Territorial Disputes Between the People's Republic of China and the Republic of the Philippines and the Perspective of Stability in the South China Sea

Abstract

The purpose of this paper is to analyze the territorial disputes between the People’s Republic of China and the Republic of the Philippines in the South China Sea, the recent developments regarding the decision of the Permanent Court of Arbitration (PCA) and its consequences. China and the Philippines have been involved in a dispute over the Spratly Islands since the 1950's. In 2013, the Philippines brought the case to the PCA under the provisions of the United Nations Convention on the Law of the Sea (UNCLOS). Even though China's refused to participate, the Court ruled that it had jurisdiction over the case. On 12, July 2016 the PCA decided in favor of the Philippines and China, under strong protests, rejected the ruling. The ruling immediately elevated the level of tensions and countries both involved in territorial disputes in the South China Sea and outside the region took positions for and against the decision. Contradicting the bleak perspectives, Manila has been taking steps towards a rapprochment with Beijing which could be translated in a first step towards the dialogue and stabilization of the region. This paper will, therefore, analyze the relations between these two countries concerning the disputed area and the perspectives of a peaceful solution.

Introduction

The South China Sea, known in the Philippines as West Philippine Sea and in Vietnam as East Sea, consists of more than 200 islands, cliffs and coral reefs grouped mainly in the Paracels and Spratly archipelagos. These formations are the subject of disputes on the part of China, Vietnam, the Philippines, Malaysia and Brunei as the alleged contiguous areas overlap.
In disputed area are approximately 11 billion barrels of oil, 58 trillion cubic meters of natural gas and in addition to important fish stocks, through which travel 5.3 trillion dollars of world trade (Schonhardt & Chaturvedi, 2016). The region was stage for battles in 1974 and in 1988 as well as recurrent skirmishes between the parties involved (Hayton, 2014).

China claims 90 percent of the region and, in recent history, began to demarcate its boundaries in 1949, during the Kuomintang nationalist government, by inserting the eleven dash lines on the maps. In 1953, there was a reassessment of the area and the line started to have nine dashes where the current Chinese claim is located. The current scenario and arguments over sovereignty rights hold primary focus on China's claims and the reactions, not only of its neighbours but also from countries that do not hold territorial claims in the region, such as the U.S., Australia and Japan.

This paper examines the territorial disputes between China and the Philippines, which are centered on the Spratly Islands. After a brief historic description on the evolution of the conflicts and the claims involved, there will be an analysis of the arbitration procedure submitted to the Permanent Court of Arbitration - PCA in 2012 as well as the repercussions of the arbitral ruling of 2016. Finally it will consider the perspectives of a peaceful settlement of the dispute between China and the Philippines.

Historic development of the territorial claims

The Spratly Islands were named after the british capitain Richard Spratly who sailed the archipelago in mid 1800s and was credited with its discovery. Great Britain first claimed it in 1877 and, although didn't hold much concern about it, never withdrew the claim. It was only in 1930, when France dispatched ships to the region, that Britain revived its claims. On 1933 France annexed six islands: Spratly, Amboyna Cay, Itu Aba, North Danger, Loaita and Thitu. Japan occupied Itu during the Second World War but abandoned it by the end of 1945. On 12 december 1946, the Republic of China sent navy ships to Itu, removed the
Japanese flag and claimed the island in what was considered the first form of Chinese claim at Spratlys (Hayton, 2014).

At the San Francisco Convention of 1951, Japan renounced every area in the region which was under its control. It was not determined, however, to whom the islands belonged to. At that moment, China went through internal chaos, with the defeat of the Nationalist Party and seizure of power by the Communist Party, and thus was unable to act to occupy the territories which it judged to be its own. At the same time, the countries of the region, which also claimed the islands made their moves to occupy them.

Chinese claims are based, mainly on what it considers to be the historical rights. In this sense, one uses facts like the diplomatic protest against the British, who contributed ships in the Spratly Islands in 1877 or still the treaty of limits signed with France in 1887, that designated the region Chinese possession. However, the islands were incorporated into Indochina by France in 1933 and, in 1939, Japan occupied a large part of the archipelago (Buszynki&Sazlan, 2007).

