
International Symposium

After the July 12 PCA (Permanent Court of Arbitration)

Verdict:

The Future of Maritime Asia

Conference Materials

December 19, 2016

Tokyo, Japan

Organized by

Meiji Institute of International Policy Studies (MIIPS)

Meiji Institute for Global Affairs (MIGA)

Under the Auspices of

The Global Forum of Japan (GFJ)

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1. Program

国際シンポジウム International Symposium

仲裁裁判所判決「後」をめぐって：アジアの海の今後 After the July 12 PCA (Permanent Court of Arbitration) Verdict:

The Future of Maritime Asia

2016年12月19日 明治大学グローバルフロント1階、多目的室
19 December, 2016, "Multi-Purpose Room," Global Front, Meiji University

主催/Organized by
明治大学国際政策研究所/Meiji Institute of International Policy Studies (MIIPS)
明治大学国際総合研究所/Meiji Institute for Global Affairs (MIGA)
後援/Under the Auspice of
グローバル・フォーラム/The Global Forum of Japan (GFJ)

【公開シンポジウム/ Public Symposium】

開会挨拶/ Opening Remarks

13:30-13:40

開会挨拶 (10分間) Opening Remarks (10 min.)	伊藤 剛 明治大学国際政策研究所長/明治大学教授/グローバル・フォーラム有識者世話人 ITO Go, Director, MIIPS / Professor, Meiji University / Academic Governor, GFJ (Japan)
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基調講演/ Keynote Address

13:40-14:00

基調講演 (20分間) Keynote Address (20 min.)	徳地 秀士 元防衛省防衛審議官 TOKUCHI Hideshi, Former Vice Minister of Defense for International Policy
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第一セッション/ First Session

14:00-15:20

仲裁裁判所7月12日判決「後」の動向 Situations "after" the July 12 PCA Verdict

モデレーター Moderator	デビット・ウォルトン 西シドニー大学准教授 David WALTON, Senior Lecturer, Western Sydney University (Australia)
発表・問題提起 (10分間) Lead Discussant A (10 min.)	宋 燕輝 中央研究院歐美研究所研究員(台湾) SONG Yann-huei, Research Fellow, Academia Sinica (Taiwan)
発表・問題提起 (10分間) Lead Discussant B (10 min.)	ヴァージニア・ワトソン アジア太平洋安全保障研究センター教授(米国&フィリピン) Virginia Bacay WATSON, Professor, Asia-Pacific Center for Security Studies, (USA & the Philippines)
発表・問題提起 (10分間) Lead Discussant C (10 min.)	キム・ベン・ファール エコー・ストラテジック・インサイトCEO(マレーシア) KIM Beng Phar, CEO, Echo Strategic Insight (Malaysia)
発表・問題提起 (10分間) Lead Discussant D (10 min.)	伊藤 剛 明治大学国際政策研究所長/明治大学教授/グローバル・フォーラム有識者世話人 ITO Go, Director, MIIPS / Professor, Meiji University / Academic Governor, GFJ (Japan)
討論者 Commentator	徳地 秀士 元防衛省防衛審議官 TOKUCHI Hideshi, Former Vice Minister of Defense for International Policy
自由討論 (40分間) Free Discussions (40 min.)	全員 All Participants

15:20-15:30

休憩/Break

第二セッション/ Second Session

15:30-16:45

周辺諸国からの視点 Views from Neighboring Countries

モデレーター Moderator	伊藤 剛 明治大学国際政策研究所長/明治大学教授/グローバル・フォーラム有識者世話人 ITO Go, Director, MIIPS / Professor, Meiji University / Academic Governor, GFJ (Japan)
発表・問題提起 (10分間) Lead Discussant A (10 min.)	デビット・ウォルトン 西シドニー大学准教授 David WALTON, Senior Lecturer, Western Sydney University (Australia)
発表・問題提起 (10分間) Lead Discussant B (10 min.)	ファン・カン・ミン ベトナム国家大学・ハノイ人文社会科学学院院長 Pham Quang MINH, Rector, Univ. of Social Sciences and Humanities, Vietnam National University-Hanoi (Vietnam)
発表・問題提起 (10分間) Lead Discussant C (10 min.)	島山 京子 関西外国語大学准教授 HATAKEYAMA Kyoko, Associate Professor, Kansai Gaidai University (Japan)
討論者 Commentator	ヴァージニア・ワトソン アジア太平洋安全保障研究センター教授(米国&フィリピン) Virginia Bacay WATSON, Professor, Asia-Pacific Center for Security Studies, (USA & the Philippines)
自由討論 (40分間) Free Discussions (40 min.)	全員 All Participants

総括/ Wrap-up Session

16:45-17:00

総括 (15分間) Wrap-up (15 min.)	伊藤 剛 明治大学国際政策研究所長/明治大学教授/グローバル・フォーラム有識者世話人 ITO Go, Director, MIIPS / Professor, Meiji University / Academic Governor, GFJ (Japan) ファン・カン・ミン ベトナム国家大学・ハノイ人文社会科学学院院長 Pham Quang MINH, Rector, Univ. of Social Sciences and Humanities, Vietnam National University-Hanoi (Vietnam)
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[NOTE] 使用言語 英語/ The main language for use will be English.

2. Speaker Profiles

Opening Remarks

ITO Go

Director, Meiji Institute of International Policy Studies / Professor, Meiji University



Dr. Go Ito graduated from Sophia University. He received Ph.D. at the Josef Korbel School of International Studies, University of Denver in 1997. He served as Associate Professor at Meiji University in 1998, and assumed the current position in 2006. Also served as Visiting Professor at Beijing University, Academia Sinica (Taiwan), Bristol University (Britain), Australian National University, and Victoria University (Canada), Adjunct Professor (International Security) at Waseda University as well as Sophia University, and as Adjunct Researcher of the House of Councilors. He is the recipients of the Eisenhower Fellowships in 2005 and the Nakasone Yasuhiro Award in 2006.

Keynote Address

TOKUCHI Hideshi

Senior Research Advisor, Institute for International Policy Studies



Mr. Hideshi Tokuchi has a 36-year career of service to the government of Japan, most recently as the nation's first Vice-Minister of Defense for International Affairs. He joined the Japanese Defense Agency (the predecessor of the Ministry of Defense) of Japan in 1979, and retired from public service on October 1, 2015, after completing several senior assignments at the Ministry of Defense, including as Director-General of the Operations Bureau, of the Personnel and Education Bureau, of the Finance and Equipment Bureau, and most recently of the Defense Policy Bureau.

During most of his service, Tokuchi focused on Japan-U.S. defense cooperation, security-related legislation, defense buildup programs, and operations of the Japanese Defense Forces. From July 1995 through November 1996, Tokuchi was stationed in Washington, D.C. as a visiting senior research fellow at the Institute for National Strategic Studies (INSS) of the US National Defense University (NDU). He taught Japan's national security policy at the National Graduate Institute for Policy Studies (GRIPS) from 2002 to 2015, and has been teaching Japan's defense policy at Aoyama Gakuin University since 2006.

Tokuchi currently holds several positions in the academic and research institutions: Senior Fellow at GRIPS, Visiting Fellow at the Institute of International Relations of Sophia University, Senior Research Advisor at the Institute for International Policy Studies (IIPS), and so forth. Tokuchi received his Bachelor of Laws degree from the University of Tokyo in 1979, and received a Master of Arts in Law and Diplomacy (M.A.L.D.) degree at the Fletcher School of Law and Diplomacy in 1986.

