

The Issues, Investors and Traders in SAARC Countries Face Due to Lack of Professionalism: The Way We Practice Law

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I. OVERVIEW OF PHILIPPINE POSITION IN THE WPS/SCS DISPUTES

The Philippines is involved in a territorial and maritime dispute with the People's Republic of China (PRC) over the West Philippine Sea (WPS). Following the Scarborough Shoal stand-off of 2012, which marked the resurgence of PRC's more pro-active stance in pursuing its nine-dashed line (9DL) claim in the South China Sea (SCS) and WPS, the Philippine Government pursued a comprehensive approach to promote Philippine territorial integrity and sovereignty?

Mindful of the power asymmetry between the Philippines and China, as well as the latter's strategy of power politics in the SCS dispute; the Philippine Government pursued a liberal-legalistic approach through international arbitration. (De Castro, Renato, 2015) Utilizing the peaceful settlement mechanism provided by the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the Philippine Government filed an arbitration case against China in January 2013. The decision of the Philippine Government to seek the assistance of an impartial international court in resolving the WPS dispute was influenced by national and regional security considerations.

The Philippines is an archipelagic state and maritime nation. In this regard, the Philippines depend on the WPS in securing its food resources, conducting trade with other countries, and ensuring the survival of key maritime industries (e.g., fisheries and ship-building). Moreover, the Philippine Government recognizes the economic and development opportunity presented by the possibly large oil and hydrocarbon deposits in the WPS. Clearly, the WPS dispute is a matter of national interest.

On the other hand, the Philippine Government understands that peace and stability in the WPS and SCS is crucial for other nations due to the economic relevance of these bodies of water in regional and global trade. The SCS is part of a vital maritime crossroad in the Asia-Pacific through which more than half of the world's shipping tonnage and 80% of

crude oil shipments are transported. It is estimated that \$5.3 trillion of annual trade passes through the SCS.

Moreover, as noted by the International Association of Ports and Harbor's, more than half of the world's top ten shipping ports are located around the SCS. Hence, an armed conflict in the WPS or the SCS will not only affect the Philippines and other claimant states but also other nation-states whose domestic economies depend on the stability of trade routes in the SCS.

The Philippine government recognizes how the situation in the WPS may affect the resolution of the SCS disputes. As such, it is determined to defend its claim in a peaceful and lawful manner. In its efforts to peacefully resolve the WPS dispute, it promotes the rule of law and freedom of navigation and over flight in the disputed waters for it believes that international law is a great equalizer.

Moreover, it seeks to impress these concerns upon the international community to garner support for the peaceful resolution of the WPS and SCS disputes and promote regional security and stability in the Asia-Pacific region.

II. PHILIPPINE GOVERNMENT'S COMPREHENSIVE APPROACH IN THE WPS/SCS DISPUTES

The Philippine Government's actions gravitate on the legal, politico-diplomatic and defense dimensions of the dispute.

A. Legal Track

Having exhausted all available political and diplomatic avenues for a peaceful resolution of its territorial and maritime dispute with the PRC, the Philippine Government filed a compulsory arbitration case in the International Tribunal for the Law of the Sea (ITLOS) under Article 287 and Annex VII of UNCLOS. Through the Embassy of the PRC in Manila, China was notified of the arbitration case on the same day that it was filed.

However, in February 2013, China rejected the Philippine notification in view of its 2006 statement submitted to the UNCLOS which expressed that the PRC

"does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b), and (c) of Article 298 of the Convention. (Calonzo, Andrea, 2015) Since then, PRC's foreign ministry has continued to reiterate that China has "indisputable sovereignty over the SCS.

Nonetheless, as a compulsory arbitration case, the proceedings will continue despite PRC's non-participation. In this regard, the preliminary issues to be decided upon by the International Arbitral Tribunal in The Hague include questions on the court's legal jurisdiction over the case and the applicability of the court's decision vis-a-vis China's reservations.

However, with respect to the arguments cited in the Philippine Government's memorial, its prayer has a solid legal footing. In a statement delivered on 7 July 2015 before the Permanent Court of Arbitration in The Hague, Netherlands, Honourable Albert F Del Rosario, Secretary of Foreign Affairs of the Philippines outlined the principal claims of the Philippines in its arbitration case against the People's Republic of China.

These include: First, "that China is not entitled to exercise what it refers to as "historic rights" over the waters, seabed and subsoil beyond the limits of its entitlements under the Convention Second, "that the so-called nine dash line has no basis whatsoever under international law insofar as it purports to define the limits of China's claim to historic rights" Third, "that the various maritime features relied by China as a basis upon on which to assert its claims in the South China Sea are not islands that generate entitlement to an exclusive economic zone or continental shelf. Rather, some are "rocks" within the meaning of Article 121, paragraph 3; others are low-tide elevations; and still others are permanently submerged. As a result, none are capable of generating entitlements beyond 12M, and some generate no entitlements at all China's recent massive reclamation activities cannot lawfully change the original nature character of these features". Fourth, "that China has breached the Convention by interfering with the Philippines' exercise of its sovereign rights and jurisdiction" and Fifth, "that China has irreversibly damaged the regional marine environment, in breach of UNCLOS, by its destruction of coral reefs in the South China Sea, including areas within the Philippines' EEZ, by its destructive and hazardous fishing practices, and by its harvesting of endangered species."

In its efforts to promote the rule of law in the WPS and SCS through a peaceful dispute settlement mechanism, the Philippine Government has been commended and supported by other nations across the globe. For instance, during his state visit to the Philippines last April 2014, US President Barack Obama expressed that the US is "very supportive of President Benigno's approach to go before the tribunal for the law of the sea and to seek international arbitration that can resolve this in a diplomatic fashion."

