

**Maritime Philippines in the Asian Century:  
Global Environmental Change, Regional Economic Integration,  
Geo-political Realities, and Contested Legal Spaces**

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Abstract

The 21st Century has been heralded as the “Asian Century” on account of the shift of the global economic centre of gravity from the West to the East. It is within this context that the Philippines, which in the past months has received favourable assessments and optimistic forecasts from various economic and investment analysts, seeks to find the “elbow-room” within which to grow and develop. However, it faces major challenges: the variable risks of natural and man-made disasters brought about by factors such as climate change and development policies, the efforts to attain regional economic integration, geo-political realities and competition, and the country's fixed location within a region of contested territorial and jurisdictional spaces. This lecture will highlight some key strands of these challenges for consideration and discussion by the business community and civil society so that they may be able to generate policy options and contribute inputs to help guide the Philippines toward its maritime future.

**Introduction**

At a high-level forum organised by the Centre for Strategic and International Studies at Washington DC less than a month ago, Foreign Affairs Sec. Alberto del Rosario quotes the old English proverb “[g]ood fences make good neighbours,” with reference to the disputes in the

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South China Sea, of which the newly-christened West Philippine Sea is part.<sup>1</sup> Most people readily recognise the obvious message conveyed in the aftermath of this summer's crisis over Bajo de Masinloc. Indeed, the very notion of fences essentially captures the common *tao's* notion of national or territorial boundaries as defining the domain over which the Philippine nation-State exercises exclusive entitlements and uninhibited control. Sec. Del Rosario's position is a clear and simple advocacy for clearly-defined and commonly-accepted boundaries between the Philippines and her neighbours in the region, something that no person is likely to question the wisdom of, as the solution to the issues in the South China Sea.



Figure 1. The South China Sea is a regional commons that has supported, and continues to support, the coastal settlements of the Southeast Asia. That regional commons is now subject of numerous exclusionary claims by surrounding States. (Source: GoogleEarth, et. al.)

1 Malig, J. Del Rosario: Philippines will respond to Chinese ships. ABS-CBN News, 28 Sept 2012. Online: <<http://globalbalita.com/2012/09/28/del-rosario-philippines-will-respond-to-china-ships/>> Date accessed: 22 Oct 2012; Quismundo, Q. Philippines won't back down in disputed sea -Del Rosario. Inquirer Global Nation, 04 Oct 2012. Online: <<http://globalnation.inquirer.net/52028/philippines-wont-back-down-in-disputed-sea-del-rosario>> Date accessed: 22 Oct 2012. For the text of his full speech, see Del Rosario, A. Philippine Foreign Policy: In Pursuit of a Just and Enduring Peace. Speech delivered at the Center for Strategic and International Studies, Washington DC, 26 Sept 2012. Department of Foreign Affairs, online: <<http://www.dfa.gov.ph/main/index.php/speeches>> Date accessed: 22 Oct 2012.

Like any good academic, I decided to check up on the source of Sec. Del Rosario's quotation, and eventually found that it was with reference to Robert Frost's free-verse poem entitled *Mending Walls*. But contrary to promoting the fence-construction industry, the poem actually questions the wisdom of an age-old practice of two neighbours regularly building and rebuilding a stone wall between two farms in the English countryside. Meeting his neighbour by chance while taking on the task, the protagonist declares:

He only says, "Good fences make good neighbours."  
Spring is the mischief in me, and I wonder  
If I could put a notion in his head:  
"Why do they make good neighbours? Isn't it  
Where there are cows? But here there are no cows.  
Before I built a wall I'd ask to know  
What I was walling in or walling out,  
And to whom I was like to give offence.  
Something there is that doesn't love a wall,  
That wants it down..."<sup>2</sup>

This happens to strike a chord. Like Frost's poetical protagonist, it is a scholar's habit is to step back and ask critical questions. To paraphrase, why should the drawing of maritime boundaries make good neighbours? What is it that we want to bind in and bind out? What is it that wants the boundary? Will it really solve the problems in the South China Sea? And so on.

When I was asked to deliver this lecture, it was immediately apparent that this was a request for information about the Philippines' maritime boundaries and the South China Sea issues, something that I have been accustomed to discussing in legal forums. One thing I have noticed in those discussions, however, is that for a topic so broad and complex, too often it gets caught up in the small details: most often, the arcane legalistic ones that are so easily mis-understood. So given that this is one of the very few times that I would be faced with a non-academic audience, rather than just put on the old hat and recycle one of my old and tired modules, I would like to place the discussion of Philippine maritime boundaries within a broader context.

Context is everything. No discussion of Philippine maritime boundaries, the West Philippine Sea and South China Sea, and the issues and challenges that they create for our archipelagic nation can be proper and complete without context. In order to appreciate the various pressures upon our maritime boundaries, and whether our responses are appropriate or off-tangent, it is absolutely necessary to view such boundaries in their natural, regional, and global settings. While it is impossible to cover these in detail, in this first half of the lecture I will highlight some key considerations from each setting before diving into the tangled web of boundaries imagined in the South China Sea. My intention is not to prescribe for you a particular set of views, but rather, attempt to give you much food for thought.

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2 Frost, R. *Mending Walls*. 1914. Poetry.org <<http://www.poets.org/viewmedia.php/prmMID/15719>> Date accessed: 22 Oct 2012.

## Global Environmental Change

The broadest context is the one most often overlooked: we live in a world that is undergoing subtle but massive change, creating anxieties about where environmental trends are leading us and that manifest in the form of resource competition and conflict. Climate change, which the ordinary Filipino appreciates in terms of increasing discomfort in the outdoors and intensifying disasters like typhoons and floods (and occasional landslides), is a global challenge facing all nations. It is thought that rising ambient temperatures will bring about a chain-reaction of associated climatic events that affect our region more than others,<sup>3</sup> such as wider variations in temperature across seasons, temporal shifting of the seasons, rising sea levels, and more frequent extreme weather events. In our sensitive oceanic realms, this portends increasing and potentially destructive stresses being laid on marine and coastal ecosystems, particularly coral reefs, mangrove stands, and seagrass beds. These ecosystems shelter and nurture our marine capture fisheries, as well as support coastal and inland aquaculture with brood-stock, and survive in a very narrow and specific band of sea surface, temperature, and salinity conditions. The primary productivity of the water column of the oceans itself, founded on the distribution of plankton, the simplest plant organisms that form the base of the entire marine food chain, is also threatened.

Sources of regional stresses to these ecosystems abound: unusual variations in sea surface temperatures could herald coral bleaching events that signal the death of coral reefs; sedimentation due to agricultural and industrial run-off from river basins literally bury coral reefs and seagrass beds while coastal infrastructure development and aquaculture destroy mangrove stands; shipping activities increase the risk of either accidental marine pollution (oil, chemicals, or other commodities) or release of marine invasive species that could endanger productive coastal areas; garbage or marine debris, particularly plastics, that are dumped or washed into the oceans directly affect all marine life; while ocean acidification,<sup>4</sup> or increased UV radiation from

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3 See for example, Barta, P. and L. Murray. ABD: Climate Change to Hurt Southeast Asia. The Wall Street Journal, 28 Apr 2009, online: <<http://online.wsj.com/article/SB124082388923058747.html>> Date accessed: 17 Oct 2009; International Fund for Agriculture Development. Climate Change Impacts: Southeast Asia. Online: <[http://www.ifad.org/events/apr09/impact/se\\_asia.pdf](http://www.ifad.org/events/apr09/impact/se_asia.pdf)> Date accessed: 19 Oct 2012; Yusuf, A.A. And H. Francisco. Climate Change Vulnerability Mapping for Southeast Asia. Singapore: IDRC/SIDA/EEPSA/CIDA, 2009. Also available online: <[http://www.preventionweb.net/files/7865\\_12324196651MappingReport1.pdf](http://www.preventionweb.net/files/7865_12324196651MappingReport1.pdf)> Date accessed: 19 Oct 2012; International Panel on Climate Change. IPCC Fourth Assessment Report, 2007: Working Group I, The Physical Science Basis - Southeast Asia. IPCC Online: <[http://www.ipcc.ch/publications\\_and\\_data/ar4/wg1/en/ch11s11-4-3-7-southeast-asia.html](http://www.ipcc.ch/publications_and_data/ar4/wg1/en/ch11s11-4-3-7-southeast-asia.html)> Date accessed: 19 Oct 2012.

