China and the South China Sea issue

**SUMMARY**

On 12 July 2016, an Arbitral Tribunal, set up under the 1982 UN Convention on the Law of the Sea (UNCLOS), between the Republic of the Philippines and the People's Republic of China (PRC) published its award about conflicting maritime claims in the South China Sea, ruling overwhelmingly in favour of the Philippines. According to the legally binding ruling, China's 'nine-dash line' and 'historic claims' have no legal basis under UNCLOS. The tribunal found that China had violated the Philippines' rights with regard to fishing, oil exploitation, land reclamation and artificial island building, and had caused severe damage to the marine environment, including by using harmful fishing methods and harvesting endangered species.

The award's *de facto* impact on the long-standing conflicts over overlapping territorial and maritime claims between China and the Philippines, and its spill-over effect on those existing to varying degrees also between China and Brunei, Malaysia, Indonesia and Vietnam, is highly unpredictable. China opposed arbitration from the outset by not participating in it, and by stating that it will not accept the outcome. Since there is no enforcement mechanism for the award, China’s response may vary between (partial, tacit) compliance, unchanged behaviour and escalation of conflicts. While Western democracies have welcomed the award, the EU has stopped short of calling for compliance with it. Only a handful of countries have criticised or rejected it.

Maintaining peace and (maritime) security in the South China Sea is likely to become more challenging given increasingly asymmetric power relations between China and adjacent south-east Asian countries, fierce competition over fishing grounds and oil and gas deposits in disputed areas, and growing Sino-US geo-strategic rivalry.

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Why and for whom is the South China Sea of geo-strategic significance?
The South China Sea is a strategic maritime link between the Indian Ocean and the Pacific Ocean stretching from the Strait of Malacca to the Strait of Taiwan. It links Brunei, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, the People's Republic of China (PRC or China), the Republic of China (RoC or Taiwan), Thailand and Vietnam into global trade flows and is essential for their livelihoods and food security.

A major trade and energy supply route
The South China Sea is one of the world’s busiest sea lines of communication (SLOCs). Each year almost 30% of global sea-borne trade, worth more than US$5 trillion, passes through it. Over half of the world’s oil tanker traffic travels through this critical commercial gateway. It is of major economic significance not only for China and the other adjacent countries, but also for the EU, Japan, South Korea and the USA. Figure 1 shows that not only China but also Japan and South Korea rely heavily on the South China Sea for their oil (and gas) supplies.

Rich but depleting fishing grounds
The South China Sea is home to rich fishing grounds. In 2010, it accounted for 10 million tonnes or 12% of reported global catch, with an estimated unreported catch of 6.6 million tonnes. Over-exploitation, destructive fishing methods and maritime pollution are of major concern. Competition for and conflicts over contested fishing grounds have hindered efforts to promote the joint management of fishery resources.

Proven and unproven oil and gas deposits
Even though in 2011 the countries bordering the South China Sea produced only 1.4% of global oil consumption according to the US Energy Information Administration (EIA), the escalation of conflicts among them has often been correlated directly to the prospects of untapped deposits of oil and natural gas in the region. Data for oil and gas reserves vary considerably across sources. The EIA estimates that the South China Sea hosts about eleven billion barrels and 190 trillion cubic feet of proven and unproven oil and natural gas reserves respectively. Although Chinese figures are much more optimistic, sustaining expectations of high economic returns, they appear modest compared to the estimated volumes of undiscovered reserves in other areas of the world (see Figure 2).
A setting for Chinese military power projection and Sino-US geo-strategic rivalry

Finally, the South China Sea is critical both for China's national defence concerns and for its naval power projection, since it offers the Chinese navy vital access to deep water, which is inexistent along China's eastern coast, thus offsetting a strategic weakness. Geo-strategic rivalry between China and the USA in East Asia, where the USA has been the security guarantor for decades, is fuelled by mounting conflicts between adjacent countries over natural resources and has resulted in the growing militarisation of the region. Maritime security could be seriously undermined as a result of disruptive unilateral moves and unintended incidents escalating into multiparty violent conflicts.

