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Nested Games During the Pivot: China's Strategy in the South China Sea

Abstract: The Asia pivot did not blunt China's South China Sea strategy. Despite a few successful maneuvers, most of the strategies adopted by the U.S.-aligned Vietnam and the Philippines miscarried. During decades of both confrontation and cooperation with its neighbors, China has perfected a set of responses to territorial disputes. During the pivot, in the face of perceived provocations and operational incompetence, China proceeded and accelerated its successful strategy and seized multiple opportunities to advance its claims. China has established effective control of the Scarborough Shoal while creating nearly 3,200 acres of new land, surpassing all the other claimants' territories combined. How did China prevail in the South China Sea over other regional powers, especially Vietnam and the Philippines? What types of games were being played out during the pivot and what are the lessons for future interactions? This paper explores how the South China Sea competitors act, react, and interact in strategic pursuit of their own self-interests. It investigates the nature of the multi-level nested games and the pivot's impact on the South China Sea competition for territory.

Keywords: South China Sea, nested games theory, pivot to Asia, Sansha city, Scarborough Shoal

嵌套博弈 vs. 转向亚洲：中国的南海战略

摘要： 迄今为止，美国转向亚洲的战略并没有给其盟友和合作伙伴带来希望的结果，因为这个战略并没有遏止北京对南中国海的领土诉求。相反，美国盟友菲律宾和越南采取的战略只有少数成功，大部分都失败了。在过去几十年与邻国的对抗与合作中，中国针对领土争端完善了一系列对策。面对他国的挑衅和运作能力不足时，中国抓住了很多机会来推进自身的诉求。中国已经实际上控制了黄岩岛，并且（人为的）填出了将近 3200 英亩新土地，超过了其他所有国家在南海争议领土面积的总和。在与其他区域大国，尤其是越南和菲律宾的较量中，中国是如何取胜的？中国在美国采取转向亚洲的战略时，是怎样应对的？这些策略对将来与中国互动时中有哪些经验教训？本文探讨了南海这些相互竞争的国家在追求自身的利益时，是如何行动、如何反应和以及如何互动的。本文深入研究了美国转向亚洲战略的本质，以及该战略对南海各国产生的影响。

关键词： 嵌套博弈论；转向亚洲战略；三沙市；黄岩岛；南海博弈。

NESTED GAMES DURING THE PIVOT: CHINA'S STRATEGY IN THE SOUTH CHINA SEA*

Introduction

The Asia pivot did not slow Beijing's advances in territorial claims in the South China Sea (SCS). Beijing's rivals presumed the United States of America (U.S.) would increasingly and permanently support their claims, whilst China knows it must rely on itself for *defense* of territorial sovereignty. Thus during decades of confrontation and cooperation with its neighbors, Beijing has perfected a set of responses to territorial disputes. International Crisis Group's Stephanie Kleine-Ahlbrandt terms those as 'reactive assertiveness.'¹ The less practiced strategies adopted by the Philippines and Vietnam, alternatively, and as a result of China's reactive assertiveness, have largely backfired. As such China has rapidly expanded its maritime capabilities, effectively establishing a presence around the Scarborough Shoal, and is in the process creating nearly 3,200 acres of new land, larger than all the other claimants' territories combined.

The SCS is dotted with hundreds of mostly uninhabited islands and coral atolls. These have been joined by seven man-made islands equipped with radars, airfields, harbors and lighthouses. The result is heightened regional tensions and a revisionist global-order precedent. How did China prevail in the SCS over its neighbors, especially Vietnam and the Philippines? What is the nature of the SCS games? What might we learn from these interactions?

The Nature of Nested Games

Media reports of the SCS competitions often make it appear as a series of singular David-outsmarting-Goliath confrontations or one-off shark-swallowing-the-minnow encounters.² On the ground, the game is far more complicated, as every state player has its own ongoing strategy. The nature of the contest is characterized by what political scientist George Tsebelis has termed 'nested games.' According to Tsebelis, there are two types of nested games: one involving a network of games (multiple arenas with variable payoffs) and the other, '...a game about the rules of the games'

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¹ Stephanie Kleine-Ahlbrandt, 'Why China won't turn the other cheek over foreign policy,' *CNN*, November 15 (2012), accessed June 7, 2017, <http://edition.cnn.com/2012/11/13/opinion/china-naval-disputes/index.html>

² An example of these reports is the news graphic over the Second Thomas Shoal confrontation focusing on the resupply of Philippines troops stationed on a decrepit ship. To prevent China's encroachment eastbound, the Philippines occupied Second Thomas Reef with a warship in 1999. See Jeff Himmelman and Ashley Gilbertson, 'A Game of Shark and Minnow,' *New York Times*, October 27 (2013), accessed June 7, 2017, <http://www.nytimes.com/newsgraphics/2013/10/27/south-china-sea/?emc=eta1>; Oliver Teves, 'Philippines Protests China Stopping Troop Resupply,' *Kansas City Star*, March 11 (2014) accessed June 7, 2017, http://www.huffingtonpost.com/huff-wires/20140311/as--philippines-china/?utm_hp_ref=world&ir=world

(institutional design with variable rules).³ The SCS territorial contest contains both types of nested games.

