

THE LA TROBE ASIA BRIEF

THE PHILIPPINES AND THE SOUTH CHINA SEA DISPUTE

THE 2016 ARBITRAL TRIBUNAL AND ITS IMPLICATIONS

Amparo Pamela Fabe

**“THE PHILIPPINES HAVE
MADE A COMMITMENT TO
THE RULES-BASED ORDER,
FREEDOM OF NAVIGATION
PRINCIPLES, AND THE
ECONOMIC PROSPERITY
OF THE COUNTRIES IN
THE SOUTH CHINA SEA.”**



MESSAGE FROM THE DIRECTOR



Welcome to the newest issue of the La Trobe Asia Brief, the first of two issues which will take a critical and thoughtful look at the South China Sea dispute particularly between The Philippines and China.

This brief examines the Philippines' use of international legal mechanisms to challenge China's 'nine-dash line' claims, in particular the 2016 South China Sea Arbitration which ruled in the Philippines favour on many accounts. It also makes suggestions on how the Philippines can increase international support for the legal ruling and strengthen its position in the future.

I'd like to thank Professor Amparo Pamela Fabe of the National Police College in the Philippines for her work in authoring this brief. Mimi has long been an authoritative voice on the topic, and we are grateful for her work.

This Brief was made possible by a donation from the Philippines Consulate in Melbourne, who have supported Philippines related activity at La Trobe University through the Philippines-Australia Forum at La Trobe (PAFL), competently led by Dr Raul Sanchez-Urribarri, Associate Dean (Partnerships) in the School of Humanities and Social Sciences, and managed by PAFL and La Trobe Asia project officer, Rei Fortes.

I sincerely hope you enjoy these insights from the Philippines into the South China Sea disputes and the challenges it presents.

Professor Rebecca Strating
Director, La Trobe Asia

ABOUT THE SERIES

The La Trobe Asia Brief is a publication from La Trobe Asia, based at La Trobe University. This series provides a platform for commentary, research and analysis of policy issues that are of key importance in the Asian region. The papers in The La Trobe Asia Brief series are written for an informed audience. Authors will be invited by La Trobe Asia to contribute to this series.

PHOTOS

Front cover: Philippine Navy vessel BRP Sierre Madre (LS57) maintaining a presence at the Second Thomas Shoal / Naval Forces West (Philippine Navy).

Inside issue: LSIS Kayla Jackson, POIS Leo Baumgartner, LSIS Yuri Ramsey (Australian Navy); Naval Forces West / Philippine Navy.

EDITOR

Matt Smith

THE LA TROBE ASIA BRIEF #12

© 2024 La Trobe Asia. All rights reserved.

La Trobe University does not take institutional positions on public policy issues. The views represented in this paper are the authors and do not necessarily represent the views of the University or collaborating institutions.

The views and opinions expressed in the brief are solely those of the author and do not necessarily reflect the position or endorsement of the Consulate or the Philippines.

EXECUTIVE SUMMARY

The 'rules-based order' refers to the body of rules, norms and institutions that regulate the behaviours and interactions of sovereign states and other actors in the global system. This rules-based order empowers states to interact with each other in a manner that maximizes cooperation while reducing the likelihood of conflict.

The international order is increasingly under challenge by rising and authoritarian powers, including in the maritime domain. The 'rules-based order' has been particularly important in establishing maritime order, particularly the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

In recent years, land features and maritime boundaries in the South China Sea have been contested by a number of countries that border it. China in particular has been aggressive in claiming and developing the region.

As a strategy to address this, President Ferdinand Marcos signed Executive Order 57 on March 25, 2024, to deal with issues that impact the country's national security, sovereignty, sovereign rights, and maritime jurisdiction over its extensive maritime zones.

This paper presents an independent analysis of the 2016 Arbitral Ruling and its implications for the Philippines' position in the South China Sea. It presents five key recommendations that the Philippines' government may consider in its efforts to further strengthen its position in the South China Sea. This Philippines' should:

- Continue to present the merits of the Arbitral Ruling in all public forums and implement exhaustive efforts to maintain its full adherence to the rule of law. It should consider creating a West Philippine Sea

Arbitral Initiative Forum, although this would need to be carefully balanced with the Philippines' ongoing commitment to multilateralism and working within established forums such as the United Nations and ASEAN.

