

EXPLAINER

David Dutton

Ten years after the arbitration:

The limits of rules in the South China Sea

Summary

- Ten years ago, the Philippines won a legal victory invalidating China's sweeping claims over the South China Sea. The arbitral award became a rallying point for defending maritime rights in accordance with the United National Convention on the Law of the Sea (UNCLOS).
- Contrary to UNCLOS and the arbitration decision, China has acted aggressively to advance its control of the SCS and alternative legal concepts, breaching regional norms and the rights of other states. Its conduct has intensified since 2023 and, in the past year, has exceeded precedents.
- China's strategic ambitions mean there will be no return to earlier periods of relative stability or resolution of differences through the application of agreed rules. Upholding UNCLOS rights requires sustained presence and deterrence, as many states have recognised.
- The result is regular physical contestation, normalisation of Beijing's aggressive and coercive conduct, and weakening diplomatic constraints, all raising the risk of crisis or conflict. The gravity of the situation may be underestimated while attention is focused on wars in Europe and the Middle East and the possibility China might use force against Taiwan.
- The Association of Southeast Asian Nations' (ASEAN) efforts would be best directed at reducing and managing the risks of conflict. Irreconcilable objectives mean negotiations with China for a code of conduct cannot be concluded unless ASEAN accepts an outcome that would weaken UNCLOS.
- Australia, although not a claimant, has critical interests in the situation in the SCS and its consequences for international law, maritime order and dispute management. Canberra has increased efforts to support regional partners' capacities, sustain operational presence and build collective deterrence – efforts that will need to be ongoing.

Introduction

The South China Sea (SCS) is one of the world's most important and disputed waterways. China claims all the islands, rocks and reefs within its 'nine-dash line' along with rights over economic resources, development and navigation, though it has not clarified its claims precisely. These claims overlap with those of Vietnam, the Philippines, Malaysia, Brunei, Indonesia and Taiwan and challenge prevailing navigational rights and high-seas freedoms available to all states.[1]

China's expansive claims, including the nine-dash line and assertions of historic rights, were invalidated in July 2016 by an ad hoc tribunal convened under UNCLOS. That process was initiated by Manila after China seized Scarborough Shoal in 2012. The tribunal didn't address sovereignty disputes but found none of the features in the Spratlys were 'islands': they

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were 'low-tide elevations' without maritime zones, or 'rocks' entitled to a territorial sea of only 22.2 km. However, China, despite being a party to UNCLOS, rejected the judgement as 'null and void', a 'scrap of wastepaper' that would have no effect on its claims or interests.[2] It continues to assert the validity of its own interpretation of UNCLOS – in June 2026, the China Institute for Maritime Affairs published a report arguing for an evolution of ocean governance that would accommodate China's interests.[3]

Control of the SCS is critical to China's strategic ambitions as a great power.

