

POLICY BRIEF

May 15, 2020

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Arbitration as a Means to Settle Territorial Disputes in the South China Sea: Case Study and History of China and The Philippines

Dr. Monika Chansoria

South China Sea’s territorial disputes gained the spotlight yet again with the April 18, 2020 announcement¹ by China’s State Council, through which, it approved setting up ‘two new’ municipal districts (dependencies of the southernmost Sansha city, in the Hainan province) covering the South China Sea – namely the ‘Xisha District’ and ‘Nansha District’. Home to an estimated 11 billion barrels of untapped oil, and 190 trillion cubic feet of natural gas, the Spratly Islands in the South China Sea possess rich natural resources and fishing areas. The Fiery Cross Reef will be in charge of the administration of the islands, reefs, and sea areas of the Spratly Islands.² The Fiery Cross Reef used to be an underwater reef that was converted into an artificial island following massive land reclamation undertaken by China. This reef was virtually untouched by man-made structures until March 2014 and was transformed into an artificial island in the span of one year by March 2015. Furthermore, the Woody Island will be in charge of the administration of the islands, reef, and sea areas of the Paracel Islands.³ China’s Ministry of Civil Affairs and the Ministry of Natural Resources has released the longitudes, latitudes, and standardized names of 25 islands and reefs and 55 undersea geographic entities in the disputed South China Sea. The listed islands include Sanzhizai – an islet north of the Woody Island in Sansha city in South China’s Hainan Province.

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1 “Hainan’s Sansha to set up two municipal districts,” *China Daily*, April 18, 2020, available at <http://www.chinadaily.com.cn/a/202004/18/WS5e9ac72fa3105d50a3d172b3.html>

2 Fiery Cross Reef, *Digital Globe*, The Asia Maritime Transparency Initiative, <https://amti.csis.org/fiery-cross-reef/>

3 Woody Island, *Digital Globe*, The Asia Maritime Transparency Initiative, <https://amti.csis.org/woody-island/>

Just a month prior to this announcement, in March 2020, Beijing officially inaugurated⁴ and put into operation, two new research stations, namely the Yongshu research station and Zhubi research station under the Integrated Research Center for Islands and Reefs of the Chinese Academy of Sciences (CAS) on the Spratly Islands. Beijing’s moves are being read as an effort to consolidate control and sovereignty claims in the disputed South China Sea. The two stations coupled with the previously established Meiji Research Center (2018) form an integrated scientific research base for China in the South China Sea.⁵ The Integrated Research Center for Islands and Reefs serve as an offshore experimental base by the CAS for the South China Sea, operated by Innovation Academy of South China Sea Ecology and Environmental Engineering, the CAS, the Integrated Research Center for Islands and Reefs.

China’s Strategic Advancement in the South China Sea

China’s approach and position on great power diplomacy has not necessarily been soft-sided. It has been a deft mix of hard tactics rolled up in yielding policy pronouncements. Stemming from this construct, Beijing’s advancement and adopted line on the South China Sea has gradually, yet firmly, become far more inflexible. Realist strategists on Southeast and East Asia have consistently argued that “... adopting and implementing guidelines is hardly a constraint on China’s increasingly aggressive behavior in the South China Sea... The real restraint on China is the presence of the US Navy and the need to have stable US-China relations.”⁶ In this backdrop it is only apposite to examine the relevance and result of the political, legal, and strategic aspects of the landmark arbitration

case between the Philippines and China on the South China Sea. Four years since the arbitration award – the arbitration, *per sé*, will remain an important milestone in the entangled web of complex international legalities plaguing the disputed islands. The political and strategic implications of the arbitral proceedings and outcome were profound resulting in a renewed and more belligerent strategic approach undertaken by China regionally.