- Consider a more cohesive maritime strategy that focuses on resisting and countering China's cognitive and narrative warfare and coercive actions in the South China Sea. As part of this, the government could also consider the establishment of the Philippine Strategic Cognitive Terrain Research Center, under the Office of the President.
- Advocate for an ASEAN Ban on the Illegal Use of Water Cannons against Coast Guard and civilian vessels in contested waters, while continuing its use of international and local media to document the harassment done by the Chinese Maritime Militia and the Chinese Coast Guard vessels on Philippine vessels.
- Consider bolstering its deterrence capabilities through the use of AI and electronic warfare in the South China Sea, including through the establishment of a Special Technologies Department within the National Maritime Council.
- Consider carrying out joint patrols in the South China Sea with an ASEAN partner, such as Vietnam and new extra-regional partners such as India, New Zealand, UK and some European Union countries, in addition to existing multilateral joint patrols. To this end, the Philippines and other regional and extra-regional partners have signed enhanced maritime cooperation agreements that may be elevated to comprehensive strategic partnerships in the near future.



INTRODUCTION

The 'rules-based order' refers in a general sense to the body of rules, norms and institutions that regulate the behaviours and interactions of sovereign states and other actors in the global system. It is founded on the United Nations (UN) and Bretton Woods institutions whose aim is to ensure, to the greatest extent possible, that all nations can share in the benefits of peace and prosperity. When the United Nations Charter was established in San Francisco last June 26, 1945, it relied on a system of laws, rules, and norms that will form a basis for international interactions.

The Philippines is strongly supportive of multilateralism and working within global institutions, such as the United Nations, that support this international rules-based order. The Philippines also strongly supports regional rules-based multilateralism and dispute resolution and management, most significantly through its membership of the Association of Southeast Asian Nations (ASEAN). The ASEAN blueprint envisages ASEAN to be a 'rules-based' community of shared norms and values, including maritime affairs.

Countries with territorial disputes are required to resolve them with recourse to the United Nations Convention on the Law of the Sea (UNCLOS) rather than using force to assert their demands. For advocates of the rules-based order, UNCLOS promotes economic cooperation and allows businesses to thrive globally, as such an order also facilitates fair competition and consequently economic growth.

The San Remo Manual and the UN Convention on the Law of the Sea (UNCLOS) serve as important legal frameworks on the rule of law in the maritime domain.

UNCLOS has 168 state parties and contains 320 articles that cover issues relating to the sea, such as the principles of navigation, the delimitation of maritime borders, the protection of the marine environment and its ecosystems, marine scientific research, and the transfer of marine technology. UNCLOS allows and sanctions the territorialization of the sea by first using land as the benchmark for drawing up the reach and extent of maritime zones and by secondly adopting land-based principles of ownership and stewardship to determine how to govern these zones.

The UNCLOS was designed to allow smaller powers to access marine resources and avoid a scramble for competition. Limited sovereignty applies to the 12-nautical-mile (22.2 km) zone of the territorial sea, as recognised by Article 2, but coastal states are also accorded an exclusive economic zone (EEZ) of up to 200 nautical miles (370.4 km) from their coastlines under Article 56, with 'sovereign rights for the purpose of exploring and exploiting, conserving, and managing the natural resources'. The key achievements of UNCLOS were to standardize states' claims to maritime zones and the resources within them and provide states with mechanisms for settling disputes when they arise. UNCLOS clarified the breadth of the territorial sea, defined other maritime zones, and provided a new zone, the EEZ.



In cases where states' maritime claims overlap, boundaries must be 'delimited' either through negotiation or arbitration. If the affected states are unable to reach an agreement, judicial and non-judicial means can resolve maritime boundary disputes.

Activities of law enforcement such as those conducted by agencies and coastguard vessels against private vessels are often not included in definitions of international armed conflict. This makes them difficult to counter.

For the Permanent Court of Arbitration and the Philippines, China is operating in violation of international law by carrying out persistent militarisation efforts in the South China Sea (SCS) in contravention of UNCLOS.

In 2014, China engaged in the construction of airstrips, buildings, and harbours in the Spratlys. It has prevented fishing by Philippine vessels at Second Thomas Shoal and Mischief Reef, where it has undertaken the construction of elevated structures since 1995.

The Philippines pursued the 2016 Arbitral Award through UNCLOS Article VII, arguing that China has interfered with the Philippines' sovereign rights and jurisdiction throughout the entire area encompassed by the nine-dash line.

