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A Set of Dead-End and Development in the South China Sea: A 2-Level Game Analysis of the Philippines-China Arbitration Case¹

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Abstract

Being the heart of the Indo-Pacific, Southeast Asia has seen numerous regional disputes over the years. One of which has remained a vocal point of dispute between the states in and outside the region, that is the South China Sea dispute. An interesting point of development in the South China Sea dispute can be pointed to the China-Philippines arbitration case. Such is the case as China, despite having its action in the waterway deemed illegal, simply brushed it off and remains insistant on its claim. Through incorporating the qualitative research method and relevant concepts like the 2 level game theory, the article seeks to explain why China made that decision. Along with that, the article also seeks to posit some regional implications that states in the region should take note of. In understanding the first issue, the 2 level game theory fits the bill as it allows the writers to learn the forces behind China's eventual foreign policy decision. Here, China's national interest along with its realization over its power standing plays a big part in the eventual outcome. For the latter, should China's assertiveness be left with no proper response, it may endanger the region's growth and stability. Not only that, it would also bring into the stage another global power like the US that would again take the spotlight from ASEAN and its member states. Against such consequences, it is important for ASEAN member states, both claimant and non-claimant, to align their view and approach towards the region's perennial issue.

Keywords: Arbitration case, China, Foreign policy, South China Sea dispute, Two level game.

Introduction

The international system has long been regarded as an anarchic one in which its composing units, the states, all live with no overarching actor that has the role of a police or ruler. Under such circumstances, many if not all states in the system sought to be the international system's hegemon or the one to possess the biggest power so as to maintain its survival and perhaps doing so by threatening the survival of others. Given the vast conflicting dynamics, it is no surprise that numerous destructive conflicts have taken place as such is the worst end of an anarchic system.

However, while it is true that the system is conflict-ridden, it is also thanks to the states that conflicts can be solved, albeit not permanently, and peace, as brief as it is, can eventually take place. States have developed many mechanisms through which conflicts can be settled or eliminated before it escalates further, from building international organizations like the UN to the creation of laws or

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norms that govern state activities. International law is one of the things that governs state action in the system, from the conduct of war to how conflicts should be solved. They can take the form of treaties to even relevant cases rulings which would require a considerable degree of legitimacy or acceptance from the states.

However, despite the presence of international law and other sets of norms, international conflicts are still around in the system. The international community would find themselves being confronted from time to time by violations of international law. Some states have violated the law for numerous reasons. On some occasions, states would justify their violation as a means to attain a greater end, this was the case in some emergency humanitarian interventions in the past. One of such conflicts has been present in one of the world's growing regions, the Indo-Pacific.

The Indo-Pacific has been regarded as one of the world's thriving regions. Many have attributed it to the region's growing importance as the veins of global trade and flow of goods. Another trait to look at is how the region is home to many of the world's growing powers, from the giant of the east like China and numerous regional powers and blocs such as Australia, Japan, and ASEAN. The latter is a unique one as it comprises numerous states, some of which are also regarded as notable regional powers, like Indonesia, Malaysia and the Philippines.

Given the huge potential the region has, it is important therefore for the region to remain stable and devoid of conflicts. However, that is not the case as the region has witnessed numerous conflicts of many scales. From the numerous proxy wars fought during the Cold War to numerous contemporary conflicts that at times have escalated to armed conflicts, the region has it all. One of the prominent and perennial conflicts the region has is the South China Sea dispute. The conflict also involves actors from the ASEAN bloc (Vietnam, Malaysia, Philippines and Brunei Darussalam) and China.

Currently the South China Sea (SCS) has become a flashpoint in the Indo-Pacific. Disputes in the SCS not only involve some countries, i.e. China, Vietnam, the Philippines, Brunei, and Malaysia, but also involve the interests of other major powers such as the United States. Furthermore, the book "The Security Environment in the Asia-Pacific" affirms that the geographical importance of the region for sea-lane traffic, regional and international security, and international trade brings the problem to the forefront of international dispute. As a result, the conflict has become a critical global security problem since regarded by foreign parties (e.g., the European Union, the United States, Japan, and others), as it calls into question the state of world peace and security (Rossiana, 2022).

