



# The South China Sea – Ten Years After the 2016 Arbitral Award

*Elina Noor and Jane Chan*



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*By Elina Noor and Jane Chan*

### SYNOPSIS

*The Philippines chairs ASEAN this year on the tenth anniversary of an arbitral award in its favour. Can ASEAN, under Manila's leadership, come together to achieve a win-win outcome on the South China Sea?*

### COMMENTARY

This July will mark [ten years](#) since an arbitral tribunal ruled in favour of the Philippines in its case against China concerning the South China Sea. This anniversary coincides with the Philippines' 2026 chairmanship of the Association of Southeast Asian Nations (ASEAN) and ASEAN's push to conclude a fair and [legally binding](#) South China Sea Code of Conduct.

When the Philippines assumed the ASEAN chairmanship at the beginning of this year, there were both expectations and concerns that Manila would make the South China Sea dispute a regional priority. The Philippines, after all, has proven the most vociferous Southeast Asian state to defend its claims against China's overreach at sea.

Manila's resort to an arbitral tribunal in 2013, its transparency policy since 2023 to "[impose severe costs to Beijing's reputation, image and standing](#)", and [alliance minilateral-making](#) with Australia, Japan, and the United States, is an approach that is sharply distinct from that of other Southeast Asian claimants.

This divergence is exacerbated by both the perception and reality that Manila has hewed more closely to Washington and its [regional allies](#) in recent years. Under President Ferdinand Marcos Jr., the Philippines has indeed sought greater

institutionalised cooperation with the United States, Japan, and Australia, as well as with [Canada](#), [the United Kingdom](#), and the [North Atlantic Treaty Organisation](#).

This shift in approach has been catalysed as much by ongoing threats at sea from China as by the realisation that Manila's formerly subdued line towards Beijing under former president Rodrigo Duterte yielded little, if any, payoff. But as more candid, frustrated murmurs in the region revealed, the Philippines' turn to extra-regional partners also seems to stem from its disappointment at the lack of expressed solidarity by its fellow ASEAN claimants.

In fact, the situation is more nuanced than the simple comparison between the Philippines and the other ASEAN littorals. Claimant states have defended their interests in various ways and with different tones, depending on their capacity, capability, and political will. Sometimes these efforts have swung wildly across the alignment spectrum depending on personalities in power, as Manila's own shifts have shown.

### **Lawfare Is But One Option**

The Philippines' decision to pursue a legal course of action was seen as a calculated use of lawfare, in which it strategically invoked established international legal avenues to counter China's military and maritime encroachment in the South China Sea. This development prompted an exploration of the viability of similar [lawfare tactics](#) for other South China Sea littorals in countering China's actions. The so-called "[battle of Note Verbales](#)" a while back saw China facing more serious pushback from Southeast Asia and extra-regional stakeholders. All the objecting states have referred to UNCLOS and challenged the legality of China's claims.

However, although the award is binding on all parties to the dispute, the arbitral tribunal has [no power](#) to compel China to comply. China's [assertive actions and aggressive stance](#) in the South China Sea have not diminished since the arbitral award and appear to be increasing.

Not all Southeast Asian claimants have adopted lawfare as a key strategy vis-à-vis China. We have seen the Philippines and Vietnam [adopting different strategies](#) when operationalising their respective legal approaches. Malaysia, in particular, has been [criticised](#) for being an "outlier". The country has not shied away from international legal adjudication in its [sovereignty disputes](#) with [neighbours](#). Yet, on the South China Sea, Putrajaya has consistently – across different governments – opted for a quieter approach behind the scenes, wary of how combustible tensions can be, and [in fact, have been](#).

Even at the height of public awareness of prolonged Chinese incursions into Malaysia's EEZ, when officials [seemingly contradicted](#) each other and broke with convention to [take to social media](#), Malaysia resisted internationalising the dispute, believing that doing so would import unhelpful major power rivalry in the area. The government has also largely confined discussions on the dispute to the policy and bureaucratic elite to avoid fanning nationalist sentiments that might ultimately restrict

its policy manoeuvrability. Still, parliamentary questions and debates on the dispute are regularly tabled.

Certainly, Malaysia's economic relationship with China has been a moderating factor in its South China Sea strategy. Like other claimants, Putrajaya is careful not to let the dispute dictate other aspects of bilateral ties, even if it does cast a long and disturbing shadow. However, despite overstretched resources, the Malaysian navy and maritime enforcement agency conduct regular patrols. The National Security Council also [maintains watch](#) over escalatory trends in the South China Sea.

In the background, the exchange of diplomatic notes between the two capitals has been the highest channel of [official communication](#), in line with Malaysia's preference for "[soft diplomacy](#)" and [dialogue](#) to manage friction. For now, Putrajaya sees little strategic value in taking a more assertive stance against China, especially since the South China Sea is a multilateral rather than a bilateral dispute.

### **A Role for ASEAN?**

ASEAN took a collective position on the [South China Sea disputes](#) for the first time in a [statement](#) released on 30 December 2023, expressing "concern [for] the recent developments in the South China Sea" and made a strong call "to restore and enhance mutual trust and confidence as well as exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability" in the South China Sea.

The statement alone didn't mean much, as there are still no viable mechanisms to help alleviate tensions at sea. Yet it was a significant milestone for the grouping, given the outstanding contentions among the ASEAN claimants themselves and the lack of direct vested interest among ASEAN non-claimants.

Even as bilateral relations between Manila and Beijing continue to be tested over the South China Sea issue, the Philippines, as ASEAN Chair, has [chosen](#) to carry all 11 member states forward collectively by "building on the gains of Malaysia's inclusivity and sustainability theme". The Philippines' chairmanship theme of "Navigating our Future, Together" states just as much.

This incremental, collective approach signals what may be expected for the rest of the year: the Philippines, together with Malaysia as co-country coordinator with China for the ASEAN-China Dialogue Relations (August 2024 – July 2027), pushing for the negotiation of a Code of Conduct (CoC) to be finalised by this year. Already, the frequency of meetings has now reached a monthly rhythm. Hopefully, meaningful consensus can be achieved on the remaining vexing issues, such as the treatment of international law, the applicability of a CoC, and the characteristics of the document itself.

There is no illusion, however, that this will be a sure or easy reach, particularly against the wider backdrop of contemporary realities, the brazen rending of international law, the self-serving dismantling of institutional mechanisms, and a

return to raw, unchecked power. The South China Sea has too often been viewed through a geopolitical lens as a flashpoint.

Perhaps the Philippines and Malaysia, in their respective ASEAN roles and together with the rest of the region, can reclaim the narrative and offer a sobering, alternative vision. The fact is the sea has always connected communities and nations without division or domination. It should remain that way.

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