The Philippines objects specifically to:

- China's prevention of fishing by Philippine vessels at Mischief Reef since 1995.
- The 2012 moratorium on fishing in the South China Sea north of 12°N latitude.
- China's revision of the Hainan Regulation
- China's prevention of fishing by Philippine vessels at Second Thomas Shoal since 1995.
- China's changing of the eco-system and features of the contested islands, reefs and shoals.
- Militarisation of the contested areas encroaching on the Philippines EEZ

Additionally, The Philippines have disputed China's claims to the entitlement of an EEZ generated by the features in the South China Seas resulting from their land building activities. China's rejection of international arbitration on these matters also puts it at odds with the established maritime order centred upon UNCLOS.

In the face of this serious challenge on the rules-based order, there are efforts to transform the narrative that adherence to the rules-based order will lead to stability in the Indo-Pacific. Former Japanese Prime Minister Shinzo Abe had imagined the region as a two-ocean system, geographically bounded by the Indian and Pacific Oceans, describing it as a regional architecture built upon the principles of freedom, openness and respect for international law. Abe stated, "The Pacific and the Indian Oceans are now bringing about a dynamic coupling as seas of freedom and of prosperity. A "broader Asia" that broke away geographical boundaries is now beginning to take on a distinct form. Our two countries have the ability -- and the responsibility -- to ensure that it broadens yet further and to nurture and enrich these seas to become seas of clearest transparency".

This articulation was then supported by Australia in its Strategic Defense Review and by the US in 2017. Abe expanded the geopolitical dimensions of the Asia-Pacific region and pushed it westward toward the Indian Ocean, thereby shifting the region's strategic profile. Then

Australian Prime Minister Malcolm Turnbull stated that the "adherence to rules delivers lasting peace, where the rights of all states are respected, and where open markets facilitate the free flow of trade, capital, and ideas".

The promotion of the 'Indo-Pacific vision' offers a contemporary framework for shaping and reinforcing the rules that will contribute to regional order. Provided it is calibrated to the interests and expectations of nations across the region, it has potential to generate wider purchase in a 'rules-based' approach. However, its effectiveness demands clarity and consistency in language, substantiated through policy and further demonstrated in existing cooperative action.



THE SOUTH CHINA SEA

The main area of geopolitical tension between China and the Philippines is the South China Sea.

The South China Sea lies between the Indian and Pacific Oceans and is bordered by seven countries: China, Taiwan, Vietnam, Malaysia, Indonesia, Brunei, and the Philippines. The area of water itself covers almost 3.5 million square kilometres. The South China Sea is a crucial shipping lane, a rich fishing ground, and believed to hold substantial oil and gas resources. It affects several states and includes hundreds of geographical (land) features, either above or below water. Brunei, Indonesia, Malaysia, Vietnam have also laid claims to parts of the South China Sea.

The Philippines initiated arbitration under Annex VII of the 1982 UNCLOS, disputing China's claims to much of the South China Sea maritime area as incompatible. Both the Philippines and China are parties to UNCLOS. The Arbitral Tribunal was established in accordance with Article 3 Annex VII ("Arbitration") of the UNCLOS. This follows the format set by the Permanent Court of Arbitration that was established by the 1899 Hague Conference on the Pacific Settlement of International Disputes. In a Note Verbale on 13 August 2013 to the Permanent Court of Arbitration (PCA), China refused to participate in the PCA proceedings initiated by the Philippines. The Philippines noted China's non-acknowledgement of the Tribunal's jurisdiction, its non-participation in the proceedings, and its non-acceptance of the ruling on disputes within its jurisdiction and declined to decide disputes outside its jurisdiction.

China claims to have exercised authority and control historically over the entire South China Sea prior to and during the period of its colonisation and occupation by Japan. A map, now known as the dotted/nine-dash line, illustrates these "historic rights". The dotted line encloses the main island features of the South China Sea: the Pratas Islands, the Paracel Islands, the Macclesfield Bank, and the Spratly Islands. It also captures James Shoal, which is as far south as 4 degrees north latitude. China uses these historical claims to justify sovereignty within the nine-dash line and officially pronounced as part of its 1958 Declaration on the Territorial Sea and 1992 Law of the People's Republic of China on the Territorial Sea and Contiguous Zone.

Within the nine-dash line China claims it has indisputable sovereignty, sovereign rights, and jurisdiction over the waters, seabed, and subsoil adjacent to those islands and insular features. This claim supports Chinese historic rights in fishing, navigation, and other marine activities such as oil and gas development in the waters and on the continental shelf surrounded by the line. For China, the nine-dash line may also serve as potential maritime delimitation lines.

In 2014, to capitalise on these claims and further enforce them, China engaged in extensive land reclamation projects with the construction of airstrips, buildings, and harbours in the Spratly Islands within the South China Seas.

