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Small State-Major Power Conflicts, Conceptions of Power and Overcoming Power Asymmetry: A Case Study of the Philippines in the South China Sea

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**Small State-Major Power Conflicts, Conceptions of Power and
Overcoming Power Asymmetry:
A Case Study of the Philippines in the South China Sea**

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Abstract

While small states lack the military and economic resources to affect the behaviour of other states, they do have access to other forms of power that they can utilize when in conflict with a major power. This research examines the ways in which the Philippines, as a small state, uses these forms of power to overcome the structural constraints that it faces in its conflict with China, a major power, in their conflict over the South China Sea. These different forms of power are categorised into four types: particular-intrinsic, derivative, collective and legal. This research has found that by using certain types of power, the Philippines precludes itself from using other types of power. The different types of power, when used successfully, can also be used to amplify or enhance other types of power. Finally, this research has found that there are limits placed on the use of derivative power of major powers by different domestic interest groups.

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1. Introduction

The South China Sea, as its name suggests, lies to the south of China and is also surrounded by Brunei, Malaysia, the Philippines and Viet Nam. The South China Sea is of great interest to the surrounding states due to its navigational purposes and its abundance of natural resources like fishing stock, oil and natural gas (Carpio, 2017). The competition to access these resources has intensified the tensions in the region over the last two decades between the states which have overlapping territorial claims in the area: China, Brunei, Malaysia, the Philippines and Viet Nam, these are all the so-called "claimant states".

The claimant states are all parties to the United Nations Convention on the Law of the Sea (UNCLOS) under which states can claim an exclusive economic zone (EEZ) up to 200 nautical miles from their shores (United Nations, 1982). However, in 2009, China claimed swathes of the South China Sea which lie far beyond their EEZ based on a "9-dash line" map as seen below. This was done in response to the joint claims submitted by Viet Nam and Malaysia to the United Nations on their Extended Continental Shelf (ECS) (Carpio, 2017). Under UNCLOS, states can claim an ECS up to 350 nautical miles from their shores which is even further than the limits allowed for claiming an EEZ (United Nations, 1982).



Source: <https://asiapacific.anu.edu.au/mapsonline/base-maps/south-china-sea-colour>

The 9-dash line claims were originally made by the Kuomintang Government in 1947, without any explanation for the basis of the claims or coordinates for their exact locations (Carpio, 2017). As the 9-dash line would include the EEZs of Brunei, Malaysia, the Philippines, Viet Nam and Indonesia, China's claims contradict the provisions enshrined in UNCLOS that all these states are party to. In 2013, China added a 10th dash on the eastern side of Taiwan and claimed the 10 dashed lines as its "national boundaries" (Carpio, 2017). As the 9 or 10 dash line maps do not include any coordinates, it is difficult to ascertain the exact locations of the boundaries claimed by China today (Carpio, 2017).

Unlike the other claimant states, which generally stick to bilateral and regional negotiations, the Philippines, in 2013, filed a case against China at the Permanent Court of Arbitration (PCA). According Wiegand et al. (2020), territorial disputes between 1945-2015 that were resolved peacefully tended to use bilateral negotiations (85% of disputants) whereas non-binding resolution was used in 11.3% of cases and binding methods in only 4.2% (1.5% for arbitration and 2.7% for adjudication) of cases. Therefore, the decision of the Philippines to pursue arbitration is rare by global standards. While it may be a rare occurrence, by studying this decision we can better understand the behaviour of small states in situations where cooperation from other states is difficult to secure and they are challenged by a state with greater power.

This research aims to understand how the Philippines as a small state has exercised different forms of power to pursue its interests when those interests conflict with the interests of a major power (China), given the constraints small states face in the international system. It will be guided by the following research question: *In what ways do small states overcome the structural constraints that they face in their conflicts with major powers?* One major structural constraint is the asymmetry of power between small states and major powers, which limits the possible courses of action by small states. I will focus on the strategies employed by the Philippines in relation to their conflict with China over the South China Sea, which includes the use of bilateral channels, multilateral negotiations and arbitration through an international organisation. By outlining these strategies this thesis is societally relevant because it allows other small powers that will come into conflict with a major power to identify alternative strategies.

