

OPINION

A Flawed Strategy and How to Rectify it: Aquino, Duterte, and the West Philippine Sea

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(UPDATED) We won in The Hague but our legal victory has been compromised by the ill-advised entry of the Aquino administration into a military alliance with the United States aimed at containing China. Moving beyond the volatile stalemate in the West Philippine Sea requires another strategy from the new Duterte administration.

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Reports on The Hague Tribunal decision on the maritime dispute between the Philippines and China have described it as an overwhelming victory for the Philippines. Let me sum up the key points of the judgment. The Permanent Court of Arbitration:

- rendered null and void China's Nine-Dash-Line claim to some 90 per cent of the South China Sea
- rejected China's claim that the land formations and waters in the area have historically fallen exclusively under the ambit of the Chinese state
- dismissed the view that the terrestrial formations in the area are habitable islands, which could generate 200 mile Exclusive Economic Zones (EEZs) for their claimants
- faulted China for violating the fishing rights of Filipino fisherfolk in Scarborough Shoal
- criticized China for causing severe damage to the fragile environment of the area with its land reclamation and dredging activities

It is said that The Hague judgment benefits not only the Philippines but all the other Southeast Asian countries that have claims to different parts of the South China Sea. And that it establishes very important precedents for settling maritime disputes among countries in all parts of the globe.

But for reasons I will touch on below, The Hague verdict is not an undiluted victory for the Philippines, and at least in the short term, it will not unlock the door to peace in the region.

I had the opportunity to be a bit player — or an “extra,” as they say in Hollywood — in this maritime drama while I was still a member of the Philippine Congress. In 2011, I sponsored the House of Representatives resolution renaming the South China Sea the West Philippine Sea, a proposal that

was later adopted by the Department of Foreign Affairs and the Office of the President. That same year, I led a congressional delegation that made the first visit of a civilian aircraft to Pag-asa Island in the Spratlys to show support from the legislative branch for our sovereign rights to the islands under Philippine jurisdiction and to our 200 mile Exclusive Economic Zone. This visit was strongly condemned by China.

I mention this not to “bring my own bench to stand on” (*magbuhat ng sariling bangko*), to use a Pilipino saying, but to emphasize where my loyalties lie as I explain what some have seen as an ambivalent if not “unpatriotic” stand on an issue that they feel I should be waving the flag on.

Where is China Coming From?

The first thing I’d like to say is that having long studied the relations between East Asia and the United States, I fully understand where the Chinese are coming from, and that is from fear and a desire for security. Let me explain.

One cannot understand why China has acted the way it has without referring to the big shock the Chinese leadership received in 1996, when after a period of 24 years of thawing and friendly relations with the United States, it was treated to a show of force of two aircraft carrier battle groups sent by the Clinton administration to warn it to back off during the Taiwan Strait Crisis. One of the carriers, the USS Nimitz, sailed provocatively through the Taiwan Strait. This was the largest display of US military force since the Vietnam War.

China’s apprehensions deepened when the next administration headed by George W. Bush, Jr. came out, prior to September 11, 2001, with the National Security Strategy Directive redefining China, from a “strategic partner” to a “strategic competitor.” A lot of the practical implications flowing from that redefinition were, however, put on hold following September 11, as Bush tried hard to enlist Chinese cooperation in the War on Terror. In fact, many people at the Pentagon, the State Department, and the White House thought the War on Terror and the Middle East adventures of Bush were a distraction from what they felt should have been the real strategic thrust of US policy, which was to focus on China as the US’ strategic rival. They finally got their wish when towards the end of the first term of the Obama administration, the “Pivot to Asia,” also known as the Containment of China, emerged as the US’s grand strategy.

Where China Went Wrong

A central element in Beijing’s response to what it regarded as “American encirclement” was to view the South China Sea as part of its defensive perimeter. Where China went wrong was in its unilateral moves to implement this view. Beijing knew that these were waters with no agreed upon lines of demarcation that it shared with at least six other littoral states, including Taiwan. It was all too aware that the ASEAN countries had long been pressing for multilateral talks to define these borders. And it was not ignorant of the fact that detailed rules for the demarcation of territorial waters and exclusive economic zones and for navigation in these waters had already been incorporated into international law with the coming into force of the 1982 Convention on the Law of the Seas, which Beijing had ratified.

But despite knowing all this, Beijing began to move unilaterally, first slicing off and fortifying Mischief Reef, which lies within the 200-mile Exclusive Economic Zone of the Philippines, in the mid-1990’s, on the pretext of building shelters for Chinese fishermen. Then salami tactics with crude

justifications were followed by a comprehensive claim of territorial sovereignty that Beijing submitted to the United Nations as a note verbale on May 7, 2009. This unilaterally asserted China's "indisputable sovereignty" over all the islands and terrestrial formations in the South China Sea and their "adjacent waters/relevant waters." Accompanying the note was the infamous "Nine-Dash Line" map. No official explanation for the Nine-Dash Line was provided at that time or since, though there have been unofficial references to the islands and waters of the West Philippine Sea being ancestral Chinese territories or to their inclusion in old maps of the defunct Nationalist Chinese regime that date back to the late 1940s.

