

## **The 12 July 2016 Permanent Court of Arbitration's (PCA) Award: The Philippines' Lawfare versus China's Realpolitik in the South China Sea Dispute**

*Renato Cruz De Castro\**

International Studies Department  
De La Salle University, Manila, Philippines  
(Visiting Research Fellow, Japan Institute of International Affairs)

### **Abstract**

On 12 July 2016, the Permanent Court of Arbitration (PCA) under the United Nations Convention on the Law of the Sea (UNCLOS) ruled in favour of the Philippines in 14 of its 15 submissions against China's expansive territorial claims in the South China Sea. The PCA declared that China's claims – defined by the nine-dash line – violate international law. The arbitral tribunal also asserted that Chinese reclamation and construction projects in the land features of the disputed waters infringe on Philippines' territorial rights. The ruling likewise found China guilty of destroying the maritime environment by building artificial islands and illegally preventing Filipinos from fishing and conducting oil exploration activities in the area. The PCA award to the Philippines illustrates the efficient and impartial dispute resolution mechanism of the UNCLOS as well as the short-term triumph of the Philippines' lawfare over China's realpolitik approach in the dispute. Unfortunately, the Duterte Administration has shelved the PCA ruling saying that enforcing it has a minimal chance of success. Instead, he has adopted an appeasement policy in exchange for China's goodwill and economic largess. The article concludes that the Duterte Administration's course of action lends credence to former State Councilor Dai Bingguo's statement that the PCA award to the Philippines is nothing more than a "piece of trash paper".

**Keywords:** *China-Philippine maritime-territorial dispute, Permanent Court of Arbitration (PCA) award, realpolitik, South China Sea, United Nations Convention on the Law of the SEA (UNCLOS)*

## 1. Introduction

*... Law, like politics, is a meeting place for ethics and power.*

*The same is true of international law, which can have no existence except in so far as there is an international community which, on the basis of a minimum common view, recognizes it as binding. International law is a function of the political community of nations. Its defects are due, not to any technical shortcomings but to the embryonic character of the community in which it functions.<sup>1</sup>*

E.H. Carr, 1939

The Scarborough Shoal stand-off in 2012 exemplifies a historic pattern of Chinese protracted, low-intensity, and incremental moves to gain control of a large portion of the South China Sea. The impasse pitted the Philippines – which has the weakest navy in the region, and an ill-equipped air force incapable of safeguarding its vast maritime territory – with China in a naval brinkmanship game. The stand-off began on 10 April 2012 when the Philippine Navy's (PN's) flagship, the *BRP Gregorio Del Pilar* tried to apprehend several Chinese fishing boats at the Scarborough Shoal. However, at this juncture, two Chinese maritime surveillance vessels arrived and prevented the arrest of the Chinese fishermen who were hauling corals, clams and live sharks into their boats. To diffuse the tension and avoid a dangerous armed confrontation with the Chinese patrol vessels, the Philippines replaced its surface combatant with a smaller coast guard vessel. Instead of reciprocating, China raised the stakes by deploying the *Yuzheng 310* – the most advanced and largest patrol vessel equipped with machine guns, light cannons and electronic sensors. When the Philippines government filed a diplomatic protest, the Chinese Embassy in Manila contended that the three Chinese surveillance vessels in Scarborough Shoal were “in the area fulfilling the duties of safeguarding Chinese maritime rights and interests.” It added that the shoal “is an integral part of the Chinese territory and the waters around it are the traditional fishing area for Chinese fishermen.”<sup>2</sup> Clearly, this incident underscores an international reality – Chinese economic and naval power cast a long shadow over the Philippines and Vietnam, which are at the forefront of a maritime dispute with China in the South China Sea.<sup>3</sup>

However, much to China's surprise, the Philippine government decided to fight back. In January 2013, the Philippines directly confronted Chinese realpolitik approach in the South China Sea dispute by filing a statement of claim against China in the Arbitral Tribunal of the United Nations Convention on the Law of the Sea (UNCLOS).

This paper examines why and how the Philippines used the legal/liberal approach as lawfare to blunt China's realpolitik strategy against the Philippines which began as early as 1995 with the occupation of the

Mischief Reef by Chinese forces, and culminated with the 2012 confrontation between a Philippine Coast Guard (PCG) vessel and four Chinese Maritime Surveillance (CMS) ships at the Scarborough Shoal. It addresses two major questions: 1) what events led to the Philippines' filing of a case against China's expansive maritime claims in the South China Sea in 2013, and 2) how does the 2016 Permanent Court of Arbitration (PCA) award to the Philippines affect its stance against China's expansionist moves in the disputed waters? This paper also raises these ancillary questions: 1) how did the Philippines respond to China's realpolitik tactic during and after the Scarborough Shoal stand-off? 2) How did the Philippines pursue its liberal/legal approach vis-à-vis China's realpolitik approach after the Scarborough Shoal stand-off? 3) How did the PCA award to the Philippines blunt China's realpolitik approach to the maritime dispute? 4) What are the geo-strategic implications of the PCA award to the Philippines for China's maritime design in the contested waters? 5) How has the Duterte Administration used the PCA ruling to challenge China's claim of sovereignty over most of the South China Sea?

## **2. International Law as a Lawfare**

A common premise in the study of International Relations/Global Society since Thucydides wrote an account of the 27-year Peloponnesian War among the Greek city-states is that the major or big powers overwhelm or subdue small or minor powers in all kinds of conflicts from wars and diplomatic tussles to business and sports competitions. Furthermore, in an asymmetric conflict – a contention between political actors with a wide disparity in capabilities – the strong is bound to and should win.<sup>4</sup> However, history shows that power preponderance does not give big powers carte blanche to impose their will on the small powers, and determine international outcomes. Small or minor powers, on several occasions, have applied balancing strategies against the major powers despite the military and diplomatic disparities between them, e.g., Finland against the Soviet Union in 1939-1940, North Vietnam against the U.S. in the 1960s, Nicaragua versus the U.S. in the 1980s, and finally, Iraq against the U.S. in 1991 and again in 2003. Clearly, inferences based on relative power relations cannot explain why small powers challenge big powers and in certain cases, even provoke or instigate an international crisis or an armed conflict.<sup>5</sup> Sometimes, small powers ignore disproportionate power relations and adopt a balancing policy against big powers because of their domestic politics, geography and ability to manipulate local circumstances. If global conditions for their balancing gambits are ripe, small powers can either draw on their geo-strategic location to exert leverage on the

powerful state, rely on other major powers for military assistance and security guarantee, or rely on the liberal approach by appealing to international law and global/regional organizations.

The liberal approach banks on a promise of rewards, the power of persuasion and reliance on the legitimacy of its claims in the dispute.<sup>6</sup> It uses legal precedent and reciprocity to make one's claim legitimate and that of the opponent illegitimate before the global society. Collectively, these methods comprise the liberal/legal institutional approach. The liberal/legal/institutional approach is one that pursues conflict resolution through negotiation, bargaining, adherence to international norms or law, and debates that promote problem-solving rather than contention and subjugation. This approach provides compromise, third-party mediation or arbitration, or adjudication of some sort.<sup>7</sup> This approach rejects certain types of state policy or behaviour, particularly unilateral actions or power-politics goals, while preferring alternative styles of conflict management. It also fosters interactive communication to reduce the possibility of war, even in the presence of a conflict.<sup>8</sup>

Lacking a credible military capability to stand up against China's naval prowess in the South China Sea, the Philippines opted for the liberal/legal approach leading to the use of lawfare to resolve its maritime dispute with this emergent power. By availing itself of the arbitration mechanism of the UNCLOS, the Philippines adopted international law as a "lawfare" or the use of law as a substitute for traditional military means to achieve an operational objective.<sup>9</sup> It is the application of legal or judicial processes to enable a weaker adversary to engage in political and legal battle against a superior opponent.<sup>10</sup> It is the same vein as Sun Tzu's aphorism to "subdue the enemy without fighting."<sup>11</sup> The importance of this approach is clear and cannot be overemphasized particularly when former Foreign Secretary Del Rosario opined that the "UNCLOS has never been more important for the Philippines than today, when overlapping maritime claims threatens as never before the peace and prosperity in our part of the world."

The Philippines' filing statement of 15 submissions against China's expansive maritime claims in the arbitral tribunal of the UNCLOS showed that the former could not be subdued easily by the latter's strong-arm tactic. In effect, the Philippines thwarted China's realpolitik approach as it sought a multilateral and legal solution to the maritime row and argued that the global society has a stake in the outcome of the case. The country showed to the international community that the appropriate way of dealing with disputes involving conflicting claims to the global commons should be the liberal/legal approach based on multilateralism and international law and not on sheer powerpolitik.

