



The South China Sea Arbitration; Reactions and Aftermath

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On the 12th of July 2016, the tribunal of the Permanent Court of Arbitration (PCA) gave its judgement on the case filed by The Philippines. The four major elements of the PCA judgement are that a) China does not have historic maritime rights in the South China Sea, b) none of the features in the South China Sea are islands, and thus do not entail any rights consistent with the United Nations Convention on the Law of the Sea (UNCLOS) and c) certain Chinese activities in the South China Sea violated The Philippines' right to the Exclusive Economic Zone (EEZ) and d) China's certain construction activities have caused irreparable damage to maritime environment.¹

PCA Case Timeline

Date	Event
22 January 2013	The Philippines initiated arbitration
19 February 2013	China rejected the claims and states that it will neither accept nor participate in the arbitration
7 December 2014	China released a position paper stating that the PCA tribunal does not have jurisdiction over the case.
29 October 2015	The tribunal issued rulings on jurisdiction and admissibility
8 June 2016	MoFA, PRC issued statement on settling disputes between Beijing and Manila through bilateral negotiations
12 July 2016	The PCA tribunal announced its judgement.
12 July 2016	MoFA, PRC issued a statement calling the award unjust and unlawful
12 July 2016	Government of the PRC issued a statement reiterating its claims in the South China Sea
13 July 2016	China issued a White Paper titled <i>China adheres to the Position of Settling Through Negotiation the Relevant Disputes between China and the Philippines in the South China Sea</i>

As expected, the People's Republic of China (PRC) has rejected the judgement and the Ministry of Foreign Affairs of the PRC declared that "the award is null and void and has no binding force".ⁱⁱ China had consistently questioned and denied the validity of the PCA process vis-à-vis South China Sea. In fact, Chinese Vice Foreign Minister had also questioned the PCA's competence as well as integrity and questioned its knowledge of the Asian Culture. China's state Councilor Yang Jiechi said in an interview that the arbitration was a farce and that was driven by a certain agenda. He also blamed the US, without naming it, for the situation. He went on to add that "the arbitration runs counter to the spirit of international rule of law, puts regional peace and stability in jeopardy, and undermines the interests of the international community".ⁱⁱⁱ

A statement issued by the Ministry of Foreign Affairs (MoFA) of the PRC said that the conduct of the tribunal as well as its award was "unjust and unlawful", and that "China's territorial sovereignty and maritime rights and interests in the South China Sea shall under no circumstances be affected by those awards. China opposes and will never accept any claim or action based on those awards".^{iv} Another statement issued by the government of PRC did not react to the arbitration judgement but reiterated its stand on the historic rights to the islands and features that it claims in the South China Sea.^v China also issued a white paper titled on the subject on 13 July 2016.^{vi}

The Philippines' statement was muted and said that "Our experts are studying the Award with the care and thoroughness that this significant arbitral outcome deserves."^{vii} Subsequently, according to media report, Philippines rejected China's calls to resume talks by disregarding the ruling. This was offered by China's foreign minister Wang Yi when he met Philippine foreign secretary Perfecto Yasay on the sidelines of the Asia-Europe Summit in Mongolia.^{viii} The Chinese reactions have consistently referred to the PCA case being filed by the "previous government in the Philippines", thereby keeping the option of new negotiations open.

Expectedly, Taiwan, whose claims are parallel to that of China, denounced the judgement, in particular, the decision that Taiping/Itu Aba was not an island.^{ix} Statement issued by the MoFA, Taiwan says that Taiwan was neither invited to nor consulted during the arbitration and Taiping was not part of the original scope of the arbitration. While the statement talks of Taiwanese islands being occupied by Vietnam, Malaysia and the Philippines, it is silent on the PRC's occupation as well as claims in the South China Sea. Taiwan also sent a frigate to Taiping on the 13th of July. While this visit was prescheduled, it was advanced by a day following the judgment. At this occasion, Tasi Ing-wen stated that the tribunal judgement had "gravely harmed" Taiwan's rights to the South China Sea.^x Taiwan also planned to send a fishing flotilla and a eight member delegation of Taiwanese lawmakers, led by Chiang Chi-chen of the Kuomintang Party (KMT), undertook a daylong symbolic visit to Taiping on 20 July 2016.^{xi} After the PCA award that treated the Taiping to

be a rock and not an island, Taiwan would lose its 200 nautical mile EEZ and would see its rights limited to the 12 nautical miles territorial sea.

The United States called this a significant award towards peaceful resolution of the disputes in the South China Sea and added that “the Tribunal’s decision is final and legally binding on both China and the Philippines. The United States expresses its hope and expectation that both parties will comply with their obligations.”^{xii} It also appealed the claimants to avoid issuing provocative statements. Subsequently, the China’s foreign ministry spokesperson expressed strong dissatisfaction with the US statement.^{xiii}

The Malaysian statement said that “all relevant parties can peacefully resolve disputes by full respect for diplomatic and legal processes and relevant international law and 1982 United Nations Convention on the Law of the Sea (UNCLOS)”.^{xiv} It also called for the implementation of the Declaration of Conduct in the South China Sea (DoC) in its entirety and early conclusion of a Code of Conduct in South China Sea as agreed between China and ASEAN countries.”

