

The South China Sea : Back to the Future Through Cooperation

A paper by Mr. Alberto A. Encomienda

On the Occasion of the International Conference on The South China Sea: Toward a Region of Peace, Cooperation and Progress

Manila, 5 - 6 July 2011

I wish to thank the Foreign Service Institute of the Philippines and the Diplomatic Academy of Vietnam for inviting me to participate in this **International Conference on the South China Sea: Toward a Region of Peace, Cooperation and Progress**. I also appreciate the subject assigned to me on **Cooperation in the South China Sea** as this would represent, for myself, a career pilgrimage come full circle. I have come to believe that a durable solution to the South China Sea issues and concerns could be facilitated through **cooperation**, especially under **UNCLOS** as the **normative** cornerstone. The very essence of UNCLOS is cooperation and therefore obliged. Moreover, the UNCLOS specially calls for enhanced and **coordinated** governance cooperation in a marine geological configuration that is called **enclosed** or **semi-enclosed** seas. The South China Sea is a regional interconnected enclosed and semi-enclosed seas. It is the classic model as regards the marine geological configuration, and for implementation of UNCLOS prescriptions for maritime governance cooperation. In this setting, governance cooperation is focused on conserving and protecting the marine environment and biodiversity, but includes cooperative international efforts at establishing the safety, security and good order of maritime communication. This governance cooperation would involve States bordering such seas, and other interested States (and international organizations) upon invitation of the former. In other words, extra-regional States can participate as stakeholders. This is provided for under UNCLOS Part IX.

The current conflict situation in the South China Sea revolves around contending claims to ownership or sovereignty over islands and other marine geological features. There would, therefore, be no substitute for a neat settlement of sovereignty/sovereign rights issues. Indeed, at the moment, this is seen as the only avenue to achieving peace and stability in the critical conflict area of the South China Sea, the so-called Spratlys archipelago, which otherwise would be the exclusive economic zone and continental shelf of the

Philippines. However, time and events have demonstrated that for the Philippines at least, an archipelagic State bordered on three fronts by enclosed and semi-enclosed seas which are of geo-strategic importance, and a large archipelagic State as immediate southern neighbor, instituting cooperative region-wide governance mechanism for peace, security and good order in the regional sea cannot wait. The establishment of a regional cooperative maritime ocean governance mechanism cannot be hostaged to a settlement of sovereignty/sovereign rights issues. Such governance cooperation must be compellingly established under the umbrella of UNCLOS Part IX, while at the same time pursuing UNCLOS solutions to sovereignty/sovereign rights issues.

This paper attempts to give an insight to cooperation arrangements under UNCLOS, which is compelled by the geological and other natural characteristics of an enclosed and semi-enclosed sea, and a scientific underpinning that dictates holistic governance and management. The canvas and brushstrokes for an UNCLOS structural/institutional design for such cooperation is also herein conceptually organized. A strategic, critical role for the Philippines is always highlighted.

This presentation is the fourth policy paper in a series which I had the privilege to present in various Track 2 fora over the last two years espousing **cooperation** to pave the way for a durable solution, in whatever form or evolution that may eventually follow, in the current South China Sea conflict situation. Inevitably, some parts are lifted from previous papers in an effort to compose a coherent and consolidated **blueprint**.

Introduction: SEA OF TRANQUILITY . . . SEA OF CONFLICT

1. The South China Sea is an extremely important regional body of water especially in regard to navigational routes for regional and international vessel traffic, and fisheries resources. Since time immemorial, the South China Sea had been a sea of tranquility and never a scene of competition and conflict among the early civilizations surrounding it, nor in later intra-State interactions. There never was adversarial contention in this maritime region during the Shri-Vishayan (7th to 13th century) and Majapahit (13th to 16th century) empires to which the tribal communities that later formed the Filipino nation then belonged. This sea area remained undisturbed when the Yuan Dynasty of the 13th and 14th centuries spread its hegemony and suzerainties over Southeast Asia, and its seafaring ventures ranged beyond the region. Even

the far reaching sea expeditions of Admiral Zheng He, the mightiest exhibition and demonstration of naval power the world had seen up to that time, never seemed to have created a ripple of concern in the region. Maritime trading had been active in the entire length and breadth of the South China Sea since the early beginnings of seafaring which later saw the establishment of important arteries for the olden Silk Road, the Spice Route, the Galleon Trade and European age of discovery. Fisheries and other marine resources were shared and nourished and fed the entire population of this maritime region. The atmosphere of regional maritime peace and good order lasted until the period of the Second World War.

