

CHINA'S REJECTION TOWARDS THE HAGUE TRIBUNAL RULING ON SOUTH CHINA SEA CASE 2016

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Abstract

The People's Republic of China and the Philippines are both the parties which are tied to the United Nations Convention on the Law of the Sea (UNCLOS). As the practice of UNCLOS' Annex VII, the Philippines proposed to deal with the jurisdiction over the South China Sea dispute. The effort in dealing with the case was met with China's non-acceptance and non-participation towards the proceedings and the result of The Hague's Tribunal Ruling which decided to rule unanimously in favour of the Philippines. On July 12, 2016, China declared her rejection towards The Hague's tribunal decision.

The objective of this thesis is to analyse the reasons behind China's rejection towards the Hague tribunal ruling over the South China Sea case. This thesis uses the rational actor model and the concept of national interest in analysing the case. The qualitative method is applied, and the writer is using media and library research related to China, South China Sea, and the *Philippines v. China's* case.

The research found that China's rejection to the decision of the arbitral tribunal's ruling brings more advantages for China in the aspects of territorial integrity, military security, and economic well-being.

Keywords: China's rejection, tribunal ruling, rational actor, South China Sea, South China Sea dispute, United Nations Convention on the Law of the Sea

INTRODUCTION

The South China Sea is an area in the part of the western Pacific Ocean, which stretches from the Karimata and Malacca Straits to the straits of Taiwan (LaFond, 2007). It is a semi-enclosed sea covering an area of almost 3.5 million square kilometers (PCA, 2016, p. 1). Geographically, the location of the South China Sea is surrounded by East Asia and Southeast Asia states such as China, Taiwan, the Philippines, Vietnam, Malaysia, Singapore, Brunei, and Indonesia.

The rich natural resources lie in the South China Sea is one of the factors that makes the area attractive to its surrounding states. The water territory is home to the highly biodiverse coral ecosystem. The area is also holding an abundant amount of gas and oil resources on its seabed. Furthermore, the South China Sea is also the location of the Spratly Islands and Paracel Islands, which comprise of small islands and coral reefs existing above the water as the peaks of undersea mountains (PCA, 2016, p. 1). Those majorly uninhabited islands have become the claiming targets by the states surrounding the region.

The overlapping claims in the South China Sea involve almost all sovereign states within the region, namely China, Taiwan, the Philippines, Vietnam, Brunei, and Malaysia (The Straits Times, 2016). Those states are claiming over islands (including special features in the South China Sea, such as the Spratly Islands and Paracel Islands), reefs, banks, and maritime boundaries. Their three main reasons to claim those areas, among others, are to acquire the rights for fishing, exploit the natural resources such as oil and gas, and strategically control the important shipping lanes in the area.

So far, there are already many attempts done to settle the dispute, both by bilateral negotiations between the claimant states and multilateral discussions facilitated by ASEAN (Association of Southeast Asian Nations). The overlapping claims have made both attempts take a long time to solve the dispute since its emergence. China, which is so far has claimed the largest portion of the territory which defined by the “nine-dash line,” triggers the Philippines to challenge the validity of

China's historical-based claim in the area marked by the "nine-dash line" to the court in the Hague (BBC, 2016).

Under the Permanent Court of Arbitration (PCA), which serves as the Registry in the arbitration, the Philippines proposed the interstate arbitration proceedings to the Chinese Embassy in Manila through a *note verbale* with a Notification and Statement of Claim on the West Philippines Sea on January 22, 2013. The Philippines disputed the case over 'maritime entitlements' and the lawfulness of the Chinese activities in the South China Sea. This action was taken after the event happened on April 2012 when the Philippine warships lose control over the Scarborough Shoal in their arrest attempt to the illegal fishing done by the Chinese in the area. (Yu, 2016).

The arbitration proposed by the Philippines is taking a basis on the 1982 United Nations Convention on the Law of the Sea (hereafter the "Convention" or UNCLOS). Both the Philippines and China have ratified and are the parties tied to the Convention. The Convention adopts the "constitution for the sea" to "settle all issues relating to the law of the sea" (PCA, 2016, p. 1). It provides the procedures to settle various disputes, including the arbitration procedures contained in Annex VII of the Convention. The proceedings are referring to Article 1 about the institution of proceedings in Annex VII (UNCLOS, 1982).

