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Testing the Waters: The Strategic Implications of an Idealist approach in the South China Sea Dispute

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Introduction

The emergence of China as a regional power in the Asia Pacific is complemented by a more aggressive territorial claim in the South China Sea (SCS).ⁱ With reference to its “nine-dash line” theory in the SCS, which extends to Philippine territorial waters and occupied islands, China bolstered its presence in the SCS by increasing its patrol activities and imposing fishing restrictions in the disputed maritime area.ⁱⁱ These actions by China can be seen as a “flexing of muscles” to strengthen its claims in the SCS, and as a threat to regional security.ⁱⁱⁱ

Moving from its initial tacit stance, the Philippines sought bilateral talks with China as well as used the multilateral platform of the Association of South East Asian Nations (ASEAN) to resolve the SCS dispute.^{iv} However, discursive engagements with China and the ASEAN did not resolve brewing conflict in the SCS. The Philippines was thus compelled to be pro-active in settling the dispute by filing in January 2013 an arbitration case against China in the International Tribunal for the Law of the Sea (ITLOS) as a measure of last resort.^v The Philippines sought for the invalidation of China’s nine dash line and cessation of Chinese incursions into the Philippine Exclusive Economic Zone (EEZ). As a response, China issued a policy pronouncement of non-participation in the ITLOS arbitration proceedings, asserting its “indisputable” sovereignty over the SCS.^{vi}

With this, what value does the Philippine arbitration case present in conflict prevention or resolution in the SCS? What are the constructivist implications of the arbitration case in the effective management of the SCS dispute? Significantly, these inquiries call for a comprehensive understanding of

the prevailing security dynamics between and among prominent actors in that strategic sea in the Asia Pacific region.

This policy study aims to understand how the political and security dynamics in the region—such as the rise of China, and the roles of the United States (US) and ASEAN—influence the behaviors and interests of the Philippines and China in the SCS conflict. This study also seeks to explain how developments in the SCS arbitration case affect the international images of China as an emerging power, the US as a balancing force in the Asia Pacific, and the Philippines as a claimant state in the SCS. Lastly, the analysis intends to determine how the arbitration case, using international law, makes an impact on the resolution of disputes and management of security in the region.

To illustrate the interconnections of key events, state behaviors, and their likely consequences, this policy study constructs a causal loop diagram (CLD) of balancing the SCS dispute through international arbitration. Notably, the constructivist perspective embodied in the CLD illustrates the role of ideas, images, identities, and positions taken by major security actors in the disputed SCS. This frame of understanding recognizes the social process by which a state interprets the behavior of another state based on the image that might have been consciously ascribed by the former and/or by the international community.

Although the realist perspective enables security analysts to determine threats of force in the SCS dispute, an interpretative analysis of the policy regime of legal arbitration requires a constructivist

lens that looks into the subjective but substantial aspects of regional security.

This policy study posits that despite the limitations of the ITLOS arbitration in solving the problem of insecurity in the SCS, the arbitration unravels an idealist strategy of resolving the SCS dispute, as well as the significance of international law in promoting regional security.

The Asia Pacific Regional Security Complex and the SCS Dispute

In a regional security complex, the political relations and security concerns of states are interconnected such that instabilities and armed threats in particular nations can affect the security environment of the entire region.^{vii} Aside from the Philippines and China as major claimants in the SCS, other actors that are actively involved in the SCS security dynamics are the US and ASEAN.

Specifically, the US plays a crucial role in maintaining the security and stability in the Asia Pacific region in which the SCS is strategically located. For the allies, the military power of the US serves as a credible counter-weight to China's hegemonic tendencies and burgeoning capabilities. Although the presence of the US in the Asia Pacific creates a feeling of reassurance for allied countries, the political rivalry between the US and China also engenders an atmosphere of increasing tension in the region.

