

國際安全研究

Journal of International Security Studies

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国际关系学院 主办

2013. 5

國際安全研究

2013年第5期目录

双月刊 总第134期

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Abstracts

3 Judge and Arbitrator in International Legal Procedures: Implications for the Arbitral Tribunal of the South China Sea Dispute between China and the Philippines

WU Hui, SHANG Tao

【Abstract】 The international legal procedures comprise judicial procedures and arbitration procedures, in which the personal factors of judges and arbitrators may have certain influences on these legal activities. The judges in the international judicial procedures shall have independence, swearing to be faithful to the court or tribunal. However, such independence is relative since the political factors during election, as well as the nationality, personal thoughts and ideas of a judge in service, will affect his or her handling of the cases. Meanwhile, the independence of the arbitrators in international arbitration procedures is insufficient compared with the judges in international judicial organizations such as International Court of Justice and International Tribunal for the Law of the Sea. The arbitrator appointed by each party usually stands for and defends the benefit of this party. In the international legal procedures, judges and arbitrators can play a certain role in determining the procedure, calling witnesses or experts and receiving their evidence and visiting the localities to which the case relates, and attaching a separate or dissenting opinion to the award. Therefore, it is important for us to have a full understanding of the personal effects of the judges and arbitrators in international legal procedures in order to deal with the present arbitration cases China has participated in and the potential cases in future; it can also help supervise and avoid adverse personal factors when China does not participate in the arbitration proceedings or gives up appointing an arbitrator.

【Key Words】 United Nations Convention on the Law of the Sea, international legal procedures, judge, arbitrator

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21 Legal Issues of the China-Philippines Arbitral Tribunal for the South China Sea Dispute

YU Mincai

【Abstract】 The Philippines' unilateral initiation of the compulsory arbitration on the South China Sea dispute against China, by means of the disguised maritime boundary delimitation dispute concurrently involving the unsettled sovereignty over certain islands and reefs and of full denial of the present and the validity of the Declaration on the Conduct of Parties in the South China Sea (DOC) between them, is incompatible with the requirements set out under the United Nations Convention on the Law of the Sea. However, it does not mean that the initiation of such proceedings by the Philippines is illegal in nature. China's non-acceptance of the arbitration and default of the participation in the arbitral proceedings does not affect the lawful establishment of the China-Philippines Arbitral Tribunal and the legitimacy of its proceedings as well as the validity of the arbitral award thereby unfavorable to China. Therefore, whether China maintains its current policy or re-participates in the following-up proceedings by the Arbitral Tribunal is an issue worthy of reevaluating. Re-participation ought to be a right choice of policy for China because the legal status of the South China Sea "dotted line" could be argued that the Convention is inapplicable so as to avoid the thorny issue of clarifying its legal status. More important, pursuant to the Southern Bluefin Tuna case Annex VII arbitral tribunal and the 2006 Chinese Declaration, as well as cases related to maritime boundary delimitation or establishment of the outer limits of the continental shelf extending beyond 200 nautical miles, the DOC falls within the "agreement" in article 281(1) of the Convention that precludes the Annex VII compulsory arbitration, and the most parts of the Philippines' claims are not justiciable; consequently, the Arbitral Tribunal should decide that it has no jurisdiction or inadmissibility on the present dispute. Even if continuing to pursue its policy of non-participation, by means of "indirect participation", China could publish a formal document after the arbitral tribunal begins its written proceedings that comprehensively rejects the request of the Philippines and objects to the arbitral tribunal's jurisdiction and admissibility on the dispute.

【Key Words】 China-Philippines Arbitral Tribunal in South China Sea , the Declaration on the Conduct of Parties in the South China Sea, participation in the following-up arbitral proceedings

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36 The Liability of States Sponsoring Persons and Entities with Respect to Activities in the International Seabed Area

GAO Jianjun

【Abstract】 According to the LOS Convention, States Parties have the responsibility

to ensure that activities in the international seabed area undertaken by the persons and entities that they sponsored shall be carried out in conformity with the relevant provisions of the LOS Convention, and shall be liable for the damage caused by any failure of the sponsored contractor to comply with its obligations. However, the liability of sponsoring state is not strict liability. Where a sponsoring state is liable for the damage, the limit of the liability shall be the actual amount of damage, which should take account of the potential liability of the Authority and States under whose jurisdiction or control the activities concerned have been carried out. The sponsoring state and the sponsored contractor do not have joint and several liability. The liability of the contractor and its implementation shall not be affected by the fact that sponsoring state is also liable for the damage. The contractor shall implement its liability prior to the sponsoring state's fulfilling its obligations. Only when the contractor fails to make full reparation for the damage it is liable for will the sponsoring state have the residual liability for the part of damage that has not been covered. Since the responsibility to ensure compliance that the sponsoring state undertakes under the LOS Convention is an obligation "of conduct", rather than the obligation "of result" to prevent the occurrence of damage, if the sponsoring state has fulfilled the obligation "of due diligence" according to the requirements of the LOS Convention, it shall not be liable for any damage caused by the contractor.

