

Research Article**CHINA'S LEGAL WAR IN THE EAST SEA SOME ISSUES ARE RAISED*****Dr. Nguyen Thanh Minh**

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Received 11th August 2023; Accepted 15th September 2023; Published online 31st October 2023**Abstract**

Analyzes of disputes in the East Sea often use the term legal war to describe the very different activities of China, the Philippines, Malaysia, Vietnam and the United States, obscuring differences normative differences between the policies of these countries. China's legal warfare strategy in the South China Sea is aimed at enforcing its baseless claims, while recent legal actions by Southeast Asian claimant states are aimed at finding how to clarify these claims and encourage dispute resolution based on the 1982 United Nations Convention on the Law of the Sea - UNCLOS. Instead of pushing for a comprehensive rewrite of maritime law, China tries to advance specific claims based on history. After decades of disputes in the East Sea, China has not seen any other views on maritime law other than its specific claims. Traditional legal processes, especially the 2016 arbitral tribunal ruling on the East Sea, have helped clarify applicable law, thereby removing all legal cover for the enforcement of China's claims in the East Sea. International support for China's maritime claims in the East Sea outside the areas of application under UNCLOS is waning, while support is evident for other substantive findings in the Arbitral Tribunal's ruling is increasing. China has effectively changed the status quo through land reclamation and the construction of outposts on a number of features in the South China Sea, but it has not succeeded in creating an unfounded belief that the enforcement of its China's baseless policy is almost legal.

Keywords: War, legal, China, East Sea.**INTRODUCTION****General overview of legal warfare**

Legal warfare is a common term to generally describe the different legal strategies of countries to protect and promote their maritime rights and interests in the East Sea. In this research article, legal warfare can initially be defined as the strategy of using - or abusing - the law as an alternative to traditional military means to achieve combat goals. However, this definition does not create consensus on what types of activities qualify as legal warfare and whether legal warfare involves negative, neutral, or normatively recommended practices or not. In analyzes of the disputes in the South China Sea, many types of activities have been labeled as legal warfare, including China's activities and legal arguments to assert its maritime claims, such as the Philippines' initiated the arbitration case against China, the joint submission of Malaysia and Vietnam on the extended continental shelf and US freedom of navigation operations - FONOP. Such liberal use of the term legal warfare has obscured normative differences in the policies and practices of these countries to the extent that some legal experts have complained that scholarship has loss of control over the concept of legal war and this is true in the South China Sea. This study examines how China's legal warfare in the South China Sea differs from the legal actions of other countries, especially Southeast Asian claimant states. In terms of national and ethnic interests, this study also evaluates the extent to which China's legal warfare has contributed to the realization of its goals in the East Sea.

China's legal battle in the East Sea

China's vague but excessive claims in the East Sea illustrate China's use of legal language as a tool.

China has adjusted its legal arguments for its maritime claims even after the ruling of the East Sea Arbitration Court on July 12, 2016 rejected its claim to sea areas outside the standard area under the provisions of the United States. UNCLOS. In a statement dated July 12, 2016, China emphasized its territorial claims to the entities, including the Hoang Sa, Truong Sa, Pratas and Macclesfield Islands, and at the same time its territorial sea claims, exclusive economic zone - EEZ, continental shelf and historical rights in China's 9-dash line of sovereignty claim. In its Notes to the United Nations Secretary General in 2020 and 2021, China then added references to general international law and remote archipelagos. China's note dated August 16, 2021 reads: the regime of remote archipelagos belonging to continental countries is not governed by UNCLOS and the provisions of general international law should continue to apply in this field. China currently defends the existence that has been invoked under rights established over a long period of history related to general international law. China's argument is based on the provision in the Preamble to UNCLOS which provides that matters not governed by the Convention continue to be governed by the provisions and principles of general international law. In Notes dated July 29, 2020, September 18, 2020, January 28, 2021 and August 16, 2021, China affirmed that general international law is the legal basis for drawing the line territorial waters around features claimed by China, including submerged reefs, in the South China Sea. China's invocation of this clause appears to be using another ambiguous legal basis for its unjustified sovereignty claims. However, issues related to the scope of maritime rights and baselines are comprehensively regulated by UNCLOS. Based on UNCLOS, the 2016 Arbitral Tribunal clarified the type and maximum scope of maritime zones that China can claim. The trial discussed in detail the distinction between islands that create rights to exclusive economic zones and continental shelves, and rocks that create only rights to territorial waters. UNCLOS also regulates the issue of baselines, i.e. the standard baseline is the line of lowest water level along the coast, straight baselines can be

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used when the coast is deep and convex or if there is a chain of islands immediately adjacent to and running along the coast in its immediate vicinity and only archipelagic states may draw straight baselines of the archipelago under additional provisions. China's insistence on territorial sea boundaries around islands and reefs based on long-standing practice and general international law is a slightly edited version of the positions taken by the South China Sea Arbitration Tribunal has rejected. The arbitration court does not accept the view that China can draw archipelagic baselines or straight baselines surrounding Truong Sa under the sovereignty of the State of Vietnam, neither according to UNCLOS nor according to international practice. Therefore, many countries, such as the Philippines, Indonesia, Malaysia, Vietnam, the US, Australia, France, Germany, the UK, Japan and New Zealand, have expressed opposition to China's insistence on baseless claims, is not scientific, and at the same time declares support for many aspects of the Court's ruling.

