

CHAPTER I INTRODUCTION

A. Background

On July 12, 2016, China made a statement to reject the decision of the Permanent Court of Arbitration in The Hague to rule unanimously in favor of the Philippines against China's claims in the South China Sea (Shi & Jun, 2016). This rejection has caught the attention of the international community more than before because it can be considered as China's biggest diplomatic setbacks in the last decade. In this thesis, the writer wants to elaborate on the reasons behind China's decision to reject the result of The Hague tribunal ruling in the case of the South China Sea.

To give a brief review of the most disputed territory among China and its neighboring maritime states, the South China Sea itself is an area in the part of the western Pacific Ocean, which stretches from the Karimata and Malacca Straits to the straits of Taiwan (LaFond, 2007). It is a semi-enclosed sea covering an area of almost 3.5 million square kilometers (PCA, 2016, p. 1). Geographically, the location of the South China Sea is surrounded by East Asia and Southeast Asia states such as China, Taiwan, the Philippines, Vietnam, Malaysia, Singapore, Brunei, and Indonesia.

The rich natural resources lie in the South China Sea is one of the factors that make the area attractive to its surrounding states. The water territory is home to the highly biodiverse coral ecosystem. The area is also holding an abundant amount of gas and oil resources on its seabed. Furthermore, the South China Sea is also the location of the Spratly Islands and Paracel Islands, which comprise of small islands and coral reefs existing above the water as the peaks of undersea mountains (PCA, 2016, p. 1). Those majorly uninhabited islands have become the claiming targets by the states surrounding the region.

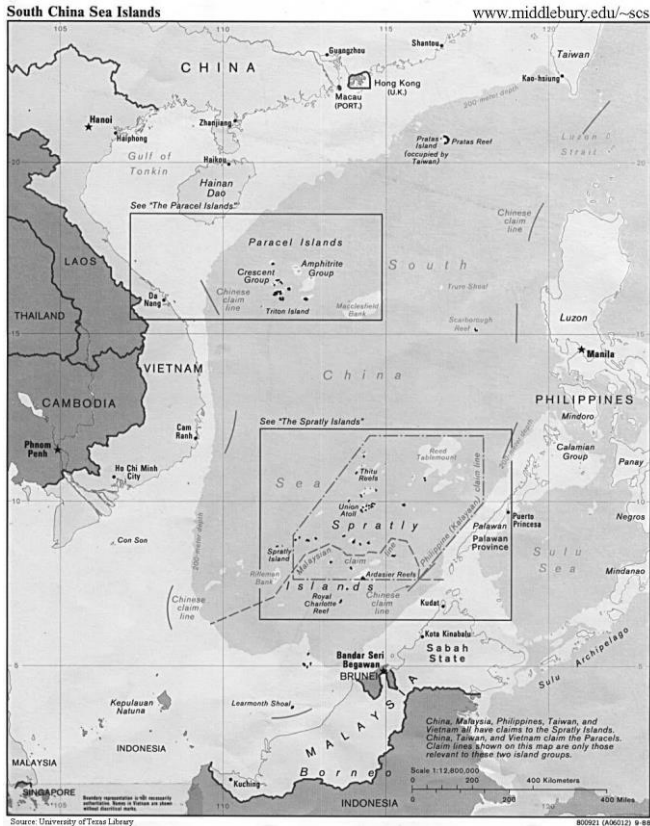


Figure 1.1 The map of the South China Sea (*South China Sea, 2011*)

The overlapping claims in the South China Sea involve almost all sovereign states within the region, namely China, Taiwan, the Philippines, Vietnam, Brunei, and Malaysia (The Straits Times, 2016). Those states are claiming over islands (including special features in the South China Sea, such as the Spratly Islands and Paracel Islands), reefs, banks, and maritime boundaries. Their three main reasons to claim those areas, among others, are to acquire the rights for fishing, exploit the natural resources such as oil and gas, and strategically control the important shipping lanes in the area.

So far, there are already many attempts done to settle the dispute, both by bilateral negotiations between the claimant states and multilateral discussions facilitated by ASEAN (Association of Southeast Asian Nations). The overlapping claims have made both attempts take a long time to solve the dispute since its emergence. China, which is so far has claimed the largest portion of the territory which defined by the “nine-dash line,” triggers the Philippines to challenge the validity of China’s historical-based claim in the area marked by the “nine-dash line” to the court in the Hague (BBC, 2016).

