

# China: Building the Great Wall of Sand

*A research on the 2016 arbitral award of the  
South China Sea maritime disputes*

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## Master Thesis

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**List of Abbreviations**

ASEAN	Association of Southeast Asian Nations
DOC	Declaration of the Conduct of the Parties in the South China Sea
EEZ	Economic Exclusive Zone
PCA	Permanent Court of Arbitration
TPP	Trans Pacific Partnership
UNCLOS	United Nations Convention on the Law of the Sea
US	United States of America

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## Introduction

*“Assessing the South China Sea Arbitral Award after One Year: Why China Won and the U.S. is Losing”*

12<sup>th</sup> July 2017, Lawfare

*“Photos show Beijing’s militarization of South China Sea in new detail”*

6<sup>th</sup> February 2018, The Guardian

*“A Year Later, the South China Sea Award Stands as Evidence of China’s Rule-Breaking Behavior”*

17<sup>th</sup> July 2017, The Diplomat

Almost two years have elapsed since the Permanent Court of Arbitration (PCA) gave its decision in case of *The Republic of Philippines v. The People’s Republic of China (The South China Sea Arbitration)*<sup>1</sup>. The decision represented a major legal victory for the Philippines in the case they brought before the Tribunal three years earlier in order to curb China’s assertive behavior in the South China Sea. The long-lasting maritime and territorial disputes between China and other regional claimants have caused recurring tensions in the sea, with China occupying features, undertaking construction activities and using its naval force, to uphold its claims of sovereignty. The Tribunal’s decision was expected to have a significant impact on the course of the disputes since it was ‘final and binding’. Many scholars and experts predicted a strong reaction of the Chinese, with possible escalation of the conflict due to Chinese persistence in upholding its claims. However, contrary to the expectations, storm clouds have dispersed and conflict has stayed out.

Although compliance with the ruling is mandatory, China rejected the decision of the PCA from the start. Acceptance of the decision would mean that China’s policy and behavior in the South China Sea would have to undergo major changes. Contradictorily, the country has continued its land reclamation activities, defends the disputed waters with its large naval and coastguard fleet and still illegally occupies features. Up to today, China has not brought its claims and activities into line with the decision or the UNCLOS Convention<sup>2</sup>. Also contrary to expectations, tensions concerning the non-compliance of China have largely stayed out. Tensions in the South China Sea seem to have decreased while China continues undisturbed with its ‘illegal’ activities in disputed waters. The disputes between several claimant states and China are ongoing and represent a dangerous situation with not only regional, but also global consequences if it were to escalate. This study therefore,

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<sup>1</sup> See “Case view”, Permanent Court of Arbitration

<sup>2</sup> The United Nations Convention on the Law of the Sea

investigates how it is possible that China, despite the PCA's decision, has been able to maintain its dominance and activity in the South China Sea without escalating?

This study will examine the course of events and the circumstances of the case in order to explain the absence of any real conflict to date. Next to China, a special focus on a number of countries will be applied as the interactions between these countries and China have influenced China's strategy and the factors for the subsequent 'Chinese success' in upholding its dominant and assertive position in the South China Sea. The Philippines and Vietnam have traditionally been the most vocal in defending their sovereignty claims and unilateral right to exploit natural resources that lie within their maritime zones. As the regional actors most involved in high-tensed disputes with China, understanding their affairs in the South China Sea is necessary. Additionally, the undeniable role of global superpower and Pacific actor the U.S. is being taken into account in order to explain where China's ability to continue its behavior undisturbed stems from.

In order to clarify the current situation, the first few chapters will elaborate on the significance of the South China Sea to China, the course of the disputes and the case brought before the PCA respectively. The study will continue with an account of the Tribunal's decision and the expected and actual events on the ground in the post-arbitrary period. After a detailed elaboration of the case, this research will make a three-tiered argument in order to answer the research question. Chapter 5 will turn to the geopolitical developments concerning the Philippines and the U.S. that have downplayed the significance of the decision and given China means to pursue its interests without compliance with the decision. Chapter 6 will continue by arguing for China's utilization of hard and soft power to coerce and entice other actors to accept and even cooperate in its behavior in the South China Sea. After Chapter 7 has shed light on the role of effectiveness of international institutions in this case, an overview of the arguments made will be given in the concluding chapter.

## Ch. 1. Significance of the South China Sea to China

The South China Sea has taken an important position in Chinese contemporary regional policy and strategy. For this there are several reasons. First, Chinese military strategists view the sea as China's 'strategic backyard', or as some Chinese analyst have called it, a 'strategic frontier' (Swe et al. 2017:187). The features scattered across the sea can function as military bases and support locations for law enforcement (e.g. coastguard) that help the Chinese not only to defend territorial claims, but also to monitor and respond to activities of other countries present in the area (O'Rourke 2015:2). The sea is being perceived as vital to the national defense of China as it creates a strategic hinterland of over one thousand kilometers (Swe et al. 2017:206).

Through artificial land reclamation and claiming existing features in the sea, China is supposedly creating what concerned neighbor states have called 'The Great Wall of Sand'<sup>3</sup>. This defensive line is believed to be designed according to the idea of the Great Wall to keep out invasive forces: in this case keeping other claimants and third parties out of Chinese maritime territory in the South China Sea<sup>4</sup>. Long-term presence of China in the sea is increasingly assured by building airstrips, ship facilities and placing surveillance and weapon equipment on the newly build islands<sup>5</sup>. These means create the improved ability to detect and challenge activities of rival claimants and third parties in the area, such as the recurrent presence of the US Navy trying to assert freedom of navigation in the South China Sea (Paul 2016:11). Winning effective control would not only create a way to becoming the regional hegemon, but also to taking a lead in the hegemonic power projection competition between China and the US in the region (Koo 2017:53).

Secondly, the South China Sea has a large economic significance not only for China, but for the global economic realm as a whole. The sea is being dubbed a "superhighway of the seas" due to its huge importance as a trade and transport route for goods and raw materials (Paul 2016:5). Every year 5.3 trillion dollars' worth of trade passes through the sea-lane, most of which traveling to or from China and other regional countries<sup>6</sup>. The Strait of Malacca, the entrance of the South China Sea, is the gateway for a third of the world's available crude oil and half of the world's liquefied natural gas making its way to recipient

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<sup>3</sup> See "China's 'Great wall of Sand' in the South China Sea: History Repeating Itself?" *The National Interest*, April 14th 2016. First use of this ironically meant name was by the Commander of the US Pacific Fleet Harry Harris, see Paul (2016).

<sup>4</sup> Described comparison made by Marie-Alice McLean-Dreyfus in "China's 'Great wall of Sand' in the South China Sea: History Repeating Itself?" *The National Interest*, April 14th 2016.

<sup>5</sup> See "China has reclaimed 3,200 acres in the South China Sea, says Pentagon", *The Guardian*, May 13th 2016.

<sup>6</sup> See "By the Numbers" in "China's Maritime Disputes: A CFR InfoGuide Presentation", *Council of Foreign Relations*.

countries in East Asia and beyond (ibid:7)<sup>7</sup>. Regional developments therefore would not only have an impact on coastal states of adjacent sea areas, but also on trading nations worldwide (ibid:5). Whoever controls the South China Sea, subsequently controls a decisive part of the global economy (Paul 2016:7). Safeguarding these sea-lanes, together being the gateway between the Pacific and the Indian Ocean, therefore also aims to guarantee the continuation of the economic growth China is experiencing (O'Rourke 2015:2). China has already declared that it is no longer satisfied to entrust the U.S. with the security of the sea-lanes in the South China Sea (Wong 2010:3).

In addition to the significance created by trade affairs in the South China Sea, China's quest for natural resources make this area of core interest to the Chinese economy (Economy & Levi 2014, Buszynski & Salzan 2007). Due to large deposits of offshore gas and oil found in the seabed, the sea has been labeled the "new Persian Gulf" (Paul 2016:7). Statistical reports from the US Energy Information Administration show estimations of 11 billion barrels of oil and 190 trillion cubic feet of gas being present under the South China Sea<sup>8</sup>. The Chinese state oil company China National Offshore Oil Corporation has stated their estimations to be much higher, consisting of around 125 billion barrels of oil, possibly making it even more interesting for the economic future of China<sup>9</sup>. As the country is unable to meet its own demand for natural resources with domestic sources, the annual double-digit Chinese economic growth is driving an unprecedented demand for resources (Economy & Levi 2014: 2,6). China's resource quest has subsequently increased chances of clashing with coastal neighbors due to overlapping claims on the oil and gas riches of the South and East China Sea (Park 1978:39).

Not only the bottom and surface of the South China Sea contain value for China and the adjacent countries. The waters of the South China Sea and the sparse islands, islets, rocks and reefs found there yield as much as ten percent of the world's catch of edible fish (Dutton 2011:47, Paul 2016:7). Next to the economic importance of the fishing industry, protein of fish is of essential importance for the nutrition of not only the exponentially growing population of China, but of all regional competitors<sup>10</sup>. China's coastal waters used to provide rich fishing grounds, but those times have passed due to overfishing and deterioration of water quality and seabed life<sup>11</sup>. The conflict in the South China Sea has therefore also been

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<sup>7</sup> Estimation lie at 15.2 million barrels a day (Paul 2016:7).

<sup>8</sup> Numbers from a 2013 US Energy Information Administration report found in Paul (2016:7).

<sup>9</sup> Estimation of CNOOC found in Paul (2016:7).

<sup>10</sup> Between 35 and 57 percent of all animal proteins consumed in Southeast Asian countries stem from the South China Sea fishing grounds. See "The South China Sea Is Really a Fishery Dispute", *The Diplomat*, 20<sup>th</sup> July 2016.

<sup>11</sup> See "Restoring China's coastal fisheries", *China Dialogue*, 13<sup>th</sup> March 2018.

argued to be a 'fishery dispute', partly because the majority of direct confrontations between claimant countries concerned disagreement over the presence of fishing vessels<sup>12</sup>.