Rival claimants and claims in the South China Sea disputes

Rival claimants and their conflicting territorial claims to land features

The South China Sea harbours hundreds of maritime features such as islands, atolls, rocks, cays, banks, shoals and reefs, many of which are partly or completely submerged at high tide and uninhabitable. They are collectively known as the Pratas Islands (in Chinese 'Dongsha Qundao' or east sand islands reflecting their geographic position in the South China Sea), the Paracel Islands ('Xisha Qundao' or west sand islands), Macclesfield Bank and the Scarborough Shoal ('Zhongsha Qundao' or central sand islands), and the Spratly Islands ('Nansha Qundao' or south sand islands) (see Map 1).

Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam hold overlapping territorial claims to these maritime features. China's claims based on its 'nine-dash line' are the most expansive.

The Pratas Islands are occupied by Taiwan, but claimed by China. The Paracel Islands are occupied by China, but claimed by Vietnam and Taiwan. The Macclesfield Bank and the Scarborough Shoal are unoccupied, but claimed by China and Taiwan. The Scarborough Shoal is also claimed by the Philippines. The Spratly Islands are occupied in part by China (7 maritime features), Malaysia (8), the Philippines (8), Taiwan (1), and Vietnam (21), but are claimed in their entirety by China, Taiwan and Vietnam and in part by Brunei, Malaysia, and the Philippines.

The nine-dash line as a source of Chinese territorial and maritime claims

At the heart of the South China Sea disputes is a map with eleven dashes which is assumed to have been drawn up in the 1930s. It depicts an interrupted U-shaped line which was issued for the first time by the RoC in 1947. No explanations were given about the meaning and the precise geographical positions of the dashes. The PRC came...
to use the map after its creation in 1949. The claims of China and Taiwan are therefore very similar. The PRC in 1953 eliminated two dashes from the Gulf of Tonkin between China and Vietnam as a sign of friendship between two communist brother countries, but in 2013 China issued a new official map which adds a 10th dash to the east of Taiwan (see Map 1).³

The 1951 San Francisco Treaty agreed among the Allied Powers in the absence of China and Taiwan failed to determine the ownership of the South China Sea's maritime features. In protest against this Treaty, China's then Premier and Foreign Minister Zhou Enlai reaffirmed the PRC's sovereignty over the South China Sea's maritime features in the 1951 'San Francisco Conference Statement' and thus formalised China's claims, which did not at that time meet with any objection. He argued that the 1943 Cairo Declaration and the 1945 Potsdam Declaration stating that Japan renounced to its rights over the Paracel and Spratly islands were the foundations of China's territorial claims.

A 1958 resolution adopted by the Standing Committee of the National People's Congress confirms all maritime features as being Chinese territory. Although China has issued documents at irregular intervals to assert its claims and to justify those to land features as being grounded in discovery and occupation, the nine-dash line has failed to trigger recognition from rival claimants.

The UN Convention on the Law of the Sea (UNCLOS) as a source of maritime claims

The 1982 UN Convention on the Law of the Sea (UNCLOS), which China ratified like its rival claimants, created a new maritime regime. It added to the existing territorial sea new maritime zones and exploitation rights attached to them, such as an exclusive economic zone (EEZ) of 200 nautical miles (nm) and a continental shelf of up to 350 nm, which were formerly part of the High Seas (see Figure 3).

As for maritime features, under UNCLOS rules only islands generate an EEZ, whereas rocks generate only a territorial sea, and low-tide elevations, which are submerged at high tide and uninhabitable, do not generate any of these maritime zones nor are they subject to appropriation by occupation or otherwise.

While China incorporated the new maritime regime in its 1992 Law on the Territorial Sea and the Contiguous Zone, it applied it unilaterally also to the Pratas, Paracel and Spratly Islands claimed under its nine-dash line with the apparent assumption – nourished by Chinese scholars – that the rights claimed are complementary to or supersede UNCLOS rules.

In 1998 this was replicated for the Law on the Exclusive Economic Zone (EEZ) and the Continental Shelf which stresses in its Article 14 that China's 'historic rights', which are
not defined therein, shall not be affected by this law. This ambiguous reference has been interpreted as China’s intention to use the historic rights concept for claimed maritime space in the South China Sea not covered by an EEZ.

The legal conundrum of China’s nine-dash line overlapping with rival claimants' EEZs

China’s U-shaped line overlaps with the EEZs of the four other claimants: Brunei, Malaysia, the Philippines and Vietnam demarcated under UNCLOS rules in line with their coastlines (see Map 2). By contrast, China's U-shaped line is longer than 200 nm and not derived from China's southernmost coastline, Hainan Island, but extends more than 950 nm from there to its southernmost position at the Malaysia-claimed fully submerged James Shoal.