David WALTON

Senior Lecturer, Western Sydney University



Dr. David Walton received Ph.D. from the University of Queensland. Conducted research in the field of diplomatic history, foreign policy, and Australia-Japan post-war relations. Taught at Griffith University, University of Tasmania, and Western Sydney University since 1995. Publications include *New Approaches to Human Security in the Asia Pacific: China, Japan and Australia* co-edited with William T. Tow and Rikki Kersten (Ashgate, 2013) and *Power Transition In Asia* co-edited with Emilian Kavalski (Routledge, in print). Served as a Japan Foundation Fellow, School of Law and Politics, the University of Tokyo 2014 and Visiting Professor at Meiji University in 2015.

SONG Yann-huei

Research Fellow, Institute of European and American Studies, Academia Sinica



Dr. Yann-huei Song received his Ph.D. in International Relations from Kent State University, Ohio; L.L.M. and J.S.D. from the School of Law (Boalt Hall), University of California, Berkeley. He is also adjunct professor at the National Taiwan Ocean University and National Sun-Yet Sen University. He has frequently been asked to provide advisory opinions by a number of government agencies in Taiwan on the policy issues related to the East and South China Seas and the international law of the sea.

Virginia Bacay WATSON

Professor, Asia-Pacific Center for Security Studies



Dr. Virginia Bacay Watson joined DKI APCSS as an assistant professor in July 2004. She held prior appointments at the University of Denver and Colorado School of Mines and served as an exchange faculty for the University of Colorado in Beijing, China. She was also a consultant for various international and governmental organizations. She teaches and publishes on topics including science and technology policy in the Asia-Pacific, the strategic role of emerging technologies, Southeast Asia/Philippine security issues, and resource/water security. Dr. Watson is originally from the Philippines, where she obtained her bachelor’s degrees in Asian Studies and Management of Financial Institutions. She holds a Master’s Degree in Asian Studies from Cornell University and a Doctorate in International Studies (in the field of comparative politics) from the

University of Denver focusing on two areas: international technology assessment & management, and public policy. She is fluent in Tagalog and Ilonggo and conversant in Japanese and Spanish.

PHAM Lan Dung

Professor, Diplomatic Academy of Vietnam



Dr. Pham Lan Dung is the Secretary General of Vietnam Society of International Law and Director General of the Foreign Services Training Center, Diplomatic Academy of Vietnam, where she has taught since 1996 and was the Dean of International Law Faculty from 2008 to 2015. At the Diplomatic Academy of Viet Nam she teaches courses in Public International Law, International Law of the Sea, International Treaty Law, the Institutional and Legal Aspects of the UN. Her research interests are in international law of the sea with respect to South China Sea disputes and legal aspects of the United Nations and its Security Council. She has written extensively on and contributed several reports and policy recommendations on South China Sea disputes. Dr. Lan Dung received Master in International Law from Moscow State Institute of

International Relations, Ministry of Foreign Affairs, Soviet Union in 1993, and a Master of Arts in Law and Diplomacy from Fletcher School of Law and Diplomacy, Tufts University, Boston, MA, United States in 2002. She obtained a Doctor of Philosophy Degree in International Relations from the Diplomatic Academy of Vietnam in 2014.

2nd Session: Vies from Neighboring Countries

**Please refer the above bios for those appear in both sessions.*

PHAR Kim Beng

Founder & President, Echo Strategic Insight



Dr. Phar Kim Beng was previously a graduate from University of Notre Dame, University of Cambridge, with cross registration at The Fletcher School of Law and Diplomacy, and Harvard University. It was at the latter he received several teaching distinction awards in the Core Curriculum and the Graduate School of Arts and Sciences. Among others, he served as the Head Teaching Fellow in International Conflict and Cooperation, Chinese Cultural Revolution, Modern Chinese History, and Modern World Economy. He received a graduate essay distinction award from Harvard Asia Quarterly, and has published a book on “Discourse of Islamic State in Malaysia,” and several hundred opinion editorials in Far Eastern Economic Review, The Asahi Shinbun, Harvard International Review, The Japan Times, The Straits Times and The South China Morning Post. His Ph.D. is on ASEAN Regional Forum, Track Two Diplomacy and South China Sea at University of Helsinki, Finland. He was also a former Japan Foundation Scholar at Waseda University Japan and Meiji University.

HATAKEYAMA Kyoko

Associate Professor, Kansai Gaidai University



Dr. Kyoko Hatakeyama is an Associate Professor at Kansai Gaidai University in Japan and currently teaching International Relations. Prior to this position, she worked as a research analyst at the Ministry of Foreign Affairs of Japan. Her research interests include Japan's security policy and International Relations Theory with a focus on constructivism. Her latest research focuses on Japan's arms trade ban policy and its relations to domestic norms. She is the co-author with Craig Freedman of the book *Snow on the Pine: Japan's Quest for a Leadership Role in Asia* (Singapore: World Scientific, 2010). Hatakeyama received her B.A. from the Faculty of Law, Keio University, and received M.A. and Ph.D. from Macquarie University.

(In the order of appearance)

3. Presentation Papers

First Session: Situations “after” the July 12 PCA Verdict

SONG Yann-huei
Research Fellow, Academia Sinica (Taiwan)

The South China Sea Arbitral Award: Taiwan’s Response and Possible Ways to Encourage Cooperation

International Reactions to the July 2016 Award

On July 12, 2016, the Arbitral Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (hereinafter referred to as “UNCLOS” or the “Convention”)¹ to hear the South China Sea arbitration case (*The Republic of the Philippines v. The People’s Republic of China*)² issued its final Award (“the Award”),³ the first significant international law decision on maritime disputes in the South China Sea. Some commentators suggest that the Tribunal’s ruling could be a game changer for managing or resolving maritime disputes in the South China Sea. However, the People’s Republic of China (“PRC” or “China”) dismissed the Award as nothing but “a piece of trash paper”⁴ and considered the Tribunal’s ruling “null and void”.⁵

Shortly after the issue of the Award, Australia, Canada, Japan, New Zealand, the Philippines, Singapore, the United States, and Vietnam issued statements, calling on the parties to accept the outcome of the South China Sea arbitration case. However, Montenegro, Pakistan, Russia, Sudan, Taiwan, and Vanuatu took a different position, questioning the obligation to abide by the Tribunal’s ruling. Around 147 countries took a neutral position or issued no

¹ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3, reprinted in 21 I.L.M. 1262 (1982) and *The Law of the Sea: Official Texts of the United Nations Convention on the Law of the Sea and of the Agreements relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea with Index and excerpts from the Final Act of the Third United Nations Conference on the Law of the Sea*, U.N. Sales No. E.97.V.10 (2001). As of September 23, 2016, the Convention had 168 parties. See U.N. Division for Ocean Affairs and Law of the Sea, Chronological lists of ratifications of, accessions and successions to the Convention, available at http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm# (last visited 10/13/2016).

² PCA Case No. 2013-19: *The Republic of Philippines v. The People’s Republic of China*, available in the website of the Permanent Court of Arbitration (“PCA”) at <https://pcacases.com/web/view/7> (last visited 10/13/2016).

³ In the Matter of the South China Sea 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, July 12, 2016, available at <http://www.pcacases.com/pcadocs/PH-CN-20160712-Award.pdf> (last visited 10/13/2016)

⁴ See speech by Dai Bingguo at China-US Dialogue on South China Sea Between Chinese and US Think Tanks, July 5, 2016, available at <http://www.china-embassy.org/eng/zgyw/t1377747.htm> (last visited 7/10/2016).

