

THE POLITICS OF SOUTH CHINA SEA WARFARE: THE MULTILATERAL DEMOCRATIC DIPLOMACY RECOURSE OF MINI-ASEAN YOUTH FOR REGIONAL SECURITY

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ABSTRACT

The 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982) adheres that a rule-based maritime order is a rudimentary concept of international law. The 2016 award by the Permanent Court of Arbitration (PCA) on the South China Sea (SCS) has led to the continuous Chinese psychological maritime warfare in the Philippine Exclusive Economic Zone (EEZ). The foreign policy of the President of the Republic of the Philippines (RP) has led to contradicting statements of Philippine government officials in protecting the West Philippine Sea (WPS) from the People's Republic of China (PRC). With the 1992 ASEAN Declaration, the regional bloc may have its jurisdiction over the case; however, their principle of non-interference prevents any mechanism to settle the maritime dispute. While both juridical and political aspects were considered in resolving the Timor Sea case through conciliation, Article 298 of UNCLOS 1982 becomes the core legal collision in the SCS. Despite experts, organisations, and institutions proposing democratic initiatives through digital activism, securing and defending the WPS, however, the broader Indo-Pacific requires the democratic diplomacy recourse of a mini-ASEAN youth to coordinate with the youth from the Quad and the G7 countries to multilaterally raise the concern at the United Nations.

Keywords: South China Sea, psychological maritime warfare, West Philippine Sea, Indo-Pacific, democratic diplomacy

INTRODUCTION

The rise of the People's Republic of China (PRC) as an economic power coincided with changes in its maritime doctrine where security and tension substantially increased due to their fishing operations and the presence of their naval vessels in the Exclusive Economic Zone (EEZ) of the Republic of the Philippines (RP). In 1978, through Presidential Decree No. 1596,¹ the RP formalised the incorporation of the Grierson Reef as part of the

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Municipality of Kalayaan, and where, under existing law, the RP claims the Julian Felipe Reef, which is technically part of its territorial sea. Despite having a 1995 joint communique,² the PRC continued with its incursions (Philippine Inquirer, 2012) in the West Philippine Sea (WPS) which resulted in the RP filing a case at the Permanent Court of Arbitration (PCA) in 2013. The Arbitral Tribunal then published the 2016 Award,³ rejecting the historical claim of the PRC over the WPS, upholding the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982). However, the PRC argued that they would not comply with the ruling, practicing instead the concept of ‘Three-Warfares’ Doctrine to break adversary resistance and achieve their objectives with no actual fighting (The Guardian, 2016; Mattis, 2018).

Rather than creating a military alliance, Member States of the Association of Southeast Asian Nations (ASEAN) set out to establish a normative framework based on the principle of non-interference to prevent unwanted foreign intervention in the domestic affairs of one another. However, the ratification of the Law on the Territorial Sea and the Contiguous Zone,⁴ and the ASEAN Declaration on the South China Sea⁵ - both in 1992, had the PRC restating its claims over the shoals and banks belonging to the RP (Baviera, 1999). The 1992 ASEAN Declaration was then strengthened with the inclusion of the PRC in 2002 through the adoption of the Declaration of Conduct in the SCS to prevent the PRC’s expansion activities with the hope to provide a *modus vivendi* in maintaining the *status quo* and unwarranted conflict (Batongbacal, 2021; Carpio, 2021). The PRC cannot build structures in the uninhabited islands including the Julian Felipe Reef so as not to violate its commitment to the Declaration’s prohibition to inhabit such remaining uninhabited islands. Upon reports from the Philippine Coast Guard (PCG) that 220 vessels of the PRC were sighted near the Julian Felipe Reef (Tomacruz, 2021), the RP filed diplomatic protests against the PRC, with several demands to withdraw the latter’s vessels from the area. Since then, commentaries from legitimate authorities such as international law experts, the academia, and non-governmental organisations of the RP have been published.

This paper aims to determine the possible unilateral-to-multilateral diplomatic actions of the ASEAN youth in the SCS case to prevent the PRC in continuing its psychological maritime warfare and explore the strategic pathway to address the post-Tribunal Award activities on the waters based on politico-diplomatic developments.

THEORETICAL FRAMEWORK

Non-state actors, including international institutions, play a crucial role in the encouragement of communication between states and the facilitation of peaceful resolution when it comes to disputes. This is the premise stressed by the Neoliberal Institutional Theory (Keohane & Nye, 1977). For neoliberal institutionalists, the absence of an international sovereign authority results in an anarchic international field caused by the states’ unilateral advancement of interests and lack of cooperation (Jervis, 1999). If anarchy is mitigated, it would be driven by institutions such as non-state actors and the agenda or interest of the individual states causing mutual interdependence.