### 3. China's Maritime Expansion in the South China Sea

In the mid-1980s, Admiral Liu Huaqing, the Commander of the People's Liberation Army Navy (PLAN), announced the "Near Seas Active Defense" doctrine. This doctrine called for the People's Liberation Army (PLA) to form layered defences in the first island-chain to deter a potential adversary from threatening China from the sea.<sup>12</sup> In the mid-1990s, China developed an arsenal of conventional yet inexpensive and highly precise armed ballistic and cruise missiles aimed at virtually every U.S. air-base and port in the Western Pacific. These weapons are also designed to sink enemy surface vessels (including U.S. aircraft carriers) operating hundreds of miles off China's coast.<sup>13</sup> Chinese military planners believe that their missiles, with anti-access/area denial (A2/AD) capabilities, can adequately prevent the U.S. Navy from intervening or provoking a confrontation with China in the region.<sup>14</sup> Thus, since the last decade of the 20th century, the U.S. Navy maintains that China has the means to disrupt or slow down the deployment of American air and naval forces to the theatre of operations.<sup>15</sup>

China's phenomenal economic prosperity during the first decade of the 21st century transformed it into an engine of growth in East Asia and, indeed, the wider world. With its gross domestic product (GDP) surpassing Japan in 2010, it has become the second largest economy in the world next only to the U.S. Its rapid economic progress has not only made the country more confident and assertive in foreign affairs but also heightened its military prowess.<sup>16</sup> China has had an annual double-digit increase in defence spending since 2006. Recently, the Chinese government increased its defence budget by 13% to boost the PLAN's capability to accomplish a wide range of military functions including winning local wars under information-age conditions. Since the early years of the new millennium, the PLAN has easily acquired a fleet of Russian-made diesel-electric Kilo-class submarines and *Sovremenny*-class destroyers, along with several types of indigenously-built destroyers, frigates, and nuclear-powered attack submarines. It also continues to upgrade its operational capabilities across the waters surrounding Taiwan and has deployed two new classes of ballistic and attack submarines. In 2012, the PLAN commissioned China's first aircraft carrier – the *Lianoning*. Likewise, China has developed and deployed the carrier-based J-15 fighter plane and the new *Jaingdao*-class light frigate for long-distance security patrol in the disputed waters around the Spratlys and the Senkaku Islands.<sup>17</sup>

China's current naval build-up is designed to bolster its A2AD, which can prevent foreign navies from occupying or crossing vast stretches of maritime territory, and make the Western Pacific off limits to the U.S. and Japanese navies.<sup>18</sup> To achieve this goal, the PLA has implemented the following:<sup>19</sup>

- a) setting up anti-satellite missiles, lasers and a sophisticated cyber-attack

mechanism to target the U.S. military's command and control systems that rely operationally and logistically on satellites and the Internet; b) deployment of conventional ballistic and cruise missiles, and stealth combat aircraft that can destroy major U.S. military facilities in the region and limit the U.S. Navy's ability to manoeuvre in international waters; and c) the purchase of submarines armed with advanced torpedoes and high-speed cruise missiles to counter U.S. aircraft carriers and the surface vessels that protect them.

Strong economically and militarily, China has taken several provocative actions in the South and East China Seas. These include the unilateral declaration of an East China Sea Air Defense Identification Zone (ADIZ); the active conduct of several live-fire naval exercises by the PLAN and the People's Liberation Army's Air Force (PLAAF) in the Western Pacific/South China Sea, and the hardline responses by the PLAN in coordination with other Chinese maritime law-enforcement agencies on territorial rows with the Philippines and Vietnam in the contested sea.<sup>20</sup> These moves worry the other littoral states about China's maritime design in the region.<sup>21</sup> From their viewpoint, these manoeuvres smack of Chinese territorial expansionism and adventurism.<sup>22</sup> However, from China's perspective, it is a case of the country outgrowing its subordinate status in the past and feeling confident enough to press its case in the western Pacific – to stand resolute in managing its territorial and sovereignty issues in the East and South China Seas.<sup>23</sup>

Arguably, China's aggressive pursuit of its territorial claim over the South China Sea has increased in tandem with the expansion of its navy and maritime services.<sup>24</sup> Its regular naval exercises utilize modern surface combatants and even submarines.<sup>25</sup> These actions concretize China's intention to unilaterally and militarily resolve the maritime issue, flaunt its naval capabilities, and impress upon the other claimant states its "de facto" ownership of the disputed territories.<sup>26</sup> In the long run, China's naval capabilities will be directed not only to expand its maritime domain but to deny foreign navies – especially that of the U.S. – access to the South China and East China Seas. In time, it will be capable of depriving the U.S. 7th Fleet access to the Western Pacific inside of the so-called first-island chain.<sup>27</sup> Hence, China's long-term goal to project its naval power not only to the near seas but to the far seas – the sea adjacent to the outer rim of the first-island-chain and those of the north Pacific – is no longer a remote possibility.<sup>28</sup>

#### **4. On the Path of China's Maritime Expansion: The Philippines**

By early 2012, China's fervent nationalism, growing naval prowess, and unilateral moves were overtly directed against a militarily-weak Philippines. As early as the last quarter of 2010, the Philippine Department of Foreign Affairs (DFA) noted increased Chinese naval presence and activities in the

Spratlys and monitored around six or seven major intrusions by Chinese vessels into the waters claimed by the Philippines. On 25 February 2011, Filipino fishermen alleged that they were fired upon by a *Jianghu*-B class missile frigate off Jackson Atoll, 140 miles west of Palawan.<sup>29</sup> On 2 March 2011, two Chinese patrol boats reportedly harassed a survey vessel commissioned by the Philippines Department of Energy (DOE) to conduct oil exploration in the Reed Bank, 150 kilometres east of the Spratly Islands and 250 kilometres west of the Philippine island of Palawan.

Then in June 2011, the PN discovered a number of Chinese structures in the vicinity of Philippine-claimed Iroquois Reef-Amy Douglas Bank near Palawan and within the country's 200-nautical mile exclusive economic zone (EEZ). Armed Forces of the Philippines (AFP) observers reported that CMS vessels and PLAN ships unloaded building materials, erected an undetermined number of posts, and placed a buoy near the breaker of the Amy Douglas Bank. In a diplomatic protest sent to the Chinese Embassy in Manila, the DFA argued that any new construction in the vicinity of the uninhabited Amy Douglas Bank is a clear violation of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea.<sup>30</sup>

In response, the Chinese foreign ministry sternly told the Philippines to stop "harming China's sovereignty and maritime rights and interests, which leads to unilateral actions that can expand and complicate [sic] South China Sea dispute."<sup>31</sup> It was Beijing's defensive reaction when the Philippines unravelling China's plan to construct an oil rig deep within the Philippines' EEZ. The Philippines also sought clarification on the recent sightings of CMS and PLAN ships near the Kalayaan group of islands. Beijing went on to demand that Manila seek Chinese permission first before it could conduct oil exploration activities even within the Philippines' EEZ.

Moreover, the Chinese ambassador in Manila justified the actions of the two Chinese patrol boats that harassed a Philippine survey ship at the Reed Bank. He regarded it as an exercise of jurisdiction over purported part that is a part of China's territory.<sup>32</sup> He added that the Philippine surveying activity in the area is a "violation of Chinese sovereignty and that is something that we (China) are against." Thus, China's aggressive actions against the Philippines and Vietnam in the first half of 2011 heightened the tension in the contested sea. Consequently, the previous Aquino Administration recognized that the Philippines was potentially on a collision course with China relative to the South China Sea imbroglio.<sup>33</sup>

## **5. The 2012 Scarborough Shoal Stand-off**

The two-month stand-off between the Philippines and China at the Scarborough Shoal epitomized an international incident waiting to happen.

The stand-off began on 8 April 2012, when a Philippine Air Force (PAF) reconnaissance plane spotted eight Chinese fishing boats around the shoal. Immediately, President Aquino ordered the AFP and the PN to step up their monitoring activities and enforce the country's fisheries and maritime environmental protection laws. Accordingly, the PN deployed the *BRP Gregorio Del Pilar*, the recently-purchased U.S. Coast Guard cutter that sailed from its homeport in Palawan into the shoal. The ship was tasked with protecting marine environment and resources and asserting the sovereignty of the Philippines as a coastal state.