Lastly, the sea has added value for the Chinese from a psychological perspective. As its land borders are more secure than at any time since the 18th century Qing dynasty, China is trying to psychologically erase two centuries of foreign domination by reclaiming what has been "Chinese territory since ancient times"<sup>13</sup>(Kaplan 2011: 78). Indicated by the so-called 'nine-dash line'<sup>14</sup> with which China delimits the maritime area it considers to be Chinese territory. The demarcation is based on historic rights arising from Chinese domination and control in the centuries before foreign transgression (Koo 2017, Kim 1998)<sup>15</sup>. The Chinese education system and propaganda subsequently teaches Chinese citizens that the sea has been under Chinese jurisdiction for centuries, only interrupted by European colonial powers and the Second World War. The Chinese narrative is describing historical and legal evidence for its entitlement and deems all claims of other countries unlawful (Swe et al 2017:205). Because this Chinese narrative appeals to the Chinese population, the general public feels a sense of entitlement to the sea and the islands (ibid:205). A larger part of the Chinese public even argue that the South China Sea should be regarded as 'China's sea' (ibid:205). China's economic and political growth in the past few decades has initiated increased Chinese confidence and nationalist rhetoric, subsequently leading to pressure on Chinese policy to continue its assertiveness over sovereignty claims in the South China Sea (Buszynski 2013: 7).

Altogether, the South China Sea is a viable asset to China and other claimants due to its military, strategic, economic and ideological value. Its values have not only been weighted heavily by the Chinese, but by many other regional actors, consequently leading to many disputes and conflictual situations described in the overview in Chapter 2.

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<sup>12</sup> See "The South China Sea Is Really a Fishery Dispute", *The Diplomat*, 20<sup>th</sup> July 2016.

<sup>13</sup> Pronunciations of Chinese president Xi Jinping. See Swe et al. (2017) p. 205.

<sup>14</sup> See figure 1. Source: Perry-Castañeda Library Map Collection - Asia maps.

<sup>15</sup> The 'nine-dash line', adopted by the Chinese in 1947 has never been recognized by the international community and has no meaning in international law (Bonnet 2012:22).





Fig. 1. Nine-dash line indicated by green lines

## Ch. 2. The South China Sea Conflict: A Short Overview

The contemporary territorial disputes in the South China Sea have their initial origins well over a century ago, dating back to when colonial powers moved into the area and took effective control of island groups formerly controlled by the Vietnamese and Chinese state. The Second World War saw Japan occupying most of the features found in the sea, resulting in a power struggle between regional claimants when the Japanese withdrew in 1951. However, in order to understand the contemporary conflict, this study will focus mainly on the last several decades, supplemented by information about events further back in time when deemed necessary. In addition to this restriction, these chapters will focus mainly on the claims of China, The Philippines and Vietnam in order to answer the research question properly. In order to give readers a picture of the run-up to the Hague tribunal's decision in 2016, this chapter will give a short overview of the contemporary dispute and tensions

The South China Sea concerns a semi-enclosed sea, including 15 islands of the Paracel archipelago, 45 'islands' and numerous reefs and rocks of the Spratly archipelago, the Macclesfield bank and three islands of the Pratas Group (Buszynski 2013:4). The dispute concerns the sovereignty over these islands and the surrounding waters that can be claimed as territorial sea according to the UNCLOS Convention<sup>16</sup>. In addition, claimants can obtain sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the waters superjacent to the seabed and of the seabed and its subsoil: all within a 200-nautical mile zone measured from the baseline<sup>17</sup>.

The disputes are between China and five ASEAN countries, namely the Philippines, Vietnam, Malaysia, Brunei and Indonesia. China roughly claims over 80% of the South China Sea, delineated by the aforementioned 'nine-dash line', effectively claiming both main archipelago's to be Chinese territory<sup>18</sup>. Vietnam as well has an extensive claim to the sea, claiming both archipelago's based on historical evidence, economic development, effective administration, and international recognition (Pedrozo 2014:37)<sup>19</sup>. The remaining countries claim contiguous sea zones based on the legal framework of the UNCLOS Convention<sup>20</sup>. The main problems arising are the non-statutory claims of both China and Vietnam, and the

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<sup>16</sup> Claimants can claim a 12-nautical mile zone of territorial water from the baseline determined in accordance with the Convention. See "United Nations Convention on the Law of the Sea".

<sup>17</sup> This zone is called an Exclusive Economic Zone (EEZs). See "United Nations Convention on the Law of the Sea".

<sup>18</sup> Legal notions for claiming territory and other zones in UNCLOS do not significantly benefit China, due to which the country has tried and validate its claims based on historical notions (Buszynski 2013:4).

<sup>19</sup> See elaboration on the above mentioned arguments for Vietnam's claim in Pedrozo (2014) Ch.IV: "Vietnam claims", 37-64.

<sup>20</sup> See figure 2. Source: the Brookings Institution.

lack of clear guidelines in the UNCLOS Convention where claims to sea territory, islands and Exclusive Economic Zones (EEZ) overlap (Buszynski 2013:4).

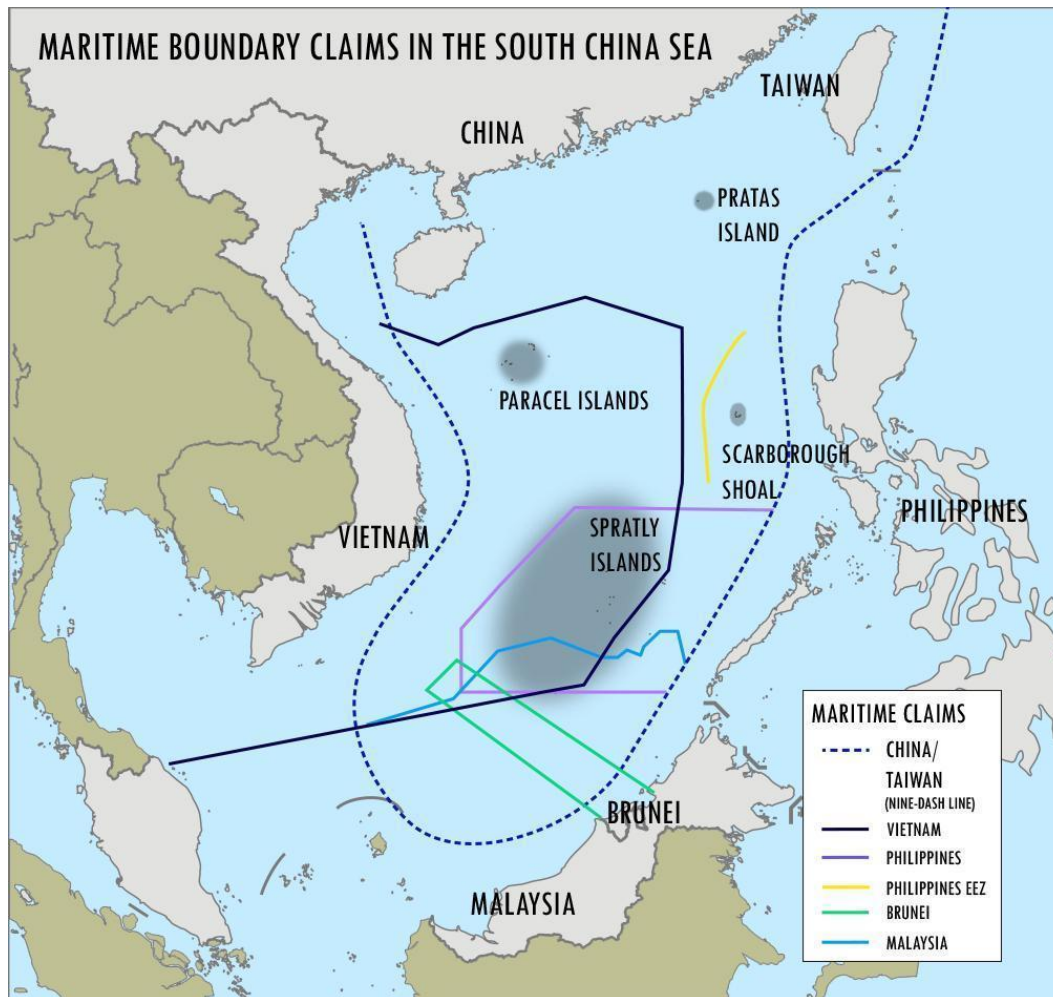


Fig. 2 Maritime Boundary Claims in the South China Sea

In the disputes, China has attracted the most attention due to its expansive claims, past uses of force to ascertain its controls over disputed waters and islands, and its growing naval capabilities (Taylor Fravel 2011:292). Since the mid 1990's, China is effectively trying to delay a resolution of the conflict in order to consolidate its sovereignty and maritime claims (ibid:293). In addition, China has tried to deter other claimants from strengthening their own claims, primarily through the use of diplomatic, administrative and military means (ibid:293)<sup>21</sup>. Being almost entirely excluded from the sea by U.S. naval presence during the Cold War, China was in need of physical presence in the region as a public demonstration of its claims (Buszynski 2013:6). Chinese forces had occupied the eastern islands of the Paracels since 1956 and ejected Vietnamese forces from the western Paracels after a naval clash in 1974 (ibid:6). Near the end of the Cold War China started air patrols over the Spratlys and launched its first large-scale naval patrol in the area in 1987. As a part of these

<sup>21</sup> Taylor Fravel (2011) states that China has stepped up its game of deterrence since the mid-2000's.

patrols, observation installations were built on multiple features in the sea and several islands were occupied. As a result of these moves, a naval clash between China and Vietnam occurred in 1988, sinking three Vietnamese vessels and resulting in 73 sailors lost (ibid:7). More recent tensions have arisen between China and Vietnam over exploration and exploitation activities of natural resources in the overlapping claimed areas, including the cutting of ship lines and deployment of deep sea drilling rigs with accompanied marine protection on both sides<sup>22</sup>.

The Philippines were also directly confronted with the presence of Chinese forces in parts of the South China Sea claimed by the Philippines. Chinese forces occupied Mischief Reef in 1995 and built several structures with piers and antennae, declaring the structures were intended as shelter for fishermen (Buszynski 2013:7). Due to the fact that China extended its constructions on this reef and others, it became clear that other intentions, more in particular, strategic protection of the features were underlying (ibid:7). These late-detected activities spawned uproar in the Philippines, which subsequently involved the U.S. in the incident as support, something which the Chinese had tried to avoid (ibid:7). During that same period tensions between the countries grew over the Scarborough Shoal, resulting even in a tense standoff between the countries' respective naval forces in 2012<sup>23</sup>. Until this day, naval patrols are being conducted by both countries to effectively enforce claims on the features near the coast of the Philippines.