2. In the above maritime scenario, it is clear that not much significance were given to islands and islets in the South China Sea except perhaps for temporary sheltering by fishermen and haven for pirates. This may be attributed to the fact that the islands and islets are remote and inhospitable to support human habitation. Indeed, some claimant countries would base a claim to ownership or possession on, among other bases, “**discovery**”, asserting that those islands and islets were **terra nullius**. A certain claimant country would, in more recent times, justify the construction of what was originally a crude structure of light materials upon a reef, as a fishermen’s shelter that would later be shared with fishermen in distress from other countries. (The “shelter” is now a multi-storey concrete structure **straddling** a reef formation, heavily garrisoned and with radar and gun emplacements.)

3. In the meantime, the South China Sea, especially its northern half, had become a sea of conflict and contention and a looming flashpoint among riparian States and, even more recently, involving extra-regional Powers. In this contemporary history, the South China Sea issues seen in terms of ownership of islands and other marine geological features, are sought to be solved through the application of the modern international law of the sea, **UNCLOS**, the universally accepted Constitution of the Ocean. This is far easier said, however, as it is clearly apparent that, despite repeated calls for application of UNCLOS provisions on sovereignty/sovereign rights to resolve the issues, the conflict is attributable to varying auto-interpretation and application of UNCLOS provisions by claimant States. It can even be said that it is UNCLOS that brought the problems about. When efforts at codification of the international law of the sea began in the mid-1950’s, the South China Sea was not an existing concern. The definition of an **island** in UNCLOS Part VIII on the **Regime of Islands** became a core controversy in the South China Sea situation in the post-UNCLOS Conference aftermath. (The Philippines, for one, was solely

consumed during the three United Nations Conferences on the Law of the Sea with establishing the archipelagic regime and international acceptance thereof.) While the post-World War II regional geopolitical equation triggered a quick grab for marine geological features in the South China Sea among riparian States for reasons of national security, it is economic/commercial interest that later fueled the current on-going conflict. Whether these contending claims can be unraveled and settled under the **UNCLOS** provisions pertaining to sovereignty/sovereign rights, has become the intractable proposition.

4. It had always been regarded that the solution to the South China Sea disputes must start with a neat application and delineation of sovereignty and sovereign rights prescriptions under UNCLOS. However, it has been continually demonstrated that this has not been practicable in the critical “contested areas”, mainly for the following reasons:

- the contested area is a jumbled mix of islands and islets, and other marine geological features such as atolls, shoals, cays and rocks which otherwise are not capable of appropriation under international law
- there is no common acceptance of the characterization/classification of these differing marine geological features; it is not even clear whether the bigger formations can qualify in the technical UNCLOS definition of an **island** and further, whether these would be entitled to a territorial sea and exclusive economic zone, and if so, how much effect; and there are controversies on the application of UNCLOS provisions on baselines delineation
- a tangled mix of jurisdictional rights are being attached to these geological features by the claimants
- the confused bundle of bases or justification for the various claims of ownership over those marine geological features would not allow for the issues to be joined especially for the purpose of a recourse to judicial settlement or arbitration; attempting to sort out and define the justiciable issues would take forever

How the above intricately tangled cluster of issues can eventually be adjudicated and implemented under UNCLOS, even assuming that a judicial decision is arrived at that is acceptable to all concerned Parties, is the practical situation that would be confronting any outcome of a judicial settlement anticipatedly proceeding from a **rules-based** approach. (The current turmoil generated by the far simpler **Temple of Preah Vihear** case should be noted

and pondered in a far more complex three-way (possibly more) situation where there would likely be a varying mix of winners and losers or worse, one winner and several losers.)

