

RECENT TRENDS IN THE SOUTH CHINA SEA DISPUTES



By Boston Global Forum

June 2015

The report is derived from Boston Global Forum conferences and is produced by the Boston Global Forum (BGF) in cooperation with the Center for International Studies, University of Social Sciences and Humanities, Ho Chi Minh City (SCIS) and the South China Sea Chronicle Initiative.

Table of Contents

INTRODUCTION	1
1. SOUTH CHINA DISPUTES	1
1.2 Islands	1
1.2 Maritime delimitation	3
1.3 Freedom of navigation	6
2. POLICY RECOMMENDATIONS.....	8
2.1 ASEAN-Intra Solution	8
a. Avoiding the misfortune of non-appearance	9
b. Facing the situation of non-appearance	10
2.2 US-ASEAN's cooperative patrols.....	11
2.3 SCS Threat Index and SCS Monitor: Approaches and Methodologies	12
APPENDIX.....	14
Appendix 1 - The use or Threat of Force in the South China Sea Disputes since 1945: A Timeline	14
Appendix 2 - Non-exhaustive Chronologies of China's continuous attacks on Vietnamese Fishermen since 2002 to June 2014	28
Appendix 3 - Case: Default of appearance and the South China Sea	29
Appendix 4 – Boston Global Forum Contributors.....	31
1.1 Working Group.....	31
1.2 Editors.....	31
1.3 Participants in the Boston Global Forum Conference on Managing Peace and Security in the South China Sea.....	31

INTRODUCTION

The maritime disputes in the South China Sea have recently grown more complex and heated, given the issues at hand, the number of countries involved, and unwillingness among these countries to genuinely cooperate with each other to find peaceful solutions to their problems.

The six countries involved: Brunei, China, Indonesia, Malaysia, the Philippines and Vietnam, all neighbour in the South China Sea and have claimed overlapping maritime zones in the region. All of them, save for Indonesia, claim sovereignty over maritime features in the area.

As part of the effort to ease world tensions, Boston Global Forum held several live and online international conferences and symposia focusing on practical solutions over claims in the South and East China Seas.

Conference participants included leading officials, scholars and policy analysts who have studied, written, lectured and published on the issue. A list of main contributors and conference participants is appended to this report.

1. SOUTH CHINA DISPUTES

These South China Sea disputes generally fall into three categories: (a) islands, (b) maritime delimitation, and (c) freedom of navigation.

1.2 Islands

The large number of islands and archipelagos in the area can be categorized into three groups, the Paracel “islands”, Macclesfield Bank including Scarborough Shoal, and Spratly “islands”.

With respect to Paracel “islands”, both Vietnam and China claim sovereignty over all maritime features including islands, islets and reefs. On the other hand, all the maritime features in Macclesfield Bank and Scarborough Shoal areas are claimed by both the Philippines and China. More importantly, the Spratly “islands” can be seen as a noodle bowl of claims in which China, Vietnam, Malaysia, Brunei and the Philippines declare their sovereignty over part or all of the maritime features in this area.

Another aspect of the disputes relate to the legal status of the maritime features in the South China Sea. The regime of islands, as provided in Article 121 of the United Nations Convention on the Law of the Sea (“the Convention”) remains unclear as it governs that “an island is a naturally formed area of land, surrounded by water, which is above water at high tide”¹. The vague terms of article 121 of the Convention, has resulted in the claimants in the South China Sea having differing views on the application and interpretation of the article with regard to the definition of an *island*. China’s position is that all the maritime features in the Paracel and Spratly “islands” that are visible at high tide, are in China’s view *islands*; therefore, they are entitled to claim not only the territorial sea surrounding them but also the Exclusive Economic Zone (EEZ) as well as continental shelf². The Philippines, in contrast, rejects this viewpoint.

¹ http://www.un.org/depts/los/convention_agreements/texts/unclos/part8.htm, access on 28 September 2014.

² Thao, Nguyen Hong, ‘Vietnam and the Code of Conduct for the South China Sea’, *Ocean Development & International Law*, vol.32, issue 2, 2001, p. 109.

Indeed, two of the claims the Philippines brought before the arbitral tribunal under annex VII to the Convention against China are that some of the features in Scarborough Shoal and the Spratly area do not qualify as islands or even rocks³.

On the other hand, Vietnam, in a letter to the Secretary-General of the United Nations on 18 May 2009, has adopted the position that “the Spratly Islets do not generate exclusive economic zones and continental shelves and that any zones around these [so called] islands should be limited to territorial seas”⁴. What’s more, according to the Vietnam government, the maritime features in the Paracel “islands” should not be given full effect⁵.

Malaysia and Brunei have not expressly declared their attitudes toward the legal status of those maritime features in the Spratly “islands”. Nonetheless, owing to their claims of 200 nautical mile EEZs based on their main coastal areas, one could assume that Malaysia and Brunei have no interest in giving the maritime features in this area full effect or to consider them as islands⁶.

In short, there are two separate aspects of the disputes in the South China Sea related to those maritime features in the area:

the dispute regarding sovereignty over the so-called islands; and

the dispute over the legal status of those islands.

While sovereignty is not a subject-matter of the United National Convention of the Law of the Sea (UNCLOS), the dispute over the “islands” legal status is considered one of the core concerns of UNCLOS and, as a result, falls entirely within the compulsory procedure for dispute settlement under Part XV of the Convention.

Thus, the principle of consent plays a less impressive role in the judicial dispute settlement means.

³ In the submission to the Arbitral Tribunal established under Annex VII of UNCLOS, the Philippines hold the view that:

Michief Reef, McKennan Reef, Gaven Reef and Subi Reef are submerged features which are not above sea level at high tide and thus do not qualify as islands or rocks in terms of Article 121 UNCLOS. None of them are located on China’s continental shelf, while Mischief Reef and McKennan Reef are part of the continental shelf of Philippines. China’s occupation of and construction activities on these four maritime features are unlawful and shall be terminated. (See Republic of the Philippines (RP), Department of Foreign Affairs (DFA), Notification and Statement of Claim (22 January 2013) Annex I, Doc B.2, Bullet points 3-5.)

Scarborough Shoal, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef shall be considered as rocks under article 121(3) UNCLOS, and may only generate entitlement to a territorial sea. Having unlawfully claimed maritime entitlement beyond 12 nautical miles from these features, China shall refrain from preventing Philippines vessels from exploiting the living resources in the waters adjacent to Scarborough Shoal and Johnson Reef, and from undertaking other activities inconsistent with UNCLOS at or in the vicinity of these features. (See Republic of the Philippines (RP), Department of Foreign Affairs (DFA), Notification and Statement of Claim (22 January 2013) Annex I, Doc B.2, Bullet points 6-7).

See also Gau, Michael Sheng-Ti, ‘Issues of jurisdiction in cases of default of appearance’, in Stefan Talmon and Bing Jia, *The South China Sea Arbitration: A Chinese Perspective*, Oxford and Portland, Oregon, 2014, p. 81.

⁴ Vietnam, Letter to Secretary-General of the United Nations, Doc. No. 240/HC-2009, New York, 18 August 2009.

⁵ McDorman, Ted L., ‘The South China Sea after 2009: clarity of claims and enhanced prospects for regional Cooperation?’, *Ocean Yearbook Online*, Volume 24, Issue 1, p. 517.

⁶ *Ibid*, pp. 517, 521.

1.2 Maritime delimitation

Although maritime delimitation is one of the optional exceptions to compulsory procedures under UNCLOS⁷, International Courts/Tribunals have heard a number of cases on this subject.

The newest case, brought before the International Tribunal for the Law of the Sea (ITLOS) is the dispute concerning delimitation of the maritime boundary between the Republic of Ghana and the Republic of Côte d'Ivoire⁸. This is a superb example of turning to ITLOS when it comes to resolving delimitation of maritime zones disputes, and shows how it is a good practice of sovereign states to make use of international judicial bodies. On the other hand, the claimant states in the South China Sea had never turned to an international court or tribunal for recourse until 2013. That occurred when the Philippines instituted arbitral proceedings against China based on the United Nations Conventions on the Law of the Sea (UNCLOS). This was done in accordance with the dispute settlement provisions of UNCLOS, particularly under Annex VII, “with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea.”⁹ Not surprisingly, China refused to appear.

While the bilateral disputes in the region are certainly difficult, the multilateral nature of overlapping maritime zone claims in the South China Sea adds to the complexity. Since the South China Sea is a semi-enclosed sea, the maritime zones of the neighbouring countries inevitably have maritime zones that overlap each other. In addition, all the claimants in this area claim 200 nautical mile EEZs and up to 350 nautical mile continental shelves¹⁰. Nonetheless, not every state in the South China Sea involved in a dispute has expressed a willingness to resolve such disputes peacefully and in accordance with the procedures set out in UNCLOS. (See table 2)

Table 2: Agreements and Submissions of ASEAN countries concerning maritime delimitation

States	Documents	Notes
Vietnam – Malaysia	Memorandum of Understanding of 5 June 1992 ¹¹	Recognizing that there are overlapping area in the Gulf of Thailand
Vietnam – Malaysia	Joint Submission of information to the commission on the limits of the continental shelf respecting the outer limit of the continental margin beyond 200 nm	Recognizing “there are unresolved disputes in the defined area” ¹³ in the South China Sea

⁷ UNLOS, Article 298.

⁸ https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_222_EN.pdf access on 1 March 2015.

⁹ http://www.pca-cpa.org/showpage.asp?pag_id=1529 access on 28 September 2014.

¹⁰ Thao, Nguyen Hong and Amer, Rames, ‘A new legal arrangement for the South China Sea?’, *Ocean development & International Law*, Vol. 40, Issue 4, 2009, pp. 334-335. See also, China 1998 Law on the Exclusive Economic Zone and Continental Shelf, Articles 4 and 14; Vietnam 2013 Sea Law, Article 15; Malaysia and Vietnam Joint Submission to the UN Commission on the Limits of the Continental Shelf in 2009; The Philippines 2009 Baseline Law; Bunei Preliminary Submission concerning the outer limits of its continental shelf.

¹¹ [1992 Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries](http://cil.nus.edu.sg/1992/1992-memorandum-of-understanding-between-malaysia-and-the-socialist-republic-of-vietnam-for-the-exploration-and-exploitation-of-petroleum-in-a-defined-area-of-the-continental-shelf-involving-the-two-c/), <http://cil.nus.edu.sg/1992/1992-memorandum-of-understanding-between-malaysia-and-the-socialist-republic-of-vietnam-for-the-exploration-and-exploitation-of-petroleum-in-a-defined-area-of-the-continental-shelf-involving-the-two-c/> access on 15 February 2015.

	in the southern part of south china sea identifying 200 nm limits ¹²	
Vietnam – Indonesia	Treaty concerning the delimitation of the continental shelf boundaries ¹⁴	Establishing continental shelf boundaries in the South China Sea.
Brunei	Preliminary Submission concerning the outer limits of its continental shelf ¹⁵	Extending EEZ and continental shelf and recognizing the future delimitation of boundaries with neighbours in the future
The Philippines	Instituted arbitral proceedings against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea (the "Convention"), "with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea.	Recognizing the situation of overlapping maritime zones in the South China Sea.

The table, illustrates two significant points must be considered. First, it could be seen that almost all the states neighbouring the South China Sea extend their EEZs and continental shelves mostly from their mainland. Second, those countries acknowledge the existence of a dispute concerning maritime delimitation in the area and have, either explicitly stated or implied that they are willing to resolve their disputes peacefully.

China, in particular, has attached a map to the Note Verbale with a nine-dash line that appears to indicate its maritime claim in the South China Sea. However, in the Note Verbale of 2009, China declared that: "*China has **indisputable sovereignty** over the **islands** in the South China Sea and the adjacent waters, and enjoys sovereignty rights and jurisdiction over the relevant water as well as subsoil thereof*¹⁶".

At the time of this report, however, China had not officially explained its positions towards this map. Two plausible explanations for China's nine-dash map exist.

¹³ McDorman, Ted L., 'The South China Sea after 2009: clarity of claims and enhanced prospects for regional Ccooperation?', Ocean Yearbook Online, Volume 24, Issue 1, pp. 507, 508

¹² Joint Submission of information to the commission on the limits of the continental shelf respecting the outer limit of the continental margin beyond 200 nm in the southern part of south china sea identifying 200 nm limits, http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/mys_vnm2009excutivesummary.pdf access on 15 February 2015.

