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Legal Critique of the South China Sea Arbitration Awards

—— “The South China Sea Arbitration Awards
Are Not International Law”

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Executive Summary

The *South China Sea Arbitration* was unilaterally initiated by the Philippines and suffers from fundamental flaws in both procedure and substance. The so-called awards issued by the Arbitral Tribunal run counter to the spirit of international law. In essence, it is a political manipulation under the guise of law, with the Tribunal itself having become a geopolitical tool of external powers such as the United States and Japan. An expert panel composed of scholars in international law of the sea from the National Institute for South China Sea Studies, Jinan University, Ocean University of China, and Shanghai Maritime University jointly produced the report *Legal Critique of the South China Sea Arbitration Award*——“The South China Sea Arbitration Awards Are Not International Law” (hereinafter referred to as the Report). This Report conducts its analysis along three main lines——arbitral jurisdiction, application of substantive rules, and the validity of the awards—to demonstrate why the awards do not reflect international law, while systematically examining the international law issues involved and clarifying certain misconceptions within the international community.

The issue of jurisdiction was the first problem exposed in this case and is also the most decisive legal obstacle. In its submissions, the Philippines’ claims constituted a strategic reframing of the nature of the dispute, deliberately packaging the territorial sovereignty and maritime jurisdiction disputes between China and the Philippines as issues concerning the interpretation and application of the provisions of the United Nations Convention on the Law of the Sea (hereinafter referred to as the Convention), thereby misleading international public opinion. However, a brief review reveals that China and the Philippines have previously confirmed through

bilateral treaties, joint statements, and other documents that the disputes between the two countries involve sovereignty over island territories and maritime jurisdiction. The two sides have reached a consensus to address South China Sea disputes through bilateral consultations and negotiations. The nature of the disputes and the agreed manner of handling them preclude the applicability of third-party arbitration proceedings. More critically, as early as 2006, China issued a government declaration pursuant to Article 298 of the Convention, expressly excluding disputes concerning maritime delimitation and other categories from the compulsory dispute settlement procedures of the Convention. In other words, with respect to such disputes, the Convention's arbitration mechanism does not have automatic jurisdiction. However, the Arbitral Tribunal turned a blind eye to all this, willfully distorting the rules while engaging in self-deception. Without any examination, it automatically accepted the Philippines' assertion that the disputes do not involve territorial sovereignty or maritime jurisdiction, forcibly bringing matters outside its jurisdiction within its purview. This rendered the arbitration devoid of any foundation of judicial jurisdiction from the very outset. Such arbitration that oversteps the limits of international law lacks legitimacy.

If jurisdictional issues constitute the fundamental flaw of the case, then the merits phase reveals even more serious systemic errors. In applying the provisions of the Convention, the Arbitral Tribunal arbitrarily adopted expansive interpretations, even distorting the original meaning of the text, to deny the maritime rights that China enjoys in the South China Sea, which derive from its sovereignty over island territories and historic rights. The Tribunal disregarded the fundamental fact that the Nansha Qundao constitute an integrated whole geographically, historically, and legally. It wantonly

dismembered China's territorial sovereignty over the Nansha Qundao by artificially fragmenting them into disconnected, scattered reefs, and mechanically applied—or even deliberately distorted—the provisions of the Convention, gravely infringing upon China's sovereignty and territorial integrity over the Nansha Qundao. What is even more questionable is the evidence-admission process. The Arbitral Tribunal showed partiality and bias, citing uncorroborated evidence from single sources on multiple occasions, and even proactively and one-sidedly collecting materials prejudicial to the other party, in violation of evidentiary rules. It thereby forfeited the objective and neutral stance incumbent upon an adjudicator. The award texts are replete with internal contradictions and arbitrary conclusions, reflecting grave deficiencies in professionalism. Such awards run counter to international judicial practice, let alone possess any legal persuasiveness.

The awards in the *South China Sea Arbitration* were rendered by an arbitral tribunal that lacked judicial jurisdiction. They suffer from fundamental flaws in the application of law and seriously violate fairness and justice. Consequently, they are void *ab initio* and devoid of any legal effect under international law. As a sovereign state, and in accordance with the provisions of the Charter of the United Nations (hereinafter referred to as the UN Charter) and the Convention, China refused to participate in the *South China Sea Arbitration* to safeguard its national sovereignty, territorial integrity, and maritime rights. This is an act of state sovereignty, legitimate and lawful, with ample precedents in international practice. Furthermore, regarding the composition of the Arbitral Tribunal itself: certain arbitrators abandoned independent judgment from the very beginning, and their opinions in the award catered to the instructions and demands of the political

forces behind them. Such a “tailor-made” composition caused the tribunal to completely lose credibility from the moment of its establishment through to the jurisdictional award. The award on the merits is even more riddled with errors and loopholes in the application of law. Such awards violate fairness and justice as well as international law. They fail to gain public trust and do not meet the conditions for implementation. They are therefore illegal and invalid.

Ultimately, the *South China Sea Arbitration* is a behind-the-scenes political manipulation by a handful of external forces under the guise of law—a strategic containment of China by outside powers such as the United States and Japan in the field of international law, cloaked in a veneer of the “rule of law.” A decade on, particularly in light of the Philippines’ repeated failure to honour its commitments and its provocations in the South China Sea in recent years, the arbitral awards have endorsed the lawbreaker. They have not resolved disputes, nor have they eased tensions; rather, they have exacerbated and further complicated the situation. Looking back at the practical experience of the international community, the true path to resolving regional disputes lies in good-faith dialogue among the parties concerned. Returning to the “dual-track” approach—whereby directly concerned states properly manage differences through mutual respect and equal consultation and negotiation among sovereign states, and China and ASEAN countries jointly safeguard peace and stability in the South China Sea—truly embodies respect for the spirit of the international rule of law, and is the only viable path to resolving the South China Sea issue.

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Introduction: A Piece of Invalid Legal Paper

In January 2013, the Philippines unilaterally initiated compulsory arbitration proceedings under Annex VII to the UNCLOS with respect to the China–Philippines disputes in the South China Sea. On 12 July 2016, the Arbitral Tribunal rendered its award on the merits, fully accepting and endorsing the claims of the Philippines. By dismembering China’s territorial sovereignty over the Nansha Qundao, it wholly denied China’s historic rights and maritime entitlements in the South China Sea.¹ However, China’s position on the 2016 Arbitral Award on the South China Sea is consistent and clear: “The so-called ‘award’ is nothing but a worthless piece of paper that is illegal, null and void, and has no binding force. China does not accept or recognize the ‘award,’ and opposes and does not accept any claim or action based on it. China’s territorial sovereignty and maritime rights and interests in the South China Sea shall not be affected by the ‘award’ under any circumstances.”² This position is by no means a disregard of international law. Rather, it rests on international law and international judicial practice and confirms that the Arbitral Tribunal had no jurisdiction over the matters raised in the Philippines’ claims, that the arbitration proceedings were seriously unlawful, and that the award on the merits is riddled with errors. Both awards in the *South China Sea Arbitration* were never grounded in international law from the outset. They contain erroneous findings of fact and erroneous application of law, and are nothing more than one-sided narratives manipulated by politics and money. The issue of jurisdiction is the greatest legal obstacle in this case, as well as the most

¹ See *The South China Sea Arbitration* (The Republic of the Philippines v The People’s Republic of China) (12 July 2016), PCA Case No 2013-19, Award.

