Diplomacy From Below

Resistance of Vietnamese Fishermen on Ly Son Island, 2002-2016

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By

Elena Bernini

OXFORD DEPARTMENT OF INTERNATIONAL DEVELOPMENT
QUEEN ELIZABETH HOUSE
OXFORD UNIVERSITY

ST ANTONY'S COLLEGE
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Introduction

> We 15 people went fishing and were arrested by the Chinese. We were kept in a warehouse full of bricks and cement. They treated us badly and did not gives us enough food. They asked who the captain was and then took us to Hainan Island, where they were based. [] They wrote a fine document in Chinese and asked a few fishermen to take it back and get money. They fined us 180 million VND [$8,000 USD]. We paid the ransom through the 'Consulate' in Da Nang, only then did they give us meals. We had to borrow money from our neighbors. [] Because I was the captain, two other people and I were kept for another half a month. Normally people eat three meals per day, we were only allowed one. If we hadn't paid money, they would have sent us to prison.
>
> - Ly Son Island Fisherman, Summer 2016

The South China Sea And Ly Son Island

Fine blue lines are drawn by hand on an ancient map of the South China Sea through the Straits of Malacca, Malaysia and Indonesia to Ly Son Island in Vietnam, after which they revector towards China and Japan (see Appendix 1). When China librarian David Helliwell kindly displayed the map for me and another handful of researchers in March 2017, I identified the island on the map I had visited the previous summer. The Selden Map of China, a misnomer for a map that focuses on trade routes in the South China Sea, is one of the treasures of the Bodleian Library at Oxford University. Dated from the early 17th century and likely displayed by an ancient merchant mariner in his office, the hand-drawn map focused on the South China Sea and the interconnected trade routes of China, Japan, and Southeast Asia. Infrequently exhibited today, the map was only rediscovered in 2008 by historian Robert Batchelor, and demonstrates that the South China Sea was a cosmopolitan network of exchange between seafarers (Hayton 2014, 30-35), fishing communities and merchants of all South East Asia. The vectoring of one of the blue lines directly to Ly Son Island, and then its revectoring towards ports in China

and Japan, suggest that the island may have been a critical waypoint on the major ancient trade routes of the South China Sea.

Only in the contemporary era have these busy trade routes and once-vibrant international commons of the South China Sea been subject to attempts at enclosure. By enclosure I mean a system of privatization of maritime space and resources or 'maritime territorialisation' (Roszko 2015, 2), which share similarities to feudal enclosures. A legal notion of enclosure of the seas is historically based on the legal doctrine of *mare clausum* (closed sea) as theorized by John Selden ([1635] 1975), the owner of the Selden Map. This is opposed to Hugo Grotius' doctrine ([1609] 2009) of *mare liberum* (freedom of the sea).

Parts of the South China Sea are claimed as exclusive, or enclosed against foreign fishermen and other resource extractors, by seven claimant countries: the People's Republic of China (China), the Republic of China (Taiwan), Vietnam, the Philippines, Malaysia, Brunei, and Indonesia. The ancient cosmopolitan network of fishing and exchange between seafarers is now under stress: all the above mentioned countries have territorial sovereignty disputes on the numerous small land features (reefs, shoals and islands) that are part of two island groups, the Paracels and the Spratlys, plus Scarborough Shoal off the Philippines in the northern part of the SCS.

All claimant countries have formally expressed an intention to peacefully cooperate and reach a solution to the conflict by signing numerous legal agreements, such as the 2002 ASEAN-China Declaration on the Conduct of Parties (DOC). But the DOC was insufficient to impede the escalation of skirmishes between rival naval, coast guard, and fishing vessels. All claimant countries, with the exception of Taiwan, are also signatories to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is constantly subject to different claimant interpretations. As lawyer Gregory

Poling of the Center for Strategic and International Studies (CSIS) puts it, "there is nothing in the United Nations Convention on the Law of the Sea to resolve sovereignty disputes over land []" (Poling 2013, ix). UNCLOS establishes only provisions on maritime entitlements of coastal states, by establishing the concept of the Exclusive Economic Zone (EEZ), which gives a state the exclusive right to exploit oil, gas and fish resources within a 200 nautical mile area measured from the coast. International waters, which are the high seas beyond the jurisdiction of every state, are preserved by UNCLOS as the original global commons of economic resources. Per UNCLOS, some economic benefits of those commons accrues to land-bound states.

The drive to prove sovereignty and continuous occupation over possible island land territory in the South China Sea stems from the fact that, according to UNCLOS, "entitlement to maritime zones is generated only by land territory, including islands" (Beckman 2013, 142). Activities such as military occupation of land features, land reclamation, artificial islands, buildings and militarization with infrastructures such as airstrips and military bases, serve the purpose of projecting hard power to the sea and at the same time coercively generating entitlement to maritime rights. On the other hand, the land features of the SCS are also increasingly subject to state-sponsored settlements of civilian population. They are tourist destinations of "sovereignty cruises", which in turn accelerate island claims and patriotism. Yet the shortcomings of these activities are great: environmental destruction for the rich biodiverse system in the SCS (such as marine species and coral), and continued militarized friction between claimant states.

China has exploited the grey areas in the existing legal framework addressing the SCS through force, including the seizure in 2012 of Scarborough Shoal. While Scarborough is in the EEZ of the Philippines, this did not prevent China from blockading

the feature to scrape the shoal of coral, endangered giant clams, and sea turtles. As of April 2017, China continues to overfish the shoal and partially impede access by filipino fishermen, an unaddressed issue of food insecurity.

In 2009, Vietnam jointly submitted with Malaysia a section of their extended continental shelves in the South China Sea to the United Nations. The response came the next day, when China submitted a *Note Verbale* to the UN, in which it claimed sovereignty over nearly the entire SCS within an attached "nine-dash line" map based on comparatively recent cartography. As of now, Beijing still must clarify the exact extent of this nine-dash line and the legal basis of the nine dash line claims, which the Permanent Court of Arbitration (PCA) in July 2016 ruled as contravening UNCLOS provisions on EEZs, as well as territorial and international waters.

China's claim of jurisdiction over the entire SCS has great implications for cooperative fisheries management of resources: today for non-Chinese fishermen of every claimant country in the SCS, it is almost impossible to navigate without the risk of being rammed or harassed by the Chinese Coast Guard, even when navigating in their own EEZ. At the heart of the problem is a different, but oftentimes instrumentally guided, interpretation of which are the disputed waters and where fishermen can conduct their activities. Ambiguity in providing a legal rationale over sovereignty claims advances China's, Taiwan's, and in some cases Vietnam's expansionist agenda while avoiding legal constraints. The states' creation of legal fictions and ambiguity leaves them impunity, while in the case of China's claim, it has repercussions on fishermen as detailed in this thesis for the case of Vietnam.

While every claimant country is guilty of clarifying its claims, so far, the most assertive moves, both in military terms and defying of international law, have been made

by China. The 2016 PCA award ruled in favour of the Philippines, and determined that China's "nine-dash line" has no historical basis (85-112). Yet China stated in advance that it would ignore the PCA, and refused to even participate in what UNCLOS defines as compulsory arbitration.

The underlying motives for which claimant countries demand sovereignty over the SCS waters and islands are: economic resources (fish and minerals, including oil and gas), maritime trade routes, and military power projection. The control of marine space in the SCS is especially critical for China to have naval outlets to blue water operations in the Pacific, Indian Ocean and beyond as it seeks to extend its naval operations globally.

The South China Sea Conflict is a transnational challenge that involves major powers and grand strategies of the U.S. and China, both of which are competing to have political and economic influence over the engagement and system of alliances of claimant countries. The SCS is also a challenge reflective of the broader changes in the international system: the shifting balance of power from the U.S., whose efforts are to manage the rise of China, which since 2017 is the first global economy by purchasing power parity. The U.S. tries to exercise its military muscle in freedom of navigation operations in spite of Chinese navy and coast guard vessels that block innocent passage of numerous vessels. But The U.S. has thus far appeased China's claims, and their daily aggressions against fishermen, even when imposed in the EEZ of their treaty ally, the Philippines.

A bottom up perspective, which is the vantage point of some development studies, including this one, is needed in the study of the South China Sea conflict and its effects on regional food security. The omission of the micro level of the South China Sea Conflict is primarily due to being dominated by international relations literature (see for example

Thayer 2011; Hiebert *et al.* 2014, Bateman and Emmers 2009) and legal studies (see for example Poling 2013; Basiron 2012).

While grand strategies of claimant states shape their politics and diplomatic relations, from my fieldwork emerged the importance of analyzing the agency of non-state actors, in particular Vietnamese fishermen, as they seek to diplomatically manage their own and foreign governments, including when they are arrested, kidnapped and fined by ostensibly Chinese government officials. Vietnamese fishermen try to change this *status quo,* by employing "diplomacy from below" tactics, yet their requests to the Vietnamese Government are thwarted and remain largely unheard. Vietnamese diplomats do not engage in diplomatic pressures on their Chinese counterparts for the release of the fishermen, as party-to-party relationships between the Chinese and Vietnamese Communist parties shape domestic politics of Vietnam.

The research questions that provide the framework for this dissertation follow from the empirical situation described above. They are:

1. *How is the diplomacy from below of Ly Son Island fishermen exhibited?*
2. *What is the effect of Ly Son Island fishermen's diplomacy from below on the political environment?*
3. *What is the effect of the political environment on Ly Son Island fishermen's diplomacy from below?*

This dissertation contributes to different sets of existing scholarships by: 1) adding the effect of the bottom level to the the top-down international relations scholarship on the South China Sea; 2) adding to legal studies of the South China Sea by unpacking underexplored human rights abuses, such as that of the kidnapping network that affects Ly Son Island, is perpetrated by the use of legal fiction, and highlights the problem of access to justice for non-state actors who are impeded from such access by their own

government; and 3) adding nuance to the social movements and diplomacy scholarship by introducing the theory of diplomacy from below, informed by Antonio Gramsci's concept of subalternity and James Scott's theory of 'everyday resistance'.

The dissertation organization is as follows. First, an introductory literature review on two entry points for the theory of "diplomacy from below": resistance and subalterns. Chapter 1 analyzes the methodologies employed: an ethnographic approach and process tracing. It also explains case selection, data collection, and the evolution of the theory. Chapter 2 enucleates the theory of diplomacy from below, starting with an overview of the traditional types of diplomacy (club and Track 1), and less hierarchical forms of 'networked diplomacy' and of 'multi-track diplomacy'. The theory predicts three effects, a cycle, and an equilibrium process in the case of a small country with an authoritarian regime, and foreign malign intervention.

Chapter 3 is the ethnographic account of Ly Son Island and the resistance that fishermen employ against a foreign power, and the ways in which they seek assistance, but are denied, from their own government. Chapter 4 looks at effects of diplomacy from below, and the equilibrium cycle of repressed diplomacy from below with an upward trend in subaltern conditions. The conclusion addresses future research, and possible legal strategies to address human rights violations of Vietnamese fishermen.

Literature Review

Rebellion, uprisings, and strikes are probably the first concepts that would come to the mind of the reader when thinking about subordinated-class resistance to economic and other forms of domination.

Historians started the line of inquiry into requests 'from below' and how they affected change in the political environment and historical phases. Georges Lefebvre's work (1989) has analyzed, for instance, how in the French Revolution, during the so called *Great Fear*, the peasants in almost the entire countryside of France rioted against the aristocracy, which eventually led the National Assembly to vote and abolish the feudal system of the *Ancien Regime* in 1792 and paved the way to the modern state. Thus, historical scholarship typically characterised peasant revolts as violent, unexpected bursts of uncontrolled activity, which entered the historical lexicon as negatively-connotated *jacqueries.*

Historian Eric Hobsbawm presented in *Primitive Rebels* (1959) a first insightful analysis on forms of discontent of peasants, in the form of upheavals against the feudal system, analyzing the situation of Italy and Spain of the 19th and 20th centuries. Yet, Hobsbawm's work characterized the requests of change from below as driven by millenarian beliefs and as exemplary forms of primitive resistance, thus depicting peasants claims as backward and at a primordial stage.

Prior to the work of James Scott (1985), scholarship on social movements and popular resistance focused on open and collective defiance, such as rebellions and uprisings, sublimating the political goals of subordinated classes as they are premised on a Western conception of modernity and a binary between primitive, egotistical and principled resistance (Scott 1985). However, a tectonic change to the dominant approach of the history literature which primarily looked at organized and open ways of contesting power, was made by Scott, through adding the concept of "everyday resistance", in his seminal book *Weapons of the Weak* (1985, 289). He defines resistance as,

any acts by members of a subordinate class that is or are intended either to mitigate or deny claims (for example rents, taxes, prestige) made on that class by superordinate

classes (for example, landlords, large farmers, the state), or to advance its own claims (for example, work, land, charity, respect) vis-a-vis those superordinate classes.

'Everyday resistance' is a useful analytical trope to analyze power relationships and subaltern advancement of claims and politics. Drawing empirical evidence from his two-year fieldwork in a Malay village (1978-1980), Scott found the ways in which Malay peasants' resistance against the landowners was manifested in acts such as foot dragging, pilfering, false compliance, feigned ignorance, and gossip (Scott 1985, xvi). These are the weapons that the subalterns employ every day and are likely to be more successful against the superordinate classes, as they do not trigger hard repression. An emblematic example provided by Scott is foot dragging during colonial India, which can easily be applied to the present in many subaltern resistance behaviours. Scott (1985, 33) highlights how "lifelong indentured servants [that] expressed their discontent about their relationship with their master by performing their work carelessly and inefficiently [so] the master was still obliged to maintain him at a subsistence level if he did not want to lose his investment completely".

Subaltern acts of resistance, especially in developing countries, rarely manifest in outright open defiance against oppressive landowners, colonial regimes, or exploitative centrally-planned economies enacted by authoritarian governments or feudal seigneurs. Rather, subaltern critique of power manifests itself in ways that fly under the radar of the dominant discourse by employing 'hidden transcripts'(1990), 'voice under domination' (1990) and 'routine resistance'(1985).

Poaching and gossip could be seen as forms of self-help, individual and opportunistic rather than being principled collective actions. Yet, recognizing that 'everyday resistance', constitutes the everyday politics of subalterns who manifest their

discontent (Scott 1985, 296-297), is precisely Scott's innovation and point of departure from social movement scholarship. 'Everyday resistance' is an axiomatic point that can be applied to diplomacy from below of not only fishermen, but other subaltern identities.

The concept of resistance is interwoven with a particular category of actors: the subalterns. Subalterns were first introduced by Antonio Gramsci ([1891-1937]1988), whose theory was informed by the economic and political conditions of 20th century Italy. At that time, Italy considerably lagged behind in development compared to other European countries.

Gramsci's research proposal on the effect of subaltern politics, which is particularly relevant for this dissertation, is that subaltern politics differs, yet is interwoven with and affects, other civil society and political society actors ([1891-1937]1988, 202). He writes,

> The subaltern classes, by definition, are not unified and cannot unite until they are able to become a 'State': their history, therefore, is intertwined with that of civil society, and thereby with the history of States and groups of States. Hence it is necessary to study: 1. the objective formation of the subaltern social groups, by the developments and transformations occurring in the sphere of economic production; their quantitative diffusion and their origins in pre-existing social groups, whose mentality, ideology and aims they conserve for a time; 2. Their active or passive affiliation to the dominant political formations, their attempts to influence the programmes of these formations in order to press claims of their own, and the consequences of these attempts in determining processes of decomposition, renovation or neo-formation; 3. the birth of new parties of the dominant groups, intended to conserve the assent of the subaltern groups and to maintain control over them; 4. the formations which the subaltern groups themselves produce, in order to press claims of a limited and partial character; 5. those new formations which assert the autonomy of the subaltern groups, but within the old framework; 6. those formations which assert the integral autonomy [].

Gramsci called for a need to inquire into the conditions by which the hegemon has achieved the long-standing subordination of subalterns. These structural preconditions wrongly make subaltern claims primitive to some. As Gramsci has captured, subaltern

"history from below" ([1891-1937] 1988, 222) has often been purposefully modified and or censored by cultural hegemony, resulting from their economic and political relations with the hegemons.

Gayatri Spivak has argued in *Can the Subaltern Speak?* (1985, 284-286) that subalterns cannot speak as they have been systematically unwritten in the official dominant discourse by the elite and are the 'paradigmatic victim'. Gramsci and Spivak diverge on their conclusion of subalterns in terms of elevating their conditions. For Spivak (1990, 158), once the subalterns reach a level of organization (such as forming a coalition or advocacy network), they are no longer subalterns. By contrast, Gramsci ([1891-1937] 1988, 57) has argued that in order to subvert subaltern conditions, we should aim at a "permanent victory" that changes the relationship of subordination between the elite and subalterns.

This literature review has focused on two main concepts which are cardinal to the theory of diplomacy from below: resistance and subalterns. Scott's contribution to the history and social movement scholarship is the observation that resistance by subalterns against the power-holders is often channeled towards largely successful passive strategies, rather than open organized protests. For reasons of space, the discussion on social movements and that on the different types of diplomacy has for now been omitted. In Chapter 2, when defining diplomacy from below, we will analyze some of the major lines of scholarship on diplomacy (see for example Cooper *et al. 2015;* Berridge 2015) and social movements (see for example Tilly 2006, Della Porta and Diani 1999). But no scholarship has widely assessed the effect of the engagement of individual or groups of subalterns *vis a vis* a foreign state level, which requires exploring the theory of diplomacy from below.

Chapter 1: Methodology

The methods I employed to answer research questions on diplomacy from below are primarily qualitative: an ethnographic approach and process tracing. While ethnography has been accused of lacking rigor and generalisability (Cresswell 2013, 66) in contrast to quantitative methods, one of its many strengths is that living and being in contact with the studied community allows the researcher to capture power-laden relations that would remain hidden through a survey or questionnaire. Given that the Communist Party of Vietnam (CPV) classifies the SCS and fishermen's involvement as highly sensitive, power-laden relationships greatly shape Ly Son fishermen's behaviour and that of other respondents, included Vietnamese Government employees.

An ethnographic approach allows the researcher to unpack the meaning and agency of the studied individuals about a certain topic and ultimately, to "grasp the native's point of view [] to realize *his* vision of *his* world" (Malinowski 1922, 25). This is topical in the SCS, where claimant states promote their own discourses, omitting the bottom, or subaltern, level. Moreover, sensitive data, such as fishermen's personal story of harassments and threats, are more likely to be revealed when a relationship of trust is formed between the researcher and the studied community.

For my research, qualitative methods have been a precursor to theory which can ultimately be augmented by quantitative methods. After my identification of initial questions, theories, and broad themes at Oxford, qualitative process tracing and ethnography in the field yielded inductive theories that can be explored in future through

deductive theory and quantitative studies (Greehlagh and Taylor 1997). My conclusion includes more on future research requirements.

Evolution of Theory

Research Questions

While I started enucleating the theory of diplomacy from below before embarking on my fieldwork, it was at an embryonic level. My original research question, plus four sub-questions, below, differed somewhat from the current ones. My original research questions focused on mutual cause and effect between Vietnamese fishermen and the Vietnamese Government. I left China out of this equation as I did not consider the impact of its economic influence over a foreign state's domestic politics.

Original Research Questions

- To what extent are Vietnamese fishermen's agency and diplomacy informing and influencing the state level?
    a. What is the public good that Vietnamese fishermen are trying to achieve?
    b. How do Vietnamese fishermen transmit and communicate their information?
    c. What sources of leverage do Vietnamese fishermen use to transmit information?
    d. Are Vietnamese fishermen political agents or 'pawns of the government?

In order to answer these questions, I originally planned to use Betsill and Corell's theoretical framework (2008), which they used to analyze the impact of NGOS on the state level through process tracing. I was most interested in trying to assess the impact of the Vietnamese fishermen's diplomacy (the independent variable in quantitative terms) on the Vietnamese state level and the international negotiations on the SCS/ international fisheries policies (the dependent variable).

The evidence that I gathered from the fieldwork seemed to suggest at first that the Vietnamese fishermen's diplomacy was not effective at all in influencing the state level: first, it seemed that Vietnamese fishermen did not engage and were not effective in intentional transmission of information about the kidnappings and their undermined livelihoods to local authorities and trade unions. During my interviews with the Vietnamese authorities they claimed to have no knowledge about the Chinese kidnapping network for which I found evidence on Ly Son Island.

The original research question and its sub-questions were therefore flawed by the assumption that the Vietnamese fishermen had a significant effect on the Vietnamese Government's interactions with foreign states like China. They overlooked the importance of hegemony, consciousness and chain-of-command concepts that are perhaps more difficult to interpret in authoritarian countries, where an overarching structure of compliance and reward-punishments on its citizens is significant. They overlooked the effect that China had directly on the Vietnamese fishermen, and indirectly through the economic influence of Vietnamese Government elites. I overlooked the pervasive influence of the CPV on all levels of society, characteristic of an authoritarian state and which fundamentally does not allow independent trade unions or NGOs to represent fishermen's claims.

The current theory of "diplomacy from below" originated inductively from reexamining the data of my fieldwork. I found answers when looking at my field data through the optic of the theories of subaltern politics, hegemony and consciousness of Gramsci, and everyday forms of resistance from authors such as Scott. This thesis now benefits from a more nuanced theory of "diplomacy from below", which is not biased from the assumption of a primarily unidirectional assessment of the effect of diplomacy

from below to the top (for which I found little evidence), but rather seeks to see the effects both from the bottom level to the political environment (effect of fishermen's actions on the state level, including Vietnam and China) and from the top to the political environment (effect of state level actions, including China's effects on the Vietnamese Government and fishermen). I changed my research questions after the fieldwork to clarify my thinking on the subject and refine future research requirements.

Current Research Questions

1. How does "diplomacy from below" manifest in the case of Ly Son Island fishermen?
2. What is the effect of Ly Son Island fishermen's diplomacy from below on the political environment?
3. What is the effect of the political environment on Ly Son Island fishermen's 'diplomacy from below'?

My current research questions include all of the information from my original research questions, but worded more exactly, plus effects of the Vietnamese fishermen on the political environment more generally (including China) and the effect of that political environment on the Vietnamese fishermen. The reworded research questions form a more holistic framework for presenting the data and theories that resulted from my fieldwork.

Case Selection

I chose to look for diplomacy from below in the South China Sea area, for a mix of personal and methodological reasons. My Vietnamese background and interest in law and international relations makes the South China Sea conflict, in which there is an ongoing international legal dispute between Vietnam, the Philippines and China, particularly compelling. I considered visiting Philippine-occupied islands, but these were closed to

foreigners. Itu Aba (controlled by Taiwan) and Chinese-occupied islands in the Paracels were more distant from my interest in subalternity and international development. I settled on studying fishermen on Ly Son Island because I had access, and it represented a mix between international development in subaltern communities, and an interface with international politics and international law.

Fishermen from Ly Son Island also provide a defensible case study from a qualitative methodological perspective. Vietnam's fishermen are a 'critical case study' (Flyvbjerg 2006, 223) because they is particularly suited to diplomacy from below. If we cannot find diplomacy from below in this location, it may be hard to find it in any other authoritarian country.

We should expect to find diplomacy from below in Vietnam, because it is well-suited for four reasons. First, Vietnam is a developing country with an economy that heavily relies on subaltern fishing. Second, Vietnamese subaltern fishing has a large interface with China, which is actively seeking to limit that fishing. Vietnam is a littoral state with an approximately 3,260 km (Tuan 2013, 97) coastline bordering on China's nine-dash line in which small-scale fishermen engage with the harassments of much more powerful state agencies, including Chinese Coast Guard and maritime militia. Third, the Vietnamese Government is authoritarian and compromised by Chinese economic influence. As a result, Vietnamese diplomats do not effectively defend subaltern fishing rights. This leaves a diplomatic vacuum in which the subalterns themselves must do their own diplomacy. Fourth, Vietnam has a strong history of subaltern resistance, including against the French, Japanese, U.S., and China. For these reasons, we should expect to see extensive organic diplomacy from below in Vietnam. If we cannot find it here, it may not be a significant phenomenon globally. It is a critical case study.

Vietnam as a whole has a strong incentive to subsidize diplomacy from below by fishermen. If China's nine-dash line were to enter into legal effect, Vietnam would become a landlocked state. As some of the poorest developing countries in the world are landlocked (Collier 2009, 20), it would likely have devastating results in economic, geostrategic and especially food security terms as Vietnam would be cut off from trade, oil and gas, and fishing.

Vietnam is an excellent place to study subaltern agency *vis a vis* international states and organizations as it has an especially strong history of resistance. The per capita income is low, and its people have fought against two major powers of the South China Sea Conflict: the U.S. and China. While today Vietnam seeks a multilateral engagement with China and the U.S., the effect of China's economic influence on Vietnamese domestic policy and its reverberation on its relationship with non-state actors involved in the South China Sea, such as the Vietnamese fishermen, is particularly relevant.

The Choice Of Ly Son Island

Access to the Vietnamese contested islands in the Paracels of the South China Sea is not possible for foreigners, despite occasionally trips for Vietnamese journalists and officials on "patriotic cruises." While my ethnicity is Vietnamese, my citizenship is European and thus I was not able to obtain passage on a cruise.

