ISSN 2180-3250

VOL. 16 NO. 1

JUNE 2025

INTERNATIONAL JOURNAL OF CHINA STUDIES

International Journal of China Studies

International Journal of China Studies, Vol. 16, No. 1, June 2025

First published in 2025

The *International Journal of China Studies* is a biannual academic journal of the Institute of China Studies, University of Malaya, Malaysia. The journal is abstracted/indexed in *Scopus, International Political Science Abstracts, International Bibliography of the Social Sciences, Bibliography of Asian Studies, EconLit, e-JEL, JEL on CD, Ulrich's Periodicals Directory, Ulrichsweb Global Serials Directory, Reference Corporation's Asia-Pacific Database, ProQuest Political Science and Research Library, ABI/INFORM Complete, ABI/INFORM Global, PAIS (Public Affairs Information Service) International, CSA (formerly Cambridge Scientific Abstracts), Worldwide Political Science Abstracts and NLB's ISI (Index to Singapore Information)*.

Website: *https://ics.um.edu.my/international-journal-of-china-studies-ijcs*

For submission to the journal, please visit https://ejournal.um.edu.my/index.php/IJCS

Manuscripts for consideration and editorial communication should be sent to:

The Editor, *International Journal of China Studies*
Institute of China Studies, University of Malaya
50603 Kuala Lumpur, Malaysia
Tel: +(603) 7967 7288
Fax: +(603) 7967 4438
E-mail: *chinastudies@um.edu.my*

Further editorial communication and acquisition, subscription and other enquiries could also be sent to:

Miss Susie Ling, IJCS Editorial Manager (E-mail: *susielyp@um.edu.my*)

Table of Contents

Foreword

International Journal of China Studies (IJCS) brings together a diverse collection of perspectives from scholars around the world and offering readers a rich tapestry of insights, analyses and arguments from leading voices on issues related to Mainland China, Taiwan, Hong Kong and Macau. Each contribution reflects the independent views and positions of its respective author(s), and does not represent the editorial stance of this journal, my own personal views, Institute of China Studies (ICS) and Universiti Malaya. In addition, the designations employed in this publication and the presentation of materials therein do not imply the expression of any opinion or stance whatsoever on the part of IJCS, ICS and UM concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

As the Editor-in-Chief, my role is to facilitate rigorous academic dialogue and to offer a neutral platform for critical discursive engagements among scholars from around the world. Therefore, I invite readers to engage with the contents of the published research articles thoughtfully and critically, and to consider the broader implications of the ideas presented. It is through such engagement that scholarship continues to evolve and inform.

Karl Chee Leong Lee
Editor-in-Chief
International Journal of China Studies (IJCS)

Research Articles

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 1–16 https://doi.org/10.22452/ijcs.vol16no1.1

Depression, Anxiety, Stress, and Quality of Life Among the University Students in Macao: A Cross-Sectional Study

Man Wai *Tam**, See Wan *Yan*° and Li Choo *Chong*•

Abstract

In the present study, we aimed to assess the mental well-being and overall quality of life of university students in Macao during the COVID-19 pandemic. A web-based cross-sectional survey using the Depression, Anxiety & Stress Scales (DASS-21) and WHO-Quality of Life (WHOQOL) self-administered online questionnaire was distributed through social media platforms and email invitations to university students from various tertiary institutions in Macao. Based on data from 381 university student (50.7% female) aged 18-25 years old, the present study demonstrated that the mental health ($p < 0.001$) and overall quality of life ($p < 0.001$) of university students decreased significantly during the COVID-19 pandemic. Specifically, female and senior students suffered more psychological pressure and worse quality of life than their male and junior counterparts. This original study showcases that the COVID-19 pandemic severely affected the mental well-being and overall quality of life of university students in Macao. As the present study is the first of its kind, these findings fill a gap for academic research and provide insights for the Macao higher education sector in developing policies to address psychological problems and improve quality of life of university students especially in unprecedented circumstances.

Keywords: *COVID-19, Quality of life, Depression, Anxiety & Stress, University students, Macao*

* Man Wai Tam is an independent researcher graduated from the Macao University of Tourism. Email: wendyqwer040@gmail.com.
° See Wan Yan is an assistant professor at the Macao University of Tourism. Email: serene@utm.edu.mo.
• Li Choo Chong is an associate professor at Taylor's University, Malaysia. Email: lichoo.chong@taylors.edu.my.

1. Introduction

The SARS-CoV-2 coronavirus has infected over 600 million individuals and caused over 6 million deaths worldwide (Worldometers, 2022). Economic collapse, the imposition of nationwide quarantines or curfews, and stringent health inspections disrupted the fundamental foundations of people's lives. The requirement for social distancing coupled with widespread COVID-19 fallacies and disinformation, as well as modern travel restrictions and quarantine orders significantly increased public anxiety, adversely affecting people's mental wellbeing and quality of life (Huang and Zhao, 2020).

Higher education institutions shut down their campuses and rapidly shifted to remote learning. In the middle of the semester, students were required to withdraw from their part time jobs, adapt to a new online learning environment, and evacuate on short notice. Students experienced psychological anguish as a result of these developments, which were both intense and unprecedented (Lee *et al*., 2021). The virus's high transmissibility and the urgent need to contain it drastically altered the nature of academic interactions, particularly those between students and their instructors. Virtual learning and education as well as virtual research, have gradually displaced the traditional face-to-face experience of university life (Chu and Li, 2022). Furthermore, students living in dormitories were encouraged to avoid all forms of socializing. These trends had serious consequences on students' overall quality of life and well-being, especially for international students who were separated from their familiar social groups and families (Antwi *et al*., 2022). Though the uncontrolled responses had subsided somewhat by 2022, the virus is still present, mutating into more nasty variations in some nations. Therefore, in many regions around the globe, the need for social distancing continues to define the new norm (Starr *et al*., 2021).

University students are one group of emerging or young people between the ages of 18 and 25 who have been negatively affected by the pandemic. Students faced fear and uncertainty about their education and future prospects, as well as feelings of social alienation and a lack of support, as a result of the rapid closures of universities (Elmer *et al*., 2020). Post-secondary students often encounter significant personal, social and academic challenges during their higher education journey, which can contribute to enhanced levels of stress and anxiety (Ribeiro *et al*., 2018). More broadly, the phase of emerging adulthood is considered a sensitive time during which

individuals may experience the emergence of mental health conditions, including anxiety and depression (Patten, 2017), which can be detrimental to developmental outcomes by engaging in poor health actions, rising substance use and lowering academic achievement (Arnett *et al.*, 2014).

The effect of the pandemic peak on the psychological and mental well-being of the general population remains unclear at this time (Tran *et al.*, 2020). Given the uncertainty and confusion a modern virus's transmission has caused, which seems to have reached a scale never before seen, it is especially important to solve this. According to what is known from the literature, most studies related to COVID-19 have concentrated on understanding the virus's genetic and epidemiological composition, analyzing the clinical features of infected individuals, and examining the challenges faced by global health governance (Wang *et al*., 2020). In addition, most previous researches have focused on health care workers (Chen *et al.*, 2020) or the general populations (Gao *et al*., 2020), and their findings may not be applicable to university students.

Few studies have recently compared the mental well-being of students by gender amid the pandemic. For instance, research from France indicated that female students scored much higher on distress, anxiety and depression evaluations than male students (Essadek and Rabeyron, 2020). When investigating anxiety of Chinese college students amid the pandemic, there was no massive gender difference (Cao *et al*., 2020). On the other hand, mental well-being of Italian students was investigated before, during, and after the pandemic lockdown, and it was discovered that both male and female students suffered severe distress symptoms during the lockdown (Meda *et al*., 2021). However, previous research did not specifically examine students in Macao. The mental well-being of university students in this region during the pandemic remains an underexplored area.

To address this gap, we conducted the present study to investigate the direct impact of the pandemic on the overall quality of life and psychological stress experienced by university students. Our study examined whether the pandemic induced psychological stress among students in Macao, explored potential gender differences in this impact, and investigated whether senior students (year three and four) faced greater stress than junior students (year one and two). Given the potential consequences on psychological health, employment and education within the university community, it is crucial to implement tailored psychological interventions and measurements during

this crisis. The findings can potentially guide Macao's education sector in better supporting university students, helping them adapt to the challenging environment, addressing psychological issues and enhancing their overall quality of life.

We therefore, hypothesized that the COVID-19 pandemic would have a negative impact on female university students and that senior students would suffer more psychological distress. Specifically, we aimed to investigate the depression, anxiety and stress in relation to the perceived quality of life among university students in Macao pre- and post-pandemic.

2. Methodology

2.1. Participants

University students in Macao aged between 18 and 25 years old who met the following criteria were invited to participate in the present study: 1) Current students enrolled in any higher education institutions in Macao; 2) Age between 18 and 25 years old; 3) There was no restriction on gender; 4) Have access to the online questionnaire; 5) Can read and understand the questionnaire; 6) Consent to participate in the anonymous survey. We set a confidence level of 95 per cent, a response distribution of 50 per cent, and a margin of error of 5 per cent, to generate the most conservative assumption of sample error. The final sample size of no less than 381 university students from various tertiary institutions in Macao participated in the online survey, which took about 20 minutes to complete.

2.2. Development of the Survey

An online questionnaire was used to conduct the study with a cross-sectional design. The original survey questions of the Depression, Anxiety & Stress Scales (DASS-21) (Lovibond and Lovibond, 1995), and the WHO-Quality of Life (WHOQOL) (World Health Organization, 2022) in the English version were translated to traditional Chinese to fit the context in Macao. These two scales are reliable, simple and applicable, to a variety of perspectives on well-being and health in different regions and populations, including Macao. The questionnaire was piloted by the authors and several colleagues from the department, with the final version being in both English and traditional Chinese prior to dissemination.

The self-administered questionnaire consisted of three parts: demographic data of the respondents, DASS-21 and the WHOQOL. In part one, we collected relevant university students' demographics to understand how these significant indicators varied in the experiences of psychological discomfort among the students. Both open- and closed-ended questions were adopted, including gender (1 = male; 2 = female), age (the students were inquired about their year of birth to determine their age), education level (1 = year 1; 2 = year 2; 3 = year 3; 4 = year 4 or above), and country of origin (1 = Macao; 2 = Hong Kong; 3 = Mainland China; 4 = other).

In part two, we used the DASS-21 survey consisting of three dimensions to measure the university students' emotional states before and during the pandemic. Each dimension consists of 7 items that are categorized into subscales based on related content. There were 21 items in total, adopting a 4-point Likert scale (0 = did not apply to me at all; 1 = applied to me to some degree, or some of the time; 2 = applied to me to a considerable degree or a good part of time; 3 = applied to me very much or most of the time). The three negative feeling scores were determined by adding the items together. The scores for depression, anxiety, and stress were: 'normal' 0 – 9, 0 – 7, 0 – 14; 'mild' 10 – 13, 8 – 9, 15 – 18; 'moderate' 14 – 20, 10 – 14, 19 – 25; 'severe' 21 – 27, 15 – 19, 26 – 33; 'extremely severe' 28+, 20+, 34+, respectively (Lovibond and Lovibond, 1995). The scoring system indicated that more passive emotional states were reflected by higher scores.

In part three, we used the WHOQOL assessment, consisting of four domains to evaluate the university students' overall quality of life prior to and amid the pandemic. Each domain is composed of multiple items including environment (8 items), physical health (7 items), psychological health (6 items), and social relationships (3 items). In addition, there were 2 items related to general health (1 item) and quality of life (1 item). There were 26 items in total, adopting a 5-point Likert scale (World Health Organization, 2022). For each domain of quality of life, we added the scores together and converted them into a final score. The higher the student's total score, the better their perceived quality of life.

2.3. Survey Administration

We distributed electronic consent options and research information to the respondents as online questionnaire link on social media platforms such as WeChat, Facebook, and email invitations. In order to connect with a varied

international student community, we also joined various international student groups on WhatsApp and LINE. University students were also encouraged to share the link with their peers in Macao who met the inclusion criteria through their online social media platforms. Respondents had the right to skip any question or withdraw from the research at any moment without facing any negative repercussions.

2.4. Data Collection and Analysis

All data collected were kept confidential, and the anonymity of the respondents was guaranteed. Only members of the research team had access to the data. Descriptive statistical methods were adopted to sum up the demographic variables, including the DASS-21 and the WHOQOL. IBM SPSS Statistics Version 24 software and Microsoft Excel were utilized for all the statistical analysis. Wilcoxon Signed Ranks Test was utilized to compare respondents' mental states and overall quality of life prior to and amid the pandemic. Independent Sample t-test was also utilized to compare the different demographic groups to explore the impact of different characteristics (i.e., gender, education level) on the quality of life and level of depression, anxiety and stress.

3. Results

A total of 381 participants with an average age of 22 years from different universities or higher education institutions in Macao responded to this survey. All consented to participate and completed the questionnaire, resulting in a 100 per cent response rate. 50.7 per cent of the participants were female, and 53.3 per cent of the participants were classified as junior students in their first and second years of study. The majority (79 per cent) of the participants were from Macao, while the remaining participants were from Mainland China and Hong Kong (Table 1).

Table 1. Demographic Characteristics of All Respondents (n = 381)

Characteristic		Frequency (n = 381)	Percentage (%)
Gender	Male	188	49.3
	Female	193	50.7
Education level	Junior student (Year 1 & 2)	203	53.3
	Senior student (Year 3 & above)	178	46.7

Characteristic		Frequency (n = 381)	Percentage (%)
Region	Macao	301	79
	Hong Kong	3	0.8
	Mainland China	77	20.2

3.1. Depression, Anxiety & Stress Scales (DASS-21)

The Depression, Anxiety & Stress Scales (DASS-21) of all respondents were significantly different before (M = 13.5, SD = 15.7) and during COVID-19 pandemic (M = 33, SD = 20.7), $p < 0.001$ (Table 2). Both male and female students encountered enhanced levels of psychological stress amid the pandemic with female students experiencing a greater increase compared to male students ($p < 0.001$). The results also demonstrated a significant difference ($p < 0.001$) between the DASS-21 index of junior and senior students amid the pandemic (Table 3). During the pandemic, both junior and senior students faced heightened levels of psychological stress, with senior students experiencing a higher increase than their junior counterparts.

Table 2. Depression, Anxiety & Stress Scales During the COVID-19 Pandemic of All Respondents (n = 381)

Depression Indexes	Depression				Anxiety				Stress			
	Before COVID-19 pandemic		During COVID-19 pandemic		Before COVID-19 pandemic		During COVID-19 pandemic		Before COVID-19 pandemic		During COVID-19 pandemic	
	n	%	n	%	n	%	n	%	n	%	n	%
Normal	326	85.5	192	51.4	322	84.5	155	40.7	325	92.4	259	67
Mild	25	6.6	50	13.1	25	6.6	48	12.6	10	2.6	50	13.1
Moderate	19	5	89	23.4	14	3.7	124	32.5	8	2.1	44	12.5
Severe	5	1.3	28	7.3	4	1	29	7.6	8	2.1	19	5
Extremely Severe	6	1.6	22	4.8	16	4.2	25	6.6	3	0.8	9	2.4
Total	381	100	381	100	381	100	381	100	381	100	381	100

n = frequency; % = percentage

Table 3. Depression, Anxiety & Stress Scales (DASS-21) During the COVID-19 Pandemic Among Different Demographic Groups

Characteristic		Depression Anxiety & Stress Scales (DASS-21)			*p*-value
		n	Mean	SD	
Gender	Male	188	24.6	17.6	0.001
	Female	193	41.3	20.1	
Education Level	Junior student	203	23.7	17.2	0.001
	Senior student	178	43.6	19.2	

n = frequency; SD = standard deviation; The final scale score produces a minimum of 0 points and a maximum of 126 points (Jiang et al.*, 2021)*

3.2. World Health Organization Quality of Life (WHOQOL)

Findings indicated a significant difference ($p < 0.001$) in the perceived quality of life between male and female students amid the pandemic with female students' level of satisfaction falling by 15.3 per cent, while that of male students decreased by 6.4 per cent. The findings also revealed a significant difference ($p < 0.001$) in the perceived quality of life between senior and junior students during the pandemic with senior students' satisfaction levels decreasing by 14.1 per cent and junior students' by 8.1 per cent (Table 4).

Table 4. World Health Organization Quality of Life (WHOQOL) During the COVID-19 Pandemic Among Different Demographic Groups

Characteristic		The World Health Organization Quality of Life (WHOQOL)			*p*-value
		n	Mean	SD	
Gender	Male	188	84.9	9	0.001
	Female	193	79	12	
Education Level	Junior student	203	87.1	9.7	0.001
	Senior student	178	76	9.4	

n = frequency; SD = standard deviation; The lowest score of the WHOQOL is 0, the highest score is 130

4. Discussion

Students generally felt uncertain about their future and a common concern was anxiety about how long the pandemic would last. The pandemic has caused uncertainty in the financial situation of university students (ElTohamy *et al*., 2022). Some students needed to work part-time jobs to cover tuition fees and living expenses. Unfortunately, the pandemic has created challenges to find and maintain jobs. Although university students could complete online courses in their dormitories or home, financial pressure remained a significant source of stress. Moreover, students were worried about being infected with the virus. The anxiety of not knowing whether they were ill, further exacerbated their fears. If they developed symptoms or tested positive for COVID-19, they feared infecting others around them (including classmates and friends) which could lead to guilt and further anxiety (Hawley *et al.*, 2021). In addition, they were concerned about spreading the virus to high-risk groups, particularly children and the elderly, who are more vulnerable due to weaker immune systems. Many students lived with such individuals and felt a heightened sense of responsibility for their safety. In other areas of safety concern, students felt that others might not always follow COVID-19 prevention guidelines, such as maintaining good personal hygiene, properly wearing masks and practicing social distancing. leading to concern about environmental safety. Also, due to the safety concerns and possible side effects of the COVID-19 vaccine, students might question about health issue as the vaccine might not provide complete protection against the virus (Jaffe *et al*., 2022).

It is worth noting that women suffered more psychological stress and experienced poorer quality of life than men during the pandemic, which was in line with the findings from 27 European countries (Koch and Park 2022). Also, there were alike results found in a Macao tertiary institute recently (Wang *et al*., 2021), where there was a greater probability of women experiencing symptoms of depression than men. Female students might be more affected by academic stress than male students. Another study discovered that female students were more prone to experiencing stress and discomfort brought by online learning (Yu *et al.*, 2021). Therefore, students in general need to have stronger self-discipline and time management skills to cope with online teaching during the pandemic (Iong, 2020). Massive media coverage might make women feel depressed and helpless (Wang and Zhao, 2020). Sometimes, media reports exaggerated the severity of

the pandemic, which could exacerbate women's psychological stress. Furthermore, the pandemic might increase women's health concerns, especially if they have underlying health conditions or were in high-risk groups (Hawley *et al.*, 2021). They were more likely to worry about health effects on their quality of life. Also, female university students might be more affected by social pressure than male university students. During the pandemic, university students need to stay away from campus and peers, which could have a negative impact on their social lives. One study reported that female students had a greater tendency to be affected by social isolation and loneliness (Erden *et al*., 2022). Women also feared about not having adequate social support and were more prone to seeking support from social networks. However, maintaining these networks could be more difficult due to social distancing measures, this could result in emotions of isolation and loneliness, which could have negative effects on overall quality of life and mental well-being.

Although both junior and senior university students experienced psychological stress during the pandemic, senior students suffered more psychological stress and experienced poorer quality of life than junior students, which was similar to a university study in the United States (Varadarajan *et al.*, 2021). Senior students faced the pressure of graduation and entering the workforce. Concerns about employment prospects, uncertainty regarding future career development and job availability added to their anxiety and restlessness (Jenei *et al.*, 2020). Senior students also have higher academic pressure, as they usually have to complete a lot of graduation papers, coursework and exams. However, due to the impact of the pandemic, they may face greater academic pressure and difficulties, such as being unable to communicate with their supervisors face-to-face. Meanwhile, senior students might have more difficulty adapting to online learning because they might be studying more advanced or specialized courses (Tanveer *et al.*, 2020), which were more difficult to teach and learn online, and they might be more prone to problems such as anxiety and depression. Moreover, with most curricula moving online, senior students might face being cut off from campus social circles. At the same time, they would not be able to participate in graduation trips, graduation ceremonies, celebrations, and other important campus activities as before. They would miss these important events due to the pandemic, which might bring loss and loneliness (Kee, 2021). The lack of social support would directly affect their

quality of life. Furthermore, senior students might face increased financial hardship and housing instability during the pandemic, which might affect their quality of life. Affected by the pandemic, this might result in loss of income or reduced working hours, affecting students' ability to pay for university fees and living expenses (Glantsman *et al.*, 2022). Those living off-campus struggled with rent or risked eviction. Some university students who pursue graduate programs were worried about new challenges like work, housing and new courses. While junior university students might experience some similar stress, senior university students were more affected by their particular circumstances.

Certain limitations to this study must be addressed. First, our study utilized a cross-sectional approach, and this type of self-reported data collection could only provide a snapshot of the information at a specific point of time. It is not possible to make a long-term comparative analysis of the mental well-being of university students in Macao at different time points amid the COVID-19 pandemic, and it is unable to offer information about the changes in the mental well-being and overall quality of life of university students across the Macao region over the long term. Therefore, we suggest that future studies may choose the longitudinal study design to provide stronger evidence for causality and assessment, and a deeper understanding of students' mental well-being.

Due to the restrictions caused by the COVID-19 pandemic, our research used online social media platforms to collect data and relied on convenience sampling, which may not accurately represent the entire population of university students in Macao. We suggest that future studies should combine online and offline data collection methods to avoid self-selection bias in online surveys and generalization of research results. This will expand our understanding of how university students accommodate to the changing circumstances of the pandemic and explore more effective preventive behavior for mental health issues.

5. Conclusion

The present study collected information on the COVID-19 pandemic among university students across the Macao region, focusing on how the pandemic affected their mental well-being and overall quality of life. Specifically, the results showed that compared with before and during the pandemic, the mental well-being and overall quality of life of university students in Macao

decreased significantly. Female university students were more likely than their male counterparts to experience negative impacts of the COVID-19 pandemic on their mental well-being and overall quality of life. Similarly, the mental well-being and overall quality of life experienced by senior students declined more dramatically compared to the junior students.

Prior research in this field did not specifically address university students in Macao. Therefore, this study has made a valuable contribution by filling this gap in academic research. Findings from the present study will be useful to the education sector to better guide university students to adapt to reduce psychological problems and to improve their quality of life. The present study also indicates the need for awareness and careful monitoring of the mental well-being of university students. Universities should enhance their support for students during and after the pandemic. Additionally, they should foster student engagement with society and improve communication between students and university staff. Promoting self-care and encouraging help-seeking behaviors is crucial. Furthermore, providing training for coping with psychological stress can assist students in managing depression, anxiety, and stress during these challenging times.

To mitigate the impact of mental health issues and to achieve a better quality of life, universities should offer psychological services tailored to these circumstances, thereby providing students with greater access to mental health resources. However, it is important to note that this study lacked a control group, preventing direct comparison with non-pandemic conditions. Future research should include such a group to deepen our understanding of pandemic-related changes and develop more effective preventive measures for mental health.

Conflict of Interest

The authors declare that they have no conflicts of interest.

Reference List

Antwi, C.O., Belle, M.A., Ntim, S.Y., Wu, Y., Affum-Osei, E., Aboagye, M.O. and Ren, J. (2022), "COVID-19 Pandemic and International Students' Mental Health in China: Age, Gender, Chronic Health Condition and Having Infected Relative as Risk Factors", *International Journal of Environmental Research and Public Health*, Vol. 19, No. 13,

p. 7916. https://doi.org/10.3390/ijerph19137916.

Arnett, J.J., Žukauskienė, R. and Sugimura, K. (2014), "The New Life Stage of Emerging Adulthood at Ages 18–29 Years: Implications for Mental Health", *The Lancet Psychiatry*, Vol. 1, No. 7, pp. 569-576. https://doi.org/10.1016/S2215-0366(14)00080-7.

Cao, W., Fang, Z., Hou, G., Han, M., Xu, X., Dong, J. and Zheng, J. (2020), "The Psychological Impact of the COVID-19 Epidemic on College Students in China", *Psychiatry Research*, Vol. 1, No. 287, p. 112934. https://doi.org/10.1016/j.psychres.2020.112934.

Chen, Q., Liang, M., Li, Y., Guo, J., Fei, D., Wang, L., He, L., Sheng, C., Cai, Y. and Li, X. (2020), "Mental Health Care for Medical Staff in China During The COVID-19 Outbreak", *The Lancet Psychiatry*, Vol. 7, No. 4, pp. e15-e16. https://doi.org/10.1016/S2215-0366(20)30078-X.

Chu, Y.H. and Li, Y.C. (2022), "The Impact of Online Learning on Physical and Mental Health in University Students During The COVID-19 Pandemic", *International Journal of Environmental Research and Public Health*, Vol. 19, No. 5, p. 2966. https://doi.org/10.3390/ijerph19052966.

Elmer, T., Mepham, K. and Stadtfeld, C. (2020), "Students Under Lockdown: Comparisons of Students' Social Networks and Mental Health Before and During The COVID-19 Crisis in Switzerland", *PLOS One*, Vol. 15, No. 7, p. e0236337. https://doi.org/10.1371/journal.pone.0236337.

ElTohamy, A., Hyun, S., Macaranas, A.R., Chen, J.A., Stevens, C. and Liu, C.H. (2022), "Testing Positive, Losing a Loved One, and Financial Hardship: Real-World Impacts of COVID-19 on US College Student Distress", *Journal of Affective Disorders*, Vol. 314, pp. 357-364. https://doi.org/10.1016/j.jad.2022.07.022.

Erden, G., Özdoğru, A.A., Çoksan, S., Ögel-Balaban, H., Azak, Y., Altınoğlu-Dikmeer, İ., Ergül-Topçu, A., Yasak, Y., Kıral-Uçar, G., Oktay, S., Karaca-Dinç, P., Merdan-Yıldız, E.D., Eltan, S., Kumpasoğlu, G.B. and Baytemir, G. (2022), "Social Contact, Academic Satisfaction, COVID-19 Knowledge, and Subjective Well-Being Among Students at Turkish Universities: A Nine-University Sample", *Applied Research in Quality of Life*, Vol. 17, No. 4, pp. 2017-2039.

Essadek, A. and Rabeyron, T. (2020), "Mental Health of French Students During the COVID-19 Pandemic", *Journal of Affective Disorders*, Vol. 277, pp. 392-393. https://doi.org/10.1016/j.jad.2020.08.042.

Gao, J., Zheng, P., Jia, Y., Chen, H., Mao, Y., Chen, S., Wang, Y., Fu, H. and Dai, J. (2020), "Mental Health Problems and Social Media Exposure During COVID-19 Outbreak", *PLOS One*, Vol. 15, No. 4, pp. 1-10. https://doi.org/10.1371/journal.pone.0231924.

Glantsman, O., McGarity-Palmer, R., Swanson, H.L., Carroll, J.T., Zinter, K.E., Lancaster, K.M. and Berardi, L. (2022), "Risk of Food and Housing Insecurity Among College Students During the COVID-19 Pandemic", *Journal of Community Psychology*, Vol. 50, No. 6, pp. 2726-2745. https://doi.org/10.1002/jcop.22853.

Hawley, S.R., Thrivikraman, J.K., Noveck, N., Romain, T.S., Ludy, M.J., Barnhart, L., Chee, W.S. S., Cho, M.J., Chong, M.H.Z., Du, C., Fenton, J.I., Hsiao, P.Y., Hsiao, R., Keaver, L., Lee, H.S., Shen, W., Lai, C.C., Tseng, K.W., Tseng, W.C. and Tucker, RM. (2021), "Concerns of College Students During the COVID-19 Pandemic: Thematic Perspectives from The United States, Asia, and Europe", *Journal of Applied Learning and Teaching*, Vol. 4, No 1, pp. 11-20. https://doi.org/10.37074/jalt.2021.4.1.10.

Huang, Y. and Zhao, N. (2021), "Mental Health Burden for The Public Affected by the COVID-19 Outbreak in China: Who Will Be the High-Risk Group?", *Psychology, Health & Medicine*, Vol. 26, No. 1, pp. 23-34. https://doi.org/10.1080/13548506.2020.1754438.

Iong, L.T. (2020), "Reflections on Online Teaching Under The COVID-19 Pandemic-Taking the International Chinese Language Program at Macao Polytechnic Institute as An Example", *Intercultural Communication Studies*, Vol. 29, No. 2, p. 6.

Jaffe, A.E., Graupensperger, S., Blayney, J.A., Duckworth, J.C. and Stappenbeck, C.A. (2022), "The Role of Perceived Social Norms in College Student Vaccine Hesitancy: Implications For COVID-19 Prevention Strategies", *Vaccine*, Vol. 40, No. 12, pp. 1888-1895. https://doi.org/10.1016/j.vaccine.2022.01.038.

Jenei, K., Cassidy-Matthews, C., Virk, P., Lulie, B. and Closson, K. 2020, "Challenges and Opportunities for Graduate Students in Public Health During The COVID-19 Pandemic", *Canadian Journal of Public Health*, Vol. 111, pp. 408-409. https://doi.org/10.17269/s41997-020-00349-8.

Jiang, L.C., Yan, Y.J., Jin, Z.S., Hu, M.L., Wang, L., Song, Y., Li, N.N., Su, J., Wu, D.X. and Xiao, T. (2020), "The Depression Anxiety Stress Scale-21 in Chinese Hospital Workers: Reliability, Latent Structure, and

Measurement Invariance Across Genders", *Frontiers in Psychology*, Vol. 11, p. 247. https://doi.org/10.3389/fpsyg.2020.00247.

Kee, C.E. (2021), "The Impact of COVID-19: Graduate Students' Emotional and Psychological Experiences", *Journal of Human Behavior in the Social Environment*, Vol. 31, No. 1-4, pp. 476-488. https://doi.org/10.1080/10911359.2020.1855285.

Koch, M. and Park, S. (2022), "Do Government Responses Impact the Relationship Between Age, Gender and Psychological Distress During the COVID-19 Pandemic? A Comparison Across 27 European Countries", *Social Science & Medicine*, Vol. 292, p. 114583. https://doi.org/10.1016/j.socscimed.2021.114583.

Lee, J., Jeong, H.J. and Kim, S. (2021), "Stress, Anxiety, and Depression Among Undergraduate Students During The COVID-19 Pandemic and Their Use of Mental Health Services", *Innovative Higher Education*, Vol. 46, No. 5, pp. 519-538. https://doi.org/10.1007/s10755-021-09552-y.

Lovibond, S.H. and Lovibond, P.F. (1995), *Manual for The Depression Anxiety Stress Scales*, 2nd Ed., Sydney: Psychology Foundation.

Meda, N., Pardini, S., Slongo, I., Bodini, L., Zordan, M.A., Rigobello, P., Visioli, F. and Novara, C. (2021), "Students' Mental Health Problems Before, During, and After COVID-19 Lockdown in Italy", *Journal of Psychiatric Research*, Vol. 134, pp. 69-77. https://doi.org/10.1016/j.jpsychires.2020.12.045.

Patten, S.B. (2017), *Age of Onset of Mental Disorders*, Los Angeles, CA: SAGE Publications Sage CA.

Ribeiro, Í.J., Pereira, R., Freire, I.V., de Oliveira, B.G., Casotti, C.A. and Boery, E.N. (2018), "Stress and Quality of Life Among University Students: A Systematic Literature Review", *Health Professions Education*, Vol. 4, No. 2, pp. 70-77. https://doi.org/10.1016/j.hpe.2017.03.002.

Starr, T.N., Greaney, A.J., Addetia, A., Hannon, W.W., Choudhary, M.C., Dingens, A.S., Li J.Z. and Bloom, J.D. (2021), "Prospective Mapping of Viral Mutations That Escape Antibodies Used to Treat COVID-19", *Science*, Vol. 371, No. 6531, pp. 850-854. https://www.science.org/doi/10.1126/science.abf9302.

Tanveer, M., Bhaumik, A., Hassan, S. and Haq, I.U. (2020), "COVID-19 Pandemic, Outbreak Educational Sector and Students Online Learning in Saudi Arabia", *Journal of Entrepreneurship Education*, Vol. 23, No. 3, pp. 1-14.

Tran, B.X., Ha, G.H., Nguyen, L.H., Vu, GT., Hoang, M.T., Le, H.T., Latkin, C.A., Ho, C.S. and Ho, R.C. (2020), "Studies of Novel Coronavirus Disease 19 (COVID-19) Pandemic: A Global Analysis of Literature", *International Journal of Environmental Research and Public Health*, Vol. 17, No. 11, p. 4095. https://doi.org/10.3390/ijerph17114095.

Varadarajan, J., Brown, A.M. and Chalkley, R. (2021), "Biomedical Graduate Student Experiences During The COVID-19 University Closure", *PLOS One*, Vol. 16, No. 9, p. e0256687. https://doi.org/10.1371/journal.pone.0256687.

Wang, C., Pan, R., Wan, X., Tan, Y., Xu, L., Ho, C.S. and Ho, R.C. (2020), "Immediate Psychological Responses and Associated Factors During the Initial Stage of the 2019 Coronavirus Disease (COVID-19) Epidemic Among the General Population in China", *International Journal of Environmental Research and Public Health*, Vol. 17, No. 5, p. 1729. https://doi.org/10.3390/ijerph17051729.

Wang, C. and Zhao, H. (2020), "The Impact of COVID-19 on Anxiety in Chinese University Students", *Frontiers in Psychology*, Vol. 11, p. 1168. https://doi.org/10.3389/fpsyg.2020.01168.

Wang, X., Liu, M., Tee, S. and Dai, H. (2021), "Analysis of Adversity Quotient of Nursing Students in Macao: A Cross-Section and Correlation Study", *International Journal of Nursing Sciences*, Vol. 8, No. 2, pp. 204-209. https://doi.org/10.1016/j.ijnss.2021.02.003.

World Health Organization. (2022, September 10), *WHOQOL-BREF: Introduction, Administration, Scoring and Generic Version of The Assessment: Field Trial Version, December 1996* (No. WHOQOL-BREF). <https://apps.who.int/iris/bitstream/handle/10665/63529/WHOQOLBREF.pdf?sequence=1>.

Worldometers. (2022, September 16), *COVID Live Update: 616,155,714 Cases And 6,525,967 Deaths from The Coronavirus*. <https://www.worldometers.info/coronavirus/>.

Yu, L., Huang, L., Tang, H.R., Li, N., Rao, T.T., Hu, D., Wen, Y.F. and Shi, L.X. (2021), "Analysis of Factors Influencing the Network Teaching Effect of College Students in a Medical School During The COVID-19 Epidemic", *BMC Medical Education*, Vol. 21, No. 1, pp. 1-8. https://doi.org/10.1186/s12909-021-02825-2.

Theme Issue:
Creating a Favourable Environment for South China Sea Issue Resolution Through International Research Cooperation

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 19–21 https://doi.org/10.22452/ijcs.vol16no1.2

Introduction: Creating a Favourable Environment for South China Sea Issue Resolution Through International Research Cooperation

Zichang *Wang*[*]
School of International Studies/Overseas Chinese Academy,
Jinan University

The series of articles on the South China Sea issue published in the present journal represents the interim results of the major Chinese National Social Science project entitled "*Collation and Research of Documents on the South China Sea in Southeast Asia*", which I lead. Every year, the National Office for Philosophy and Social Sciences conducts open bidding across the country for key research topics that are foundational, strategic, and forward-looking in nature. This project, which I was awarded and initiated in 2021 (Project No.: 21&ZD244), is one such endeavour.

The project aims to systematically sort and analyse documents related to the South China Sea issue held in Southeast Asia. It seeks to uncover the historical facts and legal foundations embedded in these materials, thereby providing a robust academic basis for an objective and comprehensive understanding of the historical background and current realities of the South China Sea dispute.

Throughout the project's implementation, the research team has adhered to the principles of openness, cooperation, and transnational research, in accordance with the management guidelines of the National Office for Philosophy and Social Sciences. The Office actively encourages international academic collaboration and permits foreign scholars to act as sub-project leaders. The goal is to foster broader perspectives, access to more diverse sources, and the production of more rigorous and objective research findings. This model is of particular value in the social sciences, especially

[*] Professor, School of International Studies/Academy of Overseas Chinese Studies, Ji'nan University, Guangzhou, China. He can be reached at twangzch@jnu.edu.cn. This work was supported by the National Social Science Foundation Project under Grant No. 21&ZD244.

in the context of the South China Sea issue, which is both complex and contentious.

As a scholar who has long been engaged in research on the South China Sea, I am keenly aware that academic inquiry into this Theme Issue carries not only the task of theoretical exploration but also the social responsibility of contributing positively to public understanding and policy formulation. However, within the current international academic climate, there remains a tendency to selectively ignore key historical documents due to political agendas or ideological bias. Scholars from some of the claimant countries, as well as certain Western researchers, often avoid or downplay the study of pivotal documents — either in pursuit of their own interests or under the guise of "political correctness".

Take Vietnam as an example. A number of studies within its academic community deliberately avoid reference to the official 1958 letter from Pham Van Dong, then Prime Minister of the Democratic Republic of Vietnam, addressed to the Chinese government, which clearly recognised China's sovereignty over the Xisha and Nansha Islands. According to international law, this formal statement has a fundamental bearing on Vietnam's current legal position on the South China Sea. In light of this and basic principles of international law, no amount of subsequent evidence advanced by Vietnam to support prior sovereignty over the Xisha and Nansha Islands can alter this legal reality (Wang and Wang, 2022). If relevant scholars approached such documents with greater responsibility, acknowledged historical facts, and presented a more complete and accurate account of the dispute through academic channels, it might be possible to foster a more rational and constructive public discourse. Sadly, some academics continue to ignore basic facts and use so-called research to inflame tensions, further complicating the situation in the South China Sea.

In this light, I believe that promoting rational understanding and peaceful resolution of the South China Sea dispute requires broad participation and concerted effort from the international academic community. The successful release of this Theme Issue shows the academic responsibility of scholars from China, and we are thankful for the International Journal of China Studies, published in Malaysia, to provide such a platform that contributes to academic mutual understanding. At the outset of the project, I invited Professor Ngeow Chow Bing, Director of the Institute of China Studies at the University of Malaya, to be an academic

partner. Director Ngeow emphasised that participation in such research must strictly follow academic logic and scholarly norms — namely, "reasoning and deduction based on facts". In this spirit, he agreed to provide the IJCS as a neutral platform for us to articulate our views and perspectives, just as he offers the journal to all scholars around the world to voice their perceptions and interpretations. This principle aligns closely with my own academic values and laid a strong foundation for this Theme Issue.

Following the project's launch, I conducted fieldwork in both Malaysia and the Philippines, meeting with numerous local experts on the South China Sea to better understand their research outputs and perspectives. In the course of these exchanges, I observed several instances where limited understanding of the facts and incomplete access to materials had led to skewed interpretations and conclusions. This further underscores the urgency and necessity of promoting international cooperation and enabling foreign scholars to gain a deeper appreciation of Chinese academic work on the South China Sea.

Building on this shared understanding, Director Ngeow and me agreed that the *International Journal of China Studies*, published by his institute, would edit and publish this Theme Issue on the South China Sea. This edition showcases significant research contributions made by Chinese scholars in recent years. Although the articles address a wide range of topics and adopt different research angles, all authors follow the same academic standard — respect for facts and strict adherence to logic.

In the current climate, where the South China Sea issue remains highly sensitive and under close international scrutiny, I hope these articles will serve not only as valuable references for the academic community, but also as a firm foundation for informed policymaking and constructive dialogue.

Reference List

Wang, Zichang and Kan Wang (2022), "Legality of Pham Van Dong's Note——A Critical Study on Li Woteng's Inferences", *Journal of Strategy and Decision-Making*, No. 5, pp. 75-90.

Research Articles

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 25–48 https://doi.org/10.22452/ijcs.vol16no1.3

Exploring the Role of Key Actors in Influencing ASEAN's Policy Shift in the South China Sea

Xinxin *Jia*[*] Zichang *Wang*[°]
[*°]School of International Relations/Institute for Overseas Chinese Studies, Jinan University

Abstract

Since ASEAN's formal involvement in the South China Sea, ASEAN's policy on the South China Sea has undergone a transformation from reaching a minimum consensus to promoting political commitment among all parties to seeking strategic autonomy and the rule of law in the South China Sea. Among them, key actors (such as Indonesia and the United States) play an important role in constructing ASEAN's position on the South China Sea in the process of maintaining and transforming its position. For example, when ASEAN was deeply divided over the South China Sea, Indonesia's foreign minister emphasized the importance of ASEAN solidarity through interaction with other member elites, thus maintaining ASEAN's original consensus on the South China Sea. The US ambassador to ASEAN, on the other hand, utilized ASEAN norms to successfully steer the rotating chair to expand the South China Sea issue under the regional framework. These two cases inspire China to focus on building a favorable position and discourse environment for safeguarding rights in the South China Sea through the diplomatic efforts of key actors, and to play a positive role in maintaining peace and stability in the South China Sea region together with ASEAN.

