

THE WEST PHILIPPINE SEA ARBITRATION

May 2013

"... instead of following procedures, the Chinese say it's so clearly right that our position cannot be challenged, so we don't have to bother with what we've committed ourselves to. ... how is it for any nation to say we're so correct that we don't have to go to the impartial tribunal we previously agreed on to hear our views validated? ..."

This makes China look bad to the world community ...

Now it looks like a bully that rejects its legal obligation to settle a dispute under UNCLOS."

Professor
Jerome Cohen
New York University
School of Law
May 2013

"Given Beijing's objections to multilateralizing the dispute and the complicated nature of the disputes, a common assumption is that the Philippines has embarked on little more than a publicity stunt."

But this is inaccurate. The Philippines' case for arbitration is sound and it has the potential to fundamentally alter the situation in the South China Sea."

Gregory Poling
Associate Researcher
Center for Strategic and
International Studies
Washington DC
24 January 2013

On 22 January 2013, the Philippines formally conveyed to China the Philippine Notification and Statement of Claim that challenges before the Arbitral Tribunal the validity of China's nine-dash line claim to almost the entire South China Sea (SCS) including a peaceful negotiated settlement of its maritime dispute with China.

China's nine-dash line claim is contrary to UNCLOS and unlawful. The Philippines is requesting the Tribunal to, among others:

- Declare that China's rights to maritime areas in the SCS, like the rights of the Philippines, are established by UNCLOS, and consist of its rights to a Territorial Sea and Contiguous Zone under Part II of UNCLOS, to an EEZ under Part V, and to a Continental Shelf under Part VI
- Declare that China's maritime claims in the SCS based on its so-called nine-dash line are contrary to UNCLOS and invalid
- Require China to bring its domestic legislation into conformity with its obligations under UNCLOS; and
- Require China to desist from activities that violate the rights of the Philippines in its maritime domain in the WPS.



Foreign Affairs Secretary Albert F. Del Rosario (right) with Solicitor General Francis Jardeleza at Department of Foreign Affairs on 22 January 2013 where he briefed the media on the Philippine Notification and Statement of Claim. Solicitor General Jardeleza is the agent or legal representative for the Philippines in this Arbitral Proceedings. The lead counsel of the Philippines is Mr. Paul Reichler of Foley and Hoag LLP.

the West Philippine Sea (WPS) and to desist from unlawful activities that violate the sovereign rights and jurisdiction of the Philippines under the 1982 UN Convention on the Law of the Sea (UNCLOS).

This Notification initiated the arbitral proceedings under Article 287 and Annex VII of UNCLOS. The Philippines has exhausted almost all political and diplomatic avenues for

The Arbitral Tribunal has jurisdiction to hear and make an award as the dispute is about the interpretation and application by States Parties of their obligations under the UNCLOS.

The Philippines position is well founded in fact and law.

Annex VII Arbitration under UNCLOS

A rather unique feature of UNCLOS is that it allows, under certain conditions, a State Party to bring another State Party to arbitration even without the latter's consent. This is allowed under Annex VII when States Parties are unable to settle a dispute by negotiation, third party resolution or other peaceful means.

An Annex VII arbitral tribunal is composed of five members free to determine its own procedure. The absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. There have been four instances when States Parties have resorted to Annex VII arbitration: Bangladesh-India, Mauritius-UK, Argentina-Ghana and Philippines-China.

“Under the United Nations Convention on the Law of the Sea, no state can claim sovereignty over an underwater feature unless it lies within 12 nautical miles of its land. James Shoal is over 1,000 kilometres from undisputed Chinese territory.

Last month, the Philippine government announced it would seek a ruling from an international tribunal about whether China’s claims in the sea were compatible with the UN convention. James Shoal would be a clear example of a claim that is not compatible. Perhaps this might be a good moment for Beijing to review how it came to claim this obscure piece of submarine territory in the first place.”

Bill Hayton
The South China Morning Post
9 February 2013

“Manila’s audacious move is a major development in the long running dispute as it marks the first time one of the Southeast Asian parties has resorted to legal means to challenge China’s expansive claims.

