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The South China Sea dispute: July 2016 update

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3 The South China Sea dispute: July 2016 update

Summary

Southeast Asia is home to a range of complex territorial disputes, but the most intractable and combustible is the South China Sea dispute.

Disputes over their sovereignty involve numerous countries across the region. The Paracel Islands are disputed by China, Taiwan and Vietnam. The Spratly Islands are disputed by China, Taiwan, Malaysia, The Philippines, Vietnam, and Brunei. The Scarborough Shoal, just to the west of the Philippines, which is sometimes considered to be part of the Spratly Islands, is claimed by The Philippines, China and Taiwan. The maritime boundaries of the Gulf of Tonkin are also disputed by China and Vietnam. Apart from national pride, access to fisheries and oil and gas resources is at also stake. The area is also one of the world's major shipping routes.

China has been involved in the majority of the direct clashes between rival claimants in the South China Sea dispute. The relationship between China and Vietnam is perhaps the most volatile of those between the rival claimants.

China is opposed to greater US involvement in the resolution of disputes in the South China Sea, preferring bilateral negotiations. The other countries favour greater US involvement and prefer multilateral negotiations through the Association of Southeast Asian Nations (ASEAN). However, China has not been entirely hostile to more multilateral approaches. In 2002 China and ASEAN agreed a *Declaration on the Conduct of Parties in the South China Sea* in which all countries agreed to seek peaceful solutions to disputes in the South China Sea. Since 2011, there has been talk of agreeing a legally binding Code of Conduct for all parties but to date no progress has been made towards one.

The last six years or so have seen rising tensions over rival claims in the South China Sea. The countries involved in the dispute have been strengthening their military capabilities, with some also exploring legal avenues. In addition, there have been intermittent efforts to reduce tensions through dialogue.

In April 2015 satellite images revealed that China had begun building a large airstrip on reclaimed land on Fiery Cross Reef in the Spratly Islands. China insisted that the airstrip was for civilian purposes, but many were highly sceptical, with fears being expressed that China might impose an 'air defence zone' over the area, as it did over the East China Sea, where it has overlapping claims with Japan, in 2013. There has been a further ratcheting up of tensions in the area during the first half of 2016.

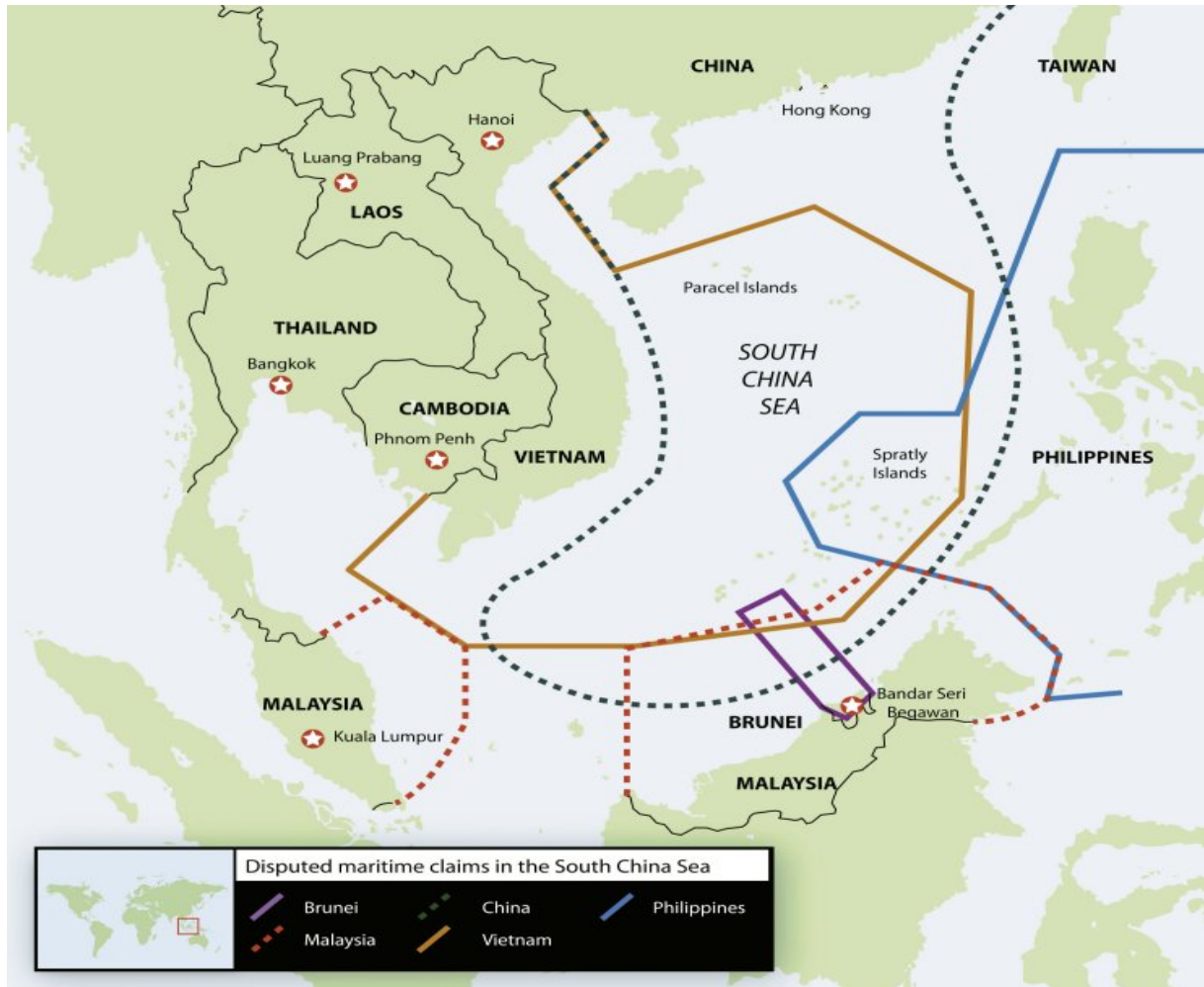
Meanwhile, in October 2015, an Arbitral Tribunal under UN Convention on the Law of the Sea ruled that it had jurisdiction to consider a case lodged in 2013 by the Philippines against China. It also ruled that the case was admissible.

China rejected the Arbitral Tribunal's jurisdiction and repeated its opposition to any third-party settlement of territorial disputes. Amid mounting tension in the region, the Tribunal issued its ruling on 12 July 2016, finding in favour of the Philippines. However, the legally binding ruling does not adjudicate on sovereignty.

The impact of the ruling is difficult to predict. The Philippines appears anxious to de-escalate tensions with China, but the latter is yet to accept this olive branch. So for now the most likely future outlook is that the rival claimants will continue with their military build-ups and further escalation is possible. As always, the fear is that a flashpoint might inadvertently trigger a larger armed confrontation whose consequences could prove difficult to control.

1. Overview of the dispute

Southeast Asia is home to a range of complex territorial disputes, but the most intractable and combustible is the South China Sea dispute.



Source: IHS/Jane's

1.1 Key facts and figures

The South China Sea is home to over 30,000 small islands and reefs, distributed across three archipelagos. The vast majority are not permanently occupied. Disputes over their sovereignty involve numerous countries across the region. Apart from national pride, access to fisheries and oil and gas resources is at also stake.

The area is also one of the world's major shipping routes. It is estimated that every year the South China Sea facilitates the movement of over half of the world's oil tanker traffic and over half of its merchant vessels by tonnage. The Malacca Strait between Singapore and Indonesia is a particularly vulnerable 'chokepoint' for sea-borne trade.