This work was supported by the National Social Science Foundation Project under Grant No. 21&ZD244.

[*] Xinxin Jia is a PhD Candidate at the School of International Relations/Institute of Overseas Chinese Studies, Jinan University. Her research focuses on ASEAN Regional Cooperation, ASEAN and the South China Sea, ASEAN Social and Cultural Community. Email: 645894279@qq.com.

[°] Zichang Wang is a professor at the School of International Relations/Institute of Overseas Chinese Studies, Jinan University. His research areas include South China Sea issue, Southeast Asian political development, Southeast Asian international relations, international relations theory, Chinese diaspora. Email: twangzch@jnu.edu.cn.

Keywords: *ASEAN, South China Sea Policy, Key Actors, Impact.*

1. Introduction

This paper examines the influence of key actors on ASEAN's position on the South China Sea. ASEAN has regarded the South China Sea issue as an important regional issue that affects the centrality of the organization, and its involvement has been deepening. ASEAN is an important factor that cannot be ignored in the development of the South China Sea issue, especially along with the continued escalation of the situation in the South China Sea (Chen&Ma, 2016). Various parties regard ASEAN as an important tool for realizing their own interests and try to continuously strengthen their presence on the South China Sea through ASEAN. Thus, recognizing ASEAN's interest demands, policy trends and influencing factors on the South China Sea issue is of great significance for China and the relevant parties to properly resolve differences in the South China Sea, promote consensus and shape a favorable regional security environment. The question raised here is: How is ASEAN's South China Sea policy constructed? By whom and in what way? What are the specific construction processes? This is also the specific research objective of this paper. This paper adopts a new research perspective, that is, to understand the construction and evolution of ASEAN's position on the South China Sea from the perspectives of "normative diffusion" and the "constructive nature of discourse and practice" emphasized by constructivism, and focuses on the subjective role of key figures. Firstly, it will review relevant studies on ASEAN's South China Sea position from a constructivist perspective. In the second part, it will sort out ASEAN's South China Sea policy according to the timeline. In the third and fourth parts, it will explore the processes of constructing ASEAN's South China Sea policy through the application and interpretation of ASEAN's norms by key states and their political elites by taking into account the Indonesian and US cases. Lastly, it will briefly summarize the whole paper.

2. Literature Review

This paper examines ASEAN's position on the South China Sea issue from a constructivist perspective. Under the constructivist research perspective, scholars focus on the issue of the utility of "ASEAN Norms"[1] in managing South China Sea disputes. On the one hand, it is argued that ASEAN has

played an effective role in the South China Sea issue, and from an identity perspective, it is argued that ASEAN maintains or advances its centrality in regional issues such as the South China Sea through the development of regionalism, which internally fosters ASEAN solidarity and consensus, and externally, by socializing the great powers to subscribe to ASEAN's rules or norms. It is through inclusion and incentives that ASEAN socializes powers dissatisfied with the regional status quo and motivates them to accept the existing regional order and rules (Denny, 2005). For example, ASEAN's involvement in the South China Sea forced China to accept the negotiation of the Code of Conduct in the South China Sea (COC) and conclude the politically binding Declaration on the Conduct of Parties in the South China Sea (DOC) (Le, 2023). Some scholars believe that the ASEAN Conflict Management Mechanism has played a certain positive role, such as prompting China to actively negotiate with ASEAN countries on a code of conduct in the South China Sea (Bama, 2015). It is argued that ASEAN, as a "friendly weak actor", has implemented a strategy of "cautious guidance" to China on the South China Sea issue. With respect to the South China Sea, ASEAN has gradually and cautiously guided China towards acting according to ASEAN's political agenda through maintaining "multi-lateral forums", emphasizing "legal justification" and pushing "codes of conduct" (Nie, 2013). Some studies have elaborated that ASEAN, with the help of (de-) issueization,[2] continuous communication and practical crisis mechanism, has prompted South China Sea claimants to distinguish the island disputes dominated by sovereignty norms from the construction of the regional security order, buffered the pressure of extra-territorial forces to politicize the norms of freedom of navigation in the South China Sea, and pushed forward the implementation and internalization of the norms of cooperative security in the practice of regional interactions (He, 2021). Scholars have also analyzed the possibility of exporting the internal norms of the ASEAN dispute resolution model to the external sphere, emphasizing that the norms of ASEAN cooperation can change claimant states' perceptions of each other, thereby limiting the impulse to settle disputes by force (Indraswari, 2013). In a series of ASEAN documents, the topic of the South China Sea is repeatedly mentioned, indicating that member states have reached a common position in the face of a common threat, and the South China Sea dispute has been constructed as a priority for ASEAN's security community building (Renaldo & Teguh, 2020).

At the same time, some studies have also raised the limitations of the ASEAN approach or norms in managing disputes in the South China Sea. Institutional structural weaknesses have continuously challenged its utility in the South China Sea. Scholars such as Angela argue that even as ASEAN states insist regional diplomacy and agendas must be driven by ASEAN "norms, mechanisms and processes," they have been unable to place any constraints on China's actions (Clare, 2021).While ASEAN has tried to manage the dispute multilaterally through dialogue and consultation, it has not yet been successful in playing a mediating role due to a lack of consensus among its member states (Agus, 2016). ASEAN's failure to develop effective tools to resolve territorial disputes demonstrates its growing irrelevance, while its principles of consensus and non-interference in internal affairs are ill-suited to the new security realities in the South China Sea region (Heydarian, 2021). In the realm of the South China Sea issue, ASEAN has not succeeded in getting China to accept the concept of multilateralism, and with China's assertive policy on the South China Sea after its rise, the constructivist advocacy of socializing the great powers through regional cooperation has failed, and ASEAN's role in the geopolitical competition among the great powers has gradually been weakened. For example, the DOC of Parties in the South China Sea, which ASEAN facilitated, is only a formal statement with no binding force, and the negotiations on the COC in the South China Sea, which ASEAN has been advocating for a long time, have not made substantive progress (Stein, 2003; Lee, 2020; Quang, 2019). Building on this, some scholars have begun to return to a realist perspective, with Graham Allison arguing that the great powers will not recognize the "2016 South China Sea arbitration" unless they believe that particular cases are also in their interests (Allison, 2016). More scholars focus on the uncertainty brought about by great power rivalry, arguing that the intensification of strategic rivalry among great powers in the South China Sea region has caused ASEAN's tendency to be marginalized, limiting its ability to play a substantive role (Jones & Jenne, 2016). Other scholars have pointed out that, judging from the provocative behaviors that the Philippines has continuously initiated in the field of the South China Sea in recent years, ASEAN norms or rules do not have the ability to bind member states, which is a manifestation of ASEAN's failure to internalize member states.

In summary, existing constructivism studies mostly start from the perspective of normative socialization, emphasizing the effectiveness and binding force of regional institutional framework and ASEAN's normative management of major powers' behavior in the South China Sea, but relatively ignoring the dynamic process of micro-level actors (such as specific countries and their political elites) reshaping ASEAN regional consensus through discourse strategies and diplomatic practices. In practice, ASEAN is not in a position to initiate strategic adjustments in response to changes in the strategic environment in the same way that sovereign states do, but the process also relies on the driving role of certain states and political elites. Thus, while established constructivist perspectives have emphasized the role of regional norms in managing South China Sea disputes, particularly the behavior of socialized powers, they have neglected to analyze the specific efforts through which key actors have constructed ASEAN's South China Sea positions and policies, which is the new research perspective adopted in this study. This study will take into account the specific cases of Indonesia's foreign minister maintaining ASEAN's South China Sea consensus through shuttle diplomacy in 2012 and the US ambassador to ASEAN guiding Brunei, the ASEAN chair, to broaden the South China Sea issue in the East Asia Summit in 2013, to shed light on the important constructive roles of key actors in maintaining and shifting ASEAN's South China Sea stance.

By key actors, this study refers to countries or political elites that actively exert a role in ASEAN's South China Sea policy and actually influence it in a particular way. Internally, these include states and elites that have led the formation of ASEAN's South China Sea consensus in their interactions with other states (e.g., Indonesia's foreign minister) and claimant states that have attempted to revise ASEAN's position on the South China Sea (e.g., Vietnam and the Philippines). Externally, this includes countries and elites that have used their norms in their interactions with ASEAN to successfully influence its policies (e.g., the US ambassador to ASEAN). In terms of intention, key actors take the initiative to construct ASEAN South China Sea policy; in terms of process, key actors mostly exert influence through interaction with other actors; and in terms of effect, key actors must successfully influence ASEAN South China Sea policy. The following paper will analyze the constructive role of key actors in maintaining and shifting

ASEAN's position on the South China Sea on the basis of ASEAN's South China Sea policy.

3. Evolution of ASEAN's South China Sea Policy

When ASEAN first participated in the South China Sea issue, it collectively established a policy of moderate neutrality based on diplomatic dialogue. With the change of the situation in the South China Sea and the promotion of some claimant countries, ASEAN intensified its involvement and showed bias towards the positions of its member countries. In recent years, when the situation in the South China Sea has continued to heat up, ASEAN is still committed to safeguarding the peace and stability of the South China Sea, and upholding the strategy of the balance of major powers, while emphasizing ASEAN's autonomy and centrality.

Since its inception, ASEAN has been committed to building itself into an "area of peace, freedom and neutrality free from external interference" and advocating the peaceful settlement of conflicts and disputes among nations. In 2003, ASEAN first put forward the goal of a political security community, based on the fundamental principles of non-use of force or threat of force, respect for sovereignty and non-interference in each other's internal affairs, and a comprehensive view of security that emphasizes the promotion of mutual security through cooperation. In the process of establishing and evolving regional security objectives, the ASEAN's objectives in the South China Sea reflect the following basic features: First, the basic objective is to maintain peace and stability in the South China Sea and to prevent all parties from engaging in forceful conflicts or wars over the South China Sea issue. Second, it promotes ASEAN centrality on the South China Sea issue. ASEAN centrality has been promoted in the interaction between the self and the other, so that it has gradually changed from an interested party to a stakeholder in the South China Sea issue. As more actors become involved in the South China Sea, ASEAN's capacity and space to play its role is being tested by internal divisions and expanding strategic tensions among major powers. In this regard, ASEAN has used regional mechanisms to continuously coordinate the positions of its member States, strengthen internal solidarity and enhance its overall influence in order to socialize the actions of major powers in the South China Sea.

After the Cold War, the reality of conflicts in the South China Sea and changes in the strategic environment of the South China Sea region

have prompted ASEAN to pay attention to the South China Sea issue and formally establish a neutral position in a collective manner. First, a minimum consensus was reached on the South China Sea issue. From Indonesia's hosting of the "Seminar on Managing Potential Conflicts in the South China Sea" to the adoption of the ASEAN Declaration on the South China Sea in 1992, ASEAN has formally intervened in the South China Sea issue and openly demonstrated its moderate stance on dealing with the disputes in a peaceful manner. Secondly, it has followed the "ASEAN Way" in dealing with conflicts in the South China Sea. For example, in response to the Mischief (Meiji) Reef incident between China and the Philippines, which occurred twice in the late 20th century, ASEAN adopted "quiet diplomacy". ASEAN avoids confrontation with China or direct condemnation of China in multilateral public forums. However, in bilateral or informal multilateral meetings, ASEAN has begun to pressure China to gradually solidify discussions on the South China Sea. Third, it has increased its influence on China's position in advancing the South China Sea dialogue with ASEAN. It has successfully introduced the South China Sea issue into ASEAN's multiple mechanisms, changing China's past position of accepting only bilateral negotiations on the South China Sea issue; facilitating the signing of the DOC of Parties in the South China Sea by both sides, and initiating negotiations on the COC in the South China Sea.

After 2009, the United Nations Commission on the Limits of the Continental Shelf's (CLCS) regulations on the time limit for submission of continental shelf delimitation applications, the promotion of some ASEAN countries and the intervention of extraterritorial powers have led to increasing tensions in the South China Sea, and ASEAN has stepped up its involvement, and its neutrality policy has begun to show bias. First, it actively promotes consultations with China on the COC in the South China Sea in an attempt to build it into a framework for regulating all parties. In 2013, ASEAN restarted negotiations with China on the COC in the South China Sea through mechanisms such as the Senior Officials Meeting and the Joint Working Group, and reached a framework for a single draft text in 2017, with ASEAN showing greater initiative and proactivity throughout the process. Second, ASEAN has gained multi-layered recognition in the process of promoting consultation among all parties, and has actively built a multilateral dialogue platform on the South China Sea under its leadership in an attempt to play a more important role in the South China Sea issue

and strengthen the binding power on China. On the one hand, ASEAN's position on the South China Sea has gradually favored member states and China-skeptic tendencies from encouraging all parties to build trust through dialogue in the past. From the 2012 ASEAN Six Principles on the South China Sea to the 2014 Foreign Ministers' Joint Statement and the 2015 ASEAN Summit Chairman's Statement, ASEAN has responded to the South China Sea positions of countries such as the Philippines and Vietnam, and has spoken out against China's actions in the South China Sea region. On the other hand, the South China Sea issue has been expanded by bringing in more countries to participate in the discussion of it. In the past, the South China Sea issue was mainly discussed within the region and the ASEAN-China bilateral mechanism, but after 2010, the issue was gradually expanded to multiple regional mechanisms such as the ASEAN+ Leaders' Summit, the ASEAN Regional Forum (ARF), and the East Asia Summit (EAS).

In recent years, as the situation in the South China Sea heats up, ASEAN has continued to adjust its policy on the South China Sea, and while it is committed to maintaining peace and stability in the South China Sea and adhering to the strategy of great-power balance, it has emphasized ASEAN's autonomy and centrality. First, the overall tone of maintaining peace and stability in the South China Sea has not changed; the most representative is to continue to promote the COC in the South China Sea consultations. Since 2017, ASEAN and China have entered a substantive phase of consultations on the COC in the South China Sea, and have achieved a series of drafts, as well as actively exploring other South China Sea cooperation mechanisms. Secondly, ASEAN maintains a balanced strategy in the competition among major powers, drawing in more countries to participate in the South China Sea issue in order to hedge against the risk of imbalance in the competition among major powers. For example, ASEAN has adopted an ambiguous attitude toward the US position on the South China Sea, selectively supporting the US participation in discussions on the South China Sea issue and strengthening its physical presence in the region, while at the same time remaining wary of its military involvement in the South China Sea region. ASEAN's internal position on the South China Sea also reflects more convergence, manifested in the refusal to recognize China's claims to South China Sea rights and interests and the strengthening of legal constraints on China. For example, as of 2023, five ASEAN countries (Malaysia, Myanmar, Singapore, Vietnam, and Indonesia) have expressed active support for the

2016 South China Sea Arbitration (Asia Maritime Transparency Initiative, 2023). Indonesia, the Philippines, Malaysia and other ASEAN countries have successively expressed their refusal to recognize China's "Ten-Dash Line in the South China Sea" and historical claims in the South China Sea. In addition, ASEAN has strengthened maritime cooperation with other countries, including India and Japan, to discuss the South China Sea issue. Third, ASEAN has demonstrated a tendency towards strategic autonomy and the rule of law. On the one hand, ASEAN has begun to cultivate a regional "maritime domain awareness", constantly mentioning the agenda of maritime security and the South China Sea in regional mechanisms, establishing the ASEAN Maritime Forum (AMF) and its Expanded Forum, and holding the first ASEAN joint military exercise without the participation of any extraterritorial country in 2023. ASEAN's maritime security cooperation is gradually showing a tendency of "mini-multilateralism", such as the establishment of the trilateral patrol in the Sulu Sea between Indonesia, Malaysia and the Philippines in 2017. At the same time, ASEAN has increasingly emphasized the fundamental role of international law and rules in the formulation of the Code of Conduct in the South China Sea and the handling of disputes in the South China Sea, and has frequently emphasized in the ASEAN Summit Chairman's Statement and other statements the fundamental role of international law, including the United Nations Convention on the Law of the Sea, in the South China Sea and in the settlement of disputes (ASEAN Secretariat, 2023).

In summary, ASEAN's policy on the South China Sea has demonstrated stability and continuity, but with some notable changes. Based on factors such as security objectives, organizational capacity and changes in the strategic environment in the South China Sea, the basic consensus of ASEAN in the South China Sea has always been to maintain peace and stability in the region and to prevent conflicts from occurring or escalating. Its variability stems from factors such as changes in the situation in the South China Sea, promotion by member states and intentional abetment by extra-territorial countries, which have deepened their involvement in order to expand their influence, especially their ability to influence the major powers, and have continuously sought strategic autonomy in an attempt to form checks and balances among various forces and to increase the legal constraints on China. In the process of ASEAN's position and policy change in the South China Sea, the key figures have played an important

role in constructing their positions through diplomatic efforts, which will be illustrated through specific cases in the following part of this paper.

4. Indonesia Keeps ASEAN's South China Sea Consensus Unbroken

Indonesia has played a leading role in bridging internal differences and promoting consensus in the South China Sea through its good Mediation diplomacy, which has contributed to the continuous construction of ASEAN's identity as an important party in the South China Sea. In the context of intensifying competition among major powers in the South China Sea and increasing internal differences, Indonesia, based on its own considerations of maritime rights and interests and its sense of responsibility as a regional power, has actively promoted the early formation of a consensus on the South China Sea among member states and acted as a mediator and facilitator in case of a conflict. When ASEAN was faced with the controversy of not issuing a joint statement for the first time at the 45th ASEAN Foreign Ministers' Meeting, Indonesia once again assumed the role of a facilitator, driven by the regional power and ASEAN's centrality. Indonesian Foreign Minister Marty Natalegawa's 36-hour emergency shuttle diplomacy to the Philippines, Vietnam, Malaysia, Singapore and Cambodia culminated in the ASEAN Foreign Ministers' Six Principles on the South China Sea, which preserved the consensus position on the South China Sea.

4.1 Adding New Impetus to ASEAN's Handling of the South China Sea Issue

Since the 1990s, Indonesia has been committed to promoting ASEAN's participation in the South China Sea issue and striving to assume a more important role, initiating the "Seminar on Potential Conflicts in the South China Sea" as a start to harmonize the positions of member countries in the South China Sea, and actively promoting the signing of the ASEAN Declaration on the South China Sea by the foreign ministers of member countries. In ASEAN's transformation from a non-directly involved party to an important stakeholder in the South China Sea issue, Indonesia has always played a leading role, actively promoting the early formation of ASEAN's consensus on the South China Sea and acting as a mediator in the event of a conflict. Indonesia has favored a unified ASEAN position on the South China Sea, and Foreign Minister Marty Natalegawa has been a key proponent of the COC in the South China Sea, repeatedly calling on ASEAN to act

together to avoid allowing the South China Sea issue to deviate from its agenda and undermine its centrality. From the beginning of its chairmanship in 2011, Indonesia has regarded the achievement of tangible results in the South China Sea as one of the key elements of ASEAN's future work, with the goal of facilitating the commencement of substantive negotiations between ASEAN and China on the COC in the South China Sea.

Indonesian Foreign Minister Marty Natalegawa has made it clear, "Personally, I am determined to ensure that Indonesia's chairmanship of ASEAN will lead to positive progress on the South China Sea, just as it did on Myanmar. In particular, I hope that ASEAN and China will start substantive negotiations on the 'Code of Conduct in the South China Sea' as advocated in the Declaration on the Conduct of Parties in the South China Sea" (Natalegawa, 2018). And Foreign Minister Marty did put in the diplomatic effort to push for the resumption of the China-ASEAN negotiations after years of not making significant progress by adopting the "Guidelines for the Implementation of the Declaration on the Conduct of Parties in the South China Sea" as a basis for the eventual formulation of a "Code of Conduct in the South China Sea" (Martel, 2022). Marty first raised the issue of negotiating the draft guidelines at the 2011 ASEAN Foreign Ministers' Retreat, and the guidelines were then formally adopted at a meeting of Chinese and ASEAN foreign ministers. In order to create positive momentum for the early launch of negotiations on the COC in the South China Sea (COC), Marty began preparing for the drafting of a "Zero Draft Code of Conduct for the South China Sea Region" after the foreign ministers' meeting (Valencia, 2013). Its content is an introduction to the first draft of the Zero Draft Code of Conduct for the South China Sea proposed by Indonesia in 2012 (Natalegawa, 2018). During the 2012 UN General Assembly, Indonesia circulated the document to ASEAN participants and received support for parts of the draft that would limit China's claim and defense of its rights. The Chairman's Statement of the 18th ASEAN Summit once again mentioned the promotion of the implementation of the guidelines of the Declaration and the launching of consultations on the Code of Conduct in the South China Sea. (ASEAN Secretariat, 2011). Indonesia and its foreign minister are committed to advancing negotiations on the COC in the South China Sea and to constraining China's actions in the South China Sea through ASEAN co-operation, which has led to diplomatic efforts to negotiate the positions of ASEAN countries after the imbalance of the

ASEAN system in 2012, with notable results.

4.2 Bilateral and Multilateral Coordination: Indonesia's "Shuttle Diplomacy"

In an effort to address the negative impact of the 2012 ASEAN Foreign Ministers' meeting, which for the first time did not result in a joint statement, to maintain the ASEAN consensus on the South China Sea, and to avoid further undermining ASEAN unity, Indonesian Foreign Minister Marty Natalegawa undertook proactive remedial work by coordinating both bilaterally and multilaterally with his elite counterparts, which ultimately resulted in ASEAN agreeing to the ASEAN Six Principles on the Settlement of South China Sea Issues. According to Marty's own account, he asked for another informal meeting of ASEAN foreign ministers to discuss the issue in the last hour towards the end of the foreign ministers' meeting (Natalegawa, 2018). However, in the end, no progress was made on the issue, and in order to prevent ASEAN's lack of consensus on the South China Sea from being finalized and to prevent open internal divisions from intensifying, Indonesian Foreign Minister Marty quickly undertook diplomatic efforts to work toward restoring ASEAN unity. Upon his return to Indonesia, he immediately briefed President Susilo on the details of the foreign ministers' meeting and stated that Indonesia could not "watch with folded arms" while ASEAN was openly divided, and that it should regulate relations among its members. Even while recognizing that diplomatic coordination did not guarantee positive results and that the chairmanship could not be relied upon for a formal diplomatic mandate, Marty insisted that "the risk of inaction far outweighed the risk of policy failure" (Natalegawa, 2018).

On 18th July 2012, as directed by President Susilo, Marty chose the Philippines as the first stop in his diplomatic coordination and drafted the "ASEAN Six Principles on the South China Sea" on the plane and held informal talks with the Philippine Foreign Minister. According to the Jakarta Post, Marty flew directly from Manila to Hanoi and met with Vietnamese Foreign Minister Pham Binh Minh, whose proposal was supported by the Philippines and Vietnam (Bagus, 2012). Later, Marty met with Cambodian Foreign Minister Hor Namhong, visited Singapore before returning to Jakarta, and spoke with the foreign ministers of Malaysia and Brunei, refining the draft Six Principles in the process. Marty said that in his meetings or communications with each of his ASEAN counterparts, he emphasized the principle and position of ASEAN solidarity and appealed to

their sense of responsibility for building the future of ASEAN (Natalegawa, 2018). Ultimately, Marty facilitated a consensus among ASEAN countries on his proposed draft on the South China Sea through 36 hours of diplomatic coordination through four countries. On 20th July 2012, Cambodian Foreign Minister Hor Namhong, the Chair-in-Office, held a press conference to formally announce the ASEAN Six Principles on the Settlement of the South China Sea Issues reached by ASEAN.

4.3 Strengthening ASEAN Consensus on the South China Sea

The Six Principles basically continue ASEAN's past position on the South China Sea, and although there are no substantive elements that differentiate them from the past position, their publication is of representative significance. In terms of diplomatic effect, as Indonesian Foreign Minister Marty said, it has gone far beyond resolving the South China Sea issue itself, prevented internal differences from widening, and become an important symbol of ASEAN's restoration of unity and cohesion, as well as helping ASEAN to restore its representativeness in the regional system. This statement has become a consensus document that has been frequently referred to in subsequent ASEAN meetings when discussing the South China Sea issue. Further, the internal endorsement and successful publication of the Six Principles made the Indonesian foreign minister's short-lived diplomatic maneuvering all the more remarkable. On the one hand, it shows that ASEAN's political elites and their personal networks play a key role in pushing for regional consensus or preventing the escalation of conflict. On the other hand, it also demonstrates Indonesia's position and influence as the largest ASEAN country in the region, and that it has played a leading role in ASEAN's consensus-building on the South China Sea.

Indonesia's insistence on diplomatic mediation to restore ASEAN unity is driven both by its position as a regional power and its attempts to downplay internal conflicts in order to continue negotiations with China on a code of conduct in the South China Sea. Indonesia's strong leadership aspirations have led it to play a dominant role in institutional checks and balances, and with the changes in the strategic landscape of East Asia and the tensions in the South China Sea, Indonesia urgently needs to consolidate its dominant position in ASEAN's political and security affairs by leading the institutional checks and balances, pushing for stronger consensus and autonomy at the regional level, and restricting major powers' dominance of

regional affairs at the trans-regional level (Li, 2017). Indonesia has played a leading role in maintaining the ASEAN consensus on the South China Sea through good offices diplomacy that promotes the continuous construction of the identity of ASEAN as an important stakeholder in the South China Sea, and conversely through such efforts Indonesia's position and influence in the region have been strengthened. Indonesia's constructive role in ASEAN's South China Sea policy lies in its ability to bridge differences and promote consensus by facilitating ASEAN rules-based interactions with other member states, even in the event that ASEAN's institutional framework fails. In addition, progress in shuttle diplomacy reaffirms the importance of "informal" norms in ASEAN decision-making or management, where the advancement of ASEAN cooperation or the management of internal conflicts sometimes relies on the efforts of political elites. The interactions of key individuals enhance the region's ability to prevent the occurrence and escalation of conflict, serve as a mechanism for maintaining stability and cohesion, and are an important channel through which ASEAN conducts its regional affairs and manages its external relations. This type of informal, non-publicized diplomacy creates a more inclusive environment for member States to negotiate their positions or mediate conflicts, which is conducive to maintaining the ASEAN consensus on the South China Sea.

5. US' Lobbying to Make the South China Sea a Public Issue

ASEAN wants the United States to play a discreet or low-profile role in the South China Sea disputes, and wants the United States to be involved in regional affairs, but equally does not want it to dominate (Ang, 2019). Out of intentions such as holding back China's physical presence and influence in the South China Sea, ASEAN regards the deep involvement and participation of the United States in the South China Sea issue as an important opportunity. At the same time, however, it is wary of the U.S. military presence in the region, and hopes that the US can counterbalance China through a "soft balance" approach. Under these circumstances, the US has utilized the ASEAN approach of informality, gradualism, and avoidance of sensitivities to influence its South China Sea policy in its participation in ASEAN-led regional mechanisms. Among them, the role of the US in guiding ASEAN to expand the South China Sea issue in the regional architecture cannot be ignored, as the US ambassador to ASEAN in 2013. David L. Carden's eventual persuasion of Brunei to mention the South

China Sea for the first time in the East Asia Summit's presidential statement through meetings with Brunei's political elite, is a good example.

5.1 US Strengthens South China Sea Diplomacy with ASEAN

As ASEAN is becoming an important stakeholder in the South China Sea issue, the US intention to draw in ASEAN as a whole to counter China has become more and more obvious. First, the US has clearly expressed its desire and determination to participate in the South China Sea issue in its dealings with ASEAN, frequently emphasizing its important interests in the South China Sea region. Second, the US insists on opposing China's bilateral negotiation of the South China Sea issue, saying that because ASEAN claimants have a serious asymmetric dependency relationship with China, they are easily held back by China and cannot effectively defend their maritime rights and interests. U.S. Ambassador to the Philippines Harry Thomas has said, "The South China Sea issue must be a collective issue for the entire ASEAN, not just one or two countries" (Pia, 2010). In addition, the US has actively urged ASEAN and China to reach a binding "Code of Conduct in the South China Sea" as soon as possible. The US encourages ASEAN to first develop its own code of conduct for the South China Sea, which should include risk reduction measures and dispute resolution mechanisms, and then work with the US to persuade China to sign and implement the code (Glaser, 2015).

Promoting the multilateralization of the South China Sea issue through regional mechanisms is one of the important ways for the United States to increase its influence on ASEAN's South China Sea policy and to build an encirclement against China. Since Secretary of State Hillary announced at the ARF that the US has important national interests in the South China Sea, the US has frequently promoted discussions on the South China Sea under the ASEAN multilateral framework. The ARF first became a multilateral platform for discussing the South China Sea under US facilitation, and in 2010, Hillary raised the issue of the South China Sea at the ARF and alluded to China's use of strong-arm tactics to coerce other countries. In 2013, Secretary of State John Kerry mentioned the importance of international arbitration in resolving disputes in the South China Sea, making the South China Sea issue a focus of discussion at the Forum. Later, the US pushed for the East Asia Summit to become another multilateral venue for discussing the South China Sea issue. In 2011, the US formally joined the summit by

proposing to include the South China Sea on its agenda; in 2013, the US made clear its intention to support the summit as the region's main body for dealing with political and strategic issues, noting that it should play a leading role in shaping the future of the Asia-Pacific region (Koga, 2022). Under the careful guidance of the US ambassador, the South China Sea issue was formally raised for the first time in the Chairman's Statement of the East Asia Summit, solidified as an important agenda of the mechanism. The following is a brief introduction to the specific process of the US including the South China Sea issue on the agenda of multilateral forums based on the memoir of the US Ambassador to ASEAN.

5.2 The US Ambassador to ASEAN Actively Lobbied the ASEAN Chair

In an effort to further develop relations with ASEAN, allay concerns in the region, and promote presence and influence in the region, the United States became the first non-ASEAN country to post an ambassador to ASEAN. The US Ambassador to ASEAN has made extensive bilateral and multilateral visits to the region, actively participated in ASEAN regional affairs, punctually attended ASEAN-led meetings at all levels, and maintained close contacts with ASEAN officials and national elites. The US has paid particular attention to ASEAN's position and policy changes in the South China Sea, which has become the focus of the US Ambassador to ASEAN's diplomatic efforts. By distorting and criticizing China's rights defense actions in the South China Sea, the US has claimed that China is the main obstacle to the resolution of the South China Sea issue and the "main culprit" for the tense situation in the South China Sea, and has gradually portrayed China as an expansionist in the region. The ambassador continues to deliver such narratives to the region's elites, trying to arouse a sense of resistance among ASEAN countries against China and reshape the self-serving discourse and policy environment in the South China Sea.

Given the chair's function and role in ASEAN's regional mechanisms and the ASEAN norms of gradualism and avoidance of sensitivities, the US ambassador to ASEAN has taken the first step in convincing the chair to focus on non-traditional security issues related to the South China Sea in the hope that they will be mentioned and discussed in ASEAN and its expanded mechanisms, leading to an eventual influence on ASEAN's position on the South China Sea. At the end of 2011, the US ambassador began lobbying Cambodia, the next chair of ASEAN, to agree to raise

the issue of fisheries resources in the ASEAN framework, which would lead to discussions on the South China Sea, by raising concerns about the damaging effects of China's construction of dams on Cambodia's Tonle Sap Lake fisheries. Cambodia refused, and the ambassador turned his lobbying efforts to Brunei, the next chair. The US lobbying effort on Brunei started earlier and was more comprehensively prepared. Ambassador Carden met with Brunei officials several times, firstly explaining to Brunei the possible economic, political and social consequences of the destruction of fishery resources and expressing the hope that Brunei would play a leading role in ensuring regional food security and marine protection; after Brunei did not respond positively, Carden held a meeting with Brunei again, respectively from the perspective of reasons for the decline of fishery resources and the harm it may bring to the coastal economy, the safety of fishermen's personal property, the marine environment, social stability, and even ASEAN's unity, respectively, to demonstrate to Brunei the necessity of including the issue of fishery governance in the South China Sea into the agenda of ASEAN and the East Asia Summit (Carden, 2019). After the US Ambassador had several exchanges with Brunei officials, Brunei indicated that it would consider increasing discussions on fisheries governance and marine conservation during its presidency.

5.3 The South China Sea Issue Was Successfully Embedded in the East Asia Summit's Agenda

Prior to the start of the 2013 East Asia Summit, Brunei stated that in order to promote maritime cooperation among East Asian countries, it proposed that the East Asia Summit enhance food security through sustainable fisheries governance and marine environmental protection, and expressed its commitment to actively cooperate in this regard. Later, the South China Sea issue was formally raised in the draft Chairman's Statement of the East Asia Summit, and after China objected to it, the United States immediately pressured ASEAN to reject the deletion of the South China Sea wording in the Statement. At the instigation of the US, representatives of various countries specifically discussed after the summit whether to retain the South China Sea wording in the chairman's statement, and Ambassador Carden refuted the Chinese viewpoint, "The chairman's statement has never dealt with the South China Sea issue in the past because China has been pressuring the summit chairmen not to mention the South China Sea issue,

and the South China Sea issue was mentioned in the speech of Sultan of Brunei at the opening meeting, and 14 of the 18 leaders also mentioned the South China Sea issue, which should have been reflected in the statement" (Carden, 2019). At a time when Chinese representatives repeatedly rejected the claim, the representatives of the United States, Australia, Japan and New Zealand left the room one after another, with the United States effectively joining forces with partner countries to pressure ASEAN countries such as Brunei to include the South China Sea in the statement. Judging from the final Chairman's Statement, the South China Sea issue has since been formally established as a fixed topic of the East Asia Summit, and the US has finally realized its purpose of continuously promoting the expansion of the South China Sea issue.

The US ambassador to ASEAN first lobbied the chairmanship to effectively circumvent ASEAN's resistance to the direct mention of the South China Sea as a sensitive issue by mentioning non-traditional security issues such as food security, personal safety, and social stability related to fishery resources. After arousing resonance, he elaborated these non-traditional security issues as hazards that would trigger regional unrest and undermine ASEAN solidarity, which is precisely what needs to be overcome in ASEAN's integration. After drawing ASEAN's attention, he then raised the correlation between regional security in the South China Sea and the above non-traditional security issues, which need to be discussed and measures taken in the broader ASEAN mechanism. Once such issues are discussed under the ASEAN+ framework, it will inevitably lead to discussion and participation of all parties on the South China Sea issue, creating a window for the US to deeply intervene, which is precisely the US's ultimate goal. Former US Ambassador to ASEAN Scott even said directly that "Washington should identify issues and areas of common interest with ASEAN, such as environmental and fisheries issues in the South China Sea that could create opportunities for us to address geopolitical issues" (Marciel, 2023). Ultimately, as evidenced by the first formal presentation of the South China Sea issue by the chair of the East Asia Summit, the US also interpreted the outcome as a sign that ASEAN was playing a significant role on key issues and that Brunei was showing real leadership (Carden, 2019). The United States has adopted a lobbying approach in line with ASEAN norms, made use of ASEAN's pursuit of centrality, and achieved remarkable results in guiding ASEAN to promote

the expansion of the South China Sea issue. The United States, through its ambassadors to ASEAN, has been actively engaged in a diplomatic offensive against ASEAN by promoting frequent interaction among the political elite, effectively implement ASEAN norms of avoiding sensitive issues, informality, and gradual progress, leading ASEAN to promote the expansion of the South China Sea issue, and packaged the process as an effort to further unite ASEAN countries represented by the chair on the South China Sea issue.

6. Conclusion

Changes in the power structure and the development of the level of regional institutionalization have not directly caused a change in ASEAN's policy on the South China Sea. The fact is that ASEAN has not been able to take the initiative to adjust its policy in accordance with changes in the geopolitical environment and based on calculations of interests, as sovereign States have been able to do. On the contrary, what really plays a key role are the specific efforts made by certain countries and their political elites to try to influence ASEAN's position based on changes in the strategic environment and considerations of national interests. This paper examines two related cases, namely the "shuttle diplomacy" of Indonesia's foreign minister and the lobbying of ASEAN by the US ambassador to ASEAN, and finds that key actors play an active role in maintaining or accelerating the shift of ASEAN's position on the South China Sea. Specifically, Indonesia has played a key role in maintaining ASEAN's consensus on the South China Sea through its good mediation diplomacy, which has contributed to the construction of ASEAN's identity as an important stakeholder in the South China Sea, in line with ASEAN's pursuit of regional centrality. Without the diplomatic efforts of Indonesia's foreign minister, ASEAN's original consensus position on the South China Sea might have broken down. The US ambassador to ASEAN used informal, step-by-step, and other ASEAN norms to lobby the chair to successfully steer ASEAN toward constructing the South China Sea issue under the expanded regional mechanisms, and recounted the process as an effort by ASEAN to preserve regional unity. Without the US ambassador to ASEAN's lobbying diplomacy with the chair country, Brunei, the process of expanding the South China Sea issue under the ASEAN framework might have been delayed. As such, key actors continue to reshape ASEAN's perception of the South China Sea through bilateral and multilateral interactions with other actors, thus having a

significant impact on the continuation or accelerated transformation of the ASEAN South China Sea Consensus.

This study complements and deepens previous constructivist studies by looking at the specific diplomatic efforts of key figures in attempting to construct ASEAN's South China Sea policy, with particular emphasis on the subjective initiative of key figures. In terms of academic significance, existing constructivist studies have mostly explored the application and dissemination of existing normative rules in the construction and transformation of ASEAN's South China Sea policy, and have not sufficiently examined the subjective initiative of key figures, i.e., there is a lack of research on the specificity of the role of key figures such as elites or leaders in maintaining ASEAN's position on the South China Sea or in pushing for the transformation of ASEAN's South China Sea policy through their specific diplomatic endeavors. This reminds us that in future research on ASEAN's South China Sea position and policy construction, we should not only pay attention to the application and dissemination of ASEAN norms, but also should not neglect the relevant research on the micro level, and the role of key figures in the process of applying and re-interpreting the ASEAN norms in constructing ASEAN's South China Sea policy. In terms of policy significance, the discussion of this issue will also provide more space for China's future South China Sea policy adjustment. First, we should always pay attention to the South China Sea policies of regional powers or ASEAN chairs and the diplomatic work of their political elites towards ASEAN, so as to prevent unfavorable remarks or actions against China's South China Sea rights defense actions, and deconstruct the discourse or policy environment unfavorable to China's South China Sea stance or rights defense actions through the benign interactions among the elites. Secondly, in the process of South China Sea dialogue and consultation with ASEAN, China should pay attention to the diversity and flexibility of policy propaganda and means of implementation, maximize the subjective and active role of elites in order to increase trust and dispel doubts, and build a good image of a great power, so as to further construct a discourse environment conducive to China's right defense in the South China Sea, guide the development of the China-ASEAN relationship in a positive and healthy direction, and actively safeguard regional stability and effectively manage tensions or rights defense actions in the South China Sea together with ASEAN.

Notes

[1] The ASEAN Norms are a series of codes of conduct, principles and institutional arrangements that ASEAN has developed over a long period of regional cooperation, reflecting its unique concept of regional governance and diplomatic culture. Their core principles include: Non-interference, Consensus Decision-making, Consensus Decision-making, Informality and Flexibility, etc. These norms have not only shaped the pattern of interaction among ASEAN member States and with extra-territorial countries, but have also had a profound impact on regional governance and cooperation in South-East Asia.

[2] He Jiajie pointed out: When faced with challenges from both internal and external sources, ASEAN seeks to use ASEAN norms to influence the behavior of relevant actors in the process by incorporating controversial issues into ASEAN's cooperation framework (i.e., issueization) and adapting to changes in the external environment. If the external environment moves against ASEAN and the network of relationships and interaction processes on the issue increases tensions, it will also remove the issue from ASEAN's cooperation framework in a timely manner to diminish its significance (i.e., de-issueization) and to ensure that it does not become a trigger for disruption of the regional order.

Reference List

Agus, Rustandi (2016), "The South China Sea Dispute: Opportunities for ASEAN to Enhance Its Policies in Order to Achieve Resolution", *Indo-Pacific Strategic Papers*, April 2016.

Allison, Graham (2016), "Of Course China, Like All Great Powers, Will Ignore an International Legal Verdict", *The Diplomat*. <https://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>.

Ang, Cheng Guan (2019), "*South East Asia after the Cold War: A Contemporary History*", Singapore: NUS Press.

ASEAN Secretariat (2023), "Chairman's Statement of the 43rd ASEAN Summit". <https://asean.org/wp-content/uploads/2023/09/CHAIRMAN-STATEMENT-OF-THE-43RD-ASEAN-SUMMIT-FIN.pdf >.

ASEAN Secretariat (2011), "Chairman's Statement of the 18th ASEAN Summit". <https://asean.org/wp-content/uploads/2021/09/Statement_18th_ASEAN_Summit.pdf>.