On the morning of 10 April, the *BRP Gregorio Del Pilar* verified the presence of eight Chinese fishing vessels anchored inside the lagoon. Following the established rules of engagement, the PN ship dispatched a boarding team to inspect the fishing vessels. Large amounts of illegally collected corals, giant clams and live sharks were found inside the compartments of the first fishing vessel boarded. On the fateful April day, however, before the PN could apprehend the fishing vessels at the shoal, however, two Chinese marine surveillance vessels arrived and placed themselves between the arresting Philippine warship and the Chinese fishing boats. The surveillance vessels not only prevented the arrest of the Chinese fishermen but also informed the captain of the *BRP Gregorio Del Pilar* that he had strayed into Chinese territorial waters. Clearly, China's reaction was a complete turnaround from its previous stance on maritime encroachments. Firstly, the Chinese patrol vessels inhibited the PN from arresting the fishermen. Secondly, China defied Philippine territorial rights over the shoal that is only 224 kilometres from the province of Zambales in Luzon and well within the country's EEZ that extends outwardly up to 200 nautical miles.

While Chinese and Philippine patrol vessels were in an impasse at the Scarborough Shoal, the Chinese Embassy in Manila confirmed that both countries were engaged in a long and tedious diplomatic negotiation. Again, the Chinese Embassy articulated the official mantra that the Scarborough Shoal is an integral part of Chinese territory. It also warned Manila not to take actions that could irreparably damage Philippines-China relations and affect the stability of the South China Sea.<sup>34</sup> By the end of April 2012, the Philippines-China negotiations were getting nowhere. The Chinese embassy accused Manila of negotiating in bad-faith and of distorting the facts during the lengthy discussions. It also "urged the Philippines to stop illegal activities and leave this area," and insisted once more that China has sovereign rights over almost the whole of the South China Sea. The embassy spokesperson also said "that ever since the ancient times, numerous documents on Chinese history have put down definitely in writing that Huangyan Island belongs to Chinese territory." Manila, in turn, criticized China's aggressive stance against other claimant states like the Philippines.<sup>35</sup> Tersely, it reminded China that the



“responsibility for resolving the stand-off in the South China Sea rests not just with one party but both parties” and challenged it to let the International Tribunal for the Law of the Seas (ITLOS) mediate the dispute.

## **6. The End of the Stand-off and its Aftermath**

In mid-June 2012, the two countries withdrew their civilian vessels on the pretext of the onset of the typhoon season. On 16 June, President Aquino ordered all Philippine vessels to leave the shoal because of rough seas and heavy rains brought by a seasonal typhoon.<sup>36</sup> On 18 June, Chinese fishing boats and civilian vessels near the area were heading back to port. A Chinese foreign ministry spokesperson announced that with the withdrawal of the civilian ships, “We (China) hope (that) there will continue to be an easing in the situation and bilateral cooperation will recover and be safeguarded.”<sup>37</sup> The following day, the China Maritime Search and Rescue Center deployed a rescue ship to the Scarborough Shoal to assist Chinese fishing boats leaving the shoal due to “rough sea conditions.”<sup>38</sup> The coordinated withdrawal of Filipino and Chinese civilian vessels from the shoal came amid ongoing consultations between the two countries. However, while the withdrawal of these vessels was aimed to de-escalate the tension, both countries have persisted in claiming sovereignty over the shoal.

In June 2012, when tension at the Scarborough Shoal eased up, China immediately consolidated its control over the area. Chinese Maritime Surveillance (CMS) vessels constructed a chain barrier across the mouth of the shoal to block the Philippines’ access to it. China also deployed these vessels to protect the fleet of Chinese fishing boats operating deep into the Philippines’ EEZ. In October 2012, then Chinese Assistant Deputy Foreign Minister Fu Ying visited Manila for a high-level dialogue. The visit was seen as China’s stop-gap measure to prevent a similar critical confrontation from happening again. However, instead of finding a mutually acceptable solution, the high-ranking official warned Manila not to do the following: 1) appeal to the UN; 2) internationalize the issue in forums such as the ASEAN; 3) coordinate with other countries such as the U.S.; and 4) issue any press release regarding the negotiations. In effect, she badgered the Philippines to accept in silence China’s exercise of *de facto* occupation of the Scarborough Shoal.

In January 2013, the Philippines directly confronted Chinese realpolitik approach in the South China Sea dispute by filing a statement of claim against China in the Permanent Court of Arbitration at The Hague in the Netherlands. In its Notification and Statement of Claim, the Philippines asked the arbitral tribunal to determine the country’s legal entitlements under the UNCLOS to the Spratly Islands, Scarborough Shoal, Mischief Reef, and other land features within its 200-mile EEZ. These entitlements are based on the UNCLOS

provisions on the rights of the Philippines to a Territorial Sea and Contiguous Zone under Part II, to an Exclusive Economic Zone under Part V, and to a Continental Shelf under Part VI.<sup>39</sup>

In its statement of claim, the Philippines made it clear that it was not seeking arbitration over which party has sovereignty over the islands. Rather, it was merely requesting the arbitral tribunal to issue an opinion on the following issues: a) whether China's maritime claim in the South China Sea based on its so-called nine-dash line is valid or contrary to UNCLOS; and b) whether the Scarborough Shoal, Johnson Reef, Cuarteron Reef, and Fiery Reef, which are submerged features and that are below sea level at high tide are islands or rocks under Article 121 (3) of the Convention. It also petitioned the Arbitral Tribunal to declare that the Philippines is entitled to a 12-mile Territorial Sea, a 200-mile EEZ, and a Continental under Parts II, V, and VI of UNCLOS and that China has unlawfully prevented the Philippines from exercising its rights to exploit resources in its EEZ and to navigation within and beyond the 200-mile of the Philippines' archipelagic baselines.<sup>40</sup>

The notification and statement of claim was filed to show that the Philippines' ownership of its six-islands in the Spratlys and other land features within its legitimate maritime jurisdiction is firmly grounded on international law – specifically the UNCLOS. The Philippines also requested the arbitral tribunal to require China to “bring its domestic legislation into conformity with its obligations under the UNCLOS and for it to stop any activities that violate the rights of the Philippines in its maritime domain in the ‘West Philippine Sea’ (South China Sea).”

## **7. Realpolitik Strikes Back!**

As expected, China refused to participate in the international mediation and openly expressed its opposition to the Philippines' filing of a case with the arbitral tribunal. On 20 February 2013, the Chinese ambassador in Manila returned the notice of arbitration to the Department of Foreign Affairs. At the same time, Mr. Hong Lei, Chinese foreign ministry spokesperson in Beijing branded the filing as “factually flawed” and accused Manila of violating the non-binding 2001 Declaration of the Code of Conduct of the Parties in the South China Sea which provides for ASEAN states and China to settle their maritime disputes among themselves.

In April 2013, a visiting Chinese foreign ministry official warned Manila of the consequences of pushing the arbitration process against China.<sup>41</sup> In late August 2013, Beijing withdrew its invitation for President Aquino to attend the China-ASEAN Expo in Nanning after the Philippine government declined its precondition for Manila to withdraw its arbitration case filed with the arbitral tribunal.<sup>42</sup> From early September to mid-October 2013,

President Xi Jin Ping and Prime Minister Li Keqiang took part in a public relations show of strong Chinese interest in fostering relations and managing differences with the Southeast Asian countries by visiting Indonesia, Malaysia, Brunei, Thailand, and Vietnam. The two Chinese leaders, however, snubbed the Philippines. China's resentment towards the Philippines became more glaring in November 2013 after it donated a measly US\$100,000 to the relief and rehabilitation efforts for the victims of Typhoon Yolanda (Haiyan) – a category five typhoon. As a result, the international media questioned China's ability to assume global leadership and responsibility.<sup>43</sup>

From 7 to 13 July 2015, the Permanent Court of Arbitration in The Hague held its first hearing on the Philippine claims against China in the South China Sea. Then Philippine Foreign Affairs Secretary Albert Del Rosario made a presentation before the five-member tribunal hearing Manila's case filed against China's expansive maritime claim in the disputed waters. He acknowledged that the tribunal does not have authority to make decisions on the issues of sovereignty. However, he said that the Philippines wanted to clarify its maritime entitlements in the South China Sea, a question over which the tribunal has jurisdiction.<sup>44</sup> He also argued that the 1982 UNCLOS does not recognize, or permit the exercise of so called "historic" rights in areas beyond the limits of maritime zones that are recognized or established by the UNCLOS.<sup>45</sup> He then lamented that China has acted forcefully to assert its so-called right by exploiting the living and non-living resources in the areas beyond the UNCLOS limits while forcibly preventing other coastal states, including the Philippines from exploiting resources in the same areas.<sup>46</sup>

