



# The Effect of the July 2016 Arbitration on US-China Relations: From the Perspective of Legitimacy

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## Abstract

US-China relations are a major topic in international politics. They are rivals and compete with each other in various fields. One of the most severe potential flashpoints is the South China Sea dispute, where China claims historic rights and building artificial islands and US opposes it. The milestone in the dispute is the July 2016 Arbitration. The core legal elements of the ruling were in line with US legal policy. At the same time, the arbitration rejected China's legal claims. Since the Tribunal's ruling lack an enforcement mechanism, it seems to be ineffective to settle the dispute. However, it effects the legitimacy-related aspect of US-China relations. The study of US hegemonic legitimacy opens this aspect. US hegemony primarily derive from its material superiority at the end of the WWII. US hegemony was legitimated in certain social context. This US hegemonic legitimacy was constituted by the substantive base of shared values, US adherence to open and accessible decision-making process, its strategic restraint and the successful outcomes. US hegemonic legitimacy conserved and stabilized US hegemonic status. Therefore, material predominance and legitimacy were the two pillars to US hegemony. The July 2016 Arbitration legitimated US legal claims and behavior in South China Sea while rejecting China's legal claims. The Arbitration effects on the legitimacy-aspect of US-China relations, not the material aspect.

**Keywords:** US-China Relations; July 2016 Arbitration; South China Sea Dispute; Hegemony; Legitimacy

## Introduction

Today, US-China relations are a major topic. The relation is rivalry, especially when US President Donald Trump took hard policy against China. The remarkable recent event is the US-China trade war that affected global economy severely. US-China relations are illustrated

as the power-competition between the two most powerful states today. But is it all about their material capability? Indeed fact, it is not. There is another aspect which relates to the concept of legitimacy. To deepen this viewpoint, I recall the study of US hegemonic legitimacy.

In the first chapter, I review what the concepts of hegemony and legitimacy are in the field of international politics. The definition of hegemony referring to the predominant power is not contentious. The material capacity such as military and economic capabilities are the fundamental pillar to the hegemony. Because the international politics has an anarchic structure wherein there is no central authority above sovereign states, the group of scholars categorized as neorealists presumes that states compete for power to secure themselves in such self-help arena. In this sense, states' goal is to become hegemon. Hegemon has predominant power that achieves states' interests. Hegemony, however, is not only about the material power. When it comes to maintaining hegemonic status, legitimacy has significant importance. Legitimacy, in general, defines what is right in certain social context and generates spontaneous compliance. In the context of hegemonic legitimacy, legitimacy conserves the hegemonic status for the long-term. Hegemony is primarily material, but legitimacy plays an important role.

The second and third chapter focus on the US hegemony after the end of WWII. US was at the hegemonic position at the end of the WWII. US military and economic capability were truly predominant. Instead of using its material power to achieve short-term interests, US chose to conserve its hegemonic status for the long-term by restricting itself. US built and maintained rules and institutions to assure others that US had no intention to dominate the system. US tried to portray itself as a benign hegemon. What constituted US hegemonic legitimacy were: the shared values that define what is right in certain social context, US adherence to open and accessible decision-making procedures and its strategic restraint and its successful outcomes (Rapkin and Braaten 2009, 115).

The fourth and fifth chapter focus on the US-China rivalry, July 2016 Arbitration, and legitimacy-related aspect. The Tribunal's ruling share core legal elements with US while it rejects China's legal argument. Since the Arbitration lack enforcement mechanism, it is unlikely that China changes its behavior. The Arbitration thus seems to be ineffective and useless, but it has affected legitimacy-related aspect of US-China rivalry. US can legitimate its legal claims and behavior in the South China Sea dispute, and this is an advantage for US because it can justify itself. US might be seen as a legitimate actor in the dispute, potentially heightening its reputation.

In the conclusion, after examining the July 2016 Arbitration, I argue that US-China relations are not only about their material capability. Although as Clark (2011, 56-7) notes that "[m]easuring levels and degrees of legitimacy is, of course, notoriously difficult," it is naive to assess US-China relations as purely material competition. The July 2016 Arbitration is an example of the cases that affect legitimacy-related aspect of US-China rivalry.

