

PROBING THE (IM)POSSIBILITY OF CHINA'S COMPLIANCE WITH THE SOUTH CHINA SEA ARBITRATION AWARD

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On 11 July 2016, a day before a UN Convention on the Law of the Sea arbitral tribunal delivered the final award of *Philippines v. China*, Graham Allison¹ argued in *The Diplomat* that China will keep its word and reject the tribunal ruling, citing how the other permanent members of the UN Security Council had also rejected the rulings in *Nicaragua v. US*, *Mauritius v. UK*, and *Netherlands v. Russia*. He claimed that in ignoring the South China Sea arbitration award, China “will be doing just what the other great powers have repeatedly done for decades.” Allison, however, gave an incomplete account of great-power compliance and excluded China’s own record in the analysis.

This paper gathers these additional historical evidence and finds that the likelihood of China’s non-compliance may not be as strong as Allison suggested. The great powers did resist the rulings initially, but their resistance was not absolute, and, arguably, they even partially complied, particularly in the *Nicaragua* and *Netherlands* cases. In addition, China, a great power itself, has abided by international judicial decisions before and, despite the rhetoric, has not totally ignored the arbitration in its informal interactions with the tribunal and the international community, and in its careful reaction to the award. China’s compliance is thus not impossible. Pointing this out matters because a scenario of compliance, even if partial, demands a different foreign policy to that in a scenario of absolute non-compliance.

Partial Compliance by the Great Powers

Allison mentioned *Nicaragua v. US* and *Netherlands v. Russia* to establish that non-compliance with international judicial decisions is the norm among the great powers, but the same cases also demonstrate that compliance is possible, even if it is partial or there is just a semblance of it.² If China would indeed mirror its great-power peers, then there could also be some degree of compliance with the arbitral award.

In the *Nicaragua* case, the International Court of Justice (ICJ) found in 1986 that the US had breached its obligations to Nicaragua for supporting the Contra rebellion against the Sandinista administration and for laying mines in Nicaraguan harbors.³ The US vowed not to comply. It had already withdrawn from the merits phase of the proceedings (after losing in the jurisdiction phase, which it had participated in), and after the release of the ruling, it further withdrew from the ICJ’s compulsory jurisdiction altogether. Nicaragua went to the UN Security Council to demand the implementation of the ruling, but the US vetoed the proposal. Nicaragua appealed to the UN General Assembly to secure a resolution calling for compliance, and it succeeded.⁴ The US Congress eventually aligned itself with the ICJ and cut off funding for the Contra rebels, as required by the ruling, but the US President then, Ronald Reagan, did not – he even continued to extend support covertly. But with the electoral win of George H.W. Bush in 1989 and the electoral defeat of the Sandinistas in 1990, the US subsequently lifted its trade embargo against Nicaragua, also as required by the ruling. It also started giving substantial economic aid, even though it still would not pay Nicaragua a compensation.⁵

In the *Netherlands* case, the International Tribunal for the Law of the Sea called upon Russia, through a provisional ruling in 2013, to release the Dutch-flagged *Arctic Sunrise* vessel it had seized from Greenpeace International and the 30 persons onboard it had detained after a protest against oil-drilling in the Arctic.⁶ Russia vowed not to comply. It had not participated in the hearings at all and had instituted domestic legal proceedings against the crew for piracy, which was eventually reduced to hooliganism. A month after the release of the ruling, however, the Russian parliament extended the amnesty decree to include those charged with hooliganism, thereby allowing the Russian authorities to drop the charges and release the detainees, as required by the ruling. In 2014, Russia also released the *Arctic Sunrise*, again as required by the ruling. Nonetheless, Russia still has not paid the Netherlands a compensation.⁷

At best, then, the evidence supports neither a case of compliance nor non-compliance but a mixed case of partial compliance. The great powers, namely the US and Russia, eventually demonstrated some degree of compliance even though they had initially announced their rejection of the rulings. Their compliance was admittedly subtle and limited, but arguably not insignificant. Exacting a decision from an international court can be a means for states to achieve certain ends. For Nicaragua and the Netherlands, getting an authoritative ruling helped them deal with their complaints against the US (i.e., its extraterritorial military and paramilitary activities) and Russia (i.e., its illegal detention of a ship and its crew).

