



Erfurt, January 19-21, 2018

Security Council Background Guide

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Staff-Team

Norovsuren Enkhbaatar (President)

Norovsuren is a B.A. student of Economics and Social Sciences with special interest in International Relations and Environmental Protection.

As a delegate she has attended several Model United Nations conferences including NMUN New York 2017. This will be her first time as part of the staff in the Security Council.

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Rosendo is also a B.A student of Economics and Politics at the University of Erfurt and has a special interest in Peacekeeping Operations and Mediation. As a delegate, he participated at several MUN conferences which was highlighted by attending NMUN New York 2017 as a Security Council Member. He is looking forward to chair during EfMUN and see how the Delegates negotiate and find solution to sensitive topics.

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Stefanos Boudourolgou-Walter is in his second Master's Semester of International Economics and Governance at the University of Bayreuth. He started attending at MUN conferences while he still was in Highschool. So far, he performed five conferences in Greece, Germany and the US. Since 2016 he is a part of the tutoring team of the MUN Seminar in Bayreuth.

Dear Delegates,

it is a great honor to welcome you to the Security Council of Erfurt Model United Nations 2018.

Your staff for the conference will be Norovsuren Enkhbaatar, Rosendo Valdez Adelsbach and Stefanos Boudourolgou-Walter.

This year we have decided on two topics:

- I. The Situation in DPRK
- II. The Territorial Disputes in South China Sea.

We hope that this Background Guide will help you with the preparation for this conference. It will give you a comprehensive overview over the committee and both topics and will help you to focus your further research on the most relevant aspects. We encourage you to delve into your countries' policies and their positions concerning the topics at hand thoroughly. When preparing for the conference, please keep in mind the mandate of the Security Council.

If you have any questions regarding the conference or your preparation for Security Council, please do not hesitate to contact mun@uni-erfurt.de.

Sincerely,

Norovsuren Enkhbaatar, Rosendo Roger Valdez Adelsbach & Stefanos Boudourolgou-Walter

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ABBREVIATIONS

<i>ASEAN</i>	Association of Southeast Asian Nations
<i>COC</i>	Code of Conduct for the South China Sea
<i>CTBT</i>	Comprehensive Nuclear-Test-Ban Treaty
<i>DOC</i>	Declaration on the Conduct of Parties in the South China Sea
<i>DPRK</i>	Democratic People's Republic of North Korea
<i>E10</i>	Non-Permanent Members of the Security Council
<i>EEZ</i>	Exclusive Economic Zone
<i>EU</i>	European Union
<i>IAEA</i>	International Atomic Energy Agency
<i>NATO</i>	North Atlantic Treaty Organization
<i>OHCHR</i>	Office of the United Nations High Commissioner for Human Rights
<i>P5</i>	Permanent Members of the Security Council
<i>PSC</i>	Peace and Security Council
<i>PTBT</i>	Partial Test Ban Treaty
<i>SOM</i>	Senior Officials' Meeting
<i>UNCLOS</i>	United Nations Convention on the Law of the Sea
<i>UNSC</i>	United Nations Security Council
<i>WFO</i>	World Food Organization

COMMITTEE OVERVIEW

History

With the ratification of the UN Charter, the Security Council (SC) was created by the victors of World War II on October 24, 1945.¹ One year later, on January 17, 1946, the SC held its first session at Church House, Westminster, London.² Ever since, the SC has its permanent residence at the UN-Headquarters in New York.³

It was originally composed of six temporary Members rotating every two years alongside the five permanent Members China, U.S.S.R. (nowadays Russia), France, the United Kingdom, and the United States.⁴

Governance, Structure and Membership

Today the SC consists of fifteen Members of the UN⁵, which are subdivided into permanent (the P5) and non-permanent Members (the E10). The permanent Members (P5) to the SC are: The People's Republic of China, France, the Russian Federation (former: the Union of Soviet Socialist Republics), the United Kingdom of Great Britain and Northern Ireland, and the United States of America.⁶

The non-permanent Members to the SC are elected for two years by the General Assembly⁷ and represent countries of the following regions: African group (three seats), the Asian group (two seats), Eastern Europe group (one seat), the Latin American and the Caribbean group (one seat), and Western Europe and Others group (two seats)⁸. The current non-permanent Members of the current period of 2018 are: Bolivia, Ethiopia, Kazakhstan, Netherlands, Sweden, Cote d'Ivoire, Kuwait, Poland, Equatorial Guinea and Peru.

After a non-permanent Member has retired, it is not "eligible for immediate re-election".⁹ Each Member of the SC has one representative.¹⁰ Furthermore, each Member of the SC has one vote.¹¹

Vote on Procedural Matters

Votes on procedural matters (i.e.: organization of the agenda) require a majority vote. This implies that there needs to be nine members voting affirmatively on the matter for it to pass.¹²

Vote on Non-procedural (substantive) Matters

Votes on substantive matters such as the establishment of a peacekeeping force, an affirmative majority vote of nine members is required as well. Furthermore, the P5 need to be among the majority vote.¹³

¹ What we do: The UN Security Council.

² UN Security Council. *United Nations Security Council: About*. 2016.

³ Ibid.

⁴ United Nations Foundation. *What we do: The UN Security Council*. 2016.

⁵ UN. *Charter of the United Nations, art.23*. 1945.

⁶ Ibid.

⁷ UN Security Council. *United Nations Security Council: Members*. 2016.

⁸ Australian Government. *The role of the United Nations Security Council*. 2016.

⁹ Australian Government. *The role of the United Nations Security Council*. 2016.

¹⁰ UN. *Charter of the United Nations, art.23*. 1945.

¹¹ Ibid. Art. 27.

¹² Ibid.

¹³ Australian Government. *The role of the United Nations Security Council*. 2016.

