

*Samia Zaman***UNDERSTANDING CHINA'S STANCE ON SOUTH CHINA SEA RULING OF THE HAGUE TRIBUNAL THROUGH THE LENS OF STRATEGIC CULTURE****Abstract**

Given the growing political and security implications of the South China Sea disputes, the Philippines initiated-case in the South China Sea against China garnered a lot of attention. Interestingly, China refused to embrace the Hague Tribunal's ruling that substantially backed the Philippines' claim in the waters of the South China Sea. The Hague Tribunal instituted the arbitral proceedings under the auspices of the United Nations Convention of the Law of the Sea (UNCLOS). There is a handful of cases when the Asian countries approached the maritime boundary dispute settlement mechanism of UNCLOS. Maritime boundary dispute settlement practices in Asia suggest that there prevails a sense of ambivalence and reluctance among the majority of Asian states to invoke the compulsory arbitration process of the UNCLOS legal regime. Nevertheless, there are substantial legal precedents for amicable resolution of maritime boundary disputes under the institutions of UNCLOS. Whereas *Bangladesh/Myanmar* case and *Bangladesh/India* case serve as glaring examples of peaceful maritime boundary dispute settlement under the purview of UNCLOS, China being a signatory to UNCLOS repudiated the Tribunal's ruling. This paper offers a theoretical prism to understand the Chinese act of denouncing the ruling which has furthered the ongoing tension in the contested waters of the South China Sea. Thus, the paper employs the theory of strategic culture to understand China's stance on the South China Sea ruling.

Keywords: Maritime boundary, dispute settlement, strategic culture, multilateralism, UNCLOS, civilisation-state complex

1. Introduction

“It was the rise of Athens and the fear that this instilled in Sparta that made war inevitable.”

(The History of the Peloponnesian War, Book by Thucydides)

Years ago, one of the pioneer realists of International Relations, Thucydides deciphered the central reason for the Peloponnesian War employing the tools of strategic culture. For him, the factors of threat perception, national psyche and political rhetoric lead countries to approach in a particular way. Similarly, one needs

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to decipher the backstory of the contested waters of the South China Sea. International politics is believed to be going through a transitional period. The concept of famous political scientist Graham Allison's Thucydides trap has been gaining ground. It is picturing China as responsible for challenging the present status quo and predominance of the United States while posing the question of the century whether China and the US can escape Thucydides trap or they are destined for war?² Given this cognitive context of an upcoming politico-military tension in Asia, it is not surprising that Asia has become the next political theatre of superpowers' conflict and the South China Sea disputes have grabbed eyeballs. Western authors like Robert D. Kaplan dubbed the South China Sea as the Chinese Caribbean which signifies that the way the US and according to Nicholas J. Spykman became a world power after taking full command over the Greater Caribbean, China can gain superiority and dominance over the Indian and Pacific Oceans both if it can control the South China Sea.³ It is in this context, *the Philippines v. China* case on the South China Sea has garnered a lot of attention when China repudiated the Hague Tribunal's ruling under the umbrella of United Nations Convention of the Law of the Sea (UNCLOS). Against the backdrop, the paper aims to understand China's stance on the South China Sea ruling of the Hague Tribunal through the lens of strategic culture.

Asia is the adobe of many strategic cultures which varies from country to country. Asia remains a unique region in which countries have been contributing to international law and regimes significantly by increasing their share of world power. Their approach towards different global regimes takes distinct Asian characteristics invoking the civilisational identity and stressing the domestic uniqueness. To understand how the dominant countries of the region are viewing and approaching the international rules and regimes, one needs to look beyond the traditional box of rationalist international relations theories and stress the significance of the existence of strategic culture in a national boundary. UNCLOS is such an important regime for a region like Asia that it is being viewed as the next platform of superpowers' vying for power. Asia's trait of being the haven of strategically important maritime chokepoints, as well as the "stopping power of waters" as propagated by John J. Mearsheimer have translated it as a critically important region of the world. The growing reign of China as the next superpower stirs the situation into a more volatile form. Therefore, unresolved disputes in the South China Sea and China's repudiation of the South China Sea arbitration have heightened the situation's turbulence.

The article explores maritime boundary dispute settlement practices in Asia and the role of strategic culture in influencing China's stance on disapproving the ruling.

² Graham Allison, *Destined for War: Can America and China Escape Thucydides's Trap?*, (Boston: Mariner Books, 2017).

³ Robert D. Kaplan, *Asia's Cauldron: The South China Sea and the End of a Stable Pacific*, (New York: Random House, 2014).

In doing so, the paper presents *the Philippines v. China case* to understand the process of maritime dispute settlement in the regional setting and the role of strategic culture in influencing the approach toward the ruling.

The article begins with a theoretical framework of strategic culture. The next section is a brief discussion of the conventional practices of the maritime dispute settlement mechanism in the Asian context. The following section presents the case of *the Philippines v. China* with the discussion of understanding China's stance on the ruling of the Hague Tribunal while employing the theory of strategic culture. Lastly, the final section draws a conclusion.

