

posal for bilateral talks – if only to find out whether in a joint development scheme with China we can get a reasonable share of the underwater resources in the contested areas compared to the offers by Western non-claimants.

Should the Philippines and China come to an agreement, they must jointly craft, without giving up sovereignty claims, along with countries that have overlapping claims an economic development program and environmental protection plan in the South China Sea, which could lead to a new era of economic growth and environmental protection in the region. All joint development and exploitation policies in the South China Sea should be developed within a fair and mutually acceptable framework that emphasizes mutual benefit, respect for political, civil and economic rights and commitments to peace and security in the region. Military intervention could be justified only in the most extreme circumstances, when the nation's fundamental security is at stake. Otherwise all claimants should pledge not to interfere with the internal affairs of the other claimants.

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Domestic Policies

The 2012 Scarborough Shoal Standoff: A Philippine Perspective¹

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1. Introduction

The most prominent of hopes pinned upon the 1982 United Nations Convention on the Law of the Sea (UNCLOS) was the desire for a common ground upon which to settle prospective competing claims to ocean resources, arising from the fear that the more technologically-advanced and militarily-powerful states would wield their great advantages to the detriment of those smaller and weaker than they. Since the negotiations for

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the Convention essentially took place within the superpower competition of the Cold War, many of the latter saw the ultimate wisdom of such an aspiration.

Thirty years since the passage of UNCLOS, the Convention has entered into force after being ratified or acceded to by the absolute majority of coastal states, while traditional politico-ideological rivalries have withered away. However, the prospect of domination and coercion seems to have become greater, not smaller, in the Southeast Asian region. The fact that all the littoral coastal states of Southeast Asia have ratified the Convention seems to have ultimately done very little to mitigate the possibility of conflict in the South China Sea (SCS), the arena of what is reputedly the most complex and intractable of all disputed maritime spaces.

As succinctly described in *The Diplomat Online*, the SCS represents “complicated issues of evolving international law, historic but ill-defined claims, a rush to grab declining fish stocks, and competition to tap oil and gas reserves” (Paal “Why”). This paper seeks to shed some light, from a Philippine perspective, on the most recent and arguably the most provocative, flare-up in the region; muse on its socio-cultural and political ramifications; and speculate upon the possible futures of the Convention in the Southeast Asian region.

2. First Decade of the Millennium: One Step Forward, Two Steps Back

2.1 *The 2002 Declaration on the Conduct of Parties in the SCS*

The signing of the 2002 Declaration on the Conduct of Parties in the South China Sea (*ASEAN Online*) between ASEAN member states and the People’s Republic of China was seen as an intermediate or stop-gap measure that would at least be a

stepping stone for a solution to the multi-faceted problem of competing claims in the SCS. It was the outcome of a long effort, spearheaded by the Philippines and with the support of Vietnam, as a result of the former’s experience with the establishment by China of three octagonal huts on Mischief (Panganiban) Reef in 1995 (Dzurek 3:65-71), which were reinforced into five-storey fortified artificial islands in 1999 (Joyner, qtd. in Singh, ed. 28: 53-110), and an attempt by China to put up an amateur radio station with foreign cohorts on Scarborough Shoal (Bajo de Masinloc) in 1997.

The declaration affirmed the intent of the parties to resolve their disputes peacefully (*ASEAN Online* 1,4) and engage in a range of confidence-building and cooperative activities that should form the foundation for future management of various aspects of the disputes (*ASEAN Online* 5) prior to a lasting settlement. Notably, however, the declaration is silent on two main and continuing ocean resource-use activities in the region: fishing, and petroleum exploration/development. In the absence of provisions, the signatory states impliedly permitted the status quo that each would be permitted to continue its respective fishing activities and exploration programs, all of which at the time had stayed within their respective coasts and adjacent exclusive economic zones (EEZ)/continental shelves.

2.2 *The 2005 Joint Marine Seismic Undertaking*

The deliberate exclusion of those two resource-use activities from the declaration of conduct (DOC) portended incidents that broke the *modus vivendi* some years later. In 2004, the Philippines suddenly entered into a bilateral Joint Seismic Marine Undertaking (JMSU) with China, to the surprise of the ASEAN member states, especially Vietnam, and quite contrary to the multilateral track that it had been pursuing and advocating. The

embarrassing move forced Manila and Beijing to belatedly admit Vietnam into the partnership and convert it into a trilateral undertaking a year later.

Although external observers hailed it as promoting diplomacy and cooperation in the region, in truth it was a diplomatic bombshell: there was no prior indication that any such negotiations were in the offing, and as Vietnam pointed out, the bilateral move on such a major and important issue contradicted the previous Philippine position on multilateralism.

After two years, the deal was thrust into controversy when its primary broker, then House Speaker Jose de Venecia, made public accusations of large-scale corruption against former President Gloria M. Arroyo and her official family. De Venecia alleged that major Chinese overseas development aid, particularly government infrastructure projects, as well as all soft loans extended to the Philippines, stood to benefit the President and her family personally with kick-backs (Malig "Wikileaks"). Allegations soon surfaced that such deals were tied to the JMSU, and the issue was subjected to Senate investigation ("Senate" *GMA News Online*).

Widely seen as a treasonous sell-out of Philippine territory, the JMSU was not renewed after its three-year duration lapsed in 2008, and the idea of maritime cooperation with China became irretrievably tainted with suspicions of corruption and treason (Bower 1.23: 1-5).

The imbroglio had one effect: a rise in nationalism that was decidedly anti-Chinese. The congressional reaction to the issue prompted the House Committee on Foreign Affairs to fast-track discussions on the proposed new Baselines Law, which had languished in obscurity since 1995. The low-key efforts by the National Mapping and Resource Information Authority to have a new baselines law passed, as part of their preparations for the filing of extended continental shelf claims, were hijacked by the JMSU issue and the insecurity it generated, fanned by erroneous

and imagined interpretations of the nature and impact of baselines.

House Bill 3216 passed second reading in December 2007, seeking to encompass the Kalayaan Island Group and Scarborough Shoal within a single system of archipelagic baselines, and effectively prevent any future negotiated settlement of the SCS issues. It would have extended the potential Philippine EEZ/continental shelf zones at least two-fold westward into the South China Sea. This could have further complicated the situation, but last-minute lobbying by more sanguine quarters at the Philippine Senate were able to inject a more conservative baseline system that was more open to diplomatic resolution.

As a result, Republic Act 9522 was promulgated into law in March 2009, optimizing the archipelagic baselines system of the Philippines, and leaving the maritime zones around the Kalayaan Island Group and Scarborough Shoal for future determination under the principles of Article 121 of the Convention.³

2.3 Submission of Extended Continental Shelf Claims

In the meantime, preparations for the submissions for the continental shelf beyond 200 nautical miles, or extended continental shelf (ECS), with the Commission on the Limits

³ Sec. 2 of RA 9522. This was meant to keep the doors open for a negotiated settlement, which would have been practically impossible had the archipelagic baselines been legislated to encompass all of the Kalayaan Islands and Scarborough Shoal into the main archipelago. The person primarily responsible for convincing the Senate to take a more reasonable stance was former solicitor-general Estelito Mendoza, one of the original members of the Philippine delegation to the UNCLOS negotiations in the 1970s. He prevailed upon senior colleagues in the Senate, particularly Senate President Juan Ponce Enrile, to be more cautious and deliberate in enacting the new legislation. However, the retreat from the "maximalist" position approved by the House was widely perceived as yet another sell-out to China (Malig "Wikileaks").

of the Continental Shelf (CLCS) in accordance with Art. 78 of the Convention were being undertaken by littoral states in view of the original deadline for such submissions on May 13, 2009.

The Philippines, finding itself with potential ECS areas in its western coast in the SCS and the eastern coast in the Pacific, decided to make a partial submission to the ECS in the Benham Rise Region east of Luzon on April 8 (“Partial” *Oceans & Law of the Sea Online*). The decision to make only a partial submission at the time recognized that it was important to open the door for cooperation in the SCS wherein the potential ECS areas of the littoral states would certainly overlap. The technical team that prepared the submission had ascertained that the southern portion of the SCS is especially concave in shape, and any ECS areas would definitely require maritime boundary delimitations between the adjacent littoral states of Vietnam, Malaysia, and Philippines. Previous to this, the idea of either a joint or coordinated submission with either Vietnam or Malaysia was seriously considered by the technical team, but for reasons of its own the Department of Foreign Affairs did not pursue this recommendation.

As it happened, on May 6, 2009, Vietnam and Malaysia filed a joint submission laying claim to a “defined area” of the southern part of the South China Sea roughly between their opposite coasts (“Joint” *Oceans & Law of the Sea Online*). Vietnam on May 7 also made a submission for a “north area” east of its northern coast and southeast of the Paracels (“Submission in Respect” *Oceans & Law of the Sea Online*).

It is significant to note that in making the ECS claims, both Vietnam and Malaysia took a conservative position with respect to the nature and ability of any islands or rocks in the SCS to generate the 200-meter EEZ/continental shelf; both countries practically disregarded all the maritime features and projected their EEZ/continental shelf zones from only their mainland coasts, even though it may have been possible for them to do otherwise.

However, China swiftly responded with a strongly-worded protest on May 7, circulating the note verbale not only within the CLCS but also among all the members of the United Nations. It declared the two submissions to have “seriously infringed on China’s sovereignty, sovereign rights, and jurisdiction in the South China Sea.” Included in the note was a copy of a map containing the so-called “nine-dash line” covering much of the South China Sea and encompassing not just the island groups within it but also most of the EEZ waters of the littoral coastal states, some as close as 20 nautical miles from the coast. It was the first time that the nine-dash lines were endorsed by the Chinese government in an official communique (“Notes dated May 7, 2009” *Commission on the Limits of the Continental Shelf Online*).

Vietnam responded strongly by declaring its submissions to be “legitimate undertakings in implementation of the obligations of states parties” to the Convention and describing the Chinese claim to sovereignty and jurisdiction as having “no legal, historical, or factual basis, therefore null and void” (“Note May 8, 2009” *Commission on the Limits of the Continental Shelf Online*). Malaysia echoed Vietnam’s assertion that the submission was a legitimate undertaking under the Convention, and added that China was previously informed of its position (“Note May 20, 2009” *Commission on the Limits of the Continental Shelf Online*).

Despite a contrary recommendation from the ECS technical team, the Philippines also very strongly protested the two submissions, asserting that they lay claim to “areas that are disputed” and “overlap with [those] of the Philippines,” going so far as to refer to its territorial claim to North Borneo. It requested the CLCS not to process the submissions “unless and until” the disputes have been settled (Communication Nos. 818 and 819 *Commission on the Limits of the Continental Shelf Online*).

