

The Philippines-China Maritime Dispute: Mapping Post-Arbitration Narratives and Ways Forward

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Abstract

This study mapped out post-arbitration narratives to comprehend the power play in the Asia-Pacific region and to survey reasonable options for the resolution of the maritime dispute of the Philippines and China. The PCA rendered its decision on the SCS Arbitration to China's rejection on July 12, 2016. Six years later, the Award failed to resolve the region's geopolitics and geoeconomics and reached an enforcement deadlock. The non-recognition and absence of UNCLOS enforcement mechanism, the inadequacies of the state-level conditions of the Philippines which stands in stark contrast to the preponderance of China, the structural realist ASEAN consensus, and US non-aligned position on competing claims have notably incentivized the aggressive resolve of China in the SCS. However, diplomatic activism grounded on mutual interests and advantages on economic, political and administrative imperatives are potential pathways for settlement. This is rather a delicate exercise if China should not take the lead. In the foreseeable future, the Philippines will maintain playing the waiting game in terms of enforcing its rights outlined in the ruling, as paths forward remain unlikely to deliver a modus vivendi for both countries given current state-level conditions and surrounding international circumstances.

Keywords: South China Sea Arbitration, foreign policy, enforcement

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Introduction

The Permanent Court of Arbitration (PCA) issued, on July 12, 2016, a landmark ruling on the long-running conflict between the Republic of the Philippines and People's Republic of China over the South China Sea (herein referred to as SCS). But more than six years have passed and the tensions between the two countries remain unsolved.

This article examines the post-arbitration foreign policy narratives of the Philippines and China to identify the prevailing dynamics. The analysis drawn out of the findings is aimed at shedding light on the ongoing impasse and offers pathways where mutual interests and advantages may be built upon for the peaceful resolution of the dispute.

Background of Interests in the SCS

The SCS is a semi-enclosed body of water with an area of 3.5 million square kilometers mostly surrounded by the countries Brunei, Indonesia, Malaysia, the Philippines, Vietnam, and China. Extensive rocks, reefs, cays, islets, and islands dot the region, which are neatly arranged into island groupings.

In China, the SCS has been known and used since time immemorial. During the dynasties of Qin and Han (221 BC-220 AD) and the dynasties of Tang and Song (618-1279 AD), it is a composite of the titular ancient Silk Road, only at sea. Its reach expands from southeast China to the coasts of the Philippines, Vietnam, Malaysia, Thailand, and passing the Malacca Strait to the Indian subcontinent and to the northern shores of the Mediterranean. As accounts would have it, a ban on maritime trade was issued by emperors during the Ming and early Qing Dynasty (circa 1474 and 1551), halting the use of the sea Silk Road. In 1840 (First Opium War between Great Britain and China), the said sea lane fell into complete disuse. As an emphasis, Chinese emperors have usually shown little interest in establishing delimitation and protection of the SCS throughout their long history (Gao & Jia, 2013).

For the Philippines, the SCS served a relatively similar function. The area encompassing SCS has provided a way for its people to engage with its neighbors including China primarily through trade long before its colonial era. Sulu first showed up in Chinese texts during the Yuan era (1268-1368). As a matter of fact, the Ming Annals mentioned a tributary expedition from Sulu to the Chinese imperial court in 1417 (Warren, 1977). This alone demonstrates that the SCS has served as a bridge for both countries' connections, and none of them seemed to have questioned each other's authority over the features therein for hundreds of years, primarily because, as Solomon (1970) aptly puts it, the idea of an enclosure on the sea was incongruous to the "South East Asian Experience." It goes without saying that there was no sense of stable and demarcated boundaries in the SCS before. The practical equivalent of boundaries within the region included zones of contact and positional strategies during infrequent warfare, within which the boundaries of expansion of each kingdom or principality's sovereignty was set by power relationships which were constantly susceptible to shift (Solomon, 1970).

By the time Spain and the United States (herein referred as US) subjugated the Philippines, they carried with them the Western conception and practice of boundary as a function of a state—that is, boundaries must be drawn to represent an area of authority or organization and such be legitimized. This explains that, with the arrival of foreign powers in the Philippines, the country became known as a unified whole without regard to its archipelagic features. Philippine territory seemed as a sizable "box" for them, inside which the Philippines' characteristics and waterways were both seen as belonging. Over time, the Philippines dropped the "box" and altered the metes and bounds of its territory (Warren, 1970; Rosen, 2014).

Briefly, the SCS is essentially peaceful, and conflicts between littoral states for authority and sovereignty over the features thereat are contemporary. As demonstrated, the change in the region's customary idea of maritime space during the transition from the 19th to the 20th century is the precursor of the SCS dispute.