¹⁴ Treaty concerning the delimitation of the continental shelf boundaries, http://www.un.org/depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin67e.pdf access on 15 February 2015.

¹⁵ Preliminary Submission concerning the outer limits of its continental shelf, http://www.un.org/depts/los/clcs_new/submissions_files/preliminary/brn2009preliminaryinformation.pdf access on 15 February 2015.

¹⁶ Chinese Note Verbale CML/18/2009 to the United Nations, http://www.un.org/depts/los/clcs_new/submissions_files/vnm37_09/chn_2009re_vnm.pdf access on 13 February 2015.

A first interpretation of the map is that China claimed sovereignty over all the maritime features (most of them would be islands, in the South China Sea); therefore, China would be entitled to enjoy the maritime zones, including the EEZs and continental shelves, attributed to them¹⁷.

This argument is also based on China's domestic laws and announcement. Article 2 of the 1992 China territorial sea law and article 2 of the 1998 China EEZ and continental shelf law are two prime examples¹⁸. In addition, China has repeated such a view in its 2011 Note Verbale stating: "China's Nansha Islands are fully entitled to Territorial Sea, (EEZ), and Continental Shelf"¹⁹. The maritime zones claimed by China, according to this view, would not be generated from the main land, but obviously from the archipelagos in the area. Second, China has expressed an interest in the so-called "historic claims", and the nine-dashed line map demonstrated China's sovereignty over the maritime spaces lying within those lines under the name of "historic water" or "historic title". Also in its 2011 Note Verbale, China declared that "China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence"²⁰.

Nevertheless, whatever it is, the nine-dashed line of China illustrates undeniably that the "maritime spaces" claimed by China overlap with its neighbours' maritime zones extended from their mainlands and indicate the existence of a dispute (See the Map 3)

In conclusion, the issues over maritime delimitation in the South China Sea are extremely complicated and difficult to resolve. Such disputes cover matters that go far beyond the scope of compulsory procedure provided in Part XV of UNCLOS. If the disputes are to be resolved peacefully, unlikely consent by the neighboring states would be vital.

Despite the obstacles, two positive signs have emerged (1) there are more than two parties with essential interests in the disputed maritime zones and (2) not every state in the area is opposed to settling the dispute via peaceful means—including judicial procedure in good faith.

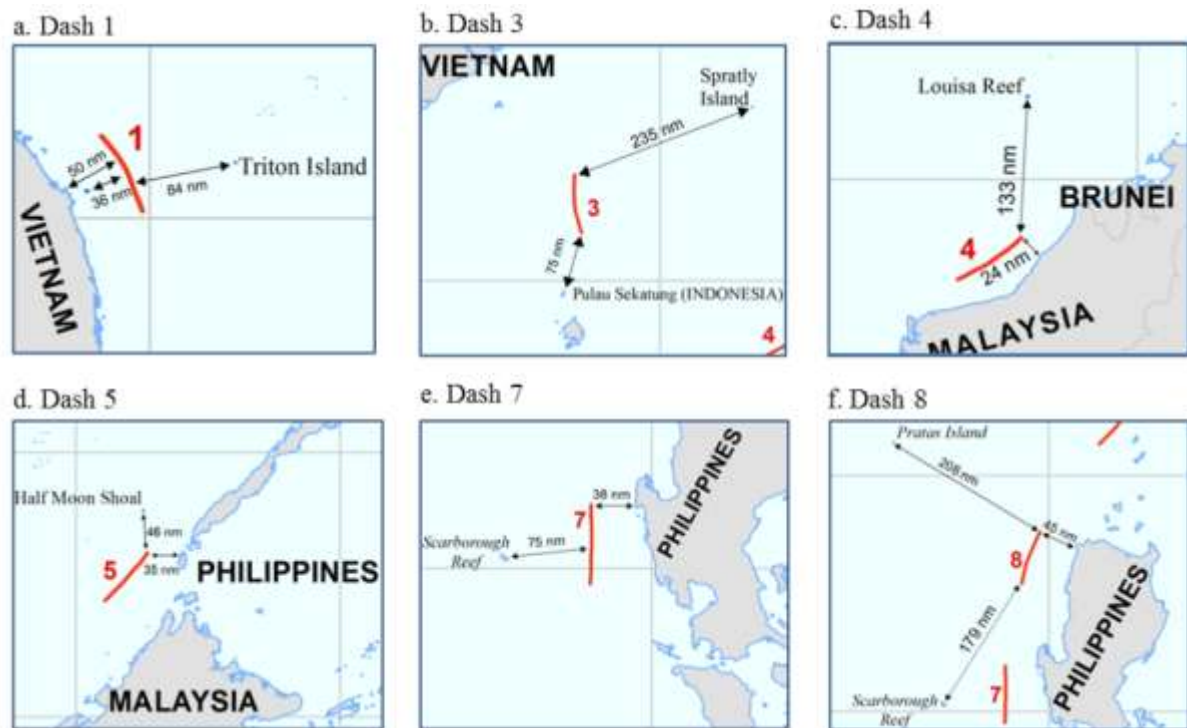
¹⁷ Gau, Michael Sheng-Ti (2014), *Issues of Jurisdiction in Cases of Default of Appearance, The South China Sea Arbitration: A Chinese Perspective*, Stefan Talmon and Bing Bing Jia, Oxford and Portland, Oregon, 2014, p. 88

¹⁸ 1992 Law of the People's Republic of China Concerning the Territorial Sea and the Contiguous Zone, article 2: "The land territory of the People's Republic of China includes the mainland of the People's Republic of China and its offshore islands, Taiwan and all islands appertaining thereto including the Diaoyu Islands; the Penghu Islands; the Dongsha Islands; the Xisha Islands; the Zhongsha Islands and the Nansha Islands; as well as all the other islands that belong to the People's Republic of China". 1998 Law on the Exclusive Economic Zone and the Continental Shelf of the Republic of China, article 2: "The exclusive economic zone of the Republic of China denotes the sea area contiguous to the outer limits of the territorial sea and to a distance measuring outwardly 200 nautical miles from the baseline of the territorial sea. The exclusive economic zone prescribed in the preceding paragraph comprises the water body, the seabed and the subsoil. The continental shelf of the Republic of China is the submarine area that extends beyond its territorial sea through the natural prolongation of its land territory to the outer edge of the continental margin. The submarine area prescribed in the preceding paragraph comprises the seabed and subsoil."

¹⁹ Permanent Mission of the People's Republic of China, Note Verbale CML/8/2011, April 14, 2011, available from DOALOS at: http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf.

²⁰ Permanent Mission of the People's Republic of China, Note Verbale CML/8/2011, April 14, 2011, available from DOALOS at: http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2011_re_phl_e.pdf.

Map 3: Distance between dashes and land features²¹



1.3 Freedom of navigation

Freedom of navigation is an often overlooked issue in the South China Sea.

This principle, “generated by Grotius in the 17th century²² and is still being respected”²³, simply means that the sea is open to all nations to freely navigate and fish. It is considered as “one of the pillars of the law of the sea and was at the origin of modern international law²⁴”. More importantly, any disputes related to freedom of navigation of state parties are always the subject of compulsory procedures included in Part XV of UNCLOS.

Most of the disputed maritime spaces do not lie within territorial seas of claimant states, but within their EEZs or even beyond. According to Articles 58 and 87 of the Convention, ships of all states shall enjoy the freedom of navigation in such areas, and while coastal states, can lawfully construct artificial islands and installations in their EEZs, they cannot impede international navigation²⁵. Now in order to assert their sovereignty and jurisdiction over disputed maritime

²¹ United States Department of State, Limits in the Sea – No.143 China: Maritime Claims in the South China Sea, p. 5

²² R.R. Churchill & A.V. Lowe (1999), *The Law of the Sea*, 3rd ed., Manchester University Press, 1999,

²³ Trang, N. M Pham & Vu, M. Truong, ‘From Clash of Vision to Power Struggle: The US, China, and Freedom of Navigation’, <http://www.e-ir.info/2014/10/31/from-clash-of-vision-to-power-struggle-the-us-china-and-freedom-of-navigation/>, accessed on 20 January 2015

²⁴ Rüdiger Wolfrum, ‘Freedom of Navigation: New Challenges’, https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/wolfrum/freedom_navigation_080108_eng.pdf, accessed on 07 September 2014.

²⁵ UNCLOS, Articles 56 and 60.

features over overlapping maritime zones, claimant states in the South China Sea have been carrying out a number of activities that may violate the navigational rights of others.

South China Sea states have unilaterally claimed sovereignty over maritime features and have occupied them, and built fortifications and other structures on them. For example, Malaysia built structures on Investigator Shoal and on Erica Reef in the Spratly archipelagos²⁶. Vietnam upgraded its structures on Cornwallis South Reef and Alison Reef in the middle of the Spratly area²⁷. However, the most startling example may be found in the September 2014 BBC report on China's construction of an island factory in the South China Sea²⁸. According to the report, China was also creating new land from the reefs in the disputed area by dredging up millions of tonnes of rock and sand on the sea floor and is also building a sea wall in the area.



Moreover, China unilaterally launched a prohibition on fishing in the disputed area challenging the jurisdiction of other neighbouring countries and provoking strong reactions²⁹.

Against such a backdrop, the Philippines brought the dispute concerning freedom of navigation between it and China to an annex VII arbitral tribunal. One of these claims concerns China

²⁶ Yann-heui Song & Stein Tonnesson, 'The impact of the law of the sea convention on conflict and conflict management in the South China Sea', *Ocean Development and International Law*, Vol. 44, Issue 3, p.249.

²⁷ Ibid.

²⁸ China's Islands Factory, <http://www.bbc.com/news/magazine-29107792> access on 18 October 2014

²⁹ Thao, Nguyen Hong, 'Vietnam and the Code of Conduct for the South China Sea', *Ocean Development & International Law*, vol.32, issue 2, 2001, p. 107.

unlawfully interfering the Philippines navigational and fishing rights granted by UNCLOS within and beyond its EEZ³⁰.

In a nutshell, the South China Sea states must seriously consider the issue of freedom of navigation—a principle well-established under customary international law and protected by the Convention. The disputes related navigation generally fall within the scope of *compulsory procedure* so that state consent and failure to appear cannot significantly impact the judicial proceedings.

2. POLICY RECOMMENDATIONS

2.1 ASEAN-Intra Solution

When it comes to settling international disputes, the countries involved must refrain from unilateral action, be open to negotiation and co-operate with each other in the exercise of their rights and in the performance of their duties as sovereign nations. Furthermore, the 1982 Law of the Sea Convention demands that when state parties are involved in a dispute in enclosed or semi-enclosed seas they should “endeavour, directly or through an appropriate regional organization to co-ordinate the management, conservation, exploration, and exploitation of the living resources of the sea and also to co-ordinate their activities” with respect to the protection and preservation of the marine environment³¹.

While those countries in the South China Sea have made efforts to settle disputes in accordance with the Law of the Sea, nearly all of their regional organizations or cooperative marine management mechanisms fail to work effectively³². It seems that non-judicial peaceful means to settle the disputes in the South China Sea have been exhausted. Mark Valencia has observed: “Indeed, when countries in Asia think maritime, they think first and foremost about boundary disputes, not protection of the deteriorating marine environment or management of dwindling fisheries”³³.

³⁰ Gau, Michael Sheng-Ti, ‘Issues of jurisdiction in cases of default of appearance’, in Stefan Talmon and Bing Bing Jia, *The South China Sea Arbitration: A Chinese Perspective*, Oxford and Portland, Oregon, 2014, p. 97

³¹ UNCLOS, Article 123

³² Dyke, Jon M. Van & Broder, Sherry P. observed that: “*The Coordinating Body on the Seas of East Asia (COBSEA) has been mostly dysfunctional and the Partnership in Environmental Management for the Seas of East Asia (PEMSEA) has been modest in its accomplishments. No effective organization to manage the shared fisheries has been established*”, Dyke, Jon M. Van & Broder, Sherry P., ‘Regional maritime cooperation in the South China Sea: COBSEA and PEMSEA’ in Keyuan Zou & Yann-Huei Song, *Major Law and Policy Issues in the South China Sea – European and American Perspectives*, Ashgate Publishing Limited, 2014, p.17.

