

## **Diplomatic Methods at Boundary Dispute: A Case Study of the South China Sea between China and Philippines**

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### **Abstract**

According to the dispute of the South China Sea, it has become the most complicated area's sovereignty and territorial sea dispute. The research is focusing on a dispute between China and the Philippines on the South China Sea conflict, discussing different standpoints of China and the Philippines. Analysis on the realistic and historical reasons for the dispute followed 4 points: marine resources, history, law, and extraterritorial countries involved. In addition, the research is finding out the new analysis thinking on China's idea by potentiality solving this international conflict.

**Keywords:** *South China Sea dispute, China, Philippines, standpoints, new analysis thinking, historical rights*

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### **1. Introduction**

The area of the Pacific Ocean, from northern latitude 4° to 20° and from east longitude 120° to 135°, is the South China Sea: this sea area is the main channel of the eastern and western countries for trading and sea transportation. Statistically, over half of the supertankers in the world pass through this sea area every year, and more than 90% of the petroleum is imported to and exported from China, Taiwan, Japan, Korea and other great countries in north Asia and northeast Asia regions by this sea area (南海问题的由来, 2014).

The South China Sea is the main water area for connecting the eastern hemisphere to southeast Asian, east Asian and northeast Asian regions, and provides important offshore linkage for an increasingly interconnected regional economy and globalization, so the South China Sea undoubtedly has significant geostrategic value for ensuring global energy transportation & reserve, military strategic delivery & energy development, regional economic interaction, etc.

After the World War II, China, as the victorious nation, took back the territory seized by Japan in the war according to the relevant spirit of the *Potsdam Proclamation* and the *Cairo Declaration*, including the Nansha Islands in the South China Sea. In December 1946, the Nationalist Party as the governing party of China at that time assigned relevant officers to accept the Nansha Islands returned by Japan on behalf of the Chinese Government.

In February 1948, the Government of the Republic of China published the *Administrative Division Map of the Republic China* after re-surveying and examining 172 islands of the South China Sea, announced and declared the jurisdiction right for the South China Sea, the islands thereof and adjacent sea areas to the international society. At that time, the countries around the South China Sea, the Soviet Union, Japan, France, Germany and Britain also annotated 11 dashed lines (11 lines) in the maps published thereby and clearly indicated the ownership to China.

In 1952, Japan announced to completely abandon all rights, names and requirements regarding Taiwan, the Penghu Islands, the Xisha Islands and the Nansha Islands occupied in the war, and officially returned the Nansha Islands to China (Hiematsu, 2001). After the establishment of new the China, in order to balance the international relations with neighboring countries and the political ecology during the Cold War period, two lines near to the Beibu Gulf among the 11 lines are removed, namely: 9 lines are left now. (South China Sea: Arbitration Case, 2017)

The Navy General Headquarters of the Philippines illegally measured the Nansha Islands of the South China Sea since April 1949, after that the Philippine government said Nansha Islands must be one of the important national security issues of the country and proposed the sovereignty requirement for the

Nansha Islands for the first time in July 1971, and subsequently gradually encroached on and controlled some Nansha Islands.

In 1994, the Philippines claimed the sovereignty for the Huangyan Island and after that in 2012, the Philippine navy arrested and detained Chinese fishing boats near the Huangyan Island, but was stopped by the Chinese marine surveillance ship, thus causing the stalemate of the sea power of the two countries at the Huangyan Island (Andy, 2011). After the stalemate event, the Philippine Government called the South China Sea as the “West Philippine Sea”. Subsequently on January 22, 2013, Philippines internationally proposed the so-called South China Sea arbitration. After the “Huangyan Island Event” territorial sea sovereignty dispute between China and the Philippines was intensified in 2012, Philippines sent the arbitration intention to China on January 22, 2013. Accordingly, the Republic of Philippines proposed the arbitration case against the People’s Republic of China to the International Tribunal for the Law of the Sea by the reason that the maritime rights & interests and the marine law enforcement & island development activities of the People’s Republic of China based on the “nine-lines” in the South China Sea (called by Philippines as West Philippine Sea) dispute between China and the Philippines in recent years have violated the United Nations Convention on the Law of the Sea (UNCLOS), and appointed Ryui Junji as the chief judge and appointed the arbitrators according to Annex VII in the United Nations Convention on the Law of the Sea, and requested the standing arbitral tribunal to establish the temporary arbitral tribunal for providing site and secretary service. Till now, the Philippines still actually control seven islands of the South China Sea (China Daily, 2017).

