

LEGAL ACTIONS RESPONDING TO CHINA'S CLAIMS IN THE EAST SEA

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Abstract: Using legal actions is one of the peaceful solutions of international disputes. This article analyses legal grounds and actions which Vietnam may choose to react to China's claim/conduct which violates the international law, Vietnam's sovereignty, sovereign rights and jurisdictional rights and threatens peace and international security in the East Sea (South China Sea).

Key words: Paracels Islands, Spratly Islands, legal, evidence, the East Sea.

1. Applicable legal grounds

1.1. Sovereignty over islands

1.1.1. Paracel Islands and Spratly Islands

i) Paracel Islands

Paracel Islands lie off the coast of Quang Tri, Thua Thien Hue, Quang Nam and part of Quang Ngai provinces. The distance from Tri Ton island in the Paracel Islands to Cap Batangan - continental land of Vietnam and Cu Lao Re (on Ly Son island) is 135 and 123 nautical miles, respectively. The nearest island in the Paracel Islands to Hainan island is 140 nautical miles and that distance to the mainland China is at least 235 nautical miles. The coastal area from Quang Tri to Quang Ngai facing Paracel Islands always catches the Southeast or Northeast monsoon. Paracel Islands have approximately 30 islands, rocks, shoals and islets (the highest being Hon Da island - 50 feet, the lowest being Tri Ton island - 10 feet), of which there are two main groups of islands: Crescent group in the Southwest and Amphitrite group in the Northeast.⁽¹⁾

In terms of administration, Paracel Islands

belong to Hoang Sa district, Da Nang.

Vietnam has complete sovereignty over the Paracel Islands based on historical and legal evidences regardless of the fact that China has controlled the islands since 1974 after invading by force.

ii) Spratly Islands

These islands spread from 6°2' to 11°28' North latitude, 112° to 115° East longitude in a sea area of 160,000 to 180,000 km². The total area of floating islands, rocks or shoals is only about 11 km². Spratly Islands consist of 137 islands, rocks and shoals, not including 5 shoals below the sea level in the continental shelf of Vietnam.⁽²⁾

In 1933, France named 9 administrative units of surrounding islands, rocks and shoals. According to the 1979 sea chart of the Military Mapping Agency, General Staff (Socialist Republic of Vietnam), Spratly

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(1) <http://nghiencuubiendong.vn/tong-quan-ve-bien-dong/560-hoang-sa> (website of Institute of South China Sea Studies, MOFA), Paracel Islands.

(2) According to the statistics of Dr. Nguyen Hong Thao in 1988 (Sea Board, National Border Committee).

Islands may be divided into 9 main groups from North to South.⁽³⁾

In Spratly Islands, Itu Aba (Ba Binh) is the largest island where people can live normally. Due to the close proximity to a sediment hollow area containing much oil and gas, Spratly Islands have a great potential about oil and gas. This sea area has not been surveyed properly in terms of geology, thus it lacks reliable data on the potential of oil and gas or other minerals. There are not many other surveys with economic or trade purposes either. Currently, Spratly Islands do not have any sea ports or wharfs but there are four airports on strategically located islands near the main shipping line.⁽⁴⁾

Vietnam, China, Brunei, Malaysia, Philippines and Taiwan claim sovereignty over the whole/large part of Spratly Islands. Brunei has claims over them but do not control any islands. Taiwan occupied one of the biggest islands, i.e. Itu Aba island. In 1988, China attacked and seized 6 islands including the Gac Ma Reef (Johnson South Reef) from Vietnam. In February 1995, China seized the Vanh Khan Reef (Mischief Reef) from the Philippines. At present, Vietnam controls 21 features, China 9 features, Philippines 10 features, Malaysia 7 features and Taiwan 2 features.⁽⁵⁾

Vietnam has sufficient evidence to prove its sovereignty over Spratly Islands. However, in the spirit of resolving disputes by peaceful measures and attaching special importance to regional mechanisms, Vietnam signed the Declaration on the Conduct of Parties in

the East Sea in 2002 between ASEAN and China (DOC). DOC reaffirmed the commitment of parties to the objectives and principles of the Charter of the United Nations, United Nations Convention on the Law of the Sea (UNCLOS), Treaty of Amity and Cooperation in Southeast Asia, five principles of peaceful co-existence and other common principles in the international law. DOC acknowledged the respect and commitment of ASEAN countries to freedom of navigation and freedom of overflight in the East Sea according to the international law; commitment of related parties to exercise self-restraint, not conducting activities to complicate or increase the disputes and affect the peace and stability.⁽⁶⁾