Both Vietnam and Malaysia responded, reiterating substantially the same positions they took with respect to China. Malaysia,

however, also revealed that it and Vietnam had actually proposed a joint submission with the Philippines, and contested the statement of the Philippines regarding North Borneo as having “clearly no basis under international law” (“Note August 21, 2009” *Commission on the Limits of the Continental Shelf Online*). Oddly, the Philippines did not respond to the Chinese protest until two years later (“Communication No. 228” *Commission on the Limits of the Continental Shelf Online*).

Indonesia remained silent, despite the fact that the southernmost border of the Vietnam-Malaysian “defined area” was approximately 140 nautical miles from the Natuna Islands. The border, however, coincided with the Indonesia-Malaysia continental shelf boundary that was negotiated back in 1969 (“Continental” 1:1-7).

The filing of extended continental shelf claims implied a common ground, at least among three of the littoral ASEAN member states, of recognizing their respective 200 nautical mile EEZ/continental shelf boundaries in a way that leaves a high-seas area in the middle of the South China Sea.

Such a position is, in terms of technicalities in international law, that which can most accommodate mutual interests and represents a good starting point for negotiations. The significance of this development has largely been overlooked and instead overwhelmed by differences arising from the competing claims. Such differences were even amplified in the year that followed, as the states continued their respective long-standing offshore petroleum exploration programs.

2.4 Active Interference with EEZ/CS Resource Activities

The Philippines has historically always undertaken fishing and petroleum exploration activities in the South China Sea, within the 200 nautical mile EEZ/continental shelf originally declared

in the late 1970s (PD 1599 *The LAWPHIL Project Online*). Due to its location, sheltered from the Pacific by the country’s islands, the South China Sea has hosted most of the human settlements and resource activities of the archipelago, especially fishing, since prehistory.

Petroleum exploration in the country began just before the Americans acquired the archipelago from Spain, with the very first oil exploration well being drilled back in 1896. Despite being a laggard in petroleum exploration compared to Malaysia or Vietnam, by 2003, no less than 85 offshore exploration wells have already been drilled in the area of the South China Sea,⁴ preceded or followed by numerous seismic exploration cruises, under petroleum service contracts (“Petroleum” *Philippine Department of Energy Online*). Among these was GSEC-101, a geophysical and seismic exploration contract for Reed Bank that was granted in 2002, pre-dating the JMSU.

During the term of the JMSU, China reportedly sought the outright cancellation of GSEC-101. The Philippines refused to do so because it was a pre-existing contract that was being fulfilled by the contractor and for which there was no valid and legal cause for cancellation. In 2006, the contractor Forum Energy plc announced a major find of natural gas in the Sampaguita well, in quantities sufficient for full-scale development (“Profile” *Forum Energy plc Online*). After the lapse of the JMSU in 2008, concerns regarding plans for petroleum development west of Palawan heightened in light of Chinese Ambassador Liu Jianchao’s declaration that since China had claims over that part of the sea, “if something is done unilaterally by the Philippine side, it is a violation of the sovereignty of China” (“China” *Philippine Star*).

⁴ As of 2003, 58 wells had been drilled in northwest Palawan, 23 in southwest Palawan, and four in Reed Bank itself.

Philippine authorities were also on heightened alert for foreign fishing by Chinese and Vietnamese fishermen. Since 1995, there had been a marked increase in the number of incidents of illegal foreign fishing targeting threatened or endangered species like marine turtles, Napoleon Wrasse fish, dolphins, and sharks not only around Palawan Island, but even in Tubbataha Reef National Marine Park in the Sulu Sea. In one incident, 122 Chinese fishermen on four vessels were arrested by the Philippine Navy (PN) in Tubbataha Reef, later on released amid protests (Porcalla "DOJ").

The fact that the incursions were not limited to the outer periphery of the EEZ, but in the very heart of archipelagic waters, placed poaching very high in public awareness. For many years there had been multiple incidents of Chinese fishing vessels detained and fishermen arrested *in flagrante delicto* with rare, threatened, or endangered species like marine turtles, Napoleon Wrasse fish, sharks, and dolphins (Billings "Philippines"; Jimeno "Rape"; "200 sea turtles" *Wildlife Extra Online*).

The Philippine public, especially the residents of Palawan, have been very sensitive to such incidents especially due to relatively high environmental awareness, attributable to the diligence of environment non-government organizations acting on both national and local levels. The Philippines is also well-known internationally as a leader in experimenting with community-based and -driven coastal resource management and marine environmental protection.

Tensions flared in the summer of 2011, when Chinese vessels separately interfered with the operations of seismic exploration vessels of the Philippines and Vietnam. In March 2011, two Chinese Maritime Surveillance vessels interfered with a private vessel engaged by Forum Energy plc to undertake a follow-up seismic exploration survey in Reed Bank about 80 kilometers from the Philippine island of Palawan (Laude and Villanueva "Navy"). The Chinese vessels reportedly threatened to ram the Philippine vessel twice before turning away. The Philippine

armed forces sent two ships and an OV-10 aircraft to support the seismic vessel, but by the time they arrived the Chinese vessels had departed. The exploration resumed with the support of the PN and Philippine Coast Guard (PCG). The Philippines sent a diplomatic protest over the incident, which was brushed aside by the Chinese Embassy (Bordadora "PH").

The following May and June, on two separate occasions, Chinese fishing vessels escorted by government ships went further and actually cut the seismic cables trailing behind the Petro-Vietnam seismic vessel operating about 120 kms. from the Vietnamese coast ("Press" *Consulate General of Vietnam in Houston Online*; "Vietnam" *Reuters Online*; "Vietnam says" *Bloomberg Businessweek Online*). The possibility of similar incidents being repeated in Philippine waters gave much reason for the government to speed-up the acquisition of the Hamilton-class cutter from the United States in order to strengthen the Philippine Navy. There was also an increased sensitivity, and media exposure of, incidents of illegal fishing by foreign poachers.

In March, 2011, the PN caught six Chinese fishermen with 16 marine turtles, 10 of which had been gutted, off Balabac Island in Palawan; the Philippine government pledged to seek long jail terms for the arrested Chinese poachers (Solmerin "6 Chinese"; "General" *Philippine Daily Inquirer*). Two months later, the PN arrested 122 Vietnamese poachers on seven fishing vessels off Palawan; they reportedly hoisted Philippine flags in an attempt to avoid detection (Mallari "Navy").

Increased patrols led to the removal of Chinese markers from Reed Bank, Boxall Reef, and Douglas Bank, all within the Kalayaan Group of Islands, as local villagers whose settlements faced the South China Sea reported sightings of Chinese poachers (Orena-Drilon and Cheng "Navy"). The PCG likewise intensified its crackdown against illegal fishing, manning the fisheries patrol vessels of the Bureau of Fisheries and Aquatic

Resources (“PCG” *Journal Online*).

Despite its increased vigilance, the PN also demonstrated a remarkable diplomatic sensitivity. In October 2011, the Philippine patrol ship *BRP Rizal (PS-74)* collided with a Chinese fishing fleet “mother” ship towing 25 smaller boats in Recto Bank about 80 nautical miles from Palawan. The Chinese vessel, upon collision, immediately cut its tow line and left the boats behind. The PN immediately sent an apology through Chinese Embassy to explain that it was accidental due to a problem with the rudder and high waves (Laude “Navy”; “PH Navy” *ABS-CBN News Online*).

Unfortunately, days later the *Global Times* famously and ominously advocated, in reference to both the Philippines and Vietnam, that “[i]f these countries don’t want to change their ways with China, they will need to mentally prepare for the sound of cannons...[w]e need to be ready for that, as it may be the only way for disputes in the sea to be resolved,” adding that “no known method exists to solve these issues in a peaceful way” (“China” *Reuters Online*). These only strengthened perceptions in the Philippine public that China is slowly and deliberately building up to the use of force in the South China Sea.

Unlike in previous years, the Philippines has taken to publicly documenting and announcing the lodging of diplomatic protests in connection with these kinds of incidents. The year 2012 began with the Philippines sending diplomatic protests to China about sightings on December 11-12, 2011 of two Chinese vessels and People’s Liberation Army navy ships in the vicinity of Escoda (Sabina) Shoal in the West Philippine Sea, about 126 nautical miles from Palawan (“PH protests...” *ABS-CBN News Online*).

It was within this context of heightened awareness and vigilance that the PN announced plans for a modest upgrade of its fleet, beginning with the acquisition of a former U.S. Coast Guard Hamilton-class cutter at a price of approximately US\$13

million. The PN had suffered greatly through the years, having only 53 patrol ships in its inventory, of which only 25 were operational and with an average age of about 36 years. Its biggest vessel, the 94-m *BRP Rajah Humabon (PF-11)*, was a former Minesweeper Frigate that was also its second oldest at 66 years in age. The former USCG cutter would become its largest ship at 116m and 3,000 tons (Romero “Navy”).

However, it is useful to note that the PN missions for the Hamilton-class ship are not purely military: it is intended for drug interdiction, law enforcement, search and rescue, migrant interdiction, as well as defense readiness. It was also tasked specifically with protecting the country’s petroleum exploration projects off Palawan (Calica “Aquino”). This emphasized that the capability development of the PN was geared not toward war-fighting, but more toward protection of the country’s resources. The new vessel, renamed the *BRP Gregorio del Pilar*, arrived in Manila in August 2011. The PN also announced the acquisition of two more of the same type (Aben “More”). The foregoing account provides the context for the events of summer 2012, when tensions flared in Bajo de Masinloc (Scarborough Shoal).

3. The Bajo de Masinloc (Scarborough Shoal) Standoff

3.1 Background

Bajo de Masinloc (Scarborough Shoal) is a lone coral atoll located approximately 124 nautical miles west of Luzon (and 260 nautical miles northeast of the Kalayaan Island Group) on the apex of what appears to be a long-dormant underwater volcano.

A few rocks stick out of the water at high tide, which may qualify as either islands or rocks under Art. 121 of UNCLOS. As a place it

is known by many names: Panatag Shoal is its current operational designation by the Philippine Navy; Scarborough Reef (Shoal) is its historical and international name on all nautical charts; and it is also known as the Scarborough Seamount in scientific literature.

It received its name Scarborough from the British ship *H.M.S. Scarborough*, a tea ship that was wrecked there in 1784 (Huddart 454), prior to the time that the British East India Company conducted the very first systematic and accurate charting of the South China Sea in 1812.

