

Five Commentaries on the South China Sea Arbitration Case: Analysis from Legal Perspectives

五論南海仲裁案 法理觀點的分析

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Preface

After certain non-regional countries issued a joint statement commemorating the so-called “10th anniversary of the South China Sea Arbitral Award,” Dr. Lee Hoey Simon wrote five Chinese–English bilingual articles, which were published in *Ta Kung Pao* and *DotDotNews*. To help the local and international communities better understand the relevant disputes, these articles have now been compiled into this report titled *Five Commentaries on the South China Sea Arbitral Case: Analysis from Legal Perspectives*. The report offers a jurisprudential analysis from five angles—“jurisdictional issues,” “the tribunal’s procedure and composition,” “the application of substantive law,” “rules and consistency,” and “subsequent impact and international practice”—and exposes the multiple legal fallacies involved in the award.

序言

在部分域外國家發表紀念所謂「南海仲裁案裁決」十週年聯合聲明後，李浩然博士撰寫五篇中英對照文章，並於《大公報》及《DotDotNews》刊出。為便於本地及國際社會理解相關爭議，現彙編成《五論南海仲裁案法理觀點的分析》專題報告，從「管轄權問題」、「仲裁庭程序與組成」、「實體法適用」、「規則與一致性」及「後續影響與國際實踐」五個面向作出法理分析，揭示該裁決所涉的多重法律謬誤。

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Territorial sovereignty dispute over Nansha Islands: Falling outside the scope of UNCLOS

On 12 July 2026, the United States, the Philippines, Japan and several other countries issued a joint statement purporting to "commemorate" the tenth anniversary of the so-called South China Sea Arbitration Award. No matter how external forces revisit this issue, an ultra vires and legally flawed award cannot acquire legitimacy merely with the passage of time or repeated statements.

The fundamental prerequisite for assessing any arbitral award lies in whether the tribunal possessed valid jurisdiction. "No jurisdiction, no adjudicative power" is the most basic principle of procedural justice in international law. The South China Sea Arbitration case failed at this threshold: the tribunal exercised jurisdiction over matters inherently beyond the scope of the United Nations Convention on the Law of the Sea (UNCLOS) and blatantly disregarded the exclusionary declaration lawfully made by the respondent State. This represents a paradigmatic instance of ultra vires jurisdiction in the history of international arbitration.

Substance of dispute: Territorial sovereignty, not interpretation of UNCLOS

On 22 January 2013, the Philippine Department of Foreign Affairs transmitted a Note Verbale to the Chinese Embassy in Manila, initiating compulsory arbitration concerning the dispute over "maritime jurisdiction" between China and the Philippines in the South China Sea. The Philippines carefully framed its arbitration submissions as questions relating to the "interpretation and application" of UNCLOS provisions. Beneath this political rhetoric, however, the essence of the China-Philippines dispute in the South China Sea is unambiguous: territorial sovereignty. The Philippines' arbitration submissions fall into three main categories. First, that China's claimed "historic rights" in the South China Sea are incompatible with UNCLOS. Second, that China's claims premised on certain rocks, low-tide elevations and submerged maritime features conflict with UNCLOS. Third, that China has unlawfully interfered with the Philippines' exercise of its rights under UNCLOS. The Philippines' real objective was to consolidate its illegal occupation of maritime features belonging to China's Nansha Islands through arbitration, and to negate China's territorial sovereignty and maritime rights and interests via legal means.

Sovereignty over the Nansha Islands has lain at the heart of the China-Philippines dispute since the 1970s. UNCLOS is expressly confined to matters of the law of the sea; territorial sovereignty issues fall entirely outside its regulatory scope. The claims submitted by the Philippines are essentially territorial sovereignty matters, which lie beyond the purview of UNCLOS. The compulsory dispute settlement procedures under UNCLOS apply only to disputes concerning the interpretation or application

of the Convention and have no mandate to adjudicate matters outside its scope. State practice offers powerful corroboration. In the 2015 *Mauritius v. United Kingdom* (Chagos Marine Protected Area) arbitration under Annex VII to UNCLOS, the tribunal explicitly observed that although Mauritius' submission that "the United Kingdom is not a coastal State" ostensibly invoked UNCLOS provisions, it needed to be examined against the underlying sovereignty dispute over the Chagos Archipelago. The tribunal ultimately ruled that this submission amounted to a territorial sovereignty question outside UNCLOS's compulsory jurisdiction. Confronted with a virtually identical legal issue, the South China Sea Arbitration Tribunal reached the opposite conclusion. This selective application of law reveals its predetermined stance and partisan bias.

China's 2006 exclusionary declaration: "Firewall" under international law

Even if the dispute touched upon maritime delimitation, China had already lawfully excluded such matters from compulsory dispute settlement procedures. Article 298 of UNCLOS expressly permits States Parties to exclude maritime delimitation and other specified categories of disputes from the Convention's compulsory dispute settlement mechanisms by way of declaration. On 25 August 2006, China deposited with the Secretary-General of the United Nations a declaration made pursuant to Article 298 of UNCLOS, stating that "with regard to any dispute referred to in Article 298, paragraph 1 (a), (b), and (c) of the Convention, the Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention."

Accordingly, China declines to accept any compulsory dispute settlement procedures under UNCLOS—including compulsory arbitration—for disputes relating to maritime delimitation, historic bays or historic titles, and other excluded subject matters. More than 30 States have lodged similar declarations, including three permanent members of the UN Security Council: the United Kingdom, France and Russia. These exclusionary declarations form an integral component and legal foundation of UNCLOS and must be respected by all parties (As for the United States, the sole remaining permanent member of the UN Security Council, it has not acceded to the Convention).

The tribunal nevertheless strove to unilaterally classify China's maritime features in the South China Sea as "rocks" and ruled that "rocks cannot generate an exclusive economic zone or continental shelf." It thereby artificially eliminated any overlap between China's maritime claims and those of the Philippines, and hence any maritime delimitation dispute. The tribunal deliberately distorted legal rules to admit disputes outside its jurisdiction, rendering the arbitration devoid of jurisdictional basis from the outset. By disregarding China's lawful declaration, the tribunal violated the principle of State consent and undermined the very foundation of its own jurisdiction.

Clear consensus between China and Philippines on settlement through negotiations

A further critical ground for lack of jurisdiction is that China and the Philippines had already established, through bilateral and multilateral instruments, a clear consensus to resolve disputes via negotiations — forming another legal obstacle to compulsory arbitration. In 2002, China and ASEAN Member States including the Philippines jointly signed the Declaration on the Conduct of Parties in the South China Sea (DOC). Article 4 of the DOC stipulates that "the Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, through friendly consultations and negotiations by sovereign States directly concerned, in accordance with universally recognised principles of international law, including the 1982 United Nations Convention on the Law of the Sea." This provision reflects the shared intention of all parties to settle disputes through direct negotiations. A series of bilateral documents between China and the Philippines further reaffirmed the consensus to handle South China Sea disputes through bilateral consultations and negotiations. By unilaterally initiating arbitration, the Philippines not only breached its express commitment under the DOC but also reneged on consensus repeatedly affirmed in bilateral agreements. The Philippines was fully aware that its arbitration claims centred essentially on territorial sovereignty over islands and reefs, that China had never consented to compulsory dispute settlement for such disputes, and that bilateral instruments provided for negotiated settlement. Its unilateral launch of compulsory arbitration therefore contravened relevant provisions of UNCLOS.

In conclusion, jurisdiction constitutes the logical starting point of any arbitral proceeding. The subject matter of the South China Sea Arbitration is in essence a territorial sovereignty dispute, a matter wholly outside the scope of UNCLOS. Even if maritime delimitation were implicated, China had already submitted a lawful exclusionary declaration. Furthermore, multiple instruments between China and the Philippines established negotiated settlement as the agreed pathway. Any one of these three legal grounds alone suffices to negate the tribunal's jurisdiction. Yet the tribunal proceeded notwithstanding all these impediments. Its jurisdictional findings lack sustainable legal footing. An award rendered by a tribunal lacking jurisdiction *ab initio* is legally invalid regardless of its substantive conclusions. This is an elementary principle of international law and an unassailable legal premise for evaluating this case.

