any discovered oil field is likely to lie across two claim lines. This leads to the possibility that the two

countries have to merge mines to have commercial exploitation conditions, with or without a demarcation line.



Vietnam - Malaysia Agreement (source: thuy-sanvietnam.com.vn)

These reasons have prompted the two countries to come to an agreement to apply the principle of provisional settlement in Articles 74 and 83 of UNCLOS. During the visit to Kuala Lumpur by Vietnamese Prime Minister Vo Van Kiet in early 1992, an agreement on conducting negotiations on the delimitation of the continental shelf between the two countries was approved. Then, from June 3 to 5, 1992, in Kuala Lumpur, the first round of negotiations between Vietnam and Malaysia was successful. The two sides quickly reached an agreement to apply a common exploitation model to a defined area in the spirit of understanding and cooperation. This agreement is without prejudice to the final planning outcome. The defined area extent only concerns the overlapping area between the two parties and excludes all parts of the overlapping area related to the claim of a third country. The tripartite overlapping area includes Thailand, Vietnam and Malaysia has been the subject of another negotiation process since late 1997. The Vietnamese side sent Petro Vietnam and the Malaysian side sent Petronas as a representative to conduct exploration and exploitation activities in the defined area. Petronas and Petro Vietnam soon came to a commercial agreement on August 25, 1993, on oil and gas exploration and production in a defined area. The agreement envisages the creation of a coordinating committee tasked with drafting policy guidelines for the management of oil and gas activities in a defined area. This committee operates on the principle of consensus. The Committee has eight members with equal voting rights, four appointed by Petronas and four appointed by Petro VietNam. The Acting Chairman of the Committee can be exchanged between the two sides for a term of two years. The agreement also clearly stipulates that the two sides agree to keep the value of PSC oil and gas product sharing contracts signed between Petronas and previous contractors here in the specified area. Petro VietNam authorizes Petronas to manage oil and gas activities in a defined area under the direction of the Coordination Committee, in accordance with the provisions of the memorandum, commercial agreements and PSC contracts. Any dispute or disagreement relating to oil and gas trade and activities shall be resolved by two national companies, under the direction of the Coordination Committee. Any resolution or decision of the Commission must be in accordance with friendship, prudence, and modern oil and gas industry practice. Only disputes or disagreements that cannot be resolved amicably by the Coordinating Committee shall be submitted to the governments of Vietnam and Malaysia for settlement. The Memorandum of Understanding also stipulates the principle of equally sharing between the two parties all costs and profits

derived from oil and gas activities, conducted under the commercial agreement. PetroVietNam authorizes Petronas, which directly conducts oil and gas activities in a defined area under the direction of the Coordination Committee, to undertake all financial activities, to pay taxes according to the agreement between the two governments and split the profits for PetroVietnam. The two sides also planned to merge the mine. Article 2, paragraph 2 of the Vietnam and Malaysia Memorandum of Understanding stipulates: "When an oil field is located partly within a defined area and partly outside, on the continental shelf of Vietnam or Malaysia as may occur in the In this case, the two sides will agree to come to acceptable terms for the exploration and exploitation of the above oil field. After four years of the commercial agreement was approved, to implement the content of the Memorandum of Understanding, Vietnam sent Petro Vietnam, Malaysia sent Petronas to cooperate in exploiting oil and gas resources in a defined area, on July 29, 1997, The first ton of oil has been extracted in a specified area from the Bunga Keva field, this event has marked a great success for both sides in the management and cooperation in exploiting natural resources as well as contributing valuable experience valuable to international practice.

This shows that Vietnam and Malaysia have succeeded in applying a common exploitation management model in the Gulf of Thailand area. This result gives valuable experience in the management and exploitation and settlement of maritime border disputes in the region and in the world. It makes more sense to compare the joint exploitation model of Vietnam and Malaysia with that of Thailand and Malaysia. The following model has been applied since 1979, but so far, there are still many difficulties in management to be able to exploit oil commercially.

The 1992 Memorandum of Understanding also shows that Vietnam has always been a leading country in applying the provisions of Articles 74 and 83 of UNCLOS, not only in delimitation but also in joint exploitation measures. However, it must be noted that this memorandum of understanding was signed at a time when Vietnam was beginning to doi moi, which lacked many laws and regulations, especially the Law on Petroleum. The authorization of Petronas to conduct oil and gas activities under the Malaysian Petroleum Law that accelerated the field development at that time caused some difficulties today. Petronas must pay taxes and send the profit after distribution to PetroVietnam through a Malaysian bank. Therefore, the two countries need to continue to negotiate on financial and customs issues related to the mine.

Because the distance between the coasts and islands of the two sides is less than 400 nautical miles, lying on a homogeneous continental shelf and moreover, the claims of both sides are based on the median line, i.e. based on the standard of coastal distance sea of the two countries, a single delimitation line can be used as the boundary for both the exclusive economic zone and the continental shelf of the two countries. The mere division of the existing overlapping maritime area between the two sides is an acceptable and fair delimitation solution. After a long time of negotiation, on May 6, 2009, Vietnam and Malaysia jointly submitted a joint report on the extended continental shelf area related to the two countries to the Commission on the Limits of the Continental Shelf of the United Nations country.

Maritime cooperation between Vietnam and Malaysia has demonstrated the peaceful spirit of resolving disagreements over the overlapping waters between the two countries and is also considered a model in resolving maritime sovereignty disputes islands between neighboring countries in the East Sea.

#### **Some comments**

The maritime delimitation cooperation between Vietnam and Malaysia has contributed to the practical experience of the world and the region in resolving disagreements and disputes at sea. From 2009 to 2023, the two sides will continue to maintain peace and stability at sea, contributing to preserving the good friendship between the two countries, and at the same time contributing to maintaining a peaceful and stable environment on the sea adjacent sea areas, serving as a basis for the two sides to cooperate for economic development.

In the current context, the two sides need to continue negotiating the delimitation of the continental shelf and exclusive economic zone. Because the distance between the coasts and islands of the two sides is less than 400 nautical miles, lie on a homogeneous continental shelf, and moreover, the claims of both sides are based on the median line, i.e. based on the standard of distance alternatively, a single delimitation line can be used as the boundary for both the exclusive economic zone and the continental shelf. The pure division of the existing overlapping area between the two sides is a fair demarcation solution that is easily accepted by both sides.

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