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China’s Positive Compliance Record

In claiming that China will not comply with the arbitral award, Allison assumed that all great powers predictably behave in the same way. To make reliable estimates of China’s future behavior, however, China’s own compliance record should also be considered.

China has manifestly complied with a number of international judicial decisions in the past. Its compliance record is thin because of its limited membership in international adjudicative bodies.⁸ China has agreed to at least 53 conventions containing dispute-resolution mechanisms, but it has submitted to the compulsory jurisdiction (i.e., binding adjudicative authority) of such mechanisms in only 9 conventions, including UNCLOS.⁹ Among these conventions with binding dispute-resolution mechanisms, China has been sued the most number of times under the World Trade Organization (WTO) Dispute Settlement Understanding.¹⁰ In the others, China has generally either refused to give its acceptance of compulsory jurisdiction (it cannot be sued in these fora without its consent) or made qualifications therein (it can only be sued over limited types of disputes).¹¹ China, for instance, has not yet made a declaration accepting compulsory jurisdiction under the Statute of the ICJ, which is why China has not yet been sued at the ICJ.¹²

But in cases where it has been sued and issued a binding a ruling, such as those in the WTO, China has generally complied. China is a respondent to 36 cases before the WTO Dispute Settlement Body (DSB). Of these, 12 are still pending, three are under implementation, and the remaining 13 have had their rulings implemented, according to

China. In turn, only four of these notifications of compliance had been openly contested by the complainant.¹³ These figures show that China commonly abides by WTO rulings.¹⁴ As one scholar observes, China “is generally adhering to the time limits set by the WTO, amending its laws when necessary and demonstrating, in its rhetoric and behavior, that it believes compliance with WTO rulings to be appropriate.”¹⁵

China’s compliance may reflect a rational calculation that non-compliance could lead to trade sanctions. The WTO has a more stringent dispute-settlement mechanism compared with UNCLOS Annex VII arbitration. In both mechanisms, cases, which may be filed unilaterally, are heard by *ad hoc* tribunals whose members are selected by the disputants from a closed list of nominees and whose decision cannot be vetoed by and is binding to the disputants. In the WTO, however, the decision can be rejected by the DSB, which consists of all the organization members, but only by consensus. The decision may also be unilaterally appealed to a permanent tribunal, the Appellate Body, whose ruling can likewise be rejected by the DSB by consensus. Moreover, while UNCLOS lacks an enforcement mechanism, the WTO has the DSB, which monitors the compliance of the disputants (initiating compliance proceedings when necessary) and authorizes temporary economic sanctions upon the request of a disputant.¹⁶

China’s compliance may also reflect a cost-benefit estimation that abiding by WTO rulings could serve its national interests. When it joined the WTO in 2001, China had already calculated and accepted that the benefits of membership (i.e., increased economic growth and, by extension, increased legitimacy for the Communist Party and increased international economic power) outweighed the costs of committing itself not only to various structural reforms but also to binding dispute-resolution through the DSB.¹⁷ Compliance with WTO rulings could complement this agenda of trade-led growth by aligning China’s domestic laws and regulations with the rules of the liberal international trading regime. Of course, unlike trade disputes, the South China Sea case entails different, largely non-economic calculations; but, like with WTO rulings, compliance with the arbitral award may also be in China’s national interests. Non-compliance risks inviting more US presence in the South China Sea, damaging the prospect of long-term economic partnerships with smaller states (especially those targeted by the One Belt, One Road initiative), and demonstrating an incapacity to lead a rules-based international order.¹⁸ If China prefers to avoid these scenarios, then compliance could be a rational option.

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China’s Nominal “Non-Participation” in the Arbitration

In addition to its history of compliance with WTO rulings, China’s conduct during the arbitration also offers some hints about its compliance behavior. Despite repeatedly stating that it would not participate in the arbitration, China nonetheless maintained informal communications with the tribunal to partially comply with some requirements during the proceedings and even gathered international support outside the court. If China’s policy of non-participation had only been nominal, then there is a chance that its policy of non-compliance could also be symbolic.

