

THE IMPLICATIONS OF THE ARBITRAL TRIBUNAL AWARD IN THE PHILIPPINES VS. CHINA CASE ON THE SOUTH CHINA SEA

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- Arbitration timeline
- Main points of the ruling
- Regional responses
- What happens next?

Arbitration Timeline

- **22 January 2013:** Philippines initiates compulsory dispute resolution procedures against China at ITLOS
- **19 February 2013:** China rejects Philippine submission
- **June 2013:** 5-member Arbitral Tribunal constituted
- **30 March 2014:** Philippines submits detailed Memorial
- **7 December 2014:** China issues a position paper rejecting the Tribunal's jurisdiction
- **April 2015:** Tribunal decides to bifurcate proceedings into jurisdictional and merits phases
- **7-13 July 2015:** Hearings on Jurisdiction and Admissibility
- **29 October 2015:** Tribunal accepts jurisdiction
- **24-30 November 2015:** Hearings on Merits of the case
- **12 July 2016:** Tribunal issues ruling

Main Points of the Ruling

- 1) China's "historic rights" claim to resources within the nine-dash line is incompatible with UNCLOS.
- 2) None of the Spratly features are islands entitled to an EEZ; they are rocks or low-tide elevations.
- 3) Activities by China have violated the Philippines' sovereign rights in its EEZ.
- 4) China's artificial island building violated its obligations to preserve & protect the environment.
- 5) China's reclamation activities aggravated the dispute.

Fiery Cross Reef



Regional Responses: The Parties

- **Philippines:** Welcomes the ruling but calls for “restrain and sobriety”.
- **China:** Rejects the ruling as “null and void” and non-binding; Tribunal proceedings a political conspiracy instigated by US.
- **Taiwan:** Rejects the ruling as non-binding

Regional Responses: SEA Parties

- **Vietnam:** Came closest to calling on both parties to abide by the ruling.
- **Malaysia:** Parties should “fully respect legal and diplomatic processes”.
- **Brunei:** “Fully committed to ensuring the peaceful resolution of disputes” in accordance with UNCLOS.
- **Indonesia:** Called for “self-restraint” and “respect for international law including UNCLOS”

Regional Responses: Non-Claimants

- **Singapore:** Parties should “fully respect legal and diplomatic processes”.
- **Thailand, Myanmar and Laos:** Emphasized importance of implementing 2002 DoC and expediting talks on CoC.
- **US, Japan and Australia:** Ruling legally binding and both parties should abide by it.

What happens next?

- **Philippines**
 - President Duterte's Difficult Dilemmas: How to proceed without alienating the Filipino people, America and China?
- **China: 3 possible scenarios: best, bad & worst.**
 - Best: Adopts a more flexible and accommodating position; holds talks without preconditions; energizes DoC/CoC talks with ASEAN; nudges its claims into line with UNCLOS.
 - Bad: Accelerates military presence in the South China Sea; draws straight baselines around Spratlys; declares an Air Defence Identification Zone (ADIZ).
 - Worst: Moves aggressively against Philippine interests e.g. at Second Thomas Shoal or Scarborough Shoal. Will China withdraw from UNCLOS?

Second Thomas Shoal



Scarborough Shoal



What happens next?

- **United States**

- Will continue to call on both parties to abide by the ruling.
- Will US ratify UNCLOS?
- Role of US military partly depends on China's actions.
- But we can expect more Freedom of Navigation Operations (FONOPs).

- **ASEAN**

- ASEAN foreign ministers unable to issue a joint statement due to differences over the South China Sea.
- Rising tensions could have a negative spillover effect on the ASEAN Leaders' Summit and East Asia Summit in September.