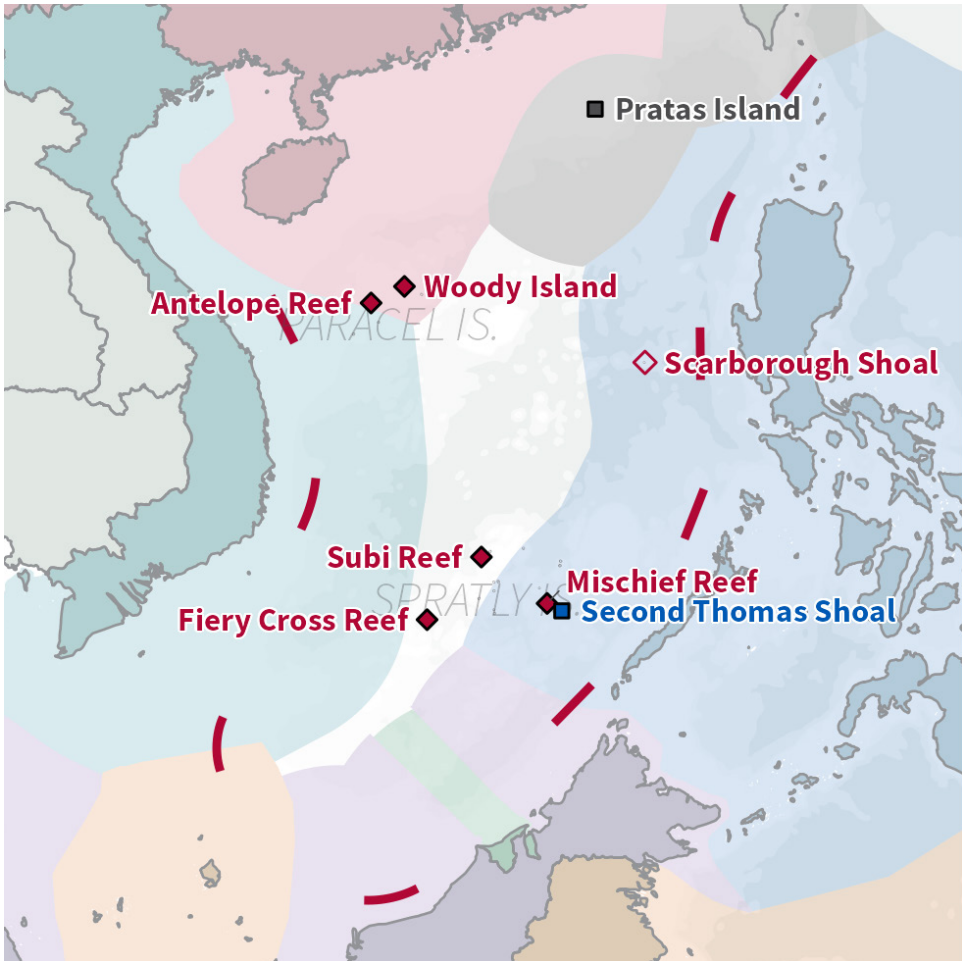
China wants control

Control of the SCS is critical to China's strategic ambitions as a great power: to promote national rejuvenation, change the military balance and create safe operating spaces, shape its relations with what it sees as the subordinate states of Southeast Asia, and control resources. China has built formidable military, civilian and militia forces and artificial island bases. It uses hostile and intimidating tactics to discourage and deny the presence of other states. These include swarming, ramming, harassment, blockades, dangerous interception, electronic warfare attacks and the use of water cannons. China has created a corpus of national law that it seeks to apply, often casting its activities in terms of domestic law enforcement.

China's conduct has gradually become more aggressive, intensifying since 2023 and, in the past year, exceeding its own precedents.[4] On-water behaviour is more menacing, involving mobilisation of superior force in encounters, increased use of military assets, and the application of controlled violence.

China has singled out the Philippines due to its status as a US ally and its defiance of Beijing's claims. Through this harassment, Beijing is using Manila as an example to other regional powers. Chinese pressure has concentrated on Second Thomas Shoal – provoking a crisis in 2024 which could have led to confrontation with the United States – and Scarborough Shoal, where China has quadrupled activity since 2024 and imposed a new exclusion zone and legal tools in the past year.[5] In 2025, China resumed island construction after a nine-year hiatus. This construction took place at Antelope Reef in the Paracel Islands, close to Vietnam. In

Figure 1: China's nine dash line, maritime boundaries and EEZ's in the South China Sea



Source: Map adapted by ASPI from Flanders Marine Institute (2023), online.

2026, China harassed the Philippines during ASEAN meetings in Manila, and Beijing sanctioned Philippine Defence Minister Gilberto Teodoro Jr. China has also increased its presence around Taiwan-controlled Pratas Island and established patrols east of Taiwan.

Claimants want to preserve maritime rights and presence

The Philippines has bolstered efforts to sustain its presence in what it calls the West Philippine Sea. It has expanded alliance cooperation with the US and accelerated defence cooperation with Japan, Australia and other partners while also modernising its defence and maritime capabilities. It has anchored these efforts in its 2016 arbitral award, including by passing new legislation in 2024 to conform domestic law to UNCLOS. Manila's vigorous transparency initiative has exposed Chinese tactics the Philippines has described as 'illegal, coercive, aggressive and deceptive', angering Beijing.[6]

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The other Southeast Asian claimants have generally sought to avoid confrontation and keep differences quiet, which hasn't necessarily brought better results. Vietnam has strengthened outposts and infrastructure in the Spratlys, building artificial islands that rival China's in total size.[7] Malaysia has undertaken limited construction and strengthened military presence in Borneo, while its oil and gas exploration near Luconia Shoals has faced persistent Chinese pressure.[8] Indonesia's diplomatic ambiguity has muddied Jakarta's legal claims and risked normalising China's intrusions.[9] All have entertained China's attempts to establish joint developments in their exclusive economic zones.