The Paracel Islands are disputed by China, Taiwan and Vietnam. The Spratly Islands are disputed by China, Taiwan, Malaysia, The Philippines, Vietnam, and Brunei. The Scarborough Shoal, just to the west of the Philippines, which is sometimes considered to be part of the Spratly

Islands, is claimed by The Philippines, China and Taiwan. The maritime boundaries of the Gulf of Tonkin are also disputed by China and Vietnam.

China's claim is defined by a 'nine-dash line' which stretches hundreds of miles to the south and east of Hainan, which is its most southerly province, although it has been claimed that China "has never clarified the jurisdictional intent of the U-shaped line."¹ Taiwan's claim is identical to that of China, although this does not mean that they co-operate on the issue.²

Vietnam occupies 21 islands, the Philippines and Malaysia eight apiece, China seven and Taiwan one, albeit the largest island, Itu Aba. Brunei does not occupy any of the islands, although it does claim sovereignty over two.³

China, Taiwan and Vietnam each make historically-based claims of sovereignty. The claims of the others are primarily based on geographical proximity and economic rights. All seek to back up their claims with a range of legal arguments.

The occupied islands all have some form of either military or paramilitary presence on them and the rival countries have been entrenching their physical occupation of specific islands by expanding their military assets and building artificial islands. For example, China maintains a military garrison in the Paracel islands, in recent years, it has been building artificial islands in the Spratlys. Taiwan has completed construction of a runway on Itu Aba; while Malaysia has also built a runway on Swallow Reef.⁴

1.2 Regular clashes and little progress in negotiations

China has been involved in the majority of the direct clashes between rival claimants in the South China Sea dispute. In 1974 and 1988, there were major naval clashes between China and Vietnam over the Paracel and Spratly Islands.

More generally, China has on occasions forced non-Chinese fishing vessels out of parts of the South China Sea that are in dispute, sometimes fining them. China also has a history of pressurising foreign oil companies from doing exploratory work in the area in co-operation with other countries.

The relationship between China and Vietnam is perhaps the most volatile of those between the rival claimants in the South China Sea.

¹ "Why Beijing's South China Sea Moves Make Sense Now", *National Interest*, 18 December 2015

² The People's Republic of China has been acknowledged by the UN as the successor of the Republic of China, whose physical ambit since 1949 has been limited to Taiwan.

³ These are commonly cited numbers. However, there is some disagreement amongst experts for the correct number by country. See, for example, A. Vuving, "South China Sea: who occupied what in the Spratlys?", *The Diplomat*, 6 May 2016

⁴ "Waves of concern – Southeast Asian states plan naval defences", *Jane's Intelligence Review*, 14 April 2011

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Nobody believes that either wants to go to war over it. Trade between Vietnam and China was worth over \$40 billion in 2012 and continues to rise. But Vietnam is engaged in a complex balancing act, maintaining relations with China while cultivating ties with the US and other neighbours such as The Philippines.⁵

China is opposed to greater US involvement in the resolution of disputes in the South China Sea, preferring bilateral negotiations. The other countries favour greater US involvement and prefer multilateral negotiations through the Association of Southeast Asian Nations (ASEAN). The US Seventh Fleet has long operated in the area.

However, China has not been entirely hostile to more multilateral approaches. In 2002 China and ASEAN agreed a *Declaration on the Conduct of Parties in the South China Sea* in which all countries agreed to seek peaceful solutions to disputes in the South China Sea.⁶ But while all-out conflict has been avoided since then, durable solutions have so far proven impossible to achieve.

There have been other attempts to build confidence and trust amongst the rival claimants. For example, in March 2005, the national oil companies of China, the Philippines, and Vietnam signed a joint accord to conduct marine seismic activities in the Spratly Islands.

⁵ "Anti-China protests expose Vietnam's weakness", *Financial Times*, 19 May 2014

⁶ [Text of the Declaration](#)

2. Recent developments

The last six years or so have seen rising tensions over rival claims in the South China Sea. The countries involved in the dispute have been strengthening their military capabilities, with some also exploring legal avenues. In addition, there have been intermittent efforts to reduce tensions through dialogue.

2.1 2009-11

In 2009 Malaysia, The Philippines and Vietnam filed papers with the United Nations Commission on the Convention on the Law of the Sea (UNCLOS), formalising their legal claims to control over parts of or all of the South China Sea. China also set out its claim in formal notes to the UN Secretary General in 2009.

In mid-2010, then US Secretary of State Hillary Clinton stated that the US had a “national interest” in maintaining respect for international law in the South China Sea. Soon after Clinton’s statement, it was reported that China had expanded its “core national interests” to include, for the first time, the South China Sea, although one analyst suggested at the time that this may have been a misunderstanding of what Chinese officials had said.⁷ In August 2010 a Chinese expedition planted a flag on the ocean floor near the Spratly and Paracel Islands.⁸

There was a rise in tensions between China and ASEAN member states in the region during the first half of 2011. In July 2011 the two parties agreed ‘cooperation guidelines’ for implementing the Declaration. These and other diplomatic efforts led to a lowering of tensions. In November 2011, China proposed that a legally binding Code of Conduct in the South China Sea should be negotiated. ASEAN member states responded positively to the proposal.⁹

2.2 2012-13

2012 saw escalating tensions between China and Vietnam over their rival claims. In June of that year, Vietnam passed a law designating the Paracel and Spratly Islands as part of the country and requiring all foreign ships passing through the South China Sea to notify their authorities. China ignored the law.¹⁰

In July 2012, China created a new administrative unit, ‘Sansha city’, with its headquarters in the Paracel Islands. Vietnam and Taiwan condemned the move. Later in the year, Vietnam accused China of sabotaging two exploration operations in the area, provoking large anti-China protests in the country.

⁷ Michael Swaine, China’s Assertive Behavior—Part One: On ‘Core Interests’, *China Leadership Monitor*, No. 34, Winter 2011

⁸ “Chinese flag planting causes swell in disputed area of South China Sea”, *Jane’s Navy International*, 1 September 2010

⁹ “Code of conduct for S China sea”, *China Daily*, 20 November 2011

¹⁰ Other countries – for example, The Philippines – have promulgated similar national laws.

In April 2012 the Philippines' naval forces intercepted twelve Chinese fishing vessels in the Scarborough Shoal, finding what they viewed as illegally fished marine life on board. For several months, there was a standoff in the area between the two countries, but by the time it was over China had successfully established full *de facto* control of the Shoal.

In January 2013, [the Philippines brought a case against China to an Arbitral Tribunal](#) under UNCLOS.

[The Notification and Statement of Claim](#) stated that the Philippines was seeking a ruling that:

- claims in the South China Sea must comply with UNCLOS, which would invalidate China's nine-dash line
- maritime features occupied by China were classified as rocks, low-tide elevations, or submerged banks, but not islands; and
- the Philippines had the right to operate inside its Exclusive Economic Zone and continental shelf without Chinese harassment.

2013 saw more incidents. For example, in March, Chinese government fishing vessels reportedly fired at a Vietnamese fishing boat in the disputed waters.

At the East Asia summit held in October 2013, US Secretary of State John Kerry called on China to undertake serious negotiations on the South China Sea. In the same month, China and Vietnam agreed to establish a working party to "jointly explore" the Gulf of Tonkin.

No progress was made towards agreeing a legally binding Code of Conduct in the South China Sea during this period. Partly in response to its clash with China in the Scarborough Shoal, the Philippines moved ahead with its claim under UNCLOS.

