



# Centre for Air Power Studies (CAPS)

Forum for National Security Studies (FNSS)

74/16

## RULING ON THE SOUTH CHINA SEA: WILL CHINA ABIDE BY THE RULE OF LAW?

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The Permanent Court of Arbitration in The Hague recently gave its ruling on the case brought to it by the government of the Philippines which challenged China's historical claims to the South China Sea. The ruling given by the tribunal dismissed China's claim to the 80 percent of the South China Sea which was based on its nine dashed line and included the various reefs and islands. China was also held accountable for disrupting the other South East Asian nations' freedom of navigation rights by asserting its territorial claims as well as destroying the marine diversity such as corals while building its artificial islands and air strips in the contested sites.<sup>1</sup> The group of eminent international lawyers that made up the tribunal which heard the case stated that, China's historical claims to the South China Sea does not hold, since there was no evidence that China had historically exercised exclusive control over the waters or their resources. The Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the 'nine-dash line'.<sup>2</sup>

However, over the last few years China has become very assertive in its claims over the South China Sea as a result of its evolving strategic calculus, the most important being its growing energy requirements. According to rough estimates there lies an untapped 11 billion barrels of oil in the South China Sea, 190 trillion cubic feet (estimated) of natural gas, and is the passage for about US \$ 53 trillion total annual trade. These rich and untapped resources and the trade route makes this region very desirable and is therefore highly contested with claims to the Islands and reefs being made by other nations – apart from China – such as Malaysia, Vietnam, Brunei, Taiwan, Indonesia and the Philippines.<sup>3</sup> Also, the South China Sea is of great significance to China since it is a part of its grand economic corridor – 'One Belt, One Road' (OBOR) – which, once operationalised, would pass through the South China Sea, opening China to Europe, as shown by the maritime route in Image 1.



Image 1: China's One Belt, One Road: Sea Links through the South China Sea<sup>4</sup>

Source: Faculty of Law, University of Oxford, <https://www.law.ox.ac.uk/one-belt-one-road>, accessed on July 13, 2016.

The other crucial questions that emerge are: what is China's intention, what is China's game plan, and whether it is limited only to its energy and other commercial requirements? The tipping point for China's sudden surge in its claims to the South China Sea could be traced to President Obama's "pivot to Asia" policy. This policy made China realise the US strategic shift towards the Indo-Pacific region. This was seen by China as a containment strategy towards its growth. China's 2015 white paper on military strategy therefore, clearly laid out the expansion of China's naval power by stating that; "the PLA Navy (PLAN) will gradually shift its focus from "offshore waters defense" to the combination of "offshore waters defense" with "open seas protection," and build a combined, multi-functional and efficient marine combat force structure".<sup>5</sup> This change in China's military strategy can also be seen with China building three airstrips in the contested Spratly Islands in order to extend its presence in the disputed waters; further, it has also militarized Woody Island by deploying fighter jets, cruise missiles and installing a radar system.<sup>6</sup> There has also been a massive overhauling of the People's Liberation Army (PLA) which attempts to build a modern high-tech military. President Xi announced on September 2, 2015, during the Victory Day parade, the scaling down of 300,000 soldiers from the PLA force and diverting China's military modernization resources from land towards the air and sea.

China has dismissed the ruling given by the arbitral tribunal, as it would seek to expand its control over the South China Sea. China has boycotted the ruling and sees it as non-binding. It further

states that the ruling cannot be enforced and thus, China would not be bound by it. During an interview with the BBC, Japan's Ambassador to the UK, Mr Koji Tsuruoka stated that the tribunal's ruling is binding on China since it is a signatory to the UN Law of the Sea Convention, which stipulates that any ruling given by an international tribunal is binding on all the signatory States. He further added that China needs to respect and abide by the rule of law since it will set a bad precedence for any future disputes.<sup>7</sup> However, despite China's assertive stance post the verdict, it would seek to ensure that the issue does not escalate as it could damage China's international image. This could compel China to facilitate engagements amongst all the parties involved in this dispute in order to reach some sort of settlement, keeping in mind its other long term strategic interests.

***(Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the position of the Centre for Air Power Studies [CAPS])***

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#### Notes

<sup>1</sup> "Declaration and Statements", *Oceans & Law of the Sea, United Nations, Division for Ocean Affairs and Law of the Sea*, October 29, 2013, [http://www.un.org/depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/depts/los/convention_agreements/convention_declarations.htm), accessed on July 13, 2016.

<sup>2</sup> "The South China Sea Arbitration (The Republic of the Philippines Vs The People's Republic of China)", *Security-Risks.com*, July 12, 2016, <http://www.security-risks.com/security-trends-south-asia/other-security-trends/south-china-sea-arbitration-summary-of-tribunal-award-6433.html>, accessed on July 12, 2016.

<sup>3</sup> "Territorial Disputes in the South China Sea", *Council on Foreign Relations*, <http://www.cfr.org/global/global-conflict-tracker/p32137#!/conflict/territorial-disputes-in-the-south-china-sea>, accessed on July 13, 2016.

<sup>4</sup> *Faculty of Law, University of Oxford*, <https://www.law.ox.ac.uk/one-belt-one-road>, accessed on July 13, 2016.

<sup>5</sup> "Document: China's Military Strategy", *United States Navy Institute News*, <https://news.usni.org/2015/05/26/document-chinas-military-strategy>, accessed on July 13, 2016.

<sup>6</sup> "Territorial Disputes in the South China Sea", *Council on Foreign Relations*, <http://www.cfr.org/global/global-conflict-tracker/p32137#!/conflict/territorial-disputes-in-the-south-china-sea>, accessed on July 13, 2016.

<sup>7</sup> Koji Tsuruoka, "Interview to Impact", BBC World News, July 12, 2016.