

July12 Forum
Stratbase/Manila Polo Club
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Good morning to all of you.

It has been two years since the Philippines' overwhelmingly won in its maritime dispute against China. But during this time, the official narrative in the Philippines has been one with strong defeatist tones.

From Day 1, July 12, 2016, when the international arbitral tribunal issued its decision invalidating China's nine-dash line and clarifying the status of certain features in the South China Sea, this ruling has never been given the national attention it deserved.

It has not been used as a leverage in the country's dealings with China. It has not been part of the country's diplomatic arsenal.

In the two years that Duterte has been president, the Award has been brought up with China twice in bilateral consultations. Twice in two years. Foreign Secretary Alan Cayetano revealed this during a recent Congressional hearing called by the special committee on the West Philippine Sea.

The government says yes, we won but...

- China is our source of economic deliverance. China will rebuild war-torn Marawi. It will invest heavily in the government's 'Build, Build, Build' program. Millions of Chinese tourists will boost our tourism industry. China is our new source of weapons.
- China is a dear friend who, unlike the EU, is nonchalant about the deadly drug war that has killed thousands and has led to a tidal wave of impunity.

These butts drown out the gains of July 12, 2016, weakening the Philippine position, making our country's voice part of the chorus of approval of China in the region.

This morning, as a journalist, I'd like to present a different narrative so that the public is not taken by the official story.

It is time we talk about a narrative that takes us back to the story of *Philippines vs. China*, the historic arbitration case that reverberated in various parts of the world.

It is time to go back to the almost two decades of back-and-forth with Beijing when our diplomats asserted Philippine rights over parts of the South China Sea—only to

be rebuffed with the stock response that China had “indisputable sovereignty” over this vast area.

It is time to go back to the Award. As a law professor from the University of Geneva said: “July 12, 2016 is a date that will remain etched in the history of international adjudication.”

It is time to hear from experts, diplomats and the public on how to make use of our legal victory and start a national conversation on this vital issue.

Rock Solid

I take a leaf from what a foreign commentator wrote soon after July 2016: “Having seized control of the narrative, Manila must hang onto it... The Philippines must... tell its story well and tell it often.”

In my new book, *Rock Solid: How the Philippines won its maritime case against China*, I tell the story of this victory that gave the country so much—a maritime area larger than the total land area of the Philippines, rich in resources—but has since been disregarded by the government.

First of all, the case is historic for four reasons:

1. It is the first to interpret the UNCLOS definitions of rocks, islands and low-tide elevations.
2. It is the first case to be filed by a South China Sea claimant state against China.
3. It is the first time the Philippines sued a country.
4. It is the first case to address the scope and application of the UNCLOS provision on protection and preservation of the environment. As the Philippine lawyers said, international environmental law was still an infant when UNCLOS was negotiated.

The book addresses why President Aquino decided to take China to court. A number of people had openly opposed the arbitration saying that it would do more harm than good to our relations with China.

A lawyer who was part of the Philippine delegation to UNCLOS even called for a withdrawal of the case as the country was awaiting the decision of the international tribunal. This was to give the incoming president latitude in dealing with China as Aquino was to step down in June 30, 2016 and Duterte was to take over.

This may be a little known fact but on the day Aquino was inaugurated president in 2010, China sent him a formal invitation for a state visit, the first country to do so. It showed how strongly China wished to woo the new leader and continue the golden years it had enjoyed with his predecessor, Gloria Macapagal-Arroyo.

Reflecting on his early years as president, Aquino said he wanted to have very good relations with China since it was increasingly becoming an economic superpower.

But two things shaped Aquino's views on China:

1) In 2011, China, displaying its might, stopped Philippine survey ships in Reed Bank or Recto Bank. These ships had less than two weeks to go before they could finish their survey.