It follows that on the basis of international law, continuous and effective occupation is required, and litigation based on historical facts is not enough to determine the ownership of the territory. China further understands that it was wronged at the time of the signing of the Charter of Saint Francis, since the United States delegation to the Conference would not allow the possession of the territories by a Communist State (Buszynki&Sazlan, 2007).

The other States involved in the territorial dispute adopt mainly the continental shelf concepts and contiguous areas established in the United Nations Convention on the Law of the Sea - UNCLOS of 1982. This is the case of the Philippines in relation to some islands in the Spratly archipelago which are considered as contiguous areas to their territory. These islands were the object of protest when the French incorporation in 1933, with support of the United States, that occupied the Philippines at the time. In 1956, the Spratly Islands were occupied by the United States and designated as Philippine territory, to be
called Kalayaan. In 1978, the Philippine government published a decree incorporating islands in Spratly / Kalayaan and establishing, from them, exclusive economic zone of 200 nautical miles.

Recent conflicts between China and the Philippines started in 1995 with China’s occupation of the Mischief Reef. The Philippines were secretly planning an oil assessment in the region in 1994 in what could be considered a violation of the 1992 ASEAN Declaration on the South China Sea in which the parties were urged to "exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes" (ASEAN, 1992). As China considers Mischief part of its territory, there were protests against Manila’s intentions. In January 1995 the crew of a Filipino fishing boat found initial structures on stilts at Mischief and were held there for a week by the Chinese who were there (Hayton, 2014). The incident unfolded waves of protests both from Beijing and from Manila as China kept on building structures at the islands.

China has for long been stating that it seeks a peaceful solution for the controversies at the South China Sea and that it intends to do so through bilateral channels. During Jiang Zemin’s state visit to the Philippines in 1996, both countries agreed on "shelving disputes and going in for joint development on the issue of South China Sea" (Embassy of the PRC in the Republic of the Philippines, 2009). Bilateral consultations went through and both parties agreed to "establish working groups on fisheries, marine environment and confidence-building measures" (Hernandez, 2016). Even though here was no formal agreement on the dispute, both China and the Philippines signed the Declaration on Conduct of Parties in the South China Sea - DOC in 2002.

There was a series of bilateral agreements between China and the Philippines in the following years in various fields. In 2004, China National Offshore Oil Corp. and Philippine National Oil Company signed the agreement for Joint Marine Seismic Undertaking on Certain Areas in the South China Sea - JMSUCA, later on joined by Vietnam in the "Agreement for Joint Marine Seismic Undertaking on Certain Areas in the South China Sea" (Embassy of the PRC in the Republic of the
Philippines, 2009). The JMSUCA did not go forward as it lapsed due in 2008 and faced strong political opposition in the Philippines (Maxie, 2016). Although there were demonstrations of cooperation, there were frequent skirmishes at the disputed areas, mostly involving fishing boats. In 2011 tensions were high again and led to the arbitration procedure that will be analyzed in the following section.

Arbitration

In 2011, both the Philippines and Vietnam announced their intentions of joint exploration of oil and gas at the South China Sea, which launched protests from China. As result, China announced that it would not only increase its patrols in the region but also launch an oil and gas drilling platform. By the end of 2011, there were reported six incidents involving Filipino vessels and Chinese patrols, including the most significant one at the Reed Bank that was followed by an exchange of note verbales at the United Nations (Thayer, 2011). In 2012, China seized the Scarborough Shoal, denying Philippine fishermen access to a rich fishing ground. A mutual withdrawal agreement was made but, shortly thereafter, Chinese ships returned to the region, where they remained in position.

In January 2013, the Philippines decided to file the arbitration procedure, before the Permanent Court of Arbitration - CPA, according to provisions of UNCLOS. Both China and the Philippines are signatories to the Convention which provides for "the obligation to settle disputes by peaceful means" (UNCLOS, 1982). Article 280 of the Convention provides that signatory states should choose the dispute settlement mechanism of their choice, with compulsory procedures and mandatory decisions. Article 287 further provides that, in the absence of a State party’s statement to that effect, it will be deemed to have accepted arbitration (UNCLOS, 1982).

