

BASELINES IN THE GULF OF TONKIN AND THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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Abstract

The Gulf of Tonkin is a shared bay between Vietnam and China, which was delimited by the Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the delimitation of the territorial seas, exclusive economic zones and continental shelves of the two countries in Beibu Gulf (the Chinese name of the Tonkin Gulf)/Bac Bo Gulf on 25 December 2000. The determination of internal waters, territorial seas, and related maritime zones depends on the declaration of baselines in the Gulf of Tonkin. After more than 20 years, China (March 2024) and Vietnam (February 2025) have issued significant unilateral declarations regarding baselines. These developments raise concerns about the impact of such declarations on the 2000 Delimitation Agreement, Vietnam-China relations, and the consistency of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). This article will analyze three main aspects: (i) the baselines of China and Vietnam in the Gulf of Tonkin, (ii) the establishment of baselines in light of UNCLOS, (iii) the impact of the new baseline systems on the 2000 Delimitation Agreement and Vietnam-China cooperation.

Keywords: Gulf of Tonkin, baseline, delimitation, Vietnam, China, UNCLOS

Received: 13 May 2025

Revised: 15 July 2025

Accepted: 25 July 2025

The Gulf of Tonkin, located in the northwestern part of the South China Sea, is a shared and strategically significant maritime area for both Vietnam and China. The two countries completed the delimitation of maritime boundaries in the Gulf of Tonkin through the Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the delimitation of the territorial seas, exclusive economic zones and continental shelves of the two countries in Beibu Gulf/Bac Bo Gulf, signed on 25 December 2000,¹ and effective from 30 June 2004. A declaration of baselines in the Gulf of Tonkin from both sides is necessary for the determination of internal waters, territorial seas, and other relevant maritime zones of each country, serving as a legal foundation for maritime management and enforcement. However, only after more than 20 years did China and Vietnam make significant unilateral declarations regarding baselines in the Gulf of Tonkin, China in March 2024 and Vietnam in February

¹ Agreement between the People's Republic of China and the Socialist Republic of Viet Nam on the delimitation of the territorial seas, exclusive economic zones and continental shelves of the two countries in Beibu Gulf/Bac Bo Gulf. <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028006ece3>

2025. These developments raise concerns about whether such actions may affect the outcome of the Gulf of Tonkin delimitation, Vietnam–China relations, as well as the consistency of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).²

To address the aforementioned question, this paper will examine three principal aspects of the issue. First, it will employ statistical and comparative methods to highlight the distinguishing characteristics of the two baseline claims in the Gulf of Tonkin. Second, building upon the findings of the first section, it will provide an in-depth analysis of the compatibility of these baselines with, and their conformity to, the 1982 UNCLOS. Third, adopting a contemporary analytical approach, the paper will offer projections and assess the potential impacts of the new baseline systems on the 2000 Delimitation Agreement and on Vietnam–China cooperation in the Gulf of Tonkin.

1. The baselines of China and Vietnam in the Gulf of Tonkin

The Gulf of Tonkin covers an area of approximately 126,250 km² (36,000 square nautical miles), with its widest point measuring around 320 km (176 nautical miles) and its narrowest point about 220 km (119 nautical miles). It is a semi-enclosed gulf, bordered by the northeastern coast of Vietnam, the southern coast of Guangxi Province, China, the Leizhou Peninsula and Hainan Island (China), the southern boundary, marked by an imaginary straight line connecting the outermost point of Oanh Ca Cape (Hainan Island, China) to Con Co Island (Vietnam) and the Vietnamese mainland.

The Gulf has two entrances. The first is the Qiongzhou Strait, located between the Leizhou Peninsula and Hainan Island, with a width of approximately 19 nautical miles. The second is the main entrance of the Gulf, stretching from Con Co Island (Vietnam) to Oanh Ca Cape (Hainan Island), approximately 119 nautical miles wide. The coastline along the Vietnamese side of the Gulf extends for about 763 km, while China's coastline in the region is approximately 695 km long. Vietnam's portion of the Gulf contains around 1,300 coastal islands, the most notable of which is Bach Long Vi Island, located about 110 km from mainland Vietnam and 130 km from Hainan Island, China.³

2 Thayer, C. A. (2024, April 16). Gulf of Tonkin the next site for China-Vietnam confrontation?. *Thayer Consultancy Background Brief*, SCRIBD. <https://www.scribd.com/document/723470554/Thayer-Gulf-of-Tonkin-the-Next-Site-for-China-Vietnam-Confrontation>; The Maritime Executive (2024, March 19). *China Quietly Annexes Northeast Corner of Gulf of Tonkin*. The Maritime Executive. <https://maritime-executive.com/article/china-quietly-annexes-northeast-corner-of-gulf-of-tonkin>

3 Keyuan, Z. (1999). Maritime boundary delimitation in the Gulf of Tonkin. *Ocean Development & International Law*, 30(3), 235–254. <https://doi.org/10.1080/009083299276177>; Thao, N. H. (2005, August). Maritime delimitation and Fishery Cooperation in the Tonkin Gulf, *Ocean Development & International Law*, 36(1), 25–44. <https://doi.org/10.1080/00908320590904939>

