

China's Claims and Positions over the South China Sea: *Continuities and adaptations*

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Issues to cover

- ❖ Reading the documents and interpreting the claims
- ❖ Understanding China's reaction to the South China Sea Arbitration

China's claims

- ❖ Declaration of the Government of the People's Republic of China on the Territorial Sea, 1958 (*12nm, applicability, baseline, foreign and military vessels*)
- ❖ The Law of the People's Republic of China on the Territorial Sea and Contiguous Zone, 1992 (*Foreign ships for non-military purposes, Foreign ships for military purposes, Foreign submarines and other underwater vehicles, scientific research, marine operations, right of hot pursuit*)
- ❖ Declaration on the Baseline of the Territorial Sea, 1996 (*Baseline of the continent, and the Paracels*)
- ❖ Decisions of the Standing Committee of the National People's Congress of the People's Republic of China on the Ratification of the United Nations Convention on the Law of the Sea, 1996 (*entitlement to EEZ and CS, equitable principles, foreign military vessels*)
- ❖ Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, 1998 (*EEZ, CS, equitable principles, historic rights*)
- ❖ China's Declaration under Article 298 of UNCLOS, 2006 (*Arc. 298 1 a, b, c*)
- ❖ Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea (*geographic scope, discovered, named, and explored and exploited, exercised sovereignty and jurisdiction, recovered and resumed, dragged Location Map of the South China Sea Islands, national legislations, rights, freedom of navigation and overflight*)

- ❖ Territorial claimed based on territory acquisition of customary international law (**sovereignty over Nanhai Zhudao, consisting of Dongsha Qundao, Xisha Qundao, Zhongsha Qundao and Nansha Qundao**)
- ❖ Maritime claims based on UNCLOS (**internal waters, territorial sea and contiguous zone, exclusive economic zone and continental shelf, based on Nanhai Zhudao**)
- ❖ Other rights based on customary international law (**historic rights in the South China Sea**)
- ❖ **Unchanged: the claims**
- ❖ **Changed: the approach**

❖ **Understanding China's reaction to the
South China Sea Arbitration**

Official documents

1. Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines (2014-12-07)
2. Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the Arbitral Tribunal Established at the Request of the Public of the Philippines (2015-10-30)
3. Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Public of the Philippines (2016-06-08)
4. Statement of the Ministry of Foreign Affairs of the People's Republic of China on Settling Disputes Between China and the Philippines in the South China Sea Through Bilateral Negotiations (2016-06-08)
5. Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea (2017-07-12)
6. Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Public of the Philippines (2016-07-12)
7. The State Council Information of People's Republic of China: China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Phi, Philippines in the South China Sea (2016-07)

China's policy choice

- ❖ **Political consideration**

- ❖ **Approach to international law**

 - Attitude Towards International Law

 - Participation in UNCLOS Process

 - Maritime Legislation Review

 - Third party compulsory dispute settlement

- ❖ **Legal position :**

 - jurisdiction/admissibility: 281/282/283/298

 - Legal culture

 - Impact on confidence-building

- ❖ **State Practice of maritime dispute settlement**

- ❖

Effectiveness and Implication for dispute settlement mechanism under UNCLOS

- What does the SCS arbitration mean for the legal order of the sea?
- What does the SCS arbitration case imply for article 298?
- What does the SCS arbitration case imply for the future development of the judicial bodies under Article 287?
- What does the SCS arbitration case tell about China's future on its options for third party compulsory dispute settlement mechanism?
- What does the SCS arbitration case imply for the United States and its future for ratifying the UNCLOS
- What does the SCS arbitration case imply for the compliance system with regard to the Arbitral Tribunal under Annex 7?

Previous Non-compliance Of States With International Arbitral/ judicial decisions

- * Boundary dispute between Bolivia and Peru (1907)
- * The Wimbledon case, P.C.I.J., Ser. A, No. 1 (1923)
- * the Societe Commerciale de Belgique case, P.C.I.J., Ser. A/B, No. 78 (1939)
- * Corfu Channel Case and Monetary Gold case
- * Asylum case (Colombia v. Peru, 1950)
- * Anglo-Iranian Oil Co. case (UK v. Iran, 1952)
- * The case concerning Right of Passage over Indian Territory (Portugal v. India, 1960)
- * Trial of Pakistani Prisoners of War case (Pakistan v. India, 1973)
- * Fisheries Jurisdiction case (UK v. Iceland, 1973)
- * The Nuclear Tests cases (New Zealand v. France, 1974)
- * The Hostages case (US v. Iran, 1980)
- * The Nicaragua case (Nicaragua v. US, 1986)
- * The Gabikovo-Nagymaros Project case (Hungary/Slovenia, 1998)

About compliance

Annex VII of UNCLOS does not incorporate arbitral awards into domestic law. UNCLOS provides no mechanism to compel enforcement of an annex VII award

- ❖ In an increasing number of cases, a party refused either to appear or to participate in stages of the proceedings, and unwilling participants were less likely than others to accept the Court's judgment.
- ❖ Disputes involving land boundaries and a history of armed conflict received the lowest levels of compliance.
- ❖ Legal doctrines supporting refusal of the enforcement:
 - Excess of power*
 - Corruption of the member of the tribunal*
 - A serious departure from a fundamental rule of procedure*

❖ *Thank you*