The Philippines made nine main allegations in the notification to the arbitral tribunal, which succinctly involved the annulment of the nine-line line that China
claims to be its territorial sea, in addition to accusing China of illegally interfering in Philippine territory. According to the Philippines, the line goes beyond what is provisioned at UNCLOS. In addition, various submerged formations that China declares as its territory, can not be recognized as such under UNCLOS, as they are not a Chinese continental shelf.

Furthermore, some of these formations, such as the Mischief and McKennan corals are part of the Philippine continental shelf, also under the terms of the convention. Thus, according to the Manila lawsuit, Beijing has illegally required such territories and prevented the Philippines from using its rights of navigation and exploitation of the resources located therein (Republic of the Philippines, 2013).

China rejected the arbitration procedure and returned the Philippines’ note verbale together with the attached Notification and Statement of Claim. However, according to the Annex VII, article 9:

> If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings (UNCLOS, 1982).

Despite Chinese protests, the arbitral tribunal was constituted and the Philippines filed a memorial in 2014, after rising tensions between the two states at Second Thomas Shoal. China again rejected the arbitration and refused to file its memorial. In December 2014, China filed a position paper alleging the lack of jurisdiction of the court and therefore refusing to take part in the procedure. Thus, it claimed its historical rights over the region and stated that "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" (Position Paper, 2014).

According to China’s recount, as the Philippine's lawsuit did not require the
determination of sovereignty over the disputed region, the court would not have jurisdiction to resolve the matter presented. In addition, China invoked the optional exclusion clause of Article 298 of UNCLOS submitted by it in 2006 (Position Paper, 2014). This instrument allows the State not to accept procedures concerning "the delimitation of maritime areas, or the bays or historical titles ..." (UNCLOS, 1982), therefore, following China's allegations, the Chinese Government does not accept any of the compulsory dispute settlement procedures” which included compulsory arbitration.

Another point highlighted by China in the document was the signing of the ASEAN DOC, which provides for the parties' commitment to conflict resolution through dialogue. In addition, China and the Philippines have repeatedly issued joint declarations reinforcing their commitment to dialogue to end disputes, including on the occasion of Philippine President Benigno Aquino III's visit to China in 2011. Thus, China accuses the Philippines of acting contrary to the will and joint efforts of China and ASEAN members in submitting the matter to arbitration (Position Paper, 2014). In October 2015, the arbitral tribunal ruled that it had jurisdiction over the case, which led to a series of protests by the Chinese government.

In the course of the proceedings, and amid escalating crisis between the two countries, the Philippines sought to intensify relations with the United States, mainly in security. In April 2014, the Philippines and the United States signed the Enhanced Defense Cooperation Agreement on the occasion of the visit and Barack Obama to Manila. The 10-year instrument allows the United States to use rotating bases on Philippine territory, as well as stockpile military equipment, as well as modernize and develop the maritime defense capability of the Philippines (Agreement, 2014)

During the weeks leading up to the CPA's decision, Chinese rhetoric has become more aggressive, both in relation to the Philippines and the United States. China accused the United States of interfering in matters in which it has no direct interests and of fomenting a climate of animosity in the region. In addition, it
refutes American accusations of militarization of the region and affirms that, in fact, the United States, through agreements and joint military exercises, were responsible for the militarization (Mahmood, 2016).

The PCA's decision was rendered on July 12, 2016, favorable to the Philippines' plea. The Court held that China held no historical right over the territory comprised within the nine-dash lines. It further understood that the Spratly Islands were not part of the territory of China but were, in fact, Philippines' EEZs (although it is not for the PCA to delimit that territory). Also in the content of the decision, the Court concluded that there had been a violation of the rights of the Philippines within its EEZ, since China has been: "a) "interfering with Philippine fishing and petroleum exploration, b) constructing artificial islands and c) failing to prevent Chinese fishermen from fishing the zone." (PCA, 2016). Finally the Court considered China responsible for the environmental damage caused in seven islands of the Spratlys.

