

**SOUTH CHINA SEA DISPUTE: ANALYZING CHINA'S
NON-COMPLIANCE AGAINST THE INTERNATIONAL
LAW THROUGH THE PERSPECTIVES OF
STRUCTURAL REALISM AND SOCIAL
CONSTRUCTIVISM**

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Abstract

During the past decade, China has been striving for a more prominent status in the international community. In doing so, China undertook several measures that indicate its willingness to become a supportive collaborator in the international politics, including taking a part in the Six Party Talks regarding to the North Korean nuclear issue as well as striving for the Market Economy Status (MES). However, the recent development of the South China Sea dispute seems to show a contrasting circumstance. As one of the claimant states, China showed a fairly aggressive gesture in expanding and exploiting the disputed territory. Recently, China even declared a refusal against the verdict from the international law which stated that China had no legal base in claiming the territory. This situation sparked a puzzle as the non-compliance against the international law seemed to be violating China's ongoing efforts to win the broader acceptance in the international community. Thus, using two different perspectives, namely structural realism and social constructivism, this study analyses puzzle and finds the contextual relevance behind China's non-compliance policy. The overall findings show that the rational interest of pursuing the hegemony in the disputed region becomes the primary goal that China is pursuing beyond the interest of adhering to the international law.

Keywords: China, non-compliance, international law, South China Sea

Introduction

During the past decade, China has been trying to establish its status as an integral member of international community. It constantly showed the initiatives to aim for a more prominent role and collaborate actively with the other parties in the global environment. We can clearly see the evidences by taking a brief look of some of its maneuvers. With regards to the economy, China's pursuit of market economy status (MES) indicates that it is ready to participate and become a cooperative trading partner under the umbrella of global free trade. In terms of international politics, China has effectively contributed to the Six Party Talks on North Korea's issue as well as UN resolutions 2007 regarding to the sanctions against Iran (d'Hooghe, 2007). In the field of cultural diplomacy, China intensively promotes its culture by opening hundreds of confucious institutes worldwide, and offering a lot of scholarships for international students to study in China (Gossett, 2013). As an addition, China showed no hesitation in spending great amount of resources to host some of the most renowned international events, such as Olympic 2008 and the International Army Games 2017.

Nevertheless, China's recent behaviors concerning South China Sea dispute has sparked contentious reactions. South China Sea issue itself is a prolonged territorial dispute involving four South East Asian countries (Malaysia, Vietnam, Brunei Darussalam, Philippine), China, and Taiwan. The disputed

territories itself comprise the sea areas as well as two major islands, Spratly and Paracel. During the last couple of years, China as one of the claimant states constantly showed fairly aggressive gesture by building artificial Islands, and performing the reclamation throughout the disputed territory (Reuters, 2015). Given the uncertainty of South China Sea's legal ownership status, this acts inevitably led to massive criticisms, not only from the other claimant states, but also from the international community.

However, the most stressing phase of the dispute is actually marked by the act of non-compliance committed by China toward the International Law. This particular issue is started by the decision of Philippine to bring up the case to the Permanent Court of Arbitration (PCA). After some hearings and meetings, PCA eventually issued a final verdict stating that there is no ground for China to claim or own the South China Sea territories (Hunt, 2016). Nonetheless, China responded the verdict in an unfriendly manner. It argued that the Tribunal ruling is defective and not legitimate. China even declared that it would never acknowledge all the decisions or verdicts made by the PCA (The Guardian, 2016). After rejecting the tribunal decision, China continued to follow up its artificial Island project in Spratly and Paracel. Furthermore, it even started to establish military facilities within its new islands). As a consequence, the international pressures came from so many directions. Among the countries that reacted is US, who firmly criticized China due to its unwillingness to cooperate and comply with the international law.

In brief, China's approaches in South China Sea dispute to some extent constitute a paradox. In this case, they can possibly undermine China's vision to become a trustworthy side in global environment and cause all the above-mentioned efforts it has done become fruitless. Thus, one might wonder about the actual motives behind China's non-compliance. The primary question then would be; *amidst the ongoing efforts to engage further in international community, why does China refuse to comply with the decision of international law with regards to South China Sea dispute?*

This study would seek to answer the research question by relying on two explanatory frameworks. First, the perspective of offensive realism by Mearsheimer is used to uncover the material incentives behind China's acts in South China Sea dispute and their association with the goals of hegemony, security and survival. Second, constructivist perspective is applied to unveil the ideational motive behind the non-compliance policy with regards to the perception of China's decision makers against the international law. The following section provides the further elaboration of the two perspectives as a theoretical framework. Afterward, the next section offers an extensive empirical analysis in the light of theories. And finally, the conclusion would be formulated on the basis of the analysis to give the clarity and answers for the research problems.

