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June 15 2008

## Where does the Republic of Vietnam end?

### Overview

Just where did “The Republic of Vietnam” end? The question has taken on the utmost importance since the Department of Veterans Affairs in the USA began playing geographic games by exploiting imagined semantic loopholes in legislation Congress enacted to compensate military personnel due to Agent Orange exposure. DVA began denying claims in 2002, opining that legislation does not provide a presumption of herbicide exposure to a Vietnam Era veteran who never set foot on land in the Republic of Vietnam and did not serve on its inland waterways. The current wording of Sec. 3.307(a)(6)(iii) is as follows: “Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.” Even though all coastal nations have claimed a belt of the surrounding sea as territory from historical times, a fact well known to Congress, DVA asserts: “We have found no indication that Congress intended a presumption covering offshore service.” This is an eristic argument promulgated for monetary gain at the expense of untold human misery and should be overturned not only because it is morally repugnant but also to protect the reputation of the United States internationally.

Adding to the urgency of resolving this issue is the fact that U.S. Navy personnel were poisoned with high levels of dioxin from the herbicide spraying operation concurrent with their service. Many Navy vessels drew their water from the sea around them using distillers, an action that concentrated intentionally deposited contaminants in the runoff reaching them from the land. In order to disqualify thousands of Vietnam veterans, VA would have us believe Agent Orange magically halted at the edge of that land. The truth of the matter is that massive defoliation progressively increased contaminant’s access to the surrounding territorial waters by removing natural buffering systems such as mangrove forests.

This “boots on ground” policy essentially removes a section of the physical reality of Vietnam by saying the country, and therefore the contamination, ends at the coastline. The need has never been greater to solidly define the terms “Republic of Vietnam” and “the waters offshore.”

### The position of the Department of Veterans Affairs

From the Federal Register: April 16, 2008 (Volume 73, Number 74)

The CAVC perceived ambiguity in Sec. 3.307(a)(6)(iii) as to whether the phrase “service in the Republic of Vietnam” includes service exclusively in the waters offshore, i.e., where the “conditions of service” did not involve “duty or visitation” in Vietnam. The perceived ambiguity arose in part from similar language in 38 CFR 3.313, which defines Service in Vietnam as “includ[ing] service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.” 38 CFR 3.313(a). The CAVC suggested that VA viewed Sec. 3.307(a)(6)(iii) as interchangeable with Sec. 3.313, concluding that there is no clear expression of a difference in the definition as it appears in the two distinct regulations, despite the inclusion of a comma in the Sec. 3.313(a) definition and, more importantly, their very different regulatory histories and purposes. The CAVC also concluded that VA’s regulation was most reasonably construed to apply to offshore service because certain veterans who served offshore (i.e., those who served for long periods in close proximity to land

areas where herbicides were used) would have a risk of herbicide exposure comparable to certain veterans who served on land (i.e., those who served only briefly on land).

### **Geography for Dummies (at DVA)**

The miscarriage of justice being pulled here by the Department of Veterans Affairs hinges on common ignorance of the fact that the territorial sea (a belt of water around a coastal nation) is legally an integral part of the territory of a coastal State. Therefore, the “Republic of Vietnam” includes the belt of water surrounding it just as surely as Long Island Sound is considered a part of the territory of the USA. You don’t relinquish “boots on the ground” in the United States or enter International waters when you take the Long Island ferry. The territory of Vietnam is enlarged by the presence of offshore islands and other features, treaties and conventions. Several of these will be covered in the next section.

### **Geography of the Republic of Vietnam**

The island of Dao Bach Long Vi (near the middle of the Gulf of Tonkin) was awarded to France by the Sino-French Convention (Convention on the Delimitation of the Frontier between Vietnam and China between France and the Qing Dynasty) on June 26 - 27, 1887. The Gulf of Tonkin is divided at meridian 108° 03' 13" E with territory to the west belonging to France (subsequently inherited by Vietnam) and territory to the east belonging to China. As this island lays 58 nm from the mainland, this island alone gives Vietnam an additional 5,680 square km (2193 square miles or 2526 square nm) of territorial water in the Gulf of Tonkin. The Gulf of Tonkin Incident took place in the Vietnamese portion of the Gulf. The entire gulf is considered to be an Historical Gulf, meaning it is considered to be the territorial waters of adjoining nations.