## **I. Conceptualizing Hegemony: Material Capability and Legitimacy**

US has been a major power since the end of WWII. The origin of US hegemony is the end of WWII, as Clark (2009: 34) notes that "there is widespread agreement that the United States emerged as a hegemon at the end of the Second World War." Hegemony has various meanings, but it primarily means the predominance of power. What power means differs in the study of hegemony.

For neorealists like Mearsheimer (2014), hegemony derives from material capabilities. A country with predominant material power has capacity to dominate the international system.

Overwhelming military capability deters, coerces and induces others not to harm hegemonic country. Strong economic power underpins the military power, while also itself makes others obey or comply with the hegemon. Some scholars, especially neorealists, focus on phenomena of power competition in international politics. They emphasize the anarchic structure of international politics. Anarchy means there is no central or higher authority above sovereign states. Each state has sovereignty, in other words they have exclusive autonomy within their territory. This anarchic structure drives state to compete each other. Because there is no central authority, it is the self-help world for sovereign state. They need to secure themselves. Being more powerful than others assures their security, simply because power deters others. Also, power succeeds coercive and inducement policy. Powerful state can use its power to coerce or induce others to gain benefit. In this sense, what state needs is power and strength in order to secure and gain, because the international politics is the anarchic arena.

For liberals and some realists, hegemony derives not only from the material capability, but also from social context. Being most powerful does not mean being hegemon. Although they take material capability into account in the study of hegemony, they also focus on leadership and legitimacy as well. They understand the term power in more broad way. Contrary to the neorealist view of power only meaning material capability, they include material capability and social power such as leadership or legitimacy. Leadership and legitimacy are both relational: to understand them one must examine the relationship of at least two actors. For hegemonic leadership and legitimacy, both the hegemon and other actors must be studied, as Clark (2003, 81; 2009, 27), Nabers (2010, 936), Reich and Lebow (2017, 18) argue. Study of hegemony must deal with the power capability of hegemon, and the perceptions of followers, as Clark (2009, 27) writes:

**“In terms of a social theory of hegemony...[t]he focus must then shift away from the attributes of the putative hegemon, and the resources at its command, towards the perceptions and responses of the ‘followers’.” (Clarke, 2009, 27)**

Power is composed by material dimension and ideal dimension. Material capability such as military and economic capability is fundamental to the concept of power. For hegemon, material power is the basis of hegemony. In that sense, material capability is essential especially in the forming of hegemony. Once the hegemon establishes its hegemony with its material supremacy, the hegemony-forming is over, and it starts to keep its status as the hegemon. Hegemonic state has predominant power, but others might have incentives to challenge the hegemon in order to become the new hegemon, or to undermine the existing hegemon, as hegemonic stability theory argues. From the view of the hegemon, making their hegemony stable is their strategic goal. When the hegemony is stable, it means the system is stable. System is stable when states follow rules and norms, that are pillars of the international system, or international order. Hegemon and rules and norms are deeply connected, as Mearsheimer (1994/5, 7) argues that dominant states tend to create and maintain institutions that further their interests and maximize their power. Hurd (1999) studies why states follow international rules and norms, and he suggests three reasons: coercion, self-interest and legitimacy. Coercion refers to the asymmetrical power structure, and self-interests explains that states follow because it benefits them (Hurd, 1999). According to Hurd (1999, 387), the third reason, legitimacy, motivates states obedience by that:

Legitimacy contributes to compliance by providing an internal reason for an actor to follow a rule. When an actor believes a rule is legitimate, compliance is no longer motivated by the

simple fear of retribution, or by a calculation of self-interests, but instead by an internal sense of moral obligation.

Legitimacy drives states compliance, and compliance leads system stability, thus the hegemony is stable. For hegemon, legitimacy lowers the cost to keep its hegemonic status. Legitimacy itself does not establish one's hegemony, but it has long-term efficiency to sustain one's hegemony.