Bateman, Sam hold the view that: “*There is still no effective regime in the South China Sea for cooperative marine management and good order at sea: for the safety and security of shipping; the preservation, protection and conservation of the marine environment; the exploration and exploitation of marine resources; the prevention of illegal activity at sea; and the conduct of marine scientific research*”, Bateman, Sam (2014), ‘Maritime boundary delimitation, excessive claims and effective regime building in the South China Sea’, Keyuan Zou & Yann-Huei Song, *Major Law and Policy Issues in the South China Sea – European and American Perspectives*, Ashgate Publishing Limited, 2014, p.131.

³³ Valencia, Mark, ‘Northeast Asia: Navigating Neptune’s neighborhood’ in Benjamin L.Self, and Yuki Tatsumi, *Confidence-Building Measures and Security Issues in Northeast Asia*, Report No. 33, Washington DC: Stimson Center, 2000, p.20. See also, Bateman, Sam (2014), ‘Maritime boundary delimitation, excessive claims and effective regime building

In these situations involving South China Sea territories, binding solutions, adjudicated by the Court are the best possible means to settle the disputes.

a. Avoiding the misfortune of non-appearance

Of the six countries involved in disputes in the South China Sea, (Brunei, China, Malaysia, Indonesia, the Philippines, and Vietnam) all except China, are parties to the Association for South East Asia Nations (ASEAN). These nations are closely connected geographically, economically and politically under the ASEAN umbrella. They have expressed or *implied* a willingness to settle disputes among them in accordance with UNCLOS, which necessitates intra-ASEAN dispute settlement litigation.

There are two good reasons for ASEAN countries initiating a legal proceeding to settle the disputes among them in the South China Sea.

- First, the element of state consent to the proceedings is strong in this instance, which will likely eliminate the occurrence of non-appearance. Support also leads to the prospect of genuinely respecting the judgment of the Court/Tribunal³⁴. Indeed, the judicial solution for the disputes in South China Sea has long been recognized among ASEAN countries.

ASEAN, has held a number of conferences and meetings to discuss the disputes in the South China Sea. During these sessions, all their neighbours have expressed their deep concerns over the issues and have encouraged them to solve their problems peacefully under the regime of UNCLOS and international law³⁵. Furthermore, they have already considered judicial settlement, which entails binding decisions provided by the Convention.

Indeed, the Philippines initiated arbitration proceedings against China in January 2013. Vietnam also sent its statement of interest to the same arbitral tribunal³⁶. On the other hand, one should not overlook the Philippines-Vietnam-Malaysia-Indonesia strategic cooperation. These four states should develop and adopt a common position on various aspects of the law of the sea in the South China Sea. For ASEAN, operating in the context of a regional power shift, normative and legal approaches were and will remain the most feasible solution when dealing with stronger nations³⁷.

- Secondly, when it comes to the difficult situation with China—a stronger state in the region—ASEAN nations with the judgment of an international Court/Tribunal will be able

in the South China Sea', Keyuan Zou & Yann-Huei Song, *Major Law and Policy Issues in the South China Sea – European and American Perspectives*, Ashgate Publishing Limited, 2014, p.132.

³⁴ "[Jonathan Charney] found that cases with contemporaneous consent or submitted by special agreement received a high degree of compliance...[Leo Gross] found that cases initiated by special agreements held more promise of being effective than those brought under the optional clause or compromissory clauses (where one of the parties is more likely to be an unwilling participant" in Paulson, Colter, 'Compliance with final judgment of the International Court of Justice since 1987', *AJIL* vol 98, No. 3 (Jul. 2004), p. 435.

³⁵ 'ASEAN wants UN law to settle South China Sea row', <http://globalnation.inquirer.net/43756/asean-wants-un-law-to-settle-south-china-sea-row/> accessed on 26 February 2015.

³⁶ 'Vietnam Files Statement of Interest with the Permanent Court of Arbitration', <http://cogitasia.com/vietnam-files-statement-of-interest-with-the-permanent-court-of-arbitration/> access on 25 February 2015.

³⁷ Minh Vu, Truong and Trang, Pham, 'International Law and South China Sea', <http://thediplomat.com/2014/12/international-law-and-the-south-china-sea/> access on 25 February 2015.

to appear well-prepared. By insisting on negotiation with China as the only solution, ASEAN nations can maintain a solid legal footing supported by evidence. China should, indeed, consider this approach when it wants to peacefully settle disputes with ASEAN nations. Conversely, when China finds itself indispensable to the judicial proceedings initiated by ASEAN countries, it can lawfully request to intervene in the case. Under the Statute of ITLOS and the Statute of the ICJ, state parties are provided the rights to intervene when considering that it has an interest of a legal nature which may affect by the decision in the dispute³⁸. The ICJ was used to grant the intervention of Poland and Cuba in the S.S. Wimbledon case and the Asylum case respectively³⁹.

b. Facing the situation of non-appearance

Since the case of Nicaragua versus the U.S., the situation of non-appearance by one or more parties has been virtually non-existent for more than 25 years. Then came the Arctic Sunrise case of 2013 with Russia refusing to appear at the proceeding. In the same year, the world witnessed another case of default by failure to appear in the South China Sea during a dispute between the Philippines and China, in which China enthusiastically showed its determination to not appear before the Court. With default by failure to appear re-emerging, the applicant and the party that fails to appear should consider several points.

The applicant, in the case of non-appearance, should skillfully break down the dispute into several separate claims. For example, in the case between the Philippines and China, the Philippines brought five claims against China. Those claims concerned the challenge of China's nine-dash-line, the legal status of several maritime features adjacent to Scarborough Shoal and Johnson Reef, China's activities preventing the Philippines from exercising its sovereignty rights in the South China Sea and, finally, freedom of navigation⁴⁰. Of course, choosing the subject-matter entirely falling within the framework of compulsory procedure in Part XV of UNCLOS is critical, especially issues related to the legal status of islands and freedom of navigation—two prime examples of South China Sea disputes.

The party that fails to appear should consider the risk of non-compliance to a judgment they may dislike. According to Guzman, the act of a state party failing to comply with the judgment of the Court/Tribunal can be seen as the ignorance to its obligation under international law. Such behavior may damage its *reputation* in an international era⁴¹. To be sure, a *reciprocal* attitude by other states can be expected when a compliant state is the applicant⁴². Finally, the worst situation is that the act of non-compliance may increase political tension⁴³ and provoke *retaliatory* sanctions⁴⁴. It is the so-called *Three-Rs-of-non-compliance*: Reputation, Reciprocity and Retaliation.

³⁸ Statute of ITLOS, Article 31 and 32; Statute of the ICJ, Article 62 and 63.

³⁹ Damrosch, Fidler Lori, *The International Court of Justice at a Crossroads*, Transnational Publishers, Inc., 1987, p.376-377.

⁴⁰ Gau, Michael Sheng-Ti, 'Issues of jurisdiction in cases of default of appearance', in Stefan Talmon and Bing Bing Jia, *The South China Sea Arbitration: A Chinese Perspective*, Oxford and Portland, Oregon, 2014, p. 81-82.

⁴¹ Guzman, Andrew, 'International tribunals: a rational choice analysis', 157 *U. PA. L. REV.* 171 (2008), p.191.

⁴² Ibid, p.191.

⁴³ Llamzon, Aloysius P., 'Jurisdiction and compliance in the recent decisions of the International Court of Justice', *Eur J Int Law* 2007 18: 815-852, p.821.

⁴⁴ Guzman, Andrew, 'International tribunals: a rational choice analysis', 157 *U. PA. L. REV.* 171 (2008), p.191.

2.2 US-ASEAN's cooperative patrols

China's accelerated construction activities in the South China Sea have further intensified the ongoing maritime disputes between Beijing and its Southeast Asian neighbours, particularly the Philippines and Vietnam. More than just complicating the ongoing disputes at the expense of other claimant states, China's land reclamation activities signal a growing military assertiveness, as the People's Liberation Army (PLA) moves towards "peripheral defense" and consolidation of its strategic depth in the area⁴⁵. China's man-made islands fortify its already expansive presence in the contested areas, fulfilling Beijing's broader grand strategy of dominating adjacent waters, particularly vital Seal Lines of Communication (SLOCs) in the South China Sea. The ongoing construction activities could very well pave the way for the establishment of a Chinese Air Defense Identification Zone (ADIZ), as Beijing completes a network of airstrips and military garrisons across the Paracels and the Spratlys. These are real implications for freedom of navigation and flight in the area.

There are growing fears—especially in Manila and Hanoi—that China will increasingly interfere with activities of other littoral countries with regard to marine surveillance, research, fishing, hydrocarbon exploration and development in the South China Sea. Most importantly, China's actions represent a fundamental challenge to the sovereignty claims of neighbouring states, undermining their ability to lawfully exercise jurisdiction, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS), within their EEZs and continental shelf.

At stake is no less than the vital interests of a number of ASEAN nations as well as the U.S. naval primacy in the Pacific. The situation demands a more robust American counter-strategy, given the limited capabilities of Southeast Asian claimant states to rein in China's territorial assertiveness on their own. But the United States need not act unilaterally, nor should its response be primarily military. The best way forward is a cooperative approach, with Washington utilizing its unique *convening power* to assemble a coalition of forces to ensure maritime stability in the region.

In a recent meeting with ASEAN naval leaders, Vice Admiral Robert Thomas, commander of the U.S. Pacific Fleet, called for Southeast Asian nations to form a multilateral naval force in order to carry out cooperative patrols in the South Sea⁴⁶. This proposal resembles existing practices in the area such as the joint anti-piracy patrols in the Malacca Strait, carried out by Malaysia, Singapore, Indonesia, and Thailand. Apart from a joint patrol force, the U.S. has also proposed the establishment of a South China Sea International Operations Center in Indonesia⁴⁷. The proposal was advanced by Admiral Harry B. Harris, commander of the U.S. Pacific Command (PACOM) during a Congressional hearing at the end of 2014. Jakarta was proposed as the location for the Center since it is the capital of ASEAN's informal leader, has no direct claim in the South China Sea and has repeatedly expressed its willingness to mediate the disputes between Beijing and ASEAN nations. The Center would also serve as a vital element in broader

⁴⁵ RAND Corporation, China's Incomplete Military Transformation, February 2015, http://www.uscc.gov/sites/default/files/Research/China%27s%20Incomplete%20Military%20Transformation_2.11.15.pdf. Accessed on May 8, 2015.

⁴⁶ Chen, Sharon, U.S. Navy Urges Southeast Asian Patrols of South China Sea, *Bloomberg*, <http://www.bloomberg.com/news/articles/2015-03-18/u-s-navy-urges-joint-southeast-asia-patrols-of-south-china-sea>. Accessed on May 8, 2015.

⁴⁷ Benson, W. Jeff, Lt. Cmdr, U.S Should Consider Establishing a South China Sea International Operations Center in Indonesia, *USNI News*, <http://news.usni.org/2015/03/09/essay-u-s-should-consider-establishing-a-south-china-sea-international-operations-center-in-indonesia>. Accessed on May 8, 2015.

international efforts to ensure maritime security and freedom of navigation in the Indian and Pacific Oceans as well.

These proposals reflect Washington's preference for a cooperative strategy to manage emerging threats to regional security. The U.S. focus on cooperative security and multilateral approaches to maritime security has been reflected in a number of policy papers since 2007, namely the American Sea Services, which includes the Navy, the Marine Corps and the Coast Guard⁴⁸. Such a cooperative strategy rests on two principles: the necessity of comprehensive collaboration among all concerned nations to manage specific threats such as the ongoing construction activities in the South China Sea that threaten regional security and a growing emphasis on burden-sharing and multilateralism in light of the United States' fiscal and defense budget constraints.

It is time for ASEAN to consider adopting the U.S. proposals to manage the conflicts in the South Sea, lest its very relevance will come under question. After all, ASEAN and China have barely moved beyond their largely symbolic but inconsequential non-binding Declaration of Conduct on Parties in the South China Sea (DOC) in 2002. There have been no concrete advancements in terms of establishing a legally-binding Code of Conduct (CoC), while ASEAN struggles to adopt unity in language and in action to manage the South China Sea disputes.

2.3 SCS Threat Index and SCS Monitor: Approaches and Methodologies

Relevance. Increasing security threats and instability in the South China Sea are largely the responsibility of national misinformation, misperception and mismanagement of the states involved. As this observer points out: "The lack of maritime domain awareness (MDA) in the South China Sea is an endemic problem that has strategic and operational consequences. Countries in the region remain insufficiently equipped to monitor their near seas, creating an environment prone to accidents, miscalculation and adventurism"⁴⁹.