² See Statement of the Ministry of Foreign Affairs of the People’s Republic of China on Certain Countries’ Playing up of the “South China Sea Arbitration Award” 10 Years After Its Issuance (12 July 2026), https://www.mfa.gov.cn/eng/xw/wjbxw/202607/t20260712_11980357.html.

evident and fatal legal defect. The Arbitral Tribunal disregarded the fact that the Philippines' claims essentially concerned territorial and maritime jurisdiction disputes between China and the Philippines. It empowered itself in violation of the principle of State Consent, wantonly exceeded and expanded its authority, seriously violated the Convention, and departed from general international judicial practice. In the merits phase, it substituted subjective conjecture and speculation for rigorous, normative treaty interpretation, rendering a miscarriage of justice that was manifestly partial to one side. The Arbitral Tribunal recklessly entertained requests involving territorial sovereignty and maritime delimitation disputes between the two countries before the means of negotiation between China and the Philippines had been exhausted.³ It denied that the Nansha Qundao constitute an integrated whole geographically, historically, and legally, fragmenting them into isolated individual maritime features and discussing their legal status separately.⁴ This approach violates international law, departs from international judicial practice, and is unpersuasive. The Tribunal's approach of equating the Convention with the entire system of the law of the sea is inconsistent with the actual development of international law, and violates the basic principles and logical reasoning of international law. Moreover, the awards are riddled with errors in the application and interpretation of law, findings of fact, and the admission of evidence, effectively endorsing the lawbreaking party. Ultimately, they have further exacerbated and complicated the South China Sea disputes. They have not only failed to facilitate the resolution of South China Sea disputes but have also disrupted

³ See The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, paras. 244-248.

⁴ See The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) (12 July 2016), PCA Case No 2013-19, Award, paras. 573-576.

the delicate balance of the Convention's provisions, undermining the integrity, authority, and credibility of the Convention. This Report aims to systematically reveal the illegal nature of the awards, clarify misconceptions in the international community regarding this case, and restore a reasonable pathway for resolving South China Sea disputes.

I. The Mystery of Jurisdiction: Why the Arbitral Tribunal Had No Competence to Adjudicate

(I) The Nature of the Problem: The Philippines' Strategic Repackaging of the Disputes' Nature

The China-Philippines disputes in the South China Sea have, throughout their history, been limited to only two matters: territorial sovereignty over islands and maritime delimitation. The history of the disputes and the official positions of both countries fully demonstrate that the disputes between China and the Philippines are nothing beyond these two issues. The official legal documents in which the Philippines initiated the arbitration explicitly stated the purpose as “safeguarding territorial integrity,” with the core demands being the seizure of Huangyan Dao and certain maritime features of China's Nansha Qundao.⁵ All 15 of the Philippines' claims in the arbitration constitute component parts of the two disputes or reflect different aspects thereof. The Philippines modified its claims on three occasions, packaging them as matters concerning the interpretation and application of the provisions of the Convention, but in reality, none of them deviated from the framework of the China–Philippines South China Sea disputes. For example, Claims 1 to 7 of the Philippines directly concern the dotted line in

⁵ See Republic of the Philippines, Notification and Statement of Claim on the West Philippine Sea (22 January 2013), para. 2.

the South China Sea and China's territorial sovereignty over Huangyan Dao of the Zhongsha Qundao and the Nansha Qundao, including Meiji Jiao, Ren'ai Jiao, Zhubi Jiao, Nanxun Jiao, Ximen Jiao, Dongmen Jiao, Chigua Jiao, Huayang Jiao, and Yongshu Jiao. Claims 8 to 14 of the Philippines all pertain to territorial and maritime jurisdiction between China and the Philippines, involving issues of the exercise of territorial sovereignty and maritime law enforcement authority. The Philippines claimed that it was not seeking a determination as to which party enjoys sovereignty over the islands claimed by both sides, nor was it requesting the delimitation of any maritime boundary. Yet in substance, each claim pointed to territorial sovereignty and maritime delimitation.

The Technical Reports to the State of the Nation Address published by the Office of the President of the Philippines over the years constitute irrefutable evidence of its true intentions: In 2014, the case was listed under the item "safeguarding territorial integrity through the promotion of the rule of law,"⁶ In 2015, it was listed again as an important component of "protecting national territory and boundaries."⁷ On the one hand, the Philippines made no secret of its true objective to seize territorial sovereignty over and maritime areas of the Nansha Qundao; on the other hand, in the arbitration case, it recast the China–Philippines disputes as issues concerning the interpretation of the Convention.⁸ This is clearly a form of legal packaging. The Arbitral Tribunal could easily have ascertained this point. However, the Tribunal chose to ignore this fact, while disregarding this common legal

⁶ See Office of the President of the Philippines, 2014 SONA Technical Report (2014), pp. 64-65, <http://www.gov.ph/2014/07/28/2014-sona-technical-report/>.

⁷ See Office of the President of the Philippines, 2015 SONA Technical Report (2015), pp. 61-62, <http://www.gov.ph/downloads/2015/2015-SONA-TECHNICAL-REPORT.pdf>.

⁸ See *The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China)* (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, para. 178.

knowledge and the consensus among regional international law scholars. It showed partiality by determining that the Philippines' claims did not involve territorial sovereignty and maritime delimitation, and deluded itself into believing that the entire proceedings would not involve territorial sovereignty and maritime delimitation. It erroneously determined that it possessed judicial jurisdiction, and in the actual course of proceedings and in its awards, repeatedly acted *ultra vires* by addressing issues of territorial sovereignty and maritime delimitation. The Tribunal's treatment of whether the Nansha Qundao meet the definition of islands under the Convention not only contradicted its commitment to refrain from addressing issues of territorial sovereignty and maritime delimitation but also gravely infringed upon China's sovereignty,⁹ constituting a serious *ultra vires* act and an unlawful infringement.

International judicial practice has long established that when the substance of a dispute involves sovereignty, even if it is packaged as an issue related to the Convention, the Arbitral Tribunal should decline jurisdiction entirely based on the principle of "incidental questions" or the principle of the "indivisibility of disputes." In the 2015 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, the Annex VII Arbitral Tribunal established under the Convention explicitly stated that although Mauritius' claim that "the United Kingdom is not a coastal State" on its face invoked provisions of the Convention, it must be viewed in the context of the Parties' dispute over sovereignty in the Chagos Archipelago.¹⁰ That Arbitral Tribunal ultimately ruled that this claim was in substance a

⁹ See *The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, paras. 572-573.

¹⁰ See *Chagos Marine Protected Area Arbitration (The Republic of Mauritius v The United Kingdom of Great Britain and Northern Ireland)* (18 March 2015) PCA Case No 2010-11, Award, para. 219.

territorial sovereignty issue and did not fall within the scope of the compulsory procedures of the Convention.¹¹ The Arbitral Tribunal in the *South China Sea Arbitration*, when confronted with a similar legal issue, reached the diametrically opposite conclusion. This selective application of the law precisely reveals the essence of its preconceived positions and partiality toward one side.