China and Philippines respectively stand their own grounds, and China emphasizes the historic rights & interests, namely the sovereignty principle of “find first, manage first”. However, the Philippines original appeals for the South China Sea sovereignty for “national security” and gradually appeals for the sovereignty for “International Law”. Dispute and position between China and Philippines are shown in Table 1.

**Table 1** Dispute and position between China and Philippines

	China	Philippines
Dispute	the <i>Potsdam Proclamation</i> and the <i>Cairo Declaration</i>	National security
Position	Historical rights	International Law

## 2. Objectives

This research will explore the origins and development of the dispute of the South China Sea between China and the Philippines. The research will study China’s approaches under the mentioned dispute and Chinese reactions in case of solving this conflict; include studying the history of the Philippines’ views, positions and solutions under this dispute.

The research purpose is also to analyze the mentioned dispute by following the theory international law and explore deeply in case of the use of law, and find out what will be the best way to solve this dispute in peaceful terms for both China and the Philippines sides as well as to analyze the noise involved from the extraterritorial countries such as the U.S., Japan, India, Australia.

## 3. Materials and Methods

The research is qualitative research which is studied from the logic of political information and relevant literatures with the Arbitration on the South China Sea initiated by the Philippines in 2016 as a case of study. The paper collects and sorts out from Chinese and foreign research, summarizes and compares data which is held by China and foreign countries on the disputes over the South China Sea. The research also has scope in theoretical basis and analyzes each hierarchy for the South China Sea issues including discussing the drawbacks of traditional visions of China in maintaining sovereignty and interests in the disputes over South China Sea.

The research studied is based on paper collection and sorts of related information from the foreign and domestic literature review and information about the South China Sea issues including inducements and

teases of conclusions and viewpoints of related research for obtaining a systematic knowledge of each hierarchy and development change for the origin of the South China Sea issue. The research also analyzes and reflects on China's experience and lessons in coping with "Arbitration on the South China Sea" initiated by the Philippines for summarizing appreciated ways for new periods and new situations to change and develop China's policies on the South China Sea which could fill in related Chinese and foreign literature, and provide reference to China for handling the South China Sea rights in the near future with flexible and effective diplomatic maneuvers.

To support these research questions and to conclude the South China Sea issues, the data were collected from several secondary sources. The main aim of data analysis for this research is to distinguish through the South China Sea disputes mainly focus on China and the Philippines case "Arbitration on the South China Sea" to finding out new thinking by the Chinese side of how to solve the problem in a win-win way.

#### **4. Results and Discussion**

##### **4.1 The findings of the origin and development of the dispute of the South China Sea**

###### *4.1.1 Marine resources and navigation resources*

The South China Sea contains a lot of resources including oil, gas, fishery, and seabed flammable ice. Since the global traditional energy crisis, international oil prices have constantly risen. Generous profits make the South China Sea become the focus of surrounding countries. Meanwhile, countries scramble for new energies, and global environmental governance and energy reserves have become the strategic trend for every country's development. Moreover, the South China Sea has abundant new energy, namely flammable ice, which abets strategic great powers to peep at the resources in the South China Sea (Lyn, 2015).