The first instance of nominal non-participation concerned the tribunal’s issuance of the rules of proceedings (Procedural Order No. 1) on 27 August 2013. China’s ambassador to the Netherlands requested a meeting with the president of the tribunal, but the tribunal collectively denied the request and sent a reminder to the parties on 14 November 2013 to refrain from *ex parte* communications. The tribunal also noted that, on two prior occasions, representatives from China’s embassy in the Netherlands had informally discussed questions of a procedural nature with the registry.¹⁹ Then, during the written arguments phase, the tribunal instructed China to submit a counter-memorial by 15 December 2014 (Procedural Order No. 2). China did not submit one, but instead published a position paper about a week before the deadline, on 7 December 2014, containing arguments on why the tribunal has no jurisdiction to hear the Philippines’ case.²⁰ China’s embassy in the Netherlands deposited a *note verbale* at the registry requesting that the paper, along with an English translation, be forwarded to the members of the tribunal.²¹ Afterward,

on 16 December 2014, the tribunal requested for comments on, among others, the possibility of site visits and the procedure for *amicus curiae* submissions (Procedural Order No. 3). On 6 February 2015, China's ambassador to the Netherlands wrote individually to the members of the tribunal reiterating China's jurisdictional counter-arguments in the position paper and expressing its "firm opposition" to those two procedural matters.²² The tribunal eventually accepted China's position paper and its ambassador's letter as China's plea in court on 21 April 2015 (Procedural Order No. 4). China's ambassador wrote a second letter on 1 July 2015 again recalling the position paper's arguments.²³ After the hearing on jurisdiction on 13 July 2015, the president of the tribunal offered China until 17 August 2015 to comment on any matter raised during the hearings. China did not submit any; instead, it published on 24 August 2015 the remarks of the spokesperson of the Ministry of Foreign Affairs (MFA) repeating its counter-arguments to the Philippines.²⁴

When the tribunal released its Award on Jurisdiction and Admissibility on 29 October 2015, China's MFA issued a statement declaring the decision null and void, and therefore not binding on China.²⁵ The tribunal went on with the proceedings and, after the hearings on merits, invited China to comment on the transcript by 9 December 2015. A few weeks later, on 21 December 2015, the spokesperson of China's MFA emphasized its position that the tribunal lacked jurisdiction over the case.²⁶ The MFA Treaty and Law Department director general also made a media briefing on 12 May 2016, again highlighting the tribunal's lack of jurisdiction.²⁷ At the time, the tribunal was looking into further evidence from the parties and from independent experts. On 20 May 2016, China's embassy in the Netherlands requested the registry to forward the previous statement of the MFA spokesperson to the members of the tribunal.²⁸ China's new ambassador to the Netherlands also wrote a letter to the members of the tribunal on 3 June 2016 regarding the remarks of the MFA spokesperson on the status of Itu Aba.²⁹ He again sent a letter on 8 June 2016 repeating China's jurisdictional arguments.³⁰ On 10 June 2016, he also forwarded a statement by the Chinese Society of International Law on the tribunal's lack of jurisdiction.³¹ During the period of submission of the Ambassador's letters, the registry received or was made aware of similar statements and commentaries by various Chinese associations and organizations.³²

China qualified that these communications to the registry and the tribunal during the proceedings are not to be considered a form of participation in or acceptance of the arbitration. Nonetheless, its intention to influence the outcome of the case despite a policy of non-participation is clear. China did respond to the tribunal's procedural orders, especially during the jurisdiction phase, but it did so indirectly and outside official channels. It released statements roughly addressing some of the tribunal's key considerations and vaguely coinciding with the schedule of the proceedings, with its embassy in the Netherlands making sure that these pronouncements were made known to the members of the tribunal.³³

Beyond the proceedings, China also acted as a *de facto* disputant in a lawsuit when it participated in the contest for international support³⁴ and made use of public diplomacy to persuade other states to support its position or, at least, tone down their support for the Philippines. The *Asia Maritime Transparency Initiative* of the Center for Strategic and International Studies followed which states had publicly expressed support for which party and for which international norms before and after the release of the final award.³⁵ During the proceedings, China claimed that about 65 other states supported its position, of which 31 would later publicly confirm their support and 4 would deny it. Post arbitration, 5 states expressed opposition to the ruling, 9 made neutral statements without mention of the award, 33 issued positive statements but fell short of calling for compliance, and only 7 explicitly urged the parties to comply.

