



## Letters to the Editor

# The South China Sea and the need for united national action

By Gilberto Teodoro Jr. (philstar.com) Updated October 25, 2011 12:00 AM Comments (0)

MANILA, Philippines - Last week, on Oct 16 and 17, the Carlos P. Romulo Foundation held a successful and extremely informative Track II dialogue on the South China Sea. Highly respected and influential personalities in the foreign relations and defence fields from the Philippines, Brunei, Indonesia, China, the USA, Taiwan, and several other countries participated.

It was a seminal effort which will hopefully lead to more extensive dialogue and exchanges of views, becoming more concrete over time, with a view to informing the public about the issues from different, if not conflicting perspectives, and to providing a venue for informal country dialogues. We must commend Ambassador Roberto R. Romulo, Chairman of the Foundation, for conceiving the need for the conference and for making it happen.

Several thoughts came to fore during those two days, among them were the different claims of the party-claimants; the bases of their claims relying on either customary international law or the United Nations Convention on the Law of the Sea (UNCLOS) or both; multilateral versus bilateral approaches to dispute resolution; ASEAN's role or lack thereof in the resolution of the claims; joint development of the disputed areas, the delineation of which is itself disputed; the role of non-claimant and extra-regional States in the whole issue; the force and impact of domestic politics on the issue; and many other issues and nuances which the time allotted could accommodate.

Proceeding from the obvious fact that the issues are complex and multifarious, a reality that we need to digest is that the processes leading towards solving the different problems take time. An example given was the Malaysia-Thailand Joint Development area, which involves an area of 7,250 km square area in the Gulf of Thailand being contested by both countries. The joint development area is an interim measure allowing both countries to share equally the proceeds derived from the natural resources in the area without resolving the issue of ownership. The memorandum of understanding, which was only the first step in a series of numerous negotiations and agreements, was signed in 1979. The first gas was produced in 2005, a quarter of a century later. What this should tell us is that we must take concrete steps NOW, and not that since the processes take time anyway, we can postpone them for later: *saka na muna tatal matagal pa 'yan*. Each day of delay causes an incalculable amount of damage to our country and handicaps the kind of country that our posterity deserves. In an age of connectivity, where we expect immediate action and instant results, will the capacity of our leaders and our people to have the patience of those who came before us, remain the same? I believe that patience and tolerance levels decrease with the passage of time. The same question may be asked of other countries and I believe the answer will be the same. Issues like climate change, population growth, and human conflict motivate us to take quicker action in addressing public issues because of one looming theme: we are in a race against time. We have an uncomfortable feeling that the time of the world is finite and that unless drastic steps are taken, and then this world will eventually be unlivable. It is thus imperative that we start to take the needed steps to squarely address the issue with dispatch.

The need for information and for public awareness of the Philippine position and claims including the bases for these is vital to our successfully moving forward. This will entail competent legal analyses of the merits of our claims based on international law. To this end, the public must be made aware of the not insubstantial efforts and the monetary costs that we must be prepared to spend in order to enforce our claims not only in an adjudicatory sense but also in a negotiated sense. We must make our people aware that, although the price in pesos is high, the return to the country, and more importantly to future generations is well worth it. We must invest in continuing education for public sector functionaries in the fields of international relations and international law. This must include provisions for experience in international organizations not only for the enhancement of their capabilities but also to give a voice to our country in these bodies. Our people must be made aware of the state of our country's claims, their legal bases and the strengths thereof, the various avenues for settlement and the steps leading to them, to include the costs-benefits of non-settlement so that they can make an **informed political judgment that provides as clear a mandate as possible to our public officials.**

We will have to take more time and more steps in moving towards resolving these disputes compared to our neighbors because of the unique character of our democracy. All the disputant States' forms of government, to my knowledge, vest in the Executive the power to conduct foreign relations. But as is well known, the powers of a Philippine President are, by design of the Constitution, more constrained and inhibited, compared to the Chief Executives of the other claimant countries. The extent of checks and balances, the

freedom of the press, and elections every three years for national positions, may create an environment where the freedom of action that a President needs in order to put forward the country's best position, may be unduly hampered. Indeed the fear of severe political fallout may constrain a President from taking appropriate action or even force him to take a position which, when objectively examined, may be unsupportable or unachievable. In this light, the President needs a clear mandate and clear authority from the people, through legislative action, or perhaps, at appropriate times, through referenda, empowering him to proceed, defining the limits of his authority, and allowing him to use the full array of legitimate diplomatic and legal tools in order to work towards resolving issues. A good analogy is a Special Power of Attorney which a litigant must grant a lawyer during litigation. The LEDAC, JELAC, the National Security Council, and perhaps the Council of State, can be appropriate vehicles to pursue this. In territorial issues our country must speak with one voice, by saying this I do not mean that there is no room to disagree, but only that after a decision is made then we must all stand behind it, and that other parties may rely on that that decision to be kept. The confidence in our country's ability to stand by a decision it has made is in no other situation more important than in resolving issues which have the potential to lead us into armed conflict. Contemporary Philippine politics forces us to make fundamental decisions ex ante, before a President can conduct effective international negotiations on important issues, because then and only then, is he provided with a comfortable mandate to act, otherwise the potential for national embarrassment is inordinately high.

We cannot overemphasize the need for a united national stand on the South China Sea issue. This stand must come about after full articulation of the relevant issues not only from our perspective, but also from the perspective of the other claimants, so that our people can be made aware in a balanced and useful way. Hopefully they will be able to come to a political judgment through their elected representatives or directly through the appropriate political processes, which will lead toward a peaceful resolution of the complex issues involved. Finally, action — from study to capacity building, from preparation to negotiation or adjudication, must come NOW; for each day of delay means more problems down the road for us and for our posterity.

*(GILBERTO TEODORO Jr., former Defense Secretary, was moderator of the South China Sea Forum held October 16 to 17, 2011 at the Manila Polo Club.)*