I thus selected Ly Son Island, a hub where even foreign tourism is allowed and incentivized by the CPV, and that has the closest geographical proximity to the Paracel islands from the Vietnamese Coast, to conduct interviews with fishermen. This island was relevant in my analysis as numerous fishermen that venture in the rough waters of the SCS depart from there and experience clashes and confrontations with foreign fishermen and

military vessels. The island was also pivotal in my analysis as the Vietnamese Government presents it as having a link with the Spratly and Paracel island by claiming to have historical evidence and artifacts (temples, incisions, documents) that Vietnamese fishermen sailed and lived in these contested South China Sea islands.

Data Collection

Interviews and Correspondence

I collected data on Ly Son Island through interviews of 20 small-scale Vietnamese fishermen who regularly venture into the contested waters of the South China Sea, and who revealed dozens of incidents with Chinese ships, including harassment, boat ramming, stealing of fish, and kidnapping. Primary interview and correspondence data was also generated from personal interviews and correspondence with diplomats, scholars, activists, and human rights practitioners in Vietnam, the United States, France, and the United Kingdom, revealing approximately 2,000 similar incidents between 2002 and 2014 against fishermen from Ly Son Island in Quang Ngai Province and Bin Chau Village in Vung Tau Province.

Interviews in the field proved to be less than easy. The period of time when I did my fieldwork (July-September 2016) was unfavorable for obtaining official permission to interview fishermen, as it followed the heightened political sensitivity during the PCA arbitration. Hanoi University had originally promised to provide me with a supporting letter to obtain consent from the local authorities of Ly Son Island, but at the last minute they rescinded the offer. I then tried to contact numerous other Vietnamese research centers and universities to officially sponsor my research, but with no success.

Thus, I had to go to my field site unchaperoned and could not interview local authorities as I originally planned. This situation turned out to be highly beneficial for the research. First, I could pose a much larger array of questions without having those questions censored by the local authorities, who typically accompany researchers and journalists everywhere on the island. Second, fishermen were generally at ease when interviewed by me and seemed to reply to me without being wary of expressing their opinions for fear of not aligning with the narrative of the CPV. Third, I saw the local authorities through the fishermen's eyes, not via the authorities' own messaging.

To correct for my lack of access to wealthy fishermen and mid-level officials on Ly Son Island, I conducted interviews in: the city of Da Nang, the main city of Central Vietnam and important location in the network of kidnapping; at a South China Sea Conference in Nha Trang, where influential Vietnamese governmental and international legal experts met; at Cam Ranh Bay, the most important naval base in Vietnam; and in Hanoi, where I conducted interviews with Vietnamese officials without a government minder.

Documents

Other primary data came from retrieving Vietnamese and Chinese financial and Government documents from two 2009 incidents that evidence a Chinese kidnapping network, including data on the ransoms paid and Chinese legal charges. I obtained extensive documents and maps from the South China Sea Conference in Nha Trang and from the museum of Ly Son island. I conducted researched at the Hanoi and Oxford libraries, including the Bodleian, which houses the Selden Map and is one of the first maps of the SCS.

Process Tracing And Snowball Sampling

The interviews and correspondence were semi-structured, which allowed the conversations to be tailored to unexpected contingencies, for instance the unease of some respondents, as well as allowing exploration of new topics and angles that may not have been taken into account in the research design (Flyvbjerg 2006, 20). I originally planned to interview the contacts of fishermen that the trade unions and local authorities suggested to me on Ly Son Island. However, due to the lack of cooperation from trade unions and local authorities, I randomly chose fishermen and from some of them I asked for references to other fishermen. This was a form of snowball sampling, which may have resulted in bias as respondents tend to recommend other people with similar views (Miller and Brewer 2001). In order to mitigate this bias, in Appendix 2, I highlight which respondents were chosen randomly and who was recommended.

Due to the sensitivity of the retrieved data from fishermen, I addressed ethical concerns by ensuring the anonymity and thus the safety of my respondents. Ultimately research should do no harm to the studied community. I guaranteed anonymity of my interviewees by changing their names into pseudonyms and some non-substantive information about their story, diminishing the risk that their identities would be compromised.

The sum of all data collected were merged using a process tracing method, which, by definition, entails triangulation "so as to increase the confidence in findings" (Betsill and Corell 2008, 40). Drawing upon and using multiple data types, sources and methodologies, corrects the likely introduction of researcher bias (Betsill and Corell 2008,

42). Triangulation allows for ‘grounded theory’ in which theories are inductively built alongside or after qualitative data collection (Corbin and Strauss 2008, 25).

Chapter 2: Theory

The theory presented in this chapter is on the cause and effects that flow from what is here defined as “diplomacy from below”. This theory builds upon the work of Antonio Gramsci, James Scott, and other scholars who have theorized subaltern forms of politics and resistance. But it develops the theory of subaltern resistance beyond subaltern relations with elite classes and the state, to subaltern relations with foreign states.

The theory predicts three main effects and an equilibrium process. The first effect is that of regime types. Autocracies are more likely to repress diplomacy from below, but at the same time, a divergence between elite incentives and subaltern incentives are more likely to create the need for diplomacy from below. Democracies are less likely to repress diplomacy from below, but democratic elite interests are more likely to converge with subaltern interests in foreign affairs. Hybrid regimes are relatively open to foreign influence, and thus are likely to germinate diplomacy from below.

The second effect theorized is from the type of interventions from foreign states. Interventions that support the interests of the subaltern are not likely to germinate diplomacy from below. But interventions that are counter to the interests of the subaltern incentivize resistance by the subaltern, such as diplomacy from below.

The third effect theorized in this chapter is that of different country sizes. In countries that are relatively small by economic or military standards, they must be more open to influence by foreign countries because of economic, security, or combined threats

from those countries. This openness to foreign influence is more likely to create divergence between elite-subaltern interests, which creates an environment conducive to diplomacy from below.

Finally, an equilibrium process is theorized in which a divergence of elite-subaltern interests on matters of foreign policy create a cycle of diplomacy from below and repression from above that continues until the divergence of interests ceases, or gradual improvements to the subaltern condition are granted.

To focus on the theory, this chapter has purposely left out most data from the fieldwork. But it draws on prior scholarship and historical data of nonviolent subaltern resistance to foreign governments, to develop its theoretical framework. The theory is still inductively informed by the fieldwork, as we will see in Chapter 3 and 4 on empirical data.

This chapter starts with the definitions and parameter space that will be required to specify its theories. Diplomacy and diplomacy from below are counterpoised and defined. Diplomacy from below is then disaggregated into *organic* diplomacy from below, in contradistinction to *state-sponsored* diplomacy from below. The parameter space of subaltern resistance is specified on two dimensions -- scope and intensity. The scope of resistance ranges from class relations to international relations, and the intensity of resistance ranges from passive to active resistance. Diplomacy from below is at all levels of intensity, but is restricted to the broader scope of international interactions between domestic subaltern and international actors.

Definitions

Diplomacy

The current understanding of diplomacy among international relations scholars is that of the *locus* of states representatives: diplomats, high-level government officials and heads of states. This type of diplomacy is generally defined as Track 1 diplomacy or "Official Diplomacy" and embeds state-to-state level interactions. This last feature is espoused by those who propose the concept of a hierarchical diplomacy made of strict gatekeepers that is part of "club diplomacy" (Cooper *et al.* 2015, 19).

In contrast with the narrowness of the "club diplomacy" model, Cooper *et. al* (2015, 7) maintains that "Diplomacy at its essence is the conduct of relationships, using peaceful means, by and among international actors, at least one of whom is usually governmental". This definition broadens the narrow scope of Track 1 diplomacy or of club diplomacy to state interactions with international civil society by recognizing the increasing importance of non-state actors such as non-governmental organizations, private sector firms, multinational corporations, and their diplomatic interactions with the state level.

Thus, a wave of global governance scholars (see for instance Diamond and McDonald 1996; Berridge 2015; Cooper *et al.* 2015) started introducing different analytical tropes such as Track 2 (Government-NGOs), Track 3 (Government-business), Track 4 (Government-private citizens), Track 5 (Government-research and education), Track 6 (Government- activists), Track 7 (Government-religion), Track 8 (Government-funding) and Track 9 (Government- the media) diplomacy to capture the transnational

entrants in international politics and in the field of peacebuilding and conflict resolution (see for instance the Institute of Multi-Track Diplomacy). These different tracks have been defined to form a "multi-track diplomacy" (Diamond and McDonald 1996) and are useful analytical tropes to map the increasingly shifting boundaries between public-private and local-global (Abrahamsen and Williams 2007, 9) diplomacy. However, in some instances there exist subaltern marginalized groups in Tracks 2-7 who are systematically denied access or agency by their own governments or others in international negotiations. In these instances subaltern claims are not represented by their own governments, leaving them to form their unique form of diplomacy from below across multiple tracks.

It has not been sufficiently emphasized in the academic literature that there has been a drastic semantic change in the usage of the term diplomacy. The present-day connotation of diplomacy comes from the late 18th century, which experienced a systemic change in the ways states conducted negotiations, and a parallel semantic change in the word diplomacy. "The era of the French Revolution, and specifically the later 1780s and 1790s, saw the modern meanings first of 'diplomatic' and then 'diplomacy' become established in the political lexicon," writes William Doyle (2012, 43). However, until one hundred years before, the connotation of diplomacy was still that of the discipline "relating to the study of diplomas or other documents" (Doyle 2012, 44).

Etymologically, diplomacy comes from the Greek word *diploma* (*διπλόω*), meaning "a document folded into two". This was the document that the envoy would bring to another city. However, the words that were used in all Ancient Greek literary texts to refer to diplomats were *presbos* or *angelos* (πρέσβος or ἄγγελος*)*: at this time the semantic root of *diploma* did not appear in words related to conducting diplomacy. As a matter of fact, in Ancient Greece, those who were gifted with the best oratory skills were the ones

who were sent to negotiate on behalf of the sending polis and had to persuade the interlocutors of the goodness of their goal (Piccirilli 2002, 18-23).[1]

From the many Ancient Greek literary accounts we can infer three common features of the Ancient Greek envoys: i) they did not have sedentary embassies[2]: their task was transitory and a temporary delegation of power from the Greek polis, ii) in contrast to the present, they did not always enjoy immunity in the receiving state or impunity in the sending state, and iii) they were gifted with determination and eloquence to persuade the receiver polis of the goodness of the cause they wanted to achieve, but were not necessarily part of an educated elite (Piccirilli 2002, 19). These features highlight the non-hierarchical nature of diplomacy at its beginning and share similarities to the diplomatic features of subaltern ways of negotiating with the state level as we will explore in Chapters 3 and 4.

Building on this low hierarchical form of 'networked diplomacy', Corneliu Bjola (2013, 80) has argued that "Traditionally diplomacy has been primarily engaging in *communication* for the purpose of achieving a particular type of good: the protection of the state against external intervention []. Yet, in the 20th century diplomatic *communication* expanded to address a growing number of public goods, including economic welfare, development, [and] environmental protection []". Thus, it can be argued that Bjola's minimum requirement that characterises the practice of diplomacy is *communication,* which is a conducive vector through which one achieves a *public good* (2013, 90). These

[1] An emblematic example is contained in the Iliad (Homer, trans. 2015, Chapter IX): Ulysses, who did not have a kingly status, yet due to his eloquence, was chosen multiple times to persuade Achilleus to go back to war.

[2] Permanent missions were started in Italy during the Middle Ages, when there were a plethora of city-states but no unified Government. As Doyle (2012) says, aristocracy and court ritual strengthened the "links between the social elite and the worlds of monarchy and diplomacy".

public goods are not easily achievable or without implications as "diplomacy is full of normative problems and moral conundrums" (2013, 90).

The minimum common denominator of diplomacy highlighted by Bjola, *communication,* can be applied to all the abovementioned typologies of diplomacy and certainly to Vietnamese fishermen and their families when, as it will be explored, they negotiate their release from captivity by Chinese actors. In addition to the two dimensions suggested by Bjola, I add negotiation as a constitutive part of diplomacy. This applies to both club diplomacy and diplomacy from below. Negotiation utilizes communication but is fundamentally different as it is a deployment of power to achieve coordination. It is therefore analytically useful to differentiate it from simple communication. My three dimensions of diplomacy are therefore: 1) Communication, 2) Negotiation, and 3) Achieving a public good.

Diplomacy From Below

Without doubt, what we found in Ancient Greece was a form of proto-diplomacy, as the current practices of diplomacy were established during the French Revolutionary era. Yet, highlighting these features of the Ancient Greek envoys serves the purpose of highlighting the low-hierarchical and mutative form of these representative communities. At least in history, therefore, diplomacy need not be excessively hierarchical. An increasing scholarly attention has been put on 'cyber diplomacy' (Potter 2002; Bjola and Holmes 2015) and thus on the multidirectionality of diplomacy. In his discussion of 'cyber diplomacy', Potter (2002, 4) states that, "hierarchy is giving way to networking". The information revolution has returned diplomacy to ancient forms in that subaltern groups can make their voices heard even in cases when their own governments act openly or

otherwise in the eyes of the press or international community. But these voices are now protected through anonymity and magnified globally through information networks with the use of social media like Twitter or Facebook - the Arab Spring being a pragmatic example.

At international fora such as the Global Migration Forum on Development or even the G7, broader segments of civil society are invited to take part in negotiation processes of new policies and agendas, which shows the interconnectedness of state and non-state actors. As Cooper (2013, 22) argues,

> We are witnessing a shift from 'club' to 'networked diplomacy'. The former is based on a small number of players, a highly hierarchical structure, based largely on written communication and low transparency. The latter is based on a much larger number of players (particularly of civil society), a flatter structure, a more significant oral component, and greater transparency.

Nonetheless, to my knowledge, despite the innovative focus on 'networked diplomacy' and other new forms such as 'cyber diplomacy', no study has been done on investigating subaltern agency and ways of negotiating, conducting and structuring relationships with the state level, or more broadly to assess how they do diplomacy and if and to what extent it differs from civil society actors.

Building on this work, I offer a new theory on what I call diplomacy from below. Subaltern groups and individuals conduct international diplomacy when their interests are not represented by traditional diplomacy. They do not follow the current modes and practice of 'club diplomacy' or Track 1 diplomacy, but have found their own form of diplomacy from below that suits their particular authoritarian or capitalist constraints.

Jönsson argues that "Diplomacy should be conceived as an institution structuring relations among *polities*" (2005, 30), this being compelled by the recognition "to abandon the state-centric perspective that has dominated the study of diplomacy" (2005, 31). A

polity, adds Jönsson (2005, 34), is a fluid and constantly evolving concept and, "can be understood as a political authority, which has a distinct identity; a capacity to mobilize persons and their resources for political purposes [] and a degree of institutionalization and hierarchy".

This discussion on the different typologies of diplomacies thus far had one specific purpose: to rethink the nature of actors involved in diplomacy and thus bridge the chasm of constructing diplomacy as only conducted by state level representatives. In the SCS, as we will see, the real civil servants who are sent to represent a claimant country's sovereignty, from countries such as China or Vietnam, are fishermen.

Per Antonio Gramsci ([1891-1937] 1988), who utilized the word subaltern for the first time in the context of studies from below, *subaltern is here defined as a systematically subjugated or instrumental class by the elite*. Elites, as Spivak conceptualized it (1990), are the dominant hegemonic class that can be either domestic or foreign actors, who pose themselves antithetically to subaltern claims.

We can derive a definition of diplomacy from below based on the three essential elements of diplomacy cited above, combined with notions of "from below" by scholars such as Scott and "subaltern" from Gramsci. Diplomacy from below is here defined as *nonviolent communication or negotiation directed at a foreign state or foreign state policies to achieve a public good by subaltern individuals or groups*.

The first important element to be addressed in this definition is the *nonviolent nature* of the actions that subaltern individuals or groups adopt in order to achieve a public good in negotiation or communication with a foreign state. These nonviolent actions could be for instance collective actions such as protests or general strikes, and civil disobedience such as Mahatma Gandhi's Salt March against British colonial taxes, or *Swadeshi* boycott

of British goods. The anti-Apartheid movement led by Nelson Mandela is another of diplomacy from below.

The requirement of peaceful measures of intra-state relationships is widely adopted by the other types of diplomacy, including Tracks 1-9. According to Cooper (2015, 15), "The diplomat steps aside and the soldier takes over when the government concludes that the goals being pursued can best be achieved through the use of military force—or when the diplomat has bungled" . Thus, a *non-example* of diplomacy from below is the neo-zapatism of the Zapatista National Liberation Army in 1994 against NAFTA, and its assertion of rural indigenous people's rights and land reform in Mexico. While the Zapatista movement does address a foreign state and has the goal of providing a public good, it deployed coercive measures and the use of force when advancing claims. This utilization of violence, even though it was relatively moderate compared with other revolutionary movements, puts them outside the definition of diplomacy from below.

The third element is defining the *scope of the actors* involved in diplomacy from below. While, as we have examined, Gramsci originated the term subaltern[3] in his study of hegemony ([1891-1937] 1988), Spivak's work (1990) further refined the notion by noting that 'many are the oppressed, but few are the subalterns'. Subalterns can be understood as those who have been "denied a position of agency or enunciation in society, history and politics" (Lehner 2011, 19). Thus, examples of actors that are not included in my definition of diplomacy from below are NGOs. While some NGOs communicate with international governments towards changes that are a public good, established NGOs do not constitute subalterns. Rather, their representatives typically receive a high income from a subaltern standpoint and have numerous preferential routes to connect at elite

[3] For additional analysis, see the "Subaltern Studies" material of Indian scholars from the 1980s (see for example Ranajit Guga ([1982] 1999).

levels of government, business, and academia. NGOs conduct Track 2 diplomacy with domestic and foreign elites. In contrast, subaltern Vietnamese fishermen have long been at the margin of society and have no access to Track 2 diplomacy. It has only been recently, due to the escalating nationalistic propaganda that pervades the SCS conflict, that the Vietnamese Government is shifting the narrative and coopting the fishermen as the saviours and heroes that are protecting the Paracel and Spratly Islands (Roszko 2015, 368), together with the effort of shifting the image of Vietnam from a "rice country" to a "seafaring country" (Roszko 2015, 366-368).

Fourth, in my definition of diplomacy from below I allow both *collective*, such as the abovementioned civil disobedience and acts of open defiance in Mahatma Gandhi's Salt March protests, and *individual* actions of resistance that exhibit unorganized patterns, such as those theorized by James Scott. The nonviolent measures expressive of diplomacy from below can also be undertaken by small groups or individuals contesting certain policies such as Afghan peasants' resistance acts, ending in civil disobedience, against international aid organizations and the Taliban who imposed poppy eradication to comply with aid conditionality from the international community (Mansfield 2016, 137). For example, during the 2000 to 2001 growing season ban there were "reports of a delegation of tribal elders from Nade Ali visiting Mullah Omar to present their case against the ban" (Mansfield 2016, 135).

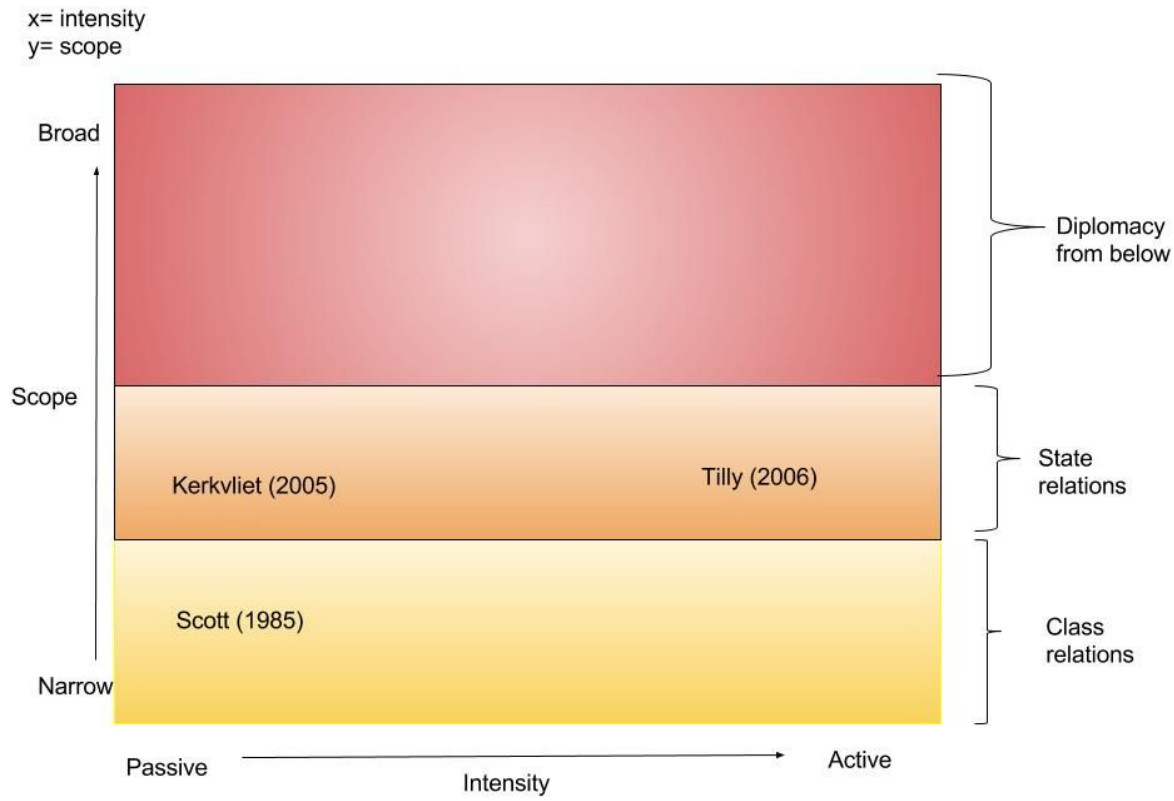
The fourth element is the international dimension: the definition of diplomacy from below presented here incorporates a requirement that subalterns engage or contest a foreign state or foreign policy. It is evident that my conceptualization of diplomacy from below involves inter-state relationships (situated in the third level), a level that Scott omitted in his work on Malaysian peasants (1985), but to which Gramsci ([1891-1937]

1988) alluded when discussing Italian peasant resistance against foreign monarchies as we have seen in the literature review.

Dimensions

The following explains three dimensions of diplomacy from below, including intensity, scope, and state sponsorship. The first two dimensions are graphed, and the third dimension is described. The positioning of activities of resistance in graphical form (see Figure 1) is titled Tactics of Resistance and considers two dimensions: i) intensity on the x-axis and ii) scope of resistance on the y-axis.

Figure 1: Tactics of Resistance.



Intensity of Resistance: From Passive to Active

Regarding the intensity: the spectrum goes from passive resistance to active resistance. Passive and low- profile resistance has been analysed by Scott (1985; 1990), who sees subaltern weapons (‘hidden transcripts’, ‘voice under disguise’ and ‘routine resistance’), such as gossip or foot dragging and pilfering against oppressive landowners, fundamentally skewed towards the passive side as they “require little or no coordination or planning; they make use of implicit understandings and informal networks; they often represent a form of individual self help; [and] they typically avoid any direct, symbolic confrontation with authority []”(Scott 1985, xvi). Scott’s examples of subaltern ‘everyday resistance’ activities are typically individual acts, and are positioned in the narrow and

passive side of the first level (individual class relations) in Figure 1.

The examples of resistance focused upon by Benedict Kerkvliet (2005) are positioned in the second level of this graph, subaltern-state relations. He draws upon Scott's passive and hidden forms of resistance, but shows how they can affect state-level policies in a context of agricultural collectivization. Kerkvliet (2005) has looked at Vietnamese' peasants resistance in the Red River delta and other provinces of North Vietnam against the Communist collectivization of land in the 1950s, and characterizes individual subaltern resistance activities as passive and medium-narrow in scope of Figure 1. Moreover, we can position his tactics of Vietnamese peasants' resistance against the Communist collectivization of land in the 1950s, and Vietnamese Communism in the second level (the level of state relations) of Figure 1.

Active resistance is typified by the literature tackling social movements and contention such as Tilly (2006) and thus is positioned in the right side of the spectrum of intensity as showed in Figure 1. Tilly (2006) shows how civil society engages in open, defiant, and collective acts of resistance to the state level that includes what he calls the repertoire of 'social contention' such as sit-ins, strikes, workplace occupations, and protests (2006, 5).

Scope: Class, State, and International

Scott's work in *Weapons of the Weak* (1985) was only focused on local class relations: peasants and landowners in the Malayan village. In order to transcend this localism, I introduce the analytical concept of diplomacy from below, which builds on Gramsci's concern with 'history from below', and Scott's theoretical framework of 'everyday resistance' that was informed by, yet transcended, Gramsci. Diplomacy from

below adds some caveats and the international dimension, making it possible to compare and analyze multiple levels of interactions between the subaltern groups and the foreign state level, as we will see in the next chapter focused on empirical data. The graph in Figure 1 shows the three levels: i) subaltern groups- superordinated local class relations, ii) subaltern groups-state relations and iii) subaltern groups-foreign state relations.

