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PRESS RELEASE

**Arbitration between the Republic of the Philippines
and the People's Republic of China**

The Hague, 13 July 2015

The Arbitral Tribunal Concludes Hearing on Jurisdiction and Admissibility

On Monday, 13 July 2015, the Arbitral Tribunal concluded the hearing on jurisdiction and admissibility in the arbitration instituted by the Republic of the Philippines against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea (the "Convention").

The hearing, which commenced on 7 July 2015, took place in the Peace Palace, the headquarters of the Permanent Court of Arbitration in The Hague, the Netherlands.

The Philippines' delegation comprised some sixty attendees, including the Solicitor General as Agent for the Philippines, the Secretary of Foreign Affairs, the Secretary of Justice, the Secretary of National Defense, members of the Supreme Court, members of the House of Representatives, Ambassadors, government lawyers, officials, legal counsel, advisors and technical experts and assistants.

The Philippines' Agent, Solicitor General Florin T. Hilbay, and the Philippines' Secretary of Foreign Affairs, H.E. Albert Ferreros del Rosario delivered introductory remarks. Thereafter, the Philippines' Counsel, Mr. Paul S. Reichler, Professor Philippe Sands QC, Mr. Lawrence H. Martin, Professor Bernard H. Oxman, and Professor Alan Boyle presented the Philippines' legal arguments.

The Arbitral Tribunal had decided not to open the hearing to the public. However, after receiving written requests from interested States, and having sought the views of the Parties, the Arbitral Tribunal permitted the Governments of Malaysia, the Republic of Indonesia, the Socialist Republic of Viet Nam, the Kingdom of Thailand and Japan, to send small delegations to attend the hearing as observers.

Commencement of the Arbitration

The arbitration commenced on 22 January 2013 when the Philippines served China with a Notification and Statement of Claim "with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea." On 19 February 2013, China presented the Philippines with a diplomatic note in which it described "the Position of China on the South China Sea issues," and rejected and returned the Philippines' Notification.

The five-member Arbitral Tribunal is chaired by Judge Thomas A. Mensah of Ghana. The other Members are Judge Jean-Pierre Cot of France, Judge Stanislaw Pawlak of Poland, Professor Alfred Soons of the Netherlands, and Judge Rüdiger Wolfrum of Germany. The Permanent Court of Arbitration ("PCA") acts as the Registry in the proceedings.

Non-Participation of China

The Chinese Government has adhered to the position of neither accepting nor participating in these arbitral proceedings. It has reiterated this position in diplomatic notes, in public statements, in the "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea

Arbitration Initiated by the Republic of the Philippines” dated 7 December 2014, and in two letters to members of the Arbitral Tribunal from the Chinese Ambassador to the Kingdom of the Netherlands. The Chinese Government has also made clear that these statements and documents “shall by no means be interpreted as China’s participation in the arbitral proceeding in any form.”

Article 9 of Annex VII to the Convention provides that:

Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and in law.

In line with its duty under Article 5 of Annex VII to the Convention to “assure each party a full opportunity to be heard and to present its case”, the Arbitral Tribunal has kept China updated on all developments in the arbitration and stated that it remains open to China to participate in these proceedings at any stage. Transcripts of the hearing have been made available to China, and China has been invited to comment on anything stated at the hearing.

Proceedings on Jurisdiction and Admissibility

Under the Convention, a tribunal constituted under Annex VII has jurisdiction to consider a dispute between States Parties to the Convention to the extent that the dispute involves the “interpretation or application” of the Convention. However, the Convention excludes certain types of disputes from the jurisdiction of a tribunal and includes certain preconditions that must be met before any tribunal may exercise jurisdiction.

For reasons set out in Procedural Order No. 4 of 21 April 2015, the Arbitral Tribunal considered the communications by China to constitute, in effect, a plea that the Philippines’ submissions fall outside the scope of the Arbitral Tribunal’s jurisdiction. Accordingly, the Arbitral Tribunal decided to conduct this preliminary hearing on the scope of its jurisdiction and the admissibility of the Philippines’ claims. In the event that the Arbitral Tribunal determines that it has jurisdiction over some or all of the Philippines’ claims, it will then proceed to a hearing on the merits.

The Arbitral Tribunal continues to have a duty pursuant to Article 9 of Annex VII to the Convention to satisfy itself that it has jurisdiction over the dispute. Accordingly, the Arbitral Tribunal made clear before and during the hearing that it would consider possible issues of jurisdiction and admissibility whether or not they were addressed in China’s Position Paper.

On 23 June 2015, the Arbitral Tribunal sent a letter to the Parties with guidance as to issues to address in connection with the hearing. The Arbitral Tribunal posed further questions during the course of the hearing.