(II) Agreement-Based Exclusion: China and the Philippines Have Already Reached a Consensus to Exclude Arbitration

Article 281 of the Convention establishes the fundamental principle of “negotiation first”: If the States Parties which are parties to a dispute “have agreed to seek settlement of the dispute by a peaceful means of their own choice,” compulsory arbitration “apply only where no settlement has been reached by recourse to such means and the agreement between the parties does not exclude any further procedure.” In other words, if the States Parties have agreed to resolve the dispute through peaceful means of their own choice, the compulsory arbitration procedure is thereby blocked. Reviewing the history of bilateral relations between China and the Philippines, the two sides have long reached a clear consensus on the means of resolving South China Sea disputes through a series of documents—The Joint Statement between the People’s Republic of China and the Republic of the Philippines concerning Consultations on the South China Sea and on Other Areas of Cooperation in 1995,¹² The Joint Statement of the China-Philippines Experts Group Meeting on Confidence-Building Measures in 1999,¹³ The Joint

¹¹ See *Chagos Marine Protected Area Arbitration (The Republic of Mauritius v The United Kingdom of Great Britain and Northern Ireland)* (18 March 2015) PCA Case No 2010-11, Award, para. 221.

¹² See Joint Statement between the People’s Republic of China and the Republic of the Philippines concerning Consultations on the South China Sea and on Other Areas of Cooperation (10 August 1995), Article 8.

¹³ See Joint Communiqué of the China-Philippines Confidence-Building Measures Working Group Meeting (23 March 1999).

Statement between the Government of the People's Republic of China and the Government of the Republic of the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century in 2000,¹⁴ and others, all of which explicitly contain provisions to the effect that disputes shall be resolved “through bilateral friendly consultations and negotiations” and that disputes between the two sides shall be “finally resolved through negotiations.” In the above wording, the word “finally” has already excluded all other procedures, fully satisfying the statutory condition under Article 281 of the Convention for excluding “any other procedure.”

More critically, the Declaration on the Conduct of Parties in the South China Sea (hereinafter referred to as the Declaration), jointly signed by China and the ASEAN countries, also stipulates in Paragraph 4 that relevant disputes “shall be resolved by the sovereign States directly concerned through friendly consultations and negotiations by peaceful means.” The repeated use in the above documents of terms such as “agree” and “commit” reflects a clear legal intent to establish rights and obligations under international law. The International Court of Justice (hereinafter the ICJ) in its interpretation of the term “commitment” in the 2007 case of *Bosnia and Herzegovina v. Serbia and Montenegro* may serve as corroboration: “The ordinary meaning of the word “undertake” is to give a formal promise, to bind or engage oneself, to give a pledge or promise, to agree, to accept an obligation.”¹⁵ Before initiating the arbitration, the Philippines did not engage in any substantive, good-faith negotiations with China regarding the 15 “issues of interpretation of the Convention” that it had packaged. Its

¹⁴ See Joint Statement between the Government of the People's Republic of China and the Government of the Republic of the Philippines on the Framework of Bilateral Cooperation in the Twenty-First Century (16 May 2000), Article 9.

¹⁵ See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, I.C.J. Reports 2007, p. 111, para. 162.

diplomatic notes were often unilateral pronouncements of position rather than efforts to seek consensus. The Arbitral Tribunal's rejection of the argument that the Declaration's provisions on resolving disputes through negotiation constituted an agreement between China and the Philippines is manifestly a deliberate distortion of elementary principles of international law;¹⁶ its disregard for the broad consensus on the Declaration in the region and its forcible intervention further highlight the partiality and isolation of the awards, fully demonstrating that its finding that the Declaration is not binding is wholly at odds with the long-standing practice of the regional States.

(III) Excluded Matters: China Has Lawfully Excluded Compulsory Jurisdiction

On 25 August 2006, China submitted a declaration to the Secretary-General of the United Nations in accordance with Article 298 of the Convention. The declaration states: "The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in Article 298, paragraph 1 (a), (b), and (c) of the Convention."¹⁷ Accordingly, with respect to disputes concerning sea boundary delimitation, historic bays or titles, military and law enforcement activities, and disputes in respect of which the Security Council is exercising the functions assigned to it by the Charter of the United Nations, the Government of China does not accept any of the compulsory dispute settlement procedures provided for in Section 2 of Part XV of the

¹⁶ See *The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China)* (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, paras. 241-248.

¹⁷ See United Nations Treaty Collection, Declaration by the People's Republic of China Under Article 298 of the United Nations Convention on the Law of the Sea (25 August 2006), <https://treaties.un.org/doc/Publication/CN/2006/CN.666.2006-Eng.pdf>.

Convention, including compulsory arbitration.¹⁸ To circumvent the jurisdictional obstacle set by Article 298 of the Convention, the Arbitral Tribunal deliberately narrowed the scope of the term “disputes concerning the interpretation or application of articles relating to sea boundary delimitations” in that provision. In its jurisdictional and merits awards, the Arbitral Tribunal in effect interpreted “disputes concerning the delimitation of sea boundaries” as “disputes concerning the delimitation of sea boundaries *per se*”¹⁹—that is, disputes limited to the final drawing of boundary lines in areas of overlapping maritime entitlements.²⁰ However, the International Tribunal for the Law of the Sea (ITLOS) had already clearly stated in the *Ghana/Côte d’Ivoire* case that the word “concerning” may be understood to include issues that do not form part of delimitation but are closely linked to it.²¹ The scope of “disputes concerning the delimitation of sea boundaries” under Article 298 of the Convention is far broader than the “disputes concerning the delimitation of maritime boundaries *per se*” as maintained by the Arbitral Tribunal in the *South China Sea Arbitration*.

China and the Philippines face each other across the South China Sea, and their maritime entitlements overlap—a fact that has been confirmed on multiple occasions in the diplomatic practice of both sides. The Philippines’ claims regarding the determination of the legal status of certain maritime features failed to fully consider the geographical circumstances of the delimitation between the two countries. Any award by the Arbitral Tribunal

¹⁸ See Ministry of Foreign Affairs of the People’s Republic of China, Position Paper of the Government of the People’s Republic of China on the Jurisdiction of the Arbitral Tribunal Established at the Request of the Republic of the Philippines (7 December 2014), https://www.mfa.gov.cn/web/ziliao_674904/zcwj_674915/201412/t20141207_9869197.shtml.

¹⁹ See *The South China Sea Arbitration* (The Republic of the Philippines v The People’s Republic of China) (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, para. 155, para. 157, para. 366.

²⁰ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, p. 83.

²¹ See *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d’Ivoire* (Ghana/Côte d’Ivoire) (Judgment) [2017] ITLOS Rep. 12, para. 548.

on these claims would necessarily redraw the scope of overlapping maritime zones between the two sides, which is itself an integral component of the maritime delimitation between China and the Philippines. Therefore, the Arbitral Tribunal should have determined on this basis that a maritime delimitation dispute exists between the two countries, and then applied Article 298 of the Convention and China's 2006 declaration to exclude jurisdiction over the relevant claims of the Philippines. However, the Arbitral Tribunal deliberately ignored this and wrongfully asserted jurisdiction, constituting a flagrant disregard of the principle of state consent and destroying the very foundation of its jurisdiction over this case.

(IV) Procedural Illegality: The Arbitral Tribunal's Malicious Distortion of the Convention

The Arbitral Tribunal maliciously narrowed the interpretation of "exclusion by agreement" to "explicit exclusion by agreement,"²² claiming that bilateral agreements between China and the Philippines can have an exclusionary effect only if they "explicitly exclude arbitration." This conclusion rested solely on the personal opinion of the New Zealand arbitrator Kenneth Keith, rather than any binding international judicial precedent.²³ In stark contrast, the Award in the *Southern Bluefin Tuna* case had already clearly established that the exclusionary effect of an agreement may be reasonably inferred from the relevant wording, without being confined to express form.²⁴ The Arbitral Tribunal abandoned this authoritative precedent and instead cited the personal opinion of an

²² See *The South China Sea Arbitration* (The Republic of the Philippines v The People's Republic of China) (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, para. 225, para. 246.

