1.

*The disputed South China Sea is a source of long-running tension and instability in Asia, worsened by controversial actions and sharp reactions by the various territorial claimants. There is a need for the peaceful resolution of disputes between China and Vietnam.*

Although the scope of this article is between China and Vietnam, it is very important to note that the Southeast Asia Sea disputes are not only between China and Vietnam. Hence, a resolution between just these two states would likely meet objections from other claimants. China and Vietnam could, however, settle their territorial disputes in the waters where they are the only claimants.

In 2009, Vietnam and Malaysia followed the call of CLCS to [jointly submit](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm) their information on the limits of the continental shelf beyond 200 nautical miles, in accordance with Article 76, paragraph 8, of the UNCLOS. The Philippines had been invited to join but ultimately rejected. Even though the submission was legitimate and necessary, it [was objected](http://en.wikipedia.org/wiki/Malaysia-Vietnam_border#Extended_continental_shelf_claims) by China and the Philippines on the ground of [the submission] overlapping the waters also claimed by these two countries.

Such example shows that a bilateral resolution in whatever form can easily meet with objections from other claimants, as the nature of the Southeast Asia Sea disputes is multilateral.

2.

*China’s unilateral moratorium on fishing in an area of the South China Sea north of 12 degrees latitude from 16 May 2011 was due to end on 1 August 2011. Vietnam has challenged the moratorium ever since it was first imposed in 1999, claiming it has sovereign rights in parts of the affected area.*

A one-sided act in a disputed area, even of good cause, is not justifiable. With this fishing ban, China has not followed the [Declaration of Conduct of Parties in the South China Sea](http://www.asean.org/13163.htm) (DOC) in which it is a signatory. The 2002 DOC stated that activities such as marine environmental protection should be undertaken in a cooperative manner.

*Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:*

*a. marine environmental protection;  
b. marine scientific research;  
c. safety of navigation and communication at sea;  
d. search and rescue operation; and  
e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.*

*The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.*

China should have only imposed the fishing ban in its EEZ in the Southeast Asia Sea where it has sovereign rights in accordance with international law. China should have not asserted the ban in the disputed waters, e.g. the EEZ of the Paracels, nor the areas where other countries have sovereign rights, e.g. the EEZ of Vietnam.

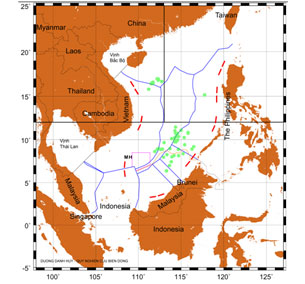
Had China really wanted to conserve the resources in the Southeast Asia Sea, it should have done the said things first, and then negotiated with Vietnam and other claimants to establish a multilateral agreement before taking any further action in the disputed areas.

Another [article](http://www.eurasiareview.com/china%E2%80%99s-fishing-ban-in-south-china-sea-implications-for-territorial-disputes-analysis-13062011/) also pointed out that the ban has done more harm then good:

*Most importantly, the very purpose of conservation of the fishing ban is defeated by both China and Vietnam’s unilateralism. China’s typical countermeasures of arresting and confiscating fishing vessels do not deter the Vietnamese fishermen who are backed by their national authorities, much less provide a long-term solution from a conservation perspective.*

**On which waters has China imposed the annual fishing ban?**

The fishing ban has been applied north of 12 degrees latitude and west of 113 degrees longitude in the Southeast Asia Sea. This area, as illustrated in the map below, includes the waters around Paracel islands and the EEZ of Vietnam. Vietnam is the only country other than China that has her EEZ captured in this unilateral ban. This clearly explains why Vietnam is the only country against it.



It is not known exactly how far into the EEZ of Vietnam China has imposed the ban. However, a [recent incident](http://unclos1982.com/2011/06/21/how-china-can-avoid-next-conflict-minxin-pei/) in May that involved Chinese fishery administration vessels cutting research cable of a Vietnamese seismic survey ship, the Binh Minh 2, happened only 120 nautical miles from Vietnam’s continental coast, well inside Vietnam’s EEZ.

3.

*Tensions have risen this year, stoked by formal accusations by the Vietnamese authorities and newspapers of “Chinese starvation of Vietnam’s fishing industry” and protest demonstrations in Hanoi and Ho Chi Minh City. Arguably adding to the situation were purported displays of Vietnam’s military such as conducting live fire drills in June and ordering military conscription for the first time since 1979. Moreover Vietnam announced plans to hold joint naval activities with the United States both at sea and in port in the next few months.*

Even though the unilateral fishing moratorium demanded strong reactions from Vietnam due to both its unfairness and lack of legal ground, the article seemed to attribute all reactions from Vietnam and other claimants *solely* to the moratorium, thereby downplaying and hiding other important incidents leading to the reactions.

