

JULY 2015

## PHILIPPINES PRESENTS ORAL ARGUMENTS ON THE ARBITRAL TRIBUNAL'S JURISDICTION OVER THE CASE AGAINST CHINA

*[W]ith the exception of China, Asians do not have a negative attitude towards settling their disputes by arbitration or adjudication. China should therefore reconsider its position in order to conform to the best Asian and international practice."*

Tommy Koh

Chairman of the governing board of  
the Centre for International Law,  
National University of Singapore  
"The Asian way to settle disputes,"  
The Straits Times,  
10 June 2015

*Maritime disputes in the South China Sea and West Philippine Sea will ultimately be a litmus test for whether China will act as a responsible member of the international community, willing to engage other contestants in a rules-based regime in accordance with established norms of international diplomacy, consistent with a nation of its importance and stature. That is China's challenge. The question is ultimately whether China will prevail in a court of law as well as the court of international public opinion, and whether China will be a graceful loser should the case against it prevail in The Hague. It looks increasingly likely that China will lose in The Hague. It has already lost in the court of international public opinion. And it remains to be seen whether or not it will be a graceful loser, but this seems unlikely.*

Daniel Wagner, CEO, Country Risk  
Solutions; and Edsel Tupaz, Professor  
of International and Comparative Law,  
Ateneo Law School  
"International Law Could Kill China's  
Claims in the South China Sea,"  
International Policy Digest,  
27 May 2015

The Philippine delegation, consisting of high-level officials from all branches of the government and international lawyers, appeared before the Permanent Court of Arbitration at The Hague, The Netherlands, on 7-13 July 2015 for the hearing on the Arbitral Tribunal's jurisdiction over the case filed against China. The hearing, which was set by the Arbitral Tribunal's third meeting on 20-21 April 2015, addressed the issue of jurisdiction and the admissibility of Philippine claims.

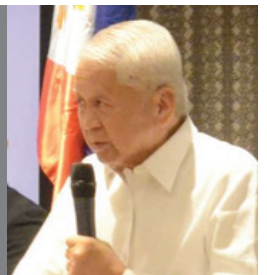
Secretary of Foreign Affairs Albert F. del Rosario explained the Philippines' reason for submitting the maritime dispute with China to international arbitration. He also emphasized how the issue is important not only to the Philippines and the littoral states around the South China Sea but also to all parties to the UN Convention on the Law of the Sea (UNCLOS), stating that the case is about "the integrity of the Convention" and the "very fabric of the legal order for the seas and oceans."

Chief Counsel Mr. Paul Reichler led the presentation of arguments on why the case falls within the jurisdiction of the Tribunal. The delegation argued that the Philippine case neither raises issues of land sovereignty and maritime delimitation nor touches on specific exemptions in UNCLOS that would bar the Tribunal from exercising jurisdiction over it. The delegation also highlighted environmental and fishing issues against China.

The Tribunal has given China an opportunity to respond to the oral arguments before 17 August 2015. However, China has reiterated that it is neither accepting nor participating in the arbitration process initiated by the Philippines, and referred to the Position Paper released in December 2014 as the statement of its views on the issue.

In a press release, the Arbitral Tribunal stated that it will deliberate on the hearing and that a ruling on the jurisdiction can be expected before the end of the year.

"[T]he power of international law, serves as the great equalizer among States, allowing countries, such as my own, to stand on an equal footing with wealthier, more powerful States.... It is these dispute resolution provisions that allow the weak to challenge the powerful on an equal footing, confident in the conviction that principles trump power; that law triumphs over force; and that right prevails over might."



Albert F. del Rosario  
Secretary of Foreign Affairs

*But China's "non-participatory participation" looks like a missed opportunity for all parties, especially China. Vietnam has now also put its views before the arbitral tribunal. Even without official Chinese participation, the tribunal will, in the not-too-distant future, issue a decision that will bind China legally.*

Dr. Wim Muller  
Associate Fellow  
International Law Programme,  
Chatham House  
"China's Missed Opportunity in the  
South China Sea,"  
19 March 2015

*... rather than accepting this option (arbitration) to resolve the dispute in accordance with UNCLOS, China refused to participate in the case before the arbitral tribunal. Instead, it adopted a policy of non-appearance and non-participation, and began undertaking large-scale reclamation works on the very features whose status is in dispute in the case.*

Robert Beckman  
Director, Centre for International Law,  
National University of Singapore  
"China and 'might makes right' at sea,"  
The Straits Times,  
20 May 2015

*[I]nterested states could quash territorial claims (territorial reclamation) through arbitration in either International Tribunal on the Law of the Sea (ITLOS) or the International Court of Justice or through a broader framework or agreement.*

Wilson VornDick  
Lt. Commander, US Navy  
"Territorial Claims: The New Geopolitical  
Reality in the South China Sea"  
CSIS Asia Maritime  
Transparency Initiative,  
8 April 2015

"All parties have expressed their desire to resolve this issue through peaceful means under international law. The Philippines, in particular, has followed through on these words with action. We have pursued arbitration to clarify maritime entitlements, and have pushed for the expeditious conclusion of a legally-binding ASEAN Code of Conduct."