4 This refers to changes in the pH levels of seawater brought about by the precipitation of industrial and agricultural air pollution, or increased absorption of atmospheric carbon dioxide by seawater. See Dean, Cornelia. Rising Acidity is Threatening the Food Web of Ocean, Science Panel Says. The New York Times, 30 Jan 2009, Online: <[http://www.nytimes.com/2009/01/31/science/earth/31ocean.html?\\_r=0](http://www.nytimes.com/2009/01/31/science/earth/31ocean.html?_r=0)> Date accessed: 17 Oct 2012; SCOR Biological Observatories Workshop. Report of the Ocean Acidification and Oxygen Working Group, Venice, Sept 2009, Online: <[http://www.scor-int.org/OBO2009/A&O\\_Report.pdf](http://www.scor-int.org/OBO2009/A&O_Report.pdf)> Date accessed: 17 Oct 2012; Caldera, K. and M. Wicket. Anthropogenic carbon and ocean PH. 425 Nature 365 (25 Sept 2003), Online: <[https://pangea.stanford.edu/research/Oceans/GES205/Caldeira\\_Science\\_Anthropogenic%20Carbon%20and%20ocean%20pH.pdf](https://pangea.stanford.edu/research/Oceans/GES205/Caldeira_Science_Anthropogenic%20Carbon%20and%20ocean%20pH.pdf)> Date accessed: 17 Oct 2012.

less effective atmospheric ozone protection<sup>5</sup> could threaten the primary productivity of the oceans. Most of these stressors can be directly or indirectly attributed to human activity, the by-products of economic activity especially in industrial urban centres and from agricultural areas connected by the major river basins to the sea. All of these influential stressors and affected ecosystems are present around the South China Sea.

Of the country's major seascapes, the West Philippine Sea<sup>6</sup> ranks second to the Sulu-Sulawesi Seascape in terms of economic productivity, environmental sensitivity and stress, and exploitation pressures,<sup>7</sup> concentrated mainly along the western shores of Mindoro and Palawan. But research has revealed important linkages between the living marine resources of the West Philippine Sea and the inter-island waters of the Sulu-Sulawesi Seas. The productivity of these marine areas are integrally linked, their biological interconnections being mediated and carried by the seawater that flows continuously between them.<sup>8</sup> But in turn, the West Philippine Sea is itself merely a part of the entire South China Sea, and its biological production is undoubtedly the foundation of the offshore marine living resources of all the surrounding littoral States. With the seasonal cycles of Nature and the oceans, it is nothing short of a common resource pool that made possible all coastal human settlements throughout the Southeast Asian region from pre-historic times. That common resource pool faces common environmental risks, from human activities common to all its surrounding inhabitants.

When we consider ourselves within these environmental conditions, we have to recognise that these general constraints add to the country's current unenviable position as being among the

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- 5 See for example, P. Hader, D., H. Kumar, R. Smith, and R. Worrest. Effects of solar UV radiation on aquatic ecosystems and interactions with climate change. 6 *Photochemical & Photobiological Sciences* 267 (2007), online: <[http://www.ciesin.columbia.edu/documents/UNEPparticle\\_worrest.pdf](http://www.ciesin.columbia.edu/documents/UNEPparticle_worrest.pdf)> Date accessed: 17 Oct 2012; Smith, R. and K. Baker. Stratospheric Ozone, Middle Ultraviolet Radiation, and Phytoplankton Productivity. *Oceanography* 4 (Nov 1999); Wu, Y., K. Gao, G. Li and E.W. Helbing. Seasonal Impacts of Solar UV Radiation on Photosynthesis of Phytoplankton Assemblages in the Coastal Waters of the South China Sea. 86 *Photochemistry & Photobiology* 586 (2010), online: <[http://mel.xmu.edu.cn/upload\\_paper/20115994251-37flcb.pdf](http://mel.xmu.edu.cn/upload_paper/20115994251-37flcb.pdf)> Date accessed: 17 Oct 2012.
  - 6 Defined in Section 1 of Admin. Order No. 29, s. 2012 as “the maritime areas on the western side of the Philippine archipelago” including “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.”
  - 7 Conservation International (Philippines). Comparing the Three Seascapes. Expert's Workshop to Prioritize the Next Seascape for the Philippines, Richmond Hotel, Pasig City, 24 Apr 2009.
  - 8 See Metzger, E. J. and H. Hurlburt Coupled dynamics of the South China Sea, the Sulu Sea, and the Pacific Ocean. 101:C5 *Journal of Geophysical Research* 12,331 (1996) doi: 10.1029/95jc03861; Sprintall, J., A. Gordon, P. Flament, and C. Villanoy. Observations of exchange between the South China Sea and the Sulu Sea. 117:C05036 *Journal of Geophysical Research* (2012) doi: 10.1029/2011JC007610; Cai, S. and Y. He. Association of the Sulu Sea surface circulation with the South China Sea. 81:4 *Journal of Marine Systems* 335 (2010); San Diego-McGlone, M.L., G. Jacinto, V. Dupra, I. Narcise, D. Padayao, and I. Velasquez. A Comparison of Nutrient Characteristics and Primary Productivity in the Sulu Sea and South China Sea. 37 *Acta Oceanographica Taiwanica* 219 (1996), online: <[http://sol.oc.ntu.edu.tw/aot/1998/373/3732\\_1/e3731.html](http://sol.oc.ntu.edu.tw/aot/1998/373/3732_1/e3731.html)> Date accessed: 17 Oct 2012.

most prone to natural disasters.<sup>9</sup> We are located at disaster-central in our part of the world: we stand in the path of typhoons, are enclosed by the tectonic plates that generously provide us with earthquakes, and host our share of volcanoes on the Pacific Rim of Fire. The associated hazards of floods, tsunamis, fire, infrastructure collapse certainly don't make things any easier. The general unpredictability of most of these extreme events, but significantly higher odds of their taking place in our part of the world, certainly challenge all but the most resourceful planners and most resilient industries. Even the insurance sector, which normally revels with such uncertainties, would probably not be too optimistic with the odds. The risks of such disasters would probably militate against the establishment of integrated, large-scale, heavy industries, but would be more likely to attract components of trans-national supply chains that spread the division of labor and stages of production across many countries so that the risks can be better managed.

When faced with common problems and higher risks, a policy of cooperative action is a reasonable and necessary action. Common problems are best addressed by all those affected acting in concert in order to effectively address the common cause; while individual resilience against risks and contingencies are enhanced by support and assistance from others. This reasoning actually underlies all environmental advocacies, including global ones such as that on climate change. The question may be asked, then, whether in the South China Sea, should things be any different?

### **Regional Economic Integration**

It would not be amiss to pause and consider, what have these inhabitants been doing lately with respect to such economic activities. This brings us to our regional context. The political victory of capitalism by the end of the Cold War finally unleashed the *laissez faire* philosophy unhindered upon the world, dividing and reducing people into consumers and producers, albeit while accommodating some useful (i.e. profit-enhancing) lessons from its competition with socialism. The indubitably global reach of the market society has most recently driven the opening up and expansion of formerly closed, restricted, or regulated markets, most especially through free-trade agreements.

