

Remarks by Professor Chen Shiqiu

Distinguished Amb. Roberto R. Romulo, Chairman of CPR Foundation Distinguished Participants, Ladies and Gentleman,

It is my great pleasure to be invited to the Forum on South China Sea. To begin with, I wish to congratulate on the opening of this Forum and extend my high appreciation to Carlos P. Romulo Foundation for Peace and the Institute for South East Asian Studies of Singapore for organizing this Forum which provides me a good opportunity to exchange views with so many eminent personages and scholars. I feel especially happy to meet my old and great friends like Amb. Domingo Siazon, Amb. Hasjim Djalal and Mr. Rodolfo C. Severino and to make many new friends.

Through yesterday afternoon and this morning's discussion I've learned a lot of appreciable thoughts and ideas. Now, I would like to share with you some of my own perspectives in my personal capacity.

First, The core of the South China Sea Issue

Sovereignty disputes over the Nansha Islands is the core part of the South China Sea Issue. Other matters, such as disputes over maritime areas and resources, all directly depend upon how to properly handle the sovereignty disputes over the Islands. To put it bluntly, the fundamental issue is who has sovereignty over the Nansha Islands.

Maybe it is necessary now for us to take a look at the evolving process concerning the sovereignty disputes over the Nansha Islands.

For a very long period of time of more than a thousand years before 1970s, there had been no such a problem as the so-called Sovereignty disputes over the Nansha Islands. There had not been any doubt about the fact that the Nansha Islands, along with Xisha Islands, Dongsha Islands, Zhongsha Islands belong to China. No country surrounding the South China Sea had challenged China's exercise of sovereignty over the Nansha Islands and their adjacent waters. Only beginning from the 1970s, when oil and gas reserves were discovered in the South China Sea, some countries began to occupy part of the islands and reefs of the Nansha Islands and laid claim to sovereignty over them, thus turned the China-owned Nansha Islands into disputes.

Second, Viewing the Issue from International law

A Disputes in the South China Sea should be analysed in accordance with universally accepted principles of international law. Since the core part of the South China Sea Issue is the Sovereignty disputes over the Nansha Islands. We have to study the issue with applicable international law as well as the historical facts of the situation in question. Among all international law principles, the most pertinent one is the intertemporal law principle. There are many exemplary cases in the world such as the Palmas Island case, the Clipperton Island case, the East Greenland Island case and the Minquis and Ecrohos Islands case, to mention just a few.

B Discovery

Historically, discovery is the oldest way to claim land territory,
Classical international law developed doctrines by which States could make a valid claim

of sovereignty over territory. The doctrines included discovery. Discovery can produce complete sovereignty. New territories and islands were subject to claim of sovereignty by discovery.

A host of historical facts have proved that before 16th -17th Century, it was China who first discovered, occupied and developed the Nansha Islands; the Nansha Islands have become an inalienable part of Chinese territory since then.

C Occupation and Effectivity

Occupation applies to territory that is terra nullius, that is, territory which is not under the sovereignty of any State by that time and is subject to acquisition by any State. Occupation requires proof of two elements: (1) the intention or will to act as the sovereign; and (2) the continuous and peaceful display of sovereignty.

In the case of islands in the South China Sea, activities of China, though modest in number but diverse in character, covering a considerable period of time and revealing an intention to exercising State functions, show its effectivity.

After discovering the islands in the South China Sea, the Chinese Government marked the Nansha Islands on the authoritative maps and exercised administrative jurisdiction over these islands. Chinese people started to develop the Nansha Islands and engage in fishing on the islands. Up till the beginning of 20th century, the Chinese Government had exercised peaceful jurisdiction over the Nansha Islands without any disputes.

After the founding of the People's Republic of China, the Nansha Islands were incorporated into Guangdong Province and Hainan Province successively and the Chinese Government has all along maintained China's sovereignty over the Nansha Islands and taken effective actions for that.

All in all, according to international law, China was the first to discover, name, occupy and develop the Nansha Islands and exercise sovereignty over them

D Estoppel

"Estoppel" is a generally accepted principle of international law in international relations. This principle has particular relevance to territorial sovereignty issues. In accordance with this principle the recent claimants should be still subject to their original recognition or Default.

E Prescription

Prescription applies to territory that was claimed by another State. It is described as the acquisition of territory through a continuous and undisturbed exercise of sovereignty during such a period as to usurp another State's sovereignty by its implied consent or acquiescence. As for the Nansha Islands issue, the Chinese Government has indisputable sovereignty over it since ancient times. And the Chinese Government has all along maintained China's sovereignty over the Nansha Islands and taken effective actions for that. The very recent time claimants can't resort to the doctrine of "occupation" or "prescription" to gain sovereignty over them.