Recognising China's expansive maritime claims would result in losses of EEZ space for Brunei of 90%, for Malaysia and the Philippines of 80%, for Vietnam of 50% and for Indonesia of 30%. The areas at stake are among others Malaysia's Sabah and Sarawak oil and gas fields and the Philippine’s oil and gas fields at Reed Bank and Malampaya respectively.

Indonesia holds no territorial claims to any disputed maritime feature, but its EEZ around Natuna Besar Island, which hosts rich natural gas deposits and fishing grounds, overlaps with the U-shaped line.

The incompatibility of the nine-dash line and the new law of the sea regime became evident when in 2009 China transmitted its U-shaped line in a note verbale to the UN Commission on the limits of the Continental Shelf (CLCS) to protest against a joint submission by Vietnam and Malaysia about their extended continental shelf beyond the standard 200 nm. The note contains territorial and maritime claims stating:

'China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see map attached).'

In 2011, China reasserted these claims in another note verbale specifying that its maritime features in the Spratly Islands were entitled to EEZs.

China's resistance to submitting conflicting claims to international adjudication

Unlike Malaysia and Indonesia, and Malaysia and Singapore, which brought their territorial disputes about maritime features before the International Court of Justice (ICJ) in 2002 and in 2008 respectively and have complied with the ruling, China has never attempted to have its claims recognised by international adjudication or dispute...
settlement mechanisms. On the contrary, China in 2006 made a declaration to its UNCLOS commitments invoking optional exceptions under Article 298 to the compulsory procedures entailing binding decisions under Articles 286-296 as regards military activities, delimitations of the territorial sea and the continental shelf and the duties of the coastal state in what appears as an attempt to preclude the application of 'unfavourable' UNCLOS rules to its claims. But it is also consistent with China's tradition of making treaty reservations as regards adjudication by international judicial bodies.4

China has since pursued its official policy of 'strategic ambiguity', routinely stating that its 'historic rights' exist since ancient times, thus putting emphasis on the fact that China's maritime claims largely predate UNCLOS, which entered into force only in 1994, and therefore prevail over UNCLOS claims. The existence of four schools of thought among Chinese academics as regards the interpretation of the nine-dash line may be an additional reason for China's reluctance to be more specific.

**China's increasingly expansionist strategy to enforce its claims**

**Low-profile enforcement of claims due to economic, political and military constraints**

In the 1950s and 1960s China had physical control over the Amphitrite group of the Paracels Islands only and thus administered its claimed maritime features nominally rather than in practice, despite extending jurisdiction of domestic laws to all of them.

Given China's political and economic isolation under Mao Zedong's rule (1949-1976) and its weak naval capabilities, it lacked the power for a sustained expansive strategy until the mid-2000s. It therefore used power transitions in the countries of rival claimants to gain control over occupied maritime features. In 1974 Chinese naval forces seized the Crescent Group of the Paracel Islands from South Vietnam in the Battle of the Paracel Islands after the withdrawal of US troops, pushing China's southern defence perimeter from Hainan Island to the Paracels. In response, Malaysia, the Philippines and Vietnam accelerated the pace of seizing unoccupied features in the Spratlys.

In 1988 at the end of the Cold War and with Vietnam's ally, the former Soviet Union, weakening, China conquered Johnson Reef and Fiery Cross Reef in the Spratly Islands in an armed conflict with Vietnamese naval forces, extending China's defence perimeter further south. In 1995 China occupied Mischief Reef in the Spratlys reaching out to the southeast of the South China Sea, at only 125 nm from the Philippines' Palawan Island.

Despite these cases of territorial expansion, China's behaviour in the South China Sea during the 1980s and 1990s was predominantly guided by Deng Xiaoping's foreign policy maxim of 'keeping a low profile'. This policy gave priority to maintaining an environment conducive to China's economic development over attempts at the immediate enforcement of claims. Disputes about sovereignty were to be shelved for resolution by future generations, with joint development deemed a promising option.5

In an effort to assuage concerns about China's creeping expansionism raised in the 1990s by the Association of East-Asian Nations (ASEAN) which gathers all rival claimants but Taiwan, China adopted its peaceful rise doctrine and engaged in good neighbourly relations. Following on from the 1976 Treaty of Amity and Cooperation in Southeast Asia, China signed the 1995 Treaty on the Southeast Asia Nuclear Weapon-Free Zone and has pursued economic integration with the bloc.

