

PHILIPPINE FOREIGN POLICY OF JOINT INITIATIVES ON THE SOUTH CHINA SEA:
POST-THE PERMANENT COURT OF ARBITRATION AWARD AGAINST CHINA

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Final Policy Research Paper
GOVT E-599 Policy Writing and Analysis Capstone
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May 16, 2019

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EXECUTIVE SUMMARY

This policy paper is submitted to the Office of the Philippine President with the objective of presenting an analysis of its rapprochement policy on the South China Sea following the country's momentous victory from the ruling of the Permanent Court of Arbitration against China in 2016. As the first South China Sea dispute-claimant to formally challenge and be favorably awarded over China in the jurisdiction of international law, expectations of its immediate enforcement have been raised by the international community and domestic public opinion. However, the administration's current stance has not only disregarded China's accountability over its aggressive hence dangerous, and illicit activities in SCS but has also undermined the authority and durability of the international legal regime. There is a need for a balanced SCS Philippine foreign policy to establish a direct or indirect check of China's power play in the region.

Among the options of (1) Philippine-China non-economic joint activities in disputed areas, (2) unilateral enforcement of PCA Award combined with expeditious enhancement of Philippine Armed Forces, and (3) strengthening/ instituting current and new security alliance/ agreements with extra-regional powerful States, it is the establishment of non-economic partnership with China which includes activities for the protection of marine environment and regional maritime security turned out to be the viable path for the Philippines. This recommendation is weighed against the risk level posed by the Southeast Asian regional peace and stability, domestic and international legal structure, policy sustainability, and macroeconomic efficiency. Apart from its responsibility as a signatory of UNCLOS and obligation towards its domestic interests, the Philippines also has the commitment to adhere with the ASEAN's objective of maintaining peace in the region, hence any action to provoke China such as ramping up its Armed Forces and/or involving non-ASEAN actors would be detrimental. However, to ensure the recommendation's sustainability, the Office of the President should first consult and coordinate with the Philippine legislature.

I. INTRODUCTION

On January 22, 2013, the Philippines invoked Article 287 and Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) for initiating an arbitration against China. The Philippines challenged China's maritime entitlements and claims, land reclamations, enforcement and military actions and omissions within the West Philippine Sea located in the eastern part of SCS enclosed by the U-Shaped Line ("USL").¹ Then on July 12, 2016, in a courtroom in The Hague, an arbitral tribunal constituted under UNCLOS issued the highly awaited award which ruled that many of China's maritime claims - and actions in defense of those claims - in the South China Sea were contrary to UNCLOS and had thereby violated the Philippines' sovereign maritime rights and freedoms.² For international legal scholars, this has been considered a significant contribution to the interpretation of various salient features of maritime and territorial laws as provisioned in UNCLOS that could be later utilized in other contextually similar disputes. Moreover, the international community (obviously except China) has received the award in a positive note with the hopes that this would be a step closer not only towards solving one of the most complex territorial conflicts in the 21st century, but also towards ensuring peace and security in the Southeast Asian region. Finally, on the domestic level, the Philippines treated the award as a momentous victory in a decades-long territorial dispute against a relatively more powerful country.

Given that the decisions were on their advantage, the Philippine government and its people have since then formed expectations of Chinese concessions in the dispute. But much to the Philippines' dismay (although many observers have already predicted this), China has consistently

¹ Gau, M. (2018). The Sino-Philippine arbitration on the South China Sea disputes: A preliminary assessment of the merits award. In *Maritime Order and the Law in East Asia* (1st ed., Vol. 1, pp. 193-215). Routledge.

² Gupta, S. (2018). China-ASEAN relations in the South China Sea: Persistent features and obstacles to cooperation. In *Maritime Order and the Law in East Asia* (1st ed., Vol. 1, pp. 9-31). Routledge.

shown and explicitly expressed its non-participation in the arbitration and eventually its non-compliance to the tribunal's decisions established in the Award. This, on the other hand, seemed not surprising for the realists of international relations studies who argue that "power, rather than law, has traditionally been the primary determinant of the course of interstate relations."³ This argument is sustained by the events in the South China Sea that involved aggressive actions by China as the arbitration case developed in 2013 and even after the awarding of the decisions in 2016. These include forcefully demonstrating Chinese 'effective control' of the area and essentially establishing a new status quo using its 'civilian' vessels such as maritime surveillance and fisheries enforcement ships in step by step progressive assertions,⁴ among others. In realists' view the activities of major powers - China in this case - and the pursuit of important interests (especially during a dispute) are highly unlikely to be constrained by (international) legal authority or prior agreement.⁵ This is despite China's ratification of UNCLOS in 1996 as one of the first supporters and signatories during its early negotiations and deliberations.

To counter the consistent Chinese power display in the SCS dispute, the Philippines has made use of a combination of diplomacy/ bilateral relations, the international legal system, alliance with third parties, and in rare occasions its own military force albeit its obvious inferiority against China's People's Liberation Army-Navy (PLA-N). Choosing a specific or a combination of actions and strategies would depend on varying conditions created by international/ regional politics but more inevitably by the country's incumbent leadership. This correlation between Philippines' actions and leadership will be further presented later in the legislative review following a brief

³ Simons, B. (1998). Compliance with International Agreements. *Annual Review Of Political Science*, 1, 75-93.

⁴ Valencia, M. (2014). The South China Sea disputes: Recent developments. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 3-15). Routledge.

⁵ Simons, B. (1998). Compliance with International Agreements. *Annual Review Of Political Science*, 1, 75-93.

discussion of the South China Sea dispute between the Philippines and China that led the former in choosing the international legal system to mediate in 2013. A strategy that was a far cry from the actions pursued by previous administrations as well as by the current one.

Closing the rest of this background chapter is a synthesis of the ongoing and failed bilateral and multilateral agreements that the Philippines participated and entered into in managing the SCS issue with China and other ASEAN countries since the mid-1990s. Analysing what factors made some agreements succeed and others failed could be used as a set of guides in the formulation of policy alternatives later on in the paper and eventually in policy recommendation.

The Philippine-China South China Sea Dispute

The South China Sea dispute is one of the most complex maritime and territorial conflicts in the 21st century. Despite great effort and conflict management, the settlement of the decades-old maritime disputes in this region seem to be politically deadlocked.⁶ One of the complexities of the dispute emanates from SCS's geopolitical significance, marine and potential energy resources, as well as its logistical benefits for international trade that cater to the domestic interests not only of the claimant-States (China, Vietnam, Malaysia, Taiwan, Brunei, and the Philippines) but of the entire East Asian countries, their global trade partners, and States who wish to exercise their freedom of navigation and operations (FONOP) in the area. Therefore, the controllership of this massive maritime region is extremely crucial that in 2011, renowned scholar Robert Kaplan even argued that the next major global military conflict may occur in Southeast Asia, particularly at sea.⁷ There have been numerous incidents of serious encounters between China and ASEAN claimants in SCS, particularly with Vietnam over their respective territorial and sovereignty assertions. The

⁶ Houlden, G. & Hong, N. (Eds.). (2018). *Maritime Order and the Law in East Asia*. Routledge.

⁷ Kaplan, R. (2011). The South China Sea is the Future of Conflict. *Foreign Policy*, 188, 76-80.

deadliest was in 2014 (since their 1979 border war in northeastern Vietnam) standoff and the most recent was on April 2, 2020 where a Chinese maritime surveillance vessel rammed and sunk a Vietnamese fishing boat in the Paracel Island and took eight fishermen as hostage.⁸

Between the Philippines and China, exclusively, their SCS dispute in the Spratly Islands has undergone a series of both benign and crucial confrontations over their respective claims since the 1970s. However, the tension escalated in the mid-90s when a series of tests and resource exploration in SCS have detected and reported that the area has an, “estimated 130 billion barrels of oil and 900 trillion cubic feet of (hydrogen) gas,”⁹ most of which could be found under the seabed of the entire Spratly group of islands of which wholly and partly is being claimed by China and the Philippines, respectively. These findings then became the precedent for China’s more aggressive behavior and actions in the SCS and against its ASEAN claimant-States, specifically the Philippines beginning with China’s illegal occupation of Mischief Reef in 1995 - a group of islets within the Spratlys less than 200km from the Philippine island of Palawan and therefore within its exclusive economic zone (EEZ). This was further intensified by China’s island building in Mischief Reefs resulting in serious and irreparable damage to its abundant marine environment which once housed massive coral reefs and bountiful stock of fisheries.

Another unlawful act of China in SCS was its unilateral imposition of a fishing ban against Filipino fishermen which it has been able to consistently and successfully enforce using its non-military fishing enforcement ships through intimidation and on some occasions with water cannons. Naturally, the Philippine government responds to this aggression but the Chinese would

⁸ Vu, K.(2020, April 4). Vietnam protests Beijing’s sinking of South China Sea boat. *Reuters*. <https://www.reuters.com/article/us-vietnam-china-southchinasea/vietnam-protests-beijings-sinking-of-south-china-sea-boat-idUSKBN21M072>

⁹ Hong, Z. (2013). The South China Sea Dispute and the China-ASEAN Relations. *Asian Affairs*, 44(1), 27-43. DOI: 10.1080/03068374.2012.760785

retaliate with the same or twice as much force and usually with a combination of economic/ trade sanctions. This pattern of relationship between the two countries was more eminent during the Aquino administration (2010-2016) which started in 2010 when, “China aggressively challenged and engaged the Philippines by building up its navy towards a maritime brinkmanship game”¹⁰ with the Scarborough Reef standoff/ crisis in 2012 as the most well known. It was the confrontation between a Philippine Coast Guard vessel and four Chinese Maritime Surveillance (CMSU) ships at that area of Spratly group of islands and became the tipping point in China’s coercive moves against the Philippines. Lasting for two months, the stand-off has since strained the bilateral relations between the two states, which have further deteriorated as China intensifies its efforts to consolidate its expansive maritime claim.¹¹ Not being able to respond in equal means, the Philippines instead chose to launch a “lawfare”¹² in 2013 at the Permanent Court of Arbitration (PCA) in The Hague to challenge China’s territorial claims and activities in the SCS in which the former claimed victory in 2016.

