

Brothers in Trouble: China-Vietnam Territorial Disputes and Their Bilateral Approach to Conflict Management

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Abstract

In the post-World War II period, China and Vietnam have engaged in a number of territorial disputes between themselves. They can be categorized into two groups. The first group consists of disputes over Sino-Vietnamese borderlands and the Gulf of Tonkin and the second one is concerned with disputes in the South China Sea (SCS). While the former came to an amicable end by December 2000, the latter has continued to date with occasional hikes of tensions and stand-offs. Despite different trajectories that the respective categories have taken, their management appears to reflect what can be termed as the “Sino-Vietnamese Way of conflict management”. This paper aims to identify the basic features of this type of conflict management from the standpoint of incompatibility management and, through comparison between the two categories of disputes, find reasons for the different outcomes between them. Major findings of this study are: First, the mutual trust that had been forged through fraternity between the two ruling communist parties and their readiness for mutual accommodation as a result played a crucial role in the successful settlement of the first category of disputes. Second, three issues prevent the full functioning of the Sino-Vietnamese Way of conflict management in the second category of disputes, which are: the exposure of the management process to nationalistic sentiments of the public; the existence of several complicating factors; and the division between the pro-China and pro-U.S. factions within the Vietnamese leadership. Third, several mechanisms to manoeuvre around incompatibilities, prevent crisis and reduce tension have been developed to compensate for the detrimental factors and appear to have been working fairly well.

Keywords: *incompatibility management, mutual trust and accommodation, inter-party fraternity*

1. Introduction

Since establishing themselves as independent sovereign states in the wake of World War II, China and Vietnam have been plagued with a number of territorial disputes against each other due to long and commonly shared land borders, contested islets and other maritime features, undetermined sea boundaries, and historical baggage in their own bilateral relations. These disputes can be grouped into two categories: (1) disputes over Sino-Vietnamese borderlands and the Gulf of Tonkin; and (2) disputes in the South China Sea (SCS).

The first category of disputes was brought to an end after the two states reached the Agreement on Gulf of Tonkin Maritime Boundary Delimitation in 2000 and completed a joint land border demarcation in December 2008. These significant achievements of dispute settlement were the results of the willingness and effort of the two ruling communist parties, whose brotherly mutual relationship can be considered to have provided stability in the management of the bilateral disputes. During the long-standing management processes, the two states actively promoted what may be called a “Sino-Vietnamese Way of conflict management”, characterized by mutual respect and accommodation. Its significance lay in jointly taking measures to avoid escalating tensions while also maintaining and deepening their well-known “comradely and brotherly friendship”. In doing so, the conflicts were effectively resolved without resorting to force or third party involvement.

However, recently raised frictions in SCS disputes, where China and Vietnam claim by far the largest overlapping waters of the sea among the claiming countries, show that the second category of disputes is much more complicated and intractable than the first one, rendering itself to be one of the flashpoints in the Asian-Pacific region. Early tensions spiked in the SCS when the two countries waged short battles against each other in 1974 and 1988, resulting in China’s control over the whole Paracel Islands and several strategically important maritime features in the Spratly Islands. Since then, the bilateral naval tensions had eased for almost two decades (1990–2007). In recent years, however, the tensions have been on the rise again, especially since 2010 when the U.S. began to intervene into the affairs of the SCS. The recent maritime flare-ups between China and Vietnam have damaged the bilateral ties of the two communist neighbours to a considerable degree. Thus, two significant questions can be asked: Why was the Sino-Vietnamese joint approach able to reduce tensions and contribute to resolving the disputes in the first category, but not sufficiently in the second? How has this difference in outcomes arisen?

What is interesting about the management of the second category in particular is the fact that despite stand-offs, protests and incompatible

positions between China and Vietnam, their inter-party relations have remained unbroken, marked among others by Secretary-General of the Communist Party and President of the People's Republic of China Xi Jinping's state visit to Hanoi in August 2015. This was an occasion when the two state leaders reached a wide consensus on reinforcing their traditional "lips and teeth" relations, and reiterated that the futures of the two countries were highly intertwined under the socialist cause (*Xinhua News*, 2015). On the other hand, recent developments such as the deepening U.S.–Vietnam relationship (Vuving, 2015), the 2014 Haiyang Shiyou 981 incident,¹ China's land reclamation activities in the waters of the Spratly Islands since early 2014, and alleged militarization of the SCS (Gady, 2016) reflect that relations between Beijing and Hanoi have become more complicated and ambiguous these days. In this respect, a few more specific questions about the second category of the bilateral disputes are due: How have China and Vietnam been responding to the on-going disputes in the SCS, which are fraught with the above-mentioned tensions and challenges? To what degree have their efforts to manage the SCS disputes been successful or unsuccessful and why? Does the traditional fraternal relationship between the two ruling communist parties play a part in the management efforts?

This paper aims to identify and assess the Sino-Vietnamese joint approach to manage territorial disputes between the two countries. It first sets up an analytical framework, which enables us to look at the management of the two categories of the bilateral disputes from the standpoint of incompatibility management and to assess the effectiveness of management efforts. The paper then investigates the management of the first category with a view to clarifying the Sino-Vietnamese Way of conflict management. Lastly, it assesses the bilateral management of the SCS disputes in comparison with that of the first category disputes.

2. Analytical Framework: Incompatibility Management

Incompatibilities appear typically in a clash between positions or goals that conflicting parties take or pursue, and constitute the core of conflict. Therefore, in the field of conflict management, it is essential to identify incompatibilities in the conflict concerned and examine and assess the different ways in which they are addressed. Theoretically, incompatibilities can be handled in one of the following manners or in their combination.

2.1. Eliminating a Conflict Party as the Carrier of Contradictions

Incompatibilities may be dissolved by eliminating a conflict party as their carrier. The positions or the goals of the eliminated party disappear together

with the party. As a result, the remaining party is free to impose its own terms on the “disarmed” or “disbanded” constituency of the defunct one (Oishi, 2011: 101). This strategy is adopted typically by the state actors such as security forces against the non-state opposition or insurgent movements. However, to the degree to which the root causes of the incompatibilities are not addressed and remain, new conflict parties may emerge.

2.2. Imposing One Party’s Position on the Other

Incompatibilities may be dissolved by a conflict party imposing its own terms on the other through open or subtle coercion, manipulation or deception. Coercion can be peaceful or non-peaceful. The latter type is easier to identify than the former, as can be observed when a conflict party resorts to physical force to impose its own will on the other. The same result may be acquired through the use of threat. On the other hand, economic sanctions can be regarded as a peaceful coercion, as it usually involves non-physical means. There is a moral coercion when a sense of guilty or moral burden is invoked in the opponents, who are hereby forced to behave contrary to their own will, as was successfully effected by the civil disobedience movement led by Mahatma Gandhi in pre-independent India (Bennis et al., 1984: 40-41). Coercion in any form aims to dissolve incompatibility by forcing parties to give up their original positions or goals. Therefore, the resultant *status quo* is fundamentally unstable. This is also the case about imposition through manipulation or deception. Related to this is what may be called “incompatibility absorption”, where incompatibilities are internalized within a party or individuals who constitute it. In this case, a potential conflict may be absorbed by the target party and not manifest itself as such. However, there is always the risk that the imposed or manipulated party realize these tactics to the rejection of such a game.

