

QUO VADIS ON THE SOUTH CHINA SEA

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I. On the Rule of Law and the South China Sea

I think we can agree that the South China Sea Dispute poses an existential challenge to the rules-based system that supports our international order, including the United Nations Convention on the Law of the Sea (“UNCLOS”). If UNCLOS—as embodied in the 2016 Arbitral Award won in The Hague—does not apply in such an important region as the South China Sea, then it is possible to extinguish the Rule of Law in any region of the world, and replace it with a system where brute force governs.

If we allow this to happen, the gains we achieved as a global community over centuries in building an international order will be reversed, and we will return to that state of nature where reason does not count, and force and intimidation prevail.

We therefore believe that every citizen of this world has a stake in resolving the South China Sea Dispute in favor of UNCLOS and the Rule of Law.

By bringing a case against China under UNCLOS, we stood for what is right and that is why we defended what is rightfully and legitimately ours using peaceful means in accordance with the Rule of Law. In pursuing our advocacy, we identified ourselves with states which observe and adhere to rules-based international norms. Moreover, in addressing the most critical security issue in our region, the Philippines positioned itself to successfully demonstrate that “right is might” and international law is the great equalizer among states.

Thus, we trusted and had been given the assurance that our government will not overlook the fact that it is compelled by the law of the land to fully address The Hague Arbitral Award under UNCLOS.

II. On Post Arbitration

Four years have passed since the Philippines legally won the South China Sea arbitration case which invalidated China’s claim to historic rights over resources within the West Philippine Sea.

Under the leadership of Xi Jinping, however, China continues to assert its claim in disputed waters in the South China Sea while disregarding the legal victory of the Philippines. Nevertheless, the Award has been internationally recognized and used as a basis for rightful claims over the South China Sea, and to exercise freedom of navigation.

Vietnam has sought to take action through legal means with its overlapping claims with China using the Award as its basis. Most recently, Indonesia shunned China's nine-dash line claim by citing the Award in its diplomatic protest regarding the Natuna Islands.

Naval powers, such as the US, Japan and Australia, have actively recognized the Award with their freedom of navigation and overflight operations which upholds international law and, at the same time, undermining China's nine-dash line claim. The UK, France and Germany have also invoked the Arbitral Tribunal outcome.

III. On The Importance of the South China Sea

The South China Sea is of tremendous economic and geostrategic importance: it is where a quarter of international trade goes through and where more than half of the world's oil tankers and merchant ships pass every year. The South China Sea is part of an area that has long been known to be the “greatest concentration of marine life on the planet,” where the highest concentration of this biodiversity is in Philippines.

Located in the Spratlys are the breeding grounds of fish and other marine life that give food and sustenance to the people of Southeast Asia over centuries. Traditional fishermen and their families have lived throughout these years relying on their fish catch from these waters.

Coral reefs are the single most valuable ecosystems in the world: a hectare of coral reefs can produce a potential value of US\$ 350,000 a year. However, for coral atolls to form, it may take as long as thirty million (30,000,000) years to occur. Thirty-four percent (34%) of the world's coral reefs are in the South China Sea, despite the area being only 2.5 percent of the world's total ocean and sea surface.

It may surprise Filipinos that our West Philippine Sea is home to these coral atolls and is one of the richest and most biodiverse ecosystems in the world, bestowed by nature upon us, our ancestors, and upon future generations of Filipinos.

IV. On Massive Environmental Destruction in the South China Sea

What happened in the past few years?

Based on the 2016 Arbitral Award, we know that this rich biodiverse region was mercilessly destroyed by China through its illegal reclamation and artificial-island building in the Spratlys.

Please take a pause to imagine how our coral atolls—which can take 30 Million years to form—were destroyed almost instantaneously by China these past few years under the leadership of Xi Jinping.

Beginning in 2013, Chinese dredgers pulverized the coral reefs in the Spratlys and used these dead coral reefs and other sediments to create dry land.

