



**Expert Views:**

## **Implications of the Permanent Court of Arbitration’s Award on Jurisdiction and Admissibility**

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**Experts offer their reactions to the Permanent Court of Arbitration’s “Award on Jurisdiction and Admissibility” in the Philippines vs. China arbitration case.**

**On October 29, 2015, the Permanent Court of Arbitration in The Hague [announced its “Award on Jurisdiction and Admissibility”](#) in the Philippines vs. China arbitration case. In your opinion, what are the implications of the award?**



The decision of the Tribunal has distinct limitations within it. By limitations, it must be acknowledged that many jurisdictional decisions remain to be determined at the merits



stage of the case. Too many of the Philippines' claims were too closely linked to the substance of the dispute for the Tribunal to be able to determine if the dispute fell within its jurisdiction. In this respect, the limited findings provide further opportunity for China to engage in the dispute settlement process. Most particularly, China has a window to clarify if it is claiming historic title in relation to its nine-dash line – which is clearly outside the Tribunal's jurisdiction – or whether it concerns historic rights – which the Philippines argues is within jurisdiction. The decision is also limited because it seems to suggest that decisions can be made about state's rights and duties in maritime zones even when it is not known which state is entitled to that particular maritime zone. What is the point of determining the maritime entitlements of particular land features when we do not – and cannot – know who is entitled?

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The decision of the Arbitral Tribunal (formed under Art. 287, Annex VII of UNCLOS) to exercise jurisdiction over a compulsory arbitration case filed by the Philippines against China is a major breakthrough for at least two reasons. First, it shows that the United Nations Convention on the Law of the Sea (UNCLOS) can indeed be useful to resolving the disputes in the South China Sea. Second, it shows that the UNCLOS can be leveraged to challenge China's sweeping territorial claims across the area, paving the way for a 'legal multiplier' that could involve other claimant states such as Vietnam pursuing a similar approach. If the Philippines manages to convince the court that it should exercise jurisdiction on the nine-dashed line and historical rights claims, and subsequently win those arguments against China, then the case will have major legal repercussions not only for the disputes between Manila and Beijing, particularly in the Spratlys, but also across the South China Sea, much of which the nine-dashed line covers.

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Two points. The first point is about sovereignty and territorial claims. This arbitration case concerns claims about sovereignty in the South China Sea, and it has come to challenge the legality of the nine-dash line and also related legal claims of China and, of course, Taiwan. Even though, in the past, every claimant had their own claims and also their own perspectives, this is perhaps the first time they have been brought to international arbitration. Different opinions can be shared by many claimants through this international discussion, and the arbitration tribunal may give opposing opinions on what China and Taiwan have claimed over the last few decades. Taiwan and China's claims may become questioned or challenged by different claimants, but this doesn't actually mean that these claims have any problems in terms of legitimacy or legality.

The second point [is related to] the impact on regional security. Originally, what the Philippine government was hoping for through this international arbitration was really to make peace in the region. My observation has been that, so far, the arbitration case has brought more problems to the region than [it has] solved, so I think this may make it increasingly difficult for countries to manage territorial disputes in the region. It shows that the tendency to suggest that every



territorial dispute go through this international arbitration process is questionable.

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It's too early for the Philippines to take any victory laps in the jurisdictional phase of the recent arbitration ruling. Most observers believe that it does grant them valuable leverage in their respective relations with China, but they are not likely to use it for any overt and direct diplomatic confrontation. Manila still must maintain international support for its cause so that it can translate this legal victory into substantive political pressure.

However, this ruling may serve to open up from ASEAN a new paradigm for engagement with China. Some international legal pundits believe that China is vulnerable right now to giving some more concessions to forestall another legal challenge. The upcoming ASEAN Summit in Malaysia may signal how other ASEAN members may diplomatically engage China to take advantage of that before they consider launching their own litigation.



ASEAN is basically divided on China's expanding footprint in the South China Sea due to economic and geopolitical realities. China is by far the biggest trading partner [for ASEAN, as it is for] Malaysia and Vietnam. Of course, the Philippines and Vietnam maintain their soft diplomacy campaigns due to the direct impact [of the South China Sea disputes] on them, but Malaysia and Indonesia generally do not want the region to become another battleground between external powers. The Summit may offer some unexpected responses.

**James Borton** is a Faculty Associate at the Walker Institute at the University of South Carolina and edited *The South China Sea: Challenges and Promises*.



Although U.S. freedom of navigation operations in the South China Sea have major implications for the region, the development of arbitration case is even more worrisome as far as China is concerned. The Tribunal was skilled enough not to touch the first two submissions of the Philippines' memorial, which are related to the "nine-dashed line" over which China claims the tribunal has no jurisdiction. However, the seven selected submissions that the tribunal made decisions on focus



on the legal status of the eight reefs that China controls and thus also have a significant impact on China's maritime claims. If the final award is not favorable for China, China could lose the maritime economic boundary, and the surrounding countries would be able to exploit the resources within their 200-nautical-mile EEZs without Chinese interference. It would be no different from outlawing the nine-dashed line. Yet the worst case scenario for China would be for all of the final award to favor the Philippines. The side effect could be indirectly recognizing the Philippines' sovereignty on reefs that it currently controls. If that were to happen, China would lose not only the nine-dashed line but also its sovereignty claims to all reefs and rocks in the SCS. I believe China understands that very well, and is now preparing for the worst. How China responds to the worst case scenario might determine the future of peace or conflict in the region.

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