

Statement Before the Permanent Court of Arbitration

Peace Palace, The Hague, Netherlands

**WHY THE PHILIPPINES BROUGHT THIS CASE TO ARBITRATION
AND ITS IMPORTANCE TO THE REGION AND THE WORLD**

Republic of the Philippines v. People's Republic of China

HON. ALBERT F. DEL ROSARIO

Secretary of Foreign Affairs

07 July 2015

1. Mr. President, distinguished Members of the Tribunal, it is a great honor to respectfully appear before you on behalf of my country, the Republic of the Philippines. It is indeed a special privilege to do so in a case that has such importance to all Filipinos and -- if I may add -- to the rule of law in international relations.
2. Mr. President, the Philippines has long placed its faith in the rules and institutions that the international community has created to regulate relations among States. We are proud to have been a founding member of the United Nations, and an active participant in that indispensable institution.
3. Its organs, coupled with the power of international law, serve as the great equalizer among States, allowing countries, such as my own, to stand on an equal footing with wealthier, more powerful States.

4. Nowhere is this more true, Mr. President, than with respect to the progressive development of the law of the sea, which culminated in the adoption of the Law of the Sea Convention in 1982. That instrument, which has rightly been called a “Constitution for the Oceans,” counts among its most important achievements the establishment of clear rules regarding the peaceful use of the seas, freedom of navigation, protection of the maritime environment and, perhaps most importantly, clearly defined limits on the maritime areas in which States are entitled to exercise sovereign rights and jurisdiction.
5. These are all matters of central significance to the Philippines. Indeed, given our lengthy coastline, our status as an archipelagic state, and our seafaring tradition, the rules codified in the law of the sea have always had particular importance for the Philippines. The Philippines is justifiably proud of the fact that it signed the Convention on the day it was opened for signature, on 10 December 1982, and was one of the first States to submit its instrument of ratification, which it did on 8 May 1984.
6. The Philippines has respected and implemented its rights and obligations under the Convention in good faith. This can be seen in the amendment of our national legislation to bring the Philippines’ maritime claims into compliance with the Convention, by converting our prior straight baselines into archipelagic baselines in conformity with Articles 46 and 47, and by providing that the maritime zones of the Kalayaan Island Group and Scarborough Shoal in the South China Sea would be consistent with Article 121.
7. The Philippines took these important steps, Mr. President, because we understand, and accept, that compliance with the rules of the Convention is required of all States Parties.
8. I mentioned a moment ago the equalizing power of international law. Perhaps no provisions of the Convention are as vital to achieving this critical objective than Part XV. 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.
9. Mr. President, allow me to respectfully make it clear: in submitting this case, the Philippines is NOT asking the Tribunal to rule on the territorial sovereignty aspect of its disputes with China.
10. We are here because we wish to clarify our maritime entitlements in the South China Sea, a question over which the Tribunal has jurisdiction. This is a matter that is most important not only to the Philippines, but also to all coastal States that border the South China Sea, and even to all the States Parties to UNCLOS. It is a dispute that goes to the very heart of UNCLOS itself. Our very able counsel will have much more to say about this legal dispute over the interpretation of the Convention during the course of these oral hearings. But in

my humble layman's view, the central legal dispute in this case can be expressed as follows:

11. For the Philippines, the maritime entitlements of coastal States – to a territorial sea, exclusive economic zone and continental shelf, and the rights and obligations of the States Parties within these respective zones – are established, defined and limited by the express terms of the Convention. Those express terms do not allow for – in fact they preclude – claims to broader entitlements, or sovereign rights, or jurisdiction, over maritime areas beyond the limits of the EEZ or continental shelf. In particular, the Convention does not recognize, or permit the exercise of, so called “historic rights” in areas beyond the limits of the maritime zones that are recognized or established by UNCLOS.
12. Sadly, China disputes this, Mr. President, in both word and deed. It claims that it is entitled to exercise sovereign rights and jurisdiction, including the exclusive right to the resources of the sea and seabed, far beyond the limits established by the Convention, based on so-called “historic rights” to these areas. Whether these alleged “historic rights” extend to the limits generally established by China's so-called “nine dash line”, as appears to be China's claim, or whether they encompass a greater or a narrower portion of the South China Sea, the indisputable fact, and the central element of the legal dispute between the Parties, is that China has asserted a claim of “historic rights” to vast areas of the sea and seabed that lie far beyond the limits of its EEZ and continental shelf entitlements under the Convention.
13. In fact, China has done much more, Mr. President, than to simply claim these alleged “historic rights.” It has acted forcefully to assert them, by exploiting the living and non-living resources in the areas beyond the UNCLOS limits while forcibly preventing other coastal States, including the Philippines, from exploiting the resources in the same areas – even though the areas lie well within 200 M of the Philippines' coast and, in many cases, hundreds of miles beyond any EEZ or continental shelf that China could plausibly claim under the Convention.
14. The legal dispute between the Philippines and China over China's claim to and exercise of alleged “historic rights” is a matter falling under the Convention, and particularly Part XV, regardless of whether China is claiming that “historic rights” are recognized under the Convention, or allowable under the Convention because they are not precluded by it. China has made both arguments in its public statements. But it makes no difference for purposes of the characterization of this dispute as one calling for the interpretation or application of the Convention. The question raised by the conflicting positions of the Philippines and China boils down to this: Are maritime entitlements to be governed strictly by UNCLOS, thus precluding claims of maritime entitlements based on “historic rights”? Or does the UNCLOS allow a State to claim entitlements based on “historic” or other rights even beyond those provided for in the Convention itself?