⁵ Foreign Ministry Spokesperson Lu Kang’s Regular Press Conference on June 14, 2016, Ministry of Foreign Affairs of the People’s Republic of China, available at http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1372136.shtml (last visited 10/19/2016).

statements in relations to the ruling.⁶

Both the United Nations and the International Court of Justice also issued statements, either distancing themselves from the Tribunal's award or stressing their own non-involvement in the South China Sea arbitration case.⁷ The EU changed its previous position when it issued a statement on behalf of its member States, including the four members of the G-7, namely, France, Germany, Italy, and the United Kingdom, in response to the Tribunal's ruling on July 15, 2016, in which it did not "support" or "welcome" the Award, but merely "acknowledged" it.⁸ But in April 2016, foreign ministers from the G-7 countries -- Britain, Canada, France, Germany, Italy, Japan, the United States -- and the High Representative of the European Union met in Hiroshima, Japan, where they called on all States "to fully implement any decisions rendered by the relevant courts and tribunals which are binding on them, including as provided under UNCLOS."⁹ Clearly, it is the group's common position that the decisions made by the Tribunal in the South China Sea arbitration case are binding on China. But the EU softened, if not changed, its position on the issue three days after the issue of the Award.

In addition, in a series of ASEAN-led summit meetings held in the summer of 2016 and thereafter, the South China Sea arbitration case and the Tribunal's ruling were not mentioned at all in the joint Communiqué, joint statements, or chairman's statements that were issued at the conclusion of the meetings, nor was there a call on the Parties to comply with the decisions made by the Tribunal. These meetings include the 49th ASEAN Foreign Ministers' Meeting ("AMM"), the 23rd ASEAN Regional Forum ("ARF"), the 4th ASEAN-US Summit, and the 11th East Asia Summit. Moreover, in his final address to the United Nations General Assembly as United States President, Barack Obama did not mention the arbitration case and the obligation of the Parties to abide by the ruling.¹⁰ This was followed by a report in the U.S. mass media, saying that a directive from the National Security Council ordered Pentagon leaders to strike "great power competition" from official statements because the phrase inaccurately frames the U.S. and China as on a collision course. Pentagon leaders were asked to find something less inflammatory to replace the phrase.¹¹

It is understandable that all nations have their own set of interests in the outcomes of the South China Sea

⁶ "Who Is Taking Sides After the South China Sea Ruling?" AMTI, CSIS, August 15, 2016, available at <https://amti.csis.org/sides-in-south-china-sea/> (last visited 10/19/2016). See also Paterno Esmaguel II, "PH vs China: Which countries support Beijing?" RAPPLER, July 9, 2016, available at <http://www.rappler.com/newsbreak/in-depth/139167-west-philippine-sea-countries-support-china> (last visited 10/19/2016). See also "Putin: Russia Supports China's Stance on South China Sea," RUSSIA-INSIDER, September 6, 2016, available at <http://russia-insider.com/en/russia-supports-chinas-stance-south-china-sea/ri16285> (last visited 10/19/2016).

⁷ The remarks made by Stéphane Dujarric, Spokesman for the Secretary-General, are as the following: "... the UN doesn't have a position on the legal and procedural merits of the case or on the disputed claims." The message posted in the website of the International Court of Justice is as the following: "The International Court of Justice (ICJ) wishes to draw the attention of the media and the public to the fact that the Award in the South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China) was issued by an Arbitral Tribunal acting with the secretarial assistance of the Permanent Court of Arbitration (PCA). The relevant information can be found on the PCA's website (www.pca-cpa.org). The ICJ, which is a totally distinct institution, has had no involvement in the above mentioned case and, for that reason, there is no information about it on the ICJ's website." For the remarks made by the Spokesman for the UN Secretary-General, see Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, July 12, 2016, available in the UN website at <http://www.un.org/press/en/2016/db160712.doc.htm>; for the ICJ message, visit the court's website at <http://www.icj-cij.org/homepage/index.php?lang=en> (last visited 10/19/2016).

⁸ See Declaration by the High Representative on behalf of the EU on the Award rendered in the Arbitration between the Republic of the Philippines and the People's Republic of China, July 15, 2016, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/07/15-south-china-sea-arbitration/> (last visited 10/19/2016) and Theresa Fallon, "The EU, the South China Sea, and China's Successful Wedge Strategy," ANALYSIS, AMTI, October 13, 2016, available at <https://amti.csis.org/eu-south-china-sea-chinas-successful-wedge-strategy/> (last visited 10/19/2016).

⁹ G7 Foreign Ministers' Statement on Maritime Security April 11, 2016 Hiroshima, Japan, available at https://eeas.europa.eu/headquarters/headquarters-homepage/2897/g7-foreign-ministers-statement-on-maritime-security-april-11-2016-hiroshima-japan_en (last visited 10/18/2016).

¹⁰ US President Obama urges world to eschew division and pursue global integration at UN Assembly, UNITED NATIONS NEWS CENTRE, September 20, 2016, available at <http://www.un.org/apps/news/story.asp?NewsID=54967> (last visited 9/22/2016).

¹¹ David B. Larter, "White House tells the Pentagon to quit talking about 'competition' with China," NAVY TIMES, September 26, 2016, available at <https://www.navytimes.com/articles/white-house-tells-the-pentagon-to-quit-talking-about-competition-with-china> (last visited 10/19/2016).

arbitration case and foreign policy consideration and priorities with China. Taiwan is no exception.

Taiwan's Reaction to the Award

In response to the Award on jurisdiction and admissibility issued by the Tribunal on October 29, 2015, in which the Tribunal found it had jurisdiction to consider 7 of the Philippines' 15 Submissions in the arbitration case, but reserved considerations of its jurisdiction to rule on the rest of the Submissions to the merits phase, Taiwan's Ministry of Foreign Affairs issued a statement, saying that "the arbitration does not affect the ROC in any way, and the ROC neither recognizes nor accepts related awards."¹²

On July 12, 2016, the Tribunal rendered the unanimous award, in which it found China's maritime claims and related actions in the South China Sea to be inconsistent with the UNCLOS. The Award surprised many international ocean law and policy experts who had followed the proceedings closely since January 2013. The two biggest surprises are related to the declaration on the legality of China's "nine-dash line" and the finding on the status of Itu Aba (Taiping Island), the largest naturally formed feature in the Spratly Islands. Very few experts predicted a decision would have been made by the Tribunal declaring the "nine-dash line" inconsistent with the UNCLOS, nor in particular in relation to China's historic rights to the South China Sea resources. Likewise, very few believed that Itu Aba would have been ruled a mere "rock" under paragraph 3 of Article 121 of the Convention, rather than a "fully entitled island", the terminology used by the Tribunal, under paragraph 2 of the same article.

On the same day when the Tribunal issued its final award, the office of the President Tsai Ing-wen declared Taiwan's position on the outcome of the South China Sea arbitration case, stating *inter alia* that

The arbitral tribunal did not formally invite the ROC to participate in its proceedings, nor did it solicit the ROC's views. The decisions of the tribunal which impinge on the interests of the ROC, especially with regard to the status of Taiping Island, have seriously undermined the rights of the ROC over the South China Sea Islands and their relevant waters. The ROC government does not accept any decisions that undermine the rights of the ROC, and declares that they have no legally binding force on the ROC.¹³

This was followed by the similar statements issued by the office of the Executive Yuan (the Cabinet), the Ministry of Foreign Affairs, the Ministry of Interior, and the Council of Mainland Affairs. Taiwan's Legislative Yuan (Congress) also issued a joint statement, rejecting the Tribunal's ruling.¹⁴

On July 22, 2016, in response to a question posed by Lally Weymouth, a senior associate editor at *The Washington Post*, concerning the Tribunal's ruling during an interview at the Presidential Office, President Tsai gave three reasons for Taiwan's rejection to the decisions made by the Tribunal: (1) Taiwan is an important interested party in this case, but Taiwan was not invited to participate in the proceedings; (2) it was unacceptable to refer to Taiwan as "the Taiwan

¹² ROC government reiterates its position on South China Sea issues, Public Diplomacy Coordination Council, Ministry of Foreign Affairs, the Republic of China, October 31, 2015, available at http://www.mofa.gov.tw/en/News_Content.aspx?n=539A9A50A5F8AF9E&sms=37B41539382B84BA&s=F5170FE043DADE98 (last visited 10/13/2016).