The Submissions of the Philippines comprise Submissions 1 to 7, which "concern various aspects of the parties' dispute over the sources and extent of maritime entitlements in the South China Sea," and Submissions 8 to 14, which "concern a series of disputes regarding Chinese activities in the South China Sea," the lawfulness of which is disputed by the Philippines. The Tribunal finds that China, through the operation of its marine surveillance vessels with respect to M/V Veritas Voyager from March 1 to 2, 2011, breached Article 77 of the Convention with respect to the Philippines' sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank. Furthermore, the Tribunal finds that China has, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese-flagged vessels, breached Article 56 of the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone. Additionally, in Articles 58 and 87 of UNCLOS, the EEZ is recognized as an open sea except for certain economically significant activities underwater, such as fishing and seabed mining. Thus, all ships and aircraft have freedom of navigation within the EEZs of other countries.

Based on Article 287(3) of UNCLOS, an arbitration under Annex VII is the default means of dispute settlement if a State has not expressed any preference with respect to the means of dispute resolution that is available under Article 287(1) of UNCLOS. The sovereign rights assigned to coastal states within the EEZ and the continental shelf are inseparable from the duties entrusted to them in respect of protection and preservation of the marine environment, fostering marine scientific research, and conserving fisheries in these maritime zones (UNCLOS Articles 73, 110, 111).



ARBITRAL TRIBUNAL RULING

1. CHINA'S CLAIMS TO HISTORIC RIGHTS AND RESOURCES HAVE NO LEGAL BASIS

The Tribunal addressed the Philippines' claim that China is entitled only to those rights provided for by the Convention and that these rights are not supplemented or modified by any historic rights, including within the area marked by the 'nine-dash line' on Chinese maps.

Submissions No. 1 and 2 are expressed as follows:

- a.) China's maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those expressly permitted by the UNCLOS;
- b.) China's claims to sovereign rights jurisdiction and to "historic rights" with respect to the maritime areas of the South China Sea encompassed by the so-called "nine-dash line" are contrary to the Convention and without lawful effect to the extent that they exceed the geographic and substantive limits of China's maritime entitlements expressly permitted by UNCLOS.

2. NONE OF CHINA'S CLAIMED LAND FEATURES IN THE SPRATLY ISLANDS ARE CAPABLE OF GENERATING A 200-NM EXCLUSIVE ECONOMIC ZONE

The Philippines argued that low-tide elevations are defined and governed by Article 13 of the Convention. "Low-tide elevations are not land territory," the Philippines emphasised, and "no measure of occupation or control can establish sovereignty over such features".

In Part 6 of the Award, the Tribunal considered the status of features in the South China Sea (the Philippines' submissions No. 3–7). The Tribunal concluded that "none of the high-tide features in the Spratly Islands are capable of sustaining human habitation or an economic life of their own within the meaning of those terms in Article 121(3) of the Convention" and that "[a]ll of the high-tide features in the Spratly Islands are therefore legally rocks for purposes of Article 121(3) and do not generate entitlements to an exclusive economic zone or continental shelf.



3. CHINA VIOLATED THE PHILIPPINES' SOVEREIGN RIGHTS BY INTERFERING WITH LAWFUL ACTIVITIES

In Section 649, paragraph 1, the Tribunal addressed the Parties' dispute concerning the activities of Chinese officials and Chinese vessels with respect to living and non-living resources in the areas of the South China Sea located within the Philippines' exclusive economic zone and continental shelf. This dispute is reflected in the Philippines' Submission No. 8, which requests the Tribunal to declare that: (a) China has unlawfully interfered with the enjoyment and exercise of the sovereign rights of the Philippines with respect to the living and non-living resources of its exclusive economic zone (EEZ) and continental shelf; and (b) China has also acted to assert its jurisdiction over fisheries in the South China Sea and to restrict fishing by Philippine nationals in areas within 200 nautical miles of the Philippines' baselines, thereby interfering with Living Resources. In addition to several distinct types of conduct on the part of China that violates Philippine sovereign rights in its Exclusive Economic Zone (EEZ), the Philippines also presented Chinese actions in erecting illegal structures within its EEZ.

In 1995, China undertook construction of elevated structures on the reef platform at Mischief Reef, a low tide atoll approximately 250 kilometres west of Palawan Island of the Philippines and well within its EEZ. This has prevented fishing by Philippine vessels at Mischief Reef and Second Thomas Shoal.