Asia Maritime Transparency Initiative (2023), "Arbitration Support Tracker", Center for Strategic& International Studies. <https://amti.csis.org/arbitration-support-tracker/>.

Bagus, BT Saragih (2012), "Marty Charms Manila, Hanoi. Next stop: Phnom Penh", The Jakarta Post. <http://www.thejakartapost.com/news/2012/07/19/marty-charms-manila-hanoi-nextstop-phnom-penh.html>.

Bama Andika Putra (2015), "China's Assertiveness in the South China Sea: Have ASEAN's Endeavors in Establishing Regional Order Truly Failed?", *Journal of Politics and Law*, Vol.8, No.4, pp.178-184.

Carden, David Lee (2019), *Mapping ASEAN: Achieving Peace, Prosperity and Sustainability in Southeast Asia*, Indiana: Indiana University Press, pp. 154-174.

Chen, Xiangmiao and Ma, Chao (2016), "Lun Dongmeng dui Nanhai Wenti de Liyi Yaoqiu he Zhengce Xuanze [On ASEAN's Interest Requirements and Policy Options on the South China Sea Issue]", *Guoji Guancha* [International Observation], No. 1, pp. 93-106.

Clare, Angela (2021 "ASEAN and the South China Sea", *Parliament of Australia*. <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Research_Papers/202122/ASEANSouthChinaSea>.

Denny, Roy (2005), "Southeast Asia and China: Balancing or Bandwagoning?", *Contemporary Southeast Asia*, Vol. 27, No. 2, pp. 305-322.

Glaser, Bonnie S. (2015), "Conflict in the South China Sea", *Council on Foreign Relations*. <https://www.cfr.org/report/conflict-south-china-sea>.

He, Jiajie (2021), "*Dongmeng de Guifanxing Yingxiangli ji Qi zai Nanhai Wenti zhong de Zuoyong* [ASEAN's Normative Influence and its Role in the South China Sea Issue]", *Shijie Jingji yu Zhengzhi* [World Economy & Politics], No. 7, pp. 127-152, 160.

Heydarian, Richard (2021), "At a Strategic Crossroads: ASEAN Centrality amid Sino-American Rivalry in the Indo-Pacific", in Jonathan R. Stromseth (ed.), *Rivalry and Response: Assessing Great Power Dynamics in Southeast Asia*, Washington: Brookings Institution, 2021, pp. 58.

Indraswari, Ratih (2013), "Projecting the Intramural ASEAN Norms into Extramural Terrain- Constructivism: Does TAC Work in the South China Sea?", *Jurnal Ilmiah Hubungan Internasional*, Vol. 9, No. 2, pp. 133-177.

Jones, David Martin and Jenne, Nicole (2016), "Weak States' Regionalism: ASEAN and the Limits of Security Cooperation in Pacific Asia", *International Relations of the Asia-Pacific*, Vol. 16, No. 2, pp. 209–240.

Ju, Hailong (2011), "*Yindunixiya Haishang Anquan Zhengce ji Qi Shijian* [Indonesian Maritime Security Policy and Its Practice]", *Shijie Jingji yu Zhengzhi Luntan* [World Economic and Political Forum], No. 3, pp. 25-36.

Koga, Kei (2022), *Managing Great Power Politics- ASEAN, Institutional Strategy and the South China Sea*, Singapore: Palgrave Macmillan, 2022.

Le, Hu (2023), "Examining ASEAN's Effectiveness in Managing South China Sea Disputes", *The Pacific Review*, Vol. 36, No. 1, pp. 119-147.

Lee, John (2020), "Understanding, Analyzing and Countering Chinese Non-military Efforts to Increase Support for, and Decrease Desistance to, Beijing's Strategic and Defense Objectives in Southeast Asia", *Hudson Institute*. <https://www.hudson.org/foreign-policy/understanding-analysing-and-countering-chinese-non-military-efforts-to-increase-support-for-and-decrease-resistance-to-beijing-s-strategic-and-defence-objectives-in-southeast-asia>.

Li, Dalu (2017), "*Nanhai Zhengduan zhong Yue, Ma, Yinni Sanguo dui Hua Zhiheng Zhanlue de Chayixing Fenxi* [An Analysis of the Differences in the Check and Balance Strategies of Vietnam, Malaysia, and Indonesia against China in the South China Sea Dispute]", *Dangdai Yatai* [Contemporary Asia-Pacific], No. 2, pp. 36-63, 156-157.

Marciel, Scot (2023), Imperfect Partners: The United States and Southeast Asia, London: Rowman & Littlefield, 2023, pp. 404.

Martel, Stéphanie (2022), *Enacting the Security Community ASEAN's Never-ending Story*, California: Stanford University Press, pp. 130.

Natalegawa, Marty (2018), *Does ASEAN Matter-A View from Within?* Singapore: ISEAS-Yusof Ishak Institute, pp. 126-139.

Nie, Wenjuan (2013), "*Dongmeng Ruhe zai Nanhai Wenti shang Fanlingdao le Zhongguo——Yizhong Ruozhe de Shijian Celue Fenxi* [How ASEAN 'Counter-Leads' China on the South China Sea? – An Analysis of the Practical Strategies of the Underdog]", *Dangdai Yatai* [*Contemporary*

Asia-Pacific], No. 4, pp. 85-106, 156.

Pia, Lee-Brago (2010, June 6), "China's Intentions Must Be Transparent, Says US", *The Philstar*. <https://www.philstar.com/headlines/2010/06/06/581462/chinasintentions-must-be-transparent-says-us>.

Quang, Nguyen Minh (2019), "Negotiating an Effective China-ASEAN South China Sea Code of Conduct", *East Asia Forum*. <https://eastasiaforum.org/2019/07/31/negotiating-an-effective-china-asean-south-china-sea-code-of-conduct/>.

Renaldo, Benarrivo and Teguh, Puja Pramadya (2020), "Questioning the Existence of Asean Political Security Community in South China Sea Conflict", *Global Political Studies*, Vol. 4, No. 2, pp. 78-88.

Satu, Limaye (2018), "ASEAN Is Neither the Problem nor the Solution to South China Sea Disputes", in G. Rozman and J. C. Liow (eds.), *International Relations and Asia's Southern Tier*, London: Palgrave Macmillan, pp. 95-109.

Stein, Tønnesson (2003), "Sino-Vietnamese Rapprochement and the South China Sea Irritant", *Security Dialogue*, Vol. 34, No. 1, pp. 55–70

The State of Southeast Asia Survey Report 2024 (2024), Singapore: ISEAS - Yusof Ishak Institute-ASEAN Study Center, 2024, pp. 48.

Valencia, Mark J. (2013), "Navigating Differences: What the 'Zero Draft' Code of Conduct for the South China Sea Says (and Doesn't Say)", *Global Asia*, Vol. 8, No. 1, pp. 2-78.

Zhou, Shixin (2017), "*Shilun Zhongguo——Dongmeng Guanxi zhong de Anjing Waijiao* [A Test of Quiet Diplomacy in China-ASEAN Relations]", *Guoji Guancha* [*International Observation*], pp. 71-84.

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 49–67 https://doi.org/10.22452/ijcs.vol16no1.4

The Legality of China's Claim of Maritime Rights and Interests in the South China Sea: A Critique of the Award Given by the South China Sea Arbitral Tribunal

Zichang *Wang*[*]

Abstract

A critical analysis of the award issued by the South China Sea Arbitral Tribunal ("the Tribunal") provides a clearer understanding of China's claims in the South China Sea ("the SCS") and their legitimacy. From China's point of view, its claims in the SCS are consistent and well-defined, asserting sovereignty over the Spratly Islands as a whole. This article argues that following World War II, the SCS "dashed-line", as depicted on China's administrative maps, was marked as a national boundary line. This interpretation of the line was uncontested by the relevant countries for a significant period of time. The prolonged acquiescence of these countries to China's claims in the SCS can be attributed to the dashed-line's consideration of their interests. By disregarding Chinese administrative maps and contravening fundamental legal principles, the Tribunal relied on dubious arguments to infer the nature of the waters within the dashed-line. It henceforth concluded that China's claims in the SCS lacked legal basis under the law of the sea. The Tribunal also forcibly divided the Spratly Islands, unilaterally determined the scope of China's interests in the area, and rejected China's sovereignty over certain islands within the Spratly group. It deliberately interpreted China's 2009 reiteration of rights as the first instance of such claims, thereby negating the acquiescence of the relevant countries, and undermining the legitimacy of China's historic rights. The bias and fallacies evident in the Tribunal's judgment paradoxically highlight the path

[*] Professor, School of International Studies/Academy of Overseas Chinese Studies, Ji'nan University, Guangzhou, China. He can be reached at twangzch@jnu.edu.cn. This work was supported by the National Social Science Foundation Project under Grant No. 21&ZD244.

and methods required to substantiate and defend the legitimacy of China's maritime rights and interests in the SCS.

Keywords: *The Philippines' South China Sea Arbitration; the South China Sea Dashed-line; Map; Acquiescence; Historic rights*

1. Introduction

In view of the Tribunal's award and its arguments, this paper attempts to demonstrate the legality of China's maritime rights and interests in the SCS. After the Philippines unilaterally initiated the SCS arbitration by invoking Annex VII of the United Nations Convention on the Law of the Sea ("UNCLOS") in 2013, scholars in China and abroad have carried out a lot of research on the related issues. For example, Zhu Feng, an international relations professor at Nanjing University, edited and published a collection of relevant essays by Chinese and foreign scholars; these essays mainly focus on the justiciability of the SCS disputes (i.e., procedural legality) (Zhu, 2018). Nonetheless, discussions about the substantive legal issues addressed by the Tribunal were not sufficiently covered in the volume. On the other hand, *The South China Sea Arbitration: Toward an International Legal Order in the Oceans*, a book written by Japanese scholar Youshimi Tanaka, examines the implications that may be brought about by the award of the Tribunal, focusing on three aspects: the interpretation and applicability of international law, the protection of the value of human community and the consideration of time in international law. Tanaka deems that, the international law as interpreted and applied in the award of The Tribunal "seems to be in line with the development of this novel paradigm in the law of the sea." The novel paradigm here means the objectivist paradigm which emphasizes the value of community and cherishes the effects of international institutions based on the law of the sea. Opposite to the objectivist paradigm is the traditional voluntarist paradigm, which upholds sovereign states and their maritime interests (Tanaka, 2019). Contrary to the conclusion of Tanaka, this paper puts forward the argument that the Tribunal violates the basic legal principles in its adjudication, ignores the Chinese administrative maps and the fact that China has been consistent in claiming the sovereignty on the Spratlys as a whole, and mistakenly treats China's reaffirmation of sovereignty over the Spratlys as the time of China's first declaration of such rights, and hence, the Tribunal simply undermines the common value sought

by the international community.

This paper is divided into the following parts. The first part introduces the Chinese government's claims in the SCS. To better illustrate, the claims of the Chinese government in different periods are categorized in Table 1. The second part analyzes why China's claims of maritime rights and interests in the SCS were acquiesced to the relevant countries for a long time. This part draws significantly from the works of Chinese scholars. The third part analyzes the reasoning and logic of the Tribunal, and reveals how it ignores the historical backgrounds, contravenes the basic legal principles and reaches a wrong conclusion. Finally, the fourth part offers a conclusion.

2. The Expressions of China's Claims in the SCS since the 20th century: Archipelagic-based Claims of Sovereignty

The Chinese government maintains that China is the first country to discover, name, record and manage the SCS, and such practice can be dated back to the Qin Dynasty, almost 2000 years ago. Table 1 provides a brief list of China's expressions and claims of the rights and interests over the SCS (in particular focusing on the Spratly Islands) since the 20th century.

Table 1

Year	Backgrounds	Forms	Expressions and Claims
1935	China protested the illegal occupation by France of some islands in the SCS, in a bid to show China's sovereignty over islands in the SCS	China's Committee for the Examination for the Land and Sea Maps passed the regulation "Instructions for the Compilation of Maps" (《指示地图编制注意事项》), and published an official map clearly indicating the Chinese names of the islands and reefs in the SCS	The regulation provides: Paracel Islands and Spratly Islands are China's territories, Paracel and Spratlys are included in China's territory
1948	As the victor of the WWII, China took over the islands once occupied by Japan in the SCS, and prevented France and the Philippines' attempt to infringe upon China's rights in the SCS	The Administrative Map of the Republic of China, which marked the "dashed-line" in the South China Sea as national boundary lines, was officially published. This map included an affiliated "Location Map of the South China Sea Islands," which was compiled in 1946 and published in 1947.	Reiteration of China's sovereignty over the islands in the SCS, the SCS "dashed-line" indicated by the legend of the official map as the national boundary lines (Wang, 2014)

Year	Backgrounds	Forms	Expressions and Claims
1951	The San Francisco Conference was held to discuss the peace treaty with Japan	Declaration by the Chinese government	Reiteration of China's sovereignty over Paracel Islands and Spratly Islands, China's sovereignty over Paracel Islands and Spratly Islands not subject to the San Francisco treaty
1958	China protested against the view of Britain, The U.S. and other countries that the so-called 3 nautical miles of territorial sea was the norm of international law, and protested against the infringement of China's maritime rights and interests by the U.S. and Japan	Declaration by the Chinese government	Reiteration of China's sovereignty over the island groups in the SCS, and territorial sea of 12 nautical miles proclaimed
1992	In accordance with UNCLOS put in place in 1994	Law of the People's Republic of China on Territorial Sea and Contiguous Zone	Reiteration of China's sovereignty over the island groups in the SCS, the sovereignty of China over its territorial sea extends to the airspace over the territorial sea and to the bed and subsoil of the territorial sea
1996	China's accession to UNCLOS	Declaration by the Chinese government	Reiteration of China's sovereignty over the island groups in the SCS
1998	China passed Law on the Exclusive Economic Zone and the Continental Shelf	Act: Law on the Exclusive Economic Zone and the Continental Shelf	The Act stipulates that China applies 200nm exclusive economic zone and continental shelf, without prejudice to the historic rights enjoyed by China

Year	Backgrounds	Forms	Expressions and Claims
2009	China protested against the Philippine Baselines Law in 2009, and protested against the joint submission by Malaysia and Vietnam to the Commission on the Limits of the Continental Shelf in 2009	Note Verbale submitted by the Chinese government to the United Nation, attached to the said Note Verbale is a map with the SCS "dashed-line" thereon	Reiteration of China's sovereignty over the islands in the SCS and the adjacent waters, and sovereign rights and jurisdiction enjoyed by China over the relevant waters as well as the seabed and subsoil thereof
2016	China protested against the award of The Tribunal	1. White paper by the Chinese government (China adheres to the position of settling through negotiation the relevant disputes between China and the Philippines in the South China Sea); 2. Declaration by the Chinese government	RReiteration of the following rights and interests: i. China has sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao; ii. China has internal waters, territorial sea and contiguous zone, based on Nanhai Zhudao; iii. China has exclusive economic zone and continental shelf, based on Nanhai Zhudao; and iv. China has historic rights in the SCS

Source: Based on official documents by the Chinese government

Based on the changes in the expressions of China's maritime rights and interests in the SCS, one can see that China initially claims sovereignty over the island groups in the SCS, and such claim later extend to cover relevant rights of the territorial sea, exclusive economic zone, contiguous zone and continental shelf of the island groups. Related to this extension of claims is the development of the international law of the sea and China's integration into it. China's claims of maritime rights and interests in the SCS are in accordance with UNCLOS. Also, China claimed the sovereignty of the island groups from 1930s in response to France's illegal occupation of some islands in the Spratlys. Since then, China's position has been consistent. Moreover, the meaning of the SCS "dashed-line" as shown on the Chinese

administrative maps has been clear, it is marked as the national boundary line, China has been steadfast in maintaining this position.

3. The Nature of the SCS "Dashed-line" and Its Legality

The SCS "dashed-line" first appeared in 1948, contained in *The Administrative Map of the Republic of China* (hereafter referred to as "Chinese administrative map"). After its appearance, for a long time there were no objections by the relevant countries to this practice. As recalled by Chen Degong, who was the Chinese representative to the UN Third Conference on the Law of the Sea: "regarding the 'nine dash line' question, many think that it conflicted with UNCLOS, but no countries raised such concerns back then and there was no objection; some Southeast Asian countries even showed support" (Xinhua News Agency, 2012). Some suggest that the absence of objections is due to the ambiguities of the nature and scope of the SCS "dashed-line" (Li, 2019). This view is not consistent with the fact. Based on the Chinese administrative map and the specific drawing method of the "dashed-line", this article seeks to provide several clarifications.

First, we shall look at the shape and the drawing of the SCS "dashed-line". The SCS "dashed-line", according to the research conducted by Han Zhenhua, an expert in the study of the SCS, could be traced back to the early 20th century. From the *Location Map of the South China Sea Islands*, produced by the Department of Territorial Administration under the Ministry of the Interior of the Republic of China in 1948, one can see the "eleven dashed-lines" on the said map, and that was the first time the SCS "eleven dashed lines" was officially and publicly published.

According to the legend of the said map, the "dashed-line" means the national boundary line. Professor Wang Ying from Nanjing University found the original copy of the said map and confirmed that the "dashed-line" was meant to represent the national boundary line. What is the basis for the drawing of the "dashed-line"? Why were some segments of the line drawn in a way that were closer to the neighboring countries while others were not? Wang Xiguang and Ju Jiwu were the makers of the said map at the time. According to them, each segment was drawn to indicate the midway between China's corresponding islands and reefs in the SCS and the neighboring countries' coastlines and reefs (Yaguang Geography Society, 1948).

Contemporary Chinese scholars Tang Meng, Ma Jinsong, Wang Ying, Xia Fei, and others, by using ArcGIS 10.1 software for map registration and data processing, analyze the geographical location of each segment of the "dashed-line" seen on the Chinese administrative map of 1947, and confirm the view expressed by Wang Xiguang and Ju Jiwu. They concluded that "lying in the middle of the sea is a deep water basin of more than 4000m in depth, the basin is surrounded by island arcs, continental slopes and continental shelves, the unique shape/ curvature of the 'dash line' highly fits the structural patterns and directions of the surrounding island arcs, continental slopes and continental shelves", "the following principles are followed at that time in the making of the eleven dashed lines: 1) in respect of shallow water basins (Beibu Gulf) and straits, partitions are made halfway between China's coastline and the neighboring country's coastline, and halfway between the straits, an approach in line with the equidistance principle widely applied in demarcation works nowadays; 2) in the areas with significant topographic shifts such as Nansha Trough and Northwest Luzon Trough etc., which actually represent the boundary zones of different topographic units, middle lines are drawn to separate the upper and lower halves of the continental slopes, or middle lines are drawn along the troughs; 3) regarding the slope to the east of and the Sunda Continental shelf to the south of the Mainland Southeast Asia, the "dashed-line" is delineated in the light of the coastlines of the neighboring countries and the underlying topographic features (Tang and Ma, 2016).

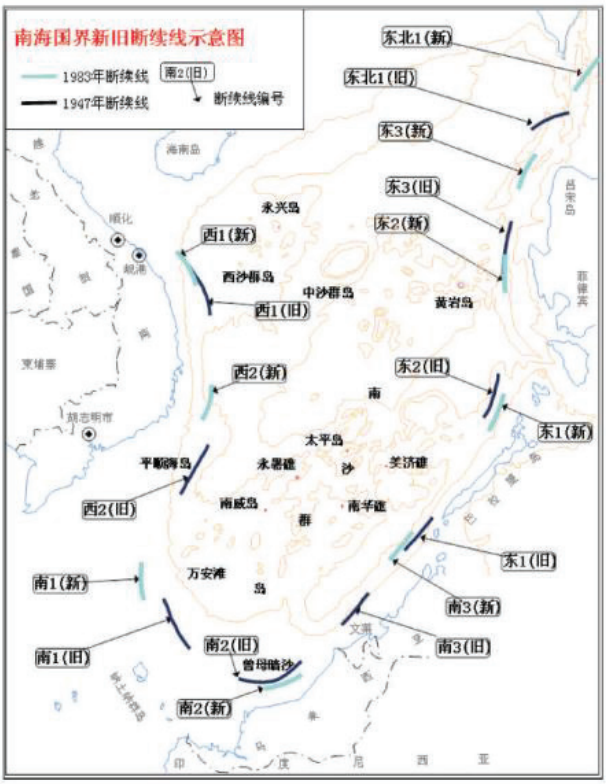
The scholars' research result verifies Wang Xiguang and Ju Jiwu's account of the use of the equidistance principle in the making of the "dashed-line". It should be pointed out that the adoption of the equidistance principle is conditional upon China's sovereignty over Xisha Islands (Paracel) and Nansha Islands (Spratlys). At that time, Southeast Asian countries did not raise any objections to China's claim of sovereignty over Xisha Islands and Nansha Islands.[1] According to the principle of equity in international law, "dashed-line" is drawn halfway between the islands of China and the neighboring countries for legality. Back then, there was no widely recognized international law of the sea, nor any provision on the exclusive economic zone regime. The commonly practiced territorial sea was three nautical miles in breadth, the concept of continental shelf was just put forward by the United States, the closest distance between one certain segment of the "dashed-line" and the neighboring country is beyond six

nautical miles.[2] Therefore, the rights of other countries were fully considered when the "dashed-line" was delineated. China considered that Southeast Asian countries did not oppose this line.

It should be noted that, the "dashed-line" seen on the Chinese administrative maps nowadays is different from that of the said map of 1947. After the founding of the People's Republic of China, two segments of the "dashed-line" within Beibu Gulf were deleted. In addition, nuances could be found regarding the locations and lengths of the "dashed-line". In comparison with the said map of 1947 and the map known as South China Sea Islands published by the Chinese government in 1983, researchers Ma Jinsong and Wang Ying from Nanjing University, "measure the longitude and latitude coordinates of the current and past 'dash line' with the aid of digital affine transformation and geographic information system", and draw a comparative diagram of the current and past "dashed-line" in the SCS. They hold that, "although there shows spatial difference for each current and past segment of the "dashed-line", the territorial range as accommodated by the current and past "dashed-line" is basically the same, …showing the historical continuity of China's territorial sovereignty in the SCS" (Ma and Wang, 2003).

To sum up, the "dashed-line" as appeared on the Chinese official administrative maps shows some variations in positions and lengths, the drawing of the current "dashed-line" is basically based on the mapping method used in 1947. This is an important foundation for the legality of the current "dashed-line". After 1953, two segments of the "dashed-line" inside the Beibu Gulf were removed from the Chinese official maps, a suggestion that although the "dashed-line" is a national boundary and a line of sovereignty over a portion of the SCS, China may be willing to give up some rights for the sake of international peace and order, a manifestation of China's exercise of sovereignty.

Figure 1: Comparison between the Current and Past Segments of the "Dashed-Line" in the SCS (Zhang and Liu, 2012)



4. A Critique of the Award by the Tribunal: Infringement on Basic Legal Principles, Ignorance of Historical Backgrounds and Facts, Reiteration of Historic Rights Mistakenly Regarded as the First Time for such Proposal, and a Wrong Conclusion

In July 2016, the Tribunal gave its award. The following rulings by the Tribunal are related to China's maritime rights and interests in the SCS. First, China lacks the legal basis to substantiate the "nine-dash line"[3] on Chinese administrative maps. Second, the maritime features in the Spratlys are determined by the Tribunal not as islands, so that they are not entitled to exclusive economic zones and continental shelves. This second ruling is the most important as it paves for the way for the first ruling.

4.1. Breaking Away the Spratly Islands by the Tribunal

The reasoning of the Tribunal is as follows. Since all the maritime features of the Spratly Islands do not meet the test for island as set out under Article 121 of UNCLOS, some are at best seen as "rocks" which could only enjoy entitlement to territorial sea of twelve nautical miles; even if all the maritime features in the Spratlys belong to China, the Chinese government cannot make a maritime claim that is beyond the territorial sea of the maritime features. Therefore, there is no legal basis for China's espoused historic rights in the vast water partitioned by the "dashed-line". Given that Mischief Reef is situated within the exclusive economic zone of the Philippines, the Philippines thus enjoys sovereign rights and jurisdictions over it, China's activities of construction on Mischief Reef are a violation of the Philippines' rights.

The key argument for the Tribunal to reach such a conclusion is that it does not consider the Spratly Islands as a whole; it divides the Spratly Islands into individual maritime features. Such an approach is in stark contrast to China's consistent claim of rights towards the entirety of the Spratlys. Starting from the French occupation of some islands in the Spratlys in the 1930s, China has been claiming sovereignty over the Spratly Islands (Nansha Qundao), and there has been no change on this. The breaking down of the SCS island groups (Nanhai Qundao) by the Tribunal is, in China's view, without factual basis, and is a violation of the relevant stipulation of the international treaty. Article 2(f) of the Treaty of Peace with Japan clearly treats the Spratlys as a whole. The said Article 2(f) provides, "Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands" (The Allied Powers, 1951).

In addition, Annex VII of UNCLOS stipulates that the Tribunal could only adjudicate on disputes in relation to the interpretation and application of UNCLOS, and cannot address questions about territory and sovereignty. A dissection approach to the Spratly Islands claimed by China would definitely involve presentation of evidence relevant to China's claim of sovereignty over the Spratlys, and this is something beyond the jurisdiction of the Tribunal. Hence, this author is of the view that the dissection approach of China's Spratly Islands is intended to interfere in China's South China Sea affairs, and a camouflage for other countries' encroachment on China's territorial sovereignty, rights and interests in the SCS. All the features in the Spratlys are not seen as "islands" by the Tribunal, but as "rocks" which cannot generate

its exclusive economic zone and continental shelf. A "rock" is only entitled to a territorial sea of twelve nautical miles, and in this connection, a vast swathe of the water inside the "nine dashed-line" becomes the exclusive economic zones of neighboring countries. The legal basis for China's historic rights in the South China Sea will hence be considered invalid.

Hence, in this author's view, the Tribunal conducted a forcible division of the Spratly Islands, which has the impact of legitimizing relevant countries' infringements on China's sovereignty in the SCS. The Chinese government is clear and unequivocally opposed to this judgement. On 12 May 2016, the Director-General of the Department of Treaty and Law at the Chinese Ministry of Foreign Affairs, when asked about the "nine dashed-line" in the context of the arbitration, responded that "in recent years, some States started to criticize China's dotted line. The real motive is to intentionally confuse territorial disputes with disputes over maritime delimitation, deny China's sovereignty over the South China Sea Islands and their adjacent waters, and cover up their illegal invasion and occupation of part of the maritime features of China's Nansha Islands" (The South China Sea Arbitral Tribunal, 2016, para. 200).

Hence, in view of the Tribunal's disregard of historical facts and provision of international treaty, and its approach to dissect the Spratly Islands, the Tribunal has created its own forcible intervention in the SCS disputes and provided legal support to the relevant countries for their infringements upon China's rights and interests in the SCS.

4.2. China's Reiteration of Historic Rights in the SCS Mistakenly Treated by the Tribunal as the First Time Such Rights Were Proposed

In judging the nature of the "nine dashed-line", common sense dictates that the legends on the Chinese administrative maps should be checked in advance. Nonetheless, the Tribunal's judges failed to consider this. The judges, based on some specious evidence and by putting aside some evidence that shows the contrary, deduced that the SCS "dashed-line" seen on the Chinese administrative maps is not a line of historic rights.

According to the Chinese administrative map of 1948 where the SCS "dashed-line" is presented for the first time, "dashed-line" represents a line of national boundary. Thereafter, "dashed-line" of the SCS is also marked as national boundary by succeeding Chinese administrative maps. The legends and descriptions of the Chinese administrative maps are legally binding.

From the perspective of evidence, descriptions of legend are more effective than official expressions in terms of legal effect, as this is because legends are universally applied, whereas textual expressions are often subject to contexts. According to the legends of the said map of 1948, "nine dashed-line" is a line of national boundary in the SCS.

The Tribunal invalidated the nature of the "dashed-line" without resorting to the legends of the Chinese official maps. In this author's view, the Tribunal's judges made a major error in failing to consider this factor in their judgement, and if the "dashed-line" is confirmed as a line of national boundary as it is revealed by the legends of the Chinese official maps, the Tribunal would lose jurisdiction over this issue. Perhaps it is because the said Chinese official maps are not provided, then the Tribunal could have requested production of the said maps by relevant parties to this arbitration (as it is not difficult for the Tribunal to get recently published Chinese administrative maps with "dashed-line" thereon). Nonetheless, the fact is that the Tribunal did not conduct an examination of the legends of the Chinese official maps. It was a serious error.

Because the legends of the said Chinese maps are omitted, the Tribunal could only determine the possible nature of the "dashed-line" by deduction. The Tribunal puts forward three arguments:

1. Declaration on the Baselines of the Territorial Sea by the Chinese government in 1958. The Declaration proclaims that "the breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles. This provision applies to all territories of the PRC, including Mainland China and her coastal islands, as well as Taiwan and her surrounding islands separated by the high seas from Mainland China and her coastal islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China". The English translation adopted by the Tribunal is different though.4 The Tribunal holds that, the attributive adjunct "separated by the high seas" applies not only to Taiwan and her surrounding islands, but also to the Islands in the SCS, meaning that Mainland China is separated by the high seas from the Islands in the SCS, the water contained by the "dashed-line" is thus not China's internal water, so that the "dashed-line" cannot be a line of maritime national boundary.

2. The Chinese side assures the freedom of navigation and over-flight in the SCS, and this is not in line with practices seen in internal water under the international law. Hence, the water within the "dashed-line" therefore is not China's internal water, and the line cannot be China's maritime national boundary (The South China Sea Arbitral Tribunal, 2016, para. 212).
3. The publication of the coordinates for the territorial baseline of the Paracel Islands (Xisha Qundao) by China in 1996. The practice of drawing territorial baselines within internal water goes contrary to the international law, the "dashed-line" therefore cannot be China's maritime national boundary (The South China Sea Arbitral Tribunal, 2016, para. 213).

Regarding these three points aforementioned, it should be noted that, the implementation of UNCLOS is silent on offshore archipelagic watesr. According to the general rules of civil law, it is legal if it is not banned by the law. Therefore, generally speaking, the management by China of the relevant water of offshore archipelagos does not amount to the contravention of UNCLOS.

Regarding the first argument or evidence put forth by the Tribunal, whether the attributive adjunct, be the 1958 Declaration in Chinese or English translation, could be applied to the Spratlys, the Zhongsha Islands and the Paracel Islands remains uncertain, more research and examinations are needed on this point.

Regarding the second evidence, it is the view of the authors that one cannot dogmatically infer that China does not possess sovereignty over the waters within the "dashed-line" simply because China guarantees the freedom of navigation and overflight for international ships and aircraft. Under international law, archipelagic states have the right to manage the passage of routes historically regarded as such, and archipelagic states are obliged to guarantee the freedom of passage over such routes. China's guarantee of freedom of passage over the routes historically regarded as such could be understood as China's making reference to relevant provisions of UNCLOS on archipelagic sea-lanes passage. It could also be understood as a normal exercise of sovereignty by China, and it cannot be assertively inferred that China does not claim sovereignty over the waters within the "nine dash line".

Regarding the third evidence, it cannot be categorically inferred that China does not claim sovereignty over the waters within the "nine dashed-line" only based on China's rollout of territorial basepoints and delineation of territorial baselines for Paracel Islands (Xisha Qundao). Chronology should be considered. China in 1948 published the administrative map with the "dashed-line" thereon for the first time. In 1996, China announced the territorial baselines for the Paracel Islands. The proclamation by China in 1996 of the territorial basepoints and baselines for Paracel Islands does not negate the SCS "dashed-line" as China's maritime line of national boundary. Even if time factor is not considered, it cannot be categorically inferred that China does not claim sovereignty over the waters within the "dashed-line". Such a move could be seen as China's initiative to transition part of sovereign rights for regional peace in the SCS, also as China's sovereign and amicable act to deal with disputes in accordance with the international law of the sea, just like the "shelving disputes, joint development" energy policy in the SCS proposed by the Chinese government. In judging the probative value of evidence, the exclusion of reasonable doubt is the most basic principle.

In addition, the Tribunal also contravenes some general principles of evidence and mistreats the evidence that shows the contrary. The Tribunal takes note of some measures implemented within the "dashed-line" by the Chinese government.

The first measure: In June 2012, China National Offshore Oil Company ("CNOOC") released a notice of open blocks for petroleum exploration adjacent to the western edge of the "dashed-line". The western portions of at least one of these blocks (BS 16) lie beyond 200nm from any feature in the SCS claimed by China, and beyond any possible extended continental shelf (The South China Sea Arbitral Tribunal, 2016, para. 208).

The second measure: in 2011, China objected to the Philippines' Geophysical Survey and Exploration Contract 101 petroleum block ("GSEC 101"), the Philippines' Service Contract 58 ("SC 58") block, and the Philippines' Area 3 and Area 4 petroleum blocks. The Tribunal opined that the petroleum blocks objected to by China were not on the continental shelves of the islands in the Spratlys (The South China Sea Arbitral Tribunal, 2016, para. 209).

The third measure: In May 2012, China declared a "Summer Ban on Marine Fishing in the South China Sea Maritime Space". This announcement applied to Huangyan Island (Scarborough Shoal) (The South China Sea

Arbitral Tribunal, 2016, para. 210-211.).

The Tribunal suggested that it was difficult to understand these three measures from the perspective of the law of the sea as these measures were enforced beyond the zone of entitlements enjoyed by China pursuant to international law. The Tribunal just pointed out that the three measures taken by China were based on "historic rights existing independently of UNCLOS". However, the Tribunal did not realize that these moves were made by the Chinese government to indicate the "nine dashed-line" as a maritime national boundary and the waters within the "dashed-line" as internal water. These three measures were strong evidence for supporting China's claim of "dashed-line" as national boundary and of historic rights in the SCS. Instead, the Tribunal regarded the three measures as a violation of the international law of the sea and denied their legality. The reason for this is that the Tribunal was confused about China's reaffirmation of rights that had been well established since 1948, arguing that the Chinese government did not assert its historic rights in the South China Sea until 2009.

According to the aforementioned legends of the Chinese administrative maps after 1948, the "dashed-line" is the national boundary. In this author's view, since 1948, the Chinese government has claimed sovereignty over the waters within the "dashed-line" of the SCS. The expression on the line is very clear and does not generate ambiguities. The "dashed-line" drawn by the Chinese government on the said administrative maps and their publications is a declaration of sovereign rights in the SCS. According to some legal principles expounded by the International Court of Justice ("ICJ"), the long-term silence of the relevant countries implies a recognition of China's sovereignty over the SCS. The Tribunal held that, "it was only by a note verbale dated May 2009 that China began to clarify the scope of the rights claimed within the "dashed-line". This is an incorrect interpretation of Chinese actions. In 2009, China stated in the said note verbale that China has historic rights in the SCS, which is not only a direct response to the actions of the Philippines, but also a reaffirmation of China's existing historic rights. It was a key mistake for the Tribunal to confuse the reaffirmation of rights with the first proposal of such rights. It was precisely because of such a mistake that the Tribunal was wrong in saying that "China's claim is clearly opposed by other countries" and that "there is no acquiescence (by other countries to China's rights)".

The Tribunal's conclusion that China's historic rights in the SCS have no legal effects, thus in this author's view, is an incorrect inference made in violation of some basic legal principles (i.e., fact-based and exclusion of reasonable doubts about evidence). The legends of China's administrative maps clearly indicate that the "dashed-line" is China's national boundary, and China's position on this is consistent. There had been no objection from the relevant countries for a long time after the publication of the said map, implying pursuant to the legal principles expounded by the ICJ about other countries' acquiescence to China's claim. The Chinese government's three measures as mentioned by the Tribunal also precisely show that, in the development and management of resources in the SCS, the Chinese government indeed regards the "dashed-line" as a maritime line of national boundary and exercises historic rights within the "dashed-line". Although China's such claim is not directly mentioned in UNCLOS, its validity is not impaired.

5. Conclusion

China's historic rights in the SCS are clear and consistent, and the "dashed-line" in the SCS is a concrete expression of the scope and nature of such rights. At its inception, the drawing of the "dashed-line" fully took into account the legitimate interests of other countries. From China's point of view, the "dashed-line" had the acquiescence of the relevant countries for a long time. The "dashed-line" is not invalidated by the implementation of UNCLOS. Because the Tribunal's ruling in its award that China's historic rights were invalid was primarily based on the Tribunal ignored the meaning of the "dashed-line" as marked in the legends of China's administrative maps, hence it contravened some basic legal principles and disregarded China's claim of sovereignty over the island groups.

The Tribunal also mistakenly treated the time for China's reiteration of historic rights as the first time for China to put forward historic rights, and thus made a wrong conclusion. Because of this series of mistakes, the Tribunal's award not only failed to promote values of the international community but also created more disputes because of its fallacies. The award will undermine the prospects of peace and cooperation in the region for a long time in the future and the expectation of peace and justice in the community.

Notes

[1] The government of the Republic of Viet Nam once claimed sovereignty over the Paracels and the Spratlys, but this position was opposite to that of the government of Democratic Republic of Viet Nam at that time. The government of the Republic of Viet Nam was eliminated by the government of the Democratic Republic of Viet Nam. The Socialist Republic of Viet Nam, evolving from the Democratic Republic of Viet Nam, therefore cannot inherit the relevant position of the Republic of Viet Nam (Wang, 2022).

[2] On this point, the Executive Yuan of the Republic of China at that time pointed out: "The Spratlys and Palawan Island in the Philippines are more than 12 miles apart (according to a report by a representative of the Ministry of Defense). Subtracting both countries' territorial sea of 3nm, both countries are still separated by the high seas of considerable breadth" (Guo, 2011).

[3] The "dashed-line" first appeared on the Chinese administrative map in 1948, there were 11 dashes. In 1953, two segments in Beibu Gulf were removed, making it commonly known as "nine dash line". "Nine dash line" or "dashed-line" is used herein.

[4] Original text in Chinese: "中华人民共和国的领海宽度为12海里。这项规定适用于中华人民共和国的一切领土，包括中国大陆及其沿海岛屿，和同大陆及其沿海岛屿隔有公海的台湾及其周围各岛、澎湖列岛、东沙群岛、西沙群岛、中沙群岛、南沙群岛及其他属于中国的岛屿". The English translation adopted by the Tribunal reads: "The breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles. This provision applies to all territories of the People's Republic of China, including the Chinese mainland and its coastal islands, as well as Taiwan and its surrounding islands, the Penghu Islands, the Dongsha Islands, the Xisha Islands, the Zhongsha Islands, the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas." Please see The South China Sea Arbitration (The South China Sea Arbitral Tribunal, 2016, para. 200)

Reference List

Guo, Yuan (2011), "*Nanhai Duanxuxian de Xingcheng Jiqi Lishi Hanyi de Jiexi* [The Formation of the Intermittent Line of South China Sea and the Analysis of Its Historical Significance]", *Zhejiang Haiyang Daxue Xuebao (Renwen Kexue)* [Journal of Zhejiang Ocean University (Humanities Sciences)], Vol. 28, No. 3, p. 4.

Li, Woteng (2019), *From Territorial Expansion on the Map to the Artificial Islands Building in the South China Sea: A Century of History of South China Sea Disputes*, Taipei: Wunan Book Publishing Co., Ltd.

Ma, Jinsong and Wang, Ying (2003), "*Nanhai Haidi Tezheng, Ziyuan Quwei yu Jiangjie Duanxuxian* [Characteristics of Submarine Geomorphology, Natural Resources Distribution and Border Intermittent Lines of the South China Sea]", *Nanjing Daxue Xuebao (Ziran Kexueban)* [Journal of Nanjing University (Natural Science)], No. 6, p. 803.

Tanaka, Youshimi (2019), *The South China Sea Arbitration: Toward an International Legal Order in the Oceans*, London: Hart Publishing.

Tang, Meng and Ma, Jinsong (2016), "1947 *Zhongguo Nanhai Duanxuxian Jingzhun Huading de Dixing Yiju* [Spatial Demarcation Principles of the Dotted Line in the South China Sea]", *Deli Xuebao* [*Acta Geographica Sinica*], Vol. 71, No. 6, p. 925. DOI: 10.11821/dlxb201606002.

The Allied Powers (1951), "Treaty of Peace with Japan, 1951", *USC US-China Institute*. <https://china.usc.edu/treaty-peace-japan-1951>.

The South China Sea Arbitral Tribunal (2016), The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China), Award on the Merits.

Wang, Ying (2014), "*Lunzheng Nanhai Haijiang Guojiexian* [Evidence of China's Maritime Boundary in the South China Sea]", *Haiyang Xuebao* [*Acta Oceanologica Sinica*], Vol. 36, No. 10, pp. 1-11. DOI:10.3969/j.isn.0253-4193.2014.10.001.

Wang, Zichang and Wang, Kan (2022), "*Fanwentong Zhaohui de Hefaxing——Dui Liwotengde Piping he Fanbo* [Legality of Pham Van Dong's Note——A Critical Study on LI Woteng's Inferences]", *Zhanlve Juece Yanjiu* [Journal of Strategy and Decision-Making], Vol. 13, No. 5, pp. 75-90.