15. As our counsel will explain, Mr. President, any recognition of such “historic rights” conflicts with the very character of UNCLOS and its express provisions concerning the maritime entitlements of coastal States. This calls indisputably for the proper interpretation of the fundamental nature of the Convention.
16. China’s assertion and exercise of its alleged rights in areas beyond its entitlements under UNCLOS have created significant uncertainty and instability in our relations with China and in the broader region. In this respect, I note the presence here today of representatives of Vietnam, Malaysia, Indonesia, Thailand and Japan to observe these critical proceedings.
17. Mr. President, China has claimed “historic rights” in areas that are beyond 200 M from its mainland coasts, or any land feature over which it claims sovereignty, and within 200 M of the coasts of the Philippines’ main islands, and exploited the resources in these areas while preventing the Philippines from doing so. It has therefore, in the Philippines’ view, breached the Convention by violating Philippine sovereign rights and jurisdiction. China has pursued its activities in these disputed maritime areas with overwhelming force. The Philippines can only counter by invoking international law. That is why it is of fundamental importance to the Philippines, and we would submit, for the rule of law in general, for the Tribunal to decide where and to what limit China has maritime entitlements in the South China Sea; where and to what limit the Philippines has maritime entitlements; where and to what extent the Parties’ respective entitlements overlap and where they do not. None of this requires or even invites the Tribunal to make any determinations on questions of land sovereignty, or delimitation of maritime boundaries.
18. The Philippines understands that the jurisdiction of this tribunal convened under UNCLOS is limited to questions that concern the law of the sea. With this in mind, we have taken great care to place before you only claims that arise directly under the Convention. As counsel for the Philippines will discuss at length in the coming days, we have, in essence, presented five (5) principal claims. They are:
 - *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 upon by China as a basis upon 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 and 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.

19. Mr. President, the Philippines is committed to resolving its disputes with China peacefully and in accordance with international law. For over two decades, we diligently pursued that objective bilaterally, regionally and multilaterally. I will not here take this Tribunal through the Philippines’ painstaking and exhaustive diplomatic efforts, which are set out in detail in our written pleadings. I will, however, mention a few representative examples, if I may.

20. As far back as August 1995, after China seized and built structures on Mischief Reef -- a low-tide elevation located 126 nautical miles from the Philippine island of Palawan and more than 600 nautical miles from the closest point on China’s Hainan Island -- the Philippines sought to address China’s violation of its maritime rights diplomatically. During those exchanges, the Philippines and China agreed that the dispute should be resolved in accordance with UNCLOS. As the then Chinese Vice Minister for Foreign Affairs, Mr. Tang Jiaxuan, stated two years later during bilateral negotiations, China and the Philippines should “approach the disputes on the basis of international law, including the United Nations Convention on the Law of the Sea, particularly its provisions on the maritime regimes like the exclusive economic zone.”

21. The mutual acceptance that the Philippines’ disputes with China must be resolved in accordance with UNCLOS was also reflected in a *Joint Communiqué* issued in July 1998 upon completion of bilateral discussions between my predecessor, Foreign Secretary Domingo Siazon, and China’s Foreign Minister Tang Jiaxuan. The Communiqué recorded that, and I quote, “The two sides exchanged views on the question of the South China Sea and reaffirmed their commitment that the relevant disputes shall be settled peacefully in accordance with the established principles of international law, including the United Nations Convention on the Law of the Sea.” (End of quote)

