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# Legal and political implications The Republic of Philippines v. The People's Republic of China 2016 case

## Abstract

The article analyzes The Philippines v. China arbitration case and its geopolitical implications for further bilateral relations between USA and China. Additionally, it examines the viewpoints of Chinese leaders. Term arbitration refers to a process in which a party submits a “dispute” to an unbiased, independent third party. Its main goal is to settle and conclude the disputes presented. The Permanent Court of Arbitration is an intergovernmental organization established in 1899 that designates arbitral tribunals to resolve disputes between and among nations. It is based in The Hague, Netherlands, and currently presides over the arbitration case. Philippines brought the case before the tribunal to dispute China's claim of “indisputable sovereignty” over almost the entire South China sea through its “nine-dash line” claim. The five arbitrators were assigned to the Judge Thomas A. Mensah (President), Judge Jean-Pierre Cot, Judge Stanislaw Pawlak, Professor Alfred H. Soons, and Judge Rüdiger Wolfrum

It will be argued that China has had a bad relationship with all neighbors since 1974, when China used force against South Vietnam in the South China Sea in order to recapture the Paracel Islands and against a unified Vietnam in 1988 to seize Johnson Reef and five more features, massacring a party of Vietnamese flag-bearers. In 1994, China seized Mischief Reef unobserved and it took months before the world noticed. Until then, China was the only claimant to have no permanent presence in the area. There are already clear signs that China is using its military power to rebuke the arbitration. Admiral Wu Shengli, the Commander of the Chinese navy, just hosted the US Chief of Naval Operations, Admiral John Richardson, at the Chinese Navy Headquarters on July 18 2016, following the successful participation of Chinese warships in the major US RIMPAC exercise in the Pacific. He made clear that the militarization of China's artificial islands will continue so that their defense corresponds to the “level of threats.” After a PLA Air Force patrol close to Scarborough Shoal made the headlines of most Chinese newspapers yesterday, a military spokesman announced that air patrols would become a regular occurrence now.

The Tribunal issued its Award on July 16 2016 after several months of hearings and submission of documents. China was absent throughout the proceedings, refusing to recognize the case. The Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line’ The Spratly Islands and its many reefs are being claimed by China under its “nine-dash line” claim that covers nearly the entire South China Sea including parts of the Philippines' Exclusive Economic Zone (hereafter referred to as EEZ). China insisted it has historic rights in asserting its ownership of the region believed to be rich in natural gas resources and also a vital

trade route for international cargo ships The 2012 Scarborough Shoal standoff was one of the factors that prompted the Philippines to file a case against China. Tensions between the two countries escalated when Chinese surveillance ships prevented Philippine authorities from apprehending Chinese vessels found poaching endangered Philippine marine species at the shoal. The dispute over maritime features in the South China Sea has been ongoing for decades prior and involved other Southeast Asian countries such as Vietnam, Malaysia, Indonesia

On January 23, 2013, the Philippine government (hereafter referred to as Manila) announced that it had initiated an arbitration case against the People's Republic of China in accordance with the dispute settlement provisions of the United Nations Convention on the Law of the Sea concerning a range of issues relevant to the ongoing sovereignty dispute in the South China Sea between the two nations. Manila's case was submitted for arbitration to a five-judge panel formed under the "Settlement of Disputes" process contained in Part XV of UNCLOS and hosted by the Permanent Court of Arbitration (PCA) in The Hague. The United Nations Convention on the Law of the Sea is an international treaty that defines the limits of a nation's maritime sovereignty claims. This convention was ratified by both the Philippines and China. Under its provisions, areas within 200 nm from the country's baselines would be part of the EEZ. UNCLOS states three basic maritime features: Islands under the sovereignty of a country are entitled to a 12 nm (approximately 22 kilometers) territorial sea and a 200 nm (approximately 370 km) exclusive economic zone (EEZ). The state may exclude foreign entities within its territorial sea and has the sole right to exploit resources found within the EEZ Since the initiation of the arbitration case, China has conducted several massive reclamation projects to turn submerged reefs into artificial islands capable of hosting military structures and equipment.

The conclusion offers general thoughts on the larger implications of the findings for the management of maritime disputes involving China and especially U. S.-China security relations.

**Keywords:** Permanent Court of Arbitration, arbitration, United Nations Convention on the Law of the Sea, China, US.

## INTRODUCTION

The judgment in a recent case has stoked concern among the United States of America (hereafter referred to as US), which has no claims to the South China Sea (hereafter referred to as SCS), but which has been an advocate of freedom of navigation in the waters, through which \$5 trillion in world trade passes each year. It is noteworthy that just recently, after the November 8<sup>th</sup> 2016 election, Chinese President **Xi Jinping** congratulated Donald Trump in a telegram, Earlier the foreign ministry said that China was hoping to work with the new US government to boost bilateral relations.<sup>1</sup> However, it's worth remembering that the US. China trade relations are mutually beneficial. Two mature big powers like the US and China will handle things well, and China is looking forward to working together with the new US administration to push forward consistent, healthy and stable China-US relations which could be beneficial to the people of the two countries and to the world.

The South China Sea spanning almost 3.5 million sq km, with abundant natural resources and a key shipping lane for international trade, borders on China, the Philippines, Vietnam, Malaysia, Brunei, Singapore and Indonesia. The China government holds that it has "historic rights" to the waters, islands and reefs it claims,

1 See also CNN, 'Donald Trump News Conference', 14 August 2015, <http://edition.cnn.com/TRANSCRIPTS/1508/14/se.01.html>  
The Guardian, 'Donald Trump: I Get Along Great with Mexico but China Should Watch Out', 1 July 2015, <http://www.theguardian.com/us-news/2015/jul/01/donald-trump-i-get-along-great-with-mexico-but-china-should-watch-out>.

and has recently produced a series of historical documents in supporting its position. China's claims that about 90 per cent of the maritime territory, with its so-called "nine dash line" is stretching deep into the maritime heart of Southeast Asia, covering hundreds of disputed islands and reefs, rich fishing grounds and oil and gas deposits. But the The Philippines argues that China's claim violates the United Nations Convention on the Law of the Sea (hereafter referred to as UNCLOS) and has restricted its rights to exploit resources and fishing areas within its exclusive economic zone.

On July 12 2012, the Permanent Court of Arbitration (hereafter referred to as PCA)<sup>2</sup> unanimously ruled that many of China's claims to the South China Sea had "no legal basis."<sup>3</sup> The PCA rejected China's assertion of historic rights to the vital waterway through a so-called nine-dash line demarcated on Chinese maps. The US has also warned China against taking "additional provocative actions" following the international court ruling. A senior State Department official voiced skepticism last week at China's claim that dozens of countries backed its position in the case the Philippines has brought against Beijing, and vowed that US would uphold its defense commitments.

China from the beginning of legal proceedings has boycotted the hearings and was engaged in a major diplomatic and publicity drive to try to delegitimize the process. It seems that the position is that even though China cannot keep up with the US military in the short-term, it should be able to let the US pay a cost it cannot stand if it intervenes in the SCS dispute by military forces.

