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A Sea Change: Problematizing the "Gray Zone" in the South China Sea

Miles Xavier
University of Calgary, Calgary, Canada

Throughout discussions of the geopolitical conflict in the South China Sea (SCS), analysts tend to shy away from using the term "armed conflict" to describe actions taken within the maritime domain. Analysts have relegated such actions to the "gray zone"; a legal ambiguity between the threshold reaching an armed attack and the threshold for reaching an armed conflict. This essay argues that the law of armed conflict (LOAC, commonly referred to as international humanitarian law or IHL) actively regulates more actions in the SCS than some legal analysts let on, and that the LOAC is best suited to regulate actions over that of strictly maritime law. Through an analysis of various incidents between claimants in the SCS, it is revealed that the LOAC effectively lowers the threshold for reaching a state of armed conflict, allowing for more firm arbitrations to be made on the basis of constituting armed attacks rising to the level of armed conflict, as well as determining contributions to an armed conflict.

Keywords: gray zone conflict, South China Sea, armed conflict, thresholds

Introduction

On 5 March, 2024, the Philippines Coast Guard (PCG) called the behaviour of China's People's Liberation Army Navy (PLAN) "aggressive", "reckless", and "illegal" for the usage of water cannons against a PCG ship and its crew sailing in the South China Sea (SCS) (Orr, Lee, & Lema, 2024). Another incident on 11 November, 2023 in the SCS was cited for its propensity to "ignite an armed conflict", with the United States State Department touting intervention if the PCG "face[d] an armed attack" in the SCS (Gomez & Calupitan, 2023). While the two journalistic accounts of the incidents loosely use terms like "aggressive" and "armed conflict", the authors' usage of such terminology offers an interesting opportunity to interrogate the SCS' security situation using the terminology and jurisprudence of the law of armed conflict (LOAC).

This essay asks the question of how the LOAC can be used to effectively prosecute the current security situation in the South China Sea. To answer this question, this essay argues that the LOAC can better regulate the use of force in the South China Sea in place of the United Nations Convention on the Law of the Sea, or UNCLOS. A secondary argument will be made that the criteria set out in the various LOAC can be met more consistently across various cases across the SCS, making the conflict less "gray" than some scholars let on (McLaughlin, 2022, p. 824). Firstly, this essay will briefly introduce the SCS's fact situation and some of the

Miles Xavier, MSS student, Centre for Military, Security and Strategic Studies (CMSS), University of Calgary, Calgary, Canada.

competing interests involved in the regional dispute for context. This essay will then review current literature on the South China Sea to understand current legal and political approaches to the SCS's security situation.

Afterwards, this essay will review the different pertinent bodies of law, namely the primary LOAC and UNCLOS, to best understand their jurisdiction in the SCS. Consequentially, this essay will discuss the SCS under the LOAC through the discussion of gray zone conflicts and the threshold(s) necessary to meet an armed conflict. The largest continuous portion of the essay will analyse the various incidents in the SCS through the LOAC, especially regarding what constitutes the use of force (*jus in bello*). What this essay will not do is to address the legitimacy of the maritime claims under the UNCLOS unless it directly pertains to justifications for the use of force, as this essay solely argues about the role of the LOAC and the usage of force in the SCS and not the validity of states' claims writ large. It is important to firstly introduce the fact situation in the SCS, as it contextualises the long-standing dispute and its legal ramifications.

The SCS Fact Situation

The SCS constitutes a large swath of intersecting territorial waters within the Southeast Asian subcontinent, compromised of the coastal waters bordering China, Taiwan, the Philippines, Brunei, Indonesia, Vietnam, Thailand, and Malaysia. The impetus for the dispute is not just based on "intertwining historical interpretations, national self-esteem, and tactical advantages," but also the access and control of the near $3 trillion USD of global trade and goods per year, the 1/3 of global maritime traffic, and the estimated "11 billion barrels of oil and 190 trillion cubic feet of natural gas" reserves (Turker, 2023). The contention is largely attributed to the claimant states' dispute over China's nine-dash line, which stems from Chinese-made historical and cartographic claims to the waters around the Spratly and Paracel island chains and the islands themselves; a claim that China enshrined both in its domestic 1992 Law on the Territorial Sea and the Contiguous Zone and its instrument of ratification of the UNCLOS (Gao & Jia, 2013, pp. 107-108).

