

## On the South China Sea Disputes

### Some Comments on the Preliminary Ruling of the South China Sea Arbitration Case

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*Abstract: The preliminary ruling by the South China Sea arbitration case gives a number of explanations on the UN Convention, which are in favor of the Philippines, especially the Arbitral Tribunal made preliminary ruling over the appeal demands unclearly excluded by both the UN Convention and the Chinese Statement and established jurisdiction, but made no preliminary ruling regarding the clearly excluded appeal demands, and established them directly into the substantive consideration, and that phenomenon has strong subjective approach. The preliminary ruling is the joint processing of legal abuse by the Arbitral Tribunal and the Philippine side, so the hope on the Arbitration case should not be placed on the inside of the Arbitral Tribunal but on the outside of the Arbitral Tribunal. The matters established under the jurisdiction by the preliminary ruling is not related to the core matter of the South China Sea disputes, bears a little practical impact on the Chinese side. However, the Arbitral Tribunal may take the opportunity to review the "historic rights" such as those excluded in order to give covert support to the Philippines and other islands-claiming countries so as to affect the overall situation of the case. In view of the defects in designing of Annex VII of the UN Convention and the possible abuse of the system, the Chinese side should get prepared. Only on the basis of internationally accepted practice and the UN Convention, should China make rational and convincing arguments, recognize the preliminary ruling is the result of legal abuse, and safeguard national rights and interest with the international law and prevent the civil abuse actions.*

#### The Case Review

On January 22, 2013, the Philippine Foreign Ministry issued a Notification and Statement of Claim to start the UN Convention on the Law of the Sea (referred to as the UN Convention) arbitration procedure on China regarding the South China Sea dispute including the Huangyan Island, and to submit it to the International Tribunal for the Law of the Sea. The Philippines in the note proposed 13 appeal demands, and requested the Arbitral Tribunal to rule that China has delineated the sovereignty of its South China Sea with the "nine-dash line" in violation of the UN Convention, and requested China to stop from invading the Philippine sovereignty and jurisdiction.<sup>1</sup> In this regard, China reiterates its indisputable sovereignty on the islands and reefs in the South China Sea and its adjacent waters, advocates solving the disputes in the South China Sea through negotiations and consultations, and points out that the Philippine unilateral actions to submit the dispute to arbitration do not have legal basis in terms of facts and procedures, and refuses to participate in the arbitration procedure.

On March 25, 2013, the Philippines specified Rudiger Wolfrum, the German judge of International Tribunal for the Law of the Sea as an arbitrator. Shunji Yanai, President of International Tribunal for the Law of the Sea designated Stanislaw Pawlak, the Polish judge, as an arbitrator for China. On April 25, Shunji Yanai assigned the remaining three arbitrators. On July 11, the Arbitral Tribunal held its first meeting at Peace Palace in the Hague. On August 27, the Arbitral Tribunal issued the first order, adopted the procedures of the rules and chose the Permanent Court of Arbitration (PCA) as the Secretariat, requested the Philippines on March 30, 2014 to submit written indictment, fully explaining the jurisdiction of the Arbitral Tribunal, the rational appeal of the Philippines and legal basis for controversial disputes and other issues. The Philippines on the date on March 30, 2014 submitted the Memorial of the Philippines Arbitration under Annex VII of the UN Convention on the Law of the Sea, Republic of the Philippines v. People's Republic of China, and expanded its 13 appeal demands to 15 ones.<sup>2</sup>

On 7 December 2014, the Chinese Government issues 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 (hereinafter referred to as "Position Papers"), which from three perspectives proves the Arbitration Tribunal has no jurisdiction over the case, reiterates its position of neither accepting nor participating in the arbitration procedure.<sup>3</sup> On December 16, as China did not submit a written appeal in line with the time specified by the Arbitral Tribunal, which asked the Philippines to provide further written arguments on certain jurisdictions and substantive issues. On March 16, 2015, the Philippines, according to the requirements of the Arbitral Tribunal, submitted a supplementary written statement. On July 7, 8 and 13, 2015, the Arbitral Tribunal held the court hearing in the Hague on the jurisdiction and rationality of the issue.