An ASEAN-China Declaration on the Conduct of Parties in the South China Sea, albeit non-binding, was signed in 2002. It commits the parties to the peaceful solution of disputes through negotiation, but has been violated time and again, not least by China
when in 2012 it ousted the Philippines from the Scarborough Shoal. Contrary to ASEAN’s expectations, rather than engaging in genuine multilateralism China has capitalised on internal divisions among ASEAN members and has insisted on an asymmetric bilateral approach so as to be better able to advance its own interests.

**Assertive enforcement of claims based on asymmetric power relations since the 2000s**

China's military strength has grown on all fronts and much more quickly than that of rival claimants (see Figure 4), enabling China to adopt a more assertive and coercive posture. At the 2010 ASEAN Regional Forum (ART), Yang Jiechi, then Chinese Minister of Foreign Affairs, stressed this asymmetry by saying that 'China is a big country and other countries are small countries and that is just a fact'.

China's policy shift since 2009 has coincided with the US foreign policy reset for the Asia Pacific under President Barack Obama. It was announced by then US Secretary of State Hillary Clinton who on a visit to Thailand in July 2009 said that after a period of neglect 'the United States is back'. Subsequently, she has stated repeatedly that the USA has a 'national interest in freedom of navigation, open access to Asia's maritime commons, and respect for international law in the South China Sea'. The 2011 US policy of a pivot to the Pacific or rebalancing towards Asia has contributed to China’s perception of being increasingly encircled and contained by the USA and its allies, while also revitalising and strengthening military alliances between the USA and China’s neighbours seeking to hedge against China's threatening military power projection in the South China Sea.

Against this political backdrop China has made unilateral, expansive moves to alter the status quo in its favour using a salami-slicing strategy, while controlling the risk of escalation. China has made growing use of its recently reorganised paramilitary forces while retaining its navy and air force in the background and engaging in responsible conduct to avoid unintended incidents with foreign navies and air forces. This policy, which has enabled China to pursue and entrench a new maritime status quo, has been dubbed 'passive assertiveness'. Yet China's increased military and paramilitary presence in the South China Sea has led to a series of dangerous maritime and air space incidents with the Philippines, Vietnam and Indonesia as well as with the USA.6

**Land reclamation, artificial island building and militarisation**

Since 2014 China has carried out rapid and massive land reclamation activities, infrastructure and installation construction on several features in the Spratly Islands and weapon deployment on the Paracel Islands. While other claimants, such as Vietnam, have also engaged in land reclamation, they have built upon existing land masses, China has significantly changed the size and structure of land features. China is the most recent Spratly claimant to build an airstrip. Vietnam did so already in 1976 on Spratly
Island, the Philippines followed in 1978 on Thitu Island, Malaysia in 1983 on Swallow Reef and Taiwan in 2006 on Itu Aba (see Figure 5). In 2015, these measures drew rare joint criticism from ASEAN which referred to them as having 'eroded trust and confidence' and having the potential to 'undermine' peace, security and stability in the South China Sea'. This has not prevented China from continuing its artificial island building however

**Incursions by Chinese fishermen into disputed waters and harassment of adjacent countries' fishermen**

In 1985 almost 90% of Chinese industry fished inshore. By 2002 this figure had already dropped to below 65%. Depletion of fishing grounds due to overfishing and pollution along the Chinese coast has pushed Chinese fishermen towards fishing grounds in disputed maritime areas. The Chinese authorities have provided financial incentives for them to travel to the Spratly Islands protected by Chinese coast guard forces, both to foster China's distant water fishing operations and to assert territorial sovereignty. This has provoked conflicts with adjacent countries, including Indonesia, which has a policy of sinking foreign fishing boats for illegal fishing.

Harassment of adjacent countries' fishermen by the Chinese coast guard in disputed waters to increase the Chinese catch has gained traction. It has its legal basis in the 2013 fishing regulations adopted by Hainan province to implement the PRC's Fisheries Law. Article 35 of the regulations requires 'foreigners and foreign fishing vessels' to hold a special permit for their fishing activities within Hainan's jurisdiction, which extends to disputed waters. Non-respect may lead to seizure of the catch and fines. Another Chinese unilateral measure is the annual fishing moratorium to rehabilitate marine resources in protected areas around the Paracel Islands and Macclesfield Bank. It has been implemented since 1999 but has been enforced more systematically since 2012. Respect is compromised, since it could be seen as recognition of Chinese sovereignty.

