



**The
SOUTH CHINA SEA
DISPUTE
in Philippine
Foreign Policy**

Problems, Challenges and Prospects

IDSS Monograph No. 5

Noel M. Novicio

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PHILIPPINE FOREIGN POLICY**

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NOEL M. NOVICIO

INSTITUTE OF DEFENCE AND STRATEGIC STUDIES

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To Doris and Paolo



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LIST OF ABBREVIATIONS

AFP	Armed Forces of the Philippines
AMM	ASEAN Ministerial Meeting
APEC	Asia-Pacific Economic Cooperation
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
CBM	Confidence-building Measures
EEZ	Exclusive Economic Zone
EU	European Union
MDT	Mutual Defence Treaty
MLSA	Mutual Logistics Support Arrangement
PAF	Philippine Air Force
PLAN	People's Liberation Army Navy
PN	Philippine Navy
PRC	People's Republic of China
RP	Republic of the Philippines
UNCLOS	United Nations Convention on the Law of the Sea
VFA	Visiting Forces Agreement

ABOUT THE AUTHOR

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PREFACE

This study examines the foreign policy options taken by the Philippines in managing its claim in the South China Sea dispute. What emerges is a dramatic shift in Philippine foreign policy decisions following the discovery of Chinese military structures on Mischief Reef, an area claimed by the Philippines and within the heart of its 200-mile Exclusive Economic Zone.

The arguments presented in the study suggest that a careful analysis of Philippine strategy will yield the following conclusions. First, while the Philippines has used diplomacy as an initial avenue to settle the dispute, it is clear that this option has paid little dividend. The Philippines' primary objective of having the Chinese structures removed from Mischief Reef remains unfulfilled, and calls into question the efficacy of bilateral negotiations with China.

Second, the regional response to the Mischief Reef case has revealed sharp divisions within ASEAN. ASEAN solidarity on the dispute is fragile and cracks are beginning to show. The hope of the Philippines that a perceived threat from China could engender greater ASEAN unity has been unrealistic.

Finally, as a direct consequence to the ineffectiveness of diplomatic initiatives, the Philippines is increasingly looking towards restoring defence cooperation with the United States as a way of checking Chinese moves in the South China Sea. The Mischief Reef crisis led the Philippines to ratify a Visiting Forces Agreement with the United

States in 1999, a necessary step for the restoration of bilateral military alliance. A strong U.S. naval presence in the background is definitely a strong stopgap until such a time the Philippines develops its military capability and economic strength to deter aggressors. The Mischief Reef crisis has also caused the Philippines to embark on a modernization programme for its armed forces to produce a better-equipped military for its external defence.

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This monograph is based on my dissertation submitted for my Master's degree. In preparing this dissertation, I have had the support and guidance of some of the most illustrious scholars in the IDSS. My greatest gratitude is to Prof. Yuen Foong Khong, a person of exceptional kindness and intellect for supervising me and allowing me to benefit from his deep knowledge of foreign policy. He patiently guided me through my drafts despite his heavy academic load as a Professor in Oxford University. Along the way, he challenged me to pick out the defining thesis that would make the dissertation a dynamic and special one. Without his detailed criticisms and comments, this work would have been a poorer one. I hope I have succeeded in meeting his suggestions and expectations for this dissertation at least part of the way. His personal graciousness and scholarship will remain an inspiration for me. I would like also to thank Associate Professor Ang Cheng Guan, the Head of Studies at the IDSS. This dissertation was inspired by my term essay that he had marked for his class in Foreign Policy and Security Issues in Southeast Asia. His friendship outside the classroom is one that I will always treasure.

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1

INTRODUCTION

Due primarily to several territorial disputes, the Spratly Islands in the South China Sea is widely viewed by ASEAN governments as a major “flashpoint of conflict” in post-Cold War Southeast Asia.¹ Their significance is magnified by the presence of natural resources in the area, such as manganese nodules, fish and oil (although the commercially exploitable potential of the last item remains to be proven), as well as their strategic location straddling some of the world’s most important sea lanes.² Stanley Roth, who heads the U.S. State Department’s East Asia Bureau, said military construction in the South China Sea can provide “flash points for confrontation”, stressing that construction or expansion of military facilities, no matter how modest, can lead to a counter-response and that is always dangerous.³ If conflict ever breaks out in the Spratlys, no less than six claimant countries could easily find themselves in the midst of a bruising encounter.

The most serious confrontation to take place in the Spratlys to date occurred in March 1988 when China and Vietnam fought a battle over Fiery Cross Reef that resulted in the loss of three Vietnamese ships with more than 70 Vietnamese sailors killed or missing.⁴ It is worth noting that during the naval encounter, China occupied only the reefs, which did not house any garrisons, and did not attempt to

dislodge either Vietnam or the Philippines from the islands, although it claimed the whole of the Spratlys. China began to establish a physical presence in the Spratlys in 1987. From 16 May to June 1987, the People's Liberation Army Navy (PLAN) carried out its first large-scale patrol of the Spratlys, from Bei Dao (North Island) to Zengmu Ansha (James Shoal). In October and November of 1987, in what was reported as the longest cruise to date by the PLAN, an East China Fleet squadron travelled from Qingdao through the western Pacific to James Shoal, thereby demonstrating its ability to reinforce the South Sea Fleet. In the autumn of 1988, a major naval exercise code-named "Guangzi-15" was conducted by the Guangzhou Military Region to assess the navy's ability to defend the coastal territorial waters as well as islands claimed by China in the South China Sea.⁵

Although the South China Sea was considered a potential trouble spot, it never became the security issue of the day throughout the 1970s and 1980s. This was so despite a number of "unfriendly" and even hostile developments that took place in the South China Sea. On 21 May 1977, Vietnam unilaterally claimed 12 nautical miles of territorial waters, 12 nautical miles of contiguous zone and a further 200 nautical miles as an Exclusive Economic Zone (EEZ) which overlapped the EEZ of its neighbours. There were also numerous skirmishes between Vietnamese fishing vessels and those from the other littoral countries as well as the claims and counter claims made by the Philippines and Malaysia. In March 1988, Vietnam and China clashed once again over the islands, resulting in China taking control of six islands in the group. More violent clashes on land such as the Vietnamese invasion of Cambodia in December 1978 and the Sino-Vietnam War of February 1979 overshadowed these maritime skirmishes. In the 1980s, the region was in the main point preoccupied by the security implications of Vietnam's occupation of Cambodia and the growing Soviet naval presence in the region.⁶

The situation is quite different today where the prevailing sentiment seems to be that China is "the threat" to the status quo, peace and stability of the South China Sea region.⁷ Zakaria Ahmad, Head of the Strategic and Security Unit at Universiti Kebangsaan Malaysia,

probably summed up the general feeling about China best when he said, “Don’t forget, they [the Chinese] have a track record of using force in that part of the world.” Zakaria was clearly referring to the two naval clashes that took place in January 1974 and March 1988 between China and Vietnam in which the former emerged, in both cases, victorious. Adherents of the “China threat” argument have often cited these two naval battles as evidence.⁸

In 1995, China consolidated its claim to the Spratly Islands by building three satellite dishes on octagonal structures perched on stilts atop Mischief Reef (known as Panganiban Reef to the Filipinos), an aptly-named feature lying just 135 miles west of the Philippines’ Palawan island and within the heart of the Philippine-claimed 200-mile EEZ. The structures on Mischief Reef, which were apparently constructed between June and December 1994, was discovered only in February 1995 by the poorly-equipped Philippine Air Force. In early 1999 tensions flared up again between the Philippines and China over the fortification of the structures built by China on Mischief Reef.⁹ This incident is significant because this was the first time that China had occupied a reef that was claimed by an ASEAN country. Previously, disputes had always been with Vietnam.¹⁰

This study examines the foreign policy options taken by the Philippines in managing its claims in the South China Sea dispute. I argue that a careful analysis of the Philippine strategy suggests the following conclusions.

First, while the Philippines has used diplomacy as an initial avenue to settle the dispute, it is clear that this option has paid little dividend. The Philippines’ primary objective of having the Chinese structures removed from Mischief Reef remains unfulfilled, and calls into question the efficacy of bilateral negotiations with China.

Second, the regional response to the Mischief Reef case has revealed sharp divisions within ASEAN. ASEAN solidarity on the dispute is fragile and cracks are beginning to show. The hope of the Philippines that a perceived threat from China could engender greater ASEAN unity has been unrealistic.

Finally, as a direct consequence to the ineffectiveness of diplomatic initiatives, the Philippines is increasingly looking towards restoring defence cooperation with the United States as a way of checking Chinese moves in the South China Sea. The Mischief Reef crisis has led the Philippines to ratify a Visiting Forces Agreement (VFA) with the United States in 1999, a necessary step for the rebuilding of bilateral military alliance and resumption of annual joint military exercises between the two countries. A strong U.S. naval presence in the background is definitely a strong stopgap until the Philippines develops its own military capability and economic strength to deter aggressors. As a result of the Mischief Reef crisis, the Philippines has embarked on a modernisation programme for its armed forces to produce a better-equipped military for its external defence.

The method used in this study is the analytical narrative. It is the intention of this study to produce an empirical analysis of Philippine foreign policy in the South China Sea dispute, especially after the eruption of conflict with China over Mischief Reef. I shall not dwell upon the history of the South China Sea dispute since a significant amount of work has already been done on the subject. I am aware that the shifts in Philippine foreign policy in the South China Sea dispute do tell us something about the relevance of liberal institutionalist and realist theories of international relations. At the start, the decision of the Philippines to seek negotiations and bargaining through ASEAN and the ASEAN Regional Forum (ARF) suggests liberal institutionalist practices. Eventually, realist power politics seems to dominate: the decision of the Philippines to buy more arms for its armed forces (self-help) and to seek the restoration of military alliance with the United States as a stopgap measure to check Chinese moves in the South China Sea. However, I shall not deal with theories of international relations explicitly since the focus of this study is not on these theories but on getting the evolution of Philippine foreign policy on the South China Sea dispute right. This study is about the dramatic shifts taken by the Philippines in its foreign policy and the decisions it has made

to strengthen its position on the issue. These policy shifts will explain why the South China Sea dispute has caused the Philippines to move from diplomacy to modernising its armed forces with more arms to rebuilding its military alliance with the United States.

The study proceeds in five parts. The first part examines the Mischief Reef case as a background. This was the incident that triggered the foreign policy options taken by the Philippines on the South China Sea dispute. This will be followed by an analysis of the diplomatic strategy taken by the Philippines. This chapter shows that the Philippines has pursued diplomacy concurrently on three levels: bilateral negotiations, multilateral negotiations and internationalisation of the dispute. The study then looks at the modernisation programme of the Armed Forces of the Philippines, a development fuelled by the Mischief Reef crisis. Finally, an explanation on why the Philippines has decided to rebuild its military alliance with the United States less than seven years after the closure of all U.S. military bases and the departure of all U.S. forces from the country. The study concludes that the course of action taken is an important option for the Philippines since diplomacy has yielded little progress in resolving the South China Sea dispute.

Notes

1. Located in the southern part of the South China Sea, the Spratly archipelago comprises more than 300 islets, reefs, shoals and sand banks, and covers a vast area of about 250,000 square kilometres. The Spratly Islands dispute involves China, Taiwan and four ASEAN members—Vietnam, Brunei, Malaysia and the Philippines. China, Taiwan and Vietnam each claim all the features in the main Spratly archipelago based on historical grounds. The claims of the last three countries differ from the rest in significant ways. First, unlike China, Taiwan or Vietnam, they do not claim the entire Spratlys chain but only certain islands. Of the three, the Philippines has the largest claim on the Spratlys, covering 53 islets, rocks and atolls collectively called Kalayaan (Freedomland). Malaysia's total claim includes three islands and four groups of rocks. Brunei claims only the Louisa Reef, although a 200-mile EEZ around the reef would extend to the southern Spratlys. Unlike China, Taiwan and Vietnam, the rest of the ASEAN claimants have based their claims on the international law of the sea. With the exception of Brunei, each of the claimants has occupied a number of islands and stationed soldiers on them. Over time, Vietnam has occupied 21 to 24 features, China has occupied nine, Taiwan has occupied one, the Philippines has occupied eight and Malaysia, five. The presence of these troops and the close proximity of the islands make the Spratlys one of Asia's most dangerous flashpoints. Each government argues that these features have long been part of its territory. See, Mark J. Valencia, *China and the South China Sea Disputes*, Adelphi Paper 298 (London: The International Institute for Strategic Studies, 1995). Also, Marwyn S. Samuels, *Contest for the South China Sea* (London: Methuen and Company, 1982).
2. Potential oil is only one factor in these disputes. The Spratlys are also considered to be strategic as bases for sea-lane defence, interdiction and surveillance, and possibly for launching land attacks. Major international shipping lanes pass through the South China Sea near the Spratlys, and more than 70 percent of Japan's oil passes through this sea. The U.S. Seventh Fleet plies the area on missions and in transit between the Pacific and Indian oceans. This means that the outcome of the competition for control of the South

China Sea and its features will affect the security interests of major powers such as China, Japan and the United States. See, Mark J. Valencia, “Building Confidence and Security in the South China Sea: The Way Forward” in Andrew T. H. Tan and J. D. Kenneth Boutin, eds., *Non-Traditional Security Issues in Southeast Asia* (Singapore: Select Publishing for the Institute of Defence and Strategic Studies, 2001), pp. 529–530. Also, Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order* (London and New York: Routledge, 2001), p. 133.

3. “U.S. Sees Flash Points in South China Sea” in *The Straits Times*, 9 Jan 2000, p. 17
4. David G. Wiencek, “South China Sea Flashpoint” in *China Brief* Vol. 1 No. 2 (24 Jul 2001), also available at http://www.jamestown.org/pubs/view/cwe_001_002_004.htm.
5. Ang Cheng Guan, “The South China Sea Dispute Revisited” in *Australian Journal of International Affairs* Vol. 54 No. 2 (2000), p. 204
6. *ibid.*, p. 201
7. A cursory review of the writing on the South China Sea dispute will show that most of the discussions are centred on China. See for example, Mark J. Valencia, *China and the South China Sea Disputes*, Adelphi Paper 298 (London: The International Institute for Strategic Studies, 1995); Marwyn S. Samuels, *Contest for the South China Sea* (London: Methuen and Company, 1982); Ang Cheng Guan, “The South China Sea Dispute Revisited” in *Australian Journal of International Affairs* Vol. 54 No. 2 (2000); Allan Shephard, *Testing the Waters: Chinese Policy in the South China Sea* (Australian Defence Studies Centre Working Paper No. 39, August 1996); Michael Leifer, “Chinese Economic Reform and Security Policy: The South China Sea Connection” in *Survival* Vol. 37 No. 2, Summer 1995; Theresa C. Carino, ed., *China-ASEAN Relations: Regional Security and Cooperation* (Quezon City, Philippines: Philippine-China Development Resource Center, 1998); Michael Studeman, “Calculating China’s Advances in the South China Sea: Identifying the Triggers of ‘Expansionism’” in *NWC (Naval War College) Review*, Spring 1998; Angelito M. Deano,

“China’s Involvement in the South China Sea Dispute: A Threat to the Security of Southeast Asia” in *Philippine Military Digest* Vol. 4 No. 3 (Jul–Sep 1999); Lee Lai To, *China and the South China Sea Dialogues* (Westport, Conn.: Praeger, 1999); Leni Stenseth, *Nationalism and Foreign Policy: The Case of China’s Nansha Rhetoric* (Oslo: Centre for Development and the Environment, University of Oslo, 1999).

