

ARCTIC ECHOES: POTENTIAL REPERCUSSIONS OF RUSSIA'S RESPONSE TO THE PHILIPPINES V. CHINA

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China's dismissal of the award by the Permanent Court of Arbitration (PCA) in the Philippines vs. China presents a singular challenge to the international maritime regime centered on the United Nations Convention of the Law of the Sea (UNCLOS). While the regional consequences of China's rejection will be profound, there is great potential for the effects of China's stance to set a precedent for more nations to shirk their obligations as parties to UNCLOS. Although a handful of smaller countries have signaled their support for China, likely as a quid pro quo for Chinese aid, of particular note has been Russia's reaction to China's rejection of the ruling. Russian officials have signaled support for the Chinese based on statements that ubiquitously insist that Russia is not choosing sides and that the dispute should be settled by bilateral negotiations. However, such statements signal support for China, as anything other than support for the PCA's ruling undermines the treaty. Russia's backing of China in its dispute illustrates the importance of the Sino-Russian alliance holds in Russian foreign policy and could set a precedent that allows Russia to avoid its obligations under UNCLOS.

As anticipated, the Permanent Court of Arbitration in The Hague (PCA) decided in favor of the Philippines in its territorial dispute with China. Chinese officials were predictably incensed over the ruling with Foreign Minister Wang Yi heatedly accusing the proceedings of being “completely a political farce staged under legal pretext”¹ and the Chinese Foreign Ministry declaring “that the award is null and void and has no binding force. China

1 “Chinese Foreign Minister Says South China Sea Arbitration a Political Farce,” *Xinhua*, July 12, 2016, accessed December 19 2016, http://news.xinhuanet.com/english/2016-07/13/c_135508275.htm.

neither accepts nor recognizes it.”² China’s stance has been backed by dozens of nations but of particular significance has been Russia’s response to the award. Russian officials have not always resoundingly endorsed Beijing’s stance in the South China Sea but instead have implicitly supported China by arguing against outside interference in the dispute so that the involved parties can settle it through bilateral negotiations. In contrast, the United States,³ Canada,⁴ Australia,⁵ New Zealand,⁶ India,⁷ Vietnam,⁸ and Japan,⁹ among others,¹⁰ have issued statements noting clearly that China is legally bound to heed the decision of the Arbitral Tribunal. Thus, Russia’s muted support is meaningful because it not only reveals potential Russian reservations about China’s actions, but also demonstrates Russia’s willingness to overcome these reservations and fully commit to its alliance with China, which has become a centerpiece of Russian foreign policy during Vladimir Putin’s tenure. The Russian response is also of particular relevance to the Arctic region because Russia is itself currently a party to maritime boundary arbitration proceedings under the UN Commission on the Limits of

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- 2 “Chinese Leaders Reject S. China Sea Arbitration Award,” *Xinhua* July 12, 2016, accessed December 19 2016, http://news.xinhuanet.com/english/2016-07/12/c_135507946.htm.
 - 3 John Kirby, U.S. Department of State, “Decision in the Philippines-China Arbitration,” Press Statement, July 12 2016, accessed December 19, 2016, <https://www.state.gov/r/pa/prs/ps/2016/07/259587.htm>.
 - 4 Stéphane Dion, Global Affairs Canada, “Canadian Statement on South China Sea Arbitration,” News Release, July 21, 2016, accessed December 19, 2016, <http://news.gc.ca/web/article-en.do?nid=1102379>.
 - 5 Julie Bishop, Ministry for Foreign Affairs of Australia, “Australia Supports Peaceful Dispute Resolution in the South China Sea,” Media Release, July 12, 2016, accessed December 19 2016, http://foreignminister.gov.au/releases/Pages/2016/jb_mr_160712a.aspx.
 - 6 Murray McCully, Ministry of Foreign Affairs and Trade of New Zealand, “NZ Comment on South China Sea Tribunal Ruling,” Press Release, July 12, 2016, accessed December 19, 2016, <https://www.beehive.govt.nz/release/nz-comment-south-china-sea-tribunal-ruling>.
 - 7 Ministry of External Affairs of India, “Statement on Award of Arbitral Tribunal on South China Sea Under Annexure VII of UNCLOS,” Press Release, July 12, 2016, accessed December 19, 2016, http://www.mea.gov.in/press-releases.htm?dtl/27019/Statement_on_Award_of_Arbitral_Tribunal_on_South_China_Sea_Under_Annexure_VII_of UNCLOS.
 - 8 “Vietnam Welcomes South China Sea Ruling, Reasserts its Own Claims,” *Reuters*, July 12, 2016, accessed December 19, 2016, <http://www.reuters.com/article/us-southchinasea-ruling-vietnam-idUSKCN0ZS17A>.
 - 9 Fumio Kishida, Ministry of Foreign Affairs of Japan, “Arbitration between the Republic of the Philippines and the People’s Republic of China regarding the South China Sea,” Press Release, July 12 2016, accessed December 19, 2016, http://www.mofa.go.jp/press/release/press4e_001204.html.
 - 10 Matthew Pennington, “Picking Sides: A World of Opinions on South China Sea Case,” June 13, 2016, accessed December 19, 2016, <http://bigstory.ap.org/article/f77d182647754042a31862481421cacc/picking-sides-world-opinions-south-china-sea-case>.

