Concrete Solutions to the Maritime Disputes between the Philippines and China
There are competing interests (with differential priorities)...

**Philippines**
- **Energy security**
  - Access to indigenous petroleum resources
  - Economic resilience
- **Food security**
  - Access to fishery resources
  - Socio-economic security & stability in coastal communities
  - 20% fish production
- **Maritime security**
  - Vantage point to capital city (SS)
  - Access to southern porous borders (KIG)

**China**
- **Maritime security**
  - Defensive perimeter for southern coast
  - Control of maritime frontiers (aspect of sovereignty)
  - Cultural aspect: historical narrative
- **Food security**
  - Access to resources for southern provinces’ fishing communities
- **Energy security**
  - Additional future source of petroleum & other resources
...as well as common interests.

- Economic security
  - Freedom of navigation/overflight – necessary for commercial trade and travel
  - Freedom of communications

- Environmental security
  - Preserve the resilience and productivity of living resources
  - Safety from spills and disasters

- Regional stability
  - Prevention of crisis and escalatory incidents that could lead to armed conflict
There are available legal frameworks...

- Provisional arrangements (inc. joint development)
  - North Sea Continental Shelf Cases, Judgment 20 Feb 1969, para. 99:
    - “The Court considers that [overlapping continental shelf areas] must be accepted as a given fact and resolved either by an agreed, or failing that an equal division of the overlapping areas, or by agreements for joint exploitation, the latter solution appearing particularly appropriate when it is a question of preserving the unity of the deposit.”
  - Eritrea v. Yemen, Award 17 Dec 1999, para. 86
    - The parties “should give every consideration to the shared or joint or unitized exploitation of [mineral] resources”
There are available legal frameworks...

- Provisional arrangements (inc. joint development)
  - UNCLOS Art. 74(3) and 83(3)
    - “Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of final agreement. Such arrangements shall be without prejudice to the final delimitation.”
  - Guyana v. Suriname, Award 17 Sep 2007, para. 459-70
    - “Twin obligations simultaneously attempt to promote and limit activities in a disputed maritime area.”
  - States are required to make “every effort”:
    - To enter into practical provisional arrangements prior to concluding final delimitation agreements (i.e., JDA)
    - Not to jeopardize or hamper the reaching of final agreement” on their delimitation disputes
There are available legal frameworks...

• UNCLOS Part IX/Art 123 (Enclosed/semi-enclosed seas)
  • States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate international organization:
    • (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;
    • (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;
    • (c) to coordinate their scientific research policies and to undertake where appropriate joint programmes of scientific research in the area;
    • (d) to invite, as appropriate, other interested States or international organizations to cooperate with them in the furtherance of the provisions of this article.
...including the SCS Arbitration Award.
However...

- Post-arbitration deadlock
  - CN refuses to recognize, accept, implement the SCS Arbitration Award
  - PH cannot enforce compliance and implementation unilaterally
- While the Award offers legal clarity, especially with the basic issue of maritime entitlements, and provides a foundation for generating solutions, it has not solved the continuing disputes
- Meanwhile, the SCS continues to absorb the impact of the parties’ activities
Post-arbitration Deadlock Scenarios

1. CN forces access to PH waters, imposes own law
   - PH and other littoral States’ resistance to CN imposition will build up and grow; will foreclose hope of future peaceful settlement
   - Incidents/encounters with escalation potential will continue and increase
   - CN will find increasingly “expensive” to maintain both ability to control seas and ability to placate littoral States; littoral States may also make CN responsible for any downturn in the status of SCS resources
   - External powers will ramp up involvement in SCS and with surrounding States to protect their interests through partnerships
   - SCS tensions will always remain high beneath the surface
Post-arbitration Deadlock Scenarios

2. CN complies with Award interpretation/application of UNCLOS, negotiates access
   • Incidents
   • Source of tensions will draw down
     • Competition for resources
     • Need for maritime security forces and partnerships
   • PH and littoral States can open discussions to settle sovereignty disputes
   • Productivity of SCS will remain stable, possibly increase
   • Regional neighborhood stability, relations will improve
Ad Interim Measures

• Parties should work on their common interests that transcend maritime boundaries, through “borderless” measures.
• These measures may be undertaken individually, within each area under its control, and on their own nationals, but will benefit all.
Ad Interim Measures

• Commit to freedom of navigation and overflight throughout the SCS, with the exception of occupied features up to a certain distance
  • Arbitrary and expansive military exclusion zones should not be established in exchange for reasonable distance

• Freedom to install and repair submarine cables and pipelines should be unhindered

• All activities that cause damage to living resources and the marine environment must stop
  • Parties should cooperate to protect the integrity of fragile living resources
  • Parties should cooperate in combatting illegal trade in endangered species
  • Parties should cooperate to stop illegal, unreported, unregulated fishing
Ad Interim Measures

- Engage in serious cooperation and establish working mechanisms for joint spill response, and search & rescue operations
- Establish direct channels of communication between military, law enforcement, decision-making units made available to respond to incidents and potential crisis
Medium-term Measures

Spratly Is. – at least 8,000 sq. n. m.

Scarborough – approx. 700 sq. n. m.
Medium-term Measures

• Fisheries within 12nm enclaves
  • 12nm enclaves around occupied features are large areas often subject to exploitation and use (e.g., Union Banks, Tizard Banks, Thitu Reefs, Scarborough Shoal)
  • Destructive fishing should not be allowed; access conditioned upon sustainable fishing methods
  • A system of common reporting and documentation should be established, allowing littorals to report infractions to the flag State so that the latter may take action
  • Cooperation on conservation and protection of commonly used areas should be promoted
Medium-term Measures

• Joint development within & outside 12nm enclaves
  • Undertaken through a treaty framework
  • Either:
    • Applicable to entire SCS, even if specific projects operate in specific areas
    • Reciprocally provides access to both parties continental shelf areas
  • Reciprocal exchanges and mutual benefits
  • Clear and transparent with respect to terms and conditions
  • Express “without prejudice” clause
  • May also be through special concession, but may require new law
The SCS Arbitration Award
End of presentation

Thank you very much!