【Key Words】 LOS Convention, International Seabed Area, sponsoring states, liability, the ITLOS

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52 North Korea Nuclear Issue and China's Policy

ZHANG Tuosheng

【Abstract】 Since 2009, North Korea's nuclear crisis has inclined towards embracing the development of nuclear weapon, and the Korean peninsula is now at a critical stage. Under both internal and external pressure, three possible scenarios may appear: irreversible possession of nuclear weapon, serious military conflict or even warfare, and resumption of dialogues towards resolution. The probability of accidental skirmish or even military conflict between North Korea and the US, Japan and ROK is higher than ever. In the long term, should North Korea continue its nuclear and missile tests or even become a de facto nuclear-weapon state, the military standoff between North Korea and US-Japan-Korea would be more intense; the Korean peninsula would be further away from peace and stability, and it would be more impossible for North Korea to focus on economic development and people's livelihood. Therefore, China should adjust its policy on North Korea to be more proactive and intervene, properly handle the interaction between denuclearization of the Peninsula and its peace and stability, avoid being stringed by wrong actions of other countries concerned, and get prepared for potential emergencies and contingencies. As long as China's national interests are well combined with common global interests and the long-term interest of North Korean people, China would be

able to hold its position.

【Key Words】 DPRK nuclear crisis, Korean Peninsula Situation, China's Policy on North Korean nuclear issues, China's Policy on Korean Peninsula

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62 China's Energy Security: New Challenges and Possible Solutions

WU Lei

【Abstract】 China's energy security is now confronted with new challenges: growing dependence on imported oil, fierce international vying for carbohydrate resources, continued tight supply on international oil market, global oil price staying at a high level, readjustment of energy policy of major consuming and producing countries, revolution of new energy technologies, discovery and development of unconventional oil and gas resources, a new oil order that is taking shape on the global horizon, deteriorating energy geopolitical conflicts and the resurgence of new resource nationalism. Against such backdrop, the author attempts to analyze and generalize the afore-mentioned issues from the perspective of energy security strategy and proceeds to put forward some measures to counter these major challenges by using macro, meso and micro approaches.

【Key Words】 changing world energy situation, impact on china's energy security, China's measures, energy security

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76 Globalism and Utilitarianism in Global Energy Governance

YU Hongyuan

【Abstract】 International energy cooperation and competition is of great importance in terms of climate change and energy security. Since 2012, China's wind power and PV industries have received anti-dumping sanctions from the U.S. and European countries. Economic and trade frictions in the new energy field are carrying a lot of weight with China-US trade, partly because the development of new energy industry in China has affected the development strategies and competitiveness of the developed countries in the area, and partly because of the growing competition for predominance in the new energy. Globalization and interdependence demands international cooperation, and also provides opportunities for cooperation. To meet the challenges of global energy development, there are both cooperation for global interests and competition due to utilitarianism. China's energy foreign policy should take into account three aspects: global energy governance, international communication and dialogues, and bilateral cooperation. China should promote the concept of common interests on global energy development, and participate in

building international energy system through win-win cooperation. International cooperation is essential to achieve peaceful development and global energy security.

【Key Words】 new energy, climate change, globalism, utilitarianism, energy security, international cooperation

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96 **China's Energy Security and the Upheaval in West Asia and North Africa**

TAN Youzhi

【Abstract】 The West Asia and North Africa (WANA) region has experienced an unprecedented upheaval since late 2010. Fierce rivalry among different forces makes this area face great uncertainty. As one of the world's most important oil producers and suppliers, the geo-political turmoil in WANA region will inevitably bring deep and far-reaching impacts on international energy structure. An overwhelming dependence on the oil resources in WANA region results in the harsh fact that China's energy security has to undergo serious challenges: regional instability further complicates the political environment for oil and gas cooperation in WANA region, and sharply increases the risks of China's overseas oil investment; given China's high dependence on WANA region for oil imports and the concentration of oil origins in this region, the vulnerability of China's energy security is constantly superimposed; the weak control of oil transporting lines will possibly make China fall into another "Malacca Dilemma". Therefore, to respond the unrest in WANA region, China shall pay close attention to the existing problems and draft up top-level design, taking advantage of multiple measures to formulate its energy security strategy by speeding up the building of oil and gas investment warning mechanism in WANA Region, steadily enhancing the diversity of importing channels for oil, and actively expanding military tactics to protect energy security.