On 15 June 1996, China declared two straight baseline systems, consisting of 49 points along the Chinese mainland coast and 28 points around the Paracel Islands, which are under Vietnam's sovereignty.⁴ China's 01 March 2024 baseline declaration in the Gulf of Tonkin continues the completion of its mainland coastal baseline system, extending from Oanh Ca Cape (Hainan Island) to Point 1 of the 2000 Agreement on the Delimitation of Territorial Seas, Exclusive Economic Zones, and Continental Shelves between Vietnam and China. This baseline segment consists of seven points. Three points are along the western coast of Hainan Island (Junbi Cape (19°21.1'N, 108°38.6'E), Shenjian Cape (19°49.6'N, 109°09.5'E), Bingma Cape (19°54.1'N, 109°15.7'E). Three points located on Xieyang Island (20°54.2'N, 109°12.4'E), Weizhou Island (21°00.6'N, 109°05.2'E) and Baixugong Reef (21°23.3'N, 108°12.3'E). Point 7, which is at sea and serves as Point 1 of the 2000 Sino-Vietnamese Gulf of Tonkin Boundary Line.⁵

The total length of the Chinese straight baseline in the Gulf of Tonkin is 183.7 nautical miles. The longest segment, from Bingma Cape to Xieyang Island, measures 61.5 nautical miles, with the furthest offshore point approximately about 50 nautical miles from the coast. The closest distances from Weizhou Island and Xieyang Island to the mainland are 23 and 26 nautical miles, respectively. This new baseline creates an area considered internal waters of approximately 17,200 km². Additionally, the Qiongzhou Strait, formed by Hainan Island and the Leizhou Peninsula, was previously an international navigation route but is now almost completely enclosed due to China's baseline system on both the western and eastern sides of Hainan Island, effectively turning it into China's internal waters.

According to the Department of Boundary and Ocean Affairs of the Chinese Foreign Ministry, the announcement of the baseline of the territorial sea is a necessary act to exercise national sovereignty and jurisdiction. In addition, there are different management regulations and usage plans for internal waters, territorial seas and exclusive economic zones. Only by delineating the baseline of the territorial sea can the scope of the above-mentioned sea areas be clearly defined, and

4 Thao, N. H. (1996). Về việc Trung Quốc công bố đường cơ sở dùng để tính chiều rộng lãnh hải. *Tạp chí Quốc phòng toàn dân* [trans: On China's declaration of baselines for measuring the breadth of the territorial sea. *National Defense Journal*], (6).

5 中华人民共和国政府关于北部湾北部领海基线的声明 [trans: The Statement of the Government of the People's Republic of China on the Territorial Sea Baselines in the Northern Part of the Gulf of Tonkin] (2025, July 16). https://www.mfa.gov.cn/web/ziliao_674904/1179_674909/202403/t20240301_11252543.shtml

it provides a basis for the standardized and scientific use of the sea by coastal provinces and regions.⁶

On 14 March 2024, the Vietnamese Ministry of Foreign Affairs emphasized that:

“Vietnam believes all coastal countries need to abide by the 1982 UNCLOS when drawing the territorial baseline used to calculate the width of the territorial waters and to ensure that the baseline does not affect the lawful rights and interests of other countries, including the freedom of navigation and the freedom of transit passage through straits used for international maritime activities in accordance with the 1982 UNCLOS”.

“Vietnam has been and will continue to discuss our positions with China on this matter, in a spirit of friendship, mutual understanding and mutual respect.”⁷

Vietnam calls on China to respect and adhere to the agreement on the delimitation of territorial seas, exclusive economic zones, and continental shelves of both countries in the Gulf of Tonkin, signed in 2000, as well as the 1982 UNCLOS. However, Vietnam “reserves its lawful rights and interests in accordance with international law”, as well as its position stated in the Government of Vietnam’s declaration on 06 June, 1996, regarding China’s 15 May, 1996, statement announcing the baselines used to determine the breadth of its territorial sea.⁸

Vietnam first declared its system of straight baselines in 1982, beginning from Point 0, which lies on the southwestern boundary of the joint historic waters between the Socialist Republic of Vietnam

6 “中华人民共和国政府关于北部湾北部领海基线的声明” [trans: Statement of the Government of the People’s Republic of China on the Baselines of the Northern Part of the Territorial Sea in the Beibu Gulf]. https://www.mfa.gov.cn/web/ziliao_674904/1179_674909/202403/t20240301_11252543.shtml; Chinese Ministry of Foreign Affairs website. (2024, March 1). <https://fmprc.gov.cn>; Global Times. (2024, March 05). *China’s latest delineation of territorial sea baseline in Beibu Gulf will not affect interests of any country: FM*. Global Times. <https://www.globaltimes.cn/page/202403/1308172.shtml>; Dimsumdaily Hong Kong (2024, March 1). *China establishes new maritime baseline in the northern Gulf of Tonkin*. Dimsumdaily Hong Kong. <https://www.dimsumdaily.hk/china-establishes-new-maritime-baseline-in-the-northern-gulf-of-tonkin>

7 Reuters. (2024, March 13). *Vietnam urges respect of international law as China draws Gulf of Tonkin baseline*. Reuters. <https://www.reuters.com/world/asia-pacific/vietnam-urges-respect-international-law-china-draws-gulftonkin-baseline-2024-03-14/>; China Strategy. (2024, March 31). *Vietnam objects to china’s expanded reach in gulf of tonkin*. China Strategy, <https://www.chinastrategy.org/2024/03/31/vietnam-objects-to-chinas-expanded-reach-in-gulf-of-tonkin/>