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China's Careful Responses to the Award

China's actions following the issuance of the final award further suggests that it is carefully balancing its responses. China released two statements on that day. The first was from the MFA, which simply repeated China's legal justifications for rejecting the arbitration as laid out in the position paper.³⁶ The second was from the State Council, China's cabinet. It did not mention the award; instead, it meant "to reaffirm China's territorial sovereignty and maritime rights and interests[,] . . . enhance cooperation . . . with other countries, and uphold peace and stability in the South China Sea."³⁷ The tone of this other statement is more optimistic, if not conciliatory, than the first. Near the end of the statement, China makes a reassuring statement:

Pending final settlement, China is also ready to make every effort with the states directly concerned to enter into provisional arrangements of a practical nature, including joint development in relevant maritime areas, in order to achieve win-win results and jointly maintain peace and stability in the South China Sea.³⁸

Chinese State Councilor Yang Jiechi, who ranks above the foreign minister, was also quoted making a similar statement.³⁹

This was the first time that the term "provisional arrangements" appeared in China's official pronouncements.⁴⁰ China's explicit use of "provisional arrangements" rather than "joint development" after the issuance of the award signals its alignment with the language of UNCLOS.⁴¹ In addition, it may be taken as an implicit recognition that only certain portions of the South China Sea are contested because provisional arrangements only apply to what the tribunal has clarified to be the disputed areas. This means that provisional arrangements cannot apply in China's now -void nine-dash line and can only apply in the territorial seas around high-tide features as identified by the tribunal. In contrast, the idea of "joint development" prior to the arbitration has tended to treat almost the entire South China Sea as a disputed area, hence China's preference for it. A case in point is the 2005 Joint Marine Seismic Undertaking between China, the Philippines, and Vietnam, which was conducted near Palawan and included the Reed Bank.

In addition to these statements, China has censored calls for war by its citizens on the internet and disallowed public protests near the Philippine and the US embassies.⁴² But the possibilities that China might start reclamation in the Scarborough Shoal and declare an air defense identification zone over the South China Sea are still looming. Nonetheless, the fact that China has not yet done either after the award suggests that it is carefully balancing its strategic interests against potential international backlash, and that it is still calibrating its next actions on the South China Sea.

Implications for Philippine Foreign Policy

Records of compliance by the great powers, including China, with international judicial decisions in the past and China's own behavior during and after the arbitration weaken the argument for China's non-compliance and support the alternative case for its compliance. Pointing this out matters because of its implications for Philippine foreign policy.

First, the possibility of compliance changes the perception about China. China's recent behavior of reclaiming land in the disputed features and denying access in the surrounding waters are legitimate reasons for other states to be distrustful and insecure. But these should not lead to perpetual pessimism over China's future behavior. Knowing that the possibility of China's compliance is grounded on evidence rather than on a mere conviction of good will and beneficence can, at the least, decrease skepticism. This is crucial not only for Philippine diplomats who will engage China in negotiations, but also for the Philippine public who may have hitherto been viewing China and the Chinese people in a negative light.

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Second, a scenario where China could comply, even if partially, demands a different strategy to a scenario where China would resolutely defy. On the one hand, in a scenario of absolute non-compliance, the Philippines could build international support, especially from the other great powers, and urge China to comply. International support raises the reputational costs of non-compliance. For instance, the Philippines could ask the US to balance against China by maintaining a continuous presence in the South China Sea through freedom of navigation operations.

On the other hand, in a scenario of possible compliance, the goal would be not to force compliance but, given the chance of compliance, to allow for it. Asking international support, especially from the US, might backfire to push China to be more aggressive. This could only trigger its memory of the “century of humiliation,” when China was taken advantage of by foreign powers, and consequently push Chinese foreign policy nearer to a hardliner position lest President Xi Jinping and the Communist Party risk their domestic legitimacy. In this regard, there is merit in the Philippines’ decision not to flaunt the arbitral award, which makes room for China to save face. There may be no need to flaunt it because it is unavoidable. Having been a global spectacle, it has already shaped the expectations of all relevant actors, domestic and international, who in turn will want to see a resolution to the South China Sea made in accordance to it. The relevant actors include not only the governments of the claimant-states, the remaining ASEAN-members, and the major powers, including the US, but also their domestic publics. They expect, to varying degrees, that China would observe and behave in line with the ruling, and they would not welcome any action that runs contrary to it.