Under the Permanent Court of Arbitration (PCA), which serves as the Registry in the arbitration, the Philippines proposed the interstate arbitration proceedings to the Chinese Embassy in Manila through a *note verbale* with a Notification and Statement of Claim on the West Philippines Sea on January 22, 2013. The Philippines disputed the case over ‘maritime entitlements’ and the lawfulness of the Chinese activities in the South China Sea. This action was taken after the event happened on April 2012 when the Philippine warships lose control over the Scarborough Shoal in their arrest attempt to the illegal fishing done by the Chinese in the area. (Yu, 2016).

The arbitration proposed by the Philippines is taking a basis on the 1982 United Nations Convention on the Law of the Sea (hereafter the “Convention” or UNCLOS). Both the Philippines and China have ratified and are the parties tied to the Convention. The Convention adopts the “constitution for the sea” to “settle all issues relating to the law of the sea” (PCA, 2016, p. 1). It provides the procedures to settle various disputes, including the arbitration procedures contained in Annex VII of the Convention. The proceedings are referring to Article 1 about the institution of proceedings in Annex VII, as stated as follow:

“Subject to the provisions of Part XV, any party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based.” (UNCLOS, 1982)

In the arbitration, there are four categories that the Philippines has brought before the Tribunal to be disputed. Thus, the Philippines has asked the Tribunal:

1. to resolve the dispute between the Parties regarding the source of maritime rights and entitlements in the South China Sea, especially in proving that China's rights and entitlements which are based on historical rights are invalid;
2. to resolve the dispute between Parties in the entitlements to Scarborough Shoal and several features in the Spratly Islands which are claimed by both Parties;
3. to resolve the dispute between Parties concerning on the lawfulness of China's actions in the South China Sea by interfering the Philippines to exercise its rights to fishing, oil exploration, navigation, and construction of artificial islands and installations, and also by failing to protect and preserve the maritime environment;
4. and to prove that China has aggravated and extended the disputes by restraining the Philippines' access to a detachment of Philippine marines stationed at Second Thomas Shoal and by constructing artificial islands and land reclamation at seven reefs in the Spratly Islands in a large-scale (PCA, 2016, pp. 2-3).

However, we have to note that the Convention does not address the sovereignty of the state over the land territory, nor it can determine the delimitation of maritime boundaries. In 1996, China made a declaration to exclude maritime boundary delimitation from its acceptance of compulsory dispute settlement in the Convention. Accordingly, the Tribunal does not intend to grant sovereignty to one or both Parties over their disputed areas in the South China Sea. Similarly, the Tribunal also does not imply to delimit any maritime boundary between the Parties (PCA, 2016, pp. 1-2).

During the arbitration, the proceedings are always met by the non-acceptance and non-participation from the China side. However, China's absence in the proceedings does not hold them to proceed. As stated in the Article 9 of Annex VII (UNCLOS, 1982), that the "absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings." The

tribunal also still recognizes China as the party in the arbitration, referring to Article 296(1) of the Convention and Article 11 of Annex VII (UNCLOS, 1982). However, the situation has made the Tribunal unable to accept the claims made by the Philippines to a default judgment.

Despite its absence, China has made a formal statement in their Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines that the Tribunal lacks jurisdiction over the Philippines' claims. Published by the foreign ministry of PRC on December 7, 2014, the position paper argues that:

“(a)[t]he essence of the subject-matter of the arbitration is the territorial sovereignty over the relevant maritime features in the South China Sea; (b) China and the Philippines have agreed, through bilateral instruments and the Declaration on the Conduct of Parties in the South China Sea, to settle their relevant disputes through negotiations; and (c) the disputes submitted by the Philippines would constitute an integral part of maritime delimitation between the two countries” (PRC, 2014).

On October 29, 2015, the Tribunal issued an Award on Jurisdiction and Admissibility in which it decided to treat China's Position Paper “as equivalent to an objection to jurisdiction and to conduct separate hearing and rule on its jurisdiction as a preliminary question.” The Award on Jurisdiction also concluded “with respect to seven of the Philippines' fifteen Submissions while deferring decisions on seven other Submissions for further consideration in conjunction with the merits of the Philippines' claims” (PCA, 2016, p. 4). In its final Award issued on July 12, 2016, the Tribunal was highly in favor of the Philippines, ruling that

1. China's claim on “nine-dash line” as well as its claim to historic rights is invalid under international law;
2. no maritime feature in Spratly Islands claimed by China (within 200 nautical miles of Mischief Reefs and Second

- Thomas Shoal) could be considered as an island under the UNCLOS;
3. there were unlawful conducts done by the Chinese such as obstructing the Philippine vessels from operating in Scarborough Shoal and damaging the marine environment by conducting harmful activities; and
 4. China has aggravated and extended the Parties' disputes on their respective rights and entitlements as well as the protection and preservation in the area of Spratly Island (PCA, 2016, pp. 473-7).