8 Viet Nam News. (2024, March 14). *Việt Nam asks China to respect Gulf of Tonkin boundary agreement: Foreign ministry*. Viet Nam News. <https://vietnamnews.vn/politics-laws/1652012/viet-nam-asks-china-to-respect-gulf-of-tonkin-boundary-agreement-foreign-ministry.html>

and the People's Republic of Cambodia, extending to Point A11 at Con Co Island in Binh Tri Thien Province. On 21 February 2025, the Government of Vietnam announced the "Declaration on the Baseline for Determining the Breadth of the Territorial Sea in the Gulf of Tonkin." This declaration was issued based on the 2012 Law of the Sea of Vietnam and Resolution No. 68/NQ-UBTVQH15, adopted by the Standing Committee of the National Assembly on 14 February 2025. Thus, Vietnam's baseline system in the Gulf of Tonkin consists of two parts. The first is a straight baseline connecting Point A11 (Con Co Island) to Point A24 (Point 1 of the 2000 Sino-Vietnamese Gulf of Tonkin Boundary Line). The second is a normal baseline, defined as the lowest low-water line along the coast of Bach Long Vi Island.⁹

Vietnam's territorial sea in the Gulf of Tonkin extends 12 nautical miles from the baseline. However, to prevent misinterpretations, Vietnam's declaration reaffirms the delimitation points of the territorial sea adjacent to the coasts of both countries at the mouth of the Bac Luan River, which consists of nine points along the boundary line between the Socialist Republic of Vietnam and the People's Republic of China in the Gulf of Tonkin, connecting to Point 10 with specific coordinates within Vietnamese waters (21°03'33.1" N; 108°10'57.7" E). Additionally, Bach Long Vi Island has a territorial sea of 12 nautical miles, measured from the lowest low-water line, beyond which lie the island's exclusive economic zone (EEZ) and continental shelf. Vietnam asserts that the establishment of baselines in the Gulf of Tonkin is intended to affirm its rights and obligations under the 1982 UNCLOS and is in accordance with Vietnam's 2012 Law of the Sea. Vietnam asserts that the establishment of baselines in the Gulf of Tonkin is intended to affirm its rights and obligations under the 1982 UNCLOS and is in accordance with Vietnam's 2012 Law of the Sea. This serves as a solid legal foundation for protecting and exercising Vietnam's sovereignty, sovereign rights, and jurisdiction, while also contributing to economic development, maritime management, and international cooperation.

Hence, these two declarations on the baselines impact each country's interests as well as the legal order in the Gulf, inevitably sparking debates over their conformity with UNCLOS.

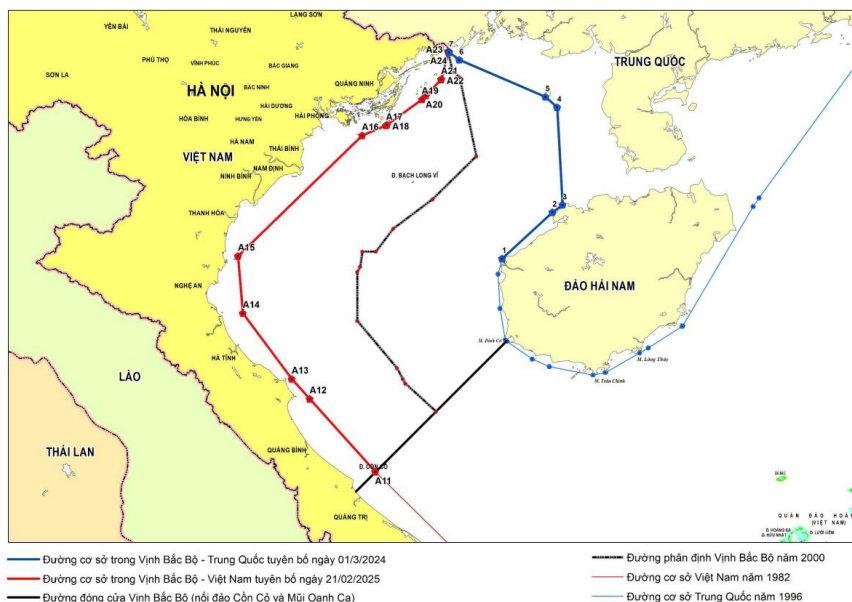
⁹ Viet Nam News. (2025, February 21). *Viet Nam announces baseline for determining territorial sea width in the Gulf of Tonkin*. Viet Nam News. <https://vietnamnews.vn/environment/1692631/viet-nam-announces-baseline-for-determining-territorial-sea-width-in-the-gulf-of-tonkin.html>

