

NOTE & COMMENT

A Chinese Perspective of Treaty Interpretation on the Status of Maritime Features: In Response to the South China Sea Arbitration Award

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The status of maritime features is one of the core issues in the South China Sea Arbitration. The essence of this issue is territorial sovereignty and maritime delimitation disputes between China and the Philippines. Based on the interception of certain facts and evidence, the Tribunal did not interpret the China's diplomatic position as it wanted, and it had an intensely subjective interpretation of Article 121(3) of the United Nations Convention on the Law of the Sea of 1982. Combined with the Chinese government's positions before and after the publicity surrounding the Award, this paper, which takes the logical approaches of the Award as the main line, focuses on chapter 6 of the Award, raising questions about disputes on the status of maritime features, analyzing the treaty interpretations related to the status of maritime features, and clarifying the defections.

Keywords

Arbitral Tribunal, South China Sea, Statue, Maritime Features, Treaty Interpretation, *In Dubio Mitius*

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1. Introduction

On January 22, 2013, the Philippines unilaterally initiated an arbitration against China on the South China Sea Disputes (hereinafter South China Sea Arbitration) in accordance with Chapter 15 and Annex VII of the United Nations Convention on the Law of the Sea of 1982 (“UNCLOS”). On July 12, 2016, the Arbitral Tribunal issued its final award (hereinafter the Award),¹ with its Part VI involving the Status of Features in South China Sea.

In the Award, the Tribunal referred to the maritime features that met the definition of an island laid down in Article 121(1) of the UNCLOS as “high-tide features.”² The Tribunal used the term ‘rocks’ for high-tide features that “cannot sustain human habitation or economic life of their own” pursuant to Article 121(3), but these high-tide features are fully entitled islands under Article 121(1). According to the Award, *Huangyan Dao* (Scarborough Shoal), *Chigua Jiao* (Johnson Reef), *Huayang Jiao* (Cuarteron Reef), *Ximenjiao* (Mckennan Reef) and *Yongshu Jiao* (Fiery Cross Reef) are rocks which do not generate an Exclusive Economic Zone (“EEZ”) or continental shelf. Low-tide elevations include *Meiji Jiao* (Mischief Reef), *Renai Jiao* (Second Thomas Shoal), *Zhubi Jiao* (Subi Reef), and *Dongmenjiao* (Hughes Reef), the *Nanxun Jiao* (Gaven Reef) were separated into two parts: the southern part is a low-tide elevation, and the northern part is a rock. None of the maritime features in *Nansha Qundao* (Spratly Islands or Nansha Islands) generates maritime entitlement including EEZ or continental shelf as a whole.³

When the Award was issued, the Chinese government released the “Statement on China’s Territorial Sovereignty and Maritime Rights and Interests in South China Sea” to enumerate its territorial sovereignty and maritime rights and interests based on the practice of the Chinese people and government over the long course of history. The Statement, *inter alia*, provides:

- (i) China has sovereignty over Nanhai Zhudao, consisting of *Dongsha Qundao*, *Xisha Qundao*, *Zhongsha Qundao* and *Nansha Qundao*; (ii) China has internal waters,

¹ In the Matter of the South China Sea Arbitration before An Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention of the Law of the Sea Between the Republic of the Philippines and the People’s Republic of China Case No. 2013-19, at 472-4, ¶ 1203 (Perm. Ct. Arb. July 12, 2016) (hereinafter South China Sea Arbitration Award), available at <http://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf> (last visited on Mar. 23, 2018).

² South China Sea Arbitration Award, at 119, ¶ 280.

³ *Id.* at 471-4, ¶ 1203.