

WEST PHILIPPINE SEA ARBITRATION UPDATE

April 2014

PHILIPPINES SUBMITS MEMORIAL



Foreign Affairs Secretary Albert F. Del Rosario delivering his statement on the submission of the Philippine Memorial, 30 March 2014

that support the Philippines' claims, all of which are cited in Volume I. Volumes II through X consist of more than 3,700 pages, including more than 40 maps, for a total submission of nearly 4,000 pages.

The Memorial is the result of an enormous, collaborative effort by the extremely capable and dedicated legal team that has been serving the Philippines in this important case, headed by Solicitor General Francis Jardeleza and a team of lawyers from various agencies, including the OSG, DFA, DOJ, and the Office of the President.

I also wish to thank other government agencies for their invaluable contribution in the generation of documents including:

- The Department of Justice (DOJ);
- The Department of National Defense (DND), particularly the Armed Forces of the Philippines (AFP), Philippine Navy, and Philippine Air Force (PAF);
- The Department of Transportation and Communications, particularly the Philippine Coast Guard (PCG);
- The Department of Environment and Natural Resources, specifically the National Mapping and Resource Information Authority (NAMRIA);
- The Department of Energy (DOE);
- The Bureau of Fisheries and Aquatic Resources (BFAR);
- The Foreign Service Institute (FSI);
- and other agencies such as National Museum, National Historical Commission, National Archives, the Philippine National Police, the Municipality of Kalayaan, and the UP Marine Science Institute.

The Memorial presents the Philippines' case on the jurisdiction of the Arbitral Tribunal and the merits of its claims.

We are also most grateful to our international legal advisers led by Paul Reichler and his team of international

lawyers, including Mr. Lawrence H. Martin, Professor Bernard H. Oxman, Professor Philippe Sands, and Professor Alan Boyle for their invaluable guidance and assistance. (to page 4 please)

Many scholars, though, think that China's claims are essentially bunk. The Law of the Sea Convention, which China signed and ratified, abolished the idea of historical claims as a way to determine maritime rights.

Keith Johnson
"When is a Rock Not a Rock?"
Financial Times
4 April 2014

...no international court or tribunal would agree to base its decision on arguments and contested evidence to the effect that China was the first country (several hundred years ago) to explore the South China Sea and discover, name, and administer its islands. Mere reliance on alleged historical evidence of the kind invoked by Chinese commentators is insufficient to establish sovereignty over the waters enclosed by the nine-dash line or the islands of the South China Sea.

Florian Dupuy and Pierre-Marie Dupuy, "A Legal Analysis of China's Historic Rights Claim in the South China Sea," The American Journal of International Law, Vol. 107, No. 1 (January 2013), pp. 124-141

Despite frequent insistence from Beijing that its claims in the South China Sea are based on international law and encompass only the "islands and adjacent waters" within the nine-dash line, Chinese actions tell a different story. Second Thomas Shoal is not an island or even a rock. It is a low-tide elevation that is not subject to any independent territorial claim under the UN Convention on the Law of the Sea or customary international law. The shoal belongs to whomever has sovereignty over the continental shelf on which it rests - by all indications the Philippines.

Gregory Poling, "The Philippines' South China Sea Memorial: Sailing into the Wind," Center for Strategic and International Studies 3 April 2014

Today, the Philippines submitted its Memorial to the Arbitral Tribunal that is hearing the case it brought against the People's Republic of China under the United Nations Convention on the Law of the Sea in January 2013.

The Philippines' Memorial was submitted in conformity with the Rules of Procedure adopted by the five-member Arbitral Tribunal last August, which established 30 March 2014 as the due date for its submission.

The Memorial presents the Philippines' case on the jurisdiction of the Arbitral Tribunal and the merits of its claims. It consists of ten volumes. Volume I, which is 270 pages in length, contains the Philippines' analysis of the applicable law and the relevant evidence, and demonstrates that the Arbitral Tribunal has jurisdiction over all of the claims made by the Philippines' in its Statement of Claim, and that every claim is meritorious. It sets out the specific relief sought by the Philippines in regard to each of its claims, and shows why it is entitled to such relief.

Volumes II through X contain the documentary evidence and maps

If a large number of countries, including members of ASEAN, speak out in support of the application of international law to resolve disputes, Beijing might conclude that flouting the ruling of the tribunal is too costly, even if China's nine-dash line is found to be illegal.

Bonnie Glaser
Senior Adviser for Asia
Freeman Chair in China Studies
12 February 2014

I am optimistic that the arbitrators will decide they have jurisdiction to hear at least some of the issues presented by the Philippines . . . does have rightful claims to the resources in some of the waters within China's nine-dash line.