It must be noted that China's military aggrandizement vis-à-vis its economic development has been a cause of much concern among the US, the Philippines, and other allied countries.^{viii} Indicative of a security dilemma, China, on the other hand, beefs up its military capabilities as a response to perceived alliance of states to contain its emergence as a regional power.^{ix}

Amidst these threat perceptions, the ASEAN Regional Forum (ARF) and the East Asia Summit, among others, tried to work out constructive engagements in managing conflict in the SCS. However, the ASEAN multilateral platform for informal dialogues appears to have fallen short of institutionalizing preventive diplomacy in the SCS.^x In what can be seen as a tug-of-war for regional support, the power competition between the US and China poses a challenge to the solidarity and identification of the regional organization to resolve crucial security issues.^{xi}

Although ASEAN has been quite successful in building confidence and forging functional cooperation among member states, it has not yet delivered its envisioned strategic output—the Code of Conduct (COC)—that will restrain claimant states to act unilaterally in the SCS and to violate international norms. The inability of signatory parties, which include China, to establish the COC despite the 2002 Declaration on the Conduct of Parties in the SCS, reveals the dilemma of making states submit to and comply with agreed rules and regulations. This was evident by the fact that China refused to participate in the ITLOS arbitration case filed by the Philippines.

Apparently, invoking the United Nations Convention on the Law of the Sea (UNCLOS) for a resolution of territorial disputes in the SCS proved to be a difficult course of action in restraining the behavior of an aggressive state and ensuring stability in the SCS. With this, the security architecture of the Asia Pacific region seems to be volatile as the application of international law for a clear-cut resolution of territorial disputes is a very challenging task.

Despite the limitations of the ITLOS arbitration in solving the problem of insecurity in the SCS, the arbitration unravels an idealist strategy of resolving the South China Sea dispute, as well as the significance of international law in promoting regional security.

International relations are influenced not just by international laws but also by social constructions that constitute the normative behaviors of states. In this light, the value of international law is in its vessel of shared meanings, norms, and obligations of states in promoting peace and security in the international community.

International Images: Ideas, Interests, and Identities

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The symbolic and practical values of international law remain to be seen in making China cooperate in the ITLOS proceedings on dispute settlement. It must be taken into account that China, in declaring its nine-dash line, does not recognize the legitimacy and applicability of the UNCLOS in ensuring the territorial integrity of states and the peaceful resolution of maritime disputes. China disregarded the call for explanation in the platform provided for by the UNCLOS, an act that challenged the weight and relevance of the ITLOS proceedings in resolving the SCS dispute.

Notably, implementation of and effective compliance to international laws are complex. Despite the agreed function of the UNCLOS in making states behave according to international law, their exclusive interests, domestic concerns, as well

as national identities prevail in international relations.^{xii} This is especially true in the case of China's provocative claim in the SCS.

Aside from the primacy of national interests over international concerns, differences between western and eastern values also matter. Distinguishing western from eastern culture is important in understanding China's behavior in the SCS dispute. One underlying reason behind China's non-participation in the ITLOS proceedings could be traced from its socio-cultural history, nationalist stance, and self-interested reading of the US pivot in the Asia Pacific and of the Philippine action in the SCS.

It can be inferred that China's defiance of the ITLOS proceedings and its criticisms of the Philippine legal action stems from a notion that an arbitration case is beyond the normative method of dispute settlement among Asians. The sway of Confucianism in China's interpretation of the political interests of the US and the Philippines could explain its negative perception of the recent developments in the SCS dispute. Under the Confucian philosophy, it is considered unethical and disrespectful to drag someone to court since it entails an attack on the person's pride and dignity.^{xiii}

In the case of the US, its identity as a superpower and as a liberal-democratic vanguard behooves it to take the lead in promoting international norms and rules of conduct. Assuming the role of a norm entrepreneur, the US upholds the principles of the UN, particularly of the UNCLOS—such as the rule of law, norms of conduct, freedom of navigation, and territorial integrity of sovereign nations.^{xiv} The US takes it as a moral obligation of a responsible superpower to guard against violations of the spirit of the UNCLOS.

Compared to the western norm of resolving disputes through formal and legal instruments, such as judicial arbitrations, the "ASEAN Way" of dispute settlement relies more on informal and personal engagements to arrive at a consensus. This norm of dispute resolution can be observed in bilateral and multilateral talks between and among ASEAN member countries. Aside from this, the principle of non-interference essentially constitutes the ASEAN Way. Keeping conflict unobtrusive protects the credibility of parties concerned and avoids escalation of dispute due to misperceptions.