The key points having been mentioned share the same insights as international relations realists: (a) that the international realm has the tendency to be anarchic, thus, a systemic-level ruling is recommended; and (b) that state behavior (which includes interstate relations) is compelled by state interest. However, their viewpoints differ when it comes to hegemonic ruling: that for neoliberal institutionalists, international order is achievable without a homogenic global government given that there is the presence of international organisations as well as intangible institutions such as institutionalised state practices (i.e., the norms, rules, and principles guiding state behavior). The paradigm as hereby explained by Milner (2009) was successful in elaborating the relations of non-state actors to international relations, surmising the works of various proponents to the theory. Hence, this work shall be the primary basis for understanding neoliberal institutionalist theory to the RP-PRC relations.

Foreign relations between RP and the PRC experienced a setback since the RP filed the diplomatic protest regarding the Scarborough Shoal in 2012. While this has not been a hindrance on the conduct of other businesses between the RP and the PRC, such as that of their bilateral trade, an analysis on the latter state's conduct with the RP by Primiano and Tan-Mullins (2017) dictates that the PRC's actions were driven by rational calculations of their interest, which would be to claim ownership on the uninhabited islands, and not by mere interest of improving correspondence with one another. With the absence of an international government and rising tensions between the two states, resolution on the conflict would be efficiently achieved with the utilisation of non-state actors, such as the ASEAN. Among other international organisations, the ASEAN would have more relations to the present case; hence, more responsibility to produce action on the matter due to the direct impact of the issue to its operations, such as: the possibility of a stumbling block between ASEAN-PRC ties, a threat to undermine regional peace and its relevance and leadership in regional affairs, and a likelihood of Southeast Asia's downfall in the context of the Sino-US strategic competition (Le Hu, 2021).

The proceeding discussion will further elaborate on the neoliberal institutionalist stance bringing emphasis on the role of non-state actors and "set governing arrangements" in current affairs. It will also shed light on each state actor's foreign policy in the resolution of the WPS ownership rights.

METHODOLOGY

To find out the feasible recourse for the RP to prevent the PRC in continuing its illegal activities over the WPS, observations and judgments were socially constructed from the series of maritime, national defense, and regional cooperation activities. With interpretivist theoretical perspective, these socially constructed observations and judgments arising from the SCS case were then subjectively integrated with diplomatic democracy approach, an alternative type of deliberative democracy which could directly influence the patriotic behaviour of nationals, particularly the youth.

Qualitative method was used in gathering and analysing the data where the first section constitutes familiarity on the historical timeline of the SCS case, most specifically the political, legal, and strategic concerns rooting from the bilateral relations of the RP with the PRC. The second section involves the generating of initial codes that could influence the entire data analysis process such as the psychological maritime warfare, the Freedom of Navigation, South China Sea, and the West Philippine Sea. The third section entails the entire data gathering from academic, journalistic, and legal sources such as journal articles, books, news articles, opinion articles, commentaries, and legal documents from research institutions, think-tanks, and international organisations for a critical academic and descriptive analysis to explain and evaluate arguments and give alternative recommendations to at least prevent the political and security tensions arising from the SCS case. The fourth section directly thematises, reviews, and assesses the coded data to determine their relations to the entire study. Finally, the fifth section refines the themes identified to view the overall analysis of the case study.

In terms of integrating international treaties and conventions, the implementation of Article 298 of UNCLOS 1982 on the Timor Sea Case dispute settlement was utilised to see how the provision may be applied to the South China Sea Case. Adding to this, the actions of these political actors in response to the different dispute settlement mechanisms were also employed to investigate and examine the correlation of the legal bases. These analytical methods lead to the formulation of alternative strategies for a democratic diplomacy recourse from the political and technical implications identified.

In-depth interviews were not conducted as this study is solely based on documents obtained from online resources. The democratic initiatives of the study are limited to digital activism, policymaking, and lobbying for the purpose of filling in public pressure in defending the WPS.

FORMULATING THE STRATEGIC PHILIPPINE FOREIGN POLICY

One of the most vital developments for diplomacy is the establishment of the UNCLOS 1982 as it highly adheres to the notion of ‘right is might’. Unfortunately, the PRC has overturned this, adopting instead the concept of ‘might is right’ while it enforces its claims outside the compulsory dispute settlement mechanism of UNCLOS 1982 (Carpio, 2021). Upon invoking a compulsory arbitration by virtue of Annex VII Arbitral Tribunal, the PRC only complied with two out of the eleven key parts of the ruling (Asia Maritime Transparency Initiative, 2019), adopting a ‘Three-Warfares’ Doctrine, which includes the psychological maritime warfare, where the PRC itself sought to win the SCS dispute by: (1) asserting a historical narrative; (2) advancing a legal theory; and (3) intimidating other claimants with their warships. The PRC has, over the years, occupied features in the Philippine EEZ without the permission of the RP, wreaking ecological damage, destroying reefs, building artificial islands, turning those islands into military bases, preventing Filipino fishermen from accessing their rightful fishing grounds, and threatening the citizens of the RP (Derr, 2021). As the PRC overlaps its claims over the UNCLOS-based Freedom of Navigation and Freedom of Overflight, its presence asserts that it violates

UNCLOS 1982 with its psychological maritime warfare since states are continuously conducting maritime exercises in the Philippine EEZ and the High Seas to safeguard the former area.