In addition, there are four identifiable levels of complexity in the SCS nested games. First, a *cross-strait game* occurs between the People's Republic of China versus the Republic of China (Taiwan) over which regime should inherit the original claim of the Chinese government established in 1947. This legitimacy dispute is a subset of the next three level games. Second, the *ownership game* between China and its regional rivals, and among these players themselves—Taiwan, Vietnam, the Philippines, Brunei and Malaysia—focuses on possession and control of specific islands and their surrounding waters. Third, a *maritime delimitation game* exists between these six claimants and Indonesia, a non-claimant of specific territories. Indonesia's ownership of the Natuna Islands allows it significant control of strategic waters versus the other claimants' rights. Fourth and last, the U.S. and China also compete for status in the region. This *supremacy game* features the contender (China) challenging the hegemon (U.S.) and its regional hub and spokes allies and partners (e.g. Japan, South Korea, Australia, India). While the extra-regional players do not necessarily covet territorial gains, they do have strategic interests. Those include freedom of transit and navigation, and maintaining the existing East Asian regional and global rules-based order.

The local games (the first three) concern both the network and the rules. The rules of the game can be in many forms, including 1) whether the United Nations Convention of the Law of the Sea (UNCLOS) or China's nine-dash-line should prevail; 2) whether the sea should be called the South China Sea, the Western Philippine Sea, or the East Sea (Vietnam's preferred name); 3) competition over fishing, administrative rights, and artificial islands. The local games include multiple arenas (such as Scarborough Shoal and Second Thomas Reef) with variable payoffs. According to U.S. Assistant Secretary of Defense David Shear, Vietnam now controls 48 outposts, the Philippines 8, China 8, Malaysia 5, and Taiwan 1 (the other claimant, Brunei, controls none).⁴

The extra-regional players' main concern is more about the rules of the game than ownership of specific features. Their interests would be better served by a set of rules stipulated from UNCLOS than the nine-dash-line claims. They prefer to see UNCLOS trump the dashed lines. This stance is supported by all regional players except mainland China and Taiwan. Only when the dashed line claims are stricken out can the other regional players improve their possibilities for achieving their desired outcomes in possession and maritime delimitation.

Considered against the background of the U.S.'s pivot to Asia, China and its neighbors are simultaneously playing nested games in the SCS. With incomplete and asymmetric information about each other's strategies (each player always knows their own strategies and tactics better than those of the opponents), these claimants act, react to, and interact with each other and with non-claimant players in an attempt to

³ George Tsebelis, *Nested Games: Rational Choice in Comparative Politics* (Berkeley: [University of California Press](http://www.universityofcalifornia.edu/press/), 1990).

⁴ On May 13, 2015, U.S. Assistant Secretary of Defense, David Shear, testified at the Senate Foreign Relations Committee. For full text, see http://www.foreign.senate.gov/imo/media/doc/051315_Shear_Testimony.pdf

control more islets—hoping to also claim the ‘rules’ high ground. These players learn from each other, update their own strategies, and attempt to gauge others’ parameters of actions; therefore, no games are one-shot deals, and all actors win and lose over a longer timeframe of interactions. Games are repeated under continuously varying circumstances.

Strategy is rarely unilateral but is instead a two-way street. In pursuing self-interest for controlling more islands or exerting bigger influence, the disputants engage in non-cooperative zero-sum games. The five examples below display how SCS competitors move their assets, react to others’ moves and respond to reactions. In addition, they demonstrate how China, being the largest claimant state and the only great power claimant, has shifted its strategies from a cooperative stance to one of confrontation. This shift was intensified by the U.S.’s pivot to Asia and China’s resulting dread of another great power’s increasing and constraining involvement.

The U.S.’s Pivot: Resetting the context of the South China Sea Nested Games

Self-identified as the U.S.’s first Pacific President, Barack Obama hoped his foreign policy pivot toward Asia would achieve three simultaneous goals. First, it meant to announce that the Bush-era obsession with the Middle East, on democratization and the war on terror, foci he reluctantly inherited, was over. Second, it aimed to strengthen long-standing bilateral security alliances in Asia in an effort to rebalance the influence of a rising China (the *security arm* of the supremacy game). Third, and last, Washington wanted to forge closer economic engagement with a region brimming with economic opportunities (the *economic arm* of the supremacy game).

The tools to achieve those goals were two-fold: moving 60 percent of U.S. military assets to the Asia Pacific by 2020, and forging a free trade zone through multilateralism, the Trans-Pacific Partnership (TPP), one claiming both old and new allies. Interestingly, the TPP included nearly all of Beijing’s rivals in the territorial disputes: Vietnam, Malaysia and Brunei. Beijing’s other two rivals not included in the TPP—Taiwan and the Philippines—were already U.S. security allies by way of treaties or domestic law.

Those goals and tools were well stated by former Secretary of State Hillary Clinton as her ‘America’s Pacific Century’ policy statement, and during her speech in the Philippines.⁵ Boarding a U.S. Navy destroyer in Manila Bay, Clinton referred to the disputed SCS by Manila’s favorite name ‘the West Philippine Sea’ while she reiterated America’s ‘neutrality.’ ‘Any nation with a claim has a right to exert it,’ proclaimed the then-Secretary of State, ‘...but they do not have a right to pursue it through intimidation or coercion.’⁶ The declared pivot thus set a new level four *supremacy game* context, within which the first three levels of the nested game would be played. It emboldened a new level of confrontation and countermeasures.