The Chinese government defines its maritime claims as all the water encompassed by a "nine-dash line"<sup>4</sup> that encircles Taiwan and lines the coastlines of the Philip-

- 2 The PCA is an independent intergovernmental organization that serves as an administrative and support vehicle for the operation of independent tribunals formed "to facilitate arbitration and other forms of dispute resolution between states." As of August 2016, the PCA had administered 12 cases initiated by nations under the arbitration provisions of Annex VII to the UNCLOS
- 3 The arbitral tribunal ruled in favor of Philippines on virtually every substantive claim and on all of the major ones. It ruled that China's Nine Dash Line is inconsistent with China's obligations under UNCLOS. It ruled that Taiping Island, the largest land feature in the Spratly Islands, is a rock and not an island. It also ruled that none (zero) of the land features in the Spratlys are islands, and that many of them are not even rocks that would allow China to generate maritime rights. See also "Award on Jurisdiction and Admissibility," PCA Case No. 2013-19 in the Matter of an Arbitration between the Republic of the Philippines and the People's Republic of China, Permanent Court of Arbitration, October 26, 2015. 9. Permanent Mission of the People's Republic of China, Notes Verbale CML/17/2009 and CML/18/2009, May 7, 2009, U.N. Division for Ocean Affairs and the Law of the Sea, [www.un.org/Depts/los/clcs\\_new/submissions\\_files/mysvnm33\\_09/chn\\_2009re\\_mys\\_vnm\\_e.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf) and [www.un.org/Depts/los/clcs\\_new/submissions\\_files/vnm37\\_09/ch\\_2009re\\_vnm.pdf](http://www.un.org/Depts/los/clcs_new/submissions_files/vnm37_09/ch_2009re_vnm.pdf);
- 4 Limits in the Seas NO. 143, "China Maritime Claims in the South China Sea," Office of Oceans and Polar Affairs, Department of State, December 5, 2014, 2-16.; Jane Chan and Joseph Chinyong Liow The PCA Ruling and ASEAN: A Call for Unity. S. Rajaratnam School of International Studies (RSIS), No. 177 - 14 July 2016
- 4 China still demonstrates that only it may exercise jurisdiction, and exploit the resources, within that line. See more Zhiguo Gao and Bing Bing Jia The Nine-Dash Line in the South China Sea: History, Status, and Implications *The American Journal of International Law* Vol. 107, No. 1 (January 2013), pp. 98-124; Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines" (see previous endnote); "Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and In-

pinas, Malaysia, Brunei, and Vietnam. The line—which China claims dating back to the 1940s—is not recognized by any other state or international institution, and for decades the Chinese government did little to enforce its claims. The line has no international standing and had gone largely unremarked upon until China recently revived it. It now figured in all official Chinese maps. China has never clarified whether the line represents a claim to the islands within the line and their adjacent waters; a boundary of national sovereignty over all the enclosed waters (including, but not limited by, the land features inside the line); or a “historic” claim of sovereignty or any other set of historic rights to the maritime space within the line. The Philippines sought a declaration that the countries’ respective rights and obligations regarding the waters, seabed, and maritime features of the SCS are governed by UNCLOS. As such, China’s claims based on any “historic rights” to waters, seabed, and subsoil within the nine-dash line are contrary to UNCLOS and invalid.

Under the nine-dash line, which constitutes approximately 80 percent of the South China Sea, China has built a series of man-made islands that form the US point of view have been militarized by China with infrastructure and equipment such as airfields and radar facilities. The U.S. government has repeatedly stated that it will not take sides in sovereignty disputes in the South China Sea region. Second, the U.S. government has also repeatedly stated that it will “sail, fly and operate, wherever international law allows.” Additionally, the U.S. government has stated that the pending South China Sea arbitral award is legally binding China, and that China should comply with the award. Therefore, in the case the U.S. Navy approaches Mischief Reef, it has no obligation to invoke innocent passage and it can legally approach within 500 meters of the Chinese artificial island

But as China has grown stronger, this country has begun to enforce its sovereign claims, constructing artificial islands near the disputed Spratly Islands and establishing an oil rig off Vietnamese shores. For example Since 2014 China has been constructing features atop seven coral reefs in the disputed Spratly/Nansha Islands of the SCS by dredging sand and coral from existing coral reefs. At last count China’s new features total more than 2,000 acres<sup>5</sup> Taken into considerations that that each of the seven reefs are naturally formed areas of coral surrounded by water, the maritime zonal entitlements of each reef depends on whether it is (1) above water at all times, and can sustain human habitation or have an economic life of its own, in which case it is a “full-fledged island”; (2) above water at all times but cannot sustain human habitation or have an economic life of its own, known as a “rock”; (3) below high tide but above water at low tide, known as a “low-tide elevation” (or LTE); or (4) below water at all times.<sup>6</sup> These moves have given the China *de facto*

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terests in the South China Sea (excerpts)” December 12, 2016, [http://news.xinhuanet.com/english/2016-07/12/c\\_135507754.htm](http://news.xinhuanet.com/english/2016-07/12/c_135507754.htm) “Statement of the Ministry of Foreign Affairs of the People’s Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines,” July 12, 2016, [http://www.fmprc.gov.cn/mfa\\_eng/zxxx\\_662805/t1379492.shtml](http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1379492.shtml)

5 Seven reefs on which China has been filling and constructing are Hughes Reef, Mischief Reef, Subi Reef, Fiery Cross Reef, Gaven Reefs, Johnson South Reef, and Cuarteron Reef

6 United Nations Convention on the Law of the Sea, arts. 6, 121(1), Dec. 10, 1982, 1833 U.N.T.S. 3, 21 I.L.M. 126]; Convention on the Territorial Sea and the Contiguous Zone, art. 10(1), Apr. 29, 1958, 15 U.S.T. 1605, 516 U.N.T.S. 205

control over sea lanes crucial to international trade, access to abundant fish stock, and possession of water potentially rich in natural resources. But China's assertive stances on issues such as SCS have damaged China's standing in the world and are alienating potential western allies.

The Philippines government decided to utilize international public law. The UNCLOS, ratified by Manila in 1984 and China in 2006, grants each maritime country an exclusive economic zone within 200 miles of its shoreline—a designation that China has largely ignored in recent years. The case, first filed by the Philippine government in 2013 has its own implications beyond questions of sovereignty in Asia. The PCA decision will bear on a larger question: Can an international institution stop a rising power from doing what it wants?

The Philippines brought the case after China seized the Scarborough Shoal in 2012, but China declined to submit formal documentation and filed a position paper arguing the Philippine submission was about a sovereign state dispute and outside the court's jurisdiction. Most of China's strategy in the disputed waters rests on the ambiguity surrounding its claims. China has never clarified exactly what the nine-dash line claim entails, apparently in hopes of maximizing its gains. It has also used its man-made islands in the South China Sea to bolster claims to EEZs of 200 nautical miles (370 km) and territorial seas of 12 nautical miles (22 km). The Philippines sought a declaration that China violated UNCLOS by interfering with the Philippines' rights and freedoms within its EEZs. This includes preventing Philippine fishing around Scarborough Shoal, violating UNCLOS's environmental protection provisions through construction and fishing activities that have harmed the marine environment (including at Scarborough Shoal, Second Thomas Shoal, and Mischief Reef), and by dangerously operating law enforcement vessels around Scarborough Shoal.<sup>7</sup> The Philippines contends that China violates the United Nations Convention on the Law of the Sea, to which both countries are signatories.<sup>8</sup> It argues China's "historic" rights are incompatible with the treaty, requests a determination about the status of the features China occupies and asserts that China has interfered with Philippine rights via its construction and fishing activities. China has rejected the arbitration and insists any disputes in the region should be settled through direct talks. China has dismissed the legitimacy of the tribunal entirely, instead preferring to negotiate with the Philippines directly. And even if the judges in The Hague ruled in the Philippines' favor, which is no sure thing, the tribunal lacks any enforcement mechanism to compel China to comply with its decision. The Chinese government, in any case, has said that it

7 See Table: Claims 5, 8, 9, 10, 11, 12, and 13 Mischief Reef and Second Thomas Shoal are part of the Philippines' EEZ and continental shelf See more Jay Batongbacal, "Arbitration 101: Philippines v. China," Asia Maritime Transparency Initiative for CSIS, January 21, 2015 <http://amti.csis.org/arbitration-101-philippines-v-china>; Arbitration on the South China Sea: Rulings from The Hague," Asia Maritime Transparency Initiative for CSIS, <http://amti.csis.org/arbitration-timeline>.