2.3. Deciding Who Has the Right to Their Position

Incompatibilities may be handled by legal consideration, which may help the parties to determine who has the right to their position and to what degree. In international dispute, international law, such as the United Nations Convention on the Law of the Sea (UNCLOS) and international treaties or agreements may provide conflict parties with legal basis on which they can proceed in negotiation. When they cannot settle conflict in this way on their own, they may seek the decision of an authoritative third party on their behalf, i.e., arbitration. Institutions of arbitration such as the International Court of Justice, International Tribunal for the Law of the Sea and the High Council of the Association of Southeast Asian Nations (ASEAN) are available to the state

parties, although the last one has never been invoked in ASEAN's history. Countries in East Asia, including Southeast Asia, have shown reluctance in going for international arbitration on the issues of sovereignty. However, if the conflict concerned does not pose any existential threat to the parties, they may feel less inhibited to use this measure, as were the cases of Pedra Branca/Pulau Batu Puteh between Singapore and Malaysia and Sipadan and Ligitan between Malaysia and Indonesia (Caballero-Anthony, 2005: 271).² In arbitration, incompatibilities are dissolved or suppressed depending on whether the losing party accepts the verdict sincerely or with reluctance. The stronger the reluctance, the more likely they are suppressed, resulting in an unstable *status-quo*.

2.4. Turning Clashing Positions into New Ones that are Mutually Compatible or are More Manageable while Incompatibilities Remain

Incompatibilities may be dissolved by turning mutually clashing positions of the parties into ones that are compatible to each other. This result can be achieved at least in two ways. Firstly, positions may be adjusted through bargaining so that no clash may take place between the parties any longer. In this case, some portion of each party's position is given up voluntarily through mutual concession or accommodation. Or the parties may concede to their counterparts, "sometimes with compensations by linkage to other issues" (Ramsbotham et al., 2005: 175). In this way, incompatibilities may be dissolved but, depending on the extent to which the new positions fail to fully satisfy the interests of the parties, the incompatibilities may be suppressed, making the resulting *status quo* less stable. Secondly, original positions of the parties may be adjusted in such a way that their underlying interests can be fulfilled to a large extent. This is possible theoretically, as there can be more than one way to meet the interests of the parties (Fisher and Ury, 1981: 41). For example, the security of a state party may increase by conceding certain maritime claims to the other party due to enhanced prospects of economic aid or investment from the latter as a result.³ What makes the second way distinct from the first is that the parties delve deeper than their respective positions to reach and understand other parties' underlying interests, which are then taken into account in their interaction. Here, incompatibilities are dissolved through integration (Ramsbotham et al., 2005: 174-175).

Moreover, it is also possible that clashing positions are changed into new ones in which incompatibilities still remain or new ones arise although they may be easier to handle than before or the original ones. This approach may be realistic from the standpoint of "conflict transformation" (Miall, 2004: 9-10), which regard conflict not as something negative to be shunned or brought to an end soonest, but as an opportunity for social change through

transformation at the personal, group, issue, actor, structural and contextual levels (Ramsbotham et al., 2005: 163-164). In a best case scenario, conflict may be turned into a “social learning” process (Fiorino, 2001: 328-330) through incompatibility management.

2.5. Manoeuvring around Incompatibilities or Setting Them Aside and Waiting for Their Change

Incompatibilities may be manoeuvred around or simply set aside by the parties, who may expect them to change or, better still, disappear in due time. This approach to incompatibility management is viable if there exists the capacity in conflict situation to absorb tensions or shocks arising from the incompatibilities, hereby forestalling a potential crisis. Such a capacity may serve as a buffer between incompatible positions and can be found functioning, among others, within ASEAN as a mechanism of conflict management. When its member states respond differently to external impacts or shocks, exemplified by China’s unilateral land reclamation activities or the U.S. Freedom of Navigation Operations both in the waters of the Spratlys in recent years, these impacts and shocks tend to dissipate in ASEAN’s imagined buffer space (Oishi, 2016: 170, 175).

3. First Category of Sino-Vietnamese Disputes and Their Settlement

With an analytical framework having been established, the paper investigates the Sino-Vietnamese bilateral disputes and their management. The first to be looked at is the first category of the disputes, i.e., the borderland dispute and the Gulf of Tonkin dispute, which came to an end with full settlement. These case studies aim to reveal the fundamental characteristics of what may be called the “Sino-Vietnamese Way of conflict management”.

3.1. Borderland Dispute and Management

Prior to the full normalization between China and Vietnam in November 1991, territorial issues had been significant sources of tension in their bilateral relations. During the 1980s, several armed clashes occurred in the contested areas while bilateral negotiations repeatedly failed to find any solution to address the conflict (BBC/Vietnamese, 2013; Amer, 2002: 6). Major incompatibilities that contributed to their land-border disputes were:

- (1) Overlapping territorial claims;
- (2) A contention for the right to control strategically important areas; and
- (3) The problem of local communities, Chinese or Vietnamese, across the borderline.

These issues and incompatibilities are elaborated and the manners they were addressed are discussed below.

3.1.1. *Overlapping Territorial Claims*

During the French colonial time in Vietnam, the French colonial government and the Chinese government of the Qing Dynasty signed Conventions in 1887 and 1895 respectively, delimitating the Sino-Vietnamese land borderline. However, during the de-colonisation period and later in the Vietnam War, accidents and developments coupled with natural disasters led to altering the *status quo* since most of the land markers were either removed or destroyed. As a result, many areas along the borders were subject to dispute. These disputes continued unabated and became more problematic when China launched a border war with Vietnam in February-March 1979, which left some strategic locations of the Vietnamese territory under China's control (Truc, 2015; Amer, 2002: 2-3). To justify their own respective claims, both Beijing and Hanoi mostly resorted to historical evidence, including interpretations of legal documents produced during the pre-colonial era, which tended to contradict with each other. Furthermore, this type of incompatibility was highly charged with national pride and ethnic hostility, making it quite difficult and complicated for the disputants to deal with.

However, after many years of a negotiation process without any agreement in the 1970s and 1980s, the Sino-Vietnamese approach to managing the dispute had been changed altogether since the renormalization of 1991. For a start, Beijing and Hanoi established joint working groups to discuss their border dispute. Despite unexpected tensions and stand-offs that sporadically occurred in the SCS, bilateral talks at both expert level and highest political level were regularly held in Hanoi and Beijing respectively.⁴ In August 1993, at the third round of bilateral talks and also the first government-level talk in Beijing the two states reached a “general understanding and consensus” on fundamental principles for handling their existing territorial dispute, except for the ones in the SCS. Following this significant achievement, an Agreement on Basic Principles for the Settlement of Border Territory Issues between the Socialist Republic of Vietnam and the People's Republic of China was signed in October 1993, emphasizing the necessity to settle the issues through peaceful negotiations, moderate manners and avoidance of using force and coercion (BBC/Vietnamese, 2013; Amer, 2002: 9-11). Also, it paved the way for the following rounds of talks (both expert- and governmental-levels) and created a major legal basis for negotiation. That is, the two states unanimously recognized the legal effects of the two Conventions of 1887 and 1895, agreed to rely upon them and adopted additional legal and technical documents to re-define their land borderline (BBC/Vietnamese, 2013; Truc, 2015). This meant

that any documents related to Sino-Vietnamese borderland published prior to year 1993 would be “invalid” as a basis for settling the dispute unless they were integral parts of the Conventions. Obviously, these arrangements in the negotiation process were practically necessary and did matter in addressing the existing dispute, as they enabled China and Vietnam to eliminate sources of incompatibility which had the potential to further complicate the situation. This is because each side might have easily produced historical and geographical evidence to justify its own claims over the disputed areas. Thus, as long as the claimants could not reach a consensus on limiting historical and legal bases and eliminating unnecessary sources of incompatibility, their dispute certainly would have remained intractable.