President Benigno S. Aquino III  
at the Nikkei 21st International Conference on the  
Future of Asia—Special Session  
Tokyo, Japan  
3 June 2015



Photo: Ryan Lim,  
Malacañang Photo  
Bureau



Photo: Ryan Lim,  
Malacañang Photo Bureau

"We reaffirmed the importance of maintaining peace, stability, security and freedom of navigation in and over-flight over the South China Sea. We emphasised the need for all parties to ensure the full and effective implementation of the Declaration on the Conduct of Parties in the South China Sea in its entirety: to build, maintain and enhance mutual trust and confidence; exercising self-restraint in the conduct of activities; to not to resort to threat or use of force; and for the parties concerned to resolve their differences and disputes through peaceful means, in accordance with international law including the 1982 United Nations Convention on the Law of the Sea."

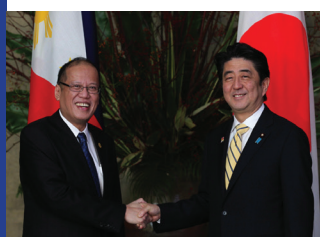
Joint Statement, 26th ASEAN Summit  
Kuala Lumpur, Malaysia  
27 April 2015

"We are committed to maintaining a rules-based order in the maritime domain based on the principles of international law, in particular as reflected in the UN Convention on the Law of the Sea. We are concerned by tensions in the East and South China Seas. We underline the importance of peaceful dispute settlement as well as free and unimpeded lawful use of the world's oceans. We strongly oppose the use of intimidation, coercion or force, as well as any unilateral actions that seek to change the status quo, such as large scale land reclamation."



Photo: pdstream.bundesregierung.de

G7 Summit Leaders' Declaration  
Schloss Elmau, Germany  
8 June 2015



"Japan reiterates its support to the Philippines' use of arbitration procedures under the UNCLOS as such an action contributes to the maintenance and enhancement of the international order based on the rule of law."

Japan-Philippines Joint Declaration:  
A Strengthened Strategic Partnership for Advancing the Shared Principles  
and Goals of Peace, Security, and Growth in the Region and Beyond  
Tokyo, 4 June 2015



“Where we get concerned with China is where it is not necessarily abiding by international norms and rules, and is using its size and muscle to force countries into subordinate positions.... We don’t have a particular view on the territorial disputes, the maritime disputes. Our attitude is simply, let’s use the mechanisms that we have in place internationally to resolve them.”



Photo: www.whitehouse.gov

US President Barack Obama  
Remarks in Town Hall with  
Young Leaders of the Americas  
University of West Indies  
Kingston, Jamaica  
9 April 2015

“We need peace and stability in the Asia-Pacific region. It is important to have political and security stability in the Asia-Pacific region . . . The ‘nine-dashed line’ that China says marks its maritime border has no basis in any international law.”



Indonesian President Jokowi Widodo  
“Indonesia’s President Jokowi says China has no legal claim to  
South China Sea: Yomiuri”  
The Straits Times, 23 March 2015



Photo: Benhur Arcayan,  
Malacañang Photo Bureau

“We reiterated the importance of maintaining peace and stability in Southeast Asia and promoting maritime security, freedom of navigation and the peaceful settlement of disputes in accordance with international law, including UNCLOS.”

President Benigno S. Aquino during a joint press  
conference with President Francois Hollande  
of France during the latter’s state visit to the  
Philippines on 26-27 February 2015

“Canada does not take position on maritime territorial disputes. However, it is important that all parties do not engage in provocative unilateral actions, all parties must show respect for international law and for international decisions in that regard.”

Canadian Prime Minister Stephen Harper  
During a Joint Press Conference with  
President Benigno S. Aquino III  
8 May 2015



Photo: Gil Nartea,  
Malacañang Photo Bureau

“I think we had similar views on China’s territorial ambitions; we don’t take a decision on territorial plans, but we do urge all nations to respect international law, respect global norms and to resolve any territorial or maritime plans peacefully... there is far too much at stake for this to not occur.”



