

X. DISPOSITIF

1202. The Tribunal recalls and incorporates the following findings reached unanimously in its Award on Jurisdiction and Admissibility of 29 October 2015:

- A. that the Tribunal was properly constituted in accordance with Annex VII to the Convention.
- B. that China's non-appearance in these proceedings does not deprive the Tribunal of jurisdiction.
- C. that the Philippines' act of initiating this arbitration did not constitute an abuse of process.
- D. that there is no indispensable third party whose absence deprives the Tribunal of jurisdiction.
- E. that the 2002 China–ASEAN Declaration on Conduct of the Parties in the South China Sea, the joint statements of the Parties referred to in paragraphs 231 to 232 of the Tribunal's Award on Jurisdiction and Admissibility of 29 October 2015, the Treaty of Amity and Cooperation in Southeast Asia, and the Convention on Biological Diversity, do not preclude, under Articles 281 or 282 of the Convention, recourse to the compulsory dispute settlement procedures available under Section 2 of Part XV of the Convention.
- F. that the Parties have exchanged views as required by Article 283 of the Convention.
- G. that the Tribunal has jurisdiction to consider the Philippines' Submissions No. 3, 4, 6, 7, 10, 11, and 13, subject to the conditions noted in paragraphs 400, 401, 403, 404, 407, 408, and 410 of the Tribunal's Award on Jurisdiction and Admissibility of 29 October 2015.

1203. For the reasons set out in this Award, the Tribunal unanimously, and without prejudice to any questions of sovereignty or maritime boundary delimitation, decides as follows:

A. In relation to its jurisdiction, the Tribunal:

- (1) FINDS that China's claims in the South China Sea do not include a claim to 'historic title', within the meaning of Article 298(1)(a)(i) of the Convention, over the waters of the South China Sea and that the Tribunal, therefore, has jurisdiction to consider the Philippines' Submissions No. 1 and 2;
- (2) FINDS, with respect to the Philippines' Submission No. 5:
 - a. that no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal constitutes a fully entitled island for the purposes of Article 121 of the Convention and therefore that no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal has the capacity to generate an entitlement to an exclusive economic zone or continental shelf;
 - b. that Mischief Reef and Second Thomas Shoal are low-tide elevations and, as such, generate no entitlement to maritime zones of their own;
 - c. that there are no overlapping entitlements to an exclusive economic zone or continental shelf in the areas of Mischief Reef or Second Thomas Shoal; and

- d. that the Tribunal has jurisdiction to consider the Philippines' Submission No. 5;
- (3) FINDS, with respect to the Philippines' Submissions No. 8 and 9:
 - a. that no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal constitutes a fully entitled island for the purposes of Article 121 of the Convention and therefore that no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal has the capacity to generate an entitlement to an exclusive economic zone or continental shelf;
 - b. that Mischief Reef and Second Thomas Shoal are low-tide elevations and, as such, generate no entitlement to maritime zones of their own;
 - c. that Reed Bank is an entirely submerged reef formation that cannot give rise to maritime entitlements;
 - d. that there are no overlapping entitlements to an exclusive economic zone or continental shelf in the areas of Mischief Reef or Second Thomas Shoal or in the areas of the Philippines' GSEC101, Area 3, Area 4, or SC58 petroleum blocks;
 - e. that Article 297(3)(a) of the Convention and the law enforcement exception in Article 298(1)(b) of the Convention are not applicable to this dispute; and
 - f. that the Tribunal has jurisdiction to consider the Philippines' Submissions No. 8 and 9;
 - (4) FINDS that China's land reclamation and/or construction of artificial islands, installations, and structures at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef, and Mischief Reef do not constitute "military activities", within the meaning of Article 298(1)(b) of the Convention, and that the Tribunal has jurisdiction to consider the Philippines' Submissions No. 11 and 12(b);
 - (5) FINDS, with respect to the Philippines' Submissions No. 12(a) and 12(c):
 - a. that no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal constitutes a fully entitled island for the purposes of Article 121 of the Convention and therefore that no maritime feature claimed by China within 200 nautical miles of Mischief Reef or Second Thomas Shoal has the capacity to generate an entitlement to an exclusive economic zone or continental shelf;
 - b. that Mischief Reef and Second Thomas Shoal are low-tide elevations and, as such, generate no entitlement to maritime zones of their own;
 - c. that there are no overlapping entitlements to an exclusive economic zone or continental shelf in the areas of Mischief Reef or Second Thomas Shoal; and
 - d. that the Tribunal has jurisdiction to consider the Philippines' Submissions No. 12(a) and 12(c);

