

## 1. TRIBUNAL JUDGMENT IN ENGLISH

### THE ACCUSED ASSISTED CHINA ENDANGER MARITIME SOVEREIGNTY

28. According to official documents of the VCP, the Accused signed the Diplomatic Note of 1958. Based on these and many other official documents, the Accused was Prime Minister of the Democratic Republic of Vietnam (later renamed the Socialist Republic of Vietnam).

“On September 14, 1958, Prime Minister of the Democratic Republic of Vietnam sent a Diplomatic Note to Zhou Enlai, Prime Minister of the People’s Republic of China, which stated, verbatim, as follows:

“ Dear Comrade Prime Minister,

We are pleased to inform Comrade Prime Minister:

The Government of the Democratic Republic of Vietnam acknowledges and endorses the declaration, dated September 4, 1958 , of the Government of the People's Republic of China, deciding on China's territorial waters.

The government of the Democratic Republic of Vietnam respects that decision and will direct its responsible state bodies to strictly respect the 12-nautical-mile territorial sea of China in all its relations with the People’s Republic of China on the surface of the sea.

Hanoi, September 14, 1958

Phạm Văn Đồng

Prime Minister

The Democratic Republic of Vietnam”<sup>15</sup>

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<sup>15</sup> Government of the Socialist Republic of Vietnam. "Note 1958 with sovereignty over Hoang Sa and Truong Sa of Vietnam." *Government Electronic Newspaper* . <https://baochinhphu.vn/cong-ham-1958-voi-chu-quyen-hoang-sa-truong-sa-cua-viet-nam-102164331.htm>. 23 May 2014.

29. The statements in 28 are verbatim the statements that were included in the Diplomatic Note of 1958 (the Diplomatic Note).
30. The Accused has never denied signing the Diplomatic Note.
31. Li Jianwei, Director of the Center for Marine Economic Research, China's National Institute for South China Sea Studies, mentioned a detail that in a meeting in 1977 with then-Deputy Premier Li Xiannian, the Accused clearly stated: "*How should we understand our statements, including the statement in my note to Prime Minister Zhou Enlai? It should be understood in the historical context of the times. In the resistance war, of course we have to put fighting against the American imperialists above everything else.*"<sup>16</sup>
32. The Diplomatic Note was published in Nhan Dan newspaper on September 22, 1958, eight (8) days after the it was signed by the Accused.



<sup>16</sup> Phuong, Thanh. "A note of Pham Van Dong, a debt that is difficult to remove." *RFI*, July 14, 2014. <https://www.rfi.fr/vi/viet-nam/20140714-cong-ham-pham-van-dong-mon-no-kho-go>.

# CHÍNH PHỦ NƯỚC VIỆT-NAM DÂN CHỦ CỘNG HÒA CÔNG NHẬN QUYẾT ĐỊNH VỀ HẢI PHẬN CỦA TRUNG-QUỐC

Sáng ngày 21.9.1958, đồng chí Nguyễn-Khang,  
Đại sứ nước Việt-nam dân chủ cộng hòa tại Trung-  
Quốc, đã gặp đồng chí Cơ-Bằng-phi, Thứ trưởng Bộ  
Ngoại giao nước Cộng hòa nhân dân Trung-hoa và  
đã chuyển bức công hàm sau đây của Chính phủ tại

Thưa đồng chí Chu Ân-lai,

Tổng lý Quốc vụ viện nước Cộng hòa  
nhân dân Trung-hoa,

Chúng tôi xin trân trọng báo Hi đã đồng  
chí Tổng lý và:

Chính phủ nước Việt-nam dân chủ cộng  
hòa ghi nhận và tôn thành bản tuyên bố, ngày  
4 tháng 9 năm 1958, của Chính phủ nước Cộng  
hòa nhân dân Trung-hoa, quyết định về hải phận  
của Trung-quốc.

Chính phủ nước Việt-nam dân chủ cộng hòa  
tôn trọng quyết định ấy và sẽ chỉ thị cho các  
cơ quan Nhà nước có trách nhiệm triệt để tôn  
trọng hải phận 12 hải lý của Trung-quốc trong  
mọi quan hệ với nước Cộng hòa nhân dân  
Trung-hoa trên mặt biển.

Chúng tôi xin kính gửi đồng chí Tổng lý  
lời chào rất trân trọng.

11.9.58, ngày 14 tháng 9 năm 1958

PHẠM-VĂN-DŨNG

Thứ trưởng Ngoại giao  
nước Việt-nam dân chủ cộng hòa

33. The Diplomatic Note has two main ideas:

First, "The Government of the Democratic Republic of Vietnam acknowledges and endorses the declaration, dated September 4, 1958, of the Government of the People's Republic of China, deciding on China's territorial waters." Second, "The government of the Democratic Republic of Vietnam respects that decision and will direct its responsible state bodies to

strictly respect the 12-nautical-mile territorial sea of China in all its relations with the People's Republic of China on the surface of the sea." The Declaration by China on September 4, 1958 stated: "The breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles. This provision applies to all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas. ... The principles provided likewise apply to Taiwan and its surrounding islands, the Penghu Islands, the Tungsha Islands, and Xisha Islands, the Chungsha Islands, the Nansha Islands, and all other islands belonging to China."

The first part, "acknowledges and endorses this declaration" means recognizing and endorsing that the Paracel Islands (Xisha) and Spratly Islands (Nansha) as "belonging to China."