The dispute of the territory manifests in the legal, diplomatic, and military/marine law enforcement (MLE) realms. Disputes hinge on the legality of the Chinese nine-dash line's under the UNCLOS, due in part to how the UNCLOS governs a state's conduct within what Articles 56 and 57 of the UNCLOS constitute as a state's exclusive economic zone (EEZ); the territory that extends 200 nautical miles from a state's "normal baseline" or coastline (United Nations, 2024, pp. 43-44). Since the EEZ reserves "sovereign rights for the purpose of exploring and exploiting", especially the right towards "economic exploration", the disputes over China's nine-dash line are evidentially rooted in both economic competition and legal accuracy (United Nations, 2024, pp. 43-44). Hence, states take up disputes as a matter of national interest, often resorting to a tripartite approach of legal disputes under the UNCLOS, diplomatic jockeying between state foreign officers, and the usage of armed deterrence by state MLE agencies (e.g. Coast Guards), civilian craft, or even naval forces in defense of their territories. Instances of both protective and offensive measures have been taken up by states by utilising naval/marine vessel armaments against each other, boarding ships for arrests, and purposefully ramming ships into each other in an aggressive or harassing manner (Legge, Lilieholm, Campbell, & Lau, 2024; Dipa & Anya, 2019; Flores & Lema, 2023).

Literature Review

Current literature on the SCS demonstrates an extensive focus on both the international political and legal standpoints on justifying state and non-state conduct in the area, especially under the UNCLOS. Burgess underscores how the UNCLOS "exacerbate[s] problems of delimitation", as the "formulations with regard to EEZs increase the possibility for overlapping territorial claims" to be a legal point of contention; simply, if everyone rules the SCS, then nobody rules the SCS (Burgess, 2003, p. 9). Regarding arbitration under the UNCLOS, Phan and Lao cite that the Philippines' 2016 arbitration against Chinese conduct in the SCS was based in extensive proof of UNCLOS violations, regardless of whether China considered the arbitration and its behaviour legitimate (Phan & Lao, 2018, pp. 47-48). Overall, the literature reviewed above makes apparent the contention that the UNCLOS possesses, regarding both geopolitical contentions with the UNCLOS itself and its utility during arbitration. Nonetheless, the literature reviewed still sees a utility in persecuting territorial claims under the UNCLOS and the overall maintenance of the UNCLOS writ large.

In contrast to the extensive research towards the UNCLOS and the SCS, the LOAC literature on the SCS lacks immensely. McLaughlin describes China's usage of the gray zone as the purposeful "leverag[ing]" of the "threshold for the application of the law of armed conflict" to not incite an armed conflict while still using force (McLaughlin, 2022, p. 824). While McLaughlin sees gray zone conflicts as an instrumentalization of the LOAC rather than actions being governed by the LOAC, others like Sato actively use the LOAC itself to prosecute the SCS. Sato discusses how the LOAC can prosecute "maritime militia" used by China, citing that various articles in both the Geneva Conventions' Additional Protocol I and Hague Convention XI effectively prohibit the existence of maritime militia for their inability to be distinguished from military and civilian efforts (Sato, 2020). This essay recognises the partial consensus in the literature surrounding the "gray zone" nature of the SCS, largely due to the mixing of civilian and military elements and the perceived lack of persistent force constituting an armed attack. This essay will, however, oppose such a consensus and offer more expanded views on the LOAC's applicability in the SCS. While the SCS-LOAC literature is in its infancy, this essay will attempt to utilise a LOAC paradigm to advance the field of LOAC study forward in the context of the SCS and its seeming lack of applicability. First, one has to qualify the LOAC to even apply it.