¹³ See ROC government position on the South China Sea arbitration, News Release, July 12, 2016, available at <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=37703&rmid=2355> (last visited 10/21/2016)

¹⁴ These statements are available at http://www.mofa.gov.tw/News_Content_M_2.aspx?n=5028B03CED127255&sms=5ED24855AD8E6C58&s=2FE266654F43DD5C (July 12, 2016); <http://www.mac.gov.tw/ct.asp?xItem=115077&ctNode=5649&mp=1> (July 12, 2016); http://www.moi.gov.tw/chi/chi_latest_news/news_detail.aspx?sn=10788&type_code=02&search_d1=YYY-MM-DD&search_d2=YYY-MM-DD&pages=1 (July 12, 2016, in Chinese) and http://www.ey.gov.tw/en/News_Content2.aspx?n=1C6028CA080A27B3&sms=E0588283EFAA02AD&s=7F05FE8BDB66CEF8 (July 14, 2016).

Authority of China” and (3) Taiping Island really is an island, not a rock.¹⁵

On July 26, 2016, Ma Ying-jeou, former ROC President, in a letter sent to the Wall Street Journal, stated that “Both President Tsai and I have rejected the unfair award, rendered without Taiwan’s participation.” According to Ma, the ruling “lacks due process of law”, “the award’s logic is also unreasonable”, “produces more problems than answers for claimants in the South China Sea”, and “creates an obstacle rather than a path leading to a peaceful resolution.”¹⁶

Taiwan’s South China Policy and Actions Taken

On July 19, 2016, President Tsai Ing-wen held the first high-level national security meeting, where she laid out four principles for Taiwan’s dealing with the South China Sea maritime disputes:

- (1) All disputes should be resolved peacefully in accordance with international law and UNCLOS;
- (2) Taiwan must be included in any multilateral dispute settlement mechanisms;
- (3) Other relevant parties are obligated to ensure freedom of aviation and navigation in the South China Sea; and
- (4) Taiwan calls for other relevant parties to set aside differences and resolve disputes through joint development, and remains committed to promoting regional stability and protecting maritime resources.¹⁷

Based on these principles, President Tsai instructed Taiwan’s government agencies to take the following five measures to deal with the South China Sea issues:

- (1) to step up patrol missions to safeguard the rights and safety of Taiwan fishermen operating in the South China Sea;
- (2) to enhance multilateral dialogue with other relevant parties on collaboration and consensus;
- (3) to invite international scholars to Taiping Island in the Nansha (Spratly) Islands to conduct scientific research on climate change, earthquakes, geology and meteorology;
- (4) to collaborate with international organizations to develop Taiping Island into a base for providing humanitarian aid and supplies; and
- (5) to encourage more local talents to study maritime law so as to strengthen the nation’s preparedness in response to international legal issues.¹⁸

On November 29, 2016, Taiwan conducted humanitarian rescue drills on Taiping Island and waters off the Spratly Islands. The drills involved the Coast Guard Administration, Navy, Air Force, Ministries of Transportation and Communications, and Health and Welfare. The exercise was conducted as part of President Tsai's policy of transforming Taiping Island into a base for the provision of humanitarian aid and logistical support.¹⁹

As December 12, 2016 marks the 70th anniversary of Taiwan’s restoration of Taiping Island after the end of the Second World War, President Tsai has been asked to set foot on the island on December 12 for the purpose of showing her determination to safeguard Taiwan’s sovereignty and maritime rights in the South China Sea and the desire to participate actively in the regional dialogue processes that deal with the South China Sea issues. Due to foreign and cross-Strait policy considerations, President Tsai did not visit Taiping Island. Instead, her administration prepared a number of events to commemorate the 70th anniversary of Taiping Island’s recovery, which include an exhibition entitled “Sustainable Governance and Enduring Peace” jointly organized by the Ministry of the Interior and Academia

¹⁵ See Lally Weymouth, “Taiwanese President Tsai Ing-wen: Beijing must respect our democratic will”, THE WASHINGTON POST, July 21, 2016, https://www.washingtonpost.com/opinions/2016/07/21/44b0a1a4-4e25-11e6-a422-83ab49ed5e6a_story.html (last visited 10/21/2016).

¹⁶ Ma Ying-Jeou, “A Flawed Verdict in the South China Sea,” THE WALL STREET JOURNAL, July 26, 2016, <http://www.wsj.com/articles/a-flawed-verdict-in-the-south-china-sea-1469553283> (last visited 10/21/2016).

¹⁷ Wendy Lee, “President convenes national security meeting the first time,” TAIWAN NEWS, July 20, 2016, <http://www.taiwannews.com.tw/en/news/2954613> (last visited 12/05/2016).

¹⁸ “Tsai holds 1st NSC meeting, unveils South China Sea approach,” TAIWAN TODAY, July 20, 2016, <http://taiwantoday.tw/ct.asp?xItem=246353&ctNode=2175> (last visited 12/05/2016).

¹⁹ “Taiwan holds joint coast guard and navy rescue training near disputed South China Sea island,” SOUTH CHINA MORNING POST, November 29, 2016, <http://www.scmp.com/news/china/policies-politics/article/2050113/taiwan-holds-joint-coast-guard-and-navy-rescue-training> (last visited 12/05/2016).

Historica.

The exhibition, opened to the public on December 9 and last until December 19, 2016, displays the relevant measures and projects undertaken by Taiwan's government agencies under the principles and measures specified by President Tsai on July 19, 2016 at the first high-level meeting on national security, which include ecological conservation work, humanitarian assistance, and scientific research. The exhibition highlights the nature of future Taiwan's policy on the South China Sea.²⁰ On December 9, 2016, President Tsai made the following remarks at the opening of "the Sustainable Governance and Enduring Peace" exhibition:

I once again reiterate that the government will staunchly safeguard our country's territorial sovereignty in the South China Sea, and insists upon all legal rights over the relevant waters in accordance with international law and the law of the sea. We will relinquish neither our sovereignty nor the rights that are ours by law.

Taiping Island is not only the sovereign territory of the ROC, it is also an important site for concrete contributions by Taiwan to regional peace and stability.²¹

She also reiterated the "four principles" and "five actions" with regard to the South China Sea issue that were announced on July 19, 2016 as mentioned previously in this paper.²²

Based upon the progress development of Taiwan's South China Sea policy since the issue of the Award by the Tribunal in July 2016, it is the opinion of this author that there is a need for the Tsai administration to undertake more efforts to help Taiwan's participation in the multilateral negotiation processes that discuss maritime cooperation in the South China Sea. The function and value of the center to be established by Taiwan unilaterally on Taiping Island for the purposes of providing humanitarian aid and logistical support or conducting scientific research on climate change, earthquakes, geology and meteorology will become very limited if no participation from other countries that border the South China Sea.

The Duty to Cooperation under the UNCLOS

The development of maritime cooperation in the South China Sea is useful to managing potential conflicts, resolving the disputes, and thus promoting peace and stability in this important East Asian semi-enclosed sea through which \$5.3 trillion of trade passes each year. Although China and Taiwan stated that they are not bound by the outcome of the South China Sea arbitration, they are still bound by the UNCLOS, to which China is a party, and Taiwan, while a non-party, is willing to accept the rules provided for in the Convention. Likewise, all countries bordering the South China Sea, with the exception of Cambodia, had ratified the UNCLOS and therefore are obligated to abide by and implement the applicable provisions contained in the Convention in the South China Sea.

