

Arbitration is right; aggressive behavior is not

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When China's Ambassador to ASEAN first wrote an article about China's ill-advised position on the Philippine arbitration case, published in a Jakarta newspaper last December 26, we did not bother to reply as the arguments presented were an old rehash of China's so-called historic rights and were refutations of the rulings issued by the Arbitral Tribunal. Indeed, the Tribunal unanimously affirmed that it had jurisdiction over the case and that "the Philippines' act of initiating this arbitration did not constitute an abuse of process." The Tribunal made it clear as well that "China's non-appearance in these proceedings does not deprive the Tribunal of jurisdiction," and "the Tribunal held that the Philippines had sought to negotiate with China and...international law does not require a State to continue negotiations when it concludes that the possibility of a negotiated solution has been exhausted." No better arguments could have been given than those already issued by the esteemed Arbitral Tribunal.

Article 33(1) of the UN Charter specifically mentions arbitration and judicial settlement as mechanisms for the compulsory settlement of disputes for all the Charter's signatories, including the Philippines and China. Arbitration is not an unfriendly act as China repeatedly claims. In fact, the 1982 Manila Declaration on the Peaceful Settlement of International Disputes Between States, which was adopted by the UN General Assembly, specifically states that the judicial settlement of disputes "should not be considered an unfriendly act between states."

However, with his second article which appeared on 14 January 2016, just as Jakarta was reeling from a deadly terror attack at the heart of its commercial district, the Chinese Ambassador is being deliberately inaccurate and misleading; we are constrained to reply. The article's main premise, as is misleadingly indicated by its title, is an attempt to justify China's coercive and provocative actions in the South China Sea, including the harassment of small fishermen, the rape and plunder of the features in the disputed areas and even well within the Philippines' own exclusive economic zones, and arrogant display of its mighty naval power.

China's Actions Peaceful?

The article tries to pull the wool down the readers' eyes by saying that China's "development activities" would benefit the public good. It conveniently redefined such "development activities" by not mentioning that these consisted of harassment of small Filipino fishermen with water cannons in Bajo de Masinloc (Scarborough Shoal), massive land reclamation and construction, massive destruction of the marine environment in several reefs, imposition of an Air Defense Identification Zone (AIDIZ) in the East China Sea on 23 November and threats of a potential ADIZ in the South China Sea,

imposition of a Fishing Ban in some parts of the South China Sea, unilateral placing of the HD981 Oil Rig in the waters off Vietnam, violations of safety zones of the Galoc Oil Field located 37 nautical miles northwest off the Philippines Palawan Province, its recent test flights in its artificial islands in the South China Sea, and many more aggressive and provocative actions. All in the name of pursuing peace, the article, says.

China has ignored ASEAN's and the international community's repeated calls to stop these atrocious activities and respect well-meaning regional efforts to create an environment conducive to the peaceful and rules-based resolution of disputes and the maintenance of peace and stability in the region. The international community such as the G7, the European Parliament, and ASEAN's major partners, the US, Australia, the UK, Japan, etc, have called upon China to stop her aggressive behavior in the South China Sea including her large-scale land reclamation, construction and militarization of these artificial structures, which leaders of these countries say, upset the status quo and increase tensions in the region. China chose to ignore all these cries for peace and order and happily goes about introducing new and shocking moves that are alarming and dismaying its smaller neighbors and raising the level of concern in the international community. Instead, the article repeats China's attempt to lure ASEAN and other countries with its promise of leading ASEAN on a caravan, a ride into the sunset, as exemplified by what Foreign Minister Wangyi eloquently calls the Asian century, with China's Maritime Silk Road and One Belt One Road proposals.

But there is a growing gap between what China is saying in diplomatic forums and what is really happening in the South China Sea. Despite the beautiful promise of a ride into the sunset, China is accelerating its expansionist agenda and changing the status quo to actualize its claims to nearly all of the South China Sea. China has been the main initiator of all provocative actions that have raised tensions in the region.

What is to be done then?

The Philippines has done its part to arrest this frightening behavior of China by bringing this matter to the appropriate body, the Arbitral Tribunal constituted under the framework of the UNCLOS, a bastion of the principles of international law. Our friends in ASEAN, the EAS, ASEM and many other forums have joined our voice in calling upon China to desist from causing any more destabilizing actions and respect international law. It behooves one and all, individual leaders of peace-loving nations, policy-makers, academics, students, fishermen, indeed, all peoples who seek to maintain the peace and stability that ASEAN has so painstakingly secured for our region, to support, even, champion our call for the rule of law and the preservation of our hard-earned peace and prosperity. When Foreign Minister Retno Marsudi, in her recent Annual Press Statement, unequivocally proclaimed that the Natunas belonged to Indonesia and should not be subjected to any claims by any outside powers, she was making a principled stand to defend the sovereignty of Indonesia above all considerations, under the principles of international law.

We must not let our guards down and should always be vigilant in upholding the rule of law in our region. When the Arbitral Tribunal hands down its decision on the Philippine case against China sometime early this year, we will abide by this decision. We call upon China to do the same. Indeed, all peace-loving citizens of this region and of the world, should abide by the ruling of that body which we have entrusted to be the arbiter of our quest for peace and security.

International law is the great equalizer among states. It allows small countries to stand on equal footing with more powerful states. Those who think "might is right" have it backwards. It is exactly the opposite: "right is might." China must match its own rhetoric of its peaceful rise by refraining from such aggressive actions and show ASEAN and the rest of the world that it can be relied upon as a responsible power in the world instead of it being a major contributor to the instability and conflict that now grips our troubled world. END