The Southeast Asian region, a veritable arena of Cold War competition in the old days, is abuzz with contrasting market forces of competition and integration. The ASEAN finally came into its own as a realistic venue for regional economic integration after the pressures of great power rivalry receded. The regional economic arena has seen remarkably significant positive movement despite great differences in national economic power, natural resources, governance capacity, political systems, and culture. Two of the most relevant efforts toward regional economic integration have been the establishment of the ASEAN Free Trade Area<sup>10</sup> and the ASEAN-China

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9 Quismundo, T. Philippines is 3<sup>rd</sup> most disaster-prone country, new study shows. Philippine Daily Inquirer, 16 Oct 2012. Online: <<http://globalnation.inquirer.net/52858/philippines-is-3rd-most-disaster-prone-country-new-study-shows>> Date accessed: 17 Oct 2012.

10 See Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area. Online: <<http://www.worldtradelaw.net/fta/agreements/afta.pdf>> Date accessed: 19 Oct 2012.

Free Trade Area.<sup>11</sup> There are other free trade agreements in which the Philippines is interested, to be sure, but these two are most relevant because they include the littoral States of the South China Sea.

Free trade agreements are normally viewed mainly in terms of the reduction of trade barriers such as tariffs, and thus make for rather boring conversations with most people. So when we consider the two overlapping free trade areas, I suggest that we need to look at three basic technological infrastructures necessary for free trade to take place: those for marine transportation, energy production, and commercial transactions.

Marine transportation is the lifeblood of international trade: it remains the most cost-efficient means of moving goods in quantity over great distances, and one cannot consider competing in global markets without the means to access such markets through the transportation of goods.<sup>12</sup> The role of maritime transportation must be seen through the more pragmatic perspective of how maritime trade takes place: with ships and through ports. If the ASEAN and ASEAN-China free trade area members are indeed serious in pursuing the benefits of free trade, then one would expect that priority would be given to the development of these industries. Yet, comparison of statistics indicate an alarming trend: the growth of the Philippine merchant fleet has been stagnant and even shrunk,<sup>13</sup> while its ports lag behind in terms of accessibility and connectivity.<sup>14</sup> Ironically, while the Philippines currently provides 27% of the world's seafarers,<sup>15</sup> it controls very little of the ships on which they sail. A host of problems bedevil the shipping and port industries and prevent their optimal use: in shipping it is mainly the lack of access to capital and high costs of doing business, while in ports it is monopolistic tendencies and operational inefficiencies, all of which give birth to their own associated problems. Facilitation of trade through the reduction of trade barriers and liberalisation are policy actions that will not work unless reflected by equivalent reductions in the practical barriers to actual business.

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11 See ASEAN-China Free Trade Agreement (ACFTA). Department of Trade and Industry online: <<http://www.dti.gov.ph/dti/index.php?p=688>> Date accessed: 19 Oct 2012.

12 See Corbett, J. and J. Winebrake. The Impacts of Globalisation on International Maritime Transport Activity. Global Forum on Transport and Environment in a Globalising World, 10-12 Nov 2008, Guadalajara, Mexico. Online: <<http://www.oecd.org/greengrowth/greeningtransport/41380820.pdf>> Date accessed: 19 Oct 2012.

13 According to statistics of the United Nations Conference on Trade and Development (UNCTAD), the Philippine merchant fleet has steadily declined from 14,766 in 1995 to 6,694 in 2012. See UNCTAD. UnctadSTAT: Merchant fleet by flag of registration and by type of ship, annual, 1980-2012. Online: <<http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=93>> Date accessed: 21 Oct 2012.

14 UNCTAD reports that from 2004 to 2012, the Philippines' liner connectivity index, which indicates how well connected a port is to global networks (based on factors such as the number of ships, container-carrying capacity, maximum vessel size, services, and companies that operate container ships) has grown only from 15.45 to 17.15. In contrast, for the same period, Vietnam's index has grown from 12.86 to 48.71; Malaysia's from 62.83 to 99.69; and China's (excluding Hong Kong, Macau, and Taiwan) from 100 to 156.9. UNCTAD. UnctadSTAT: Liner shipping connectivity index, annual, 2004-2012. Online: <<http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=92>> Date accessed: 21 Oct 2012.

15 Tan, Edita. Supply Response of Filipino Workers to World Demand. Makati: International Organization for Migration, 2009, at 32. See also Philippines finally ratifies Convention 185. World Maritime News, 25 Jan 2012. Online: <<http://worldmaritimeneeds.com/archives/45489>> Date accessed: 19 Oct 2012.

The second most important infrastructure is energy production, for in the modern world no industries, whether agricultural or industrial, will function without energy. On this front, the Philippines has maintained a relatively stable policy of balancing energy dependence with energy self-sufficiency. Since the 1970s, it has successfully avoided over-dependence on imported energy sources and kept its indigenous energy sources almost at parity with imports.<sup>16</sup> But the all-important transportation industry (land, air, sea) underpinned by internal combustion engine technology is still absolutely dependent on oil, which to date has not been found plentiful within or just off its own shores. And there is little doubt that much, if not all, of the Philippines petroleum reserves are to be found in its offshore: the volcanic origins of most of its landmasses militate against the existence of viable reserves. But one major problem that prevents Philippine petroleum exploration and exploitation: the shortage of domestic capital that can be used by the high-risk petroleum industry. Philippine energy policy seeks to make up for the lack of capital and reduce or eliminate the risks to its own limited financial reserves by attracting foreign investments in the petroleum sector. To this end, it has offered its prospective petroleum provinces for exploration by foreign companies and is open to production-sharing agreements with service contractors that allow the country to a 60% net benefit from any prospective production in exchange for the contractor absorbing all other costs and risks. Unfortunately, petroleum exploration and development is be-deviled by an over-abundance of regulations and charges, moves at a snail's pace while the rest of the region accelerates by leaps and bounds. Despite the fact that its southern neighbours Malaysia and Indonesia have found oil and gas reserves in abundance, to date it has only one significant gas production platform, the Malampaya Project, which presently (and precariously) forms the sole foundation of the Philippine natural gas market and supplies about 40%-45% of Luzon's energy needs.<sup>17</sup> And to replace this reserve when it begins to run out in 2020, the Philippines pins very much of its hopes on one really promising region: the West Philippine Sea, specifically the offshore areas west of Palawan.

The final technological infrastructure is one which most probably do not see and realise: the systems that facilitate commercial transactions, which are presently and absolutely dependent on information technology. Electronic transactions are the essential element that make global commerce work; instantaneous communications and data transmissions underpin everything from the mere sending of an order by fax to the real-time tracking of shareholder values in the stock markets. These economic information flows mostly travel not through the air but rather through submarine fibre-optic cables that traverse the planet underneath the oceans.<sup>18</sup> The electronic commercial transactions mediated by ICT permit the realisation of true financial markets that are virtual and borderless, where billions of dollars are traded and globe-spanning

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16 See Almendras, J. The Philippine Energy Sector. Presentation, SRDA Energy Forum, Clark Pampanga, 17 Jan 2012. DOE Online: <<http://www.doe.gov.ph/Sec%20Corner/SRDA%20Energy%20Sector%20-%20Clark.pdf>> Date accessed: 20 Oct 2012.

17 See Malampaya holds 'Energy breakfast' with business leaders. Press release, 25 Jul 2012. Malampaya.com <<http://malampaya.com/?p=296>> Date accessed: 20 Oct 2012; DOE: Power supply 'normal' in Luzon during Malampaya shutdown. Rappler.com <<http://www.rappler.com/business/8636-doe-power-supply-normal-in-luzon-during-mampalaya>> Date accessed: 20 Oct 2012;

18 Electromagnetic wave-based communications through ground stations or satellites do their part and share, but are still relatively slower and less reliable than light.

commerce is conducted without a single coin changing hands. It also carries with it the risks of instantaneous changes in values: the US sub-prime mortgage crisis is a very good example of how billions of dollars can literally disappear in a flash. In an era of very sensitive and rapidly changing market conditions and highly fluid capital flows, the technological infrastructure for instant and virtual market transactions is an essential tool for competing in a regional (and global) economy.