8 See also judgement in the case Territorial and Maritime Dispute (Nicaragua v Colombia), Merits, Judgment, ICJ Reports 2012, para. 237-38. MP, Vol. XI, Annex LA-35.; Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012, ITLOS Reports 2012, paras. 318 & 337. MP, Vol. XI, Annex LA-43.

will continue to do what it wants regardless of the decision. China and the United States of America have been on a diplomatic flurry before the ruling, with visits to Southeast Asian nations and public statements on their views. China succeeded this month in lobbying Laos to torpedo an Association of Southeast Asian Nations statement that had expressed "serious concern" over developments in the South China Sea and the risk to Asean-China ties.

China's assertive approach to the SCS has resulted in promises of an increase in U.S. military aid to the Philippines and increased American military consultations with Vietnam. Meanwhile, the Philippines have been negotiating for the acquisition of defense equipment from Japan, China's World War II enemy and modern geopolitical rival. Japan has long been engaged in a territorial dispute with China over the disputed islands known as the Senkaku islands in Japan and Diaoyu islands in China. China might retaliate against a ruling it views as negative by delineating an air defense identification zone over the SCS, as it did in 2013 over the East China Sea amid its fight with Tokyo over the Japanese-controlled Senkaku Islands, which are known as the Diaoyus in China. But China has grown over the years in economic importance to India, Australia, and Japan, accounting for more than 20 percent of Australia and Japan's total trade. India is hoping to gain \$20 billion in investment promised by China. As a consequence there might be an ADIZ this year and the excuse will be that the U.S. has militarized the region and that it hasn't complied with Chinese requests to stay away from the artificial islands. It should be noted that Secretary of Defense Ash Carter and Secretary of State John Kerry, along with Senator John McCain and Pacific Command Commander Admiral Harry B. Harris, Jr., have signaled that actions such as declaring an Air Defense Identification Zone (ADIZ), starting reclamation at Scarborough Shoal, or overtly militarizing land features in the Spratly Islands would require tough, cost-imposing measures by USA. But the larger fear is of a regional event spiraling out of control, such as an accidental clash at sea, an overzealous pilot flying too close to another, or a plane being shot down by an accident - a surface-to-air missiles

## POLITICAL SCENE

From the Philippines filed a case with the International Tribunal for Law of the Sea in 2013, China has moved quickly to bolster its claims, reclaiming enough land on some features it controls in the South China Sea to create airstrips and other facilities. China argues growing U.S.<sup>9</sup> military ties and presence in the region is what is really what is driving up tensions in the South China Sea - not its vast claims that cut into other countries EEZs<sup>10</sup>. There are three main types of EEZ boundaries.

9 Defense Secretary Ash Carter noted during his talks with Singaporean leaders on June 4 that the "ruling on the Philippines-China claims will be binding on both parties," <http://www.stripes.com/news/chinese-statement-rejects-any-ruling-over-south-china-sea-dispute-1.416934>

10 Exclusive Economic Zones give countries the exclusive right to develop resources within them and can be used for anything, including offshore wind farms, natural gas and oil extraction and/or access to fishing grounds. The concept is a relatively recent one, only having been agreed to in 1982 at the Third United Nations Conference on the Law of the Sea. Previously, territorial waters, which are defined as extending up to 12 nautical miles (22km) off a country's coast, had been used as the basis for economic activity. EEZ means Sovereign rights for the purpose of exploring, exploiting, conserving and managing natural

Treaty boundaries have been formally recognized by neighboring countries and are thus not contested. Median line boundaries have mainly been established by the UNCLOS convention. While many have been recognized by the concerned countries, a few are being disputed. In some cases, disputed boundaries led to large areas of disputed EEZ, notably the Spratly Islands on the South China Sea, portions being contested by China, Vietnam, Malaysia and the Philippines. From a transportation perspective, an important distinction is that vessels of other states have the freedom of navigation within the EEZ. While they also have, the more restricted right to “innocent passage” through the territorial sea, the coastal state has much greater authority over foreign vessels in that zone

U.S. Navy ships and aircraft have repeatedly transited near the islands occupied by China, in areas which USA considers part of the global commons under the U.N. Convention on the Law of the Sea. It is unlikely that since the Philippines filed a case with the International Tribunal for Law of the Sea in 2013, China has moved quickly to bolster its claims, reclaiming enough land on some features it controls in the South China Sea to create airstrips and other facilities. The Scarborough Shoal is an inherent part of the Chinese territory. No matter what kind of action that China may take or not, it is something within the scope of China’s sovereignty.” Another important issue is the new president elect Donald Trump stance on the China.<sup>11</sup> Already in November 2015, Trump has outlined his plan for reforming U.S. trade relations with China.<sup>12</sup> He would as president formally designate China a currency manipulator, crack down on what he says is its theft of U.S. intellectual property, and expose its various export subsidy practices. As president, he would also seek to lower the U.S. corporate income tax rate, decrease the national debt, and ramp up the U.S. military presence in the Asia-Pacific region, all of which he says would bolster the USA’s bargaining position with respect to Beijing.<sup>13</sup> Historically, what a candidate has said during a campaign has never been equal to what he does after being elected president. However, the presidential candidates’ words probably reflect the interests behind their candidacies; these interests, rather than the letter of campaign promises, can be understood as the driving force behind

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resources, whether living and nonliving, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds

- 11 Trump also promises to confront China over intellectual property theft and illegal export subsidies. For further leverage, he proposes somewhat incongruously to cut US corporate taxes in order to make America a more attractive place to invest than China and to bolster the US naval presence in the South China Sea. He also proposes to reduce China’s ability to ‘blackmail’ the United States through its Treasury bond holdings by reducing the national debt.
- 12 Trump’s approach to China has focused primarily on economic issues, although he has also addressed some important Asia relationships as well. His overall stance, as found on his campaign website, asserts that Washington has been weak and ineffective in dealing with Beijing and that his administration would provide unprecedented “leadership and strength at the negotiating table...to bring fairness to our trade with China.” See also “Donald J. Trump Foreign Policy Speech,” TMAGA!, <https://www.donaldjtrump.com/press-releases/donald-j.-trump-foreign-policy-speech>. Thomas Wright, “Donald Trump wants America to withdraw from the world,” *Financial Times*, March 23, 2016, <http://www.ft.com/intl/cms/s/0/25d0210a-ef80-11e5-9f20-c3a047354386.html#axzz4BglfCD2n>.
- 13 <http://www.cfr.org/campaign2016/>

certain of the economic and political policies they later enact.<sup>14</sup> One of President-elect Trump's biggest challenges will be managing the relationship between the United States and China.<sup>15</sup>

The relationship has chilled amidst U.S. accusations of Chinese hacking and Chinese complaints that the United States are trying to contain China's growing influence in Asia along with noncompliance with the Court's judgment. Most probably Trump will rebuild the U.S. Navy, adding more than 70 ships to its current fleet, in part to protect the \$5 trillion of annual trade across the South China Sea — a region China is eager to control.