Veto-Right

Due to their “key roles in the establishment of the United Nations”¹⁴ and the continuing high importance with regards to the maintenance of international peace and security, the Permanent Member States (see p.5) of the SC hold a special voting power: The “right to veto” against a matter of substance (i.e.: a draft resolution) and this eventually leads to the failure of the draft resolution.¹⁵

Participation

Article 31 UN-Charter allows any Member State which is not a member of the SC to participate by invitation in the discussions brought before the SC “whenever the latter considers that the interests of that Member are specifically affected”. Those “participating” members do not hold the right to vote, but to state a brief report upon their views and situation.¹⁶

Presidency

The presidency of the council is held by every Member of the Council for a time-period of one month, rotating in accordance with the alphabetic order.¹⁷

Functions and Power

Under the Charter of the United Nations, the SC holds the following functions and powers:

- to maintain international peace and security in accordance with the principles and purposes of the United Nations¹⁸;
- to investigate any dispute or situation which might lead to international friction or give rise to a dispute¹⁹;
- to recommend methods of adjusting such disputes or the terms of settlement²⁰;
- to formulate plans for the establishment of a system to regulate armaments²¹;
- to determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;
- to call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
- to take military action against an aggressor²²;
- to recommend the admission of new Members;
- to exercise the trusteeship functions of the United Nations in "strategic areas";
- to recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice.

In brief, the Security Council holds sanctions, diplomatic tools, military action and partnerships with national and international organizations as mechanisms to guarantee international security.

¹⁴ UN Security Council. *United Nations Security Council*. 2016.

¹⁵ Ibid.

¹⁶ UN. *Charter of the United Nations, art.31*. 1945.

¹⁷ UN Security Council. *United Nations Security Council: Presidency*. 2016.

¹⁸ UN. *Charter of the United Nations, art.24*. 1945.

¹⁹ Ibid. Art.34.

²⁰ Ibid. Art.36.

²¹ Ibid. Art.41.

²² Ibid. Art.42.

According to Article 25 of the United Nations Charter, all members of the United Nations “agree to carry out and accept the decisions of the Security Council in accordance with the present Charter”.²³ This implies that the SC is able to bestow legally binding obligations on the Member States.

²³ Ibid. Art.25.

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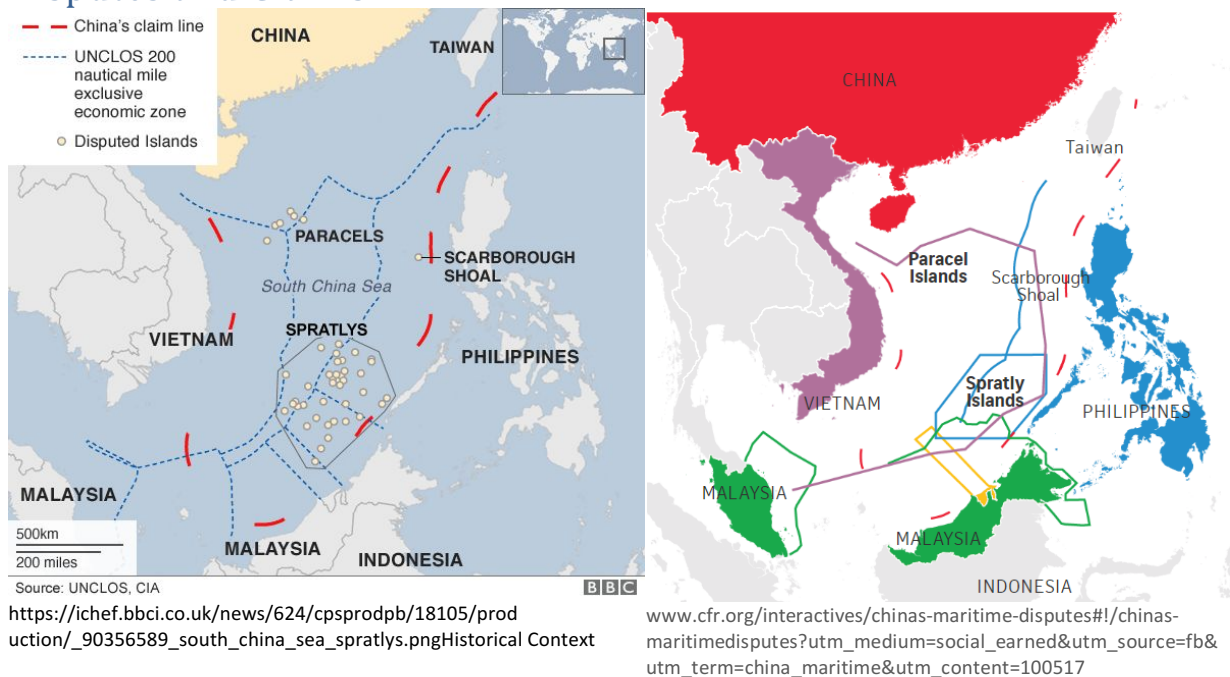
Australian Government. (2016). *The role of the United Nations Security Council* [Website]. Retrieved November 15, 2017, from <http://dfat.gov.au/international-relations/international-organisations/un/unsc-2013-2014/Pages/therole-of-the-united-nations-security-council.aspx>.

I. THE TERRITORIAL DISPUTES IN THE SOUTH CHINA SEA

Introduction

The South China Sea (SCS) is a semi-enclosed sea in the western Pacific Ocean, spanning an area of almost 3.5 million square kilometers. It lies to the south of China, to the west of the Philippines, to the east of Viet Nam and to the north of Malaysia, Brunei, Singapore, and Indonesia. The SCS is a crucial shipping lane, a rich fishing ground, home to a highly biodiverse coral reef ecosystem and believed to hold substantial oil and gas resources.²⁴ Main tensions result from mutual claims for territorial titles in the Spratly Islands, Paracel Islands and various boundaries in the Gulf of Tonkin. But also maritime claims such as the waters near Indonesian Natuna Islands prevail.²⁵

Disputes and Claims



Nine-Dash-Line, Spratly Islands & Paracel Islands

The Nine-Dash-Line is a U-shaped line covering the Paracel and Spratly Islands. A map showing the line was brought forward by China in 1947. This serves as the basis for their claims. Although largely uninhabited, the Paracels and the Spratlys are considered to hold excessive reserves of natural resources around them. There has been little detailed exploration of the area. Estimates are largely extrapolated from the mineral wealth of neighboring areas.²⁶ The Spratly Islands consist of hundreds of islands and reefs. Due to their strategic location in the middle of several major trade routes and being the home to fishing grounds which supply people across the region, as well as the possibility of their containing natural resources have made the islands an extremely valuable commodity. By mid-2015, China had built at least

²⁴ Pemmaraju, Sreenivasa Rao, Chinese Journal of International Law, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, 2016, p.266.