The Philippines should consider these implications because compliance does not rest solely on China’s shoulders. China’s response will depend not only on its own calculations but also on the Philippines’ next moves. The Philippines shares the burden of compliance. For its part, the Philippines should recognize that there is now a potential opening, and thus, it should set terms that would allow China to save face. It could start with engaging China in its preferred forum, closed-door bilateral negotiations, which the new Duterte administration has relaunched. So far, the move seems to be bearing fruit: China has allowed Philippine fishermen to return to the Scarborough Shoal, a move which the Philippine ambassador to China, Jose Santiago Sta. Romana, has described as suggestive that the great power is complying with the arbitral award.⁴³

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The Philippines could also take advantage of China’s openness to “provisional arrangements” in the disputed areas, as determined by the tribunal, but it should not easily settle with “joint development” in what should now be non-legally-disputed areas. If the Philippines still determines joint development in the West Philippine Sea to be in its national interest, then it should make sure that it safeguards its sovereign rights in its exclusive economic zone. In general, it should be clear how the Philippines plans to advance the national interest in the West Philippine Sea. This requires a set of policies for its people on the ground (e.g., the navy, the maritime law enforcement agencies, and the fishermen) and a determination of its maximum and minimum positions in negotiations (i.e., what its priorities are and what it would be willing to compromise). An important consideration is to be sensitive about the implications of its next actions to its relations with other states, especially the other claimant-states. The Philippines’ maritime and territorial disputes with China are not purely a bilateral issue because Brunei, Malaysia, and Vietnam also claim (varying portions of) the Spratly Islands. The region and the international community also have interests in peace and stability in this portion of the world’s waters. Finally, vigilance should remain vital even though an opening for compliance may be apparent, and the Philippines should also consider alternative courses of action. As much as there is a possibility of compliance, the possibility of non-compliance still looms.⁴⁴ The larger burden remains on China to show to the region and the international community that it can behave in accordance with international rules and norms.

Conclusion

The possibility that China might comply with the arbitral award is one not merely founded on an assumption of goodwill or a desperation for hope; rather, it is supported by histories of partial compliance by other great powers (i.e., the US and Russia) with high-profile international judicial decisions, China’s own history of compliance with WTO

rulings, its nominal non-participation in the arbitration, and its careful responses to the award. This behavior seems to indicate a recognition that China cannot fully ignore international law and that adherence to international rules and norms can serve its national interests. The possibility of compliance reduces, even if only by a small degree, the pessimism over China for its actions in the South China Sea through the years and presents some consequences to Philippine foreign policy both in terms of outlook and tactics. There is danger in being overly optimistic, and there are legitimate reasons to be defensive, but these are not grounds to dismiss all prospects of any form of compliance. There is a perceptible possibility for China's compliance, however partial, but one that the Philippines should not ignore. ❁