To elaborate, in 1914 two private cartographers published in the Chinese national atlas a continuous boundary line enclosing the SCS. From this date onwards, China began to reframe its approach in the SCS as evidenced by a number of instances when its maps in the SCS were modified to keep up with the realities such as the its recovery of the Xisha (so-called Paracel Islands) and Nansha Islands (so-called Spratlys Islands) from Japan pursuant to the Cairo and Potsdam Declaration. Perhaps, the most significant event occurred in 1948 when the atlas on the national administrative districts reflecting the eleven-dash line was made known to the world by China via Commerce Press. In 1949, the Philippines was reported to have started showing interest in the Spratlys. A diplomatic inquiry on the matter according to China revealed that the Philippines' concern was only limited to protecting its fisherfolk in the waters. Further, in the 1953 Sino-French Tonkin War, the "nine-dash line"¹ emerged resulting from the removal of two (2) dashes from the eleven-dash line in favor of Vietnam (Gao & Jia, 2013).

As stated, the Philippines went on record showing interests in some portions of the SCS since 1949. Among a number of actions undertaken, perhaps the most significant of which was the voyage of the Filipino navigator Thomas Cloma in 1956 to the Pag-asa Island and claimed it as his own because, for him, there had been no strong claimants of the islands he had found except a few Taiwanese banners. The Philippine government was alerted by Cloma about this, and the latter even wrote letters to global newspapers announcing the Free Territory of Freedomland (now known as the Kalayaan Island Group). In response, then South Vietnam, China, and Taiwan expressed concern and asserted their prior claims to the KIG. Considering the benefits of assisting the claim of Cloma, it supported its stand that said territory initially belonged to none.

¹ The nine-dash line is China's maritime order in the SCS. It encloses four island groupings, including the Paracel Islands (Xisha), Pratas Islands (Dongsha), Zhongsha Islands—which includes the Macclesfield Bank and other reefs, sandbanks, and shoals—and the Spratly Islands (Nansha) (Gao & Jia, 2013). Its historicity heavily depends on China's long and vast history of unequivocal dominion of the SCS over thousands of years in its recorded history.

Though it is an elementary principle in international law that only states can claim a territory and hence can be recognized, the Philippine government's move in accord with that of Cloma appeared to mean that the latter's claim was state sanctioned. In 1978, through Presidential Decree 1596, the Philippines incorporated a large section of the KIG as part of the province of Palawan (Umali, 2019).

In the years that followed, the Philippines backed its assertion in accord with the UN Law of the Sea Convention of 1982 (herein referred to as UNCLOS). Rosen (2014) laid down the two primary SCS claims made by the Philippines: 1) claims to the Scarborough Shoal feature and 2) claims to additional features in the commonly named Kalayaan Group of Islands (KIG) which are located in the Spratlys. In laying claim, the primary premise lies in the fact that KIG is within the Philippine Exclusive Economic Zone (EEZ) and is closer to the Philippines than to China by 400 nautical miles (Rosen, 2014). In 2011, the term West Philippine Sea was first used by Malacañang to refer to the subject islands in reaction to China's warning to rival claimants to halt prospecting for petroleum in the disputed region without the latter's authorization (Bordadora, 2011, para. 2).

For the countries that surround it, the SCS is an entryway for economic opportunities (i.e. rich hydrocarbon and protein resources) while the extra-regional states, the United States, Japan, Australia, India, etc., concerned themselves with the Global Commons or free and open access of navigation to high seas in the SCS (Dutton, 2011; Deepak, 2018). Relatedly, Gao and Jia (2013) elucidated that interests on freedom of navigation and overflight in the South China Sea is something China has never interfered and will not interfere in the future because of Article 11 of the 1998 Chinese law on the EEZ and on the continental shelf which guarantees that "states shall, on the premise that they comply with international law and the laws and regulations of the People's Republic of China, enjoy the freedom of navigation in and flight over its [EEZ]" in the SCS.

Both China and the Philippines have exhibited solid resolve based on either historical or legal claims, or a mix of both. The conflicting interests of the disputant states have resulted in frequent bursts of tension and conflict during the last four decades. Concrete examples of these incidents are the invasion of the Paracel Islands by Chinese troops in 1974; the aggression on Vietnamese troops on Fiery Cross Reef by Chinese forces in 1988; and the structures built by Chinese personalities in the Philippines-claimed Mischief Reef in 1995 that reneged on the US brokered agreement on the withdrawal of forces thereat. As a result of such incidents, the Association of Southeast Asian Nations (ASEAN) promulgated in November 2002 a unified political position against China's behavior, which was enshrined in SCS Declaration of Conduct of Parties (herein referred to as Declaration). The Declaration made explicit that the State Parties including China reaffirmed their commitment to international law and declared to maintain "consultations and dialogues concerning relevant issues, through modalities to be agreed by them . . . for the purpose of . . . facilitating peaceful resolution of disputes" (ASEAN, 2002). However, the events of the succeeding years validate the argument of Buszynski (2003) that in situations where weaker states are up against a possible hegemon, a delicate balance is needed before norms like the aforementioned Declaration can serve as a solid foundation for conflict avoidance and preventive diplomacy. Beginning 2007 onwards, a series of Chinese maneuvers in the area jeopardized this relative

stability (Dutton, 2011).