On October 29, 2015, the Arbitral Tribunal, in a unanimous manner, made a preliminary ruling on the question of jurisdiction and rationality as follows: (A). Awarding the legitimate formation of the Arbitral Tribunal under the provisions of Annex VII of the UN Convention. (B). Ruling that China in the procedure is absent from the court in no way deprives the jurisdiction of the Arbitral Tribunal. (C). Ruling that the Philippines starting this arbitration act does not constitute a procedural abuse. (D). Ruling that there is no existential deprivation of the jurisdiction of the necessary third party by the Arbitral Tribunal in its absence. (E). Ruling that according to the provisions of Article 281 or 282 of the UN Convention, China-ASEAN Declaration on the Conduct of Parties in the South China Sea 2002, Joint Statement by both parties to the dispute, the Treaty of Amity and Cooperation in Southeast Asia and the Biodiversity Convention quoted by the paragraphs 231 and 232 of the ruling do not exclude applicability of the compulsory dispute settlement procedures under Section 2, Part 15 of the UN Convention. (F). Ruling that the two parties to the dispute have exchanged views in accordance with the provisions in Article 283 of the UN Convention. (G). The Arbitral Tribunal under the conditions of Sections 400, 401, 403, 404, 407, 408 and 410, has jurisdiction over appeal demands No. 3, 4, 6, 7, 10, 11, and 13.

(H). Ruling the decision whether the Arbitral Tribunal has jurisdiction over the Philippine appeal demands No. 1, 2, 5, 8, 9, 12 and 14 will involve in considerations hearings on the issues of incomplete preliminary nature, thus keeping the jurisdictional hearing deliberations of the appeal demands No. 1, 2, 5, 8, 9, 12 and 14 till the substantive issue hearing stage. (I). Directing the Philippines to clarify the contents of and limit the scope of its No. 15 claim, and retaining the jurisdictional hearing of the demand No. 15 till the substantive issue hearing stage. (J). Reserving the right to make further considerations and instructions on the issue of this award.<sup>4</sup>

## **II. The Arbitral Tribunal Has a Clear-cut Subjectivity**

As an International Court of Justice, the Arbitral Tribunal should maintain impartial and unbiased, and make neutral ruling. However, the Arbitral Tribunal although nominally acts in accordance with the UN Convention, actually, in the process of applying the rules of the UN Convention on dealing with the case, it has taken up a more favorable interpretation for the Philippine side, which has exposed its position intentionally supportive of the Philippines and its abusive action.

The author argues that the Philippine side has never had any meaningful negotiations with China on the South China Sea dispute; and the consultation contents already held on the South China Sea dispute between the Philippines and China are very much inconsistent with the proposed appeal in the arbitration by the Philippines.<sup>5</sup> Therefore, the strict interpretation of Article 283 of the UN Convention provides that it is not difficult to find the Philippines did not fulfill its obligation to exchange views with the Chinese side before litigation. However, in the preliminary ruling, the Arbitral Tribunal gave a very broad interpretation of the Article – having counted all general consultations and communications between the two sides about the South China Sea dispute as pretrial exchange of views, but many formulations used in the appeal by the Philippine side are quite "unconventional", and are unheard of for the Chinese side – and then openly announced that the Philippines had exchange of views in accordance with the provisions of the UN Convention. Undoubtedly,

however, there is no need for the Article 283 of the UN Convention if it is interpreted with such broad understanding, because any argument between the two parties can be counted as "exchange of views".

Generally speaking, the Arbitral Tribunal rules whether or not it has a jurisdiction over a matter is not enough to become a reason to question its neutrality. But in this case, the Arbitral Tribunal runs counter to the universal practice by an international tribunal on adopting a clear-cut description of what matters to be governed by the International Court of Justice, and what matters not to be governed, but first included matters not explicitly defined by the UN Convention into its scope of jurisdiction, and then keep the matters excluded by China based on the Article 298 of the UN Convention till the substantive stage of considerations. That is tantamount to conclude that whatever demands the Philippines raised, the Arbitral Tribunal has to accept accordingly with basis, and has to accept by changing the ways if there is no basis. Therefore it made a preliminary ruling for the former, but not a preliminary ruling for the latter, but considered directly with substantive issues together and merged into the final ruling verdict. Not to mention that under the jurisdiction of a controversial dispute, usually there is a need to first make a preliminary ruling, confirm the jurisdiction and then further consider the substantive issues and make the final ruling. Even if the Arbitral Tribunal intends to conduct the direct consideration of substantive issues and come up with the final decision, it should not have taken this "double standard" to discriminate different appeal demands in the same case, thus, resulting in preliminary ruling for some appeal demands and no preliminary ruling for others but moving them directly into consideration of substantive issues. This is extremely rare and strong subjective approach not only making the preliminary ruling for the Chinese side extremely unfavorable, it can be predicted, then even the final ruling is not worth expecting by the Chinese side.