Hurd (1999)'s explains the legitimacy as a source of states' compliance. Rapkin and Braaten (2009) study legitimacy of the hegemon itself, explaining legitimacy as "a relevant property for states that, either collectively or singly, claim for themselves an extraordinary systemic role, above and beyond simply being a member of this system." Is this reference also from page 118?. They write that "[s]uch a role typically involves responsibility for maintaining the stability of the international order" (Rapkin and Braaten 2009: 118). Legitimacy gives the hegemon special right to exercise its predominant power to create and maintain international order. Rapkin and Braaten (2009: 115) argues that legitimacy is constituted of three conditions:

1. a substantive base of the shared values
2. constitutionalism, encompassing adherence to open, accessible decision procedures, and strategic restraint in the use of predominant power
3. successful outcomes

Traditionally, study of legitimacy discusses that the legitimacy derives from its substance and procedures. Substantive legitimacy derives from the normative substance of the principle, rule, action or policy in question, while the procedural approaches emphasize decision process as the basis of legitimacy (Rapkin and Braaten 2009: 122).

The first condition, a substantive base of the shared values, relates to the substantive explanation. The hegemon's policy, and the rules, norms, values and institutions it establishes or maintains are focused from this approach. If the followers recognize the hegemon's policy and rules and norms as such it builds or maintains 'just', or 'right', there is to some extent hegemonic legitimacy. The second condition emphasizes the decision-making process. As Franck (1988, 709) summarizes Weber's argument, "rules tend to achieve compliance when they, themselves, comply with secondary rules about how and by whom rules are to be made and interpreted. Clark (2011, 57) stresses that "[t]he assumption is that a constituency is more likely to be voluntarily compliant, if all affected sectors are allowed a voice in reaching the decision." Open and accessible decision-making process generate legitimacy of the decision, and the decision would be followed by states. It is essential for hegemon to avoid using its predominant power in decision-making to achieve its desirable outcomes. Hegemon, because it has overwhelming power, can control the negotiation, or it can establish institutions in which the hegemon decides unilaterally and impose its decision on others. Such decision lacks legitimacy from the eye of others, thus the hegemon must restraint itself. The third condition, successful outcomes, focuses on the hegemon's performance. For example, a hegemon's serving of stability and peace through providing market and military interventions might be recognized as successful outcomes from hegemon, thus generating hegemonic legitimacy.

Hegemon has predominant power, and the material capability is fundamental to the concept of hegemony. Especially in the forming of hegemony, material capability plays a dominant role. However, when it comes to maintain hegemonic status, legitimacy, together with material capability, plays an important role. Legitimacy lowers the hegemonic cost of maintaining international system, since it generates others' spontaneous compliance. Then the question shift to the US hegemony. How does US established hegemony after WWII? Is US still a hegemon today? Next chapter focuses on US hegemony specifically.

## II. Origin of US Hegemony and Its Restraint Strategy

Clark (2009 Page number required: 34) writes that “there is widespread agreement that the United States emerged as a hegemon at the end of the Second World War.” This is primarily because of the situation then. Europe damages severely by the warfare, and US and USSR are started rivalry well known as the Cold War. US had relatively high capacity because the European countries, the former great powers, had been hit by the war. Also, the emerging Cold War gave US and USSR the position of regional hegemon. US offered aid and support to Europe and western European states received US support. USSR expanded its sphere of influence at the same time. This made US hegemon acceptable or desirable for some other states. The structure of Cold War is two superpowers competing against each other in various fields. They both try to expand its sphere of influence and try to keep their influence within their hegemony. For the other states, the superpowers are threat because they have overwhelming power. To counter one superpower, they ally with the other superpower. In the case of the Cold War, western European states chose to ally with US in order to balance against USSR. US offered military and economic support to those countries, and they accepted US aids. The structure of at the end of the WWII was the one reason how US established its hegemony. The WWII made US supremacy over others, and the emergence of two superpowers, US and USSR, made other states to ally with one of them in order to counter against the other. Thus, both US and USSR expanded its sphere of influence, becoming the regional hegemon.

At the first stage, US material capability was the main pillar. It used its military power to provide security to other states, and they needed US support to survive through the Cold War. At the same time, US served its market and economic capacity to support its partner states. US hegemony is acceptable and desirable for the followers because US military and economy supports were what they needed.

