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**The South
China Sea
Disputes from
a Philippine
perspective:
The limits of
International Law
and the
predominance of
Geopolitical
dynamics**

Supervisor

Prof. Vanni Pettinà

Graduand

Jennifer Vendramin

Matriculation Number 863246

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Abstract

The South China Sea (SCS) contains one of the busiest sea lane for global trade, is one of the richest bodies of water in terms of resources and has a strategic location, thus, is one of the most disputed areas worldwide in terms of maritime sovereignty.

The SCS is currently one of the main concerns in the international arena due to its rapid process of militarization and internationalization. The Philippines is a good representation of the struggles Southeast Asian States in the area are struggling with: China's assertive and expansionist behavior. None of these states are able to match China's superiority in economic, political and military terms. The struggles concern China's undisputable maritime sovereignty over most of the SCS, based on its 'nine-dash line', which englobes the whole area regardless of other States' rights and claims, and on its "historic rights".

Such controversial line is in contrast with UNCLOS provisions, which regulate rights and obligations at sea and establish the limits of differing maritime zones. The Philippines to assert its rights resorted to international law by initiating an arbitration against China, and in the meantime strengthened its military ties with USA, its greatest ally on which its security depends. US-Philippine tie is peculiar, an admiration-subjugation kinship, given the fact that the Philippines was the first US overseas violent colonial conquest.

Nevertheless, USA is the best deterrent tool for the Philippines against China, and became a first necessity since the Philippine legal victory was never implemented nor accepted by China. This two-fold strategy in Philippine foreign policy proved fundamental, as geopolitics prevails over international law.

Introduction

The South China Sea, located in South East Asia and stretching from mainland China's coasts to the shores of several Southeast Asian States, is one of the most trafficked maritime areas, contains one of the busiest sea lane for global trade, is one of the richest bodies of water in terms of fishery, oil, gas and other living and non-living resources, and, hence, is one of the most disputed areas worldwide, at least in terms of maritime sovereignty.

The South China Sea disputes currently represent one of the main concerns in the international arena due to its relatively rapid escalation process, which quickly transformed the dispute from a regional quarrel into an international challenge and a new potential battleground that extends to third-parties States as well. This research is aimed at analyzing the disputes from the perspective of one of the directly involved States: the

Philippines. The Philippines indeed is a good representation for the struggles that most of the Southeast Asian littoral States in the South China Sea are dealing with, most notably China's assertive and expansionist behavior. Each ASEAN States' individual capabilities are not sufficient to match China's overwhelming supremacy and outstanding superiority in economic, political and military terms. However, not even as a collective power is ASEAN able to impact and alter China's actions in the South China Sea. The source of the Philippines' struggles, shared with all ASEAN States involved as well, is China's claims of undisputable sovereignty over most of the South China Sea. China's maritime claims are defined by the so-called "nine-dash line", a line that encompasses the whole South China Sea, regardless of other littoral States' rights and claims, based on China's alleged historic rights over the "islands" located in such a disputed Sea. However, most of the land features located in the South China Sea do not legally possess the requirements to be considered a proper "island". The distinction between island and other features is indeed fundamental in determining which entitlements and rights are generated. China's controversial nine-dash line is indeed in contrast with the provisions contained in the United Nations Convention on the Law of the Sea (UNCLOS), which establishes the limits that coastal States are legally allowed to use in determining a State's territorial water, exclusive economic zone, and continental shelf; and regulates the coastal State's and other States' rights and obligations within these maritime areas. Both the Philippines and China have ratified the UNCLOS, however, China's nine-dash line encompasses the Philippines' exclusive economic zone. China, allegedly justified by its nine-dash line and its historic rights, has been – and still is - constantly violating the Philippines' maritime rights under UNCLOS, heavily affecting Sino-Philippine diplomatic relations. The increasing tensions among the involved States led to a process of militarization in the South China Sea, mainly due to China's activities of building artificial islands and military installations upon them; and, as a consequence, to a quick process of internationalization of the dispute, mainly due to the Philippines' security relations with the United States and to the Philippines' attempts to attract the International Community into the dispute, to which China has strongly opposed. The Philippines has been the main driver in the internationalization process, for two main reasons: first, it is the only ASEAN State that, after several incidents, protests and failures in diplomatic dialogues, resorted to international law by filing a case against China before the Permanent Court of Arbitration, under UNCLOS. Second, the Philippines is the United States' closest ally in Asia, in cultural, institutional, commercial, and - above all – military terms. The special Philippine-

American friendship is considered a peculiar tie, given the fact that the Philippines had been the first overseas step and colonial conquest for the United States, as a result of the violent Philippine-American War. Nevertheless, despite the fact that U.S. colonial rule only ended in 1946, the Philippines considers USA as its closest friend, and the tie between the two States has intensified after the Philippines' independence, and has consolidated into a submissive-admiration kinship, which from the outside could even appear as U.S. neocolonialism hidden behind the mask of friendship towards their "little brown brothers".

The main aspect of this relationship in the context of the South China Sea is their military alliance, most notably the 1951 US-Philippine Mutual Defense Treaty, which obliges both States to military intervene in the event of an external aggression. Given the rising security concerns towards China's expansionism in the South China Sea, the Philippines, despite the cooling of its relationship with the United States due to a sporadic Philippine rising nationalist sentiment that resulted in the closure of U.S. bases in the Philippines during the '90s and the controversial Duterte Presidency between 2016 and 2022; has resorted to overall strengthen its military treaty with additional agreements, most notably the 1998 Visiting Force Agreement, the 2014 Enhanced Defense Cooperation Agreement, in order to ensure a large and frequent presence of US military force in the country, and last but not least the 2023 Bilateral Defense Guidelines, as an upgrade of the Mutual Defense Treaty aimed at including the South China Sea scenario as a valid reason to evoke such Treaty, which in the past decades was not included in U.S. interpretation of their defense commitments towards the Philippines. The latter, indeed, represents the Philippines' greatest deterrent tool against China. China, on the other hand, had engaged in a process of maritime reclamations and occupation between the '70s and the '90s, followed then by a "good neighbor" foreign policy that lasted from the mid-'90s until 2009, during which it showed an apparent willingness to dialogue and to multilateral diplomacy. This façade has quickly shifted to an assertive and hostile approach since 2009, with the submission of its nine-dash line map to the United Nations and with an increasingly belligerent attitude during Sino-Philippine encounters at sea. This switch in China's approach led the Philippines to initiate the South China Sea Arbitration against China, which, despite the Philippines' overwhelming legal victory, was never accepted nor implemented by China. China's non-compliance continued undisturbed, together with its militarization projects, to the point that since 2016 up to nowadays, China disposes of several military equipment and infrastructures all over its claimed "islands" (most of them being artificial ones) in the South China Sea, well within the Philippines' exclusive economic zone. As a result, the

Philippines' foreign policy based on a two-fold strategy (resorting to international law and increasing US military engagement) has proved a failure on one side, and a necessity on the other side. Despite several shifts in Philippine Foreign Policy based on presidencies' changes of direction, the military alliance with the United States remained and still is a pillar for Philippines' confrontation with China. This proves that, up to date, geopolitics prevails over international law, which is still "flawed" due to its lack of enforcement-mechanism and its difficulties in transforming theory into practice, abstractness into concreteness. Hence, all of these geopolitical developments suggest that the realist paradigm still triumphs over the liberal one in international relations.

Chapter 1: The South China Sea dispute from a Philippine perspective

This chapter will examine the reasons why the South China Sea is a disputed area among all States that are touched by it, by illustrating its strategic and economic value. The analysis will proceed with the description of the main historical development of the region in order to motivate its militarization and internationalization processes, and to be able to frame the implications under international law and the role of the international community. Last but not least, the geopolitical dynamics that are triggered will be discussed, as the security-related uncertainties rise, and how did they mutate following the apparent achievement of international law, which attempted to address and definitively settle the disputes.

1.1 Importance of the South China Sea

The South China Sea is currently one of the most crucial flashpoints and source of concern in terms of international stability, due to its strategic and geopolitical value. Above all, what draws the attention of international organizations, third-party States and international relations scholars are its potential implications in terms of security and stability in the Southeast Asian region, that could possibly extend to a global level, given its geopolitical structure. Its strategic value - which subsequently translates into states' interests - hence, geopolitical value as well; concerns several combined aspects, ranging from global trade, natural resources, energy production, geographical location, and ultimately to overlapping territorial claims that lead to rising nationalist feelings or resentments. Indeed, the South China Sea is one of the primary routes for international trade: more than 50% of international merchant fleet and at least one third of global maritime traffic pass through this sea. The amount of oil transported to East Asian countries through this sea is more than six times the amount that goes through the Suez Canal and 17 times the amount that is transported through the Panama Canal, considering that the South China Sea route provides on average two-thirds of energy supplies and crude-oil imports for South Korea, Japan, Taiwan and China. Moreover, the South China Sea, besides being a crucial hub for international trade, has also a great economic value itself thanks to its abundant fishing stocks, natural gas reserves - estimated 900 trillion cubic feet - and 7 billion barrels of oil reserves, all resources of high value, especially if Asian countries are interested in decreasing their dependence on Middle East countries, as far as energy supplies are concerned, and considering the increasing energy demands and consumption in the Asian region as well. In terms of trade, another vital interest is the free passage, granted by the freedom of navigation, given it is

one of the most trafficked sea lanes globally, both for littoral states in Asia and Western countries, most notably the United States¹.

Besides the economically-valuable contents within the sea itself, the core of inter-state disputes is represented by the numerous islands, rocks and reefs disseminated throughout the South China Sea, a body of water on which several Southeast Asian coastal states lie, most notably the People's Republic of China, Vietnam, Malaysia, Indonesia, Brunei, the Philippines and Taiwan. How and why did tiny islands, sandbars and rocks in the middle of the sea become such a focal point of contention? The interest for these small and mostly uninhabited land features, actually concerns what rights under International Law arise from them. Indeed, according to international customary law, any claim of sovereignty must be over land, whereas - as far as sea is concerned - the Hugo Grotius' principle of "*Mare Liberum*" prevails, thus, the principle of freedom of the seas, which grants that "seas are of free access to all and belong to no one". Hence, it is the presence of land – in the form of islands, rocks, or reefs – that eventually confer sovereignty and rights to a specific state. Such principle has been crystallized into international treaties, most notably the United Nations Convention on the Law of the Sea (UNCLOS), which is the legal basis on which the South China Sea disputes are centered on. UNCLOS became the main legal tool to regulate any claim of sovereignty or right at sea, included the South China Sea claims, and subsequent disputes. However, a crucial and debatable point is the definition of what is considered to be a habitable island or merely a formation of rocks, given the fact that different rights and rules apply based on these distinctions². The UNCLOS provisions that apply to this specific case will be further analyzed in the following sections. In order to properly frame the current situation, the claims and the counter-claims in such a contested sea, a brief historical background would help provide useful information for a correct interpretation of the events, in particular the process of militarization that the region of the South China Sea has experienced, and the evolution from a regional issue to a global challenge.

1.2 Historical background

This section will begin with the description of the sources used by the contestant states in the formulation of their maritime claims in the South China Sea, in particular China's controversial claim to practically the whole maritime area. A correct interpretation of the

¹ Foreign Policy Research Institute, Report "The South China Sea is the future of conflict", Robert D. Kaplan

² Sarah Raine and Christian Le Mière, "Regional Disorder: The South China Sea Disputes", pp. 22-23

underlying sources of alleged sovereignty is useful to understand the nature of the ongoing overlapping claims, and to compare them with the actual rights each littoral state possesses, under international law. Some of the involved states, most notably China, but Vietnam and Taiwan as well, attempted to apply the principle of “historic rights” to support and justify their territorial claims in the South China Sea. Other states, instead, based their territorial claims on what was established by International Law, in particular under UNCLOS provisions. However, the mixture of historic rights and UNCLOS rights resulted in overlapping territorial claims, that eventually fueled tensions among states. The term “historic rights”, which is a crucial element to properly interpret how international law has been applied in the South China Sea Arbitration Philippines v. China, is related to a specific means of acquisition of territory in international law. There is no established definition of the term under international law, yet. However, some scholars have attempted to explain it in various ways. According to Blum, “the term historic rights denotes the possession by a State, over certain land or maritime areas, of rights that would not normally accrue to it under the general rules of international law, such rights having been acquired by that State through a process of historical consolidation”. Blum further explains that historic rights are a product of a lengthy process comprising a long series of acts, omissions and patterns of behavior which, in their entirety, and through their cumulative effect, bring such rights into being and consolidate them into rights valid in international law³. It should be noted that the term “historic rights” is general in nature and can describe any rights that a state may possess that would not normally arise under the general rules of international law, absent particular historical circumstances. Historic rights may include sovereignty, but may equally include more limited rights, such as fishing rights or rights of access that fall well short of a claim of sovereignty⁴. Almost all territorial disputes involve small and weak littoral Southeast Asian states against China, whose claims - lacking any legal foundation – stretch from Chinese coasts to a few hundred kilometers away from its neighboring states’ coasts, covering the whole South China Sea and, most importantly, overlapping the areas and the island that, under International Law, are part of the Exclusive Economic Zones (which will be better explained afterwards) of these countries. How does China motivate its excessively-extended territorial claims in the South China Sea? China resorted both to its alleged historic rights and to its own interpretation of International Law.

³ Yehuda Z. Blum, “Historic Titles in International Law”

⁴ Florian Dupuy and Pierre-Marie Dupuy, “A Legal Analysis of China’s Historic Rights Claim in the South China Sea”, pp. 124-141

In terms of historic rights, China claims that, due to its long and glorious imperial past, the first people to have ever set foot on these islands were their Chinese ancestors, fishermen and merchants, who dominated the traffic in the South China Sea. Thus, Chinese allegedly discovered the islands and regularly used them as shelters and stop-overs, hence the Chinese population exercised continuous sovereignty over them. However, such assertions on historic rights lack sufficient evidence to prove China's current sovereignty to the islands. The proof that China presented, and upon which its current "nine-dash line" is based, is the 1936-published "Map of Chinese Domain in the South China Sea", contained in the "New map of Chinese Construction" cartographical volume.⁵

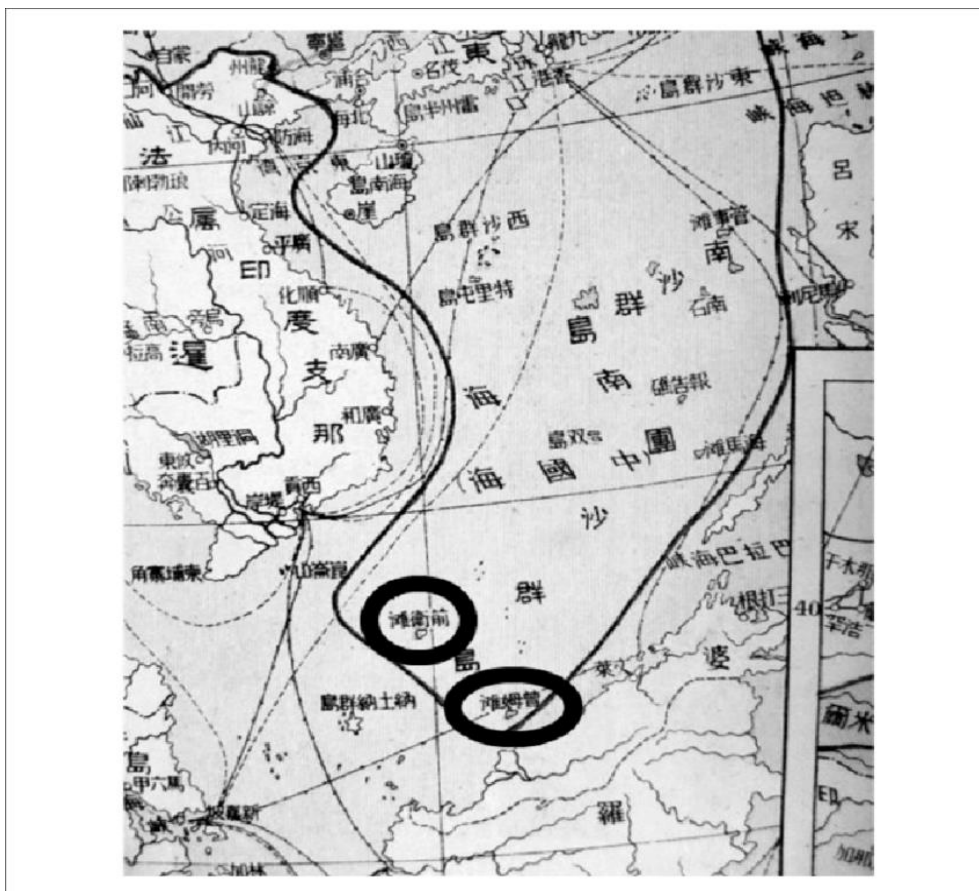


Figure 1: Map of Chinese Domain in the South China Sea" (1936), Beijing Normal University Newspaper no. 295 (May 10, 2012)⁶

This map is the first illustration of China's alleged boundaries that reach the southern part of the South China Sea, which is presented as the piece of evidence that the islands belonged to China and were used by Chinese fishermen and/or merchants. It should be noted that, back then, European powers were still present in Asia as well, hence, even

⁵ Sarah Raine and Christian Le Mière, "Regional Disorder: The South China Sea Disputes", pp. 24-26

⁶ "Map of Chinese Domain in the South China Sea" (1936), Beijing Normal University Newspaper no. 295 (May 10, 2012) https://www.researchgate.net/figure/Map-from-New-Atlas-of-Chinas-Construction-1936-published-by-Bai-Meichu-James-Shoal-is_fig2_324956433

France and the UK had claims in the South China Sea's islands - despite there were no strategic-commercial value or interests at stake - most notably France, which declared sovereignty over the Paracel Islands in July 1938. Indeed, what preoccupied European colonial powers were the expansionist ambitions of imperial Japan, which did claim sovereignty on the Spratly islands in 1938. After World War II, the situation in the South China Sea seemed to have calmed down, given the lack of countries with imperialist ambitions. Indeed, World War II marked the definitive defeat of the Japanese Empire, and the new role of the United States as guarantor of stability in the new international order. With the San Francisco Treaty of Peace of 1951, Japan officially gave up all of its claims to the South China Sea islands, hence, most of the territories were "vacant". During the second half of the 20th century, the attention to the South China Sea was no longer paid by European states or Japan, whereas the new actors involved in this area were, obviously, China and the Southeast Asian states surrounding the sea.⁷

In 1947, under the nationalist Kuomintang party, China marked its territorial claims in the South China Sea through an eleven-dash line, based on the 1936 Map of Chinese Domain and in the aftermath of post-World War II Japan's losses. The eleven-dash line, the predecessor of the present-day nine-dash line, was a U-shaped line drawn by Chinese geographer Yang Huairan to point out China's territorial waters and claimed islands, and to name each of these land features located within the South China Sea. Following the Chinese Civil War, in 1951 the new Communist leader Mao Zedong modified the previous map by reducing the 11-dash line to the infamous nine-dash line, after having renounced to the Gulf of Tonkin in favor of Vietnam, as a sign of friendship among Communist regimes⁸. Since then, the nine-dash line has been used by China to justify its right to sovereignty over the contested islands⁹.

The 1970s marked a new phase in the South China Sea disputes, most of the littoral states claimed portions of the islands under the principles of historic rights or the principle of "*res nullius*", which refers to the discovery of unclaimed and unoccupied lands¹⁰. One example of the latter principle was applied by the Philippines, when in 1947 Filipino businessman Thomas Cloma "discovered" the Western part of the Spratly Islands (located on the East of the Philippine island of Palawan) and established on them, proclaiming it a new state called

⁷ Sarah Raine and Christian Le Mièrre, "Regional Disorder: The South China Sea Disputes", pp. 26-28

⁸ The Print Essential, Srijan Shukla, "What is nine-dash line? The basis of China's claim to sovereignty over South China Sea", 28 July 2020, <https://theprint.in/theprint-essential/what-is-nine-dash-line-the-basis-of-chinas-claim-to-sovereignty-over-south-china-sea/469403/>

⁹ Council on Foreign Relations, "Timeline 1895—2020 China's Maritime Disputes"

¹⁰ Sarah Raine and Christian Le Mièrre, "Regional Disorder: The South China Sea Disputes", pp. 28-31

“Kalayaan”, in English “Freedomland”, given the fact that these were the closest islands to the Philippines and that they were “Terra Nullius”, hence unowned. Ultimately, in 1974, then Philippine President Marcos declared the Kalayaan Islands as Philippine sovereign territory, incorporating them to the province of Palawan Island¹¹. During the ‘70s, several claims were set down, most notably by China, Vietnam, the Philippines and Malaysia, and several features were occupied as well, giving birth to the current and ongoing disputes. Moreover, the fact that it occurred during the ‘70s is no coincidence, when the awareness of the presence of oil and gas reserves spread out, and when the 1973 oil crisis hit the world¹². Due to a United Nations’ seismology report in 1969, which declared the South China Sea an area “possibly rich in hydrocarbon deposits”, exploration projects and “scramble for territorial claims for oil and gas’ sake” were initiated, later confirmed in 1995 by a Russian Institute of Geologies, which reports “estimates reserves totaling approximately 4.7 billion barrels”¹³. Indeed, in 1976, following the 1972 “Oil Exploration and Development Act”, the Philippines discovered oil reserves off the coast of Palawan, and started drilling and producing petroleum under the Philippine first oil company, Philippine Cities Services Inc.¹⁴. As a matter of fact, the militarization process of the South China sea began, especially in the aftermath of the gun battle on the Paracels in January 1974, between China and South Vietnam, which was the first violent confrontation that led to the victory on the Chinese side, and as a consequence, to the occupation of portions of the Paracels by China. This specific event triggered security concerns for other states and generated further maritime expansionist appetite for China¹⁵. The term “militarization” used in this study refers to the process of equipping and increasing a state’s military resources, military capabilities and military alliances with other states, as an external security threat is perceived and, either it increases the probability of conflict, or it urges threatened states to seek deterrent strategies and greater bargaining power. Indeed, as China pursued its claims and occupation of land features, Southeast Asian states felt the urge to counter balance China’s evident superiority by resorting to military relations with external states, most notably the United States, and by consolidating their regional body, ASEAN, in which the South China Sea became a priority. The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967

¹¹ Lieutenant Colonel Stanley E. Meyer, “Incident at Mischief Reef: implications for the Philippines, China, and the United States”, pp. 3-4

¹² Sarah Raine and Christian Le Mièrè, “Regional Disorder: The South China Sea Disputes”, pp. 28-31

¹³ Lieutenant Colonel Stanley E. Meyer, “Incident at Mischief Reef: implications for the Philippines, China, and the United States”, pp. 5-6

¹⁴ Council on Foreign Relations, “Timeline 1895—2020 China’s Maritime Disputes”,

¹⁵ Sarah Raine and Christian Le Mièrè, “Regional Disorder: The South China Sea Disputes”, pp. 28-31

by five Southeast Asian states, namely the Philippines, Indonesia, Malaysia, Singapore and Thailand. It consists of a regional inter-governmental organization created to foster cooperation in the Southeast Asia region, aimed at the promotion of economic, cultural and social progress; and at maintaining regional peace and stability through the principles of international law and of the United Nations Charter. Since its creation, throughout the '80s and '90s, several other states have joined the Association, among them Brunei, Laos, Myanmar, Cambodia and Vietnam, up to the current ASEAN composition. Moreover, ASEAN's functions and purposes have extended also to bilateral and/or multilateral discussions and agreements with third-party states, for instance with China and the United States, in order to promote ASEAN's shared interests and to increase its effectiveness¹⁶. The 1992 ASEAN Declaration on the South China Sea, adopted in Manila on 22 July, indeed, called on all involved countries to settle all sovereignty and jurisdictional disputes concerning the South China Sea without the use of force, but by peaceful means, through 5 main points:

*"We, the Foreign Ministers of the member countries of the ASEAN [...] recognizing that the South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned; conscious that any adverse developments in the South China Sea directly affect peace and stability in the region; Hereby emphasize the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force; urge all parties concerned to exercise restraint with the view to creating a positive climate for the eventual resolution of all disputes; resolve, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility of cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combatting piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs [...]."*¹⁷

Since China is not an ASEAN member, the Declaration was not signed by Chinese Foreign Minister, although a separate statement was issued recognizing and welcoming such initiative. ASEAN countries, by agreeing with Philippines' attempts to involve external states that could deter China's assertiveness, pursued the internationalization of the South China Sea disputes, through, for instance, Philippines' calls on United Nations for intervention and mediation, and the establishment of the ASEAN Regional Forum (ARF), able to exercise

¹⁶ ASEAN, "the founding of ASEAN", <https://asean.org/the-founding-of-asean/>

¹⁷ASEAN, "1992 ASEAN Declaration on the South China Sea", 22 July 1992

some influence over China's approach, strategy and behavior with its neighbors, without isolating or containing China, but by engaging and promoting economic interdependence, in order to make China a stabilizing – rather than destabilizing – force in the region. The ARF included all ASEAN states, plus Japan, China, the European Union, Australia, Russia, Canada, New Zealand, Laos, South Korea, Papua New Guinea, and, last but not least, the United States.¹⁸

This specific study, though, is focused on the Philippine perspective and the role of the Philippines in the South China Sea disputes, therefore, from now on, the historical events will concern explicitly China and the Philippines, keeping in mind that disputes between China and other ASEAN states persist as well. As far as the Philippines and China are concerned in the context of the South China Sea disputes, the first remarkable event occurred in February 1995, when a Philippine flight noticed that China was building structures on Mischief Reef, a reef of the Spratly Islands located 130 miles west of Palawan Island. Despite the protests from Manila, the constructions and fortification continued¹⁹. As a result, on October 1995, in the aftermath of China's seizure of Mischief Reef, Philippine former President Ramos delivered a speech at the East-West Center in Hawaii in which he publicly stated that China represented a threat to regional security in South-East Asia, calling on the USA to militarily come back to the Philippines, and added that "even if Beijing does not have the capability to expand beyond its borders, China will inevitably be a political and military threat to Southeast Asia"²⁰. Besides Mischief Reef, China initiated a construction process of artificial islands in the surrounding area, most notably on Fiery Cross Reef and Subi Reef, on which it appears that identical defensive structures have been built over the decades, as tracked by the Asia Maritime Transparency Initiative, which observed that "China appears to have built significant point-defense capabilities, in the form of large anti-aircraft guns and probable close-in weapons systems, at each of its outposts in the Spratly Islands [...]. It now seems that these structures are an evolution of point-defense fortifications already constructed at China's smaller facilities on Gaven, Hughes, Johnson, and Cuarteron Reefs"²¹. As a result, the Philippines - and all other Southeast Asian states that have claims in the South China Sea - resorted both to military alliances with stronger states, and to an arms race, by increasing their investment in defense modernization, and

¹⁸ Lieutenant Colonel Stanley E. Meyer, "Incident at Mischief Reef: implications for the Philippines, China, and the United States", pp. 12-16

¹⁹ Sarah Raine and Christian Le Mière, "Regional Disorder: The South China Sea Disputes", pp. 31-32

²⁰ Zhao Hong, "The South China Sea Dispute and China-ASEAN Relations", p. 34

²¹ Asia Maritime Transparency Initiative, "China's new Spratly Island Defenses"

by acquiring military equipment and aircrafts from the West, in particular the Philippines acquired aircraft from Italy and added \$14 billion for its defense modernization project²². After having established its presence in several features – the wave of expansion between the ‘70s and the ‘90s - due to the increasing complaints and pressure by other States against China’s annexations, China switched to a diplomatic and cooperative approach, in order to pursue its “good neighbor” policy. The “good neighbor policy” refers to China’s foreign policy and diplomatic approach that had been adopted since the end of the Cold War. In the aftermath of Mao Zedong’s death in 1976, China experienced a period of reformation and fast-paced development under the rule of Deng Xiaoping, Mao’s successor and China’s greatest innovator. Deng’s ultimate goal was to modernize China and reform its economy and its culture, by opening up the country to international trade and to diplomatic relations, known as the “*open door policy*”, which marked the end of China as an internationally isolated nation. To proceed and pursue its project of modernization and progress after China’s opening to the international scene, Deng based his foreign policy strategy upon its motto “*keep a low profile and never take the lead*”, which translated into engaging in multilateral diplomacy, and maintaining a friendly-cooperative approach with neighbor-states, in order to promote China’s interests, while pursuing regional stability and economic cooperation as well. China’s goal during Deng’s administration, indeed, was to display China as a global power promoting prosperity, cooperation and stability, in order to increase its global influence, to improve its international reputation, to delete the foreign “misperception” of China as a potential hegemonic threat, and consequently, to downplay foreign states’ agenda of containment and counterbalance towards China. Such collaborative, multilateral and anti-hegemonic approach, which appears in total contrast with China’s concrete actions in the South China Sea, could be perceived as a Chinese attempt to minimize U.S. reach and influence in Asia, and to minimize the risk of military escalations in the South China Sea²³. Once all of the littoral States involved in the South China Sea disputes became members of ASEAN (Vietnam being the last state to enter in 1995), multilateral diplomacy and negotiations were put into practice, besides bilateral talks. The consolidation of ASEAN was perceived as a useful tool for Southeast Asian states to embark on an equal basis with China, clearly a larger, stronger and more powerful country, compared to each single

²² Lieutenant Colonel Stanley E. Meyer, “Incident at Mischief Reef: implications for the Philippines, China, and the United States”, p. 6

²³ European Strategist, International Affairs, Mezinàrodnì Denì, “China’s peaceful rise and the good neighbor policy”, 11 December 2011, <https://www.eurstrat.eu/chinas-peaceful-rise-and-the-good-neighbor-policy/>

Southeast Asian country, hence a useful “balancing-of-power” instrument to increase their bargaining power and their pressures on China²⁴. A Regional Forum such as ASEAN - whose primary purpose was to grant stability and security from external forces to intensify economic growth, social and cultural progress, and to peacefully resolve regional challenges - was perceived as the most likely multilateral formula for the resolution of the disputes, all state-claimants indeed favored this approach, except for China obviously, which had more bargaining power in bilateral formulas, given its proved willingness to use force as well, if deemed necessary. It should also be noted that, during the second half of the ‘90s, the United States’ position on the South China Sea territorial claims was still vague. The Philippines often mentioned the 1951 Mutual Defense Treaty with USA in the event of an armed conflict, however, the United States avoided to explicitly support Philippine claims and did not agree with Manila’s interpretation of Philippine-US Mutual Defense commitments in the South China Sea context, by stating that the Treaty can be evoked “in the event of an armed attack on the metropolitan territory of either party, or on the island territories under its jurisdiction”, hence, Washington’s interpretation is that the Spratly Islands, given the overlapping claims and undefined jurisdiction, do not possess the necessary conditions to implement their defense commitments. In addition, the United States, at least during the ‘90s, did not take “any position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls, and cays in the South China Sea”, although it has a strong interest “in the maintenance of peace and stability in the area”²⁵.

Going back to China’s change of approach, following the Mischief Reef stalemate, in 1995 China and the Philippines pledged to manage their territorial disputes with a peaceful approach by signing a bilateral agreement. Another step further in China’s cooperative approach was the Declaration on the Conduct of Parties in the South China Sea, signed by all ten ASEAN states and China, through its Vice Minister of Foreign Affairs, Wang Xi, on 04 November 2002. This declaration reaffirmed what was already established in the 1992 Manila Declaration, and expanded the commitments of all involved states to act upon the principles of equality, mutual respect and international law. The Declaration’s main provisions, indeed, recapitulated the states-parties commitment to the principles of international law, specifically to the United Nations Charter, to the 1982 UNCLOS, to the Treaty of Amity and Cooperation in South East Asia, and to their goal of building inter-state

²⁴ Sarah Raine and Christian Le Mière, “Regional Disorder: The South China Sea Disputes”, p. 32

²⁵ Lieutenant Colonel Stanley E. Meyer, “Incident at Mischief Reef: implications for the Philippines, China, and the United States”, pp. 7-12

trust and confidence through bilateral and multilateral dialogues and consultations, based upon mutual respect and equality, and states-parties willingness to avoid any escalation of disputes and to engage in peaceful settlement of disputes. In particular, concerning the South China Sea disputes, Articles 3, 4 and 5 explicitly state what behavior parties-state should maintain, although they cannot be considered totally exhaustive:

“ 3. The parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea [...];

4. The parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force [...], in accordance with universally recognized principles of international law, including the 1982 UNCLOS;

5. The parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner”²⁶

(Appendix 1)

However, the ten-point Declaration reiterated that all Parties should settle their disputes through peaceful means and in accordance with UNCLOS, abstain from occupying further features, and cooperate for the creation of a legally-binding Code of Conduct. Thus, besides the fact that such Declaration does not impose legally-binding obligations, it did not limit states to expand and strengthen their already existing fortifications. Hence, China, after having already covered and occupied its main areas of interest in the South China Sea during the wave of expansion and militarization between the '70s and the '90s, agreed to switch from a competitive to a cooperative environment, “committing” itself not to occupy new territories, but not to stop its fortification processes that were already in place. In October 2010, China’s Minister of Foreign Affairs Yang Jiechi, also agreed to sign another ASEAN document, the treaty of Amity and Cooperation in Southeast Asia, which was already created in 1976, in which all Parties further committed not to undertake activities that constitute a threat to the sovereignty of another party. The Treaty, unlike the Code of Conduct, is legally-binding and its main Articles establish the following provisions:

“Article II: in their relations with one another, the Parties shall be guided by the following fundamental principles: mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations; the right of every state to lead its national existence free from external interference, subversion or coercion; non-

²⁶ ASEAN-China Declaration on the Conduct of Parties in the South China Sea, 04 November 2002, <https://asean.org/declaration-on-the-conduct-of-parties-in-the-south-china-sea-2/> (Appendix 1)

interference in the internal affairs one another; settlement of differences or disputes by peaceful means; renunciation of the threat or use of force; effective cooperation among themselves. [...]

Article X: Each Party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another Party.

Article XIII: The Parties shall have the determination and good faith to prevent disputes from arising. In case disputes on matters directly affecting them should arise, especially disputes likely to disturb regional peace and harmony, they shall refrain from the threat or use of force and shall at all times settle such disputes among themselves through friendly negotiations.