Then, why the Arbitral Tribunal has such a biased subjective approach, the author argues for the reasons as follows.

***First, the Composition of the Arbitral Tribunal is lack of Neutrality***

Because the Chinese side refuses to

participate in the arbitration, therefore does not designate any arbitrator, this is although showing the necessary means of stating position by China, objectively speaking, it is equal to present the opportunity to designate arbitrators to others submissively, therefore ensuring the Arbitral Tribunal composed of arbitrators, non of whom is inclined to the Chinese side, so neutrality is in question.

Reviewing the process of designating arbitrators, it is not difficult to find the clues to the problems: Firstly, China does not specify an arbitrator with pro-China position, and the Philippines specifies the arbitrator with pro-Philippines position. Secondly, the Chinese side and the Philippine side have no consultation on specifying another three arbitrators, plus the arbitrator who should be designated by China, a total of four arbitrators appointed by Shunji Yanai, President of the Tribunal for the Law of the Sea, and a Japanese Judge. In this regard, some scholars point out that the acts by President of Tribunal for the Law of the Sea to appoint arbitrators and Arbitral Tribunal judge are short of fairness guarantee through basic procedures; the influence of individual will is too large, does not meet the basic requirements of procedural justice; flaws are existing in the composition of the Arbitral Tribunal, which may be lack of rationality and appropriateness.<sup>6</sup> The author believes that even though an arbitrary judgment can't be made that the Japanese judge represents the position of the Japanese Government, however, a Japanese judge is nominated by the Japanese Government and to safeguard the national interests of Japan is indisputably a logical judgment;<sup>7</sup>

***Second, the subjective approach of the Arbitral Tribunal self-tailored jurisdiction is enlarged***

Whether it is arbitration or Tribunal for the Law of the Sea, both of which are means to settle disputes under the Article 15 of the UN Convention, and the legal basis is entirely identical. Seeking from afar what lies close at hand, the Philippines has taken up arbitration rather than Tribunal for the Law of the Sea even though most arbitrators are judges from Tribunal for the Law of the Sea. Its approach is more than a surprise.

In addition to arbitrators positions lack of neutrality, some scholars also emphasize that

Annex VII of the UN Convention has loopholes in designing the arbitration system and is incompatible with fairness through procedures.<sup>8</sup> Another reason is that the Philippines wishes to take advantage of the Arbitral Tribunal self-tailored jurisdiction principle and the arbitration clauses' independence fashionable among arbitrators as well as the objective approach of the Arbitral Tribunal self-tailored jurisdiction in order to add more weight to establish jurisdiction on the case. And the Arbitral Tribunal just follows so.

Once an Arbitral Tribunal is established, which first of all declares matters it has no jurisdiction at all, to some extent, this is practice of arbitration community, and is even more so for this case belonging to the sort of ad hoc arbitration. Of course, if the Arbitral Tribunal itself keeps its positions basically neutral, then the subjective tendency of the self-tailored jurisdiction will be to a certain degree contained. Under the circumstances that the case has great international influence and relevant legal basis of jurisdiction is not really thorough, the Arbitral Tribunal will usually consider cautiously whether jurisdiction shall be awarded, but because of the problematic neutrality of the Arbitral Tribunal, tendencies of the self-tailored jurisdiction shall be magnified. As far as this case goes, it is originally almost impossible to hope those judges to take the initiative to announce that they do not have jurisdiction after the hearing is held, and it has become completely impossible coupled with their subjective position. Therefore, the objective existing arbitration system loopholes (to unilaterally force the establishment easily) in Annex VII of the UN Convention together with other factors under the combined influence will make the Arbitral Tribunal more inclined to establish its own jurisdiction than Tribunal for the Law of the Sea.