Viewed from the navigation resources, the sea area is the primary channel for the trade and maritime communication between eastern and western countries. The South China Sea is located between the Indian Ocean and the Pacific Ocean, and is an important international waterway connecting the two oceans. The South China Sea is adjacent to Southeast Asia, Australia and the Strait of Malacca, and many waterways and airlines from west Asia, Africa and Europe to East Asia, Southeast Asia and America must pass the South China Sea with very important strategic status. In recent years, China has constantly enhanced the trade with the above-mentioned areas, and the sea routes between China and the countries of Southeast Asia are busier, which makes the position of the South China Sea as the navigational junction more and more important. Due to the important strategic position, extraterritorial countries led by America and Japan attach great importance to "maintain the freedom and safety of the navigation in the South China Sea". Therefore, because the Philippines notices that extraterritorial countries pay attention to the strategic status of the South China Sea, it constantly cooperates with other countries to attempt to expand and internationalize the issue of the South China Sea, so as to contain the legal actions of China in the inherent area of the South China Sea and weaken the influence and control power of China in the disputed area. As a result, the issue of the South China Sea has presented an increasingly deepened "nationalized" trend and is more difficult to solve.

###### *4.1.2 China and the Philippines conflict on the South China Sea*

Since the ancient times, China has the indisputable sovereignty over the South China Sea, which can be traced to Han Dynasty. China has never given up the advocate of the right of the South China Sea over the two thousand years and constantly enhances its own "historic rights and interests"

The Philippines claims that the disputed islands in the South China Sea had no "owners" when it found them which were first developed and managed by it. Since December 1946, the Chinese Government had taken back the Xisha Islands and Nansha Islands from Japan, and these islands have been administrated by the Chinese Government and named, but not "the land trusted" or "without owners". Moreover, the Chinese Government has never given up the jurisdiction and sovereignty over the islands in the South China Sea (Pedrozo, 2010). Meanwhile, the Philippines proposes the requirement for sovereignty depending on "safety principle", which is not persuasive, because a country cannot invade other countries' land or entrench other countries' sovereignty for their own safety, or else they not only violate the spirit of international law, but also breach the justice and peace of the international society. Therefore, in order to

guard the sovereignty, China had military conflicts with the Philippines and Vietnam in the 1970s, 1980s and 1990s.

#### 4.2 The finding of the use of International law under the South China Sea dispute

At present, the primary basis for the international society to solve the dispute of maritime territory is the United Nations Convention on the Law of the Sea, and the development and implementation of the convention enable maritime territory dispute to have an international consensus and standard to a large extent, which is undoubtedly conducive to the establishment of international maritime order. However, the Convention still has many defects and disadvantages which hinder the issue of the South China Sea to be solved smoothly and makes the problem more complex.

Specifically, first, the issuance of the Convention makes the fight for the islands in the South China Sea fiercer. The Convention regulates that after a country obtains the sovereignty over an island with the condition suitable for human to live as well as the legal condition to maintain their economy and life, it can delimit corresponding marginal sea, area and 200 sea miles of special economic zone, and has the right to exploit the ocean resources in the special economic zone as the South China Sea has rich gas, oil and fishery.

Second, the issuance of the convention directly makes the islands in the South China Sea have huge potential economic value, so the countries' fight for the sovereignty over the islands and the competition for defining special economic zone are increasingly fierce, leading to continuous sovereign disputes. Moreover, as an important basis to deal with maritime disputes, the Convention lacks enough force of constraint during implementation.

On the one hand, some countries cope with problems by dialog and negotiation. They obtain benefits by violating the spirit of the Convention, and maliciously use the terms in the Convention to breach the interests of other countries, which makes the Convention lack deterrence and force of constraint in the face of the behaviors violating the spirit of the international law. Moreover, when the countries signed the Convention, they did not completely accept the Convention. Some accepted the Convention in the form of making a statement publicly or issuing domestic laws. Therefore, in terms of dealing with international seas, the advocates and opinions of these countries are not uniform.

Third, when the Convention confirmed maritime rules, it did not take justice into account, leading to new contradictions. For example, the parties involved in the dispute of the South China Sea unilaterally divide marginal sea, continental shelf, adjacent area and special economic zone, which did not consider the "historic rights" of other countries, so they violated the sovereignty over territorial waters of other countries, leading to conflicts. Finally, there are many principles in the Convention during dividing the right of maritime space, and the Convention is self-contradictory in the face of the sovereign complaint proposed by the disputed countries. Just as mentioned before, the compulsory arbitration mechanism in the Convention is just a supplementary mechanism of a peaceful way to peacefully solve the disputes of marginal sea. Disputes are primarily solved by the contracting parties in the formal negotiation. Meanwhile, if there is still relevant contracts between contracting countries, mandatory arbitration is not applicable.