On the whole, several constructs shape the development of the SCS dispute: China's emerging power and aggressive posture in the region; the US role and interest in regional stability; and, the Philippine course of action to seek for judicial remedy from the ITLOS. China aims to bolster its military strength and expand its sphere of influence in the region. Domestic pressure from Chinese nationalists fuels China's aggressive stance in claiming historic rights in the contested SCS.^{xv} To note, it appears that China considers its exclusive political and economic interests, as well as its strategic goal of becoming a world power, of greater value than its negative image as a threat in the region.^{xvi}

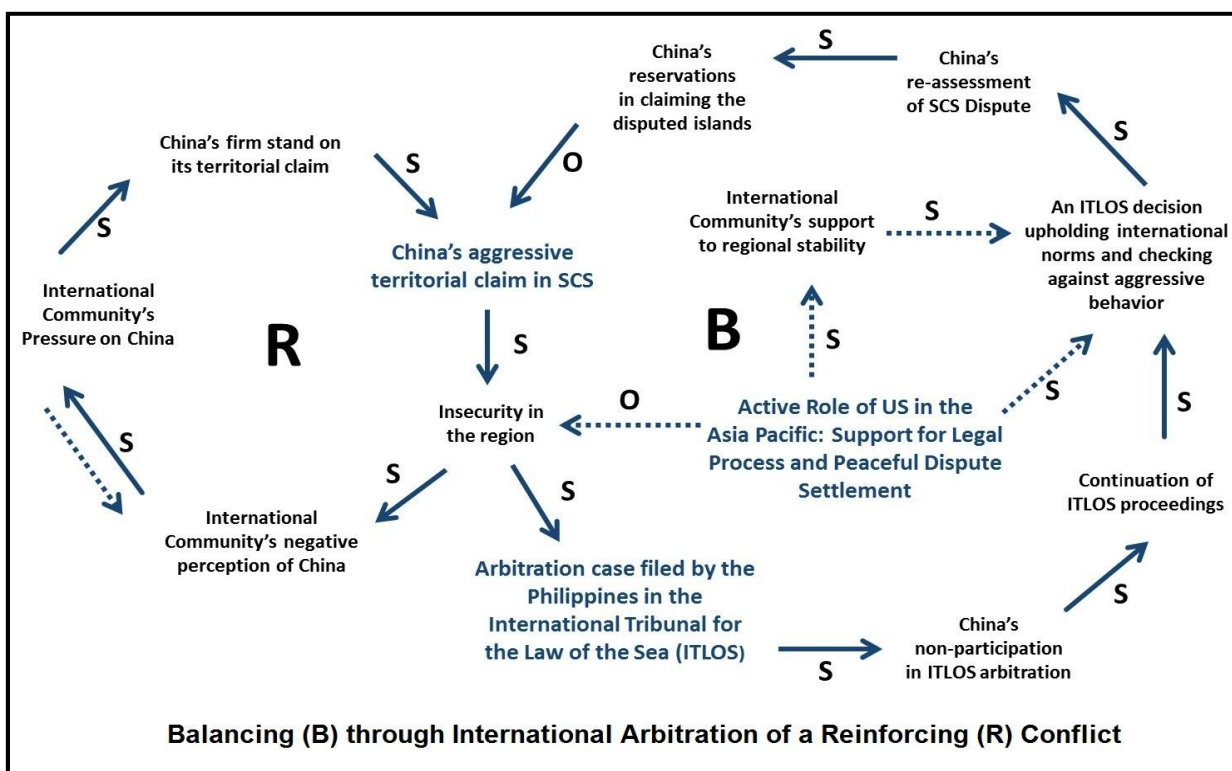
The US interest in the Asia Pacific, particularly in the SCS, is seen to play an important role in serving as a force in balancing power and managing conflict in the Asia Pacific and other regions of the world. The rapid force deployment capability of the US poses as a diplomatic leverage in assisting its allies and upholding international laws. The image of the US as a super power, global leader, and champion of liberal democracy is deemed crucial in its disposition to serve as a counterweight against China. There is thus a need to protect this image as a credible deterrence against violations of international norms and democratic peace. If the US reneges on this role and fails to make a stand, it is

taken as a sign of weakness not only on its part but also on the spirit of international laws that it guards.

Given the fact that the Philippines internationalized the dispute by filing an arbitration case in the ITLOS, the eyes of the international community are now focused on the Philippines, China, and US. In a bid to resolve the SCS conflict, the arbitration case formalized the negative impact of China's aggressive behavior in that maritime region. Since China's nine-dash line theory is contested by the Philippines in the arbitration case, the legitimacy of China's territorial claim is effectively challenged. With this, a favorable perception and response of the international community to China's territorial claim would be unlikely.