Against the backdrop of the issue's presence to this day, the article seeks to expand upon the knowledge surrounding the topic through utilizing the 2 level games theory. The 2 level games theory

is chosen as the relevant concept due to its fitting nature to analyze international matters that involve both domestic and international matters. The aforementioned matters are essential in the Philippines and China arbitration case as the eventual China's treatment towards the result of the ruling is strongly determined by its domestic dynamics.

The 2-level game theory

To understand the existing issues, then "two level game theory" is very appropriate. The theory initiated by Robert Putnam describes international political relations as a "two-level game". The government plays an important role in taking policies that favor domestic interests but on the one hand also considers external factors (Putnam, 1988). Against the backdrop of driving forces, numerous outcomes may emerge from the domestic stage. For the two levels to come together, agreement in the domestic stage of the parties involved are needed. For agreement at the international level to be accomplished, a win-set needs to be obtained. A win-set can be understood as the converging point between the interests of the involved parties where once it is fulfilled, the agreement can emerge. While it has been commonly used to analyze how international cooperation or negotiation are successfully done, it can also be used on other subjects such as the stance towards international law matters (international court ruling) or even to understand why certain interactions break down (Lisowski, 2010).

In this sense, the concept is suitable to understand the conflicting nature that leads China's move that would render the eventual ruling somewhat irrelevant. The concept would give the leeway to analyze the respective national interests of each party involved as well as seeing how it is simply contradictory in nature which results in the breakdown of the issue. This fits in well with the arbitration case between China and the Philippines where the two states failed to come into agreement over the South China Sea dispute despite the issue being deliberated and settled with the involvement of the arbitral tribunal of Permanent Court of Arbitration (PCA).

The elephant in the room: China-Philippines arbitration case

As humans in nature, a country led by humans also has its interests. The Philippines has its own interest in the South China Sea. With lucrative fishing, oil and gas resources, the Spratly Islands have become one of the most significant and strategically contested oceans in the 21st century. The former President, Benigno Aquino III, believed that the Spratly Islands and their surrounding areas were richly endowed with resources. In addition, as a country which relies too much on imports for energy, the Philippines is eager to protect supplies and reduce its electricity costs by expanding its own ownership of offshore oil and gas resources (Imanudin & Sugito, 2021).

China's interests in the South China Sea are limited by the interests of other countries (in this case the Philippines). China's interests are further restricted by the decision of the PCA arbitral court. In 2016 the International Court of Arbitration based in The Hague, Netherlands, ruled that China had violated Philippine sovereignty in the South China Sea. The United Nations Arbitration Court (UN) stated that the Chinese state has no legal basis for claiming territorial waters in the South China Sea. However, the Chinese government did not accept the ruling (Adi, 2021).

In essence, the judgment issued by the Court states:

- There is no legal basis for China to make historic claims rights to resources in the marine areas included in the 'nine dash line'.
- None of the Spratly Islands can afford resulting in an expanded maritime zone. The Spratly Islands cannot produce maritime areas collectively as one unit.
- China has violated the Philippines' sovereign rights in its exclusive economic zone by (a) disrupting Philippine fishing and petroleum exploration, (b) building artificial islands and (c) failed to prevent Chinese fishermen from fishing in the zone
- Large-scale land reclamation and construction of artificial islands by China in seven features in the Spratly Islands cause irreversible damage to marine environment and ecosystems (Permanent Court of Arbitration, 2016).

However, the Chinese side said that they did not accept and would not recognize the decision of the PCA. The Chinese Foreign Ministry said that the ruling had no binding force so China would not accept or recognize the ruling. The statements issued by China regarding the PCA ruling are:

“The ruling is null and void with no binding force. It will in no way affect China's territorial sovereignty and maritime rights and interests in the South China Sea. We oppose and refuse to accept any proposal or action based on the ruling. China will continue to safeguard territorial sovereignty and maritime rights and interests, maintain peace and stability in the South China Sea, and endeavor to peacefully resolve relevant disputes in the South China Sea with parties directly concerned through negotiation and consultation on the basis of respecting historical facts and in accordance with international law” (Rafi et al., 2017).