2.3 2014

In 2014 there was another major flare-up in tensions between China and Vietnam. In May, China moved a deep-water drilling oil rig into what Vietnam considers its territorial waters close to the Paracel Islands. The rig was accompanied by over 80 vessels, which clashed with Vietnamese vessels in the area. These events triggered large-scale anti-Chinese riots in Vietnam in which at least 21 people died, most of them Chinese. Many Chinese nationals fled the country. For a while the authorities seemed willing to let them continue but after several days of Chinese nationals and property coming under attack, they stepped in – not without difficulty – to bring them to an end.

Vietnam appealed to ASEAN to condemn China's actions at its annual summit in mid-May. ASEAN's statement expressed concern and called for restraint by all parties, but did not specifically mention China, leaving Vietnam disappointed with the outcome. The statement also called for the long-discussed but oft-postponed code of conduct for handling

disputes to be negotiated urgently.¹¹ By contrast, the US position was strongly supportive of Vietnam.

In late June 2014 China withdrew the offending oil rig, officially due to poor weather conditions.¹²

While it was at loggerheads with Vietnam, China was also embroiled in another argument with The Philippines in response to the conviction and imprisonment by the Filipino authorities of nine Chinese civilians for poaching sea turtles in the reefs close to its coastline. China protested and called for the men to be released.¹³

2.4 2015

Events on the ground

In April 2015 satellite images revealed that China had begun building a large airstrip on reclaimed land on Fiery Cross Reef in the Spratly Islands. China insisted that the airstrip was for civilian purposes, but many were highly sceptical, with fears being expressed that China might impose an 'air defence zone' over the area, as it did over the East China Sea, where it has overlapping claims with Japan, in 2013.¹⁴

In mid-2015 Taiwan launched a 'South China Sea Peace Initiative', in which it proposed that all parties to the dispute should shelve their sovereignty claims and focus instead on negotiating resource-sharing agreements. No agreements of this kind had been reached by the end of the year.¹⁵

In October 2015, the Arbitral Tribunal under UNCLOS ruled that it had jurisdiction to consider the case filed by the Philippines against China in 2013. It also ruled that the case was admissible.

China condemned the decision, rejecting the Tribunal's jurisdiction and repeating its opposition to any third-party settlement of territorial disputes.¹⁶

In the same month, the US sailed a destroyer within 12-nautical miles of new artificial islands being built by China in the Spratlys, announcing that this was the first of a series of actions intended to assert the right to free navigation in the region. China warned the US that such a move would further increase tensions and retaliated by holding a naval exercise in the South China Sea.¹⁷ It also leaked reports that a Chinese

¹¹ "China tensions top Southeast Asian summit talks", *Daily Herald*, 12 May 2014

¹² "Hundreds held as anti-China riots quelled in Vietnam", *Daily Telegraph*, 27 May 2014

¹³ "Why are Chinese fishermen destroying coral reefs in the South China Sea?", *BBC News Online*, 15 December 2015

¹⁴ "China lands more planes on its man-made island in the disputed South China Sea", *Mail Online*, 7 January 2016

¹⁵ "Taiwan's Plan for Peace in the South China Sea", *Diplomat*, 27 May 2015

¹⁶ "Tribunal arbitration on S. China Sea neither fair nor just", *China Daily*, 19 December 2015; "China advises Philippines to quit arbitration over South China Sea", *Legal Monitor Worldwide*, 23 December 2015

¹⁷ Q&A: South China Sea dispute, BBC News Online, 27 October 2015

naval vessel might ram the next US warship that entered what it considered its territory.¹⁸

In December, the BBC reported that Chinese fishermen were deliberately destroying coral reef in disputed areas close to the coastline of The Philippines.¹⁹ At the same

Also in December, a US B-52 strategic bomber flew within a few miles of a reef claimed by China in the South China Sea. China accused the US of a “serious military provocation”; the US said that it had been an error.²⁰ In the same month, Australia flew an aircraft over the South China Sea. China demanded that it ensure there were no further such flights but Australia refused.²¹

November 2015: three regional summits held

Xi Jinping visited the US in September 2015 and said that China had no plans to militarise the South China Sea – a statement welcomed by the US Administration.²²

The South China Sea was an increasingly prominent international diplomatic agenda item during late-2015. November 2015 saw three important regional summits at which the issue was raised: the Asia-Pacific Economic Cooperation (APEC) summit in Manila, The Philippines; the ASEAN summit in Kuala Lumpur, Malaysia; and the East Asia summit, also in Kuala Lumpur.

APEC Summit

China sought to keep the issue of the South China Sea off the formal agenda of the APEC summit.²³ The issue did not appear in any of the official declarations arising from the summit. However, US President Barack Obama and Japanese Premier Shinzo Abe did make remarks about the importance of upholding international law and freedom of navigation in the area in the course of bilateral meetings and to the world’s media.²⁴

Responding, Chinese vice foreign minister Liu Zhenmin said that China had shown restraint in the South China Sea:

¹⁸ “The Spratly showdown – a plan to keep Beijing from ruling the South China Sea”, *National Review*, 21 December 2015

¹⁹ “Why are Chinese fishermen destroying coral reefs in the South China Sea?”, BBC News Online, 15 December 2015

²⁰ “China accuses US of ‘serious military provocation’ over South China Sea overflight”, *Daily Telegraph*, 21 December 2015

²¹ “Australia says no plan to stop surveillance flights over South China Sea”, *Middle East and North Africa Financial Network*, 18 December 2015

²² “US rebukes China for ‘militarisation’ of South China Sea”, *Financial Times*, 18 February 2016

²³ The participating APEC economies are: Australia, Brunei, Canada, Chile, China, Hong Kong-China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Taiwan, Thailand, United States, and Vietnam

²⁴ “US, Japan Put South China Sea at the Forefront of Asia Summits”, *Diplomat*, 18 December 2015

The Chinese government has the right and the ability to recover the islands and reefs illegally occupied by neighboring countries [...] But we haven't done this.²⁵

ASEAN Summit

At the ASEAN summit, China did not seek to keep the issue off the agenda. ASEAN member states and China agreed a range of steps on the South China Sea, including towards a Code of Conduct in the South China Sea:

Declaration on the Conduct of Parties in the South China Sea (DOC) and towards a Code of Conduct in the South China Sea (COC)

1.5.1 Push forward the full and effective implementation of the DOC in its entirety in order to maintain regional peace and stability and to promote mutual trust, dialogue and cooperation in the South China Sea, including through the regular convening of the ASEAN-China Senior Officials' Meeting (SOM) on the Implementation of the DOC and the ASEAN-China Joint Working Group on the Implementation of the DOC (JWG).

1.5.2 Work together to intensify substantive discussions towards the early conclusion of a Code of Conduct in the South China Sea (COC) on the basis of consensus.

1.5.3 Carry out agreed joint cooperative projects and activities, as well as mutually agreed Early Harvest-Measures which contribute to the promotion of mutual trust and confidence in the South China Sea in accordance with the Guidelines for the Implementation of the DOC.

1.5.4 Continue to work together and cooperate on enhancing maritime security and maintaining peace and stability in the South China Sea, including to ensure safety and freedom of navigation in and overflight above the South China Sea, in accordance with universally recognised principles of international law, including the 1982 UNCLOS.

1.5.5 Undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability, and have Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognised principles of international law, including the 1982 UN Convention on the Law of the Sea.

