ONLINE ARTICLE

The Lost Dimension: Food Security and the South China Sea Disputes

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I. Introduction

The rationale for establishment of the Exclusive Economic Zone (EEZ) in the United Nations Convention on the Law of the Sea (UNCLOS) has profound implications for the maritime disputes in the South China Sea. The EEZ was created to ensure that coastal subsistence fishing communities had access to offshore fish stocks adjacent to their coast. Developing States joined with a handful of artisanal fishing States such as Iceland to propose a 200-mile zone to protect living marine resources from distant water fishing nations, such as Japan, the Soviet Union, and the United States. As 90 percent of all fish stocks are within 200 miles of shore, the EEZ was designed to safeguard a basic human right to food security. The human right to food security is the lost dimension of the maritime boundary disagreements in the South China Sea.

The legal structure of the EEZ informs the dispute between China on the one hand and the Philippines, Vietnam, Malaysia, Brunei, and Indonesia over sovereign rights and jurisdiction in the South China Sea. In these disputes China plays the role of a distant water fishing nation, as the southern tip of Hainan Island is some 1200 kilometers from the farthest extent of Beijing's claims in the South China Sea. The maritime zones in UNCLOS are predicated on the concept that the land dominates the sea, so coastal States are entitled to a 12 nm territorial sea over which it exercises sovereignty, a 24 nm contiguous zone for customs purposes, a 200 nm EEZ for exclusive access to living and non-living resources, and a continental shelf of 200 nm or more, over which the coastal State has rights to seabed oil minerals. Each of these zones was codified from customary international law, except the EEZ, which emerged from the **mood of decolonization** and national sovereignty that permeated the negotiations as well as the drive for food security and economic development.

First, the coastal States surrounding the South China Sea enjoy sovereign rights to the marine resources of their EEZ based on the legal theory of construction of the zone. The EEZ was produced during UNCLOS negotiations that spanned 9 years principally to give coastal States competence to protect subsistence coastal fishing populations, rather than as a zone of national aggrandizement or offshore industrial development. The large coastal populations of Vietnam, the Philippines, and the other States in close proximity to the seashore of the South China Sea are in contrast with China's physically remote population and distant coastline.

Second, despite physical occupation of selected land features, such as rocks, islets, reefs and cays in the South China Sea, China does not enjoy legal title to territories located there, and therefore lacks concomitant maritime rights to an EEZ generated by them. Regardless of the resolution of the disputes over legal title to the insular rock and island features, however, the five coastal States with large populations in proximity to and adjacent to the South China Sea are entitled to a normal 200-mile EEZ to fulfill the rationale for the origin and purpose of the zone.

II. The Emergence of the EEZ

The process of creation of the EEZ in the United Nations Convention on the Law of the Sea (**UNCLOS**) provides a unique vantage point from which to evaluate the disputes in the South China Sea. China relies on the theory of discovery and historic title over the water and land features that dot the seascape to lay claim to over 90 percent of the South China Sea. These claims incorporate vast areas of the Exclusive Economic Zone (EEZ) of five neighboring States – Vietnam, the Philippines, Malaysia,

Indonesia, and Brunei – approximately 1.2 m^2 of 1.4 m^2. China and its five antagonists are party to UNCLOS.

The construction of the regime of the EEZ in the *travaux préparatoires* of UNCLOS, however, suggests that the EEZ was created principally to protect coastal subsistence fishermen from distant water fishing fleets. Yet the founding purpose and function of the regime of the EEZ has been virtually ignored in the South China Sea disputes, to the detriment of the human rights and subsistence of coastal fishing communities. This paper reintroduces the key motivation for creation of the EEZ and places it in the context of contemporary disputes in the region. It concludes that large parts of the EEZs of Vietnam, the Philippines, Malaysia, Indonesia, and Brunei are at risk of being stripped away, circumventing subsistence rights of coastal fishing communities in Southeast Asia and diminishing the regime of the EEZ worldwide.

After World War II, industrial fishing from distant water fleets grew tremendously. Global catch was only 15 million tons in 1938, but by 1989 it had grown to 86 million tons. Beginning in the late 1950s, distant water fishing fleets from the USSR, Japan, and the United States expanded substantially. Large fishing vessels roamed the seas far from their native shores and began to land catch on an industrial scale. Fish stocks declined as factory fleets swept distant coastlines, driving some species to extinction (**UN Doc. A/CONF.62/C.2/SR.27**). Factory ships displaced local fishermen around the world, undermining the human right of food security (**E/C.12/1999/5**). Armadas of **factory-fishing vessels** capable of staying at sea for months at a time were constructed around enormous deep freezers. Fish catch was brought on board, cleaned, and frozen to market – all from the ship. These commercial vessels incorporated sophisticated technology, including sonar, to search the depths for schools of fish. The degradation of fish stocks prompted some coastal States to combine efforts to resist encroachment by distant water fleets.