According to the Director of the Bureau of Fisheries and Aquatic Resources of the Philippines, A.G. Perez, the conduct of and laws enacted by the Chinese Government "have created a deep sense of fear among Filipino fishermen that has significantly curtailed their fishing activities and severely impacted their ability to earn a livelihood."

In Articles 58 and 87 of UNCLOS, the EEZ is recognised as an open sea except for economically significant activities underwater, such as fishing and seabed mining. All ships and aircraft have freedom of navigation within the EEZs of other countries. China, however, interprets Articles 58(3) and 88 of UNCLOS differently, claiming that it is authorised to regulate the military activities of other countries within its EEZ, and all activities by foreign vessels within its claimed EEZ should abide by Chinese laws.

In Paragraph 1139, with respect to the Second Thomas Shoal, the Philippines argued that "China has dangerously altered the status quo since the commencement of this arbitration by aggressively challenging "the long-standing presence of the Philippines at Second Thomas Shoal" and "unlawfully preventing" the routine rotation and resupply missions "that the Philippines has been conducting consistently since 1999." According to the Philippines, these actions arise from a violation of the Convention, insofar as China's "interdiction of Philippine vessels navigating in the area of the Second Thomas Shoal violates the exclusive rights and jurisdiction relating to the Philippines under Articles 56 and 77 of the Convention."



4. CHINA VIOLATED ITS MARINE ENVIRONMENTAL PROTECTION OBLIGATIONS BY CAUSING "SEVERE HARM TO THE CORAL REEF ENVIRONMENT"

The Tribunal found that China not only failed to prevent Chinese fishing boats from harvesting endangered species, including sea turtles, but also provided armed protection for those vessels. The tribunal concluded that China was "fully aware of" and "actively tolerated" a practice called 'propeller chopping' to harvest endangered giant clams—an activity that basically kills coral reefs.

Many of these clam shells are taken to Hainan, China, where they are carved into decorative items and sold to tourists.

On July 30, 2014, the Philippines brought to the Tribunal's attention the "extensive land reclamation activities" being undertaken by the Chinese at Hughes Reef, Johnson Reef, Gaven Reef (North), and Cuarteron Reef, which made use of dredgers to pile sand around the reefs, expanded the size of the artificial islands previously constructed, and added a landing strip at Hughes Reef. On April 27, 2015, the Philippines advised the Tribunal that China had extended its reclamation activities to Subi Reef and Mischief Reef.

In all its submissions, the Philippines highlighted the importance of a peaceful resolution to its dispute with China.

ANALYSIS OF THE IMPACT OF THE 2016 ARBITRAL AWARD

In 2013 President Xi Jinping declared that his goal was for China to become a strong maritime power as part of China's "dream" of national rejuvenation. In view of this strategy, the Central Committee formed the Maritime Rights and Interests Leading Small Group and National Maritime Committee. China's maritime security strategy features a stronger administrative body in maritime security, participation in regional and international maritime affairs, and the creation of a world-class navy. These objectives demonstrate that the PRC intends to be a comprehensive sea power with a broad maritime agenda.

To advance the perspective that China is a major sea power, the People's Liberation Army (PLAN) and the Chinese Coast Guard (CCG) have conducted more regular patrols and military exercises in the East China Sea and SCS. Additionally, the PRC engaged in unprecedented dredging and artificial island-building in the SCS beginning 2013. China employed the People's Armed Force Maritime Militia (PAFMM) which is composed of marine industry workers who form part of China's armed force. The PAFMM is neither a formal naval force nor a maritime law enforcement unit. From a Mahanian perspective, the PAFMM maximises naval influence in order to achieve maritime dominance. The continued use of maritime militias demonstrates China's legitimacy over contested islands. The State Council has stated China's maritime strategy, which is as follows:

China will effectively safeguard territorial sovereignty and maritime rights and interests. It will strengthen the capacity of maritime law-enforcement agencies, study historical and legal sea-related issues, coordinate the use of different measures to safeguard and expand national maritime rights and interests, respond to activities that undermine China's maritime rights, and protect the freedom of navigation in waters and passage safety within our sea territory. China will actively participate in the establishment and maintenance of international and regional maritime orders and also promote dialogue and cooperation with neighbouring countries pragmatically. China will further improve mechanisms for coordinating maritime affairs [among departments], strengthen the top-level design of maritime strategy, and formulate a maritime basic law (State Council, 2016).