There are a number of complementary reasons why China has behaved the way it has, but the central one is the strategic decision to make the area part of its defensive perimeter against Washington's encirclement. To achieve this goal, however, China resorted to the Big Power behavior it has so often criticized when displayed by the West, treating its neighbors as nothing but collateral damage of its increasingly sharp geopolitical rivalry with Washington. It could have acted differently, for instance appealing to and working with ASEAN to craft a multilateral treaty to seal off the area from big power rivalry, along with the initiation of talks on a Code of Conduct to govern the behavior of parties with claims in the region, something that China and the ASEAN countries had, in fact, agreed to negotiate in 2002.

Instead, Beijing chose the American way of unilateralism, cooking up nonexistent rights based on the most dubious documents.

Fatal Contradiction: Aquino's response to China

The Aquino administration was right to bring our case to the Permanent Court of Arbitration in The Hague in January 2013 since the appropriate international legal instruments were present to resolve the case in accordance with the 1982 Convention on the Law of the Seas and other legal precedents. For many intimately involved in the issue, it was clear that the law was overwhelmingly on the Philippines' side. We realized that while it was unlikely that China would immediately submit to a ruling by a Hague tribunal whose jurisdiction it did not recognize, we saw gaining international legal recognition of our rights and the moral authority that went with that as important assets in a struggle that would last for many more years.

Where the Aquino administration went off the rails was to allow itself to be suckered into a military agreement with the United States that would again make the Philippines a major launching pad for the projection of US power onto the East Asian land mass — to become part of the grand strategy proclaimed by the Obama Administration as the "Pivot to Asia." I still have to figure out what went on in the minds of Mr. Aquino and his Foreign Secretary Albert del Rosario to account for their simultaneously pursuing a peaceful legal track in The Hague and a provocative military track aimed at containing the actor we wanted to convince to respect international law. Maybe they thought these two prongs were complementary. If this was the case, then it was a costly misjudgment.

The Philippines and the United States signed the Enhanced Defense Cooperation Agreement during President Obama's visit to Manila in April 2014. This agreement of indefinite duration allowed the US not only to rotate troops in the Philippines for training purposes but to deploy troops, weapons, and materiel in fixed bases that would be nominally Philippine bases but where full operational control would be in the hands of the United States. The Philippines' main value to the US has always been its being an ideal site for projecting power onto the Asian mainland, and Washington got this advantage again, over twenty years after Clark Air Base and Subic Naval Base were forced out of the country by a combination of a volcanic explosion and rising nationalism. With containment of China

being Washington's new Grand Strategy, the Philippines became one of the three prongs of US strategy, the others being the US bases in Japan and the mobile naval base known as the Seventh Fleet.

The Aquino administration sold EDCA to the Philippine public as a way of getting the United States to protect the territories we claimed in the South China Sea and our Exclusive Economic Zone. EDCA did not, in fact, provide this, and there was deception in the way administration propaganda deliberately and conveniently omitted this fact. As far as Washington was concerned, it could not give the Spratly islands and terrestrial formations claimed by the Philippines defense coverage like it did to the Senkaku Islands claimed by Japan. Washington's reasoning went this way: the Senkaku Islands were included as Japanese territory covered by the US-Japan Mutual Defense Treaty of 1960 whereas the Philippines' Spratly possessions did not come under the ambit of the 1951 US-Philippine Mutual Defense Treaty since the Philippines acquired them only in the 1970s. In fact, the US' oft-repeated response to the question if it recognized Philippine sovereignty over the islands we hold is that it "does not interfere in sovereignty issues." It might be pointed out here that Obama's silence on the Spratlys during his visit to Manila in April 2014 contrasted with his explicit commitment to defend the Senkakus when he was in Japan just a few days earlier.

So what did the Philippines gain? Well, military aid, mainly in the form of World War II-era refitted US coast guard cutters. Amazingly, the Aquino administration chose to forego even asking for rent for the bases the US would use, whereas two decades back we extracted \$180 million a year for the Americans' renting Subic Naval Base, Clark Air Force Base, and several other installations.

But, in my view, there was a bigger problem with EDCA. Prior to the agreement, I warned Mr. Aquino in the few times he ran into me, via his subordinates, and through the media that not only would we get no guarantee of defense of our South China Sea possessions from Washington, but we would be farther away from a resolution of the territorial issue if we signed on to EDCA. Why? Because the dynamics of superpower competition would marginalize the territorial question owing to our entry into an overtly anti-China military alliance with the US. Before EDCA, we were small but we were significant. Through EDCA we would transform ourselves into the pawn of one party in a superpower struggle. Vietnam and Malaysia had their differences with China — and even outright skirmishes in the case of Vietnam — but China saw them as neighbors, perhaps troublesome neighbors from its perspective, but neighbors nevertheless. By signing on to EDCA, we would graduate or be demoted into a different category: that of an ally of its strategic enemy.