The occupying activities, military expansions and increased naval presence of China, leading to tensions in the South China Sea, have concerned not only Vietnam and the Philippines, but also other ASEAN countries as well as the U.S. (Swe et al.2017:210). Until 2015, every annual defense budget of China showed a double-digit percent increase in military expenditure, going from 10 billion annually in 1997 to 145 billion in 2015<sup>24</sup>. According to some analysts China is increasingly using its military expansion to deploy tactics of assertion and harassment to intimidate other claimants and deter them from further efforts to confirm or validate their claims (Buszynski 2013:7). As a result, China has been accused of applying tactics of 'creeping annexation', or 'talk and take', whereby China is engaging in negotiations while simultaneously taking action to gain control of the contested area by 'wrapping the islands in layers of occupation and protection' (O'Rourke 2015:23). The U.S. and eleven other countries expressed their concerns about China's claims and actions at the ASEAN Regional Forum in July 2010. Some have argued that China -as a response to the regional blowback- began to moderate its efforts and prevent any further escalation of

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<sup>22</sup> See Pedrozo (2014), Ch.III.A.2 "Economic Development" for elaboration on tensions between China and Vietnam over economic activities in the contested areas.

<sup>23</sup> See Bonnet (2012) for elaboration on the Scarborough Shoal incident.

<sup>24</sup> Data from Bitzinger (2015): China's Double-Digit Defense Growth.

tensions (Taylor Fravel 2011:310). This resulted in a China-ASEAN agreement which was meant to prevent further escalations, mainly between the claimant states China and Vietnam<sup>25</sup>. While the agreement stated the desires and guidelines for accelerated bilateral negotiations over maritime issues, credibility was contested and Chinese occupation and construction continued unabated (Taylor Fravel 2011:310).

The assertive diplomacy of China has been argued to have created incentive for the U.S. to increase its presence and influence the course of events in Asia (Koo 2017:56). Increased U.S. military engagement in the area has involved the resumption of Freedom of Navigation Operations (FONOPs) in the South China Sea, the lifting of the arms sale ban on Vietnam, deployment of combat ships to Singapore (important economic and diplomatic partner of China) and the possible re-opening of air and naval bases in the Philippines (ibid:56). The Obama administration initiated a 'pivot to Asia', including summits with ASEAN members states to signal ASEAN support of U.S. efforts to contain China and prevent further provocations (ibid:56). Under the Trump administration FONOPs have only recently resumed after an interruption of several months during the beginning of his term of office; recently Trump declared the U.S. wants Australia to participate in operations in the South China Sea<sup>26</sup>.

Dispute resolution between China and other claimant countries was given a new impulse when the Philippines submitted, against Chinese requests, a unilateral application under UNCLOS regulations on dispute resolution on January 22<sup>nd</sup>, 2013 (French 2017: 49). The dispute settlement process allows one side of a dispute to initiate proceedings before several dispute settlement institutions, even when the other party remains absent (ibid:49). Although China to this day has rejected any form of legitimacy and participation, the arbitral tribunal under Annex VII UNCLOS, seated in The Hague, came with a decision in favor of the Philippines on July 12<sup>th</sup> 2016<sup>27</sup>. In order to understand the significance of this decision, the next chapter will elaborate on the content of the case submitted with the Tribunal, and that of the subsequent decision.

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<sup>25</sup> See Taylor Fravel (2011) p. 310-313 for elaboration on the management of escalation between Vietnam and China.

<sup>26</sup> See "Trump Would "Love" Australia to Join Freedom of Navigation Operations", *The Maritime Executive*, 24<sup>th</sup> February 2018.

<sup>27</sup> For an extensive overview of the Tribunal's decision see French (2017)

### Ch. 3. The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)

Case No. 2013-19 was submitted by the Philippines on the 22<sup>nd</sup> of January 2013. In total it consisted of 15 different claims concerning the South China Sea maritime disputes and Chinese behavior in these disputes. Since there was no prior consensus between the countries on dispute settlement, proceedings were held before an arbitral tribunal in absence of Chinese representatives (French 2016:49). As an impartial institution, the Tribunal of course had to, irrespective of absence, also consider the possibly legitimate interests of the Chinese. This was realized through the Chinese submission of several *notes verbale* which made its position on the case and the hearing clear to the Tribunal (ibid:49). It is important to understand the content of the submitted case and the subsequent Tribunal's decision to determine the consequences for the course of the conflict.

#### 3.1: Content of Case No. 2013-19

The case submitted with the Tribunal consisted of three main areas of claims. First, the Philippines asked for all South China Sea features to be determined according to the legal prescriptions given in the UNCLOS Convention (French 2016:49). Through this decision not only islands would be determined, but distinctions between low-tide elevations and rocks would also be made<sup>28</sup>. (ibid:49) These distinctions are very important as these different categories lead to different claims of maritime zones. Whereas an island comes with a claim of territorial sea (12 nm), an EEZ (200nm) and possible extensions along the continental shelves<sup>29</sup>, the other two categories give less rights to possible maritime claims. Rocks can (only) generate a territorial sea, while low-tide elevations give no right to any form of maritime zone. The decision could therefore make Chinese exploration, exploitation, fishing and coast guarding activities around a multitude of features illegal. As the tribunal has no right to address the question to whom specifically territorial sovereignty over the features belong, the Philippines tried to avoid insurmountable jurisdictional issues over territory (Whormersley 2016:242). This was accomplished by avoiding direct questions over territorial sovereignty or delimitation of maritime boundaries (French 2016:49).

Secondly, the Philippines asked for arbitration concerning the historically-based 'nine dash line' used by the Chinese to outline its sovereign waters. As this demarcation is not based on legal prescriptions of the UNCLOS Convention, the Philippines asked for a

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<sup>28</sup> Low-tide elevations are rocks which are visible during low tide but submerge during high-tide.

<sup>29</sup> Continental shelf extends beyond 200 nm and consists of seabed over which coastal states exercise sovereign rights regarding the exploration and exploitation of resources. See UN Oceans & Law of the Sea, "(CLCS) The Continental Shelf".

denunciation of this claim, which would not only have value to the Philippines but also to the other claimants. Finally, to fight Chinese construction activities on islands within their 'nine dash line', which allegedly causes severe environmental harm and infringes Philippine sovereign rights of its EEZ, judgement over Chinese activities was asked (French 2016:49). The Philippines argued that China aggravated the disputes by land reclamation activities and restricting movement of Philippine (and other) vessels (ibid:50).

### **3.2: The Tribunal's Award**

Concerning the distinction between categories of features, the Tribunal had to take certain (legal) principles into account. Reclamation and artificial construction would in any event not change the nature of the feature (Whormersley 2016:243). This consideration is important as China is heavily involved in sand spraying and concrete laying on many of the disputed features. Additionally, the Tribunal had to decide on the determination of low and high tides in the area. Lastly, the Tribunal made a distinction between rocks and islands based on the question of whether human life is possible on the feature. Subsequently, the possibility of human life was based on the livability and economic sustainability of the island (French 2016:52)<sup>30</sup>. After taking all these questions and subsequent outcomes into account, the Tribunal decided that none of the disputed features in this case meet the criteria to be an island as defined in the Convention (Storey 2016:337). In addition to this decision, it made several distinctions between rocks and low-tide elevations which were in favor of the Philippines. Through these distinctions, Chinese sovereignty claims over several features near the Philippine coast became reprehensible: the Tribunal found that China had no legal entitlements and that there were no overlapping EEZ claims between China and other claimant states (Rosen 2017:259, Zhang 2017:441).

Concerning the 'nine dash line', the Tribunal decided against the legality of this historically substantiated delineation. In short, the Tribunal decided in favor of the Philippines concerning this claim for two reasons. First, the Tribunal argued that UNCLOS provided a comprehensive system of maritime zones that is "capable of encompassing any area of sea or seabed"<sup>31</sup>. Through this, the Tribunal argued that, just as any sea, UNCLOS applied to the South China Sea and that parties to the Convention therefore should abide by the rules agreed to. Secondly, as China acceded to the Convention in 1996, the Tribunal argued that "any historic rights that China may have had to the living and non-living resources within the 'nine-dash line' were superseded ... by the limits of the maritime zones provided for by the Convention".<sup>32</sup> The Tribunal thus argued that by officially becoming a party to this

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<sup>30</sup> See French (2012), p.51-52 for further elaboration on provisions for distinction.

<sup>31</sup> See arbitration decision in "Award of 12 July 2016", Paragraph 231.

<sup>32</sup> Ibid: Paragraph 231.

Convention through ratification, China has distanced itself from alternative claim substantiations.

The Tribunal furthermore decided that China violated legitimate sovereignty-claims of the Philippines by entering and exploiting parts of the sea, coordinated escorting and protection of Chinese vessels in Philippine waters and did not take any measures to protect the environment harmed by its reclamation activities (French 2016:53). By continuing these activities during the arbitral proceedings, China was stated to have aggravated the dispute (Storey 2016:337). Against experts' expectation, the court's decision was far more comprehensive and decisive: The Philippines won 14 out of the initial 15 claims under consideration (Storey 2016:337). International observers have almost unanimously described the award to be an overwhelming victory for the Philippines, while the Chinese suffered a heavy defeat (Zhang 2017:440).



#### Ch. 4. Expectations & Aftermath of the Arbitration

After the legal victory of the Philippines, expectations were that tensions over sovereignty and territorial claims would increase; with possibly even an actual escalation of the conflict between China and other claimant states. Despite the binding and final nature of the arbitral decision, the award did not resolve the litigation in a decisive manner (Whomersley 2016:263). Although the decision has political and legal implications for all actors in the South China Sea disputes, it does not mean the dispute is over (Hong 2016:359). On the contrary, the decision was expected to possibly magnify the assertiveness of China and other coastal states over the disputed waters as they are still critical to the maritime security of all these actors (Liu & Karim 2017:4). The gap between expectations and actual materialization of the Tribunal's aftermath will be assessed in this chapter.