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides a number of binding and non-binding means towards peaceful settlement of disputes. In the case between the Philippines and China, neither State expressed any preferred third-party dispute settlement mechanism in their ratification of the Convention. Hence, both were deemed to have selected arbitration as a means to settle disputes concerning the UNCLOS, unless limitations under Articles 297 and 298 applied. China rejected arbitration initiated by the Philippines, including the jurisdiction of the Tribunal on the matter and firmly stated that it would not participate in the proceedings. Article 9 of Annex VII of the UNCLOS however, provides that the “absence of a party or failure of a party to defend its case does not constitute a bar to the proceedings”. Thus, China was still considered a party to the arbitration based on Article 296 (1) of the UNCLOS and Article 11 of Annex VII and shall be bound by any Tribunal issues. Arbitral awards are not a source of international law. At best, they can be described as a subsidiary means for the determination of the rules of international law. The history of the arbitral proceedings on jurisdiction and admissibility of the case filed by the Philippines against China on the South China Sea included various procedural requirements and statements

4 “New research stations come into operation on Nansha Islands,” *Xinhua News*, March 20, 2020, available at http://www.xinhuanet.com/english/2020-03/20/c_138898845.htm

5 “China launches comprehensive reef research center on Nansha Islands,” *Xinhua News*, January 02, 2019, available at http://www.xinhuanet.com/english/2019-01/02/c_137715291.htm

6 As cited in, Bary Wain, “A South China Sea Charade,” *The Wall Street Journal*, 21 August 2011.

issued by both parties to the dispute.

Approaching the Arbitration Tribunal

China’s claim over the South China Sea is contested by Malaysia, Indonesia, the Philippines, Brunei, Taiwan and Vietnam. Despite China declaring that it would not accept or participate in international arbitration under any circumstance, Manila filed a legal case unilaterally against Beijing holding the position that the Chinese territorial claims in the South China Sea are illegal as per the UNCLOS and submitted evidence in form of more than 40 maps and an approximate 4,000-page document to the International Arbitration Tribunal. This submission was interpreted as a diplomatic attempt at buttressing its case against Chinese claims that span almost 90 percent of the South China Sea’s 3.5 million sq km (1.35 million sq mile) waters, with the sea providing 10 percent of the global fisheries catch and carrying \$5 trillion in ship-borne trade annually.⁷

The People’s Republic of China repetitively reiterated its position of neither accepting, nor participating, in the arbitral proceeding on the South China Sea issue at the Permanent Court of Arbitration at The Hague. Their claim was the lack of jurisdiction of the court in determining territorial sovereignty over disputed island and in delimiting maritime entitlements.⁸ China further argued that Manila’s move breached the agreement that was repeatedly reaffirmed with China as well as the Philippines in the Declaration on the Conduct of Parties in the South China Sea (DOC). In a statement released

through the official *Xinhua* agency, China stated that it would refuse to recognize the conclusion of the arbitration further stressing, “... on the issue of territorial sovereignty and maritime rights, China will never accept any imposed plan, nor any solution arrived at by unilaterally resorting to a third party for resolving disputes.” It cited a policy of resolving disputes on territorial sovereignty and maritime rights only through direct consultation and negotiation with the nation directly involved. China described itself “... the victim of the South China Sea disputes” and further claimed that it “remains highly restrained and keeps safeguarding regional peace and stability in mind.”⁹ Often coalescing the issue of maritime entitlement with the larger concept of territorial sovereignty, it appeared that Beijing was making an attempt to steer the debate on arbitration away from the focal point.¹⁰

The result of the arbitration proceedings cast a considerable shadow on China’s external relations. In a direct reference, the Chinese Foreign Ministry criticized the US saying that despite not being a party to the South China Sea, Washington was influencing the arbitration case filed by the Philippines. Referring to then US Assistant Secretary of State, Daniel Russel’s statement, in which he asserted that with both Beijing and Manila being parties to the UNCLOS, legally, they must abide by the tribunal’s decision.¹¹ On July 17, 2015, a *New York Times* editorial commented, “a courtroom in The Hague has become an important new battleground in the multinational struggle over the resource-rich South China Sea”