- (6) FINDS with respect to the Philippines' Submission No. 14:
 - a. that the dispute between China and the Philippines concerning the stand-off between the Philippines' marine detachment on Second Thomas Shoal and Chinese military and paramilitary vessels involves "military activities", within the meaning of Article 298(1)(b) of the Convention, and that the Tribunal has no jurisdiction to consider the Philippines' Submissions No. 14(a) to (c); and
 - b. that China's land reclamation and/or construction of artificial islands, installations, and structures at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef, and Mischief Reef do not constitute "military activities", within the meaning of Article 298(1)(b) of the Convention, and that the Tribunal has jurisdiction to consider the Philippines' Submission No. 14(d);
- (7) FINDS, with respect to the Philippines' Submission No. 15, that there is not a dispute between the Parties such as would call for the Tribunal to exercise jurisdiction; and
- (8) DECLARES that it has jurisdiction to consider the matters raised in the Philippines' Submissions No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14(d) and that such claims are admissible.

B. In relation to the merits of the Parties' disputes, the Tribunal:

- (1) DECLARES that, as between the Philippines and China, the Convention defines the scope of maritime entitlements in the South China Sea, which may not extend beyond the limits imposed therein;
- (2) DECLARES that, as between the Philippines and China, China's claims to historic rights, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the 'nine-dash line' are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements under the Convention; and further DECLARES that the Convention superseded any historic rights, or other sovereign rights or jurisdiction, in excess of the limits imposed therein;
- (3) FINDS, with respect to the status of features in the South China Sea:
 - a. that it has sufficient information concerning tidal conditions in the South China Sea such that the practical considerations concerning the selection of the vertical datum and tidal model referenced in paragraphs 401 and 403 of the Tribunal's Award on Jurisdiction and Admissibility of 29 October 2015 do not pose an impediment to the identification of the status of features;
 - b. that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef include, or in their natural condition did include, naturally formed areas of land, surrounded by water, which are above water at high tide, within the meaning of Article 121(1) of the Convention;
 - c. that Subi Reef, Gaven Reef (South), Hughes Reef, Mischief Reef, and Second Thomas Shoal, are low-tide elevations, within the meaning of Article 13 of the Convention;

- d. that Subi Reef lies within 12 nautical miles of the high-tide feature of Sandy Cay on the reefs to the west of Thitu;
 - e. that Gaven Reef (South) lies within 12 nautical miles of the high-tide features of Gaven Reef (North) and Namyit Island; and
 - f. that Hughes Reef lies within 12 nautical miles of the high-tide features of McKennan Reef and Sin Cowe Island;
- (4) DECLARES that, as low-tide elevations, Mischief Reef and Second Thomas Shoal do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation;
- (5) DECLARES that, as low-tide elevations, Subi Reef, Gaven Reef (South), and Hughes Reef do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation, but may be used as the baseline for measuring the breadth of the territorial sea of high-tide features situated at a distance not exceeding the breadth of the territorial sea;
- (6) DECLARES that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef, in their natural condition, are rocks that cannot sustain human habitation or economic life of their own, within the meaning of Article 121(3) of the Convention and accordingly that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef, and Fiery Cross Reef generate no entitlement to an exclusive economic zone or continental shelf;
- (7) FINDS with respect to the status of other features in the South China Sea:
- a. that none of the high-tide features in the Spratly Islands, in their natural condition, are capable of sustaining human habitation or economic life of their own within the meaning of Article 121(3) of the Convention;
 - b. that none of the high-tide features in the Spratly Islands generate entitlements to an exclusive economic zone or continental shelf; and
 - c. that therefore there is no entitlement to an exclusive economic zone or continental shelf generated by any feature claimed by China that would overlap the entitlements of the Philippines in the area of Mischief Reef and Second Thomas Shoal; and

DECLARES that Mischief Reef and Second Thomas Shoal are within the exclusive economic zone and continental shelf of the Philippines;

- (8) DECLARES that China has, through the operation of its marine surveillance vessels in relation to M/V Veritas Voyager on 1 and 2 March 2011 breached its obligations under Article 77 of the Convention with respect to the Philippines' sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank;
- (9) DECLARES that China has, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese flagged vessels, breached its obligations under Article 56 of

the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone;

(10) FINDS, with respect to fishing by Chinese vessels at Mischief Reef and Second Thomas Shoal:

- a. that, in May 2013, fishermen from Chinese flagged vessels engaged in fishing within the Philippines' exclusive economic zone at Mischief Reef and Second Thomas Shoal; and
- b. that China, through the operation of its marine surveillance vessels, was aware of, tolerated, and failed to exercise due diligence to prevent such fishing by Chinese flagged vessels; and
- c. that therefore China has failed to exhibit due regard for the Philippines' sovereign rights with respect to fisheries in its exclusive economic zone; and

