



The Philippines-China Arbitration Decision

Reactions from the MAP International Expert Panel


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SUMATHY PERMAL

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The Philippines case against China is an effort provided for under the United Nations Convention on the Law of the Sea (UNCLOS), which allows parties to institute compulsory dispute resolution procedures against others. In this regard, the arbitration case is a mechanism for dispute settlement, although other means exist, such as consultation and negotiation. The arbitration award on July 12 could be a destabilizing factor in the Asia-Pacific, mainly because of China's opposition to the ruling. This has caused international actors to challenge China's stance, thus creating uncertainty in the South China Sea.

The South China Sea disputes, involving multiple claimants in overlapping areas, remain complicated post-arbitration and ultimately call for multilateral negotiation. Bilateral negotiations can be adopted under diplomatic good offices in order to reduce escalation at any point in a conflict. Joint activities that can enhance all the claimant states' economic interests, keeping politics on the sidelines, can provide a near-term solution. It may also be helpful to place viable ventures—for example, deep sea fishing, aquaculture,

deep seabed mining, and oil and gas production—in the hands of capable professionals, with each claimant enjoying equal partnership rights. 

Sumathy Permal is a Senior Researcher with the Centre for the Straits of Malacca at the Maritime Institute of Malaysia. .

JA IAN CHONG

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Much ink has already been spilt on the arbitral tribunal's decision on the South China Sea. Yet the excitement and media responses may somewhat obscure several broader issues. I highlight three of those issues here.

First, greater clarification on the nature of features in the Spratly Islands, specifically the ruling that none of them can generate anything more than a territorial sea, can serve to reduce contention among claimant

states. The tribunal's definitions help reduce both the geographic extent of overlapping claims and the nature of possible claims. This can help limit points of contention among claimant states and in turn reduce likely areas of tension in the longer term. Claimants and interested parties will, however, have to comply and support the ruling for this to happen.

Second, China's strong response to the arbitral tribunal's ruling is not surprising and is consistent with its recent responses to differences with other governments active in the region. That the decision overwhelmingly favored the Philippines is certainly a cause for unhappiness in China, but should not have been surprising. After all, China chose not to participate in the formal arbitral process, significantly reducing its voice in the lead-up to the final decision.

More importantly, China has demonstrated an increasing willingness to respond strongly on a range of issues it does not agree with across Northeast and Southeast Asia in recent years. These include challenging South Korea's decision to host a deployment of U.S. anti-ballistic missile systems, Japan's claims in the East China Sea, Taiwan's election of a president that China does not prefer, and naval operations in regional seas by the United States and other states. Chinese reactions may be a result of a need to express resolve externally, given the pressure of domestic economic and political structural adjustments. Such dynamics suggest that tensions over the South China Sea are likely to persist in the short to medium term.

Third, the timing of China's hosting of the upcoming G-20 meeting is fortuitous because it gives leaders in Beijing a strong reason to exercise self-restraint in the immediate aftermath of the tribunal ruling. International political and media attention that will accompany the G-20 meeting means that Beijing has an incentive to avoid creating an impression that it is a troublemaker, even if it wants to show that the decision makes China an aggrieved party. This means that Beijing is likely to dampen the most strident and pernicious expressions of unhappiness precisely during the period when domestic reactions are likely

to be most heated. This can help blunt the sharpest popular and official responses to the tribunal decision, potentially making future negotiations with other South China Sea claimants and talks with ASEAN easier than might otherwise have been the case. ∞

Ja Ian Chong is an Assistant Professor with the Department of Political Science of the National University of Singapore, where he studies and teaches the international relations of the Asia-Pacific. He was previously a research assistant professor at the Hong Kong University of Science and Technology. He is author of External Intervention and the Politics of State Formation—China, Indonesia, and Thailand, 1892–1952 (2012), which was awarded the 2013 Best Book Award by the International Security Studies Section of the International Studies Association. ol of International Affairs and the Ocean Policy Research Foundation.

ROY D. KAMPHAUSEN AND MICHAEL DYER
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The arbitral decision from The Hague can be seen as a mixed blessing for the United States. Reinforcement of the rule of law and resistance to coercion are strong U.S. interests, and thus the ruling represents a great victory. But implementing U.S. policy in Asia will be more challenging in the aftermath of the ruling, and successfully managing the region's disputes has taken on greater importance.

Prior to the award, China's ambiguity with regard to its claims allowed for freedom of rhetorical and political maneuver. However, the clarity provided by the ruling—which outlines what can and cannot be claimed in the South China Sea—removes much of that ambiguity, laying bare how unsupportable those claims are. China has now painted itself into an awkward corner with few good face-saving policy choices available.