Despite years of dispute, the Philippines developed a minimally credible defensive posture because of issues relating to difficulties with internal security (communist insurgency, Muslim separatist movement, and intermittent terrorist strikes); constrained military spending due to limited financial resources (the 2012 Chinese defense budget of US\$129.3 billion towered over the US\$1.2 billion Philippine military budget allocation); and massive corruption (Ortuoste, 2013). With the inability to gain ground in negotiations and rising anti-China sentiments at home, the Philippine government might have been left with no recourse but to institute legal proceedings. In a bold move, the Philippines filed a formal complaint against China on January 22, 2013, citing Annex VII of UNCLOS at the Permanent Court of Arbitration (PCA), thus posed a challenge against China's claims and activities in the SCS (Ortuoste, 2013).

To give adequate context, the preceding section elaborates the nature, composition, jurisdiction, and functions of the Permanent Court of Arbitration .

PCA: Nature, Composition, Jurisdiction and Functions

The Permanent Court of Arbitration (PCA) is an institution established to administer international dispute resolution, which may either be ad hoc arbitration in accordance with Annex VII of UNCLOS (commonly referred as de facto choice) or special arbitral tribunal admitted for certain categories of disputes established under Annex VIII of UNCLOS (Special Arbitral Tribunal and is uncommon choice of state parties so far). Its core function involves settling disputes resulting from the application or interpretation of UNCLOS. In contrast to other settlement procedures under Part XV, Article 287 like the judicial settlement, which can either be lodged through the International Court of Justice (ICJ) by states or International Tribunal for the Law of the Sea (ITLOS) by non-state parties, the arbitration administered by the PCA does not adjudicate but merely interprets dependent on the provisions of the Convention and then issues an Award (UNCTAD, 2003).

It is made up of a permanent secretariat known as the International Bureau, which is led by the Secretary-General and aids state parties by forming and administering a tribunal for each case upon their request for arbitration. In terms of jurisdiction, the agreement of parties to arbitrate is the cornerstone since, in principle, it would imply a renunciation of sovereign immunity and thereby yield to its authority. The PCA rules provide that the law of choice by the parties with prior agreement to arbitrate should be applied in resolving the substantive problems. In the absence of which, it must follow the rules of general international law or another specified body of law. In terms of the expense of the arbitration procedure, the state party and/or other entities involved will incur their own legal representation and assistance costs, as well as the common costs of arbitration. As to composition, Annex VII shall be composed of five (5) members: two (2) of which are appointed by the parties and the other three (3) are decided by agreement. In case of non-cooperation of another party and/or absence of prior agreement, the tribunal members are determined by the President of the Tribunal on the Law of the Sea. For Annex VIII, it is composed of experts whose functions are not limited to adjudication but also fact-finding and conciliation. It is essential to

highlight that both forms can be initiated unilaterally. Should the party fail to uphold its case, a binding award, “final and without appeal,” can be delivered by the tribunal, even in the event of default of one party. So long as it can demonstrate that it has jurisdiction and that the claim at hand is substantiated in fact and in law (UNCTAD, 2003).

In this case, it is worth noting that China questioned early on the tribunal’s jurisdiction on the issue, citing the applicable exceptions under Part XV, Section 2, Article 298 (Optional Exceptions to Applicability of Section 1). The same provision restricts the scope of the compulsory settlement procedure outlined in Section 1, Article 287 (Choice of Procedure), which includes Annex VII. Relevant provision of which is quoted hereunder:

“(1) State may...declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:

(a) (i) disputes concerning the interpretation or application of...sea boundary delimitations, or those involving historic bays or titles,...and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission; 4) If one of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within an excepted category against the declarant party to the procedure specified in such declaration.”

In view thereof, the tribunal, per its decision on matters of jurisdiction released on October 29, 2015, only acquired jurisdiction on matters submitted by the Philippines relating to the “two Parties’ respective rights and obligations . . . [and] no delimitation of a boundary” given that China issued a 2006 declaration expressly excluding maritime demarcation from its acceptance of the obligatory dispute settlement mechanism, which UNCLOS specifically allows under the above-quoted provision (PH-CN Award, 2016).

Following this reasoning and as a matter of fact, the Tribunal constituted under Annex VII acquired jurisdiction only in the issue areas relevant to maritime rights and obligations and not the boundary issue in the SCS. This basically explains the reason why of the fifteen (15) submissions of the Philippines, only fourteen (14) of which were given consideration.

On July 12, 2016, the Tribunal issued the Award in favor of the Philippines’ claims and contentions. The relevant dispositive portion of which is hereunder quoted, viz:

“DECLARES that, it has jurisdiction to consider the matters raised in the Philippines’ Submissions No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14(d) and that such claims are admissible;

DECLARES that, ... China's claims to historic rights...encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention...; and further DECLARES that the Convention superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein;

DECLARES that, as low-tide elevations, Mischief Reef and Second Thomas Shoal do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation;

DECLARES that, as low-tide elevations, Subi Reef, Gaven Reef (South), and Hughes Reef do not generate entitlements..., but may be used as the baseline for measuring the breadth of the territorial sea of high-tide features situated at a distance not exceeding the breadth of the territorial sea;

DECLARES that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef, in their natural condition, are rocks and...generate no entitlement to an exclusive economic zone or continental shelf;

DECLARES that, Mischief Reef and Second Thomas Shoal are within the exclusive economic zone and continental shelf of the Philippines;

DECLARES that China has breached its obligations under Articles 77; 56; 192 and 194(5); 123, 192, 194(1), 194(5), 197, and 206; 60 and 80; 94; 279, 296, and 300 of the Convention."

