

Aquino policy on the South China Sea: Are we ready for tough times ahead?

By AILEEN SAN PABLO-BAVIERA

The territorial disputes and maritime jurisdiction issues in the South China Sea will be a continuing bone of contention between the Philippines and its neighbors, especially China, for many years to come.

Since the 1990s, the Philippines has been proactive in seeking cooperative, rules-based approaches to managing the disputes, relying on both bilateral as well as multilateral diplomacy. Bilaterally, the Philippines entered into agreements with China and Vietnam in 1995 and 1997 pledging self-restraint and urging cooperation on non-sensitive areas. Many high-level exchanges were held, including among military officials. Even at the height of tensions over Mischief Reef, bilateral trade and people-to-people ties between Beijing and Manila thrived.

Multilaterally, the Philippines also spearheaded the 1992 Manila Declaration by ASEAN states, the negotiation of an ASEAN-China code of conduct (COC) which resulted in the 2002 Declaration of Conduct (DOC), and even the ill-fated Joint Marine Seismic Undertaking (JMSU) with China and Vietnam which was allowed to lapse after being implicated in alleged corrupt and treasonous activities of the previous regime.

The JMSU fiasco was a logical outcome of the way the Arroyo administration allowed domestic

politics and regime interests to dominate the country's China policy, with disastrous consequences for our security and foreign policy. Today, we are still trying to get relations back on track and are farther than ever from agreement on how to manage the disputes.

In the meantime, a new layer of security challenges looms over Southeast Asia, with the maritime disputes at its core. Several regional states have recently worked to delineate territories and boundaries (in our case, the 2009 Baselines Law), increasing tensions with China. Oil exploration activities have been on the rise. China's increasing assertiveness and growth in military capabilities cause concern. Sino-American rivalry for strategic influence in East Asia is casting a big shadow over attempts to solve the disputes peacefully.

This is the security environment in the South China Sea that the Aquino government now confronts.

The Aquino administration has confidently articulated its preferred multi-dimensional approach to the disputes. This is expressed in the Philippine proposal to turn the South China Sea into a "Zone of Peace, Freedom, Friendship and Cooperation". This approach places ASEAN at the center of any solution, which is appropriate because a non-threat-

ening, neutral and moderate ASEAN is acceptable to China and other stakeholders. It emphasizes rules-based solutions and reliance on international law, a fundamental principle if we are to prevent a situation where military might becomes the final arbiter.

The approach is inclusivist, cognizant of states with a particular interest in freedom of navigation such as Japan and the United States. However, caution must be exercised to ensure that non-claimants play a role supportive of a peaceful and equitable settlement, rather than one that exacerbates tensions in the region. The Aquino policy also rightly stresses the need to build the capability of the Armed Forces and the Coast Guard, so that the country may not only strengthen its defenses but in the future contribute its share to keeping order at sea.

Where the Aquino policy differs from the past is in its readiness to confront the issues directly underpinning the conflicts, shifting attention from confidence building activities to trying to clarify the basis of the claims, including calling for a determination of non-disputed from the disputed areas. Knowing the exact metes and bounds of the contested areas may help better define the possible areas for cooperation or even future joint development of resources.

What appears to be lacking in the emerging

policy of the Aquino government is a strategy of re-engagement with China. During the President's state visit to China which was arguably touted a success, the two parties "agreed to disagree" on this issue. That said, there is a great need for both sides to assure each other of their commitment to peaceful resolution, which means continuing dialogue and mutual persuasion about even divergent perspectives. The Philippines - and China, too - should start stepping back from the tough, unfriendly rhetoric as a gesture of goodwill and peaceful intent.

Also lacking is follow-up action on the proposed ASEAN-China Code of Conduct. Frustration and impatience over the difficult drafting process may be understandable; however there is no greater need for such an agreement than now. Given the worrying security environment described earlier, an agreement by the claimant states, recognized and supported by neighbors as well as extra-regional states, that focuses on measures to avoid armed conflict and reduce the risk of miscalculation at sea, is imperative.

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Basis for cautious optimism?