Theories

Offensive Realism

As a part of grand structural or neo-realism strand, this theory stands on the ontological basis that the world is constituted by the anarchical structure (no overarching authority), and the structure of anarchy itself poses great impacts toward the behavior of the units in the system (Waltz, 2004, p.2). Since there is no leader or overarching power, the unit is responsible for its own self with regards to the survival. This leads to the situation in which the state would always try to maximize its security, compete with each other, and try to earn the power for the sake of survival (Mearsheimer, 2013).

The power itself refers to the material capacity that particular unit possesses (Mearsheimer, 2013, p. 72). In this case, the states would always try to aim for obtaining enough material resources to ascertain their security. However, in comparison with Waltz's defensive realism, offensive realism brought by Mearsheimer does not see any threshold in which the state would satisfy with the amount of power it has earned. In other words, there is no limit for offensive realism since the states are inclined to seek for as much as power possible, and maximize all the opportunities to do so (Mearsheimer, 2001). This would be the case since the only way to guarantee the survival is by achieving the state of hegemony (Mearsheimer, 2013, p. 75).

One might then argue that merely preserving the balance of power and status quo is definitely not an option. In this case,

the state should instead seek to dominate the others and become the most prominent actor in the region. This inevitably leads to certain aggressive measures by the states in their backyard. Hence, the pursuit of security in offensive realism perspective often includes the act of territorial expansion in which the practice of taking over some resources from the other units always takes place (Snyder, 2002, p. 156).

If we refer to these propositions, one might easily question the legitimacy of international law. In an anarchical world, there is no towering authority that can actually control the behavior of the state. The presence of the international law and its apparatus is no more than advisory institutions which do not have far-fetching influence toward the units. Thus, it is hardly surprising that the unit does not follow the rules constituted by the international law since the only driving forces for the states are basically the material interests and the importance of survival.

Furthermore, to put the offensive realism perspective into the context of the case, one might argue that the occupation committed by China in South China Sea is necessary to gain material benefits over the others and establish the position as the regional hegemon. These interests exceed all other incentives, and therefore, the principles that seem contradictory would not be embraced. With regards to the non-compliances, we can safely assume that since the international law impedes China's venture for survival, its principles should be disregarded. Out of these propositions, the first hypothesis that can be evoked is:

H1: China refuses to comply with the international law because there is a bigger interest to become a regional hegemon.

Social Constructivism

Unlike structural realism or the other rational theories, social constructivism works in the realm of ideas, and concerns less with the material factors. It focuses more on the human consciousness, and the way it operates within the context of international politics (Jackson & Sorensen, 2006). According to the constructivist perspective, the reality of international relations is not a material object 'outside there', but rather it is also a part of the inter-subjective realm of human affairs (Jackson & Sorensen, 2006). Since the reality itself is subjective, there is no point of focusing on the objective knowledge concerning the existence of anarchical structure in global system. Besides, the idea that this structure leads to the rational behaviors of the units is also irrelevant. Instead, we should switch our concern to the role of 'ideas and beliefs', and how they constitute the knowledge of the units, which subsequently establish their behavior in international environment (Jackson & Sorensen, 2006, p. 162).

Furthermore, constructivism stands on the assumption that the realm of international affairs is basically a societal realm, not a physical or material realm. Therefore, it is our understanding regarding to that realm that matters, and they are all derived from the reasoning process in human mind (Jackson & Sorensen, 2006, p.164). Within the practical context of human interactions, the

actors would assess the action of the others or make the judgment to the objects they contacted with and afterwards, constitute 'the meaning to them' (Jackson & Sorensen, 2006, p.164). This process results in a 'subjective understanding' of the object which is also a part of the social knowledge as a whole (Weber, 1977, p. 15). This knowledge or idea eventually becomes the ground in which the actual treatment toward the object is carried out. In brief, the behavior of units toward particular object is strongly influenced by the meanings of the objects for these units and the meaning itself is produced through inter-subjective mechanism.

These propositions lead us to consider the importance of the decision maker's perspective in a whole constellation of international politics. The state may acts on behalf of perception to particular issues or the meanings it constitutes to certain objects it interacted with. Thus, the ideas and knowledge of particular agent (in this case, state's decision makers) do matter, and in order to analyze their impacts to its actual behavior, it is crucial to delve into the actor's subjective realm.

With regards to the research topic, the unit or in this case China's decision makers might have framed the international law as an illegitimate instrument. The presence this subjective perception (that international law is not legitimate) and how it was constructed are the primary driving force behind the non-compliance policy. Hence, the second hypothesis would be:

H2: China refuses to comply with international law because of the perception that the decision of international law is not legitimate.