In the absence of an effective conflict mechanism and MDA in the South China Sea, approaches to regional stability and national security vary widely among state, creating dangerous weak links when there are competing territorial claims and overlapping maritime zones.

Building regional maritime threat awareness has now become a necessary and important step toward dealing with security, with the South China Sea Threat Index and South China Sea Monitor serving this purpose. The SCS Monitor and SCS Index were created to assess the maritime security and regional stability in the South China Sea region and to provide an objective platform for academic and policy debate over priorities required to strengthen security, as well as to encourage governments and international community to take actions. The indexes monitor and publicize the balance between peace and conflict by presenting the current security-status in the South China Sea region based on specific indicators in any easy to grasp format.

⁴⁸ American's Sea Services, Forward, Engaged, Ready, A Cooperative Strategy for 21st Century Seapower, March 2015, <http://www.navy.mil/local/maritime/150227-CS21R-Final.pdf>. Accessed on May 8, 2015.

⁴⁹ Ely Ratner (2014), *A Summer Calendar for Advancing U.S. Policy toward the South China Sea*, Center for a New American Security.

By fostering more public information, as well as indicators about maritime activity and transformation in the South China Sea, the SCS Threat Index and SCS Monitor could inform the public about *bad behavior* and provide “the international community with a more accurate account of who is actually doing what”⁵⁰.

Approaches and Methodology. In an attempt to draw together the multitude of valuable studies on disputes, the Index uses a wide-ranging definition that includes both positive measures of stability and indicators of instability. The index assesses stability/instability-tendencies in five categories:

- (a) The use of force in the South China Sea
- (b) The level of regional institutionalization
- (c) The development of land reclamation and construction in the contested sea
- (d) Arms races between involved states
- (e) Survey of security and South China Sea experts (100-150 experts)⁵¹.

Current research projects and publications at the SCS team examine the cause-and-effect relationships and consequences of the five categories. A monthly email update pools key papers surrounding the issue—presenting latest surveys, documents, comments and speeches.

⁵⁰ Ely Ratner (2014), Ibid.

⁵¹ Adopting the methodology of Global Threat Index developed by Professor Thomas E. Patterson. See more: <http://www.bostonglobalforum.org/2014/12/professor-thomas-patterson-introduced-global-threats-index/>

APPENDIX

Appendix 1 - The use or Threat of Force in the South China Sea Disputes since 1945: A Timeline

Prepared by the South China Sea Chronicle Initiative

According to Ian Brownlie in his classic book *International Law and the Use of Force by States*, the use of force is conducted not only by military forces but also by law enforcement agencies.⁵² Brownlie's view has been widely accepted. Based on his perspective, the following activities are considered for the timeline:

- + Fire opening or fire exchange between state forces or from a state force against civil activities on the sea (for example: fishing)
- + Armed ships (either military or other law enforcement agencies) blocking unarmed forces of another state to peacefully occupy an island/feature (for example, the Spratlys in 1988 or Mischief Reef in 1995)
- + Armed ships (either military or other law enforcement agencies) blocking civil activities, attacking, ramming and sinking unarmed fishing vessels of another state.
- + Other confrontation involved armed forces of states.

Timeline

July 1971: A Philippine fishing vessel was fired by Taiwanese forces stationed on Itu Aba.⁵³

January 1974: Battle of Paracel islands:

According to Bill Hayton citing Chinese navy's official history and US military documents⁵⁴, China had planned the battle some time earlier than 1974. Mao Zedong and Zhou Enlai issued the order for the operation since 1973. The Chinese military secretly started training around September 1973 and a tightening of security was observed in the Chinese port of Beihai. From mid-December, six fishing trawlers with hundreds of Chinese commandos were observed

⁵² "There can be little doubt that 'use of force' is commonly understood to imply a military attack, an 'armed attack' by the organised military, naval, or air forces of a state; but the concept in practice and principle has a wider significance. The agency concerned cannot be confined to the military and other forces under the control of a ministry of defense or war, since the responsibility will be the same if a government acts through 'militia', 'security forces', or 'police forces' which may be quite heavily armed and may employ armored vehicles. Moreover, governments may act by means of completely 'unofficial' agents, including armed bands, and 'volunteers', or may give aid to groups of insurgents on the territory of another state." Cited from Ian Brownlie (1963): *International Law and the Use of Force by States*, p. 361.

⁵³ Park Hee Kwon, "The Law of the Sea and Northeast Asia: A Challenge for Cooperation," Kluwer Law International Publisher, 2000: p. 92

Christopher C. Joyner, "The Spratly Island dispute: What role for normalizing relations between China and Taiwan?" *New England Law Review*, no. 3, 1998, vol. 32

⁵⁴ Bill Hayton, "The South China Sea: The Struggle for Power in Asia," Yale University Press 2014: p. 73

leaving the port each day and returning in the evening. This phenomenon continued for around ten days. Some other researches also note that the number of Chinese fishing vessels entering the waters of the Crescent group controlled by Republic of Vietnam suddenly increased in the second half of 1973.⁵⁵

A Chinese report on the events of the Paracel battle says the conflict originated when the Vietnamese "illegally" arrested Chinese fishermen during November 1973⁵⁶.

On 9 January 1974, Chinese fishermen moved to Robert Island close to Pattle island occupied by Republic of Vietnam.⁵⁷

On 11 January 1974, China's Foreign Ministry claimed its sovereignty over Paracels and Spratlys. On 12 January 1974, the spokesperson of the Republic of Vietnam rejected Chinese claim. In the following days, China sent people and ships into the waters around the Robert, Duncan and Drummond islands and land on these islands, erected tower and hoisted Chinese flag.⁵⁸

On 16 January 1974, Vietnamese Navy saw two Chinese "armored fishing trawlers" were laying off Drummond Island supporting troops from the PLA that have occupied the island. Chinese troops were also observed on Duncan Island, with a PLAN landing ship moored on the beach.⁵⁹ In the evening of the same day, the Council of Cabinet of the Republic of Vietnam Government convenes a meeting, concluding that "the situation in Paracel has become alarming" and announced the Directive of the RVN President ordering the navy to use "to the maximum extent

⁵⁵ Alan Dupont and Christopher G. Baker, "East Asia's Maritime Disputes: Fishing in Troubled Waters," *The Washington Quarterly* vol. 37 (1): p. 84

Dieter Heintz, "Disputed Islands in the South China Sea: Paracels, Spratlys, Pratas, Macclesfield Bank," Wiesbaden, Germany: Otto Harrassowitz, 1976: p. 34

⁵⁶ China Navy Encyclopedia, vol. 2, Beijing: Sea Tide Press, 1998: p. 1747. Cited in Bruce A. Elleman, "China's 1974 naval expedition to the Paracel Islands," in the book "Naval Power and Expeditionary Wars: Peripheral Campaigns and New Theatres of Naval Warfare," Routledge 2010: p. 145

⁵⁷ Xu Ge, "Tiemaoguo haizhan shiji" [Steel anchors consolidating maritime frontiers: Record of the republic's naval battles] Beijing: Haichao chubanshe, 1999: pp. 289-290. Cited in M. Taylor Fravel, "Power Shifts and Escalation Explaining China's Use of Force in Territorial Disputes," *International Security*, vol. 32 (3), Winter 2007/08: p. 75

⁵⁸ Statement dated 16 January 1974 on the Communist China's violation of the Sovereignty of the RV over Hoang Sa and Truong Sa Archipelagoes. File No 4617-DII-CH, National Archives Center II, Ho Chi Minh City: "On 11 January 1974, the Foreign Ministry of the Communist China suddenly and falsely claimed its sovereignty over Paracel and Spratly of the RV. One day after that, the spokesperson of the RV rejected that groundless claim. However, in the past few days, the Chinese Communist Government not only did not withdraw its irrational claim but also brazenly infringed on the territory of the RV by sending people and ships encroaching in the waters around the Robert Island, Duncan Island and Drummond of the Paracel Archipelago of the RV. These people also dared to land on these islands, erected tower and hoisted the flag of the Communist Chinese, thus flagrantly violated the sovereign and territorial and territorial integrity of the RV." Cited in Luu Anh Ro, "China's use of 'Fishermen disguise - strange boat' tactic to gradually take the upper hand before launching a strike to seize Vietnam's Paracel archipelago - as reflected in the archives of the Republic of Vietnam (1954-1974)," *Proceedings of the conference "Paracel - Spratly Archipelagoes: Historical truth,"* Da Nang 19-21 June 2014

⁵⁹ Bill Hayton, *Ibid.*, supra note 3: p. 74

Vinh Truong, "Vietnam War: The New Legion." Volume 2. Trafford Publisher 2010: p. 471

the international law and other measures to chase them away." "If they use force, we respond with force," written the Directive.⁶⁰

On 17 January, 15 Vietnamese navy soldiers were landed on Money Island. By the morning of Friday, 18 January, four Vietnamese warships consisting of three destroyers and a corvette were on station in the islands and the flotilla's commander, Captain Ha Van Ngac attempted to land on Duncan Island. Two Chinese corvettes steamed into the path of the Vietnamese vessels. Ngac aborted the landing.⁶¹

The main battle officially started on 19 January, after Chinese troops opened fired at the Vietnamese troop arriving on Duncan island and waving a white flag, signaling a desire to talk. Two Vietnamese soldiers were killed. The Vietnamese troop retreated. Two hours later, Vietnamese ships opened fire on the Chinese vessels. At the end, the China's PLA-N fleet made up of four Hainan class fast attack craft, two mine sweepers and two fishing boats defeat the South Vietnamese force of three destroyers and a corvette. Saigon also said that China used ariplanes to bomb Vietnamese positions on Pattle, Robert and Money islands. By the afternoon of 20 January, Chinese forces successfully seized the three islands previously occupied by Vietnamese forces. The two Chinese fishing boats participating in the battle were found to be the same boats that had been in secret training in Beihai a month before.⁶²

1976: Vietnamese forces garrisoned on Southwest Cay fire on a Philippines aircraft that flew close to the island.⁶³

⁶⁰ Minutes No 32/55 of the Cabinet Council's Meeting on 16 January 1974, File No 6375 - DII-CH

"The Foreign Ministry shall make every possible international and legal effort to reaffirm for the last time our sovereignty over Paracel, from historical aspect to international public law of international conferences... Use all channels to communicate with the violating countries; solemnly and widely publicize the actions and statements... of the Government within today, 16 July 1974. For foreign ships and boats curenly present at the islands, the navy uses to the maximum extent the international law and other measures to chase them away. If they use force, we respond with force. Naval troops land on Robert and Duncan, take away foreign flag, install the Vietnamese flag and chase the foreigners away. The Navy is responsible for preventing all acts of installing flag and landing of people in the remaining islands, such as Drummond and Money. If necessary, the Navy must mobilize additional vehicles for the maximum protection of the Vietnamese sovereignty over Crescent Island and take all necessary measures."

⁶¹ Bill Hayton, *Ibid.*, supra note 3: pp. 74-75

⁶² Bill Hayton, *Ibid.*, supra note 3: pp 75-76

Vinh Truong, *Ibid.*, supra note 8: pp. 472-473

Janes Fighting Ships. 1989-90 (London: Janes Defense Data, 1990), pp. 109, 111. Cited in John W.Garver. "China's Push through the South China Sea: The Interaction of Bureaucratic and National Interests." *The China Quarterly* No. 132 (Dec., 1992): p. 1001

"Saigon Says China Bombs 3 Isles and Land Troops," *The Associated Press*, 20 January 1974

David K. Shipler, "Saigon Forces Pull Back," *The New York Times* 20 January 1974

David K. Shipler, "Saigon Says Chinese Control Islands, But Refuses to Admit Complete Defeat," *The New York Times* 20 January 1974

⁶³ Mark J. Valencia, "The Spratly Islands: Dangerous Ground in the South China Sea" *Pacific Review*, Vol. 1, No. 4, 1988: p. 439. Cited in Clarence J. Bouchat. "Dangerous Ground: The Spratly Islands and U.S. Interests and Approaches." United States Army War College Press 2013: p. 14

28 July 1980: According to Vietnamese sources, the Philippine troops launch Operation Polaris-I to occupy Commodore Reef in the Southern Spratly archipelago. On August 11, 1980, the Vietnamese Government sends diplomatic notes to protest the above-use-of-force actions by the Philippines.