In 1952, Chile, Ecuador and Peru signed the **Santiago Declaration** to preserve local fish stocks as sustenance for their coastal populations. This regional declaration affirmed that governments had an "obligation" to "ensure for their peoples the necessary conditions of subsistence…." The coastal States acknowledged a duty to prevent exploitation of marine resources within and beyond their jurisdiction. The States accepted that by virtue of their long coastlines, fish stocks were an "irreplaceable means of subsistence" to their coastal communities. In light of these needs, the governments of Chile, Ecuador, and Peru proclaimed a new norm that coastal States should have exclusive competence to manage living resources seaward to a distance of 200 miles. The Santiago Declaration formed the intellectual and philosophical underpinning for the 200 nm EEZ, which was incorporated into UNCLOS during years of multilateral negotiations in the 1970s.

Before UNCLOS, the 1958 Geneva **Convention on Fishing and Conservation of the Living Resources of the High Seas** recognized the coastal State's superior interest in the resources adjacent to its coast. The agreement defined conservation of living resources as "the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products." The special interest of coastal States in the conservation and management of fisheries in adjacent waters was incorporated into the text, allowing them to take "unilateral measures" for conservation on high seas adjacent to territorial waters. It required that if six months of prior negotiations with foreign fishing nations to divide the catch on the adjacent high seas had failed to reach a formula for sharing, the coastal State unilaterally could impose terms on foreign-flagged fishing vessels. It was never clear, however, whether coastal States could prescribe and enforce such rules, which in any event were never broadly implemented by coastal States.**[1]** Without specific authority to ensure food security, the 1958 treaty was ineffective and, like the other 1958 Geneva Conventions on the law of the sea, largely a disappointment. The **Convention on the Territorial Sea and Contiguous Zone**, for example, had its own shortcoming in that it failed to delimit the breadth of the territorial sea or specify the meaning of "innocent passage."

The problem of distant water fleets was particularly acute for small island developing states. Foreign-owned distant-water fishing fleets from Japan, the United States, the Soviet Union, and other flag States were taking massive amounts of fish from the waters surrounding small-island developing states such as Fiji (**A/CONF.62/ SR.29**). If the waters near these islands became depleted, distant-water fleets

would move elsewhere, but the inhabitants could not. Exploitation and abuse by States with huge fishing fleets led directly to the establishment of the EEZ (**A/CONF.62/WS/23**).

Industrial fishing from these fleets generated some amount of envy, as well as anger, among coastal States in the developing world. Furthermore, the "Cod Wars" of the 1950s and 1970s illustrate that such feelings were present in developed states as well. In the Cod Wars, the United Kingdom and West Germany resisted efforts by Iceland to progressively expand its fishing zone, resulting in a series of confrontations over fishing rights in the waters surrounding Iceland. In three major iterations, 1958, 1972-1973, and 1975, Iceland increased its claimed exclusive fishing zone from 4 to 12, then 50 and finally 200 miles offshore, pushing out distant water fleets from the United Kingdom and West Germany. The population of Iceland was at the time almost entirely dependent on fishing as a source of income. The conflict ended only after the United Kingdom accepted a 200 mile Icelandic fishing zone.

Similarly, by the early 1970s, the United States had accepted the efforts by South American states to exclude U.S. fishing fleets from tuna fishing their offshore areas. A **discussion** on the "tuna war" between Henry Kissinger and Richard Nixon in the White House in 1971 captures the sentiment at the time:

> *Kissinger: We have other technical [unclear] connected with Latin America. The Brazilians have established a 200 mile limit, and they want to start enforcing it as of June 1st [1971].*
>
> *Nixon: [unclear]*
>
> *Kissinger: Now, our problem is that unless we get them – unless we tell that that we're willing to negotiate the fisheries issue with them, they will have to start enforcing it. We've already agreed to negotiate, but we don't have a formal position yet. And so there's some debate. The State Department wants to negotiate now, but the Defense Department wants to have a showdown. They're not so concerned about fisheries, but they're concerned about law of the seas [sic]. I would recommend that we tell them that we're willing to negotiate this fall. That if we – because if we don't do it on fisheries, the Latin Americans will oppose us on the more important issues of navigation, which comes up on the law of the sea conference later this year. While if we can settle Brazil, it's not basically a hostile country to us [sic].*
>
> *Nixon: I don't give a damn about fisheries anyway. Let everybody have 200 miles to fish. They're all poverty-stricken down there anyway.*
>
> *Kissinger: If we dig in on fisheries, we'll lose on navigation –*
>
> *Nixon: Navigation we want. Let them fish if they want. That's my view.*
>
> *Kissinger: Well, that's my recommendation, Mr. President.*

The pressure to preserve national fishing resources was no less powerful in the United States, which adopted a 200-mile zone under the **Magnusson Fishery Act in 1976** – six years before the EEZ was adopted by the Conference. The United States acted even against the advice of the Pentagon, which correctly warned that a unilateral announcement of a fishery zone would weaken the U.S. hand in negotiations to ensure high seas freedoms in the zone, as well as transit passage through straits used for international navigation.

Between 1974 and 1979 alone there were some 20 other disputes over cod, anchovies or tuna and other species among, for example, the United Kingdom and Iceland, Morocco and Spain, and the United States and Peru. As long-utilized fishing grounds began to show signs of depletion, and as long-distance ships came to fish waters local fishermen claimed by tradition, competition increased; so too did conflict.

III. The Third United Nations Conference

Consequently, the concept that every coastal State was entitled to management and exploitation of an exclusive fishing zone was a major impetus for negotiations on UNCLOS. Soon after the opening of the Third UN Conference on the Law of the Sea in 1973, Nigerian representative J. D. Ogundere stated that the high rate of world population growth, especially in Africa, meant that developing States were turning to the sea to feed their populations and earn foreign exchange (**A/CONF.62/C.2/SR.31**). African nations were strong proponents of the zone. Somalia, for example, argued that only a 200-nm territorial sea could protect the coastal State fisheries from distant water fleets (**A/CONF.62/C.2/SR.26**).

During UNCLOS negotiations, Indonesian Ambassador Hasjim Djalal stated that from the view of adjacency or coastal proximity, coastal States have a superior right to the resources of the EEZ than distant countries (**A/CONF.62/C.2/SR.26**). Many States benefited from wider coastal zones, including a majority of seafarers and fishermen in coastal States, for whom such zones represented more food, more jobs and higher standards of living (**A/CONF.62/C.2/SR.30**).

Fishing states proposed that the right of distant water nations to access coastal State fisheries be included in the terms of the Convention. In rejecting this approach, Mr. Akyamac of Turkey objected to "…proposals … that the traditional distant-water fishing States be granted fishing rights within the economic zones of ocean States. The creation of such a privileged club would be highly detrimental to the developing States," as they too would have to turn toward distant-water fishing to sustain economic and social development (**A/CONF.62/C.2/SR.27**).

By the beginning of the Second Session of the Third UN Conference on the Law of the Sea in the summer of 1974, most of the major distant-water fishing countries had accepted the idea of the 200-mile zone in which fish stocks would be managed by the coastal State. Valencia Rodriguez of Ecuador recalled, "No one now denied that the 200-mile limit was the only means of relieving the acute and growing subsistence problems of the developing world." (**A/CONF.62/C.2/SR.27**)

Distant water fishing nations ceded that coastal States that depended on coastal fisheries had a right to establish exclusive rights over the resources located there. Poland, for example, recognized that despite its distant-water fishing interests, developing coastal States and States dependent mainly on coastal fisheries should have the right to establish a zone within which they could exercise special rights with respect to living marine resources (**A/CONF.62/C.2/SR.26**).

The needs of distant-water fishing countries and of other states in- terested in fishing in the EEZs were taken into account in the final text. These interests flowed from a joint **Australian-New Zealand fisheries paper** submitted to the Seabed Committee in 1972 that made its way into the UNCLOS negotiations. The paper provided that the portion of allowable catch not taken by the coastal State would be available for the fishing vessels of third countries. By the time the UNCLOS negotiators picked up the issue of the EEZ at the 21st session of the Second Meeting on 31 July 1974, most distant water states already had accepted this approach (**A/CONF.62/C.2/SR.21**).