Some statistics on Vietnam compiled in 2004:

- Situated in the tropical monsoon area in South East Asia.
- Coastline of more than 3 260 km, stretching from Mong Cai (Quang Ninh) down to Ha Tien (Kien Giang), crossing 13 latitudes, from 8°23'N to 21°39'N.
- The continental shelf has a surface area of some 700 000 km<sup>2</sup>
- Over 4 000 islands. As can be seen by the example of Dao Bach Long Vi mentioned above, the presence of all these islands vastly increases the territory of Vietnam.
- Coast contains numerous bays, lagoons, estuaries and over 400 000 hectares of mangrove stands (MOF, 2001). In the south-east reaches of the coastline, the extent of the continental shelf is more limited, and deeper waters are close to the shoreline. The Gulf of Tonkin to the north is shared with China, and is all shallow continental shelf.

## **Definitions: Republic of Vietnam; territorial sea/waters; Sea Frontier; Offshore**

The term “Republic of Vietnam,” (known more commonly as South Vietnam) existed from October 22 1955 to April 21 1975 after the Geneva Conference of 1954 (which produced the Geneva Accords) partitioned the country along the 17<sup>th</sup> parallel producing South and North Vietnam. The Geneva Accords specifically associates the Republic of Vietnam to territorial waters several times:

- Article 4 (discussing the 17<sup>th</sup> parallel, therefore pertaining to both North and South)

“The provisional military demarcation line between the final two regrouping zones is extended into the territorial waters by a line perpendicular to the general line of the coast.”

- Article 24

“The present Agreement shall apply to all the armed forces of either party. The armed forces of each party shall respect the demilitarized zone and the territory under the military control of the other party, and shall commit no act and undertake no operation against the other party and shall not engage in blockade of any kind in Viet-Nam.”

“For the purposes of the present Article, the word “territory” includes territorial waters and air space.”

- Article 35 (excerpt)

“...These points of location may, at a later date, be altered at the request of the Joint Commission, or of one of the parties, or of the International Commission itself, by agreement between the International Commission and the command of the party concerned. The zones of action of the mobile teams shall be the regions bordering the land and sea frontiers of Viet-Nam...”

- Article 42

“When dealing with questions concerning violations, or threats of violations, which might lead to a resumption of hostilities, namely:

(a) Refusal by the armed forces of one party to effect the movements provided for in the regroupment plan;

(b) Violation by the armed forces of one of the parties of the regrouping zones, territorial waters, or airspace of the other party.

the decisions of the International Commission must be unanimous.”

The terms “territorial waters” and “territorial sea” are not quite equivalent. Wikipedia, referring to the 1982 United Nations Convention on the Law of the Sea, defines these terms as: “a belt of coastal waters extending at most twelve nautical miles from the baseline (usually the low-water mark) of a coastal state. The territorial sea is regarded as the sovereign territory of the state, although foreign ships (both military and civilian) are allowed innocent passage through it; this sovereignty also extends to the airspace over and the seabed below. Informally, the term “territorial waters” is used to describe an area of water under state jurisdiction.”

Interestingly, the Geneva Accords (see above) uses the informal term in Article 4:

“The provisional military demarcation line between the final two regrouping zones is extended into the territorial waters by a line perpendicular to the general line of the coast.”

“Sea Frontier” From Wikipedia: “Sea Frontiers were established by the U.S. military during World War II as areas of defense against enemy vessels, especially submarines, along

the American coasts. Sea Frontiers generally started at the shore of the United States and extended outwards into the sea for a nominal distance of two hundred miles.

“Offshore,” as an adverb, is defined by Wiktionary as: 1) Moving away from the shore; 2) Located in the sea away from the coast (EG. An offshore oil rig); and 3) located in another country. These definitions, I feel, precisely illuminate the original intention of Congress to designate the waters near the shore but not so far as to be ashore in another country when they said: “Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.” This, of course, refers to the territorial waters.