In the arbitration, there are four categories that the Philippines has brought before the Tribunal to be disputed. Thus, the Philippines has asked the Tribunal (1) to resolve the dispute between the Parties regarding the source of maritime rights and entitlements in the South China Sea, especially in proving that China's rights and entitlements which are based on historical rights are invalid; (2) to resolve the dispute between Parties in the entitlements to Scarborough Shoal and several features in the Spratly Islands which are claimed by both Parties; (3) to resolve the dispute between Parties concerning on the lawfulness of China's actions in the South China Sea by interfering the Philippines to exercise its rights to fishing, oil exploration, navigation, and construction of artificial islands and installations, and also by failing to protect and preserve the maritime environment; and (4) to prove that China has aggravated and

extended the disputes by restraining the Philippines' access to a detachment of Philippine marines stationed at Second Thomas Shoal and by constructing artificial islands and land reclamation at seven reefs in the Spratly Islands in a large-scale (PCA, 2016, pp. 2-3).

However, the Convention does not address the sovereignty of the state over the land territory, nor it can determine the delimitation of maritime boundaries. In 1996, China made a declaration to exclude maritime boundary delimitation from its acceptance of compulsory dispute settlement in the Convention. Accordingly, the Tribunal does not intend to grant sovereignty to one or both Parties over their disputed areas in the South China Sea. Similarly, the Tribunal also does not imply to delimit any maritime boundary between the Parties (PCA, 2016, pp. 1-2).

During the arbitration, the proceedings are always met by the non-acceptance and non-participation from the China side. However, China's absence in the proceedings does not hold them to proceed. As stated in the Article 9 of Annex VII (UNCLOS, 1982), that the "absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings." The tribunal also still recognizes China as the party in the arbitration, referring to Article 296(1) of the Convention and Article 11 of Annex VII (UNCLOS, 1982). However, the situation has made the Tribunal unable to accept the claims made by the Philippines to a default judgment.

Despite its absence, China has made a formal statement in their Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines that the Tribunal lacks jurisdiction over the Philippines' claims. On October 29, 2015, the Tribunal issued an Award on Jurisdiction and Admissibility in which it decided to treat China's Position Paper "as equivalent to an objection to jurisdiction and to conduct separate hearing and rule on its jurisdiction as a preliminary question." The Award on Jurisdiction also concluded "with respect to seven of the Philippines' fifteen Submissions while deferring decisions on seven other Submissions for further consideration in conjunction with the merits of the Philippines' claims" (PCA, 2016, p.

4). In its final Award issued on July 12, 2016, the Tribunal was highly in favor of the Philippines, ruling that (1) China's claim on "nine-dash line" as well as its claim to historic rights is invalid under international law; (2) no maritime feature in Spratly Islands claimed by China (within 200 nautical miles of Mischief Reefs and Second Thomas Shoal) could be considered as an island under the UNCLOS; (3) there were unlawful conducts done by the Chinese such as obstructing the Philippine vessels from operating in Scarborough Shoal and damaging the marine environment by conducting harmful activities; and (4) China has aggravated and extended the Parties' disputes on their respective rights and entitlements as well as the protection and preservation in the area of Spratly Island (PCA, 2016, pp. 473-7).

Responding to the Permanent Court of Arbitration's verdict, the president of the People's Republic of China, Xi Jinping made a statement on July 12, 2016 that "China will not accept any proposition or action based on an international tribunal's ruling over the disputed South China Sea" (Shi & Jun, 2016).