## THE SOUTH CHINA SEA

The Paracels and the Spratlys may have reserves of natural resources around them. There has been little detailed exploration of the area, so estimates are largely extrapolated from the mineral wealth of neighboring areas.<sup>16</sup> The sea is also a major shipping route and home to fishing grounds that supply the livelihoods of people across the region. China claims by far the largest portion of territory - an area defined by the "nine-dash line" which stretches hundreds of miles south and east from its most southerly province of Hainan. Increased use of the contested waters by China and its neighbors heighten the risk that miscalculations by sea captains or political leaders could trigger an armed conflict, which the United States of America could be drawn through into its military commitments to allies Japan and the Philippines. China says its right to the area goes back centuries to when the Paracel and Spratly island chains were regarded as integral parts of the Chinese nation, and in 1947 it issued a map detailing its claims. It showed the two island groups falling entirely within its territory. Those claims are mirrored by Taiwan.

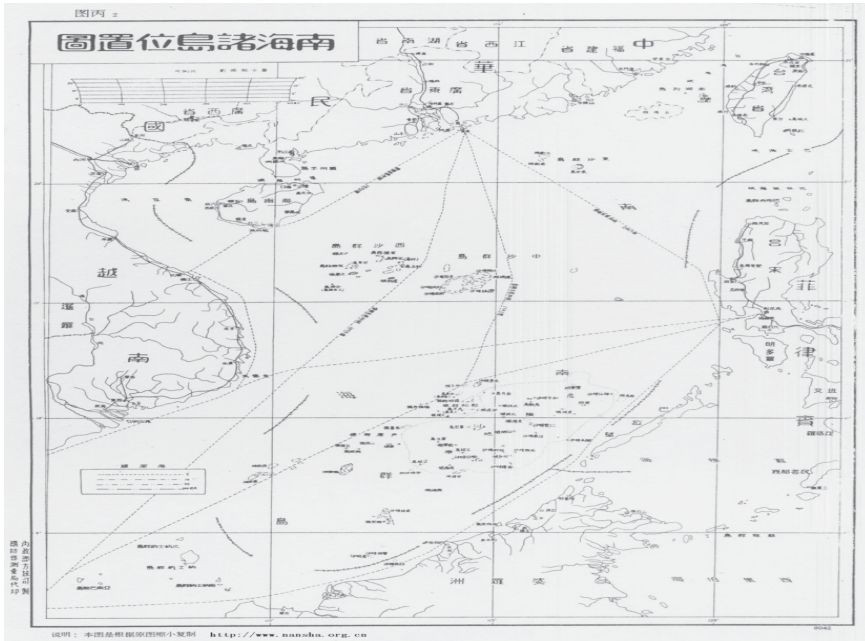
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14 From years of observing U.S. presidential elections, Chinese officials have learned that U.S. candidates' harsh words on China can't be taken seriously because they are just intended to appeal to voter

15 For example, see Yang Ning 杨宁 and Yuan Lu 袁璐, "China is a hot topic among U.S. Presidential candidates" (候选人频打'中国牌'), *People's Daily*, March 22, 2016, *Yi Wen* 奕文, "Trump the 'Anti-Political'" ("反政治"的特朗普), *Cover Story* (封面报道), March 23, 2016, pp. 70–71. "Editorial: Trump opens Pandora's box in US," *Global Times*, March 14, 2016, <http://www.globaltimes.cn/content/973564.shtml> "Checking Trump": A Detail in American Democracy ("阻击特朗普": 美国民主的一个 细节), *Global Times*, April 14 2016, <http://opinion.huanqiu.com/1152/201604/8808632.html>. Li Haidong 李海东

16 alleged 11 billion barrels of untapped oil and 190 trillion cubic feet of natural gas <http://www.cfr.org/global/global-conflicttracker/p32137#!/conflict/territorial-disputes-in-the-southchina-sea>

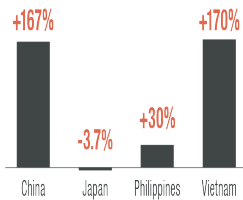




Source: [https://en.wikipedia.org/wiki/File:1947\\_Nanhai\\_Zhudao.png](https://en.wikipedia.org/wiki/File:1947_Nanhai_Zhudao.png)

Vietnam hotly disputes China's historical account, saying China had never claimed sovereignty over the islands before the 1940s. Vietnam says it has actively ruled over both the Paracels and the Spratlys since the 17th Century - and has the documents to prove it. The other major claimant in the area is the Philippines, which invokes its geographical proximity to the Spratly Islands as the main basis of its claim for part of the grouping

RISING TENSIONS



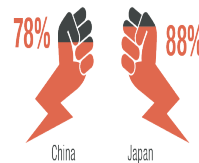
Percentage change in military spending by regional actors 2005-2014

Sources: Stockholm International Peace Research Institute, Military Expenditure Database



The cost of ten Coast Guard patrol boats that Japan is donating to the Philippines

Source: Philippine Daily Inquirer



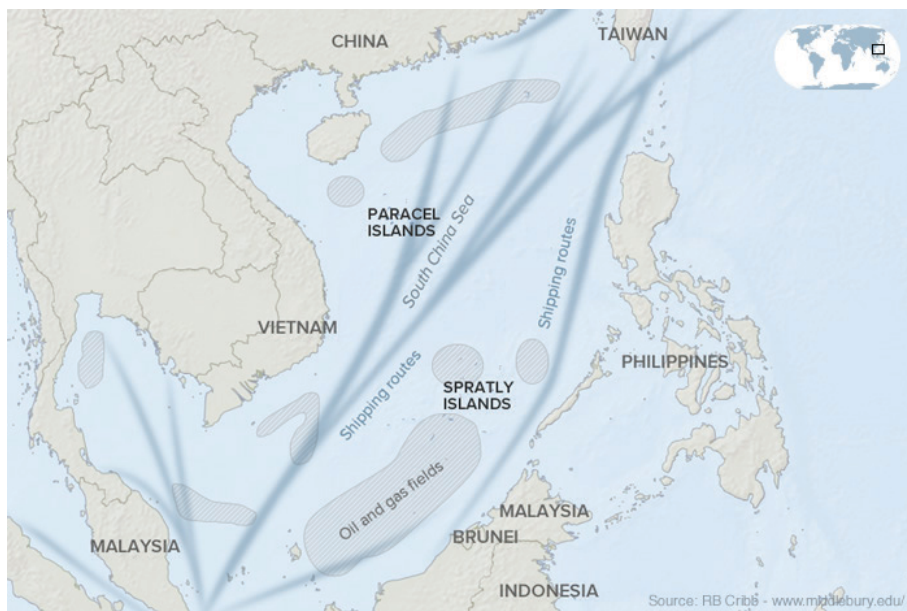
China and Japan's level of "unfavorable" impressions of each other in 2015

Source: The Genron NPO

COUNCIL OF FOREIGN RELATIONS

Source: <http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/#/p31345>

Both the Philippines and China lay claim to the Scarborough Shoal (known as Huangyan Island in China) - a little more than 100 miles (160km) from the Philippines and 500 miles from China.<sup>17</sup> USA defense treaty with Philippines could draw the United States of America into a China-Philippines conflict over the substantial natural gas deposits in the disputed Reed Bank or the lucrative fishing grounds of the Scarborough Shoal. The arbitral tribunal found that none of the land features in the Spratlys satisfy the definition of an "island" under the definitions set out in UNCLOS. This means that none of the land features can generate a 200 nautical mile exclusive economic zone where China claims the right to limit U.S. military surveillance. In June 2016 the Indonesian Navy has fired on Chinese fishing boats in the SCS<sup>18</sup> China had made official protests over the incident, the ministry said in its statement on Sunday, and urged Indonesia not to take any more actions to complicate the situation The Paracels and the Spratlys - two island chains claimed in whole or in part by a number of countries.