The claim by Duterte of having a "verbal fishing agreement" with Chinese President Xi Jinping in the third quarter of 2019 resulted in the opposing statements of two prominent political figures. On one side, Presidential Legal Counsel Salvador Panelo declared Duterte's decision to be "legally binding", and on the other side, Philippine Senator Leila De Lima believed it to be unconstitutional, for "the exclusive right of Filipinos to fish in their EEZ is a sovereign right which the President cannot waive unless allowed in a treaty ratified by the Senate" (Carpio, 2021). At the beginning of the second quarter of 2021, following the maritime exercises of the PCG in the WPS, Chinese Ministry Spokesperson Wang Wenbin even called for the RP to "respect Chinese sovereignty and rights and interests" and "stop actions complicating the situation and escalating disputes" (Ministry of Foreign Affairs of the People's Republic of China, 2021) to which the RP believes has no legal basis since it is the RP who is supposed to have sovereign rights over the WPS. Because of said verbal fishing agreement, diplomatic protests being filed by the Philippine Foreign Secretary Teodoro Locsin, Jr., as well as the strong warnings issued by the Philippine Defense Secretary Delfin Lorenzana were not taken seriously by the PRC (Department of Foreign Affairs, 2021; Mangosing, 2021; GMA News Online, 2021).

Despite the callous stance of the PRC, Locsin still continues to assert the rights of the Filipinos in the WPS by virtue of international law, with daily protests filed by the Department of Foreign Affairs (DFA), while the Department of National Defense (DND), in coordination with the Bureau of Fisheries and Aquatic Resources (BFAR), secures the WPS and its Kalayaan Group of Islands (KGI) (Tomacruz, 2021; Viray, 2021; Cabrera, 2021). To monitor the daily situation in the Julian Felipe Reef, the Philippine Air Force (PAF) deployed jet aircraft in the area, with the increased presence of the Philippine Navy (PN) and PCG to conduct patrols and protect local fishermen. In addition, actions such as Lorenzana welcoming a carrier strike group from the United Kingdom of Great Britain and Northern Ireland, as well as a discussion on defense cooperation and a partnership with the Commonwealth of Australia on bolstering maritime relations, show how foreign policy is being exercised by the RP (Mangosing, 2021; ABS-CBN News, 2021).

Duterte's Chinese narrative of war - fearing that asserting rights over the WPS would lead to bloodshed, is a myth. Former Philippine Foreign Secretary Albert Del Rosario, retired Supreme Court Senior Associate Justice Antonio Carpio, maritime experts, and members of the academia had already debunked Duterte's argument that asserting Philippine sovereign rights would spark war with the PRC (Tomacruz, 2021). The statement made by Duterte that the RP will "set aside" the arbitral ruling means to "abandon, overrule, reverse, or annul" the ruling (Tupas, 2019). Further, Justice Carpio asserted that even under the Philippine laws, the President has no authority to "set aside" such a ruling issued by The Hague as the unilateral declaration could bind the RP under international law by virtue of the Doctrine of Unilateral Declarations.⁶ Fortunately, before the PRC could accept the declaration of Duterte setting aside the ruling which could have

given up the sovereign rights of the RP, Locsin was able to provide a prompt clarification that the RP was not setting aside or abandoning the PCA's ruling.

On 20th March 2021, the National Task Force for the West Philippine Sea (NTF-WPS) gave an official statement on the activities of the Chinese maritime militia personnel within the Julian Felipe Reef located within the Philippine EEZ and Continental Shelf (PTV News, 2021), sighting 220 Chinese fishing vessels showing no actual fishing activities, but raised that it was also an alert to the risk of safety of navigation. As a response to avoid contradictions, Duterte issued an order instructing presidential spokesperson Harry Roque and Locsin to be the only Philippine personnel allowed to issue official statements regarding WPS concerns (Galvez, 2021).

ASEAN CENTRALITY AND THE QUAD STRATEGY

With the consensus norm in the ASEAN, the principle of non-interference then refrains its member states from criticising each other and commenting on the systems of government of one another. When a certain proposal has been included in the agenda of the ASEAN and at least one objected, an alternative proposal has to be sought to which all of the member-states can agree (Manalo, 2017; Quilop, 2000). As this principle reflects the ASEAN cooperation, overemphasis on dialogues toward consensus compartmentalises controversial security issues for member states to avoid unilateral actions that can be criticised against the Association - preserving the "ASEAN Way" for the sake of dynamism and regional prestige. Subscribing to practise these principles, however, would keep the mechanisms for regional security dispute settlement delayed and completely avoided, making the ASEAN itself inefficient and unresponsive. Fearing its loss of centrality, Indonesian President Joko Widodo, as the key *de facto* leader in ASEAN has, since 2014, advocated for an alternative "Indo-Pacific" vision to maintain ASEAN centrality (Connelly, 2014; Roberts & Widyarningsih, 2015). However, rather than "real centrality", the concept of 'unanimity' has been manifested from the regional bloc's "Outlook on the Indo-Pacific".⁷