3.2 *Bajo de Masinloc in Philippine History*

In the Philippines, its official/legal name Bajo de Masinloc (Sec. 2 RA 9522) was taken from its old Spanish name, *Isla Bajo de Masinloc*, which literally translates “low-lying island of Masinloc,” which, in old nautical usage, specifically refers to a reef or shoal visible just beneath the water. Early Spanish cartographers designated it *Panacot* (Serrano 171; De la Encarnacion 278),⁵ which, together with *Galit*⁶ to the north and *Lumbay*⁷ to the south, comprised one of three oceanic reefs west of Luzon and marked as navigational hazards for the galleons sailing into/from Manila and the Visayas.⁸

The three different names being of native origin, it is very likely that the Spaniards got them from the native population. It is entirely possible, though, that all three names actually referred to the same feature, given that until the invention and widespread use of the ship-based chronometer in the 1790s (Sobel 1-192),

⁵ For the Tagalog inhabitants of Luzon, this old native word means something used to frighten people, while for the seafaring Visayans, it refers to spices and condiments for food.

⁶ A Tagalog word, meaning “anger.”

⁷ A native Tagalog word, meaning “sadness.”

⁸ See the famous map *Carta Hydrographica y Chorographica de Las Islas Filipinas*, 1724 by Padre Murillo Velarde, and subsequent reproductions thereof.

mariners were really prone to making mistakes in reporting the location of maritime features, while cartographers had very little information with which to establish identity and locations with absolute certainty.

The shoal received the designation “I. Baxo de Masinlogo” from Spanish mariners and cartographers in the early 18th century, and subsequently assigned various homonyms by different cartographers. To describe the shoal as a “low-lying island of Masinloc” is an attribution of identity with the coastline of Masinloc, which, at the time, was the name of the closest settlement on the adjacent coast of Luzon. The existence of only Panacot or Bajo de Masinloc, as it was later called, and not the other two reefs, was confirmed by the Malaspina Expedition in 1792-93. Its English name Scarborough was adopted by the Spaniards in the late 19th century (Arrana 207-209).

Bajo de Masinloc should be considered to have been ceded to the U.S. by Spain not through the Treaty of Paris of 1898, but through the Treaty of Washington of 1900. The Treaty of Washington clarified in its sole article that all islands to which Spain may have “title or claim of title” at the time of the Treaty of Paris, even if outside the Treaty of Paris lines, were considered as having also been ceded as if they were inside the lines.⁹

Bajo de Masinloc is one of several features located outside the Treaty of Paris lines to the north and south of the archipelago, and was very prominently marked in the first official American

⁹ The full text of the sole article of the Treaty states: “Spain relinquishes to the United States all title and claim of title which she may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belong to the Philippine Archipelago, lying outside the lines described in Article III of the Treaty and particularly to the islands of Cagayan Sulo and Sibutu and their dependencies, and agrees that all such islands shall be comprehended in the cession of the Archipelago as fully as if they had been expressly included within those lines” (underscoring ours).

map of the Philippine Islands, issued in 1900 by the U.S. Bureau of Coast and Geodetic Surveys and based on the work of Fr. Jose Algue, SJ and Filipino draftsmen of the Manila Observatory (Quirino 75-77; Laya "Troubled").¹⁰

Subsequent maps of the Philippines in official American government publications of the time include a map of the Philippine Islands with Bajo de Masinloc, or its English name Scarborough Shoal, prominently indicated, without the Treaty of Paris lines.¹¹ It is included in official list of geographic names of islands and other features of the Philippine islands published by first Philippine Census in 1920 (595).

It is of course accepted that maps per se have limited value as proof of State jurisdiction or sovereignty. Thus, they must be considered in light of other facts that Bajo de Masinloc has been constantly under the direct administration and control of the Philippine government, primarily for the purposes of safety of navigation. It was, after all, a well-known shipwreck site since the 1700s, and indeed, the responsibility for surveillance of the reef and ensuring it was well-marked as a navigational hazard was placed squarely on the Philippines. All relevant nautical charts of the Philippines exhibit the discharge of that duty. International sailing directions and gazetteers published by other countries include Scarborough Reef/Shoal, as it was internationally known, prominently as a part of the Philippine coast.

The shoal's status as a hazard to navigation never changed, as it featured prominently in several more shipwrecks due to bad weather in the early days of shipping. During the American period, even the Philippine Supreme Court significantly bears witness to the fact that responsibility for incidents on the shoal lay exclusively with the Philippines; it is a background fact in

¹⁰ Notably, American maps of the period do not show the Treaty of Paris lines.

¹¹ See for example, Worcester 1-557; Merrill 1-300; Dickerson 1-322.

the incorporation of Anglo-American rules on salvage into Philippine maritime law jurisprudence (*Erlanger & Galinger vs. Swedish Asiatic The LAWPHIL Project Online*; *Oelwerke Teutonia vs. Erlanger & Galinger*, 1919).

The case arose out of the shipwreck of the Swedish ship *S.S. Nippon* on the shoal in 1913 after a typhoon; the USCG sent its cutter *Mindoro* and cables ship *Rizal* to undertake salvage work (*Report* 182), the governor-general of the Philippines directed the conduct of a marine investigation (EO 39, 1913), and the Bureau of Science even took the opportunity to undertake special scientific studies on the effects of spoilage of the cargo (Pratt 8A: 439-441).

Philippine acts of sovereignty were already well-established in the 1960s. For example, the shoal was subject to a full topographic and hydrographic survey by the Bureau of Coast and Geodetic Survey in 1961. It was sometimes used by smugglers as a base of operations, prompting the PN on two occasions to destroy a smugglers' wharf and warehouse on the shoal in 1968 ("Business View" 32.11: 564). Other acts included its use as an impact/gunnery range by Philippine and U.S. military forces (at least one of which took several days), with the ruins of Philippine structures serving as targets; and the construction and maintenance of the Scarborough Reef Light; such activities were properly notified to the international community through appropriate notices to mariners and nautical charts.¹²

The western boundary of the Philippine area of responsibility for purposes of meteorology and search and rescue notably turns in the vicinity of the shoal. Records of wrecks on the shoal were

¹² The installation and maintenance of the Scarborough Reef Light by the Philippines' Bureau of Coast and Geodetic Surveys, for example, is recorded in the internationally-published List of Lights of the UK Hydrographic Office and the U.S. Department of National Defense prior to 1997.

reported, updated, and maintained by the Philippines both under colonial rule and as an independent State. As late as last year, the PCG rescued fishermen stranded by a typhoon at the shoal (Laude “Mina”); such rescue by Philippine-based marine agencies is merely the latest in a very long record that stretches back a hundred years. Needless to say, the place has been a fishing ground within easy reach of the small- to medium-scale commercial fishermen of Zambales, who refer to it by its colloquial name “Karbuero” (Gonzaga “At ‘Karbuero”).

Throughout the time, all such acts were undertaken peacefully and without comment from any coastal state, including China. Thus, there can be absolutely no question that Bajo de Masinloc was within the functional jurisdiction of the Philippines as early as its colonial era, and was already part of it at its birth as an independent nation-State.

The exercise of administration and jurisdiction over the area, and the conduct of government activities, are equivalent to occupation, that was open, peaceful, public, and uninterrupted. It was not until 1997 when China began openly and publicly questioning Philippine sovereignty and jurisdiction over the area. China took advantage of the actions of a small band of private amateur radio operators who attempted to exploit the location of the Treaty of Paris lines by installing a radio station there.

The allegation that the Philippines only began claiming the shoal in 1997 is a complete myth; when then Foreign Affairs Secretary Domingo Siazon described the issue as a “new” manifestation of the South China Sea claims, he clearly meant that it was the very first time that China asserted a claim against the Philippines over the shoal (Zou 7.2:74; “Chinese Embassy” *PhilStar Online*; Zhong “China”; *Xinhua* “Chinese”). Prior to that time, and despite the nine-dash line map, China had never contested any of the previous acts of Philippine jurisdiction or sovereignty.

The implausibility of the Chinese claim is clearly indicated by internal inconsistencies in the widely publicized statements of the Chinese Embassy in Manila (“Chinese Embassy” *PhilStar Online*) and the various articles in the State-controlled media laying the basis for the Chinese claim (Zhong “China”).

In sum, the Chinese claim is based on having first discovered the feature, first named and incorporated it into its territory, and an allegedly unbroken exercise of jurisdiction since then. However, the first discovery is attributed to Chinese maps of the Yuan Dynasty established by Kublai Khan, a time when China was actually under the sovereignty of a foreign power, the Great Mongol Empire.

Chinese maps produced even later than the Yuan period, but based on Yuan maps, cannot possibly show the location of the shoal, because they do not even properly show the location of the largest Philippine islands like Luzon and Mindanao. Needless to say, neither can they bear the name Huangyan Island, a name which did not exist until 1983. Moreover, Chinese chronicles show that pre-colonial Filipinos had been in contact with China even earlier, since the Tang Dynasty in the seventh century; in fact, during the Yuan Dynasty, it was Chinese merchants who urged their government to make contact and trade with those “barbarian” peoples. Thus, the Chinese of that time knew very well that the islands of the Philippines were inhabited by coastal seafaring peoples; their early records even speak in fear of the frequent piratical and slave-raiding expeditions of the Visayans, reaching as far north as China’s Fujian coast.

The Visayans, the Iranun, and Balanggigi were the masters of the Southeast Asian seas, and their seafaring raids were feared across the region. The same Chinese records also speak of the lucrative trade in metals, weapons, musical instruments, and gold jewelry from as far southwest as Butuan, which was apparently the major regional port polity at the time, and once on the

outer periphery of the great Sri Vijayan Empire (Chau 159-161, 165-166; Abinales and Amoroso 34-39; Scott 21; Ocampo "Visayan")¹³. It was precisely because of the profitability of that trade that Chinese traders later during the Yuan Dynasty asked their government to send official trade missions to Southeast Asia.

Thus, if ever the Yuan Dynasty mariners came to the Philippines, or any of its parts, it was because they wanted to meet the pre-colonial Filipinos' ancestors who were already there. They were not journeys of discovery of hidden places, but purposeful voyages to trade with pre-existing lands and peoples.

As for being the first to map and name the shoal, it actually first appeared on modern Chinese maps only in January 1935 as one of the features officially listed by the government's Water Mapping Review Committee (Zou 71-72). But the first name given to the feature on a Chinese map was "Scarborough Shoal," the English name, and it was listed as part of the Nansha Qundao (Zhong "China"). This indicates that even the information about the shoal on this first Chinese map to actually show it was most likely only reproduced from the British charts (or copies thereof) (Hancox 84-120, 138-158);¹⁴ but even so, clearly there was official uncertainty as to its proper location and inclusion in the island groups within the South China Sea.