A Discussion of Thresholds

The LOAC primarily deals with the regulation of hostilities *after* states have resorted to the use of force, rather than preventing the use of force itself. This means that the discussion of the LOAC's applicability only extends as far as the *jus in bello*, making evident the distinction between the LOAC and the UNCLOS (which deals with all maritime conduct leading up to a *jus ad bellum* or resort to the use of force). The main LOAC are comprised the 1899 and 1907 Hague Conventions, the Geneva Conventions (GC) I-IV, and the GC's Additional Protocols (AP) I & II. These bodies of law are effectively recognised as both long-standing treaty law and crystallised customary law, cementing the LOAC as a "general practice accepted as law" that binds all states engaged in an armed conflict (International Committee of the Red Cross, 2024a). Beyond this, the proliferation of additional case law and other LOAC-adjacent law help define and better map out how the LOAC applies both empirically and theoretically. Briefly regarding the *jus ad bellum*, the charter of the United Nations effectively sets out a prohibition of the threat or use of force in Article 2(4). This is recognised not only in Article 19.2(a) of

the UNCLOS ("any threat or use of force against the sovereignty, territorial integrity or political independence of a coastal state…in violation of the principles of… the Charter of the United Nations") but also by Ruys as a peremptory norm (meaning that states cannot violate such a prohibition in any capacity) (United Nations, 2024, p. 31; Ruys, 2014, pp. 159-162).

The resort to the use of force remains an ultimate last resort after exhausting peaceful measures to prevent an armed attack, and in the context of the SCS and the UNCLOS, it can be recognised that peaceful dispute mechanisms outlined in the UNCLOS have been exhausted (Lango, 2009, p. 120). Following the Philippines' arbitration against China in 2016 under the UNCLOS, China effectively ignored such rulings that it had violated international maritime law and continued forward with its conduct, with all parties justifying their persistent use of force as necessary in self-defence of territorial integrity in light of UN Charter Article 51's allowance for the *jus ad bellum* in response to preceding armed attacks (Reuters, 2024a). Overall, it is evident that the thresholds for armed conflict come into play here, especially regarding forceful acts in the SCS. While recognising that the use of force is entirely prohibited yet still utilised by all states in the SCS in a sort of "territorial self-defence", it becomes a matter of diagnosing whether a state can claim that an armed conflict exists between the two states.

While the threshold for a use of the force is low, the bar for an armed attack remains above it (and decently incongruous among different definitions). In second common article of GC I-IV (CA2), it effectively states that GC I-IV apply when "armed conflict… arise[s] between two or more of the High Contracting Parties", effectively meaning that any two or more states who resort to the use of force against each other creates an armed conflict (International Committee of the Red Cross, 2024b). All of the claimant states in the SCS are party to GC I-IV, except for Taiwan, who's status as a state remains contested while still compliant with the GC and UNCLOS (The Red Cross Society of The Republic of China (Taiwan), 2024). While AP I is not necessarily customary in its entirety nor is it unanimously signed by parties involved in the SCS (Indonesia and Thailand, Malaysia, and Indonesia are not parties), there is a recognition that portions of AP I as it pertains to the *San Remo Manual* are customary in nature due to their presence in state practice and the "agreement as to the [manual's] present content of customary law," namely the portions dealing with direct participation in hostilities and the rendering of civilian ships as a part of a state's armed forces (Doswald-Beck, 1995). Thus, the GC + the selected portions of AP I in the 1995 *San Remo Manual* are recognised to be customary law and thus binding on state activity regardless of whether a state is a party or not.