the Continental Shelf (CLCS).¹¹ Vladimir Putin's decision to support China's repudiation of UNCLOS could portend a similar Russian reaction in the future if the CLCS produces an unfavorable ruling. Ultimately, Russian responses to the PCA's award reveal a reluctance to fully diminish UNCLOS but also an acknowledgement of the precedence the Chinese alliance has assumed in Russian foreign policy under Putin.

The depth of the Chinese anger at the PCA's ruling can perhaps be explained by how comprehensively it undercuts their claims to the lands, waters, and resources of the South China Sea. The PCA rendered a unanimous award in the South China Sea maritime boundary dispute between China and the Philippines, ruling that "there was no legal basis for China to claim historic rights to resources within the sea areas falling within the 'nine-dash line.'"¹² Nullifying the foundation for Chinese claims in the region even further, the PCA ruled that maritime features being disputed were in fact rocks and reefs incapable of sustaining permanent habitation, both currently and historically, and are not entitled to the 200-mile Exclusive Economic Zone (EEZ) under UNCLOS.¹³ The court also publicly censured China for violating its treaty obligations set out in UNCLOS by its actions in the South China Sea, and specifically rebuked the People's Republic for interfering with the Philippines' fishing and petroleum exploration activities in its EEZ, constructing artificial islands, failing to prevent Chinese fishermen from operating in the Philippines' EEZ, and causing "severe harm" to the coral reef environment and its wildlife in the South China Sea.¹⁴

The wording of the Russian Foreign Ministry's statement, delivered two days after the ruling, reflects the opposing forces motivating Russia's response but fails to acknowledge the totality of the award. On one hand, Russian foreign ministry spokeswoman Maria Zakharova noted Russian support for the "efforts of ASEAN and the Chinese People's Republic towards working out a code of conduct in the South China Sea" and that "we are not taking any sides in principle... we believe that the involved parties must hold relevant consultations and negotiations in the format they themselves

11 "Donskoi: Russia's Arctic Shelf Expansion Application to Be Reviewed despite Disagreements with Other Countries," *Arctic.ru*, October 3, 2016, accessed December 19, 2016, <http://arctic.ru/geographics/20161003/454690.html>.

12 Permanent Court of Arbitration, "The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)," Press Release, July 12, 2016, accessed December 19, 2016, <https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/>.

13 *Ibid.*

14 *Ibid.*

determine.”¹⁵ On the other hand, she added that “we highly value the role of the Convention in ensuring supremacy of law in the world ocean,” and that “it is important to have the provisions of this universal international treaty applied consistently.”¹⁶ This could be seen as problematic by the Chinese, as UNCLOS’ legal supremacy and consistent application would result in China being forced to abandon its disputed claims with the Philippines in the Spratly Islands. Still, by merely playing lip service to respect for UNCLOS, and not acknowledging the legality of the PCA’s award, Russia is affirming its support for China’s position.