Seeing that the "ASEAN Way" cannot produce any viable solution, more states are pushing for the finalisation of the Code of Conduct for the SCS, such as the European Union (EU) and the Department of Foreign Affairs (DFA) (Bordey, 2021; Department of Foreign Affairs, 2021). However, it can be implied that the PRC would not agree if the Code incorporates key points from the 2016 PCA Award. If the Code would be adopted without these essential points, the Code would then be downplayed by the PRC as the Code itself stands as the political and economic agreement of the regional bloc with the PRC. However, it seems that the PRC would continue its psychological maritime warfare before having any unilateral declaration for the Code, legitimising their artificial islands first with their air and naval bases in the WPS, which may lead to a Chinese *de facto* veto power into the Code, resulting in its non-ratification. Moreover, ASEAN would just continue to play the waiting game, or worse, with its "projection without a project" as leaving them to focus on its Code with the PRC would just delay the justice that international law, particularly

the UNCLOS 1982, values - as the SCS case is also a global challenge to institutional accountability and hegemonic stability.

To balance the growing power of the PRC in the region, the Quadrilateral Security Dialogue (Quad) reemerged to discuss security, economic, and health issues. Begun in 2004, the Quad, which is composed of the US, the Commonwealth of Australia, the Republic of India, and Japan, has intensified its security and economic ties with each other “to counter the assertion of regional influence” of the PRC (Smith, 2021). With the driving force of Former Japanese Prime Minister Shinzo Abe in his “Confluence of the Two Seas”⁸ speech and pushing for a “Democratic Security Diamond”⁹, Former US President Donald Trump had endorsed Abe’s vision in the region despite horrible tactics (Heydarian, 2020; Heydarian, 2021). With the Biden administration, the US has strengthened its ties with the Japanese Self-Defense Forces, while the Republic of India and the Commonwealth of Australia have adopted a tougher stance over the PRC (Express Web Desk, 2020; Scott, 2020).

While the PRC referred to the Quad as the “Asian North Atlantic Treaty Organisation” for its “selective multilateralism”, the soft diplomatic response to constrain the PRC can build a cohesive Indo-Pacific front with like-minded key ASEAN countries such as the RP, the Federation of Malaysia, the Socialist Republic of Vietnam, and the Republic of Indonesia (Heydarian, 2021; Malay Mail, 2020; Parey & Ahmed, 2021; Hasija, 2021). This, in turn, would let ASEAN unilateralism complement the inefficacies that come with ASEAN ‘unanimity’. However, the Quad must also ensure that the Republic of China (ROC) does not fall to the PRC, given that a growing military crisis over the Taiwan Strait with the new Chinese Coast Guard Law could cause regional instability, easing the projection of Chinese naval power across the Indo-Pacific that would extend the maritime militia of the PRC through the Ryuku Islands and Senkaku Islands, interfering with the maritime commerce of Japan. When the ROC would be controlled by the PRC, it could also envelope the RP to access the Benham Rise, strengthening the ability of the PRC to also control their SCS-claimed territory “by blocking the Luzon Strait and the Balintang and Babuyan channels, cutting off the traditional access paths used by US naval vessels” (Krishnan, 2021; Davis, 2021; Batongbacal, 2021).

DIGITAL ACTIVISM

In the Philippine Congress, senators have filed Senate Resolution No. 708¹⁰ condemning the illegal activities of the PRC in the Philippine’s EEZ. Senator Panfilo Lacson reiterated that it could be disastrous to Philippine’s sovereignty if members of the military interpreted the comments by Duterte as surrendering to the PRC. Furthermore, the 1987 Philippine Constitution which renounces war as an instrument of national policy, was sworn by the President to protect. Senator Risa Hontiveros also reiterated that if a “war” Duterte cannot wage is the only way he can think of, then that betrays the moral and intellectual bankruptcy of the highest office of the land (Perez-Rubio, 2021).

The DND, NTF-WPS, PN, PCG and BFAR continued to be vocal about these incursions and the risks these pose to national security. Particularly, BFAR urged nearly 300,000 Filipino fishermen and more than 100 commercial fishing boats to swarm WPS and ply its EEZ regularly (Roper, 2021). Del Rosario also urged Duterte to follow the recent initiative of the NTF-WPS, DND, and DFA, together with patriotic soldiers in asserting Philippine's sovereign rights in the WPS (Tomacruz, 2021).