²³ See *The South China Sea Arbitration* (The Republic of the Philippines v The People's Republic of China) (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, para. 225, para. 223.

²⁴ See *Southern Bluefin Tuna Case* (Australia and New Zealand v Japan) (Award on Jurisdiction and Admissibility) (4 August 2000) 39 ILM 1359, para. 57.

individual judge to support its predetermined conclusion. This approach fully exposes its essence of reaching a predetermined conclusion first and then searching for supporting evidence—a perversion of justice that is unconvincing from the very outset.

Another important manifestation of procedural illegality is that, before initiating the arbitration, the Philippines failed to engage in substantive good-faith negotiations with China, as required by Article 283 of the Convention. In international judicial practice, the parties must usually determine, through negotiations, the scope of matters they agree to submit to third-party settlement—this is an indispensable prerequisite procedure before compulsory arbitration may be initiated.²⁵ The Philippines bypassed this statutory requirement and directly initiated the arbitration. Not only did the Arbitral Tribunal fail to dismiss the case, but it accepted it—this act in itself constitutes a flagrant betrayal of procedural justice. The Arbitral Tribunal disregarded China’s lawful declarations and the explicit provisions of the China–Philippines bilateral agreements, and unlawfully conferred jurisdiction upon itself. This not only seriously violates specific provisions of the Convention, but also strikes at the very foundation of international judicial legitimacy. The various procedural violations committed by the Tribunal during the jurisdiction phase have fundamentally destroyed the basis of its jurisdiction. A tribunal that cannot even establish the legitimacy of its own jurisdiction has no foundation for its subsequent proceedings or their impartiality, and none for its award or its legality; still less can it earn the trust of the international community.

²⁵ See Liu Heng, *The Evolution of Compulsory Arbitration in the Settlement of International Disputes*, *Chinese Review of International Law*, Vol. 5, 2019, pp. 19–20.

II. Substantive Defects: How the Awards Distort International Law

(I) Errors in Legal Application: Tampering with the Provisions of the Convention

First, the Arbitral Tribunal substantially tampered with the regime of islands established under Article 121 of the Convention. According to that provision, an island is entitled to an exclusive economic zone and a continental shelf provided that it is “capable of sustaining human habitation or economic life of its own.” However, the Tribunal arbitrarily imposed additional criteria such as “natural capacity,” “settlement,” and “self-sufficiency,”²⁶ and further willfully misinterpreted the disjunctive relationship conveyed by “or” in paragraph 3 of the article as a conjunctive relationship of “and.”²⁷ This practice of distorting treaty texts and substituting subjective conjecture for rigorous, normative interpretation of the treaty has drawn severe criticism from many international law scholars.²⁸ Particularly alarming is that the Tribunal clearly applied a double standard in applying its self-created criteria: it applied lenient standards to features claimed by the Philippines, such as Zhongye Dao, yet applied strict standards to all South China Sea maritime features actually controlled by China, such as Meiji Jiao and Ren’ai Jiao, uniformly downgrading them to

²⁶ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, paras. 540-544.

²⁷ See Chris Whomersley, *The Award on the Merits in the Case Brought by the Philippines against China relating to the South China Sea: A Critique*, *Chinese Journal of International Law*, Vol. 16, Issue 3, 2017, p. 398.

²⁸ See Myron H. Nordquist, William G. Phalen, *Interpretation of UNCLOS Article 121 and Itu Aba (Taiping) in the South China Sea Arbitration Award*, in Myron H. Nordquist et al eds., *International Marine Economy: Law and Policy*, Brill Nijhoff, 2017, pp. 3-78. Stefan Talmon, *Article 121: Regime of Islands*, in *The United Nations Convention on the Law of the Sea: A Commentary*, Alexander Proelß (ed.), C. H. BECK • HART • NOMOS, 2017, pp. 848-880. Michael Sheng-ti GAU, *The Interpretation of Article 121(3) of UNCLOS by the Tribunal for the South China Sea Arbitration: A Critique*, *Ocean Development and International Law*, Vol. 50, Issue 1, 2019, pp. 49-69. Malcolm D. Evans, Reece Lewis, *Islands, Law and Context: The Treatment of Islands in International Law*, Edward Elgar Publishing, 2023, pp. 50-53.

“rocks” or even “low-tide elevations.”²⁹ This approach fully exposes the Tribunal’s preconceived position and its bias toward one party.

Second, the Tribunal’s arbitrary interpretation of Article 121 is entirely at odds with general international practice. As Stefan Talmon has pointed out, State practice demonstrates that even small islands that are uninhabited and lack economic life, as defined by the Tribunal, are nevertheless recognized as full “islands” entitled to full maritime entitlements.³⁰ Examining global practice, the Tribunal’s so-called interpretative standards have no foothold whatsoever outside the South China Sea: Globally, at least 86 deserted islands that are both uninhabited and devoid of economic activity, as well as the vast majority of small islands lacking freshwater resources, are universally recognized by the international community as islands. With only six exceptions, all States claim exclusive economic zones and continental shelves on that basis.³¹ Thus, the Arbitral Tribunal’s attempt to supplant prevailing international practice with fabricated standards is doomed to failure. This can only serve as a negative example of the erroneous application and interpretation of international law.

Third, the Tribunal erroneously denied the status of “historic rights” under international law. The systematic arrangement of Article 10, paragraph 6 (historic bays), Article 15 (historic titles), Article 51, paragraph 1 (historic rights of adjacent States), and Article 298, paragraph 1 (optional exceptions to compulsory jurisdiction) of the Convention clearly demonstrates that the Convention expressly recognizes historic rights. The 1962 study by the

²⁹ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, para. 1203.B. (6) - (7).

³⁰ See Stefan Talmon, Article 121 Regime of Islands, in Alexander Proelß (ed), *The United Nations Convention on the Law of the Sea*, C. H. BECK·HART·NOMOS, 2017, p. 871.

³¹ See Stefan Talmon, *The South China Sea Arbitration: Jurisdiction, Admissibility, Procedure*, Leiden/Boston: Brill Nijhoff, 2022, pp. 316-320.

United Nations Secretariat also explicitly stated that the Convention on the Territorial Sea and the Contiguous Zone in 1958 leaves “historic titles” undisturbed by way of exception.³² The ICJ has held in the *Tunisia/Libya* case that the concepts of historic rights or waters and the concept of the continental shelf are governed by different legal regimes in customary international law.³³ The Tribunal’s forced ruling that historic rights were superseded upon the entry into force of the Convention completely disregards their independent status under customary international law,³⁴ is logically self-contradictory, and cannot be justified. Even more questionable is that the Arbitral Tribunal acknowledged the Philippines’ “traditional fishing rights” in the internal waters and territorial sea of China’s Huangyan Dao,³⁵ yet denied China’s historic rights in the vast maritime areas of the South China Sea,³⁶ manifestly applied double standards in both its findings of fact and application of law,³⁷ and merely selected four isolated incidents after 2009, namely, the BS16 petroleum bidding block announced by China National Offshore Oil Corporation in June 2012, China’s objection to the Philippines’ Geophysical Survey and Exploration Contract (GSEC) 101 block in 2011, the South China Sea “fishing moratorium” announced by China in May 2012, and China’s statements regarding respect for freedom of navigation and overflight in the South China Sea—but these in no way reflect the full picture of China’s historic rights.³⁸

³² See United Nations Secretariat, *Juridical Regime of Historic Waters, Including Historic Bays* (9 March 1962), UN Doc A/CN.4/143, reprinted in *Yearbook of the International Law Commission*, 1962, Vol II, pp. 1-13.

