The Sino-Philippine Arbitration on the South China Sea Disputes and the Taiwan Factor

Michael Sheng-ti Gau*

The Sino-Philippine Arbitration on the South China Sea Disputes was over on July 12, 2016, with a Merits Award in Philippine favor. Beijing rejected this arbitration and abstained from submitting written and oral arguments. Taiwan actively engaged in the debate with the Philippines since July 7, 2015. Not deemed as representative of China, Taiwan was considered capable of clarifying the meaning of the U-Shaped Line it first published in 1947 when seated in Nanjing, representing China then. The biggest maritime feature in the Spratly Islands, i.e. Taiping Island (Itu Aba), has been occupied by troops from mainland China since 1946 and then from Taiwan since 1956. The legal status of Taiping Island was the key to success of Philippine Submissions. The factual information from Taiwan became vital. This paper examines Taiwan’s role in this arbitration and the degree to which it could actually speak for China at such legal proceedings.

Keywords
South China Sea Arbitration, UNCLOS, Annex VII-Tribunal, Taiping Island, U-Shaped Line, Article 121 of UNCLOS

* Professor of International Law at the Institute for the Law of the Sea, National Taiwan Ocean University. LL.B.(NTU), LL.M. (Cantab/London), Ph.D. (Leiden). The views expressed in this paper are those of the author and do not represent the official position of any government agencies or other people. The author may be contacted: mikegau97@msn.com / Address: No. 1, Peining Road, Keelung City, 20224, Taiwan. DOI: http://dx.doi.org/10.14330/jeail.2016.9.2.09
1. Introduction

The Sino-Philippine Arbitration for the South China Sea ("SCS") Disputes finally ended on July 12, 2016, with a Merits Award totally in Philippine favor. As the respondent, China rejected this arbitration as well as the Awards on Jurisdiction, Admissibility and Merits. Meanwhile, the Government in Taiwan (hereinafter Taiwan) started to publish legal arguments and factual information from July 7, 2015 to refute the Philippines’ relevant arguments for this arbitration. It is interesting to review the role of Taiwan in this arbitration. In this research, the author will outline the development of this arbitration where the interactions between Taiwan, the Philippines, and the Tribunal will be focused stage by stage. This paper is composed of four parts including a short Introduction and Conclusion. Part two will examine the beginning and evolution of the SCS Arbitration. Part three will address Taiwan’s role through this Arbitration.

2. Development of SCS Arbitration

A. Initiation of the Arbitration

On January 22, 2013, the Philippines invoked Article 287 and Annex VII of the UNCLOS\(^1\) for initiating an arbitration against China.\(^2\) The Notification and Statement of Claim (hereinafter the Notification) said that the goal of this action was “to seek a peaceful and durable resolution of the dispute in the West Philippine Sea ("WPS"),\(^3\) by narrowing disputes to facilitate future negotiation.\(^4\) The Philippines challenged China’s maritime entitlements and claims, land reclamation, enforcement and military actions and omissions within WPS located in the eastern part of SCS.

---