

## EAST ASIAN OBSERVER

### The Prospects for the Sino-Philippine Arbitration and the Territorial Disputes in the South China Sea

Michael Sheng-ti Gau\*

On January 22, 2013, the Philippines initiated arbitration against China under Article 287 and Annex VII of the UNCLOS.<sup>1</sup> As said by the Notification and Statement of Claim (hereinafter the Notification), the goal of the arbitration is “to seek a peaceful and durable resolution of the dispute in the West Philippine Sea” between these two States.<sup>2</sup> The Philippines challenges against China’s claims and entitlement in the eastern part of South China Sea (“SCS”) enclosed by the “nine-dash-line,” which the Philippines requests the Tribunal to declare as its exclusive economic zone (“EEZ”) and continental shelf.<sup>3</sup>

On February 19, 2013, China officially refused to join the litigation, based on, *inter alia*, its 2006 Declaration<sup>4</sup> covering the disputes brought by the Philippines and depriving the Arbitral Tribunal of necessary jurisdiction to entertain the case.<sup>5</sup>

\* Professor of International Law at Institute for the Law of the Sea, National Taiwan Ocean University. The author may be contacted at: [mikegau97@msn.com](mailto:mikegau97@msn.com)

<sup>1</sup> For the official explanations of the Philippines, see Statement by the Secretary of DFA on the UNCLOS Arbitral Proceedings against China, available at <http://www.imoa.ph/press-releases/statement-by-secretary-of-foreign-affairs-albert-del-rosario-on-the-unclos-arbitral-proceedings-against-china-to-achieve-a-peaceful-and-durable-solution-to-the-dispute-in-the-wps> (last visited on Oct. 31, 2014).

<sup>2</sup> See the Notification and Statement of Claims, issued by Department of Foreign Affairs of Republic of the Philippines in Manila to the Embassy of the People’s Republic of China in Manila (Jan. 22, 2013), at 1, ¶ 2, available at <http://www.dfa.gov.ph/index.php/2013-06-27-21-50-36/unclos> (last visited on Nov. 3, 2014).

<sup>3</sup> *Id.* ¶¶ 31 (Sec. III: The Philippines’ Claims) & 41 (Sec.V: Relief Sought).

<sup>4</sup> UN Division for Ocean Affairs and the Law of the Sea, Declarations and Statements, available at [http://www.un.org/Depts/los/convention\\_agreements/convention\\_declarations.htm#China](http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#China) upon ratification (last visited on Oct. 31, 2014). It reads: “The Government of the People’s Republic of China 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.”

<sup>5</sup> See the statement made on February 19, 2013 by the spokesman of the Foreign Ministry of China, available at <http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t1015317.shtml> (last visited on Oct. 31, 2014).