1.5.6 Promote trust, confidence building and encourage concerned parties to prevent incidents at sea in accordance with the principles of the DOC.

1.5.7 Adhere to universally recognised principles of international law including the 1982 UNCLOS and other relevant instruments of the International Maritime Organisation.

1.5.8 Promote joint cooperation and dialogue in areas such as marine scientific research, protection of the marine environment, safety of navigation and communication at sea, search and rescue operation, humane treatment of all persons in danger or distress,

²⁵ "US, Japan Put South China Sea at the Forefront of Asia Summits", *Diplomat*, 18 December 2015

fight against transnational crimes, as well as cooperation among military officials.²⁶

The US and ASEAN also referred to the issue in a joint statement:

We reaffirmed the importance of maintaining peace, security and stability, as well as upholding freedom of navigation in and over-flight above the South China Sea.

We shared the concerns expressed by some Leaders over the recent and on-going developments in the South China Sea, including land reclamation, which have eroded trust and confidence amongst parties, and may undermine peace, security and stability in the South China Sea. We noted proposals put forward by various parties to address current and on-going developments as well as to lower tensions in the South China Sea.

We welcomed the commitment of ASEAN Member States and China in ensuring the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) in its entirety, as well as to work towards the early establishment of an effective Code of Conduct in the South China Sea (COC). We emphasised the importance for the states concerned to resolve their differences and disputes through peaceful means, in accordance with international law including 1982 United Nations Convention on the Law of the Sea.²⁷

However, following the summit, two analysts described ASEAN's role as "increasingly marginal":

Evaluating ASEAN's role in managing the problem in the South China Seas reveals that far from addressing this evolving conflict over international rights of free passage in the high seas, its weak multilateral approach only further stirs already troubled waters.²⁸

They concluded that China is exploiting:

ASEAN's weak state regionalism to advance its national interest in maritime hegemony [...] China, in other words, is successfully engaging ASEAN in a policy of divide and rule.²⁹

East Asia Summit

Immediately after the ASEAN summit came the East Asia Summit.³⁰ Here again, the South China Sea was discussed. The concluding statement said:

South China Sea

17. We reaffirmed the importance of maintaining peace, stability, security and upholding freedom of navigation in and over-flight above the South China Sea.

²⁶ [Plan of Action to Implement the Joint Declaration on ASEAN-China Strategic Partnership for Peace and Prosperity \(2016-2020\)](#)

²⁷ [Chairman's Statement of The 3RD ASEAN-UNITED STATES Summit, Kuala Lumpur, 21 November 2015](#)

²⁸ David Martin Jones and M.L.R. Smith, "Can ASEAN ever solve the South China Seas dispute through multilateral dialogue?", *Daily Telegraph*, 24 November 2015

²⁹ "Can ASEAN ever solve the South China Seas dispute through multilateral dialogue?", *Daily Telegraph*, 24 November 2015

³⁰ This summit was attended by the Heads of State/Government of ASEAN Member States, Australia, the People's Republic of China, the Republic of India, Japan, New Zealand, the Republic of Korea, the Russian Federation and the United States of America.

18. We took note of the serious concerns expressed by some Leaders over recent and on-going developments in the area, which have resulted in the erosion of trust and confidence amongst parties, and may undermine peace, security and stability in the region.

19. We welcomed assurances given by China as expressed by President Xi Jinping during his visit to the United States of America recently that China does not intend to pursue militarisation in the South China Sea.

20. We underscored the commitment of ASEAN Member States and China to ensure the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC) in its entirety: to build, maintain and enhance mutual trust and confidence; to exercise self-restraint in the conduct of activities; not to resort to the threat or use of force; and for the states concerned to resolve their differences and disputes through peaceful means, in accordance with international law including the 1982 United Nations Convention on the Law of the Sea (UNCLOS 1982).

21. We noted the outcomes of the 10th ASEAN-China Senior Officials Meeting (SOM) on DOC and the 15th ASEAN-China Joint Working Group (JWG) in Chengdu, China on 19 - 20 October 2015. We are encouraged by the recent agreement of ASEAN Member States and China to proceed to the next stage of consultations towards the establishment of the Code of Conduct in the South China Sea (COC) and looked forward to the expeditious establishment of an effective COC.³¹

2.5 2016

January-March

During 2016, the pattern of actions and counter-actions to assert claims has continued. Several experts have called this the "new normal" in the South China Sea.³²

In January, China conducted two civilian flights to one of its artificial islands, Fiery Cross Reef, landing them both on the new airstrip that it has built.³³ A host of countries, including the US and Vietnam, expressed concern at this move, arguing that it increased the danger that the South China Sea was becoming 'militarised'.³⁴ Two more Chinese-built airstrips are expected to become operational in the next few months.³⁵

Vietnam claimed that it had counted 46 incidents of Chinese planes violating Vietnamese airspace during the first seven days of 2016. Vietnam also announced that it had begun submarine patrols in the

³¹ [Chairman's Statement of The 10th East Asia Summit, Kuala Lumpur, 22 November 2015](#)

³² For example, see: James Bowen, "A New Normal in the South China Sea?", *IPI Global Observatory*, 30 October 2015

³³ "China lands more planes on its man-made island in the disputed South China Sea", *Mail Online*, 7 January 2016

³⁴ "'US, Vietnam share concerns over China's test flights in S. China Sea", *Japan Economic Newswire*, 7 January 2016. Some argue that the South China Sea were militarised "years ago" by the competing claimants. Mark Valencia, "Who is militarizing the South China Sea?", *The Diplomat*, 20 December 2015.

³⁵ "Anxiety over South China Sea tensions", *Nation*, 11 January 2016

South China Sea.³⁶ China has said that it will deploy a large coastguard patrol ship in the area in the near future.³⁷

Vietnam also accused China of moving the same oil rig into its waters in mid-January as the one which triggered the 2014 stand-off between the two countries (see above). China denied that it had done so.³⁸

Meanwhile, the Philippines offered US forces eight bases under an Enhanced Defence Cooperation Agreement signed last year after the agreement was declared constitutional by its Supreme Court. The Philippines is also calling for joint patrols with the US in the South China Sea.³⁹

The Centre for Strategic and International Studies published a report in January which claimed that military power in the Asia-Pacific is shifting against the US, which has so far lacked a coherent response, and in favour of China.⁴⁰

A new Taiwanese president, Tsai Ing-wen, was elected in January. She is much less positive about building ties with China than her predecessor. It remains to be seen what impact this will have on the country's policy on the South China Sea when she takes office in May, but Beijing will be viewing her with considerable wariness.

At the end of January, the US Navy sent a destroyer to within 12 miles of the Paracel Islands to assert freedom of navigation. Within days it was being reported that China had deployed missile batteries on Woody Island, one of the Paracel Islands. China preferred to talk instead of "self-defence facilities". It had also landed fighter jets there.⁴¹ The US Administration accused China of breaking its promise not to militarise the South China Sea.⁴² Sections of the Chinese media called on the Chinese military to fire shots at and ram US warships that sailed too close to what it claimed was Chinese territory.⁴³

In February it was claimed that China was building radar installations on Cuarteron Reef and several other Chinese-controlled features in the Spratly Islands, with a view to enhancing its surveillance capacities of surface and air traffic in the southern part of the South China Sea.⁴⁴

³⁶ "Subs keep an eye on China's dream; South China Sea – Vietnam builds up arsenal", *The Age*, 8 January 2016

³⁷ "China builds second 'monster' ship", *Straits Times*, 11 January 2016

³⁸ "China drops online notice of oil rig location after Vietnam complaint", *Tangerine Zee News*, 24 January 2016

³⁹ "Philippines offers eight bases to US under new military deal", *Middle East and North Africa Financial Network*, 13 January 2016

⁴⁰ "Military power in Asia-Pacific 'shifting against US'", *Straits Times*, 21 January 2016

⁴¹ "China deploys missiles in South China Sea islands 'posing threat to any aircraft within 100 miles'", *Independent*, 17 February 2016. China built a runway on the island in the 1990s.