If the UN tribunal decides to hear the case, any ruling it issues will have wide-ranging legal, political and strategic implications.”

Dr. Ian Storey
Institute of Southeast Asian Studies Singapore
1 February 2013



“We are not doing this because we want to be an aggressor, we are not doing this because we want escalation. This is about keeping the peace. This is about protecting ourselves - something we have long thought impossible”

Benigno S. Aquino III
President of the Philippines



“The Philippines is one of our five Asia-Pacific allies, and a very, very important relationship at this point in time when there are tensions over the South China Sea, where we support a code of conduct, and we are deeply concerned some of those tensions and would like to see it worked out through a process of arbitration.”

John Kerry
Secretary of State
Remarks with
Secretary Albert Del Rosario
State Department, 2 April 2013

Secretary Albert Del Rosario thanks Japanese Prime Minister for Japan’s support for Philippine arbitration initiative



23 May 2013, Tokyo –The further strengthening of the strategic partnership between the Philippines and Japan based on shared values took center stage at Foreign Affairs Secretary Albert F. del Rosario’s courtesy call on Japanese Prime Minister Shinzo Abe at the Kantei (Prime Minister’s Office) in Tokyo this afternoon.

The Prime Minister and Secretary del Rosario discussed the regional situation and the particular maritime security challenges confronted in common by the Philippines and Japan. They noted the Philippines and Japan’s shared advocacy in promoting the rule of law.

Along these lines, Prime Minister Abe manifested the Japanese Government’s support for the Philippines’ initiation of arbitral proceedings last January, pursuant to the United Nations Convention on the Law of the Sea (UNCLOS), in its bid to clarify maritime zones and entitlements in the South China Sea.

Secretary del Rosario expressed the Philippines’ appreciation for Japan’s stance, stressing the crucial role of international law in attaining a durable resolution to international disputes based on a level playing field.

“The initiation of Arbitral Proceedings against China on the nine-dash line is an operationalization of President Aquino’s policy for a peaceful and rules-based resolution of disputes in the WPS in accordance with international law specifically UNCLOS.”

Albert F. Del Rosario
Secretary of Foreign Affairs



“The European Parliament “underlines the global importance of the South China Sea through which one third of the world’s trade passes; is alarmed at the escalating tension and therefore urgently appeals to all parties involved to refrain from unilateral political and military actions, to tone down statements and to settle their conflicting territorial claims in the South China Seas by means of international arbitration in accordance with international law, in particular the UN Convention on the Law of the Sea, in order to ensure regional stability.”

Bastiaan Belder
Report on EU-China Relations by
Committee on Foreign Affairs
European Parliament
Strasbourg, France, 13 March 2013



“. . . the Philippines will have achieved a major victory if the Tribunal rules in their favour on the most important issue to them – that China cannot make claims to maritime space based on history and the nine-dash line . . . although it is impossible to predict how the case will turn out, it is hoped that as a result of the decision of the Tribunal, all of the claimants, including China, will clarify their claims and bring them into conformity with UNCLOS.”

Robert Beckman
Director
Centre for International Law
National University of Singapore
14 March 2013

“If, as the Philippines hopes, the tribunal decides that the land features in the South China Sea are largely “rocks” or submerged features under UNCLOS rather than islands, their maritime space would be limited to a relatively small territorial sea.

Such a ruling would mean that even if Chinese sovereignty was indisputably established over all land features in the South China Sea, it would not have a credible claim to all the waters of most of the South China Sea, and the waters surrounding Scarborough Shoal and hydrocarbon-rich Reed Bank near the Philippines in particular.”

Zach Dubel
Research Associate
Stimson Center
Washington DC
5 March 2013



Paragraph 59, Chairman's Statement
22nd ASEAN Summit "Our People, Our Future Together"
Bandar Seri Begawan, Brunei, 25 April 2013

“We discussed the situation in the South China Sea and reaffirmed the importance of peace, stability, and maritime security in the region. We underscored the importance of the Declaration on the Conduct of Parties in the South China Sea (DOC), ASEAN’s Six-Point Principles on the South China Sea, and the Joint Statement of the 10th Anniversary of the DOC. In this regard, we reaffirmed the collective commitments under the DOC to ensuring the peaceful resolution of disputes in accordance with universally recognised principles of international law, including the 1982 United Nations Convention on the Law of the Sea, without resorting to the threat or use of force, while exercising self-restraint in the conduct of activities.”