To the immense detriment of countries bordering the South China Sea, China destroyed these coral reefs to create air and naval bases in the Spratlys for the purpose of enforcing a historically and legally baseless claim over the South China Sea.

Given the wanton destruction of these fish homes in the Spratlys, scientists are now warning that this has accelerated one of the world's worst fisheries collapse that may lead into mass starvation in the region.

John McManus, a world-renowned marine scientist, observed that the “thoroughness of the damage to marine life exceeded anything he had previously seen in four decades of investigating coral reef degradation.”

Dr. McManus ominously warned: “What we’re looking at [in the South China Sea] is potentially one of the world’s worst fisheries collapses ever...We’re talking hundreds and hundreds of species that will collapse, and they could collapse relatively quickly, one after another.”

The 2016 Arbitral Award found that “[b]ased on the compelling evidence, expert reports, and critical assessment of Chinese claims described above, the Tribunal has no doubt that China’s artificial island-building activities on the seven reefs in the Spratly Islands have caused devastating and long-lasting damage to the marine environment.”

V. On Actions to be Taken

At this point, what can we do?

It seems obvious that we should protect and rebuild the remaining marine life in the South China Sea. The suggestion of Justice Antonio Carpio and other marine biologists to immediately declare the Spratlys as a “Marine Protected Area” is well-taken.

If countries bordering the South China Sea agree to declare the Spratlys a “Marine Protected Area,” this will give the marine life in that area some “breathing space” to heal. We therefore urge our countrymen, the Philippine Government and our ASEAN neighbors to help us in this endeavor. This also means that we should push back on any destructive reclamation and militarization activities in the Spratlys.

If these are not done, Southeast Asia will suffer one of the worst environmental catastrophes in history that will destroy our food and livelihood.

Equally important is to demand accountability from the main perpetrator of the environmental destruction in the South China Sea—China. As cited in the Arbitral Award: “The overall damage to the coral reefs within the Greater Spratly Islands covers at least 124 km², of which the [People’s Republic of China] is responsible for 99%.”

If we do not demand accountability, we embolden rogue countries like China to commit the same malevolent acts in the future, including China’s planned reclamation of Scarborough Shoal—another rich traditional fishing ground of Filipinos, the Vietnamese and even the Chinese.

China has long been planning to reclaim Scarborough Shoal to enforce the northeastern part of nine-dash line and complete its triangle of military control over the South China Sea.

Fortunately, despite its *de facto* possession over Scarborough Shoal, China has not yet reclaimed the shoal because the US and its allies considered Scarborough Shoal as a “red line” that China must not cross.

For now, China is waiting for the right moment to reclaim Scarborough Shoal.

It is, therefore, in our highest national interest that we exert all efforts to prevent China from committing another disastrous crime by reclaiming Scarborough Shoal.

VI. On Duty of Every Citizen to Protect the South China Sea

The protection of our environment is a duty not only of governments, but every citizen of this planet. Due to the interconnection of natural ecosystems, an environmental disaster in one area inevitably spills over to other parts of the globe. This is especially true in the rich biodiverse region of the South China Sea.

UNCLOS acknowledges this fact by providing in its Preamble that “the problems of ocean space are closely interrelated and need to be considered as a whole.”

Even the Philippine Constitution provides that every Filipino, as part of the Philippine State, shall protect the nation’s marine wealth.

VII. On ICC Filing on China's Crimes Against Humanity

For our part, on March 13, 2019, former Ombudswoman Conchita Carpio Morales and I submitted a Communication to the Office of the Prosecutor of the International Criminal Court ("ICC") to show that Chinese President Xi Jinping, Foreign Minister Wang Yi and former Chinese Ambassador Zhao Jinhua, among others, committed Crimes Against Humanity by, among others, (1) illegally blockading the traditional fishing grounds like the waters around Scarborough Shoal and the Spratlys and (2) causing the near permanent destruction of the marine environment of the South China Sea. We subsequently include in our Communication executives of China Communications Construction Company, the corporation which undertook the destructive dredging in the Spratlys.