On the other hand, during the state visit of President Aquino to Germany in September 2014, German Chancellor Angela Merkel expressed that the international dispute settlement arrangements based on UNCLOS is a "very good way forward" in settling border disputes. Also, during his meeting with President Aquino in September 2014, European Commission President Jose Manuel Barroso expressed that the European Union "encourages all parties to seek peaceful solutions in accordance with international law.

Meanwhile, in a speech during the 9th East Asia Summit in 2014, Indian Prime Minister Narendra Modi expressed that "following international law and norms" is important in promoting peace and stability in the SCS. He also noted that the 1982 UNCLOS should be the "basis for resolving disputes peacefully.

Moreover, during the state visit of President Aquino to Japan last 4 June 2015, Prime Minister Shinzo Abe expressed that Japan agrees with the "Philippines' push to uphold the principle of rule of law in disputed territories through arbitration procedures"

However, as a seemingly shrewd attempt to change facts on the ground before the International Arbitral Tribunal issues a decision on the WPS dispute arbitration case, China has engaged in massive land reclamation activities in the KIG. Since January 2013, PRC has transformed land and sea features in Cuarteron Reef, Fiery Cross Reef, Gaven Reef, Hughes Reef, Johnson Reef, and Mischief Reef into artificial islands and has constructed buildings, piers, and jetties therein. Currently, China is likewise engaged in land reclamation activities in Subi Reef, Sand Cay, and West Reef.

B. Politico Diplomatic Track

Mindful of the absence of an international police to implement a prospective favourable decision of the

International Arbitral Tribunal, it can be construed that the Philippine Government seeks the cooperation of other states in promoting the rule of law and freedom of navigation and over flight in the WPS and SCS. Foremost in the Philippines' diplomatic efforts to resolve the WPS and SCS disputes is its political cooperation with the members of the Association of Southeast Asian Nations (ASEAN).

The Philippine Government continues to push for the expeditious conclusion of the ASEAN- China Code of Conduct in the SCS (COC). Building on the principles identified in the 2002 ASEAN-China Declaration on the Conduct of Parties in the SCS (DOC), an ASEAN-China COC would lessen the probability of maritime and/or naval armed conflict in the SCS and would bring the dispute resolution among parties in conformity with internationally recognized laws and norms, such as UNCLOS.

Moreover, as a set of multilaterally supported rules, the COC can enhance the level of trust and confidence among parties. Likewise, it can pave the way for institutionalizing mechanisms to address unaltered encounters at sea and manage other emergencies, preventing conflict escalation, and ensuring the efficiency of humanitarian assistance and disaster relief (HADR) in East Asia.

The Philippine Government recognizes that an issue as immense as the 9DL affects all ASEAN member-states and firmly believes that they must work collectively to overcome the first hurdle in resolving the SCS disputes-the implementation of the DOC and early conclusion of the COC. Hence, in many seminars, workshops, and meetings of various multilateral platforms (e.g., ARF, ADMM, ADMM+, AFMM, and NADI), the Philippines reiterates the value of the COC in promoting regional peace and stability in the Asia-Pacific.

The Philippines' politico-diplomatic efforts to level the playing-field in the SCS dispute garnered support from a host of nations. The primary supporters of the Philippines in internationalizing the relevance of the SCS disputes are US and Japan. Sharing the aspirations of the Philippines for regional security and viewing itself as a "pacific power," the US has engaged other countries (e.g., Japan, India, South Korea, Malaysia, Vietnam, and the Philippines) to promote the rule of law and freedom of navigation and over flight in the SCS. All this has been beneficial in the Philippine Government's effort in influencing other countries to make their claims in conformity with UNCLOS as well

as in its efforts towards the expeditious conclusion of the COC.

On the other hand, through a joint statement by President Benigno Aquino III and then Prime Minister Yoshihiko Noda in 2011, Japan and the Philippines have agreed that "freedom of navigation, unimpeded commerce, and compliance with established international law including the UNCLOS and the peaceful settlement of disputes" are in the interest of both countries. Furthermore, during the 2014 Shangri-La Dialogue in Singapore, Japanese Prime Minister Shinzo Abe expressed that Japan will support the efforts of ASEAN countries in ensuring "the security of the seas and the skies, and thoroughly maintain freedom of navigation and freedom of over flight." Moreover, he expressed that the Japanese Government "supports the efforts by the Philippines calling for a resolution to the dispute in the South China Sea."

C. Defence Track

Defense of Japan holds promise in enhancing the maritime security capabilities of the AFP through the sharing of defense technology.

III. CONCLUSION

In its effort to address the WPS and SCS security dilemma, the Philippine Government puts premium on the protection and promotion of Philippine sovereignty and territorial integrity. Hence, it seeks to ensure the unimpeded exercise of its maritime rights in the WPS enshrined in the 1982 UNCLOS.

The Scarborough Shoal incident of 2012 and PRC's massive land reclamation activities in the SCS revealed that China's territorial and maritime assertiveness in the SCS can challenge the freedom of navigation and over flight in the High Seas and in the EEZs of coastal states. In view of these developments, the Philippine Government has recognized the power asymmetry between the Philippines and China as well as the realpolitik context of the SCS dispute. Accordingly, it has resorted to international law in resolving the SCS dispute.

Due to the economic relevance of the SCS as an international maritime crossroad, the Philippine Government believes that the WPS and SCS disputes are pressing security issues not only for the claimant states but also for all states in the Asia-Pacific region and in the whole world. Hence, the Philippine Government seeks to promote cooperation among nation-states in influencing the PRC to respect and conform to the rule of law and internationally