In China's view, Southeast Asian neighbors must yield to China's historically based claims to maritime zones even if an arbitral award decides that these claims are inconsistent with UNCLOS and maritime practices. Some scholars see this assertion as an attempt to promote a different view of the law of the sea. However, this view is still considered a quest to enforce specific claims rather than promoting a comprehensive rewriting of maritime law. After decades of disputes in the East Sea, there has been no other view of China on the law of the sea other than its specific claims. When China refers to rights established over a long history, there is no indication that China believes that other countries also claim historical rights. China's use of legal language to defend these claims is not a search for a universally accepted interpretation of the law of the sea. However, the scope of these particular claims could upset the basic balance of UNCLOS, especially the fact that no state is allowed to claim maritime rights beyond the standard limits or balance between the prerogatives of coastal states and the maritime rights of user states. Although Chinese sources repeatedly affirm China's compliance with UNCLOS, China's claims are so extreme that they could greatly increase the standard rights provided for in UNCLOS.

What makes China's legal warfare actions different from those of other countries in the legal field in the East Sea

It can be seen that the use of law as a tool is not unique in China's activities. The US FONOP activities in the South China Sea are called legal warfare based on the argument that these activities are merely instrumentalizing the law to promote local political interests, including military spending. According to this argument, FONOP operations ostensibly promote the rule of law over the principle of force while in fact serving political and strategic interests. Granted, the idea of legal instrumentalization is often seen as a characteristic element of legal warfare. However, this view, which regards a particular practice as legal war simply because it uses the law as an instrument, sets the threshold for legal war too low. The instrumental use of law, such as the US FONOP operation, is permissible under UNCLOS, does not in itself conflict with the interests of acting within the legal order, and is not necessarily objectionable blame. The Philippines' decision to launch an arbitration case against China is considered an example of the Philippines' legal warfare strategy, a typical case in point. This type of legal warfare reflects the recognition, be it actual or potential usefulness, of international law in shaping,

constraining and regulating the behavior of states. According to this argument, the Philippines' initiation of arbitration deserves to be called a legal war because this is the Philippines' last strategic choice. However, the Philippines' use of arbitration under Annex VII of UNCLOS is completely permissible and is a right provided for in UNCLOS. According to the Manila Declaration of the United Nations General Assembly, the use of court settlements for legal disputes, especially those brought to the International Court of Justice, should not be considered an unfriendly act between nation. It is therefore questionable whether the term legal warfare should be used for legitimate legal actions such as arbitration proceedings. Malaysia and Vietnam's joint submission on the extended continental shelf to the Commission on the Limits of the Continental Shelf - CLCS is also considered a legal war. However, joint submissions are normatively recommended practice, as part of the implementation of the rights and obligations of coastal states under point 8 of Article 76 of UNCLOS. This is the part of the legal process that actually encourages dispute resolution, as these legal processes are used to convey claims, as well as clarify the legal basis of the claims and the establish rules as a framework for negotiation and interaction. China's activities in the legal field are in stark contrast to those of the Philippines or Malaysia and Vietnam, both in practice and in norms. China's actions are a kind of legal war that conceals claims and emphasizes baseless claims while the other countries' actions are trying to clarify claims and encourage dispute resolution based on on the terms of UNCLOS.

What is the purpose and plot of China's legal war in the East Sea

The main goal of China's legal battle in the East Sea is to provide a rhetorical cover for the country to change the actual status quo. However, the fact that China has actually changed the status quo, for example by building outposts on islands or increasing the frequency and scope of maritime patrols, does not mean that China has succeeded. It has been instrumental in creating the presumption that its enforcement of baseless claims is quasi-legal. This is a special case when such changes in the status quo contradict the 2016 Arbitral Tribunal ruling. Assuming that China's legal battle combines deliberate ambiguity around its excessive claims with the enforcement of specific claims in the South China Sea, it remains unclear how What has China's legal war achieved in the legal field? It is often pointed out that the ambiguity of China's claims, including its historic rights, is a deliberate policy choice that gives Beijing a degree of flexibility and the ability to change change. Ambiguity about the legal claims, the nature of the dispute, and the actors involved in the dispute are certainly factors that characterize gray zone challenges. In this regard, the ambiguity is part of an effort to maintain doubt about the excessive nature of China's claims. This suspicion acts as a cover for unilateral advances in claims. While the exact scope and purpose of the ambiguity in China's maritime claims may be controversial, the arbitration award has put an end to the ambiguity of the claims. The ruling affirms the Philippines' position that China can only claim standard rights under UNCLOS, which all other countries can also do. The ruling established the type and maximum scope of maritime zones that China can claim. It is therefore clarified that: (i). If historic rights exist, these are superseded... by the limits of maritime zones established by the Convention. (ii). There are no features within the Spratly Islands or Scarborough Shoal that can create

