



CAN THE 2016 ARBITRATION RULING AVERT A MARINE ENVIRONMENT DISASTER IN THE SOUTH CHINA SEA?

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A 2012 standoff over Panatag (Scarborough) Shoal in the West Philippine (South China) Sea led Manila to take Beijing to arbitration over maritime claims and activity in the region. July 12 marks the third year anniversary of the landmark award issued by the arbitral tribunal convened under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS). When the decision came out, the Philippines, by then under a new administration, went for a soft landing with China, which helped calm tensions. But continued degradation of the marine environment and the recurrence of maritime incidents involving both government and private vessels have led Philippine citizens to challenge President Rodrigo Duterte's decision to shelve the ruling. The development of norms and standards for maritime safety and environmental protection offers both countries, as well as other claimant states, platforms to pursue functional cooperation and dispute management.

The 2016 arbitration decision made a big splash in the contested waters. It invalidated China's claims of historic rights and its infamous nine-dash line as contrary to UNCLOS. It ruled that none of the features in the semi-enclosed sea qualifies as an island capable of generating extended maritime zones and affirmed Manila's exclusive economic zone (EEZ) in its

western seaboard. It judged China's interference in Filipino fishing and petroleum exploration, construction of artificial islands, and failure to prevent its nationals from fishing in the Philippines' EEZ as unlawful. It also cited the unsafe maneuvers of Chinese law enforcement vessels that risked collision with Philippine vessels. The ruling also considered serious damage to the marine environment associated with Beijing's artificial island building and its failure to rein in its fishermen from capturing endangered marine species. The tribunal also upheld the aggravation of the dispute by the commencement of reclamation works while the case was being heard.

For all of its breakthrough decisions, the ruling fell short of resolving the long-running flashpoint, although it surely serves as useful guide for the future. While celebrated for clarifying maritime entitlements, it did not delimit any maritime boundaries nor resolve sovereignty disputes over ownership of numerous features contested by six claimant states. Furthermore, the tribunal did not make an exhaustive determination of the nature of all features in the disputed sea except for those that were included in the case brought by Manila. While confirming that three Chinese-occupied features are actually low-tide elevations, it did uphold that five others were rocks entitled to a 12 nautical mile territorial sea. In addition, it maintained traditional fishing rights, not only of Filipino fishermen, but also Chinese fishermen, in Scarborough Shoal. This opens certain enclaved areas of Manila's western EEZ to foreign fishing.

As claimants have solidified hold over their controlled features and competition for resources has intensified, the spotlight is shifting to the marine environment. Fishing within the territorial sea limit of occupied features, which may overlap, and traditional fishing rights in shared fishing grounds provide practical bases for cooperation on conservation of the marine environment. The migratory nature of certain commercial fisheries species and the semi-enclosed nature of the sea constitute additional factors in support of cooperation.

In the Philippines, non-state actors are increasingly resorting to local and international legal remedies to put pressure on China to abide by the ruling, to stop interfering in Filipino maritime economic activities,

and to prevent Chinese nationals from engaging in illegal and unsustainable fishing in the Philippines' western EEZ. Last March, two former Philippine senior officials filed a complaint before the International Criminal Court against Chinese officials, including President Xi Jinping, for damage to the marine environment and interference in Filipino fishing activities. Last May, a writ of *kalikasan*, a demand for government protection of the marine environment in the country's western EEZ, was issued by the Philippine Supreme Court. Oral arguments on the petition before the high court began last week.

While calling out China and demanding that Manila do more to protect the marine environment, the door is left open for cooperation. In a maritime security symposium organized by the Philippine Navy last month, University of the Philippines (UP) professor Clarita Carlos raised the importance of a regional fisheries arrangement, saying that it is likely that cooperation in such low politics activity would not be opposed. Speaking at the same symposium, Deo Florence Onda of the UP Marine Science Institute (MSI) added that marine scientists in the region agree about the importance of a closed fishing season, but disagree as to who should declare it. He lamented the absence of a regional mechanism for fisheries in the semi-enclosed sea.

In a [statement](#) released last week, MSI called for the “establishment of multilateral marine protected areas, along with international scientific cooperation on joint studies and expeditions.” Realizing the sensitivities involved in the proposal, it encouraged the governments of China, the Philippines, and the other ASEAN states “to seriously discuss these possibilities by acknowledging the SCS as a shared heritage that we will bestow on future generations.”

Investments in capture fisheries capacity and improved maritime law enforcement capability will benefit all littoral states. But such actions can also fuel a race that may lead to overfishing and confrontation. Meanwhile, unilateral fishing bans, for all their good intention, will not bind other claimants unless they are seen as acquiescing to a rival's claims. Hence, there is still no substitute to cooperation.

If the tribunal's 2016 ruling can be leveraged to foster cooperation, then it may have greater value. Protection of the marine environment should not be a card that claimants can play to bolster their claims. Rather, it should be an area for genuine cooperation for the collective benefit of the present and future generations. In this context, much is expected from China as the sea's biggest claimant with the world's largest fishing fleet and a record of unsustainable fishing practices. The Duterte government is also under pressure to implement the ruling, which has been raised in bilateral consultations with Beijing. Indeed, more than providing possible cover for the ruling's enforcement, cooperation may, in fact, help avert a tragedy of the commons in the South China Sea.

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