Although the above two principles popular in international commercial arbitration should not be applied to this case as a temporary arbitration by international law,<sup>9</sup> however the Arbitral Tribunal, with some kind of subjective tendency, naturally does not question the Philippine side to select arbitration, and still mainly those judges of the International Tribunal for the Law of the Sea serve as arbitrators, but are pleased to accept, and with defects of a arbitration system in Annex VII of the UN

Convention as the foundation, deliberately enlarge the subjectivity of the self-tailored jurisdiction, and finally come up with self-ruling announcement that it has jurisdiction.

***Third, the Philippines actively promotes arbitration and cooks the international public opinion***

In order to be benefited in the arbitration case on the South China Sea dispute, the Philippines deliberately promotes law operation and public opinion cooking, having not only contributed to the formation of the Arbitral Tribunal, but also exerted the imperceptible impact on the arbitrators psychologically.

To counter China in the South China Sea dispute, the Philippines has heavily hired Paul S. Reichler, U.S. famous lawyer of the Foley Hoag Law Firm, to serve as the chief legal adviser. Reichler's cases have two characteristics: One is involved in territorial or maritime border disputes, such as Nicaragua v. Columbia, Bangladesh v. Burma, Croatia v. Slovenia, etc. Two is a considerable part of the cases is that he represents a small country against a big country, such as Nicaragua v. United States, Georgia v. Russia, Mauritius v. United Kingdom, Bangladesh v. India and so on. The above Reichler's characteristics should be the main reason for the Philippines to choose him as its chief legal adviser. Driven by economic interests, Reichler refined a set of packaging for the Philippines to apply for arbitration and had the jurisdictions established with its expertise in international law and international law business, in an attempt to embarrass China in the South China Sea arbitration.

Comparatively, the Philippine side attaches more importance to the role of international law in settlement of the dispute, and is willing to pay heavily for the purchase of related legal service, so as take the initiative in the legal operation. In contrast, Chinese international law scholars also actively use international law to analyze the South China Sea arbitration case and put forward many valuable ideas,<sup>10</sup> but under guidance of the fixed-idea with the political game-play as the essential means for the settlement of the South China Sea disputes, China is still not customed to mainly using the international law to analyze and respond to the disputes, therefore reacts a little slowly, has lost some advantages and has to make double efforts to catch up.



From the perspective of judicial practice, the Philippine side does maximize using the loopholes in existing laws, and make a superb superficial show in every process of the actual operation. The Philippine side spends lots to hire an international lawyers team, which has worked tirelessly to collect and edit a variety of archival materials, and deeply impresses the international community that the Philippine side is very active at least superficially. No wonder some media comments that so wide range of materials prepared in such a short period of time shows the great efforts by the Philippines and the close cooperation of the team.

Obviously, the Philippines takes the case that is clearly not awarded with the jurisdiction to arbitration and trumpeted it clamorously, the purpose of which is no more than using the dispute settlement mechanism of the UN Convention and manufacturing international public opinion unbeneficial to China. Because once the Philippines wins in any appeal, which can be regarded as its victory against China, even if the application for arbitration is not accepted or rejected by the law in accordance with the provisions of the jurisdiction, the Philippines can at least unilaterally initiate the dispute settlement procedures, so that it can embarrass China that has consistently advocated settling disputes through consultations; not to mention if China initiates the disputes to international arbitration, which can easily leave an impression to international community that China is indefensible in international law. So whatever the results may be, the Philippines can still have a harvest. Under the conditions that the Philippines Government fails to get the upper hand in competing with China for the Huangyan Island and reefs control in the South China Sea, it tries another way by flaunting the international public opinion banner in an attempt to balance China.<sup>11</sup> Therefore, for the Philippines, even if the case is impossible to win, as long as the cooked international public opinion is not conducive to China, it can also still claim a victory.

***Fourth, the growing contradictions between the Chinese side and the Arbitral Tribunal***

As early as the Philippines apply for arbitration, China states its "neither accepting nor participating" attitude. Legally speaking, China certainly has the right not to participate in an

international arbitration it has never agreed to accept, but this in no way means that China and the Arbitral Tribunal does not have legal exchange at any formal level, because under the establishment of the Arbitral Tribunal, even if China "neither accepts nor participates in" the Arbitral procedures, it should also explain the legal reason to it. After all, China is a state party to the UN Convention and a member of the above dispute settlement mechanism. As a responsible maritime major country, China should actively face the dispute and bravely take up legal weapons.

