

ENFORCING THE ARBITRAL RULING AND SEEKING A TEMPLATE TO FINALLY SETTLE THE MARITIME DISPUTE IN THE SOUTH CHINA SEA

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1. As I have said on many occasions, China's claim to the West Philippine Sea, backed up by air and naval bases in the Spratlys, is the gravest external threat to the Philippines since World War II. At stake is a maritime space, constituting the Exclusive Economic Zone of the Philippines, with an area larger than the total land area of the Philippines. China wants to grab this huge maritime space from the Philippines.
2. The arbitral ruling affirmed that this maritime space is the Exclusive Economic Zone of the Philippines, and only the Philippines can explore and exploit the natural resources in this maritime zone. There are those who say that the arbitral ruling is a pyrrhic victory because there is no one to enforce the ruling.
3. This is, of course, false. Even as I speak now, the arbitral ruling is being enforced. When the ruling invalidated China's nine-dashed line claim, immediately you have high seas in the center of the South China Sea, and all around these high seas are the exclusive economic zones of the coastal states, including the exclusive economic zone of the Philippines in the West Philippine Sea.

4. Today, the naval powers of the world – the US, UK, France, Japan, Australian, India and Canada – are sailing and flying in the high seas and exclusive economic zones of the South China Sea because in the high seas and exclusive economic zones there is freedom of navigation and overflight under international law.
5. In particular, these naval powers are asserting freedom of navigation and overflight in the West Philippine Sea because there is an exclusive economic zone in the West Philippine Sea. Under UNCLOS, the natural resources in the exclusive economic zone belong exclusively to the adjacent coastal state. In the West Philippine Sea, there is only one adjacent coastal state – the Philippines. It does not take rocket science to conclude that the freedom of navigation and overflight operations of these naval powers actually enforce a core part of the arbitral ruling.
6. Of course, these naval powers are conducting freedom of navigation and overflight operations not because they love the Philippines, but because it is their paramount national interest to protect their trade routes in the high seas and exclusive economic zones of the world. But since the Philippines is a beneficiary of these freedom of navigation and overflight operations, because these operations enforce a core part of the ruling, the Philippines should logically welcome these freedom of navigation and overflight operations.

7. However, when it comes to the actual exploration and exploitation of the natural resources in Philippine exclusive economic zone in the West Philippine Sea, the Philippines cannot expect help from these naval powers. That is not the national interest of these naval powers. The Philippines is on its own when it comes to ensuring its exclusive right to the natural resources in its exclusive economic zone in the West Philippine Sea.
8. Recently, during the visit of President Xi Jinping, the Philippines and China signed the MOU on cooperation in oil and gas activities in maritime areas. I support this MOU for three reasons.
9. First, the signed MOU is the Philippine draft, not the Chinese draft. The Chinese draft calls for “joint exploration and exploitation” of oil and gas. The Philippine draft, which was the one signed, calls for cooperation in oil and gas activities through the vehicle of Philippine service contracts.
10. “Joint exploration and exploitation” violate the Philippine Constitution, which requires that the Philippine state should exercise “full control and supervision” in the exploration and exploitation of natural resources. In “joint exploration and exploitation,” the Philippines loses “full control and supervision.”

11. Second, the model service contract of the DOE, in its first whereas clause, states that the natural resources covered by the contract belong to the Philippine state. The second whereas clause states that the contractor shall comply with Philippine laws, rules and regulations. The contract also provides that the governing law shall be Philippine law. PD 1459, which governs payment to service contractors, provides that the share of the Philippines shall not be less than 60 percent of the net income, including all taxes paid to the Philippines.
12. The MOU creates a Working Committee composed of equal representatives from CNOOC and from the service contractors which have approved contracts with the Philippine government in specific maritime areas. In short, CNOOC will cooperate in oil and gas activities either as a sub-contractor of the Philippine service contractor, or as equity holder in the Philippine service contractor, or both.
13. Clearly, under the signed MOU, there is compliance with the Philippine Constitution, and there is no waiver of Philippine sovereign rights under the arbitral ruling.
14. There is a third reason why I support the signed MOU. I view the South China Sea dispute in three phases. In the first phase, China claimed indisputable sovereignty to 85.7 percent of the South China Sea under the nine-dashed line.

15. In the second phase, when the arbitral tribunal invalidated the nine-dashed line, China asked the other claimant states to meet China “half-way.” I asked Wu Shicun, China’s guru on the South China Sea, what “half-way” meant - half of the sovereign rights, or half of the income, or both. There was no answer. Of course, with the arbitral ruling, no claimant state can surrender even half of its sovereign rights in its exclusive economic zone.
16. In the third phase, China will no longer claim sovereign rights in the exclusive economic zones of other claimant states but will be satisfied with half of the income. If China actually accepts this cooperation arrangement, then we would have found the formula for finally settling the maritime dispute in the entire South China Sea. This formula will use the service contract as the vehicle for cooperation with China in oil and gas activities. This formula will be acceptable to other claimant states.
17. With the signing of the MOU, have we entered the third phase? Are we on the cusp of finally settling the maritime dispute in the entire South China Sea? I really do not know. It would depend on the outcome of the negotiations in the Working Committee between CNOOC and the Philippine service contractor. In Reed Bank, that would be Forum Energy which holds Service Contract 72 from the Philippine government. It is, of course, possible that in the negotiations China would go back to “joint exploration and exploitation,” something which we should firmly reject.

18. But there is also the possibility that China will realize that service contracts may be the only win-win formula to resolve the maritime dispute in the entire South China Sea, and will thus cooperate with the Philippines through Philippine service contractors. That is why I support the signed MOU, because it may possibly, just possibly, usher in the third phase.
19. Anyway, we are well protected and we have nothing to lose under the MOU. Whether we are in the third phase or still stuck in the second phase, we will know for sure within 12 months, the deadline for the Working Committee to hammer out an agreement.
20. With that, I conclude my remarks. Thank you and good afternoon to everyone.