7 Monika Chansoria, “China-Philippines Face-off Heightens Regional Tension,” *The Manila Times*, April 20, 2014.
 8 For more details see, “Chinese embassy rebuts NY Times editorial on China-Philippines dispute,” *Xinhua*, July 29, 2015.
 9 As cited in Lu Hui, “China won’t accept Hague sovereignty arbitration: Foreign Ministry,” *Xinhua*, July 14, 2015.
 10 For further details see, Monika Chansoria and Mary Ann Palma-Robles, “Arbitrating Conflict in the South China Sea: The Case of China and The Philippines,” *Journal of the Centre for Land Warfare Studies*, Winter 2015 edition, pp. 21–43.
 11 For more details see, “China: Philippines’ unilateral arbitration unacceptable,” Report by *China Network Television* (CNTV), Beijing, July 25, 2015.

and that the Philippines “can qualify to have 200-nautical-mile exclusive economic zones.” The Chinese Embassy in Washington swiftly termed the editorial as ‘unfair’, stressing that Beijing’s approach toward this issue hinged around holding direct bilateral negotiations. China’s Press Counsellor and Spokesman Zhu Haiquan stated that the editorial titled *The South China Sea, in Court* about the arbitration case raised by the Philippines over rights to the South China Sea is ‘not fair’, and that “China’s approach toward solving the South China Sea issue is to have direct dialogue and negotiation between claimants” that is more effective and sustainable.¹²

China’s “Position Paper” on Jurisdiction in South China Sea Arbitration: ‘Creating’ an Alternative Narrative

Reference the arbitration debate, China released an official *Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines* on December 7, 2014. According to the Arbitration Tribunal rules of procedure, China was required to present its counter-memorial to the case filed by the Philippines, latest by December 15, 2014. The Chinese Foreign Ministry officially enunciated its position on March 31, 2014 of not accepting and/or participating in the arbitration. Moreover, the act of releasing an official position paper on the eve of the December deadline apparently served as a tool in two ways: 1) it expounded on why the tribunal does not have jurisdiction over this case; and 2) it reiterated China’s position of not participating in the case.¹³

China argued that the document pronouncing China’s position on the issue was neither a counter-memorial on the arbitration, nor a response to the request of the Arbitral Tribunal. It primarily set forth the legal positions on the matter of jurisdiction on the arbitration and “on the basis of international law ... debunking the Philippines’ groundless assertions ... projecting China’s image as a defender and promoter of the international rule of law.”¹⁴ Further elaborating a legal basis for China’s position, the Director-General of the Department of Treaty and Law of the Foreign Ministry, Xu Hong, stated that the Arbitral Tribunal manifestly had no jurisdiction in the case as per international law. Even if the subject matter of the Philippines’ claims could be considered in part as concerning the interpretation or application of the Convention, it constituted an integral part of maritime delimitation between China and the Philippines. However, China had already excluded, through a declaration made on August 25, 2006, certain types of disputes including those, relating to sea boundary delimitations, or those, involving historic bays or titles based on Article 298 of UNCLOS allowing States Parties to exclude from compulsory binding procedures.¹⁵

The primary arguments put forth in the *Position Paper* by Beijing were: 1) The subject matter of arbitration was the territorial sovereignty over several maritime features in the South China Sea, which is beyond the scope of the UN Convention; 2) By unilaterally initiating the present arbitration, the Philippines breached mutual obligation and violated international law given that Beijing and Manila had agreed, through bilateral instruments and the DOC, to settle relevant disputes through negotiations; 3) Assuming that the subject matter of the

12 “Chinese embassy rebuts NY Times editorial on China-Philippines dispute,” *China Daily*, July 30, 2015.

13 Xue Li, “How China Views the South China Sea Arbitration Case,” *The Diplomat*, July 14, 2015.

14 Remarks by Xu Hong, Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs, on the *Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines*, December 7, 2014.

15 Ibid.

arbitration did concern the interpretation or application of the Convention, it had been excluded by the 2006 declaration filed by China under Article 298 of the Convention, for it being an integral part of maritime delimitation between the two countries; and lastly, 4) China had never accepted any compulsory procedures of the Convention with regard to the Philippines' claims for arbitration.¹⁶ By virtue of publicly releasing the *Position Paper*, China displayed a toughened politico-diplomatic stance on the subject. The bottom line of this was that China shall not accept any ruling, pronounced by the Arbitration Tribunal.