THE RATIONAL ACTOR MODEL

Graham T. Allison firstly coins the rational actor model in his famous book entitled *Essence of Decision: Explaining the Cuban Missile Crisis* written in 1971. In his book, Allison explains the phenomenon of the Cuban missile crisis using three kinds of foreign policy decision-making models, with the rational actor as the first model (Allison, 1971). Karen Mingst, in her book *Essentials of International Relations*, describes the rational actor model as a model of the foreign policy decision-making process in which actions are chosen by the national government in order to maximize the nation's strategic goals and objectives (Mingst, 1999, p. 131). In this context, the rational actor model can be the most suitable model of foreign policy decision-making theory to explain the reasons behind China's decision to reject the Hague tribunal ruling on South China Sea case.

Table 1. Benefits and Costs of China Accepting / Rejecting the Hague Tribunal Ruling on the South China Sea Case

Parameter	Accepting	Rejecting
Benefits	<ul style="list-style-type: none"> - China receive positive image in supporting regional stability in Southeast Asia. 	<ul style="list-style-type: none"> - To consolidate the China's Communist Party leadership. - To show off China's military preparedness in protecting its territorial sovereignty. - To maintain the ongoing claim over the disputed area in terms of its economic and strategic potentials.
Costs	<ul style="list-style-type: none"> - President Xi Jinping will be considered as a weak national leader and therefore risk his leadership to the China Communist Party. - China's military force could be considered as unreliable in protecting its territorial claim. - China loses its ongoing claim over the disputed area in terms of its economic and strategic potentials. 	<ul style="list-style-type: none"> - China receives a negative image in international political realm.

According to the table, it is more benefitting to reject the Hague tribunal ruling on the South China Sea. The benefits that China gains from rejecting the Hague tribunal ruling are that China can consolidate the China's Communist Party leadership, show the preparedness of China's military to protect its territorial sovereignty, and maintain the ongoing claims on the disputed area in terms of economic and strategic potentials. In order to understand those standpoints, we have to take the consideration that China has become more assertive in South China Sea, notably after President Xi Jinping's accession to power in 2012. Prior to his leadership, the CCP's legitimacy was threatened due to the weakening economy. Therefore, it is essential to the CCP to have more muscular foreign policy to show the Chinese people that it is able to cater to the

people's well-being and aspirations by putting importance on safeguarding China's strategic economic interests and territorial ambitions in the South China Sea (Casarini, 2017).

However, rejecting the Hague tribunal ruling costs China to receive negative image in international political realm. China has already been criticized by the United States and its allies from showing non-acceptance and signaling in advance that it will ignore the tribunal's ruling. Nevertheless, China as a rational actor is considered to be able to determine a decision that has best alternative and the decision to reject the Hague tribunal ruling over the South China Sea case is the highest rank of choices in terms of its goals and objectives.

THE CONCEPT OF NATIONAL INTEREST

Since the founding of nation-states, the term "national interest" has been used by statesmen and scholars to describe the aspirations and goals of a sovereign state in relation to other sovereign states comprising the external environment (Nuechterlein, 1976). In the conceptualization of national interest, Hans J. Morgenthau in his book *Politics Among Nations* wrote that "the main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined in terms of power" (Morgenthau, 1985). His approach in defining interest is by equating it with power, where power is used to establish and maintain control by a state over another. In Morgenthau's view, the concept of national interest has a residual meaning inherent from the concept which is survival. In order to survive, a nation-state has "to protect their physical, political, and cultural identity against encroachments by other nation-states" (Coulombis & Wolfe, 1986). Similarly, according to Jack C. Plano and Roy Olton, national interest is a fundamental objective that guides a state in its foreign policy decision-making process. It is a highly generalized conception of overall elements that make the state's most vital needs, include self-preservation, independence, territorial integrity, military security, economic well-being (Plano & Olton, 1988).

In the relation to the case study, the writer considers that the aspects of territorial integrity, military security, and economic well-being are essential for China to achieve their national interests. In accordance to protect the territorial integrity, President Xi Jinping and the CCP strive for more assertive policy in South China Sea to defend what has historically been the part of China's territory. Beyond the fact that there is no living activity in the claimed area, China shows its military presence to affirm its claim. Since the disputed area contains potential and strategic economic resources, China wants to maintain their *status quo* as the *de facto* ruler of the contested area and therefore, will still be able to continue the activities in there.