Statement issued by the Ministry of External Affairs, Government of India stated that “India has noted the Award of the Arbitral Tribunal”.^{xv} It also added that “India supports freedom of navigation and over flight, and unimpeded commerce, based on the principles of international law, as reflected notably in the UNCLOS. India believes that States should resolve disputes through peaceful means without threat or use of force and exercise self-restraint in the conduct of activities that could complicate or escalate disputes affecting peace and stability.” The statement reiterated India’s position on the sea lanes of communication and urged the parties to show utmost respect for the UNCLOS.

Overall, the award has been reacted to with cautious optimism across the region. The reactions have largely been on the expected lines. Lack of provocative behaviour on ground is a welcome sign for peace; whether or not this award changes the course of the future of South China Sea disputes remains to be seen.

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Disclaimer: The views expressed are that of the Researcher and not of the Council.

Endnotes:

ⁱ Permanent Court of Arbitration, “Press release: The South China Sea Arbitration (The Republic of Philippines vs The People’s Republic of China”, 12 July 2016, at <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf> (accessed 12 July 2016).

- ii MoFA, PRC, “Foreign Ministry Spokesperson Lu Kang’s Regular Press Conference on July 12, 2016”, 13 July 2016, at http://www.fmprc.gov.cn/nanhai/eng/fyrbt_1/t1380374.htm (accessed 13 July 2016).
- iii MoFa, PRC, “Yang Jiechi gives interview to state media”, 14 July 2016, at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1381740.shtml (accessed 15 July 2016).
- iv MoFa, PRC, “Statement of the Ministry of Foreign Affairs of the People's Republic of China on the Award of 12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines”, 12 July 2016, at http://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1379492.htm (accessed 12 July 2016).
- v Xinhua, “Full Text of Chinese gov’t statement on China’s territorial sovereignty and maritime rights and interests in S. China Sea”, *Global Times*, 12 July 2016, at <http://www.globaltimes.cn/content/993804.shtml> (accessed 12 July 2016).
- vi Information Office of the State Council, “*China adheres to the Position of Settling Through Negotiation the Relevant Disputes between China and the Philippines in the South China Sea*”, *White Paper released on 13 July 2016*, at http://www.china.org.cn/government/whitepaper/node_7239601.htm (accessed 15 July 2016).
- vii DFA, The Philippines, “Statement of the Secretary of Foreign Affairs”, 12 July 2016, at <http://www.dfa.gov.ph/newsroom/dfa-releases/9900-statement-of-the-secretary-of-foreign-affairs-2> (accessed 14 July 2016).
- viii AFP, “Philippines rejects conditional offer of talks from China on South China Sea dispute”, *South China Morning Post*, 19 July 2016, at <http://www.scmp.com/news/china/diplomacy-defence/article/1991671/philippines-rejects-conditional-offer-talks-china-south> (accessed 19 July 2016).
- ix MoFA, RoC (Taiwan), “ROC position on the South China Sea Arbitration”, 12 July 2016, at http://www.mofa.gov.tw/en/News_Content.aspx?n=1EADDCCFD4C6EC567&s=5B5A9134709EB875 (accessed 13 July 2016).
- x Austin Ramzy, “Taiwan, after rejecting South China Sea Decision, sends patrol ship”, *New York Times*, 13 July 2016, at <http://www.nytimes.com/2016/07/14/world/asia/south-china-sea-taiwan.html> (accessed 18 July 2016).
- xi Liu Kuan-ting and Christie Chen, “Lawmakers depart for Taiping to defend Sovereignty”, *Focus Taiwan News*, 20 July 2016, at <http://focustaiwan.tw/news/aip/201607200004.aspx> (accessed 20 July 2016).
- xixii US Department of State, “Decision in the Philippines China Arbitration”, Statement by John Kirby, Assistant Secretary and Department Spokesperson, Bureau of Public Affairs, Washington DC., 12 July 2016, at <http://www.state.gov/r/pa/prs/ps/2016/07/259587.htm> (accessed 15 July 2016).
- xiii MoFA, PRC, “Foreign Ministry Spokesperson Lu Kang's Remarks on Statement by Spokesperson of US State Department on South China Sea Arbitration Ruling”, 13 July 2016, at http://www.fmprc.gov.cn/nanhai/eng/fyrbt_1/t1380409.htm (accessed 17 July 2016).
- xiv MoFA, Malaysia, “Statement by Malaysia”, 12 July 2016, at http://www.kln.gov.my/web/guest/press-release/-/asset_publisher/t3pS/content/press-release-following-the-decision-of-the-arbitral-tribunal-on-the-south-china-sea-issue?redirect=%2Fweb%2Fguest%2Fpress-release%3Fp_p_id%3D101_INSTANCE_t3pS%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1%26_101_INSTANCE_t3pS_delta%3D10%26_101_INSTANCE_t3pS_keywords%3D%26_101_INSTANCE_t3pS_advancedSearch%3Dfalse%26_101_INSTANCE_t3pS_andOperator%3Dtrue%26curr%3D2 (accessed 15 July 2016).
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