⁵ Hillary Clinton, ‘America’s Pacific Century,’ *Foreign Policy*, November (2011), accessed June 7, 2017, http://www.foreignpolicy.com/articles/2011/10/11/americas_pacific_century; Jeffrey Goldberg, ‘The Obama Doctrine,’ *The Atlantic* magazine, April (2016), accessed June 7, 2017, <https://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/>

⁶ ‘Clinton uses warship to push Philippines alliance,’ *Manila (AFP)*, November 16 (2011), accessed June 7, 2017, http://www.spacedaily.com/reports/Clinton_uses_warship_to_push_Philippines_alliance_999.html

A Game of Chicken: The Scarborough Shoal Contest

Date: April 2012

Circumstance: Alleged poaching

Rules involved: *Fishing disputes* - who could fish what, where, when, and how much

Tools deployed: 1 Philippine naval warship verses 2 Chinese marine surveillance ships

Result: China gains complete control over the strategic reef in the northeast SCS, as well as its rich fishing ground

The Philippines initiated an inept confrontation. It deployed its largest naval asset, a decommissioned U.S. 1960s-era patrol cutter, the BRP Gregorio del Pilar,⁷ to confront 12 boats of Chinese fishermen for alleged poaching in the Scarborough Shoal lagoon. However, the Philippines failed to study the geography of the triangular reef within which their vessel was supposed to operate. The mouth proved too narrow and the water too shallow for the aged warship to enter the lagoon. As a result, a small boarding team of 12 soldiers, half of them armed, was sent into the lagoon to make the arrest. The naval soldiers boarded the dozen Chinese vessels. These strategic failures provided time and space for Chinese government vessels to intervene. China sent in two light-armed marine surveillance ships in the name of protecting its fishermen who were explained as taking shelter in the lagoon from inclement weather.⁸ China thus thwarted Manila's initial effort.

The ensuing months-long standoff proved that the Philippines was not equipped to repel Chinese territorial incursions. To quote a Filipino domestic critic, 'After a few days confronting the Chinese vessels, our warship turned tail and returned to port, as it had run out of drinking water, food, or fuel—or all of these.'⁹ China used the opportunity to extend its unilateral fishing ban (since 1999) to cover the waters around the Shoal. Audaciously, it roped off the entrance of the lagoon to prevent Philippine fishermen from harpooning in the territory.

Similarly, the Philippines did not consider or manage public relations either. The Philippines' inept deployment of a naval vessel permitted the impression that it had militarized the dispute. With pictures of naval soldiers pointing guns at unarmed Chinese fishermen, China successfully declared that an aggressive, bullying Philippine navy had maltreated hapless Chinese fishermen who had simply sought refuge from a life-threatening storm. In addition, the Philippine Defense Minister made belligerent statements without backing them up with action. President Aquino made statements likening China's reaction to Philippine naval action as akin to Adolph Hitler's annexation of the Sudetenland. Public opinion rallied against the simplicity of the Filipinos with *Forbes* magazine, for example, asserting these

⁷ BRP stands for 'Barko ng Republika ng Pilipinas' (meaning Ship of the Republic of the Philippines). The names of commissioned ships of the Philippine Navy are prefixed with the letters BRP, following with a name selected to honor important people and places. Named after its 'Boy General' who died at the Battle of Tirad Pass during the Philippine Revolutionary War, the BRP Gregorio del Pilar warship was meant to be the vanguard in the country's confrontation with other claimants in the region.

⁸ 'Beijing urges Manila to stop harassing its fishermen,' *Xinhua*, April 11 (2012), accessed June 7, 2017, http://www.china.org.cn/world/2012-04/11/content_25116458.htm

⁹ Rigoberto Tiglao, 'Scarborough fail: How Aquino blew it,' *The Inquirer*, May 3 (2012), accessed June 7, 2017, <http://opinion.inquirer.net/27985/scarborough-fail-how-aquino-blew-it>

statements are ‘...inappropriate, irresponsible and inflammatory.’¹⁰ Unruffled, China placed three female professionals in charge of its Manila diplomacy—Ambassadors Ma Keqing, Tong Xiaoling (then Chinese Ambassador to ASEAN), and Fu Ying (then Deputy Foreign Minister and former Ambassador to the Philippines). Whether by choice or by coincidence, these negotiators implemented a toughened policy while appearing flexible and sophisticated.¹¹

China, being the Philippine’s largest trading partner and its fourth largest source of tourism, was in a dominant position to exert retaliatory economic pressure. From agriculture to tourism China’s great power economic dominance threatened to impose significant and crippling economic costs on the fragile Filipino economy. To save bilateral relations, the Philippines had to pull out of retirement a former diplomat as the new Ambassador to Beijing. A further Filipino complication was that factional infighting had left the country without an Ambassador to China for over a year; this being especially problematic during the first two months of its flare-up. The absence of a chief representative in this crisis led to a quick deterioration of bilateral relations. Only after China imposed a stringent standard on tropical fruit imports, resulting in piles of rotting Filipino bananas, did the Malacañang Palace finally send inspectors to accompany the banana shipments. Sonia Brady, former Ambassador to Beijing (2006-2010), retired and in her 70s, was hastily appointed to undertake the emergency service.

In this round of the SCS nested games, Manila’s deficiency in military preparedness and lack of political dexterity resulted in its territorial, diplomatic and economic losses. Beijing’s reactive assertiveness, facilitated by appropriate naval assets, as well as diplomatic and economic capacity, combined with long-term planning and superior bravery within the dangerous SCS games enabled its territorial victory at the Scarborough Shoal.