### **Extent of territorial waters**

There is an excellent case to be made for the Republic of Vietnam, by its definition as a coastal State, to have historically included at least a 12 nautical mile territorial sea (as measured out from the low-tide mark). To end any possible remaining doubt about Vietnam possessing a territorial sea, why else was the USS Maddox (DD-731) under orders not to approach the North’s coast closer than eight miles immediately preceding the Gulf of Tonkin Incident?

There is a great deal of historical evidence supporting the legal notion of a territorial sea as *the part of the ocean adjacent to the coast of a state that is considered to be part of the territory of that state and subject to its sovereignty*. This will be explored in the next section.

### **Historical Perspective**

The Paracel Islands, which lie over 200 miles from the coast of Vietnam, were officially claimed by the Chinese, over French objections, as part of the territory of Annam (Annam is the name the Chinese gave to the land that constitutes modern-day northern Vietnam) in 1925.

Since the eighteenth century the British Empire, the United States (in 1793) and France, among many other nations, have all claimed a territorial sea 3 nautical miles in width. The Convention for the Protection of Submarine Telegraph Cables (Paris, March 14 1884), of which the USA was a signatory, states in Article 1 that it “applies outside territorial waters.”

In a move that astounded the world, President Harry S. Truman claimed the waters to the edge of the continental shelf for the USA on 28 September 1945. It reads, in part: “WHEREAS it is the view of the Government of the United States that the exercise of jurisdiction over the natural resources of the subsoil and sea bed of the continental shelf by the contiguous nation is reasonable and just, since the effectiveness of measures to utilise or conserve these resources would be contingent upon cooperation and protection from the shore, since the continental shelf may be regarded as an extension of the land-mass of the coastal nation and thus naturally appurtenant to it, since these resources frequently form a seaward extension of a pool or deposit lying within the territory, and since self-protection compels the coastal nation to keep close watch over activities off its shores which are of the nature necessary for utilisation of these resources;

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the following policy of the United States of America with respect to the natural resources of the subsoil and sea bed of the continental shelf.

Having concern for the urgency of conserving and prudently utilising its natural resources, the Government of the United States regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control. In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles. The character as high seas of the waters above the continental shelf and the right to their free and unimpeded navigation are in no way thus affected. “

This American claim was followed by similar claims from the United Kingdom regarding their overseas possessions North Borneo and Sarawak. Saudi Arabia, Iran, Pakistan, India, the Philippines, Australia, Bulgaria, Israel, Egypt and Iraq later followed suit. There can be no doubt that the concept of a territorial sea being part of a nation has existed for hundreds of years, but if any country in the world is responsible for making this a codified reality and pushing it to the extreme, it is the United States.

The doctrine of the Truman Proclamation of 1945 which claimed for the United States jurisdiction over the resources of the continental shelf, with undefined limits, was incorporated in the 1958 Geneva Convention on the Continental Shelf which established the jurisdiction of the coastal States to the shelf to a water depth of 200 meters or “beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources”.

### **Law of the Sea Convention**

Enter one of the most comprehensive international treaties ever written – the Law of the Sea Convention. I will mainly be referencing the Geneva Convention on the High Seas of 1958 due to its being in effect during the Vietnam War. It is comprised of three parts entitled:

- Convention on the Territorial Sea and the Contiguous Zone
- Convention on Fishing and the Conservation of the Living Resources of the High Seas
- Convention on the Continental Shelf

This is long so I'll **BOLD** what I think is relevant and **BOLD and UNDERLINE** my comments. Here's a comment to start off with: **The USA never officially declared war on Vietnam and this colours much of the following.**

Geneva Convention on the High Seas (Excerpts)

(Done at Geneva on 29 April 1958. Entered into force on 30 September 1962)

This is the predecessor of United Nations Convention on the Law of the Sea of 10 December 1982 and so would have been in effect during the Vietnam War.