Russia’s leaders have continued the strategy of implicitly siding with China by advocating for bilateral negotiations, criticizing the United States and its allies, usually obliquely referred to as outside parties, for interfering, and stating that Russia ostensibly has no horse in the race. This stance was established before the PCA’s ruling, with Russian Ambassador to China, Andrey Denisov, mounting a vocal, if still vague, defense of Beijing in the dispute in a June 21, 2016 interview with Russian journalists. He argued that claims by “some world capitals regarding restrictions if not say a threat for the freedom of navigation” are “artificial and have no relation to reality.”¹⁷ He goes on to make calls for discussions between the relevant parties. Russian Prime Minister Dmitry Medvedev commented that Russia opposes internationalization of the dispute and called for bilateral negotiations when speaking on the sidelines of the ASEAN summit in Ulaanbaatar on July 15, 2016.¹⁸

After meeting with Xi Jinping, President Putin tried to add some cohesion to the Russian stance by tying together the sometimes oppositional positions asserted by influential Russians on the issue at the G20 summit in Hangzhou on September 5, 2016. There, like other Russian officials, he issued a warning against interference by outside parties and assured his Chinese allies that Russia stands behind their non-recognition of the PCA’s ruling. However, he took great pains to avoid entirely delegitimizing UNCLOS, adding, “this is not a political position, but purely legal. It lies in the fact that any arbitration proceedings should be initiated by the disputing parties,

15 “Moscow Set to Avoid Being Dragged into South China Sea Dispute,” *TASS*, July 14, 2016, accessed December 19, 2016, <http://tass.ru/en/politics/888205>.

16 *Ibid.*

17 “Russian Ambassador: Tensions in South China Sea Created Artificially,” *Tass*, June 21, 2016, accessed December 19, 2016, <http://tass.ru/en/politics/883678>.

18 “Russia Opposes Internationalizing South China Sea Issue: Medvedev,” *Xinhua*, July 15, 2016, accessed December 19, 2016, http://news.xinhuanet.com/english/2016-07/15/c_135516298.htm.

while the arbitration court should hear the arguments and positions of the disputing parties.”¹⁹ Putin’s strong defense of China, relative to Medvedev and Zakhárova, is noteworthy because of the explicit reasoning he lays out to support China’s position. He studiously did not attack the legitimacy of UNCLOS and the PCA but questioned its jurisdiction in this specific case. By advocating for this interpretation of the dispute in a high-profile setting on Chinese soil, Putin surely intended it to be the definitive Russian statement on the issue.

Statements by the leaders of the United States and regional powers ,Japan and Australia, highlight the divide between their position and the one taken by Vladimir Putin. Australia’s Prime Minister Malcolm Turnbull and Japanese Prime Minister Shinzo Abe piqued China by vigorously defending the legitimacy of the PCA’s ruling at the ASEAN summit on September 8, 2016 as they both emphasized its binding nature. Turnbull commented that “the decision in The Hague is a fact, it is a reality,”²⁰ and Abe said, “I hope that both parties to the dispute in the South China Sea will abide by the ruling of the China-Philippines tribunal court, which legally binds the parties to the dispute.”²¹ A week earlier in an interview with *CNN*, US President Barack Obama chided China for its rejection of the judgement, stating that “if you sign a treaty that calls for international arbitration around maritime issues, the fact that you’re bigger than the Philippines or Vietnam or other countries ... is not a reason for you to go around and flex your muscles.”²²

The rhetoric employed by these leaders plainly spells out recognition of and support for the PCA’s decision, in contrast to the Russians calling for bilateral negotiations and Putin’s argument that the PCA lacks the authority to issue a binding ruling in this specific case. It is important to note that not every traditional US ally has signaled their support for the American position.

19 “Russia Supports China’s Stance on South China Sea,” *Sputnik International*, September 5, 2016, accessed December 19, 2016, <https://sputniknews.com/world/20160905/1044988523/russia-china-putin.html>.

20 Liam Cochrane, “Malcolm Turnbull Calls for Peaceful Resolution to East Asia and South China Sea Disputes,” *Australian Broadcasting Corporation News*, September 8, 2016, accessed December 19, 2016, <http://www.abc.net.au/news/2016-09-08/turnbull-calls-for-calm-in-south-china-sea/7827470>.