However, the *Position Paper* fell acutely short on two counts. 1) China was of the view that the arbitration case brought up by the Philippines, in essence, touched upon the question of sovereignty over features in the South China Sea, and thus the tribunal did not have any jurisdiction. On the contrary, the Philippines maintained the view that its case asked for arbitration on the matter of whether or not, China's assertion of maritime rights was in accordance with UNCLOS—a question where the tribunal did indeed, have clear jurisdiction. Facing such a disagreement, a third party might conclude that the case fell under the scope of the tribunal's duties, unless China could provide overwhelming evidence to the contrary.¹⁷ China's stance on the core issue of arbitration was a subjective judgment, thereby rendering its legal effectiveness, limited. Besides, according to the practice of China's own domestic law, the right to decide jurisdiction belongs to the courts, and not to either party of a lawsuit.¹⁸ 2) The second major shortcoming of China's *Position Paper* in the South China Sea Arbitration was its failure to clarify the heavily debated "nine-dash line".

The Chinese Foreign Ministry and state-controlled media have seemingly chosen to omit clarifying the controversial "nine-dash line" claim, which primarily encompasses most of the South China Sea. This contentious line was first published, officially, on a map by the Chinese government in 1948 and continued to appear on PRC's official maps post-1948 as well.¹⁹ Since then, Beijing has refused to clarify/define what exactly the line denotes/includes. The official explanation does not go beyond stating that the first official map on the 'nine-dash line claim' was published in 1948. The Ministry of Foreign Affairs of China has often suggested, in a meandering way, that the line possibly indicated a claim to the islands and reefs lying within it. The onus has continued to remain on China to furnish a basis for the alignment of its 'nine-dash line' that fully complies with international law. It is often cited that the line has become an expedient tool applied opportunistically, and illegally at times, to reprimand other claimants' presumed non-neighborly activities in the contested waters.²⁰

On the day of the official release of the *Position Paper* on the matter of jurisdiction in the South China Sea arbitration, Xu Hong, the Director-General of the Department of Treaty and Law (Ministry of Foreign Affairs) was asked as to why China had not clarified the meaning of the dotted line in the *Position Paper*. The response was published as part of an interview to the *Xinhua News Agency* – saying that in 1948, the Chinese Government published an official map that displayed the dotted line in the South China Sea and the *Position Paper* mentions this while setting the historical background to the relevant dispute in the South China Sea. Subsequently, Xu professed China's

16 For a detailed debate on the Chinese stated position on the issue, see, *Xinhua News Commentary* titled, "Why Manila's arbitration request over South China Sea does not hold water," July 17, 2015.

17 Chansoria and Palma-Robles, n. 10.

18 Xue Li, n. 13.

19 Chansoria and Palma-Robles, n. 10.

20 Chansoria, *The Manila Times*, n. 7.

“indisputable sovereignty over the South China Sea Islands and the adjacent waters” that has “formed and evolved over a long course of history.”²¹ The decision to release a *Position Paper* was interpreted as a “pre-emptive” move aimed to hassoek any international fallout from an unfavorable decision at the Tribunal. Du Jifeng at the Chinese Academy of Social Sciences was in agreement with this line of thought stating that Beijing expected that a verdict arising from international arbitration would bring upon it “more international moral pressure ... and [China] may find itself more isolated internationally as the convention is still endorsed by a majority of countries, even though Beijing does not accept the arbitration.”²² Beijing remained wary of the decision taken by the Philippines to move the case to the International Arbitration Tribunal, primarily because the ruling could provide credence in moulding international opinion on the South China Sea dispute.²³

