

**REMARKS**  
**ADR'S INSTITUTE FORUM**  
**“POST ARBITRATION: A FOCUS ON THE HARM DONE TO**  
**THE MARINE ENVIRONMENT”**  
**ROOM 407-409 DON ENRIQUE YUCHENGCO BLDG.**  
**DE LA SALLE UNIVERSITY, MANILA**  
**AUGUST 11, 2016**

**Good morning.**

**At ADRi, we share in the observation made by many that the degradation and destruction of the ecosystems in and around the Spratly Islands and Scarborough Shoal deserve greater attention than they have received.**

**The lack of meaningful attention to this issue is a little surprising. As Filipinos living on an archipelago, the wellbeing of our surrounding seas is of vital importance to the country.**

**The West Philippine Sea and the South China Sea beyond it are not just any waterways. They are home to valuable coral reefs that fish and other wildlife rely on to reproduce**

**and grow. For generations, their productive fisheries have fed Filipinos, people in this region, and people around the world. According to one study, the South China Sea produces at least 12 percent of the global fish catch each year.<sup>1</sup> I have read that forty percent of the world's tuna are born in the South China Sea.<sup>2</sup>**

**Moreover, the marine ecosystems in these areas feature some of the greatest biodiversity in the world. Various types of marine turtles, giant clams, corals, and other vulnerable or endangered species can be found in the waters or seabed.<sup>3</sup> There is more marine biodiversity in our region than anywhere else.<sup>4</sup>**

**We know that ours is an interconnected Earth. It should be made clear to everyone that destructive practices in the West Philippine Sea and around the Spratly Islands**

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<sup>1</sup> ["South China Sea: fish wars."](#) *The Straits Times*, 3 April 2016.

<sup>2</sup> ["The Other Problem in the South China Sea."](#) *The Diplomat*. 8 April 2015.

<sup>3</sup> The South China Sea Arbitration Award of 12 July 2016, para. 822.

<sup>4</sup> ["The Other Problem in the South China Sea."](#)

**can affect ecosystems throughout the South China Sea<sup>5</sup>—  
ecosystems from Palawan to the coast of Vietnam.**

**From a diplomat's perspective, we can say that harmful activities in Philippine waters affect not only this country's interests, but also those of our neighbors. By the same token, the same practices in our neighboring waters can also affect Philippine interests. Whether we like it or not, we are all in this together.**

**Today, I have been asked to share my views on the role that marine environmental damage has played in our diplomacy. I would like to do this by revisiting the Philippines' experience with destructive fishing in the lead-up to the infamous stand-off at Scarborough Shoal in 2012. I hope you will see that the welfare of the marine habitat lay at the center of many of our diplomatic representations.**

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<sup>5</sup> The Award, para. 825.

**Afterward, I would like to turn to what could be the most destructive and distressing practice: the building of artificial islands. In this domain, the pace of change has been so rapid. To my understanding, the old reefs that have been transformed into “Great Walls of Sand” cannot be returned to their former state. It is all the more important that reefs and shoals that have not been built upon should not suffer the same fate.**

**Despite this, there is a future for cooperation in this region. We can work not only to build more trust among our nations, but to do so in a matter that does not compromise the marine habitat and the long-term wellbeing of our waters. I will end with some brief thoughts about how the Philippines, our friends, and our neighbors, can move forward together.**

## **ON DESTRUCTIVE FISHING IN THE WEST PHILIPPINE SEA**

**Illegal fishing activities and the destructive environmental practices associated with them began long before the**

**filings of our arbitration case and before the Aquino administration. The earliest incident we submitted as evidence to the Tribunal occurred in 1998<sup>6</sup>—18 years ago—although these practices began well before then.<sup>7</sup> In one incident that year, we discovered twenty-nine Chinese fishermen whose boats carried dynamite, used to blast away corals.<sup>8</sup>**

**The Philippines has consistently protested illegal and destructive activities. We could not—and cannot—catch everyone, but several fishermen were and have been tried and convicted under Philippine laws.<sup>9</sup>**

**In the year 2000, we asked China to take action against Chinese fishermen found with corals in Scarborough Shoal. In a Note Verbale, we said that the illegal activity “disturbed the tranquility of the ecosystem and habitat of important species of marine life and, at the same time, caused irreparable damage to the marine environment in**

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<sup>6</sup> The Award, para. 827

<sup>7</sup> Ibid., 827, footnote 882.

