



*Degree Program in PPE: Politics, Philosophy and  
Economics*

Chair: International Law

**Sovereignty and International Law in  
Maritime Disputes: A Critical Analysis of the  
Philippines v. China Arbitration in the South  
China Sea**

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# Chapter 1

## Analysis of the South China Sea

*"The South China Sea is a strategic artery of trade and commerce, and it is in the interest of all nations to ensure its peace and stability." - Barack Obama*

### **Introduction**

The complex territorial disputes in the South China Sea are examined in this chapter. It is impossible to overestimate the importance of this region for international trade, the supply of energy, regional security, and politics. The potential for tensions to rise and the probability of armed conflicts between the claimant states might have far-reaching effects on the Asia-Pacific region and beyond, therefore, resolving these issues are crucial for the international community.

The structure of this chapter aims to provide readers with an extensive understanding of the South China Sea issues from a variety of perspectives.

The geography, economic significance, and strategic placement of the South China Sea are the main topics of Section 1.1, which also underlines the region's importance in the larger global context.

By tracing the history of these territorial disputes from the Qing Dynasty to the founding of the Republic of China, Section 1.2 explores the basis of these claims in historical terms. Understanding the historical background of the conflicts and the political factors that have affected them is essential to understanding why these conflicts have occurred.

Section 1.3 analyzes the most recent territorial conflicts in the South China Sea. The several nations competing for sovereignty over the area, along with the dynamics of their conflicting claims are explored in this section.

addition, The People's Republic of China's claims to the South China Sea are examined in Section 1.4, along with how these claims are being enacted through proactive measures like military buildup and land reclamation initiatives.

Finally, section 1.5 focuses on the Philippines' claims over the South China Sea and the legal and diplomatic efforts undertaken to address these disputes.

## 1.1 Geography of the South China Sea

The South China Sea is a body of water in the western Pacific Ocean, adjacent to the Southeast Asian mainland. Several geographical features border it: to the northeast, it connects with the East China Sea through the Taiwan Strait; to the east, it is bounded by Taiwan and the Philippines; to the southeast and south, it is bordered by Borneo, the southern extent of the Gulf of Thailand, and the eastern coast of the Malay Peninsula; and to the west and north, it is delimited by the Asian mainland. Together with the East China Sea, it forms the China Sea<sup>1</sup>.



Source: Encyclopedia Britannica

The southern boundary of the South China Sea is marked by an underwater ridge between the islands of Sumatra and Borneo, while the northern section stretches from the northernmost point of Taiwan to the coast of Fujian province in China, encompassing the Taiwan Strait. The South China Sea covers a vast area of

<sup>1</sup> Political Map of the South China Sea - Nations Online Project, Nations Online Project. <https://www.nationsonline.org/oneworld/map/South-China-Sea-political-map.htm>, 2024.

approximately 1,423,000 square miles (3,685,000 square kilometers) and has an average depth of 3,976 feet (1,212 meters)<sup>2</sup>.

### ***1.1.2 Economic importance of the South China Sea***

The U.S. Energy Information Agency estimates that the South China Sea holds about 190 trillion cubic feet of natural gas and 11 billion barrels of oil in proved and probable reserves, most of which lie along the margins of the South China Sea rather than under disputed islets and reefs. The U.S. Geological Survey 2012 estimated that another 160 trillion cubic feet of natural gas and 12 billion barrels of oil could be undiscovered in the South China Sea<sup>3</sup>.

Twelve percent of the global fish catch comes from the South China Sea, large parts of populations in coastal states (Philippines, Indonesia, and Vietnam) rely on fish protein in their diet, and fishing significantly contributes to the economies of China, Vietnam, Thailand, and Indonesia<sup>4</sup>.

Over 270 million people live in most of the South China Sea's coastal nations, most of which have developing or underdeveloped economies. As a result, the aquaculture and fishing sectors are vital to growing coastal nations. Fisheries provide a primary source of income for millions of people, either directly or indirectly. Food and nutrition have increased significantly in the South China Sea due to the growth of aquaculture and fisheries. It has enhanced local economic development, employment opportunities, and the standard of living in coastal countries<sup>5</sup>.

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<sup>2</sup> LaFond, E. C., South China Sea. Encyclopedia Britannica. <https://www.britannica.com/place/South-China-Sea>, January 16, 2024.

<sup>3</sup> South China Sea Energy Exploration and Development, Asia Maritime Transparency Initiative. <https://amti.csis.org/south-china-sea-energy-exploration-and-development/>, 2023.

<sup>4</sup> Roy, N., Revisiting Geopolitics in the South China Sea. In *The Palgrave Handbook of Contemporary Geopolitics*, February 24 2024.

<sup>5</sup> Ke, C. et al., Editorial: Fisheries ecological environment in South China Sea, *Frontiers*. <https://www.frontiersin.org/articles/10.3389/fenvs.2022.981443/full>, 24 October 2022.

The most significant actor in this region is China. China imports and exports goods crucial to its economy and energy security through these waters. Its potential hydrocarbon reserves and fisheries industry also support China's economy<sup>6</sup>.

For its fisheries and maritime trade, countries like Vietnam, the Philippines, Malaysia, Indonesia, and Thailand rely on the South China Sea. These nations use water as a conduit to global markets, attracting foreign investment and stimulating economic development along their coasts<sup>7</sup>.

### ***1.1.3 The strategic location of the South China Sea***

Due to its strategic location at the intersection of major marine routes connecting the Pacific and Indian oceans, the South China Sea serves as a focal point for global powers and their interests. Given its ability to facilitate the annual transit of goods valued at trillions of dollars, the South China Sea is essential to the world economy. Almost one-third of all international trade is carried out over these waterways, including vital energy supplies like natural gas and oil<sup>8</sup>.

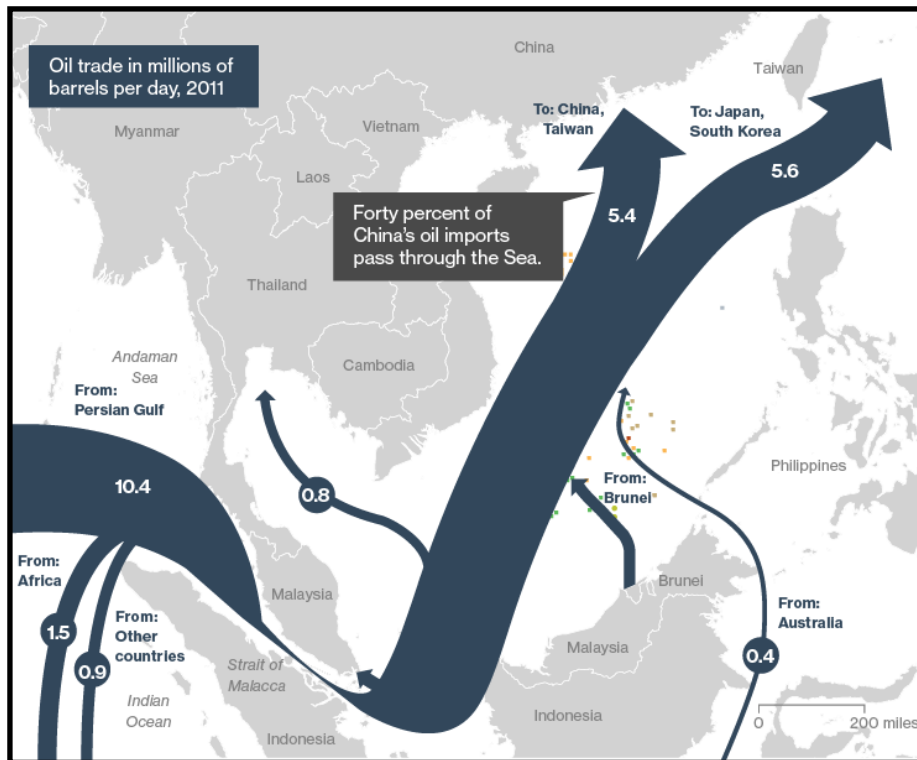
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<sup>6</sup> Ke, C. *et al.*, Editorial: Fisheries ecological environment in South China Sea, *Frontiers*. <https://www.frontiersin.org/articles/10.3389/fenvs.2022.981443/full>, *February 10 2022*.

<sup>7</sup> Ke, C. *et al.*, Editorial: Fisheries ecological environment in South China Sea, *Frontiers*. <https://www.frontiersin.org/articles/10.3389/fenvs.2022.981443/full>, *February 10 2022*.

<sup>8</sup> Fabinyi, M., et al., China's blue economy: A state project of modernisation. *The Journal of Environment & Development*, Sage, 30, 2021, 2.





SOURCE: Bloomberg.com

More than fifty percent of global trade, worth over five trillion dollars, crosses the islands and waterways of the South China Sea via the Straits of Malacca, Sunda, and Lombok. In addition, it also includes the most critical energy channels that East Asian nations use to transport natural gas and oil from the Persian Gulf<sup>9</sup>. As a result, the South China Sea is strategically and geopolitically significant for the economic and energy security of China and other East Asian nations and the USA, whose \$1.2 trillion in trade passes through the seas. Furthermore, the contested islands possess proven oil and gas deposits, meaning that their sovereignty includes the legal right to utilize these resources<sup>10</sup>.

<sup>9</sup> Sunariyanto, Budi Prayogo, and Akhmad Hanan, "The Importance of the South China Sea: Energy Perspective.", The Purnomo Yusgiantoro Center. <https://www.purnomoyusgiantorocenter.org/the-importance-of-the-south-china-sea-energy-perspective/>, February 10 2022.

<sup>10</sup> Sunariyanto, Budi Prayogo, and Akhmad Hanan, "The Importance of the South China Sea: Energy Perspective.", The Purnomo Yusgiantoro Center. <https://www.purnomoyusgiantorocenter.org/the-importance-of-the-south-china-sea-energy-perspective/>, February 10 2022.

## ***1.2 Historical Importance***

### ***1.2.1 Historical importance of the South China Sea: from the Qing Dynasty to the establishment of the Republic of China***

In the pre-European era, the South China Sea was a bustling maritime hub used by indigenous Asian, African, and Arab trading societies. Remarkably, these societies navigated its waters without asserting explicit territorial claims. Instead, the sea played a pivotal role as the bridge for communication and trade, fostering a network of exchange rather than serving as a subject of territorial contention<sup>11</sup>.

The entry of Europeans into the South China Sea narrative commenced with the Portuguese takeover of Malacca in 1511. Surprisingly, this early European involvement did not witness the formalization of territorial claims by either the European powers or the indigenous traders. The sea continued to function as a vital trade route without becoming a focal point of geopolitical disputes<sup>12</sup>.

The late 19th and early 20th centuries witnessed a significant shift in the region's dynamics as the Qing Dynasty was struck by geopolitical setbacks, including the Treaty of Shimonoseki in 1895 and the Boxer Rebellion from 1899 to 1901. These challenges fueled widespread sentiments of "national humiliation," compelling Qing officials to contemplate a more defined national border<sup>13</sup>.

In March 1909, during the Qing Dynasty, lead by notions of national pride, decided to elevate the issue of sovereignty over South China Sea islands. A symbolic attempt was made to claim Pratas Island, a move that encountered unexpected

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<sup>11</sup> Zhiguo Gao, and Bing Bing Jia, *The American Journal of International Law* 107, 1, 2013, 100.

<sup>12</sup> Zhiguo Gao, and Bing Bing Jia, *The American Journal of International Law* 107, 1, 2013, 101.

<sup>13</sup> *The Recent History of the South China Sea: A Timeline*, Crisis Group, 2024. <https://www.crisisgroup.org/content/recent-history-south-china-sea-timeline>.

obstacles, including the presence of Japanese workers. This event marked a crucial turning point despite a failed attempt to purchase the island<sup>14</sup>.

May 1909 witnessed the dispatch of a naval force by Yen Jun Zhang, the governor of Guangdong, to secure the Paracel Islands. This move, reflected a subtle but significant shift in approach, although it was contradictory to the official Chinese-produced maps of the time. A new map, published upon the force's return, became China's first cartographic claim to South China Sea features<sup>15</sup>.