ASEAN has never collectively endorsed the arbitral award and has rarely reached consensus on specifics, instead issuing declaratory language on general principles of international law and dispute resolution. Malaysia, Vietnam and Indonesia have deployed the award's legal reasoning but rarely invoked it openly. ASEAN states have relied on the US, Japan, Australia and others to contest China's claims in public. Even the Southeast Asian claimants have shown limited ability to form common approaches, and the divergence of interests across the full ASEAN membership precludes positions that would challenge China.

A 2002 Declaration on the Conduct of Parties in the SCS agreed upon between ASEAN and China aimed to freeze disputes and prevent conflict but was ineffective by the 2010s. Long-running negotiations towards a more substantial code of conduct have provided somewhere to channel expectations, but meaningful agreement has never been in reach. An aspirational deadline for conclusion is likely to pass in 2026 unless ASEAN yields its UNCLOS rights to China.

More states want to sustain UNCLOS rules and access

More than 30 states, mostly Western countries, celebrated the award on its tenth anniversary. Among ASEAN states, only the Philippines joined, and others such as South Korea were conspicuously absent.[10] But more states have joined efforts to support UNCLOS, boost maritime assistance and conduct operations to demonstrate rights and signal positions. Japan has upgraded security cooperation with Manila and undertaken new exercises and military assistance in response to the 'severe reality' of unilateral efforts to change the status quo by force and coercion.[11] India first invoked the award in 2023 and has become more active and expanded maritime cooperation, though it didn't mark the anniversary.[12] Britain, Germany, France, other European countries and Canada have challenged China's claims, and the European Union recently initiated new maritime cooperation with the Philippines.[13]

The US has consistently supported the award and opposed China's expansive claims, notwithstanding growing anxiety in the region as to how the Trump administration might respond in a crisis. Its 2025 National Security Strategy emphasised deterrence by denial along the First Island Chain and the prevention of any state from controlling navigation within the SCS. The US has expanded security cooperation with the Philippines, confirmed that mutual defence obligations cover the SCS, increased rotational presence at Philippine bases and deployed new missile capabilities.

Australia has critical interests in the maintenance of freedom of the seas.

Australia has critical interests in the maintenance of freedom of the seas, including for military access and the large proportion of Australian trade that transits the SCS. It has remained neutral to sovereignty disputes, championed the award and international law, and labelled China's actions in recent years as destabilising and dangerous.[14] It has stepped up its maritime capacity assistance, maintained operational presence and increased joint patrols and exercises – most strikingly with the Philippines.[15]

Conclusion

The 2016 ruling delegitimised China's expansive claims, buttressing the position of Southeast Asian claimants and mobilising states outside the immediate region. Yet China has advanced its revisionist objectives that deny the rights of other states. The trajectory is towards more intense, militarised competition, the normalisation of aggressive conduct and the weakening of constraints. This creates a growing risk of sudden accident, crisis or inadvertent conflict.

There will be no return to the conditions of earlier periods of relative stability. States that want to sustain UNCLOS need to make more determined and concerted efforts to maintain presence, deter aggression and impose costs when China denies the rights of others. This means carrying strategic risk and managing escalation. The zone of contestation is large, claimants deploy different approaches and China can be pushed at different points. Beijing presses its objectives unless met by effective resistance, but it is neither incautious nor indifferent to international opinion.

Continued deepening, networking and diversification of security partnerships increases weight, shares risk and complicates Chinese activity and retaliation. The trend towards joint exercises, operations, patrols and diplomacy supports rules and enables states to exercise rights. The US remains paramount because of its unique capacity to balance China with military, economic and technological power, as well as its ability to provide security assurances and anchor coalitions. Its signals to Beijing are indispensable. But claimants and other states need to do more to pull their own weight, protect their own interests and create collective impact in different configurations – quietly relying on America's balancing presence will not be enough.

Diplomacy remains essential and all states need to manage their relations with Beijing. But deference to ineffective processes and quiet assent to Chinese pressure will lead to rights being gradually extinguished. ASEAN should concentrate on normative expectations, dialogue and risk reduction, bearing in mind it is unlikely to exert collective weight or resolve fundamental differences. Code of conduct negotiations warrant reconsideration, given that an outcome that meets China's objectives would weaken UNCLOS and access to its dispute resolution processes.

While no state wants to fight a war over the SCS, it is a dangerous flashpoint containing the ingredients for such a conflict – and there is insufficient attention to the risks. China is breaking the constraints of international law and norms in the SCS, where the consequences of disruption would be much greater than in the Strait of Hormuz. The future of maritime order there, as elsewhere, will be determined by how states work together to uphold rules under challenge.

Notes

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