2. Literature review

When analysing the conflicts between small states and major powers (Tolentino & Ham, 2015; Yamazaki & Osawa 2021) have used asymmetry theory. Asymmetry theory posits that “the obstacle of creating mutual and common interests usually results from the inattention of larger state, A, and overattention of small state, B, in the related conflicting areas” (Tolentino & Ham, 2015). Similar to this research, these scholars have studied the relations between China and the Philippines however, this thesis does not share the view that China’s inattention is a contributing factor to its ongoing dispute in the South China Sea and therefore does not think asymmetry theory is a useful lens to use to study the relationship between the Philippines and China.

Other scholars focus on the strategies employed by small states to further their interests specifically in a negotiation setting (Drahos, 2003; Deitelhoff & Wallbott, 2012; Panke, 2012). These scholars are concerned with institutional structures and the formation of coalitions that lend greater bargaining power to small states. However, this view is unnecessarily limited because there are other tools than just negotiations available to small states.

Following the work of Barnett and Duvall (2005) and Long (2016) who challenge traditional conceptions of power, it is useful to examine the forms of power utilised by small states. Long (2017) analyses the relationship between the US and small states in South America using a theoretical framework which is explained in the following section of this thesis. However, Long (2017) did not focus on legal power as a separate

category which follows Wiegand et al. (2020) findings that bilateral negotiations rather than legal options are most often used to resolve disputes. This thesis will therefore add to the literature by seeking to expand Long's (2016) conceptualisation of power by applying it to a conflict between a small and a major power where legal power was used.

3. Theoretical and conceptual framework

In order to answer the above research question, it is essential to first clarify what is meant by a small state. Since much of the early scholarship in this area refers to “small powers” instead of “small states”, these terms will be used interchangeably for the purposes of this thesis. Neumann & Gstöhl (2006) provide a more elaborate explanation of the evolution of the term “small powers” to “small states” in their work.

The early scholarship defines small states as states “whose demands are restricted to their own and immediately adjacent areas” in contrast to great powers who exercised influence over larger areas (Fox, 1959, p.3). Keohane (1969) suggests defining a small power as “a state whose leaders consider that it can never, acting alone or in a small group, make a significant impact on the system”. Such a view would suggest that small states are merely bystanders in the international system rather than actual participants in it. In contrast, Rothstein in attempting to define small powers observed that all small powers relied on outside sources to solve their security dilemmas (1968, p.24). Katzenstein (1985) focuses on small states as economic actors in a “world economy”, where they are reactive and necessarily adopt flexible policies that can adapt to economic changes.

In more contemporary discussions, Baldacchino & Wivel (2020) contend that small states have two universal characteristics: (i) political, economic and administrative systems of limited capacity, and (ii) are the weaker part in an asymmetric relationship (when dealing with a great power). Buszynski (2020) finds that ASEAN is simultaneously a platform where small states can voice their concerns while serving

as a way for China to assert its claims on the South China Sea onto the other claimant states. Following the findings of Baldacchino and Wivel (2020), as ASEAN does not have the right design to protect the small claimant states in their conflict with a major power, i.e. China, other international institutions with different designs, like the Permanent Court of Arbitration, can be a potential solution to overcome the asymmetrical power relationship in the South China Sea.

Barnett and Duvall (2005) challenge realists like Mearsheimer (2014) who consider material capabilities as the source of a state's power. Building on their work, this thesis will answer the research question by exploring how small states can access different types of power when handling conflicts with major powers. To achieve this, it will use the framework of different categories of power provided by Long (2016), since the use of compulsory power, where actors exercise control directly over another actor (Barnett and Duvall, 2005, p. 43), is not an option for a small state as they do not have the material resources to utilise this form of power.