2026年7月12日，美國、菲律賓、日本等國發表所謂「紀念南海仲裁案裁決」十年聯合聲明，妄圖為十年前那份非法裁決造勢。然而，無論如何反覆炒作，越權枉法的裁決始終無法獲得合法性。評判任何仲裁裁決的正當性，首要前提在於管轄權是否合法有效——「無管轄權則無裁判權」，這是國際法最基本的程序正義原則。南海仲裁案自始即在這一根本問題上缺乏法理基礎：仲裁庭對一項本質上不屬於《聯合國海洋法公約》（下稱《公約》）調整範圍的事項作出評判，且無視當事國已依法作出的排除性聲明，構成了國際仲裁史上罕見的越權管轄典型案例。

一、爭議的實質：領土主權，而非《公約》解釋

2013年1月22日，菲律賓外交部照會中國駐菲大使館，就中菲有關南海「海洋管轄權」爭端提起強制仲裁。菲律賓將仲裁請求包裝為關於《公約》條文「解釋與適用」的問題。然而，剝開這層法律修辭，中菲南海爭議的實質清晰無誤——領土主權歸屬問題。

菲律賓提出的仲裁事項主要歸納為三類：一是中國在南海主張的「歷史性權利」與《公約》不符；二是中國依據南海若干岩礁、低潮高地和水下地物提出的權利主張與《公約》不符；三是中國非法干涉菲律賓基於《公約》所享有和行使的權利。菲律賓的真實目的，是通過「仲裁」這種手段將其非法侵佔的中國南海島礁據為己有，從法律上否定中國的領土主權和海洋權益。

南海島礁的主權歸屬，是自上世紀70年代以來中菲之間爭議的核心。《公約》的調整範圍明確限定於海洋法事項，領土主權問題不在其管轄範疇之內。菲律賓提出的仲裁事項本質上是領土主權問題，而領土主權問題超出了《公約》的範疇。《公約》框架下的強制爭端解決程序僅限於處理有關《公約》解釋或適用的爭端，無權處理《公約》以外的事項。

國際實踐也為這一判斷提供了有力佐證。在2015年毛里求斯訴英國查戈斯海洋保護區案中，根據《公約》附件七組建的仲裁庭明確指出，毛里求斯關於「英國不是沿海國」的訴求雖表面援引《公約》條款，但必須置於雙方對查戈斯群島主權存在爭端的背景下審視。該仲裁庭最終裁定，此項訴求實質為領土主權問題，不屬於《公約》強制程序的管轄範圍。在南海仲裁案中，仲裁庭面對相似的法律問題，卻得出截然相反的結論。這種選擇性適用法律的做法，恰恰暴露了其預設立場、偏袒一方的本質。

二、中國2006年排除性聲明

進一步而言，即便爭議涉及海洋劃界問題，中國也已依法將其排除出強制仲裁程序。《公約》第298條明確允許締約國以聲明方式將海洋劃界等特定類別的爭端排除出強制爭端解決程序。

中國於2006年8月25日根據《公約》第298條向聯合國秘書長提交聲明，明確宣布「關於《公約》第298條第1款（a）、（b）和（c）項所述的任何爭端，中華人民共和國政府不接受《公約》第十五部分第二節規定的任何程序。」據此，對於涉及海域劃界、歷史性海灣或所有權等事項的爭端，中國政府不接受《公約》第十五部分第二節規定的任何強制爭端解決程序，包括強制仲裁。

全球有30多個國家作出了類似聲明，其中包括英國、法國、俄羅斯等聯合國安理會常任理事國。這些排除性聲明一併構成《公約》不可分割的組成部分，是《公約》成立的基礎。（至於餘下的唯一聯合國安理會常任理事國美國，則並未加入《公約》）。

仲裁庭對此卻置若罔聞，強行將中國南海島嶼單方面認定為「岩礁」，判定「岩礁無法產生專屬經濟區或大陸架」，妄使中國在南海的權益主張和菲律賓主張之間的重疊區消失，中菲之間海洋劃界爭議就被人為地抹去。仲裁庭是採用故意曲解規則的方式，強行受理不在管轄範圍的爭議，這使仲裁從一開始就不具備管轄權基礎。仲裁庭無視中國的合法聲明，實屬對國家同意原則的公然漠視，自己也摧毀了對本案的管轄權基礎。

三、中菲之間已有談判解決爭端的明確共識

管轄權不成立的另一重要理由是：中菲之間早已通過雙邊和多邊文件確立了以談判方式解決爭端的明確共識，這構成了阻擋強制仲裁的另一個法律基礎。

2002年，中國與包括菲律賓在內的東盟國家共同簽署了《南海各方行為宣言》（DOC）。該宣言第四條明確規定：「有關各方承諾根據公認的國際法原則，包括1982年《聯合國海洋法公約》，由直接有關的主權國家通過友好磋商和談判，以和平方式解決它們的領土和管轄權爭議。」這一規定體現了各方通過直接談判解決爭議的共同意願。此外，中菲之間還存在一系列雙邊文件，確認了以雙邊協商談判方式處理南海爭議的共識。

菲律賓單方面提起仲裁，不僅違背了其在DOC中所作的明確承諾，也背棄了在中菲雙邊協議中反覆確認的談判共識。菲律賓明知其提出的仲裁事項本質上是島礁領土主權問題，也知中國從未同意就有關爭端接受強制爭端解決程序，而且中菲之間存在通過談判方式解決有關爭端的協議，卻仍單方面提起強制仲裁，違反了《公約》的相關規定。

四、結語

管轄權是整個仲裁程序的邏輯起點。南海仲裁案仲裁事項的實質是領土主權爭議——這一爭議根本不屬於《公約》的調整範圍。即便涉及海洋劃界，中國也已依法作出排除性聲明；更何況中菲之間已有多項文件確立了談判解決的路徑。三重法律根據均否定了仲裁庭的管轄權，可惜仲裁庭卻強行否定法律規定和原則，使其管轄權裁決在法律上沒法成立。一個自始沒有管轄權的仲裁庭所作出的任何裁決，無論實體內容如何，在法律上均屬無效——這是國際法的最基本原則，也是評判本案不可動搖的法理前提。

Procedural and compositional defects of the South China Sea Arbitral Tribunal

International arbitration requires the voluntary participation of the disputing States, its impartiality is therefore of paramount importance. It must hear both sides in order to achieve the purpose of dispute settlement. Whether the procedures under which an award is rendered are proper and whether the composition of the tribunal is neutral are key to safeguarding impartiality.

The South China Sea arbitration case is fundamentally defective in both dimensions: the tribunal's formation was marred by procedural irregularities, its composition was seriously unbalanced, and the resulting findings were inevitably fraught with errors. In fact, the report *New Critique of the South China Sea Arbitration Award*, released in Hong Kong on July 13, 2026, systematically pointed out that over the past decade, the award has been generally avoided in subsequent jurisprudence of international judicial and arbitral institutions.

Initiation of proceedings: Abuse of "compulsory arbitration"

Under the two-tier dispute settlement mechanism of "priority of voluntary procedures, supplementation by compulsory procedures" established by Part XV of the United Nations Convention on the Law of the Sea (UNCLOS), the initiation of compulsory arbitration under Annex VII of the Convention is subject to a series of strict legal prerequisites, including that the parties have fulfilled the obligation to exchange views and that the dispute is not among the excluded matters. These preconditions are systematically set out in Sections 1 and 2 of Part XV of UNCLOS, and the absence of any one of them is sufficient to deprive the tribunal of its lawful jurisdictional basis.