Tit for Tat: The Law of Hanoi verses Beijing’s Municipality

Date: June 2012

Circumstance: Vietnam’s Announcement of a Maritime Law

Rules involved: *Legal and administrative disputes* - unilaterally changing the status quo

Result: Beijing’s establishment of the Sansha city¹²

Vietnam controls the majority of the disputed Spratly Islands. In late June 2012, the National Assembly of Vietnam passed a controversial Vietnamese Law of the Sea declaring that the disputed Spratlys, along with the China-administered Paracels

¹⁰ Jean-Pierre Lehmann, ‘President Aquino Should Avoid Inflammatory Rhetoric On South China Sea: China Is Not Nazi Germany! --The Philippines Has Other Priorities,’ *Forbes*, June 7 (2015), accessed June 7, 2017, <http://www.forbes.com/sites/jplehmann/2015/06/07/president-aquino-should-shut-up-on-south-china-sea-china-is-not-nazi-germany-the-philippines-has-other-priorities/#163c302fe346>

¹¹ ‘Sanming nu waijiaoguan zhudao dui fei woxuan’ (三名女外交官 主导对菲斡旋 Three female diplomats in charge of China’s negotiation with the Philippines), *Sina News*, May 13 (2012), accessed June 7, 2017, <http://news.sina.com.cn/c/2012-05-13/075924407903.shtml>

¹² Literally the ‘city of three sands’, a new prefecture-level city tasked with administering the three disputed island groups, namely Xisha (Paracels), Zhongsha (Macclesfield Bank, and the Scarborough Shoal), and Nansha (Spratly islands). The government seat was set on Woody Island, in Paracels.

(since 1974), to be within Vietnam's sovereignty and jurisdiction. The seven chapter and 55 clause law constituted a Vietnamese imitation of the nine-dash-line, albeit with less ambitious territorial claims, and 65 years behind the Chinese version. The law was condemned by all the other claimants; Beijing's reaction, however, was the most assertive.

Beijing's counter-offensive—upgrading of Sansha from the authority of a mere office (*banshichu*) to a prefecture-level city—was unexpected, to say the least. Prior to the move, Hainan Province had only two such cities: Haikou and Sanya. It is worth noting that deliberation of this unusual city, initially-planned at the county-level, one rung lower than the current prefectural level, was conducted over a fifteen-year period before it was shelved in an internal meeting during November 2007. Reportedly, the proposition was tentatively approved by China's State Council to retaliate against two Vietnamese moves that year.

The dual events, which China protested against, were that congressional districts in Vietnam's Khanh Hoa province included, for the first time, parts of the Vietnamese-controlled Spratly Islands, and that Hanoi planned to have the BP company deliver a gas pipeline into the SCS. When the news leaked of the Sansha upgrade, back in 2007, Vietnamese youth rallied in front of the Chinese Embassy in Hanoi; extremely rare in the communist state.¹³ These protests compelled Beijing to withdraw the plan, indicating China's deep-seated fear of a potential international backlash. Beijing's restraint and caution also reflected its appreciation of relations with Hanoi, the only ruling Communist Party in Southeast Asia.¹⁴

That apprehension however was no longer present in 2012 during the pivot. Beijing responded to Vietnamese maritime law by announcing the same day its plan to found Sansha city, a move condemned by all the other claimants. This youngest and controversial city is unique in China's administrative landscape. With only 13 km² of total land area (before 2014) and little more than 1,000 people, it is the smallest prefecture-level city. However, although small in terms of population and land area, it ranks as the largest and the most contentious Chinese city when its maritime territory is considered as it administers two million km² of disputed 'blue territories'.

Its genesis naturally invited condemnation from both Hanoi and Manila for being 'illegal'. Part of their concern was the military garrison established on Woody Island, the seat of Sansha. Subsequent improvements in infrastructure have been made, which includes waste-water treatment facilities, desalination systems, roads and ports, a school and a hospital. Politically, a local congress was created with a 15 member Standing Committee and 60 directly elected delegates.¹⁵ Sansha manages over ten residential communities and five villages.¹⁶ It even houses a special People's

¹³ Liu Jun and Yao Xuepeng, 'Sansha shi dansheng ji' [三沙市诞生, Birth of the Sansha city], *Nanfang Zhoumo* [Southern Weekend], June 29 (2012), accessed June 7, 2017, <http://www.infzm.com/content/77887>

¹⁴ 'Sansha new step in managing South China Sea,' *Global Times*, June 25 (2012), accessed June 7, 2017, <http://www.globaltimes.cn/content/716822.shtml>

¹⁵ 'China's Sansha starts forming government,' *China Daily Europe*, July 17 (2012), accessed June 7, 2017, http://europe.chinadaily.com.cn/china/2012-07/17/content_15592002.htm

¹⁶ The youngest administrative village being Meiji, established in December 2012 on the disputed Mischief Reef.

Liberation Army Rainwater Unit. In November 2016, it was publicized that China's smallest city, with a population of 1,443, has an exceedingly high concentration of Communist Party members.¹⁷ Party members in China represent only six percent of the population, but in the Sansha city, this ratio is one in three, or 32 percent of residents.