The Permanent Court of Arbitration Award

This arbitration concerned the role of historic rights and the source of maritime entitlements in the South China Sea, the status of certain maritime features and the maritime entitlements they are capable of generating, and the lawfulness of certain actions by China that were alleged by the Philippines to violate the Convention. In light of limitations on compulsory dispute settlement under the Convention, the Tribunal has emphasized that it does not rule on any question of

¹⁰ Cruz De Castro, R. (2015). The 2012 Scarborough Shoal stand-off: From stalemate to escalation of the South China Sea dispute? In *The South China Sea Maritime Dispute: Political, legal and regional perspectives* (1st ed., pp. 111-129). Routledge.

¹¹ Ibid.

¹² A term used to refer to “legal warfare” or (in international relations) a strategic means of challenging a certain claim based on international laws and conventions.

sovereignty over land territory and does not delimit any boundary between the Parties.¹³ The victory - the Award - consists of four (4) interrelated unanimous decisions in favor of the Philippines' complaints against Chinese behavior and activities in SCS. According to the Press Release by the PCA on July 12, 2016 regarding *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*:

First, there is no legal basis for China to claim historic rights to resources within the sea areas falling within the 'nine-dash line'. Second, certain sea areas in the SCS fall within the exclusive economic zone (EEZ) of the Philippines¹⁴ and none of the features in the Spratly Islands could generate its own EEZ. Third, China has caused serious damage to the marine environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species. Finally, the Tribunal found that China engaged in actions that aggravated the dispute, including large scale land reclamation and construction of artificial islands.¹⁵

It is worth noting here that the Award - similar to any international agreement or dispute decision - is absent of a clear and formal enforcement mechanism. On one hand, it would seem that China's earlier illicit activities and aggressive stance in the South China Sea, its non-participation during the arbitration process, and its non-compliance of the arbitration ruling reflect its recognition, thus taking advantage of this anchored weakness of international law. However, the Philippines' ultimate decision of invoking international jurisprudence in relation to SCS issues does not imply that the country has failed to recognize this. Apart from the "absence of a viable military option (given the Philippines' decrepit naval and air force capability) and the collapse of diplomatic communication channels with Beijing after the Scarborough Shoal incident, there was also the growing domestic political pressure on the government to respond to China's perceived territorial

¹³ Permanent Court of Arbitration Press Release. (2016, July 12). *The South China Sea Arbitration (The Republic of the Philippines v. People's Republic of China)*. Permanent Court of Arbitration.

¹⁴ Thus, China's activities in these areas such as island building and large-scale fishing were ruled as violation of the Philippines' sovereign rights over its EEZ.

¹⁵ Bautista, L., & Arugay, A. (2017). Philippines v. China The South China Sea Arbitral Award: Implications for Policy and Practice. *Asian Politics & Policy*, 9(1), 122-152.

aggression that could not be balanced by a third party's intervention even if it was an ally.¹⁶ Thus, proponents of the arbitration case against China (the Aquino Administration) have argued that the remaining alternative was to “internationalize” its territorial claims in the South China Sea through the PCA after it “has exhausted almost all political and diplomatic avenues for a peaceful negotiated settlement of its maritime dispute with China.”¹⁷

The predecessors of the Aquino administration since the mid-1990's have also encountered the same dilemma on their respective conflict with China on the SCS. However, none of the previous leaders embarked on a provocative “lawfare” strategy against China whose policy/ies on the South China Sea are invariably based on bilateral negotiations and agreements and opposes multilateral mechanisms and institutions. Instead, the Philippine-China relations from the 1995 Mischief Reef incident until 2010 have been more proactive in promoting bilateral mechanisms to manage issues that could otherwise lead to tensions.¹⁸ In fact, these two countries' bilateral relations, negotiations, and agreements have become the model used in formulating the first ASEAN-China Code of Conduct (COC) in the South China Sea in 2002. Also, unlike the Award afforded by the PCA ruling, China has been more cooperative when the SCS issues are managed within its government and the ASEAN community. China obviously does not want to be told ‘what to do’ or to necessarily abide by a US dominated ‘international order.’¹⁹

¹⁶ Heydarian, R. (2018). Mare Liberum: Aquino, Duterte, and the Philippines' Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy* 10(2), 283-299.

¹⁷ Amer, R., Jianwei, L., Shicun, W., & Nong, H. (2014). Recent developments in the South China Sea: Assessing the China–Vietnam and China–Philippines relationships. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 29-48). Routledge.

¹⁸ Amer, R. & Jianwei, L. (2014). Recent Developments in the South China Sea: Assessing the China-Vietnam and China-Philippines Relationships. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 3-15). Routledge.

¹⁹ Valencia, M. (2014). The South China Sea disputes: Recent developments. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 3-15). Routledge.

China's Stand on the Ruling

China became a “good citizen” of the international community when it finally joined the World Trade Organization in the start of the 21st century. From then, the country's deferential participation in the workings of the liberal world gained the trust and confidence of many. However, it has been observed that the country would only cooperate and adhere to the rules and values of the international regime if it gains from doing so. This is why China's defiance in the PCA ruling favoring the Philippines came as not surprising for analysts. Chinese officials declared early and often that the tribunal lacked jurisdiction, that the arbitration was illegitimate, that the Philippines had wronged China by refusing to settle their disputes through bilateral negotiation, and that the ruling was “null and void.” Accordingly, analysts expected a spike in tensions and an increase in the danger of conflict.²⁰ It also viewed that the unilateral initiation of arbitration by the Philippines violated the bilateral agreement reached between both countries to resolve relevant disputes in the South China Sea through negotiations, as well as that it disregarded the commitment made by China and ASEAN countries in the 2002 DOC to resolve the relevant disputes through negotiations by States directly concerned.²¹

²⁰ Welch, D. (2017). Philippines v. China one year later: A surprising compliance from Beijing. *The Globe and Mail*. Accessed from <https://www.theglobeandmail.com/opinion/philippines-v-china-one-year-later-a-surprising-compliance-from-beijing/article35660244/>

²¹ Becker-Weinberg, V., Minas, S., & Diamond, H. (2018). The South China Sea Arbitration and the China–Philippines Relations Beyond the Award. In *Stress Testing the Law of the Sea: Dispute Resolution, Disasters & Emerging Challenges* (pp. 190-222).

THE POLICY PROBLEM

Barely two (2) weeks into the presidency when the arbitration Award - an initiative pursued by the previous administration - was issued, newly inaugurated President Rodrigo Duterte faced international and domestic pressures to reflect the PCA decisions into his future foreign policy towards the SCS dispute in general, and to China in particular. First, now that the Philippines has scored a legal and moral victory against China, the pressure is on Duterte to translate what is seen as an unenforceable decision into the actual exercise of Philippine maritime rights in the areas that China continues to dispute.²² Moreover, it was highly expected that the Philippines would use this favorable arbitration outcome to mobilize international diplomatic pressure on China and call upon America, Japan, and other like minded naval powers to “enforce” key elements of the ruling.²³ Finally, having been popularly elected because of his firm and vocal stance against foreign intervention, among others, both supporters and critics of the new administration anticipated a more aggressive relations with China.

Powerful v Weaker States: The Reality of ICJ Compliance

These international and domestic expectations on President Duterte’s administration to utilize the PCA Award won by the previous leadership of Aquino as a bargaining tool in its maritime and territorial dispute against China in the South China Sea. However, in a geopolitical system in which might and money prevail despite the installed international legal institutions, China who possesses both cannot and will not be compelled to recognize the decisions of PCA favoring the Philippines who does not have either the might or money within an international regime that

²² Baviera, A. (2016). President Duterte's Foreign Policy Challenges. *Contemporary Southeast Asia*., 38(2), 202-208.

²³ Heydarian, Richard J. (2017). Tragedy of Small Power Politics: Duterte and the Shifting Sands of Philippine Foreign Policy. *Asian Security* 13(3), 220-236.

has no enforcement mechanism or authority. This is not the first time in history that a relatively more powerful country not only ignored the ruling of the international court that favors the much weaker State but also imposed pernicious sanctions over the complainant. The Nicaragua v United States case before the International Court of Justice (ICJ) and the Arctic Sunrise case between the Netherlands and Russia before a UN Convention on the Law of the Sea (UNCLOS) Annex VII arbitral tribunal were two known cases where states explicitly announced that they would not comply with the decision of a dispute settlement body.²⁴ In both cases, the more powerful actor ignored the court's decisions through non-participation and non-compliance and even imposing sanctions and Treaty withdrawals.