1.1.2. Grounds to affirm Vietnam's sovereignty

According to the international law, the determination of a country's sovereignty is based on a number of principles, one of which is the principle of possession (of unowned territories) or principle of actual possession in terms of enforcing sovereignty over those territories.⁽⁷⁾

According to the explanation in the international law, actual possession includes

⁽³⁾ <http://nghiencuubiendong.vn/tong-quan-ve-bien-dong/561-trng-sa> (website of Institute of South China Sea Studies, MOFA), Spratly Islands.

⁽⁴⁾ Article *Geography and Economic Development in Spratly Islands*, posted on <http://www.biendong.net> (created by experts in International Law).

⁽⁵⁾ Ministry of Information and Communications (2013), *Vietnam's Sea and Islands – Questions and Answers*, Propaganda Materials, pp.64-65.

⁽⁶⁾ ASEAN-China Declaration on the Conduct of Parties in the South China Sea 2002.

⁽⁷⁾ Rebeca M.M.Wallace, Sweet and Maxwell (1992), *International Law*, pp.90-93.

the following criteria: open, uninterrupted and peaceful possession in a long time. Besides, the act of possession is carried out by state actors, not individual conduct.⁽⁸⁾

From the historical and legal point of view, the obtained evidences show that: Vietnam is the first and actual possessor of Paracel and Spratly Islands.

Historical evidences from documents in *Sino-Nom* language since the 17th century that affirmed the open possession of Paracel and Spratly Islands include: maps in *Thien Nam tu chi lo do thu*, *Toan tap Thien Nam dia do*, etc.; historical and geographical collections such as *Dai Viet su ky tuc bien* (*Supplementary Edition of the Annals of DaiViet*), *Phu bien tap luc* (*Miscellaneous Chronicles of the Pacified Frontier*), *Kham dinh Dai Nam hoi dien su le* (*The Great Encyclopedia of History of the Nguyen Dynasty*), *Lich trieu hien chuong loai chi* (*Regulations of Successive Dynasties by Subject-matter*), *Hoang Viet dia du chi*, *Dai Nam nhat thong chi* (*Nguyen Dynasty National Atlas*), *Dai Nam thuc luc* (*Chronicle of Greater of Vietnam*), *Quoc trieu chinh bien toat yeu*, *Viet su cuong giam khao luoc*, *Minh Menh chinh yeu*, etc.; administrative documents such as *Chau ban trieu Nguyen* (official documents bearing red seals of the Nguyen emperors), etc. Historical and official documents of the feudal state affirmed that Vietnam had an uninterrupted and peaceful possession of these islands through the following means: sending people to Paracel Islands every year to survey, set up landmarks, draw maps to submit to the court; forming of Paracel, North Sea boat groups by the

state to go out to the sea to exercise control over the sea and islands; educating awareness of appreciating the sovereignty over Paracel, Spratly Islands and other sea areas of Vietnam (books teaching *Han* language for first grade students having notes about Vietnam's sovereignty over Paracel, Spratly Islands and other sea areas of Vietnam in the East Sea; the books *Khai dong thuyet uoc* in 1881 and *Tu than luan ly khoa*).⁽⁹⁾

When ruling Indochina, France in the name of Vietnam continued to control two islands and opposed all other countries' claims over these islands. These activities were published in the official gazette of the Republic of France on 26/7/1933. After the second World War concluded, France requested the Republic of China to withdraw from islands that they occupied illegally in 1946 and sent replacement soldiers to rebuild the weather and broadcasting station.⁽¹⁰⁾

In 1951, at the San Francisco Conference, the Soviet Union proposed to supplement the draft Peace Treaty with the request to return Paracel and Spratly Islands to China. The Conference rejected that proposal with 46 ayes over 51 votes.⁽¹¹⁾ At the Conference,

⁽⁸⁾ Max Huber (1953), *Refer to the Case on the Island of Palmas between the US and the Netherlands*, supra n.2 at 846, ICJ rep., p.47.