5. In the foregoing scenario the possibility of arriving at a settlement of sovereignty/sovereign rights issues under UNCLOS would very likely be impossible. If implemented in good faith, the “**rules-based**” approach should be the only way to proceed. But the UNCLOS has been rendered dysfunctional as, as earlier indicated, it is being invoked to support rigid and differing national positions. Moreover, it would be extremely difficult for claimant countries to abandon or even compromise on their claims on account of the **sovereign** nature of such claims. It is also important to note that the motive element for the sovereignty/sovereign rights claims is not mere ownership of barren marine geological features but competition for the resources beneath. (Perhaps it can help establish better perspective if it is considered that the rules-based approach had not helped matters either in regard to disputed “islands” between China and Japan and the Republic of Korea and Japan.) While awaiting a peaceful resolution of the sovereignty disputes, however, other neglected security concerns must be addressed.

6. The South China Sea, particularly in the so-called “contested areas” faces another security concern, characterized as **non-traditional security** issues. This arises from its natural geological characteristic as an enclosed or semi-enclosed sea that compels maritime governance cooperation principally among riparian countries. This other security concern refers to ocean governance to sustainably conserve and preserve the marine environment, its fisheries resources and biodiversity. It also necessarily involves cooperation to ensure the safety, security and good order of navigation as these concerns, as with other human activities, impacts on the marine environment. Governance cooperation in this regard, while compelled under scientific paradigms on account of the geological configuration of the South China Sea as enclosed or semi-enclosed sea, is rendered infinitely more complex and critical because of criss-crossing strategic and commercial sealanes throughout the regional sea, the intense competition for fish and other marine resources, and military assertion activities of claimant countries in the contested area. The added impetus to implement maritime governance cooperation is the expectation that this necessary recourse could at the same time defuse and help alleviate or even ultimately resolve the conflict situation.

7. The clear and imperative order of the day is to bring the South China Sea regional maritime state of affairs ... **back to the future**; a rebuilding and continuation of early regional maritime culture and history through governance cooperation. Regional maritime peace must be reconstructed to set the stage for a collective regional **“peaceful rise”**. (China should contribute substantially towards this immediate goal, or the anticipated China-led Asian century would have an inauspicious entry with a troubled conflicted **front yard**.)

Contemporary Regional Geopolitical Equation

8. A regional geopolitical **tour d’ horizon** and situational assessments especially in the contested areas had been made earlier in this Conference that would lay the premises for a proposition toward implementing maritime governance cooperation. The troubled regional milieu does not project rosy future prospects . . . it is a clear continuing stalemate with a prognosis for further deterioration. At the moment, in the words of Professor Mark Valencia . . . **“fear is racing hope”**. The key players in the regional peace and development equation has been identified as **Asean-China**; they are responsible for the continuing stalemate and threats to peace and good order in the regional sea, or the locomotive for development and economic progress. Having said this, it is a hopeful sign that the Track 2 setting, as reflected in (Session 5) Topic 3 of this Conference, have seemingly graduated from what has come to be an exceedingly drawn-out and puerile discourse solely focused on supposed applicable international law to settle sovereignty/sovereign rights issues, or putative violations of international law in regard to activities of the claimants in the contested areas. After too long wallowing in legalese darkness on this aspect, perhaps it is time to light a candle for maritime governance cooperation, which is compelled under UNCLOS and therefore also **rules-based**. Instituting regional maritime governance cooperation, while not directly relevant to a rules-based settlement of sovereignty/sovereign rights issues, is nonetheless mandated under UNCLOS, as earlier emphasized, for enclosed or semi-enclosed seas. Such a marine geological configuration, to repeat, entails primary concern relating to the protection and conservation of the marine environment, its resources and biodiversity, but must essentially complementarily accompanied by cooperative arrangements for the security and good order of maritime communication. These are regional governance concerns that can only be effectively addressed through cooperation among

riparian States, with stakeholder participation of extra-regional Powers as **other interested States**, following the UNCLOS Part IX format.

