The Sino-Philippine Arbitration of the South China Sea Nine-Dash Line Dispute: Applying the Rule on Default of Appearance

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Introduction

On January 22, 2013, the Philippines presented a diplomatic notification to China under Article 287 and Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). It aimed at initiating arbitral proceedings to challenge China’s claims and entitlement to areas of the South China Sea (SCS) and the underlying seabed, which the Philippines requests the Tribunal to declare as its exclusive economic zone (EEZ) and continental shelf.1 Based on the Philippines’ claims and the relief sought under Sections III and V of the “Notification and Statement of Claim” (the Notification),2 there are five groups of claims:3

† This article is dedicated to Professor Thomas Mensah, who coached the author in 1993–1994 at Leiden University for the Manfred Lachs International Space Law Moot Court Competition. The points presented in this article only comment on the Philippines’ statement and arguments contained in its diplomatic notification released on January 22, 2013. The opinions expressed here do not represent those of any government agency.
2 For the information released by the Permanent Court of Arbitration, serving as Registry of this arbitration, see online: <http://www.pca-cpa.org/showpage.asp?pag_id=1529>.
4 See paras. 31 (Section III: The Philippines’ Claims) and 41 (Section V: Relief Sought) of the Notification, id.
First, China’s rights concerning the SCS maritime areas are those established by UNCLOS only and consist of the territorial sea, the contiguous zone, the EEZ and the continental shelf. China’s maritime claims therein based on the “nine-dash line (U-shaped line)” contravene UNCLOS and are invalid. Secondly, the Mischief, McKennan, Gaven and Subi Reefs are submerged features not above sea level at high tide, and should not be deemed as islands or rocks according to Article 121 of UNCLOS. None of them are located on China’s continental shelf. Rather, the Mischief and McKennan Reefs are part of the Philippines’ continental shelf. China’s occupation of these four maritime features and construction activities thereon are unlawful and should be terminated.

Thirdly, Scarborough Shoal and the Johnson, Quarteron, and Fiery Cross Reefs should be considered as rocks under Article 121(3), and may only generate state entitlement to the territorial sea. Having unlawfully claimed maritime entitlements beyond 12 nautical miles (NM) from these features, China should refrain from preventing Philippine vessels from exploiting the living resources in waters adjacent to Scarborough Shoal and Johnson Reef, and from undertaking other activities inconsistent with UNCLOS at or in the vicinity of these features.

Fourthly, the Philippines is entitled under UNCLOS to a 12-NM territorial sea, a 200-NM EEZ, and a continental shelf measured from its archipelagic baselines. China has unlawfully claimed and exploited the living and non-living resources in this EEZ and continental shelf, and prevented the Philippines from exploiting the living and non-living resources therein.

Finally, China has unlawfully interfered with the Philippines’ exercise of its navigational rights and other rights under UNCLOS within and beyond the Philippines’ EEZ. China should desist from these unlawful activities.

On February 19, 2013, China officially refused to join the litigation. One of the reasons is that its 2006 Declaration covers the disputes brought by the Philippines and deprives the Arbitral Tribunal of necessary jurisdiction to...