The political landscape further evolved with the overthrow of the Qing Dynasty in 1911, giving rise to the Republic of China (ROC). However, despite this political transition, neither the new republic nor other littoral states or European powers undertook formal efforts to claim features in the South China Sea physically<sup>16</sup>.

### ***1.2.2 Historical importance of the South China Sea from the 1920s until the 1951 San Francisco Peace Conference***

The historical narrative surrounding the territorial claims in the South China Sea begins with the emergence of French concerns over Spratly Island in 1927. This concern escalated in 1927 after Japanese inquiries about France's interest in the island. Subsequently, in April 1930, the French formally landed on Spratly Island, prompted by rumors of an impending Japanese seizure. However, formal annexation and neighboring features such as Amboyna Cay, Itu Aba, North Danger Reef, Loaita,

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<sup>14</sup> Erickson, Andrew S., Lyle J. Goldstein, and Nan Li, China, the United States, and 21st-Century Sea Power: Defining a Maritime Security Partnership. Annapolis, MD: Naval Institute Press, 119-120, eds. 2010.

<sup>15</sup> Encyclopaedia Britannica, s.v. Territorial Disputes in the South China Sea, <https://www.britannica.com/topic/territorial-disputes-in-the-South-China-Sea>.

<sup>16</sup> Sacks, Benjamin J., The Political Geography of the South China Sea Disputes: A RAND Research Primer. Santa Monica, CA: RAND Corporation, 16 June 2022.

and Thitu did not occur until 1932. Despite protests from both the Chinese and Japanese governments, neither took concrete actions to reclaim these features<sup>17</sup>.

In 1934, private citizen Chen Duo published the Newly Made Chinese Atlas, asserting China's claim to the Spratly Islands. This move was noticed, as it potentially influenced China's Review Committee for Land and Water Maps, which listed the claimed islands without specifying boundaries<sup>18</sup>. In 1936, Bai Meichu published the New China Construction Map, introducing the first instance of China's infamous nine-dashed or U-shaped line around the South China Sea islands<sup>19</sup>. However, the official adoption of this claim by the Republic of China's government did not occur until 1947, with the publication for Chinese audiences coming in 1948. Notably, the ROC government intended to negotiate precise maritime boundaries with other countries later, under international laws<sup>20</sup>.

The late 1930s saw a temporary halt to South China Sea disputes due to the rapid expansion of the Japanese empire in East and Southeast Asia. It wasn't until a year after World War II that regional countries revisited the issue. In 1946, the Philippines declared the Spratly Islands part of its territory, prompting responses from the French and the ROC. The ROC navy landed forces on Itu Aba in 1947 but suspended plans to garrison forces throughout the Spratly and Paracel Islands due to the Communist victory in the Chinese Civil War and the ROC's retreat to Taiwan<sup>21</sup>.

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<sup>17</sup> Govella, K., Avoiding and exploiting the tragedy of the commons: fishing, crime, and conflict in the South China Sea. <https://doi.org/10.1057/s41311-023-00501-4>, 13 September 2023.

<sup>18</sup> Govella, K., Avoiding and exploiting the tragedy of the commons: fishing, crime, and conflict in the South China Sea. <https://doi.org/10.1057/s41311-023-00501-4>, 13 September 2023.

<sup>19</sup> China's Claim on the Spratly Islands: Just a Mistake?, Center for International Maritime Security. <https://cimsec.org/chinas-claim-spratly-islands-just-mistake/>.

<sup>20</sup> Erickson, Andrew S., Lyle J. Goldstein, and Nan Li, China, the United States, and 21st-Century Sea Power: Defining a Maritime Security Partnership. Annapolis, MD: Naval Institute Press, eds. 2010, 211.

<sup>21</sup> Erickson, Andrew S., Lyle J. Goldstein, and Nan Li, China, the United States, and 21st-Century Sea Power: Defining a Maritime Security Partnership. Annapolis, MD: Naval Institute Press, eds. 2010, 212.

The territorial situation was further complicated in 1951 when Japan relinquished all claims to the South China Sea islands at the San Francisco Peace Conference. The People's Republic of China (PRC) and the ROC made respective claims, but Western states not participating in the conference ignored these claims, leaving the sovereignty of the Spratly and Paracel groups deliberately ambiguous. This ambiguity was attributed to Western fears of Communist presence and weak French and British claims<sup>22</sup>.

In 1955, the PRC introduced forces on Woody Island in the Paracels, prompting the Vietnamese government to assert control over the Crescent group. The maritime border in the Paracels remained undefined as neither side possessed sufficient naval power to knock over the other. Meanwhile 1956, the ROC returned to Itu Aba and Pratas Island. On September 4, 1958, the PRC issued a declaration claiming the South China Sea features within the nine-dashed line, though without explicitly taking action to enforce the claim<sup>23</sup>.

### ***1.3 South Chinese Sea disputes in recent times***

Eight states claim title to these South China Sea islands. Singapore and Malaysia dispute claims over Pisang Island and Pulau Batu Puteh, strategically situated in the congested waters of Malacca and Singapore Straits. China, Taiwan, and Vietnam contest each other's claims to sovereignty over the Paracel Islands, a group of fifteen islets and several reefs and shoals scattered over a 200-kilometer area in the middle of the Gulf of Tonkin. Taiwan also contests China's claims to Pratas Island and the Macclesfield Bank. As for the Spratlys, six states assert claims: China, Taiwan, and Vietnam claim the entire archipelago, while the Philippines, Malaysia,

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<sup>22</sup> Thomas Schwartz, John Yoo, Asian Territorial Disputes and the 1951 San Francisco Peace Treaty: The Case of Dokdo, Chinese Journal of International Law, Volume 18, Issue 3, September 2019. <https://doi.org/10.1093/chinesejil/jmz017>.

<sup>23</sup> Thomas Schwartz, John Yoo, Asian Territorial Disputes and the 1951 San Francisco Peace Treaty: The Case of Dokdo, Chinese Journal of International Law, Volume 18, Issue 3, September 2019. <https://doi.org/10.1093/chinesejil/jmz017>.

and Brunei claim sovereignty over portions of the Spratlys. Except for Brunei, all the others have established a military presence in the Spratlys<sup>24</sup>.

Since 2009, tensions in the area began to increase, as Malaysia and Vietnam submitted requests to the United Nations for extended Exclusive Economic Zones (EEZs) in the South China Sea. The PRC submitted a diplomatic protest and officially presented its nine-dashed line claim to the UNCLCS without providing historical evidence. The Philippines and Vietnam also engaged in territorial claims, marking a shift from the prior peaceful atmosphere. In 2009, the Philippines revised its archipelagic baselines law, prompting Chinese military considerations for constructing a Mischief Reef airstrip. Despite bilateral agreements and trade efforts, the differing negotiation approaches became more apparent over the following decade. The submission of territorial claims to the UNCLCS in 2009 and the Philippines renaming its EEZ as the "West Philippine Sea" in 2011 signaled an increasing tension in the South China Sea dispute, with the PRC responding by expanding its Spratly Island operations and patrolling disputed features claimed by the Philippines<sup>25</sup>.

#### ***1.4 PRC's claims over the South China Sea***

The People's Republic of China asserts its claim to the Spratly and Paracel Islands based on historical naval expeditions dating back to the 15th century. In 1947, under Kuomintang rule, the ruling party at the time, China, demarcated a line around these islands known as the nine-dash line map. This delineation asserted China's sovereignty over all islands enclosed by this line<sup>26</sup>.

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<sup>24</sup> Hayton, Bill, *The South China Sea: The Struggle for Power in Asia*. New Haven: Yale University Press, 2015, 56.

<sup>25</sup> Sacks, Benjamin J., *The Political Geography of the South China Sea Disputes: A RAND Research Primer*. Santa Monica, CA: RAND Corporation, 2022, p. 9-11.

<sup>26</sup> Erickson, Andrew S., Lyle J. Goldstein, and Nan Li, eds. 2010. *China, the United States, and 21st-Century Sea Power: Defining a Maritime Security Partnership*. Annapolis, MD: Naval Institute Press

Even after the Communist Party took control in 1949 and established the People's Republic of China (PRC), the new government continued using this map in official communications, claiming rights to the waters within it. Based on this historical evidence, China upholds its South China Sea claim<sup>27</sup>.

In 2009, following the joint submission of Vietnam and Malaysia to the Commission on the Limits of the Continental Shelf (CLCS), China submitted the nine-dash line map to the CLCS to solidify and legitimize its claim beyond 200 nautical miles. This move prompted Malaysia, Vietnam, Brunei, and the Philippines to assert their rights over the islands and various zones in the SCS, directly challenging China's claims<sup>28</sup>. However, the nine-dash line map contradicts the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).

The Convention establishes guidelines on baselines, the width of territorial waters, the regime of islands, low-tide elevations, the exclusive economic zone, the continental shelf, maritime boundary delimitation, and dispute settlement, all of which apply to the South China Sea. Consequently, the foundation of China's claims must be substantiated as it does not adhere to the Convention's determinations and needs sufficient historical evidence. Despite this, to expand its territory in the South China Sea, China has undertaken island-building activities, enlarging existing islands and transforming features into fully developed islands to establish an exclusive economic zone (EEZ) extending 200 nautical miles. China asserts its rights over and around islands that cannot naturally sustain human habitation and constructs new islands to broaden the area under its sovereignty<sup>29</sup>.

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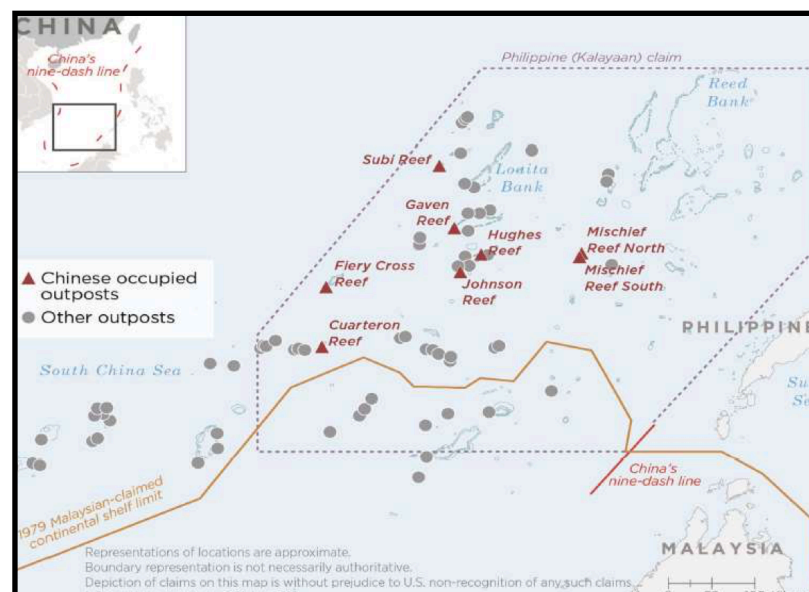
<sup>27</sup> Erickson, Andrew S., Lyle J. Goldstein, and Nan Li, eds. 2010. *China, the United States, and 21st-Century Sea Power: Defining a Maritime Security Partnership*. Annapolis, MD: Naval Institute Press, 215.

<sup>28</sup> Kaplan, Robert D. 2014. *Asia's Cauldron: The South China Sea and the End of a Stable Pacific*. New York: Random House, 8, 22.

<sup>29</sup> Kaplan, Robert D. 2014. *Asia's Cauldron: The South China Sea and the End of a Stable Pacific*. New York: Random House, 8, 24.

These actions counter UNCLOS, specifically Article 121, paragraph 3, which states that "rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." Predictably, China's stance and operations have heightened tensions with neighboring countries that also lay claims to the region, resulting in escalated disputes involving sunken vessels and military exercises to assert sovereignty. Presently, international law recognizes that the mere discovery of territory doesn't confer valid ownership title; instead, it establishes an inchoate title that must be perfected through subsequent continuous and practical acts of occupation, typically involving permanent settlement<sup>30</sup>.