By TIMOTHY ONG

In a recent issue, the influential American magazine Foreign Policy asked a number of well-known commentators to make large predictions on the future. Of the nine predictions, most seemed far removed from our lives. One however was directly relevant to the Philippines and the other maritime state of East Asia.

The writer, Robert Kaplan, a member of the Defense Policy Board of the United States Defense Department predicted that "The South China Sea is the Future of Conflict".

Because of its geography as the main trade access to the booming economies of East Asia, its history of multiple and complex territorial claims, its geology of immense wealth in hydrocarbon resources, the South China Sea is increasingly the main arena of conflict and competition between a rising China on the one hand and the USA and other maritime states of the region on the other.

When I accepted former Philippines Foreign Secretary Roberto Romulo's invitation to take part in the Carlos P. Romulo Foundation's Forum on the South China Sea, I expected to have this bleak outlook confirmed.

Certainly there was little basis for optimism. China's 'nine dotted lines' claim although vaguely defined was ambitious in its reach. Joined together the dotted lines cover almost the entire South China Sea. Even something as innocuous as strengthening the 'Declaration on Conduct' between China and ASEAN to manage conflicting claims in the South China Sea had been almost impossible to agree upon with China showing no interest in anything binding.

At the conclusion of the forum, I was struck by two clear but

disconnected themes that sit uneasily with each other.

On the one hand, there was broad agreement that the issues underlying the conflicting claims are complex and intractable and inextricably linked to national and strategic interests.

On the other hand, there was broad agreement that the conflicting claims must be managed peacefully without disrupting Asia Pacific regionalism and economic integration.

These two themes are supported by developments within the Asia Pacific. The rise in tensions arising from conflicting claims, the build up in arms and increasing nationalist posturing has gone hand in hand with rapidly growing economic links between China, the Philippines and the other maritime states of the South China Sea. Almost bewildering to the western eye, the parties to the conflicting claims have continued to embrace each other while squabbling. In short, nothing so far has come in the way of doing business.

What explains growing tensions on the one hand and business as usual on the other? The cynic in the Philippines and elsewhere in ASEAN will be tempted to see this as appeasement or at any rate accommodation of China's growing might. As a Vietnamese delegate at the Forum observed, China's invitation for to put aside sovereignty issues and focus on joint development is a little like "What is mine is mine; what is yours is mine and we are willing to share".

My take is less cynical. My view is that ASEAN's willingness to separate the difficult issues of sovereignty from the practical ones of resource management; to emphasize common interests and de-emphasize differences; to focus on managing conflict rather than securing complete solutions reflects a necessary pragmatism.

It was this pragmatism that led to the Thai-Malaysian Development Area, a mutually beneficial framework for managing their conflicting claims in the Gulf of Thailand and to the successful management of a number of territorial disputes within the region. As a distinguished Indonesian participant and one of ASEAN's leading experts on the Law of the Sea, urged: "Start with the less sensitive issues and focus on common ground".

This ASEAN pragmatism reminds me of the distinction the scholar James P. Carse made between two types of "games", finite and infinite. Finite games are played with the goal of winning. Infinite games on the other hand, do not have a knowable beginning or ending. They are played with the goal of continuing play.

Listening to the diverse views from participants across the Asia Pacific at the forum, observing the inflexibility of final positions and the pragmatism of next steps, I concluded that the continuing skirmishes around the conflicting claims of the South China Sea, diplomatic, military and otherwise should be viewed and assessed as an infinite game. The aim is not to win; the aim is to keep playing.

With this thought at the conclusion of the forum, I began to feel that there is some basis for a cautious optimism on the South China Sea.

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'China-ASEAN ties too important to be strained by West Philippine Sea dispute'

By ALEXIS ROMERO

Security experts and former government officials have cited the need for more dialogues to resolve the West Philippine Sea (South China Sea) dispute, which has been regarded as a potential source of conflict in the region.

Participants of last week's "Forum on South China Sea" in Makati stressed the vital role of diplomacy in maintaining stability and robust ties among Spratly claimants.

And while the absence of major conflicts in the recent years has yielded optimism, there were concerns about the lack of a binding code of conduct among claimants, a condition that could trigger fresh squabbles.