The Philippines failed to fulfill the necessary prerequisite of prior and adequate exchange of views, violated the China-Philippines consensus on peaceful settlement through consultations, contravened the provision of the Declaration on the Conduct of Parties in the South China Sea (DOC) that directly concerned sovereign States shall resolve disputes through friendly consultations and negotiations, and violated fundamental principles of international law such as *pacta sunt servanda* (agreements must be kept) and estoppel. Therefore, when the Philippines unilaterally initiated arbitration on January 22, 2013, it manifestly lacked the legal prerequisites for doing so. The Philippines' unilateral submission of the relevant disputes to compulsory arbitration constituted an abuse of the compulsory dispute settlement procedures under UNCLOS; yet it was accepted for political reasons.

After the proceedings were initiated, China consistently refused to participate—not out of disregard for international law, but as a legitimate assertion that the tribunal manifestly lacked jurisdiction. Nevertheless, the tribunal proceeded with the entire process with only the Philippines participating, seriously violating the procedural justice requirements of international arbitration.

Formation of the tribunal: Orchestrated by Japanese right-wing forces

The formation of the five-member ad hoc tribunal in the South China Sea arbitration was itself fraught with questionable procedural irregularities.

Under the procedure, because China did not participate in the arbitration, the appointment of arbitrators fell to the then-President of the International Tribunal for the Law of the Sea (ITLOS). In 2013, that President was Japanese national Shunji Yanai. This meant that of the five arbitrators, apart from the one appointed by the Philippines, the remaining four were all designated by Yanai.

Yanai's background itself raises serious concerns. He served in Japan's Ministry of Foreign Affairs for over four decades, holding positions including Vice-Minister for Foreign Affairs and Ambassador to the US. He is regarded as a representative of Japan's right-wing hawkish faction. Yanai also served as Chairman of the "Advisory Panel on the Rebuilding of the Legal Framework for National Security" established by Prime Minister Shinzo Abe, playing a significant role in assisting Abe's efforts to reinterpret the right of collective self-defense and challenge the post-World War II international order. It was during Yanai's tenure as ITLOS President that the Philippines unilaterally initiated the South China Sea arbitration. For such a person with a direct conflict of interest with China and distinct political coloring to dominate the appointment of arbitrators, the impartiality of the proceedings was never assured from the very beginning.

Monopoly of the tribunal by extra-regional personnel

The final five-member tribunal comprised: Thomas A. Mensah (Ghana, President), Jean-Pierre Cot (France), Stanisław Pawlak (Poland), Alfred H.A. Soons (Netherlands), and Rüdiger Wolfrum (Germany).

The imbalance in this composition is evident. Four of the five arbitrators came from Western countries, and the sole African arbitrator had long resided in Europe—hardly possessing the broad representativeness required by international law. The tribunal had not a single arbitrator from Asia—yet the case involved territorial and maritime rights and interests in Asia. A tribunal dominated by four Europeans raises legitimate questions about whether it can represent the world's major legal systems, particularly the Asian legal system.

International arbitral tribunals should reflect representation of the world's principal legal systems—this is a basic requirement of procedural justice. The composition of the South China Sea tribunal manifestly failed to meet this standard. In fact, the United Nations, the International Court of Justice, and ITLOS all publicly stated that they had no connection whatsoever with this "tribunal." The arbitral tribunal was never an international court, and there exists no official subordination or affiliation between ITLOS and the arbitral tribunal.

This arbitral tribunal was an ad hoc body temporarily established after the Philippines unilaterally initiated the arbitration, and it would be dissolved after the conclusion of the case. ITLOS, by contrast, is a permanent official judicial institution headquartered in Hamburg, Germany, and forms part of the formal international judicial system under the framework of UNCLOS.

The then-Vice-President of ITLOS, Judge Tullio Treves, had publicly clarified that the five individuals participating in this arbitration acted solely in their private capacities and did not represent the official position of ITLOS in any way. ITLOS has never been involved in the proceedings, participated in any form, provided official endorsement, or ever recognized the validity of this award.

Procedural defects leading to factual errors

The fundamental defects in the tribunal's composition and procedure were directly reflected in serious errors of fact-finding. The tribunal "often pre-set conclusions before collecting evidence from the Chinese side." Such a procedural approach could never achieve rigorous legal analysis, and descended into the adjudicators' "free discretion."

This practice of pre-setting conclusions was particularly conspicuous in the determination of the status of the features. The tribunal disregarded the fundamental fact that the Nansha Islands constitute an integral whole geographically, historically, and legally, and arbitrarily dismembered China's territorial sovereignty over the Nansha Islands. It admitted multiple pieces of evidence that had not been cross-verified and came from single sources, thereby violating the rules of evidence and abandoning its neutral adjudicative stance.

The tribunal also displayed serious inconsistency on jurisdictional matters: on the one hand, it asserted that the case was not essentially about territorial sovereignty or maritime delimitation; on the other, it relied on the negotiations between China and the Philippines concerning territorial sovereignty and maritime delimitation as evidence that the Philippines had fulfilled its obligation to exchange views. On the one hand, it insisted that the DOC was not legally binding; on the other, it relied on the DOC as evidence that the Philippines had fulfilled its obligation to exchange views. This logical contradiction exposed the arbitrariness and lack of seriousness in the tribunal's procedural conduct.

Conclusion

The composition of the tribunal is the first and fundamental element of procedural justice. When a tribunal is formed under the domination of persons with clear political leanings, with a seriously unbalanced composition, and proceeds with only one party participating, the impartiality of its award is fundamentally compromised. Procedural defects inevitably lead to systematic errors in fact-finding. The composition and procedural conduct of the South China Sea tribunal violated the most basic requirements of international arbitration, and its award is consequently legally void from the very outset.

國際仲裁需爭端國自願參與，所以其公正性十分關鍵，必須兼聽雙方立場，才能達至爭端解決的目的。而作出裁決的程序是否正當、仲裁庭的組成是否中立等，是維護公正的關鍵。

南海仲裁案在這兩個維度上均存在根本性缺陷：仲裁庭的組建過程存在程序缺陷，人員構成嚴重失衡，由此導致的認定無法避免會錯誤百出。事實上，根據2026年7月13日在香港發布的《南海仲裁案裁決新批駁》報告便系統地指出，十年來該裁決在國際司法與仲裁機構的後續判例中被普遍地迴避。

一、程序啟動：「強制仲裁」的濫用

根據《聯合國海洋法公約》第十五部分所構建的「自願程序優先、強制程序補充」雙層爭端解決機制，啟動《公約》附件七強制仲裁程序須滿足一系列嚴格的法律前提，包括爭端各方已履行交換意見的義務、爭端不屬於已被排除的事項等。這些前提條件在《公約》第十五部分第一節及第二節中有系統性規定，任何一項的缺失都足以使仲裁庭的管轄權失去合法基礎。

菲律賓沒有履行事先充分交換意見的必要前提，違背中菲達成的通過協商和平解決爭議的共識，違反《南海各方行為宣言》有關直接當事國通過友好磋商談判和平解決爭議的規定，違背了「約定必須遵守」、「禁止反言」等國際法基本原則。因此菲律賓在2013年1月22日單方面提起仲裁時，根本不具備啟動仲裁的法律要件。菲律賓單方面將有關爭端提交強制仲裁，是濫用《公約》規定的強制爭端解決程序；卻因政治因素獲得受理。

仲裁程序啟動後，中國自始至終拒絕參與——這不是對國際法的漠視，而是對仲裁庭根本沒有管轄權的正當認定。然而，仲裁庭在僅有菲律賓一方參與的情況下，執意推進全部程序，嚴重違背了國際仲裁的程序正義要求。