Another important factor that contributed to settling the overlapping territorial claims was the agreement in July 1997 between Secretaries-General of the Communist Party of China and the Communist Party of Vietnam to fully settle the land border dispute and the Gulf of Tonkin dispute not later than 2000.⁵ This agreement significantly boosted the commitment of negotiators from both sides to completing the delimitation by the deadline with a sense of urgency (Phung, 2016; Truc, 2016). As such, the post-1997 negotiation processes resulted in the signing of the Treaty of Land Border between China and Vietnam in December 1999 in Hanoi. This treaty accelerated the demarcation process, as it laid down the practical principles to determine border lines that would be planted with border markers. Also, as prescribed in the treaty, they established a Joint Commission on Land Border Demarcation right after the treaty took effect in June 2000. Adhering to the articles of the treaty and its attendant map and protocols,⁶ in December 2001, the joint commission proceeded to work out the border demarcation and land markers plantation, which were completed in August 2008. Thus, China and Vietnam successfully determined a new borderline through mutual accommodation by narrowing the gap between their conflicting claims.

3.1.2. A Contention for the Right to Control the Strategically Important Areas

The second incompatibility arose from access to the militarily important areas alongside the Sino-Vietnamese borderland, most of which were under China’s control after the 1979 border war. The strategic significance of these disputed sites, Ban Gioc/Detain Falls and Huu Nghi Quan/Youyi Guan among others, lay more in what they meant or symbolized than in how much area they covered. For Vietnam, given its complex history heavily influenced by China, Hanoi did not want to renounce these disputed areas, which had been extremely important outposts to deter invasions from its formidable neighbour to the north during its course of history. For China, the same locations were beneficial to itself in military and economic terms, since they

were China's ace in the hole against Vietnam during periods of hostility while generating great economic revenues from tourism and cross-border trade with Vietnam in post-war reconstruction and development. This contention for the sovereign ownership over the sensitive areas had resulted in a number of armed incidents after the 1979 border war and raised the stakes for the two neighbours, further complicating and protracting the dispute (Chanda, 1986: 10; O'Dowd, 2007: 97-100).

However, the 1993 Agreement and the 1999 Treaty served as the basis for Beijing and Hanoi to handle this challenging issue constructively and for this purpose the Joint Commission on Land Border Demarcation was able to establish three principles: First, areas traversing the new borderline or those belonging to one side as determined by the Sino-French Conventions but being under the control of the other must be handed over to the rightful owner without any conditions. Second, militarily strategic elevation points, i.e. peaks, hills, etc., located right in the boundary must be demilitarized completely. Third, for the areas where the Sino-French Conventions did not clearly fix the boundary, the following factors must be taken into account to re-define the borderline: the legal basis of the Conventions, historical management, topography, historical maps, convenience of management, and international rules and practices. These principles were implemented faithfully by the joint commission through mutual accommodation between Chinese and Vietnamese representatives and the ownership issue of strategically important areas was completely settled by 2008.⁷

3.1.3. Local Communities Across the Borderline

During the war times (1954-1989), numerous Vietnamese and Chinese villages, cemeteries, fields and gardens constituting human landscapes were created beyond each other's territory. This gave rise to a major problem in the China-Vietnam demarcation process, making the process much more intricate, sensitive and time-consuming. The most important principle that they jointly established to overcome this challenge was what might be called the principle of "giving for receiving". Its purpose was to make sure that the delimitation of the Sino-Vietnamese boundary would be carried out equitably and strictly while maintaining the *status quo* of human landscapes and local people's livelihood by adjusting and redrawing where applicable the new boundaries defined by the 1999 Treaty (Truc, 2015). This exercise was completed by 2008 and resulted in mutual concessions in the delimitation exercise.⁸ The favourable outcomes indicated that the two parties successfully applied this principle by granting equal concessions to each other in a spirit of good neighbourliness, comradery and fraternity, and that Beijing did not impose its superior position on its neighbour.

3.2. *Gulf of Tonkin Dispute and Its Management*

With respect to the delimitation in the Gulf of Tonkin, two major formidable incompatibilities existed between the positions of the two countries: First, Vietnam's historic waters defined by the 1887 Sino-French Treaty versus China's claim based on newly established baselines. Second, China's intention to combine a fishery agreement and maritime delimitation in a package versus Vietnam's claim that the fishery agreement should be on the basis of successful demarcation results.

3.2.1. *Vietnam's Historic Waters versus China's Claim Based on Newly Established Baselines*

Both China and Vietnam adopted straight baselines from which the breadth of their territorial seas and other maritime zones could be measured. Nevertheless, their ideas of the baseline were different from each other. In 1996 when China ratified the 1982 UN Convention on the Law of the Sea (UNCLOS), it announced straight baselines that went along its mainland coast and Hainan Island. However, Vietnam lodged an official protest to the United Nations about China's baselines, as the former believed that the latter's baselines, connecting four geographic coordinates from Junbi Jiao to Yingge Zui along the western coast of Hainan Island might affect delimitation results in the Gulf (US Department of State, 1983; US Department of State, 1996; Zou, 2005: 14-15). Moreover, Vietnam also rejected China's proposal to delimitate the Gulf on a 50-50 basis, which would entitle China to the 50% of its area. Vietnam's rejection was based on the fact that Vietnam's coastline facing the Gulf was considerably longer than that of China and that the former owned a number of off-shore islands sporadically located in the Gulf (BBC/Vietnamese, 2013).

Vietnam, for its part, adopted straight baselines in its 1982 Statement on the Territorial Sea Baseline of Vietnam, which asserted that the Gulf of Tonkin had been delineated by the 1887 Sino-French Treaty. As such, the waters on Vietnam's side "constitutes the historic waters and is subject to the juridical regime of internal waters" of Vietnam (Zou, 2005). Vietnam's claim over historic waters and the delimitation line in the 1887 Treaty were rejected by China, which claimed its own version of historic waters. Furthermore, China feared that the Vietnamese claim, if ever applied, would undoubtedly lead to giving "full effects" to Vietnam's two most strategic islands in the Gulf in delimitation. In this scenario, the proposed boundary would be located eastward much farther away from the currently established boundary, and such a shift would certainly not benefit China.⁹

The impasse in the delimitation of the Gulf of Tonkin was broken by the 1997 agreement between the Secretaries-General of the ruling communist parties of both countries – the same agreement that positively impacted the delimitation process of the land borders. As was mentioned previously, the two leaders pledged that China and Vietnam would hasten bilateral negotiations to completely settle the land border issue and finish the demarcation of the Gulf of Tonkin by the end of 2000. By specifying such a deadline, the two states displayed their political commitment to achieving a fair and equitable solution to the Gulf of Tonkin dispute. Here again, the joint “giving for receiving” approach played a central role, helped by increasing mutual trust and mediated by the consideration of legal entitlements. The two sides firstly agreed to discard the 1887 Treaty and then applied the principles stipulated in the UNCLOS and related international practices, upheld the principle of equity, and took into consideration all relevant circumstances in the disputed waters. As the coasts of the two states are opposite and adjacent to each other, the UNCLOS principle of equidistance was applied to delineate a single line, also called an “adjusted median line”,¹⁰ measuring both the continental shelf and an exclusive economic zone (EEZ) between opposite and adjacent coasts. From 1994 to 2000, the Sino-Vietnamese joint working group on the Gulf of Tonkin met 17 times and their intensive negotiation process led to the signing of the maritime delimitation agreement on the Gulf of Tonkin in time on 25th December 2000.

