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The Sino-Philippine South China Sea Dispute¹

Shelton Woods*

ABSTRACT

On January 23, 2013 the Philippines alerted the international community that it had initiated a case against China in to help resolve the dispute regarding China's continuing move into the South China Sea. The body set to hear the case against China is the United Nations Convention on the Law of the Sea (UNCLOS). China's response was presented in a scathing 93-point rebuke of the Philippines. China claims that the Philippines has not followed proper channels in trying to resolve territorial disputes, and China remains willing to discuss this at a bilateral level. For their part, Philippine officials claim that China is bullying its way into hegemonic control of the South China Sea. This paper presents a contextual understanding of the current situation with an eye toward history as a way through this potential geopolitical crisis. Based on precedent in the area and in world history, I argue in this paper that the Philippine government's reliance on the UNCLOS to arbitrate with China in the South China Sea is a gamble that will result in greater harm than good for the region. The limited options in how to respond to China should recalibrate how the Philippines should diplomatically move forward with China.

Keywords: Philippines, UNCLOS, Nine Dash Line, ASEAN, Arbitration

I. INTRODUCTION

It seems a bit strange that the Philippines would pick a fight with China. Yet that is exactly how China and other observers view the Philippines' Sino-policies over the past two years.² Tensions between China and the Philippines escalated to the point that in July 2015 diplomatic sources indicated that China's President Xi Jinping may boycott the November 18, 19 APEC

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1 This article is taken from the reviewed and edited paper that was delivered at the 23rd Annual Conference on Taiwan Studies, October 3, 2015

2 Julian Ku, "The Philippines' Massive Lawfare Blunder in the South China Sea", *National Interest* 14 December 2014, available at <<http://nationalinterest.org/feature/the-philippines-massive-lawfare-blunder-the-south-china-sea-11837>>.

meeting due to who was hosting the meeting – it met in Manila.³ This would have been the first time in APEC's 26-year history that a leader from one of the 21 represented economies abstained from participating due to animus toward the host country.⁴ Animus is not too strong a term to use as on June 3, 2015 Philippine President Benigno Aquino compared China's actions in the South China Sea (SCS) to Nazi Germany's actions leading up to World War II, implicitly likening President Xi to Adolph Hitler. Vitriolic comments characterized China's responses to President Aquino's sentiments.⁵ President Aquino made these statements during a visit to Japan—his sixth visit within five years to China's East Asian rival. The genesis for the now-public quarrel between the Philippines and China occurred on January 22, 2013 when the Philippines issued a Notification and Statement of Claim against China to the United Nations Convention on the Law of the Sea (UNCLOS). The reported 4,000-page subsequent memorial included numerous Philippine complaints that China's actions in the SCS violate international law. The UNCLOS chose to convene a hearing on this matter, appointing a five-person tribunal to review the Philippine complaint against China. For its part, China has refused to participate in arbitration, though that has not stopped the UNCLOS from moving forward with the proceedings.⁶

This article argues that the Philippines' decision to take China to an international court is misguided and an affront to signed accords and unspoken agreements between the two countries. Following this brief introduction, an overview of Philippine-China historical relations provides a context for the current crisis. Next, the Philippine case against China is juxtaposed with China's public position paper on the Philippine complaint. This background, along with the case study of Japan's past actions in the SCS, are the bases for an argument against the Philippine decision for arbitration. This article concludes with a review of the Philippines' options in the SCS.

II. A BRIEF HISTORY OF PHILIPPINE-CHINA RELATIONS

China's aggressive action in the SCS helps to explain President Aquino's recent overtures to the United States and Japan. The hope is that these multi-lateral relations will serve as a deterrent to China's aggression. What is a bit paradoxical in President Aquino's foreign policy decisions is that between China, Japan, and the United States, only two of those countries have invaded and caused unspeakable horror to Filipinos. The 1899-1902 Philippine-American War and Japan's invasion and subsequent occupation of the Philippines during World War II caused more human loss than anything China has ever done to the Filipinos.⁷

The Philippines was a long-time colony of Spain (1571-1898). However, following the 1898 Spanish-American war, the United States bought the

3 "Xi Jinping May Not Participate in this Year's Apec Summit", *China Times*, 17 July 2015.

4 David Stout, "Philippine President Slams Beijing for Acting like Nazis in the South China Sea", *Time*, 3 June 2015, available at <<http://time.com/3906811/philippines-china-nazi-germany/>>.

5 "Aquino Shows a Lack of Sense or Sensibility", *China Daily*, 5 June 2015, available at <http://usa.chinadaily.com.cn/epaper/2015-06/05/content_20921845.htm>.