34. In addition, the Diplomatic Note made no statement to oppose China's claim of sovereignty over the Xisha (Paracel) and Nansha (Spratly) islands as defined by China's September 4 Declaration. China has used this Note as the most important evidence for its sovereignty over these two archipelagos.<sup>17</sup>
35. The Accused, during his 32 years as Prime Minister (DRV and SRV), made no statements confirming Vietnam's sovereignty over the Hoang Sa and Truong Sa Islands. The Accused could not be unaware of the Chinese invasion of the Paracels in 1974.
36. China's Declaration on April 9, 1958, affirmed, "China's territorial sea along the mainland and its coastal islands takes as its baseline the line composed of the straight lines connecting basepoints on the mainland coast and on the outermost of the coastal islands; the water area extending twelve nautical miles outward from this baseline is China's territorial sea. The water area inside the baseline ... is Chinese inland waters."

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<sup>17</sup> The Permanent Mission of the People's Republic of China to the United Nations. "CML/42/2020." *UN, 17 04 2020*.  
[https://www.un.org/depts/los/clcs\\_new/submissions\\_files/mys\\_12\\_12\\_2019/2020\\_04\\_17\\_CHN\\_NV\\_UN\\_003\\_EN.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/mys_12_12_2019/2020_04_17_CHN_NV_UN_003_EN.pdf).

37. Acknowledging and endorsing the above statement, the Accused also accepts that the straight lines connecting the Chinese mainland and the two archipelagos of Paracels and Spratlys constitute China's internal waters. The Accused also acknowledged and endorsed that “the part of the sea 12 nautical miles calculated from the baselines is the territorial sea of China.”
38. Not opposing, recognizing and endorsing China's sovereignty over the Paracel and Spratly Islands are assisting China endangering the country's maritime sovereignty.
39. Not opposing, recognizing and endorsing the definition of inland sea and China's territorial waters based on straight lines are assisting China endangering the country's maritime sovereignty.

#### THE ACCUSED ASSISTED CHINA ENDANGER NATIONAL SOVEREIGNTY

40. *28 - 37 as presented above.*
41. National sovereignty is defined as: “The absolute capability and power of a sovereign nation to independently govern free from external interference.”
42. Acknowledging and endorsing, without opposing, China's sovereignty, the Accused assisted China to threaten the “absolute capability and power of a sovereign nation to independently govern free from external interference.” This capability and power of governance is being continuously interfered by China, using the Diplomatic Note signed by the Accused as the foundation. Therefore, the defendant assisted China to endanger national sovereignty.

#### THE ACCUSED ASSISTED CHINA ENDANGER TERRITORIAL INTEGRITY

43. *28 - 37 as presented above.*

44. Territorial integrity is an important principle under international law, concerning the integrity of a country's territory and the right of a sovereign state to defend that territory. Acknowledging and endorsing China's sovereignty over a part of the country's territory, the Accused assisted China to endanger the territorial integrity and the country's right to protect that territory.

#### THE ACCUSED ASSISTED CHINA ENDANGER NATIONAL SECURITY

45. *28- 37 as presented above.*
46. National security, or national defense, is the security and defense of a sovereign state, including its citizens, economy and institutions, which is considered the duty of the government.
47. The acknowledgement and endorsement of China's internal waters and territorial waters and the airspace over these waters, using the Paracel Islands and Spratly Islands as landmarks, are to lose a large part of Vietnam's sea and airspace. Acknowledging and endorsing that “No foreign vessels for military use and no foreign aircraft may enter China's territorial sea and the air space above it without the permission of the Government of the People's Republic of China ... apply to ... Xisha Islands, Nansha Islands, and all other islands belonging to China” make it not possible to protect national security in these areas. Therefore, it can be concluded that the Accused assisted China to endanger national security.

#### THE ACCUSED ASSISTED CHINA ENDANGER MARITIME SECURITY

48. *45 - 47 as presented above.*
49. The Accused acknowledged and endorsed China's internal waters, territorial waters and airspace is a threat to the security of the uninhabited part of the East Sea of Vietnam, such as the Spratlys. Therefore, the Accused assisted China to endanger maritime security.

## THE ACCUSED ASSISTED CHINA ENDANGER FOOD SECURITY

50. 45 - 47 as presented above.

51. The East Sea is an important food resource. According to documents of the Vietnamese authorities, “The East Sea has rich and diverse biological resources, with more than 160,000 species, nearly 10,000 species of plants and 260 species of birds living there. The reserve of marine animals is estimated at 32.5 billion tons, of which fish accounts for 86% of the total reserve.

Vietnam's waters have more than 2,458 species of fish, including many different orders and families, with about 110 species of high economic value. The fish reserve in our waters is about 5 million tons/year, the fish reserve that can be caught annually is about 2.3 million tons. There are more than 1,800 species of mollusks in the East Sea, many of which are favorite foods, such as squid, sea cucumber, ...

Seabirds: The types of seabirds in our ocean are extremely varied, including seagulls, pelicans, partridges, canaries, ...

In addition to animals, the sea also provides humans with a variety of valuable seaweeds. This is a rich source of nutrients and medicinal herbs. Our sea has about 638 species of seaweed. Seaweeds are easy to grow, less prone to crop failure and have high yields, so they will be an important food source for mankind in the future.”<sup>18</sup>

52. According to the United Nations Environment Program (UNEP), the South China Sea produces about 12% of global fish and fishery for 3.7 million people. China's declaration and establishment of a "no-fishing zone in the South China Sea" from May 1 to August 1 every year and the construction of artificial islands on seven atolls in the Spratly Islands that China has occupied since 1988<sup>19</sup> have a direct impact on national and regional food

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<sup>18</sup>Ngô, Tiến. “Nguồn tài nguyên quan trọng ở các vùng biển của Việt Nam trong Biển Đông.” *Sở TT&TT Bắc Giang*, 16 10 2018. [https://sttt.bacgiang.gov.vn/chi-tiet-tin-tuc/-/asset\\_publisher/RcQOwn9w7wOJ/content/nguon-tai-nguyen-quan-trong-o-cac-vung-bien-cua-viet-nam-trong-bien-ong](https://sttt.bacgiang.gov.vn/chi-tiet-tin-tuc/-/asset_publisher/RcQOwn9w7wOJ/content/nguon-tai-nguyen-quan-trong-o-cac-vung-bien-cua-viet-nam-trong-bien-ong).