To justify its non-participation in the proceedings, China cited its policy of resolving disputes on territorial and maritime rights only through direct consultation and negotiation with the countries directly involved.<sup>47</sup> It repeatedly declared that "it will neither accept nor participate in the arbitration unilaterally initiated by the Philippines," and it also made it clear – through the publication of a position paper, the *2014 December Position Paper* and in other official statements – that, "in its view the tribunal lacks jurisdiction in this matter."<sup>48</sup> For a crafty player that had benefited from the ambiguity of its goal and on the full extent of its South China Sea claim, China had much to lose in the ruling.<sup>49</sup> Since 2009, however, it has slowly shifted its strategy away from delaying the resolution of the dispute to one that emphasizes its sovereignty over the contested waters. This tactic aims to deter other claimant states like the Philippines and Vietnam from cementing their claims and to enable China to negotiate with small powers from the position of strength.<sup>50</sup> Furthermore, it does not want to extend any legitimacy to the tribunal since it holds other instruments of power – economic, diplomatic, and strategic – that it can wield to settle the dispute according to its own terms.<sup>51</sup>

Without China's participation, the arbitration proceeded in accordance with the provisions of UNCLOS. Representatives from Indonesia, Japan, Malaysia, Thailand, and Vietnam also attended the hearings.<sup>52</sup> On 29 October 2015, after almost three years of proceedings, the arbitral tribunal unanimously decided that it has jurisdiction over the maritime dispute between China and the Philippines in the South China Sea. In its ruling, the tribunal held that both the Philippines and China are parties to the Convention and are bound by its provisions on the settlement of the dispute.<sup>53</sup> It also stated that China's choice not to participate in the proceedings does not deprive the tribunal of its jurisdiction over the case and that the Philippine decision to commence arbitration was not an abuse of the UNCLOS' dispute settlement procedure.<sup>54</sup> The tribunal's ruling meant that it would hold further hearings to settle the highly contentious territorial dispute between the Philippines and China in the South China Sea. On 30 November 2015, the Philippine panel concluded the presentation of its claims against China to the tribunal.

## **8. Blunting China's Realpolitik Approach in the South China Sea Dispute**

On 12 July 2016, the PCA delivered its long-awaited ruling on the protracted and tense maritime dispute between the Philippines and China. Surprisingly, the PCA ruled in favour of the Philippines in 14 of its 15 claims against China's expansive territorial claims in the South China Sea. The court declared that China's claims – defined by the nine-dash line – defy and violate international law. The tribunal concluded that whatever historic rights China had to the resources in the waters of the South China Sea were extinguished when it joined and ratified the UNCLOS.<sup>55</sup> It also noted that, although Chinese navigators and fishermen, as well as those of other states, had historically made use of the islands in the South China Sea, there was no evidence that China had historically exercised exclusive control over the waters or their resources.<sup>56</sup> The tribunal asserted that historical navigation and fishing by Chinese fishermen and navigators in the waters of the South China Sea involved the exercise of high seas freedom, rather than a historic right, and that there was no concrete evidence that China had historically exercised exclusive control over the South China Sea or prevented other states from exploiting its resources. This ruling on China's claim to historic rights within the nine-dash line was a major legal victory for the Philippines since this was the major reason why it initiated the arbitration proceedings against Asia's new emergent power.<sup>57</sup>

In addition, the PCA ascertained although the Spratly Islands were historically used by small groups of fishermen and several fishing and

guano mining enterprises, these land features could not sustain habitation by a stable community. Accordingly, the tribunal gathered that none of the Spratly Islands is capable of generating extended maritime zones.<sup>58</sup> It also noted that these features now have constructed installations with maintenance personnel. However, these modern presences are dependent on outside resources and support. In fact, many of the features have been modified to improve their habitability. The tribunal ruled that the Chinese land reclamation and construction projects in the area infringe on the Philippines' territorial rights. More importantly, it found China guilty of destroying the maritime environment by building artificial islands and illegally preventing Filipinos from fishing and exploring oil in the area.

All in all, these decisions effectively invalidate any Chinese claim based on the nine-dash line to more than the disputed land features themselves and the territorial seas they encompass. Furthermore, the PCA determined that China violated the rights and obligations of nations utilizing the ocean by destroying the marine environment, through its constructions of artificial islands; openly defied Philippines sovereign rights by interfering with oil and gas exploration at the Reed Bank; and illegally constructed a facility on Mischief Reef, which sits on the Philippine continental shelf.<sup>59</sup>

The PCA award to the Philippine case is a strong assertion of the impartiality and effectiveness of the dispute resolution mechanism of UNCLOS and more significantly, the triumph of the Philippines' liberal approach over China's realpolitik approach in the maritime dispute. On the implication of the PCA's award for the South China Sea dispute, an American specialist on maritime law commented:

...the decision is much more than a pyrrhic victory for the Philippines as some will be tempted to suggest. This opinion will have normative power that over the long run will and should affect the way every state thinks about the South China Sea in the future. Ultimately, the ruling's power is not in its direct enforceability, but the way it will inevitably alter perceptions about right and wrong actions in the South China Sea. Coercion will no longer stand with moral impunity. Even if indirectly, the opinion should therefore serve as the basis for improved bilateral relations in the future. It has significantly narrowed the scope of what is in reasonable and justifiable dispute and therefore should help the parties move closer to a final resolution of their differences.<sup>60</sup>

## **9. The PCA Award as a Lawfare**

The PCA award to the Philippines is not simply a sweeping legal victory and a decisive setback for China. It also has significant strategic and geopolitical implications for East Asia. Thus, it is considered a potential

game changer that has introduced new factors transforming the strategic milieu of the dispute, reshaping the actors' strategies and identities, and strongly motivating them to change their courses of actions and decisions. At the core of this change is the engendered clarity of the maritime dispute particularly China's claim based on the nine-dash line that has neither legal nor historical foundation and the ruling that no country can lawfully assert "historic rights" in the high seas.<sup>61</sup> By clarifying the legal status of the South China Sea, the ruling has exposed China's expansive maritime claim as simply a component of its concerted long-term maritime strategy aimed to erode American preponderant position in the region, weaken the credibility of U.S. security commitments in East Asia, fragment ASEAN and other regional bodies, and coerce specific regional states to accommodate its self-defined and self-proclaimed "core interests."<sup>62</sup>

Likewise, the PCA ruling revealed that the maritime dispute between China and the other littoral states such as the Philippines is part and parcel of an old-fashioned great power competition between an emergent regional power and a status quo power in East Asia.<sup>63</sup> From a geo-strategic perspective, Chinese control of the South China Sea will extend the PLA's A2/AD.<sup>64</sup> This will enable the PLA to fully deploy advanced submarines and surface combatants, for longer-ranged strike warfare, and more sophisticated aircraft to delay or deter U.S. response to regional crisis, such as over the Taiwan Straits or in the Senkaku Islands.<sup>65</sup> Maritime control over the South China Sea will also support the PLAN's power-project capabilities into the far seas.<sup>66</sup> In specific terms, using its historic claim as the legal basis of its maritime expansion, China was able to occupy, build-up and construct military-grade facilities on a network of seven disputed land features in the South China Sea. These fortified land features can be fully militarized within days and utilized to intimidate other littoral states, as well as complicate U.S. naval operations in the South China Sea short of creating an all-out conflict.<sup>67</sup>

Consequently, the PCA ruling forces states in the region to take sides – either to be on the side of international law (or the status quo) or against it (revisionism leading to China's domination of the South China Sea) – and this significantly narrows the room for manoeuvre by both sides. Prior to the ruling, regional states articulated their own interpretations of the various South China Sea disputes and preferred to be fence-sitters. Interestingly, the PCA award also produces the basis and motivation for cooperation among states that are threatened by China's maritime expansion and consequently, are supportive of international law. Before 12 July 2016, the maxim of "each to his own" hindered these states from engaging in robust cooperation to constrain China's maritime expansion. With the PCA's ruling that China's nine-dash line is invalid, littoral states like the Philippines, Malaysia, Indonesia, and Vietnam can join forces and lawfully align themselves with

major naval powers like the United States, Japan, Australia, and India to defend their EEZ against Chinese encroachment, and rationalize this effort to uphold international law. If cooperation among these states before the ruling could easily be interpreted as taking sides and ganging up on China, now it can be regarded as a collective effort by the international community to defend the rule-based order against an aggressive and expansionist power.<sup>68</sup>

These states can then apply a strategy of constraint on China. Nonetheless, formulating a constraint policy entails an assessment of whether China's neighbours and the major powers are strong enough to resist Chinese expansion in the South China Sea.<sup>69</sup> The policy also requires that the interests of the states must be collectively defended by means of incentives for good behaviour, deterrence for bad behaviour, and punishment when deterrence fails.<sup>70</sup> The legitimacy of the PCA ruling and its alignment with the strategic interests of these states will provide the *raison d'être* of this coalition which will set the appropriate mechanisms for the effective implementation of the constraint policy on China.