<sup>8</sup> Ibid.,

<sup>9</sup> Ibid.,

**the area.” In the same note, we pointed out China’s obligations under three international conventions.<sup>10</sup>**

**A few months after issuing that particular Note Verbale, three Chinese fishing boats were again found at Scarborough Shoal. The record reminds us that the boats carried stocks of cyanide, explosives and, the fishermen’s target, corals.<sup>11</sup> Incidents and diplomatic exchanges continued for years. The pace of destructive fishing did not slow.**

**On the Philippines’ part, the country did its best. When government boats encountered vessels, we would photograph and confiscate the catches. These catches included the giant clams, corals, and marine turtles I mentioned previously, but also endangered sharks and eels. In December 2005, sailors found four fishing boats holding live clams: 16 tons of them, taken all at once.<sup>12</sup>**

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<sup>10</sup> The Award, para. 827

<sup>11</sup> Ibid., 829.

<sup>12</sup> Ibid., 833.

**Years later, when it came time for arbitration, we provided the Tribunal with all of this documentation, and evidence of how the fishing or harvesting was done. Fishermen blast the corals that surround the giant clams with dynamite, or chop up the corals with the propellers of their boats. You can see scars on the reefs from satellite photos.**

**Is it any wonder that one independent expert, Professor John McManus, in his report to the Tribunal earlier this year, stated “The thoroughness of the damage to marine life exceeded anything I had previously seen in four decades of investigating coral reef degradation”?<sup>13</sup> Professor Kent Carpenter, another expert, said “the extraction methods employed by Chinese fishermen, which are countenanced by the Chinese Government, are extremely destructive to reef habitat and represent unprecedented harm to the marine environment”!<sup>14</sup>**

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<sup>13</sup> Ibid., 849-50.

<sup>14</sup> Ibid., 850-51.

**Their views, and the views of all the independent experts consulted on the situation, must be brought to light.**

**2012 was an important year for us. On April 10, a Philippine Navy vessel, BRP Gregorio Del Pilar, went to Scarborough Shoal. Smaller boats launched from it conducted what is called a “Visit, Board, Search, and Seizure Operation” on Chinese fishing vessels inside the shoal. The sailors reported finding “large amounts of corals and clams” and “assorted endangered species.”<sup>15</sup>**

**The same afternoon, two Chinese Maritime Surveillance vessels moved toward the shoal. They placed themselves between the Gregorio Del Pilar and the fishing boats, in essence to protect them—to protect the fishermen poaching endangered species. This is the incident that led to a stand-off. We did not move, and China’s Maritime Surveillance boats did not move either.<sup>16</sup>**

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<sup>15</sup> Ibid., 835.

<sup>16</sup> Ibid., 835-6.

**In the days and weeks that followed, however, the fishermen could move and they did move. Our Coast Guard reported to the Bureau of Fisheries that it had seen boats stacked with giant clams and other products moving out of the Shoal. The Coast Guard could only observe: the fishing boats were being protected.**

**Less than a year after the stand-off ended, we filed our case against China. Two of the fifteen submissions we made to the court—Numbers 11 and 12—dealt directly with the damage to the marine environment.**

**It sounds like a small number, but you can and should see that destructive fishing practices and the importance of marine preservation are deeply embedded in the incidents that catalyzed the case.**

**I am grateful that the court, in considering our evidence and in consulting the independent views from esteemed and experienced coral biologists, validated the view that China has not upheld its obligations to preserve the**

**marine environment. These next sentences come directly from the Tribunal's summary of its opinion:**

**“The Tribunal also found that Chinese authorities were aware that Chinese fishermen have harvested endangered sea turtles, coral, and giant clams on a substantial scale in the South China Sea (using methods that inflict severe damage on the coral reef environment) and had not fulfilled their obligations to stop such activities.”<sup>17</sup>**

## **ON LAND RECLAMATION**

**I wish we could say that our work was done after we filed the case with the Arbitral Tribunal. After we filed for arbitration, China worked to build its claim in a very literal sense. It quickly took land from the sea to create artificial islands—the so-called “Great Walls of Sand” that I referenced earlier.**

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<sup>17</sup> PCA Summary of the Award, Part 4, Section C.