⁴² "US rebukes China for 'militarisation' of South China Sea", *Financial Times*, 18 February 2016

⁴³ "Chinese media calls for government to 'fire shots and ram US warships to teach them a lesson' over disputed South China islands", *Mail Online*, 20 February 2016

⁴⁴ "China building radar on contested island, says US think-tank", *FT.Com*, 23 February 2016

In the same month, the departing president of Taiwan, Ma Ying-jeou, visited Taiwan-administered Taiping, the largest natural feature in the Spratlys.

In March, the Director of US National Intelligence, James Clapper, said that China will be able to project “substantial offensive military power” from the artificial islands it has been building in the Spratly Islands by the end of 2016.⁴⁵

In the same month, tension flared between China and Indonesia after a Chinese fishing vessel was intercepted by the Indonesian Navy just off the Natuna Islands, which overlap with the southernmost part of the South China Sea. Indonesia said that the crew would be prosecuted. China called for the immediate release of the fishermen. Indonesia is not a party to the South China Sea dispute. Also in March, Taiwan organised an ‘international media tour’ of Taiping⁴⁶

April-July

In April, satellite images appeared to show that China had landed another two J-11 fighter jets on Woody Island. It was also reported that China had agreed plans to develop maritime nuclear platforms that could be used to provide power for the artificial islands it has been building in the South China Sea.⁴⁷

With a ruling from the Court of Arbitration on the Philippines’ case against China expected in the near future, attention increasingly turned towards legal dimensions of the dispute from April onwards. Wang Yi, the Chinese foreign minister, toured countries seeking support for China’s position. He claimed that China had secured support from Russia, Belarus, Brunei, Cambodia and Laos – the last three of which are members of ASEAN.⁴⁸

The election in May of new Philippines president Rodrigo Duterte, who suggested during the campaign that he might be willing to take a softer line on the South China Sea dispute in return for Chinese investment and joint exploration of natural resources in the area, further complicated the picture.⁴⁹

In May it was also claimed that China is increasingly using irregular maritime militias of fishermen and private boat owners based on Hainan Island, off mainland China, to challenge US and other regional ships – this as a tactic that allows the Chinese Government to avoid direct

⁴⁵ “China able to project ‘substantial offensive power’ from Spratlys in months – US”, *Mail Online*, 11 March 2016

⁴⁶ “Indonesia vows to prosecute Chinese trawler crew in South China Sea dispute”, *Guardian*, 24 March 2016

⁴⁷ “China to send fleet of nuclear power ships to South China Sea amid mounting political tensions”, *Mail Online*, 26 April 2016

⁴⁸ “China builds ties as well as airstrips in South China Sea”, *FT.Com*, 2 May 2016. Afghanistan, Lesotho, The Gambia, Kenya, Niger, Sudan and Vanuatu have also publicly voiced support for China’s position. See A. Panda, “South China Sea: which countries are on China’s side?”, *The Diplomat*, 16 June 2016

⁴⁹ “Beijing defies criticism as it charts course in S China Sea”, *FT.Com*, 6 June 2016

confrontation and deny involvement.⁵⁰ Satellite images suggested that China had now also deployed reconnaissance drones on Woody Island.

In the same month, the Australian Government announced a significant increase in the size of the country's defence budget amidst opposition calls for air or naval patrols to be conducted close to islands claimed by China in support of US actions in the region.⁵¹ The Chinese Government warned Australia not to do anything that "undermines regional peace and stability."⁵²

Meanwhile, also in May the US accused two Chinese fighter jets of unsafely intercepting one of its maritime patrol reconnaissance aircraft in international airspace over the South China Sea by flying within 50 feet of it. This was the first such incident since 2014. China claimed that the US spy plane had been over Chinese coastal waters close to Hainan Island and a minister warned the US that China was willing to replay the Korean or Vietnam Wars if provoked.⁵³ Several days later, the US lifted its 50-year old arms embargo against Vietnam.

In the same month, US Secretary of Defence Ashton Carter, visiting Singapore, warned that China was building a "great wall of self-isolation" in Asia.⁵⁴

In early June there was another unsafe interception of a US reconnaissance aircraft by Chinese jets – this time they came within 100 feet of it. At the same time, China announced that it would be building an "ocean laboratory" up to 10,000 feet beneath the South China Sea.⁵⁵

In mid-June, divisions within ASEAN over the South China Sea dispute again erupted into the open when a statement expressing concerns about recent developments and stressing the importance of free navigation and overflight was retracted following a meeting of ASEAN foreign ministers with their Chinese counterpart. No amended statement was subsequently issued.⁵⁶

Around the same time, the US Navy dispatched four electronic attack aircraft and about 120 military personnel to Clark Air Base on Luzon Island in the Philippines for training with the Philippines Armed Forces and to support US and Philippines naval operations in the South China Sea.⁵⁷

⁵⁰ "Little blue men: the maritime militias pushing China's claims", *Guardian*, 16 May 2016

⁵¹ "Coalition under renewed pressure to send Australian military to South China Sea", *Guardian*, 18 May 2016

⁵² "China warns Australia over challenge to South China Sea activities", *Guardian*, 18 May 2016

⁵³ "Chinese jets make 'unsafe' intercept of US spy plane over South China Sea", *Independent*, 19 May 2016; "China's blunt warning to America", *Mail Online*, 20 May 2016

⁵⁴ "Beijing defies South China Sea critics", *Financial Times*, 7 June 2016

⁵⁵ "China unveils plan for ocean laboratory 10,000 feet down as it expands military operations in South China Sea", *Mail Online*, 9 June 2016

⁵⁶ "Asean show of unity over South China Sea collapses", *FT.Com*, 15 June 2016

⁵⁷ "US Navy sends electronic attack warplanes to Philippines amid South China Sea tensions", *The Diplomat*, 17 June 2016

The Arbitral Tribunal under UNCLOS indicated that it would be issuing its ruling on the Philippines' case against China on 12 July. In the week running up to the ruling, the US conducted naval patrols close to the Spratly Islands involving destroyers and an aircraft carrier. Meanwhile, China held military drills around the Paracel Islands. China pledged that it would not take a "single step back" in the South China Sea. The new Philippines president, Rodrigo Duterte, proposed dialogue with China following the court's decision.⁵⁸

The US reiterated its position that China should accept the ruling.⁵⁹ US officials also confirmed publicly for the first time that China had deployed anti-ship cruise missiles in the area.⁶⁰ China's foreign minister, Wang Yi, had a phone conversation with US Secretary of State John Kerry in the run-up to the ruling.⁶¹

On 12 July, the Arbitral Tribunal found in favour of the Philippines (for details of the ruling, see Section 3 below).

⁵⁸ "US urges respect for South China Sea ruling", *Agence France Presse*, 7 July 2016

⁵⁹ "Beijing will not 'step back' in South China Sea: media", *Agence France Presse*, 8 July 2016.