In the words of the ICC Statute, these actions of Chinese officials and agents are, no doubt, "inhumane acts...intentionally causing great suffering, or serious injury to body or to mental or physical health" that must not go unpunished."

Towards the end of 2019, the ICC Office of the Prosecutor communicated its jurisdictional concerns to us and we believe we are able to respond to these concerns with our counsel, Justice Antonio Carpio.

VIII. On the ICC Case as Private Sector Initiative

We consider this private sector initiative as our contribution to what should be a global effort to protect the South China Sea and demand accountability from China.

We pursue this case on the premise that we, Filipinos, should not sit idly by as China continue to flagrantly destroy our rights. Through our private efforts, we continue to work to protect our country's rights and to make China pay for its atrocities to the Filipino people.

We are delighted to know that there are now groups—such as the organizers of this online conference—which have made the protection of the South China Sea as their advocacy. We are also heartened to know that, as of now, more than 98,000 individuals have signed an online statement of support for our ICC Case.

We humbly suggest to you and your friends to support our ICC Case by submitting communications with the ICC Office of the Prosecutor showing how President Xi Jinping and other Chinese agents inhumanely destroyed the marine life in the South China Sea and the food and livelihood of the people in Southeast Asia. As we said before, this is as simple as sending an email to the ICC.

IX. On An Integrated Approach to the South China Sea Issue

We should continue to apply ways that complement our efforts to protect the South China Sea and demand accountability from China. Conferences, forums and publications in both print and social media remain important because they inform the public about the severity of the South China Sea issue and the appropriate steps that must be undertaken to address it.

We need all the help that we can get.

The countries bordering the South China Sea are victims of China's wanton environmental destruction in the Spratlys. Governments and citizens of these countries can file cases before their own courts especially against Chinese state-owned enterprises which operate in their respective territories and which are linked to the illegal reclamation and island-building in the Spratlys such as the China Communications Construction Company.

For the Philippines alone, the University of the Philippines Marine Science Institute conservatively estimated that we are losing at least USD 662 Million annually from our damaged reef ecosystems due to China's reclamation activities and illegal fishing operations.

This sums up to USD 4.634 Billion since the start of 2014 (around the time China started dredging) until this year. This money can be used to save our fish and rehabilitate the marine ecosystem destroyed by China in our waters.

The countries bordering the South China Sea, *i.e.*, Vietnam, Indonesia, Malaysia and Brunei, have the right to seize assets and properties owned by Chinese State in their territory as compensation for the crimes committed by the Chinese State against their people. It may also be considered by countries like the United States and Europe which claim to have been injured by China in the context of the COVID-19 pandemic.

For the Philippines, these assets may include certain major industries. China can be held accountable here in our country and our Philippine government, as representatives of the Filipino people, needs to stand up for our legitimate rights.

X. On Multilateralism

China's continuing destructive actions gravely affects all coastal States in the South China Sea, as well as all States in the world which have an interest in making the region free and open for humanity through freedom of navigation and overflight.

It is, therefore, clear that a multilateral approach is necessary to resolve the South China Sea issue.

We recall that when China seized Scarborough Shoal from the Philippines in 2012, China warned us not to “internationalize” the dispute by (1) referring it to international arbitration; (2) seeking the help of the ASEAN; or (3) seeking the help of the United States, which maintains a longstanding alliance with the Philippines under the 1951 Mutual Defense Treaty. Let us call this approach preferred by China as “bilateralism.”

China has always insisted on a bilateral approach because it seeks to use its superior strength to separately force each coastal State in the South China Sea to accept its dominion over the region.

In other words, China does not want the strength in numbers inherent in a multilateral approach. This is because no law-abiding country will unequivocally support China’s nine-dash line claim.

