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Issue Brief

South China Sea Dispute: Need for a Peaceful Settlement

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On July 27, 2016 top diplomats from China and the Association of Southeast Asian Nations (ASEAN) met in Tianjin, China to discuss the implementation of the 2002 Declaration on the Conduct of Parties in the South China Sea (SCS), and to make progress towards a more binding Code of Conduct in the region. The meeting followed tensions between China and ASEAN countries after a ruling by Permanent Court of Arbitration in The Hague (PCA) on July 12, 2016 regarding the territorial disputes in the SCS.¹

In a 497 page verdict, PCA ruled that China has no legal basis to claim historic rights to a large part of the SCS under the United Nations Convention on Laws of the Sea (UNCLOS).² In 2013, the Philippines had filed a case after the Chinese navy took control of the Scarborough Shoal.³ China has refused to participate in the proceedings of case because its outcome could have long-lasting consequences for its rise as a superpower, global trade and even world peace. Beijing has maintained that the case went beyond the jurisdiction of the court, and it would not accept the decision.⁴ China rejected the verdict soon after it was issued calling it “ill-founded”. The Chinese President, Xi Jinping, said China’s “territorial sovereignty and marine rights” in the seas would not be affected by the ruling. He maintained China was still “committed to resolving disputes” with its neighbours. While the Philippines Foreign Affairs Secretary called to exercise restraint and sobriety.⁵

China has supported its claims in SCS with artificial island-building, constructing military bases and naval exercises across SCS. The US claims it does not take sides in territorial disputes. However, in May 2016, a US Warship sailed within 12 miles of one of China’s largest artificial islands terming it “freedom of navigation” exercises, stimulating China to deploy fighter jets over the SCS which monitored the activity of that US warship⁶. Both sides have blamed each

¹ “For the ASEAN-China South China Sea Code of Conduct, Ninth Time Isn't the Charm” *The Diplomat*, August 01, 2016

² “Philippines vs China: Why the South China Sea ruling may change Asia” *CNN*, July 12, 2016.

³ “Map: What’s at issue in the South China Sea Dispute?” *The Washington Post*, July 12, 2016.

⁴ “Philippines vs China: Why the South China Sea ruling may change Asia” *CNN*, July 12, 2016.

⁵ “Beijing rejects tribunal's ruling in South China Sea case” *The Guardian*, July 12, 2016.

⁶ “U.S. Navy destroyer nears islands built by China in South China Sea” *Reuters*, October 26, 2015

other for "militarising" the SCS. There are suspicions that the region is turning into a flashpoint, with possibly grave global consequences.

The SCS covers 3.5 million square kilometres of water and stretches between China, Taiwan, the Philippines, Vietnam, Cambodia, Thailand, Singapore, Malaysia, Brunei and Indonesia. The bone of contention in these waters are series of barren islands - the Spratly Islands to which six countries lay claim, but are controlled by China, Vietnam, Malaysia, the Philippines and Taiwan . Vietnam and the Philippines have constructed bases here, but China's construction activity has outpaced every other country.⁷ The Paracel Islands, which are claimed by both China and Vietnam, but controlled by China after the bloody clash of 1974 with Vietnam. China has constructed a surface-to-air missile defence system on Woody Island, and recently added a helicopter base to Duncan Island, which are included in Paracel Islands.⁸ And then there is Scarborough Shoal claimed by both China and the Philippines. Control of these islands allows China to observe US military activity in the region. Philippines took this matter to the court in The Hague in 2013, rather than engaging in bilateral discussion with China. Also involving US into this dispute, former Philippines President Aquino cautioned that US will have to react militarily if China starts construction at Scarborough Shoal. The United States and the Philippines have a mutual defence treaty, though it would probably not be applied unless the Chinese military attacked Philippines forces unprovoked.⁹ However, newly elected President of Philippines, Rodrigo Duterte, has said that he's open to direct negotiations with China saying explicitly that "I will not go to war because of the Scarborough Shoal".¹⁰

Beijing claims 90% of the SCS, believed to hold huge reserves of unexploited oil and gas. According to estimates by US Energy Information Agency, there are 11 billion barrels of oil and 190 trillion cubic feet of natural gas in deposits underneath the sea.¹¹ In addition to that, due to the presence of 10 % of total global fisheries, a lot of fishing boats are sailing in these waters

⁷ "Troubled waters: conflict in the South China Sea explained" *The Conversation*, July 12, 2016.

⁸ "China's HD-981 Oil Rig Returns, Near Disputed South China Sea Waters" *The Diplomat*, June 27, 2015.

⁹ "Benigno Aquino Says U.S. Must Act if China Moves on Reef in South China Sea" *The New York Times*, May 19, 2016.

¹⁰ "Did a US 'Line in the Sand' at Scarborough Shoal Just Wash Away?" *The Diplomat*, June 25, 2016.

¹¹ "South China Sea" *Energy Information Agency*, February 7, 2013.

claimed by several different navies, increasing the risk of conflict. The region is also a busy trade route, goods worth \$5.3 trillion are transported through this sea every year.¹²

Supporting China's position, Pakistan's Foreign Office maintained that disputes over the SCS should be peacefully resolved, through consultations and negotiations by states directly concerned, in accordance with bilateral agreements and the Declaration on the Conduct of Parties in the SCS. Adding, that Pakistan opposes any imposition of unilateral will on others, and respects China's statement of optional exception in light of Article 298 of the UNCLOS.¹³ While addressing the 23rd ASEAN Regional Forum (ARF) Ministerial Meeting held in Vientiane, Lao People's Republic in July 2016, Pakistan's Advisor for Foreign Affairs Mr. Sartaj Aziz said, "Pakistan feels that disputes should be resolved peacefully by directly concerned sovereign states through consultation and negotiations in accordance with relevant bilateral agreements and the Declaration on Conduct of Parties."¹⁴

China says it follows a historical pattern set by the "nine-dash line" that Beijing sketched in 1947 following the surrender of Japan.¹⁵ Dispute arises when it comes to demarcation of Exclusive Economic Zones (EEZs) of China and ASEAN countries.¹⁶ To sort out these disputes, China stresses on mutual negotiations, while ASEAN countries prefer multilateralism or adjudication. Because of these two completely contradictory approaches, it's a key challenge to find out a mutually agreed upon solution.

To find out a peaceful solution to this dispute, all the parties should abandon their aggressive approach and negotiate to find out a common ground. External involvement in SCS, especially that of the US, has complicated the situation further and has increased the risk of military clash. Little skirmishes can escalate into a large scale military confrontation, which will have grave consequences for regional peace and stability. This dispute should be left to China and ASEAN

¹² "The South China Sea: Explaining the Dispute" *The New York Times*, July 14, 2016.

¹³ "Pakistan Stands with Beijing as China Refuses to Accept South China Sea Arbitration Award" *The Fortress*, July 12, 2016.

¹⁴ "International community needs greater co-ordination, deeper dialogue to tackle terror threat: Sartaj" *The Business Recorder*, July 26, 2016.

¹⁵ "Philippines vs China: Why the South China Sea ruling may change Asia" *CNN*, July 12, 2016.

¹⁶ "Troubled waters: conflict in the South China Sea explained" *The Conversation*, May 24, 2016.

countries to deal through mutual negotiations. One likely way out would be for all the parties concerned to limit their claim to the areas of 200 nautical miles (370km) of EEZs in accordance with the UNCLOS. By converging to such a suggestion, the parties can decide to leave international waters for free navigation. Another possible solution can be for concerned parties to establish common ownership of the disputed areas whereby all the revenue from the SCS is equitably shared among the coastal countries.