The expanded view elaborated in the International Committee of the Red Cross (ICRC)'s *Commentary of 2020* on CA2 affirms that even a use of force against any states' "territory, [its] civilian population, and/or civilian objects including (but not limited to) infrastructure, constitutes an armed conflict for the purposes of Article 2(1)." (International Committee of the Red Cross, 2020). Additionally, both the *Commentary of 2016* and the *Commentary of 2020* respectively presuppose that armed conflicts do not necessarily have to be, as somewhat tacitly assumed, between two or more armed forces. Rather, armed attacks within an armed conflict can be constituted by armed force attacks against civilians *and* armed forces versus armed forces (International Committee of the Red Cross, 2016; 2020). The strict interpretation of the threshold under CA2 is also reaffirmed in later LOAC case law, namely in the 1995 *Prosecutor v. Tadić* case at the International Criminal Tribunal for the former Yugoslavia, where an international "armed conflict exists whenever there is a resort to armed force between States," thus invoking the LOAC's applicability (International Criminal Tribunal for the former

Yugoslavia, 1995). Overall, it is not "gray" or ambiguous whether or not there is an armed attack according to GC CA2, yet other thresholds set out in the International Court of Justice (ICJ)'s 1986 *Nicaragua v. United States* Judgement sets out a higher threshold.

Nicaragua states that "frontier incidents" or "military activity of a lower intensity" or duration does not necessarily constitute an armed attack (Yusuf, 2012, pp. 464-465). Subsequently, *Nicaragua* poses the interrogation of a "scale and effect" threshold as the differentiator between uses of force versus armed attacks (Yusuf, 2012, p. 464). If one takes the idea that incidents in the SCS sit below the threshold of an armed attack (as McLaughlin does), the *Nicaragua* threshold leaves "open the possibility" that successive and repeated "incidents" over time could accrue to constitute "an armed attack" (Yusuf, 2012, p. 465). The case could be made for the SCS that the repeated armed attacks by, between, and against various militaries and civilian elements (coast guards, fishing vessels, research vessels, etc.) over the 60 approximate years when these regional claims have been contested for can constitute an extremely protracted armed conflict by *Nicaragua* standards, or a series of armed conflicts within themselves by *Tadić* and GC CA2 standards (Yusuf, 2012, p. 465; Gao & Jia, 2013, p. 105). This intensity threshold is also problematized by the *2016 Commentary*, whereby it does not matter "the intensity or duration of hostilities… even minor skirmishes between the armed forces…," as any use of force "[c]ould spark an international conflict and lead to the applicability of humanitarian law [or LOAC]." (International Committee of the Red Cross, 2016).

Using Nicaragua's scale-and-effect threshold, some of the SCS' incidents can also qualify an armed attack constituting the incitement of an armed conflict. For example, on 14 March, 1988, a dispute at the Johnson South Reef in the SCS lasted merely a day, yet it consisted of the shooting and killing of 64 Vietnamese soldiers, the death of four Chinese navy personnel, and the capturing of nine Vietnamese soldiers as well (Benar News, 2023). The question of the enaction of the LOAC would be met by using the intensity threshold set out by the Nicaragua decision, despite lacking a duration beyond what could be considered as incidental. While this overtly bloody incursion is a more direct and traditional use of force between two states' armed forces, other actions like harassment can also qualify for the applicability of the LOAC under Nicaragua, especially when such actions result in excessive damages.

While it may be assumed that harassment sits below the scale and effects threshold of Nicaragua, the use of water cannons or the mere kinetic ramming can cause extensive harm and damage to ships. A water cannon used by the CCG against a PN supply boat caused extensive interior damage and injury to the crew, necessitating emergency assistance from the PCG (The Maritime Executive, 2024). Ship ramming has resulted in the sinking of ships (as was the case with the CCG's sinking of a Vietnamese civilian ship following its ramming), qualifying an extensive scale of damage (Vu, 2020). Overall, it is apparent that direct uses of force like the 1988 Johnson South Shoal incident directly qualify the LOAC. It is also evident that incidents like the Chinese PLAN's harassment of a Philippine Navy (PN) ship, whereby the PLAN hindered PN operations by using a helicopter to spray seawater on a PN rubber boat engaged in a resupply mission to the nearby naval outpost on the Ayungin Shoal, constitute a use of force rising to the level of an armed attack (Roxas, 2018). While this essay has outlined that the SCS and the use of force-armed attack distinction is less "gray" than imagined, the nature of the ships themselves also contributes to the discussion of a gray-zone conflict.