The group "Professors for Peace" consisting of educators and academicians from top Philippine universities signed a statement expressing that they cannot tolerate the outright theft of Philippine's natural resources and the harassment to the Filipino fishermen (Professors for Peace, 2021). In addition, Philippine business groups, which include the Makati Business Club (MBC), the Management Association of the Philippines (MAP), and the Philippine Chamber of Commerce and Industry (PCCI), also released a joint statement joining the call for the PRC to withdraw its vessels from the Julian Felipe Reef, respect sovereign rights, and seek peaceful co-existence (Pangalangan, 2021).

The international community has also been expressing support for the position of the RP on the dispute. On March 2021, Ambassador Kazuhiko Koshikawa and Ambassador Steven Robinson, the Japanese and Australian Ambassadors to the Philippines, respectively, had spoken up against the destabilising actions of the PRC, viewing such as directly affecting regional security and stability; while US Secretary of State Antony Blinken, on April 2021, stated that the US stands with the RP in the face of maritime militia of the PRC amassing at the Julian Felipe Reef (Tomacruz, 2021; Blinken, 2021). British Ambassador to the Philippines Daniel Pruce reiterated the United Kingdom of Great Britain and Northern Ireland's position on the dispute, with its readiness to provide support in related capacity-building efforts, pointing that the UNCLOS 1982 must take precedence (Casilao, 2021). In 2020, the UK, together with the Republic of France and the Federal Republic of Germany, informed the United Nations (UN) of their rejection of the PRC-claimed "historic rights" (Ramos, 2020). Moreover, in the second quarter of 2021, the European External Action Service (EEAS) reiterated its strong opposition to any unilateral actions that could undermine regional stability and the international rules-based order while urging all parties to resolve disputes through peaceful means in accordance with international law (European External Action Service, 2021).

SETTLING DISPUTES UNDER UNCLOS 1982

Even prior the determination of the jurisdiction of the Annex VII Arbitral Tribunal, the RP could not already bring their relevant maritime disputes to any of the compulsory procedures since the PRC, in its 2006 Declaration¹¹ under Article 298, did not accept any of the procedures provided for in Section 2, Part XV of the UNCLOS 1982, all of which are subject to compulsory procedures.

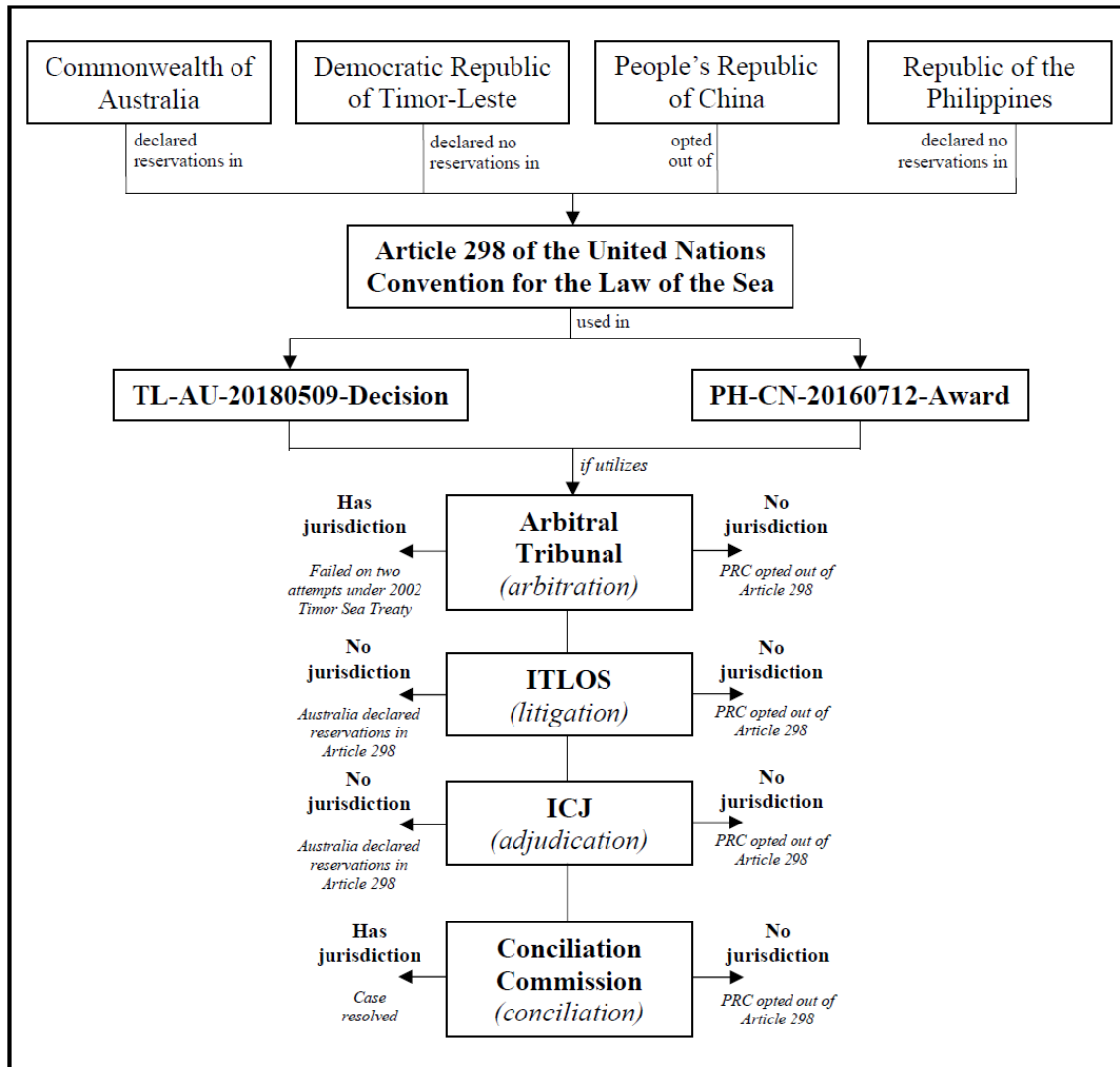
Despite having a 2002 Declaration on the Conduct of Parties in the SCS (DOC)¹², the Annex VII Arbitral Tribunal may only have its jurisdiction over the SCS case if the PRC did not opt out of Article 298. On the other hand, while the *ad hoc* arbitral tribunal