In fact, other incidents including the cable cutting of survey ships Binh Minh 2 and Viking 2 were also important factors. Both [incidents](http://english.vietnamnet.vn/en/special-report/10965/vietnam-in-china-s-game-in-the-east-sea.html) happened within Vietnam’s EEZ: the [Binh Minh 2 incident](http://unclos1982.com/2011/06/21/how-china-can-avoid-next-conflict-minxin-pei/#2) happened on May 26, followed by the [Viking 2 incident](http://unclos1982.com/2011/06/21/how-china-can-avoid-next-conflict-minxin-pei/#3) on June 09. The first demonstrations took place in Hanoi and Ho Chi Minh City on June 05 with others following many weeks after. These two incidents also led to the naval fire drill by Vietnam, which could be seen as a firm assertion to protect one’s right on one’s sovereignty under international law.

Therefore, it was quite misleading to attribute the heightened tensions and other activities from the Vietnamese including the protests solely to the fishing moratorium.

4.

*Since its inception 12 years ago, China’s fishing moratorium has resulted in tangible benefits for the fishing community in terms of improvement to fishing stocks, both in quantity and quality. It proved effective and necessary in protecting fisheries resources and improving production. Moreover, it has been widely accepted and implemented with only minor instances of non-compliance.*

The author praised the fishing ban without giving a single reliable scientific source. The readers are not expected to believe any of these claims unless they are based on trustworthy data.

5.

*China’s fishing moratorium, first imposed in the Yellow Sea and East China Sea in 1995, and then in the South China Sea, is in keeping with its international obligations. Under the 1982 United Nations Convention on the Law of the Sea, to which both China and Vietnam are parties, the coastal state is obliged to take proper measures to ensure that living resources under its jurisdiction are not endangered by over-exploitation.*

A coastal state’s obligation as specified by UNCLOS is to cooperate with other states in matters of conservation, not acting unilaterally in another state’s EEZ. If Vietnam were to unilaterally impose a fishing moratorium along China’s coast, would the author call that “keeping with international obligation”?

In the same [article](http://www.eurasiareview.com/china%E2%80%99s-fishing-ban-in-south-china-sea-implications-for-territorial-disputes-analysis-13062011/) linked above, Nguyen Danh Thang wrote about the legal framework to implement such fishing bans:

*Among the existing arrangements that states practise is the so-called ‘grey zone’ model. This best serves conservation purposes as far as fisheries are concerned. Basically, this model stipulates that the disputed area — the ‘grey zone’ — is defined and temporarily separated from the maritime zones that apparently belong to only one country under international law. In this grey zone, one country will not enforce its laws against vessels of the other. However, to ensure sustainable fisheries, the two countries may agree to uniform conservation measures in the grey zone. Such a modus operandi with regard to fisheries in contested waters is possible thanks to the without prejudice clause omnipresent in every arrangement.*

*‘Grey zone’ agreements are not alien to China. Indeed, Beijing concluded two agreements of this kind with Japan and South Korea in 1997 and 2000 respectively to regulate fisheries in their overlapping maritime zones in East Asia. It is noteworthy that the former arrangement functions successfully even in the waters adjacent to China’s claimed Diaoyu/Senkaku which Japan presently occupies.*

Hence, in order to keep with international obligations, China must have not enforced its own regulation against other countries’ vessels but worked to build a multilateral agreement to uniform conservation measures in the disputed area.

In reality, the same author wrote,

*China’s enforcement of the fishing ban coupled with harsh measures against Vietnamese fishermen will deepen the concern that China is acting more aggressively on territorial issues.*

6.

Their successful delimitation of the territorial sea, exclusive economic zone and continental shelf in the *Gulf of Tonkin* proved that the two states can solve territorial issues by peaceful means. This gives hope that the recent incidents in the South China Sea can be solved ***bilaterally*** by peaceful means.

The success of the negotiations on the Gulf of Tonkin issue between China and Vietnam gives some hope that disputes in the Southeast Asia Sea could be also peacefully resolved. After all, peaceful means are the way that a civilised community tends to, and will be welcomed by all parties involved.

Unlike the Gulf of Tonkin case where there are only two parties involved – China and Vietnam, disputes regarding EEZs, continental shelves, islands, international waters in the Southeast Asia Sea are related directly to several countries in the region, namely the People’s Republic of China, the Republic of China (Taiwan), Malaysia, the Philippines, Vietnam, and Brunei, and some other countries outside the region using sea lanes in the international waters in the Southeast Asia Sea.

Therefore, these disputes should be settled by all parties involved. China and other countries would not accept bilateral agreements, for example, between Vietnam and the Philippines to sort out issues concerning sovereignty over islands and possible EEZs of the Spratlys. It is also true that Vietnam would not accept bilateral agreements between two other countries to resolve disputes in the Southeast Asia Sea.

7.

*Beijing* has declared that it will refrain from resorting to force.