Philippine-China Relations Post-The Hague Ruling

When the Aquino administration submitted its case against China to the Permanent Court of Arbitration in 2013, China retaliated in various ways such as trade sanctions, travel advisories, and harassment of Filipino fishermen, to name a few. Many thought that China would repeat these aggression after the PCA decisions. What has been observed instead is that almost four (4) years post The Hague arbitral ruling, the Philippines has “opted for a conciliation policy, effectively setting aside the arbitration award in favor of warmer ties with China.”²⁵ It did not even take advantage of its ASEAN Chairmanship in 2017 to raise the issues involving the Award and solicit support from ASEAN community not only because of the organization's direct communication with China (ASEAN-China Partnership) but especially since some of its members are also SCS claimant-States. It instead lobbied ASEAN to focus on “consensus issues” - such as maritime

²⁴ Nguyen, L. & Vu, T. (2016, July 22). After the Arbitration: Does Non-Compliance Matter? *Asia Maritime Transparency Initiative*. Accessed from <https://amti.csis.org/arbitration-non-compliance-matter/>

²⁵ Heydarian, Richard J. (2018). Mare Liberum: Aquino, Duterte, and the Philippines' Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy* 10(2), 283-299.

piracy - and leave territorial issues to bilateral discussions.²⁶ The Duterte administration spent half of its term neglecting and setting aside the provisions of the Award which according to PCA is “final and binding... and shall be complied with by the parties to the dispute.”²⁷

The Arbitral win provided the Philippines with moral high ground and was generating a significant regional and global pressure against China. However, the current administration has refused to apply the legal ruling to pressure Beijing.²⁸ These acts of “shelving” the Award by the Philippines manifest its enforcement failure of an international ruling on a significant maritime dispute. Although, by not flaunting the Award, the Philippines was able to build a peaceful diplomatic channel and better economic relations with China. Since 2016, there has been an absence of serious military encounters between the two countries in the SCS, and a number of new bilateral trade agreements as well as billions of dollars worth of Chinese investments have been pledged and infused towards various Philippine industries and infrastructure projects. Also, within the Southeast Asian region, stirring the discussions away from the Award, the ASEAN-China dialogue was able to make significant progress with its Declaration on the Code of Conduct in SCS which has been stalled since 2002.

Arguably, all of these could be recognized as better arrangements than disrupting the current status quo by compelling China to abide by the Award. On the other hand, however, the failure of enforcing a “final” and “binding” ruling has not led to significant compliance by Beijing

²⁶ Roberts, C. (2018). ASEAN, the “South China Sea” Arbitral Award, and the Code of Conduct: New Challenges, New Approaches. *Asian Politics & Policy*, 10(2), 190-218.

²⁷ Permanent Court of Arbitration Press Release. (2016, July 12). *The South China Sea Arbitration (The Republic of the Philippines v. People’s Republic of China)*. Permanent Court of Arbitration. <https://pca-cpa.org/en/news/pca-press-release-the-south-china-sea-arbitration-the-republic-of-the-philippines-v-the-peoples-republic-of-china/> Accessed February 15, 2020.

²⁸ Roberts, C. (2018). ASEAN, the “South China Sea” Arbitral Award, and the Code of Conduct: New Challenges, New Approaches. *Asian Politics & Policy*, 10(2), 190-218.

with international law nor directly constrained China's behavior regarding militarization, the imposition of unilateral fishing bans, and other illicit activities in the South China Sea.²⁹ Consequently, with The Hague Award arbitration ruling in place, the current Philippine South China Sea rapprochement/ conciliatory policy requires a balance between pursuing peaceful diplomatic relations for economic/ trade benefits as well as avoiding any escalation of military tension in SCS, on the one hand, and preserving its sovereign rights and territorial claims in the South China Sea dispute, on the other.

Observers have argued that maintaining this warmer relations, the Philippines is squandering its legitimate contentions on the SCS on the account of the Award, thereby further impairing the authority of the decisions established by the Permanent Court of Arbitration (PCA) on the issue. What then can be done to ensure that China does not completely disregard international law and maintain the durability of its authority within the context of the PCA ruling on the South China Sea against the Philippines? This conundrum is the ultimate focus of this policy paper addressing the issue of direct or indirect enforcement of a multilaterally awarded victory over a much more powerful rival if doing so may result in the disintegration of economic and political diplomatic relations or worse military/ naval confrontation that would jeopardize the already fragile peace and security in the SCS region.

²⁹ Roberts, C. (2018). ASEAN, the "South China Sea" Arbitral Award, and the Code of Conduct: New Challenges, New Approaches. *Asian Politics & Policy*, 10(2), 190-218.

II. LEGISLATIVE REVIEW

Since the granting of the PCA Award in favor of the Philippines in 2016, there has been no specific Philippine legislation that directly addresses the said ruling in terms of its enforcement and compliance. Furthermore, there has not been a specific Philippine legislation that resolves its maritime claims in the South China Sea in general, or particularly against other ASEAN claimant-States and China since the mid-1990s when the dispute became more eminent and critical for regional peace and security. Instead, most of Philippines' legal and non-legal actions in the past were usually directed towards establishing both bilateral (with China) and multilateral (with ASEAN-claimant states) agreements since the SCS maritime dispute is an international/ regional issue. Although not all of them succeeded due to each actor's respective domestic politics that have led to their lack of participation or infraction, some are still in the process of negotiation that have actually kept the line of communication open among the parties thereby managing the risk of conflict escalation.

Bilateral Agreements between Philippines and China

The 1995 First Bilateral Code of Conduct in the South China Sea between Philippines and China

Since the 1990s, China and Philippines have reached the following consensus on managing their disputes: first, they will exercise restraint in handling relevant disputes and refrain from taking actions that may lead to an escalation; second, they will stay committed in managing disputes through bilateral consultation mechanisms; third, they commit themselves to pursuing practical maritime cooperation and joint development; and fourth, the relevant disputes should not affect the

healthy growth of bilateral relations and peace and stability in the South China Sea region.³⁰ Both countries have emphasized the importance of peaceful settlement and have agreed that direct communication would help ease tensions. In 1996 it was agreed to set up some bilateral consultation mechanisms, including three working groups on fishery, marine environmental protection and confidence-building.³¹ This (ongoing) agreement became precedent to various Southeast Asian regional arrangements and also gave opportunities for other claimants to open their respective bilateral communication with China. Thus, between the mid-1990s and the first decade of the 21st century, there was relative peace in the SCS region.

2016 Memorandum of Understanding between the China Coast Guard and the Philippine Coast Guard on the Establishment of a Joint Coast Guard Committee (JCGC) on Maritime Cooperation

One of the first actions of the new administration (2016 - Present) of President Rodrigo Duterte with regard to China and the SCS dispute was to enter a Memorandum of Understanding with President Xi Jin Ping on the establishment of a Joint Coast Guard Committee (JCGC). It is the committee's responsibility "to address maritime emergency incidents, as well as humanitarian and environmental concerns in the SCS, such as safety of lives and property at sea and the protection and reservation of the marine environment in accordance with universally recognized principles of international law including the 1982 UNCLOS."³² At the inaugural meeting of the JCGC in February 2017, a hotline mechanism to facilitate communication in agreed areas was established.

³⁰ State Council Information Office, China. (2016). China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South China Sea. (2016). *Chinese Journal Of International Law*, 15(4), 909-933.

³¹ Amer, R. & Jianwei, L.(2014). Recent Developments in the South China Sea: Assessing the China-Vietnam and China-Philippines Relationships. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 3-15). Routledge.

³² Becker-Weinberg, V., Minas, S., & Diamond, H. (2018). The South China Sea Arbitration and the China–Philippines Relations Beyond the Award. In *Stress Testing the Law of the Sea: Dispute Resolution, Disasters & Emerging Challenges* (pp. 190-222).

Both sides also agreed to cooperate in various aspects of maritime security such as preventing and combating drug trafficking and other transnational crimes, search and rescue, environment protection, and emergency response.³³ Both countries also agreed to enhance collaboration through ‘bilateral exchange activities,’ which include high-level visits, maritime operations and related exercises, vessel visits, and capacity-building.³⁴

With the exception of the Aquino administration, it seems that the current Philippine leader has been continuing the strategies of its predecessors in maintaining good diplomatic relations with China on the SCS issue through different forms of bilateral agreements and partnerships like the JCGC. In process, however, the PCA award is being “shelved for now” since the current administration has not actively acted on it policy-wise. Since its inception, there have been a number of joint rescue missions of fishermen and crime-prevention patrols in the South China Sea.

Multilateral Agreements

The ASEAN-China Code of Conduct (COC) in the South China Sea

As mentioned earlier, the Philippine-China bilateral agreements in the mid-1990s became the template for the ASEAN-China COC in managing the SCS issue, this time together with both claimants and non-claimant ASEAN States. All parties recognized that the SCS dispute affects all countries in the Southeast Asian region not only those who have maritime and territorial disputes against China. This could be distinguished in the Declaration on Conduct of parties which includes the same principles of exercising self-restraint, managing disagreements in peaceful means, encouraging joint development, and preserving/ protecting the marine environment. The COC is

³³ Quintos, M. (2018). The Philippines: Hedging in a Post-Arbitration South China Sea? *Asian Politics & Policy*, 10(2), 261-282.