**Table 1. Technical Specifications of Vietnam's
Baselines in the Gulf of Tonkin**

Point	Geographical Location	Longitude	Latitude	Distance to Mainland (Nautical Miles)	Distance to Next Point (Nautical Miles)
A11	Cồn Cỏ Island	107° 20' 36.0 E	17° 10' 00.0 N	13.94	59.29
A12	Hòn Gió Lớn Islet	106° 40' 25.8 E	17° 54' 48.1 N	9.24	16.26
A13	Hòn Chim Islet	106° 29' 23.7 E	18° 07' 02.5 N	3.14	49.99
A14	Hòn Mát Con Islet	105° 59' 20.5 E	18° 47' 28.2 N	12.23	35.7
A15	Hòn Mê Island	105° 56' 18.6 E	19° 22' 36.7 N	7.71	105.31
A16	Long Châu Island	107° 12' 32.2 E	20° 36' 47.9 N	20.61	15.51
A17	Hạ Mai Island	107° 27' 14.9 E	20° 42' 58.6 N	17.9	0.69
A18	Hạ Mai Island	107° 27' 50.2 E	20° 43' 21.3 N	17.52	26.2
A19	Thanh Lam Island	107° 49' 20.9 E	20° 59' 02.3 N	22.13	3.39
A20	Thanh Lam Island	107° 51' 46.5 E	21° 01' 25.9 N	21.59	13.59
A21	Hòn Bồ Cát Islet	108° 01' 09.6 E	21° 11' 19.6 N	19.75	0.21
A22	Hòn Bồ Cát Islet	108° 05' 32.8 E	21° 28' 14.9 N	19.75	17.7
A23	Trà Cổ Island	108° 05' 32.8 E	21° 28' 14.9 N	0.88	0.51
A24	Point 1 of the 2000 Sino-Vietnamese Gulf of Tonkin Boundary Line	108° 06' 04.3 E	21° 28' 12.5 N	1.2	
A25	Bạch Long Vỹ Island	107°42'50"E	20°07'35"N	the lowest low-water line	

Nautical chart scale 1:1,000,000, sheet I-1000-01, Mercator projection, WGS84 datum¹⁰

¹⁰ The chart is prepared by Nguyen Hong Thao and Nguyen Duy Luong in Thao, N. H. (2020, April). *Extended continental shelf: A renewed South China Sea competition*. Maritime Issues. <http://www.maritimeissues.com/law/extended-continental-shelf-a-renewed-south-china-sea-competition.html>

Figure 1. Baseline in the Gulf of Tonkin¹¹

2. Analysis of the Establishment of Baselines in the Gulf of Tonkin under the 1982 United Nations Convention on the Law of the Sea

The declaration of baselines for measuring the breadth of the territorial sea falls within the authority of coastal states. UNCLOS does not prohibit coastal states from unilaterally declaring their system of baselines and registering it with the United Nations (Article 16), provided that it complies with international law, particularly Articles 5 (normal baselines) and 7 (straight baselines) of the UNCLOS.¹² Coastal states may choose to apply normal baselines, straight baselines, or a combination of both.

Under UNCLOS, the straight baseline method is permitted only in three specific cases: (i) in localities where the coastline is deeply indented or cut into; (ii) if there is a fringe of islands along the coast in its immediate vicinity, and (iii) when there is an exceptionally unstable delta or other natural conditions affecting the coastline. In all three cases, the drawing of straight baselines must not significantly deviate

11 The chart is prepared by Nguyen Duy Luong in Thao, N. H. (2020, April). Extended continental shelf: A renewed South China Sea competition. *Maritime Issues*. <http://www.maritimeissues.com/law/extended-continental-shelf-a-renewed-south-china-sea-competition.html>

12 Article 5, 7, 16 of the United Nations Convention on the Law of the Sea.

from the general direction of the coast, and the sea areas enclosed within these lines must be sufficiently linked to the land domain to be considered internal waters.

However, in practice, most states opt for the straight baseline method for their maritime zones to maximize their claims over waters under national jurisdiction. For example, the 1992 Law on the Territorial Sea and the Contiguous Zone of China declared the adoption of the straight baseline method for China's maritime areas.¹³ Upon this, the baselines declared by China on 01 March 2012 are primarily based on offshore rocks and islands. Therefore, China established its baselines under the exception for a fringe of islands along the coast, which must be close to shore. A condition of a fringe of islands along the coast can be referenced in the United States (U.S) Department of State's commentary on China's 1996 straight baseline system.¹⁴ While UNCLOS does not explicitly define what constitutes a "fringe of islands," nor does it specify the maximum distance between them and the mainland or the permissible length of straight baselines, international cartographic experts generally consider a fringe to consist of at least three islands, with baseline segments ideally not exceeding 24 nautical miles.¹⁵ There is no international consensus on the maximum offshore distance for a fringe of islands. Most experts agree on a 24-nautical-mile limit, corresponding to the territorial sea width of both the mainland and islands. A minority argue that the contiguous zone width between the mainland and islands could be the upper limit.¹⁶

However, any state claiming a straight baseline system must demonstrate that the waters enclosed within the straight baselines are

13 Thao (1996), *supra* note 4.

14 The Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs. (1996). Straight baseline claim: China. *Limits in the Seas*, (117). United States Department of State. <https://www.state.gov/wp-content/uploads/2020/01/LIS-117.pdf>

15 Prescott, V. & Schofield, C. (1985). *The maritime political boundaries of the world*. 2nd edition, Martinus Nijhoff Publishers, p. 69. <https://www.defence.lk/upload/ebooks/The%20Maritime%20Political%20Boundaries%20Of%20The%20World%20Second%20Edition.pdf>