During 1988-1989: Several dozen Chinese warships conduct large naval exercises coinciding with its occupation of several reefs in the Spratlys, consisting of Fiery Cross Reef, Huges Reef, Cuarteron Reef, Gaven Reef and Subi Reef.⁶⁴ Vietnamese media reports that China occupies these reefs after successfully using several warships to block Vietnamese transport ships from entering the features.⁶⁵

14 March 1988: China forces Vietnam out of Johnson South Reef in a skirmish in which 64 allegedly unarmed Vietnamese navy engineers were killed.⁶⁶

March 1992: In response to reports of oil drilling, Chinese marines land on Da Ba Dau reef, near the Vietnamese-held island of Sin Cowe East, triggering a military clash on 19 March 1992. Four months later, Chinese marines landed on Da Lac reef on Tizard Bank.⁶⁷

June to September 1992: China seizes 20 Vietnamese cargo ships coming from Hong Kong.⁶⁸

July 1994: China sends naval ships to blockade operations of a Vietnamese oil rig within Vietnam's internationally recognized territorial waters over Tu Chinh (Vanguard Bank) oil exploration blocks 133, 134, and 135. China claims the area as part of their Wan' Bei-21 (WAB-21) block.⁶⁹

February 1995: Sino-Filipino conflict over Mischief Reef. China forces start occupying Mischief Reef and establish several buildings there. They claim the buildings are "shelters for fishermen". However, the Philippine government publishes pictures of several Chinese navy supply vessels

Jon M. Van Dyke & Dale L. Bennett. "Islands and the Delimitation of Ocean Space in the South China Sea." *Ocean Yearbook Online*, Volume 10, 1993: p. 59

⁶⁴ Keith Jacobs, "China's Military Modernization and the South China Sea," *Jane's Intelligence Review* 4, 6 (June 1992), pp. 278-281. Cited in Sam Bateman & Ralf Emmers, "Security and International Politics in the South China Sea: Towards a Co-operative Management Regime," Routledge 1 December 2008: p. 49

⁶⁵ Mai Thanh Hai, "Giữ Trường Sa trước tham vọng bá quyền - Kỳ 4: Những cuộc đối đầu căng thẳng," Thanh Niên Online 24 October 2014, available online at <http://www.thanhnien.com.vn/chinh-tri-xa-hoi/giu-truong-sa-truoc-tham-vong-ba-quyen-ky-4-nhung-cuoc-doi-dau-cang-thang-504848.html> (accessed date: 10 November 2014)

⁶⁶ Lt. Colonel Zumwalt, "The Massacre "Not Heard Around the World," *US Daily Review* 2014. See also the video released by China: <https://www.youtube.com/watch?v=uq30CY9nWE8>

⁶⁷ Tai Ming Cheung, "Fangs of the Dragon," *Far East Economic Review* (13 August 1992): p. 19. Cited in Lt. Michael Studeman, U.S. Navy, "Calculating China's Advances in the South China Sea Identifying the Triggers of "Expansionism," *Naval War College Review* 51, no. 2 (Spring 1998): pp. 68-90

Sujit Dutta, "Securing the Sea Frontier: China's Pursuit of Sovereignty Claims in the South China Sea," *Strategic Analysis*, vol. 29 (2), Apr-Jun 2005: p. 288

Da Ba Dau is currently unoccupied, according to Vietnamese journalists who visited Spratly islands

⁶⁸ Stein Tonnesson, "Vietnam's Objective in the South China Sea: National or Regional Security," *Contemporary Southeast Asia*, Vol. 22 No. 1, April 2000: p. 210

⁶⁹ Michael Klare, "Resource Wars: The New Landscape of Global Conflict," Macmillan Publisher 17 May 2001: p. 124
US Energy Information Administration, Analysis Briefs, "South China Sea", March 2008. Cited in Adam B. Lowther, "The Asia-Pacific Century: Challenges and Opportunities," Taylor & Francis, 28 August 2013: p. 122
Philip Shenon, "China Sends Warships to Vietnam Oil Site," *The New York Times* 21 July 1994

and a submarine-support ship around the reef.⁷⁰ Chinese warships drive off Philippine ships attempting to reach the island.⁷¹

16 March 1995: Malaysian navy boats fire on a Chinese trawler found to be fishing off Sarawak, reportedly within Malaysian EEZ, injuring four Chinese crewmembers.⁷²

25 March 1995: Taiwanese artillery on Itu Aba fire on a Vietnamese supply ship, Bien Dong 80, that was approaching the island.⁷³ According to Vietnam's Ministry of Foreign Affairs, the Vietnamese ship was approaching Ban Than Reef where Taiwan was attempting to conduct construction activities.⁷⁴

March 1997: China sends three warships to survey the Philippine-occupied Lankiam Cay and Loaita island in the Spratly archipelago.⁷⁵

April 1997: The Philippine navy orders a Chinese speedboat and two fishing boats to leave Scarborough Shoal; Philippine fishermen remove Chinese markers and raise their flag.⁷⁶

January 1998: The Philippine Navy arrests 22 Chinese fishermen close to Scarborough Shoal.⁷⁷

January 1998: Vietnamese soldiers fire on a Philippine fishing boat near Vietnam-controlled Tennent (Pigeon) Reef, injuring a Filipino fisherman.⁷⁸

1 May 1999: Chinese naval ships are accused of harassing a Philippine naval vessel after being stranded near the Spratly Islands.⁷⁹

May 1999: A Chinese fishing boat is sunk after colliding with a Philippine warship off Scarborough Shoal.⁸⁰

⁷⁰ "China's Military Threat Increasing," *Taiwan Communiqué* No. 65, April 1995

⁷¹ US Energy Information Administration, *Ibid.*, supra note 18: p. 122

B.Raman, "Chinese Assertion of Territorial Claims- The Mischief Reef: A case Study," *South Asia Analysis Paper* No. 24 14 January 1999

Ian J. Storey, "Creeping Assertiveness: China, the Philippines, and the South China Sea Dispute," *Contemporary Southeast Asia*, Vol. 21, No.1, April 1999: pp. 95-118

⁷² Michael Klare, *Ibid.*, supra note 18: p. 124

⁷³ R. L. Chen, Vietnam, "Spratly Protest Rejected," *China Post* (Taipei), Apr. 3, 1995; Tammy C. Peng, "ROC Will Protect Its Air and Sea Zones," *Free China Journal* (Taipei), Oct. 16, 1992. Cited in Christopher Joyner, "The Spratly Islands Dispute: What Role for Normalizing Relations Between China and Taiwan," *The New England Law Review*, 1998

⁷⁴ Vietnam News Agency 4 April 1995

⁷⁵ "Chinese Refuse to Leave Philippine Waters," *Courier Mail*, 3 May 3 1997. Cited in CNAS Flashpoints Timeline
US Energy Information Administration, *Ibid.* supra note 18: p. 122

⁷⁶ US Energy Information Administration, *Ibid.*, supra note 18: p. 122

⁷⁷ Michael Klare, *Ibid.*, supra note 18: p. 124

⁷⁸ US Energy Information Administration, *Ibid.*, p. 122

"Philippines Lodges Protest Over Shooting in Spratlys," *Deutsche Presse-Agentur*, January 19, 1998. Cited in "The West Philippine Sea, The Territorial and Maritime Jurisdiction Disputes from a Filipino Perspective: A Primer." *The Asian Center and Institute for Maritime Affairs and Law of the Sea University of the Philippines* April 2013: p. 57

⁷⁹ US Energy Information Administration, *Ibid.*, p. 122

⁸⁰ US Energy Information Administration, *Ibid.*, p. 122

19 July 1999: Another Chinese fishing boat is sunk in a collision with a Philippine warship off Scarborough Shoal.

October 1999: According to Philippine defense sources, two Malaysian fighter planes and two Philippine air force surveillance planes nearly engaged over a Malaysian-occupied reef in the Spratlys. The Malaysian Defense Ministry states that it was not a standoff.⁸¹

13 October 1999: Vietnamese forces on Tennent Reef fire at a Philippine Air Force reconnaissance plane flying over the reef.⁸²

2 February 2000: Philippine Navy ship fires warning shots into the air to drive Chinese vessels away from Scarborough Shoal. Philippine Armed Forces Chief Gen. Angelo Reyes says that the ship tried to contact the vessels but they engaged in some evasive maneuvers. China's Ambassador Fu Ying later informs Foreign Secretary Domingo Siazon Jr. that Beijing would file a diplomatic protest over the said incident. DFA orders probe on the incident and asks China to prevent its fishing vessels from venturing into disputed islands.⁸³

17 April 2000: The Philippine Navy apprehends a Chinese fishing boat at the Scarborough Shoal and confiscates eight tons of corals.⁸⁴

26 May 2000: Philippine troops open fire on Chinese fishermen, killing one and arresting seven.⁸⁵

January-March 2001: The Philippine navy boards 14 Chinese-flagged boats, confiscated their catches, and eject the vessels out of the Spratlys.⁸⁶

March 2001: The Philippines sends a gunboat to Scarborough Shoal to "ward off any attempt by China to erect structures on the rock."⁸⁷

1 April 2001: A U.S. EP-3 reconnaissance plane collided with a Chinese F-8 fighter jet near Hainan Island.⁸⁸ Two Chinese-built F-8 fighters approach an EP-3 US reconnaissance plane flying over the South China Sea about 80 miles southeast of Hainan Island, and one of them accidentally colliding with the EP-3. While the EP-3 landed safely on Hainan, the Chinese plane crashed. Although the US plane was well outside China's 12-mile territorial limit and was flying

Sol Jose Vanzi, "Chinese Fishing Boat Sinks After Colliding with RP Navy Ship," *Philippine Headline News Online*, May 25, 1999

⁸¹ US Energy Information Administration, *Ibid.*, p. 122

⁸² John McLean. "World: Asia-Pacific Philippines protests at Vietnam Spratly 'attack'." *BBC News* 28 October 1999

⁸³ Scarborough shoal standoff: A timeline. *Inquirer.net* 9 May 2012

Cynthia D. Balana, "Navy ship fires warning shots," *Philippine Daily Inquirer* 5 February 2000

⁸⁴ *Ibid.*

⁸⁵ "China Makes Representations to the Philippines on Killing of Fisherman." *People's Daily* 02 June 2000

US Energy Information Administration, *Ibid.*, p. 122

⁸⁶ "Row Grows Over Disputed Spratly Island," *CNN* 21 March 2001

Renato Cruz De Castro. "China's Realpolitik Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-Off". Paper submitted for "Managing Tensions in the South China Sea" conference held by CSIS on June 5-6, 2013

US Energy Information Administration, *Ibid.*, p. 122

⁸⁷ US Energy Information Administration, *Ibid.*, p. 122

Malou Talosig, "Manila sends gunboat to keep China off shoal", *Gulf News* 29 March 2001

⁸⁸ Bonnie S. Glaser. "Armed Clash in the South China Sea". *Council on Foreign Relation* April 2012

over international waters and Chinese officials agreed that the collision took place nearly 80 miles from Hainan, the Chinese government still claimed sovereignty over these waters.⁸⁹

Since 2002: Chinese ships have occasionally harassed the US Navy's *Bowditch*, an oceanographic survey ship, as it operated in China's EEZ in the Yellow, East China and South China Seas.⁹⁰

August 2002: Vietnamese troops fire warning shots at Philippine military reconnaissance planes circling over Spratlys.⁹¹

8 January 2005: A Vietnamese fishing boat is assaulted by Chinese fishery officers in the Western part of the demarcation zone of the Gulf of Tonkin (shared area).⁹² Vietnam's state media reports that nine fishermen were killed, eight were detained, two of which were wounded.⁹³

9 July 2007: A Chinese navy ship fired at Vietnamese fishing vessels near disputed Spratly islands, injuring five Vietnamese fishermen.⁹⁴

8 March 2009: Five Chinese vessels, including a naval intelligence ship, a government fisheries patrol vessel, a state oceanographic patrol vessel, and two small fishing trawlers harass the USNS *Impeccable* approximately 75 miles south of Hainan Island in the South China Sea. The Pentagon states this is the latest of several instances of "increasingly aggressive conduct"⁹⁵ in the past week.