Even when the Chinese first gave the shoal a Chinese name in 1947, it was called Minzhu Jiao (Democracy Reef) and then made part of the Zhongsha Qundao (Zou 71). The nuance in naming is significant because it indicates that the shoal was known as a submerged feature, not an island, at the time. It was only in 1983,

¹³ Scott also cites the *Chu-Fan-Chi* and the *Tao I Chih Lueh* of Wang Ta-yuan.

¹⁴ Hancox and Prescott note that charts of the South China Sea issued by the hydrographic office of China up to as late as the 1950s were reproductions of British and Japanese hydrographic charts; it is quite possible that even the 1935 chart cited by China was merely a modified reproduction of British Admiralty charts.

not earlier, when the shoal was given the name Huangyan Island (Zou 71). It may be surmised that the change in name was the result of the field surveys reportedly carried out by the Chinese Academy of Sciences in 1977 and 1978 (*Xinhua* "Chinese"; Zou 74),¹⁵ and implies that it was only during that time that the Chinese government actually gained accurate information on the nature of the feature. The uncertainty of location and nomenclature makes it difficult to conceive of any purportedly unbroken exercise of any kind of Chinese jurisdiction.

This is in stark contrast to the historical consistency with which the shoal has been documented in the Philippines. Compared with the relatively higher certainty of Philippine records relevant to the shoal, not a few of which were written by disinterested entities prior to the 1990s, it is clear that prior to 1997, China could not have possibly exercised any form of effective jurisdiction over Bajo de Masinloc, while the Philippines actually did so continuously and with regularity. Chinese sovereignty or jurisdiction over Huangyan Island since ancient times is a complete myth.

3.3 *The Bajo de Masinloc Standoff, April-June 2012*

The unfortunate prelude to the "standoff" at Bajo de Masinloc, as the Philippine mass media came to refer to it, was a report about Chinese academics openly discussing the possibility of China waging "small wars" against Southeast Asian nations in order to recover territories in the South China Sea (Kastner "Small"). It was in this context that a week later, a routine PN surveillance patrol sighted eight Chinese fishing vessels inside the shoal on April 8, 2012. The *BRP Gregorio del Pilar* was already on its way back to Manila from the western Palawan region and

¹⁵ It is also noted that China did not send any expedition to the reef until the 1970s.

was directed to the shoal. The ship anchored outside the atoll and sent a boarding team on April 10 to inspect the fishing vessels; the team reported large amounts of harvested corals, giant clams, and live blacktip sharks, all protected species under Philippine fisheries laws and regulations as well as under international law (“Various marine”, “*Ibát ibang uri*” *GMA News Online*; David “Giant clams”, “Scarborough Shoal”, “Giant clams o taklobo”; “China” *GMA News Online*).

Before the PN could arrest the fishermen, two Chinese CMS ships identified as the 77-m *Zhongguo Haijian 75* and the 99-m *Zhonggou Haijian 84* arrived, sailed to the mouth of the shoal and prevented the arrest of the fishermen by blocking the entrance to the shoal (DFA-PIU “Philippines”; Pata “DFA”). A third unidentified ship arrived afterwards. In response to reports, the Chinese Embassy in Manila issued a statement accusing the Philippine warship of illegally entering Chinese waters, and “urged the Philippine side to stop immediately their illegal activities and leave the area” (“China” *GMA News Online*). It stated that Huangyan Island was “an integral part of the Chinese territory and the waters around is [are] traditional fishing areas [of] Chinese fishermen,” adding that “[ever since ancient times, numerous documents on the Chinese history have put down definitely in writing that Huangyan Island belongs to Chinese territory” (“China” *GMA News Online*).

The PN responded that they had authority to confiscate the illegal catch and to bring the ships to Manila, emphasizing that the PN had done that in the past (“Aquino” *GMA News Online*). President Aquino also ordered the military to follow its rules of engagement and ensure that no violence occurs at the Shoal; he reiterated that no one would benefit from any bloodshed and the government would work only for a diplomatic solution (“Aquino” *GMA News Online*). A PCG ship, the search and rescue vessel, *BRP Pampanga (SARV-006)*, was immediately sent to relieve the

BRP Gregorio del Pilar the next day (“Aquino” *GMA News Online*; Tima “*BRP Gregorio del Pilar*,” “*Barko*”; Calonzo “PHL’s”).

On April 12, the Department of Foreign Affairs announced that talks between the Philippines and China held “high hopes for a diplomatic solution” (DFA-PIU “DFA”) and that the situation was easing as of the following day because of information from the Chinese Embassy that one of the three Chinese ships had left the area and had only relieved one of the first two that arrived (DFA-PIU “1 of 3 Chinese”).

The DFA also understood that the new vessel was a fisheries enforcement vessel “that would look into the alleged violations of the Chinese fishing boats” (DFA-PIU “1 of 3 Chinese”). Three of the eight Chinese fishing boats had also left, and there was no attempt to detain the vessels and there was “freedom of ingress and egress” in the area (Tan “AFP”). The secretary said that the Philippines and China had agreed “to maintain the status quo and not to take any further provocative action in the area while negotiating a solution” (Tan “AFP”).

Meanwhile, Chinese Foreign Ministry spokesman Liu Weimin was quoted as having urged the Philippines “to work together with the Chinese side to appropriately address the confrontation off the coast of Huangyan Island,” but accused the Philippines of having “infringed upon China’s sovereignty and violated the consensus of maintaining the peace and stability of the South China Sea” (“Statement” April 14, 2012).

The following day, in the morning of April 14, Secretary of Foreign Affairs Albert F. del Rosario announced that all Chinese fishing vessels had left the lagoon, and the number of Chinese government vessels had been reduced to one. One Philippine vessel also remained (“AFP”, “With one ship” *GMA News Online*). He added that talks with Chinese Ambassador Ma Keqing had been trying to reach an agreement on an appropriate end to the situation, and that although the Chinese fishing vessels

had indeed departed, the inability to confiscate the harvest which was illegal under the Fisheries Code was “regrettable” (DFA-PIU “Statement” “AFP” *GMA News Online*). He acknowledged, however, that there was a stalemate as both he and the ambassador “had demanded of one another that the other nation’s ship be first to leave the area” (DFA-PIU “Statement”).

Later that day, however, the PCG reported that the number of Chinese vessels was back to two, and a Chinese aircraft conducted a fly-by near the PCG ship; the secretary said that “these developments deviated from the position the Chinese Ambassador Ma Keqing expressed [the previous day] (“Delicate” *GMA News Online*).” The Philippines did not find this move helpful in resolving the issue, and “would turn the tide” from a peaceful resolution (“DND” *GMA News Online*).

The following day, April 16, the *BRP Pampanga* was relieved by another search and rescue ship, *BRP EDSA (SARV-002)*. The situation was deemed to be “stable” so much so that “Filipino fishermen continued to go in and out of the area” (Calonzo “AFP”). Despite misgivings about the outcome, President Aquino stated that allowing the Chinese fishing vessels to leave, even though their catch could not be confiscated, was preferable to sending more vessels and forcing China to react with their own military, and that escalation would not serve the national interest (Legaspi “Pnoy”). He also explained that replacing the PN ship with the PCG vessel was proof of the Philippines’ intention to de-escalate the situation, and that it was exploring all diplomatic avenues (Legaspi “Pnoy”).

The President made his announcement at a press briefing on the start of previously-scheduled joint military exercises between the Philippine and U.S. armed forces on Palawan island. These land-based exercises involved humanitarian assistance and disaster preparedness, construction of classrooms and conduct of multiple medical, dental, veterinary and civic action missions,

cross-training and field training exercises to improve interoperability between the two organizations (“Delicate” *GMA News Online*). President Aquino insisted that these exercises were not related to the incident at the Shoal, and not intended to provoke China (Legaspi “Pnoy”).

On April 17, the secretary announced that “(i)n pursuing a peaceful settlement of the Scarborough Shoal issue, we fully intend to humbly invite our Chinese friends to join us in the International Tribunal on the Law of the Sea,” in order to “ascertain which of us has sovereign rights over the waters surrounding Scarborough Shoal where Chinese ships are currently engaging in illegal activities within the Philippine EEZ” (DFA-PIU. “Statement” April 17, 2012; Calonzo “PHL”; “Palace” *GMA News Online*). The Chinese Embassy in Manila issued a “Q&A” published in the newspapers stating its official position on the standoff (“Chinese Embassy” *PhilStar Online*). The next day, the DFA posted on its website a lengthy paper entitled “Philippine position on Bajo de Masinloc (Scarborough Shoal) and the waters within its vicinity” (DFA-PIU “Philippine position”).

As this happened, a Philippine-registered boat, the *M/Y Saranggani*, carrying French archaeologists and undertaking underwater archaeological research that began prior to the standoff was reportedly harassed by Chinese vessels and an aircraft near the shoal, prompting the filing of another diplomatic protest (“PHL files” *GMA News Online*). The Chinese Embassy responded by accusing the Philippines of conducting “illegal salvage archaeology” on an “ancient Chinese shipwreck on the shoal,” and saying that it “infringes on China’s right and violates relevant international conventions” (Calonzo “China”). It gave no specifics as to which wreck it was or its location. It added that the Chinese government should have been consulted before the archaeological research was permitted (Calonzo “China”). The

vessel had left the area on April 19 (“PHL” *GMA News Online*). China, on the other hand, sent its largest fisheries enforcement vessel, the 110-m *Yuzheng 310*, to take up station at the shoal with the *Zhongguo Haijian 71* and *84* (Kwok and Sinapit “China sends”).

China reportedly rejected the call to bring the issue before an international tribunal, which “underscored Beijing’s determination to protect its maritime interests in response to Manila’s refusal to withdraw ships from Chinese waters” (Calonzo “China refuses”; Zhang “Manila’s). However, at that time, the Philippines still maintained only one government vessel at the shoal (while the Chinese maintained two), and even advised Filipino fishermen not to venture into the area in the meantime in order to prevent any escalation of tension (“PHL execs” *GMA News Online*).

In the morning of April 20, the University of the Philippines website was hacked and defaced by pro-China hackers who posted a map of China’s nine-dashed line claim and indicated, “We come from China! Huangyan Island is Ours” (Bautista “UP”)! Three official government websites were also subjected to “denial of service” attacks by Chinese hackers asserting ownership of the contested shoal; the attacks on the government websites were actually traced to China (Mabasa “DFA”). Filipino hackers retaliated against several Chinese sites the following day (Castro “Pinoy”). The Philippine government called for an end to the cyber attacks on both sides (“Palace calls” *GMA News Online*). No similar position was reported for China.