STRATEGIC RATIONALE BEHIND CHINA'S DECISION TO REJECT THE HAGUE ARBITRAL TRIBUNAL RULING IN THE SOUTH CHINA SEA CASE

In regard of the options that China's government has (accept or reject) in the case of the Hague tribunal ruling over the South China Sea dispute, rejections is the most benefiting decision for China. Although, by rejecting the tribunal's decision, China has to face more criticism and pressure from international entities, China still gain advantages which can be seen from the aspects of territorial integrity, military security, and economic well-being.

1. TERRITORIAL INTEGRITY

Domestically, the Chinese leader and the people uphold the same view that the South China Sea is an inseparable part of China's territory. Following the issuance of the Tribunal Award to be in a high favor for the Philippines on July 12, 2016, the Government of the People's Republic of China released a statement regarding China's territorial sovereignty and maritime rights and interests in the South China Sea. The statement is to

“reaffirm China's territorial sovereignty and maritime rights and interests in the South China Sea, enhance cooperation in the South China Sea with other countries, and uphold peace and stability in the South China Sea” (Xinhua, 2016a).

In the statement, it is written that China's South China Sea Islands consist of the Dongsha Islands, Xisha Islands, Zhongsha Islands and Nansha Islands. The Chinese people has conducted activities in the South China Sea that can be traced back to over 2000 years ago. Along with that narrative, the statement that “the Chinese is the first to have discovered, named, explored, and exploited the South China Sea and the first to have exercised jurisdiction and sovereignty over the water” has been consistently mentioned in China’s official documents. China also reaffirms that, after the Second World War has ended, China recovered and resumed the exercise of sovereignty over the South China Sea which had been occupied by the Japan during its war of aggression against China. In the 1947, the Chinese government reviewed and updated the geographical names of the South China Sea (Nanhai Zhudao) on which the dotted line is drawn. Since February 1948, the map was officially published and made known to the world by the Chinese Government (Xinhua, 2016a). Seen from those narrative, we can see that China’s territorial and maritime claims in the South China Sea are closely linked with China’s identity storyline. Therefore, in the eyes of Chinese people, the features in the South China Sea and the related waters are undisputedly parts of China’s historic territory (Casarini, 2017).

Since the founding of the People’s Republic of China on 1 October 1949, China has been firm in upholding her territorial sovereignty and maritime rights and interests in the South China Sea. China has issued a series of legal instruments to solidify its claim, such as the 1958 Declaration of the Government of the People's Republic of China on China's Territorial Sea, the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, the 1996 Decision of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea, and the 1998 Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf (Xinhua, 2016a). Thus, it can be implied that China has been seriously maintaining its claims in the South China Sea.

With regard to the Arbitral Tribunal in the South China Sea (*Philippines v. China*) case in 2013-2016, the Ministry of Foreign Affairs of the People's Republic of

China solemnly declares that the award is null and void and has no binding force. China neither accepts nor recognizes it (Xinhua, 2016b). China's rejection to the result of the tribunal has always been consistent. As China has stated in 2014 position paper, the arbitration breaches the agreement between China and the Philippines, violates the UNCLOS, and goes against the general practice of international arbitration (PRC, 2014). Therefore, according to China, the arbitral tribunal has no jurisdiction over the matter (Raditio, 2019). Furthermore, regarding China's interest in the South China Sea, several Chinese policymakers of the People's Liberation Army have asserted that the South China Sea is now the part of China's "core national interest" (Casarini, 2017). Therefore, it is within China's rights to defend the territorial sovereignty over the South China Sea.