**Source:** <http://www.abc.net.au/news/2016-06-23/joko-widodo-visits-south-china-sea-amid-tension-with-china/7539164>

- 17 Malaysia and Brunei also lay claim to territory in the South China Sea that they say falls within their economic exclusion zones, as defined by UNCLOS - the United Nations Convention on the Law of the Sea. Brunei does not claim any of the disputed islands, but Malaysia claims a small number of islands in the Spratlys.
- 18 Although Indonesia has not been part of the larger regional conflict, Jakarta has objected to China's inclusion of the Natuna Islands within its territorial boundaries. [http://in.reuters.com/article/china-indonesia-ship-idINL4N19B074?mc\\_cid=5122713207&mc\\_eid=84215f-db75](http://in.reuters.com/article/china-indonesia-ship-idINL4N19B074?mc_cid=5122713207&mc_eid=84215f-db75)

## TURNING POINTS

The most serious trouble in recent decades has flared between Vietnam<sup>19</sup> and China, and there have also been stand-offs between the Philippines and China:

- In 1974 the Chinese seized the Paracels from Vietnam, killing more than 70 Vietnamese troops.<sup>20</sup>
- In 1988 the two sides clashed in the Spratlys, with Vietnam again coming off worse, losing about 60 sailors.
- In early 2012, China and the Philippines engaged in a lengthy maritime stand-off, accusing each other of intrusions in the Scarborough Shoal.
- In July 2012 China angered Vietnam and the Philippines when it formally created Sansha city, an administrative body with its headquarters in the Paracels which it says oversees Chinese territory in the South China Sea.
- Unverified claims that the Chinese navy sabotaged two Vietnamese exploration operations in late 2012 led to large anti-China protests on Vietnam's streets.
- On January 2013, Manila said it was taking China to a UN tribunal under the auspices of the UN Convention on the Laws of the Sea, to challenge its claims.
- In May 2014, the introduction by China of a drilling rig into waters near the Paracel Islands led to multiple collisions between Vietnamese and Chinese ships.
- In April 2015, satellite images showed China is building an airstrip on re-claimed land in the Spratlys.

China has long insisted that the disputes be handled through bilateral negotiations between claimants and argued against any international involvement. China maintains that under international public law, foreign militaries are not able to conduct intelligence gathering activities, such as reconnaissance flights, in its exclusive economic zone (EEZ). According to the United States of America, countries should have freedom of navigation through EEZs in the sea and are not required to notify claimants of military activities. China's claims threaten sea lines of communication, which are important maritime passages that facilitate trade and the movement of naval forces<sup>21</sup> In recent years, China has built three airstrips on the contested Spratly Islands to extend its presence in disputed waters, and militarized Woody Island by deploying fighter jets, cruise missiles, and a radar system. China has warned its Southeast Asian neighbors against drilling for oil and gas

19 A dispute between China and Vietnam over territorial claims could also threaten the military and commercial interests of the United States. The failure of Chinese and Southeast Asian leaders to resolve the disputes by diplomatic means could undermine international public laws governing maritime disputes and encourage destabilizing arms buildups.

20 <http://www.bbc.com/news/world-asia-pacific-13748349>

21 In response to China's assertive presence in the disputed territory, Japan sold military ships and equipment to the Philippines and Vietnam in order to improve their maritime security capacity and to deter Chinese aggression. <http://politicsandfinance.blogspot.com/2016/07/china-south-china-sea-hague-and-mental.html>

in the contested region, which has disrupted other nations' oil exploration and seismic survey activities.<sup>22</sup>

On October 2015, the US sailed a guided-missile destroyer within 12-nautical miles of the artificial islands - the first in a series of actions planned to assert freedom of navigation in the region. China warned that the US should "not act blindly or make trouble out of nothing"<sup>23</sup> The U.S. military deployed surveillance aircraft over the Chinese-built artificial islands in 2015 and sent warships to sail within 12 nautical miles of disputed features in the Paracel and Spratly island chains to emphasize the importance of freedom of navigation in the contested waters. These operations, intended to challenge China's maritime claims, are expected to expand in scope and have received support from U.S. regional allies (Japan, Indonesia) In June 2016 The Navy just concluded the multi-day deployment of two carrier strike groups to the Philippine Sea, whereas The USS John C. Stennis and USS Ronald Reagan, both aircraft carriers, and their associated strike groups launched joint operations Saturday, and completed them by June 13 2016.<sup>24</sup>

Satellite imagery has shown China's increased efforts to reclaim land in the South China Sea by physically increasing the size of islands or creating altogether new islands. In addition to piling sand onto existing reefs, China has constructed ports, military installations, and airstrips—particularly in the Spratly Islands. It is noteworthy that Article 279 of the Convention requires the parties to settle disputes by peaceful means in accordance with Article 2, paragraph 3 of the Charter of the United Nations. Article 300 prohibits abuse of rights. On 25<sup>th</sup> May 2016, the Group of Seven (G-7) advanced economies issued a statement supporting arbitration, voicing their "strong opposition to any intimidating coercive or provocative unilateral actions that could alter the status quo and increase tensions."<sup>25</sup> UK Prime Minister Cameron made clear he backed other countries in the region in demanding that China respects a forthcoming ruling in The Hague over islands in waters disputed with the Philippines<sup>26</sup> Federation of Russia put its weight behind China, arguing against so-called international interference in South China Sea disputes.

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22 has also deployed the YJ-62 subsonic anti-ship cruise missile on Woody Island, the largest of the Paracels in the South China Sea. The missile was likely deployed at about the same time China's HQ-9 surface-to-air missile system was first detected on the island in February, according to IHS Jane's 360, a British publishing company that keeps records on military equipment. The YJ-62 reportedly arms the Type 052C destroyer launched in 2003. <http://www.ibtimes.com/south-china-sea-controversy-china-deploys-fighter-jets-radar-system-woody-island-2352891>;

see more Clive Schofield, "Island Disputes and the 'Oil Factor' in the South China Sea Disputes", *Current Intelligence*, Vol. 4, No. 4 (2012), p. 4. Hearing on Merits, Annex 829.; C. Schofield, et al., *An Appraisal of the Geographical Characteristics and Status of Certain Insular Features in the South China Sea* (Mar. 2015). SWSP, Vol. IX, Annex 513.

23 <http://www.bbc.com/news/world-asia-pacific-13748349>

24 The strike groups carried out a variety of training, including air defense drills, defensive air combat training, long-range strikes and sea surveillance, <https://www.washingtonpost.com/news/checkpoint/wp/2016/06/20/in-rare-move-the-navy-sends-two-aircraft-carriers-near-the-philippines/>

25 The United States, Britain and others have urged Beijing to abide by the decision when it is finally announced. But China is showing no signs of shifting its stance.

26 "On the tribunal case, we believe it is in Britain's interest to have a rule for the world that is based on adhering to the institutions and rules of that world – that suits us," <http://www.ft.com/cms/s/0/7caf731a-225a-11e6-aa98-db1e01fab0c.html>

Three Southeast Asian nations, Cambodia, Laos and Brunei, have also voiced support for countries handling the disputes bilaterally, but only one of them actually has claimed in the disputed waters. The Chinese government aims on avoiding a loss of face because the the Permanent Court of Arbitration is expected to support Manila's claims on the disputed islands. It is also concerned that other claimants may follow in the Philippines footsteps.