### ***1.4.1 PRC's military influence in the South China Sea***



Source: US Security Department

Between 2013 and 2015, China conducted extensive land reclamation activities, involving the creation of artificial islands in the Spratly Island chain within the South China Sea. According to the U.S. Department of Defense (DOD), this reclamation effort resulted in the development of approximately five square miles of

<sup>30</sup> Gleice, Miranda, and Valentina Maljak, *The Role of United Nations Convention on the Laws of the Sea in the South China Sea Disputes*, 23 July 2023, p. 3-4.



artificial land across seven contested sites controlled by China. Military infrastructure, advanced anti-ship and anti-aircraft missile systems, and other military equipment were subsequently installed on these outposts<sup>31</sup>.

While other claimants in the South China Sea have engaged in reclamation and construction activities on the sites they occupy, China's efforts in terms of scale and militarization far surpass those of other claimants<sup>32</sup>.

In recent years China's land reclamation efforts in the Spratlys and Paracels appear to have transitioned into the establishment of permanent infrastructure. The focus has shifted towards enhancing Chinese command-and-control capabilities and developing enduring facilities. The features controlled by China in the Spratly Islands, including deep-water berths, now boast what seems to be permanent weapons emplacements. In contrast, such permanent installations are not as evident in the Paracels, although occasional appearances of weapons have been noted<sup>33</sup>.

The Spratly Islands house ports, equipped with deep-water berths, capable of supporting a diverse range of naval vessels. Additionally, runways, aircraft hangars, and weapons-storage facilities on Woody Island in the Paracels, as well as Subi, Fiery Cross, and Mischief reefs in the Spratlys, signify a strategic expansion of Chinese AirPower. It's worth noting that the Paracels, due to their proximity to Hainan, may be perceived as less vulnerable, potentially influencing the presence of permanent weapons installations<sup>34</sup>. In the Spratlys, a variety of radars and radomes further contribute to China's comprehensive military capabilities in the South China Sea.

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<sup>31</sup> Yi, Sophie Wushuang, Navigating South China Sea Security in 2024., The Diplomat, <https://thediplomat.com/2024/01/navigating-south-china-sea-security-in-2024/>, January 4, 2024.

<sup>32</sup> Yi, Sophie Wushuang, Navigating South China Sea Security in 2024., The Diplomat, <https://thediplomat.com/2024/01/navigating-south-china-sea-security-in-2024/>, January 4, 2024.

<sup>33</sup> International Crisis Group, "Recent History of the South China Sea: A Timeline." <https://www.crisisgroup.org/asia/south-east-asia/south-china-sea/recent-history-south-china-sea-timeline>.

<sup>34</sup> U.S. Naval Institute Staff., Report on U.S.-China Competition in East, South China Sea, USNI News. <https://news.usni.org/2024/02/06/report-on-u-s-china-competition-in-east-south-china-sea-13>, February 6, 2024.

Satellite images consistently reveal the frequent visits of People's Liberation Army Navy (PLAN) destroyers, frigates, combat ships, and China Coast Guard (CCG) patrol vessels to the artificial islands. Additionally, numerous auxiliary and logistics vessels are regularly observed in these images<sup>35</sup>. It's important to acknowledge the limitations of relying solely on satellite imagery, as it captures only those ships present in port at a specific moment, potentially missing those out on patrol. Nevertheless, the pervasive appearance of PLAN and CCG vessels in images of Fiery Cross, Mischief, and Subi Reefs since the beginning of 2017 underscores the substantial and enduring naval and coast guard presence at these island bases<sup>36</sup>.

## ***1.5 The Philippines' Roles***

### ***1.5.1 The Philippines' claims over the South China Sea***

The Philippines bases its claims to the Spratlys primarily on the "discovery" of certain islands by Thomas Cloma in 1947. In 1956, Cloma declared the establishment of a new island state named "Kalayaan" (Freedomland), with himself as the head of its Supreme Council. While this self-proclaimed "state" received no international recognition, Cloma persisted with his claim until 1974, when he officially transferred ownership through a Deed of Assignment and Waiver of Rights to the Philippine government<sup>37</sup>.

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<sup>35</sup> U.S. Naval Institute Staff, Report on U.S.-China Competition in East, South China Sea, USNI News. <https://news.usni.org/2024/02/06/report-on-u-s-china-competition-in-east-south-china-sea-13>, February 6, 2024.

<sup>36</sup> Cordesman, Anthony H., et al., "Military Build Up in South China Sea as Part of Overall Change in China's Strategic Posture." *China and the U.S.: Cooperation, Competition and/or Conflict An Experimental Assessment*, Center for Strategic and International Studies (CSIS), 2019, pp. 321–23.

<sup>37</sup> The Diplomat. *A Brief Genealogy of Philippine Claims in the South China Sea*, <https://thediplomat.com/2024/03/a-brief-genealogy-of-philippine-claims-in-the-south-china-sea/>, 21 March 2024.

The Philippines' official assertion began in 1971, triggered by an incident where Taiwanese forces fired upon a Philippine fishing vessel on Itu Aba Island. In response, the Philippine government protested the incident, subsequently laid claim to islands in the Spratly group based on Cloma's original claim<sup>38</sup>.



A 1770 MAP BY BRITAIN'S ROYAL HYDROGRAPHER SHOWS THE PANACOT SHOAL, NOW CALLED SCARBOROUGH SHOAL. "PANACOT" IS A FILIPINO NAME IN THE TAGALOG LANGUAGE.

In 1978, the Marcos government formally annexed the archipelago to the Philippines, placing it under the administration of Palawan province. Notably, the Philippines maintains that the Kalayaan Islands group is distinct from the Spratlys and Paracels. This claim is founded on a geological argument stating that the continental shelf of the Kalayaan Island group is adjacent to Palawan Province and extends about 300 miles westward into the heart of the Philippines' Exclusive Economic Zone (EEZ). The Philippines currently maintains hundreds of marines

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<sup>38</sup> Kenny, M., "territorial disputes in the South China Sea." *Encyclopedia Britannica*, June 5, 2024. <https://www.britannica.com/topic/territorial-disputes-in-the-South-China-Sea>.

stationed on eight islands to safeguard its claims. These bases are fortified with heavy artillery and equipped with radar facilities, a weather station, and ammunition depots<sup>39</sup>.

### ***1.5.2 Philippines' military presence in the South China Sea***

In 1999, the Philippines deliberately grounded the BRP Sierra Madre, a World War II-era warship, at the Second Thomas Shoal, strategically located in proximity to the Chinese-controlled Mischief Reef. The Philippines aimed to check China's advances in the contested waters. Stationing a handful of troops on this remote outpost, the Philippines relies on regular resupply missions, but contends that China's coastguard disrupts these operations, highlighting the strategic importance of the location<sup>40</sup>.

Recent years have witnessed an increase in reported confrontations between the Philippines and China. Accusations include dangerous maneuvers by a Chinese ship near the Second Thomas Shoal and the alleged use of a military-grade laser by the Chinese coastguard, causing temporary blindness to a Philippine ship's crew. China asserts that these actions were responses to vessels intruding into its territorial waters, contributing to the escalating tensions in the region. President Ferdinand Marcos Jr.'s administration marks a departure from his predecessor Rodrigo Duterte's policies. Marcos seeks to strengthen defense ties with the United States, symbolized by granting the U.S. access to additional military bases under the Enhanced Defense Cooperation Agreement (EDCA)<sup>41</sup>.

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<sup>39</sup> Gleice , Miranda, and Valentina Maljak, The Role of United Nations Convention on the Laws of the Sea in the South China Sea Disputes, 23 July 2023, p. 3-4.

<sup>40</sup> Kenny, M., "territorial disputes in the South China Sea." *Encyclopedia Britannica*, June 5, 2024. <https://www.britannica.com/topic/territorial-disputes-in-the-south-china-sea>.

<sup>41</sup> South China Morning Post, *US-Philippine military drills along South China Sea risk Beijing's ire – that's their problem*. <https://www.scmp.com/week-asia/politics/article/3257934/us-philippine-military-drills-along-south-china-sea-risk-beijings-ire-thats-their-problem>

This agreement enables joint training, repositioning of equipment, and infrastructure development, emphasizing sites facing the South China Sea and Taiwan. The United States responds to the Philippines' strategic shift with tangible support, announcing \$100 million in military aid and an additional \$82 million to upgrade EDCA sites. The two nations conduct their largest-ever joint drills, featuring live-fire exercises at sea. The Biden administration, following a summit with President Marcos, explicitly commits to defending the Philippines if attacked in the South China Sea, signaling a robust deterrent against potential aggression. China criticizes the Philippines' strengthened ties with the U.S., warning of potential entanglement in geopolitical strife. As the Philippines navigates a complex geopolitical landscape, its alliance with the U.S. serves as both a strategic defense measure and a diplomatic signal against China's territorial assertiveness<sup>42</sup>.

## ***1.6 The South China Sea conundrum***

The South China Sea is a region of immense strategic, economic, and geopolitical importance. Its vast natural resources, critical maritime trade routes, and central location within the Asia-Pacific have made it a focal point of regional and global competition. The overlapping territorial claims and growing tensions among the surrounding nations, particularly China, Vietnam, the Philippines, Malaysia, Brunei, and Taiwan, have transformed the South China Sea into a powder keg with the potential for armed conflict.

As this chapter has outlined, the high stakes involved - from energy resources to fisheries to freedom of navigation - have drawn in major external powers like the United States, further complicating the situation. Resolving the South China Sea disputes will require deft diplomacy, adherence to international law, and a careful balancing of the interests of all stakeholders.

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<sup>42</sup> "What's behind Rising China-Philippines Tensions in the South China Sea?" *Al Jazeera*, Al Jazeera, [www.aljazeera.com/news/2023/8/9/whats-behind-rising-china-philippines-tensions-in-the-south-china-sea](http://www.aljazeera.com/news/2023/8/9/whats-behind-rising-china-philippines-tensions-in-the-south-china-sea).

The next chapter will delve deeper into one of the most high-profile cases within this broader regional conflict, the case between the Philippines and China. By analyzing the legal, geopolitical, and diplomatic dimensions of this specific dispute, the thesis will shed light on the broader challenges facing the South China Sea and explore potential paths forward for conflict management and cooperation.

## **Chapter 2**

### **Republic of the Philippines v. People's Republic of China**

#### **Introduction**

This chapter analyzes the landmark case involving the People's Republic of China and the Republic of the Philippines. With major implications for the ongoing territorial disputes over the South China Sea, the arbitration that the Philippines initiated against China under the United Nations Convention on the Law of the Sea is an unprecedented legal dispute.

This chapter seeks to give a comprehensive understanding of the legal considerations and wider political implications of the South China Sea disputes, as well as the function of international law in resolving these protracted territorial conflicts, through an analysis of this case.

In addition to providing an overview of the case and the broader context of the South China Sea disputes, Section 2.1 goes further into the history of the case and the conflicts that preceded the arbitration.

The consequences of China's choice to not participate in the arbitration procedures are discussed in Section 2.2, along with how it affects the global legal system and the dispute settlement procedure.

A comprehensive overview of the prerequisites, exclusions, and restrictions on the Tribunal's jurisdiction is provided in Section 2.3, which also highlights the complex legal factors that influenced the parameters and extent of the arbitration.

A crucial component of the case that has implications for the claimant states' territorial claims is the Tribunal's assessment of the status of different South China Sea features, which is the focus of Section 2.4.

The Tribunal's decisions regarding matters including fishing rights, the preservation and protection of the maritime environment, and the legitimacy of China's building and occupation activities on the Mischief Reef are finally examined in section 2.5.