11 June 2009: A Chinese PLAN submarine collides with the sonar sensor of the destroyer USS *John S. McCain* near Subic Bay off the coast of the Philippines.⁹⁶

June 2009: The Indonesian Navy detains 75 Chinese fishermen in eight boats for "illegally" fishing in the EEZ of the Natuna, which provokes demand from Beijing for their immediate return.⁹⁷

In 2009: According to Vietnamese media reports, China detains or seizes 33 Vietnamese fishing boats and 433 crew members, several of which were detained while they sought shelter in the Paracel islands during storms in August and October.⁹⁸

⁸⁹ "U.S. Aircraft Collides with Chinese Fighter, Forced to Land" *CNN* 1 April 2001

Sam Bateman, Ralf Emmers. "Security and International Politics in the South China Sea: Towards a Co-operative Management Regime." Routledge, 1 Dec 2008: p.54

⁹⁰ Mark Valencia, "The Impeccable Incident: Truth and Consequences," *China Security*, 5(2), Spring 2009: p. 23

⁹¹ Tran Dinh Thanh Lam, "Bird Watchers, Divers, Tourists Ignite Spratlys Row." *Asia Times Online*, 7 April 2004

US Energy Information Administration, *Ibid.*, p. 122

Ralf Emmers. "Cooperative Security and the Balance of Power in ASEAN and the ARF." Routledge Publisher, 12 Nov 2012: p. 144

⁹² Vietnamese fishermen killed in territory dispute. *ABC News* 13 January 2005

⁹³ "Phía Trung Quốc phải xử lý những kẻ bắn ngư dân VN," *Vietnamnet* 18 January 2005

⁹⁴ Chinese navy fires at Vietnamese fishing ship, injuring 5," *Kyodo* 21 July 2007

⁹⁵ "Pentagon Says Chinese Vessels Harassed U.S. Ship." *CNN*, 9 March 2009

"Chinese Ships 'Harass' US Vessel." *BBC News*, 9 March 2009

⁹⁶ "China sub collides with array towed by U.S. ship: report." *Reuters*, 12 June 2009

⁹⁷ Keith Loveard, "The Thinker: Caution Over Natuna," *The Jakarta Globe*, 2 July 2009

⁹⁸ "China Seizes Vietnamese Fishing Boat," *Deutsche Presse-Agentur*, April 19, 2010

May to July 2010: Indonesian and Chinese navies each capture several of the others sides' fishing boats, accusing them of illegal fishing. In one incident, an Indonesian naval ship detains ten Chinese fishing boats north of the Natunas, but reportedly within the 200 nautical mile EEZ. Indonesian officials maintain the Chinese fishing boats had encroached in a "deliberate and coordinated manner." During the few hours of their detention, two frigate-sized ships "armed with heavy guns" appear and engage in a tense confrontation before the fishing vessels are released.⁹⁹

23 June 2010: Indonesian patrol boats confront China's fishing vessels escorted by heavily-armed fisheries management vessels approximately 65 miles northwest of Natuna islands. An unverified report from Japan's *Manichi Shimbun* suggest that the Yuzheng-311 and another Chinese fisheries-enforcement vessel had confronted an Indonesian naval patrol boat. Having been ordered to leave, the Yuzheng-311 refused and trained its guns on the Indonesian vessel, demanding the release of a recently detained Chinese fishing boat. No shots are fired and the Chinese trawler is released.¹⁰⁰

In 2010: Vietnam News Agency reports that when Vietnam conducted surveys in 2010 to complete its dossier on boundaries of the continental shelf for a report to the United Nations, Chinese vessels also cut Vietnamese ships' survey cables.¹⁰¹

In 2010: According to Vietnamese report, Chinese authorities detained at least 30 Vietnamese boats with more than 200 fishermen in disputed areas in the South China Sea.¹⁰²

25 February 2011: According to a report by the Armed Forces of the Philippines (AFP), three Philippine fishing vessels, F/V Jaime DLS, F/V Mama Lydia DLS and F/V Maricris 12 were fishing near Jackson Atoll off the Spratly islands, 140 nm from Palawan island when a Chinese frigate approached. The Chinese frigate, a Jianghu-V Class missile frigate, Dongguan 560, broadcasted over its marine band radio: "This is Chinese Warship 560. You are in the Chinese territory. Leave the area immediately." Then the frigate repeatedly broadcast, "I will shoot you." even though the Philippine boat replied through a marine band radio to "please wait for a while" as it was experiencing trouble removing its anchor. As the fishing vessels began to withdraw, the Chinese frigate fired three shots that landed 0.3 nautical miles (556 meters) from F/V

Carlyle A. Thayer, "Recent Developments in the South China Sea: Grounds for Cautious Optimism?" *RSIS Working Paper* no. 220, 14 December 2010: p. 24

⁹⁹ Alan Dupont and Christopher G. Baker. "East Asia's Maritime Disputes: Fishing in Troubled Waters". *The Washington Quarterly* 37:1 p. 86

Lilian Budianto, "South China Sea Dispute a Potential Rift in RI-China Ties: Envoy," *The Jakarta Post*, 9 January 2012

¹⁰⁰ SITC-NWC Policy Briefs, *Ibid.*, supra note 30: p. 5

Christian Le Mièrre. "Maritime Diplomacy in the 21st Century: Drivers and Challenges." Routledge Publisher, 24 April 2014: p. 32

Kelley Currie. "Why is China Picking Fights with Indonesia?" *The Weekly Standard*, 6 August 2010

Alan Dupont and Christopher G. Baker. "East Asia's Maritime Disputes: Fishing in Troubled Waters". *The Washington Quarterly* 37:1 p. 86

Lilian Budianto, "South China Sea Dispute a Potential Rift in RI-China Ties: Envoy," *The Jakarta Post*, 9 January 2012, <http://www.thejakartapost.com/news/2010/05/25/south-china-sea-dispute-a-potential-rift-richina-ties-envoy.html>

¹⁰¹ "National, world security closely linked: minister." *Vietnam News* 7 June 2011

¹⁰² Nga Pham, "Vietnam puts Paracel row on summit agenda," *BBC News* 8 April 2010

Maricris 12.¹⁰³ The Chinese ambassador to the Philippines, Liu Jianchao later denied that any Chinese vessel had fired on Filipino fishermen.¹⁰⁴

2 March 2011: The Government of the Philippines reports that two patrol boats from China have attempted to ram one Philippine surveillance ships: Two Chinese white-painted patrol boats, No. 71 and No. 75, order MV Veritas Voyager, a Forum Energy Plc. survey vessel operating in the Reed Bank area off Palawan Island, to leave and maneuvered twice close in what the Government of the Philippines reported a threat to ram the MV Veritas Voyager. The survey ship was French-owned and registered in Singapore. The Philippines respond by dispatching two OV-10 aircraft to investigate. The Chinese boats depart without further incident.¹⁰⁵

21-24 May 2011: Chinese maritime surveillance vessels and PLAN ships are suspected of unloading building materials near Philippine-occupied West York and Flat islands in the disputed Spratly archipelago.¹⁰⁶

26 May 2011: Three Chinese maritime surveillance ships molest the Binh Minh 02, a Vietnamese seismic survey ship operating in Block 148. China's Maritime Surveillance Ship No. 84 cuts a cable towing seismic monitoring equipment by the Vietnamese ship. The incident lasts for three hours and takes place in an area called Block 148 about 120 km (80 miles) off the south-central coast of Vietnam from the beach town of Nha Trang and 600 kilometers south of China's Hainan province. In Vietnam's view, the location is within the exclusive economic zone of Vietnam.¹⁰⁷ After the incident, China argues that "the law enforcement activities by Chinese maritime surveillance ships against Vietnam's illegally operating ships are completely justified. We urge Vietnam to immediately stop infringement activities and refrain from creating new troubles."¹⁰⁸

31 May 2011: Three Chinese military vessels use guns to threaten the crews of four Vietnamese fishing boats while they were fishing in the waters of the Spratly Islands.¹⁰⁹

9 June 2011: According to the spokeswoman of Vietnam's Ministry of Foreign Affairs, at 6 a.m., "the Viking II, a vessel hired by Vietnam National Oil and Gas Group, was conducting 3D seismic exploration in Block 136/03 (coordination: 6 degrees 47.5' North and 109 degrees 17.5' East), within the continental shelf of Viet Nam when Chinese fishing vessel No 62226, supported by two Chinese Yuzheng fishery administration vessels No. 311 and No. 303, cut off

¹⁰³ Tessa Jamandre. "China Fired at Filipino Fisherman in Jackson Atoll." *ABS-CBN News* 3 June 2011

¹⁰⁴ Jim Gomez, "China warns neighbors: Stop oil search in Spratlys," *Associated Press* 9 June 2011

¹⁰⁵ H.Res. 714, Introduced at 113th U.S. Congress, 2013-2015, Passed on 3 Dec 2014

"Philippines halts tests after China patrol challenge." *BBC News* 8 March 2011

¹⁰⁶ Carlyle A. Thayer, "China's New Wave of Aggressive Assertiveness in the South China Sea." Paper presented at Maritime Security in the South China Sea Conference and Papers, Washington, June 20-21, 2011: p. 8; "Manila Daily Berates China Over Violation of South China Sea Code of Conduct," *The Philippine Star* 4 June 2011. Cited in CNAS Flashpoints Timeline.

¹⁰⁷ Press Conference on Chinese maritime surveillance vessel's cutting exploration cable of Petro Vietnam Seismic Vessel, *Vietnam's Ministry of Foreign Affairs* 29 May 2011, accessed online at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns110530220030 on 11 May 2015

"Vietnam accuses China in seas dispute." *BBC News* 30 May 2011, accessed online at <http://www.bbc.com/news/world-asia-pacific-13592508> on 11 May 2015

¹⁰⁸ China's Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on 31 May 2011

¹⁰⁹ H.Res. 714. *Ibid.*, supra note 55

"East Sea undercurrents." *Thanh Nien News* 10 June 2011, accessed online at <http://www.thanhniennews.com/society/east-sea-undercurrents-11927.html> on 11 May 2015

Viking II, then veered with acceleration. Despite warning flares from the Vietnamese side, vessel 62226 headed on and rammed exploration cables of the Viking II. Its specialized cable-slashing device was consequently trapped in the Viking II's cables, jamming Viking II operation. As soon as that happened, Chinese Yuzheng 311 and 303, together with several Chinese fishing vessels, rushed to rescue Vessel 62226." Vietnam view is that the location where Viking II was operating is located "within Viet Nam's 200-nautical mile-continental shelf."¹¹⁰ The location is approximately 1,000 kilometers off China's Hainan island.

17 June 2011: China dispatches one of its largest patrol ships, the Haixun 31, on a voyage through disputed areas of the South China Sea in a deliberate show of force en route to a port call in Singapore. China's official media stated that the sailing route of the Haixun 31 in the South China Sea was determined to protect its "rights and sovereignty"¹¹¹.

25 June 2011: Chinese PLA Major General (Ret.) Peng Guangqian states in a television interview that "China once taught Vietnam a lesson. If Vietnam is not sincere, it will receive a bigger lesson", adding that "if Vietnam continues to act tough, play with the knife, sooner or later it will get cut"¹¹².