8. Ang Cheng Guan, *op. cit.*, pp. 201–202
9. “Ramos: Sinos Occupying Reef in Spratlys” in *Philippine Daily Inquirer*, 9 Feb 1995
10. Ang Cheng Guan, *op. cit.*, p. 205. Vietnam became a member of ASEAN only on 1 Jul 1995.

2

CHINA'S INTENTIONS IN THE MISCHIEF REEF CASE

Before 1995, China and Vietnam had appeared to be the most serious claimants to the South China Sea islands, with the two countries engaging in brief but deadly naval clashes in the Paracels in 1974 and in the Spratlys in 1988. This began to change from 1992. In October 1992, the Paris Peace Conference reached a final settlement regarding Cambodia and general elections held under U.N. auspices were scheduled for 1993. Having acceded to the ASEAN Treaty of Amity and Cooperation in July 1992, Vietnam was no longer considered hostile. Vietnam became a member of the regional grouping on 1 July 1995.¹ Beijing has apparently shifted its focus from Vietnam to the Philippines. Sino-Vietnamese relations have improved considerably since both countries normalised relations in November 1991 and notwithstanding the historical baggage and asymmetry of power of the two countries. During President Jiang Zemin's visit to Hanoi in November 1994, both sides agreed to establish a joint working group to discuss the Spratlys issue.²

At the time that the Vietnamese and Chinese were fighting it out in the Spratlys, the Philippines was preoccupied with internal political battles of its own after the ouster of President Ferdinand Marcos from power in February 1986.³ Looking back over the past quarter-century, a pattern emerges. China has consistently moved to reinforce its claim

in the South China Sea at times when other claimants were weak. For example, in 1974 it seized the Paracel Islands from the embattled South Vietnamese regime, knowing that neither it nor North Vietnam, which was receiving Chinese military aid, was in any position to argue. In 1988, as Vietnam started trying to project a less warlike image and open to the world, China seized a handful of Spratly islets in a naval clash. Conversely, when it encountered resistance, as it did from ASEAN in 1992, China has eased off.⁴

China has been building what appears to be a chain of naval facilities and observation posts stretching from the Spratlys to the Paracel Islands, an island group located 800 km north of the Spratlys, which it seized from Vietnam in 1974. The structures, built along a nearly straight line, appear almost to be a recreation of the Great Wall—this time across China's watery southern frontier. Although Beijing describes the Mischief Reef structures as shelters for its fishermen, their strange architecture suggests fortress-like structures. The anxieties generated by China's presence are magnified by Beijing's claim to historical rights over all of the South China Sea. Although such claims hold little water in international law, physical occupation does. China seems bent on establishing a military presence in the disputed shoals.⁵ In 1999, the U.S. Defense Department warned the Philippines to expect an increased Chinese naval presence in some of the disputed islands in the South China Sea over the next five years. With the warning, the Philippines predicted that Mischief Reef could become a potential naval air base and a key Chinese command-and-control facility in support of that projection.⁶

The most concerned rival to China's claims on the Spratlys is the Philippines. It has been very critical of China's assertive behaviour in the South China Sea. The structures on Mischief Reef sit within the economic zone claimed by the Philippines. It protested China's action as an infringement of the 1982 U.N. Convention on the Law of the Sea (UNCLOS) and against the spirit of the 1992 ASEAN Declaration on the South China Sea, which sought to "resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force".⁷

Philippine Defence Secretary Orlando Mercado described the construction as part of a “creeping invasion”. The Mischief Reef incident demonstrated Beijing’s willingness to disregard the 1992 ASEAN Declaration on the South China Sea in which ASEAN Foreign Ministers took a united stand against Chinese irredentism in the South China Sea. The ASEAN Declaration was itself a response to the passage of the February 1992 Chinese National People’s Congress Law on Territorial Waters and their Contiguous Waters which formalised and consolidated Beijing’s claims to nearly the entire South China Sea. Allan Shephard notes that the February 1992 law encompasses about 80 percent of the South China Sea, with two thirds of it being disputed waters.⁸ Three months later, China awarded an oil exploration contract to Crestone Energy Corporation in an area which Vietnam also claimed to be within its territorial waters.⁹

In 1995, Philippine President Fidel Ramos stated that the Spratly Islands dispute had become a “litmus test of whether China, as a great power, intends to play by international rules or makes its own.” His successor, President Joseph Estrada, went even further. In May 1999, he issued a warning in Hong Kong: “China’s sweeping claim to the Spratlys is not merely about barren and uninhabitable islets. It is about Southeast Asia’s bottom-line security.”¹⁰ He also stressed that Southeast Asia has “political anxieties currently centring on China’s effort to project power” into the region’s “maritime heartland”.¹¹

While some observers were puzzled by the Chinese occupation of Mischief Reef, others believed that it was due to Manila’s secret granting of a six-month “desk top” oil exploration permit to Alcorn Petroleum and Minerals after talks between China and the Philippines over Reed Bank’s reef exploration and production broke down.¹² China, however, insists the structures on Mischief Reef are intended only as shelters for Chinese fishermen. The construction on Mischief Reef was apparently undertaken by elements in the PLAN between June and December 1994 without the sanction of the top leadership. Chinese officials had told the Philippine government that this was the case. In addition, elements within the PLAN were involved in smuggling activities and piracy in the South China Sea. Sceptics, however, argue that even if it were true that the decision to occupy Mischief Reef was not made by the top civilian

leadership, the senior military leaders must have approved it.¹³

Since 1995, the Philippines has tried to persuade China to remove the structures. China has rejected this request and continues to upgrade its facilities. The Spratlys dispute has expanded beyond just China and Vietnam or China and the Philippines to become an ASEAN issue. Between October 1998 and January 1999, China constructed a five-storey, fortified, cement building alongside the three octagonal structures. This building is permanent and perceived by the Philippines as evidence of China's intentions to establish a military outpost in the region.¹⁴ Philippine defence officials believe that the building could house communications, anti-aircraft guns and radar systems for monitoring aircraft and ships, or even for guiding cruise missile systems throughout the South China Sea. Both Asian and Western governments suspect that the developments on Mischief Reef foreshadow further military activity in the South China Sea.¹⁵

Tensions again arose in the summer of 1999 with the sinking of two Chinese fishing boats in separate collisions with the Philippine Navy.¹⁸ These incidents prompted ASEAN to propose a regional code of conduct to prevent conflicts over the Spratlys. Going into the July 1999 ASEAN Regional Forum (ARF) meeting in Singapore, some countries had hoped that a code of conduct drafted by the Philippines might be accepted by the other claimants, particularly China. Any agreement on the guidelines, however, was rejected by China, which insisted that the South China Sea disputes be negotiated in bilateral discussions with rival claimants, not in a multilateral forum. More fundamentally, China believes itself to be the rightful "owner" of the South China Sea and thus feels that any such code of conduct should emanate from its own initiative.¹⁷

Philippine official reaction to the Chinese occupation of Mischief Reef has been the strongest ever in incidents involving the disputed areas. Although the Philippine military is inferior to China's, Manila has put up a show of resistance. The Philippine Navy was reported to have blown up territorial markers that Chinese forces had set up in various other features of the Spratlys. The Philippine Air Force and Navy also stepped up their patrols in the area. Arrests of Chinese fishermen found operating either in Philippine-claimed areas or in Philippine territorial

waters were intensified and prominently publicised. The Philippine Navy has reported frequent sightings of Chinese vessels of various types—civilian research and survey ships, fishing vessels as well as military frigates among them. As a result, Manila has strengthened the presence of its troops in the Spratlys and announced plans of upgrading its airstrip on Pag-asa (Thitu) island, one of the islands it claims.¹⁸

China's stand-off with the Philippines over Mischief Reef is significant for a number of reasons. Firstly, this is the first instance where China has attempted to seize control of a disputed territory from an ASEAN member. While Vietnam has now joined ASEAN, Chinese diplomacy will now seek to prevent the coalescence of ASEAN opinion against its claims in the South China Sea. Secondly, Beijing's low-key confrontation with Manila signals that it prefers a low-key policy of "creeping annexation" of the islands to the risk associated with a large-scale military action. It is also significant that this is occurring despite the best efforts of the many Southeast Asian regional security fora to broker a negotiated solution to the conflicting South China Sea claims. Thirdly, the Mischief Reef issue has forced the United States to take a more active stance in the matter, albeit reluctantly. Manila's reaction to Beijing's activities at Mischief Reef might be categorised as high risk but it has paid off for Philippine regional security. This strong resistance by one of the weaker ASEAN states will no doubt give China food for thought if it continues its creeping annexation of islands in the South China Sea.¹⁹

Aside from Mischief Reef, a new dispute with China has emerged over Scarborough Shoal, a group of uninhabited rocks lying 130 nautical miles off the Philippines' Luzon island. In April 1997, a team of Chinese and foreign amateur radio buffs organised by the Chinese Radio Sports Association set sail from Guangzhou for Scarborough Shoal. Before they could complete their mission of sending radio signals from the shoal, Philippine Navy personnel asked them to leave. China protested the action and said that the area was subject to China's historical sovereignty. In mid May, a group of Philippine congressmen sailed to Scarborough Shoal and planted the Philippine flag on the reef.²⁰ Scarborough Shoal is on the northeast of the South China Sea but is not part of the Spratly archipelago.

Recent developments in Philippine and Chinese actions on Scarborough Shoal have brought to the surface a new, previously unacknowledged, territorial dispute between the Philippines and China. The Philippines claims Scarborough Shoal as part of its territory as the shoal is within its 200-mile EEZ. It has continuously exercised sovereignty and effective jurisdiction over the shoal as well as the waters surrounding it. Filipino fishermen have used the area as their traditional fishing ground and as a sanctuary during bad weather. The Philippines says it has operated a lighthouse on the shoal and was used in the early 1980s as an impact range by defence authorities.²¹

The Chinese takeover of Mischief Reef touched off a diplomatic crisis between Manila and Beijing, with the Philippines having to back down in the face of a far more formidable political-military opponent in the end. As diplomacy has yielded little progress in resolving the dispute, the Philippines is increasingly looking towards restoring and strengthening defence links with the United States as a way of monitoring Chinese moves in the South China Sea. China's occupation of Mischief Reef came at a time when the U.S. military bases at Clark Bay and Subic Bay (then two of Washington's largest overseas military installations) had unexpectedly closed down and when the U.S. had terminated practically all economic and military assistance to the Philippines.²²

Notes

1. Ang Cheng Guan, "The South China Sea Dispute Revisited" in *Australian Journal of International Affairs* Vol. 54 No. 2 (2000), p. 205
2. *ibid.*, p. 207
3. The government of President Corazon Aquino was besieged by seven attempted coup d'états by military rebels from 1987 to 1989.
4. Rigoberto Tiglao, et al, "'Tis the Season" in *Far Eastern Economic Review*, 24 Dec 1998
5. Alex Magno, "Naval Power Play Sets Off Alarms" in *Time*, 27 Sep 1999
6. "Expect Larger Chinese Force in Spratlys, Manila Told" in *The Straits Times*, 17 Apr 1999, p. 33
7. See ASEAN Declaration on the South China Sea, issued in Manila, 22 Jul 1992. See also, Magno, "Naval Power Play Sets Off Alarms".
8. Allan Shephard, *Testing the Waters: Chinese Policy in the South China Sea* (Australian Defence Studies Centre Working Paper No. 39, Aug 1996), p. 6
9. Michael Studeman, "Calculating China's Advances in the South China Sea: Identifying the Triggers of 'Expansionism'" in *NWC (Naval War College) Review* (Spring 1998), also available at <http://www.nwc.navy.mil/press/Review/1998/Spring/art5-sp8.htm>.
10. Joseph Y. S. Cheng, "Sino-ASEAN Relations in the Early Twenty-first Century" in *Contemporary Southeast Asia* Vol. 23 No. 3 (Dec 2001), p. 441
11. "Estrada Says China 'Biggest Threat'" in *Philippine Daily Inquirer*, 18 May 1999
12. Rigoberto Tiglao, "Troubled Waters" in *Far Eastern Economic Review*, 30 Jun 1995
13. Ang Cheng Guan, *op. cit.* pp. 206–207
14. "China Completes Spratly Island Structures", *Agence France Presse*, 5 Jan 1999.

15. Christopher C. Joyner, "The Spratlys Islands Dispute in the South China Sea: Problems, Policies and Prospects for Diplomatic Accommodation" available online at <http://www.stimson.org/japan/pdf/cbmapspratly.pdf>.
16. Aileen San Pablo-Baviera, "The Kalayaan Islands (Spratlys) in Philippine Foreign Policy" in *Panorama* Vol. 1 No. 2 (1999), p. 75
17. Mark J. Valencia, "Building Confidence and Security in the South China Sea: The Way Forward" in Andrew T. H. Tan and J. D. Kenneth Boutin, eds., *Non-Traditional Security Issues in Southeast Asia* (Singapore: Select Publishing for the Institute of Defence and Strategic Studies, 2001), pp. 529–530
18. *Today* (Manila), 22 Jan 1999
19. Allan Shephard, *op. cit.*, pp. 17–18
20. Aileen San Pablo-Baviera, "Security Challenges of the Philippine Archipelago" in *Southeast Asian Affairs* (Singapore: Institute of Southeast Asian Studies, 1998), pp. 221–222. Also, Ian James Storey, "Creeping Assertiveness: China, the Philippines and the South China Sea Dispute" in *Contemporary Southeast Asia* Vol. 21 No. 1 (Apr 1999), p. 98.
21. *Primer on the South China Sea* (Manila: Foreign Service Institute, 1999), p. 9
22. Clark Air Base was abandoned following massive volcanic eruptions from Mt. Pinatubo in June 1991 while a historic 12-to-11 vote by the Philippine Senate on 16 September 1991 to terminate the lease agreement on the bases led to the U.S. departure from Subic.