Article XVII: Nothing in this Treaty shall preclude recourse to the modes of peaceful settlement contained in Article 13 of the Charter of the United Nations. The Parties which are parties to a dispute should be encouraged to take initiatives to solve it by friendly negotiations before resorting to the other procedures provided for in the Charter of the United Nations.”²⁷

Such Treaty was amended three times in order to make it open for accession by States outside Southeast Asia as well, subject to the consent of all the States in Southeast Asia. Indeed, the Treaty was signed both by the People’s Republic of China on 8 October 2003 and by the United States on 23 July 2009, showing another step further in China’s “good neighbor” diplomatic strategy, conceived by Deng Xiaoping in his modernization mission of China as an emerging global power. Furthermore, on 14 March 2005, the three most involved and “loud” states in the South China Sea disputes, namely China, the Philippines and Vietnam, joined a trilateral agreement, the Joint Marine Seismic Undertaking, establishing that the leading oil and gas companies of the three states will jointly explore a large area of the South China Sea. The Joint Statement on the Signing of a Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea, held in Manila, declared as follows:

“By signing this Agreement, the three parties expressed their desire to engage in a joint research of petroleum resource potential in the Agreement Area as a pre-exploration

²⁷ ASEAN, “Treaty of Amity and Cooperation in Southeast Asia”, 24 February 1976, <https://asean-aipr.org/wp-content/uploads/2018/07/Treaty-of-Amity-and-Cooperation-in-Southeast-Asia-1976-TAC.pdf>

activity. The joint activities will be conducted in the Agreement Area in accordance with the seismic work programs approved by the parties. The term of the Agreement will be three years. The joint activities will cover an area of about 143,000 square kilometer which is defined by specific geographic coordinates. The three parties affirm that the signing of the Tripartite Agreement will not undermine the basic positions held by their respective Governments on the South China Sea issue and will contribute to the transformation of the South China Sea into an area of peace, stability, cooperation, and development in accordance with the 1982 UNCLOS and the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea.”²⁸

The Agreement though did not specify anything concerning potential profit sharing in the event of discoveries of oil or gas resources in the area. Nevertheless, the Agreement, which was signed during former Philippine President Arroyo’s term, expired in 2008 after its first three-year term, and sparked allegations of unconstitutionality in the Philippines, since the exploration area extended and covered Philippine claimed territories in the Western Spratly Islands²⁹. As a matter of fact, on 10 January 2023, the Philippine Supreme Court officially declared the Tripartite Agreement for Joint Marine Seismic Undertaking among China’s National Offshore Oil Corporation, Vietnam’s Oil and Gas Corporation, and Philippines’ National Oil Company, unconstitutional and void. Such Agreement was, indeed, in contrast with Article XCC of the 1987 Philippine Constitution, which rules that “*Article the exploration, development, and utilization of natural resources shall be under the full control and supervision of the State*”. The Agreement was deemed illegal since it allowed corporations fully-owned by foreign states to explore, develop, and/or use natural resources that shall remain under the supervision of the Philippine government and shall be reserved to Filipino citizens and/or corporations, whose capital must be detained by Filipino citizens at least for 60%³⁰ (Appendix 2). Such provision contained in the 1987 Philippine Constitution suggests that the Philippines was dedicated to avoiding foreign exploitation or foreign investments that would not benefit its citizens, as a demonstration of its status as a sovereign state, and no longer a colony or “neo-colony”.

In spite of the attempts of trust-building, cooperation and multilateral diplomacy between the second half of the ‘90s and the 2000s, it is increasingly doubtless that the

²⁸ Embassy of the People’s Republic of China in the Republic of the Philippines, “Joint Statement on the Signing of a Tripartite Agreement for Joint Marine Seismic Undertaking in the Agreement Area in the South China Sea”

²⁹ Sarah Raine and Christian Le Mière, “Regional Disorder: The South China Sea Disputes”, p. 32-33

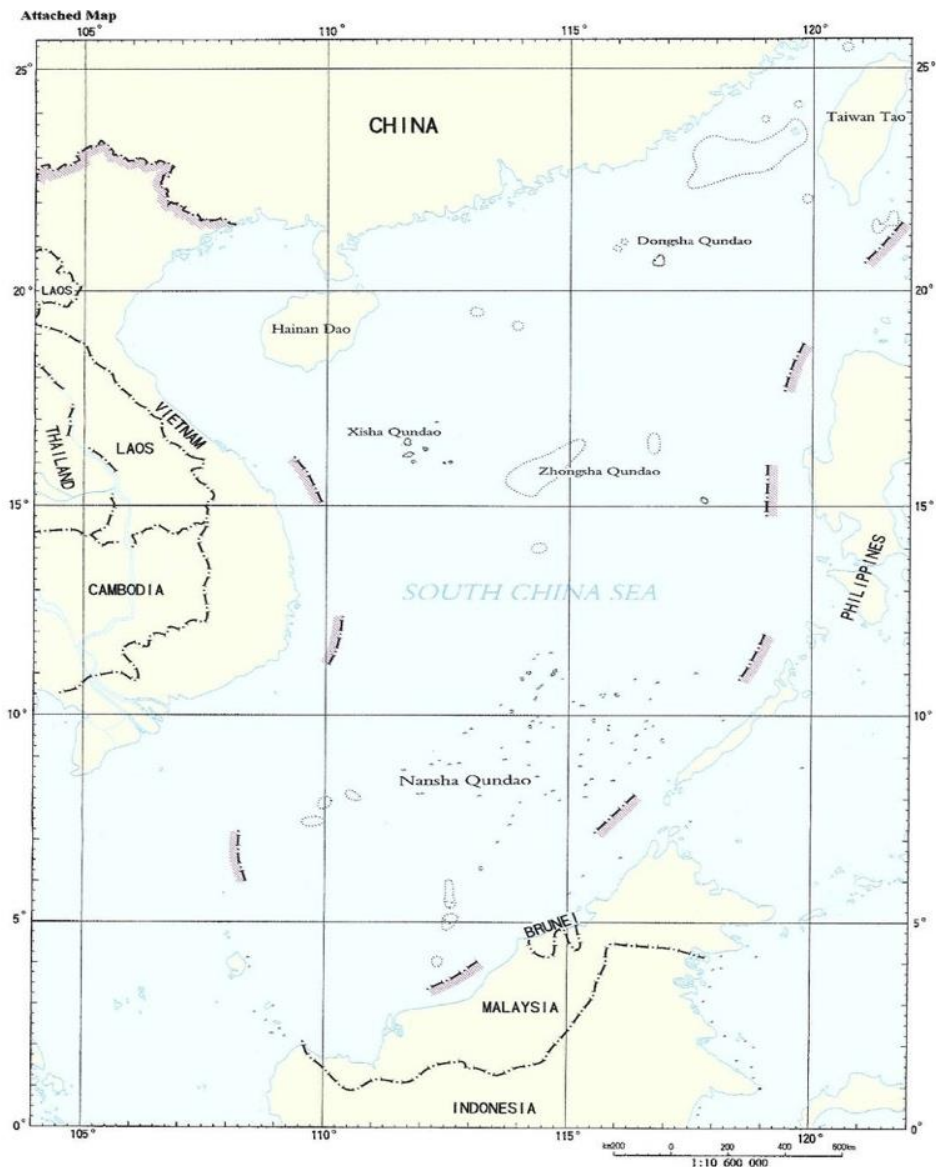
³⁰ Supreme Court of the Republic of the Philippines, Decision G.R. No. 182734, promulgated January 10, 2023, <https://sc.judiciary.gov.ph/sc-declares-unconstitutional-the-joint-marine-seismic-undertaking-among-philippine-vietnamese-and-chinese-oil-firms/> (Appendix 2)

commitments to cooperation and friendly negotiations were a mere façade, whereas, in the meantime, parties continued to distrust one another and were encouraged to proceed with their militarization processes. It should be noted that, although Deng Xiaoping died in 1997, his diplomatic strategy was advanced in the following years, and used as foundation for China's future foreign policy, along with the impressive economic and military development that China underwent, consistent with Deng's project of making China a "rich, powerful and respected member of the community of modern States". Indeed, it is in the second half of the '90s that China had concretely started implementing its Deng-inspired "good neighbor policy", and pursue the effective adaptation of Deng's strategy. Such diplomatic strategy had been realized later than expected due to unforeseen outcomes in the aftermath of the end of the Cold War that generated other domestic priorities for China³¹. However China's good-neighborliness started to fade towards the end of the first decade of the 21st century. The year 2009 specifically, marked a comeback trend as tensions over the South China Sea disputes were on the rise again, and demonstrated China's intransigent and coercive approach, a throwback to assertiveness and the "China threat", which no longer pursued its "good neighbor" foreign policy. First of all, China's submission of the "9-dash line map" marking Chinese claims to the South China Sea on the 7th May 2009 at the United Nations, after several requests of clarification were presented to China by the UN. The Document "CML/17/2009" submitted by the People's Republic of China to the United Nations states as follows:

*"China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). The above position is consistently held by the Chinese Government, and is widely known by the international community."*³²

³¹ Avery Goldstein, *The China Quarterly*, "The Diplomatic Face of China's Grand Strategy: A Rising Power's Emerging Choice", Cambridge University Press, December 2001, pp. 835-838

³² United Nations, "Document CML/17/2009" submitted by the People's Republic of China, 07 May 2009



(Figure 2: Document CML/17/2009, the “nine-dash line”, the United Nations)

The map, which is based on the 1951 nine-dash-line map established by Mao Zedong as stated earlier in this chapter, was submitted by China to the United Nations, and shows a U-shaped line that demarcates China’s territorial claims in the South China Sea. The line stretches from mainland China to the coasts of all involved South East Asian countries, encompassing almost all of the South China Sea. Hence, the area covered by the nine-dash line, is allegedly under Chinese sovereignty. The submission of this map marked a new phase in the South China Sea disputes, as stated above, it marked the end of China’s “good neighbor” policy, and the comeback of the perception of the “China threat” for the security and stability of the whole region. It sparked protests and counterclaims by all involved states, and most notably, it provoked the Philippines’ reaction to concretely resort to international law – not through regional bodies such as ASEAN - by bringing the case

before the Permanent Court of Arbitration in The Hague in 2013, which will be further analyzed in the following pages. Moreover, thanks to its well-performing economy, during the first decade of the 21st century, China had notably improved its military strength, especially its naval power, acquiring the capacity to deny or complicate even the access to U.S. Navy in its surrounding seas, most notably the East China Sea and the South China Sea, thanks to its increases in military spending, which allowed the purchase of sophisticated and modern military equipment and, consequently, allowed the expansion of its operational capabilities in the South China Sea. Hence, together with its military capabilities, China's assertiveness in supporting its maritime claims grew as well, by showing its willingness and determination to unilaterally settle potential maritime disputes through show-offs of its brand-new military muscles. Indeed, in 2010 China conducted four major naval exercises, which were a demonstration of China's readiness to use its naval forces throughout the maritime area and of its indisputable sovereignty³³.

Besides the submission of such controversial map and the Chinese Navy's improvements, several other events triggered the heating of tensions and disputes. One of the most remarkable incidents in the South China Sea was the "Impeccable" incident that occurred on 08 March 2009, which, for the first time, directly involved an external actor, namely the United States. China argues that, in its maritime area, foreign military and naval activities should obtain Chinese authorization to transit in Chinese territorial waters – or, more properly, Chinese claimed areas of the South China Sea - whereas the United States asserts the rights of freedom of navigation, freedom of overflight and of free passage under UNCLOS, and holds that China has no legal basis for limiting these freedoms in the South China Sea. As reported on the Asia Maritime Transparency Initiative, On 08 March 2009, a group of five Chinese vessels encircled the United States Naval Ship (USNS) Impeccable, a Naval Research Vessel, located 75 miles south of Hainan Island in the South China Sea. The USNS Impeccable, although owned by the U.S. Navy, is a non-armed ocean surveillance ship operated by the Military Sealift Command, which was reportedly engaged in hydrographic surveys in the South China Sea. Following warnings from the Chinese operators to depart from the area or "suffer the consequences", the Impeccable faced persistent harassments by Chinese vessels and aircraft paving the way to a significant incident. The head of China's South China Sea Bureau of the Fisheries Law Enforcement Command orchestrated such coordinated harassment operation,

³³ Renato De Castro, "Facing Up To China's Realpolitik Approach in the South China Sea: The Case of the 2012 Scarborough Shoal Stand-off and its aftermath", pp. 166-167

through a Chinese Navy intelligence ship, a Fisheries Law Enforcement patrol vessel, and a China Marine Surveillance vessel observing as two Chinese-flagged fishing trawlers headed towards the Impeccable, their focus being the ship's towed sonar equipment. One trawler attempted to collide with the submerged equipment, and when that failed, the crew resorted to grappling hooks on long poles. In response, the Impeccable used a high-pressure water nozzle to deter the crew of one of the Chinese ships. Worried, the Impeccable's captain eventually complied with Beijing's demand to leave and requested a safe route from China. However, the Chinese "fishing" boats abruptly blocked the Impeccable's exit by dropping wooden debris into the water. This forced the U.S. ship to stop suddenly in order to avoid collision. The China Marine Surveillance cutter and the Chinese Navy ship also obstructed the Impeccable's path. Only in the aftermath of these intimidating actions, the U.S. vessel did receive authorization to depart. The White House was promptly informed of the incident. As a consequence, Evan Medeiros, then-US director of the National Security Council for China, concluded that a strong signal was needed to halt such actions. On March 9, the Department of Defense criticized China's behavior as "aggressive and unprofessional," accusing them of violating their obligations under UNCLOS, and stressing the legality of U.S. operations in international waters. China reacted by criticizing U.S. behavior and policy, asserting that the U.S. had violated international and domestic Chinese law by operating in China's exclusive economic zone without permission. The Ministry of National Defense justified the harassment as "normal law enforcement activities" and urged the U.S. to respect Beijing's interests. Chinese officials claimed that foreign navies only had the right to "innocent passage" in China's Exclusive Economic Zones. On March 11 and 12, Both Chinese and US representatives agreed to prevent such incidents from taking place again. Although, the United States deployed a guided missile destroyer to monitor the Impeccable's return to its original site. A week later, the possibility of armed escorts became a consideration if Chinese harassment persisted. Chinese media reported that the military was prepared to end the standoff on March 20. However, this didn't indicate a change in China's view on U.S. surveillance missions along its maritime periphery. A month later, Chinese civilian fishing trawlers again harassed the USNS Victorious in the Yellow Sea. As a result, key conclusions from the Impeccable incident include differing interpretations of international law, more specifically the 1982 UNCLOS provisions, the premeditated and well-

coordinated nature of the harassment, the involvement of civilian fishermen behaving as military vessels, and China's response to U.S. signals of escalation.³⁴

Throughout 2010 and 2011, the Philippine Department of Foreign Affairs noticed a growing Chinese naval presence and activities in the Spratly Islands, together with an increasing number of harassments and potentially-violent confrontations between Chinese and Philippine vessels. For instance, on 25 February 2011, Filipino fishermen accused a Chinese military vessel of having fired gunshots to their three fishing boats anchored at Jackson atoll, 140 miles off Palawan Island, widely within the 200 miles of Philippine exclusive economic zone, the maritime area upon which - pursuant to UNCLOS provisions - the interested coastal state possesses exclusive rights in terms of economic activities derived from the resources present in the area (the definition of exclusive economic zone will be further explained in the next section). The fishermen reported that they were approached by a Chinese military ship warning them, through marine band radio, "You are in the China territory. Leave the area immediately". The fishermen asked for time to remove their anchors, but three gunshots were fired, which led the fishermen to cut their anchor ropes and flee from the perceived danger. Such declarations were then confirmed by a military report of the Philippine Navy. This event, together with other minor aggressive encounters, led then-Philippine-Foreign Affairs Secretary Del Rosario to consider such incidents as violations of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea, and to file diplomatic protests directed to the Chinese Embassy in Manila. The Chinese response to Philippine protests and allegations was merely a recommendation "to stop harming and violating China's sovereignty and maritime rights and interests, which leads to unilateral actions that can expand and complicate the South China Sea disputes, and to seek Chinese authorization before conducting activities in the area, even within the Philippine EEZ"³⁵. The most significant incident between the Philippines and China in the context of the South China Sea started on 08 April 2012 and is known as the "Scarborough Shoal standoff", which is considered to be the most evident risk of instability in the region. When a Philippine aircraft noticed Chinese fishing boats anchored in Scarborough Shoal - a territory claimed by Manila and on which the latter exercised de facto control, within the Philippine 200-mile Exclusive Economic Zone and 224 kilometers away from Philippine Province of Zambales - the Philippines reacted by

³⁴ Asia Maritime Transparency Initiative , Michael Green, "Counter-coercion series: harassment of the USNS Impeccable", 9 May 2017, by Michael Green(<https://amti.csis.org/counter-co-harassment-usns-impeccable/>).

³⁵ ABS-CBN News, Tessa Jamandre, "China Fired at Filipino fishermen in Jackson atoll", 03 June 2011, <https://news.abs-cbn.com/-depth/06/02/11/china-fired-filipino-fishermen-jackson-atoll>

sending a military ship, whose primary task was the protection of marine environment and resources, for inspection and to arrest the Chinese fishermen for illegal fishing of corals, giant clams, live sharks; and for illegal entry. However, in the meantime two Chinese Marine Surveillance vessels quickly reached the Shoal and took position in front of the entrance to the Scarborough Shoal's lagoon, preventing the arrest of the Chinese fishermen and accusing the Philippine ship of entry in Chinese territorial waters; leading the Philippine navy ship and the Chinese vessels into a standoff. Manila attempted to seek a diplomatic solution and on April 12 replaced its military ship with a Coastal Guard vessel, however, the action was not reciprocated by China, which instead sent a third vessel. During negotiations between then Philippine Secretary of Foreign Affairs Del Rosario and Chinese Ambassador in Manila, the Chinese fishing boats were escorted out of the shoal by two Chinese vessels, hence, the standoff involved just one vessel for each side. Del Rosario declared a stalemate in negotiations, but a second Chinese boat returned to the shoal, implicating that there were two Chinese vessels against one Philippine Coastal Guard vessel. At that point, given the lack of transparency and good faith in settling the standoff peacefully on the Chinese side, on 17 April Manila unilaterally decided to "go international" by involving third parties and by appealing to ASEAN, China's reacted by accusing Manila of breaking the agreement to settle the issue bilaterally, hence the standoff persisted. On 26 April Manila stated it would "seek to maximize U.S. involvement", to which China reacted by increasing its aggressiveness, harassing Philippine vessels in the shoal and sending four more Chinese vessels. In the meantime, Washington reiterated its alliance and its pledge to support the Philippines in building its naval power, but did not mention their Mutual Defense Treaty or if it was willing to intervene in defense of its ally. Consequently, since 03 May, Philippine fruit exports to China, which is its largest importer, were being banned by Chinese customs for alleged "failures in quality control tests". Moreover, the China International Travel Service imposed a travel ban by suspending all scheduled flights directed to the Philippines for "safety reasons". As a consequence, Chinese travel agencies and flight companies cancelled their trips to the Philippines, hitting Philippine businesses. These moves were perceived as an economic coercive threat connected to the Scarborough Shoal dispute, an implicit "embargo" against the Philippines to impose a Philippine retreat from the shoal, given the economic severe consequences the Philippines would suffer. In the meantime, Chinese moves in the Shoal kept escalating with an increasing number of Chinese vessels, up to 21 May, when the two Philippine boats were facing almost 20 Chinese vessels. Despite Manila's attempts of

settlement through back-channel negotiations that lasted for more than two months, under the pressure of U.S. assistant Secretary of State, Philippine vessels left the shoal due to bad weather conditions and a typhoon forecasted; and expected Chinese boats to reciprocate such action. United States negotiated a mutual withdrawal to settle the tense situation, but China did not follow and stated that its commitment was to de-escalate, not to totally withdraw from the shoal. Eventually, Chinese vessels remained and Philippine vessels left, with the conviction that Chinese would leave as well, which did not occur. The result of such unclear statements and continuous denials and changes of declaration by China was a de facto transfer of control of Scarborough Shoal from the Philippines to China. Manila decided not to reanimate the standoff, and by July Filipino fishermen were chased away from the shoal by Chinese vessels^{36 37}. In the aftermath of the standoff, Chinese Foreign Minister Fu Ying warned Manila not to appeal to the United Nations, not to extend the dispute to ASEAN, not to involve the United States and not to issue any press release concerning their negotiations. Basically, China was demanding the Philippines to silently accept China's control and occupation on Scarborough Shoal³⁸. The Scarborough Shoal stand-off represented a concrete proof of China's increasing assertiveness and decreasing neighborliness. However, defining China's strategy simply as assertive could be limiting. According to Sarah Raine and Christian Le Mière, indeed, the 2012 Scarborough Shoal demonstrated that China is with no doubts able to alter the status quo in disputed territories, however this capacity does not derive from the mere application of brutal force, on the contrary, China has resorted to smart – or sneaky - means as well, such as its misleading statements during negotiations, mixed with its display of force and power, through its naval maneuvers and the economic repercussions it can cause. To rely exclusively on its hard power capabilities would have been counter-productive indeed, as far as its reputation and image in the international arena are concerned, in particular. For this reason, to prove the world that China has no imperial ambitions or expansionist desires, it has always preferred deploying paramilitary means rather than merely military ones, aware that its military force is strikingly above any other claimant state. Its “good neighbor” foreign policy was indeed aimed at clearing China's international image, by showing its willingness to diplomatically settle disputes, through

³⁶ Asia Maritime Transparency Initiative, “Counter-coercion series: Scarborough Shoal standoff”

³⁷ Renato De Castro, “Facing Up To China's Realpolitik Approach in the South China Sea: The Case of the 2012 Scarborough Shoal Stand-off and its aftermath”, pp. 168-173

³⁸ Renato De Castro, “Facing Up To China's Realpolitik Approach in the South China Sea: The Case of the 2012 Scarborough Shoal Stand-off and its aftermath”, p. 174

dialogue and agreements, with a strong preference for bilateral frameworks over multilateral ones. However, the “diplomatic mask” has started disappearing since 2009, “as the gap between the rhetoric of cooperation and the reality of competition has become starker”, as stated by Raine and Le Mière. China’s “contained” assertiveness is often referred as “non-confrontational assertiveness”³⁹.

Nevertheless, the Scarborough Shoal standoff led Manila to confirm its perceptions of China as a threat to security and as a state with an assertive, coercive, ambiguous and aggressive approach, with which dialogue was not possible over its “undisputable” core interests, in this case, its alleged sovereignty over the South China Sea. Consequently, the Philippines reacted with two specific strategies. First, Manila started negotiations in 2013 with the United States for the establishment of the “2014 Enhanced Defense Cooperation Agreement”, a reinforcement of the already existing Philippine-American military agreements aimed at strengthening Philippine obsolete and weak military power and resources; and a tool that could serve as a deterrent against China’s assertiveness, due to U.S. greater and more frequent military presence (which will be further analyzed in the next chapter). It should be noted that China has always “feared” the involvement of the United States, to the point that it has warned in several occasions ASEAN states, most notably the Philippines, not to involve third-parties in bilateral talks, and that Americans should not involve themselves in the South China Sea issue as well⁴⁰. Second, former Philippine President Aquino was determined to resort to the United Nations through international law, by filing a case against China before the Permanent Court of Arbitration in The Hague for repeated violations of 1982 United Nation Convention on the Law of the Sea, in 2013.

1.3 International Law implications

The Philippines has been the first and only state among ASEAN states involved in the South China Sea disputes to assert its rights under international law and to press charges against China’s violations of international law, by filing the case *The Republic of the Philippines v. People’s Republic of China* before the Permanent Court of Arbitration in The Hague, which is also known as the “South China Sea Arbitration”. Before analyzing the Permanent Court of Arbitration (PCA) case number 2013-9, its implications, its developments and its final

³⁹ Sarah Raine and Christian Le Mière, “Regional Disorder: The South China Sea Disputes”, pp. 40-42

⁴⁰ Sarah Raine and Christian Le Mière, “Regional Disorder: The South China Sea Disputes”, pp. 42-44

verdict, it is important to examine the main provisions of the United Nations Convention on the Law of the Sea (UNCLOS) that are directly related to the South China Sea disputes.

1.3.1 UNCLOS provisions

The main elements included in UNCLOS that represent the core of disputes in the South China Sea, that coincide with the main elements discussed during the South China Sea Arbitration are, most notably, the provisions regulating the distinction among territorial sea, archipelagic water, and exclusive economic zones; and the distinction between natural island, artificial island, low-tide elevation, high-tide elevation or rock, which confer differing rights and obligations. Less relevant provisions (as far as the South China Sea Arbitration is concerned), which are still worth mentioning though, are the concept of freedom of navigation, freedom of overflight and innocent passage, representing the United States' core interests in the South China Sea disputes.

Given the fact that China claims sovereignty over most of the South China Sea, regardless of other claimant states' exclusive economic zones and territorial claims, and in several occasions has warned other states for having "entered Chinese territorial sea" in the main disputed spots, to understand whether China's claims are legitimate or not, a comparison between China's pretenses and UNCLOS provisions is needed.

Article 2 establishes that *"the sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea"*⁴¹. Article 3 proceeds by establishing the breadth of the territorial sea, by stating that *"every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention"*⁴², hence, territorial waters can extend maximum 12 nautical miles from baseline. The term that needs more clarification, to determine from where the 12 nautical miles (or the 200 nautical miles in the case of exclusive economic zones, which will then be explained) can be counted, is "baseline". Following China's claims of sovereignty, it appears that China establishes its baselines, to measure its territorial sea and exclusive economic zone, from the alleged islands – or land features – on which it claims sovereignty under its "historic rights". However, Article 5, indeed, explains that *"except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast*

⁴¹ United Nations Convention On The Law Of The Sea, Article II, p. 27

⁴² United Nations Convention On The Law Of The Sea, Article III, p. 27

[...]”⁴³, completed by Article 6 which states that “*in the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef*”⁴⁴. However, given the geographical nature of some states, Article 7 establishes that “*in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be deployed in drawing the baseline [...]. The appropriate points may be selected along the furthest seaward extent of the low-water line [...]*”. In particular, point 4 and 6 of Article 7 establish that “*straight baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them [...]. The system of straight baselines may not be applied by a State in such a manner as to cut off the territorial sea of another State from the high seas or an exclusive economic zone.*”⁴⁵ Considering that most of the land features located in the most contested South China Sea archipelago (most notably Paracel Islands and Spratly Islands) are not proper islands, Article 13 establishes that “*a low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of territorial sea from the mainland of an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.*”⁴⁶ In the specific case of archipelagic States, such as the Philippines, Articles 47, 48 and 49 concludes that, to determine the breadth of its territorial sea, archipelagic States are allowed to draw straight baselines by connecting their “outermost points of their outermost islands” if such baseline is aimed at merely including the main islands and an area of the water that does not exceed the ratio 1 to 1 and 9 to 1 to the area of land. Moreover, such baseline cannot be drawn from low-tide elevations that are located beyond the breadth of the territorial sea from the nearest island. Hence, the breadth of territorial sea or exclusive economic zone must be measured from archipelagic baselines that are properly drawn following the provisions indicated in article 47⁴⁷. Needless to say, the South China Sea “islands”, on which China claims sovereignty and that are used by China as their

⁴³ United Nations Convention On The Law Of The Sea, Article V, p. 27

⁴⁴ United Nations Convention On The Law Of The Sea, Article 6, p. 27

⁴⁵ United Nations Convention On The Law Of The Sea, Article 7, p. 28

⁴⁶ United Nations Convention On The Law Of The Sea, Article 13, p. 29

⁴⁷ United Nations Convention On The Law Of The Sea, Articles 47-48-49, pp. 40-41

baseline in measuring Chinese territorial water and exclusive economic zone, are at a considerable distance from China's mainland and China's internationally-recognized and legitimate islands. Moreover, regardless of the establishment of territorial sea or exclusive economic zone or continental shelf, which all generate different and specific rights to the coastal State, a fundamental pre-condition of any measurement and of any establishment of the baseline is the legal meaning of the term "island". Article 121 validates that

*"an island is a naturally formed area of land, surrounded by water, which is above water at high tide. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory. Rocks which cannot sustain human habitation or economic life of their own shall have **no** exclusive economic zone or continental shelf."*⁴⁸

Thus, to consider a land feature an island, it needs the requirement of being naturally formed and able to sustain human habitation or economic life of their own, which do not apply to most of the reefs, shoals and rocks in the South China Sea, indeed. To be even clearer, Article 60, which regulates artificial islands, installations and structures in the exclusive economic zone, states that

*"in the exclusive economic zone, the coastal state shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of: artificial islands; installations and structures for the purposes provided for in article 56 and other economic purposes [...]. The coastal state shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations. Due notice must be given of the construction of such artificial islands, installation or structures, and permanent means for giving warning of their presence must be maintained. [...] 8. Artificial islands, installations and structures do not possess the status of islands. They have **no** territorial sea of their own, and their presence does not affect the delimitation of the territorial sea, the exclusive economic zone or the continental shelf."*⁴⁹

Besides the fact that China has never noticed other coastal states of the construction of artificial islands, point 8 of Article 60 invalidates most of China's claims of sovereignty in the South China Sea, given the fact that most of its claims and actions at sea against other claimant states are based on China's alleged territorial sea stemming from its alleged sovereignty – justified through its alleged historic rights - over its alleged islands, that are

⁴⁸ United Nations Convention On The Law Of The Sea, Article 121, p. 66

⁴⁹ United Nations Convention On The Law Of The Sea, Article 60, p. 45

often artificial ones or mere rock formations, that in most cases are located within other States' exclusive economic zones. Article 55 establishes the legal regime of the exclusive economic zone, which is "*an area beyond and adjacent to the territorial sea, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention*"⁵⁰. Article 56 provides the rights, jurisdiction and duties of the coastal State in the exclusive economic zone, which are

"(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

(b) jurisdiction with regard to: the establishment and use of artificial islands, installations and structures; marine scientific research; the protection and preservation of the marine environment.

*[...]In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention."*⁵¹

Thus, a coastal State in its own exclusive economic zone possesses sovereign rights on all the resources contained in that zone, and on any economic activity derived from said resources, and has jurisdiction over scientific research, preservation of the marine environment, and over the possibility to build artificial islands, structures or installations.

Article 57 finally establishes the breadth of the exclusive economic zone, which "*shall not extend beyond **200 nautical miles** from the baselines from which the breadth of the territorial sea is measured*"⁵². For instance, Mischief Reef is located 130 nautical miles west of the Philippine island of Palawan, and Scarborough Shoal is located 119 nautical miles west of the Philippine largest island of Luzon. As a matter of fact, both land features are well within the UNCLOS-established economic exclusive zone of the Philippines (See figure below).

⁵⁰ United Nations Convention On The Law Of The Sea, Article 55, p. 43

⁵¹ United Nations Convention On The Law Of The Sea, Article 56, pp. 43-44

⁵² United Nations Convention On The Law Of The Sea, Article 57, p. 44



Figure 3: Philippines & China's Territorial Row, Source CNN Philippines (DFA/UN) <http://www.cnnphilippines.com/news/2016/07/12/PH-wins-maritime-arbitration-case-vs-China.html>

The Scarborough Shoal standoff is a perfect example to demonstrate China's illegitimate actions in the South China Sea, given the fact that the above-mentioned shoal is well within Philippines' exclusive economic zone, hence, the rights, jurisdiction and duties described in Article 56 belong to the Philippines, not to China. The actions that China would be lawfully allowed to practice are described instead in Article 58, which establishes that

“in the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms [...]. In exercising their rights and performing their duties under this Convention in the exclusive economic zone,

*States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of International law in so far as they are not incompatible with this Part.*⁵³

It is clear that China has overstepped the freedoms granted to other states in another state's exclusive economic zone. On the contrary, China not only did overstepped them, but acted as if the exclusive economic zone of another state were its own territorial water, as it occurred in Scarborough Shoal and Mischief Reef. As already explained, the fact that China warned Philippine vessels for having entered "Chinese territorial waters", following China's interpretation, is justified by its sovereignty claims over these "islands" (most of them being artificial islands built upon low-tide or high-tide elevations), hence, China holds that its alleged territorial water and alleged exclusive economic zone should be measured by these alleged islands, which represent the points from which China draws its alleged archipelagic baseline. In the event of overlapping exclusive economic zones, Article 74 declares that

*"the delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice in order to achieve an equitable solution. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV. [...] Where there is an agreement in force between the States concerned, questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement."*⁵⁴

Thus, UNCLOS does not provide specific mechanisms or rules for the resolution of potential disputes over States' exclusive economic zones or territorial waters, whereas, its provisions are limited to identifying which procedure should be followed when both involved States fail to settle the dispute peacefully and bilaterally. Indeed, Part XV regulates the settlement of disputes, Article 279 establishes that *"State parties shall settle any dispute between them concerning the interpretation or application of this Convention by peaceful means in accordance with the Charter of the United Nations"*.⁵⁵ Article 281, however, declares that in the event of a dispute regarding the interpretation or application of UNCLOS, in which the States Parties involved have agreed on their own the means to settle their dispute, Part XV then does not apply. Part XV's procedures are applicable instead only when the two States

⁵³ United Nations Convention On The Law Of The Sea, Article 58, p. 44

⁵⁴ United Nations Convention On The Law Of The Sea, Article 74, p. 52

⁵⁵ United Nations Convention On The Law Of The Sea, Article 279, p. 129

Parties have not been able to reach a settlement and in the absence of an agreement between the involved States that excludes further procedures⁵⁶. Article 286 continues by specifying that in the event of disputes concerning the interpretation or application of UNCLOS that have not reached any settlement through the means described earlier (bilateral agreements for instance), can be submitted to the tribunal or court having jurisdiction⁵⁷. Point 5 of Article 287 moreover establishes that *“if the parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the parties otherwise agree”*, which means that the rejection by one of the interested States to proceed through settlement-mechanisms provided by UNCLOS does not prevent the proceedings from taking place, and that details for this type of situation are provided in Annex VII⁵⁸. Finally, Article 296 establishes that final decisions taken by a court or tribunal having jurisdiction is to be considered final and legally binding for the States Parties involved in the dispute, although its binding force cannot be extended to Third-Parties States⁵⁹. Thus, the Permanent Court of Arbitration’s final verdict is legally binding for both the Philippines and China, but not for other States. However, despite the binding force of the decision, in the final chapter, the limits of international law will be indeed described.

As for the United States’ main interests concerning UNCLOS provisions in the South China Sea disputes, namely the freedom of navigation, overflight and innocent passage; Articles 17; 18 and 19 establish that ships of all States possess the right of innocent passage through the territorial sea of another State. Passage refers to the continuous and expeditious navigation through another State’s territorial water, stops and anchoring are allowed in case of accidents, issues and/or distress due to force majeure that prevent ordinary navigation, or for the purpose of assistance to persons, ships or aircrafts in danger at sea. A passage is considered innocent as long as it does not prejudice the peace, security and order of the coastal State. Actions that are considered prejudicial to the peace, and thus constitute that the passage is no longer innocent, include any threat or use of force, any exercise or practice with weapons of any kind, any prohibited economic activity such as fishing, exploring or researching within the coastal State’s territorial waters⁶⁰. Moreover, Article 24 imposes that *“the coastal State shall not hamper the innocent passage of foreign ships through the*

⁵⁶ United Nations Convention On The Law Of The Sea, Article 281, p. 129

⁵⁷ United Nations Convention On The Law Of The Sea, Article 286, p. 131

⁵⁸ United Nations Convention On The Law Of The Sea, Article 287, p. 131

⁵⁹ United Nations Convention On The Law Of The Sea, Article 296, p. 134

⁶⁰ United Nations Convention On The Law Of The Sea, Articles 17-18-19, pp. 30-31

territorial sea except in accordance with this Convention”, nor should it impose any form of requirements or discrimination on foreign ships which practically translates into the denial of the right of innocent passage⁶¹. Note that these four Articles are related to the passage of foreign ships in another State’s territorial sea, in the case of another state’s exclusive economic zone, Article 58 (already mentioned above) describes the activities that are allowed to foreign States, which are substantially greater than those allowed in territorial waters, and are included in Article 87 as well, regulating the high seas. Article 86 identifies what high seas are by stating that *“all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State”* are to be considered high seas.”⁶² Article 87 proceeds and establishes what the status of high seas entails, thus, the freedom of the high seas that must be enjoyed by all States, regardless of their geographical location. The freedom of the high seas consists of *“freedom of navigation; freedom of overflight; freedom to lay submarine cables and pipelines; freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; freedom of fishing; freedom of scientific research.”*⁶³ The distinction of sets of rights or obligation based on whether a foreign ship is located in its or another State’s territorial water or exclusive economic zone, or in the high seas, appears to be clear. What is not clear, at least in the South China Sea, is how to identify some portions of water, whether it is high seas, or territorial water, or exclusive economic zone. China, indeed, often limits and infringes foreign states’ rights at sea by claiming large portions of the South China Sea as its own territorial waters. This violation of other States’ rights of freedom of navigation and overflight or innocent passage, irritates the United States, which is a strong defender of these freedoms. On 21 April 2023, for instance, the U.S. Department of Defense released its “Freedom of Navigation Report for the Fiscal Year 2022”, in which the United States argues that any excess in maritime claims that are inconsistent with international law represents a threat to the rules-based international order, since it limits the rights and freedoms that every State can benefit from. Thus, the United States will continue pursuing its operations and diplomatic engagements contrasting these violations of other States’ rights and freedoms, and upholding the freedom of navigation as a fundamental principle necessary to allow “lawful commerce and the global mobility of U.S.