1) Local class relations. This level corresponds to Scott's 'everyday resistance' theory (1985) and the evidence that he gathered from his fieldwork with his chosen groups of subalterns, the peasants of Sedaka, and the village landowners in Malaysia.
2) Subaltern groups-state relations within their state. This level has been analyzed by Kerkvliet (2005). The tactics of resistance that Kerkvliet finds (such as foot-dragging, sabotage and theft) among Vietnamese peasants against the Vietnamese Government are similar to those found by Scott (1985). Kerkvliet concludes that Vietnamese resistance led to the demise of the collectivization plan. Tilly's work (2006) on social contention (see above) also concerns the state level and thus has been positioned on the second level of Figure 1.
3) Subaltern groups-foreign state relations. This level corresponds to the theoretical framework upon which the theory of diplomacy from below is based, as it involves an international dimension. Empirical evidence from my fieldwork will be provided in the next chapters.

Organic vs. State-Sponsored Diplomacy From Below

After having enucleated the first two dimensions of diplomacy from below, intensity and scope (graphed above), we turn to an additional dimension, *organic* diplomacy from below vs. *state-sponsored* diplomacy from below.

Those subalterns who accept payment, go through state training and engage in state-directed acts against a foreign state constitute state-sponsored diplomacy from below. Examples of organic diplomacy from below that have been mentioned before are Mahatma Gandhi's Salt March protests, the Swadeshi boycott of British goods, the anti-Apartheid movement, and Afghan peasants' resistance acts against poppy eradication. These were all 'organic' movements originated from below that did not receive any substantive external support from their state.

The *Global Nonviolent Action Database* provides numerous additional examples that can illustrate organic diplomacy from below. Conversely, Governments instrumentally support certain subaltern groups in order to co-opt them to a government-supported political trope or agenda, while masking it as originating from the bottom, as illustrated in Figure 2. This is what is here defined as "state sponsored diplomacy from below".

Similarly, Graeme Robertson (2011) has argued that state-sponsored social movements , what he calls 'ersatz managed social movements', are particularly common in hybrid regimes (2011, 28). An example is the patriotic NGO Centre for National Glory established in the USSR "to celebrate the achievements of Russia in World War II [] and parading holy relics", led by Vladimir Yakunin (Robertson 2011, 29). Even though Robertson did not specifically focus on subaltern acts directed at a foreign state, this is an example of state-sponsored diplomacy from below as "such movements are designed, at

least in part, to use state and private funds to generate a sense of unique national history and patriotism, while at the same time promoting support for the state and a national political base for [Yakunin, the then political leader]" (Roberston, 2011, 28).

While Robertson's example concerns a state-sponsored social movement under the aegis of an NGO, similarly there exist governmentally incentivized subalterns who advance and serve the purpose of states' agendas rather than their own, and thus constitute state-sponsored diplomacy from below. Gramsci alluded to the possibility that subaltern organizations may have a state sponsorship dimension ([1891-1937]1988, 202), as we have seen in the previous chapter, but did not delve into it. State-sponsoring diplomacy from below gives states a soft power tool to achieve their national interests and gain influence within a foreign state while not resorting to the use of force. In chapters 3 and 4, I provide empirical examples from my fieldwork.

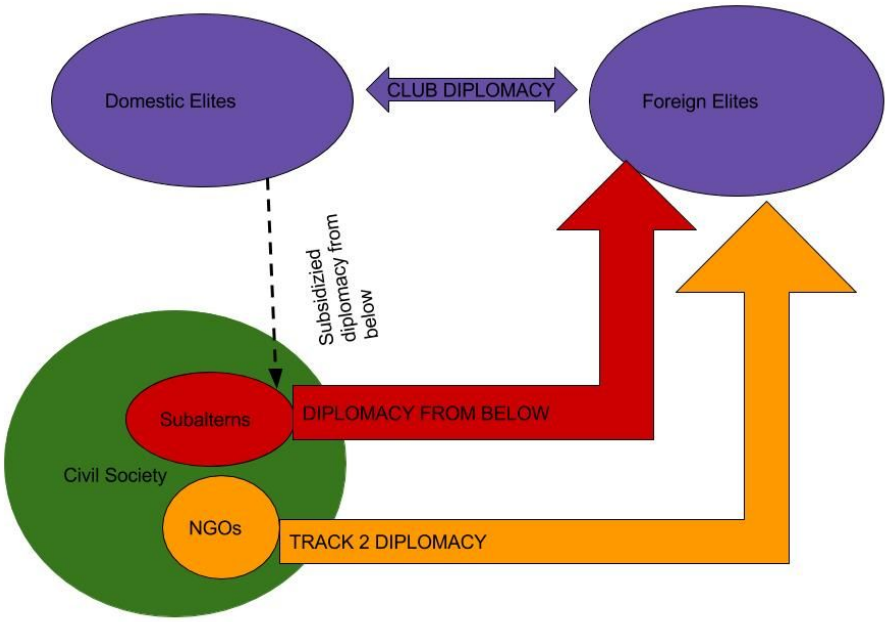
Two definitions are developed and deployed here. *Organic diplomacy from below is that diplomacy from below that has no significant support or direction from a state*. *State-sponsored diplomacy from below is that diplomacy from below that is significantly supported or directed by a state.*

Figure 2 differentiates traditional types of diplomacy (e.g., club diplomacy) with diplomacy from below and its disaggregation into organic and subsidized types. By focusing on the interrelationships between subalterns and the international level, I thus distinguish diplomacy from below from club diplomacy (elite-Head of Government interrelationships) and from Track 2 diplomacy (Government-NGO interrelationships) (see Figure 2), while examining an underexplored side of social movements. Figure 2 illustrates that subalterns and NGOs are both subcategories of civil society. Yet subalterns,

following my definition that has built on Gramsci and Spivak, are those groups denied agency by the hegemonic class' systematic subjugation, and thus form a discrete group.

When subaltern claims against a foreign state are not represented by any NGO or by their domestic diplomatic actors, subalterns themselves sometimes seek to rise from their subaltern status through creative forms of political negotiation and communication: diplomacy from below. To the extent that diplomacy from below succeeds, the subalterns rise from their status. But if repressed at the crest of the cycle, the subalterns remain and may again initiate diplomacy from below when conditions become unbearable in the trough of the cycle. Over time, the theory predicts gradual improvement in the conditions of the subaltern through their diplomacy from below gaining allies, media coverage and public or sectoral political pressure.

Figure 2: Club Diplomacy, Track 2 Diplomacy and Diplomacy From Below.



Theory

So far we have focused on the definitional underpinnings required for theorizing diplomacy from below. We shall now proceed to the theory, which has several components. First, diplomacy from below creates an equilibrium process. Second, regime type (democracy, hybrid, or autocracy) has an effect on diplomacy from below, which is delineated in the following. Third, the type of intervention (in support of elites or subaltern) from foreign states respectively encourages or discourages diplomacy from below. Fourth, smaller countries, whether economically or militarily, are more vulnerable to outside influence than are more powerful countries.

Diplomacy From Below Equilibrium Process

Diplomacy from below is the result of a disjuncture between elite profits or payoffs at the international level, and subaltern subsistence needs. Elites typically seek selective pecuniary benefits for themselves, their families, and associates, with relative disregard for the effect on subaltern citizens' subsistence needs. In the international arena, this may mean that domestic elites make bargains with foreign governments that lead to the impoverishment of subaltern citizens.

The disjuncture between elite profits or payoffs, and subaltern needs, leads to the initiation of resistance by subaltern classes. This resistance, on the international level, is diplomacy from below. It typically exhibits through subaltern individuals or groups resisting a law or regulation imposed by a foreign entity. That imposition need not be direct. The foreign entity can use a domestic agent to impose the law or regulation.

Resistance by the subaltern is in turn typically met with repression or cooptation by the foreign entity, sometimes through domestic agents, including the foreign-influenced domestic government. This repression and cooptation impedes the success of the diplomacy from below. However, over time the subalterns collect allies and obtain public recognition for their cause, and the resulting political pressure is sufficient for gradual subaltern gains over time.

Effects

Regime Type (Autocratic, Democratic, or Hybrid)

The regime type of a country has effects on the outcome of diplomacy from below. The literature on contention and classic social movements, (Tilly 2006; Della Porta and Diani 1999; Tarrow 2011) has focused primarily on the domestic side: social movement waves and discontent against the country in which a social movement

develops. Little study has been done on contention against a *foreign state*, which is an exemplification of diplomacy from below. Yet, for the purpose of this dissertation, some of the conclusions of the contention and social movement literature can be applied to the theory of diplomacy from below on three different regime types: autocratic, democratic, and hybrid/anocracy (based on the classification of the *Polity Index* of the University of Maryland).

Autocratic regimes, because of the disjuncture between elite profits or payoffs and subaltern needs that we analyzed above, and because of low levels of horizontal accountability (a system of checks and balances), are able to hamper subaltern claims through a surveillance system of covert or overt repression to preempt any open demonstrative protests that could lead to an end of their existence (Davenport 2015). The effect of autocratic regimes on diplomacy from below is that the likelihood of diplomacy from below itself increases as the interests of subalterns are not represented by the traditional diplomacy.

Democratic regimes, on the other hand, because of their free recurring competitive elections, a respect of the rule of law and guaranteed political and civil liberties such as freedom of association, freedom of speech and movement, are conducive to broad, active and organized activities of diplomacy from below from subalterns without the imminent or prospected fear of repression (Della Porta and Diani 1999). For instance in a democratic country such as Italy, there have been numerous cases of Italian fishermen who are taken as hostages and jailed by Libyan maritime militia while fishing in international waters. However, diplomatic pressure from the Italian Government immediately ensues against the Libyan Government (*La Repubblica* 1998; *Il Sicilia* 2017). Subaltern interests, if poor Sicilian fishermen can be considered as such, are represented when they are part of

transnational democratic institutions, such as the European Union. In 2005, the European Union issued a *Note Verbale* condemning Libya for its practice, urging immediate release of the fishermen (*Parliamentary Questions* 2008). Thus, diplomacy from below in democratic countries decreases as the interests of subalterns, the Italian fishermen, are or will be represented and co-opted by the traditional diplomacy.

Last, hybrid regimes, which are the most common regime type in developing countries after the end of the Cold War (Levitsky and Way 2010, 3), are more permeable to foreign influence, which increases the likelihood of diplomacy from below. For example, hybrid regimes, because they must appeal to both democratic and authoritarian alliance blocs, engage in more regional and multilateral institutions than do autocratic or democratic regimes (which mainly engage in like institutions). These institutions come with more conditionality, and with conditionality comes more impositions on the subaltern (if the conditionality is contrary to subaltern interests), and thus more diplomacy from below.

Foreign Intervention

Social movement studies are increasingly concerned with regionalization and globalization of social movement fields of contestation (Della Porta and Kriesi 2009). Subaltern diplomacy can fill a void of traditional diplomacy, or counteract traditional diplomacy that has been captured by a foreign state and is counter to subaltern interests. However when foreign interests capture a state's diplomacy on a particular issue and use that capture to support subaltern interests, subalterns do not need to conduct diplomacy from below. Their interests are already represented at the state level.

Thus we find that when foreign intervention is pro-subaltern, diplomacy is more traditional, and subalterns have no reason to "invade" the diplomatic realm. But if foreign

intervention is counter-subaltern, those subalterns will more likely be forced to take up diplomacy themselves, and thus diplomacy from below will be more likely. This diplomacy from below will lead to the diplomacy from below equilibrium process, theorized below.

Country Size (Economic and Military)

The role of Foreign Direct Investments (FDI) and aid, from multilateral institutions such as the World Bank and the International Monetary Fund (IMF) or agencies such as the United States Agency for International Development (USAID), results in economic and political conditionalities attached to the receiver countries (see for example Moyo 2010; Hubbard and Duggan 2009). Democratic and autocratic countries as well, however, have historically tried to get a foothold in other smaller militarily and economically weaker countries, especially those in a transition after a war or those that are developing countries. When such conditions are counter to subaltern interests, subaltern individuals and groups are likely to resist. Since smaller countries are more likely to have to accept conditionality, some of which will be contrary to subaltern interests, smaller countries are more likely to encounter diplomacy from below.

The Marshall Plan *(*originally named the European Recovery Programme) is one emblematic example of smaller countries being more vulnerable to foreign influence: in the aftermath of World War II, numerous destroyed European countries' economies accepted the economic aid and attached conditions from democratic funders. In the late 1980s and the Structural Adjustments Plans of the IMF in Latin America, the so called "Washington Consensus", was criticized for imposing a Western-led vision of development (Williamson 1993). Despite what the recent scholarship on the "Beijing Consensus" (Ramo 2005) argues of respecting the self-determination of receiver countries,

China's aid and FDI projects in Asian countries, and the recent growth in Africa, have long-term strings attached as well.

Thus, small countries and their governments, whether economically or militarily, are more vulnerable to outside influence from more powerful foreign countries, whether "Western" or "Eastern". To the extent that this outside influence encourages policies that are contrary to subaltern interests, diplomacy from below is thereby increased.

Equilibrium: Cycle Of Diplomacy From Below and Repression

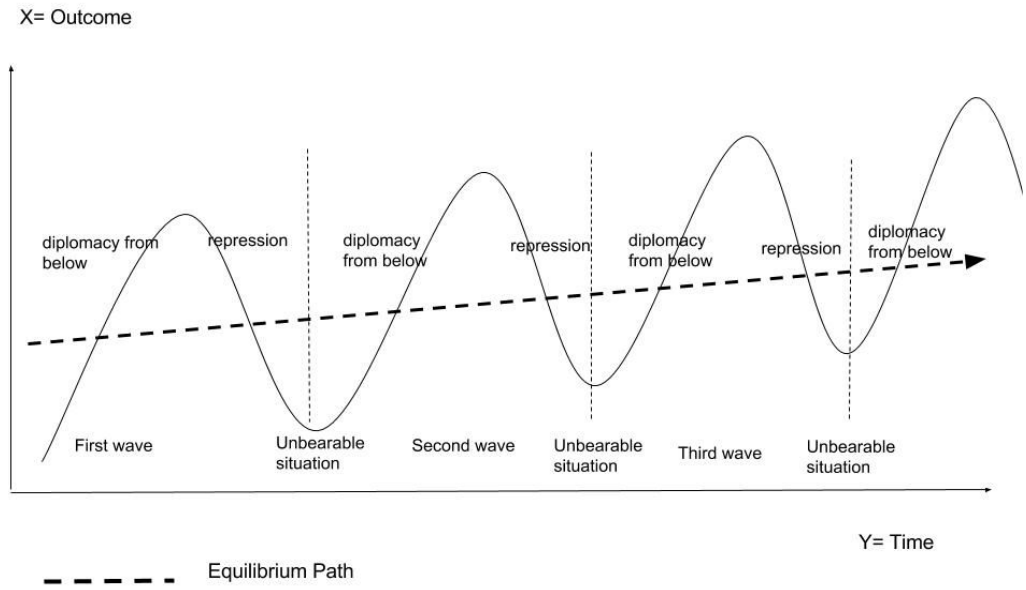
In the case of a small country, with an authoritarian regime and a counter-subaltern foreign intervention (which is the case of Vietnam and the specific situation that I found during my fieldwork) the equilibrium is a cycle as shown in Figure 3. Other equilibria could exist in other situations, for instance by changing the parameter of regime type (democratic, hybrid or autocratic regimes) or the parameter country size (small vs. large), yet they cannot be theorized here for reasons of space.

The diplomacy from below equilibrium process, in a small authoritarian country with a counter-subaltern foreign intervention, leads to relatively constant diplomacy from below, which is partially or fully repressed using low-impact surveillance and other tactics of state control. As long as foreign elements compromise domestic elites in a manner that supports those elites to the detriment of the subaltern, those elites have no incentive to support the subaltern, leading to this continual cycle of diplomacy from below.

That diplomacy from below is repeatedly repressed at the crests of the cycle, but revives after an *unbearable situation* to be yet again co-opted or repressed until the foreign influence is removed or the influence itself supports pro-subaltern policies. An unbearable situation is one that leads the subaltern to violate laws, regulations, or norms through overt or hidden forms of resistance, and occurs in the the trough of the cycle. Over time,

improvements can be seen if diplomacy from below has the intended effect: winning over allies and elites through media coverage and political pressure, and gaining concessions that improve subaltern conditions.

Figure 3: The Equilibrium of Diplomacy From Below in a Small Authoritarian Country with a Foreign Counter-Subaltern Intervention.



Theoretical Summary

In this chapter we have used a theoretical framework that problematizes the traditional understanding of diplomacy (Track 1 diplomacy and club diplomacy) as state-level representative relationships. Yet diplomacy at its beginning exhibited non-hierarchical forms of structuring relationships. Three fundamental dimensions of diplomacy were highlighted: communication, negotiation, and achieving a public good.

Subaltern has been defined *as a systematically subjugated or instrumental class by the elite* and is a separate group from civil society groups that have privileged channels of Track 2 diplomacy with the elite (Figure 2). By highlighting and adopting the trope of diplomacy from below we have explored how subalterns negotiate, resist, conduct and structure relationships with foreign states when their claims do not find an outlet or are not

stewarded by their own government. The other existing Tracks (2, 3, 4, 5, 6, 7, 8 and 9) do not address this aspect.

Building on this and the literature of Gramsci and Scott on subaltern politics of everyday resistance, a definition of diplomacy from below has been provided as *nonviolent communication or negotiation directed at a foreign state or foreign state policies to achieve a public good by subaltern individuals or groups*. Building on Gramsci, I also defined subalterns as *as a subjugated or instrumental class*. In order to graphically visualize subaltern ways of resisting hegemonic state-to-state relations, the three dimensions of assessing resistance (intensity, scope and state sponsorship), together with the Graph on the Tactics of Resistance (Figure 1), were introduced.

Second, elaborating on the state-sponsorship dimension, the definitions of "organic diplomacy" and "state-sponsored diplomacy" have been given: organic diplomacy from below *is that diplomacy from below that has no significant support or direction from a state*. State-sponsored *diplomacy from below is that diplomacy from below that is significantly supported or directed by a state.* These tropes and problematiques have not been sufficiently analyzed by the existing scholarship on social movements, nor that on resistance or diplomacy. At the same time they will be essential in the next chapter in order to analyze the phenomenon of subaltern mobilization by fishermen in order to advance their own claims with seemingly little or no marginal gains by subalterns.

Third, the theory has four different components: i) the diplomacy from below equilibrium process; ii) the effect of regime type (autocratic, democratic, and hybrid); iii) the effect of intervention from foreign states; iv) the effect of country size (economic and military); and the conclusion, that in a small authoritarian country with counter-subaltern

foreign intervention, the v) equilibrium is that of a cycle of diplomacy from below and repression, with gradual improvements to the subaltern condition as shown in Figure 3.

Both the definitions and the theory will be useful entry points to analyze, in the next chapter, the data and evidence that have been gathered during my fieldwork on Ly Son Island in the Summer of 2016. The theoretically-grounded but empirically led nature of the next chapter, will present opportunities to further corroborate or disprove the theories and analysis of this chapter.

Chapter 3: Ethnography of Ly Son Island, Vietnam

> I was kept for 3 days and my family had to bring money, 140 million VND, to Da Nang to ask some people for help there. We didn't know what the money was for. [] They detained three boats and kept us in the same warehouse. They fed us like pigs, just with big chunk of plain rice. [] How could I go to the toilet? They gave me a bucket. Then I did it myself. [] We had to bend down. They didn't let us to look at their faces, otherwise, we might be hit black and blue. [] Their boats reached 30-40 km/h, so much faster than my boat which was only 7 km/h. [] We were arrested in the sea. Then we were brought to another boat to the islands. We were blindfolded so as not to see how the islands looked like. [] 15 people were arrested and kept in a kind of warehouse. Then they let 12 fishermen to go home on their boats and kept the 3 other people and a boat. Because there were so many people that they couldn't have enough food for them. [] They asked us to send the money via a bank account and we had no idea who would receive the money.
> - Vietnamese kidnapped fisherman (Interview 2 2016)

The words of a Vietnamese fisherman exemplify the repression and resistance experienced by the seafarers of Ly Son Island when they venture out of their community to provide for their families. The fishermen's resistance is dual: against the Vietnamese and Chinese Government. Once arrested and kidnapped on the sea by the Chinese, the Vietnamese Government hardly supports the rescue operations, according to my interviewees, and does not engage in high-level talks with the kidnappers. Nor does the Vietnamese Government provide money to cover the requested ransom. Sometimes only instant noodles are give to the family of the kidnapped fishermen. This is contrary to the usual state practice internationally, when hostage taking occurs by a foreign state. Often in those situations diplomats will attempt to engage in mediation and seek immediate release of citizens, including through payment of ransoms if necessary. For example in the case of

Italian fishermen detained by Libyan entities, Italian diplomats publicly protested and European Union diplomats sent a Note Verbale to the Libyan Mission to the United Nations, as detailed in the theory chapter. In contrast, no sense of urgency is heard from the Vietnamese diplomatic channels. Omerta, a code of silence typical of criminal organizations, is in full effect, for example in the state-run newspapers and international conferences on the South China Sea hosted by Vietnamese Government officials. Given the vacuum of traditional diplomacy on behalf of the Vietnamese Government, the Vietnamese fishermen and their families have to be the autonomous demiurgic of their rescue operations, negotiation and communication, with a wide array of ostensibly state and foreign governmental actors. This is diplomacy from below.

Ly Son Island

Fifteen nautical miles (ca. 30 Km) off Vietnam's Central Coast lies Ly Son Island, with a population of approximately 25,000 inhabitants. Numerous Ly Son inhabitants have now opened tourist businesses such as restaurants, hotels, homestays, and small street vendor shops -- businesses that are all concentrated near the port to meet Vietnam's increasing tourism market. Yet, not far from the concentrated Western-style hotel skyline and the hustle of this fast-paced and uncontrolled urban development, lie two fishing villages (An Hai and An Vinh), whose fishermen have had a presence in the South China Sea (SCS) for generations in what was known as the Maritime Silk Road. They still venture out to sea to sustain their livelihoods, but now also supplement their incomes with garlic farming.

Ly Son Island tourism is not only about surf and sand. It is about patriotism, and is highly incentivized by the Vietnamese Government: celebratory ads or documentaries on the island continuously recur on Vietnamese TV channels, ecological volunteering is

popular among Vietnamese youth generations of the Central coast from cities like Da Nang to "help and keep clean" *(giúp đỡ và giữ sạch)* the island as the posters scattered around the island say, charity missions to donate money from wealthy Vietnamese northerners are organized to support the defenders of sovereignty (Roskzo 2015, 369). Vietnam seems to be mobilizing economic resources and people in an effort to display to the international community their sovereignty over the Paracels and Spratly islands. The museum displays numerous artifacts and maps that are used to prove sovereignty over the SCS.

Despite this idyllic discursive portrait, which would favour a tourist boom, Ly Son Island is a restricted access area (Roszko 2015, 368) and highly militarized. One telling example that emerged from my fieldwork: an International Organization agreed with the local authorities to send some international doctors to teach Ly Son to diminish the risk of hazards when the fishermen are diving to catch fish. However, when the doctors wanted to practically train the fishermen and get on some boats, the local authorities refused on the basis that "the waters around Ly Son Island are an area of war". The war among the fishermen in the South China Sea is indeed like a "silent war" (Interview 12 2016) according to my interviewees, but the fishermen must deploy much of their own diplomacy in the conflict.

The West part of Ly Son Island, away from the tourist crowds and hotels, is scattered with small military bases, with uniformed soldiers roaming around. These camps are close to the port where Ly Son islanders dock their fishing boats, but far from curious tourist eyes or researchers that come to attend international SCS conferences, and far from the port where tourists dock upon their arrival.

How Vietnamese Fishermen Resist

Fishermen of Ly Son Island, and those belonging to the central coast of Vietnam, engage in two different types of fishing: one close to the land, inshore, usually done either with small (2 meters diameter) rounded traditional fishing boats, called coracles (*tung chai)*, where only one man or two stand and lay their fishing net, or with very small boats (under 10 meters) with less than a 90 horsepower engine. This can broadly fit into the small-scale artisanal fishery definition of the Food and Agriculture Organization of the United Nations (FAO). The other type of boat typically used by the Ly Son fishermen, generally referred to as offshore and large-scale fishing boats, are utilized further from the Vietnamese coast and the Exclusive Economic Zone (EEZ) of Vietnam, in the Paracels (*Hoang Sa*) and the Spratly *(Truong Sa*) islands, with wooden boats of about 30 meters painted with bright blue and yellow that can reach a capacity of more than 90 hp, in a crew usually composed of around 10 people.

The offshore fishing in the South China Sea waters using these boats is still arguably artisanal fishing. It has more associated risks, and is the main site of resistance of Vietnamese fishermen against Chinese territorial encroachments in Vietnamese waters. As a matter of fact, in many of my interviews it emerged that the fishermen lament a decline in the inshore fish stock, thus causing them to go fishing further and stay longer at sea using the larger wooden boats. Yet this exponentially increases the likelihood to the the small 90-hp wooden Vietnamese boats of getting attacked by the steeled-hulled, faster and more technological Chinese Coast Guard and Chinese fishing militia vessels. Fishermen of Ly Son Island are "fishing 8-10 times annually and leave for 10-12 days, sometimes half a month as the fish stock has been sharply decreased over the years. Ten

years ago, it took them only 6-7 days to get there and back" (Interview 15 2016). Waters close to Vietnam and China coast are overexploited in terms of fishing resources, despite the plethora of numerous bilateral agreements between the two countries and the EEZ regime being in place (Chau and Kane 2014, 123), an ongoing tragedy of the commons.