In reaffirming China's stance in the South China Sea dispute to the ASEAN member states, in April 2016, the Chinese Foreign Minister Wang Yi established 'a four-point consensus' during his visit to Brunei, Cambodia, and Laos. In the consensus, both China and the three countries agreed that (1) the issue in the South China Sea should not affect China-ASEAN relations, (2) every sovereign states is free to choose their own ways to solve the disputes and it should not be imposed by unilateral decision, (3) the dialogues and consultations on the disputes over territorial and maritime rights and interest should be directly concerned under Article 4 of the DOC, and (4) peace and stability in the South China Sea can be maintained by China and ASEAN member states through cooperation (Ministry of Foreign Affairs of the People's Republic of China, 2016). Therefore, in regard of China's decision to reject the result of the Arbitral Tribunal's ruling, China's position has always been clear that she prefers to solve the problem by negotiations and consultations. China, as a state party to UNCLOS, supports and respects the treaty's principles and spirit. What China opposes is not UNCLOS and compulsory arbitration, but the tribunal's abuse of power in handling the case (Ying, 2016). Bringing the disputes to be resolved on bilateral basis through negotiations will benefits China. As a large and powerful country, China can swing its weight against much smaller and weaker claimants (Panda, 2016).

From the way Chinese government has been responding to the recent South China Sea dispute, it can be seen that China has become more assertive in their policies. According to Michael Yahuda, China's new assertiveness in the South China Sea are stemmed from four factors: 1) China's perception of the shift in power balance, 2) the growing national interest that includes the maritime area, 3) the advancing military capability to consolidate its claim, and 4) the rising patriotic sentiments among the Chinese people, both the elites and the ordinary citizens (Yahuda, 2013). However, Klaus Heinrich Raditio in his book titled "*Understanding China's Behavior in the South China Sea*" assesses that Yahuda's view which suggesting that China's behaviour is motivated by patriotic sentiment is quite flawed, because in a political system like China, public participation is not involved in the matter of foreign policy making. Instead, he supports Peter Dutton's view which suggests that China's main objection in the South China Sea are regional integration, resource control, and enhanced security (Raditio, 2019). Even though Dutton's view seems closer to determine China's interests in the South China Sea, Nicola Casarini argues in her article titled "*A Sea at the Heart of Chinese National Interest*" that it is important to cater to Chinese people's growing aspiration. Thus, by taking more assertive policy in the South China Sea, it is hoped that the action can consolidate the CCP's leadership and maintain their legitimacy.

2. MILITARY SECURITY

To safeguard China's interest and exercise its maritime rights in the South China Sea, China strengthens its military capability and increases its military presence in the area. From Chinese perspective, it remains important to defend the unresolved territorial disputes where China has claimed but did not control, such as in Taiwan and the areas in the East and South China Sea. By building capabilities which the US calls as 'anti-access/area denial' (A2AD), China's military presence in the disputed area does not try to control them, but rather to deny access to other countries to operate freely in the area. The A2AD capabilities consist of a whole set of conventional means,

which include the attack submarines, ballistic and cruise missiles, land-based aircraft, cyber-attacks, and possibly many others. In a scenario where China has to face a major military campaign, China's military capabilities and physical presence in the disputed area will allow China to have a better control over the territory (Turcsanyi, 2018).

China's military rise can be seen from the data on military budget. In regional context, China's military expenditure has overtaken Japan since 2004. The number is now significantly overgrowing in aggregate numbers of all the actors in the Indo-Pacific region. Numerically, China has an obvious advantage over other claimants in the South China Sea because China surpasses other claimants' military hardware. It is not surprising, considering the big differences in military expenditures, economies, and sizes.

Furthermore, to solidify its hold on the South China Sea despite competing territorial claims, China is rapidly transforming numerous reefs of the Spratly Island group into military installations. The bases will be used to constrain the activities of competing countries' military in the region. To appear more than adequate in supporting air traffic monitoring and enforcement in the area, China were to declare an Air Defense Identification Zone over the South China Sea. The strategic importance of China's expansion in Spratly Islands was made evident in September 2014, when the commander of the PLA Navy, Wu Shengli, personally made an inspection of each of the newly filled-in reefs. In a presentation to Taiwanese legislators, China's President Xi Jinping had personally authorized five of Beijing's new military sites in the Spratly Islands. Among the features in Spratly Island, China has been establishing military bases in Fiery Cross Reef, Johnson South Reef Mischief Reef, Hughes Reef, Gaven Reef, Cuarteron Reef, Subi Reef, and Eldad Reef (Lee, 2015).