#### **10. The Duterte Administration's Goal: To Reduce the Ruling as a "Piece of Trash"**

Despite the fact that the eagerly awaited 12 July 2016 PCA ruling was a legal victory for the Philippines, the Duterte Administration met the decision with sober, cautious and even muted reaction. Then Philippine Foreign Affairs Secretary Perfecto Yasay Jr. called for restraint and sobriety among the Filipinos who were euphoric about their country's decisive legal triumph against an expansionist power. During the ASEAN summit meeting in Laos, President Rodrigo Duterte digressed from his prepared speech on the PCA ruling on the South China Sea, and instead, narrated accounts of American atrocities against the Moros of Mindanao in the early 20th century. Before the summit, President Duterte claimed that the PCA ruling is purely a bilateral issue between the Philippines and China, and not a matter for ASEAN, echoing both Cambodia's and China's position on the matter. On 13 September 2016, he announced an end to Philippine-U.S. joint patrols in the South China Sea and, added that the PN will confine its routine patrol within the country's territorial waters to avoid provoking other countries.<sup>71</sup>

In his speech at the Center of Strategic and International Studies (CSIS) in Washington D.C., in September 2016, Secretary Yasay reasoned out "that joint patrols (with the U.S.) could be seen by China as a provocative acting, making it more difficult to peacefully resolved territorial disputes."<sup>72</sup> He disclosed that the Philippines is quietly making arrangements through diplomatic channels for bilateral talks with China without any preconditions. Clearly, the Duterte Administration is determined to establish an entente with China even though

the Chinese Navy and Coast Guard vessels are operating inside potential flashpoints such as the Scarborough Shoal and the Mischief Reef.

President Duterte pursues a calibrated foreign policy by gravitating closer to China. He declared that he is opened to any direct bilateral negotiations. In contrast, former President Aquino brought the dispute to be resolved by the Permanent Court of Arbitration. Supportive of President Duterte's policy pronouncements, then Foreign Secretary Yasay commented "that the relationship between the two countries (China and the Philippines) was not limited to the maritime dispute. There were other areas of concern in such fields as investment, trade and tourism and discussing them could open the doors for talks on the maritime issues."<sup>73</sup>

In late September 2016, President Duterte divulged that he would forge "new alliances" to cushion the fallout from the possible withdrawal of the U.S. from the Philippines in 2017.<sup>74</sup> In a speech delivered in the province of Pampanga, he urged Filipinos to make a small sacrifice for his plan of "crossing the Rubicon" in his ties with the U.S. as he establishes partnerships with rival countries (China and Russia) or what he called countries on the other side of the ideological barrier.<sup>75</sup> He also announced his forthcoming visits to Russia and China to chart an independent foreign policy and "open (new) alliances" with these two regional powers that are ideological and traditional rivals of the U.S., the Philippines' only strategic ally.

In his most recent speeches and policy initiatives, he has intimated that he is diplomatically and strategically distancing the Philippines from the United States while gravitating towards China and Russia.<sup>76</sup> On 21 October 2016, 250 Filipino businessmen accompanied him when he visited China. The Philippines set aside years of hostility and sought a new partnership with China at a time when strained relations between the Philippines and its long-standing ally, the U.S., were mounting.<sup>77</sup> This trip manifested President Duterte's independent posture in foreign affairs that allows him to adroitly balance the major powers. This diplomatic gambit also impelled him to downplay the arbitral tribunal's landmark decision on the South China Sea disputes and giving credence to former State Councilor Dai Bingguo's remark that the ruling is nothing more than a "piece of trash paper."

Toeing the line, then Secretary Yasay admitted that the Philippines is helpless in stopping China's maritime expansion and militarization activities on the disputed islands in the South China Sea.<sup>78</sup> He mentioned that it was wiser to let other countries with special concerns about China's activities take action (themselves), citing the U.S. and Japan which had raised concern on freedom of navigation and overflight operations.<sup>79</sup> He announced as well that the Philippines has its own bilateral engagement with China to ensure no further actions.<sup>80</sup> On 20 December 2016, Chief Presidential Legal Counsel, Salvador B. Panelo, stated to set aside temporarily the PCA ruling favouring



the Philippines “since the country cannot enforce it against China.”<sup>81</sup> According to him, “the ruling is a mere paper judgement.”<sup>82</sup> Accordingly, “instead of trying to enforce it against China with minimal chances for success, the Philippines should take advantage of economic benefits resulting from better relations with China.”<sup>83</sup> He went to say instead of trying to enforce it against China with a minimal chance of success, the Philippines should take advantage of economic benefits resulting from better relations with China.<sup>84</sup> On 22 December 2016, President Duterte himself declared his readiness to set aside the PCA ruling amidst reports that PLAN has installed weapon systems in the seven land features which China occupies in the disputed waters.<sup>85</sup> Succinctly, he said the changing nature of international politics in Southeast Asia prompted his decision. This standpoint obviously and radically differs from President Aquino’s position of standing up to China.

### **11. The Duterte Administration’s Appeasement Policy and the 30th ASEAN Summit**

Since early 2017, President Duterte made several statements and undertook several measures that could be construed as an appeasement policy on China. In March 2017, he publicly admitted that the Philippines cannot stop China’s reported plan to construct an environmental monitoring station on the disputed Scarborough Shoal.<sup>86</sup> Questioned by a journalist about his view on the prospect of China building a radar station on the shoal, President Duterte revealed his appeasement agenda when he replied: “We cannot stop China from doing this thing. So what do you want me to do ... declare war on China? I can, but we’ll all lose our military and policemen tomorrow.”<sup>87</sup> He even announced that he wants Chinese ships “to pass or come and dock” in the Philippines as long as “they will not do anything to the Philippine Coast Guard as it patrols the country’s maritime waters.”<sup>88</sup>

President Duterte’s announcements that he would not do anything to stop China from building on the disputed shoal was based on the calculation that appeasing this emergent power has its rewards in the form of US\$6 billion dollars in deals including agreement for agricultural exports to China, and loans for infrastructure projects. In March 2017, Chinese Third-Vice Premier Wang Yang visited Davao City and witnessed the exchange of letters between Philippine and Chinese officials on the feasibility studies of infrastructure projects China will bankroll.<sup>89</sup> Mr. Wang visited portions of the proposed Davao Coastline and Portland Development Project. He was also briefed on the Davao City Expressway and the Mindanao Railway. In the aftermath of this trip in Mindanao, Premier Wang expressed China’s interest in funding the various infrastructure projects presented to him while he was in Davao City.<sup>90</sup>

Also during Premier Wang's visit, the Philippines and China signed a six-year economic cooperation agreement.<sup>91</sup> It commits China to finance 15 big-ticket infrastructure projects such as the US\$53.6 million Chico River Pump Irrigation, the US\$374 million New Centennial Water Source-Kaliwa Dam, and the South Line of the North-South Railway.<sup>92</sup> Moreover, China also extended to the Philippine government a credit package worth US\$500 million for the AFP's procurement of Chinese-made military hardware.<sup>93</sup> Under the initial part of this assistance package, China will extend to the Philippines US\$144.4 million for the Philippine military's acquisition of small arms, speed boats and night vision goggles to enhance its counter-terrorism, counter-insurgency, counter-terrorism and anti-narcotics capabilities.<sup>94</sup> Historically, the AFP has acquired its hardware from the U.S. However, under his administration, the Philippine military's procurement pattern will likely change as President Duterte explores the possibility of reducing the AFP's dependence on the U.S. by procuring Chinese-made weapons financed by Chinese loans over a 25-year period.<sup>95</sup>

Not surprisingly, President Duterte is resigned to heightened Chinese island-building activities in the South China Sea. Clearly, he has been lured by the Chinese promise of trade concessions, grants, loans and investment. Consequently, his administration has subscribed to Beijing's official mantra "that after several years of disruption caused mainly by "non-regional countries (Japan and the U.S.), the South China Sea has calmed with China and Southeast Asian countries agreeing to peacefully resolve [their] disputes."<sup>96</sup> He put this mantra into practice during the 30th ASEAN Summit held in Manila in late April 2017.