US also built and maintained rules and institutions. This strategy has two dimensions: One is to further and sustain its influence, and the other is to restraint its power to conserve its hegemonic status. What motivated US to build or maintain certain rules and institutions was to further its influence and to sustain its hegemony. Rules and institutions are the devices to conduct states' behavior. Also, they fix the current situation. One example is the permanent 5 in UN Security Council. US, France, UK, Russia and China have permanent seat in UN Security Council, and they have veto. These countries were the winners in the WWII and so are given special rights. Similarly, US built multilateral institutions like NATO to keep its presence and influence over other states' policy. The rules and institutions restrict states' use of power including hegemon. Hegemon's strategic restraint conserves its status (Ikenberry 2001, 53). Predominant US power fear others, and they may challenge US to balance against it. US needs to assure its partners and other states that US has no intension to use its power to harm or meddle others' interests. One way to show such attitude is to restraint itself. Rules and institutions encompass hegemon's behavior. It limits the hegemon's use of power. It made others possible to calculate the hegemon's intension. Through such restraint strategy, the hegemon appeals that it is the “benign” hegemon for others.

US became hegemon after WWII with the power asymmetry caused by the war, and its strategy to build and maintain rules and institutions in order to conserve its hegemony by furthering its influence and appealing itself as a benign hegemon. I focus what constitutes US hegemonic legitimacy in the next chapter.

## III. US Hegemony and its Legitimacy

Legitimacy affects politics in various ways. Suchman (1995: 575) gives a general definition of it: legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions. Reich and Lebow (2017, 27) explains in the context of influence, “legitimacy is foundational for social power.” Hurd (1999: 388) argues that “legitimacy as a device of social control has long-run efficiency advantages over coercion in reducing some kinds of enforcement costs and increasing the apparent ‘freedom’ of subordinates, although it is more expensive in the short run.” As I discussed in the first chapter, legitimacy is a relational concept. In the context of hegemonic legitimacy, the relations of hegemon and followers must be examined. Recalling the first chapter, the three conditions Rapkin and Braaten (2009: 115) constitute US legitimacy.

*A substantive base of shared values.*

Legitimacy decides what behavior is ‘right’ in social context. Either certain actions, policy or behavior is seen as legitimate differ in different social context, which share different values from others. Clark (2009: 28) emphasizes this point: “past hegemonies have operated, not just within asymmetric distributions of power, but also within diverse social contexts of legitimacy.” Clark (2009: 28) proposed two set of distinctions: whether it is singular or collective, and whether the scope of the social constituency within which the hegemon’s claims are legitimated are inclusive or exclusive. To examine more about the scope of the social constituency within which US legitimates itself, the study must focus on the multi-layered structure of the values and norms.

The first layer of the values and norms is the fundamental layer. The basic norms and values are included at this level. Sovereign state system is an example. Today’s international politics is based on the principle of the sovereign state system. To be the legitimate actor in international politics, each member must oblige this principle. Once a state behaves against the basic principle of sovereign state system, that state faces criticisms from other members, and it would lose its legitimacy. Although there is an asymmetric distribution of power, and hegemon is capable to behave freely with its predominant power, hegemon loses its legitimacy as a hegemon or a sovereign state once it behaves against the norm of sovereign state system. It is necessary for hegemon to respect the basic principle of sovereign state system in order to legitimate itself today. Since the norms and values in the first layer are so fundamental to today’s international politics, every state is included in this level’s constituency. The second layer is more important in the study of hegemonic legitimacy.

The second layer of the values and norms is higher and more specific than the first layer. Liberal democracy and free market are the example of such norms and values. The first norms and values are fundamental and neutral, and they seldom invoke controversy. Unlike them, those of the second layer are more controversial, since they are more specific. In the context of US hegemonic legitimacy and its constituency, the second layer distinguish who the members of the constituency are.

The members within the constituency form an ‘international society’. International society is a concept developed by the English School of international politics. Bull (1977, 13) writes that an international society “exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common institutions.” The members of the constituency within which US is legitimated as a hegemon form an international society. US became hegemon and used its capability to build and maintain rules and institutions to further its influence and to conserve its hegemonic status. The norms and values that underpin those rules and institutions, are the focus. They

decide what is 'right', and thus evaluate legitimacy in that social context. US is legitimated by the international society that share such values and norms, for example liberal democracy. US hegemony bases upon the coalition of states which form the international society in the sense they share substantive norms and values. This view fits the bipolar structure of the Cold War. US was a hegemon while there was US-USSR rivalry. US was the leader of the free world, or the West, which legitimated US hegemony.

