

The Hon. Malcolm Turnbull, MP, Prime Minister of Australia  
The Hon. Julie Bishop, MP, Foreign Minister  
The Hon. Steven Ciobo, Minister for Trade, Tourism and Investment  
The Hon. Bill Shorten, MP, Opposition leader of Australia  
Senator the Hon. Penny Wong, Shadow Foreign Minister  
The Hon. Jason Clare, MP, Shadow Trade and Investment Minister  
Senator the Hon. Richard Di Natale, Greens Leader  
The Australian Parliament

## **An Open Letter to the Australian Government**

**RE: Australian Government's Position on the Arbitration on the South China Sea Dispute**

6<sup>th</sup> August 2016

Dear Representatives of the Australian public,

On behalf of all Chinese associations and communities in the Australian Capital Territory, we write to express our concerns over the position of the Australian Government on the arbitration on the South China Sea dispute.

The Arbitral Tribunal in Hague ruled that China has no legal claim to historic right in the South China Sea on 12 July 2016 .

The Australian Government have urged claimants to the South China Sea to respect the Hague Ruling that China has no legal basis to claim historic right over the region. Foreign Minister Julie Bishop has recognised the ruling — a much stronger reaction than most countries while the formal Foreign Minister Mr. Bob Carr said that Australia should not run the risk of being caught up in war against China.

As Australian citizens of Chinese origin, we are deeply concerned with the attitude of the Australian Government on this matter. We believe that the ruling was not made based on the fact through a legitimate procedure. It seems that the arbitration itself was manipulated by a group of parties which intentionally did the Philippine a favour. In this sense, the arbitration had abused the UN Convention on the Law of the Sea that was injustice and had little value in resolving the dispute.

We just want to draw your attention to a number of facts.

- It is true that there is a territory dispute between China and Philippine over the South China Sea. Both sides have their own arguments and evidence to support their claims. To resolve the dispute a mechanism based on bilateral negotiation had already been established since 1995, which was endorsed by both Chinese and Philippine governments.
- By initiating the arbitration unilaterally the Philippines ate their own words and also against the spirits agreed by all the parties including Philippines set in 2002, the Declaration on the Conduct of Parties in the South China Sea (DoC 8<sup>th</sup> ASEAN Summit ).

- The Arbitral Tribunal has no jurisdiction over the territorial dispute issues, which are not subject to the UN Convention on the Law of the Sea (UNCLOS).
- With regard to maritime delimitation issues, China made, pursuant to article 298 of UNCLOS, a declaration in 2006 excluding them from arbitration and other compulsory dispute settlement procedures.
- Similar declarations have been made by some 30 countries, including Australia and all the permanent members of the UN Security Council with the only exception of the United States, which is yet to accede to UNCLOS.

We believe that the Australian media had mixed up the Arbitral Tribunal with the International Court in Hague when reported the ruling. It is important to clarify that the ruling was made by the Arbitral Tribunal NOT by the International Court.

We believe that the ruling was made through an illicit procedure. In arbitration, both parties must agree on the issues, procedures and arbitrators. However, China made it very clear that it neither agreed on the issues nor the procedures well before the Arbitration. How can an arbitration make ruling without the agreement of both parties? Secondly, the judges in the arbitral tribunal are highly questionable. None of the five members were appointed with the agreement of China. Four of the five members of the arbitral tribunal on the South China Sea case were appointed by Shunji Yanai, the former president of the International Tribunal for the Law of the Sea. He is well known to be rightist, hawkish, close to Japanese Prime Minister Shinzo Abe and unfriendly to China. One member was designated by the Philippines. It suggests that the Chair of the arbitral tribunal, Mr Shunji Yanai, has conflict of interest over the relationship with China in this case. In Australia, you do not call a ruling impartial if a judge has conflict of interest with one side of the parties involved in a dispute. Those factors have seriously undermined the legitimacy of the ruling.

Furthermore, the Arbitral Tribunal ruled that Itu Aba (Taiping Island) – along with the rest of the Spratlys – is not an island, as it cannot sustain a human community without external aid. The island, the largest naturally occurring feature in the Spratlys group, is occupied by Taiwan and houses a military garrison, a hospital and a farm. Taipei strenuously argued its case that Itu Aba is capable of sustaining human habitation, with its freshwater wells and ability to grow produce, and is thus an island under UNCLOS. "We absolutely will not accept [the tribunal's decision] and we maintain that the ruling is not legally binding on the Republic of China." The Presidential Office of Taiwan said in a statement. The statement pointed out that the tribunal did not consult with Taiwan or invite it to participate in the case, yet the ruling has "seriously undermined" Taiwan's maritime rights in the South China Sea. If the largest island (Taiping Island) was not an island, we would argue that Australia is in the same situation because we also rely on importation of many goods from overseas for daily life. This ruling is against the commonly accepted definition for an island and setting a precedent for defining an island vs rock. If it were accepted by the international societies, the impacts would have been far beyond this particular case. We believe that many countries with their territories being affected by such a definition would not recognise and accept the ruling.

For the above reasons, we do not believe that the tribunal is capable of making an impartial decision and ruling.

We migrated here and made Australia home because we love Australia including its democratic system. We believe that the political system in Australia is established based on justice, freedom and democracy. Just a few weeks ago the Liberal-National Coalition won the election with marginal majority. Labor's wild Medicare scare campaign was partially blamed for the swing against the Coalition. In response, "A furious Malcolm Turnbull yesterday launched a blistering attack on Bill Shorten's campaign, ordering Labor to stop calling old people at night and scaring them." "What you do not want done to yourself, do not do to others"- the analects of Confucius. If you don't want to suffer from a politically motivated plot, please don't do it to others.

We understand that the Australia is an US ally, but China is the number one trading partner of Australia. Philippine already realized that they were used as cannon fodder against China and would suffer from that. As a matter of fact, the new Philippine government is going to send an envoy to Beijing for a bilateral negotiation. As an out-of-region country with no territory claim in the South China Sea, it would be wise for Australia to keep in neutral in this highly politically motivated case. Further intervention from Australia in this case would have no added value in resolving the dispute and against Australia's national interest.

We are proud to be Australian citizens, proud to be part of the social fabric of this country and proud of our economic capabilities by which we can contribute to this country, yet we have strong feelings for our traditional homeland. In fact, it is the combination of these twin factors which propels us to express these current and urgent concerns. It hurts the feelings of the vast number of Chinese Australians to see Australia itself on the verge of contributing to the destabilisation of the sensitive South China Sea region, to know that our fellow citizens largely remain ignorant of the China perspective on these matters, and it would affect us greatly if the cherished Australia-China relationship should suffer and diminish because of an unnecessary side-track into these marginal issues. The relationship with China is not only strategically important in the 21 century but also pivotal to Australian's future prosperity.

The Australian Chinese community holds great hope for the future of the Australia-China relationship and is always very willing to contribute to its even greater success by working closely with the Government and our fellow Australians.

This open letter from the ACT Chinese Community is viewed as the start of an open dialogue on the position of the Australian Government on the Arbitration on the South China Sea dispute. It is a prompt response to the Australian Government's statement on the Hague ruling on 12 July 2016. We hope it initiates a broader and more sustained dialogue that reaches across foreign affairs, trading and investment, stakeholders, policy and the public.

Yours sincerely,

**The Federation of the Chinese Associations of the Australia Capital Territory**