3

DIPLOMATIC STRATEGY

From the very beginning, the Philippines has stressed the primacy of diplomacy in seeking to resolve the dispute. Since 1995, it has pursued diplomacy concurrently on three levels: bilateral negotiations, multilateral negotiations and internationalisation of the dispute. It views the dispute as a serious multilateral issue for the region and the Philippines, and has consistently called on all claimants to work together to enhance cooperation, tranquillity and development in the South China Sea. The Philippines has also proposed demilitarisation of the area and stewardship of the islands, including Mischief Reef, to precede activities leading to joint development.

ENGAGEMENT WITH CHINA

The Philippines and China held two rounds of bilateral discussions in 1995, resulting in an agreement on a code of conduct. In August, Manila and Beijing signed a joint statement that specified agreement by the two sides to abide by the principles of a code of conduct; emphasising “that the dispute shall not affect normal development of relations, be settled in a peaceful and friendly manner” and “in accordance with UNCLOS and recognised principles of international law.”¹ The Philippines also held

talks with Vietnam on 6 and 7 November, 1995, reaching agreement on certain principles similar to those concluded with China.² In April 1996, a team of Filipino and Vietnamese marine scientists undertook a marine research tour from Manila through the Spratlys to Ho Chi Minh City.³

In 1995, President Jiang Zemin wrote a letter to then President Ramos, expressing assurances that China would only pursue peaceful means in its territorial claims in the Spratlys.⁴ According to the Philippines, however, China has repeatedly violated the code of conduct, moving naval assets in and out of the area without informing Manila. In contravention of the code, China has also upgraded its facilities on Mischief Reef on two occasions: between March and May 1996, additional electronic communications and surveillance equipment was added; between October 1998 and January 1999, the facilities on the reef were substantially expanded to include a brick barracks and a helicopter landing pad. On each occasion China has denied breaking the code. On the last occasion, it claimed that the work being carried out was renovation.⁵

Before the Mischief Reef incident, Philippine-China relations had been very cordial since the restoration of diplomatic relations in 1975. For a decade, from 1975-1985, the Philippines and China underwent a period of consolidation of their bilateral relations. The succeeding administrations of Presidents Corazon Aquino (1986-1992) and Fidel Ramos (1992-1998) continued not only the policy of normalisation but also intensification of relations with China. President Aquino visited China in 1988 and was followed by President Ramos in 1993 as well as by Vice President Joseph Estrada in 1994. On the other hand, Chinese Premier Li Peng visited Manila in 1990 and President Jiang Zemin paid a state visit to the Philippines immediately following the APEC Leaders Meeting in Manila in November 1996. In November 1999, Premier Zhu Rongji visited the Philippines preceding the ASEAN Informal Summit.⁶

In 1996, diplomatic relations were upgraded when an additional consulate-general was opened in Guangzhou and the two sides exchanged armed forces and defence attaches for the first time. Also unprecedented were port visits to Manila by Chinese naval vessels in March 1997 and May 1998, following similar visits that they had made

to Malaysia and Thailand.⁷ A new consulate-general in Shanghai will be opened soon following an agreement between the Philippines and China in 2001. Unfortunately, despite this active and reciprocal bilateral diplomacy, the Philippines was not able to convince China to move out of Mischief Reef. Instead China even reinforced its presence by building more permanent multi-story buildings in place of the original bunkers that the Philippines had wanted dismantled. Bilateral diplomacy may have contributed to an expanding understanding by both sides of their respective positions, but not to a softening or a compromise of those positions.

In 2001, President Gloria Macapagal-Arroyo paid a state visit to Beijing after the APEC Leaders Meeting in Shanghai in October. The state visit came two years after her predecessor, President Estrada, abruptly cancelled a scheduled visit to Beijing after China imposed a two-month fishing ban on the South China Sea in from May to June 1999. Although the Department of Foreign Affairs explained that scheduling problems caused the cancellation of the Estrada visit, the move was interpreted as a diplomatic rebuke to China since this was a personal invitation of President Jiang Zemin when they met in Kuala Lumpur during the APEC Leaders Meeting in November 1998. Moreover, immediately after he assumed office on 30 June 1998, President Estrada expressed his desire to make China the first country he would visit, but he was prevailed upon by his advisers to make a customary visit to ASEAN countries first.⁸

After her meeting with President Jiang Zemin, President Arroyo instructed her senior foreign affairs officials to get the Chinese officials' ideas on the specific ways they believe Manila and Beijing could jointly develop the South China Sea. Philippine Foreign Affairs Undersecretary Lauro Baja said President Arroyo now wants to "test the waters" and seek the ideas of China about this joint development offer.⁹ President Arroyo is the third Philippine president to offer solutions to the dispute.

In 1995, President Ramos put forward a proposal for demilitarisation of the South China Sea, as well as suggestions for joint development of the resources for the mutual benefit of littoral states. He also proposed that, until such an agreement was reached, each disputed

island should be placed under the stewardship of the claimant-country closest to it geographically, on the understanding that “the steward-country accommodates the other claimants’ needs for shelter, anchorage and other peaceful means.”¹⁰ In 1999, President Estrada proposed to transform the area into a maritime sanctuary for all the claimants to jointly manage for eco-tourism.¹¹

For some time, China had shown restraint in dealing with the claims made by Manila and Kuala Lumpur. During President Aquino’s visit to Beijing in April 1988, China reportedly pledged not to attack Filipino troops stationed in the Spratlys. Visiting Singapore in 1990, Chinese Premier Li Peng stated China’s willingness to shelve the sovereignty issue and cooperate with Southeast Asian countries to develop resources jointly. However, Beijing continued to pursue its territorial claims with the adoption in February 1992 of a territorial sea law which claimed virtually the entire Spratlys and provided for the use of force in support of it. This initiative was followed by the award of a three-year exploration contract to Crestone Energy Corporation in the South China Sea in an area just 160 km from the Vietnam coast. Furthermore, China’s occupation of the Philippine-claimed Mischief Reef marked the first encroachment by China into an area claimed by an ASEAN member. Similarly, the first violent incident between China and an ASEAN country occurred in March 1995 when a Chinese fishing boat was fired upon by Malaysian naval vessels in waters claimed by Kuala Lumpur. Such skirmishes involving the Philippine Navy and Chinese fishing boats have continued around the Mischief Reef area.¹²

MULTILATERAL DIALOGUE THROUGH ASEAN

The Philippines has also tried to win regional support for its position through ASEAN, a strategy which has had mixed results. Although not all ASEAN members are claimants in the dispute, the issue is a matter of concern for the whole organisation because of its impact on regional stability and the importance of the South China Sea to the economic well-being of the ASEAN states. In 1995, ASEAN considered China’s occupation of Mischief Reef to be destabilising and issued a statement expressing “serious concern”.¹³ Though failing to name China directly,

the statement was meant as a clear signal to Beijing to desist from its increasingly assertive behaviour in the South China Sea and abide by the 1992 ASEAN Declaration on the South China Sea.

The issue of the South China Sea has also been raised at informal sessions of the ASEAN-China Political Consultations, an annual event held since 1995. The first such meeting in Hangzhou, China, in April 1995 marked the first occasion when ASEAN collectively engaged China in direct dialogue on the South China Sea disputes. China agreed to discuss the dispute during an informal session, marking a turning point in Chinese policy which had hitherto insisted on discussing the disputes only bilaterally. Since then, the South China Sea dispute has figured prominently on the agenda of ASEAN-China meetings.¹⁴ However, four years on, in response to the second Mischief Reef incident, ASEAN members were apparently unwilling to confront Beijing more strongly despite the fact that this was only China's second transgression. At the December 1998 ASEAN summit in Hanoi, President Estrada showed ASEAN leaders convincing documentation, including photographs, to demonstrate that significant Chinese expansion on Mischief Reef was underway. He fully expected that the closing statement would condemn such unilateral destabilising actions, even if China was not mentioned by name. But, to the disappointment of the Philippines, little was said about the issue.¹⁵

At the ASEAN-China meeting in Kunming (4–8 April 1999), ASEAN only managed to obtain Beijing's agreement to give "serious" and "earnest" consideration to the proposal of the Philippines of a new regional code of conduct with regards to the South China Sea. The code of conduct is presently being drafted. According to Foreign Affairs Undersecretary Lauro Baja, the code of conduct is expected to include provisions prohibiting the use of force, maintaining the status quo and promoting joint cooperation. What remains unclear is the extent which the proposed code of conduct will be different from the 1992 ASEAN Declaration on the South China Sea (to which Beijing had expressed agreement), the 1995 Joint Statement on PRC-RP Consultations on the South China Sea and On Other Areas of Cooperation, and the joint statement signed between ASEAN and China during the ASEAN Summit meeting in December 1997.¹⁶

CHINA-MALAYSIA COLLUSION?

Ongoing negotiations for a regional code of conduct are taking place under a cloud of cynicism as previous bilateral codes and other agreements between the Philippines and China have been breached without so much as a protest from the ASEAN states. One reason for this became clear when Malaysia, another ASEAN claimant, completed construction of a two-story concrete building and a helipad on Investigator Shoal and Erica Reef, which are also claimed by the Philippines, Vietnam, China and Taiwan, sometime in June 1999. This surprise unilateral action by an ASEAN member has several implications. First, it clearly splits ASEAN solidarity on this issue vis-à-vis China. Some diplomats even suspected that Malaysia had cut a covert deal with China at the expense of ASEAN. Second, it violates and perhaps fatally undermines the ASEAN Declaration on the South China Sea. And third, it may open floodgates to a new wave of occupations by other claimants.¹⁷

Since 1995, it has seemed apparent that Kuala Lumpur was willing to accommodate and accept, if not share in, China's position on the South China Sea. Consider the 1996 response of Syed Hamid Albar, in his capacity as Malaysia's Defence Minister, to a question on China's intentions in the Spratly Islands.

China's claims in the South China Sea have been looked upon by extra-regional powers as the greatest destabilising factor in Southeast Asia and have provided the seemingly irrefutable evidence for their China threat theory. But we in Southeast Asia generally feel that China has so far been a sober and responsible regional player. Its advocacy of joint exploration of South China Sea resources with other regional states and its recent indication of readiness to abide by the international law in resolving the Spratlys issue have made us feel that it wants to coexist in peace with its neighbours.¹⁸

Malaysia's concerns for China's intentions in the South China Sea seemed to peak in 1995, in the aftermath of the Mischief Reef incident. The standoff between the Philippines and China rang alarm bells in the capitals of ASEAN. Malaysia stood with ASEAN and added its voice to the collective concern for Chinese expansionism. Noordin Sopiee,

director-general of the government-linked Institute of Strategic and International Studies, acknowledged that the February 1995 discovery of Chinese structures on Mischief Reef “had a very substantial impact on how we (in ASEAN) look at China.” ASEAN’s subsequent attempt to forge a collective response was seen as one that will register with China in no uncertain terms that there are certain rules of the game.¹⁹

However, since 1995, there has been a perceptible change in Malaysia’s South China Sea policy with regards to Beijing. Chinese Premier Li Peng chose his August 1997 visit to Kuala Lumpur to present a Chinese proposal to ASEAN for the joint development of the disputed Spratly Islands. When the Mischief Reef crisis between the Philippines and China erupted again in November 1998, Malaysia’s position was significantly different from that of 1995. Malaysia’s Foreign Minister Syed Hamid Albar chose to commend China’s restraint. At the 1999 ASEAN Ministerial Meeting In Singapore, Syed Hamid, in a puzzling move that surprised many observers and participants, rejected Philippine requests for the November 1998 dispute to be discussed at the ASEAN Regional Forum. In defending Malaysia’s position by stating that it was a bilateral issue to be discussed bilaterally, Syed Hamid in effect echoed China’s position that the South China Sea issue should be settled through bilateral negotiations. Kuala Lumpur also opposed a proposed code of conduct drafted by the Philippines and Vietnam. Malaysia’s contradictory attitude toward ASEAN and the ARF on this matter was not lost on fellow ASEAN members, especially the Philippines, whose Foreign Secretary Domingo Siazon disclosed that “among ASEAN members, it is really just Malaysia now that has second thoughts.”²⁰

This difference of opinion between two of ASEAN’s founder-members carries important implications and is revealing of the extent of amity and cooperation that exists between Malaysia and China. Syed Hamid’s response to the Mischief Reef incident echoed what has been a long-held position in Beijing: that bilateral approaches are the only acceptable approach to discussing the South China Sea problems. That Malaysia opposed ASEAN’s common position on the importance of multilateral dialogue with China also warrants attention considering the position the organisation holds in the hierarchy of Malaysia’s diplomatic priorities. Finally, Syed Hamid’s open contradiction of a fellow ASEAN

state's position infringed upon the organisation's much-vaunted principle of not extending intra-ASEAN disputes out to the public domain.²¹

As a result, this episode led observers inside and outside ASEAN to speculate that Malaysia and China had a special agreement. From a geographical perspective, Malaysia's claims to some 12 reefs and atolls lie in the southernmost corner of the South China Sea. In other words, the territory Malaysia calls its own lies furthest from China. This has kept both parties from actual conflict over their respective claims and in turn has facilitated easier bilateral cooperation. Malaysia's position of prolonging the status quo is similar to that of Beijing's. That it is in the interest of both parties that the status quo remain also paves the way for the kind of bilateral cooperation on the South China Sea of recent years. Thus, it is not surprising that Beijing only gave a token, muted diplomatic response to Malaysia's most recent occupation of the Investigator Shoal and Erica Reef.²²

CODE OF CONDUCT?

The joint communiqué released after the ASEAN Ministerial Meeting in Hanoi in July 2001 welcomed progress in the consultations between ASEAN and China towards the adoption of a code of conduct aimed at easing tensions in the South China Sea. The ASEAN Foreign Ministers also "encouraged the continued exercise of self-restraint by all the parties concerned and the promotion of confidence-building measures in this area and welcomed their commitment to resolving disputes in the South China Sea by peaceful means in conformity with recognised principles of international law including the United Nations Convention on the Law of the Sea (UNCLOS)".²³ However, negotiations for a code of conduct have hit a snag and ASEAN leaders did not even discuss it during their last summit in Brunei in November 2001. Baja said differences within ASEAN and between ASEAN and China over the area it would cover continued to delay progress in reaching a code of conduct. Vietnam has been pushing for the inclusion of the Paracel Islands in the code of conduct's geographic scope. China has consistently rejected this. As for the Philippines, it insists on a provision in the code of conduct committing

claimants of the Spratlys to refrain from further occupation of uninhabited reefs or cays, but China has been reluctant to make such a commitment. Baja declared in Manila in early November 2000: “There must be specific mention of the principle of no new occupation. Otherwise, we don’t want a written code of conduct”.