The Department of Foreign Affairs' Statement on China's Response to the Philippines' Arbitration Case, 20 Feb 2013

The Department received this afternoon from Chinese Ambassador to the Philippines Ma Keqing a Note Verbale stating that China rejects and returns the Philippines' Notification and Statement of Claim.

The Department stresses that China's action will not interfere with the process of Arbitration initiated by the Philippines on 22 January 2013. The Arbitration will proceed under Annex VII of UNCLOS and the 5-member arbitration panel will be formed with or without China.

In its *Note Verbale*, China reiterated its often stated position that it has indisputable sovereignty over the entire South China Sea encompassed by its 9-dash line claim. This excessive claim is the core issue of the Philippines' arbitration case against China. The Philippines remains committed to Arbitration which is a friendly, peaceful and durable form of dispute settlement that should be welcomed by all.

“Manila’s quest could take several years of legal proceedings, but it is not quixotic. The submission was carefully put. It is not asking for maritime boundaries to be delineated. Instead, it is asking for a ruling on the validity under UNCLOS of China’s expansive ‘Nine-Dashed Line,’ and on whether the land features in the South China Sea are rocks or submerged features rather than islands.”

Rory Medcalf
The Diplomat
Tokyo, 25 March 2013

“By asking the tribunal to decide on the legality of China's nine-dash line under UNCLOS, the Philippines has essentially dealt a clever hand - China might have to clarify the extent and basis for its nine-dotted line claim. . . . This is something that many analysts have been calling for.”

William Choong
The Straits Times/Asia News Network
Singapore
30 January 2013

In any event, I think it is safe to say this it a game changer in the long-running South China Sea dispute. It is also, without question, the most important case that has ever been filed under the dispute resolution procedures of UNCLOS. It will be a crucial test of the UNCLOS institutions, as well as of UNCLOS members.

Julian Ku
Opinio Juris Blog
Professor of Law and Faculty Director of International Programs
Maurice A. Deane School of Law at Hofstra University, New York
22 January 2013

Recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States.

The Manila Declaration on the Peaceful Settlement of International Disputes
United Nations General Assembly Resolution No. 33/10
Adopted by consensus on 15 November 1982

Francis H. Jardeleza is the Philippine Agent for the West Philippine Sea Arbitration. He is the Solicitor General of the Philippines.

He obtained his Bachelor of Laws (cum laude) from the University of the Philippines in 1974 and placed third in the bar examinations the same year. In 1977, he obtained his Masters of Law from Harvard Law School and trained in securities, litigation and public offerings in a large New York law firm.

Mr. Jardeleza practiced law for more than three decades and chaired the Litigation Departments of his law firms. He was Senior Vice President and General Counsel of San Miguel Corporation, a position he held continuously up to June 2010, when he opted for early retirement.

A professorial lecturer at the University of the Philippines College of Law since 1993, he is a member of the Integrated Bar of the Philippines, the Philippine Bar Association, the American Bar Association and the Inter-Pacific Bar Association. In 1997, he was admitted to the New York State Bar.



The Statement by Secretary of Foreign Affairs Albert del Rosario on the UNCLOS Arbitral Proceedings against China as well as FAQs on the issue are available at:

<http://www.dfa.gov.ph/index.php/newsroom/dfa-releases/7300-statement-by-secretary-of-foreign-affairs-albert-del-rosario-on-the-unclos-arbitral-proceedings-against-china-to-achieve-a-peaceful-and-durable-solution-to-the-dispute-in-the-wps>

The Philippine Notification and Statement of Claim are available at:

http://www.dfa.gov.ph/index.php/downloads/doc_download/523-notification-and-statement-of-claim-on-west-philippine-sea



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