Of course, all countries in the region would like to see that the above China’s statement will be implemented in practice. Hopefully that all disputes in the Southeast Asia Sea will be peacefully resolved by all parties involved.

In the past, even though China has not resorted to force with large scale, but China has engaged in almost all naval skirmishes in the region.

In 1974, the Chinese navy gained complete control of the Paracel islands after routing the South Vietnamese navy. In 1988, China and Vietnam fought a brief naval battle in the Spratlys; as a result, China has gained control of several islets in that region since then. In each of both cases, about 60 Vietnamese soldiers have been killed by the Chinese navy. In 1994, China also occupied the Mischief Reef, just 130 nautical miles (nm) off the Palawan Island of the Philippines.

Among the Vietnamese, China is also very well-known for its use of armed vessels to aggressively terrorize Vietnamese fishing activities in recent years.

On January 8, 2005, Chinese marine police opened fire at 2 Vietnamese fishing boats, killing 9 fishermen and injuring 7. The boats were [reportedly](http://www.vpa.org.vn/detail_temp.jsp?page=34&id=462&cate_id=21) fishing at 19.16oN and 107.06oE in the Gulf of Tonkin when this massacre happened.

Following this event, Chinese armed fishery administration vessels have repeatedly [detained](http://tuoitrenews.vn/cmlink/tuoitrenews/features/east-sea-vn-fishermen-s-home-away-from-home-1.33528http:/tuoitrenews.vn/cmlink/tuoitrenews/features/east-sea-vn-fishermen-s-home-away-from-home-1.33528), asked for ransom, [harassed](http://vi.wikipedia.org/wiki/Vi%E1%BB%87c_Trung_Qu%E1%BB%91c_b%E1%BA%AFt_ng%C6%B0_d%C3%A2n_Vi%E1%BB%87t_Nam_n%C4%83m_2009)  and even opened fire at Vietnamese fishing boats. China also enforces annual unilateral fishing bans from May to August in the Southeast Asia Sea which it ambiguously claims with the [9-dotted line](http://en.wikipedia.org/wiki/Nine-dotted_line).

The latest incidents inside Vietnam’s 200-nm EEZ with two Vietnamese seismic survey vessels Binh Minh 2 (when its exploration cables were cut by three Chinese marine surveillance vessels on May 26, 2011) and Viking 2 (when its research cable was run into and disabled by Chinese vessels on June 9, 2011) also indicated that China could potentially use small-scale conflicts to pressurise other countries involved in the Southeast Asia Sea disputes.

8.

However it is necessary that China and other claimant states clarify their claims, spell out their interests and positions

This move would definitely be welcomed by all parties involved. Once each country has unambiguously clarified its claims, it could be a big forward step for the negotiations to be proceeded further.

China’s 9-dotted line has been one of most ambiguous points of the Southeast Asia Sea issues. This line has been drawn in such a way that its large portion is located well inside 200-nm EEZs of Vietnam, the Philippines, Brunei and Malaysia.

Even though China has never used the 9-dotted line as an inviolable border to its sovereignty, and China's authority has never officially explained the meaning of the 9-dotted line, but China has used it to claim sovereignty over the Southeast Asia Sea, and even submitted to the United Nations a map containing this line in 2009.

Some scholars believe that this line cannot be considered as a maritime boundary line because it violates international law which states that a national boundary line must be a stable and defined one. The 9-dotted line is not stable because it has been reduced from 11 to 9 dashes in the Gulf of Tonkin as endorsed by China’s then-Premier Minister Zhou Enlai without any reasons given. It is also not a defined line because it does not have any specific geographic coordinates and does not tell how it can be connected if it was a continuous line.

9.

China emphasises that regional disputes be resolved by states in this region. It argues that internationalising the South China Sea issue only heightens tension between parties; ostensible support from parties not involved in the dispute will encourage certain factions within states or the states themselves to adopt a more belligerent tone and makes it less possible to reach an agreement.

Regarding internationalization of the Southeast Asia Sea issue, there are two possible aspects.

Firstly, the Southeast Asia Sea contains the world's second busiest shipping lanes. Over half of the world's merchant fleet (by tonnage) sails through the international waters in the Southeast Asia Sea every year.  This sea consists of not only islets, rocks, and potential EEZs that several countries in the region have competing claims to, but also the international waters where, according to international law, every country in the world can use it, for instance, to freely navigate. With China claiming sovereignty over the whole of this sea by using its 9-dotted line, the Southeast Asia Sea issue itself is an international matter, which concerns not only countries directly involved in the region, but also other countries outside the region using the international waters of this sea.

Secondly, if internationalization is understood as to make public the disputes, problems, and developments in the Southeast Asia Sea issue to the world, then this aspect is completely normal in our times when news on a single incident at some remote place can be instantly transmitted to the outside world. This openness also contributes to making all parties involved, especially powerful ones, act more responsibly and transparently.