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The East Asia Institute
#909 Sampoong B/D
158 Eulji-ro, Jung-gu
Seoul 04548
Republic of Korea

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www.eai.or.kr

Clear Ruling, Murky Future: the South China Sea Dispute Following the UNCLOS Tribunal Ruling

Benjamin A. Engel
EAI Research Associate

The Permanent Court of Arbitration in The Hague produced a very clear ruling in the case brought by the Philippines on July 12, 2016. In addition to its ruling on jurisdiction issued in October 2015, the tribunal asserted it had jurisdiction to rule on almost all of the claims brought by the Philippines, save those dealing with military clashes in contested waters. Regarding the classifications of different features, the tribunal declared no feature to be more than a rock, which generates only 12 nautical miles of territorial waters and no 200-mile exclusive economic zone (EEZ). Therefore, regardless of whether or not China has sovereignty over these features, the minerals and resources outside of the territorial waters do not belong to China. Furthermore, the tribunal found that “there was no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line.’” Thus, the tribunal ruled that China had violated the Philippines’ rights in its EEZ, essentially invalidating nearly all Chinese claims in the South China Sea. The court added that it agreed with the Philippines claim that China was causing harm to the marine environment through its land reclamation efforts.

China has consistently asserted that the tribunal’s ruling will be ignored, and many analysts expect short-term deteriorations in the region. China has a variety of means to

respond aggressively to the ruling, including dispatching fighter jets to its newly constructed airstrips on reclaimed land in the Spratly Islands, creating some sort of incident with the Philippines by blockading Filipino troops on islands in the region or using Chinese fisherman to create trouble (both techniques having been previously employed), and even taking the more drastic step of declaring the Spratly Islands to have an archipelagic baseline, effectively declaring the waters to be Chinese territorial waters. Another more drastic step may be the Chinese declaring an Air Defense Identification Zone (ADIZ) in the region, which could create tensions similar to those felt in the East China Sea after the declaration of an ADIZ there in 2013. While the exact tactic the Chinese will employ remains a mystery, no one expects Beijing to quietly accept the decision.

Meanwhile, the ruling provides new opportunities and challenges for the U.S. and the Philippines. The clarification of international law surrounding the Spratly Islands provides legal cover for more vigorous and frequent U.S. freedom of navigation (FON) operations in the region. However, the U.S. will have to walk a fine line between asserting the ruling and provoking China after its nationalistic ego has been bruised with analysts having different opinions on the tempo of FON operations in the future. The U.S. also may

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feel a renewed sense of pressure to ratify the UNCLOS treaty if it wishes to drum up support for the ruling. The Philippines, on the other hand, finds itself in an odd position given that the new President Rodrigo Duterte recently made overtures toward China on joint development of the resources in the region. The ruling effectively gives the Philippines sole control over these resources, but it remains to be seen how Duterte will react given his different approach toward China from that of his predecessor.

If the ruling is to be utilized effectively to create a lasting peaceful resolution to the South China Sea issue, the key will be to use it to pressure the Chinese to abide by international laws and norms. The ruling is a clear and stinging rebuke of Chinese claims in the Spratly Islands, and many believe this ruling will greatly harm the reputation of China if it does not abide by the tribunal's ruling. Analysts at major U.S. think-tanks expect a war over international opinion to heat up as the Chinese government attempts to convince other countries that a serious injustice has been done to China's sovereignty, while the Philippines and the U.S. churn up support to force China to abide by international law. This battle for supporters will most likely be the most immediate outcome, as China will not want to force a major incident ahead of the G-20 summit, which will be held in China. If the U.S. and the Philippines are successful in creating a swell of international support for the ruling, then, in time, this could push Beijing to negotiate toward a peaceful resolution in the long-term despite the seemingly inevitable short-term spike in tensions. ■

— Benjamin A. Engel is a Research Associate/Program Officer in the Peace and Security Research Unit at the East Asia Institute (Seoul, South Korea). He is a Ph.D. candidate in East Asian Studies at Seoul National University's Graduate School of International Studies and holds an MA in Korean Studies from the same school. His research interests include modern Korean history, democratization in East Asia, and U.S. foreign policy.