Psychologically, the reactive-assertive Sansha move marks a milestone for Beijing. It indicates that Beijing no longer seems bound by its past anxieties over potential criticisms by external players. An editorial in the nationalistic *Global Times* viewed the move as not only a *de facto* declaration of Chinese sovereignty, but also '...a combination of political, economic, social and national defense moves.' It boasts that the city carries more weight than Hanoi's controversial new law—merely a paper measure. Anticipating more uncertainty ahead, the article called for the nation to embrace Sansha as an opportunity '...to train its will power and courage.'¹⁸

In this round of tit for tat confrontation, both sides played a prisoners' dilemma game and the result was a draw. Both had gains and losses. Vietnam formalized its claims over the SCS in a new law; however, China abandoned its previous cooperative stance for one of genuine retaliation. The combination of legal, administrative and even military procedures all happened in but a few days. Hanoi's new law inadvertently provided justification for Beijing to create Sansha city. All Chinese maps published since September 2012 proclaim the newest city.¹⁹

Lawfare: The Philippines' and the International Tribunal for the Law of the Sea

Date: 2013 - 2016 (three and a half years' duration)

Rules involved: *Legality of Beijing's nine-dash-line claim* - thus, about the rules of the game in the South China Sea

Tools deployed: Philippine deployment of international lawyers to defend it before a five-member international tribunal; expenditure of tens of millions of dollars for the ruling

Result: A seemingly overwhelming victory for Manila; both Beijing and Taipei rejected the ruling; Beijing launches massive island building projects

This example affected all four levels of the nested games as it was an attempt to define the rules. It supposedly, would place all regional and global SCS games players under the authority of The Hague. The International Tribunal would resolve the rules of the game disputes by asserting a single rules-base. Thus it was a clash of two grand

¹⁷ 'Sansha shi diyici dangdaihui zai Yongxing dao zhaokai, sheshi si nian dangyuan da 468 ren' [三沙市第一次党代会在永兴岛召开, 设市 4 年党员达 468 人] Sansha city Calls its First Party Congress in Woody Island; In Four Years since its Elevation to be a Prefecture-Level City, the number of party members here has reached 468], *Guancha* [Observers], November 13 (2016), accessed June 7, 2017, http://www.guancha.cn/society/2016_11_13_380451.shtml

¹⁸ 'Sansha shi duanlian quanzhongguo de yizhi he danlue' ['三沙市锻炼全中国的意志和胆略' Sansha city trains China's resolve and courage], *Global Times*, June 25 (2012), accessed June 7, 2017, <http://china.huanqiu.com/newchinahotcomment/2012-06/2849723.html>

¹⁹ 'Guojia Cehuiju: Ditushang bixu zhengque biaooshi Sanshashi' [国家测绘局:地图上必须正确表示三沙市] [State Bureau of Surveying and Mapping: All Maps must correctly mark Sansha city], *Guancha*, August 30 (2012), accessed June 7, 2017, http://www.guancha.cn/local/2012_08_30_94240.shtml

outlooks: The United Nations Convention on the Law of the Sea (UNCLOS) as the rules or China's (and Taiwan's) dash-line claims. Not only the Filipinos and the Chinese were affected: Hanoi, Taipei and even Washington all joined the fray. Japan and many others sent observers. Beijing mobilized some 70 countries to support its stance.²⁰

Having lost the Scarborough Shoal, Manila sought to win it back in an international court. During January 2013, it launched the legal case—at the Permanent Court of Arbitration (PCA) in The Hague—raising the stakes of its maritime territorial dispute with China. Claiming to have exhausted almost all political and diplomatic avenues for a peaceful settlement with China, Manila submitted a nearly 4,000-page testimonial to the five-member tribunal—maritime law experts from Ghana, France, Germany, Poland, and the Netherlands—seeking to have the tribunal invalidate Beijing's nine-dash-line as a basis for determining ownership and maritime rights. China again adopted its reactive-assertive and increasingly non-cooperative strategy. Insisting it was 'unilaterally initiated' by Manila, Beijing refused to participate in the legal case, let alone pay the required deposit for the procedure.

In an arbitration of mutual agreement, the parties are supposed to split the cost of the entire process. Since Manila resorted to a unilateral compulsory procedure, it had to absorb the entire cost, not only paying its own portion but footing the bill that China had refused to honor. The legal case was not cheap, especially when it was represented by world-class international attorneys like Paul Reichler. It reportedly cost the Philippine taxpayers US\$7 million in lawyers' fees alone.²¹ No official release on the total cost is available, but one source revealed that it could be as much as US\$30 million.²²

China insisted that the tribunal's decision would have no bearing on its behavior. Feeling a need to clarify the U.S. position on the dispute, the State Department released a position paper (on December 5, 2014). This represented indirect support for the Philippine's lawfare approach by raising issues with the nine-dash-line.²³ Two days later, the Chinese government issued a detailed position paper on the arbitration in six sections and 93 articles. Beijing reiterated its objections to Manila's arbitration case.²⁴ Not to be outdone, Vietnam filed its own position paper on December 11 with three main points. Contrary to China's assertion, Hanoi supported the PCA's jurisdiction over the Philippine lawsuit against Beijing. Next, it asked the court to

²⁰ Wang Wen and Chen Xiaochen, 'Who Supports China in the South China Sea and Why,' *The Diplomat*, July 27 (2016), accessed June 7, 2017, <http://thediplomat.com/2016/07/who-supports-china-in-the-south-china-sea-and-why/>

²¹ Ellen T. Tordesillas, 'How much did PH pay for foreign lawyers in case vs China?' *ABS-CBN News*, July 21 (2016), accessed June 7, 2017, <http://news.abs-cbn.com/focus/07/20/16/how-much-did-ph-pay-for-foreign-lawyers-in-case-vs-china>

