

Reply to the Letter of the President of the Chinese Society of International Law  
dated 19 September 2019

29 October 2019

Distinguished Prof. Huang Jin,  
President of the Chinese Society of International Law

At the outset, I would like to thank you and other members of the Chinese Society of International Law (CSIL) for your reply to the Open Letter of the Viet Nam Society of International Law (VSIL) dated 24 August 2019, concerning the violations of the exclusive economic zone and the continental shelf of Viet Nam by Chinese survey vessel Haiyang Dizhi 8 and its escort vessels. Proceeding with the serious and objective attitude and respects of our different legal stance and political aspects relating to the disputes between Viet Nam and China in the East Sea, I would like to have certain comments on the points you raised in your Letter dated 19 September 2019, as follows:

1) In your Reply Letter, you criticized me for “circumventing” the question on the territorial sovereignty of Spratly Islands considered that question “should be dealt with in the first place.” This is completely a misunderstanding.

First of all, I would like to reassure that the issue of territorial sovereignty with respect to the Hoang Sa and Truong Sa (the Paracel and the Spratly Islands) is not the subject-matter in my Open Letter dated 24 August 2019. The reason is quite obvious and cannot be misunderstood in a different way. This means that the territorial sovereignty over these Islands is not related, either legally or geographically, to the area where China is conducting activities that seriously infringe upon the sovereign rights and jurisdiction of Viet Nam.

Second, as I also mentioned in my Open Letter, the sovereignty of Viet Nam over the Paracel and the Spratly Islands “on many occasions has been affirmed by the Viet Nam’s Government.” The affirmation of the Viet Nam’s Government is firmly grounded on historical evidences and strong legal basis, as clarified in the White Papers on Viet Nam’s sovereignty over the Paracel and Spratly Islands, published in 1975, 1979, 1981 and 1988. The undeniable sovereignty of Viet Nam over the Paracel and Spratly Islands is also supported and recognized by a large

number of academic publications by international lawyers and historians, such as “*Sovereignty over the Paracel and Spratly Islands*” authored by the French professor of international law Monique Chemillier-Gendreau, published in French in 1986 (the English version published in 2000), or “*The South China Sea: The Struggle for Power in Asia*” published in 2014 by the British researcher Bill Hayton.

Third, I can’t agree with your statement that since the 1970s “Viet Nam has intermittently and illegally occupied some islands and reefs” of the Spratly Islands, “giving rise to the territorial dispute between China and Viet Nam.”

Since the 17<sup>th</sup> century, Viet Nam’s Nguyen Lords had continuously exercised sovereignty of Viet Nam over the Paracel and Spratly Islands by ordering the Hoang Sa – Bac Hai Flotilla to the two islands for exploiting marine products and collecting goods from shipwrecks. The Nguyen Dynasty then continued to dispatch ships to the two Islands to draw maps and plant sovereignty markers therein. During the period of colonialism, on behalf of Viet Nam, France also exercised its administrative power over the Paracel and Spratly Islands. Then, following the withdrawal of France, the Republic of Viet Nam took over the administration of these two Islands in accordance with the 1954 Geneva Agreement. The continuation of Vietnamese administration over the Spratly Islands in spring 1975, as well as other normal and regular activities of Viet Nam in and around the Spratly Islands after the country’s reunification, are in full compliance with international law. For what reason these activities were considered “illegal” while they have never been objected by any state, including the People’s Republic of China?

On the contrary, in 1974 and 1988, China used force to occupy several features (rocks and low-tide elevations) in the Paracel and Spratly Islands in violation of international law. Worse still, since its armed occupation, China has gradually constructed artificial islands and illegally militarized some rocks and low-tide elevations in the Spratly Islands. No wonder, these illegal acts of China are the main cause for the rising tensions, threatening peace and stability in the East Sea and in the region. How such illegal acts being condemned by Viet Nam and other states can constitute a lawful evidence for China to claim sovereignty over the Paracel and Spratly Islands and serve as the basis for China to assert its rights over a vast maritime area, encroaching on Viet Nam’s exclusive economic

zone and continental shelf, established in full conformity with the 1982 United Nations Convention on the Law of the Sea (UNCLOS)?

2) I share your view in Point 2 of your Letter that it is important to underline “the principle of consent” of states in settling international disputes and the principle of “the land dominates the sea” in determining the maritime entitlement of a coastal state. However, I can in no way share your interpretation on the application of the two principles.

