

B O O K

**The South China Sea arbitration:
Understanding the awards and debating with China***

By Alfredo C. Robles, Jr.

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Alfredo Robles's book on the Philippines v. China South China Sea arbitration (PCA Case Number 2013–19) is a very useful reference, especially for those who are already familiar with the fundamental facts and developments of the South China Sea disputes. It is also a great reference for interested students and analysts who wish to understand the complexity of these territorial and maritime disputes and why they are at the center of so much controversy.

The author states at the outset that he is not looking into the foreign policy implications or even the relationship between the two countries. Instead, he based his work on a point-by-point summarization of the respective legal arguments of the Philippines and China on the key issues raised by the Philippines before the Arbitral Tribunal, which was organized under Annex VII of the UN Convention on the Law of the Sea (UNCLOS). The period covers January 2013, when China was served notification of the filing, until July 2016 when the Tribunal handed down its decisions on these points. By juxtaposing the Philippines' arguments, China's positions (as culled from various indirect sources due to China's non-participation in the process), and the decisions of the Tribunal, Robles saves the reader the trouble of reading through 500 pages of the arbitral award to understand what the results were.

To recap the issues here and to highlight the significance of the award for the Philippines (and for international law), I quote directly from his Introduction:

[T]he Tribunal's decisions are important because they have made clear that China's encroachment on (the Philippines') maritime zones, embodied in the so-called nine-dash line, is illegal; reiterated the exclusive right of the Philippines to explore and exploit the living and non-living resources of its

* Note from the Editor-in-chief: Professor Aileen Baviera passed away in March 2020 due to COVID-19. This book review was posthumously copyedited and I accepted the necessary minor corrections on her behalf.

exclusive economic zone (EEZ) and continental shelf; refuted China's claims of excessive maritime entitlements for Scarborough Shoal and the Spratly Islands; validated Philippine claims that China's construction activities and its toleration of fishing of endangered species by its nationals have inflicted irreparable harm on the marine environment in the South China Sea; and confirmed that the behavior of China's vessels that deliberately sought to provoke collision with Philippine vessels is illegal. (xxi)

Sovereignty, or ownership of the disputed features, was not being put to a decision, as this was not within the scope of the UNCLOS. However, as there was currently no process for addressing issues regarding sovereignty nor the maritime delimitation between China and its neighboring coastal states, there was no reason to forego the interpretation or implementation of the UNCLOS even while these other concerns remained. This is because the UNCLOS is a body of law resulting from decades of negotiations and ratified by 168 states, including China and the Philippines. China, from the very start, refused to participate in the process, questioned the jurisdiction of the Tribunal on grounds that the case was ultimately about sovereignty and maritime delimitation, and even tried to besmirch the integrity of the judges.

Robles's detailed description of the processes provides good insights into the nature of arbitral proceedings in international law. Such processes include the selection of the judges, how the Philippines had to pay for all the expenses that normally would have been shared between parties in an arbitration case, the recruitment of scientific experts to establish the exact nature of some of the geographic features in question, and how all communications were passed on to China and other governments whose interests might be affected (but when the United States requested it was refused the opportunity to observe because it was not deemed a State-party to the UNCLOS).

The chapter on what China could learn from Africa was a welcome bonus wherein Robles—in this reviewer's mind—demonstrated the difference between international politics and international law. The very same states that China had persuaded to support its position had, in their own experiences, relied on similar norms and principles of international adjudication to resolve some of their own disputes.

Indeed, consistency and principle are not exactly hallmarks of states in a realist world. Small states need to play along with big power games, but at the end of the day, they need the protection of international law. Translated to the Philippine setting, the Aquino administration chose to gamble on international law, and then the Duterte government turned around, set aside the legal windfalls from the arbitration, and started playing the game of international politics. One wonders whether President Duterte is completely unaware that the biggest political card he could have used vis-à-vis China was the arbitration ruling itself.

China's initial total rejection of the Philippines' legal victory was extremely disappointing. Robles prudently distinguished between reactions from the Chinese media (although I would have further distinguished Communist Party mouthpieces from the rest) and the official pronouncements. They were disappointing coming from a big power that somehow saw itself as an emerging world leader and moral exemplar. In this part of the book, perhaps one area that would also have been instructive is a discussion of the intense lobbying both sides conducted with other governments, and the tally sheet of supporters and oppositors before and after the issuance of the arbitral award. Others have written on this.

There are some minor criticisms worth raising so that future readers (and I hope there will be many) are prepared. By using too much of the unadulterated language of law and quoting extensively from the arbitration ruling itself, an opportunity to translate some rather technical questions into more understandable legal and political concepts for a lay reader was missed. In some parts of the discussion, the author did add some rather useful data from his own research, but other than pointing out that these were his contributions, which were not in the verbatim text of the award, he did not provide citations as to the other sources used.

Robles's narration apparently also drew liberally from journalistic coverage by Raissa Robles and from blogs that she wrote. I generally consider this a strength as the author showed that he was a close observer of unfolding historic events rather than a researcher trying to reconstruct facts from published works. Unfortunately, he repeatedly referred to Raissa Robles as "my sister-in-law," an extremely personal touch in the otherwise formal expert tone of the book. Some readers might find parts of the book taking a biased tone toward the Philippine perspective, but that was the author's call.

Who would benefit most from reading this substantial work? Students and scholars of Philippine diplomacy and of public international law, keen observers of China's behaviors in the bilateral and multilateral arenas, or even fans of underdog stories wanting to see how modern-day Davids can try to topple Goliaths, at least on the legal front. Will the argument "Right makes might" trump "Might is right?" This is the quintessential question of the relationship between law and power.

Most of all, the book should benefit the Duterte administration, which needs reminding of the immense pains and costs (political, diplomatic, and financial) the arbitration entailed for the Filipino people. If the South China Sea arbitration were to contribute to encouraging states, most specially the big powers, to behave according to the rules and conventions that are intended to keep order in the world today, then every centavo, every doubt, every criticism, and every day of diplomatic isolation suffered by those on the Philippine frontlines of the arbitration during this three-and-a-half year episode would have been worthwhile.

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