We have, of course, rejected China’s bilateralism. We brought a case against China before an International Tribunal in The Hague, which resulted in an overwhelming victory for the Filipino people as embodied in the 2016 Arbitral Award.

Our overwhelming victory in The Hague is a vindication against China's unlawful expansion agenda, and its outcome is now an integral part of international law. The ruling upheld the need for a rules-based order over the waters in the South China Sea. It espoused that any claim not anchored on and supported by the UNCLOS should be denied.

Since then, we have been calling for a multilateral approach through the enforcement of the 2016 Arbitral Award which, among others, found China's blockade of Scarborough Shoal as illegal and that China is culpable for the massive and near permanent environmental disaster in the South China Sea.

We continue to make this call and we hope that our Philippine government and the citizens of this world will help us in this endeavor.

XI. On Enforcement of the Award

Since the Award was issued in 2016, we missed a golden opportunity for almost four years when the Philippines did not raise the Award at the United Nations General Assembly ("UNGA") and failed to seek the support of countries in enforcing the Award.

However, we remain thankful for the President who finally invoked the Award at the 75th UNGA and recently at the 37th ASEAN Summit this year. It is better late than never and we are heartened to know that the President is not at all impervious but listens to the will of his countrymen.

The next step is for our President and his administration to put in reality the invocation of the Arbitral Award: our Government should work earnestly to get the support of more countries so that the Arbitral Award will be raised more emphatically next year, for the UNGA 2021 and other international fora.

We maintain that the Award has multilateral support because it benefits the coastal States of the South China Sea, whose lands and seas are encroached upon by China's nine-dash line. The Award also benefits the rest of the other countries in the world like the United States, the European Union and Japan because it affirms the freedom of navigation and overflight in the South China Sea.

We continue our call to take concrete steps to consolidate support and assistance from the US, Australia, EU, Japan, ASEAN and other responsible nations. Most of the countries around the world believe in the Rule of Law and UNCLOS.

As a product of UNCLOS, these countries believe that the enforcement of the Award is the legitimate process of resolving the maritime dispute in the South China Sea.

In the long run, how can 145 littoral states of 193 UN member nations vote against their national interests by going against UNCLOS which grants them considerable maritime areas and resources they previously did not enjoy? How can naval powers like the US, UK, France and Australia not support UNCLOS which upholds their freedom of navigation and overflight around the world? This simple logic should not be lost on us.

XII. On Standing for our Rights is Not Waging War against China

At this point, we need to disabuse some of our countrymen of the outright falsity that standing up for our rights in the South China Sea is waging war against China.

Standing up for our rights is what decent men and women do to uphold the Rule of Law and prevent bullies from having their way. If we allow bullies to have their way, we become complicit in undermining the Rule of Law and we consent to a world where only brute strength matters.

In the South China Sea, China is the bully because it has no right to hijack an entire sea. China's nine-dash line claim has been found to be historically and legally baseless by a legitimate Tribunal established under UNCLOS. Moreover, China was also found to be solely responsible for one of the biggest environmental disasters in the world when it built its artificial islands in the Spratlys.

Yet China remains adamant in forcing its unjustified claims against the world.

We are all familiar with China's continuing unlawful activities. These include preventing our fishermen from pursuing their livelihood in our exclusive economic zone, blocking the Philippine development of our natural resources, destroying elements of the marine environment, erecting military facilities and ridiculously confronting our President with the threat of war.

Moreover, to the deep dismay of our people, some of us are still succumbing to China's threats of force including a threat of war.

Surprising as it may sound, according to professor Amitav Acharya of the American University, war is not even a good option for China. Its economy is heavily reliant on global trade, including its fuel supply, which needs open shipping lanes such as the Malacca Strait and the Indian Ocean which are dominated by US naval power.

Even Wang Yi believes that war would be self-injurious.