2. In Search of a Theory of Strategic Culture

International law tends to theorise the states as sovereign juristic persons. The way a human person's world view is shaped through the process of his/her learning from the surroundings sourced from history, norms, culture, values, classic texts, symbols; similarly, a state is assumed to view and behave towards a particular event differently depending on its local context and causes. A state's world view, which determines how it positions itself in the world and its approaches towards dealing with foreign relations is likely to be shaped by its history, political culture, geography, and others. There is rhetoric about the American way of war, the British way of warfare, the Russian way of war, the Chinese way of war, and so on. Does the way of war depend on individual culture? Bangladeshi political scientist Rashed Uz Zaman in a very interesting article attempted to understand the culture of war in the context of strategic culture. For him, the classic texts of strategic thinking of a society are inspired by the rules, and custom of that very society.⁴ The cultural aspects of strategic thinking are deeply embedded in society. One cannot simply transcend the culture.⁵ The US-initiated wars are largely bogged down in Asia due to its miscalculation of not including the difference in strategic culture in the grand strategy. The most recent one was in Afghanistan where it might have won the battles but lost the war. It is because of Afghanistan's geopolitical position, the foundation of the state, the idea of nationhood, the composition of the nation, its political culture, the equation among the ethnic groups, the mountainous geography characterised by passes, the hierarchy in the society, the socio-political arrangements are very different. If you do not know the enemy, it is difficult to win the war. As Sun Tzu put it, "if you know the enemy and know yourself, you need not fear the result of a hundred battles".⁶

The concept of strategic culture has been a subject of intense debate from the beginning of its theorising in the field of international relations though the practices

⁴ Rashed Uz Zaman, "Strategic Culture: A "Cultural" Understanding of War," *Comparative Strategy* 28, no. 1 (2009): 68-88.

⁵ Rashed Uz Zaman, "Strategic Culture: A "Cultural" Understanding of War."

⁶ Sun Tzu, *The Art of War*, translated by Lionel Giles, Beyond Books Hub, 1910.

have been prevalent since ancient times. Laurie M. Johnson Bagby in his article, "The Use and Abuse of Thucydides in International Relations" depicted and argued that although Thucydides is viewed as one of the pioneer realists in international relations, unlike realists he did not disregard the role of national character, personalities and speeches of the leaders, political rhetoric, different behavioral approaches of Athens and Sparta from his study.⁷ Thucydides demonstrated successfully how Athens and Sparta differed in approaches toward power and dominance.⁸ Actions of states are translations of the individuals' decisions. Thus, employment of the tools of strategic culture has been reigning in the field of international relations from ancient time. The concept is then transmitted into terms like national character, political culture, way of war, etc.

Going straight to theorising strategic culture, the concept emerged in the context of the US-Soviet Union nuclear rivalry during the Cold War. Jack Snyder developed a study on analyzing the Soviet Union's nuclear response in 1977.⁹ Snyder coined this term to show the difference in behavioral approaches of the US and the Soviet Union towards the nuclear strategy including key terms like nuclear deterrence, limited war, and arms control. He argued that Soviet norms for nuclear strategy might be different from those of American norms. The Soviet Union might not view these issues through American lenses due to its difference in strategic thinking. Its strategic culture can allow unleashing of full nuclear forces instead of the limited war. Thus, the approach gained ground in the context of the limitations of neo-realism which fails to explain the dissimilarities of states' behavior toward the identical event. Due to the school's excessive focus on the structure, they fail miserably to analyse states' different behaviour in the same situation. Each state does not need to act rationally just because the structure dictates it to be. Thus, the conception of strategic culture delved into four generations.

The first generation scholars include Jack Snyder, Ken Booth, and Colin S. Gray who maintained that due to the difference in local context sourced from geography, political culture, historical experience, economic influence, national idiosyncrasies, the aspiration of uniqueness, countries behave differently.¹⁰ They view the concept as the context of the particular behaviour of the state.¹¹

For the second generation of scholars, strategic culture is a mere instrument to achieve their embedded objectives. Strategic culture acts to serve the purpose of a declaratory strategy which is rhetoric in nature and does not work at the operation level. Bradley Klein who is an influential scholar of this generation was largely

⁷ Rashed Uz Zaman, "Strategic Culture: A "Cultural" Understanding of War."

⁸ Rashed Uz Zaman, "Strategic Culture: A "Cultural" Understanding of War?."

⁹ Jack L. Snyder, "The Soviet Strategic Culture: Implications for Limited Nuclear Operations," Rand Corporation, updated September, 1977, <https://www.rand.org/content/dam/rand/pubs/reports/2005/R2154.pdf>.

¹⁰ Anand V., "Revisiting the Discourse on Strategic Culture: An Assessment of the Conceptual Debates,"

Strategic Analysis 44, no. 3, (2020):193-207,<https://doi.org/10.1080/09700161.2020.1787684>.

¹¹ Anand V., "Revisiting the Discourse on Strategic Culture".

influenced by the works and ideas of Gramsci and applied the concept of hegemony in the field of strategic studies in combination with the works of Robert Cox.¹² For him, hegemony operates at two levels: domestic and international. The domestic political elite used the rhetoric to maintain their domination in the process of social struggle and establish internal hegemony which later they attempt to expand at the international level.¹³ This stream emerged as a critique of the ideas of the first generation.