二、仲裁庭的組建：由日本右翼一手操辦

南海仲裁案五人臨時仲裁庭的組建過程，本身就充滿了令人質疑的程序缺陷。

按照程序，由於中國不參與仲裁，仲裁員的指定工作由國際海洋法法庭時任庭長完成。而2013年時任國際海洋法法庭庭長的，正是日本籍法官柳井俊二。這意味着，南海仲裁案5位仲裁員中，除菲律賓指定的1人外，其餘4人均由柳井俊二指定。

柳井俊二的背景本身即引發嚴重關切。他在日本外交部門工作40餘年，曾任外務省事務次官和駐美大使，被認為是日本右翼鷹派人物的代表。柳井同時

也是日本安倍政府安保法制懇談會會長，在協助安倍解禁集體自衛權、挑戰二戰後國際秩序方面起了很大作用。正值柳井擔任國際海洋法法庭庭長期間，菲律賓單方面發起了南海仲裁案。由這樣一位與中國存在直接利益關聯、政治色彩鮮明的人士來主導指定仲裁員，其公正性從一開始就沒法得到保證。

三、域外人員壟斷仲裁庭

最終組成的五人仲裁庭包括：托馬斯·A·門薩（加納籍，庭長）、讓－皮埃爾·科特（法國籍）、斯坦尼斯瓦夫·帕夫拉克（波蘭籍）、阿爾弗雷德·H.A.·松斯（荷蘭籍）、呂迪格·沃爾夫魯姆（德國籍）。

這一組成結構的失衡是顯而易見的。五名仲裁員中四名來自西方國家，唯一的非洲籍仲裁員長期居住在歐洲，根本不具備國際法所要求的應有廣泛代表性。整個仲裁庭沒有任何一名仲裁員來自亞洲——而本案恰恰涉及亞洲地區的領土與海洋權益爭議。一個由四名歐洲人主導的法庭，其是否能夠代表世界主要法律體系、特別是亞洲法律體系的公正性，令人嚴重質疑。

國際仲裁庭的組成應當體現世界各主要法系的代表性，這是程序正義的基本要求。南海仲裁案的仲裁庭組成結構，從任何角度看都難以滿足這一要求。事實上，聯合國、國際法院、國際海洋法法庭都公開聲明，跟仲裁庭毫無關係。仲裁庭絕不是國際法庭，國際海洋法法庭和仲裁庭並不存在任何官方隸屬或關聯關係。

該仲裁庭是在菲律賓單方面發起仲裁後臨時特設，在案件審結後便會解散的臨時組建一次性機構。而國際海洋法法庭是總部位於德國漢堡的常設官方司法機構，隸屬於《聯合國海洋法公約》框架下的正式國際司法體系。時任國際海洋法法庭前副庭長圖爾克已公開澄清：參與該仲裁的5名人員僅以私人身份參與，完全不代表國際海洋法法庭的官方立場。國際海洋法法庭也自始至終沒有介入案件審理、任何形式的參與、出具官方背書，也從未承認過這份裁決的效力。

四、程序缺陷導致的事實認定錯誤

仲裁庭組成和程序上的根本缺陷，直接反映在事實認定的嚴重錯誤上。仲裁庭對菲方的訴求「往往是先預設結論，然後再搜集中方的證據」。這種審理程序和方式，沒法達到嚴謹的法理分析，更走向了法官的「自由心證」。

這種預設結論的做法，在島礁地位認定問題上表現得尤為突出。仲裁庭無視南沙群島在地理、歷史和法律上構成一個整體的基本事實，肆意肢解中國對南沙群島的領土主權。仲裁庭採信多處未經交叉核實、來源單一的證據材料，也違背舉證規則，喪失中立裁判立場。

仲裁庭在管轄權問題上同樣表現出嚴重的不一致：一方面說案件本質不是領土主權和海洋劃界問題，另一方面卻將中菲雙方圍繞領土主權和海洋劃界爭

端進行的談判作為菲已履行意見交換義務的依據。一方面堅持認定 DOC 不具法律約束力，另一方面又將 DOC 作為菲方已履行交換義務意見的依據。這種邏輯上的前後矛盾，暴露了仲裁庭在程序推進中的隨意和不嚴謹。

五、結語

仲裁庭的組成是程序正義的第一基本要素。當一個仲裁庭由具有明顯政治傾向的人士主導組建、組成結構嚴重失衡、在僅有單方參與的情況下推進程序時，其裁決的公正性已無從談起。程序上的根本缺陷，必然導致事實認定上的系統性錯誤。南海仲裁案仲裁庭的組成與程序運作，均違背了國際仲裁最基本的要求，其所作裁決在法律上也因此沒法具有效力。

South China Sea Arbitration Award

Beyond jurisdictional and procedural flaws, the South China Sea Arbitral Tribunal also rendered a distorted interpretation of Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS) and disregarded the integral nature of the Nansha Islands as a whole. These errors in fact-finding and substantive law rendered the award legally flawed and fundamentally erroneous.

Distortion of Article 121 of UNCLOS

The core fallacy of the Tribunal's substantive award lies in its interpretation and application of Article 121 of UNCLOS (the regime of islands). Article 121(3) provides: "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." This involves a critical judicial determination: how to define "rocks" versus "islands", which directly determines the existence and scope of relevant maritime entitlements.

The Tribunal conducted a piecemeal review of all features in the Nansha Islands that are above water at high tide, concluding that all of them constitute "rocks which cannot sustain human habitation or economic life of their own," and accordingly ruled that no feature in the Nansha Islands can generate an exclusive economic zone or continental shelf.

The most absurd example of this determination is the treatment of Taiping Island (Itu Aba). Taiping Island is the largest natural island in the Nansha Islands, covering approximately 500,000 square meters, possessing fresh water resources and arable land, and having been inhabited and sustained by human life for an extended period. The crux of the controversy surrounding Taiping Island lies in the Tribunal's adoption of an exceptionally stringent and highly contested interpretation, whereby it classified an island with conditions capable of sustaining human habitation and independent economic life as a "rock," thereby denying Taiping Island's status as an island. The Tribunal set forth criteria requiring "settlement of a stable human community" and stipulated that economic activities must not be "purely extractive." The Tribunal opined that personnel stationed on Taiping Island relied on external supplies and that historical utilization by fishermen was intermittent, thus not constituting stable settlement.

However, this clearly disregards the objective conditions on Taiping Island, including the presence of fresh water and soil, as well as the historical fact that Chinese fishermen resided, cultivated crops, and raised livestock there over extended periods, fully satisfying the objective conditions for sustaining human life and

economic activity. If the standards adopted by the South China Sea Arbitral Tribunal were to be accepted, many features currently recognized by international law as "islands" would also be reclassified as "rocks." Examples include Midway Atoll, Wake Island, and Jarvis Island of the US, all of which are similarly limited in area and reliant on external support.

Another example is Okinotorishima in Japan, which Japan claims as an "island" and has used to delineate an exclusive economic zone, despite its natural conditions being far inferior to those of Taiping Island. Article 121(3) of UNCLOS has long been controversial and is widely considered to be laden with subjectivity and uncertainty. The Tribunal exploited precisely this ambiguity, disregarding existing international law and the global maritime order, to engage in unrestrained interpretation. This not only sets a perilous precedent of arbitrarily rewriting the legal status of maritime features under the guise of legal interpretation, severely disrupting global maritime order and stability, but also fully exposes the "double standards" applied to the claims of different States.

Dismembering integral nature of Nansha Islands

Another major fallacy of the Tribunal lies in its disregard for the fundamental fact that the Nansha Islands constitute a single whole geographically, historically, and legally. As an integral archipelago, the Nansha Islands feature close geographical and historical interconnections among their component features. China's sovereignty claim over the Nansha Islands is a claim over the archipelago as a whole, rather than separate claims over individual isolated features. However, the Tribunal artificially fragmented the Nansha Islands into discrete and unrelated features, assessing the legal status of each feature in isolation. This approach is erroneous not only in fact, ignoring the archipelago's unity as a geographical unit, but also in law, as it contravenes the principle of archipelagic integrity under international law. The Tribunal's error lies in its application of Article 121 of UNCLOS to individual features that form part of the Chinese Nansha Islands archipelago, adjudicating their status and maritime entitlements in isolation. This "divide and conquer" methodology effectively constitutes a dismemberment of, and encroachment upon, China's sovereignty over the Nansha Islands.