Even before the summit began President Duterte announced that he would not raise the PCA rulings on the South China Sea during the ASEAN Summit on 27 April.<sup>97</sup> During a press conference held in the presidential palace two days before the event, he emphatically declared "We [ASEAN] will skip, I will skip the arbitral ruling. It is not an issue here in the ASEAN."<sup>98</sup> By accepting Chinese economic largess and rejecting former President Aquino's confrontational stance on the South China Sea dispute, President Duterte dismissed the idea that any benefits could come out from the PCA ruling. Responding to his domestic critics, President Duterte deridingly pointed out: "What would be the purpose of discussing it? Who will dare pressure China?"<sup>99</sup>

True to his word, the chairperson's communique for the 30th ASEAN Summit avoided any adversarial statements directed at China. It did not include any references to China's island building and weapons deployment on the reclaimed land features nor did it touch on the PCA ruling that declared China's excessive claim in the South China Sea as a violation of international law. ASEAN diplomats reported that there were some efforts exerted by the

Chinese government to pressure the Philippines to keep the South China Sea issue totally off the ASEAN agenda. The statement, however, retained the phrase “the need to demonstrate full respect for legal and diplomatic process in resolving the dispute.” This was a very subtle reference to the PCA ruling and to the regional negotiations for the COC.<sup>100</sup> Nevertheless, the statement also welcomed China’s cooperation with ASEAN on the drafting of a framework for a Code of Conduct for the Parties in the South China Sea.

A few ASEAN leaders tried to include the phrase “such reclamation and militarization (in the South China islands) that may further complicate the situations.” However, as the current chair of ASEAN, President Duterte determined it was pointless to discuss China’s island reclamations in the South China Sea and the PCA ruling, calling both a non-issue.<sup>101</sup> Pleased by the Philippine president’s moves to soften the chairman’s statement, the Chinese foreign ministry announced that “it had noted Mr. Duterte’s remarks and would continue to deal with the Philippines to create a sound environment for stable development of bilateral relations.”<sup>102</sup> The following month, the Duterte Administration made sure that its relations with China would indeed further develop. He attended the opening ceremony of China’s One Belt, One Road Project in Beijing; the Philippine and Chinese coast guards formed a commission on maritime security cooperation; and the two countries’ foreign ministries began conducting bilateral talks on the South China Sea dispute.<sup>103</sup>

## **12. Conclusion**

The Philippines’ decision to file a case against China’s claim of sovereignty over much of the South China Sea stemmed from the 2012 Scarborough stand-off. This impasse was the proverbial tipping point caused by China’s pattern of protracted series of aggressive actions against the Philippines which began two years earlier. Confronted by an assertive China, the Philippines resorted to the instrumentality of international law that governs the use of the world’s oceans to settle maritime territorial disputes. Former Philippine Foreign Secretary Albert Del Rosario stressed the importance of this approach when he declared that the “UNCLOS has never been more important for the Philippines than today, when overlapping maritime claims threatens as never before the peace and prosperity in our part of the world.” Without any credible military capability to back its diplomacy, the Philippines saw that “the legal track presents the most durable option to defend the national interests and territory on the basis of international law.” During the stand-off, the Philippines reiterated its proposal to present the dispute over the shoal for arbitration by the International Tribunal on the Law of the Sea (ITLOS). It insisted on a multilateral approach to resolve the conflict and to ensure the freedom of navigation and the unimpeded commerce in the South China Sea which are also issues of grave concerns.

In January 2013, the Philippines confronted Chinese coercive diplomacy head-on by filing a statement of claim against China in the arbitral tribunal of the UNCLOS. In its statement of claim, the Philippines made it clear that it was not seeking arbitration over which party has sovereignty over the islands claimed by both the Philippines and China. Rather, it was simply requesting the tribunal to issue an opinion on two points in question: a) whether China's maritime claim in the South China Sea based on its so-called nine-dash line is valid or contrary to UNCLOS; and b) whether the Scarborough Shoal, Johnson Reef, Cuarteron Reef and Fiery Reef, which are submerged features that are below sea level at high tide, are islands or rocks under Article 121 (3) of the Convention.

With its filing of the 15 submissions with the PCA and the consequential ruling of the court on 12 July 2016, the Philippines foiled China's strong-arm tactic. By winning most of its claims, the country blunted China's realpolitik approach specifically when it patiently pursued a multilateral and legal solution to the maritime dispute, and appealed for the support of the international society that also has a stake in the outcome of the case. The Philippines showed to the global society that the appropriate way of settling disputes involving overlapping claims to the global commons should be the liberal/legal approach based on multilateralism and international law, not on powerpolitik. The challenge then for the Philippines was to forge a strong partnership with law-abiding countries in the world so that, collectively, they can avert China's realpolitik approach resolving disputes in an evolving regional order still haunted by recent history and still susceptible to the use of coercion and force. Finally, the PCA ruling could also be a potential game changer since it ascertained that China's expansionism into the South China Sea is bereft of neither legal nor historical foundation. It also created the *raison e'tre* for littoral states and major naval powers to form a coalition to effectively constrain an expansionist China.

Unfortunately, the Duterte Administration has shelved the PCA ruling saying that enforcing the decision has minimal chance of success. Instead, it has adopted a policy of appease in exchange for China's goodwill and economic largess. In the process, the Duterte Administration has unwittingly lent credence to former State Councilor Dai Bingguo's assertion that the 12 July 2016 PCA award to the Philippines is nothing more than a "piece of trash paper."

## Notes

- \* Renato Cruz De Castro is a full professor in the International Studies Department, De La Salle University, Manila, and holds the Charles Lui Chi Keung Professorial Chair in China Studies. He is an alumnus of the Daniel

Inouye Asia-Pacific Center for Security Studies in Hawaii, USA. In 2009, Dr. De Castro became the US State Department ASEAN Research Fellow from the Philippines and was based in the Political Science Department of Arizona State University. He earned his Ph.D. from the Government and International Studies Department of the University of South Carolina as a Fulbright Scholar in 2001, and obtained his B.A. and two master's degrees from the University of the Philippines. Professor De Castro has conducted several courses on International Relations and Security Studies in the National Defense College and Foreign Service Institute. He is also a member of the Board of Trustees of the Albert Del Rosario Institute for Strategic and International Studies (ADR Institute). A current consultant in the National Security Council of the Philippines, Professor De Castro's research interests include Philippine-US security relations, Philippine defence and foreign policies, US defence and foreign policies in East Asia, and the international politics of East Asia. He has written over 80 articles on international relations and security that have been published in a number of scholarly journals and edited works in the Philippines, South Korea, Canada, Malaysia, France, Singapore, Taiwan, Germany, the United Kingdom, Australia, and the United States. He can be reached at <renato.decastro@dlsu.edu.ph>.

1. E.H. Carr, *The Twenty Years' Crisis* (New York, New York: Palgrave, 2001), p. 165.
2. James Hookway, "Philippine, China Ships Square Off", *The Wall Street Journal Asia* (12 April 2012), p. 2. <http://search.proquest.com/docview/993221572/fulltext/1368A3AE...>
3. William Chong, "Path to Scarborough Far from Fair: South China Sea Rivals no Match for China's Economic, Military Clout", *The Strait Times* (21 April 2012), p. 1. <http://search.proquest.com/docview/1008636649/fulltext/1368A3A...>
4. Ivan Arreguijn-Toft. *How the Weak Win Wars: A Theory of Asymmetric Conflicts* (Cambridge, UK; New York, USA: Cambridge University Press, 2005), pp. 2-3.
5. Steve Chan, 2011. "Preventive War by the Weak: Loss Aversion, Strategic Anticipation and Third Power Intervention", *Tamkang Journal of International Affairs*, Vol. 14, No. 3 (January), p. 4.
6. Russett, Bruce and Starr, Harvey, 1996. *World Politics: The Menu of Choice* (USA: W.H. Freeman and Company), p. 144.
7. *Ibid.* pp. 143-144.
8. John Vasquez, 1993. *The War Puzzle* (Cambridge, UK: Cambridge University Press), p. 271.
9. Michael Scharaf and Elizabeth Anderson (2010). "Is Law fare Worth Defining? Report of the Cleveland Experts Meeting September 11, 2010", *Case Western Reserve Journal of International Law*, Vol. 43, No. 1, p. 12.
10. Michael T. Palmer and Michael Johnson, "Undersea Lawfare: Can the U.S. Navy Fall Victim to this Asymmetric Warfare Threat?", *Naval War College Review* (Winter 2016) Vol. 69, No. 1. p. 135.
11. *Ibid.* p. 135.
12. Christopher H. Sharman, *China Moves Out: Stepping Stones toward a New Maritime Strategy* (Washington, D.C.: National Defense University, April 2015), p. 4.