Sponsors of the working paper recognized the need for equitable rights of access for developing States to EEZ resources of neighboring coastal states (**A/CONF.62/L.4**). Access could be negotiated on the basis of regional, sub-regional or bilateral agreements. Most importantly, coastal States had a duty to accommodate the interests of other States that had historically fished in waters adjacent to their coastline, but no longer were entitled to because of the creation of the EEZ. China is such a distant water State in the areas beyond it 200 nm EEZ in the South China Sea, and as such, it has certain rights.

Coastal States such as Vietnam and the Philippines, have a duty to "take into account" the right of access of other States, and in particular, "States which have habitually fished in the zone." (**A/CONF.62/C.2/L.40 and Add.1**) If China seeks to fish in the EEZs of the coastal States of the South China Sea, it must do so through the process developed in UNCLOS. This approach firmly rejected colonial, imperialist or foreign domination of the EEZ. "It should also be made clear that such rights could

not be exercised, profited from or in any way infringed by a metropolitan or foreign power administering or occupying such a territory." (**A/CONF.62/C.2/SR.21**)

IV. The EEZ Regime

The outer limit of the EEZ extends a maximum of 200 nm from the baselines from which the territorial sea is measured. More than 150 coastal States have an EEZ. Unlike the continental shelf, which was an inherent part of the coastal State, the EEZ was based on a claim through proclamation or declaration. Most coastal States lack the ability to enforce their resource jurisdiction. They will "obtain the full benefit of their EEZ only if . . . more powerful States respect them" (**A/CONF.62/SR.190**).

The EEZ is a generous grant of community ocean space to the coastal state; the zone, indeed, was cut out of the high seas and ceded willingly. "Coastal States also seemed willing now to accept the obligation to allow fishermen from other countries to enter the 200-mile zone on reasonable terms and conditions to take the balance of the allowable catch not harvested by the local industry" (**A/CONF.62/C.2/SR.21**).

Coastal States have sovereign rights in the EEZ with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection. All other States enjoy freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines.

Most ocean activities are located in EEZs, which encompass **36 percent of the total area of the sea**. Ninety percent of commercially exploitable fish stocks are located in the zone because the "**richest phytoplankton pastures lie within 200 miles of the continental masses**." Phytoplankton, the basic food of fish, is brought up from the deep by currents and ocean streams at their strongest near land, and by the upwelling of cold waters where there are strong offshore winds. The area also has almost all of the major shipping routes and a high proportion of marine scientific research. The continental shelf under the EEZ contains over 80 percent of the known offshore oil and gas deposits.

The EEZ is a *sui generis* regime – neither a territorial sea nor residual high seas, but a distinct third type of zone established in Part V. The Law of the Sea Convention governs the rights and jurisdiction of the coastal State and the rights and freedoms of other States in the zone (**arts. 55, 56, 58**). The treaty also contains a formula for attribution of rights and jurisdiction that do not fall within either of coastal or other States (**art. 59**).

The coastal State enjoys in the EEZ sovereign rights – but not sovereignty – over resources and economic activities, sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources and with regard to other activities for the economic exploitation and exploration of the zone, sovereign rights with regard to the seabed and subsoil (**art. 56**). Coastal States also have sovereign rights for rules aimed at conservation of the living resources (**art. 61**), utilization of the living resources (**art. 62**), special rules for shared and straddling stocks, highly migratory species, marine mammals, anadromous stocks, catadromous species, and sedentary species (**arts. 63-68**), the right of land-locked and geographically disadvantaged states (**arts. 69-70**), and marine enforcement of laws and regulations of the coastal State (**art. 73**). The International Tribunal for the Law of the Sea recognized these authorities in the **M/V Virginia G Case**.

Because of their adjacency or proximity, coastal States were afforded special authority to develop and manage a conservation regime in the EEZ. The coastal State has a duty to determine the total allowable catch (TAC) for EEZ fisheries that "takes into account" the "best available" scientific information (**UNCLOS, art. 61**). Coastal States also shall adopt measures to prevent "overexploitation" of the fishery, and maintain or restore stocks at levels that can produce "maximum sustainable yield" (MSY), "as qualified by relevant environmental and economic factors." These factors include the economic needs of coastal fishing communities and the special requirements of developing States. Management measures must consider "effects on species associated with or dependent upon harvested species" to ensure such species

do not become "seriously threatened." The objective of the management regime is to optimize utilization of the fishery "without prejudice" to the coastal State's rights in article 61 (**art. 62**).