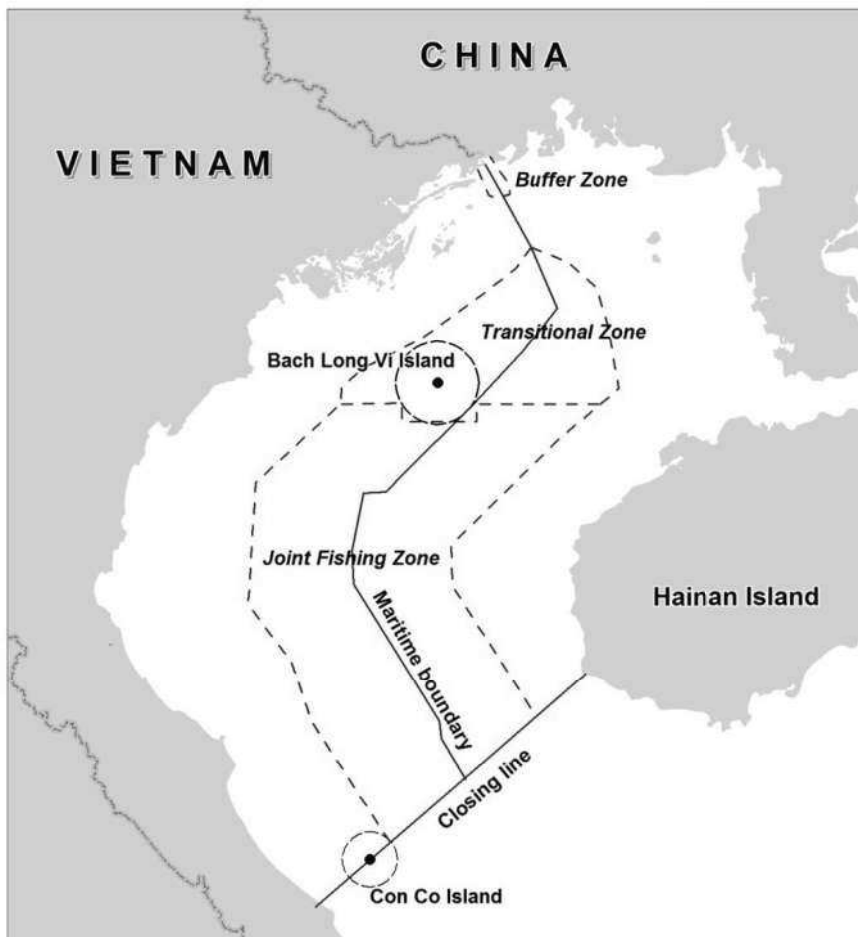
3.2.2. China’s “Package Deal” versus Vietnam’s Focus on Delimitation

The second key issue of the Gulf of Tonkin dispute was access to fishery resources. For China, the delimitation of the gulf was of direct interest to hundreds of thousands of Chinese fishermen whose livelihood heavily depended on maritime resources in it. Thus, from the beginning of the Sino-Vietnamese negotiation, Beijing stated expressly that boundary delimitation must be directly linked to fishery cooperation, and that agreements on these two matters must be signed and entered into force simultaneously. However, since most of the good fishing grounds were located well within Vietnam’s EEZ and due to its huge disadvantage on fishing capability vis-à-vis China, Hanoi disagreed with Beijing’s proposal. The former would not support any negotiation that might reduce the strategically significant demarcation issue to largely technical fishery talks. Thus, it wanted to delimitate the maritime boundary first, and a fishery agreement must be based on successful demarcation results (Phung, 2001; Zou, 2005).

The incompatible positions of the two states were eventually reconciled to each other by mutual accommodation. Beijing tacitly accepted Hanoi’s

demand to set aside the fishery issue while the joint demarcation process, which had gained momentum since the 1997 agreement, was going on. Only eight months before the end of 2000 marked as the deadline for the settlement of the Gulf of Tonkin dispute, as declared in 1997 and reaffirmed in 1999 by the two parties' General Secretaries (Phung 2001), Hanoi agreed to starting the negotiation on fishery cooperation. Thus, on 25 December 2000, both countries successfully signed two agreements on demarcation and fishery cooperation, creating the appearance of a package deal, which China had wished (Phung 2001).¹¹ The fishing agreement established three fishery zones, i.e., the joint fishing zone, transitional fishing zone and buffer zone (Figure 1).¹²

Figure 1 Delimitation and Joint Fishing Zones in the Gulf of Tonkin¹³



3.3. The Aftermath of the Settlement of the First Category of Bilateral Disputes and Some Reflections

As has been seen above, China and Vietnam successfully settled the first category of their bilateral disputes in time, concluding the years-long bilateral negotiation process and generating new legal orders on each other's peripheries. The three main agreements on borderland demarcation, maritime delimitation in Tonkin Gulf and fishery cooperation were ratified by their national assemblies a few years later. Since November 2009, three additional accords for demarcation of borders, installation of border markers and arrangement of border-gate management have been signed and come into effect. It is worth observing that the two neighbours, by relying upon these documents, have established many local-level paramilitary rangers in association with national border defence and coastguard forces to safeguard the markers and the maritime boundary. They also further approved agreements on joint border and naval patrols, joint development areas and other regulations for fishery cooperation and sustainable exploitation of natural resources in common border zones. From a standpoint of dispute management, these additional measures appear to function as an infrastructure for long-term peace, as they bring more positive prospects of acquiring wealth locally through strengthened economic ties with each other and joint economic projects, which eventually turn areas of contention and protest into those of cooperation and prosperity.

The investigation into the process of settling the first category of Sino-Vietnamese disputes suggests a distinctive approach to conflict management, which possesses the following characteristics. Firstly, fraternal relations between the two communist parties and, by extension, between the two neighbouring states played a crucial role in incompatibility management. This special relationship, having been developed during the Vietnam War and re-activated since 1991, maintained stability in the interaction between disputing parties, and contributed significantly to preventing disputes from escalating beyond certain limits. Specifically, it motivated the parties to reach agreement by deadlines when invoked by the top officials of the ruling communist parties, facilitated them in determining legal entitlements for each side, and helped them to learn about the other side's interests and take them into account in negotiation. Besides, such a relationship gave additional incentive for each party to regulate domestic public sentiments, which might otherwise have negatively impacted the management process with national pride and ethnic hostility.¹⁴

Secondly, incompatibilities in the disputes were dissolved through the combination of mutual concession, integration and legal consideration. Mutual concession took place when the disputing parties adopted the principle of

“giving for receiving” in the delimitation of areas under contention in both disputes. Elements of integration can be observed, among others, in their consideration of the underlying needs of the other side in demarcating the Gulf of Tonkin and establishing the Joint Fishing Zone. The international law, particularly the UNCLOS, contributed to the stability of negotiation process by clarifying legal entitlements to each party. It is notable that these exercises of incompatibility management were embedded firmly in the above-identified exercises of fraternity between the two ruling communist parties and couched in joint working groups that were set up for rule and principle making and border delimitation.

Finally, the first category of disputes remained bilateral to the end. It happens frequently that bilateral interstate conflict is internationalized by the weaker party seeking the intervention of a third party to compensate for the power disparity that the former perceives against the stronger party, as has been observed typically in disputes between the Philippines and China in the SCS (*Reuters*, 2015). Such internationalization did not take place in the disputes over the Sino-Vietnamese land-border and the Gulf of Tonkin. Apparently, the weaker party Vietnam did not feel the need to enlist the support of ASEAN as the prime organisation of the region nor great powers such as the United States for its own cause. Here, the good conduct of the two states in these disputes based on mutual confidence, which in turn stems from the China-Vietnam interparty fraternity, seems to have made void Hanoi’s need for internationalization.

4. Second Category of Sino-Vietnamese Disputes and Their Management

This paper posits that the fundamental characteristics of managing the first category of the disputes between China and Vietnam identified in the previous section suggest the “Sino-Vietnamese Way of conflict management.” Using this concept as a touch stone, this section looks at the second category of bilateral disputes between them, i.e., the disputes over the Paracel Islands and Spratly Islands in the SCS, and examines to what extent the manner in which they have been managed conform to the Sino-Vietnamese Way.