Unlawful denial of historic rights and international treaties

The Tribunal further comprehensively denied China's historic rights in the South China Sea. The award asserts that China's claims based on the "nine-dash line" and its maritime claims rooted in historic rights lack legal basis. This determination likewise fails to withstand legal scrutiny. China's historic rights in the South China Sea are rooted in over two millennia of continuous presence and effective administration. From maritime navigation in the South China Sea during the Western Han Dynasty,

to detailed records in the Geng Lu Bu (seafaring compass manuals) of the Ming and Qing dynasties, and through to the restoration of sovereignty after World War II in accordance with the Cairo Declaration and the Potsdam Proclamation, China's sovereignty over the South China Sea islands and related maritime rights are grounded in historical accumulation and international law. The 1943 Cairo Declaration explicitly stipulates that "all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa (Taiwan), and the Pescadores, shall be restored to the Republic of China," which legally encompasses the South China Sea islands that Japan had seized. Furthermore, Article 8 of the 1945 Potsdam Proclamation reaffirms that "The terms of the Cairo Declaration shall be carried out," further restricting Japan's sovereignty to the four main islands of Honshu, Hokkaido, Kyushu, and Shikoku. Following Japan's surrender, these legal provisions entered into force. Between November and December 1946, the Chinese government dispatched four vessels—the Yongxing, Zhongjian, Taiping, and Zhongye, to conduct repossession ceremonies, re-erect sovereignty markers, and station troops on the Xisha and Nansha Islands respectively. Concurrently, surveying, mapping, and resource reconnaissance were carried out, and the restoration of sovereignty was publicly proclaimed. The entire process elicited no objections from neighboring States. In 1947, the Chinese government approved the Comparison Table of Old and New Names of the South China Sea Islands and published the Location Map of the South China Sea Islands bearing the eleven-dash line (the predecessor of the later nine-dash line).

In 1948, this map was formally incorporated into the officially published Administrative Map of the Republic of China, thereby completing the international law procedure of publicizing sovereignty claims. The post-war maritime order in the South China Sea and the scope of China's sovereignty were thus firmly established.

In conclusion, the South China Sea arbitration award is vitiated by substantial factual and legal defects, rendering it manifestly erroneous. During its proceedings, the Tribunal failed to give due consideration to objective facts and credible evidence. More egregiously, it attempted to deny long-established historic and conventional treaty rights by applying highly controversial standards, contravening the fundamental international law principle that historic rights shall be respected. The Tribunal's misinterpretation of Article 121 of UNCLOS, its dismemberment of the integral nature of the Nansha Islands, and its wrongful denial of China's historic and treaty rights collectively amount to a grave miscarriage of justice in the South China Sea arbitration.

除了管轄權和程序瑕疵，南海仲裁庭還對《國際海洋法公約》第121條作出扭曲解釋，並忽視南沙群島的整體性。這兩方面對事實認定和實體法的錯誤，造成裁決的枉法和謬誤。

一、對《公約》第121條的扭曲

仲裁庭實體裁決最核心的謬誤，體現在對《公約》第121條（島嶼制度）的解釋和適用上。《公約》第121條第3款規定：「不能維持人類居住或其本身經濟生活的岩礁，不應有專屬經濟區或大陸架」。這涉及重大的司法判斷——如何界定「岩礁」與「島嶼」，直接決定了相關海洋權益的有無與範圍。

仲裁庭對南沙群島所有高潮時露出水面的島礁進行了逐一審查，認定它們均屬於「不能維持人類居住或其本身經濟生活的岩礁」，從而裁定南沙群島沒有任何島礁可以產生專屬經濟區或大陸架。這一認定中最为荒謬的例證，莫過於對太平島的處理。

太平島是南沙群島中最大的自然島嶼，面積約50萬平方米，擁有淡水資源和可耕種土地，長期有人居住和生活。對太平島爭議的核心，在於仲裁庭設定了極為嚴苛且備受爭議的解釋，將這樣一座具備人類居住和獨立經濟生活條件的島嶼判定為「岩礁」，以此否定太平島的島嶼地位。

仲裁庭提出的標準是「穩定的人類社群的定居」、經濟活動不能是「純採掘性的」。仲裁庭認為太平島上的駐守人員依賴外部補給，歷史上漁民利用是短暫的，因此不構成穩定定居。然而，這明顯忽略了太平島上擁有淡水、土壤，歷史上中國漁民長期居住、種植、飼養，是完全具備維持人類生活和經濟活動的客觀條件。

一旦南海仲裁庭的標準被確立，許多目前被國際社會承認的「島嶼」地位也會變成「岩礁」。例如美國的中途島、威克島、賈維斯島等，同樣面積有限、依賴外部支持。另外還有日本的沖之鳥礁，日本主張其為「島」並劃定專屬經濟區，但其自然條件卻遠不如太平島。

《公約》第121條第3款多年來一直備受爭議，被認為表述充斥着主觀性與不確定性。仲裁庭正是利用了這一條款的模糊性，不考慮現行國際法和世界海洋規則，肆意進行解釋。這不僅開啟了借法律解釋之名隨意改寫島礁法律地位的惡劣先例，嚴重擾亂世界海洋秩序和格局，更充分顯示出對不同國家主張的「雙重標準」。

二、肢解南沙群島的整體性

仲裁庭的另一重大謬誤，在於無視南沙群島在地理、歷史和法律上構成一個整體的基本事實。

南沙群島作為一個群島整體，其島礁之間存在着密切的地理聯繫和歷史聯繫。中國對南沙群島的主權主張，是對整個群島的主權，而非對各個孤立島礁的分別主張。然而，仲裁庭將南沙群島人為切割為互不關聯的零散島礁，對每一個島礁孤立地進行法律地位評估。這種做法不僅在事實上錯誤——無視群島作為一個地理單元的整體性；在法律上同樣錯誤——違背國際法中關於群島的整體性原則。

仲裁庭的錯誤在於將《公約》第121條適用於作為中國南沙群島組成部分的單個島礁，孤立地裁定其地位和海洋權利。這種「各個擊破」的方法論，實質上是對中國南沙群島主權的肢解和侵犯。

三、對歷史性權利和國際條約的非法否定

仲裁庭還對中國在南海的歷史性權利進行了全面否定。裁決聲稱中國的「九段線」主張以及基於歷史性權利的海域主張沒有法律依據。

這一認定同樣經不起法理檢驗。中國在南海的歷史性權利根植於長達兩千多年的持續存在和有效管轄。從西漢時期的南海航行，到明清《更路簿》的詳細記載，再到二戰後依據《開羅宣言》、《波茨坦公告》恢復行使主權，中國對南海諸島的主權和相關海洋權益具有歷史積澱和國際法依據。

1943年的《開羅宣言》明確規定，「使日本所竊取於中國之領土，例如東北四省、台灣、澎湖列島等，歸還中國」。其中的「等」字，從法理上涵蓋了日本侵佔的南海諸島。同時，1945年的《波茨坦公告》第八條重申，「《開羅宣言》之條件必將實施」，進一步限定了日本主權範圍僅限於本州等四島。日本投降後，法律條款進入執行階段。1946年11至12月，中國政府派遣「永興」、「中建」、「太平」、「中業」四艦，分赴西沙、南沙群島舉行接收儀式、重立主權碑、派兵駐守。同時進行了測繪與資源踏勘，公開宣告恢復主權。整個過程未受周邊國家異議。1947年，中國政府審定《南海諸島新舊名稱對照表》，並繪製標示十一段線（後演變為九段線）的《南海諸島位置圖》。1948年，該地圖正式收入公開發行的《行政區域圖》，在國際法上完成了主權主張的公示程序；戰後南海秩序和主權範圍由此確立。