³³ See *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)* (Judgment) [1982] ICJ Rep. 18, p. 100.

³⁴ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, paras. 235-238.

³⁵ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, paras. 805-813.

³⁶ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, paras. 207-214, para. 270.

³⁷ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, pp. 311–313.

³⁸ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign

(II) Errors in Factual Findings: Dismembering China's Holistic Claim to the Archipelago

On the one hand, by maliciously tampering with Chinese government documents, the Tribunal sought to dismember China's holistic claim to the archipelago. From geographical, historical, and legal perspectives, China's Nansha Qundao constitute an integral legal whole, and their territorial sovereignty is indivisible. However, when citing Chinese notes verbales, the Tribunal arbitrarily altered "China's Nansha Qundao is" to "China's Nansha Qundao [are]."³⁹ This manipulation of singular and plural forms is designed to partition China's sovereignty over the Nansha Qundao, dismember the Nansha Qundao as an integrated whole, and deny China's sovereignty over it.⁴⁰ The Arbitral Tribunal stripped individual maritime features from the archipelago one by one, and misapplied the law in determining their legal status. This constitutes a flagrant provocation against China's sovereignty and a grave violation of China's territorial integrity, and is utterly intolerable.

On the other hand, the Tribunal turned a blind eye to both China's historical practice regarding its claims to Nanhai Zhudao and generally accepted international practice. China officially named the islands in the South China Sea on three occasions—in 1935, 1947, and 1983—comprising the collective designations for the four archipelagos as well as the group and individual geographical names for islands, reefs, cays, and shoals. In so doing, it reaffirmed China's territorial sovereignty over the South China Sea Islands, namely the Dongsha Qundao, Xisha Qundao, Zhongsha Qundao, and Nansha Qundao, each as an integrated whole. The Tribunal deliberately

Languages Press, 2018, p. 210.

³⁹ See *The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China)* (29 October 2015), PCA Case No 2013-19, Award on Jurisdiction and Admissibility, para. 169.

⁴⁰ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, p. 118.

ignored this consistent Chinese practice.⁴¹ Although the Convention does not contain specific provisions on outlying archipelagos of continental States, the absence of specific provisions by no means signifies that continental States are not entitled to treat outlying archipelagos as a whole in asserting maritime rights. According to the preamble of the Convention, matters not regulated by this Convention continue to be governed by the rules and principles of general international law. From the perspective of global practice, at least 17 out of more than 20 continental States apply straight baselines to outlying archipelagos as a whole. Such widespread and continuous State practice is legally consistent with China's holistic claim to the Nansha Qundao.⁴² The Tribunal's disregard of this substantial body of conclusive evidence constitutes manifest selective blindness. Its dismemberment of the Nansha Qundao into scattered individual maritime features for separate examination lacks any legal basis and runs counter to mainstream international practice.

(III) Violations of Evidentiary Procedure: Serious Breach of the Principle of Impartiality

The Tribunal violated the fundamental principle of “he who asserts must prove,” gathering foreign archival materials on behalf of the Philippines⁴³ and acting as a veritable “second complainant.” The Tribunal not only obtained historical survey materials from the British, Japanese, and United States navies but also retrieved documents from the French National Library,⁴⁴ without regard to their relevance, and even repeatedly allowed the

⁴¹ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, pp. 217–220.

⁴² See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, p. 247.

⁴³ See *The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, para. 89.

⁴⁴ See *The South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China)* (12 July

Philippines to supplement evidence outside time limits.⁴⁵ This practice is wholly contrary to international judicial practice—the ICJ does not actively gather evidence or raise facts not asserted by the parties in its proceedings, and the burden of proof has always been borne by the parties themselves.⁴⁶ The Tribunal’s unwarranted initiative demonstrates its manifest partiality.

The Tribunal applied a double standard in the admission of evidence: it readily admitted affidavits submitted by the Philippines even when they contained obvious defects;⁴⁷ with respect to China’s existing historical documents, it either ignored them outright or dismissed their value. The Tribunal did not consult Chinese-language publications by China, made arbitrary judgments regarding the water quality of Taiping Dao, disregarded materials demonstrating that Taiping Dao has abundant high-quality groundwater, yet relied solely on British hydrographic materials to determine that Ren’ai Jiao is a low-tide elevation.⁴⁸ On the same issue, it admitted defective materials from the Philippines while excluding historical archives from China.

Furthermore, the Tribunal’s expert appointment procedure contained serious defects. The expert appointment process lacked transparency and did not seek the views of the States parties or involve certification by authoritative institutions; all appointed experts were from Western countries,⁴⁹ their report was completed in only 17 days, and throughout, it

2016), PCA Case No 2013-19, Award, para. 140.

⁴⁵ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, p. 262.

⁴⁶ See Chittharanjan F. Amerasinghe, *Evidence in International Litigation* (Martinus Nijhoff Publishers, 2005) p. 34; Markus Benzing, *Evidentiary Issues*, in Andreas Zimmermann et al (eds), *The Statute of the International Court of Justice*, 3rd edition (Oxford University Press, 2019) p. 1375.

⁴⁷ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July 2016), PCA Case No 2013-19, Award, para. 763.

⁴⁸ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, pp. 294–295.

⁴⁹ See *The South China Sea Arbitration (The Republic of the Philippines v The People’s Republic of China)* (12 July

cited cases unrelated to the South China Sea, such as the Port of Miami, the Caribbean, and the Great Barrier Reef.⁵⁰ Moreover, the Philippines-appointed expert Clive Schofield had acknowledged in a 2014 paper that the 12 largest islands in the Nansha Qundao had vegetation, roads, and buildings, yet provided contradictory testimony in the arbitration. The Arbitral Tribunal failed to question such inconsistent and self-contradictory testimony, instead accepting it outright.⁵¹ Meanwhile, the Arbitral Tribunal uncritically accepted satellite imagery and research reports provided by think tanks such as the United States Center for Strategic and International Studies, which are marked by manifest political bias, and treated these unverified, single-sourced materials, laden with ideological coloring and geopolitical designs, as important evidence for determining the nature of the maritime features. This further substantiated its double standards and biased position in the admission of evidence.⁵²

III. The Invalid Awards: Why the Arbitral Awards Are Illegal and Void under International Law

(I) The Composition of the Arbitral Tribunal: Seriously Inappropriate

The composition of the Arbitral Tribunal was seriously deficient in geographical representation: all five arbitrators were from Europe or long-term residents in Europe, and none was Asian. This composition stands in

2016), PCA Case No 2013-19, Award, para. 95.

⁵⁰ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, p. 380.

⁵¹ See Robert C. Beckman, Clive H. Schofield, *Defining EEZ Claims from Islands: A Potential South China Sea Change*, *The International Journal of Marine and Coastal Law*, Vol. 29, No. 2, 2014, pp. 210-211.