THE ARBITRAL AWARD DENIED CHINA'S HISTORIC RIGHTS CLAIM

China has claimed to have superior right over all 1.3 million square miles of the South China Sea and sovereignty over the islands within. To reinforce its sovereignty, the Chinese Coast Guard, Navy, and maritime militia vessels routinely block or shadow Philippine patrol and supply boats. For example, the Chinese Coast Guard has used

water cannons against Philippine patrol vessels and also blocked and subsequently collided with Philippine boats sending supplies to troops stationed at the BRP Sierra Madre in the West Philippine Sea. The Chinese Maritime Militia have also engaged in 'swarming', ensuring the control of islands by encircling them with several layers of ships to ward off opponents through an overwhelming presence.

The Arbitral Award states that there is 'no legal basis' for China's claim to historic rights in the areas within its nine-dash line. Historic rights should be established by a historic practice of exclusion, and there is no evidence that China historically exercised exclusive control over the waters of the South China Sea. Even if any such rights existed, they 'were extinguished' when China ratified the UNCLOS as historic rights do not trump rights under the UNCLOS. Second, the Tribunal also ruled that all the features in the South China Seas are either low-tide elevations or rocks that cannot sustain human habitation or economic life. Accordingly, none of the features are capable of generating 200-mile EEZs, and the waters outside the 12nm territorial sea from the islands are open to all states to exercise freedoms of the high seas. Regarding Mischief Reef, the Tribunal ruled that it is a low-tide elevation in the EEZ of the Philippines. Consequently, the installations and structures built by China on Mischief Reef are legally under the jurisdiction of the Philippines. The Tribunal held the Second Thomas Shoal, on which the Philippines intentionally stranded the BRP Sierra Madre to prevent China from occupying, as a low-tide elevation in the EEZ of the Philippines.

THE ARBITRAL AWARD FOUND CHINA'S ACTIONS IN VIOLATED THE SOVEREIGN RIGHTS OF THE PHILIPPINES

Chinese actions in the South China Sea, such as persistent interference with Philippine fishing and exploration activities, large-scale land reclamation and construction of artificial islands, failure to regulate its own fishing activities, and enforcement activities, were either in violation of the sovereign rights of the Philippines within its EEZ, or had breached various obligations under the UNCLOS.

China's land reclamation and construction violated its obligations to protect and preserve the marine and destroyed evidence of the natural condition of the features in question.

Furthermore, the Tribunal has ruled that none of the disputed islands are entitled to an EEZ of their own. Thus, it means that China has no legal basis under the UNCLOS to claim that it has a right to share the fishing or hydrocarbon resources in the EEZ of the ASEAN claimants.



THE ARBITRAL AWARD GIVES INDEPENDENT STATES RECOURSE TO UNCLOS

On the question raised in the Philippine Submission No. 9, regarding alleged failure of China to prevent its nationals from exploring the Philippines' living resources, the Tribunal ruled:

"China has, through the operation of its maritime surveillance vessels in tolerating and failing to exercise due diligence to prevent fishing by Chinese flagged vessels at Mischief Reef and Second Thomas Shoal in May 2013, failed to exhibit due regard for Philippine sovereignty with respect to fisheries in its Exclusive Economic Zone. China has breached its obligations under Articles 58 (3) of the Convention." (Final Award Sec VIII (b) (5) d 757, p. 297).

China had been remiss in preventing its maritime surveillance vessels and Chinese flagged vessels from occupying indefinitely the Philippine EEZ. Additionally, the Marcos Administration now denounces the "provocative, irresponsible, and illegal actions of the China Coast Guard" and its "dangerous blocking manoeuvres," which imperil the safety of the crew aboard Philippine vessels.

For example, the Philippines has been filing protests almost daily since March 15, 2021, when 220 Chinese vessels started swarming around Julian Felipe (Whitsun) Reef. Philippine Defense Secretary Delfin Lorenzana demanded that China recall these vessels while dispatching a naval task force to patrol the area. Emphasising the Philippines' diplomatic efforts to resolve this issue, the Philippines has already filed 99 diplomatic protests against China's various incursions in the South China Sea, citing the "incessant deployment, prolonged presence, and illegal activities" of Chinese vessels, particularly off Pag-asa (Thitu) Island.

The Philippines has also intensified its patrols in the South China Sea. From March 1 to May 25, 2023, approximately 13 law enforcement and military vessels from the Philippines patrolled waters around the contested Spratly Islands and Scarborough Shoal at least 57 times. In August 2023, the PCG condemned the CCG for its "dangerous manoeuvres and illegal use of water cannons" against PCG vessels escorting indigenous boats chartered by the Armed Forces of the Philippines (AFP) to deliver supplies to the BRP Sierra Madre.