13. Aaron L. Friedberg, "Buckling Beijing: An Alternative U.S. China Policy", *Foreign Affairs* (September/October 2012), Vol. 91, No. 5, p. 53.
14. *Ibid.* p. 53.
15. Roger Cliff, Mark Burles, Michael S. Chase, Derek Eaton and Kevin L. Pollpeter, *Entering the Dragon's Lair: Chinese Anti-Access Strategies and their Implications for the United States* (Santa Monica, CA: Rand Corporation, 2007), p. xvii.
16. National Institute for Defense Studies, *NIDS China Security 2014: Diversification of Roles of the People's Liberation Army and the People's Armed Police* (Tokyo: National Institute for Defense Studies, 2015), p. 2.
17. Christopher H. Sharman, *China Moves Out: Stepping Stones toward a New Maritime Strategy* (Washington D.C.: National Defense University Press, April 2015), pp. 34-35.
18. See Andrew F. Krepinevich, Jr., "How to Deter China: The Case for Archipelagic Defense", *Foreign Affairs*, Vol. 94, No. 2 (March/April 2015), p. 79.
19. *Ibid.* pp. 79-80.
20. National Institute for Defense Studies, *NIDS China Security Report 2014* (Tokyo: National Institute for Defense Studies, 2015), p. 3.
21. *Ibid.* p. 3.
22. David Scott, *China Stands Up: The PRC and the International System* (Oxon; New York: Routledge, 2007), p. 104.
23. Michael D. Swaine, "The Real Challenge in the Pacific: A Response to 'How to Deter China'", *Foreign Affairs*, Vol. 94, No. 3 (May/June 2015), pp. 146-147.
24. Peter Dutton, "Three Disputes and Three Objectives: China and the South China Sea", *Naval War College Review* (Autumn 2011) Vol. 54, No. 4, p. 6.
25. For details on China's Training Exercises in its surrounding waters see National Institute for Defense Studies, *NIDS China Security Report* (Tokyo: National Institute for Defense Studies, 2011), pp. 14-21.
26. See The International Institute for Strategic Studies, *The Military Balance 2011: The Annual Assessment of Global Military Capabilities and Defence Economics* (London: The International Institute for Strategic Studies, 2011), p. 196.
27. Yoichi Kato, "China's Naval Expansion in the Western Pacific", *Global Asia*, Vol. 5, No. 4 (Winter 2010), p. 19.
28. Sharman, *op. cit.* p. 6.
29. See Carl A. Thayer, "China's New Wave of Aggressive Assertiveness in the South China Sea", *International Journal of China Studies* (December 2011, Vol. 2, No. 3, pp. 561-562.
30. Anonymous, "Philippines Protests against China's Planned Oil Rig, Constructions in Spratlys", *BBC Monitoring Asia-Pacific* (2 June 2011), p. 2. <http://proquest.umi.com/pqdweb?index=329&did=329&did=2363645341&Sr...>
31. Anonymous, "China Says Philippines Harming Sovereignty, Interests in Spratlys", *BBC Monitoring Asia-Pacific* (9 June 2011), p 1. <http://proquest.umi.com/pqdweb?index=64&did=2369715781&Src...>
32. *Ibid.* p. 3.
33. See Edward Wong, "China Asserts Role as a Naval Power", *International Herald Tribune* (23 April 2010), pp. 1 & 4.

34. Thai News Service Group, "Philippines/China: China Seeks Preservation of Over-All Friendly Relations with Philippines as Tension Over Scarborough Ebbs Momentarily", *Asia News Monitor* (12 April 2012), p. 2. <http://search.proquest.com/docview/993552866/138B64F7C717082...>
35. "Philippines/China: No Agreement Reached with Chinese Government on Pull-Out of Philippine Vessels from Scarborough Shoal—DFA", *Asia News Monitor* (26 April 2012), p. 1. <http://serach.proquest.com.docview/1009600955/138FC30C1134...>
36. Jane Perlez, "Stand-off Over South China Sea Shoal Eases: Beijing and Manila Pull Their Ships from Area, but the Dispute is Not Settle", *International Herald Tribune* (19 June 2012), p. 4. <http://search.proquest.com/docview/1020884288/1386FC0C1134...>
37. *Ibid.* p. 2.
38. Teddy Ng, "Stand-Off Eases as Sides Withdraw Ships from Shoal: Beijing Follows Manila in Pulling Vessels out of Disputed Area because of Bad Weather", *South China Morning Post* (19 June 2012), p. 1. <http://search.proquest.com/docview/1020927910/139091870A75BB1E5FF/15?accounti=2...>
39. Department of Foreign Affairs, "Notification and Statement of Claim to the United Nations Convention of Law of the Sea (UNCLOS) Arbitral Tribunal", Manila (22 January 2013), pp. 12-14.
40. *Ibid.* pp. 18-19.
41. Robert Sutter and Huang, Chin-hao (2014), "China's Growing Resolve in the South China Sea Dispute", *Comparative Connections: A Triannual E-Journal on East Asia Relations* (May 2014): 1-8. <http://csis.org/files/publication/1301q-seasia.pdf>
42. Sutter, Robert and Huang, Chin-hao (2012), "China's Shifts to Positive, Downplays Disputes", *Comparative Connections: A Triannual E-Journal on East Asia Relations* (January 2014): 4. <http://csis.org/files/publication/1303q-seasia.pdf>
43. *Ibid.* p. 4.
44. Frank Ching, "Seeking a South China Sea Solution", *New Straits Times* (30 July 2015), p.1. <http://search.proquest.com/docview/169973814?accountid=28547>
45. Michaela Callar, "China's Historical Claim over South China Sea Invalid under UNCLOS", *The Philippines News Agency* (8 July 2015), p. 1. <http://search.proquest.com/docview/1694690512?accountid=28547>
46. *Ibid.* p. 2.
47. *BBC Monitoring Asia-Pacific* (14 July 2015), "China not to Accept Third Party Decision over Sea Dispute with Philippines", p. 5. <http://search.proquest.com/docview/1695962448?accountid=28547>
48. Permanent Court of Arbitration, "The South China Sea Arbitration (The Republic of the Philippines versus the People's Republic of China)", *Press Release* (The Hague, 12 July 2016), p. 1.
49. Mather Waxman, "Legal Posturing and Power Relations in the South China Sea", Asian Maritime Transparency Institute (AMTI) (21 January 2015), p. 3. <http://amti.csis.org/chinas-mariime-actors-coordinate-and-directed-from-the-top/>