The emergence of the third generation was facilitated by the rise of constructivism. The school of constructivism paved the way to view the actors and structure in a varied way. According to prominent third-generation scholars like Alastair Iain Johnston, strategic culture works at an ideational level.¹⁴ They view the strategic culture as one of the sources of the state's behavior. They consider the strategic culture as a cause, rather than a context for the state's behavioral approach. Alastair Iain Johnston's famous work on China's strategic culture in which he named China's strategic culture as cultural realism which constituted the existence of two strategic cultures. He also demonstrated that China employed the practices of *realpolitik* which he called the parabellum paradigm in the guise of Confucianism.¹⁵

The fourth-generation scholars like Alan Bloomfield argue that there can be multiple strategic cultures within a nation. This floated the concept of strategic sub-cultures which can better explain a state's decision-making process.¹⁶ Drawing on the rigorous debate on the discourse of strategic culture, the paper looks to decipher a working definition of strategic culture:

Whereas the earlier definition of strategic culture was reminiscent of Cold War's perspectives, the concept has experienced a huge proliferation in terms of its nature and scope. Some define the concept of strategic culture as the "ideational source of national predispositions"; some view it as "the prominent patterns of strategic behavior". Some highlight the domain of the concept and linked it to national security. The paper argues in line with the first generation of scholars as Colin S. Gray who wrote that the first generation of theory strikes back and strategy is universal but cultural.¹⁷ Thus, strategic culture should be considered as a context. As Ken Booth defined strategic culture as:

"The concept of strategic culture refers to a nation's traditions, values, attitudes, patterns of behavior, habits, symbols, achievements and particular ways of adapting

¹² Bradley S. Klein, "Hegemony and Strategic Culture: American Power Projection and Alliance Defence Politics," *Review of International Studies* 14, no. 2 (1988).

¹³ Bradley S. Klein, "Hegemony and Strategic Culture."

¹⁴ Anand V., "Revisiting the Discourse on Strategic Culture."

¹⁵ Alastair Iain Johnston, *Cultural Realism: Strategic Culture and Grand Strategy in Chinese History* (New Jersey: Princeton University Press, 1998).

¹⁶ Anand V., "Revisiting the Discourse on Strategic Culture."

¹⁷ Colin S. Gray, "Strategic Culture as Context: The First Generation of Theory Strikes Back," *Review of International Studies* 25, (1999).

to the environment and solving problems concerning the threat or use of force”.¹⁸ The paper reinforces the idea that strategic culture of a country stems from its traditions, political culture, history, national aspiration, dominant political and religious ideology, national identity. Strategic culture of a country offers a context to approach different issues and shapes how a country will behave both in the domestic and international setting.

It is worth mentioning here that while framing the theoretical framework, the paper has found several limitations of the theory of strategic culture. The theory of strategic culture came to fore in the face of conspicuous limitation of realism and neorealism in explaining how different states behave differently when they face an act of aggression.¹⁹ The idea was to avoid the danger of mirror-imaging. Since the theory focuses on domestic uniqueness, it has emerged as a state-centric theory. Besides, this theory is often criticised for its failure to account for any changes over time.²⁰ This reductionism often discards the structural realities such as changing world order, global power shift, regional politics, vested interest of superpowers in engaging in regional politics and others.

3. Maritime Boundary Dispute Settlement Practices in Asia

The practice of maritime boundary dispute settlement falls exclusively under the ambit of states. From the very beginning of human civilisation, humankind got involved with maritime affairs for their survival. Oceans are considered the cornucopia for resources for humankind. During ancient times, different civilisations were developed centering the waterways. From the ancient civilizations to present nation-states, the human polity has flourished with the proper utilization of maritime resources. States were very quick to grasp the reality of sea power. For states, oceans emerged as the critical enabler of both wealth generation and military supremacy.²¹ From ancient military strategists to modern international relations theorists, scholars have been reinforcing the politico-strategic supremacy of sea command for states. To Mahan, “the control of the sea is, and has been a great factor in the history of the world”. John J. Mearsheimer introduced the concept of “stopping power of water” in which he stated waterways as the “forbidding barrier” for the invading force.²² Thus, command over the sea has been a central objective of coastal states for politico-economic reasons. There comes the issue of maritime

¹⁸ Ken Booth, “The Concept of Strategic Culture Affirmed,” in *Strategic Power USA/USSR*, ed. C. G. Jacobsen (New York: St. Martin's Press, 1990).

¹⁹ Maula Hudaya and Dwi Aulia Putri, “Strategic Culture: The Answer of International Relations Study to Overcome Challenges in The Globalized World,” updated September, 2018. https://www.researchgate.net/publication/327777482_Strategic_Culture_The_Answer_of_Internasional_Relations_Study_to_Overcome_Challenges_in_The_Globalized_World

²⁰ Antulio J. Echevarria II, “Strategic Culture: More Problems than Prospects,” *Infinity Journal* 3, no. 2 (Spring 2013): 4-7, <https://www.militarystrategy.com/article/strategic-culture-more-problems-than-prospects/>

²¹ Colin S. Gray, “Sea Power: The Great Enabler,” *Naval War College Review* 47, no. 1 (1994): 18-27.