<sup>19</sup>Nguyễn, Hôi. “An ninh nghề cá vì một Biển Đông xanh.” *Thủy Sản Việt Nam*, 06 07 2020. <https://thuysanvietnam.com.vn/an-ninh-nghe-ca-vi-mot-bien-dong-xanh/>.

security, with total losses of approximately \$4 billion per year and fisheries alone more than \$400 million per year. An increase in illegal fishing by Chinese fishermen has resulted in the depletion of near-shore fish stocks, forcing Vietnamese fishermen to travel further into more dangerous waters. Acknowledging and endorsing China's sovereignty over a large part of the East Sea, the Accused assisted China to endanger the national food security.

#### THE ACCUSED ASSISTED CHINA ENDANGER FREEDOM OF NAVIGATION

53. *45 - 47 as presented above.*
54. According to article (3) of China's Declaration, "No foreign vessels for military use and no foreign aircraft may enter China's territorial sea and the air space above it without the permission of the Government of the People's Republic of China." Acknowledging and endorsing this Declaration, which is contrary to the provisions of the United Nations Convention on the International Law of the Sea, the Accused assisted China to endanger the security and freedom of navigation of Vietnam and the rest of the world.

#### THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER MARITIME SOVEREIGNTY

55. *28 - 39 as presented above.*
56. According to researcher Gia Nguyen Ngoc Chau, on the historical context of Vietnam before the Diplomatic Note:  
"On March 7, 1958, Pham Van Dong sent a letter to Ngo Dinh Diem, requesting a meeting to reduce the army of each side and establish commercial relations, the first steps towards future unification. The South Vietnamese government, having learned from past communist betrayals, did not trust this suggestion. Especially when the South was in the hands of Ngo Dinh Diem, whose brother Khoi and his son were killed by the communists in 1945, and for Americans, a good communist is a dead communist.



In fact, from 1956 to 1958, neither the Soviet Union nor China supported a war between North and South Vietnam. The Soviet Union wanted to exist peacefully with the capitalist countries and China did not want to see the United States interfere on its borders. And Hanoi did not want to embark on an adventure in the South without the consent of the two communist elders.

In 1958, reports from the South indicated that the Republic of Vietnam's '*To Cong*' campaign was reducing the ranks of the resistance."

57. According to Research Gia Nguyen Ngoc Chau, on the historical context of Vietnam after the Diplomatic Note:

"Resolution '15' passed at the 15th Conference of the Central Committee held in January 1959 was a complete revision of the strategy for the South. A 'united front' had to be born as a non-communist organization in the South, and a general uprising strategy was decided. After the meeting, Ho Chi Minh flew to Beijing and Moscow to get approval from the two elder communist parties to send troops to the South secretly, and to apply for economic aid. Two treaties were signed with China for an additional 100 million yuan in non-refundable aid and 300 million yuan in long-term credit.

In 1956, China's priority was for economic development to surpass that of Great Britain within five years (which was not achieved), but China continued to aid the revolutionary movements with arms, like the Algerian resistance.

In 1959, *the 559th Military Convoy* was established to build a road from North to South Vietnam through Laos – National Highway 559, called «*Ho Chi Minh Trail*» - and *the Gianh River Fishing Team* ship to send people and equipment to the South by sea. In 1960, Le Duan returned to Hanoi and was elected General Secretary of the Politburo, which meant that the faction that wanted to invade the South had won."

58. The clear change in policy of invading the South before and after the Diplomatic Note on September 14, 1958 proves that the DRV has been supported by China in this strategy. According to the Beijing Review, on March 30, 1979, Pham Van Dong admitted that Hanoi recognized China's sovereignty in 1958 to avoid a dispute that would lead to Beijing reducing aid to the DRV. The VCP and the government of the Socialist Republic of

Vietnam did not object to this admission. Therefore, the defendant conspired with China to endanger its maritime sovereignty in order to continue to receive aid.<sup>20</sup>

THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER NATIONAL  
SOVEREIGNTY

59. *40 - 42 as presented above.*

60. Three months after the Diplomatic Note, in the late night of February 20 and early morning of February 21, 1959, the PRC sent troops to the islands of Cam Tuyen, Duy Mong, and Quang Hoa of the Paracels. The Republic of Vietnam Navy fiercely fought back. The Chinese boats still did not withdraw, causing the South Vietnamese Navy to open fire and capture 82 people and 5 Chinese boats. <sup>19</sup> Tuoi Tre Newspaper of the Communist Party of Vietnam confessed: “After this event, the Republic of Vietnam continuously took strong diplomatic, administrative, and economic activities to protect its sovereignty in an environment of a more aggressive China. And the climax was China's illegal seizure of the entire Paracel Islands on January 19, 1974.”<sup>21</sup>

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<sup>20</sup> Duiker, William. *China and Vietnam: The Roots of Conflict*. (Berkeley: Regents of the University of California, 1986), 73.

<sup>21</sup> Minh, Tu. “Hoàng Sa và âm mưu 70 năm trước.” *Tuoi Tre*. 16 12 2016. <https://tuoitre.vn/hoang-sa-va-am-muu-70-nam-truoc-1236865.htm>.