## LEGAL ASSESSMENT

The PCA<sup>27</sup> is a less powerful court than the International Court of Justice (ICJ), whereas unlike the ICJ, it does not have the equivalent of article 94 in the UN Charter<sup>28</sup> On 22 January 2013, the Republic of the Philippines instituted arbitral proceedings against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea "with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea."<sup>29</sup> On 19 February 2013, Chinese government presented a Note Verbale to the Philippines in which it described "the Position of China on the SCS issues,"<sup>30</sup> and rejected and returned the Philippines' Notification. The Chinese Government adheres to the position that it neither accepts nor participates in the court's proceedings. It has reiterated this position in *notes verbales*, in public statements, in its Position Paper "on the Matter of Jurisdiction" dated 5 7th December 2014.<sup>31</sup>

27 Established in 1899 to facilitate arbitration and other forms of dispute resolution between states, the PCA has developed into a modern, multi-faceted arbitral institution that is now perfectly situated at the juncture between public and private international public law to meet the rapidly evolving dispute resolution needs of the international community. <https://pca-cpa.org/en/about/>

28 If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

29 On 9th May 2013, the Philippines sent the first of several diplomatic notes protesting China's actions at Second Thomas Shoal. Note Verbale from the Department of Foreign Affairs of the Republic of the Philippines to the Embassy of the People's Republic of China in Manila, No. 13-1585 (9 May 2013). MP, Vol. VI, Annex 217.

30 In the matter of an arbitration under Annex VII of the United Nations Convention on the Law of the Sea PCA Case No. 2013-19; "The root of the disputes presented by the Philippines in this arbitration lies not in any intention on the part of China or the Philippines to infringe on the legal rights of the other, but rather—as has been apparent throughout these proceedings—in fundamentally different understandings of their respective rights under the Convention in the waters of the South China Sea. In such circumstances, the purpose of dispute resolution proceedings is to clarify the Parties' respective rights and obligations and thereby to facilitate their future relations in accordance with the general obligations of good faith that both governments unequivocally recognise.

31 And in two letters to members of the Arbitral Tribunal from the Chinese Ambassador to the Kingdom of the Netherlands, Mr Chen Xu, on 6th February 2015, and most recently on 1st July 2015.

ECONOMY



**\$5.3 TRILLION**

in total trade passes through the South China Sea every year

Source: The White House

**11 BILLION**

barrels of oil in the South China Sea

Source: U.S. Energy Information Administration

**190 TRILLION**

cubic feet of natural gas in the South China Sea



**90%**

of Middle Eastern fossil fuel exports are projected to go to Asia by 2035

Source: World Energy Outlook 2012 prepared by the International Energy Agency (IEA)

COUNCIL OF  
FOREIGN  
RELATIONS

**Source:** <http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#l/p31345>

Already in October 2015 the PCA ruled that it has jurisdiction to hear some of the claims filed against China, and a ruling is pending. An outside organization or mediator could also be called upon to resolve the disagreement, although the prospect for success in these cases is slim given China's likely opposition. The Chinese government several times stressed that the Arbitral Tribunal has violated the United Nations Convention on the Law of the Sea (UNCLOS) and has abused its power at will by hearing the case and exercising jurisdiction.<sup>32</sup> This is not the only instance where a party in proceedings before the PCA claimed this defense. The Permanent Court of Arbitration (PCA) decided on August 24 2015 on temporary measures regarding the Arctic Sunrise case initiated by the Netherlands. Federation of Russia has taken no part in the Arctic Sunrise arbitration hearing and believes that the arbitration tribunal formed to address this case has no proper jurisdiction. China ratified UNCLOS about 20 years ago. Following Article 298 of UNCLOS, China in 2006 handed in a written document, stating it will not accept international arbitration over sovereignty disputes. So far 58 countries have made similar statements, including South Korea.

The United Nations Convention on the Law of the Sea clearly states that a tribunal will not be entitled to pass judgment on a territorial and boundary disputes. Under UNCLOS, the jurisdiction of an arbitral tribunal is limited to disputes concerning the interpretation or application of the convention. Territorial issues are not subject to UNCLOS, but to general international public law. The PCA has distorted the UNCLOS by extending its jurisdiction and has overstepped its power to make a judgment on territorial sovereignty.<sup>33</sup> It must be noted that international tribunals have long held to the principle that the fact that certain aspects of a dispute

32 See generally Ministry of Foreign Affairs of the People's Republic of China, Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the Arbitral Tribunal Established at the Request of the Republic of the Philippines (30 Oct. 2015). Supplemental Documents, Vol. I, Supplemental Documents, Vol. I, Annex 649.

33 The 1982 Convention was intended as a comprehensive constitution for the oceans, to settle all matters relating to the law of the sea. As such, it supersedes any claim to sovereign rights of any kind beyond the limits allowed by the Convention.

may be non-justiciable or highly political, is no reason (short of proof of abuse of process) to refuse to hear a case concerning any legal questions actually falling within jurisdiction, because a tribunal lacking jurisdiction over a maritime boundary dispute, might still have jurisdiction to answer the legal question whether a particular maritime *feature* claimed by one state was capable of generating zones such that there could be a dispute as to overlapping maritime entitlements with a neighbouring State.<sup>34</sup> Despite all the verbal manipulations by the tribunal, which said it would not try to settle sovereignty disputes, but only determine geological features, the Philippines' claims will eventually lead to the question of who owns it. Furthermore, according to China, the arbitration also infringes on China's right to refuse to accept any imposed rulings on territorial and delimitation disputes, which is ensured by the UNCLOS. Moreover, an arbitration requires the consent of the two concerned parties. Chinese government officials have invoked the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation<sup>35</sup> to suggest that both parties must agree on the rules of dispute settlement before any arbitration may proceed.

China's stance of non-acceptance of and non-participation in the arbitration not only secures its own interests, but also preserves the right of other countries facing a similar situation.<sup>36</sup> It is protecting the authority and completeness of the UNCLOS within its frame, and that's why China's position on the South China Sea issue has gained more and more countries' understanding and support. Any just international arbitration is aimed at eventually solving disputes and conflicts and pushing forward the peace process and development. It is unthinkable a tribunal would create chaos or worsen a crisis in its own right. The UNCLOS also explicitly rules out any infringements on the rights of relevant parties in a conflict to solve their problems through dialogue and negotiations.

## THE JUDGMENT<sup>37</sup>

The court's decision is not enforceable. Nor will China dismantle its newly constructed islands in the South China Sea. In addition to Chinese state media's battle of words against the PCA, the Chinese People's Liberation Army engaged in live-fire drills in the northern part of the South China Sea last week. The tribunal ruled that any other historic rights China might once have claimed in what are now the

34 Alan E. Boyle, *Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction*, *International and Comparative Law Quarterly* / Volume 46 / Issue 01 / January 1997, pp 37-54

35 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations New York, 24 October 1970

36 In line with its duty under Article 5 of Annex VII 6 to the Convention to "assur[e] to each party a full opportunity to be heard and to present its case", the Arbitral Tribunal has kept China updated on all developments in the arbitration and stated that it is open to the People's Republic of China to participate in these proceedings at any stage.

37 A statement from the Chinese Foreign Ministry issued after the PCA award said: "China is the first to have discovered, named, and explored and exploited [the South China Sea islands] and relevant waters, and the first to have exercised sovereignty and jurisdiction over them continuously, peacefully and effectively, thus establishing territorial sovereignty and relevant rights and interests in the South China Sea. <http://time.com/4402451/south-china-sea-ruling-tribunal-philippines/>

exclusive economic zones (EEZ)<sup>38</sup> or continental shelves of other countries were invalidated by its ratification of UNCLOS. The tribunal expressly did *not* rule out the possibility that in certain circumstances prior agreements or historic rights might be preserved under UNCLOS.<sup>39</sup> China violated the Philippines' sovereign rights in its EEZ. It did so by interfering with Philippine fishing and hydrocarbon exploration; constructing artificial islands; and failing to prevent Chinese fishermen from fishing in the Philippines' EEZ. China also interfered with Philippine fishermen's traditional fishing rights near Scarborough Shoal (without prejudice to the question of sovereignty over Scarborough Shoal). China's construction of artificial islands at seven features in the Spratly Islands, as well as illegal fishing and harvesting by Chinese nationals, violate UNCLOS obligations to protect the marine environment. Finally, Chinese law enforcement vessels unlawfully created a serious risk of collision by physically obstructing Philippine vessels at Scarborough Shoal in 2012.