Measuring the effort done by China to safeguard its rights for sovereignty and maritime entitlements in the South China Sea, it is comprehensible that China chooses to reject the result of the Arbitral Tribunal's ruling. China's effort in strengthening its military capabilities and military presence in the South China sea will effectively

fortifying its trade and route security, upsetting any potential threat from other major players in the area, and protecting further activity in oil and gas exploration.

3. ECONOMIC WELL-BEING

The South China Sea is a key commercial area which connects Asia with Europe and Africa. Besides that, its seabed is rich with natural resources, such as oil, gas, and fish. The US Energy Information Administration estimates the South China Sea contains at least 11 billion barrels of oil and 190 trillion cubic feet of natural gas. Other has estimated that the area contains as high as 22 billion barrels of oil and 290 trillion cubic feet of gas. The South China Sea also accounts for 10 per cent of the world's fisheries, making it a key source of food for hundreds of millions of people (SCMP, 2019).

As China's economy has rapidly grow over the past 30 years, it has led to a rising energy demand in the country. The South China Sea has become China's major source and important passage to meet its high demand for energy and resources. In 2012, China has become the world's second largest oil importer and consumer after the US. According to the US Energy Information Administration (EIA), in 2013, China has surpasses the US as the world's largest oil importer (Zhou, 2015). For fishing activity, China's catch in South China Sea has the total of 17 million tons, or a global share of 19% in 2016 according to FAO report (FAO, 2016). It is 2 million tons bigger than the total catch from all of ASEAN countries with a coastline in the South China Sea (Austin, 2019). For trading activity, a total of US\$3.37 trillion of international trade passes through the South China Sea. It is equal to one third of global shipping. In 2016, 80 per cent of China's oil imports arrive via the Strait of Malacca, in Indonesia, and then sail across the South China Sea. Given the significance of the South China Sea for Chinese trade activity, it is understood that China wants to preserve the free flow of trade in the area (CSIS China Power Project, 2019).

Thus, rejecting the result of the Arbitral Tribunal's ruling will enable China to continue what it has enjoyed so far in exploiting the resources in the South China Sea

and taking advantage of its strategic position. Taking account on how much China's economy relies on the South China Sea, it is understandable that China wants to defend their *status quo*.

THE RESPONSES FROM INTERNATIONAL ENTITIES

Despite the PCA being less powerful than the ICJ, ignoring a finding of the PCA would still be significant, as it would amount to ignoring international law. The members of the UN Security Council still has the ability to seek its permanent members to discuss and seek for resolution on the matter. Rejecting the PCA's finding could highly damaging to the credibility of UNCLOS, and the decades of diplomatic work that its successful negotiation entailed. The UNSC could classify the South China Sea issue as a dispute causing international friction. However, the UNSC's efforts are inevitable when China and Russia would prevent the UNSC from discussing the issue.

The US and the UK are taking a strong line in responding this issue. President Barack Obama has strongly emphasized respecting the PCA's findings despite the US not ratifying UNCLOS (Obama, 2016). UK Prime Minister David Cameron has stated that he expects China to abide by the result of the arbitration (Asthana, McCurry, & Wintour, 2016). France is more difficult to predict, only that it and EU members have been calling for resolution of the South China Sea disputes through international law.

In defense to China's decision to reject the finding of the PCA, Allison wrote in his recent essay that it is unlikely to discover a permanent member of the UN Security Council that has ever complied with the PCA's rulings on issues involving the Law of the Sea. He further argues that none of the permanent members of the UN Security Council have accepted any international court's decision when it infringed their sovereignty and national security interests. Therefore, China will only be doing what other great powers have done repeatedly when it rejects the decision of the Hague's tribunal ruling (Allison, 2016).

CONCLUSION

Rejection is the most benefiting decision for China in the case of the Hague tribunal ruling over the South China Sea, and the reasons are 1) China can consolidate the China's Communist Party leadership by striving for more assertive policy in South China Sea to defend what has historically been the part of China's territory, 2) China can show that its military force is reliable to protect its territorial claim, and 3) China can maintain the ongoing claims on the disputed area in terms of economic and strategic potentials.

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