For its part, and in light of Chinese vulnerability, the United States must now play a more nuanced game. The United States must continue its ongoing and robust maritime presence missions throughout the region—failure to do so risks allies and partners questioning U.S. resolve in the face of tough Chinese rhetoric. But at the same time, the United States should avoid giving the impression that its freedom of navigation patrols are police actions to “enforce” the arbitral tribunal’s ruling. This would only cause China to double down on unsupported positions. A more nuanced approach is needed that helps keep the issues in proper context. As Daniel Kritenbrink, senior director for Asian affairs on the National Security Council, said, “We have an Asia strategy that includes the South China Sea, and not vice versa.”

The ruling also heightens the risk that even more attention will be given to the South China Sea disputes at the expense of the larger Sino-U.S. bilateral relationship. As difficult as it is to imagine, despite the heated rhetoric over the South China Sea, overall bilateral military-to-military relations have not been better since before 1989. Humanitarian assistance and disaster relief exercises are increasing in sophistication, the PLA Navy continues to support the antipiracy missions in the Gulf of Aden, and army-army staff talks have been initiated. That U.S. chief of naval operations Admiral John Richardson was invited to Beijing—from Hawaii, where he was observing the Rim of the Pacific (RIMPAC) exercise joined by the PLA Navy—on short notice for discussions with his counterpart, Admiral Wu Shengli, is positive as well. Indeed, there is an emerging pattern that top leaders refuse to disengage when times get tough in bilateral relations, and this pattern is quite positive for regional stability.

In short, the challenge that the United States faces in the South China Sea is not simply one of containing aggression or upholding international law; it is the challenge of “holding the ring,” of holding steady and reassuring allies without provoking the enmity of other states. The importance of holding the ring is now greater following the tribunal’s ruling, but

that is exactly what our regional relationships—and specifically our relationship with China—require of us. ∞

Roy D. Kamphausen is Senior Vice President for Research and Director of the Washington, D.C., office of the National Bureau of Asian Research (NBR). Michael Dyer is a Political and Security Affairs Intern at NBR.

JAMES MANICOM

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The ruling of the Permanent Court of Arbitration on the South China Sea marks an important development in the evolution of maritime disputes worldwide. First, the world now has clearer criteria for what maritime features are entitled to generate maritime zones beyond 12 nautical miles. Second, the world has a clearer understanding of the status of historic rights after a state ratifies the United Nations Convention on the Law of the Sea (UNCLOS). Third, the world has been put on notice that state parties to UNCLOS are expected to fulfill their obligations to protect the marine environment. Combined with recent legal decisions limiting the impact of small islands on maritime delimitation, the intrinsic value of small islands is further diminished after Tuesday’s ruling. China is not the only country that would be well served by reading the decision very carefully. ∞

James Manicom is the author of Bridging Troubled Waters: China, Japan and Maritime Order in the East China Sea (2014). He has held fellowships at the Centre for International Governance Innovation, the Balsillie School of International Affairs and the Ocean Policy Research Foundation.

ADMIRAL (RET.) DENNIS C. BLAIR

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The ruling has two important implications:

- Although the tribunal's decision does not affect sovereignty claims, it does establish that none of the features in the Spratly Islands is entitled to an exclusive economic zone (EEZ). Since most of these features fall within the Philippines' EEZ and continental shelf stretching 200 nautical miles from Palawan Island, the ruling strengthens the Philippines' claim that it has jurisdiction over hydrocarbon and fishing resources in this region.
- The tribunal ruled unanimously, as it had in its initial decision to award jurisdiction. Unanimity helps prevent any state from trying to use a divided verdict as justification to ignore the ruling.

The tribunal's ruling is a legal and diplomatic victory for the Philippines. It brought careful, impartial analysis based on the United Nations Convention on the Law of the Sea (UNCLOS) to issues that China has been attempting to confuse in its favor.

While legal scholars and nations that uphold the rule of law applaud this effort at a law-based solution to the South China Sea disputes, it is important to note that the tribunal's ruling makes only a limited contribution to this contentious issue. It had no jurisdiction to decide any issues of sovereignty over the land features, which continues to be at the heart of many of the disputes. Similarly, the tribunal did not decide on issues concerning maritime boundary delimitations. Finally, there is no enforcement mechanism.

China's reaction to the decision is very important. By signing UNCLOS, China agreed to abide by the rulings of the tribunal. Yet China's recent official rhetoric has repeatedly stated that the country will not be bound by the decision. China faces a critical

juncture. How it reacts will indicate its level of commitment to the peaceful and cooperative resolution of contentious disputes, both in the South China Sea and more broadly. Should China continue to disregard the decisions of this tribunal, it will raise serious doubts about whether other nations can trust the country to abide by any of its international obligations. China's actions in the South China Sea, along with its tougher treatment of international businesses in China and worldwide economic espionage, have all raised doubts about its commitment to the international system from which it has benefited for decades. Coupled with its increasingly harsh treatment of dissenting opinions among its own citizens, China risks creating a suspicious, if not hostile, international environment, which it has so skillfully avoided doing since it first opened to the outside world. ∞

Admiral Dennis C. Blair is the Chairman of the Sasakawa Peace Foundation USA and a member of the Energy Security Leadership Council of Securing America's Future Energy, the Aspen Homeland Security Council, and the Board of Trustees of Freedom House.