"Diplomacy has a very important role in managing disputes with other countries. At the same time, I wish to signal that continued disputes on the South China Sea could lead to potential conflicts in the region," said former Foreign Affairs Secretary Domingo Siazon during the forum, which was organized by the Carlos P. Romulo Foundation.

Siazon, a former director of the United Nations Industrial Development Organization, said the territorial dispute lingered even as the Southeast Asian countries and China had managed to improve their economic ties.

"It seems paradoxical that the Philippines, ASEAN and China have succeeded for the last 10 years to establish closer economic relations but remain unable to resolve the South China Sea dispute," he said.

"There are clear signs that the bigger economies in the Asian region need to improve the

management of their relations with each other."

Siazon said China is the Philippines' largest trading partner and an important member of the ASEAN Regional Forum.

According to Siazon, ASEAN was China's 4th largest trading partner. The regional bloc moved to third place in the first half of the year.

Citing a report by the Asian Development Bank, Siazon said about \$148 trillion or half of the world's gross domestic product would come from Asia by 2015. He said China alone would be the biggest economy by that time with a GDP of about \$63 trillion.

"There are of course caveats in this scenario like regional integration, good governance and continuing restructuring but perhaps most significant is the avoidance of a major conflict between the big economies," Siazon said.

"China and Philippine relations and China-ASEAN relations are too important to be frozen because of the dispute in the South China Sea," he added.

Siazon said ASEAN and China "should try to manage the disputes and go full speed ahead with our economic and political cooperation."

China, the Philippines, Brunei, Malaysia, Vietnam and Taiwan claim either part or the entire Spratly Islands, which is located in the West Philippine Sea.

The island group is said to be rich in mineral resources and has been the subject of a territorial dispute in the region.

Rommel Banlaoi, executive director of the Philippine Institute for Peace, Violence and Terrorism

Research and one of the forum participants, said diplomacy does not always lead to a settlement.

"Diplomacy is the most peaceful way to manage disputes but not a guarantee for dispute settlement. Diplomacy can only settle disputes if parties to the conflict are open for compromise," Banlaoi told The STAR.

"We need more dialogues to clear the air," he added.

Hasjim Djalal, director of the Center for Southeast Asian Studies in Jakarta, warned that the prospects of conflict in the West Philippine Sea would continue to exist if the stakeholders do not manage their differences carefully.

"I hope that the dialogue procedure would continue. It should be noted, however, that co-operation on technical and scientific matters are relatively easier to achieve than solving political, territorial or jurisdictional issues," Djalal said.

Aside from the economic ties among claimants, also at stake is the freedom of navigation, the factor that prods non-littoral states to closely monitor the dispute.

"The right of free passage and freedom of navigation and the orderly and consensual exploitation of the resources of the South China Sea are matters of huge importance to all nations," said Frank Wisner, former US undersecretary of defense for policy.

Wisner, who also served as US Ambassador to the Philippines, said adherence to internationally-accepted norms is "a key factor in ensuring peace and shared development" of the West Philippine Sea.

"The United States looks to the nations of this area to find diplomatic solutions to differences. At the same time, it is committed to maintaining a robust military presence in Asia and will support its allies," he said.

However, Chen Shiqiu, professor at China's Foreign Affairs University, believes external forces should not be involved in the West Philippine Sea issue.

"Internationalizing the South China Sea issue is undesirable as that will only further complicate the situation," Chen said.

According to Chen, the 1982 United Nations Convention on the Law of the Sea cannot serve as a basis in asserting a territorial claim since it has no provisions on sovereignty.

Djalal said the spirit of cooperation has emerged in the West Philippine Sea as there has been no major armed conflict among the claimants since 1988.

Wisner, however, said the absence of binding code that would govern the conduct of claimant countries leaves room for misunderstandings.

"It is a matter of regret that the region's diplomacy has not moved vigorously and achieved a Code of Conduct to cover differences in the South China Sea," he said.

In 2002, China and Southeast Asian Nations signed the Declaration on the Conduct of Parties in the South China Sea in line with the efforts to resolve territorial disputes peacefully. However, specific and binding guidelines have yet to be approved.

