

# **JOINT STATEMENT ON 2019 SONA**

**By:**

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During the 2019 SONA, President Duterte acknowledged our United Nations Convention on the Law of the Sea (UNCLOS) victory against China, and that “[o]ur ownership of the West Philippine Sea is internationally recognized.” Yet he explained how our northern neighbor, through Chinese President Xi Jinping, apparently exacted Chinese fishing rights through threats of war in our Philippine Exclusive Economic Zone (EEZ) during their first meeting in October 2016. A crucial question is: why was this agreement secret and hidden from the Filipino people for nearly three years?

The answer can only be that this agreement manifestly contravenes our fundamental law – the Constitution. No Presidential agreement with China or any other country can override the explicit constitutional mandate that the “use and enjoyment” of our EEZ is “reserved...exclusively to Filipino citizens.” The agreement between President Duterte and China is therefore illegal, null and void.

Unless the Constitution is amended, no public official has the authority to grant foreigners fishing rights in our EEZ. To paraphrase President Duterte’s October 16, 2016 departure speech, as he embarked on State visits to Brunei Darussalam and China, he cannot be the “sole authorized agent” to share with the Chinese, our EEZ which belongs exclusively to the Filipino people.

But apparently with China’s threat of war as claimed, President Duterte’s broke the following promise: “I will be very careful not to bargain anything for after all I cannot give what is not mine and which I am not empowered to do by any sketch of imagination.” This is worrying because the President and the military are constitutionally mandated to secure the integrity of our national territory, which includes our EEZ and the West Philippine Sea.

International law protects the Filipino people in this situation, because the Philippines and China are parties to the Vienna Convention on the Law of Treaties which provides, “A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.” Thus, if the Philippines agrees to share its resources in its Exclusive Economic Zone (EEZ) because China is threatening to use force or wage war against it, such an agreement is illegal, void and does not bind the Filipino people.

To quote President Duterte on President Xi Jinping's threat of force: "Ang *sabi ni* President Xi, 'Well, you know there is a conflict there. Do you think, rather than go there and have a confrontation -- not necessarily the grey ships, war ships. But you know a squabble there could lead to something else.' *Sabi niya*, we just became friends. And perhaps we can talk about this.

But not an outright precipitate move because... He said it softly, 'It can mean trouble.' . . . And the fastest [missiles] that they have installed there [*i.e.*, the artificial islands of the West Philippine Sea] can reach Manila in seven minutes. You want war? *Alam mo, asaran 'yan eh.*"

We would also like to respectfully clarify certain misconceptions on UNCLOS and the Arbitral Award:

- 1) Traditional fishing rights among Filipinos, Chinese, Vietnamese and others are limited only in the 12-nautical mile territorial sea around Scarborough Shoal, **not** in the Philippine EEZ which is almost twice the total area of the country. These traditional fishing rights are "artisanal," using small boats like the ones used by Filipino fishermen. The Chinese large fishing fleets do not qualify as traditional fishing and, as such, are not entitled to fish in Scarborough Shoal.
- 2) Only Filipinos are entitled to fish in the Philippine EEZ. The UNCLOS Award held that traditional fishing rights have been "extinguished" in the EEZ. China or any Chinese citizen has no traditional fishing rights in the Philippine EEZ.
- 3) We were reminded by President Duterte in his SONA that the UNCLOS Award recognized that a country may enter into agreements with others on the use of its EEZ. However, the UNCLOS Award also ruled that such a country has **no** obligation to do so. In the case of the Philippines, it is prohibited to give part of its EEZ to the Chinese because the Philippine Constitution specifically reserves the use and enjoyment of its EEZ exclusively to Filipinos. China has almost depleted its fishing stocks in its waters and now wants to fish in the Philippines to the detriment of countless Filipinos who rely on fishing to survive.

In the President's 2016 Departure Speech, he said that "we cannot barter which is not ours, it belongs to the Filipino people." He also said that he would be impeached if he conceded our claims in Scarborough Shoal. If the President was willing to be impeached upon conceding our claims in Scarborough Shoal—which is a common fishing ground among Filipinos, Chinese, and Vietnamese—with more reason that he cannot concede our sovereign rights in our EEZ, which is exclusive to Filipinos.

The West Philippine Sea belongs exclusively to Filipinos, not to China. We must stop giving China primacy over that of our own people. When will Filipinos be FIRST and not LAST, in our own country? ##