5 July 2011: Chinese soldiers reportedly punch and kick a Vietnamese captain and threatened nine other crew members before expelling them from waters near the disputed Paracel Islands.¹¹³

22 July 2011: An Indian naval vessel, sailing about 45 nautical miles off the coast of Vietnam, is warned by a Chinese naval vessel that it is allegedly violating Chinese territorial waters.¹¹⁴ An unidentified caller who claims to be from the Chinese Navy, but who is speaking in English, tells the INS Airavat that the Indian ship is entering Chinese waters and must leave.¹¹⁵

22 February 2012: Vietnam says Chinese authorities used force to prevent 11 Vietnamese fishermen trying to seek refuge from a storm from reaching the Paracel Islands. Vietnam lodges a protest with the Chinese Embassy in Hanoi.¹¹⁶ China denies the allegations.¹¹⁷

23 March 2012: According to reports citing Vietnamese officials, China detains 21 fishermen near the Paracel Islands and demands \$11,000 for their release.¹¹⁸ Viet Nam asks China to immediately and unconditionally release all fishermen.¹¹⁹

¹¹⁰ Regular Press Briefing by Vietnam MOFA's Spokesperson Nguyen Phuong Nga on 9 June, 2011

¹¹¹ H.Res. 714. *Ibid.*, supra note 55

¹¹² H.Res.352 - 112th U.S. Congress (2011-2012). Introduced on 15 July 2011

¹¹³ "Vietnam: Chinese Soldiers Attack Fishermen," *Philippine Inquirer*, 14 July 2011

¹¹⁴ *Ibid.*, supra note 55

¹¹⁵ "Chinese warship confronts Indian naval ship: Report." *IBN Live* 1 September 2011, accessed online at <http://ibnlive.in.com/news/chinese-warship-confronts-indian-naval-ship-report/180479-3.html> on 11 May 2015

¹¹⁶ "Vietnam protests China's acts against fishermen." *Vietnam's Ministry of Foreign Affairs* 1 March 2012, accessed online at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns120301165106 on 10 May 2015

¹¹⁷ Jeremy Page, "Beijing in Fresh Sea Row With Hanoi," *The Wall Street Journal*, 1 March 2012; "Vietnam Says China Assaulted Fishermen," *Associated Press*, 1 March 2012. Cited in CNAS Flashpoints Timeline

¹¹⁸ Edward Wong, "China: Vietnamese Fishermen Detained," *The New York Times*, 23 March 2012

¹¹⁹ "Vietnam asks China to immediately and unconditionally release all fishermen." *Vietnam's Ministry of Foreign Affairs* 22 March 2012, accessed online at http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns120322165528 on 10 May 2015

April-June 2012: After a Philippine reconnaissance plane identifies Chinese fishing boats at Scarborough Reef, the Philippine Navy sends in its biggest warship, the BRP Gregorio del Pilar, arguing that the fishermen are fishing illegally. China also sends ships. There is a stalemate. The Filipino fishermen later leave the area because of the impending typhoon season. The Chinese boats likewise leave following the Filipino withdrawal.¹²⁰

18 July 2012: Philippine DFA official says China blocks Philippine ships and fishing vessels from the shoal by setting up barriers to its entry point. Since then, vessels belonging to the China Marine Surveillance and Fisheries Law Enforcement Command have been observed in the nearby disputed shoal and Chinese government vessels have been turning away Filipino vessels sailing to the area.¹²¹

30 November 2012: Chinese fishermen have again cut the seismic survey cables of the Vietnamese oil exploration ship Binh Minh 02. The incident reportedly occurred at 17.26 degrees North latitude and 108.02 degrees West longitude, about 43 nautical miles southeast of Vietnam's Con Co Island and 20 miles west of the median line between Vietnam and China.¹²²

In 2012: Vietnam's media quoting An Hai Fishery Union Chairman Nguyen Quoc Chinh, says that there were 300 fishermen in Quang Ngai province detained by China authorities.¹²³

20 March 2013: An unidentified Chinese vessel chases and fires the flare on a Vietnamese fishing boat near the Paracel Islands, according to the Vietnamese government, which calls the incident "very serious". It lodges a formal complaint with the Chinese embassy in Hanoi. Chinese foreign ministry spokesman Hong Lei says China has taken unspecified but "legitimate and reasonable" actions against Vietnamese boats working illegally in Chinese waters. He denies that any boats have been damaged, but gave few other details.¹²⁴ On this incident, US state department spokesman Patrick Ventrell said that the United States "strongly oppose the threat or use of force or coercion by any claimant to advance its claims in the South China Sea"¹²⁵.

¹²⁰ Jim Gomez. "Philippines, China Commit to Diplomacy in Standoff." *Associated Press*, 11 April 2012; James Hookway, "Philippine Warship in Standoff with China Vessels" *The Wall Street Journal*, 11 April 2012; Jane Perlez, "Philippines And China Ease Tensions In Rift at Sea." *The New York Times*, 18 June 2012. Cited in CNAS Flashpoints Timeline

¹²¹ Michaela Del Callar. "DFA: China boats blocking PHL vessels from Panatag Shoal". *GMA News* 18 July 2012, accessed online at <http://www.gmanetwork.com/news/story/265889/news/nation/dfa-china-boats-blocking-phl-vessels-from-panatag-shoal> on 10 May 2015

Joshua Keating. "China has the Philippines on the rope." *Foreign Policy* 4 September 2012, accessed online at <http://foreignpolicy.com/2012/09/04/china-has-the-philippines-on-the-ropes/> on 11 May 2015

Fat Reyes. "3 Chinese government vessels spotted at Scarborough Shoal — DFA". *Global Nation Inquirer* 27 July 2012, accessed online at <http://globalnation.inquirer.net/45761/3-chinese-government-vessels-spotted-at-scarborough-shoal-dfa> on 11 May 2015

¹²² "Chinese boats cause cable cut to Vietnam's ship." *Tuoi Tre News* 4 December 2012, accessed online at <http://tuoitrenews.vn/society/4755/chinese-boats-cause-cable-cut-to-vietnam%E2%80%99s-ship> on 10 May 2015

¹²³ "Lính Trung Quốc đã chia súng uy hiếp ngư dân Việt Nam," *Sống Mới* 18 March 2013

¹²⁴ Hanoi accuses Chinese of firing at boat. *The Associated Press* 26 March 2013, accessed online at <http://www.ft.com/intl/cms/s/0/5d14a1da-963d-11e2-9ab2-00144feabdc0.html?siteedition=uk> on 10 May 2015

¹²⁵ Patrick Ventrell. "Daily Press Briefing." *U.S. Department of State* 26 March 2013, accessed online at <http://www.state.gov/r/pa/prs/dpb/2013/03/206703.htm#CHINA> on 10 May 2015

9 May 2013: A Philippine Navy ship fired at a Taiwanese fishing vessel, killing one crew member on board. Philippines says the incident took place in the Balintang channel, just north of the island of Luzon, within Philippine territorial waters. Taiwan says the location was 180 nautical miles southeast of the southern tip of Taiwan.¹²⁶

5 December 2013: While the USS Cowpens is reportedly operating in international waters in the South China Sea, a auxiliary vessel of the PLAN aircraft carrier Liaoning reportedly crosses its bow at a distance of less than 500 yards and stops in the water, forcing the USS Cowpens to take evasive action in order to avoid a collision.¹²⁷

In 2013: Dozens of Vietnamese fishing boats were chased, rammed or shot, fishing gears were destroyed, catches were confiscated by Chinese authorities, according to Vietnamese Fishery Society.¹²⁸

1 May 2014: China's state-owned energy company, CNOOC, places its deep water semi-submersible drilling rig Hai Yang Shi You 981 (HD-981), accompanied by over 25 Chinese ships, in Block 143, 120 nautical miles off Vietnam's coastline.¹²⁹ China declares a 3 nautical mile security radius around the oil rig, while United Nations Convention on the Law of the Sea only allows 500 meter safety zone.

1 May - 15 July 2014: The number of Chinese vessels escorting HD-981 increased to more than 80, including seven military ships, which patrolled and harassed Vietnamese coast guard ships, reportedly intentionally ramming multiple Vietnamese vessels as well as using helicopters and water cannons to obstruct others.¹³⁰ The oil rig is withdrawn on 15 July 2014.

26 May 2014: A Chinese vessel rams and sinks a smaller Vietnamese fishing boat, and then flees the scene. The incident occurs around 30 kilometers south-southwest of the oil rig HD-981 that China deployed on 1 May, reportedly in Vietnam's EEZ.¹³¹

March-August 2014: On 19 August 2014, Pentagon spokesman John Kirby says that "an armed Chinese fighter jet conducted a dangerous intercept of a U.S. Navy P-8 Poseidon aircraft, patrol aircraft, that was on a routine mission. The intercept took place about 135 miles

¹²⁶ "Philippines admits shooting of Taiwanese fisherman," The Deutsch Welle 10 May 2013

"PHL Navy ship fires upon Taiwan fishing boat, one dead - report," GMA News 10 May 2013

¹²⁷ S.Res.412 - 113th Congress (2013-2014). Agreed to Senate on 07 October 2014

"Trust-building needed to cut Gordian Knot of China-US military ties." *Global Times* 18 December 2013, accessed online at <http://www.globaltimes.cn/content/832838.shtml> on 11 May 2015

Christopher Bodeen. "After sea incident, China praises ties with US." *The Associated Press* 18 December 2013, accessed online at <http://www.philstar.com/world/2013/12/18/1269571/after-sea-incident-china-praises-ties-us> on 11 May 2015

¹²⁸ Website of Vietnamese Fishery Society, accessed online at <http://www.hoinghecvietnam.org.vn/tinchitiet.aspx?newsid=194&&cateid=11> on 23 January 2014

¹²⁹ S.Res.412 - 113th Congress (2013-2014). *Ibid.*

¹³⁰ S.Res.412 - 113th Congress (2013-2014). *Ibid.*

Phan Hậu & Đan Hạ. "Trung Quốc đã tăng lên 99 tàu ở khu vực đặt giàn khoan trái phép." *Thanh Niên Online* 12 May 2015, accessed online at <http://www.thanhnien.com.vn/chinh-tri-xa-hoi/trung-quoc-da-tang-len-99-tau-o-khu-vuc-dat-gian-khoan-trai-phep-79788.html> on 11 May 2015

"Cận cảnh vũ khí Trung Quốc ở khu vực giàn khoan Hải Dương 981." *VTV1/So Ha News* 8 June 2014, accessed online at <http://soha.vn/quan-su/can-can-h-vu-khi-trung-quoc-o-khu-vuc-gian-khoan-hai-duong-981-20140608072515105.htm> on 11 May 2015

¹³¹ Manabu Ito. "Chinese ship sinks Vietnamese fishing boat in South China Sea." *Nikkei Asian Review* 27 May 2014

east of Hainan Island, in international airspace." Kirby says that was the fourth "close intercept" involving Chinese jets since March 2014: "On three different occasions, the Chinese J-11 crossed directly under the US aircraft with one pass having only 50-100 feet separation between the two aircraft".¹³² The spokesman of China's Defense Ministry issues a statement in which he describing the US accusations as "groundless". He says China was conducting "routine identification and verification" flights. Yang said the Chinese jet "kept a safe distance from the US planes"¹³³.

In 2014: Vietnam's media reports several incidents in which Chinese armed ships attack, ram three Vietnamese fishing boats near disputed Paracel islands.¹³⁴

December 2014 – April 2015: Philippine Marine 1st Lt. Mike Pelotera says Chinese coast guard vessels blocked or chased Filipino and Vietnamese fishermen for at least eight times near the Second Thomas Shoal. There are reports that similar incidents also take place near Scarborough Shoal where Chinese government ships threaten by gun or fire water cannon on the fishermen to take their properties and drive them away.¹³⁵

January 2015: Vietnam's media reports that Chinese armed fisheries surveillance ships attack three Vietnamese fishing boats near disputed Paracel islands, smash their fishery equipment and confiscate all the property on board.¹³⁶

April 2015: China is accused of challenging a US plane flying over a Chinese-occupied area.¹³⁷

¹³² Rear Admiral John Kirby. "Department of Defense Press Briefing by Admiral Kirby in the Pentagon Briefing Room." *U.S. Department of Defense* 22 August 2014, accessed online at <http://www.defense.gov/Transcripts/Transcript.aspx?TranscriptID=5493> on 10 May 2015

¹³³ "China defends interception of US Navy aircraft." *Deutsche Welle* 24 August 2014, accessed online at <http://www.dw.de/china-defends-interception-of-us-navy-aircraft/a-17874119> on 10 May 2015

Liu Sha. "US urged to scale back surveillance." *Global Times* 25 August 2014, accessed online at <http://www.globaltimes.cn/content/877938.shtml> on 10 May 2015

¹³⁴ Viên Nguyễn, "Ngư dân tố bị kiểm ngư Trung Quốc phá tàu, cướp hải sản," *Dan Viet* 6 January 2014, accessed online at <http://danviet.vn/xa-hoi/ngu-dan-to-bi-kiem-ngu-trung-quoc-pha-tau-cuop-hai-san-178523.html> on 6 January 2014

"Chủ tịch Nghiệp đoàn Nghề cá xã An Hải, huyện Lý Sơn kêu gọi giúp đỡ ngư dân bị tàu Trung Quốc đập phá, cướp cá," *Lao Dong* 6 January 2014, accessed online at <http://laodong.com.vn/xa-hoi/chu-tich-nghiep-doan-nghe-ca-xa-an-hai-huyen-ly-son-keu-goi-giup-do-ngu-dan-bi-tau-trung-quoc-dap-pha-cuop-ca-171945.bld> on 6 January 2014

"Ngư dân lại bị cướp ngư cụ ở biển Hoàng Sa," *ANTV* 3 March 2014, accessed online at <http://www.antv.gov.vn/tin-tuc/an-ninh-trat-tu/ngu-dan-lai-bi-cuop-ngu-cu-o-bien-hoang-sa-2984.html> on 5 March 2014