Case Selection and Method

The reason behind the selection of China's non-compliance case in the South China Sea dispute is spurred collectively by the 'deviant' and 'typical' motives. Deviant simply means that there is a discrepancy between the common expectation concerning some events or occurrences in a particular case and the actual reality (Gerring 2008, p. 655). This further renders a puzzle worth observing. In this case, the puzzle lies on the ambiguity in the China's non-compliance against the international law. China's act seemed to be going against people's expectation considering how intensive China's current initiatives to engage in the international community. Moreover, another consideration behind the selection of the case is the 'typical' phenomena. Typical means that the case shows similar characteristics with the explanations from the previous studies or theories (Gerring, 2008). By seeing the case through the lenses of the two theoretical frameworks, the non-compliance of China seemed to suit the expectations brought by the offensive realism and social constructivism even though the non-compliance policy looked puzzling at a first glance. Hence, the goal of examining this typicality is also what motivates this paper.

With regards to the methods, the qualitative case study is performed to examine the causal mechanism of both hypotheses. This entails the careful empirical observation of China's non-

compliance case. The empirical framework itself is built by the use of secondary data sources. This includes the official speeches or statements made by China’s elites, previous articles or journals and media coverage from newspapers or online news websites (eg. Xinhua, The Guardian, etc.).

Table 1: Analytical Foundation

Hypotheses	Independent Variable	Dependent Variable	Observatory tools
H1 (offensive realism)	Interest becoming hegemon	of Non-compliance	-Occupation and exploitation policies in the South China Sea -Material resources within South China Sea territories

H2 constructivism)	(social Perception	Non- compliance	Statements, arguments, and ideas from the Chinese Government
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Since there are two different hypotheses, the empirical analysis is also divided into two sections with two different observatory tools. The first hypothesis with regards to the regional hegemony interest would be tested by relying on the media coverage concerning the China's occupation policies in South China Sea as well as the comprehensive information of the material resources within the disputed territories. The second hypothesis is tested by uncovering the subjective idea of the Chinese government. This is done by analyzing the official statement made by the Chinese government in the Chinese national media or the government's websites. Thus, the perception of China as well as the reasoning behind the non-compliance policies can be captured.

Analyzing China's non-compliance conduct

China's expansion in South China Sea

H1: *China refuses to comply with the international law because there is a bigger interest to become a regional hegemon*

Out of all the claimant states, China has been the most aggressive party in making an exploration in the South China Sea. During the past couple of years, China has constantly built many facilities and infrastructures in the territories across the nine-dash line, areas claimed by China as its own based on the historical map. One of the most well-known projects in the South China Sea is definitely the reclamation of the areas around Spratly and Paracel. China performed this reclamation and created many artificial islands as a base for its future facilities. Moreover, China has also started the project of oil exploration. Through its oil company National Offshore Oil Cooperation (CNOOC), China has made a move to gain material benefit as well as maximize the oil resources from the water areas around nine-dash line (Reuters, 2017). In terms of defense, China began to strengthen its position in the disputed areas by actively building military infrastructures (CNBC, 2017). This ambition is clearly reflected by the establishment of military bases in China's artificial islands, including the facilities for the air and naval forces (DW, 2017). Not to mention that these territories are already projected as an important asset for China's future nuclear center (Falvey, 2017).

Judging from China's expansionist nature in the South China Sea, it is safe to say that the case seemed to suit the

expectation brought by the offensive realism perspective. In this case, the measures taken by China made us believe that it actually aimed to become a dominant force in the region and sought to exploit as much as material benefits as possible to achieve this goal. This condition does make more sense considering the actual potencies of natural resources contained in the disputed territories. South China Sea is known as a vessel for so many sources of energy. It contains a great amount of oil and gas. There are approximately more than 10 gas and oil basins within South China Sea areas or equals to around 48 % of the overall shelves of South China Sea (Valencia, 1985, p. 159). Another report estimates that there are around 7 billion barrels of oils in the disputed region with the actual potency can reach up to 200 billion of barrels (Vagg, 2012a). The same report also indicates that there are even around 900 trillion cubic feet overall gas potencies (Vagg, 2012a). Apart from oil and gas, South China Sea is also known to possess a considerable amount of marine resources. These include food materials, such as fisheries and the other metal resources, such as iron and petroleum (China Economic Weekly, 2012).