Vessels: Between the Civilian and Military

The principle of distinction is one of the most important principles of the LOAC, especially with regards to minimising civilian harm and the overall pursuit of military objectives. Distinction in turn also determines how to approach the use of force determining what constitutes a use of force in the sense of militarised hostilities versus a use of force in the pure law enforcement sense, especially within the scope of a group's rules of engagement. Distinction, however, is problematized in the SCS for its wide variety of actor activities. For example, how does one reconcile the usage of a civilian-in-nature Thai MLE vessel to shoot and kill a Vietnamese fisherman while injuring two others? (Khaosod English, 2015). Additionally, how can the LOAC be used to prosecute the Royal Malaysian Navy's purposeful beating and capture of Filipino fishermen who were then left with a handwritten note stating threatening "aggressive action?" (Torres-Tupas, Tetch, 2016). In these cases, it is not helpful to simply dichotomise civilian and military as entirely opposed, as some of the vessels involved in various disputes sit somewhat in the middle of the two spheres of conception. Thus, it is important to discuss the distinction of various actors in the SCS through two avenues: the discussion of command-control structures and the contribution to hostilities.

The make-up of the various actors in the SCS helps aid the principle of distinction, especially by way of analysing their command structures. This helps determine the character and nature of the vessels involved in direct hostilities. Most obviously involved in military operations in the SCS are the respective states' navies. The ambits of these navies are military in scope, defined simply as a marine wing of a state's armed forces and thus lawful combatants under the LOAC. In opposition to this, civilians are more broadly negatively understood as non-combatants, contingent on the fact that they do not take up arms and engage in hostilities. This dichotomy is recognised by Article 43 of GC AP I, which also expands on the nature of civilian-staffed armed law enforcement agencies and paramilitary groups, stating that these groups can be considered armed forces "under a command responsible" to a party to a conflict (International Committee of the Red Cross, 2024c). Thus, a PLAN vessel or a CCG vessel can be an instrument of the Chinese armed forces and thus a party to a conflict, while a non-hostile Philippine fishing vessel is purely civilian and not a part of the armed forces of a party.

Some arguments have been made by states that the jurisdiction of the ships demonstrates the validity of the use of force, whereby many of the states use force under the scope of "maritime law enforcement". For example, China stated that the CCG's operations in and around the disputed Scarborough Shoal fall under the state's MLE regime, which implies to some extent that the CCG is preventing territorial intrusions into China's sovereign territory through the permissible use of force as a matter of domestic law (Reuters, 2024b). Interestingly, the Philippines lays claim to the same shoal, citing that it too has claim to MLE activities in its EEZ under its territorial sovereignty (Petty, 2023). These claims of an MLE's defense of territoriality falter in two ways. Firstly, the disputed nature of the SCS effectively negates the claims that these states are operating under the guise of domestic law enforcement to protect either *de jure* or *de facto* sovereign territory, creating a sort of no-man's land constituting repeated uses of military force rather than uses of force under law enforcement; a lack of exclusive and extensive "authority" coupled with a lack of an acquiesced and multilaterally-recognised "historic title" makes claims invalid in reference to the UNCLOS under Article 15 (Ma, 2017). This means that MLE vessels are not necessarily solely engaging in the "minimum use of force…contained in the concept of

enforcement" within the jurisdiction of a state's MLE branch, but rather the excessive use of force is bound by the principles of the LOAC instead constituting an armed attack (Papastavridis, 2015, p. 129).