²² Rigoberto D. Tiglao, 'Psst... All superpowers usually ignore international verdicts,' *The Manila Times*, July 14 (2016), accessed June 7, 2017, <http://www.manilatimes.net/psst-all-superpowers-usually-ignore-international-verdicts/273798/>

²³ United States Department of State, 'China: Maritime Claims in the South China Sea,' Limits in the Seas, No. 143, December 5 (2014), accessed June 7, 2017, <https://www.state.gov/documents/organization/234936.pdf>

²⁴ '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,' Ministry of Foreign Affairs website, December 7 (2014), accessed June 7, 2017, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml

consider its own maritime rights. Last, it rejected the nine-dash-line as lacking legal basis for determination of ownership rights.²⁵

Not being invited, Taiwan nonetheless joined the fight. To counter the Philippines' claim that the Taiwan-controlled Taiping Island (Itu Aba) was a rock instead of an island, Taiwan's then President Ma Ying-jeou rejected the assertion as 'patently false.'²⁶ Furious that the proceedings even challenged his own territory, Ma invited the Philippines and the PCA arbitrators to visit the Taiping Island. He even made a high-profile visit to the island himself, in an attempt to demonstrate that Itu Aba was a bona fide island capable of supporting human habitation. Taiwan's Society of International Law even intervened, supporting its government's position.²⁷ The hearings were attended by observers from Indonesia, Japan, Malaysia, Vietnam, and others.

On July 12, 2016, the PCA ruled in Manila's favor, unanimously. It nullified China's nine-dash-line map and refused to recognize Taiwan's Itu Aba as an 'Island'; this constituted '...an overwhelming legal and moral victory for Manila.'²⁸ Paul Reichler, the Philippines' lead counsel, hailed it as '...a victory for rule of law.' Jacques deLisle summarized it as:

...a stunning repudiation of several of China's key legal arguments and much of its real-world behavior in the disputed South China Sea; a remarkable affirmation of the core elements of U.S. policy and strategy toward the contested maritime region and China's claims and actions therein; and a striking assertion of the reach and capacity of international law and formal dispute resolution procedures.²⁹

Examined carefully, the ruling is unlikely to solve the Sino-Philippine dispute, itself being part of the nested games. The heavy price tag attached to the victory only bought the country, in President Rodrigo Duterte's words, '...a piece of paper with four corners,'³⁰ one that is unenforceable by the court. While the PCA ruled against

²⁵ Prashanth Parameswaran, 'Vietnam Launches Legal Challenge Against China's South China Sea Claims,' *The Diplomat*, December 12 (2014), accessed June 7, 2017, <http://thediplomat.com/2014/12/vietnam-launches-legal-challenge-against-chinas-south-china-sea-claims/>

²⁶ Claudia Liu and Kuo Chung-han, 'Taiping Island deserves exclusive economic zone: president,' *Focus Taiwan*, May 17 (2016), accessed June 7, 2017, <http://focustaiwan.tw/news/aip/201605170030.aspx>

²⁷ 'President invites Philippine officials to visit Taiping Island,' CNA, March 25 (2016), accessed June 7, 2017, <http://www.chinapost.com.tw/taiwan/intl-community/2016/03/25/461686/president-invites.htm>; Greg Torode and J.R. Wu, 'Taiwan enters South China Sea legal fray, as group seeks to sway international court,' May 9 (2016), accessed June 7, 2017, <http://www.reuters.com/article/us-southchinesea-taiwan-idUSKCN0Y02LD>

²⁸ Lowell Bautista, 'The Philippines and the Arbitral Tribunal's Award: A Sombre Victory and Uncertain Times Ahead,' *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, vol. 38 no. 3 (2016), pp. 349-355, *Project MUSE*, accessed June 7, 2017, <http://muse.jhu.edu/article/647371>

²⁹ Jacques deLisle, 'The South China Sea Arbitration Decision: China Fought The Law, And The Law Won? – Analysis,' *Foreign Policy Research Institute*, July 13 (2016), accessed June 7, 2017, <http://www.eurasiareview.com/13072016-the-south-china-sea-arbitration-decision-china-fought-the-law-and-the-law-won-analysis/>

³⁰ 'South China Sea looms over Duterte visit to Beijing,' *Asia Maritime Reviews*,

China, as other great powers have done, Beijing refused to acknowledge the decision or even the court's jurisdiction over the matter. With its weak military, Manila has no way to enforce it. Manila's allies (the U.S., Japan, Australia, and Singapore, among others) stated that China must respect the decision of The Hague, which China denounced vehemently. Duterte seemingly, has little confidence that Washington would honor its defense obligations despite treaties. The unfortunate outcome of the lawfare approach for the Philippines and Vietnam however is that it enabled Beijing's reactive assertive strategy. Given that China's nightmare games scenario is a permanent loss of the SCS, it required the astounding and unprecedented island building response.