had jurisdiction in the Timor Sea case as both the Commonwealth of Australia and the Democratic Republic of Timor-Leste did not opt out of Article 298, the arbitration, however, failed on two attempts under the 2002 Timor Sea Treaty (Lando & Oral, 2021).

Other than the Annex VII arbitration, Article 287 (1) of UNCLOS 1982 provides that the International Tribunal for the Law of the Sea (ITLOS), through litigation, the International Court of Justice (ICJ), through adjudication, and the Annex VIII special arbitral tribunal, through arbitration, can be nominated by any State Parties by means of written declaration; however all of these do not have any jurisdiction in the Timor Sea case as the Commonwealth of Australia historically rejected the dispute settlement mechanisms to comply with their 2002 Declaration¹³ under Article 287 and 298, declaring that “it does not accept any of the procedures provided for in [S]ection 2 of Part XV [...] with respect to disputes concerning the interpretation or application of [A]rticles 15, 74, and 83 relating to sea boundary delimitations as well as those involving historic bays or titles”. Likewise, the ITLOS, the ICJ, and the Annex VIII special arbitral tribunal also do not have any jurisdiction in the SCS case because the PRC, in its 2006 Declaration¹⁴, does not accept any of the procedures provided for in Section 2, Part XV of the UNCLOS “with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention”. If the PRC did not opt out of Article 298, the ITLOS, the ICJ, and the Annex VIII special arbitral tribunal may have its jurisdiction over the SCS case; however, even if the ICJ may have its jurisdiction over the SCS case, the choice of procedure may only be detrimental to the RP as it would classify offshore features as islands entitled to the PRC (Reed & Wong, 2016).

Although not part of the PCA or any other court or tribunal, by virtue of Article 284, Section 1, Part XV of the UNCLOS, the Timor Sea case has been resolved by means of conciliation through the Conciliation Commission formed on an *ad hoc* basis solely to conduct the conciliation process. While conciliation can be signified as a procedure that can be adopted for similar maritime disputes, taking into consideration the legal, political, and economic factors (Tamada, 2020), it cannot be invoked in the SCS case since the Conciliation Commission has no jurisdiction over it as the PRC opted out of Article 298, (unlike the Commonwealth of Australia who only declared reservations in Article 298), thus engendering a diplomatic deadlock for the RP in all of the compulsory procedures in Part XV of the UNCLOS.

Figure 1 - Dispute Settlement Mechanism Options from the Timor Sea Case applied for the South China Sea Case based on Article 298 of UNCLOS 1982



THE MINILATERAL TO MULTILATERAL STRATEGIC DEFENSE

While the main goal of the RP is to prevent the PRC from winning without fighting, the long-term objective must be the development of a credible defense capability by training the navy and air forces of the RP for asymmetrical warfare. However, for immediate purposes, naval warships and patrolling air forces should surround the “free-floating” areas within the Philippine’s EEZ in the conduct of the Freedom of Navigation and Freedom of Overflight, until posts entitled to the RP are already planted. In this sense, the PRC could not anymore occupy the areas “free to be eaten”.