9. It had always and for too long been regarded that settlement of the claims to sovereignty/sovereign rights jurisdictions in the conflict areas of the South China Sea is a **prejudicial question**, a **conditio sine qua non**, to any forward movement addressing regional maritime peace, security and prosperity. Somewhat later, almost as an afterthought, promoting **cooperation** increasingly became an attractive possibility in the nature of **“interim measures”**. A well-known early proposal along this tack was when then Chinese Premier Deng Xiao Peng proposed in 1996, a few times subsequently reiterated, for sovereignty issues to be “shelved” and for claimant countries to carry-on with **Joint Cooperation/Development**. This Conference clearly strikes the future direction for a parallel effort at pursuing **cooperation**, while at the same time working at addressing sovereignty/sovereign rights controversies. There is now a creeping realization that **cooperation**, whether normative under UNCLOS, or extra-UNCLOS such as joint cooperation/development, would be a constructive parallel undertaking while searching for a durable solution to the overall conflict situation. UNCLOS Part IX would be the appropriate starting point for such cooperation, and proceed with a holistic package of interrelated **cooperation** arrangements that hopefully could have positive impact in downplaying sovereignty/sovereign rights issues and help defuse current tensions in the so-called “contested areas”.

10. Parenthetically, an UNCLOS-mandated institutionalized **cooperation** in tandem with the pursuit of solutions to sovereignty/sovereign issues by whichever means of pacific settlement, would also be more constructive in alleviating tensions than pursuing a **Code of Conduct** among Parties to the dispute. Work on the Code of Conduct, later downgraded to a **Declaration of Conduct** so it would not be considered “compulsory” and expectedly gain easier acceptance, took over a decade. Specific implementation steps agreed upon in 2006 pursuant thereto, have yet to happen. And even before the Declaration can be said to have acquired any moral or persuasive force almost a decade after its adoption, there is now talk of a renewed attempt at constructing a **Code**. When this can finally be accomplished, it would be impossible to foretell. In the meantime, events are developing towards a “fait accompli” favoring a particular claimant State employing disturbingly aggressive means.

11. A recent and wider geopolitical concern relates to the geological/geographical character and configuration of the South China Sea as an enclosed and semi-enclosed sea **in a geo-strategic setting**. This time extra-regional Powers are directly involved. This has to do with recent assertions by extra-regional Powers in regard to what was originally referred to as “freedom of navigation” and now claimed as **“rights of access”** to . . . **“international commons”**. This added dimension to the South China Sea situation is said to be triggered by the so-called “spy plane incident” over exclusive economic zone near Hainan Island in 2000. The incident is attributed to have generated an **“AirSea”** battle strategy on the part of a superpower - antagonist as counter to what it perceives as an **anti-access** strategy of a regional superpower (Bateman 2011) engaged in a “non-confrontational assertion” of jurisdictional rights (Li Minjiang 2011). This is an altogether different issue, also involving varying interpretations of applicable international law (in this case the regime governing the exclusive economic zone or EEZ), which must not distract the focus on resolving the issues relating to the contested areas. This is not to say that this new controversy is irrelevant or unimportant to peace, security and good order in the South China Sea, but it is outside the purview of this Conference. Indeed, it is this added-on dispute to the South China Sea security situation that could well be the greater threat and flashpoint as the Parties directly involved have capacities to wreak a “nuclear cockpit” of the region, and truly “internationalizing” the flashpoint and the conflict.

[A superpower is reported to have offered “support” to the Philippines in regard to the claims controversy. If the offer of support could be channeled to assistance in regard to constructing regional maritime governance infrastructure under UNCLOS Articles 275 and 276, in relation to UNCLOS Annex 6, then this offer of support would be constructive. The superpower concerned and other interested extra-regional Powers can have a valid stakeholder participation under UNCLOS Part IX, with the proffered support to focus on the aspect of safety, security and good order of navigation. (In this regard, the IMO and IHO can also be involved under UNCLOS Part IX and other UNCLOS cooperative governance provisions.) This would be the answer to the (Secretary of State Hillary) Clinton doctrine enunciated in Hanoi in July 2010 for institutionalized solutions to the South China Sea issues and concerns under UNCLOS. If, however, the proffered support is of a politico-military character, there would be grave Constitutional and national policy dilemma for the Philippines, especially if the Mutual Defense Treaty is invoked by either side. If this kind of support is entertained, would enhanced military “presence” (read military bases in Philippines territory or intensified activity under the