Long argues that small states can “most successfully pursue their interests through three types of power: derivative power, particular-intrinsic power, and collective power” (2016, p.194). He reasons that as small states “lack more traditional forms of power, they must specialise in how they employ their resources and relationships” (Long, 2016, p.187).

The traditional conception of power based on material resources would fall under Long's “particular-intrinsic power”. Small states can apply their resources to a specific policy objective and in this way play a larger role than would be expected given their

limited size and resources. Long uses the example of oil-producing countries to illustrate how a small state can threaten to withhold resources in order to achieve their policy goals in other areas (p.195).

Long (2016) observes that “small states depend more heavily on external options, whether a special relationship with a great power or other small states” which brings us to his two other conceptions of power: derivative and collective. “Derivative power” is when small states form or maintain good relationships with major powers, which will in turn promote the interests of the small state. Long cites US support for Taiwan as an example of derivative power in action (2016, p.198). However, Long theorises that this form of power is likely to be narrow or issue specific.

In contrast to pursuing an alliance with a major power, small states can access “collective power” by acting in concert with other small states. Long identifies international and regional organisations as a major site for collective power to be used by small states (2016, p.198-199). This power can be exercised in ad hoc coalitions or in more formal groupings, therefore we could expect bilateral and multilateral meetings with other small states to protect their joint interests in the South China Sea, these meetings can both be organised by an international or regional organisation (ASEAN) or by the small states themselves.

In addition to the three categories of power conceptualised by Long (2016), using legal power can be a strategy to overcome the structural constraints that they face in their conflicts with major powers. This form of power can be embodied by bilateral treaties

and multilateral agreements or can be drawn from customary international law. Legal power is dependent on international recognition and enforcement, often voluntarily by individual states, in order to be effective.

Table 1: Four categories of power studied in this thesis (adapted from Long, 2016)

	Particular-intrinsic	Derivative	Collective	Legal
Base (source)	Resource inherent to small state	Relationship with great power	Relationships with smaller powers	Bilateral treaties, multilateral agreements, customary international law
Means (instrument)	Threat/promise to withhold or grant	Lobbying, framing, patron alliance manipulation	Institutional; ad hoc coalitions	Legal rulings from international bodies, sanctions
Amount (extent)	Contextually dependent	Potentially great	Depends on coalition	Depends on international recognition and enforcement
Scope (range)	Directly related to resource, plus linkages	Issue specific	Narrow for ad hoc coalitions; diffuse for institutions	Related to level of international acceptance

4. Methodology and Case selection

This research will study the interactions between the Philippines and China with regards to the South China Sea between 2002 and 2018. While other claimant states

could also be studied, the variation in their strategies for managing the power asymmetry is limited and would provide less empirical richness as they have mainly engaged in regional negotiations. The “outlier character” of the Philippines, because of their decision to pursue arbitration, is also a reason to select them as a case that can be studied by process-tracing (Van Evera, 2016).

The reason for choosing this period of study is that it covers the time between the signing of the Declaration on the Conduct of Parties in the South China Sea in 2002 up to 2018 when the first stage of negotiations on the Code of Conduct in the South China Sea were concluded with the creation of the Single Draft Negotiating Text (SDNT) (Xinhua, 2018). When Duterte came into power in 2016 he made a major pivot in his strategy vis-a-vis China by becoming more accommodating to China, because of this the period of study covers a diversity of approaches that the Philippines have taken vis-a-vis China regarding the South China Sea.

In order to determine how the Philippines accessed the different types of power as put forth by Long (2016), this research will make use of explaining-outcome process-tracing to understand how the Philippines strategies evolved over time to address the power asymmetry in the South China Sea. According to Beach (2017, p. 21), “explaining-outcome process tracing is an iterative research strategy that aims to trace causal mechanisms in order to produce a comprehensive explanation of a particular historical outcome”. In this case, the historical outcomes are the variety of strategies employed by the Philippines. The different conceptions of power are the underlying reason for the variety of strategies employed by the Philippines. Beach (2016) argues process-tracing can be used to test theories of causal mechanisms as “tracing mechanisms gives us a better understanding of how a cause produces an outcome”.