It therefore appears that for regional economic integration (upon which the Philippines, like the rest of ASEAN, has bet its future growth) to work, our abilities to engage in global commerce, produce goods using energy resources from the offshore, and then transport them across the seas, all of which must cross the South China Sea, must be assured. All three basic infrastructures for regional economic integration require a South China Sea that is cooperatively secured and stabilised by all parties; responsibility for the regional commons must be shared by all for their mutual benefit. The assurance required should not necessarily or directly correlated with absolute control over territorial space. Well-planned and profitably-managed international trade can be parlayed into economic power that far outstrips limited productive capacities of a given territory: take for example the case of Singapore and Taiwan, both islands much smaller than the Philippines. Both invested heavily in their respective maritime industries, secured energy supplies from outside their limited areas, and led in the establishment of technological infrastructure. Both were able to benefit from these infrastructures by availing of the free access to transportation and communications through the oceans, cooperatively established and maintained by all States. And despite their obvious vulnerabilities due to the absence of homeland-based resources, they have managed to transcend their limitations and successfully established themselves in positions of disproportionately greater economic power. From these examples, the case can be made that in today's international trade setting, a robust maritime trade capability, stable energy supplies, and seamless and direct electronic access to financial markets are the real keystones of contemporary economic power, not absolute control over specific geographic spaces.

These examples challenge the traditional idea of national borders as defining the geographic scope of a country's "riches", or its resource-base, and its true relationship to its economic potential. In turn, they pose questions about the modern-day correlation between the exercise of the exclusive powers and prerogatives over geographic space, *vis-a-vis* the need to cooperatively accommodate all States' interests to establish free and unfettered lines of transportation and communication. It appears that the common denominator is a strategic use of foreign policy and an openness to good neighbourliness and cooperative relations, whether with foreign States or foreign private entities. Considering that all three infrastructures of regional economic integration run through, and link us to, the South China Sea, would such openness to cooperation be any less essential?

## **Geopolitical Realities**

It has been said that one thing that is very different today despite the dominance of one superpower, the United States, is the de-coupling of economic power from military power.<sup>19</sup> In particular, after the sub-prime home-mortgage crisis of 2008 destabilised the US economy and sent it headlong into recession, many see US economic power waning in the wake of China's rise on course to become the premiere economy of the world. We are witnessing a critical juncture, a transition period for both the US and China as the star-players on the current geo-political stage.

Geopolitics is most often the lens with which scholars and observers of the South China Sea view any key development in the relations between the littoral States. One of the most prominent focal points of this geopolitical game is each country's strategic military framework in the region. US global military strategy has historically relied on Alfred Mahan's seapower doctrine, which sees both the Navy and the merchant marine as key instruments of national power.<sup>20</sup> The US Navy's carrier battle group is the ultimate expression of modern seapower, and its demands for global access and mobility through the seas coincide perfectly with the requirement of freedom of navigation for the commercial ships of all States. Maintenance and protection of the worldwide network of the sea lines of communication that guarantee international trade, upon which US commerce has traditionally depended, is an essential US national interest where its military and commercial goals coincide.

However, in recent decades the combination of advanced electronic technologies, rising costs, increasing political unpalatability of war overseas, and dependence on international trade has encouraged the trimming down of the American military by shifting from manpower to machinery, best imagined as a change from “boots on the ground” to “drones in the air.” Smart bombs, drone platforms, and surgical strike capabilities represent a revolution in military affairs that the US finds itself eager to exploit because it is an ideal response to shrinking military budgets and politically unacceptable losses of life or prestige.<sup>21</sup> This is not to say that the US military deployment in the region is about to go home anytime soon; the US military re-balancing toward the Asia-Pacific requiring the re-deployment of its assets and engagement in

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19 Huang Jing. The Rise of China and the US-Asia Pivot: Implications for the Philippines, ASEAN, and the West Philippine Sea. Symposium, UP College of Law, 20 Jul 2012.

20 See Mahan, A. T. *The Influence of Seapower Upon History, 1660-1783*. Boston: Little, Brown & Co., 1890. Online: <<http://www.gutenberg.org/ebooks/13529>> Date accessed: 20 Oct 2012.

21 The upsurge in “drone warfare” has indeed instigated its own moral and policy debate. See for example, Visvanathan, M. *Death from the Skies: Drone Warfare and The Obama Administration*. Liberation, July 2012. Online: <[http://www.cpiml.org/liberation/year\\_2012/july\\_2012/international.html](http://www.cpiml.org/liberation/year_2012/july_2012/international.html)> Date accessed: 20 Oct 2012; Strawser, B. *The morality of drone warfare revisited*. The Guardian, 08 Aug 2012. The Guardian UK Online: <<http://www.guardian.co.uk/commentisfree/2012/aug/06/morality-drone-warfare-revisited>> Date accessed: 20 Oct 2012; Spangler, T. *Perspectives on US Drone Strikes*. The Orange County Register, 10 Oct 2012. Online: <<http://www.ocregister.com/articles/obama-374163-drone-khan.html>> Date accessed: 20 Oct 2012; Lee, B., *5 Things You Need to Know About Drones*. Need to Know on PBS, 13 Sept 2012. PBS Online <<http://www.pbs.org/wnet/need-to-know/five-things/drones/12659/>> Date accessed: 20 Oct 2012; Kaiser, K. *Obama's Record on Drone Strikes and the Automation of War*. Opinion, 07 Nov 2012. University of Southern California Neon Tommy, Online: <<http://www.neontommy.com/news/2012/11/obamas-record-drone-strikes-and-automation-war>> Date accessed: 18 Nov 2012; *Military States Reveal Epicenter of US Drone War*. Opinion. 09 Nov 2012, Brookings Institute <<http://www.brookings.edu/research/opinions/2012/11/09-us-drone-afghanistan-shachtman>> Date accessed: 18 Nov 2012;

multiple military alliances only shows that American military forces, particularly the US Navy, remain formidable and are here to stay. But the very nature and character of that military, including its priorities and strategies, is clearly also changing and evolving. Quite literally, the US is aiming for a leaner and meaner fighting machine that will no longer require the kind of financial drain and logistical support that it did during the Cold War.<sup>22</sup> In the Asia-Pacific arena, this new strategy is expected to progressively rely less and less upon permanent forward bases on foreign soil and more upon access and service arrangements and military partnerships.<sup>23</sup>

In contrast, Chinese military strategy in response to US seapower seems to be a variation of the classic heartland or fortress strategy, with a modern maritime twist. Sometimes referred to as the “Two Island-chain Strategy,” China views two defensive frontiers described by the layered geographic distribution of Asia-Pacific islands surrounding its putative maritime threshold, the South China Sea. The first island chain extends as far north as Japan and south to Malaysia to enclose the South China Sea, the Taiwan Strait, East China Sea, and Yellow Sea. The second island chain extends from Japan south to the Marianas, Guam, Palau, Micronesia, and Indonesia to enclose the Philippine Sea. The theory is that these island-chains define the defensive “buffers” within which Chinese military power can concentrate anti-access/area-denial weapons (mainly intermediate and long-range missiles launched from ships and submarines) that can neutralise US naval power at a distance from the Chinese heartland.<sup>24</sup> It is obviously a plausible attempt to counter-act the lumbering carrier battle group, the primary instrument of American force projection, with smaller, faster, and more mobile assets. But the inclusion of independent coastal States within these defensive perimeters clearly causes anxiety in the region, and colours China's movements with respect to the South China Sea.<sup>25</sup>

In truth, despite the potential military rivalry, both countries have much in common, particularly with respect to dependence on maritime trade and in stable bilateral economic relations. China is just as concerned about the freedom of commercial navigation as the US, it being a major importer of energy supplies from the Middle East and raw materials from Africa, Asia and Oceania, and a major exporter of products to the rest of the world. The US and China trade is one of the largest in the world, heavily weighted in favor of China, since the value of US imports is

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22 See Department of Defense. Sustainaing US Global Leadership: Priorities for 21<sup>st</sup> Century Defense. Washington DC, Department of Defense, 2012.