The Vietnamese fishermen are very aware that going to fish in the Paracels, despite having the benefit of catching more fish, leads to an exponential risk of run-ins with Chinese and other foreign boats. A fisherman trade union representative told me (Interview 9 2016), in a succinct description of active diplomacy from below,

> Those fishing far away from the coast, they are not only actually going fishing, they are also protecting their islands. People who just fish in waters around Danang don't have the Icom [long-range 2-way radios provided by the government]. Protecting here means they want to say indirectly that Vietnam has the right claims on Paracel and Spratly Islands. It's their homeland and they are entitled to do whatever they want on their land, they are free to fish in their waters, their islands.

Chinese encroachment in Vietnamese traditional grounds is enacted through building up naval and militia forces in the region. As another fisherman told me, "The Paracels are occupied by Chinese forces where they have numerous outposts, military constructions and camps. The Chinese military troops occupy the Northern parts of the Paracel islands and the Vietnamese the Southern parts. Already ten years ago the Chinese were there. The Paracel Islands belong to Vietnam only on paper, but in reality the Chinese have occupied all the Northern parts" (Interview 3 2016). In the Spratlys, "there are some Vietnamese military outposts, schools and Vietnamese people living, who receive incentives from the Vietnamese Government to live there" (Interview 2 2016). Another fishermen says: "Fishing in Spratly is less dangerous than in Paracel, because their [Chinese] military boats are so many in Paracel" (Interview 4 2016).

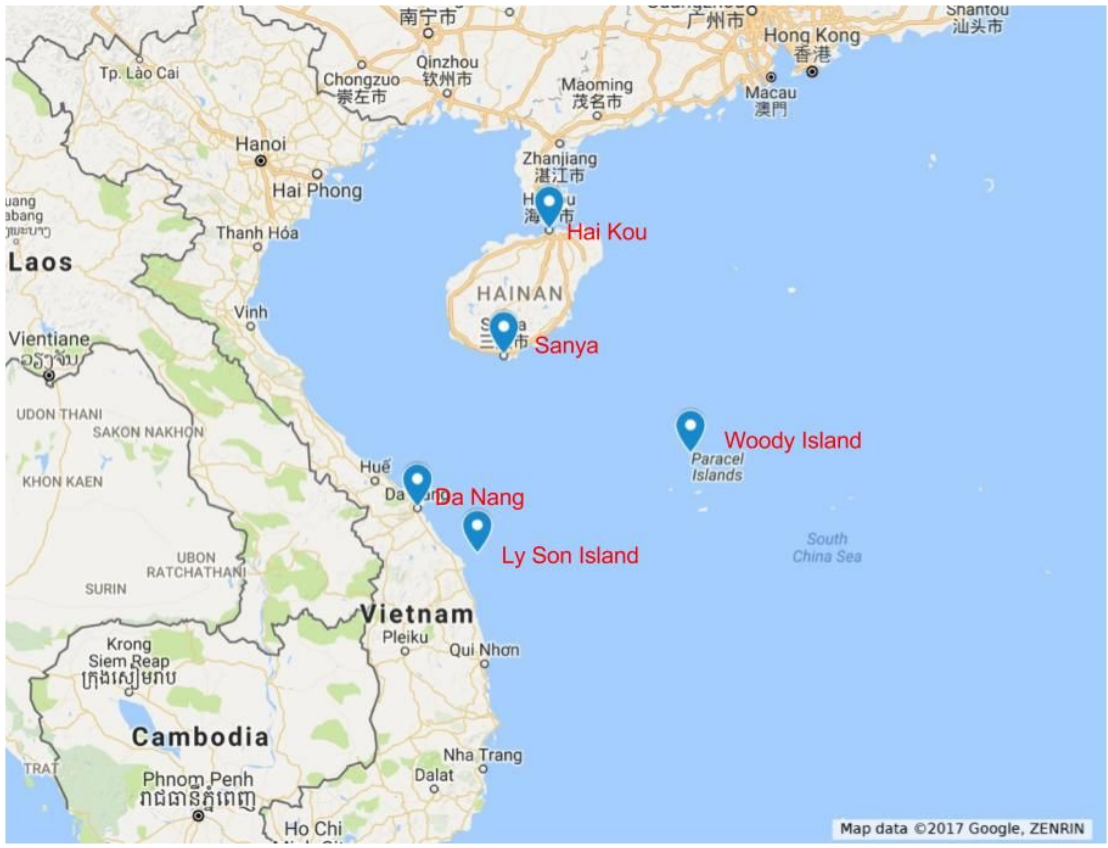
Reports from the Asian Maritime Transparency Initiative of the Centre for Strategic and International Studies confirm this, as of February 2017 "China occupies 20 outposts in the Paracels [] and the largest of the Paracels, Woody Island, sports an airstrip, hangars, and a deployment of HQ-9 surface-to-air missile batteries" (*CSIS AMTI Report,* 2017).

Conventional Chinese naval force in the Paracel Islands gives Chinese maritime militia forces and industrial fishing protection from Vietnamese Coast Guard. The abundance of Chinese maritime vessels in Vietnamese waters led to what for me was a completely unexpected finding of my fieldwork: an intricate kidnapping network that supports Chinese vessels in kidnappings of the Vietnamese fishermen of Central Vietnam. I say unexpected as neither the Vietnamese state-run media (see for example *Thanh Nien News* 2016*; VOA News* 2015*),* nor the international media (see for example *BBC 2016*, *CNN* 2016) have covered this part of hostage release and negotiation as they were not free to pose questions to fishermen. Scholarly work as well, such as that of Hongzhou Zhang (2016), Roszko (2015), Andrew Erickson (2015) have almost exclusively reported cases of Vietnamese fishing vessels being rammed, and their boat equipment (GPS, hulls, petrol, etc.) and fish catch being stolen. To my knowledge, no account or study has been made on trying to unpack this kidnapping network, which constitutes an unwritten history of resistance and diplomacy from below by Vietnamese fishermen.

The usual pattern of kidnappings goes at follows: Vietnamese fishermen's boats are chased by the faster Chinese vessels around the Paracels, oftentimes at night, rammed, and then the Vietnamese crew is given orders and threatened with weapons. The Chinese military attackers usually release some fishermen to go back to Ly Son and collect the ransom, which on average is around 8,000 euro- an amount of money which is eight times

more than the average annual income of a Vietnamese fisherman. The remaining fishermen are made hostages, blindfolded and brought to another island, which they think is Hainan, China, or Woody Island (Figure 4). In Chinese captivity, they are typically squeezed into a small room in a warehouse where they are underfed and beaten.

Figure 4: Kidnapping Network Map.



The families of the fishermen that have been kidnapped, and the released fishermen, then will contact someone they refer to as a "Vietnamese Ambassador" and a "Chinese Consulate" or "Chinese Embassy" in Da Nang. While there obviously cannot be a Vietnamese Ambassador in Vietnam per normal usage, this local usage demonstrates how the Ly Son Island fishermen see Hanoi and the Vietnamese Government as almost foreign. So their diplomacy from below applies not only to the Chinese, but also to the Vietnamese authorities.

Da Nang (Figure 4) is thriving with Chinese Foreign Direct Investment (FDI) and tourist investments, on the wave of the macro trade flow from China. Supposedly a

Chinese Consulate has opened in Da Nang only last year (*VnExpress* 2016). However I have data on kidnappings, such as in 2007 and 2009, from years before the Consulate opened. Moreover, it seems that very few or no Ly Son fishermen's families have the phone number of the consulate, so had to go to Da Nang to the "Vietnamese Ambassador". No fisherman could provide me with a name of this person. Once the aggrieved family of the kidnapped fisherman gather the requested ransom, the money is transferred to a Chinese Bank based in Hainan, which is Beijing's center for SCS governance, academic thought, and naval bases. It also hosts patriotic tourism. This money is not sent to the governmental offices in Beijing, but to what seems to be a provincial government branch in Hainan, which supposedly acts under Chinese domestic law. Some voices that I collected from my interviews provide more detail on the kidnapping process:

> I was kidnapped by Chinese boats 15 years ago. They took me to Hainan Island. I was kept for 15 days. As soon as they got money from my family, they let me go. Thanks to an 'Ambassador' in Danang. My family had to pay a hundred million VND to get me back. I had no idea who the 'Ambassador' was.
> (Interview 4 2016)

> Chinese military contacted the Vietnamese 'Ambassador' and also contacted the Chinese Consulate in Da Nang to inform that some Vietnamese fishermen were being arrested by them. The 'Ambassador' then contacted fishermen's families telling them what had happened to those people. They knew what they had to do next.
> (Interview 3 2016)

> My husband was arrested in Phu Lam Island [Woody Island] in 2005. By a magic, he could escape. He went again and got arrested again. The government used to support him, but not anymore. [] they stopped last year. [] They gave him some instant noodles and some money.
> (Interview 7 2016)

> We were fishing in Paracel Islands, some Chinese military vessels approached and kept shooting at us for more than an hour. We had to kneel down and put our hands up for 3-4 hours
> (Interview 9 2016)

The Kidnapping Network

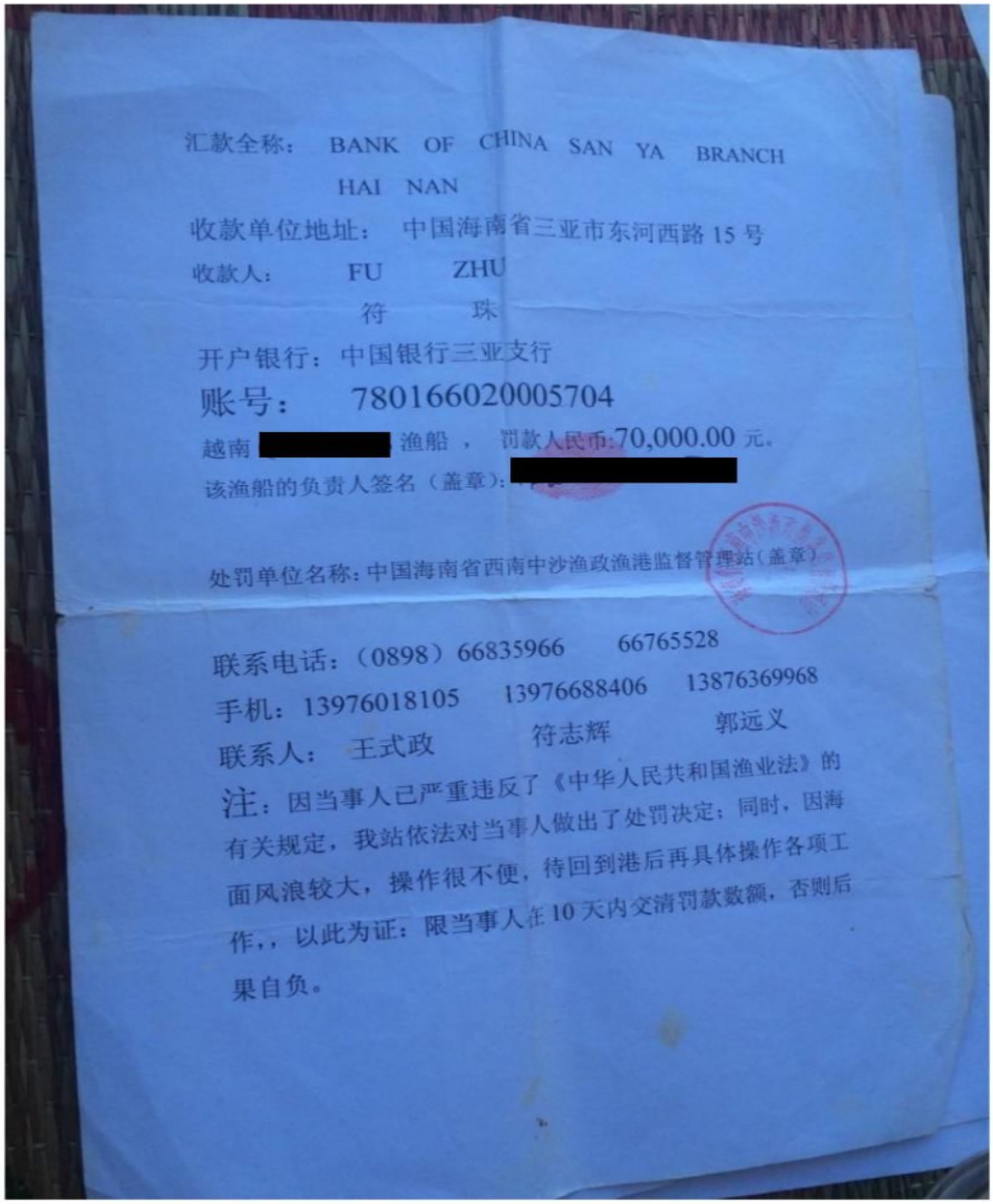
Retrieved Documents

During my fieldwork on Ly Son Island I was able to retrieve four unpublished documents that provide supporting evidence for the fishermen's accounts. The first document (Document 1, Figure 5) appears to be an official Chinese document with a seal, and has the following: the number and engine power (90hp) of the arrested Vietnamese fishing vessel, and the Vietnamese boat captain's printed fingerprint and signature. It included ransom payment information, including the name of the bank, Bank of China (Sanya), and the address of the bank. Sanya is a patriotic Chinese tourist site located in the southern part of Hainan (see Figure 4), where there are also a lot of Chinese fishing militia units.

Document 1 states that the amount of the fine is 70,000 yuan (around 9,600 euro). The name of the Prosecuting body, which supposedly enforces Chinese domestic law in the Paracels, is Zhong Sha Fishery Administration- the Zhong Sha Fishery seal is stamped in red ink on all retrieved Chinese documents (Document 1, 2 and 3). Document 1 ends with the following sentences:

> The person severely violated China's fishery law and the station has punished the person. Yet due to the heavy wind and waves on the sea, it shall wait till the person is on the land and this document serves as a testimony. The person should also pay the fees within 10 days, otherwise he needs to face other punishments.

Figure 5: Document 1 with ransom demand. Black boxes have been added to protect the identity of the fisherman. The first black box is the fishing vessel number. The second is the name of the fisherman with his fingerprint.



汇款全称： BANK OF CHINA SAN YA BRANCH
HAI NAN
收款单位地址： 中国海南省三亚市东河西路 15 号
收款人： FU ZHU
符 珠
开户银行：中国银行三亚支行
账号： 780166020005704
越南 [redacted] 渔船 ， 罚款人民币:70,000.00 元。
该渔船的负责人签名（盖章）: [redacted]
处罚单位名称：中国海南省西南中沙渔政渔港监督管理站（盖章）
联系电话：（0898）66835966 66765528
手机：13976018105 13976688406 13876369968
联系人： 王式政 符志辉 郭远义
注：因当事人已严重违反了《中华人民共和国渔业法》的有关规定，我站依法对当事人做出了处罚决定；同时，因海面风浪较大，操作很不便，待回到港后再具体操作各项工作，，以此为证：限当事人在 10 天内交清罚款数额，否则后果自负。

The second document (Document 2, Figure 6) provides information on the location of the fishing incident. It states that,

> on February 21, 2009, at 13:50 p.m. in China, at this certain latitude 16°33'09"N 112°45'43.86"E, the plaintiff conducted blast fishing in P.R. China controlled sea. They obtained around 250 kg fish in good quality. This act is despicable and troublesome, and it is a serious violation against "China's Fishing Law" clause number 8 and the fourth clause of the "Temporary Regulation For Foreigners and Foreign Freight, Fishing Businesses in China Sea".

Then the document continues by saying that,

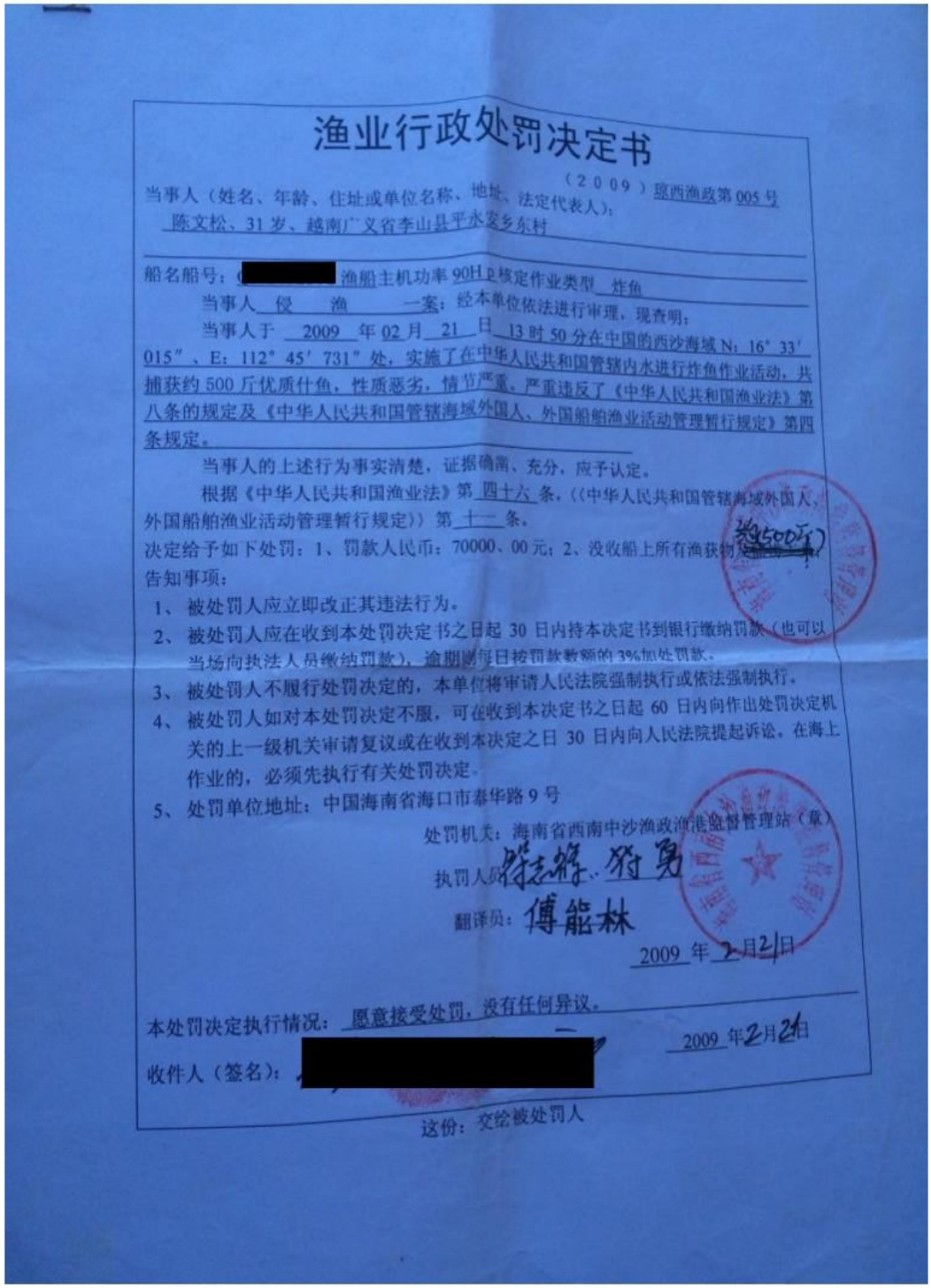
> It is determined that the following punishment shall be given:
>
> 1. A fine of RMB 70,000 yuan
>
> 2. Confiscation of all fishing equipment from the boat as well as the approximately 500 pounds of fish

And last, it enumerates 5 points:

> 1. The guilty party must immediately correct his illegal behavior
>
> 2. The guilty party must take this document to the bank and pay the fine within 30 days from the time he receives the document (or he may pay the law enforcement officer at the current site). If payment is delayed past this time, each day will add an additional 3% of the amount to the fine.
>
> 3. If the guilty party does not fulfill the terms of the verdict, this body will request the People's Court to carry out the verdict through compulsory action or, according to the law, itself carry out the law through compulsory action.
>
> 4. If the guilty party does not agree with the terms of this decision, then within 60 days after receiving this document, he may take this decision on to the next high court level and request a reconsideration of the recent proceedings; or within 30 days he may take the decision to the People's Court and request a review. Before resuming any activity on the ocean, he must first comply with all matters pertaining to the verdict.
>
> 5. The address of the prosecuting body is: China, Hainan Province, Hai-kou City, Tai-hua Road, Number 9.

Document 2 (Figure 6) ends with "I agree to receive the punishment, without any objections", with completed signature of the fisherman below.

Figure 6: Document 2, “Decision Regarding the Punishment ordered by the Fisheries Administration”. Charges and admission of guilt. The first black box is the fishing vessel number. The second is the signature of the fisherman.



渔业行政处罚决定书

（2009）琼西渔政第005号

当事人（姓名、年龄、住址或单位名称、地址、法定代表人）：
陈文松、31岁、越南广义省李山县平水安乡东村

船名船号：[redacted]渔船主机功率90HP核定作业类型 炸鱼

当事人 侵 渔 一案：经本单位依法进行审理，现查明：

当事人于 2009 年 02 月 21 日 13 时 50 分在中国的西沙海域 N：16° 33′ 015″、E：112° 45′ 731″ 处，实施了在中华人民共和国管辖内水进行炸鱼作业活动，共捕获约 500 斤优质什鱼，性质恶劣，情节严重，严重违反了《中华人民共和国渔业法》第八条的规定及《中华人民共和国管辖海域外国人、外国船舶渔业活动管理暂行规定》第四条规定。

当事人的上述行为事实清楚，证据确凿、充分，应予认定。

根据《中华人民共和国渔业法》第 四十六 条，《中华人民共和国管辖海域外国人、外国船舶渔业活动管理暂行规定》第 十一 条。

决定给予如下处罚：1、罚款人民币：70000、00元；2、没收船上所有渔获物（约500斤）。

告知事项：

1、被处罚人应立即改正其违法行为。

2、被处罚人应在收到本处罚决定书之日起 30 日内持本决定书到银行缴纳罚款（也可以当场向执法人员缴纳罚款），逾期则每日按罚款数额的 3%加处罚款。

3、被处罚人不履行处罚决定的，本单位将申请人民法院强制执行或依法强制执行。

4、被处罚人如对本处罚决定不服，可在收到本决定书之日起 60 日内向作出处罚决定机关的上一级机关申请复议或在收到本决定之日 30 日内向人民法院提起诉讼。在海上作业的，必须先执行有关处罚决定。

5、处罚单位地址：中国海南省海口市泰华路 9 号

处罚机关：海南省西南中沙渔政渔港监督管理站（章）

执罚人员：[redacted]

翻译员：傅能林

2009 年 2 月 21 日

本处罚决定执行情况：愿意接受处罚，没有任何异议。

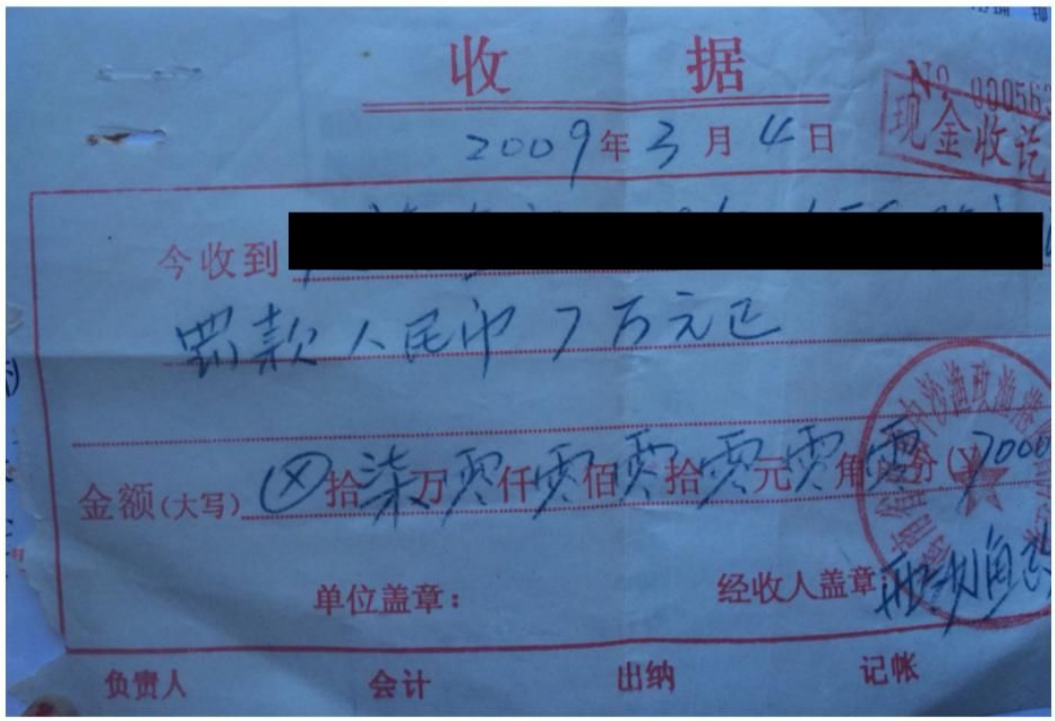
2009 年 2 月 21 日

收件人（签名）：[redacted]