Process-tracing can be used to test theories and explain cases of intrinsic importance (Van Evera, 2016). Process-tracing applied to a case study is done in three steps: (1) stating the theory, (2) stating expectations of what should be observed if the theory is valid, and (3) exploring the case for congruence or incongruity between expectation and observation (Van Evera, 2016). The first two steps are found within the previous section of this paper and the following section contains the final step.

This thesis will use a combination of primary and secondary sources. The primary sources that will be used include the official statements of the claimant states (Brunei, Malaysia, the Philippines, Viet Nam) and documents submitted to the Permanent Court of Arbitration. The secondary sources consist of books and opinion pieces on the Philippines' policies concerning the South China Sea, newspaper articles, reports from think tanks such as the Asia Maritime Transparency Initiative and political magazines and forums that provide commentary on the issue.

5. Analysis

5.1 *The evolution of the Philippines' strategy in the South China Sea*

The emergence of territorial claims (pre-2000)

Beginning with President Ferdinand Marcos in 1968 and up to President Joseph Estrada in 1999, the Philippines have made efforts to occupy the Kalayaan Island Group (KIG) which are part of the Spratly Islands (Vitug, 2019, p.10-16). This decision to occupy the islands was based on customary international law (Vitug, 2019, p.14): the Philippines argued that the KIG became *terra nullius* or unoccupied territory after the 1951 San Francisco Treaty of Peace where Japan renounced its title to the islands (The National Bureau of Asian Research, 2020) and further solidified their occupation via a decree in 1978 which claimed the KIG, based on the islands on contiguity with the Philippine archipelago, historical title, and the lapsing of other states' claims (The National Bureau of Asian Research, 2020).

As a great power, China is able to exercise compulsory power (Barnett and Duvall, 2005) which is not available to the Philippines and the other claimant states, thus creating an asymmetrical power relationship. This power asymmetry in the South China Sea first became clear in January 1996, with the first military confrontation between China and the Philippines. This was the Mischief Reef Incident in which three Chinese ships engaged with a Philippine navy gunboat in the Mischief Reef, which is part of the Spratly chain of islands (Xu, 2020). Since this incident, it has been observed that claimant states in the South China Sea have all made efforts to increase their maritime presence and ability to police disputed areas however none have been able to match the success of China (Swaine, 2013). This disparity pushes small states like the Philippines to explore different ways to address the asymmetrical power

relationship with China, in order to continue to have access to their claimed territories in the South China Sea and therefore retain their particular-intrinsic power defined as power rooted in resources inherent to a state.

The Arroyo administration (2001-2010)

In 2002, the ASEAN Member States and China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) which was a formal agreement but which was not legally-binding (ASEAN, 2002). This DOC was the product of years of negotiations and served as a middle-ground between doing nothing and a legally-binding agreement (Li, 2014). The DOC was meant to promote trust between the ASEAN Member States and China as well as set the stage for the discussion and conclusion of a formal and binding Code of Conduct. Due to its non-binding nature, compliance with the DOC has been mixed (Li, 2014) however the ambiguity of the agreement itself also contributes to the DOC's failure to prevent maritime incidents. This has resulted in states accusing each other of violating the DOC (Duong, 2015).

The DOC has not been fully implemented and there remains dissatisfaction on the part of the ASEAN claimant states over activities conducted in the South China Sea by China, such as fishing in their EEZs, large-scale land reclamation and militarisation (Thayer, 2013). China has used paramilitary vessels to expel Filipino fishermen and maintain control of areas claimed by the Philippines under UNCLOS provisions (Thayer, 2013) and threatened to establish an Air Defence Identification Zone (ADIZ) over the South China Sea, which it had done over the East China Sea in 2013 (Bader, 2016).

