



FACT SHEET

Award in Republic of the Philippines v. People's Republic of China,

PCA Case No. 2013-19 (12 July 2016)

1. What happened?

- A. An international Arbitral Tribunal convened under the 1982 U.N. Convention on the Law of the Sea unanimously ruled in favor of the Philippines and against China on the critical issues in dispute.
- B. Specifically, the Tribunal determined that China's maritime entitlements in the South China Sea cannot extend beyond the limits expressly provided by the Law of the Sea Convention.
- C. It also determined that China's claim to "historic rights" in the areas of the South China Sea encompassed by its so-called "nine-dash line" is contrary to the Convention and international law more generally.
- D. The Tribunal also upheld the Philippines claims in a number of other important respects, including by finding that (1) there are no islands in the South China Sea that are capable of generating maritime entitlements beyond a 12 nautical mile territorial sea; (2) China has unlawfully interfered with the Philippines' sovereign rights and jurisdiction in its exclusive economic zone; and (3) China's island building in the South China Sea constitutes a flagrant violation of the environmental protection provisions of the Convention.

2. What is the significance?

- A. This landmark decision clarifies both the Philippines' and China's maritime rights and duties in the South China Sea. The previous lack of clarity created a situation of dangerous ambiguity, heightening tensions in an already complex area.
- B. It is also significant because it should allow all States affected by China's "nine-dash line" claim, not just the Philippines—but also Vietnam, Indonesia and Malaysia—to exercise their lawful sovereign rights and jurisdiction in areas within 200 nautical miles of their coasts where it has now been definitively determined that China has no legitimate claims.
- C. The decision strongly affirms the centrality of the Law of the Sea Convention in establishing a comprehensive legal order for the seas and oceans. Claims to maritime space and rights can only be made in accordance with the Convention.
- D. China has repeatedly said that it will ignore the ruling. Yet, the provisions of the Convention explicitly state that Awards like this are final and binding on all parties; there is no appeal. China specifically agreed to submit itself to arbitration by any other State Party when it ratified the Convention in 1996.
- E. The Tribunal's ruling makes clear that the international community enjoys full freedom of navigation in the South China Sea.

3. What is the context?

- A. Beginning in 2009, when it first depicted the nine-dash line on a map circulated to the United Nations, China has been increasingly assertive in pressing its claim to exclusive maritime rights in the areas encompassed by the line.
- B. It has repeatedly interfered with the Philippines' attempts to explore for and exploit the living and non-living resources (i.e., fish and oil/gas) in its exclusive economic zone and continental shelf within 200 nautical miles of its coasts.
- C. In 2012, China forcefully ejected Filipino fishermen from their traditional fishing grounds around Scarborough (Panatag) Shoal, less than 120 nautical miles from the Luzon coast.
- D. Confronted with China's actions, and its refusal to negotiate in good faith, former President Benigno Aquino III (2010-2016), took the difficult decision to initiate arbitration against China in January 2013. The purpose of the arbitration was to obtain from an authoritative international Tribunal a binding ruling on the lawfulness of China's nine-dash line claim and other activities that deprived the Philippines of its rights and jurisdiction within 200 nautical miles of its coasts under the Law of the Sea Convention.
- E. The arbitration raised no issues concerning land sovereignty over disputed islands. Nor did it seek any form of maritime boundary delimitation.
- F. Specifically, the Philippines asked the Tribunal to determine that China's maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those expressly permitted by the Convention, and that China's claims to sovereign rights jurisdiction, and to "historic rights", with respect to the

- maritime areas of the South China Sea encompassed by the so-called “nine-dash line” are contrary to the Convention and without lawful effect.
- G. The Philippines also requested the Tribunal to determine that certain identified features in the South China Sea are not capable of generating maritime entitlements beyond a 12 nautical mile territorial sea.
- H. The Philippines further asked the Tribunal to find that China unlawfully interfered with the enjoyment and exercise of the sovereign rights of the Philippines with respect to resources in its exclusive economic zone and continental shelf, and that China unlawfully failed to prevent its own nationals and vessels from exploiting the resources of the Philippines’ exclusive economic zone.
- I. Additionally, the Philippines requested the Tribunal to determine that China’s island building in the South China Sea and destruction of coral reefs and other critical habitats violate the provisions of the Convention relating to the protection and preservation of the marine environment.
- J. China refused to participate in the arbitration, arguing that the Tribunal does not have jurisdiction over the Philippines’ claims. In December 2014, China issued a formal Position Paper articulating the reasons it considered the Tribunal to be without jurisdiction.
- K. The Tribunal is made up of five renowned experts on the law of the sea. The President is Mr. Thomas Mensah (Ghana), former president of the International Tribunal for the Law of the Sea (“ITLOS”). The other four member are Prof. Rüdiger Wolfrum (Germany), Mr. Stanislaw Pawlak (Poland), Prof. Jean-Pierre Cot (France) and Prof. Alfred Soons (Netherlands). The first three are Judges on