It is obvious that China has signed Declaration on the Conduct of Parties in the South China Sea with ASEAN to emphasize solving the dispute of the South China Sea by negotiations between two state parties. However, the essence that the Philippines unilaterally initiated "the South China Sea Arbitration" is the appeal to the sovereignty over the islands, so the Convention was not suitable for interpreting the case. The behavior of the Philippines not only breached ASEAN but also the spirit of the Convention, so the Chinese Government insists on the attitude of "no acceptance, participation, acknowledgment and implementation", which maintains the dignity of the International Law.

It should be noted that "the South China Sea Arbitration" proposed by the Philippines was not arbitrated by the International Court of Justice (ICJ) but a special arbitrary court whose secretary service is provided by the Permanent Court of Arbitration (PCA). As another completely different institution, ICJ did not completely participate in the so-called arbitration all the way (International Court of Justice, 2017). Therefore, whether the so-called temporary arbitration court can represent the International Law to arbitrate the dispute of the South China Sea remains open.

Extraterritorial countries intervene in the dispute of the South China Sea, which made the problem complex. The islands and maritime space involved in the issue of the South China Sea have been highly concerned by previous governments of the Philippines which want to contain China's legitimate claim to the sovereignty over the South China Sea depending on the power of ASEAN. Meanwhile, it spares no effort to draw great powers to protect it in the global society. In recent years, great extraterritorial powers led by America also intervened in the issue of the South China Sea, which makes the dispute more complex.

#### 4.3 The finding of extraterritorial countries' noise and involved

With the strategy of "Pivot to Asia" issued by the U.S. and the gradual implementation of the "Look East Strategy" by India, the dispute of Diaoyu Islands on the East China Sea between Japan and China constantly upgrades. As the positive supporter of "Pivot to Asia" of the U.S., Australia has always kept a united front with the US in terms of the South China Sea, and constantly made opinions and advocated so-called the "freedom of navigation in the South China Sea" (Lohman, 2009). So Southeast Asia becomes the strategic importance of the US, India, Japan and Australia in the Asian-Pacific region.

At present, although America declares that it insists on neutrality in terms of the dispute in the South China Sea, but it openly stated at a later date that free navigation in the space of the South China Sea is related to the basic interests of the US, and Australia. Recently, Japan and India also enhanced their existence in the South China Sea and attempted to realize the strategic purpose of restraining the increasingly significant influence of China in the region and disturb the increasingly deepened international cooperation between China and ASEAN depending on the issue of the South China Sea.

#### 4.4 The finding of solutions on the South China Sea dispute

China has always insisted on peacefully solving the issue of the South China Sea, and the important path of dealing with the dispute should be two state parties rather than an international organization or other countries or extraterritorial countries. China thinks that the issue of the South China Sea is neither the affair of the United States, India, Japan or other extraterritorial countries nor the affair of China and ASEAN, but is the affair between China and the disputed countries. In addition, the state parties should solve the issue of the South China Sea through peaceful negotiation. Therefore, "internationalized", "complex" and "long-term" issue is neither the path to solve the issue of the South China Sea nor the development trend of the issue of the South China Sea (Zhang, 2013).

New analysis thinking for China to deal with the South China Sea dispute from the "South China Sea Arbitration"

The essence and connotation of the new ideas for China to deal with the South China Sea dispute can be discussed from four aspects;

First, it is necessary to continue to adopt the successful experience obtained by traditional ideas of safeguarding legal rights, insist on solving the dispute through bilateral negotiations. In addition, China should assume more responsibilities as a great power and enhance its right of speech in the face of global society and organizations.