21 “Abe Tells Asian Leaders of ‘Serious Concern’ with China Posturing in South China Sea,” *The Japan Times*, September 8, 2016, accessed December 19, 2016, <http://www.japantimes.co.jp/news/2016/09/07/national/abe-tells-asean-that-japan-is-seriously-concerned-by-south-china-sea-tension/#.WA1fC1QrLIW>.

22 “Obama Urges China to Stop Flexing Muscles over South China Sea: CNN,” *Reuters*, September 2, 2016, accessed December 19, 2016, <http://www.reuters.com/article/us-china-obama-relations-idUSKCN1182KX>.

Some European nations have hesitated to jeopardize Chinese business ties and investment by publicly urging Beijing to adhere to the PCA's ruling. Due to these divides, the EU statement on the issue makes no mention of treaty obligations and strenuously avoids using any language that could upset Beijing, but also fails to support Beijing's decision to not recognize the verdict.²³

Vladimir Putin's approach to the South China Sea dispute has crucial implications for Russia's foreign policy and potentially for its Arctic policy. The alliance with China is the most important consideration for Russia's Asian policy. Putting aside decades of mistrust and hostility fostered by Cold War rivalry and historic enmity, the nations signed the Sino-Russian Good Neighborly Treaty of Friendship and Cooperation in 2001, which finally settled their border disputes and set out arrangements for deeper economic and military cooperation. Since that agreement, the states have closed many business deals, including landmark oil and gas agreements, the most notable of which was signed in 2014 and will be worth \$400 billion over thirty years.²⁴ The two nations also have close defense ties, with China importing over \$3 billion in arms from Russia in 2013.²⁵ This September, they held joint naval drills in the South China Sea to further demonstrate their solidarity in the wake of the PCA's judgement.²⁶

Given the trade and defense benefits of the alliance with China, it is unsurprising that Russia would back Beijing in the dispute; however, Russia does risk alienating some of its partners in the region. Vietnam also has territorial disputes with China in the South China Sea and has sided with the Philippines in the dispute. Meanwhile, India's Prime Minister Narendra Modi has moved to strengthen ties with Vietnam and urged both parties to respect the Arbitral Tribunal's decision in the South China Sea.²⁷ India is

23 Robin Emmott, "EU's silence on South China Sea ruling highlights inner discord," *Reuters*, July 14, 2016, accessed December 19, 2016, <http://uk.reuters.com/article/uk-southchinasea-ruling-eu-idUKKCN0ZU1CS>.

24 Jane Perlez, "China and Russia Reach 30-Year Gas Deal," *The New York Times*, May 22, 2014, accessed December 19, 2016, <http://www.nytimes.com/2014/05/22/world/asia/china-russia-gas-deal.html>.

25 Allan Smith and Skye Gould, "This Map of US and Russian Arms Sales Says It All," *Business Insider*, August 13, 2014, accessed December 19, 2016, <http://www.businessinsider.com/arms-sales-by-the-us-and-russia-2014-8>.

26 "China Says to Hold Drills with Russia in South China Sea," *Reuters*, July 28, 2016, accessed December 19, 2016, <http://www.reuters.com/article/us-southchinasea-china-drills-idUSKCN108008>.

27 Sanghamitra Sarma, "India-Vietnam Relations After Modi's Visit," *The Diplomat*, September 5, 2016, accessed December 19, 2016, <http://thediplomat.com/2016/09/india-vietnam-relations-after-modis-visit>.

the largest importer of Russian arms and Vietnam also has significant arms deals with Russia. Thus, Putin's decision to stand behind China signals that the Sino-Russian alliance is the most significant determinant for Russian foreign policy in Asia, possibly to the detriment of Vietnamese-Russian relations and Indo-Russian relations.

Unlike China, Russia has participated in the international legal proceedings to determine its continental shelf rights in the Arctic Ocean. Russia has submitted a claim for continental shelf rights to a Texas-sized patch of the Arctic seafloor to the CLCS, which confers less rights and differs from China's claims to an EEZ in the South China Sea. However, they are consequential when it comes to transit rights and natural resource extraction and Russia has vigorously defended and enhanced its claim in the Arctic.