Beijing's Great Wall of the Sand

Date: 2014-2016

Circumstance: *Land reclamation* - to boost actual control and enhance the legality of Beijing's nine-dash-line claim

Tools deployed: Numerous dredgers including the powerful *Tianjing*; skilled construction workers and billions of dollars for land reclamation

Results: Beijing's land building program on 7 reefs; seven full-fledged artificial islands with three runways, two lighthouses, and completed with radar facilities in the Spratlys

Richard Javad Heydarian, political science professor at De La Salle University in the Philippines, called his country '...a nation of lawyers' and China '...a nation of strategists and business-minded leaders.'³¹ This interesting perspective can be applied to analysis of the following facts. Chinese Ministry of Foreign Affairs spokesperson Hua Chunying criticized Philippine's lawfare as '...political provocation under the cloak of law,' with a purpose of denying Beijing's maritime rights and interests in the SCS.³²

The Philippine lawfare placed China's nine-dash-line under intense international scrutiny. Beijing attempted but could not stop Manila from bringing it to the International Tribunal for the Law of the Sea. It was a 'now or never' moment. The jury was still out, but correctly anticipating a loss, Beijing resorted to massive land reclamation to solidify its physical control of the reefs.

With powerful dredging and construction tools, Beijing was able to build at a scale and speed no other claimant country could have ever imagined. Satellite images confirmed that in a year and half, Beijing increased the size of its holdings in the disputed Spratlys from 5 acres to nearly 3,200 acres, a 6340-fold increase in acreage, far more than all the other claimants have done in the past 40 years.³³ Before January

October 19 (2016), accessed June 7, 2017, <http://asiamaritime.net/south-china-sea-looms-over-duterte-visit-to-beijing/>

³¹ Richard Javad Heydarian, 'Philippines vs. China: Law and Disorder in the South China Sea,' *Huffington Post*, n.d. accessed June 7, 2017, http://www.huffingtonpost.com/richard-javad-heydarian/philippines-vs-china_b_6386216.html

³² 'Foreign Ministry Spokesperson Hua Chunying's Regular Press Conference on July 2, 2015,' *Ministry of Foreign Ministry* (website), July 2 (2015), accessed June 7, 2017, http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1278069.shtml

³³ According to the island trackers on Asia Maritime Transparency Initiative, these seven islands are, in descending order, Mischief (Meiji, 1,379 acres reclaimed), Subi (Zhubi, 976), Fiery Cross (Yongshu,

2014, the Chinese presence in the Spratlys comprised only outposts made of concrete blockhouses perched atop seven coral atolls. Sansha city's size has since been doubled, if not tripled. Outposts on stilts grew from these reef-based constructions to full-fledged islands, with two of them having lighthouses and three of them having runways.³⁴ Although China is the last comer in building runways, rival runways built by Malaysia, Vietnam, Taiwan and the Philippines could not compare with Beijing's in size or capabilities. In addition, the newly reclaimed islands could follow the Sansha precedent to become cities.

China claims 'indisputable sovereignty' in the SCS, stressing that its own construction on the disputed islands are '...lawful, reasonable, justified and beyond reproach.'³⁵ In an interview with *China Daily*, Ouyang Yujing, Director-General of the Department of Boundary and Ocean Affairs, repudiated any connections between island constructions with the ongoing arbitration initiated by the Philippines. Even though Chinese officials have repeatedly denied the links, many observers see a clear relationship between the two events. In the words of a Philippine maritime expert, '...the reclamation was clearly a response to the arbitration. If ever China had real plans to do this before, clearly the arbitration case accelerated those plans.'³⁶

China's island-building efforts required three M's: Money, Mind and Might. Money means tens of billions of dollars; Mind means a heavy investment in engineering talents and infrastructure; Might means naval protection so that the job started can be completed without much interruption. In 2014, China was ready for the challenge. Its long-term planning habit had prepared it well.

Why did China go to all the trouble? Its chief motivation was perhaps to solidify the nine-dash-line claims, the exact opposite that the Philippines was determined to do with the lawsuit. In addition, by transforming reefs into islands, China now has important bases—with airstrips, harbors and radars—to extend its military capabilities deep into the SCS. This reinforces China's strength in the local games vis-à-vis other claimants as well as the supremacy contest with the U.S. Only when it wins in the supremacy contest will it be in a position to control shipping, and exploit the region's resources. As a bonus, it would also help China eventually reunify Taiwan, the crown

677), Cuarteron (Huayang, 56), Gaven (Nanxun, 34), Johnson (Chigua, 27), and Hughes Reef (Dongmen, 19). These added up to 3,168 acres, about 12.8 km² (or nearly 5 miles). For more information check <https://amti.csis.org/island-tracker/chinese-occupied-features/> accessed June 11, 2017. Other reports on the size of the islands before and after, see David Alexander, 'China accelerates land reclamation in disputed islands – Pentagon,' *Reuters*, May 9 (2015), accessed June 7, 2017, <https://uk.news.yahoo.com/china-accelerates-land-reclamation-disputed-islands-pentagon-130329555.html>; 'China has reclaimed 3,200 acres in the South China Sea, says Pentagon,' *The Guardian*, May 13 (2016), accessed May 16, 2017, <https://www.theguardian.com/world/2016/may/13/pentagon-report-china-reclaimed-3200-acres-south-china-sea>

³⁴ By February 2016, lighthouses have been erected on Cuarteron and Johnson South reefs. The three reefs with airstrips built are the Fiery Cross, Mischief, and Subi reefs.

³⁵ Zhang Yunbi, 'An Interview on China's Construction Activities on the Nansha Islands and Reefs,' *China Daily*, May 27 (2015), accessed June 7, 2017, http://www.chinadaily.com.cn/china/2015-05/27/content_20827354.htm

³⁶ Lara Tan, 'Expert: China speeding up reef reclamation due to arbitration case,' *CNN Philippines*, July 10 (2015), accessed June 7, 2017, <http://cnnphilippines.com/news/2015/04/13/China-Mischief-Reef-reclamation.html>

jewel of Xi Jinping's China Dream. Of course, winning could be achieved through a U.S. voluntary withdrawal or through a co-management of the region.