²² John J Mearsheimer, *The Tragedy of Great Power Politics*, (New York: W. W. Norton & Company, 2001).

boundary settlement between adjacent states. Although there are different opinions about using the proper term, this paper prefers maritime boundary instead of maritime delimitation. Some scholars reserve the term boundary exclusively for land issues. There are ideas that maritime delimitations are more appropriate than maritime boundaries as one cannot draw a demarcation borderline in the sea.²³

Law of the sea under the broad spectrum of international law deals with the technical issues and has come to the forefront with the growing interest of states to resolve their maritime boundary disputes. The proliferation of maritime litigation under the umbrella of the UNCLOS regime demonstrates and validates the argument. Asian states are no different. Asian states are showing their increasing interest in resolving maritime boundary disputes in line with the law of the sea under the UNCLOS system. Asia is a vast and diverse region. It is the cradle of different human civilisations. Diversity of cultures but a commonality in values, and norms is the beauty of Asia. It is being called that the ninetieth century was of Europe, the twentieth century was of America and the current century will be of Asia. The arrival of the “Asian century” can be fully materialised by utilising the full potential of the “maritime age”. To realize this dream, the states in Asia need to resolve their internal maritime conflict in terms of well-defined boundaries. Unlike the states of Europe and America, the practice of maritime delimitation is completely different in Asia. Before the 1958 Geneva Conventions, western states largely depend on bilateral agreements among them to have maritime delimitations. For example, in 1809, Sweden and Russia concluded the treaty of Fredriksham following a median-line system and established a well-founded maritime boundary between them.²⁴ Again, in 1846, the United States of America and the British government concluded the Treaty of Limits.²⁵ Finland and Norway opted for the 1924 Convention.²⁶

It is worth mentioning that since the majority of the Asian states are relatively young, bilateral agreements to resolve internal conflict on maritime boundary issues are not common although the region carries a long glorious legacy of codification and development of maritime practices. There is a popular conception prevailing in the domain of international law that the law of the sea is mainly dominated by and thrived with the contribution of western knowledge and ideas. The paper finds the opposite idea. Hence, it offers an alternative explanation that the traditional maritime practices in Asia have contributed largely to the foundation of international law of the sea although this aspect is largely overlooked by western scholars. The core idea of the maritime practices regime is the “freedom of the seas”. It is a customary rule long ago codified in Roman law, but it lost ground after the dissolution of the Roman Empire. The idea of freedom of the seas was propagated by the father of International Law, Hugo Grotius and there is an essential

²³ Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*, (Oxford: Hart Publishing, 2019).

²⁴ Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*.

²⁵ Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*.

²⁶ Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*.

background story that once again validates the famous critical theory of Robert W. Cox which argues that “theory is always for someone and some purpose”. Grotius wrote *Mare Liberum* during the period of ongoing commercial rivalry between western powers namely Spain, Portugal, Holland, and the British Empire over trade to monopolise the lucrative spices market in Southeast Asia.²⁷ *Mare Liberum* gave the moral ground for the Dutch People the right to navigation and trade over the eastern seas. The freedom of navigation and freedom of commerce among different states was a long-established tradition in the Indian Ocean. The states in Asia never wanted to control and monopolise the seas. It was firstly the idea of two Iberian powers, Spain and Portugal to divide the world between them as materialised in the treaty of Tordesillas in 1494 in which the Indian Ocean falls under the Portuguese power and the Pacific Ocean under the Spanish rule.²⁸ Asia is a maritime region embroiled with challenges stemming from these two Oceans. The Portuguese people were the first who started to seize strategic choke points like Malacca, Goa, and Hormuz to monopolise the trade route in the Indian Ocean. Occupying trade routes by blocking the sea lanes was not an Asian practice. The Asian people always practiced the concept of freedom of the seas, although this was not in a codified form. So, Alexandrowich rightly identified this aspect. He stated that when Hugo Grotius formulated the doctrine of *Mare Liberum* which was largely influenced by the maritime practice regime in the Indian Ocean, the idea of *Mare Clausum* was more relevant to the Europeans.²⁹ Thus, although Asian states are relatively young to go for the formal maritime litigation under the UNCLOS, they inherit the rich maritime practices. Despite these, the long colonial rule in a large part of Asia has contributed to creating political flashpoints in the region and building mistrust among adjacent states. The politico-strategic significance of the region is rapidly changing.

The development of the UNCLOS regime coupled with the end of the Cold War created new avenues of cooperation in the maritime domain for the majority of the Asian states. The end of the Cold War brought security tension among the south-east Asian countries.³⁰ There was a growing tension among the states which were previously under the US security umbrella that the political clout of the US will be reduced in the region.³¹ After the collapse of the Soviet Union, the US was believed to more focus on its domestic issues. Moreover, at the same time, the UNCLOS entered into force in 1994 after the agreement was concluded as a result of 20 years of negotiations among state parties. The newly formed constitution of the oceans brought some new issues to the fore whereas the states in Asia discovered that they have overlapping claims. The waters were getting more contested than ever.