Additionally, the operations of armed law enforcement and navies often transgress boundaries set out by the UNCLOS, whereby states are required by way of state practice to avoid "the use of force… as far as possible" and if force is used, "it must not go beyond what is reasonable and necessary in the circumstances" (Papastavridis, 2015, p. 130). While this echoes some of the LOAC through the principles of necessity and humanity, it does not make reference to the principle of distinction that is of utmost importance to the LOAC. This especially factors into military-like actions against civilians, as various actions conducted by the armed forces of claimant states demonstrate a disregard for distinction. If one takes the stricter understanding of direct military hostilities against civilians, one could view that the Indonesian Navy's shooting of Vietnamese fishermen is a direct violation of the principle of distinction and proportionality under the LOAC, especially considering that the Vietnamese fishermen had no nexus to the incitement of an armed attack and were disproportionately attacked (Reuters, 2017). Taking the expanded view that MLE actions constitute a part of the armed forces, the CCG's usage of force against Philippine fishing vessels in the Scarborough Shoal constitutes a lack of distinction and proportionality, especially regarding the fact that the Philippine fishermen had no way impeded any Chinese paramilitary/law enforcement actions and the ramming of the ship was disproportionate to the act of merely fishing in disputed territory (Macatuno, 2016). Overall, it is evident that prosecutions under the LOAC yield more firm decisions that can abet victim claimants in seeking redress, especially when military action violates LOAC principles protecting civilian activities.

As such, it should be mentioned that the LOAC cannot cover purely civilian matters nor accidents as they fall under the ambit of the UNCLOS. For instance, when a ship flying the flag of the Marshall Islands collided with and killed three Filipino fishermen near the disputed Scarborough Shoal, the incident was not pursued as an intentional armed attack (Magramo, 2023). What is seemingly difficult to prosecute under the LOAC are so called "maritime militia" that operate as both civilian and military vessels. In reference to Russia's "little green men" in Crimea, these "little blue men" are the personnel of indistinguishably civilian-military ships that serve the purpose of confusing prosecuting armed forces. This was evidenced in the over two month-long dispute where both Vietnam and China purposefully interwove civilian fishing ships into large "flotillas" of naval and coast guard ships to confuse prosecuting actions while serving to intimidate, harass, and aggress (National Broadcasting Company, 2014). This is where the second avenue of prosecution can be pursued with regards to the direct participation in hostilities.

While the civilian nature of ships is tough to reconcile with regards to distinction, the threshold of reaching an armed attack by way of harassment or direct uses of force (and successive harassment attempts) creates a condition that is outlined under the ICRC's 2009 *Interpretative Guidance* as a "direct participation in hostilities" constituting a "resort by the parties to the conflict to means and methods of injuring the enemy" (Melzer, 2009, pp. 43-44). As such, there is recognition that maritime militias or little blue men constitute what would typically be referred to as "irregular forces failing to fulfill the four requirements… of (a) responsible command; (b) fixed distinctive sign recognizable at a distance; (c) carrying arms openly; and (d) operating in accordance with the laws and customs of war" (Melzer, 2009, p. 22). Many of these militia fly flags of respective parties to the conflict while not necessarily openly displaying arms, yet both the 2009 *Interpretative Guidance* and the 1995 *San Remo*

Manual constitute these organisations as operating as a "part of the armed forces" of the party by directly participating in hostilities (Melzer, 2009, p. 22; Doswald-Beck, 1995). These organisations have been directly endorsed by their respective states, such as the Chinese Maritime Militia or the forces outlined under Vietnam's *Law of Militia and Self-Defense Forces*, and as such they are importantly not determined by their internal characteristics but rather their external characteristics regarding their direct participation in hostilities (Cui & Shi, 2022). These forces also have the propensity to operate in civilian manners, which makes their activities based on the active nature of a ship.