Julie Bishop  
Foreign Minister of Australia  
on her previous discussions with Sushma Swaraj  
External Minister of India, 14 April 2015

Photo: Office of the Minister of Foreign Affairs of Australia

*It is no longer good enough for advocates of the Chinese claim to base their arguments on such baseless evidence. It is time that a concerted effort was made to re-examine the primary sources for many of the assertions put forward by these writers and reassess their accuracy. The resolution of the disputes depends on it—both in the courtrooms of The Hague and in the waters of the South China Sea.*

Bill Hayton  
Journalist and Author  
“The importance of evidence: fact,  
fiction and the South China Sea,”  
The South China Sea:  
The Struggle for Power in Asia,  
May 2015

*China’s call for consistency and adherence to international legal principles in the region is positive, but leading by example would be far more effective. China should clarify the intent of its reclamation activities in the South China Sea and reaffirm its position that maritime claims cannot be perfected through human development of otherwise uninhabitable features.*

Ryan Santicola  
“Promoting Good Faith in the South  
China Sea,” CSIS-Asia Maritime  
Transparency Initiative  
8 April 2015

*No country has demonstrated that they have historical rights to the Spratlys, simply because it is, and always has been, Dangerous Ground, a place to avoid at all costs. China’s claim to a large chunk of the South China Sea on historical grounds does not seem to be indisputable.*

Dr. Michael Flecker  
Visiting Fellow, Nalanda-Sriwijaya  
Centre of the Institute of Southeast  
Asian Studies (ISEAS), Singapore  
“Archaeology could wreck China’s sea  
claims,” Today Online,  
6 May 2015

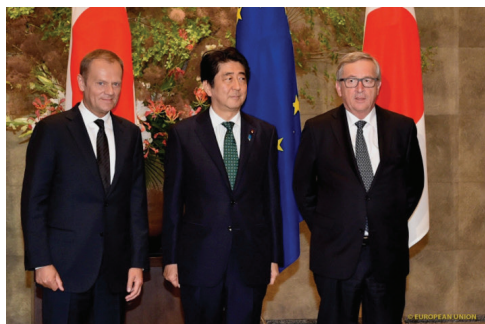


Photo: ec.europa.eu

“Mindful of the uncertainties in the regional security environment, we condemn all violations of international law and of the principles of sovereignty and territorial integrity of states. We underline the need for all parties to seek peaceful, and cooperative solutions to maritime claims, including through internationally recognised legal dispute settlement mechanisms, and to maintain full

freedom of navigation and overflight of the high seas under international law as enshrined in the United Nations Convention of the Law of the Sea.”

Joint Statement by Shinzo Abe, Prime Minister of Japan, Mr. Donald Tusk, President of the European Council, and Mr. Jean-Claude Juncker, President of the European Commission, during the 23rd Japan-EU Summit, Tokyo  
29 May 2015

“[W]e, too, call on all parties involved to refrain from activities that increase tension. We call on them to pursue urgently the settlement of maritime and other disputes peacefully and in accordance with international law. We call on them to be transparent about their claims and to clarify the legal basis for them.”



Michael Fallon  
United Kingdom Secretary of Defence  
IISS Shangri-La Dialogue 2015 Third Plenary Session  
30 May 2015

Photo: www.gov.uk

“The US also continues to emphasize the importance that maritime and territorial disagreements be resolved peacefully in accordance with international law and opposes the use of intimidation, coercion, or force to assert claims. An example of such an attempt at peaceful resolution is the Philippines’ arbitration against China under the Law of the Sea Convention that is being heard by a tribunal in The Hague. Of note, China has refused to participate in this arbitration to date.”

Admiral Samuel Locklear, Commander, US Pacific Command, Statement before the US House of Representatives, 15 April 2015



Photo: www.navy.mil



“(We) underscore the importance of freedom of navigation in, and overflight above, the South China Sea as provided for by universally recognised principles of international law, including the 1982 United Nations Convention on the Law of the Sea (UNCLOS).”

9th ASEAN Defence Ministers’ Meeting (ADMM)  
Langkawi, Malaysia, 16 March 2015

*We should also ask Beijing to clarify the precise extent of its opaque ambit claim to 90 per cent of the South China Sea and to submit to the dispute resolution mechanisms enshrined in UNCLOS as an indicator of its willingness to shelve its territorial claims in the interests of regional stability and joint development of the sea’s resources.*

Alan Dupont  
Professor of International Security at the University of New South Wales, Australia  
“Chinese push in the South China Sea must be resisted,” The Australian,  
13 June 2015

*China and ASEAN should conclude a Code of Conduct on the South China Sea as soon as possible, so as to break the vicious cycle and not let disputes sour the broader relationship. If all parties adhere to international law, including the UN Convention on the Law of the Sea, well, that is the best outcome.*

H.E. Lee Hsien Loong  
Prime Minister, Singapore  
During his opening remarks and keynote address at the  
2015 IISS Shangri-La Dialogue,  
29 May 2015



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