Sea Arbitration: The Dispute Between China And Philippines Over The South China Sea

Introduction to the Philippines

Philippines, an island country sitting on the western side of the Pacific Ocean. It consist of some 7100 islands with neighboring countries such as Vietnam, China, and some other Southeast Asian countries. The capital of Philippines is Manila, a city founded by the Spanish in 1571. The country was under Spanish rule for quite some time until 1898 when the Americans came and took over. It saw great destruction towards its cities during the World War Two era with some historically notable events occurring during that period including the Battle of Surigao Straits, the last Battleship against Battleship naval warfare in history of mankind. It was not until recent years did the Philippines gone up onto International News. With the outbreak of South China Sea dispute against the Chinese government taking over headlines from across the world, it has come to many people's concern to investigate and understand the issue behind it and why is China so desperate in wanting to gain control over the region.

Background of the dispute of South China Sea

The disputes started back in September 8 1951, when Japan signed treaties that officially made them renounced all claims to the islands that is located in the middle of South China Sea and also all of their conquered territories which is the Treaty of San Francisco and Treaty of Peace with the Republic of China (Taiwan). However, the treaties signed does not signify successor countries to the renounced territories since the Beijing government (People's Republic of China-PRC) was not invited to the San Francisco treaty talk. PRC therefore issued the Declaration of the Treaty of Peace with Japan by the government of United States and the United Kingdom, reaffirming their sovereignty over the territories, which is Spratly Islands and other islands on the South China Sea archipelagos, as well as protesting the absence of any provisions in the drafts regarding which country will be the successor state that will take over all rights, titles and claims to them after Japan's renunciation. They assert that the legitimate sovereignty of the Beijing government shall remain intact. Their claims over the South China Sea are solely based on their history where the islands has been an integral parts of the Ming dynasty. Then, the United States presided over the Japan-Taiwan signing of the Peace Treaty on 28 April 1952. In that document, it was stated in the article 2 that Japan had renounced all right, title and claim of the territories to Taiwan and Penghu. More than a decade later, the Philippines entered the conflicts by bases their claims on geographical proximity, which is their closeness to the Spratly island. The disputes continued to escalate when a Filipino named Thomas Cloma as well as his followers decided to occupy the islands and proclaimed the territory as "Freedomland", hence lead them to called for the Philippine to become a protectorate. In 1968, when the country was under the rule of President Ferdinand Marcos, Philippine troops were sent off to the island. A decade later, the archipelago was positioned under Palawan's jurisdiction.

Recently, in 2012, PRC seized Scarborough Shoal from Manila and it led to public outrage. In addition, those two countries also fight over the accusation of illegitimate poaching by the fishermen from China. The two states then agreed to withdraw from the Shoal after two months

of standoff. The Philippines had conform to the agreement, however, China did the opposite. The Chinese later has gone overboard to the point where the exclude all boats own by the Filipinos from the water of the Scarborough Shoal.

Fast forward to the year of 2013, an arbitration case was brought up against PRC by the government of Philippines, within Annex the seventh of the United Nations Convention on the Law of the Sea (UNCLOS), with regard to issues regarding the disputes on the South China Sea, including the legitimacy of the Nine-dash Line territory claimed by PRC. However, the Beijing government was firm with their stance, they declared that they will not cooperate in the arbitration. The case was ruled in favor of the government of Manila by the Permanent Court of Arbitration (McDorman, 2016). The arbitrators explained that any issues over sovereignty of territories will never be ruled, as well as any maritime borders between parties will be determine. It was also ruled that PRC has no rights based on history regarding the “nine-dash line”. Both the government of Beijing and Taiwan rejected the ruling of the case.