## ***2.1 Analysis of the Republic of The Philippines v. People's Republic of China case***

In January 2013, the Philippines initiated legal proceedings against China under the United Nations Convention on the Law of the Sea. The Philippines appointed Judge Rüdiger Wolfrum as an arbitrator. In response, China rejected the arbitration in February 2013. The International Tribunal for the Law of the Sea (ITLOS) appointed arbitrators, including Judge Stanislaw Pawlak, Judge Jean-Pierre Cot, Professor Alfred Soons, and Ambassador Christopher Pinto (later replaced by Judge Thomas A. Mensah). The Tribunal adopted Procedural Order No. 1 on August 27, 2013, setting March 30, 2014, as the deadline for the Philippines to submit its Memorial<sup>43</sup>.

The basis for the arbitration between the Philippines and China is the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Both countries are parties to the Convention, with the Philippines ratifying it on May 8, 1984, and China on June 7, 1996. The UNCLOS serves as a comprehensive framework, often referred to as a "constitution for the oceans," designed to address various issues related to the law of the sea. It has been ratified by 168 parties<sup>44</sup>. Part XV of the UNCLOS outlines a system for the peaceful settlement of disputes, including provisions for compulsory arbitration as detailed in Annex VII. On January 22, 2013, the Philippines filed for arbitration against China in accordance with the rules of procedure provided in Part XV and Annex VII of the Convention<sup>45</sup>. The Tribunal emphasizes that the United Nations Convention on the Law of the Sea (UNCLOS) does not address the issue of sovereignty over land territory. Therefore, the Tribunal does not have the authority to

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<sup>43</sup> "Permanent Court of Arbitration." Memorial Of The Philippines, Republic Of The Philippines, 30 Mar. 2014, p. 1-3.

<sup>44</sup> Sreenivasa Rao Pemmaraju, The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility, Chinese Journal of International Law, Volume 15, Issue 2, June 2016, Pages 265–307, <https://doi.org/10.1093/chinesejil/jmw019>.

<sup>45</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." The South China Sea Arbitration, 12 July 2016, p.1-2.



make rulings on which state holds sovereignty over any land territory in the South China Sea, including disputes over the Spratly Islands or Scarborough Shoal. The Tribunal's decisions in this Award do not rely on determinations of sovereignty, and the Award does not express any view on questions of land sovereignty.<sup>46</sup>

Additionally, while UNCLOS includes provisions for the delimitation of maritime boundaries, China, through a 2006 declaration, has excluded maritime boundary delimitation from its acceptance of compulsory dispute settlement. Consequently, the Tribunal is not tasked with and does not claim to establish maritime boundaries between the Philippines and China or with any other state bordering the South China Sea. The Tribunal will address claims related to specific locations in the South China Sea only to the extent that they do not depend on maritime boundary issues, and where no delimitation is necessary because applying the Convention would not result in an overlap of the respective entitlements of the two parties<sup>47</sup>.

### ***2.1.2 Frictions leading up to the case***

The maritime disputes between the Philippines and China in the South China Sea have undergone two distinct stages, each marked by a shift in focus and approach. During the initial phase, spanning from early 1995 to early 2009, the focal point of the disputes centered around the divergent interpretations of the nature and maritime entitlements of certain features in the South China Sea. Notable among these features were Mischief Reef and Scarborough Shoal. The disputes also encompassed issues related to fishing rights in the area. Both the Philippines and China sought to address these disagreements through bilateral exchanges and negotiations. The disputes entered a second stage after May 2009, when China began asserting its maritime claims in the South China Sea based on its alleged "historical

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<sup>46</sup> U.S. Department of Defense, "U.S. Official Says Allies Acting Together to Deter China," news release, October 16, 2023.

<sup>47</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." The South China Sea Arbitration p. 3-4

rights" within the nine-dash line. This claim was contested by the Philippines and other states, as it was seen as conflicting with the principles and provisions of the United Nations Convention on the Law of the Sea. China's actions aimed to restrict the Philippines from conducting certain activities within the nine-dash line, including within the Philippines' Exclusive Economic Zone and continental shelf<sup>48</sup>. The differences between the two countries regarding their rights and obligations under UNCLOS became deeply entrenched and difficult to resolve. The shift from the initial phase to the second stage of the disputes signifies a fundamental change in the nature of the disagreements. In the beginning, the disputes were primarily focused on specific features and fishing rights, with both countries engaging in bilateral negotiations in an attempt to find a mutually acceptable resolution<sup>49</sup>. However, since 2009, China's emphasis on historical rights and its assertion of control within the expansive nine-dash line has significantly escalated tensions.

China's claims within the nine-dash line have raised concerns among neighboring countries, including the Philippines, as they challenge the established norms and legal frameworks provided by UNCLOS. The Philippines has strongly contested China's claims, arguing that they infringe upon its sovereign rights and undermine the principles of international law<sup>50</sup>.

The protracted nature of the disputes and the failure to reach a comprehensive resolution have had wide-ranging implications. Besides the direct territorial and resource-related concerns, the disputes have had an impact on regional stability, maritime security, and the freedom of navigation in one of the world's busiest waterways. The involvement of other regional and global actors, including the United

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<sup>48</sup> Koga, K., *Four Phases of South China Sea Disputes 1990–2020*. In: *Managing Great Power Politics. Global Political Transitions*. Palgrave Macmillan, Singapore, 2022.

<sup>49</sup> United Nations, "United Nations Convention on the Law of the Sea", 1982, p. 44.

<sup>50</sup> "Why Does China Claim Almost the Entire South China Sea?" Al Jazeera, October 24, 2023, <https://www.aljazeera.com/news/2023/10/24/why-does-china-claim-almost-the-entire-south-china-sea>.

States, has further complicated the situation and added to the geopolitical complexities surrounding the disputes<sup>51</sup>.

### ***2.1.3 Philippines claims against China***

The legal dispute between the Philippines and China, brought before the Tribunal, revolves around three crucial issues under the United Nations Convention on the Law of the Sea. A cornerstone of the Philippines' case is the challenge to China's claim of "historic rights" beyond the scope of its UNCLOS entitlements, particularly within the expansive nine-dash line. The Philippines vehemently argues that such historic rights, as asserted by China, run counter to the provisions of UNCLOS<sup>52</sup>.

A significant aspect of the dispute involves the contestation of China's claims to specific maritime features in the South China Sea. The Philippines contends that these features, central to the territorial disagreement, should not be classified as islands generating exclusive economic zone or continental shelf entitlements. Instead, they argue that UNCLOS categorizes these features as "rocks" under Article 121(3), or as low-tide elevations and submerged banks incapable of generating the contested entitlements<sup>53</sup>.

The Philippines further alleges that China has unlawfully interfered with its sovereign rights and freedoms under UNCLOS and other international laws that align with the Convention. All three issues at the heart of this dispute exclusively hinge on the interpretation and application of UNCLOS. Notably, China has refrained from invoking the optional exceptions outlined in Article 298 of the Convention, signaling

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<sup>51</sup> "Permanent Court of Arbitration." Memorial Of The Philippines, Republic Of The Philippines, 30 Mar. 2014, 45-47.

<sup>52</sup> Mark J. Valencia, "The Maritime Bedrock of the U.S.-Philippines Alliance," Institute for China-America Studies, October 2023, <https://chinaus-icas.org/research/the-maritime-bedrock-of-the-u-s-philippines-alliance/>.

<sup>53</sup> Sreenivasa Rao Pemmaraju, The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility, Chinese Journal of International Law, Volume 15, Issue 2, June 2016, 272.

a commitment to utilizing the dispute resolution mechanisms within UNCLOS<sup>54</sup>. The Philippines, in initiating legal proceedings, clarifies that it does not seek to challenge China's rights under the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Rather, it aims to ensure that China's claims align with the limits set by the Convention and invokes UNCLOS provisions to protect its own rights, including the right to a peaceful and compulsory settlement of the dispute. The Philippines specifically requests a declaration from the Tribunal regarding China's assertion of historic rights<sup>55</sup>.

Additionally, the Philippines seeks a determination of the status and maritime entitlements, if any, of nine maritime features in the South China Sea. Among these features are Johnson Reef, Cuarteron Reef, Fiery Cross Reef, Scarborough Shoal, Mischief Reef, McKennan Reef, Gaven Reef, Subi Reef, and Second Thomas Shoal<sup>56</sup>.

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<sup>54</sup> "Permanent Court of Arbitration." Memorial Of The Philippines, Republic Of The Philippines, 30 Mar. 2014, p. 58-60.

<sup>55</sup> Symmons, Clive, "Historic Rights in the South China Sea," Centre for International Law, National University of Singapore, accessed June 18, 2024, 678.

<sup>56</sup> Symmons, Clive, "Historic Rights in the South China Sea." Centre for International Law, National University of Singapore, 679.



*The encroachment of China's nine-dash line into the Philippines EEZ and Continental Shelf*

Crucially, the Philippines does not request that the Tribunal rule on its claims to sovereignty over these characteristics. China, according to the Philippines, fails to acknowledge that none of the listed maritime features qualify as "true" islands under UNCLOS. Some are classified as "rocks" because of their small size and inability to sustain human habitation or economic life, thereby not generating entitlements to an Exclusive Economic Zone (EEZ) or continental shelf. Others are identified as low-tide elevations or submerged banks, devoid of generating any maritime entitlements. The Philippines expresses concern over China's development activities on certain features, such as Mischief Reef, aiming to alter their character and status<sup>57</sup>.

<sup>57</sup> Symmons, Clive, "Historic Rights in the South China Sea." Centre for International Law, National University of Singapore, 549.

The Philippines highlights China's inconsistency, referencing China's objection to Japan's 2008 Submission to the Commission on the Limits of the Continental Shelf. In that case, China asserted that insignificant features, under Article 121(3) of UNCLOS, cannot generate entitlement to a continental shelf. The Philippines underscores that China's approach in the South China Sea contradicts its stance in other areas, suggesting an inconsistent interpretation and application of UNCLOS<sup>58</sup>.

## ***2.2 Philippines' pursuit of dispute resolution despite China's non-participation***

China decided to stay out of the process. States that opt out of appearing in court are still considered parties to the case and are obligated to abide by the final ruling, according to past rulings from the International Court of Justice and the International Tribunal for the Law of the Sea<sup>59</sup>.

In June 2016, representatives from the Chinese Embassy delivered a letter to the Tribunal in the South China Sea arbitration case. The letter enclosed a statement from the Ministry of Foreign Affairs of China, emphasizing both China and the Philippines have agreed to settle their disputes in the South China Sea through negotiation. China and the Philippines have not engaged in any negotiation regarding the subject matter of the arbitration initiated by the Philippines. The unilateral initiation of arbitration by the Philippines violates the bilateral agreement to settle disputes through negotiation and contravenes the provisions of UNCLOS. China will

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<sup>58</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." The South China Sea Arbitration, 12 July 2016, p.1-2 p. 64-65.

<sup>59</sup> Sreenivasa Rao Pemmaraju, The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility, Chinese Journal of International Law, Volume 15, Issue 2, June 2016, 272.

adhere to its position of settling the relevant disputes with the Philippines through negotiation<sup>60</sup>.

On June 10, 2016, another letter from the Chinese Ambassador was delivered to the Registry, enclosing a statement by the Chinese Society of International Law. This statement, titled "The Tribunal's Award in the 'South China Sea Arbitration' Initiated by the Philippines is Null and Void," reiterated the jurisdictional points previously raised by China in the Position Paper and addressed in the Award on Jurisdiction<sup>61</sup>.

Additionally, during that period, the Registry received various unsolicited statements and commentaries from Chinese associations and organizations, although they were not provided to the Tribunal by the Chinese Government or any party to the Convention. These statements focused on jurisdictional matters already decided by the Tribunal and did not offer assistance on the disputed issues in the ongoing proceedings<sup>62</sup>.

Although China did not participate in the proceedings, the Tribunal can still form a view on China's positions based on its previous communications, the views of individuals associated with the Chinese government, and academic literature reflecting Chinese perspectives<sup>63</sup>.