Summary of China’s Position Paper on the Matter of Jurisdiction

China’s Position Paper of 7 December 2014 is “intended to demonstrate that [the Arbitral Tribunal] does not have jurisdiction over this case.” The Position Paper “does not express any position on the substantive issues related to the subject-matter of the arbitration initiated by the Philippines” and “shall not be regarded as China’s acceptance or participation in this arbitration.”

The Position Paper, which is available at http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml, elaborates on the following four positions, as expressed by China:

- The essence of the subject-matter of the arbitration is the territorial sovereignty over several maritime features in the South China Sea, which is beyond the scope of the Convention and does not concern the interpretation or application of the Convention;
- China and the Philippines have agreed, through bilateral instruments and the Declaration on the Conduct of Parties in the South China Sea, to settle their relevant disputes through negotiations. By unilaterally initiating the present arbitration, the Philippines has breached its obligation under international law;

- Even assuming, *arguendo*, that the subject-matter were concerned with the interpretation or application of the Convention, that subject-matter would constitute an integral part of maritime delimitation between the two countries, thus falling within the scope of the declaration filed by China in 2006 in accordance with the Convention, which excludes, *inter alia*, disputes concerning maritime delimitation from compulsory arbitration and other compulsory dispute settlement procedures;
- Consequently, the Arbitral Tribunal manifestly has no jurisdiction over the present arbitration. Based on the foregoing positions and by virtue of the freedom of every State to choose the means of dispute settlement, China's rejection of and non-participation in the present arbitration stand on solid ground in international law.

Summary of the Philippines' Arguments

In his introductory remarks at the opening of the hearing on jurisdiction and admissibility, the Secretary del Rosario, summarized the Philippines' submissions on the merits of the Parties' dispute as follows:

- First, that China is not entitled to exercise what it refers to as 'historic rights' over the waters, seabed and subsoil beyond the limits of its entitlements under the Convention;
- Second, that the so-called 'nine-dash line' has no basis whatsoever under international law insofar as it purports to define the limits of China's claim to 'historic rights';
- Third, that the various maritime features relied upon by China as a basis upon which to assert its claims in the South China Sea are not islands that generate entitlement to an exclusive economic zone or continental shelf. Rather, some are 'rocks', within the meaning of Article 121(3); others are low-tide elevations; and still others are permanently submerged. As a result, none are capable of generating entitlements beyond 12 miles, and some generate no entitlements at all. China's recent massive reclamations activities cannot lawfully change the original nature and character of these features;
- Fourth, that China has breached the Convention by interfering with the Philippines' exercise of its sovereign rights and jurisdiction; and
- Fifth, that China has irreversibly damaged the regional marine environment, in breach of [the Convention], by its destruction of coral reefs in the South China Sea, including areas within the Philippines' [exclusive economic zone], by its destructive and hazardous fishing practices, and by its harvesting of endangered species.

Secretary del Rosario also emphasized that "in submitting this case, the Philippines is not asking the Tribunal to rule on the territorial sovereignty aspect of its disputes with China. We are here because we wish to clarify our maritime entitlements in the South China Sea, a question over which the Tribunal has jurisdiction."

Secretary del Rosario was followed by Counsel for the Philippines who first addressed the question of whether the Philippines' submissions involve matters over which a legal dispute exists between the Philippines and China and whether such disputes require the interpretation or application of the Convention. According to the Philippines, the dispute between the Parties concerns, at its broadest level, the Parties' contrasting views on the source of their maritime entitlements. In the Philippines' view, the "rights and obligations of the Philippines and China are precisely those that are specified in the 1982 Convention, neither more nor less" and the Convention fully regulates the maritime zones of States Parties. Accordingly, for the Philippines, the question of "whether China's alleged 'historic rights' under general international law are in conflict with the provisions of the 1982 Convention, or are preserved by them, is plainly a matter calling for interpretation or application of the Convention". Similarly, the Philippines argued that its submissions regarding the status of certain maritime features and China's conduct in the South China Sea require the Arbitral Tribunal to apply the relevant provisions of the Convention and are therefore matters within the Arbitral Tribunal's jurisdiction.

Counsel for the Philippines went on to address the relationship between the Philippines' submissions in this arbitration and the Philippines' claims to sovereignty over maritime features in the South China Sea, responding in particular to the arguments in China's Position Paper. According to the Philippines, the status of a feature under the Convention and the maritime zones that it is capable of generating do not depend upon a prior determination of which State has sovereignty over the feature. There is therefore no need for the Arbitral Tribunal to consider sovereignty when ruling on the Philippines' submissions, as the status of the features will be the same irrespective of which State is sovereign. Additionally, the Philippines considers it well established in international law that a court or tribunal can exercise jurisdiction over a portion of a multi-faceted dispute, even if it lacks jurisdiction to consider all issues relating to the dispute.