这份：交给被处罚人

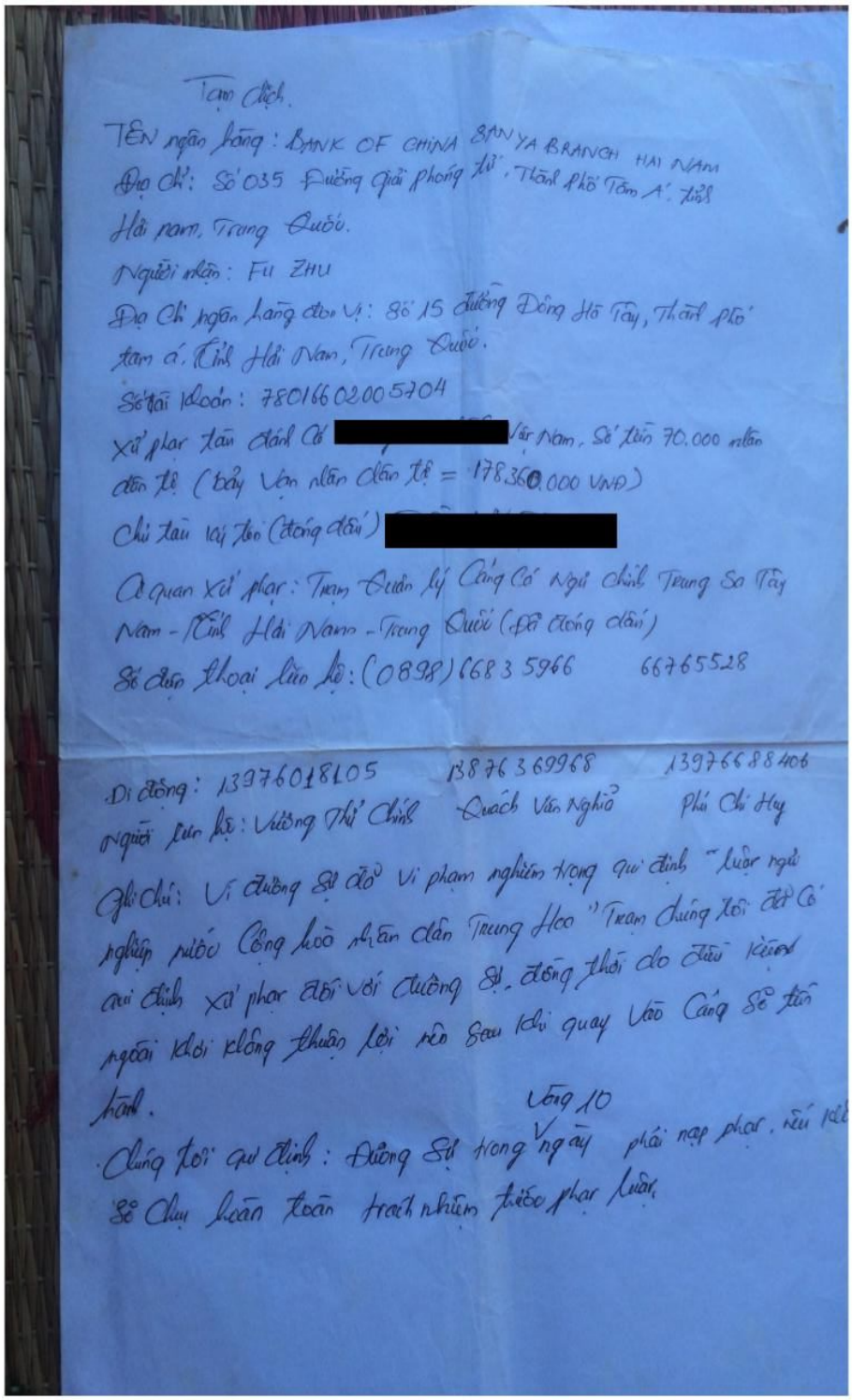
Document 3 (Figure 7) is a cash receipt number 00056 of the 70,000 yuan fine dated March 4, 2009, with the same seal of Zhong Sha Fishing Administration that was in Document 1 (Figure 5) and Document 2 (Figure 6). At the bottom of the document there is a lower stamp and signature by the person who received the cash.

Figure 7: Document 3, “Receipt”. The black box is the fishing vessel number.



Document 4 (Figure 8) is the Vietnamese translation of Document 1 (Figure 5). No translation of Documents 2 and 3 were available from the fisherman's family. Moreover, few fishermen on Ly Son Island seemed to have these documents. One interviewee volunteered the documents without being asked. Subsequent interviewees, about 75% of them, were asked through the translator and did not appear to understand or have the documents. If accurate, this means most fishermen are left without any documentation of the charges they faced.

Figure 8: Document 4, Vietnamese Translation of the Ransom Demand. The black box contains the convicted fisherman's name and fishing vessel number.



Tạm dịch.

TÊN ngân hàng: BANK OF CHINA SANYA BRANCH HAI NAM
Địa chỉ: Số 035 Đường giải phóng lộ, Thành phố Tôm Á, tỉnh Hải nam, Trung Quốc.
Người nhận: FU ZHU
Địa chỉ ngân hàng đơn vị: Số 15 đường Đông Hồ Tây, Thành phố tam á, Tỉnh Hải Nam, Trung Quốc.
Số tài khoản: 780166020057O4
Xử phạt tàn đánh cá [redacted] Việt Nam, Số tiền 70.000 nhân dân tệ (bảy vạn nhân dân tệ = 178.360.000 VNĐ)
Chủ tàu và thuyền (đồng đội) [redacted]
Cơ quan xử phạt: Trạm Quản lý Cảng cá Ngư chính Trung Sa Tây Nam - Tỉnh Hải Nam - Trung Quốc (đối đồng đội)
Số điện thoại liên hệ: (0898) 6683 5966 66765528

Di động: 13976018105 13876369968 13976688406
Người liên hệ: Vương Thế Chính Quách Văn Nghiệ Phí Chí Huy

Ghi chú: Vì đường Sự đã vi phạm nghiêm trọng quy định "luật ngư nghiệp nước Cộng hoà nhân dân Trung Hoa" Trạm chúng tôi đã có quy định xử phạt đối với đường Sự. đồng thời đã đưa ra kiến nghị khởi kiện không thuận lợi nên sau khi quay vào Cảng sẽ tuân thủ.

Vòng 10

Chúng tôi quy định: Đường Sự trong vòng ngày phải nạp phạt. nếu kể sẽ chịu hoàn toàn trách nhiệm theo phạt luật.

The first salient feature is that Document 1 (Figure 5) and Document 2 (Figure 6) are dated the same day, February 21, 2009. Thus, this means that Document 2 includes a full confession dated the same day that the violation allegedly occurred: the fishing boat was stopped and the fisherman was made to sign and accept the charges immediately, yet with no translator likely available that would have enabled the fishermen to understand what he was signing. Important to note also is that the Vietnamese translation (Document 4) of Document 1 was only made available later to the family of the fishermen who went to the Vietnamese or Chinese Ambassador at the the Da Nang Consulate.

The second salient feature is the disconnection between the Vietnamese fishermen's conceptualization of their fishing activities in waters near the Paracels versus Chinese perceptions. For Vietnamese fishermen it is fishing for subsistence in what used to be open access. Technically, this would be a conceptualization consistent with a global commons and of the legal principle of the freedom of the sea espoused by Grotius ([1609] 2009). While for China it is poaching and IUU (Illegal, unregulated and unreported) fishing, consistent with Selden's *Mare Clausum* ([1635] 1975). Vietnamese fishermen generally recognize when they engage in distant fishing in waters that have been internationally recognized or are part of the EEZ of a country. For example, a fisherman says in one of my interviews, "A friend of mine was arrested by Australian military boats and now he is held in prison as he went fishing in waters belonging to Australia" (Interview 8 2016). However, they typically distinguish this from China's nine-dash line, which they see as a unilateral decision that has no legal basis in UNCLOS.

In all my interviews fishermen define these supposedly Chinese enforcement operations as "kidnappings" and the amount of supposed fine as a "ransom". China presents these operations as maritime enforcement of Chinese law. Document 2, for

example, presents the Chinese actions as lawful detention and a fine on the basis of violating "China's domestic fishery law". Self-evidently China gives itself the entitlement to project its legal capability of domestic sovereignty over almost all SCS waters, while some Vietnamese fishermen still remember the previous pre-nine dash line scenario.

The third salient feature is that there are differences between the two Chinese "official documents" (Document 1 and 2) and the Vietnamese translated version (Document 4). In Document 1, ten days are given to the arrested fishermen to pay; while in Document 2 (Figure 6), thirty days are given. However, in the Vietnamese translation that was given to the fisherman's family, it was stated ten days, a shorter time frame than the thirty days stated on the Chinese version of Document 1 (Figure 5). Another big omission in the translated Vietnamese version is that the Chinese Coast Guard or maritime militia arrested the fisherman charging him on the basis of blast fishing. While blast fishing is indeed a destructive environmental practice and there may be some cases of the use of this technique from some Vietnamese fishermen, Chinese may hide behind an environmental issue to arrest the fishermen without giving them the possibility to know the crime with which they are charged. This would make the Chinese look like good environmental supporters to their superiors and therefore justify the facade their aggressive detentions of fishermen.

The fourth important point is mentioning the possibility for the fisherman if he "does not agree with the terms of this decision", to appeal to a High level court "within 60 days after receiving this document", or to the "People's Court" "within 30 days" (Document 2). Yet *de facto,* fishermen are detained in a small room, with no freedom to move without being beaten. It is hardly imaginable that they can request an appeal. The address of the Prosecuting Body is in the City of Hai Kou (Figure 4), the capital city of

Hainan, but no translation in Vietnamese was given to the fishermen of Document 2, so presumably he never had the chance to know these rights and options for appeal. Yet the mentioning of a physical address of the Prosecuting Body and that of the Remittance Bank, both on Hainan, together with the the two higher courts, are important information that seem to suggest that this may not be criminal impersonation of low-level government, or organized activities by pirates or smugglers. There is a strong likelihood that these actions are seen by provincial Chinese authorities on Hainan as legitimate enforcement of China's maritime territory within the nine-dash line. Making sense of who are the kidnappers and harassers has been a puzzle of my fieldwork, which will be analyzed further in the next chapter.

Forced Disappearance, Habeas Corpus, and Torture

Many Vietnamese state-run media and researchers have portrayed the offending Chinese vessels for a certain period as "strange vessels" (*tua la*) or "pirates" (Ha 2012-2013, 99), making culpability vague. This may be so as not to trigger popular anger or retaliating behaviours from Beijing. Another Vietnamese told me: "Talking against Chinese or Vietnamese Government is a sensitive issue in Viet Nam. There used to be times the media hesitated to mention Chinese directly" (Interview 18 2016).

Undeniably, in the South China Sea, piracy is common, being the perfect spot for pirates to hide within the myriad of atolls and islands, and sometimes even intersecting with some Abu Sayyaf terrorist militants, which abducts and asks for a ransom similar to the Somali pirates in the Gulf of Aden. The Abu Sayyaf group operating in the Philippines is an emblematic example of ransom extortion and hostage taking (*The Telegraph* 2017). Much piracy also takes place in Indonesia, according to the International Maritime Bureau

(IMB) (*ICC International Maritime Bureau Report* 2016). However, the kidnapping network that is found near the Paracels and specifically near the hub of the Chinese fishing militia appears not to be run by organized criminals or smugglers: all kidnapped fishermen told me that their "kidnappers" were uniformed soldiers. Their boats were too well equipped to be petty criminals. The fishermen are brought and detained on Hainan Island or Woody Island (Figure 4). That latter is "China's main military base in the Paracels" and where the Chinese Government announced in 2012 that its city, Sansha, is the official administrative capital and has jurisdiction over the three island chains it claims in the South China Sea (*CSIS AMTI* 2017). Moreover, pirates would have difficulty hiding in a small island such as Woody Island, where ingress and egress are strictly tracked.

The payment of the ransom goes to the Bank of China. The branch address is on Sanya (Figure 4), the Chinese fast-paced developed patriotic tourist hub on Hainan Island. In a letter of an escaped fisherman that has been published online (*SGTT.VN 2011* [no longer available at that site *boxitvn.wordpress 2011*), it is mentioned that he was brought to the centre of Sanya City, Hainan, to make the call to his family.

The letter is no longer available at the original place where it was published, *SGTT.VN* (*Saigon Tiep Thi Online*), an independent website. However it has been copied to the blogspot *boxitvn.wordpress.com* (full name *Bauxite Vietnam*) and around other blogs, where it is still available. In a case of cross-social movement solidarity , this letter was copied on a blogspot that seems to publish articles display resistance and critique of the Vietnamese Government and on the main page complains of frequent cyberattacks. In fact, the blogspot *boxitvn.wordpress.com* is named after the bauxite mining deal, another controversial and national security topic that involves Chinese influence in Vietnam that will be reprised in the next chapter. These two social movements that oppose China in

Vietnam are thus linked forms of diplomacy from below. If a legitimate report, this is another indicator of Vietnamese Government attempts to elide news that might increase public dissatisfaction with China.

Who are the intermediaries? Fishermen seem to refer to one person, translated as "Ambassador". The fishermen use the word *Đại sứ quán*, which is literally translated as "Consulate". However they seem to refer to only one person involved, which is why that person has here been translated as "Ambassador". It may be that the fishermen are unfamiliar with the difference between an embassy and a consulate, but it seems like some Vietnamese and Chinese governmental representatives, not pirates, function as a communication channel between the fishermen's families, the Chinese Consulate in Da Nang, the Chinese Coast Guard, and the Chinese maritime militia. This indicates some official backing for what, following the fishermen's understanding, is here called a kidnapping network.

For all these reasons, it seems unlikely that the kidnappings of the fishermen of Ly Son Island is perpetrated by a maritime organized crime organization similar to piracy or smugglers that has bases and middlemen in Da Nang and Hainan. Rather it appears that this is a crime of forced disappearance that is state-sponsored at the provincial level by China, and aimed at deterring Vietnamese fishermen in China's nine-dash line, while significantly augmenting Chinese military presence in the South China Sea.

This kidnapping network is not a phenomenon exclusive to fishermen of Ly Son Island, but also affects Bin Chau village, in the Central coast of Vietnam. Other documents (Document 5, 6) have been filmed, which can be seen in the documentary of

Andre Menras[4] on the widows of the Vietnamese fishermen (*La meurtrissure* [Painful Loss] 2011).

While available photos of Menras' documents are only partial, they show the same year, remittance bank account number, name of prosecutor, formatting (the official red seal, and wording). The cash receipt of the fine has the same handwriting as my document, according to two Chinese linguists. Even if the lines of Menras' documents are too blurred to read and check the exact wording of the content, both documents seem to come from the same source. Interestingly, they both date to 2009, with one day of difference (February 21 and 22, 2009). The only apparent difference is the date, fishing vessel number, and fine amount.

China's 2009 *Note Verbale* submitted to the United Nations with the nine-dash line map, was only 3 months later. In the Note, China claimed "indisputable sovereignty over the islands in the South China Sea and adjacent waters, and enjoyed sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof". Thus, it can be argued that even if the incident had taken place in territorial waters claimed now by China, at that time it had not officially claimed sovereignty and jurisdiction on the waters where the incident took place. Arguably, China's domestic law cannot be applied retroactively. Sansha City, China's ostensible administrative capital of all of the South China Sea, was established only in 2012, three years after delivery of the *Note Verbale* to the UN.

[4] Andre Menras, a French citizen at birth, was able to shoot the documentary thanks to an honorary Vietnamese citizenship that was conferred on him after becoming a Vietnamese national hero for waiving a National Front for the Liberation of South Vietnam flag in front of the South Vietnam Government building in 1970 during the Vietnam War. He was convicted for the act and spent three years in a South Vietnamese prison. (Menras Interview 21 2017).

Can China legally enforce its domestic law, and does it have jurisdiction over the location where the fishing incident took place? The incident took place at the coordinates 16°33'09"N 112°45'43.86"E. The incident was 185 nm from China, and 234 nm from Vietnam, within the 12 nm territorial sea of Lincoln Island in the Paracels (Figure 9 and 10). After I provided him with the coordinates of the incident, Gregory Poling, Fellow at CSIS, said in a personal communication: "The incident was not only beyond the median line, but was beyond the 200 nm maximum EEZ that Vietnam could claim from its coast. It did, however, take place within the 12 nm territorial sea of Lincoln Island in the Paracels. In other words, it was in a territorial sea claimed by both Vietnam and China (but administered by China). In any future arbitration, a court would likely find that the territorial seas around all the Paracels are traditional fishing grounds for both Chinese and Vietnamese fishermen" (Poling Email 2017). However, important to note is that even if China's domestic law would have applied, "assault and ransom-taking are not law enforcement, they are criminal activities", Poling said (Email 2017). No lawful grounds seem available to China to arrest the fisherman, detain them, deprive them of food, and beat them causing permanent disabilities. Chinese actions in these cases thus appear to constitute human rights abuse, a violation of *habeas corpus* (unlawful imprisonment) and arbitrary detention.

Figure 9: Location of Fishing Incidents from Document 2 (yellow pinpoint), potential EEZ of Vietnam (red lines) and Paracel features (violet) (Poling Email 2017).

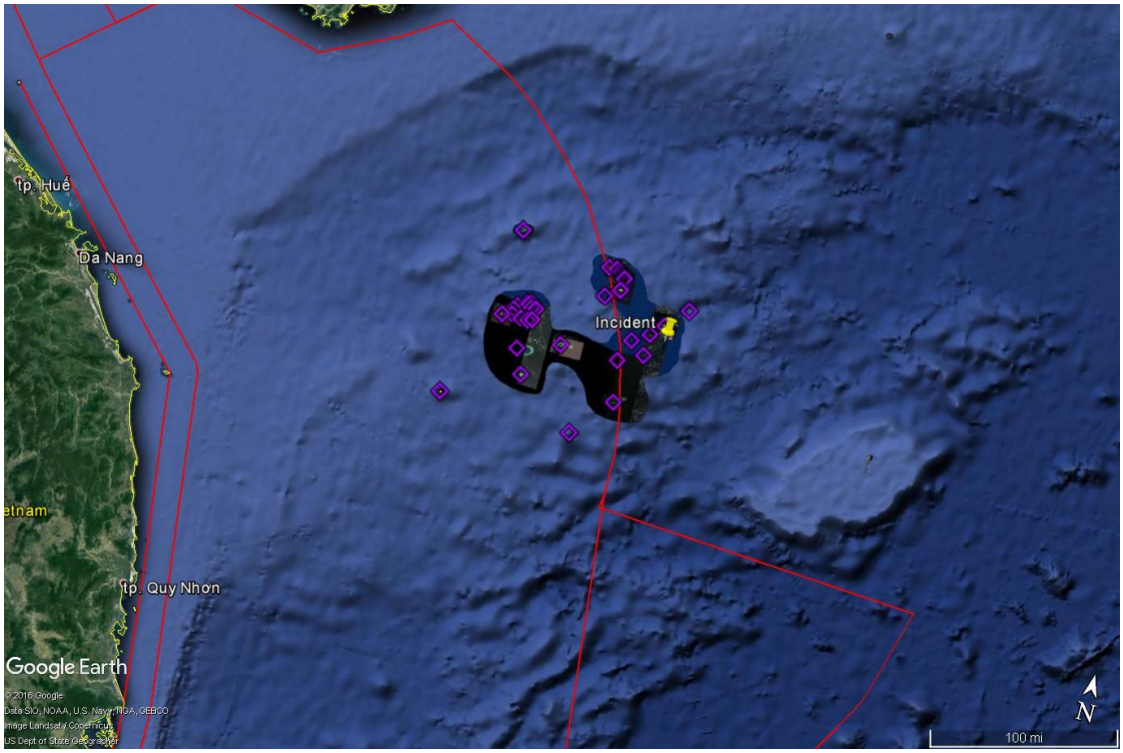
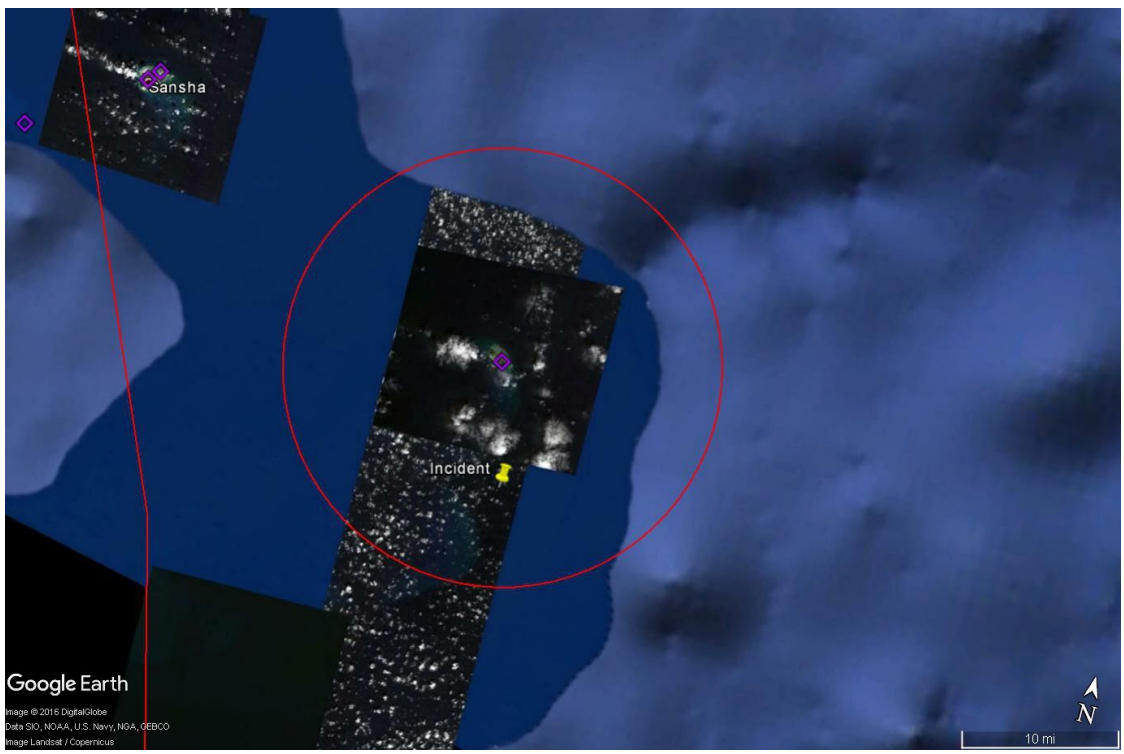


Figure 10: Location of Fishing Incident (Document 2), within the 12 nautical miles radius of an island. Source (Poling Email 2017).



An apparent violation of *habeas corpus* comes from the fact that China does not give a chance to appeal before a court according to my interviewees, despite what is claimed in Document 2. The fishermen that are kept as hostages on the ship were not provided a full translation of Document 2, where the right of appeal is stated. Nor were they given a translator. They had to sign and admit guilt without understanding their charges. The fact that no more recent documents are available may mean that the kidnappers may be provincial government officials who produced such documents, but then stopped the production for some reason, for example after orders from Chinese national-level governmental officials in Beijing, who may have realized the risk of drawing too much international attention with documentation. The documentation appears to have stopped in 2009, but the kidnappings did not stop until 2014 according to one of my interviewees on Ly Son Island and Menras (Menras Interview 21 2017; Interview 9 2016).

Menras was not aware of my fieldwork findings (Interview 21 2017): the intermediaries in Da Nang (the Vietnamese and Chinese governmental officials or "Ambassadors" that serve as a communication channel) and did not get his documents that are partially seen in his documentary translated. The discussion of my retrieved documents however are relevant to highlight a more intricate kidnapping network, the greater numbers of kidnapping network actors at play, and the ostensible legal basis by which the Chinese arrest the fishermen. I also show that the version presented in Vietnamese and international media and scholarship is different than that described by my interviewees and in Menras documentary. Nonetheless Menras' personal fieldwork buttresses my own findings and adds information on the interrogation style of the Chinese military (Interview 21 2017). Menras says,

> When Vietnamese fishermen are arrested, the Chinese have usually a translator. But Vietnamese fishermen have to sign a document the content of which they don't know because it is written only in Chinese. They chase film them, take pictures of them. Elaborate a file about each one name, age, family, school and address. The Chinese ask questions 'Where did you go in the army?', 'Do you know this is Chinese territory?', so that the fishermen are scared to be arrested a second time. Most of the time, the Vietnamese flag on the fishing boat is taken down, torn to pieces and thrown to the sea.

A "non-exhaustive chronology of aggressions" was put together by Menras, where it is estimated that "from 2002 to 2014, about 2,000 fishermen of the center [coastal region] of Vietnam have been victims of Chinese aggressions offshore around Paracels archipelago" (*Memoires d'Indochine* 2014*)*. Menras points out that 2008 was a poor year of records in the Vietnamese media because Beijing was hosting the Olympics, and the need to give a positive image to the international community was encouraged by assertiveness from the CPV (*Memoires d'Indochine* 2014*)*.

