

How the Sea Was Won

Francis H. Jardeleza

*SUBJECT/S: WEST PHILIPPINE SEA; SOUTH CHINA SEA
ARBITRATION CASE; UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA*

*KEYWORD/S: WEST PHILIPPINE SEA; SOUTH CHINA SEA
ARBITRATION CASE; UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA; PERMANENT COURT OF
ARBITRATION; INTERNATIONAL LAW; ARBITRATION*

Disputes between the Philippines and China over territories in the South China Sea have been going on for decades. The Philippines has taken a diplomatic stance to resolve the disagreement, engaging in measures such as bilateral talks as a means to remedy the situation. Despite this, the desired results have yet to be achieved. Thus, and remaining consistent with its efforts to peacefully resolve the dispute, the Philippines filed an arbitration case in the Permanent Court of Arbitration (PCA) — the proceedings of which just recently concluded. The ruling on the South China Sea Arbitration case — with regard to the award of jurisdiction and admissibility on 29 October 2015 and the determination of the merits of the dispute on 12 July 2016 — was in favor of the Philippines. Significantly, China’s claims of “historic rights” over the Scarborough Shoal and other features in the Spratly islands based on the nine-dash line have been declared to be contrary to the provisions of the United Nations Convention on the Law of the Sea (UNCLOS). It also clarified the maritime entitlements of features identified by the Philippines in its submissions to the Arbitral Tribunal.

This Article goes in-depth on how the Philippine legal team crafted a case that ultimately led to the Philippines’ victory in the South China Sea Arbitration Case. It discusses a “low-risk strategy” which was instrumental in protecting the Philippines’ interests over resource-rich territories such as the Scarborough Shoal and the Reed Bank. It also presents a preliminary discussion on the series of events that led to the initiation of the arbitration case as well as the maritime entitlements as provided by the UNCLOS. It goes into the challenges that were confronted by the Philippine legal team in the course of the arbitration proceedings, particularly on the issue of the PCA’s jurisdiction over the subject-matter.

In the final analysis, the Author highlights how the present administration under President Rodrigo R. Duterte should use this legal advantage to fully protect the Philippines’ maritime entitlements, in accordance with (1) the pertinent provisions of the UNCLOS and (2) the

interpretation of these provisions as can be gleaned from the ruling of the South China Sea Arbitration case. He emphasizes that the need for diplomatic efforts cannot be undermined despite the Philippines' victory in the arbitration case.