Therefore China has breached various obligations under UNCLOS regarding the protection and preservation of the marine environment by having caused severe and irreparable harm to coral reef ecosystems in its construction of artificial islands in the South China Seas. On the question of specific maritime entitlements over disputed features, the court found that Scarborough Shoal is a rock entitled only to a 12-nautical-mile territorial sea. The judges cannot rule on sovereignty over that shoal, but ruled that China has violated the traditional fishing rights of Filipinos by not allowing them to fish at the shoal. Notably the tribunal said it would have found the same regarding Chinese fishermen if they were prevented access to the shoal by the Philippines.

In its July 12 judgment, the tribunal "concluded that none of the Spratlys, including the largest natural features—Itu Aba, Thitu Island, Spratly Island, Northeast Cay, and Southwest Cay—are legally islands because they cannot sustain a stable human community or independent economic life. As such, they are entitled only to territorial seas, not EEZs or continental shelves. Of the seven Spratlys occupied by China, the court agreed with the Philippines that Johnson Reef, Cuarteron Reef, and Fiery Cross Reef are rocks, while Hughes Reef and Mischief Reef are under water at high-tide and therefore generate no maritime entitlements of their own. Statement that Mischief Reef is a low tide elevation over which no State can claim sovereignty or possession means it is a maritime feature within the Philip-

38 The Philippines sought a declaration that China violated UNCLOS by interfering with the Philippines' rights and freedoms within its EEZs. This includes preventing Philippine fishing around Scarborough Shoal, violating UNCLOS's environmental protection provisions through construction and fishing activities that have harmed the marine environment (including at Scarborough Shoal, Second Thomas Shoal, and Mischief Reef), and by dangerously operating law enforcement vessels around Scarborough Shoal.

39 See the judgment in the case of *in the Matter of the Chagos Marine Protected Area Arbitration* (Mauritius v. UK), whereas tribunal constituted under Annex VII of the UN Convention on the Law of the Sea (UNCLOS) issued its award on 18 March 2015. The tribunal found that the UK's declaration of the MPA disregarded Mauritius' rights, rendering the MPA unlawful. The PCA interpreted claims as rooted in a dispute over the sovereignty of the Archipelago and noted that it did not have jurisdiction over that issue. However, it held that "in declaring the MPA, the United Kingdom failed to give due regard to Mauritius's rights and declared that the United Kingdom had breached its obligations under the Convention..



pinas exclusive economic zone (EEZ). Chinese island-building activities there are thus not merely without legal effect, but are in violation of the sovereign rights of the Philippines. The law of the sea distinguishes three types of maritime features which might generate maritime zones. The critical concept is that of an island (being a naturally formed area of land above the water at high tide: Art 121 UNCLOS), capable of generating a full suite of maritime zones including a 200 nm EEZ. Less useful to the states are ‘rocks’ incapable of human habitation which generate only 12 nm territorial seas. Finally, there is the category of so-called ‘low tide elevations’, maritime features which are only occasionally above the surface of the water. These generate no zones, but if there are sufficiently close to a coastline might affect the baselines from which a territorial sea is measured. Low tide elevations, however, outside states’ territorial seas are not capable of appropriation: no one may claim sovereignty over them and they have no legal status. The final category is that of an artificial island generating only a 500 meter safety zone (Art 60(5) UNCLOS).

It disagreed with the Philippines on the question of Gaven Reef, finding that it is a rock, not a low-tide elevation, as well as on Kennan Reef (which China does not occupy but was introduced into the case). Additionally, the court ruled that Second Thomas Shoal and Reed Bank are submerged and belong to the Philippine continental shelf. In addition, the judges ruled that China violated its responsibilities under UNCLOS by engaging in widespread environmental destruction via its construction of artificial islands; violated Philippine sovereign rights by interfering with oil and gas exploration at Reed Bank; and illegally constructed a facility on Mischief Reef, which sits on the Philippine continental shelf. The arbitration panel also ruled that “having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal found that it could — without delimiting a boundary — declare that certain sea areas are within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China.” Which means that certain Chinese-controlled outposts in the South China Sea are within waters that the Philippines can claim as its own. China’s attachment to the nine-dash line is based on so-called “historic rights,” which the Philippines argued are not applicable in deciding ownership of the South China Sea. The PCA agreed with the Philippine position. “The Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line,’” said a PCA press release on the panel’s judgement.

The Philippines’ lawyers urged the Hague court to define the precise nature of the bits of sand, rock and reef in the South China Sea’s Spratly archipelago. Definition is key because only naturally formed islands that can support economic and human life give governments an “exclusive economic zone” of a maximum 200 nautical miles of surrounding waters, including all oil, seafood and other underwater resources..<sup>40</sup> Philippine government argued in their submissions that Chinese

40 Bits of reef that poke out during high tide are eligible for 12 nautical miles of territorial sea. Atolls that remain submerged during high tide qualify for no economic privileges at all. Even if China has dredged sand and coral to turn reefs into islands bristling with military

activity in waters claimed by the Philippines harmed the environment and that Chinese maritime authorities prevented Philippine fishermen from pursuing their livelihoods. The PCA agreed, deciding that, "China had violated the Philippines' sovereign rights in its exclusive economic zone by (a) interfering with Philippine fishing and petroleum exploration, (b) constructing artificial islands and (c) failing to prevent Chinese fishermen from fishing in the zone." The tribunal further "found that China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species. The South China Sea case is in essence about territorial sovereignty and maritime delimitation, but China argued that the Philippines' case against it to the Permanent Court of Arbitration "breaches international public law" because its disputes aren't being resolved bilaterally.

The Arbitral Tribunal circumvented a declaration under UNCLOS that China made in 2006 to exclude third parties from any dispute involving maritime delimitation. Therefore, the tribunal in The Hague has exceeded its jurisdiction by accepting the Philippines' case. Second, the Arbitral Tribunal has violated UNCLOS by hearing the case. It disregards the fact that China and the Philippines have chosen to settle disputes through their own means, such as negotiation. UNCLOS stipulates that nothing impairs the right of states to settle a dispute through means of their own choosing. Further procedures will only be applied only where no settlement has been reached between interested parties. Given the fact that China and the Philippines have made a clear choice to settle their dispute through one-on-one negotiations, third-party settlement procedures are unapplicable. Third, the Philippines has broken an understanding reached with China on solving the disputes through negotiations, and its commitments under the Declaration on the Conduct (DOC) of Parties in the South China Sea. "Pacta sunt servanda" - or maintaining agreements - is a basic principle in international public law. However, the Philippines' unilateral initiation of the arbitration violates its agreement with China. Fourth, China isn't the first country in the world to claim that a court lacks jurisdiction. In 1986, the International Court of Justice ruled that the United States of America had violated international public law by supporting the Contras rebels against the Nicaraguan government and by mining Nicaragua's harbors. However, the United States of America refused to participate in the proceedings after the Court rejected its argument that the Court lacked jurisdiction to hear the case.