四、結語

南海仲裁裁決在事實認定和適用法律兩方面存在重大缺陷，造成裁決明顯錯誤。

仲裁庭在審理過程中，對事實和證據未給予應有的考量。更甚者，嘗試以備受爭議的標準去否定早已存在的歷史性和國際公約權利，違背了國際法中關於歷史性權利應予尊重的基本原則。裁決對《公約》第121條的曲解、對南沙群島整體性的肢解、對歷史性和國際條約權利的否定，均造成這次南海仲裁庭的枉法裁判。

On July 12, 2026, the US, the Philippines, Japan, and some other countries issued a so-called joint statement to "commemorate" the tenth anniversary of the South China Sea arbitration award, proclaiming a "rules-based order" and constantly demanding that China comply with the United Nations Convention on the Law of the Sea (UNCLOS). However, when we turn to the maritime practices of these countries, what we see is a quintessential double standard—"use it when convenient, discard it when not." The so-called "rules-based order" is in essence an "order based on the interests of these countries."

I. The US: Outsider to UNCLOS and Self-Appointed Judge

The most flagrant practitioner of double standards in the application of international law is the US. As the world's preeminent maritime power, the US has long asserted maritime rights under UNCLOS, yet has persistently refused to ratify the Convention, unwilling to be constrained by it.

On one hand, the US refuses to join UNCLOS and evades its treaty obligations; on the other, it presumes to act as UNCLOS's "judge," demanding that other States comply with the Convention while arbitrarily interpreting it to suit its purposes. On the South China Sea issue, the US demands that all States abide by UNCLOS, yet it is not even a party to the Convention—this is the very essence of double standards.

A State that is not even a party to UNCLOS, yet presumes to be its defender and arbitrarily criticizes other States' maritime rights and interests—this is legally and logically untenable. The US stands behind the Philippines, denigrating China, purely for geopolitical reasons to contain China.

II. Japan: Okinotorishima as "Island" and Taiping as "Rock"

If America's double standard consists of "standing outside while pointing fingers," Japan's consists of "different treatment for the same thing."

Okinotorishima is a reef in the Pacific Ocean, with an area of approximately 10 square meters above water at high tide. Under Article 121 of UNCLOS, rocks which cannot sustain human habitation or economic life of their own shall not have an exclusive economic zone or continental shelf. Since 2004, China has formally stated that it does not recognize Japan's claim to an EEZ or continental shelf based on Okinotorishima. In April 2012, the Commission on the Limits of the Continental Shelf (CLCS)—a technical body established under UNCLOS—in its recommendations on Japan's submission for the outer continental shelf, did not recognize Japan's claimed

outer continental shelf based on Okinotorishima.

Yet the Japanese government not only classifies Okinotorishima as an "island," but has artificially reinforced and filled it to create the appearance of an "island," and on this basis claims a vast exclusive economic zone. On one hand, Japan supports the South China Sea arbitration award, which classified Taiping Island, with its 500,000 square meters and fresh water resources, as a "rock". On the other hand, it claims an EEZ based on Okinotorishima, a 10-square-meter reef.

The Chinese Foreign Ministry spokesperson posed a pointed rhetorical question: since Japan has declared its support for the content of the "award," China has reason to believe that Japan has, by the same standard, voluntarily renounced its corresponding maritime claims. Japan has used steel, cement, and concrete to desperately reinforce that reef—barely the size of a tatami mat at high tide—and on that basis claims 400,000 square kilometers of EEZ. Under the "South China Sea arbitration standard," should Japan not immediately abandon this claim?

Professor Kōki Kyōtsu, Professor Emeritus at Yamaguchi University in Japan, pointed out that the Japanese government's approach is a textbook example of double standards. Japan supports the "South China Sea arbitration award" on one hand, and on the other hand artificially reinforces and fills Okinotorishima to present it as an "island"—a plainly self-contradictory position.

III. Systematic Double Standards in the Maritime Practice of States that Issued the Statement

The tribunal's interpretation of Article 121—particularly its stringent standard for "rocks"—is seriously out of step with the maritime practice of States worldwide. Stephen Fietta, a British international law scholar and founder of Fietta LLP, pointed out that after the 2016 award, "State practice has not been rewritten by it; many States continue to claim EEZs and continental shelves over certain features, inconsistent with the tribunal's stringent interpretation of 'rocks' under Article 121."

This means that these States that issued the statement continue to claim EEZs and continental shelves over small features that do not meet the "rock" definition. On the one hand, they demand China to accept the tribunal's stringent standard, and on the other hand, they claim broad maritime rights for similar features of their own. This "strict with others, lenient with oneself" approach fully exposes the true nature of the so-called "rules-based order"—rules are merely tools to constrain others, not to constrain oneself.

IV. Double Standards: The Legal Packaging of Hegemony

Double standards are not accidental deviations in practice, but a systematic choice serving geostrategic interests. The South China Sea arbitration was from start to finish a "political farce disguised in legal garb." The so-called award has become the "international law narrative" through which certain extra-regional countries "seek to maximize their own interests in the South China Sea and squeeze China's geopolitical space."

The tribunal's handling of the Philippines' submissions fully reflects this politicization. The tribunal often pre-set conclusions before selectively collecting evidence from the Chinese side and making unfounded accusations. It cited a few recent and highly controversial judicial precedents to support its views, while ignoring the many international judicial precedents that contradicted its conclusions. This selective application of law and precedent is not impartial judicial adjudication, but the search for legal footnotes to predetermined political conclusions—and a damage to the international rule of law.

V. Conclusion

When the US has not ratified UNCLOS yet presumes to be its judge; when Japan claims an EEZ based on the 10-square-meter Okinotorishima while supporting the classification of the 500,000-square-meter Taiping Island as a "rock"; when certain countries demand that China to accept stringent standards they themselves do not observe—the hypocrisy of the so-called "rules-based order" stands fully exposed.

This is not a "rules-based order"—this is a "hegemony-based order": rules are selectively interpreted and applied to other States, while those who proclaim them remain unconstrained. The vitality of international law lies in equal application—equality before the rules for all States, not selective application as a tool based on self-interest. The South China Sea arbitration is the most typical illustration of this double standard—a tragedy in which the international rule of law has been used as a political tool.

2026年7月12日，美國、菲律賓、日本等國發表所謂「紀念南海仲裁案裁決」十年聯合聲明，高喊「基於規則的秩序」，動輒要求中國遵守《聯合國海洋法公約》。然而，當我們將目光轉向這些國家自身的海洋實踐時，卻是看到典型的「合則用，不合則棄」的雙重標準。所謂「基於規則的秩序」，本質上是「基於這些國家利益的秩序」。

一、美國：《公約》的「局外人」與「裁判官」

在國際法適用上採取雙重標準，最典型的莫過於美國。作為世界頭號海洋強國，美國一直主張《公約》項下的海洋權利，卻因不想受到約束而遲遲不批准《公約》。

美國一方面拒絕加入《公約》、規避履約義務，另一方面卻動輒以《公約》的「裁判官」自居，要求其他國家遵守《公約》，肆意對《公約》進行片面解釋。在南海問題上，美國要求各國遵守《公約》，但自己卻不加入《公約》——這是典型的「雙標」。

一個連《公約》締約國都不是的國家，卻以《公約》的捍衛者自居，肆意指責他國的海洋權益——這在法理和邏輯上都是說不通的。美國站在菲律賓身後，詆毀中國，只是基於地緣政治考慮對中國進行圍堵。