⁶¹ United Nations Convention On The Law Of The Sea, Article 24, p. 33

⁶² United Nations Convention On The Law Of The Sea, Article 86, p. 57

⁶³ United Nations Convention On The Law Of The Sea, Article 87, p. 57

forces". The U.S. Department of Defense explicitly defines the freedom of the seas worldwide as "longstanding U.S. national interest"⁶⁴.

It should be also noted that, the Philippines has signed UNCLOS on 10 December 1982 and has ratified it on 8 May 1984, China has signed it on 10 December 1982 as well, and has ratified it on 7 June 1996 (years later compared to the Philippines); on the contrary, the United States has never ratified it and therefore it is not a State-party. Moreover, China has made two specific declarations with reference to the Convention. The first declaration, made in 25 August 2006, consisted of the acceptance of the UNCLOS provisions concerning the 200-mile exclusive economic zone and the rights and duties generated by it, but adding a specific remark that China possesses sovereignty over "*the archipelagoes and islands in the South China Sea as listed in article 2 of the Law of the People's Republic of China on the Territorial Sea and Contiguous Zone promulgated on 25 February 1992*". Moreover, China also reaffirmed that the right to innocent passage through the territorial waters does not prevent China from requesting "a foreign state to obtain advance approval from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state."⁶⁵ (Appendix 3)

This declaration was made during China's "good neighbor approach" and attempts to engage in multilateral diplomacy, which revealed to be deceptive and misleading, especially after 2009. Moreover, the last part of the declaration on innocent passage, could be perceived as a provocation towards the United States. A second declaration concerning article 298 of UNCLOS was made by China. Article 298 consists of the possible procedures for the settlement of disputes that belong to specific categories. China rejected the procedures provided by Part XV of UNCLOS with respect to all the categories of disputes mentioned in article 298, namely "*disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, or other rights over continental or insular land*", "*disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service*", and "*disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction*".⁶⁶ (Appendix 4)

China's declaration under Article 298 was a clever move to prevent other States to resort to the instruments for the settlement of disputes provided by UNCLOS, in order to maintain as

⁶⁴ U.S. Department of Defense, "Freedom of Navigation Report for Fiscal Year 2022", 21 April 2023

⁶⁵ United Nations Treaty Collection, United Nations Convention On The Law Of The Sea, Declarations and Reservations, Declaration by China, 25 August 2006 (Appendix 3)

⁶⁶ United Nations Treaty Collection, United Nations Convention On The Law Of The Sea, Declarations and Reservations, Declaration under article 298 by China, 25 August 2006 (Appendix 4)

much as possible a bilateral framework, given the fact that the categories of disputes listed are represent the main complaints of all the other claimant states.

The Philippines as well made a declaration upon the signature of the Convention, later confirmed upon ratification, in which it establishes that such Convention does not affect the Philippines' sovereign rights granted by the its Constitution or any sovereign rights possessed by the Philippines as successor of the United States by virtue of the Treaty of Paris signed on 10 December 1898 between the United States and Spain, specifically the Kalayaan Islands (West Spratly Islands). Moreover, in such declaration, the Philippines also pointed out that the UNCLOS shall not effect in any way its mutual rights and obligations under the 1951 Mutual Defense Treaty with the United States⁶⁷ (*Appendix 5*).

Thus, the Philippines explicitly remarked its security relations with the United States that will not be affected by the provisions of UNCLOS, and its sovereignty rights over the Western Spratly Islands (Kalayaan Islands in Filipino indeed), which, at least in Philippines' perspective, were administered by Spain during colonial era, hence, passed to the United States after the Spanish-American War and ultimately to the Philippines after its independence from Washington. Nevertheless, in 2013 the Philippine Government, under then President Aquino III's administration, as a reaction to China's actions between 2009 and 2013, most notably the submission of its nine-dash-line map to the United Nations and the Scarborough Shoal standoff; firmly decided to assert its rights under UNCLOS and condemn China's violations of international law by filing the case number 2013-19 before the Permanent Court of Arbitration. Smartly, the Philippines did not directly contest China's sovereign claims and did not ask to establish maritime boundaries, on the contrary, the Philippine government contested the basis on which China made its maritime claim, hence the illegitimacy of its historic rights and the legal status of the land features China claims, which will be described in the following paragraph.

1.3.2 Philippines v. China Arbitration

On 22 January 2013, the Philippines officially filed an international arbitration case under UNCLOS against China's claims of sovereignty over Scarborough Shoal and the Spratly Islands. This was, and still is, the first time a state resorted to international law by initiating an international case against China under UNCLOS, concerning the South China Sea disputes. China rejected such legal procedure and had never participated in the arbitration.

⁶⁷ United Nations Treaty Collection, United Nations Convention On The Law Of The Sea, Declarations and Reservations, Declaration by the Philippines upon signature, 10 December 1982 (*Appendix 5*)

Its non-participation was “justified” by the fact that, from China’s perspective, the Permanent Court of Arbitration in The Hague lacked jurisdiction, and by its declaration made in 2006 (above-mentioned) on its non-acceptance of *“the procedures (for the settlement of disputes) provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298”*⁶⁸. However, in its final ruling, the Court did not rule on questions of sovereignty and did not delimit any maritime boundary either. The Court instead ruled upon China’s alleged historic rights used as legal basis for its sovereign claims, and consequently upon China’s nine-dash-line map and the legal status of some of the land features in the South China Sea. Therefore, the Court held that this specific dispute was not included among the exceptions provided in Article 298, hence the case was admissible and the Court had jurisdiction over it. Indeed, in the final Award of 12 July 2016, in the Introduction chapter, the Court explicitly stated that

*“the Convention (referring to UNCLOS), however, does not address the sovereignty of States over land territory. Accordingly, this Tribunal has not been asked to, and does not purport to, make any ruling as to which State enjoys sovereignty over any land territory in the South China Sea, in particular with respect to the disputes concerning sovereignty over the Spratly Islands or Scarborough Shoal. [...] the Tribunal has not been asked to, and does not purport to, delimit any maritime boundary between the Parties [...].”*⁶⁹
(Appendix 6)

What the Philippines asked the Court, which is not a declaration on maritime boundaries or on sovereignty, concern the source of China’s maritime rights, hence, the illegitimacy of using alleged historic rights upon which the nine-dash line map rely, rather than UNCLOS to claim sovereignty; together with the legal status of geographical features in the South China Sea, since the terms island, artificial island, low-tide elevation or rock all generate differing maritime rights; the lawfulness of China’s actions in the South China Sea; and, last but not least, China’s large scale construction of artificial islands that is causing huge damage on coral reefs and the maritime environment in general. All of these claims are well-summarized in the introduction of the Award (see Appendix 6), in which the Tribunal divided the Philippines’ assertions into four categories. The first category of claims concerns the source of maritime sovereignty, in particular China’s use of historic rights over the UNCLOS provisions and, consequently, China’s use of its nine-dash line for its maritime pretensions.

⁶⁸ United Nations Treaty Collection, United Nations Convention On The Law Of The Sea, Declarations and Reservations, Declaration under article 298 by China, 25 August 2006

⁶⁹ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Introduction Chapter, pp. 1-2 (Appendix 6)

The second category of demands presented by the Philippines relates to the legal status of the disputed maritime features. The Philippines, indeed, seeks an official definition of each land feature, in order to establish what rights or entitlements (territorial sea's rights, or exclusive economic zone's rights, or high seas' rights), are generated by each feature, regardless of each State's interpretation. The third set of claims laid out by the Philippines, as a consequence of the previous two categories, concerns the lawfulness of China's actions in the South China Sea (fishing, exploration, constructions of artificial islands, lack of protection of the marine environment), given the fact that the Philippines argues that China has violated UNCLOS by ignoring the Philippines' maritime rights in its exclusive economic zone and by behaving as if such maritime area belonged to China's territorial waters. The fourth set of claims, added during the proceedings, relates to China's non-collaborative attitude throughout the proceedings, for which the Philippines accused China for having aggravated the disputes, by not refraining, instead continuing with its allegedly unlawful actions even when the proceedings were taking place⁷⁰.

Nevertheless, China kept rejecting the Philippines' recourse to arbitration by not participating in the proceedings and by not accepting the final Award, considering its refusal to be lawful under UNCLOS. However, Article 9 of the Convention's Annex VII establishes that "*the absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings*"⁷¹, hence, China's absence did not prevent the arbitration from taking place. Despite the fact that China has never formally participated to the proceedings, China did remark its position against the Philippines' allegations. Most notably, China's Foreign Ministry published on 7 December 2014 a "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines" – also known as China's Position Paper - in which China argued that

*"the Tribunal lacks jurisdiction because: (a) the essence of the subject-matter of the arbitration is the territorial sovereignty over the relevant maritime features in the South China Sea; (b) China and the Philippines have agreed, through bilateral instruments and the Declaration on the Conduct of Parties in the South China Sea, to settle their relevant disputes through negotiations; and (c) the disputes submitted by the Philippines would constitute an integral part of maritime delimitation between the two countries."*⁷²

⁷⁰ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Introduction Chapter, pp. 2-3 (Appendix 6)

⁷¹ United Nations Convention On The Law Of The Sea, Annex VII, Art. 9, p. 189

⁷² Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Introduction Chapter, p. 4

Thus, China accused the Philippines for having “skipped” potential bilateral negotiations to settle the disputes agreed upon signing the Declaration on the Conduct of parties, and for having publicly accused China at the international level, without having attempted a bilateral or regional framework. Though, it should be noted that, especially during the Scarborough standoff, negotiations did take place, but turned out to be useless or even used slyly to mislead the counterpart, given China’s rigid and uncompromising stance on its alleged sovereignty over the whole South China Sea. Hence, the bilateral formula was excluded from the available options to settle the dispute. At the regional level, instead, in the aftermath of the Scarborough Shoal standoff, China was able to prevent ASEAN from mentioning or commenting the standoff and its potential implications for other littoral states as well. The neglect and lack of support by ASEAN towards the Philippine experience with China, led the Philippines to feel unfairly ignored by its allies theoretically fighting the same battle. Therefore, to state that the Philippines had immediately “jumped” to an extreme conclusion with no prior attempts of dialogue cannot be considered truthful.

A part from the preliminary matter of the Tribunal’s jurisdiction contested by China, the Philippine arguments were articulated in 15 specific Submissions that were covered from Chapter V to Chapter IX of the final Award of 12 July 2016. In Submission No. 1 the Philippines requested for “*a declaration that the Parties’ respective rights and obligations in regard to the waters, seabed, and maritime features of the South China Sea are governed by the Convention (UNCLOS)*”; in Submission No. 2 the Philippines asked for a declaration “*that China’s claims to sovereign and historic rights with respect to the maritime areas encompassed by the ‘nine-dash-line’ are contrary to the Convention and therefore without lawful effect*”⁷³; Submissions No. 3; 4; 5; 6 and 7 concern “*the status of, and maritime entitlements generated by, certain maritime features in the South China Sea, namely Cuarteron Reef, Fiery Cross Reef, the Gaven reefs, Johnson Reef, Hughes Reef, McKennan Reef, Mischief Reef, Scarborough Shoal, Second Thomas Shoal, and Subi Reef*”, and “*whether any feature in the Spratly Islands constitutes a fully entitled island, capable in its natural condition of sustaining human habitation or an economic life of its own within the meaning of Article 121 of the Convention, such as to be entitled to potential maritime zones that could overlap with those of the Philippines.*”⁷⁴; Submission No. 8 concerns “*China’ interference with the Philippines’ sovereign rights over non-living and living*

⁷³ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Introduction Chapter, p. 6

⁷⁴ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Introduction Chapter, p. 6

resources”; Submission No. 9 concerns “China’s failure to prevent exploitation of the Philippines’ living resources by Chinese fishing vessels”; Submission No. 10 regards “China’s interference with the traditional fishing activities of Philippine fishermen at Scarborough Shoal”; Submission No. 11 concerns “China’s failure to protect and preserve the marine environment through its tolerance and active support of Chinese fishing vessels harvesting endangered species and engaging in harmful fishing methods”; Submission No. 12 instead “China’s extensive land reclamation, artificial island-building, and construction activities at seven coral reefs in the Spratly Island and at Mischief Reef without Philippines’ authorization”; Submission No. 13 concerns “China’s operation of its law enforcement vessels in such a way as to create serious risk of collision and danger to Philippine vessels in the vicinity of Scarborough Shoal during two incidents in April and May 2012”; Submission No. 14 argues that “China has, through its activities near Second Thomas Shoal and its artificial island-building activities at seven coral reefs in the Spratly Islands, aggravated and extended the Parties’ disputes since the commencement of the arbitration”; and, last but not least, Submission No. 15 on “the future conduct of the Parties and the obligations on both Parties going forward to resolve their disputes peacefully and to comply with the Convention and this Award in good faith”⁷⁵. In the Philippines’ Notification and Statement of Claim of the Republic of the Philippines filed on 22 January 2013, the Philippines, besides submitting its claims, stressed that:

“it does not seek in this arbitration a determination of which Party enjoys sovereignty over the islands claimed by both of them. Nor does it request a delimitation of any maritime boundaries. The Philippines is conscious of China’s Declaration of 25 August 2006 under Article 298 of UNCLOS, and has avoided raising subjects or making claims that China has, by virtue of that Declaration, excluded from arbitral jurisdiction”⁷⁶,

to which China had replied by presenting a Note Verbale to the Department of Foreign Affairs of the Philippines on 19 February 2013 rejecting the proceedings and stating that

“China’s position on the South China Sea issues has been consistent and clear. The core of the disputes between China and the Philippines in the South China Sea are the territorial disputes over some islands and reefs of the Nansha Islands. The two countries also have overlapping jurisdictional claims over parts of the maritime area in the South

⁷⁵ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Introduction Chapter, pp. 6-7

⁷⁶ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, pp. 11-12

*China Sea and both sides had agreed to settle the dispute through bilateral negotiations and friendly consultations*⁷⁷.

The 15 Submissions were presented by the Philippines to the Tribunal on 30 March 2014, included in its Memorial that “*shall fully address all issues including matters relating to jurisdiction, admissibility, and the merits of the dispute*” as requested by the Tribunal through its Procedural Order No. 1 on 27 August 2013⁷⁸. China’s Ministry of Foreign Affairs published on 7 December 2014, as stated above, its Position Paper, which was distributed to the members of the Tribunal by the Chinese Embassy in the Netherlands, the Position Paper was accompanied by a Note Verbale in which China stated that

*“the Chinese Government reiterates that it will never accept nor participate in the arbitration unilaterally initiated by the Philippines. The Chinese Government hereby makes clear that the forwarding of the aforementioned Position Paper shall not be regarded as China’s acceptance of or its participation in the arbitration”*⁷⁹.

Given the lack of collaboration and strong opposition by China on potential site visits and other activities to evaluate the merits of the arbitration, with Procedural Order No. 4, on 21 April 2015 the Tribunal decided to consider China’s Position Paper and all communications done by the Chinese Embassy, thus it established to convene the Hearing of Jurisdiction to consider issues of jurisdiction and admissibility between June and July 2015⁸⁰. On 1 July 2015, another letter was sent by the Chinese Embassy to the members of the Tribunal, recalling and insisting on China’s practice of settling disputes through bilateral frameworks with the State directly involved, and on China’s right not to accept imposed means of settlement nor to accept the practice of unilaterally resorting to third-parties to settle the dispute, a right that was allegedly violated by the Philippines initiating the arbitration⁸¹. The Tribunal’s Award on Jurisdiction and Admissibility was issued on 29 October 2015 and unanimously found that the Tribunal was properly constituted in accordance with UNCLOS, that China’s absence does not entail that the Tribunal lacks jurisdiction, that the Philippines’ initiation of the arbitration is not to be considered an abuse of process, that any type of regional agreement or bilateral statement, such as the 2002 Code of Conduct in the South

⁷⁷ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, p. 12

⁷⁸ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, p. 13

⁷⁹ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, p. 14

⁸⁰ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, p. 16

⁸¹ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, p. 17

China Sea, between the Philippines and China do not preclude the recourse to dispute settlement procedures provided under UNCLOS and that both States have exchanged their views on their dispute as required under UNCLOS to proceed. Thus, the preliminary jurisdiction Award confirmed that the Tribunal possesses jurisdiction and rejected China's claim of inadmissibility of the arbitration, without considering China's absence as a limit to the arbitration. As far as the Submissions were concerned, the Jurisdiction Award confirmed the jurisdiction of 7 out of 15 Submissions, and reserved consideration of the remaining 8 Submissions' jurisdiction during the merits phase.⁸² (*Appendix 7*)

China reacted on the 30 October 2015 by issuing a Statement on the Award on Jurisdiction and Admissibility of the South China Sea arbitration by the Arbitral Tribunal, in which China reiterates, once again, that such Award is "*null and void, and has no binding effect on China*", and in which it insists that "*China has indisputable sovereignty over the South China Sea Islands formed in the long historical course and protected under international law*". Moreover, China considered such decision by the Philippine government as an abuse of procedures and as a "*political provocation under the cloak of law*" and an "*attempt to negate China's territorial sovereignty*", and that such severe breach of international law and avoidance to settle their dispute through bilateral consultations "*damages the basis of mutual trust between states*".⁸³ (*Appendix 8*)

The words used in the Statement by the Chinese Ministry of Foreign Affairs are clear, not interpretable and bold. These words reflect China's anger towards the Philippines for having dared to challenge China's "undisputable" sovereignty at the international level. China, whose violations of Philippine rights under UNCLOS are undeniable, played the victim and turned the tables in its favor, and accused the Philippines of having "breached China's legitimate rights under UNCLOS" given the fact that they repeatedly agreed to settle disputes bilaterally through negotiations. Thus, the fact that, in more occasions, negotiations between the Philippines and China did not lead to a settlement, but instead to an escalation of the situation (see Scarborough Shoal), added to the fact that disputes arise specifically from China's "indisputable" claims, claims upon which China has absolutely never showed willingness to dialogue, demonstrating that China's stance in potential negotiations will never be collaborative, rather will always be rigid and unmovable; furtherly added to the fact that China is not even willing to discuss the merits of the Philippines' submissions and

⁸² Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, Award on Jurisdiction and Admissibility, pp. 19-20 (*Appendix 7*)

⁸³ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, pp. 20-21 (*Appendix 8*)

arguments, hence it rejects any Philippine view *a priori*, all these facts put together, on China's view, do not justify the Philippines' attempt to settle their dispute through other means, such as involving Third-Parties' interpretation of UNCLOS. On the contrary, on China's view, to resort to legal means for the settlement of disputes allowed under international law, unrealistically becomes a breach of international law and of China's rights. To make it clearer, the Philippines' "shoutout" of the violation of their rights under international law perpetrated by China, is in its own a violation of international law and China's rights, even without determining whether China has concretely breached Philippines' rights or not. Moreover, the fact that China explicitly mentioned the bilateral agreements and the China-ASEAN agreement reached since the '90s, during China's foreign policy of "good neighbor", demonstrates that China's intention was not to increase its legal obligations towards its neighbor state, its intention was to defend itself and its image from potential allegations of assertiveness through this shield, which enables China to prove its "commitments" to peaceful resolutions through bilateral negotiations, which in reality had never occurred. Its insistency on the bilateral framework lies on the fact that China is aware of having more bargaining power and coercive capabilities than any other ASEAN state, which can be used and hidden under the mask of "diplomacy and willing to dialogue" behavior.

Following the positive Award on jurisdiction and admissibility, the Hearing on the Merits were held on 24, 25, 26 and 30 November 2015, during which oral presentations were made. Most notably, the former Philippine Secretary of Foreign Affairs Albert Del Rosario, during his concluding remarks, recalled:

*"two centerpieces of the UN order were the sovereign equality of States and the obligation to settle disputes by peaceful means. [...] No State, no matter how powerful, should be allowed to claim an entire sea as its own and to use force or the threat of force in asserting that claim. No State should be permitted to write and re-write the rules in order to justify its expansionist agenda. If that is allowed, the Convention itself would be deemed useless. Power will have prevailed over reason, and the rule of law would have been rendered meaningless. [...]"*⁸⁴

In the aftermath of the Hearing on the Merits, during the Tribunal's phase of collection of independent expert opinions, additional materials, clarifications and comments to assess whether the Philippines' submissions are well-funded, on 12 May 2016, the Chinese Ministry

⁸⁴ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, Hearing on the Merits, pp. 25-26

of Foreign Affairs issued a statement in which China reiterated, once again, its position of non-acceptance of the proceedings and expressed its allegations of abuse of procedures and violations of international law committed by the Philippines, as already stated in several previous communications already mentioned; and also added harsh comments on alleged favoritism and injustice against the Tribunal itself, by stating that

*“the Tribunal is not objective or just. On several occasions, it distorts the provisions of the UNCLOS to embrace the claims of the Philippines. [...] The opinions made by the Tribunal, as an institution that manifestly lacks jurisdiction and should not exist in the first place, are personal views of the arbitrators at best and are not legally binding, not to mention its recognition or implementation.”*⁸⁵

Between May and July 2016, several letters were delivered to the members of the Tribunal from the Chinese Embassy, which were always said not to constitute a plea or participation in the arbitration, in which China kept illustrating its rigid position on its undisputable sovereignty, its historic rights, on the fact that all land features must be classified as natural islands and, thus, do certainly generate entitlements of territorial water and exclusive economic zone, and kept reiterating that the arbitration is null and void⁸⁶.

Eventually, the Final Award was issued on 12 July 2016, in which the Tribunal’s most relevant decisions in relation to the merits unanimously established that *“China’s claims to historic rights are contrary to the Convention and without lawful effect”* as they exceed the limits imposed by the Convention. Hence, *“the Convention superseded any historic rights”*. As far as the definition and legal status of the contested maritime features, the Tribunal found that none of them possess the requirements to be qualified as a naturally-formed island, all of the involved features are either low-tide elevations, high-tide elevations or rock formations that *“cannot sustain human habitation or economic life of their own”*, thus, such features *“do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation”* pursuant to UNCLOS provisions. The Award explicitly declares that, given the fact that none of the features are islands, *“there is no entitlement to an exclusive economic zone or continental shelf generated by any feature claimed by China that would overlap the entitlements of the Philippines”*. The Tribunal also explicitly agreed that *“Mischief Reef and Second Thomas Shoal are within the exclusive economic zone and continental shelf of the Philippines”*. Besides the analysis of

⁸⁵ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, Post-Hearing Proceedings, pp. 29-34

⁸⁶ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Procedural History, Hearing on the Merits, pp. 35-37

China's illegitimate sources of sovereignty and the definition of the legal status of the disputed features, the Tribunal also established that China, in several occasions, violated UNCLOS with respect to the Philippines' sovereign rights in its exclusive economic zone, and that China *"unlawfully prevented fishermen from the Philippines from engaging in traditional fishing at Scarborough Shoal"*. As for the preservation of the marine environment, it has been declared that *"China's land reclamation and construction of artificial islands, installations and structures has caused severe, irreparable harm to the coral reef system; China has not cooperated in the protection and preservation of the marine environment"*. Moreover, China's construction of artificial islands occurred within the Philippines' exclusive economic zone and without authorization of the latter. Last but not least, it has been ascertained that the operations at sea undertaken by Chinese vessels in several occurrences, among which the Scarborough Shoal incident, *"created serious risk of collision and danger to Philippine ships and personnel"*, and that such actions were perpetrated even when the proceedings were ongoing, thus, causing the aggravation of the dispute.⁸⁷ (Appendix 9)

In conclusion, the Permanent Court of Arbitration ruled in favor of the Philippines and invalidated the legal foundations used by China to justify its alleged undisputable sovereignty over the maritime area in the South China Sea encompassed in its nine-dash line. The Court has done so by confuting China's historic rights that are not sufficiently demonstrable and, above all, are contrary to the UNCLOS provisions. Hence, China's maritime claims based on its historic rights have no lawful effect. Not only China's historic rights have been invalidated, China's alleged territorial water, exclusive economic zone and continental shelf in the surrounding waters of the claimed land features in the South China Sea, have been declared inexistent, given the fact that none of these land features match the natural requirements to be legally considered an island. All land features have been classified as low-tide elevations, high-tide elevations or rock formations, hence, none of them generate entitlements to territorial waters, exclusive economic zone or continental shelf. China has also been accused for engaging in harmful activities both for the marine environment and for the security of Philippine ships; and for aggravating the dispute with its actions. Last but not least, the Court has confirmed that China has certainly violated Philippines' exclusive economic zone. It should be noted that, as affirmed in the preliminary phase, the Award did not regulate or establish any maritime boundary or sovereignty, the Award merely evaluated the legal reasoning upon which the claims of sovereignty are made and condemned any breach of the UNCLOS provisions, regardless of the Parties' sovereign

⁸⁷ Permanent Court of Arbitration, Philippines v. China case, The South China Sea Arbitration Award, Chapter X, pp. 473-477 (Appendix 9)

claims. This Award represents an overwhelming victory for the Philippines, which was finally able to assert its rights that had been constantly violated by an undisturbed China. However, it will remain a conceptual and theoretical victory, which has never been concretely implemented and translated into practice. The limits of international law due to its lack of enforcement-mechanisms, indeed, will be covered in the final chapter.

1.4 Post South China Sea Arbitration developments

Throughout the course of the South China Sea Arbitration, China had reiterated in several occasions its refusal and non-participation to the proceedings that were unilaterally initiated by the Philippines and upon which the Permanent Court of Arbitration allegedly had no jurisdiction. The Arbitration was seen as a violation of international law and a provocation, rather than an attempt to settle their dispute, by the Philippines. Indeed, the day after the final Award was published, Chinese Department of Foreign Affairs released a white paper in which it insisted and reiterated that the Philippines' claims and actions were illegal and acts of bad faith, and that "*in addition, China has historic rights in the South China Sea*"⁸⁸ Thus, it is not surprising that China rejected the final Award, has never considered it as legally binding and has never complied with it. On 5 February 2018, aerial photos of China's outposts in the Spratly Islands were published by the Philippine Daily Inquirer, which show that China's artificial islands started hosting large and complete air and naval bases, and that new constructions were also taking place despite the Permanent Court of Arbitration's Award in 2016. Most of the reefs claimed by China, by the end of 2017, already had military facilities available, among which there are airstrips, communications and intelligence facilities, large hangars to accommodate aircrafts, point defense facilities including close-in weapons systems, underground storage facilities, large radar arrays and communications towers⁸⁹.

On 18 May 2018, Chinese People's Liberation Army Air Force officially announced that, for the first time, it had landed bombers in China's outposts in the South China Sea. Despite the fact that the outpost involved was Woody Island, in the Paracel Islands, "nearly all of the Philippines falls within the radius of the bombers, including Manila and all five military bases earmarked for development under the U.S.-Philippines Enhanced Defense Cooperation Agreement", as suggested by the Asia Maritime Transparency Initiative. It is clear that China

⁸⁸ People's Republic of China, the State Council, White Paper "China adheres to the position of settling through negotiation the relevant disputes between China and the Philippines in the South China Sea", 13 July 2016

⁸⁹ Asia Maritime Transparency Initiative, "Comparing Aerial and Satellite Images of China's Spratly Outposts", 16 February 2018

has engaged in several deployments of military platforms, facilities and weapons all over its claimed outposts in the South China Sea⁹⁰. Besides the increasing militarization process that took place even after the Award, Chinese vessels also continued to patrol the surrounding areas of the Spratly Islands within the Philippines' economic zone, to dangerously harass Philippine vessels, to impose a fishing ban on the Philippines' exclusive economic zone and to block Philippines' exploration for oil and gas⁹¹.

On 9 June 2019, a Chinese fishing vessel clashed with and sank a Filipino fishing boat that was anchored at Reed Bank, and sailed away while the Philippine boat was sinking, without offering any form of assistance. The Filipino fishermen were rescued after more than six hours by a Vietnamese vessel. This collision, in the framework of Sino-Philippine relations, was the most serious among all incidents in the aftermath of the Award. A formal diplomatic protest was filed, to which China responded by simply stating that the collision was just "an ordinary maritime traffic accident", however the Philippines insisted it was not an accident, but a deliberate act to ram the Philippine fishing vessel, given the fact that the latter was anchored, not sailing. However, then Philippine President Duterte's appeasement approach towards China, downplayed the incident and the South China Sea Award in general during his term⁹². Incidents, harassments and diplomatic protests persisted in the following years, demonstrating that the South China Sea Award was perceived as a mere meaningless piece of paper by China.

As far as China's diplomatic strategy is concerned, it should be noted that the South China Sea Arbitration occurred after the current Chinese leader Xi Jinping's election in 2012. China's assertive and intransigent stance with regards to the proceedings reflects Xi's new foreign policy for the new China, which left Deng's doctrine of "low profile" and neighborliness behind. Xi's doctrine is known as China's "Major Country Diplomacy", which represents the fulfillment of China's rise as a global power and its new leadership in global affairs. Its role is no longer passive towards the geopolitical dynamics, but active and able to affect and induce changes on the international stage. Given its new influential power, China's foreign policy is now aimed at safeguarding its core interests and at fulfilling its domestic preferences in an increasingly nationalist environment, by fostering a more favorable and equal international order in which "Western predominance and monopoly" in

⁹⁰ Asia Maritime Transparency Initiative, "China lands first Bomber on South China Sea Island", 18 May 2018

⁹¹ Asia Maritime Transparency Initiative, "Failing or incomplete? Grading the South China Sea Arbitration", 11 July 2019

⁹² Asia Maritime Transparency Initiative, Renato Cruz De Castro, "Incident at Reed Bank: A Crisis in the Philippines' China Policy", 20 June 2019

global affairs no longer prevails. China, especially since Xi, has been presenting itself as the new non-Western alternative in the world stage, in particular towards developing nations, as its self-confidence and national pride grew along with its economic and political power⁹³. Thanks to its new economic and military capabilities, China is now able to fiercely advance its national interests in international issues, such as the South China Sea dispute, and to compete with global powers, such as the United States. Xi often referred to its “China dream” and “centennial goals” that are part of his “historical mission” of consolidating China’s global status and vindicate the humiliation suffered during the previous centuries at the hands of Western powers.

Going back to the South China Sea disputes, as of March 2023, the Philippines is still unable to explore and exploit its non-living resources within its exclusive economic zone due to China’s presence and challenges. Hence, the Philippines is still not able to enjoy its rights under UNCLOS up to date due to China’s assertive presence and militarization process in the area within its nine-dash line, despite its legal victory in 2016⁹⁴. Nevertheless, back to former President Aquino III’ administration between 2010 and 2016, his foreign policy to contain China’s expansion in the South China Sea was based on a two-fold strategy: as we have analyzed so far, to resort to international law instruments, and to strengthen the Philippines’ military and security ties with the United States, by increasing U.S. military presence in the country that could serve as deterrent for China’s actions in the South China Sea. Given the fact that the international law option has proven “useless” in practical terms, merely a theoretical victory that did not prevent China from continuing its illegal practices, the U.S.-Philippines military relations become even more necessary to counterbalance China’s power. The next chapter, indeed, will analyze the roots of U.S.-Philippines relations, which currently represents the best – or the only available – option for the Philippines’ management of the disputes with China.

⁹³ Yang Jiemian, “China’s New Diplomacy under the Xi Jinping Administration”, *China Quarterly of International Strategic Studies*, Vol. 01, 2015, pp. 2-5

⁹⁴ Asia Maritime Transparency Initiative, “(Almost) Everyone is drilling inside the nine-dash line”, 8 March 2023

Chapter 2: The Philippines and its relations with the United States and People's Republic of China

This chapter is a detailed-analysis of the relationship between the main actor of this research, the Philippines, and its two most significant allies-rivals, namely the United States of America and the People's Republic of China. The former represents Philippines' long-lasting military ally and former colonial ruler, perceived as its "savior" for having expelled – although the term "replaced" would be more appropriate – the Spaniards first, and the Japanese then, from the Philippine archipelago; with which a special friendship – or a special form of neocolonialism, depending on one's perception – has developed, based on a mix of admiration-imitation-submission exchange. The latter, instead, represents Philippines' greatest and strongest neighbor-state, with which strong economic and financial ties – or dependency – have developed, in concurrence with rising tensions concerning overlapping territorial claims in the South China Sea – or West Philippine Sea - as a result of China's increasing assertiveness and "imperialist" – or merely global super power – ambitions.

Thus, the Philippines finds itself stuck between two global super powers in competition one another, although both countries are necessary for Filipinos' economic welfare or national security. The "dilemma" the Philippines is facing is whether it is more reasonable to give up its "nationalist pride" and most of its maritime rights under UNCLOS to indulge China's actions in the South China Sea in order not to undermine Sino-Philippine important economic and financial ties, and to safeguard stability in the region by not challenging China's claims and by maintaining a "permissive" behavior towards its "giant-bully neighbor"; or whether it is more reasonable to give up its "nationalist pride" not in terms of international rights, rather historical ones, by "hiding" behind the shield of United States' military protection, its former colonial ruler, and consequently risking potential critics of still being a "neo-colony", against its own Constitution and principle of self-determination.

To better understand what options and potential compromises the Philippines has in this geopolitical scenario, a review of its relations with both countries is needed.

2.1 USA – Philippines relations

2.1.1 USA's greatest admirer: the Philippines

The relations between the Philippines and USA, a topic that should be further analyzed in-depth a part from this research, are at the center of this paper.

Despite some short periods of detachment, that culminated during the former Philippine President Rodrigo Duterte's mandate between 2016 and 2022, the United States has

always been a long-lasting ally for the Philippines, in spite of being their former colonial ruler with which even violent and bloody episodes had occurred in the past century. The analysis of this topic will begin with a short description of one of the “weakest” moments in Philippine-American relations, in order to have a complete picture of how positive the relationship between these two countries in reality is, despite their initial violent-colonial encounter. President Duterte’s direction in terms of foreign policy during his term between 2016 and 2022, which featured a clear attempt to distance the Philippines from the U.S. sphere of influence while moving closer to China instead, was mostly inconsistent with Philippine officials’ and Philippine public opinion’s perception of the USA. His anti-U.S. rhetoric had always been in contrast with Filipinos’ opinion, which has always been positive and friendly towards USA, and on the other hand often negative, or at least suspicious, towards China⁹⁵. It should be noted that, as far as timeframe is concerned, Duterte’s presidency in the Philippines coincided with Donald Trump’s presidency in the USA. Pew Research Center’s report highlights that Trump’s presence in Washington DC had caused a negative impact on worldwide perceptions of the US overall, nevertheless, Filipinos’ perception of USA remained definitely positive, despite an inevitably decline. There had been a drop in Filipinos’ confidence in Trump compared to the previous Obama presidency, from 92% to 78% who expressed positive sentiment, although, Pew Research Center’s survey suggests that The Philippines was “the most pro-Trump nation” in 2017⁹⁶. In the meantime, despite Duterte’s attempts to improve Filipinos’ perceptions on China, opinions have not changed much instead, even though the economic relationship with the latter is vital to the Philippines. The economic factor indeed is one of the few elements that leads Filipinos to soften their view towards Chinese foreign policy over their territorial disputes. It is clear that Filipinos feel somehow “trapped” in their economic dependence on China. By comparing Filipinos’ opinion on whether it is more important to have strong economic relations with China, or keeping a tough behavior with China on territorial disputes, the result was almost even: 43% against 41%⁹⁷.