State parties to the UNCLOS bear the obligation to cooperate. Article 74(3) and Article 83(3) of this Convention provide that "[p]ending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without

²⁰ See "Sustainable Governance and Enduring Peace: An Exhibition Commemorating the 70th Anniversary of the Recovery of the South China Sea Islands opens December 9," Ministry of the Interior, Republic of China (Taiwan), December 1, 2016, http://www.moi.gov.tw/english/english_news/news_detail.aspx?sn=17049&type_code= (last visited 12/05/2016).

²¹ "President Tsai attends exhibition commemorating 70th anniversary of recovery of South China Sea Islands," Office of the President (Taiwan), December 9, 2016, available at <http://english.president.gov.tw/Default.aspx?tabid=491&itemid=38433&rmid=2355> (last visited 12/09/2016).

²² *Id.*

prejudice to the final delimitation.”²³ For those State parties that are bordering an enclosed or a semi-enclosed sea, they should cooperate with each other in the exercise of their rights and in the performance of their duties under the Convention.²⁴ This requirement is relevant both to joint development and cross-border utilization agreements signed between or among states that are bordering the East and South China Seas.

Both the UN Charter and the UNCLOS provide a number of methods that can be used by the countries involving in maritime disputes to resolve or manage their disputes, which include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, regional arrangements, or other peaceful means of their own choice. As far as “other peaceful means” are concerned, examples include the adoption a bilateral or code of conduct, making a provisional arrangement, issuing joint statements, signing a joint declaration, announcing peace initiatives, and organizing Track I, Track One-and-half, or Track II meetings or conferences.²⁵

Peaceful Proposals in the South China Sea

In 2002, ASEAN member states and China signed the Declaration on the Conduct of Parties in the South China Sea,²⁶ and have been under negotiation for the purpose of adopting a regional code of conduct for the South China Sea.²⁷ The Philippines proposed to turn the South China Sea into a “Zone of Peace, Freedom, Friendship and Cooperation” (ZoPFFC) in September 2011. Taiwan proposed the Spratly Initiative in 2008, the East China Sea Peace Initiative in 2012, and South China Sea Initiative in 2015 respectively. China and Japan proposed to cooperate and to make the East China Sea “a sea of peace, cooperation and friendship”. Likewise, China and the ASEAN member States have proposed to transform the South China Sea from a sea of confrontation into “a sea of peace, cooperation and friendship”.²⁸ Most recently, on December 3, 2016, the Chinese Foreign Minister Wang Yi said at the opening ceremony of the International Situation and China Diplomatic Seminar in 2016 that China needs to enhance friendly cooperation with the member states of ASEAN, and really makes the South China Sea “a sea of peace, friendship and cooperation” by insisting on the approach of dialogue and negotiation to settle the South China Sea issues.²⁹

Bill Hayton discussed a number of “other peaceful means” in his book entitled “*The South China Sea: The Struggle for Power in Asia*” that were adopted by the littoral states to help promote cooperation and to resolve the disputes in the South China Sea, which include signing fisheries agreements, establishing a marine conservation park, announcing peace initiatives, proposing joint development projects, organizing workshop on managing the potential conflicts, conducting joint marine biodiversity investigation, re-examining the history, and referring the disputes to a

²³ *Supra* note 1.

²⁴ See Articles 122 and 123, *supra* note 1.

²⁵ In November 2016, the 26th Informal Workshop on Managing Potential Conflicts in the South China Sea, which is a Track 1.5 mechanism for ASEAN member states, PRC, and Taiwan to discuss maritime cooperation issues, was held in Bandung. The main goal of this workshop is to manage maritime disputes in the South China Sea.

²⁶ For the text of the Declaration, visit the website of the ASEAN at http://asean.org/?static_post=declaration-on-the-conduct-of-parties-in-the-south-china-sea-2 (last visited 12/05/2016).

²⁷ See paragraph 9 of the Chairman’s Statement of the 23rd ASEAN Regional Forum, Vientiane, Lao PDR, July 26, 2016, “Turning Vision into Reality for a Dynamic ASEAN Community,” http://asean.org/storage/2016/07/Chairmans-Statement-of-the-23rd-ASEAN-Regional-Forum_FINAL.pdf (last visited 12/05/2016).

²⁸ Yann-huei Song, “A Study of the Peace and Cooperative Proposals by Taiwan in the East and South China Seas,” in COOPERATION AND PEACE IN EAST ASIAN REGION, edited by C.Y. Shie, Takahashi Nobuo, and Ing Jer Huang, Soochow University, Avanguard Publisher, November 2014, pp. 145-201.

²⁹ For the test of Foreign Minister Wang Yi’s speech, visit the website of the PRC Ministry of Foreign Affairs at <http://www.mfa.gov.cn/web/zyxw/t1421108.shtml> (last visited 12/5/2016).

court or tribunal for settlement.³⁰ At the end of his book, Hayton raised the following question: “How then could a Chinese population be persuaded to take a different view of the history of the South China Sea?” He answered this question himself by stating that

Perhaps one answer lies in Taiwan. The chances of a freer debate on Chinese history are much greater in Taiwan than on the mainland. There are already a number of ‘dissident’ academics rethinking aspects of twenty-century history. Taiwan is also where the archives of the Republic of China, the government that first drew the ‘U-shaped line’, are stored.³¹

In the epilogue of the book, Bill Hayton offered a richer prospect by citing the cooperative experience in the Mediterranean, which just like the South China Sea, is also a semi-enclosed sea. He wrote:

It’s a semi-enclosed Sea with a shared history and a connected present whose whole is greater than the sum of its parts. It will be a Sea with agreed boundaries based upon universal principles and governed by shared responsibilities to use its resources most wisely, a Sea where fish stocks are managed collectively for the benefit of all, where the impacts of oil exploration and international shipping are alleviated and where search and rescue operations can take place unimpeded. It could happen – if a line is redrawn.³²

The award made by the Tribunal in the South China Sea arbitration case and the suggestions made by Bill Hayton raise important issues that are related to the importance of Article 123 of the UNCLOS, the obligation of the countries that border the South China Sea to cooperate among themselves, and the role that Taiwan can play in the management and resolution of the South China Sea disputes.

After the Award was issued, Article 123 of the UNCLOS has been considered the low-hanging fruit for promoting cooperation in the South China Sea. As such, efforts could and should be made by the bordering countries (1) to coordinate the management, conservation, exploration and exploitation of the living resources of the South China Sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment in the South China Sea; (c) to coordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the South China Sea; and (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the proposed cooperative measures.

Ways to Encourage Cooperation: What could be done by Taiwan?

For Taiwan, the following policy options are worthwhile to be considered for the purpose of enlarging the possibilities of Taiwan’s participation in the regional dialogue processes that deal with the South China Sea issues, and achieving the stated goal to help maintain peace and stability as well as promoting cooperation in this semi-enclosed sea, where Taiwan has high strategic, security and economic stakes.

First, in order to help prevent, deter, and combat the IUU fishing activities in the South China Sea in accordance with the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Sea,³³ the 1995 FAO Code of Conduct for Responsible Fisheries,³⁴ the 1995 United

³⁰ Bill Hayton, *THE SOUTH CHINA SEA: The Struggle for Power in Asia* (New Haven and London, Yale University Press, 2014), Ch. 9, pp. 239-265.

³¹ *Id.*, p. 265.