In summary, the Award is a landmark decision for the controversial maritime issues. It explicitly declares that the maritime claims manifested by the nine-dash line of China are devoid of legal basis as far as UNCLOS is concerned, that a number of marine zones in the contested portion of the South China Sea between PH and PRC rightfully belongs to the former, that China has failed to observe its international obligation to protect and to safeguard the sensitive saltwater ecosystems in the disputed area, and that the actuations of China such as land reclamations and installations on pending settlement of dispute further worsened the situation between parties.

While the Award was met with utmost rejoice in the Philippines, China as a party to it categorically declared it as "null and void and has no binding force" per the Statement of the Ministry of Foreign Affairs. PRC consistently stands firm that the tribunal has no authority to deliberate the submissions because the "subject-matter . . . is in essence an issue of territorial sovereignty . . . and inevitably concerns and cannot be separated from maritime delimitation between China and the Philippines" which is not subject to UNCLOS. Hence, the act of the Philippines unilaterally submitting the issue to arbitration under Article 287 is "out of bad faith," and by extension, the acquisition of jurisdiction is unjust and unlawful.

Also, the Award faced legal criticism on its central findings. The National Institute for South China Sea Studies (2020) sums up some of the most important loopholes as it argues the following points:

1. The determination of the validity of the Tribunal's and invalidity of China's nine-dash line per se is outside its authority because its function merely concerns the application and interpretation of UNCLOS;
2. The declaration that UNCLOS questionably superseded historic rights because such rights coexist and are independent from UNCLOS as attested by the award in the Eritrea/Yemen case and in Article 51 of the Convention. Granting that decisions of other tribunal does not constitute adequate reference of law, the Award apparently presents a "double standard" rendition of issues with similar nature;
3. The Tribunal, by engaging an archivist and allaying the Philippines of its burden of proof on Submissions 4 & 6, breached its responsibility under Article 9 of Annex VII that territorial claims must be "well founded in fact and law;" and
4. The Tribunal made another procedural error by disregarding both Parties' opportunity of cross-examining four experts, selected as members of the Tribunal, whose advice the Award was based on after the merits hearing.

Impact of Arbitration Decision

A look at the foreign policy of both countries over time offers more insights into the impacts of the Award on dispute resolution. The subsections that follow will go through these narratives in depth, respectively.

South China Sea: Chinese Foreign Policy

It is common knowledge that China is ascending into an economic powerhouse at par with the United States. This is embodied in the increasing economic and foreign market links to 163 countries throughout the world. PRC sealed 80 bilateral investment agreements and 10 free-trade agreements topping other trade agreements (Kotani, 2012 in Deepak, 2018). With China's trade connections across all continents, the security and protection of SCS as its critical maritime and trade route is paramount. The nine-dash line, therefore, plays a supportive role in maintaining and advancing these economic interests.

For decades, the priority to safeguard its interests in the SCS have been made known to the world. In fact, China in ratifying the UNCLOS on May 15, 1996 as the legitimate structure that oversees all marine and maritime activities, it expressly declared its reservation based on its instrument of ratification which expressly provides, "The People's Republic of China reaffirms its sovereignty over all its archipelagos and islands as listed in Article 2 of the Law of the People's Republic of China on the territorial sea and the contiguous zone,

which was promulgated on 25 February 1992.” Article 2 of said Law included, as China's land territory, the four island groups in the SCS, as well as other islands reached by China's twelve-mile territorial sea. Shortly after its ratification of the UNCLOS, China established its base points for gauging its territorial sea on June 26, 1998 as indicated in the Law on the Exclusive Economic Zone (EEZ) and Continental Shelf Act. Article 14 of that law, however, explicitly states that the enactment of the same does not alter the "historic rights" of China materialized as the nine-dash line (Gao & Jia, 2013). To clarify, China's reservation in its ratification cannot accordingly undermine the Award's binding force because China as a party to UNCLOS adopted its compulsory dispute settlement procedure without reservation (CRS, 2016). Its reservation merely rests on its concern about the territorial delimitation in the SCS, considering that its claims clearly run contrary to the provisions on EEZ and on continental shelf maintained in the Convention, and not the recognized compulsory dispute settlement procedure laid out therein. This is precisely the reason why this argument was not part of the objections raised by PRC on the jurisdictional issue of the SCS arbitral tribunal.