As coastal States, Vietnam, the Philippines, and Malaysia, should accommodate neighboring States, such as China, with access to surplus catch in the fishery. Surplus catch (SC) is determined by total allowable catch (TAC) minus the capacity to harvest (CTH), with TAC qualified by maximum sustainable yield (MSY). Thus, TAC (based on MSY) – CTH = SC.

To fulfill its obligations, Vietnam should acknowledge the significance of living resources of the area to the economy of Southern China and China's "other national interests," the requirements of developing States in the sub-region or region, and the need to minimize economic dislocation in States whose nationals historically have fished in the zone. (Vietnam also must consider the provisions regarding geographically disadvantaged and land-locked States in articles 69 and 70 of UNCLOS, but these do not apply vis-à-vis China and Vietnam). If Vietnam opens access to Chinese distant water fishermen, these guests have a duty to comply with the conservation measures and other terms and conditions established in Vietnamese law (**art. 62**). Even if one accepts the validity of China's claim to historic fishing grounds off the coast of Vietnam, the problems occurring offshore emanate from a reversal of roles between the two States. In this regard, China's attempt to impose annual fishing bans from April to August and fishing management regimes in areas throughout the South China Sea that are distant from its coastline – and in fact within the EEZs of its neighbors – are **unlawful, ineffective, and perverse**.

The EEZ is one of the most revolutionary features of UNCLOS, and it has had a profound impact on the management and conservation of the resources of the oceans. The regime of the EEZ recognizes the right of coastal States to jurisdiction over the resources of some 38 million nm^2 of ocean space. The coastal State inherited right to exploit, develop, manage and conserve all resources – fish or oil, gas or gravel, nodules or sulfur in the waters, on the ocean floor and in the subsoil of an area extending 200 miles from its shore.

V. China as a Distant Water Nation

In 1980, China had the fourth largest fishing catch in the world, behind Japan, the USSR, and the United States.**[2]** Today, China has **the third largest merchant marine fleet in the world** and it is the world's top fishing nation, currently taking nearly **20 percent** of the total world catch. China has almost **300,000 motorized fishing vessels and approximately eight million fishermen**. With a total take of over **17 million tons** in 2007, China lands four times the catch of its nearest competitor, and far exceeds the catch of Japan, the United States and other major Pacific maritime powers. The largest catch is from the East China Sea, followed by the South China Sea and Yellow Sea. The catch is increasing, however, only in the South China Sea.

Chinese fishermen predominately **catch finfish**, species such as anchovy, Japanese scad, hairtail and small yellow croaker, and also harvest large amounts of shrimp, crab and squid. They use trawlers, purse seines, gill nets, set nets, and line and hook. Chinese fleets are located mostly in Guangdong and Shandong provinces, with Fujian and Zhejiang also major regions for fishing. As waters close to home become depleted, Chinese fishermen have moved farther south to exploit the waters of the South China Sea. First, China seized the Paracel Islands from Vietnam, which inherited title from France, and laid claim to the waters surrounding them.

The features of the Paracel Islands do not generate zones of sovereignty or sovereign rights and jurisdiction for China since it does not have valid title to them. Legal title may be obtained through accretion, cession, conquest, occupation, or prescription. Under the Charter of the United Nations, after 1945 conquest is not a lawful means to acquire territory. Consequently, China's **military capture[3]** of the Hoàng Sa/Paracel Islands in January 1974 is devoid of legal effect. China has not perfected any claim through one of these five methods in a manner that would confer legal title. Similarly, prescription to title to territory is effected through long-term occupation of another state's territory, but it requires a display of governmental authority that is continuous, peaceful, public, and uninterrupted – criteria that China also does not meet. China's reliance on ancient discovery is similarly lacking in legal effect, and cannot be the

basis for EEZ rights. Even if China discovered regional rocks and islands in vicinity of Vietnam, mere inchoate title is incomplete without subsequent acts of effective occupation that evidence an intention and will to act as sovereign.

In December 2014, Beijing **renewed its claims** to virtually all of the South China Sea, but it does not have a valid legal claim to sovereignty over either the disputed features or waters. Yet China is increasingly using its fishing fleet for **strategic purposes** to control the region. Beijing will continue to use the Chinese strategy of "defeating harshness with kindness" (*yi rou ke gang*) and thus deploy unarmed fishing vessels or fisheries enforcement vessels to confront foreign vessels operating in its EEZ and claimed waters. In March 2009, for example, several Chinese fishing vessels operated in coordination with Chinese state vessel in the South China Sea to harass and impede the USNS *Impeccable*, a special mission military survey ship. In the incident that occurred 120 km from Hainan, the fishing vessels were accompanied by two maritime law enforcement ships and at least one Chinese naval vessel.