6 Jay Batongbacal, "Arbitration 101: Philippines v. China", 21 January 2015, *Asia Maritime Transparency Initiative*, available at <<http://amti.csis.org/arbitration-101-philippines-v-china/>>.

7 Brian McAllister Linn, *The Philippine War, 1899-1902* (Lawrence: University Press of Kansas, 2000); José G. Reyes, tr. by José García Insua, *Terrorism and Redemption: Japanese Atrocities in the Philippines* (Manila: Consumer Press, 1947).

Southeast Asian archipelago for 20 million dollars. America remained its colonial mother until 1942 when Japan invaded and occupied the Philippines.

After receiving independence in 1946, the Philippines was still economically and militarily dominated by the US as numerous American bases, including the large air force base of Clark Field and the strategic naval base of Subic Bay, assisted the US to maintain its paramount military power in Asia during the Cold War.⁸ While these bases were active, the United States was the second-leading employer in the Philippines.

Suffering from what some call “a colonial hangover,” nationalist fervor in the post-Ferdinand Marcos era led the Philippine legislature to order that all US bases close by the end of 1992.⁹ While relations between the two countries remain cordial, there is a deep conviction by many that America’s tenure and influence in the Philippines were rooted in both overt and cloaked racist assumptions and actions.¹⁰

Historians note that the main reason Spain, the US, and Japan occupied the Philippines had everything to do with geography. Spain sought a base close to Indonesia’s Spice Islands and a station from which to trade with China. At the end of the nineteenth century, influential American politicians warmed to Alfred Mahan’s thesis of naval primacy and the Philippines provided an ideal spot for America’s expanding empire and navy.¹¹ Japan was likewise motivated by its need for open sea lanes to import oil from the Dutch East Indies. These three colonial mothers promised that Filipinos would benefit from foreign presence and rule; nonetheless, these foreign powers were party to widespread abuse on the local population. China, on the other hand, which is closer geographically to the Philippines than these three previous Philippine occupiers, has never sought to colonize the islands.

Trade between China and the Philippines dates back several millennia as insular Southeast Asia’s early history is defined by trade and navigational expertise of Malay sailors.¹² The presence and importance of Chinese in the Philippines dramatically increased after Spain established its rule on the islands.¹³ The famous Manila Galleon trade between the New World and the Philippines centered on the exchange of America’s silver for Chinese goods.¹⁴ Thousands of Chinese moved to Manila and served as brokers for Chinese finished products; the Spanish eventually allowed the Chinese to dominate Manila’s economy. To be sure, resentment toward the Chinese

8 William E Berry, *U.S. Bases in the Philippines: The Evolution of the Special Relationship* (Boulder: Westview Press, 1989); Catherine Lutz and Cynthia Enloe, *The Bases of Empire: The Global Struggle against US Military Posts* (New York: NYU Press, 2009).

9 Rolando Gripaldo, “Filipino Philosophy: A Western Tradition in an Easter Setting” in Rolando M. Gripaldo (ed.) *The Making of a Filipino Philosopher and other Essays* (Manila: National Book Store, 2009).

10 Paul A. Kramer, *The Blood of Government: Race, Empire, the United States, & the Philippines* (Chapel Hill: University of North Carolina Press, 2006); Vincent L. Rafael, *White Love and Other Events in Filipino History* (Durham: Duke University Press, 2000).

11 Warren Zimmermann, *First Great Triumph: How Five Americans made their Country a World Power* (New York: Farrar, Straus and Giroux, 2002).

12 Keith Weller Taylor, “The Early Kingdoms” in *The Cambridge History of Southeast Asia: From Early Times to C. 1500* ed. Nicholas Tarling (Cambridge: Cambridge University Press, 1992); Kenneth R. Hall, *A History of Early Southeast Asia Maritime Trade and Societal Development, 100-1500* (Lanham: Rowman & Littlefield, 2010); M.C. Ricklefs, et. al., *A New History of Southeast Asia* (New York: Palgrave Macmillan, 2010).

13 Jonathan D. Spence, *The Search for Modern China* (New York: Norton, 1990).

14 Benito Legarda, “Two and a Half Centuries of the Galleon Trade”, *Philippine Studies* vol. 3, no. 4 (1955): 345-372.

community in the Philippines grew as its economic and social networks expanded, and there were several brutal massacres of Chinese carried out by combined Spanish and Filipino forces.¹⁵ Still, the Chinese found their way not only into economic prominence but also into social importance. Elite Filipino families allowed their daughters to marry prominent local Chinese merchants and their mestizo offspring were often the most highly educated and culturally sophisticated among the indigenous peoples.¹⁶ Many of the wealthiest Filipinos in the twenty-first century are part Chinese.¹⁷ Yet, as noted further below, China never sought to conquer all of the Philippines—unlike the actions of Spain, the US, and Japan.