²⁵ Permanent Court of Arbitration, *The South China Sea Arbitration PCA Case Nr. 2013-19*, 2016.

²⁶ BBC, *Why is the South China Sea contentious?*, 2016.

seven artificial islands, further challenging peace in the SCS.²⁷ As it seeks to expand its maritime presence, China's activities have been met by growing assertiveness from regional claimants and therefore increased their maritime presence and raised demands.²⁸

Early modern origins of the dispute can be traced back to the Sino-Japanese war of 1894, while Japan's defeat in World War II and Cold War geopolitics added complexity to claims over the islands. The fight over overlapping EEZs in the SCS has an equally complex chronology of events steeped in the turmoil of Southeast Asian history. Globalization—including extensive free trade pacts between claimants have further connected the two disputes.²⁹

Uncertainty in alignments and nationalistic domestic politics further complicate the situation. Most recently, the strong emerging regional alliance between the Philippines and Vietnam is at stake. A recent shooting incident which saw the Philippine Navy fatally wounding several Vietnamese fishermen, highlights growing tensions between the two neighbors over illegal fishing. The once-close cooperation has recently turned into a rivalry. In response, the Philippines have reoriented towards reestablishing once unwanted partnerships. Even though military cooperation with the U.S. exists, this goes to show the fast pace of a change in policies of key actors in the dispute. Another dimension aggravating the tensions is the concern on diminished fish stocks, mainly due to the excessive fishing policy of large economies. The upshot is a bitterly divided all participants in the conflict.³⁰

Further Elements of the Conflict

Economic Aspects

Not only territorial but especially economic interests lie at the core of the dispute, as countries lay overlapping claims to the East and South China Seas, an area that is rich in hydrocarbons and natural gas and through which trillions of dollars of global trade flow.³¹ An estimated US \$5.3 trillion worth of global trade passes through the SCS annually. The international waterway is one of the main arteries of global economy and trade.³² The interest in retaining or acquiring the rights to fishing areas, the exploration and potential exploitation of crude oil and natural gas in the seabed of various parts of the SCS, and the strategic control of important shipping lanes are not to be disregarded. To promote this, several states conduct "freedom of navigation" operations.³³

²⁷ Asia House, *The South China Sea: The Spratly Islands Dispute*, 2016.

²⁸ CIA Factbook, *International Disputes: Spratly Islands*, 2017.

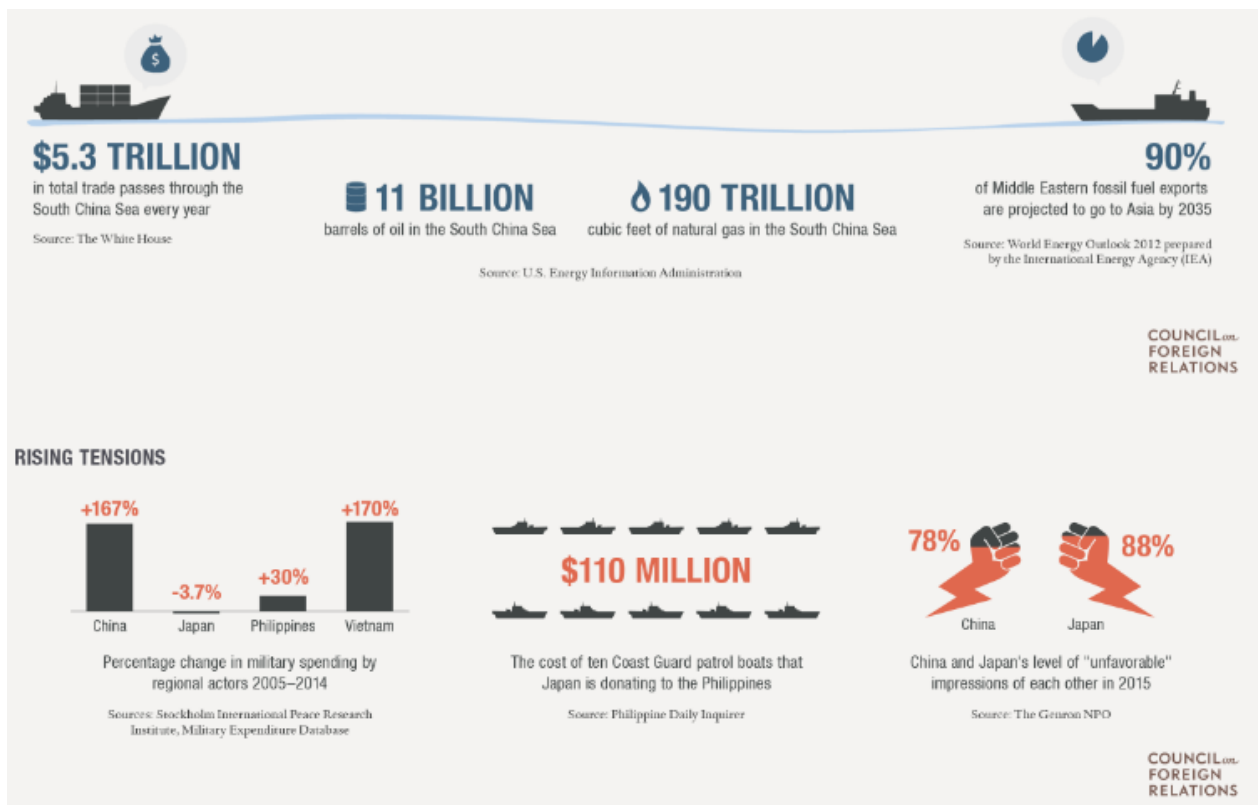
²⁹ Ibid.