Considering the limited maritime resources of the RP, its strategic alliance with the US should be revitalised by reviewing and updating its Visiting Forces Agreement (VFA)

to further strengthen their 1951 Mutual Defense Treaty (MDT) in guidance of the 2014 Enhanced Defense Cooperation Agreement (EDCA), and enhance its security partnerships with ‘like-minded’ ASEAN countries such as the Socialist Republic of Vietnam, Republic of Indonesia, Federation of Malaysia, and even the Kingdom of Thailand and the Republic of Singapore to come together for the coordination of their approach to constrain, rather than contain, the PRC from claiming its expanded SCS. Once this ASEAN ‘minilateralism’ initiates from the RP, the US would then recognise that its presence could better foster strategic defense ties to secure not just the WPS, but the broader Indo-Pacific, extending its defense strategy from the Quad to the Group of 7 (G7), which includes the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany, the Republic of France, the Republic of Italy, and Canada. The inclusion of these European powers could also strengthen the Indo-Pacific security alliance since they also have defense staff offices in the Republic of Singapore for them to exercise the berthing rights of their navies in the Philippine’s EEZ.

Given that the ROC has enhanced its engagement with the Republic of India and ASEAN countries under its New Southbound Policy¹⁵, the Quad with the G7 could pull the ROC to join the Indo-Pacific security alliance to further protect the Taiwan Strait from the PRC, which would in turn, also secure the Luzon Strait and the Spratly chain controlling the northeast exit of the SCS.

The stakes of the strategic pathway to the UN

While the RP can file diplomatic protests to the UN, it cannot recommend the UN to oversee the occupation of the PRC in the WPS with its Peacekeeping Navy since it can only take place with the support of the UN Security Council (UNSC). As the PRC is a permanent member with a veto power, requesting for it would just prompt the PRC to use its veto power or just lay the measure on the table.

Despite Duterte raising its unilateral stand on the 75th session of the UNGA, and the RP itself being elected as the Vice-President of the 76th session to serve from 2021 to 2022 (Rocamora, 2021), it may hardly set the SCS case in its agenda since setting the agenda in the UNGA is the task¹⁶ of its 21 Vice-Presidents where the permanent members of the UNSC are also seated. It may set it as an agenda if the RP would raise the case to be an agenda in the 76th session; however, it would be undesirable if the RP would be the only member state firm to raise it to the UNGA.

The SCS case may then, however, be prioritised if the RP would exercise a “democratic yet diplomatic” protest by forwarding to the UN Secretary-General a written notification accompanied by a statement of the claim indicating that the post-Tribunal Award has led to the continuous violation of UNCLOS 1982 and the grounds on why it has to be brought to the attention of the UN through the Secretary-General - invoking instead, a voluntary arbitration by virtue of the UN Charter. Contrarily, the RP may not immediately raise it or even initiate a minilateral defense strategy due to the strengthened bilateral economic ties of Duterte with the PRC. In resolving the tensions arising in the region, there has to be alternative democratic mechanisms to forward the case to the UN.

Democratic diplomacy recourse through Mini-ASEAN Youth

To halt the occupation of the PRC over Philippine waters and to call for deliberate minilateral dialogues and immediate and concrete dispute settlement mechanism over the SCS dispute, digital activism must be extensively strengthened through international policy-making and lobbying to governmental and private institutions of the RP, to 'like-minded' organisations and institutions within Southeast Asia and allies of the RP, before forwarding to the ASEAN, the Quad, G7, and the UN Secretary-General. Thus, from a regional minilateral cooperation, and by the rule of law agreement, the dispute can be handled by initially organising a large youth network in the RP for mobilisation, partnering with different youth-led, non-government, and civil society organisations not just in the RP, but also with the ASEAN youth, beginning from the Republic of Indonesia as the *de facto* leader of ASEAN, and to the ASEAN states of Socialist Republic of Vietnam, Federation of Malaysia, the Kingdom of Thailand, and the Republic of Singapore.

Upon convening, two (2) resolutions, shall be drafted and signed by organisations and institutions from the RP and its ASEAN allies: (1) pressuring the ASEAN to act on the SCS case by revisiting their core principle of non-interference with the peaceful settlement of disputes, by reforming its dispute settlement mechanism on maritime issues, and by revitalising their multilateral actions for regional political security; and (2) requesting the UN Secretary-General, through a communication with the UNGA President to relay to the 21 Vice-Presidents, the conduct of an inquiry to the dispute, upholding UNCLOS 1982, the 2016 PCA Award, and related international law instruments, as the challenges do not only affect the PRC-RP and ASEAN-PRC relations, but the global political and economic relations in recognising the role of the middle powers for institutional accountability and hegemonic stability - a leverage for the RP that PRC cannot not participate, not comply, and not recognise since here, RP invoked the voluntary arbitration under the Charter. A proactive political engagement with the youth from the Quad and G7 countries regarding international peace and security and the law of the sea then has to be established for a common perspective toward securing the Indo-Pacific. From the youth alliance with the mini-ASEAN, the Quad, and G7 countries, a separate joint communique shall then be drafted for the enforcement by state practice of the ruling of Freedom of Navigation and Freedom of Overflight, with a clause "subjecting to reciprocity" the industry investments - the thrust of diplomacy of each state for maritime security and economic trade.