4.1. Disputes in the SCS: Basics, Chronology and Recent Developments

Geographically, the Paracel and Spratly Islands are located midway between Vietnam and the Philippines, and are adjacent to one of the world’s most important sea-lanes in the potentially energy-rich SCS. Owing to their geopolitically strategic position, these island chains and surrounding waters have been deemed as the “bones of contention” among the littoral states that have made decades-long rival claims. Mainland China and Taiwan claim most of

the SCS, including the two archipelagos, while Vietnam asserts the ownership of both island groups, and other claimants – the Philippines, Malaysia and Brunei – contend over parts of the Spratly Islands. These Southeast Asian states also claim maritime entitlements, i.e., exclusive economic zones and continental shelves, which overlap with the ones that China and Taiwan insist on. In the Paracel Islands, which have been claimed by both China and Vietnam, the *status quo* has remained since the Chinese forces expelled a South Vietnamese garrison from the archipelago towards the end of the Vietnam War. Meanwhile, the situation of the Spratly Islands dispute is much more complicated and intractable as it involves six disputants whose overlapping and conflicting claims to sovereign rights cover either the whole or particular parts of the islands and the waters surrounding them (Oishi, 2016: 159).

The history of the Spratly Islands dispute dates back at least to the 1970s when these disputants, except for China and Brunei, had already occupied parts of the archipelago. Confrontations and skirmishes have taken place among them, notably between China and Vietnam since Beijing established its late presence in the islands after a battle with the Vietnamese navy in March 1988 and occupied its six features in Johnson South Reef (Chen and Glaser, 2015; Gady, 2016). In 1995, China newly occupied the Mischief Reef claimed by the Philippines. This incident more or less tarnished Beijing's image among the Southeast Asian public and led to strong protests from Manila and a low-profile response of concern from other ASEAN member states (Emmers, 2003: 133-134, 136). However, the positive role that China played in the wake of the 1997 East Asian financial crisis and its "Charm Offensive" (Kurlantzick, 2007) towards Southeast Asian countries went a long way to restore and even enhance its image in the region. These developments brought about a considerable degree of stability in the SCS, facilitating the signing of the Declaration on the Conduct of the Parties in the South China Sea (DOC) in 2001 by China and all the member states of ASEAN. This document has so far served as a *de facto* code of conduct in the SCS until a legally-binding code to be established in the future.

However, since the late 2000s, the SCS has become turbulent again. In May 2009, Vietnam and Malaysia made a joint submission concerning the outer limits of continental shelf beyond their own respective 200-nm EEZs in the southern part of the SCS to the United Nations Commission on the Limits of the Continental Shelf, publicly challenging China's sovereignty claims (Parameswaran, 2015: 7; Quang, 2017). Then came U.S. Secretary of State Hilary Clinton's statement in Hanoi in July 2010, declaring that the U.S. had an interest in the free passage of vessels and airplanes in and over the SCS. This statement, widely considered as a declaration of the U.S. "pivot to Asia", not only infuriated China but also emboldened the regional parties

to the dispute, especially the Philippines and Vietnam, triggering a series of stand-offs and confrontations involving fishing, surveying and government ships or oil rigs from these countries and China (Oishi, 2016: 171-172). Particularly noteworthy developments in the SCS in recent years are China's hectic land reclamation activities on its seven occupied maritime features in the Spratlys started in early 2014, Freedom of Navigation Operations by U.S. navy to challenge China's "excessive" claim of territorial waters surrounding the reclaimed sites and the Philippines' submission against China regarding its "U-shape line" to the Arbitral Tribunal at The Hague in March 2014, followed by the tribunal's ruling in favour of the former in July 2016, and the latter's firm rejection thereof (Ku et al., 2016; The State Council, 2016; Pham, T.N., 2016). These provocative moves and new developments have given rise to a highly volatile situation in the internationalized SCS dispute, where tensions among the parties involved, including those that are non-claimants, are likely to increase with evolving dynamics and growing security concerns.

4.2. Issues of the SCS Disputes between China and Vietnam

With the historical background and current situation of the SCS disputes having been outlined, the paper focuses on the bilateral disputes between China and Vietnam, which are composed of rival claims over the Parcel and Spratly Islands and overlapping maritime jurisdictional zones that both states have established in the SCS. These disputes are examined in terms of the following contentious issues: (1) overlapping historical titles, (2) disagreement as to which disputes should be subject to negotiation, (3) differences in applying international law, (4) mutually clashing national interests, and (5) different approaches to dispute settlement. Each of these issues contains incompatibilities shared between the two states. They are extracted for investigation so that the manner in which they have been handled may be understood and the prospects of effectively managing them in the future may be discussed.

4.2.1. Overlapping Historical Titles

China and Vietnam have been heavily relying on historical titles to legitimize their own uncompromising postures on the SCS disputes. Both countries publicly affirm that their historical documents and evidence indicate that islands in the SCS have been part of their respective territories far prior to the arrival of Western colonisers. Thus, in the past decades the two neighbours have sought to persuade the international community that they are the first to have discovered these island chains, and that they have since then established

and maintained sovereignty over them and adjacent waters (Shen, 2002: 102; *China Daily*, 2016).

Beijing believes that Chinese ancestors discovered the island chains and had administered them for over two thousand years prior to other peoples. It is confident that Chinese historical documents and evidence are valid and fit perfectly with such legal methods of acquiring state territory as discovery, occupation, prescription and conquest (Hao, 2011). As China discovered the no-man's lands of Xisha (Paracels) and Nansha (Spratlys), and had maintained continuous and effective occupation after discovery, it deserves the right to hold sovereignty over these islands. However, during the Cold War, China failed to safeguard its overall rights of the SCS due to the constant containment by Western countries. As a result, its islands and reefs were illegally occupied by neighbouring countries (Shen, 2002; Hao, 2011). On the other hand, Hanoi's claims are based on documents of Vietnamese feudal dynasties and original maps produced by European countries during the colonial period, which affirm that Hoang Sa (Paracels) and Truong Sa (Spratlys) were part of the Dang Trong (the present-day Southern Vietnam) and depict that China's south-eastern frontier ends at the Hainan Island. Hanoi further argues that China began to claim sovereignty over the SCS as late as 1947 when the Republic of China under the Nationalist Party issued a "Map of Locations of the South Sea Islands", giving names to a number of reefs and shoals, including islands that Vietnam claims, followed by the Beijing government's use of force to seize islands of Hoang Sa in 1956 and 1974, and occupied several features in Truong Sa in 1988 (Vu, 2014; Vietnam News Agency, 2014a, 2014b).

Thus, the two claimants have been engaged in what may be called a "historical evidence race" by trying to provide historical facts and interpret them in favour of their own respective claims while at the same time searching for further evidence (Erickson and Bond, 2015). This type of difference is quite difficult to dissolve since it is generated from the mutually incompatible historical perspectives and highly charged with national pride and popular sentiments, despite the fact that the two states successfully settled the first category of their bilateral disputes, where historical incompatibilities were equally prominent.

4.2.2. Disagreement as to Which Disputes Should be Subjected to Negotiation

The difference on historical understanding and interpretation has led both sides to divergent and incompatible positions as to which disputed areas should be considered as valid for their bilateral negotiations. Hanoi pushes

for the inclusion of the Paracels as an issue alongside the Spratlys, as it claims that both groups of islands were illegally invaded by China several times. However, Beijing wants to discuss only the latter islands, as it has maintained an effective control over the former. To further complicate the matter, China apparently regards the dispute over maritime jurisdiction, i.e., exclusive economic zones and continental shelves, as part of the Spratly dispute, whereas Vietnam intends to settle the ownership of the two groups of islands before proceeding to deal with maritime jurisdiction. This is because Vietnam fears that initiating talks relating to maritime jurisdiction could be interpreted as giving legitimacy to China's claim over the island chains, especially the Paracels, when deciding the baselines of maritime entitlements (Amer and Jianwei, 2013). This situation stands as a non-starter for bilateral negotiation over maritime demarcation, which is a major substantive issue of the dispute.

