



Philippines v. China Arbitration Case:

Summary of the Philippines' Submissions and Tribunal's Awards



On January 22, 2013, the Philippines formally initiated arbitral proceedings against China under Article 287 and Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS).

On February 19, 2013, China rejected and returned the Philippines' Note Verbale initiating the proceedings, stated that it would neither accept nor participate in the arbitration, and provided reasoning to support its position. China has since reiterated and developed its position by means of official government statements. Taiwan, due to its lack of representation in the United Nations, was unable to participate in the arbitral proceedings despite the fact that the Philippines' submissions and arguments sought international legal decisions affecting its maritime territorial claims and interests.

The Philippines, in its Memorial presented to the Tribunal on March 30, 2014, requested that the Tribunal issue an Award regarding fifteen submissions related to the status and legal entitlements of certain features in the South China Sea, the conduct of states and other actors in the disputed areas, and the legal legitimacy of China's historical claims. The Philippines, in its testimony during the arbitral proceedings, also requested that the Tribunal address other key issues beyond the scope of its fifteen Submissions.

On July 12, 2016, the Arbitral Tribunal issued its Award. The Philippines' submissions and additional claims, the Tribunal's conclusions contained in its Award on Jurisdiction and Admissibility, and its conclusions made in its final Award are summarized below.



	Philippines' Submission or Additional Claim March 30, 2014; November 30, 2015	Tribunal's Position in Award on Jurisdiction and Admissibility October 29, 2015	Tribunal's Position in Final Award July 12, 2016
1	China's maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those permitted by [UNCLOS].	Reserved consideration	UNCLOS "defines the scope of maritime entitlements in the South China Sea, which may not extend beyond the limits imposed therein." (X, 1203, B, 1)
2	China's claims to sovereign rights and jurisdiction, and to "historic rights", with respect to the maritime areas of the South China Sea encompassed by the so-called "nine-dash line" are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under UNCLOS.	Reserved consideration	China's claims regarding "historic rights, or other sovereign rights or jurisdiction, [within] the 'nine-dash line' are contrary to [UNCLOS and have no] lawful effect [where] they exceed the geographic and substantive limits of China's maritime entitlements under [UNCLOS]". UNCLOS "superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein." (X, 1203, B, 2)
3	Scarborough Shoal generates no entitlement to an exclusive economic zone or continental shelf.	Had jurisdiction	Scarborough Shoal is a rock without EEZ or continental shelf entitlements. (X, 1203, B, 6) It is entitled to territorial waters.
4	Mischief Reef, Second Thomas Shoal and Subi Reef are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, and are not features that are capable of appropriation by occupation or otherwise.	Had jurisdiction	Mischief Reef and Second Thomas Shoal are low-tide elevations without territorial sea, EEZ, or continental shelf entitlements. They are not "capable of appropriation." (X, 1203, B, 4) Subi Reef is a low-tide elevation without territorial sea, EEZ, or continental shelf entitlements. It is not "capable of appropriation, but may be used as the baseline for measuring the breadth of the territorial sea of high-tide features situated at a distance not exceeding the breadth of the territorial sea." (X, 1203, B, 5) It is within the 12-nm territorial waters of Sandy Cay, which is a high-tide feature. (X, 1203, B, 3, d)
5	Mischief Reef and Second Thomas Shoal are part of the exclusive economic zone and continental shelf of the Philippines.	Reserved consideration	Mischief Reef and Second Thomas Shoal are low-tide elevations without territorial sea, EEZ, or continental shelf entitlements, and "there are no overlapping [EEZ or continental shelf] entitlements ... in the areas." (X, 1203, B, 4)
6	Gaven Reef and McKennan Reef (including Hughes Reef) are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, but their low-water line may be used to determine the baseline from which the breadth of the territorial sea of Namyit and Sin Cowe, respectively, is measured.	Had jurisdiction	Gaven Reef (South) and Hughes Reef are low-tide elevations without territorial sea, EEZ, or continental shelf entitlements. They are not "capable of appropriation, but may be used as the baseline for measuring the breadth of the territorial sea of high-tide features situated at a distance not exceeding the breadth of the territorial sea." (X, 1203, B, 5) Gaven Reef (South) is within the 12-nm territorial waters of Gaven Reef (North) and Namyit Island, which are high-tide features. (X, 1203, B, 3, e) Hughes Reef is within the 12-nm territorial waters of McKennan Reef and Sin Cowe Island, which are high-tide features. (X, 1203, B, 3, f)
7	Johnson Reef, Cuarteron Reef and Fiery Cross Reef generate no entitlement to an exclusive economic zone or continental shelf.	Had jurisdiction	Johnson Reef, Cuarteron Reef and Fiery Cross Reef are rocks without EEZ or continental shelf entitlements. (X, 1203, B, 6) They are entitled to territorial waters.
8	China has unlawfully interfered with the enjoyment and exercise of the sovereign rights of the Philippines with respect to the living and non-living resources of its exclusive economic zone and continental shelf.	Reserved consideration	China "breached its obligations under Article 56" regarding "the Philippines' sovereign rights over the living resources of its exclusive economic zone" by implementing its 2012 South China Sea fishing moratorium and not making "exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines [or] limiting the moratorium to Chinese flagged vessels." (X, 1203, B, 9)
9	China has unlawfully failed to prevent its nationals and vessels from exploiting the living resources in the exclusive economic zone of the Philippines.	Reserved consideration	China "breached its obligations under Article 58(3)" by not preventing "fishing by Chinese flagged vessels" at Mischief Reef and Second Thomas Shoal, which are within the Philippines' EEZ, in May 2013. (X, 1203, B, 11)
10	China has unlawfully prevented Philippine fishermen from pursuing their livelihoods by interfering with traditional fishing activities at Scarborough Shoal.	Had jurisdiction	China has, since May 2012, "unlawfully prevented fishermen from the Philippines from engaging in traditional fishing at Scarborough Shoal," which "has been a traditional fishing ground for fishermen of many nationalities." (X, 1203, B, 11)