The Lead-up to, and Implications of the Legal Action against China

The Philippines does not claim all the islands in the South China Sea. Shortly after gaining its Independence in 1946, the Philippines has asserted its claim to the Spratly Group of Islands before the United Nations General Assembly. Around 1956, the Philippine Government sent a diplomatic note demanding the withdrawal of a Chinese garrison on the island of Itu Aba on the basis of the Philippines’ legal title to the island.²⁴ Despite historical accounts and

activities substantiating the Philippine exercise of territorial sovereignty over the Kalayaan Island Group, the legal action initiated by the Philippines against China was a result of more recent events that arose from the longstanding dispute between the two countries and other developments in the region. The fact that the Philippines brought in arbitration against China was welcomed by other South China Sea claimant states and other players monitoring the developments in their periphery.²⁵ The height of the territorial dispute between the Philippines and China can be traced back to the 1999 Mischief Reef incident. A series of diplomatic meetings followed which led to the 2002 Declaration on the Conduct of Parties in the South China Sea.²⁶

In 2009, a joint submission was made by Vietnam and Malaysia and a sole submission by Vietnam on the limits of continental shelf beyond 200 nautical miles in the South China Sea. These submissions were followed by increased confrontations at sea, including the interference of Chinese maritime surveillance ships with a Philippine seismic survey ship in the Reed Bank in 2011. The adoption of the Philippine Baselines Law which contains provisions on the Scarborough Shoal, as well as technical work on the delimitation of the Philippine continental shelf beyond 200 M, also resulted in escalating tensions in the South China Sea. In 2012, a ‘standoff’ occurred between Philippine and Chinese vessels in Scarborough Shoal which required immediate talks between Beijing and Manila to enable a withdrawal of such vessels

21 Remarks by Xu Hong, n. 14.

22 As cited in Li Jing, “China releases paper denouncing Philippine ‘pressure’ over sea dispute arbitration,” *South China Morning Post*, December 7, 2014.

23 For details see, Chansoria, *The Manila Times*, n. 7.

24 For details see, Mary Ann Palma, “The Philippines as an Archipelagic and Maritime Nation: Interests, Challenges, and Perspectives,” *RSIS Working Paper*, Issue No. 182, Singapore: S. Rajaratnam School of International Studies, 2009.

25 Chansoria and Palma-Robles, n. 10.

26 *Note Verbale* from the Department of Foreign Affairs of the Republic of the Philippines to the Embassy of the People’s Republic of China in Manila, No. 110885, April 4, 2011.

in the area. However, shortly after the incident, Chinese vessels returned to Scarborough Shoal to take control of the area. The official announcement of the ‘West Philippine Sea’, as well as printing of a new official government map naming the South China Sea alarmed China.²⁷

Despite attempts to manage disputes by adhering to the South China Sea Declaration and other means of diplomatic negotiations, the Philippines deemed China’s proclamation of the nine-dash line as unlawful and contrary to international law. After exhausting all available political and diplomatic means available, “the Philippines had no other recourse but to institute compulsory arbitration proceedings against China under Annex VII of UNCLOS.”²⁸ The arbitration between Philippines and China on the South China Sea commenced on January 22, 2013 when the Philippines served China with a Notification and Statement of Claim with respect to the dispute with China over maritime jurisdiction of the Philippines in the West Philippine Sea. The Philippine position was that recourse to judicial settlement of legal disputes should not be considered an unfriendly act between States.²⁹ The Philippines sought relief from the Tribunal for a number of declarations and orders, but the key argument was the application of UNCLOS with respect to islands and rocks, as well as in exercising rights and obligations of both Parties in maritime areas of the South China Sea. In particular, the main

declaration sought was the invalidity of China’s claims based on the map of the nine-dashed line. Though it may not have directly supported the territorial claim in the Kalayaan Island Group, an outcome in favor of the Philippines on either argument of such inter-related claims had strategically affirmed the Philippines’ general approach on the South China against China.