*Constitutionalism, encompassing adherence to open, accessible decision procedures, and strategic restraint in the use of predominant power.*

This condition of legitimacy is the procedural approach. Constitutionalism is the idea that the authority of ruler derives from the fundamental law while also restricted by them. In the context of hegemonic legitimacy, a hegemon that follow the fundamental set of rules, norms and values is more likely to be legitimated. This set of rules, norms and values adhere to open, accessible decision procedures and strategic restraint in the use of predominant power. US legitimacy is constituted by the multilateral institutions where the members are allowed a voice in the decision-making process. Ikenberry (1998, 45) argues that the liberal order under US hegemony "has what might be called 'constitutional characteristics'-a structure of institutions and open polities that constrain power and facilitate 'voice opportunities,' thereby mitigating the implications of power asymmetries and reducing the opportunities of the leading state to exit or dominate."

Rapkin and Braaten (2009) divided Ikenberry's argument into two sections as written in their second condition of legitimacy. One refers to open, accessible decision-making and the other refers to the strategic restraint.

The hallmark of the former element is that "the hegemon maintains relatively open foreign policy decision-making characterised by transparency, decentralization and many points of informal access" (Rapkin and Braaten 2009, 123). This focuses on the reassurance by the hegemon. Since the hegemon's power are predominant, it is the threat for other states. US built multilateral institutions where states are allowed voice, and this enables the subordinate states to affect US foreign policy. US built the institutions to allow others to participate the decision-making procedure in order to appeal itself as a benign hegemon by reducing others fear of US supremacy. Deudney and Ikenberry (1999, 111) write that "[s]uch processes endow the [asymmetric] relations with a degree of acceptability in the eyes of subordinate powers."

The latter element, strategic restraint of the predominant power, "entails reducing returns to hegemonic power, self-imposed limits on the hegemon's autonomy, and reassurances that it will not exploit its superordinate position or trample others' interests in pursuit of its own" (Rapkin and Braaten 2009, 123). It is to assure others that the hegemon has no intension to dominate the system. Ikenberry (2001, 40-1) argues that states respond to potential threats with institutional binding strategy, in which they link themselves to be bound by the common institutions, thus locking themselves in their commitments. US built multilateral institutions that limit its options. Instead of mobilizing its capacity to achieve short-term goals, US chose to constrain its use of power in order to make its hegemony for the long-term.

Taken together, the two elements generate US hegemonic legitimacy by reducing US threat with the adherence to the fundamental set of rules, norms, and values and the strategic restraint policy of the use of its power. This strategy gave the subordinate states capacity to influence US policy. In other words, they can take balancing action against US. They are given a voice in decision-making process, that it to say they have influence over how to use their collective power, and how US behaves. This type of US hegemony is acceptable for the eye of other states to some extent, thus generates US hegemonic legitimacy.

### *Successful outcomes.*

The third element focuses on the hegemon's behavior. Rapkin and Braaten (2009, 124) explains that hegemonic legitimacy derives from the effectiveness of the use of its capacity to achieve successful outcomes, and the successful outcomes "might be in terms of diffuse systemic properties (peace, stability or equilibrium) or they can be more specific and concrete (effective military interventions, serving as the engine of global economic growth." US supplied military and economic support during the Cold War, and this generate legitimacy from those who received it. Under the Cold War wherein US and USSR are the two superpowers, the subordinate states were involved in the rivalry. Those states needed either US or USSR support to counter against the other. For the western European states, US military and economic support were what they needed to balance USSR. US was legitimated within the constituency through the outcome legitimization. In this sense this is deeply related to the first condition proposed by Rapkin and Braaten (2009). US is legitimated in a specific social context of the West, and they see US legitimate because they shared substantive values. They had received US support to balance against USSR, and this kept US legitimacy within that constituency.

The three conditions constituted US hegemonic legitimacy. US hegemony derives from its material superiority in the first place. Its military and economic capability at the end of the WWII clearly gave US predominant position. Under the bipolar structure of the Cold War, US strategy of self-restraint, building and maintaining rules and institutions based on the norms and values that US and the West share, generate US hegemonic legitimacy.