Analyzing the Tribunal's decision and its subsequent consequences for regional tensions, one could argue that it has a two-fold outcome. On the one hand, the Tribunal's decision significantly reduced the extent of disputed waters. Due to the made distinctions between rocks and islands, disputed waters were reduced to small pockets of territorial sea which actors could claim (Schofield 2016:344). By making the judgement that none of the high tide elevations in the Spratlys or Paracels can generate maritime entitlements to EEZ's or continental shelves, the Tribunal has freed most of the South China Sea from disputes (Anh 2016:371). Therefore, it could be argued that tensions would disappear evenly with the waters no longer disputable. However, as a lot of these remaining pockets are occupied by the Chinese and lie within the EEZ of for example, the Philippines, direct confrontation was one of the predicted possibilities. According to Schofield, ruling that two sites of significant artificial island building by the Chinese, are part of the Philippines EEZ, made these feature possible future flashpoints (2016:346). As China will likely not suspend its reclamation activities, he argues that the decision could set the scene for increased maritime conflict in the South China Sea (Schofield 2016:346)

It was expected that China would largely ignore the decision and, likely, escalate tensions in the South China Sea<sup>33</sup>. Analyst reacted to the verdict that China "may take a very tough reaction" or "a more forceful response to solidify its claims"<sup>34</sup>. Other argued that China would continue or even increase its blockades for Filipino soldiers stationed at several features and begin reclamation activities at new features ruled to be within the Philippines'

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<sup>33</sup> See "After the Tribunal's Ruling on the South China Sea: A New Momentum for the Code of Conduct", *ASEAN Studies Program*.

<sup>34</sup> Ibid.

EEZ<sup>35</sup>. It was expected that the decision would certainly not ease tensions between Manila and Beijing (Hong 2016:359).

Although the Tribunal's award is "final and binding without appeal", China and Taiwan rejected Tribunal's decision (Schofield 2016:340). According to the Chinese Ministry of Foreign Affairs, the Tribunal's award is "null and void" and contains "no binding force"<sup>36</sup>. Beijing repeatedly insisted on its 'four no's': no participation, no acceptance, no recognition and no enforcement (Bautista 2018:184). The international community has repeatedly tried to convince China to abide by the decision of the Tribunal, especially the U.S. and Japan (Hong 2016:359). However, China has not signaled to be bringing its claims into line with the legal determinations found in UNCLOS (Storey 2016:338). Bautista even goes as far as to claim that the invisible forces of international law, global public opinion and "the waning power and clout of extra-regional powers such as the U.S." have failed to force China into compliance with international law or prevent China from further militarization and occupation of features in the sea (2018:178). Chinese Prime Minister, Li Keqiang, argued against this and claimed that through China's non-recognition and non-acceptance, international law was being safeguarded (Bautista 2018:184). This is because China has continuously stated its position on the missing legitimacy of the Philippines bringing the case before the Tribunal. It thus seems that China is trying to defend its reputation of "guardian of international rule of law", while the country remains steadfast in its position concerning the sovereignty over the disputed features<sup>37</sup>.

Initially, there were high expectations that the Philippines, after the legal victory, would call for other regional and outside parties to help enforce the decision, demand damage reparations for destroyed marine life, negotiate on fishing rights and conduct navigational operations (Bautista 2016:350). However, since the administration of President Duterte came into office (just before the Tribunal's decision), successive measures and actions to limit Chinese assertiveness in the conflict have not come from the Philippines side, nor from other claimant states. Although China still claims and occupies, now illegally, features that lie within de maritime zones of the Philippines, tensions between the countries have lowered and the decision appears to have fallen sharply in value and significance as compliance is absent on both sides. The origins of this somewhat surprising course of events between China and the Philippines after the decision will be discussed in the next chapter.

Contrary to the expectations, China did not increase its assertive behavior in response to the detrimental outcome of the arbitration proceedings; it merely continued its

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<sup>35</sup> Ibid.

<sup>36</sup> See Statement of Ministry of Foreign Affairs of China on the Award, 7<sup>th</sup> January 2016.

<sup>37</sup> Pronunciation of Chinese president Xi Jinping, see Bautista (2018:184).

activities (Storey 2016:338, Quintos 2018:266). The Chinese coastguard continued guarding the features and completed several naval, air, radar and defense facilities on the disputed reefs (Quintos 2018:266). Weapon systems are suspected to be installed on several features to increase point-defense capabilities and reports have argued that China is likely to start reclamation activities at the Scarborough Shoal, the feature closest to the Philippine shore (ibid:266). On the ground, China thus continued its activities undisturbed despite the decision that these features lie within the legitimate claim of the Philippines.

In the diplomatic realm, however, China has been refraining from strong rhetoric over the disputes and applies a more diplomatic approach instead of the aggressive attitude it showed in previous discussions<sup>38</sup>. In official government documents, China continues to stress its sovereignty, maritime rights and interests. It warns other claimant states not to “internationalize and judicialize” their disputes with China<sup>39</sup>. Surprisingly however, China has stopped referring to the ‘nine-dash line’ and merely talks about indisputable sovereignty over certain features. As these Chinese warnings towards other claimants have not deterred the Philippines from bringing the case before the Tribunal, one could argue that other claimants would neither, especially not after the Tribunal’s favorable decision. Contradictory to the expectations however, no other claimant state launched their own legal challenge against China over disputed features and maritime zones (Bautista 2016:352).

In order to prevent any future discussion or dialogue on the claims of other ASEAN countries, China has initiated a new cooperation mechanism for the South China Sea littoral states<sup>40</sup>. This mechanism would discuss non-traditional security issues in the South China Sea and would be China-led. A China-led mechanism where disputes in the South China Sea would be discussed and negotiated on, would most probably not result in fair and legitimate outcomes. Some scholars argue that China is applying tactics of “talk and take” where officials are involved in seemingly promising talks and negotiations while behind the scenes occupation and reclamation activities in the disputed waters continue (O’ Rourke 2015:23). This behavior can be observed where the Chinese Ministry of Foreign Affairs stated that it wanted to sustain the momentum of de-escalation of regional tensions and give rise to the cooperative spirit amongst claimant states, while at the same time its hard power dimension of policy -originating from the state’s military component- continues uninterrupted with installment of civilian and military facilities on the disputed features (Zhang 2017:454).

Up to today, China has not altered its defiant posture and lack of respect for the Tribunal’s award (Bautista 2018:179). Although the Philippines were seen as the legal victor

<sup>38</sup> See “One Year after the PCA Tribunal Judgment on the South China Sea”, *New York Times*, 18<sup>th</sup> July 2017.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

after the Tribunal's award, and major changes were expected in the course of the disputes, China can ironically be argued to be the winner of the arbitration (ibid:188). The country continues its activities in the disputed waters without much opposition of other claimants. The disputes have surprisingly not escalated into conflict. China has pursued certain strategic military and diplomatic tactics to ensure continuation of their undisturbed activities but has also profited from geopolitical developments and structural problems in international institutions. The following chapters will give a tripartite argument to show how China has been able to maintain its control over the disputed waters despite the negative outcome of the arbitration proceedings, with a special focus on the involved countries Vietnam, the U.S. and the Philippines.

## Ch. 5. Geopolitical Developments

In order to explain how China has been able to maintain its claims in the South China Sea despite the Tribunal's decision, changing relations with -and involvement of- regional and extra-regional actors have to be considered. While this research focuses on the involved actors Vietnam, the Philippines and the U.S., this chapter merely contains arguments based on literature and other sources concerning the latter two. Extensive research has revealed that there is little to no literature on significant changes in Sino-Vietnamese relations following the Tribunal's decision that have affected the course of the disputes. Therefore, this chapter elaborates on how changed Sino-Philippine relations, a lack of U.S. strategy and deteriorated relations between these two countries have contributed to China having the opportunity to uphold its claims and activities without escalating the conflict.

### ***5.1: Different President, Different China-policy***

The PCA's decision was a legal victory for the Philippines and was expected to provoke a strong reaction from an assertive China. According to Kreuzer (2017) however, conflict has stayed out partly because of the change in the Philippines' government days prior to the Tribunal's decision. Two weeks prior to the decision, President Rodrigo Duterte came into office. Corazon Aquino, former president of the Philippines, changed the country's foreign policy in response to Chinese encroachment of the Philippines' EEZ (Santamaria 2018:324). She adopted a hardline policy towards China over the maritime disputes and engaged in close security ties with the U.S. and Japan (Bautista 2016:253). Duterte however started his term by doing the direct opposite. Bilateral negotiations between the countries were initiated in which Duterte declared that the Philippines, for the time being, might be willing to set the Tribunal's decision aside, in order to improve the economic cooperation and diplomatic relations between the countries (ibid:253).

According to Hermann, most drastic changes in a countries foreign policy occur when new governments with different perceptions of the environment and new agendas come to power (1990:4). These changes are important for external actors as they can have powerful consequences for other countries. The change in government in the Philippines, involving a president with radically different ideas than his predecessor, has significant consequences for the Chinese as rapprochement started as soon as Duterte took office. This sharp turn in policy towards China however, is not unfamiliar in Filipino political history.

According to Yin, the condition of Sino-Philippine relations is dependent on the current relationship with the U.S. and on what alliances are perceived to be in the

Philippines' contemporary interests<sup>41</sup>. In the past, the Philippines distanced themselves from Beijing when it perceived Taiwan as more valuable, turned to the U.S. when it felt threatened by China and later warmed its relations with China again when feeling the pressure of U.S. interests<sup>42</sup>. This diplomatic capriciousness has caused a periodic swing in Sino-Philippine relations which again saw a drastic turn when Duterte became president. Whereas China prior to the Tribunal's decision had to deal with a pro-American and anti-China president in the Philippines, the situation now seems completely turned with Sino-Philippine relations having intensified under president Duterte. This has, according to Santamaria been a continuous pattern in maritime tensions between China and the Philippines since 1970 as "tensions have ebbed and flowed with the tide of successive Philippine administrations" (2018:325).

Political leaders in the Philippines have been argued to have carefully calibrated actions right after the decision in order to cushion the blow for China's legal defeat (Bautista 2018:183). Right after the decision, Foreign Affairs Secretary Yasay of the Philippines issued an official statement in which he asked for "restraint and sobriety" (Bautista 2018:183). Although Duterte faces domestic criticism for being too soft against China over the long-running territorial disputes, Duterte stated that he sees his approach to the case as pragmatic<sup>43</sup>. Duterte made it also clear that challenging China might trigger war between the countries, which would needless to say be devastating for the Philippines. Duterte has subsequently put the ruling "on the back burner" and will, as officials emphasize, revisit the decision later in his term, something which remains to be seen as half of his term has already passed<sup>44</sup>. Against initial expectations, neither China nor the Philippines therefore further heated the debate over the 'islands' and, instead of conflict, Sino-Philippine relations entered a period of intensification and tensions lowered<sup>45</sup>.