²⁷ R. P. Anand, “Maritime Practice in South-East Asia until 1600 A. D. and the Modern Law of the Sea,” *The International and Comparative Law Quarterly* 30, no. 2 (1981): 440-454.

²⁸ R. P. Anand, “Maritime Practice in South-East Asia.”

²⁹ R. P. Anand, “Maritime Practice in South-East Asia.”

³⁰ Mark J. Valencia, “Asia, the Law of the Sea and International Relations,” *International Affairs* 73, no. 2 (1997).

³¹ R. P. Anand, “Maritime Practice in South-East Asia.”

Consequently, they began to pursue their maritime objectives in the form of national interest in the oceans. They began to identify their jurisdiction in the water as Exclusive Economic Zones (EEZ), continental shelf.³² Besides, a new kind of dynamism in the form of an arms race was being observed in many states of Asia.³³

There was a growing apprehension about the absence of an extra-regional security guarantor that prompted many states to engage in an arms-buying spree to bolster their military capability to protect the newly demarcated maritime zones. A striking feature of the region has been that many maritime areas are claimed by more than two parties, thus making the maritime boundary settlement more complex. The states in this region are showing increasing interest to take part in the legal process under UNCLOS. Different research studies demonstrate that in general, the majority of Asian states show reluctance in the participation process of international negotiating fora. There prevails a sense of ambivalence among the states about international law and institutions. Simon Chesterman analysed the reasons for their ambivalence.³⁴ Most Asian states could not participate in the negotiation of the international agreements to which they are parties. Hence, the sense of ownership is less among them.³⁵ They also differed in their views about establishing compulsory dispute resolution. China, India, and Indonesia were among the Asian states which were in opposition to compulsory arbitration.³⁶ Besides, after attaining statehood during the process of decolonisation, the states were expected to embrace different treaties, structures, and bodies of international law.³⁷ The Japanese experience in the Tokyo trial after the end of the 2nd world war, its demilitarisation process coupled with China's engagement with international law and institutions gave a clear message to the states in Asia that international law can be used as a political tool and an instrument to attain selective interests.³⁸

Despite the grim picture, Asia is handling the maritime issues with much political acumen. UNCLOS has been successful in terms of integrating the majority of the states of Asia. Surprisingly, its dispute settlement procedure has been invoked in a handful of cases. The paper finds four instances wherein two Asian states as applicant and respondent approached the UNCLOS dispute settlement mechanism among which three cases involved maritime boundary conflicts. The three cases which dealt with maritime boundary dispute settlement are *Bangladesh/Myanmar* case, *Bangladesh/India* case, and the *Philippines v. China* case. There are other cases where Asian states invoked the ICJ for settlement of disputes, but not under the auspices of the UNCLOS.

³² R. P. Anand, "Maritime Practice in South-East Asia."

³³ R. P. Anand, "Maritime Practice in South-East Asia."

³⁴ Simon Chesterman, "Asia's Ambivalence about International Law and Institutions: Past, Present and Futures," *The European Journal of International Law* 27, no. 4 (2017).

³⁵ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System: What Role Can It Play in Resolving Maritime Disputes in Asia?," *Asian Journal of International Law* 18, no 1 (2018): 91-115.

³⁶ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

³⁷ Simon Chesterman, "Asia's Ambivalence about International Law."

³⁸ Simon Chesterman, "Asia's Ambivalence about International Law."

The above-mentioned three cases are glaring examples of Asian maritime boundary dispute settlement practices. In *Bangladesh/Myanmar* case, the Bangladesh-Myanmar maritime boundary dispute had become an apple of discord between these two parties. The parties involved met in eight rounds of bilateral negotiation between 1974 and 1986.³⁹ The discovery of hydro-carbon gas reserves in the Bay of Bengal coupled with increasing domestic demand for natural resources led the two countries to again involve in six rounds of bilateral negotiations that held between 2008 and 2010.⁴⁰ However, the lack of any resolution led Bangladesh to resort to third-party arbitration under Annex VII of UNCLOS, whereas Myanmar opted for arbitration through International Tribunal for the Law of the Sea (ITLOS). Finally, both parties decided to settle their dispute through ITLOS, and ITLOS delivered its judgement in 2012. Both Bangladesh and Myanmar accepted the judgement claiming it as their victory.

Similarly, in *Bangladesh/India* case, India and Bangladesh had a long-pending maritime dispute concerning the delimitation of the maritime boundary. Both parties were engaged in a process of bilateral negotiations since 1970s which bore no fruit.⁴¹ In the context of increasing demand of natural resources for meeting the needs of the huge population, both the nations met in a series of inconclusive negotiations, the failure of which made Bangladesh initiate formal litigation in the UNCLOS forum. Bangladesh submitted the case before the Annex VII Arbitral Tribunal, which delivered the final award in 2014. The much-awaited verdict was widely accepted by both parties. It was seen as a great success for a rule-based maritime order which would set a positive precedent for the coming days that even when diplomatic attempts fail between nations, they can resort to UNCLOS dispute settlement mechanism. The aforementioned two cases resulted in an amicable resolution of maritime boundary settlement under the regime of UNCLOS, but the *Philippines v. China* case instituted under the UNCLOS dispute settlement could not resolve the maritime boundary disputes between the parties involved. Therefore, the paper chose the case of the *Philippines v. China* with a critical analysis of the strategic cultures of individual countries that interfere with the implementation of the rulings on the ground.