61. 60 helps to explain the historical connection of the Diplomatic Note, PRC's failed invasion in early 1959, ROV activities to defend its sovereignty, and the PRC's 1974 forcible seizure of the Paracels, right on the doorstep of the Vietnamese Communist Party's invasion of South Vietnam in 1975.
62. The documents of the Ministry of Foreign Affairs of the People's Republic of China included a world map published in 1972 by the Department of Surveying and Mapping in the Office of the Prime Minister of the Democratic Republic of Vietnam, in which Xisha and Nansha are marked by Chinese name. The Accused at that time was the Prime Minister of the DRV. The documents also stated that maps of the North in 1960 and 1974 also indicated Xisha and Nansha as Chinese territories.
63. The above facts prove that the Accused conspired with China to endanger national sovereignty in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER TERRITORIAL  
INTEGRITY

64. *43 - 44 as presented above.*
65. *60 – 62 as presented above.*
66. The above facts prove that the Accused conspired with China to endanger territorial integrity in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER NATIONAL  
SECURITY

67. *45 - 47 as presented above.*
68. *60 – 62 as presented above.*

69. The above facts prove that the Accused conspired with China to endanger national security in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER MARITIME  
SECURITY

70. *48 - 49 as presented above.*

71. *60 – 62 as presented above.*

72. The above facts prove that the Accused conspired with China to endanger maritime security in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER FOOD SECURITY

73. *50 -52 as presented above.*

74. *60 – 62 as presented above.*

75. The above facts prove that the Accused conspired with China to endanger food security in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO ENDANGER FREEDOM OF  
NAVIGATION

76. *53 – 54 as presented above.*

77. *60 – 62 as presented above.*

78. The above facts prove that the Accused conspired with China to endanger freedom of navigation in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO HARM MARITIME  
SOVEREIGNTY

79. *55 - 58 as presented above.*

Maritime sovereignty has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

80. The above facts prove that the Accused conspired with China to harm maritime sovereignty in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO HARM NATIONAL  
SOVEREIGNTY

81. *59 - 63 as presented above.*

National sovereignty has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

82. The above facts prove that the Accused conspired with China to harm national sovereignty in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO HARM TERRITORIAL INTEGRITY

83. *64 - 66 as presented above.*

Territorial integrity has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

84. The above facts prove that the Accused conspired with China to harm territorial integrity in order to continue receiving aid.

#### THE ACCUSED CONSPIRED WITH CHINA TO HARM NATIONAL SECURITY

85. *67 - 69 as presented above.*

National security has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

86. The above facts prove that the Accused conspired with China to harm national security in order to continue receiving aid.

#### THE ACCUSED CONSPIRED WITH CHINA TO HARM MARITIME SECURITY

87. *70 - 72 as presented above.*

Maritime security has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

88. The above facts prove that the Accused conspired with China to harm maritime security in order to continue receiving aid.

#### THE ACCUSED CONSPIRED WITH CHINA TO HARM FOOD SECURITY

89. *73 - 75 as presented above.*

Food security has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

90. The above facts prove that the Accused conspired with China to harm food security in order to continue receiving aid.

THE ACCUSED CONSPIRED WITH CHINA TO HARM FREEDOM OF  
NAVIGATION

91. *76 - 78 as presented above.*

Freedom of navigation has been seriously damaged since the Diplomatic Note. The reason for that damage was explained by the PRC as the Diplomatic Note signed by the Accused, or proved by the proximate actions of the PRC after the Diplomatic Note was signed.

92. The above facts prove that the Accused conspired with China to harm freedom of navigation in order to continue receiving aid.

THE ACCUSED CONSPIRED TO HARM MARITIME SOVEREIGNTY

93. *55 - 58 as presented above.*

94. The above facts prove that the Accused conspired to harm maritime sovereignty.

THE ACCUSED CONSPIRED TO HARM NATIONAL SOVEREIGNTY

95. *59 - 63 as presented above.*

96. The above facts prove that the Accused conspired to harm national sovereignty.

THE ACCUSED CONSPIRED TO HARM TERRITORIAL INTEGRITY

97. *64 - 66 as presented above.*

98. The above facts prove that the Accused conspired to harm territorial integrity.

THE ACCUSED CONSPIRED TO HARM NATIONAL SECURITY

99. *67 - 69 as presented above.*

100. The above facts prove that the Accused conspired to harm national security.

#### THE ACCUSED CONSPIRED TO HARM MARITIME SECURITY

101. *70 - 72 as presented above.*

102. The above facts prove that the Accused conspired to harm maritime security.

#### THE ACCUSED CONSPIRED TO HARM FOOD SECURITY

103. *73 - 75 as presented above.*

104. The above facts prove that the Accused conspired to harm food security.

#### THE ACCUSED CONSPIRED TO HARM FREEDOM OF NAVIGATION

105. *76 - 78 as presented above.*

106. The above facts prove that the Accused conspired to harm freedom of navigation.

#### THE ACCUSED CAUSED HARM TO MARITIME SOVEREIGNTY

107. *93 - 94 as presented above.*

108. In addition to the forced occupation of the Paracels in 1974, “in 1988, the People's Republic of China mobilized forces to occupy six positions, which are the shoals northwest of the Spratlys, to build, upgrade and transform these shoals into fortified bases, like fortresses on the sea. In 1995, the People's Republic of China mobilized troops to capture Mischief Reef, located to the southeast of the Spratly Islands. Currently, they use force to encircle and occupy Co May Shoal, located to the east, close to Mischief Reef, in the



Spratly Islands. Thus, the total number of rocks and shoals that the Chinese side has used force to occupy in the Spratlys so far is 9 positions." <sup>22</sup> In total, there are 10 positions in the two archipelagoes of Hoang Sa and Truong Sa that have been occupied by China since the Diplomatic Note.

109. Major Pham Van Hong of the Army of the Republic of Vietnam was present in the naval battle of Hoang Sa on January 19, 1974, and was taken prisoner by the Chinese army. While being a prisoner in Guangzhou, to prove that the Paracel Islands were theirs, China cited that "since 1958, Prime Minister Pham Van Dong of Vietnam already signed a note confirming that, recognizing that the Paracels belong to China."