By the end of 2014, China released the "Position Paper", actually made the jurisdiction defense. However, compared to the Philippines lengthy indictment, the Position Paper seems to be put together in a quite hasty and inadequate manner, did not come up with detailed legal analysis and explanation to the Philippine questions one by one, but laid emphasis on reviewing history and reiterating its main positions to the neglect of the sound legal effect.

Meanwhile, it seems that the Position Paper deliberately downplays and neglects existence of the Arbitral Tribunal, and the Chinese side tries to avoid direct communication with the Arbitral Tribunal, these negative attitudes will be counter-productive with those arbitrators. If not subjected to explicit provisions in Article 298 of the UN Convention and China's effective statement, the Arbitral Tribunal is likely to rule that it has the jurisdiction over the Philippines all appeals; now only include about half of the appeal demands in jurisdiction, but "reserves" others, also continues to "review" them till the "substantive stage", i.e. putting them into the final decision for discussion. Thus, the contradiction between China and the Arbitral Tribunal after a few rounds of game-play is still growing.

**III. The Philippines gains from "packaging" the arbitral promotion**

***First, the essence and effect of the Philippine legal promotion***

As is known to all, the South China Sea dispute between the Philippines and China is related to the following three aspects: One is the Islands-reefs sovereignty dispute. Two is the maritime delimitation disputes. Three is China's "historic rights" issue. The previous negotiations and conflicts between the Philippines and China

are focused on the above three aspects. Therefore, logically speaking, if the Philippines seeks legal aid, it must proceed from these three aspects

But the problem is that the above three aspects are all within the scope of Article 298 of the UN Convention that allow the exclusion of compulsory process jurisdiction, and China really has substantiated the statement. Therefore, the Philippines knows it if it proceeds from the normal legal operation to bring a suit or apply for arbitration, it has no presentable reason and basis, and therefore takes the means of promoting "decomposition - bending - packaging", so as to possibly bypass the Chinese written statement, and to achieve the abuse purpose of litigation.

The specific ways for the Philippines to "package" legal promotion of the arbitration appeals are the following: Firstly, "packaging" the core demands of sovereignty over islands and maritime delimitation, through the dazzling decomposition and reorganization, into a dozen complicated and lengthy items in the Notification. Secondly, avoiding the use of the statements that embody the rights and obligations in and that define the meaning of the application as far as possible, and replacing them by the wording and presentations that are compatible with the international law. Thirdly, regarding the disputed islands and reefs, mentioning no sovereignty dispute, only providing the legal effect of the islands and reefs themselves (whether enjoying the territorial sea, exclusive economic zone or continental shelf), so that the appeal demands are seemingly turned into a request to clarify the islands and reefs effect and unrelated to the state sovereignty of any party to the dispute. Fourthly, joining fishing, environment, ship collision and other non-core demands included in Article 298 of the UN Convention, so as to ensure that the jurisdiction of the Arbitral Tribunal can be established.

According to the preliminary ruling, the Arbitral Tribunal has confirmed the jurisdiction of the Philippines appeal demands including: Item 3, the Huangyan island is not the basis for claiming the right to the exclusive economic zone or continental shelf. Item 4, Meiqi, Ren-ai and Zhubi reefs are low-tide elevations, which, therefore, cannot generate the rights to and interests for the territorial sea, exclusive economic zone or the continental shelf, and which should not be invaded by preempt

occupation or other means. Item 6, the Nanxun and Ren-ai reefs (including the Dongmen reef) are low-tide elevations that cannot form the territorial sea, exclusive economic zone and continental shelf, but their low-tide line can be used to determine the baseline, and thus measure the territorial sea breadth of the Hongma island and Jinghong island. Item 7, Chigua, Huayang and Yongshu reefs are not the basis to claim the exclusive economic zone or continental shelf right. Item 10, It is illegal for China to interfere with the pursuit of livelihood by the traditional fishing activities of Philippine fishermen around the Huangyan island. Item 11, China has violated its obligations under the UN Convention to protect and maintain the marine environment surrounding the Huangyan and Ren-ai islands. Item 13, China operates its law enforcement ships in a dangerous way, and creates a serious collision risk with the Philippine ships sailing near Huangyan island, which is in violation of its obligations under the UN Convention.