23 Ibid.

24 Arnold, A. Strategic Consequences of China's Expanding Maritime Power. Philadelphia, US Army War College, 2008, at 10-11, 16-19; see also Wesley, M. What's at Stake in the South China Sea? Strategic Snapshot 11. Lowy Institute for International Policy; Breach, J. China's Island Chain Defense. Blog Entry, 16 Apr 2011. Breach Your Mind Online: <<http://jacobbreach.wordpress.com/2011/04/16/chinas-island-chain-defense-via-global-power-and-strategy-analysis/>> Date accessed: 21 Oct 2012.

25 See Holmes, J. Island Chains Everywhere. The Diplomat, 16 Feb 2011. Online: <<http://thediplomat.com/flashpoints-blog/2011/02/16/island-chains-everywhere/>> Date accessed: 20 Oct 2012; Holmes, J. Island-chain Defense. The Diplomat, 15 Apr 2011. Online: <<http://thediplomat.com/flashpoints-blog/2011/04/15/island-chain-defense/>> Date accessed: 20 Oct 2012. See also Yuan, J. Emerging maritime rivalry in the South China Sea: Territorial disputes, sea lane security, and the pursuit of power. Foreign Affairs and International Trade Canada Online: <[http://www.international.gc.ca/arms-arnes/isrop-prisi/research-recherche/intl\\_security-securite\\_int/Report-South\\_China\\_Sea.aspx?view=d](http://www.international.gc.ca/arms-arnes/isrop-prisi/research-recherche/intl_security-securite_int/Report-South_China_Sea.aspx?view=d)> Date accessed: 19 Oct 2012.

more than 15 times more than the value of its exports to China.<sup>26</sup> As of August 2012, China also held a little over 1.1 Trillion USD of the 5.4 Trillion USD of the foreign debt of the US, just a little higher than its next largest foreign creditor, Japan.<sup>27</sup>

One thing that should be clear from both Chinese and US military strategy is that maritime boundaries and territories do not define the prospective arena for strategic rivalry. Reflecting on the location and distribution of the competing claims to islands of the South China Sea, and the grand military strategies that consider the larger areas around them, those little patches of land, which do not even show up on the regional map, have very little military significance to the potential military power that could be let loose in any regional conflict between the two powers. But then, the sobering state of the relationships between the primary geopolitical rivals in the region overshadow the likelihood of any such potential conflict between them, notwithstanding the occasional sabre-rattling from the hawks on both sides, and should seriously be considered with respect to attempts by various quarters to play up the significance of the PHL-US military alliance in the task of protecting and pursuing Philippine maritime boundary interests in the West Philippine Sea. In fact, some analysts fret over the possibility of being dragged into unwanted conflicts over their military allies' interest as a result of treaty commitments and triggering a larger, unwanted confrontation.<sup>28</sup> The indications are clear that neither China nor the US will be interested in any military confrontation over any of the islands in the South China Sea.

This situation leaves the Philippines in a difficult position. Although it is militarily allied and economically dependent on the United States,<sup>29</sup> and lies in middle of a geo-strategic area of potential rivalry between the US and China, Philippine perspectives on and interests in the appropriate policy posture with respect to the South China Sea are not in complete alignment. Philippine interests in exclusive sovereignty and/or jurisdiction over the Kalayaan Islands and adjacent waters in the West Philippine Sea are not necessarily reinforced by US interests in

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26 US Census Bureau. Foreign Trade: Trade in Goods with China. Online: <<http://www.census.gov/foreign-trade/balance/c5700.html>> Date accessed: 19 Oct 2012; Office of the United States Trade Representative. US-China Trade Facts. Online: <<http://www.ustr.gov/countries-regions/china>> Date accessed: 19 Oct 2012; See also Lum, T. and D. Nanto. China's Trade with the United States and the World. Washington DC: Congressional Research Service, 2007. Online: <<http://www.fas.org/sgp/crs/row/RL31403.pdf>> Date accessed: 19 Oct 2012; also Hammer, A. The Dynamic Structure of US-China Trade, 1995-2004. Washington DC: US International Trade Commission, 2006.

27 Department of Treasury. Major Foreign Holders of Treasury Securities. Department of Treasury Online: <<http://www.treasury.gov/resource-center/data-chart-center/tic/Documents/mfh.txt>> Date accessed: 21 Oct 2012.

28 These fears are especially directed toward the European region, but there is no reason why the same logic cannot apply to the Asia-Pacific. Chisak, A. Dangerous Crossroads in US Military Strategy: From “Deterrence” to “Nuclear Competence”. Global Research, 06 Feb 2010. Globalresearch.org <<http://www.globalresearch.ca/dangerous-crossroads-in-us-military-strategy-from-deterrence-to-nuclear-competence/17446>> Date accessed: 22 Oct 2012.

29 The US remains the Philippines' second largest trading partner (after Japan) and primary source of foreign direct investment. The US accounts for a little more than 16% of the Philippine's world trade. Embassy of the Republic of the Philippines to the United States. Overview of Philippines-United States of America Bilateral Relations. Online: <<http://www.philippineembassy-usa.org/philippines-dc/embassy-dc/ph-us-bilateral-relations-dc/>> Date accessed: 22 Oct 2012.

freedom of navigation and overflight. Despite the best efforts of some officials to make it appear that the US defence umbrella will be deployed to protect those places from foreign incursions, the US has greater interest in the absence of conflict, perhaps even if it costs the Philippines those areas. No direct US military intervention came in the wake of Mischief Reef in 1995; no such action came after Scarborough Shoal this year; in case of any other incidents elsewhere in Philippine offshore territories, it is unlikely that the Philippines will get anything more than quiet diplomacy behind the scenes, apart from public insistence on neutrality, from the US.

The most rational and pragmatic course of action would be for it to seek a carefully-balanced foreign policy position that strives closer towards our own neutrality in the geo-political rivalry, rather than deliberately taking sides in favour of one against the other. It is better to attempt to establish good relations with both, and thus avoid becoming collateral damage in their rivalries, rather than deliberately place the country directly in between, or attempt to pull one into a confrontation with the other. China will continue to push its maritime claims and interests as far outward as possible on one hand, and on the other, the United States will seek only to prevent restraints on navigational freedoms, but nothing more. Obviously, Philippine national sovereignty and/or jurisdiction in the West Philippine Sea do not necessarily have to be recognised by either of the two rivals in order for them to protect their respective interests. Our positions related to the South China Sea issues must proceed from this fact.

