

ARBITRATION UNDER ANNEX VII OF THE UNITED NATIONS  
CONVENTION ON THE LAW OF THE SEA

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**REPUBLIC OF THE PHILIPPINES**

**v.**

**PEOPLE'S REPUBLIC OF CHINA**

SUPPLEMENTAL WRITTEN SUBMISSION OF THE PHILIPPINES

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16 MARCH 2015

26.11. This observation has been echoed in a number of cases since<sup>296</sup> and applies fully to the dispute the Philippines has submitted to this Tribunal. As described more fully below, the Philippines has presented only those of the Parties' disputes that relate to law of the sea matters over which the Tribunal has jurisdiction. The questions concerning the interpretation and application of UNCLOS presented in this case cannot be considered either marginal or secondary. The fact that the Parties also have territorial sovereignty disputes, "however important", is not pertinent to the determination of the matters over which the Tribunal does have jurisdiction.

26.12. China's argument about the essence of the Philippines' case being territorial sovereignty is presented by reference to "three categories" of the Philippines' claims.<sup>297</sup> China characterizes the first category of claims as relating to "China's assertion of the 'historic rights' to the waters, sea-bed and subsoil within the 'nine-dash line' (*i.e.*, China's dotted line in the South China Sea) beyond the limits of its entitlements under the Convention ...".<sup>298</sup> According to China, "whatever logic is to be followed, only after the extent of China's territorial sovereignty in the South China Sea is determined can a decision be made on whether China's maritime claims in the South China Sea have exceeded the extent allowed under the Convention".<sup>299</sup>

26.13. China has failed — whether intentionally or otherwise — to correctly appreciate the true nature of the Philippines' claims. The "essence" of the Philippines' position is that *even assuming that China is sovereign over all of the insular features it claims*, its claim to "historic rights" within the areas encompassed by the nine-dash line exceeds the limits of its potential entitlement under the Convention. They are therefore inconsistent with, and violate, UNCLOS. In other words, China's claim to historic rights within the areas encompassed by the nine-dash line exceeds its potential entitlement under UNCLOS *regardless* of what view one takes on questions of territorial sovereignty. The Tribunal therefore has no need to address or resolve competing claims to territorial sovereignty to address this issue.

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<sup>296</sup> See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 431, para. 105. MP, Vol. XI, Annex LA-13.

<sup>297</sup> China's Position Paper, para. 8. SWSP, Vol. VIII, Annex 467.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*, para. 10.

further on the Tribunal's jurisdiction over these issues in response to other questions, to which it respectfully refers the Tribunal.<sup>312</sup>

26.24. For all of these reasons, the dispute the Philippines has submitted to the Tribunal neither concerns competing claims to territorial sovereignty nor requires the Tribunal to express any views on those issues. To the contrary, this dispute concerns China's assertion and exercise of sovereign rights and jurisdiction where UNCLOS gives it none, and, indeed, where the Convention gives entitlements only to other States. And even in those limited areas that are the subject of the Philippines' claims and where China may have entitlement, the Tribunal has jurisdiction to address China's violations of the Convention.

## **II. Neither the 2002 DOC Nor Any Other of the Joint Statements China Cites Operate to Impair the Tribunal's Jurisdiction, or Affect the Admissibility of the Philippines' Claims, under Article 281**

26.25. In its Memorial, the Philippines explained that the 2002 DOC, and in particular paragraph 4 thereof,<sup>313</sup> poses no obstacle to the Tribunal's jurisdiction under Article 281 for four reasons. *First*, the DOC is political document only. It does not create legal rights and obligations, and hence does not constitute an "agreement" under Article 281.<sup>314</sup> *Second*, even if the DOC could be considered an "agreement" falling within the ambit of Article 281, no settlement has been reached through the means contemplated in it (consultations and negotiations).<sup>315</sup> *Third*, the DOC neither expressly nor impliedly excludes recourse to the dispute settlement procedures established in Part XV of the Convention.<sup>316</sup> *Fourth*, and in any event, China cannot assert rights under the DOC due to its own actions in flagrant disregard of the requirements of the DOC.<sup>317</sup>

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<sup>312</sup> See *supra* Responses to Questions 3, 4 and 9.

<sup>313</sup> The provision reads: "The Parties concerned undertake 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". Association of Southeast Asian Nations, *Declaration on the Conduct of Parties in South China Sea* (4 Nov. 2002), para. 4. MP, Vol. V, Annex 144.

<sup>314</sup> Memorial, paras. 7.50-7.58.

<sup>315</sup> *Id.*, paras. 7.59-7.63.

<sup>316</sup> *Id.*, paras. 7.64-7.73.

<sup>317</sup> *Id.*, paras. 7.74-7.76.