For that matter, Manila also posed issues relating to the unlawful activities by China, which were deemed to prevent the Philippines from lawfully exercising its rights in its maritime zones under the Convention. The Philippines was clear in that was not asking for a ruling on the territorial issues that it held with China, nor did it request the Tribunal to delimit any maritime boundaries. One of the strongest points of the Philippine arguments was the recognition that while there are different elements to the disputes, some elements may not be precluded from falling within jurisdiction of the Tribunal.³⁰ By focusing on the application of the UNCLOS and isolating issues of territorial sovereignty and maritime boundary delimitation, Manila was able to strongly argue against Beijing’s position and support the Tribunal’s jurisdiction to rule on the issues it had raised. Consequently, the arbitration verdict was expected to induce greater pressure on China to clarify the legal basis of its position or minimize its activities in the South China Sea.³¹

The arbitration proceedings resulted in

27 Chansoria and Palma-Robles, n. 10.

28 Philippine House of Representatives, House Resolution 3004, Resolution Strongly Supporting the Filing of An Arbitration Case Against China Under Article 287 and Annex VII of the United Nations Convention of the Law of the Sea by His Excellency President Benigno S. Aquino III, January 23, 2003.

29 United Nations General Assembly, A/RES/37/10, 6th Plenary Meeting, 15 November 1982, Peaceful Settlement of Disputes between States, Para 5 (3); also see For more details see, Republic of the Philippines, Department of Foreign Affairs, No. 13-0211, Notification and Statement of Claim, 22 January 2013; The Philippines’ Supplemental Written Submission to the Arbitral Tribunal, March 16, 2015.

30 Chansoria and Palma-Robles, n. 10.

31 Ibid.

growing awareness and advocacy for the protection of the marine wealth.³² A House Resolution was filed in the Fifteenth Philippine Congress strongly supporting the filing of the arbitration case against China.³³ The Philippines, in its Amendment Statement of Claim also provided that the 2002 ASEAN Declaration on the Conduct of the Parties in the South China Sea did not bar the exercise of the jurisdiction of the Tribunal. It also supported the principle of transparency by indicating that it had no objections for other interested parties to access copies of relevant documents and sending delegations to attend the hearings on the jurisdiction.

The Philippines taking China to dispute settlement had political and socio-economic implications. Apart from the political tensions, there were looming threats to sever established economic ties between the two countries, including calls for the boycott of Chinese goods, imposition of stricter regulations on Philippine exports, suspension of travel tours, mass protests in respective consulates, and intensified fishing activities to assert territorial claims.³⁴ Despite all this, the Chinese activities in the South China Sea continued. For instance, in 2014, Chinese and Filipino fishermen were arrested for engaging in the illegal trade of a significant number of marine turtles in Half-Moon Shoal. Photographs were released showing reclamation on Johnson South Reef and other reefs.³⁵ When China deployed an oil rig off the coast of Vietnam, the Philippines called for a moratorium on any activity that would further create tension in the area.³⁶ Evidence of all these incidents were submitted progressively to the

Tribunal during the proceedings. While it may be argued that there were no legal implications of such activities on the arbitration process overall, it appeared that the impact fell more in the political realm as compared to security.³⁷ The Arbitration Tribunal ruled in favor of the Philippines. Few vital points of the arbitration judgement are as follows:

- That it does not accept that it follows from the existence of the dispute over sovereignty that sovereignty is also the characterization of the submission of the Philippines (para 152);
- The Tribunal ruled that a dispute over an issue that may be considered in the course of a maritime boundary delimitation constitutes a dispute over maritime boundary delimitation itself (para. 155);
- A dispute exists not about the existence of specific historic rights, but about historic rights within the framework of the UNCLOS (para. 168);
- A dispute exists concerning the status of maritime features and the source of maritime entitlements in the South China Sea (para. 169). These features are; the Scarborough Shoal, Mischief Reef, Second Thomas Shoal, Subi Reef, Gaven Reef and McKennan Reef (including Hughes Reef), Johnson Reef, Cuarteron Reef and Fiery Cross Reef (para. 169);
- A dispute exists as to the incidents alleged by the Philippines with respect to potential violations of obligations under the UNCLOS and other relevant international agreements (paras 174-177); and
- The Declaration of Conduct in the

32 Philippine Supreme Court Justice Antonio Carpio has delivered various speeches and conducted briefing before legislators, politicians, academics, the general public, and foreign institutions on the importance of promoting national interests in the West Philippine Sea.