⁽⁹⁾ Vietnam Academy of Social Sciences and Social Sciences Publishing House (2014), *Some Sino-Nom Materials on Vietnam's Sovereignty over Paracel Islands and Spratly Islands as well as Other Territorial Waters of Vietnam in the East Sea*, Hanoi, pp.10-35.

⁽¹⁰⁾ "Legal Grounds to Affirm Vietnam's Sovereignty over Paracel Islands and Spratly Islands", *Dai Doan Ket Newspaper*.

⁽¹¹⁾ *Press Release* on May 23, 2014 by National Border Committee, MOFA.

Prime Minister Tran Van Huu, leader of the Vietnam's national government delegation, asserted the long-standing sovereignty of Vietnam over Paracel and Spratly Islands without objection or reservation from any country.⁽¹²⁾

In 1956, France transferred the territory of Southern Vietnam to the Government of the Republic of Vietnam and this government already sent military forces there to take over, organized administration (established one commune on each archipelago under a district in the mainland), built sovereignty steles and maintained the weather station. After the Geneva Agreement in 1954, China secretly and illegally occupied the eastern group of islands of Paracel Islands (in 1956); had the conspiracy to occupy West Paracel Islands but not successful (1959). In 1974, China used force to seize the remaining group of islands in Paracel Islands. The Government of the Republic of Vietnam and the Provisional Revolutionary Government of the Republic of South Vietnam always strongly protested against that invasive act of China.

Regarding the Spratly Islands, there had not been any Chinese presence until 1988. On 14/3/1988, China started to use force and illegally occupy a number of islands (6 islands) in the Spratly Islands of Vietnam.⁽¹³⁾

After unification, the State of Vietnam took over all the islands controlled by the Republic of Vietnam's army in the East Sea and continued to affirm sovereignty of Vietnam over Paracel and Spratly Islands; established Hoang Sa and Truong Sa

districts with the task of administrative management of these islands.

In short, since many centuries ago, Vietnam has had actual possession and sufficient historical and legal evidences to affirm its sovereignty over these two archipelagos.

The Chinese presence on Paracel Islands and a number of islands in Spratly Islands is the outcome of occupation by force, against Vietnam's national integrity and seriously violating one of the basic principles of the international law as noted in Clause 4, Article 2, Charter of the United Nations and in the Declaration of the International Law principles regarding the peace and cooperation among countries in accordance with the Charter of the United Nations (1970 Declaration) and other documents. About the principle of not using force or threatening to use force in international relations against the national integrity and independence of a country and against the objectives of United Nations, the 1970 Declaration affirmed: "a country's territory cannot be an object to be possessed by another country by threat or use of force. No territorial possession by force or threat to use force can be legalized".⁽¹⁴⁾

Even the Chinese diplomatic memorandum on 12/5/1988, an official document of the Chinese Ministry of Foreign Affairs, clearly affirmed a fundamental principle of the

⁽¹²⁾ Statement made by Tran Van Huu at the Conference in Sans Franscisco.

⁽¹³⁾ "Legal Grounds to Affirm Vietnam's Sovereignty over Paracel Islands and Spartly Islands", *Ibid*.

⁽¹⁴⁾ UN Resolution A/RES/25/2625.

international law, i.e. “invasion cannot give rise to sovereignty” over a territory.⁽¹⁵⁾

1.2. Other claims/conducts of China

1.2.1. China's U-shaped - 9-dotted line

China claims a U-shaped line (11 dots originally but 2 dots were removed in 1953) encircling Paracel Islands, Spratly Islands and Scarborough. This 9-dotted line was first sent by China to UN in 2009.

The meaning of the 9-dotted line is not understood alike even among Chinese scholars as there are 4 different views on this issue.⁽¹⁶⁾

The declaration on the 9-dotted line is neither based on the UNCLOS that both Vietnam and China are members nor any international legal foundation. It faced protests from regional countries as well as the international community.⁽¹⁷⁾ The lack of foundation of the 9-dotted line is shown right in the Chinese arguments before the international community.⁽¹⁸⁾

The 9-dotted line is also one of the issues that the Philippines mentioned in its complaint against China in January 2013 at the Permanent Court of Arbitration (PCA) according to Annex VII of UNCLOS.⁽¹⁹⁾

1.2.2. Vietnam's right to the sea area surrounding islands and features in the East Sea

China claims for territorial waters including the exclusive economic zone and continental shelf surrounding islands and features that China occupied in the East Sea to be similar to the sea attached to land. This claim was used by China in the case of placing the HYSY 981 drilling rig in the

“so-called” sea area attached to Paracel Islands (at the nearest location over 12 nautical miles from Tri Ton island).