Xinhua News Agency (2012), "Contract of Maritime Rights: China's Participation in the Negotiations of UNCLOS", *Oriental Outlook*, No. 47, pp. 18-23.

Yaguang Geography Society (1948), *Zhongguo Dituji* [Atlas of China], Shanghai: Yaguang Geography Society.

Zhang, Yaoguang and Liu, Kai (2012), "*Cong Ditu kan Zhongguo Nanhai Haiyu Jiangjiexian de Xingcheng yu Yanjin: Zhongguo Nanhai Jiutiao Duanxu Guojiexian* [The Evolvement of the State Maritime Boundary in South China Sea by Maps: China's Nine-dotted Maritime Boundary Line in South China Sea]", *Dili Kexue* [*Scientia Geographica Sinica*], Vol. 32, No. 9, p. 1036.

Zhu, Feng and Yu, Mincai (2018), *Anatomy of the Philippines' South China Sea Arbitration*, Beijing: World Affairs Press Co. Ltd.

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 69–93 https://doi.org/10.22452/ijcs.vol16no1.5

The 1960s Philippine Territorial Sea Laws in Sino-Philippine Territorial Disputes: A Historical and Legal Analysis

Kan *Wang*[*]
School of Global and Area Studies (Institute of International Relations),
Guangdong University of Foreign Studies
Southern Marine Science and Engineering Guangdong Laboratory
(Zhuhai)

Abstract

Before the territorial disputes in the South China Sea between China and the Philippines were crystallised, the Philippines enacted two territorial sea laws in the 1960s to promote international recognition of its special status as an archipelagic state. This marked the first time since its independence in 1946 that the Philippines defined its territorial scope and territorial sea claims through legislation. In these laws, the Philippines declared the baselines and basepoint coordinates of its territorial sea without mentioning certain islands and reefs in the Spratly Islands or Scarborough Shoal. China argues that the two laws explicitly defined the territorial scope of the Philippines, excluding the Spratly Islands and Scarborough Shoal from the baselines and basepoints of the Philippines' territorial sea, indicating that the Philippines did not consider these islands part of its territory at that time. According to discussions in the Philippine Congress regarding the two laws and on the basis of the precedent established by the International Court of Justice, while these laws do not explicitly address certain islands and reefs of the Spratly Islands or Scarborough Shoal and do not constitute recognition of China's

[*] Dr. Kan Wang is currently an Associate Professor at the School of Global and Area Studies (Institute of International Relations), Guangdong University of Foreign Studies, China. He is committed to the study of South China Sea issue and China-Philippines relations. He can be reached at <wangkan0806@163.com>. The author would like to thank the anonymous referees for their insightful comments. This work is supported by the National Social Science Foundation Project under Grant No. 21CGJ049 and 21&ZD244. I am solely responsible for all views or errors in this article.

territorial sovereignty, they do, to some extent, support China's claims. The Philippines has remained silent on this issue because a detailed discussion would undermine its position. It would also hinder its efforts to utilise the South China Sea arbitration ruling, which avoids addressing the issue of territorial sovereignty, for international propaganda.

Keywords: *Territorial sea, Spratly Islands, Scarborough Shoal, Territorial disputes, Philippine Congress.*

1. Introduction

The South China Sea is bordered by mainland China and the island of Taiwan to the north, the islands of Kalimantan and Sumatra to the south, the Philippine Islands to the east, and the central and southern peninsulas, along with the Malay Peninsula, to the west. China and the Philippines have territorial disputes over many maritime features in the South China Sea. These maritime features include "Huangyan Island", referred to in China, also known as "Panacot", "Bajo de Masinloc" or "Panatag Shoal" in the Philippines and "Scarborough Reef" or "Scarborough Shoal" internationally. They also include the "Kalayaan Islands" or "Kalayaan Island Group" in the Philippines, which are considered part of the "Nansha Islands" in China and part of the Spratly Islands globally.[1] The Philippines officially filed a competing territorial claim over the "Kalayaan Islands" on 10 July 1971, and the territorial dispute over these islands was crystallised (Official Gazette of the Republic of the Philippines, 1971). In May 1997, the Philippines lodged a competing territorial claim against China for Scarborough Shoal, and the territorial dispute over Scarborough Shoal was crystallised (Zou, 1997). From many perspectives, the Philippines' territorial claims in the South China Sea are much weaker than those of China (Austin, 2019). Among these claims, the domestic maritime-related legislation prior to the 1970s also provides clear evidence on this topic.

After the Philippines gained independence in 1946, its territorial scope remained the same as it had been during its time as an American colony. With over 7,000 islands comprising the Philippine Islands and varying distances between these islands, the country's geographical configuration poses significant challenges to maintaining national integrity and security, particularly given its relatively weak ability to defend against external threats (Batongbacal, 1997). To strengthen control over the Philippine Islands,

the Philippines enacted two territorial sea laws in the 1960s: Republic Act No. 3046 in 1961 and Republic Act No. 5446 in 1968, defining the extent of the country's territorial sea and establishing the baselines from which it is measured. This marked the first time since its independence in 1946 that the Philippines defined its territorial scope and territorial sea claims through legislation. These laws emphasise that the land and waters within the territorial sea baselines constitute the land territory and internal waters of the Philippines, whereas the waters from the baselines to the "treaty limits" are designated the territorial sea of the Philippines.[2] These laws play a significant role in demonstrating that, prior to the 1970s, some islands and reefs of the Spratly Islands and Scarborough Shoal were not within the territorial scope of the Philippines. The Philippine Archipelagic Baselines Law of 2009 (Republic Act No. 9522) declared that the "Kalayaan Island Group" and Scarborough Shoal fall under the "island regime", as defined in Article 121 of the United Nations Convention on the Law of the Sea (The Republic of the Philippines, 2009). China contends that Republic Act No. 3046 and Republic Act No. 5446 explicitly define the territorial extent of the Philippines, confirming that the "Kalayaan Island Group" or Scarborough Shoal does not belong to the Philippines. Furthermore, China asserts that Republic Act No. 9522 unlawfully designates China's Huangyan Island and certain islands and reefs in the Nansha Islands as part of the Philippine territory. In response, China promptly lodged formal representations and protests with the Philippine government (Zhong, 2012).

What were the circumstances surrounding the enactment of territorial sea laws in the 1960s? How did the Philippine Congress perceive territorial issues concerning islands and reefs in the South China Sea during that period? Did these laws support China's territorial claims in any way? Why does the current Philippine government refrain from commenting on the two laws enacted in the 1960s?

To address these questions, the rest of this paper is divided into four parts. The next two sections explore the background, evolution, key provisions, and congressional perspectives on territorial sovereignty in the 1960s Philippine territorial sea legislation. The fourth section examines international jurisprudence related to territorial sea law in the context of territorial disputes. The concluding section summarises the overall findings and their implications.

2. Evaluation of the Philippine Territorial Sea Law of 1961: Republic Act No. 3046

2.1 Legislative Background

In 1961, influenced by various international and domestic factors, the Philippines enacted Republic Act No. 3046, which laid the foundation for a territorial sea regime suited to the country's unique geographical configuration.

First, the failure of international efforts to establish a uniform standard for the breadth of the territorial sea strengthened the Philippines' ability to safeguard its territorial sea claims and secure the special status of an archipelagic state. Before World War I, the generally accepted breadth of the territorial sea was three nautical miles. However, following World War I, an increasing number of countries expanded their territorial sea limits. By 1958, at the first United Nations Conference on the Law of the Sea, only 22 of the 76 participating countries adhered to the three-mile principle (Proelß, 2017). Since various states had divergent practices, demand for a uniform standard regarding the breadth of the territorial sea increased. Before the First United Nations Conference on the Law of the Sea convened, the Preparatory Group for the Conference invited states to submit their respective proposals. On 7 March 1955, the Philippines submitted a note to the United Nations International Law Commission, stating that

> *"All waters around, between and connecting different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. All other water areas embraced within the lines described in the Treaty of Paris of 10 December 1898, the Treaty concluded at Washington, D.C., between the United States and Spain on 7 November 1900, the Agreement between the United States and the United Kingdom of 2 January 1930, and the Convention of 6 July 1932 between the United States and Great Britain, as reproduced in Section 6 of Commonwealth Act No. 4003 and Article 2 of the Philippine Constitution, are considered as maritime territorial waters of the Philippines for purposes of protection of its fishing rights, conservation of its*

> *fishery resources, enforcement of its revenue and anti-smuggling laws, defence and security, and protection of such other interests as the Philippines may deem vital to its national welfare and security, without prejudice to the exercise by friendly foreign vessels of the right of innocent passage over those waters"* (The Permanent Delegation of the Philippines to the United Nations, 1955)

This marked the first instance in which the Philippines presented its territorial sea claims in an international forum, laying the foundation for its pursuit of the special status of the archipelagic state—a position reiterated in a subsequent note dated 20 January 1956—also addressed the United Nations International Law Commission (the Permanent Delegation of the Philippines to the United Nations, 1956). Neither of these notes specified the starting point for measuring the breadth of the territorial sea. The 1958 Convention on the Territorial Sea and the Contiguous Zone failed to resolve the issue of the breadth of the territorial sea due to the significant divergence of views among participating states (United Nations Treaty Series [UNTS], 1964). Consequently, the Philippines declined to accede to the convention, as its territorial sea claims were not supported by the participating states. From 17 March to 28 April 1960, delegates convened in Geneva for further consultations on the breadth of the territorial sea. The Philippines appeared to place limited importance on the meeting, initially sending only a two-member delegation led by Senator Tolentino and accompanied by the Philippine Ambassador to Switzerland (Lotilla, 1995). The limited size of the delegation severely constrained its ability to fulfil its responsibilities, prompting Senator Tolentino to make significant efforts to enlist Avelino de Guzman, the Deputy Director of the Coastal and Geodetic Survey, as an advisor.

At the Geneva Conference, the delimitation of baselines for the territorial sea and the determination of its breadth were matters of critical importance to the Philippines. With respect to the former, the International Law Commission established the principle of the low-water line, which provides that each island has its own territorial sea. However, the Philippines objected to the application of this norm in its case. Several authorities in international law have argued that archipelagos should be treated as a single unit with a unified territorial sea rather than assigning a separate territorial sea to each individual island (Evensen, 1957). With respect to the

latter, maritime powers, led by the United States, advocated for a territorial sea limit of six nautical miles. However, for the Philippines, "with the application of this six-mile limit the Sibuyan Sea would become high seas or international waters. And way down in the Sulu Sea, it would become international water, and likewise, the Mindanao Sea. So that Luzon would be practically separated from the Visayan islands and the Visayan islands separated from Mindanao and Sulu, and Palawan would be isolated from the rest of the country, from the Straits of Mindanao" (Lotilla, 1995). Additionally, "With that converting the Sibuyan and the Mindanao Seas into high seas or international waters that means that any warship of any country can enter these waters with full rights under international law and we cannot do anything about it legally. It also means that fishermen of any country can bring their ships into and enter these seas and bring any fish resources from those far countries" (Lotilla, 1995). Thus, the Philippine delegation sought to prevent the application of general rules on the territorial sea to the Philippines and worked to secure recognition of the country's special status. Their strategy involved two key approaches: first, articulating in the General Assembly the unique basis and exceptional nature of the Philippines' territorial sea claim; second, supporting the resolutions proposed by other states while requesting the inclusion of a clause explicitly stating that the rules established in those resolutions would not apply to the historic waters of the Philippines (Lotilla, 1995).

Both approaches were unsuccessful. Nonetheless, according to Tolentino,

> *"the failure of the Geneva Conference to agree on the breadth of the territorial sea means that the Philippines' claim to the legal status of the waters within the 'treaty limits' remains unaffected. While debates over 6 nautical miles and 12 nautical miles created deadlock, with some even advocating for a 200-nautical-mile territorial sea, the Philippine claim, grounded in historical sources of entitlement, was neither attacked nor countered by any country in the General Assembly. Although the United States refused to include our exception in the resolution, it did so out of concern that other countries might follow suit. The motion to establish the Philippine territorial sea regime is now being introduced to consolidate the advantages gained by the Philippines at the Geneva Conference.*

> *If the international community adopts a uniform breadth of the territorial sea without recognizing the Philippine exception, I would recommend to the Department of Foreign Affairs and the government that the regime not be recognized. Should a future dispute arise between the Philippines and a foreign country over the breadth of the territorial sea, the Philippines will submit the matter to the International Court of Justice for resolution"* (Lotilla, 1995).

Second, the "national territory" clause in the Constitution had shortcomings. To gain international acceptance of the Philippines' special territorial sea claims, the first step is to establish the 1987 Philippine Constitution as the legal title for recognising both the land and sea within the "treaty limits" as part of the Philippine territory. However, the "treaty limits" alone were insufficient, as the three international treaties provided no clear basis for transferring large areas of waters within these limits to the Philippines.4 Consequently, the Filipinos identified two additional legal instruments to support their claims: the Tydings-McDuffie Act of 1934 and the Fisheries Act of 1932, despite differences in their wording. The fisheries law enacted in 1932 declared, in its Article II ("Definitions"), that "Philippine waters, or territorial waters of the Philippines, includes all waters pertaining to the Philippine Archipelago, as defined in the treaties between the United States and Spain" (Severino, 2011). The Philippines asserts that both laws were recognised by the United States and that its exercise of sovereignty over the specified sea areas has not been challenged by any country. The second step involved determining the boundary between the internal waters and the territorial sea. However, there is no clear basis for this in the Philippine Constitution, and the Philippine note submitted to the United Nations on 7 March 1955, contains only a vague statement on the matter.

Third, there was a practical need to negotiate with Japan. At the time, representatives from the Philippines and Japan were engaged in discussions on a treaty concerning trade and navigation in Tokyo. Upon his return from the Geneva Conference, Tolentino met with the Philippine negotiating team in Tokyo. He believed that the adoption of territorial sea law would support and facilitate the efforts of the expert negotiating team (Republic of the Philippines National Assembly, 1983-1984).

Fourth, in 1951, the International Court of Justice, in the *Anglo-Norwegian Fisheries* case, upheld the Norwegian King's Dahir, which

connected 48 baselines linking headlands, islands, and reefs along the outer edge of the Norwegian coastline to form a straight baseline. The court declared that the sea area extending four nautical miles seaward from the baseline constituted Norway's exclusive fishing zone. This decision inspired the Philippines to develop its state practice for establishing a regime of special territorial sea (Lotilla, 1995).

2.2 Legislative Process of Republic Act No. 3046

The issue of establishing a territorial sea baseline ordinance was first raised in the Philippine Senate on 3 May 1960, when Senator Tolentino introduced Senate Bill No. 541, "An Ordinance Establishing the Baseline of the Territorial Sea of the Philippines", which was first read and passed on 4 May 1960, and referred to the Committee on Foreign Affairs the same day. On 6 May 1960, the Committee on Foreign Affairs returned the bill to the Senate with Committee Report No. 1264, which concurred with the Tolentino version and recommended its passage without amendment. On 7 May 1960, the Senate passed the bill on its first reading. On 17 May 1960, the Senate approved the bill on second reading with amendments, followed by its passage on third reading the same day. On 18 May 1960, the bill was sent to the House of Representatives for concurrence. On 19 May 1960, the House read the bill first and referred it to the Committee on Transportation and Communications. On the same day, the Committee on Transportation and Communications submitted the Committee Report No. 3072, which recommended passage. Finally, on 5 May 1961, the House unanimously passed the bill on second reading without amendment (House of Representatives, 1964). On 18 May 1961, the House of Representatives passed the bill on third reading without amendment, with 35 votes in favour, 29 against, and 4 abstentions. On the same day, the United States issued Note Verbale No. 836 through its embassy in the Philippines, declaring that the United States Government could not regard claims based on the present legislation as binding upon it or its nationals (The Geographer, 1973). On 17 June 1961, a certified copy of the bill was submitted to the presidential office, and on the same day, President Macapagal approved it as Republic Act No. 3046.

2.3 Main Elements of Republic Act No. 3046

Republic Act No. 3046 establishes the baselines from which the territorial sea of the Philippines is to be measured, using straight lines connecting the appropriate points of the islands on the outer edge of the archipelago. The sea between the baselines and the "treaty limits" is designated the territorial sea, whereas the waters enclosed by the baselines are classified as the internal waters of the Philippines (Lotilla, 1995). The contents of the Act and the Congressional Record highlight four key aspects: reaffirmation of the legal status of the "treaty limits"; establishment of the baselines of the territorial sea, consisting of 80 straight baselines connecting the outermost points of the outermost islands of the Philippine mainland; clarification of the extent and status of internal waters, within which the Philippines exercises exclusive sovereignty; and clarification of the extent and status of the territorial sea, where foreign vessels are granted only the right of innocent passage. This law effectively provides the foundation for establishing the Philippines as an archipelagic state (Chiang, 2016).

According to a report by the United States Department of State, the total length of the 80 straight baselines established by the act, which is based on 82 selected points, is 15,139.910 nautical miles, with an average baseline length of 102.185 nautical miles. The longest baseline, Baseline 26, which connects Moro Bay, measures approximately 140.05 nautical miles, whereas the shortest baseline, Baseline 63, which is located far north, connects Yami Island (west) to Yami Island (centre) and measures approximately 0.1279 nautical miles. Of the 80 baselines, three exceed 100 nautical miles, accounting for approximately 3.75 per cent of the total. The land-to-water ratio within the baselines is 1.841:1. The baselines encompass key waterways, including the Sibutu Passage in the Surigao Strait, the Balabac Strait, the Mindoro Strait, and internal passages between various Philippine islands. Significant bodies of water, such as the Sulu Sea, Moro Bay, Mindanao Sea, and Sibuyan Sea, are also enclosed within the baselines. Notably, the island of Palmas, which belongs to Indonesia, falls within the territorial waters claimed by the Philippines. The area enclosed within the baselines is approximately 2.8 times the size of the original "national territory", whereas the area within the "treaty limits" is approximately six times larger than the original "national territory" (The Geographer, 1973).

2.4 Philippine Congressional Discussions on the Waters West of Palawan and Certain Islands or Reefs of the Spratly Islands during the Legislative Process of Republic Act No. 3046

The Philippine Congressional Record contains four references to the issue of the waters west of Palawan and parts of the Spratly Islands. The first three occurred on 17 May 1960, during the Senate's second reading of Senate Bill No. 541. The fourth reference was made on 18 May 1961, when the House of Representatives conducted its third reading vote.

First, Senator Fernandez raised questions to Senator Tolentino regarding the waters west of Palawan.

Senator Fernandez and Senator Tolentino engaged in a dialogue addressing concerns over the territorial sea west of Palawan. Senator Fernandez highlighted the richness of fish and natural resources in the waters around Palawan and expressed concern over the relatively narrow territorial sea in this area compared with the broader sea boundaries around Luzon. He questioned whether it would be possible to extend the territorial sea west of Palawan to prevent incursions by foreign fishermen. However, Senator Tolentino stated that such an extension would be legally challenging due to the constraints of the Philippine Constitution, which delimits the country's territory. Tolentino emphasised that the "black lines" ("treaty limits") on the map reflect the boundaries outlined in the Constitution and that any expansion would need to conform to these constitutional limits. Fernandez, referencing the concept of "historic waters", suggested that the long-standing presence of Filipino fishermen in the waters west of Palawan could justify an expanded territorial sea. However, Tolentino raised concerns about diplomatic and legal implications, particularly during international conferences. He argued that claims extending beyond the constitutional boundaries would place the Philippine delegation in an "embarrassing position", especially if challenged by other states such as the United States. The conversation also touched upon "Freedom Island", with Fernandez inquiring about its location.[3] Tolentino admitted that he could not identify it on the map and speculated that it might lie outside the Philippine territorial limits, as it was contested by other countries. Fernandez reiterated his concern that without expanding the territorial sea, foreign fishermen could exploit the resources west of Palawan. Tolentino explained that during international conferences, the Philippine delegation supported amendments recognising "preferential rights" for coastal states

to fish beyond their territorial seas. However, these amendments failed to secure the necessary votes for adoption. Fernandez proposed a hypothetical scenario in which future unilateral action might allow the Philippines to expand its territorial sea. He expressed concern that the current baseline law could later be invoked as a form of estoppel by adversely affected countries. In response, Tolentino clarified that future congresses could repeal or amend the law to widen the territorial sea, provided that such actions are aligned with constitutional provisions. He humorously added that the Constitution might even be amended to claim parts of Borneo or Formosa in the future. Finally, Fernandez argued that the act of Filipino fishermen operating in waters beyond "treaty limits" could serve as a basis for territorial expansion. Tolentino disagreed, stating that these fishermen acted as individuals, not representatives of the state. He cautioned against recognising such acts as assertions of sovereignty, noting that it could create a precedent for other nations, such as Japan, to claim seas near Philippine coasts. He emphasised the risks of such an approach, given the Philippines' smaller fishing fleets than Japan's (Lotilla, 1995).

These dialogues indicate that Tolentino did not believe there was justification for extending the Philippines' territorial sea into the fishery-rich waters west of Palawan. He was unaware of the specific location of "Freedom Island" and did not consider the mere acts of possession by fishermen as sufficient grounds to claim ownership over the sea areas where they operated. Furthermore, he argued that the activities of individual Filipino fishermen fishing beyond the "treaty limits" could not represent the intent of the Philippine government, nor could the government use such activities as a basis for asserting possession or sovereignty. Recognising this principle, he warned, would place the Philippines in a disadvantageous position.

Second, Senator Rodrigo questions Senator Tolentino about "Freedom Island".

Senator Rodrigo and Senator Tolentino discussed the implications of the Philippine Constitution for territorial adjustments. Senator Rodrigo sought clarification, emphasising that the Constitution does not prevent the Philippines from adding to or subtracting from its territory without amendment. Senator Tolentino affirmed this, explaining that territory can be ceded or acquired through constitutional processes or methods recognised by international law. Senator Rodrigo used "Freedom Island" as an example,

acknowledging uncertainty about its location relative to the "treaty limits". Tolentino confirmed that it lies outside these limits. Rodrigo then asked if claiming an unoccupied, unclaimed island outside the "treaty limits" would be prohibited by the Constitution. Tolentino responded that claiming such territory by discovery, for instance, would constitute a legal title. He noted that the Constitution does not prevent asserting sovereignty over newly discovered territories outside the "treaty limits", provided that it aligns with international law (Lotilla, 1995).

This dialogue reveals that Tolentino believes that the Philippines' "treaty limits" do not prevent the country from acquiring new territory. However, he asserts that such acquisition would be subject to specific conditions: the territory must be *terra nullius* and must be discovered by individuals authorised by the government. Tolentino's comments were hypothetical, as it is evident that the Spratly Islands were not terra *nullius* at that time and that the activities of Philippine vessels in parts of the Spratly Islands and their surrounding waters had not been officially sanctioned by the government.

Third, Senator Marcos questioned Senator Tolentino.

Senator Marcos and Senator Tolentino discussed the status of islands between the baselines and "treaty limits" marked on the map in detail. Senator Marcos asked about the fate of these islands, to which Senator Tolentino clarified that islands outside the baselines are not considered part of the internal waters but fall within the territorial sea, remaining Philippine territory. Tolentino stated that all major islands are included within the baselines since the baselines are drawn from appropriate points in the outermost islands. Marcos pressed further, questioning whether there were any substantial islands beyond the baselines. Tolentino explained that most features outside the baselines are coral formations, which, if submerged at high tide, do not meet the international definition of islands. Marcos noted reports suggesting that some islands might exist outside the baselines, which had been studied by geographers. Tolentino noted that the baselines were reevaluated in the latter part of the previous year. Marcos then shifted to inquire about the three-mile limit and whether it could extend below the waterline, to which Tolentino agreed. Marcos highlighted the controversy surrounding "Freedom Island" and noted the absence of islands west of Palawan within the baselines. Tolentino explained that these features are primarily shoals and not islands in the true sense. Marcos then posed a hypothetical question about the possibility of claiming that islands that

might be discovered, formed, or otherwise appear outside the baselines but within the territorial limits. Tolentino noted that such claims would not be possible under the current framework. He emphasised that the primary function of baselines for an archipelago such as the Philippines is to define the boundary between territorial waters and the territorial sea. Regardless of whether features fall within territorial waters or the territorial sea, they remain part of the Philippine territory as long as they are within the "treaty limits" (Lotilla, 1995).

In this dialogue, Senator Marcos referred to "Freedom Island" west of Palawan, but his use of the singular form suggested that he was unaware of the full extent of Cloma's so-called "Freedom Island". He did not indicate that the Philippine government had a territorial claim to "Freedom Island". According to Tolentino's interpretation, the Philippines could have potentially acquired it on the basis of principles recognised by international law. However, if Tolentino's perspective is followed, the coral islands in the Spratly Islands cannot be considered true islands. It seems likely that Tolentino does not view some of the Spratly Islands west of Palawan as subject to Philippine territorial acquisition.

Fourth, on the third reading, Representative Ligot (R-IL) voted against the passage of the bill.

Mr. Ligot expressed strong opposition to the bill, labelling it an act of treason for unilaterally limiting the country's territorial jurisdiction. He criticised the bill as "stupidity" for curtailing the Philippines' rights of conquest, discovery, and territorial claims, specifically referencing North Borneo and "Freedom Island" discovered by Commander Cloma. Ligot firmly stated, "I vote a thousand times No on this bill" (House of Representatives, 1964). Ligot noted Cloma's territorial claim of "Freedom Island", but his use of the singular suggests that he was unaware of the full details. He expressed concern that the passage of the bill could negatively affect future Philippine claims to Sabah and certain islands in the South China Sea. However, his opposition was brief and was not shared by the majority of lawmakers. His opposition was short-lived and was not followed by the other legislators.

2.5 Comments

Tolentino's proposal for an act on the baselines of the territorial sea was significantly influenced by his experience at the Second United Nations

Conference on the Law of the Sea. Although the conference failed to reach an agreement on the exact breadth of the territorial sea, there was a noticeable trend within the international community towards establishing a uniform width for territorial seas. Regardless of the breadth ultimately adopted, it is unlikely to fully satisfy the Philippines. Therefore, the Philippines needs to clarify its territorial sea regime before a universally accepted territorial sea breadth can be established. Tolentino addressed this challenge by proposing the adoption of a straight baseline approach, drawing on the precedent set by the *Anglo–Norwegian Fisheries* case. From both theoretical and practical perspectives, Tolentino also considered the potential adverse effects that the territorial sea baseline law might have on Sabah, which lies outside the baselines. The final conclusion was that no such adverse effects exist, as the Constitution does not restrict the Philippines from acquiring new territory on the basis of internationally recognised principles of international law. Furthermore, the current Republic Act No. 3046, which aimed to establish state practices for the territorial sea claims of archipelagic states, would have long-term implications for the Philippines without hindering its future ability to define the baselines of other territories. The only practical concern, however, was to avoid antagonising the Malaysian government.

While Republic Act No. 3046 reaffirms the three international treaties that define the territorial limits of the Philippines and establishes territorial sea baselines for the mainland, it does not preclude the Philippines from asserting new or reaffirming existing territorial claims. However, on the basis of the four congressional references concerning the west waters of Palawan, even key figures such as Tolentino and Marcos (who later became President of the Philippines) were unaware of the exact location of "Freedom Island". According to Tolentino, claims to new territories beyond the "treaty limits" were contingent on the principles of *terra nullius* and discovery by government-authorised persons. He further argued that at the time, the Philippines lacked the capacity for distant-water fishing, and thus, even if individual fishermen ventured beyond the "treaty limits", their actions could not be considered representative of the Philippine government's intentions. In Tolentino's view, the Philippines could not claim ownership on the basis solely of the fishing activities of private individuals. If this principle was acknowledged, it could imply that Japanese fishing vessels would be legally allowed to operate within the Philippines' "treaty limits". Tolentino's

statements suggest that, at that time, he did not recognise "Freedom Island", as claimed by Cloma, as Philippine territory. Given his knowledge and position, it is unlikely that he would have made such a statement if he had regarded it as part of the Philippines. It is also evident that Republic Act No. 3046 was not intended as a legislative exercise concerning the "Kalayaan Islands" or Scarborough Shoal. Neither the Act nor its accompanying tables identify the "Kalayaan Islands" or the Scarborough Shoal as Philippine territorial sea basepoints.

3. Evaluation of the Philippine Territorial Sea Law of 1968: Republic Act No. 5446

3.1 Legislative Background

Senate Bill No. 954, filed by Tolentino on 18 July 1968, served as the basis for Republic Act No. 5446. Tolentino's primary motivation for introducing the bill was to address errors in the names and technical descriptions of several baselines in Republic Act No. 3046, emphasising that these corrections "would in no way alter the baselines of the territorial sea of the Philippines" (Senate of the Philippines, 1968). Additionally, the bill was filed in response to a request from the Secretary-General of the United Nations for the Philippines to submit a copy of the baseline descriptions of its territorial sea, accompanied by a map illustrating those baselines (Senate of the Philippines, 1968).

3.2 Legislative Process of Philippine Law 5446

On 19 July 1968, Senate Bill No. 954 passed its first reading in the Senate and was referred to the Committee on Foreign Relations for consideration. On 22 July 1968, the Committee on Foreign Relations filed Report No. 1788, which recommended the immediate passage of the bill. On 24 July 1968, the Senate began deliberating on the bill during its second reading, which was passed with amendments on 5 August 1968. The Senate unanimously passed the bill on third reading on 8 August 1968, and it was sent to the House of Representatives for concurrence on the next day. The House passed the bill on first reading on August 9, referring it to the Committee on Foreign Affairs. On August 22, the Committee on Foreign Affairs filed Report No. 4013, which recommended that Senate Bill No. 954 be considered after being consolidated with House Bill Nos. 17834 and 17936. On August 26,

the bill was read a second time and passed with amendments on the third reading. It was returned to the Senate on August 27 and referred to the Rules and Foreign Relations Committees on August 28. On August 28, the House signalled its willingness to accept the Senate's request for a joint committee if the Senate disagreed with the House amendments. The Senate responded by rejecting the amendments and requesting the formation of a joint committee. The joint committee issued a report on the same day, indicating that both chambers had reached an agreement. The House and Senate subsequently approved the report and the final version of the bill, incorporating changes from the joint committee. On 12 September 1968, the finalised bill was sent to the presidential office and was signed into law by the president on 18 September 1968, becoming Republic Act No. 5446.

3.3 Key Elements of the Republic Act No. 5446

Republic Act No. 5446 amended Section 1 of Republic Act No. 3046 to address typographical errors, primarily errors in the measurement of baseline lengths. Additionally, the act directly reaffirmed the Philippines' territorial sovereignty over Sabah in northern Borneo, reflecting a response to nationalist pressures (Lotilla, 1995). Republic Act No. 5446 establishes a total of 80 straight baselines, although the serial numbers of the baselines identified only reach 64, with some baselines listed using numbers followed by "a" and "b". The total baseline length is approximately 15,140 kilometres (approximately 8,175 nautical miles), with three baselines exceeding 100 nautical miles, accounting for approximately 3.75 per cent of the total. The longest baseline is approximately 259.4 kilometres (140 nautical miles), whereas the shortest baseline is approximately 0.178 kilometres. The average baseline length is 64 kilometres (35 nautical miles), enclosing an area of approximately 884,000 square kilometres with a land-to-water ratio of approximately 1.9:1. It has been argued that the ratio of land to water in the baseline had a decisive influence on the relevant provisions of the 1982 Convention that were to follow, since this land–water ratio allowed the Convention to set the land–water ratio at a level between 9:1 and 1:1 (Chiang, 2016).

3.4 Discussions in the Philippine Congress on the Legal Status of the Maritime Features in the Spratly Islands During the Legislative Process of Republic Act No. 5446

Senator Pelaez and Senator Tolentino addressed the scope of the Philippines' maritime claims and their implications for security and resource exploration.

Senator Pelaez raised the issue of whether the Philippines' territorial sea definition would preclude the country from asserting mineral rights beyond inland waters, referencing claims made by other nations such as Venezuela and New Zealand to resources located far beyond their territorial boundaries. Senator Tolentino explained that the Philippines, as an archipelagic state, follows a unique system of baselines. Unlike continental states, which base their territorial sea claims on fixed distances (e.g., 3, 6, 12, or 24 miles), the Philippines connects the outermost points of its islands with baselines, designating all waters within as inland waters akin to rivers and lakes. The waters beyond these baselines but within the "treaty limits" defined in the Constitution are considered territorial seas. He clarified that this approach allows the Philippines to claim significant areas of maritime territory, including distances of up to 100 miles on the South China Sea side of Luzon and 200 miles on the Pacific Ocean side, reflecting a special rule for archipelagos. Senator Pelaez, however, expressed concerns about the implications of this definition for the Philippines' ability to assert rights beyond these limits, particularly in sea areas such as the continental shelf. He cited examples of Venezuela and New Zealand exercising rights to resources far beyond their territorial seas and sought confirmation that the Philippines' baseline delineation would not preclude similar claims or actions. Senator Tolentino affirmed that the delineation of archipelagic baselines would not affect the Philippines' right to explore or claim resources on the continental shelf, which extends far beyond territorial boundaries. Senator Pelaez also voiced specific security concerns about the large area west of Palawan, noting that it is not a navigable sea but could be strategically significant if it was controlled by hostile power. He stressed the importance of ensuring that the definition of baselines and inland territorial waters does not prevent the Republic from taking measures to secure this sea area or from exercising rights over marine resources in these waters. Senator Tolentino assured him that the delineation of baselines would not hinder the Philippines from asserting its rights for security or resource exploration beyond its territorial waters (Senate of the Philippines, 1968).

From this discussion, it is evident that the senators were aware of the islands west of Palawan and expressed concerns that control of this sea area by hostile countries could threaten Philippine security. The issuance of mineral resource licences was seen as a means of safeguarding the security of the western Philippines. Tolentino, however, was merely reiterating the general provisions of the recently issued Proclamation No. 370, and it appears that even he lacked a clear understanding of the exact extent of the Philippine continental shelf. No senator has raised the issue of territorial claims over any islands or reefs in the Spratly Islands, let alone territorial claims to Scarborough Shoal. This indicates that, at most, legislators were concerned about security issues but did not consider some of the islands and reefs in the Spratly Islands to be part of the Philippine territory. It also highlights that the 1956 "Freedom Island" territorial request made by Filipino Cloma had not yet been recognised by these legislators, who still did not consider the islands and reefs scattered across the sea west of Palawan to be part of the Philippine territory. Otherwise, given the strong reactions of legislators regarding the Sabah issue, a territorial sovereignty claim over these islands would likely have been frequently raised during discussions or included in Republic Act No. 5446. However, no such records can be found in congressional debates.

3.5 Comments

Senate Bill No. 954, initially introduced by Tolentino, aimed primarily at clarifying the archipelagic status of the Philippines and the special regime of its territorial sea, specifically to correct typographical errors in the names, coordinates, and lengths of several baselines established under Republic Act No. 3046. To avoid objections from other states, it was decided to connect only the outermost points of the Philippines' outermost islands with straight baselines extending from the mainland, designating the waters within these baselines as internal waters and the sea areas up to the "treaty limits" as the territorial sea. However, three of the 80 straight baselines in the proposed amendment exceeded 100 nautical miles, which did not meet the 3 percent criterion outlined in the 1982 United Nations Convention on the Law of the Sea, leading to a revision of the act in 2009. For other areas over which the Philippines asserts sovereignty—such as Sabah and areas it may acquire in the future—Tolentino maintained that none of these claims were affected

by the current territorial sea baseline law. Tolentino's decision to submit the bill solely aimed at correcting typographical errors, without diminishing the country's territorial claims, was a strategic move designed to ensure international recognition of the Philippines' archipelagic state status. This approach was made with the long-term interests of the Philippines in mind.

The Philippines has never denied that the "Kalayaan Islands" or Scarborough Shoal lies outside the "treaty limits" established by Republic Act No. 5446. However, like Republic Act No. 3046, Republic Act No. 5446 represents a state practice aimed at advancing the Philippines' territorial sea claims or its status as an archipelagic state, without addressing territorial claims beyond the "treaty limits". During the legislative process for both laws, the relationship between the "treaty limits" and territorial acquisition was extensively debated in Congress and received broad support from legislators. Without such support, it would have been impossible for these laws to pass, given the political dynamics in the Philippines. From an international law perspective, Republic Act No. 5446 does not constrain the Philippines from making new territorial claims. However, owing to its general applicability, it also does not support the Philippines' territorial claim to the "Kalayaan Island Group" or Scarborough Shoal. Congressional records of the discussions surrounding Republic Act No. 5446 reveal that, at the time, Cloma's territorial claim to "Freedom Island" had not been recognised by Congress. While unrelated to the South China Sea disputes, the Sabah issue provides a "mirror". The impassioned speeches delivered by members of the House and Senate on the issue of Sabah left a striking impression. If Cloma's "Freedom Island" claim had been considered Philippine territory, the legislators would not have remained silent. This stands in stark contrast to the legislative process surrounding Republic Act No. 9522 in 2009. Thus, while Republic Act No. 5446 does not restrict the Philippines from asserting new territorial claims, the silence of nearly all legislators on the issue of sovereignty over the Spratly Islands or Scarborough Shoal, compared with their fierce reactions over Sabah, suggests that the majority of Filipinos at the time did not regard "Freedom Island" as Philippine territory. At this stage, the primary driver of Philippine interest in the South China Sea was security concerns, with oil and gas resources only beginning to enter the nation's strategic considerations.

4. International Jurisprudence on Territorial Sea Laws in Territorial Disputes

The 1961 and 1968 Philippine territorial sea laws do not constitute recognition of China's territorial sovereignty in the South China Sea. However, they do provide some support for China's claims. This conclusion is based not only on the facts mentioned above but also on international jurisprudence.

In the Pulau Ligitan and Pulau Sipadan Sovereignty Case between Indonesia and Malaysia, which was decided by the International Court of Justice (ICJ) in 2002, Indonesia referred to its Indonesian Territorial Sea Law of 18 February 1960, which defined the country's territorial sea. This law established baselines for Indonesia's territorial waters but did not include Ligitan and Sipadan as baselines for the purpose of defining the extent of Indonesia's archipelagic waters and territorial sea. Indonesia argued that this omission should not be interpreted as a denial of the islands' inclusion in its territory. The 1960 law, which was introduced promptly, was intended to set a precedent on the concept of archipelagic state waters ahead of the Second United Nations Conference on the Law of the Sea. In contrast, Malaysia noted that Indonesia had shown no interest in the islands of Ligitan and Sipadan during the first 25 years of independence, nor had Indonesia enacted any laws or regulations concerning the disputed islands and their adjacent waters. Malaysia further emphasised that Indonesia's 1960 legislation included a map defining its waters and listing specific datums, but the two disputed islands were not included in the baselines of the territorial sea. This omission in both the legislation and the map suggested that Indonesia did not consider Ligitan and Sipadan as part of its territory at the time. The ICJ concluded that Indonesia's 1960 legislation and the accompanying map did not reflect any legislative action regarding the disputed islands and that the omission of Ligitan and Sipadan from the baselines of Indonesia's territorial sea did not constitute a formal recognition of Malaysia's sovereignty over the islands. However, the Court acknowledged that the omission provided some support for Malaysia's claim, even though it was not a conclusive or direct recognition of Malaysian sovereignty (ICJ, 2002).

Although the Philippines does not base its claim to territorial sovereignty over "Kalayaan Island Group" or Scarborough Shoal on Republic Act No. 3046 and 5446, it is highly likely to follow Indonesia's example by asserting that this approach should not be interpreted as the

Philippines not regarding these islands as part of its territory; the swift enactment of the 1961 law was primarily aimed at setting a precedent for the concept of archipelagic waters before the Second United Nations Conference on the Law of the Sea. The 1961 and 1968 Philippine legislations included tables that defined the country's waters by listing basepoints, but they did not designate "Kalayaan Island Group" or Scarborough Shoal as basepoints of the territorial sea. China could argue that this legislation and its accompanying tables indicate that the Philippines did not regard "Kalayaan Island Group" or Scarborough Shoal as part of its territory at the time. The two legislations delineating the baselines of its archipelago do not constitute a legislative activity specifically targeting the "Kalayaan Island Group" or the Scarborough Shoal. Neither the legislation nor its accompanying tables designated these islands as base points of the Philippines' territorial sea. While this does not amount to recognition of China's sovereignty, it does provide some degree of support for China's claims.