二、日本：沖之鳥礁的「島」與太平島的「礁」

如果說美國的雙重標準體現在置身事外卻指手畫腳，那麼日本的雙重標準則體現在同樣的事、不同的對待。

沖之鳥礁是太平洋上的一塊岩礁，高潮時露出水面的面積僅約10平方米。根據《公約》第121條的規定，不能維持人類居住或其本身經濟生活的岩礁不應擁有專屬經濟區或大陸架。中國從2004年起就正式表態不承認日方依據沖之鳥礁主張專屬經濟區和大陸架的主張。2012年4月，根據《聯合國海洋法公約》設立的技術機構「大陸架界限委員會」，對日本外大陸架劃界案給的建議裏，不認可日本依據沖之鳥礁主張的外大陸架。

然而，日本政府不僅將沖之鳥礁認定為「島嶼」，還通過加固填埋等方式將其包裝成「島嶼」，並以此主張大範圍的專屬經濟區。日本一方面支持南海仲裁案裁決——該裁決將面積達50萬平方米、擁有淡水資源的太平島判定為「岩礁」，另一方面卻對僅10平方米的沖之鳥礁主張專屬經濟區。

中國外交部發言人對此曾作出反問：既然日本已發表聲明贊成「裁決」的內容，中方有理由認為，日方已按照相同標準，自願放棄相應的海洋主張。日本用鋼筋水泥和混凝土死命加固那個漲潮時只有榻榻米大小的沖之鳥礁，然後藉此強佔40萬平方公里專屬經濟區。按照「南海仲裁標準」，日本是不是應該立刻放棄這個主張？

日本山口大學名譽教授瀨顯厚指出，日本政府的做法堪稱雙重標準的典型。日本一方面支持「南海仲裁案裁決」，另一方面卻通過加固填埋等方式將「沖之鳥礁」包裝成「島嶼」，日本政府的立場顯然自相矛盾。

三、參與聲明的國家在海洋實踐時的系統性雙標

仲裁庭對《公約》第121條的解釋——尤其是對「岩礁」的嚴苛標準——與全球各國的海洋實踐嚴重脫節。英國國際法學者 Stephen Fietta 指出，2016年裁決之後，「各國海洋實踐並未被它改寫，很多國家仍在對部分地貌主張專屬經濟區和大陸架，與仲裁庭對《公約》第121條『岩礁』的嚴苛解釋並不一致。」

這意味着這些參與聲明的國家，自身仍在持續對不符合「岩礁」定義的小型地貌主張專屬經濟區和大陸架。這些國家一方面要求中國接受仲裁庭的嚴苛標準，另一方面卻為本國的類似地貌主張寬泛的海洋權益。這種「嚴以律人、寬以待己」的做法，充分暴露了所謂「基於規則的秩序」的真實面目——規則只是用來約束別人的工具，而不是約束自己的準則。

四、雙重標準：霸權的法律包裝

雙重標準並非偶然的實踐偏差，而是服務於地緣戰略利益的系統性選擇。南海仲裁案自始至終就是一場「披着法律外衣的政治鬧劇」。所謂裁決成為一些域外國家「謀求自身南海利益最大化，擠壓中國地緣政治空間常說常新的國際法敘事」。

仲裁庭對菲律賓訴求的處理方式，充分體現了這種政治化傾向。仲裁庭對菲方的訴求往往是先預設結論，然後再選擇性地搜集中方的證據並且無端指責。仲裁庭引用個別新近作出且具有高度爭議性的司法判例來證明其觀點，卻無視更多與其結論相反的國際司法判例。這種選擇性適用法律和判例的做法，不是公正的司法裁判，而是為預定政治結論尋找法律註腳；是對國際法治的傷害。

五、結語

當美國尚未批准《公約》卻以《公約》裁判官自居，當日本為10平方米的沖之鳥礁主張專屬經濟區卻支持將50萬平方米的太平島判為「岩礁」，當一些國家要求中國接受自己都不遵守的嚴苛標準——所謂「基於規則的秩序」的虛偽性已暴露無遺。

這不是「基於規則的秩序」，這是「基於霸權的秩序」——規則是選擇性地解釋和適用於他國，而自身則可以不受約束。國際法的生命力在於平等適用——規則面前各國平等，而非某些國家按照自身利益選擇性適用的工具。南海仲裁案正是這種雙重標準的最典型展示，是一次國際法治被用作政治工具的悲劇。

Subsequent practice of international judicial and arbitral institutions and the role of Hong Kong

On 13 July 2026, the South China Sea Security Roundtable Dialogue was held in Hong Kong, during which the report "New Refutations of the South China Sea Arbitration Award" was released. The report systematically examines the actual effects of the so-called award under international law. A decade on, the treatment of the South China Sea arbitration award by international judicial and arbitral institutions, as well as the assessments of the international legal academic community, has clearly outlined the true status of this award—it has never been capable of genuine implementation under international law. At the same time, Hong Kong, as a unique platform for international rule-of-law dialogue, plays an irreplaceable role in disseminating fair legal reasoning and correcting fallacies.

I. The "Silence" of International Judicial and Arbitral Institutions: Marginalisation of the Award

Over the past decade, major international judicial institutions such as the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS), have generally avoided or not adopted the Award's core reasoning concerning Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS) and historic rights in subsequent cases involving island status, historic rights, and exclusive economic zone entitlements. The report points out that over the past ten years, the actual impact of the "Award" on state practice in the international community has been very limited, and international judicial and arbitral institutions have generally and deliberately avoided the "Award" in subsequent jurisprudence. Wu Shicun, Founding Dean and Chairman of the Academic Committee of the National Institute for South China Sea Studies, stated at the press conference: "Over the past decade, this illegal 'award' has neither been echoed in the practice of other states, nor recognized and followed by international judicial institutions, nor endorsed by the international academic community."

This "silence" is by no means accidental. Citation of precedent by international judicial institutions generally signifies recognition of the precedential legal value of that case. The deliberate avoidance of the South China Sea arbitration award stems precisely from the widespread recognition within the international legal community of its fundamental legal defects—lack of jurisdiction, procedural injustice, and substantive fallacies in reasoning. No serious international judicial institution would stake its judicial credibility on such a controversial award.

II. Systematic Critiques from the International Legal Academic Community

Beyond the "institutional silence" of international judicial bodies, critiques from the

international legal academic community have been equally systematic and profound.

Several former presidents of the ICJ and ITLOS, as well as renowned international law of the sea scholars, have offered systematic criticisms of the award regarding treaty interpretation, the regime of islands and rocks, and historic rights. Numerous authoritative international scholars have raised sharp criticisms from multiple dimensions, including textual interpretation, historical investigation, and logical consistency. Participating scholars noted that the award's actual impact on state practice in the international community has been very limited and that the academic community has generally taken a critical view of the award's legal reasoning.

Stephen Fietta, founder of Fietta LLP (United Kingdom), stated at the press conference that a decade of state practice, international judicial practice, and academic research demonstrates that the "South China Sea Arbitration Award" has had a very limited impact on the development of the international law of the sea. Participating experts remarked that the so-called award is a "negative precedent" that violates international law.

III. The Practical Effect of the Award: Never Truly "Implemented"

The observation of British scholar Fietta is also pivotal: "Following the 2016 Award, the maritime practice of states has not been rewritten by it. Many states continue to claim exclusive economic zones and continental shelves over certain maritime features, which is inconsistent with the Arbitral Tribunal's interpretation of Article 121(3) of UNCLOS concerning 'rocks'."

This statement reveals a core truth: a truly authoritative and persuasive award should be capable of influencing and shaping subsequent state practice and international judicial decisions. The South China Sea arbitration award, however, is precisely the opposite. States' maritime practices have continued as before, and international judicial institutions have deliberately avoided citing it. The award has "never truly 'landed'" at the level of international law of the sea; it "has been used more as a geopolitical tool by certain forces."