domestically controversial Visiting Forces Agreement or VFA) not be far behind? If the Mutual Defense Treaty strategic alliance relationship can be **transmuted** into maritime governance cooperation under UNCLOS Part IX, UNCLOS Articles 275 and 276 and UNCLOS Annex 6, the “presence” in the region of the superpower concerned, or any **other interested States** for that matter, would be most welcome. The issue of **access** could be defined, subsumed and worked out in this aspect of regional governance cooperation.]

Cooperation among Regional Countries

12. As a general proposition, maritime cooperation among States bordering the South China Sea is nothing new. Since the birth of ASEAN, bilateral cooperation in maritime border patrol and security, and search and rescue, among such others, have been undertaken among member States and continues to be strengthened. Somewhat later, joint cooperation/development arrangements were instituted on a bilateral basis. These cooperative undertakings have a life of their own and are expected to continue to be further developed and enhanced. (In a wider regional scenario, China and Vietnam have an agreement on joint patrol.) Of concern in this Conference, however, is regionwide cooperation that could help defuse tensions in the South China Sea as a parallel course to the search for pacific settlement along traditional modes of conflict resolution which, as earlier implied, has long been . . . at sea, or worse . . . dead in the water. This paper is confined to this cooperation context; a two-pronged cooperation, in no way exhaustive in either case, is herein proposed that can and must be pursued in the immediate term:

- normative cooperation under **UNCLOS**
- extra-**UNCLOS** cooperation in regard to joint cooperation /development

[Joint cooperation/development is herein mentioned but will not be discussed. As a cooperative modality, however, its importance cannot be downplayed by the Philippines as its value is not only relevant to the Spratlys archipelago. With technology for deep-sea drilling now within easy reach, the Philippines should already seriously study and entertain prospects for joint cooperation/development for energy resources in its southern borders with Indonesia and Malaysia, and also in its northern border with Taiwan or China (indeed, the Spratlys situation is heating up because one claimant not only already possesses deep-sea drilling capability, but has announced its intention to soon commence such activity in deep waters in the South China Sea). Moreover, it is no idle conjecture that in less than ten (10) years, when China

celebrates the centenary of the Communist Party, the northern boundary of the Philippines would be China, not Taiwan (China already claims so even at this very moment). A focus by the Philippines on joint cooperation/development could therefore be preemptive of other possible conflict situations in the South China Sea.]

The intended geographical scope for cooperation would be the entire South China Sea as an enclosed or semi-enclosed sea but critically initiated in the so-called “contested areas” with contending sovereignty/sovereign rights claims i.e. the Spratlys archipelago. This is imperative as the cooperation arrangement is intended to help alleviate the conflict situation, and also because this critical maritime sector suffers the most from degradation of the marine environment and depletion of fisheries and other marine resources arising from the conflict situation.

Normative Cooperation under UNCLOS

13. A normative cooperation structure under **UNCLOS** relevant to the South China Sea would be under the following specific provisions:

- **UNCLOS Part IX** - Enclosed and Semi-Enclosed Seas
- **UNCLOS Part XII** - Protection and Preservation of the Marine Environment
- **UNCLOS Part XIII** - Marine Scientific Research
- **UNCLOS Part XIV** - Development and Transfer of Marine Technology
- **UNCLOS Annex 6** - Resolution on development of national marine science technology and ocean service infrastructures

The possibilities for governance cooperation under UNCLOS are limitless. The above areas of maritime governance cooperation are suggested as mere starting points and not an exhaustive catalogue of cooperation arrangements. They would provide the canvas and broad brushstrokes of a maritime governance structure/infrastructure under UNCLOS. Implementing cooperation with the abovementioned starting points is urgent in the “contested areas” and would serve as building blocks for region-wide capacity/institution-building promoted under UNCLOS as a general cooperation obligation among States, but specifically called for in the UNCLOS Part IX context.