RECOMMENDATIONS

The Philippines affirms its adherence to the rules-based order and to the peaceful resolution of conflict in the South China Sea. The 2016 Arbitral Award has conveyed with greater clarity and understanding on the solidity of the Philippines' legal basis in defending its territorial integrity, its sovereign rights in its EEZ, and its right to the development and utilization of its maritime assets as well as the right of access by its fisherfolk to their traditional fishing grounds in the South China Sea.

This paper puts forward five recommendations that will serve to support as well as reinforce the 2016 Arbitral Award. These recommendations would assist the Philippine commitment to the rules-based order, the freedom of navigation principles, and the economic prosperity of the countries in the South China Sea. The Philippines recognizes the importance of maritime trade, fishing, and offshore resources such as oil and gas. Thus, it should consider working with other international partners to pursue the development of industries, sustained livelihoods, and continued access to traditional fishing grounds of local fishers throughout the region.

First, the Philippines should continue to present the merits of the 2016 Arbitral Award in all public forums and implement exhaustive efforts to maintain its full adherence to the rule of law through the creation of a West Philippine Sea Arbitral Award Initiative Forum.

The West Philippine Sea Arbitral Award Initiative Forum could be a government-led forum that will actively host international conferences, academic exchanges and publications on the merits of the 2016 Arbitral Award. The Forum could engage with youth, professional and civic associations, the business sector, universities, think-tanks and civil society organizations. Furthermore, the Forum may also support the Philippine Government's move to submit a new case against China concerning environmental degradation, and a third case to contest the China Coast Guard order issued last May 15, 2024 which provides that all "illegal trespassers" in the South China Sea will be detained from 30 days up to 60 days without trial. This new regulation is based on the 2021 China Coast Guard Law. The Armed Forces of the Philippines will ensure that the Filipino fishermen are protected within the EEZ by sending Coast Guard and Navy patrol vessels in the area.

The Philippines should continue its strategy of working with regional and global institutions in upholding the rules-based order and promoting peaceful means in resolving territorial disputes. This strategy further complements the 1982 Manila Declaration on Peaceful Settlement of International Disputes. The Preamble of the Manila Declaration highlights the obligation of all states to settle their international disputes peacefully. This commitment to peaceful dispute resolution was reinforced at the 2024 ASEAN Australia Special Summit, which highlighted foundational ASEAN principles of mutual respect, sovereignty, non-interference, and adherence to international law, notably UNCLOS and the ASEAN Outlook on the Indo-Pacific (AOIP), supporting

regional stability and prosperity. UNCLOS is highlighted as a critical framework, setting out the legal structure for all activities in the oceans and seas and emphasising its strategic importance for global action in the marine sector. There is a shared commitment to conserving and sustainably using marine resources in accordance with international law. Additionally, the concept of 'good order at sea' hinges on the stability, reliability, and adherence to prevailing rules, norms, and principles, which sets a 'quotidian' order that is shaped by the daily interactions of those who regularly use the seas.

Second, the Philippines should consider implementing a more cohesive maritime strategy incorporating cognitive and narrative strategies to counter Chinese coercive actions and cognitive warfare in the South China Sea. This could be achieved with the establishment of a Philippine Strategic Cognitive Terrain Research Center, directed by the Office of the President.

China has weaponized information by waging cognitive warfare on the South China Sea. The Philippine Strategic Cognitive Terrain Research Center could identify opportunities to employ psychological, ideological, and informational approaches that is waged within gray zones. The manipulation of strategic cognitive terrain through gray zone competition is one characteristic of modern warfare. If China gains the upper hand in cognitive and narrative warfare in the maritime domain, there will be serious consequences for the Philippines. As China conducts perceptual manipulation operations that will dominate the cognitive space, this Philippine research center needs to close the exploitable cognitive gaps where malignant information thrives. The Philippines can further tap into the assistance of its closest partners, including US and Australia, to better understand cognitive dissonance theory and interrelated psychodynamic concepts to effectively deal with the manipulation of societal perceptions. The Philippines need to take the lead in implementing successful information operations to counter malicious threat actors.

Third, the Philippines could attempt to campaign for an ASEAN Ban on the Illegal Use of Water Cannons against Coast Guard and civilian vessels in contested waters, while continuing its use of international and local media to document the harassment done by the Chinese Maritime Militia and the Chinese Coast Guard vessels on Philippine vessels.