The Philippines signed a Joint Marine Seismic Undertaking (JMSU) with China and Viet Nam in 2005 (Ministry of Foreign Affairs of the People's Republic of China, 2005) which would allow the Philippines to exploit energy resources in the South China Sea, which enhanced its ability to access their particular-intrinsic power. As part of the JMSU, China was allowed to access the area to conduct energy exploration activities and expected to later exploit the reserves that would be found. They did not manage to do this since the JMSU lasted only three years, after which it was not renewed due to criticism from domestic groups that the agreement undermined the sovereignty of the Philippines and violated the Constitution because foreign parties were allowed to conduct seismic tests in Philippine territorial waters (Gatdula, 2008).

While the Philippines had previously proven resistant to China's attempts to establish such a relationship, it has been argued that the emergence of the deal was due to the deterioration of relations between the Philippines and the US following the withdrawal of the Philippines from the coalition of countries supporting the Iraq war as well as allegations of fraud during Gloria Macapagal Arroyo's presidential campaign (Bower, 2010). The loss of access to derivative power, defined as power gained through cultivating a relationship with a major power, which in this case was a good relationship with the US meant the Philippines had to look for alternative sources of power and this resulted in pursuing better relations with China.

It is clear that President Arroyo pursued good relations with China, visiting six times between 2007 and 2008 (Ministry of Foreign Affairs of the People's Republic of China, 2009). However, this does not appear to be in order to access derivative power in the

South China Sea. Instead, the derivative power that the Philippines gained by improving their relationship with China was used to secure economic interests: China increased development aid to the Philippines and approved loans for projects including railways and broadband networks (Bower, 2010).

Despite pursuing good relations with China, President Arroyo also signed an act to ensure the baselines of the Philippines were consistent with the provisions of UNCLOS ('R.A. 9522', 2009). These baselines or geographical coordinates determine the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of a state ('United Nations Convention on the Law of the Sea', 1982). This compliance with international law was a clear part of the Philippines' consideration to utilise legal sources of power in the South China Sea.

The Aquino administration (2010-2016)

After the JMSU lapsed, China began to prevent oil and gas exploration within the EEZ of the Philippines (Permanent Court of Arbitration, 2016). The most prominent of these occurred in March 2011 when the M/V Veritas Voyager, a seismic survey vessel, was followed by Chinese ships who ordered it to stop its surveying activity in the area because they claimed it was in Chinese territorial waters (Permanent Court of Arbitration, 2016). This incident illustrates the difficulty the Philippines had in accessing its particular-intrinsic power through resource extraction of oil and gas.

Chinese ships continued to enter waters claimed by the Philippines throughout 2011 and the same behaviour is seen in areas claimed by Viet Nam where oil exploration had been planned (Xu, 2020). Aware that other claimants were also facing restricted access to their claimed territories in the South China Sea, the Philippines sought to rely on the collective power of ASEAN to amplify its voice. In November 2011, The Philippines proposed a Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC) in the South China Sea to geographically define which areas were disputed and clarify which of these areas were under the sovereignty of a country to establish a joint cooperation area (Reuters, 2011). Other ASEAN Member States did not support the initiative, therefore at that point in time the Philippines failed to access the collective power of ASEAN to address China's behaviour in the South China Sea.

Between April and May 2012, tensions between the Philippines and China increased over incidents in the Scarborough Shoal because both sides accused each other of illegal fishing (Ortigas, 2012). In July 2012, the ASEAN foreign ministers failed to issue a joint communique during the 45th ASEAN Ministerial Meeting due to opposing views on mentioning the incidents in the Scarborough Shoal (BBC News, 2012). The non-issuance of a statement was unprecedented and indicates the difficulty which the Philippines continued to face in using the collective power of ASEAN.

In September 2013, ASEAN and China began negotiations on the Code of Conduct in the South China Sea (Thayer, 2013), which have yet to conclude. Besides these multilateral efforts to manage the dispute, individual claimant states have bilateral negotiations with China over the South China Sea.