Of course, if the Arbitral Tribunal maintains a neutral stance, objectively and cautiously explains and applies the international law, it is not difficult to see through the Philippine abusive tricks, the legal operation of the Philippines could hardly work, but in the case of biased position already taken by the Arbitral Tribunal with the pro-Philippines interpretation of law, it is naturally difficult to get a fair outcome.

### ***Second, only simple reef legal effect?***

To analyze the above items under arbitration, it is not difficult to see that Items 3, 4, 6, 7 appeal demands all simply belong to the reefs legal effect, but the Philippine side in wording deliberately avoids the originally existing sovereignty dispute on the islands and reefs, which makes the appeal demands look like objective problems uninvolved in any interests of the parties to the dispute, and it seems that any country can propose such problem to any international judicial mechanism.

But if there is no sovereignty claim on these islands and reefs, naturally there is no damage to the interests to speak of, there is neither a cause of action, otherwise any country can just pick out any island anywhere in the world and take it then to international litigation or arbitration for their legal effect. Therefore, the premise of the Philippines appeal demands is that it has its own claim on the sovereignty of these islands and a

dispute with China, and the premise is excluded from the compulsory process by Article 298 of the UN Convention, and the Chinese Statement, which shows the above appeal demands have no establishment basis. The Philippine acts are meant to mislead the mass media that it seems the Philippines just doesn't want to talk about sovereignty and just want to clarify the islands and reefs effect, unrelated to the parties rights and interests, but the Arbitral Tribunal with legal professionals turn their blind eyes to it, so the jurisdiction over these 4 appeal demands are established.

In addition, the identified sovereignty of the islands and reefs is the premise of establishing the legal effect, if there is no clear-cut claimed sovereignty of the Islands and reefs, then any of them in the demarcation process can only be given zero effect, there could be other choice only after sovereignty is clearly defined (full effect or partial effect).<sup>12</sup> The Arbitral Tribunal with legal professionals cannot but is well aware of this point. Moreover, the provisions of the UN Convention has no descriptions on defining islands, reefs, or low-tide heights, so it is inappropriate for the Arbitral Tribunal to make a ruling on their nature and legal effect before detailed and clear-cut standards are adopted.

### ***Third, the general marine disputes?***

And Items 10, 11 and 13 appeal demands are fishing, environment, navigation safety issues, belong to the general maritime disputes and are not excluded by Article 298 of the UN Convention, which should be the reasons for the Arbitral Tribunal to establish jurisdiction. However, an in-depth analysis will help one find the loopholes in the legal logic.

On the issue of fishing, according to Article 297th (3) (a) of the UN Convention, a coastal state has no obligation to agree to any dispute about its sovereign rights over biological resources in the exclusive economic zone or the exercise of this right. And again the Arbitral Tribunal makes a broad interpretation of this provision beneficial to the Philippine side, arguing that a fishery dispute could not only occur in the exclusive economic zone and may occur in the territorial sea, therefore the above article is inapplicable, and the Arbitral Tribunal has jurisdiction over this.<sup>13</sup> But even so, the Arbitral Tribunal needs at least to revise the Philippine appeal demands and limit the fishery

disputes within the territory, yet, the Arbitral Tribunal simply accepts the Philippine appeal demands, so the motivation for this approach cannot but should be questioned.

On environmental disputes, which, it should be recognized, is mandatory under the UN Convention dispute settlement mechanism, and indeed can ensure establishment of the jurisdiction by the Arbitral Tribunal. According to Section 1 Article 297 of the UN Convention, some disputes shall be applied to the compulsory procedure leading to binding ruling. Section 1 (c) condemns a coastal state in violation of specific international rules and standards of behavior on the protection and preservation of the marine environment applicable to this coastal State, and adopted by this UN Convention, or formulated through competent international organizations or diplomatic conference in accordance with the UN Convention "

On navigation safety issue, its essence is to question China's exercise of jurisdiction in certain South China Sea waters, but the basis of jurisdiction is the state sovereign and maritime delimitation, the ruling on which will inevitably involve sovereignty claim and maritime delimitation. The Arbitral Tribunal shall determine whether China's behavior in the Huangyan island is illegal or not, first of all determine the legal status of Huangyan island. According to the UN Convention, to judge the Philippines appeal, the sovereignty of Huangyan Island must be first determined, and then the maritime delimitation of the surrounding waters be clarified, but these issues are subject to exclusion by the Article 298 of the UN Convention. This shows that the Arbitral Tribunal has no jurisdiction on this. However, on the basis of this issue not explicitly excluded, the Arbitral Tribunal still includes it in the scope of jurisdiction, which is obviously to establish jurisdiction as much as possible.