Responding to the Permanent Court of Arbitration's verdict, the president of the People's Republic of China, Xi Jinping made a statement on July 12, 2016 that "China will not accept any proposition or action based on an international tribunal's ruling over the disputed South China Sea" (Shi & Jun, 2016). China's Foreign Minister also delivered a statement repeating its position that "the award is null and void and has no binding force" (Tiezzi, 2016). On the previous day, the slogan "中国，一点都不能少" ("Zhongguo, Yi Dian Dou Bu Neng Shao" – "China cannot be less even for a bit", referring to China's territory including the "nine-dash line" area) had been trended by the website and the social media account of People's Daily (人民日报 – Renmin Ribao), the biggest newspaper group of China and the official newspaper of Chinese Communist Party, to show the stance of the people and the state towards the result of the Hague's tribunal ruling (People's Daily Weibo, 2016).

B. Research Question

Based on the background above, this research is aimed to find out: "*Why does China reject the decision of The Hague tribunal ruling over the South China Sea case?*"

C. Theoretical Framework

In order to answer the research question, the writer uses the rational actor model of foreign policy decision-making theory and the concept of national interest as theoretical framework.

1. Foreign Policy Decision Making Theory (The Rational Actor Model)

Graham T. Allison firstly coins the rational actor model in his famous book entitled *Essence of Decision: Explaining the Cuban Missile Crisis* written in 1971. In his book, Allison explains the phenomenon of the Cuban missile crisis using three kinds of foreign policy decision-making models, with the rational actor as the first model (Allison, *Essence of Decision: Explaining the Cuban Missile Crisis*, 1971). Karen Mingst, in her book *Essentials of International Relations*, describes the rational actor model as a model of the foreign policy decision-making process in which actions are chosen by the national government in order to maximize the nation's strategic goals and objectives (Mingst, 1999, p. 131). In this context, the rational actor model can be the most suitable model of foreign policy decision-making theory to explain the reasons behind China's decision to reject the Hague tribunal ruling on South China Sea case.

In the rational actor model, Allison argues that the state or government is conceived as a rational, unitary actor in the decision-making process, which has an established goal, a set of options, and a single estimated consequence from each alternative. In a rigorous model of action, the decision taken by a unitary actor becomes rational when there is consistency among the goals and objectives in the way it selects the best among alternatives (Allison, *Essence of Decision: Explaining the Cuban Missile Crisis*, 1971, pp. 28-9). Accordingly, Mohtar Mas'ood supports Allison's argument in which he states that the rational actor model is very common to be used by realists or policymakers to analyze a state's foreign policy due to its rational approach. It is also based on the assumption that as a unitary actor, there are no splits of a decision in the government of a state (Mas'ood, 1990, p. 235). Following those arguments, it is to be expected that there is no split of decision inside the Chinese government regarding their claim in the South China Sea, particularly in facing the Tribunal's result. In the case of a highly centered authoritarian system such as

China's, the primary arbiter of the nation's foreign policy is the supreme leader, Xi Jinping, himself (Nie, 2016). The 'split of decision' is very rare to happen since his decision is, most often than not, supported by his government officials and his people. Furthermore, following the arguments about the rational actor model, China's decision to reject the Hague tribunal ruling on South China Sea case is the result of the state's consideration after taking into account the consequences from each alternative that the state has. The decision that China takes is consistent with the nation's goals and objectives.

According to Allison (Allison, 1971, p. 33), four components are constructing the rational actor model in determining its Rational Choice:

"(1) *Goals and Objectives*. National security and national interests are the principal categories in which strategic goals are conceived. Nations seek security and a range of other objectives; (2) *Options*. Various courses of action relevant to a strategic problem provide the spectrum of options; (3) *Consequences*. Enactment of each alternative course of action will produce a series of consequences. The relevant consequences constitute benefits and costs in terms of strategic goals and objectives; and (4) *Choice*. Rational choice is value-maximizing. The rational agent selects the alternative whose consequences rank highest in terms of his goals and objectives."