Endnotes

- ¹ Graham Allison, "Of Course China, Like All Great Powers, Will Ignore an International Legal Verdict," *The Diplomat*, 11 July 2016, <http://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>.
- ² Incidentally, these two cases are also directly related to *Philippines v. China*: the lead counsel of the Philippines, Paul Reichler, had been a counsel of Nicaragua, while all the five arbitrators, Rüdiger Wolfrum, Stanislaw Pawlak, Jean-Pierre Cot, Thomas Mensah, and Alfred Soons, had been judges at different points in the *Netherlands* case.
- ³ See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. US)*, Merits, Judgment, 1986 ICJ Rep. 14 (27 June 1986).
- ⁴ See Judgment of the International Court of Justice of 27 June 1986 Concerning Military and Paramilitary Activities in and against Nicaragua: Need for Immediate Compliance, UN General Assembly Res. 31, 41st sess., *Official Records of the General Assembly*.
- ⁵ See Robert O. Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, "Legalized Dispute Resolution: Interstate and Transnational," in *Power and Governance in a Partially Globalized World*, ed. Robert O. Keohane (London: Routledge, 2000), 168–9. Paul Reichler, interview by Gregory Poling, "Post-Arbitration Outcomes" (podcast), *Asia Maritime Transparency Initiative*, 18 July 2016, <https://amti.csis.org/podcast-arbitration-outcomes-paul-reichler-philippines-lead-counsel/>; "Understanding the Iran-Contra Affairs," Brown University, n.d., https://www.brown.edu/Research/Understanding_the_Iran_Contra_Affair/.
- ⁶ *Arctic Sunrise Case (Netherlands v. Russia)*, Order, ITLOS Case no. 22 (22 November 2013). See also *Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award on the Merits, PCA (Permanent Court of Arbitration) Case no. 2014-02 (14 August 2015).
- ⁷ Craig H. Allen, "ITLOS orders Russia to Release Arctic Sunrise and its Greenpeace protestors," *Opinio Juris*, 25 November 2013, <http://opiniojuris.org/2013/11/25/itlos-orders-russia-release-arctic-sunrise-greenpeace-protestors/>; "Updates from the Arctic Sunrise Activists," Greenpeace International, 1 August 2014, <http://www.greenpeace.org/international/en/news/features/From-peaceful-action-to-dramatic-seizure-a-timeline-of-events-since-the-Arctic-Sunrise-took-action-September-18-CET/>.
- ⁸ This may be attributed in part to China's Confucian culture, which avoids litigation as a method of resolving disputes and emphasizes harmonious social relations. Instead, consultation and mediation are the preferred methods of resolving disputes. The reluctance toward courts also spills over China's international relations, where it is amplified by China's collective memory of foreign oppression during the "century of humiliation." This also partly explains why China rejects the Philippines' arbitration case and insists on negotiations. Marcia Don Harpaz, "China and International Tribunals: Onward from the WTO," in *China in the International Economic Order: New Directions and Changing Paradigms*, ed. Lisa Toohey, Colin B. Picker, and Jonathan Greenarce (New York: Cambridge Univ. Press, 2015), 47–50; Jose Santiago Sta. Romana, "The Philippine Arbitration Case and China's Dispute Resolution Culture: Part 1," *Philippine Alternative Dispute Resolution Review*, November 2015, 2–3, <http://www.pdrci.org/web/wp-content/uploads/2016/01/2015-11-Philippine-ADR-Review.pdf>.
- ⁹ The rest are the World Trade Organization Dispute Settlement Understanding, Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), Convention on International Civil Aviation, Customs Convention on Containers, European Patent Convention, International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, International Telecommunications Convention, and Trade-Related Aspects of Intellectual Property Agreement. Julian Ku, "China and the Future of International Adjudication," *Maryland Journal of International Law* 27 (2012): table 1.
- ¹⁰ China has been sued only twice under the ICSID Convention, in 2011 and in 2014, but the earlier case was dropped by the complainant, a Malaysian firm, after reaching out a settlement, while the latter case, involving a South Korean firm, is still pending. Meanwhile, China has been sued only once under UNCLOS, in 2013, by the Philippines. It has, though, made a submission to the Seabed Disputes Chamber of ITLOS for an advisory opinion (but not a ruling on a dispute) requested by the International Seabed Authority. See "Cases," International Centre for Settlement of Investor Disputes, n.d., <https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/AdvancedSearch.aspx>; *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Written Statement of China, ITLOS Case no. 17 (18 August 2010).
- ¹¹ Ku, "China," 160–2.