4.2.3. Differences in Applying International Law

Both China and Vietnam have resorted to international law to justify their own mutually contradicting claims. This has resulted in different interpretations of international principles regarding acquisition of territory, diplomatic documents and international law on the sea (Hayton, 2015; Hao, 2011: 3-5). For instance, Vietnam takes the stand that no features of Paracel and Spratly Islands are regarded as "islands" as defined in Article 121 of the UNCLOS, which would generate EEZs and continental shelves, and that waters around these features should be limited to territorial waters of 12 nautical miles. China disagrees, insisting that its occupied features definitely meet the definition of "islands" (Valencia et al., 1997: 20-24; *China Daily*, 2016).

Another legal incompatibility between the two disputants arises from China's claim of the sea zone within the "U-shape line", which cuts deeply into Vietnam's 200 nautical mile EEZs and continental shelves. This overlap has long become the area of bilateral contention as maritime agencies of the two states intensify what they consider as the exercise of sovereign rights that the international law entitles them to. However, Beijing appears to be gradually changing its interpretation of the U-shape line, and there have been already some encouraging signs of re-framing of its claims over the SCS recently (Oishi, 2016: 169-170). This probably opens up a positive prospect that through a discursive interaction between China and Vietnam, a mutual accommodation may take place between them, although the recent ruling issued by the International Arbitral Tribunal and rejecting China's claims in the SCS (Davenport, 2016) may intensify the complexity of this type of incompatibility.

4.2.4. Mutually Clashing National Interests

The rival claims, disagreements and differences contained in the issues discussed above have boiled down to clashing national interests between China and Vietnam (Fravel, 2011: 296; Hao, 2011: 7). Currently, the most prominent among them are the clashes over: (1) access to fishing and hydrocarbon resources, and (2) the control of shipping lanes connecting each state's mainland and occupied maritime features in the SCS.

Firstly, as was discussed earlier, China and Vietnam have not agreed on sovereign and jurisdictional rights over the SCS. This disagreement has fuelled a series of confrontations involving fishing, surveying and government ships or oil rigs from both sides (Dien, 2015; Blanchard et al., 2015). Vietnam consistently claims that the waters east of its coast claimed by China are part of its EEZ pursuant to the 1982 UNCLOS and the disputed waters adjacent to the Paracels and Spratlys are the Vietnamese fishermen's traditional fishing grounds. Meanwhile, China insists that those waters are either part of China's "historical waters", which naturally contains "historical rights" including the rights to exploit fishing and non-living resources, or EEZs generated by its occupied maritime features in the two archipelagos.

As a result, policies launched by Hanoi and Beijing regarding living and non-living resources management and development in the SCS are generating frictions as they perceive the policy of the other side as infringing on their own economic interests. For instance, the annual two-month fishing moratorium in the whole SCS, imposed unilaterally by China, threatens Vietnamese fishermen with fines, confiscations and possible criminal charges which Vietnam strictly protests thereof (Fravel, 2011; Nguyen et al., 2015). China, on the other hand, resolutely opposes Vietnam's petrol and gas exploration activities in the resource-rich disputed areas, which often results in their ships colliding with each other for days (*Tuoi Tre News*, 2012; AFP, 2014).

Secondly, China's military presence in its newly reclaimed islands has disrupted Vietnam's shipping lanes connecting its mainland and Vietnam-occupied land features in the Spratly Islands. In response to China's alleged militarization of its artificial islands and to secure its vital routes, Vietnam is believed to have fortified its major occupied islands in the Spratlys with modern military assets, including new mobile rocket launchers (Torode, 2016). Such a silent move by Hanoi is eyed warily by Beijing as it has the potential to challenge China's control of sea lanes contiguous to its occupied features and threaten Chinese garrisons stationing near Vietnamese ones.

Nevertheless, these two issues can possibly be addressed in peaceful dispute management processes. The apparent incompatibility over the right to access natural resources in disputed waters may be dissolved if the two claimants separate the resources access issue from the sovereignty issue,

and jointly pursue win-win arrangements to replace the current win-lose situation on the ground. As for the need to control the shipping lanes in the Spratly Islands, several mechanisms to avoid armed confrontation between the military forces of both countries may be placed as a result of an innovative defence diplomacy.¹⁵

4.2.5. Different Approaches to Dispute Settlement

China and Vietnam are contending with each other also in the manner the SCS disputes are to be handled. While Beijing insists that they should be settled through bilateral negotiation, Hanoi seeks to internationalize them. The different approaches adopted by the two states undermine their mutual trust and confidence: Hanoi feels it a tall order to cope alone with its formidable neighbour to the north, and seeks the help of international institutions, ASEAN included, and extra-regional powers such as the U.S. and Japan (*Vietnam News Agency*, 2011a; *VNExpress*, 2014; Collin, 2015; M. Pham, 2016). Beijing, on its part, tends to perceive Hanoi's internationalization effort in terms of the "China encirclement" (Oishi, 2016: 172-174) allegedly engineered by the U.S., and this perception would prompt it to take further unilateral actions in the SCS.

However, with the rise of the "dual track" approach, the gap between the two positions seems to be narrowing. This is an approach in which China and ASEAN countries would collaborate for the maintenance of peace and stability in the SCS by ensuring that the direct disputants be socialized into conducting themselves peacefully towards each other, while the substantive issues of the disputes, such as overlapping territorial or maritime claims, would be handled by the parties that have direct stakes. This third approach was originally proposed by Brunei Darussalam, and has been accepted by China (Liu, 2016). Vietnam seems to be opening up to this approach at least about the management of the Paracel Islands.¹⁶ For the Spratlys, however, Vietnam seems to tread carefully due to several complicating factors. The most outstanding is the memory of deadly clashes in the past with China in the disputed islands. This inclines Hanoi to welcome the internationalization of the dispute, coupled with its perception of a huge disparity with its neighbour in economic and military capability.

Nonetheless, it is noteworthy that Hanoi has recently sent a clearer and more direct message that it is willing to address sovereignty disputes through peaceful bilateral or, where applicable, multilateral negotiation (*Tuoi Tre News*, 2016). Particularly, as the Spratly Islands are claimed wholly or partly by six parties, the resolution of this collective dispute requires multilateral negotiations. Vietnam asserts that depending on particular disputed areas in the Spratlys, either bilateral, trilateral or quadrilateral negotiations shall be

invoked with constructive attitude (Truc, 2016; Phung, 2016). At the same time, Vietnam underscores the significance of maintaining peace and stability in the SCS, and pushes for more robust engagement of ASEAN as a regional organization as well as that of external powers that subscribe to peace and justice. Apparently, such a re-consideration of the basic approach to dispute management by Vietnam more or less fits into the “dual-track” approach adopted by China. Given this, Hanoi would likely take this approach in addressing the Sino-Vietnamese portion of the SCS disputes through direct negotiation with China.