³⁰ Nikkei Asian Review, *Duterte's pro-China Shift fractures anti-Beijing alliance in Southeast Asia*, 2017.

³¹ Council on Foreign Relations, *China's Maritime Disputes*, 2017.

³² Ibid.

³³ CNN, *U.S. protests after Chinese military jet lands on South China Sea Island*, 2016.



https://www.cfr.org/content/ips/assets/china-s-maritime-disputes/BTN_ChinaMaritime_Economy_1.png

Military Dimension

Military build-ups on the disputed islands have raised the stakes further, increasing potential of an armed conflict in the region. China has also been building runways on its artificial islands for over 12 months and the recent landing of its first plane is said to have raised tension and threaten regional stability. Satellite images suggest China has upgraded its military infrastructure.³⁴

Thousands of vessels, from fishing boats to coastal patrols and naval ships ply the East and South China Sea waters. Increased usage of contested waters by all actors heightens the risk that miscalculations by sea captains or political leaders could trigger an armed conflict. Due to global military cooperation, this conflict has the potential to quickly expand the regional scope. Policy experts believe that a crisis management system for the region is crucial.³⁵

International & Regional Framework

United Nations Convention on the Law of the Sea (UNCLOS)

The *United Nations Convention on the Law of the Sea*, also called the Law of the Sea Convention or the Law of the Sea treaty, is an international agreement which defines the universally accepted rights and responsibilities of a nation towards the use of oceans and their environment, forms of use for businesses and the management and exploitation of marine resources.³⁶

³⁴ Asia House, *The South China Sea: The Spratly Islands Dispute*, 2016.

³⁵ Council on Foreign Relations, *China's Maritime Disputes*, 2017.

³⁶ United Nations Convention on the Law of the Sea, 1982.

In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) in Switzerland. UNCLOS I resulted in four treaties:³⁷

- Convention on the Territorial Sea and Contiguous Zone, 1964
- Convention on the Continental Shelf, 1964
- Convention on the High Seas, 1962
- Convention on Fishing and Conservation of Living Resources of the High Seas, 1966

However, topics such as the breadth of territorial waters were not addressed properly.³⁸ UNCLOS II was held in 1960. The Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil was agreed upon.³⁹

UNCLOS III, the third iteration of the conference, took place between 1973 and 1982 and, above all, defined various areas in relation to a Nation State such as internal waters, territorial waters, the contiguous zone, the EEZ, the continental shelf and archipelagic waters.⁴⁰ The conference used a consensus process rather than majority vote attempting to reduce the possibility of groups of states to dominate the negotiations. The resulting convention came into force in 1994. The EEZ is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this part, under which the rights and jurisdiction of the coastal state and the rights and freedoms of other states are governed by the relevant provisions of this Convention.⁴¹ The Convention was adopted as a “constitution for the oceans,” in order to “settle all issues relating to the law of the sea,” and has been ratified by 168 parties. It addresses a wide range of issues and includes as an integral part a system for the peaceful settlement of disputes. A variety of dispute settlement procedures, including compulsory arbitration in accordance with a predefined procedure is provided.⁴²

The Convention, however, does not address the sovereignty of states over land territory. Accordingly, this Tribunal has not been asked to, and does not purport to, make any ruling as to which state enjoys sovereignty over any land territory in the SCS, in particular with respect to the disputes concerning sovereignty over the Spratly Islands or Scarborough Shoal. None of the Tribunal’s decisions in this regard are dependent on a finding of sovereignty, nor should anything in this regard be understood to imply a view with respect to questions of land sovereignty.⁴³ However, since 168 states have ratified the treaty, it can be assumed that its paragraphs express customary law.

Dispute Settlement under UNCLOS

As mentioned above, UNCLOS itself offers procedures of conflict management. The dispute settlement regime set down in the treaties has been described as the most complex system ever included in any global convention. UNCLOS requires states “to achieve an equitable solution” with regard to the delimitation of their EEZ and continental shelf. Section 2 of the respective articles provides that in cases where “no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part 15.” This section of UNCLOS explicitly deals with measures and provisions of peaceful

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Permanent Court of Arbitration, *The South China Sea Arbitration*, PCA Case Nr. 2013-19, 2016.

⁴³ Ibid.

dispute settlement under the Convention. The SCS, being a semi-enclosed sea after Article 122, demands particular cooperation between adjacent states with regard to their rights and duties. States are thus obligated to settle disputes peacefully and in accordance with international law and under the provisions of UNCLOS. For cases in which no settlement could be reached, Section 2, providing compulsory procedures entailing binding decisions, then takes effect. Article 289, however, allows states to opt-out of this compulsory binding dispute settlement mechanism. In the past, this clause has been used to limit the scope of UNCLOS with regards to the SCS. China has exercised its right and questions the Convention in 2006 and thus declared that it “does not accept any of the procedures provided for.”⁴⁴

Commission on the Limits of Continental Shelves

The *Commission on the Limits of Continental Shelves* is a body of 21 experts in the fields of geology, geophysics or hydrography, established by UNCLOS. The Commission makes recommendations to littoral states on matters related to the establishment of the outer limits of their continental shelf. This includes the limit beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. These recommendations are based on the scientific and technical data and other material provided by States in relation to the implementation of Article 76 of the Convention.⁴⁵ It defines and outlines criteria by which the definition of the continental shelf and the criteria by which a coastal State may establish the outer limits of its continental shelf.⁴⁶

Non-UN Entities

Association of Southeast Asian Nations (ASEAN)

In 2002, the Governments of the Member States of ASEAN and the Government of the People’s Republic of China reaffirmed their determination to consolidate and develop the friendship and cooperation existing between their peoples and governments with the view to promoting a 21st century-oriented partnership of good neighboring and mutual trust.⁴⁷

The Parties also reaffirmed their commitment to the principles and purposes of the Charter of the United Nations, the 1982 UNCLOS, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations. The Parties reassured their respect for and commitment to the freedom of navigation in and overflight above the SCS as provided by the universally recognized principles of international law.⁴⁸ Article 10 of the DOC explicitly noted that “the Parties concerned reaffirm that the option of a code of conduct in the SCS would further promote peace and stability in the region and agree to work, based on consensus, towards the eventual attainment of this objective.”⁴⁹

While the framework is a step forward in the conflict management process for the SCS, it is short on details and contains many of the same principles and provisions contained in the 2002 ASEAN-China Declaration on the Conduct (DOC) which has yet to be fully implemented. The framework includes a new reference to the prevention and management of incidents, as

⁴⁴ Fels, Enrico, *Power Politics in Asia’s Contested Waters: Territorial Disputes in the South China Sea*, 2016, p.47.