Constructivist Projections of the South China Sea Dispute

The development of the SCS dispute, due to China's aggressive territorial claim, can be illustrated in a Causal Loop Diagram or CLD below. Notably, the diagram has two causal loops: one is a *reinforcing* (R), vicious cycle of a security dilemma; and, the other is a *balancing* (B) act of the arbitration case filed in the international court.



In the first *reinforcing* causal loop, it can be seen that China's aggressive stance in the SCS creates insecurity in the region. This would likely project a negative image in the international community due to China's lack of respect for the UNCLOS. Consequently, this image would drive the international community to pressure China to adopt an attitude of good neighborliness, and make the latter refrain from making aggressive actions in the SCS. But tensions arising from the internationalization of the SCS dispute would also likely reinforce China's assertive behavior in claiming and controlling the disputed maritime zone.

It can be inferred that had the Philippines not taken a decisive course of action in seeking for legal arbitration, the turn of events would be a vicious and reinforcing security dilemma. Initial talks with China and through the ASEAN multilateral platform had fallen short of resolving the SCS dispute, prompting the Philippines to resort to legal channel and internationalize the issue. However, China's rejection of the arbitral proceedings and reiteration of its "indisputable sovereignty" in the contested territory hampered the immediate resolution of the dispute.

In the second *balancing* causal loop, it is assumed that the ITLOS arbitration case would continue even without the participation of China since the Tribunal already appointed a judge to represent China. Since the arguments set forth by the Philippines in its notice to the ITLOS were based on the rights granted to a sovereign state under UNCLOS, it is possible that the ITLOS decision will be in favor of the aggrieved party. Aside from the merits of international law, the US support to a rules-based and peaceful settlement of the SCS dispute serves as a balance of power and a credible deterrence against China's aggressiveness in the maritime region.

It must be noted that the US does not take side with the territorial claims of the Philippines nor back up a political stand-off of the latter with China. Nonetheless, the US has always been explicit in promoting the ideals and principles of the UNCLOS. The role of the US as a norm entrepreneur becomes very important in consensus-building among countries in the region and the international community. The US support to the arbitration case filed by the Philippines against China boosts the

credibility of the international law in resolving the territorial dispute in SCS.

As illustrated in the CLD, a decisive action by the ITLOS could influence China to reassess its hardline stance in the SCS dispute. If China's nine-dash line theory were invalidated, the Chinese claim beyond its internationally recognized territories would be considered as provocative and a violation of international norms, giving the US more reason to confront China. Proceeding from an understanding of these possibilities, China might have reservations on its claims in the SCS. These reservations can lighten China's aggressive behavior in SCS and make it rethink its strategic priority in the region. In this light, the ITLOS arbitration proceedings in the balancing causal loop can potentially and ideally serve as a buffer in managing conflicts in the disputed maritime region.

The use of the social constructivist perspective in the CLD idealizes a peaceful resolution of the SCS dispute through the politico-legal approach of internationally agreed norms. The CLD presents a social constructivist perspective of the complex dynamics played by major security actors in the SCS drama, which includes the Philippines, China, and US. The dispute settlement method pursued by the Philippines through the ITLOS arbitration case works in the idealist assumption that China, as a responsible nation and aspiring world leader, has respect for international laws. Notwithstanding the possibility of China's non-participation in the ITLOS proceedings, the Philippines remains steadfast in pursuing the arbitration case in the hope that the merits of international law on the territorial rights of sovereign states will be judiciously upheld.

Conclusion

From the arguments presented in this study, it can be understood that despite the perceived limitations of the ITLOS arbitration in solving the problem of insecurity in the SCS, the arbitration case presents strategic implications on the ideal prospects for the SCS and on the significance of international law in regional security. Despite China's aggressive position in the SCS, the constructivist value of the UNCLOS and ITLOS in international relations is the credibility of their judicial proceedings and decisions on

legitimate grievances of disadvantaged states—the kind of which can rally international support and limit the actions of an aggressive state.

On the whole, the constructivist projection of the SCS dispute arbitration in this study accentuates the value of the politico-legal approach in conflict management. From a social constructivist viewpoint, states respond not only to hard might and other realist interests, but also to soft power, idealist values, and constructive engagements for regional security. Meanwhile, as the Philippines takes on the idealist approach in resolving the dispute, other claimants in the SCS await on how such strategy can test the waters in the contested sea.