A decade later, the award has neither resolved the dispute nor promoted peace but has instead "obstructed the process of rule-of-law construction in the South China Sea region and become a countercurrent in the history of international law development." Facts demonstrate that this award has not, and cannot, bring peace and tranquility to the South China Sea.

IV. Hong Kong's Role: A Unique Platform for International Rule-of-Law Dialogue

It is precisely against this backdrop that the report "New Refutations of the South China Sea Arbitration Award" was released in Hong Kong, which carries profound judicial significance.

Hong Kong possesses a well-established independent common law system and serves as a natural hub for East-West rule-of-law dialogue. The report conference was jointly organized by the National Institute for South China Sea Studies, the Asian Academy of International Law, and the Huayang Ocean Research Centre, with legal support and advisory services provided by Fietta LLP (UK). By engaging in reasoned debate framed in the logic familiar to the Western legal community, the report is less susceptible to simplistic labeling by foreign media and enables cross-jurisdictional legal reasoning that is both well-grounded and persuasive.

As an internationally neutral judicial platform connecting the world, Hong Kong hosts consulates of various countries, multinational shipping enterprises, international think tanks, and media outlets year-round. Hosting the release event in Hong Kong facilitates the simultaneous transmission of complete factual information to a diverse global audience.

Participating scholars considered that the release of the "New Refutations of the South China Sea Arbitration Award" report seeks to enable states within and beyond the region to clearly recognize the nature and harmfulness of the award, while also demonstrating that China's "non-acceptance of any claims or actions based on the 'award'" is precisely an act of safeguarding its own rights and claims in the South China Sea, defending regional peace and stability, and upholding the international rule of law.

V. Conclusion

A decade later, it is clearly evident that the South China Sea arbitration award has been marginalized in international judicial practice. International judicial institutions have deliberately avoided it, the international legal academic community has systematically criticized it, and state maritime practice has remained unchanged. This award has never truly attained authority or validity under international law, but certain states have repeatedly exploited it as a tool for geopolitical purposes.

In this process, Hong Kong has played a unique and critical role. Leveraging its common law system and international connectivity, Hong Kong has provided an irreplaceable platform for disseminating fair legal reasoning. Looking ahead, continued cultivation of Hong Kong's rule-of-law and think-tank resources, along with the establishment of independent and equitable channels for international rule-of-law expression, will contribute to the gradual dismantling of hegemonic narratives in international law and promote the construction of a new, genuinely equal, and non-hegemonic international legal order for the oceans.

2026年7月13日，南海安全圓桌對話在香港召開，會議期間發布了《南海仲裁案裁決新批駁》報告。報告系統審視了所謂裁決在國際法層面所產生的實際效應。十年過去，南海仲裁案裁決在國際司法與仲裁機構中的遭遇，以及國際法學界的評價，已清晰地勾勒出這份裁決的真實地位——在國際法層面從未能夠真正落地。與此同時，香港作為國際法治對話的獨特平台，在傳播公正法理聲音、針對謬誤正視聽等方面發揮着不可替代的作用。

一、國際司法與仲裁機構的「沉默」：裁決的邊緣化

過去十年間，國際法院（ICJ）、國際海洋法法庭（ITLOS）等主要國際司法機構在審理涉及島嶼地位、歷史性權利和專屬經濟區權益的後續案件時，「普遍迴避或未採納『裁決』關於《聯合國海洋法公約》第121條及歷史性權利的核心論述」。

報告指出，十年來，「裁決」在國際社會各國實踐中的實際影響十分有限，國際司法與仲裁機構在後續判例中普遍有意迴避「裁決」。中國南海研究院創始院長、學術委員會主席吳士存存在發布會上表示：「10年來，這一非法『裁決』的內容既未得到其他國家實踐層面的響應，也未獲得國際司法機構的認可和遵循，更未得到國際學術界的認同。」

這種「沉默」絕非偶然。國際司法機構對先例的引用通常意味着對該先例法理價值的認可。而南海仲裁案裁決之所以被刻意迴避，正是因為國際法律界普遍認識到其在法理上的重大缺陷——管轄權不成立、程序不正義、實體論證謬誤。任何嚴肅的國際司法機構都不會將自己的司法信譽與這樣一份充滿爭議的裁決綁定。

二、國際法學界的系統性批評

除了國際司法機構的「制度性沉默」，國際法學界對裁決的批評同樣系統而深刻。

多位國際法院、國際海洋法法庭前任院長及國際知名海洋法學者對裁決在條約解釋、島礁制度和歷史性權利等方面提出了系統性批評。多位國際權威學者從文本解釋、歷史考察、邏輯一致性等多個層面對裁決提出尖銳批評。與會學者指出，裁決在國際社會各國實踐中的實際影響十分有限，學術界對裁決的法律推理普遍持批評態度。

英國菲耶塔律師事務所創始人斯蒂芬菲耶塔在發布會上表示，十年來的國家實踐、國際司法實踐和學術研究表明，「南海仲裁案裁決」對國際海洋法的發展影響十分有限。與會專家表示，所謂裁決是違反國際法的「壞典型」。

三、裁決的實踐效應：從未真正「落地」

菲耶塔的觀察也十分關鍵：「2016年裁決之後，各國海洋實踐並未被它改寫，很多國家仍在對部分地貌主張專屬經濟區和大陸架，與仲裁庭對《公約》第121條『岩礁』的解釋並不一致。」

這段話道出了一個核心事實：一份真正具有法律權威和說服力的裁決，應當能夠影響和塑造後續的國家實踐與國際司法裁判。然而南海仲裁案裁決恰恰相反。各國的海洋實踐照舊進行，國際司法機構刻意迴避引用。裁決在國際海洋法層面上「從未真正『落地』」，它「更多是被部分勢力當作地緣工具來用」。

十年過去，該裁決不僅未能解決爭議、促進和平，反而「阻礙南海區域國際法治建設進程，成為國際法發展史上的一股逆流」。事實表明，這一裁決沒有、也不可能給南海帶來和平與安寧。

四、香港的角色：國際法治對話的獨特平台

正是在這一背景下，《南海仲裁案裁決新批駁》報告選擇在香港發布，具有深遠的司法意義。

香港擁有完備獨立的普通法體系，是東西方法治對話的天然樞紐。報告會議由中國南海研究院、亞洲國際法律研究院和華陽海洋研究中心聯合主辦，英國菲耶塔律師事務所提供法律支撐和諮詢服務。以西方法律界熟悉的邏輯展開平等辯論，報告不易被外媒簡單標籤化，能夠實現有理有據的跨法域法理闡釋。

香港作為聯通世界的國際中立司法平台，各國駐港領館、跨國航運企業、國際智庫與傳媒常年匯聚於此。在香港舉辦發布活動，可同步向全球多元受眾傳遞完整事實。

與會學者認為，此次發布《南海仲裁案裁決新批駁》報告，力求讓域內外有關國家認清裁決的本質及其危害性，同時也表明中國「不接受任何基於『裁決』的主張和行動」恰恰是維護自身南海權利和主張、捍衛區域和平穩定、維護國際法治之舉。

五、結語

十年過去，南海仲裁案裁決在國際司法實踐中的邊緣化命運已清晰可見。國際司法機構刻意迴避、國際法學界系統批評、各國海洋實踐未被改寫。這份裁決從未真正獲得國際法層面的權威與效力，而始終是一張被部分國家用作地緣政治反覆翻炒的工具。

而香港在這一過程中扮演了獨特而關鍵的角色。憑藉普通法體系與聯通世界的優勢，香港為傳播公正法理聲音提供了不可替代的平台。展望未來，持續深耕香港的法治與智庫資源，搭建自主、公平的國際法治發聲渠道，將有助逐步消解國際法領域的霸權敘事，推動建構真正平等、摒棄強權干預的國際海洋法治新秩序。



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