In a study conducted by Kuik (2017), the Chinese foreign policy in the early 2000s had been characterized by a mix of naval aggression and economic-diplomatic enticement. To illustrate, it adopted a tougher stance on maritime issues and matched it with aggressive economic and diplomatic statecraft in order to reassure its smaller neighbors/rivals and disunite them, although with varying results. This contradiction originates from the ruling Communist Party officials' effort to strike a balance between their several legitimization approaches: nationalist legitimization which requires China to practice its rights and sovereignty in the SCS and performance legitimization which requires it to pursue a cooperative regional strategy for long-term domestic prosperity by exercising diplomatic prudence with the developed world that is admittedly needed by China to sustain economic growth and for the regime to remain in power at the same time.

Such calculated play of strategies to assure legitimacy both at home and abroad is analyzed by Zhao (2013). He established that the convergence of state and popular nationalism called maritime nationalism within China, with the latter being characteristic of contempt of the US, Western powers, or any state that challenges its sovereignty, make the former difficult to reach a diplomatic compromise in foreign policy areas that are inimical to its core national interest (commonly referred to as economic interests). But because of economic imperatives cited above, Chinese officials were able to prevent the growth of popular nationalism from harming China's affinity with the US and Japan by talking strongly but behaving cautiously. In executing such a strategy, the government monopolized official nationalist rhetoric, preventing popular nationalism which characterized disdain of Western interference from having an excessive impact on foreign policy-making. However, post-2008 Chinese foreign policy took a strident turn. China engages in coercive diplomacy in response to popular nationalist cries of irredentism and Western skepticism, which is exacerbated by its perception of relative empowerment and bolstered by its newly acquired wealth and military capabilities. Morton (2016) is correct in highlighting that, at present, what explains China's efforts in the SCS is marine nationalism, rather than maritime hegemony, and that this has driven China's adamant and coercive actuations in the SCS despite eroding its licitness as other major states and players see it.

Hayton (2018) depicts the trend of China's development of maritime claims in the SCS as a manifestation of the power of nationalism. This kind of nationalism was strengthened by various instances developed on a shared conviction of the Chinese "historic claim" of the SCS throughout twentieth century's first half, partly as a reaction to deemed challenges to PRC's sovereignty, but mostly as an attempt by Chinese intellectual and political elites to shore up regime's dwindling nationalist legitimacy that demands for the government to assert China's rights therein. The nationalist rhetoric dictates that aside from economic performance, for the Chinese Communist Party government to remain legitimate, it must exercise all actions necessary to assert PRC's perceived entitlement in the SCS.

Taking into account China's economic position and bearing in mind that the traditional power balance strategy in the disputed region, with the US taking the lead, no longer works effectively to constrain China to act in conformity with shared international rules when the latter goes against its core national interests, this article is of the view that the post-arbitration SCS cannot engender a mutual agreement if these conditions which are favorable to China remain constant.

West Philippine Sea: Philippine Foreign Policy

China claims almost all of SCS within its "nine-dash line," much to the displeasure of other coastal governments especially the Philippines (Deepak, 2018). The submissions of the Philippine government in the PCA clearly demonstrates the country's objection to Chinese assertions in the SCS. On July 12, 2016, the Award on the matter was issued, but unfortunately reached an impasse on enforcement.

This situation shows that the legal acrobatics of the Philippines has not been significantly fruitful, not to mention the waste of state funds incurred in the process and the varying opinions that attributed the same to have strained further the relations with China, making prospects for bilateral settlement practically difficult to undertake.

It has been more than six years that the Award did not result in any effective global diplomatic pressure on China or a mutually agreed policy direction in favor of the Philippines, but it did however embolden China to assert its perceived rights and heightened its routine patrols and reclamation projects in the area (Deepak, 2018).

Hence, the rules-based international system championed by UNCLOS was not kind enough to affect the enjoyment of the Philippines to the areas the Award declares as rightfully belonging to the country. While it is said that it is the most legally important development in the SCS maritime conflict—the Award opposing China's insistence on its illegitimate and exorbitant claims (Lee, 2021)—such milestone for the Philippines appeared to have been relegated into a worthless piece of paper when judged to the extent it engenders resolution or even a united cause across ASEAN member states to contain China's assertiveness and aggressive actions in the disputed waters.

In closing, while there have been available authoritative studies that dealt with the domestic variables, predominant motivations and strategic realities of the foreign policy of either the Philippines and China (Zhao, 2013; Murphy, 2017; Gao & Jia, 2013; Le Thu, 2018; Morton, 2016) as well as studies on the challenge of its enforcement, the extent the Award advances the claims of the Philippines, cooperative approaches, and demand to rethink institutionalist framework in resolving international disputes (Talmon, 2017; deLisle, 2017; Domingo-Almase, 2017), few papers are available that analyzed the confluence of the prevailing post-arbitration narratives/factors in both countries in effecting practical ways forward of the dispute.

Methodology

This is a qualitative study conducted through a review of both relevant literature. Moreover, it applies Constructive Realism in the analysis of foreign policy narratives of both Philippines and China. The constructive realist method, according to Domingo-Almase (2017), analyses the strategic world from the paradigmatic prism of constructivism and realism. This needs a thorough and critical grasp of the complex dynamics of social agents and their constructed ideals, power-seeking actors and their material capabilities, and natural-world security realities. Including, in particular, thinking strategically about security difficulties and deciding quickly on feasible choices, appropriate solutions, and/or acceptable national security agreements.