In March 2009, the Philippines enacted Republic Act No. 9522, which was harmonised with the UNCLOS and declared that the "island regime" applies to "Kalayaan Island Group" or Scarborough Shoal, over which "the Philippines has sovereignty and jurisdiction". However, this law does little to demonstrate that the territorial disputes over "Kalayaan Island Group" or Scarborough Shoal were not crystallised prior to 2009. Although the law is a continuation of Republic Act No. 5446, it is clearly inconsistent with the earlier act in terms of the territorial scope of its application. The Philippines has also relied on Republic Act No. 9522 to increase its legal status with respect to the "Kalayaan Island Group" or the Scarborough Shoal. Therefore, according to the "critical date" doctrine, the value of the 2009 Philippine legislation in determining sovereignty over the "Kalayaan Island Group" or Scarborough Shoal should be disregarded.[4]

5. Conclusion

This study examines the legislative development of the Philippines' territorial sea claims after its independence in 1946, focusing on Republic Acts No. 3046 and No. 5446 enacted in the 1960s, which defined the territorial scope of the Philippines and established the baselines of its territorial sea without mentioning the Spratly Islands or Scarborough Shoal. The acts reflect the historical reality that these islands were not considered part of the Philippine territory at the time, with Philippine congressional

records and international jurisprudence supporting this inference. The Philippines' occupation of parts of the Spratly Islands and Scarborough Shoal after the 1970s was new and untenable. The Philippines has remained silent on this issue because engaging in a thorough discussion undermines its position and hinders its efforts to use the South China Sea arbitration ruling, which avoids addressing territorial sovereignty, for international propaganda. The recent enactment of the 2024 Philippine Maritime Zones Act, aimed at aligning domestic legislation with UNCLOS, represents an effort to expand maritime claims, including in the South China Sea. Such measures are intended to obscure the fragility and illegality of the Philippines' territorial claims in the South China Sea, divert the attention of the international community, and mislead its perception. Rather than unilaterally enacting legislation, the Philippines should acknowledge historical facts and pursue constructive dialogue to resolve disputes. The resolution of the South China Sea issue depends on adherence to bilateral agreements, regional cooperation, and the avoidance of actions that escalate tensions, thereby promoting stability and mutual benefit for all parties.

Notes

[1] Throughout the rest of the text, the name Spratly Islands or Scarborough Shoal is used unless otherwise stated.

[2] The "treaty limits" of the Philippines refer to the boundaries established during its colonial period under the Treaty of Paris (1898), the Treaty of Washington (1900), and the Convention between the United States and Great Britain (1930). These treaties defined the geographical extent of the Philippine territory as recognised internationally at the time, encompassing the islands ceded by Spain to the United States. The concept of "treaty limits" has been cited in Philippine legislation to outline its territorial sea and jurisdiction, although its relevance under modern international law remains contested.

[3] The so-called "Freedom Island" was identified by the Philippine national Tomas Cloma in the 1950s as part of his self-declared "Freedomland". In reality, it is part of the Spratly Islands, a group of islands, reefs, and shoals in the South China Sea. The Spratly Islands

have been historically regarded as a unified geographical entity (Valencia, 1997).

[4] In 1928, arbitrator Max Huber first introduced the concept of the critical date in the Palmas Island Sovereignty Arbitration case as follows: "If a dispute arises as to the sovereignty over a portion of territory, it is customary to examine which of the States claiming sovereignty possesses a title—cession conquest, occupation, etc.—superior to that which the other State might possibly bring forward against it. However, if the contestation is based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereign" (Reports of International Arbitral Awards [RIAA], 1928). The critical date plays an important role in distinguishing between two kinds of sovereign acts, one occurring prior to the crystallisation of the dispute, which should be considered by the tribunal in establishing or determining sovereignty over the disputed territory, and the other occurring after that date, which has no significance for the establishment or determination of sovereignty over the disputed territory. There are various methods of determining the critical date, but "generally, the critical date can be set when the dispute arises or crystalizes between the parties. This may occur where one state asserts that it has gained title by prescription against another with an original but lapsed title or, as is more likely, where the original sovereign protests" (Triggs, 2010).

Reference List

Austin G. (1998), "China's Equal Rights in the Spratly Islands", in Austin G., *China's Ocean Frontier: International Law, Military Force and National Development*, Australia: Allen and Unwin, pp. 131-161.

Batongbacal J. L. (1997), "The Philippines' Right to Designate Sea Lanes in Its Archipelagic Waters under International Law", *The Ocean Law and Policy Series*, Vol. 1, No. 1, p. 82.

Evensen J. (1957), "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos", Document No. A/CONF.13/18, Extract from the Official Records of the United Nations Conference on the Law of the Sea, Vol. 1 (Preparatory Documents).

House of Representatives (1964), Congressional Record, 4th Congress (1958-1961), *Proceedings and Debates, 4th Regular Session, Jan. 23, 1961—May. 18*, 1961, Vol. IV-Part II, Apr. 11—May. 18, Capitol Publishing House, Inc, p. 2646.

Huang-chih, C. (2016), "An Analysis of the Archipelagic Regime of the Philippines: From an International Law Perspective", *Taiwan International Studies Quarterly*, No. 4, p. 19.

Lotilla, R. P. M. (1995), *The Philippine National Territory: A Collection of Related Documents*, Institute of International Legal Studies, University of the Philippines Law Center.

Official Gazette of the Republic of the Philippines (1971), Vol. 67:29, pp. 5673-5674.

Proelß A. (2017), *United Nations Convention on the Law of the Sea: A Commentary*, C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden, pp. 37-38.

Republic of the Philippines National Assembly [*Batasang Pambansa*] (1983-1984), *Record of the National Assembly* [*Batasan*], *First Batasan Sixth Regular Session*, Vol. 4, p. 707.

Republic of the Philippines (2009), "Republic Act No. 9522, An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baseline of the Philippines and for Other Purposes", *Philippine Laws and Jurisprudence Databank*, http://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html.

Reports of International Arbitral Awards (1928), "Island of Palmas Case (Netherlands/United States of America)", *Reports of International Arbitral Awards*, Vol. 2, pp. 829-871.

Senate of the Philippines (1968), *Congressional Record*, p. 355.

Severino, R. (2011), *Where in the World is the Philippines? Debating Its National Territory*, Institute of Southeast Asian Studies, p. 22.

State Council News Office of the People's Republic of China (2016), "China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South

China Sea", https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/201607/t20160713_8527301.htm.

The Geographer (1973), *Straight Baselines: Philippines, Limits in the Sea*, No. 33, p. 9.

The Permanent Delegation of the Philippines to the United Nations (1955), "Note Verbale from the Permanent Delegation of the Philippines to the United Nations", Document A/CN.4/94, 2. In: UN, *Yearbook of the International Law Commission* (pp. 52–53). New York: UN.

The Permanent Delegation of the Philippines to the United Nations (1956), Document A/CN.4/99, A/CN.4/SER.A/1956/Add. 1, 2. In: UN, *Yearbook of the International Law Commission* (pp. 69–70). New York: UN.

Triggs, G. D. (2010), *International Law: Contemporary Principles and Practices*, Chatswood, N.S.W.: Lexis Nexis Butterworths.

United States Embassy (1961), *Note No. 836 of May 18, Declaring Inter Alia "...the United States Government Could Not Regard Claims Based on the Present Legislation as Binding Upon It or Its Nationals*."

United Nations Treaty Series (1964), "No. 7477. Convention1 on the Territorial Sea and The Contiguous Zone. Done at Geneva, on 29 April 1958", *United Nations — Treaty Series*, https://treaties.un.org/doc/Publication/UNTS/Volume%20516/volume-516-I-7477-English.pdf.

Valencia, M. J., Van Dyke, J. M., and Ludwig, N. A (1997), *Sharing the Resources of the South China Sea*, Martinus Nijhoff Publishers.

Zhong, S (2012), "China has a Strong Legal Basis for Sovereignty over Huangyan Island", *People's Daily*, May 9, p. 3.

Zou, K. Y. (1999), "Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?", *IBRU Boundary & Security Bulletin*, Vol. 7, No. 2, p. 71.

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 95–120 https://doi.org/10.22452/ijcs.vol16no1.6

ASEAN's Norm Subsidiarity Strategy in Shaping Regional Order in the South China Sea°

Pengfei *Pu**

Abstract

In order to avoid further erosion of its own autonomy and marginalization in the shaping of the order in the South China Sea, ASEAN has actively taken the initiative to strengthen the shaping of the order in the South China Sea by resorting to the principle of norm subsidiarity. On the one hand, it has resisted negatively the U.S.-advocated norm of "freedom of navigation" through the strategy of norm indifference. On the other hand, it has resisted positively the Chinese-advocated norm of "bilateralism" through the strategy of local norm practice. ASEAN's actions have achieved certain results in resisting the influence of great power norms, but have achieved limited results in promoting the dominant position of ASEAN norms. In the future, ASEAN needs to speed up the conclusion of a more substantive "Code of Conduct in the South China Sea" with China, strengthen internal unity and solidarity, enhance the influence of ASEAN norms, and revive ASEAN's reputation.

Keywords: *Norm Subsidiarity, ASEAN, South China Sea, Regional Order*

° This work was supported by the National Social Science Foundation Project under Grant No. 21&ZD244 and the Guangdong Provincial Social Science Fund Project under Grant No. GD24YZZ02.

* Associate Professor, Center of International and Regional Studies, School of Foreign Studies, Zhaoqing University, Zhaoqing, China, He can be reached at <pengfeipu512@gmail.com>.

1. Introduction

This paper will take the South China Sea issue as an example to study the application of ASEAN's norm subsidiarity strategy and its effectiveness. At present, the order in the South China Sea region is in a state of intense change, which is manifested not only in the power struggle between various actors, but also in the norm struggle between various actors. On the South China Sea issue, China advocates bilateral negotiations with other South China Sea claimants based on historical rights. However, this move was opposed by some ASEAN countries and the United States. The United States is not a party to the South China Sea dispute, but it is worried that China's leading the resolution of the South China Sea issue will threaten or weaken its own hegemony, so it intervenes in the South China Sea issue in the name of "freedom of navigation" norms to achieve the goal of containing China and maintaining its own hegemony. However, this move was strongly opposed by China and did not receive full support from ASEAN. Faced with increasingly fierce competition among major powers, ASEAN hopes to negotiate the South China Sea issue based on "ASEAN norms" under the framework of ASEAN leadership, manage major power competition, maintain its own autonomy, and strengthen the shaping of order in the South China Sea region.[1] So how does ASEAN, which lacks power and material resources, take specific actions? What are the results? What challenges will it face in the future?

On the one hand, the study of these issues helps to clarify ASEAN's behavioral logic on the South China Sea issue from a normative perspective, that is, how ASEAN, as a weak actor, can exercise autonomy in terms of norms and participate in the shaping of the order in the South China Sea region. On the other hand, it also helps to enrich the connotation of the theory of norm subsidiarity. This article will draw on the concept of "norm subsidiarity" proposed by Amitav Acharya (2011) for analysis. Since he did not propose how weak actors can implement norm subsidiarity, this study proposes specific strategies for ASEAN to implement norm subsidiarity based on ASEAN's behavior on the South China Sea issue. Therefore, this study helps to enrich the theoretical connotation of norm subsidiarity. In a broader sense, this study also helps to better understand the agency of weak actors and challenge the Western-centric perspective in international norm research.

The paper is divided into the following sections. The first section briefly reviews and evaluates the established academic literature and presents the analytical framework of the paper. In the second part, it analyses how ASEAN has resorted to the principle of norm subsidiarity while resisting the influence of norms dominated by China and the United States to strengthen its own shaping of the regional order in the South China Sea. Finally, based on the above analyses, a brief conclusion is presented, along with relevant policy recommendations.

2. Literature Review and Research Framework

A representative example in this regard is the research of Amitav Acharya (2011, 2018). In 2011, he took the lead in developing and verifying the conceptual tool of "norm subsidiarity" to describe the constructive role of the Third World in the normative field of the global order. In his 2018 book *Constructing Global Order: Agency and Change in World Politics*, Acharya redefined "agency" and constructed a norm "localization-subsidiarity-circulation" framework, further exploring the role of Third World countries or regions in the global order from a normative perspective.

Acharya's study mainly discussed the definition, motivation and effects of normative subsidiarity. Norm subsidiarity refers to "*the process whereby local actors create rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors*" (Acharya, 2011: 97). The local actors here mainly refer to the normative behavior of weak countries, especially those in the Third World. Acharya argues that the motivations for local actors to resort to norm subsidiarity include the following. First, when local actors are excluded in the process of global norm shaping and institutional construction, the principle of subsidiarity can become a way for them to deal with the potential "dictatorship" of higher-level institutions and more powerful countries. The rationality of local norms lies in the fact that local institutions are more familiar with local problems than global institutions and can therefore propose better solutions. Second, when the "meta-norms" cherished by local actors are violated by powerful actors and the global institutions that embody these norms are unable to prevent such violations, local actors will resort to norm subsidiarity. Third, local actors hope to make the "abstractly defined" "meta-norms" consistent with local concepts, identities and habits. This motivation comes from the desire for legitimacy, the recognition of

the uniqueness of their own values and identities, and the general cultural characteristics of localization.

Acharya also pointed out two major consequences of norm subsidiarity. The first is the "challenge/resistance" effect. Local actors provide normative resistance to central actors (including major powers and institutions controlled by them) by creating norms. At the same time, local actors claim the right to make rules and deal with their own problems without interference from any higher authorities. The latter has the right to "perform only those tasks that cannot be performed at a more direct or local level". Therefore, norms are used here as "weapons of the weak" to compensate for those actors who "lack structural and material power" to resist foreign interference. The second is the "support/reinforcement" effect. This is related to the way local actors create norms by "citing and supporting global norms to ensure their autonomy and resist powerful actors". Acharya pointed out that in the contemporary international system, some global norms are implemented and supported by weak countries, such as sovereignty, territorial integrity, independent self-determination, national equality, non-intervention, etc. Local actors support these existing global norms, thereby delegitimizing any attempt by external actors to circumvent this principle, and ultimately prevent the latter, thereby ensuring their own autonomy and resisting powerful actors. In this sense, the support/reinforcement effect is achieved.

Since then, some scholars have used this concept for applied analysis, such as Lee and McGahan's (2015) study on ASEAN countries' cooperation in anti-piracy systems, which mainly focused on analyzing the motivation of ASEAN countries to resort to norm subsidiarity in anti-piracy cooperation. Cloramidine and Wibisono' s (2024) study on how ASEAN implements global cybersecurity norms, which mainly focused on analyzing how ASEAN resorts to norm subsidiarity to strengthen global cybersecurity norms. Liu's (2024) study on ASEAN's resistance to the "responsibility to protect" norm in the process of responding to the "Nargis" disaster mainly focused on analyzing how ASEAN resorted to norm subsidiarity to challenge the norms advocated by major powers.

Overall, the concept proposed by Acharya has rich development potential in describing the role of third world countries or regions in shaping regional order. Weak actors lacking power and material resources can also exercise autonomy in norms to shape regional order. Unfortunately,

Acharya did not propose specific strategies for local actors to resort to norm subsidiarity. In addition, applied research on norm subsidiarity has rarely paid attention to this issue, and has not yet applied this concept to the South China Sea issue. Based on previous research, this article will try to go a step further and propose two strategies for resorting norm subsidiarity–norm indifference and norm practice, and apply ASEAN's two strategies to the analysis of the South China Sea issue.

Norm indifference mainly refers to the indifference of local actors to powerful foreign norms. Specifically, it expresses dissatisfaction or protest by ignoring or disregarding foreign norms. Norm practice refers to the local actors responding to problems by practicing their own dominant norms, which can also be called "local norm practice". Wei pointed out that local practice is a socially meaningful and patterned performance action carried out by a practice community composed of local actors based on common local background knowledge. She also pointed out that it defines the basic norms, rules and agendas of the interaction between local actors, constructs the basic social connotation of the relationship between actors, and plays an important role in shaping the regional order (Wei, 2020: 3-4). Therefore, local norm practice is an action that focuses more on results, rather than just normative advocacy.

Fundamentally, both strategies involve resistance to foreign norms. The former achieves resistance through indifference or neglect, which can be called "passive resistance"; the latter achieves resistance through the practice of its own dominant norms to promote the effectiveness of its own norms, which can be called "active resistance". For ASEAN, the latter also has the effect of support/consolidation, because ASEAN norms include some universal norms in the international community, such as sovereignty, non-interference and other norms. When ASEAN practices these norms, it naturally supports or consolidates international norms. If ASEAN practices its own unique social-cultural norms and can demonstrate the effectiveness of these norms, it will undoubtedly promote the universality of ASEAN norms.

It should be pointed out that when facing powerful actors, ASEAN will adopt these two different strategies at the same time, but the emphasis will be different. For external actors with strong power, ASEAN may not be able to persuade them directly through local norm practices, but will adopt a passive resistance, that is, focusing on the strategy of norm indifference. For

external actors with secondary power, ASEAN may have a greater chance of persuasion, so it will adopt a more active resistance, that is, focusing on local norm practices and directly persuading powerful actors. In the South China Sea region, China and the United States are obviously stronger than ASEAN, but the United States is obviously stronger than China. Therefore, ASEAN has a stronger motivation to adopt the local norm practice strategy to actively resist China, and has a stronger motivation to adopt the norm indifference strategy to passively resist the United States.

3. ASEAN's Norm Subsidiarity Strategy on the South China Sea Issue

3.1 Local Norm Practice: ASEAN's Resistance to China's Advocacy of "Bilateralism"

After the end of the Cold War, although China's strength has increased rapidly, there is still a big gap compared with the United States. At that time, China focused most of its energy on economic development, and a peaceful and stable surrounding environment was conducive to China's economic development. In other words, China needed ASEAN's help more at that time. Therefore, on the South China Sea issue, ASEAN has a stronger motivation to actively resist China's advocacy of "bilateralism", that is, to strengthen normative persuasion of China through local norm practice strategies.

3.1.1 Disagreements Between China and ASEAN on "Bilateralism" or "Multilateralism"

China and ASEAN have differences in the way of dealing with the South China Sea issue, namely, "bilaterally" or "multilaterally". For a long time, China has advocated a peaceful settlement through negotiation and consultation with the directly concerned countries on the basis of respecting historical facts and in accordance with international law, that is, the "bilateral" approach. This approach denies ASEAN's relevant role in the South China Sea issue, and is also intended to exclude interference from major powers outside the region. However, ASEAN countries advocate negotiating the South China Sea issue with China through the power of the whole, which is usually called the "multilateral approach".

For China, the "bilateral" approach is mainly based on the following three considerations. First, China is concerned about third parties, especially the United States, intervening in the resolution of the South China Sea issue.

The United States has been a prominent player in the South China Sea issue. Although the United States has repeatedly stated its neutral position that it does not stand on the side of any claimant country and supports the peaceful resolution of disputes in accordance with international law, and in the first decade of the post-Cold War era, the United States has been committed to reducing its excessive power and influence in the region. However, since the United States has signed military alliance treaties with the Philippines and Thailand, and has carried out fairly close military cooperation with Singapore, Vietnam and other countries, China has reason to be skeptical about the intentions of the United States. China believes that the United States is a troublemaker that undermines peace and stability in the region (PRC, 2020). Second, China is worried that ASEAN countries will greatly enhance their bargaining power when negotiating with China as a whole. As individual countries, the strength of ASEAN member states is far behind that of China. Therefore, through bilateral negotiations, China can better use its power and leverage to exert influence. However, when negotiating with ASEAN as a whole, China's comparative advantage will be greatly reduced, the restrictions it faces will increase, and it is more likely to be at a disadvantage in the negotiations. In addition, multilateral negotiations may also make China face an "alliance" including the United States, which is the situation that China least wants to see (Ramadhani, 2016: 4-5). Third, China has a hard line on territorial sovereignty, arguing that it should not be included in multilateral negotiations. For China, territorial sovereignty is an issue that cannot be questioned. China has repeatedly reiterated that it has indisputable sovereignty over the South China Sea islands and their surrounding waters, which concerns China's core interests. Michael D. Swaine (2010) points out: "China's use of the term 'core interests' on an issue is intended to convey a very high level of commitment to manage or resolve the issue on China's terms without much discussion or negotiation."

For ASEAN, there are also considerations for taking a "multilateral" approach. First, taking a "multilateral" approach is in line with its philosophy or norms. ASEAN has formed the philosophy or norms of multilateralism in its many years of historical practice, and has a strong desire and action to promote this norm to a wider region. During the Cold War, ASEAN had already shown its preference for multilateralism. In the political field, in the process of resolving the Cambodian issue, ASEAN actively promoted the United Nations to propose resolutions and principles for resolving the

Cambodian issue, and promoted the "Democratic Kampuchea Coalition Government" to become the legitimate government of the United Nations, etc., which played an important role in promoting the final resolution of the Cambodian issue. In the economic field, in the face of the damage to the interests of ASEAN countries, especially Singapore, caused by the International Civil Aviation Policy (ICAP) issued by the Australian government, ASEAN countries united as a whole to actively negotiate with Australia on the aviation market, and finally forced Australia to compromise. After the end of the Cold War, ASEAN paid more attention to openness and inclusiveness in the external dimension. For example, the Treaty of Amity and Cooperation in Southeast Asia was revised to encourage non-regional countries to join; the ASEAN Regional Forum (ARF) was established to include major powers in the multilateral security dialogue system; the "ASEAN+" regional cooperation mechanism was created to create a regional cooperation model of "small horses pulling big carts". At the 38th ASEAN Summit held on October 26, 2021, ASEAN adopted the "ASEAN Leaders' Declaration on Preserving Multilateralism" (ASEAN Secretariat, 2021), emphasizing the importance of ASEAN's adherence to multilateralism in all fields. The declaration stated:

> *"REAFFIRMING our belief that regionalism and multilateralism are important principles and frameworks of cooperation, and that their strength and value lie in their rules based on nature, inclusivity, transparency and openness, mutual benefit and Respect;*
>
> *REITERATE the need for ASEAN to remain united, cohesive, and resilient in promoting its purposes and principles as enshrined in the ASEAN Charter and the commitment to support multilateralism founded on the principles stipulated in the Charter of the United Nations and on the basis of international law, which is the indispensable foundation of a more peaceful, prosperous and just world, as well as emphasizing a committed multilateral approach in responding to emerging opportunities and challenges and actively shaping a rules-based regional architecture that is capable of tackling pressing common regional and global issues."*

Second, from a utilitarian perspective, adopting a multilateral approach will help ASEAN countries gain greater benefits. Chinese scholar Song W. (2015: 7) pointed out that "generally speaking, when small and medium-sized countries build an interdependent economic relationship with a powerful country, they will definitely have political concerns, that is, their unequal status in the interdependence may become a handle for interference and influence by the powerful country. If a form of multilateralism, especially institutionalized multilateralism, is adopted, small and medium-sized countries can unite to defend their independence and rights in this multilateral cooperation, while not giving up the huge benefits of establishing an interdependent relationship with regional powers". Vietnamese scholars Truong-Minh Vu and Nghiem Anh Thao (2014: 372-373) believe that the multilateral system can become a "weapon of the weak". First, it creates a communication platform for all parties (especially the weak) to express their opinions. In bilateral relations with powerful countries, decisions are likely to be unilateral, completely controlled by power or resolved through the balance of power, which is obviously disadvantageous to weak countries; second, the multilateral system helps to limit the unilateral actions that powerful countries may take. If powerful countries defy or violate the rules, the legitimacy of the actions of powerful countries will be reduced, while the legitimacy of the actions of weak countries will be enhanced. Finally, the multilateral system is the lowest-cost way to ensure that disputes are resolved through laws and regulations, rather than simply through the balance of power or force. Singaporean scholar Byron Chong (2024) also emphasized: "ASEAN focuses on open and inclusive multilateralism, aiming to create a favorable environment where smaller countries can not only shape the overall outline of the regional order, but also exert a certain degree of influence on the preferences of larger and more powerful countries."

3.1.2 ASEAN's Persuasion to China in the Multilateralization of the South China Sea Issue

Based on the above differences, in order to avoid further damage to their own interests and to enhance ASEAN's normative influence, ASEAN countries actively promoted the multilateralization of the South China Sea issue through the strategy of "local norm practice" and resisted the "bilateralism" norms advocated by China. Specifically, the measures taken

by ASEAN include the following.

First, ASEAN discussed the South China Sea issue through the multilateral platform, creating a fait accompli of the multilateralization of the South China Sea issue. During the Cold War, ASEAN did not speak out on the South China Sea issue as a whole. Even when China and Vietnam had a serious armed conflict over "Chigua Jiao" (Vietnam calls it Đá Gạc Ma) in 1988, ASEAN still did not respond. However, after the end of the Cold War, facing the shrinking power of the United States and the Soviet Union in Southeast Asia and China's increasingly confident behavior, ASEAN countries gradually began to seek to speak out collectively through the ASEAN platform. In 1990, Indonesia held an informal seminar sponsored by Canada to seek the collective position of ASEAN countries on the South China Sea issue. In 1992, ASEAN issued its first joint statement on the South China Sea issue. Since then, the South China Sea issue has become a frequently discussed topic at the ASEAN summit and related ministerial meetings (such as the ASEAN Foreign Ministers' Meeting and the ASEAN Defense Ministers' Meeting). With the establishment of multilateral cooperation mechanisms centered on ASEAN, the South China Sea issue has also become a frequently discussed topic at the ASEAN Regional Forum, the East Asia Summit, and the summits between ASEAN and its dialogue partners (such as the United States and Japan). Through this multilateral approach, ASEAN has utilized its collective strength and the ASEAN-centered multilateral mechanism, and by controlling the right to set the agenda and issue joint statements after the talks, it has promoted the process of multilateralization of the South China Sea issue, creating a fait accompli of the multilateralization of the South China Sea issue. In this way, China's opposition to multilateralism and advocacy of bilateral negotiations has become, in a certain sense, a self-policy declaration, which is divorced from the practice of the region and ultimately forced China to accept multilateral negotiations.

Second, ASEAN does not directly criticize China by name in its joint statements, but exerts influence in the form of "hopes" and "suggestions". For example, in July 1992, although ASEAN issued the "1992 ASEAN Declaration on the South China Sea" (Centre for International Law, 2017), the statement did not mention China's name, nor did it condemn China (in February of that year, China passed the "Law on the Territorial Sea and the Contiguous Area"). In 1992, when the Philippines proposed to hold an international conference to discuss the South China Sea issue, it was rejected

by ASEAN. Even when the serious "Meiji Jiao Incident" (The Philippines calls it Panganiban Reef) occurred in 1995, ASEAN remained restrained in the joint statement it issued. In the statement, ASEAN only expressed serious concern about the recent incidents that affected peace and stability, but did not directly mention China. At the same time, ASEAN also called on all parties to exercise restraint, avoid taking actions that endanger regional stability and undermine peace and security in the South China Sea, and called for the problems caused by the "Meiji Reef Incident" to be resolved as soon as possible (Zhang, 2010: 70-71). ASEAN's practice of "saving face" in public has taken into account the comfort of all parties, especially China, and eased China's concerns about participating in multilateralism.

Third, ASEAN gradually guided China to participate in the multilateral framework in a step-by-step manner. For example, in 1993, Singaporean Foreign Minister Wong Kan Seng invited Chinese Foreign Minister Qian Qichen to attend an informal dinner of ASEAN dialogue partners and to participate in the consultation forum between ASEAN and dialogue partners during the 27th ASEAN Ministerial Meeting/Subsequent Ministerial Meeting in 1994. Finally, China participated in the first working meeting of the ASEAN Regional Forum in 1994 as a founding member. Although China did not participate in this meeting in an official capacity, but as a consulting partner, it was still the first regional multilateral security cooperation organization that China participated in after the end of the Cold War. Before that, China only participated in multilateral organizations centered on the United Nations. Some scholars pointed out: "In a sense, ASEAN is the guide of China's multilateral diplomacy" (Zhang, 2010: 65). Under the guidance of ASEAN, China gradually entered the multilateral stage, and once it entered this stage, the South China Sea issue became one of the topics that both sides could not avoid. In April 1995, at the China-ASEAN Senior Officials Consultation Meeting held in Hangzhou, ASEAN countries expressed serious concerns about China's behavior in the "Meiji Reef Incident" and China's future South China Sea policy. In response, China's chief representative Tang Jiaxuan made an unexpected move at the time – arranging the delegates to a separate room after the dinner to discuss the South China Sea issue. Although this was only an informal discussion with ASEAN countries, it still marked the first time that China was willing to discuss the South China Sea issue with ASEAN as a whole, breaking China's previous position of only holding bilateral negotiations with relevant countries.

Since then, China and ASEAN have conducted more substantive coordination on the South China Sea issue. In 2002, the two sides signed the "Declaration on the Conduct of Parties in the South China Sea" (DOC) and moved towards reaching a "Code of Conduct in the South China Sea" (COC). During the 2014 East Asia Summit, Premier Li Keqiang further clarified the "dual-track approach" to handling the South China Sea issue: "the relevant specific disputes shall be peacefully resolved through negotiations and consultations by the directly concerned parties on the basis of respecting historical facts and international law, and the peace and stability of the South China Sea shall be jointly maintained by China and ASEAN countries" (CGP, 2014). This is the first time that China has clearly stated that it accepts ASEAN's participation and promotion in the construction of security order in the South China Sea (He, 2021: 128). The proposal of the "dual-track approach" means that China has made a slight adjustment in its approach to handling the South China Sea dispute, from refusing to resolve the South China Sea issue through any multilateral channels to recognizing that it can seek solutions to some issues involving multilateral interests in limited multilateral occasions.

3.2 Normative Indifference: ASEAN's Resistance to the "Freedom of Navigation" Norm Advocated by the United States

3.2.1 Securitization: The United States Promotes the Spread of the "Freedom of Navigation" Norm

Although "freedom of navigation" as a legal norm has been recognized by the vast majority of countries in the world, the "freedom of navigation" stipulated in the "United Nations Convention on the Law of the Sea" is very vague, and there are also great differences in international judicial and arbitration practices regarding "freedom of navigation", which has led to great differences in the understanding of this norm among countries. From the perspective of norm construction, the "freedom of navigation" norm is still in the process of construction. Therefore, this gives the United States, which has strong power and influence, more initiative to construct norms that are beneficial to itself according to its own wishes and promote their diffusion. The reason why we attach importance to norm construction is that, as a mechanism of power, norms are more easily accepted by others than coercive power (Michael and Duvall, 2005). If hegemony supplements

and maintains its material dominance by constructing a social framework that legitimizes its power and leadership, the cost of hegemony can also be reduced.

Securitization operations are of great significance to the generation of norms. Pan Yaling (2019: 57-58) pointed out: "By identifying 'existential threats', securitization operations can provide a persuasive moral logic and effectively establish the urgency of norm generation." Therefore, in order to promote the spread of "freedom of navigation" norms that are beneficial to itself, the United States has gradually securitized the "freedom of navigation" issue in the South China Sea. Barry Buzan (1998: 159) pointed out that the United States often uses securitization methods to legitimize its unilateral actions to interfere in the sovereignty of other countries by constructing threats to the international community, international order, and international law.

First, the United States refers to China as a normative object. Through diagnostic framing, it refers to China as a threat and destroyer of "freedom of navigation" in the South China Sea, which makes the public reach a common understanding that there is a threat to "freedom of navigation" in the South China Sea. For example, Peter Dutton (2011: 47) pointed out that China's nine-dash line in the South China Sea is overconfident and aggressive, and is the "culprit" of regional instability. In 2015, Harris, commander of the US Pacific Command, pointed out in a speech that "freedom of navigation" has a global standard, not a double standard, that is, China can fly, sail and operate anywhere permitted by international law, while other countries cannot" (US Pacific Command, 2015). On July 11, 2021, US Secretary of State Antony J. Blinken issued a statement on the fifth anniversary of the Arbitral Tribunal Ruling on the South China Sea, stating that: "Nowhere is the rules-based maritime order under greater threat than in the South China Sea. The People's Republic of China (PRC) continues to coerce and intimidate Southeast Asian coastal states, threatening freedom of navigation in this important global waterway, and called on China to abide by its obligations under international law, cease provocative behavior, and respect the rights of all countries, big and small" (US Mission to ASEAN, 2021).

Second, through prognostic framing, specific strategies and means are proposed to solve the so-called "freedom of navigation" issue in the South China Sea. The United States believes that the "freedom of navigation" issue in the South China Sea should be solved through international law or

international rules. The United States' unilateral accusations against China will not easily gain the recognition of other countries. It also needs to use the discourse of rules to make it credible and legitimate, and then influence the common cognition of the securitization audience (Zhang and Zhang, 2020: 47). Therefore, on the one hand, the United States highlights China's violation of international law and undermining the rules-based international order in its discourse and rhetoric. On the other hand, it points out that the international customary law reflected in the "United Nations Convention on the Law of the Sea" provides guidelines for the reasonable use and access rights of the ocean. The United States, "along with ASEAN member states and other maritime countries and the wider international community, regards freedom of navigation, public domain access and international legal order in the South China Sea as national interests. The United States not only consistently exercises its right to "freedom of navigation", but also supports other countries in exercising their right to navigate and operate in international waters (US Department of State, 2010). In addition to international legal means, the United States also believes that the issue of "freedom of navigation" in the South China Sea should be resolved through multilateral consultations. In June 2011, US Democratic Senator James Webb submitted a "motion calling for a peaceful and multilateral solution to Southeast Asian maritime territorial disputes" to the Senate Foreign Relations Committee. Webb used the "Impeccable" and "McCain" incidents to accuse China of obstructing the "freedom of navigation" of US warships and merchant ships in the South China Sea, claiming that the United States supports a peaceful and multilateral solution to the South China Sea disputes in order to facilitate the US military's South China Sea patrols (Liu and Xing, 2018: 35).

Third, through motivational framing, the United States encourages allies and partners to participate in collective "freedom of navigation" operations in the South China Sea and maintains their enthusiasm for participation. (1) The United States has vigorously increased its military presence in the South China Sea and the Western Pacific, setting an example for allies and partners to participate in collective "freedom of navigation" operations in the South China Sea. To this end, the United States has taken measures including: increasing military budget allocations in the South China Sea, strengthening military presence and force deployment, frequently holding military exercises and large-scale joint military exercises in the South China Sea, and

increasing the frequency of "freedom of navigation" operations by US ships in the South China Sea, directly challenging the normative claims of China and other coastal countries. (2) The United States has strengthened defense and security cooperation with allies such as Japan, the Philippines, and Australia to obtain their support for its "freedom of navigation operations" and also provide support for their participation in "freedom of navigation" operations in the South China Sea. (3) The United States has urged the inclusion of the issue of "freedom of navigation" in the South China Sea on multilateral political agendas such as the Shangri-La Dialogue, the ASEAN Summit, and the ASEAN Regional Forum, promoting ASEAN's attention and urging ASEAN to support the "freedom of navigation" it advocates. For example, on November 23, 2019, Admiral Philip S. Davidson, commander of the US Indo-Pacific Command, delivered a speech at the International Security Forum. Regarding the COC being negotiated between China and ASEAN, he urged ASEAN countries to ensure that the agreement reached would not restrict their freedom of navigation or their ability to conduct commerce and exercises there (Vergun, 2019).

In short, the United States has been raising the issue of "freedom of navigation" in the South China Sea on various occasions and platforms, portraying China as a threat and destroyer of "freedom of navigation" in the South China Sea, while the United States is a defender of "freedom of navigation" and international rules, and gradually pressuring relevant countries in the South China Sea to accept the United States' position, principles and norms. In fact, the "freedom of navigation" norms and related practices advocated by the United States on the South China Sea issue are intended to use its own power to promote the spread of the norms it advocates, and then establish a so-called rule-based order in the South China Sea region dominated by itself. ASEAN countries have a clear understanding of this. As Aileen Baviera (2017), a professor at the Center for Asian Studies at the University of the Philippines, warned: "If ASEAN does not play a leading role in this issue (South China Sea dispute), then the great powers may try to unilaterally impose their own rules, and whether the great powers succeed in calming or exacerbating the conflict in the end, the management of the dispute and the ocean itself will be defined by non-ASEAN actors, thereby infringing on ASEAN's autonomy and marginalizing the ASEAN regional multilateralism brand within its own geographical scope." Therefore, in order to prevent the United States from dominating

the construction of order in the South China Sea, ASEAN has resisted the "freedom of navigation" norms advocated by the United States.

3.2.2 Norm Indifference: ASEAN's Resistance to the United States' Promotion of "Freedom of Navigation" Norms

In view of the greater normative pressure on ASEAN in the light of the systematic efforts of the United States to promote the proliferation of "freedom of navigation" norms, ASEAN has mainly adopted a passive resistance strategy, namely norm indifference. First, while the United States frames China as the object of the "freedom of navigation" norm, ASEAN does not target "freedom of navigation" at specific countries. Zhou (2005: 92-94) mentions that if the object of the norm disappears, then the norm will lose its function and the reason for its existence. At the 3rd ASEAN Defence Ministers' Meeting Plus (ADMM-Plus) in Kuala Lumpur on 4 November 2015, faced with the prospect that there would be no reference to the South China Sea in the joint statement, the US delegation expressed its displeasure and refused to support the draft declaration. Ultimately, due to differences among member states, ASEAN decided not to issue a joint statement and replaced it with a chairman's statement. In the Chairman's Statement, Malaysian Defense Minister Hishammuddin Hussein stressed that the joint statement would not actually help resolve the South China Sea disputes and that dwelling on the joint statement would not solve the real problem. Instead, Hishammuddin stressed the importance of concluding a code of conduct in the South China Sea to build mutual trust and confidence and maintain regional peace and stability (Parameswaran, 2015). This approach not only successfully resisted the US attempt to tie the issue of "freedom of navigation" to China's claims in the South China Sea, but also fully reflected ASEAN's emphasis on maintaining overall friendly relations and the practice of "balanced relations" (Wei, 2017: 62-63).

Second, in response to the United States perception of China as a threat to freedom of navigation, ASEAN views China as a collaborator in safeguarding freedom of navigation. In joint statements issued on various occasions, including the ASEAN-China Leaders' Summit and the China-ASEAN Commemorative Summit on the Establishment of Dialogue Relationship, both sides emphasized their commitment to safeguarding the safety and freedom of navigation and overflight in the South China Sea in accordance with international law including the 1982 United Nations

Convention on the Law of the Sea (UNCLOS). In response to the US urging ASEAN to ensure the US and its partners' right to "freedom of navigation" and unrestricted commercial and military exercises in the South China Sea, ASEAN has "appeased" China through various dialogue channels and repeatedly reiterated that it has no intention of taking sides between China and the US. For example, on February 17, 2016, when Obama hosted the US-ASEAN Special Summit, he said: "At this summit, we can advance our shared vision for a regional order that upholds international rules and norms, including freedom of navigation, and resolves disputes through peaceful and lawful means" (Wai, 2016). This is an indirect but clear reference to China's aggressive reclamation and construction of military facilities in the disputed South China Sea. In response, ASEAN countries have responded cautiously. At the dinner that followed, Singaporean Prime Minister Lee Hsien Loong said regarding the South China Sea dispute: "This issue needs to be resolved peacefully on the basis of international law, but at the same time, we must remember that this is in the context of a cooperative relationship, not an adversarial one." Malaysian Prime Minister Najib Razak pointed out: "We all agree that the principle of freedom of navigation should be respected, and we all believe that relevant countries should not increase tensions in the region, and when we talk about demilitarization, this also applies to China and the United States" (Wai, 2016).

Third, in terms of the means of resolving the South China Sea dispute, ASEAN has adjusted to the United States's claim of resolving it through international law and multilateralism, emphasizing that it should be resolved under a forum led by ASEAN, rather than just the legal means and multilateral methods advocated by the United States. In July 2016, after the Permanent Court of Arbitration (PCA) announced the award made by the arbitral tribunal, the United States called on China to respect the award made by the arbitral tribunal and suggested that the arbitration case be mentioned in the joint statement of the ASEAN Foreign Ministers' Meeting, while criticizing China for building artificial islands and facilities at sea and sending warships close to the disputed territory to safeguard its "freedom of navigation" rights (Mogato et al., 2016). In response, ASEAN rejected the US suggestion and, based on its own principle of "consensus", did not mention the arbitration case in the joint statement of the ASEAN Foreign Ministers' Meeting, but expressed ASEAN's "serious concern" about the situation in the South China Sea.

It reiterated the importance of maintaining and promoting peace, security, stability, safety and freedom of navigation and overflight in the South China Sea, reiterated the need to enhance mutual trust and confidence, exercise restraint in carrying out activities, avoid actions that may further complicate the situation, and seek peaceful settlement of disputes in accordance with international law, including the 1982 United Nations Convention on the Law of the Sea. Emphasizing the importance of non-militarization and self-restraint in all activities, including land reclamation, it is considered urgent to step up efforts to make further substantive progress in the full implementation of the Declaration and to conduct substantive negotiations for the early conclusion of the COC, including the outline and timetable of the COC (ASEAN Secretariat, 2016).