The President has already invoked the Award at the 75th UNGA and the 37th ASEAN Summit this year. We do not see a war being waged by China against us. Hopefully, this should put to rest the utterly inane notion that invoking the Award and standing up for our rights are equivalent to waging war against China.

Our Constitution has clearly tasked our President and military to secure our sovereignty and protect our lands and seas.

It is a grave insult to our forefathers who died and fought for our country's self-respect and independence if we only cower in fear before such threats. It is also a grave insult to our children and grandchildren if we give away our waters and territories in the face of such threats.

XIII. On Developing a Credible Minimum Defense Posture

It may be high time for our government to assert our rightful position by relying on the skill, courage and patriotism of our Navy and Armed Forces which are capable of developing a credible minimum defense posture against any bully or aggressor, whoever that might be.

As we had previously said, we are opposed to war—as we should be. But if threatened by the use of force, we should be ready to inflict, at the very least, a bloody nose on any attacker who is out to harm us.

It is in this light that we also welcomed the recent clarification of the US as to when the Mutual Defense Treaty can be invoked. Last year, US State Secretary Mike Pompeo declared that “[a]s the South China Sea is part of the Pacific, any armed attack on any Philippine forces, aircraft, or public vessels in the South China Sea will trigger mutual defense obligations under...our Mutual Defense Treaty.”

In pursuing a multilateral approach, it is also time that our country develops a minimum credible defense posture, rejoin our partners in conducting joint patrols in the South China Sea and work to strengthen our alliance with the US. As a self-respecting country, we need the capacity to protect our territory and defend ourselves against external threats like China’s incursions, as mandated by our Constitution.

To do this, we need to develop our own defense assets and call upon like-minded allies like the US, Australia and Japan, which share our respect for the Rule of Law and the values of freedom and democracy. No other nation can support us more than we do ourselves, and there can be no unity over the right course of action unless we initiate this unity.

XIV. On What Is Ours Is Ours

There must be a serious plan to deal with China for the benefit of the Filipino people. In summary, this plan should include:

- 1. Convincing the President that he must raise the Arbitral Award again this September 2021 and make sure that he seeks the support of responsible nations to compel China to abide by the arbitral ruling. The people of the Philippines and the people of responsible nations would be greatly saddened and disappointed if he does not prepare to take advantage of his last golden opportunity with the UNGA in September of next year.**
- 2. Welcoming the position of France, Germany and the United Kingdom against China's claims in the South China Sea as provided in the Note Verbale to the United Nations dated September 16, 2020.**

France, Germany and the UK invoke the primacy of the United Nations Convention on the Law of the Sea in the South China Sea and the Arbitral Ruling won by the Philippines against China.

Along with the US, these European nations confirm our position that there is international support for our country's lawful rights in our West Philippine Sea, as ruled by the Arbitral Tribunal in The Hague.

The position of France, Germany and the UK also unequivocally supports the will of the Filipino people, as shown in surveys, that our Government should raise the Arbitral Ruling in the UN General Assembly and other international fora.

3. Taking concrete steps to consolidate support and assistance from the US, Australia, EU, Japan, ASEAN and other responsible nations. Most of the countries around the world believe in the Rule of Law and UNCLOS.

4. Making Chinese officials criminally accountable for having inflicted the most massive, near permanent and devastating destruction of the marine wealth in the South China Sea. This finding has been unanimously upheld by the Award. Thus, former Ombudswoman Conchita Carpio Morales and I pursued the ICC case to make China for this purpose.

We urge citizens of Vietnam, Malaysia, Indonesia and Brunei to submit similar communications to the ICC because they too have been affected by China's systematic and wanton environmental destruction.

Under ICC rules, any person—even citizens of the US, Australia and Japan—can submit information and evidence regarding the systematic and wanton environmental destruction committed by Chinese officials in the South China Sea.