Going back to USA, this research suggests that “despite the drops, people in the Philippines still support the U.S. military presence in the region and say that the U.S. would defend them should they get into a conflict with China (68%)”, which is consistent with the majority of

⁹⁵ The Washington Post, Ishaan Tharoor, “Forget Duterte. The Philippines love the United States”, 22 October 2016

⁹⁶ Pew Research Center, Jacob Poushter and Caldwell Bishop, “People in the Philippines Still Favor U.S. Over China, but Gap is Narrowing”, 21 September 2017, p. 2

⁹⁷ Pew Research Center, Jacob Poushter and Caldwell Bishop, “People in the Philippines Still Favor U.S. Over China, but Gap is Narrowing”, 21 September 2017, pp. 2-3

Americans' belief (58%) that U.S. should, in the event of a conflict with China, use military force to defend their Asian allies. As far as the threat perception is concerned, 47% of the Filipinos surveyed perceive China as a major threat, against 25% who perceive the USA to be a threat instead⁹⁸.

Digging deeper, this survey reveals that 75% of Filipinos consider U.S. military presence in the country positively, and 82% consider the territorial disputes with China over the South China Sea to be a worrying issue⁹⁹.

Besides recent people's perceptions and opinions, in order to better understand the special tie that links the Philippines to the USA, a historical framework and a short analysis of their military relations are worth to be mentioned. First of all, the reason why the term "special" is used to describe the relation between these two countries, lies on the nature of their first direct encounter, which started with a violent and oppressive approach, and eventually flowed into an "indissoluble friendship", to the point that in 2015, before the election of the then President Rodrigo Duterte, according to Pew Research Center, "Filipinos like USA even more than the Americans do", with an astonishing 92% of respondents holding a positive view of the United States. No other country, globally, had a greater number of people admiring the USA than the Philippines, especially in Asia, although Filipinos' appreciation surpasses even traditional Western allies¹⁰⁰. This "indissoluble friendship" though could be perceived, particularly by external actors, as a dangerous "admiration – subjugation" kind of relationship, in which the USA, thanks to their abilities in terms of soft power (or, from another perspective, coercion), were able to easily and effortlessly conquer the weak, permissive and accommodating Philippines, thus to shape this Asian country to their needs and desires. Yet, as long as it is consensual, or even explicitly requested, by the Philippine side, the U.S. influential presence in the Philippine archipelago can proceed undisturbed through this form of "Empire by Invitation" as defined by Michael H. Hunt in "The American Ascendancy"¹⁰¹.

2.1.2 USA's annexation of the Philippines: Philippine – American war 1898-1902

However, it has not always been all roses: it should not be forgotten that between 1898 and 1902 a bloody and violent war had occurred between the expansionist USA and the

⁹⁸ Pew Research Center, Jacob Poushter and Caldwell Bishop, "People in the Philippines Still Favor U.S. Over China, but Gap is Narrowing", 21 September 2017, pp. 3 and 10

⁹⁹ Pew Research Center, Jacob Poushter and Caldwell Bishop, "People in the Philippines Still Favor U.S. Over China, but Gap is Narrowing", 21 September 2017, p. 9

¹⁰⁰ Rappler, "Filipinos like the US even more than Americans do – Pew Research", 22 April 2014

¹⁰¹ Michael H. Hunt, "The American Ascendancy", University of North Carolina Press, 1 February 2009, pp. 46-52

Philippines, immediately in the aftermath of the Philippine short-term, or almost non-existent, liberation from Spanish rule. Spanish colonial period had lasted since 1521, when explorer Ferdinand Magellan discovered the nowadays Philippine archipelago and claimed it a Spanish colony, up to 1898, when the Philippine revolution, guided by Emilio Aguinaldo and started in 1896, pushed a weakened Spain away. In the meantime, in 1898, the Spanish-American war was occurring indeed, with the United States pushing Spanish rule out of the American continent, specifically from Cuba and Puerto Rico, but also keeping an eye on Spanish colonies outside of the continent. Spain officially surrendered in 1898 signing the Treaty of Paris, which established that USA had gained former Spanish colonies of Guam, Puerto Rico and the Philippines, and that Spain no longer had sovereignty over Cuba. The Philippines were sold to the United States for the sum of \$20 million. The United States, by annexing the independent state of Hawaii as well during the Spanish-American conflict, were able to secure its predominance in the Caribbean region and to extend its presence to the Pacific region, specifically in Hawaii, Guam and the Philippines.¹⁰²¹⁰³ Needless to say, the Philippine desire for freedom from Spanish rule did not end as expected: after having fought hard for independence, Filipinos found themselves under the alleged rule of another state, the USA with emerging expansionistic and imperialistic ambitions, which, for the first time, had set foot overseas, specifically in the Pacific Ocean, a region that could give them access to the Asian continent.¹⁰⁴

The Philippine-American war, or also known as the Philippine Insurrection by Americans, officially begun in 1898, right after the Spanish retreat, when the First Philippine Republic was just established. It can be considered as the continuation of the Philippine struggle for freedom, firstly against their already known Spanish colonial rulers, secondly against a new world power and new obstacle to independence, the USA. The war officially ended in 1902, with the proclamation of the Philippines as a U.S. colony by then U.S. president Theodore Roosevelt, who had just succeeded former president William McKinley, the latter being the actual “responsible” for the annexation of the Philippines. It should be noted that, President Mckinley found himself trapped in the debate between American interventionists and isolationists, he had never had a concrete and defined plan for the U.S. future role in the Philippines after defeating Spain, whether the U.S. presence in the Philippines should be

¹⁰² U.S. Department of State, Office of the Historian, Foreign Service Institute, “The Spanish-American War, 1898”, <https://history.state.gov/milestones/1866-1898/spanish-american-war>

¹⁰³ Michael H. Hunt, “The American Ascendancy”, University of North Carolina Press, 1 February 2009, pp.

¹⁰⁴ Lewis L. Gould, “The Spanish-American War and President McKinley”, University Press of Kansas, April 1982, pp.60-67 and 84-90

limited to the goal of eliminating Spain or extended to the annexation of the Philippine islands. Eventually, despite his long attempts in keeping his position as much neutral and vague as possible, President McKinley had been “dragged” by the U.S. enthusiastic reaction to Dewey’s victory in Manila Bay against the Spanish fleet, and indulged Americans’ appetite for the taste of empire, as Americans’ consciousness of their own strength, power and potentiality increased. McKinley’s vagueness and lack of purposefulness towards the Philippines, and consequently the absence of concrete guidance for American officials who arrived in the Philippines to face the Spanish army, led to the collaboration between U.S. soldiers and Filipino insurgents against their common Spanish enemies in conquering Manila. Filipinos naively believed that Americans were there to help them against Spain, when US goal initially was limited to defeat Spain, and turned into replacing Spain and annexing the archipelago for their imperial ambitions, a goal that was actualized “in the making”, as the taste of empire grew and the opportunity to possess overseas lands became seductive and irresistible¹⁰⁵. In the aftermath of Spanish retreat, Filipinos realized they were manipulated by Americans’ initial promises of being there to protect them rather than to conquer them, the betrayal led to tensions and consequently to the brutal Philippine-American war¹⁰⁶. The conflict had been depicted by historians as terribly agonizing, with records of awful atrocities and war crimes committed by both the American military and the Filipino insurgents, ranging from torture, wiping out entire native villages, including children and women, creation of concentration camps; to shootings upon civilians waving a flag of truce. The death toll caused by the Philippine-American war is still a matter of debate, however, following the United States Department of State’s statement, the war allegedly caused the death of roughly 4,000 American soldiers out of 125,000 that were fighting, and over 20,000 Filipino combatants, to which another 200,000 – to possibly a million Filipino civilians casualties due to war-related violence, famine and diseases need to be added, although numbers could even be underestimated. Although the Philippine-American war formally ended in 1902, hostilities by Philippine resistance group towards the American troops and the Philippine armed force, the Philippine Constabulary created by the American occupational government continued until 1913. The Philippine-American war, depicted by Americans as an insurrection by Filipinos against alleged legitimate U.S. authority, when it was actually an un-allowed American annexation, is considered to be among the cruelest

¹⁰⁵ Lewis L. Gould, “The Spanish-American War and President McKinley”, University Press of Kansas, April 1982, pp. 60-67 and 84-90

¹⁰⁶ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 108-110

conflicts of Western Imperialism.¹⁰⁷ It should be noted that since the end of the American colonial period in the Philippines up to date, Philippine and U.S. representatives rarely mentioned the brutality of the Philippine-American war, which had been instead depicted as an “heroic” gesture by the United States that liberated the Philippine people from Spanish occupiers, and that transformed the Philippines from a colony to a democracy brought by the Americans; overshadowing Washington’s colonial role in the archipelago that lasted until 1946. For instance, on 18 October 2003 during then U.S. President Bush’s tour of Asian nations, in his speech in Manila, Bush gave the United States credit for bringing democracy to the Philippines and for liberating the Philippines from colonial control, making the Philippines the first democratic nation in Asia. It is true that the Americans pushed Spain away from the archipelago, however, the McKinley administration, driven by its confidence and enthusiasm boosted by U.S. quick victory over Spain, also known as “wonderful little war”, seized the islands and established U.S. colonial rule instead of a Philippine democracy. From a U.S. perspective, the Philippine annexation started as a war (Spanish-American war) aimed at eliminating Spanish presence from the Philippines, but it eventually ended into another violent war (Philippine-American war), during which about 120,000 American forces had been deployed, more than 4,000 had died, and more than 200,000 Filipino military and civilians were killed. Just as Americans formerly rejected Britain’s desire to control them, the United States used to oppose nations’ desire of acquiring overseas colonies, prior to the annexation of the Philippines. However, the United States ultimately became the kind of imperial force it once opposed.¹⁰⁸ The process of overshadowing the vicious past between the United States and the Philippines in favor of a “friendly-since-forever” rhetoric will be explained in the next section indeed.

2.1.3 Spanish colonial period vs American colonial period: “300 years in a convent, 50 years in Hollywood”

The U.S. presence in the Philippines as colonial ruler, which lasted until the aftermath of World War Two, when the Philippine Independence by then U.S. President Harry Truman was formally recognized on the 4th July 1946, is considerably short compared to the 300-year Spanish occupancy, nevertheless 50 years of U.S. rule had had a greater impact than 300 years of Spanish rule on the nowadays Philippine society. “300 Years in a

¹⁰⁷ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, p. 12

¹⁰⁸ John B. Judis, Foreign Policy, No. 143, “Imperial Amnesia”, August 2004, pp. 50-53

Convent, 50 in Hollywood” is a well-known and idiomatic expression used by Filipinos to describe their colonial history.¹⁰⁹

In order to clarify the reason why “50 years in Hollywood” had been more impactful than “300 years in a Convent”, it is useful to shortly describe Spanish colonial policies towards the Philippines and how the Spanish legacy facilitated the American penetration in the Philippine society.

The Spanish colonial era, especially in the first centuries of occupation, was depicted as a mixture of total tyranny and neglect, Spaniards expected total obedience by natives, or *Indios* as they were called, fostering a high passivity in Filipinos. Compared to other Spanish colonies, for instance Mexico, Filipinos lacked a sense of national identity and memories of a past empire, the fragmentation of the Philippine islands and lack of unity among Philippine tribes allowed Spaniards to control them with less effort than Latin American colonies. As a matter of fact, Philippine administration was indirect, they were indeed a “colony of a colony”, administered by Spanish authorities in Mexico¹¹⁰. Spanish crown’s primary goal in the Philippines, besides serving Spain as an outpost for its trade exchanges across the Pacific between the Asian and the American continents, was the promotion of Christianity, given the apparent lack of valuable resources in the archipelago, such as gold or silver. The concrete management of the archipelago was in Catholic monastic orders’ hands indeed. For centuries, the Philippines remained isolated from the outside world and from international trade, focused exclusively in propagating Catholic faith, their only foreign contact being the Acapulco-Manila voyage, a trade route crossing the Pacific Ocean that brought American silver and gold to Asian markets and Chinese luxury goods to American and European markets, which took place once a year¹¹¹¹¹². The control exercised by conservative Catholic orders prevented any advance in liberal reforms in the country, even during the 19th century Enlightenment era, which coincided with a slow beginning of openness to foreign trade. Spain’s greatest success in the Philippines was the total compliance to Christianization, although Spaniards had never been able to alter the indigenous tribal structure and values of the archipelago, which still persist up to date. The *repartimiento* system, a form of labor aimed at building roads and ships which was closer to slavery, and the *encomienda* system, a taxation imposed on natives by

¹⁰⁹ Efron Center For The Study Of America, Princeton University, Cameron Lee, “300 Years in a Convent, 50 in Hollywood”, 8 December 2021

¹¹⁰ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 43, 48, 49

¹¹¹ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 55-57

¹¹² Teodoro A. Agoncillo, “History of the Filipino people”, Department of History University of the Philippines, 8th edition, 1990, pp. 85-87

settlers, both practices borrowed from Latin American colonies; demonstrated Spaniards' brutal violence and fostered hatred and fear among natives¹¹³. Catholic friars were the concrete governors of all rural areas, they managed religion and education, the latter being exclusively focused on the former. Filipino natives were taught catechism and the lives of the saints, their social lives were determined by the structure of the villages, called *pueblos*, in which the centerpiece was the local Catholic church. They were prevented from learning Spanish, as friars wanted to limit their knowledge and their potential understanding, in order to keep the distinction between natives and Spaniards clear. Thus, Filipinos never became a true Spanish-speaking colony, although nowadays Tagalog language borrowed a great number of words from Spanish, which were probably words that did not exist in their local dialects yet¹¹⁴¹¹⁵. Another crucial element that fostered a sense of inferiority in Filipinos that still persists today was racism: the social distinctions were rigid and strict, at the top of the pyramid there were the *peninsulares*, Spaniards living in the Philippines, enjoying all their colonial privileges, concentrated in Manila, specifically in the neighborhood of *Intramuros*, a walled-area of the city aimed at marking the distinction between Spaniards and locals. At the second spot there were *criollos*, Spaniards born in Spanish colonies, followed by Spanish *mestizos*, individuals with mixed Spanish and Philippine blood. Chinese *mestizos* ranked next, Chinese presence in the archipelago dates back to pre-colonial era for commercial reasons, becoming the most powerful minority in economic terms, which then translated into political influence in the upcoming centuries as well. During the colonial era, Chinese were forced by Spaniards to marry native women in order to stay, therefore Chinese mestizos increased. At the bottom of the hierarchy there were the *Indios*, the brown-skinned Filipino natives living in rural areas under the supervision of friars. As a matter of fact, the skin tone was a tool to distinguish social classes, the whitest the skin, the higher the rank, and this standard still exists in today's Philippine society. Whiter skin among pure Filipinos is a marker of either Spaniard or Chinese descendants, and this feature is considered to be sufficient to be treated differently from dark-skinned Filipinos¹¹⁶¹¹⁷.

¹¹³ Teodoro A. Agoncillo, "History of the Filipino people", Department of History University of the Philippines, 8th edition, 1990, pp. 81-83

¹¹⁴ Stanley Karnow, "In Our Image: America's Empire in the Philippines", pp. 50-53

¹¹⁵ Teodoro A. Agoncillo, "History of the Filipino people", Department of History University of the Philippines, 8th edition, 1990, pp. 100-102

¹¹⁶ Stanley Karnow, "In Our Image: America's Empire in the Philippines", pp. 62-63

¹¹⁷ Teodoro A. Agoncillo, "History of the Filipino people", Department of History University of the Philippines, 8th edition, 1990, pp. 121-122

From an economic perspective, as anticipated earlier, the Philippines served the Spanish crown merely as a port in Asia, connecting the Mexican coast to Asian markets through the Pacific Ocean. Domestic economy had never been developed, Spaniards kept the Philippines isolated from foreign trade and influence for centuries, as they did not have any economic interest in Philippine resources, which is another reason behind the seclusion and neglect.¹¹⁸ As a result of all these aspects, Spanish policies towards the Philippines had been a failure, except for the promotion of Catholicism and its values. During the 19th century, some slight improvements occurred due to Enlightenment ideals, Industrial Revolution in the West and greater pressures demanding for changes. The Philippine economy started to develop by producing tobacco and cane sugar, but Spaniards in the archipelago along with monastic orders avoided and prevented any potential change in order to keep the status quo that granted them privileges and superiority¹¹⁹¹²⁰. New generations of richer and educated Filipinos mainly with mestizo background, called *Ilustrados*, started to enroll in universities and to travel to Europe. Knowledge and comparison with Western standards of life, combined with repeated events of cruelty and intransigency by Spaniards, gave rise to the “beginning of a nationalist consciousness” among Filipinos, which would translate into rebellious movements in the end of the 19th century. Truth is, if the Spaniards had been more moderate, open to dialogue, to reforms and to compromise with Filipinos, and less rigid on their positions that merely showed their intentions in keeping Filipinos in “ignorance and rusticity”, and in depriving them of “civilization and prosperity”; probably no Filipino independent movement would have been founded¹²¹. What *Ilustrados* demanded was not independence from Spain, rather integration through reforms, in order to grant the Philippines equal opportunities and a higher quality of life, exactly like Spain¹²². José Rizal indeed, considered a Philippine national hero today, imagined a relationship in which “Mother Spain” protects and raises its child, the Philippines. Rizal was an *ilustrado* who, through his fictional novels, exposed his ideals and the flaws of Spanish colonialism in the Philippines¹²³. Spain along with the clergy, on the other hand, perceived compromise with Filipinos as its own suicide, its intransigency and toughness towards Filipinos’ demands for

¹¹⁸ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, p. 57

¹¹⁹ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 60-61

¹²⁰ Teodoro A. Agoncillo, “History of the Filipino people”, Department of History University of the Philippines, 8th edition, 1990, pp. 116-118

¹²¹ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 65-67

¹²² Teodoro A. Agoncillo, “History of the Filipino people”, Department of History University of the Philippines, 8th edition, 1990, pp. 129-131

¹²³ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 68-70

moderate reforms led Spaniards to opt for repression and executions of *illustrados*, even if they were moderate *criollos* who shared Filipinos' views. Spain's violent response and unwillingness to dialogue, which culminated in the execution of José Rizal in 1896, gave birth to Andres Bonifacio's *Katipunan* movement, also known as *KKK*, whose ideals were more radical and nationalist compared to Rizal's moderate stance¹²⁴. The *KKK*, along with the Philippine independent movement guided by general Emilio Aguinaldo, ultimately led to the Philippine Revolution in 1896, with Bonifacio's declaration of war against Spain¹²⁵. "*Violence is the only option, it is a waste of time to wait for promises of felicity that will never come*" said Bonifacio, given the fact that Spaniards demonstrated intractability with Rizal¹²⁶. During the Philippine insurrection, Filipinos perceived Americans as potential allies in their war against Spain, Aguinaldo even declared that his intention was to create a Republic like that of the United States. Filipinos would soon discover that a new global power would replace Spain's presence in their archipelago, a new power that was approaching overseas imperialism for the first time.¹²⁷

On the 1st May 1898 American ships, guided by Commodore George Dewey, entered Manila Bay, facing the Spanish fleet. No US vessels were damaged, whereas on the Spanish side, only one ship survived US attack. Dewey's victory was celebrated with huge enthusiasm in America, "The Battle of Manila Bay" signed the transition of USA into a world power, since the Americans, for the first time in history, set foot in overseas land, namely in former Spanish colonies of Puerto Rico, Cuba and the Philippines (the latter being the only overseas land outside of the American continent), defeating the great Spanish Empire, and becoming an imperialist global power¹²⁸. The former colony became a colonialist and was able to grab territories overseas from one of the greatest European colonial powers. The US-Spanish war began as a strategy to eliminate Spain's presence in the American continent by liberating Cuba, though it ended as an undeniable opportunity to extend US presence and reach imperial grandeur status, by oppressing Filipinos' independence movement and establishing a US colony on the other side of the Pacific Ocean. Between the end of the 19th century and the beginning of the 20th century, Americans were divided between interventionists and isolationists, with debates over the

¹²⁴ Teodoro A. Agoncillo, "History of the Filipino people", Department of History University of the Philippines, 8th edition, 1990, pp. 167-170

¹²⁵ Teodoro A. Agoncillo, "History of the Filipino people", Department of History University of the Philippines, 8th edition, 1990, pp. 157-165

¹²⁶ Stanley Karnow, "In Our Image: America's Empire in the Philippines", pp. 72-74

¹²⁷ Stanley Karnow, "In Our Image: America's Empire in the Philippines", pp. 75-77

¹²⁸ Lewis L. Gould, "The Spanish-American War and President McKinley", University Press of Kansas, April 1982, pp. 60-67 and 84-90

dilemma whether the United States should expand overseas to gain the profits, but also risk the burdens, of international role, or not. Back in 1898 the expansionist ideals prevailed, leading President McKinley to the annexation of the Philippine archipelago. With this move, the USA laid the basis of its long-lasting presence and involvement in Far East Asia.¹²⁹¹³⁰

Spain's attitude throughout its colonial permanence in the Philippines, left in Filipinos' memories a sense of injustice and exploitation, feelings that largely differ from their perception of America's presence instead.

Moreover, it should be noted that nowadays the National holiday commemorating Philippine Independence Day is celebrated on the 12th of June, rather than the 04th of July, to pay tribute to the declaration of independence from Spain and the establishment of the First Philippine Republic by Emilio Aguinaldo back on the 12th of June 1898. This decision was taken by the Philippine Congress with Republic Act. No. 4166 on the 04th August 1964, "an act changing the date of Philippine Independence Day from July 04th to June 12th, upon the issuance of Proclamation No. 28 by then Philippine President Diosdado Macapagal to move the date¹³¹. Besides officially recognizing the Philippine Independence as the liberation from Spain, rather than the United States, in 1955 Philippine President Ramon Magsaysay had established the observance, upon Proclamation No. 212, of the Philippine-American Day on the 15th November.¹³²

After having caused pain, famine, and huge losses, and after having delayed the end of colonization of half a century, at a time in which Filipinos were one step away from freedom; how did USA manage to leave such a good memory of their colonial stay and maintain such stable and warm ties with the Philippine people?

American Imperialism, compared to previous European imperialism, was perceived as a "benign" rule, reason for which Filipinos developed a closer affinity to USA rather than Spain. What marked the difference are probably the different economic impulses that drove colonization: Europeans, in this case Spain, are explicitly remembered as exploiters of their colonies and craving for power, whereas Americans, with their strong capitalist mentality, saw colonies as an economic opportunity for the establishment of new markets

¹²⁹ Stanley Karnow, "In Our Image: America's Empire in the Philippines", pp. 78-80

¹³⁰ Lewis L. Gould, "The Spanish-American War and President McKinley", University Press of Kansas, April 1982, pp. 60-67 and 84-90

¹³¹ Official Gazette of the Republic of the Philippines, President Diosdado Macapagal, Proclamation No. 28 "Declaring June 12 as Philippine Independence Day", 12 May 1962

¹³² Official Gazette of the Republic of the Philippines, President Ramon Magsaysay, Proclamation No. 212 "Declaring November 15 Philippine-American Day", 4 November 1955

to export their consumer products, their equation being “expansion abroad = new profits”. As a result, the U.S. approach was felt as benevolent and altruistic by Filipinos, even though the hidden reality is that Americans prevented a Philippine industrial development and voluntarily kept the Philippine economy mainly agricultural and therefore reliant on American products¹³³. Besides the colonizers’ economic reasons, it should be noted that the Philippines have been the most receptive colony of foreign influence in all Asia, independently of how much *Spanishish* or how much *Americanish* the Philippines are today. What differentiates the Philippines from other Asian former colonies is their lack of pre-colonial history, in the sense that before the arrival of Ferdinand Magellan, there was no central authority, no nationalist sentiment, no common language nor religion, “just” an archipelago with different tribes on each island. The “lack” of a real Philippine identity, made Filipinos more receptive and voluntarily welcoming towards Spanish influence first, and to American influence then. America’s arrival in the Philippines, even though fought by Filipinos guided by Aguinaldo, by many was seen as a potential source of modernization, rather than a threat to Filipino tradition and culture, to the point that numbers of educated Filipinos during the Philippine-American war switched side and preferred to welcome the USA and ask for an American protectorate, rather than fighting them¹³⁴. The impact of Western colonizer is still visible in their former colonies around the world, although in no other countries the imperial legacy is more alive than in the Philippines, where “*America’s presence is almost as dynamic now as it was during the days of U.S. rule*” as stated by Karnow.¹³⁵

A review of the American colonial period in the Philippines is worth a mention in order to grasp how effective and efficient the USA had been in implementing their soft power and cultural diplomacy, besides their hard power and direct control, of course.

2.1.4 American colonial period in the Philippines: 1902 – 1946

As it was anticipated earlier, even though the American colonial period in the Philippines lasted for a short period of time, these “fifty years in Hollywood” had been incisive enough to shape the Philippines upon the American image and American customs. Although the Spanish colonial era had radically impacted Philippine culture, religion above all, the American era transformed Philippine society in its structure, institutions and mentality.

¹³³ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 12-13

¹³⁴ Lewis L. Gould, “The Spanish-American War and President McKinley”, University Press of Kansas, April 1982, pp. 100-103

¹³⁵ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 14-16

Today, the Philippines is considered by many to be “the most Westernized country in Asia”, known also as the “bulwark of Christianity in the East” and as the “bastion of democracy in Asia and the Far East”¹³⁶. Except for strong Catholic values, Spanish words incorporated in local dialects and languages, Spanish surnames and culinary influences that were brought by Spaniards, American influence concerned instead civil society, institutions, democratic values, law, education and mass culture. What was done in the Philippines by the USA during their colonial rule can be considered as one of the most efficient processes of “Americanization”, thus a closer look to the foreign policy strategies that were implemented during the first half of the 20th century is needed.

First of all, then-President William McKinley’s approach for USA’s first imperialistic move overseas, was based on the concept of “*Benevolent Assimilation*”, the idea that American rule would ultimately benefit the colonized people, thanks to their altruistic contributions, to their willingness to share their knowledge and Western values, aimed at educating backward people and at providing them with efficient and sophisticated institutions to become a better State¹³⁷. As a matter of fact, in his Benevolent Assimilation Proclamation addressed to the Philippines on the 21st December 1898, President McKinley stated:

*[...] It will be the duty of the commander of the forces of occupation to announce and proclaim in the most public manner that we come not as invaders or conquerors, but as friends, to protect the natives in their homes, in their employment, and in their personal and religious rights. [...] Finally, it should be the earnest and paramount aim of the military administration to win the confidence, respect, and affection of the inhabitants of the Philippines by assuring them in every possible way that full measure of individual rights and liberties which is the heritage of a free people, and by proving to them that the mission of the United States is one of the benevolent assimilation, substituting the mild sway of justice and right for arbitrary rule. [...]*¹³⁸

Americans, during its colonial era and beyond, perceived America as the master of “inferior races”, McKinley’s Benevolent Assimilation proclamation is indeed an expression of America’s conviction of the “*White Man’s Burden*”, the idea (and Rudyard Kipling’s poem to exhort U.S. colonialism) that Americans would confer the blessings of their civilization to the

¹³⁶ Leon T. Garcia, “The Philippines between the East and the West”, Pakistan Institute of International Affairs, December 1951, p. 233

¹³⁷ Teodoro A. Agoncillo, “History of the Filipino people”, Department of History University of the Philippines, 8th edition, 1990, pp. 213-215

¹³⁸ U.S. Library of Congress, Asian Division, President William McKinley of the United States “The Benevolent Assimilation Proclamation”, 21 December 1898

Philippines¹³⁹, or also known as their “little brown brothers”, creating the basis of this perpetuating narrative of admiration-inferiority in the Philippines.

During its half-a-century colonial rule, the USA had indeed conferred to the Philippines American-based institutions, Western values, such as democracy, the rule of law, individual freedoms; infrastructure, universal education and a common language; whereas Spaniard legacy was limited to cultural and religious aspect of today’s Filipino society¹⁴⁰.

The first U.S. governor in Manila, William Howard Taft, had laid the foundation of U.S. colonial approach in the Philippines in the first decade and, thus, the whole Americanization process of the Philippines. During his term, ports and roads were built to unify the country, young American teachers were assigned in all schools all over the country, Western values of democracy and liberalism were instilled in Filipinos, and the political program to prepare Filipinos to govern themselves was launched. In 1913, when Taft had been replaced by the progressive and less racist Francis Burton Harrison, a process called “Filipinization” had started, with which Filipinos were put in charge within the American bureaucracy in the Philippines, in order to prepare them to autonomy and then independence, which was perceived as an altruistic gesture¹⁴¹. Most of Filipino political figures during the colonial era, and even in the post-colonial era, were products of American education and American mentors. Most of Filipino Presidents after independence were results of U.S. intervention. Most of Philippine political acts and deeds had been maneuvered by U.S. Presidents and American Intelligence¹⁴².

2.1.5 American “neo-colonialism” in the Philippines: 1946 – nowadays?

Summarizing what I stated above, the special relation between the Philippines and the USA is based on a powerful sense of admiration – or subjugation – towards USA, which persisted and intensified in the post-colonial era, once USA granted the Philippines its independence. A good example that expresses this sense of kinship was Philippine President Corazon Aquino’s address to Congress during her Washington visit in 18 September 1986, aimed at obtaining American aid and resources to restore the Philippines in the aftermath of Marcos’ dictatorship, by appealing both to conservatives and liberals alike. Some of her most

¹³⁹ Rudyard Kipling, “White Man’s Burden”, McClure’s Magazine, February 1899

¹⁴⁰ Lewis L. Gould, “The Spanish-American War and President McKinley”, University Press of Kansas, April 1982, pp. 24

¹⁴¹ Teodoro A. Agoncillo, “History of the Filipino people”, Department of History University of the Philippines, 8th edition, 1990, pp. 307-311

¹⁴² Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 14-15

remarkable sentences, pronounced with her fluent English as a reminder of the products of USA's tutelage of the Philippines, were:

*"Has there been a greater test of national commitment to the ideals you hold dear than what my people have gone through? You have spent many lives and much treasure to bring freedom to many lands that were reluctant to receive it. And here you have people who won it by themselves and need only help to preserve it.", "Thank you, America, for the haven from oppression"*¹⁴³.

Behind the façade of independence, the Philippines are often considered to have remained a "U.S. neo-colony", given the fact that their economy and security matters completely relied upon U.S. presence, besides the cultural and institutional penetration carried out during the colonial era. Aside from a few minor ultranationalist movements, Filipinos overall were very welcoming towards the post-independence U.S. presence, as they perceived it as a proof of America's concern for Filipinos' welfare, to the point that some Filipinos would have even preferred to remain a US colony rather than becoming an independent state¹⁴⁴. This notable kinship relation is a result of Filipinos' view on Americans as their saviors and liberators from Spain's 400-year-oppressive rule, and from Japanese atrocious invasion during World War II as well, during which Filipinos and Americans fought side by side. The shared agony during Japanese occupation, indeed, increased the sense of family tie and generated a trauma in Filipinos, who feared to lose America's protection¹⁴⁵. The perception of Americans as benevolent "masters" was also facilitated by the process of cultural Americanization during the colonial era, thanks to America's efficient soft power that was able to shape Filipinos' attitude and way of thinking. Digging deeper into the details of the Americanization process, those details that at first seem insignificant, but are instead the essence of the process looked through a magnifying glass, for those who are not familiar with the Philippines, any little detail reminds of America and recalls how Filipinos admire America. Streets, squares and venues in Manila are named after American Presidents or Generals, wealthy Filipino families emulating Americans would furnish their houses with inconsistent pieces of furniture, such as leather sofas with plastic covers on top due to Philippine tropical climate and humidity. Filipino families would serve their guests with American canned fruit, even though their country has plenty of tropical fruits, Filipinos would

¹⁴³ Official Gazette of the Republic of the Philippines, "Speech of President Corazon Aquino during the Joint Session of the U.S. Congress", 18 September 1986

¹⁴⁴ Stanley Karnow, "In Our Image: America's Empire in the Philippines", p. 330

¹⁴⁵ E. San Juan, Jr., "After Postcolonialism: Remapping Philippines-United States Confrontation", Rowman & Littlefield Publishers, 24 May 2000

drive hours to buy American products close to U.S. bases, reflecting how prestigious for Filipinos is the “Made in USA” label. People whose name is Benedicto, Bernardo, Perpetua or Victoria, call themselves “Benny, Bernie, Popsy or Vicky”, every young Filipino’s dream is to attend American college, which represents a direct ticket for a skilled job in Manila. The most emblematic element of Americanization is the use of American English, which is used in road directions, in government agencies, in legal acts, contracts and Courts. During Spanish colonial era, the Spanish language was reserved only to Philippine elites, whereas Americans managed to transform English into the common language in the whole country. The best-known newspapers in the Philippines are the Manila Times and CNN Philippines, basketball and baseball became the most appreciated sport activities and alternatives to cockfighting, the real Filipino addiction.¹⁴⁶

Besides the cultural aspects, since 1946, Philippine policies - especially in terms of foreign policies - reflected a solid “pro-Americanism” stance, which helped hiding the US-neocolonial status of the Philippines behind the “mask” of Philippine independence and sovereignty. A symbolic example was when Philippine President Manuel Roxas, back in 1946, when vindicating American rule over the Philippines, expressed gratitude for the American victory over Spain in 1898. Throughout the second half of the 20th century, the Philippines had always sustained and aligned with US foreign affairs, and safeguarded US Cold-War-related interests, such as the containment of Communism’s expansion; to the point that, although being part of the so-called “Global South” or “third world”, the Philippines had often refused to support Afro-Asian solidarity, or in general former colonies’ solidarity. Non-aligned countries were often confused and frustrated when observing Philippine pro-Americanism indeed. Neocolonialism, following Lichauco’s definition, works and stays intact through a brainwashing process, with which members of the former colony, in this case the Philippines, are being convinced and manipulated to believe that neoliberal – or neocolonial – policies and strategies are the only integral principles that would trigger their country’s development. Hence, a capitalist economy, open and receptive to foreign investments – mainly coming from their former colonizer – combined with a monetary austerity program, is the only remedy to Third World misery. The adaptation to capitalist principles – which is synonymous of neocolonialism hidden behind economic motives.¹⁴⁷

In the aftermath of World War II, as a result of American colonial policy, the Philippines was considered as potentially the second most-developed country in East Asia, second only to

¹⁴⁶ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 17-18

¹⁴⁷ Alejandro Lichauco, “Lichauco Papers: Imperialism in the Philippines”, Monthly Review Press, 1 January 1973

Japan, thanks to its political institutions, culture, values, well-educated citizens and use of English as second official language. Nevertheless, due to domestic issues, political instability and widespread corruption, this potentiality was never exploited, to the point that the Philippines has remained behind other developing countries and has never been able to surpass the border between developing and developed country. The Philippines' largest trading partners up to date are the United States, Japan and the People's Republic of China. Moreover, the Philippines has always relied on U.S. foreign assistance.¹⁴⁸

Besides the historic, cultural, institutional and economic ties, what makes the Philippine-American relationship durable and powerful is their military relations.