Taking the case of China's rejection towards the Hague tribunal ruling over the South China Sea case, the rational actor model will be applied as follows:

- a. *Goals and Objectives*. The goals and objectives of a state are essentially extracted from its national interests. Therefore, this thesis will examine China's national interest in the South China Sea as consideration.
- b. *Options*. The rational actor model directs us to find that there are some options or alternatives offered for the decision-makers to formulate their foreign policy. To China's government, there are two options available to response: accept or reject.

- c. *Consequences.* In the foreign policy decision-making process, listing the consequences is the core of the entire process because it contains the benefits and costs from each course of action (alternative) that will be chosen as a foreign policy. Therefore, it must be proven that China's government has calculated its rational benefits and costs in deciding to reject the arbitration result in terms of strategic goals and objectives.
- d. *Choice.* The last step in formulating a nation's foreign policy using the rational actor model is 'choice.' A rational actor will select the alternative which consequences rank highest in terms of his goals and objectives in determining the choice. Taking the benefits and costs from each alternative into account, the rational actor model guides us to find evidence that China's decision to reject the Hague tribunal ruling over the South China Sea case is the highest rank of choices in terms of China's goals and objectives.

In order to show a clear comparison between the benefits and costs from accepting or rejecting the Hague tribunal ruling, the following tables will provide the main points about the consequences described in the previous step.

Table 1.1 Benefits and Costs of China Accepting / Rejecting the Hague Tribunal Ruling on the South China Sea Case

Parameter	Accepting	Rejecting
Benefits	<ul style="list-style-type: none"> - China receive positive image in supporting regional stability in Southeast Asia. 	<ul style="list-style-type: none"> - To consolidate the China's Communist Party leadership. - To show off China's military preparedness in protecting its territorial sovereignty. - To maintain the ongoing claim over the disputed area in terms of its economic and strategic potentials.
Costs	<ul style="list-style-type: none"> - President Xi Jinping will be considered as a weak national leader and therefore risk his leadership to the China Communist Party. - China's military force could be considered as unreliable in protecting its territorial claim. - China loses its ongoing claim over the disputed area in terms of its economic and strategic potentials. 	<ul style="list-style-type: none"> - China receives a negative image in international political realm.

According to the table, the decision to reject the Hague tribunal ruling on the South China Sea has more benefits than to accept. The benefits that China gains from rejecting the Hague tribunal ruling are that China can consolidate the China's Communist Party leadership, show the preparedness of China's military to protect its territorial sovereignty, and maintain the ongoing claims on the disputed area in terms of economic and strategic potentials. In order to understand those standpoints, we have to take the consideration that China has become more assertive in South China Sea, notably after President Xi Jinping's accession to power in 2012. Prior to his leadership, the CCP's legitimacy was threatened due to the weakening economy. Therefore, it is essential to the CCP to have more muscular foreign policy to show the Chinese people that it is able to cater to the people's well-being and aspirations by putting importance on safeguarding China's strategic economic interests and territorial ambitions in the South China Sea (Casarini, 2017).

However, rejecting the Hague tribunal ruling costs China to receive negative image in international political realm. China has already been criticized by the United States and its allies from showing non-acceptance and signaling in advance that it will ignore the tribunal's ruling. Nevertheless, China as a rational actor is considered to be able to determine a decision that has best alternative and the decision to reject the Hague tribunal ruling over the South China Sea case is the highest rank of choices in terms of its goals and objectives.

2. The Concept of National Interest

Since the founding of nation-states, the term "national interest" has been used by statesmen and scholars to describe the aspirations and goals of a sovereign state in relation to other sovereign states comprising the external environment (Nuechterlein, 1976). In the conceptualization of national interest, Hans J. Morgenthau in his book *Politics Among Nations* wrote that "the main signpost that helps political realism to find its way through the landscape of international politics is the concept of interest defined in terms of power"

(Morgenthau, 1985). His approach in defining interest is by equating it with power, where power is used to establish and maintain control by a state over another. In Morgenthau's view, the concept of national interest has a residual meaning inherent from the concept which is survival. In order to survive, a nation-state has "to protect their physical, political, and cultural identity against encroachments by other nation-states" (Coulombis & Wolfe, 1986). Protecting the physical identity means maintaining the territorial integrity of a nation-state. Protecting the political identity is equated with the preservation of the existing political-economic regimes. Protecting the cultural identity is related to the preservation of ethnic, religious, linguistic, and historical norms in a nation-state.