33 House Resolution 3004, n. 17.

34 Chansoria and Palma-Robles, n. 10.

35 Associated Press, "Philippines charges Chinese caught in disputed sea," *The Daily Mail*, May 13, 2014.

36 "China's HD-981 Oil Rig Returns, Near Disputed South China Sea Waters," *The Diplomat*, June 27, 2015.

37 "India can play constructive, positive role in South China Sea, China Says," *Press Trust of India*, November 6, 2015.

South China Sea, Treaty of Amity, as well as bilateral statements made by the Philippines and China, whether individually or collectively, do not bar the Tribunal’s jurisdiction (paras. 229-353).³⁸

The Arbitral Award clarified amply that while the Tribunal has clear jurisdiction over disputes concerning alleged violation of “specified international rules and standards for the protection and preservation of the marine environment in the exclusive economic zone”, it reserved decision on its jurisdiction with respect to certain Submissions of the Philippines for consideration with conjunction with the merits of the Philippine claims (paras. 397-412). The main considerations in this regard were pertaining potential effects of any overlapping maritime entitlement and the historic rights over the ‘nine-dashed line’ under the UNCLOS. The Tribunal also did not accept certain issues for determination such as military and other activities of China around disputed areas. In order to avoid any implications on the merits of the Philippine claim to the South China Sea, the Tribunal deemed it necessary to consider the maritime zones generated by any feature in the South China Sea claimed by China, whether or not such feature was occupied by China.³⁹ Beijing’s lack of clear supporting evidence and position on the ‘nine-dashed line’ was amply highlighted post this event, especially in terms of finality in legal underpinning and interpretation.⁴⁰

During the Scarborough Shoal standoff in 2012, Chinese poachers were allowed to leave by the Philippine Navy with their illegal catch. However, Chinese maritime surveillance ships

never really left the area, and remain there till date following which the Chinese PLA managed to seize control of the Shoal from the Philippines without having to resort to actual combat. Having found success in redefining the status quo in this case, China has often attempted to use the same yardstick to challenge the rule-based international order with endeavors to alter the status quo in all its existing territorial disputes, both on land and at sea. By means of this, it seeks to test the tenacity and credibility of the existing military and security alliances in the Indo-Pacific region.⁴¹ Beijing is seen to have made a departure from its earlier “dual-track approach” given out in August 2014 by Foreign Minister, Wang Yi, where he hinted at agreeing to handle the South China Sea dispute under a multilateral framework. It was being suggested that the Association of Southeast Asian Nations (ASEAN), as a regional grouping, could well play a constructive role, although strictly opposing ‘interference from countries outside the region’. Manila has long been insisting that only by engaging other ASEAN members can any negotiation to settle the West Philippine Sea dispute be accepted. This gets reflected in the statement, “... the principle of ASEAN centrality should be recognized in accordance with the Declaration of Conduct of Parties in the South China Sea...” according to Presidential Communications Operations Office Secretary Herminio Coloma Jr.⁴²

China’s active patrolling in the South China Sea had forced the Philippines’ Hamilton-class ship to guarantee patrolling of Manila’s exclusive economic zone. Moreover, Beijing constructed an artificial island in the South China Sea over the course of 2014 in the Fierly

38 The Philippine Court of Arbitration, PCA Case No. 2013-19 in the Matter of an Arbitration before An Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People’s Republic of China, Award on Jurisdiction and Admissibility.