2.1.6 American – Philippine military relations

Historical Overview of Military Cooperation

Needless to say, the military relations between the United States and the Philippines have a long and complex history dating back to the late 19th century, with their first direct encounter that then culminated in the Philippine-American War and the subsequent colonization of the Philippine archipelago, which is considered to be the first significant step overseas in the path towards the status of the United States as a global superpower. Under American rule, indeed, the Philippines became a strategic outpost for the US military in the Asia-Pacific region, through the establishment of military bases and training facilities in the archipelago, solidifying the foundation of military cooperation between the two nations. The long-lasting military cooperation has always been a pillar in US-Philippine relations, however it should be noted that military relations between the two nations had also been subject to periods of uncertainty, especially during the '90s and during Duterte's presidency, which will be further analyzed afterwards. Nevertheless, since the Philippine-American War, there has never been any conflictual moments in the relationship between the two countries. The crucial element for which the US presence in the Philippines have been considered as neo-colonial is indeed the American military presence in the archipelago, through its two largest overseas bases, Clark airfield basis and Subic navy yard basis¹⁴⁹. Overtime, the motives of US military presence in the Philippines have changed following the global geopolitical shifts. During the second half of the 20th century, the Philippines became a virtual extension of the Pentagon in the context of the Cold War, serving US vital interest in countering the Communist spread in Asia. Military relations between the two countries had decreased since

¹⁴⁸ Congressional Research Service, Thomas Lum and Larry Nicksch, "The Republic of the Philippines: Background and U.S. Relations", 15 January 2009, pp. 5-7

¹⁴⁹ Stanley Karnow, "In Our Image: America's Empire in the Philippines", p. 330

1991, coinciding with the dissolution of the Soviet Union and the end of the Cold War. Negotiations and military cooperation had intensified again during the end of the 1990s, due to increasing tensions between the Philippines and China over the South China Sea. In the aftermath of 9/11, the Philippines became, once again, a US interest in its war against terrorism worldwide, given the fact that the Philippines, a Catholic state, underwent domestic tensions in the Southern island of Mindanao due to its minority of Islamic separatist movements and terrorist movements, such as Abu-Sayaff. Therefore, up to date, from a military and security perspective, based upon historical ties, shared interests and values, security alliance, cooperation in countering terrorism worldwide; on October 6, 2003, the Philippines was designated a major non-NATO Ally, after Manila announced its support for the US-led war in Iraq.¹⁵⁰

Post-Independence Era main military agreements

In spite of the fact that the Philippines gained independence from the United States in 1946, the close relationship between the two countries did not end at all. Instead, the US presence in the Philippines proceeded undisturbed and uncontested. For this reason, the post-independence era is often considered as a “neocolonial” era, during which most of Philippine Government’s acts and deeds were actually guided by a hidden U.S. hand. The U.S. maintained a significant presence especially through its military bases, most notably Clark Air Base and Subic Bay Naval Base, which became vital to U.S. interests in the Cold War era, especially in terms of containment purposes of the Communist spread in Asia. The foundation upon which Philippine-American military relations have consolidated during the post-independence era are the 1947 Military Bases Agreement and the 1951 Mutual Defense Treaty. The 1947 Military Bases Agreement between the United States and the Philippines marked a significant chapter in their post-independence bilateral relations. The agreement, based on a previous Act, the Tydings-McDuffie Act, ratified in 1934 with the purpose of retaining American naval bases and fueling stations even after Philippine independence, granted the U.S. military access to 22 bases in Philippine soil for a period of 99 years, including Clark Field and Subic Bay, the two largest American bases overseas. Signed on March 14, 1947, the accord allowed the U.S. to maintain strategic military installations in the country, that were already existing during colonial times, bolstering their defense and security cooperation as two independent states. Philippine

¹⁵⁰ Congressional Research Service, Thomas Lum and Larry Nixsch, “The Republic of the Philippines: Background and U.S. Relations”, pp. 15-16

President Roxas, during his speech to the Philippine Senate on the Agreement concerning American Military Bases in the Philippines on 17 March 1947, fully expresses the feeling of admiration, gratitude and acquiescing attitude of Filipinos towards Americans. His opening remarks concerned the foundation of the Military Bases Agreement, which was the 1934 Tydings-McDuffie Act, through which the Philippines, still under U.S. colonial rule, agreed to locate U.S. military establishment in Philippine soil even after independence. President Roxas then proceeded by describing and recognizing the new world conditions in the aftermath of World War II, “*the total nature of warfare that had been demonstrated*”, hence, the main reason for which military cooperation between the United States and the Philippines should proceed and intensify even after independence. Moreover, President Roxas praised the United States for its “*long and unbroken record of loyalty and willingness to the cause of Philippine independence*” and for its “*capacity to govern themselves in an enlightened, progressive, and democratic manner*”, a model that the recently independent Philippines should follow suit. This was President Roxas’ preface to its decision to authorize the U.S. President to “*withhold or to acquire and to retain such bases [...] as he may deem necessary for the mutual protection of the Philippine Islands and of the United States*”. President Roxas then explained what are the differences between this agreement and the previous Tydings-McDuffie Act: the U.S. military bases agreement allows the establishment of army and air bases besides naval bases, which were the only one previously agreed; the 1947 Agreement did not impose limits on the U.S. Army to reservations already existing, and lastly, this agreement granted “*the U.S. President authority to establish such bases, unilaterally if he so chose*”. Then, President Roxas recalled that the Philippine Congress, on 28 July 1945, unanimously voted in favor of the Joint Resolution with the U.S. Congress, which reiterated that such resolution “*marks a new era in Philippine-American relationship, whereas it binds the ties of friendship and mutual interest existing between the two countries stronger and closer than ever and insures also the peace and tranquility in the Pacific area*”. President Roxas, in order to obtain Senate’s authorization to negotiate with U.S. President about military bases, recalled that two years earlier (1945), Filipino people greeted the U.S. decision to establish bases in the Philippines with pledges of complete cooperation. “*There was no feeling of being imposed upon. We did not feel that any infringement of our forthcoming sovereignty was involved. We recognized that the purpose of the bases was to protect our sovereignty, a protection which would be furnished by American forces in a degree and in a manner of which we ourselves were incapable.*” President Roxas reiterated that the

Philippines should welcome U.S. military presence for their own security and national integrity, and that there is no other State – besides the United States - that could grant such a high level of protection. Hence, such agreement should not be perceived as inconsistent with the Philippine independence nor as an imposition by the United States, a state that demonstrated respect and principles of equality and mutuality of interests among States instead. President Roxas concluded his speech by recalling the reasons for which this agreement is necessary and the reasons why the United States represents the best option

“The United States has agreed to this arrangement, first, because of her commitments to protect our independence; second, because of our loyalty during the war; third, because of our historical associations; fourth, because of America’s great desire that democracy and freedom flourish in this part of the world; and fifth, in order to advance the great cause of world peace, security, and freedom of which America is a champion today”¹⁵¹ (Appendix 10)

However, it also sparked minor debates and controversies, even though in a limited number, with some Filipinos questioning the country's sovereignty and the social impact of hosting foreign military forces, especially regarding U.S. total jurisdiction over their bases and their army. Eventually, Filipino towns close to American bases, most notably Angeles City and Olongapo, became centers exclusively serving Americans’ entertainment and needs, cities whose economy relied on bars, brothels and prostitution¹⁵². Besides the military agreement, Americans were able to obtain, through their leverage and bargaining power, great economic privileges in the Philippines, including American exporters’ monopoly on the archipelago combined with Filipinos’ full and unrestricted access to the U.S. market, prohibiting them though to sell goods that might be in competition with US goods. Moreover, Americans were entitled to equal rights with Filipinos to own resources and real estate in the archipelago, a right that was denied to Filipinos in American soil instead. The result of this economic terms, prevented any potential industrial development of the Philippines, which remained an agricultural economy fully dependent on U.S. manufactured goods. The combination of the Military Bases Agreement and the economic terms agreed – or, imposed – transformed the newly-independent archipelago into an “American outpost in the Pacific”. However, Filipinos did not complain and did not perceive these conditions as privileges for Americans. They felt that Americans deserved military

¹⁵¹ Official Gazette Of the Republic of the Philippines, “Message of President Roxas to the Senate on the Agreement Concerning American Military Bases in the Philippines, 17 March 1947 (Appendix 10)

¹⁵² Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, p. 332

access for their own security and deserved to share their resources since they were their saviors. As a result, throughout the second half of the 20th century, the Philippines was perceived as the “poor little rich country” of Asia and Filipinos as “Americans’ little brown brothers”¹⁵³. Following the 1947 Military Bases Agreement, another pillar in Philippine-American military relations up to date is the 1951 Mutual Defense Treaty, which is still relevant and often mentioned nowadays, most notably in the context of the South China Sea disputes. Signed on the 30th August 1951, the Treaty establishes the mutual defense commitments and cooperation between the two nations in the event of an external armed attack, in order to guarantee peace and stability in the Pacific area. Its fundamental aim is to avoid any potential imperialist aggression, as it occurred during World War II, by strengthening and preserving peace and security in the region. It should be noted that it is a defensive treaty based upon the Charter of the United Nations, therefore both parties commit to settle any international dispute by peaceful means and refrain from the use of force. The crucial elements up to date of the Treaty are with no doubts Article 3, Article 4 and Article 5. Article 3 establishes that *“the parties, through their Foreign Ministers or deputies, will consult together from time to time regarding the implementation of this Treaty and whenever in the opinion of either of them the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific”*, thus, any potential threat must be evaluated and considered as such by both states, which means that the need for intervention is open to interpretation. Article 4, indeed, states that *“each Party recognizes that an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety, and declares that it would act to meet the common dangers in accordance with its constitutional processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations, such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.”* Article 5 specifies that *“for the purpose of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the Island territories under its jurisdiction in the Pacific Ocean, its armed forces, public vessels or aircraft in the Pacific.”*¹⁵⁴ As for nowadays tensions between the Philippines and the People’s Republic of China over the South China Sea territories, the words “Island territories under its jurisdiction in the Pacific

¹⁵³ Stanley Karnow, “In Our Image: America’s Empire in the Philippines”, pp. 334-336

¹⁵⁴ Official Gazette of the Republic of the Philippines, “Mutual Defense Treaty between the Republic of the Philippines and the United States of America, 30 August 1951

Ocean” result way too vague to allow the Philippines to invoke the Mutual Defense Treaty in the event of an armed attack on these territories, given their nature that often are not classified as “islands” and due to the controversies arising from the distinction between “Jurisdiction” and “Exclusive Economic Zones”, which was already analyzed in the previous chapter. Nevertheless, since encounters between Chinese and Philippine vessels in the South China Sea are increasing, and since the risk of a potential confrontation is intensifying; a reaffirmation of US-Philippine mutual defense commitments stemming from the Mutual Defense Treaty has been made on the 3rd May of 2023 through the establishment of the “Bilateral Defense Guidelines”, by U.S. Secretary of Defense Lloyd J. Austin III and Philippine Secretary of the Department of National Defense Carlito Galvez, in order to modernize and adapt the alliance to current geopolitical phenomena and dangers. As stated in the Fact Sheet regarding U.S.-Philippines Bilateral Defense Guidelines, published on the U.S. Department of Defense’s website:

“the guidelines reaffirm that an armed attack in the Pacific, including anywhere in the South China Sea, on either of their public vessels, aircraft, or armed forces – which includes their Coast Guards – would invoke mutual defense commitments under Articles IV and V of the 1951 U.S.-Philippines Mutual Defense Treaty. Recognizing that threats may arise in several domains – including land, sea, air, space, and cyberspace – and take the form of asymmetric, hybrid, and irregular warfare and gray-zone tactics, the guidelines chart a way forward to build interoperability in both conventional and non-conventional domains.”

The Bilateral Defense Guidelines have been published with the primary goal of strengthening the United States and the Philippines’ deterrence ability given the evolving security matters, through the clarification of roles, missions and capabilities in the framework of the Treaty to face potential security threats, most notably the risk of armed attacks by China in the South China Sea, given its questionable behavior on the matter. The Guidelines also aim at identifying the areas that need to be improved or modernized, in order to advance these objectives, such as the modernization of Philippine defense capabilities to bolster deterrence and to resist coercion, the expansion of cooperation on maritime security through the conduct of combined maritime activities, the increase in bilateral exercises and activities to improve the ability to counter armed attacks, the expansion of investments in non-materiel defense capacity building through education and

training exchanges, and the improvement of decision-making processes, communication procedures and information sharing to broaden cooperation and coordination.¹⁵⁵

Shifts in Military Relations

Although mostly positive and close, the military relationship between the USA and the Philippines has experienced fluctuations, often influenced by changes in the geopolitical environment or in the political leadership in both countries. In the aftermath of World War II, up to the Philippine President Marcos' era (1965-1986), the military alliance was marked by strong ties, as all Philippine Presidents adopted pro-US stances, as already explained. However, the relationship became strained during the Martial Law period due to allegations of human rights abuses and corruption during the Marcos era. The subsequent transition to democracy under Presidents Corazon Aquino and Fidel Ramos saw efforts to renegotiate the 1947 Military Bases Agreement, culminating in its eventual termination in 1991, which coincided with the end of the Cold War, thus, a reduction in US interests in maintaining the bases¹⁵⁶. The expiration of the Military Bases Agreement, though, did not necessarily mark a deterioration in their relationship. The expiration was a result of the Philippine Senate's rejection – for just one vote (12 – 11 vote) – of a treaty, “the Treaty of Friendship, Cooperation and Security”, aimed at extending the U.S. military presence in the archipelago for 10 more years in exchange for \$2 billion in aid. The reason behind the rejection was that negotiations and the final US proposal did not match Philippine expectations, which demanded more in terms of financial aid and lease terms. It should be noted though that the conditions that were not matched were just the Philippine Senators' expectations, which did not reflect the will and the preferences of the Philippine people and then Philippine President Corazon Aquino, who fought to win the approval of the treaty and was willing to seek a national Referendum on U.S. military bases in order to override the Senate, given the fact that the majority of Filipinos supported US presence in their country¹⁵⁷. Moreover, the United States did not offer more and did not bargain with Manila in order to retain its military bases in the archipelago, given the fact that the international scenario and global events of the early '90s, especially the dissolution of the Soviet Union, made the military presence in the Philippines less valuable and no longer a

¹⁵⁵ U.S. Department of Defense, “Fact Sheet: U.S.-Philippines Bilateral Defense Guidelines”, 3 May 2023

¹⁵⁶ The Asia-Pacific Journal, “The End of the Bases: The United States Finally Leaves the Philippines”, March 1992

¹⁵⁷ Los Angeles Times, Charles P. Wallace, “Manila Senate rejects U.S. Pact: Philippines: the 12-11 vote would bar American use of Subic Bay Naval Base. Washington supports Aquino's call for a popular referendum to overturn the action”, 16 September 1991

priority for U.S. interests. Hence, the fall of the Soviet Union represented the disappearance of a global threat that led to a loss in Philippine military bases' strategic value. From the Philippine perspective, in the post-Cold War era there were no potential external threats, and U.S. presence was perceived more as a commercial relation than a security one, for which a monetary compensation was a requirement for hosting U.S. bases in Philippine soil¹⁵⁸. Thus, the Philippine Senate's national pride and attempt to increase its bargaining power with its former colonial ruler, combined with America's loss of interest in the area, resulted in the withdrawal of American troops from Subic Bay and Clark Air Base between 1991 and 1992¹⁵⁹. With the closure of the military bases, the U.S.-Philippines military relationship underwent a realignment, but remained allies under the Mutual Defense Treaty. Nevertheless, due to new emerging threats and global events, the relationship intensified once again towards the end of the '90s and the beginning of the 21st century. The gradual revitalization was a response to two main global phenomena: the emergence of China as a military power with territorial revisionists aims, and the emergence of terrorist threats worldwide.

First, an emerging and worrying "China challenge", perceived by America as the new threat in the whole Asia-Pacific region, and as the new rival to its role as global superpower; and it was perceived by the Philippines as a threat to peace and security in the region, especially in the South China Sea, given China's assertive attitude and growing military and economic strength. The crucial event that worried Filipinos was Manila's discovery that China, since 1995, has been constructing platforms, buildings and landing strips on disputed territories in the South China Sea, most notably in Mischief Reef, in the aftermath of Beijing's territorial claims on most of the Spratly Islands. Thus, Chinese expansion in the South China Sea suddenly became the main long-term external threat to the Philippines, for which a strategy to maintain balance of power or deterrent capacity against the powerful Chinese navy – hence, U.S. military presence - was needed. It should also be noted that, during the second half of the '90s, the United States' position on the South China Sea territorial claims was still vague. The Philippines often mentioned the 1951 Mutual Defense Treaty with USA in the event of an armed conflict, however, the United States avoided to explicitly sustain Philippine claims and did not agree with Manila's interpretation of Philippine-US Mutual Defense commitments in the South China

¹⁵⁸ Renato Cruz De Castro, *Asian Survey* Vol. XLIII No. 6, "The Revitalized Philippine-U.S. Security Relations", November/December 2003, p. 974

¹⁵⁹ The New York Times, David E. Sanger, "Philippines orders U.S. to leave strategic Navic Base at Subic Bay", 28 December 1991

Sea context, by stating that the Treaty can be evoked “in the event of an armed attack on the metropolitan territory of either party, or on the island territories under its jurisdiction”, hence, Washington’s interpretation is that the Spratly Islands do not possess the necessary conditions to give rise to their defense commitments. Therefore, Washington does not consider the Spratly Islands as part of Philippines’ sovereign territory, since the Philippines did not claim them in 1951, when the Treaty was signed. In addition, the United States, at least during the ‘90s, did not take “any position on the legal merits of the competing claims to sovereignty over the various islands, reefs, atolls, and cays in the South China Sea”, although it has a strong interest “in the maintenance of peace and stability in the area”. Hence, the United States avoided specific commitments and statements or speculations on their hypothetical response to an hypothetical armed crisis in the South China Sea, but clarified that Treaty obligations will be respected and fulfilled if needed¹⁶⁰. The lack of full support by the United States was probably a consequence of the cooling in their relation and the closure of US bases in the Philippines, besides the fact that the United States were more focused elsewhere, and Asia was no longer a top priority, at least at that time, although it did not last long.

Nevertheless, on the 11th February of 1998, both countries signed the Visiting Forces Agreement (VFA), which allowed US troops' rotational presence in the Philippines for joint military exercises and training, among which the Balikatan exercise, which in Tagalog means “shoulder-to-shoulder”. The Agreement served as a framework for the revitalization of the military relations between the two countries, by allowing U.S. naval ship visits to Philippine ports and by conducting joint military exercises. For the American side, the access to Philippine infrastructure was crucial for the deployment of U.S. forces in the event of a crisis in Asia, the most worrying one being a potential conflict between China and Taiwan.¹⁶¹

Second, in the aftermath of 9/11, USA’s top priority in global affairs became its war on terrorism, for which the Philippines represented a loyal and long-lasting ally. Former Philippine President Arroyo, indeed, in the aftermath of terrorist attacks in New York City and Washington D.C., offered U.S. access to their former bases in Clark Air and Subic Naval for military operations, and expressed Philippines’ total support to American anti-terrorist war by offering logistical support and medical support to U.S. forces. President

¹⁶⁰ Lieutenant Colonel Stanley E. Meyer, United States Army, “Incident at Mischief Reef: implications for the Philippines, China, and the United States”, USAWC Class of 1996, pp. 7-8

¹⁶¹ Renato Cruz De Castro, Asian Survey Vol. XLIII No. 6, “The Revitalized Philippine-U.S. Security Relations”, November/December 2003, p. 977-979

Bush, in return, increased U.S. involvement and support to the Philippine campaign against terrorist Abu Sayaff organization – linked to Al-Qaeda – in the Southern island of Mindanao, in order to neutralize terrorist networks and chance to harbor in South East Asia. The Philippines was designated in 2003 as a major non-NATO ally in USA's war against international terrorism, after Philippine President Arroyo signed the "Military Logistics and Support Agreement" in 2002 to provide U.S. forces with logistical support and access to Philippine territories for military operations, and after Arroyo's full support to Bush' decision to invade Iraq. However, at least during the beginning of the 21st century, U.S. priorities and Philippine priorities in their military relation revival differed. U.S. priority was to assist any of its allies to increase their own military capabilities to counter terrorism, but overall a U.S. disengagement in Asia was occurring. America's support to the Philippines was limited to the military interest of counter terrorism. Indeed, the USA was focused and prioritized other regions in the world, most notably the Middle East (Iraq and Afghanistan), in its war against terrorism, therefore to counterbalance China's notable growth was not a priority. Whereas, for the Philippine side, a long-term and constant U.S. military presence in the archipelago would have represented a deterrent to China's expansionist ambitions, and consequently a key for peace and security in South East Asia.¹⁶²

However, during the Obama administration and given the increasing assertiveness of China in the South China Sea, the USA increased its engagement in Asia through its "Pivot to Asia" foreign policy, aimed at reassessing U.S. role in the Asia-Pacific region and to reflect the growing importance of this region to U.S. interests. Specifically with the Philippines, a further Agreement was signed on the 28th April 2014, the "Enhanced Defense Cooperation Agreement", as a tool – complementary to the 1998 Visiting Force Agreement - to bolster U.S. military presence in the archipelago, without declaring any official permanent U.S. presence or U.S. bases, thus on a non-permanent basis, through incremented ships and aircraft visits to the Philippines, increased number and greater frequency of joint military exercises, greater U.S. access to Philippine military facilities, included their former military bases¹⁶³.

Despite a cooling-off period in Philippine-American relations, which coincided with Philippine President Rodrigo Duterte's administration and U.S. President Donald Trump's

¹⁶² Renato Cruz De Castro, Asian Survey Vol. XLIII No. 6, "The Revitalized Philippine-U.S. Security Relations", November/December 2003, p. 982-986

¹⁶³ Congressional Research Institute, Thomas Lum & Ben Dolven, "The Republic of the Philippines and U.S. Interests", 23 April 2014

administration between 2016-2021, during which President Duterte's attempt was to distance the Philippines from America and to move closer to other potential allies, most notably China amid territorial disputes; up to date, under U.S. Biden and Philippine Marcos Jr.'s administrations, Philippine-American alliance is strong, resilient and often mentioned by both states. On the 01st May 2023, President Biden, during President Marcos' visit at the White House, reaffirmed the United States' unbreakable commitment to the defense of the Philippines. Both leaders discussed also regional matters and coordination on efforts to uphold international law and promote a free and open Indo-Pacific. New arrangements and initiatives were also discussed to expand the relations between the two states on all aspects, specifically in military terms, the adoption of the Bilateral Defense Guidelines mentioned earlier, aimed at modernizing the already existing 1951 Mutual Defense Treaty in order to adapt the alliance to emerging challenges, most notably the South China Sea dispute. President Biden reiterated the *"United States' ironclad alliance commitments to the Philippines, underscoring that an armed attack in the Pacific, which includes the South China Sea, on Philippine armed forces, public vessels, or aircraft, including those of the Coast Guard, would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.-Philippines Mutual Defense Treaty."*¹⁶⁴

Since the termination of the Military Bases Agreement, eventually, U.S. military presence in the Philippines persisted and increased during the last decade, due to emerging geopolitical tensions in the Indo-Pacific region. Indeed, one of Biden administration's priority was to improve relations on all fronts with the Philippines and gain greater military access, which would greatly improve U.S. capacity to intervene in the region in the event of conflicts or crisis – most notably in the South China Sea or in Taiwan. Filipinos are aware that, whether they like it or not, the Philippines – given its geographical location and its proximity to China and Taiwan – would be involved in case of a conflict, hence, closer military ties with the United States is a necessity. Following the evolution of geopolitical dynamics, in February 2023 President Marcos and Defense Secretary Austin agreed to expand "access sites" to the United States in the Philippine archipelago, by adding five new sites to the already existing ones granted by the previous Enhanced Defense Cooperation. As stated earlier, the election of President Marcos greatly facilitated the improvement and expansion of Philippine-American relations, compared to his

¹⁶⁴ White House United States of America, "Fact Sheet: Investing in the Special Friendship and alliance between the United States and the Philippines", 01 May 2023

predecessor, former President Duterte, who was considered the country's most pro-China and anti—American leader ever¹⁶⁵

Despite the fact that a new Military Bases Agreement has never been signed by the two countries since its termination in 1991, all these developments suggest that Philippine-American military cooperation is still vital and strong, and that it has intensified over the last two decades, through the adoption of new forms of Agreement that do not establish any permanent base, such as the 1998 Visiting Force Agreement, the 2014 Enhanced Defense Cooperation Agreement, or the 2023 Bilateral Defense Guidelines. U.S. military presence in the Philippine archipelago has continued, although under different conditions. The crucial feature that differentiates the military relations between the two countries during the 1947 Military Bases Agreement and in the aftermath of 1992, is the lack of large and permanent U.S. bases, substituted by several and rotating access points for U.S. forces all over the archipelago, which prevented any potential anti-America protest or allegation of U.S. neocolonialism in the Philippines.

2.2 China – Philippines relations

Relations between the Republic of the Philippines and the People's Republic of China are crucial to frame the recent evolutions in Philippine-American relations. The three countries are intertwined one another and the Philippines finds itself lying between two rival global superpowers, on one hand the United States, its former colonial ruler with which a special and long-lasting relationship has evolved, in military, economic, cultural terms; and on the other hand China, its greatest neighbor-state on which the Philippines strongly depends economically and financially, but with which there is no such ideological affinity, and tensions over territorial claims in the South China Sea – or West Philippine Sea – are on the rise.

Sino-Philippine relations, given their geographical proximity, date back to pre-colonial era, during which cultural and commercial encounters often occurred. A Chinese community in the Philippines was established during Spanish colonial era, as explained previously, mainly due to commercial exchanges.

During the 20th century, the Philippines, as did the United States, recognized Taiwan as a close ally and, subsequently, perceived the People's Republic of China as a potential threat. Diplomatic ties between the Philippines and the People's Republic of China were

¹⁶⁵ The Washington Post, Karen DeYoung and Rebecca Tan, "United States military bases in the Philippines", 02 February 2023

established in 1975 under Philippine President Ferdinand Marcos – after U.S. President Richard Nixon established diplomatic relations with China as well. During the '80s and the early '90s the Philippines did not perceive China as a potential threat to security and stability, one of the reasons for which the U.S. military bases in the Philippines were closed in 1991. The concept of “China Threat” begun to arouse suspicion in Filipinos since the mid-90s, when China showed a more assertive-aggressive approach. Since the symbolic 1995 Mischief Reef episode, under President Ramos administration, Sino-Philippine relations notably deteriorated, leading Ramos to knock on America’s door for the establishment of new military agreements, in order to counterbalance Chinese military capabilities and to benefit from “America’s defense umbrella” as a deterrent¹⁶⁶.

In October 1995, in the aftermath of China’s seizure of Mischief Reef - which is located only 130 miles west of the Philippine island of Palawan – former Philippine President Ramos delivered a speech at the East-West Center in Hawaii in which he publicly stated that China represented a threat to regional security in South-East Asia, calling on the USA to militarily come back to the Philippines¹⁶⁷.

Nevertheless, during the '90s and early 2000s, the Chinese approach in the South China Sea was still based on the “good neighbor policy” and on the attempt to use diplomatic tools and engage in bilateral negotiations to solve disputes. China was worried about the rising perception of the “China Threat” in neighboring countries, therefore it attempted to act as a “benevolent giant” willing to engage in bilateral agreements with its small and weak neighbor-states, and tried to avoid as much as possible the involvement of other global powers, most notably the United States¹⁶⁸.

Although it is ascertained that up to date the Philippine economy strongly depends on China, it should be noted that the Philippines was a late-comer compared to other ASEAN countries, and did not exploit immediately China’s economic liberalization during the '80s and '90s, a trend that allowed several of its neighbor-states to rapidly develop through trade and investments. Only in 2000, former Philippine President Estrada signed a joint declaration of Bilateral Cooperation in the 21st century with China during a visit. As a result, since the beginning of the 21st century, China-Philippines bilateral trade steadily rose with an increase of 244% between 2003 and 2011, which made China the third

¹⁶⁶ The Journal of East Asian Affairs, Fall/Winter 2012, Vol. 26, No. 2, Hong Zhao, “Sino-Philippines Relations: moving beyond South China Sea Dispute?”, Institute for National Security Strategy, pp. 57-58

¹⁶⁷ Asian Affairs Vol. 44, by Zhao Hong, “The South China Sea Dispute and China-ASEAN Relations”, 18 February 2013, p. 34

¹⁶⁸ Asian Affairs Vol. 44, 2013, by Zhao Hong, “The South China Sea Dispute and China-ASEAN Relations”, p. 27

largest trading partner, after the USA and Japan, in the Philippines. Despite the stunning numbers - if observed in absolute terms - the growth between China and the Philippines is slow and low compared to other ASEAN countries – if observed in relative terms. For instance, the +244% growth that occurred between 2003 and 2011 in trade between the Philippines and China represents only about one-third of the growth in trade between Malaysia and China, making the Philippines' trade with China the lowest among ASEAN-4. Same can be said in terms of foreign investments: Philippines' foreign direct investment value in China can be considered insignificant compared to other countries, and China's foreign direct investment value in the Philippines is relatively small, accounting for only 4.5% of its foreign direct investment in ASEAN (US\$294 million out of US\$5.9 billion of its foreign direct investments in ASEAN). Given the economic and financial dynamics, other ASEAN countries, compared to the Philippines, have more positive perceptions and willingness to engage in economic integration and cooperation with China¹⁶⁹. This relatively “negative” feature of Sino-Philippine economic ties, together with Philippines' West-based culture, make the Philippines one of the most “distant” Asian countries from China, despite their geographical proximity. Therefore, the Philippines, among ASEAN states, is the most notable example and expression of ASEAN complaints over the territorial disputes in the South China Sea with China. Compared to ASEAN states in general, the Philippines are more willing to raise their voice despite the economic and financial ties, and to assert their rights, by resorting to International Law tools and by resorting to the geopolitical concept of balance of power through military alliances. Going back to the chronological evolution of Sino-Philippine relations, given the good-neighbor policy implemented by China during the '90s and 2000s combined with the huge growth in bilateral trade experienced during the first decade of the 21st century, it can be observed that, despite the Mischief Reef episode, relationship between the Philippines and China seemed to improve during China's good neighborliness. A first example is, as stated above, former Philippine President Estrada opening the Philippines to bilateral trade and investment with China in 2000. Another proof of the improvement in their relations is former Philippine President Arroyo's proclamation of June 9 as the Filipino-Chinese Friendship Day, during the opening ceremony of the National Convention of the Chinese Filipino Business Club Inc. in 2002. The date coincides with the formal establishment of diplomatic relations with China, back in 1975. Arroyo's foreign policy strategy, indeed, has

¹⁶⁹ Asian Affairs Vol. 44, by Zhao Hong, “The South China Sea Dispute and China-ASEAN Relations”, 18 February 2013, pp. 38-39

been labelled as “*equibalancing*”, meaning that she attempted to improve diplomatic relations with both China and the United States simultaneously, by deepening military ties with the United States for security-related matters, and by welcoming China’s soft power in the Philippines in exchange of economic and diplomatic benefits. Moreover, Arroyo became the Philippine President with the greatest number of official visits to the People’s Republic of China while in office, with a record of ten visits. However, after she has entered into several economic agreements with China, among which the North Rail project, or the Joint Marine Seismic Undertaking in the South China Sea, Filipinos started to perceive her as too friendly and welcoming towards China, to the point that, due to allegations of electoral fraud as well, Filipinos called for her impeachment. Eventually, former President Arroyo was arrested in 2010 over corruption allegations and, subsequently, all of the new agreements signed with China during her administration were suspended¹⁷⁰. It should be noted that the most defining aspect in Sino-Philippine relations is the approach that each Philippine President has or has had towards China. As it will be explained in the next chapter, the Philippine foreign policy and diplomatic approach towards China has drastically changed based on which Philippine President was in office. The two most striking examples of total shifts in Foreign Policy from a pro-China stance to an anti-China agenda are: the transition from Arroyo’s administration to Aquino III’s administration in 2010, and - even more impressive – the transition from Duterte’s presidency to current Philippine President Marcos Jr. in 2022, which will be further analyzed in the next chapter.

As a matter of fact, Arroyo’s successor, former Philippine President Benigno Aquino III, has been the most vocal and determined Philippine President against China and its territorial claims. Since he took office in 2010, he has drastically distanced the Philippines, once again, from China, while reconciling even more the Philippine-American ties; and has depicted the tense situation between China and the Philippines over the South China Sea as a “*David vs. Goliath battle*”, in which – obviously – Goliath represents China and David the Philippines. As a matter of fact, since the 2010s, China’s attitude became more assertive and hostile, proving to be less willing to dialogue and more prone to unilateral decisions. Aquino III’s presidency coincides with the establishment of the 2014 Enhanced Defense Cooperation Agreement with the United States, with the suspension of the “Filipino-Chinese Friendship Day” in 2015 as a result of Aquino III’s strong declarations

¹⁷⁰ Reynaldo C. Ileto, “Southeast Asia and China: A Contest in Mutual Socialization”, Lowell DITTMER and NGEOW Chow Bing, World Scientific Publishing, 13 December 2015, pp. 76-79

and historical interpretations, in which he compared China's assertive attitude in the Spratly Islands to Nazi Germany during World War II, which in turn triggered a negative reaction by then Chinese Ambassador Zhao. But, above all, Aquino III's presidency coincided with the initiation, in 2013, of the Philippines v. China arbitration, brought by the Philippines before the Permanent Court of Arbitration in the Hague against China, concerning the nature of their maritime disputes in the South China Sea, under the United Nations Convention on the Law of the Sea. Thus, Aquino III, during his presidency, often called on China for "mutual respect" and "commitment to the rule of the law" in the hope of improvements in their relationship, then, in 2013 attempted to resort to international law, more specifically to UNCLOS, to assert Philippines' rights, and eventually resorted to the intensification of U.S. military presence in the archipelago to counterbalance China's military superiority, given the threats of future geopolitical scenarios in South East Asia.¹⁷¹ Besides Aquino III's strong position on Philippine rights, a crucial event triggered the decision to bring the case before the Permanent Court of Arbitration as a violation of UNCLOS by China: China's submission of the "9-dash line map" representing Chinese claims to the South China Sea on the 7th May 2009 at the United Nations, after several requests of clarification were presented to China by the UN. The Document "CML/17/2009" submitted by the People's Republic of China to the United Nations states as follows: *"China has indisputable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof (see attached map). The above position is consistently held by the Chinese Government, and is widely known by the international community."* (See Figure 2)¹⁷²

The map submitted by China shows a U-shaped line that outlines China's territorial claims in the South China Sea. The line stretches from the Chinese mainland to the coasts of several South East Asian countries, encompassing almost all of the South China Sea. Hence, the area covered by the nine-dash line, is allegedly under Chinese sovereignty. The submission of the above-mentioned map, together with the intensification of Philippine-Chinese vessels encounters and incidents similar to the 1995 Mischief Reef, most notably the March 2011 Reed Bank incident and the April 2012 standoff on Scarborough Shoal; led the Aquino III administration to shift the attention of the Philippine Army from domestic security to maritime defense from external threats, and to extend the

¹⁷¹ Reynaldo C. Iletto, "Southeast Asia and China: A Contest in Mutual Socialization", Lowell DITTMER and NGEOW Chow Bing, World Scientific Publishing, 13 December 2015, pp. 79-82

¹⁷² United Nations, "Document CML/17/2009" submitted by the People's Republic of China, 07 May 2009

dispute to the international community, through international law and through the revitalization of military alliances, as explained above¹⁷³.