According to UNCLOS, uninhabited islands or islands without economic life of their own shall have no exclusive economic zone or continental shelf (Article 121.3) but only territorial waters of 12 nautical miles.

There has neither been any clear explanation of Article 121.3 of UNCLOS nor sufficient legal precedent to prove for the above argument. However, since the 1990s of the last century, scientists provided criteria to identify these islands based on the capability for stable and

⁽¹⁵⁾ *Press Release* by the National Border Committee on May 23, 2014 posted on the VGP News website.

⁽¹⁶⁾ Nguyen Hung Son (Institute of South China Sea Studies, MOFA) (2014), *Overview of the Requests in South China Sea*, Workshop at VASS, dated May 23.

⁽¹⁷⁾ All related nations protested against the 9-dotted-line right after China informed the UN in 2009. Its unreasonability is continually shared among the views of scholars attending the Seminar “Maritime challenges to ASEAN and prospects to the South China Sea disputes” co-organized by the Myanmar Institute of Strategic and International Studies and the Centre for Asian Strategic Studies – India (Yangon, 24 April, 2014).

⁽¹⁸⁾ At the 4th joint discussion session (June 1st 2014) of Shangri-la Asian Security Dialogue, many scholars questioned China's Deputy Chief of the General Staff, PLA about the meaning of the “9-dotted line”, which China drew on the East Sea. China could not have any grounds other than the fact that a map with that line reflecting 2,000 years of Chinese history and that was before the time of UNCLOS; as the result, it is not regulated by UNCLOS. Meanwhile, other nations even changed the way to calculate territorial waters according to UNCLOS with the spirit to codify the Law of Sea to suit with the principles of fair and equality of rights, the objectives and principles of the UN as provided in the UN Charter.

⁽¹⁹⁾ http://www.pca-cpa.org/showpage.asp?Pag_id=1529 accessed on 23/5/2014.

sustainable life for inhabitants, not only for armed forces or fishermen due to climate and natural land conditions; criteria for economic life of their own based on the capability for sustainable life of inhabitants and the exploiting capability of inhabitants in the surrounding sea.⁽²⁰⁾

Besides, there are several legal precedents related to the sea area surrounding these islands. One of the recent legal precedents that was often mentioned by lawyers is the case between Nicaragua and Colombia (judged by the International Court of Justice – ICJ), concerning features in an enclosed sea zone like the East Sea. According to the verdict, islands in the sea area between Nicaragua and Colombia are not entitled to 200 nautical miles (even though there are inhabitants and some islands even have up to 70,000 inhabitants) because they are opposite to the coast of other countries. In this case, those islands are only entitled to 12 nautical miles. Only islands facing the sea or large sea area can enjoy their complete rights.⁽²¹⁾

Therefore, China's claim for the sea area surrounding uninhabited islands or islands without economic life of their own to have separate exclusive economic zone or continental shelf is baseless.

Besides, according to the principle of "the land dominates the sea", if China does not have sovereignty over islands, then the related waters will have the same legal fate.

Above all, Vietnam has sufficient historical and legal evidence to prove its sovereignty

over the islands and sovereign rights to the sea surrounding these islands. The current attitude of Vietnam towards the claims of other parties expresses the principle of goodwill according to Article 300 of UNCLOS, self-restraint, not further complicating the situation in the East Sea in pursuant to DOC.

1.2.3. Sovereign right and jurisdictional right in the Vietnamese waters

China always initiates and maintains provocative policies with the hope of turning Vietnamese waters into conflict zones to take advantage. China's "encroaching" policy has been carried out for a long time with different behaviour chains but always violates Vietnam's sovereign and jurisdictional rights in the exclusive economic zone and continental shelf of Vietnam.

The behaviour groups can be classified as follows:

- Violate Vietnam's sovereign rights in fishing, exploring resources for economic purposes by unilaterally issuing the fishing ban in the waters belonging to Vietnam's sovereign rights; preventing fishing activities of Vietnamese fishermen; preventing oil and gas exploratory work by cutting cables, attacking Vietnamese boats (violating Clause 1, Article 56 of UNCLOS).