2) A year later, in 2012, China took control of Scarborough Shoal after a one-and-a-half-month standoff, a tense confrontation over fishing rights. A series of dangerous near-collisions took place between Philippine and Chinese ships. Much later, the tribunal ruled that China's provocations caused these, violating regulations on good seamanship.

Aquino told me in an interview that he particularly remembered the quip of one ASEAN senior leader: "There are big countries and there are small countries. That's the way of the world."

He mulled over this and thought: It was precisely the law that would serve as the great equalizer.

The case

With this as anchor—the law as the great equalizer—Aquino decided to take China to court, with the approval of the Cabinet, the leaders of Congress and two past presidents.

In January 2013, the Philippines began its legal battle.

More than a year later, the Philippines submitted its memorial, equivalent to a plea, which reached more than 3,000 pages. It was a product of massive research in history, international law, geology, hydrography, marine biodiversity, and cartography. This included ten volumes of annexes which contained maps, nautical charts, expert reports, witnesses' affidavits, historical records, official communications.

Written exchanges between the Philippines and China, including notes verbale, starting from the mid-1990s, were made public. Intelligence reports of the Navy, the Western Command of the Armed Forces, and the Department of National Defense were also submitted to the tribunal.

This was a first in the country's contemporary history: that diplomatic cables and intelligence documents were revealed to the public, a fascinating trove of our country's diplomatic history.

It is good to be reminded that it was the Philippines which hosted the first bilateral consultations that focused on the South China Sea in August 1995.

The Philippine story also unfolds in the transcripts of the oral hearings in The Hague which capture the essential points of the case. As you will see, Paul Reichler and his team at Foley Hoag used the richly documented diplomatic history of the Philippines-China dispute in their arguments before the tribunal.

These transcripts, the Philippine memorial, the awards (or the tribunal's decisions) on jurisdiction and merit are accessible reading to non-lawyers like me. They can be downloaded from the website of the Permanent Court of Arbitration.

Aftermath

Despite the stunning victory, the Philippine government was so glum about a historic ruling that was on its side. The government chose to bury a euphoric moment instead of using the victory to galvanize a nation.

President Duterte once said that the Philippines was "helpless" in the face of China's might. For him, the choices in dealing with China were extreme, either to talk or to go to war. He has framed foreign policy in a false dichotomy.

While the story of *Philippines vs. China* offers hope and inspiration, it is the aftermath that offers more challenges. *Rock Solid* gives a few prescriptions on how to make the tribunal's decision work but there are definitely more ideas out there from scholars, diplomats and experts worth exploring. We've heard substantial ideas from our speakers this morning.

Many have said that international pressure can encourage the implementation of the award—but friendly countries have to take the lead from the Philippines.

In the region, the award benefited not only the Philippines but other Southeast Asian states which have made claims to parts of the South China Sea. Domestically, the Philippines should invest heavily in the upgrade of the coast guard because it is the civilian agency responsible for patrolling the country's waters and policing the seas. Its assets are inexpensive, compared to those of the navy. The Philippine Coast Guard (PCG), despite its long history—it was founded in 1901—had been given scant attention by the government. It was only after the Scarborough crisis in 2012, when the Philippines needed to send coast guard vessels to the shoal, that its importance surfaced.

Making the tribunal ruling work and seeing it come to fruition, partly or fully, will take a long time, way beyond a single president's term. It will require strategic thinking anchored on a strong sense of justice, equity and sovereign rights.

Lessons

This book project has left me with a few lessons.

One, the country is bereft of strategic thinking. It is moored on short-term interests and has little regard for external forces, primarily powerful countries' plans and how these impact the country's policies.

Two, despite being one of the top ten countries with the longest coastlines, we have very low awareness of our maritime surroundings and the issues that arise from our geography. Government policies are dominated by land-based problems, from infrastructure to security.

Finally, the past has a lot to teach us, even if the decisions and actions were made under another government. Thus, the Philippines should learn from its rock-solid victory and not let it go to waste.

Thank you for listening and good day.