³⁴ Parameswaran, P. (2017, March 15). What’s Behind the China-Philippines Coast Guard Exercise? *The Diplomat*. <https://thediplomat.com/2017/03/whats-behind-the-new-china-philippines-coast-guard-exercise/>

based on a 2002 Declaration on the Conduct of Parties in the South China Sea signed by China and the 10 ASEAN States.³⁵ One of the significant improvements of the COC from its inception to its present provisions is that it is now a, “*legally binding document* that would manage how countries act within the SCS despite disputing territorial claims.”³⁶ A stipulation that was absent in the first draft of the agreement that eventually negotiated among the signatories.

Although the COC has been under deliberations and negotiations for 18 years, one could argue that these regular meetings and open communication have kept diplomacy more compelling between ASEAN countries and China that despite numerous incidents in the SCS, those incidents have not instigated or resulted into a serious military conflict as of date.

The 2005-2008 Trilateral Joint Maritime Seismic Undertaking (JMSU) between China, Vietnam and the Philippines

This trilateral agreement, which had expired in 2008, saw the Philippine National Oil Company, China National Offshore Oil Corporation, and PetroVietnam embark on a preliminary, trilateral effort at canvassing precious resources in the South China Sea. It was one of the most potentially transformative efforts at setting aside intractable, zero-sum territorial disputes in favor of, potentially down the road, joint development in areas of overlapping maritime claims.³⁷ It was agreed by the three States to jointly acquire geoscientific data and assess the petroleum resource potential of certain areas in the SCS. Although considered to be a tripartite agreement among the states companies, JMSU was promisingly “conducive to the maintenance of peace and stability in

³⁵ De Guzman, L. (2019, Nov. 4). ASEAN targets completion of Code of Conduct within three years. *CNN Philippines*. <https://www.cnnphilippines.com/news/2019/11/4/asean-china-code-of-conduct-south-china-sea.html>

³⁶ Ibid.

³⁷ Heydarian, R. (2018). Mare Liberum: Aquino, Duterte, and the Philippines’ Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy* 10(2), 283-299.

the South China Sea” (Storey 2008) and seen as a way of calming down tensions and promoting peace in the region.³⁸

Despite the possibility of being a successful multilateral joint development in one of the most territorially-contested areas in the world that could make cooperation in the SCS easier, the JMSU failed to continue beyond 2008. Its constitutionality was questioned in the Philippines after Arroyo’s administration (2000 - 2010) was found to have acted on the political interference of well-connected advisors and authorized decisions outside of usual administrative and diplomatic channels involving the foreign affairs, defense and energy departments.³⁹ The period of bilateral or multilateral joint development initiatives ceased after the Arroyo administration since its successor (Aquino administration) was highly hesitant to approve any joint ventures with China.

2011 Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C)

ZoPFF/C envisions the clear application of 1) DOC’s Point No. 5 strictly within the disputed islands; and, 2) Part IX of UNCLOS as to the rest of the maritime area of the SCS which is non-disputed. Enclaving paves the way for the application of this dual regime of DOC’s Point No. 5 (for disputed features) and Part IX of UNCLOS (on non-disputed waters).⁴⁰ In non-disputed areas, claimants can develop them unilaterally based on the principle of sovereign rights in accordance with the application of exclusive economic zone, continental shelf and other maritime zones provided for by UNCLOS. The disputed areas (Spratlys and Paracels), on the other hand,

³⁸ Vu, T. (2017). The Logic of Strategic Restraint and Prospects for Joint Development in the South China Sea. In *The Logic of Strategic Restraint and Prospects for Joint Development in the South China Sea*. Leiden, The Netherlands: Brill. doi: https://doi-org.ezp-prod1.hul.harvard.edu/10.1163/9789004312180_010

³⁹ Chan, I. & Minjiang, L. (2014). Political will and joint development in the South China Sea. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 3-15). Routledge.

⁴⁰ Bensurto, H. (2011). *Cooperative Architecture in the South China Sea: ASEAN-China Zone of Peace, Freedom, Friendship and Cooperation*. Center for Strategic and International Studies.

shall be converted into “enclaves” and be declared as “joint cooperation areas” (JCAs). In the JCA, the following joint cooperative activities can be pursued: 1) joint development; 2) marine scientific research; 3) protection of the marine environment; 4) safety of navigation and communication at sea; 5) search and rescue operations; 6) humane treatment of all persons in danger or distress at sea; 7) fight against transnational crimes.⁴¹

It is interesting that most of the salient features of ZoPFF/C and JCA seem to be reiterations of those found in earlier bilateral and multilateral agreements presented above, particularly the ASEAN-China Code of Conduct (COC). However, one reason behind its neglect is China’s objection to the ZoPFFC’s concept of joint development as it vehemently challenged China’s nine-dash line claim. That it is bereft of any legal basis under international law. The then Philippine Department of Foreign Affairs Secretary Albert F. Del Rosario even described China’s nine-dash line claim as ‘the core of the problem’ that must be ‘subjected to [the] rules-based regime of UNCLOS.’⁴² With this kind of statement, it was not surprising that the Philippines failed to gather support from the ASEAN membership especially from those whose political and economic interests are incorporated within their support for China. As a result, ASEAN and China agreed to instead focus on negotiating the guidelines of a COC, but the South China Sea disputes entered a new, dangerous phase in 2012, when Manila and Beijing squared off over the hotly contested Scarborough Shoal⁴³ followed by the former’s submission of the arbitration case to the PCA in

⁴¹ Banlaoi, R. (2014). Functional cooperation and joint development: A way ahead in the South China Sea. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 228-240). Routledge.

⁴² Ibid.

⁴³ Heydarian, R. (2018). Mare Liberum: Aquino, Duterte, and the Philippines’ Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy* 10(2), 283-299.

2013. From then until the end of the Aquino administration (2016), the diplomatic relations and communication channels between the two countries went sour.

Insights from the Literature Review

A number of observations could be discerned from reviewing the literature that is related to Philippine actions and strategies it has taken regarding its SCS dispute with China, and even with ASEAN claimant-States since the mid-1990s and towards the end of Duterte's predecessor. First, it seems that a better Philippine-China bilateral diplomatic relations would often translate into a conducive regional environment for a multilateral discussion of the SCS issue which China typically refuses to participate in. Thus, due to the strong political will from both countries in relation to the China-Philippine management of disputes resulting in the ASEAN-China confidence-building mechanism, the South China Sea remained reasonably calm up until 2009.⁴⁴ This also gives credit to the role played by the ASEAN community in distributing the responsibility of maintaining peace and stability in the SCS.

Second, China's definition of "internationalizing" the SCS dispute which it disagrees with appears to be ambiguous since discussing the dispute with both claimant and non-claimant ASEAN States is considered to be the same concept. Yet, Philippine-China SCS dispute has so far been managed in an "internationalised" setting such as ASEAN-China partnership. Bearing this, apart from bilateral negotiations, it could be argued that China is only more cooperative in conditions wherein its dominance or political and economic leverage against other actors is secured. This is the reason behind its non-participation in the PCA arbitration - a mechanism

⁴⁴ Amer, R. & Jianwei, L.(2014). Recent Developments in the South China Sea: Assessing the China-Vietnam and China-Philippines Relationships. In *Recent Developments in the South China Sea Dispute: The Prospect of a Joint Development Regime* (1st ed., pp. 3-15). Routledge.

generated by the liberal-world order. The Philippines' unilateral submission of its SCS claims to the PCA arbitration in 2013 is novel compared to the policies and strategies implemented since the mid-1990s. This was also the period when China started becoming more aggressive in its island-building activities in the SCS disputed areas as well its behavior at sea impeding necessary improvements in various on-going bilateral and multilateral agreements.

Finally, none of the agreements presented above explicitly mention exploitation of energy resources for profit since this would usually contradict each player's respective constitution/ domestic policies. The agreements have consistently reiterated the significance of economic/ trade integration among the ASEAN States and China which should be jeopardized by the SCS dispute. What has been highlighted and agreed upon unanimously with regard to SCS issue includes the protection of the marine environment and the exercise of self-restraint to ensure peace and security in the region.

III. METHODOLOGY

Based on the analysis of the evolution of Philippine-China relations since the mid-1990s provided in the legislative review, the presence and the roles of third parties considered in various scholarly articles in international territorial issues, a number of factors have been consistently highlighted that should be taken into account in formulating policy alternatives for managing the South China Sea dispute in the Philippine perspective, especially for the post-The Hague ruling environment. These are the (1) Southeast Asian regional stability, (2) Domestic and International Legal System, (3) the Sustainability, as well as (4) the Efficiency of the policy. Each policy alternative is analyzed based on the level of risk (high, intermediate, low) each evaluative criteria could pose that would weaken or strengthen the effectiveness of a specific alternative in addressing the policy problem framed in Chapter II.

These factors are also aligned with Tran Truong Thuy's arguments in his Policy Brief on Territorial and Maritime Disputes in the South China Sea and Vietnam's Policy.⁴⁵ Not only because both the Philippines and Vietnam are SCS claimant-States, the two countries also have relatively similar experiences with China's aggression in relation to their respective claims in the SCS. It is therefore rational to incorporate the policy criteria prescribed by Thuy's for Vietnam in this paper which "relates to almost all aspects of its national security and development: protecting territorial integrity and national sovereignty, promoting maritime economic development, maintaining an external peaceful environment and peaceful relationships with China and other claimants, and safeguarding regime legitimacy and internal stability."⁴⁶

⁴⁵ Thuy, T. (2018). Territorial and Maritime Disputes in the South China Sea and Vietnam's Policy. *The Japan Institute of International Affairs, Policy File*.

