

Defending Our Sovereign Rights in the Grand Manner
U.P. Law Alumni Homecoming Speech
November 7, 2019

Justice Antonio T. Carpio (Ret.)

Good evening to everyone. I wish to thank the Class of 1994, the Silver Jubilarians, for inviting me to speak before you tonight. I am truly honored to address the illustrious alumni of the U.P. College of Law gathered here.

We are all proud alumni of the U.P. College of Law, which taught us law in the grand manner that we may become great lawyers. And to become great lawyers we must practice law in the grand manner.

To practice law in the grand manner is to practice law not for personal gain alone, but to practice law most especially in service to our country and people. You may now want to harness your legal skills to serve our country and people if you are not doing so already – for this is what it means to practice law in the grand manner.

We may have different political beliefs, and we may belong to different political, professional or social organizations, but there is one issue that unites and binds us all as Filipinos. We are one in defending our sovereignty and sovereign rights as an independent and sovereign nation. No Filipino, and no one here, will ever say that he or she does not want to defend our sovereignty and sovereign rights as an independent and sovereign nation.

Before the adoption of the United Nations Charter in 1945, the defense of a state fell primarily on armed soldiers who were trained to fight in war. The United Nations Charter has outlawed war as a means of settling territorial or maritime disputes between states, and such disputes must be settled now only through negotiations and mediation, and as a last resort, through arbitration in accordance with the Rule of Law.

Thus, in territorial or maritime disputes, the defense of a state has fallen primarily on diplomats and on lawyers. When China seized Scarborough Shoal in 2012, we did not send the Philippine marines to retake Scarborough Shoal. Instead, we sent our lawyers to The Hague in an arbitration case to declare China's nine-dashed line without legal effect. And we won an overwhelming victory, a landmark victory that will shape the direction of the Law of the Sea for decades to come. Lawyers are now the warriors in defending sovereignty and sovereign rights, through the Rule of Law.

We defended, and preserved, our Exclusive Economic Zone in the West Philippine Sea, an area larger than our total land area, by resorting to the Rule of Law, without firing a single shot in anger. We brought the maritime dispute before a forum where warships, warplanes, missiles, and nuclear bombs do not count and where the dispute would be resolved only in accordance with the Rule of Law. In short, we used the Rule of Law in the grand manner in defense of our nation's sovereign rights.

A recent SWS survey shows that 93 percent of the Filipino people want the arbitral ruling asserted. The Duterte Administration, however, has chosen to put aside the arbitral ruling in exchange for loans and investments from

China. Those loan and investments have not been coming as promised, as admitted by Foreign Secretary Teddyboy Locsin.

As lawyers who were taught law in the grand manner, our task is to convince the Duterte Administration, and the rest of the 7 percent of our people, that it is in the best interest of our nation to assert the arbitral ruling in accordance with the Rule of Law. War is not an option and has never been an option. Our Constitution prohibits resort to war as an instrument of national policy, and international law outlaws war as a means of settling disputes between states.

As lawyers who learned law in the grand manner, we have to convince everyone in Government to be more vigilant and vigorous in protecting our sovereign rights in the West Philippine Sea. We are faced with a nuclear-armed regional superpower that wants to seize 80 percent of our Exclusive Economic Zone in the West Philippine sea, and this superpower is right there battering at our gates. We cannot take the defense of our sovereign rights lightly.

What the House of Representatives has done last Monday this week was to confer on Chinese Ambassador Zhao the Congressional Medal of Achievement for fostering, and I quote, “stronger bonds of very good friendship between the Philippines and China.” The House of Representatives must be referring to the article penned by Ambassador Zhao in *Philippine Star* last November 15, 2018 where Ambassador Zhao asserted, and I quote, “Being separated by only a narrow strip of water, China and the Philippines have been close neighbors for centuries, sharing xxx geographic proximity.”

In short, Ambassador Zhao was saying to the entire Filipino people that the Philippines and China are very close neighbors, because the nine-dashed line is China's national boundary in the South China Sea, leaving the Philippines with only a sliver of water as its territorial sea and Exclusive Economic Zone. For this, Ambassador Zhao was conferred a Congressional Medal of Achievement by our House of Representatives. Of course, the House of Representatives was just following President Rodrigo Duterte, who earlier conferred on Ambassador Zhao the Order of Sikatuna with the Rank of Datu. Our national heroes who died defending our territory against foreign invaders must now be turning in their graves.