In January 2013, the Philippines filed a case against China at the Permanent Court of Arbitration (PCA) over “the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features in the South China Sea, and the lawfulness of certain actions by China in the South China Sea that the Philippines alleged to be in violation of the Convention” (Permanent Court of Arbitration, 2013b).

China refused to participate in the arbitration case in spite of being party to UNCLOS, the convention under which the Philippines were seeking arbitration. The refusal of China however was not an impediment to the case being heard by the PCA as there was precedent for arbitration cases to proceed with only one party, such as the Arctic Sunrise case, where the Netherlands had filed a case against Russia, which was allowed to proceed without the participation of Russia (Permanent Court of Arbitration, 2013a).

Although there was precedent to have only one state participate in proceedings, the PCA chose to first examine whether they had jurisdiction to make rulings over the claims made by the Philippines before assessing the merits of their claims. The DOC was scrutinised in the jurisdiction hearing, as China claimed the use of the PCA as a dispute resolution mechanism ran counter to the DOC (‘The Philippines’ Memorial - Volume I’, 2014). This claim was dismissed because the DOC is not a legally-binding agreement, had not resulted in any settlements through consultations or negotiations and did not have any clauses that precluded recourse to dispute settlement procedures stipulated under UNCLOS (‘The Philippines’ Memorial - Volume I’, 2014). This dismissal shows how past strategies employed by China during the creation of the DOC to weaken the collective power of ASEAN by creating an agreement that was

not legally-binding allowed the Philippines in 2013 to access legal sources of power via the PCA.

Besides pursuing legal power, the Philippines also sought to use derivative power over the South China Sea by rebuilding their strategic alliance with the US through a new security agreement ('Philippines-US Enhanced Defense Cooperation Agreement', 2014). The US was open to this because of its "pivot to Asia" strategy under President Barack Obama which incentivised Asian states who were in maritime conflicts with China to engage US support on the matter (Swaine, 2013).

The Duterte administration (2016-present)

In July 2016, the Philippines received its final award from the PCA which had ruled in its favour on all of its claims (Permanent Court of Arbitration, 2016). The Aquino administration, which had sought and overseen the PCA case, had by then been replaced by that of Rodrigo Duterte. President Duterte's approach to China diverged swiftly from his predecessor's, as he immediately worked to improve relations with China and appointed former President Fidel Ramos as an envoy to China (Baculinao, 2016).

Rather than relying on legal power, President Duterte sought to use derivative power with a number of major powers to pursue the Philippines' interests in the South China Sea. President Duterte appeared to balance his improving relations with China with increased security cooperation with Japan, in place of relying on the US who had been their traditional security ally (de Castro, 2016). In October 2016, President Duterte visited both China (Ranada, 2016) and Japan (Ministry of Foreign Affairs of Japan, 2016). It is clear that President Duterte sought to improve economic relations between

the Philippines and China, as he brought a business delegation of more than 200 people and signed trade and investment agreements worth US\$ 13.5 billion (Blanchard, 2016).

In contrast, the relationship that President Duterte cultivated between the Philippines and Japan was focused on security issues, particularly maritime security, as well as development aid ('Japan-Philippines Joint Statement', 2016). President Duterte announced during his visit to China that he was moving away from the US (Blanchard, 2016) which indicated that, in order to normalise relations with China there had to be policy shifts in other areas of the Philippines foreign policy, in this case the downgrading of relations with the US.

5.2 Managing the costs of power

It can be observed from the previous section that while there are several strategies for small states when they come into conflict with major powers, there is a cost to using the different forms of power associated with each strategy.

Derivative power

In the South China Sea, the Philippines and China have directly opposing interests and therefore the Philippines using Chinese derivative power is only possible when one party ignores or reshapes their interests. When President Arroyo signed the JMSU, she put economic interests before the sovereignty of the Philippines over

claimed territories in the South China Sea. This improved relations with China and resulted in the ability to access derivative power as well as particular-intrinsic power from access to energy resources in the South China Sea. This reliance on China however was costly at the level of domestic politics as it was part of several allegations, including corruption, made against President Arroyo after she left office that resulted in her arrest and prosecution (Al Jazeera, 2012).