On 20 July 2001, the Philippines, in a bid to break the impasse, circulated a new draft of the code of conduct to the ASEAN Senior Officials Meeting. The new draft dropped the reference to geographic boundaries. The new draft states the parties “undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability, including among others, refraining from action of inhabiting the presently uninhabited islands, shoals, cays, and other features and to handle their differences in a constructive manner.”²⁴ Baja said the Philippines had been trying to work out various formulas to satisfy the claimants’ concerns but so far there had been no progress. He said the issue should now be taken up by the ASEAN ministers. Since 1999, discussions and negotiations for a code of conduct have been at the level of senior officials. Baja complained that it had already reached a point where what was needed was an exercise of more political will. He said that if that happens, the prospect for the adoption of a code of conduct would be much brighter.²⁵

The Philippines felt that its ASEAN partners and the international community had not given it enough support in protesting against China’s continued occupation of Mischief Reef. Baja lamented that “on Mischief Reef, we were left alone. The other countries said that while they sympathise and understand our situation, the issue is only a Philippine-China problem.” In a speech before the Rotary Club on 15 April 1999, Baja also described the Philippines as “an orphan in its campaign” (referring to Manila’s recent efforts to internationalise the South China Sea issue). He may have upset ASEAN officials by stating: “Some of our ASEAN friends are either mute, timid or cannot go beyond espousal of general principles of peaceful settlement of disputes and polite words of understanding given in the corridors or meeting rooms.”²⁶

After three years of negotiations, a non-binding China-ASEAN “Declaration on the Conduct of Parties in the South China Sea” was signed on 4 November 2002 in Phnom Penh, Cambodia, during the ASEAN Summit. Unfortunately, this agreement fell short of its billing—that of a code of conduct ASEAN had originally sought. It does not spell out concrete steps to avoid conflict. As such, it is unlikely to have much practical impact on tensions in the South China Sea.²⁷ The document expressed the parties’ commitment to abide by international law, avoid the threat or use of force, refrain from further inhabiting new features in the South China Sea, and pledge to explore cooperation in activities, including scientific research and rescue missions and continuous dialogue on the issue pending the final settlement of the disputes.²⁸ If the parties indeed abide by even these minimalist commitments, then a window of opportunity may have arisen for them to work together not just to prevent the eruption of new conflict but also to begin transforming the South China Sea from a region of potential flashpoint to one of cooperation for common peace and development.

The biggest risk posed by the Spratlys dispute to ASEAN is a display of disunity within the grouping in dealing with China. Hopes that a perceived threat from China could actually engender greater ASEAN solidarity have been unrealistic. China has continued to push for bilateral negotiations with the claimants and appears to have made headway with respect to Malaysia. At the ARF meeting in Singapore in July 1999, Malaysia appeared to move closer to China’s position of seeking bilateral solutions to the dispute. Intra-ASEAN tensions over the Spratlys, rare in the past, escalated over Manila’s discovery in April and June 1999 of Malaysia’s construction of structures on Investigator Shoal and Erica Reef, two features claimed by the Philippines. Philippine officials and legislators suspected a collusion between Kuala Lumpur and Beijing since the construction was believed to have started after a visit by the Malaysian foreign minister to Beijing in May 1999. Manila’s increasingly vocal criticism of China’s actions over Mischief Reef has not gone down well in other ASEAN capitals, especially Singapore, while Manila feels betrayed by Malaysia and frustrated by the lack of support from fellow ASEAN members in dealing with repeated Chinese encroachments.²⁹

“TRACK TWO” DIPLOMACY

The Philippines is also very much involved in the Indonesian-led workshop series entitled “Managing Potential Conflicts in the South China Sea”, the foremost “Track Two” process that focuses on the dispute in the South China Sea. It has been held annually since 1990. The workshop series is hinged on the concept that functional cooperation in areas of common benefit could encourage habits of cooperation and confidence building among claimants. Ambassador Hashim Djalal describes the workshop process as a two-pronged approach—by seeking areas where cooperation involving all the South China Sea claimant countries or participants could be developed; and by seeking ways to prevent potential conflicts in the area from developing into armed conflicts and, if possible, to try to create through confidence-building measures an atmosphere conducive to the solution of the conflicting claims.³⁰

For the past decade, however, the process has yielded few concrete results. It has been unable to prevent conflict, build confidence or achieve consensus among the claimants. Its oft-repeated pledges to refrain from unilateral actions that increase tension in the region have been repeatedly violated. So many restrictions have been placed on discussions during the main conference and even in the technical working groups that the only projects on the agenda are innocuous scientific research like biodiversity studies, sea-level and tide monitoring, information exchange and networking, marine ecosystems, and a maritime and geoscience database. Even these modest efforts languish for want of funding, leadership and participation. It is thus not a surprise that some feel that the workshops have become just a diversion—“a talking club”, holding out a false promise of cooperation while some claimants deliberately delay actions in order to consolidate and strengthen their bargaining or military positions.

These talks have recently been deprived of their most influential patron, Indonesian Foreign Minister Ali Alatas, who was replaced after President Suharto's resignation. It is not clear whether his successor, Alwi Shihab, will place as much importance on this initiative, or even allow this effort to be coordinated by his ministry.³¹ The workshop series has deliberately avoided dealing with sensitive territorial issues. Its proponents have argued that the workshop series was in itself an important confidence-building measure, offering the participants a chance to develop a certain level of transparency regarding national positions on the complex dispute. Proposals for CBMs, such as non-expansion of military presences in the disputed areas, and exchanges of visits by military commanders in the disputed areas, have been discussed, but have proven elusive with China opposing any discussion of military issues in this forum. Ideas about joint development of resources have not made much headway either. Obstacles include Beijing's objection to any negotiations involving Taiwan, the unlikely prospect that any of the claimants which already had a military presence on the islands would agree to a withdrawal, and problems in deciding the principles for fair allocation of rights and profit.³²

INTERNATIONALISATION OF THE DISPUTE

The third and final diplomatic tactic used by the Philippines has been to internationalise the dispute. China is unlikely to relinquish its claims in the South China Sea willingly, including its takeover of Mischief Reef. You Ji argues that China will consolidate its current presence and may be tempted to take a few more uninhabited reefs.³³ Manila's strategy, therefore, is to maintain the status quo as it presses for the just and peaceful resolution of the conflicting claims. By gaining the sympathy of the international community, Manila hopes to bolster its bargaining position vis-à-vis China and apply pressure on Beijing to prevent future grabs like Mischief Reef. The United States, Japan, Australia, New Zealand and even the European Union (EU) have also expressed concern. In particular, U.S. policy on the issue seems to have changed from "passive" to "active neutrality". The issue of the South China Sea disputes was first raised in Brunei in July 1995 at the ARF meeting.³⁴ At the 1999 ARF meeting in Singapore, then U.S. Secretary of State

Madeleine Albright warned that “the stakes are too high to permit a cycle to emerge in which each incident leads to another with potentially greater crisis and graver consequences...we cannot just simply sit on the sidelines and watch.”³⁵

ASEAN Secretary-General Rodolfo Severino, Jr., in his capacity as Foreign Affairs Undersecretary of the Philippines, said that some degree of internationalisation could be a form of preventive diplomacy. Focusing the international spotlight on a volatile—albeit regional—problem, can effectively restrain states from resorting to the threat or use of armed force. One of the sources of the efficacy of international law is the fact that states, in general, are social creatures and are to some extent sensitive to world opinion. Thus, specifically, some degree of internationalisation of the South China issue can create an atmosphere that would encourage the claimants to use peaceful means to settle their disputes.³⁶

As part of this strategy, the AFP has also facilitated boat trips to Mischief Reef and flights over the Chinese structures for the international and local media. On 15 May 1995, the Philippine Navy ferried 38 local and foreign journalists on an amphibious assault craft near Mischief Reef and subsequently flew over the outpost with helicopters.³⁷ The aim was to show them that contrary to its stand that there were no military structures on the atoll, China was actually constructing military-like fortifications on Mischief Reef. Beijing denounced the media tour as provocation and warned Manila against allowing another trip to the area.³⁸ But Philippine officials considered it as a part of its diplomatic manoeuvre to gain international support.³⁹ In March 1999, President Estrada raised the subject of Mischief Reef with U.N. Secretary General Kofi Annan and indicated that Manila might raise the issue before the U.N. General Assembly.⁴⁰ China has rejected any role for the U.N., asserting that the issue should be resolved bilaterally.

The lack of progress on the diplomatic front has convinced many Philippine officials that China is pursuing a dual strategy in the South China Sea. This strategy has been variously referred to as “creeping invasion”, “creeping annexation”, “creeping assertiveness”, “creeping occupation”, or more recently by Philippine Defence Secretary Orlando

Mercado as “talk and take”.⁴¹ On the one hand, China has consistently maintained that sovereignty of the Spratlys is not up for negotiation, but that it is prepared to shelve the issue and jointly exploit any maritime resources with the other claimants. At the same time, however, China continues to expand its physical presence in the South China Sea, laying down territorial markers, taking unoccupied reefs and building structures on them.

The perception of “creeping assertiveness” is related to that of the China threat. Subscribers to the view of “creeping assertiveness” believe that the Chinese military does not have the capability to dominate the South China Sea yet, and that China at this stage does not want to provoke the United States into adopting a more assertive stand in Southeast Asia and push ASEAN closer to the latter. Those who are concerned about the China threat also think that it is not a serious threat to ASEAN at present because of its limited military projection capabilities, but the threat will become significant in two to three decades when it becomes much stronger economically and militarily, and when its economic development generates a huge demand for resources, especially energy resources, pushing China onto the road of expansionism.⁴²

Those in ASEAN who are concerned about China’s “creeping assertiveness” and the China threat naturally welcome renewed American efforts to revitalise bilateral security ties with Japan, South Korea, Australia, Thailand and the Philippines, as well as a more conspicuous forward deployment of U.S. forces in the Asia-Pacific region. Many in the Philippines and hardliners in the United States have urged both the Clinton and Bush Administrations to strengthen the U.S.-Philippine military alliance, as the Philippines is the ASEAN state with the most recent record of active maritime clashes with China. They propose this as part of a comprehensive campaign to deter China’s increasing regional influence.⁴³

Notes

1. See Joint Statement on PRC-RP Consultations on the South China Sea and on Other Areas of Cooperation, issued in Manila, Philippines, 9–10 Aug 1995.
2. See Joint Statement on the Fourth Annual Bilateral Consultations Between the Republic of the Philippines and the Socialist Republic of Vietnam, issued in Hanoi, Vietnam, 7 Nov 1995.
3. “Manila, Hanoi Launch South China Sea Research” in Reuters, 23 Apr 1996
4. Aileen San Pablo-Baviera, “The Kalayaan Islands (Spratlys) in Philippine Foreign Policy” in *Panorama* Vol. 1 No. 2 (1999), p. 74
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4

MILITARY MODERNISATION PROGRAMME

While diplomats negotiate for peaceful ways to resolve the conflict in the South China Sea, the Armed Forces of the Philippines (AFP) is not letting the opportunity to build up its military capability pass. ASEAN states have traditionally rejected military means as a way of resolving territorial issues, but if and when diplomacy should fail or not suffice, a well-equipped and well-trained military force is crucial to the defence of the Philippines' sovereignty and territorial integrity. Outgunned and outmanoeuvred, Manila has tried to fast-track the development of its defence capability although the acquisition of new weapon systems is held back by the fallout from the 1997–98 Asian financial crisis. Mischief Reef was the closest that China's military occupation had come to Philippine shores thus far.

A credible external defence system may make China think twice about tilting the balance of power in the region. In the words of Foreign Affairs Secretary Domingo Siazon, Jr.: “The Philippines is a peaceful country that harbours no hostility or offensive intent towards any other country. We stand firm in the belief that diplomacy is the country's first line of defence, that cooperation is the primary basis of external security. But if and when diplomacy should fail or not suffice, a self-reliant,

well-equipped, well-trained and ideologically prepared military force is crucial to the defence of our sovereignty and territorial integrity.”¹

China has been able to expand its presence on Mischief Reef because of the withdrawal of U.S. forces from the Philippines in 1992 and the emasculated condition of the AFP. Prior to 1992, the U.S. had maintained six major military bases and installations in the Philippines, the largest of which were Clark Air Force Base and Subic Naval Base. Robyn Lim argues that miscalculation by the Philippines did much to let China into the South China Sea. By insisting that the United States leave its bases in the Philippines in 1991, the Filipinos removed the chief means by which the U.S. could protect them. By hobbling American maritime flexibility, they encouraged China.²

By the time of the U.S. withdrawal, the AFP was one of the weakest armed forces in Asia. Lt. Gen. Victor A. Mayo, AFP Vice Chief of Staff and the man on top of the AFP modernisation programme said that, compared to its neighbours, the Philippine military is about 30 years behind as far as equipment and materials are concerned.³ Successive Philippine governments had neglected to modernise the AFP because of the belief that the Philippines was shielded from external threats by the U.S. security umbrella. In 1972 President Marcos imposed martial law and the Philippine Army increasingly took on the role of an internal security force. When Marcos was deposed in 1986, the new president, Corazon Aquino, recognised the importance of a well-equipped military for external defence and recommended that the Philippines embark on a military modernisation programme. Aquino’s defence secretary and future Philippine president, Fidel Ramos, a former AFP chief of staff, initially outlined a US\$1 billion AFP modernisation programme to Congress in 1990 to give the air force a squadron of multi-role fighter aircraft, long-range aircraft, air defence radar systems and air defence communications systems, logistic support vessels, fast missile patrol boats and multi-mission aircraft for maritime patrol for the navy.⁴

The occupation of Mischief Reef highlighted the inadequacies of the Philippines’ air-defence capability, and the issue of new fighter aircraft for the Philippine Air Force (PAF) became a matter of urgent

priority. In 1995, the PAF had only eight vintage 1965 Northrop F-5 fighters to call on as its first line of defence; of these, only five were considered airworthy. The weakness of the country's air-defence capability led the PAF chief, Major General Loven Abadia, to comment that "our skies are totally naked."⁵ Like the PAF, the Philippine Navy (PN) was unable to modernise because of a lack of funding and is in no position to challenge China's People's Liberation Army Navy (PLAN). When the Mischief Reef crisis erupted in 1995, the PN could only call on one frigate, nine offshore patrol vessels and eight amphibious landing ships. All of these ships were built in the U.S. during the Second World War and were in a poor state of repair.⁶

As a result of public outcry over China's occupation of the disputed reef and intense AFP lobbying, the Philippine Congress approved a bill to provide for the AFP's modernisation on 20 February 1995, less than two weeks after the discovery of the Chinese structures on Mischief Reef. President Ramos signed the act into law on 23 February 1995. The 15-year, 331-billion peso (US\$12.6 billion) modernisation programme calls for the purchase of about 60 new ships, mostly offshore vessels armed with surface-to-surface and surface-to-air missiles and 24 multi-role fighter planes, air defence radar systems, air defence communications systems and other types of aircraft considered vital for air and naval defence as well as the protection of maritime zones.⁷

The 1997 Asian financial crisis forced the government to suspend the procurement of modern military equipment. However, in 1999, the government allocated six billion pesos (US\$165 million) to jumpstart the stalled modernisation programme. The Department of National Defense launched an electronic bidding system to fast-track the project. The fighters being considered were the JAS Gripen fighter jet, F/A-18 Hornet, Mirage 2000-5, Kfir 2000, F-16 and Mig-29. Limited avionics and structural upgrades were also being considered for the PAF's fleet of F-5A/Es and F-5Bs, with up to 14 more sought for use as lead-in trainers for the planned new fighters.⁸

In May 1995, U.S. Senator Larry Pressler suggested that the Philippines be allowed to purchase 18 of the 28 F-16s which had previously been sold to Pakistan. Delivery of the aircraft had been halted since 1990 because the Pressler Amendment prevented the U.S. government from transferring them to Islamabad until it could prove research into the development of nuclear weapons had ceased. It was later reported that 18 F-16s had been offered to the Philippines at the reduced price of US\$240 million, down from the original US\$450 million. The offer was apparently renewed in April 1998. The PAF chief, General Arnulfo Acedera, favoured the twin-engined F-18 Hornet and, in May 1997, called on the U.S. Congress to sell the aircraft to the Philippines at a reduced price.⁹ While waiting for the purchase of new sophisticated fighter jets, the Philippines is negotiating to get 24 F5-E fighter jets from Taiwan for a token fee to strengthen its ill-equipped air force in exchange for concessions such as letting Taiwanese fighter pilots train in Philippine air space. Despite their age, however, the single-seater F5-Es would still be a boon to the ill-equipped PAF as it battles Abu Sayyaf Muslim rebels in Southern Philippines in a campaign backed by U.S. special forces.¹⁰ They can also be used to patrol the country's long coastline and to monitor activities in the South China Sea.