4. Understanding China's Stance on South China Sea Ruling of the Hague Tribunal through the Lens of Strategic Culture

The South China Sea is one of the biggest hot spots for maritime disputes with the potential of translating the geopolitical configuration of the region wherein the claims of the Philippines and China overlap. The sea's disputed area involves more than two claimants which makes the maritime region very volatile and vulnerable to

³⁹ Ravi A. Balaram, "Case Study: The Myanmar and Bangladesh Maritime Boundary Dispute in the Bay of Bengal and Its Implications for South China Sea Claims," *Journal of Current Southeast Asian Affairs* 31, no.3 (2012).

⁴⁰ Ravi A. Balaram, "Case Study: The Myanmar and Bangladesh Maritime Boundary."

⁴¹ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

escalated tension. In the absence of positive development in the area, the Philippines decided to submit its case under the UNCLOS dispute settlement mechanism. The Philippines initiated the case under Annex VII Arbitral Tribunal in 2013.⁴² For definite reasons on the part of China, it did not take part in the proceedings, although the absence of China could not prevent the Tribunal from continuing the proceedings and delivering the final verdict. China argued that the Philippines previously agreed to settle the dispute through negotiation and bilateralism. They need to employ the regional instrument which is in action namely, the Declaration on the Conduct of the Parties in the South China Sea.⁴³ Besides, the issue involves territorial sovereignty over islands in the South China Sea which is outside the jurisdiction of the Tribunal. Moreover, China has excluded the issue of maritime boundary delimitation by the virtue of article 298 from its acceptance of UNCLOS jurisdiction with a declaration in 2006.⁴⁴

The Tribunal investigated China's claims of its historic rights based on a nine-dash line upon the fifteen different submissions of the Philippines seven of which the Tribunal upheld. The Tribunal found that China's historic claims based on the nine-dash line are not in conformity with the principles enshrined in the convention and the claims lack any legal ground.⁴⁵ Another issue of dispute was clarifying the status of Spratly which is popularly known as the Spratly Islands. The Tribunal found that none of the features of Spratly can title islands, rather they should be called "rocks".⁴⁶ This has a serious implication that no littoral state of the South China Sea can claim a maritime zone that exceeds 12 nm from these maritime features.⁴⁷ The Tribunal also held that China is responsible for violating several obligations of the UNCLOS framework through different deleterious practices like fishing and construction activities. Most importantly, China breached the Philippines' sovereign right over its EEZ and continental shelf.⁴⁸ Naturally, China rejected the Tribunal's ruling. It slammed the award as a 'political farce'.⁴⁹ China's Foreign Ministry declared the award as 'null and void'.⁵⁰ Moreover, President Xi Jinping reiterated that China will not accept the Tribunal's decision.⁵¹ Whereas China insisted on bilateralism in the process of settling any kind of dispute in the South China Sea, the rendition of the award opened a new avenue for dispute

⁴² Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

⁴³ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

⁴⁴ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

⁴⁵ Hao Duy Phan, "International Courts and State Compliance: An Investigation of the Law of the Sea Cases," *Ocean Development and International Law* 50, no. 1 (2019).

⁴⁶ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

⁴⁷ Lan Ngoc Nguyen, "The UNCLOS Dispute Settlement System."

⁴⁸ Hao Duy Phan, "International Courts and State Compliance."

⁴⁹ Hannah Beech, "China Slams the South China Sea Decision as a 'Political Farce,'" *Time*, updated July 13, 2016, <https://time.com/4404084/reaction-south-china-sea-ruling/>

⁵⁰ Shannon Tiezzi, "China: Tribunal Ruling 'Null and Void', Will Not Affect South China Sea Claims," *The Diplomat*, updated July 12, 2016, <https://thediplomat.com/2016/07/china-tribunal-ruling-null-and-void-will-not-affect-south-china-sea-claims/>

⁵¹ Shannon Tiezzi, "China: Tribunal Ruling"

settlement for the regional states that their options are not limited but to yield to the agency of a powerful state.

The behaviour of China can be traced back to its strategic culture. As Ken Booth affirmed, “the strategic culture of a nation derives from its history, geography and political culture”⁵², China's strategic culture stems from its political culture (Chinese skepticism towards multilateralism, threat perceptions), history (century of national humiliation), national aspiration (the idea of Chinese natural leadership), dominant ideology (Confucianism), and national construction of identity (the Middle Kingdom complex, civilisation-state complex).