50. See Fravel M. Taylor, "China's Strategy in the South China Sea", *Contemporary Southeast Asia*, Vol. 33, No. 3 (December 2011), pp. 292-319. <http://search.proquest.com/docview/921618988/accountid=28547>
51. Waxman, *op. cit.* p. 3.
52. *Asia News Monitor* (21 July 2015), "Philippines/China: International Tribunal Vows to Rule on Jurisdiction Issue on Philippine-China Sea Row before Yearend", p. 1. <http://search.proquest.com/docview/1697280629?accountid=28547>
53. BBC Monitoring Newsfile, "Philippines Scores against China in South China Sea Arbitration Case—Paper", *BBC Worldwide Limited* (30 October 2015), p. 1. <http://search.proquest.com/docview/1728148041?accountid=28547>
54. *Ibid.* p. 1.
55. Permanent Court of Arbitration, *op. cit.* p. 1.
56. *Ibid.* p. 2.
57. Robert Beckman, "The South China Sea Ruling: Game Changer in the Maritime Disputes", *RSIS Commentary* 180/2016 (18 July 2016), p. 2.
58. Permanent Court of Arbitration, *op. cit.* p. 2.
59. Gregory Poling, Michael Green, Bonnie Glaser, Murray Hiebert, Chris Johnson, and Amy Searight, "Critical Questions: Judgement Day; the South China Sea Tribunal Issues for its Ruling", *PACNET#57* (12 July 2016), p. 2.
60. Peter Dutton, "Comments" in China's Claims in the South China Sea Rejected: A China File Conversation (12 July 2016). *A Project of the Center on U.S.-China Relations of Asia Society*, p. 1. <http://www.chinafile.com/conversation/chinas-claims-south-china-sea-rejected>
61. Permanent Court of Arbitration, *op. cit.* pp. 8-9.
62. Andrew Shearer, "Post-Arbitration Geopolitical Assessment", Remarks delivered during the Albert Del Rosario Institute of Strategic and International Studies' (ADRI) Upholding the Law of the Sea Convention and the Post-Arbitration Philippine Challenge, 15 July 2016, University of the Philippines, College of Law, p. 2.
63. *Ibid.* p. 2.
64. Malcolm Davis, "China's Next Step in the South China Sea", *ASPI Strategist* (21 July 2016), p. 1. <http://www.aspistrategist.org.au/author/malcolm-davis/>
65. *Ibid.* p. 2.
66. Sharman, *op. cit.*
67. *Ibid.* p. 2.
68. Alexander L. Vuving, "Why the South China Sea Ruling Is a Game Changer: Make No Mistake, the Verdict has Transformed the Strategic Landscape", *The Diplomat* (27 July 2016), p. 2. <http://www.thediplomat.com/2016/07/why-the-south-china-sea-ruling-is-a-game-changer/>
69. Gerald Segal, "East Asia and the 'Constrainment' of China", *East Asian Security* (edited) Michael E. Brown, Sean M. Lynn-Jones, Steven E. Miller (Cambridge, Massachusetts: The MIT Press, 1996), p. 160.
70. *Ibid.* p. 186.
71. Jay Solomon and Alan Cullison, "U.S. Seeks Strategy to Sustain Philippine Ties amid Rodrigo Duterte's Outbursts", *The Wall Street Journal* (14 September



- 2016). p. 1. <http://www.wsj.com/articles/u-s-weeks-strategy-sustain-philippine-ties-amid-rodgrigo-duterte-outbursts-1473902096>
72. Jose Katigbak, "Philippines Eyes Talks with China Sans Preconditions", *The Philippine Star* (18 September 2016), p. 1.
73. *Ibid.* p. 2.
74. Gil Cabacungan, "Duterte Seeks Alliances with China and Russia", *Philippine Daily Inquirer* (28 September 2016), p. 1. [http://globalnation.inquirer.net/145595/duterte-seeks-alliances-china-and-russia?utm\\_source=Arangkada+News+Clips&utm\\_campaign=57936169b7-Aran...](http://globalnation.inquirer.net/145595/duterte-seeks-alliances-china-and-russia?utm_source=Arangkada+News+Clips&utm_campaign=57936169b7-Aran...)
75. *Ibid.* p. 1.
76. AFP, "Presidential Remarks on China, Russia Send Investors Fleeing", *Business World* (28 September 2016). p. 1.
77. Neil Jerome Morales and Karen Lema, "The Philippines is Preparing a Major Pivot toward China amid Tension with the U.S.", *Business Insider* (11 October 2016), p. 1. [http://www.businessinsider.com/the-philippines-is-preparing-a-major-pivot-toward-china-2016-10?source=Arangkada+News+Clips&utm\\_campaign=2df...](http://www.businessinsider.com/the-philippines-is-preparing-a-major-pivot-toward-china-2016-10?source=Arangkada+News+Clips&utm_campaign=2df...)
78. Jeannette I. Andrade, "Philippine Helpless versus China—Yasay", *Philippine Daily Inquirer* (17 December 2016), p. 1.
79. *Ibid.* p. 2.
80. *Ibid.* p. 2.
81. David Cagashastian, "Malacanang Shelves Ruling for Better Relations with China", *Business Mirror* (21 December 2016), p. 1. [http://www.businessmirror.com.ph/malacanang-shelves-ruling-for-better-relationships-with-china/?utm\\_source=Arangkada+News+Clips&utm\\_campaign=4857ce...](http://www.businessmirror.com.ph/malacanang-shelves-ruling-for-better-relationships-with-china/?utm_source=Arangkada+News+Clips&utm_campaign=4857ce...)
82. *Ibid.* p. 1.
83. *Ibid.* p. 1.
84. *Ibid.* p.1.
85. Alexis Romero and Edith Regalado, "Rody Ready to Set Aside Ruling on Sea Dispute", *The Philippine Star* (18 December 2016), p. 1. [http://www.philstar.com/headlines/2016/12/18/1654564/rody-ready-aside-ruling-set-aside-ruling-sea-dispute?utm\\_source=Arangkada+News+Clips&utm\\_campaign=b066...](http://www.philstar.com/headlines/2016/12/18/1654564/rody-ready-aside-ruling-set-aside-ruling-sea-dispute?utm_source=Arangkada+News+Clips&utm_campaign=b066...)
86. Christina Mendez, "No One Can Stop China on Panatag–Duterte", *The Philippine Star* (20 March 2017), p. 1.
87. *The American Interest* (21 March 2017), "Duterte: We Can't Stop China at Scarborough Shoal", p. 1. <http://www.the-american-interest.com/2017/03/20/duterte-we-cant-stop-at-scarborough-shoal/>
88. Mendez, *op. cit.* p. 2.
89. *Philippine News Agency* (21 March 2017), "Chinese Leader's Visit Brightens' Realization of Mindanao Railway, 4 Other Development Projects", p. 1. <http://www.businessmirror.com.ph/chinese-leaders-visit-brightens-re...>
90. *Ibid.* p. 1.
91. Czeriza Valencia, "Philippines, China Sign Development Plan", *The Philippine Star* (19 March 2017), p. 1.
92. *Ibid.* p. 2.

93. Jon Grevatt, "China Offers US\$500 Million in Military Assistance to Philippines," *Jane's Defense Weekly: Horley*, Vol. 54, No. 8 (December 2016), p. 1. <http://search.proquest.com.lib1000.dlsu.edu.ph/docview/1851029631/834095F0419D406CPQ12?accountid=28547>
94. Peter Layton, "The Battle for Southeast Asia's Soul", *Real Clear Defense* (2 June 2017). [http://www.realcleardefense.com/articles/2017/06/02/the\\_battle-for\\_southeast\\_asias-soul\\_111504.html](http://www.realcleardefense.com/articles/2017/06/02/the_battle-for_southeast_asias-soul_111504.html)
95. Jon Grevatt, "China Offers US\$500 Million in Military Assistance to Philippines", *Jane's Defense Weekly: Horley*, Vol. 54, No. 8 (December 2016), p. 1. <http://search.proquest.com.lib1000.dlsu.edu.ph/docview/1851029631/834095F0419D406CPQ12?accountid=28547>
96. *Ibid.* p. 43.
97. The Associated Press, "Duterte Won't Bring Up South China Sea Arbitration Victory at Southeast Asia Summit", *Dow Jones Institutional News* (27 April 2017), p. 1. <http://0-search.proquest.com.lib1000.dlsu.edu.ph/docview/1892549455/fulltext/433D30753C8C4331PQ/29?accountid=28547>
98. *EFE News Service* (April 2017), "Duterte to Overlook Territorial Disputes with China during ASEAN Summit", p. 1. <http://0-search.proquest.com.lib1000.dlsu.edu.ph/docview/1892212582/fulltext/433D30753C8C4331PQ/23?accountid=28547>
99. Jake Maxwell Watts, "ASEAN Tacks away from Rocky South China Sea Issue: Final Summit Communique Welcome Beijing's Cooperation on Issues such as Framework of Maritime Code of Conduct", *Wall Street Journal* (30 April 2017), p. 1. <http://0search.proquest.com.lib1000.dlsu.edu.ph/docview/1893082807/fulltext/433D30753C8C4331PQ/75?accountid=28547>
100. Sutter and Huang, *op. cit.* p. 53.
101. Raul Dancel, "ASEAN Calls for Peaceful End to Territorial Conflicts: Leaders Take Softer Stance, Despite Pressure to Mention Beijing's Activities in South China Sea", *The Straits Times* (1 May 2017), p. 1. <http://0-search.proquest.com.lib1000.dlsu.edu.ph/docview/1893541975/fulltext/433D30753C8C4331PQ/44?accountid=28547>
102. The Associated Press, *op. cit.* p. 1.
103. Robert G. Sutter and Huang Chin-Hao, "Beijing Presses Its Advantages", *Comparative Connections*, Vol. 13, No. 3 (September-December 2017), p. 55.