³² *Id.*, p. 269.

³³ Text of the agreement is available at http://www.fao.org/fileadmin/user_upload/legal/docs/012t-e.pdf (last visited 12/12/2016)

³⁴ Text of the code is available at <http://www.fao.org/docrep/005/v9878e/v9878e00.htm> (last visited 12/12/2016).

Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks,³⁵ the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal Fishing,³⁶ and the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing,³⁷ Taiwan could make efforts at the APEC's fisheries-related working group meetings or the Indonesia-organized Informal Workshop on Managing the Potential Conflicts in the South China Sea to initiate the discussion on the possibility of reaching agreement to issue a joint declaration on combating IUU fishing in the South China Sea.

Second, in order to help manage and conserve living resources in the South China Sea, Taiwan should make efforts to initiate the discussion on the need to establish a regional fishery management and conservation organization (RFMO) in the region. Taiwan could approach the Southeast Asian Fisheries Development Center (SEAFDEC), Thailand, and Japan to discuss the possibility of transforming the SEAFDEC into a RFMO.

Third, in order to protect marine biodiversity in the South China Sea, Taiwan could make efforts at the Informal Workshop on Managing the Potential Conflicts in the South China Sea to develop multilateral biodiversity studies, just like the Anambas Expedition that was conducted in the Anambas and Natuna Islands of Indonesia in March 2002.³⁸ The areas in need for multilateral biodiversity studies are located in the northeastern and northwestern portions of the South China Sea.

Fourth, Taiwan could consider announcing a new peace and cooperation initiative in the South China Sea that integrates the proposals made by Taiwan's former President Chen Shui-ban (the Spratly Initiative) in February 2008 and Ma Ying-jeou (the South China Sea Peace Initiative and its Roadmap) in May 2015 and January 2016, respectively. This new peace and cooperation initiative should also integrate Taiwan's new southbound policy into other regional economic integration plans such as Regional Comprehensive Economic Partnership (RCEP), an ASEAN-centered proposal for a regional free trade area, and the China-proposed Belt Road Initiative (BRI), referring to the Silk Road Economic Belt and 21st Century Maritime Silk Road, a significant development strategy launched by the Chinese government with the intention of promoting economic co-operation among countries along the proposed Belt and Road routes.³⁹

Fifth, Taiwan could consider the possibility of establishing a group of experts on the history of the South China Sea so that they can conduct deep studies and re-examine the relevant history that is important to clarify the claims to the ownership of the islands and the water areas, and to help manage and resolve the disputes in the South China Sea.

Sixth, Taiwan could consider the need to promote cooperation with mainland China in the South China Sea in the areas of fisheries, humanitarian assistance, anti-piracy, climate change, marine scientific research, and the protection of the marine environment.

Last but not least, Taiwan could consider the possibility to expand the scope of participation in the annually-held South China Sea Study Summer Camp by inviting college students and researchers from other countries that border the South China Sea. The 6th Cross-Strait South China Sea Study Summer Camp will be held in Taiwan. So far, however, such possibilities have not been discussed between the two sides of the Taiwan Strait.

³⁵ Text of the Agreement is available at http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm (last visited 12/12/2016).

³⁶ Text of the plan of action is available at <http://www.fao.org/docrep/003/y1224e/y1224e00.htm> (last visited 12/12/2016).

³⁷ Text of the Agreement is available at <http://www.fao.org/port-state-measures/en/> (last visited 12/12/2016).

³⁸ For information about Ex Anambas, visit <http://lcnhm.nus.edu.sg/exanambas/> (last visited 12/12/2016).

³⁹ The Belt and Road Initiative aims to connect Asia, Europe and Africa along five routes. The Silk Road Economic Belt focusses on: (1) linking China to Europe through Central Asia and Russia; (2) connecting China with the Middle East through Central Asia; and (3) bringing together China and Southeast Asia, South Asia and the Indian Ocean. The 21st Century Maritime Silk Road, meanwhile, focusses on using Chinese coastal ports to: (4) link China with Europe through the South China Sea and Indian Ocean; and (5) connect China with the South Pacific Ocean through the South China Sea. For more information about the initiative, visit <http://beltandroad.hktdc.com/en/about-the-belt-and-road-initiative/about-the-belt-and-road-initiative.aspx> (last visited 12/12/2016).

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CONTINUITY, CHANGE and CRISIS:
THE PHILIPPINES IN THE AFTERMATH OF THE PCA VERDICT

My discussion will examine four features of the Philippines' current security environment in the aftermath of its legal victory in July 2016. I argue that these attributes contain dynamics of continuity, change, and the potential for crisis.

First, the Philippines' response to its Permanent Court of Arbitration (PCA) win has served to tamp down the then escalating tensions in the South China Sea (SCS). A newly-elected Philippine president 'friendlier' to Beijing, the continuing lack of consensus of ASEAN member states on the issue, and the nature of U.S.-PRC relations are some of the reasons I cite that is creating – for the moment – a de-escalation of the maritime tensions.

Second, there is a growing trend toward the diversification and intensification of maritime cooperation between the Philippines and other countries even while there is a possibility that, under President Duterte's administration, Philippine-U.S. ties will suffer a downturn. This is reflective of Duterte's predisposition to expand and/or develop further the Philippines' foreign relations particularly with its Asian neighbors.

Third, there is a continuing evolution of the Philippines' 'maritime security' concept that is beginning to configure around the nexus of territorial integrity, resource security, environment security, and border security. Articulating this development is the ramp up of Philippine Coast Guard capabilities, a more pronounced 'fish-as-food/economic resource' narrative, and the improving regime of maritime cooperation between the Philippines, Indonesia, and Malaysia.

Finally, the PCA verdict raises questions of geopolitical/geostrategic import. For instance, what is the domestic and sub-regional impact of Duterte's foreign policy recalibrations? To what extent will the Philippines' 2017 ASEAN Chairmanship matter in light of the PCA verdict? How will the Trump presidency inform the SCS issue?

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Symposium on the South China Sea at Meiji University Tokyo, 19/12/2016

After the July 12 Verdict: International Law and Possible Solvency in Maritime Asia

Slide 1

The dispute after the judgment

4. Excessive and vague claims => Has clarified the claims, limited the scope of claims only to the extents of legitimate entitlements under UNCLOS;
5. Undefined status of the islands, for some extents => Has given a clear answer that Spratly can not have the status of archipelagic state and can not have archipelagic baseline;

Slide 4

The dispute before the judgment

1. Five countries and Taiwan as a non-state party to the SCS Dispute;
2. Disputes over sovereignty of Paracel and Spratly;
3. Undefined scope of Paracel and Spratly;
4. Undefined status of the islands, for some extents;
5. Excessive and vague claims;

Slide 2

The dispute after the judgment

6. Undefined status of the geographical features of Paracel and Spratly => Has defined the status of the features in question and related features (Itu Aba).
7. Undefined maritime entitlements from each features => The problem has been solved with the one on status of features.
8. Existence of vast overlapping maritime areas => Overlapping maritime areas have been significantly reduced, even though the question of sovereignty has not been resolved.

Slide 5

The dispute before the judgment

6. Undefined status of the geographical features of Paracel and Spratly;
7. Undefined maritime entitlements from each features
8. Existence of vast overlapping maritime areas because of:
 - o excessive maritime claims;
 - o sovereignty claims;
 - o undefined status of the features;

Slide 3

Theoretical impacts of the judgment

1. Provide legitimate interpretation and application of the UNCLOS provisions
2. Reduce overlapping maritime claims
3. Outlaw the excessive claims
4. Promote peace and stability
5. Create clear legal basics to determine legitimate interests, rights of parties to the dispute and other countries.