The Philippines acknowledges that China's non-appearance places a burden on the Tribunal to ensure that it has jurisdiction over the dispute and that the claim is

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<sup>60</sup> Sreenivasa Rao Pemmaraju, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, *Chinese Journal of International Law*, Volume 15, Issue 2, June 2016, 272.

<sup>61</sup> Sreenivasa Rao Pemmaraju, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, *Chinese Journal of International Law*, Volume 15, Issue 2, June 2016, 272.

<sup>62</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." *The South China Sea Arbitration*, 12 July 2016, 29-32.

<sup>63</sup> Symmons, Clive, "Historic Rights in the South China Sea." Centre for International Law, National University of Singapore.. <https://cil.nus.edu.sg/wp-content/uploads/2017/01/Session-2-on-Historic-Rights-Clive-Symmons-Paper.pdf>.

well-founded in fact and law. The Philippines has formulated its arguments in the Memorial, taking into account potential arguments that China might have raised if it had participated<sup>64</sup>.

### ***2.3 Preconditions, exceptions and limitations to the jurisdiction of the Tribunal***

The Tribunal considered the preconditions to jurisdiction set out in the UNCLOS regarding the maritime dispute between the Philippines and China in the South China Sea. It examined whether the Parties had agreed to alternative means of dispute settlement and if the exchange of views on settlement had taken place before resorting to arbitration.

The Tribunal analyzed the applicability of Articles 281 and 282 of UNCLOS to determine if the Parties had agreed to another means of dispute settlement. It concluded that the 2002 China-ASEAN Declaration on the Conduct of Parties in the South China Sea (DOC) was a political agreement and did not provide a binding mechanism for settlement. The Tribunal also determined that the joint statements between the Philippines and China did not exclude other means of settlement. The Treaty of Amity and Cooperation in Southeast Asia and the Convention on Biological Diversity were legally binding agreements with their dispute resolution procedures but did not provide a binding mechanism and did not exclude other procedures. The Tribunal determined that the Philippines was not restricted by any of these instruments from submitting its arbitration claims<sup>65</sup>.

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<sup>64</sup> Symmons, Clive, "Historic Rights in the South China Sea.", Centre for International Law, National University of Singapore, 578.

<sup>65</sup> Sreenivasa Rao Pemmaraju, The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility, Chinese Journal of International Law, Volume 15, Issue 2, June 2016, 272.



In regard to the discussion of methods of settlement, the Tribunal determined that Article 283 of UNCLOS obliged the parties to discuss methods of resolution, not the content of the dispute.

The Tribunal found that the requirement was met through diplomatic communications where the Philippines expressed a preference for multilateral negotiations, while China insisted on bilateral talks. The Tribunal also considered whether the Philippines had an obligation to pursue negotiations independently of Article 283 before resorting to arbitration. It determined that the Philippines had actively sought negotiations with China, but international law does not require a State to continue negotiations when the possibility of a negotiated solution is deemed exhausted<sup>66</sup>.

The Tribunal also examined the subject matter limitations to its jurisdiction under Articles 297 and 298 of UNCLOS. Article 297 automatically limits jurisdiction over disputes concerning marine scientific research or living resources of the exclusive economic zone. Article 298 allows States to make declarations for exceptions from compulsory settlement, such as disputes related to sea boundary delimitations, historic bays and titles, law enforcement activities, and military activities. China had made a declaration activating all of these exceptions<sup>67</sup>.

Considering certain aspects of the merits of the Philippines' claims, the Tribunal noted that its jurisdiction may depend on the nature and validity of China's claim to historic rights in the South China Sea. It also recognized that jurisdiction may be affected by the status of maritime features and overlapping entitlements to maritime zones between the Philippines and China. The Tribunal further considered

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<sup>66</sup> Sreenivasa Rao Pemmaraju, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, *Chinese Journal of International Law*, Volume 15, Issue 2, June 2016, 273.

<sup>67</sup> Sreenivasa Rao Pemmaraju, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, *Chinese Journal of International Law*, Volume 15, Issue 2, June 2016, 274.

the jurisdictional implications of alleged Chinese law enforcement activities and whether certain activities were military in nature<sup>68</sup>.

The Tribunal concluded that it had jurisdiction over certain claims brought by the Philippines, while others were not exclusively preliminary and would be deferred for further consideration in conjunction with the merits.

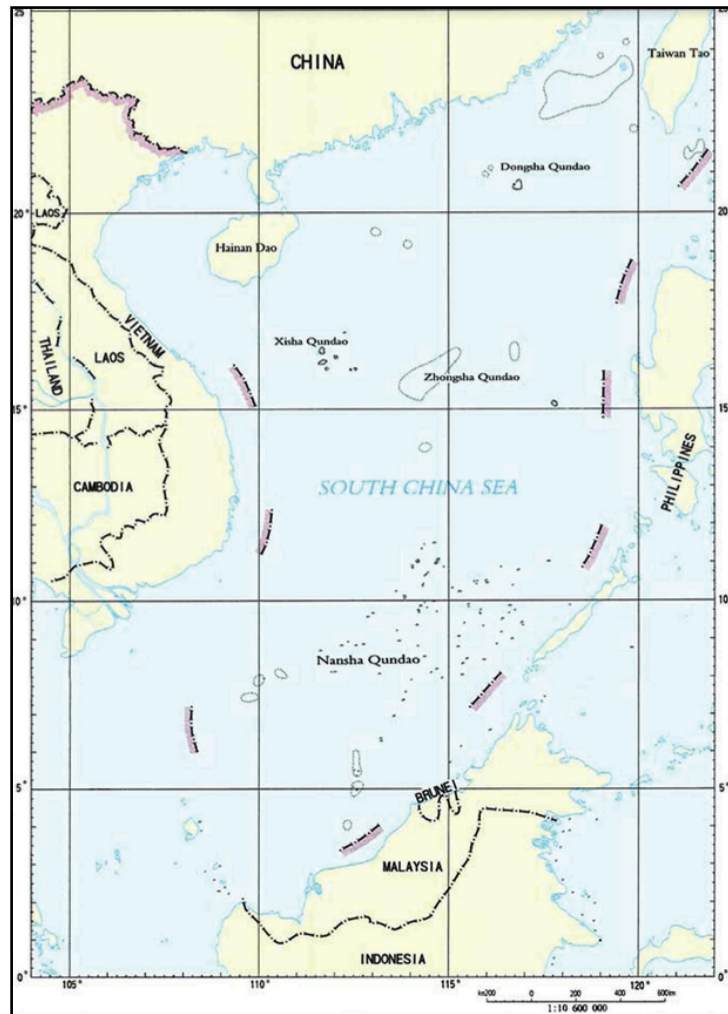
### ***2.3.1 The Tribunal's statement on China's claims in the South China Sea and their compatibility with UNCLOS***

On May 7, 2009, China submitted two Notes Verbales to the UN Secretary-General in response to a Joint Submission by Malaysia and Vietnam regarding the limits of the continental shelf in the South China Sea. China affirmed its undeniable sovereignty over the islands in the South China Sea and the surrounding waters in these notes. Along with the seabed and subsurface in that region, it also asserts its sovereign rights and authority over the pertinent waters. Furthermore, China maintains a consistent position on its sovereignty and jurisdiction in the South China Sea, which is widely recognized by the international community. Attached to China's notes was a map known as the "2009 Map" or the "nine-dash line" map. This map depicted a series of nine dashes or lines enclosing a significant portion of the South China Sea, indicating China's claimed maritime boundaries<sup>69</sup>.

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<sup>68</sup> Symmons, Clive, *Historic Rights in the South China Sea.*, Centre for International Law, National University of Singapore, 654.

<sup>69</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." *The South China Sea Arbitration*, 12 July 2016, 94-95.



MAP ATTACHED TO CHINA'S NOTES VERBALES  
Nos. CML/17/2009 & CML/18/2009

According to the Philippines, China's actions support the notion that its claim in the South China Sea is based on sovereign rights and jurisdiction rather than sovereignty over the entire area within the "nine-dash line."

The Philippines has expressed multiple arguments to support its standpoint on the South China Sea conflict. China has implemented a fishing prohibition within the "nine-dash line," indicating its assertion of exclusive jurisdiction and authority over the resources in that region. Moreover, China has meddled with the Philippines' petroleum exploration endeavors in the South China Sea, suggesting that China perceives itself as having the jurisdiction to oversee such activities in the contested waters. In addition, China has made concessions for oil blocks in places that fall

inside the "nine-dash line," which might potentially surpass its rights as defined by the United Nations Convention on the Law of the Sea (UNCLOS). Despite these efforts, the Philippines highlights that China has constantly conveyed its adherence to the principle of freedom of flight and maritime travel in the South China Sea, suggesting that its claim does not constitute complete sovereignty over the entire area included by the "nine-dash line." This viewpoint is corroborated by Chinese academics, including those who have close ties with the government<sup>70</sup>.

The Tribunal concludes that China's claim to historic rights within the "nine-dash line" in the South China Sea is incompatible with the UNCLOS because it exceeds the limits of China's maritime zones defined by the Convention. The text of the Convention addresses the rights of other states within the exclusive economic zone and continental shelf, leaving no room for the assertion of historic rights. This conclusion is supported by the negotiating record of the Convention, which emphasized the importance of adopting a comprehensive instrument and securing the rights of developing states over their maritime zones, including China's active involvement in championing these objectives<sup>71</sup>.

Any historical rights China may have had to the living and non-living resources inside the "nine-dash line" were legally replaced between the Philippines and China following China's accession to the Convention and its entry into force by the boundaries set by the Convention. This outcome is not unexpected or exceptional, as the Convention is a comprehensive package that cannot fully reflect any state's prior understanding of its maritime rights. Accession to the Convention signifies a commitment to align incompatible claims with its provisions, and its continued

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<sup>70</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." *The South China Sea Arbitration*, 12 July 2016, 79-80.

<sup>71</sup> Sreenivasa Rao Pemmaraju, *The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility*, *Chinese Journal of International Law*, Volume 15, Issue 2, June 2016, 278.

operation requires compromise by states with claims that exceed the limits established by the Convention<sup>72</sup>.

#### ***2.4 The status of features in the South China Sea***

The Tribunal has made several determinations regarding the status of specific features in the South China Sea. It categorized these features based on their natural conditions. Some features are identified as high-tide elevations, which are rocks or sand cays that remain above water at high tide. Others are identified as low-tide elevations, meaning they are exposed at low tide and submerged at high tide.

A regime for islands is created by Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS), which comprises a definition, a general rule, and an exception. An "island" is defined in paragraph (1) as a naturally occurring piece of land that is surrounded by water and is above the water at high tide. The general norm stated in paragraph (2) stipulates that islands are accorded the same rights under UNCLOS as any other terrestrial territory, including territorial sea, contiguous zone, exclusive economic zone (EEZ), and continental shelf. Nevertheless, paragraph (3) establishes an exemption to this norm, stating that rocks do not have an EEZ or continental shelf claim if they are incapable of supporting economic life or human settlement<sup>73</sup>.