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Endnotes

ⁱ Kania, Elsa. The South China Sea: Flashpoints and the U.S. Pivot. <http://www.iop.harvard.edu/south-china-sea-flashpoints-and-us-pivot> (accessed February 3, 2013).

ⁱⁱ As a response to China's assertive claim in the SCS, the Philippine Government issued Administrative Order No. 29 (A.O. 29) on September 5, 2012. Section 1 of A.O. 29 reads: "The maritime areas on the western side of the Philippine archipelago are hereby named as the West Philippine Sea. These areas include the Luzon Sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as Scarborough Shoal." Notably, Section 2 of A.O. 29 reads: "The naming of the West Philippine Sea is without prejudice to the determination of the maritime domain over territories which the Republic of the Philippines has sovereignty and jurisdiction."

ⁱⁱⁱ Department of Foreign Affairs of the Republic of the Philippines. Notification and Statement of Claim on West Philippine Sea. January 22, 2013. <https://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/unclos> (accessed January 7, 2014); China.org.cn. South China Sea Issue Explained. July 18, 2012. http://www.china.org.cn/china/2012-07/18/content_25941294.htm (accessed February 21, 2014).

China's nine dash line theory encompasses "an area of 3.6 million square kilometers from the Singapore and Malacca Straits to the

Strait of Taiwan, stretching more than 1,800 kilometers from north and south and 900 kilometers from west to east."

^{iv} Emmers, R., & Tan, S. (2009). *The ASEAN Regional Forum and Preventive Diplomacy: A Failure in Practice*; Acharya, Amitav (2001). *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*. London: Routledge.

^v International Crisis Group. *Stirring up the South China Sea (II): Regional Responses*. Asia Report No 229, International Crisis Group, 2012. The constructive communication between the two countries was strained when China became more aggressive in the SCS, as observed in the 2012 Scarborough Shoal stand-off.

^{vi} *Ibid* <ii>; International Tribunal for the Law of the Sea. New Arbitrator and President Appointed in the Arbitral Proceedings Instituted by the Republic of the Philippines Against the People's Republic of China. ITLOS Press Release No. 197, ITLOS, 2013.

^{vii} Buzan, Barry, and Ole Waever. *Regions and Powers: The Structure of International Security*. Cambridge: Cambridge University Press, 2003.

^{viii} Thayer, Carlyle. *Why China and the US won't go to war over the South China Sea*. May 13, 2013.

<http://www.eastasiaforum.org/2013/05/13/why-china-and-the-us-wont-go-to-war-over-the-south-china-sea/> (accessed February 3, 2014).

^{ix} Information Office of the State Council of the People's Republic of China. "The Diversified Employment of China's Armed Forces." Ministry of Defense: White Papers. April 2013.

Beijing <http://eng.mod.gov.cn/Database/WhitePapers/> (accessed February 3, 2014) In a Defense White Paper entitled "The Diversified Employment of China's Armed Forces", China expressed: "Some country has strengthened its Asia-Pacific military alliances, expanded its military presence in the region, and frequently makes the situation there tenser."

^x *Ibid* <iv>

^{xi} *Ibid* <i>

^{xii} Alexander, Wendt. "Anarchy is what States Make of it: The Social Construction of Power Politics." *International Organization*, Vol 46, No 2 (Spring), 1992: 391-425; Adler, Emanuel. "Constructivism and International Relations." *Handbook of International Relations*. 2002. SAGE Publications. 28 Feb. 2011. <http://www.sage-reference.com/hdbk_intrelations/Article_n5.html>.

^{xiii} Goh, Bee Chen. "Remedies in Chinese Dispute Resolution." *Bond Law Review* Volume 13, Issue 2, Article 7, 2001.

^{xiv} Buszynski, Lezek. *Asia Pacific Security - Values and Identity*. London: Routledge Curzon, 2004; Cronin, Patrick, and Robert Kaplan. "Cooperation from Strength: U.S. Strategy and the South China Sea." In *Cooperation from Strength: U.S. Strategy and the South China Sea*, by Patrick Cronin, 8-25. Center for a New American Security, 2012.

^{xv} Fenby, Jonathan. *Does China have a Foreign Policy? Domestic Pressures and China's Strategy*. London School of Economics and Political Science, 2012.

^{xvi} Roy, Denny. "China's Pitch for a Multipolar World: The New Security Concept." *Asia Pacific Security Studies* Vol 2, No 1, 2003: 1-4.