- Illegal installment of equipment and works including HYSY 981 drilling rig since 2/5/2014 in the exclusive economic zone

⁽²⁰⁾ J. Van Dyke and Dale Bannet (1993), *Island and the Delimitation of Ocean Space in the South China Sea*, 10 Ocean Yearbook, p.79.

⁽²¹⁾ Nguyen Hung Son, *Ibid*.

and continental shelf, violating Vietnam's exclusive rights in this area (violating Article 56.1.b, Article 60, Article 77.2, Article 80 of UNCLOS).

- Chinese government's boats, military boats and aircrafts have used force and threatened to use force at different times and especially in May and June, 2014 they attacked and damaged law enforcement ships of Vietnam (violating Article 2.4 of the Charter of the United Nations; Article 73.1 of UNCLOS).

- Government vessels, fishing boats attacked and even sank the fishing boat DNa 90152 of Vietnam, causing injuries to Vietnamese fishermen, preventing the rescue of fishermen in the exclusive economic zone of Vietnam (violating general principles of international law in pursuant to the Charter of the United Nations, objectives of the International Maritime Organization, to which both Vietnam and China are members, and objectives of UNCLOS).⁽²²⁾

- Other actions against the principal objectives of the UN Charter causing instability and threatening regional peace and security, affecting security as well as freedom in navigation and aviation.

With the above series of actions, China has seriously violated the basic principles of the international laws, the UN Charter, principles and provisions of UNCLOS as well as other related international treaties. Especially, China has undertaken inhuman actions regardless the absolute human right when attacking fishermen and preventing the rescue of Vietnamese fishermen in the sea.

1.2.4. Place HYSY 981 oil rig in Vietnam's exclusive economic zone and continental shelf

The HYSY 981 oil rig was placed in Vietnam's exclusive economic zone from May 2nd 2014 and moved to the location at 15°33'38" North latitude and 111°34'62" East longitude on May 27th 2014, continued to moved within the Vietnam's exclusive economic zone and continental shelf. This location if observing from Tri Ton island (without considering the sovereignty over it) or from the border of the overlapping exclusive economic zone between Vietnam and China (equidistant line between the parties' basic lines, including the points taken from Hainan and Ly Son islands...) is clearly within Vietnam's exclusive economic zone and continental shelf.

The acts of placing this oil rig and conducting exploratory drilling violated Clause 1 Article 56, Clauses 1 and 2 Article 60, Clauses 1 and 2 Article 77 and Article 80 of UNCLOS.

According to existing legal precedents, it is conceived that the acts of placing HYSY 981 oil rig on the sea and drilling into the continental shelf will lead to the situation of being unable to fully restore the continental shelf surface. Even when the location of placing the oil rig is actually the sea territory in dispute, this action reflects the non-restraint policy and further complicating the situation of China. Moreover, these actions happened in Vietnam's exclusive economic zone and continental shelf.

⁽²²⁾ VTV1 News on May 27, 2014, information from the International Press Conference on the East Sea Situation on June 5, 2014.

According to UNCLOS, such actions may only be allowed with the agreement from the Vietnamese side.⁽²³⁾

2. Legal mechanism applying to China's claims/conducts

Vietnam has been complying with the international commitments, UN Charter as well as UNCLOS. Vietnam has restrained and not caused any complications of the situation, been persistent with diplomatic measures to deal with China's claims/conducts. Within the last month, since China placed the HYSY 981 oil rig, Vietnam has put lots of efforts through the diplomatic channel, including sending out 3 diplomatic notes without receiving any replies. This means the voluntary reconciliation as provided at Section 1 Part XV of UNCLOS does not lead to any results in this period. In the next step, to choose peaceful measures through legal mechanisms dealing with conflicts in compliance with the international laws in general and UNCLOS in particular is not only the right but also the responsibility of the related parties.

The selection of resolving mechanisms may be considered according to the following criteria:

- Institutional jurisdiction;
- Evidences and grounds quoted for each particular request; and
- Final overall effects set out by Vietnam

These measures may be taken separately or combined depending on the particular needs, based partially or fully on the correlative evidence and grounds. Such

selection should take into consideration the provisions, exceptions according to UNCLOS as well as related provisions of the international laws on applying one resolution for a particular request.