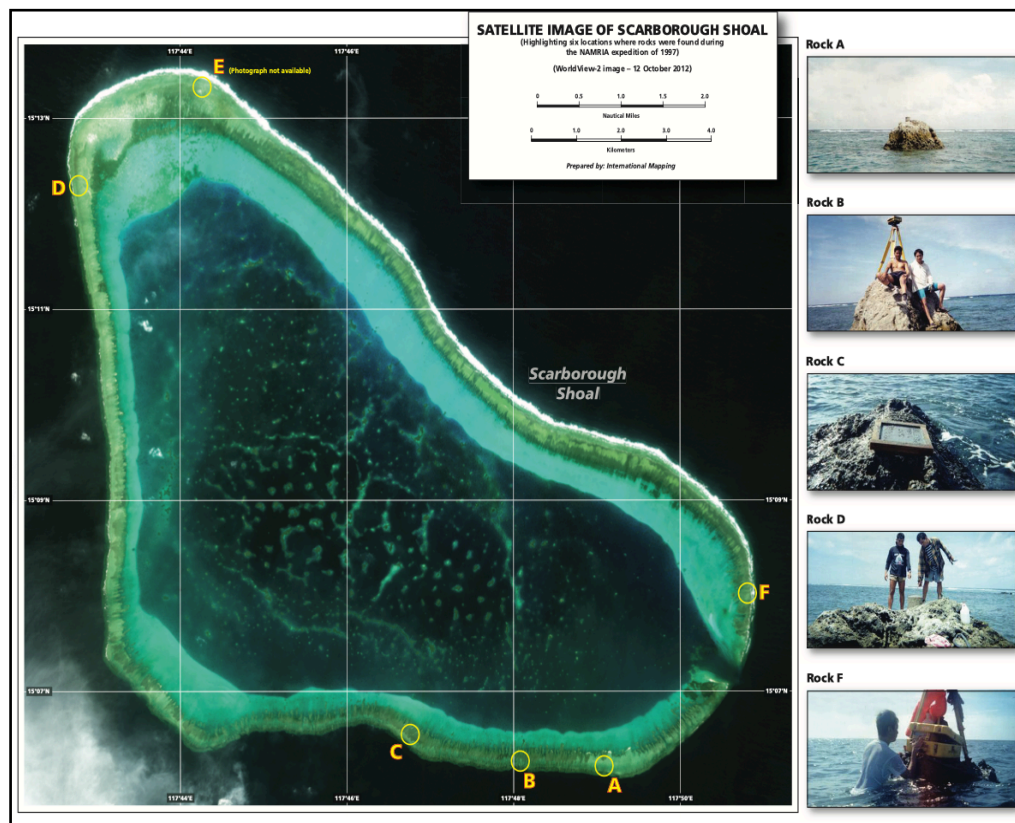
According to the Tribunal, "fully entitled islands" and "rocks" are the two types of naturally occurring high-tide characteristics that are distinguished by Article 121. The basic rule producing marine entitlements applies to fully entitled islands, whereas rocks incapable of supporting economic life or human habitation are not entitled to an exclusive economic zone or continental shelf.

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<sup>72</sup> PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...” *The South China Sea Arbitration*, 12 July 2016, 79-80.

<sup>73</sup> PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...” *The South China Sea Arbitration*, 12 July 2016, 118-119.

## *2.4.1 Clarification of sovereign rights and maritime entitlements in the South China Sea according to UNCLOS*



Satellite image of Scarborough Shoal

The Tribunal found that none of the high-tide features in the Spratly Islands qualify as fully entitled islands for Article 121 of UNCLOS. Furthermore, the Tribunal concluded that Mischief Reef, Second Thomas Shoal, the GSEC101 block, Area 3, Area 4, or the SC58 block do not generate any entitlements to maritime zones and cannot generate overlapping entitlements. Therefore, China has no legal basis for any entitlement to maritime zones in those areas. Additionally, it determined that the

Philippines, and not China, possesses sovereign rights concerning resources in those areas<sup>74</sup>.

Regarding the distribution of rights inside the exclusive economic zone and continental shelf, the Convention is quite explicit. Other states have rights regarding navigation and the building of pipelines and underwater cables, but they are unable to stop the Philippines from using its sovereign rights to explore and utilize non-living resources on its continental shelf. In the same way, the Philippines is sovereign over its exclusive economic zone and has the right to explore, develop, conserve, and manage living resources. Other states may install underwater cables and pipelines and have rights connected to navigation, but they cannot stop the Philippines from using its own natural resources<sup>75</sup>.

The Tribunal also discusses China's apparent interference with Philippine vessels' ability to fish at Second Thomas Shoal and Mischief Reef. The Philippines argues that China has made it more difficult for Filipino fishermen to fish in these areas, but the Tribunal determines that there is insufficient evidence to back up this assertion. The presence of Chinese vessels and China's assertion of fisheries jurisdiction may discourage Filipino fishermen, but the evidence before the Tribunal does not support a finding of a violation of the Convention. The Tribunal found that in May 2013, China failed to take the necessary precautions to stop Chinese-flagged vessels from fishing in Mischief Reef and Second Thomas Shoal, thereby violating its obligations under Article 58(3) of the Convention<sup>76</sup>.

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<sup>74</sup> Institute for Maritime and Ocean Affairs. "Part V: Exclusive Economic Zone." United Nations Convention on the Law of the Sea of 10 December 1982. <https://www.imoa.ph/treaties/unclos/united-nations-convention-on-the-law-of-the-sea-of-10-december-1982/part-v-exclusive-economic-zone/>.

<sup>75</sup> Institute for Maritime and Ocean Affairs. "Part V: Exclusive Economic Zone." United Nations Convention on the Law of the Sea of 10 December 1982. <https://www.imoa.ph/treaties/unclos/united-nations-convention-on-the-law-of-the-sea-of-10-december-1982/part-v-exclusive-economic-zone/>.

<sup>76</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ..." The South China Sea Arbitration, 12 July 2016, 277-279.

## ***2.5 The Tribunal's Roles***

### ***2.5.1 The Tribunal's considerations of fishing rights***

Scarborough Shoal has long been a popular fishing destination for fishermen from the Philippines, China (including Taiwan), and Vietnam, as the Tribunal recognizes. Given an absence of documented records on the subject, the Tribunal acknowledges that conventional fishing privileges are vested rights earned through extensive use and should be handled with caution. The Tribunal acknowledges that in good faith, China and the Philippines have historically fished at Scarborough Shoal<sup>77</sup>.

The Tribunal points out that ancestral fishing privileges are not untouchable and may be governed by laws, especially those pertaining to conservation. It recognizes that the coastal state has the power to control traditional fishing in a reasonable manner and to determine the point at which technological advancement and scale render foreign nationals' fishing no longer considered traditional<sup>78</sup>.

The Tribunal concludes that, with regard to the activities at Scarborough Shoal, Chinese government fleets have been stopping Filipino fishermen from fishing there on occasion since May 2012, while Chinese fishing vessels have been able to do so. The Tribunal finds that China's outright ban on Filipino fishermen fishing at Scarborough Shoal for extended periods is incompatible with the regard that international law accords to the Philippines' customary fishing rights. The Tribunal highlights that the conflicts between the Philippines and China about sovereignty and law enforcement at Scarborough Shoal are not reasons for China's activities against Filipino fishermen<sup>79</sup>.

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<sup>77</sup> Lawfare, "Tribunal Issues Landmark Ruling in South China Sea Arbitration.", <https://www.lawfaremedia.org/article/tribunal-issues-landmark-ruling-south-china-sea-arbitration>.

<sup>78</sup> Fonbuena, Carmela, "Hague Ruling: Filipinos, Chinese May Fish in Scarborough.", <https://www.rappler.com/nation/hague-ruling-filipinos-chinese-may-fish-scarborough>.

<sup>79</sup> Congressional Research Service. "Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress.", 146.



The Tribunal does not find sufficient evidence to support the Philippines' claim that China's actions at Scarborough Shoal represent a specific failure to fulfill its duties to settle disputes by peaceful means under the UN Charter and the UNCLOS<sup>80</sup>.

### ***2.5.2 Tribunal's statement on the lack of protection and preservation of the marine environment***

The Tribunal has concluded without reservation that China's attempts to create artificial islands on the seven reefs in the Spratly Islands have caused serious and long-lasting damage to the marine environment. This conclusion is based on extensive documentation, testimony from experts, and a comprehensive assessment of China's claims mentioned earlier. As a result, the Tribunal concludes that China has breached its duty to safeguard and maintain the marine environment under Article 192 by using its building operations.

Additionally, as a result of China's excavating operations, the marine ecosystem has been contaminated with sediment, Article 194(1) has been violated, and Article 194(5) requires China to take the necessary actions to protect rare or delicate ecosystems as well as the habitats of threatened, endangered, or depleted species along with other underwater life forms<sup>81</sup>.

Although the Tribunal is unable to conclusively ascertain whether China has carried out an environmental impact assessment (EIA), it does recognize China's persistent assertions of extensive research. Nevertheless, China is still guilty of violating Article 206 even if a definitive conclusion is not reached on this issue. In order to fulfill the requirements of Article 206, a State has to carry out an EIA and report the results. Despite the Tribunal's direct request for a copy of any EIA prepared by China, none was provided.

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<sup>80</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...", *The South China Sea Arbitration*, 12 July 2016, 311-315.

<sup>81</sup> Robles Jr., A., *Endangered Species, Fragile Ecosystems, and the Obligation to Protect and Preserve the Marine Environment*. In: *Endangered Species and Fragile Ecosystems in the South China Sea.*, Palgrave Macmillan, 2020, 543.

Despite not taking part in the arbitration, China has already had the chance to disseminate statements made by its authorities. Consequently, the Tribunal believes that had China wanted to, it could have made public the existence and contents of an EIA. The evidence concerning Chinese fishing vessels' collection of giant clams, specifically from Scarborough Shoal and other regions in the Spratly Islands, concerns the Tribunal. Numerous corals and giant clams in the area are classified as listed as endangered species in CITES Appendix II.

The Tribunal observes that enormous clams are essential to the development and upkeep of the reef system. The Ferse Report describes how extensive fossil shell mining from reef flats using ship engines has nearly destroyed the impacted reef areas. According to Professor McManus's most recent analyses, China is accountable for about 70 square kilometers of coral reef damage resulting from this type of clam harvesting, which he considers to be more harmful to the ecosystem than anything he has seen in his forty years of studying coral reef deterioration<sup>82</sup>.

### ***2.5.3 The Tribunal's statement on the occupation and construction activities on Mischief Reef***

According to the Tribunal, Mischief Reef is a low-tide elevation located inside a region where the Convention potentially grants exclusive maritime zone rights to the Philippines. Therefore, Mischief Reef is not within any right claimed by China or another State; rather, it is located inside the exclusive economic zone and continental shelf of the Philippines.

According to Article 60(1) of the Convention, the Tribunal concludes that China's early constructions on Mischief Reef, which began in 1995, were installations or buildings. The Tribunal recognizes this as an economic goal, despite China's claim that the original intent was to house fishermen. Furthermore, the original buildings might have infringed upon the rights of Filipino fisherman in their exclusive

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<sup>82</sup> "PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...", *The South China Sea Arbitration*, 12 July 2016, p. 378-380.

economic zone, which China refused to grant them. Only the Philippines was authorized by Article 60 to build or approve such constructions. China's actions at Mischief Reef have turned it into a man-made island over time. This artificial island is classified as "artificial" under Article 60 because it was built without the Philippines' consent and despite objections. The Tribunal views China's actions as a clear violation of its obligations under the Convention<sup>83</sup>.

The Tribunal concludes that Mischief Reef cannot be appropriated since it is a low-tide elevation and does not legally belong to a State's land area. Rather, it is covered by the continental shelf legal system. As such, no state may appropriate low-tide elevations such as Mischief Reef by settlement or other methods<sup>84</sup>.

Mischief Reef has legal significance since the Philippines has exclusive sovereign rights over it because it is located inside its exclusive economic zone and continental shelf. Regarding other arguments, the Tribunal has already found that China's conduct at Mischief Reef illegally infringed with the territorial integrity of the Philippines<sup>85</sup>.

China has violated Articles 60 and 80 of the Convention by building installations and artificial islands at Mischief Reef without the Philippines' permission, the Tribunal finds, given the inability to appropriate Mischief Reef and its recognized disruption with the Philippines' sovereign rights. The Tribunal reiterates that Mischief Reef cannot be appropriated since it is a low-tide elevation<sup>86</sup>.

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<sup>83</sup> Mark E. Rosen, "A Legal Analysis of the Philippine-China Arbitration Ruling," *The Diplomat*, November 7, 2015, <https://thediplomat.com/2015/11/a-legal-analysis-of-the-philippine-china-arbitration-ruling/>.

<sup>84</sup> James Kraska, "Military Activities on the Continental Shelf," *Lawfare*, January 14, 2020, <https://www.lawfaremedia.org/article/military-activities-continental-shelf>.