In 1997, the PN took delivery of three offshore patrol vessels from Britain.¹¹ It had planned to equip these vessels with missiles. DCN International of France had offered a special package of three Aviso-class patrol vessels including training for the Philippine Navy. DCNI said that the versatile ships were well adapted for EEZ duties and could perform both anti-submarine warfare and anti-air warfare roles. Aerospatiale Missile, a subsidiary of French aeronautics group Aerospatiale Matra, has offered a range of missiles including the Eryx. Ukraine's State Corporation Company Progress has offered main battle tanks. The company is presently involved in the supply of 320 main battle tanks for Pakistan.¹²

In November 1998, President Estrada ordered the PN to "block entry and exit points" around Mischief Reef. The Philippine media

used the word “blockade” to describe the presidential order: an act of war under international law. As quoted by the Philippine Daily Inquirer, Estrada said: “I have already instructed the (AFP) Chief of Staff to block the entry and exit points so that intruders will not be able to enter anymore.” Siazon was quick to clarify what the president had said, saying that Estrada had actually ordered the Philippine Navy to “increase surveillance” around the reef. But Siazon asked Chinese Ambassador Guang Dengming for an explanation on the new Mischief Reef structures. The Chinese ambassador claimed they were only repairing some structures in the reef and that “they are not military structures.” He also refuted the charge of Defence Secretary Orlando Mercado that China is launching a “creeping invasion” in the Spratlys. In fact, indications are that Estrada probably intended to enforce a blockade around Mischief Reef but had been dissuaded from doing so by the Philippine Navy itself, which could not match the firepower of the two PLAN Jianghuo class frigates patrolling nearby.¹³

Changing the AFP from an internal security-oriented force to an external security-oriented force is a key point in the modernisation programme. It emphasises the development of sufficient strategic capabilities to support a “Defence-In-Depth” policy. That means extending the AFP’s capability to protect the country’s 200-mile EEZ and to provide a credible deterrent against outside threats to its territorial claims. The country’s overall national defence policy, however, continues to be based on the concept of “Total Defence” involving the mobilisation of citizens in the event of conflict.¹⁴

Notes

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5

REBUILDING DEFENCE LINKS WITH THE U.S.

On 16 September 1991, the Philippine Senate rejected by a vote of 12 to 11 a new military base treaty with the U.S., entitled “A Treaty of Friendship, Cooperation and Security”. The action ended nearly a hundred years of American presence in the Philippines. Since Commodore George Dewey defeated the Spanish fleet in Manila Bay in 1898, the U.S. has maintained military facilities in the Philippines as part of their forward defence in the Pacific. Under the proposed treaty, the U.S. would pay the Philippines US\$360 million in 1992 and US\$203 million per year over the next nine years that the latter was committed to host the bases. (The Philippine negotiators had asked for US\$825 per annum in compensation over a seven-year period.)¹

In 1947, the U.S. and the Philippines signed a Military Bases Agreement which entitled the U.S. to a 99-year lease on its facilities in the Philippines. However, in 1966, the term of the 1947 treaty was reduced from 99 to 25 years. Washington was amazed at Manila’s decision to reject the new treaty in 1991. In his own words, Vice President Dick Cheney, in his capacity as Defence Secretary, said: “We’ll pack and move, that’s it. We can’t stay where we’re not wanted, and we won’t.” The financial consequences of the U.S. withdrawal were serious, including cuts in U.S. aid which was around US\$556 million in 1991, including

a US\$160 million grant to the Multilateral Assistance Initiative, a mini Marshall Plan designed to bolster Philippine democracy and development. The withdrawal also affected the Philippines' military, which was counting on US\$370 million in equipment and assistance for a much needed modernisation programme. At Subic Naval Bay Station, 25,000 to 30,000 skilled Filipino workers lost their jobs.²

Subic Bay Naval Station used to be the logistical hub of the U.S. Seventh Fleet with nearly 8,000 American personnel. It had the capability to support battle operations for several aircraft-carrier battle groups at once. Clark Air Base, on the other hand, was the only tactical air base in Southeast Asia, with more than 10,000 U.S. military personnel. After a one-year grace period, the last of the U.S. forces left the Philippines on 24 November 1992. The Philippines and the U.S., however, remain treaty allies. The two countries became treaty allies on 30 August 1951 when they concluded a Mutual Defence Treaty (MDT) in Washington. The bilateral Philippine-American defence relationship that was built on the MDT has been a bulwark for the external defence of the Philippines and a major instrument in helping to preserve the security of East Asia.³ The MDT also provides for two countries may "consult together" whenever, "in the opinion of either of them, the territorial integrity, political independence or security of either of the parties is threatened by external attack in the Pacific." Twice a year, the Mutual Defence Board created by the MDT meets to discuss the implementation of the treaty. The AFP chief of staff and the U.S. Pacific Command commander sit as co-chairmen of the board.⁴

With the departure of the last U.S. service personnel in 1992, President Ramos hoped that the forward deployment of U.S. naval vessels in other parts of Asia, along with the MDT, would partially make up for the deterrent effect which the U.S. bases had provided for the Philippines for more than 40 years. However, Manila was disappointed with the reaction of the U.S. during the Mischief Reef crisis. On 10 May 1995 the U.S. State Department issued a statement regarding the Spratlys and the South China Sea stressing four points: (a) the U.S. opposes the use of force; (b) the U.S. has an abiding interest in the maintenance of peace and stability in the area; (c) maintaining freedom of navigation and all maritime activities consistent with international law are fundamental

interests of the U.S.; and (d) the U.S. takes no position on the legal merits of the competing claims.⁵

The U.S. has not taken any position with respect to the conflicting claims, but a defence official has stated that if military action in the Spratlys interfered “with freedom of the seas, then we would be prepared to escort and make sure that free navigation continues.”⁶ However, the U.S. did not feel obliged to aid the Philippines militarily because Washington did not consider the Spratlys to be covered by the MDT⁷, nor did it favour the territorial claims of one country over another in the South China Sea. Washington thought that the Philippines and its ASEAN partners should act together to try to curb Chinese behaviour in the South China Sea, and that the ideal forum to raise the issue would be the ARF. Winston Lord, Assistant Secretary of State for East Asian and Pacific Affairs, commented that if the ARF was to be “credible”, it must address “key regional security issues” such as the Spratly Islands. America’s decision not to aid the Philippines militarily was defended by Stephen Wrage, Associate Professor at the U.S. Naval Academy, in a seminar given in Singapore. Wrage argued that had the United States provided military assistance to the Philippines, it would have significantly raised tensions in the area, possibly leading to a Sino-U.S. military clash. The resulting damage to bilateral relations would have set back efforts on such issues as non-proliferation and further opening of the Chinese market. Instead, Wrage asserted, it was better for ASEAN to deal with China at multilateral fora. However, as shown, ASEAN was unwilling to raise the issue formally at the ARF for fear of antagonising China.⁸

Philippine-U.S. ties were further strained by the Pentagon’s refusal to supply the AFP with intelligence reports of Chinese activities around Mischief Reef. Bilateral relations suffered another setback in December 1996 when Washington suspended all port calls by U.S. naval vessels after the Philippine Congress closed a legal loophole that had shielded visiting U.S. military personnel from being prosecuted for crimes committed in the Philippines. The annual Philippine-U.S. military exercises were also cancelled. Negotiators began working out a new framework that would govern the legal status of visiting U.S.

military personnel to the Philippines. On 10 February 1998, a Visiting Forces Agreement (VFA) was signed by Foreign Affairs Secretary Siazon and U.S. Ambassador Thomas Hubbard that, when ratified, will permit routine combined exercises and training, and ship visits.⁹ The visit of President Ramos to Washington in April 1998 further affirmed the two sides' mutual commitment to the resumption of U.S. training activities in the Philippines.¹⁰ U.S. Secretary of Defence William Cohen visited the Philippines in August 1998 to personally campaign for the ratification of the VFA.

President Estrada gave the VFA his full backing despite having voted for the removal of U.S. bases in 1991. In his inaugural speech, Estrada argued that while in 1991 he was fighting for "Philippine sovereignty", he was now standing up for "Philippine security". Estrada declared that until the modernisation of the AFP could be effected, the security of the Philippines would rest on "our treaty obligation with the United States." The VFA, he argued, was in the national interests of the Philippines because it would enable joint Philippine-U.S. military exercises to resume, thus honing the combat skills of AFP personnel and introducing them to modern weapons. Estrada also suggested that the VFA would deter China from expanding further in the Spratlys. Speaking in March 1999, he said: "The VFA will be a potent deterrent to any emerging military strength by nations determined to claim or re-claim their territorial boundaries." Defence Secretary Mercado, who also voted for the removal of U.S. bases in 1991 as a senator, was more explicit, arguing that the VFA would facilitate a U.S. military presence in Southeast Asia, thus "balancing" the PRC.

The most persuasive argument against the VFA is whether it will actually benefit the Philippines, either in its dispute with China or in terms of helping to realise the defence modernisation programme. Both Estrada and Mercado have argued that the VFA has deterrent value and that it will help modernise the AFP.¹¹ Even if the Philippine economy begins to recover over the next few years, additional resources for the armed forces are likely to be scarce. Increasingly, therefore, the Philippines has looked to the U.S., through the VFA, to strengthen the AFP's operational capabilities and to provide a limited deterrent to Chinese encroachments in the Spratlys.

The Philippines found more direct support from Republican congressman Dana Rohrabacher, a senior member of the U.S. House of Representatives' international relations committee. On 10 December 1998, he flew over Mischief Reef in a Philippine Air Force C-130 transport plane, accompanied by Philippine congressman (now National Security Adviser) Roilo Golez. Rohrabacher subsequently described the Chinese fortification and the presence of its vessels as an "act of intimidation against the Filipino people which the world should not tolerate." He added: "The Chinese were frantically building these fortifications as we flew over. We saw the glitter of welding torches. What I saw was both alarming and sinister. The Chinese have sent warships hundreds of miles from their waters in order to steal territory from a neighbour."¹² Upon his return to the U.S., he moved to resume American military assistance to the Philippines through the transfer of excess military hardware. China then accused the United States of meddling in an issue that did not concern it.

Following Rohrabacher's controversial visit to the Spratlys, the U.S. State Department appealed to China to avoid actions that would increase tensions in the Spratlys. A State Department Press Guidance dated 11 February 1999 stated that "the United States closely monitors activities in the South China Sea and follows developments regarding China's military modernisation..." On the question of whether the United States would come to the defence of the Philippines in the event of a conflict over the competing claims, the State Department said, "The United States honours its treaty commitments. However, we are not in a position to comment on possible U.S. government action in the case of a hypothetical scenario."¹³

Indeed, Washington's policy has evolved from active neutrality to active concern. Active involvement is likely to be the next step, resulting in a serious new source of tension with China. What concerns U.S. naval strategists is that Beijing could be intending to transfer large areas of the South China Sea from a regime in which warships have immunity from its jurisdiction to one in which permission is required for entry. China set an ominous precedent in this regard when it banned planes at certain heights from October 1979 to February 1980 over four "danger"

zones south and east of Hainan Island. This ban forced the temporary closure of a major commercial air corridor. Of course, now China cannot enforce such a regime for the entire South China Sea, but when it is strong enough, it may try to do so.¹⁴

In 1999, the Philippines moved to strengthen its defence relations with the U.S. when it ratified the VFA. On 27 May, the Senate voted to ratify the VFA by 18 to 5 despite intense protests from left-wing groups. Under the VFA, the U.S. has permission to use ports in the Philippines and to participate in annual joint exercises. Most Philippine leaders believed that China would not have occupied Mischief Reef had the Philippine Senate ratified the treaty for a new Military Bases Agreement in 1991. Since then, Philippine leaders have been in search of greater manoeuvring room for the Philippines. They fumed over Chinese refusal not only to leave Mischief Reef but also to continue its expansion and renovation of the reef. The Philippines saw in the VFA an opportunity to deter Chinese action in the Spratlys. Despite American disclaimers that the islands claimed by the Philippines in the Spratlys are not covered by the MDT, the Philippines is hopeful that any future conflict between China and the Philippines in the Spratlys would leave the U.S. no choice but to contain China's reassertion of sovereignty in the South China Sea. On 30 January, President Estrada's message to the Philippine Senate was: Pass the VFA, and the country can stop the Chinese in the Spratlys. In his own words: "It is good for us to have an ally, a superpower partner so our security would be safeguarded."¹⁵ Defence Secretary Mercado explained the government's position: "What we are saying is that, in the interest of stability in the region, there should be an American presence...If there is no American presence, we all know who would come in. Isn't it obvious? Before we know, they (the Chinese) could be in (Philippine) Palawan (province)."¹⁶

Critics of the rebuilding and strengthening of the Philippine-U.S. military alliance argued that certain elements in the Philippine government – prominently the defence department—were exaggerating and even creating tensions in the Spratlys in order to use the so-called "China bogey" to justify renewed U.S. involvement and support for Philippine external security. Whether this was true or not, the fact remains that perceptions of a China threat did pave the way for the

Senate's ratification of the VFA that now allows American troops back into the Philippines for training and other activities in the implementation of the MDT. Now Philippine Foreign Affairs Secretary Blas Ople, in his former capacity as senator and chairman of the Senate Foreign Affairs Committee, argued in his speech which concurred with the VFA.