*Please see Evidence Book of the Vietnam Tribunal.*

110. The above facts prove that the Accused caused harm to maritime sovereignty.

#### THE ACCUSED CAUSED HARM TO NATIONAL SOVEREIGNTY

111. 95 - 96 as presented above.

112. 108 - 109 as presented above.

113. The above facts prove that the Accused caused harm to national sovereignty.

#### THE ACCUSED CAUSED HARM TO TERRITORIAL INTEGRITY

114. 97 - 98 as presented above.

115. 108 - 109 as presented above.

116. The above facts prove that the Accused caused harm to territorial integrity.

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22. "Hoàng Sa mãi mãi là lãnh thổ Việt Nam." *Công An Nhân Dân*, 14 Jan. 2014, <https://cadn.com.vn/hoang-sa-mai-mai-la-lanh-tho-viet-nam-10-post108734.html>

THE ACCUSED CAUSED HARM TO NATIONAL SECURITY

117.99 - 100 as presented above.

118.108 - 109 as presented above.

119. The above facts prove that the Accused caused harm to national security.

THE ACCUSED CAUSED HARM TO MARITIME SECURITY

120.101 - 102 as presented above.

121.108 - 109 as presented above.

122. The above facts prove that the Accused caused harm to maritime security.

THE ACCUSED CAUSED HARM TO FOOD SECURITY

123.103 - 104 as presented above.

124.108 - 109 as presented above.

125. The above facts prove that the Accused caused harm to food security.

THE ACCUSED CAUSED HARM TO FREEDOM OF NAVIGATION

126.105 - 106 as presented above.

127.108 - 109 as presented above.

128. The above facts prove that the Accused caused harm to freedom of navigation.

## THE ACCUSED BETRAYED HIS DUTIES TO MARITIME SOVEREIGNTY

129.107 - 110 as presented above.

130. According to the Constitution of the Socialist Republic of Vietnam, "The Prime Minister is the head of the Government, responsible to the National Assembly for the activities of the Government and the assigned tasks; report on the work of the Government and the Prime Minister to the National Assembly, the National Assembly Standing Committee, and the State President."

131. The Government, headed by the Prime Minister, has duties, based on the Constitution of the Socialist Republic of Vietnam, "to defend the Fatherland, to ensure the lives and property of the People."

132. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The East Sea is a part of the Fatherland, the responsibility to protect the Fatherland includes the responsibility to protect the East Sea of the Fatherland. By harming maritime sovereignty of the East Sea, the Accused betrayed his constitutional duties to the country's maritime sovereignty.

## THE ACCUSED BETRAYED HIS DUTIES TO NATIONAL SOVEREIGNTY

133.111 - 113 as presented above.

134.130 - 131 as presented above.

135. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The responsibility to protect the Fatherland includes the responsibility to protect national sovereignty. By harming national sovereignty, the Accused betrayed his constitutional duties to national sovereignty.

## THE ACCUSED BETRAYED HIS DUTIES TO TERRITORIAL INTEGRITY

136.114 - 116 *as presented above.*

137.130 - 131 *as presented above.*

138. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The responsibility to protect the Fatherland includes the responsibility to protect territorial integrity. By harming territorial integrity, the Accused betrayed his constitutional duties to territorial integrity.

## THE ACCUSED BETRAYED HIS DUTIES TO NATIONAL SECURITY

139.117 - 119 *as presented above.*

140.130 - 131 *as presented above.*

141. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The responsibility to protect the Fatherland includes the responsibility to protect national security. By harming national security, the Accused betrayed his constitutional duties to national security.

## THE ACCUSED BETRAYED HIS DUTIES TO MARITIME SECURITY

142.120 - 122 *as presented above.*

143.130 - 131 *as presented above.*

144. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The responsibility to protect the Fatherland and the People includes the responsibility to protect maritime security. By harming maritime security, the Accused betrayed his constitutional duties to maritime security.

## THE ACCUSED BETRAYED HIS DUTIES TO FOOD SECURITY

145.123 - 125 *as presented above.*

146.130 - 131 *as presented above.*

147. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The responsibility to protect the Fatherland and the People includes the responsibility to protect the nation's food security. By harming food security, the Accused betrayed his constitutional duties to food security.

## THE ACCUSED BETRAYED HIS DUTIES TO FREEDOM OF NAVIGATION

148.126 - 128 *as presented above.*

149.130 - 131 *as presented above.*

150. One of the Accused's responsibilities as Prime Minister is "to defend the Fatherland, to protect the lives and properties of the People." The responsibility to protect the Fatherland and the People includes the responsibility to protect freedom of navigation. By harming freedom of navigation, the Accused betrayed his constitutional duties to freedom of navigation.

## THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING MARITIME SOVEREIGNTY

151.28 - 39 *as presented above.*

152. According to Beijing Review, issue 13, March 30, 1979, recorded in "Memorandum on Vice-Premier Li Xiannian's Talks with Premier Pham Van Dong June 10, 1977":

"In mid-April 1977, as he stopped at Beijing on his way to Europe, Premier Pham Van Dong expressed to Comrade Chen Xilian his desire to stay for a few days in Beijing on his way back and have a talk with us. This was most welcome. The day before yesterday

Chairman Hua Guofeng met Premier Pham Van Dong and had a cordial conversation with you, during which he informed you of developments in China. You talked about problems in the relations between our two Parties and states, and Chairman Hua repeated our consistent stand and said that we shared the desire to further develop our friendship with the Vietnamese Party and people. I am instructed by Chairman Hua and entrusted by my Party's Central Committee to discuss candidly and in a comradely way a number of problems in the relations between our two Parties and states.”

