

# Briefing Memo

## **China's Response to the Permanent Court of Arbitration's Ruling on the South China Sea**

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The decision awarded to the Philippines by the Permanent Court of Arbitration on July 12, 2016 (hereinafter, the Decision), was more decisive than almost all expectations, and repudiated the validity of China's assertion of historic rights in its nine-dash line in the South China Sea. China's stance in the South China Sea, which has become remarkably hardline since 2009, has drawn protest from the international community, and in that context it can be said that the recent Decision further deepened China's disadvantageous situation.

The problem, however, is to what degree China recognizes the current situation, and whether China recognizes that the situation calls for some change in its policy.

There is no doubt that China's caution has heightened in response to the recent Decision. At the same time, however, it is highly likely that China believes that it can overcome the current situation. It is this very perception by China that is causing instability in the region.

### **1. Statements and remarks regarding the Decision**

The recent Decision awarded by the Permanent Court of Arbitration was made in regard to 7 of the 15 submissions presented by the Philippines in 2013 regarding China's assertions and movements in the South China Sea. In 2015, the Permanent Court of Arbitration recognized these submissions to be within the jurisdiction of the Permanent Court of Arbitration, and proceeded with an arbitral hearing. China immediately stated that the Permanent Court of Arbitration had no right to undertake these claims, and refused to participate.

The Decision awarded on July 12 was more decisive than almost all expectations. The Decision stated that China's assertion that it held historical rights in the South China Sea was in contradiction to the United Nations Convention on the Law of the Sea (UNCLOS). Furthermore, the Permanent Court of Arbitration was expected to make a ruling as to whether seven islands in the Spratly Islands were islands, rocks, or low-tide elevations, but its Decision was even more decisive, and stated that the features were not recognized as islands of the Spratly Islands, and that internal waters were not formed by the numerous

nearby islands. Specifically, the Decision stated that the Spratly Islands are composed of rocks and low-tide elevations, and therefore only generate territorial waters and are not an exclusive economic zone (EEZ).

When the Decision was awarded, China immediately issued statements and comments in quick succession, such as comments by President Xi Jinping, a statement by Foreign Minister Wang Yi, the “Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines,” the “Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea,” white papers regarding the Decision, and a declaration by the Foreign Affairs Committee of the National People's Congress. This paper collates and extracts the basic elements of these statements.

First, President Xi Jinping took the occasion of his joint press conference with President Donald Tusk of the European Council on July 12 to clarify China's position, “China's territorial and maritime rights in the South China Sea will not be influenced by the Court of Arbitration under any circumstances, and China will not accept any claims or movements based on the Court of Arbitration. China consistently upholds international law, fairness and impartiality, and is adhering to the path of peaceful development.” (Xinhua News Agency, July 12, 2016)

The declaration announced by Foreign Minister Wang Yi incorporates the fundamental line of the recent remarks and statements by China's leaders. In other words, the statement emphasizes the points that (i) the Decision is a political farce disguised as law, (ii) China will not accept or participate in the arbitration, and is advocating international and regional law, (iii) China's territorial and maritime rights in the South China Sea have firm, historical roots, and will not be influenced by the Court of Arbitration, and (iv) China is continuing to make efforts towards a peaceful resolution of the dispute through diplomacy, and is advocating peace and stability in the region (Xinhua News Agency, July 12, 2016).

China's remarks and statements in response to the Decision can be consolidated into the following four points.

First, China does not accept the Decision, and rejects its validity. China's stance is that the Permanent Court of Arbitration has no rights to rule on territorial rights, and that the Decision is therefore invalid, and has refused to participate in arbitration in the Court of Arbitration. This stance has not changed since the time the Philippines made its claims, and in that sense should come as no surprise.

Second, China views the Decision as a “political farce disguised as law,” and sees a plot by the United States and Japan in the background to force it into a disadvantageous position. For example, State Councilor Yang Jiechi contends that a plot is behind the Decision, “Countries outside the region are seeking to use the Decision to repudiate China's sovereignty and rights in the South China Sea, form a faction which will isolate China in the international community, and throw dirt on its face.”