16 Roach, J. A. & Smith, R. W. (1996), *United States responses to excessive maritime claims* (2nd edition). Martinus Nijhoff Publishers, p. 64 (24 miles); Hodgson, R. D. & Alexander, L. M. (1971). Towards an objective analysis of special circumstances: Bays, rivers, coastal and oceanic archipelagoes and atolls. *Law of the Sea Institute Occasional Paper*, (13), p. 8 (45 miles); Beazley, P. B. (1978, August). *Maritime limits and baselines: A guide to their delineation* (2nd ed., revised, Special Publication, No. 2). The Hydrographic Society, p. 9 (45 miles); The Office of Ocean Affairs, Bureau of Oceans and International Environmental and Scientific Affairs. (1987). Developing standard guidelines for evaluating straight baselines. *Limits in the Seas*, (106). United States Department of State. <https://2021-2025.state.gov/wp-content/uploads/2019/12/LIS-106.pdf>

sufficiently linked to the land domain to be considered internal waters. In China's 1996 straight baseline system, 24 out of 49 baseline segments exceeded 24 nautical miles, with three segments extending beyond 100 nautical miles – the longest spanning 121.7 nautical miles from point 8 to point 9. Given these excessive lengths and the positioning of many baseline points, the U.S. assessment concluded that China's straight baselines "do not meet the criteria set forth in UNCLOS."¹⁷ Nevertheless, China dismissed the U.S. critique, arguing that it was not yet a party to UNCLOS at the time.

In the Gulf of Tonkin, certain segments of the western baseline of Hainan Island, specifically, segments 3–4 (Bingma Cape to Xieyang Island) and 5–6 (from Weizhou Island to Baixugong Reef), do not truly form a fringe of islands, as they merely connect two isolated reefs. Some segments extend about 50 nautical miles from the mainland and do not follow the general direction of the coast.¹⁸ Additionally, China has not provided evidence demonstrating that the waters enclosed by these baselines are closely linked to the mainland, which would justify their classification as internal waters.

Article 6 of the China's 1992 Law on the Territorial Sea and the Contiguous Zone permits innocent passage of foreign vessels, but the expansion of internal waters under the straight baselines in the Gulf of Tonkin could negatively impact freedom of navigation in the waters west of Hainan Island, the Leizhou Peninsula, and through the Qiongzhou Strait. This strait, located between the Leizhou Peninsula and the northern coast of Hainan Island, has a maximum width of 19 nautical miles and a minimum width of 9.8 nautical miles. When China declared its territorial sea in 1958, it implied that the Qiongzhou Strait fell within its internal waters. However, under Article 34(1) of UNCLOS, the legal regime of straits used for international navigation remains unaffected by any claims regarding the legal status of the waters, seabed, subsoil, or airspace above them. Therefore, even if the Qiongzhou Strait were designated as internal waters through the application of the straight baseline method under Article 7 of

17 The Office of Ocean Affairs. (1987), *supra* note 14, p. 5.

18 "The PRC's new claims significantly depart from the general direction of the coast in breach of UNCLOS Article 7(3) – e.g., the largest baseline segment remains vertical as the landmass moves eastward", see USINDOPACOM Joint Operational Law Team, U.S. Pacific Fleet & U.S. Region Legal Service Office Southwest. (2024, April 24). *The PRC's straight baselines in the Gulf of Tonkin*. USINDOPACOM J06/SJA TACAID Series. [https://www.pacom.mil/Portals/55/Documents/Legal/J06%20TACAID%20-%20STRAIGHT%20BASELINE%20CLAIMS%20\(FINAL\).pdf?ver=_Kvu6zOzDglPEyY157gUhw%3d%3d](https://www.pacom.mil/Portals/55/Documents/Legal/J06%20TACAID%20-%20STRAIGHT%20BASELINE%20CLAIMS%20(FINAL).pdf?ver=_Kvu6zOzDglPEyY157gUhw%3d%3d)

UNCLOS, foreign vessels would still retain passage rights in the strait as regulated by Article 35.

Under Article 38 of UNCLOS, all ships and aircraft enjoy unimpeded the right of transit passage through straits used for international navigation. Coastal states may, however, establish traffic separation schemes and navigation routes to ensure maritime safety (Article 41). If China's straight baselines were to classify Qiongzhou Strait as internal waters, this could restrict navigational freedoms in the region, particularly for Vietnamese vessels.

Vietnam's baseline system in the Gulf of Tonkin follows a hybrid approach, combining straight baselines and normal baselines, with Bach Long Vi Island applying the normal baseline method. UNCLOS allows the use of both methods, though straight baselines are an exception to the normal baseline principle, permitted only in the three specific cases mentioned earlier.

Vietnam's 21 February 2025, declaration on baselines in the Gulf of Tonkin is fully consistent with UNCLOS. It also complies with Article 8 of Vietnam's 2012 Law of the Sea, which states:

"The baseline used to measure the breadth of Vietnam's territorial sea is the straight baseline as announced by the Government. The Government shall determine and announce the baseline in areas where it has not yet been established, after approval by the Standing Committee of the National Assembly."¹⁹

By adopting both straight and normal baselines, Vietnam demonstrates a flexible approach to maritime delimitation. This flexibility may also indicate a potential future approach when declaring baselines for features in the Paracel (Hoang Sa) and Spratly (Truong Sa) Islands.

Vietnam's straight baseline system in the Gulf of Tonkin is applied to an island chain that follows the general direction of the coastline. The baseline connects 12 islands and reefs, with the farthest island, Thanh Lam Island, located 21.59 nautical miles from the coast. Most of the other features are within 12 nautical miles of the mainland, meaning they are closely aligned with the coastline and do not depart from its general direction. Additionally, their distance does not exceed the breadth of the territorial sea from either the mainland and the island. Vietnam's straight baselines in the Gulf of Tonkin do not cut across any international straits or maritime areas used for international navigation. Therefore, they do not interfere with the right of innocent

¹⁹ The 2012 Law of the Sea of Vietnam.

passage for foreign vessels within Vietnam's territorial sea or with freedom of navigation in the Vietnam's exclusive economic zone. Thus, while China may face challenges in justifying the legality of its straight baseline claims in the Gulf of Tonkin, Vietnam's baseline declaration is firmly grounded in legal principles and fully compliant with UNCLOS.