14. The cooperation modality under **UNCLOS Part IX** is necessary and compelled in an ocean geographical/geological configuration called **enclosed or semi-enclosed seas**, defined below:

Article 122: Definition- For the purposes of this Convention, “enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

To understand and appreciate the mandatory and essential nature of cooperation in the setting of enclosed or semi-enclosed seas, attention is invited to UNCLOS Article 197 where, as a general principle, cooperation for the protection and preservation of the marine environment must be conducted **on a regional basis . . . “taking into account characteristic regional features”**. Among a few enclosed and semi-enclosed seas in the world, the classic layout for application of UNCLOS Part IX on a regional scale is the South China Sea. Moreover, cooperation under UNCLOS Article 123 may be undertaken through an appropriate **regional organization** for the purposes stated therein. (The Philippines, way back in 1996 and reiterated in 2003, made official representations with the IMO and lobbied for the creation of an IMO regional office located in the Philippines, for this purpose. Incidentally, the **“maritime heartland”** and **epicentre** for conservation and protection, and therefore the strategic center for maritime governance cooperation, is the Philippines.) To emphasize universal interest in promoting governance of an enclosed or semi-enclosed sea, States bordering such seas have an obligation to invite, where appropriate, **other interested States** and international organizations to participate in governance cooperation (UNCLOS Article 123 (d)). This would be a localized, regional situation that by international law (UNCLOS) is “internationalized”.

15. In an ocean geological configuration as defined above, UNCLOS Part IX prescribes the broad cooperation arrangement in the following manner:

Article 123: Cooperation of States bordering enclosed or semi-enclosed seas – States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their

rights and in the performance of their duties under this Convention. To this end they shall endeavor, directly or through an appropriate regional organization:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;**
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;**
- (c) to coordinate their scientific research policies and undertake, where appropriate joint programmes of scientific research in the area;**

Once again, UNCLOS is about cooperation in all aspects of ocean management and governance. In the case of enclosed or semi-enclosed seas, UNCLOS defines a special obligation among States bordering such seas to ... **coordinate** the management, conservation and exploitation of living resources; ... **coordinate** implementation of rights and duties for the protection and conservation of the marine environment; and ... **coordinate** scientific research and appropriate joint programmes of scientific research in the area. This emphasizes the necessary holistic approach to ocean governance of an enclosed and semi-enclosed sea and, for that matter, the connectivity of the ocean. Further, it underlines worldwide concern by imposing the obligation among riparian States to invite the participation of ... **other interested States** and international organizations (UNCLOS Article 123 (d) as cited above).

Specific Governance Cooperation under UNCLOS

16. As already noted, the specific areas of cooperation mentioned under UNCLOS Parts XII and XIII relates to the preservation and conservation of the marine environment and biodiversity and the promotion of marine scientific research. These would be the essential starting points for recovery of the marine environment and biodiversity in the contested areas which have suffered the gravest threat and degradation mainly due to the activities of claimant States and complete lack of governance management. The regionwide cooperation structure/infrastructure for the South China Sea as an enclosed or semi-enclosed sea would be under the umbrella of **UNCLOS Part IX**, while the

more specific parameters of cooperation would cover Parts XII, XIII, and XIV and other specified cooperation arrangements promoted elsewhere in UNCLOS. As stated earlier, the take-off point for maritime governance in the foregoing structure/infrastructure would be the contested areas wherein collaborative undertakings could be bilateral and/or multilateral as suggested in UNCLOS Part IX. In the multilateral aspect, UNCLOS Part IX could include, to reiterate for emphasis, ... **“other interested States”**, a clear reference to extra-regional stakeholder participation/ partnerships.