⁶⁰ "Beijing deploys anti-ship cruise missiles in South China Sea: US", *Japan Economic Newswire*, 8 July 2016

⁶¹ "US-China discuss South China Sea arbitration over phone", *Ani News*, 7 July 2016

3. International law issues

3.1 Introduction

International law is often cited in connection with claims in the South China Sea. This section of the briefing paper provides a guide to the main international legal issues raised by the dispute:

- sovereignty;
- who can do what in different maritime zones;
- claims to an extended continental shelf and the role of the UN Continental Shelf Commission; and
- dispute resolution procedures including arbitral tribunals, and the current Philippines v China case.

3.2 Sovereignty

One of the most important issues in the South China Sea is sovereignty – which country owns which islands?

A big reason why this is so important is that islands (as well as mainland coasts) generate sovereignty over the surrounding sea, with fishing and seabed rights in the territorial sea, as well as other rights over more distant areas of sea and seabed.

Sovereignty is determined by a variety of means under customary international law. For instance discovery on its own is not enough – there must also be effective occupation (though what counts as ‘effective’ will vary according to the circumstances).⁶²

China’s claim to sovereignty over the islands in the South China Sea and the area inside the ‘nine-dash line’ is particularly controversial. It relies heavily on historical claims, but with little evidence of exactly what those claims cover, or of effective occupation or acquiescence by foreign states.

The UK takes no position on the territorial and maritime claims made by different countries in the South China Sea, but upholds the right of innocent passage in other States’ recognised territorial seas.

The US Government also takes no position on the competing sovereignty claims. However, the State Department’s Bureau of Oceans and International Environmental and Scientific Affairs analysis, [Limits in the Seas](#), concluded that China’s nine-dash line would comply with international law only if it was a claim to sovereignty over the islands within the line and any maritime zones generated by them. The report considered that the line could not be either an international boundary or a claim to maritime rights beyond those set out in the law of the sea (see below).

⁶² See Rebecca Wallace and Olga Martin-Ortega, *International Law*, 7th edition, 2013, pp102-107

3.3 Maritime zones

Depending on how an area of sea is classified under international law, different rights arise for coastal states and foreign vessels respectively. Fishing and seabed oil and gas rights are amongst the most important of these rights in the South China Sea.

The international law of the sea is now largely embodied in the [1982 UN Convention on the Law of the Sea](#) (UNCLOS). UNCLOS covers a wide range of issues relating to the world's oceans, including the rights over the sea-bed as well as fishing, navigation and shipping. It brought together traditional rules for the uses of the oceans and new legal concepts and regimes, as well as providing the framework for further development of specific areas of the law of the sea. It entered into force in 1994, and now has 167 State Parties, including China, Malaysia, the Philippines, Vietnam and Brunei.⁶³

The different maritime zones and the rights of states over them set out in UNCLOS can be summarised as follows:

Zone	Description	Coastal state's rights	Foreign states' rights
Internal waters	Inland rivers and lakes (and also sea waters within the 'baselines' from which the breadth of the territorial sea is measured – see below).	Full and exclusive sovereignty.	No right of passage for foreign vessels without permission.
Territorial sea	The waters surrounding a State's territory and including its bays, gulfs and straits, up to 12 nautical miles from the 'baselines' (which are usually taken as the low-water line, but there are special rules for bays, inlets and islands).	Full sovereignty over the territorial sea (plus airspace, seabed and subsoil).	Right of 'innocent passage' for foreign merchant ships and warships.
Contiguous zone	Extends for up to 24 nautical miles from the baselines.	May prevent and punish infringements of its customs, fiscal,	Rights of navigation and overflight; rights to lay

⁶³ [UN Treaty database](#) (as at 20 June 2016)

		immigration or sanitary regulations.	cables and pipelines.
Exclusive economic zone (EEZ)	Extends for up to 200 nautical miles from the baselines.	Sovereign rights for exploring, exploiting, conserving and managing living and non-living natural resources; and extensive powers of enforcement. ⁶⁴	Rights of navigation and overflight; rights to lay cables and pipelines. Access to surplus fish stock.
Continental shelf	Either 200 nautical miles from the baseline, or the seabed and subsoil of the natural prolongation of a coastal state's land territory into the sea to the outer edge of the continental margin, whichever is further. States wishing to assert rights over the continental shelf between 200 and 350 nautical miles beyond their coastlines can demonstrate the prolongation of an adjoining continental shelf according to various complex formulas (see below).	Sovereign rights to exploration and exploitation of the natural resources of the shelf. Coastal States must share with the international community part of the revenue derived from exploiting resources from any part of their shelf beyond 200 nautical miles.	Open to all states for navigation, overflight, laying of cables and pipelines, fishing and scientific research, subject to other rights and duties under the Convention.
High seas	All parts of the sea that are not included in the	Open to all states for navigation,	Open to all states for navigation,

⁶⁴ Land-locked and geographically disadvantaged States have the right to participate on an equitable basis in exploitation of an appropriate part of the surplus of the living resources of the EEZs of coastal States of the same region or sub-region. Highly migratory species of fish and marine mammals are accorded special protection.

internal waters, territorial sea or EEZ of a state.	overflight, laying of cables and pipelines, fishing and scientific research.	overflight, laying of cables and pipelines, fishing and scientific research, subject to other rights and duties under the Convention..
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3.4 Island or rock?

A major dispute in the South China Sea is over whether each feature counts as an island or a rock.

Only naturally-formed islands that are above sea level at high tide can generate a territorial sea, EEZ or continental shelf.

If they cannot sustain human habitation or an economic life of their own, they are considered merely 'rocks', which can only have a territorial sea, not an EEZ or continental shelf (UNCLOS article 121).

There is a further category of 'low-tide elevation': a naturally-formed area of land which is above sea level at low tide but submerged at high tide. This can extend the territorial sea of the mainland or an island, but cannot generate a territorial sea of its own (UNCLOS article 13).

The majority of Chinese-occupied features were totally submerged before the island construction campaign.⁶⁵

3.5 Historical claims

Historical sovereignty claims are sometimes recognised as exceptions to the general rules in UNCLOS – notably some of the rules on bays (article 10) and the rules on determining the territorial seas of adjacent or opposite states:

Article 15

Delimitation of the territorial sea between States with opposite or adjacent coasts

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason

⁶⁵ Katherine Morton, '[China's ambition in the South China Sea: is a legitimate maritime order possible?](#)', *International Affairs* 92: 4 (2016) 909–940 at 922

of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

There is also some recognition of historical usage in relation to fishing:

- Article 62(3) requires a State to consider 'the need to minimize economic dislocation in States whose nationals have habitually fished in the zone' when allowing other States to access its EEZ.
- Under Article 51, an archipelagic State 'shall recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling within archipelagic waters'.

But otherwise UNCLOS appears intended to supersede any historical claims.

3.6 Extended continental shelf claims

Under UNCLOS, states can claim an extended continental shelf beyond 200 nautical miles from its baselines.

The [UN Commission on the Limits of the Continental Shelf](#) (CLCS) verifies the outer limits of these claims on the basis of the formula contained in UNCLOS, and provides appropriate scientific and technical advice to states if requested.

The CLCS does not resolve territorial disputes between states. If a dispute exists, it will not consider a submission unless prior consent is given by all states concerned.⁶⁶

Disputes over extent between opposite or adjacent states may instead be resolved through two alternative procedures: the principle of equidistance from the nearest points of the respective baselines⁶⁷ or 'by agreement in accordance with equitable principles'.⁶⁸ Any disputes relating to UNCLOS can be submitted to the International Tribunal for the Law of the Sea (ITLOS) established under UNCLOS,⁶⁹ to the International Court of Justice, or to arbitration (see below). Conciliation is also available and, in certain circumstances, submission to it would be compulsory.