3. Impacts of the New Baseline System on the 2000 Delimitation Agreement and Vietnam-China Cooperation in the Gulf of Tonkin

Vietnam and China underwent 30 years of negotiations (1974–2004), including five rounds of talks, with the longest round taking place from 1993 to 2000, to reach the Agreement on the Delimitation of the Territorial Sea, Exclusive Economic Zone, and Continental Shelf in the Gulf of Tonkin on 25 December, 2000. This agreement entered into force after both countries signed the Fisheries Cooperation Agreement in the Gulf of Tonkin and the Protocol on the Common Fishing Zone in 2004.²⁰ The Gulf of Tonkin Delimitation Agreement defines 21 geographical coordinate points. Points 1–9 mark the boundary line separating the adjacent territorial seas of the two countries. A vertical plane along this boundary clearly delimits the territorial waters, the seabed beneath, and the airspace above, which fall under the sovereignty of each nation. Points 10–21 establish the delimitation of the EEZ and continental shelf between the opposite coasts of northern Vietnam and China's Hainan Island. This agreement permanently defines the maritime boundary, as it does not include any provisions on its expiration.

Additionally, both parties agreed to establish a buffer zone for small fishing boats near the Bac Luan River mouth, extending 3 nautical miles from the delimitation line on each side and spanning a total length of 10 nautical miles. This provision facilitates the free movement of small, non-GPS-equipped fishing vessels in the internal waters of both countries at the river mouth. Furthermore, the agreement states that if a petroleum deposit straddles the delimitation line, both parties will engage in friendly consultations to reach an agreement on the most effective development method and a fair division of benefits derived from the resource.²¹

The 2004 Fisheries Cooperation Agreement and its Protocol on the Common Fishing Zone established a joint fishing area south

20 Thao (2005), *supra* note 3, p. 25 – 45.

21 Keyuan (1999), *supra* note 3.

of the 20°N latitude, extending 30.5 nautical miles on each side of the delimitation line. This agreement was initially valid for 12 years and was subject to automatic three-year renewals unless either party objected. After 15 years, both countries agreed to extend it for one additional year, leading to the agreement's expiration in 2020.

These agreements were founded on principles of mutual respect for sovereignty, territorial integrity, non-aggression, non-interference in each other's internal affairs, equality, mutual benefit, peaceful coexistence, and friendly consultations to achieve a fair solution.²² The delimitation of the Gulf of Tonkin was based on the principle of agreement, taking into account special circumstances, particularly the coastline ratio and the central position of Bach Long Vi Island.

Some argue that Vietnam had an advantage due to Bach Long Vi (2.5 km², located 130 km from Hainan and 110 km from Hon Dau, Haiphong), asserting that the island should receive full effect in the delimitation. This would mean dividing the waters between Bach Long Vi and Hainan, rather than between Hainan and Vietnam's mainland, thereby granting Vietnam a larger maritime area.²³ However, according to international law and case law, an island close to the median line, like Bach Long Vi, represents a special circumstance that must be considered in delimitation negotiations to achieve an equitable solution.

There is no fixed rule under UNCLOS or state practice dictating why one island receives half effect, another one-third, or no effect at all. For example, Abu Musa Island (1981 Dubai-Sharjah case) received no effect, Djerba Island (1982 Tunisia-Libya case) was ignored in delimitation,²⁴ and the Bijagós Islands (1985 Guinea-Guinea Bissau case) were disregarded.²⁵ Clearly, each case is unique (*unicum*), dependent on specific circumstances and state agreements. In the *Romania v.*

22 Preamble of the 2000 Gulf of Tonkin Delimitation Agreement.

23 Tréglodé, B. D. (2016). Maritime boundary delimitation and Sino-Vietnamese cooperation in the Gulf of Tonkin (1994–2016). *China's Policy in the China Seas*, Translated by David Buchanan, Special feature, (3), 33–41. <https://doi.org/10.4000/chinaprospectives.7030>; Huy, D. D. (2021). *Vấn đề đường cơ sở thẳng của Việt Nam nhìn từ Luật biển quốc tế*. Báo Quốc Dân [trans: *The Issue of Vietnam's Straight Baselines from the Perspective of International Law of the Sea*. National Newspaper]. <https://www.baoquocdan.org/2021/02/duong-danh-huy-van-e-uong-co-so-thang.html>

24 Shapland, G. (2020). Maritime boundaries in the Middle East. *Asian Affairs*, 51(1), 146–168. <https://doi.org/10.1080/03068374.2019.1707529>

25 David, E. (1985). La sentence arbitrale du 14 février 1985 sur la délimitation de la frontière maritime Guinée-Guinée-Bissau [trans: The arbitral award of 14 February 1985 on the delimitation of the maritime border between Guinea and Guinea-Bissau]. *Annuaire Français de Droit International*, (31), 350–389. https://www.persee.fr/doc/afdi_0066-3085_1985_num_31_1_2665

Ukraine case (Snake Island), the International Court of Justice (ICJ) outlined a three-step process: (i) draw the median line between the relevant coasts as a starting point; (ii) adjust for special circumstances (e.g., coastline shape, islands) to achieve an equitable result; and (iii) check proportionality, ensuring the allocated maritime zones are fairly distributed relative to coastline length.