Peter Dutton
US Naval War College
13 November 2013

. . . the Philippines will be able to present its arguments on the merits of the case as soon as the jurisdictional hurdle is overcome . . . If I was sitting in the Philippines' chair right now I would be happier than sitting in China's.

Clive Schofield
Director of Research
Australian National Center
for Ocean Research and
Security, 27 Sept 2013

It should be noted that the Philippines has been clever not to challenge those areas where China has exempted itself from binding arbitration.

Carl Thayer
"The South China Sea: China
Rejects UNCLOS Arbitral
Tribunal" Australia Defense
Force Academy, 21 Feb 2013



By filing the case based on the provisions of UNCLOS, we can ascertain who is entitled to what, what are the rights of each one, what are the obligations of every state. I subscribed to this oath when I assumed office. I have to defend our national territory and our sovereignty. We went to arbitration primarily because that is a means to resolve the dispute consistent with the policy of peaceful resolution and in conformity with the international law.

President Benigno Simeon Aquino III
35th Philippine National Police Academy Mandilaab Class of 2014
Camp General Mariano Castañeda, Silang, Cavite, 31 March 2014



. . . territorial disputes in the South China Sea, or what the Philippines calls the West Philippine Sea, be resolved through peaceful, diplomatic means, or in the case of the Philippines, through the tribunal processes. .

Dr. Marty M. Natalegawa
Foreign Minister of Indonesia
6th Philippines-Indonesia Joint Commission on
Bilateral Cooperation, Jakarta, 24 February 2014



Arbitration is one answer. I hope it works. . . whatever the institutional response is . . . it is the will of the people of the region that is very important, and that will of the people of the region is there should be a peaceful resolution.

Salman Khurshid
Minister for External Affairs of India
Press Conference, Manila
24 October 2013



We always encourage, not just here but all over the world, a rules-based rather than a power-based solution to disputes.

William Hague
UK Secretary of State for Foreign Affairs
Keynote speech "United Kingdom and the
Asian Century", Manila, January 2014



All countries should respect the right of any State Party, including the Republic of the Philippines, to avail itself of the dispute resolution mechanisms provided for under the Law of the Sea Convention.

William J. Burns
Deputy Secretary of State
Asia Society Policy Institute Launch, 8 April 2014



On 7 April 2014, a week after the Philippines submitted its Memorial in its arbitration case on the West Philippine Sea, a **bipartisan group of Senators** introduced a resolution reaffirming US support for freedom of navigation and the peaceful resolution of territorial and maritime disputes. Senate Resolution 412 was introduced by Senators Robert Menendez (D-NJ), Marco Rubio (R-FL), Ben Cardin (D-MD), James Risch (R-ID), and John McCain (R-AZ), all members of the Senate Foreign Relations Committee.

www.menendez.senate.gov

... The two sides reiterated that international disputes in the South China Sea should be settled in accordance with international law and through diplomatic or other peaceful means, such as through the use of arbitration. The two sides expressed concern over the ambiguity and potential breadth of some claims and agreed on the importance of all claimants clarifying their territorial and maritime claims. ...

Joint Statement, Fourth Philippines-United States Bilateral Strategic Dialogue (BSD)
Washington DC, March 6-7, 2014



Undersecretary Evan P. Garcia and Assistant Secretary of State Danny Russel, co-chairs of the PH-US BSD

The Philippine arbitration case should be regarded as a positive move in the right direction ...

Lowell Bautista
Faculty of Law
University of Wollongong
Journal of East Asia and
International Law, 2013

If Asia wishes to prevent events in its own neighborhood that mirror those unfolding today in the Ukraine, it must seize this remarkably clear-cut opportunity to support the development of a rules-based system in Asia. Staying silent on the Philippines arbitration case is a tacit vote against such a future.

Bonnie Glaser and
Ely Ratner, "Can Asia prevent its own Crimea?" Center for Strategic and International Studies
26 March 2014

The Philippines. . . has avoided raising any subjects or making any claims that China excluded from arbitral jurisdiction.

Robert Beckman, Director of the
Centre for International Law,
Singapore, June 2013

CENTRIST DEMOCRATIC INTERNATIONAL ADOPTS EMERGENCY RESOLUTION ON THE SOUTH CHINA SEA

The global international political territory, and group Centrist Democrat remembers International (CDI) unanimously these lessons to adopted an emergency resolution on condemn the South China Sea maritime territorial encroachments wherever disputes during a meeting of its they occur." The group "calls on Executive Council on March 19 in China to respect its treaty obligations Brussels, Belgium. under the UN Charter, Convention on the Law of the Seas (UNCLOS) and generally accepted principles on international law."