⁵² See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, p. 330.

stark contrast to the requirement under Article 9 of the Statute of the ICJ that “in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.”⁵³

Moreover, Shunji Yanai (Japanese), former President of the International Tribunal for the Law of the Sea, had served as Chairman of the Advisory Council on Security and Defense Legislation for the Abe administration, had actively promoted Japan’s lifting of the ban on collective self-defense, and had openly challenged the post-World War II international order. To have such a right-wing political figure—who made it his mission to amend the pacifist Constitution and undermine the post-war international order—preside over arbitral proceedings involving China’s major maritime rights and interests was to call his neutrality into question from the very outset, and the fairness and objectivity of the proceedings were fundamentally out of the question.⁵⁴

The Arbitral Tribunal initially appointed Judge M.C.W. Pinto (Sri Lankan) as President. Because his wife was Filipino, Pinto voluntarily sought the views of both parties on the matter of recusal, and the Philippines expressed its agreement. However, when Pinto showed a tendency to hold reservations about the Tribunal’s jurisdiction, the United States and Japan expressed concerns, and in May of that year Pinto was forced to resign.⁵⁵ After Pinto’s removal, the Tribunal’s position on jurisdiction underwent a 180-degree reversal, shifting from prudence and restraint to arbitrary expansion. The composition of the Arbitral Tribunal violated the spirit of fairness governing

⁵³ See Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945), Article 9, <https://www.icj-cij.org/statute>.

⁵⁴ See Ding Duo, Re-exposing the Illegitimate Nature of the South China Sea Arbitral Award (12 July 2025), People’s Daily, <https://world.people.com.cn/n1/2025/0712/c1002-40520073.html>.

⁵⁵ See Luo Huanxin, Comparison and Options of Dispute Settlement Procedures under UNCLOS, *Local Legislation Journal*, Vol. 5, 2022, p. 111.

the appointment of arbitrators under Annex VII to the Convention, reducing the entire proceedings to a “tailor-made adjudication” in which all impartiality was completely lost.

(II) The Professional Integrity of the Arbitral Tribunal: A Collapse of Credibility

As is widely known, the *South China Sea Arbitration* has a strong geopolitical backdrop. Since the Obama administration, the United States has sought to contain China at the geopolitical and global strategic levels, shifting from “limited involvement” to “active involvement” in maritime disputes between China and its neighbors, and inciting the Philippines to initiate the *South China Sea Arbitration*. Teams from the United States engaged in behind-the-scenes orchestration and participated throughout the *South China Sea Arbitration*, dispatching legal teams to provide hands-on guidance and support, devise strategies, and draft pleadings. During the proceedings, American scholars also shaped public opinion, controlled the narrative, cultivated the international legal community, and exerted influence and pressure. In December 2014, the United States Department of State issued Limits in the Seas, No. 143, entitled “China’s Maritime Claims in the South China Sea” (2014), consciously and systematically guiding the Arbitral Tribunal to produce awards according to a United States script.⁵⁶ All of this, combined with the fact that the Philippines bore the entire cost of the arbitration, led many international observers to question the independence of the Tribunal, its composition, and its arbitrators. In international arbitration practice, situations in which one disputing party bears the full costs are highly likely to generate risks of bias; when

⁵⁶ See United States Department of State, No. 150 People’s Republic of China: Maritime Claims in the South China Sea (2014-12-5), <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf>.

arbitrators' remuneration depends entirely on one party, expecting them to maintain absolute neutrality is often unrealistic.

Amid intense public opinion pressure generated by the United States and influenced by Western ideological political correctness, some arbitrators changed their positions. For instance, Dutch scholar Alfred H. A. Soons and others openly reversed their long-held academic stances to suit the exigencies of the awards. In his academic works published in 1990 and 2011, Soons explicitly stated that the definition of islands and the maritime entitlements they generate are an inherent component of maritime delimitation, and that paragraph 3 of Article 121 of the UNCLOS applies only to specific delimitation.⁵⁷ In other words, Soons had long maintained that the legal status of insular features should be considered as a whole in conjunction with maritime delimitation and could not be treated in isolation. Yet in the awards rendered in this case, he completely reversed his own long-standing academic position. Bernard H. Oxman, the American lawyer retained by the Philippines, published articles in 2017 and 2022, respectively, touting the “contributions” of the awards, which further corroborates, from another angle, the “outsourced litigation” nature of this arbitration.⁵⁸ The Arbitral Tribunal succumbed to powerful international political pressure and was reduced to a tool in the geopolitical competition among major powers. This is deeply regrettable. The *South China Sea Arbitration* serves as a wake-up call. Upholding the fairness and impartiality of international justice requires firm adherence to the principle of State Consent as the cornerstone

⁵⁷ See Barbara Kwiatkowska, Alfred H.A. Soons, Entitlement to Maritime Areas of Rocks Which Cannot Sustain Human Habitation or Economic Life of Their Own, *Netherlands Yearbook of International Law*, Vol. 21, 1990, p.139. See Barbara Kwiatkowska, Alfred H.A. Soons, Some Reflections on the Ever Puzzling Rocks-Principle under UNCLOS Article 121(3), *The Global Community: Yearbook of International Law and Jurisprudence*, 2011, p.111.

⁵⁸ See Bernard H. Oxman, The Fortieth Anniversary of the United Nations Convention on the Law of the Sea, *International Law Studies*, Vol. 99, 2022, p. 872. Bernard H. Oxman, The South China Sea Arbitration Award, *University of Miami International and Comparative Law Review*, Vol. 24, 2017, pp. 280-281.

of all international judicial settlements, including the dispute settlement mechanism under the Convention.

(III) The Cornerstone of Rights: The Sovereign Nature of the Right of Non-Appearance and Its Confirmation under International Law

Under international law, States have the right to refuse to participate in international arbitral proceedings. The choice not to participate in the proceedings is a legitimate right of sovereign states under international law, and does not constitute an act of contempt for the law.⁵⁹ Nonappearance neither constitutes acquiescence to jurisdiction nor diminishes a State's substantive rights. Furthermore, under international law, States also have the right to refuse to enforce an award, especially one that is illegal and invalid; refusal to enforce is a core manifestation of State sovereignty and a natural extension of the principle of State consent in international law.

According to statistics, in Annex VII arbitration practice under the Convention, approximately 23 cases involved States not appearing or appearing only partially. More notably, among 19 cases for which statistics are available, 8 involved States that chose to withdraw after applying for provisional measures. This phenomenon reflects the extremely low level of trust States place in the Annex VII arbitration mechanism—a State invests substantial resources to initiate proceedings, yet withdraws at a critical juncture, which reveals deep skepticism about the fairness of that mechanism. Furthermore, the normal rate of case closure for Annex VII arbitration is only 47%; the remaining 53% of cases were resolved through agreed termination or referral to other mechanisms. More than half of the awards faced enforcement difficulties. This means that over half of the cases

⁵⁹ See Markus Benzing, Evidentiary Issues, in Andreas Zimmermann et al (eds.), *The Statute of the International Court of Justice: A Commentary*, 3rd edition, Oxford University Press, 2019, p. 1376.

ultimately did not reach the enforcement stage; the disputing parties preferred to seek alternative solutions rather than rely on the arbitral result. Legal validity does not equate to actual binding force; without the cooperation of the State concerned, an award will ultimately be difficult to implement.