The party-to-party relationship between the Vietnamese Government and the Chinese Government is extremely important in shaping the dynamics of media coverage of harassments, hostage taking (as we have seen with the discursive portrait of "strange vessels" and "pirates") and allowing or suppressing fishermen's protests against China as we will explore in the next chapter. In short, when bilateral relations between China and Vietnam are good, there may be less reporting of fishing incidents or even of kidnappings, as exemplified by the year 2008. However when relations between Vietnam and China are bad, the news coverage of fishing incidents increases. Such news coverage may be an attempt by the Vietnamese Government to warn China for perceived transgressions.

Menras believes that the hostage taking stopped in 2014 in part because his documentary was published that year. He said that "the publishing of the documentary in 2014 [] may have had an effect on Beijing" (Interview 21 2017). This seems like a

plausible explanation to me. As an alternative explanation, in 2014 Vietnam created the Vietnamese Fisheries Surveillance Force (VFSF), which might be considered a "Vietnamese fishing militia," for counterbalancing the positioning of the Chinese oil rig in Vietnamese waters. To the extent the militia is nonviolent, which as far as I know is the case, this state-sponsored diplomacy from below could well have had a determinative effect in giving Vietnam more bargaining power against China and ending the kidnappings.

But while the kidnappings have stopped, China's actions against Vietnamese fishermen continue (Table 1). According to one fisherman that I interviewed in 2016, "Now Chinese military boats won't kidnap Vietnamese fishermen anymore. They try to ram, hit, crash, destroy, and even shoot our boats. They do anything to send Vietnamese fishermen away so that fishermen won't dare to fish there" (Interview 16 2017). Table 1 below shows that all kidnappings occurred before Menras film was released, suggesting that international attention decreases Chinese human rights abuses, especially when done outside China's recognized territorial boundaries.

Table 1: Fishing incidents and ransoms from fieldwork (2016).

Year of incident	Type of Incident	Location
2016	Boat rammed, beating, fish catch stolen	Triton Island
2015	Shooting, boat damaged	Woody Island
2009	Kidnapping, 70,000 yuan ransom (231 million VND)	Lincoln Island
2009	Kidnapping, 180 million VND ransom	Woody Island
2008	Kidnapping, 200 million VND ransom	Triton Island
2005	Kidnapping, 140 million VND ransom	Woody Island
Unknown	Kidnapping, 100 million VND ransom	Lincoln Island
2002	Boat rammed, fish catch stolen, beating	Woody Island

Government Subsidies, Fishermen's Income and Losses

Even if the network of kidnappings may have stopped, the physical harm that causes permanent injuries and disabilities perpetrated by Chinese Coast Guard and maritime militia, was still happening at the time of my fieldwork. This results in some artisanal fishermen not being able to fish and sustain their families and livelihoods. They must start start new businesses with little financial returns such as "finding seashells and snails to sell for a living" (*SGTT.VN 2011*[not available anymore]*; boxitvn.wordpress 2011*).

Another method that Chinese authorities use to dissuade Vietnamese fishermen is to forbid them from docking on Chinese-administered islands, even during life-threatening events such as severe weather. If a Vietnamese boat is lucky enough to make it back to Ly Son Island in a storm, the fishermen often do not have the fishing equipment as they may have been stolen or damaged. In contrast, in one interview, one fisherman highlighted the cooperative approach from another SCS claimant country when one time he was injured at sea and the Philippines "let dock, treat well and called an helicopter for assistance" (Interview 3 2017).

Prior to 2014, the fishermen frequently had to sell their boats to cover the Chinese ransom, or pay debts used for such to the Vietnamese Government. Paradoxically, the fishermen often buy the boats from the Vietnamese Government on credit, thus doubly indebting themselves to the state.

The widows of the fishermen who do not return from sea have started some creative businesses. For instance, Menras in his documentary (2011) shows how one woman started a lamp business with glass bottles, yet the generated income is not enough to grow the orphaned children or to repair the debts. Many fishermen's widows cannot afford to bury the bodies or many do not even have the physical body to bury. In this instance they bury the bodies or figurines of the bodies in secret as we will explore later, in some cases while talking about tactics of resistance.

Prior to 2015, the Vietnamese Government provided some compensation to Vietnamese fishermen who had lost their boats, equipment, fish catches, or paid ransoms to the Chinese. But interviews (Interview 13 2016; Interview 14 2016) with the fishermen revealed that "The government stopped last year [2015] to give compensation" for losses related to Chinese enforcement. Another fisherman (Interview 6 2017) said "The

compensation was not much, 2 VND million [75 euro] put in an envelope and some instant noodles delivered at our doors". From Table 2 we can see that the average ransom is 180 VND million [3215 euro], while the average annual income of a hired fisherman is 45 VND million [1808 euro]. This means that the ransom is more than two times more than average annual income. The cost of a 250 hp boat is usually 1,5 VND billion [60,000 euro] which is almost 35 times more than the average fisherman's income. For the physical damage causing permanent disabilities, it is hardly possible to give a figure of compensation cost. It is clear that the actual damage and the probability of risk of damage is less than the compensation that they receive. Are their decisions to keep fishing in contested waters therefore contrary to rational choice? Not really. Even if they wanted, external constraints will make it difficult for Vietnamese fishermen to leave Ly Son Island. Indeed, they have debts with their neighbours and Vietnamese banks, but also and especially the Vietnamese Government, from whom, ironically, they accumulate debt to buy boats (*SGTT.VN 2011* [not available anymore]*; boxitvn.wordpress 2011*). Moreover, instead of being absolved of their debts and celebrated for their arguably patriotic actions, the fishermen are likely prosecuted by Vietnamese authorities.

Table 2: Fishermen's income, subsidies and damages from fieldwork (2016)

Income	Losses
Monthly income of hired fisherman, 4-6 million VND (depending on the quantity of the catch)	If fish catch stolen 10 tonnes of fish= 200 million VND
Average year income (if fishing 9 times a year), 45 million VND	
Government subsidies to go fishing in the Paracels and Spratlys, 10 million VND per month (2015 and prior)	
Petrol subsidies for a large fishing trawler, 80 million VND per year	Costs (fuel, wages, food) for 15 days For a 90 hp boat about VND 150 million For a 250 hp boat and one month offshore around VND 200 Million.
	Cost of a boat For a 90hp around 1 billion VND For a 250 around 1,5 billion VND If boat damaged (GPS and fishing equipments), average 250 million VND
Compensation for ransom 3 million VND, rice and instant noodles	Average 180 million VND ransom
	If physical disabilities Not measurable
Total maximum income per year **135 million VND (approximately 5436 euro)** **Total incentives per year from the CPV** (but as of 2016 these incentives and some fishermen have never received them) **90 million VND (approximately 3625 euro)**	**Total loss of an owner of a boat** (without including physical disabilities and interest rates of loans) **More than 1 billion VND (more than 40278 euro)**

The Vietnamese Coast Guard is officially a branch of the Vietnamese People's Army, and have the task of patrolling and protecting Vietnamese sovereignty around the SCS waters. Moreover as Professor Nguyen Binh of Hanoi University and former Vietnamese Ambassador to the UN said, the Coast Guard has "the task to assist fishermen when problems arise with their boats and accompany fishermen when fishing" (Interview 22 2017). Their duties include also operating against: "drug smuggling, human trafficking, marine environmental protection, [and] search and rescue" (Hiebert 2014). Despite their mandate of enhancing human security of their nationals, in many of my interviews, Vietnamese fishermen of Ly Son Island said they "were never accompanied from Ly Son Island by the Coast Guard" (Interview 10 2017). Another fisherman told me, "there were times when we needed their help because the engine stopped working or because of a storm or because the boat was damaged by some foreign boat but they never came despite communicating via Icom" (Interview 13 2017).

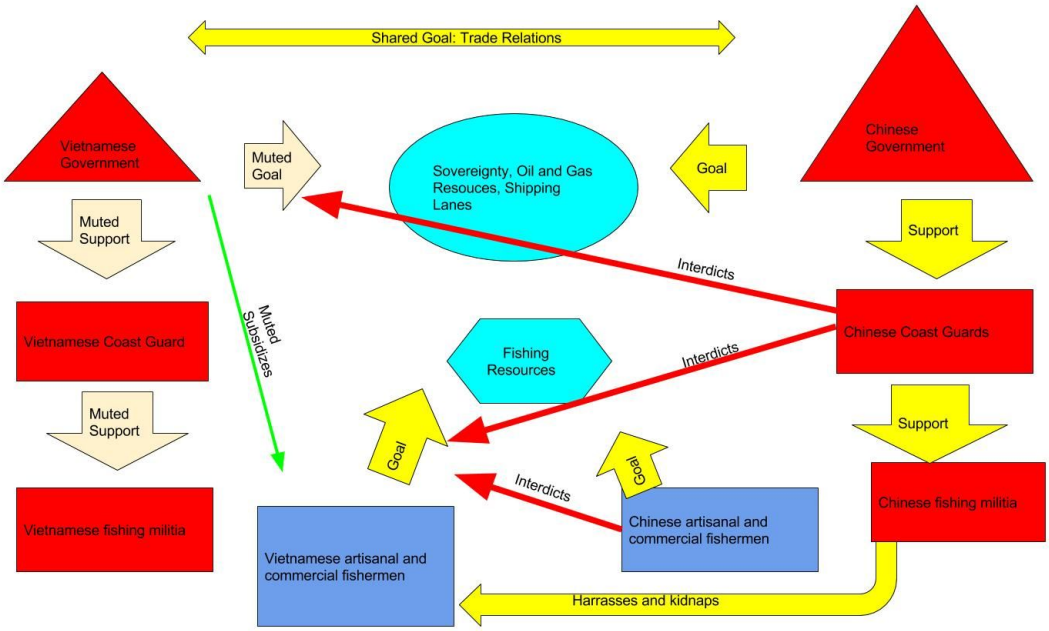
A U.S. Government official who wants to stay anonymous said (Email 2017) that "The Vietnamese Coast Guard is still very young with ships of limited size that preclude its ability to adequately enforce fishing regulations throughout its EEZ, let alone conduct counter-piracy". While undoubtedly the enforceability of their tasks and the protection of fishermen is problematic, it seems that Hanoi policy on the SCS is extraordinarily passive in responding to maritime emergencies. It seems likely that from Hanoi, the order transmitted to the chain of command is a non-escalatory and non-confrontational approach with the Chinese Coast Guard, thus impeding the fulfillment of their mandate to protect fishermen and advance human security. The Vietnamese Coast Guard receives only muted support from the upper echelons of the Vietnamese Government, as suggested above, and as diagrammed in Figure 11.

Paradoxically then, a situation is created where the Vietnamese Coast Guard of the central coast of Vietnam, where this network of kidnappings in the Paracels usually happen, instead of being the strong supporter of the fishermen, end up closely surveilling their activities to avoid escalatory behaviours with China, or revealing compromising information to international journalists or researchers. On Ly Son Island, I observed a vast number of Vietnamese Coast Guard and military personnel. According to one fisherman, the "Vietnamese Coast Guards and military soldiers are the eyes and ears of the Vietnamese Government" (Interview 19 2016). This is tangible and effective on the island. Coast Guard posts on Ly Son Island "have the exact number of hostage taking, ransom amount [] the MOFA [Ministry of Foreign Affairs] knows [] however they do not want to release the data" (Menras Interview 21 2017).

Some emblematic examples of routine repression operated by the Coast Guard includes a researcher who was able to obtain informal consent from a fisherman to sail on his boat around Ly Son Island, however the fisherman was later told by a Coast Guard officer that if he had brought the researcher on the sea his fishing license would be revoked (Interview 17 2016).

Another example, which will be compelling for our discussion, is in 2016 a Vietnamese fisherman was shot dead by the Chinese military on the open sea. Yet, following the orders of local authorities, the burying was done in secret in a distant location from the fisherman's house at night, so as not to galvanize anti-Chinese sentiments and possible triggering of a public protest among the grieving fishermen's relatives. Coastguard officials ensured that the order was executed and complied with (Interview 16 2016).

Figure 11: The Vietnamese and Chinese Political Ecosystem, Goals, and Non-state actors.



Organic Diplomacy from Below: "Fighters Without Weapons"

This section further discusses the Vietnamese and Chinese state and non-state actors (see Figure 11) involved in the South China Sea conflict, and sheds more light on four actors in particular: i) Chinese small-scale and commercial fishermen, ii) Vietnamese small-scale and commercial fishermen, iii) Chinese fishing militia, and iv) another state-sponsored armed force, the Vietnamese Fisheries Surveillance Force.

Who are the kidnappers and harassers? My fieldwork suggests that they are Chinese fishing militia who acted under a state-sponsored policy of China and other maritime enforcement vessels such as the Chinese Coast Guard. To signal the importance that the Chinese Government gives to its fishermen in the advancing of claims in the South China Sea, in 2013 President Xi Jinping of China visited Tanmen Marine Militia

Company in Hainan within one month of assuming the presidency (*The Maritime Executive 2016).* This shows a link between the Chinese Government and the likely harassers.

The use of non-state actors gives Beijing a plausible deniability argument as we will see in the conclusion. *Radio Free Asia* (2013) reports the interview of an attacked fisherman that matches my fieldwork findings and testimonies of my interviewed fishermen when he says that the harassers wore uniforms. "They wore dark blue uniforms like those worn by the fishing surveillance force [] I did not understand them but they gestured to me [] [indicating that] if anyone tried something, there would be consequences and they would get hurt". The fishing militia have three hubs: the Tanmen maritime militia were established in 1985, from a small town in Hainan - the province where the Prosecuting Body address is located in the document (Erickson 2015). The second maritime militia, the Sanya maritime militia, was established in 2001. The Sanya branch of the Bank of China is the financial institution to which ransom payments were directed in documents discovered during my fieldwork. And last, the Chinese fishing militia has its location in Sansha city, which was established in 2013 as the main city on Woody Island near where the fishermen were typically harassed and kidnapped. For the kidnapping incident that we have most carefully analyzed, and which took place in 2009 and is listed on Document 1 (Figure 5), probably the first two mentioned maritime militia are relevant. Reportedly the fishing militia wear uniforms (Erickson 2015), one of the points that the harassed and kidnapped fishermen regularly pointed out.

The Chinese fishing militia receive military training to "actively collect maritime information, assist island and reef construction, and contribute to sovereignty defence in the South China Sea" (*The Maritime Executive 2016*) and have been crucial actors in

China's maritime power projections such as the seizing of Scarborough Shoal with the Philippines in 2012 and operations during the *Haiyang Shiyou* (HYSY)-981 Oil Rig standoff with Vietnam in 2014.

Hiebert *et. al* (2014, 145) reports that Vietnam also has its own fishing militia, the Vietnam Fisheries Surveillance Force (VNFSF), which was established in 2014 and in that year utilized a significant number of Vietnam's estimated "120,000 [fishing vessels] employing around 1 million fishermen". The VNFSF utilized fishing vessels and fishermen as state-sponsored diplomacy from below to protest the (HYSY)-981 Oil Rig Standoff so as to counterbalance China's use of hybrid civilian-military forces.

It is true that Vietnamese fishermen engaged in state-sponsored diplomacy when they received petrol subsidies and incentives to fish in the Paracels, as shown in Table 2. Yet, as it was mentioned, it seems that the state support has ceased or was received by few fishermen. One of my fieldwork impressions is that the fishermen of the West part of the island, which had wealthier houses and were more likely to be part of the Vietnamese maritime militia, were more reluctant to talk to me. Conversely, the poorer artisanal fishermen who undergo detainments and often must pay a ransom display organic diplomacy from below.

A fisherman told me, referring to the fishermen of Ly Son Island, "It's Vietnamese laws that limit the number [of] people who can use guns legally and people who are not allowed to bring guns with them. The laws do not allow fishermen to carry guns while fishing" (Interview 18 2016). Another fisherman said, "we are fighters without weapons" (Interview 9 2016). This non-violent character is a fundamental requirement in my definition of diplomacy. Had the Chinese fishing militia not employed the use of force, by detaining hostages and carrying guns, but only helped the construction of the artificial

islands, it would have been perhaps an effective strategy of state-sponsored diplomacy from below. Nonetheless, the non-violent tactics of the Vietnamese fishermen's resistance *vis a vis* China constitute ways of challenging the country's claim of sovereignty over the SCS, in other words, and thus displaying organic diplomacy from below against China.

From the accounts of the Vietnamese fishermen of Ly Son Island it is evident that in order to get the kidnapped fishermen back, the family of the kidnapped fishermen and the released fishermen are involved in numerous activities of negotiation and communication -- two of the three constitutive dimensions of diplomacy as we have seen in Chapter three. Sometime the families are called by the Chinese kidnappers, and they try to negotiate on the ransom or get proof that their relatives are still alive via telephone; the Chinese telephone numbers that are stated on Document 2 (Figure 6) and supposedly were the point of contact were not operational. The families and the released fishermen will also engage in numerous negotiation and communications that require persuasive skills by gathering the requested sum of money from relatives and neighbours or with Vietnamese banks by showing that they have valuable goods as their relatives and neighbours do not have such capital. Yet, the interest rate of the loan is sometimes as high as 20% (*SGTT.VN 2011* [not available anymore]*; boxitvn.wordpress 2011*).

The Vietnamese fishermen creatively employ diplomatic practices as there is an undeniable vacuum of traditional diplomacy from the Vietnamese Government, which on this matter does not engage in high-level talks or "shuttle diplomacy" with the Chinese Government enough to secure human security to the fishermen while they fish or ensure a decent treatment of fishermen when arrested or kidnapped. There is also a vacuum of help from the Vietnamese Coast Guard and from grassroots-level independent organizations

such as Trade Unions and NGOs that represent fishermen as we will see, deriving from the CPV's state-corporatist view of society.

As we see from Figure 11, the goal that the Chinese Government and the Vietnamese Government want to achieve, which in its waterfall chain of influence reverberates towards the Coast Guard, sovereignty, is oil and gas resources, and shipping lanes. In contrast, the public goods that the fishermen want to achieve are simple, yet obstructed in coercive ways: freedom of navigation, which is a principle enshrined in UNCLOS, and fish resources for subsistence.

Ethnographic Summary

This chapter unpacked the kidnapping network that has emerged during my ethnographic fieldwork of Ly Son island, discussing unpublished documents and interviews that are testimonies for alleged crimes of forced disappearance, torture and violation of *habeas corpus* in disputed waters, but that have been traditional fishing grounds for centuries.

On both sides, China and Vietnam, there is a rush to state-sponsored tourism on islands and relocating people - this latter being a homesteading directed by governmental policy. On both sides there are state-sponsored fishermen who receive incentives to fish and migrate in further waters to assert sovereignty. There are armed and military trained civilians (the Chinese and the Vietnamese fishing militia), but there are also artisanal or commercial fishermen who do not receive any form of subsidies, are not allowed to be armed while fishing, and make material and physical losses that well exceed their income and chain them to a lifelong condition of debt with their own state. These are the subalterns who display organic diplomacy from below. They struggle with creative forms

of resistance, and interrupt the chain of command of governmental orders. These are the artisanal fishermen of Ly Son Island.

Chapter 4: Diplomacy From Below of Vietnamese Fishermen

Look—what's Creon doing with our two brothers?
He's honouring one with a full funeral
and treating the other one disgracefully!
Eteocles, they say, has had his burial
according to our customary rites,
to win him honour with the dead below.
But as for Polyneices, who perished
so miserably, an order has gone out
throughout the city—that's what people say.
He's to have no funeral or lament,
but to be left unburied and unwept…

- *Antigone* (Sophocles [441 BC] 2015, Prologue)

So far the discussion has been an analysis of the network of kidnappings, and the actors involved in the political ecosystem of China-Vietnam maritime conflicts. This Chapter provides further evidence for the inductive theory enucleated in Chapter Two, focusing on the research question 'how does the environment affect diplomacy from below'. Why is there an omerta and acquiescence from the Vietnamese Government, despite their knowledge of the kidnapping network? Why does the Vietnamese Government impede the burial of fishermen's bodies who have been shot by Chinese Coast Guard and maritime militia? What explains the power of diplomacy from below of fishermen at the

international level? Might civil or human rights litigation against China, enabled by international allies, be one additional remedy for Vietnamese fishermen's plight? This empirical chapter will assess these questions.

Effects

Regime Type

The Polity Score of the University of Maryland categorizes Vietnam as an authoritarian country (tracing the trend from 1953 to 2010), giving a score of -7 (-10 to -6 corresponds to authoritarian regimes) (*Systemic Peace Vietnam Report* 2010). Worth to point out is that, according to the Polity Score, the authoritarian score of -7 has not changed since the early 1970s. In other words, since the reunification of the country in 1976, the Vietnamese Communist Party (CPV) was able to maintain a stable authoritarian regime, but with no improvements towards democracy. Vietnam is a one-party communist regime whose nature is that of a "responsive-repressive" (Kerkvliet 2010) state, as it "represses individuals and groups that it deems are threats to the country's stability or the Communist Party" (Kerkvliet 2010, 2).

Because of the focus from the Vietnamese elites on the survival of the CPV, what Kerkvliet (2010) has called a "repressive-oppressive" nature, and because of the elites' ideological ties and business ties with the Chinese Communist Party (CCP), the disjuncture of Vietnamese elite interests and the subalterns is great. Every year a plethora of visits between the CPV and CCP reinforce economic and social ties, and shows the CPV allegiance to the CCP.

This disjuncture in authoritarian countries between elite and subaltern interests is more pervasive as elites in authoritarian countries are more likely to accept profitable

business deals for themselves with foreign investors without a system of checks and balances or the possibility of being removed from their positions even if suspected, but with little regards to the long-term effect on the country. This is not to say that in democratic countries, one cannot find elites that are compromised for privatistic business deals by foreign intervention. The recent trend in the 2016 United States elections is telling. My argument is that in authoritarian countries power is more concentrated among fewer gatekeepers who seek pecuniary benefits for themselves, for their families, or for those who can keep them in power. The shared goal among Vietnamese and Chinese elites is trade relations (as we have seen in Figure 11). However, this inevitably creates a disjuncture between elites and subalterns and triggers diplomacy from below.

In contrast, Italy, because of its democratic regime type, better represents the interests of subalterns and mobilizes traditional diplomatic tools. Italy pressured the Libyan Government for the release of its fishermen of Mazara del Vallo, in Sicily (*La Repubblica* 1998*; Il Sicilia* 2017). Italy arguably did this in a way that Vietnam did not pressure China for two reasons. Italy is more democratic and more powerful than Vietnam, and China is more powerful than Libya. Thus country size and regime type are on the side of Italy, but not Vietnam, in terms of acting for subaltern interests.

Country Size (Economic and Military)

Being a small country relative to its largest neighbor, China, Vietnam, in theory, has "sought to create a multi-polar balance among five major powers - Russia, India, Japan, China and the United States" (Thayer 2016, 5), so as not to be caught in a sphere of influence and maintain independence. The main feature of Vietnam, similar to other Southeast Asian small countries (economically and militarily), has been defined as that of

hedging between U.S. and China (Hiep 2013; London 2014). Vietnam's past turbulent history with both the U.S., for the American War, and China, for being under the Chinese rule for almost 1,000 years, makes it an extremely interesting case to see its policy of multilateral engagements. Yet, in practice, as Thayer argues, "relations with China have become the key domestic driver in Vietnam foreign policy" (Thayer 2016, 7). The greater anxiety that pervades the Vietnamese Government, compared to the other maritime claimant states in the SCS, such as Indonesia or Malaysia, is due to the geographic proximity of China (Hiep 2013).

Since the introduction of the *Đổi Mới*[5] in 1986, Vietnam's economy has indeed exploded, "from one of the world's poorest nations to a lower middle-income country" (*World Bank Country Overview* 2017). State-society relations are the potential minefield that the CPV had to constantly keep in check. Thayer (2016, 3) argues that with the advent of the *Đổi Mới*, the "Vietnam(ese) mono-organizational socialist system weakened and the CPV's hegemonic grip over society loosened as a result of an explosion of activity from below by community-based organizations in the 1990s".

More recently, the workers' protests at the Chinese factories in Ha Tinh province after the positioning of the HD-981 oil rig in 2014, and the workers protests over the bauxite mining deal with China in 2009, have all been analyzed by scholars to be potential test-cases for civil society (Wells Dang 2014, 168) and constitute centrifugal pushes to the existence of the CPV.

