

China's 2017 fishing ban a threat to maritime rule-based order

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China's 2017 fishing moratorium constitutes a severe violation of UNCLOS, which accords all the countries sovereign rights and jurisdiction over their Exclusive Economic Zones.



On 20 January 2017, China Ministry of Agriculture (MOA) pronounced its new stricter fishing moratorium to apply in the South China Sea [1]. The new fishing moratorium actually continued the old fishing ban, which was illegally and unilaterally introduced by China since 1999 [2] in the South China Sea. However, there are two new elements in the 2017 fishing moratorium. One, the duration of the fishing ban is extended beyond usual three-month period from 1st May to 16th August. Two, it imposes stricter rules that prohibit all Chinese and foreign citizens and entities from all kind of fishing activities except traditional fishing methods like hooking. The geographical scope of the fishing ban remains the same, encompassing Bohai Sea, Yellow Sea, East China Sea and South China Sea north of the 12th degrees north latitude (including the Gulf of Tonkin).

China's fishing ban is a threat to stability and the rule-based order in the region for four following reasons:

Firstly, China's fishing ban violates the sovereignty and sovereign rights of Viet Nam. In its statement, Ministry of Foreign Affairs' spokesperson stated that the moratorium seriously "infringes upon Viet Nam's sovereignty over Hoang Sa (the Paracels), Viet Nam's legal rights and interests in its waters and violates international law, including the 1982 UN Convention on the Law of the Sea and relevant international legal documents" [3].

Viet Nam has for a long time claimed sovereignty over the Paracels based on its well-founded

legal and historical evidence. China unilaterally issued the moratorium applied for the area around the Paracels, therefore, infringing Viet Nam's sovereignty over this archipelago and maritime entitlements stipulated by UNCLOS.

Secondly, China's moratorium also violates UNCLOS 1982. According to Article 57 of UNCLOS, a coastal state is entitled to 200 nautical miles of Exclusive Economic Zone measured from its baseline [\[4\]](#). Article 56 of UNCLOS clearly states that in the exclusive economic zone, a coastal state has "sovereign rights" to explore, exploit and manage the natural resources of the living and non living resources and the "jurisdiction" to govern the "protection and preservation of the marine environment". China's fishing moratorium applied in the South China Sea area to 12th degree North latitude, which stretches beyond 200 nautical miles of its coast and up to 600 miles. [\[5\]](#)

Therefore, much of this area is beyond China's sovereign rights and jurisdiction and violates Vietnam's Exclusive Economic Zone. Only Viet Nam has the mandate under UNCLOS to issue such kind of moratorium to protect and preserve the fishing resources in its own Exclusive Economic Zone.

Thirdly, China's fishing moratorium violates the Arbitral Award of 12 July 2016 relating to the case between the Philippines and China over the South China Sea disputes. The award states that China's fishing moratorium applied in "most parts of the South China Sea" and intended to apply in the Philippines' Exclusive Economic Zone north of 12-degree N latitude violates Article 56 of UNCLOS which accords sovereign rights to the Philippines for its "living resources of its exclusive economic zone" [\[6\]](#). This year's fishing ban to be applied in the Philippines' Exclusive Economic Zone, therefore, disrespects the Arbitral Award.

Finally, China's fishing moratorium violates the Declaration on the Conduct of the Parties in the South China Sea (DOC) and undermines the progress in the making of a Code of Conduct (COC). ASEAN and China signed the DOC in November 2002, in which all parties pledged to keep the status quo and not to conduct activities that may complicate the ongoing disputes.

[\[7\]](#)

The fishing moratorium creates new disagreements and adds complexity to the ongoing disputes in the South China Sea at a time when ASEAN and China are making efforts to achieve a framework for COC by mid-2017.

In conclusion, China's 2017 fishing moratorium constitutes a severe violation of UNCLOS, which accords all the countries sovereign rights and jurisdiction over their Exclusive Economic Zones. China's annual fishing ban in the South China Sea contradicts UNCLOS, the recent ruling of the South China Sea arbitration tribunal, and the DOC. It also undermines relationships

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between the neighboring states bordering the South China Sea. Dismantling this illegal fishing ban will be a way for China to become a benign and responsible state, which complies with international law and norms, and works toward enhanced peace and security in the region.

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The authors are researchers at the East Sea Institute, Diplomatic Academy of Viet Nam (DAV). The opinions expressed in this article are the author's own and do not necessarily reflect the views of the DAV.

[1] "China to implement strictest fishing moratorium in history," *People's Daily*, 21 February 2017, at: <http://en.people.cn/n3/2017/0221/c90000-9180737.html> (accessed 5 April 2017)

[2] See more at Chinadaily, Annual South China Sea fishing ban begins , http://www.chinadaily.com.cn/china/2016-05/16/content_25302619.htm (accessed on 1 April 2017)

[3] Remarks by MOFA Spokesperson Le Hai Binh on a notice released by China's Ministry of Agriculture adjusting its fishing moratorium which covers parts of Vietnamese waters at <http://en.people.cn/n3/2017/0221/c90000-9180737.html> (accessed 1 April 2017)

[4] Article 57, UNCLOS at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

[5] Julian Ku and Chris Mirasola, Tracking Compliance with the South China Sea Arbitral Award: China's 2017 Summer Fishing Moratorium May Rekindle Conflict with the Philippines,

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Lawfare Blog, 7 March 2017, at <https://www.lawfareblog.com/tracking-compliance-south-china-sea-arbitral-award-chinas-2017-summer-fishing-moratorium-may>
(accessed 5 April 2017)

[6] See more at the South China Sea Arbitration Award of 12 July 2016, Paragraph 712, at <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf>
(accessed 1 April 2017)

[7] See more the DOC details at

<https://cil.nus.edu.sg/rp/pdf/2002%20Declaration%20on%20the%20Conduct%20of%20Parties%20in%20the%20South%20China%20Sea.pdf> (accessed 1 April 2017)