⁴⁶ Ibid.

Southeast Asian Regional Peace and Stability

The South China Sea maritime issue is a burden of the international community but more specifically that of the Southeast Asian nations - as a claimant-State or not. This means that an individual State's action/s in the SCS would definitely produce effects that would be dealt collectively in the region. In the same manner, the successful management of the dispute would also be a collective accomplishment. Guided by the pending ASEAN-China Code of Conduct (COC) of parties in SCS dispute management, alternative approaches to resolving the territorial disputes in (Northeast and) Southeast Asia hinge on being committed to the principles of collective action, multilateralism, a shared regional identity, and attention to people-to-people concerns⁴⁷ that ensure peace and stability of the region. As a criterion, this would be qualitatively weighed against the principles embedded in the ASEAN-China Declaration of Conduct of Parties (DOC) in SCS dispute management which include the exercise of self restraint, peaceful means of managing disagreements, joint development, and the preservation/ protection of the marine environment.

Domestic and International Legal System

The Center for Strategic and International Studies (CSIS) Expert Working Group on the South China Sea have considered both international and domestic legal aspects in their discussions and formulation of blueprints⁴⁸ in managing successfully the tension in SCS in an environment involving multiple interests/ actors. It was suggested by the CSIS that reaching agreements that are both effective and acceptable to all parties will require framing necessary compromises so that the

⁴⁷ Tadem, E. (2019). Alternative approaches to territorial disputes in Northeast and Southeast Asia. *UP CIDS Policy Brief 2019-12*. ISSN 2619-7286.

⁴⁸ These include (1) A Blueprint for a South China Sea Code of Conduct, (2) A Blueprint for Fisheries Management and Environmental Cooperation in the South China Sea, and (3) A Blueprint for Cooperation on Oil and Gas Production in the South China Sea.

South China Sea claimants can adjust their positions without violating domestic or international law.⁴⁹ It would be useful to recall here that one significant reason for the cessation of the 2005-2008 Joint Maritime Seismic Undertaking (JMSU) between China, Vietnam, and the Philippines was the question of its constitutionality in the latter's interpretation. Thus, a policy alternative should be in congruent with the 1987 Philippine Constitution, on one hand, and the international law on the other. This pertains to the Philippines' international legal obligation as a Party in the PCA arbitration case and eventually its ruling as a signatory of UNCLOS.

Policy Sustainability

In developing countries, like the Philippines, where foreign policy decision making is less institutionalized, more personalistic, and largely reactive to the behavior of great powers, (foreign) policy is usually a function in domestic political calculations of the ruling elite faction and changes in the balance of power in the regional security environment.⁵⁰ Had the PCA ruling been granted within the Aquino administration (2010-2016), the Philippines would have followed this up with an appropriate action on SCS and reinforcing the Award. Thus, formulating policy alternatives for this paper has to consider that in less than three years, the Philippines is going to inaugurate a new administration once more. That the recommended policy has a strong possibility to be adopted regardless of the change in leadership.

⁴⁹ Thuy, T. (2018). Territorial and Maritime Disputes in the South China Sea and Vietnam's Policy. *The Japan Institute of International Affairs, Policy File*.

⁵⁰ Heydarian, R. (2017). Tragedy of Small Power Politics: Duterte and the Shifting Sands of Philippine Foreign Policy. *Asian Security: Great Power Rivalry, Domestic Politics and Southeast Asian Foreign Policy*, 13(3), 220-236.

Macroeconomic Efficiency

It was demonstrated earlier how integrated the Philippine economy is to that of China's in terms of trade and tourism. As the Philippines-China maritime tension escalated, various sectors flagged concerns on possible economic coercion by China. The constraining of trade, blacklisting of Philippine companies in investment bids, negative tourist advisories are just a few fears.⁵¹ Therefore, any action emanating from the Philippine government should also consider the possibility of trade loss and weakening of the tourism industry in the form of economic sanctions and travel advisories/ bans, respectively. Also, under this criterion, policy alternatives should not cost the already (relatively) weaker Philippine economy and exert pressure of redirecting government funds towards national security and away from more important socio-economic services such as education, infrastructure, and healthcare, to name a few.

⁵¹ Clemente, T. (2016). Understanding the Economic Diplomacy between the Philippines and China. *International Journal of China Studies* 7(2), 215-233.

IV. POLICY ALTERNATIVES AND EVALUATION

The policy alternatives that are presented in this chapter are not only weighed against the risk associated with each evaluative criteria discussed in the previous section (Southeast Asian Regional Peace and Stability, Domestic and International Legal System, Policy Sustainability, and Macroeconomic Efficiency) as to their feasibility and appropriateness to the current environment but also these alternatives take into consideration the 2016 The Hague Award ruling in favor of the Philippines against China in their South China Sea maritime dispute and the fact that there is no world police to enforce China's compliance of the said Award.

PA1. Rapprochement Policy of the Current Administration (The Status Quo)

The “lawfare” strategy of the previous administration of Aquino on its SCS dispute against China that led to the Philippines’ victory in The Hague was not carried on by the current leadership of President Duterte. Instead, the Philippines has avoided bringing up the issue or attempted to gather multilateral support to be able to “collect” in multiple opportunities such as in 2017 when the Philippines was the Chair of ASEAN and when the PCA ruling received an overwhelming approval from liberal States like Japan and Australia. As a result, trade between the two countries further improved and there have been indications of deepening Sino-Philippine security cooperation through military assistance in the form of ammunition and military equipment from Beijing, including plans for joint training, intelligence sharing, and even joint military exercises.⁵²

The prioritization of better security and economic relations with China by the Philippines reflects the latter’s rapprochement policy in relation to managing the SCS issue with the former. Defending this policy, Duterte has consistently argued that the Philippines has no means, leverage,

⁵² Bautista, L. (2018). The South China Sea Arbitral Award: Evolving Post-Arbitration Strategies, Implications and Challenges. *Asian Politics & Policy*, 10(2). 178 - 189.

and enough geopolitical influence to compel China in honoring the PCA ruling. That he will not risk the lives of the country's military personnel against the overwhelming size of China's People's Liberation Army - Navy (PLAN) as well as the country's economy over the Award. As the country's status quo policy, however, it has received criticisms from the local political elites arguing that the warmer relations of the two countries despite the ongoing SCS dispute and the PCA victory, Duterte may have traded the country's territorial sovereignty and national security over short-term economic benefits of trade and foreign direct investments.

Southeast Asian Regional Peace and Stability - Low Risk Level

Despite domestic criticisms of Duterte's rapprochement policy on the SCS dispute in general and on China in particular, the said policy has aided in improving the relations between the ASEAN community and China. By not flaunting the Award that could lead to provoking China, it has created a conducive environment for effective consultations on and deliberation of the ASEAN-China Code of Conduct (COC) by parties in the South China Sea. Additionally, weighing this policy alternative to the principles of self-restraint and peaceful means of managing the SCS dispute as the mantra of the ASEAN, the status quo is posing a low risk to the relative peace and stability that the region is currently (barely) sustaining.

Domestic and International Legal System - Intermediate Risk Level

The rapprochement policy of the current administration does not violate the Philippine constitution, specifically the provisions on territorial sovereignty. This is because the PCA ruling does not cover these issues which were not included in the case filed by the Philippines in 2013 to begin with. Thus, by choosing to not enforce or compel China to honor the Award, the domestic

legal system of the country does not pose any risk for implementing the policy of rapprochement. However, the case is different in the perspective of the international legal order. Since, the Award remains legally relevant since it is a part of the maritime international law edifice, the ultimate victim would be the rule of law in international waters. With China's defiant action of the arbitration award - and the Philippines' subsequent acquiescence - this policy will likely set a dangerous precedent for other major geopolitical flashpoints in the future.⁵³ Given the low risk from the domestic legal system but a high risk from the international legal order, the policy of rapprochement presents an intermediate level of risk.

Policy Sustainability - High Risk Level

Minor powers such as the Philippines have small foreign policy bureaucracies, inadequate military capabilities, few diplomatic posts abroad, and insignificant intelligence agencies that hamper the scope and vitality in conducting their foreign policy.⁵⁴ As a result, Philippine foreign policies usually rest on the prerogative of the executive branch. Similar to what happened to the initiatives of the previous administration in dealing with its SCS dispute against China, this policy of rapprochement could be overturned by the next leadership which is in the year 2022. Thus, the policy's sustainability presents a high risk level.

Macroeconomic Efficiency - Low Risk Level

International trade between the Philippines and China became the victim of the aggressive stance of the Aquino administration in the South China Sea which technically started in its filing of

⁵³ Heydarian, Richard J. (2018). Mare Liberum: Aquino, Duterte, and the Philippines' Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy* 10(2), 283-299.