In our own part of the world, East Asia, the Chinese colossus has awakened... There is every indication... that this giant has not only awakened but is belching forth a stream of fire in the direction of the Philippines. One fine day in 1995, we woke up to discover that Chinese naval forces have occupied Mischief Reef... (T)oday it is Mischief Reef and Scarborough Shoal off Zambales. Tomorrow there might be more tempting prizes, including Palawan and the Philippines itself... (T)he one factor that restrains China's military hawks is the realisation that the Philippines is bound to the United States by a Mutual Defence Treaty.¹⁷

With the ratification of the VFA, annual joint military exercises between the Philippines and the U.S. resumed in early 2000. On 28 January, the Philippines and the U.S. conducted their first joint military exercises under the VFA involving 5,000 troops from both countries. As part of the exercise, a U.S.-guided missile warship made a call in Palawan, at the Philippine port nearest to the Spratlys. The second phase began on 21 February. It was the largest war game ever between the U.S. and the Philippines and included naval warfare, an aerial combat scenario and ground forces manoeuvres. The exercises were called *Balikatan*, which is Filipino for "shouldering the burden together." On 14 June, joint Philippine-U.S. naval exercises began. The intent was to strengthen bilateral defence cooperation and "promote strategic understanding of the challenges we all face—in Southeast Asia."¹⁸

Indeed, Philippine-U.S. security relationships have evolved since the closure of U.S. military bases in 1992. With the VFA, the U.S. and the Philippines are gradually establishing a post-bases relationship—exercises, ship visits, exchanges and policy dialogues—to solidify the Philippine-U.S. security partnership in the coming years.¹⁹ The VFA not only allowed the resumption of large-scale, joint Philippine-U.S.

military exercises following the termination of the lease on U.S. bases in the Philippines in 1992 but it has also opened the doors to U.S. military assistance to build the defence capability of the Philippines as it faces two important security issues—the dispute with China in the Spratlys, and the Moro separatist rebellion in Mindanao in southern Philippines. In a more strategic sense, the VFA incorporated the Philippines into the U.S. network of security arrangements with Japan, South Korea, Taiwan and most countries of Southeast Asia. Although arrangements under the VFA between the U.S. arrangements and some members of ASEAN do not involve the return of fixed U.S. bases, they do facilitate military deployments in the South China Sea and they enhance U.S. military presence in the region.²⁰

The September 11 terrorist attacks in the United States further deepened the restoration of Philippine-U.S. military alliance. Its revival was a significant foreign policy success for President Gloria Macapagal-Arroyo, bringing in a badly needed military and economic assistance package. President Arroyo was the first Asian leader to have called President George W. Bush in the wake of the terrorist attacks, offering Philippine support in the war on terrorism. She was well rewarded with a US\$92.3 million military package. During her November 2001 visit to the United States to commemorate the 50th anniversary of the MDT, Bush promised Arroyo military and economic assistance, offering to help in getting rid of the Abu Sayyaf.²¹ The new U.S. military package for the Philippines includes a C-130 transport plane, eight Huey helicopters, a naval patrol boat and 30,000 M-16 rifles plus ammunition.²²

Bilateral military cooperation was further solidified in January 2002 with the arrival of 660 American soldiers, including 160 Navy SEALs, Army Green Berets, Marine Corps and Air Force special operation troops, in southern Philippines. The previously unthinkable active U.S. participation in an advisory capacity was the first substantial deployment of U.S. troops in the country since the closure of American military bases in 1992. The Special Forces troops were deployed in military camps in Basilan province, the stronghold of the Abu Sayyaf; the rest were on standby in nearby Zamboanga City and Cebu City. Originally labelled a training exercise, the six-month joint mission with 3,800 Filipino troops was referred as “Freedom Eagle – Philippines”.

American troops were supposed to provide only technical support, training and advice but they can actually fight alongside Filipino troops. U.S. Special Forces accompanied Filipino soldiers in combat and were authorised to defend themselves if attacked. The main goal was to fight the Abu Sayyaf, a terrorist group with strong ties to the al-Qaeda network of Osama bin Laden.²³

On 26 April 2002, the highest-ranking U.S. military officer arrived in Manila, sending the strongest signal yet of resurgent military relations between the Philippines and the United States. Gen. Richard Myers, chairman of the U.S. Joint Chiefs of Staff, met President Arroyo and other government officials and visited U.S. troops participating in this year's Philippine-U.S. joint military exercises. His visit marked the first time that a chairman of the U.S. Joint Chiefs of Staff has visited a Balikatan exercise, an annual training programme started in 1981. During his visit, Myers promised U.S. "technological boosts" to the poorly-armed AFP. Aside from the Special Forces deployed in southern Philippines to help the AFP fight the Abu Sayyaf, more than 3,000 U.S. troops are in northern Philippines for this year's joint exercises with local troops, the most since the closure of the U.S. bases in 1992.²⁴

While opposition to the presence of U.S. troops in the Philippines persists, that opposition has become less strident. According to results of a nationwide survey conducted in March 2002, Filipinos are highly supportive of U.S. military presence in the Philippines, with a majority saying the U.S. soldiers should stay in the combat zones for as long as necessary. The Social Weather Stations (SWS) survey firm revealed that 75 percent of 1,200 respondents approve of U.S. soldiers going into combat zones like Basilan, while 60 percent said that the American forces should stay in those areas for as long as needed.²⁵

The September 11 terrorist attacks have contributed in stretching the limits of the VFA and even the MDT. The re-energised bilateral military relationship also paved the way for the signing of a Mutual Logistics Support Arrangement (MLSA) which was designed to provide mutual military support, supplies and services and to facilitate military operations and provide greater U.S. access to Philippine facilities.²⁶ It was obviously an arrangement to provide more teeth to the VFA. President

Arroyo allowed U.S. warplanes to refuel in the country in support of the U.S.-led campaign against terrorism in Afghanistan. Amando Doronila commented that if there had not been a VFA, the Philippines would have stood in isolation with the rest of the world whose defenceless peoples face the menace of terrorism. The framework of the VFA is elastic enough to accommodate the requirements of military cooperation that is evolving into a strategy of shifting ad hoc alliances.²⁷

Notes

1. Alex B. Brilliantes, Jr., “The Philippines in 1991: Disasters and Decisions” in *Asian Survey* Vol. XXXII No. 2 (Feb 1992), p. 141
2. William Stewart, “Time to Say Goodbye” in *Time*, 23 Sep 1991, p. 8
3. *The Visiting Forces Agreement: A Primer* (Manila: Department of Foreign Affairs), p. 2
4. Ma. Cristina V. Deocadiz and Cecille E. Yap, “Spratlys Conflict: U.S. Intervention” in *Businessworld* (Manila), 11 Jul 1997. Also *Mutual Defense Treaty Between the Republic of the Philippines and the United States of America*, signed in Washington, 30 Aug 1951.
5. Ralph A. Cossa, ed., *Security Implications of Conflict in the South China Sea* (Honolulu: Pacific Forum, CSIS, 1996), Appendix G
6. Zalmay Khalilzad, et al, *The United States and Asia: Toward a New U.S. Strategy and Force Posture* (Santa Monica, California: RAND, 2001), p. 53. The authors quoted the statement of Assistant Secretary of Defence for International Security Affairs Joseph Nye, as quoted in Nigel Holloway, “Jolt from the Blue” in *Far Eastern Economic Review*, 3 Aug 1995, p. 22.
7. Under the MDT, the Philippines and the U.S. have agreed to respond in the event of an armed attack in the metropolitan territories of either country. A point of contention is the geographical scope covered by the MDT. Legal scholars say the MDT covers only the Pacific and the metropolitan territory of the two countries, therefore, excluding the Spratlys in the South China Sea. Article V of the MDT reads: “An armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific.”
8. Ian Storey, “Creeping Assertiveness: China, the Philippines and the South China Sea Dispute” in *Contemporary Southeast Asia* Vol. 21 No. 1 (Apr 1999), p. 111

9. Ian Storey, "Manila Looks to USA for Help over Spratlys" in *Jane's Intelligence Review*, 1 Aug 1999
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13. Aileen S. P. Baviera, "Bilateral Confidence Building with China in Relation to the South China Sea Disputes", a Paper prepared for the International Security Research and Outreach Programme, International Security Bureau, Canada, Feb 2001, pp. 14–15
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15. *Philippine Star*, 1 Feb 1999
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17. Aileen San Pablo-Baviera, "The Kalayaan Islands (Spratlys) in Philippine Foreign Policy" in *Panorama Vol. 1 No. 2* (1999), pp. 72–73
18. Mark J. Valencia, *op. cit.*, p. 533
19. The United States Security Strategy for the East Asia-Pacific Region, p. 29
20. Amando Doronila, "Estrada to Bring Home Military Assistance Pact" in *Philippine Daily Inquirer*, 24 Jul 2000, p. 1
21. Mel C. Labrador, "The Philippines in 2001: High Drama, a New President, and Setting the Stage for Recovery" in *Asian Survey Vol. XLII No. 1* (Jan–Feb 2002), pp. 147–148
22. Steven Mufson, "US to Aid Philippines' Terrorism War" in *Washington Post*, 21 Nov 2001, p. A03

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24. "US Military's Top Man is Here" in *Philippine Daily Inquirer*, 27 Apr 2002, p. 1
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26. Juliet Javellana and Cynthia D. Balana, "RP-US Deal Signed by AFP Chief" in *Philippine Daily Inquirer*, 21 Jan 2002, p. 1
27. Amando Doronila, "US Attacks Call for New VFA Interpretation" in *Philippine Daily Inquirer*, 1 Oct 2001, p. 1

6

CONCLUSION

The South China Sea dispute remains the principal source of tension in Southeast Asia. There is a genuine fear that ongoing incidents, like the Mischief Reef case, could escalate to actual confrontation. The conditions of mutual trust and confidence to arrive at a negotiated peaceful solution to the dispute, including joint development of the area among the claimants, is simply too hard to achieve. ASEAN solidarity on the dispute is fragile and cracks are beginning to show. Hopes that a perceived threat from China could actually produce greater ASEAN solidarity have been unrealistic. China has continued to push for bilateral negotiations with the claimants and appears to have made some headway with respect to Malaysia. At the 1999 ARF meeting in Singapore, Malaysia appeared to move closer to China's position of seeking bilateral solutions to the dispute, undermining the positions of fellow ASEAN claimants.¹

Beijing's present stance on the South China Sea, as laid out by then Premier Li Peng in August 1997 while on a visit to Kuala Lumpur, is that the issue should be solved peacefully through consultations according to international law. This position was reiterated by President Jiang Zemin during the first informal ASEAN plus Three summit in Kuala Lumpur in December 1997. On 28 May 1998, Beijing issued a White Paper stating that it would stick to its policy of shelving maritime territorial

disputes that cannot be resolved immediately through negotiations.² In reality, however, this position does not represent a significant departure from Li Peng's August 1990 statement, made while in Singapore, which announced the idea of joint development while asserting ultimate Chinese sovereignty over virtually the whole South China Sea.³

The Philippines is trying to “internationalise” the issue as much as it can, possibly with the quiet support of Vietnam. If Manila can keep the issue on the headlines and if ASEAN can get its act together, Beijing, which has all along opposed multilateral talks on the Spratlys issue, may have to concede. Bilateral discussions such as those between the Philippines and China do not appear to have resulted in any concrete results so far. It is evident that only a united ASEAN can possibly move China, as in 1995.⁴

Since the discovery of the Chinese structures on Mischief Reef in 1995, the Philippines had been dealing with the South China Sea dispute from a position of weakness. Diplomatic efforts have not stemmed the construction of structures by competing claimants. Philippine foreign affairs officials are resigned to the fact that the problems of the Chinese intruding in Philippine-claimed territories will always be existent. The series of incursions made by the Chinese and the exchange of unpleasant statements by Beijing and Manila has led pessimists, particularly the Philippine military, to envision a possible “worst-worst” scenario in the South China Sea.

Moreover, the South China Sea dispute continues to serve as an unforgiving reminder of the extremely poor capabilities of the Armed Forces of the Philippines and its stillborn military modernisation programme. An earlier perception that the country did not face any external threat has suddenly changed, prompting Congress to hurriedly pass the AFP modernisation programme.⁵ More importantly, it led to a shift in Philippine perceptions of U.S. military presence, setting the stage for the 1999 ratification of the Philippine-U.S. Visiting Forces Agreement, a necessary development that paved the way for the rebuilding of bilateral defence cooperation between the two countries. If diplomacy cannot resolve problems, then at least the United States will be at hand to assist. The Philippines and the United States have a

Mutual Defence Treaty. The VFA gives substance to the MDT by serving as the legal framework in promoting defence cooperation between the Philippines and the United States. The MDT states the two countries will “separately and jointly, by self-help and mutual aid, maintain and develop their individual and collective capacity to resist armed attack.”⁶

What appears more pressing for the Philippines is to receive credible assurances from China that there will be no further moves to occupy new features, strengthen its military presence or obtain strategic advantage in the South China Sea at the expense of other claimants. At the same time, it is the fear of an increasingly powerful and assertive China, not animosity against it, that has driven Philippine responses on the Mischief Reef issue thus far. This fear is grounded as much in the Philippines’ vulnerability and weakness as it is in China’s territorial ambitions. Therefore, while agreements with China or other claimants may provide some short-term comfort, the imperative remains for the Philippines to strengthen its own internal positions on the issue. This involves improving its capability to enforce laws in its maritime jurisdiction zones in accordance with UNCLOS and international law. It also involves strengthening its military capability through the implementation of a modernisation programme as well as technical and scientific expertise on ocean affairs in preparation for the challenges at hand.⁷

As diplomacy has achieved little progress in resolving the dispute, the Philippines is increasingly rebuilding and strengthening its defence links with the United States as a way of monitoring Chinese moves in the South China Sea. The Philippines has to maintain security linkages in Asia with the U.S., which has maintained its bilateral security network with Asian countries as a temporary condition to protect the national territory until it develops the military capability and economic strength to deter aggressors. The territorial disputes in the Spratlys and the perception of a China threat became the most persuasive arguments used to justify that it is time to modernise the poorly-equipped Philippine military. The Mischief Reef case was also the defining incident that paved the way for the restoration of Philippine-U.S. military alliance, less than seven years after the closure of U.S. military bases and the departure of all U.S. forces from the Philippines. A strong U.S. naval presence in the

background is definitely an important stopgap until such time when ASEAN can get its full act together.