These protests, which may constitute other salient examples of diplomacy from below and criticism against the CPV for not taking a strong stance against China's expansion, have all been repressed using police force, including dragging away of

[5] The policy of economic liberalization from a centrally-planned economy to a market oriented one.

protesters. Thayer characterizes this as an example of "unprecedented public criticism from below of the regime's domestic development and foreign policies" (Thayer 2016, 7). However, the protests of the kidnapped and harassed fishermen of Ly Son Island are pre-emptively impeded to do so at any circumstance, by a subtle system of repression, as the sensitivity is greater as we will see. In contrast, the 2016 Vietnamese fishermen protests against the Taiwan-owned steel factory that spilled toxic substances in the central coast of Vietnam, causing a mass death of fish (*Bloomberg* 2016), seem to be less repressed , as it constitutes a good outlet for the CPV to channel public anger against a country that is inconvenient for Beijing. According to Menras,

> The Taiwanese company (with Beijing f[u]nds) got (probably bought) from the local vietnamese authorities the authorisation for their activities. The central authorities are also implicated. That is the reason why the [V]ietnamese court rejected the sueing of Formosa by more than 1000 fishermen. Protesting against Formosa is protesting against the incompetence and the corruption of the authorities. It is also a protest against the growing influence of China in Vietnamese everyday life....When [I] say that the Taiwanese company received authorization for their activities [I] mean that they had officially the agreement to produce steel on that part of the sea side with the danger of a big pollution if they didn't [take] the necessary measures to avoid it. And [I] also want to say that the [V]ietnamese authorities which gave the agreement had the responsibility to control that to protect their population and their [sea] which they didn't do.

Accommodating trade deals and FDI with China (Kerkvliet 2010), which after the normalization of relations with China in 1991 have increased dramatically (*VietnamNet* 2015), has made managing China's rise extremely difficult for the Vietnamese Government. Trade between Vietnam and China has increased from $30 milllion in 1991 to $58.6 billion in 2014. China was the largest foreign investor in Vietnam in 2016 with 4,759 projects and $56.7 billion of investment capital (*VN Express* 2016).

Vietnamese concerns over China's economic influence emerged during my fieldwork. In Da Nang, some interviewees (Interview 9 2016; Interview 12 2016)

expressed concerns about how Chinese businesses are dominating the Vietnamese investments and establishments. While "othering" foreign immigrants and businesses that supposedly take away jobs from locals has been common for ages and across countries, in Vietnam anti-Chinese sentiments, due to perceived domination under the former Chinese Empire, are still pervasive among the population (Kerkvliet 2015, 218) , which ultimately reinitiates the cycle of diplomacy from below.

While China may provide trade and investment to Vietnam, anthropologist Marcel Mauss ([1922] 2016) noted, "there is no such thing as a free gift". Small developing countries, such as Vietnam, have to reciprocate by accommodating and complying with the requests of the donor country (Stirrat and Henkel 1997). Chinese economic influence reverberates in other foreign countries, particularly in small countries through $1 trillion of infrastructure aid in China's 'One Belt, One Road' initiative. The project is "often intended not to support the local economy, but to facilitate Chinese access to natural resources" constituting "China's debt-trap diplomacy" (*Project Syndicate* 2017). The bauxite mining deal with Vietnam is an emblematic example.

Vietnam's military modernization and dramatic increase in military budget spending falls within the maritime power projection goal. As part of my fieldwork among Vietnamese elites, I had the opportunity to visit Cam Ranh Bay, in South Central Vietnam, one of the three most strategic military outposts in the South China Sea. I was able to visit Cam Ranh Bay at a critical moment, four months after the inauguration of its international commercial port facility when it was seeking international business. Cam Ranh Bay is emblematic of the multi-polar approach of military foreign policy in Vietnam. After the end of the Vietnam War, Russia used the base for many years, Vietnam let dock in April 2016 two destroyers from Japan, in October 2016 the first U.S. warship since the end of

the Cold War docked , and in October 2016 China did so (*The Diplomat* 2016). Being a small country with limited military budget spending, Vietnam is seeking to build multi-defence partnerships, yet with the unintended consequence, of increasing the risk of foreign influence.

Due to its small size, economically and militarily, Vietnamese elites are in part aligning with the source of danger for their own self-preservation and benefit.

Foreign Intervention

The effect of having an ally or an antagonist in the international arena, for efforts of diplomacy from below, is of paramount importance to the outcome of subaltern claims.

If the foreign country, in this case China, adopts a benign approach towards subalterns, then their claims are amplified. Yet the pro subaltern intervention from China is more charm offensive than working class solidarity. China's non-commitment to human rights is considered by many scholars as the most non-appealing side of its soft-power. The engagement in anti-piracy missions in Somalia with the EU and NATO, and the establishment of its first first overseas naval base in Djibouti, has been seen by some analysts as part of the effort of China to promote a shift in its image of "contribution to regional security and development" (*Reuters* 2016), while at the same time serving its national interests of moving in the direction of shifting the alliance system and advancing its 21st Century Maritime Silk Road, rather than being driven by genuine interests. Similarly, by signing an agreement with Vietnam to establish a hotline "to deal with fisheries incidents" (*Xinhua* 2013), China is effectively executing soft power while its hard power is utilized to cause those incidents without media attention. While this hotline

is an important step towards cooperation, it has never been mentioned in my interviews with Vietnamese fishermen, who appear unaware of its existence.

If the foreign country with influence, in this case China, is against subalterns, and is able even to influence the domestic policy of the country that should have an interest of protecting its own citizens, then the subaltern claims are hampered. In Vietnam this influence is evident. The international news and academic research on the harassed Vietnamese fishermen are limited in their scope and most importantly, the network of kidnappings of the Chinese has not been fully unpacked publicly, probably because of resistance by the Vietnamese Government for fear of galvanizing the Vietnamese population.

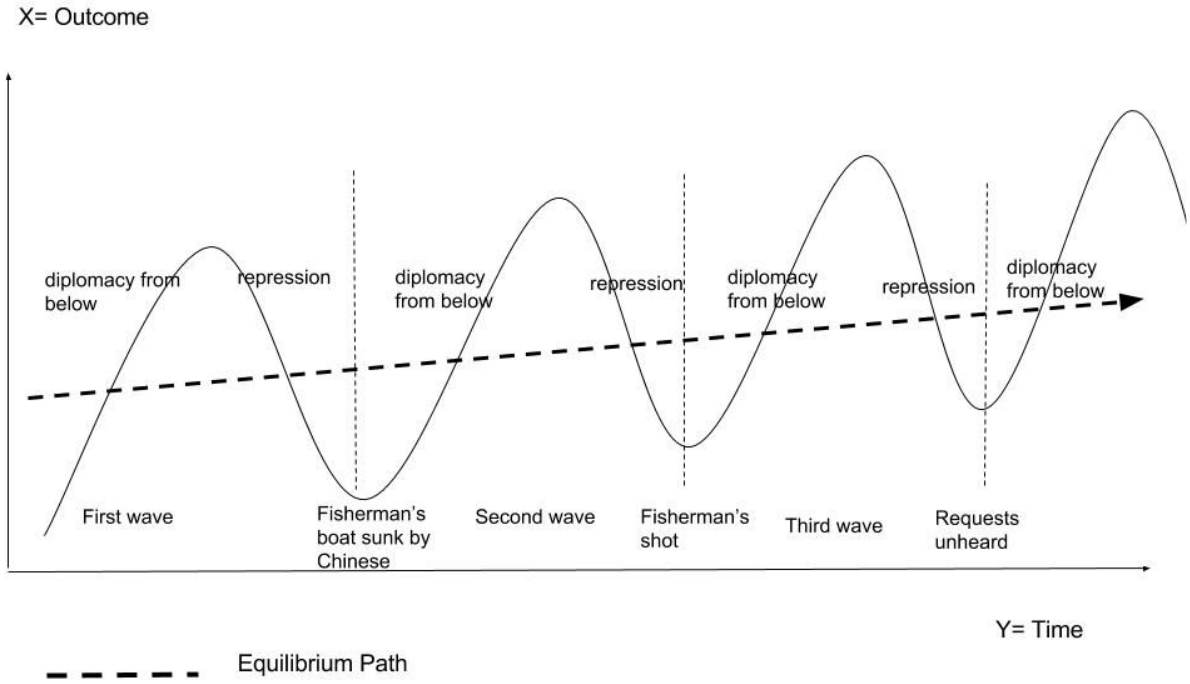
The documentary of Menras (2011) is one exception of maintaining a principled independence, yet while it was welcomed to be displayed around Vietnam under the previous administration of Prime Minister Nguyen Tan Dung, it is now prohibited to be shown in Vietnam and struggles to be displayed in numerous cities of European countries after the venues where they are reserved receive informal calls from Chinese Government representatives. For instance, the mayor of Montpellier in France refused to allow Menras to show his documentary so as not to compromise wine exports to China. Menras says that the "mayor was in Israel at that moment but her assistants said they could not attribute the room for international events because the film 'put in conflict two culture'" (Menras Interview 21 2017). In Leipzig, Germany, a similar situation occurred where auto exports to China were informally dissuaded by the Chinese Embassy, and the City decided to oppose showing of the film (Menras Interview 21 2016). This is symptomatic of a growing Chinese influence even in Western countries, who also are wary of compromising trade relations with China (Menras Interview 21 2016).

Equilibrium Cycle

Vietnamese fishermen's diplomacy from below is affected by a an authoritarian regime, a counter-subaltern intervention and small country size (economically and militarily), leading to an equilibrium cycle of repressed diplomacy from below with gradual increases in subaltern conditions (See Figure 12). The short-term cycle of diplomacy from below and repression masks a static or slightly improving equilibrium path that in my fieldwork has shown gains, but never fully lifts the subaltern fishermen out of their subaltern status. In the following we explore each component of the wave of the cycle of diplomacy from below: first an unbearable situation in the trough of the cycle that leads to an upward trend of diplomacy from below, until it reaches the crest of the cycle when repression is deployed by the Vietnamese Government to decrease its level.

Slight gains can be seen in the equilibrium path in the case of my fieldwork, for example the ending of kidnappings, likely due to organic diplomacy from below by fishermen, for example releasing information to internationals and negotiation with Vietnamese and Chinese authorities, as well as state-sponsored diplomacy from below, for example the founding of the nonviolent parts of Vietnam's maritime militia. These actions led to international media coverage that was effective -- as evidenced by Chinese diplomacy in France and Germany to get that media coverage shut down, and by China's ending of the practice of kidnapping in 2014.

Figure 12. The Equilibrium of Diplomacy from Below in a Small Authoritarian Country with Counter-Subaltern Foreign Intervention.



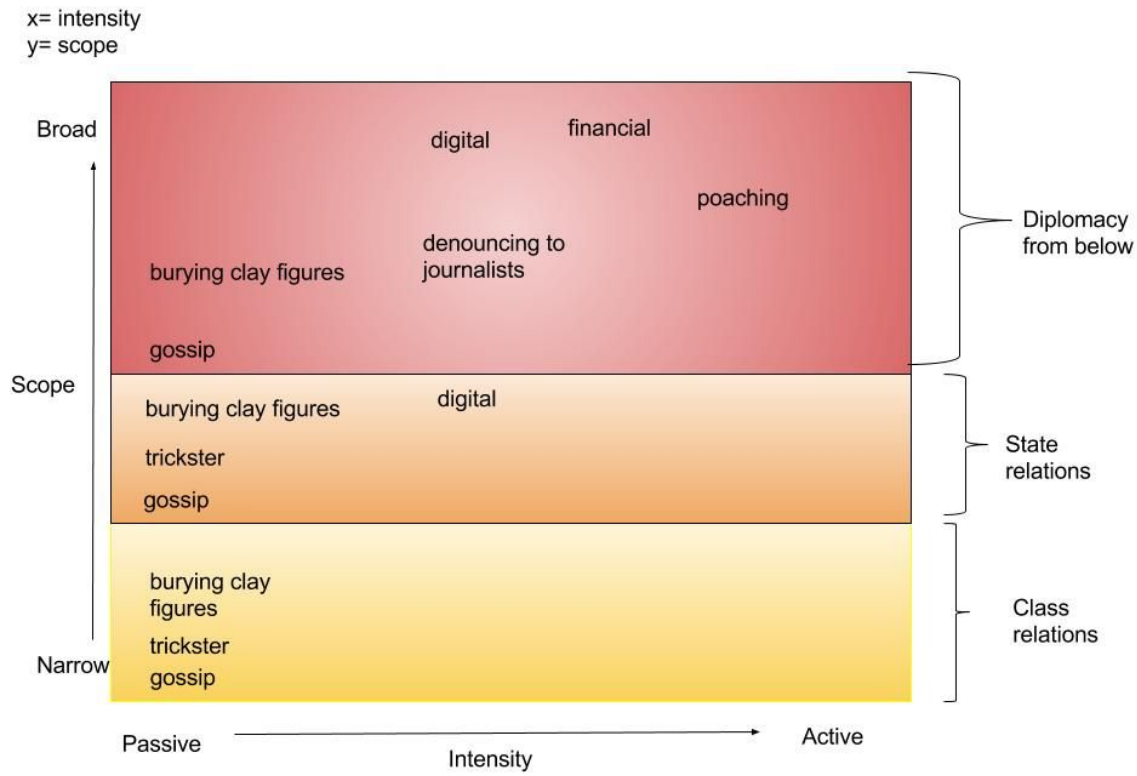
Upward Slope of Wave: Diplomacy from Below

This chapter's epigraph is from Antigone, the eponymous Ancient Greek character of Sophocles's tragedy, who struggled against the despot Creon's edict not to bury her brother, Polyneices. ([441 BC] 2015, Prologue). Antigone now symbolizes resistance, for example at the onset of Nazism in the 1930s in a work by Bertolt Brecht (1948). Antigone contravenes Creon's edict and buries Polynices' brother in secret. The play could be reenacted with Vietnam as a backdrop.

Vietnamese fishermen and the widows of those who do not return must face a resistance scenario similar to that of Antigone: the Hoang Sa flotilla people, those Vietnamese seafarers from the West part of Ly Son Island who died in the Paracels defending Vietnamese sovereignty during the 19th century, are buried and worshipped in traditional festivals on Ly Son Island district with a big gathering from fishing communities every year. However, another destiny is reserved for the fishermen who are now shot by the Chinese Coast Guard: because of an informal edict similar to the despot Creon from the local authorities and the Vietnamese, some fishermen have to be buried in secret during the night in a small ceremony with the Coast Guard watching (Interview 18, 2017).

In Figure 13, which reprises the Tactics of Resistance of Chapter 2, are plotted the empirical findings of resistance of my fieldwork. The two dimensions to assess resistance are i) intensity on the x-axis and, ii) scope of resistance on the y-axis. Vietnamese fishermen resist at three levels: i) class relations (local authorities and informants), ii) state level (as exemplified by the ban of burying an assassinated fisherman by the hand of Chinese while fishing), and iii) international level (Chinese Coast Guard, Chinese maritime militia).

Figure 13: Tactics of Resistance of Vietnamese fishermen on Ly Son Island.



1. Poaching

Poaching has been an active way of expressing discontent against powerholders for centuries: from the peasants who were poaching in the king's or landowner's private land as exemplified by the still widely popular English Geordie ballad, the peasant who stole three deers on king's land and was sentenced to death, and by many numerous global folkloristic. Similarly, Vietnamese fishermen consider the SCS their Commons, while all claimant countries attempt at enclosures and charge fishermen with IUU (Illegal Unreported and Unregulated fishing). Scott (1985) positioned poaching on the passive side

of the spectrum as we saw in the graph plotted in the theory chapter. Yet in contrast with Scott, Vietnamese fishermen see poaching as an active and broad tactic to express discontent against the powerholders. Poaching in the SCS is actively risking one's life for sustenance and to communicate discontent.

2. Financial

Paying ransom to kidnappers is a form of repression by China, but it is not giving up to the aggressors. Vietnamese fishermen experience a vacuum of traditional diplomacy and thus have to resort to this tactical retreat. The fishermen employ creative and communal ways to find the requested sum of money as described in the previous chapter. Usually, in the international arena when hostage takings from terrorist groups happen, communication and negotiation happen, as well as high-level diplomatic talks, as in the case with the Italian fishermen. When negotiation and communication fail, sovereign states will often pay the ransom to the terrorist group as following their duties to protect their own citizens. In the case of Vietnamese fishermen, they usually must find ways to pay the ransom themselves.

3. Digital

Social media platforms allow anonymity while having potential reverberating effects globally. Disguise is one of the most effective tactics that subalterns have in their arsenal of non-violent weapons. Social media is not widely used in my case, because many fishermen lack physical means such as smartphones. Yet when utilized, they are paradigmatic examples of digital resistance and what could be considered a form of disguised "cyber diplomacy from below", such as online publication of the letter of

fisherman that escaped from Hainan (*SGTT.VN 2011* [no longer available at that site *boxitvn.wordpress 2011*), in which the lack of support from the Vietnamese Government was harshly critiqued. This has been published anonymously. Other cyber diplomacy, such as anonymous blogs critiquing the Vietnamese omerta and soft stance on the Chinese harassment of fishermen (see for example *boxitvn.wordpress.com*), are effective ways of expressing discontent and have the potential to obtain global attention. The main limitation is that, as of now, they are written in Vietnamese, and many times are censored or experience cyberattacks, most likely by Vietnamese or Chinese Government hackers.

4. Open Denunciations to Journalists

After a Vietnamese boat was sunk by Vietnamese, in what has been left as purposely mysterious circumstances by local authorities, a woman said in front of local and one international journalist that Vietnamese fishermen were ready to bring the case before a court (Interview 7 2016). That did not get published in the local media. If they followed up on her story, they would have found that she later received a visit from local authorities, who dissuaded her to continue her battle.

Hereafter I analyze diplomacy from below in the context of my fieldwork and Scott's 'everyday resistance' (1985).

1. Wind Graves

These are some of the most peculiar tactics of resistance on Ly Son Island, both against the state level and against China. Widows of fishermen who have not returned from the sea, under what they call wind graves (*mo gio*), bury a clay figure in a ceremony

representing the body of the dead fisherman at sea. They are a unique feature of Ly Son Island not found anywhere else in the world (Menras Interview 21, 2017) to my knowledge. The practice resists the local authorities' attempts to hide the burying of bodies of killed fishermen by China, so as not to escalate anger. Similar to Antigone's defiant act of burying her brother by contravening the order, the burying of clay figures insinuates a critique of power, while being at the same time highly powerful communicative acts that display grievance.

2. Gossip and Character Assassination

Gossip and character assassination are tactics of resistance for subalterns that allow a critique of power while being protected under the shield of anonymity (Scott 1985). My fieldwork on Ly Son Island was probably made possible thanks to many little noncompliant acts of fishermen, and by not being reported in numerous situations when I was asking sensitive questions. The openness of gossiping against the lack of help from the Government and sharing all the anecdotal stories that the fishermen lived themselves, was itself indicative of fishermen's resistance and dissatisfaction with the current situation.

3. The Trickster

On the boat to Ly Son Island, a small TV was entertaining the passengers with comedian acts of the Vietnamese traditional folklore, generating laughter among the fishermen. The cunningest traditional Vietnamese mask character that generated the greatest bursts of laughters was *Chú Tễu* (literally meaning uncle laughter), the petite servant boy who always finds ways of tricking and disobeying his boss, and afterwards dissimulating it.

Popular fascination with tricksters and bandits evoke a subversion of the hierarchy and have been for centuries a recurring literature archetype of many cultures and traditional theatres, while powerfully critiquing the powerholders (Scott 1985; 1990). For instance, Harlequin, a traditional mask of the Italian theatre, has the same features of the trickster *Chú Tễu*. The theatre itself is one of the 'anti-hegemonic sites of resistance', together with markets and pubs (Scott 1985; Bakhtin ([1965] 1984).

When I asked a fisherman why he was laughing, the reply was that "He makes fun of the vexive bosses [] of the order []. He is a symbol for us". Mikhail Bakhtin ([1965] 1984), in his important work on semiotics, focuses on the interconnections between ethics and aesthetics. He and Scott have analyzed sites of anti-hegemonic subversion of order typical of celebrations such as Carnival in which the "parody, ridicule, blasphemy, grotesque" of the powerholders are allowed (Scott 1985, 120). Similarly, *Chú Tễu* and other folkloristic characters such as the Harlequin, allow degrees of freedom in the everyday lives of subalterns while being a political voice under disguise.

In Figure 13 we see that some tactics of resistance can be found on all three levels: burying clay figures representing the bodies of the fishermen who have not returned is an individual form of self-help against the local authorities (second level), but also against China and raising awareness to the international community by showing the emotional grief on a documentary (third level); gossip against the local authorities and the state level who do not give compensation (first level), and also gossiping and character assassinations of the kidnappers by portraying them as ruthless to researchers who can report that to independent international media outlets (resistance against the international level, China).

Yet, those tactics of resistance located at the international level, because they involve the fishermen's resistance against a particularly vexing foreign policy (the

harassments and kidnappings of fishermen by China) constitute diplomacy from below; they occur across the entire spectrum from passive 'everyday resistance' analyzed by Scott to the active, and constitute subaltern ways of rallying support, co-opting allies (foreign or local journalists and activists) and thus promoting their cause. This is greatly needed and effective based on evidence from my fieldwork. There are no other grassroots-level trade unions or fishing cooperatives that effectively represent subaltern fishermen, and who could support and amplify the requests of fishermen to the state or international level. Rather, such trade unions and cooperatives only have a symbolic role in Vietnam. In my interviews with fishing cooperative representatives, only the organization of festivals for fishing communities, such as the Hoang Sa Flotilla, was mentioned.

In another of my interviews I was told by a Vietnamese, "Officially, Vietnamese Fisheries Society represents fishermen's rights, but their voice is not independent. There are no independent NGOs in Vietnam that only focus on advocating for fishermen's rights" (Interview 16 2016). Also this quote from a Vietnamese newspaper is revealing of the state-sponsored and contradictory nature of Trade Unions in Vietnam. "Employees have staged strikes recently to demand employers meet their rights and interests. However, the number of strikes has fallen considerably thanks to Trade Union intervention" (*Talk Vietnam* 2017). Again, operating under the umbrella of the CPV is due to the state corporatist view of society of Vietnam. Similar to the Vietnamese Coast Guard, Trade Unions have more of a repressive role in Vietnam, and keep potential threats to Government stability in check, rather than advancing subaltern claims.

Important to note is that open acts of resistance, for example nonviolent direct action forms of discontent (protests, sit-ins, strikes) analyzed by Tilly (2006), do not

appear in the third level of the graph, the diplomacy from below level, because as Scott argued (1985; 1990), subalterns are aware that open defiant acts would lead to tougher repression from the superordinate classes. Conversely, making use of informal networks and hidden forms of resistance under the radar of the elites, is a more successful strategy (Scott 1985, 1990). However, such activities are utilized by the state through state-sponsored diplomacy from below, for example against Chinese oil drilling in the Vietnamese EEZ. Likely due to the threat to oil revenues, which are highly important to the Vietnamese Government and elites, this Chinese challenge got more government attention and support as compared to the challenges faced on a daily level by Vietnamese fishermen.

Downward Slope of Wave: State Repression

The fishermen are resisting not only the Chinese, the third level of the graph of Tactics of Resistance (Figure 12), but also the Vietnamese local authorities and the state level (the first and second levels of the graph), as the CPV policy gives big concessions to Chinese policy. The 'everyday resistance' against the local surveillance system is multiform as we have analyzed. The repertoire of repression is both open and hidden, efficaciously creating powerful boundary marks that stabilize the authoritarian system.

All information that fishermen of Ly Son island are considered to be in possession of, is highly sensitive from the Vietnamese Government's perspective. Every Ly Son island fisherman has to submit a report to the local authorities in the unlikely possibility that an unaccompanied researcher or journalist asks questions as simple as concerning their livelihoods. Local informants follow and update the Vietnamese authorities about the movements of curious journalists or researchers. The wide and pervasive national network

of local informants and a system of 'neighborhood watch'(Hayton 2010, 68-73) is a highly sought after and implemented tool by the Vietnamese Communist Party, that wants to keep a close eye on any possible destabilizing activity. When sporadically a voice stands out and tries to denounce the situation of the fishermen to bring the case before a court or foreign journalists, as we have seen in the case of one woman, a visit from local authorities will deter any follow-up.

Unchaperoned contact between fishermen of Ly Son Island and researchers or journalists are rare. Vietnamese people on vacation try not to mingle with the fishermen, in order try to avoid any potential minefield that has to do with politics, despite praising the fishermen for their bravery of confronting the Chinese (Interview 14 2016).

Moreover, the fact that journalists are accompanied by local authorities, results in tangible and powerful reminders to the fishermen about their precarious civil liberties and the surveillance system for which they are one focus. On Ly Son Island "fishermen experience a police system" (Menras Interview 21 2017). Similarly, in the Malaysian village where Scott conducted his fieldwork, the struggle of peasants against the landowners was accompanied by a routinely repressive system that shaped their behaviours: "an arrest here, a visit from the Special Branch there, an indirect warning from the head of the [local authorities] are all that is normally needed to create boundary markers that no wary peasant would deliberately breach []. What is at least clear is that these boundaries [] serve to inhibit certain forms of open protest and defiance" (1985, 277).

Given the repertoire of this routine repression, it is not surprising that nearly all of my contacts, both fishermen and Vietnamese citizens with close knowledge of the topic, to whom I asked follow up questions, have disappeared and stopped replying to messages.

This has also been a trend widespread among the elites, diplomats and Minister of Foreign Affairs (MOFA) employees who originally gave me consent to be interviewed in person. This had methodological implications that I have addressed in the introduction. Five members of the MOFA following the SCS closely that I interviewed told me that, supposedly, they were not aware of the kidnapping network. One member who asked to stay anonymous (Interview 19 2016) told me, in what must be feigned ignorance, "When these incidents happen, high-level talk occur to have the fishermen back. They do not have to pay a ransom".

