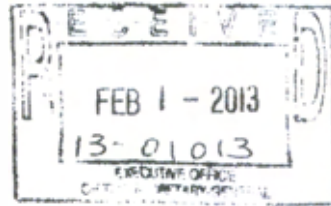


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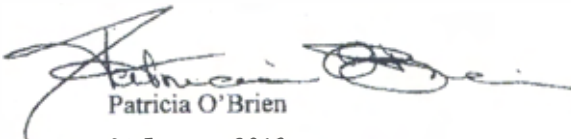


Note to Ms. Malcorra

Philippines - international arbitration against China re South China Sea

(13-00683)

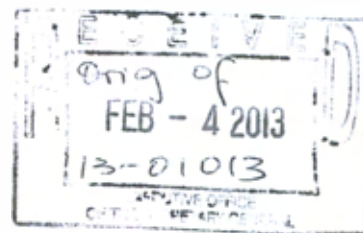
1. Further to my Note of 22 January 2013 (attached), this is to provide you with a brief update on the above-captioned matter.
2. On 23 January 2013, Mr. Sergey Tarasenko, Director, DOALOS/OLA, met with H.E. Mr. Libran N. Cabactulan, Permanent Representative of the Philippines, at the latter's request. Ambassador Cabactulan informed the Secretariat about the initiation by his country of the arbitral proceedings against China, restating the position of the Philippines as summarized in paragraph 2 of my Note of 22 January 2013. In addition, he expressed appreciation for the comment made by the Secretary-General to the press on 22 January 2013. In that comment, the Secretary-General stated that the dispute should be resolved in a peaceful and amicable manner and that the UN stands ready to provide technical assistance. ~~Ambassador Cabactulan also mentioned that he had requested an urgent meeting with the Secretary-General to discuss the matter.~~ I understand that this meeting will take place on 8 February. OLA is working with DPA to prepare relevant materials for that meeting.
3. On 30 January 2013, Mr. Tarasenko met with Ms. Guo Xiaomei, Legal Adviser of the Permanent Mission of China, at her request. Ms. Guo informed that China considers the initiative by the Philippines as a "political provocation under the guise of a legal action." She reiterated that China's position is that all disputes in the South China Sea should be solved through bilateral negotiations among the parties concerned. She informed the Secretariat that China had not yet issued any official response to the Philippines' notification but that it had engaged with the Philippines in informal consultations with a view to convincing it to "correct the mistake" and to abandon the arbitral proceedings.
4. We will continue to monitor the situation and keep you informed of any important developments.
5. Finally, I wish to note that the role of the Secretary-General under UNCLOS in relation to arbitral proceedings is relatively limited. Pursuant to Annex VII to UNCLOS, Secretary-General draws up and maintains a list of arbitrators from among which the members of the arbitral tribunal may be chosen. This function is being discharged on his behalf by the Treaty Section of my Office.

  
Patricia O'Brien  
31 January 2013

LEG/02/007; POL/04/002

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*Central*



**Note to Ms. Malcorra**

**Philippines - international arbitration against China re South China Sea**

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Patricia O'Brien

31 January 2013

13-0101007 : 104/04/003

**Note to Ms. Malcorra**

**Philippines - international arbitration against China re South China Sea**

1. According to today's news reports, Mr. Albert F. del Rosario, Secretary for Foreign Affairs of the Philippines, stated earlier today that "[T]his afternoon, the Philippines has taken the step of bringing China before an Arbitral Tribunal under Article 287 and Annex VII of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) in order to achieve a peaceful and durable solution to the dispute over the West Philippine Sea (WPS)."
2. The Philippines asserted, *inter alia*, that (i) so-called nine-dash line claim of China that encompasses virtually the entire South China Sea/West Philippine Sea [see attachment] is contrary to UNCLOS and thus unlawful; (ii) China has laid claim to, occupied and built structures on certain features that are parts of the Philippine continental shelf, or the international seabed; and (iii) China has interfered with the lawful exercise by the Philippines of its rights within its legitimate maritime zones.
3. The Philippines is asking the Arbitral Tribunal, *inter alia*, to declare that China's maritime claims in the South China Sea are contrary to UNCLOS and invalid; and to require China to desist from activities that violate the rights of the Philippines in its maritime domain in the West Philippine Sea.
4. According to the news reports, Ma Keqing, Chinese ambassador to the Philippines, reiterated that "China has indisputable sovereignty over the islands in the South China Sea and its adjacent waters" and stressed that the disputes should be settled through one-on-one negotiations.
5. Concerning the settlement of disputes under UNCLOS, an arbitral tribunal is a default mechanism for parties that have not agreed on another one. In 2006, China made an optional Declaration under UNCLOS, excluding certain categories of disputes, including those relating to sea boundary delimitations, from compulsory procedures entailing binding decisions. The Philippines, on the other hand, stated that it was conscious of that Declaration and that it had avoided raising subjects or making claims that China has, by virtue of that Declaration, excluded from arbitral jurisdiction.
6. It appears that the maritime claims by China in the South China Sea are derived from their sovereignty claims over the offshore land territory (islands, rocks, etc.) in that body of water. Historically, China never accepted a third party settlement of a dispute related to the sovereignty over land or insular territory.

  
Patricia O'Brien  
22 January 2013

cc: Mr. Feltman

Attached Map