Counsel for the Philippines next turned to the question of preconditions to the Arbitral Tribunal's jurisdiction and whether either the 2002 Declaration on the Conduct of Parties in the South China Sea or the 1976 Treaty of Amity and Cooperation in Southeast Asia constituted an agreement between the Parties to forego the right to resolve disputes between them through arbitration under the Convention. According to the Philippines, the 2002 Declaration is not a legally binding agreement, a fact that China has recognized on many occasions. Moreover, the Philippines submits, nothing in the 2002 Declaration can be read as excluding recourse to arbitration, and the Declaration itself makes reference to resolving disputes in accordance with the Convention. Similarly, the Philippines considers that although the Treaty on Amity and Cooperation is a legally binding agreement between the Parties, the Treaty expressly preserves the possibility of recourse to other means of dispute settlement. Finally, the Philippines argued that it had met the obligation in the Convention to exchange views with China concerning the settlement of the Parties' dispute. In the Philippines' view, this provision imposes only a "modest burden" on disputing States and is amply met by the diplomatic correspondence between the Philippines and China.

Counsel for the Philippines then turned to the exceptions to jurisdiction set out in the Convention and to the argument in China's Position Paper that the Philippines submissions are an integral part of a dispute over sea boundary delimitation that is excluded from the Arbitral Tribunal's jurisdiction by Article 298 of the Convention. According to the Philippines, "questions of maritime delimitation arise only in the context of overlapping entitlements of coastal states" and China's objection conflates the issue of entitlement to maritime zones with the question of how those zones will be divided in the event that they do overlap. In the Philippines' view, one of the principal accomplishments of the Convention was to specify the maritime entitlements of coastal States and to provide for the resolution of disputes concerning the nature and extent of such entitlements. Accordingly, in the Philippines' view, while a tribunal may be precluded from delimiting overlapping entitlements, there is no restriction on this Arbitral Tribunal determining the existence of such entitlements as the Philippines requests.

Turning to the exclusion in Article 298 for disputes involving "historic bays or titles", Counsel for the Philippines argued that the China's claims to "historic rights" are distinct from the concept of "historic title" set out in the Convention. Reviewing the Chinese language text of the Convention, as well as the language of the other five authentic versions (in English, French, Spanish, Arabic, and Russian), the Philippines contended that a "historic bay or title" is limited to claims in the inshore waters adjacent to the coastline of a State. Additionally, according to the Philippines, China's statements and diplomatic correspondence have never used those terms to describe the "historic rights" that China claims in the South China Sea.

Counsel for the Philippines then addressed the exceptions to jurisdiction over disputes involving military or law enforcement activities. According to the Philippines, the exception for law enforcement activities is narrow and applies only to law enforcement activities that are related to marine scientific research or the management of living resources (both areas that are themselves excluded from compulsory dispute settlement). As such, the Philippines does not consider the law enforcement exception to be implicated by its submissions. As for the exception for military activities, the Philippines considers that the characterization of activities as military in nature depends upon their intended purpose and submits that it is China—not the Philippines—that would be able to provide information on the nature and purpose of its activities in the South China Sea. The Philippines noted, however, that China has been reluctant to characterize its operations as military and did not invoke this exception in its Position Paper. Additionally, the Philippines observed that "[m]any States use their naval vessels for law enforcement purposes at least some of the time" and argued that "the involvement of military personnel in construction or land reclamation activities does not necessarily mean that the purpose of the activities is military".

Lastly, Counsel for the Philippines addressed the exception to jurisdiction over disputes involving the living resources of the exclusive economic zone in the context of the Philippines' submissions on environmental harm and endangered species. According to the Philippines, this exception is not applicable, because China's violations have taken place either in the territorial sea surrounding Scarborough Shoal or in areas near Second Thomas Shoal and Mischief Reef where only the Philippines has an entitlement to an exclusive economic zone. In the Philippines' view there is no limit to the Arbitral Tribunal's jurisdiction in such circumstances. The Philippines also clarified that its submissions relate to the portions of the Convention concerning the marine environment and that it does not here allege a separate breach of the Convention on Biodiversity.