IAN J. STOREY

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The responses by the Philippines' ASEAN partners to the tribunal's ruling have been cautious, even disappointing, but perhaps not surprising. Thus far, only six ASEAN members have issued statements: Singapore, Indonesia, Vietnam, Malaysia, Thailand, and Myanmar. Fellow claimant Brunei has been completely silent, as has Laos, which is the current ASEAN chair. Cambodia has not said a word since the verdict was issued, but last week Prime Minister Hun Sen echoed China when he said that the case was a "political conspiracy" and that he would not support the judges' decision.

None of the ASEAN members have explicitly called on both parties to abide by the ruling. Vietnam came closest when it pointed out that the ruling was legally binding and that China and the Philippines were both signatories to the United Nations Convention on the Law of the Sea (UNCLOS). Singapore and Malaysia merely said that all parties should “fully respect legal and diplomatic processes.” Vietnam reiterated its territorial and sovereignty claims in the South China Sea and, strangely, summarized the main points of the award.

Although the nine-dash line cuts into the Natuna Islands’ exclusive economic zone, Indonesia’s long-standing position has been that it does not have a maritime boundary dispute with China because the U-shaped line does not comport with UNCLOS. By throwing out China’s nine-dash line claim, the tribunal validated Indonesia’s position. However, Indonesia did not mention this in its statement and merely called on all parties to exercise “self-restraint” and avoid any activities—including “military activity” (militarization)—that could undermine peace and stability in Southeast Asia.

Singapore, Malaysia, Myanmar, and Thailand all stressed the importance of implementing the 2002 Declaration on the Conduct of Parties in the South China Sea and expediting talks on a code of conduct. Bizarrely, Indonesia said it would continue to promote the Zone of Peace, Freedom and Neutrality in Southeast Asia, an outdated concept from the 1970s. Further and more detailed statements will likely follow once Southeast Asian governments have fully assessed and digested the implications of the 500-page ruling. In the meantime, no ASEAN member, including the Philippines, wants to enrage a bruised China further by calling on it to comply with the ruling. ~

ROMMEL C. BANLAOI

July 13, 2016

At long last, on July 12 the Permanent Court of Arbitration at The Hague released the decision of the five-member International Arbitral Tribunal formed to hear the case filed by the Philippines against China on the South China Sea disputes. In addition to the moral victory that the Philippines enjoyed when it filed the case in January 2013, Manila now has the legal victory to support its maritime entitlements in the South China Sea; particularly in the maritime domain it calls the West Philippine Sea.

But what will be the direction of relations between the two countries after the arbitration? What will be the Philippines’ next move now that it has a legal victory?

In his first cabinet meeting on June 30, immediately after his inauguration, President Rodrigo Duterte had already instructed his officials not to “taunt” or “flaunt” the arbitral ruling. New foreign affairs secretary Perfecto Yasay followed the presidential instruction when he made only a brief diplomatic statement, calling for restraint and sobriety, when the Philippine government received the ruling.

Evidently, the Philippine government does not want the ruling to be used as a reason for the escalation of security tensions in the South China Sea. It acknowledges the enormous enforcement challenge given China’s rejection and nonacceptance of the ruling. Though some Filipino protesters have strongly demanded that China leave the West Philippine Sea, the Philippine government has been more circumspect in its reaction in order to not agitate China, which is currently suffering from the humiliation caused by the ruling.

Immediately after receiving the ruling, President Duterte called an emergency meeting of the Cabinet Cluster on Security, Justice and Peace to identify the Philippines’ next move. There is a general understanding in the Duterte administration of the strong need to repair damaged political ties with China.

Ian J. Storey is a Senior Fellow at the ISEAS-Yusof Ishak Institute, Singapore. He is also the editor of the institute's flagship academic journal Contemporary Southeast Asia.

Contrary to former president Benigno Aquino III, President Duterte has opened his channels of communication with Chinese president Xi Jinping in order to rebuild confidence between the two sides and usher in a new era in Philippines-China relations. In a very rare gesture, President Xi twice personally congratulated President Duterte on winning the presidency and assured the Philippines of China's goodwill as a close neighbor.

President Duterte is now counting on China's goodwill. Indeed, China needs to be reminded of this promise as it weighs its next actions in the South China Sea. The arbitral ruling should guide China on how to behave more responsibly in the South China Sea. ∞

Rommel C. Bankaoi is the Director of the Center for Intelligence and National Security Studies, a constituent unit of the Philippine Institute for Peace, Violence and Terrorism Research, of which he is the Chairman.

Banner image: Chinese structures on stilts at Mischief Reef in 1995. © ROMEO GACAD/AFP/Getty Images

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