Slide 6

Reaction of China

- China declares that the arbitration does not have jurisdiction and therefore not to respect the judgment
- Under international law the judgment is final and binding
- It would not be for the interest of China in broader context to act against the judgment
- Reaction in the short term and in the long term

Slide 7

Reactions of other countries

- Judgment provide legal bases for responses and reactions from other countries
- The areas that are of interest of states in the world
 - freedom of navigation and flight
 - maritime security
 - peace and stability
- The areas that are of interest states in the region:
 - maritime entitlements and sovereign rights
 - environmental protection
 - demilitarization

Slide 10

The rule of law

- The significance of the rule of law principle
- The rule of law and national interests: short-term vs. long-term

Slide 8

Reactions of other countries

- No jurisdiction
- The judgment is not binding
- Not to comply with the judgment
- Keep silence

Slide 11

Reactions of other countries

- Support diplomatic and judicial process to settle the dispute
- Support the judgment
- Having final and binding effect
- Keep silence

Slide9

Main maritime security issues that concern Vietnam

Issues of Vietnam's concern:

1. Sovereignty over "land features" in the Spratlys
2. Sovereignty over "land features" in the Paracels
3. Protection of sovereign rights and jurisdiction within Vietnam's EEZ and continental shelf
4. Protection of Vietnam's fishermen and their vessels operating in the overlapping areas, particularly around the Paracels

Slide 12

Sovereignty

1. Sovereignty over "land features" in the Spratlys
2. Sovereignty over "land features" in the Paracels

- **Vital interests:** sovereignty, territorial integrity; political stability
- **Development interests:** peace, favorable environment
- **Legal perspective:**
 - Is sovereignty a maritime or a territory acquisition issue?
 - Sovereignty disputes can be resolved only by the consent of the parties
- **Practical perspective:** sovereignty is always a long-standing issue

Slide 13

The possibility of escalation of conflict

3. In practical terms, it depends on the parties
- Parties, including media, academia and public opinion should understand what legal aspects have been resolved by the award
 - The 2 extremes should be avoided:
 - To misunderstand and expect more than what the award has done => being too critical about no changes after the award
 - To exaggerate the possibility of noncompliance and its effect => being too pessimistic about the binding force of the award
 - Parties should be patient, cooperative, should understand their legitimate interests and be determined to firmly protect its national interests

Slide 16

Maritime Security Issues

3. Protection of sovereign rights and jurisdiction within Vietnam's EEZ and continental shelf

4. Protection of Vietnam's fishermen and their vessels operating in the overlapping areas, particularly around the Paracels

- Maritime issues
- Scope of rights and jurisdiction of Vietnam in its EEZ and CS can be significantly affected by excessive claims from other parties in ES/SCS
- Incidents occur in **overlapping areas** (distinct from the sovereignty dispute); legal aspects of the incidents can be examined in the light of LoS and UNCLOS

Slide 14

Vietnam's attitudes toward bilateral negotiations between disputing claimants

- Principle: Issues should be resolved by its nature
 - Bilateral issues should be resolved bilaterally
 - Multilateral issues should be addressed multilaterally
- Issues relating to the interests of more than 2 parties should be resolved by those parties
- Issues relating to peace and stability, freedom of navigation and orderly order at sea, maritime environment and resources protection involve all SCS users and affected parties

Slide 17

The possibility of escalation of conflict

1. The possibility was high in the past, conflicts and incidents broke out often, tension escalated for the following reasons:

- Overlapping areas before the award remained large
- It was difficult to define the overlapping areas because of
 - vague and excessive claims
 - unclear status of the features in the SCS

2. Theoretically, after the July award the possibility has to be reduced, since the vague claims have been clarified as well as the status of the geographical features in the SCS

Slide 15

Vietnam's attitudes toward the use of arbitration

- Settle disputes by peaceful means in conformity with international law
- Compliance with international law provides an equal footing to all ES/SCS claimants
- Art. 33(1) UN Charter:
"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, **arbitration, judicial settlement**, resort to regional agencies or arrangements, or other peaceful means of their own choice."

Slide 18

Vietnam's attitudes toward the use of arbitration

- Vietnam clearly stated its attitudes in the Position Paper submitted to the Arbitration on the 5th December 2015, in which Vietnam expressed its supports of the arbitration's jurisdiction, reconfirmed Vietnam's legitimate interests in the SCS and protested against the groundless U-shape line.
- After the July award, in his statement, the Vietnam's spoke person welcomed the final award of the Arbitration and restated that Vietnam maintained its consistent position as stipulated in the Position Paper on 5/12/2015

Slide 19

ASEAN

1. Activities of China (and other parties) in the SCS have been very complicated and unpredicted. ASEAN is very concerned, especially with the construction of the islands and militarization of those constructed features
2. ASEAN at present focuses on the following principle:
 - non-use of force
 - peaceful settlement of disputes
 - compliance with IL and UNCLOS
 - with diplomatic and legal processes

Slide 22

ASEAN

- "Welcome" the Award: The Philippines, Vietnam.
- "Take note": Malaysia, Indonesia, Singapore.
- No country has made official statement on the content of the Award.
- 49th AMM Joint Communique: No single term "PCA Award" was mentioned.
- What can be interpreted the ASEAN position on PCA's Award?

Slide 20

ASEAN

3. SCS is of common interest for many countries in the region and countries in the world. They are also under the obligation to contribute to the promotion of peace, security, stability and safety of navigation.
4. Comply fully and effectively with DOC and speed up the negotiation of COC.
5. Implement measures for trust building, preventive diplomacy; enhance cooperation in maritime security; prevent encounters and risks at sea.

Slide 23

ASEAN

- "We reaffirm our shared commitment to maintaining and promoting peace, security and stability in the region, *as well as to the peaceful resolution of disputes, including full respect for legal and diplomatic processes, without resorting to the threat or use of force ...*"

Slide 21

ASEAN

- 49th AMM Joint Communique
- 19th ASEAN China Summit in Laos (8/9/2016): move on from escalation of tension and focus on rebuilding trust and confidence – 2 outcome documents
 - Joint statement on the application of the Code for Unplanned Encounters at Sea (CUES) – nothing new compared to agreement among 21 countries
 - Guidelines for Hotline Communications among Senior Officials of the Ministries of FA in response to maritime emergency of the DOC
- China suggest: Agree on the outline of the COC by mid 2017 if there is nothing disruptive
- 17th NAM Meeting in Venezuela 9/2016

Slide 24

Conclusion

- The jurisdiction is legally binding the parties to the case not depending on the reactions and responses of any state
- The enforcement of the judgment is, however, carried out by the parties themselves
- The responses and actions of other countries would enhance the principle of the rule of law for the interest of all and each country.

Slide 25

ITO Go Director, MIIPS / Professor, Meiji University (Japan)

The PCA Award and Japan

1. The Security in the Maritime Area
 - (1) Freedom of Navigation
 - (2) Exclusive Economic Zones (EEZ)
 - (3) Territorial Ownership
2. Fundamental Conceptions: Seemingly already laid out → The political will become important.
3. The PCA Award: no islands in the SCS
Itu Aba: Japan's territory in the past (長島)
The SCS must be a public good.
“Goods” can be changed to “bads.” How will China address the “bads”?
4. Okinotori: An intended impact on Japan
5. China says that Japan and the US are outsiders for the South China Sea, but this claim cannot be sustained from the perspectives of (1), since that area is the place where a tremendous number of vessels pass every day for transport and other logistical purposes.
6. China has obstructed the passage of various vessels in the past, and these events challenge the existing foundations of maritime order globally.
7. FON + (2) + (3)
8. China could say:
 - (a) Guam and Hawaii for the United States.
 - (b) French Polynesia for France
 - (c) The Falkland Islands for Britain
 - (d) Antilles for the Netherlands, the United States, France and Britain

Above islands are geographically located quite far from their home countries, while China claims only the area of the South China Sea, which is in the neighborhood of China.