Moreover, while the aggressive characteristic of China's policies in the South China Sea is clearly seen, it is also evident that China aimed to do whatever it takes to protect its new backyard. This is proven by its willingness to get involved in a heat with the other claimant states, such as Philippine and Vietnam to ascertain the continuity of the current projects in the nine dash line. Several clashes with the other great power, United States (US)

further prove that China would stand against anyone to defend its strategic position in the South China Sea. China's disobedience against the international law and pressures from the other prominent global actors evidently reflects its exceptional ambition to become a single ruler of the disputed region which is proven to be rich in material resources.

China's Perception against the South China Sea Dispute

H2: China refuses to comply with international law because of the perception that the decision of international law is not legitimate.

In this section, it is worth to briefly examine the subjective reasoning process that leads the China's decision makers to the non-compliance policy. In July 2016, China's Foreign Minister Wang Yi declared the rejection against the PCA's decision, saying that the verdict was 'unjust and unlawful' (Xinhua, 2016a). Moreover, he argued that the decision actually contains certain political interests instead of the actual law procedures (Xinhua, 2016a). President Xi Jinping further disregarded the legal binding of the verdict by saying that the ruling would not affect the fulfillment of China's 'territorial sovereignty and marine rights' (The Guardian, 2016).

A number of specific points behind the objection are covered in the official statement of the Ministry of Foreign Affairs. In this statement, China affirmed that the Philippine's decision to bring

the case to the PCA is influenced by the bad intention of undermining 'China's territorial sovereignty, marine rights and interests in South China Sea' and not by the idea of solving the dispute (Ministry of Foreign Affairs, 2016a). This is because the Philippine's initiative itself is considered as the violation of international law since the dispute is not actually the subject to PCA and UNCLOS (Ministry of Foreign Affairs, 2016a). In this case, Philippine was considered responsible for arbitrarily framing the dispute as an UNCLOS-relevant issue (Ministry of Foreign Affairs, 2016a). According this ground, it is legally unjust to refer to the PCA's decision and therefore, the act of non-compliance against this verdict cannot be seen as the act against international law. China itself never intended to oppose the international law as it firmly stated by the end of the official statements that it would continue to respect the international law, and comply with the principles of 'territorial integrity, sovereignty and peaceful dispute settlement' (Ministry of Foreign Affairs, 2016a).

In brief, the constitution of perception that PCA's verdict is unlawful is precipitated by two main reasons. First, the PCA's tribunal verdict actually represents political purpose of Philippine. Second, as frequently stated, the verdict contests China's 'territorial sovereignty, marine right and interests in South China Sea'. From these explanations, one might argue that idea and the reasoning process might have taken a part in establishing the non-compliance policy. However, there is one problematic link that undermines this proposition. In this case, there is an exact paradox between the statement of standing on the territorial

sovereignty and the statement of obeying the international law. China insisted that it never violated international law in South China Sea dispute, but instead, it justly fought for its sovereignty.

Nonetheless, the common ground in which China's claim of South China Sea stood on remains unclear until now. China claimed some parts of the South China Sea on the historical ground that they were major areas for China's past fishing activities as referred in China's old nine dash line map (Hayton, 2016). However, there were hardly any rules or international conventions that acknowledge or support this. PCA's verdict itself clearly stated that this ground cannot be utilized by China to make the claim. Since the absence of international recognition equates with the absence of sovereignty, one can safely assume that China's pursuit of the territories is merely driven by its subjective goal, not the sovereignty goal. China might have accused Philippine for trying to seize some territories that China itself has no legal base to claim. This inconsistency makes us question; where does China's perception with regards to the sovereignty and compliance to the international law come from? It might have not naturally constructed but instead, intentionally be framed to justify the pursuit of the rational interests.

Conclusion

From the analysis, one might argue that China's non-compliance against the international law seemed to be precipitated mostly by its rational interest. It can be seen by all the measures taken in the disputed territories that China definitely has a genuine ambition to expand and become a dominant side in the region. Besides, the on-going exploration in the South China Sea further proves that the pursuit of material incentives is among China's plans to achieve the hegemony. On the other hand, the influence of the perception seemed to be minimal because there is problematic gap in the way China's presented its stances against the international law. The inconsistency and discrepancy in China's statements signal that the ideas might not be socially constructed, but rather becomes a tool to justify China's actions in the South China Sea. Thus, it is safe to say that in the case of China's non-compliance, offensive realism rules over social constructivism, or in other words, the first hypothesis is confirmed, while the second one is refuted. This means that the importance of securing the survival through a pursuit of a regional hegemonic position exceeds the urgency of complying with the principles of the international law. In a broader sense, this case also tells us that China is basically playing two contrasting roles in the international politics. While striving for more acceptance as an importance member of the international community, China is still a rational actor that prioritizes its own interest and survival above all means.

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