22. Regrettably, neither the bilateral exchanges I have mentioned, nor any of the great many subsequent exchanges, proved capable of resolving the impasse caused by China's intransigent insistence that China alone possesses maritime rights in virtually the entirety of the South China Sea, and that the Philippines must recognize and accept China's sovereignty before meaningful discussion of other issues could take place.
23. The Philippines has also been persistent in seeking a diplomatic solution under the auspices of ASEAN. This has proven no more successful than our bilateral efforts. In fact, China has insisted that ASEAN cannot be used to resolve any territorial or maritime disputes concerning the South China Sea, and that such issues can only be dealt with in bilateral negotiations. ASEAN and China have yet to conclude a binding code of conduct in the South China Sea. The most that has been achieved was the issuance, in 2002, of a "Declaration on the Conduct of Parties in the South China Sea." Although that document recorded the parties' commitment to work toward the "eventual" establishment of a code of conduct in the South China Sea, China's intransigence in the 13 years of subsequent multilateral negotiations has made that goal nearly unattainable.
24. Nonetheless, Mr. President, the 2002 DOC is significant in at least one important respect: the ASEAN Member States and China undertook therein to "resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, *including the 1982 UN Convention on the Law of the Sea*." In so doing, the Declaration encouraged those States, should they prove unable to resolve their disputes through consultations or negotiations, to do so in accordance with the Convention, which includes, of course, the dispute resolution procedures under Part XV.
25. Mr. President, over the years, China's positions and behavior have become progressively more aggressive and disconcerting. Outside observers have referred to this as China's "salami-slicing" strategy: that is, taking little steps over time, none of which individually is enough to provoke a crisis. Chinese military officials themselves have referred to this as its "cabbage" strategy: peeling one layer off at a time. When these small steps are taken together, however, they reflect China's efforts to slowly consolidate *de facto* control throughout the South China Sea.
26. Two more recent incremental steps caused the Philippines to conclude that it had no alternative other than to invoke compulsory procedures entailing a binding decision. The first was China's transmittal of its nine-dash line claim to the United Nations in 2009, after which, it prevented the Philippines from carrying out long-standing oil and gas development projects in areas that are well inside the Philippines' 200 M EEZ and continental shelf.

27. Secondly, in 2012, China forcibly expelled Philippine fishermen from the maritime areas around Scarborough Shoal where the Filipino fishermen have for generations been fishing without so much as a protest from China.
28. These and other acts by China caused the Philippines to conclude that continued diplomatic efforts, whether bilateral or multilateral, would be futile, and that the only way to resolve our maritime disputes was to commence the present arbitration.
29. Subsequent events, including China's acceleration of massive land reclamation activities, which it has undertaken -- and continues to undertake -- in blatant disregard of the Philippines rights' in its EEZ and continental shelf, and at tremendous cost to the marine environment in violation of UNCLOS -- only serve to reconfirm the need for judicial intervention.
30. Mr. President, I would like to conclude by conveying my country's deepest appreciation for the considerable time and attention you have devoted to these proceedings. The case before you is of the utmost importance to the Philippines, to the region, and to the world. In our view, it is also of utmost significance to the integrity of the Convention, and to the very fabric of the "legal order for the seas and oceans" that the international community so painstakingly crafted over many years.
31. If China can defy the limits placed by the Convention on its maritime entitlements in the South China Sea, and disregard the entitlements of the Philippines under the Convention, then what value is there in the Convention for small States Parties as regards their bigger, more powerful and better armed neighbors? Can the Philippines not invoke Part XV to challenge China's activities as violations of its obligations and the Philippines' rights, considering that the Philippines' claims call for a mere interpretation and application of the Convention and do not fall within any of the jurisdictional exclusions of Articles 297 or 298?
32. Mr. President, if the Philippines cannot invoke Part XV, then what remains of the obligation regarding judicial settlement of disputes that was such a key element of the comprehensive package that made the Convention acceptable to all State Parties?
33. We understand, Mr. President, that in the exercise of its collective wisdom and judgment, this body has decided to bifurcate the proceedings and to limit these current hearings to the issue of jurisdiction. In this respect, we shall explain in full how our case falls squarely within the jurisdiction of this Tribunal, to the end that justice and fair play may prevail and the Tribunal would recognize its jurisdiction over the case and allow the Philippines to present the actual merits of our position.

34. In the Philippines' view, it is not just the Philippines' claims against China that rest in your capable hands. Mr. President, it is the spirit of UNCLOS itself. That is why, we submit, these proceedings have attracted so much interest and attention. We call on the Tribunal to kindly uphold the Convention and enable the rule of law to prevail.

35. I humbly thank you, Mr. President, and distinguished Members of the Tribunal. May I now ask that Philippines' counsel, Mr. Paul Reichler, be called to the podium.