39 Chansoria and Palma-Robles, n. 10.

40 Ibid.

41 Monika Chansoria, “China takes on The Philippines,” *The Sunday Guardian*, August 24, 2013.

42 Delon Porcalla, “Philippines rejects bilateral talks with China anew,” *The Philippine Star*, July 8, 2015.

Cross Reef (part of the Spratly Islands) that was virtually untouched by man-made structures until March 2014, thereby fueling tensions in the South China Sea. The facilities created by China can be put to use for out-and-out military operations amid a flotilla of Chinese vessels tasked with land-dredging activities, creating ports and battlements in the region—amounting to it becoming, perhaps, the biggest “reclamation project”—a reported 800 hectares of submerged reef converted into dry land.⁴³

Conclusion

The stakes in South China Sea’s territorial dispute do not remain limited to the rich ocean resources in its surrounding waters, but concurrently impact upon the strategic positioning in terms of geopolitics – particularly, control of the critical hub in the sea route transport connection between East Asia and Southeast Asia, West Asia and the Indian Ocean.

China’s regional security posture adopted in the South China Sea since 2000 has placed it at the crossroads with its de-classified foreign policy guidelines including the principle of *mulin fuli* 睦邻富里 (in harmony with neighbors and prosper together); the principles of *mulin, fulin, anlin* 睦邻, 富邻, 安邻 (in harmony with neighbors, prosper together with neighbors, and assuring the neighbors) and *yi lin wei ban, yu lin wei shan* 以邻为伴, 与邻为善 (to be partner of neighbors and do good to neighbors).⁴⁴ The situation has seemingly evolved from 2000

until 2020 through the hazy prism of *realpolitik*, and measures the primary alignment of other claimants to the ownership of the islands, atolls, reefs, cays and islets in the South China Sea. China’s aggressive assertion of sovereignty over the South China Sea in the first half of 2001 raised the security stakes for all Southeast Asian states and maritime powers that sail through these waters. Ensuring security of the South China Sea has become an international issue to be addressed multilaterally by all concerned states.⁴⁵

More recently, in 2019, Vietnam lodged an official protest with China following the sinking of a Vietnamese fishing boat, which according to Hanoi, was rammed by a Chinese Coast Guard surveillance vessel in the waters off the Paracel Islands in the disputed South China Sea.⁴⁶ In another episode, National Security Adviser of the Philippines, Hermogenes Esperon, Jr. affirmed that more than 130 Chinese fishing vessels have been spotted in the Philippine-occupied Pag-asa Island area since the beginning of 2020.⁴⁷ Interpreting the above two incidents in light of the latest April 2020 move of establishing ‘new districts’ with local administrations, will surely strengthen China’s claim to sovereignty over the area, and create an alternative narrative backed by the ‘creation of facts’. In the event of any future short-term, or protracted standoff, Beijing shall hold an operational advantage of possessing more assets and outposts for replenishment, and interoperability, especially in the Spratly region by projecting its air and naval

43 For more details see, Monika Chansoria, “China’s Artificial Island is a Matter of Concern,” *The Sunday Guardian*, June 20, 2015.

44 For further reading see, Emile Kok-Kheng Yeoh, “China: Foreign Relations and Maritime Conflict,” *International Journal of China Studies*, vol. 2, no. 3, December 2011, pp. 551-553.

45 Carlyle A. Thayer, “China’s New Wave of Aggressive Assertiveness in the South China Sea,” *International Journal of China Studies*, vol. 2, no. 3, December 2011, pp. 555-583.

46 “Vietnam protests over China’s sinking of vessel in contested South China Sea,” *South China Morning Post*, March 22, 2019, available at <https://www.scmp.com/news/asia/southeast-asia/article/3002794/vietnam-protests-over-chinas-sinking-vessel-contested>

47 “Chinese vessels near Pag-asa Island likely to stay, Esperon says,” *CNN Philippines*, March 3, 2020, available at <https://www.cnnphilippines.com/news/2020/3/3/west-ph-sea-chinese-vessels-esperon.html>

power through the facilities mentioned above and achieve coercive outcomes territorially. The two ‘new’ districts aim at recapping China’s jurisdiction in the South China Sea, and concurrently attempt at marginalizing the apprehension of being overwhelmed by any regional mechanism that works outside the periphery of Chinese influence. The lines separating the arbitration, politics, and military strategies between the Philippines, China, as well as other claimants in South China Sea are getting increasingly blurred and precarious.