PHILIPPINES v. CHINA REVISITED: OPTIONS & OPPORTUNITIES

JAY L. BATONGBACAL, PHD
ASSOCIATE PROFESSOR, UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW
DIRECTOR, U.P. INSTITUTE FOR MARITIME & OCEAN AFFAIRS
CORE PHILIPPINE POLICY RE. ARBITRATION

• PH has NOT given up/renounced/abandoned the Arbitration Award
• Discussion of the Award is temporarily shelved pending efforts to improve PH-CN relationship
• The President publicly committed to discussing the Arbitration Award at a later time during his tenure.
• The only authoritative interpretation of CN’s 9DL claim (i.e. claim to natural resources w/n 9DL area)
  • Not consistent with UNCLOS
  • Not valid against PH EEZ/CS
  • Not valid historic claim
• No islands/rocks generate 200nm EEZ/CS; no overlap between CN EEZ/CS and PH EEZ/CS
  • Only 12nm enclaves remain legitimately disputed areas
• CN maritime assertion activities & artificial islands contravene obligations under UNCLOS & related IL
CN POSITION & ACTIONS

- CN will not accept/recognize/implement the Award
- CN continues to carry out/expand activities in the PH EEZ/CS
  - Fishing
  - Maritime law enforcement activities
  - Marine scientific research
  - Military activities
BROADER IMPACT BEYOND THE AWARD

• Establishes an ideal moral standard
  • “fair” and “equitable” distribution of SCS
  • “right” and “wrong” in maritime claims
• Between PH and CN, creates basis of future determination of an internationally wrongful act (repeat of incidents already dealt with in Award)
• Enables differentiation between Political Accommodation and Legal Resolution
OPTIONS

• Resistance – parties refuse to budge, no improvement
• Capitulation – one party surrenders, one wins, other loses
• Cooperation – parties find means for mutual and reciprocal accommodation (some legal, some political) without prejudice to respective positions
OPPORTUNITIES

• CN continues to incur intangible costs for its refusal to abide by/act consistently with the Award
  • Incentive for adjustment and accommodation over the long term
• Newton’s Third Law, similar in geopolitics: action = reaction (eg, The Quad; SEA States naval build-up; neighborhood)
  • Incentive for moderation and self-restraint
• Common interest among littoral States in environmental sustainability, productivity of the SCS, peace and stability
  • Incentive for basic cooperation in management of resources, activities
OPPORTUNITIES

• Convergence in practice and policies of ASEAN claimant States
  • Based on practice, all Southeast Asian States’ maritime zones practice now consistent with/complement each other; CN “persistent objector”?  
  • ASEAN claimants States now have basis for unified position and practice; needs support of external powers; CN still needs friendly neighborhood
RECOMMENDATION: “BORDERLESS INITIATIVES”

- FONO throughout SCS except within certain safety distances from occupied positions; no arbitrary/extended military exclusion zones
- Specific coordinated unilateral actions to stop degradation of marine environment
  - Protect habitats within areas of own control
  - Combat illegal trade in threatened/endangered species
  - Prevent further damage to marine habitats
  - Coordinated/joint oil spill response
RECOMMENDATION: “BORDERLESS INITIATIVES”

• Cooperative Search & Rescue, HADR, crisis management mechanisms
• MSR partnerships/cooperation projects
• SCS as a shared maritime commons: littoral States share ALL or nothing of SCS
THANK YOU VERY MUCH!

END OF PRESENTATION