### **Contested Legal Spaces**

This rather lengthy prelude now brings us to the core interest of this lecture, the multiple overlapping claims that comprise the contested maritime spaces collectively known as the South China Sea. The best way to understand the current disputes is to review more or less chronologically the staking of the various claims.<sup>30</sup>

In the 1930s, the French, Japanese, and Chinese engaged in diplomatic tussles over certain uninhabited guano-rich islands, including those in the Spratly island group west of Palawan. A flurry of diplomatic communications were exchanged, but no major actions were taken by any of the littoral States for quite some time until the outbreak of the Second World War, when Japan annexed all the islands in the South China Sea as part of the Shinnan Gunto Administrative Region based in Formosa (now Taiwan). After the war, Japan renounced sovereignty over the islands as a condition of its surrender. In 1947, China's Koumintang Government (then in battle with the Communist Party) issued a local map of the South China Sea Islands, enclosing the South China Sea in irregular eleven dashed-lines of varied lengths and distances from nearby coasts. The eleven dashed-lines would eventually become the basis for the now better-known nine dashed-lines map that China uses to illustrate its claim. In 1952, the Philippines made its

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30 So much has been written by many authors from different countries detailing the chronology of claims and counterclaims made in the South China Sea, making it unwieldy to cite each and everyone in turn in the succeeding chronology of events. Instead, the author recommends that the reader visit either of the following webpages: Timeline: Disputes in the South China Sea. The Washington Post Online: <<http://www.washingtonpost.com/wp-srv/world/special/south-china-sea-timeline/index.html>> Date accessed: 22 Oct 2012, or Flashpoints: Security in the East and South China Seas Timeline, 1955 to the Present. Center for New American Security Online: <<http://www.cnas.org/flashpoints/timeline>> Date accessed: 22 Oct 2012.

own unilateral claim alleging historic title to the waters enclosed within the Treaty of Paris lines; this gave birth to the Philippine archipelagic doctrine. The islands of the South China Sea remained uninhabited until 1956, when the Filipino maritime entrepreneur Tomas Cloma published a Notice to Whole World claiming most of the islands in the Spratly island group as his own personal country. The Philippine government took care to distance itself from Cloma's claim, but Taiwan sent ships to evict Cloma from the area and then occupied the largest island Itu Aba.

From then, the region fell silent until sometime in 1969 when the Philippines, after amending its first baselines law and laying claim to the territory of Sabah, decided to occupy seven islands in the Spratly group, which was officially announced two years later in 1971. It would eventually occupy nine features, mostly full-pledged islands, a couple of sand cays, and one shoal. The Philippine action was followed by Malaysia, which claimed an irregular continental shelf in 1975 and then occupied and developed two reefs, constructing a hotel on one of them. Eventually they would occupy five major features more or less adjacent to the coast of Sabah. This was followed in 1979 by Brunei making a simple arbitrary claim to a continental shelf extending parallel to its small coast. The same year, the Philippines formally defines the area of the Kalayaan Island Group and announces its creation as a municipality of Palawan, but at the same time declares an exclusive economic zone (EEZ) extending from the baselines of its main archipelago only. In the meantime, Vietnam had also begun taking its own features, comprised of islands, rocks, and reefs in the Spratlys and the Paracels, eventually accumulating the most possessions among all the littoral States. Its occupation of the Paracels is interrupted in 1988, when a naval clash with China results in their eviction.

The entry into force of the United Nations Convention on the Law of the Sea in 1994 provides a treaty foundation for the declaration of EEZs projected from baselines, which the various littoral States either maintained from pre-UNCLOS days or defined in new legislation. Vietnam maintained its straight baselines, while Indonesia enacted its archipelagic baselines. Without considering the islands and whether they can generate their own EEZ, the mainlands EEZ zones would leave a high seas corridor in the middle portion of the South China Sea. Indonesia, Malaysia, and Vietnam had also negotiated, at different points in time, the common boundaries of their respective continental shelves. In 1995, China occupied Mischief Reef as the latest in its own effort to gain occupation of maritime features, and a year later, declared baselines enclosing its southern coast and Hainan Island, as well as the Paracels which it had taken from Vietnam. Clashes over Scarborough Shoal emerged two years later, but neither side decides to occupy the shoal, and the littoral State eventually agree to sign the 2002 Declaration of Conduct to try to freeze the status quo.

In 2009, the Philippine enacted a new baselines law, adjusting its previous baselines to conform with UNCLOS technical requirements and affirming its sovereignty over the Kalayaan Island Group and over Scarborough Shoal. As the original deadline for the making of a submission for continental shelf beyond 200 nautical miles looms, Vietnam and Malaysia file a joint claim to a portion of the seabed in the southern portion of the South China Sea between them, followed by a Vietnamese submission for a portion adjacent to its northern coast near the Paracels. This is

protested by the Philippines and China, which emphasises its protest by attaching the nine dashed-lines map, which indicates new lines slightly different from those in its 1947 map.

This, in a nutshell, is the current status of the South China Sea. Since 2009, there has been a marked increase in tensions between the littoral States, and a sharp increase in actual incidents between fishing, seismic survey, and maritime law enforcement vessels belonging to the littoral States, or an exchange of diplomatic notes. The incidents and communications frequently involve contradicting claims to the exercise of sovereign rights to explore and exploit natural resources in accordance with UNCLOS on the part of Southeast Asian States, including Vietnam, Philippines, and Indonesia on the one hand, and claims by China of violations of its sovereignty as well as sovereign or relevant rights on the other hand. More recent moves by China, such as the announcement of the establishment of Sansha City and its garrison, in the aftermath of the stand-off between Philippine and Chinese ships at Scarborough Shoal, have done nothing to decrease tensions and anxieties.

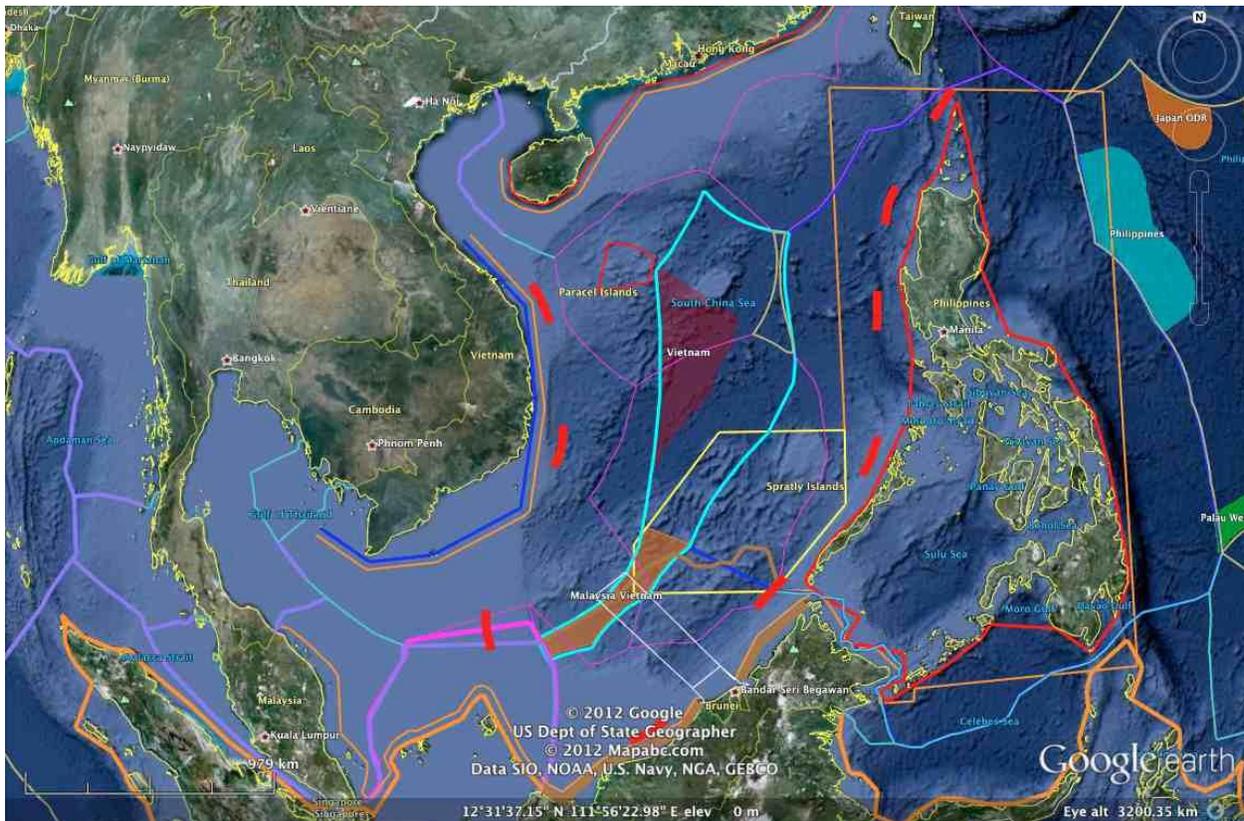


Figure 2. Current competing maritime claims in the South China Sea. Some are defined by arbitrary unilateral claims, others by negotiated bilateral treaties, and others by application (both proper or improper) of rules in the 1982 UN Convention on the Law of the Sea. For clarity, the many small islands and islets of the Spratly, Paracel, and Pratas islands are not indicated. Any one of those islands could potentially influence the configuration of the already confusing jumble of overlapping maritime claim lines and maritime zones. (Data from numerous sources integrated in GoogleEarth)