Similarly, according to Jack C. Plano and Roy Olton, national interest is a fundamental objective that guides a state in its foreign policy decision-making process. It is a highly generalized conception of overall elements that make the state's most vital needs, include:

- a. self-preservation: the rights of a nation-state to maintain its existence and defend itself from external threats;
- b. independence: the rights for a nation-state to determine its own destiny by not being bound or colonized by other country.
- c. territorial integrity: a form of sovereignty of a nation-state over their territory and it is the highest recognition of the existence of a nation-state in international political realm.
- d. military security: the rights for a nation-state to maintain its stability; the quantity and quality of weapons of a nation-state will affect its initial position and strength in comparison to other nation-states.
- e. economic well-being: the rights to realize economic prosperity which is one of the pillars that supports the stability of a nation-state (Plano & Olton, 1988).

In the relation to the case study, the writer considers that the aspects of territorial integrity, military security, and economic well-being are essential for China to achieve their

national interests. In accordance to protect the territorial integrity, President Xi Jinping and the CCP strive for more assertive policy in South China Sea to defend what has historically been the part of China's territory. Beyond the fact that there is no living activity in the claimed area, China shows its military presence to affirm its claim. Since the disputed area contains potential and strategic economic resources, China wants to maintain their *status quo* as the *de facto* ruler of the contested area and therefore, will still be able to continue the activities in there.

D. Hypothesis

Using the rational actor model and the concept of national interest as theoretical frameworks, it can be hypothesized that China rejects the decision of the Hague tribunal ruling over the South China Sea case because rejection will be more benefiting to China rather than accepting it. The reasons are:

1. China can consolidate the China's Communist Party leadership by striving for more assertive policy in South China Sea to defend what has historically been the part of China's territory.
2. China can show that its military force is reliable to protect its territorial claim.
3. China can maintain the ongoing claims on the disputed area in terms of economic and strategic potentials.

E. Research Method

In conducting this research, the writer carried out the research method as below in collecting and analyzing the data to answer the proposed research question.

1. Level of Analysis

Based on the research question proposed by the writer, the unit of analysis in this thesis is on the state level because the phenomenon explained in this research is the reason behind China's response -- as a state -- towards the decision of The Hague, particularly on the arbitration proposed by the Philippines. The unit of explanation in this thesis is on the state level since the analysis will be emphasized in the national structure of decision making inside China's

government. Therefore, the level of analysis in this thesis is “correlationist” because the level of the unit of explanation is equal to the unit of analysis (Mas'oe'd, 1990, pp. 38-9).

2. Purpose of Research

According to Babbie (Babbie, 2007), in addition to exploration and description, another main purpose of social science research is to explain things. Since the research question is asking about the factors (*causes*) behind the actual fact (*China's rejection*), therefore the purpose of this research is to give an explanation to China's rejection towards the Hague tribunal ruling over the South China Sea case.

3. Data-collection Method

The data in this research is acquired by doing library research. Whereas, the data is the secondary data by citing from other works in the form of books, journals, proceedings, conventions, websites, and news relevant to the topic discussed in this thesis.

4. Data Analysis Method

In the method of analyzing the data, this thesis is carried out a qualitative analysis. Qualitative analysis is a method for examining social research data without converting them into a numerical format. The assessment of observation in this thesis is done by doing a content analysis, in which the evidence is provided from the result of analysis of mainly official speeches and relevant documents available.

5. Range of Research

To avoid the discussion becomes too broad or too narrow, the writer limits the range of research only in the topic concerning the dispute between China and the Philippines over the South China Sea during 2013-2016, particularly China's rejection and its underlying factors. Even though, to put the analysis to be in context, contemporary China's foreign policy dynamics are involved in the discussion before emphasizing the given case. The more detail points of discussion are described in the outline below.

F. Outline

The outline of this thesis is described as follows:

- CHAPTER I** highlights the background of the problem, the research question, the theoretical framework, the hypothesis, the research method, and the outline;
- CHAPTER II** provides necessary information about the dynamics of contemporary China's foreign policy under Xi Jinping administration to put the given case in context;
- CHAPTER III** describes the dynamics in the South China Sea dispute between the Philippines and China;
- CHAPTER VI** explain China's decision regarding its rejection to the Hague tribunal ruling in South China Sea case;
- CHAPTER V** is the closing part of the thesis, which contains the conclusion.