Calming the waters...

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Wisner expressed worry about the "loss of diplomatic traction," noting that there has been no "satisfactory explanation for the inability of China and its neighbors to manage their differences." Valencia noted the lack of a united position within Asean, which has non-claimant members unwilling to take on China and states which have territorial wranglings with each other.

Familiar to the difficulties and frustrations of shepherding the contending parties is Dr. Hasjim Djalal, special advisor to Indonesia's Minister of Maritime Affairs and Fisheries who has been lead convenor of a workshop on managing the South China Sea conflict since 1989. He narrated how discussion on sovereignty, territorial, political and security issues in the workshops had stalled after several meetings, noting modest achievements of the dialogue on confidence building measures.

Conceding that cooperation on technical and scientific matters is easier to achieve than on political and jurisdictional issues, Djalal called for political will in finding a solution using an inclusive approach. He concluded by saying, "The prospects for conflicts in the South China Sea continue to exist in the future if the countries concerned do not persist in managing them carefully."

Still, there were glimmers of hope. Some speakers offered possible pathways to a solution.

Varapote Chensavadsjai, who works in the Department of Treaties and Legal Affairs of Thailand's foreign ministry, discussed the 1990

Agreement on the Establishment of Malaysia-Thailand Joint Authority to settle the overlapping claims of the two countries in the Gulf of Thailand and the subsequent exploitation and sharing of the resources in the contested area. He said the arrangement could serve as a model for joint development in the South China Sea, but warned that it took over a decade to hurdle legal obstacles in the case to form the joint body and another 15 years for the first gas to be produced.

Peter Galbraith, former US ambassador to Croatia, national security professor, and founder of the Windham Resources Group, explained the success of the negotiations of the 2006 revenue sharing agreement between East Timor and Australia on the biggest oil and gas field in the Timor Sea. He said it required "focus on interests, not positions" and demonstrated that power, which clearly belonged to Australia in the case, was less important than fairness.

Dr. Fraser Cameron, director of the EU-Asia Center, talked about lessons that can be learned from the integration experience of the European Union, the various fisheries and environment cooperation agreements in the North Atlantic such as the Bonn Agreement as well as the work of the Oslo-Paris Commission, the Helcom-Helsinki Commission, and the Regional Maritime Pollution Emergency Response.

Valencia offered a roadmap on the South China Sea, starting with a cooperation agreement on non-sensitive issues and the signing of an enforceable code of conduct where parties vow to tone down unilateral moves in the area. He urged Asean members to sort out their own, separate disputes, such as the one between the Philippines and Malaysia over Sabah, which have made it difficult for the regional grouping to take a united stand on the South China Sea. Work should then proceed to define the outcrops in the area

in a further effort to specify the various claims and delineate the EEZs of all parties. Agreement can then be negotiated on acceptable military actions within EEZs, after which discussion on joint development beyond EEZs can materialize.

Valencia admits his packet of "baby steps" is difficult to make. Just how hard was illustrated by Barry Wain, former editor of The Asian Wall Street Journal now ISEAS writer-in-residence. Citing his sources familiar with the outcome of the latest meeting of Asean senior officials in Bali, Wain said the regional grouping will reject a proposal by the Philippines for Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C) in the South China Sea. The proposal calls for the segregation of disputed and undisputed areas in the South China Sea to determine where joint development could take place. Enclaves being jointly developed may then be demilitarized.

"Extremely hostile" to the idea, Wain said China lobbied to prevent an Asean legal experts' meeting on ZoPFF/C and succeeded in getting Laos and Cambodia to skip the conference which managed to take place in Manila last September. In Bali, Vietnam and Malaysia raised questions on the Philippines' interpretation of certain provisions of UNCLOS and Asean "turned cold" to the only proposal on the table on the South China Sea other than the code of conduct.

And so regional players must continue to grapple with the South China Sea question. Former Philippine foreign secretary Domingo Siazon who chaired the forum, while optimistic that history has been studied well by all concerned, expressed a word of caution. He said all players, especially the major powers, would do well to follow a saying by the late Chinese communist leader Chen Yun: "crossing the river by feeling for the stones."