(IV) The Awards Are Illegal and Invalid: Completely Unenforceable

China's persistent position of neither accepting nor recognizing the awards in the *South China Sea Arbitration* unilaterally initiated by the Philippines is supported by clear domestic legal provisions and rests on a solid and sufficient basis in international law, constituting a necessary and legitimate rejection of the unlawful awards. The Chinese government has explicitly stated that the arbitral awards are illegal and invalid, and that China's sovereignty and maritime rights in the South China Sea remain unaffected. The 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 systematically elaborates China's lawful rights in the South China Sea and explicitly states that the awards in the arbitration case are invalid. China's position has received broad understanding and support from the international community: more than 230 political parties and political organizations in over 100 countries have explicitly supported China's position on the South China Sea issue and do not recognize the arbitral awards.⁶⁰ This fully demonstrates that the awards of the Arbitral Tribunal have not received widespread recognition from the international community, and can by no means serve as a basis for resolving South China Sea disputes. Among these countries, Russia, Cambodia, Zimbabwe, and

⁶⁰ See Xinhua News Agency, Over 230 Political Parties from More than 90 Countries Express Support for China's Position on the South China Sea (13 July 2016), https://www.xinhuanet.com/world/2016-07/13/c_129141808.htm.

many others have explicitly stated their respect for China's right to resolve South China Sea disputes through bilateral negotiations. China's non-participation in the arbitral proceedings was an exercise of a legitimate right conferred by international law; refusal to enforce invalid awards is a core manifestation of the principle of state sovereignty.

The award on the merits in the *South China Sea Arbitration* contains no operative provision for enforcement. Since this is an illegal and invalid award, there is, fundamentally, no issue of enforcement to speak of. In fact, among ASEAN countries, only the Philippines has called for the enforcement of this award, but it has not received explicit support or a response from other ASEAN countries. Viet Nam, Malaysia, Indonesia, and other South China Sea littoral states, although they share certain common interests with the Philippines, have not publicly supported the Philippines' clamor for enforcement of the award. In fact, neither the Philippines nor any other country in the world possesses the capability to enforce this award. Regional states are fully aware of this, and the external forces that promoted the formation of this award are fully aware of this as well. In this regard, China has also expressed a clear and firm position, resolutely opposing any statements and actions based on the award, and insisting on properly handling South China Sea disputes and on addressing, through dialogue and cooperation, the various challenges that infringe upon China's sovereignty and maritime rights in the South China Sea.

IV. The Right Path: Real Solutions Under the International Legal Framework

(I) Exposing the Essence: The “Rule of Law” Cloak of Political Manipulation

The awards in the *South China Sea Arbitration* appear to be legal rulings, but in reality they serve as a strategic tool for the United States and other extra-regional powers to intervene in South China Sea affairs and contain China’s development. The so-called “rule of law” packaging essentially serves geopolitical games.⁶¹ The Arbitral Tribunal’s *ultra vires* acts are not limited to the abuse of jurisdiction; it further attempts to rewrite the provisions of the Convention through “judicial law-making,” disrupting the balance of interests reached by the contracting states through long-term negotiations. Such practice seriously undermines the integrity and authority of the Convention, impairs the credibility of the Annex VII arbitration mechanism, shocks the global maritime dispute settlement system, and erodes the fundamental trust of all parties in the compulsory procedures under Annex VII of the Convention.

Criticism from the international academic community further confirms this point. Gilbert Guillaume, former President of the ICJ, believes that the Arbitral Tribunal in the *South China Sea Arbitration* did not interpret the text of the Convention at all; it entirely rewrote the Convention.⁶² International law of the sea experts Nordquist and Franck also clearly pointed out that UNCLOS did not authorize the Arbitral Tribunal to rewrite its text.⁶³ In other words, the function of the Arbitral Tribunal is limited to

⁶¹ See Xu Qi, China’s Countermeasures Against the South China Sea Arbitral Award: Rational, Powerful and Restrained (12 July 2025), South China Sea Voice, <https://vscs.cri.cn/20250711/cd275608-417f-5eab-b5b9-6dfa80e1b6d1.html>.

⁶² See Gilbert Guillaume, Rocks in the Law of the Sea: Some Comments on the South China Sea Arbitration Award, EJIL Talk (2021-2-25), <https://www.ejiltalk.org/rocks-in-the-law-of-the-sea-some-comments-on-the-south-china-sea-arbitration-award/>.

⁶³ See Myron H. Nordquist, William G. Phalen, Interpretation of UNCLOS Article 121 and Itu Aba (Taiping) in the South China Sea Arbitration Award, in Myron H. Nordquist et al eds., International Marine Economy: Law and Policy, Brill Nijhoff, 2017, p. 38. See Myron H. Nordquist, UNCLOS Article 121 and Itu Aba in the South China Sea Final Award: A Correct Interpretation?, in S. Jayakumar et al eds., The South China Sea Arbitration: The Legal Dimension,

interpreting and applying existing rules, rather than acting as a legislator. Chris Womersley and Joanna Mossop further warned that the Arbitral Tribunal's erroneous interpretation of key terms may trigger legal instability, and the awards have overturned maritime zone patterns that have been firmly established for forty years or even longer, which hardly constitutes a positive contribution to the maritime order.⁶⁴ The very flaws of the Arbitral Tribunal's *ultra vires* ruling lay bare the deep-seated political manipulation behind the veneer of the so-called "rule of law."

A research report from the Singapore-based S. Rajaratnam School of International Studies shows that since 2023, the Philippines has pursued a foreign policy based on awards, with the intention of seriously damaging China's international reputation and image; at the same time, it has built a multilateral alliance mechanism with Australia, Japan, and the United States. This strategy stands in sharp contrast to the strategies of other Southeast Asian South China Sea claimants, who view legal rights protection as merely one of several optional strategies. For example, Malaysia has long adhered to a policy of refusing to internationalize the dispute, believing that this would only allow great power geopolitical games to spread to the South China Sea, which is not conducive to regional stability; the Malaysian government also deliberately limits discussion of the dispute to the policy and government elite circles, avoiding the incitement of domestic nationalist sentiments, which would in turn constrain its own policy maneuvering space.⁶⁵

Edward Elgar, 2018, p. 190.

⁶⁴ See Christopher Womersley, The South China Sea Arbitration and Its Implications, in Zou Keyuan (ed), Routledge Handbook of the South China Sea, Routledge, 2021, p. 443. See Joanna Mossop, The South China Sea Arbitration and New Zealand's Maritime Claims, New Zealand Journal of Public and International Law, Vol. 15, 2017, p. 281.

⁶⁵ See Elina Noor and Jane Chan, The South China Sea-Ten Years After the 2016 Arbitral Award (2026-4-1), <https://www.rsis.edu.sg/wp-content/uploads/2026/04/CO26067.pdf>.

These differentiated choices by regional countries provide diverse points of reference for examining the arbitration case and its subsequent impact. More than ten years have passed since the award was rendered. The Philippines has failed to obtain any substantive benefits; on the contrary, the South China Sea situation has grown more complex, China–Philippines bilateral relations have suffered severe damage, and the atmosphere for regional cooperation has also been undermined.⁶⁶ The Philippines unilaterally initiated arbitration, disregarding China’s legitimate claims and reasonable positions as well as the complex background of the South China Sea disputes, in an attempt to circumvent the effective avenue of bilateral negotiations and consultations. The final award not only failed to resolve any substantive disputes, but instead rendered the issues even more intractable. Facts have proven that bypassing the will of the parties concerned and forcibly bringing disputes into judicial proceedings not only fails to contribute to problem resolution, but instead generates new contradictions and intensifies confrontation. In the end, the Philippines will find that the losses outweigh the gains.

