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 disputes in the waters where they are the only claimants, one of which is the Gulf of Tokin.

A recent counter-example for bilateral negotiation in this region is the [joint submission](http://www.un.org/Depts/los/clcs_new/submissions_files/submission_mysvnm_33_2009.htm) between Vietnam and Malaysia to the Commission on the Limits of the Continental Shelf (CLCS) on May 6 2009. This joint submission [was objected](http://en.wikipedia.org/wiki/Malaysia-Vietnam_border#Extended_continental_shelf_claims) by China herself and the Philippines. Put aside any values the submission might have brought, the example showed that bilateral agreements can hardly resolve the multilateral Southeast Asia Sea disputes.

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 legitimate EEZ in the Southeast Asia Sea where it has sovereign rights in accordance with international law. China should have neither asserted the ban on 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.

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:

*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.*

3.

*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.

4.

*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.*

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, the author, 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 and worked to build a multilateral agreement to uniform conservation measures in the disputed area.

In reality,

*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.*