- 5. We also need to make China pay monetarily for its crimes. China mercilessly destroyed the breeding grounds of fish and other marine life in the Spratlys. More than half of our country's 110 million Filipinos live in coastal communities, relying on marine resources for their daily needs. Where will we get our food when we run out of fish?**

As mentioned, the coastal States in the South China Sea, including the Philippines, have the right to seize assets and properties owned by Chinese State in their territory as compensation for the crimes committed by the Chinese State against their people.

- 6. It is time that our country develops a minimum credible defense posture, rejoin our partners in conducting joint patrols in the South China Sea and work to strengthen our alliance with the US.**

According to recent surveys, more than 8 of 10 Filipinos advocate the need for us to protect our territory and defend ourselves against external threats like China's incursions, as mandated by our Constitution.

7. We respectfully urge our Government to engage as official government advisor, Justice Tony Carpio, for his unparalleled wisdom, expertise and sound judgement on the South China Sea Dispute. Throughout the years, we have seen that Justice Carpio's work on this issue has always been for the country's interest, with the goal of protecting our lands and seas for generations of Filipinos.

XV. On Government Must Listen To Its People

Of great import, our government must listen to its people. Nine out of ten Filipinos believe that it is important for the Philippines to regain control of the artificial islands built by China in the West Philippine Sea. Similarly, nine out of ten Filipinos believe that it is important to strengthen the military capability of the Philippines, especially its navy. Furthermore, eight out of ten Filipinos believe that the South China Sea issues should be brought to the UN General Assembly.

The latest SWS survey also shows that 8 out of 10 Filipinos agree that the Philippines should form alliances with countries willing to help defend our rights in the West Philippine Sea.

It is time for Filipinos to unite and demand what is due from China. We should not be hoodwinked into giving up our rights by the mere prospect of Chinese money. Seeking accountability for China's atrocities in our land and waters is not waging war against China; it is taking what Filipinos justly deserve under the Rule of Law.

The future may be unclear and uncertain today. But fidelity to the Rule of Law and believing that right is might would buttress a truly independent foreign policy.

XVI. On "Right Makes Might"

With the COVID-19 global pandemic, the world expected China to temper its coercive behavior in South China Sea to address the public health emergency.

Instead, China took advantage of the public health emergency by (1) unilaterally declaring administrative districts over the Paracel Islands and the Spratly Islands to consolidate its *de facto* control; (2) launching two research stations on the reclaimed islands in the Spratlys to further expand its surveillance and access for its research vessels and coast guards; (3) having a Chinese warship cross paths with the Philippines' BRP Conrado Yap (PS39) in the Philippine Exclusive Economic Zone ("EEZ") where a radio challenge and gunpoint incident unfolded. In addition, Australia and the US had to intervene in a standoff between Chinese vessel and Malaysian oil exploration vessels in the Malaysian EEZ which lasted for months.

These incidents again show that China under President Xi Jinping is relentless in forcing its will against us and against the world.

We should not allow China to commit the perfect crime: to let China be simply because it is a superpower. This is a recipe to allow continuing abuses such as China's horrific treatment against the minority Uighurs in Xinjiang and the suppression of people of Hong Kong who are fighting for a democratic life. To allow a superpower to commit abuses is to magnify such abuses because the superpower realizes that, with its resources and influence, it has no constraints in the world.

This is to allow a bully to reign free in our backyard.

To the young people of this planet, how can each of you be helpful? You can help by understanding what is happening, by adding your voices to defend what is ours and by taking a united stand in upholding the rule of law and doing what is right.

The South China Sea issue is an intergenerational struggle across countries. We should all do our part to uphold the Rule of Law and protect what is ours.

If we do not speak out against China's abuses, then not only is China to blame but also ourselves. By speaking out against abuses, we show the world that we are enlightened humans who remain guided by morals and reason and not the law of the jungle.

Rather than "Might Makes Right", we should be upholding the Rule of Law where "Right Makes Might". END