【Key Words】 West Asia and North Africa, regional upheaval, energy security, oil security, china's energy strategy

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108 **The Contention of Discourse Power in International Relations and the Academic Consciousness in China**

CHEN Xiaoding, WANG Yaqi

【Abstract】 The international relations studies have been under the discourse hegemony of the U.S. since the end of the World War II. The U.S. has constructed

the basic paradigm of IR studies, demonstrated and strengthened the legitimacy of its hegemony academically, contributed by its mighty national power, which makes it able to manipulate the international agenda setting to its own benefit, and its hard work on the discourse subject, content and platform following the mechanism of discourse power. After the end of the Cold War, to promote theoretical development and meet the challenge of the international political reality, IR studies is becoming diversified and the contention of academic discourse more prominent. The European IR scholars brought forward “European perspectives” in research orientation, research methods, and schools of theories, which highlights the European culture and the practice of the European integration, and to some extent weakens the American hegemony of discourse. In recent years, along with the adjustment of the international political pattern and the eastward movement of international political and geopolitical center of gravity, the Asian consciousness of IR studies began to emerge, especially in China. The academic consciousness and assuredness of IR studies has substantially improved in China. To further promote the contention of discourse power in IR studies and to break the monopoly of American discourse, this article explains the construction path of American discourse hegemony and its implications, followed by profound analysis of the deficiencies and problems of the discourse power construction in China and specific proposals.

【Key Words】 international relations studies, discourse power, IR studies in China, academic consciousness

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125 In Search of Chinese International Relations Theory: a Mission Impossible?

LIN Minwang

【Abstract】 This article responds to the discussion on Chinese International Relations (IR) theory. Research on Chinese IR theory has produced a variety of discourses, but it doesn't reach a consensus on whether it is possible. Naturalists believe all IR theories to be universally true, but anti-naturalists refuse to accept this standpoint. Is it a mission impossible? The author holds that it is possible to establish a universally applicable IR theory with Chinese characteristics. Following Hans Reichenbach (1891–1953), the author distinguishes between the “context of discovery” and the “context of justification” in theory-building. Once a hypothesis is proposed, there are canons of logic that determine whether or not it should be accepted—that is, there are rules of method that hold in the context of justification. There are, however, no such rules that will guide someone to formulate the right hypothesis, or even hypotheses that are plausible or fruitful in the context of discovery. Chinese scholars will set their mark on IR theory in the context of discovery. Thus, it is a possible mission to have a universally applicable Chinese IR theory.

【Key Words】 international relations theory, Chinese School, context of

discovery, context of justification

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138 Implications of China's Call for "Discourse Power": A Subjective Epistemological Approach to China's Emerging Role

WANG Hungjen

【Abstract】 There has been an increasing number of discussions in the Chinese International Relations (IR) literature regarding China's "discourse power" in international affairs. From my investigation of two important periods in that literature—the discourse power initiation stage (2004-2005) and blossoming stage (2007-2008)—the author identified four categories of Chinese self-perceptions of discourse power: Marxist ideology, autonomy and independence, international status and influence, and national image. These categories reflect four epistemological approaches entailing China's integration into international society, and acknowledgment of its rising power during the current post-reform era. The four corresponding Western epistemological approaches to analyzing China's emerging role are democratic peace theory, IR realism, social constructivism, and soft power (also known as liberal realism). In addition to revealing cultural and historical differences, these contrasting approaches represent clear epistemological differences in understanding China's rising role. The author argues that for China to overcome conflicts emerging from this divide, it must not internalize Western values or apply a soft-power strategy, but instead engage in a "discourse alliance" and IR theory reconstruction for purposes of encouraging a form of Anglo-centric universalism to accept the realities of relative absolutism and cultural diversity.

【Key Words】 International Relations (IR) theory, China's rise, discourse power, identity, image

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