11	China has violated its obligations under the Convention to protect and preserve the marine environment at Scarborough Shoal and Second Thomas Shoal.	Had jurisdiction	China “breached its obligations under Articles 192 and 194(5)” because it “was aware of, tolerated, protected, and failed to prevent” environmentally destructive activities by fishermen from Chinese flagged vessels, who “have engaged in the harvesting of endangered species on a significant scale[and] the harvesting of giant clams in a manner that is severely destructive of the coral reef ecosystem” in the South China Sea. (X, 1203, B, 12)
12	China’s occupation and construction activities on Mischief Reef (a) violate the provisions of the Convention concerning artificial islands, installations and structures; (b) violate China’s duties to protect and preserve the marine environment under the Convention; and (c) constitute unlawful acts of attempted appropriation in violation of the Convention.	Reserved consideration	China “breached its obligations under Articles 123, 192, 194(1), 194(5), 197, and 206” because its land reclamation and construction have “caused severe, irreparable harm to the coral reef ecosystem” without cooperating, coordinating, or communicating environmental impact assessments with other countries. (X, 1203, B, 13) China “breached Articles 60 and 80” through its “construction of artificial islands, installations, and structures at Mischief Reef without the authorisation of the Philippines” because the feature is a low-tide elevation not capable of appropriation within the Philippines’ EEZ. (X, 1203, B, 14)
13	China has breached its obligations under the Convention by operating its law enforcement vessels in a dangerous manner causing serious risk of collision to Philippine vessels navigating in the vicinity of Scarborough Shoal.	Had jurisdiction	China “breached its obligations under Article 94” and “violated Rules 2, 6, 7, 8, 15, and 16 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972” by causing “serious risk of collision and danger to Philippine ships and personnel” through the “operation of its law enforcement vessels” on April 28 and May 26, 2012. (X, 1203, B, 15)
14	Since the commencement of this arbitration in January 2013, China has unlawfully aggravated and extended the dispute by, among other things: (a) interfering with the Philippines’ rights of navigation in the waters at, and adjacent to, Second Thomas Shoal; (b) preventing the rotation and resupply of Philippine personnel stationed at Second Thomas Shoal; and (c) endangering the health and well-being of Philippine personnel stationed at Second Thomas Shoal.	Reserved consideration	China has aggravated the disputes over “the status of maritime features in the Spratly Islands” as well as those about the countries’ “respective rights and entitlements” and “the protection and preservation of the marine environment” at Mischief Reef. (X, 1203, B, 16) China has enlarged the disputes over “the protection and preservation of the marine environment to Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef.” (X, 1203, B, 16)
15	Original: China shall desist from further unlawful claims and activities. Amended: China shall respect the rights and freedoms of the Philippines under the Convention, shall comply with its duties under the Convention, including those relevant to the protection and preservation of the marine environment in the South China Sea, and shall exercise its rights and freedoms in the South China Sea with due regard to those of the Philippines under the Convention.	Requested clarification	China should have abstained from activities with “a prejudicial effect [on] the execution of the decisions to be given” and activities that “might aggravate or extend the dispute during” the arbitral proceedings. (X, 1203, B, 16)
Additional Issues			
1	Itu Aba (Taiping) Island is a rock, not an island, under Article 121(1) and 121(3) of UNCLOS. (Itu Aba Island is occupied by Taiwan and is the largest feature in the Spratly Islands.)		Itu Aba (Taiping) Island is a rock without EEZ or continental shelf entitlements because “no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal constitutes a fully entitled island.” (X, 1203, A, 2, a)
2	Thitu Island is a rock, not an island, under Article 121(1) and 121(3) of UNCLOS. (Thitu Island is occupied by the Philippines and is the second-largest feature in the Spratly Islands.)		Thitu Island is a rock without EEZ or continental shelf entitlements because “no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal constitutes a fully entitled island.” (X, 1203, A, 2, a)
3	West York Island is a rock, not an island, under Article 121(1) and 121(3) of UNCLOS. (West York Island is occupied by the Philippines and is the third-largest feature in the Spratly Islands.)		West York Island is a rock without EEZ or continental shelf entitlements because “no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal constitutes a fully entitled island.” (X, 1203, A, 2, a)

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