F Geographic Contiguity

Some countries argue that small islands and other features of Nansha Islands are close to their main territory, within their EEZ or on their continental shelf, should belong to them.

Under customary international law, contiguity is not an independent basis for the

acquisition of territory. There are many historical cases which denied similar claims.

G__UNCLOS

Some countries have claimed sovereignty of Nansha Islands on the ground that these islands are within their continental shelves or exclusive economic zones.

According to international law and the UN Convention on the Law of the Sea, it is a basic principle that land dominates the sea. Maritime rights and interests should be based on territorial sovereignty. No country should be allowed to extend its maritime jurisdiction to the territories of other countries, still less should it be allowed to invade and occupy other's territory on the ground of exclusive economic zones or the continental shelves.

The 1982 Convention on the Law of the Sea (UNCLOS) has no provisions on sovereignty, nor does it regulate sovereignty over islands of their original status. UNCLOS only prescribes the regime of maritime zones. UNCLOS assumes that it has been determined which State has sovereignty over a continental land mass or an off-shore island. It then sets out what maritime zones can be claimed by States.

All in all, UNCLOS can in no way serve as a basis for a country's territorial claim, nor can it change China's indisputable legal status as having sovereignty over the Nansha Islands.

Third: the scenarios for the solution of the South China Sea Issue in the foreseeable future

Resolution of the sovereignty claims and agreement on maritime boundaries in the South China Sea seem unlikely in the foreseeable future.

One scenario is resolution by threat or use of force. Disputes used to be solved by force, but times have changed. Now, disputes should be dealt with by peaceful means. Threat or use of force is contrary to the purposes and principles of the Charter of the United Nations and in violation of the basic norms of international relations. Threat or use of force in the South China Sea only cause more conflicts. No country, whether the countries surrounding the South China Sea, or countries outside the area, can benefit from this kind of scenario.

One scenario is "let it to be". The countries concerned engage in "war of words" or unilateral actions on the basis of their own unilateral claims. In this scenario, the risk of conflicts or armed clashes is very high because unilateral actions by one country and counter-actions by another country may escalate or complicate the disputes, could only aggravate tension in the South China Sea which will benefit no one.

One scenario is resolution through direct dialogue and consultation by peaceful means. The countries directly concerned properly handle differences and sensitive issues based on the principle of equality and mutual respect; make great efforts to resolve disputes through bilateral consultations and negotiations. The countries directly concerned need to show political sincerity and flexibility in order to find a final solution acceptable to both sides. The situation in the South China Sea will be peaceful and stable. Good-neighborly relationship of cooperation can be developed among the countries surrounding the South China Sea. It is a win-win way. Though it may take some time, it is worth doing.

One scenario is "put aside dispute for joint development". Pending the final settlement, all countries concerned should exercise self-restraint and refrain from taking any action that may escalate or complicate the disputes. The countries concerned make great effort to enter into provisional or transitional arrangements, including "shelving disputes and carrying out

joint development” in disputed areas. Joint development will not only bring benefits to all parties concerned, but also create favorable environment and atmosphere for settling disputes in a long run. It should be the most practical, feasible and win-win way for the countries concerned under the present circumstances.

Fourth, the way forward on the SCS Issue.

The countries surrounding the South China Sea have a common interest in ensuring peace and stability in the SCS. To this end, they must handle their differences in an appropriate way.

All the parties concerned should adopt a restrained, calm, responsible, constructive attitude toward the issue.

Refrain from further actions that may undermine peace, stability, trust and confidence in the region.

Handle differences and relevant disputes with the countries concerned through direct consultation or diplomatic channels and by peaceful means.

Solve the disputes properly through bilateral negotiation and consultation in accordance with universally recognized international laws including modern maritime laws and the United Nations Convention on the Law of the Sea , fully respect legal principles, take history and other relevant circumstances into consideration and accommodate each other's concerns in a fair and constructive manner.

Pending the final solution of the disputes, the countries concerned shelve the disputes for the time being and go in for joint development in the disputed areas.

Abide by the Declaration on the Conduct of Parties in the South China Sea(DOC) and actively explore or undertake cooperative activities in such areas as marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operation and combating transnational crimes.

To maintain the safety, unimpededness and freedom of navigation of foreign vessels and aircraft enjoyed in accordance with international law.

No involvement by any external forces in the South China Sea disputes. “Internationalizing” the South China Sea Issue is undesirable, as that will only further complicate the situation.

Make joint efforts to transform the South China Sea into an area of peace, stability, cooperation and development.