The rapid change of regional circumstances is cited by many observers as the reason for China's position in the South China Sea. A key driver of these developments is Beijing's concern over its territorial superiority and interests, particularly among Chinese analysts. Actions of the Chinese in disputed areas. The demand for energy sources, the need to safeguard fisheries resources, oil supplies and sea transport are some of the issues which concern economics. Nearly half of the South China

Sea is covered. In addition to half its fishing grounds and huge potential energy resources and mineral wealth, the area of 1 million square kilometers is vital for Beijing in terms of both. This is a vital waterway for trade in the sea. The bulk of China's crude oil imports transit South China Sea market from the Middle East and Africa (Kuik, 2017).

Behind the machinery of China's foreign policy

China's foreign policy has been driven by its fundamental national interests, and domestic political stability plays a role as well. The sovereignty, territorial integrity and sustainable social development of the country are these fundamental national interests. The importance of protecting China's interests and sovereign rights as well as its refusal to surrender to external pressures was underlined in the 18th Chinese Communist Party Congress 2012 report, which offers guidance for the next five years. The South China Sea has also been declared to be a "core National Interest" at the 18th CCP Congress. Nationalism, patriotism and pride are also in the forefront of Xi Jinping's leadership. Xi Jinping, Huang reminded him, recognized that nationalism was a strong concept in Chinese society (Sinaga, 2015).

While many outside observers regard China's physical challenges to U.S. or other foreign military surveillance operations in the EEZ of China, as a very important element From Beijing's perspective, these activities signal an increased degree of assertiveness. The reaction to what is considered unfriendly shall constitute a genuine and comprehensible response behavior (Swaine et al., 2011).

The basis of the Chinese government's claim to the South China Sea seems to be based on the assumption of historical rights. Beijing claims that China was the first country to locate these islands in the South China Sea, established a government and lived on those islands. Chinese people have been the first ones to engage in economic activity in this region. According to the Chinese ambassador Liu Xiaoming, as early as 200 BC, during China's Han Dynasty, the Chinese had large-scale seagoing and fishing activities in the South China Sea. As a result, the first islands to be discovered in the South China Sea were discovered by the Chinese. The assertion confirmed that China was the first to be discovered, named, searched and exploited in the South China Sea (Wood, 2021).

In the domestic stage, China's political characteristic paves the way for how it behaves in the international system. Given that China's domestic politics is dominated by the CCP, it doesn't face the need to convince or get the support of many stakeholders. With such conditions laid out, the CCP can freely pursue its international interest in the dispute with little to none domestic hindrance. The same thing also applies when it is facing an external hindrance as apparent in the arbitration court ruling where China's supportive domestic political landscape allowed it to simply brush it off. With

such domestic arrangement, national power and ambitious national interest (procure territory and resources in the South China Sea), it was not surprising for China to not go for the win-set and instead remain with its interest.

Due to China's immense power and position in the international system, it doesn't come out as much of a surprise that China could at times adhere to and ignore international law. One of which that's been violated and adhered to, to some extent, by China is the UNCLOS. In a unique twist, China has referred to the UNCLOS in the handling of the ongoing dispute, claiming how the issue needs to be resolved through the mechanism and principles laid out in the UNCLOS. It is with such conditions that China decided how the arbitration result holds little to none impact to its claim and activity in the area. While it is true that the international community has once again been made aware of the regional conflict, none of them can do any major move that would reverse the present fait accompli there.

Therefore, given that China had no desire to cease its pursuit of its own national interest in the disputed area, China simply couldn't go forward with the court's ruling. This is in line with what the 2 level game theory has to offer as for any international cooperation or ruling to function, the involved parties must agree on a shared point, in this case it was the end of China's unjust claim and activities in the disputed area.