**These islands were created on top of imperfect, but living, reefs. Boats with large pumps and excavators broke reefs apart to extricate sand, rock, and other materials from the seabed to use in the construction. On top of the direct damage to the reef habitat, which was effectively buried by rubble, the clouds of sediment produced by construction chokes the coral, blocking it from the sunlight it needs to grow.<sup>18</sup>**

**Most of this construction began in late 2013, less than three years ago. In this time, China has built new islands of a size and at a speed that has never been seen before in the West Philippine Sea, or the South China Sea, or any Sea at all. In Professor Carpenter's words, this activity "constitutes the most rapid nearly permanent loss of coral reef area in human activity."<sup>19</sup> 12.8 million square meters of land, or 1,300 hectares, were created in less than 36 months, which included three full-size airstrips.<sup>20</sup>**

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<sup>18</sup> The Award, para. 901.

<sup>19</sup> Ibid., 904.

<sup>20</sup> Ibid., 854.

**In the 1990s, an estimated 240 hectares of Fort Bonifacio were shaped and developed into Bonifacio Global City. In comparison, the total amount of land created by reclamation in the South China Sea amounting to 1,300 hectares was therefore more than five times the size of Bonifacio Global City.**

**From our perspective, the gravity of the island-building activity is of an entirely different magnitude than that of the destructive fishing. More seriously, this activity was not only countenanced by or supported by the government, but carried out by it.**

**I mention that the majority of the construction transpired after we filed our case.**

**Because of that, the reclamation on seven reefs—Cuarteron, Fiery Cross, Gaven (North), Johnson, Hughes, Subi, and Mischief—had not been a part of our original submissions to the court. Yet, when the island-building sped up, we could not leave it at that—we persevered in our duties to the West Philippine Sea.**

**We wrote to the court and to the public of our deepest concerns for the marine habitat. To the best of our ability, we did not miss an opportunity to speak out about these new developments, which were more harmful and, in our view, violations of China's obligations to protect and preserve the marine environment.<sup>21</sup>**

**By the end of 2015, there was new hard evidence, in the form of aerial and satellite photography, that documented the tremendous changes that had occurred at six reefs, in addition to the two we had originally submitted.<sup>22</sup> We requested the Tribunal to permit us to amend our Submission and include these reefs in our complaints.<sup>23</sup> We did not leave the marine environment behind.**

**There is no need to take my word for it. As the result is in, I can repeat to you the words straight from the ruling, in reference to the land reclamation:**

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<sup>21</sup> Ibid., 818.

<sup>22</sup> Ibid., 820.

<sup>23</sup> Ibid., 820.

**“The Tribunal...found that China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species”<sup>24</sup>**

## **ON BUILDING TRUST FOR THE FUTURE**

**The question on many people’s minds is “What next?” I think the Filipino people and the international community have asked this since the ruling came out almost exactly a month ago. You all may know that I have been an advocate for standing by our principles and standing by the decision and international law.**

**I believe that we can do this while seeking to build trust within the region. There is a natural foundation for us to work with others. As I mentioned, the effects of destructive activities in the West Philippine Sea will be**

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<sup>24</sup> PCA Summary of the Award, Part 4, Section C.

**felt in the ecosystems throughout the South China Sea. In this way, what is a critical interest for the Philippines is also an vital interest for Southeast Asia.**

**When the Tribunal sought independent experts, they made their own report to the court. One said that his research showed that the “highly destructive... harvesting practice was now very widespread across the Spratly area.”<sup>25</sup>**

**These realities are not just unsustainable, they are unacceptable. The frequency and gravity of these activities, and the incidents they spark, show us that marine destruction is not simply collateral damage, but is at the heart of the problems to be resolved.**

**For this reason, the Philippines should look for ways to cooperate with our neighbors to preserve marine ecosystems in the South China Sea and to ensure the sustainability of fishing resources for everyone. We could do this through scientific cooperation to improve the health of the reefs. We could do this through developing a**

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<sup>25</sup> The Award, para. 849-850.

**regional framework for managing the fisheries and enforcing our individual laws. These efforts could serve a purpose beyond improving marine protection: they would help us to build trust and show that we are all acting in good faith. This can only be helpful in advance of eventual talks to resolve the disputes with finality.**

**To my understanding, the old reefs that have been transformed—such as Mischief Reef—cannot be returned to their former state. As a first step, it is all the more important that reefs and shoals that have not been built upon remain uninhabited. Some things we cannot reverse, but at the very least we should not aggravate the destruction.**

**Finally, the hand of friendship can and should be extended to all who join in the cause of protecting the marine environment; of upholding international law; and of seeking peace and security in this region.**

**At day's end, we need to do what is right. END**