The demand for China to refrain from new occupations is a commitment that the Philippines itself as well as other claimants must be prepared to give in return. If even one claimant refuses to restrain itself in such a manner, those who do exercise self-restraint may end up jeopardising their own positions. The atmosphere for cooperation cannot develop under such circumstances. This is where a regional code of conduct, involving all claimants and possibly open for accession by other interested parties, can play a vital role. A means of regulating the dispute is worth the effort. Without a framework to restrain them, the parties are likely to continue to jostle, apparently on the rationale that possession represents nine-tenths of the law. Such a situation is likely to prompt a renewed push towards military modernisation, fuel the undeclared regional arms race that was interrupted by the Asian economic crisis and retains the potential to, at the very least, sour diplomatic relations and, at worst, spark fresh conflict.⁸

The signing of the “Declaration on the Conduct of Parties in the South China Sea” between ASEAN member states and the People’s Republic of China on 4 November 2002 in Phnom Penh, Cambodia, was a major leap for peace in the South China Sea dispute. Although it fell short of its original intent—that of a code of conduct ASEAN had originally sought—the framework offers a strong foundation for future negotiations on the adoption of a code of conduct on maritime security and territorial issues between ASEAN and China.

Previous agreements between the Philippines and China, ASEAN and China as well as between other pairs of claimants have thus far tended to focus on broad principles as a “peaceful solution”, “non-use of force” and “self-restraint”. It has become apparent, from the Philippine experience, that more specific operational guidelines are required for these agreements to be satisfactorily implemented. The most urgent problems are those of conflict avoidance and the need to prevent an escalation of the disputes.⁹

Notes

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2. "Beijing to Put Marine Disputes on Hold" in *The Strait Times*, 29 May 1998, p. 36
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5. Cecille E. Yap and Ma. Cristina V. Deocadiz, "South China Sea Conflict: Diplomatic Options" in *Businessworld* (Manila), 10 Jul 1997
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8. *ibid.* Also, Clive Schofield, "A Code of Conduct for the South China Sea?" in *Jane's Intelligence Review*, 27 Oct 2000
9. Aileen San Pablo-Baviera, *op. cit.*, pp. 77–78

APPENDIX 1

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF THE
PHILIPPINES
AND
THE GOVERNMENT OF THE UNITED STATES OF
AMERICA
REGARDING THE TREATMENT OF
UNITED STATES ARMED FORCES
VISITING THE PHILIPPINES
(RP-US VISITING FORCES AGREEMENT)**

10 FEBRUARY 1998

PREAMBLE

The Government of the Republic of the Philippines and the Government of the United States of America,

Reaffirming their faith in the purposes and principles of the Charter of the United Nations and their desire to strengthen international and regional security in the Pacific area;

Reaffirming their obligations under the Mutual Defense Treaty of August 30, 1951;

Noting that from time to time elements of the United States armed forces may visit the Republic of the Philippines;

Considering that cooperation between the Republic of the Philippines and the United States promotes their common security interests;

Recognizing the desirability of defining the treatment of United States personnel visiting the Republic of the Philippines;

Have agreed as follows:

ARTICLE I: DEFINITIONS

As used in this Agreement, “United States personnel” means United States military and civilian personnel temporarily in the Philippines in connection with activities approved by the Philippine Government.

With this definition:

1. The term “military personnel” refers to military members of the United States Army, Navy, Marine Corps, Air Force, and Coast Guard.
2. The term “civilian personnel” refers to individuals who are neither nationals of or ordinarily resident in the Philippines and who are employed by the United States armed forces or who are accompanying the United States armed forces, such as employees of the American Red Cross and the United Services Organization.

ARTICLE II: RESPECT FOR LAW

It is the duty of the United States personnel to respect the laws of the Republic of the Philippines and to abstain from any activity inconsistent with the spirit of this Agreement, and, in particular, from any political activity in the Philippines. The Government of the United States shall take all measures within its authority to ensure that this is done.

ARTICLE III: ENTRY AND DEPARTURE

1. The Government of the Philippines shall facilitate the admission of United States personnel and their departure from the Philippines in connection with activities covered by this Agreement.
2. United States military personnel shall be exempt from passport and visa regulations upon entering and departing the Philippines.
3. The following documents only, which shall be presented on demand, shall be required in respect of United States military personnel who enter the Philippines:
 - (a) personal identity card issued by the appropriate United States authority showing full name, date of birth, rank or grade and service number (if any), branch of service and photograph; and
 - (b) individual or collective document issued by the appropriate United States authority, authorizing the travel or visit and identifying the individual or group as United States military personnel.
 - (c) the commanding officer of a military aircraft or vessel shall present a declaration of health, and when required by the cognizant representative of the Government of the Philippines, shall conduct a quarantine inspection and will certify that the aircraft or vessel is free from quarantinable diseases. Any quarantine inspection of United States aircraft or United States vessels or cargoes thereon shall be conducted by the United States commanding officer in accordance with the international health regulations as promulgated by the World Health Organization, and mutually agreed procedures.

4. United States civilian personnel shall be exempt from visa requirements but shall present, upon demand, valid passports upon entry and departure of the Philippines.
5. If the Government of the Philippines has requested the removal of any United States personnel from its territory, the United States authorities shall be responsible for receiving the person concerned within its own territory or otherwise disposing of said person outside of the Philippines.

ARTICLE IV: DRIVING AND VEHICLE REGISTRATION

1. Philippine authorities shall accept as valid, without test or fee, a driving permit or license issued by the appropriate United States authority to United States personnel for the operation of military or official vehicles.
2. Vehicles owned by the Government of the United States need not be registered, but shall have appropriate markings.

ARTICLE V: CRIMINAL JURISDICTION

1. Subject to the provisions of this Article:
 - (a) Philippine authorities shall have jurisdiction over United States personnel with respect to offenses committed within the Philippines and punishable under the law of the Philippines.
 - (b) United States military authorities shall have the right to exercise within the Philippines all criminal and disciplinary jurisdiction conferred on them by the military law of the United States over United States personnel in the Philippines.
2. (a) Philippine authorities exercise exclusive jurisdiction over United States personnel with respect to offenses, including offenses relating to the security of the Philippines, punishable under the laws of the Philippines, but not under the laws of the United States.

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- (b) United States authorities exercise exclusive jurisdiction over United States personnel with respect to offenses, including offenses relating to the security of the United States, punishable under the laws of the United States, but not under the laws of the Philippines.
 - (c) For purposes of this paragraph and paragraph 3 of this Article, an offense relating to security means:
 - (1) treason;
 - (2) sabotage, espionage or violation of any law relating to national defense.
3. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:
- (a) Philippine authorities shall have the primary right to exercise jurisdiction over all offenses committed by United States personnel, except in cases provided for in paragraphs 1 (b), 2 (b), and 3 (b) of this Article.
 - (b) United States military authorities shall have the primary right to exercise jurisdiction over United States personnel subject to the military law of the United States in relation to:
 - (1) offenses solely against the property or security of the United States or offenses solely against the property or person of United States personnel; and
 - (2) offenses arising out of any act or omission done in performance of official duty.
 - (c) The authorities of either government may request the authorities of the other government to waive their primary right to exercise jurisdiction in a particular case.

- (d) Recognizing the responsibility of the United States military authorities to maintain good order and discipline among their forces, Philippine authorities will, upon request by the United States, waive their primary right to exercise jurisdiction except in cases of particular importance to the Philippines. If the Government of the Philippines determines that the case is of particular importance, it shall communicate such determination to the United States authorities within twenty (20) days after the Philippine authorities receive the United States request.
- (e) When the United States military commander determines that an offense charged by authorities of the Philippines against United States personnel arises out of an act or omission done in the performance of official duty, the commander shall issue a certificate setting forth such determination. This certificate will be transmitted to the appropriate authorities of the Philippines and will constitute sufficient proof of performance of official duty for the purposes of paragraph 3 (b) (2) of this Article. In those cases where the Government of the Philippines believes the circumstances of the case require a review of the duty certificate, United States military authorities and Philippine authorities shall consult immediately. Philippine authorities at the highest levels may also present any information bearing on its validity. United States military authorities shall take full account of the Philippine position. Where appropriate, United States military authorities will take disciplinary or other action against offenders in official duty cases, and notify the Government of the Philippines of the actions taken.
- (f) If the government having the primary right does not exercise jurisdiction, it shall notify the authorities of the other government as soon as possible.
- (g) The authorities of the Philippines and the United States shall notify each other of the disposition of all cases in which both the authorities of the Philippines and the United States have the right to exercise jurisdiction.

4. Within the scope of their legal competence, the authorities of the Philippines and United States shall assist in each other in the arrest of United States personnel in the Philippines and in handing them over to authorities who are to exercise jurisdiction in accordance with the provisions of this Article.
5. United States military authorities shall promptly notify Philippine authorities of the arrest or detention of United States personnel who are subject to Philippine primary or exclusive jurisdiction. Philippine authorities shall promptly notify United States military authorities of the arrest or detention of any United States personnel.
6. The custody of any United States personnel over whom the Philippines is to exercise jurisdiction shall immediately reside with United States military authorities, if they so request, from the commission of the offense until completion of all judicial proceedings. United States military authorities shall, upon formal notification by the Philippine authorities and without delay, make such personnel available to those authorities in time for any investigative or judicial proceedings relating to the offense with which the person has been charged. In extraordinary cases, the Philippine Government shall present its position to the United States Government regarding custody, which the United States Government shall take into full account. In the event Philippine judicial proceedings are not completed within one year, the United States shall be relieved of any obligations under this paragraph. The one year period will not include the time necessary to appeal. Also, the one year period will not include any time during which scheduled trial procedures are delayed because United States authorities, after timely notification by Philippine authorities to arrange for the presence of the accused, fail to do so.
7. Within the scope of their legal authority, United States and Philippine authorities shall assist each other in the carrying out of all necessary investigation into offenses and shall cooperate in providing for the attendance of witnesses and in the collection and production of evidence, including seizure and, in proper cases, the delivery of objects connected with an offense.

8. When United States personnel have been tried in accordance with the provisions of this Article and have been acquitted or have been convicted and are serving, or have served their sentence, or have had their sentence remitted or suspended, or have been pardoned, they may not be tried again for the same offense in the Philippines. Nothing in this paragraph, however, shall prevent United States military authorities from trying United States personnel for any violation of rules of discipline arising from the act or omission which constituted an offense for which they were tried by Philippine authorities.

9. When United States personnel are detained, taken into custody, or prosecuted by Philippine authorities, they shall be accorded all procedural safeguards established by the law of the Philippines. At the minimum, United States personnel shall be entitled:
 - (a) To a prompt and speedy trial;
 - (b) To be informed in advance of trial of the specific charge or charges made against them and to have reasonable time to prepare a defense;
 - (c) To be confronted with witnesses against them and to cross examine such witnesses;
 - (d) To present evidence in their defense and to have compulsory process for obtaining witnesses;
 - (e) To have free and assisted legal representation of their own choice on the same basis as nationals of the Philippines;
 - (f) To have the services of a competent interpreter;

- (g) To communicate promptly with and to be visited regularly by United States authorities, and to have such authorities present at all judicial proceedings. These proceedings shall be public unless the court, in accordance with Philippine law, excludes persons who have no role in the proceedings.
10. The confinement or detention by Philippine authorities of United States personnel shall be carried out in facilities agreed on by appropriate Philippine and United States authorities. United States personnel serving sentences in the Philippines shall have the right to visits and material assistance.
11. United States personnel shall be subject to trial only in Philippine courts of ordinary jurisdiction, and shall not be subject to the jurisdiction of Philippine military or religious courts.

ARTICLE VI: CLAIMS

1. Except for contractual arrangements, including United States foreign military sales letters of offer and acceptance and leases of military equipment, both governments waive any and all claims against each other for damage, loss or destruction to property of each other's armed forces or for death or injury to their military and civilian personnel arising from activities to which this Agreement applies.
2. For claims against the United States, other than contractual claims and those to which paragraph 1 applies, the United States Government, in accordance with United States law regarding foreign claims, will pay just and reasonable compensation in settlement of meritorious claims for damage, loss, personal injury or death, caused by acts or omissions of United States personnel, or otherwise incident to the non-combat activities of the United States forces.

ARTICLE VII: IMPORTATION AND EXPORTATION

1. United States Government equipment, materials, supplies, and other property imported into or acquired in the Philippines by or on behalf of the United States armed forces in connection with activities to which this Agreement applies, shall be free of all Philippine duties, taxes and other similar charges. Title to such property shall remain with the United States, which may remove such property from the Philippines at any time, free from export duties, taxes, and other similar charges. The exemptions provided in this paragraph shall also extend to any duty, tax, or other similar charges which would otherwise be assessed upon such property after importation into, or acquisition within the Philippines. Such property may be removed from the Philippines, or disposed of therein, provided that disposition of such property in the Philippines to persons or entities not entitled to exemption from applicable taxes and duties shall be subject to payment of such taxes, and duties and prior approval of the Philippine Government.

2. Reasonable quantities of personal baggage, personal effects, and other property for the personal use of United States personnel may be imported into and used in the Philippines free of all duties, taxes and other similar charges during the period of their temporary stay in the Philippines. Transfers to persons or entities in the Philippines not entitled to import privileges may only be made upon prior approval of the appropriate Philippine authorities including payment by the recipient of applicable duties and taxes imposed in accordance with the laws of the Philippines. The exportation of such property and of property acquired in the Philippines by United States personnel shall be free of all Philippine duties, taxes, and other similar charges.

ARTICLE VIII: MOVEMENT OF VESSELS AND AIRCRAFT

1. Aircraft operated by or for the United States armed forces may enter the Philippines upon approval of the Government of the Philippines in accordance with procedures stipulated in implementing arrangements.
2. Vessels operated by or for the United States armed forces may enter the Philippines upon approval of the Government of the Philippines. The movement of vessels shall be in accordance with international custom and practice governing such vessels, and such agreed implementing arrangements as necessary.
3. Vehicles, vessels, and aircraft operated by or for the United States armed forces shall not be subject to the payment of landing or port fees, navigation or overflight charges, or tolls or other use charges, including light and harbor dues, while in the Philippines. Aircraft operated by or for the United States armed forces shall observe local air traffic control regulations while in the Philippines. Vessels owned or operated by the United States solely on United States Government non-commercial service shall not be subject to compulsory pilotage at Philippine ports.

ARTICLE IX: DURATION AND TERMINATION

This Agreement shall enter into force on the date on which the parties have notified each other in writing through the diplomatic channel that they have completed their constitutional requirements for entry into force. This Agreement shall remain in force until the expiration of 180 days from the date on which either party gives the other party notice in writing that it desires to terminate the Agreement.

In witness whereof the undersigned being duly authorized by their respective governments, have signed this agreement. Done in duplicate at Manila, the Philippines, this tenth day of February 1998.

(Sgd.) Thomas C. Hubbard

For the Government of the United States of America

(Sgd.) Domingo L. Siazon, Jr.