One of the reasons the Philippines are shelving the arbitration's decision is that Duterte wants to resume joint development with China in exchange for investments and technical expertise for extracting hydrocarbons from the South China Sea (Santamaria 2018: 323). According to Santamaria, Duterte sees less in making China comply with the arbitration since it –in his view- accomplishes relatively little for the ordinary Filipinos (2018:325). Santamaria continues by stating that Duterte therefore cares more about receiving financial investments from China, securing the revenues from oil and gas royalties and hereby curbing its dependency on imported oil and enhancing the country's long-term

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<sup>41</sup> See "Vacillations and Dramas Exist in Sino-Philippines Relations Too", *Asia Pacific Bulletin*, 11<sup>th</sup> January 2017.

<sup>42</sup> Ibid.

<sup>43</sup> See "China hails 'golden period' in relations with Philippines", *Reuters*, June 29<sup>th</sup> 2017.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

energy security (2018:325). The fact that Duterte pays more attention to economic progress than upholding national sovereignty in its coastal waters, gives China more room to keep its claims on features in the Philippines' EEZ undisturbed.

Against the argument that Duterte is seeking rapprochement with China because of economic incentives, stands a security related argument. According to Walt (1987), there are two common approaches for states to deal with an external threat: balancing and bandwagoning. Through balancing, states can increase their security by forging alliances with other states against the prevailing threat (Quintos 2018:262). Contradictory, bandwagoning entails that states align themselves with the external threat in order to ensure their own safety (ibid:262). As China is a clear external threat to the Philippines because of proximity and Chinese assertive attitude in recent years, the Philippines are forced to react. While his predecessor clearly chose alignment with the U.S. as a counterbalancing means against the Chinese, Duterte is strengthening its links with China (Santamaria 2018:326). His strong anti-America rhetoric and colorful language towards the Chinese government over economic and security cooperation speaks for a radical turnaround in alliances, something which serve the Chinese very well in strengthening their grip on the South China Sea. As the Philippines are looking for security by bandwagoning with China, they become forced to accept the status quo of China occupying territory of the Philippines.

Contrary to this argument of the Philippines enhancing economic and security relations in order to benefit from them, some argue that China is purposely promising investments and aid in order to create a dependency relation in which the Philippines will become trapped in debt (Shields 2018:18). Through "debt-trap diplomacy" China is argued to be giving the Philippines loans and investments until the country is unable to repay, finding themselves forced to give China access to their natural resources and strategic assets (ibid:18). By investing and granting loans China is argued to be creating dependency and debt which provides China with a means of putting pressure on countries such as the Philippines.

When combining the above made arguments, we can state that one of the factors involved in the cooling down of the conflict comes from Duterte's radical change of the Philippines' foreign policy. The fact that this governmental change happened shortly before the Tribunal's decision -and resulted in shelving of the verdict- has given China a huge advantage in controlling its disputes in the South China Sea.

## **5.2: Lack of U.S. Strategy**

While China is engaged in territorial disputes with regional actors, external forces also play a role in the course of the region's tensions. As the U.S. -being not only a global superpower but also a Pacific actor- has stakes in the course of the disputes, its presence and

involvement is clear. However, according to Brands & Cooper, U.S. strategy in the South China Sea has remained not only indistinct, but also ineffective (2018:17). The Obama administration repeatedly warned China to halt reclamation, construction and militarization in the South China Sea, but failed to halt, or even slow down, China's activities. He argues that one reason for this was the lack of credible U.S. pledges to militarily respond to Chinese aggression in the South China Sea, for example when looking at the Mutual Defense Treaty between the U.S. and the Philippines (Brands & Cooper 2018:17). U.S. leaders refused to comment publicly that it would intervene if the Philippines were to be attacked by China, something which the agreement suggests (ibid:17).

U.S. President Donald Trump, who became president early in 2017, holds widely different views than his predecessor, which influences his Asia policy. As Trump is pushing an America First agenda, it has been questioned if Trump will continue the 'pivot to Asia' set up under the Obama administration. According to some, the U.S. has been an almost invisible presence since Trump took office, leaving a great-power vacuum in the region that China has been happy to fill<sup>46</sup>. President Obama supported adherence to international law in maritime security, despite the fact that the U.S. itself has not yet ratified UNCLOS (Dalpino 2017:6). According to Dalpino, Trump, however, appears less interested in upholding this categorical imperative (2017:6). Brands & Cooper state that Trump's administration as well is displaying struggles with outlining a clear strategy towards China and the South China Sea disputes (2018:17). While initially taking a hard stance on the issue, Trump soon receded from this policy by putting its focus on bilateral trade with China and the issue of North-Korea (Brands & Cooper 2018:17). Without a clear strategy towards China and the South China Sea, China is given room to continue its activities without threat of actual U.S. interference.

The U.S., under Trump's administration, have continued to exercise 'freedom of navigation' by doing routine controls in the waters claimed by China, and subsequently making public reports on these missions. U.S. Secretary of Defense James Mattis stated that the U.S. would carry out exercises in international waters and transit international waters as appropriate, as "freedom of navigation is absolute, whether it be commercial shipping or the U.S. Navy" (Quintos 2018:269). However, the amount of Freedom Of Navigation Operations (FONOPs) have been limited. For example, during the first half of 2017 not a single FONOP was conducted<sup>47</sup>. Brands & Cooper argue that although the U.S. under Trump has conducted FONOPs later in 2017, it lacks an overall strategy for addressing

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<sup>46</sup> See "One year after the Permanent Court of Arbitration's Decision on the South China Sea", *Prif Blog*, 12<sup>th</sup> July 2017.

<sup>47</sup> See "Is Donald Trump abandoning America's 'Asia pivot'?" 23<sup>rd</sup> August 2017.



China's naval advances (2018:18). Without a clear strategy, U.S. capabilities to contain China in its activities in the South China Sea are limited.

One of the challenges for the U.S. confronting China's aggressive power, particularly in the South China Sea, lies with the fact that there are continuous changes in the Trump staff. Steve Bannon, Trump's former Chief Strategist and Senior Counselor, was willing to confront China, and raised the possibility of a renewed and reinvigorated "pivot to Asia"<sup>48</sup>. With Bannon fired and gone, the globalists who are left are likely to prefer a more cooperative and "integrationist" approach toward Beijing<sup>49</sup>. Another of Trump's actions that endangers its relations with Asian countries and increases the likelihood of them siding with China, lies with his denunciation of participation in the TPP-agreement<sup>50</sup>. By stepping out of the agreement, the U.S. is losing credibility in multilateral agreements and will push countries in the region to look for economic cooperation with China's successful economic statecraft<sup>51</sup>. Through this China's influence will grow and U.S. regional importance will decline, giving way for China to possibly become the regional hegemon and subsequently upholding its claims without much opposition.

Koo states that America's reluctance to challenge China's growing assertiveness has been interpreted as an acknowledgement of China's legitimate interests in the South China Sea, giving China more space to continue or even expand its reclamation and occupying activities (2017:56). A lack of clear U.S. strategy and any concrete action to stop China from engaging in its 'illegal' activities has therefore contributed to the absence of escalation of the conflict, despite China's persistence in the South China Sea.

### **5.3: An alliance falling apart**

Not only increased bilateral relations between the Philippines and China affect the effectiveness of the tribunal's decision, the deteriorating relationship between the Philippines and the U.S. does as well. American-Philippine relations have taken a sharp turn as Duterte is opposed to what he sees as long-term American interference in Filipino foreign policy (2018:326). Influenced by a lack of confidence in the U.S. defense shield, Duterte argues that the country is safer by appeasing to China and in this way avoiding war (ibid:326).

During a state-visit to China, Duterte announced the country's military and economic "separation" from the U.S. (Bautista 2016:351). With this statement Duterte did not mean actually cutting ties with the U.S., but merely the beginning of a process of becoming

<sup>48</sup> See "Is Donald Trump abandoning America's 'Asia pivot'?" 23<sup>rd</sup> August 2017.

<sup>49</sup> Ibid.

<sup>50</sup> Trans Pacific Partnership (trade-) agreement.

<sup>51</sup> See "One year after the Permanent Court of Arbitration's Decision on the South China Sea", *Prif Blog*, 12<sup>th</sup> July 2017.

independent from the U.S. in establishing and implementing of foreign policy (ibid:352) The U.S.-Philippine relations have cooled down since Duterte became president, as he spent the first months in office heavily rallying against U.S. criticism on the bloodiness of the war on drugs in the Philippines<sup>52</sup>. Furthermore, Trump's insistence that all allies should pay equal and fair shares for U.S. protection will only further deteriorate the relationship between the countries, since Duterte already wants American troops out of his country<sup>53</sup>. Lastly, Trump's intentions with illegal immigration and economics have consequences for the U.S.-Philippine relations. Trump's crack down on illegal immigrants may well have a large impact on the the Philippines' economy. This is because remittances are send back by overseas workers, of which many reside in the U.S., collectively representing 10% of the Philippines' GDP<sup>54</sup>. These difficulties between the U.S. and the Philippines could possibly be beneficial for China, since the country is instead stepping up its bilateral relations with China. The change of alliance can possibly give China an advantage in opposing the U.S. over maritime dominance in the South China Sea.

According to Cruz de Castro, Duterte's administration view China as an emerging power while the U.S. is a declining power in East Asia (2017:559). He continues by stating that this results in the Philippines' policy of distancing itself from its treaty ally, the U.S., and seeking more rapprochement towards China (ibid:559). Although the Filipino government has stated that joint military exercises with the U.S. will continue, it stated that these activities will not take place in the South China Sea in order to prevent provocation of the Chinese (Shields 2018:25). The deteriorating American-Philippine relations have given way for China to engage increasingly in bilateral negotiations with the Philippines while enjoying a decreasing influence of the U.S. in the territorial disputes. Together, a lack of clear U.S. strategy, change in Filipino government and the subsequent deteriorating U.S.-Philippine relations, have made it relatively easier for the Chinese to, despite the Tribunal's clear decision, uphold its claims in the South China Sea without escalating the conflict.