- ¹² The Republic of China, however, had been sued once, by Belgium, at the Permanent Court of International Justice—the predecessor of the ICJ—for denouncing an 1865 treaty. Belgium was awarded a favorable interim decision in 1927, but it withdrew its application in the same year after reaching a settlement. Ku, “China,” 158–9.
- ¹³ Data gathered from “Disputes by Country/Territory,” WTO, n.d., https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm. The statuses of the cases are according to the WTO Secretariat. See also Timothy Webster, “China’s Implementation of WTO Decisions,” in *China in the International Economic Order: New Directions and Changing Paradigms*, ed. Lisa Toohey, Colin B. Picker, and Jonathan Greenarce (New York: Cambridge Univ. Press, 2015), 98–111.
- ¹⁴ One scholar contends that China has only been superficially complying with WTO rulings, thus referring to its abidance as “paper compliance,” but concedes nonetheless that “compared with other liberal trading powers, China exhibits a high degree of compliance.” Timothy Webster, “Paper Compliance: How China Implements WTO Decisions,” *Michigan Journal of International Law* 35 (2014): 525–78. Quoted material in p. 535.
- ¹⁵ Harpaz, “China,” 50–2.
- ¹⁶ Agreement Establishing the WTO, 15 April 1994, *UNTS* 1869, no. 31874, annex 2; UNCLOS, 10 December 1982, *UNTS* 1833, no. 31363, annex 7; Keohane, Moravcsik, and Slaughter, “Legalized Dispute Resolution,” 154–63.
- ¹⁷ Harpaz, 58–61.
- ¹⁸ Aileen S.P. Baviera, “Arbitration Over, Time for China to Lead Responsibly,” *Global Asia* 11 (2016), <http://appfi.ph/publications/commentaries/865-arbitration-over-time-for-china-to-lead-responsibly>.
- ¹⁹ *Philippines v. China*, Award on Jurisdiction and Admissibility, PCA Case no. 2013-19 (29 October 2015), para. 40.
- ²⁰ See “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,” Chinese Ministry of Foreign Affairs, 7 December 2014, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml.
- ²¹ *Philippines*, Award on Jurisdiction, para. 55–6.
- ²² *Ibid.*, para. 64.
- ²³ *Ibid.*, para. 83.
- ²⁴ *Ibid.*, para. 96.
- ²⁵ *Ibid.*, Award (12 July 2016), para. 61.
- ²⁶ *Ibid.*, para. 82.
- ²⁷ *Ibid.*, para. 96.
- ²⁸ *Ibid.*, para. 97.
- ²⁹ *Ibid.*, para. 100.
- ³⁰ *Ibid.*, para. 102.
- ³¹ *Ibid.*, para. 103.
- ³² *Ibid.*, para. 104.
- ³³ In addition, in the statements themselves, China repeatedly justified its non-participation in terms of international law—an indication that it does not want to be seen as a renegade state. This suggests that it cannot afford to ignore the possible reputational costs of a total rejection of the arbitration case.

- ³⁴ See for instance Louie Dane C. Merced, “The Contest for International Support on the South China Sea Disputes,” *Center for International Relations and Strategic Studies Commentaries* 3, no. 7 (May 2016), <http://www.fsi.gov.ph/the-contest-for-international-support-on-the-south-china-sea-disputes/>.
- ³⁵ “Arbitration Support Tracker,” *Asia Maritime Transparency Initiative*, 16 July 2016, <https://amti.csis.org/arbitration-support-tracker/>.
- ³⁶ “Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines,” MFA of China, 12 July 2016, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379492.shtml.
- ³⁷ “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,” MFA of China, 12 July 2016, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379493.shtml.
- ³⁸ *Ibid.*, para 4.
- ³⁹ Yang said, “China is ready to discuss with countries concerned about provisional arrangements pending final settlement of the dispute.” Gillian Wong, “China’s Calls for South China Sea Talks Face Challenges,” *Associated Press*, 21 July 2016, para. 3, <http://bigstory.ap.org/article/3e9ce0bf32724eb885e0a04a524911cb/chinas-calls-south-china-sea-talks-face-challenges>.
- ⁴⁰ According to the executive director of the China Center for Collaborative Studies on the South China Sea of the Nanjing University, Zhu Feng, “It is the first time that the idea of provisional arrangements has been proposed as a policy.” *Ibid.*, para 5.
- ⁴¹ UNCLOS, art. 74, para. 3; art. 83, para. 3.
- ⁴² Ankit Panda, “36 Hours After the South China Sea Ruling, How Has China Reacted?” *The Diplomat*, 14 July 2016, <http://thediplomat.com/2016/07/36-hours-after-the-south-china-sea-ruling-how-has-china-reacted/>.
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