<sup>85</sup> Mark E. Rosen, "A Legal Analysis of the Philippine-China Arbitration Ruling," *The Diplomat*, November 7, 2015, <https://thediplomat.com/2015/11/a-legal-analysis-of-the-philippine-china-arbitration-ruling/>.

<sup>86</sup> PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...” *The South China Sea Arbitration*, 12 July 2016, p. 411-415.

#### ***2.5.4 The Tribunal's final remarks on the case***

Based on the previously stated issues, the Tribunal concludes that China's drilling, artificial island-building, and building operations have caused the Parties' disputes to worsen and grow during these proceedings, in particular, during the course of these procedures.

China has built a sizable artificial island on a low-tide elevation within the Philippines' exclusive economic zone, exacerbating the conflict between the Parties over their respective rights and entitlements in the vicinity of Mischief Reef<sup>87</sup>.

China has exacerbated the dispute between the Parties concerning the protection and preservation of the marine environment at Mischief Reef by causing permanent, irreparable harm to the coral reef habitat of that feature.

By starting massive island-building and construction projects at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef, China has aggravated the dispute between the Parties about the preservation and safeguarding of the aquatic ecosystem.

China has erased all traces of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef's original state, permanently escalating the conflict between the Parties over the status of maritime features in the Spratly Islands and their ability to create rights to maritime zones<sup>88</sup>.

#### ***2.6 The South China Sea arbitration aftermath***

China's historical claims within the nine-dash line, the classification and maritime entitlements of specific features in the South China Sea, and China's alleged

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<sup>87</sup> PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...” The South China Sea Arbitration, 12 July 2016, p. 411-415.

<sup>88</sup> PCA Case No 2013-19 in the Matter of the South China Sea Arbitration ...” The South China Sea Arbitration, 12 July 2016, p. 467-469.

interference with the Philippines' sovereign rights were the three main issues at the heart of the legal dispute between the Philippines and China that was brought before the Arbitral Tribunal under UNCLOS. The Philippines firmly contested these Chinese claims and actions as incompatible with the principles and provisions of the UN Convention on the Law of the Sea.

The key question would be how the Tribunal's decision would affect the changing dynamics and relations in the South China Sea region in the post-arbitration phase, even if it would offer an authoritative interpretation of UNCLOS and its application to the parties' disputes. The arbitration's aftermath will be discussed in the following chapter, along with how different parties—such as China, the Philippines, and other regional players—reacted to and interacted with the Tribunal's conclusions.

## Chapter 3

### **Critical Analysis of Jurisdiction and the Merits of the Decision in the Philippines vs. China Case**

#### ***Introduction***

This chapter covers the jurisdictional analysis of the ruling in the historic Philippines v. China case, emphasizing how the tribunal interpreted the UN Convention on the Law of the Sea. Through an analysis of this case, the chapter seeks to clarify the legal doctrines that underpin maritime disputes and the intricacies surrounding international adjudication.

In Section 3.1, the analysis of the jurisdictional ruling in the China v. Philippines case is presented. The tribunal's justification for establishing its jurisdiction is explained in this section, emphasizing the significance of establishing a distinction between maritime entitlements and territorial sovereignty. The assessment of China's "nine-dash line" claim by the tribunal and its consequences for international law are also covered.

The topic of jurisdictional challenges and the limits of international law is covered in Section 3.1.1. China's challenges to the tribunal's jurisdiction are examined in this paragraph, with particular attention paid to Beijing's 2006 declaration under UNCLOS Article 298 and its claims about historical rights. It also addresses the more general dispute between the obligatory character of international adjudicatory procedures and state sovereignty.

The analysis of the "nine-dash line" claim and historical rights under international law is covered in Section 3.1.2. This section looks closely at the "nine-dash line" claim, examining its legality under international law and the conflicts that arise between historical and codified maritime entitlements.

Expert views and scholars' perspectives on the jurisdictional verdict are covered in part 3.2. This part highlights arguments for and against the tribunal's verdict by presenting a variety of expert viewpoints. It takes into account how the decision may affect international law as well as how crucial it is to incorporate historical settings into international law.

The analysis of the criteria the tribunal used to determine the status of formations is covered in Section 3.3. It analyzes how the tribunal used UNCLOS criteria to classify maritime features, with a particular emphasis on their natural status, habitability, and capacity to support human life or economic activity.

The controversial strictness of the tribunal's rules for habitability is discussed in Section 3.3.1. This section debates the advantages of evaluating a place's natural state against the possibility of human change and technological developments.

The analysis of the Tribunal's approach to environmental protection is covered in Section 3.4. This section assesses how the tribunal has handled environmental protection matters, mainly concerning China's land reclamation efforts and how they affect marine habitats. It talks about the environmental protections provided by the tribunal, its advantages and disadvantages, and the necessity of workable implementation strategies.

### ***3.1 Analysis of the jurisdictional decision in the Philippines vs. China Case***

The Philippines v. China tribunal's reasoning was based on several important considerations. First, by highlighting that the dispute related to marine entitlements rather than territorial sovereignty, which is outside the authority of UNCLOS, the tribunal established its jurisdiction over the matter. This distinction was important because it permitted the panel to move forward with the case despite China's protests. China's "nine-dash line" claim was analyzed by the tribunal, which ruled that it

lacked legal support under international law. This view was especially important because it invalidated China's extensive claims to historical rights in the South China Sea<sup>89</sup>.

In addition, the tribunal found that several South China Sea features, such as the Spratly Islands, could not produce large marine zones larger than 12 nautical miles. This conclusion was reached via the UNCLOS classification criteria for maritime features, which differentiated between low-tide heights, rocks, and islands. The tribunal's conclusions, which emphasized the value of abiding by existing international law rather than making unilateral historical claims, were supported by a thorough examination of UNCLOS statutes<sup>90</sup>.

Despite the tribunal's comprehensive explanation, several objections draw attention to possible overreach in its claims of jurisdiction. Critics contend that the tribunal disregarded complex interpretations of customary international law in rejecting China's historical claims. Although not stated clearly in UNCLOS, historical rights have been important in international legal situations and should be taken into account in addition to codified legal systems. Furthermore, concerns regarding the tribunal's objectivity and the consent principle in international adjudication were raised by the tribunal's decision to move forward despite China's reluctance to participate. International law is based on the principle of state consent, and if one party doesn't participate, the process may not be seen as legitimate<sup>91</sup>.

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<sup>89</sup> "Maritime Chessboard: The Geopolitical Dynamics of the South China Sea." Geopolitical Monitor, August 24, 2023. <https://www.geopoliticalmonitor.com/maritime-chessboard-the-geopolitical-dynamics-of-the-south-china-sea/>.

<sup>90</sup> "Maritime Chessboard: The Geopolitical Dynamics of the South China Sea." Geopolitical Monitor, August 24, 2023. <https://www.geopoliticalmonitor.com/maritime-chessboard-the-geopolitical-dynamics-of-the-south-china-sea/>.

<sup>91</sup> Oxford University Press, *The South China Sea Arbitration Awards: A critical study*, February 4, 2018, 263-264.



### ***3.1.1 Jurisdictional challenges and the limits of international law***

China had multiple reasons for its reservations regarding the tribunal's authority and ruling. Beijing claimed that the tribunal lacked jurisdiction because territorial sovereignty—which is not covered by UNCLOS—was at the heart of the dispute. China argued that the tribunal did not sufficiently take into account its historical rights and ongoing control of the South China Sea. Although controversial, historical assertions are a reflection of China's sustained involvement and presence in the area, which Beijing contends shouldn't be entirely dismissed<sup>92</sup>.

Furthermore, China's non-appearance policy was based on its 2006 declaration made by UNCLOS Article 298—which exempts maritime delimitation disputes from mandatory arbitration. This declaration is important because it legally excuses China from some UNCLOS arbitration procedures. Although China's position is strengthened by this caveat, it is important to remember that the tribunal determined it had jurisdiction since the dispute was centered on marine entitlements rather than delimitation or sovereignty<sup>93</sup>.

China's concerns highlights a more significant problem in international law, which is the conflict between state sovereignty and the legally binding character of international adjudicatory processes. States may choose not to participate in some international procedures under the doctrine of state sovereignty, but this may run counter to the objective of establishing a consistent and enforceable international legal system. This contradiction is brought to light by the tribunal's decision to assert jurisdiction despite China's non-participation, which also calls into question the efficiency and equity of mandatory arbitration procedures<sup>94</sup>.

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<sup>92</sup> The U.S.-China Economic and Security Review Commission, ed. South China Sea Arbitration ruling, China Sea Arbitration Ruling What Happened and What's Next, July 12, 2016,

<sup>93</sup> Talmon, Stefan, "The South China Sea Arbitration." Brill, August 8, 2022, 6.

<sup>94</sup> Oxford University Press, ed. The South China Sea Arbitration Awards: A critical study, February 4, 2018, 649-650.

The case also shows how difficult it may be to enforce tribunal rulings, particularly when influential nations like China refuse to follow through. This circumstance highlights the problems with the current international legal system, which frequently lacks enforcement mechanisms or has weak ones that depend on support from large nations. Concerns regarding the effectiveness of international law in settling conflicts involving major geopolitical interests are raised by the absence of enforcement. Consequently, it is unclear how the tribunal's ruling will affect geopolitical realities in practice, even though it may have an impact on future legal interpretations. Major states' noncompliance can erode the legitimacy of international legal organizations and the foundation of international law as a whole<sup>95</sup>.

### ***3.1.2 Analysis of the "Nine-Dash Line" and historical rights under international law***

The "Nine-Dash Line" has been the center of debate in the conflict over the South China Sea. It asserts the claim that China has indisputable sovereignty over marine features and related waterways, however, it is vague on both legal problems and specific physical locations. International law, especially UNCLOS, establishes marine entitlements based on precise standards, not on past claims, such as baseline measures, exclusive economic zones, and continental shelves<sup>96</sup>.

In particular circumstances, international law acknowledges historical rights, usually through peaceful, long-standing utilization. According to the Tribunal, by claiming waters inside other coastal states' EEZs, the "nine-dash line" goes well beyond what UNCLOS allows, undermining this idea. Due to China's historical rights

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<sup>95</sup> "Maritime Chessboard: The Geopolitical Dynamics of the South China Sea." Geopolitical Monitor, <https://www.geopoliticalmonitor.com/maritime-chessboard-the-geopolitical-dynamics-of-the-south-china-sea/>, August 24, 2023.

<sup>96</sup> Talmon, Stefan, The South China Sea Arbitration and the Finality of 'Final' Awards, *Journal of International Dispute Settlement*, Volume 8, Issue 2, May 2017, 388.

claim and the territorial and maritime entitlements established under UNCLOS, there has been a great deal of tension and disputes as a result<sup>97</sup>.

### ***3.2 Perspectives of experts and scholars on the jurisdictional verdict***

Those in favor of the verdict claimed that the tribunal's decision upholds the integrity of UNCLOS and ensures a rules-based system of international maritime law. Professionals and legal experts list a number of the decision's main advantages.

The tribunal's ruling emphasizes how important it is to have precise legal definitions and standards. The judgment confirmed that maritime claims must be based on clear legal principles rather than ambiguous historical narratives by rejecting broad and ambiguous historical claims, such as China's "nine-dash line." This strategy encourages predictability and stability, both of which are necessary for handling and settling international conflicts<sup>98</sup>.

Furthermore, granting historical claims would conflict with UNCLOS and would encourage the spread of similar claims around the world. States may seek broad and overlapping maritime rights based on historical usage, which might complicate maritime governance and create disputes if claims based on historical narratives were accepted. Thus, the tribunal's ruling sets a crucial precedent for preserving an orderly and just legal system for the world's oceans. The tribunal underlined the significance of international law in settling conflicts by rigorously upholding UNCLOS. This supports an international order based on rules by

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<sup>97</sup> Stefan Talmon, The South China Sea Arbitration and the Finality of 'Final' Awards, *Journal of International Dispute Settlement*, Volume 8, Issue 2, May 2017, 401.

