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A Perspective on Environmental Security in the South China Sea: Engaging in Environmental Diplomacy

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Introduction

China and the Philippines have been caught in a highly politicized territorial dispute in the South China Sea (SCS) together with Brunei, Malaysia, Viet Nam, and Taiwan. The claim over the islands in the SCS escalated in 1988 when a confrontation erupted into violence as gunfire shots were exchanged between Chinese and Vietnamese troops in the SCS.¹

Since there are several of claimants over the islands in the SCS, the issue was intensified dramatically. Due to the heightened political tensions in the SCS, the environmental aspect has been greatly ignored. Thus, this paper provides an environmental perspective in managing the SCS.

In 2013, the Philippines, under the Benigno S Aquino III administration, filed a case in the Permanent Court of Arbitration (PCA) regarding the rights and obligations in the SCS and the effect of the United Nations Convention on the Law of the Sea (UNCLOS) on China's nine-dash line historical claim. In 12 July 2016, the SCS Arbitration was awarded to the Philippines. The case filed by Philippines in the PCA has been considered as one of the most important documents in the legal regime governing the seas.²

Some claimants have initiated land reclamation among selected islands in the SCS.³ This led to the degradation of the SCS pointing towards one of the most important aspect of the SCS that countries appear to have forgotten – marine life and protection.⁴

This policy briefs discusses the ruling of the Arbitral Tribunal over the SCS, the Marine Environment in the SCS, and the proposal to create an international marine peace park in the SCS. Likewise, the policy brief explores the option for the Philippines.

The Hague Ruling

The military presence of not only China and the Philippines but also of the United States and Russia though surveillance military exercises have increased the tensions in the SCS.⁵ As other claimants over islands in the SCS took on a relatively 'softer' approach, the Philippines appeared to have stood alone head to head with China and its massive military power.⁶

In January 2013, the Philippines filed a case against China's claim on the SCS in the Arbitral Tribunal following its standoff in the Scarborough Shoal in 2012. This action was done after exhausting almost all political and diplomatic means of peaceful settlement of the maritime dispute with China.⁷ In 2013, the Philippine Department of Foreign Affairs (DFA) stated that the country has been exchanging views with China regarding a peaceful settlement but failed to come up with a clear solution, therefore proceeding with the initiated arbitration.⁸

The Chinese government expressed its refusal to recognize the ruling by the arbitral tribunal in the SCS.⁹ The decision of the arbitral tribunal based on the findings of the submitted case determined that China violated the sovereign rights of the Philippines in its Exclusive Economic Zone (EEZ) by interfering with

Philippine fishing and petroleum exploration activities, constructing artificial islands, and failing to prevent Chinese fishermen from fishing in the Philippines' EEZ.¹⁰

Furthermore, the decision also found that China caused severe harm to the coral reef environment and violated its obligation to preserve and protect the fragile ecosystems and habitat of depleted, threatened, or endangered species through its large-scale reclamations on certain features in the SCS.¹¹

According to the SCS Arbitration Award of 2016, the intensified activities of China in the disputed area (e.g. dredging, building of artificial islands, and other construction activities) equates to negative consequences that threaten the marine life in those areas. These activities undertaken by the Chinese government in implementing China's policy has caused degradation of coral reefs to create buildings and other concrete installations that have eliminated respect for the natural existing forms of the coral reefs.¹²

Furthermore, the SCS Arbitration Award cited its findings that China's "illegal activity disturbed the tranquility of the ecosystem and habitat of important species of marine life and, at the same time, caused irreparable damage to the marine environment of the area."¹³

Marine Environment of the South China Sea

Dr John W McManus, the director of the National Center for Coral Reef Research (NCORE) of the Rosenstiel School at the University of Miami, is a scientist and a professor of marine biology that spent great number of years in the different islands of the SCS. He expressed great appreciation of the uniqueness of the coral reefs in the SCS. His studies, together with scientists from the University of the Philippines Marine Science Institute, found that the coral reefs in the SCS are five (5) times richer than any other coral colonies.

McManus first engaged on explorations of the marine environment of the SCS during the 1990s and published several articles and books

on the subject. Most of his findings consisted of scientific flow of life forms and wavelengths in the area. According to McManus, the SCS consists of 600 coral reefs while the Spratly alone consists of 333 species of coral reefs.¹⁴

In his research, he monitored the fish flow in the SCS through heat signals detected through satellites. Results show that the coral colonies in the SCS area replenish the fish flow in the entire Pacific Ocean. However, the reclamation done by China constitutes the most rapid rate of damage and may even lead to permanent loss of coral reefs in human history.¹⁵

Fisheries is one of the most important industry in the SCS that benefits the global community, employing at least 3.7 million people. However, for the past years, the number of fish caught has declined as some have engaged in destructive fishing practices. These destructive fishing practices involve the use of dynamites and cyanide on reefs, coupled with artificial island-building. At this point, the coral reefs of the SCS have declined at a rate of 16 percent per decade.¹⁶