2.1. International mechanism

These channels are ranked in priority order based on the criteria and principles as mentioned above.

2.1.1. General Assembly of the United Nations

According to the UN Charter, nations can file any disputes or situations threatening peace or stability to the UN General Assembly (Article 35.1). The consideration takes place at a regular or special meeting. The General Assembly may issue a Resolution recommending solutions or forward to the Security Council for consideration if specific actions are necessary (Article 11), or request the Security Council to pay attention to the situation that is harmful to international peace and security (Article 11.3). The adoption of a resolution needs the votes of two thirds of present members (Article 18.2). Thus, the adoption depends on the nations participating in the voting. The UN has 193 member countries. During meetings, lobbying for adoption of resolutions can be done, therefore, voting context is extremely important. Resolutions of General Assembly have important political significance and greatly affect the prestige of related countries.

⁽²³⁾ Nguyen Dang Thang (2014), *Legal Aspects of the HYSY 981 Oil Rig Case*, Workshop at VASS, dated May 23.

Vietnam can utilize related evidence and background as a dispute/situation that causes instability and threatens regional peace and security.

2.1.2. Security Council

Up to now, the Security Council has adopted 2,154 resolutions within its authority. Directly related to members of the Security Council, all resolutions tend to benefit them.⁽²⁴⁾

Based on Article 35.1, Article 37.1 of the UN Charter, Vietnam can request the Security Council to look at the whole dispute issue/situation such as the case of HYSY 981 causing threat to regional peace and security. However, a resolution to be adopted by the Security Council on this matter needs to have 9 out of 15 support votes and permanent members such as China do not veto. Even when it is not hoped that the Security Council will adopt a resolution supporting Vietnam, it will reduce China's prestige.

Besides, based on Article 27.3 of the UN Charter, member of the Security Council that is a party to dispute in accordance with Chapter VI of the Charter (peacefully resolving disputes) will not have the right to vote for the resolution. In pursuant to Article 36 (Chapter VI) of the Charter, the Council may recommend a procedure for resolving the dispute, of which legal matters can be considered at the UN's ICJ. If China keeps disagreeing with the Court's authority, it will lose trust from the international community.

For issues to be considered by the Security Council, the General Assembly will have no recommendation (Article 12.1 of the UN Charter). Thus, the priority is to bring the issue to the UN General Assembly to avoid the application of the rule in Article 12.1 as mentioned above.

2.1.3. Resolving conflicts by Arbitrator according to compulsory procedures at Annex VII of UNCLOS

Vietnam's goodwill to resolve dispute by diplomatic measures has no reply from China. According to Section 2, Part XV of UNCLOS, parties need to follow compulsory arbitration procedures according to Article 287.5 of UNCLOS because other methods such as the International Tribunal for the Law of the Sea (ITLOS) or ICJ, etc., will not be approved by China.

Arbitration according to Annex VII of UNCLOS is the method that the Philippines has pursued since 2013 and the case is being considered. 11 out of 12 disputes have followed Annex VII and selected PCA to settle. PCA agreed to settle 10 cases of which 5 verdicts have been declared.⁽²⁵⁾

Vietnam may request to consider the acts of illegal placement of HYSY 981, violation of sovereign and jurisdictional rights in the exclusive economic zone and continental shelf of Vietnam (excluding the

⁽²⁴⁾ UNSCR website, accessed on 28/5/2014, China used to be the subject to Resolution 87 petitioned by Taiwan but that Resolution was not approved with 7 ayes, 3 noes and one blank.

⁽²⁵⁾ http://www.pca-cpa.org/showpage.asp?pag_id=1288, accessed on 23/5/2014.

disputes about sovereignty, boundary of territorial waters, exclusive economic zone, continental shelf, military activities or situations that the Security Council is considering according to Declaration 2006 on the exception of China based on Article 298.1 of UNCLOS).

In its complaint, the Philippines requested to look at the legitimacy of the 9-dotted line, Chinese claim of the waters over 12 nautical miles around the feature according to Article 121.3 of UNCLOS and jurisdiction of the Philippines in its exclusive economic zone and continental shelf.⁽²⁶⁾ The complaint was submitted in January 2013; China did not accept PCA's authority but an arbitration committee of 5 members has been established and examined the case.