I communicated all this to Mr. Aquino and his subordinates, but he told me I was being too hard on the United States or I was being "more opposition than the opposition," and went on in his usual stubborn way. At times, I simply wanted to scream in frustration at administration officials briefing us on EDCA: "This is China we are dealing with, one of the most skilled governments in the art of diplomacy, not a fourth-rate government. Do we really think its attitude towards our peaceful legal challenge would not be affected by our entering into a formal military alliance with its strategic rival that was directed at it?"

Persevering in the legal-diplomatic route was the only viable way to go, but having deviated from this by entering into a military alliance with a state determined to contain it, the moral force and diplomatic credibility we should have gained from our legal victory in the Hague have been compromised. Even with our complete legal ascendancy, we can still lose the propaganda war, with Beijing besmirching our legal triumph by branding us as Washington's gofer in carrying out its grand strategy of encircling China.

Where Do We Go From Here?

The Duterte administration has been rightfully sober in its response to Hague decision, welcoming it but not furiously waving the flag. It is right to be circumspect since it received a problematic legacy from the previous administration: a successful legal appeal compromised by a provocative military alliance. How should it approach China on the South China Sea issue?

Before I offer my two-cents worth, however, I want to make a full disclosure in the interest of transparency: I have very serious differences with President Rodrigo Duterte on the issue of human rights and due process and consider myself to be in the opposition. However, when it comes to securing the national interest of the Philippines, I stand fully behind him.

Let me go on. I do not believe in the inevitability of trends. A combination of openness to reexamining our premises, experimenting with a different strategy, and luck could turn things around, though one must admit it's not going to be easy. The two things I am banking on as enabling conditions are first, that Beijing is concerned about its international image and that, being pragmatic, the Chinese leadership might reach the point where they will see that the disadvantages of being intransigent outweigh its advantages, especially as it seeks to be respected as a superpower that is not bent on destabilizing the global status quo; and second, that China would prefer a future of peace with its neighbors to one of endless tension that could occasionally break out in open conflict.

Having said this, let me outline the steps towards a possible settlement.

First, since it is the military element that is fundamentally driving China's behavior, the Philippines and China can agree to have bilateral talks on how to bring down the tension between the countries. The aim of these talks will not be to settle the territorial issue but to negotiate military deescalation. One possible proposal could be a freeze in China's base-building activities in exchange for a freeze in the implementation of EDCA. Though the focus of the talks would not be the territorial dispute, some mention of it would be inevitable, which is why it would be wrong for China and unacceptable to the Philippines to make no reference to it a precondition for the negotiations.

Second, perhaps simultaneously with the Philippine-China bilateral talks, ASEAN and China can start the long postponed multilateral talks on a Code of Conduct to govern the maritime behavior of all parties with claims to the South China Sea that they agreed to have in 2002.

Third, should these two confidence-building measures achieve some success, ASEAN and China could move on to negotiations to achieve significant demilitarization and denuclearization of the South China Sea, with the goal of coming up with a multilateral treaty that would be binding on all parties, including third parties like the United States. Such an agreement would, of course, necessitate abandoning EDCA on the part of the Philippines and dismantling of military structures in the South China Sea on the part of China. This agreement would be complementary to two earlier ASEAN agreements, the agreement to make ASEAN a Zone of Peace, Freedom, and Neutrality, and the Southeast Asia Nuclear Weapons Free Zone Agreement. It could also be the forerunner of an East Asia-wide collective security treaty that would replace the dangerous and volatile balance of power politics that simply promotes an uncontrollable arms race.

Finally, again depending on the success of the previous confidence-building measures, ASEAN and China could begin the process of resolving claims on EEZ's and continental shelves and discussing joint development of fisheries and other resources. Given political sensitivities, these might be de facto arrangements instead of full-blown treaties or agreements and will not necessitate China's formally abandoning its Nine-Dash-Line claim, at least not in the short term. Face, as they say, is

important, and the art of diplomacy is often the art of allowing your negotiating partner to save face while making grudging concessions.

Our diplomacy must be anchored on the Hague decision affirming our rights in the West Philippine Sea, but this must be combined with our distancing ourselves from Washington's military containment strategy, very close cooperation with our ASEAN neighbors, and a willingness and patience to go the distance in dealing with Beijing. We are, after all, both Asians, peoples separated by colonialism, imperialism, the Cold War, and the continuing hegemonic schemes of forces external to the region. It is time both sides commit to bridge that separation, no matter how difficult initially that process might be. The time for flag-waving and false solutions is over. It's time for serious engagement.

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P.S.

* InterAksyon.com. The online news portal of TV5. July 19, 2016 9:59 AM:

<http://interaksyon.com/article/130501/opinion--a-flawed-strategy-and-how-to-rectify-it-aquino-duterte-and-the-west-philippine-sea>

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