Of course, the past does not guarantee the future. China may change its 5,000-year pattern of not seeking conquests across oceans. More likely, however, if there is a pattern that will continue with China it is its identity as the Middle Kingdom to which peripheral states owe deference and respect. It is this very historical identity that the Chinese refer to when they speak of their country's national sovereignty. For the Chinese, those two words—national sovereignty—are packed with historical memory of regional dominance. The Philippines obviously does not accept this regional paradigm and has taken its case public via the courts at The Hague.

III. THE PHILIPPINE V. CHINA UNCLOS CASE

On January 22, 2013 the People's Republic of China (PRC) embassy in Manila received a 43-point Notification and Statement of Claim that was concomitantly submitted to the UNCLOS. This international organization assists in establishing boundaries and use of resources for states that border oceans and seas. UNCLOS was established in 1982, and the Philippines and China signed on as UNCLOS adherents in 1984 and 2006 respectively. Article 279 invites parties to submit arbitration requests if disputes lie within the UNCLOS's purview and the parties have already sought to negotiate a settlement between themselves. A brief and general summary of the Philippine complaint against China is provided in the four bulleted points below:

- The Philippines is not asking UNCLOS to determine which country owns the disputed territory that both parties claim.
- China has ignored and violated the internationally-sanctioned rules of the 200 nautical mile Exclusive Economic Zone to which each country is entitled. In fact, China has claimed sovereignty over reefs and waters that are 870 nautical miles from land belonging to the People's Republic of China (rather than following the internationally accepted 200 mile limit).
- China's blatant disregard for its neighbors and international law is evidenced in the so-called nine-dash line map submitted by China to the United Nations on May 7, 2009. According to this map, 80 percent of the South China Sea, including areas less than 50 miles from the Philippines, belongs to China.
- Finally, China has bullied the Philippines, reneged on mutual agreements to withdraw from specific areas of dispute, and continues to claim islets for itself that do not even qualify as habitable.¹⁸

15 Edgar Wickberg, *The Chinese in Philippine Life, 1850-1898* (Quezon: Ateneo University Press, 1965).

16 Edgar Wickbert, "The Chinese Mestizo in Philippine History", *Journal of Southeast Asian History* vol. 5, no. 1 (1964): 62-100.

17 *Forbes*, "2015 Philippines' 50 Richest", available at <<http://www.forbes.com/philippines-billionaires/list/#tab:overall>>.

18 Government of the Philippines, "Notification and Statement of Claim of the Philippines in the West Philippine Sea", 30 January 2013, available at <<http://www.chicagopc.com/pr02-13.pdf>>.

Embedded in the Philippines' case against China are numerous specific examples that are fleshed out in the lengthy follow-up memorial submitted to the UNCLOS on March 30, 2014.

Though China exercised its prerogative to not participate in the UNCLOS proceedings, it did release a position paper on December 7, 2014 in which it outlined the reasons why the Philippine case lacked merit. The tone of China's unofficial response is more strident than the initial complaint submitted by the Philippines. Some of the more poignant points made in China's response include the following:

- The very essence of the Philippine case is about who owns the disputed territory. That dispute is beyond the purview of the UNCLOS.
- The Philippines is haggling over a few disputed territories rather than discussing the overall matter of China's SCS policy. To fixate on just a few areas of dispute rather than the much larger issue is counterproductive.
- China claims indisputable sovereignty over territory inside its nine-dash line SCS map. It is not the role of the UNCLOS to determine whether or not China has a right to this SCS region.
- In connection with the above, China and the Philippines have a long-standing agreement to resolve this dispute through friendly and respectful dialogue. Numerous examples regarding this include:
 - An August 10, 1995 joint statement noted that both sides agree that "...disputes shall be settled in a peaceful and friendly manner through consultations on the basis of equality and mutual respect."
 - A March 23, 1999 joint statement of the China-Philippines Expert Group meeting notes, "...the understanding to continue to work for a settlement of their difference through friendly consultations [and that] the two sides believe that the channels of consultations between China and the Philippines are unobstructed. They have agreed that the dispute should be peacefully settled through consultation."
 - A joint statement on May 16, 2000 where both parties agreed to pursue peaceful negotiations regarding SCS territory.
 - The April 4, 2001 joint statement where "The two sides noted that the bilateral consultation mechanism to explore ways of cooperation in the South China Sea has been effective."
 - The November 4, 2002 Declaration on the Conduct (DOC) of parties in the South China Sea between the Association of Southeast Asian Nations (ASEAN) and the PRC that included the statement, "The Parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means. . .through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law, including the 1982 UN Convention on the Law of the Sea."
 - On September 3, 2004 during Philippine President Gloria Macapagal-Arroyo's state visit to China a joint press statement included the following: "[The PRC and the Philippines agree] that the early and vigorous implementation of the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea will pave the way for the transformation of the South China Sea into an area of cooperation."
 - During Philippine President Benigno S. Aquino's August 30 to September 3, 2011 state visit to China, a joint statement reaffirmed the DOC's agreement for peaceful negotiation of SCS disputes.
- Perhaps more importantly for the current crisis is that the arbitration document includes an assertion that the PRC and the Philippines have been trying to negotiate an understanding regarding disputed SCS borders and territories. This is not true. As China notes, "But the truth is that the two countries have never engaged in negotiations with regard to the subject-matter of the [UNCLOS] arbitration." In China's opinion, while both parties agreed to approach the matter in a friendly and peaceful manner, real talks on substantive issues have yet to take place. Furthermore, China has actually sought to establish a "China-Philippines regular consultation mechanism on maritime issues. To date, there has never been any response from the Philippines."