To some extent, it is understandable that some may not be able to determine what constitutes a fishing vessel and what constitutes a maritime militia vessel operating in civilian clothes per se; a similar comparison can be made between civilians and guerilla insurgents who dress in civilian clothes. Yet, a maritime militia's direct participation in hostilities renders them prosecutable, even when reaching the *de minimis* threshold of actions of harassment that constitutes an armed attack with belligerent intention to injure or impede. It should be firstly noted that if these maritime militia vessels are acting as civilian ships, they can only really be treated as civilian, and actors should merely assume this until a use of force is undertaken to maintain the principle of distinction. Ships should not engage in a sort of pre-emptive or preventative use of force to pre-empt maritime militia activities, like the PLAN did against Vietnamese ships, simply based on the assumption that certain ships were operating illegally in the Paracel Islands without any attempt to prove a criminal action under the LOAC (even though these fishing ships were openly in a distress situation according to the Vietnamese Foreign Ministry) (Page, 2012).

Seemingly civilian ships can be targeted by armed forces, however, if they play a role in harassment efforts, especially constituting harassment by the intentional ramming of ships by a harassing/aggressing party or by the usage of water cannons. This was the case when a Chinese fishing vessel intentionally rammed a PCG vessel in an attempt to evade law enforcement measures, that of which could constitute a lawful prosecution under the LOAC (it should also be noted that the ship directly violated the UNCLOS' rules on flag-bearing by flying an upside-down Philippine flag while operating within the Philippines internal territorial waters, even possibly constituting a war crime of perfidy under Article 39 of GC AP I) (Rappler, 2016). Overall, it is evident that in cases of these seemingly low level uses of force, especially those constituting harassment by outwardly civilian vessels, the direct participation in hostilities in light of these dual-use operations thus qualifies an armed attack by a *military-like* actor.

Overall, this essay has effectively argued that the conflict in the SCS is less gray than conceived by some scholars. After setting out the fact situation of the SCS, this essay reviewed literature on the SCS to discuss the perception that the usage of civilian actors by claimant states in the SCS is deliberately meant to confuse, coupled with the larger idea that some uses of force sit below a threshold used to denote the existence of an armed conflict. This essay opposes such claims of this sort of "gray zone", stating that the LOAC is immediately applicable in uses of force causing extensive damage (using the *Nicaragua* scale and effects threshold), of which many of the harassment instances (usage of water cannons, ship ramming, etc.) and the more intense uses of force (shooting personnel with naval armaments) rise to the level of an armed attack. This reconciles that the many incidents outlined above in the SCS are effectively not instances of gray-zone conflict(s), but rather somewhat short-lived

armed conflicts, despite the scholarly/military over-acceptance of the fact that the SCS is just made up of mere frontier incidents.

After contextualising the SCS by qualifying the utility and applicability of the LOAC, this essay then analyses the SCS through a LOAC framework. This essay focuses on how actors in the SCS use force, constituting that the use of force in effectively unreconciled territory (beyond the scope of indisputable interior waters, like in the case of the 2016 Camiguin incident above) nullifies the utility of the UNCLOS, making the LOAC applicable and thus the principles of proportionality and distinction especially apt, regardless of whether claimant states regard the SCS as a matter of "domestic" MLE. Finally, this essay concludes by discussing that the applicability of the LOAC, especially through the ICRC's 2009 Interpretative Guidance, stretches to cover all actors in the SCS, citing that the direct participation in hostilities is the upmost qualifier when determining distinction. This essay recognises that the applicability of the LOAC does not necessarily apply writ large for the SCS, and that each case of these conflicts requires context to be effectively prosecuted under the LOAC. Additionally, the UNCLOS still matters for prosecuting matters in undisputed territorial waters, even in partial use when prosecuting strictly civilian disputes that deal with protracted "standoffs" with no collisions or uses of force. In an ideal case, the UNCLOS would be used in its intended proprietary matter to prevent the resort to the use of force in accordance with UN Charter Article 2(4). In the best interest of the LOAC's perpetuation and applicability, a differing fact situation does not necessarily rely on the creation of a law of gray zone conflict, however, but rather a casting of some new light on existing LOAC. Sometimes light ought to be cast on gray matters, revealing that the situation can be more black or white instead.

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