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<sup>52</sup> See "One year after the Permanent Court of Arbitration's Decision on the South China Sea", *Prif Blog*, 12<sup>th</sup> July 2017.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

## Ch. 6. Rising China's Power

It is evident that if we look at China, we can conclude it to be an emerging regional and global power. The country has the largest population in the world, the fastest growing economy, the largest army in the world, the largest middle class in the world, a permanent seat in the UN Security Council, a nuclear arsenal and so on (Callahan 2005:701). According to Shirk, many in the West initially believed China's rise would be a peaceful rise (2017:21). In the years after adopting a market-oriented economic policy, the country opened itself up to foreign trade, improved its friendly relations with neighboring countries and even joined several international institutions (Shirk 2017:21). According to several scholars, the speedy recovery of the Chinese economy after the financial crisis of 2008 induced a sense of triumph and empowerment that gave China the strength to express its interest abroad more aggressively (Shirk 2017:21). China's economic growth has also been accompanied by an increase in its military power which, subsequently, resulted in growing tensions in the South and East China Sea (Robertson & Sin 2017:93).

According to Elizabeth Economy, China has replaced its "hide brightness, cherish obscurity" mantra with a far more expansive and muscular foreign policy (2014:88). The Asian giant has grown more confident and nationalistic since its global economic rise (Buszynski 2013, Yahuda 2013). This, according to Buszynski, has the effect that China puts more efforts in the continuation of its sovereignty claims in the South China Sea, even with powerful external powers like the U.S. involved (2013:7). These interests, e.g. its sovereignty claims in the South China Sea, are pursued and ensured by what this chapter argues to be China's use of hard and soft power.

### 6.1: *China's hard power*

As China has become a global economic power with a substantial military force, it does not seem surprising that it is able to use its power to pursue its interests, often at the costs of others. The grown economy and military have given China means of hard power. According to Wilson, hard power is the capacity to coerce other states into acting in ways which it would not have acted otherwise (2008:114). These hard power strategies focus on military actions, coercive diplomacy and economic sanctions to enforce national interests (Wilson 2008:114). When looking for cases of Chinese hard power in the South China Sea disputes, many examples are to be found.

Buszynski states that China has been increasingly using its military capability to deploy tactics of assertion and harassment to intimidate other claimants (2013:7). Prior to the Tribunal's case for example, overlapping maritime claims of China and Vietnam have resulted in multiple incidents with military confrontation. A few examples are the severing of

cables of a Vietnamese research ship by the Chinese, or the opening of nine militarily guarded oil blocks in Vietnam's EEZ by a Chinese state oil company (Anh 2016: 370). In addition, China has frequently approached Vietnamese fishing vessels aggressively with subsequent detainment of Vietnamese fishermen (ibid:370). In the regard to the Philippines, the 2012 Scarborough Shoal military stand-off and the subsequent economic sanctions on the country<sup>55</sup> prove as examples of China exerting its military and economic power locally in order to enforce its maritime claims.

Right before and after the decision, China used its military capabilities to defy the arbitral decision and demonstrate its sovereignty claims (Zhang 2017: 448). In the week prior to the Tribunal's decision, China conducted a major exercise near the Paracel islands using all three of its fleets. Zhang (2017) argues that the timing of this 'routine' exercise suggest that it was targeted at the release of the decision as its outcome was expected to not be in China's favour. Right after the decision, China's military started to conduct regular combat air patrols over the area in addition to new military exercises (Zhang 2017:448). According to Herbert, China has been applying strategies of "showing the flag", where either the Chinese navy, coastguard or other maritime militias are conducting increased patrols or exercises in disputed waters (2018:307). With these routines, China is symbolically reinforcing its claims through shows of strength, continuingly being present in the area and deterring foreign vessels from access to the disputed waters (Herbert 2017:307). Although not having used its military capabilities to forcefully seize islands controlled by other states since a 1974 incident against Vietnamese forces over the Paracel islands, its growing military strength and presence deters other claimants from taking military actions to ensure their maritime claims (Koo 2017:62)

China has not only been increasing its hard power by expanding its military and naval forces, but also by building new facilities on features that help China to enforce its claims. Against the outcome of the verdict, China's top naval commander Wu Shengli stated that China was determined to continue its construction activities since land reclamation activities were finalized and the 'islands' now awaited installation of facilities, including military hardware (Zhang 2017:448). Reports have shown that China indeed has continued its building activities on the disputed features (ibid:448). According to Koo, the building of naval bases, airstrips and other military facilities on the disputed features provide the Chinese with additional edge over other regional actors and external parties like the U.S. (2017:55).

By continuing land reclamation activities and the installment of research and military facilities on features in the South China Sea, China is argued to be adopting a "salami-slicing" strategy (Cheng-Chwee 2017:184). This holds that China is adopting a series of

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<sup>55</sup> Post-standoff, China issued economic restrictions on bananas from the Philippines. See "China lifts import ban on Philippines bananas", *Philstar Global*, 7<sup>th</sup> October 2016.

incremental and selective measures to change the situation on the ground (Ibid:184). By using military and non-military means, China is consolidating its claims, creating possibilities to extract the well-needed resources and increase its physical presence on the claimed features. The continuation of these activities come with Chinese caution to further provoke direct confrontation but are eventually meant to confirm effective control over the South China Sea (ibid:184). The creation of a defense line by the Chinese on the “Great Wall of Sand” enlarges China’s hard power capabilities in future conflictual situations in the region. However, as China has become economically and militarily stronger in the past few decades, it has been less and less inclined to actually use this force (Hayton 2017:149, Taylor Fravel 2008). It has more often used different forms of power exertion like economic coercion, diplomatic pressure and the (mere) threat of using force (Hayton 2017: 151).

According to Mearsheimer (2014) and Yahuda (2013) China is, due to its overwhelming power relatively to neighboring countries, in a good position to use military threats to force other actors into accepting deals largely on China’s terms. China has - although abstaining from actual action- repeatedly threatened to use force in order to deter another country from certain actions. An example comes from a surge in tensions between China and Vietnam in the summer of 2017 over oil drilling plans of the Vietnamese in the South China Sea. Vietnam granted a Spanish oil company, Repsol, the rights to perform drilling activities in the disputed waters<sup>56</sup>. China responded by directly informing the Vietnamese government that it would attack Vietnamese bases in the Spratlys if the drillings did not halt (Sutter & Huang 2018:54). Vietnam was forced to inform Repsol of this threat and asked the company to halt the activities and leave the area. The Philippines have, just like Vietnam, experienced threats of force by the Chinese. In response to a statement of Duterte’s determination to drill for oil in the South China Sea, China’s President Xi Jinping allegedly responded that China wants to continue the warm relationship between the countries, but that war would commence if the Philippines forced the issue<sup>57</sup>. China’s neighbors are well aware of China’s military supremacy, which clearly gives China the capability to deter other states through threats of the use of force.

The continued military activities and coercive diplomacy of the Chinese show that the country is well aware of its superior power compared to other regional actors. Due to its military and naval expansion, the country has become capable of enforcing sovereignty over disputed features without much actual opposition by other claimant states or the U.S. According to Koo, states in the region consider China to have become the regional de facto co-hegemon with the U.S., which has come at the cost of their own territorial integrity

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<sup>56</sup> See “Alarming Escalation in the South China Sea: China Threatens Force if Vietnam Continues Oil Exploration in Spratlys”, *The Diplomat*, 24<sup>th</sup> July 2017.

<sup>57</sup> Ibid.

(2017:55). China can therefore be argued to, despite the Tribunal's decision have the power and the ability to force its claims upon other claimants through the use of hard power without escalating into actual conflict.

## **6.2: China's soft power**

In contrast to hard power, soft power evolves around the capacity to persuade other actors to do what one wants (Wilson 2008:114). Through persuasion and attraction states can convince other states to go along with its proposals, ideas and requests. China is believed to have spent billions of dollars to boost its international image in order to increase the country's international attractiveness and ability to influence other countries and publics<sup>58</sup>. According to Asian scholars, China is trying to advance its national interests through development assistance, diplomacy and soft power<sup>59</sup>. Additionally, China is argued to be trying to create friends and partners through investments and becoming a trade partner<sup>60</sup>.

One of China's strategies to increase influence is by developing relations with countries based on finding mutual preferences and integrate these into 'win-win' agreements in the economic and financial domain (Goh 2016:47). This is being achieved through financial investments, foreign assistance, new trade agreements and infrastructure development (Goh 2016:47). By strengthening economic ties with its regional neighbors, China is seeking to change the perception of China as a threat and tries to increase the attractive economic power of China (Swe et al. 2017:189). Having intensive economic relationships and being perceived as an attractive economic actor -with whom countries would like to cooperate with and benefit from- subsequently grant China increased soft power usable in the South China Sea negotiations (ibid:189).

China has shown efforts to create a better and less aggressive image of itself on the regional and international stage. It emphasized navigational freedom in the South China Sea, while it still experiences its own difficulties with American FONOPs (Koo 2017:62). It has even adopted the Guidelines for the Implementation of the 2002 Declaration of the Conduct of the Parties in the South China Sea (DOC), which entails a code of conduct when unplanned encounters occur in the South China Sea<sup>61</sup>. Through the DOC and initiation of a crisis hotline between foreign ministers, China and ASEAN want to manage the disputes better (Hong 2016:360). These agreements and practical actions signal that China is willing to resolve the disputes and other issues more peacefully through cooperation and negotiation (Koo 2017:62). Through these policies, China is trying to alter the image of China

<sup>58</sup> See "China's Big Bet on Soft Power", *Council on Foreign Relations*, 9<sup>th</sup> February 2018.

<sup>59</sup> Curtis S. Chin in "China Using 'Soft Power' to Assert Rights Over South China Sea", *VoaNews*, 22<sup>nd</sup> July 2016.

<sup>60</sup> Ibid.

<sup>61</sup> See "Declaration on the Conduct of Parties in the South China Sea", *ASEAN*.

as an aggressive and assertive regional actor. However, according to Hong, China is still a long way from being persuasive enough that it will not use coercion instead of peaceful means to pursue its national interest (2018:242).