4.3. Sino-Vietnamese Bilateral Dispute Management in the SCS

Against the background of the above-discussed issues of the SCS disputes and prospects for addressing them, China and Vietnam have engaged themselves in incompatibility management, which also includes the prevention or management of crises that may arise while incompatibilities remain. To effectively pursue these goals, the two states have sought to expand the bilateral diplomatic space, in which they could interact with each other in their traditional fraternal way. In October 2011, Hanoi dispatched a special delegation led by the Secretary-General of the Communist Party of Vietnam Nguyen Phu Trong to Beijing for high-level dialogues with their Chinese counterparts, including a summit meeting. Trong’s visit to China resulted in an “Agreement on Basic Principles Guiding the Settlement of Sea-Related Issues”. Restoring the collaborative spirit of the “1993 Agreement on Basic Principles for the Settlement of Border Territory Issues between the Socialist Republic of Vietnam and the People’s Republic of China”, the new agreement outlined several principles to address the maritime issues.¹⁷

The summit was concluded by a joint statement, which stressed the commitment of Hanoi and Beijing to settling the SCS disputes by peaceful means in a step by step approach, beginning with the easier issues to handle. Thus, among the first initiatives are: cooperation on maritime environmental issues, joint sea-related scientific research, arrangements to enhance maritime security, and negotiation on the demarcation of territorial waters off the Gulf of Tonkin. It was expected that fruitful outcomes of these measures enhance mutual trust to facilitate the settlement of more difficult issues. In a move to further institutionalize confidence-building and crisis management on a bilateral basis, Beijing and Hanoi have jointly held a dozen multi-level meetings and dialogues and set up hotline mechanisms. This process has also established a Joint Working Group on “Cooperation in Less Sensitive Sea Areas,” which has in turn decided to implement two agreements signed during previous meetings. They are: (1) joint comparative research of the Holocene sedimentary architecture of Vietnam’s Red River Basin and China’s

Yangtze River Basin, and (2) cooperation on scientific research and exchange on insular and maritime environmental management in the Gulf of Tonkin. Another joint project on “Cooperation on Search and Rescue at Sea between China and Vietnam” is being mapped out (*Lao Dong Newspaper*, 2015).

In addition to installing the mechanisms of tension reduction and crisis management, Beijing and Hanoi established a Joint Working Group on “Demarcation of Waters beyond the Mouth of the Gulf of Tonkin” in 2012 with a view to dissolving one of the most fundamental incompatibilities of the SCS disputes. The working group meets twice a year in Hanoi and Beijing alternately, and one of its tasks is to earmark maritime areas between the Gulf of Tonkin and the two island chains for demarcation exercise. For this purpose, it was agreed during its third meeting in Hanoi that a Technical Team be set up to conduct joint surveys in the areas which it allocates for demarcation. The working group has so far held eight meetings, resulting in the technical team conducting a joint survey over a 387km² section of the waters contiguous to the Gulf of Tonkin (Ministry of Foreign Affairs, 2016; Li and Amer, 2015: 250-251).

For now, tensions between China and Vietnam appear to have been largely defused and kept out of military clash, although the Haiyang Shiyou 981 oil rig crisis in mid-2014 resulted in a series of ramming incidents between Chinese and Vietnamese vessels and anti-Chinese riots in Vietnam, marking the sharpest deterioration of China-Vietnam fraternal relations in years. During this two-month standoff, however, the above-mentioned mechanisms of crisis management appeared to be working fairly well. Over 30 extraordinary meetings were held at different levels to calm down the situation and, finally, top diplomats from both countries gave timely handshake to each other (Ministry of Foreign Affairs, 2014). Apparently, the 2011 Agreement has been functioning as a *de facto* “code of conduct” for the two countries, while it has also opened the prospect of dissolving the most fundamental incompatibilities in the SCS disputes, which stem from the overlapping territorial and maritime claims.

Although the above-mentioned process of managing the bilateral disputes in the SCS appears similar to the one applied to the bilateral disputes of the first category, at least three situational differences can be identified between them. Firstly, unlike the management process of the first category, which was conducted above the heads of the general public of both countries, the disputes in the SCS have become highly exposed to the scrutiny of them, who are naturally the major source of nationalistic sentiments. This renders it more difficult for the state leaders to control the management process, as was shown by the anti-Chinese riots in Vietnam during the 2014 oil rig crisis. Even if both states may manage to eventually dissolve the major incompatibilities of the SCS disputes in the same ways as the disputes of the

first category were handled, the general public may not be satisfied with the results. If popular discontents spread, new actors may rise as articulators of incompatibilities that may have been swept under the carpet. They may not only disturb the official dispute management process, but may also pose a challenge to the legitimacy of the government and the ruling communist party concerned (Weiss, 2016).

Secondly, the demarcation of the SCS between Vietnam and China is much more complicated and challenging than that of the Sino-Vietnamese land borders and the Gulf of Tonkin due to two factors. First, depending on locations, overlapped maritime zones in the SCS are not necessarily bilateral between the two states exclusively, but can be multilateral, involving other disputants, while the first category of disputes remained bilateral. It is obvious that the multilateral situation would make the demarcation exercise a more complicated and uphill task. Second, the ownership of the Paracel Islands and the Spratly Islands, which would serve as the basis to determine the maritime jurisdiction over the SCS, is under dispute and cannot be determined easily, as was discussed previously. In contrast, past agreements and other records on the Sino-Vietnamese land borders made during the French colonial period served as a secure starting point of negotiation between Hanoi and Beijing, and the baselines for the demarcation of the Gulf of Tonkin were drawn with no major difficulty by each of them. It is true that a series of negotiations have been conducted over a portion of the SCS adjacent to the Gulf of Tonkin. Beyond that, however, no basis on which the demarcation exercise can proceed appears to come by easily, mostly due to the unsettled status of the two island chains.

Thirdly, the Beijing-Hanoi relationship in managing the disputes of the first category was qualitatively different from the one in managing the SCS disputes. There is a chronological separation between the two events of conflict management, and the strong sense of brotherhood that mediated between the two countries in the first category of dispute had all but disappeared by the time the SCS disputes had escalated to such an extent as to require serious treatment. This change may be attributed to factional contentions within the government of Vietnam and its ruling Communist Party. Vietnam watchers have identified two rival factions that exist among the Vietnamese elites: the “conservative” pro-China faction that wants to maintain cordial relations with China on the basis of the time-tested inter-party fraternity, and the “reformist” pro-U.S. faction that draws inspirations from American-style neo-liberal economic policies (*BBC News*, 2016). The recent period of high tensions with China over the SCS corresponds to the tenure of pro-U.S. Nguyen Tan Dung as Prime Minister (June 2006 – April 2016). Enhanced Hanoi-Washington relations in this period¹⁸ and a confrontational posture of Vietnam toward China as a result apparently lay behind recent

maritime incidents between the two countries. However, the hiked tension was addressed each time with conciliatory gestures by the pro-China faction led by Nguyen Phu Trong as Secretary-General of the ruling Communist Party (January 2011 – present). The resultant inconsistent posture of Hanoi towards Beijing continued until Dung lost an internal power struggle toward the end of his tenure and was eventually replaced by pro-China Nguyen Xuan Phuc as Prime Minister (April 2016 – present) (Quang, 2017).

The three differences reveal the obstacles to managing the SCS disputes, which seem to have narrowed the space in which the fraternity between the two states would function as the basis of incompatibility management. Such circumstances in the SCS disputes not only led to military skirmishes in 1974 and 1988, but also caused minor stand-offs and confrontations in recent years, undermining further the trust between Beijing and Hanoi. As a result, it is understandable that the weaker disputant, i.e., Vietnam appears to become highly sensitive to any Chinese action in the SCS. Even though several stabilizing mechanisms have been put into the SCS disputes as was discussed earlier, deficiency in diplomatic and legal common ground in the SCS disputes may trigger tit for tat between Hanoi and Beijing in a rather classical case of security dilemma.

5. Conclusion

Through an investigation into China-Vietnamese disputes over borderlands and the Gulf of Tonkin, this paper has identified what can be termed the Sino-Vietnamese Way of conflict management. It has been found that the mutual trust that has been forged through time-honoured fraternity between the two ruling communist parties played a crucial role in it. This trust contributed to a positive attitude and self-restraint in handling bilateral disputes and commitment to settling them peacefully and by mutually agreed dates. As a result, a number of mechanisms to manage the disputes were installed. Joint working groups in particular served as carriers of functions to regulate the conduct of the disputants and to dissolve incompatibilities, including the one over sovereign rights. The peace process going through these mechanisms was stabilized by the aforementioned mutual trust, and incompatibility dissolution was carried out within the secure space having thus been created through mutual concession, integration and legal consideration.