- the ITLOS. Prof. Soons was formerly the Director of the Netherlands Institute for the Law of the Sea.
- L. The Convention explicitly gives the Tribunal authority to determine its own jurisdiction.
- M. Following extensive written pleadings on jurisdiction and on the merits, the Tribunal held a separate hearing on the jurisdictional issues that China raised (and others) in July 2015. Before and during the hearings, the Tribunal asked the Philippines a large number of questions, pointedly exploring all aspects of the jurisdictional issues. The Tribunal issued an award on jurisdiction in October 2015.
- N. In its 150-page Award on Jurisdiction, the Tribunal determined that it had jurisdiction over 7 of the Philippines's 15 claims. It reserved judgment on the remaining claims, finding that they were too closely intertwined with the merits of the case to be decided separately.
- O. Oral hearings on the remaining jurisdictional issues and the merits of the Philippines' claims were held in November 2015. Before and during the hearings, the Tribunal again asked the Philippines a large number of pointed questions concerning all aspects of the Philippines claims.
- P. The Philippines' lead counsel were Messrs. Paul Reichler, Lawrence Martin and Andrew Loewenstein of the law firm Foley Hoag LLP, in Washington, DC. The Philippines was also represented by Prof. Bernard Oxman of the University of Miami, Prof. Philippe Sands QC of University College London and Prof. Alan Boyle of the University of Edinburgh.

Q. The hearings on jurisdiction and on the merits were attended by observer delegations from a number of States, including Australia, Indonesia, Japan, Malaysia, Singapore, Thailand and Vietnam.

4. What were the specific legal findings?

- A. The Tribunal decided that China’s nine-dash line claim is inconsistent with the Convention on the Law of the Sea; therefore, it is not a lawful claim. In particular, the Tribunal found that China’s maritime entitlements in South China Sea may not extend beyond the limits expressly provided by the Convention, and that China’s claim to exclusive sovereign rights over all maritime areas encompassed by the nine-dash line is without lawful effect because it exceeds those limits. It agreed with the Philippines that “any historic rights China may have had in the waters of the South China Sea beyond its territorial sea were extinguished by the adoption in the Convention and in customary law of the concept of the exclusive economic zone.” The Tribunal observed that “China’s freedom to navigate the South China Sea remains unaffected.”
- B. The Tribunal also determined that there are no insular features in the relevant areas of the South China Sea that are capable of generating maritime entitlement beyond a 12 nautical mile territorial sea.
- C. The Tribunal further found that China had in fact unlawfully interfered with the Philippines’ exercise of its sovereign rights in its exclusive economic zone and continental shelf, and that China had unlawfully failed to prevent its nationals and vessels from exploiting the resources in those zones.

- D. In addition, the Tribunal ruled that China’s construction of large-scale, man-made islands in ecologically sensitive areas of the South China Sea has “caused severe, irreparable harm to the coral reef ecosystem” and constitutes a serious violation of the Convention’s provisions concerning the protection and preservation of the marine environment.
- E. The Tribunal also decided that Filipino fisherman have the right to fish at their traditional fishing grounds in the waters at Scarborough Shoal, and that China cannot lawfully deny them access.

5. What does this mean for the future of the South China Sea?

- A. The Tribunal’s decision brings important legal clarity to the nature and extent of the Parties’ maritime rights and obligations in the South China Sea. Although the ruling does not, and could not have, settled all the Parties’ disputes in the area (because the Tribunal did not have jurisdiction to address matters relating to territorial sovereignty over islands or boundary delimitation), the ruling will have the effect of minimizing these disputes by putting them in a more well-defined legal context.
- B. Although the Tribunal’s decision is technically binding only on the Philippines and China, it has important implications for the rest of the South China Sea States. China’s nine-dash line claim can be no more valid with respect to other neighboring States than it is with respect to the Philippines. The decision should therefore allow those States—such as Vietnam, Indonesia and Malaysia—to move

forward to the exploration and exploitation of their resources in the South China Sea unencumbered by China's unlawful claim.

- C. The Tribunal's ruling also sends a clear signal that all States in the region have a genuine responsibility to protect and preserve the delicate marine environment in the South China Sea.