The Guo Jiping column of the Renmin Ribao, or People's Daily (Guo Jiping is the pen name used for

important international critiques in the People's Daily), stated more directly that U.S. intervention was behind the Philippines' actions, and that the recent Decision represents the prolongation of the series of developments represented by the U.S. (i) seeking to position China as a destructive force, (ii) advancing militarization in the South China Sea using a freedom of navigation strategy, and (iii) forming a faction to progress the internationalization of the South China Sea issue (People's Daily, July 11, 2016). Furthermore, the Press Secretary of China's Ministry of Foreign Affairs announced "strong dissatisfaction and resolute opposition" in response to the U.S. supporting the recent Decision and seeking its implementation.

Additionally, regarding Japan, the Press Secretary of China's Ministry of Foreign Affairs criticized Foreign Minister Fumio Kishida, stating "Japan, an unrelated country, has no standing to say anything about China," in response to Foreign Minister Kishida seeking compliance with the Decision in light of its legally binding force.

Furthermore, China has criticized the participation of Japanese people in the Decision as evidence of its political nature. Among the five arbitrators which made up the tribunal that awarded the recent Decision, one arbitrator was to have been appointed by each country involved in the dispute, and the remaining three by the International Tribunal for the Law of the Sea (ITLOS). China, however, refused to participate in the arbitration itself, and did not appoint any arbitrator, and therefore that individual was also selected by ITLOS. As the president of ITLOS at the time was Shunji Yanai, the former ambassador of Japan to the United States, China believes Mr. Yanai selected a disadvantageous individual for China.

It can be said that China's perspective on law and order are displayed in these criticisms. In other words, a human-driven and conspiratorial perspective that law and order is a reflection of political power and subject to manipulation.

Third, China emphasized the validity of its rights in the South China Sea. China announced a white paper emphasizing the validity of its position regarding the territorial dispute with the Philippines. Furthermore and more vitally, China had previously taken a strategy which obscured its claims of rights in the South China Sea, but the statements announced by China and its domestic editorials in response to the recent Decision clarify its claim of rights in the South China Sea to an unprecedented degree.

For example, the "Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea" announced the position that (i) China has sovereignty over the South China Islands, specifically the Pratas Islands, the Paracel Islands, Zhongsha Island and the Spratly Islands, (ii) China has internal waters, territorial waters, and a contiguous zone in the South China Sea Islands, (iii) China has an EEZ and continental shelf in the South China Sea Islands, and (iv) China has historic rights in the South China Sea (Xinhua News Agency, July 12 2016).

The essay by the Research Center of Theoretical System of Socialism with Chinese Characteristics of the Party School of the Central Committee of C.P.C. in the China Military newspaper garnered even

further attention (July 18, 2016). The essay was the first to clearly define China's previously ambiguous nine-dash line. According to the definition of the nine-dash line, (i) China has sovereign rights to the islands, reefs, and shoals within the line; regarding (ii) historical territorial rights to island groups which are close together and can be viewed as a single unit and the waters between islands: these are China's internal waters, the maritime boundary can be drawn along their perimeter, and China can claim jurisdiction of the EZZ and continental shelf; and (iii) in the event that the EZZ or sovereign islands of another country overlap with the waters of the nine-dash line, China can claim historical and traditional fishing rights to those waters.

Of course these claims cannot be considered to be in conformance with UNCLOS or other international law. It could be said, however, that in publishing this definition in a military newspaper, China had begun to consider the issue of international law more seriously than before.

Fourth, China has repeatedly appealed that it is not challenging the international order, but instead advocating a peaceful resolution. With its refusal to accept the Decision, China is wary of a growing reputation of China as a challenger to the existing international order. President Xi Jinping stated to U.S. National Security Advisor Susan Rice that, "China has no intention of challenging the existing international order and norms," (July 25, 2016). Foreign Minister Wang Yi has also stated that, "China is an architect of international order, an advocate of regional peace, and will continue to maintain its dependence on international law, seek the resolution of disputes through direct negotiations with the concerned countries, and maintain its protection of the freedom of navigation and overflight of each country in accordance with the law."