China has been long sceptical about the intention of international multilateral institutions. Until recently, China has embraced the idea of multilateralism. Multilateralism was regarded by China as a means to realise western dreams in the region. Multilateral institutions were regarded as the fora to instill western ideas and norms in the region. Although China has been actively participating in economic multilateral arrangements, its commitment to the security arrangements is infested with a trust deficit. For example, China is a member of the ASEAN Regional Forum (ARF). Despite its commitment to the forum, it did not want to institutionalise the preventive diplomacy and conflict resolution mechanism of ARF for maintaining regional security cooperation.⁵³ It maintained reservations on preventive diplomacy and conflict resolution mechanism, as for China, these can interfere in its domestic affairs.⁵⁴ China prefers bilateralism for settling any kind of security-related disputes. Security arrangements should not be employed in multilateralism for resolving regional security issues. This goes in contradiction with its handling of regional security orders. Thus, it is no wonder that China did not embrace the UNCLOS court ruling as its mechanism went in contradiction with the Chinese mode of tackling territorial disputes in the region. The grim picture can be best demonstrated by quoting Hongying Wang,

“For instance, in a July 1999 speech, China’s chief negotiator on the matter of its WTO membership told an audience of Chinese officials and researchers not to take international organizations that seriously.... When our country joins an international organization, our top priority remains our sovereignty and our national interest. . . . We will not do anything contradictory to our national interest”.⁵⁵

It is important to mention that China is a country that had never been without a powerful political adversary on its border. China has consolidated its foundation with continuous struggle with neighboring countries. Thus, threat perception among the Chinese people is very valid in terms of its history. Chinese view on the dispute

⁵² Ken Booth, “The Concept of Strategic Culture Affirmed ”

⁵³ Hongying Wang, “Multilateralism in Chinese Foreign Policy: The Limits of Socialization,” *Asian Survey* 40, no. 3 (2000): 475-491.

⁵⁴ Hongying Wang, “Multilateralism in Chinese Foreign Policy.”

⁵⁵ Hongying Wang, “Multilateralism in Chinese Foreign Policy.”

over the South China Sea is also shaped by this threat perception. Like any great power, it is a very conventional practice that China will not tolerate any peer competitors in South China Sea that it considers its backyard. China uses multilateral institutions to extend its share of power in international politics. Like any great power, it complies with the view of the institutions as long as it serves its interest. The moment it goes contrary, it will defy the institution. Thus, Graham Allison stated that the Chinese approach to the court ruling demonstrated a typical great power behaviour.⁵⁶ Great powers do not bow to the Tribunal of the law of the sea. These institutions serve as the platform for extending the soft power of the great powers. These institutions are mere instruments for the great powers to achieve their foreign policy objectives.

Besides, the narrative of a century of national humiliation is so entrenched in the psyche of the Chinese nation which has also a profound impact on their heightened threat perception and the desire for growing national capability.⁵⁷ They believe, the suffering of China from the First Opium War until the end of World War II continued due to its weakness as a country. They divide their political history into two divisions up to the Opium War and after the Opium War.⁵⁸ The Chinese people view that their noble country was subject to the aggression of western powers and Imperial Japan. They can no longer afford such humiliation. The South China Sea which China considers as its backyard and in which China is reclaiming lands through island building that is being called in the West as “great wall of sand”⁵⁹, can be worked for China as a protective shield and natural defense against any western or non-western entrenchment that can weaken the country and humiliate them.

There also prevails a perception that once China was a powerful, respected country in the world and it is destined to rejuvenate its role as a powerful yet peace-loving country. A Chinese tributary system existed until the end of the nineteenth century in which the different neighboring states in the region or beyond namely Japan, Vietnam, Malaysia, the Philippines, Thailand, France, the Netherlands, the United Kingdom paid tribute to the emperor in the form of economic payment in exchange of trade and security benefits.⁶⁰ The Chinese people believed that they are superior to other nations, thus dealing with China requires tribute from the vassals. The trend dominated until the Europeans introduced colonialism in East Asia. China

⁵⁶ Graham Allison, “Of Course China, Like All Great Powers, Will Ignore an International Legal Verdict,” *The Diplomat*, updated July 11, 2016, <https://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>

⁵⁷ William A. Callahan, “National Insecurities: Humiliation, Salvation, and Chinese Nationalism,” *Alternatives* 29, (2004).

⁵⁸ Merriden Varrall, “Chinese Worldviews and China’s Foreign Policy,” Lowy Institute, updated 2015, <https://www.files.ethz.ch/isn/194995/chinese-worldviews-chinas-foreign-policy.pdf>

⁵⁹ China’s increasing military presence and other related activities were referred to as the “great wall of sand” by a former commander of US Pacific Fleet, Admiral Harry Harris.

⁶⁰ Yuan-kang Wang, “Explaining the Tribute System: Power, Confucianism, and War in Medieval East Asia,” *Journal of East Asian Studies* 13, (2013).

with such powerful but a glorious past became victimised and faced hundred years of humiliation. Thus, China believes it is a natural leader in the region. In the South China Sea dispute, it continues to stress its historical right which does not go well with international law. Again, China views international law and regime as the products of western ideas which does not address the civilisation-state-society complex with Chinese characteristics. Besides, China's claim over large swaths of South China Sea has been a very conscious decision of the ruling regimes of China engaged in the process of constructing national identity based on rejuvenation of the country's past glory and grandeur.⁶¹