The resolution was proposed by former Philippines Senator Edgardo J. Angara, who is a member of CDI's Executive Council and Vice President for Asia Pacific.

It says in the resolution that the CDI "recalls [that] history's destructive wars began when democratic nations stood silent in the face of unlawful occupations of other nation's

Likewise, the CDI "strongly urges China to pursue peaceful, lawful, and internationally sanctioned rules on dispute resolution to remove rising tensions in the region and seek peaceful rules-based solutions of the conflicting claims."

The ASEAN Foreign Ministers arrived at a consensus during their 17 January 2014 Ministers' Retreat in Myanmar that recent developments in the South China Sea are serious concerns that affect the region's peace and stability.

They called on all parties to exercise self-restraint in the conduct of their activities, to undertake the full and



www.mofa.gov.mm/?p=1811



effective implementation of the Declaration on the Conduct of Parties in the South China Sea (DOC), to continue working towards the conclusion of the Code of Conduct (COC), and to peacefully settle their disputes in accordance with international law including the 1982 UN Convention on the Law of the Sea. The Foreign Ministers also reaffirmed ASEAN's Six-Point Principles on the South China Sea and the importance of the maintenance of peace and stability, maritime security, freedom of navigation in and over flight above the South China Sea.

Any use of the "nine dash line" by China to claim maritime rights not based on claimed land features would be inconsistent with international law.

. . . The international community would welcome China to clarify or adjust its nine-dash line claim to bring it in accordance with the international law of the sea. . .

. . . we fully support the right of claimants to exercise rights they may have to avail themselves of peaceful dispute settlement mechanisms. The Philippines chose to exercise such a right last year with the filing of an arbitration case under the Law of the Sea Convention.



www.foreignaffairs.house.gov

Daniel R. Russel
Assistant Secretary, Bureau of East Asian and Pacific Affairs
House Foreign Affairs' Subcommittee on Asia and the Pacific
Washington DC, 5 February 2014

By explicitly rejecting the nine-dash line, Assistant Secretary Russel and the administration have drawn our own line in the right place. They have made clear that our objection is a principled one, based on international law, not a mere rejection of a claim simply because it is China's. So long as our approach to the South China Sea remains firmly grounded on principle and international law, the U.S. can accomplish our objectives, strengthen the position of other claimants with respect to their rights and avoid the appearance of seeking confrontation with China over a sovereignty issue.



www.state.gov

All countries should respect the right of any States Party, including the Republic of the Philippines, to avail themselves of the dispute resolution mechanisms provided for under the Law of the Sea Convention. We hope that this case serves to provide greater legal certainty and compliance with the international law of the sea.

Marie Harf
Deputy Spokesperson
US Department of State, 30 March 2014

**Jeffrey A. Bader, "The U.S. and China's Nine-Dash Line: Ending the Ambiguity" Brookings Institute
4 February 2014**

China's reservation does not appear to incorporate a key aspect of the dispute, i.e. whether the disputed islands generate independent maritime zones under UNCLOS that a state could benefit from, for example by gaining rights to hydrocarbon reserves or fisheries resources around those islands. In addition, a statement by the Tribunal that the boundaries in the South China Sea are governed by UNCLOS, such that all maritime boundaries must be delineated in accordance with UNCLOS would be significant politically.

The government of Japan supports the Philippines' use of procedures under the United Nations Convention on the Law of the Sea . . . such an action contributes to the maintenance and enhancement of the international order in the region based on the rule of law.

Koichi Mizushima
Deputy Press Secretary, Foreign Ministry of Japan
1 April 2014

PHILIPPINES SUBMITS MEMORIAL *(from p.1)*

Ordinarily, the next step in an arbitration of this nature would be the filing of a Counter-Memorial by the other Party. However, it is currently unknown whether China will appear in the case, or whether it will continue its present policy of abstaining from the proceedings.

Under the Rules of Procedure, the Arbitral Tribunal will decide on next steps and advise the Parties.

The Philippines will follow the guidance of the Arbitral Tribunal in regard to the publication of the Memorial.

In the meantime, out of respect for the Tribunal and the arbitral process, it is obliged to preserve confidentiality.

With firm conviction, the ultimate purpose of the Memorial is our national interest.

It is about defending what is legitimately ours.

It is about securing our children's future.

It is about guaranteeing freedom of navigation for all nations.

It is about helping to preserve regional peace, security and stability.

And finally, it is about seeking not just any kind of resolution but a just and durable solution grounded on International Law. 🌐

**Donald Francis Donovan et al. (eds)
"South China Sea: Maritime Dispute Resolution by Arbitration?"
Debevoise & Plimpton LLP
Arbitration Quarterly, Issue No. 3,
September 2013**

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