Shortly thereafter, Yu-zheng 311, China's largest fishery enforcement vessel, deployed off the coast of the Philippines after that country passed legislation to formalize its off-shore claims to several islets in the South China Sea. In June 2009, Vietnam protested abusive treatment of its fishermen by Chinese fishery enforcement authorities. That same month, the Indonesian Navy seized eight Chinese fishing vessels and detained 75 Chinese fishermen, who were fishing illegally in the country's EEZ.**[4]** Fifty-nine of the fishermen were released to China the following month.

The exercise of Chinese jurisdiction in its neighbors EEZs is incompatible with the original design and structure of UNCLOS to protect food security for developing coastal states. This lost dimension of the maritime disputes has not been recognized, but it completely upends Chinese claims. The dispute should be settled in light of the food security impetus that drove the initial UNCLOS negotiations. China's fishing activities in the South China Sea are permissible only to the extent that they have been authorized by the coastal State to land surplus catch (SC).

VI. Conclusion

Today, the benefits brought by EEZs are evident. Ninety-nine percent of the world's fisheries are conducted within some coastal State's jurisdiction. Archipelagic States and large nations endowed with long coastlines naturally acquire the greatest areas under the EEZ regime. Among the major beneficiaries of the EEZ regime are the United States, France, Indonesia, New Zealand, Australia and the Russian Federation. Using normal baselines for calculation, Vietnam has an EEZ of 210,000 m^2 or more than 417,000 km^2 (**Limits in the Seas No. 46**). With exclusive rights come responsibilities and obligations, and Vietnamese law provides for foreign access to the country's EEZ based on treaties concluded between Vietnam and "interested parties."**[5]**

Each coastal State is to determine the total allowable catch for each fish species within its EEZ, and estimate its harvest capacity and what it can and cannot catch. These States should give access to other States, particularly neighboring States and land-locked countries, to the surplus of the allowable catch. In the South China Sea, Vietnam should consider whether it has jurisdiction over surplus catch that might be shared with the Chinese fishing community. Such access must be done in accordance with the conservation measures established in the laws and regulations of Vietnam. In turn, Vietnam is obligated to manage the fisheries, and adopt measures to prevent and limit pollution and to facilitate marine scientific research in its EEZs. This balanced structure should govern the relationship between coastal fishermen of Vietnam and distant-water fishermen from China (**A/CONF.62/SR.185**).

The issue of subsistence fishing is one element of a broader mosaic of thinking in terms of human security, rather than purely national security. In this respect, the push by developing countries during UNCLOS negotiations for creation of the EEZ was prescient, as it foretold the rise in the 1990s of human security as a basis for policy.**[6]**

For its part, China has a legal obligation to comply with the terms of UNCLOS, including regulations by Vietnam, Malaysia, Brunei, the Philippines, and Indonesia, within their respective EEZs.

The doctrine of *pacta sunt servanda* ("agreements must be kept") is a brocard, or cornerstone principle of international law, and is reflected in article 26 of the **Vienna Convention on the Law of Treaties**.[7] For all its fanfare, the rise of the New China is incomplete without commitment to a rules-based order of the oceans.

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[1] Richard A. Falk and Hilary Charlesworth, *International Law and World Order, 4th ed.* (2006).

[2] 50 FAO Y.B. of Fishery Statistics 1980 (1981).

[3] "Saigon Reports Clash with China," N.Y Times, Jan. 19, 1974 and "Saigon Says Chinese Control Islands, But Refuses to Admit Complete Defeat," N.Y. Times, Jan. 21, 1974. *See also*, "The World: Storm in the South China Sea," Time Magazine, Feb. 4, 1974.

[4] Zhang Jin, "Indonesia Told to Release Chinese Fishermen," China Daily, June 29, 2009.

[5] "Government Decree on Foreign Fishing Ships Operating in Vietnamese Maritime" Zones (Decree No. 31-CP), Socialist Republic of Vietnam, 1980, reprinted in FBIS-APA, 19 March 1980, at K1.

[6] Louise Doswald-Beck, *Human Security: Can It be Attained?*, 97 Am. Soc'y Int'l. L. Proc. 93, 93-95 (2003).

[7] *See also* Hans Wehberg, *Pacta Sunt Servanda*, 53 Am. J. Int'l L. 775 (1959) (deep moral and religious influence of the principle in ordering international society).