As this happened, China’s *Liberation Army Daily* issued a commentary warning that Philippine and U.S. joint military exercises “reflected a mentality that will lead the South China Sea issue down a fork in the road towards military confrontation and resolution through armed force” (Buckley “Top”). At a media briefing on the joint Philippine and U.S. military exercises in

Palawan, the American commander stressed that there was no direct link between the exercises and the ongoing tensions, nor were such exercises directed at China (“U.S.” *GMA News Online*).

Six more Chinese vessels arrived at the shoal on April 22 (“DFA: *Pagdating*” *GMA News Online*). China’s *Global Times* ran a commentary stating that China “should be prepared to engage in a small-scale war at sea with the Philippines” (Frialde “Paper”; Avendalo “China”). On April 23, the 35-m PCG-BFAR surveillance and law enforcement vessel *MCS-3006* arrived to accompany the 56-m PCG search and rescue vessel *BRP Pampanga (SARV-003)* (Mabasa “DFA”).

According to President Aquino, this was to “show the flag” at the shoal (Legaspi and Calonzo “Aquino”); but he also stressed that China’s territorial claims spanned a huge area and were getting closer and closer to the Philippines; openly asking “how can [other countries in the region] not be fearful of what is transpiring” (“PHL warns” *GMA News Online*)?

Secretary Del Rosario echoed the fears by saying, “even if we are the only ones being targeted the bigger picture is anybody can be targeted....nations should be concerned” (Mabasa “DFA”). He also stated that the agreements made between the Philippines and China were not accurately conveyed to Beijing by the Chinese Embassy in Manila (Mabasa “DFA”). On April 24, the Chinese Embassy announced that China was doing its part to de-escalate the situation by withdrawing two of its vessels from the area two days previously, leaving only one ship for law enforcement purposes (“China” *GMA News Online*). However, the PN reported that the three vessels remained at the shoal (Tan “AFP”).

The following day, the Philippines sent a note verbale to China complaining that its embassy in Manila was “relaying inaccurate information about the negotiations to resolve the territorial standoff” and that the Philippines “allegedly broke an agreement on the pull-out of the fishing boats and ships (“PHL: Chinese

envoy” *GMA News Online*; Pasmaquel “Don’t lie”). It pointed out that dialogue between the two governments “must be based on complete trust and confidence” and called for an “accurate rendition of facts” because of its belief that “responsibility for resolving the issue rests not just with one party but with both parties (“PHL: Chinese envoy” *GMA News Online*).”

Del Rosario reported that two unidentified aircraft reportedly flew over the shoal on April 25, but that there was no escalation of the tension as both countries had two government vessels each in the area (DFA-PIU “DFA chief”). He added that there were six Chinese fishing vessels and two Filipino fishing boats inside the lagoon (DFA-PIU “DFA chief”). Despite meeting with the Chinese ambassador three times, however, the two sides were still in stalemate as to the appropriate resolution of the situation (DFA-PIU “DFA chief”).

It was also announced that the secretaries of Foreign Affairs and National Defense of the Philippines will meet with their counterparts in the U.S. at the end of April to discuss various issues, including the incident at Scarborough Shoal (Calonzo “PHL officials”). China, in an official ministry statement, immediately responded by warning the Philippines not to involve the U.S. in the ongoing standoff, saying that it will do no good to escalate the tension in the area (“China warns PHL” *GMA News Online*). The Chinese defense ministry was also quoted as saying that Chinese armed forces will work with fishery and maritime agencies to “jointly safeguard” its rights and interests (“China: Armed forces” *GMA News Online*).

On April 27, the DFA announced that it had formally invited China to join the Philippines in bringing the issue before an appropriate third-party adjudication body under international law (“PHL formally” *GMA News Online*). The same day, the Philippine and U.S. joint military exercises formally concluded, with the Defense secretary describing the activity as demonstrating

“our unequivocal resolve to support each other against the threats of external aggression and the enemies of freedom and liberty” (“PHL says” *GMA News Online*). Malacañang, however, rejected calls for a “permanent presence” of U.S. troops in the country (“Palace frowns” *GMA News Online*).

The following day, it was reported that a Chinese ship speeding at 20 knots veered dangerously close to two smaller Philippine vessels at the shoal; the DFA denounced the maneuvers as “bullying” and the most dangerous event since the standoff began (*Agence France Presse* “Philippines”). The DFA attempted to assure the people that it did have a plan to resolve the issue, citing three tracks (political, legal, and defense) to be pursued for peaceful settlement (Esplanada “DFA”).

The political track consisted of advocating the transformation of the West Philippine Sea into a zone of peace, freedom, friendship, and cooperation; the legal track in resorting to dispute settlement under the Law of the Sea Convention, and the defense track in improving national defense by building a minimum credible defense posture for protecting territorial sovereignty (Esplanada “DFA”). He cited the last track as necessary to complement Philippine diplomatic capacity (Esplanada “DFA”). He accused China of violating the ASEAN Declaration of Conduct and preventing Philippine law enforcement in its own EEZ (Esplanada “DFA”).

At the meeting of foreign and defense secretaries in the U.S., the Philippines appealed for help in building up the armed forces (Carmichael “Philippines”), although U.S. Secretary of State Hillary Clinton had stated that the U.S. will not take sides in the dispute over the shoal (Galvez “Clinton”). The joint statement that came out of the meeting did not directly address the issue (“Joint statement” *GMA News Online*). The DFA later announced, however, that the U.S. will nearly triple its military funding for the Philippines in 2012 (“U.S. triples” *GMA News*

Online), and agreed to provide the latter with satellite surveillance assistance, as well as assistance in establishing a “minimum credible defense posture” (“U.S. to provide” *GMA News Online*).

At this point, Taiwan chimed in through its foreign minister, who submitted a report to the Legislative Yuan, describing the Philippines’ claim to the shoal and deployment of vessels for law enforcement as “illegal” (Calonzo “Taiwan”). To this, the DFA responded that it was only more reason to bring the issue before an international tribunal (Calonzo “Taiwan”).

In the meantime, more Chinese vessels arrived at the shoal bringing the total number to 14, even as the Philippines maintained only two vessels (“AFP” *GMA News Online*). Philippine authorities could not prevent the incessant Chinese fishing activities, and could only document the destruction at the shoal in order to not escalate the tensions (“Palace: PHL” *GMA News Online*).

On May 8, Chinese Vice Foreign Minister Fu Ying announced that Beijing had “made preparations to respond to any escalation of the situation by the Philippine side,” as four Chinese surveillance ships and 10 fishing boats anchored in the shoal against the smaller PCG and BFAR ships anchored outside.

She accused the Philippines of “making serious mistakes and instead... stepping up efforts to escalate tensions” and about which the Chinese side found it “hard for us to be optimistic about the situation” (“China prepared” *GMA News Online*). The statement was incongruent with an official announcement from the DFA around the same time that the Philippines “was endeavoring to undertake a new diplomatic initiative which [it] hope[d] will help the situation” (“PHL working” *GMA News Online*), but the next day, Secretary Del Rosario assured the public that the U.S. declared it will honor the 1951 Mutual Defense Treaty if the Philippines comes under attack (“DFA: U.S.” *GMA News Online*).

Civil society groups, including a political party allied with

the President’s political adviser, decided to organize and hold a protest before the Chinese Embassy on May 11. Concurrent and similar protests were planned by Filipino expatriate communities abroad (“China warns citizens” *GMA News Online*). China warned its citizens in Manila to stay off the streets and take precautions against such protests. Chinese travel agencies suspended tourist packages to the Philippines and promised refunds to all customers (“Chinese” *GMA News Online*). The state media even warned of war (“China state” *GMA News Online*). On the eve of the anti-China protests, the state’s news agency posted pictures of a Chinese journalist planting China’s flag on the reef (“Chinese news” *GMA News Online*).

The protests actually did take place, calling for China to leave the shoal and to “stop bullying” the Philippines (“*Mga Pinoy*” *GMA News Online*). It was nowhere as serious as what the Chinese media cautioned its citizens about; in Manila, only about 200 protesters showed up in front of the Chinese Embassy (Mogato “China”). It was peaceful, and some Chinese-Filipino traders even joined (“Filipino-Chinese” *GMA News Online*).

Simultaneous protests were held by a small group of 75 Filipino-Americans in New York, which lasted only an hour (Lugay “Fil-Ams”). Yet, China accused the Philippines of escalating the dispute (Mogato “China”) and warned that it was “a false move for the Philippine side to incite the anti-China protest,” which may complicate the standoff (“China warns: Makati” *GMA News Online*). Malacañang immediately shook off the Chinese claim, stating that it was a private initiative by private citizens (“Palace shakes off” *GMA News Online*).

Meanwhile, at the shoal itself, Filipino fishermen on outrigger boats attempted to fish, but Chinese boats manned by rifle-brandishing crewmen surrounded them and intimidated them from fishing (“Pinoy” *GMA News Online*). News reports came in that China had refused to allow the entry of some 1,500

containers of bananas in connection with the standoff (“Palace sees”, “PHL eyes” *GMA News Online*).¹⁶ While the regulatory issue with the bananas began in March, China became extra strict in May (“PHL eyes” *GMA News Online*). Officials hinted at possible discriminatory treatment (“China’s new complaint” *GMA News Online*).¹⁷

On May 14, China announced a fishing ban in the South China Sea, including the area of the shoal, to begin May 16 until August 1 (“China imposes” *PhilStar Online*). The Philippines later announced its own fishing ban (“Philippines” *GMA News Online*). President Aquino viewed it as a positive development, concerned over PCG reports that the water quality in the shoal had already gone down due to much damage from activities therein, and expressed confidence that the standoff would be amicably resolved soon (“*Aquino tiwalang maaayos*” *GMA News Online*).

As the Chinese fishing ban officially began on May 16, China Southern Airlines, one of the three major air carriers of China, cut down its flights to the Philippines, citing shrinking numbers of Chinese tourists (“China air carrier” *GMA News Online*). The tourism department was unfazed by the pullout of the Chinese tourists but expressed confidence that the situation was only temporary (“Tourism” *GMA News Online*).

A U.S. submarine, the *USS North Carolina (SSN-777)* docked

¹⁶ These were downplayed by the government, which stated that the problems with the banana exports to China began two months before the incident at the shoal, and appeared to be a purely regulatory issue concerning some alleged pests in the produce. Still, a few days later, the government admitted that it was eyeing alternative markets for fruits if China kept blocking their entry.