**Chinese expansion of deep-water oil exploration in disputed maritime areas**

China is a latecomer to oil exploration in the South China Sea. Since the early 1970s, rival claimants have cooperated with Western oil corporations in coastal areas. Since the Chinese National Offshore Oil Company (CNOOC), founded only in 1982, started to plan deep-water drilling in 2005, China has pursued different tactics of obstructing oil exploration cooperation in disputed areas between foreign oil companies and the Philippines and Vietnam – although not with Malaysia and Brunei. In 2012 CNOOC launched its deep-water drilling rig, stating that 'Large deep-water drilling rigs are our mobile national territory and strategic weapon for promoting the development of the country's offshore oil industry', adding that 'the drilling would contribute to the country's energy security and sovereign rights over territorial waters'. In 2014, protected by about 80 Chinese vessels and several warships, the Haiyang Shiyou 981 oilrig was deployed in Vietnam's EEZ. This led to clashes with Vietnamese coast guard
vessels and violent anti-Chinese mass demonstrations in Vietnam, and has remained a hot topic.

Responses from rival claimants and the positions of the USA and the EU

The Philippines and Vietnam have been the most vocal about China's increasing assertiveness in the South China Sea. However, they have chosen different responses reflecting their different degree of interdependence with China.

The Philippines is upgrading its defence capabilities and maritime law enforcement with US support, based on the 2014 enhanced defense cooperation agreement (EDCA), as well as Japan. In 2015, it announced it was re-opening the former US naval base in Subic Bay closed in 1992. In 2016 the Philippines and the USA agreed on several military bases where US troops and supplies could be stationed. In 2013 the Philippines was the first claimant to submit its maritime dispute with China to international arbitration.

Vietnam's strategy has been influenced by its high dependence on trade and investment relations, ideological affinity and geographical proximity with China but has also been driven by historical antagonism (the 1979 Sino-Vietnamese war) and lingering public anti-Chinese sentiment. In 2014 Vietnam filed a formal statement of interest in the Philippines vs. China arbitration case in response to China's position paper. In 2015, the USA and Vietnam signed a Joint Vision Statement on deepening US-Vietnam defence and security ties. Vietnam has upgraded its military equipment with deliveries from Russia and the USA and its coast guard with support from Japan. In 2016 Vietnam started to deploy rocket launchers on some of its maritime features.

Malaysia has pursued a non-confrontational approach, giving priority to its strong economic ties with China over political and strategic considerations. After Chinese warships held military exercises off the Malaysia-claimed James Shoal in 2013 and 2014, Malaysia and the USA raised their relations to a comprehensive strategic partnership in 2014 putting them on a par with Chinese-Malaysian ties. In 2015 Japan and Malaysia signed a Joint Declaration on Strategic Partnership which commits both to bilateral defence cooperation on the transfer of defence equipment and technology. With intrusions by Chinese coast guard ships into Malaysia's EEZ being the norm rather than the exception, Malaysia is even considering adopting a 'push back' policy.

Brunei has not occupied any of the maritime features it claims and has taken a low-key approach to China, since except for its overlapping EEZ its claims oppose it to Malaysia.

The other six non-claimant ASEAN countries – Burma/Myanmar, Cambodia, Indonesia, Laos, Singapore, and Thailand – have either taken on the role of mediator, such as Singapore and Indonesia, or have sided with China, such as Cambodia and Laos. Indonesia also recently experienced encroachments of its exclusive maritime entitlements by Chinese illegal fishing, challenging its neutral position. In 2012 ASEAN adopted a common approach to the South China Sea outlined in six principles. They foresee inter alia the conclusion of a legally-binding Code of Conduct (COC). Although COC negotiations are one strand of China's 'dual-track approach', there has been no progress, as China seems to be reluctant to restrict its behaviour to legal norms.