Table 3: Tactics of repression of the Vietnamese Government on fishermen of Ly Son Island (2016)

Hidden	Open
Threat to remove means of subsistence (fishing licences)	Use of security forces (Coast Guard)
Visits to non-compliant fishermen	Trials
Asking to submit reports	Jail
Use of local informants and of the surveillance apparatus	No independent trade unions or NGOs
Stopping to pay minimal compensation for ransoms	Cyberattacks and censorship against dissident blogs, social media pages and documentaries

Triggering Event: Restarting Diplomacy from Below

When the situation is unbearable, which is the trough in the curve of diplomacy from below as shown in Figure 12, the diplomacy from below starts again more vehemently in a new wave. Unbearable events that start diplomacy from below are for example the case of Chinese vessels shooting and sinking a Vietnamese boat in 2006, after which the Vietnamese woman tried to denounce the situation to foreign press. Another unbearable event that has triggered a second wave of diplomacy from below in 2014, was open and defiant protests against China that took place in Hanoi and in other cities in front of the Chinese Embassies, after the positioning of the Chinese HD-981 oil rig. Yet the equilibrium of diplomacy from below of a small authoritarian country, greatly open to foreign influence and with malign intervention from a foreign state, is a continuous cycle of repression and of diplomacy from below. This cycle, as shown in Figure 12, has a gradual path of improvement based on subaltern resistance. I find evidence in my fieldwork for all elements of this cycle, including improvement (for example the end of kidnappings after 2014), which is discussed below.

Equilibrium Path: Diplomacy from Below And Subaltern Improvements

Despite the efforts of diplomacy from below of fishermen of Ly Son Island that restart after being repressed, the situation only very slowly improves for them. The equilibrium is

simple: a relatively constant diplomacy from below, which is partially or fully repressed, but leads to gradual improvement along an upward-trending equilibrium path.

Whenever I talked about the human rights abuse and racket of kidnappings that the fishermen of Ly Son Island endure, even to South China Sea experts, the first reaction was to think that the kidnappers are an organized form of criminal activity similar to the Somali pirates' hijacking and taking hostages in the Gulf of Aden. Yet, this is exactly the kind of narrative that the Chinese and Vietnamese Governments want the international community to believe. The Vietnamese elites make sure that the voices and requests of fishermen remain unheard and do not reach the international community, by dissuading the fishermen themselves and censoring their struggles in international fora.

The SCS Conference in Nha Trang is an anecdotal experience that represents the repression aspect of diplomacy from below: while the point of implementing humanitarian assistance to the fishermen was raised by one person at the end of the Conference, the Chairman and many other Vietnamese Government attendees quickly asked to drop the point and urged not to include it in the final joint submission document. Moreover, no Vietnamese fisherman has ever been invited to testify at a SCS conference in Vietnam. Thus the equilibrium is an omerta from the Vietnamese Government on the human rights abuse of fishermen, while the fishermen remain, as one activist has pointed out to me, the "unheard little guys" (Interview 17 2016).

Expected Effect Of Changing Variables

If domestic or international variables change, such as Vietnam becomes a democratic country, or China starts benign support of Vietnamese fishermen, diplomacy from below of the fishermen could have a bigger effect. It would be easier for fishermen to

organize and protest in a democratic Vietnam, and if China used its influence on Vietnam to encourage positive policies for Vietnamese fishermen, the effect of fishermen's diplomacy from below would in theory increase. These are, however, just hypotheticals at this point for Vietnam. However, they could be tested by looking at the effect of benign aid agencies in other more democratic countries, for example the Philippines.

I do not claim to have included all possible variables in this study. Other variables that should be studied and likely have an effect include: foreign NGO or international governmental organization assistance, for example assistance to the Vietnamese fishermen from the UN, and foreign help from independent NGOs, or international activists. If this were the case, Vietnamese fishermen and benign foreign actors could form a Transnational Advocacy Network, which would be a powerful nonviolent tool. We have seen that limited international advocacy by Menras may have stopped the kidnappings in 2014, and was at least enough to draw the attention of Chinese government representatives in France, Poland, and Germany. The cyber diplomacy of fishermen may also have an effect on the Vietnamese Government's domestic policy and that of China. On the other hand, if the fishermen are isolated from activists or Facebook, for example, piracy should be expected to increase.

I recognize that the the term 'elites' may be perceived as too generic. I borrowed it from Scott and Spivak (see Chapter 2) and use it in that theoretical framework. I did find evidence in my interviews for corruption, elites being compromised, and acceptance of private business deals that affect Vietnamese foreign policy towards China.

The CPV is not monolithic, and there is elite factionalism in Vietnam: reformists are in favour of a two-party system, democratization ties with the West and shifting away from China. General Giap, who conducted the military operations during the Vietnam

War, is an emblematic example of a critical voice inside the CPV that is protesting against China's bauxite mining in Vietnam. Previous Vietnamese President Nguyen Minh Triet gave Menras the permission in 2011 to film the documentary, encountering opposition within the CPV (Menras Interview 21 2017). Those who support continuation of one-party rule and a close alliance with China, on the other hand, are typically enmeshed in business deals with China according to some of my interviewees (Menras Interview 21 2017).

Empirical summary

China's 'One Belt, One Road' initiative is effective in influencing the domestic politics of a small economic and military country such as Vietnam by investing in infrastructures projects, signing business deals and other FDI projects. As long as the shared goal among Vietnam elites is prioritizing business deals and not representing their own citizens, Vietnamese fishermen have two governmental malign effects that try to repress their claims. Vietnamese fishermen counterbalance these effects with unsystematic, covert ways of resisting.

A fear of trespassing China's 'core interests' that the SCS represents, and of losing trade deals, has the effect of repressed diplomacy from below, for example empty "wind graves" without the bodies of Vietnamese fishermen, and censoring fundamental freedom of expression by impeding Menras' documentary in European cities. Despite these negative effects of the environment on the diplomacy from below of Vietnamese fishermen, a positive marginal upward trend in the equilibrium path of diplomacy from below can be noticed: since 2014, the kidnappings that started at least as early as 2009 have stopped. This is most likely due to organic diplomacy from below, including continued fishing, local exposure to international researchers, and cyber diplomacy, that

led to limited international advocacy in Europe, and a change or imposition of policy from Beijing.

Conclusion

> Those [the Chinese kidnappers] are military Government people []. Yet to me are like pirates.
>
> - Ly Son Island fisherman, 2016

> Justice being taken away, then, what are kingdoms but great robberies? For what are robberies themselves, but little kingdoms? The band itself is made up of men; it is ruled by the authority of a prince, it is knit together by the pact of the confederacy; the booty is divided by the law agreed on. If, by the admittance of abandoned men, this evil increases to such a degree that it holds places, fixes abodes, takes possession of cities, and subdues peoples, it assumes the more plainly the name of a kingdom, because the reality is now manifestly conferred on it, not by the removal of covetousness, but by the addition of impunity. Indeed, that was an apt and true reply which was given to Alexander the Great by a pirate who had been seized. For when that king had asked the man what he meant by keeping hostile possession of the sea, he answered with bold pride, "What thou meanest by seizing the whole earth; but because I do it with a petty ship, I am called a robber, whilst thou who dost it with a great fleet art styled emperor.
>
> - *The City of God* (Augustine [426 AD] 2009, Book IV, Chapter 4)

Legal Issues

These two quotes are entry points for our discussions on the legal issues that the Vietnamese fishermen, who have been victims of a transnational tort involving hostage taking and torture, would face were they to take China to court. As highlighted by the above quote of the fisherman, the human rights abuses of torture, hostage taking and forced disappearance, are physically enacted by Chinese security forces, whether the Chinese Coast Guard, or more likely, the Chinese fishing militia. As anticipated in Chapter 3, in my interviews with the fishermen and from the retrieved documents that I

analyzed as having emerged, the kidnapping network is not merely having unintended consequences of bold robberies for private ends by some Chinese actors similar to pirates, but rather committed as part of a wide state policy against a foreign civilian population for which Hu Jintao, as the sitting President of China at the time of the kidnappings, was arguably complicit and could be held liable by a foreign court. The seals affixed on the retrieved documents by the Zhong Sha Fishing Administration, the detentions on Woody Island or Hainan Island and the fines, go through the Bank of China. These are all Beijing's official measures, which have been implemented on the basis of "committing serious violation against 'China's Fishery Law' (Document 3).

First, there is a problem of access to justice for marginalized groups such as subalterns, whose claims are buffered by their own governments, with the effect of not reaching international courts. The plaintiffs, the Vietnamese fishermen, are non-state actors yet suing a state actor, Hu Jintao. It should be possible from a normative human rights perspective. Initiating a criminal proceeding that seeks to bring justice to Vietnamese fishermen is far from being an easy task: the practical accessibility to justice (Francioni 2007) is cemented at a theoretical level. In international law the right of individuals to obtain access to justice is formally recognized in the Declaration of the High-level Meeting on the Rule of Law, yet in practice member states fail to implement. Marginalized individuals face numerous constraints from the starting point to press charges before an international court, as charges can mostly only be brought by states against states.

As Terri Marsh, Executive Director of the Human Rights Law Foundation, has put it, "The key regarding the defendants has to do with jurisdiction. A court must have jurisdiction over a defendant and that is a major hurdle in cases involving foreign actors"

(Marsh Email 2017). It is harder for non-state actors to find an international court where jurisdiction can be claimed over the domestic matter: the International Court of Justice (ICJ) is the principal judicial organ of the United Nations where only states members can sue other states, while the International Criminal Court (ICC) is the permanent court, independent of the United Nations, that prosecutes individuals. The ICC would be the most appropriate international body for suing an individual, yet it requires a state to initiate the criminal proceeding. Given the acquiescence of the Vietnamese Government in the CCP state-sponsored human rights abuses perpetrated on fishermen, and the vacuum of traditional diplomacy and lack of representation of the Vietnamese fishermen issued by trade unions and NGOs, it is an improbable scenario that the charges of fishermen will be brought by states[6] or by a domestic Vietnamese NGO to international courts such as the ICJ or the ICC.

The second legal issue concerns universal jurisdiction and state immunity. Piracy has been recognized as an *erga omnes* crime, meaning that "jurisdiction over a piratical act is vested in all states" (Elleman *et al.* 2010, 21). From the existing international law, pirates are considered enemies of every state (*hostis humanis generis),* thus can be prosecuted by any state. The reality is that international law gives more tools to prosecute small criminals, like Chinese fishing militias or pirates, than powerful perpetrators of atrocities. By sueing Jintao there is the problem of state immunity that state officials enjoy. While there have been some past cases that have successfully sued state officials such as Augusto Pinochet in 1998 or the Sudanese President Al Bashir in 2009, both sued before the ICC, the fishermen's case would present the additional problem of

[6] Lindblom and Anna-Karin (2005, 219) notice that "Apart from states, only the UN General Assembly, the Security Council and other organs of the United Nations and specialised agencies may request the Court to give an advisory opinion". Yet the Security Council mechanism would be impracticable as it would be blocked by the veto of China.

demonstrating liability of Jintao, and of demonstrating that the order came from Jintao and then regressed the chain of command.

It is paradoxical then that the current universal jurisdiction in which any domestic state court can prosecute petty criminal acts such as piracy, but not the comparatively more destructive acts of authoritarian leaders and other governmental criminal perpetrators, who commit atrocities but notwithstanding are protected by state immunity before international courts such as the ICJ and their domestic courts. This leads us to a moral conundrum: as St. Augustine has argued ([426 AD] 2009, Book IV, Chapter 4), from a normative philosophical perspective, states without justice are little different than armed robbers and pirates. Pirates can be prosecuted by any state, as they are considered by the current legal doctrine as an enemy of humanity. The case of Vietnamese fishermen's diplomacy from below is that of being robbed by armed Chinese Governmental officials or militiamen who have little regard to ensure a minimum standard of human rights dignity to those Vietnamese fishermen who are arrested.

One possibility for suing China would be to challenge the current definition of piracy and enlarge it so as to include the case of state-sponsored piracy. The definition of piracy by UNCLOS currently puts nation-states outside of its scope, in other words by not envisaging the possibility of state-sanctioned piracy. But Italian fishermen's trade union representatives and diplomats have vocally accused Libyan militias of aggressions and ransom taking, calling them acts of piracy (*Il Sicilia* 2017).

Vietnamese fishermen cannot sue Jintao for state-sponsored piracy, which would have been perhaps the best way to describe the current international tort, and would have been an effective way to bring the case to another foreign domestic court. The masking of the hostage taking as vague or non-Chinese piracy in the Vietnamese media gives China a

foothold and impunity in international courts, as it diverts public attention from piracy as state policy. The hostage taking and beating happening on contested islands, such as Woody Island, is an extraterritorial use of force outside of normal legal jurisdictions, a legal fiction similar to Guantanamo Bay, Cuba. A critical debate on the idea of universal jurisdiction over governmental human rights perpetrators should clearly be pursued.

Third, it is important to "secure evidence of the elements of the crime sufficient to meet the criminal standard of proof – or a reasonable chance that such evidence can be secured via a criminal investigation" as international human rights lawyer Daniel Machover has highlighted (Manchover Email 2017). Evidence of torture, ill-treatment and forced disappearance on a systematic scale of the fishermen, such as medical bills of the physical disabilities that some fishermen have to bear are hard to retrieve given the CPV surveillance system and tactics of repression.

The "non-exhaustive chronology of aggressions" created by Menras estimates around 2,000 incidents (*Memoires d'Indochine* 2014*)*. Despite this systematic human rights abuse of the fishermen, it is going to be hard to retrieve documentation of the register of the number of incidents, ransom and damages maintained by the Vietnamese Coast Guard. These are tightly held according to Menras (Menras Interview 21 2017) . Vietnamese government visits to the fishermen's houses, and other tactics of repression on diplomacy from below that we have seen in Chapter 4, have a chilling effect that dissuades fishermen from presenting hard documentation. In the previous chapter we have seen that even the attempt of a Vietnamese woman to denounce the situation that Ly Son Island fishermen face to a group of international journalists, was immediately repressed by the local authorities.

The following lines are illustrative of the discussion of the problem of formal and substantial access to justice, respect of rule of law and of cracking down on human rights, by a Vietnamese boy whose family is mostly made of fishermen who have been kidnapped and harassed (Interview 10 2016).

> I can tell you that it is a dream, bringing the case to a U.S. Court and sue China. The fishermen cannot seek for help from the local authorities or even Vietnamese Government, thus they keep silent. This is what Vietnamese hate the most, myself included. It is not fair and equal like any Western countries, that is what we have to bear. You can call the police, call the lawyer do everything to protect your right, human right, but in my country sometimes because I am just nobody, I have no voice.

This quote is also illustrative of the subalterns' awareness of the opportunities that they would have in seeking justice if Vietnam applied fairness and equality as a guiding principle of its rule of law, and if the universal human rights as underpinned in the Universal Declaration of Human Rights Charter and as grounded on a natural law doctrine (see for example Locke [1689], 1998) were respected.

South East Asia greatly lacks a regional Court of Human Rights. In contrast, other regions have already adopted it, such as the European Court of Human Rights, the African Court on Human and People's Rights and the Inter American Court of Human Rights. The only human rights regional legal instrument that exists in South East Asia serves the political interests of states: The ASEAN Human Rights Declaration has numerous limitations and "undermines, rather than affirms, international human rights laws and standards. The document is a declaration of government powers disguised as a declaration of human rights" (*Human Rights Watch* 2012*)*. Indeed, there is no mention of universal human basic rights, such as the right of freedom of association or the right to be free from forced disappearance, and there is no mention of the right to access justice, which is restricted in the document on the basis of protecting states' national interests.

In the drafting process of the ASEAN Human Rights Declaration, civil society actors were excluded (*Human Rights Watch* 2012). It is worth noting that the Chair of ASEAN in 2012, the year when the ASEAN Human Rights Declaration was drafted, was Cambodia. Cambodia, similar to Vietnam, has geographic and political proximity to China, and is a relatively small (economically and militarily) country. Some ASEAN diplomats that attended the drafting mentioned that China was economically able to influence Cambodia to have a weaker ASEAN Human Rights Declaration (*Radio Free Asia* 2011*).*

Legal scholarship in support of the cultural relativism of human rights (see for example Donnelly 1984) may see this as a light omission and would likely argue that the influence of China on the ASEAN Human Rights Declaration is an expression of "Asian values". The basis on which the universal value is dismissed by the relativist human rights scholars and "Asian values" defenders is that the "West, which is seen as imperialist, created human rights" (*Demystifying Human Rights in Asia,* 4) and are irrespective, for instance, of the Confucianist system based on family rather than on the individual. Yet, the problem with the concept of relative universality of human rights is that it serves mostly a "strategic essentialism" (*Demystifying Human Rights in Asia, 5*) for sovereign state bodies to advance their national interests while violating human rights and enjoying impunity from the international community. This is the current situation of Vietnamese fishermen and of a myriad of other subalterns globally. The relative universality of human rights ends up creating for states a powerful "form of reverse orientalism" (*Demystifying Human Rights in Asia,* 7-10*),* which is ultimately a form of "occidentalism", in which the East fictionally represents the West (Buruma 2004).

This is not to deny the importance of cultural relativism, which anthropological scholarship, by enquiring into the vernacular knowledge system of the studied population, seeks to bring to the attention of other disciplines. We have seen how important it is for Vietnamese widows to bury figurines of lost fishermen's corpses, dead at the hands of what they expect to be China's state-sponsored piracy. We have seen how their natural law clashes with the positive law of the Vietnamese Government. My argument is that the discourse of a relative universality of human rights has been constructed by elites to serve interests that are contrary to their own populations at the human level of the subalterns.

If we were to ask more subalterns, the very people who daily experience injustice, whether they would prefer a setting in which universal or relative human rights were granted, the first would almost universally be chosen. Subalterns that I interviewed do not hold the view of a relative universality of human rights. It simply does not help them to press claims and seek justice before a court, knowing their disadvantaged position and continuous repression of diplomacy from below. Vietnamese fishermen, by saying that Vietnam is not "fair and equal like any Western countries" (Interview 10 2016), appear to prefer a commitment of the Vietnamese Government to universal human rights.

As long as a relative universality of human rights view is extant, subalterns will be the the main victims. At the current status of affairs - with a problem of access to justice to international courts for subalterns, an universal jurisdiction granted over pirates but not for governmental human rights perpetrators, and Vietnam's strategic discursive promotion of the relative universality of human rights - the equilibrium, from a legal point, is once again a repressed diplomacy from below, where Vietnamese fishermen's claims for reparative justice are hampered by the top level, but slowly progress through mobilization and publicity.

As James Kraska, Professor at the U.S. Naval War College, has argued, "The human rights angle is the 'lost dimension' of the South China Sea, as the EEZ was created to preserve subsistence fishing rights and thwart distant water poaching, which is what China is doing at Scarborough and elsewhere" (Kraska Email 2017). From my fieldwork has emerged that China is masking the detainments and arguably illegal enforcement of domestic laws on Vietnamese fishermen vessels with charges of illegal fishing and poaching around disputed waters, playing on the ambiguity of its sovereignty claims and the difficulty for fishermen to know their basic rights and on what basis they are arrested. In my empirical discussion, I have argued that in the retrieved documents, the fishing incident did not take place in an area where China or its enforcement vessels had jurisdiction according to UNCLOS. Even if domestic law had applied, beating, prolonged detainment and ransom taking are extraterritorial use of force with criminal activities similar to piracy, not state law enforcement (Poling Email 2017).

Given these premises, one would have assumed the Vietnamese fishermen are easily entitled to seek justice before a court. Yet, the case of the Vietnamese fishermen presents numerous legal issues both for international criminal law as well as for international human rights law.

This conclusion has enucleated the structural legal constraints of direct access to justice faced by subalterns whose interests are not represented by their own country and thwarted by a malign, from the perspective of the subalterns, external intervention. It has also enucleated some legal ways to seek justice for the fishermen before a court, focusing on existing case law, and suggested a re-understanding of the the definition of piracy. This is not a legal argument, but a development studies plea for more legal work in this regard.

Above, I discuss Vietnamese fishermen might seek legal relief, for example by sueing China. But this is not to overlook that other SCS claimant countries are violating fishermen's rights: there are indeed numerous reported cases for instance of Indonesian authorities blowing up fishing boats (*The Wall Street Journal* 2016), and Malaysia arresting fishermen (*Vn Express* 2017), in their respective EEZs. These incidents cause extreme harm to artisanal fishermen, whose sustenance is precarious. They need scrutiny and human rights research. However, starting by initiating a criminal proceeding against China, arguably the biggest legal transgressor in the SCS, including outside the Chinese EEZ, would set a powerful legal precedent that would strengthen the human rights regime at sea for all artisanal fishermen who face harassment from a myriad of state parties.

As of April 2017, China is ignoring the ruling of the PCA award, has repeatedly violated Philippine fishermen's rights by occupying Scarborough Shoal, and islands in the Spratly's, and apparently directed or allowed its fishermen to utilize destructive environmental practices that destroy marine and coral endangered species, including through military-directed destructive land reclamation and artificial island building in the Philippine EEZ. The same is likely true in the Vietnamese EEZ, but Vietnam has not taken China to compulsory arbitration.

Future Research

There is a general lack of academic scholarship on diplomacy from below in general, and on the political agency of fishermen in the South China Sea in particular. This is a challenge, but provides for a number of opportunities for future research.

Quantitative research is needed on the set of theories presented here on diplomacy from below. General research is needed on the impact of EEZs and China's nine-dash line, and Coast Guard and maritime militia harassment of Vietnamese fishermen, including on food security and fishing resources management. Studies are needed on how beneficial, or not, the EEZs and nine-dash line have been in preventing a tragedy of the commons.

Qualitative field research should be done on how diplomacy from below changes in conditions of democracy, for example in the Philippines and Italy, and when outside interference is benign, for example when foreign governments, international NGOs or international institutions attempt to support diplomacy from below. The diplomacy from below theory could be tested in other regimes such as hybrid regimes to see how diplomacy from below exhibits and how the equilibrium changes. Research is needed on how diplomacy from below might benefit by forming a Transnational Advocacy Network or North-South coalitions. South-South coalitions of artisanal fishermen (spanning from Vietnam to Philippines, India, Africa and Latin America, for example), could collectively press for legal changes before the international community.

Future research should seek to identify if and what other forms of diplomacy from below exist, and to what extent and the reasons why domestic and foreign elites hamper their claims. In this case study of Vietnamese fishermen on Ly Son Island, we have seen how economic influence from a larger country played a fundamental role in hampering the claims of diplomacy from below by fishermen. Future research should also seek to identify when a domestic or foreign elite state-sponsored diplomacy from below has impact. State sponsorship, one of the dimensions of diplomacy from below analyzed in Chapter 2, is an underexplored pattern in much of the literature on social movements.

I previously anticipated that the Vietnamese workers' resistance against Chinese factories in the Central Highlanders' bauxite mining concessions with China, could be a form of diplomacy from below that, similar to the Vietnamese fishermen, is continuously repressed but makes gradual gains in an equilibrium cycle. Another form of diplomacy from below could be the wave of peasants and indigenous resistance against foreign corporations in Latin America, where traditional land is seized with the participation of their own domestic governments.

Research on how to strengthen human rights at sea and the existing legal mechanisms by ameliorating lack of subaltern access to justice and non-universal jurisdiction is needed. This theory and empirical research on diplomacy from below is one step in that direction. The livelihood of subaltern people depends on more development research on this and other topics of food security, and how to turn subalternity into a people who can remake their own futures.

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Appendices

Appendix 1: The Selden Map and Ly Son Island

Section of the Selden map of China, with the author's identification of Ly Son island.
The map shows the trade routes (black/blue lines) that vector and revector to Ly Son island. Guangnan and Qui Nhon were identified with the help of David Helliwell (Email 2017) and Barbara Schwartz (Email 2017). Although there is some question among experts as to the identity of this island on the map that I identify as Ly Son, Schwartz noted that the obscured character could be related to "li-si" (力四). Batchelor (Email 2017) notes that "what makes your interpretation more likely is the compass reading which seems to be wubing (again [] blurred) or 175 degrees, which is much closer to the actual navigation from Ly Son."

Appendix 2: List of Interviewees and Sample Selection Process

Title	Name	Sample selection
Interview 1	'Pham'	Random
Interview 2	'Tuan'	Snowball
Interview 3	'Song'	Random
Interview 4	'Binh'	Random
Interview 5	'Dinh'	Random
Interview 6	'Giang'	Snowball
Interview 7	'Lanh'	Random
Interview 8	'Vinh'	Random
Interview 9	'Xuan'	Random
Interview 10	'Huy'	Snowball
Interview 11	'Ngai'	Random
Interview 12	'Hanh'	Random
Interview 13	'Thuy'	Random
Interview 14	'Chi'	Random
Interview 15	'Bao'	Random
Interview 16	'An'	Random
Interview 17	'Anh'	Random
Interview 18	'Trung'	Snowball
Interview 19	'Song'	Random
Interview 20	'Danh'	Random