First, by refusing to participate in the South China Sea Arbitration initiated by the Philippines and declaring its non-recognition of the binding effect of the Awards of the Arbitral Tribunal established under Annex VII of the UNCLOS, China had violated the principle of consent that a State Party to the UNCLOS should observe. By ratifying the UNLCOS, the People’s Republic of China expresses its consent to be bound to the legal obligations as provided in the Convention, including the obligation to accept the compulsory procedures entailing binding decisions, and the obligation to recognize and to comply with the final and binding Award rendered by the Arbitral Tribunal on 12 July 2016.

Second, concerning the application of the principle of “the land dominates the sea”, the Arbitral Tribunal in the South China Sea Arbitration, by conducting an objective and scientific analysis, concluded that no high-tide features in the Spratly Islands satisfy the criteria under Article 121 of the UNCLOS to generate an exclusive economic zone and continental shelf of their own. This means that all high-tide features in the Spratly Islands are, at best, entitled to a 12 nautical-mile territorial sea. The maritime features that are submerged at high tide are not islands and are thus not entitled to any maritime zone of their own.

Moreover, the Arbitral Tribunal also concluded that no state is allowed to draw an archipelagic baseline surrounding the Spratly Islands and to consider the Islands as a single unit for the purpose of claiming an exclusive economic zone and continental shelf for the whole Islands. This is because the Spratly Islands do not meet the criteria for drawing either an archipelagic baseline under Article 47 or a straight baseline under Article 7 of the UNCLOS. The area claimed by China as “Wan’an Tan” (Vanguard Bank) is a submerged formation within the continental shelf of Viet Nam and has no relevant relation with the Spratly Islands, which are

not entitled with any exclusive economic zone and continental shelf as concluded by the Arbitral Tribunal.

In a nutshell, the existing dispute concerning the territorial sovereignty over the Spratly Islands cannot give rise to the formation of any overlapping area between the exclusive economic zone and continental shelf of Viet Nam and the territorial sea of any high-tide features of Spratly Islands. In other words, the principle of “the land dominates the sea” mentioned in your Letter is not relevant as in fact there exists neither “land” to be applied nor overlapping area to be settled.

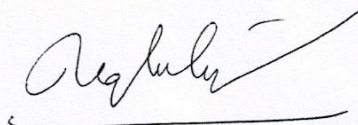
In order to turn the East Sea into “a link connecting all parties” as you suggested, every party should respect the lawful rights and legitimate interests of other parties when conducting activities in the Sea and treasure the friendly relationship which has been built up through history and strictly comply with international law.

3) Concerning the two bilateral and multilateral political documents, the “Agreement on the Basic Principles Guiding the Settlement of Maritime Issues between the Socialist Republic of Viet Nam and the People’s Republic of China” and the “Declaration on the Conduct of Parties in the South China Sea between ASEAN Members and China” (DOC), my opinion is that the “friendly consultation and negotiation” should be the prioritized means to peacefully settle the disputes and disagreements among states. As a former senior official of the Ministry of Foreign Affairs of Viet Nam with many years negotiating with China on territorial and boundary issues, including the East Sea disputes, from the bottom of my heart, I hope that our two states can settle the remaining disputes through friendly consultation and negotiation. However, as a specialist of International Law, I can affirm that no content in the two aforementioned documents, or in any other agreements between Viet Nam and China, can be interpreted as a hindrance for each state to choose any other peaceful means recognized under international law, particularly under the Charter of the United Nations (Article 33) and the UNCLOS.

Finally, I strongly believe that serious and scientific exchanges in the principle of mutual respect between the academic communities of both states will enable our people and the international community to gain a more comprehensive and precise understanding of the causes of and the effective means to settle the current tension in the East Sea. As non-governmental organizations, CSIL and VSIL cannot represent the governments. However, I believe that scientific and objective exchanges of views among their experts and scholars do play a positive role in strengthening the friendly relationship and mutual trust between the people of two states, as well as contribute to maintaining peace and stability in the East Sea and the region, meeting the expectation of all states in the world.

I sincerely thank you for your invitation to visit China at an appropriate time for both sides. It is also my pleasure to invite you and other members of the CSIL to visit Viet Nam at your convenient time. I appreciate your suggestion that we should co-organize exchanges or workshops on international legal issues of mutual concern relating to the East Sea disputes and recommend that this suggestion should be realized soon.

With high consideration.



Nguyen Ba Son

President of the Viet Nam Society of International Law