This Memorandum recorded the dialogue from the Chinese side:

“On May 9, 1965, the Government of the Democratic Republic of Viet Nam issued a statement with reference to the designation by U.S. President Lyndon B. Johnson of the ‘combat zone’ of the U.S. armed forces in Viet Nam, recognizing the Xisha Islands as belonging to China. The Vietnamese statement said: ‘U.S. President Lyndon Johnson designated the whole of Viet Nam, and the adjacent waters which extend roughly 100 miles from the coast of Viet Nam and part of the territorial waters of the People's Republic of China in its Xisha Islands as 'combat zone' of the United States armed forces ... in direct threat to the security of the Democratic Republic of Viet Nam and its neighbors.’

When Vice-Premier Li Xiannian referred to this question, Premier Pham Van Dong produced the untenable argument that: ‘In the war of resistance we of course had to place resistance to U.S. imperialism above everything else.’ ‘How should one understand our statements including the one in my note to Premier Zhou Enlai? One should understand it in the context of the historical circumstances of the time.” Vice-Premier Li Xiannian promptly pointed out that this explanation was not convincing. He said, the territorial question between our two states should be dealt with seriously, war could not justify a different interpretation, and a serious attitude was called for. Moreover, there was no war going on in Viet Nam when on September 14, 1958, Pham Van Dong, as the Premier of the Government of the Democratic Republic of Viet Nam, acknowledged in his note to Premier Zhou Enlai that the Xisha and Nansha Islands are Chinese territory.”<sup>22</sup>

\* On May 9, 1965 the Government of the Democratic Republic of Viet Nam issued a statement with reference to the designation by U.S. President Lyndon B. Johnson of the "combat zone" of the U.S. armed forces in Viet Nam, recognizing the Xisha Islands as belonging to China. The Vietnamese statement said:

"U.S. President Lyndon Johnson designated the whole of Viet Nam, and the adjacent waters which extend roughly 100 miles from the coast of Viet Nam and part of the territorial waters of the People's Republic of China in its Xisha Islands as 'combat zone' of the United States armed forces . . . in direct threat to the security of the Democratic Republic of Viet Nam and its neighbours. . . ."

\*\* When Vice-Premier Li Xiannian referred to this question, Premier Pham Van Dong produced the untenable argument that: "In the war of resistance we of course had to place resistance to U.S. imperialism above everything else." "How should one understand our statements including the one in my note to Premier Zhou Enlai? One should understand it in the context of the historical circumstances of the time." Vice-Premier Li Xiannian promptly pointed out that this explanation was not convincing. He said, the territorial question between our two states should be dealt with seriously, war could not justify a different interpretation, and a serious attitude was called for. Moreover, there was no war going on in Viet Nam when on September 14, 1958 Pham Van Dong, as the Premier of the Government of the Democratic Republic of Viet Nam, acknowledged in his note to Premier Zhou Enlai that the Xisha and Nansha Islands are Chinese territory.

*March 30, 1979*

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<sup>22</sup> "Memorandum on Vice-Premier Li Xiannian's Talks with Premier Pham Van Dong". *Beijing Review*, 10 06 1977, pp. 17-22.

# Memorandum on Vice-Premier Li Xiannian's Talks With Premier Pham Van Dong

June 10, 1977

*"Renmin Ribao" on March 23 released the memorandum outlining Vice-Premier Li Xiannian's talks with Premier Pham Van Dong on June 10, 1977, prefaced by an editor's note which said:*

In recent years, the Vietnamese authorities deliberately worked to undermine the traditional friendship between the Chinese and Vietnamese peoples and kept poisoning Sino-Vietnamese relations. The Chinese side was greatly pained by this. The problem was repeatedly raised with the Vietnamese leaders by Chinese leaders with admonitions and in the earnest hope that the two countries would remain friendly to each other. On September 24, 1975 Comrade Deng Xiaoping talked to Le Duan, General Secretary of the Vietnamese Party, in Beijing about the problems existing in the relations between the two Parties and states and expressed the hope that they would be solved through joint efforts. On June 10, 1977 Comrade Li Xiannian, on behalf of the Chinese Party Central Committee, further held candid discussions with Premier Pham Van Dong on these problems and

gave him a memorandum on the statements made. The Chinese side hoped that Sino-Vietnamese friendship might be protected from further damage and preserved through joint efforts.

But most regrettably, the Vietnamese authorities completely disregarded the sincere desire of the Chinese side and have never replied to the Chinese leaders' views aimed at preserving the relations between the two Parties and states. Aided and abetted by the Soviet Union, they picked China as their No. 1 enemy, and have been pursuing with ever greater vigour a policy of opposition and hostility to China. That Sino-Vietnamese relations should have worsened to such an extent today is wholly the making of the Vietnamese authorities.

We now publish the full text of the memorandum handed by Vice-Premier Li Xiannian to Premier Pham Van Dong on June 10, 1977, with a few footnotes, to set forth the historical facts. This will help people to know more about the true course of development of Sino-Vietnamese relations.

**I**n mid-April 1977, as he stopped at Beijing on his way to Europe, Premier Pham Van Dong expressed to Comrade Chen Xilian his desire to stay for a few days in Beijing on his way back and have a talk with us. This was most welcome. The day before yesterday Chairman Hua Guofeng met Premier Pham Van Dong and had a cordial conversation with you, during which he informed you of developments in China. You talked about problems in the relations between our two Parties and states, and Chairman Hua repeated our consistent stand and said that we shared the desire to further develop our friendship with the Vietnamese Party and people. I am instructed by Chairman Hua and entrusted by my Party's Central Committee to discuss candidly and in a comradely way a number of problems in the relations between our two Parties and states.