The final verdict of the Philippines v. China arbitration case of the 12th July 2016, ruled in favor of the Philippines and found China's bases for its territorial claims a violation of UNCLOS. For the Philippines, such award represented the value of international law and its relative legal instruments in asserting militarily weak countries' rights against dominating superpowers - hence, the alleged equality of all states before international law - regardless of their superiority in military and/or economic power. However, the final decision of the International Arbitral Court did not solve the dispute, given the fact that China refused to participate to the legal proceeding and rejected the ruling, considering it as illegitimate. China insisted that such disputes shall be settled through bilateral negotiations and agreements, with no involvement of third-parties or international organizations. The fact that the Philippine government "dared" to contest China's territorial claims through international legal institutions, fueled China's assertiveness and nationalist feelings. China shifted from the initial "good neighbor" policy to flexing its military muscles and accelerating its expansion and militarization on the territories of the South China Sea. As mentioned above, the end of China's "good-neighbor diplomacy" coincided with its universally-recognized new leading role in global affairs and its subsequent new Chinese confidence, that ultimately led China from keeping a low profile as taught by Deng Xiaoping - or keeping a "good-neighbor" mask on while developing its economy and military strength, to acting as an hegemonic main character in the international stage, able to alter the course of events and to impose its will on weaker states. It should be noted that China's switch in its diplomatic approach (most notably since 2009) also coincides with the 2008 financial crisis that hit the whole Western world. Moreover, as reported in U.S. Congressional Research on China's economic conditions in 2009, "*in 2008 China, was the world's second largest merchandise exporter and third largest importer. In 2008, foreign direct investment (FDI) in China totaled \$92 billion, making it the destination for FDI among developing countries. The combination of large trade surpluses, FDI flows, and large-scale purchases of foreign currency (especially dollars) has helped make China the world's largest holder of foreign exchange reserves at \$2.3 trillion.*"¹⁷⁴ Thus, the combination of China's recent economic ascendancy as a result of Deng's process of

¹⁷³ The Journal of East Asian Affairs, Fall/Winter 2012, Vol. 26, No. 2, Hong Zhao, "Sino-Philippines Relations: moving beyond South China Sea Dispute?", Institute for National Security Strategy, pp. 60-61

¹⁷⁴ Congressional Research Service, Wayne M. Morrison, "China's Economic Conditions", 11 December 2009, https://www.everycrsreport.com/files/20091211_RL33534_cb9a2ea85e1bde5f4a0677f739ff8cd078d573d1.pdf

economic liberalization reforms since the '80s, of China's subsequent rapid military development and modernization, of China's nationalist memories of past humiliation; with the simultaneous economic decline in the West as a consequence of the 2008 financial crisis, allowed the emergence of a new China, first under former President Hu Jintao, then under current leader Xi Jinping since 2012, who has been exacerbating China's brand new leading and global role since then. The "probationary period" of China in the realm of global affairs was over, China did not need more time for developing its capabilities to reach the status of a global superpower while "putting on a good face" any longer, and it seized the opportunity of Western economic weakness to switch from a "passive" actor with a low-profile to an "active" actor with huge economic leverage and greater political power worldwide. Hence, the South China Sea territorial dispute has moved from the realm of international law and diplomacy, to the realm of geopolitics and hard power¹⁷⁵. In the aftermath of the Arbitration, the Philippines perceived that any political and diplomatic tool to peacefully settle the dispute has been attempted on their side, to which Filipinos hoped China would have reacted with compliance, respect, and efforts to find a durable solution. China's reaction, instead, was based on the "four nos": no-participation, no-recognition, no-acceptance, no-compliance", and on accusations to the Philippine Government of fraud and betrayal for having involved third-parties and for allegedly having manipulated The Hague's ruling, which was allegedly a "*trap set up by Japan and the United States*". Thus, China reacted aggressively and assertively, flexing its military strength and capabilities in the South China Sea, continuing with its previously planned military exercises with Russia in the area, and coercing other South East Asian countries through diplomatic actions not to take any further action and not to express any supporting statement in favor of the Philippines' legal victory. As a result, most of ASEAN countries remained passive and never explicitly mentioned the South China Sea Arbitration, thus, China successfully divided "ASEAN's unity". The only ASEAN country that exposed its closeness to the Philippine cause was Vietnam, not coincidentally, as the Philippines and Vietnam have always been the two most vocal, determined and active states against China's claims in the South China Sea¹⁷⁶. However, the lack of explicit international support, the passive response by international actors, the lack of international pressure for compliance towards China, and the lack of implementation of the Arbitral final ruling,

¹⁷⁵ Journal of Contemporary China, Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law", 2018, pp. 1-2

¹⁷⁶ Journal of Contemporary China, Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law", 2018, pp. 7-10

allowed China to continue - undisturbed - its projects of exploration and militarization of the South China Sea region, transforming therefore Philippines' initial enthusiasm into the realization that it was just a "moral victory", and that stronger states remain superior and are able to impose their will on weaker states. More specifically, the lack of explicit support and exposure in favor of the Philippine cause and the lack of attempts to induce the enforcement of international law on China by Western states – also known as "appeasement" - resulted, on one hand, in an increasing nationalist feeling and pride for China rising as a global superpower, and on the other hand, in a strong disappointment for the Philippines, whose people felt "abandoned" by their initially supportive allies and neighbors. Thus, the Philippines realized that, contrarily to its previous belief, none of its allies or international organizations with shared-interests, is concretely willing to expose itself against China, hence, the little and weak country of the Philippines is left alone in his "battle" against the giant China, even their American "big white brothers", who stepped back to avoid confrontation with China, at least initially.

It is now clear how Philippine-Chinese relationship had heavily deteriorated during the first half of 2010s, despite the previous meliorative attempts done by former President Arroyo in the 2000s. Nevertheless, in the aftermath of the 2016 Arbitral ruling in favor of the Philippines, and the subsequent heavy Chinese reaction, instead of further worsening, the year 2017 marked a positive "U-turn" in Sino-Philippine relations, and, as a result, a negative turn in Philippine-American relations.

The election of former Philippine President Rodrigo Duterte in June 2016 has sparked controversies worldwide, and has significantly affected the reputation of the Philippines in the international arena and the Philippines' Foreign Policy, which will be further analyzed in the next chapter. Concerning the Sino-Philippine relationship, Duterte's policy took an opposite direction compared to his predecessor, former President Aquino III. Aquino III, in dealing with China in the context of the South China Sea issue, engaged in multilateral talks rather than bilateral, got international organizations involved, evoked the role of international law in settling disputes, and focused on strengthening security relations with the United States for balance-of-power purposes, as already explained. On the contrary, Duterte dismantled Aquino III's agenda by engaging in bilateral relations with China and by separating the Philippines from the United States, at that time guided by former President Donald Trump's motto "*America First*", pursuing an "Independent Foreign Policy". An independent foreign policy, in theory, means that a country's Foreign Policy should be based on diversified and multiple relationships with different states, whose only purpose is

to serve Philippine national interests and to maximize Philippine prosperity, without taking sides and keeping neutrality and equidistant relations¹⁷⁷. What Duterte had done in practice, was to suspend joint military exercises with the United States and to block U.S. military access to the country, activities that were established and planned by the Visiting Force Agreement and the Enhanced Defense Cooperation Agreement. Duterte, in more occasions, has pronounced strong statements against the United States, proving his remarkable skepticism about United States' willingness to defend the Philippines in the event of an armed conflict with China, and his belief that U.S. government has proved useless in preventing China's militarization and expansion in the South China Sea. Instead, while distancing from the United States, his primary goal was to improve relations with China, in order to "soften" Chinese assertiveness and approach through bilateral diplomacy, by deepening economic and financial ties and by diminishing the value of the Philippine victory on the South China Sea Arbitration, in order not to irritate China. Duterte, indeed, was able to secure from China billions of dollars in low-interest loans, economic aid and investments, allowing him to fund his domestic programs and increasing Philippines' economic dependency on China. Duterte's aggressive and critical approach towards the United States, combined with a docile and permissive approach towards China instead, does not properly reflect the notion of "Independent Foreign Policy", given the lack of impartiality. Although, Duterte stated that, in order to rebalance the Philippines' position between China and USA, it needed to detach from the United States and get closer with China, so that the stage of neutrality could be reached¹⁷⁸. Since 1946, Rodrigo Duterte has been the only Philippine President with a strong anti-U.S. and pro-Chinese orientation, who has publicly accused the United States of neocolonial attitude towards the Philippines in more occasions. However - towards the end of his term in June 2022 - he realized that, despite his commitment and efforts, Beijing's assertive and uncompromising attitude in disputed maritime claims did not change, nor it did slow down at all. Indeed, during his speech at the United Nations General Assembly on the 23rd September 2020, for the first time during his term, he explicitly mentioned the 2016 Arbitral Ruling in favor of the Philippines and stated that it was "*beyond compromise*" and that "*we firmly reject attempts to undermine it*". Moreover, on November 2020, Duterte suspended his termination of the Visiting Force Agreement with the United States. Thus, the controversial President realigned Philippines' Foreign Policy closer to the United States and farther from

¹⁷⁷Jurnal Dinamika Global Vol. 6 No. 1, J. Candice and A. Perwita "The Shift and continuity of the Philippines' Foreign Policy under Rodrigo Duterte on the South China Sea Issue", June 2021, pp. 6-8

¹⁷⁸The Interpreter, Andrea Chloe Wong, "The Myth of Rodrigo Duterte's "independent foreign policy", 13 August 2020

China, a trend that up to date is solidifying even more under the recently-elect Philippine President Ferdinand Marcos Jr.¹⁷⁹

The election of current Philippine President Ferdinand Marcos Jr. in June 2022 marked a significant improvement in Philippine-American relations, as stated above. Though, this time, it does not automatically mean that Sino-Philippine relations are necessarily deteriorating. In the meantime, China has become the Philippines' top export trading partner, surpassing the United States and Japan, as showed by the Philippine Statistics Authority's data on exports of July 2021, a result of former President Duterte's policy. Hence, Marcos' Foreign Policy is based on the recovery, the re-establishment and the expansion of solid military-security relations and commitments with the United States in the post-Duterte era, and in the meantime on keeping Philippines' openness towards China, especially as far as economic ties are concerned, by engaging with China both bilaterally and multilaterally¹⁸⁰.

Despite keeping close relations with Beijing, Marcos proved a decisive stance on the matter of territorial disputes. During Marcos' first State of the Nation Address held on the 25th July 2022, he stated:

“On the area of foreign policy, I will not preside over any process that will abandon even a square inch of territory of the Republic of the Philippines to any foreign power. With respect to our place in the community of nations, the Philippines shall continue to be a friend to all. And an enemy to none. [...] We will be a good neighbor – always looking for ways to collaborate and cooperate with the end goal of mutually beneficial outcomes. If we agree, we will cooperate and we will work together. If we differ, let us talk some more until we develop consensus. But we will not waver. We will stand firm in our independent foreign policy, with the national interest as our primordial guide. We commit to maintaining good relations with the rest of the world [...]. The Philippines will continue to promote stronger and multi-faceted relationships with all our partners around the world.”¹⁸¹

Marcos expressed his intention to pursue an Independent Foreign Policy, but, contrary to former President Duterte, his goal is to keep both Beijing and Washington close, the former for economic purposes, the latter for security purposes; in a delicate balancing act

¹⁷⁹ Foreign Policy, Derek Grossman, “China has lost the Philippines despite Duterte’s best efforts”, 3 May 2021

¹⁸⁰ ResearchGate, Wendell Glenn Cagape “Post-Duterte Philippine Foreign Policy Framework to the Marcos flexible Foreign Policy: engaging the world peacefully, multilaterally”, March 2023, pp. 8-10

¹⁸¹ Philippine Information Agency, “State of the Nation Address (SONA)”, Philippine President Ferdinand Marcos Jr.’s Speech, 25th July 2022

between China and the United States. The balancing strategy, in theory, represents the optimal policy for the Philippines, given its nowadays economic and security realities¹⁸². However, China did not appreciate the intensification of Philippine-American military ties and started reacting to Marcos' "excessive" closeness to U.S. military forces. In February 2023, for instance, a diplomatic protest was filed by President Marcos due to repeated harassing behaviors held by Chinese coastguard towards Philippine ships, such as pointing laser lights to the Philippine crew. Moreover, in March 2023, the Chinese Embassy in the Philippines considered Philippine-American discussions on the expansion of U.S. military presence in the archipelago as a "*move that are part of the U.S. efforts to encircle and contain China*", and that "*the U.S. wanted to use the Enhanced Defense Cooperation Agreement to advance its own "anti-China agenda" and interfere in the situation across the Taiwan strait*". The Chinese Ambassador further added "*The Philippines is advised to unequivocally oppose Taiwan independence rather than stoking the fire by offering the US access to the military bases near the Taiwan Strait, if you care genuinely about the 150,000 Overseas Foreign (Filipino) workers*", which was perceived by Filipinos as a threat against fellow Filipinos working in Taiwan¹⁸³. Another interpretable and recent move was the meeting held on the 17th July 2023 between Chinese President Xi Jinping and former Philippine President Duterte in Beijing, a meeting that current President Marcos declared "*he knew about and for which Duterte did not need his explicit permission, as the meeting was between friends*". Although, Marcos also stated that he would appreciate any input from former President Duterte on what was talked about during the meeting, hoping that they were able to discuss about the current issues in the South China Sea, in order to achieve progress, and any new line of communication is welcome if it could be useful¹⁸⁴. Up to date, the details of the Duterte-Xi meeting are still unknown, the only piece of information that was revealed is that President Xi "*appreciates the strategic choice Mr. Duterte made to improve relations with China during his presidency*"¹⁸⁵. Regardless of the details, the simple fact that the current Chinese President preferred to hold a debate with the former Philippine President - rather than the current Philippine President – in the aftermath of President Marcos' visit to U.S. President Biden in Washington D.C., could be perceived as a signal of China's intolerance towards

¹⁸² East Asia Forum, Jenny Balboa, "Marcos Jr's delicate balancing act between China and the United States", 12 April 2023

¹⁸³ Aljazeera, Michael Beltran, "Marcos Jr treads a fine line over military ties as he heads to US", 1 May 2023

¹⁸⁴ Manila Times, Kristina Maralit, "Marcos: Duterte-Xi talks meeting "between friends""; 18 July 2023

¹⁸⁵ Philippine News Agency, Ruth Abbey Gita-Carlos, "Duterte meets with PBBM, tackles recent visit to China", 2 August 2023

Philippine-American security expanding commitments and agreements. Future developments, unfortunately, cannot be included in this research, however, it can be deduced that Philippine-American relationship is on a notably positive and propositional trend. Whereas, as far as Sino-Philippine relationship is concerned, despite the strong economic and diplomatic ties, tension over the territorial claims in the South China Sea (or West Philippine Sea) could be on the rise. It is also important to acknowledge the key role that different Philippine President's individual orientation played in shaping Philippine Foreign Policy and, subsequently, the relationships with both the United States and China, which often witnessed several swings.

Chapter 3: Philippine Foreign Policy

The Philippines' Foreign Policy, specifically concerning the management of the South China Sea disputes, overwent several changes of direction, most notably due to the different Philippine Presidents' approaches towards the United States and China. From the previous chapters, it can be concluded that, so far, the two Philippine Presidents that held a more pro-China stance throughout their terms had been former President Gloria Macapagal-Arroyo and former President Rodrigo Duterte. As far as the other Presidencies are concerned, the overall trend had been to maintain a pro-United States stance instead. It should be noted indeed that, except for former President Duterte, none of the Philippine Presidents had attempted to detach the Philippines from the United States, even former President Arroyo, while positively engaging with China, was maintaining good terms with Washington as well. However, what emerges by analyzing the various administrations is that advances leaning towards the US resulted in a deterioration in Sino-Philippine relations, and advances leaning towards China, on the other hand, resulted in a deterioration in Philippine-American relations. Thus, the Philippines is located on a fragile equilibrium between two competing global powers, which both represent primary necessities for Philippine stability. Philippine economy strongly relies on China's imports, investments and loans, on the other hand, the Philippines' security completely depends on its military alliance with the United States, its former colonial ruler with which a strong cultural and institutional tie has developed. In theory, all States are equal before international law regardless of their relative economic, political and military power. However, in practice, international law is not able to impose compliance on hegemonic States. In the aftermath of the South China Sea Arbitration, which was not sufficient to

settle the maritime disputes in the South China Sea, the Philippines had to adapt its Foreign Policy upon two main strategies: seeking justice and mutual respect through international law as a clearly weak - but sovereign – State; and, meanwhile, seeking reassurance from the United States on their mutual defense obligations and on US willingness to intervene and honor its obligations.

3.1 Philippine Foreign Policy: the West Philippine Sea Arbitration

In the first chapter, during the analysis of the developments of the South China Sea Arbitration, the various Chinese Ministry of Foreign Affairs' reactions and statements to the Philippines' decision to initiate the Arbitration against China and to the various steps of the proceedings have been inserted and described. However, the Philippine Department of Foreign Affairs' reactions and statements instead were not mentioned, but will be covered in this chapter indeed. First of all, it should be noted that the Philippine Department of Foreign Affairs does not refer to the arbitration as the "South China Sea Arbitration" as it is known worldwide, but as the "West Philippine Sea Arbitration" instead. This choice is rooted in Philippines' increasing patriotic sentiment towards the maritime disputes and against China's unlawful and non-compliant actions, and pursuant to Philippine Administrative Order No. 29 of 5 September 2012 "Naming the West Philippine Sea of the Republic of the Philippines, and for other purposes", with which the President of the Philippines (at that time Aquino III) established that

*"The maritime areas on the western side of the Philippine archipelago are hereby named as the West Philippine Sea. These areas include the Luzon Sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as Scarborough Shoal. [...] All departments, subdivisions, agencies and instrumentalities of the Government are hereby directed to use and employ the name West Philippine Sea in all communications, messages and public documents, to popularize the use of such name in the general public, both domestically and internationally [...]."*¹⁸⁶

After having formally conveyed to China the Philippine Notification and Statement of Claim before the Arbitral Tribunal on 22 January 2013, one of the Philippines' priority was indeed to seek an international consensus, by seeking explicit claims of support for the Philippine cause by governments and scholars around the world. The Philippine Department of

¹⁸⁶ Official Gazette of the Republic of the Philippines, Administrative Order No. 29 by President Benigno S. Aquino III "Naming the West Philippine Sea of the Republic of the Philippines, and for other purposes, 5 September 2012

Foreign Affairs' statement on China's response of rejection to the Philippines' Notification, made on 20 February 2013, stressed that

*"China's action will not interfere with the process of Arbitration initiated. The Arbitration will proceed under Annex VII of the UNCLOS and the 5-member arbitration panel will be formed with or without China. In its [China's] Note Verbale, China reiterated its often stated position that it has indisputable sovereignty over the entire South China Sea encompassed by its nine-dash line claim. **This excessive claim is the core issue of the Philippines' arbitration case against China.** The Philippines remains committed to Arbitration which is a friendly peaceful and durable form of dispute settlement that should be welcomed by all."*¹⁸⁷

Philippines' position indeed reiterates that recourse to judicial settlement of legal disputes should not be considered an unfriendly act between States, as China instead insisted. President Aquino III, during his third State of the Nation Address on 23 July 2012, indeed, stated that *"We are not doing this because we want to be an aggressor, we are not doing this because we want escalation. This is about keeping the peace. This is about protecting ourselves – something we have long thought impossible"*¹⁸⁸. The Philippine Department of Foreign Affairs indeed had specified that the initiation of the arbitration is mainly due to the fact that *"the Philippines has exhausted almost all political and diplomatic avenues for a peaceful negotiated settlement of its maritime dispute with China"*, hence, the Philippines' position is sound and well founded in fact and law, and that *"the Arbitral Tribunal, under Article 287 and Annex VII of the Convention, has jurisdiction to hear and make an award as the dispute is about the interpretation and application by States Parties of their obligations under the UNCLOS, not about establishing maritime boundaries and claims of sovereignty."*¹⁸⁹ Annex VII of the UNCLOS, as explained in chapter one, which regulates Arbitration under UNCLOS indeed, establishes that under certain conditions, a State Party is allowed to bring another State Party to arbitration even without the latter's consent, for instance, when States Parties are unable to settle a dispute by negotiation, third party resolution or other peaceful means. As far as scholars' statements on the Notification are concerned, the Philippines had indeed received academic support for such decision.

¹⁸⁷ Philippine Department of Foreign Affairs' Statement on China's Response to the Philippines' Arbitration Case, 20 February 2013

¹⁸⁸ Official Gazette of the Republic of the Philippines, President Benigno S. Aquino III's Third State of the Nation Address (SONA) speech, 23 July 2012

¹⁸⁹ Philippine Department of Foreign Affairs, "West Philippine Sea Arbitration Updates", May 2013, <https://dfa.gov.ph/west-philippine-sea-arbitration-updates>

Professor Jerome Cohen from the New York University School of Law claimed on May 2013

*"[...] instead of following procedures, Chinese say it's so clearly right that our position cannot be challenged, so we don't have to bother with what we've committed ourselves to... how is it for any nation to say we're so correct that we don't have to go to the impartial tribunal we previously agreed on to hear our views validated? ... This makes China look bad to the world community... Now it looks like a bully that rejects its legal obligation to settle a dispute under UNCLOS."*¹⁹⁰

Dr. Ian Storey from the Institute of Southeast Asian Studies in Singapore, stated on 1 February 2013 that

*"Manila's audacious move is a major development in the long running dispute as it marks the first time one of the Southeast Asian parties has resorted to legal means to challenge China's expansive claims. If the UN tribunal decides to hear the case, any ruling it issues will have wide-ranging legal, political and strategic implications."*¹⁹¹

Julian Ku, Professor of Law and Faculty Director of International Programs at the Hofstra University in New York, declared on 22 January 2013 that

*"In any event, I think it is safe to say this is a game changer in the long-running South China Sea dispute. It is also, without question, the most important case that has ever been filed under the dispute resolution procedures of UNCLOS. It will be a crucial test of the UNCLOS institutions, as well as of UNCLOS members."*¹⁹²

In terms of governmental-institutional statements and global support for the South China Sea Arbitration, as monitored by the Asia Maritime Transparency Initiative, the number of States explicitly supporting it had drastically changed between the pre-ruling and the post-ruling periods. The Asia Maritime Transparency Initiative is an official source of information and analysis, regularly updated, aimed at promoting transparency and providing correct information on maritime security disputes in Asia, to discourage assertive attitudes and claims. It does not take explicit positions on States' maritime claims, but it is limited to reporting all information and developments impartially. Such source of transparent information has been conceived by the Center for Strategic and International Studies (CSIS), which is a *"bipartisan, nonprofit policy research organization dedicated to address*

¹⁹⁰ Philippine Department of Foreign Affairs, "West Philippine Sea Arbitration Updates", May 2013, <https://dfa.gov.ph/west-philippine-sea-arbitration-updates>

¹⁹¹ Philippine Department of Foreign Affairs, "West Philippine Sea Arbitration Updates", February 2013, <https://dfa.gov.ph/west-philippine-sea-arbitration-updates>

¹⁹² Philippine Department of Foreign Affairs, "West Philippine Sea Arbitration Updates", January 2013, <https://dfa.gov.ph/west-philippine-sea-arbitration-updates>

the world's greatest challenges"¹⁹³. It should be noted that, in the realm of international law, given its lack of enforcement mechanism, its most effective tool to induce compliance is international pressure. However, before the final Award was issued, the number of States publicly supporting the Arbitration as legally binding was 41, the number of neutral States which did not issue any statement was 121, and 31 were the countries opposing Arbitration and considering it illegitimate. Among the 41 supportive States, the most relevant ones were of course the United States, all 28 European Union's States (including the United Kingdom), Japan, Australia, New Zealand, Canada, and Vietnam. It should be noted that Vietnam was the only ASEAN State to explicitly side with the Philippines, despite the high interests at stake for the whole region. In the aftermath of the final ruling, instead, the number of States explicitly supporting and calling for the Ruling to be respected fell from 41 to 7, which includes the United States, Canada, Australia, Japan, New Zealand and Vietnam (besides the Philippines, of course). 33 countries indeed, in the post-Award period, limited their statements by positively acknowledging the Ruling, but not calling for compliance on China, including European Union States. Nevertheless, the number of countries explicitly opposing the Ruling was 6, among which there were Sudan, Pakistan, Montenegro, Taiwan and China. This proves China's great ability in affecting other countries' positions, hence, China's economically coercive power. Another result that emerges from the Asia Maritime Transparency Initiative's analysis of these data is that

*"there is a strong correlation between the level of support shown for the South China Sea Arbitration and a country's level of corruption and strength of governance/rule of law, as measured by Transparency International's Corruption Perceptions Index and Freedom House's index in the World scores. There are exceptions, but generally countries with greater respect for rule of law at home and more insulated from Chinese economic coercion have been more willing to speak in defense of the arbitral tribunal and international law more broadly"*¹⁹⁴.

Nevertheless, in 2023 the "Arbitration Support Tracker" by the Asia Maritime Transparency Initiative has been updated, seven years after the Ruling was issued. This year, indeed, numerous States have renewed its position on the South China Sea Arbitration, due to increasing concerns for international rules in the wake of the war in Ukraine and to a more active Philippine policy on the South China Sea. The Asia Maritime Transparency Initiative has identified 24 governments that have publicly called for the

¹⁹³ Center for Strategic and International Studies Programs, "Asia Maritime Transparency Initiative", <https://www.csis.org/programs/asia-maritime-transparency-initiative>

¹⁹⁴ Asia Maritime Transparency Initiative, "Who is taking sides after the South China Sea Ruling?", 15 August 2016

Ruling to be respected, compared to 7 in the aftermath of the issuance of the Award. Among the countries that have shifted from positively acknowledging the Ruling to fully supporting it and endorsing it as legally binding, most notably appear European Union States (Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, Netherlands, Poland, Spain, Sweden, Czechia, Slovakia, Romania), United Kingdom, and India. Among Southeast Asian neighbors, except for Vietnam, none of them have formally recognized the Ruling as legally binding nor called on China for compliance. Among the Asian States positively acknowledging the Ruling, appear at least Indonesia, Malaysia, Myanmar, Singapore, and South Korea. As far as the countries siding with China are concerned instead, the list remains short: China, Montenegro, Pakistan, Russia, Sudan, Syria, Taiwan and Vanuatu. As of 2023, although a slight improvement and increase in the number of States publicly supporting the South China Sea final Award has been tracked, most countries worldwide have not taken a position yet. Thus, the numbers of global support are not sufficient yet to generate international pressure on China to comply with international law¹⁹⁵. The Philippines has always given a high value on the opinion and the support by the International Community, as international pressure could be a means to push China to comply with the Arbitration. As explained by former Philippine Senator Edgardo Angara, a member of the international political group Centrist Democrat International (CDI), in their “emergency resolution on the South China Sea”,

*“the CDI recalls that history’s destructive wars began when democratic nations stood silent in the face of unlawful occupations of other nation’s territory, and remembers these lessons to condemn territorial encroachments wherever they occur. [...] The CDI strongly urges China to pursue peaceful, lawful, and internationally sanctioned rules on dispute resolution to remove rising tensions in the region and seek peaceful rules-based solutions of the conflicting claims.”*¹⁹⁶

On 12 July 2022, in occasion of the sixth Anniversary of the Philippines-China South China Sea Arbitral Tribunal Ruling, current Philippine Secretary of Foreign Affairs, Enrique Manalo, issued a statement reported by all main Philippine Embassies and Consulates worldwide, in which he declared that

“we recall 12 July 2016 as the day that affirmed to the community of nations that the rule of law prevails, and that stability, peace and progress can only be attained when

¹⁹⁵ Asia Maritime Transparency Initiative, “Arbitration Support Tracker”, 19 July 2023, <https://amti.csis.org/arbitration-support-tracker/>

¹⁹⁶ Philippine Foreign Service Institute, “West Philippine Sea Arbitration Update”, April 2014, <https://fsi.gov.ph/wp-content/uploads/2023/03/2014-April-WPS-Update-2.pdf>

*founded on a rules-based legal order on the oceans [...]. The Award and the UNCLOS are the twin anchors of the Philippines' policy and actions on the West Philippine Sea. [...] The Award, an affirmation of UNCLOS' dispute resolution mechanism, not only sets reason and right in the South China Sea, but it is an inspiration for how matters should be considered – through reason and right - by states facing similarly challenging circumstances. [...] These findings are no longer within the reach of denial and rebuttal, and are conclusive as they are indisputable. The Award is final. We firmly reject attempts to undermine it; nay, even erase it from law, history and our collective memories. At the same time, we welcome the support of a growing list of countries for the Award*¹⁹⁷.

On the same date, U.S. Secretary of State Antony Blinken issued a press statement reiterating the Award's findings on China's unlawful claims and actions to the areas that are part of the Philippines' exclusive economic zone, and released the

*"Limits in the Seas No. 150 - the latest study examining coastal state maritime claims and their consistency with international law – which analyzes China's revised articulation of its South China Sea maritime claims following the issuance of the tribunal's ruling. This study concluded that these rearticulated maritime claims remain plainly inconsistent with international law. The United States reaffirms its July 12, 2020, policy regarding maritime claims in the South China Sea. We also reaffirm that an armed attack on Philippine armed forces, public vessels, or aircraft in the South China Sea would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.-Philippines Mutual Defense Treaty. We call again on the PRC to abide its obligations under international law and cease its provocative behavior [...]"*¹⁹⁸

The following year, on 12 July 2023, in occasion of the seventh Anniversary of the Philippines-China South China Sea Arbitral Tribunal Ruling, Enrique Manalo issued another statement concerning the Award, in which he stresses that

"it is an affirmation of the UNCLOS and its dispute settlement mechanisms, the Award definitely settled the status of historic rights and maritime entitlements in the South China Sea and declared without legal effect claims that exceed entitlements geographical and substantive limits set by UNCLOS. It is now part of international law. Anniversaries are markers reminding us of the trajectory we have taken as a nation and as a people. In the decision to file a case for arbitration, the Philippines opted to take

¹⁹⁷ Philippine Department of Foreign Affairs, "Statement of Foreign Affairs Secretary Enrique A. Manalo on the 6th Anniversary of the Award on the South China Sea Arbitration", 12 July 2022

¹⁹⁸ U.S. Department of State, Press Statement by Secretary of State Antony Blinken, "Sixth Anniversary of the Philippines-China South China Sea Arbitral Tribunal Ruling, 11 July 2022

the path of principle, the rule of law and the peaceful settlement of disputes. The Tribunal's decision affirmed the correctness of that course of action [...]. We welcome the growing number of partners that have expressed support for the Award. We are honored that the Award stands as a beacon whose guiding light serves all nations. It is a settled landmark and a definitive contribution to the progressive development of international law. [...]"¹⁹⁹

The Chinese Embassy in Manila, on the same date, issued its "remarks on the seventh Anniversary of the so-called Award on the South China Sea Arbitration" insisting that

"China's position on the so-called South China Sea arbitration and the award is consistent, clear and firm. The Arbitral Tribunal gravely violated UNCLOS and general international law. The award is illegal, null and void. China does not accept or recognize it, and will never accept any claim or action based on the award. China's sovereignty and relevant rights and interests in the South China Sea were established in the long course of history, and are solidly grounded in history and the law. This shall under no circumstances be affected by any illegal award. As the mastermind behind the South China Sea arbitration, the US ropes in allies to play up the issue each year on the anniversary of the illegal award to gang up against China and to exert pressure, and force China into accepting the award. We are firmly against this. We urge these countries outside the region to respect China's territorial sovereignty and maritime rights and interests in the South China Sea, stop using the South China Sea issue to drive wedges among regional countries, and refrain from being a troublemaker to peace and stability in the South China Sea."²⁰⁰

The United States, accused of "ganging up against China to exert pressure", on the same date, issued a press statement stressing that

"Today marks the seventh anniversary of an Arbitral Tribunal constituted under the 1982 Law of the Sea Convention firmly rejecting the People's Republic of China's (PRC) expansive South China Sea maritime claims, including any PRC claim to the area determined by the Arbitral Tribunal to be part of the Philippines' exclusive economic zone and continental shelf, as well as any resources therein. Under the terms of the Convention, this ruling is final and legally binding on the Philippines and the PRC. The United States reaffirms its July 13, 2020, policy regarding maritime claims in the South China Sea. We continue to urge Beijing to comport its maritime claims with

¹⁹⁹ Philippine Department of Foreign Affairs, "Statement of Foreign Affairs Secretary Enrique A. Manalo on the 7th Anniversary of the Award on the South China Sea Arbitration", 12 July 2023

²⁰⁰ Embassy of the People's Republic of China in the Republic of the Philippines, "Remarks of the Spokesperson of the Chinese Embassy in the Philippines on the 7th Anniversary of the so-called Award on the South China Sea Arbitration", 12 July 2023

international law as reflected in the 1982 Law of the Sea Convention; cease its routine harassment of claimant state vessels lawfully operating in their respective exclusive economic zones; halt its disruption to states' sovereign rights to explore, exploit, conserve, and manage natural resources; and end its interference with the freedoms of navigation and overflight of states lawfully operating in the region. We will continue working with allies and partners to advance a free and open Indo-Pacific, one that is at peace and grounded in respect for international law.”²⁰¹

It should be noted that, before 2022, no statements by the Philippine Department of Foreign Affairs were released in occasion of the various anniversaries of the Arbitration, consistent with former President Duterte's policy avoiding confrontation and bold statements against China's activities and non-compliance in the South China Sea. Nevertheless, in 2021, U.S. Secretary of State Antony Blinken did release a statement on the fifth anniversary of the Arbitral Tribunal ruling, in which he reiterated that

“nowhere is the rules-based maritime order under greater threat than in the South China Sea. The People's Republic of China continues to coerce and intimidate Southeast Asian coastal states, threatening freedom of navigation in this critical global throughway. [...] We call on the People's Republic of China to abide by its obligations under international law, cease its provocative behavior, and take steps to reassure the international community that it is committed to the rules-based maritime order that respects the rights of all countries, big and small”²⁰².

Going back to 2023, besides the statement by Philippine Secretary of Foreign Affairs, Marcos' administration in occasion of the seventh anniversary launched a new website managed by the Philippine Department of Foreign Affairs called “Not One Inch”, recalling Marcos' phrase during his 2022 SONA “*I will not preside over any process that will abandon even one square inch of territory of the Republic of the Philippines to any foreign power*”, which aims at providing official information, resources, material submitted to the Tribunal, official statements and a clear and complete picture on the South China Sea Arbitration. This move represents one of the latest efforts by President Marcos to substantiate and validate Manila's position in its maritime dispute²⁰³.