⁴⁵ United Nations Commission on the Limits of the Continental Shelf, 2017.

⁴⁶ Ibid.

⁴⁷ ASEAN, *Declaration on the Conduct of Parties in the South China Sea*, 2012.

⁴⁸ Ibid.

⁴⁹ The Diplomat, *South China Sea Code of Conduct? Don’t get your hopes up*, 2017.

well as a seemingly stronger commitment to maritime security and freedom of navigation. The legal status of the document is disputed, as are the geographical scope of the agreement and enforcement and arbitration mechanisms. The framework will form the basis for further negotiations on the COC.⁵⁰ In 2017, China and ASEAN members reached agreement on a draft framework COC at their 14th Senior Officials' Meeting (SOM) on the Implementation of the DOC. The next stage will be to open formal consultations on the text and timeline for completing the COC.⁵¹ Later in 2017, ASEAN and China announced to start negotiating on the details and fine prints of the COC. This is considered a milestone development.⁵²

European Union (EU)

The EU has interests in the peace and stability of the region. Economic considerations and free trade routes are also of importance. Foreign Ministers of Member States of ASEAN and the High Representative of the EU gathered in 2017 to commemorate the 40th anniversary of the Establishment of ASEAN-EU Dialogue Relations. Concerning the SCS, the parties underscored the full and effective implementation of the 2002 DOC in its entirety and support the efforts of ASEAN Member States and China to work towards the early conclusion of an effective COC.⁵³ The EU has so far not officially commented on the territorial disputes.

International Arbitration

The *Permanent Court of Arbitration (PCA)* was established by treaty in 1899 and is an intergovernmental organization providing a variety of dispute resolution services to the international community.⁵⁴ But the PCA does not have the equivalent of Article 94 UN Charter which states that "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the SC, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." The International Court of Justice and the International Tribunal for the Law of the Sea are two forums where claimants can file submissions for settlement.⁵⁵ In 2013, a UN tribunal was convened at The Hague to discuss an arbitration case filed by the Philippine government contesting the legality of China's territorial claims in the SCS. The court ruled in favor of the Philippines over China in 2016. This is considered a historic ruling.⁵⁶ The court stated: "In the matter of the South China Sea arbitration before an arbitral tribunal constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People's Republic of China. This arbitration concerns disputes between the parties over maritime entitlements in the SCS, the status of certain maritime features in the SCS and the maritime entitlements they are capable of generating, and the lawfulness of certain actions by China that were alleged by the Philippines to violate the Convention. In light of limitations on compulsory dispute settlement under the Convention, the Tribunal has emphasized that it does not rule on any question of sovereignty

⁵⁰ Ibid.

⁵¹ Thayer, Carlyle A. *South China Sea Research, ASEAN's Long March to a Code of Conduct in the South China Sea*, 2017.

⁵² Yusof Ishak Institute, *Assessing the ASEAN-China Framework for the Code of Conduct in the South China Sea*, 2017.

⁵³ European Union External Action, *Joint Statement on the 40th Anniversary of the Establishment of ASEAN-EU Dialogue Relations*, 2017.

⁵⁴ Permanent Court of Arbitration, *About Us*, 2017.

⁵⁵ UN. Charter of the United Nations, art.94., 1945.

⁵⁶ CNN, *South China Sea: Court rules in favor of Philippines over China*, 2016.

over land territory and does not delimit any boundary between the Parties.”⁵⁷ The tribunal found that China’s Nine Dash Line had no legal basis for its claims to historic rights to resources in the SCS and that none of the land features met the requirements of an EEZ for China. The Chinese Foreign Ministry dismissed the court’s award, saying it had no binding force. Alternatively, an outside organization or mediator could also be called upon to resolve the disagreement, yet the prospect for success in these cases is slim.⁵⁸

Conclusion

Although there have been various attempts for agreements and mediation efforts, the conflict in the SCS remains yet unsolved. In order to accomplish a long lasting peaceful situation, mediating measures have to be established. But more so weak spots such as the reinforcement of existing laws and regulations must be ensured. Even though involved parties have agreed upon multilateral risk reduction and confidence-building measure, the prospects for the area are unclear. The SC has yet so address the disputes in the SCS. To guarantee peace and security, states need to consider joint development of the resources as an option; or cooperation on other issues such as marine environmental protection, marine scientific research, and counterterrorism, without prejudice to their respective claims. The resolution of the disputes should consider the political dynamics and sensitivities of the region and allow a greater role for intraregional mechanisms.⁵⁹

⁵⁷ Permanent Court of Arbitration, *The South China Sea Arbitration*, PCA Case Nr. 2013-19, 2016.

⁵⁸ The Guardian, *Philippines wins South China Sea Case against China*, 2016.

⁵⁹ Bautista, Lowell B., *The Implications of Recent Decisions on the Territorial and Maritime Boundary Disputes in East and South East Asia*; National Bureau of Asian Research, 2012, p.106.

Further Research

To prepare themselves for this topic, delegates should focus on the following questions:

- How does my country frame the current situation?
- Are there diplomatic initiatives which should be reenacted or fostered?
- What are the motives of the states involved in the dispute?
- Are there any other states that have undisclosed strategic interests in the area?
- Given the political and even military actions taken by actors in the past, what steps in accordance with the charter should the SC take?
- Should the possibilities of demilitarizing the region be taken into consideration?
- How can trust be built in the region?
- Who could serve in a mediation role or neutral actor?