⁵⁴ De Castro, R. (2018). Explaining the Duterte Administration's Appeasement Policy on China: The Power of Fear. *Asian Affairs: An American Review* 45(3-4). 165.191.

the 2013 arbitration case against China in The Hague. During the years 2002-2011, the balance of trade yielded a surplus except for the years 2004 and 2009. Curiously, the deficits in 2012-2015 raised concerns that they were caused by the maritime tension and reflected the three highest deficits in the economic relationship between the two countries.⁵⁵ Duterte's leadership, on the other hand, and with his decision to set aside the arbitral award has been favorably received by China, which reciprocated with offers of aid and investment in the billions of dollars (Jennings, 2017).⁵⁶ Moreover, the rapprochement policy of the current administration has benefitted the Philippines in terms of actual foreign direct investments reflected in 2016 until 2018 data in which China has become the second top investor in the Philippine economy next to Japan.⁵⁷ Therefore, macroeconomic efficiency poses a low risk to this status quo policy of Duterte, at least for the next three years.

General Policy Risk Level - Low to Intermediate

Southeast Asian Regional Peace and Stability	Domestic and International Legal System	Policy Sustainability	Macroeconomic Efficiency
LOW	INTERMEDIATE	HIGH	LOW

So far, the South China Sea and the Southeast Asian region have remained relatively peaceful during the Duterte administration as compared to the previous leadership of Aquino. This could be credited to the status quo created not just by the Philippines but by all the regional players of not provoking a more powerful claimant-State (China) and to continuously keep the line of

⁵⁵ Clemente, T. (2016). Understanding the Economic Diplomacy between the Philippines and China *. *International Journal of China Studies*, 7(2), 215-233.

⁵⁶ Bautista, L. (2018). The South China Sea Arbitral Award: Evolving Post-Arbitration Strategies, Implications and Challenges. *Asian Politics & Policy*, 10(2). 178 - 189.

⁵⁷ 2019 ASEAN Statistical Yearbook. Jakarta: ASEAN Secretariat, December 2019.
https://www.aseanstats.org/wp-content/uploads/2020/01/ASYB_2019.pdf

diplomacy open. Although it is the very same player that creates tension in the region in the past decade, pacifying China through Duterte's rapprochement policy against the flaunting of the PCA Award has resulted in more benefits than losses for the Southeast Asian region and the Philippines, albeit for the short term. As a foreign policy recommendation for the Philippines in the context of the PCA Award, rapprochement or appeasement has a low to intermediate risk level that could be sustained for the meantime and even be proposed and adopted by the succeeding Philippine leadership after President Duterte's term.

PA2. Philippine-China Non-Economic Joint Development Activities in their Disputed Areas

Joint development, exploration, and exploitation are the widely implemented solutions by countries competing on territories especially if such areas contain significant volume of natural resources. However, this solution comes with conflict of interests especially in regards to the economic benefits that the natural resources would bring. This is the reason that as a foreign policy alternative for the Philippines, joint development with China would strictly be on activities that do not entail exploitation of natural resources, rather its conservation within the context of a maritime dispute. Contested sovereignty over islands and extensive areas of overlapping maritime claims has tended to compromise efforts to preserve and protect the region's unique marine environment, thus efforts to promote sustainable management of its vital living resources have been stymied.⁵⁸

Another non-economic joint development activity included in this policy alternative pertains to search and rescue operations and transnational crime prevention and detection that would benefit not only the Philippines but the entire region and the surrounding States. With

⁵⁸ Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T., & Leonardo Bernard. (2013). Introduction: Why joint development in the South China Sea? In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 1-8). Edward Elgar Publishing.

Philippines' debilitated Naval resources, the country could definitely benefit from this joint activity with China to monitor threats to its national security. Additionally, this alternative would alleviate tension between the two countries since there is a need to first build confidence and trust among the claimants to reinforce the underlying rationale for joint development and articulate the advantages of pursuing this option to as wide an audience as possible.⁵⁹

Southeast Asian Regional Peace and Stability - Low Risk Level

Non-economic joint activities in the South China Sea are highly recommended by the Association of the Southeast Asian Nations (ASEAN) especially in the midst of the ongoing maritime and territorial disputes between its claimant-members and China. This has been advocated in the ASEAN-China Declaration of Conduct by relevant parties in the SCS. The cooperative activities which the Parties are encouraged to undertake are marine environmental protection, marine scientific research, safety of navigation, communication at sea, search and rescue operations as well as combating transnational crime. These are arguably less controversial activities than joint development of hydrocarbon resources and, hence, may be easier to reach agreement on.⁶⁰ Because the activities in this policy alternative reflect the agreed provisions of the ASEAN-China DOC, it poses low to no risk to the regional peace and stability of Southeast Asia.

Domestic and International Legal System - Intermediate Risk Level

Domestically, joint development activities with foreign actors are constrained by the Philippine constitution. Recall that one of the reasons for the termination of the 2005-2008

⁵⁹ Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T., & Leonardo Bernard. (2013). Moving forward on joint development in the South China Sea. In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 312-332). Edward Elgar Publishing.

⁶⁰ Ibid.

Tripartite Joint Marine Seismic Undertaking (JMSU) between the Philippines, Vietnam and China involved the issue of its constitutionality despite being a non-economic project with a foreign State. This policy alternative may then face the same predicament if and when adopted, hence the domestic legal system poses an intermediate level of risk over it. However, the international legal system may be more tolerable and would only pose a low risk on this policy option. One of the fundamental principles in UNCLOS with respect to overlapping maritime boundary claims is that the States concerned are under an obligation, in a spirit of understanding and cooperation, to make every effort to enter into provisional arrangements of a practical nature such as joint development arrangements or other cooperative measures.⁶¹ Additionally, with regards to the Award, non-economic joint development activities between the Philippines and China that focus on the protection of the marine environment indirectly address/ resolve the PCA ruling that highlighted the damage that China caused in the SCS.

Policy Sustainability - Intermediate Risk Level

If this policy gets adopted, it could be argued that it would have at least three (3) years of operations similar to what happened to the 2005-2008 JMSU. If so, it would be able to survive the current administration's term in office and would have the opportunity to be evaluated to its effectiveness and purpose to national and regional security as well as to the preservation of the marine environment within the Philippine-China disputed areas in the SCS. However, this would be exclusively dependent on the domestic political environment in the Philippines especially since there will be a change of not only the leadership in 2022 but the Legislative Branch as well.

⁶¹ Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T., & Leonardo Bernard. (2013). Moving forward on joint development in the South China Sea. In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 312-332). Edward Elgar Publishing.

Macroeconomic Efficiency - Low Risk Level

Non-economic joint operations or activities between the Philippines and China would not mean that there is absolutely no economic benefit from it for the former. As long as this option is in place, the line of communication and diplomacy between the two countries would also be open that could be translated into continuous bilateral trade and investment relations. Therefore, macroeconomic efficiency as an evaluative criterion poses a low level of risk to this policy alternative. The political diplomacy that could be established in this policy alternative could be translated into an improved and consistent economic diplomacy between the two States.

General Policy Risk Level - Low to Intermediate

Southeast Asian Regional Peace and Stability	Domestic and International Legal System	Policy Sustainability	Macroeconomic Efficiency
LOW	INTERMEDIATE	INTERMEDIATE	LOW

Given that the 2005-2008 Joint Marine Seismic Undertaking participated by the Philippines and China was possible before, the same could be feasible now that the relationship between the two States has improved. In fact The same warmer relationship existed during the Arroyo administration of 2000-2010 when the JMSU was formulated and operationalized. Cooperative arrangements would not only remove or reduce tension, they also have the potential to create and/or cement good relations between States concerned and even act as confidence-building measures in their own right.⁶² This alternative only has to make sure that it has been deliberated by the

⁶² Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T. & Bernard, L. (2013). Factors conducive to joint development in Asia – lessons learned for the South China Sea. In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 291-311). Edward Elgar Publishing.

Philippine Legislative branch to endure the constitutional issue that JMSU went through in the past. This should offset the intermediate level of risk that domestic legal system and policy sustainability criteria pose.

PA3. Increase Defense Spending to Further Strengthen the Philippine Armed Forces to Unilaterally Enforce The Hague Award

To be able to enforce the PCA Award or compel China to comply with the ruling in favor of the Philippines' complaints, there are two things that the Philippines needs to prepare and equip itself with, respectively. First, since this policy alternative reflects an aggressive stance against China, it would mean a significant breakdown of diplomatic relations. Therefore, (second), the Philippines needs to incorporate a capable military if this shift in policy results in an escalation of maritime tension. Enforcing the Award would be going against the wishes of China to resolve the SCS dispute bilaterally, hence it will retort to its aggressive (and this time, more than ever) behavior in the SCS region. Despite existing security treaties with allies, it is still essential that the Philippines has its own defensive military resources in the event that China resumes with its dangerous activities such as harassment of Filipino fishermen and the Philippine Coast Guard and Navy because of this policy alternative.

Former President Benigno Aquino originally launched the Armed Forces of the Philippines (AFP) modernization program as part of an effort to challenge China's expansion in the South China Sea. But after Duterte's election in 2016, the new president suggested he would pursue a policy of gravitating closer to China while ignoring territorial defense and focusing again on internal security.⁶³ Now that the country is fortified by its PCA victory and has the obligation to

⁶³ De Castro, R. (2018). The Next Phase of Philippine Military Modernization: Looking to External Defense. *Asia Maritime Transparency Initiative*. Accessed from <https://amti.csis.org/the-next-phase-of-philippine-military-modernization-looking-to-external-defense/>

follow-through with the decisions, building up and investing on the country's territorial defense capabilities is a necessary measure to take.