The on-going disputes in the SCS pose formidable challenges to the Sino-Vietnamese Way of conflict management. Three issues that obstruct the progress of management process have been identified: (1) the exposure of management process to nationalistic sentiments of the people, which may disrupt the process; (2) the existence of complicating factors such as the multilateral elements of the Spratly and maritime disputes, which the bilateral

Sino-Vietnamese Way has to deal with and the lack of a settlement over the issue of ownership of the Paracels and Spratlys, which would otherwise serve as a legal basis of maritime delimitation; and (3) the division between the pro-China and pro-U.S. factions within the Vietnamese leadership, which affects the traditional communist fraternity between Vietnam and China.

Since these issues are detrimental to the dissolution of incompatibilities and undermine the trust between the two countries, several mechanisms to manoeuvre around the incompatibilities, prevent crisis and reduce tension have been developed and appear to have been working fairly well. Here again, mutual trust is crucial for the stable functioning of these mechanisms. Therefore, it seems that the effective management of the SCS disputes and, eventually, its peaceful settlement largely depends on which faction, pro-China or pro-U.S., is at the helm of the Vietnamese government. In this respect, a window of opportunity is presently open under the current pro-China administration of Vietnam.

Notes

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1. On 2 May, 2014, China's state-owned National Offshore Oil Company (CNOOC) moved its Haiyang Shiyou 981 oil platform into waters within the EEZ claimed by Vietnam near the disputed Paracel Islands (Leaf, 2014; Bower and Poling, 2014; Panda, 2015). The incident, which was considered as the most serious development in their territorial disputes ever since the 1988 Johnson South Reef Skirmish, has sparked a major crisis between the two countries and resulted in a series of anti-Chinese protests across Vietnam, many of which quickly escalated into violent riots in which many Chinese factories and workers were targeted (Boehler, 2014).
2. Disputes over maritime sovereign rights generally take place on the periphery of a nation far from the national centre. For this reason, this type of conflict is

not considered to pose an existential threat to the state unlike terrestrial dispute on land borders. For a detailed discussion on this difference, see Mak (2009: 115-118).

3. This case shows that the interest of the parties, i.e., national security, can be satisfied by changing their position, i.e., maritime claims, which constitute a particular incompatibility.
4. Expert-level talks were undertaken by joint working teams and mapping teams whose major tasks were to discuss the methodology, legal basis, relevant circumstances, area and scope of delimitation to work out delimited lines for the consideration and approval of respective governments. Meanwhile, the governmental-level negotiations aimed to reach “general understanding and consensus” and pose “fundamental principles” guiding the common process of resolution of all border issues (Manh Dong, 2009).
5. There are several reasons explaining why Sino-Vietnamese leaders decided to completely settle their first category of dispute by 2000. For example, they wanted to celebrate the 50th anniversary of the establishment of China-Vietnam diplomatic ties (1950-2000) and to eliminate existing bilateral obstacles (mainly territorial tensions and differences) in order to further their comprehensive, strategic and cooperative partnership in the era of global integration. Furthermore, it is worth noting that disputed areas along the Sino-Vietnamese land borders and the Gulf of Tonkin are core parts of what is recently deemed as China-initiated “One Axis and Two Wings” strategy, characterized by the Beibu Gulf Economic Belt and China-ASEAN Free Trade Area (CAFTA). Thus, the two neighbours were sufficiently motivated to settle the prevailing disputes as quickly as possible to expedite the integration process (*People’s Daily*, 2000a, 2000b).
6. These documents have not been made public up to now.
7. Specific strategically important and sensitive areas under dispute and their settlements are as follows:
 - Huu Nghi Quan/Youyi Guan: China and Vietnam agreed to rely on the Conventions to determine the 300m stretch of the railway between Pingxing (Guangxi – China) and Dong Dang (Lang Son – Vietnam). The site went to China eventually;
 - Thac Ban Gioc/Detain Falls, Bac Luan river mouth and Hoanh Mo village where the Conventions did not clearly prescribe. Both sides agreed to delimitate the total area of the falls on a 50:50 basis (Truc, 2016; Phung, 2016).
8. Vietnam accepted to give up 5 villages with a total area of about 5.7 sq. km where Chinese residents live beyond the new boundary. On the other hand, China is believed to cede the same area of 4 villages where the Vietnamese live in China’s territory beyond the boundary (Truc, 2015; Amer, 2002: 40).
9. The above-mentioned islands under Vietnam’s sovereignty are Bach Long Vi Island, located right at the centre of the Gulf, and Con Co Island, 13 nm to the north east of the Vietnamese shore and located right at the closing line of the Gulf. The UNCLOS can in “full effects” entitle these islands to not only

territorial waters of 12 nm, but also exclusive economic zones of 200 nm and continental shelves of up to 350 nm (Amer, 2002: 42).

10. The median line was “adjusted” in that Vietnam in a major concession agreed to not giving “full effects” to its two islands in the Gulf of Tonkin in determining the line of maritime jurisdiction, although the UNCLOS entitled EEZ and continental shelf to the islands (Amer, 2002: 42).
11. China also accepted Vietnam’s demands for the limited duration and area of the newly established joint fishing zone (Zou, 2005: 16-17; Manh Dong, 2009).
12. According to the fishery agreement, the joint fishing zone of about 33,500 square kilometres covered most of the fishing grounds of high productivity in the Gulf of Tonkin, stretching from 20°N southward to the closing line of the Gulf with a width of thirty and a half nautical miles and had a 15-year operational period (including three year of automatic extension after the termination date). The transitional fishing zone which would last for four years was established to allow fishermen to have time to adjust their fishing patterns to the new conditions. In addition, China and Vietnam agreed to establish a buffer zone of 30 sq. nautical miles outside the estuary of the Bac Luan river, from which fishing boats of either state mistakenly coming in would be asked to leave (Zou, 2005: 16-17; Manh Dong, 2009).
13. Despite the provision of the UNCLOS, Vietnam and China agreed that Bach Long Vi Island would generate 12 nm territorial sea and 3 nm more of EEZ and continental shelf outside the territorial sea, totalling 15 nm and that Con Co Island would be given 6 nm of territorial sea, EEZ and continental shelf in total. For this reason, the circle surrounding the latter is depicted considerably smaller than that surrounding the former (Amer 2002: 42; Tuoi Tre News 2004; Zou 2005: 15).
14. Beijing and Hanoi fully controlled their respective state-owned media, and did not allow them to report criticism from the public. As a result, no significant domestic objection emerged after the two states reached agreements to settle the disputes (*BBC/Vietnamese*, 2013; Zou, 2005: 15; Beina, 2015).
15. For a detailed discussion on the potential role of defence diplomacy in Asia, see Taylor et al. (2014).
16. For example, Vietnamese Deputy Defense Minister, Senior Lieutenant General Nguyen Chi Vinh remarked that the dispute over the Paracels and adjacent waters was a bilateral matter between China and Vietnam and that bilateral negotiations should be appropriate (*Tuoi Tre News*, 2016).
17. The agreement underscores, among others: (1) taking the fraternal relations between the two countries as the foundation of negotiation, (2) respecting legal principles, notably the 1982 UNCLOS, and credible historical evidence, (3) taking into account each other’s legitimate concerns, and (4) settling bilateral disputes through bilateral negotiations (*Vietnam News Agency*, 2011b).
18. During Nguyen Tan Dung’s premiership, Vietnam has moved significantly closer to the U.S., as represented by an increased number of high level mutual visits in Hanoi and Washington, including state visits by Vietnamese state leaders and US presidents (Consulate of the Socialist Republic of Viet Nam in New York 2013). For the US “strategic engagement” in this period, see Wong (2013).

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