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II. THE SITUATION IN THE DEMOCRATIC PEOPLE`S REPUBLIC OF NORTH KOREA

Introduction

Over the past decade the Democratic People's Republic of North Korea (DPRK), also known as North Korea, raised concerns among members of the United Nations due to its nuclear testing activities and intercontinental missile launches as well as the humanitarian conditions within its territory, leading to many resolutions and diplomatic talks. In early response to the country's hydrogen bomb testings, the SC released several resolutions forcing sanctions on North Korea.⁶⁰ Recently, just three days after the Security Council (SC) voted upon Resolution 2375 (2017) which forces yet the hardest sanctions on the DPRK, another ballistic missile launch over Japan has been conducted.⁶¹ In reaction to the ongoing testing, the President of the United States of America Donald J. Trump underscored that if the US is forced to defend itself or its allies, "we will have no choice but to totally destroy North Korea."⁶² Even formal allies such as China are urging the DPRK not to go "further along a dangerous direction" and are themselves enforcing sanctions while also continuing diplomatic talks.⁶³ On the other hand, the North Korean Spokesman says in response to the imposed sanctions that they are a "brutal criminal act that indiscriminately infringes upon the right to existence of the peaceful civilians" and also adds that the sanctions won't stop the nuclear weapons programs.⁶⁴ Moreover, *The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea* express his deep concerns that the crisis overshadows the humanitarian problems and human rights violations.⁶⁵

This crisis has the potential to lead into a nuclear war, with the possibility of causing massive civilian casualties while, at the same time, deteriorating the humanitarian conditions in the DPRK.

International & Regional Framework

Even though recent developments are causing severe tensions, several international legal instruments are in place to monitor and channel the process.

Six-Party-Talks

In 1994 the United States and North Korea negotiated an Agreed Framework amidst rising concerns about Pyongyang's nuclear activities, including North Korea's decision to withdraw from the *NPT*. The agreement halted that decision and as part of the accord North Korea pledged to freeze its nuclear program in exchange for energy aid. In the process it obtained two proliferation-resistant light-water reactors.⁶⁶ However, in 2002 North Korea announces the reactivation of its nuclear facilities at Yongbyon and expels UN inspectors which causes

⁶⁰ Arms Control Association. *UN Security Council Resolution on North Korea*. 2017.

⁶¹ UN News Centre. *UN condemns DPRK ballistic missile launch; stresses country cease such activities*. 2017.

⁶² UN News Centre. *All nations should embrace their sovereignty; US President tells world leaders at UN Assembly*. 2017.

⁶³ UN News Centre. *China, at UN Assembly urges DPRK not to go "further along a dangerous direction"*. 2017.

⁶⁴ New York Times. *North Korea Says U.N. Sanctions Are Causing "Colossal" Damage*. 2017.

⁶⁵ United Nations Human Rights Office of the High Commissioner. *Don't lose sight of ordinary North Koreans in security crisis- UN Human rights expert*. 2017.

⁶⁶ Arms Control Association. *The Six-Party Talks at a Glance*. 2017.

worldwide concerns about a possible escalation.⁶⁷ In order to prevent a nuclear war the *Six-Party-Talks* were created as a diplomatic tool consisting of several rounds of negotiations that culminated in an agreement on 2005.⁶⁸ The board of the Six-Party-Talks consisted of the DPRK, the Republic of Korea, China, Japan, the Russian Federation and the United States. All board members noted that peaceful efforts to address the serious challenge posed by the DPRK nuclear activity have been made.⁶⁹ In 2006, the sixth round of negotiations took place as planned but never came to an agreement.⁷⁰ Due to the new sanctions on the Banco Delta Asia, which aimed to stop the purchase of new material for the nuclear programme, the North Korean delegation walked out of the negotiations.⁷¹ Since then no further rounds took place.⁷²

United Nations Framework

The UN Charter calls the United Nations to maintain “international peace and security”, therefore She shall “take effective collective measures for the prevention and removal of threats” guided by “the principles of justice and international law” to settle “international disputes or situations”.⁷³

Specifically, Chapter 6 of the UN Charter demands the United Nations Security Council to “investigate any dispute, or any situation which may lead to international friction or give rise to dispute” in order to foresee if the dispute will continually imperil the maintenance of international peace and security.⁷⁴

The United Nations Security Council (UNSC) is responsible for maintaining international peace and security therefore it shall seek solutions by “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”⁷⁵ If this is not given, the UNSC is commanded by Chapter 7 Article 41 and 42 to take measures such as the “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” or “use of armed forces”.⁷⁶ Since the first employment of sanctions in 1963, Article 41 and 42 have proven flexible with respect to the application of varying measures to address evolving threats to international peace and security.⁷⁷

The Council first imposed sanctions on the DPRK through the adoption of resolution 1695 on 15 July 2006. Since then, it has adopted seven more resolutions expanding and strengthening the sanctions: S/RES/1718 (14 October 2006), S/RES/1874 (12 June 2009), S/RES/2087 (22 January 2013), S/RES/2270 (2 March 2016), S/RES/2356 (2 June 2017), S/RES/2371 (5 August 2017) and resolution 2375 (11 September 2017).

Especially Resolution 1718 is a key document enacting strong sanctions on the DPRK. It was adopted shortly after the first nuclear test conducted on the 9th October 2006.⁷⁸ It imposes an arms embargo, an asset freeze and travel ban on persons involved in the DPRK nuclear

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ UN News Centre. *UN Nuclear watchdogs urges DPR of Korea to resume six-party talks*. 2005.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Security Council Report. *UN Sanctions*. 2013.