Southeast Asian Regional Peace and Stability - High Risk Level

Any aggressive action/ policy by the major players pertaining to the SCS dispute would likely negatively affect the entire region's mission of maintaining peace and stability. An irregular or highly suspicious ramping up of one's military capabilities would send a worrying signal to China whose nature is known to be retaliatory against this kind of behavior. This policy alternative could therefore escalate the already difficult situation in the region, putting the Southeast Asian regional peace and stability at a high risk. For the same reason, the ASEAN community may not embrace this policy that could further create more strain on the currently fragmented relationship of the organization's membership.

Domestic and International Legal System - Low Risk Level

Since the purpose of strengthening the military capabilities of the Philippines is to enable the country to enforce the PCA ruling, this policy alternative is congruous with the international legal system that requires adherence to UNCLOS and/or the decisions of its institutions such as the PCA, this policy alternative would be acceptable in the perspective of the international legal order. Domestically, on the other hand, developing/ modernizing the Armed Forces for the purpose of maintaining national security as well as protecting/ defending its territory does not violate the 1987 Philippine constitution. Together, both domestic and international legal system pose low to no risk over this policy option, hence it might be a prudent action for the Philippines in the midst of its maritime dispute with China.

Policy Sustainability - Low Risk Level

Modernizing the country's military resources has actually been existing since the mid-1990s as one of the laws in the Philippines and has undergone several amendments since then. Its first initiative was during the presidency of Fidel Ramos (1992-1998) in the form of Republic Act 7898 or "*An Act Providing for Modernization of the Armed Forces of the Philippines and for Other Purposes*" with the fundamental objective of "developing the AFP's capability to uphold the sovereignty and territorial integrity of the Republic and to secure the national territory from all forms of intrusion and encroachment."⁶⁴ This Act has evolved and remained as a Philippine law until today as Republic Act 10349 only with a higher allocated budget but with the same purposes in place. The fact that this law has survived three (3) Philippine administrations, policy sustainability would not be a problem in the adoption of this policy alternative regardless of the additional purpose as a tool to effectively enforce the PCA ruling over China.

Macroeconomic Efficiency - High Risk Level

National defense spending always opens up the debate of trade-offs between two important public goods, namely national security and socio-economic development. It is one of the fundamental principles of economics that resources are scarce in the face of unlimited wants and necessities which means a dollar appropriated for arms is a dollar less for other public goods such as education, housing, and healthcare that a developing country particularly the Philippines desperately lacks. Therefore, macroeconomic efficiency poses a high level of risk over this policy alternative not only as justified above but also because a confrontational behavior of ramping up the Philippine Armed Forces would result in a fall out of diplomatic relations with China. With

⁶⁴ Republic of the Philippines Department of Budget and Management Government Procurement and Policy Board. https://www.gppb.gov.ph/laws/laws/RA_7898.pdf

respect to the relationship between conflict and trade, it is generally well established that, at the bilateral level, states that fight more trade less.⁶⁵ China then could retaliate in a number of ways most likely in terms of bilateral trade in the form of economic sanctions, withdrawal of existing foreign direct investments, and retracting previously announced investment pledges that would severely paralyze the Philippine economy and create a vicious cycle of sour relationship between the two States.

General Policy Risk Level - Intermediate

Southeast Asian Regional Peace and Stability	Domestic and International Legal System	Policy Sustainability	Macroeconomic Efficiency
HIGH	LOW	LOW	HIGH

This policy alternative may only have an intermediate level of risk based on the four (4) evaluative criteria presented earlier. It is after all supported by an existing Philippine legislature that is at the same time for the purpose of honoring the decisions of the international legal system. However, despite gaining a moderate evaluation it is important to take into consideration the possible negative effects it may give rise to in the macro level such as in the regional environment and the Philippine economy. The last reasoning makes it onerous to eventually recommend this policy option since the Philippine economy is not only, “bogged down by insufficient resources but also the AFP modernization would hardly deter the PLAN in the South China Sea given the latter’s procurement of large surface combatants and submarines since the advent of the 21st century.” Even if the Philippine government provides AFP the funds for its (shopping list of) planes, surface combatants, and submarines, the strategic imbalance between the Philippines and

⁶⁵ Schultz, K. (n.d.). Borders, Conflict, and Trade. *Annual Review of Political Science*, 18(1), 125-145.

China cannot be rectified in the foreseeable future.⁶⁶ No other claimant in the South China Sea has defense capability that is at par with China. In fact, the combined military spending of states in Southeast Asia (except for Laos and Cambodia that have no data available) in 2015 was only at USD 38 billion—16% of China’s total defense expenditure for the same year (SIPRI, 2015).⁶⁷

PA4. Strengthen Existing or Establish New Bilateral Security Agreements with non-ASEAN Allies to Gain Leverage in Enforcing The Hague Award

Despite the desire of some claimants (especially China) to exclude external actors from ‘their’ region, together with an abiding desire among some claimants to regard their own claims as ‘indisputable’ and beyond question or discussion, it seems that the debate on South China Sea has become thoroughly internationalised.⁶⁸ This gives the Philippines the chance to rally support from more influential and militarily powerful non-ASEAN States to pressure China and provide necessary aid in enforcing the Award especially from those who have their respective interests in the SCS region. Despite the notable discrepancy in the military strength of the Philippines and China and the ASEAN community has stayed tight-lipped with regard to the authority of the PCA Award, it is fortunate that there are two external powers interested in fostering a security partnership with the Philippines in the face of China’s maritime expansion in the SCS - the United States and Japan.⁶⁹

⁶⁶ De Castro, R. (2016). The Strategic Balance in East Asia and the Small Powers: The Case of the Philippines in the Face of the South China Sea Dispute. *Pacific Focus*, 31(1), 126-149.

⁶⁷ Quintos, M. (2018). The Philippines: Hedging in a Post-Arbitration South China Sea? *Asian Politics & Policy*, 10(2), 261-282.

⁶⁸ Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T., & Bernard, L.. (2013). Introduction: Why joint development in the South China Sea? In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 1-8). Edward Elgar Publishing.

⁶⁹ De Castro, R. (2016). The Strategic Balance in East Asia and the Small Powers: The Case of the Philippines in the Face of the South China Sea Dispute. *Pacific Focus*, 31(1), 126-149.

The United States and Japan are the two external actors that have the ability to balance China's regional military power and economic influence in Southeast Asia and its littoral countries. With this, the Philippines can invoke the arbitration Award as a basis to encourage and justify more expansive and multilateral Freedom of Operations by the United States, Japan, and other like minded countries, which are perturbed by China's expansive military footprint in the South China Sea.⁷⁰ As a long-standing security ally of the Philippines, strengthening this alliance could result in the United States' visible presence in the region that could one way or another restrain any illicit and belligerent retaliatory activities of China in the event that the Philippines enforces the PCA Award. It could possibly respond to China's strategy through paramilitary and economic elements, which it has relatively neglected over the years.⁷¹ Moreover, though Japan and the Philippines' relationship is more on economic, trade, and development assistance, combined with the former's own territorial and maritime conflict with China in East Asia, Japan would be a vital player in the Philippine dispute with China both as a security ally and an additional reinforcer of the Award.

Southeast Asian Regional Peace and Stability - High Risk Level

The United States and Japan both have allies in Southeast Asia besides the Philippines regardless of their role in the SCS dispute. One would argue that by being active in the region could be beneficial for the ASEAN community vis-a-vis China's past, current, and future undertakings in the SCS. However, an external players' interference would be viewed as an infringement of the currently deliberated ASEAN-China COC that could jeopardize its adoption paving the way for China to further escalate the tension.

⁷⁰ Heydarian, Richard J. (2018). Mare Liberum: Aquino, Duterte, and the Philippines' Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy* 10(2), 283-299.

⁷¹ Thuy, T. (2018). Territorial and Maritime Disputes in the South China Sea and Vietnam's Policy. *The Japan Institute of International Affairs, Policy File*.

Domestic and International Legal System - Low Risk Level

Enhancing and establishing bilateral security arrangements with existing or new allies are not in contradiction with any Philippine domestic law or constitutional provision. In fact, studies in international relations have argued that strategies such as alliance/ alignment is necessary for small/ weaker States especially for those who have to deal with geopolitical threats from a relatively more powerful adversary. Furthermore, international law has no particular restrictions either on forming regional or international alliances nor the UNCLOS as well as the ruling of the PCA to comply with the obligations set forth in the Award. As a result, the domestic and international legal system pose low risk to this policy alternative.

Policy Sustainability - Intermediate Risk Level

Although this policy option would not encounter a serious obstacle in the domestic legal system of the country, bilateral agreements such as this could easily be abandoned or terminated depending on the domestic political environment or leadership. A relevant and current example of this is the 1999-present Visiting Forces Agreement (VFA) under the Mutual Defense Treaty between the Philippines and the United States that the Duterte administration has been planning to discontinue after its expiration this year. This means that the sustainability of existing or new security agreements that this policy option suggests could face an intermediate level of risk.

Macroeconomic Efficiency - High Risk Level

Rallying for additional support through leaning on external actors in the form of bilateral security agreements to aid in the enforcement of the PCA Award, the Philippines needs to be prepared for China's possible retaliatory actions. This is the usual retort of China anytime that a

rival SCS-claimant carries out policies that threaten or impede their maritime expansion activities in the SCS. This includes economic and trade sanctions that could cripple the Philippine industries/sectors that China has heavily invested in that would negatively affect the Philippine macroeconomy in the long run.