DECLARES that China has breached its obligations under Article 58(3) of the Convention;

(11) FINDS that Scarborough Shoal has been a traditional fishing ground for fishermen of many nationalities and DECLARES that China has, through the operation of its official vessels at Scarborough Shoal from May 2012 onwards, unlawfully prevented fishermen from the Philippines from engaging in traditional fishing at Scarborough Shoal;

(12) FINDS, with respect to the protection and preservation of the marine environment in the South China Sea:

- a. that fishermen from Chinese flagged vessels have engaged in the harvesting of endangered species on a significant scale;
- b. that fishermen from Chinese flagged vessels have engaged in the harvesting of giant clams in a manner that is severely destructive of the coral reef ecosystem; and
- c. that China was aware of, tolerated, protected, and failed to prevent the aforementioned harmful activities; and

DECLARES that China has breached its obligations under Articles 192 and 194(5) of the Convention;

(13) FINDS further, with respect to the protection and preservation of the marine environment in the South China Sea:

- a. that China's land reclamation and construction of artificial islands, installations, and structures at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef, and Mischief Reef has caused severe, irreparable harm to the coral reef ecosystem;
- b. that China has not cooperated or coordinated with the other States bordering the South China Sea concerning the protection and preservation of the marine environment concerning such activities; and
- c. that China has failed to communicate an assessment of the potential effects of such activities on the marine environment, within the meaning of Article 206 of the Convention; and

DECLARES that China has breached its obligations under Articles 123, 192, 194(1), 194(5), 197, and 206 of the Convention;

- (14) With respect to China's construction of artificial islands, installations, and structures at Mischief Reef:
- a. FINDS that China has engaged in the construction of artificial islands, installations, and structures at Mischief Reef without the authorisation of the Philippines;
 - b. RECALLS (i) its finding that Mischief Reef is a low-tide elevation, (ii) its declaration that low-tide elevations are not capable of appropriation, and (iii) its declaration that Mischief Reef is within the exclusive economic zone and continental shelf of the Philippines; and
 - c. DECLARES that China has breached Articles 60 and 80 of the Convention with respect to the Philippines' sovereign rights in its exclusive economic zone and continental shelf;
- (15) FINDS, with respect to the operation of Chinese law enforcement vessels in the vicinity of Scarborough Shoal:
- a. that China's operation of its law enforcement vessels on 28 April 2012 and 26 May 2012 created serious risk of collision and danger to Philippine ships and personnel; and
 - b. that China's operation of its law enforcement vessels on 28 April 2012 and 26 May 2012 violated Rules 2, 6, 7, 8, 15, and 16 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and

DECLARES that China has breached its obligations under Article 94 of the Convention; and

- (16) FINDS that, during the time in which these dispute resolution proceedings were ongoing, China:
- a. has built a large artificial island on Mischief Reef, a low-tide elevation located in the exclusive economic zone of the Philippines;
 - b. has caused—through its land reclamation and construction of artificial islands, installations, and structures—severe, irreparable harm to the coral reef ecosystem at Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef; and
 - c. has permanently destroyed—through its land reclamation and construction of artificial islands, installations, and structures—evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef; and

FINDS further that China:

- d. has aggravated the Parties' dispute concerning their respective rights and entitlements in the area of Mischief Reef;
- e. has aggravated the Parties' dispute concerning the protection and preservation of the marine environment at Mischief Reef;

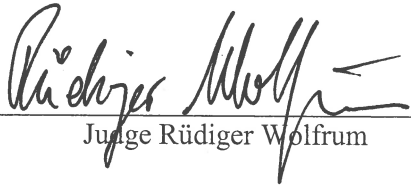
- f. has extended the scope of the Parties' dispute concerning the protection and preservation of the marine environment to Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef; and
- g. has aggravated the Parties' dispute concerning the status of maritime features in the Spratly Islands and their capacity to generate entitlements to maritime zones; and

DECLARES that China has breached its obligations pursuant to Articles 279, 296, and 300 of the Convention, as well as pursuant to general international law, to abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decisions to be given and in general, not to allow any step of any kind to be taken which might aggravate or extend the dispute during such time as dispute resolution proceedings were ongoing.

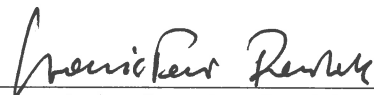
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Done at The Hague, this 12th day of July 2016,




Judge Rüdiger Wolfrum




Judge Stanislaw Pawlak



Judge Jean-Pierre Cot



Professor Alfred H.A. Soons



Judge Thomas A. Mensah
Presiding Arbitrator



Ms. Judith Levine
Registrar