Mari Pangetsu, former Minister of Tourism and Creative Economy of Indonesia, pointed out that from the perspective of ASEAN, it is beneficial to balance the United States and China, but to do so, there needs to be a common position that benefits all ASEAN member states. One of the difficulties facing ASEAN is that China has various territorial disputes with the Philippines, Vietnam and Malaysia in the South China Sea. The United States said that these disputes should be peacefully resolved through legal means rather than bilaterally, and freedom of navigation should be guaranteed while resolving the disputes. ASEAN takes a similar position, but believes that freedom of navigation should be achieved under a code of conduct negotiated in an ASEAN-led regional forum. ASEAN must maintain this position. The leadership and neutrality of Indonesia, ASEAN's largest country (not a claimant), can help achieve this goal (Pangestu, 2016).

Finally, ASEAN is wary of the involvement of the United States and its partners in the South China Sea issue. ASEAN believes that increasing military-related activities, sending aircraft carriers, increasing naval fleets, submarines, conducting oil exploration, or establishing encirclement alliances cannot build trust. It also points out that mobilizing all ASEAN member states, including non-claimants, to unite against China or tarnish China's image internationally is a departure from ASEAN's way of doing things, which prioritizes consultation, dialogue, non-conflict and non-confrontation. At the same time, these actions cannot encourage China to participate meaningfully in negotiations (Vireak, 2019). In other words, ASEAN is worried that inviting the United States to play a more active role may further arouse China's dissatisfaction and confrontation, thereby

complicating the resolution of disputes. In 2015, Indonesian Defense Minister Ryamizard Ryacudu said: "If regional countries can manage the South China Sea themselves, there is no need to involve other countries" (Parameswaran, 2015). In fact, the United States' incentives to ASEAN are intended to use ASEAN as a tool to constrain China, but ASEAN has a deep understanding of this. Therefore, on the one hand, ASEAN welcomes the United States to play a constructive role, and on the other hand, it focuses on ASEAN's autonomy and hopes to resolve the South China Sea issue within the ASEAN framework. Nguyen Hung Son (2021), vice president of the Diplomatic Academy of Vietnam, noted that in order to manage the South China Sea, the region's top priority is to work towards an open, inclusive, transparent and rules-based regional security architecture in which major decisions are made based on rules and norms rather than power, while properly respecting the interests of all countries.

4. Conclusion and Recommendations

The South China Sea is becoming a focal area for competition between China and the United States. From the perspective of normative order, China and the United States have put forward their own normative propositions to strengthen the shaping of order in the South China Sea. As a relatively weak actor, ASEAN also hopes to strengthen the shaping of order in the South China Sea to maintain peace and stability in the South China Sea.

The research in this article shows that ASEAN is not a passive recipient of international norms. It can also exercise autonomy and resist the norms advocated by major powers to a certain extent. On the South China Sea issue, ASEAN faces pressure from the "bilateralism" norm advocated by the powerful actor China and the "freedom of navigation" norm advocated by the United States. In response, ASEAN resorted to the principle of norm subsidiarity, adopted a norm indifference strategy to passively resist the powerful United States, and adopted a local norm practice strategy to actively resist the second-strongest China to maintain its own autonomy.

The actions taken by ASEAN have produced certain effects. First, it gradually made China accept ASEAN's relevant role in the South China Sea issue and made China agree to negotiate with ASEAN on a binding code of conduct, thus avoiding ASEAN's irrelevant role in the South China Sea issue and strengthening ASEAN's shaping of the order in the South China Sea region. Second, it gradually made the United States give up on ASEAN

as the main actor in promoting the "freedom of navigation" norm. This move helped avoid provoking a more intense reaction from China and avoided intensifying the Sino-US conflict. In this sense, ASEAN has achieved certain results in regulating Sino-US conflicts and playing the role of a "buffer" in Sino-US competition.

At the same time, ASEAN's actions have achieved limited results in strengthening the dominance of ASEAN norms. First, it has not been able to fully constrain China, nor has it reached a more binding COC with China. (1) China has not fully accepted the "multilateralism" norms advocated by ASEAN. Although China recognizes ASEAN's relevant role in maintaining peace and stability in the South China Sea, it still insists that issues involving sovereignty in the South China Sea should be negotiated directly by the relevant parties. This is actually a limited acceptance of "multilateralism". (2) The protracted negotiations on the COC have seriously constrained ASEAN's management of great power competition. Although China and ASEAN have reached a consensus to reach a more effective and substantive agreement as soon as possible, so far, the code has been negotiated for more than 20 years, far behind the pace of escalating Sino-US competition. In other words, in order to make the "Code" more meaningful, the progress of diplomatic negotiations cannot continue to lag far behind the changes in the balance of power at sea. (3) The long duration of the negotiations also shows that there is still a lack of trust between the parties.

Second, ASEAN has also failed to effectively prevent the United States from pointing its "freedom of navigation" spearhead at China in the South China Sea. Given that ASEAN does not fully support the "freedom of navigation" norms advocated by the United States, and that different countries have different strategies and interests in the South China Sea issue, the United States has made a second choice and has established a number of small multilateral mechanisms or non-institutional normalized arrangements to replace it according to different agendas and preferences. This includes: the "Quadrilateral Security Dialogue" mechanism (QUAD) between the United States, Japan, India and Australia, the trilateral cooperation between the United States, Philippine and Vietnam, the trilateral dialogue between the United States, Japan and Australia, the trilateral security partnership between the United States, the United Kingdom and Australia (AUKUS) and other regional multilateral mechanisms, as well as bilateral partners between the United States and Malaysia, Indonesia, Vietnam and other countries. The

United States has instead promoted the spread of its "freedom of navigation" norms in these formal or informal combinations. Although the United States' "freedom of navigation operations" have only attracted the formal participation of the United Kingdom, Japan and Australia, it has successfully won the support of the Philippines, Indonesia, Malaysia and other countries (Oladipo and Brunnstrom, 2021). ASEAN's disregard for the "freedom of navigation" norms advocated by the United States is essentially a desire to resolve the South China Sea issue in accordance with ASEAN norms under a framework dominated by itself. However, the actions taken by the United States have disrupted ASEAN's attempt and further divided ASEAN.

Overall, ASEAN as a weaker actor faces greater challenges in shaping an ASEAN-centric regional order in the South China Sea through recourse to the principle of normative subsidiarity. In the future, the key for ASEAN is, first, to accelerate the conclusion of a more substantive COC with China. Although the COC may not be able to resolve the South China Sea disputes once and for all, it has important practical significance in stabilizing China-ASEAN relations. The fact that the South China Sea remained calm for many years after the signing of the DOC is an example. In addition, against the backdrop of escalating competition between China and the United States, a COC with certain binding force has become more practical in stabilizing the situation in the South China Sea.

Second, strengthening the unity and solidarity within ASEAN. At present, as the competition between China and the United States intensifies, the pressure and inducements exerted by China and the United States on ASEAN countries have further increased, which has led to a more obvious trend of internal division within ASEAN. To this end, ASEAN must do its utmost to encourage open and frank dialogue among member states, reduce mutual suspicion among internal member states, and strengthen internal unity and solidarity.

Third, strengthening the influence of ASEAN norms and reviving ASEAN's reputation. At present, the effectiveness of ASEAN norms is generally questioned. Not only is it ineffective in solving internal regional problems, but also major powers do not trust ASEAN norms to play a role in easing geopolitical competition, which reduces the influence of ASEAN norms. In the future, ASEAN can strengthen cooperation in areas where member states have greater interest and least resistance. For example, in areas such as humanitarian disasters, epidemics, cybersecurity, and cross-

border crimes, it can focus on achieving achievable results in these areas to improve its reputation. At the same time, ASEAN also needs to strengthen its detailed assessment of the dynamics of Sino-US competition, enhance its flexible response capabilities, and better play the role of a buffer in Sino-US competition.

Notes

[1] ASEAN norms, according to Acharya's classification, they can be divided into legal-rational norms and socio-cultural norms. Legal-rational norms are formal rational legal principles, which are derived from the universal principles of the Westphalian system, including sovereignty, non-interference, non-use of force in dealing with inter-state relations, and peaceful settlement of disputes. Socio-cultural norms reflect the historical and cultural environment of the actors. For ASEAN, its uniqueness is specifically manifested in the long-advocated ASEAN working method - the "ASEAN Way", which generally includes: consultation, consensus, informality, gradualism, non-confrontation, face-saving, organizational minimization, and non-binding (Acharya, 2001: 47-72; Haacke, 1999: 581-611). Since the end of the Cold War, along with ASEAN's practice of open regionalism, multilateralism has become an extension of the connotation of the "ASEAN Way" (Zhai and Yin, 2023).

Reference List

Acharya, A. (2001), *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, London and New York, Routledge.

Acharya, A. (2011), "Norm Subsidiarity and Regional Orders: Sovereignty, Regionalism, and Rule-Making in the Third World", *International Studies Quarterly*, Vol. 55, No. 1, pp. 95 - 123.

Acharya, A. (2018), *Constructing Global Order: Agency and Change in World Politics*, Cambridge: Cambridge University Press.

ASEAN Secretariat. (2016), "Joint Communique of the 49th ASEAN Foreign Ministers' Meeting", July 25, 2016, https://asean.org/joint-communique-of-the-49th-asean-foreign-ministers-meeting/.

ASEAN Secretariat. (2021), "ASEAN Leader's Declaration on Upholding

Multilateralism", October 26, 2021, https://asean.org/wp-content/uploads/2021/10/3.-FINAL-ASEAN-Leaders-Declaration-on-Upholding-Multilateralism.pdf.

Baviera A. (2017), "Preventing War, Building a Rules-based Order: Challenges Facing the ASEAN Political-Security Community", https://www.eria.org/ASEAN_at_50_4A.0_Baviera_final.pdf.

Buzan, B., Wæver, O. & De Wilde, J. (1998), *Security: A New Framework for Analysis*, Boulder: Lynne Rienner Publishers.

Centre for International Law. (2017), "1992 ASEAN Declaration on the South China Sea", https://cil.nus.edu.sg/wp-content/uploads/2017/07/1992-ASEAN-Declaration-on-the-South-China-Sea.pdf.

Chinese Central Government. (2014), "*Meiti Jiedu Li keqiang Nanhai "Shuanggui Silu" Xin Siwei* [Media Interpretation of Li Keqiang's New Thinking on the South China Sea 'Dual-track' Approach]", December 3, 2014, https://www.gov.cn/xinwen/2014-12/03/content_2786138.htm.

———. (2020), "*Waijiaobu Fayanren Dui Mei She Nanhai Shengming Zuochu Huiying* [Foreign Ministry Spokesperson Responds to the US Statement on the South China Sea]", July 15, 2020, https://www.gov.cn/xinwen/2020-07/15/content_5526894.htm.

Chong B. (2024), "The Future of Multilateralism in Southeast Asia", *Asia Research Institute*, *National University of Singapore*, September 13, 2024, https://ari.nus.edu.sg/app-essay-byron-chong-wenzhong/.

Cloramidine, F. & Wibisono, A. A. (2024), "Global Cyber Norms Subsidiarity (UN GGE and UN OEWG) within ASEAN's Body", *Hasanuddin Journal of Strategic and International Studies*, Vol. 2, No. 2, pp. 21-37.

Dutton P. (2011), "Three Disputes and Three Objectives: China and the South China Sea", *Naval War College Review*, Vol. 64, No. 4, pp. 42-67.

Haacke, J. (1999), "The Concept of Flexible Engagement and the Practice of Enhanced Interaction: Intramural Challenges to the 'ASEAN Way'", *The Pacific Review*, Vol. 12, No. 4, pp. 581-611.

He J. J. (2021), "*Dongmeng De Guifanxing Yingxiangli Ji Qi Zai Nanhai Wenti Zhong De Zuoyong* [ASEAN's Normative Influence and Its Application to the South China Sea Issue]", *Shijie Jingji Yu Zhengzhi* [World Economy and Politics], No. 7, pp. 127-152.

Lee, T. & McGahan, K. (2015), Norm Subsidiarity and Institutional Cooperation: Explaining the Straits of Malacca Anti-piracy Regime, The

Pacific Review, Vol. 28, No. 4, pp. 529-552.

Liu Y. F. & Xing R. L. (2018), "*MeiGuo 'Nanhai Hangxing Ziyou' Wenti Tanxi——Jiyu Guifan Kuosan De Shijiao* [The U.S. and the Freedom of Navigation in South China Sea: The Norm Diffusion Perspective]", *Nanyang Wenti Yanjiu* [Southeast Asian Affairs], No. 4, pp. 29-44.

Liu Y. W. (2024), "*Guifan Dizhi Yu Dongmeng Dui Diqu Zhongxin Diwei De Weihu——Jiyu 'Naerjisi' Fengzai De Guoji Yuanzhu Guifan Zhi Zheng* [Normative Resistance and ASEAN's Preservation of Its Regional Centrality - Debate on the Norms of International Aid Based on Cyclone Nargis]", *Dongnanya Yanjiu* [Southeast Asian Studies], No.1, pp. 29-48.

Michael B. & Duvall R. (2005), "Power in International Politics", *International organization*, Vol.59, No.1, pp.39-75.

Mogato M., Martina M. & Blanchard B. (2016), "ASEAN Deadlocked on South China Sea, Cambodia Blocks Statement", *Reuters*, July 26, 2016, https://www.reuters.com/article/world/asean-deadlocked-on-south-china-sea-cambodia-blocks-statement-idUSKCN1050F6/.

Oladipo D. & Brunnstrom D. (2021), "U.S., Indonesia Commit to South China Sea Defense in 'Strategic Dialogue'", *Reuters*, August 4, 2021, https://www.reuters.com/world/asia-pacific/blinken-launching-strategic-dialogue-with-indonesia-2021-08-03/.

Pan Y. L. (2019), "*Guoji Guifan Shengcheng: Lilun Fansi Yu Moxing Jiangou* [Generation of International Norms: Theoretical Reflection and Model-Building]", *Ouzhou Yanjiu* [European Studies], Vol. 5, pp. 45-67.

Pangestu M. (2016), "The Importance of ASEAN Centrality in Sunnylands", *East Asia Forum*, 14 February 2016, https://eastasiaforum.org/2016/02/14/the-importance-of-asean-centrality-in-sunnylands/.

Parameswaran P. (2015), "What Did the 3rd ASEAN Defence Minister's Meeting Plus Achieve?", *The Diplomat*, November 06, 2015, https://thediplomat.com/2015/11/what-did-the-3rd-asean-defense-ministers-meeting-plus-accomplish/.

Parameswaran P. (2015), "The New U.S.-Indonesia Strategic Partnership After Jokowi's Visit: Problems and Prospects", *Brookings*, December 8, 2015, https://www.brookings.edu/articles/the-new-u-s-indonesia-strategic-partnership-after-jokowis-visit-problems-and-prospects/.

Ramadhani, E (2016), "Whither Multilateral Negotiation? China's Foreign Policy in the South China Sea Dispute", *Global and Policy Journal of International Relations*, Vol.4, No.2, pp.1-12.

Son N. H. (2021), "Major Power Competition in the South China Sea and Southeast Asian Responses", March 19, 2021, http://www.maritimeissues.com/politics/major-power-competition-in-the-south-china-sea-and-southeast-asian-responses.html.

Song W. (2015), "*Zhongguo De Zhoubian Waijiao: Duobian Zhuyi Haishi Shuangbian Zhuyi* [Chinese Neighborhood Foreign Policy: Multilateralism or Bilateralism]", *Shanghai Jiaotong Daxue Xuebao (Zhexue Yu Shehui Kexue)* [Journal of Shanghai Jiao Tong University (Philosophy and Social Sciences)], Vol. 4, pp.5-12.

Swaine, M. (2010), "China's Assertive Behavior-Part One: On 'Core Interests'", China Leadership Monitor, November 15, 2010, https://carnegieendowment.org/posts/2010/11/chinas-assertive-behaviorpart-one-on-core-interests?lang=en.

US Department of State. (2010), Hillary Rodham Clinton, Secretary of State, "Remarks at Press Availability", July 23, 2010, https://2009-2017.state.gov/secretary/20092013clinton/rm/2010/07/145095.htm.

US Mission to ASEAN. (2021), "Fifth Anniversary of the Arbitral Tribunal Ruling on the South China Sea", https://asean.usmission.gov/fifth-anniversary-of-the-arbitral-tribunal-ruling-on-the-south-china-sea/.

US Pacific Command. (2015), "Admiral Harris Addresses the 2015 Halifax International Security Forum", November 21, 2015, http://www.pacom.mil/Media/Speeches-Testimony/Article/630828/admiral-harris-addresses-the-2015-halifax-international-security-forum/.

Vergun D. (2019), "Freedom of Navigation in South China Sea Critical to Prosperity, Says Indo-Pacific Commander", *U.S. Department of Defense*, November 23, 2019, https://www.defense.gov/News/News-Stories/Article/Article/2025105/freedom-of-navigation-in-south-china-sea-critical-to-prosperity-says-indo-pacif/.

Vireak S. (2019), "ASEAN Way' Key to Solving South China Sea Conflicts", *Asia Times*, October 17, 2019, https://asiatimes.com/2019/10/asean-way-key-to-solving-south-china-sea-conflicts/.

Vu T. M. & Thao N. A. (2014), "'Institutionalization' as Weapons of the Weak: ASEAN Countries and the South China Sea Disputes", *International Relations and Diplomacy*, Vol. 2, No. 6, pp.370-379.

Wai A. (2016), "US Affirms Pivot to Region at Special ASEAN Summit", February 17, 2016, https://www.todayonline.com/world/asia/us-affirms-pivot-region-special-asean-summit.

Wei L. (2017), "Guanxi Pingheng, Dongmeng Zhongxin Yu Diqu Zhixu Yanjin [Balance of Relations: ASEAN Centrality and the Evolving Regional Order]", *Shijie Jingji Yu Zhengzhi* [World Economics and Politics], No. 7, pp. 38-64.

Wei, L. (2020), "*Bentu Shijian Yu Diqu Zhixu: Dongmeng, Zhongguo Yu Yintai Goujian* [Local Practices and Regional Order: ASEAN, China and the Indo-Pacific Construct]", *Nanyang Wenti Yanjiu* [Southeast Asian Affairs], No. 2, pp. 1-14.

Zhai, K. & Yin K. (2023), "*Dongmeng Fangshi Yu Kaifang Diqu Zhuyi De Xingcheng* [The ASEAN Way and the Formation of Open Regionalism]", *Zhongguo Shehui Kexue Bao* [Chinese Social Sciences Today], Vol. 2695.

Zhang, C. & Zhang W. Q. (2020), "*Anquanhua: Meiguo Jiangou Nhai 'Hangxing Ziyou' Wenti De Huayu He Xingdong* [Discourse Construction, Political Performance and the Securitization of Freedom of Navigation Problem in the South China Sea]", *Zhanlue Juece Yanjiu* [Journal of Strategy and Decision-Making], No. 4, pp. 37-60.

Zhang, Y. (2010), *Guoji Zhengzhi Zhong 'Ruozhe' De Luoji: Dongmeng Yu Yatai Diqu Daguo Guanxi* [The Logic of Weak in International Politics: ASEAN's External Relations with Major Powers in the Asia-Pacific Region], *Beijing: Shehui Kexue Wenxian Chubanshe* [Beijing: Social Sciences Academic Press].

Zhou, F. Y. (2006), "*Guoji Guifan De Yanhua*, [The Evolution of International Norms, PhD thesis]", Tsinghua University, PhD Thesis.

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 121–143 https://doi.org/10.22452/ijcs.vol16no1.7

A Legal Critique of the Philippines' Actions in the South China Sea in 2024

Qi *Xu*[*] Mingyang *Zhang*[°] Jiayi *Chen*[•]
Law School & Intellectual Property School, Jinan University, China

Abstract

In 2024, the South China Sea's geopolitical complexity has surged, with the China-Philippines maritime rights rivalry drawing intense global attention. This paper examines Philippine actions at Xianbin Jiao (Sabina Shoal) and Huangyan Dao (Scarborough Shoal). From China's perspective, the Philippines has engaged in illegal beaching activities and territorial water intrusions, seriously violating China's sovereignty and maritime rights, contrary to the United Nations Convention on the Law of the Sea (UNCLOS), the South China Sea Declaration, and other international laws. Regarding Xianbin Jiao, China's scientific endeavors on the reef constitute lawful exercises of sovereignty, adhering to the principle of peaceful ocean use and fulfilling obligations for environmental cooperation. Conversely, the Philippines' conduct contravenes the Declaration and jeopardizes regional stability. As for Huangyan Dao, China's declaration of territorial sea baselines and subsequent law enforcement actions are aligned with both international and domestic law, whereas the Philippines' Maritime Zones Act and Archipelagic Sea Lanes Act flout international law, seeking to entrench illegitimate territorial claims through domestic legislation.

China firmly upholds its territorial sovereignty and maritime rights, responding lawfully to Philippine provocations. Both nations should adhere to international law, resolving disputes through dialogue to maintain peace in the South China Sea. From an international law standpoint, this article

[*] Qi Xu, Associate Professor, Vice Dean of the Institute of Foreign-related Rule of Law, Jinan University Law School, email: xuqi2019@jnu.edu.cn. This work was supported by the National Social Science Foundation Project under Grant No.21&ZD244.
[°] Mingyang Zhang, LLM Candidate, Jinan University Law School, email: m18322125115@163.com.
[•] Jiayi Chen, LLM Candidate, Jinan University Law School, email: heathercjy@163.com.

offers in-depth analyses to enhance understanding of the China-Philippines South China Sea dispute and provides jurisprudential underpinnings for its peaceful resolution.

Keywords: *South China Sea, China-Philippines dispute, international law, Territorial sovereignty, Maritime rights and interests.*

1. Introduction

The situation in the South China Sea has undergone rapid changes, becoming increasingly complex. The current tensions between China and the Philippines in the South China Sea have led to the deterioration of bilateral relations. Since the beginning of 2024, the intensifying dispute over maritime rights and interests between the two parties in the South China Sea has been centered around several focal points.

The Philippines has accused China of land reclamation activities at Xianbin Jiao (Sabina Shoal), while simultaneously attempting to replicate the tactics used at Ren'ai Jiao (Second Thomas Shoal) by grounding ships at Xianbin Jiao (Sabina Shoal) for extended periods. China believes that a Philippine vessel deliberately rammed a Chinese Coast Guard ship in the confrontation and hence had to take effective countermeasures against the Philippines' action, resulting in a five-month stay before finally withdrawing. In the same month, the Philippine bicameral conference panel approved the Archipelagic Sea Lanes Passage Act and the Maritime Zones Act, attempting to synergistically assist the Philippine government in determining the scope and jurisdiction of its maritime areas under UNCLOS. Following the enactment of these two laws in December, Philippine vessels entered the waters of Huangyan Dao under the pretext of "law enforcement", provoking disturbances at sea, which seriously violated China's territorial sovereignty and maritime rights and interests in the South China Sea.

2. International Law Analysis of the Philippines' Grounding at Xianbin Jiao (Sabina Shoal)

Since the 1970s, the Philippines has pursued a policy aimed at advancing its territorial ambitions in the South China Sea through a three-phase process involving both military force and soft occupation tactics. The Philippines occupied several features of Nansha Qundao (Spratly Islands) by force,

marking the beginning of its territorial expansion in the South China Sea. From the late 1990s to 2016, it expanded its control over Ren'ai Jiao (Second Thomas Shoal) and Huangyan Dao, among others, by grounding military vessels. After the 2016 South China Sea Arbitration, it took control of relevant maritime areas of the "Kalayaan Islands" and maintained control over multiple islands and reefs through soft occupation strategies (National Institute for South China Sea Studies, 2024: The Philippines attempts to use its activities at Xianbin Jiao to further substantiate the South China Sea Arbitration Award).

China's position is that Xianbin Jiao (Sabina Shoal) is an inherent territory of China and part of China's Nansha Qundao (Spratly Islands). Located in the northeast of Nansha Qundao, south of the Reed Bank and Southern Bank, Xianbin Jiao (Sabina Shoal) is a spoon-shaped, medium-sized, semi-open atoll that dries out at low tide, and it is administered by Sansha City, Hainan Province (CCTV News, 2024: China's first release of the "medical examination" report on the Xianbin Jiao and the remarks concocted by the Philippine side have no scientific or factual basis). China Coast Guard vessels have long patrolled and enforced the law nearby, and it has been a traditional fishing ground for Chinese fishermen. Fishermen from coastal provinces such as Guangdong, Guangxi and Hainan, have long engaged in fishing production here and even named it "Fish Scales" based on its shape. Historically, in 1935, the Chinese government named it Sabina Shoal, which was later renamed Xianbin Ansha in 1947. In 1983, the Chinese government officially announced the name Xianbin Jiao to the international community. In 1987, during a comprehensive survey of the Nansha Qundao (Spratly Islands) organized by the Chinese government, a comprehensive scientific research team landed on Xianbin Jiao (Sabina Shoal) and erected Chinese stone tablets and markers. China has indisputable sovereignty over Nansha Qundao (Spratly Islands), including Xianbin Jiao (Sabina Shoal), and the adjacent waters, based on sufficient historical and jurisprudential evidence.

As early as 2011, the Philippines attempted to control Xianbin Jiao (Sabina Shoal) through naval patrols and maritime area control (CCTV.COM, 2024). Since then, especially after the South China Sea Arbitration in 2016, it has frequently harassed and interfered with the normal activities of Chinese fishing vessels at Xianbin Jiao (Sabina Shoal), hyping the issue internationally. Since April 2024, using the pretext of monitoring China's

alleged activities of constructing "artificial islands and reefs" at Xianbin Jiao (Sabina Shoal), the Philippines grounded a vessel there and lingered for an extended period. Subsequently, it dispatched patrol boats and multiple fishing vessels, which gathered in the waters near the stranded Philippine Coast Guard vessel 9701 at Xianbin Jiao (Sabina Shoal), leading to multiple conflicts between China and the Philippines, including several malicious collisions, seriously violating China's territorial sovereignty and maritime rights and interests. In addition, through repeated maritime provocations, the Philippines has hyped itself as a "victim" in the international community on issues such as so-called "humanitarianism", "maritime security" and "sovereignty protection", pushing international public opinion in a direction unfavorable to China.

2.1 China's Activities and the Protection and Preservation of the Marine Environment in the South China Sea

2.1.1 The Philippines' Accusations Lack Scientific Evidence and Factual Basis

Firstly, the Philippines' accusations against China's so-called illegal activities of constructing "artificial islands and reefs" at Xianbin Jiao (Sabina Shoal) are not grounded in sufficient scientific evidence. China's activities on islands and reefs in the South China Sea primarily involve necessary reinforcement and protection of naturally exposed landforms, rather than so-called island and reef expansion. These measures not only comply with the provisions of international maritime law but also demonstrate China's respect and protection for the ecological environment of the South China Sea. In fact, islands and reefs, as part of marine geomorphology, undergo dynamic changes, with their positions, sizes and shapes, altered by the combined effects of astronomical tides, storm tides, winds and waves. Based on scientific predictions of these natural phenomena, China's island and reef activities ensure the natural survival and ecological safety of the islands and reefs. The Philippines should respect scientific facts and cease its unfounded accusations and rumors. More crucially, the evidence presented by the Philippines, namely China's dispatch of research vessels and military ships, with dozens of vessels operating at Xianbin Jiao (Sabina Shoal), was obviously insufficient to constitute an accusation against China's island and reef construction activities. The activities of these vessels were legitimate actions such as normal scientific research and maritime patrols. Therefore,

the Philippines should conduct rational analysis based on conclusive evidence and facts, rather than mislead the public solely through conjecture and rumors.

2.1.2 China's Island and Reef Activities Within Its Sovereignty Comply with the Principle of Peaceful Uses of the Sea

Based on the long-standing historical practices of the Chinese people and government, and the consistent position upheld by successive Chinese governments, and in accordance with national and international law, including the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea, the 1992 Law of the People's Republic of China on Territorial Sea and Contiguous Zone, the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, the 1982 UNCLOS, and the 1996 Decision of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea–China has established, based on Nanhai Zhudao (the South China Sea Islands), its internal waters, territorial seas, contiguous zones, exclusive economic zones, and continental shelf. Furthermore, China has historic rights in the South China Sea (CCTV News, 2024). In terms of international treaties, the UNCLOS, as a comprehensive multilateral agreement on marine spaces, embodies the concept of sustainable development and covers all aspects of marine utilization, including environmental, economic and social aspects. It serves as the primary basis for determining China's maritime rights and interests in the South China Sea. One of the objectives of UNCLOS is to promote marine environmental research (Salpin *et al.*, 2018). Articles 2 to 32 of UNCLOS stipulate that the islands in the South China Sea possess a territorial sea of 12 nautical miles. Articles 33, 55 to 75, and 76 to 85 of UNCLOS grant coastal states specific rights over their territorial seas, exclusive economic zones and continental shelves, including conducting scientific research, resource development and other peaceful activities for the utilization of marine resources in these waters. Xianbin Jiao (Sabina Shoal) is part of China's Nansha Qundao (Spratly Islands), and China has the right to conduct legal scientific research and resource development activities in the surrounding waters. In fact, China's island and reef activities in Nansha Qundao (Spratly Islands) are carried out within its sovereignty, aimed at improving the living conditions

of garrison personnel on the islands and reefs while maintaining their natural state, enhancing search and rescue capabilities in the South China Sea, and better fulfilling China's territorial sovereignty and maritime rights and interests in the South China Sea. These activities are conducted with full respect for international law and regional stability and pose no threat or harm to the legitimate rights and interests of any country. Conversely, the grounding of the Philippine Coast Guard vessel on Xianbin Jiao (Sabina Shoal) may have caused damage to the marine ecological environment. By anchoring within the lagoon, the vessel's underwater anchor, influenced by waves and winds, could potentially destroy coral reefs. Once coral reefs are destroyed, marine organisms inhabiting them lose their living space and perish. If the Philippines insists on continuing its grounding activities, the entire ecosystem around Xianbin Jiao (Sabina Shoal) will be severely damaged.

Furthermore, regarding marine environmental protection, the international community's call for marine ecological sustainability is growing louder, and the United Nations mechanism is playing an increasingly important role. Article 33 of the Charter of the United Nations stipulates that "the parties to any dispute, the continuation of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice" (Chen & Xu, 2022). Therefore, countries should follow the principle of peaceful settlement of disputes and jointly maintain regional peace and stability through dialogue and consultation. The various unfounded accusations and provocative actions of the Philippines do not comply with the peaceful methods required by the Charter of the United Nations. It should return to the right track as soon as possible to work with China to promote the proper resolution of issues in the South China Sea.

2.1.3 China Has Not Breached the "Duty to Cooperate" with Environmentally Affected Countries

The Philippines has accused China of violating its obligation to cooperate under Articles 123 and 197 of the Convention. Article 197 of the UNCLOS, titled "Cooperation on a global or regional basis," stipulates the cooperative obligations that states must fulfill in establishing and improving international

rules, standards and recommended practices and procedures, to protect and preserve the marine environment. This article emphasizes the fundamental cooperative obligations that states must fulfill in establishing international rules, standards, and recommended practices and procedures to protect and preserve the marine environment. The "Ireland v. United Kingdom" case noted that the cooperative obligation is a fundamental principle of the Convention's Part XII and general international law for preventing marine environmental pollution. In the "MOX Plant" case, the disputing parties were required to cooperate, consult and exchange information, among other things. However, the Philippines has interpreted this provision unilaterally. The term "cooperation on a global or regional basis" refers to the development and establishment of international rules, standards and recommended practices and procedures, in accordance with this Convention. It is clear that China's scientific research activities at Xianbin Jiao (Sabina Shoal) do not fall within the scope of Article 197.

With regard to Article 123 of UNCLOS, "Duty of coastal States bordering enclosed or semi-enclosed seas to cooperate", it imposes legally binding cooperation obligations on coastal states of enclosed or semi-enclosed seas, requiring coordination among countries in the management, conservation, exploration and exploitation of marine living resources, as well as in the exercise and fulfillment of their rights and obligations in the protection and preservation of the marine environment (Zhang, 2016). In addition, Paragraph 5 of the DOC elaborates on the obligation of restraint for all parties. Based on these provisions, the Philippines' accusation that China's dredging and construction activities are destroying the coral system in Nansha Qundao (Spratly Islands) is completely unfounded. China has always actively fulfilled its obligations under Article 123 of the Convention. Within the framework of the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea, China initiated the establishment of three specialized technical committees on marine scientific research and environmental protection, navigation safety and search and rescue and combating transnational crimes at sea in 2011, and has been making efforts to this end (Ministry of Foreign Affairs of the People's Republic of China, 2011). In addition, from May to July 2024, a number of research institutes affiliated with the Ministry of Natural Resources of China, together with the support of a number of domestic scientific and technological innovation platforms, conducted

a comprehensive investigation of the Xianbin Jiao (Sabina Shoal), and officially released the "A Survey Report on the Coral Reef Ecosystem of Xianbin Jiao" on August 30 (National Institute for South China Sea Studies, 2024: China releases an ecological investigation report on the Xianbin Jiao: Philippine ship agglomeration activities have caused damage to the Xianbin Jiao ecosystem), which shows China's efforts in marine environmental protection and scientific research, so it cannot be accused of violating Article 123 of UNCLOS.

As mentioned above, the natural formation process of islands and reefs in the South China Sea is a complex geographical phenomenon, and China's normal marine scientific research activities cannot be smeared as artificial island and reef construction. According to "A Survey Report on the Coral Reef Ecosystems at Xianbin Jiao", the false remarks such as China dumped coral debris a Xianbin Jiao (Sabina Shoal) and caused massive coral bleaching and death are without scientific or factual basis (The South China Sea Development Research Institute of the Ministry of Natural Resources and the South China Sea Ecological Center and the South China Sea Survey Center, 2024). On the contrary, illegal beach landings and the constant delivery of supplies by the Philippines will harm Xianbin Jiao (Sabina Shoal).

2.2 China's Law Enforcement Activities Against the Philippine Vessels in the Area of Xianbin Jiao (Sabina Shoal) are Lawful and Reasonable

On August 19 and August 25 in 2024, during the period when the Philippines grounded its vessel on Xianbin Jiao (Sabina Shoal), Philippine Coast Guard vessels also intruded into the waters adjacent to Xianbin Jiao (Sabina Shoal) consecutively and deliberately rammed China Coast Guard vessels that were conducting routine law enforcement, resulting in "collision" accidents. The Philippines accused China Coast Guard vessels of using water cannons to attack Philippine vessels, while the United States even exaggerated the situation by expressing solidarity with its ally and condemning China for deliberately colliding with Philippine Coast Guard vessels.

China enjoys sovereignty over, and maritime entitlements based on the Nansha Qundao (Spratly Islands) as a unit which includes Xianbin Jiao (Sabina Shoal). The activities of the Philippine vessels in China's territorial sea were not "innocent passage", and China, via its law enforcement vessels, was entitled to "take the necessary steps in its territorial sea to prevent

passage which is not innocent" according to international law. According to Article 18 of UNCLOS, foreign ships exercising "passage" within China's territorial waters must do so for the purpose of "navigation". The Philippines claims that Xianbin Jiao (Sabina Shoal) is within the exclusive economic zone of the Philippines and claims to conduct maritime patrols and law enforcement activities, but in fact, it was likely providing supplies to ships stranded at Xianbin Jiao (Sabina Shoal). It is not a passage through Chinese territorial waters for the purpose of navigation. Even if the activities of the Philippine ships are considered "passage", they do not constitute "innocent passage". According to Article 19 of UNCLOS, passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. The provocative actions of Philippine ships entering the waters of Xianbin Jiao (Sabina Shoal) for maritime patrols and attempting to resupply the stranded ships are clearly acts that undermine regional peace and are not "innocent passage". According to Article 25 of UNCLOS, "the coastal State may take such steps as are necessary to prevent passage which is not innocent within its territorial sea".

In addition, Article 111 of the Convention provides that the hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Although Article 111 does not explicitly state that force may be used in exercising the right of hot pursuit, it would be difficult to achieve the purpose of law enforcement if the right of hot pursuit could only be exercised by closing the distance with the offending vessel without the assistance of the use of force. Some scholars also believe that, from a legal perspective, since the right of hot pursuit is a kind of police power, and the police have the right to use force against escapees who ignore warnings when enforcing the law, law enforcement vessels of the coastal state may use force after the warning to order the offending vessel to stop has been ineffective (Gao, 2009).

In international judicial practice, the International Court of Justice, the International Tribunal for the Law of the Sea and arbitration tribunals have also recognized in many cases the use of limited force at sea as a necessary step to prevent innocent passage. In SAIGA (No. 2) (Saint Vincent and the Grenadines v. Guinea,1999) case, the tribunal considered that although the Convention does not contain express provisions on the use of force in the arrest of ships, international law, which is applicable by virtue of article

293 of the Convention, requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances (ITLOS, 1999).

Moreover, according to the relevant provisions of China's domestic law, the Coast Guard Law of the People's Republic of China, concerning the use of force or weapons in compliance with international law and customs, and the newly issued Provisions on the Administrative Law Enforcement Procedures of Coast Guard Agencies, China Coast Guard has the right to take necessary measures against foreigners who infringe upon China's territorial waters in accordance with the law. China Coast Guard conducted warning water cannon sprays on Philippine vessels that illegally entered the waters adjacent to Ren'ai Jiao (Second Thomas Shoal) in the South China Sea, maintaining rational restraint throughout the process. The Philippines was trying to change the peaceful status quo in the South China Sea, while China is a party that maintains the status quo. The Philippines' attempt to stay in Chinese territory for a long time precisely proves that China is taking legal and necessary actions to safeguard its territorial sovereignty. The Philippines also undermined the DOC reached between China and ASEAN countries, which was not conducive to accelerating the negotiation of a "Code of Conduct in the South China Sea" and fostering a good atmosphere. These countermeasures are not only necessary for China to safeguard its territorial sovereignty but also to uphold the solemnity and authority of the DOC.

2.3 Philippines Cannot Acquire Territorial Sovereignty through "Effective Control"

The Philippines has a "precedent" of occupying Xianbin Jiao (Sabina Shoal). Since the Marcos Jr. administration came into power, there have been some noticeable changes in the Philippines' South China Sea policy, including continuously stirring up troubles in the South China Sea, consolidating its grounded ship at Ren'ai Jiao (Second Thomas Shoal) aiming to turn it into an occupation, and returning to Huangyan Dao (Scarborough Shoal) (Wang & Li, 2024). However, international law does not stipulate that territorial sovereignty can be acquired through prescription or through the so-called "effective control" over islands and reefs (Fu & Li, 2016).

Effective control refers to "the acts of a state intended to demonstrate sovereignty over territory through the exercise of national power

(Marcelo, 2018)." In terms of legal requirements, the Permanent Court of International Justice stated in the "Eastern Greenland Case" that effective control must meet two conditions: firstly, there must be a subjective and continuous intention to exercise control; secondly, there must be objectively demonstrable acts showing the purpose of control (Permanent Court of International Justice, 1993). When a state's subjective intention is not explicitly expressed, it can be realized through the state's objective manifestations (Qu, 2010). In the Nicaragua v. Honduras case concerning sovereignty over islands and maritime delimitation, the International Court of Justice (ICJ) held that "an important factor in identifying sovereign acts related to the disputed islands is the extent and scope of acts already performed by the other claiming sovereignty," specifically supporting Honduras' acts of immigration control, fisheries management, and public works construction on the islands (ICJ, 2007). In the Pedra Branca case between Singapore and Malaysia, the ICJ considered acts such as investigations into maritime accidents, control over visits to Pedra Branca by foreigners (including Malaysians), installation of maritime communication equipment, and land reclamation plans as sovereign acts demonstrating effective control (ICJ, 2008).

This is precisely the intention behind the Philippines' recent elaborate schemes to ground ships on the pretext of monitoring "China's land reclamation activities at Xianbin Jiao (Sabina Shoal)", attempting to gain "effective control" over Ren'ai Jiao (Second Thomas Shoal), Xianbin Jiao (Sabina Shoal), and other South China Sea islands. However, in the aforementioned cases, the ICJ further clarified the applicable conditions and rules of this principle, namely, the ICJ invokes the principle of effective control to adjudicate cases only under certain prerequisites, such as when the legal owner cannot be determined (Zhou & Zou, 2013). In territorial disputes, one country may assert its original legal rights to the disputed territory to deny another country's claim of effective control. Original rights may derive from the occupation of *terra nullius* or from assertions based on the rule of continued occupation. The rule of continued occupation means that newly established sovereign states should retain the internal boundaries of their territories as they existed before independence, provided that the legal title to the territory is established. These internal boundaries are delineated by domestic laws (including legislation and executive orders) enacted by the colonies before independence or by international treaties

concluded by colonial states. The ICJ stated in the Burkina Faso/Mali case, "As the basis of sovereignty, the rule of continued occupation requires the legal title to prevail over effective occupation".

In other words, international judicial bodies follow a certain order, where the existence of a legal title determines the assessment of the legal value of effective control. In the presence of a legal title, if the effective control is legitimate, the legal title takes precedence; if the effective control is illegal, then the effective control has no legal effect, and the legal title still takes precedence; if there is no legal title or the proof of the legal title is insufficient, effective control takes precedence and can create a source of sovereignty; in other cases, effective control has the function of proving or interpreting the legal title, or a residual function.