It is worth recalling the study of US hegemonic legitimacy, despite "the mainstream position has been rather that this US hegemony survived only until the beginning of the 1970s," where does the quotation mark begin from (Clark 2011, 124) because it opens legitimacy-related aspect of the today's US-China rivalry. Hegemony refers to the predominant power, and the material capability is the fundamental pillar to it. However, hegemony has legitimacy-related aspect. Legitimacy supports hegemony in the sense it stabilizes hegemonic status by generating spontaneous compliance. Legitimacy, in other words, refers to the stability of the hegemony. US-China relations are described as the competition between the two powerful states. The competition is not only about the material capability but also there is a competition of legitimacy, as I discuss that point in the next chapter.

## **IV. US-China Relations and the Summary of the July 2016 Arbitration**

US-China rivalry is the issues ongoing, and there are many comments and prospects about it. Rising, or emerging China became the subject of discussions. The question was whether China is a threat or not for, in most cases, US. Those who concern the rising China focus on its rapidly growing economic capability. They worried China would challenge US and its privileged status, or it may try to become the hegemon in Asia by excluding US out from its backyard. Some predicted that China would rise peacefully because it understands the benefit it gains from accommodating the liberal institutions.

As the tension rises and China grow as the second-largest economy, the question shifted away from whether China is a threat. Especially after Donald Trump became the US President, US-China relations became tense. The recent US-China trade war reflects this point well.

The US-China conflict is ongoing over multiple fields. One example is the South China Sea dispute. South China Sea is a potential flashpoint of armed conflict. China, Vietnam and the Philippines are the major claimants in the dispute. Although US is not the claimant in the

dispute, it is the stakeholder in the region. South China Sea is where US and China face militarily.

The milestone in this conflict is the July 2016 Arbitration. In 2013, the Philippines sued China over South China Sea dispute. They had been argued for years, but the Philippines sued China in 2013 because of the Scarborough shoal standoff in 2012. Both China and the Philippines claim to have sovereignty over Scarborough shoal. In 2012, Chinese surveillance ship and the Philippine warship engaged in the shoal. In the end, Chinese force took control and the Philippines had to leave. Instead of the military options, the Philippines decided to take the legal option.

The Philippines brought two significant debates. First, because the United Nations Convention on the Law of the Sea (UNCLOS) does not rule to which party the sovereignty belongs to, the Philippines sued China that what China claims in the dispute is not compatible with the international law. China claims sovereignty based on its nine-dash line and the right it emerges. Nine-dash line is plotted to cover almost entire South China Sea. The area China claims to have sovereignty is more than a country allowed to have under UNCLOS. The Philippines questioned the court that what China claims is illegal. Secondly, the Philippines asked the court if the maritime features in South China Sea generate a territorial sea, a contiguous zone, and an exclusive economic zone. The Philippines advocates those features are rocks or low-tide elevations that generate no rights around them. Obviously, China argues those features are islands under international law which emerge rights to the belonging state.

When the Philippines sued China, China instantly opposed the Philippines. China insisted that UNCLOS and the Permanent Court of Justice Permanent Court of Arbitration (PCA) have no right to rule about the sovereignty. Also, China argued that China and the Philippines did not have enough talks, meaning that it was not the time to appeal to the court. The court announced in 2015 whether it has jurisdiction over this matter. The court notes that China neglected to have multilateral negotiation as the Philippines asked, so the Philippines' act of lawsuit is acceptable. The court also decided that it does not rule which party has sovereignty. It only has right to decide if the maritime features are islands, rocks or low-tide elevations.

After the consideration of jurisdiction, the court ruled the case in 2016. The award has 3 significant points (PCA 2016):

- (1) Nine-dash line has no lawful effect that is contrary to UNCLOS;
- (2) The status of maritime features in South China Sea are rocks and low-tide elevations under UNCLOS;
- (3) The Tribunal considers that all party are obliged to follow UNCLOS, including its provisions regarding the resolutions, and to respect the rights and freedoms of other states under UNCLOS.

China has claimed historic rights over the islands in South China Sea. China also claimed maritime rights such as territorial sea around those islands. However, the court made clear that Chinese historic rights has no legality under UNCLOS. The court decided that because of the Vienna Convention on the Law of the Treaties and UNCLOS, the court must arbitrate the case under UNCLOS and any other international legal arrangement that is compatible with UNCLOS. Any rights and duties incompatible with UNCLOS expired when a state signed UNCLOS. Therefore, the historic rights China claims has no legality under UNCLOS.