According to UNCLOS Annex II Article 4, a coastal state must submit its proposal for establishment of its continental shelf beyond 200 nautical miles to the CLCS within 10 years of UNCLOS entering into force for that state.

Once the coastal state has established the limit of its continental shelf in accordance with the recommendations of the CLCS, that limit is final and binding (Article 76(8)).

⁶⁶ CLCS Rules of Procedure, CLCS/3/Rev.2, 4 September 1998, Annex I

⁶⁷ 1958 Convention on the Continental Shelf, Article 6

⁶⁸ *North Sea Continental Shelf Case*, ICJ, 20 February 1969, ICJ Reports 1969, 4-54, at 53

⁶⁹ UNCLOS Part XV and Annex VI

In 2009 Malaysia, the Philippines and Vietnam each filed submissions with the CLCS for areas of extended continental shelf beyond 200 nautical miles in the South China Sea. Where these submissions included areas surrounding features claimed by other States, the States affected – including China – submitted Notes Verbales to the UN Secretary-General objecting to the submissions, in order to protect their legal interests.

The submissions and protests helped to clarify the claims of several of the States claiming sovereignty over features in the South China Sea.⁷⁰ However, as noted above, the CLCS cannot resolve sovereignty disputes.

3.7 Dispute resolution

The International Court of Justice (ICJ) can hear contentious cases between states – for instance in a sovereignty dispute – but only if they both agree to it.

Under UNCLOS, if the parties to a dispute fail to reach a settlement by peaceful means of their own choice, they are obliged to resort to one of the four compulsory dispute settlement procedures set out in UNCLOS:

- the [International Tribunal for the Law of the Sea](#) (ITLOS), a specialised tribunal adjudicating disputes over the interpretation and application of UNCLOS
- the International Court of Justice
- an arbitral tribunal constituted in accordance with Annex VII to the Convention
- a special arbitral tribunal constituted in accordance with Annex VIII to the Convention.

Both parties must agree to the same forum for it to have jurisdiction.

If the parties to a dispute have not accepted the same settlement procedure, the dispute may only go to arbitration in accordance with Annex VII of UNCLOS (unless the parties agree otherwise).

A state may declare ‘optional exceptions’ to third-party adjudication in cases where disputes involve existing maritime boundaries, historic bays and titles, military activities or concerns under discussion at the United Nations Security Council.⁷¹ By declaration on 25 August 2006, China activated all of these exceptions.

⁷⁰ Robert C Beckman and Tara Davenport, ‘[CLCS Submissions and Claims in the South China Sea](#)’, paper for the Second International Workshop on The South China Sea: Cooperation for Regional Security and Development, 10-12 Nov 2010, Ho Chi Minh City, Viet Nam

⁷¹ Katherine Morton, ‘[China’s ambition in the South China Sea: is a legitimate maritime order possible?](#)’, *International Affairs* 92: 4 (2016) 909–940

3.8 The Philippines' case against China under UNCLOS

In January 2013, following the Philippines' navy's interception of Chinese fishing vessels in the Scarborough Shoal, [the Philippines brought a case against China to an Arbitral Tribunal](#) under Annex VII of UNCLOS.

[The Notification and Statement of Claim](#) stated that the Philippines was seeking a ruling that:

- claims in the South China Sea must comply with UNCLOS, which would invalidate China's nine-dash line
- maritime features occupied by China were classified as rocks, low-tide elevations, or submerged banks, but not islands; and
- the Philippines had the right to operate inside its EEZ and continental shelf without Chinese harassment.

In February 2013, China presented a [Note Verbale](#) to the Philippines in which it described 'the Position of China on the South China Sea issues'. It also rejected the jurisdiction of the Arbitral Tribunal and announced that it would not participate in the proceedings. China's December 2014 [position paper](#) argued that the arbitration ultimately deals with sovereignty over disputed islands and so was not a dispute under UNCLOS that the Arbitral Tribunal could rule on, and that the dispute over where the maritime boundary lies was excluded from dispute settlement by the exception to UNCLOS activated by China's 2006 declaration.

In response, the Philippines argued that even if all of China's claims to the islands of the South China Sea were accepted as legitimate, the nine-dash line would still exceed what China would be entitled to under UNCLOS.

In October 2015, the Arbitral Tribunal [ruled that it had jurisdiction](#) to consider the claim of the Philippines in its maritime dispute with China and that the claim was admissible. It agreed to determine legal entitlements to some disputed maritime features on the basis of their natural state, and to consider whether China's island construction activities were consistent with its obligations to protect and preserve the marine environment under article 192 of UNCLOS. However, it confirmed that the tribunal would not adjudicate on sovereignty.

China condemned the decision, again rejecting the Tribunal's jurisdiction and repeating its opposition to any third-party settlement of territorial disputes.⁷²

Hearings on the merits followed at the Permanent Court of Arbitration in The Hague, with a ruling – final and legally binding, despite China's

⁷² 'Tribunal arbitration on S. China Sea neither fair nor just', *China Daily*, 19 December 2015; 'China advises Philippines to quit arbitration over South China Sea', *Legal Monitor Worldwide*, 23 December 2015

non-participation – expected by mid-2016. It was widely expected to favour the Philippines. These expectations were borne out.⁷³

3.9 July 2016: the Arbitral Tribunal rules on the Philippines' case

On 12 July, the Arbitral Tribunal published its ruling, finding in favour of the Philippines. Below is a summary of the ruling, taken from the press release it issued on that day.

Historic Rights and the 'Nine-Dash Line':

[...] the Tribunal concluded that, to the extent China had historic rights to resources in the waters of the South China Sea, such rights were extinguished to the extent they were incompatible with the exclusive economic zones provided for in the Convention [...] there was no evidence that China had historically exercised exclusive control over the waters or their resources. The Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the 'nine-dash line'.

Status of Features:

[...] the Tribunal concluded that none of the Spratly Islands is capable of generating extended maritime zones. The Tribunal also held that the Spratly Islands cannot generate maritime zones collectively as a unit. Having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal found that it could—without delimiting a boundary—declare that certain sea areas are within the exclusive economic zone of the Philippines, because those areas are not overlapped by any possible entitlement of China.

Lawfulness of Chinese Actions:

Having found that certain areas are within the exclusive economic zone of the Philippines, the Tribunal found that China had violated the Philippines' sovereign rights in its exclusive economic zone by (a) interfering with Philippine fishing and petroleum exploration, (b) constructing artificial islands and (c) failing to prevent Chinese fishermen from fishing in the zone.

Harm to Marine Environment:

The Tribunal [...] found that China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species.

Aggravation of Dispute:

The Tribunal found [...] that China's recent large-scale land reclamation and construction of artificial islands was incompatible with the obligations on a State during dispute resolution proceedings, insofar as China has inflicted irreparable harm to the marine environment, built a large artificial island in the Philippines' exclusive economic zone, and destroyed evidence of the natural

⁷³ See for example '[A case of rocks or islands? Examining the South China Sea Arbitration](#)', Asia Maritime Transparency Initiative (accessed 24 June 2016); Sourabh Gupta, '[Philippines v. China arbitration: be careful what you wish for](#)', PacNet #28, Center for Strategic & International Studies, 17 March 2016; Ralph Jennings, '[UN Court To Decide On South China Sea Dispute...So What's Next?](#)', Forbes Asia, 28 April 2016

condition of features in the South China Sea that formed part of the Parties' dispute.⁷⁴

⁷⁴ Permanent Court of Arbitration, [The South China Sea Arbitration \(The Republic of the Philippines v. The People's Republic of China\)](#), press release, The Hague, 12 July 2016

4. The UK stance

As the two parliamentary answers below confirm, the UK takes no position on the territorial and maritime claims made by different countries in the South China Sea but upholds the “right of innocent passage whenever transiting in another States' recognised territorial seas”.