<sup>98</sup> Euan Graham, "The Hague Tribunal's South China Sea Ruling: Empty Provocation or Slow-Burning Influence?" Council on Foreign Relations, <https://www.cfr.org/councilofcouncils/global-memos/hague-tribunals-south-china-sea-ruling-empty-provocation-or-slow-burning-influence>, August 18, 2016.

reaffirming the importance of international legal frameworks in offering a consistent and unbiased basis for resolving complicated disputes<sup>99</sup>.

On the other hand, those who disagree with the tribunal's decision contend that it did not sufficiently take China's claims' historical and cultural background into account. Academics draw attention to several issues.

It is crucial to consider historical rights, particularly in areas where intricate historical relationships existed before the development of contemporary legal frameworks. China is one of the many entities that historically utilized and governed the South China Sea, and these historical ties have shaped the geopolitical environment that exists now. Ignoring these aspects could lead to a superficial comprehension of the disagreement<sup>100</sup>.

The South China Sea's complex historical usage and regional customs were also overlooked by the tribunal's strict adherence to UNCLOS. The practical and long-standing uses of maritime spaces are reflected in historical claims, which are not officially recognized by UNCLOS but can have significant effects on the validity of present claims. Critics argue that a more impartial strategy that took historical circumstances and legal principles into account could have been more appropriate<sup>101</sup>.

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<sup>99</sup> Roundtable: The Arbitral Tribunal's Ruling on the South China Sea – Implications and Regional Responses, South China Sea, December 13, 2016. <https://seasresearch.wordpress.com/2016/12/13/roundtable-the-arbitral-tribunals-ruling-on-the-south-china-sea-implications-and-regional-responses/>.

<sup>100</sup> Lee, John, "What Now for China's 'historic Rights' in the South China Sea?" – The Diplomat, August 2, 2016, <https://thediplomat.com/2016/08/what-now-for-chinas-historic-rights-in-the-south-china-sea/>.

<sup>101</sup> Yadav, Dhruv, "Understanding the Case of the Philippines and China in the South China Sea Dispute.", *Modern Diplomacy*, August 3, 2020, <https://moderndiplomacy.eu/2020/07/29/understanding-the-case-of-the-philippines-and-china-in-the-south-china-sea-dispute/>.

Overall, the critics suggest that by dismissing China's historical claims, the tribunal may have ignored important aspects of the dispute, potentially complicating the resolution of conflicts and the enforcement of the ruling<sup>102</sup>.

### ***3.3 Analysis of the criteria used by the Tribunal to determine the status of formations***

Under the UNCLOS, maritime features are classified into several categories, each with distinct legal implications. In the Philippines v. China case, the tribunal analyzed the UNCLOS status of several South China Sea features, including Scarborough Shoal and the Spratly Islands. The main aim of the investigation was to see if these features may provide longer maritime zones. The tribunal examined these characteristics, such as their size, ability to sustain human residence or commercial activity, and longevity above high tide. The tribunal concluded that none of the Spratly Islands' features, which China had claimed, could be islands with the capacity to create large marine zones. The natural status of these characteristics and their ability to support human habitation or economic life were major factors in the tribunal's rulings<sup>103</sup>.

#### ***3.3.1 Controversial strictness of habitability standards***

The tribunal's strict application of habitability norms in determining the status of maritime formations has drawn significant criticism. Critics argue that many features fail to meet the high standard set by the tribunal, which requires that a feature support economic life or human habitation without external assistance. This

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<sup>102</sup> Lee, John, What Now for China's 'historic Rights' in the South China Sea?, The Diplomat, August 2, 2016. <https://thediplomat.com/2016/08/what-now-for-chinas-historic-rights-in-the-south-china-sea/>.

<sup>103</sup> Maritime Chessboard: The Geopolitical Dynamics of the South China Sea, Geopolitical Monitor, August 24, 2023, <https://www.geopoliticalmonitor.com/maritime-chessboard-the-geopolitical-dynamics-of-the-south-china-sea/>.

standard, according to critics, disregards the potential for habitation or economic activity with minimal support, especially considering the advancements in modern technology. They suggest that a more flexible approach could better reflect the realities and possibilities of human habitation and economic use of these maritime features<sup>104</sup>.

The tribunal's emphasis on the natural state of maritime features as opposed to man-made modifications is also a point of contention. Critics argue that permitting some degree of human modification would offer a more realistic depiction of how these qualities can be used in the future as well as in the present. They argue that features that would otherwise be uninhabitable may be useful assets for both strategic and commercial objectives via the application of modern engineering and technology capabilities. Artificial islands, for example, might greatly improve the habitability and value of maritime features, which has to be taken into account in legal evaluations<sup>105</sup>.

However, supporters of the tribunal's methodology argue that it is imperative to preserve the evaluation grounded on the natural state of characteristics to avoid artificial modifications from distorting legal entitlements. They argue that permitting man-made modifications to impact maritime features might trigger a "race to the bottom," in which governments engage in massively exaggerated improvements to support their claims, so compromising the fundamental tenets of UNCLOS. By guaranteeing that marine borders and rights are based on the original, natural state of features, this method upholds international law's fairness and stability<sup>106</sup>.

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<sup>104</sup> Faccio, S., Human Habitation or Economic Life of their Own: The Definition of Features Between History, Technology and the Law. *Liverpool Law Review*, 42, 2021, 23–24.

<sup>105</sup> Faccio, S., Human Habitation or Economic Life of their Own: The Definition of Features Between History, Technology and the Law, *Liverpool Law Review*, 42, 2021, 25.

<sup>106</sup> Rabbani, Attar, "China's Hegemony In The South China Sea." *World Affairs: The Journal of International Issues* 23, 3, 2019, 77.

### *3.4 Analysis of the Tribunal's approach to environmental protection*

The Philippines claimed that China's actions in the South China Sea had seriously harmed the environment in its submissions to the arbitral tribunal. The main focus of these accusations was China's massive building and land reclamation projects on different marine features, especially the Spratly Islands. The Philippines claimed that China's actions had breached UNCLOS Article 192, which requires governments to safeguard and preserve the marine environment, as well as international environmental law, by destroying coral reefs and altering marine ecosystems. The tribunal concluded that there had been serious environmental damage caused by China's development activity. The tribunal's decision made clear that China had violated UNCLOS's environmental requirements by neglecting to stop the devastation of delicate ecosystems<sup>107</sup>.

The tribunal's environmental protection strategy has been praised for enhancing state commitments under UNCLOS. The tribunal emphasized the significance of maintaining maritime ecosystems and international environmental norms by making China accountable for its activities. Nonetheless, there have been some criticisms of how the tribunal has handled environmental matters<sup>108</sup>.

The tribunal's ruling, according to critics, lacked a comprehensive framework for putting environmental safeguards into practice. This omission creates a hole in the assurance that particular actions are done to protect and restore harmed ecosystems. To effectively conserve the environment, international cooperation, practical

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<sup>107</sup> "Maritime Chessboard: The Geopolitical Dynamics of the South China Sea.", Geopolitical Monitor, August 24, 2023, <https://www.geopoliticalmonitor.com/maritime-chessboard-the-geopolitical-dynamics-of-the-south-china-sea/>.

<sup>108</sup> Trung, Nguyen Thanh, "China's Plan for the South China Sea: A Mixture of Pressure and Legal Approaches.", Asia Maritime Transparency Initiative, July 7, 2021.

measures, and legal rules are necessary to redress harm and stop additional degradation<sup>109</sup>.

Furthermore, according to critics, the tribunal's ruling, which was primarily concerned with legal and environmental issues, did not adequately address the diplomatic and political factors that affect state conduct. In such a divisive area, a more comprehensive strategy that takes into account diplomatic and legal options may be more successful in resolving environmental issues<sup>110</sup>.

### ***3.5 Implications of the Philippines v. China arbitration***

The arbitration in the Philippines v. China case has generated significant debate and analysis, shedding light on various aspects of international maritime law, particularly as interpreted under the United Nations Convention on the Law of the Sea.

The tribunal's decision has far-reaching implications for international maritime law and dispute resolution. It affirms the importance of adhering to legal principles established under UNCLOS and provides a precedent for handling similar disputes. However, the challenges associated with enforcing international rulings and addressing historical and environmental considerations indicate that the international legal system must continuously evolve to address complex geopolitical and environmental issues.

Future international maritime disputes will likely benefit from the legal clarity provided by this case, but they may also require more integrated approaches that consider historical contexts, environmental protections, and diplomatic efforts.

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<sup>109</sup> Trung, Nguyen Thanh, "China's Plan for the South China Sea: A Mixture of Pressure and Legal Approaches.", Asia Maritime Transparency Initiative, July 7, 2021, <https://amti.csis.org/chinas-plan-for-the-south-china-sea-a-mixture-of-pressure-and-legal-approaches/>.

<sup>110</sup> Trung, Nguyen Thanh, "China's Plan for the South China Sea: A Mixture of Pressure and Legal Approaches.", Asia Maritime Transparency Initiative, July 7, 2021, <https://amti.csis.org/chinas-plan-for-the-south-china-sea-a-mixture-of-pressure-and-legal-approaches/>.



Strengthening enforcement mechanisms and fostering international cooperation will be crucial for upholding the integrity of international law and ensuring effective resolution of maritime conflicts.

It is with sincere hope that the countries involved in the South China Sea dispute will prioritize cooperation, compromise, and the pursuit of lasting peace and stability in the region. By embracing the principles of international law, respecting each other's legitimate interests, and working towards mutually beneficial solutions, the claimant states can pave the way for a future of lasting freedom and prosperity in the South China Sea.

## **Conclusion**

The Philippines versus China case remains one of the most complex and volatile political and international law issues in the Asia-Pacific region. As this thesis has demonstrated, the interplay of historical claims, economic interests, strategic importance, and military developments has created a conflict with far-reaching implications for regional stability and international relations.

The historical analysis as seen in Chapter One, reveals that while maritime trade in the South China Sea has existed for centuries, the concept of territorial claims over its waters and features is relatively recent. Formalized claims began with the Qing Dynasty's transition to the Republic of China and have since developed into the intricate network of overlapping sovereignty claims that exists today.

The People's Republic of China's assertive stance, exemplified by its nine-dash line claim and extensive land reclamation efforts, has dramatically altered the regional dynamics. China's military buildup in the area, including the construction of artificial islands and the deployment of advanced weaponry, has raised concerns among neighboring countries and the international community.

As analyzed in Chapter Two, the Philippines versus China case had a profound impact on international law and geopolitics. In a landmark ruling on July 12, 2016, the Permanent Court of Arbitration largely sided with the Philippines, declaring that China's claims had no legal basis under UNCLOS. The tribunal also found that China violated the Philippines' sovereign rights within its exclusive economic zone.

Finally, Chapter Three highlights the significance of setting a legal precedent regarding maritime entitlements, such as the rights associated with reefs, rocks, and islands. It underscored the limitations of enforcing international law when major powers, like China, refuse to comply. Despite China's rejection of the ruling, the case highlighted the importance of international legal mechanisms and the ability of

smaller states to challenge larger powers through legal means. Additionally, it has had lasting geopolitical repercussions, influencing regional security dynamics, freedom of navigation, and the balance of power in the Asia-Pacific region.

Looking ahead, the resolution of the Philippines versus China case will require sustained diplomatic efforts, adherence to international law, and a willingness to compromise from all parties involved. The challenge lies in balancing national interests with regional stability and the principles of freedom of navigation.

Future research could focus on the potential for multilateral solutions, the role of ASEAN in mediating the conflict, and the long-term environmental impacts of continued militarization and resource exploitation in the region.

In conclusion, the South China Sea remains a critical flashpoint in international relations. Its resolution – or lack thereof – will have profound implications for regional security, economic prosperity, and the future of international maritime law. As such, it will continue to demand the attention of policymakers, scholars, and the global community in the years to come.

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