These illegal, unreported, and unregulated (IUU) fishing practices were highlighted by the defense institutions representing their countries such as Indonesia, Malaysia, the Philippines, and Viet Nam during the Track II Network of ASEAN Defence and Security Institutions (NADI) Workshop on Marine Environmental Protection in the Philippines on November 2017. Representatives from Indonesia likewise expressed the need to classify IUU fishing practices as a transnational crime and recommends the utilization of the regional collaboration in combatting IUU fishing.¹⁷

China used to acknowledge the importance of maintaining the marine environment intact. Similar to other countries bordering the SCS, China's coastal population depends on resource management and protection of the marine environment, wherein China instituted a temporary ban on fishing back in 1999.¹⁸

However, due to China's reclamation activities in the SCS, a large area of coral reefs

suffer from grave damage and destruction. The dredging and island activities undertaken by China produces sands and gravel deposits that destroy corals underneath. These activities damaged 55 square kilometers of reef. Further, China's engagement in destructive of fishing methods for giant clams have reportedly destroyed 104 square kilometers of living corals. According to McManus, these coral reefs could partially recover however, the sediments deposited on top of it would have to be washed away first.¹⁹

The intensified activities of China's large-scale reclamation and construction in the SCS caused the destruction of a large amount of coral reefs thus resulting to the displacement of organisms that inhabited them and have made the structural integrity of the reefs to be vulnerable to wave action and storm.²⁰ Thus, continuous large-scale military activities aside from land reclamation would lead to the overall destruction of the marine environment of the SCS.

The Peace Park Option

A peace park is defined by the International Union for Conservation of Nature (IUCN) as a "transboundary protected areas that are formally dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and to the promotion of peace and cooperation."²¹ The IUCN, based in Switzerland, is the oldest and largest international conservation organization in the world that holds an observer status in the United Nations.

There is a saving voice of experts and government officials recommending the creation of the Marine Peace Park as an alternative solution in managing the SCS. An international marine peace park is a protected area with an objective of obtaining or maintaining peace within its boundaries.²²

McManus urged for the peace park option in SCS explaining that a rise in tensions such as the increase military activities and exercises or a worst case scenario would cause massive

implications on the marine environment of the SCS.

Likewise, this scenario not only presents an implication on the environmental aspect of national security but affects the economic relations between great numbers of nations not only in Asia. He also argued that the proposal would benefit a wide range of nations as the SCS serves as an important breeding ground for marine life. The ocean current in the SCS moves in such a way that it distributes larval fish to the coastal areas of the region. For this to be preserved, the creation of an international management board, tourism facilities, research and programs, a private surveillance force, and a contracted research and management institutions should be established.

Antonio Claparols, President of the Ecological Society of the Philippines, explained that their group was among those who co-sponsored the motion to create a "Marine Peace Park" in the SCS. The motion was filed in the IUCN on 05 September 2016. The motion was filed with 11 other co-sponsors including the Center for Environmental and Legal Studies in New York.²³ Claparols explained that "the creation of a marine peace park and sanctuary is the ideal solution to the hotbed that the SCS has become, and is the peaceful solution for all countries claiming the territory."

Last July 2016, Supreme Court Senior Associate Justice Antonio Carpio offered a solution to the issue. Similar to the suggestion offered by Dr McManus, Justice Carpio suggested to make the SCS into an international marine peace park which would freeze claims over the islands for 50 to 100 years.²⁴

In addition, Justice Carpio explained that the engagement in the establishment of a marine peace park would mean a halt to the destructive practice of building artificial islands in the SCS. This would enable the coral reefs to rehabilitate and reproduce that would give birth to a thousand more species of fish. The creation of a peace park underscores the importance of restoration of natural resources.

Option for the Philippines

The Philippines, along with other signatories of the UNCLOS has the legal responsibility to protect the marine environment. Under Article 123 of the UNCLOS, the SCS is classified as a semi-enclosed sea as it is connected by other bodies of water such as the Yellow Sea, East China Sea, Sulu-Sulawesi Sea, Indonesian Sea, Gulf of Thailand, Gulf of Tonkin, Lingayen Gulf, and Manila Bay.

Therefore, cooperation of states bordering the semi-enclosed sea is acknowledged in order to exercise their rights in the performance of their duty under the Convention. Article 123 states that States may engage in regional organization through the following:

- a.** To coordinate the management, conservation, exploration, and exploitation of the living resources of the sea;
- b.** To coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
- c.** To coordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area; and
- d.** To invite, as appropriate, other interested States or international organizations to cooperate with them in furtherance of the provisions of this article.”

Further, under Article 192 of the UNCLOS, “States have the obligation to protect and preserve the marine environment.” The protection and conservation of the SCS is a general obligation under international law, of all surrounding states of this semi-enclosed sea. The option to transform the SCS into an international marine peace park is an ideal solution that would benefit the claimant states, the coastal states benefiting from the fish being produced, and the marine environment of the SCS.

In his speech, “Strengthen the Foundation for Pursuing Peaceful Development” last 28 January 2013, President Xi Jinping emphasized that “China will never sacrifice their legitimate

rights and interests or China’s core interests. No foreign country should expect China to trade off its core interests or swallow bitter fruit that undermines China’s sovereignty, security or development interest.”²⁵ Based on this clear and adamant statement, as well as China’s utter disregard for the Arbitral Award of 2016, China will not be persuaded to stop any activities in the SCS. However, focusing on its statement on its development interest and China’s growing population, the fish production in the SCS should appear as an equally important interest for China.

