

PCA Case N° 2013-19

IN THE MATTER OF AN ARBITRATION

- before -

**AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

THE REPUBLIC OF THE PHILIPPINES

(Applicant)

- and -

THE PEOPLE'S REPUBLIC OF CHINA

(Respondent)

PROCEDURAL ORDER N° 3

ARBITRAL TRIBUNAL:

**Judge Thomas Mensah (Presiding Arbitrator)
Judge Jean-Pierre Cot
Judge Stanislaw Pawlak
Professor Alfred Soons
Judge Rüdiger Wolfrum**

REGISTRY:

Permanent Court of Arbitration

16 December 2014

WHEREAS in accordance with Article 1.1 of Procedural Order No. 1 the Tribunal adopted Rules of Procedure to apply in this Arbitration;

WHEREAS Article 25(2) of the Rules of Procedure provides that: “In the event that a Party does not appear before the Arbitral Tribunal or fails to defend its case, the Arbitral Tribunal shall invite written arguments from the appearing Party on, or pose questions regarding, specific issues which the Arbitral Tribunal considers have not been canvassed, or have been inadequately canvassed, in the pleadings submitted by the appearing Party. The appearing Party shall make a supplemental written submission in relation to the matters identified by the Arbitral Tribunal within three months of the Arbitral Tribunal’s invitation. The supplemental submission of the appearing Party shall be communicated to the non-appearing Party for its comments which shall be submitted within three months of the communication of the supplemental submission. The Arbitral Tribunal may take whatever other steps it may consider necessary, within the scope of its powers under the Convention, its Annex VII, and these Rules, to afford to each of the Parties a full opportunity to present its case.”

WHEREAS in accordance with Article 2.1.1 of Procedural Order No. 1 and Article 18 of the Rules of Procedure, the Republic of the Philippines filed its Memorial with accompanying Annexes on 30 March 2014 and sent copies to the People’s Republic of China, the Permanent Court of Arbitration (“PCA”) as Registry and the Arbitral Tribunal;

WHEREAS by letter dated 15 May 2014 the PCA on behalf of the Arbitral Tribunal invited comments from both Parties on a draft of Procedural Order No. 2 and the tentative schedule for the next phase of the proceedings, including one set of dates for the scenario in which the People’s Republic of China were to file a Counter-Memorial within the timeframe set by Procedural Order No. 2 and an alternative set of dates for the scenario in which the People’s Republic of China were not to file a Counter-Memorial within the timeframe set by Procedural Order No. 2;

WHEREAS by Note Verbale to the PCA dated 19 May 2014, the Embassy of the People’s Republic of China to the Kingdom of the Netherlands reiterated “its position that it does not accept the arbitration initiated by the Philippines” and returned the correspondence from the PCA, stating that the Note Verbale “shall not be regarded as China’s acceptance of or participation in the arbitration procedure.”

WHEREAS by letter dated 29 May 2014 the Agent for the Republic of the Philippines made comments on the proposed timetable and expressed its satisfaction with the terms of Procedural Order No. 2;

WHEREAS on 2 June 2014 the Tribunal issued Procedural Order No. 2, which provided in Paragraph 1.1 that: “The People’s Republic of China shall submit a Counter-Memorial responding to the Memorial of the Republic of the Philippines by 15 December 2014”; and in Paragraph 1.2 that “The Arbitral Tribunal will determine the need for, and scheduling of, any further written submissions and hearings at an appropriate later stage, after seeking the views of the Parties.”

WHEREAS on 8 December 2014, the Embassy of the People’s Republic of China in the Kingdom of the Netherlands deposited with the PCA a Note Verbale to inform the PCA that “[o]n 7 December 2014, the Ministry of Foreign Affairs of the People’s Republic of China was authorized to release 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.” In the Note Verbale, the People’s Republic of China also requested the PCA to forward the Position Paper and its English translation to the individual members of the Arbitral Tribunal. The Note Verbale further included the statement that: “The Chinese Government reiterates that it will neither accept nor participate in the arbitration unilaterally initiated by the Philippines. The Chinese Government hereby makes clear that the forwarding of the aforementioned Position Paper shall not be regarded as China’s acceptance of or its participation in the arbitration.”

WHEREAS on 11 December 2014 the PCA conveyed to the Parties that it had received and forwarded to the members of the Arbitral Tribunal copies of the Note Verbale from the People's Republic of China and the accompanying Position Paper;

WHEREAS as at 16 December 2014 the People's Republic of China has not filed a Counter-Memorial;

WHEREAS although to date the People's Republic of China has "reiterated its position that it does not accept the arbitration initiated by the Philippines," it nonetheless remains open to the People's Republic of China to participate in these proceedings at any stage;

MINDFUL of the provisions of Annex VII to the United Nations Convention on the Law of the Sea, including in particular Article 5, which provides that unless the parties to the dispute otherwise agree, the Arbitral Tribunal "shall determine its own procedure, assuring to each party a full opportunity to be heard and to present its case," and Article 9, which provides for the continuation of proceedings if "one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case";

THE ARBITRAL TRIBUNAL hereby issues the following Procedural Order:

1. Procedural Timetable

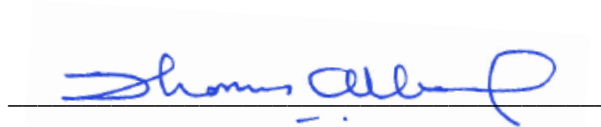
- 1.1 Pursuant to Article 25(2) of the Rules of Procedure, the Arbitral Tribunal invites further written argument from the Philippines on specific issues which the Arbitral Tribunal considers have not been canvassed, or have been inadequately canvassed, in the Memorial, as set out in the attached document entitled "Requests for Further Written Argument by the Philippines Pursuant to Article 25(2) of the Rules of Procedure."
- 1.2 The Philippines shall make a supplemental written submission in relation to the matters identified by the Arbitral Tribunal by **16 March 2015** and shall communicate the supplemental written submissions to the People's Republic of China, the Registry and the Arbitral Tribunal.
- 1.3 The People's Republic of China shall have until **16 June 2015** to provide any comments it may wish to make on the supplemental written submission.
- 1.4 The Arbitral Tribunal will determine the need for, and scheduling of, any further written submissions and hearings at an appropriate later stage, after seeking the views of the Parties.

2. Leave to Apply

- 2.1 Any Party has leave to apply to the Arbitral Tribunal for a variation of this Order, giving particulars of the variation sought and the reason for it.
- 2.2 Any Party may, at any point in these proceedings, request that the Arbitral Tribunal convene a conference with the Parties to address any procedural aspect of these proceedings. The Arbitral Tribunal will arrange to confer with the Parties in person or by teleconference, according to the circumstances.

Dated: 16 December 2014

ON BEHALF OF THE ARBITRAL TRIBUNAL



**Judge Thomas Mensah
President**