¹⁷ Philippine agriculture executives expressed surprise about a new complaint about bugs in Philippine fruit exports which did not affect the same products in other countries.

at Subic Freeport to resupply and was immediately criticized by left-wing militants as possibly escalating the row (“Militants” *GMA News Online*). Malacañang was quick to state that the port call had nothing to do with the incident at the shoal, having been pre-arranged before the standoff began (Legaspi “Palace”). Amid developments, President Aquino reiterated his commitment to not give up any part of the Philippines but expressed readiness to share resources with other countries (“Pnoy” *GMA News Online*).

Then, a former rebel military officer, one of those who attempted *coup d’etats* against the government in the late 1980s, announced a plan to sail to the shoal in protest of China’s aggressive handling of the issue (“Ex-Marine” *GMA News Online*). China warned that “foreign violators” are included in the fishing ban (“China: ‘Foreign’ violators” *GMA News Online*). Former colleagues in the military, and later the President, persuaded the officer to abort his protest (“Pnoy stops” *GMA News Online*). After this was announced, China went on “high alert” in the area (“China goes” *GMA News Online*). It also urged the Philippines to “stop making irresponsible remarks and inciting radical behavior” but come back to the right track of a diplomatic solution” and to “send clear and consistent messages” on the matter (“China goes” *GMA News Online*).

On May 19, the press reported that 300 Chinese exchange students were disallowed from studying in Palawan State University, but Malacañang decided not to comment on the issue, citing the need to verify all alleged statements or actions first (“Palace going” *GMA News Online*). It also declined comment on reports that China was blaming the media for sensationalizing the standoff (“Palace going” *GMA News Online*). The government emphasized that the shoal was just one aspect of Philippines-China relations, and that “one part is not indicative of the whole” (“Palace going” *GMA News Online*). To ensure the easing of tensions, Malacañang also discouraged any

further “patriotic journeys,” and called for the people to instead support the government’s efforts toward a diplomatic solution (“No more” *GMA News Online*).

The U.S. then renewed a call for the crafting of a legally-binding code of conduct among the ASEAN nations and China on the occasion of the 25th ASEAN-U.S. Dialogue held in Manila on May 22 (“U.S. wants” *GMA News Online*). China responded with “firm opposition” to what it said was the Philippines’ effort to draw in third parties to the issue, citing reports that some countries (i.e. the U.S.) would help the Philippines’ establish a “minimum credible defense posture”, and saying such a move would escalate the issue and change its nature (“China frowns” *GMA News Online*). This was apparently in belated reference to the joint statement of the U.S. and Philippine foreign and defense secretaries the month before.

Meanwhile, it was revealed that despite the fishing ban, Chinese fishing activities and coral harvesting continued unabated on the shoal (“*Mga Tsino*” *GMA News Online*; Esplanada “DFA chief”); in fact, there were more vessels than before the ban (“DFA: China” *GMA News Online*). The PCG reported that there were five government vessels, 16 fishing boats, and 76 smaller boats, all Chinese, at the shoal (“BFAR” *GMA News Online*).

The government complained that “[t]he increase in the number of China’s vessels in the area imperils marine biodiversity in the shoal and threatens the marine ecosystem in the whole of the [West Philippine Sea]” (“DFA: China” *GMA News Online*) but acknowledged that there was not much it could do except to monitor the violations of the fishing ban by Chinese fishing vessels (“DFA: PHL” *GMA News Online*). The DFA called the actions “regrettable” for occurring at a time when China was calling for de-escalation of tensions, and deemed it a violation of the ASEAN-China Declaration of Conduct (DFA “Statement”). Beijing, however, insisted that Chinese fishermen were

complying with the fishing ban; incongruously, it even corrected the Philippine report by saying there were 20 fishing boats in the shoal, not 16 (“Beijing” *GMA News Online*).

Secretary Del Rosario, in a statement to the United Nations, suggested that mediation can bring a peaceful resolution to the issue, and said that the DFA was planning to bring it to the U.N. to determine which country had a rightful claim (“DFA: Mediation” *GMA News Online*). The Philippines placed its faith in international law to dispense justice equally among all, whether small nations or world powers (“DFA: Mediation” *GMA News Online*).

As this statement was made, China claimed that the Philippines’ “provocative actions” prompted it to increase its presence in the shoal, and demanded that the latter respect China’s territorial sovereignty and show sincerity in making serious diplomatic dialogues with China (“China to PHL” *GMA News Online*). It added that the incident was singularly caused by the Philippine warship’s “harassment” of Chinese fishermen, and that it was trying to resolve the standoff through diplomatic consultations (“China to PHL” *GMA News Online*).

Elsewhere, although it was reported that Chinese importation of Philippine bananas had resumed (“*Saging*” *GMA News Online*), stricter rules were then imposed on pineapples and papayas (“Banana” *GMA News Online*). The government, however, had decided to try to broaden its markets for the fruits, saying that the Chinese market comprised 30 percent (“Banana” *GMA News Online*) of its export market, and was the second largest market after Japan (“Palace exec” *GMA News Online*). It acknowledged, however, that it had moved on with respect to the issue of bananas as the entry of Philippine banana exports resumed in China (“*Tensyon*” *GMA News Online*).

Unknown to the public, on May 26, a dangerous game of chicken and cat-and-mouse occurred between the Chinese and

Philippine government vessels at the shoal, with the two largest Chinese patrol vessels and a Chinese helicopter badgering the smaller BFAR vessel; at one point, there was an apparent attempt to lure the BFAR vessel into a mooring line strung across the water. This incident was not reported in Philippine media until the following month.

By May 29, from a peak of 92, Chinese vessels had gone down in number to 35 (six government vessels, 12 fishing vessels, and 17 utility boats) (“DFA: Fewer” *GMA News Online*). The meeting of ASEAN defense ministers in Phnom Penh provided an opportunity for the Philippine defense minister to speak with his Chinese counterpart, and both agreed to show restraint over the standoff by toning down the rhetoric and finding a peaceful resolution to the spat (“Philippines, China”, “China urges” *GMA News Online*). This was followed by the confirmation of Philippine Ambassador to China Sonia Brady, who had previously held the position in 2006-2010 (“CA” *GMA News Online*).

The air between the two sides seemed to clear somewhat in the early days of June. At the Shangri-La Dialogue on June 2, U.S. Defense Secretary Leon Panetta formally announced that the U.S. naval fleet would re-deploy most of its ships to the Pacific by 2020 (“U.S. to shift” *GMA News Online*), a decision that China immediately described as “untimely” (“China says” *GMA News Online*). President Aquino met with United Kingdom Prime Minister David Cameron and U.S. President Barack Obama in consecutive visits in the first and second week of June. After the latter meeting, President Obama called for clear rules to resolve the maritime disputes in the South China Sea and throughout the Pacific (“After” *GMA News Online*). There was no information, however, on whether there was any agreement with the U.S. regarding the shoal (“Palace mum” *GMA News Online*).

In talks with the Philippines, China allegedly committed to remove its vessels from inside the shoal (Santos “China”), but as

of June 15, at least 26 Chinese vessels were still present (Reyes “China”). On June 16, President Aquino ordered the remaining Philippine vessels at the shoal to pull out due to the approach of a typhoon (“Aquino orders” *GMA News Online*), amid assurances that the Philippines was not giving up its territory (Reyes “PH”).

It was expected that the Chinese vessels would also pull out, in accordance with an agreement reached between the secretary of Foreign Affairs and the Chinese side (“Palace: China” *GMA News Online*). The Chinese Embassy announced that it was sending a vessel to provide assistance to pull Chinese fishing boats safely to shelter, while welcoming the pull-out of the Philippine ships (“China sends” *GMA News Online*). The Chinese Foreign Ministry also issued a similar statement, and added that Chinese fishing vessels were already heading back to port because of bad weather (“China urges restraints” *GMA News Online*).

Just a day after, however, China then stressed that its vessels would not leave the shoal (“China, *iginiit*” *GMA News Online*). The Chinese Ministry of Foreign Affairs then denied the existence of any agreement to pull out of the shoal completely in response to a Philippine pull-out (“*Tensyon*” *GMA News Online*). The Chinese Foreign Ministry spokesperson was quoted to have “wondered where the so-called commitment the Philippines mentioned on China’s withdrawal of vessels came from” (“Pull-out” *ABS-CBN News Online*).

This prompted the Defense secretary to call for re-deployment of Philippine vessels to the shoal (“PHL Defense chief”, “DFA: *Gobyerno*” *GMA News Online*), and the President was quoted at an ambush interview as ordering surveillance flights to check on the situation. The Chinese Embassy urged the Philippines to stop making remarks “that influence public opinion (“Stop” *GMA News Online*)” which Malacañang dismissed, citing that its statements and actions to date had been consistent with the policy of de-escalation (“Palace: No” *GMA News Online*).

The PN confirmed the absence of Chinese vessels inside the shoal on June 24 (Esplanada “China”), and their return into the lagoon two days later on June 26 (Esmaguel “Chinese”; Pazzibugan and Reyes “Chinese”). Noting the continued violation by China of its own fishing ban, the government, however, adhered to its policy of de-escalation (“China violating” *GMA News Online*), and did not re-deploy its own vessels (“Malacañang” *GMA News Online*). The government appeared to be at a loss with what to do with its own fishing ban, which was due to end July 15 (“Panatag”, “To fish” *GMA News Online*).

On June 25, the *Global Times* reported that China created “Sansha City” to administer the Xisha, Zhongsha, and Nansha Islands. This was protested by the Philippines in a diplomatic note, as a violation of Philippine territorial sovereignty over the Kalayaan Group of Islands and Bajo de Masinloc, as well as its EEZ/continental shelf rights in the West Philippine Sea (“PHL hands” *GMA News Online*). Subsequently, China announced that it would hold “combat-ready” patrols in the South China Sea (*Reuters* “China”).

On July 2, Chinese patrol ships reportedly undertook formation practice in the area of the Spratly Islands (“Chinese patrol ships” *GMA News Online*). President Aquino indicated that the government would consider requesting U.S. spy plane overflights to monitor activities in the South China Sea (“Pnoy wants” *GMA News Online*). This prompted China to again urge the Philippines to “stop making provocative comments” and “do more [to] help calm the situation and boost bilateral friendly cooperation” (“Stop provocation” *GMA News Online*).

The Chinese Foreign Ministry, however, added that the Chinese fishing vessels were using the shoal for shelter with the onset of the typhoon season (“Stop provocation” *GMA News Online*). The *People’s Daily*, however, took a more belligerent tone, accusing the Philippines of “sparing no effort to stir up

the South China Sea issue through all sorts of means” (“China paper” *GMA News Online*).