## **2. Actions aimed at invalidating the Decision**

Most importantly, in addition to the aforementioned points, China perceives that it is possible to obstruct the implementation of and invalidate the Decision, and is carrying out a wide range of policies to that end. These include (i) demanding bilateral negotiations with the Philippines, (ii) avoiding unified criticism of China by ASEAN and the EU, and (iii) issuing warnings against the implementation of the Decision through actions such as military exercises.

First, China is demanding bilateral negotiations with the Philippines. In a conversation regarding the Decision, Foreign Minister Wang Yi stated that President Duterte was displaying a positive stance towards talks with China, and called for dialogue regarding the South China Sea issue. While Foreign Minister Wang Yi made informal contact with the foreign minister of the Philippines at the Foreign Ministers' meeting of the Asia-Europe Meeting (ASEM), this did not result in a resumption of dialogue. This is said to be due to Wang Yi requesting the Decision to be shelved, and left absolutely untouched. Regarding the Decision, in a press conference, Vice Foreign Minister Liu Zhenmin stated "if it's shelved, that will be the end," making it highly likely that China made this request to the Philippines. At the same

time, Zhenmin added an additional statement which could be perceived as a threat, “If the Philippines refuses to come back to the negotiating table, the bilateral relations will certainly be affected, and the current situation will be difficult to reverse.” (Ministry of Foreign Affairs Website, July 13, 2016)

Second, China is seeking to avoid unified criticism from ASEAN and the EU by undertaking a diplomatic offensive.

China has emphasized that, “China has issues with several ASEAN countries, but there is no issue between China and ASEAN,” in other words, “double track thinking,” and sought to divide ASEAN through individual diplomatic offensives. In this incident as well, leaders from China held frequent talks with the leaders and government officials of Cambodia and Laos. As Cambodia opposed ASEAN taking up the South China Sea issue, the joint statement of the ASEAN Foreign Ministers’ Meeting did not touch on the arbitration.

Furthermore, the EU was unable to immediately release a statement regarding the Decision, and while the statement issued several days later recognized the Decision, it announced no position would be taken regarding sovereign rights, and no remarks seeking compliance from China were included. It is said the opposition of Croatia, Hungary, and Greece were behind these ambiguous statements (Wall Street Journal, July 17, 2016).

It is unclear whether these points represent pressure from China. What is important, however, is that there is a high possibility these points are perceived as diplomatic victories by China. While it differs from the facts, China has claimed that over 60 countries have publicly supported its stance (Ministry of Foreign Affairs Website, June 14, 2016), and can be thought to be evaluating its diplomatic success far greater than its actual achievements.

Third, by displaying military activity such as military exercises, China is seeking to issue a warning to the U.S. and the Philippines to not implement the Decision, and apply pressure. Vice Foreign Minister Liu Zhenmin has stated, “the Chinese Government can take the necessary measures to stop [the implementation],” because the implementation of the decision would be illegal based on the invalid decision of the Court of Arbitration.

In addition to this statement, a large-scale maritime training exercise was held immediately prior to the Decision in the southern military district. While China stated that the exercise was held in accordance with an annual schedule unrelated to the arbitration, carrying out large-scale, live fire exercises combining three fleets can be interpreted as a threatening action. Furthermore, exercises were restarted on July 19, after the Decision. Vice Chairman of the Central Military Commission Fan Changlong paid a visit to the Southern Military District for the exercises, and is emphasizing measures to raise China’s maritime military response capabilities to sudden events (China Military, July 20, 2017).

Furthermore, images released with the exercises demonstrated China’s new model of ballistic missile deployed in the southern military district, the DF-16 (approximate range 1000km). There are also reports that the DF-21D mid-range anti-ship ballistic missile (approximate range 1500-2000km) is also deployed

in the southern military district.

Additionally, photos appeared on the Internet of the new version of China's "Jin Class" strategic nuclear submarine, the 094A. The 094A is thought to be capable of launching long-range ballistic missiles capable of reaching the U.S. mainland, further than the 094, and there is a high probability that the appearance of these photos is an intentional leak to threaten the U.S.