This theory is applicable as it attempts to survey foreign policy narratives and available post-arbitration ways forward for both China and the Philippines by analyzing the existing power play in the Asia-Pacific region so to map out reasonable options that may be arrived by the two (2) disputant countries for the handling and prospective settlement of the conflict while building upon the SCS Arbitration.

Results and Discussion

This chapter discusses the difficulties and opportunities that the impact of the SCS Arbitration brought to the parties and pathways for both countries to settle the dispute.

The following table provides for an analysis of the post-arbitration dynamics between the Philippines & China. As shown below, there are unfavorable/conflicting state-level and system-level conditions whose narratives are altogether issues that constitute an added layer of challenge to resolve the core problem of unilateral recognition of the Philippines as party of interest to the dispute and the Award's null enforcement mechanism. At any rate, there are mutual interests and advantages for both countries which can become potential pathways to reframe the SCS issue and could act as adequate foundation to start afresh with political diplomacy as the only viable mode of making up with the inadequacies of the international legal order championed by the 1982 UNCLOS.

Disputant States	Philippines	China
State-level Condition	Power asymmetry (relatively weak economic and military capabilities)	Power dominance (relatively strong economic and military capabilities)
	Popular Anti-China Rhetoric	Maritime Nationalism (irredentism and Western skepticism) as source of regime legitimacy
	Unstable government leadership/posturing	Stable government leadership/posturing
System-level Condition	Structural Realist ASEAN Consensus	
	US non-aligned & Freedom of Navigation Operations (FONOP)-focused position in the disputed waters	
Core Problem	Unilateral Recognition and Absence of Award Enforcement Mechanism	
Pathways for Mutual Interests and Advantages	Economic (access to and control of resources), Political (territorial integrity and nationalist rhetoric), and administrative (marine environment protection and preservation) imperatives	

Table 1. Philippines & China Post-arbitration Dynamics

Disputes participated by states are inherently difficult to overcome, and the solutions are even more challenging. As explained by Barrette (1999), the novel restriction in international relations that prevents first-best outcomes from being fulfilled is sovereignty. On this premise, as the participation in an international endeavor is voluntary for states, self-enforcing agreements are required for long-term collaboration and positive engagements. However, the fact of sovereignty and correspondingly, state interests in the global sphere fluctuate and thus resolutions remain a daunting task to overcome.

de Lisle (2017) puts forward contributory factors that directly challenge the effectiveness of international law and legal institutions in resolving disputes in the SCS. While it was opined that the arbitral ruling was a significant resolution of various problematic doctrinal questions for international law, as well as a powerful affirmation of the breadth and ability of international legal standards, and formal dispute mitigation or resolution mechanisms, the larger and longer-term ramifications are vague and equivocal.

Accordingly, the Award was so broad and ambitious that there was a risk that the seeming "win" becomes illusory. The stern rejection by China, the Philippines' striking downplaying under Rodrigo Duterte's presidency, the obvious limitations of the USA, and the implicit vulnerabilities in international legal rules and institutions all add up to significant

distrust of the Tribunal's decision whether it ends up being a triumph for international law and legal institutions or not.

The China-US Factor

With respect to China, not only it publicly expressed its refusal to cooperate at the outset of the proceedings, it also has been consistent in adopting a strong negative stance of the judgement and asserting bilateral negotiations. In response to interference from extra-regional powers, specifically the United States' policy of rebalancing power in Asia, which, according to Deepak (2018), implies that apart from pushing its interest in the Global Commons, it is backing the Philippines, its ally, Deputy Foreign Minister of China Liu Zhenmin declared that outside interference or international adjudication would only exacerbate the issue as the SCS conflict should be handled via bilateral dialogue with the nations concerned.

This confident leadership by China and the occurring regional power shift pose an even greater challenge to the SCS disputant states. Fels & Vu (2016) articulated this constraint in their study which revealed that China's well-publicized ascent, as well as the shifting regional power balance resulting from its rapid development, have impacted worldwide perceptions of Asia-Pacific geopolitics and geoeconomics. A stronger Chinese leadership poses a growing danger to the Asia-Pacific region's US-led regional order. It is noteworthy that PRC has been actively seeking to change the existing order in its surrounding environments. This political reality all the more prevents the effective negotiation to arrive at a mutually-agreed framework with which the two states shall conduct itself in the SCS given the adamant assertion of China's national interest. Further, with the hedging approach of President Rodrigo Duterte towards China and backing away from its so-called legal victory, China has now been given more incentive to continue doing activities in the SCS, albeit confronted with several states' protests.

In many ways, the United States is China's sole genuine challenge (Lee, 2021). The strengths of powerful states like the United States or even others holding comparable powers like China itself holds the key to resolving the dispute. The Hegemonic Stability Theory (HST), in this respect, provides a compelling insight. HST presumes that the hegemonic power distribution among states, where a single state possesses power dominance, is the prime precondition to a stable and open international order (Webb, 1989). Put simply, order under this theory is a result of the presence of a powerful state capable of imposing peace and commanding both respect and authority by states in the international community (Paul, 2012).