The President and Cabinet reportedly discussed and assessed the issue and all other aspects of Philippines-China relations on July 3 (Legaspi “PHL-China”). It was clarified that no decision had been made on requesting aerial surveillance by the U.S., and that it was merely one option for monitoring the national territory. The Cabinet noted that the Philippines had been “bending over in order to try to deescalate the situation” from the beginning, but to properly deescalate there was a need to monitor what was happening in the area (Legaspi “PHL-China”).

Responding to the *People’s Daily* report, the President urged the Chinese government to “balance their statements with the truth” (Legaspi “PNoy urges”). He pointed out that Philippine vessels pulled out of the shoal three weeks before, but Chinese vessels departed briefly and then returned and had not left (Legaspi “PNoy urges”).

On July 6, the government announced that it had made a decision on how to best handle the tension with China over the West Philippine Sea, but would no longer divulge any specific details (“PHL firms” *GMA News Online*). This did not prevent the Philippines from expressing its frustration, as in July 12 when Secretary Del Rosario was quoted at the ASEAN regional forum as saying, “[i]f Philippine sovereignty and jurisdiction can be denigrated by a powerful country through pressure, duplicity, intimidation and the threat of the use of force, the international community should be concerned about the behavior” (*Agence France-Presse* “Philippines slams”).

The secretary was not only referring to the incidents concerning fishing vessels, but also to China’s warnings for the Philippines to stop all oil exploration contract offers for areas in the West Philippine Sea (Santos “China bucks”). By August, only Chinese vessels remained on the shoal, and it was reported

that the entrance to the atoll had been “roped off” by means of a mooring line that could entangle ships’ propellers if they were to cross it (Kwok “Has China”).

As of November 2012, Philippine surveillance flights confirmed the presence of three Chinese vessels and the rope across the mouth of the shoal (Quismundo “Navy”). In the meantime, China announced that it would establish a garrison on Sansha City in the Paracels (*Xinhua* “China to”) and send its fishing fleet into the waters of the disputed Spratly Islands (“China fishing” *INQUIRER Online*). Philippine efforts to have the incident mentioned in the traditional ASEAN Joint Communiqué at the end of the ASEAN Summit in Phnom Penh ended badly with the failure to issue the statement amid accusations of Chinese direct influence on the Cambodian chair (“ASEAN” *The Daily Tribune Online*; Hunt “ASEAN”).

4. Commentary

The 200 nautical mile EEZ/continental shelf under the Law of the Sea Convention was supposed to represent the ultimate mutual compromise to balance various expansive maritime territorial claims with the needs and interests of other coastal and user states. The starting point of this balance is the fundamental principle that no state can place any part of the oceans under its sovereignty except as may be provided and accepted under international law.

This being so, beyond the 12 nautical mile territorial sea, no coastal State ought to be able to claim any sovereignty or jurisdictions greater than that provided for in the rules that have been expressly negotiated, agreed upon, and ratified by coastal states in the law of the sea. The de-legitimization of excessive claims was intended to promote an equitable sharing of the wealth of the oceans, and discourage the unfair appropriation of ocean space and resources by more powerful or technologically-

advanced coastal states, to the detriment of those less endowed.

Included in the system of allocation was the promotion of the idea of sharing and mutual cooperation on the basis of a common set of rules applicable to all. If the last 10 years is any indication, however, such underlying principles of the Law of the Sea Convention may remain a pipe dream for the South China Sea and the littoral states for whom it is a regional heritage.

5. Regional Impact of Unilateralism in EEZ/CS Activities

Unilateralism with respect to the EEZ/CS has been a distinct trend in the region for decades, especially with respect to the areas around the contested island groups. However, up until recently there had been remarkable restraint on the part of littoral states concerning the exercise of EEZ/CS rights. In the first place, while all claimant states declared 200m EEZ/CS zones, none had expressly declared and delineated EEZ/CS zones around any one, some, or all of the disputed Spratly Islands, and restrained themselves to projecting such zones only from their respective mainland coasts.

Likewise, their fishing and petroleum exploration activities were concentrated close to their respective coasts. Even China established only a partial baseline system and claimed the EEZ/CS projected from it, and deferred the projection of maritime zones from any of the island groups in the South China Sea. Up to the 1990s, these conservative positions at least established a de facto modus vivendi through which each of the littoral State were able to peaceably explore and develop their respective EEZ/CS areas.

Despite the occupation of maritime features, Vietnam and Malaysia were similarly self-restrained, and in fact later confirmed their conservative positions in their submissions to the CLCS. The

Philippines' eventual non-enclosure of both the Kalayaan Island Group and Bajo de Masinloc within its archipelagic baselines, also indicated a similar self-restraint despite initial Congressional urge to maximise the same. Republic Act 9522 was only the first step in a long, drawn-out process of complete conformity to the law of the sea, intended to address the imperative to conform with international law while leaving options open for eventual negotiated resolution of the South China Sea issues.

In this context, China's assertion of the "nine-dash line" claims in the protest against the Vietnamese and Malaysian extended continental shelf claims, and its insistence that non-Chinese resource activities within the area infringed on Chinese "sovereignty" specifically, backed up by actual intervention within the littoral states' coastal areas, represents a far more serious form of unilateralism in the region's recent history.

The doubtful status of the "nine-dash line" as an illegitimate sovereignty claim over extensive ocean space is well known regionally and internationally, and the principle behind it underlies all coastal states' ratification or accession to the law of the sea. Since all littoral states of the South China Sea have repeatedly and officially professed adherence to the law of the sea, express ratification of the Law of the Sea Convention followed with a policy of exceptionalism totally undermines the credibility of any coastal State in claiming legitimacy under international law.¹⁸

The expansionist response to conservative positioning with respect to EEZ/CS delineation also unfortunately demonstrated the correctness of the lessons of the prisoner's dilemma: coastal states that try to do "the right thing" only end up being pushed back. The Vietnamese and Malaysian ECS claims clearly limit

¹⁸ This argument is precisely among those that drove the Philippines to take legislative steps, albeit slowly and with great difficulty, toward harmonisation of its domestic legislation with international law.

full sovereignty zones to 12 nautical mile bands around islands and rocks, and leave the larger areas of the South China Sea under the EEZ/CS regime which, despite its "exclusive" label, is in law more open to joint utilization by bordering coastal states.

Articles 74 and 83 of the Law of the Sea constitute the best expression of this openness, obliging coastal states with opposite or adjacent EEZ/CS zones to "make every effort" to negotiate provisional arrangements pending final settlement of their disputes. The limitation of full sovereignty claims by all littoral states to only a "per-island or per-rock" basis would have provided the most room for negotiated agreements that could contribute to an eventual peaceful and final settlement of the various disputes over the long term.

However, China's assertion of full sovereignty through the "nine-dash-line" takes away this legal obligation and opportunity. Though understandable and predictable as a maximal decision in terms of the prisoner's dilemma, it sends the message that China cannot be expected to make any form of compromise that would also be of benefit to the littoral states, thus discouraging any and all prospects of meaningful bilateral engagement in peaceful negotiations.

Even though China insists that it is in favor of peaceful settlement of disputes, in light of its actions, none of the claimant states can be expected to give such statements much value. And in the end, it only tends to prove to the littoral states that unilateralism is their best option in the face of aggressive competition.

5.1 Twenty-first Century Gunboat Diplomacy and Naval Brinkmanship

China's usage of nominally-civilian maritime law enforcement vessels in asserting fisheries rights as well as sovereignty is

apparently intended to outwardly de-militarise the character of China's activities in the waters of other countries. Experience has shown, however, that this has not diminished the nature and character of the use of such vessels as essentially coercive instruments of coastal state power. Even worse, in asserting fisheries rights and sovereignty, such vessels have engaged in activities that are no less dangerous and provocative had they been undertaken by naval vessels in peacetime; and the only reason why their activities have thus far not been characterised as a threat or use of force is the technical absence of military-grade weapons and the fact that they are not expressly directed against the "territorial integrity or political independence" of any coastal state ("U.N. Charter Art. 2.4" *United Nations Online*). However, the U.N. Charter considers that a threat or use of force might also be undertaken "in any manner inconsistent with the purposes of the U.N.," which has yet to be adequately interpreted.

The coercive activities of the Chinese civilian fishery enforcement vessels and personnel, such as training guns on Indonesian maritime police vessels (Currie "Why"), cutting the seismic cables and threatening to ram Vietnamese and Philippine seismic survey vessels, intimidating fishermen without even any color of authority or legality, badgering and instigating chicken and cat-and-mouse games and attempting to lure Philippine vessels into a mooring line, all arguably fall short of the traditional technical definition of the threat or use of force.

These activities must be considered in the light of its exceptionalist unilateralism in asserting complete sovereignty over what should be EEZ/CS under the Law of the Sea, and apparent refusal to enter into meaningful talks with littoral states prior to taking such unilateral actions. Such actions may, in the near future, arguably be seen as inconsistent with the purpose of the U.N. Charter of "maintaining international peace and security" and constitute "breaches of the peace," and contradict

the development of "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples" ("U.N. Charter Art. 1.1, 1.2" *United Nations Online*).

It also runs counter to the purposes of the law of the sea that seek to settle "in a spirit of mutual understanding and co-operation" all issues relating to it, and to establish "a legal order for the seas and oceans which facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment ("Preamble 2nd, 5th Clauses" UNCLOS)."

5.2 *The Public Sphere in International Relations*

Events in the region have also demonstrated how the worldwide proliferation of information and communications technology, and the emergence of new media such as online publications, blogs, asynchronous communication boards, and social networking sites has expanded the public sphere tremendously, and definitely intruded into the formerly restricted sphere of public authority.¹⁹

In the Bajo de Masinloc standoff, developments spiralled rapidly: between the initial interference by two Chinese government vessels in the arrest of eight fishing vessels by one Philippine ship, and the initial reduction of ships to only two vessels each, only five days had passed, yet, the information on the situation at sea was changing and updating practically on an hourly (not only daily) basis. It was clear that both sides expected

¹⁹ For a more detailed explanation of the public sphere and the sphere of public authority, see Jürgen Habermas. *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society*. MIT Press, 1991. Print.

actions to follow words instantly, such that if they did not coincide by the next day, accusations of bad faith immediately flew.

On the other hand, the verbal tit-for-tat between the two sides occurred at least twice daily, such that news reports included both statement and counter-statement almost as soon as they were made, on the same day. Parallel to instances of quick responses were statements and responses with longer lag times, which sometimes tended to heighten tensions even more due simply to misinterpretation on account of timing.