The relations between our two Parties, states and peoples have been close and friendly for years. Our deep friendship was forged and

promoted personally by Chairman Mao Zedong and President Ho Chi Minh, whose revolutionary friendship was a concentrated expression of Sino-Vietnamese friendship. Our friendship stood the severe test in the long period of revolutionary struggles. Both in the years of arduous struggle in our respective countries and in the two decades or so of wars of resistance against imperialism, we shared weal and woe and helped each other, "uniting together, fighting together and winning victories together," as Premier Zhou Enlai said. Our revolutionary friendship is sealed in blood. The Communist Party of China and the Chinese Government have always valued the friendship and unity between our two Parties, states and peoples. In our dealings with the Vietnamese Party and Government, both under the late Chairman Mao and President Ho and afterwards, we have always strictly implemented Chairman Mao's revolutionary line, done our best to fulfil our internationalist duty and

March 30, 1979

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153. In 1958, before the Accused signed the Diplomatic Note, China did not want to participate in Vietnam for fear that it would lead to American participation in the war. Thus, when France withdrew from Vietnam in 1954, China was keen to reduce tensions in Southeast



Asia. They didn't want to join another Korean War in Vietnam. 1958 was the time when the Vietnamese Workers Party (the future Communist Party of Vietnam) paid more attention to the invasion of the South.

The VWP sought Chinese advice by presenting in the summer of 1958 to the CCP for comment two documents titled “Our View on the Basic Tasks for Vietnam during the New Stage” and “Certain Opinions Concerning the Unification Line and the Revolutionary Line in the South.” After a careful study, the Chinese leadership responded with a written reply, which pointed out that “the most fundamental, the most crucial, and the most urgent task” for the Vietnamese revolution was to carry out socialist revolution and socialist construction in the north. As to the south, the Chinese reply continued, Hanoi’s task should be to “wait for opportunities.” According to Hoang Van Hoan, the Chinese advised Hanoi that it was not opportune “to expose its armed forces in south Viet Nam.” Clearly, Chinese leaders at this time did not believe that the time was ripe for Hanoi to wage military struggle in the south.<sup>23</sup> This policy from the CCP changed after the Diplomatic Note in 1958.

154. In October 1959, the Accused visited Beijing, where he asked Zhou Enlai for military aid and the dispatch of a Chinese military technical team to the DRV. A month later, this delegation came to Vietnam in a fact-finding mission. Before its departure to Vietnam, Zhang Aiping, deputy chief of staff of the People's Liberation Army, informed the team of China’s position on aid to the DRV: China would satisfy whatever requests the North Vietnamese put forward so long as China was in a position to do so. On behalf of the VCP Politburo, Prime Minister Pham Van Dong mentioned three times in his conversation with this delegation that the DRV had high hopes for China's help. Based on the delegation's recommendation, the CCP began to aid the VCP to invade the South.

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<sup>23</sup> Zhai, Qiang. *China & the Vietnam Wars, 1950 - 1975*. The University of North Carolina Press, 2000, pp 80-82.

155. Based on the above facts, the Accused has depended on China to pursue war and endanger the country's maritime sovereignty using the Diplomatic Note of 1958 to recognize China's sovereignty in the Paracels, Spratlys and part of the East Sea.

THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING  
NATIONAL SOVEREIGNTY

156. *151 - 154 as presented above.*

157. *40 – 42 as presented above.*

158. Based on the above facts, the Accused has depended on China to pursue war and endanger national sovereignty.

THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING  
TERRITORIAL INTEGRITY

159. *151 - 154 as presented above.*

160. *43 – 44 as presented above.*

161. Based on the above facts, the Accused has depended on China to pursue war and endanger territorial integrity.

THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING  
NATIONAL SECURITY

162. *151 - 154 as presented above.*

163. *45 – 47 as presented above.*

164. Based on the above facts, the Accused has depended on China to pursue war and endanger national security.

THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING  
MARITIME SECURITY

165.151 - 154 as presented above.

166.48 - 49 as presented above.

167. Based on the above facts, the Accused has depended on China to pursue war and endanger maritime security.

THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING FOOD  
SECURITY

168.151 - 154 as presented above.

169.50 - 52 as presented above.

170. Based on the above facts, the Accused has depended on China to pursue war and endanger food security.

THE ACCUSED DEPENDED ON CHINA TO PURSUE WAR ENDANGERING  
FREEDOM OF NAVIGATION

171.151 - 154 as presented above.

172.53 - 54 as presented above.

173. Based on the above facts, the Accused has depended on China to pursue war and endanger freedom of navigation.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING  
MARITIME SOVEREIGNTY

174.151 - 154 *as presented above.*

175.55 - 58 *as presented above.*

176. Based on the above facts, the Accused has colluded with China to pursue war harming maritime sovereignty.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING  
NATIONAL SOVEREIGNTY

177.151 - 154 *as presented above.*

178.59 - 63 *as presented above.*

179. Based on the above facts, the Accused has colluded with China to pursue war harming national sovereignty.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING  
TERRITORIAL INTEGRITY

180.151 - 154 *as presented above.*

181.64 - 66 *as presented above.*

182. Based on the above facts, the Accused has colluded with China to pursue war harming territorial integrity.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING  
NATIONAL SECURITY

183.151 - 154 as presented above.

184.67 - 69 as presented above.

185. Based on the above facts, the Accused has colluded with China to pursue war harming national security.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING  
MARITIME SECURITY

186.151 - 154 as presented above.

187.70 - 72 as presented above.

188. Based on the above facts, the Accused has colluded with China to pursue war harming maritime security.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING FOOD  
SECURITY

189.151 - 154 as presented above.

190.73 - 75 as presented above.

191. Based on the above facts, the Accused has colluded with China to pursue war harming food security.

THE ACCUSED COLLUDED WITH CHINA TO PURSUE WAR HARMING  
FREEDOM OF NAVIGATION

192.151 - 154 as presented above.

193.76 - 78 as presented above.

194. Based on the above facts, the Accused has colluded with China to pursue war harming freedom of navigation.

THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING MARITIME  
SOVEREIGNTY

195. 151 - 154 as presented above.