As an inseparable and important part of China's territory, Nansha Qundao (Spratly Islands) has corresponding historical records and legal basis to be under China's sovereignty. Based on abundant historical evidence and the principle of occupation in territorial acquisition under international law, China was the first to discover and effectively occupy Nansha Qundao (Spratly Islands), acquiring sovereignty of its entirety over them, and has continuously and stably exercised this exclusive right thereafter (Chu, 2017). Combined with the conditions discussed above, "When the legal owner of the disputed territory can be determined, the legal owner should be considered first, and the application of the principle of effective control should be excluded; the principle of effective control can only be applied when it is difficult to determine the legal owner," it can be concluded that the principle of effective control cannot be applied in the dispute over Nansha Qundao (Spratly Islands). Therefore, the Philippines' attempt to ground ships at Xianbin Jiao (Sabina Shoal) to achieve "effective control" cannot be realized.

2.4 Philippines' Grounding on Xianbin Jiao (Sabina Shoal) Violates the Declaration on the Conduct of Parties in the South China Sea

The Philippines' act of infringing upon China's territorial sovereignty over Nansha Qundao (Spratly Islands) not only violates international law but also breaches the Declaration on the Conduct of Parties in the South China Sea (hereinafter referred to as "the Declaration"), jointly signed by China and ASEAN countries in 2002. A declaration typically refers to a statement or commitment jointly signed by multiple countries or international

organizations, aiming to express the common stance, policy direction, or cooperation intentions of the parties concerned on certain issues. Since the 1990s, China and the Philippines have repeatedly affirmed in bilateral documents the settlement of relevant disputes between them through negotiation and consultation. As a party to the Declaration reached among China and ten ASEAN countries, the Philippines participated in the entire negotiation process of the Declaration as an ASEAN member and was well aware of the obligations to be undertaken by all parties in the Declaration. The Declaration, as a political outcome achieved by ASEAN parties after years of effort, speaks for itself in terms of seriousness and authority. In the Danube Dam case, the International Court of Justice emphasized the agreement reached between the two countries in 1977 and subsequent commitments on environmental and water resources management. Although some content may have originated from political commitments, its binding force was deemed to meet international law standards. The ICJ ruling indicated that even if certain international declarations are not treaties themselves, they can still influence state conduct and international responsibility. Paragraph 5 of the Declaration stipulates that the Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability, including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Before the signing of the Declaration, on 9th May 1999, the Philippines dispatched the landing ship Sierra Madre (LT 57 Sierra Madre) to invade China's Ren'ai Jiao (Second Thomas Shoal) and illegally "grounded" itself on the reef under the pretext of a "technical malfunction." And after the signing of the Declaration, it continuously dispatched fishing boats to transport supplies, attempting to turn the grounded vessel into a permanent facility on the reef and even rotated personnel to guard it, which constituted "actions aimed at the habitation of uninhabited reefs". After its bold move on Ren'ai Jiao (Second Thomas Shoal), the Philippines took similar actions on Xianbin Jiao (Sabina Shoal) in an even more egregious manner, attempting to replicate the process of grounding, resupplying and guarding, turning a blind eye to and repeatedly violating the commitments in Paragraph 5 of the Declaration. This not only violates the principle of good faith in international law but also undermines the authority of the Declaration.

3. The Philippines' "Maritime Zones Act" and "Archipelagic Sea Lanes Act" Violate International Law

China has sovereignty over Nansha Qundao (Spratly Islands) and their adjacent waters, as well as the Zhongsha Qundao (Zhongsha Islands), including Huangyan Dao (Scarborough Shoal), and their adjacent waters, and has sovereign rights and jurisdiction over the relevant maritime areas. China's territorial sovereignty and maritime rights and interests mentioned above have sufficient historical and jurisprudential foundations and comply with international law.

Huangyan Dao (Scarborough Shoal) has been China's inherent territory since ancient times, and China has indisputable sovereignty over Huangyan Dao (Scarborough Shoal) and its adjacent waters. China's activities in the South China Sea date back more than 2,000 years, being the earliest to discover, name and exploit the South China Sea Islands. China is also the earliest in the continuous exercise of sovereign jurisdiction over them. China has indisputable historical rights to the South China Sea Islands, including Huangyan Dao (Scarborough Shoal). Since the founding of the People's Republic of China, the Chinese government has been actively safeguarding the sovereignty of the South China Sea Islands through persistent and practical actions. Both the 1958 Declaration of the Government of the People's Republic of China on the Territorial Sea and the 1992 Law of the People's Republic of China on Territorial Sea and Contiguous Zone explicitly stipulate that the territory of the People's Republic of China includes the Dongsha Qundao (Dongsha Islands), Xisha Qundao (Xisha Islands), Zhongsha Qundao (Zhongsha Islands), and Nansha Qundao (Spratly Islands) (Ministry of Foreign Affairs of the People's Republic of China, 2016). Before the 1970s, the domestic laws and maps of the Philippines did not involve China's South China Sea Islands and reefs. Afterwards, the Philippines began to weave various justifications to make territorial claims on Huangyan Dao (Scarborough Shoal) in China's Zhongsha Qundao (Zhongsha Islands).

Firstly, the Philippines makes the argument that Huangyan Dao (Scarborough Shoal) is within its 200-nautical-mile exclusive economic zone and thus asserts jurisdiction over Huangyan Dao (Scarborough Shoal). Secondly, the Philippines introduced the idea or geographical proximity, arguing that Huangyan Dao (Scarborough Shoal) is closest to the Philippines and thus the Philippines acquires its sovereignty. It also makes

the argument that the Philippines inherited sovereignty over Huangyan Dao (Scarborough Shoal) from the US military stationed in the Philippines. Finally, the Philippines also asserts that Filipino fishermen began utilizing Huangyan Dao (Scarborough Shoal) as early as the Spanish colonial period, thereby acquiring territorial sovereignty over it. During the South China Sea Arbitration in 2016, China's position paper also clearly stated that Huangyan Dao (Scarborough Shoal) is China's inherent territory, and China has continuously, peacefully and effectively, exercised sovereignty and jurisdiction over Huangyan Dao (Scarborough Shoal). The territorial claims made by the Philippines over Huangyan Dao (Scarborough Shoal) since 1997 are unreasonable, illegal and invalid. The Chinese government does not recognize any territorial sovereignty dispute with the Philippines over Huangyan Dao (Scarborough Shoal) (China Gov.com, 2014).

Since the 1990s, the military of the Philippines has frequently harassed Chinese fishermen fishing near Huangyan Dao (Scarborough Shoal). Since the Marcos Jr. administration came to power in 2022, several Philippine vessels have intruded into the waters adjacent to China's Huangyan Dao (Scarborough Shoal) multiple times. In November of this year, China delineated and announced the territorial sea baseline of Huangyan Dao (Scarborough Shoal) in accordance with UNCLOS and other international laws, as well as the Law of the People's Republic of China on Territorial Sea and Contiguous Zone, clarifying the scope of the internal waters, territorial sea, and other maritime areas of Huangyan Dao (Scarborough Shoal). Meanwhile, President Marcos of the Philippines signed the Archipelagic Sea Lanes Passage Act and the Maritime Zones Act, using the implementation of UNCLOS as a pretext to solidify the arbitral ruling of the South China Sea Arbitration and legitimise its actions in the South China Sea Then, in December, the Philippine Coast Guard vessels 9701 and 4409, as well as official vessels 3002 and 3003, attempted to intrude into the territorial sea of China's Huangyan Dao (Scarborough Shoal) under the guise of "law enforcement" and dangerously approached China Coast Guard vessels conducting normal law enforcement patrols. China exercised control over them in accordance with laws and regulations.

This article believes that the Archipelagic Sea Lanes Act and Maritime Zones Act of the Philippines violate international law, including UNCLOS. Firstly, the sea lanes and air routes designated by the Philippines' Archipelagic Sea Lanes Act do not include all commonly used international

routes within the archipelagic waters of the Philippines, which does not comply with Article 53(4) of UNCLOS, which stipulates that archipelagic states "shall include all normal routes for international navigation or overflight used for passage through the archipelagic waters or over them", and impairs the legitimate interests of other shipping nations. Article 53(9) of UNCLOS further stipulates that when designating sea lanes, an archipelagic state shall make proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them. In other words, the Philippines should propose and agree on sea lanes with the International Maritime Organization before designating archipelagic sea lanes, but the Philippines has not yet completed the corresponding agreement procedures.

In addition, the sea lanes and air routes designated by this Act are all in close proximity to the United States military bases in the Philippines. If the Philippines restricts the legitimate rights of passage for countries other than itself and its allies and takes the opportunity to monitor passing vessels, it will seriously threaten the navigation safety of countries in the South China Sea. It is obvious that the Philippines' Archipelagic Sea Lanes Act exceeds the scope authorized by UNCLOS and serves the purpose of illegally restricting the legitimate rights of other countries. Therefore, before the Philippines completes the aforementioned procedures, in accordance with Article 53(12) of UNCLOS, other countries may still exercise navigational rights in other routes used for international navigation.

Secondly, the Maritime Zones Act of the Philippines includes China's Huangyan Dao (Scarborough Shoal), some islands and reefs of Nansha Qundao (Spratly Islands), and their maritime areas within its maritime zones, thus violating China's territorial sovereignty and maritime rights in the South China Sea. The Act lists islands and reefs that are part of China's Nansha Qundao (Spratly Islands) as part of its exclusive economic zone, infringing upon China's territorial sovereignty. This act deliberately replaces the Philippines' territorial claims with "maritime jurisdiction claims", and attempts to cover the fact of the Philippines' occupation of some islands and reefs in China's Nansha Qundao (Spratly Islands). Although the Maritime Zones Act of the Philippines mentions so-called "all other low-tide elevations within two hundred (200) nautical miles from the archipelagic

baselines" and "artificial islands located in the Philippines' exclusive economic zone" without specifying their names, the targets are very obvious, mainly targeting some islands, reefs, banks and sandbars in China's Nansha Qundao (Spratly Islands). This also suggests that the Philippines has cause to attempt to further occupy relevant islands and reefs in China's Nansha Qundao (Spratly Islands), possibly including Yongshu Reef, Zhubi Reef and Meiji Reef, in the South China Sea as part of the territory of the Philippine government. Legally speaking, this provision actually exceeds the authorization of Articles 56 and 60 of UNCLOS. UNCLOS grants coastal states sovereign rights and jurisdiction over the construction, authorization, and management of the construction, operation, and use of artificial islands, but never mentions the issue of ownership of artificial islands. However, the Philippines has always had a record of using domestic legislation to endorse its territorial claims, and this is also an attempt to gradually expand beyond its territorial outer limits. The Maritime Zones Act adopts a similar approach and is also an inheritance and development of previous legislative infringements.

The Maritime Zones Act of the Philippines takes the ruling of the South China Sea Arbitration as one of the bases for delineating its maritime boundaries, attempting to solidify the arbitration ruling through domestic legislation. In the view of the Philippines, only by further 'domesticating" the arbitration ruling can it exert its "maximum effectiveness", thereby consolidating the "political and legal foundation" for maritime confrontation with China and providing domestic legal support for its actions regarding the issue of the continental shelf beyond 200 nautical miles in the South China Sea, pushing forward negotiations with relevant countries on the delimitation of maritime boundaries in the South China Sea without China, and initiating new international arbitrations in the South China Sea. However, this cannot shake the fact that China has deemed the arbitral ruling of the South China Sea Arbitration as invalid, with the arbitral tribunal exceeding its jurisdiction, conducting trials in defiance of the law, and committing numerous errors in legal interpretation and application, evidence admissibility, and fact-finding. The Philippines' reliance on an invalid ruling as the basis for its rights will not produce any legal effects.

Furthermore, the two Acts of the Philippines have violated Article 5 of the Declaration on the Conduct of Parties in the South China Sea, which stipulates "exercising self-restraint and refraining from actions that

complicate or escalate disputes and affect peace and stability". The signing of the two Acts is not conducive to dispute resolution but will only further escalate contradictions and undermine regional peace and tranquility. The Philippines is thus seeking to expand and gain benefits in the name of international law, but its actions ultimately affect the freedom and safety of navigation in the South China Sea, threaten regional peace and stability, and inevitably cause dissatisfaction among regional countries and the international community.

Lastly, the invocation by the Philippines of the provisions of its domestic laws, the Maritime Zones Act and Archipelagic Sea Lanes Act, as the justification for not fulfilling treaty obligations, is not acceptable. According to Article 27 of the 1969 Vienna Convention on the Law of Treaties, concerning "Compliance with Internal Law and Treaties": "A party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty". The Philippines' enactment of these two Acts violates multiple international conventions, including the Charter of the United Nations and the UNCLOS, as well as the provisions of several joint declarations between China and the Philippines. The Philippines cannot invoke these domestic laws to disregard its obligations under various international treaties. According to the principle established by the International Court of Justice in the "Fisheries Case" (United Kingdom v. Norway), unilateral acts by the Philippines that do not conform to the rules of international law are externally invalid. Therefore, the two Acts unilaterally enacted by the Philippines should be considered invalid and have no binding force on China or the international community at the international law level. According to the Draft Articles on Responsibility of States for Internationally Wrongful Acts and customary international law reflected therein, the legislative acts of the Philippines also constitute internationally wrongful acts, for which the Philippines should bear international responsibility, and China has the right to take countermeasures.

4. China's Announcement of the Territorial Sea Baselines and Law Enforcement Activities in Huangyan Dao (Scarborough Shoal) Complies with International and Domestic Law

China's announcement of the territorial sea baselines of Huangyan Dao (Scarborough Shoal) complies with the legitimate measures stipulated by international law, including UNCLOS, and domestic laws such as the Law of

the People's Republic of China on the Territorial Sea and Contiguous Zone. The territorial sea baseline is an important basis for a country to determine its territorial sea. The Convention stipulates that "every State has the right to establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles measured from baselines determined in accordance with this Convention". Regarding the method for drawing territorial sea baselines, the Convention not only recognizes the "normal baseline" method, which uses the low-water line along the coast as the territorial sea baseline, but also permits the use of the "straight baseline" method to connect suitable points to determine the territorial sea. China's use of the "straight baseline" method to determine the territorial sea baseline of Huangyan Dao (Scarborough Shoal) fully complies with the relevant provisions of international maritime law.

Meanwhile, according to the Law of the People's Republic of China on the Territorial Sea and Contiguous Zone, the territorial sea baseline of the People's Republic of China is delineated by the straight baseline method, consisting of straight lines joining adjacent base points. Undoubtedly, China's announcement of the territorial sea baselines of Huangyan Dao (Scarborough Shoal) fully complies with the norms of international law, such as the UNCLOS, as well as domestic law requirements. In addition, China's law enforcement actions against the Philippine Coast Guard vessels comply with international and domestic law. Despite being fully aware that China had announced the territorial sea baselines of Huangyan Dao (Scarborough Shoal), the Philippines insisted on entering the territorial sea and colliding with Chinese law enforcement vessels, intending to enforce the newly enacted Archipelagic Sea Lanes Act and the Law on the Territorial Sea, and denying China's territorial sovereignty over Huangyan Dao (Scarborough Shoal), while completely ignoring the domestic legal measures taken by China to defend its sovereignty. Moreover, the Philippines' repeated provocations in Huangyan Dao (Scarborough Shoal) aim to continue enforcing the ruling of the South China Sea arbitration case related to Huangyan Dao (Scarborough Shoal). Based on the ruling, the Philippines firmly refuses to recognize China's sovereignty and maritime rights over Huangyan Dao (Scarborough Shoal), claiming that Huangyan Dao (Scarborough Shoal) belongs to the Philippines' exclusive economic zone, intending to stir up confrontation on Huangyan Dao (Scarborough Shoal) and use the ruling to garner international support.

China's countermeasures have effectively demonstrated its determination to firmly defend its national territorial sovereignty and maritime rights and interests in at least three ways. Firstly, China clearly announced that Philippine vessels entered the territorial sea of Huangyan Dao (Scarborough Shoal), indicating that China is exercising administrative jurisdiction based on the newly announced territorial sea baselines of Huangyan Dao (Scarborough Shoal), which complies with the provisions of the UNCLOS and effectively proves that Huangyan Dao (Scarborough Shoal) belongs to China. By enforcing the law within the territorial sea, China has clarified the scope of maritime rights arising from Huangyan Dao (Scarborough Shoal), providing clear guidance for future law enforcement activities in the exclusive economic zone and continental shelf of Huangyan Dao (Scarborough Shoal). Secondly, China firmly countered the Philippines' propaganda efforts, effectively demonstrating through the release of videos from the scene that the Philippines was the culprit behind the collision incident. Videos from the Chinese side show that the Philippines suddenly made a large-angle turn and reversed its vessel while navigating, deliberately colliding with Chinese Coast Guard vessels. During this dangerous collision, Philippine Coast Guard personnel were still jumping around to film and collect so-called evidence. It can be seen that the videos released by the Philippines only show a partial view rather than the whole situation, and the Philippines completely disregarded the safety and humanitarianism of its crew members. Thirdly, China maintained maximum restraint and patience during the collision incident, effectively maintaining peace and stability in the South China Sea. Peace and stability in the South China Sea are in the common interest of countries in the region. In China's view, the above-mentioned actions undertaken by the Philippines could trigger conflicts and undermine regional peace and stability. China's warning aims to remind the Philippines of the severity of its wrongdoings, urging it to stop in time and avoid further escalation of the situation. Only when the Philippines ceases its behavior can China and the Philippines resolve their dispute through dialogue and consultation and achieve regional peace and stability.

Reference List

Chen, X. M. (2024, August 26), "[菲律宾企图利用在仙宾礁的活动，进一步坐实"南海仲裁裁决"] The Philippines Attempts to Use Its Activities at Xianbin Jiao to Further Substantiate the South China Sea Arbitration

Award]". Retrieved 20 July 2025 from *Guancha Syndicate* at <https://m.guancha.cn/chenxiangmiao/2024_08_26_746031.shtml>.

Chen, X. D. & Q. Xu (2022), "Reflections on International Dispute Settlement Mechanisms for the Fukushima Contaminated Water Discharge", *Ocean & Coastal Management*, Vol. 226, p. 106278.

Chinese Central Government (2014, December 07), "中国政府关于菲律宾共和国所提南海仲裁案管辖权问题的立场文件 [Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines]". Retrieved 20 July 2025 from *Chinese government website* at <https://www.gov.cn/xinwen/2014-12/07/content_2787663.htm>.

Chinese Central Television (CCTV) (2024, August 30), "我国首次发布仙宾礁珊瑚礁 "体检" 报告 菲方炮制言论毫无科学和事实依据" [China's First Release of the 'Medical Examination' Report on the Xianbin Jiao and the Remarks Concocted by the Philippine Side Have No Scientific or Factual Basis]". Retrieved 20 July 2025 from *CCTV* at <https://news.cctv.cn/2024/08/30/ARTIuDDr7TcMvf9uRvL00h9n240830.shtm>.

———. (2024), "美西方为菲律宾站台背后有哪些小九九？[What Are the Ulterior Motives Behind the United States and the West's Support for the Philippines?]".

Chu, X. L. (2017), "Fishery and the International Law Basis of China's Sovereignty Over Nansha Qundao", *Journal of Shanghai Ocean University*, Vol. 26, No. 4, pp. 615-620.

Fu, K. C. & J. C. Li (2016), "Some International Legal Issues in the South China Sea", *Pacific Journal*, Vol. 24, No. 7, pp. 7-12.

Gao, J. J. (2009), "Use of Force in the Law Enforcement on the Sea——Based on the International Practice", *Studies in Law and Business*, Vol. 26, No. 4, pp. 23-31.

Huayang Center for Maritime Cooperation and Ocean Governance (2024, July 11), "南海仲裁案裁决再批驳 [Report: Critique of the South China Sea Arbitration Award]". Retrieved 20 July 2025 from *Huayang Center for Maritime Cooperation and Ocean Governance* at <https://www.huayangocean.com/researchlist/677.html>.

International Court of Justice (ICJ) (2007, October 8), "Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)", Judgment, I.C.J. Reports 659, p. 655,

para. 80, p. 712, para. 174. Retrieved 20 July 2025 from *International Court of Justice* at <https://www.icj-cij.org/case/120/judgments>.

———. (2008, May 23), "Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)", Judgment, I.C.J. Reports 12, pp. 95–96, para. 274. Retrieved 20 July 2025 from *International Court of Justice* at <https://icj-cij.org/case/130/judgments>.

ITLOS (1999, December 22), "The M/V 'SAIGA' (No.2) Case (Saint Vincent and the Grenadines v. Guinea)", ITLOS Case No. 2, Judgment, para.155. Retrieved 20 July 2025 from *Jus Mundi* at <https://jusmundi.com/en/document/decision/en-the-m-v-saiga-no-2-case-saint-vincent-and-the-grenadines-v-guinea-judgment-thursday-1st-july-1999>.

Kohen, M. G. (2018), *Research Handbook on Territorial Disputes in International Law*, Edward Elgar Publishing, Cheltenham.

Ministry of Foreign Affairs, People's Republic of China (2011), "中华人民共和国国务院总理温家宝在第十四次中国 – 东盟(10+1)领导人会议暨中国 – 东盟建立对话关系20周年纪念峰会上的讲话 [Statement by H.E. Wen Jiabao Premier of the State Council of the People's Republic of China At the 14th China-ASEAN Summit as a Commemorative Summit to Celebrate the 20th Anniversary of China-ASEAN Relations]".

Ministry of Foreign Affairs, People's Republic of China (2016, July 12), "中华人民共和国政府关于在南海的领土主权和海洋权益的声明 [Statement of the Chinese Government on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea]". Retrieved 20 July 2025 from *Chinese government website* at <www.gov.cn/xinwen/2016-07/12/content_5090631.htm>.

National Institute for South China Sea Studies (2024, August 31), "中方发布仙宾礁生态调查报告：菲船舶聚集活动给仙宾礁生态系统造成破坏 [China Releases an Ecological Investigation Report on the Xianbin Jiao: Philippine Ship Agglomeration Activities Have Caused Damage to the Xianbin Jiao Ecosystem]". Retrieved 20 July 2025 from *National Institute for South China Sea Studies* at <https://m.nanhai.org.cn/search-detail/15675/1.html>.

Permanent Court of International Justice (1933), "Legal Status of Eastern Greenland (Denmark / Norway)", Judgment.

Qu, B. (2010), "On Application of Effective Control Principle in Solving Island Dispute", *Contemporary Law Review*, Vol. 24, No. 1, pp. 144-151.

Salpin, C., V. Onwuasoanya, M., Bourrel & A. Swaddling (2018), "Marine

Scientific Research in Pacific Small Island Developing States", *Marine Policy*, Vol. 95, pp. 363-371.

The South China Sea Development Research Institute of the Ministry of Natural Resources and the South China Sea Ecological Center and the South China Sea Survey Center (2024, August 15), "仙宾礁珊瑚礁生态系统调查报告 [A Survey Report on the Coral Reef Ecosystems at Xianbin Jiao]". Retrieved 20 July 2025 from *Ministry of Natural Resources of the People's Republic of China* at <https://www.mnr.gov.cn/sj/sjfw/hy/202408/t20240830_2856504.html>.

Wang, C. J. & P. F. Li (2024), "Analysis of Some Changes in the Philippines' South China Sea Policy Since Marcos Jr. Taking Office", S*outheast Asian Affairs*, No. 2, pp. 88-103.

Zhang, H. (2016), "On the Legal Obligation and Prospect of Cooperation Between Parties Involved in the Disputes on South China Sea", *Pacific Journal*, Vol. 24, No. 1, pp. 1-10.

Zhou, J. & W. J. Zuo (2013), "The Principle of Effective Control and Its Inapplicability on the Disputes of Nansha Qundao", *Chinese Journal of Maritime Law*, Vol. 24, No. 2, pp. 60-66.

International Journal of China Studies
Vol. 16, No. 1, June 2025, pp. 145–165 https://doi.org/10.22452/ijcs.vol16no1.8

The Decline of Shipbuilding and Maritime Capabilities in Vietnam and its Dependence on China's Qing Dynasty During the Tự Đức Era (1848–1883)[1]

Chen Wen° *Li* Lu* *Fan* Yazhen** *Tan* Simin***
School of International Studies/Academy of Overseas Chinese Studies,
Jinan University, China

Abstract

During the early Nguyễn Dynasty, Vietnam prioritized the development of its shipbuilding industry, constructing numerous vessels for water transportation and coastal defence. However, during Emperor Tự Đức's reign (1848–1883), worsening internal and external crises, coupled with an increasingly depleted treasury, led to a severe decline in shipbuilding capacity. The number of ships dwindled, while existing large vessels and imported steamships fell into disrepair. Coastal shipping capabilities deteriorated significantly, and maritime accidents steadily increased. By the later years of Tự Đức's reign, the Nguyễn Dynasty's fleet was no longer capable of completing the annual transportation of official grain supplies between the north and south. At the same time, China's Qing Dynasty advanced its shipbuilding and maritime industries through the Self-Strengthening Movement, establishing the China Merchants' Steam Navigation Company and developed large-

° Chen Wen, is a professor at the School of International Studies/Academy of Overseas Chinese Studies, Jinan University, China. Her research areas include Vietnamese history and Sino-Vietnamese relations history. She can be reached at <twenchen@jnu.edu.cn>.

* Li Lu, Ph.D. Candidate at the School of International Studies/Academy of Overseas Chinese Studies, Jinan University, China. Her research focuses on Sino-Vietnamese relations. She can be reached at <mi_no@qq.com>.

** Fan Yazhen, Ph.D. Candidate at the School of International Studies/Academy of Overseas Chinese Studies, Jinan University, China. Her research focuses on Sino-Vietnamese relations. She can be reached at<fyz1042911154@163.com>.

*** Tan Simin, Ph.D. at the School of International Studies/Academy of Overseas Chinese Studies, Jinan University, China. Her research focuses on Area Studies. She can be reached at<xvill2049@gmail.com>.

scale shipbuilding and maritime transportation industries. Chinese private merchant and fishing vessels also maintained strong maritime transport capabilities. Under the close suzerain-vassal relationship between China and Vietnam, Vietnam was compelled to rely on Chinese official and private ships to assist with grain transport, anti-piracy operations, foreign maritime affairs, and the procurement of goods. This reliance on external support underscored the comprehensive decline of Vietnam's maritime capabilities during the Tự Đức Era.

Keyword: *Shipbuilding Decline, Maritime Transport, Tự Đức Era (1848–1883), Vietnam's Nguyễn Dynasty, China's Qing Dynasty.*

1. Introduction

The development of Vietnam's shipbuilding and maritime capabilities has long been a focal point of academic research. Ancient Vietnamese shipbuilding techniques were considered unique and highly advanced. Some Vietnamese scholars have remarked,

> *The shipbuilding and plank-crafting techniques of ancient Vietnamese were remarkably distinctive and reached a high level of sophistication. Even in the 19th century, when China faced the crisis of Western invasions, patriotic scholar officials such as Lin Zexu once proposed to imitate the ships of Annam in order to strengthen the maritime defence capabilities of the Chinese navy (Li, 2003; Nguyen, Van kim and Nguyen, Manh Dung, 2007).*

However, whether Vietnam's shipbuilding capabilities in the 19th century truly reached such a high level remains a subject worth further exploration.

Regarding Vietnam's ancient and modern shipbuilding technology and shipping capacity, France and other Western scholars have conducted more in-depth studies. For example, John Crawfurd was an early proponent of the idea that Vietnam's foreign trade was done by the Chinese, and that the Vietnamese were not good seafarers and seldom ventured beyond the coast (Crawfurd, 1820, 513-514). Paris published *Essai sur la construction navale des peuples extra-européens and Esquisse d' une ethnographie navale des pays Annamites* in 1843; JeanBaptiste Pietri authored *Voiliers d'Indochine*;

and Pierre-Yves Manguin conducted the first investigation of clinker-built ships in the Hue region in 1985. Additionally, Aubalie-Sallenave published *Bois et bateaux du Viêtnam* in 1987, and Michael Flecker, following his participation in multiple South China Sea archaeological excavations from 1992 to 2001, released works that explored ship construction in depth. In the 21st century, French scholars have expanded their research to include small vessels such as bamboo rafts (Pham and Palmer, 2010). Relevant research by Vietnamese scholars, such as *Kinh tebien va khoa hoc ky thuat ve bien o nuoc ta* (Dao, 2002) and *Kinh tebien va khoa hoc ky thuat ve bien o nuoc ta* (To sang tac Bo Giaothong van tai, 2002), and the 2006 conference proceedings of the ASEAN Committee on Culture and Information, covers topics including maritime history, shipbuilding, and maritime socio-cultural aspects. These studies explore ship construction through sporadic findings from land-based archaeological excavations. Li Tana provided an in-depth study of ships and shipbuilding in Vietnam's maritime industry, arguing that ancient Vietnam was shaped by a vibrant coastal economy and cultural contact, with different types and numbers of ships constructed in the late 18th and early 19th centuries (Li, 1998, 2003, 2024). Zheng Yongchang and Li Guimin examined the shipbuilding, coastal defence reforms, and operations during the reign of Emperor Minh Mang (1820–1841). They argued that during this period, Vietnam prioritized coastal defence reforms and adopted Western modern technology to construct copper-clad ships, its shipbuilding technology and navigational capabilities reached a high level in ancient Vietnam, but this capability was merely a "momentary brilliance." (Zheng and Li, 2014; Li, 2016; Zheng, 2022)

Studies have analysed in depth the maritime awareness, ships and shipbuilding capacity of Vietnam from the late 18th century to the early 19th century. However, the shipbuilding and maritime capabilities of Vietnam during the Tự Đức Era (1848–1883) have yet to receive sufficient attention and depth study. This paper intends to focus on the construction, number and maritime transport capacity of ships in Vietnam during the Tự Đức period in an attempt to gain a deeper understanding of the situation of shipbuilding in Vietnam in the 19th century and the help of Qing Dynasty ships to Vietnam, with a view to providing new perspectives and empirical evidence for related research.

2. The Shipbuilding and Sources of Vessels in Vietnam During the Tự Đức Era

In the early 19th century, following the unification of the north and south and the strengthening of national power, Vietnam's Nguyễn Dynasty constructed a fleet of ships for transportation and defence. However, during the Tự Đức Era, escalating internal and external crises, forced the Nguyễn Dynasty to build only essential ships within its limited fiscal capacity and technological capabilities. These vessels were primarily used for resisting French invasion forces and facilitating north-south transportation.

2.1 Shipbuilding in Vietnam's Nguyễn Dynasty During the Tự Đức Era

Increase the Allocation of Ships for the Six Southern Provinces. In 1847, French warships shelled Đà Nẵng. The Nguyễn Dynasty increased the shipbuilding quota in the six southern provinces to defend against the invasion of French warships. In April of 1854, the ship quotas for the six southern provinces were adjusted to a total of 302 vessels: Biên Hòa was assigned 30 vessels, Gia Định 67 vessels, Định Tường 43 vessels, Vĩnh Long 67 vessels, An Giang 65 vessels, and Hà Tiên 30 vessels (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 10, 15). In July 1858, the ship quota for the six southern provinces was further increased to 416 vessels. This included 52 regular ships and 20 additional ships for Gia Định; 48 regular and 14 additional for Vĩnh Long; 22 regular and 7 additional for Biên Hòa; 26 regular and 11 additional for Định Tường; 48 regular and 15 additional for An Giang; and 20 regular and 9 additional for Hà Tiên. If the regular ship numbers were insufficient, the additional ships were to be used to fill the quota (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 19, 1-2). However, this was merely the planned quota for shipbuilding, and it was not always possible to meet the prescribed numbers.

Construction of Patrol Ships and Warships. In December 1857, the provinces of Bình Thuận and Khánh Hòa were instructed to build an additional 2 to 3 patrol vessels, bringing the total number of patrol ships in these two provinces to 5 to 7. The construction was completed by 1859 to support coastal patrol duties (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 17, 40). In March 1865, an order was issued for the provinces from Thanh Hóa and Nghệ An to Bình Thuận to build 75 new-style warships in preparation for battle (Nguyễn Dynasty Bureau of Historiography, 1979a,

Vol. 31, 21). However, the task of building 75 warships was never fully completed. Combined with the frequent accidents involving the existing warships and patrol ships, by March 1873, the Nguyễn Dynasty had only 39 patrol and warships remaining. In March 1873, the Nguyễn Dynasty ordered the construction of 11 additional vessels, bringing the total number of patrol and warships to 50 (35 patrol ships and 15 warships) (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 48, 10).

Construction of "Long Dragon Ships". In March 1873, the Nguyễn Dynasty ordered the provinces of Hải Dương and Quảng An to imitate the design of the dragon boats and build 20 more for river transport (Ibid., 11).

Construction of Fire-Powered Ships. In April 1876, the Nguyễn Dynasty ordered the construction of one fire-powered ship to facilitate the transportation of money and grain between the north and south (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 55, 15).

Construction of Bamboo Boats and Plank Boats. These types of boats were typically small vessels privately constructed by Vietnamese civilians. Plank boats measured 5 to 6 feet in width, while bamboo boats ranged from 5 feet to 10 feet 9 inches in width (Nguyễn Dynasty Bureau of Historiography, 1971, Vol.206, 6). In January 1881, the Nguyễn Dynasty ordered the construction of 20 small bamboo merchant boats each at the ports of Thuận An and Đà Nẵng (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 65, 3-4), modelled after those used in Quảng Nam. As two of the most important commercial ports in central Vietnam, the use of only small bamboo vessels for official transport illustrates the marked limitations of Vietnam's shipbuilding capacity and financial resources at the time.

Construction of Grain Transport Ships Based on Qing Dynasty Designs. In the mid-19th century, China's Qing Dynasty purchased and built modern warships, and its grain transport vessels were relatively advanced. The Nguyễn Dynasty modelled its grain boats after Qing designs to transport rice from southern and northern regions to the capital, Huế. In September 1881, the Nguyễn Dynasty ordered the navy to build 15 vessels modelled after Qing grain transport boats and Hong Kong long ferry boats (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 66, 19). It also ordered the provinces of Quảng Bình, Hà Tĩnh, Nghệ An, Thanh Hóa, Quảng Nam, Bình Định, and Phú Yên to collaborate in constructing canal boats, with the project scheduled for completion within three years (Ibid., 34). Imitating the style of Qing grain transport ship, 39 feet long, 5.5 feet across, 2 feet

deep in the middle, can carry 160 cubic units（方）of rice, "because of its lightness and speed, it can be ready for transportation"（"以其轻捷，可备堪运"）(Ibid., 19). In December 1882, Thanh Hóa Province completed the construction of nine vessels, including maritime patrol boats and Qing-style grain transport boats, which were immediately put into service transporting grain from northern Vietnam to Huế. (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 68, 28).

Repair of Existing Ships. Due to the reduction of ships, the Nguyễn Dynasty had to order the repair of the existing ships. In 1855, the Nguyễn Dynasty stipulated the years of repair for all types of ships, "copper-coated ship"（"裹铜船"）, repair every 5 years, rebuild every 16 years; non-copper-coated ships（非裹铜船）, repair every 3 years, rebuild every 10 years; and return to the oil tanker once a year (Do Van Tam, 1907). Owing to increasing financial constraints, the time frame set for the repair of ships could not be fully implemented.

2.2 Other Sources of Ships in the Nguyễn Dynasty During the Tự Đức Era

In addition to the various types of officially built ships, there were several other sources of ships in Vietnam during the Tự Đức Era:

Expropriation of Private Vessels. Lacking the financial resources to construct modern ships, the Nguyễn Dynasty mobilized private resources for shipbuilding. In March 1873, the Nguyễn Dynasty encouraged coastal residents to build ships to support the dynasty's maritime operations. It was stipulated that large ports were to construct around ten ships, while smaller ports were tasked with building three to five ships. Nearby coastal communities, consisting of either several hundred or around one hundred people, were selected to "appropriately fulfil maritime duties"（"适充船务"）. However, many provinces reported that "the burden on the local population was unbearable"（"辖民在所难堪"）, making it difficult to complete the assigned tasks (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 48, 10-11). In October 1878, the Nguyễn Dynasty ordered various provinces to gather private resources to construct steam-powered sailing ship, stating (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 60, 30). Despite the preferential conditions offered by the Nguyễn Dynasty, Vietnamese civilians were still reluctant to participate in the court's shipbuilding and transportation tasks. This reluctance was primarily due to the small size of civilian vessels, the lack of technology and experience for

long-distance maritime navigation, and the unwillingness of the populace to take on the risks of sea transport. They feared that storms or pirate attacks could result in damage to their ships or even loss of life (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol.65, 12-13).

Purchasing Western-Style Ships. In response to the continuous incursions by Western colonial powers, the Nguyễn court and its officials began to place greater importance on learning advanced technologies from Western countries. Tự Đức regarded Western steam-powered ironclad ships as superior to other ships. Despite financial constraints, he spared no expense in purchasing Western-style steam-powered ironclad ships and even hired foreigners to serve as technical personnel for navigation and operation. In August 1865, the Nguyễn Dynasty purchased the "Minto Steam-Powered Ironclad Ship"（"敏妥气机大铜船"）for a price of 135,000 Vietnamese piastres, equivalent to 97,200 taels of silver. The ship measured 11.23 zhang（丈）in length, 1.69 zhang in width, and had a carrying capacity of 300,000 catties（斤）. (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 32, 40-41). In June 1866, the Nguyễn Dynasty spent a considerable sum to send Nguyen Chinh and others to Hong Kong to purchase the "Thuan Tiep Steam-Powered Ironclad Ship"（"顺捷气机大铜船"）, The total expenditure, including the ship's price, accompanying equipment, and supplies such as coal, amounted to 134,300 taels of silver. The ship's hull was clad in copper, featuring two decks, one smokestack, and two masts. It measured 9.36 zhang in length, 1.6 zhang in width, and 8.3 chi（尺）in depth. The ship was equipped with six cannons, 15 muskets, five horse rifles, eight cabins, and various tools and iron chains. The fore and aft compartments could carry approximately 400,000 catties (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 34, 29-31). In 1870, the Nguyễn Dynasty purchased another Western-style ship, the "Teng Hui Fire-Powered Ship"（"腾辉火船"）(Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 32, 40).

These steam-powered ironclad ships were the largest and most advanced vessels in Vietnam at the time, but they were already obsolete by Western standards. Many were damaged before they could even be put into use. For example, the "Thuan Tiep Steam-Powered Ironclad Ship", purchased in 1866, was damaged by strong winds while sailing from Hong Kong to the Thuận An Port in Vietnam, "the water intake tube at the bottom broke, and the engine was too small to move quickly"（"船底引水筒折坏，又机

小驶迟”）, requiring repairs upon arrival in Gia Định. Emperor Tự Đức lamented that it was a “misguided purchase”（“*此系误买*”）and ordered the hiring of foreign agents to capture Nguyen Chinh and others responsible for the acquisition (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 34, 31).

Accepting Ships Gifted by the French. During the reign of Emperor Tự Đức, the Nguyễn Dynasty also accepted fire-powered ships gifted by the French. In September 1876, the dynasty received five fire-powered ships from France, which Emperor Tự Đức named them “Li Zai”（“*利载*”）“Li Ji”（“*利济*”）“Li Da”（“*利达*”）“Li Yong”（“*利用*”）“Li Fan”（“*利泛*”）(Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 56, 3).

Seizing Pirate Ships. In the 19th century, pirates frequently harassed the coastal areas of Vietnam, and the Nguyễn Dynasty occasionally seized pirate ships. However, by the later years of Tự Đức Era, the dynasty’s ability to resist pirates had weakened significantly, and the number of pirate ships captured became very limited. For instance, in the intercalary May of 1876, the “Teng Hui Fire-Powered ship” seized a pirate ship off the coast of Hà Tĩnh Province (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 55, 27-28). In July 1883, “Li Da” fire-powered ship and “Thuan Tiep Steam-Powered Ironclad Ship” seized a pirate ship off the coast of Khánh Hòa Province (Nguyễn Dynasty Bureau of Historiography, 1979b, 18-19). In February 1881, Nguyễn Dynasty troops launched an anti-piracy operation off the coast of Bình Định Province, seizing two ships and several pieces of artillery (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 65, 12).

In summary, during the Tự Đức Era, due to limited shipbuilding capacity, the Nguyễn Dynasty rarely constructed large vessels apart from repairing steamships and copper-clad ships inherited or purchased from earlier reigns. Instead, it primarily built a small number of fire-powered ships, warships, patrol boats, and privately owned small boats. By this period, Vietnam’s shipbuilding capabilities had significantly weakened, and both the variety and quantity of vessels had markedly declined.