On the final day of the hearing, in response to questions from the Arbitral Tribunal, the Philippines presented further argument on (a) the existence of a legal dispute with respect to each of the Philippines' submissions; (b) the scope of a tribunal's ancillary jurisdiction over any minor issues of territorial sovereignty that may be implicated by the Philippines' submissions; (c) the application of the legal principle of estoppel to the 2002 Declaration on the Conduct of the Parties in the South China Sea; (d) whether the Philippines was obliged to attempt to resolve the Parties' dispute pursuant to the provisions of the 2002 Declaration or the 1976 Treaty of Amity and Cooperation in Southeast Asia; (e) the scope and implications of the Convention's exception for disputes relating to military activities; and (f) whether the question of jurisdiction over any of the Philippines' submissions was not of an "exclusively preliminary character" and would require the Arbitral Tribunal to first determine one or more issues relating to the merits of the Philippines' claims. The Philippines also answered questions from individual members of the Arbitral Tribunal.

Next Steps for the Arbitral Tribunal

The Parties will have until next Monday, 20 July 2015, to review and submit corrections to the transcripts of the hearing on jurisdiction and admissibility. By Thursday, 23 July 2015, the Philippines will submit further written responses to the questions posed by the Arbitral Tribunal during the hearing. The Arbitral Tribunal anticipates that the reviewed and corrected transcripts will be made available on the PCA's website.

In line with the Arbitral Tribunal's duty under Article 5 of Annex VII to the Convention to "assure each party a full opportunity to be heard and to present its case," the Arbitral Tribunal has decided to provide China with the opportunity to comment in writing, by Monday 17 August 2015, on anything said during this Hearing on Jurisdiction and Admissibility.

The Arbitral Tribunal now enters its deliberations and is conscious of its duty under the Rules of Procedure to conduct proceedings "to avoid unnecessary delay and expense and to provide a fair and efficient process." The Arbitral Tribunal will endeavour to issue its decision on such issues of Jurisdiction and Admissibility that it determines appropriate as soon as possible and expects to do so before the end of the year.

If the Arbitral Tribunal determines that there are jurisdictional objections or issues of admissibility that do not possess an exclusively preliminary character, then, in accordance with Article 20(3) of the Rules of Procedure, such matters will be reserved for consideration and decision at a later stage of the proceedings.

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Further information about the case, including the Rules of Procedure and earlier Press Releases, and photographs of the hearing, may be found at http://www.pca-cpa.org/showpage.asp?pag_id=1529.

Background to the PCA: The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. Headquartered at the Peace Palace in The Hague, the Netherlands, the Permanent Court of Arbitration facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

Contact: Permanent Court of Arbitration, bureau@pca-cpa.org

Annex: Overview of photographs available for download

**THE REPUBLIC OF THE PHILIPPINES V. THE PEOPLE'S REPUBLIC OF CHINA****HEARING ON JURISDICTION AND ADMISSIBILITY****PEACE PALACE, THE HAGUE, 7-13 JULY 2015**

PHOTOGRAPHS ACCOMPANYING POST-HEARING PRESS RELEASE

1. The Arbitral Tribunal
L to R: Judge Jean-Pierre Cot, Judge Stanislaw Pawlak, Judge Thomas A. Mensah (President), Judge Rüdiger Wolfrum, Professor Alfred H. A. Soons
2. Statement by Secretary for Foreign Affairs of the Philippines, H.E. Mr. Albert F. Del Rosario
3. Hearing in Session
4. Statement by Agent for the Philippines, Solicitor General Mr. Florin T. Hilbay
5. Counsel Team for the Philippines, including Professor Bernard H. Oxman, Professor Alan E. Boyle and Mr. Lawrence H. Martin
6. Hearing in Session
7. Statement by Mr. Paul S. Reichler, Counsel for the Philippines
8. Members of the Philippines' Delegation, including: Secretary of Justice Ms. Leila M. De Lima; Justice Antonio T. Carpio, Associate Justice of the Supreme Court; and Deputy Executive Secretary for Legal Affairs of the Philippines, Mr. Menardo I. Guevarra
9. Members of the Philippines' Delegation, including: Speaker of the House of Representatives of the Philippines, Mr. Feliciano Belmonte, Jr. and Executive Secretary of the Philippines, Mr. Paquito N. Ochoa Jr
10. Statement by Professor Philippe Sands QC, Counsel for the Philippines
11. Hearing in Session
12. The Arbitral Tribunal with PCA Staff Members
L to R (seated): Judge Thomas A. Mensah (President), Judge Stanislaw Pawlak;
L to R (standing): PCA Senior Legal Counsel and Registrar Judith Levine, Judge Jean-Pierre Cot, Judge Rüdiger Wolfrum, Professor Alfred H. A. Soons, PCA Senior Legal Counsel Garth Schofield
13. Members of Observer Delegations
14. Delegation of the Republic of the Philippines

** copies follow on next page * high resolution images will be available on PCA website **

SELECT PHOTOGRAPHS

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