The USA has a position of neutrality as regards the territorial claims at stake and has repeatedly called for a peaceful settlement of disputes and for unilateral intimidating and coercive action to be avoided. Since October 2015, the US Navy has conducted several freedom of navigation operations (FONOPs) designed to challenge China's expansive maritime claims and to uphold a rules-based maritime order in the region.
The EU pursues a 'policy of principled neutrality' on territorial claims and maritime space in the South China Sea. It has advocated the peaceful settlement of maritime disputes in accordance with international law and notably UNCLOS in an effort to promote the rule of law and rules-based good governance at sea, and cooperation in multilateral frameworks, in line with the 2014 EU Maritime Security Strategy. As set out in the 2016 EU-China Strategy, the EU is opposed to unilateral actions that could alter the status quo and increase tensions. In March 2016 it expressed concern about missile deployment on maritime features in the South China Sea.

**European Parliament position**

In its resolution of 16 December 2015 on EU-China relations, the European Parliament called on all parties in the South China Sea 'to avoid unilateral provocative actions' and 'stressed the importance of peaceful settlement of disputes, based on international law and with the help of impartial international mediation' such as UNCLOS. It considered 'it regrettable that China refuses to acknowledge the jurisdiction of both UNCLOS and the Court of Arbitration'.

**The Philippines vs. China arbitration case and the way forward**

In 2013 the Philippines initiated arbitral proceedings against China that were registered at the Permanent Court of Arbitration (PCA) in The Hague. It issued a Notification and Statement of Claim in accordance with the dispute settlement provisions of UNCLOS under Article 287 and Annex VII. It submitted 15 claims against China concerning the lawfulness of China's nine-dash line and historic rights under UNCLOS; the legal status of certain maritime features claimed by China and the Philippines and China's activities in the South China Sea.

The Arbitral Tribunal faced three major challenges: First, for lack of jurisdiction over sovereignty matters, it could not rule on territorial claims but only on maritime claims. Second, given China's 2006 opt out from compulsory arbitration concerning maritime delimitations its jurisdiction was also limited as regards maritime claims. Third, the respondent, China, refused to participate and accept the outcome. But, under Article 9 of UNCLOS Annex VII, non-participation of a party does not bar the proceedings.

In 2014, despite its non-participation, China presented a position paper in which it explained why it believed that the tribunal lacked jurisdiction. It argued that i) the arbitration actually was about territorial sovereignty over maritime features for which the tribunal lacked jurisdiction and that maritime entitlements could be derived only from land features once their ownership had been clarified according to the established principle that 'the land dominates the sea' and that this principle could not be reversed. It asserted that ii) China's opt out from compulsory arbitration as regarded maritime delimitation prevented the tribunal from proceeding to it. China stressed that iii) the Philippines had violated the ASEAN-China Declaration of Conduct by initiating arbitration unilaterally instead of seeking a solution in bilateral negotiations with China.

On 29 October 2015 the tribunal issued its award on jurisdiction for only seven claims, while deferring decision on whether it had jurisdiction for the eight other claims based on the merits of the seven claims. On 12 July 2016, the tribunal published its award on all submissions. It is legally binding on the two parties as set out in Article 296 and Article 11 of Annex VII, and strengthens the claims of other claimants considerably.

As for China's nine-dash line and historic rights, the tribunal concluded that there was no legal basis for them under UNCLOS. It held that 'to the extent that China had historic rights to resources in the waters of the South China Sea, such rights were extinguished...
to the extent that they were incompatible with the exclusive economic zones provided for in the Convention'. It noted that 'although Chinese navigators and fishermen, as well as those of other States, had historically made use of the islands of the South China Sea, there was no evidence that China had historically exercised exclusive control over the waters or their resources.'

As regards the legal status of a number of maritime features claimed by China within the Philippines' EEZ, the tribunal categorised them as rocks, which generate only a territorial sea but no EEZ or continental shelf, and low-tide elevations, which do not give rise to any maritime zone and cannot be appropriated. The tribunal found that no maritime feature met the UNCLOS criteria for islands. The absence of an island in the Spratlys to which China could claim sovereignty precluded its claims to an EEZ and the exploitation rights attached to it. These findings were a precondition for the tribunal to assess China's activities in the Philippines' EEZ.

As for China's activities in the South China Sea, the tribunal found that China had a) encroached on the Philippines' rights under the convention with regard to fishing, oil exploration, navigation, and the construction of artificial islands and installation; b) failed to protect and preserve the marine environment by tolerating and actively supporting Chinese fishermen in the harvesting of endangered species and the use of harmful fishing methods that damage the fragile coral reef ecosystem of the South China Sea; and c) inflicted severe harm on the marine environment by engaging in extensive land reclamation and artificial island building at seven reefs in the Spratlys.