During the negotiations, Vietnam also recognized that Bach Long Vi Island would have partial effect. At the beginning of the negotiations, the two sides exchanged initial positions, Vietnam proposed a 50% effect, while China insisted on 0% effect. As a result of the Gulf of Tonkin delimitation, Bach Long Vi Island was granted a 12-nautical-mile territorial sea and an EEZ and continental shelf extension of 3 nautical miles, equivalent to 25% effect. In terms of maritime area allocation, Vietnam received 53.25% of the Gulf's area, while China received 46.77% (a ratio of 1.135:1). The Vietnamese coastline within the Gulf of Tonkin measures 763 km, compared to China's 695 km (a ratio of 1.1:1). Thus, the ratio of the allocated maritime area is proportional to the coastline length. Accordingly, Vietnam and China's agreement on the delimitation of the Gulf of Tonkin adhered to recognized international practices, taking into account Bach Long Vi's position and effect within the framework of an equitable solution.

Based on the 1969 North Sea Continental Shelf judgment, decisions by international courts and tribunals, and state practice in maritime delimitation, experts from both countries applied the three-step method in 2000, nine years before the ICJ formally endorsed it in 2009. Thus, if the case were to be presented before an international judicial body, it would be difficult for either side to achieve an overwhelmingly favorable outcome.

Over the past quarter of a century, the Gulf of Tonkin Delimitation Agreement has been regarded as a widely cited example of a negotiated maritime boundary settlement in international law literature. The agreement has contributed to stability in the Gulf of Tonkin. Alongside the 1999 and 2009 land border delimitation agreements, it has effectively resolved two of the three major historical obstacles in bilateral relations, strengthening friendly cooperation between Vietnam and China. International delimitation practice and judicial decisions have shown that baselines are rarely used in maritime delimitation, as they are unilateral declarations that can undermine the equitable outcome of negotiations. To facilitate the negotiation

process, both Vietnam and China exercised restraint by refraining from declaring baselines in the Gulf of Tonkin. After the delimitation, both countries recognized the need to implement the Fisheries Cooperation Agreement, which regulated the number of fishing vessels permitted in the joint fishing zone. This zone served as a buffer area between the two countries, reducing the immediate need for baseline declarations and the establishment of maritime zones with clearly defined legal regimes.

However, after the expiration of the Fisheries Cooperation Agreement in 2020, both nations faced increasing demands for maritime management. These included clarifying jurisdictional responsibilities for maritime inspection and enforcement forces in their territorial seas, EEZs, and continental shelves, ensuring the proper exercise of the right of innocent passage through territorial waters, and respecting the freedom of the high seas for other states within their respective EEZs. These developments laid the groundwork for conducting enforcement maritime patrols. Since 2020, after the agreement's expiration, the coast guards of Vietnam and China have conducted eight joint patrols along the delimitation line.

Once the baselines of both sides are determined, their respective EEZs will also be clearly defined, facilitating the negotiation of a new Fisheries Cooperation Agreement in the Gulf of Tonkin. Moreover, the establishment of baselines is closely linked to national airspace boundaries, as the vertical plane extending from the 12-nautical-mile territorial sea boundary marks the national airspace limit. This would enhance the management of international flight routes entering and exiting the national airspace of both countries, ensuring aviation security and international trade safety.

Vietnam's baseline declaration in the Gulf of Tonkin was not a response to China's baseline declaration, but rather a necessary measure for objective maritime management needs and international maritime cooperation. Some foreign commentators acknowledge that China's baseline declaration in the Gulf of Tonkin does not directly impact the Maritime Boundary Delimitation Agreement with Vietnam. However, they suggest it may be a legal warfare tactic aimed at gaining leverage in negotiations and pressuring Vietnam in the South China Sea.²⁶ According to Article 62 of the 1969 Vienna Convention on the Law of Treaties, to which both Vietnam and China are parties, treaties establishing boundaries remain unchanged even in the event

26 USINDOPACOM. (2024), *supra* note 18.

of a fundamental change of circumstances.²⁷ Thus, any unilateral claim to extend territorial waters to 12 nautical miles in areas already delimited (points 1–9) following a baseline declaration has no legal basis. Consequently, there is no legal ground to demand changes to the agreement. The results of the border and maritime boundary negotiations, once ratified by both National Assemblies, constitute a permanent legal framework, unless both countries mutually agree to modifications. Any unilateral attempt to alter the agreement would erode trust, damage credibility in international relations, and entail legal responsibilities under international law.

The 2000 Delimitation Agreement remains China's first and only maritime delimitation treaty to date. It is also the second of four maritime delimitation agreements that Vietnam has signed with foreign countries. Chinese experts acknowledge that this agreement achieved a mutually satisfactory delimitation outcome for both parties.²⁸ Chinese leaders have stated that this step is fully consistent with national law, international law, and bilateral agreements and will not affect Vietnam's interests or those of any other country.²⁹ Defining the baseline in the Gulf of Tonkin will contribute to better implementation of the delimitation agreement under current conditions and aligns with Article 123 of UNCLOS, which calls for cooperation among states bordering semi-enclosed seas. However, these statements are not sufficient to dispel concerns among researchers and public opinion in the region and internationally. While Vietnam's baseline declaration in the Gulf of Tonkin did not trigger any public reaction, the maritime zones formed by China's newly declared straight baseline system could extend its geographic reach and impose restrictions on innocent passage of foreign vessels, including warships from the United States and its allies.