As previously announced, Beijing stated that it would not acknowledge the decision, which considered to be illegal and that the CPA held no jurisdiction over the matter (Yao, 2016). Addressing the issue on the same date, Xi Jinping asserted that China:

Firmly insist on maintaining peace and stability in the South China Sea, and on directly negotiating for a peaceful resolution on relevant disputes with states that are directly involved, based on the respect of history and in accordance with international laws,” (Xi, 2016).

Thus, despite alleging that the search for the arbitration solution was an act of bad faith from the Philippines (CCTV, 2016), Beijing continued to call for dialogue and resolve the dispute through negotiations and consultations, as established in DOC, 2016. China claimed that the Philippine government of Benigno Aquino III, responsible for initiating the arbitration proceeding, was "manipulated and instigated by external forces" (Wu, 2016). Beijing suggested that Manila should not be used in the US "pivot to Asia" strategy as it would affect its trade interests with China which reached a bilateral trade volume of US $ 44.42 billion in 2014 (Liang, 2016).
Confronted by the arbitration award, Beijing accused Washington of fomenting escalation of tensions in the region and putting ASEAN members against each other (Xiaohui, 2016). After the promulgation of the sentence, Cambodia and Laos favored the Chinese position and Taiwan protested against the ruling as it adversely affected its territorial interests. Australia, Japan and Vietnam, as well as the G-7 and the European Union, joined the United States and issued communiqués urging China to respect international law and abide by the PCA’s decision.

China’s Foreign Ministry spokesman called on the United States, Japan and Australia not to interfere in the conflicts in the South China Sea, which should be resolved exclusively by the parties directly involved. In addition, it accused the three States of acting in accordance with international law only when it suits them (Yao, 2016). At the meeting of the ASEAN Regional Forum, held on July 26, 2016, China achieved a great diplomatic victory. With the presence United States Secretary of State John Kerry, Beijing was able to avoid any mention in the final statement regarding the outcome of the arbitration (Mcleary, 2016). Despite increasing tensions in the region after the arbitration decision, there is no expectation that other states will take the same initiative in the Philippines (An & Shoufeng, 2016)

Recent developments and perspectives

Since the PCA ruling, Manila has been adopting a posture opened to negotiations, as President Duterte expects investment and aid from Beijing. A few weeks after the ruling Duterte sent former President Fidel Ramos to Hong Kong in order to engage both countries towards future agreements. Duterte was successful in his approach as an array of agreements have been reached between the Phillipines and China. A significant agreement reached during Duterte's visit to China in October 2016 was the Memorandum of Understanding on Coast Guard Cooperation, which can be considered an important confidence building measure.
In December 2016 Duterte announced a firearms deal in which Beijing offered to provide $14.4 million worth of equipment to Manila as military assistance (Parameswaran, 2016). During Duterte’s visit to China for the Belt and Road Forum in May, 15, the Filipino Secretary of Defense signed a letter of intent with the president from Poly Technologies, one of China’s top state-owned defense manufacturing and exporting firms in which the Philippines would buy military equipment, possibly using a loan provided by the Chinese government (Parameswaran, 2017). Even though the details are not clear, the agreement shows the willingness of both parties to go further on defense cooperation.

Another result of Duterte’s strategy was the resumption of the Philippines - China Joint Commission on Economic and Trade Cooperation led in March 2017 to a six-year program for economic and trade cooperation. The dialogue was put on hold for five years as consequence of the rising tensions related to the territorial disputes at the South China Sea. With the reestablishment of the Joint Commission China agreed to fund three infrastructures projects: a railway valued at $3.1 billion, a dam valued at $374 million and an irrigation project valued at $53.6 million (Venzon, 2017) Another sign of better relations was a greater access to Filipino fishermen to the waters near Scarborough Shoal where they could not operate since the 2012 incident.