In 1850, lawyer and future President Abraham Lincoln urged his colleagues to:

‘Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man.’³⁷

President Duterte, a lawyer himself, seems to understand Lincoln well. When he came into office two weeks before the arbitration ruling, he adopted a different approach, effectively reducing the tension. Through a diplomatic approach, he achieved what his predecessor could never have dreamed. Not only has the Philippines gained US\$24 billion from China, but he is also able to resume trade relations, and send Filipino fishermen back to the China-controlled Scarborough Shoal.³⁸

With President Trump in office, the pivot seems to have come to an end. Upon his first day in office, Trump scrapped the TPP, the economic arm of the pivot. Only one Freedom of Navigation operation has been approved.³⁹ Trump and Xi have established seemingly good personal relations. Xi's forum on the Belt and Road Initiative, a lynchpin of China's economic rebalancing, drew leaders from 28 countries and representatives from 110 countries.⁴⁰ The U.S. and Japan both sent delegates, and all the claimants in the SCS attended the forum. Although Washington is struggling to establish an East Asia policy, the pivot to Asia as envisioned by the Obama Administration is officially over.⁴¹

Conclusion

The present SCS situation is one of the most important security issues in East Asia as well as being uniquely complex and holding potentially global systemic repercussions. There are many participants holding varying capacities and interests. The SCS territorial conflicts are not only about maritime territory, unexploited resources, and global shipping routes but are concerned with history, national identity and global order. Thus all SCS conflict participants are engaged in a multiple-level nested game.

³⁷ Abraham Lincoln, ‘[Notes for a Law Lecture](#)’ (dated July 1, 1850), In Roy P. Basler (ed.), *The Collected Works of Abraham Lincoln* Volume II (New Brunswick, N.J: Rutgers University Press, 1953), 81.

³⁸ Trisha Macas, ‘Duterte to bring home \$24 billion from China,’ *GMA News* October 21 (2016), accessed June 7, 2017, <http://www.gmanetwork.com/news/money/economy/585888/duterte-to-bring-home-24-billion-from-china/story/>

³⁹ Jane Perlez, ‘U.S. Warship Sails Near Island Claimed by Beijing in South China Sea,’ *New York Times*, May 24 (2017), accessed June 7, 2017, https://www.nytimes.com/2017/05/24/world/asia/south-china-sea-us-navy-warship-spratly-islands.html?_r=0

⁴⁰ Ministry of Foreign Affairs Holds Briefing for Chinese and Foreign Media on President Xi Jinping's Attendance and Chairing of Related Events of the BRF, April 18 (2017), accessed June 7, 2017, http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1455115.shtml

⁴¹ Aaron Mehta, ‘‘Pivot to the Pacific’ is over, senior U.S. diplomat says,’ *Defense News*, March 14, 2017, accessed June 7, 2017, <http://www.defensenews.com/articles/pivot-to-the-pacific-is-over-state-official-says>

Of these, China and Taiwan both inherited the 1947 nine-dash-line claims made by the Chinese government. Their *cross-strait game* competition is an extension of their decades-old legitimacy contest, which forms a subset of the next three level of the game. Secondly, *the ownership game* between China and its five regional rivals focuses on possession and control of specific islands and waterways. Thirdly, *a maritime delimitation game* exists between these six claimants and Indonesia, a non-claimant of specific territories. Fourth and last, the U.S. and China are competing for primacy in the region; the *supremacy game*. These games frequently reveal themselves in the context of armed clashes over islands, fishing disputes, administrative rows, and oil rig clamors. It could also escalate into a global dispute over the rules of the game.

The pivot to Asia seemed to have emboldened Washington's regional allies to challenge Beijing, which in turn invited a stronger response, and created counter moves resulting in regional instabilities. The Philippines unwisely provoked a standoff, which resulted in the Chinese taking over the Scarborough Shoal. Vietnam's symbolic law led to the Chinese fortressing Woody Island. Philippine lawfare prompted Beijing to build seven new islands with airstrips and radars. These examples indicate that the SCS claimants, driven primarily by narrow nationalism during the pivot era, proved incapable of perceiving the complexity of the multi-level nested game.

The U.S. pivot to Asia has ended and the Trump administration is yet to proclaim an alternative strategy, other than America First, no TPP and one freedom of navigation operation.⁴² China continues to very successfully advance its territorial claims by leveraging opportunities provided by other claimants. In essence, Beijing's strategy in each of these examples has been to wait for other claimants to make the first move, then respond in kind, proclaiming justification for a tougher response and thus change the SCS status quo in its favor. It is akin to the Asian game Go, replete with carefully planned moves prepared ahead of time, and then implemented after patiently awaiting the right opportunity. This paper has noted this strategy as reactive assertiveness. All SCS game participants are thus potential enablers of Chinese ambitions if they fail to appreciate the complexity of the multi-level nested game.

⁴² Jane Perlez, 'U.S. Warship Sails Near Island Claimed by Beijing in South China Sea, *New York Times*, May 24 (2017), accessed June 1, 2017, https://www.nytimes.com/2017/05/24/world/asia/south-china-sea-us-navy-warship-spratly-islands.html?_r=0