(II) The Dual-Track Approach: An Institutional Embodiment of Regional Consensus

This approach is deeply rooted in Asia’s unique method of dispute settlement, whose core features are consensus-building, mutual compromise, and the forging of common ground. It does not demand uniformity of positions but instead narrows differences and builds mutual trust through incremental dialogue. It is not a passive avoidance of conflict, but a search for the greatest common denominator on the basis of acknowledging

⁶⁶ See Zheng Zhihua, *Rules and Disarray: A Ten-Year Assessment of the South China Sea Arbitration Award* (Collaborative Innovation Center of South China Sea Studies, MSDPR Report No 51, April 2026, pp. 2–6).

differences. The signing of the Declaration is a model achievement of this approach. During the negotiations, all parties fully respected one another's core concerns, adhered to the principle of "seeking common ground while reserving differences and making gradual progress," and only reached the final text after years of consultations.

The dual-track approach is fully consistent with the provision in Article 4 of the Declaration that "the Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, through friendly consultations and negotiations by sovereign states directly concerned." China's creative proposal for the dual-track approach in 2014 is precisely the institutionalized elevation of this regional consensus. Over two decades of practice have fully demonstrated that the Declaration has provided an effective platform for parties to the South China Sea disputes to manage and control disputes, and has also built an indispensable security guarantee for the leapfrog development of the entire Southeast Asian region. The political mutual trust accumulated by regional countries through this mechanism is a precious asset that no externally imposed arbitration procedure can replace. The universal practice of Southeast Asian countries provides a solid foundation for this approach: the Agreement on the Basic Principles Guiding the Settlement of Maritime Issues between Viet Nam and China in 2011 more explicitly stipulates that maritime disputes shall be resolved "through negotiations and friendly consultations."⁶⁷ Countries in the region have generally chosen the path of consultation. This regional consensus demonstrates that resolving disputes through negotiations by the directly

⁶⁷ See Ministry of Foreign Affairs of the People's Republic of China, Agreement between the Government of the People's Republic of China and the Government of the Socialist Republic of Viet Nam on Basic Principles for Settling Maritime Issues (11 October 2011) https://www.mfa.gov.cn/web/gjhdq_676201/gj_676203/yz_676205/1206_677292/1207_677304/201110/t20111012_9308637.shtml.

concerned states is not a temporary expedient but an effective rule that has been tested through long-term practice. With the joint efforts of all parties, the consultation process on the Code of Conduct in the South China Sea has been continuously accelerated, and all parties are fully confident in ultimately reaching the Code. This fully proves that dialogue and consultation are the only feasible path to resolving South China Sea issues.

(III) Return to Common Sense: The True Meaning of the International Rule of Law

The international rule of law is not an externally imposed adjudication mechanism but a rules-based order built upon state consent. Respecting state consent is, in essence, respecting the international rule of law itself. Article 33 of the Charter of the United Nations enumerates various dispute settlement methods, including negotiation, inquiry, mediation, conciliation, arbitration, and judicial settlement, and, regardless of the mechanism or approach chosen, it must not contravene the will of sovereign states and should be based on State Consent. Among the modes of dispute settlement, negotiation is the direct expression of state will and the most fundamental method. The outcome reached through direct negotiation between the parties best reflects the will of sovereign states. Compared with third-party dispute settlement mechanisms, negotiation and consultation are better suited to resolving complex and sensitive territorial and maritime delimitation disputes, and can embody the autonomous will and sovereign equality of states. Settlement through negotiation has stood the test of practice and has been fully proven to be effective and successful. According to academic statistics from the International Maritime Boundaries series, the majority of maritime boundaries worldwide have been delimited through negotiation

and consultation; this demonstrates that consultation rather than confrontation is the norm in international maritime delimitation practice.⁶⁸ Since the founding of the People's Republic of China in 1949, in the spirit of equality, consultation, and mutual understanding, China has signed boundary treaties with 12 of its 14 neighboring countries with which it shares land borders, through bilateral negotiations. China and Viet Nam have delimited the limits of their territorial seas, exclusive economic zones, and continental shelves in the Beibu Gulf through negotiations. On the South China Sea issue, China and ASEAN countries have long reached a consensus on resolving disputes through negotiations and consultations, and have repeatedly confirmed this through bilateral documents. Meanwhile, this is also a solemn commitment made by China and ASEAN countries in the Declaration on the Conduct of Parties in the South China Sea jointly signed in 2002. Over the years, the Declaration has become an effective regional rule. To forcibly push for other approaches in violation of the Declaration's provisions not only fails to help resolve the relevant disputes, but may also exacerbate them.⁶⁹ South China Sea littoral states have long been steeped in the Eastern tradition of harmony and cooperation, strongly identify with consultation and dialogue, and generally prefer to handle maritime disputes through autonomous consultation. Even when agreement is temporarily difficult to reach, they can manage differences and avoid escalation of the situation through dialogue, creating conditions for subsequent resolution. This is an important foundation that enables the South China Sea issue to maintain overall stability and regional cooperation to continue advancing.

⁶⁸ See Clive Schofield and Victor Prescott, *The Maritime Political Boundaries of the World*, 2nd edition, Martinus Nijhoff Publishers, 2005, p. 218.

⁶⁹ See The State Council Information Office of the People's Republic of China, *China Adheres to Solving Disputes with the Philippines through Negotiations* (13 July 2016), http://www.scio.gov.cn/zfbps/ndhf/2016n/202207/t20220704_130493.html.

Dialogue, consultation, mutual understanding, and mutual accommodation embody the crystallization of wisdom from Asia's long history of peaceful coexistence, and deserve the respect and promotion of the international community.

In the *South China Sea Arbitration*, the Arbitral Tribunal disregarded the principle of State Consent by arbitrarily determining its jurisdiction, distorting treaty texts, and misrepresenting the original intent of provisions. Under the guise of the “rule of law,” it acted to undermine the rule of law itself. This not only disrupted the balance of the Convention's text and damaged the integrity of the Convention's system, but also dealt a blow to the credibility of the Annex VII arbitration mechanism.⁷⁰ A decade has passed. The awards have not only failed to resolve disputes or promote peace, but have instead created obstacles for the negotiations on the Code of Conduct in the South China Sea and for advancing the international rule of law in the region. It stands as a retrogressive current in the history of international law. The true essence of the international rule of law lies not in violating state consent, forcibly imposing arbitration, or allowing a few so-called Western jurists who fundamentally do not understand the South China Sea to pontificate and act arbitrarily. Rather, it lies in respecting regional history, in mutual respect and equal consultation among regional countries, in taking into account the legitimate concerns of all parties, and in jointly safeguarding peace and stability in the South China Sea. China firmly upholds fairness and justice in the international rule of law, steadfastly adheres to the right path of resolving disputes through consultation, and is

⁷⁰ See Chinese Society of International Law, *The South China Sea Arbitration Awards: A Critical Study*, Foreign Languages Press, 2018, pp. 394–395; See Ma Xinmin, *Analyzing the Illegality and Invalidity of the South China Sea Arbitration Awards via Six “Whys”* (30 April 2024), https://www.chinadaily.com.cn/a/202404/30/WS66304ac1a31082fc043c4d23_1.html.

willing to work hand in hand with neighboring countries to jointly build a South China Sea of peace, friendship, and cooperation, and to reshape a fair and equitable order in the South China Sea.