International reactions to the award and prospects for its enforcement
In the absence of an enforcement mechanism for the award, only international pressure by countries recognising the verdict as legally binding and calling for it to be respected is likely to bring reluctant respondents into compliance. Previous cases of non-participation of one party to the legal dispute, such as the Nicaragua vs. United States case and the Arctic Sunrise case, seem to show that although the respondents at first refused to abide by the ruling, they ultimately complied with large parts of it.

According to a Center for Strategic and International Studies (CSIS) analysis of official statements made after the award's publication, by early September 2016, seven countries, Australia, Canada, Japan, New Zealand, the Philippines, the USA and Vietnam, have called publicly for the award to be respected. A group of 33 countries, including the EU-28 and India, have issued positive statements on the verdict, but have refrained from calling on the parties to abide by it. Nine countries, including Russia, have made vague or neutral statements about the South China Sea without referring to the award. As opposed to the 60 or so countries that China claimed were supportive of its South China Sea position prior to the award, only six countries, including China, Montenegro, Pakistan and Taiwan, have publicly criticised or rejected it.

China's policy choices: four possible scenarios
China's response to the award is likely to emerge as a consensus between the three schools of thought (hardliners, realists and moderates) within the Chinese leadership. Theoretically, four scenarios could materialise. Compliance in the short term with an award China's leadership deems 'null and void' and to which it responded with the publication of a white paper reasserting China's claims, would be difficult for it to sell at home without losing face and credibility. Partial tacit compliance could be a mid- to long-term option to avoid China's image as a responsible great power and its 'peaceful development' doctrine from being compromised in the international arena. China will
have to make a trade-off between domestic and foreign policy goals and between its adherence to the rule of law and the 'might makes right' principle. It could benefit from its past 'strategic ambiguity' by acknowledging the least expansive interpretation of its nine-dash line, freezing the status quo and entering negotiations with rival claimants on an equal footing on the joint development and preservation of natural resources. That would imply an end to China's encroachments into the Philippines' EEZ. Unchanged behaviour based on defiance is likely to be China's response in the short term. It would mean China pursuing the broad range of activities that the tribunal declared unlawful under UNCLOS. An escalation of conflicts could include China's declaration of an Air Defence Identification Zone (ADIZ) over parts of the South China Sea, its withdrawal from UNCLOS, the extension of joint military drills with like-minded countries, land reclamation at other maritime features such as the Scarborough Shoal, the deployment of offensive weapons on artificial islands, the seizure of maritime features from rival claimants and enhanced resource exploitation in disputed areas. This would be the most damaging and unlikely option, inevitably triggering US push-back.

Endnotes
2 Regional Disorder: The South China Sea Disputes, Raine S. and Le Mière Ch., International Institute for Strategic Studies (IISS) 2013, p.13.
4 This behavioural pattern is rooted mainly in a) China's concern about the impartiality of international judicial bodies, b) China's strong attachment to the protection of national sovereignty against foreign interference as a result of China's historical legacy of 'unequal treaties' during what is referred to in China as the 'century of humiliation' and c) the Confucius-inspired non-legal tradition of Chinese culture which promotes harmony rather than litigation. 'Sense and sensibilities of China and WTO dispute settlement', Harpaz, M.D., in China and Global Trade Governance, Zeng K., and Liang, W., (eds.), Routledge 2013, p. 240.
5 This policy has remained largely symbolic, despite recurrent efforts to relaunch it. The only example so far with Chinese involvement in the South China Sea has been the 2005 joint maritime seismic undertaking (JMSU) between China, the Philippines and Vietnam which was not prolonged in 2008. The 2000 Sino-Vietnamese Gulf of Tonkin boundary agreement and joint fishing regime concern maritime space outside the U-shaped line.
6 China and the USA diverge in their interpretation of the scope of EEZ rights relating to foreign military activities. The USA argues that – beyond the territorial waters of 12nm – the EEZ rights are limited to economic exploration and exploitation rights and invokes the freedom of navigation and overflight (Article 58 UNCLOS) for its reconnaissance flights. China by contrast includes other non-economic rights. It does not recognise the airspace above its EEZ as international airspace and maintains that coastal state consent is required for all maritime data collection activities, including military intelligence, before they could be carried out in the EEZ.
7 The South China Sea, op. cit., p. 242.
8 Regional Disorder, op. cit., p. 75.

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