The dispute between China and Philippines over the South China Sea (Philippines’ Position)

China’s conduct at the Second Thomas Shoal under China’s Coast Guard(CCG) and CMS vessels. This is to seek and to enforce purported jurisdiction by China. The military vessels were used for the convenience of civilian also for law enforcement purposes. This has raised China’s claims that their purpose in the dispute is for civilian and not for military. For instance, there were no military activity or basis of military found to support that China has military activities over the Second Thomas Shoal. Philippines on the other hand submits that involvement of military units in construction projects will not affect the purpose of nature. This has violated the rights of the Philippines, according to article 279 of the convention. Which explains that Philippines reserves the right to have the dispute settled within peaceful means. This is in accordance of the United Nation’s Charter (Article 2 paragraph 3). This also notes Philippines right to not have the dispute extended or aggravated.

China’s action was considered by the Philippines as China’s form of reprisal after the Philippines decided to move forward with the arbitration. Philippines claims that China has used and altered the “status quo pen dente lite” since the commerce of the arbitration. This describe the position of the status quo, which is questionable and can be challenged, has allows China to dramatically challenged it. Next, China has also challenged the standing presence of the Philippines at the Second Thomas Shoal. This has made its effort good faith and the abuse of right. This describes that a party has the right to refrain from a dispute from extending or aggravating.

Philippines reserves the right to put a stop to the actions that may aggravate the dispute. This means that the article prohibits any acts that might aggravate or extend the dispute between China and Philippines over the Second Thomas Shoal. This includes all of China’s Activity around the Second Thomas Shoal. Whether it may or may not affect the Second Thomas Shoal, if it extends the dispute between the two parties, it should not be conducted. Secondly, Article 300 of the convention mentions about the basic principle of good faith and the abuse of right. The explains that parties should act accordingly with restraint, an objective to narrow and not to widen the differences between two parties. China and Philippines should work to minimize the differences between them to end the disputes.

In general, the former and current Philippine presidents, President Aquino III and President Rodrigo Duterte had a pretty similar security foreign policy. However, their way of implementation varies slightly including Philippines' military modernization, peace process of Muslim Mindanao and Maritime rights.

In efforts to end the "Decades of bullying by China", the Philippine submitted a memorial nearly 4,000 pages on March 2014. At the ASEAN Summit on May 2014, President Aquino III pushed for finalization of binding Declaration of Conduct of Parties in the South China Sea (DOC) to raise its maritime dispute with China. In October 2014, to improving their ties with China, former president Aquino addresses the Foreign Correspondents Association Philippines(FOCAP) excluding its maritime dispute over territories in the West Philippine Sea (South China Sea). President Aquino III planned to bring up recent action by China regarding the dispute water and ask for updates from regional leaders on the progress of the DOC. In the same week, Aquino did not attend Asia Pacific Economic Cooperation (APEC) Leaders Summit to have bilateral meeting with other leaders in Beijing. Aquino said that both of the country are looking for a solution that can be "win-win". Lastly, Aquino emphasized will focus with their plan to pursue peaceful resolutions to the problem.

President Duterte came to power in June 2016 and improved relations with Beijing via Chinese trade and investment. The government has increasingly looked to build an economically beneficial relationship with Beijing. In 2018, President Duterte and China president, Xi Jinping signed on joint oil and gas exploration deal and the "Belt and Road Initiative" to boost ties between Manila and Beijing. In April, the Philippines government filed a diplomatic protest against China. Then, Duterte threatened to send his troops for a "suicide mission" if China continues to conquer Thitu and Spartly Island chain.

Why China does not Agree with The Arbitration on the South China Sea?