⁷⁸ UN Security Council. *S/Res/1718*. 2006.

programme, and a ban on a range of imports and exports.⁷⁹ It also establishes the 1718 Committee, which oversees the sanctions measures imposed by the UNSC.⁸⁰

The latest Resolution 2375 enforces new and also strengthens sanctions on the DPRK and is focusing on Oil/Petroleum, Textiles, Overseas Laborers, Interdiction, Joint Ventures and Designations, these measures target North Korea's last remaining export goods by completely prohibiting export of textiles (nearly \$800 million each year) and preventing overseas workers from earning wages that finance the North Korean budget (over \$500 million each year).⁸¹

Non-UN Entities

European Union (EU)

The European Union (EU) is a supporter of the decisions made by the UNSC and therefore adopted Council Regulation (EC) No 329/2007, which lead to sanctions enforcing the ones imposed by the UNSC.⁸² Recently the EU expanded the sanctions against the DPRK in order to additionally support the UN.⁸³ Moreover, the EU is interested in supporting the DPRK through humanitarian actions. In order to do so the European Commission's Civil Protection and Humanitarian Aid Operations department has been responding to humanitarian needs in North Korea since 1995, providing €135.6 million in humanitarian aid to support over 130 projects.⁸⁴ The aid focuses on providing food assistance, the improvement of health services and access to clean water and sanitation to the most vulnerable parts of the population.⁸⁵

North Atlantic Treaty Organization (NATO)

In 2006, the NATO held an emergency meeting in response to the missile launch in order to express their deep concerns. They further stated that the recent development, deployment and proliferation of ballistic missiles, missile-related materials, equipment, and technology pose a serious threat to the region and the international community at large.⁸⁶ The North Atlantic Council (NAC) condemns in the strongest possible terms the latest missile launch by the DPRK.⁸⁷ Therefore is supportive towards all actions made by the UN and further calls for all nations to fully implement existing UN sanctions and apply decisive pressure to convince the DPRK regime to abandon its current threatening and destabilizing path.⁸⁸

African Union (AU)

The Peace and Security Council (PSC) from the *African Union (AU)* was established to be a collective security and early warning arrangement with the ability to facilitate timely and efficient responses to conflict and crisis situations.⁸⁹ So far the PSC has neither condemned the situation in the DPRK nor recognized its consequences for the security of African states.⁹⁰

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ United States Mission to the United Nations. *Fact Sheet: Resolution 2375 (2017) Strengthening Sanctions on North Korea*. 2017.

⁸² Council of the European Union. *Council Regulation (Ec) No 329/2007*. 2007.

⁸³ Council of the European Union. *Timeline- EU restrictive measures against North Korea*. 2017.

⁸⁴ EC. *European Civil Protection and Humanitarian Aid Operations- North Korea (DPRK)*. 2017.

⁸⁵ Ibid.

⁸⁶ NATO. *Statement on North Korea*. 2017.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ AU. *Peace and Security Council (PSC)*. 2017.

⁹⁰ ISS. *Cooperation between African states and the Democratic People's Republic of Korea*. 2016.

A Panel of Experts supporting the 1718 Committee noted that many African countries are non-reporting upon the implementation of UNSC Sanctions of S/Res/1718.⁹¹

Despite the low number of reporting countries, African states sitting in the UNSC as non-permanent members have always systematically provided support for sanctions.⁹²

Association of Southeast Asian Nations (ASEAN)

On the 3rd of September 2017 the *Association of Southeast Asian Nations (ASEAN)* Foreign Ministers deplore and express grave concerns over the nuclear test conducted by the Democratic People's Republic of Korea (DPRK).⁹³ The ASEAN Regional Forum (ARF) focuses on promoting peace and security through dialogue and cooperation in the Asian Pacific, therefore it is trying keep diplomatic talks with the DPRK open and urges them to comply with the UN.⁹⁴

International Treaties, Conventions and Frameworks

Even though nuclear weapons have only been used twice in warfare—in the bombings of Hiroshima and Nagasaki in 1945—the great danger imposed by the existence of nuclear weapons and a potential nuclear war is admitted.⁹⁵

Still to this day, about 22,000 nuclear bombs reportedly remain in our world and there have been over 2,000 nuclear tests conducted to date.⁹⁶ Disarmament is the best protection against such dangers, but achieving this goal has been a tremendously difficult challenge.⁹⁷ In order to ensure disarmament, the UN has several entities and treaties to ensure measures are taken.

International Atomic Energy Agency (IAEA)

The IAEA, the world's central intergovernmental forum for scientific and technical co-operation in the nuclear field, works for the safe, secure and peaceful uses of nuclear science and technology, contributing to international peace and security and the United Nations' Sustainable Development Goals.⁹⁸ The IAEA was created in 1957 as a response to the deep fears and expectations generated by the discoveries and diverse uses of nuclear technology.⁹⁹ One of the main functions and capabilities of the IAEA is providing safeguards, which aim at deterring the spread of nuclear weapons through early detection of the misuse of nuclear material or technology. This provides credible assurances that states are honoring their legal obligations.¹⁰⁰ Furthermore, these safeguards are an essential component to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

The *Treaty on the Non-Proliferation of Nuclear Weapon (NPT)* is a landmark international treaty whose objective is to prevent the spread of nuclear weapons and weapon's technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of

⁹¹ UNSC. S/2016/157. 2016.

⁹² ISS. *Cooperation between African states and the Democratic People's Republic of Korea*. 2016.

⁹³ ASEAN. *ASEAN Foreign Ministers' Statement on The Democratic People's Republic of Korea's (DPRK) Nuclear Test*. 2017.

⁹⁴ VOANEWS. *ASEAN Foreign Minister Urge North Korea to Comply With UN*. 2017.

⁹⁵ UNODA. *Nuclear Weapons*. 2017.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ IAEA. *Overview*. 2017.