Cooperation for Capacity-building under UNCLOS

17. Another avenue of cooperation also prescribed under UNCLOS, complementary to those indicated in Parts IX, XII, XIII and XIV thereof relates to mutual assistance among States for capacity-building in maritime governance, scientific research, and institution-building and governance infrastructure. This separate but complementary cooperation structure mirrors a mutual-aid concept originally embodied in the United Nations Conference on Trade and Development (UNCTAD) and adapted into UNCLOS. In the ocean governance context, it relates to the economic/social aspect of the ocean in sustainable economic development that focuses on assistance to developing countries among themselves, or in the form of development assistance from developed countries to developing countries. This is a mutual assistance modality derived from the Technical Cooperation among Developing Countries (TCDC) under UNCTAD and imported into UNCLOS particularly at Articles 202, Article 244 (2), and Article 266 (2). The essence of this additional layer of cooperation arrangements is restated in UNCLOS Annex 6 exhorting that all countries must exert cooperative effort to promote the **“development of national marine science, technology and ocean service infrastructure”**. (This cooperation modality must be separately programmed and pursued by the Philippines and promoted regionwide as a matter of vital national interest as an archipelagic State bordered by enclosed and semi-enclosed seas. The Philippines earlier attempted to implement this mutual-aid cooperation under its own TCDC program as handled by the Technical Cooperation Council of the Philippines (TCCP) attached to the Department of Foreign Affairs. The Philippines could also initiate incorporation of this thrust into the Millennium Development Goals (MDG)).

A Transborder Marine Peace Park; other maritime cooperation building-blocks

18. Attempts at implementing and promoting UNCLOS Part IX cooperation in the South China Sea had been started bilaterally and multilaterally. The **Joint Oceanographic Marine Scientific Research Expedition (JOMSRE)**, a bilateral undertaking between Philippines and Vietnam, was in the process of expanding multilaterally with the participation of China and Laos, and in regard to the geographic scope of research coverage. The program was however aborted when it was scuttled by the Philippines for reasons not publicly known, during the third and final preparatory meeting in Nha Trang, Vietnam in 2008. Another attempt was the trilateral **Joint Marine Seismic Undertaking (JMSU)** involving China, Philippines and Vietnam which was a **Joint Cooperation/Development** project for the extraction of oil and gas resources in the contested areas of the South China Sea. The first phase, i.e. joint cooperation (exploration) was successfully completed with promising results but could not proceed, as agreed, to joint development supposedly due to domestic issues on the part of the Philippines. Both thrusts could still be revived. (Admittedly though, the aforementioned joint cooperation/development programs did not originate from a coherent/coordinated policy implementation of UNCLOS Part IX.) A third building block implementing UNCLOS Parts IX, XII, XIII and XIV in what would be a comprehensive and unified governance undertaking is the establishment of a **Marine Transborder Peace Park** in the contested areas. This is a joint proposal of the participating scientists at the **Colloquium** formally concluding the bilateral JOMSRE between Vietnam and Philippines and reflected in its published **Proceedings**. If implemented, this regional project would serve as the appropriate “launch activity” for UNCLOS Part IX cooperation in the South China Sea. (The Philippines, pursuing the spirit of UNCLOS Part IX, conducted **Exercise Luzon Sea** in 1996 as a marine scientific research cruise entirely within its territorial waters in the southwestern flank of Palawan Island, as the marine scientific research segment connecting to the JOMSRE exercises which is in the high seas. It was participated in by invited scientists from regional countries. The research outcomes are also published).

19. Other areas of regional cooperation in the South China Sea would relate to fisheries management. This is an area where some form of unilateral conservation measures are already taking place among riparian States and can and should easily be repackaged and promoted regionwide under UNCLOS Part

IX. An equally important and urgent area of maritime governance cooperation may be established as a separate structure of governance mechanism complementary to the protection of the marine environment, but also under UNCLOS Part IX. This would be in regard to maritime safety and security adverted to earlier. Extra-regional States should be interested stakeholders in the aforementioned maritime governance cooperation as **other interested States** inasmuch as the South China Sea is a strategic crossroads of Sea Lanes of Communications (SLOCs) for international commerce and navigation.