The original function of water cannons in Coast Guard vessels is for firefighting purposes. In the Indian Ocean, mariners of shipping vessels use water cannons to prevent Somali pirates from hijacking attempts. However, China Coast Guard and maritime militia vessels have used water cannons against Philippine Coast Guard and civilian supply vessels resulting in damage to the starboard and injuries to personnel. The Philippines should strive to gain support from other countries and raise awareness amongst the global community of China's malign influence, by forging alliances and documenting harassment by Chinese Maritime Militia and Chinese Coast



Guard vessels. The US, Canada, Japan and Australia have affirmed their support for the Philippines during the standoff. On March 23, 2024, the European Union also released a statement condemning China's actions, and eleven European countries released statements of support for the Philippines against China.

Fourth, in addition to existing trilateral joint naval patrols with the US, Australia and Japan, the Philippines should push for joint patrols in the South China Sea with Vietnam and new extra-regional partners such as India, New Zealand, South Korea, France and the UK. The US-Japan-Philippines Trilateral Summit highlighted the distributed force posture, advanced war fighting capabilities and a comprehensive campaign of multi domain and combined operations.

To this end, the Philippines and other regional and extra-regional partners have signed enhanced maritime cooperation agreements that may be elevated to comprehensive strategic partnerships in the near future. Furthermore, the Philippines established maritime security partnerships with these countries:

- The Philippines and Australia signed a memorandum of understanding on enhanced maritime cooperation in civil maritime security, marine environment protection, maritime domain awareness, and upholding international law.
- The Philippines and Vietnam signed a maritime cooperation agreement encompassing capacity building, training, personnel, and ship exchanges between the two coast guards and the establishment of a hotline to streamline coordination.
- The Philippine-South Korea Maritime Dialogue created a strategic partnership to deepen maritime cooperation.

- The Philippines and the United Kingdom signed a memorandum of understanding (MOU) that outlined defence engagements, covering the maritime domain.
- Philippines and South Korea have agreed to enhance its maritime security cooperation.
- The Philippines and India agreed to work together to strengthen maritime security as commercial shipping becomes vulnerable to threat actors with the aim of protecting Filipino seafarers manning various global sea vessels.
- The Philippines and France signed a Reciprocal Access Agreement that will be elevated to an Enhanced Defense Cooperation in Maritime Security.
- The Philippines and Brunei signed a maritime security cooperation covering information and research sharing, pollution control and joint skills training.

The foundational work of strengthening alliances, enhancing deterrence, and advancing a rules-based international order demands accelerated action from the Philippines and its trusted regional and extra-regional partners.

International observers posit that the persistent conflicts and geopolitical tensions in the South China Sea may ultimately lead to war. War is about people, and it is broken up by intense moments of fear, conflict, and violence.

The 2016 Arbitral Ruling serves as a quintessential peace laurel in the maritime conflicts of the South China Sea. It has transformed the UNCLOS from a basic international legal framework to an enduring, binding application of the Law of the Sea that lights up the knowledge and understanding of law-abiding citizens of the world.



AUTHOR



Amparo Pamela Fabe

Professor, National Police College and Philippine Public Safety College

Amparo Pamela Fabe is a maritime security expert at the National Police College, Philippines. Her research encompasses maritime and underwater domain awareness, irregular warfare, use of technologies and AI, terrorism financing and explosive ordnance disposal.

Professor Fabe is also a Preventing/Countering Violent Extremism Specialist of the Armed Forces of the Philippines and the Philippine National Police. She is the 2023 Irregular Warfare Initiative Fellow, a joint project of the Modern Warfare Institute of the US Military Academy at West Point and Princeton University's Empirical Studies of Conflict Institute.

Professor Fabe is a Non-Resident Fellow of the Brute Krulak Center for Innovation and the Future of Warfare at the US Marine Corps University from 2024-2026. She has written over 40 books, including *Countering Terrorist and Criminal Financing* (CRC Press, 2023), *The Handbook of Terrorist and Insurgent Groups: A Global Survey of Threats, Tactics and Characteristics* (CRC Press, 2024), *Money Laundering and Terrorism Financing Through Hawala Money Transfer Operators*. (Palgrave Macmillan, 2024) and *The Fate of Afghanistan* (Manchester University Press, 2024). She is also a contributing author to *The Palgrave Handbook of Geopolitics and Security in the Indo-Pacific* (Palgrave Macmillan, 2024) and *Maritime Security and Cooperation in the Indo-Pacific: Essays in Honour of Sam Bateman* (Brill, 2023).

CONTACT

La Trobe Asia
La Trobe University
Melbourne, Victoria 3086
T +61 3 9479 5414
E asia@latrobe.edu.au

X
[@latrobeasia](#)



latrobe.edu.au/asia