Another form of derivative power that the Philippines has used is to strengthen their relationship with the US or other major powers in the region who would then promote the interests of the Philippines through material support and by other means. Just like the improving of relations with the Chinese, the Philippines-US security alliance was costly at the domestic level, as there were nationalist movements that worked to remove US military presence in the Philippines, which resulted in the US returning its military bases to the Philippines in 1992 (Branigin, 1992). This withdrawal of US military presence in the Philippines and inadequate military investment by the Philippines government created the opportunity for China to increase the power asymmetry in the South China Sea conflict.

President Duterte has also relied on anti-US nationalist sentiment to maintain support within his electorate in the southern Philippines (Parameswaran, 2016), which led him to search for other major powers to build a relationship with, namely Japan. As previously mentioned, China has a conflict in the East Asia Sea where it has declared an ADIZ, which affects Japan and South Korea (Green et al, 2017). By improving relations with a major power that has its own maritime conflict with China, the

Philippines' strategy could encourage China to escalate the militarisation of the South China Sea.

From the experience of President Arroyo and President Duterte, it can be seen that there are limits to the use of derivative power due to domestic factors. Nationalist movements against US military presence or Chinese occupation of waters adjacent to the Philippines prevent total reliance on derivative power. Even within the government, there is resistance to President Duterte's position towards China, which has led to an impeachment complaint (Heydarian, 2017).

Collective power

Collective power through a coalition of small states can appear less threatening in the military sense to major powers like China and therefore is a viable option to prevent escalating tensions in conflict areas. There are however drawbacks to using collective power: it is unpredictable, time-intensive, and often the product of compromise between the states involved. As mentioned previously, the Code of Conduct in the South China Sea has been negotiated since 2013 and as of 2021, has not yet been completed (Bandial, 2021) which illustrates how time-intensive relying on collective power can be. It is still unclear if the Code of Conduct will be legally-binding (Bandial, 2021) and this will only become clear closer to the final stages of the negotiations, when parties can evaluate the compromises they have made before legally committing themselves to the agreement.

Particular-intrinsic power

The Philippines has had difficulty in accessing particular-intrinsic power in several ways, which excludes it as a viable strategy for use in the South China Sea. Fruit exports to China decreased when bilateral relationships deteriorated during the Aquino presidency, which caused economic damage. This in turn constrained the capacity of the Philippines to carry out its objectives as a government. The lack of expertise and capacity to explore energy resources independently in the South China Sea is also a constraint on the Philippines ability to access its particular-intrinsic power, as these resources could change the economic reliance of the Philippines on major powers it has alliances with.

Legal power

By pursuing legal power, President Aquino could not make use of Chinese investments the way that President Arroyo or Duterte have done which exemplifies the economic costs of this strategy besides the fees of the legal firms hired by the Philippines government. The loss of foreign investments exacerbates the Philippines' difficulty in accessing its particular-intrinsic power over the South China Sea. While legal power has this relatively (in comparison to collective power) short-term cost, the Philippines use of legal power appears to have affected the behaviour of the other claimant states which means that by using legal power the costs of collective power were reduced.

Reactions of other states after the 2016 PCA award

The PCA award in 2016 in favour of the Philippines did not appear to adversely affect the negotiations between ASEAN and China towards establishing a Code of Conduct in the South China Sea (COC). Despite the outcome of the case, the ASEAN Member States and China continued to cooperate on the COC and on 18 May 2017 announced that they had agreed on a framework for the COC (Xinhua, 2017). By August 2018, they had produced a Single Draft Negotiating Text (SDNT) (Xinhua, 2018) which would guide the rest of the COC negotiations.