China has steadfastly refused to recognize the PCA's jurisdiction. Decrying the trial as judicial overreach, the Chinese seats during the proceedings remained conspicuously empty. Under UNCLOS, the arbitration ruling is binding regardless of whether both parties assent, but China has sought to ensure the court of international opinion reaches a far murkier conclusion. Chinese officials have not stopped at refusing to participate in a binding process. They have also actively sought to bust countervailing coalitions before they could cohere.<sup>41</sup> For a time,

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hardware, the Philippines maintained in their PCA case that the Spratly features under Chinese control were, at most, high-tide elevations, not naturally formed islands. <http://time.com/4402451/south-china-sea-ruling-tribunal-philippines/>

41 <http://warontherocks.com/2016/06/how-will-china-react-to-the-gavel-coming-down-in-the-south-china-sea/>

countries neighboring the South China Sea were actively supporting the arbitration process, or at least observing how it might soon be applicable to their own claims and interests China has pursued a strategy to discredit and undermine its proceedings, sow discord among those states likely to benefit from the case, and make the geopolitical impact of a ruling meant to be clarifying instead as murky as possible

The most controversial argument would declare China's "nine-dash line" in conflict with the Law of the Sea convention. China has never clarified what the line means on its maps; however, it has inferred that the line covering 90 percent of the sea is a territorial boundary. That line also cuts through the 200-mile exclusive economic zones of multiple nations, including the Philippines. Chinese and Philippine ships have engaged in low-level showdowns at sea over territory and fishing rights. Such actions concern the U.S., which is allied to the Philippines under a defense treaty. The court agrees to an extent; it doesn't make rulings on who rightfully owns any of the islands in the South China Sea, which are claimed by China, Taiwan, Vietnam, Malaysia and the Philippines. A Philippine win on some of the 15 claims in the case would bolster U.S. arguments that some of China's actions, which include building up and militarizing artificial islands, have no standing under international public law. Fiery Cross Reef, an artificial island where China has built a military-grade airfield and added self-propelled artillery, doesn't gain some of the economic and territorial benefits associated with islands and continental shelves. The PCA, a 121-nation dispute resolution body, has no jurisdiction over the case. Although China hasn't agreed to participate in the case, it has issued public position papers the court has considered in its deliberations. With regard to territorial issues and maritime delimitation disputes, China does not accept any means of third-party dispute settlement or any solution imposed on China. On 6<sup>th</sup> May 2016 Ouyang Yujing, director-general of the Chinese Foreign Ministry's Department of Boundary and Ocean Affairs issued a warning stating that the more they challenge its position regarding disputed territories in one of the world's busiest waterways, the more it will push back.<sup>42</sup>

## CONCLUSION

It is without any doubt that the Tribunal has jurisdiction over the Philippines' submissions with respect to China's violations of its duties to protect and preserve the marine environment under Articles 192 and 194 of the Convention, over China's construction of artificial islands, and over the Philippines submission relating to China's interference with its fishing rights in the vicinity of Scarborough Shoal. The Sea Convention in 1982. That instrument, which has rightly been called a "constitution for the oceans", counts among its most important achievements the establishment of clear rules regarding the peaceful use of the seas, freedom of navigation, protection of the marine environment and, perhaps most importantly, clearly defined limits on the maritime areas in which states are entitled to exercise sovereign rights and jurisdiction. According to the 2011 White Paper 'Chi-

42 The Chinese foreign ministry is lobbying countries to support its position and seeking to expand the numbers that are on its side,

na's Peaceful Development', which included the most comprehensive and indeed relevant definition, China's core interests include: 'state sovereignty; national security; territorial integrity; national reunification; protecting China's political system as established by the constitution, the maintenance of overall social stability; and basic safeguards for ensuring sustainable economic and social development.' More recently, the scope of the definition has been widened once again. Whilst commenting on the new National Security Law, a senior official of the National People's Congress defined 'core interest' as encompassing 'the political regime; the sovereignty, unity, and territorial integrity of the nation; and people's livelihoods, sustainable economic development of society, and other major interests'<sup>43</sup> Therefore interested parties Claimants in both the South China Sea and East China Sea shall cooperate on the development of resources, including fisheries, petroleum, and gas. A resource-sharing agreement could include bilateral patrolling mechanisms, which would deter potential sources of conflict like illegal fishing and skirmishes arising from oil and gas exploration. More collaborations in the mold of joint fishery deals like those between China and Vietnam and Japan and Taiwan could mitigate risk by sharing economic benefits.

The United States of America or United Kingdom could serve in a mediation role in the event of crisis erupting in either sea. In the South China Sea, mediation could also come from ASEAN or a trusted, neutral actor within the region like Singapore. Parties could also call for an emergency session of the UN Security Council to negotiate a cease-fire, although China's permanent seat on the Council could limit the effectiveness of this option. <sup>44</sup> In a landmark joint resolution in April, the UN Security Council and General Assembly agreed on the importance of a comprehensive approach to "sustaining peace" through the prevention of conflict and addressing its root causes, including "strengthening the rule of law at the international and national levels." In the East China Sea, bilateral management of the dispute is the likely first option, with China and Tokyo starting negotiate a common guideline for handling the conflict and preventing its escalation. <sup>45</sup> Another political solution The development of a multilateral, binding code of conduct between China and ASEAN countries is often cited as a way of easing territorial disputes in the South China Sea. The parties have already agreed upon multilateral risk reduction and confidence-building measures in the 2002 Declaration on the Conduct of Parties in the South China Sea, but none have adhered to its provisions or implemented its trust-building proposals. While China has historically preferred to handle all disputes bilaterally, ongoing consultations between China and ASEAN still hold some promise for reinvigorating a multilateral framework toward greater cooperation and conflict resolution.

43 <https://rusi.org/commentary/south-china-sea-dispute-chinas-polygonal-defence-core-interests>

44 "A review of the UN's track record shows its success has been limited to cases of interstate conflict between smaller powers, and the dispute does not lend itself to structural solutions, as the players are as strong as the referee is weak.

45 Chinese and Japanese officials made a breakthrough to ease tension in November 2014, issuing a joint four-point outline to improve Beijing-Tokyo relations. <http://www.cfr.org/asia-and-pacific/chinas-maritime-disputes/p31345#/p31345>

However, given differences among ASEAN members vis-à-vis China and China's preference to settle matters bilaterally, it is uncertain whether progress can be made. If any of the mentioned above options fails at least the two sides should come to the table. If only one side goes for arbitration, there is no agreement. The Philippines can deploy all their coast guard ships, planes and helicopters against Chinese fishing boats but cannot stop China. It is economic attrition. A bilateral deal with China would leave more for the Philippines. Nonetheless the US should not expect China's boundary-pushing behavior to change anytime soon.<sup>46</sup> Even in the face of The Hague's legal rebuke, China is likely to continue trying to discredit those international public laws and norms impinging on its creeping assertions of sovereignty in the region of the South China Sea. It seems that China could continue to build on its fake islands in the area, turning them into small military bases armed to the teeth with the latest "carrier-killer" anti-ship weapons, rotate in large amounts of the latest fighter and bomber aircraft and turn the South China Sea into the ultimate anti-access/area-denial zone (A2/AD).

A few other interesting points. The both Parties shall instead of continuing legal battles exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner. The bottom line, however, is that the US and China should consider forming a joint team that includes experienced, high-ranking officials and prominent experts from both sides. This group could chart a course for US-China relations in 2017, identify potential conflicts, and recommend solutions before tensions can reach a boiling point. With a new diplomatic framework for bilateral relations, the US and China could ward off strategic confrontations. In the long term, the both states US and China need deeper dialogue and a shared vision for the international order in dispute region, so that individual countries will not be tempted to form rival blocs among themselves.

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46 The United States' considerable—and now gradually intensifying—presence throughout the Asia Pacific means that it retains an unrivalled base of power and influence from which to exert authority. Equally however, this does not mean that USA able to rely on entirely unconditional support.