Rough waves ahead! Regional implications to consider

Being the heart of the Indo-Pacific, it would not be a surprise that many global powers have been eyeballing the regional dynamics in Southeast Asia. One of such dynamics include the many developments of the South China Sea dispute along with its far-reaching implications. The eventual result of the China-Philippines arbitration case puts forward some things to consider for the states along with the region as a whole.

The huge power gap between China and ASEAN, as the regional bloc that covers 4 of the claimant states in the dispute, is so apparent, let alone when it is juxtaposed with the 4 claimant states. Being a rational actor in the international system, China's disregard towards the court's ruling and how it did not bring any significant consequences give it a sense of impunity. In that, China learned how despite its action being deemed illegal by the international community, at the end of the day, it can simply brush it off and go about its previous business in the disputed area. With such violation of international law in the disputed area remains present, it would severely harm international laws supremacy in governing the behavior of states in the system. At its worst, China's assertive move and constant violation of international law as it does in the South China Sea may push other states, either in the region or outside of it, to follow the same path.

Another thing that the countries in the region should be aware of is how other countries seek to take matters into their own hands. A prominent actor with such interest is the US which has made its interest known through the creation of numerous multilateral cooperation in the region. In regard to other claimant states in the region, the US has made numerous overtures to bridge dialogue between them, even to go as far as strengthening military ties with Vietnam. While it is true that increasing US presence may hinder further assertive moves by China, it would also harm the region's growth. That is because the region would be the stage in which the two global powers, China and the US, bring about their own national interests which in turn may endanger the present regional architecture and rule-based order (international law constructed by ASEAN). Not only that, through taking the coachman seat, it would also hinder the regional powers of the region to grow, notably some ASEAN member states and ASEAN itself.

Against such a backdrop of ongoing implication, it is crucial for the states in the region to take the necessary measures. An important step to take is to formulate a better rapprochement towards China and the dispute. In this matter, ASEAN plays an important role as the bridge between claimant member states and non-claimant member states. Apart from being a regional actor or regional organization, ASEAN is first and foremost a forum for its member states to deliberate upon crucial issues, the South China Sea dispute is one of them. From there, member states can unite their vision to face the problem at hand given the far-reaching effect it has on the region's interconnectedness. While it is true that aligning the vision of all member states is not way more arduous, given what's at stake, it is indeed important to resort to.

Adherence to international law may have been a fruitless effort as apparent to the China-Philippines arbitration case, but it is important for ASEAN to remain committed to the available rule-based order. One of such laws relevant to the dispute is the UNCLOS, which set the basis of ASEAN member states' respective claims. As mentioned before, China has referred to the UNCLOS and many measures it has. Hence, in the future efforts, ASEAN should take note of this particular international law in carrying out its desire to solve or maintain the issue as apparent in its effort to develop a code of conduct there.

Conclusions

The PCA in The Hague, Netherlands on 12 July 2016 ruled in favor of the Philippines' petition against Beijing. In this case, on the one hand, China has a claim to the South China Sea area based on history and the nine-dash line. On the other hand, the Philippines feels that this claim contradicts the

UNCLOS 1982 and violates the sovereign rights of the Philippines in the exclusive economic zone. This shows that both the Philippines and China have their respective interests in the South China Sea. The South China Sea is an important region because of the abundance of fishery resources and energy resources and mineral wealth, as well as sea transportation. This shows that it is natural that the South China Sea is an area contested by several countries in the region such as China and ASEAN countries (Vietnam, Malaysia, Philippines and Brunei Darussalam). This factor also affects China's foreign policy in the South China Sea. This was especially evident when Xi Jinping took office as president of China.

As the concept of 2 level game theory, a country's policy in international matters is also influenced by its domestic interests. This is also what affects China in making foreign policy. China's foreign policy is driven by its fundamental national interests, and domestic politics. Given that China's domestic politics are dominated by the CCP, there is no need to convince or gain support from many stakeholders. Against such a backdrop its disadherence to another source of international law can be rationally understood. Its move to do so also comes with regional scale implication that other states in and around the region must take note of.

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