

OPEN LETTER
BY PRESIDENT OF THE VIET NAM SOCIETY OF INTERNATIONAL LAW
TO
PRESIDENT OF THE CHINESE SOCIETY OF INTERNATIONAL LAW

Ha Noi, 24th August 2019

To: Professor Huang Jin,
President of the Chinese Society of International Law (CSIL)

All members of the Viet Nam Society of International Law (VSIL) are seriously concerned over the tensions recently raised by China in Viet Nam's exclusive economic zone and continental shelf in the Southern area of the East Sea. Activities undertaken by the survey vessel Haiyang Dizhi 8 (HD-8) and its escort vessels in the aforementioned areas have seriously violated international law, especially the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and go against agreements reached by Senior Leaders of the two countries and undermined the traditional friendly relations between the people of Viet Nam and the people of China.

Dear Professor Huang,

VSIL and CSIL, the two organizations comprising of leading experts in international law in our respective country, are established for the purpose of researching, disseminating, applying and developing international law. To the best of our knowledge, CSIL defines its mission in the Constitution as to "*organizing various types of international, national and regional academic research and exchange activities in international law*". I believe, therefore, that both organizations can discuss in a sincere and reasonable manner and with good faith recent incidents in the East Sea.

In this Open Letter, I will not refer to the sovereignty issue over the Paracel and Spratly Islands, which on many occasions has been affirmed by the Viet Nam's Government, but only focus on exchanging views with you on the legal aspects regarding current activities conducted by the survey vessel HD-8. Relying on sufficient and comprehensive rules of UNCLOS in particular and international law in general, I believe we would be able to reach a mutual recognition based on scientific evidence and objective legal basis, thereby exerting our efforts to ease the tension, contributing to the peaceful and stable development in the East Sea

and realizing the expectation of people of both Vietnam and China as well as people of all other countries in the region and around the world.

1. The area in which the survey vessel HD-8 is conducting its activities lies entirely within the exclusive economic zone and continental shelf of Viet Nam as determined on the basis of Article 57 and Article 76 of UNCLOS. Obviously, this is neither an overlapping nor a disputed area between Viet Nam and China.

In compliance with UNCLOS provisions, Viet Nam has adopted legal instruments to establish the scope and legal regime of its exclusive economic zone and continental shelf. Accordingly, in its exclusive economic zone and continental shelf, Viet Nam exercises its sovereign rights as a coastal state regarding the exploration, exploitation, conservation and management of living and non-living resources of the waters superjacent to the seabed and the seabed and its subsoil. Viet Nam also has jurisdiction over the establishment and use of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment in its exclusive economic zone and continental shelf. As provided in UNCLOS, the rights of coastal state over its exclusive economic zone and continental shelf have an exclusive nature in the sense that if the coastal state does not explore or exploit its natural resources in such areas, no state has the right to undertake these activities without the permission of the coastal state. Activities of exploration, exploitation, survey, research of the resources in these areas can only be undertaken upon the express consent of the coastal state.

The activities conducted by the survey vessel HD-8, despite oppositions from Viet Nam, have seriously violated provisions of UNCLOS and Vietnamese law regarding Viet Nam's sovereign rights and jurisdiction in Viet Nam's exclusive economic zone and continental shelf. The activities of China's other escort vessels with an attempt to obstruct enforcement measures of Viet Nam's Coast Guard vessels have also seriously violated such provisions and posed a threat to the safety of maritime navigation in the concerned areas.

2. A number of China's international law experts usually refer to the "nine-dash line" to justify China's claim of "historic rights" or "historic title" to the maritime zones within the "nine-dash line". Furthermore, China also relies on UNCLOS to claim an exclusive economic zone of 200 nautical miles and an extended continental shelf from the archipelagoes in the East Sea, to which China is one of the sovereignty claimants. Based on such references, China stated that the operation areas of the survey vessel HD-8 and its escort vessels are within the maritime zones under China's jurisdiction.

This is completely irrational. There is no legal basis in international law or UNCLOS for the “nine-dash line” claim. Viet Nam and other countries in the region and over the world have never recognized any implications on the scope of rights over the maritime zones claimed to be parts of this “nine-dash line”. It is also impossible to consider the area in which the survey vessel HD-8 is conducting its activities as the maritime zones of the Spratly Islands because the Spratly Islands is not an archipelagic state and does not meet the criteria under UNCLOS to have surrounding straight baselines and form an exclusive economic zone and a continental shelf of its own.

Since the Award of 12 July 2016 of the Arbitral Tribunal established under Annex VII of UNCLOS concerning the disputes between the Philippines and China in the East Sea, such matters in questions have been settled. The Award ruled that: (i) there is no legal basis for China to claim historic rights to resources in the areas within the “nine-dash line”; (ii) based on the natural characteristics of the high-tide features in the Spratly Islands, no feature is entitled to generate an exclusive economic zone and a continental shelf of its own; (iii) international law does not allow China to draw archipelagic baselines surrounding the Spratly Islands and consider the Spratly Islands as a single unit with its own exclusive economic zone and continental shelf; (iv) low-tide elevations (and fully submerged features) are not subjected to sovereignty claims.

Although China did not participate in the arbitral proceedings and denied the binding nature of the Award, under international law and UNCLOS, the Award is final and binding on both Parties to the case. All countries wish that the Award shall be respected and implemented in good faith by the Parties.

3. I am also aware that, international law experts from China refer to the following paragraph in the Preamble of UNCLOS, “[a]ffirming that matters not regulated by this Convention continue to be governed by the rules and principles of general international law”, in justifying their arguments on historical factors and vague claims in order to create “overlapping areas” between China and other coastal states in the East Sea.

However, any questions related to the scope and regime of the maritime zones under a coastal state’s sovereignty, sovereign rights and jurisdiction, especially the exclusive economic zone and the continental shelf, as well as questions concerning archipelagic states and archipelagic waters are matters already clearly regulated by UNCLOS; thus they are completely not “*matters not regulated*”. Viet Nam and China are state parties to UNCLOS and have voluntarily expressed their consent to be bound by the Convention. Therefore, all interpretations and applications that go against the provisions of the Convention

shall be null and void. This has also been confirmed by the Arbitral Tribunal in the disputes between the Philippines and China in the East Sea.

Dear Professor Huang,

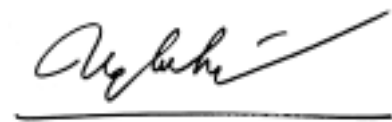
As the people who have devoted the whole life to the research, dissemination and application of international law, we all bear in mind our solemn oath to serve justice in our honorable capacity as lawyers. The shared mission of both VSIL and CSIL is to protect justice and the international legal order against any violations of principles and rules of international law.

I hope that, as a think tank with the mandate to serve the foreign policies and practices of China as set out in the CSIL Constitution, and with the sacred mission of a lawyer, you and other CSIL members will provide international legal advice and recommend the Chinese Government to immediately end its violations of international law and withdraw the survey vessel HD-8 and its escort vessels from the maritime zones under Viet Nam's sovereign rights and jurisdiction.

All members of VSIL shall take all measures provided under international law, especially UNCLOS to protect the legitimate rights and interests of our country.

On behalf of all members of VSIL, may I send you and other members of CSIL my best regards and express my wish to further exchange with you about academic matters of international law with a view to maintaining the international rules-based order, contributing to the maintenance of peace and security in the East Sea and the development of friendly relations between the peoples of Viet Nam and China.

President of the Viet Nam Society of International Law



Dr. Nguyen Ba Son