In 2016, Philippine President Duterte and Chinese President Xi Jinping made a verbal agreement allowing the two nation access to the fishing areas controlled by both countries. Under international law, this is not prohibited as Coastal States are required to share their vast resources to other entities under certain situation. These situations often involve disadvantaged states in terms of resources.

However, with regards to the fishing engagement with China, the recent event of a maritime incident²⁶ wherein the boat of Filipino fishermen was crashed and left to sink by a Chinese vessel because they were fishing in the area caused great alarm for the Philippines. The recent incident raised higher tensions regarding the impact of the engagement and proved that it is a one-sided affair benefiting only China.

Policy Considerations

In view of managing the dispute and preserve marine life environment in the SCS, international cooperation must be established in the engagement in environmental diplomacy. This would entail mutual benefit for all countries affected by the SCS dispute.

This paper draws some policy considerations while factoring in social acceptability on an environmental option vis-à-vis the Philippines’ national interest. Cognizant of the shift in Philippine foreign policy under the current administration, it is highly recommended to adapt an approach that will meet the interests of not only China and the Philippines but of all nations in the region.

Engaging in this approach may address the domestic concerns regarding the country's stand towards China alongside the protection of the country's sovereign rights. The following are the some of the policy considerations in managing the SCS.

1. Engage in Environmental Diplomacy.

Analyzing China's action, it will not stand down through simple diplomatic approach from claiming and militarizing the SCS. However, continuous land reclamation and militarization of the SCS will lead to overall destruction of its marine environment that would cause extreme damage and negatively affect the fish catch of countries in the region. In this light, emphasis of the environmental aspect of the SCS should be highlighted through the engagement of environmental diplomacy.

Environmental diplomacy is a framework used by international organizations such as the United Nations Environment Programme (UNEP) in transforming conflicts over natural resources and environment into opportunities by inducing joint responsibility to eliminate environmental stressors.²⁷

Engaging in environmental diplomacy would likewise call for an international environmental cooperation among ASEAN and China in the SCS. Scholars from the Department of Environmental Law and University of Iran explain that environmental diplomacy as a framework is characterized by international dialogue, international cooperation, environmental cooperation, and global peace.²⁸ Environmental diplomacy can utilize the environment as an initial entry point for dialogue. This would identify problems which would then facilitate in the identification of technical solutions and creating a common information among stakeholders.

Thus, to calm the current tensions regarding the 'verbal agreement' between the two countries on fishing engagement in the SCS, a formal agreement on fishing might ease the tension.²⁹ Further, in engaging in an agreement, it should be considered an environmental

engagement should first be done to ensure that there will be enough fish left for future generations and for the benefit of not only the two nations but all neighboring countries as well.

2. Creation of an International Marine Environment Research Center in the SCS.

One of the main aspects of engaging in environmental diplomacy is the facilitation of technical solutions. It is recommended that in order to further analyze and monitor the fish life cycle in the SCS, further research should be conducted to assess the timeline of rehabilitation that should be done to restore the coral reefs in the area.

Since the peace park initiative may also appear as a sensitive topic, especially in the Philippines in view of the participation of China to the conduct of marine scientific research in Philippine waters and the non-participation of Philippine research organizations³⁰, it is recommended that a single research facility be constructed for the SCS to encourage the participation of marine environmental scientist from all involved nations in marine environmental protection.

3. Call for an International Environmental Cooperation in the SCS.

The effort to establish the fine prints of the Code of Conduct in the SCS between ASEAN and China must not go to waste. However, in order to ensure a more inclusive Code of Conduct, it is recommended that states not only focus on the political and economic aspect of cooperation but also include the preservation of the SCS. The call for an international environmental cooperation in the SCS is a call for sustainable development and protection of the environment and natural resources. This is a call to a larger objective to protect the common human heritage.

The main output of an international environmental cooperation would be a Code of Conduct by ASEAN and China which includes the practices of environmental diplomacy and the stakeholders' participation in the protection and rehabilitation of the SCS.

Conclusion

Under Article 61 (2) of the UNCLOS, the coastal State “shall ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over-exploitation,” however, recent events have not contributed well into this endeavor. This paper proposes a different approach to international cooperation in managing the SCS. Due to its highly politicized nature, the dispute over the SCS caused the near destruction of its marine environment.

It is important to note that economic, environmental, as well as social factors are at stake in the existing regional inaction/wait-and-see policy on settling the SCS dispute. Therefore, this paper proposes engagement in environmental diplomacy to manage the dispute.

Environmental diplomacy is simply the ground work in preparation for global diplomacy

and sustainable development. It thrives on the idea that the world should not tolerate irresponsibility for one’s selfish needs but should consider the following generations and the promotion of the quality of human life. The concept of environmental diplomacy promotes international cooperation wherein the world could act in a unified manner and exist benefitting from the shared commonly nurtured resources.

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