The country is not only boosting its image with ASEAN actors. As China is seeking to improve extra-regional cooperation through its “One Belt, One Road Initiative”, it was forced to adopt a less assertive attitude in order to prevent disruption of stable cooperation between the regional actors (Cheng-Chwee 2017:163). This initiative creates “regional connectivity through a vast network of railways, roads, pipelines, ports, and telecommunications infrastructure that will promote economic integration from China, through Asia, the Middle East, and Africa, to Europe and beyond”<sup>62</sup>. Through initiatives like this China is showing friendly gestures towards its South East Asian neighbors and the further international community. According to Koo, China appears to be aware that becoming the provider of regional public goods can enhance its own position as a regional hegemon and contributes to the achievement of its own interest (2017:62). Sutter & Huang state that China with these initiatives is trying to establish itself as “the anchor” of peace, stability and development in the Asia-Pacific region (2018:54). Whereas relations with the Philippines hit an all-time low during the arbitral proceedings, China now seems to invest heavily into restoring a positive image with the Philippines through cooperative agreements and aid<sup>63</sup>.

Next to an increase in warm relationships and bilateral cooperative agreements with the Philippines, China also pursued a rapprochement with Vietnam in order to work towards a resolution of the maritime disputes between the two. The countries have set up joint inspection activities in the disputed waters and have started several cooperative projects aiming at the development of the sea basin (Hong 2018: 230). During a recent state visit of China’s President Xi Jinping to Vietnam, the countries signed 12 cooperation agreement on trade and security issues (including on the management of the maritime issues) (Sutter & Huang 2018:54). Cooperative behavior between the countries will have a significant impact on the reduction of tensions. For example, where the Chinese and Vietnamese coastguards before came across unexpectedly and sometimes aggressively, now the two countries have even held work meetings between the respective coast guards (Hong 2018: 231). Although China has brought its coastguard under military command, and Vietnam is trying to push through a law that provides its coastguard more power while simultaneously also seeking cooperation with external powers such as Japan and the U.S.<sup>64</sup>, partnership between these coastguards can possibly prevent future clashes. As the countries now cooperate in certain

<sup>62</sup> See “China’s Big Bet on Soft Power”, *Council on Foreign Relations*, 9<sup>th</sup> February 2018.

<sup>63</sup> See “Sino-Philippine ties to move forward with more progress: ambassador”, *Xinhua*, 10<sup>th</sup> June 2018.

<sup>64</sup> See “Why Vietnam’s New Coast Guard Law Matters”, *The Diplomat*, 14<sup>th</sup> April 2018.

problematic areas, China can be perceived as a more collaborative and non-hostile partner to Vietnam, but also to other regional actors.

Another tactic used by China lies with what Goh terms 'discursive persuasion'. This strategy involves the persuasion of actors to tag along discursive positions like normative attitudes towards sovereignty and non-interference (Goh 2016:47). According to Swe et al. Beijing is "keen to change the strategic landscape, security architecture, bilateral security ties, the norm and rules and even the trajectory of politico-economic developments to China's favor" (2017:188). By providing evidence that China's beliefs are more accurate and desirable, it tries to propagate dominant beliefs which, once accepted, "constrain and align the preferences of the subject with those of the powerful actor", in this case China (Goh 2016:13). By aligning ideas, China can influence the role of international institutions, including those concerning dispute resolution. However, China's efforts to influence the formation of new international institutions and its efforts to reshape existing institutions, like ASEAN, have been limited (Goh 2016:47). One of the problems for this limited influence is that the power of the Western discourse is still much more influential in Asia and therefore makes it harder for countries to switch and follow China instead (ibid:47). One of the reasons for this lies with the admittance of other rising powers like Australia and India in regional institutions, but also the increased U.S. commitment to these institutions in recent years, effectively neutralizing the effects of China's growing power (ibid:47).

Despite the fact that its occupations and activities in the South China Sea continue, this chapter has argued that China was able to prevent the disputes from escalating through the use of hard and soft power. The country has used its military predominance to coerce other regional actors into acceptance of Chinese occupation and activities, and deterred them from taking practical measures. On the other hand, China has engaged in friendly negotiations, bilateral agreements and reputational recoveries in order to win the international community over and exert influence, which can be used in resolving the disputes in its favor. This mixed use of hard and soft power therefore confirms the theory mentioned before that China applies a strategy of "talk and take" whereby it engages in promising talks, agreements and action while simultaneously taking what it claims to be hers through the use of its military might.



## Ch. 7. International Institutions and Dispute Settlement

China has, despite the decision, not brought its claims in accordance with the regulations set out in UNCLOS (Storey 2016:338). The country has, again contesting the decision of the PCA, continued to emphasize its claims and has not shown any sign of retreat from the 'illegally' occupied features within the Philippines' EEZ (Storey 2016, Quintos 2018). Except for the somewhat silent disappearance of the 'nine dash line' in Chinese statements, Chinese compliance with the decision of this international arbitration institutions is absent. In order to answer the question how China, despite the negative decision of the PCA, has managed to sustain its dominant position in the South China Sea without escalating tensions, we must take a closer look at the international institutions involved. The PCA and UNCLOS are both very important international institutions involved in this case. The role of these institutions in the international arena and their involvement in -and subsequent effects on- the developments in the South China Sea are significant for explaining how China has downplayed the decision's importance and evaded compliance. In addition to a more in-depth examination of the role of these international institutions, it is also important to understand what effectiveness these institutions have in resolving disputes where states' interests clash.

On the effectiveness of international institutions in promoting peace and stability has long been debated. Realists and institutionalists have stood against each other when discussing whether institutions markedly affect the prospects of international stability (Mearsheimer 1994:7). While institutionalist claim this to be the case, realists deny such an influence. Realist state that institutions are basically a reflection of the distribution of power in the world (Mearsheimer 1994:7). According to Mearsheimer, these institutions are based on the self-interested calculations of the great powers, and do not possess the power to independently affect state's behavior (1994:7). This last point is of significance in the case of the South China Sea, because as we observe post-arbitrational events we can clearly see that China, and even the Philippines, are not effectively influenced in their behavior by the PCA'S decision. The verdict spoke largely against China and if actually complied with, would have caused the withdrawal of Chinese claims, cessation of Chinese 'illegal' activities and adherence to the UNCLOS Convention in other existing disputes. China, however, has largely ignored and undermined the Tribunal's decision by not complying with the award, continuing reclamation and occupying activities and by looking for ways to resolve the disputes outside the international institutions. Why and how exactly China was able to, more or less, surpass an international institution in which it takes part, has several reasons which will be discussed in the following paragraphs.

### **7.1: Chinese declaration of exception from dispute settlement**

First of all, one of China's earliest arguments for dismissing the Tribunal's decision stems from the exceptions filed at the time of ratification of the Convention. According to the Convention, states are allowed to make declarations or statements regarding the application at the time of signing, ratifying or acceding to the Convention<sup>65</sup>. Although this does not exclude or modify the legal effect of the provisions of the Convention, it expresses a country's position regarding the Convention, or certain parts of it. China ratified the Convention in 1996 at which time it also issued a declaration reaffirming its sovereignty over all its archipelago's and islands and provided an additional declaration ten years later. On the 25<sup>th</sup> of August 1996, China issued a declaration in which it stated that it would "not accept any of the procedures provided in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c)"<sup>66</sup>. The procedures mentioned entail any international judicial or arbitral jurisdiction with respect to disputes related to maritime boundary delimitation, territorial disputes or military activities (Mincai 2014:2). This reservation essentially excluded China's participation in future arbitration(s) and in this way hampered the process of proper settlement through the institutions mechanisms. When the Philippines submitted the case in 2013, China declared, according to expectations, that it would not cooperate in the case brought before the Tribunal. Although China claimed to exclude itself from compulsory arbitration, this claim cannot absolve its obligation to accept the results of the mandatory dispute resolution process (Zhao 2018:8). Therefore, a look at China's contemporary arguments for rejection of the Tribunal's decision should complement the argument that China's non-participation hampers the functioning of the arbitration proceedings.

### **7.2: Jurisdiction, admissibility & significance of PCA**

Therefore, as a second contributing factor to the circumvention of the Tribunal's judgement, China's arguments for delegitimization of the case have to be taken into account. After the Philippines submitted the case, China issued a declaration in which it stated not to accept nor participate in the arbitration based on the argument that the Tribunal has no jurisdiction over this case<sup>67</sup>. It stated that as the Tribunal arose from UNCLOS, questions about the sovereignty of the disputed features were beyond its jurisdiction (Schofield 2016:340). Next to delegitimizing the case on the basis of jurisdiction, China also spoke against the admissibility of the case. The declaration clearly states that the Philippines had no right

<sup>65</sup> See "Declarations and Statements" of the United Nations Oceans & Law of the Sea.

<sup>66</sup> See "Declaration China (25<sup>th</sup> August 2006)" under article 298 of UNCLOS.

<sup>67</sup> See China, "Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines", 7<sup>th</sup> December 2014.

bringing the dispute before this institution on the basis that both countries agreed, through bilateral agreements and the DOC-declaration, to resolve the disputes through bilateral negotiations<sup>68</sup>. With this statement China accused the Philippines of violating its obligation under international law, and thereby seeks to undermine the legality and significance of the case, and the Tribunal. Beijing even launched a diplomatic campaign after the decision to convince governments around the world that the Tribunal was illegal and lacked jurisdiction (Zhao 2018:7). By increasing international support for the delegitimization of the case, effectiveness of the decision becomes impaired.

China has not only clearly expressed strong opposition towards the arbitration with arguments about the lack of jurisdiction and admissibility: it has also strongly emphasized that the case admission would deteriorate Sino-Philippine relations (Hong 2016: 357). In order to downplay the significance of the institutions, Chinese officials have argued that the arbitration has disturbed the current track of diplomatic dialogue and consultation to resolve the disputes and has only increased tensions in the region (Wang in Zhang 2017:451). According to them, the Tribunal has failed to resolve the disputes, disrupted the ongoing process of setting up the DOC-declaration and brought Sino-Philippine relations to an all-time low<sup>69</sup>. These accusations undermine the perceived effectiveness of international institutions as they call for the continuation of the use of previous means to resolve the disputes. It therefore seems that the Chinese are trying to create an opening to resume the bilateral negotiations it wants to have with other claimant states, instead of resolving them through international arbitration institutions.

### ***7.3: Enforcement mechanisms in international institutions***

Another problem which reduces the effectiveness of the Tribunal's decision is the difficulty of ensuring that the judgment is complied with. Although the decision was "binding and final", China had the opportunity to hear the decision, but then to disregard it as no actor or institution can effectively enforce compliance (Herbert 2018:311). According to Koremos et al., this is because most international institutions have relatively decentralized enforcement arrangements which specify the possible punishments for rule violation but leave it up to the members to apply them (2001:772). Because many institutions like the PCA lack effective enforcement mechanisms to force actors into compliance, enforcement problems arose after the decision (Zhao 2018:1). According to Lee, China's non-acknowledgement of the PCA's jurisdiction, non-participation in the proceedings, and non-acceptance of what the court decided and prescribed, has made the victory of the Philippines relatively hollow (2017:179).