Conclusion/Prologue

20. It would be noted that a substantially lengthy early part of this paper (paragraphs 1-10) amounts to a negative proposition in regard to the continuing pursuit of the settlement of sovereignty issues under UNCLOS. This nevertheless serves as the lead argument to the main proposition that maritime governance cooperation must immediately be implemented and cannot be hostage to settlement of the sovereignty/sovereign rights issues. Indeed these urgent and pressing regional maritime governance requirements are also characterized as **non-traditional security issues** as mentioned earlier, a play on the usual treatment of security concerns in the South China Sea as being solely and directly associated with the conflict situation and sovereignty issues. UNCLOS provides the scientific/legal underpinnings for the regionwide governance architecture, but there is the immediate necessity to arrest and reverse the rapidly deteriorating neglected maritime environment in the contested areas which is largely due to the on-going unilateral assertion activities of claimant States.

21. The above proposition to implement regional cooperation in ocean governance could be said to skirt the core issue of conflicting/overlapping sovereignty claims that makes the South China Sea a regional flashpoint, rather than directly addressing it. The problem, however, is that in the almost four decades of contention and search for solutions invoking the application of general international law and UNCLOS, not a single of the accompanying bundle of jurisdictional issues have been resolved today. During all this time, no significant progress has been achieved in pursuing solutions to maritime jurisdictional issues applying UNCLOS. It may be time to break out of “the box” and consider simultaneously addressing another South China Sea security concern which, under UNCLOS, is peculiarly demanded and essential to enclosed and semi-enclosed seas. This maritime governance cooperation thrust

can serve to ease tensions and create a regional **détente** and favorable atmosphere for pursuing an eventual durable solution.

22. A strong argument for implementing maritime governance cooperation that could serve as a soft complement to conflict resolution is that a durable and comprehensive solution could evolve in the region in much the same manner that the **European Coal and Steel Community (ECSC)** did in Europe. In this regard, the economic aspect and incentive is not at all missing in the South China Sea equation. The intense competition for energy (oil, after all, is the modern-day **coal**) and fishery resources are present to serve as motive factor. This is not to suggest for the ECSC to be a template or conceptual model for the South China Sea. The reference is only meant to inject some awareness that out of constructive modest beginnings could develop or evolve durable solutions. This is not an original thought, it is adapted from a conceptual suggestion in an article by Mr. Tommy Koh (“E.Asia can learn from EU”, **The Straits Times**, 10 July 1998) relating to another aspect of regional cooperation. And in aspiring for this regional “castle of everybody’s dream”, quoted herein for its wisdom and relevance, especially in a drafting formulation which cannot be improved upon, is the concluding paragraph of an article by Gareth Evans, former Minister of Foreign Affairs of Australia, entitled “What Asia Needs is a Europe-Style CSCA” appearing in the 27 July 1990 issue of the **International Herald Tribune**, as follows: **“It is too early to map in detail what might evolve. What matters for the moment is that the process of dialogue, both bilateral and regional, be assiduously pursued. Efforts should be constant to make all the individual strands of the web both denser and more resilient, so that sooner or later a base will emerge on which more systematic security can be built”**. This should be the regional mantra for the South China Sea, building towards institutionalized maritime governance cooperation under UNCLOS, that hopefully could evolve towards a durable solution to the conflict, and even perhaps contributing to greater integration for Southeast Asia.

23. Finally, in the ECSC setting, Luxembourg is said to have played the role of the **“school where the Six learned to work together”**. This is a role which the Philippines, in the regional geo-strategic setting as the front-line State in the South China Sea conflict situation and most vulnerable to adverse economic, social, and environmental impacts that could arise therefrom, or threats or damage related to peacetime exploitation of resources or shipping, would be most appropriate to undertake. In the same context, the Philippines can also establish and consolidate a leadership role in regional ocean governance to

serve its own vital national interests by working to establish a strong **national marine and technological research centre**. This national institution must be designed and projected to be the South China Sea regional marine scientific and technological research centre (see UNCLOS Articles 275 and 276) and promote the regional marine policy envisioned in UNCLOS Part IX and Annex 6.

* * * * *