In fact, these three appeal demands are used by the Philippines as a means to confuse and mislead the international community. The Philippine side really knows its weakness in the jurisdiction basis for the appeal demands, therefore deliberately designed and added some easy appeal demands to establish the jurisdiction in order to prolong the arbitration proceedings and rally the international public opinion.

### Concluding Remarks

In whatever approach to settle the disputes in the South China Sea, support of the international laws is inseparable. On the one hand, China should continue engagement with the Philippines in the area of international law including the UN Convention, take advantage of all multi-lateral occasions to exhibit its international law basis and bring to light the Philippine abuses of the international law. Meanwhile, China should also question the fairness of the Arbitral Tribunal preliminary ruling, and expounds the ruling that runs counter to normal logic and international law as well as

rare operational approaches by the Arbitral Tribunal. On the other hand, so long as China attaches great importance to applying the international law to solve the disputes in the South China Sea, makes thorough arguments regarding the “historical rights” in line with the international practice and the UN Convention and uses the international law to safeguard its maritime rights and interests, it will get beneficial outcome in the end.

(Excerpts of the Chinese  
From <http://shisu.edu.cn>)

### Footnotes:

1. Notification and Statement of Claim on West Philippine Sea, 22 January 2013.
2. Memorial of the Philippines, Arbitration under Annex VII of the United Nations Convention on the Law of the Sea, Republic of the Philippines v. People's Republic of China, 30 March 2014.
3. 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. <http://www.fmprc.gov.cn/ce/cesg/chn/gdxw/t1217644.htm>.
4. Award on Jurisdiction and Admissibility 29102015-29-10-2015 (English) <http://www.pcacases.com/web/sendAttach/1506>.
5. See Luo Guoqiang and Chen Shaojin, "Understanding the Jurisdiction in the Philippines South China Sea Arbitration – in combination of China's position Paper Contemporary International Relations, No.1, 2015.
6. see Liu Heng, "Annex VII of the UN Convention on the Law of the Sea: Positioning, Performing and Questing", *International Law Studies*, No.5, 2015.
7. International Tribunal for the Law of the Sea Statute does not request judges to keep neutral or represents global interests.
8. See Liu Heng, "Annex VII of the UN Convention on the Law of the Sea: Positioning, Performing and Questing".
9. See Luo Guoqiang, "the Philippines legal operation in the in the South China Sea Arbitration", *Huadong Formal University Bulletin*, No.1, 2014.
10. See Stefan Talmon, Bing Bing Jia(ed): the South China Sea Arbitration: a Chinese perspective, Oxford and Portland, 2014, Seinho Yee, the South China Sea Arbitration (The Philippines V. China): Potential Jurisdiction Obstacles or Objections, 13; *Chinese journal of international Law* (2014); Yu Mincai, Mandatory Arbitration Procedure of Maritime disputes and China's Response", *Legal Business Studies*, No.3, 2013; Cao Qun, "The South China Sea Disputes and International Arbitration: the Philippines Wanton Appeal", *International Studies*, No.4, 2013; Xing Guangmei, "Some observations on China-Philippines South China Sea Arbitration, *International Relations*, No.6, 2013; Wang Yong, "On the Restrictive Conditions of Mandatory Arbitration by the UN Convention, Politics and Laws No.1, 2014; Mao Junxiang, "The Political and Legal Analysis on the Philippines taking the South China Sea Disputes and to International Arbitration, *Law Studies*, No.2, 2014; He Zhipeng, "Legal Expression of the Chinese Discourse -- China Position Paper", *Hainan University bulletin*, No.2, 2015; Wang Jiwen, "Mandatory Arbitration in the Maritime Disputes Settlement", *Southeast Asia Studies*, No.4, 2015..
11. See Luo Guoqiang, Zhang Yangchen, "On Impact of International Opinion on International Laws --- an Enlightenment on Solving South China Sea Disputes", *South Asia Studies*, No.3, 2013.
12. See Legal Effect of the Disputed Islands and Reefs in the Maritime Demarcation", *Contemporary Legal Studies*, No.1, 2011.
13. Award on Jurisdiction and Admissibility 29102015-29-102015 (English), para.407.