David Tweed, "Vietnam Says Chinese Vessels Attacked Fishermen Near Paracels," *Bloomberg News* 10 September 2014, accessed online at <http://www.bloomberg.com/news/articles/2014-09-10/vietnam-says-chinese-vessels-attacked-fishermen-near-paracels> on 28 November 2014

"Chinese ships reportedly ram, fire water cannons at Vietnamese fishing boats," *Tuoi Tre News* 29 November 2014, accessed online at <http://tuoitrenews.vn/society/24354/chinese-ships-reportedly-ram-fire-water-cannons-at-vietnamese-fishing-boats> on 14 December 2014

¹³⁵ Jim Gomez, "Filipinos saw China blocking fishermen from shoal," *Associated Press* 23 April 2014

Randy V. Datu, "PH fisherfolk: Living with Chinese coastguards' hostility," *Rappler* 15 March 2014

Joel Guinto, "Philippines accuses China coast guard of armed robbery," *Agence France-Presse* 23 April 2015

¹³⁶ "Chinese armed forces destroy equipment, steal property from Vietnamese fishing boat: report," *Tuoi Tre News* 10 January 2015

"Two more Vietnamese fishing boats attacked by Chinese vessels," *Tuoi Tre News* 13 January 2015

19 April 2015: Philippine media reported that a Chinese Navy frigate ordered a Fokker plane of the Philippine Air Force that was conducting maritime patrols to stay away from Subi Reef. The Chinese frigate also blinked its lights. The recorded Chinese audio message repeatedly stated: "Foreign airplane you are approaching my military security area. Please go away quickly in order to avoid misjudgment."¹³⁸

19 April 2015 – 7 May 2015: Philippine's Westcom chief Vice Admiral Alexander Lopez At accuses China of harassing Philippine air patrols in six separate incidents.¹³⁹

¹³⁷ "China challenges US plane during Balikatan war games." *Rappler* 9 May 2015, accessed online at <http://www.rappler.com/newsbreak/inside-track/92637-us-plane-south-china-sea> on 10 May 2015

¹³⁸ Carmela Fonbuena. "China continues to harass Phi air patrols in West PH Sea." *Rappler* 7 May 2015, accessed online at <http://www.rappler.com/nation/92415-china-harassment-air-patrols-west-ph-sea> on 10 May 2015

¹³⁹ *Ibid.*

Appendix 2 - Non-exhaustive Chronologies of China's continuous attacks on Vietnamese Fishermen since 2002 to June 2014

<https://fishermenineastsea.wordpress.com/2014/12/18/a-non-exhaustive-chronology-of-chinas-aggressions-towards-fishermen-of-the-center-of-vietnam-from-2002-to-june-2014/>

<https://fishmenstories.wordpress.com/2014/01/23/raw-data-on-vietnamese-fishing-boats-attacked-by-chinese-in-the-waters-of-paracels-in-2012-2013/>

Appendix 3 - Case: Default of appearance and the South China Sea

There have been 14 cases of non-appearance before an International Court/Tribunal with three results:

- The Court terminated the proceedings: 6 [1] because the Court/Tribunal declared that either it had no jurisdiction or the claims were inadmissible
- The Applicant withdrew the claims: 2 [2]
- The Defendant did not comply with the rendered judgment: 6 [3]

Why?

[1]: Technical/Internal problems → the compulsory procedure depends heavily on state consent.

[2+3] External problems → the problems coming from the applicants and the defendants

	Name of the case	Non-appearance party	Outcomes
PCIJ	Sino-Belgian treaty case (Belgium v. China)	China	The Belgium Government withdrew the claims ¹⁴⁰ .
	Electricity Company of Sofia and Bulgaria Case (Belgium v. Bulgaria)	Bulgaria (Not voluntary)	Proceedings on the merits never took place ¹⁴¹
	The eastern Carelia Case (Finland v. Russia)	Russia	The Court declared that it had no jurisdiction ¹⁴² .
ICJ	Corfu Channel case (The U.K. v. Albania)	Albania	Albania did not agree with the amount of compensation decided by the Court ¹⁴³ . The award remains unsatisfied. (Johnathan, 1987, p.294)
	Monetary case (Albania v. Italy)	Albania	The Court decided that it had no jurisdiction to rule the case ¹⁴⁴ .
	Anglo-Iranian Oil Co. case (The U.K. v. Iran)	Iran	Not only did Iran not comply with the jurisdiction of the Court, but also it expelled all the British staff of the Oil Co. remaining in Iran (Jerome, p.48).
	The Nottebohm case (Liechtenstein v. Guatemala)	Guatemala	The Court held that the claims of Liechtenstein were inadmissible ¹⁴⁵ .
	The Fisheries jurisdiction	Iceland	Iceland did not comply with the

¹⁴⁰ 1929 PCIJ, Ser. A, Nos. 18/19, p.5. See also, Jerome B. Elkind (1984), Non-Appearance before the International Court of Justice: Functional and Comparative Analysis, Martinus Nijhoff Publishers, p. 33.

¹⁴¹ Jerome B. Elkind, Non-appearance before the International Court of Justice: Functional and Comparative Analysis, Martinus Nijhoff Publishers, p. 35.

¹⁴² PCIJ, Ser. B, No.5, p.28.

¹⁴³ Jerome B. Elkind (1984), Non-Appearance before the International Court of Justice: Functional and Comparative Analysis, Martinus Nijhoff Publishers, p. 41.

¹⁴⁴ ICJ 1954 19, para. 34.

¹⁴⁵ 1955 ICJ 4 p.26

	cases (Germany v. Iceland; The U.K. v. Iceland)		interim measures rendered by the Court. (Jerome, p.57)
	The Nuclear test cases (New Zealand v. France; Australia v. France)	France	The Court dismissed the cases as France terminated its Nuclear practice in the Pacific.
	The Trial of Pakistan Prisoners of War Case (Pakistan v. India)	India	Pakistan withdrew the requests and the proceedings were discontinued.
	The Aegean Case (Greece v. Turkey)	Turkey	The Court declined its jurisdiction. (Johnathan, 1987, p.295)
	The Hostage case (The U.S. v. Iran)	Iran	Iran did not appear before the Court, nor did it comply with the Order of the Court (15 December 1979), the Resolution of the SC (res. 457). On December 29-31 1979, the SC met to consider further measures to reconvene resolution authorizing sanction failed because of the veto by the USSR on the ground that the situation was not a threat to international peace and security. (p.76).
	The Nicaragua case (Nicaragua v. The United States of America)	The U.S.	"All indications suggest that the U.S. will not fully abide by the resulting order of the Court" (Jonathan, 1987, p.288)
ITLOS	The Arctic Sunrise case (Netherlands v. Russia)	Russia	The Tribunal did not invoke article 28 of the Statute of ITLOS. According to Judge Paik from his separate opinion, such exercise of the Tribunal may raise the question of the applicability of the provision ¹⁴⁶ .

¹⁴⁶ The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation), 2013, ITLOS, Separate opinion of Judge Paik.

Appendix 4 – Boston Global Forum Contributors

1.1 Working Group

Richard Javad Heydarian, Assistant Professor at De La Salle University /Policy advisor at the Philippines House of Representatives, email: jrfheydarian@gmail.com

Trang Pham (Master, International Law), Nippon Fellow at the International Tribunal for the Law of the Sea (ITLOS), email: minhtrang.pn@gmail.com

Minh-Vu Truong (PhD, Political Science), Member of Boston Global Forum's Young Leaders Network for Peace and Security; Director of the Center for International Studies, University of Social Sciences and Humanities, Ho Chi Minh City (SCIS), email: truongminhhuyvu@gmail.com

1.2 Editors

Michael S. Dukakis, Co-Founder and Chairman, Boston Global Forum, Former three-term Governor of Massachusetts, and 1988 Democratic presidential nominee.

Anh-Tuan Nguyen, Co-Founder, Editor-in-Chief, Boston Global Forum

Professor Thomas E. Patterson, Co-Founder, Member of Board of Directors, Member of Editorial Board, Boston Global Forum; Bradlee Professor of Government and the Press, Harvard Kennedy School

Richard Pirozzolo, Member, Boston Global Forum Editorial Board; Founder and Managing Director, Pirozzolo Company Public Relations

Professor John Quelch, Co-Founder, Member of Board of Directors, Boston Global Forum; Charles Edward Wilson Professor of Business Administration, Harvard Business School

1.3 Participants in the Boston Global Forum Conference on Managing Peace and Security in the South China Sea

Moderators

Michael S. Dukakis, Co-Founder and Chairman, Boston Global Forum, Former three-term Governor of Massachusetts, and 1988 Democratic presidential nominee.

Joseph S. Nye, Jr., Member of Board of Thinkers, Boston Global Forum, University Distinguished Service Professor, Harvard University

Speakers

Professor Richard Cooper, Maurits C. Boas Professor of International Economics, Harvard University

Michael H. Fuchs, Deputy Assistant Secretary for Strategy and Multilateral Affairs, Bureau of East Asian and Pacific Affairs, U.S. Department of State

Ambassador Ichiro Fujisaki, President of the America-Japan Society, Inc.; Professor of Sophia University and Keio University; Ambassador of Japan to the United States of America (2008-2012).

Linda Gasparello, Co-Host, General Manager of “White House Chronicle”, PBS

Richard Javad Heydarian, Assistant Professor at De La Salle University /Policy advisor at the Philippines House of Representatives

Tsutomu Himeno, Consul General of Japan in Boston

Llewellyn King, Member, Boston Global Forum Editorial Board; Co-Host, Executive Producer of “White House Chronicle”, PBS

Lei Guo, Assistant Professor, Division of Emerging Media Studies, Boston University College of Communication

Maximilian Mayer, Member, Young Leaders Network for Peace and Security; Researcher, Center for Global Studies, Institute for Political Science and Sociology, Bonn University

Nobue Mita, Representative, Boston Global Forum Japan

Anh-Tuan Nguyen, Co-Founder, Editor-in-Chief, Boston Global Forum

Professor Suzanne P. Ogden, Member of Editorial Board, Boston Global Forum, Professor of Northeastern University’s Department of Political Science

Professor Fumio Ota, Former Professor, Defense Academy of Japan (2005 – 2013)

Professor Thomas E. Patterson, Co-Founder, Member of Board of Directors, Member of Editorial Board, Boston Global Forum; Bradlee Professor of Government and the Press, Harvard Kennedy School

Trang Pham (Master, International Law), Nippon Fellow at the International Tribunal for the Law of the Sea (ITLOS)

Richard Pirozzolo, Member, Boston Global Forum Editorial Board; Founder and Managing Director, Pirozzolo Company Public Relations

Professor John Quelch, Co-Founder, Member of Board of Directors, Boston Global Forum; Charles Edward Wilson Professor of Business Administration, Harvard Business School

Grant F Rhode, PhD, Research Associate, Center for the Study of Asia, Boston University; Research Associate, Fairbank Center for Chinese Studies, Harvard University

Professor Richard Rosecrance, Adjunct Professor, Harvard Kennedy School; Research Professor of Political Science, University of California, Los Angeles

Dr. Elliot Salloway, Chief Operation Officer, Boston Global Forum

Minh-Vu Truong (PhD, Political Science), Member of Boston Global Forum’s Young Leaders Network for Peace and Security; Director of the Center for International Studies, University of Social Sciences and Humanities, Ho Chi Minh City (SCIS)

Thomas J. Vallely, Member of Board of Thinkers, Boston Global Forum; Senior advisor, Mainland Southeast Asia; Ash Center for Democratic Governance and Innovation, Harvard Kennedy School

Admiral Nirmal Verma, U.S. Chief of Naval Operations Distinguished International Fellow, U.S. Naval War College – Newport RI; India's High Commissioner to Canada (2012-2014); Former Chief of Naval Staff of Indian Navy

Professor Ezra Vogel, Member of Board of Thinkers, Boston Global Forum; Henry Ford II Professor of the Social Sciences Emeritus, Harvard University

Iryna Vushko, Member, Young Leaders Network for Peace and Security; Assistant Professor of History, Hunter College, City University of New York

Ambassador Shunji Yanai, Judge and Former President, The International Tribunal for the Law of the Sea (ITLOS); Ambassador Japan to the United States of America (1999–2001)

Professor Zheng Wang, Director and Associate Professor, Center for Peace and Conflict Studies, School of Diplomacy and International Relations, Seton Hall University