196. In January 1960, the DRV agreed to a 5-Year Plan. The Accused asked Zhou Enlai for 500 million yuan. Responding to the Accused, Zhou Enlai said he could lend a larger amount of money. In 1961, the defendant again visited Beijing to ask for aid. Zhou Enlai went on to emphasize the "blending legal and illegal struggle and combining political and military approaches." During the meetings between the Accused, Vo Nguyen Giap, and Zhou Enlai between April 7 and April 11, Zhou Enlai instructed the VCP to continue to escalate the war. The Accused pointed out that the strategy Hanoi used was based on advice from China. According to a letter written by the Soviet Embassy in North Vietnam in August 1967, the Accused and Vo Nguyen Giap solemnly promised China to continue the war. On May 7, 1968, Zhou Enlai told Xuan Thuy that "Comrade Mao Zedong allows Comrade Pham Van Dong to discuss with the US, but he has to be in the upper hand."<sup>24</sup>

197. After the Indochina Agreement was signed in Geneva in July 1954, China continued to provide weapons, equipment and military training to the DRV. But in June 1965, China started sending troops to fight in Vietnam. Between 1965 and 1968, China sent 23 divisions to Vietnam, including 95 regiments, with a total strength of about 320,000 troops. Beginning in 1968, China also sent 110,000 troops to Laos to provide air defense, build and repair highways, and maintain transportation and communications along the Ho Chi Minh Trail. A total of at least 430,000 Chinese troops participated in the Vietnam War, compared with the highest number of American troops in Vietnam in April 1969 of 543,000. This is not to mention the Soviet army also present in Vietnam.

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<sup>24</sup> Zhai, Qiang. *China & the Vietnam Wars, 1950 - 1975*. The University of North Carolina Press, 2000, pp. 170-171.

198. From 1955 to 1963, China's total military aid amounted to \$106 million and these great contributions helped Ho Chi Minh build a substantial army. After 1964, China increased its aid and provided an additional 20 billion USD in military and economic aid to Vietnam. Massive Chinese supply and support to North Vietnam in the early 1960s helped North Vietnam intensify guerrilla warfare in South Vietnam.
199. In Beijing in the summer of 1962, Mao agreed with Ho that China would supply grain and weapons to the South Vietnamese Liberation Front through the "Ho Chi Minh Trail". After Ho left Beijing, the CCP Central Committee decided to provide free weapons and equipment to rearm 230 Vietnamese infantry battalions, numbering more than 180,000 men. In March 1963, General Luo Ruiqing, Chief of the General Staff of the People's Liberation Army, led a military delegation to Hanoi to discuss in more detail how to support the Viet Cong in South Vietnam.<sup>25</sup>
200. In 1964, the Central Committee of the CCP reached an agreement that China would continue its military and economic aid to North Vietnam, even though the country faced bankruptcy. Premier Zhou Enlai explained the foreign aid policy to his ministers at a State Council executive meeting on July 18, 1964: "We must seize the moment and take a firm grasp of the central issue [of our economic foreign policy]," because the current international situation offered "a great opportunity" for the PRC to increase its influence among the Southeast Asian nations.

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<sup>25</sup> "Mao Zedong and Pham Van Dong," Wilson Center Digital Archive.

<https://digitalarchive.wilsoncenter.org/document/112181.pdf?v=e3262a1cf02cee0ab4edc2476d7151ef>

201. On January 31, 1968, the Communist Party of Vietnam attacked the South during the 1968 Tet massacre. On November 17, 1968, the Accused led a delegation to report to Mao Trach Dong. "Our victories in the South are, to a large extent, due to the support, as well as encouragement, of the Chinese people and of Chairman Mao." "We forced the US military into the bunker because of the artillery that China gave us." Mao also announced the withdrawal of Chinese troops and promised to return if needed.<sup>26</sup>
202. In January 1974, China forcibly occupied the Paracels and neighboring islets. Zhou Enlai is the main protagonist ("principal architect") in this work, formed by a five-man group within the CCP Politburo including Ye Jiaying, Wang Hongwen, Zhang Chunqiao, Deng Xiaoping and Chen Xilian. Reacting to the Chinese occupation of the Paracels, Hanoi said that "the relevant countries must resolve such disputes by negotiation and in the spirit of equality, mutual respect and good neighbourliness."<sup>27</sup>
203. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming the country's maritime sovereignty over the East Sea.

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<sup>26</sup> Li, Xiaobing. *Building Ho's Army: Chinese Military Assistance to North Vietnam*. University Press of Kentucky, 2019

<sup>27</sup> Ibid.



THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING NATIONAL  
SOVEREIGNTY

204.182 - 185 *as presented above.*

205.81 - 82 *as presented above.*

206. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming national sovereignty.

THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING TERRITORIAL  
INTEGRITY

207.182 - 185 *as presented above.*

208.83 - 84 *as presented above.*

209. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming territorial integrity.

THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING NATIONAL  
SECURITY

210.182 - 185 *as presented above.*

211.85 - 86 *as presented above.*

212. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming national security.

THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING MARITIME  
SECURITY

213.182 - 185 as presented above.

214.87 - 88 as presented above.

215. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming maritime security.

THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING FOOD SECURITY

216.182 - 185 as presented above.

217.89 - 90 as presented above.

218. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming food security.

THE ACCUSED ASSISTED CHINA TO WAGE WAR HARMING FREEDOM OF NAVIGATION

219.182 - 185 as presented above.

220.91 - 92 as presented above.

221. Based on the above facts, the Accused assisted China to wage the Vietnam War, harming freedom of navigation.

We, Panelists of the Vietnam Tribunal, declare the Accused Pham Van Dong guilty of treason with 63 crimes as described above.