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<sup>68</sup> See China, "Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines", 7<sup>th</sup> December 2014.

<sup>69</sup> Pronouncements of Chinese Foreign Minister Wang Yi in Zhang (2017:451).

Although several institutions like UNCLOS and involved state actors can try and coerce China into compliance with the decision, no actual mechanism exists which ensures Chinese actions to comply in practical terms. The fact that international law often lacks these enforcement mechanisms, gives a powerful China the opportunity to denounce international institutions, such as the PCA, without other countries having the ability to do something about it (Rapp-Hooper 2016:76) The absence of such an enforcement mechanism is therefore argued here to be compromising the effectiveness of the Tribunal and its decision.

#### **7.4: Compliance enforcement by international community**

As mentioned before, coercing China into compliance was dependent on international efforts and China's response to this. According to Zhao, one of the problems in this case was that the international community lacked the will to induce significant compliance (2018:1). While Tribunal's award would seemingly be a humiliating defeat for Beijing, the nature of the award made it easier for the Chinese to delegitimize the outcome (Zhang 2017:446). In the months prior to the decision, China received many requests from other countries to comply with the outcome of the Tribunal's case. Due to the overwhelming, and to some, surprising outcomes of the decision, China was able to downplay the significance of the decision on the basis of a 'tribunal biased against China' (Zhang 2017:446). Although there was a general support for the award within the international community, scholars argue its significance and subsequent international support to be downplayed because of the verdict's sweepingness (Zhang 2017:446). The Philippines, the U.S. and some of its key-allies issued statements calling for Chinese compliance with the decision. However, many other countries issuing statements did not mention compliance of China or even rejected the verdict, effectively reducing the pressure on China to recognize the decision (ibid:446). This confirms Zhao's argument that the international community lacked the will to collectively pressurize China into compliance with the decision rendered by an international institution as the PCA, and the rules and regulations of UNCLOS.

The countries that did try to force China into compliance could only do this through statements, of which some had a counterproductive element. According to Zhao, China has effectively put U.S. statements concerning compliance to a rule-based order aside by pointing out the hypocrisy of the U.S. (2018:8). The U.S. Congress has not ratified UNCLOS for the same reason as China did. It does not want to subject itself to the system of dispute settlement set out in the Convention (ibid:8). Therefore, the U.S. seems to be trying to force China into compliance with an institution's rules it does not even accept themselves. Without a credible condemnation of China's rejection by the U.S., compliance with the judgment seems a long way off (Rosen 2017:252).

### **7.5: Bilateralism instead of compliance**

The consequence of the above arguments concerning the impairment of the effectiveness of the decision is that China uses a different strategy aiming to resolve the disputes outside the institutions. The decision of the Tribunal has had political and legal implications for China, especially in its future approach of managing and resolving maritime disputes (Hong 2016:356). Taking a look at the post-arbitration diplomatic behavior of the Chinese we can see a clear pattern of increased bilateral negotiations and talks with separate claimant states. China has always advocated bilateral negotiations above institutional dispute settlement as the most practical means of resolving disputes between states (Hong 2018: 221).

A clear example is the contemporary bilateral diplomatic relationship between China and the Philippines. Instead of steadfastly supporting the Tribunal's decision, and thereby obtaining what it has been assigned, the Philippines are going along with China's desire to find a solution through bilateral consultations. As stated before, the countries reinstated bilateral negotiations due to the Philippines' willingness to set the Tribunal's decision aside in order to improve the economic cooperation between the countries. The two countries have signed multiple cooperative agreements in the economic and security realm but are also seeking to resolve the dispute bilaterally<sup>70</sup>. These renewed bilateral negotiations confirm the realist theory that international institutions do not have a direct influence on the peace and stability between states, but instead seems dependent on the self-interests of states and their subsequent behavior trying to ensure these interests being safeguarded (Mearsheimer 1994:7). China and the Philippines surpass the decision by engaging in these bilateral negotiations, effectively giving China an opportunity to use its dominant position in the search for a solution.

One can say that contrary to what the Tribunal's decision would have accomplished if compliance with this institution had occurred, the decision did have a tension-relieving effect. Zhang argues that the verdict, despite not being complied with, was viewed by major actors involved (China, the Philippines, U.S. and ASEAN) as an opportunity to de-escalate tensions (2017:454). Although the Tribunal made negotiations on the disputes harder, it represented a turning-point in bilateral relations between China, Philippines and Vietnam because of new cooperation agreements instigated following the decision (ibid:454). Here again we see that the arbitral institution's decision lacks direct effectiveness, while regional tensions are instead reduced through the individual behavior of states and their bilateral agreements with each other.

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<sup>70</sup> See "China hails 'golden period' in relations with Philippines", *Reuters*, June 29<sup>th</sup> 2017.

Together, this chapter's arguments collectively have argued that international institutions such as the PCA, and its decision rendered, lacks the effectiveness it is supposed to have on Chinese behavior. China's a priori denouncement of the dispute settling mechanisms under UNCLOS; its efforts to delegitimize the PCA's jurisdiction and its decision, supplemented by the lack of any form of effective compliance enforcement have contributed to an ineffectiveness of this institution and its decision. This ineffectiveness was therefore used as an opportunity for China to pursue bilateral negotiations instead of complying with the decision. This chapter has therefore argued that the ineffectiveness of international institutions has contributed to the opportunity for China to sustain its dominant position in the South China Sea, despite the Tribunal's legally binding decision.

## Conclusion

Concluding, this research has given a three-tiered argument to explain how China was able to, despite the Tribunal's decision, maintain its dominance and activity in the South China Sea without escalating the disputes. Firstly, this study argues that China has benefited from the way the Philippines and the U.S. have approached the Tribunal's decision and the subsequent lack of compliance by China. A governmental change in the Philippines days prior to the decision has resulted in a radical turn around in foreign policy towards China, with president Duterte downplaying the significance of the decision by shelving the verdict in order to improve relations with China. Together with deteriorating U.S.-Philippine relations and a lack of clear U.S. strategy to challenge China's assertive behavior, China was given the opportunity to remain non-compliant while continuing its activities in the disputed waters.

Secondly, this paper has argued that China, being an emerging global power, has used its growing power to exert influence and pressure on other claimant states in order to continue the current practice of Chinese behavior in the South China Sea. On the one hand it has used its means of hard power, e.g. its military power, to coerce actors into acceptance of the status quo of China's dominance in the area. On the other hand, it has tried to alter the perception of China as a threat by becoming an attractive economic and security partner. These efforts result in soft power usable for China to increase support and resolve the disputes in its favor. The combination of hard and soft power has led to an argument of a Chinese 'talk and take' strategy in which China engages in promising talks, agreements and action while simultaneously taking what it claims to be hers through the use of its military might.

Lastly, the final argument this study makes is that there are structural difficulties concerning the significance and effectiveness of the Tribunal's decision. Next to difficulties with jurisdictional and admissibility questions, the effectiveness of the decision has been reduced by a lack of enforcement mechanisms in international institutions and a lack of collective will in the international community to enforce compliance with China. The overall lack of effective international institutions to resolve the disputes have led to resumption of bilateral negotiations as the individual behavior of states based on self-interest prevail over compliance with the institution's decision. Therefore, the ineffectiveness of international institutions has contributed to the opportunity for China to sustain its dominant position in the South China Sea, despite the Tribunal's legally binding decision

The situation in the South China Sea is likely to preserve the status quo in the near future. China will continue upholding its claims, which in reality and despite some being illegal, still seem to outweigh the claims of other countries. Additionally, the country is simply much stronger from a military point of view for its neighbors to challenge. Instead of fighting,

regional actors now seem to be seeking cooperation as a solution to the conflict. Tensions have subsided, and negotiations have resumed. The Tribunal's decision has created a new scope for negotiation. The Philippines will always have a stronger position in the bilateral negotiations with China than it did before due to having a trump card: the Tribunal's decision and the eventual inescapability of the international rule-based order in which China also takes part. China will always have to deal with the decision, as it will never disappear and can always be brought forward by the Philippines or other states. Although full compliance by China seems out of the question, the decision should be utilized to remind China of the legitimate claims of other countries and its duty to adhere to international law and order. Being continuously reminded of this decision could moderate China's assertive behavior and efforts in the negotiations, possibly even making it susceptible to compromise or even concessions.

As China will likely maintain its non-compliance with the decision and holds growing regional power and influence, negotiations between claimant states concerning the peaceful co-utilization of international waters and available resources will have to continue. China's growing economy is increasingly hungry for the necessary raw materials, which can be extracted in exchange for economic deals with littoral states of the South China Sea. If China, in exchange for shared extraction, uses its economic clout to help and develop its regional neighbors with aid, investment and cooperation, all actors in the region profit from this win-win situation. However, it is not only in the area of raw materials that compromises have to be found. Shared fishing grounds, for example, are very important and already seem to be a feasible option, even for China. The first signs of Chinese acceptance of Philippine fishing vessels around disputed features such as the Scarborough Shoal have been reported.

In order to maintain stability and peace in the region, peaceful negotiations will have to continue between China and other claimant states; either through multilateralism or bilateralism. The setting up of the Code of Conduct between ASEAN and China is a good start which at least decreases the chances of actual escalating encounters between maritime forces. The regional institution should expand this code with negotiations on finding compromises and possibilities for cooperative behavior in the South China Sea. Solving the disputes will not have to be a matter of who owns which island, but of how to work together on the development and security of the South Chinese Sea basin. Joint monitoring of one of the world's most important trade routes should be carried out by regional actors, while ensuring freedom of navigation for every country. The U.S., still being a highly influential actor in the region, will of course be involved in regional cooperation but has to start recognizing and respecting China's role and growing importance in the region. Instead of containment, co-existence should be the aim for these regional super powers.



Future developments in the non-compliant position of China, the formation of effective enforcement mechanisms in international institutions and in the political landscape of the international community might change the situation dramatically. Continuous research into these developments can therefore add value to the explanation of the course of the South China Sea disputes in the future.

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