The court defined the legal status of the maritime features in South China Sea. Under UNCLOS, the maritime features of Spratly islands are rocks and low-tide elevations. Rocks and low-tide elevations generate no exclusive economic zone. The arbitration weakened

China's legal argument by assessing that China's claim of historic rights and EEZ around maritime features in Spratly islands are incompatible with UNCLOS (deLisle 2018).

China is opposing the lawsuit and court's ruling from the beginning of the arbitration. It denies the court's jurisdiction because it regards the dispute as the matter of sovereignty. As of other international law, the arbitration lacks the enforcement mechanism. It is unlikely that China change its behavior in favor of the ruling. However, the case and the ruling have significant importance because it denies China's legality. Also, the ruling gives support to other parties--especially US-- legal argument and commitment.

## **V. The Implication of the Arbitration on US-China Relations: From the Perspective of Legitimacy**

The South China Sea dispute has major impact not only on the regional countries but also on US. The US and China are rivals and competing in many fields. They face each other militarily in Asia, and South China Sea has strategic importance for both. China's construction in South China Sea aims to exclude US presence in the region. For US, keeping its access and presence in South China Sea and Southeast Asia is necessary to contain China.

US is deploying its marine forces to keep its access to South China Sea (Dutton 2016, 6). This operation is called Freedom of Navigation program. Access is the key for US strategy because access is the fundamental for US to deploy its forces worldwide. US grabbed its military superiority based on its military capability and ability to deploy its forces effectively in the most part of the world. Freedom of Navigation program aims to keep its access to certain region. The operation has two components. First, US delivers its messages through diplomatic means. It denies other nation's claim of historic rights and restriction of other's access to certain region that are contrary to international law. Also, US maintains its access to certain area by deploying its military forces to appeal that US will not accept any illegal restriction of access by other nation. The right of freedom of navigation is guaranteed by UNCLOS, which US see as a reflection of international customary law. US can portray itself as a supporter or guardian of international law, because its Freedom of Navigation program aims to maintain US rights and interests that are written in UNCLOS.

In the South China Sea, US is facing challenges from China. China claims its historic rights and is building artificial islands to install military sites in the area, aiming to exclude US presence in their backyard. Despite the July 2016 arbitration ruled China's legal argument contrary to the international law, China is proceeding its construction.

US started its Freedom of Navigation program in October 2015. According to the US reports from fiscal year 2015 to 2018, US operated in order to counter against China's illegal claims including its attempt to draw illegal straight baselines, jurisdiction over airspace above the EEZ, domestic law criminalizing survey activity by foreign entities in EEZ, claims security jurisdiction in the contiguous zone, request of prior permission for innocent passage of foreign military ship through the territorial sea and actions and statements that indicate a claim to a territorial sea around features not so entitled (US Department of Defence 2018). What is important is that US operates to secure rights that are guaranteed under international law, but also to achieve its strategic goals by keeping its access to the region. Those two objectives are closely connected. Freedom of navigation is written in UNCLOS and originated from ancient times. UNCLOS itself is written in order to consolidate the century long discussion about the law of the sea. Freedom of navigation, as US explains, is the right that is guaranteed by international customary law. Therefore, US portrays itself as the guardian of the international law. US Freedom of Navigation program makes US the supporter of the international law, while also it achieves US strategic goals by keeping its access to the region.

For US, portraying itself as a supporter and guardian of international law is beneficial because it can appeal its legitimacy compared to China. While it is beneficial to counter China in South China Sea with the Freedom of Navigation program, it also justifies US behavior and status. The court's ruling has four elements which are in line with US policy: (1) not taking a position on questions of sovereignty over disputed landforms and lesser features in the SCS (none of which is the object of US claims of territorial sovereignty or maritime rights to be delivered therefrom); (2) asserting and protecting rights to broad freedom of navigation and overflight and access to the maritime commons in the SCS area; (3) insisting that all parties follow international law, including particularly the law of the sea rules in UNCLOS, which the US regards as, in most respects, reflective of binding customary international law; and (4) calling on rival claimants to use peaceful means to address their disputes and to eschew coercive or destabilizing measures (deLisle 2018, 51).