This recent revival of discussions and statements concerning the South China Sea Arbitration signals a change of direction in Philippine Foreign Policy since the end of the

²⁰¹ U.S. Department of State, Press Statement by Department spokesperson Matthew Miller, “7th Anniversary of the Philippines-China South China Sea Arbitral Tribunal Ruling”, 11 July 2023

²⁰² U.S. Department of State, Press Statement by Secretary of State Blinken, “5th Anniversary of the Philippines-China South China Sea Arbitral Tribunal Ruling”, 11 July 2021

²⁰³ CNN Philippines, “DFA launches “Not One Inch: microsite on PH's arbitral win vs. China”, 12 July 2023

Duterte presidency and the beginning of current President Marcos' administration indeed, which began in June 2022, given the fact that former President Duterte tended to downplay the final result of the Award and to be as friendliest and amenable as possible towards Beijing. President Marcos' strategy in the context of the maritime disputes with China, indeed, is based on asserting Philippines' maritime rights through rules-based mechanisms, the rule of international law, by reiterating what the Arbitration established, by engaging in multilateral dialogues on the issue, in the hope of inducing Beijing to realign their policy and actions in the South China Sea in conformity with UNCLOS and the Award. In Marcos' view, the Award is a useful tool that gives the Philippines leverage to advance its interests, despite China's rejection and non-compliance. Hence, compared to his predecessor, the current Philippine President gives a great value to the Philippines' legal victory, despite seeming abstract yet, and will use it as part of its bargaining power in negotiations. In October 2022, President Marcos expressed his willingness to take a lead role in ASEAN peace-making and peace-keeping efforts and negotiations amid the ongoing geopolitical tensions, suggesting that ASEAN needs to be strengthened in order to make the regional framework more responsive to potential challenges, more able to intervene than what it has accomplished so far, and more united to push forward its function to ensure stability in the region, given the geopolitical challenges it is facing²⁰⁴. In the aftermath of an umpteenth incident at sea occurred on 6 February 2023, in which a Chinese Coast Guard vessel pointed a military laser light at a Philippine Coast Guard vessel that temporarily blinded the Philippine crew, during a resupply mission of the Philippine Navy in the South China Sea; President Marcos proved that his intention is to avoid escalation and provocations that would heat tensions up with China. Indeed, he stated that he will not invoke the Mutual Defense Treaty with the United States as a response to China's action, by stating that

“if we activated that, what we are doing is escalating the tensions in the area and I think that would be counterproductive. [...] I do not think that that [the laser incident] is sufficient for it to trigger the Mutual Defense Treaty. So we are in constant contact, of course, with our treaty partners, not only with the United States but also our ASEAN partners and partners here in Asia and that I think is a better recourse rather to go

²⁰⁴ Philippine Presidential Communications Office, “PBBM says PH ready to take the lead in ASEAN peace-keeping efforts amid global tensions”, 6 October 2022

*directly to the Mutual Defense Treaty, which again, I am very concerned would provoke the tensions rather than cool the tensions down*²⁰⁵

Nevertheless, another primary goal in Marcos' agenda is to stabilize domestic security issues, such as Communist rebellions, in order to shift the Government's focus from domestic defense to external security, to *"reorient the focus of the Armed Forces towards external defense. Because, right now, we have so many geopolitical issues and challenges so we need the Armed Forces to now focus its eyes on external defense"*.²⁰⁶ As for the Communist uprisings in the Philippines, it should be noted that they date back to the 1970s, during former Philippine President Ferdinand Marcos Sr's regime. Up to date, the Communist insurgency is led by the far-left Communist Party of the Philippines (CPP), which was established in 1968 and strongly holds that the Philippines, since its independence, has been and still is a semi-colonial and semi-feudal country serving neo-colonial monopoly capitalism. In the aftermath of former President Marcos Sr.'s regime, which ended in 1986 with his exile to Hawaii and the election of President Corazon Aquino (Liberal Party of the Philippines), the CPP underwent an internal division that led to its weakening. Nevertheless, the CPP has never completely disappeared, since its inception it has been fighting a guerrilla war against the State. The Philippine government, throughout the decades and during all differing administrations, has always acknowledged its existence and that its persistence is linked to long-standing socio-economic issues, especially in poor rural communities and agricultural areas, where agrarian unrest and social inequalities are stark. Philippine governments, despite several agrarian reforms and attempts of peace talks, have never been able to completely settle its domestic guerrilla waged by Communist insurgents, as it occurs with Islamic separatist movements in the Southern area of the Philippines, most notably the terrorist organization of Abu Sayyaf. The CPP has been labeled by both the United States and the European Union as a foreign terrorist group aimed at destabilizing the Philippine economy and at overthrowing the national government of the Philippines, together with the Abu Sayyaf terrorist organization²⁰⁷.

²⁰⁵ Philippine Presidential Communications Office, "PBBM says invoking MDT with US after China's laser-pointing incident will only escalate tension in WPS", 18 February 2023

²⁰⁶ Philippine Presidential Communications Office, "PH to shift to external defense within PBBM's term after ending communist rebellion – NSC", 1 September 2023

²⁰⁷ The Armed Conflict Location & Event Data Project (ACLED), Tomas Buenaventura, "The Communist Insurgency in the Philippines", 13 July 2023, <https://acleddata.com/2023/07/13/the-communist-insurgency-in-the-philippines-a-protracted-peoples-war-continues/>

Going back to international issues, during the 43rd ASEAN Summit Retreat held between the 4th and 7th September 2023, President Marcos intervened and reiterated the Philippines' commitment to peaceful settlement of disputes and to a ruled-based international order, by stating that

“history will ultimately judge whether the supremacy of the rule of law prevails, ushering in an era where all nations truly stand as equals, independent and unswayed by any single power. The challenge for us remains: that we should never allow the international order to be subjected to the forces of might applied for a hegemonic ambition. The Philippines is not seeking conflict but will always rise to meet challenges to its sovereignty, sovereign rights and maritime jurisdiction in the South China Sea. The Philippines firmly rejects misleading narratives that frame the disputes in the South China Sea solely through the lens of strategic competition between two powerful countries [China and USA]. This not only denies us of our independence and agency, but also disregards our own legitimate interests”²⁰⁸.

More specifically, during the 26th ASEAN-China Summit held in Jakarta on 6 September 2023, President Marcos intervened affirming the relevance of ASEAN-China cooperation to ensure peace and progress in the region, and adding that

“among the priority areas, maritime cooperation is especially significant to the Philippines as an archipelagic nation. We must emphasize that practical cooperation in the maritime domain can only flourish with an enabling environment of regional peace, security, and stability, anchored in international law. The Philippines therefore continues to uphold the primacy of the 1982 UNCLOS as the framework within which all activities in the seas and oceans are conducted. We once again reaffirm our commitment to the rule of law and peaceful settlement of disputes. [...] The early conclusion of an effective Code of Conduct in the South China Sea [which is still under negotiations] that is in accordance with international law, including UNCLOS, remains the goal for ASEAN and for China. Universal multilateralism is our only recourse in an interconnected and interdependent world. This is in a context set against a backdrop of geopolitical challenges and macroeconomic fragilities.”²⁰⁹

Last but not least, during the 18th East Asia Summit, President Marcos called on ASEAN

²⁰⁸ Philippine Presidential Communications Office, “PBBM: ASEAN must not allow international order to be subjected to hegemonic ambition”, 6 September 2023

²⁰⁹ Philippine Presidential Communications Office, “Intervention of President Ferdinand R. Marcos Jr. at the 26th ASEAN-China Summit, 6 September 2023

“to rally and take action over the dangerous use of coast guard and maritime militia vessels in the South China Sea. We must not allow tensions in the South China Sea to further escalate. In this spirit and in accordance with the Declaration on the Conduct of parties in the South China Sea, we continue to urge all parties to exercise self-restraint and refrain from unilateral and assertive activities that would increase tensions in the region, misunderstandings, and miscalculations in the South China Sea. We are concerned over consistent actions that are in violation of obligations under international law, including UNCLOS, and under the Declaration on Conduct. The Philippines fully supports adherence to international law and the rules-based order. We must oppose the dangerous use of coast guard and maritime militia vessels in the South China Sea. We are concerned over illegal, unreported, and unregulated fishing, and the militarization of reclaimed features in the South China Sea. The Philippines remains resolute towards the peaceful resolution of disputes. We continue to support freedom of navigation and overflight, and the rules-based international order. [...] We are still committed to defending our sovereignty, our sovereign rights, and the maritime jurisdiction in accordance with UNCLOS”²¹⁰.

Marcos’ words, in all of his recent statements and interventions, reflect his confidence in international law and his belief that a rules-based international order will be achieved. His approach towards China appears diplomatic and willing to cooperate, but at the same time, firm and intractable as far as Philippines’ maritime rights are concerned, avoiding submissive behaviors towards powerful states, both towards contentious ones – hence China – and friendly ones – United States. His belief on the equality of States leads him not to immediately run to the United States and not to hide behind the U.S. military shield, and at the same time, not to cede to China’s pressures and coercive approaches.

President Marcos’ approach in foreign policy, so far, has appeared calm but determined, focused on a multilateral framework and compliance to international law, in which no state should exercise coercion, nor use threats to use force or to take unilateral actions, regardless of each States’ power. For President Marcos, it appears that the Philippines’ greatest “weapon” and source of bargaining power is its unquestionable legal victory over China on the South China Sea Arbitration. By analyzing all of the official statements mentioned throughout this research, both by Philippine and Chinese representatives, it is undeniable that each State attempts to present its position as the legitimate one. The

²¹⁰ Philippine Presidential Communications Office, “Intervention of President Ferdinand R. Marcos Jr. at the 18th East Asia Summit (EAS), 7 September 2023

Philippines presents itself as the peaceful nation championing for a rules-based international order, respectful towards international law and struggling with the unlawful actions perpetuated by its giant neighbor, labeled as an expansionist power with hegemonic ambitions, which keeps preventing the Philippines from enjoying its rights established under UNCLOS. On the other hand, China presents itself as a misinterpreted nation, which is often criticized by the majority of a biased international community that favors Western powers and customs, and that does not appreciate China's rise as a global active actor. Both States are clearly defending their own core interests, China's vital interests in "detaining" its maritime sovereignty over the South China Sea "islands" stemming from its alleged historic rights, and the Philippines' vital interests in detaining and enjoying its exclusive rights over its exclusive economic zone, stemming from UNCLOS provisions. The Philippines finds itself in a presumably "privileged" position, as international law – at least in theory - sides with the Philippine view. Hence, the Philippines' core interests are actually consistent with international rules, thus it can advocate the respect of international law and the importance of a rules-based international order. The same cannot be said about China's core interests and subsequent actions, which have been repeatedly considered unlawful and inconsistent with international law, not only by its Philippine counterpart, but by the Permanent Court of Arbitration and other States (most notably the United States) as well. The fact that China did not even participate to the arbitral proceedings worsened its position, it appeared as a State that expects to be right and to have valid arguments regardless of any other interpretation, to the point that it is not even willing to demonstrate and prove its view against the allegations received, just because its view is "undisputable". Hence, the core difference between the Philippine position and the Chinese position, both fighting for their own core interests, is that the Philippines is backed by international law, confirmed by the Arbitral Ruling, whereas China, in the lack of legal supportive tools, is backed by its superiority in economic and political terms, with which it is able to limit the implementation of the legal defeat, but does not eliminate the global perception of an "assertive" and "hypocrite" China. In a hypothetical scenario in which China had not ratified UNCLOS, China would have probably proved more coherence with its actions and behavior. However, given the executive limits in the implementation of international law still present today, the Philippines cannot allow itself to rely solely on international law, but needs instead other assets of reassurance to assert its rights and its security against external threats, namely the United States' security umbrella.

3.2 Philippines' Foreign Policy: the military alliance with the United States

As already described in chapter two, the military relationship between the Philippines and the United States has been a long-lasting pillar in their bond, and an increasingly necessity for both nations amid the potential challenges in East Asia. Except for a few and short periods, specifically former Philippine President Duterte's term and the first half of the '90 with the closure of U.S. bases in the Philippines, the military ties have always been deep-rooted, stable, solid, and crystallized in various agreements, most notably the 1951 U.S.-Philippines Mutual Defense Treaty. The controversial former President Duterte, indeed, had been the only Philippine President to heavily criticize and row against the United States, risking to reset all the achievements previously scored by past Presidents, such as Aquino III's establishment of the 2014 Enhanced Defense Cooperation Agreement, or the 1998 Visiting Forces Agreement established under Ramos' administration. Thus, one of Marcos' priorities has been to restore the U.S.-Philippines' relationship and relative commitments, which were put at risk by his predecessor Duterte, during an era of geopolitical tensions in the region that instead increases the indispensability of having the United States' support.

On 21 November 2022, during U.S. Vice President Kamala Harris' visit to the Philippines and meeting with Philippine President Marcos, they both reiterated their well-established relationship and, most notably, their military commitments. President Marcos told Vice President Harris

"[...] The relationship between our two countries is something that we both have really come to depend upon. And with the upheavals that we are seeing, not only in the region, but especially in the region, this partnership becomes even more important. The situation is rapidly changing. We must evolve to be properly responsive to that situation. And so that is why it is very important that we continue to progress, that we continue to strengthen, as we redefine those relationships. Your visit is a very strong symbol that this relationship remains strong and that it remains important. I do not see a future for the Philippines that does not include the United States. That really has come from the very long relationship that we have had with the US. Of course, we went through different phases of relationship. But since the war, it has just been strengthened in every way: in the economic sense, in the political sense, defense, security. You cannot think of an area where we have not cooperated, collaborated, and have had good results for both our countries." Vice President Harris replied "I have traveled here because of many of the points that you have made. The relationship between the Philippines and the United States is a long and enduring one. [...] As you said, the

*basis of our relationship is multifaceted. Our relationship is based on mutual commitment to the economic prosperity of the region and our respective nations. [...] Our relationship is based on mutual concerns about security for the region. We are both proud members of the Indo-Pacific. And in particular as it relates to the Philippines, I will say that we must reiterate always that we stand with you in defense of international rules and norms as it relates to the South China Sea. An armed attack on the Philippines armed forces, public vessels, or aircraft in the South China Sea would invoke U.S. mutual defense commitments. And that is an unwavering commitment that we have to the Philippines. When we think about what is happening in this region we know that there are so many opportunities for us to continue to strengthen our relationship. But the basis of our relationship is based on mutual commitments to international rules and norms, and upholding those international rules and norms in all of the ways we know to allow for prosperity and security for our respective nations in the region. So again, I will reiterate that the alliance between the United States and the Philippines is a strong one and enduring one, and only under your leadership continues to be strengthened, and we look forward to working with you on many of these issues [...]*²¹¹

U.S. Vice President's official visit to the Philippines, indeed, signals a huge improvement and step forward in U.S.-Philippines relations after the cooling period during the Duterte presidency. The strong and unequivocal defense commitments reiterated by Vice President Harris is exactly what President Marcos was seeking from the United States as part of the Philippines' foreign policy initiated by former President Aquino III, interrupted by former President Duterte, and resumed by current President Marcos.

Moreover, as a proof of Marcos' successful achievement of greater international consensus concerning the South China Sea Award, on 26 May 2023, in the aftermath of the G7 and Quadrilateral Security Dialogue (between United States, Australia, India and Japan) summits held in Japan, the Philippine government was informed by the Japanese Ambassador to the Philippines that all G7 leaders (United States, Canada, France, Germany, Italy, Japan and the United Kingdom) reaffirmed their commitment to strengthen coordination with regional partners, most notably ASEAN, and that

“the G7 leaders also stressed that there is no legal basis for China's expansive claims in the South China Sea and strongly opposed its militarization in the region. Underlining the universal character of the UNCLOS and its pivotal role in setting out the legal

²¹¹ Philippine Presidential Communications Office, “Remarks by President Ferdinand R. Marcos Jr. and United States Vice President Kamala Harris”, 21 November 2022

*framework in all activities in the oceans and seas. [...] Significantly, the leaders reiterated the legally binding Arbitral Tribunal award as a significant milestone and as a basis for peaceful resolution of disputes between the parties. Furthermore, they affirmed the importance of peace and stability across the Taiwan Strait, and agreed to foster resilience to economic coercion*²¹².

On 12 June 2023, during the celebrations of the 125th anniversary of Philippine independence from Spain, President Marcos urged Filipinos to feel proud for having “thrown off the ominous yoke of domination, never again to be subservient to any external force that directs or determines our destiny”²¹³.

Most notably, on May 2023 President Marcos flew to Washington DC for his first 5-day official visit to the United States, the first in more than ten years by a Philippine president, aimed at strengthening even more U.S.-Philippines already steady bond, adapting it to the current challenges, advancing U.S.-Philippines’ core interests, boosting U.S. economic engagement through trade, investment, technology, and innovation, and last but not least, reiterating their mutual concerns and commitments in terms of security and defense in the Indo-Pacific²¹⁴. During the bilateral meeting with US President Biden at the White House on 2 May 2023, the latter welcomed President Marcos by stating that

“when we met in New York last year [during the UN General Assembly], you told me that – I’m using your phrase – “a strong alliance has to continue to evolve as we face the challenges of this new century”. And we are facing new challenges, and I can’t think of any better partner to have than you. I couldn’t agree more that we have to. This relationship has to continue to evolve, and together, we’re standing up for our shared democratic values, workers’ rights and the rule of law. [...] And the United States also remains ironclad in our commitment to the defense of the Philippines, including the South China Sea, and we’re going to continue to support the Philippines’ military modernization goals. Our countries not only share a strong partnership, we share a deep friendship – one that has been enriched by millions of Filipino Americans in the communities all across the United States of America.”

President Marcos’ opening remarks concerning the military alliance were the following:

“[...]there also the geopolitical issues that have made the region where the Philippines is, possibly, arguably the most complicated geopolitical situation in the world right now.

²¹² Philippine Presidential Communications Office, “2023 G7, QUAD summits outcome documents back PBBM’s foreign policy position”, 26 May 2023

²¹³ Philippine Presidential Communications Office, “PBBM: PH never again to be subservient to any external force that directs our destiny”, 12 June 2023

²¹⁴ Philippine Presidential Communications Office, “Departure Statement by President Ferdinand R. Marcos Jr. for his Official Working Visit to Washington D.C., USA”, 30 April 2023

And so, it is only natural for the Philippines to look to its sole treaty partner in the world, to strengthen and to redefine the relationship that we have and the roles that we play in the face of those rising tensions that we see now around the South China Sea and Asia-Pacific regions. So I welcome very much the opportunity to come here [...].²¹⁵

The day after, President Marcos met once again with US Vice President Harris, to discuss more in depth about economic cooperation and the issue of security in the South China Sea. Vice President Harris stated

"[...] on the issue of security of course, the work that our countries are doing together as it relates to the South China Sea, as it relates to what we must do in terms of continuing to work together through our Coast Guards. I was honored to go to Palawan. I went there after you and I met and met with the fishers there and with the Coast Guard which the US and the Philippines – our Coast Guards are working together in that region very closely."

President Marcos replied

"[...] I think that [the visit] has given us the very attractive opportunity to continue to strengthen the relationship between our two countries in the context of all of the difficulties and complexities, the rising tensions in our region and the world. And once again, we turn to our American partners, our only treaty partner in the world. And it is natural, after all the different cycles as in any friendship, like any friendship we go through many cycles and I think this is an upside now to that cycle."²¹⁶

During his visit to the United States, President Marcos also met with U.S. Secretary of Defense Lloyd Austin III at the Pentagon. Secretary Austin's opened his remarks by reminding that

"we recently concluded the largest and most complex iteration ever of Exercise Balikatan [which are the joint military exercises established by the 1998 Visiting Forces Agreement]. And it included more than 17,000 troops from the Philippines, the United States, and Australia, training side-by-side across air, land, sea, and for the first time, cyberspace. And of course, Balikatan means shoulder to shoulder because that's how the United States and the Philippines have always worked together. For decades, the Philippines has been an indispensable friend and ally to United States. Our alliance is rooted in common democratic values, and it draws strength from the deep bonds between our peoples. We're more than allies, we're family and we share a common

²¹⁵ Philippine Presidential Communications Office, "Opening Remarks by President Ferdinand R. Marcos Jr. and U.S. President Joe Biden during their bilateral meeting, 2 May 2023

²¹⁶ Philippine Presidential Communications Office, "Remarks by President Ferdinand R. Marcos Jr. and U.S. Vice President Kamala Harris, 2 May 2023

vision for free and open Indo-Pacific because a region governed by rules and rights helps provide security and prosperity for our two countries and for the whole region. Our commitment to the defense of the Philippines is ironclad. And let me tell you once again that our mutual defense treaty applies to armed attacks on our armed forces, Coast Guard vessels, public vessels, or aircraft in the Pacific including anywhere in the South China Sea. So, make no mistake Mr. President, we will always have your back, in the South China Sea or elsewhere in the region. Today, I look forward to discussing how we've made the alliance stronger, including the recent expansion of our Enhanced Defense Cooperation Agreement to four new sites across the Philippines.”²¹⁷

During his final statement on his official working visit to the United States, President Marcos reaffirmed that all meetings held with President Biden, Vice President Harris, U.S. Secretary of Defense Austin III, and other members of the U.S. Cabinet, were productive and useful to expand and adapt their long-standing alliance and partnership. He also restated that the Philippines and the United States “*have been and will continue to be naturally drawn to each other*”, not only because of the Treaty Alliance, but due also to their shared values and commitments to mutual prosperity²¹⁸. Besides the finalization of U.S.-Philippines bilateral defense guidelines aimed at expanding the 1951 Mutual Defense Treaty, especially by including armed attacks in the South China Sea as a triggering motive to invoke the defense commitments under Article IV, which were already covered in chapter 2; both Presidents Marcos and Biden released a Joint Statement following their bilateral meeting in Washington, through which both countries commit one another to strengthen their alliance, uphold international law and expand regional collaboration, indeed. The Joint Statement reports that

“President Biden reaffirms the United States’ ironclad alliance commitments to the Philippines, underscoring that an armed attack on Philippine armed forces, public vessels, or aircraft in the Pacific, including the South China Sea, would invoke U.S. mutual defense commitments under Article IV of the 1951 U.S.-Philippines Mutual Defense Treaty. The leaders welcome the identification of new sites pursuant to the U.S.-Philippines Enhanced Defense Cooperation Agreement, which will strengthen Philippine security and support the Armed Forces of the Philippines’ modernization goals [...]. The leaders underscore their unwavering commitment to freedom of navigation and overflight in the South China Sea, and the importance of respecting the

²¹⁷ Philippine Presidential Communications Office, “Opening Remarks by President Ferdinand R. Marcos Jr. and U.S. Secretary of Defense Lloyd J. Austin III during their meeting”, 4 May 2023

²¹⁸ Philippine Presidential Communications Office, “Post-Visit Statement by President Ferdinand R. Marcos Jr. on his Official Visit to Washington D.C.”, 5 May 2023

sovereign rights of states within their exclusive economic zones consistent with international law. [...]The leaders note the ruling of the 2016 arbitral tribunal, constituted pursuant to the UNCLOS. They affirm the importance of maintaining peace and stability across the Taiwan Strait as an indispensable element of global security and prosperity. The leaders welcome cooperation with partners that share the United States' and the Philippines' commitment to international law and mutual respect, and in that spirit, they reaffirm their strong support for ASEAN centrality and the ASEAN Outlook on the Indo-Pacific.”²¹⁹

All of these statements and remarks suggest that since President Marcos has taken office, Manila and Washington have experienced an increasing number of exchanges of official engagements and official visits at all levels of government, which did not occur at all during Duterte's administration, instead. All of the meetings that were held between the Philippines and the United States, both in bilateral or multilateral framework, resulted in an expansion of collaboration and commitments. The United States, compared to previous decades, during which tended to avoid bold and explicit statements in favor of the Philippines concerning the South China Sea disputes, has been showing its support and its willingness to defend the Philippines' cause, probably due to the rapid escalation of the militarization process carried out by China – which was evidently underestimated - and due to the increasing tensions over other geopolitical challenges in the area, Taiwan's fragile situation above all. Hence, for the United States, the Southeast Asian region has become a priority and an area in which U.S. presence is much needed. Eventually, it can be concluded that Marcos' goal to restore U.S.-Philippines relationship and to receive U.S. reassurance on their mutual defense commitments, has been achieved so far.

Nevertheless, Marcos' focus in terms of security and stability is not limited to the United States' presence, his foreign policy to deter China's assertiveness and militarization is also centered on the centrality of regional frameworks, most notably ASEAN.

3.3 Philippines' Foreign Policy: multilateralism and ASEAN

Despite all the efforts to improve and expand U.S.-Philippines alliance, President Marcos proved that his foreign policy strategy is not solely based on U.S. military assistance and increased presence in the archipelago. As it occurred in the aftermath of the laser-incident between a Chinese and a Philippine vessels, President Marcos does not intend to directly

²¹⁹ United States of America White House Office, “Joint Statement of the Leaders of the United States and the Philippines”, 1 May 2023

and immediately turn to the United States for defense, on the contrary his intention is to extend the role of regional frameworks, more specifically ASEAN's role in settling disputes and in counterbalancing China's militarization process. Besides the several statements made by President Marcos during ASEAN summits concerning the rule of international law and the validity of the South China Sea arbitral ruling, he has been pushing also for ASEAN centrality and crucial role on geopolitical challenges. During his intervention at the 42nd ASEAN Summit Retreat Session held in Indonesia on May 2023, Marcos delivered his speech on the importance of ASEAN's central role on facing geopolitical challenges and stated that

*“ASEAN must take decisive and responsive action on geopolitical issues concerning the regional bloc. The ASEAN of today must be better than the ASEAN of yesterday. For ASEAN to succeed, ASEAN must be the master of its future. ASEAN must show the world that we are able to respond effectively to geopolitical and geo-economic challenges as a cohesive force. ASEAN Community must strengthen our centrality and actively reinforce a global order anchored in international law. [...] The decisiveness of ASEAN, and the effectiveness and capacity of the ASEAN-led regional architecture in demonstrating and asserting its centrality in the region will determine whether ASEAN truly matters. This goal can only be achieved insofar as ASEAN is able to come up with an innovative and flexible system that would facilitate decisive, effective, and timely decision-making in ASEAN. [...] While multilateral cooperation is key in tackling global challenges, regional perspectives need to be taken into account in formulating a global response to shared concerns. [...] The Philippines has been clear and consistent about its serious concerns over recent developments in the South China Sea, especially infringements on our sovereignty, sovereign rights and jurisdiction. Despite the continued incidents of Filipino vessels in our waters and attempts to deny and obstruct our ability to exercise our sovereign rights in our exclusive economic zone, the Philippines will remain firm in upholding and protecting our entitlements under UNCLOS. The Philippines is committed to the full and effective implementation of the Declaration of Conduct of Parties in the South China Sea, and the early conclusion of an effective and substantive Code of Conduct in the South China Sea [...]*²²⁰

The Code of Conduct in the South China Sea is seen as a potential improvement, implementation and adaptation to current challenges of the weak and often-ignored 2002 Declaration of Conduct of Parties in the South China Sea. However, it has not been

²²⁰ Philippine Presidential Communications Office, “Intervention of President Ferdinand R. Marcos Jr. for the 42nd ASEAN Summit Retreat Session”, 11 May 2023

finalized yet, as States parties are still negotiating the details that will be contained in the Code. What is certain, is that a legally binding Code of Conduct, rather than a mere declaration, is needed to overcome the ongoing tensions and the increasing number of coercive and unilateral acts, given the fact that the Declaration has been completely ineffectual in preventing incidents and disputes. The failure of the Declaration is linked to its lack of specific definitions of what activities are to be considered forbidden. The Declaration, in fact, is limited to provide a guideline for the behavior of States in the South China Sea to maintain peace and stability in the region, and avoid disputes or conflicts. The Asia Maritime Transparency Initiative provided some useful insights that might be able to maintain the current status quo and that might prohibit any coercive or aggressive action that would breach another State's rights under UNCLOS. Given China's strategy in occupying and claiming land features in the South China Sea without explicitly violating the Declaration of Conduct, the following principles should be included to ensure an effective Code of Conduct:

- 1. The claimants shall not seize features occupied by others;*
- 2. The claimants shall not blockade features occupied by others;*
- 3. The claimants shall not seize unoccupied features, either by actual occupation or by denying access to other claimants;*
- 4. The claimants shall not create artificial islands from submerged areas or low-tide elevations and shall not enlarge either natural or artificial islands;*
- 5. The claimants shall claim sovereignty only over islands, defined as features that are naturally above water at high tide. Low-tide elevations within the territorial sea of an island are under the same sovereignty as the island. The claimants shall come to an agreement on which features are islands, and which are not;*
- 6. The claimants shall come to an agreement on which islands are disputed among them;*
- 7. Claims to straight baselines and territorial sea shall conform to UNCLOS. The regime for the territorial sea, including the right of innocent passage, must conform to UNCLOS;*
- 8. The territorial sea of a disputed island is also disputed. The claimants shall agree on an equitable provisional regime for this disputed territorial sea;*
- 9. The claimants shall come to an agreement on which disputed islands are entitled to EEZs;*
- 10. if an island is entitled to an EEZ, the claimants will come to an agreement on the extent of this EEZ, independent of questions over the island's sovereignty;*

11. *A disputed island's EEZ is also disputed. The principles of UNCLOS Article 74 apply and the claimants will agree on a cooperative transitional regime based on these principles;*

12. *The waters outside these EEZs have nothing to do with the sovereignty disputes over the islands and are therefore not disputed (unless they are disputed due to overlapping EEZ or continental shelf entitlements by the mainland coasts). In these undisputed waters, the parties to the COC shall come to concrete agreements for cooperation according to their rights and responsibilities under UNCLOS;*

13. *If there are irreconcilable differences in any of the principles above or in their interpretation, an international court will arbitrate.*²²¹

Despite these detailed suggestions provided by the Asia Maritime Transparency Initiative already in 2015, when not even the Award was concluded, today, eight years later, a Code of Conduct has not been negotiated yet.

Chapter 4: Conclusion: the limits of international law compared to geopolitical dynamics

As Suisheng Zhao – a professor of Chinese politics and foreign policy at the School of International Studies in the University of Denver, and editor of the *Journal of Contemporary China* - suggests, “*while the Philippines won the case in the sphere of international law, China won the geopolitical battle, not only because the court does not have effective enforcement mechanisms, but also because the international community lacked the will to induce significant compliance, given China's forceful rejection as a great power*”²²². The South China Sea final Award, at first, was perceived as a potential breakthrough for the international community, as a huge step towards a rules-based international order, in which all States, regardless of their relative power, are equal before international law. However, up until now, the Arbitral Ruling is on the side of the Philippines, though the land features and the disputed waters are still under China's control. The gap between theory and practice persists in the realm of international law, as its enforcement mechanisms are still too feeble to induce – or impose – militarily and economically powerful States to comply. International law, on the contrary, does not dispose of formal and coercive enforcement systems as

²²¹ Asia Maritime Transparency Initiative, Huy Duong, “A fair and effective Code of Conduct for the South China Sea”, 1 July 2015

²²² *Journal of Contemporary China*, Suisheng Zhao, “China and the South China Sea Arbitration: Geopolitics Versus International Law”, 2018, p. 1

national law does, its functioning is indeed based on States' consent, it is a "voluntarily accepted and voluntarily enforced" system of law, based on States' voluntary self-restriction for the common good, as explained by Martin Dixon²²³. The main enforcement-mechanism in international law, besides the UN Security Council's decision to take "enforcement action" as last resort, is the use of its international judicial institutions, such as the International Court of Justice, the Permanent Court of Arbitration, the International Criminal Court and other ad hoc Tribunals. However, their final decisions could be difficult to implement if there is no consent and acceptance by one of the States Parties, as it occurred in the South China Sea Arbitration. Thus, in the realm of international law, other mechanisms that are intertwined with diplomacy and politics could be useful in inducing respect and compliance. International pressure, through the loss of legal rights and privileges, or through the imposition of penalties or sanctions, as a result of a State's violation of international law, is one of the most effective enforcement mechanisms in such a globalized and interdependent world, and it is efficient when the political or economic cost for an unlawful action surpasses the advantages derived from such action. Hence, international pressure, in most cases, is able to induce obedience²²⁴. However, if the unlawful action represents a core interest for the State violating international law, for which no imposition or economic-political threat is sufficient to renounce such core interest; and if such State is able to coerce other weaker States thanks to its overwhelming political and economic influence and strength, international pressure might not work, as the majority of States decide not to explicitly expose themselves on that specific dispute. "*Vital interests of the subjects may prevail over the dictates of the law. [...] When a state believes its 'vital interests' to be threatened, it is not certain that international law will be able to prevent illegal conduct.*"²²⁵ This is exactly what has occurred in the South China Sea case, as China has often referred to its South China Sea maritime claims and sovereignty as "undisputable" and as a vital interest. Besides the limitations of efficient enforcement mechanisms in international law in general, two key elements, as described by Suisheng Zhao, prevented and obstructed the implementation of the South China Sea Award: Beijing's powerful rejection through its "four nos" (*no-participation, no-recognition, no-acceptance, no-compliance*) of course, and the "passive international reactions", which hindered the formation of any possible international pressure. China, through its diplomatic campaign launched when the Arbitral Ruling was imminent, and through its leverage on several States, was able to limit the choices and the voices of

²²³ Martin Dixon, "Textbook on International Law", Oxford University Press, 7th edition, 2013, p. 6

²²⁴ Martin Dixon, "Textbook on International Law", Oxford University Press, 7th edition, 2013, pp. 7-11

²²⁵ Martin Dixon, "Textbook on International Law", Oxford University Press, 7th edition, 2013, p. 15

its neighbor-states and to minimize the creation of a substantial international bloc calling for its obedience. Indeed, as often repeated in the previous chapters, China has always rejected any attempts of internationalizing the disputes and any attempts to involve third-parties, as the Philippines did, and has always insisted on bilateral negotiations and bilateral settlement of disputes, aware of its overwhelming superiority compared to any of its neighbor-States²²⁶. Thus, China's strategy to assert its alleged maritime sovereignty in the disputed waters had solely relied on its military superiority, its economic superiority, its subsequent capability to coerce other States through bilateral negotiations, ignoring and rejecting any aspect of international law and rules-based order. China's total rejection and neglect of UNCLOS and of the South China Sea Award, which was considered by China as "nothing more than a piece of waste paper", was allowed by the international community indeed, due to the latter's passive response and unwillingness to actively support the Philippines and explicitly condemn China. Moreover, China needed to defend its status as a "rising global power" in the eyes of the Chinese people and the international community, seen as a Chinese "conquest" or "revenge" after the national humiliation China underwent in the previous century at the hands of Western powers. Thus, China's approach and reactions in the aftermath of the South China Sea Arbitration suggest that it is a "geopolitical battle" where there is no place for international law and a rules-based order in which all States are treated equally, and in which the Philippines' attempt to assert its rights under international law was maneuvered by Washington's (and Tokyo's) anti-China plot, demonstrating how low the Philippines' role and interests are considered by China²²⁷. The Philippines, during the Arbitral proceedings, hoped and relied on ASEAN's support, perceived as a powerful tool for international pressure on China, however, China, through its diplomatic campaign, was able to divide ASEAN, as already demonstrated by the Asia Maritime Transparency Initiative's Arbitration Support Tracker described in the previous chapter²²⁸. Indeed, in the aftermath of the Arbitration's final verdict, during the 49th ASEAN Foreign Ministers' Meeting on the 24 July 2016, the South China Sea Award was not supported, nor mentioned, due to China's strategy of hard diplomacy and economic coercion on Southeast Asian states. Furthermore, the election of former Philippine President Rodrigo Duterte in 2016, with his appeasement policy towards China and his separation from the United States, facilitated

²²⁶ Journal of Contemporary China, Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law", 2018, pp. 5-6

²²⁷ Journal of Contemporary China, Suisheng Zhao, "China and the South China Sea Arbitration: Geopolitics Versus International Law", 2018, pp. 7-9

²²⁸ Asia Maritime Transparency Initiative, "Arbitration Support Tracker", 19 July 2023, <https://amti.csis.org/arbitration-support-tracker/>

China's desire for silence on the Arbitration and lack of international pressure, in order to proceed with its processes of land feature-claiming and militarization in the South China Sea²²⁹. As posed by Filipino scholar Richard Heydarian

*“China displayed the classic behavior of a hegemonic power in securing its interest over the objection of regional states. Chinese leaders talk often about mutual respect, win-win cooperation and equality of states. They do not seem to mean what they utter but expect other countries to follow their wishes.”*²³⁰

It should be noted that China has often cited the example of the United States' past behaviors of rejecting mechanisms of settlement of disputes towards smaller States, to justify its rejection of the Arbitral Tribunal Award, by accusing the United States of hypocrisy, given the fact that it repeatedly urged China to respect UNCLOS, when the United States has not even ratified it. Hence, for China, its behavior should be considered as legitimate and understandable, as a great power defending its core interest²³¹. This view is also supported by U.S. political scientist Graham Allison, who argued when the final verdict was upcoming that