For the Government of the Republic of the Philippines

(Source: <http://www.dfa.gov.ph>)

APPENDIX 2

MUTUAL DEFENSE TREATY BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA

30 AUGUST 1951

The Parties of this Treaty,

Reaffirming their faith in the purpose and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments, and desiring to strengthen the fabric of peace in the Pacific area.

Recalling with mutual pride the historic relationship which brought their two peoples together in a common bond of sympathy and mutual ideals to fight side-by-side against imperialist aggression during the last war.

Desiring to declare publicly and formally their sense of unity and their common determination to defend themselves against external armed attack, so that no potential aggressor could be under the illusion that either of them stands alone in the Pacific area.

Desiring further to strengthen their present efforts for collective defense for the preservation of peace and security pending the development of a more comprehensive system of regional security in the Pacific area.

Agreeing that nothing in this present instrument shall be considered or interpreted as in any way or sense altering or diminishing any existing agreements or understandings between the Republic of the Philippines and the United States of America.

Have agreed as follows:

Article I. The parties undertake as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered and to refrain in their international relation from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Article II. In order more effectively to achieve the objective of this Treaty, the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.

Article III. The Parties, through their Foreign Ministers or their deputies, will consult together from time to time regarding the implementation of this Treaty and whenever in the opinion of either of them the territorial integrity, political independence or security of either of the Parties is threatened by external armed attack in the Pacific.

Article IV. Each Party recognizes that an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Article V. For purposes of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific Ocean, its armed forces, public vessels or aircraft in the Pacific.

Article VI. This Treaty does not affect and shall not be interpreted as affecting in any way the rights and obligations of the parties under the Charter of the United Nations or the responsibility of the United Nations for the maintenance of international peace and security.

Article VII. This Treaty shall be ratified by the Republic of the Philippines and the United States of America in accordance with their respective constitutional processes and will come into force when instruments of ratification thereof have been exchanged by them at Manila.

Article VIII. This Treaty shall remain in force indefinitely. Either Party may terminate it one year after notice has been given to the other party.

In witness whereof the undersigned Plenipotentiaries have signed this Treaty. Done in duplicate at Washington this thirtieth day of August, 1951.

For the Republic of the Philippines:

(Sgd.) Carlos P. Romulo

(Sgd.) Joaquin M. Elizalde

(Sgd.) Vicente J. Francisco

(Sgd.) Diosdado Macapagal

For the United States of America:

(Sgd.) Dean Acheson

(Sgd.) John Foster Dulles

(Sgd.) Tom Connally

(Sgd.) Alexander Wiley

(Source: <http://www.dfa.gov.ph>.)

APPENDIX 3

ASEAN DECLARATION ON THE SOUTH CHINA SEA MANILA, PHILIPPINES

22 JULY 1992

We, the foreign Minister of the member countries of the Association of Southeast Asian Nations;

Recalling the historic, cultural and social ties that bind our peoples as states adjacent to the South China Sea;

Wishing to promote the spirit of kinship, friendship and harmony among our peoples who share similar Asian traditions and heritage;

Desirous of further promoting conditions essential to greater economic cooperation and growth;

Recognizing that we are bound by similar ideals of mutual respect, freedom, sovereignty and jurisdiction of the parties directly concerned;

Recognizing that South China Sea issues involve sensitive questions of sovereignty and jurisdiction of the parties directly concerned;

Conscious that any adverse developments in the South China Sea Directly affect peace and stability in the region.

Hereby

Emphasize the necessity to resolve all sovereignty and jurisdictional issues pertaining to the South China Sea by peaceful means, without resort to force;

Urge all parties concerned to exercise restraint with view to creating a positive climate for the eventual resolution of all disputes;

Resolve, without prejudicing the sovereignty and jurisdiction of countries having direct interests in the area, to explore the possibility cooperation in the South China Sea relating to the safety of maritime navigation and communication, protection against pollution of the marine environment, coordination of search and rescue operations, efforts towards combatting piracy and armed robbery as well as collaboration in the campaign against illicit trafficking in drugs;

Commend all parties concerned to apply the principles contained in the Treaty of Amity and Cooperation in Southeast Asia as the basis for establishing a code of international conduct over the South China Sea;

Invite all parties concerned to subscribe to this Declaration of principles.

Signed in Manila, Philippines, this 22nd day of July, nineteen hundred and ninety-two.

(Sgd.) H.R.H. Prince Mohamed Bolkiah
Minister of Foreign Affairs
Brunei Darussalam

(Sgd.) H.E. Mr. Ali Alatas
Minister of Foreign Affairs
Republic of Indonesia

(Sgd.) H.E. Datuk Abdullah Ahmad Badawi
Minister of Foreign Affairs
Malaysia

(Sgd.) H.E. Mr. Raul S. Manglapus
Secretary of Foreign Affairs
Republic of the Philippines

(Sgd.) H.E. Mr. Wong Kan Seng
Minister of Foreign Affairs and Community Development
Republic of Singapore

(Sgd.) H.E. Mr. Arsa Sarasin
Minister of Foreign Affairs
Kingdom of Thailand

(Source: <http://www.aseansec.org>)

APPENDIX 4

STATEMENT BY THE ASEAN FOREIGN MINISTERS ON THE RECENT DEVELOPMENTS IN THE SOUTH CHINA SEA

18 MARCH 1995

We, the ASEAN Foreign Ministers, express our serious concern over recent developments which affect peace and stability in the South China Sea.

We urge all concerned to remain faithful to the letter and spirit of the Manila Declaration on the South China Sea which we issued in July 1992 and which has been endorsed by other countries and the Non-Aligned Movement. The Manila Declaration urges all concerned to resolve differences in the South China Sea by peaceful means and to refrain from taking actions that de-stabilize the situation.

We call upon all parties to refrain from taking actions that destabilize the region and further threaten the peace and security of the South China Sea. We specifically call for the early resolution of the problems caused by recent developments in Mischief Reef.

We urge countries in the region to undertake cooperative activities which increase trust and confidence and promote stability in the area.

We encourage all claimants and other countries in Southeast Asia to address the issue in various fora, including the Indonesia-sponsored Workshop Series on Managing Potential Conflicts in the South China Sea.

(Source: <http://www.aseansec.org>)

APPENDIX 5

JOINT STATEMENT ON PRC-RP CONSULTATIONS ON THE SOUTH CHINA SEA AND ON OTHER AREAS OF COOPERATION

9-10 AUGUST 1995

Delegations from the Philippines and China met in Manila on 9-10 August 1995 for consideration on the South China Sea and on other areas of cooperation.

The consultations were held in an atmosphere of cordiality and in a frank and constructive manner.

The two sides reiterated the importance they attach to their bilateral relations. They recognize that the continued prosperity of their economies depends upon the peace and stability of the region. They reaffirmed their commitment to regional peace, stability, and cooperation.

Frank discussions on Meiji Reef (“Mischief Reef”) were held. The two sides expressed their respective positions on the matter. They agreed to hold further consultations in order to resolve their differences. On the South China Sea issues as a whole, they exchanged views on the legal and historical bases of their respective positions.

Pending the resolution of the dispute, the two sides agreed to abide by the following principles for a code of conduct on the area:

1. Territorial disputes between the two sides should not affect the normal development of their relations. Disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect.
2. Efforts must be undertaken to build confidence and trust between the two parties, to enhance an atmosphere of peace and stability in the region, and to refrain from using force or threat of force to resolve disputes.
3. In the spirit of expanding common ground and narrowing differences, a gradual and progressive process of cooperation shall be adopted with a view to eventually negotiating a settlement of the bilateral disputes.
4. The two sides agree to settle their bilateral disputes in accordance with the recognized principles of international law, including the UN Convention on the Law of the Sea.
5. Both sides shall keep an open-minded attitude on the constructive initiatives and proposals of regional states to pursue multilateral cooperation in the South China Sea at the appropriate time.

6. The two sides agree to promote cooperation in fields such as protection of the marine environment, safety of navigation, prevention of piracy, marine scientific research, disaster mitigation and control, search and rescue operations, meteorology, and maritime pollution control. They also agree that on some of the abovementioned issues, multilateral cooperation could eventually be conducted.
7. All parties concerned shall cooperate in the protection and conservation of the marine resources of the South China Sea.
8. Disputes shall be settled by the countries directly concerned without prejudice to the freedom of navigation in the South China Sea.

In order to push the process forward, the two sides agreed to hold discussions among experts on legal issues and sustainable economic cooperation in the South China Sea. They agreed further that experts from the two countries shall hold consultations at a mutually acceptable date in order to explore the possibilities of fisheries cooperation in the disputed area.

The two sides agreed on the importance of bilateral cooperative activities as useful in and of themselves, and as confidence building measures. They are dedicated to a pragmatic approach to cooperation.

In addition to the South China Sea issue, the two sides reviewed other fields of bilateral cooperation. They emphasized the usefulness of exchanging contact at various levels in strengthening cooperation. They noted the successful conclusion of the 18th Philippine-China Joint Trade Committee Meeting. They looked forward to concluding negotiations on the avoidance of double taxation and fiscal evasion. They noted the ratification by the Philippine side of the Bilateral Agreement on the Promotion and Mutual Protection of Investments.

The talks ended with both sides satisfied that some progress had been made in terms of substantially improving the atmosphere of relations and identifying and expanding areas of agreement by holding frank exchanges directly addressing contentious issues. They pledged to continue consultations in the same constructive spirit.

(Source: Foreign Affairs Quarterly Vol. 1 No. 1, Manila: Foreign Service Institute, Jan-Mar 1999)

APPENDIX 6

DECLARATION ON THE CONDUCT OF PARTIES IN THE SOUTH CHINA SEA PHNOM PENH, CAMBODIA

4 NOVEMBER 2002

The Governments of the Member States of ASEAN and the Government of the People's Republic of China,

REAFFIRMING their determination to consolidate and develop the friendship and cooperation existing between their people and governments with the view to promoting a 21st century-oriented partnership of good neighbourliness and mutual trust;

COGNIZANT of the need to promote a peaceful, friendly and harmonious environment in the South China Sea between ASEAN and China for the enhancement of peace, stability, economic growth and prosperity in the region;

COMMITTED to enhancing the principles and objectives of the 1997 Joint Statement of the Meeting of the Heads of State/Government of the Member States of ASEAN and President of the People's Republic of China;

DESIRING to enhance favourable conditions for a peaceful and durable solution of differences and disputes among countries concerned;

HEREBY DECLARE the following:

1. The Parties reaffirm their commitment to the purposes and principles of the Charter of the United Nations, the 1982 UN Convention on the Law of the Sea, the Treaty of Amity and Cooperation in Southeast Asia, the Five Principles of Peaceful Coexistence, and other universally recognized principles of international law which shall serve as the basic norms governing state-to-state relations;
2. The Parties are committed to exploring ways for building trust and confidence in accordance with the above-mentioned principles and on the basis of equality and mutual respect;
3. The Parties reaffirm their respect for and commitment to the freedom of navigation in and overflight above the South China Sea as provided for by the universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
4. The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea;
5. The Parties undertake to exercise self-restraint in the conduct of activities that would complicate or escalate disputes and affect peace and stability including, among others, refraining from action of inhabiting on the presently uninhabited islands, reefs, shoals, cays, and other features and to handle their differences in a constructive manner.

Pending the peaceful settlement of territorial and jurisdictional disputes, the Parties concerned undertake to intensify efforts to seek ways, in the spirit of cooperation and understanding, to build trust and confidence between and among them, including:

- a. holding dialogues and exchange of views as appropriate between their defense and military officials;
 - b. ensuring just and humane treatment of all persons who are either in danger or in distress;
 - c. notifying, on a voluntary basis, other Parties concerned of any impending joint/combined military exercise; and
 - d. exchanging, on a voluntary basis, relevant information.
6. Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following:
- a. marine environmental protection;
 - b. marine scientific research;
 - c. safety of navigation and communication at sea;
 - d. search and rescue operation; and
 - e. combating transnational crime, including but not limited to trafficking in illicit drugs, piracy and armed robbery at sea, and illegal traffic in arms.

The modalities, scope and locations, in respect of bilateral and multilateral cooperation should be agreed upon by the Parties concerned prior to their actual implementation.

7. The Parties concerned stand ready to continue their consultations and dialogues concerning relevant issues, through modalities to be agreed by them, including regular consultations on the observance of this Declaration, for the purpose of promoting good neighbourliness and transparency, establishing harmony, mutual understanding and cooperation, and facilitating peaceful resolution of disputes among them;
8. The Parties undertake to respect the provisions of this Declaration and take actions consistent therewith;
9. The Parties encourage other countries to respect the principles contained in this Declaration;
10. The Parties concerned reaffirm that the adoption of a code of conduct in the South China Sea would further promote peace and stability in the region and agree to work, on the basis of consensus, towards the eventual attainment of this objective.

Done on the Fourth Day of November in the Year Two Thousand and Two in Phnom Penh, the Kingdom of Cambodia.

(Sgd.) Mohamed Bolkiah
Minister of Foreign Affairs, Brunei Darussalam

(Sgd.) Hor Namhong
Senior Minister and Minister of Foreign Affairs and International
Cooperation, Kingdom of Cambodia

(Sgd.) Dr. Hassan Wirayuda
Minister of Foreign Affairs, Republic of Indonesia

(Sgd.) Somsavat Lengsavad
Deputy Prime Minister and Minister of Foreign Affairs, Lao
People's Democratic Republic

(Sgd.) Datuk Seri Syed Hamid Albar
Minister of Foreign Affairs, Malaysia

(Sgd.) Win Aung
Minister of Foreign Affairs, Union of Myanmar

(Sgd.) Blas F. Ople
Secretary of Foreign Affairs, Republic of the Philippines

(Sgd.) Prof. S. Jayakumar
Minister for Foreign Affairs, Republic of Singapore

(Sgd.) Dr. Surakiart Sathirathai
Minister of Foreign Affairs, Kingdom of Thailand

(Sgd.) Nguyen Dy Nien
Minister of Foreign Affairs, Socialist Republic of Viet Nam

(Sgd.) Wang Yi
Special Envoy and Vice Minister of Foreign Affairs, People's
Republic of China

(Source: <http://www.aseansec.org>)

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This monograph provides one of the most systematic and detailed accounts of Philippine foreign policy on the South China Sea dispute. It aims to deepen our understanding of the patient steps that the Philippines had gone through before eventually settling on the balance of power option. The author's comprehensive research and use of primary documents allowed him to pin down the argument in a most solid and persuasive way.

About the Author

Noel M. Novocio is a young Filipino diplomat who topped the Foreign Service Officer's Examinations of the Philippines in 2000. He holds a Master of Science in Strategic Studies from the Nanyang Technological University in Singapore as well as a Bachelor of Arts in Communication (Journalism) and a Master of Arts in Asian Studies, both from the University of the Philippines. He lives in Parañaque City, Philippines, with his wife Dorothy and son Jose Paolo.



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