Even though there has been a substantive improvement in relations since the PCA ruling, tensions at the South China Sea persist between Beijing and Manila reaching the negotiations table. One of the main sources of friction between the two countries is that, even though Beijing insists that it would not militarize its holdings in the region, constructions at those sites seem to show otherwise. Satellite images from July 2016 showed that China was building hangars for jets on Fiery Cross, Subi and Mischief Reefs. China’s Defence Ministry reaffirmed its sovereignty over the Islands and asserted that "China has said many times, construction on the Spratly islands and reefs is multipurpose, mixed, and with the exception of necessary military defensive requirements, are more for serving all forms of civil needs." (Beech & Ali, 2016).
A recent incident involving China and the Philippines took place in March 2017 at Union Banks in the Spratly Islands, near Gaven Reef, one of China’s recently build artificial island. The episode involved a Chinese speedboat that fired the Princess Johann, a Filipino fishing trawler. The incident caused a backlash both from the Filipino press and the opposition but there was no official reaction both from Manila and from Beijing (Glaser & Funaiolo, 2017). The lack of official statements about the episode, nonetheless, can be translated into another effort to maintain the stability of relations and an effort to solve differences bilaterally.

Another controversy envolving the territorial disputes at the South China Sea was a recent disclosure of the contents of meeting between Duterte and Xi regarding the Philippines intentions of drilling oil at contested territory. According to Duterte, as the subject was mentioned at the meeting, Xi supposedly threatened with war (Ranada, 2017). The conversation was held in Beijing, during the Belt and Road Forum. Duterte’s declaration triggered protest from the opposition in the Philippines that accuse him of being too soft with Beijing. A few days later, the Foreign Ministries both from China and from the Philippines played down Duterte’s statement by affirming that the discussion was focused on preventing conflict (Lema & Petty, 2017).

A further factor of instability in Sino-Philippines relations at the South China Sea is the United States stance in the region. One of the most visible aspect of it is the Freedom of Navigation - FON policy. Even though the Philippines opted to play down the effects of the arbitration ruling, the U.S. has since then incited Manila to enforce it. Since its inception, FON has been a point of friction between Washington and Beijing and hold a high potential of creating animosity between China and the Philippines. In the most recent episode, reported on June, 05 2017, a U.S. Navy guided missile destroyer navigated near the Chinese outpost at the Mischief Island (Webster, 2017). According to a statement on the FON released by the Pentagon, the U.S. will keep on conducting these operations in order to challenge “massive maritime claims of 22 coastal states” (Webster, 2017), which includes China.
Although China has build installations at Mischief Islands, there was so far no claim of the territorial sea in the area surrounding it. Neither China nor the Philippines have yet commented on the recent FON but the U.S. claims the right to conduct the operations based both on the UNCLOS and on the arbitration award which state that there is no territorial sea in the region to be claimed by China (Webster, 2017). The lack of official reaction both from Manila and from Beijing can be compared to the recent Union Bank incident, minimizing the episode and solving eventual differences behind closed doors.

Considering the multilateral aspect in which China and the Philippines are involved there are also indications of further stabilizing the relations at the South China Sea. Despite China’s wish to solve bilaterally the conflicts, ASEAN members have been trying for years to establish a Code of Conduct - COC. It is expected that in November, 2017 at ASEAN Summit in Manila, ASEAN and China are expected to formally adopt a draft of a framework of a COC in which the parties will agree on solving the disputes through diplomatic channels (Nikkei, 2017). The framework of the COC ia also supported by the United Stated and, if adopted, holds a great potential of lowering tensions in the South China Sea.

Whereas Sino-Philippines relations have been instable for the past years, especially considering the disputes at the South China Sea and the recent arbitration award, there are consistent signs of a wish from both parties to stabilize it and reach a peaceful solution. There are still evident points of friction and external factors that could influence or even revert the intent of secure a harmonious relationship between China and the Philippines but, considering the events from the past year, when in last June the arbitration award led to gloomy forecasts, it can be affirmed that there is a perspective of stable if not prosperous relations with positive impacts at the South China Sea.
References


Venzon, Cliff. 2017. "Duterte's 'top guns' off to solicit infrastructure support from