3. Low Coastal Transport Capacity of Vietnamese Ships

During the Tự Đức Era, Vietnam’s shipbuilding capacity and maritime transportation and defence capabilities significantly declined, leaving the country struggling to fulfil functions such as north-south cargo transportation

and combating piracy. This decline is evident in the following aspects:

3.1 The Nguyễn Dynasty's Steamships and Fire-powered Ships Fell into Disrepair and Often Ran Aground

During the Tự Đức Era, although Vietnam constructed and purchased steamship with copper plating and fire-powered ships, it faced multiple challenges. First, local sailors generally lacked the technical skills required to operate these modern vessels, forcing the Nguyễn Dynasty to hire Western and Qing navigators and operators, a role referred to as "oversee operations" （"*看标*"）. For example, in June 1866, purchased the "Thuan Tiep Steam-Powered Ironclad Ship", the dynasty hired one Western technician, along with 34 Javanese and Chinese personnel, to oversee operations and machinery (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 32, 40-41). Second, due to financial difficulties, these ships often lacked the necessary maintenance and repairs, resulting in frequent malfunctions and damage. These issues severely undermined the operational efficiency and maritime safety of the fleet. In June 1855, pirates raided merchant ships at the Thị Nại port in Bình Định Province and attacked official ships along the coast of An Du port. The Nguyễn Dynasty dispatched two ironclad ships to capture the pirates. However, one ship began leaking due to strong winds upon reaching the waters of Thị Nại, and had to return to Quảng Nam Province for repairs (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 12, 31). In November 1875, Vietnam's largest ship at the time, the "Minto Steam-Powered Ironclad Ship", was tasked with transporting goods such as ironwood planks from Thanh Hóa and Nghệ An Provinces. On its return journey, while sailing along the coast of Quảng Bình Province, the ship's main boiler began leaking and required repairs. After the repairs, the coastal area of Taiyang in the Phủ Thừa Thiên, "the boiler burst, and the hull broke" （"*大锅破裂，船身荡破*"）, resulting in the tragic drowning of 36 crew members (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 54, 40). In July 1876, the "Teng Hui fire-powered ship", carrying official funds and grain, ran aground along the coast of Hà Tĩnh Province and sank near Ang Ao（盎澳）(Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 55, 38). In December 1883, the two ironclad ships, "Xiang Yan"（"*祥雁*"）and "Jing Yang"（"*静洋*"）were "sent on a northern patrol mission but were lost to strong winds"（"*往北哨载，因风漂没*"）. This tragic incident resulted in the drowning of 77 crew members on the "Xiang Yan" and 51

on the "Jing Yang," marking a major disaster (Nguyễn Dynasty Bureau of Historiography, 1980a, Vol. 2, 13).

Even the fire-powered ships gifted by the French, due to their narrow hulls and inability to withstand sea voyages, were limited to inland river transportation. For example, the "Li Ji" fire-powered ship arrived at a Vietnamese port in September 1876. In November, while departing on a mission to transport official goods, the vessel ran aground along the coast of Thừa Thiên Prefecture and was wrecked and sunk off the shores of Tang Ky District. For instance, the "Li Ji" fire-powered ship arrived at a Vietnamese port in September 1876. However, by November, during its first voyage transporting official goods, it ran aground along the coast of Phủ Thừa Thiên and sank off the shores of Tang Quỳ village（*唐圩邑*）(Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 56, 29). The "Li Fan" fire-powered ship was also described as "narrow, heavy, and underpowered, suitable only for river navigation"（"*狭小，身重力微，只堪江行*"）. In May 1877, the fire-powered ship "Li Fan" was dispatched to the inland waterways of Hải Dương for the purpose of "patrolling the rivers and transporting cargo"（"*巡江搭货*"）(Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 59, 30).

3.2 Private Small Boats Failed to Handle North-South Official Goods Transport

The Nguyễn Dynasty's north-south cargo shipping system (water transport of grain to the capital) was known as "Grain Transport"（"漕运"）and "Patrol Shipping"（"*哨载*"）. In 1826, it was decreed that north-south shipping routes be divided into two sections: Northern Grain Transport and Southern Grain Transport. "'The Southern Grain Transport covered areas south of Thừa Thiên, while the Northern Grain Transport included areas north of Quảng Trị'（"*承天以南曰南漕，广治以北曰北漕*"）(Cabinet of Nguyễn Dynasty, 2015, Vol. 257, 1). Typically, valuable and heavy goods were transported by official ships, while other official goods were carried by grain transport ships." (Ibid.)

In the late of Tự Đức Era, due to the backwardness of shipbuilding technology, frequent harassment by pirates, inadequate protection of Nguyễn Dynasty's official ships, the increase in the rate of wreckage of private boats hired for grain transport (patrol shipping), and insufficient compensation due to the Nguyễn Dynasty's financial emptiness, the Vietnamese people

were reluctant to build ships for sentry loads (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 65, 12-13). As a result of these factors, the number of grain transports was greatly reduced, and they were no longer able to fulfil the annual task of transporting grain and goods from the north to the south. For example, in June 1875, Vietnam planned to release 490,000 cubic units of rice from the northern provinces to the capital that year, but the transportation into the capital was only 10,350 cubic units of rice (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 53, 57). In the fourth month of the following year, a high-ranking official reported that "the hired civilian boats were either plundered by pirates or wrecked in storms, resulting in unreliable transport"（"*雇拨民船应载，或被匪劫掠，或因风失事，运载不清*"）, which led to "maritime blockades and a shortage of vessels"（"*海梗船稀*"）， making it impossible to fulfil the official transport tasks for silver and grain (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 55, 10, 15-16).

3.3 High Rate of Shipwrecks

During the Tự Đức Era, Vietnam's transportation ships were wrecked frequently due to wind and waves and pirate attacks, resulting in serious losses of people and goods. For example, in March 1856, Biên Hòa Province sent sea-going ships to transport public goods and return items that were given as gifts by others, and on the way, the ship broke in the wind and waves, and 41 people were lost in the water (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 16, 10). In front of the French fire-powered ship guns, the Vietnamese government ships are also unbeatable. Such as from 1861 winter to the first month of 1862, the Nguyễn Dynasty to unload the ship transporting food and pay equipment, 25 ships were burned by foreign ships, the loss of more than 20,080 cubic units of rice (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 26, 3).

In the first period of Tự Đức, Vietnam sent more sentinel ships every year, such as 612 ships in 1852, 613 ships in 1853 and 650 ships in 1855. However, since the middle of the period, not only the number of sentinel ships decreased year by year, some years even only a few dozens of ships, but also the rate of shipwrecks of sentinel ships increased, and the loss of personnel and property was heavy. The highest rate of shipwrecks was in 1883, when 69 ships were dispatched, and 19 ships were sunk and lost to bandits because of the wind, the rate of shipwrecks was as high as 27.53

percent, and the number of people drowned and disappeared was 119 (Nguyễn Dynasty Bureau of Historiography, 1980a, Vol.2, 20).

Private boats suffered heavy losses in hurricanes because of their small hulls and outdated technology. For example, in August 1861, Thanh Hóa province was hit by a hurricane, which capsized 26 fishing boats of coastal residents and drowned 220 people (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 25, 7).

4. The Nguyễn Dynasty Relied on Qing Ships for Coastal Transportation and Anti-Piracy Operations

Qing official and private ships won the trust of the Vietnamese Nguyễn Dynasty due to their extensive experience in ocean trade and their familiarity with sea routes. During the Tự Đức Era, in view of the decrease in the number of Vietnamese ships and their frequent shipwrecks due to quality and technical problems, the Nguyễn Dynasty had to rely on Qing official and private ships to carry out official overseas business and official purchases, to help transport food from the north to the south, to escort Vietnamese ships on coastal patrols, and to assist in the suppression of piracy in Vietnam.

4.1 The Assistance of Qing Ships for Official Overseas Business and Purchase of Goods

During the Tự Đức Era, the Nguyễn Dynasty had few ships to sail far and had to rely on Qing official ships and private ships to go out on official business. For example, in December 1881, the Nguyễn Dynasty wanted to send people to Britain, Russia, Prussia, France, the United States, Austria, Japan and other countries to study. Due to the backwardness of their own shipbuilding and sailing technology, they "did not get the convenience" （"*未得其便*"）to do so, but "The Qing Empire regularly interacted with various countries and hoped to rely on smooth passage without obstruction" （"*清国有常往来诸国，欲赖搭行无碍*"）, requests to board Qing ships to travel to various countries for official duties (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 66, 44).

The Nguyễn Dynasty also used the Qing private merchant ships to trade in Vietnam to buy goods on consignment. For example, in July 1864, the Nguyễn Dynasty sent Chen Rushan to return on a Qing merchant ship to buy goods and exempted the Qing merchant ship shipowner from the entry tax

of more than 2,000 min（缗）(Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 30, 5). The Nguyễn Dynasty also invited Qing merchant ships to the Mekong River delta region and Southeast Asian maritime countries to traffic grain to be sold in the central regions. For example, in August 1864, the provinces invited Qing merchant ships to buy rice in Siam（暹罗）or Gia Định and Ha Chau（下洲）areas and transported it back to central Vietnam provinces for sale, and gave them tax exemptions to solve the problem of food supply in central Vietnam (Ibid., 9). By the late 19th century, Vietnam had become a French colony. As its merchant ships operated "only within the northern and southern regions of the country and never ventured abroad for trade"（"不过南北两圻等辖而已，未曾往至外国行商"）(Nguyễn Dynasty Bureau of Historiography, 1980b, Vol. 8, 12-13), Vietnam's foreign commerce remained largely dependent on Qing Chinese merchant vessels.

4.2 Requesting Help from Qing Merchant Ships and Government Ships to Transport Grain

During the Tự Đức Era, due to the limited sea transportation capacity of Vietnamese official ships, "The transport ships in the southern provinces are not accustomed to navigating the sea routes and repeatedly suffer losses"（"南省漕船不习海道，屡屡失利"）(Nguyễn Dynasty Bureau of Historiography, 1981, 6), and small private boats unwilling to venture out to sea, the transportation of food from the north to the south of Vietnam often became difficult to complete, the Nguyễn Dynasty had to rely on the Qing Dynasty's official ships and private merchant ships to complete the task of transporting official goods.

Thus, they hired Qing merchant ships to transport public goods. In the early years of Tự Đức, Ruan Zhonghe hired ships from eastern part of Guangdong to transport official goods, "in order to facilitate the transportation of goods"（"以俾漕运敏济"）(Nguyễn Dynasty Bureau of Historiography, 1981, 6). In 1876, since the national ships were unable to complete the transportation of money and rice from the north to the south, the Qing merchants, such as Wu Liande, were allowed to hire Qing ships to carry goods to northern provinces of Vietnam (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 55, 1). In January 1881, as merchant ships and fishing boats from Quảng Bình, Hà Tĩnh and Nghệ An provinces were reluctant to transport rice from the northern region to the central part of the country, the Nguyễn Dynasty hired Qing ships to help carry the rice (Nguyễn

Dynasty Bureau of Historiography, 1979a, Vol. 65, 1).

The Nguyễn Dynasty requested the Qing Dynasty Merchants Bureau to handle grain transportation on its behalf in order to solve the problem of transporting grain between North and South Vietnam. In March 1881, Nguyễn Dynasty requested Qing Dynasty Merchants Bureau to transport official rice of Vietnam, Li Hongzhang of Qing Dynasty sent Tang Tinggeng, a third-grade official of Merchants Bureau, to Vietnam to discuss matters on behalf of the load, according to the agreement signed by the two sides, the Qing Dynasty annually helps Vietnam to transport 420,000 cubic units of rice, which is loaded in the first month of the year, and finished in July, and is transported from the port of Hải Phòng in the north to the port of Thuận An in the central part, and the transportation of every 100 cubic units of rice pays the shipping fee of 140 min for the Qing Dynasty, and in case of any defaults and failures, the Qing Dynasty pays compensation for all. In order to better fulfill the amount, Qing Dynasty Merchants Bureau also set up granaries in Hải Phòng and Thuận An ports of Vietnam and sent staff to live and manage them (Ibid., 15). In January 1883, the Nguyễn Dynasty, citing the reasons that grain distribution was sufficient and rice was difficult to store for long periods, ordered the Shipping Bureau to modify its annual transport plan of 420,000 cubic units of rice to instead include an equal share of millet and rice (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 69, 4).

4.3 Qing Ships Help Vietnam Fight Bandits

After the middle of the 19th century, Vietnam's coastal areas were often harassed by pirates, due to the lack of large ships and cannons, official ships in the fight against the pirates often wrecked, the Nguyễn Dynasty had to hire Qing ships to help fight the bandits, and the Qing ships were often victorious.

In May 1864, Peng Tingxiu, from Thanh Hóa Province, hired a Qing ship to patrol the coast of Nguyễn Dynasty and captured 2 pirate ships and received a reward of 200 min (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 29, 39). In April 1865, Vietnam's coastal provinces had a lot of pirate ship infestation, and several Nguyễn Dynasty's warships were wrecked, so they hired the Qing ships led by Peng Tingxiu to help round up the Pirates (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 31, 31-32). At the time, there were Qing ships moored in Vietnam's seaport,

applying for commerce to buy rice, Nguyễn Dynasty took the opportunity to persuade these Qing ships to help Vietnam to fight the pirates (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 32, 7). In August of the same year, the Nguyễn Dynasty ordered the navy to send 12 patrol ships, and the provinces of Thanh Hóa, Nghệ An and Nam Định to send 21 official ships to the sea to jointly fight against the bandits. Considering the fact that the Qing Dynasty's merchant ships and fishing boats were both "well versed in the paths of the islands" ("*谙熟岛屿路径*") and had "courageous and practical people" ("*勇敢干实者*"), the Nguyễn Dynasty hired 25 Qing ships to take part in the battle, and finally expelled the pirate ships from the distant sea (Ibid., 35-38). In October 1866, the Nguyễn Dynasty exempted 69 Qing merchant ships from departure and entry taxes on the basis of their merit in fighting bandits (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 35, 38). In November 1882, the coastal garrison in Thanh Hóa province assisted the Qing fishing boats to round up pirates, captured 2 pirate ships and the gunpowder on board, and arrested 18 pirates, and emperor Tự Đức ordered to reward the Qing fishing boats with more than 1,100 min of money as a reward (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 68, 27).

4.4 Qing Ships Helped Patrol the Vietnamese Coast and Escorted Official Ships Transporting Public Goods

After the mid-19th century, Vietnamese ships transporting goods from north to south frequently fell victim to pirate attacks. The official ships assigned to escort these convoys often encountered accidents, prompting the Nguyễn Dynasty to hire Qing ships to assist with coastal patrols and escort missions for Vietnamese vessels carrying goods and food.

For instance, in July 1865, the Nguyễn Dynasty hired Qing ships to patrol the coast and escort grain convoys from the northern regions. Five Qing ships, organized by Qing merchant Peng Tingxiu, were employed for this purpose. Initially, the agreement was to hire the ships for a half-month term with 1,050 taels of silver (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 32, 31). In December 1866, Emperor Tự Đức observed that the provincial naval forces escorting grain transport boats were "scattered and sparse, lacking unified command, and thus ineffective" ("*零星希疏，不相统摄，难期得力*") making them susceptible to pirate attacks. As a result, in addition to deploying Nguyễn court vessels for joint escort duties, he requested the Qing merchant Peng Tingxiu to help hire two

or three Qing ships to assist in escorting the Nguyễn grain boats and to cooperate with government troops in joint suppression of pirates, in order to "restore security at sea" (“以清海氛”) (Nguyễn Dynasty Bureau of Historiography, 1979a, Vol. 35, 61).

5. The Reasons for Vietnam's Limited Shipbuilding Capacity and Reliance on Qing China for Maritime Transport During the Tự Đức Era

The main reasons for the decline of Vietnam's shipbuilding capacity and its reliance on Qing China for maritime transport in the mid-to-late 19th century were:

5.1 Premodern and Early Modern Vietnam's Weak Maritime Consciousness Limited the Development of its Shipbuilding and Maritime Industries

As a coastal nation, premodern and early modern Vietnam possessed a coastal consciousness but lacked a broader maritime or oceanic outlook. Several scholars have explored this issue in depth. Vietnamese researchers such as Thanh The Vy and Dao Duy Anh believed that ancient Vietnam feared the sea, and its navigation was largely confined to waters close to the shore (Thanh, 1961, 182; Dao, 2002, 79). Anthony Reid similarly noted that Vietnamese men traditionally looked down upon trade and commerce, and were even less inclined to engage in coastal or ocean-going trade (Reid, 2015, 24-25). Yu Xiangdong argued that Vietnam's maritime activities were primarily limited to nearshore sailing along the coast. Under the Nguyễn Dynasty, maritime awareness was largely restricted to coastal defence and the protection of harbours and maritime gateways (Yu, 2008, 2012, 2015). This fear of the open sea and the absence of a true oceanic vision significantly hindered the development of Vietnam's large-scale shipbuilding and long-distance maritime trade.

5.2 Vietnam was Plagued by Internal Turmoil and External Threats, Leading to a Rapid Decline in National Strength

Between 1858 and 1885, Vietnam faced successive French invasions that led to the loss of its southern provinces, the occupation of northern territories, and eventual colonization. Treaties such as those of *Saigon* (1862, 1874) and *Hue* (1883) forced Vietnam to cede land, open trade routes,

and accept French protectorate status. The end of the Sino-Vietnamese tributary relationship after the 1885 Sino-French War marked the loss of Vietnam's independence. These internal and external crises strained state finances, weakened shipbuilding and coastal transport, and left Vietnam vulnerable to piracy fuelled by regional colonial disruptions. At the same time, Western colonial expansion forced some coastal populations in East and Southeast Asia to turn to piracy, leading to frequent pirate disturbances along Vietnam's coastline. Although some Vietnamese elites sought reform and the Nguyễn Dynasty began learning from the West—purchasing several Western-style steamships—it still failed to effectively carry out north-south grain transport and suppress coastal pirate disturbances.

5.3 China Placed Great Importance on the Development of Modern Shipbuilding and Maritime Transportation

At the same time, the Qing Dynasty was also grappling with internal and external crises. Following the Opium Wars, the Qing government faced heavy indemnities and frequent domestic uprisings. In the 1870s, the Self-Strengthening Movement emerged, during which Li Hongzhang advocated for the Qing government to prioritize coastal defence, leading to the establishment of the Beiyang Fleet and the founding of the China Merchants' Steam Navigation Company in 1872. The company acquired Western-style steamships and operated under a "state-supervised, merchant-managed" model, fostering China's modern maritime industry and opening domestic and international shipping routes. During this period, a significant number of Chinese merchant and fishing vessels sailed south to Vietnam, leveraging advanced deep-sea navigation technologies to operate actively in the South China Sea and along Vietnam's coasts.

5.4 The Qing Dynasty and Vietnam Still Maintained a Relatively Close Suzerain–Vassal Relationship

The Nguyễn Dynasty maintained a relatively close suzerain–vassal relationship with the Qing Dynasty, which did not come to a definitive end until after the Sino-French War in 1885. Due to Vietnam's inferior shipbuilding technology and maritime capabilities compared to China, it had to rely on both official and civilian Chinese vessels to carry out tasks such as transporting grain and government goods between the north and south,

suppressing piracy, and purchasing supplies.

6. Conclusion

In summary, during the reign of Emperor Tự Đức, Vietnam faced mounting internal and external crises and severe fiscal constraints. To counter foreign invasions, pirate attacks, and ensure north–south transport of grain and official goods, the Nguyễn court endeavoured to build and acquire various vessels—including steam-powered copper-clad ships, fire-powered boats, patrol boats, and warships—while provinces and civilians relied on traditional wooden and bamboo boats. However, shipbuilding technology had significantly declined, vessel numbers dropped sharply, and the official fleet's transport and combat capacities were limited. Lacking trained naval personnel, the court had to rely on Qing and Western sailors to operate new steamships. Persistent financial hardship also meant poor maintenance, leading to frequent problems such as rust, leakage, grounding, and hull damage. Small civilian boats, with low transport capacity and weak maritime defences, were prone to accidents and pirate threats during their annual missions.

Given the relatively close tributary relationship between Vietnam and China at the time, the Nguyễn Dynasty increasingly relied on Qing official ships, as well as civilian merchant and fishing boats, which were equipped with modern ships and had experience in coastal and long-distance navigation. These Qing ships assisted Vietnam in completing essential tasks, including transporting grain and goods between the north and south, coastal patrols, escorting transport fleets, combating pirates, purchasing goods from China and other parts of Southeast Asia, and carrying officials on overseas missions. This reliance on foreign support reflects the comprehensive decline of Vietnam's maritime capabilities during the reign of Emperor Tự Đức.

Note

[1] This work was supported by the National Social Science Foundation Project under Grant No. 21&ZD244.

Reference List

Cabinet of Nguyễn Dynasty (2015), "*漕政–漕运二* (Caozheng-Caoyun 2) [The Grain Tribute System - Water Transport of Grain 2], *钦定大南会典事例* (Qinding Danan Huidian Shili) [The Supreme Court Rule on Adoption]" (Photocopy), Principal Records, Vol. 257, Beijing: People's Publishing House.

Crawfurd, John (1820), *History of the Indian Archipelago*, London: Cambridge University Press.

Do Van Tam (1907), "*大南典例撮略新编–工部* (*Danan Dianli Cuolue Xinbian – Gongbu*) [The New Compilation of the Excerpts from the Grand Regulations of Dai Nam -- Ministry of Works]".

Dao, Duy Anh (2002), *Việt Nam văn hóa sử cương* (Outline of Vietnamese Cultural History), Hanoi: Nha Xuat ban Van hoa Thong tin Ha Noi.

Li, Guimin (2016), "*越南阮朝明命时期（1820-1841）海防体系的改革与运作* (*Yuenan Ruanchao Mingming Shiqi (1820-1841) Haifang Tixi de Gaige yu Yunzuo*) [The Reform and Operation of the Coastal Defense System in the Minh Mệnh Period of the Nguyễn Dynasty (1820-1841)]", *亚太研究论坛* (*Yatai Yanjiu Luntan*) [Asia-Pacific Research Forum], No. 62, pp. 101-134.

Li, Tana (1998), *Nguyễn Cochinchina: Southern Vietnam in the Seventeenth and Eighteenth Centuries*, NY: Cornell University Press.

Li, Tana (2003), "*Thuyền và kỹ thuật đóng thuyền ở Việt Nam cuối thế kỷ 18, đầu thế kỷ 19* (Maritime Routes and Shipbuilding Technology in Vietnam During the Late 18th and Early 19th Centuries)", *xua va nay*, so 131.

Li, Tana (2003), "*十八世纪末十九世纪初越南的船舶和造船业* (*Shibashiji Mo Shijiushiji Chu Yuenan de Chuanbo He Zhaoshuiye*) [Ships and Shipbuilding in Vietnam in the Late Eighteenth and Early Nineteenth Century]" (Yu, Xiangdong and Yang, Chaoqin, Trans.), *中国东南亚研究会通讯* (*Zhongguo Dongnanya Yanjiuhui Tongxun*) [Journal of the Southeast Asian Studies Association of China], No. 1.

Li, Tana (2024), *A Maritime Vietnam from Earliest Times to the Nineteenth Century*, UK: Cambridge University Press.

Nguyễn Dynasty Bureau of Historiography (1971), "*圣祖仁皇帝实录* (*Shengzuren Huangdi Shilu*) [The Annals of Emperor Minh Menh]", 大南实录 (*Danan Shilu*) [The Annals of the Dai Nam] (Photocopy), Principal Records, Part II, Tokyo: Institute of Language and Culture, Keio University.

Nguyễn Dynasty Bureau of Historiography (1979a), "*翼宗英皇帝实录* (*Yizongying Huangdi Shilu*) [The Annals of Emperor Tự Đức]", *大南实录* (*Danan Shilu*) [The Annals of the Dai Nam] (Photocopy), Principal Records, Part IV, Tokyo: Institute of Language and Culture, Keio University.

Nguyễn Dynasty Bureau of Historiography (1979b), "*附废帝* (*Fu feidi*) [The Deposed Emperor]", *大南实录* (*Danan Shilu*) [The Annals of the Dai Nam] (Photocopy), Principle Records, Part IV, Tokyo: Institute of Language and Culture, Keio University.

Nguyễn Dynasty Bureau of Historiography (1980a), "*简宗毅皇帝实录* (*Jianzongyi Huangdi Shilu*) [The Annals of Emperor Kien Phuoc]", *大南实录* (*Danan Shilu*) [The Annals of the Dai Nam] (Photocopy), Principle Records, Part V, Tokyo: Institute of Language and Culture, Keio University.

Nguyễn Dynasty Bureau of Historiography (1980b), "*景宗纯皇帝实录* (*Jingzongchun Huangdi Shilu*) [The Annals of Emperor Dong Khanh]", *大南实录* (*Danan Shilu*) [The Annals of the Dai Nam] (Photocopy), Principle Records, Part VI, Tokyo: Institute of Language and Culture, Keio University.

Nguyễn Dynasty Bureau of Historiography (1981), "*诸臣列传二十* (*Zhuchenliezhuan 20*) [Biographies of Twenty Ministers]", *大南正编列传* (*Danan Zhengbian Liezhuan*) [The Principal biographies of the Dai Nam] (Photocopy), Part II, Vol. 30, Tokyo: Institute of Language and Culture, Keio University.

Nguyen, Van kim and Nguyen, Manh Dung (2007), "*Truyền thống và hoạt động thương mại của người Việt - thực tế lịch sử và nhận thức* (Traditions and Commercial Practices of the Vietnamese - Historical Context and Perceptions)", *NCLS*, so 8.

Pham, Charlotte, Blue, Lucy, and Palmer, Colin (2010), "The Traditional Boats of Vietnam: An Overview", *International Journal of Nautical Archaeology*, Vol. 39, No. 2, pp. 258–277.

Reid, Anthony (2015), *A History of Southeast Asia*, West Sussex: Wiley Blackwell.

Thanh, The Vy (1961), *Ngoại thương Việt Nam thời thế kỷ XVII, XVIII và đầu XIX* (Vietnam's Foreign Trade during the 17th, 18th Centuries and the Early 19th Century), Hanoi: Su hoc Publishing House.

To sang tac Bo Giao thong van tai (2002), *Lịch sử giao thông vận tải Việt*

Nam (History of Transportation in Vietnam), Ha Noi: Nxb giao thong van tai.

Vo, Nhuyen Giap (1987), *Kinh tế biển và khoa học kỹ thuật về biển ở nước ta* (The Marine Economy and Marine Science and Technology of Our Country), Ha Noi: Nxb Nong Nghiep.

Yu, Xiang Dong (2008), *古代越南的海洋意识* (*Gudai Yuenan de Haiyang Yishi*) [Maritime Consciousness of Ancient Vietnam], Doctoral Dissertation, Xiamen University.

Yu, Xiang Dong (2012), "*西方入侵前夕越南阮朝的'外洋公务'* (*Xifang Ruqin Qianxi Yuenan Ruanchao de 'Waiyang Gongwu'*) [The 'Official Overseas Business' of Vietnam's Nguyễn Dynasty on the Eve of Western Invasion]", *历史研究* (*Lishi Yanjiu*) [Historical Research], No. 1, pp. 124–142.

Yu, Xiang Dong (2015), "*试析越南阮朝明命帝的海洋意识* (*Shixi Yuenan Ruanchao Mingming Di de Haiyang Yishi*) [On Maritime Consciousness of Emperor Minh Mang in the Nguyễn Dynasty of Vietnam]", *史学月刊* (*Shixue Yuekan*) [Historical Monthly], No. 12, pp.72-78.

Zheng, Yongchang, and Li, Guimin (2014), "*瞬间的光芒：越南阮朝裹铜船之制作与传承* (*Shunjian de Guangmang: Yuenan Ruanchao Guotong Chuan Zhi Zhizuo yu Chuan Cheng*) [The Glimmer of a Moment: The Making and Inheritance of Copper-Clad Ships in the Nguyễn Dynasty of Vietnam]", *南方大学学报* (*Nanfang Daxue Xuebao*) [Journal of Southern University], No. 2, pp. 65–89.

Zheng, Yongchang (2022), "*越南阮朝明命帝（1820-1841）海洋强国梦：以造船和出洋公务为中心* (*Yuenan Ruanchao Mingming Di (1820-1841) Haiyang Qiangguo Meng: Yi Zaosheng he Chuyang Gongwu wei Zhongxin*) [The Maritime Power Dream of Minh Menh Emperor (1820-1841) of the Nguyễn Dynasty: Focusing on Shipbuilding and Foreign Maritime Affairs]", *人文及社会科学集刊* (*Renwen ji Shehui Kexue Jikan*) [Journal of Humanities and Social Sciences], Vol. 34, No. 3, pp. 589–624.

Book Review

Po-Shek Fu. *Hong Kong Media and Asia's Cold War*. Oxford: Oxford University Press, 2023. 256 Pages. ISBN: 9780190073770.

The unique geo-political location of Hong Kong and how the colony became a base for the battle of hearts and minds of Chinese diaspora scattered across Asia during the Cold War, have been written and observed by many scholars over the years. However, in his latest book, Po-Shek Fu offers a refreshing perspective by choosing media as the keyword and draws upon an extensive collection of archival materials, films and oral interviews, in order to examine cultural production in Hong Kong from the 1950s to 1970s as well as how film and print media serve as popular forms of propaganda undertaken by the Communists, Nationalists and the United States. Fu argues that in our current understanding of the cultural Cold War, one needs to move beyond the ideological warfare between the anti-Communist or anti-Capitalist camps and pay attention to local processes and experiences that are equally important in shaping how the competing parties evolve, develop and assert their respective hegemonic influences on Chinese diasporic communities living in different parts of Asia.

With a preface and an epilogue, the book begins from the period of late 1940s with the arrival of refugees and "White Chinese" (Shanghai emigres) in Hong Kong, to the 1960s and 1970s where an emergent local consciousness can be found among the population who grew up in an age of prosperity and stability. Popular media such as films, songs and print materials such as the *Chinese Student Weekly* were carefully examined by Fu in tracing the dynamics and complex meanings of the cultural Cold War in Hong Kong. Being one of the most respected scholars in the field of Chinese-language cinema, the chapters on Asia Pictures (in Chapter Three) and the Shaw Brothers (in Chapter Four) are the most interesting. They allow readers to appreciate how individuals such as Chang Kuo-sin and Run Run Shaw responded with varying strategies during the Cold War and convincingly argue that it was The Asia Foundation and the Federation of Southeast Asian Producers that lend impetus to transforming Hong Kong's Mandarin film production through fresh rounds of investment on capital and expertise in the 1950s. These had helped in making Hong Kong into "the

regional hub of Chinese-language filmmaking and cultural production" (p. 108) and facilitated the "border-crossing movement of ideas and influences … [that demonstrated] the ambivalence of film production in Hong Kong" (p. 140).

For those who might be more interested on the historical backdrop, Chapter One offers a succinct overview of the United States intelligence service in Hong Kong, the Communists and the Nationalists' stance, as well as the British colonial government's policies on political propaganda, censorship and surveillance. As a result of Cold War, it became crucial for the British colonial government to adopt a neutral policy and by implementing strict censorship and surveillance on any potential subversive individuals or activities across the competing ideological camps, the British colonial government sought to present itself as non-partisan and open-minded.

Chapter Two and the Epilogue can be read together in that the boom and decline of the hugely popular Chinese magazine *Chinese Student Weekly* could help us better appreciate the cultural Cold War in Hong Kong beyond the usual rhetoric of creating a "democratic China", building a "free world" and criticisms of authoritarian regimes. Fu noted that the magazine consciously remained aloof of local politics, often "inflexibly veered readers from involving themselves in local political activity [and] advised them to focus on schoolwork" (p. 76). He added that such an editorial approach while aligned with United States' anti-Communist campaign in Asia and their effort to portray Chinese Student Weekly as an agency of Cold War enlightenment to overseas readers, it did not sit well with the postwar local generation in Hong Kong. In his Epilogue, Fu proposed that it was precisely because the postwar baby-boomers' experience of a global youth culture centered on rebellion, calls for justice and equality, coupled with rapid modernisation in the 1960s, it was a generation who did not share the same diasporic experience as their parents nor a strong attachment to the Chinese mainland which somehow "embedded" them in the ongoing Cold War politics. In fact, the change in Hong Kong's mediascape marked by the birth of the new *City Magazine* by prominent writer Xi Xi, promotion of Cantopop and revival of Cantonese movies, establishment of the City Hall and Hong Kong Arts Festival & etc, all these factors gave rise to different meanings and challenges. Some have argued that it was the new, local-born generation who actively reshaped the Cold War networks of émigré cultural

production in Hong Kong during the 1970s and in turn, Hong Kong's status as a nodal point in Asia's cultural Cold War gradually lost its significance.

All in all, Fu takes effort to provide a clear introduction to his readers on the specific social and geopolitical contexts in his writing. Each chapter is supported by close readings of selected films, newspaper articles and other archival materials which he has meticulously compiled and collected. The book also highlights local agency and sets out to reflect on Hong Kong identity, sense of belonging, media and cultural production, at the "crossing" of various local, regional and global forces. Fu's thorough research makes it accessible for readers who are keen to study Cold War history, business networks and cultural production in Asia, film, media, gender as well as Sinophone studies.

Review by Yap Soo Ei, Department of Chinese Studies,
National University of Singapore
Research Fellow, PhD
Full postal address: Block 469B Admiralty Drive #13-75
Singapore 752469
E-mail address: yapse85@gmail.com
Telephone: +65 96798252

Book Review

Eva Dou, *The Secret History of China's Most Powerful Company: House of Huawei*, Penguin Random House, 2025, 406 pages. ISBN 9780593544631.

Huawei is one of the leading global Chinese telecommunication infrastructure corporations, spanning business from switches, submarine cables, surveillance systems, and fifth-generation technology to consumer electronics gadgets. Over the years, it has gained immense popularity by moving ahead of global giants such as Ericsson and Nokia. However, Huawei's popularity stems not merely from its advanced information and technology services but also its tense relationship with the United States. The rise of China's leading tech company is attached to the secret relationship it shares with the Chinese government and how this relationship emerges as a source of geopolitical confrontation with the United States. *The Secret History of China's Most Powerful Company*: *The House of Huawei* by Eva Dou, was written to unpack the stories of Huawei that move beyond its rise as a tech company.

Eva Dou is a seasoned technology policy reporter for the Washington Post. She had worked for seven years on Wall Street, covering politics and technology in China and Taiwan. Therefore, this book is based on her many years of journalistic experience in China and Taiwan and covers both technology and policy.

The book has 28 chapters and is chronologically structured into three parts, covering its rise from a humble background to becoming the centre of international geopolitical tension. The first part of the book begins with the background of Huawei's founder, Ren Zhengfei, and the company's formative years under three distinct political periods led by Mao Zedong, Deng Xiaoping, and Jiang Zemin. Unlike many who suffered and died during Mao's Cultural Revolution period, Ren, as the author notes, was 'luckier than many' to work as an engineer for a classified military project codenamed 011 after graduation. Deng Xiaoping's Reform and Opening Up policy opened new opportunities for rapid development of China, and during this period, Ren Zhengfei founded Huawei Technologies Co. in 1987 with five co-investors. The key point highlighted in this section is how Ren had early on learned the importance of political alignment with the government

for a company's long-term success. For instance, in the aftermath of the Tiananmen Square protests, he made patriotism fundamental to working in the company (p.51). When Jiang Zemin took over from Deng Xiaoping, Ren openly committed to ensuring that Huawei would prioritize the nation's security interests above its commercial objectives (p. 70). This approach was crucial to the company's success, especially as competitors such as The Stone Group, popularly known as China's IBM, stumbled because of political participation during the protests.

The second section covers Huawei's global outreach. Dou pointed out another distinctive strategic decision made by Huawei that helped it flourish internationally. Instead of directly competing with major telecommunication infrastructure corporations, such as Ericsson and Alcatel, which dominated the Western market, it made a strategic decision to focus on expanding into territories often overlooked and deemed as rogue regimes, including Iran, Russia, and Libya. This strategic decision, which was instrumental in its early years of global success, was also the reason for the conflict between the company and the U.S. government in the later period. In this section, Dou provides intriguing details on the important relationship shared between the Chinese Communist Party and the company. In addition to the establishment of a party unit within the company comprising half of the employees as party members, notably, Ren himself tasked these staff with providing ideological guidance to employees of Huawei (p. 122). This highlights his dedication to the party to ensure the security of the company. She also highlighted the internal political structure combined with Chairwoman Sun Yufang's background in China's State Security Agency. Moreover, many deals secured by Huawei were negotiated at a diplomatic level. With strong support from the government, Huawei's international outreach expanded the dominant telecommunication market of many Western countries, including the United States, the United Kingdom, and Europe. Its business, which started with the switches program, expanded to include the production of surveillance systems, submarine cables, managed services, and advanced AI technologies.

The last part of the book chronicles Huawei under Xi Jinping's leadership and the hostile U.S. attack on the company due to alleged violations of Iran's sanctions, theft of technology, data, and surveillance against the U.S. government. When Xi Jinping came to power, his priorities were security and stability. He rolled out various projects, such as Sharp Eyes, to cover all of China by using surveillance cameras. He also declared

the Belt and Road Initiative and Made in China 2025 to be two leading national development projects that aim to establish China as a leading global power. Xi Jinping, like his predecessor, showed strong support to Huawei and, subsequently, Huawei expanded working on the development of advanced surveillance systems including infamous advanced surveillance program called the 'Uyghur Alarm' system, which automatically identifies individuals of Uyghur ethnicity, and heightened global scrutiny of Huawei's involvement in China's surveillance policies.

While it continues to find strong support from the Chinese government, it is faced with serious pressure from the U.S. government. In 2019, the U.S. intensified pressure, and President Donald Trump declared Huawei a national emergency by imposing sanctions against the company. He also pressured Western allies to exclude Huawei from 5G networks, leading major universities, such as Stanford, Oxford, and UC Berkeley, to terminate R&D contracts with the company. Under pressure from the U.S., Canada arrested Huawei CFO, Meng Wanzhou, the daughter of Ren, further intensifying geopolitical tension between China and Western countries.

The Secret History of China's Most Powerful Company: The House of Huawei arrives at a critical moment when information and technology reshape global power structures. The author provides intriguing information about Huawei, its mysterious relationship with the Chinese government, and its cooperation in building some of the most repressive advanced surveillance systems. It also reveals how data are transferred from Africa to China through the network system built in Africa. While the book provides intriguing information, much of it, particularly about the tense relationship with the United States, is not secret. There is rich literature available on the subject; therefore, much of the information is repetitive to existing information. Instead of concentrating on the U.S., if the author had focused on the Huawei relationship with rogue regimes and how it expanded its business in these countries, and what kind of role the Chinese government played in navigating those business opportunities would have helped reveal new secrets and offered a new perspective, as there is a lack of deep study conducted about Huawei presence in these countries. Another issue is the references, which are missing in the book but available on the websites of the publishing house.

Overall, the House of Huawei, despite its limitations, forms an important reading in understanding why it is not just a telecommunication company

but also a geopolitical force and representation of China's rise in the global IT sector. This book makes a significant contribution to the discussion of the complex relationship between information technology and geopolitics, offering a detailed analysis that is crucial for grasping their intricate interconnections.

Review by Dolma Tsering
Department of Humanities and Social Sciences
National Yang Ming Chiao Tung University
ruthokdzhong66@gmail.com

Title : *International Journal of China Studies*
ISSN : 2180-3250
Publisher : Institute of China Studies, University of Malaya
50603 Kuala Lumpur, Malaysia

The *International Journal of China Studies* is a biannual academic journal focusing on contemporary China in issues pertaining to the fields of political, social and economic development, trade and commerce, foreign relations, regional security and other domains of the social sciences in the context of, more specifically, today's Mainland China, Taiwan, Hong Kong or Macau. The journal is abstracted/indexed in *Scopus, International Political Science Abstracts, International Bibliography of the Social Sciences, Bibliography of Asian Studies, EconLit, eJEL, JEL on CD, Ulrich's Periodicals Directory, Ulrichsweb Global Serials Directory, Reference Corporation's Asia-Pacific Database, ProQuest Political Science and Research Library, ABI/INFORM Complete, ABI/INFORM Global, PAIS (Public Affairs Information Service) International, CSA* (formerly Cambridge Scientific Abstracts) *Worldwide Political Science Abstracts* and NLB's *ISI* (*Index to Singapore Information*).

Website: *https://ics.um.edu.my/international-journal-of-china-studies-ijcs*

Manuscripts for consideration and editorial communication should be sent to:

The Editorial Manager
International Journal of China Studies
Institute of China Studies
University of Malaya
50603 Kuala Lumpur, Malaysia

Tel: +(603) 7967 7288
Fax: +(603) 7967 4438

For further information, please write to *chinastudies@um.edu.my*
For submission to the journal, please visit *https://ejournal.um.edu.my/index.php/IJCS*

UNIVERSITI MALAYA
INSTITUTE OF CHINA STUDIES
马来亚大学中国研究所

ISSN 2180-3250
9 772180 325006