9. Ownership of an island in the South China Sea (which is (3).) may lead to the claim on the EZZ around the island (which is (2).), and may expand the argument of obstructing the freedom of navigation (which is (1).). This argument contends that maritime areas are like an extension of land.
10. The legal framework can become a method of projecting one country's political interests.

Second Session: Views from Neighboring Countries

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Australia and the South China Sea Maritime dispute

Australia's formal position

- Neutral position on territorial dispute
- Support for international law conventions such as UNCLOS
- Support for Freedom of Navigation in disputed area (hugely important for Australian as 60% of Australian exports travel through the international shipping routes)

Issues

1. There has been noticeably tougher stance evident in Australia since Malcolm Turnbull became Prime Minister in September 2015.
2. Australia was worked with the United States, Japan and Southeast Asian countries as part of a security web
 - Australia has criticized Beijing's massive land reclamation activities and installation of potential military bases.
 - The Australian military routinely patrols in the South China Sea, under Operation Gateway. The flights typically take place from Butterworth base in Malaysia, and are normally undertaken by P3-Orion aircraft.
 - Australian Air Marshal Davies said unlike the past, "nearly all" recent Operation Gateway surveillance flights had been challenged. But he insisted they would continue because they are in line with international law.
3. The rise of China and claims and actions in the South China Sea represents a dilemma for Australian foreign policy and relations with China and Japan as well as Australia's overall regional diplomacy.
 - Australia promotes closer ties with China to enhance commercial and economic ties and subsequent benefits to the Australian economy, yet paradoxically the South China Sea dispute has led China to be viewed as a potential security threat to regional security.
 - Finding the appropriate range of policies towards China poses a range of interrelated problems for Australia's

foreign relations with Japan. At the regional level, the difficulty is finding the balance between security and commercial interests. Both Australia and Japan have a burgeoning trade relationship with China and have made efforts to further expand commercial links in China through investment and trade opportunities. Yet as is well known, Canberra and Tokyo have substantially strengthened security links and have maintained a strong commitment to an enhanced security alliance with the United States. Australia's dual strategy of close ties with the United States and Japan and proactive foreign policy towards China becomes problematic in light of ongoing strategic competition in the South China Sea and the United States to pivot in Asia.

•The recent upgrading of bilateral relations between Australia and China highlights the challenge of maintaining a hedging strategy towards China. Australia has made the decision to develop a genuine strategic partnership with China within the next few years. The decision has led to almost unprecedented and at times fiery public debates among academics and defence specialists. In many respects, the debate is symbolic of the China question; can the current Australian hedging strategy continue to work?

**PHAR Kim Beng
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Strategic Circular

Whether Sino Malaysia Relationship in South China Sea after the July 12 verdict ?

Malaysia believes that the July 12 verdict by the Permanent Court of Arbitration (PCA) on the Status of the South China Sea is a strong supplement to its own claims of five islets/islands, the most important of which is Pulau Layang Layang that has already been operating as a divers haven and hotel resort. These are islets that lie within the Exclusive Economic Zones of Malaysia anyway. Thus, Malaysia is more confident of its claims viz other countries that compete for theirs in Paracels and Spratlys.

There are three reasons to believe that the PCA have advanced the individual bargaining power of Malaysia. But, as this circular will note further down, only theoretically. The reality is harsher.

One, the original 11 dash line, which was incidentally reduced by Mao Tse Tung, to 9 dash line, alas, to accommodate the Vietnamese Communist government in the 1960s in the name of joint socialist brotherhood, rests on invalid premises, especially the claim of historical continuity and jurisdiction per modern international law. The PCA made clear of this poinr, to which Malaysia is most delighted to say the least.

Second, it is not just the bargaining rights of Malaysia that have advanced in the (open) world of public relations, granted that the international media has been focusing on South China Sea, but that of ASEAN as a whole.

The PCA may have been an adjudication submitted by the Philippines alone, but due to the membership of the Philippines as a key member and founder of ASEAN, the benefits or stronger legal cum moral claims that accrue to Manila, have also cascaded downward to benefit other claimants in the grouping; especially that did not press the case more aggressively than former President Benigno Aquino II did.

Three, although the US is not a signatory to the UN Conventions on the Laws of the Sea (UNCLOS) and is more unlikely than ever to come on board under President Donald Trump over the next four years, the verdict of the PCA galvanized the international community to the side of ASEAN, even without US on board for now.

How can Malaysia listen when its head has already turned face wars to Beijing ? It is not just Malaysian Prime Minister alone but his entire cabinet and staff members.

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Hedge or engagement? Japan's norm-based strategy and the rise of China

Japan preferred to employ economic means as a tool of diplomacy, eschewing involvement in military affairs during the Cold War period. However, departing from the economic-centered approach towards the region, it started to provide military assistance towards littoral countries such as the Philippines and Vietnam in the South China Sea in the 2000s. Undeniably, China's claim for sovereignty on the Senkaku Islands currently administered by Japan, and its provocative behavior exemplified by repeated intrusions into Japan's territorial waters alarmed Japan. Considering the territorial dispute over the Senkaku Islands between Japan and China, it seems Japan is becoming assertive and increasing its military support towards the littoral countries in the South China Sea to counter China's perceived threat in the East China Sea. Or, is Japan's military support one of the attempts to increase its military role, which started after the end of the Cold War? Realists deem 'power' as synonymous with maximization of military power. They emphasize a power competition among states. However, due to the growing interdependence in various fields among states, states cannot single-mindedly pursue its national interests by totally disregarding norms. Therefore, incorporation of normative factors into the analysis of the South China Sea issue in which economic and security interests of many states are intertwined will complement the realist approach.

Despite the growing interdependent world, Realists argue that Japan has been active to counter China's threat and protect the Senkaku Islands. However, it is too simplistic to regard Japan's active engagement and military support as one of the hedging strategies to protect the Senkaku Islands. It is argued that international acquiescence to deviated behavior would lead to a change of order/norms. Therefore, I argue that Japan implements a norm-based strategy to protect both the Senkaku Islands and the current regional order. Emergence of a region that is not governed by laws would run counter to Japan's interests.

That is to say, what Japan hopes to defend is not only the Senkaku Islands. Tokyo also wants to defend the current regional order, which is ruled by laws. When China's assertiveness in the East China Sea remained in the realm of bilateral territorial disputes, Japan made an effort to settle the issue through negotiation. Such engagement is illustrated by its attempt to reach agreement over the joint exploration of the oil field in the East China Sea. However, the 2009 'impeccable incident' made Japan apprehensive. When Japan perceived that China was ready to take action to change the status quo, it chose to hedge against China, rather than seeking engagement. Japan's military support towards the Philippines and Vietnam through the provision of patrol vessels and its support for capacity building demonstrated its hedging strategy. Japan has also repeatedly referred to the 'rule of laws' at both bilateral and multilateral meetings with the Asian countries. By underlining an international norm, namely, 'rule of laws', Japan has aimed to put pressure on deviant China by garnering regional support to defend the current regional order Japan has greatly benefited from. The Senkaku dispute was not a sole and direct reason triggering Japan's activism. Rather, China's attempt to change the current order/ norm by using force raised concerns among the Japanese policy makers. Japan became active to protect twin direct and indirect national interests—sovereignty on the Senkaku Islands and the regional peace and stability—by employing normative diplomacy.