“[...] There is no much suspense about what the tribunal will decide: it will almost certainly side with the Philippines. The United States and its allies have already started criticizing China for signaling in advance that it will ignore the court's ruling, which one Chinese official derided last week as “nothing more than a piece of paper. [...] None of the five permanent members of the UN Security Council have ever accepted any international court's ruling when (in their view) it infringed their sovereignty or national security interests. Thus, when China rejects the Court's decision in this case, it will be doing just what the other great powers have repeatedly done for decades. [...] The United States has never been sued under the UNCLOS because – unlike China – Washington has not ratified the international agreement and is thus not bound by its rules.” He then added that *“observing what permanent members of the Security Council do, as opposed to what they say, it is hard to disagree with realist's claim that the Permanent Court of Arbitration and its siblings in The Hague are only for small powers. Great powers do not recognize the jurisdiction of these courts – except in particular cases where they believe it is in their interest to do so. Thucydides' summary of the Melian mantra – “the strong do as they*

²²⁹ Journal of Contemporary China, Suisheng Zhao, “China and the South China Sea Arbitration: Geopolitics Versus International Law”, 2018, pp. 9-11

²³⁰ Richard Javad Heydarian, National Interest, “Can China really ignore international law?”, 1 August 2016, <https://nationalinterest.org/feature/can-china-really-ignore-international-law-17211?platform=hootsuite>

²³¹ Richard Javad Heydarian, National Interest, “Can China really ignore international law?”, 1 August 2016

will; the weak suffer as they must” – may exaggerate. But his week, when the Court finds against China, expect Beijing to do as great powers have traditionally done.”²³²

Nevertheless, despite not having ratified the treaty, the United States, overall, has concretely complied with UNCLOS, whose provisions are perceived as part of customary international law, and it proved so by defending the right to innocent passage everywhere, not just in the South China Sea. The United States, indeed, has always allowed the passage of Chinese ships and warships within its exclusive economic zone, for instance, which was never reciprocated by China in the South China Sea²³³. In the current period, seven years after the South China Sea Arbitral Tribunal ruling was issued, the situation seems unaltered. As described in the previous chapter, the Philippines’ rights under UNCLOS have not been concretely adopted yet, whereas China’s unlawful actions in the South China Sea persists. Philippine vessels are still struggling to calmly fish or explore other resources in its exclusive economic zone, and are often harassed by Chinese vessels that keep acting as if those waters were their territorial waters. All the encounters at sea that occurred in the past seven years, the ignored diplomatic complaints filed by the Philippine Government, the failure in settling the disputes and implementing the South China Sea Arbitration, and the continuing rejection and non-compliance by the Chinese government; suggest that up to date, international relations are still governed by the realist paradigm, rather than the liberal one. If the Philippines v. China arbitral proceeding is to be considered as a test to establish whether the international world order is moving towards a rules-based order, in which all States are treated equally and their interactions are dictated by international law; or the international world order is still governed by great power politics and geopolitical dynamics, the result would be that geopolitics still prevails over international rules. The realist theory in international relations, according to Martin Griffiths, is based on the fact that *“[since] the desire for more power is rooted in the flawed nature of humanity, states are continuously engaged in a struggle to increase their capabilities. The absence of the international equivalent of a state’s government is a permissive condition that gives human appetites free reign. [...]*”²³⁴ Realism theory in general, regardless of its existing and differing variants, suggests that States are in competition one another, and that each State acts according to its best advantages, that usually coincides with a disadvantage for the counterpart State. In

²³² Graham Allison, The Diplomat, “Of course China, like all great powers, will ignore an International Legal Verdict”, 11 July 2016, <https://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>

²³³ Richard Javad Heydarian, National Interest, “Can China really ignore international law?”, 1 August 2016

²³⁴ Martin Griffiths, “International Relations Theory for the Twenty-First Century: An introduction”, Taylor & Francis, 2007, p. 12

an anarchical world, in which there is no higher authority able to enforce rules and order, powerful states prevail, while weak and small states submit to them. In the absence of a legitimate global authority, States do not trust one another and fear other States' intentions. For this reason, States' goal is to protect themselves from other States, thus, relative power is the most valuable aspect in international relations. When a State is relatively more powerful than another State, it is able to impose its will and its interests. The greatest concern in international relations for States is security and stability, thus, each State's foreign policy is aimed at granting its own security and stability from the threat of other States' vital interests. Given the lack of trust among States, each State needs to deal with the global security dilemma. States' power is measured in relative terms rather than absolute ones, therefore the main dynamics that guide international politics is the principle of balance of power, for which, each State seeks to counterbalance another State's strength in order not to be overwhelmed by it. The means through which States are able to counterbalance other States' power is by increasing its own defense capabilities or by creating alliances to grant mutual protection from a common threat. Eventually, all States struggle for power and security in an anarchic international order, through geopolitical manoeuvres²³⁵. This picture of the realist paradigm in international relations seems to perfectly represent the dynamics occurring between the Philippines and China in the South China Sea context, in which the Philippines is struggling for its own security, opposed to China's core interests in the South China Sea to increase its reach of power and influence and to demonstrate its status of rising super power. As a consequence, the Philippines - being decisively weaker than China's overwhelming power - in order to counterbalance China, resort to the alliance with its closest powerful State, the United States and its defense commitments. On the other hand, liberalism theory argues that democratic values and international trade can overcome the realist security dilemma. As States become more interdependent, they prefer to cooperate and to settle disputes rather than arguing one another, in order to achieve a win-win outcome, in which advantages are absolute, not relative. Hence, economic interdependence and the creation of international law and international institutions are able to prevent conflicts and disputes. Modernization and faith in progress will lead States to a rules-based world order, in which States are focused in joint absolute advantages that benefit all States, through cooperation, and voluntarily accept the rule of law, given the positive returns for all States. States will refrain from hegemonic or hostile attitudes due to

²³⁵ Alexander Wendt, "Anarchy is what States make of it: the Social Construction of Power Politics", *International Organization*, Vol. 46, No. 2, Spring 1992, pp. 395-403

the great economic interests at stake, hence, cooperation is always preferable to disputes²³⁶.

Scholar - and associate of the International Institute for Strategic Studies - Lynn Kuok argues that China's assertive and hostile behavior and actions concerning the South China Sea disputes, have contributed to the disempowerment of international law in general and in particular of the international rules of the seas, which would represent a huge step backwards for the international community, by undermining the rules-based world order and the rule of law. However, on Kuok's opinion, the South China Sea disputes could still experience a change of direction, and it should not be considered as a definitive win for China. A stronger and more decisive role of the United States and an increased and more active support by the international community in general could still prevent further developments in favor of China, especially in terms of militarization and effective control of land features.²³⁷

The Philippines has always and repeatedly advocated for a rules-based international order and for the compliance of international rules, which sounds obvious considering that Philippine interests are actually protected by international law in this case, hence, it does not mean that the Philippines is an advocate of international law for the international community's sake, but for its core interests of course. However, its approach is not matched by China's action and narrative. The Philippines, calling for a liberal paradigm of international relations that would serve its national interests in the South China Sea, attempted to overcome China's unlawful behavior and actions (that could be perceived as part of the realist paradigm) by resorting to international law and international institutions, although the final – or rather practical - result was not as expected. Cooperation and rule of law did not occur, not even in the aftermath of the Philippines' overwhelming legal victory. Nevertheless, the Philippines did not rely solely on international law to assert its rights. The Philippines foreign policy strategy, as previously described, was two-folded: on one hand, the tool of the Arbitration under UNCLOS to stop China's unlawful actions in the South China Sea, and on the other hand, the tool of the United States' security umbrella as a means to achieve balance of power and as a deterrent force to prevent China from intensifying its unlawful actions. The first tool belongs to the liberalism theory, whereas the second tool belongs to the realism theory, the former proved to be a failure, at least for now, whereas

²³⁶ Kenneth N. Waltz, "Kant, Liberalism, and War", *The American Political Science Review*, Jun., 1962, Vol. 56, No. 2, pp. 331-340

²³⁷ Lynn Kuok, "How China's actions in the South China Sea undermine the rule of law", *Global China*, November 2019, pp. 1-2

the latter proved to be a necessity instead. Despite the increasing Philippine nationalist sentiment against any form of neo-colonialism, despite the increasing legal tutelage crystallized in the Philippine Constitution to prevent foreign exploitation, the Philippines eventually found itself knocking at the door of its previous and latest colonial ruler and keeping a close and “pervasive” relation with it, the United States, in order to defend its sovereignty and its interests from the threat of another foreign power that is exploiting and overstepping Philippines’ rights and entitlements, China. It seems that the Philippine struggle against foreign exploitation and foreign occupation, since Spanish era, has never ended at all.

Given the recent developments though, there could be some room for improvement in the nearby future. Current Philippine President Marcos Jr.’s insistence to increase and intensify international pressure on China by the international community, combined with the United States’ increased determined role and unmistakable statements on its defense commitments towards the Philippines in the event of an armed attack in the South China Sea, and the ongoing negotiations on a Code of Conduct in the South China Sea; could be potential signals for potential change in China’s behavior. Of course, the South China Sea disputes are still ongoing, therefore it is not possible to forecast future outcomes, whether the dispute will be settled or a conflict will spark. However, what can be acknowledged so far is that the South China Sea disputes is now perceived as a challenge that needs to be solved as soon as possible by the majority of States, compared to the previous decades, during which there was less attention on this issue. Hence, international pressure and China’s rising fear of United States’ military involvement, could possibly consolidate and become sufficiently efficient in inducing obedience, or at least a change in behavior, on China. The reason behind this rise in global attention and concerns towards the South China Sea is believed to be linked to other ongoing geopolitical tensions worldwide, above all Russia’s invasion of Ukraine and the tense situation surrounding the Taiwan Strait, events that suggests a comeback to great power politics and wars, in which States’ power and military capabilities are at the center of the stage of international relations. Eventually, up to date, all the events, developments, behaviors, strategies and theories covered in this research, suggest and demonstrate that the realist paradigm prevails over the liberal theory, hence, geopolitical dynamics prevails over international law, and the Philippines’ experience in managing the South China Sea disputes with China is one of the most concrete examples to prove it.

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APPENDIX

APPENDIX 1: ASEAN-China “Declaration on the Conduct of Parties in the South China Sea, 04 November 2002

“1. The parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea (UNCLOS), the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;

2. The parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;

3. The parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea [...];

4. The parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force [...], in accordance with universally recognized principles of international law, including the 1982 UNCLOS;

5. The parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner;

6. Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify to seek ways to build trust and confidence [...];

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolutions;

8. The parties undertake to respect the provisions of this Declaration and take actions consistent therewith; [...]

10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.”

APPENDIX 2: Supreme Court of the Philippines G.R. No. 182734 Decision of unconstitutionality of the Tripartite Agreement for Joint Marine Seismic Undertaking by and among China National Offshore Oil Corporation, Vietnam Oil and Gas Corporaion, and Philippine National Oil Company in the South China Sea, 10 January 2023

“declared unconstitutional and void the Tripartite Agreement for Joint Marine Seismic Undertaking (JSMU) by and among Chinese National Offshore Oil Corporation, Vietnam Oil and Gas Corporation, and Philippine National Oil Company [...]. The Court ruled that the JSMU is unconstitutional for allowing wholly owned foreign corporations to participate in the exploration of the country’s natural resources without observing the safeguards provided in Section 2, Article XCC of the 1987 Constitution [...], which mandates that the exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. Petitioners argued that the JMSU was illegal as it allowed foreign corporations wholly-owned by China and Vietnam to undertake large-scale exploration of the country’s petroleum resources, in violation of the Constitutional provision which reserves the exploration, development, and utilization of natural resources to Filipino citizens, or corporations or associations at least 60% of whose capital is owned by such citizens. [...] That the Parties designated the joint research as a “pre-exploration activity” is of no moment, such designation does not detract from the fact that the intent and aim of the agreement was to discover petroleum which is tantamount to “exploration”.

APPENDIX 3: First Declaration by the People’s Republic of China on UNCLOS made on 25 August 2006

“(1) In accordance with the provisions of the United Nations Convention on the Law of the Sea, the People’s Republic of China shall enjoy sovereign rights and jurisdiction over an exclusive economic zone of 200 nautical miles and the continental shelf.

(2) The People’s Republic of China will effect, through consultations, the delimitation of boundary of the maritime jurisdiction with the states with coasts opposite or adjacent to China respectively on the basis of international law and in accordance with the equitable principle.

(3) The People’s Republic of China reaffirms its sovereignty over all its archipelagoes and islands as listed in article 2 of the Law of the People’s Republic of China on the Territorial Sea and Contiguous Zone which was promulgated on 25 February 1992.

(4) The People's Republic of China reaffirms that the provisions of the UNCLOS concerning innocent passage through the territorial sea shall not prejudice the right of a coastal state to request, in accordance with its laws and regulations, a foreign state to obtain advance approval from or give prior notification to the coastal state for the passage of its warships through the territorial sea of the coastal state"

APPENDIX 4: Second Declaration by the People's Republic of China on UNCLOS made on 25 August 2006

"The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298. when signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes: (a) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission. [...] (b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction [...]; (c) disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in this Convention."

APPENDIX 5: Declaration by the Republic of the Philippines upon signature of UNCLOS, 10 December 1982

“(1) The signing of the Convention by the Government of the Republic of the Philippines shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines;
(2) Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898 [...];
(3) Such signing shall not diminish or in any manner affect the rights and obligations of the contracting parties under the Mutual Defense Treaty between the Philippines and the United States of America of August 30, 1951, and its related interpretative instruments; nor those under any other pertinent bilateral or multilateral treaty or agreement to which the Philippines is a party;
(4) Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over any territory over which it exercises sovereign authority, such as the Kalayaan Islands, and the waters appurtenant thereto; [...]
(8) The agreement of the Republic of the Philippines to the submission for peaceful resolution, under any of the procedures provided in the Convention, of disputes under Article 298 shall not be considered as a derogation of Philippine sovereignty”

APPENDIX 6: Permanent Court of Arbitration, Philippines v. China, “The South China Sea Arbitration”, Introduction chapter (pp. 1-3)

“the Convention (referring to UNCLOS), however, does not address the sovereignty of States over land territory. Accordingly, this Tribunal has not been asked to, and does not purport to, make any ruling as to which State enjoys sovereignty over any land territory in the South China Sea, in particular with respect to the disputes concerning sovereignty over the Spratly Islands or Scarborough Shoal. None of the Tribunal’s decisions in this Award are dependent on a finding of sovereignty, nor should anything in this Award be understood to imply a view with respect to questions of land sovereignty. Although the Convention does contain provisions concerning the delimitation of maritime boundaries, China made a declaration in 2006 to exclude maritime boundary delimitation from its acceptance of compulsory dispute settlement [...]. Accordingly, the Tribunal has not been asked to, and does not purport to, delimit any maritime boundary between the Parties [...]. The Tribunal will address them (Philippines’ claims) only insofar as the two Parties’ respective rights and

obligations are not dependent on any maritime boundary or where no delimitation of a boundary would be necessary because the application of the Convention would not lead to any overlap of the two Parties' respective entitlements. The disputes that the Philippines has placed before the Tribunal fall broadly within four categories. First, the Philippines has asked the Tribunal to resolve a dispute between the Parties concerning the source of maritime rights and entitlements in the South China Sea. Specifically, the Philippines seeks a declaration from the Tribunal that China's rights and entitlements in the South China Sea must be based on the Convention and not on any claim to historic rights. The Philippines seeks a declaration that China's claim to rights within the "nine-dash-line" marked on Chinese maps are without lawful effect to the extent that they exceed the entitlements that China would be permitted by the Convention. Second, the Philippines has asked the Tribunal to resolve a dispute concerning the entitlements to maritime zones that would be generated under the Convention by Scarborough Shoal and certain maritime features in the Spratly Islands [...]. The Convention provides that submerged banks and low-tide elevations are incapable on their own of generating any entitlements to maritime areas and that "rocks which cannot sustain human habitation or economic life of their own" do not generate an entitlement to an exclusive economic zone of 200 nautical miles. The Philippines seeks a declaration that all of the features claimed by China [...], fall within one or the other of these categories and that none of these features generates an entitlement to an exclusive economic zone or to a continental shelf. Third, the Philippines has asked the Tribunal to resolve a series of disputes concerning the lawfulness of China's actions in the South China Sea. The Philippines seeks declarations that China has violated the Convention by: (a) interfering with the exercise of the Philippines' rights under the Convention, including with respect to fishing, oil exploration, navigation, and the construction of artificial islands and installations; (b) failing to protect and preserve the marine environment by tolerating and actively supporting Chinese fishermen in the harvesting of endangered species and the use of harmful fishing methods that damage the fragile coral reef ecosystem in the South China Sea; (c) inflicting severe harm on the marine environment by constructing artificial islands and engaging in extensive land reclamation as seven reefs in the Spratly Islands. Fourth the Philippines has asked the Tribunal to find that China has aggravated and extended the disputes between the Parties during the course of this arbitration by restricting access to a detachment of Philippine marines stationed at Second Thomas Shoal and by engaging in the large-scale construction of artificial islands and land reclamation [...]."

APPENDIX 7: Permanent Court of Arbitration, Philippines v. China, “The South China Sea Arbitration”, Tribunal’s Award on Jurisdiction and Admissibility, 29 October 2015

“In relation to its jurisdiction, the Tribunal finds that:

(a) the Tribunal was properly constituted in accordance with Annex XII to the Convention; (b) China’s non-appearance in these proceeding does not deprive the Tribunal of jurisdiction; (c) the Philippines’ act of initiating this arbitration did not constitute an abuse of process; (d) there is no indispensable third party whose absence deprives the Tribunal jurisdiction; (e) the 2002 China-ASEAN Declaration on Conduct of the Parties in the South China Sea, the joint statements of the Parties [...], the Treaty of Amity and Cooperation in Southeast Asia, and the Convention on Biological Diversity, do not preclude recourse to the compulsory dispute settlement procedures available under Section 2 of Part XV of the Convention; (f) the Parties have exchanged views as required by Article 283 of the Convention; (g) the Tribunal has jurisdiction to consider the Philippines’ Submissions No. 3, 4, 6, 7, 10, 11, and 13 [...]; (h) the determination of whether the Tribunal has jurisdiction to consider the Philippines’ Submissions No. 1, 2, 5, 8, 9, 12, and 14 would involve consideration of issues that do not possess an exclusively preliminary character, and accordingly RESERVES consideration of its jurisdiction to rule on the afore-mentioned Submissions to the merits phase; (i) directs the Philippines to clarify the content and narrow the scope of its Submission 15 and reserves consideration of its jurisdiction to the merits phase; (j) reserves for further consideration and directions all issues not decided in this Award.”

APPENDIX 8: Statement on the Award on Jurisdiction and Admissibility of the South China Sea Arbitration by the People’s Republic of China, 30 October 2015

*“the Award rendered on 29 October 2015 [...] on Jurisdiction and Admissibility of the South China Sea arbitration is **null and void**, and has **no binding effect** on China.*

1. China has **indisputable sovereignty** over the South China Sea Islands and the adjacent waters. China’s sovereignty and relevant rights in the South China Sea, formed in the long historical course, are upheld by successive Chinese governments, reaffirmed by China’s domestic laws on many occasions, and protected under international law including UNCLOS. With regard to the issues of territorial sovereignty and maritime rights and interests, China will not accept any solution imposed on it or any unilateral resort to a third-party dispute settlement.

2. *The Philippines' unilateral initiation and obstinate pushing forward of the South China Sea arbitration by **abusing** the compulsory procedures for dispute settlement under the UNCLOS is a **political provocation** under the cloak of law. It is in essence not an effort to settle disputes but an attempt to **negate** China's territorial sovereignty and maritime rights and interests in the South China Sea [...].*
3. *As a sovereign state and a State Party to the UNCLOS, China is entitled to choose the means and procedures of dispute settlement of its own will. China has all along been committed to resolving disputes with its neighbors over territory and maritime jurisdiction through negotiations and consultations. Since the 1990s, China and the Philippines have repeatedly affirmed in bilateral documents that they shall resolve relevant disputes through negotiations and consultations. The Declaration on the Conduct of Parties in the South China Sea explicitly states that the sovereign states directly concerned undertake to resolve their disputes by peaceful means through friendly consultation and negotiations. All these documents demonstrate that China and the Philippines have chosen, long time ago, to settle their disputes through negotiations and consultations. The **breach** of this consensus by the Philippines **damages the basis of mutual trust** between states.*
4. *Disregarding that the essence of this arbitration case is territorial sovereignty and maritime delimitation, maliciously evading the declaration on optional exceptions made by China in 2006 [...], and negating the consensus between China and the Philippines on resolving disputes through negotiations and consultations, the Philippines and the Arbitral Tribunal have **abused relevant procedures** and **obstinately forced ahead** with the arbitration, and as a result, have **severely violated** the legitimate rights that China enjoys as a State Party to the UNCLOS [...].*

*The Philippines' attempt to negate China's territorial sovereignty and maritime rights and interests in the South China Sea through arbitral proceedings will lead to **nothing**. China urges the Philippines to honor its own commitments, respect China's rights under international law, change its course and return to the right track of resolving relevant disputes in the South China Sea through negotiations and consultations."*

APPENDIX 9: Permanent Court of Arbitration, Philippines v. China, “The South China Sea Arbitration”, Tribunal’s Final Award on the Merits, 12 July 2016

“In relation to the merits of the Parties’ disputes, the Tribunal:

- 1. Declares that, as between the Philippines and China, the Convention defines the scope of maritime entitlements in the South China Sea, which may not extend beyond the limits imposed therein;*
- 2. Declares that **China’s claims to historic rights**, or other sovereign rights or jurisdiction, with respect to the maritime areas of the South China Sea encompassed by the relevant part of the ‘nine-dash line’ **are contrary to the Convention and without lawful effect** to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under the Convention; and further declares that **the Convention superseded any historic rights**, or other sovereign rights or jurisdiction, in excess of the limits imposed therein;*
- 3. Finds, with respect to the status of features in the South China Sea: (a) that it has sufficient information concerning tidal conditions in the South China Sea such that the practical considerations [...] do not pose an impediment to the identification of the status of features; (b) that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef, and Fiery Reef include, or in their natural condition did include, naturally formed areas of land, surrounded by water, which are above water at high tide, within the meaning of Article 121 (1) of the Convention; (c) that Subi Reef, Gaven Reef (South), Hughes Reef, Mischief Reef, and Second Thomas Shoal, are low-tide elevations, within the meaning of Article 13 of the Convention; (d) that Subi Reef lies within 12 nautical miles of the high-tide feature of Sandy Cay; (e) that Gaven Reef (South) lies within 12 nautical miles of the high-tide features of Gaven Reef (North); (f) and that Hughes Reef lies within 12 nautical miles of the high-tide features of McKennan Reef;*
- 4. Declares that, as **low-tide elevations**, Mischief Reef and Second Thomas Shoal **do not generate entitlements** to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation;*
- 5. Declares that, as low-tide elevations, Subi Reef, Gaven Reef (South), and Hughes Reef do not generate entitlements to a territorial sea, exclusive economic zone, or continental shelf and are not features that are capable of appropriation, but may be used as the baseline for measuring the breadth of territorial sea of high-tide features situated at a distance not exceeding the breadth of the territorial sea;*

6. Declares that Scarborough Shoal, Gaven Reef (North), McKennan Reef, Johnson Reef, Cuarteron Reef and Fiery Cross Reef, in their natural condition, are **rocks that cannot sustain** human habitation or economic life of their own, within the meaning of Article 121(3) of the Convention and accordingly that they generate no entitlement to an exclusive economic zone or continental shelf;
7. Finds with respect to the status of other features in the South China Sea: (a) that **none of the high-tide features in the Spratly Islands**, in their natural condition, are capable of sustaining human habitation or economic life of their own within the meaning of Article 121(3) of the Convention; (b) that none of the high-tide features in the Spratly Islands **generate entitlements** to an exclusive economic zone or continental shelf; and (c) that therefore **there is no entitlement to an exclusive economic zone or continental shelf generated by any feature claimed by China** that would overlap the entitlements of the Philippines in the area of Mischief Reef and Second Thomas Shoal; and Declares that Mischief Reef and Second Thomas Shoal are within the exclusive economic zone and continental shelf of the Philippines;
8. Declares that China has, through the operation of its marine surveillance vessels in relation to M/V Veritas Voyager on 1 and 2 March 2011 breached its obligations under Article 77 of the Convention with respect to the Philippines' sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank;
9. Declares that China has, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese flagged vessels, breached its obligations under Article 56 of the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone;
10. Finds, with respect to fishing by Chinese vessels at Mischief Reef and Second Thomas Shoal: (a) that, in May 2013, fishermen from Chinese flagged vessels engaged in fishing within the Philippines' exclusive economic zone; (b) that China, through the operation of its marine surveillance vessels, was aware of, tolerated, and failed to exercise due diligence to prevent such fishing by Chinese flagged vessels; (c) and that therefore China has failed to exhibit due regard for the Philippines' sovereign rights with respect to fisheries in its exclusive economic zone; and Declares that China has breached its obligations under Article 58(3) of the Convention;

11. *Finds that Scarborough Shoal has been a traditional fishing ground for fishermen of many nationalities and Declares that China has, through the operation of its official vessels from May 2012 onwards, unlawfully prevented fishermen from the Philippines from engaging in traditional fishing at Scarborough Shoal;*
12. *Finds, with respect to the protection and preservation of the marine environment in the South China Sea, that fishermen from Chinese flagged vessels have engaged in the harvesting of endangered species on a significant scale, have engaged in the harvesting of giant clams in a manner that is severely destructive of the coral reef ecosystem; and that China was aware of, tolerated, protected and failed to prevent the afore-mentioned harmful activities, and Declares that China has breached its obligations under Article 192 and 194(5) of the Convention;*
13. *Finds further, that China's land reclamation and construction of artificial islands, installations and structures has caused severe, irreparable harm to the coral reef system; that China has not cooperated or coordinated with other States bordering the South China Sea concerning the protection and preservation of the marine environment concerning such activities; and that China has failed to communicate an assessment of the potential effects of such activities on the marine environment [...]; and Declares that China has breached its obligations under Articles 123, 192, 194(1), 194(5) and 206 of the Convention;*
14. *With respect to China's construction of artificial islands, installations, and structures at Mischief Reef: finds that **China has engaged** in the construction **without the authorization of the Philippines**; recalls its findings that Mischief Reef is a low-tide elevation [...]; and Declares that China has breached Articles 60 and 80 of the Convention with respect to the Philippines' sovereign rights in its exclusive economic zone and continental shelf;*
15. *Finds, with respect to the operation of Chinese law enforcement vessels in the vicinity of Scarborough Shoal that: (a) China's operation of its law enforcement vessels on 28 April 2012 and 26 May 2012 created **serious risk of collision and danger** to Philippine ships and personnel; (b) and China's operation [...] violated Rules 2, 6, 7, 8, 15 and 16 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and Declares that China has breached its obligations under Article 94 of the Convention;*
16. *Finds that, during the time in which these disputes resolution proceedings were ongoing, China: (a) has built a large artificial island on Mischief Reef, a low-tide*

elevation located in the exclusive economic zone of the Philippines; (b) has caused – through its land reclamation and construction of artificial islands, installations, and structures – severe, irreparable harm to coral reef ecosystem [...]; (c) and has permanently destroyed [...] evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef, Johnson reef, Hughes Reef, and Subi Reef; and

Finds further that China: (d) **has aggravated the Parties' dispute** concerning their respective rights and entitlements in the area of Mischief Reef; (e) has aggravated the Parties' dispute concerning the protection and preservation of the marine environment at Mischief Reef; (f) has extended the scope of the Parties' dispute concerning the protection and preservation of the marine environment [...]; (g) and has aggravated the Parties' dispute concerning the status of maritime features in the Spratly Islands and their capacity to generate entitlements to maritime zones; and

Declares that China has breached its obligations pursuant to Articles 279, 296, and 300 of the Convention, as well as pursuant to general international law, to abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decisions to be given and in general, not to allow any step of any kind to be taken which might aggravate or extend the dispute during such time as dispute resolution proceedings were ongoing.”

**APPENDIX 10: OFFICIAL GAZETTE OF THE REPUBLIC OF THE PHILIPPINES,
“MESSAGE OF PRESIDENT ROXAS TO THE SENATE ON THE AGREEMENT
CONCERNING AMERICAN MILITARY BASES IN THE PHILIPPINES, 17 MARCH 1947**

“[...] This Agreement has its basis in the Tydings-McDuffie Act of 1934 [...]. The Filipino people in 1934, in approving the Tydings-McDuffie Act, expressed their willingness that American defense establishments be located on Philippine soil after independence. In 1943, the Commonwealth Government-in-Exile held a series of conversations with officials of the United States Government regarding the liberation of the Philippines, the possible advancement of the date of independence following liberation, and the military relations between the Philippine Republic and the United States after independence. Our Government at that time, recognizing the new world conditions which had arisen and the total nature of warfare that had been demonstrated, expressed its conformity with the expansion of the scope of military cooperation between the two countries after independence to provide for the establishment and maintenance here of bases of the

Army, Navy and the Air Force. [...] WHEREAS the Government of the United States has solemnly guaranteed to the people of the Philippine Islands the right to be completely free and independent . . . and because of the long and unbroken record of loyalty of the Filipino people both to the cause of complete independence for themselves and to the sovereignty of the United States while they have been under our flag, and because they have abundantly demonstrated their will to independence . . . and because they have abundantly proved their capacity to govern themselves in an enlightened, progressive, and democratic manner [...], the President of the United States is hereby authorized, by such means as he finds appropriate, to withhold or to acquire and to retain such bases, necessary appurtenances to such bases, and the rights incident thereto in addition to any provided for by the Act of March 24, 1934 (Philippine Independence Act), as he may deem necessary for the mutual protection of the Philippine Islands and of the United States. This Joint Resolution amended the Tydings-McDuffie Act in three major respects: (1) it provided for the establishment of army and air bases here after independence, in addition to the naval bases already provided for; (2) it did not limit army or navy bases to reservations already existing; and (3) it gave the President of the United States authority to establish such bases, unilaterally if he so chose. The Philippine Congress, by joint resolution by unanimous vote on July 28, 1945, adhered to the policy and program set forth in the Joint Resolution of the United States Congress. The pertinent provisions of the Philippine resolution follow: "WHEREAS such action [...], marks a new era in Philippine-American relationship, whereas it binds the ties of friendship and mutual interest existing between the two countries stronger and closer than ever and insures, not only the permanence of Philippine independence and the security of the United States, but also the peace and tranquility in the Pacific area . . . Resolved that the Congress of the Philippines adheres to the policy and intent of Joint Resolution 93 (of the United States Congress) which it considers as an acknowledgment by the people of the United States of the heroic role of the Filipino people in this war, and that it recognizes in this action of the Congress the noble purpose of the American nation to make permanent in the Philippines the blessings of peace, liberty, and democracy . . . Resolved, finally, that in order to speedily effectuate the policy declared [...], the President of the Philippines be authorized to negotiate with the President of the United States the establishment of the aforesaid bases, so as to insure the territorial integrity of the Philippines, the mutual protection of the Philippines and the United States, and the maintenance of peace in the Pacific." If we will recall to our minds our sentiments and thoughts of two years ago, we will remember that we greeted the

decision of the United States to establish bases in the Philippines with pledges of complete cooperation. There was no feeling of being imposed upon. We did not feel that any infringement of our forthcoming sovereignty was involved. We recognized that the purpose of the bases was to protect our sovereignty, a protection which would be furnished by American forces in a degree and in a manner of which we ourselves were incapable. We reasoned at the time, that as long as we were to have naval bases and fueling stations here, we should welcome a more elaborate military establishment to serve as a true guarantee of our security and national integrity. Naturally such an arrangement would be impossible with any other country. We would not dream of it; we could not conceive it. It was only the very unique relationship between our country and the nation which was about to grant us independence and which had liberated us that permitted the base arrangement. That arrangement was not at all inconsistent with our independence. The United States Joint Resolution did, it is true, impose a possibly unilateral decision as to the exact location of bases upon us. The Philippine Congress accepted that possibility. But the United States Government, despite that resolution, chose to overlook the grant of unilateral authority. The United States Government, instead, sought complete and mutual agreement with us, interpreting the mandate for negotiations to be a mandate to reach a mutually acceptable agreement on every aspect of the base arrangement. This is another instance of high-minded American policy with regard to us, a policy inspired by a desire to respect our independence, to treat us as an equal among equals, and to accord us the dignity that is our sovereign right. [...] American naval and military power, of course, was well established throughout the Pacific. [...] American bases in the Philippines were an essential part of the chain of defense outposts in the Pacific. But at all times, the chief motive for the location of American military establishments in the Philippines was for the protection of our country. The matter of jurisdiction was one of the knottier problems we faced. It is a fundamental doctrine in the armed services that a Commanding Officer must have complete control of his troops, especially in the matter of discipline. The very existence of an armed force depends on that general requirement. Nevertheless, we faced a situation in which these American troops were to be established on Philippine soil. The jurisdiction of our courts and of our laws had to be maintained. After long and intensive study, a formula was worked out which, I feel, will be eminently satisfactory in meeting both requirements of the military and the essential dignity of our own sovereign jurisdiction. I think the arrangements we have made in this matter are a happy compromise of the major requirements that had to be met. The term of the Agreement is for 99 years, subject

to such extensions as may be made by mutual agreement between the two Governments. I should like at this point to quote the statement of Acting United States Secretary of State Acheson on behalf of the Government of the United States, on the occasion of the signing of the Agreement. That statement, defining the American policy, is our assurance that the mission of the American troops here is for our protection, for the protection of our mutual interests, and the advancement of the purposes of the United Nations. I quote now from that statement: "Three weeks after Pearl Harbor, when American and Filipino soldiers were fighting shoulder to shoulder against the Japanese aggressor, President Roosevelt crystallized the sentiment of the American people in a pledge: I give to the people of the Philippines my solemn pledge that their freedom will be redeemed and their independence established and protected.' In the negotiations, the two Governments have been constantly guided by the principle of respect for each other's sovereignty, by the mutuality of their interests, by regard for their equality of status as members of the United Nations and by the commitments of both nations to the purposes and principles of the United Nations. As one example the agreement provides that, in the interest of international security, any of the bases may be made available to the Security Council of the United Nations by prior mutual agreement of the United States and the Republic of the Philippines. The present agreement will contribute to international security and peace in the Pacific and will supplement such future arrangements for world peace as may be reached under the Security Council of the United Nations. We have by this Agreement guaranteed our national defense. We have formalized our military ties with the United States for 99 years. We have defined the community of interests which will bind our two peoples for almost a century. I consider this of major benefit to the Philippines. The United States is not given a single privilege here which is not for the common interest of our two countries. The entire arrangement is for mutual protection and for the furtherance of our interest, along with that of the United States, in maintaining peace in this part of the world. We are assured henceforth that no aggressor will lightly undertake to invade us. The United States has agreed to this arrangement, first, because of her commitments to protect our independence; second, because of our loyalty during the war; third, because of our historical associations; fourth, because of America's great desire that democracy and freedom flourish in this part of the world; and fifth, in order to advance the great cause of world peace, security, and freedom of which America is a champion today. We are now contributing under this Agreement to that holy cause. [...] The present agreement calls for many more bases than were contemplated in 1933. This change of attitude is, of course,

due to the last war. [...] conclusion of this treaty and the execution of its provisions will insure the national defense of our territory and the security of our independence not only for today but for all time to come.”