That being said, the ability and commitment of the US to explicitly back up the Award or perhaps by PRC's recognition as the equally powerful state in the Asia-Pacific is the ultimate precondition to the order and resolution of the dispute. This is utterly idealistic to say the least. Nevertheless, it informs our realities of the ideal dynamics that could better aid in the management of the SCS dispute between and among Parties.

Given that China is a force to be reckoned with and that the US, according to some

estimates (Danner & Martin, 2019), no longer enjoys absolute hegemony across the globe, combined with the current China-US dynamic, the prospect of a single powerful state stepping up to police the international system and enforce international legal order is unlikely in the foreseeable future.

Absent favorable changes on the China-US dynamics, the prospect of a mutually-agreed settlement is elusive in the SCS without China taking the lead or the US assuming a bigger role beyond the Freedom of Navigation Operations (FONOPs) approach.

The Philippines Factor

The vast power disparity between the Philippines and China is an obvious factor and, consequently, China's ability to gain political concessions through economic leverage. One manifestation of this dynamic was China's implementation of tight phytosanitary regulations on Philippine bananas and suspension of tourist trips to PH immediately after the 2012 incident in Scarborough Shoal resulting in the Philippines reaching an agreement with China allowing simultaneous withdrawals from both nations. China, however, occupied the area to this day, and the Philippines is clearly unable to confront China, militarily and economically speaking (Ravindran, 2012).

Another factor is domestic in nature. Philippine political leadership has not been as constant throughout the administrations. Then President Duterte, who was elected in 2016, conducted foreign policy towards SCS that is in sharp contrast to that of the previous administration (Lee, 2021). Hsu (2017) cited this force of leadership by observing the ambiguity with which the Award was welcomed by the Philippine government on July 12, 2016—example, the Philippine government issued a statement that echoed President Duterte's intention to enhance the Philippines linkages with China when he was first elected—and the seeming contradiction this creates with the Filipino public's delight for the arbitral outcome.

Nevertheless, as argued again by Hsu (2017), because the ruling infuriated China's leadership and increased nationalist fervor in both countries (The Philippines anti-China rhetoric versus Chinese marine nationalism), foreign policy compromises on SCS matters are more difficult and costly. In contrast, The Philippines' increasing anti-China rhetoric has significantly pressured the government to not cave-in to PRC's assertions. The ruling, on the other hand, may unfortunately have heightened the SCS stakeholders' willingness to compete in maritime rivalry.

Nonetheless, the judgment presents both claimants and non-claimant governments with obstacles as well as possibilities laid down in this article as the ways forward.

The ASEAN Factor

Taking into consideration the force of regional alliance in shaping state conduct, ASEAN which is supposed to rally support and put pressure on China appeared to have been muted by its structural deficiencies and contrasting interests of member-states as regards the SCS.

This seeming indifference can be attributed to its agreed role in conflict resolution of “non-interference in the internal affairs of the member states” and “mutual understanding amongst the member states over the avoidance of use of force in case of inter-state dispute” (Soomro, 2017); and its design as a mechanism for trust-building instead of being a platform for conflict resolution (Thompson & Chong, 2020). This structure and culture of consensus elucidates the forces behind the inability to reach consensus on the SCS problem, given that numerous members have competing interests on the matter (Thompson & Chong, 2020).

Esq. Jay Batongbacal in Lee (2021) aptly explained that given the ASEAN claimant states' competing maritime claims as well, it would have a good chance of succeeding if they understood that they needed to see eye to eye and agree on a cohesive plan countering China's stance on the disputed water. Of course, divisive activities will continue to obstruct progress toward shared action until then.

In the same vein, the inherent vulnerability of ASEAN and the policy of China towards it that prevents dispute settlement was raised by Le Thu (2018). It argued that Beijing's twin strategy of coercion and inducement with various ASEAN members is far from identical, resulting in a successful exploitation of the ASEAN consensus and advancing the 'divide and rule' tactic.

In general and on a deeper analysis, the predicament of ASEAN can be generally explained by the inherent structural realist ASEAN consensus and the strategic interventions of China within the member states of the alliance. The fact that a large number of the Association's member states have a vested interest in the issue, promoting a unified approach on the SCS issue in accordance with the Award, which exclusively binds China and the Philippines only, would jeopardize the interests of other disputant member states (Thompson & Chong, 2020).

On this premise, ASEAN limitations and the force that China commands in the region renders alliance irrelevant in helping resolve the dispute.

Ways forward: exploring pathways for mutual interests and advantages

The issues concerning SCS are complex in nature and resolving them in the near future is quite improbable if not extremely delicate to undertake (Zhang, 2018). As explained, the gap in the international structure reflected in the absence of a viable UNCLOS enforcement mechanism and sovereignty of states in the international community are the paramount challenge in dispute settlement despite the SCS Arbitration ruling.