Furthermore, the air force launched regular patrols using aircraft such as the H-6K bomber. According to the Press Secretary of the Chinese Air Force, in addition to bombers, fighter aircraft, reconnaissance aircraft, and mid-air refueling aircraft also participated, and a patrol was made around the Scarborough Shoal and other areas (Xinhua News Agency, July 18, 2016).

The landfill construction of the Scarborough Shoal and establishment of an Air Identification Zone in the South China Sea, both subjects of concern, are not currently being carried out. The Chinese military and Ministry of Foreign Affairs, however, are warning that they may be implemented in the event foreign countries take some action. For example, after expressing to U.S. Chief of Naval Operations Richardson China's intention to complete the landfill construction according to plan no matter what pressure is received, Admiral Wu Shengli warned, "the degree of defensive facilities (to be installed) will be entirely decided based on the degree of threat we receive. The method of trying to display military muscle to make us succumb will bring about the exact opposite result." (Xinhua News Agency, July 18, 2016) Furthermore, in response to a question on the possibility of establishing an Air Identification Zone in the South China Sea, after expressing China's right to do so, Vice Foreign Minister Liu Zhenmin stated, "whether [an Air Identification Zone] is necessary or not is based on the degree of threat received."

Fourth, what is important alongside the responses that have actually been made is those responses that have not been made. China frequently combines a variety of methods to apply pressure on partner countries, and has sought to demonstrate its unwavering intention both internally and externally. In the incident in which a fishing vessel invaded the waters surrounding the Senkaku Islands in 2010, China permitted domestic demonstrations and restricted the export of rare earth. Furthermore, in 2012, when the Japanese government purchased the so called property rights to the Senkaku Islands, it remains fresh in the mind that China increased the vigor of its maritime law enforcement agency activities in the waters surrounding the Senkaku Islands, and even permitted large-scale demonstrations domestically.

In contrast to this, regarding the issue of the South China Sea Islands, China has not applied any economic pressure on the Philippines, and has not permitted any domestic protest demonstrations. It is a fact that a portion of Chinese society is reacting against the U.S., and seeking to start a boycott campaign against Kentucky Fried Chicken. No mass protest demonstrations have been permitted, however, and the government is taking a critical stance towards the Kentucky Fried Chicken boycott campaign. This is due to the Chinese leadership fearing that internal mobilization could lead to uncontrollable risks, and also a sign that they are leaving scope for diplomatic maneuvering.

### 3. China's diplomatic dilemma and the South China Sea situation going forward

The vicious cycle of China's diplomacy in the South China Sea is continuing. On one hand, China feels powerful distrust that the U.S. and Japan are using the issue with the intention to contain China, and China's wariness is increasing with each disadvantageous reaction that occurs to it in the South China Sea. On the other hand, as China also perceives that the Decision cannot be enforced, even by the U.S., and furthermore sees "success" in its diplomacy to drive a wedge between various countries, its confidence will likely deepen, and it will continue to strengthen its de facto control over the South China Sea.

China's current diplomatic issue is brought about by both this excessive distrust of other countries, and its own self confidence. With the confidence created by the increase in its relative strength, China is adopting a robust foreign policy, but this leads to friction with neighboring countries, and is isolating China. China's distrust, however, is strengthening the perception that this is being brought about by a conspiracy by the U.S. and others. Furthermore, China has repeatedly been able to drive a wedge between other countries, and as China perceives that it assumes little risk of strong intervention by the U.S. regarding the South China Sea issues, it will not review its robust foreign policy. This vicious cycle is creating instability in the conditions of East Asia.

Going forward, it is necessary to ensure the effectiveness of the recent Decision. China will likely display an even stronger reaction if the Decision is implemented. If the Decision is not implemented, and ineffective in practice, however, there is the possibility that China will feel even greater confidence and will carry out even stronger actions. This is also one dilemma, and is a dilemma in the China-facing foreign policy of the surrounding countries. It is necessary to implement the Decision even if it elicits a reaction from China, but at the same time, one of the major challenges is coming up with a policy that brings about the least possible reaction.

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