General Policy Risk Level - Intermediate to High

Southeast Asian Regional Peace and Stability	Domestic and International Legal System	Policy Sustainability	Macroeconomic Efficiency
HIGH	LOW	INTERMEDIATE	HIGH

Stephen Walt argues that small powers will balance a major or emergent power if their security partners are supportive, communicate effectively with them, recognize their common interests, and coordinate their responses to the threat through a formal alliance network.⁷² This makes the United States and Japan the leading global players the Philippines could hinge on in the advent of enforcing the PCA Award over China. However, since this option gains an intermediate to high policy risk level evaluation, it is necessary for the Philippines to consider the possible effect of this policy alternative in the macro level. The country has a responsibility to ensure and secure not only its maritime and territorial interests in the SCS but also its foreign-dependent economy as well as the stability of the entire Southeast Asian region.

There is also a need to carefully calculate the foreign policy stance of the United States in the region given its current domestic political situation that seems to reflect no categorical guarantee of immediate and concrete assistance to the Philippines should another round of tensions flare up

⁷² De Castro, R. (2016). The Strategic Balance in East Asia and the Small Powers: The Case of the Philippines in the Face of the South China Sea Dispute. *Pacific Focus*, 31(1), 126-149.

similar to the 2012 incident in the Scarborough Shoal.⁷³ As for Japan, its own maritime and territorial conflict with China in East Asia could serve either as a an opportunity to further challenge China through alliance with its SCS rivals such as the Philippines, or a hindrance in supporting the country in SCS with the concern of sacrificing its own advancement in their dispute in East Asia, particularly the Senkaku Islands.

RECOMMENDED POLICY:

Philippine-China Non-Economic Joint Development Activities in their Disputed Areas

Following the four (4) evaluative criteria assessing the four (4) policy alternatives in the previous chapter, Table 1 below summarizes the findings for the purpose of proposing the appropriate Philippine foreign policy on South China in light of the victory it received from the 2016 The Hague ruling against China. Based on the analysis presented, the status quo (Policy Alternative 1) and the Philippine-China non-economic joint development activities (Policy Alternative 2) have both received the lowest level of risk assessment and therefore deserved to be recommended. The status quo or the rapprochement policy of the current Philippine administration, however, has received criticisms not only by the opposition party/ies in the country but also by the public itself accusing the government of squandering away the momentous PCA Award and therefore surrendering the Philippine sovereignty over its SCS territories in exchange of getting in China's good graces. For this reason, despite seeming to be an appropriate recommendation, it would be worthwhile to explore another alternative that has the same evaluated low risk level.

⁷³ Quintos, M. (2018). The Philippines: Hedging in a Post-Arbitration South China Sea? *Asian Politics & Policy*, 10(2), 261-282.

Table 1. OVERALL EVALUATION OF THE POLICY ALTERNATIVES

POLICY ALTERNATIVE	POLICY ALTERNATIVE RISK LEVEL				GENERAL POLICY ALTERNATIVE RISK LEVEL
	Southeast Asian Regional Peace and Stability	Domestic and International Legal System	Policy Sustainability	Macroeconomic Efficiency	
Rapprochement Policy of the Current Administration (The Status Quo)	LOW	INTERMEDIATE	HIGH	LOW	LOW to INTERMEDIATE
Philippine-China Non-Economic Joint Activities in Disputed Areas	LOW	INTERMEDIATE	INTERMEDIATE	LOW	LOW to INTERMEDIATE
Increase Defense Spending to Further Strengthen the Philippine Armed Forces to Unilaterally Enforce The Hague Award	HIGH	LOW	LOW	HIGH	INTERMEDIATE
Strengthen Existing or Establish New Bilateral Security Agreements with non-ASEAN Allies to Gain Leverage in Enforcing The Hague Award	HIGH	LOW	INTERMEDIATE	HIGH	INTERMEDIATE to HIGH

There is a natural tendency for Governments to take actions and make decisions based on prevailing domestic politics or sentiments. This is dangerous, as not only does it further inflame national sentiments and emotions, but also it makes it difficult for the claimants to make reasonable compromises in international negotiations without being accused of surrendering their sovereignty.⁷⁴ Therefore, instead of purely appeasing China for bilateral trade and investment rewards (Policy Alternative 1), direct and equal non-economic cooperative activities that protect the region's marine environment and ensure national and regional security would dismiss the contention of "bowing down" to China.

⁷⁴ Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T., & Leonardo Bernard. (2013). Introduction: Why joint development in the South China Sea? In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 1-8). Edward Elgar Publishing.

V. CONCLUSION

Recalling that the “puzzle” of this policy paper revolves around the difficulty of guaranteeing China’s deference to the international law/ UNCLOS, in general, and the PCA Award in particular. However, international law may/ could not determine the ultimate outcome of the South China Sea disputes as this in all likelihood will be fundamentally dependent on (geo)political factors.⁷⁵ This is one of the reasons for Duterte’s current rapprochement policy towards China. His calculations are strongly influenced by the regional security environment, particularly the balance of power between China and America. Its ability to build constructive relations with China will depend on the latter’s behavior in the South China Sea. Similarly, much will also depend on the behavior of the Trump administration, which has sent mixed signals as to the future of America policy in Asia, particularly in the South China Sea. If America opts for retrenchment, downgrading its military footprint and commitment to allies in Asia, then the Philippines will have little option beyond a policy of accommodation to China in the South China Sea. In contrast, if America ramps up its military presence and begins to more forcefully check China’s maritime ambitions, then the Philippines is in a stronger position to resist and negotiate a better strategic outcome.⁷⁶

D. Becker (Policy Paper Presentation, May 5, 2020) pointed out that regardless of the edentulous nature of the PCA Award, the Philippines winning the arbitration case should have opened negotiations between the Philippines and China in which the former could have had the upper-hand. However, De Castro (2018) has explained the dilemma that a small and relatively

⁷⁵ Beckman, R., Schofield, C., Townsend-Gault, I., Davenport, T., & Leonardo Bernard. (2013). Introduction: Why joint development in the South China Sea? In *Beyond Territorial Disputes in the South China Sea: Legal Frameworks for the Joint Development of Hydrocarbon Resources* (NUS Centre for International Law series, pp. 1-8). Edward Elgar Publishing.

⁷⁶ Heydarian, R. (2017). Tragedy of Small Power Politics: Duterte and the Shifting Sands of Philippine Foreign Policy. *Asian Security: Great Power Rivalry, Domestic Politics and Southeast Asian Foreign Policy*, 13(3), 220-236.

weaker SCS claimant such as the Philippines has to deal with in the event of negotiations despite having the PCA Award around its belt:

They generally have a low level of participation in world affairs and usually find it detrimental to their interest to engage in risky and expensive foreign-policy undertakings. In the face of an emergent power bent on effecting a systemic change, a small power has a narrow range of opportunities for an independent and dynamic course of action for self-interest and self-preservation. Consequently, the capabilities of a small power to pursue its goals are contingent on the opportunities present in the international system and the willingness of the national leadership. A small power is boxed by virtue of its relative weakness vis-a-vis other powerful states. Thus, the head or leader of a small state makes decisions not based primarily on rationality, but on the utility of gains differently than losses.⁷⁷

Additionally, inheriting the PCA Award, the Duterte administration as well as its successors has/will view the legal victory more as a burden than as a window of opportunity on its maritime and territorial struggle in the SCS against China. This is because the award has also exposed fractures within ASEAN and challenged its centrality, and continues to test the efficacy of the current regional security infrastructure and institutions.⁷⁸

The recommended non-economic joint development activities between the two States exclusively within their disputed areas in SCS may not directly address the ‘white elephant’ embodying the PCA Award that China has chosen not to comply based on Merits but may still recognize its outcome. Nevertheless, the lack of enforcement mechanisms in international law does not mean that there are no costs to non-compliance. The few instances in which states openly defied a court or arbitral tribunal’s decisions have mostly involved great powers. But even in those cases, decisions that were initially ignored were eventually complied with to a certain extent.⁷⁹ Thus, the recommended policy could unlock the path of cooperation together with the overall

⁷⁷ De Castro, R. (2018). Explaining the Duterte Administration’s Appeasement Policy on China: The Power of Fear. *Asian Affairs: An American Review* 45(3-4). 165-191.

⁷⁸ Bautista, L. (2018). The South China Sea Arbitral Award: Evolving Post-Arbitration Strategies, Implications and Challenges. *Asian Politics & Policy* 10(2). 178-189.

⁷⁹ Nguyen, L. & Vu, T. (2016, July 22). After the Arbitration: Does Non-Compliance Matter? *Asia Maritime Transparency Initiative*. Accessed from <https://amti.csis.org/arbitration-non-compliance-matter/> Accessed May 13, 2020

attempt by both countries to pursue the goal of improving China-Philippines relations that might constitute an opportunity to implement a cooperative regime that indirectly reflects some of the assessments made by the Tribunal.⁸⁰

⁸⁰ Becker-Weinberg, V., Minas, S., & Diamond, H. (2018). The South China Sea Arbitration and the China–Philippines Relations Beyond the Award. In *Stress Testing the Law of the Sea: Dispute Resolution, Disasters & Emerging Challenges* (pp. 190-222).

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<https://www.theglobeandmail.com/opinion/philippines-v-china-one-year-later-a-surprising-compliance-from-beijing/article35660244/> Accessed on May 2, 2020.