The use of this channel must ensure not to coincide with the authority of the Security Council or when the Security Council finishes the agenda of looking at the mentioned situation (China declared according to Article 298.1.c of UNCLOS). In other words, Vietnam will not utilize the same request at the Security Council and Arbitration unless the Security Council already removed the issue from its agenda or itself requested to use this method for settlement of the dispute.

2.1.4. Mechanism for dispute settlement of the International Maritime Organization

International Maritime Organization (IMO) is tasked with ensuring the safety, maritime security and protecting the environment within the system of UN specialized agencies. China and Vietnam are both members of

this organization.

IMO has 170 member countries with 6 main agencies including: Assembly, (Standing) Council, Specialized Committees including the Maritime Safety Committee. IMO has compiled and adopted a number of treaties, including the SOLAS 1974/1978 Convention and COLREG 1972 Convention; Vietnam and China are both members of these two Conventions.⁽²⁷⁾

Therefore, it is possible to raise the issue related to the policy of China affecting the safety and maritime security in the East Sea with intentional and organized acts, causing collision, sinking Vietnamese boats and personnel based on the IMO objectives, the objective and spirit in Chapter V of SOLAS 1974/1978; Article 2.1, Article 6, Article 8, etc. of COLREG 1972 Convention.

2.1.5. International Court of Justice (ICJ)

First option: In future, if China accepts the Court's authority or the Court's authority is compulsory for UN members on the basis of amendments to ICJ mechanism, all actions of China in the East Sea that threaten peace, security or violate treaty responsibilities, or requirements to explain the application of international law can be brought to ICJ.⁽²⁸⁾

Second option: If China does not accept ICJ's authority, Vietnam and ASEAN countries as well as Northeast Asian countries through

⁽²⁶⁾ Part I.6 Notification and Statement of Claim/Republic of Philippines/Department of foreign affairs, Manila.

⁽²⁷⁾ IMO official website, accessed on 28/5/2014.

⁽²⁸⁾ Regulations of the International Court of Justice (ICJ), ICJ official website.

the international agencies within the UN system may request ICJ for consultation or explanation of Article 121.3 of UNCLOS; unilateral declare the sea boundary not prescribed in UNCLOS; explain the consequences of using force against the sea territorial integrity according to Article 2.4 of the UN Charter; Article 1.3 of the UN Charter on the objective of “encouraging the respect of human rights”; the jurisdiction of the UN Human Rights Council in special situations in the sea according to the request from the victim representative...

2.1.6. UN mechanism to protect human rights

Complaint against the inhuman policy/conduct of Chinese government's ships towards Vietnamese fishermen at UN agencies on human rights.

The mechanism of UN Human Rights Council is also used for non-member countries of the International Covenant on Civil and Political Rights (e.g. China - already signed but not yet ratified) as well as the Protocol Supplementing the Covenant on individual complaints (like Vietnam). Specifically, Fisheries Association/General Confederation of Labor can raise the matter causing serious damage to fishermen by the Chinese side in the East Sea and request for a special procedure of the Human Rights Council (conducted with the special rapporteur/independent human rights expert/working group) to specify the unwanted situation that China seriously violates human rights of fishermen in the East Sea. Currently there are 37 rapporteurs responsible for different

topics and 14 other rapporteurs operating at different hot spots throughout the world.⁽²⁹⁾ The conclusion and report will be submitted to the Human Rights Council/UN Secretary General that will be of great significance in terms of prestige.

According to this method, even the fisheries associations, non-governmental organizations in Vietnam can call upon the Philippines' Fisheries Association to use the special procedure mechanism with the Working group (5 members) of the UN Human Rights Council when the rights of fishermen are threatened by China.

2.2. National mechanism

It is not hindered by using the Arbitration mechanism at the same time according to Annex VII of UNCLOS for the same act of violation by China (Article 295 of UNCLOS). The law can be enforced by the national mechanism for each specific action from the fishing boats, illegal activities of subjects carrying out their commercial function in the Vietnamese waters according to Article 73.1 of UNCLOS. During the course of exercising sovereign and jurisdictional rights in the exclusive economic zone and continental shelf, Vietnam can search, capture and prosecute according to its law and UNCLOS. The Philippines has also exercised its jurisdiction according to the national mechanism in the East Sea in relations with China.

⁽²⁹⁾ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>. *No precedents applied as the case of China, usually applied to nations with arbitrator right.*