Complete text as provided below available at:

<http://www.intfish.net/treaties/genevahs.htm>

## Convention on the High Seas

The States Parties to this Convention,

DESIRING to codify the rules of international law relating to the high seas,

RECOGNIZING that the United Nations Conference on the Law of the Sea, held at Geneva from 24 February to 27 April 1958, adopted the following provisions as generally declaratory of established principles of international law,

Have agreed as follows:

### **Article 1**

**The term "high seas" means all parts of the sea that are not included in the territorial sea or in the internal waters of a State.**

### **Article 8**

- 1. Warships on the high seas have complete immunity from the jurisdiction of any State other than the flag State. Note: this is on the "high seas" only!**
- 2. For the purposes of these articles, the term "warship" means a ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline.**

### **Article 10**

**1. Every State shall take such measures for ships under its flag as are necessary to ensure safety at sea with regard inter alia to:**

- (a) The use of signals, the maintenance of communications and the prevention of collisions;**
- (b) The manning of ships and labour conditions for crews taking into account the applicable international labour instruments;**
- (c) The construction, equipment and seaworthiness of ships.**  
**Faulty equipment like distillers?**

**2. In taking such measures each State is required to conform to generally accepted international standards and to take any steps which may be necessary to ensure their observance.**

### **Article 23**

**1. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit must be commenced when the foreign ship or one of its boats is within the internal waters or the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 24 of the Convention on the Territorial Sea and the Contiguous Zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established.**

**2. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own country or of a third State.**

**3. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship are within the limits of the territorial sea, or as the case may be within the contiguous zone. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship.**

**4. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft on government service specially authorized to that effect.**

**5. Where hot pursuit is effected by an aircraft:**

**(a) The provisions of paragraph 1 to 3 of this article shall apply mutatis mutandis;**

**(b) The aircraft giving the order to stop must itself actively pursue the ship until a ship or aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest on the high seas that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption.**

**6. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an enquiry before the competent authorities may not be**

claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the high seas, if the circumstances rendered this necessary.

**7. Where a ship has been stopped or arrested on the high seas in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.**

**This whole article (23) says that the USN AND ITS AIRCRAFT must have needed to recognize they were within the territorial sea of the “pursued” State of Vietnam.**

#### **Article 25**

1. Every State shall take measures to prevent pollution of the seas from the dumping of radioactive waste, taking into account any standards and regulations which may be formulated by the competent international organizations.

**2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents.**

**I wonder if the UN is considered to be a “competent international organization” and is liable for not preventing the pollution caused by the U.S. spraying of AO?**

#### **Article 34**

**1. This Convention shall come into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.**

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

#### **Article 35**

**1. After the expiration of a period of five years from the date on which this Convention shall enter into force, a request for the revision of this Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.**

#### **Article 37**

The original of this Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 31.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Geneva, this twenty-ninth day of April one thousand nine hundred and fifty-eight.

<http://shamburek.com/default.html>

## 2. Geneva Convention On The High Seas

The Geneva Convention on the High Seas, 13 U.S.T. 2312, T.I.A.S. 5200, 450 U.N.T.S. 82, was adopted at Geneva, Switzerland on April 29, 1958, entered into force on September 30, 1962 and proclaimed by the President of the United States on November 9, 1962 ("High Seas Convention") **Note: John F. Kennedy was President from January 20 1961 until November 22 1963.**

## Rules of Engagement (Excerpt)

The Rules of Engagement in effect during the Vietnam War specifically mention, and were well aware of, a twelve mile limit defining "The Republic of Vietnam."

From <http://www.mtholyoke.edu/acad/intrel/pentagon3/doc165.htm>

### RULES OF ENGAGEMENT

- A. JCS 7700
- B. CINCPAC INSTR 03710.2 OF 24 MAY 1961
- C. CINCPAC 04
- D. JCS 2084/80 OF 1 JUL 1964
- E. JCS 3796 MAR 62

1. Events in Gulf of Tonkin accentuate need for clarification and changing rules of engagement under which US forces must operate in situations short of open hostilities.

2. Following are rules of engagement currently in effect as understood here:

A. Situation: unprovoked attack by hostile vessels against vessels in international waters.

**(1) Rule: US vessels authorized to defend, pursue and destroy attacking vessels up to 11 miles from NVN coast and 4 miles from offshore islands. US craft authorized to**

**pursue and destroy attacking vessels while operating in airspace up to 3 miles from NVN coast. Authorized by ref A.**

**Seems to me the ROE respects the 12 mile limit. You going to argue with the Joint Chiefs of Staff?**

## **Summation**

Any definition of “The Republic of Vietnam” must include the belt of water surrounding that nation. It is an intrinsic element of a coastal nation’s sovereignty.

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