Furthermore, the designation of waters in the Qiongzhou Strait as internal waters would limit, obstruct, or even prohibit access to the Hainan Strait, an international strait where all states traditionally enjoy rights of transit passage. Following China's previous straight baseline

27 Article 62.2 of the 1969 Vienna Convention on the Law of Treaties: "A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary".

28 Global Times. (2024). *China's latest delineation of territorial sea baseline in Beibu Gulf marks significant step in clarifying boundaries: expert*. Global Times. <https://www.globaltimes.cn/page/202403/1308023.shtml?id=12> accessed on 16 July 2025

29 PFC Foreign Minister Wang Wenbin Statement on PRC Gulf of Tonkin Demarcation Announcement (March 19, 2024). <https://maritime executive.com/article/china-quietly-annexes-northeast-corner-of-gulf-of-tonkin>

declarations around the Paracel Islands and Scarborough Shoal, this new declaration in the Gulf of Tonkin could be seen as a test case to gauge international reactions and lay the legal groundwork for additional straight baseline claims in the Taiwan Strait or around the Spratly Islands.

Conclusion

The baseline declarations in the Gulf of Tonkin by China and Vietnam are unilateral actions by coastal states, permitted under UNCLOS (Articles 3, 5, 7, and 16). However, the determination of these baselines must comply with UNCLOS criteria, ensuring that no precedents violating international maritime freedoms are set. Both countries have reaffirmed their commitment to respecting the 2000 Gulf of Tonkin Delimitation Agreement. The establishment of baselines in the Gulf of Tonkin stems from the objective need to clearly define sovereign and jurisdictional maritime zones, serving as a foundation for improving maritime management and cooperation. Based on the established baselines, the territorial sea limits of the two countries in the Gulf of Tonkin will be clearly defined, with implications for the passage of foreign vessels and aircraft. It also facilitates negotiations for a new fisheries cooperation agreement and potential joint oil and gas exploration in transboundary fields within the Gulf of Tonkin, benefiting both nations.

To ensure stability and mutual benefits, Vietnam and China must enhance cooperation and dialogue based on respect for sovereignty, sovereign rights, and jurisdiction in accordance with the UNCLOS and bilateral agreements. Additionally, both countries should ensure that their maritime policies do not infringe upon the legitimate rights and interests of other States, including the freedoms of navigation and transit passage. The maintenance of peace and stability in the Gulf of Tonkin serves as a model for maritime dispute resolution negotiations in the region, contributing to regional stability, peace, and prosperity. ●

References

- [1] Beazley, P. B. (1978, August). *Maritime limits and baselines: A guide to their delineation*. (No. 2, 2nd ed., revised). The Hydrographic Society Special Publication
- [2] David, E. (1985). La sentence arbitrale du 14 février 1985 sur la délimitation de la frontière maritime Guinée-Guinée-Bissau [trans: The arbitral award of 14 February 1985 on the delimitation of the maritime border between Guinea and Guinea-Bissau]. *Annuaire Français de Droit International*, (31), 350-389. https://www.persee.fr/doc/afdi_0066-3085_1985_num_31_1_2665

- [3] Hodgson, R. D. & Alexander, L. M. (1971). Towards an objective analysis of special circumstances: Bays, rivers, coastal and oceanic archipelagoes and atolls. *Law of the Sea Institute Occasional Paper*, (13)
- [4] Prescott, V. & Schofield, C. (1985). *The maritime political boundaries of the world*. 2nd edition, Martinus Nijhoff Publishers
- [5] Keyuan, Z. (1999). Maritime boundary delimitation in the Gulf of Tonkin. *Ocean Development & International Law*, 30(3), 235–254. <https://doi.org/10.1080/009083299276177>
- [6] Roach, J. A. & Smith, R. W. (1996), *United states responses to excessive maritime claims* (2nd edition). Martinus Nijhoff Publishers
- [7] Shapland, G. (2020). Maritime boundaries in the Middle East. *Asian Affairs*, 51(1), 146–168. <https://doi.org/10.1080/03068374.2019.1707529>
- [8] Thao, N. H. (1996). Về việc Trung Quốc công bố đường cơ sở dùng để tính chiều rộng lãnh hải. *Tạp chí Quốc phòng toàn dân* [trans: On China's declaration of baselines for measuring the breadth of the territorial sea. *National Defense Journal*], (6)
- [9] Thao, N. H. (2005, August), Maritime delimitation and Fishery Cooperation in the Tonkin Gulf, *Ocean Development & International Law*, 36(1), 25–44. <https://doi.org/10.1080/00908320590904939>
- [10] Tréglodé, B. D. (2016). Maritime boundary delimitation and Sino-Vietnamese cooperation in the Gulf of Tonkin (1994–2016). *China's Policy in the China Seas*, Translated by David Buchanan, Special feature, (3), 33–41. <https://doi.org/10.4000/chinaperspectives.7030>

Author Contribution

The author solely contributed to the study conception and design. The author read and approved the final manuscript.

Declarations

Conflict of Interest: The author declares no competing interests.

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