

**Critical questions: Judgement Day: the South China Sea Tribunal issues its ruling** by Gregory Poling, Michael Green, Bonnie Glaser, Murray Hiebert, Chris Johnson, and Amy Searight

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Today an arbitral tribunal at the Permanent Court of Arbitration in The Hague issued a [long-awaited ruling](#) in Manila’s case against Beijing’s claims in the South China Sea. The five-judge tribunal was established under the compulsory dispute settlement provisions of the United Nations Convention on the Law of the Sea (UNCLOS), and despite China’s refusal to participate in the proceedings, its ruling is final and legally binding. For a closer look at the tribunal’s ruling and the areas it leaves legally disputed in the South China Sea, visit the Asia Maritime Transparency Initiative’s [new interactive map](#).

#### Q1: What did the tribunal rule?

The judges issued a unanimous decision in favor of the Philippines on the overwhelming majority of the claims it made against China. They invalidated Beijing’s claims to ill-defined historic rights throughout the nine-dash line, finding that any claims it makes in the South China Sea must be made based on maritime entitlements from land features. The tribunal ruled that any other historic rights China might once have claimed in what are now the exclusive economic zones (EEZ) or continental shelves of other countries were invalidated by its ratification of UNCLOS. 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 the Spratly Islands, the court surprised many observers by ruling on the legal status of every feature raised by the Philippines. It found 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 below water at high-tide and therefore generate no maritime entitlements of their own. 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.

Taken together, these decisions effectively invalidate any Chinese claim within the nine-dash line to more than the disputed islets themselves and the territorial seas they generate (excepting around the Paracels farther north). 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 only questions on which the tribunal found that it lacks jurisdiction were those involving China’s blockade and other harassment of Philippine troops upon the BRP *Sierra Madre* at Second Thomas Shoal. Those questions fell within the exception to arbitration relating to military matters, which China claimed under article 298 of UNCLOS.

#### Q2: What comes next?

China has been clear that it will not accept any decision from the court, and there is no enforcement mechanism for the ruling. However, China will suffer considerable reputational cost from the ruling. This could help convince Beijing, over the medium-to-long term, to bring its claims into accordance with international law and treat fairly Manila and the other claimants. Recognizing this, the Philippines and partners like Japan and the United States will not only be issuing their own statements calling on both parties to abide by the ruling, but they will urge as many other nations as possible to do the same.

Historically, major powers have often resisted the rulings of international tribunals, only to eventually find a politically acceptable means to accommodate them. Whether or not Beijing will follow that pattern is an open question, and so this will be an important test case of whether a strong international consensus can be sustained vis-à-vis Chinese rejection of international law and whether Beijing will in the end accommodate the expectations of its neighbors.

Beijing recognizes that international solidarity will be the real determinant of whether the case has long-term impact, and has been working to rally countries behind a counter-narrative of China as the victim. Despite Chinese government claims to the contrary, this effort has had limited success. CSIS’s Asia Maritime Transparency Initiative [has documented](#) that, on the eve of the ruling, just eight nations had sided with China, calling the tribunal’s proceedings illegitimate, while 40 had voiced support for the outcome as legally binding.

How many more will speak up now that a decision has been reached? And how many will continue to do so in bilateral meetings, international forums, and UN General Assembly votes for the years it might take to convince China of the costs it is incurring? All eyes will be on whether the Philippines' closest neighbors in the Association of Southeast Asian Nations, who have varying degrees of ties with China, will be able to develop a common statement on the court's ruling. Ultimately, the success of Manila's legal effort depends not on the immediate aftermath of this ruling, but on whether the Philippines and likeminded countries including the United States can sustain enough reputational pressure to eventually convince Beijing to seek a face-saving way out

### **Q3: How might China react in the near-term?**

China's reaction will depend on how much room Beijing decides it still has to maneuver in the wake of the ruling, as well as the reactions of the Philippines, the US, and others. China may not make any immediate moves other than publicly rejecting the tribunal's ruling. As host of the G20 Summit in early September and with an offer by the Philippines' new president Rodrigo Duterte for talks on de-escalation and resource sharing, Beijing may respond with restraint for the time being. If so, this would be an important opportunity for dialogue.

But in light of today's sweeping ruling against several of the core arguments that undergird China's approach to dealing with the South China Sea, Beijing may feel compelled to demonstrate that it is undeterred in the face of what some in the senior leadership are sure to see as a concerted US and allied campaign to undermine China's sovereignty claims. China's persistent land reclamation and operational escalation over the past two years also suggest that Beijing will eventually react to today's ruling by escalating the disputes. Doing so would send a message that China will not be bound by the ruling and serve as retaliation against Manila for its refusal to drop the case while dissuading others like Vietnam and Indonesia from following in the Philippines' footsteps. These steps are more likely to occur several months from now, after the G20, but could come sooner.

One act of retaliation could be island building at Scarborough Shoal. Beijing already resolved to undertake land reclamation at Scarborough in March but was deterred by strong signaling from Washington, including the extended operations of the USS *John C. Stennis* aircraft carrier in the area, patrols near the shoal by A-10 *Warthogs* deployed to Clark Air Base, and direct warnings from President Barack Obama and Defense Secretary Ashton Carter. Scarborough Shoal's location – just 185 nautical miles from Manila situated near the entrance to the Luzon Strait separating the Philippines and Taiwan – makes the establishment of a Chinese military base strategically unacceptable to both Washington and Manila. Reclamation would also carry enormous diplomatic and economic costs, and would be difficult, albeit [not impossible](#), to prevent if China determines to make the attempt.

An even more escalatory, though perhaps less likely, Chinese reaction could be the imposition of a blockade of the Philippine marines stationed aboard the derelict BRP *Sierra*

*Madre* at Second Thomas Shoal. Chinese ships prevented resupply of those marines for several months in early 2014, forcing the Philippines to drop supplies by air. Eventually a Philippine civilian ship carrying international and domestic journalists ran the blockade and the Chinese ships backed off. A new blockade could lead to violence, thereby drawing the US military into a direct response under the requirements of its mutual defense treaty with the Philippines.

Other possible retaliations include moving up the timeline on actions that Beijing has already determined to undertake. China could deploy the first rotation of fighter jets to its facilities on Fiery Cross, Subi, and Mischief reefs. The runways at all three have been built to accommodate fighters, and, at least at Fiery Cross, hangars have been constructed to house them. Beijing could also decide to declare archipelagic baselines around the Spratlys Islands – something that it has explicitly reserved the right to do since establishing baselines around its mainland and the Paracel Islands in 1996. Doing so would be a serious threat to freedom of navigation, since it would amount to a declaration that the waters within the Spratly group were China's internal waters, closed to all surface and air traffic by any other nation. It would also be a direct contravention of today's court ruling.

The deployment of air assets and drawing of straight baselines around the Spratlys would also be the likely precursors to another major escalation: the declaration of an Air Defense Identification Zone (ADIZ) over the South China Sea. As occurred when China declared an ADIZ over the East China Sea in 2013, the militaries of the US and Japan, along with most claimant states and others like Australia, would rapidly violate the zone. But most, if not all, civilian air traffic would comply with China's demands. This would not only heighten the risks of air-to-air incidents between militaries, but would represent another attempt to establish de facto, if not de jure, control over civilian activities throughout the South China Sea.

These are only some of the possible escalatory activities that China could undertake in response to today's ruling. But they all indicate that while the tribunal's decision could prove useful in managing the South China Sea disputes in the long run, the short-term result is likely to be heightened tensions.

*PacNet commentaries and responses represent the views of the respective authors. Alternative viewpoints are always welcomed and encouraged.*