South China Sea: Written question - 18709

Asked by Stephen Phillips (Sleaford and North Hykeham)

Asked on: 03 December 2015

To ask the Secretary of State for Foreign and Commonwealth Affairs, whether the Government has formed a view on the legality of the maritime claims made by the People's Republic of China in the South China Sea as set out in the nine-dotted line map annexed to the Notes Verbales communicated to the UN Secretary-General in May 2009.

Answered by: Mr Hugo Swire

Answered on: 14 December 2015

The UK takes no position on the underlying and conflicting claims in the South China Sea. We encourage all parties to resolve all their maritime disputes peacefully, in accordance with international law, for example the United Nations Convention on the Law of the Sea (UNCLOS).

Spratly Islands: Territorial Waters: Written question - 15272

Asked by Sir Nicholas Soames (Mid Sussex)

Asked on: 06 November 2015

To ask the Secretary of State for Defence, whether the Royal Navy plans to adhere to the 12-nautical mile territorial limit proclaimed by China around the Subi and Mischief reefs in the Spratly archipelago; and if he will make a statement.

Answered by: Penny Mordaunt

Answered on: 16 November 2015

In accordance with international law as set out in the United Nations Convention on the Law of the Sea (UNCLOS), Royal Navy warships exercise the right of innocent passage whenever transiting in another States' recognised territorial seas. The exercise of the right of innocent passage requires neither prior authorization nor authorization from the coastal State. When operating in the Exclusive Economic Zone of a coastal State, RN warships will exercise full freedom of navigation and overflight whilst respecting any established safety zones, up to 500 meters, around an artificial island, installation or structure.

In the South China Sea the UK has a strong interest in the maintenance of peace and stability, which is underpinned by respect for, and adherence to, international law. The UK strongly supports its right, and that of all States, to exercise freedom of navigation in accordance with UNCLOS. We urge all States to respect these very important rights.

The UK Government has expressed concern about China's recent moves to reclaim land in the Spratly Islands

Spratly Islands: Written question 2722

Asked by Mr Gregory Campbell (East Londonderry)

Asked on: 16 June 2015

To ask the Secretary of State for Foreign and Commonwealth Affairs, if he will raise at the UN, the land reclamation by the Chinese government in the South China Sea.

Answered by: Mr Hugo Swire

Answered on: 22 June 2015

The UK remains concerned about any unilateral actions in the South China Sea, such as large scale land reclamation, that change the facts on the ground, raise tensions and increase the likelihood of miscalculation. The Secretary of State for Foreign and Commonwealth Affairs, my right hon. Friend the Member for Runnymede and Weybridge (Mr Hammond), raised the issue directly with the Chinese Foreign Minister on 10 June, and the UK has supported recent G7 Leaders' and Foreign Ministers' statements which express concern at the situation. We will continue to make our concerns known, bilaterally with the Chinese, alongside allies, and in international fora. The UK would engage in any multilateral discussion of the South China Sea along similar lines.

During a visit to Asia in January 2016, Philip Hammond, the Foreign Secretary, reiterated that freedom of navigation and flights over the South China Sea are "a red line for us".⁷⁵

In April 2016, during a visit to Vietnam, British Foreign Secretary Philip Hammond called for all sides to show restraint, adding that the UK has "strong national interests in the continued stability and security of this region."

In the same month, Lord Hannay of Chiswick criticised the US for having failed to ratify the UN Convention on the Law of the Sea while calling for China to uphold what Senator John McCain had recently called "the rules-based order".⁷⁶ China has made the same argument.⁷⁷

At the end of May, during the G7 Summit in Japan, David Cameron said that China should abide by the ruling of the Court of Arbitration in the Philippines case. There were reports that the US had been feeling that the UK stance towards China on the South China Sea dispute had been insufficiently forthright.⁷⁸

The UK conducts its relationship with ASEAN through the European Union.

⁷⁵ "China lands more planes on its man-made island in the disputed South China Sea", *Mail Online*, 7 January 2016

⁷⁶ "An important convention the US has not yet ratified", *Financial Times*, 15 April 2016

⁷⁷ "Who is really behind the tensions in the South China Sea?", *Financial Times*, 9 May 2016 [Letter from Liu Xiaoming, China's Ambassador to the UK]

⁷⁸ "David Cameron: China must abide by ruling on South China Sea", *Guardian*, 25 May 2016

The UK is part of the Five Power Defence Arrangements, set up in 1971 with Malaysia, Singapore, Australia and New Zealand. Under the Arrangements, the five member nations undertake to consult in the event of an external threat to, or an attack on, either Malaysia or Singapore. However, there is no specific commitment to military intervention in such an event.

Under a Treaty of Friendship and Cooperation, the UK has a defence battalion of Gurkhas in the south of Brunei. It is the only permanent deployment of British troops east of Cyprus.

The UK also has 'strategic partnerships' with China and Vietnam that encompass defence and security issues.

5. Future prospects

There is no shortage of voices calling for all parties to the South China Sea to show restraint and work towards de-escalation of the dispute, with some urging them to focus instead on building trust and confidence through joint development projects. The countries directly involved –China included – have all at points expressed willingness to explore this option.⁷⁹ However, in practice little has materialised.

Unless the parties to the dispute are willing to show greater flexibility, the most likely outlook is for continued tension. Under this scenario, the rival claimants will continue with their military build-ups and further escalation is possible.

There seems little prospect at present of meaningful negotiations or of a legal resolution to the dispute. A legally binding Code of Conduct in the South China Sea currently looks a far-off prospect.⁸⁰

The consequences of the ruling by the Arbitral Tribunal a few days ago, which was predominantly in favour of the Philippines, are difficult to predict, but they are as likely to be negative as positive. Philippines president Rodrigo Duterte appears keen to de-escalate tensions between his country and China but to date the latter has not responded to his olive branch.

There are concerns that China's immediate response might be to declare an Air Defence Identification Zone (ADIZ) in the South China Sea, as it did in the East China Sea in 2013, under which 'foreign aircraft' officially would be required to seek Chinese permission to fly over the area. If this does happen, the US and other countries can be expected – as they have done in the East China Sea – reject the legality of the ADIZ and continue to fly aircraft over it.⁸¹

As always, the fear is that an event of some kind will inadvertently trigger a larger armed confrontation whose consequences proves difficult to control. Some analysts view this as a major risk, while others are more sanguine.⁸² Either way, if this is the "new normal" in the South China Sea, it is a highly dysfunctional and undesirable one.⁸³

⁷⁹ M. Rosen, "After the South China Sea arbitration", *The Diplomat*, 21 June 2016

⁸⁰ "South China Sea arbitration: what may follow", *Straits Times*, 23 January 2016

⁸¹ "China issues warning to US ahead of South China Sea ruling", *Guardian*, 6 July 2016

⁸² Robert Kaplan describes the South China Sea as the "battlefield of the future". See: *Asia's cauldron: the South China Sea and the end of a stable Pacific* (New York, 2014)

⁸³ For example, see: James Bowen, "A New Normal in the South China Sea?", *IPI Global Observatory*, 30 October 2015

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