Direct public participation and expression in the communication process was demonstrated in the independent organisation of protests by Philippine citizens in Manila and Philippine expatriates abroad, all facilitated by the sense of direct involvement mediated by the Internet. The undeclared “cyber war” of hacking incidents, on the assumption that it was similarly carried out by private individuals on China’s side, also manifest a willingness on the part of the citizenry to directly engage with counterparts on opposite sides of the South China Sea. And in the open asynchronous communication networks of cyberspace, Chinese and Philippine citizens were actually engaged in heated direct pedestrian debate that often exceeded the bounds of civility and polite conversation.

The impact of the expanded public sphere, mediated by new media, upon international relations in the region may be seen as introducing changes on two levels. The first is with respect to state-to-people relations; it is obvious that direct access to voices in civil society is having an impact on state decision-making.

One example is the solicitation of the Philippine government’s reaction to the nominally-unofficial opinion advocating limited war as expressed in Chinese newspapers. In turn, China’s “official” reaction to independent civilian protests, characterising them as Philippine-sponsored “escalation,” indicates direct

interaction with non-state sectors that disregards the traditional divide between official acts and acts of citizens. Subsequent warnings to the Philippine government to not “issue statements that influence public opinion” may have marked China’s belated realisation and sensitivity to the fact that public perceptions are based on direct appreciation of information facilitated by new media; as such, they could be harnessed by government for support, in ways that could not be addressed by conventional public relations.

The second level is with respect to people-to-people relations. Unfortunately, the Bajo de Masinloc standoff marks a deterioration of people-to-people relations, with Philippine citizens greatly losing trust and confidence in China (Social Weather Stations “Net trust”), and the Philippines being described as an “unfriendly” country by the Chinese media.

At a time when the region is experiencing major social, cultural and economic changes, a breakdown in perceptions at the levels of ordinary citizens is a serious obstacle to progress. It promotes racial stereotyping and discrimination, which is not a trivial matter in the region. The histories of the various Southeast Asian states are marked by the anti-Chinese racism of the colonial powers, which has been transmitted to a number of Southeast Asian peoples, and may now be encouraged by the manner in which China is perceived to act in the region.

In the Philippines, the Bajo de Masinloc standoff has definitely sparked off some racial prejudice against mainland China, evidence of which can be found in the discourses in the mass media and cyberspace.

It is not lost upon many academics that with respect to the public sphere, the situation in the Philippines is incomparable with that in mainland China. While the Philippine public sphere is characterised by complete openness and diversity, China’s public sphere is heavily regulated and dominated by the

Communist Party through state-controlled media.

It is well-known among Philippine academics that one of the reasons why the Philippines was “demonized” in the Chinese press is that it was collateral damage in the party’s attempt to distract domestic public attention from the Bo Xilai scandal and problematic leadership transition (Malig “China using”). War drums are a convenient means of shoring up national unity at a time when domestic political conditions could run into instability, and it is expected that China’s efforts to whip up nationalistic frenzy will not change until after the leadership transition in October 2012.

But it may be argued that the costs of regime survival have been great, and may ultimately prove counter-productive, as both regionally and internationally, it has traded China’s credibility as a benign regional and world power. For the Philippines, at least for now, there is little point in engaging directly with China on the South China Sea: it is perceived to take advantage of every opportunity whether fair or foul (including high-level corruption) to advance its interests, insists on bilateral diplomacy while demonstrating the extent of coercive powers, urges de-escalation while itself engaged in escalation, and speaks of peace while banging the drums of war.

Even for those who advocated more subtle and nuanced diplomacy at the height of the standoff, it was extremely difficult to convince decision- and policy-makers and the public to even consider alternatives. Most of the local security community and much of the general public is convinced that China fully intends to resolve the South China Sea issues by force, despite all its statements to the contrary and all efforts on the part of smaller states to establish a means to move toward eventual peaceful settlement.

China’s recent actions have only generated a severe and possibly irreparable loss of trust, and further persuaded many quarters of the inevitability of this outcome. Secretary Del Rosario’s public

frustration over China’s “pressure, duplicity, intimidation, and threat of the use of force” is indicative not only of the sentiments of the DFA, but also of the rest of the Philippine people.

5.3 A Withering of Law and Order at Sea?

China’s exclusionary and exclusive claim to practically the entire South China Sea contravenes the historical purpose of the Law of the Sea, of developing that principle that “the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind (“Preamble 7th Clause” UNCLOS). In the fact, the very nature and existence of the Law of the Sea, as a codification and progressive development of international law, to the end of “strengthening peace, security, co-operation and friendly relations among all nations in conformity with the principles of justice and equal rights” could be seen as intended to prevent the kind of unilateralism now taking place in the South China Sea (“Preamble 8th Clause” UNCLOS).

It is a unilateralism that springs from an illegitimate and deliberately ambiguous claim (the nine-dashed lines) employed to protect internationally illegitimate fishing activities (harvesting of rare, threatened, and endangered species), not to mention in total disregard of all other coastal state rights. It also tends to undermine international law itself by itself promoting self-serving mis-interpretations in response.

China’s public assertion of full sovereignty over all waters within the “nine-dash line” generates reactionary claims of full sovereignty over the EEZ/CS from other states. As a result, the term “exclusive economic zone” in the public sphere has come to be equated with full sovereignty, particularly whenever the term “sovereign rights” are mentioned without explanation of the subtle legal nuance for which the term was designed (“Article

56" UNCLOS).

Both citizenry and governments (in varying degrees) are confounded into perceiving the terms as synonymous, especially whenever any incidents involving ships of two sides occur within an EEZ/CS zone. Newton's third law, that every action creates an equal and opposite reaction, apparently applies to international relations just as well as to physics, especially in the aftermath of an unfavorable prisoner's dilemma.

It is indeed unfortunate that China and other littoral states continue to fail to arrive at an agreement, for various reasons, on the full application of the Law of the Sea Convention to the South China Sea. Beginning with a common conservative application of the maritime zones and consideration of the contested islands and features as distinct and independent territorial zones, much of the contested waters can then be brought under the EEZ/CS regime which does not only allocate exclusive rights to adjacent coastal states, but also guarantees other states' rights and duties, and establishes the necessary legal basis for provisional cooperation and eventual peaceful dispute settlement of pending maritime claims.

Articles 56.2 and 56.3, for example, establish the obligation on the part of all coastal and other states to give "due regard" to each other's rights and duties, while Art. 59 establishes equity and relevant interests as the basis for resolving conflicts over un-attributed rights and jurisdictions in the EEZ.

Article 73 provides the minimum standards for the conduct of fisheries law enforcement, which will remain one of the two main flashpoints for conflict in the near future, while Art. 74 establishes the obligations for delimitation of overlapping claims.

In a way, the inability of all the littoral states to take the necessary steps to establish the legal foundation for a peaceful solution represents a common and collective failure to abide by the very rules that they agreed to live by when they ratified or acceded to the Law of the Sea.

6. Conclusion: Historical Ironies

It is earnestly hoped that the pessimistic tone of the foregoing discussion will not actually characterise the South China Sea in the years to come. The trend in the events in the last decade does not bode well for the Southeast Asian littoral states, and little has been achieved to convince them otherwise of the direction of China's rise in the region. China's claim on the basis of ancient history will never be acceptable to any of the littoral states, because China's ancient history is tied up with the history of the entire region. Acceptance of a Chinese historical claim over the South China Sea is only one logical step shy of a similar historical claim to all the lands around it.

To accept that China was the "first" to discover the lands and seas of the region is also to deny the similarly ancient history of all Southeast Asian peoples, some of whom were definitely seafaring races long before China even developed the technology to travel far from their shores. Intuitively, acceptance of the "nine-dash line" corresponds to denial of the very identity and history of the ancestors of the Vietnamese, Filipinos, and Malays; it is practically a modern revival of ancient China's denigration of non-Chinese as "barbarians" not entitled to equal respect and dignity as peoples.

Analysts have noted that the more China pushes the "nine-dash line" claim to the extent that it intrudes very closely to the coastlines of the Southeast Asian states, the more such affected states will seek protection under the U.S. military umbrella and cooperate in the strategic containment of China.

In the case of the Philippines, this precisely happened after the Mischief Reef incident in 1995 and 1999, and it is happening again after Bajo de Ma'inloc in 2012. Every drop of confidence and trust in China translates into a corresponding rise in confidence and trust in other powers like the U.S., Japan, and

Australia (Social Weather Stations, May 2012). Such a situation, duplicated in the littoral states, signals the beginning of a new Cold War between the U.S. and China with Southeast Asia as the main battleground, but also playing out in other arenas such as regional and international trade.

What makes the situation very ironic is that historically, among all the Southeast Asian states it is the Philippines that has been most welcoming of Chinese migration. Chinese ethnic groups in the Philippines were fully integrated into Philippine society at an early stage in the nation-state's development; they also became most successful expatriate group within Philippine society as the Chinese mestizo class joined and commingled with the native principalia throughout the first few hundred years of the colonial existence.

Throughout the Spanish period, the Chinese mestizo class carried out the important function of establishing and maintaining the economic linkages between the port cities and scattered communities of the archipelago. This was something that the Spanish colonial overlords, whether the few Spanish settlers and government officials or the influential and corrupt religious orders never did. In the Philippines, China's immigrant population was successfully assimilated, unlike in some other Southeast Asian states where racial tensions with the native Malay population continued well into the modern period.

This deep-seated and underlying historical friendship is, in essence, feared to be repaid with the imminent denial of the Philippines' native heritage and the coercive taking of its marine resource-base.

The ultimate irony, however, is the inherent identity that China is creating in its rise to regional economic dominance and its eventual regional military supremacy. Clearly, it has used its "soft power" to establish relations of economic dependence or to create paramount interests in Chinese beneficence in order

to control or restrain the actions of regional states; it has also shown no compunctions against intervention through proxies to influence or interfere in regional dialogues. Together with the flexing of its paramilitary and economic might in the Bajo de Masinloc standoff, these signify China's coming of age into that which it most hates: a modern imperialist power.

On the part of the smaller littoral Southeast Asian states, these developments will give only more reasons to seek refuge and protection in modern international law. Philippine insistence on resorting to dispute settlement procedures under the UNCLOS, even if it might seem imprudent or ill-advised to some, are therefore entirely understandable as legitimate reactions in the face of the exercise of raw, unilateral, and unabashed power.

The viability of the EEZ/CS regimes in the South China Sea is directly challenged by the "nine-dash line" claim, and the very concept of international law, including the Law of the Sea, stands to lose meaning for the smaller and weaker states whom they were originally designed to protect.

If anything, the Bajo de Masinloc standoff has only demonstrated that might makes right in the South China Sea, and thus the only hope for an alternative lies in the fair and equitable application of commonly-accepted rules for the allocation of ocean space. In other words, the region's future truly depends on the full implementation of the Law of the Sea and a final arbitration or adjudication of the competing claims.

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