Because the ruling and US policy share these four elements, US can use this arbitration case to justify its behavior. First, US has no intention to support any side in dispute of sovereignty. The court also decided not to mention anything about the sovereignty. China opposes the court's decision and US behavior as an act of interruption of China's sovereign rights, but US can refuse that claim noting that both the tribunal and US have no deal about the sovereignty. Second, US Freedom of Navigation program is legitimated with the arbitration. US started its Freedom of Navigation program ahead of the trial. In 2016, the arbitration closed with the ruling that China's claim and behavior are contrary to the law of the sea. The decision basically supports US stance in South China Sea. With the tribunal decision, US strengthened its legitimacy as a supporter of international law in South China Sea dispute. Also, US allies and partners, and countries against China can ask China to follow the international law, mentioning the arbitration case. Third, US has been asking claimants to follow and respect the international law and to refrain from taking military or coercive action. Peaceful resolution is what US keeps asking for to any party concerned. US now ask China to follow the arbitration. This action legitimates US and damages China's reputation. Also, the arbitration is valuable for US because the South China Sea dispute is put on multilateral table. For China, bilateral negotiation is better option because China can use its military and economic capability easily. China can use its power to achieve their goals although that action is contrary to the code of conduct. However, because of the arbitration, South China Sea dispute is a multilateral dispute which involve not only claimants such as China, the Philippines and Vietnam, but also US.

The arbitration decision is in line with US legal policy. Some criticize US because it has not signed the treaty. US is not signed UNCLOS because of the article 11. However, when the article 11 was revised, then president President Clinton asked the Senate to approve UNCLOS. Bush and Obama administration also asked the Senate to sign the treaty. US still has not ratified UNCLOS with strong opposition from some Senate. To overcome this dilemma, US government regards UNCLOS as the reflection of international customary law. Another critic is that UNCLOS is written to support US hegemonic status, thus the arbitration has no legitimacy. This is not true, because what is written in UNCLOS is the consolidation of the century-long debate about the law of the sea. UNCLOS is written under multilateral negotiation and approved by many nations, thus hardly the reflection of US hegemony or US will.

## **Conclusion**

US-China relations are described as the rivalry between the two most powerful states. They face each other in various fields, and the South China Sea is one of the most severe potential flashpoints. The milestone of the dispute was the July 2016 Arbitration. The Tribunal's ruling

is in line with the US legal elements, while it denied China's argument. The decision lacks any enforcement mechanism and China is unlikely to change its behavior due to the ruling. In that sense, the Arbitration seems ineffective to settle the dispute. However, the Arbitration has an important implication on US-China relations from the aspect of legitimacy.

The study of US hegemonic legitimacy opens this legitimacy-related aspect of today's US-China relations. Legitimacy is relational and it derives from the relations of actors. It defines what is right in a specific social context. Legitimacy is explained with the substantive approach and procedural approach. In the context of US hegemonic legitimacy, substantive values that US and other share, US adherence to the open and accessible decision-making process and its strategic restraint policy, and the successful outcomes from US hegemony constitute US hegemonic legitimacy. US is legitimated within the constituency that forms the 'international society'. Legitimacy stabilized US hegemonic status, therefore it was a main pillar to support the US hegemony. US hegemony derives first from its predominant capability at the end of the WWII, and US was legitimated within certain 'International society', making its hegemonic status more conservable and stable.

Since US-China rivalry is to some extent a competition for a hegemonic status, it is worth recalling the study of US hegemonic legitimacy to shed light on the legitimacy-related aspect. The July 2016 Arbitration legitimated US claims and behavior in South China Sea, while rejecting China's legal argument. US, since it can formally portray itself as the supporter and guardian of the international law, can ask China to follow and respect the international law, instead of asking China to step down in order to fulfill US interests.

US-China relations are not only about their material capability. The rivalry has material aspects and ideational aspects. There are military and economic competitions that many observers comment about. Along with those competitions, there is a competition for legitimacy. By recalling and adapting the study of US hegemonic legitimacy, the July 2016 Arbitration opened the legitimacy-related aspect of the today's US-China relations.

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