an exclusive economic zone or continental shelf claim. (iii). Neither UNCLOS nor customary international law allows China to draw straight baselines or archipelagic baselines around the Truong Sa archipelago under the sovereignty of the State of Vietnam. In other words, whatever impression China's previous legal battles gave of the validity of China's maritime claims beyond the standard claims, the arbitration ruling extinguished them. Importantly, this is reflected in growing international support for the arbitral award. Before the ruling, 31 countries had objected to the tribunal's jurisdiction or considered it illegal. However, only six countries have expressed objections since the court issued its ruling in 2016. Importantly, a growing number of countries have officially supported key elements of the ruling in notes sent to the United Nations. United Nations or in its public statements. These countries include the Philippines, Vietnam, Indonesia, the US, Australia, Malaysia, France, Germany, the UK, Japan, New Zealand and India. So far, only China has objected to the court's authority and ruling in its note sent to the United Nations.

Reactions from countries around the world demonstrate that there is no generally accepted established practice that allows China to claim historic rights and draw straight baselines around different groups of entities in The South China Sea as the country's legal battle has tried to argue. On the issue of the law of the sea, where China's claims are controversial with its neighbors and other maritime states, China is no closer to promoting a different view of the law of the sea than it was in the past a decade. Even Chinese states that claim to oppose the arbitration award argue that states generally cannot claim historic rights under international law. Furthermore, although China and some other countries defend the position of limiting the freedom of movement of warships and innocent passage, there are no signs of these countries building alliances bright.

However, this analysis does not imply that China has not made lasting achievements in asserting its presence and control in the South China Sea. The reclamation and construction of outposts has allowed China to increase the frequency and geographical scope of its navy and coast guard patrols in remote areas of the East Sea. But the improvement in the actual reach of state power cannot be attributed to legal warfare. Completely opposite. The progress China has made on the ground is commensurate with the gap between China's leadership aspirations and Southeast Asian elites' distrust of China. In the ISEAS - Yusof Ishak Institute's 2023 Southeast Asia Survey, the region's trust in China in maintaining the rules-based order and complying with international law is very low, at 5.3%, much lower than the US at 27.1%, the EU at 23%, ASEAN at 21% and Japan at 8.6%.

This shows that the response of members of the Association of Southeast Asian Nations - ASEAN to China's behavior in the East Sea is still ineffective. ASEAN-related forums are not strategically suitable for dealing with disputes. Even the Southeast Asian countries that claim sovereignty are still fragmented collectives. They do not have a strong general consensus on clear and meaningful provisions for a code of conduct. They do not have a coherent view on how to govern the maritime zone in accordance with the arbitration court's ruling. However, even if Southeast Asia's responses to China's activities remain ineffective, this cannot be attributed to China's legal battles but to differences and controversies existing among Southeast Asian countries as well as due to

these countries' awareness of the huge power asymmetry with China. Despite waging legal war for many years in the East Sea, China has not achieved any achievements in the legal field. The traditional legal approach to clarifying the law, especially arbitral awards, has removed any legal cover that China's legal battle in the South China Sea could create. What remains of China's legal war is an effort to promote unreasonable and specific claims of sovereignty, sovereign rights, and jurisdiction that are contrary to the law of the sea such as the arbitral tribunal and many countries in the community international concept.

Conclusion

Because the law of the sea is relatively well codified, at least compared to other international legal mechanisms, strategic interactions in the East Sea take place *under the shadow* of the law of the sea. Analyzes of disputes in the South China Sea often use the term *legal warfare* to describe state choices around making claims, using legal processes, or conducting maritime operations. The military must be considered both legally and strategically. Used as a catch-all phrase for the interactions between law and strategy in the South China Sea, the term obscures rather than clarifies the use of certain legal practices and processes that are motivated by considerations strategies or ways to promote those activities and processes. Although China's activities in the legal field can be considered a legal warfare strategy, China has not achieved much in the legal field. In contrast, traditional legal processes, such as arbitration, have resulted in clarification of applicable law, removing any legal cover for changes to the status quo that legal battles may have created. This is a lasting achievement of the East Sea Arbitration Court ruling. One effective way to fight legal warfare is to use traditional legal processes. The fact that this ruling has received increasing international support over the past few years reinforces the idea that China's legal warfare in the South China Sea is ineffective. Southeast Asian claimant states should take advantage of the ruling's momentum by negotiating maritime governance tools in the South China Sea, such as fisheries management, marine protected areas, and cooperation to improve maritime governance enforce maritime law, appropriately and based on judgment. Strengthening the ruling in this way is certainly a measure to counter China's activities in the East Sea./.

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