China's long tradition of following Confucianism has a far-reaching impact on shaping its strategic culture. In general view, Confucianism is dominated by the idea of pacifism.⁶² According to Yan Xuetong, "The rise of China will make the world more civilised...The core of Confucianism is benevolence"⁶³. But in contradiction with the popular belief that Confucianism rules out the option of war is not valid. Confucianism is opposed to unjust wars. Wars can be waged against those who go against benevolence and justice. And as the history of Confucianism and East Asia goes hand in hand, thanks to Confucianism for the hierarchical order of East Asia during from the 14th to the 19th century.⁶⁴ East Asian international system during the period is considered relatively peaceful due to the hierarchical order as China being the regional hegemon maintained the order by the tributary system.⁶⁵ Many believe that the tributary system had its root in Confucianism. According to Confucianism, "hierarchy is the natural order of things like heaven and earth".⁶⁶ In terms of maintaining foreign relations, China was placed at the center due to the superiority of its civilisation. The leaders of tributary states were known as kings and the term emperor was reserved for the Chinese emperor.⁶⁷ China's relations with the tributary states were unequal but benign and marked by an absence of warfare due to the tributary states' submission to the emperor, thus maintaining the Confucian tradition of maintaining peace.

Glorifying the Chinese Civilisation's past and the Middle Kingdom mentality have widely been embraced by the political rulers of China which in turn invoke Chinese nationalism as well as serve the interest of the ruling regime to cement the nation. It also has been instrumental in justifying the ruling regime. As Sun Yat-sen once famously put it, "while materially the Orient is far-behind the Occident,

⁶¹"A Sea at the Heart of Chinese National Interest,," Global Challenge, updated 2017, <https://globalchallenges.ch/issue/1/a-sea-at-the-heart-of-chinese-national-interest/>

⁶² Feng Zhang, "Confucian Foreign Policy Traditions in Chinese History,," *The Chinese Journal of International Politics*, (2015),doi: 10.1093/cjip/pov004.

⁶³ Yan Xuetong, "The Rise of China in Chinese Eyes,," *Journal of Contemporary China* 10, no 26 (2001).

⁶⁴ Yuan-kang Wang, "Explaining the Tribute System"

⁶⁵ Yuan-kang Wang, "Explaining the Tribute System"

⁶⁶ Yuan-kang Wang, "Explaining the Tribute System"

⁶⁷ Yuan-kang Wang, "Explaining the Tribute System"

morally the Orient is superior to the Occident".⁶⁸ The present Chinese Premier Xi Jinping also likes to boast about the civilisation identity of China. Thus, China highlights its history as one of the ancient civilisations of the world. The idea of the Middle Kingdom dominates the prevailing culture of China.⁶⁹ The Middle Kingdom mentality is pervasive in present China. The notion of the middle kingdom symbolises China's civilisation-state complex. As Lucian W. Pye famously stated, China is a civilisation pretending to be a state.⁷⁰ The Middle Kingdom mentality implies the civilisational superiority of the Chinese people who anciently positioned themselves at the middle of the world. As the idea of the nation-state stemmed from the western world and was imported into Asia, it is no wonder that states in the region have enjoyed the liberty to globalise the concept. Asians were not nation-centric people, they championed the concept of civilisations and society with their diverse traditions. Thus, the behavior of a model Westphalia nation-state should not be expected from an age-old rich traditional country like China. With the passage of time and the pace of the modern world, China has molded itself to the demands of the present world order, the roots supposedly remain the same which dictates its foreign relations and behavior. Given the context, it is not surprising that China defies multilateralism and prefers bilateral negotiations in resolving regional disputes.

5. Concluding Remarks

During the much-hyped maritime age, the Asian countries are vying to delimit their maritime boundary which gives rise to ongoing maritime disputes. The existence of multiple claimants of the particular maritime area makes the situation more complex. Besides, the maritime boundary dispute settlement practices of Asia demonstrate a sharp contrast to the practices of the western world. Although the countries in the region are resorting to the UNCLOS dispute resolution methods, the practices are far from being institutionalised.

The paper hereby prefers the theory of first-generation scholars of strategic culture which views strategic culture as the context in which the country designs and operates the actions in terms of interacting with the external world. The sources of strategic culture include history, political culture, geopolitics, ancient treatises of statecraft, national aspiration, and leadership.

China's strategic culture combines the idea of Confucianism with its political culture (Chinese skepticism towards multilateralism, threat perceptions), history (century of national humiliation), national aspiration (the idea of Chinese natural

⁶⁸ Amitav Acharya, "The Myth of the "Civilization State": Rising Powers and the Cultural Challenge to World Order," *Ethics & International Affairs* 34, no. 2 (2020): 139 – 156.

⁶⁹ Mohamad Rosyidin, "China's Strategic Culture and the Challenge of Security Management in the South China Sea Dispute," *East Asia* 30, no. 2 (2013).

⁷⁰ Lucian W. Pye, "International Relations in Asia: Culture, Nation and State," The Sigur Center for Asian Studies, updated 1998. <https://www2.gwu.edu/~sigur/assets/docs/scap/SCAP1-Pye.pdf>

leadership and national construction of identity (the Middle Kingdom complex, civilisation-state complex) and creates a context in which China views its position as unique in Asia and the world and approach the other disputants toward bilateral negotiations. Viewing its rights in South China as undisputed and historical, and treating the multilateral institutions as a means to increase its share of world power, nothing can better explain the approach of China on the South China Sea ruling as the theory of strategic culture.