As lawyers who practice law in the grand manner, we need to impress upon our people, and the rest of the world, that there are many peaceful approaches to enforcing the arbitral ruling in accordance with the Rule of Law. I have enumerated many of these peaceful approaches in my lectures. This is not the occasion to reiterate them; suffice it to state that all these approaches are in accordance with our Constitution, the United Nations Charter and relevant international laws.

Now, is there actually a light at the end of the tunnel on the South China Sea dispute? Will China ever comply with the arbitral ruling? Yes, I believe so, and to quote Secretary Teddyboy Locsin, "we are almost there."

Last November 2018, during President Xi Jinping's visit to Manila, the Philippines and China signed the Memorandum of Understanding or MOU on joint cooperation to explore and exploit oil and gas in the West Philippine Sea. Subsequently, the Philippines and China signed the Terms of Reference or TOR to implement the MOU. During President Duterte's last

visit to Beijing at the end of September this year, the Philippines and China named their respective representatives to the Steering Committee created in the MOU to implement the MOU. The Steering Committee had its first meeting just last week in Beijing.

Under the MOU and TOR, China, through its state-owned commercial enterprise China National Offshore Oil Company, or CNOOC, will participate in exploring and extracting oil and gas in the West Philippine Sea as a service contractor, or through a service contractor, of the Philippine Government. A service contractor acknowledges that the oil and gas belong to the Philippine Government. A service contractor does not claim to be the owner of the oil and gas, otherwise it will not just be a service contractor if it believes it owns the oil and gas. Besides, in the service contract of the Department of Energy with Forum Energy, the service contractor in Reed Bank, the area most likely to be first explored and developed, there is an express acknowledgement by the service contractor that the oil and gas belong to the Philippines state.

Thus, I do not see the need to demand that China expressly waive in writing any claim to sovereign rights within Philippine Exclusive Economic Zone in the West Philippine Sea. The arbitral ruling and the nature and language of the MOU, TOR and the service contract should be sufficient to protect our sovereign rights in the West Philippine Sea.

We must remember that China has to defend the MOU and TOR before its own people. We cannot expect China to expressly admit in writing to its own people that the historical narrative that the Chinese government taught them for the last 70 years is totally false. We have to help China make a face-

saving exit before its own people without, however, compromising our own sovereign rights. As long as we stick to the MOU and TOR, which recognize the service contract as the mode of cooperation between the Philippines and China, we do not compromise our sovereign rights.

China has offered Vietnam similar arrangements as the MOU and TOR with the Philippines. Why is China now striking a bargain with the Philippines and Vietnam? The arbitral ruling has made it impossible for any government in the Philippines, Vietnam, Malaysia, Brunei or Indonesia to cede its sovereign rights to China. Because of the arbitral ruling, China can never force any of these coastal states to surrender its sovereign rights to China. Because of the arbitral ruling, China's nine-dashed line has been exposed as historically false and without any legal basis to claim any part of the South China Sea.

So, China is making the most out of a difficult situation, especially so that it has to show to the rest of the world peace and stability in the South China Sea, which is the starting point of its maritime Belt and Road Initiative. China also has an on-going trade war with the United States and is facing massive protests in Hong Kong. China will have to find solutions to some of its disputes with other states.

We cannot, however, at this point lower our guard. We must keep the pressure on China by educating the peoples of the countries around the South China Sea, and the peoples of the rest of the world, on why China never owned or controlled the South China Sea at any time in its history. The 1.4 billion Chinese people most especially need to understand that what they were taught about the South China Sea from grade one to college is totally false.

And we still need lawyers like you, who were taught law and learned law in the grand manner, to push for peaceful approaches to enforce the arbitral ruling in accordance with the Rule of Law. We still need to convince the Duterte Administration, and the rest of the 7 percent of the Filipino people who are still holding out, that the Filipino people must be firmly united in asserting Philippine sovereign rights in the West Philippine Sea under the Rule of Law.

Only then can we be assured that our sovereign rights will remain permanently with us for the benefit of the present generation of Filipinos, and the generations of Filipinos still to come.

So, to my fellow alumni in the U.P. College of Law, as our “*Pahinungod*” or oblation to the Filipino people for making us “*Iskolar ng Bayan*,” let us all defend our sovereign rights in the West Philippine Sea in the grandest manner that we know, through the Rule of Law.

Thank you and a pleasant evening to everyone.