Under Vladimir Putin, the Russian practice of *maskirovka*, or Russian military deception, has enjoyed a comeback. He has obfuscated the truth during the Russian takeover of Crimea,²⁸ Russian sources have frequently changed their story in regards to flight MH 17 while always denying any Russian participation.²⁹ Putin insisted that the priority of the Russian campaign in Syria is to fight Islamic extremists, when evidence has shown that they often target the moderate opposition and their main goal is propping up the Assad regime.³⁰ If the CLCS eventually rules unfavorably for Russia, it is conceivable that Putin could still assert Russia's rights to the territory by seizing upon the same rationalization as China because of the profound lack of any serious mechanism to enforce an award. This possibility cannot be dismissed as far-fetched because by annexing Crimea, Putin has demonstrated that he is unafraid to upset the rules-based international order. Not to mention, his comments on the ruling were hardly a resounding commitment to UNCLOS.

China is well positioned to ignore the PCA's award because its hard military power resources in the South China Sea are far greater than other nations in the region, especially with the ongoing construction of the so-called "Great Wall of Sand"³¹ in the South China Sea. Due to the imbalance of its

28 "Putin Reveals Secrets of Russia's Crimea Takeover Plot," *BBC News*, March 9, 2015, accessed December 19, 2016, <http://www.bbc.com/news/world-europe-31796226>.

29 Olga Ivshina, "Flight MH17: Russia and its Changing Story," *BBC News*, October 16, 2015, accessed December 19, 2016, <http://www.bbc.com/news/world-europe-34538142>.

30 Laura Smith-Spark, Jomana Karadesh, and Euan McKirdy, "Activists: 3,800 Syrian civilians killed in a year of Russian airstrikes," *CNN*, September 30, 2016, accessed December 19, 2016, <http://www.cnn.com/2016/09/30/middleeast/un-aleppo-condemnation/>.

31 Bill Gertz, "China's South China Sea Island Buildup 'For Military Purposes,'" *The National Interest*, October 11, 2016, accessed December 19, 2016, <http://nationalinterest.org/blog/the-buzz/>

military resources in the area compared to the Chinese, the only possible way Manila could enforce the ruling is with American support. However, ongoing conflicts in the Middle East and the need to check Russian expansion in Eastern Europe leave American forces overcommitted and such a scenario seems altogether unlikely.

Comparable to China's position in the South China Sea, Russia has far more strategic assets in the Arctic than the US and its NATO partners. In the summer of 2016, Russia launched the *Arktika*, the first of three new generation nuclear-powered icebreakers intended to patrol the Northern Sea Route.³² In total, the Russians currently have six nuclear-powered icebreakers besides *Arktika*, in addition to more than 30 diesel vessels, while the Americans have three, non-nuclear icebreakers. If Russia were to reject an unfavorable CLCS award, Russia's support for China in the South China Sea would almost certainly result in a quid pro quo resulting in Chinese backing Russian claims in the Arctic.

Subsequently, Putin's strong defense of China's position at the G20 summit—in contrast to the Foreign Ministry's earlier more cautious statement—is the result of Russian policymakers assessing that a firm commitment to the Sino-Russian alliance is of primary importance in their foreign policy. But, because of this posture, Russia risks alienating previously friendly countries in Asia, particularly Vietnam and India, because of their historic grievances and stated opposition to China's expansionism in the South China Sea. Putin's legal maneuvering that allowed him to back China's rationalization of its decision to not participate in the PCA's proceedings not only weakens the legitimacy of UNCLOS, but it also opens the possibility that Russia may be willing to abandon its commitment to the international maritime order founded on UNCLOS if it loses its case at the CLCS. As a result, the consequences of China's actions in the South China Sea may ripple outwards from the balmy waters of the South China Sea all the way to the frigid depths of the Arctic. **Y**

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32 David Hambling, "Russia Built a Big, Bad Nuclear-Powered Icebreaker to Win the Arctic," *Popular Mechanics*, June 23, 2016, accessed December 19, 2016, <http://www.popularmechanics.com/military/navy-ships/a21484/russia-nuclear-powered-icebreaker/>.