Second, in terms of its defects, especially insufficient effective jurisdictional strength of the disputed sea area, it is necessary to accelerate the establishment of maritime rights protection and law enforcement system and promote the process of maritime legislation.

Third, China should emphasize cross-regional cooperation, actively promoting and implementing the establishment of cross-regional organizations with ASEAN countries, such as "Lanchang-Mekong Cooperation" mechanism initiated by China. Under the "Belt and Road" initiative, it is necessary to constantly increase the mutual exchange between China and ASEAN countries, promote in-depth cooperation in the field of economy, diplomacy, politics, culture and safety, exhibit benefit coexistence between China and ASEAN countries and the goodwill of peaceful development, so as to reduce the probability of misjudgment of China and ASEAN countries, restrict state parties to depend on ASEAN in terms of the South China Sea dispute, realizing the purpose of "governing sea with land".

Finally, China should enhance the construction of its maritime strength of rights protection, and establish the South China Sea management system with administrative means, such as the establishment of Hainan province and Sansha city. Meanwhile, based on national defense capability, it is necessary to stop

any extraterritorial powers dispatching military power in the name of "free navigation" and frequently infringing the sovereignty over the South China Sea, so as to enhance China's effective control and jurisdiction over the South China Sea. Chinese traditional measures and new analysis thinking are listed as in Table 2.

**Table 2** Chinese traditional measures and new analysis thinking

	Traditional measures	New analysis thinking
<i>Marine resources and navigation resources</i>	- Military conflicts - Detained boats	- Peaceful negotiation - Cooperation(Belt and Road)
History	- Followed treaty : the Potsdam Proclamation and the Cairo Declaration (Table 1)	- Getting issue for support historic rights (China has the indisputable sovereignty as it can be traced to Han Dynasty, more than two thousand years ago. )
Law		- Following International law - Accelerate the establishment of maritime rights protection and law enforcement system
Extraterritorial countries	- Diplomatic Remonstrance	- Keep freedom of navigation - Non-diplomatic way (Have to stop any extraterritorial powers dispatching military power in the name of "free navigation" and frequently infringing the sovereignty over the South China Sea.)

## 5. Conclusion

The key point of solving the South China Sea dispute with new ideas in the new era is **insisting** on the overall framework of solving this dispute through peaceful negotiations by state parties, constantly enhancing China's effective control over the South China Sea with various non-diplomatic means supplemented with traditional diplomacy, as well as effectively maintaining China's rights and interests of the integrity of territorial sovereignty and sovereignty over territorial waters while keeping peaceful development and normal navigation freedom in the South China Sea.

In the South China Sea dispute between China and the Philippines, China constantly improves rights protection mechanism, fully understanding and completely implementing international laws and relevant applicable provisions, so China's attitude of "no acceptance, participation and acknowledgment" completely conforms to international law. Meanwhile, enhancing the law enforcement efforts of China's coastguard and national defense capability is conducive to effectively guarding the sovereignty and properly preventing further upgrade of the dispute. This is not only conducive to maintaining the peaceful development in the South China Sea, but also improving the actual jurisdiction and control power over the inherent sovereignty in the South China Sea, and has very important reference significance for China to gradually solve the South China Sea dispute under the current trend.

Maintaining the peace and stability in the South China Sea is related to the fundamental interest of China and ASEAN countries. The South China Sea dispute should not be the obstacle hindering the deepened bilateral and multilateral relationship between China and ASEAN countries. Establishing the maritime rights protection measure and integrating traditional peaceful diplomacy and new non-diplomatic means of administration and law as well as military measures can promote and guarantee the integrity of China's sovereignty, peace and stability of the South China Sea, and the freedom and safety of the navigation in the South China Sea. In addition, this is not only the powerful representation of firmly

upholding peaceful development of China under new trends, but also an attempt and practice of China to solve the South China Sea dispute with independent and peaceful diplomacy, and provides beneficial example reference for the establishment of "peaceful, friendly, cooperative and flourishing South China Sea" under the strategic background of The Belt and Road Initiative.

## 6. Acknowledgment

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