There is a strong global legitimate reason for China to reject and take part in the proceedings of this arbitration on the South China Sea, being heard at the Permanent Court of Arbitration in The Hague. Additionally, China is known as a sovereign state. Thus, China is qualified to choose or to pick its favored methods for the resolution of the dispute which is a legitimate right under international law. In this case, the Philippines' approach on this matter is defective and illegitimated by these anomalies as the nation's abuse in the settlement of the dispute, its twisting of concepts and its deliberate mask of the real concepts of the debates. The arbitration is related to sea delimitation and the arbitration of the Philippines is also related with the disagreement regarding the sovereignty of reefs and islands in the South China Sea. However, these regional matters are not in the scope of the United Nations Convention on the Law of the Sea (UNCLOS). Other than that, the initiation of the arbitration on the South China Sea did not meet the preconditions of United Nations Convention on the Law of the Sea (UNCLOS) because it is an unilateral arbitration. In this case, China has not yet given the exact claims with individual islands. Instead, it has constantly regarded them as a part of its Nansha Islands or Zhongsha Islands in the South China Sea. Additionally, UNCLOS also stated that Philippines must trade or exchange point of views regarding the arbitration over the issue with China. However, in this case, Philippines has never talked or discussed about this issue with China. Therefore, the approaches of the Philippines has failed to settle disputes as they has violated the agreement that they agreed on which is these two countries much go through bilateral

negotiations and consultations as the way to settle the issue on the South China Sea. Based on what we understand from this issue is that the arbitration will only cause pressures and instability between these two countries, hence, it cannot settle the debates between Philippines and China on the issue of the South China Sea. In order for them to settle this dispute, they have to go back to the way of looking for solutions which is through bilateral negotiations. In international law, there is no supreme law so no one is allowed to violate the basic principles of international rule of law. In addition to that, in this tribunal, whose position and power are given by states, is an international settlement instrument under UNCLOS. If this tribunal mishandles its power based on international law, China and other countries have the rights to dismiss the decisions of the arbitration. However, in this issue, Philippines has acted in a careless way. Thus, Philippines has disregarded the most common and basic standards of international law. Hence, China has rejected the arbitration on the South China Sea.

What Happened Afterwards? (Conclusion)

In a nutshell, Duterte decided to follow the Code of Conduct set up and agreed by the Philippines and China. In this agreement, there are several rules and regulations both Philippine and China have to obey which includes but not limited to; joint petrol gas ventures, shared maritime spaces, and so on. This act of compromise however, received a significant amount of backlash from the Philippine public as some of the general public see it as undermining Philippines territorial claims in South China Sea.

June 9th 2019, an accident involving the Chinese and Philippines took the world by surprise. A Philippines fishing vessel was sunk with 22 Filipino crew members on-board. It was reported that the Chinese left the scene after making collision with the Philippine fishing vessel in South China Sea. Even though later investigations showed that the Philippines were partly at fault for not having a “proper lookout” since the ship was carrying too many crews, having an expired fishing license, and including an unlicensed engine officer. These minor flaws however, does not justify China’s action in not issuing an official apology letter regarding this incident nor did the Chinese paid for any compensation to the Philippines for “destroying” their fishing boat and trespassing their territory.

In the 35th ASEAN Summit, the topic of China being the “bully” was sort of brought up by Philippines, Vietnam, and some other ASEAN countries but it did not receive any proper attention from the Chinese spokesman. It can be seen from the general response by the Chinese spokesman that China did not see their acts of aggression as offending or a violation of International Maritime Sea Security.

The International Tribunal for the Law of the Sea gave Philippines the full sovereignty of South China Sea. Regardless of China’s disagree towards the final decision by the court, Duterte still decides to compromise and allow for bilateral negotiations even though the law of the sea is behind his back (Duterte). This act of friendliness towards the Chinese government however was not appreciated by the Chinese.

To summarize Philippines’ foreign security policy in a nutshell, Duterte did his very best at keeping friendly ties with the Chinese government regarding the South China Sea, but nothing seems to workout so far. Bilateral negotiations only leads to China’s perception of Philippines being weak and willing to compromise regardless of the cost. This act of aggression by the

Chinese will not stop nor will it come to an end, it is safe to say that the current flow of events goes accordingly with Niccolo Machiaveli's The Prince on Realism perspective of things. In The Prince, it was stated that "the stronger state will always exert its hegemony over the weaker state", although not proven, but it can seen that China is obviously exerting pressure on Philippines based on its advantage regardless of it being from a military or economic standpoint.