⁹⁹ *Ibid.*

¹⁰⁰ IAEA. *Basics of IAEA Safeguards*.

achieving nuclear disarmament and general and complete disarmament. The Treaty represents the only binding commitment in a multilateral treaty to the goal of disarmament signed by the nuclear-weapon States. Opened for signature in 1968, the Treaty entered into force in 1970. On 11 May 1995, the treaty was extended indefinitely.¹⁰¹ Article 3 of the treaty demands the acceptance of Safeguards which belong to the responsibility of the IAEA and which are used to verify compliance with the Treaty through inspections.¹⁰² Today the NPT has 103 signatures and 127 ratifications.¹⁰³

The *Treaty Banning Nuclear Weapon Tests In The Atmosphere, In Outer Space And Under Water* also known as (*Partial Test Ban Treaty (PTBT)*) requires parties to prohibit, prevent, and abstain from carrying out nuclear weapons tests or any other nuclear explosions in the atmosphere, in outer space, under water, or in any other environment if such explosions cause radioactive debris to be present outside the territorial limits of the state that conducts an explosion.¹⁰⁴ In order to refrain from causing, encouraging, or in any way participating in, the carrying out of any nuclear weapon test explosion, or any other nuclear explosion, anywhere which would take place in any of the above-described environments.¹⁰⁵

The *Comprehensive Nuclear-Test-Ban Treaty (CTBT)* was opened for signature in 24th September 1996 and obligates all members to ban any nuclear weapon test explosion or any other nuclear explosion.¹⁰⁶ In 1985 North Korea joined the international Nuclear Non-Proliferation Treaty.¹⁰⁷ Later, in 1993, the IAEA accuses the DPRK of having violated the treaty, causing North Korea's withdrawal from the NPT.¹⁰⁸ Eventually, in 1994, the DPRK withdrew its membership from the IAEA, but agrees to keep the Safeguard Agreement intact.¹⁰⁹ The DPRK neither signed the PTBT or CTBT.¹¹⁰

The *United Nations Office for Disarmament Affairs (UNODA)* is another UN agency charged with promoting disarmament, including disarmament of WMD. The UNODA does this through a variety of frameworks and mechanisms, including the major WMD and conventional weapons conventions and regional organizations and agreements.¹¹¹ In 2004, the Security Council unanimously adopted Resolution 1540 under Chapter VII of the United Nations Charter, obliging States to refrain from supporting non-state actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery systems.¹¹²

¹⁰¹ UNODA. Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

¹⁰² Ibid.

¹⁰³ UN. *Treaties*. 2016.

¹⁰⁴ Nuclear Threat Initiative. *Treaty Banning Nuclear Weapon Tests In The Atmosphere, In Outer Space And Under Water (Partial Test Ban Treaty) (PTBT)*. 2011.

¹⁰⁵ Ibid.

¹⁰⁶ Nuclear Threat Initiative. *Comprehensive Nuclear-Test-Ban Treaty (CTBT)*. 2016.

¹⁰⁷ IAEA. IAEA and DPRK: Chronology of Key Events. 2017.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ UNODA. *Nuclear Weapons*.

¹¹¹ UNODA. *United Nations study on disarmament and non-proliferation education*. 2017.

¹¹² UNODA. *Disarmament in the Security Council*. 2017.

Humanitarian actions

The situation in North Korea is regularly criticized by humanitarian organizations due to violations against human rights, especially in the mid-90s the DPRK gained attention through country wide famines.

The *Office of the United Nations High Commissioner for Human Rights (OHCHR)* addresses human rights violations worldwide. The UN Commission on Human Rights established *Resolution/2004/13 The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, and has been renewed on an annual basis by the Human Rights Council.¹¹³ The Special Rapporteur investigates and reports on the situation of human rights in the country and on the government's compliance with its obligations under international human rights law.¹¹⁴ He submits reports to the Human Rights Council and General Assembly annually.¹¹⁵

Lately the *Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea* stated that the international security crisis over North Korea must not overshadow the human rights situation of millions of ordinary citizens in the country, especially because these suffer from patterns of "grave violations".¹¹⁶ He also stated great concern with the wider sanctions on coal, iron and seafood imposed by the UN Security Council in September may have a negative impact on the population.¹¹⁷

Regional Context

From 1910 to 1945 the Korean peninsula was colonized by the Japanese, but after World War II occupation ended with the Soviet troops governing the north, and US troops the south.¹¹⁸

Before the withdrawal of the Soviets out of the country, they created North Korea's Communist Party and empowered the Supreme Leader Kim Il-sung, who declared the independence of North Korea in 1948, establishing a communist system.¹¹⁹

In 1950 the South, supported by the US, declared its independence, sparking an invasion through the DPRK which led to the Korean War and lasted three years until it was ended by an armistice in 1953.¹²⁰ This event caused the death of five million soldiers and civilians and divides the country until today.¹²¹

Afterwards, the DPRK experienced a rapid industrial growth and finally joined the United Nations after the release of S/RES/702, which recommended North and South Korea to become Member States in 1991.¹²²

the Korean War never officially ended, it only found a temporary armistice. Due to this situation the tension between both countries is still present.¹²³

¹¹³ UNHR. *Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*. 2017.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Report by the *Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*. A/72/394. 2017.

¹¹⁷ Ibid.

¹¹⁸ British Broadcasting Corporation (BBC). *North Korea profile- Timeline*. 2017.

¹¹⁹ Ibid.

¹²⁰ History. *Korean War*. 2017.

¹²¹ Ibid.

¹²² UNSC. S/RES/702.

¹²³ History. *Korean War*. 2017.

Conclusion

Although there have been various agreements and treaties, the nuclear and missile program of the DPRK is far from being contained. Because of the threat caused by nuclear weapons and their destructive power this is constituting a menace to international peace and security. At the same time North Korean citizens live under poor conditions, infringed in their basic human rights. Therefore, mediation is needed to encourage the different parties to restart negotiations and for the DPRK to enter into closer cooperation with the international community.

Further Research

To prepare themselves for the topic, delegates should focus on following questions:

Concerning their countries:

- Is the country economically, militarily, technically affected by/involved in North Korea's missile tests?
- Which international instruments, treaties, UN documents etc. does the country support?
- Which relation has your country towards the DPRK, are you able to mediate or is it directly involved in the conflict?

Concerning the possibilities of the SC to convince the DPRK to stop the nuclear and missile program:

- Should new Sanctions be implemented to force the DPRK to stop the testing, if so which ones should be strengthened, renewed or created?
- How can the SC ensure, that new Sanctions will take effective measures against the testing and not negatively affect the North Korean population?
- Which diplomatic initiatives your country's willing to reestablish?

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