As a group, ASEAN has appeared to increasingly favour a COC that is more formal in nature, in line with international law. In 2020, ASEAN emphasised that the COC be “consistent with international law, including the 1982 UNCLOS” (ASEAN, 2020) while Viet Nam, as (rotating) chairman of ASEAN asserted that the COC should be “recognised by the international community” (National ASEAN 2020 Committee, 2020). This opposed China’s desire to resolve its maritime issues through bilateral channels without the involvement of external parties as that would mean that other claimants could invite other states to be involved in dispute resolution mechanisms specified under UNCLOS which would not look favourably upon China’s claims.

There have been further efforts by other states to access legal power through international bodies since the Philippines case at the PCA. In December 2019, Malaysia made a submission to the Commission on the Limits of Continental Shelf (CLCS) which built upon its 2009 joint submission with Viet Nam (United Nations, 2019). This submission indirectly challenges China’s territorial claims in the South

China Sea as it would likely fall within the nine-dash line, which has no defined geographical coordinates.

Upon China's response, which refuted Malaysia's claims, a joint Note Verbale was issued by France, Germany and the UK in support of Malaysia (UK Mission to the UN, 2020). This show of support from major powers demonstrates how the use of legal power can amplify the ability of small states to access collective or derivative power. If viewed as an issue-specific action, the choice of France, Germany and the UK to support Malaysia falls under derivative power however if these states are viewed as an ad hoc coalition of small states then this would fall under collective power.

6. Conclusion

By categorising different forms of power and applying them to the strategies of the Philippines in the South China Sea, this research has shown how these forms of power interact with each other and how they can be employed at the expense of one another. The forms of power observed in this research serve as an alternative to more conventional notions of power based on military capabilities or economic strength, which allows for the power of small states to be appreciated and therefore the tools at their disposal to be assessed.

This paper has contributed to the literature on small states by building upon the conceptualisation of power put forward by Long (2016) with the additional category of legal power, which is a new dimension to the analysis of small states' use of power.

This research has also shown the limitations placed on different types of power by domestic interest groups, in particular nationalist movements who oppose close relations with major powers, which prevents the use of their derivative power. This raises a potential area for future research: the effects of reliance on nationalist movements as an electoral constituency in the Philippines on the South China Sea as a regional conflict.

When small states are able to combine multiple forms of power they can achieve more favourable outcomes as they are better able to influence the behaviour of other states to reach their desired objectives, which in the Philippines' case was the acceptance of legal strategies in the South China Sea following the success of their arbitration case which would demonstrate international recognition of their claims.

A limitation of this study is that it uses only one case study to determine the effects of pursuing legal strategies. The process may look very different when applied to another

case where the state has a different structure of government than the Philippines. Besides that, while this thesis has attempted to use as many primary sources as possible, all sources are still written and they are often (based on) government documents. Since in complex negotiations governments are reluctant to completely show their hands, the information that is being published might not fully reflect the impact of certain strategies. Lastly, the conflict over the South China Sea is still ongoing, so it hasn't been possible to fully determine the effects of the use of the legal strategy. Consequently, it would be useful to revisit the topic of this research once the Code of Conduct in the South China Sea has been finalised, to examine how the use of legal power in this conflict has progressed since the Philippines' arbitration case.

The legal strategies employed by the Philippines were the result of decisions taken by leaders over decades and pursued through an arbitration case which lasted three years. States need to consistently assert their legal claims to ensure that the international community recognises them as legitimate, otherwise they would lose access to legal power and, without any other means to enforce these claims, they would need to concede the claims altogether. President Arroyo's signing of the JMSU and baselines act may seem contradictory as one pursues derivative power with China and the other pursues legal power, two forms that have not appeared to be compatible with each, however these outcomes are the result of competing domestic interest groups. These domestic interest groups are key to keeping certain strategies functioning that may not be desirable in the eyes of an administration in power, just as President Duterte has largely abandoned the legal strategy of President Aquino in the South China Sea.

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