Policy advocacy and mobilisation enter as the resolutions and joint communique, upon negotiation and agreement, shall primarily be submitted to the offices of the ASEAN Secretariat, UN Youth Envoy, and UN Secretary-General, by each youth-led, non-governmental, and civil society organisation and institution. Policy lobbying comes in as the documents released by each organisation and institution shall be copy-furnished to the offices of the Philippine Senate President, each Philippine senator, Philippine DFA Secretary, Philippine DND Secretary, Philippine Vice President, Philippine President, and to the equivalent offices of the mini-ASEAN plus the Quad and the G7 countries.

A strengthened digital activism can be expected as the organisations and institutions can publish their documentations online, not just for transparency, but also for a united

front in defending the WPS and the broader Indo-Pacific while protecting the marine resources, food stock, and the livelihood of fishermen from the incursions unilaterally legalised through the new Chinese Coast Guard Law.

CONCLUSION

The democratic diplomacy youth recourse for a minilateral to multilateral approach would redirect to the accountability of regional and international organisations such as the ASEAN and the UN to uphold international law, as the resolutions and the joint communique reflect the voice of the “hope of the future” generation, only allowing a hegemon that respects international law, particularly the law of the sea, and the role of the middle powers - preventing the opportunity for Chinese structural realists to debunk Filipino and Southeast Asian neoliberal institutionalist framework driven by constructive communicative actions. With policy-making, lobbying, and mobilisation from the mini-ASEAN youth coalition, the principle of non-interference and the dispute settlement mechanism on maritime affairs of the ASEAN will be questioned. With a minilateral to multilateral approach to regional and international organisations, the WPS will be protected, the SCS will be regulated; and the Indo-Pacific will be secured - relying on the purpose of the establishment of the UN: the call for international peace and security.

Notes

¹ See Official Gazette of the Republic of the Philippines. (1978). Presidential Decree No. 1596. <https://www.officialgazette.gov.ph/1978/06/11/presidential-decree-no-1596-s-1978/>

² See Association of Southeast Asian Nations. (1995, Jul 30). 1995 Joint Communique of the 28th ASEAN Ministerial Meeting. <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1995-28th-AMMJC.pdf>

³ See Permanent Court of Arbitration (2016). PCA Case No 2013-19 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. <https://docs.pca-cpa.org/2016/07/PH-CN-20160712-Award.pdf>

⁴ See United Nations. (1992). Law on the Territorial Sea and the Contiguous Zone of 25 February 1992. https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf

⁵ See Centre for International Law. (1992). 1992 ASEAN Declaration on the South China Sea. Association of Southeast Asian Nations. <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/1992-ASEAN-Declaration-on-the-South-China-Sea.pdf>

⁶ See Association of Southeast Asian Nations. (2019). ASEAN Outlook on the Indo-Pacific. https://asean.org/storage/2019/06/ASEAN-Outlook-on-the-Indo-Pacific_FINAL_22062019.pdf?mc_cid=5e63ed38b9

⁷ See Abe, S. (2007). “Confluence of the Two Seas”. Ministry of Foreign Affairs of Japan. <https://www.mofa.go.jp/region/asia-paci/pmv0708/speech-2.html>

⁸ See Abe, S. (2012), Asia’s Democratic Security Diamond. Project Syndicate. <https://www.project-syndicate.org/onpoint/a-strategic-alliance-for-japan-and-india-by-shinzo-abe?>

⁹ See Drilon, F., Recto, R., Binay, M., De Lima, L., Gordon, R., Hontiveros, R., Lapid, M., Pangilinan, F., Poe, G., Revilla, R., & Villanueva, J. (2021). Resolution condemning the illegal activities of the People’s Republic of China in the Exclusive Economic Zone of the Philippines and other parts of the West Philippine Sea, in violation of the United Nations Convention on the Law of the Sea and the 2016 Award by the Permanent Court of Arbitration in favor of the Philippines. Senate of the Philippines. <http://legacy.senate.gov.ph/lisdata/3485431695!.pdf>

¹⁰ See Mogato, M. (2017, May 19), Duterte says China's Xi threatened war if Philippines drills for oil. Reuters. <https://www.reuters.com/article/us-southchinasea-philippines-china-idUSKCN18F1DJ>

¹¹ See Declarations and Reservations of China, particularly Chapter XXI, Section 6, in the Status of Treaties under the Depositary of the United Nations Treaty Collection.

¹² See Declaration on the Conduct of Parties in the South China Sea, 4 November 2002.

¹³ See Declarations and Reservations of Australia, particularly Chapter XXI, Section 6, in the Status of Treaties under the Depositary of the United Nations Treaty Collection.

¹⁴ Declarations, *supra* note 12.

¹⁵ See New Southbound Policy Portal (2021). Policy Framework.

https://nspp.mofa.gov.tw/nspp/list_tt.php?unit=376&unitname=Policy-Framework

¹⁶ See Chapter VI (General Committee) of the Rules of Procedure of the General Assembly of the United Nations, particularly Rule 40. <https://www.un.org/en/ga/about/ropga/gencttee.shtml>

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