

STATEMENT OF JUSTICE ANTONIO T. CARPIO ON CHINA'S THREAT TO GO TO WAR WITH THE PHILIPPINES

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The United Nations Charter outlaws the use or threat of force to settle disputes between states. In the West Philippine Sea dispute, an arbitral tribunal created under the United Nations Convention on the Law of the Sea (UNCLOS), to which China is a party, has already ruled with finality that the Reed Bank is within the Exclusive Economic Zone (EEZ) of the Philippines and only the Philippines can exploit the natural resources within Philippine EEZ.

The threat of China to go to war against the Philippines if the Philippines extracts oil and gas in the Reed Bank, or in any area within Philippine EEZ in the West Philippine Sea, is a gross violation of the United Nations Charter, UNCLOS, and the Treaty of Amity and Cooperation in Southeast Asia to which China and the Philippines are parties. As a nation that under its Constitution has renounced war as an instrument of national policy, the Philippines' recourse is to bring China's threat of war to another UNCLOS arbitral tribunal, to secure an order directing China to comply with the ruling of the UNCLOS arbitral tribunal that declared the Reed Bank part of Philippine EEZ. The Philippines can also ask for damages for every day of delay that the Philippines is prevented by China from exploiting Philippine EEZ.

The Philippines can also bring China's threat to go to war against the Philippines before the United Nations General Assembly by sponsoring a resolution condemning China's threat of war against the Philippines and demanding that China comply with the ruling of the UNCLOS arbitral tribunal. China has no veto in the General Assembly.

The Philippine Constitution mandates that the "State shall protect the nation's marine wealth in its xxx exclusive economic zone." Since the Philippines has renounced war as an instrument of national policy, the President has the constitutional duty to use all legal means under international law to protect Philippine EEZ. In the face of China's open threat of war to seize Philippine EEZ in the West Philippine Sea, an area larger than the total land area of the Philippines, the President cannot simply do nothing, or worse acquiesce to China's action, for inaction is the opposite of protecting Philippine EEZ.

Under international law, acquiescence is the inaction of a state in the face of threat to its rights under circumstances calling for objection to the threat to its rights. Acquiescence means the Philippines will lose forever its EEZ in the West Philippine Sea to China.

China's blatant threat of war against the Philippines demands that the Philippines strengthens its defenses and alliances. In particular, the Philippines must strengthen its alliance with the United States, the only country with whom the Philippines has a mutual defense treaty. The United Nations Charter recognizes the right of states to mutual self-defense against armed aggression. The Philippines can ally with the United States because the United States does not claim the West Philippine Sea or any Philippine territory. The Philippines cannot ally with China because China wants to grab for itself the West Philippine Sea and the Spratlys. As long as China threatens the Philippines with war over the West Philippine Sea, the Philippines can never lower its guard in its dealings with China.

Among all the countries in the world, only China has threatened the Philippines with war over Philippine EEZ in the West Philippines Sea. The other claimant states in the Spratlys - Vietnam, Malaysia, Brunei – recognize Philippine EEZ, including Reed Bank, in the West Philippine Sea. The only dispute of the Philippines with Vietnam and Malaysia is on high-tide elevation rocks and their 12 nautical mile territorial seas in the Spratlys, which are more than 100 nautical miles from Reed Bank. Vietnam and Malaysia are certainly not claiming the Reed Bank. The Philippines has no dispute with Brunei.

Reed Bank is vital to Philippine national interest. It is the only replacement for Malampaya, which supplies 40 percent of the energy requirement of Luzon. Malampaya will run out of gas in less than 10 years. Unless the Philippines develops Reed Bank, Luzon will suffer 10 to 12 hours of brownouts daily 10 years from now. This will devastate the Philippine economy.

China's threat of war against the Philippines over the West Philippine Sea reveals the aggressive design of China against the Philippines. No less than Chinese President Xi Jinping has delivered the threat personally to Philippine President Rodrigo Duterte. This extremely troubling development calls for all Filipinos to unite to defend the West Philippine Sea in accordance with the Constitution, international law and UNCLOS.

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