## Commentary and Prelude to Discussion

The South China Sea disputes, recognised worldwide as the “most complex” and “most intractable” of all maritime disputes, is seen by many scholars as driven primarily by competing interests in its marine resources and uses. From the chronology just stated, it is clear that acquisition of marine resources are the ultimate objective of the various claims. And since one of the original functions of UNCLOS is to establish an orderly means of allocating ocean resources, most people accept that it plays a prominent and crucial role in the regional competition for select portions of the South China Sea. The confusing tangle of lines drawn in the South China Sea has been created by varied claims made with varied justifications, and it is widely thought that UNCLOS provides the only commonly acceptable means of properly drawing lines of allocation and equitably distributing ocean space.

But first of all, these lines cannot be seriously considered without recalling the earlier parts of the presentation about global environmental change, regional economic integration, and geopolitical realities, and the questions posed at the beginning of my talk: why should maritime boundaries make good neighbours, when we see how the ultimately arbitrary nature of human political boundaries have little to do with preventing the transmission of environmental effects through the aquatic medium that covers 70% of the world? What do we wish to bind in and bind out, when geopolitical strategies largely disregard exclusionary maritime boundaries in favour of the pragmatic demands of national interests and objectives? What do we really want the maritime boundary for, when some of the most important uses and benefits that can be derived from the sea, do not necessarily require any boundary at all?

By this time, you may have noted that whether or not any of these lines on these maps are drawn, the issues and challenges posed by global environmental change, regional economic integration, and geopolitical realities remain the same. The exclusive national prerogatives that pertain to the maritime zones beyond 12 nautical miles are actually very limited and wither immediately to mere flag State jurisdiction at 24 nautical miles. Even the sovereign rights to explore and exploit natural resources in the EEZ are limited in scope, and the provisions of UNCLOS clearly require resort to flag State jurisdiction even in case of EEZ violations. The EEZ is not a zone of absolute sovereignty; the term “sovereign rights” was actually coined and designed to remove that implication.<sup>31</sup> For this reason, there are multiple duties to engage in bilateral cooperation with other States in the management of EEZ resources, especially those located in overlapping claim areas.<sup>32</sup>

The truth is, there can be no “good fences” in the middle of the ocean. Both the literature and record of experience of States show that the establishment of maritime boundaries alone do not

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31 The legal analogue to the distinction between sovereignty and sovereign rights is the distinction between ownership and rights of ownership. Ownership is considered to be comprised of a bundle of rights, such as the right to exclude, to use and enjoy, to dispose, among others. A coastal State's sovereign rights in the EEZ is similarly situated: it refers only to limited, specific rights to some aspects of the zone (particularly certain rights to identified natural resources), not the absolute and complete rights that it can exercise under sovereignty over its land territory.

32 Note 35, *infra*.

change the objective conditions and practical problems of marine management. They do not actually solve problems of resource competition between coastal States, nor do they address the risks from marine resource use activities, unless accompanied by good relations between neighbouring States and cooperation between coastal and user States.<sup>33</sup> At most, maritime boundaries provide a starting point for cooperation about mutual problems: they do not, by themselves, solve them.

Secondly, there is no doubt that UNCLOS is a truly remarkable international convention for many reasons; it is the first truly global multi-lateral convention, and it served as the model for global multi-lateral negotiations to come. It provides for a globally-recognised system of allocating jurisdiction over maritime spaces, which historically have been regarded as beyond the powers of exclusive State sovereignty outside of the territorial waters adjacent to the shore. The further one is from the shore, the greater the diminution of exclusive coastal State rights and the more the common duties and responsibilities that attach to the activities of all States.

It would be a mistake to assume that UNCLOS is solely concerned with the division of the ocean into exclusive maritime domains. Among the key achievements of the Convention is the establishment of the duty to cooperate among all States, on everything from maritime boundary issues pending delimitation, to the global protection and preservation of the marine environment. The duty to cooperate permeates every major part of the Convention; at every turn, it promotes the peaceful settlement of disputes most notably through bilateral negotiations between the concerned coastal State and other interested States.<sup>34</sup> In cases of contested maritime boundaries,

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33 For example, after the International Court of Justice decided upon and actually drew the common maritime boundary between United States and Canada in the Gulf of Maine, both parties were actually left mutually dissatisfied with the outcome, as neither had been able to achieve what they had aimed for at the start of the litigation. Thus, even after the boundary was drawn, the US and Canada still had to negotiate a *modus vivendi* in order to address the continuing transboundary management issues that were still not resolved by the maritime boundary. See Vanderzwaag, D. The Gulf of Maine Boundary Dispute and Transboundary Management Challenges: Lessons to be Learned. 15 Ocean and Coastal Law Journal 241 (2010); also Pudden, E. and D. Vanderzwaag. Canada-USA Bilateral Fisheries Management in the Gulf of Maine: Under the Radar Screen. 16:1 Reciel 36 (2007). Even in the case of directly negotiated boundaries, transboundary management issues may still persist and have to be addressed by agreements other than that establishing the maritime boundary. One good regional example is the maritime boundary dividing the Gulf of Tonkin between Vietnam and China. See Thao, N. H. Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf. 36 Ocean Development & International Law 25 (2005), and Yu, Y. and Y. Mu. The new institutional arrangements for fisheries management in Beibu Gulf. 30 Marine Policy 249 (2006).

34 This is most particularly expressed in UNCLOS Part XV on the Peaceful Settlement of Disputes, which, despite providing for a range of third party dispute settlement mechanisms, places upon any disputing States a burden of first attempting and exhausting efforts toward a negotiated settlement before the provisions of Part XV can apply. UNCLOS Art. 280 emphasises that Part XV does not impair the right of any State Parties “to agree at any time to settle a dispute between them... by any peaceful means of their own choice,” while Article 281 states that the procedures under Part XV will apply only if the State Parties are unable to settle their dispute by such peaceful means of their own choice. Article 282 requires the State Parties to use the binding dispute settlement mechanisms under existing general, regional, or bilateral agreements other than UNCLOS if such other agreements permits one of the parties to request the settlement of their dispute through those other mechanisms. And Article 283, para. 1 requires States Parties, whenever a dispute arises, to “proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.” These articles all

it encourages the execution of “provisional agreements of a practical nature” pending delimitations,<sup>35</sup> recognising the need for cooperation in addressing the daunting needs of management of marine activities. The greater proportion of the Convention is actually devoted to promoting bilateral negotiations between States and multi-lateral cooperation through international institutions,<sup>36</sup> in order to address the problems of ocean management that require cooperative approaches such as marine scientific research, marine environmental protection, conservation of living marine resources, deep seabed mining, management of shipping, and peaceful settlement of disputes. It recognises that by and large, the oceans are a global commons, in which all coastal States share common interests, duties, and obligations. It realises that the many problems of ocean management are inter-related and cannot be addressed by any individual coastal State on their own.<sup>37</sup>

This cooperative spirit that underlies the very core of UNCLOS is clearly overlooked in the very restrictive discussion of maritime boundaries. Contrary to common perception, the seas completely defy the conventional metaphor of “fences.” The ocean is not a barrier, but a medium for human activities and their impacts. The water is a complete environment that not only carries positive benefits like living marine resources, but also negative impacts such as pollution. It is an interactive environment that directly influences, and is affected by, the atmosphere and its climate. It is alive with essential food sources and sustains the marine food web on which all living marine resources and humans depend for sustenance. It supports maritime commerce and fishing activities, and permits the mobility of military and law enforcement just as well as cargo, passenger and fishing vessels.