The resort to the more rigid legalistic or institutionalist approaches initiated by the Philippines resulted in both deadlock or insult to injury as pointed out by Hsu (2017). As observed, common narratives on the SCS Arbitration are judged under power-based or rules-based approach to international affairs and states are uninclined to adopt this approach as international law and politics are not separable (Lee, 2016 in Bautista & Arugay, 2017). China's assessment of whether other nations expect this and would use pressure to achieve it will most likely determine if it eventually complies. However, upon the issuance of the SCS

ruling, only the US, Japan and Australia have expressed that the Award is legally binding. Meanwhile, all other ten ASEAN states, the European Union, and the Secretary General of UN, as well as India and South Korea did not use such terminology. Given that all of these parties support international law as a way of settling the conflicting claims in SCS, their reservations are most likely related to the Tribunal's wide approach to issues that might undermine their interests when it shall be given precedence although, as Talmon (2017) pointed out, rulings are rarely used as precedents in the international community. To put it in perspective, other disputant states' reluctance to adopt the award's conclusions, despite the fact that UNCLOS solely bind the arbitration parties, might be explained by the clear repudiation of "historic rights."

For the long-standing issues in the SCS, Domingo-Almase (2017) compares and contrasts the utilization of military force to dissuade and to balance the source of danger with the utilization of diplomacy to restore connections and profit from interdependent commitments. She concluded that, due to its limited power bases and capacities, a small state cannot afford to step cautiously when it comes to balancing in order to maintain security. Traditional unease generated by a greater power to less powerful states like the Philippines cannot be mitigated by mere affiliation and alignment with a rival or a source of threat. In order to achieve a dependable security and long-term peace in the Asia Pacific, defense, diplomacy, and development must be balanced. For nations surrounding the SCS, common strategic thinking paths through diplomacy such as Economic (access to and control of resources), Political (territorial security and integrity), and administrative (marine environment preservation and protection) imperatives for mutual interests and advantages is a clear road moving forward, albeit extremely problematic at present. As an alternative, diplomatic activism might be pursued as advocated by Domingo-Almase (2017). Through bilateral ties, negotiated agreements, multilateral engagements, institutional arrangements, functional coordination, economic interdependence, and global interconnection, diplomatic action promotes virtuous loops of peaceful relations and conflict avoidance. If this is pursued, the likelihood of an Asia-Pacific military conflict decreases as maintaining peace and stability in the region is in the best interests and is the most advantageous for all nations bordering the SCS.

The path ahead, therefore, must return to diplomatic imperatives. Under current conditions, the limitations of a highly legalistic tool in a politically motivated reality in the SCS dispute proves ineffective and less beneficial for the Philippines.

Conclusion

The "Chinese dragon" has not just awakened but placed in the best position under optimum condition to effectively assert itself onto the world, despite pressures from disputant states and global power like the US. Already six years had passed that the SCS arbitration has failed to resolve the region's geopolitics and geoeconomics.

The post-SCS Arbitration scenario demonstrates that inter-state disputes essentially relating to territories are best treated primarily through political prescriptions rather than the legal imperatives, without an international mechanism established and capable of

overcoming the usual roadblock on enforcement. The mere absence of an international entity capable of enforcing the award or policing China for its perceived maritime contraventions coupled with the incapacity of Philippines together with the vulnerabilities of ASEAN to pressure China to toe the line, this article argues that the Arbitration award presented a false promise for the Philippines in providing a viable step to resolve the dispute.

Nonetheless, the Philippines is not hopeless per se. There are available pathways forward of mutual interests and advantages for both countries with diplomacy as the viable foundation: Economic (access to and control of resources), Political (territorial security and integrity), and administrative (marine environment protection and preservation) imperatives. This is rather a delicate exercise if China, which possesses greater power than the Philippines and ASEAN, will not take the lead or if the US remains to focus its interests on the freedom of navigation in the high seas and will not assume an aligned or bigger role in the SCS as the legitimate counterweight state of China.

Unless a greater power with overwhelming preponderance may relegate China, only then will the Philippines may be put in the best position to negotiate and maybe able to enforce its claim set forth in the SCS Arbitral Award. At any rate, the Philippines is hereby prescribed not to drop its claims of rights within SCS nor accede such rights to China, in the meantime, it has to exercise diplomatic prudence so as not to fully provoke China if in doing so it may affect its economic interests judging by the impacts produced in its economy upon the economic sanctions of China during the 2012 Scarborough Shoal incident. Until then, the feasible option for the Philippines is to reanimate the emphasis of the diplomatic imperatives, specifically voluntary dispute settlement procedures of negotiation, conciliation or settlement through a separate agreement with China.

Once and for all, this article concludes that post-arbitration scenarios have provided China with far greater motives and incentives to pursue coercive foreign policy. In the foreseeable future, the Philippines will maintain playing the waiting game concerning enforcement of its rights in the SCS under UNCLOS since the ways forward remain least likely to affect practical dispute solutions for both countries to keep aggression in the minimum and possibly resume exhausting compromise or negotiations considering the state-level conditions and surrounding international circumstances of the moment.

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