The cooperative spirit at the heart of UNCLOS should therefore be considered carefully whenever the Philippines invokes it in the disputes over the South China Sea: to regard UNCLOS simply as a basis for dividing ocean space into exclusive domains goes against its underlying tenor. This cooperative spirit is actually fully in accord with the requirements of the context of the South China Sea disputes that I have outlined in the previous sections of my talk. By this time, you may have noted that whether or not any of these lines on these maps are drawn, the issues and challenges posed by global environmental change, regional economic integration, and geopolitical realities are actually the same. Proper responses to environmental fluctuations require coordination and mutual support across nations; regional economic integration requires interconnectivity of trade and financial flows; and the geopolitical situation requires the careful balancing of common *vis-a-vis* exclusive interests while maintaining equally good relations with competing rivals. These responses demand cooperation and concerted action that contradict the exclusionary logic of political boundaries, whether terrestrial or maritime, both which are based on assumptions of sole and absolute State control.

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consistently promote direct bilateral talks and efforts toward a negotiated settlement of the dispute prior to the engagement of the dispute settlement mechanisms under UNCLOS Part XV.

35 UNCLOS Art. 74, para. 1, Art. 83, para. 3.

36 See for example, UNCLOS Art. 118, 123, 144, 197, 199, 200, 226, 235, 266, among others.

37 UNCLOS, 3<sup>rd</sup> Preamble

At the very least, therefore, the government should take care to balance its approach to UNCLOS: the comprehensive convention does not only provide the means for delimiting maritime zones, it also establishes and protects certain rights in favour of foreign States in the waters of coastal States. It does not only provide for third party dispute settlement mechanisms, but also encourages States to first seek bilateral and mutually negotiated agreements. The UNCLOS is not all that has been presented thus far in the mass media and public discourse.

Instead of merely seeking implementation of only the part of UNCLOS that speaks of maritime boundaries, we should ask critical questions: why should maritime boundaries make good neighbours, when we see how the ultimately arbitrary nature of human political boundaries have little to do with preventing the transmission of environmental effects through the aquatic medium that we share? What do think are we binding in or out, when geopolitical realities largely disregard the exclusionary maritime boundaries in favour of the pragmatic demands of national interests and objectives? What do we really want the maritime boundaries for, when some of the most important uses and benefits that can be derived from the sea do not necessarily require any boundary at all?

In this light, the recent spats over the West Philippine Sea should benefit from a re-examination of government's standing policy, apparently established for many years now, of compartmentalising the maritime boundary issues and de-coupling them from the broader context of State to State relations between the Philippines and her neighbours. This compartmentalisation is reflected in Sec. Del Rosario's recent speech about how the South China Sea issues should not serve as an obstacle to the development of other relations, and that the South China Sea "is not the sum total of our relations" with China. The underlying assumption is that the competing claims can be dealt with separately from the rest of the issues that arise in the normal course of international relations, such as trade and cultural exchanges.

However, recent events seem to indicate that the idea of separating the South China Sea issues has turned into one of dealing with the disputes completely independently of the state of other political, cultural, and economic relations with the littoral, as well as with other interested, States. When viewed in this light, the compartmentalisation policy may have resulted in addressing the territorial rows and maritime boundary problems in a vacuum, as if it existed solely and separately without regard to its relationship to, and potential impact on, other Philippine national interests and our relations with other States. Moreover, such separate treatment has obviously allowed it to be magnified in its apparent role and impact on Philippine foreign relations: the South China Sea may not be the sum total of our relations with China, but from the various public pronouncements and government positioning of issues in the international arena, one cannot help but get a sense that in many ways, it has become the bottom line. When one asks an ordinary Filipino on the street about his knowledge of Philippine-China relations, what comes to his mind other than the territorial disputes?

There also seems to be a dissonance in the government's positions *vis-a-vis* not only China but its ASEAN neighbours as well. Despite its advocacy of a multi-lateral approach in the late 1990s and early 2000s, culminating in the 2002 Declaration of Conduct, the Philippines unexpectedly took a bilateral route by engaging in the JMSU with China in 2005. The two parties had to accept

Vietnam as a partner, and turn the JMSU into a trilateral undertaking, in order to try to repair the obvious damage the move wrought. Then, in 2009 when Malaysia and Vietnam made submissions for extended continental shelf areas in the South China Sea, specifically with the commitment that such submissions were without prejudice to future maritime boundary negotiations with other States, the Philippines blocked the consideration of such submissions, certainly closing off any perception of cooperation. Then later, when the issue of Scarborough Shoal arose, the Philippines then sought the support of Malaysia and Vietnam, as well as the rest of ASEAN, for a multi-lateral response against China. From a long-term perspective, there is unfortunately a palpable inconsistency in the government's positions about multi-lateralism in the region.

These considerations are among the reasons why I, together with a number of colleagues and distinguished former government officials, convened our own informal experts group to attempt to consolidate the critical questions that we recommend the government to address in the crafting and implementation of all its policies related to the South China Sea.<sup>38</sup> It is well past the time to re-examine the notion of simply separating the South China Sea territorial and maritime boundary issues from the rest of the country's interests and relations, and instead consider them as closely integrated and coordinated. The aftermath of the stand-off over Bajo de Masinloc demonstrated clearly the danger of dealing with the disputes completely independently of other political, cultural, and economic relations with the littoral, as well as with other interested States, and how such an approach may not work very well in the country's favour.

We in the expert group call for “a comprehensive and strategic approach to policymaking on the West Philippine Sea, taking into consideration the myriad short-term to long-term interests of the country at stake, the fluid regional and international environment and the domestic imperatives that will affect how government prioritises the allocation of its efforts and resources.”<sup>39</sup> We ask the many critical questions that we believe government to have left unanswered for far too long, and suggest that a major overhaul of how we deal with these issues and all our neighbours and allies is sorely needed.

Just as the US and China are fully aware of their period of transition, the Philippines should also realise that we lie at a critical crossroads. The Asian Century is upon us: all economists agree that the global centre of economic activity is shifting to the Asian hemisphere with China and India at its core. Our policies and actions must clearly navigate our way through the complicated and sometimes conflicting demands of cooperation and competition that will mark the unfolding of this century. It is indeed a time for re-tooling and re-imagination, and we call upon the business community and civil society to raise their voices and help in charting our country's future. We

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38 Agustin, C. et. al. Managing the West Philippine Sea. Philippine Daily Inquirer, 22 Sept 2012. Available online: <<http://opinion.inquirer.net/37294/managing-the-west-philippine-sea>> Date accessed: 22 Oct 2012. See also Quismundo, T. Expert group offers national policy on West PH sea. Philippine Daily Inquirer, 13 Sept 2012. Available online: <<http://globalnation.inquirer.net/50030/expert-group-offers-national-policy-on-west-ph-sea>> Date accessed: 22 Oct 2012.

39 Agustin, *ibid.*

must put our collective knowledge and skills to this task, lest we find ourselves left behind and swimming against the tide that the rest of the region is preparing to harness.

Thank you very much.