- Finally, China has made it clear that it will not abide by the UNCLOS conclusions regarding the SCS dispute:

On 25 August 2006, China deposited, pursuant to Article 298 of the Convention, with Secretary-General of the United Nations a written declaration, stating that, "The Government of the People's Republic of China does not accept any of the procedures provided for in section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a), (b) and (c) of Article 298 of the Convention." In other words, as regards [to] disputes concerning maritime delimitation, historic bays or titles, military and law enforcement activities, and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, the Chinese Government does not accept any of the compulsory dispute settlement procedures laid down in section 2 of Part XV of the Convention, including compulsory arbitration. China firmly believes that the most effective means for settlement of maritime disputes between China and its neighboring States is that of friendly consultations and negotiations between the sovereign States directly concerned.¹⁹

Philippine officials responded to China's position paper by claiming that China has bullied its way into waters and land that are under Philippine jurisdiction. Furthermore, when the Philippines and China make agreements, such as an agreement to withdraw from Scarborough Shoal, China reneges on its agreement and returns in force.²⁰ Filipino leaders asked: How do you negotiate with an entity that disregards basic international norms? How do you talk to someone who says that ancient maps along with a 1948 map presented to the UN affirms that the SCS belongs to China and all negotiations must begin with that presupposition? Finally, in the midst of so-called peaceful talks, China continues to blatantly strengthen its position in the SCS. For example, China's massive building campaign on Fiery Cross Reef now includes the largest landing strip in the SCS and the only one that allows for the landing of four types of aircraft: cargo, surveillance, fighter, and bombers. This 3,000 meter landing strip is substantially longer than the next largest SCS airstrip of Malaysia's 1,368 meter strip on Shallow Reef.²¹

The Philippines, for various reasons, however, should tread lightly in this situation. In terms of military might, the Philippines is ranked 40th—just above Nigeria—in the world's countries of military strength; China is third.²² A recent assessment of the Philippine Air Force notes, "Unfortunately, the Philippine Air Force is a shadow of the organization that the U.S. helped build up after Vietnam. Despite a 20-year-old modernization plan, the Philippine Air Force lost its ability to operate jet fighters ten years ago and suffers from aging equipment, poor infrastructure, an *ad hoc* military procurement system and poor morale. In effect, the PAF is an internal security force and the Philippines is entirely dependent on the U.S. for external defense."²³ Losing face is also an important aspect for the relations between China and the Philippines. Taking China to a global court is opening this difficult situation to the entire world. If China refuses to abide by the UNCLOS decision,

19 Government of the People's Republic of China Ministry of Foreign Affairs, "Position Paper of the Government of the People's Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines", 7 December 2014, available at <http://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1217147.shtml>.

20 Philippines, "Notification and Statement".

21 Asia Maritime Transparency Initiative, "Airpower in the South China Sea", (2015), available at <<http://amti.csis.org/airstrips-scs/>>.

22 Global Fire Power, "Countries Ranked by Military Strength", (2015), available at <<http://www.globalfirepower.com/countries-listing.asp>>.

23 Michael W. Pietrucha, "Regaining the Initiative in the South China Sea", *The Diplomat*, 5 August 2015, available at <<http://thediplomat.com/2015/08/regaining-the-initiative-in-the-south-china-sea/>>.

what options does the Philippines have in response to China's blatant encroachment on waters and reefs close to Luzon and Palawan? Why might the Philippines have overplayed its hand in its UNCLOS arbitration complaint against China?

IV. HISTORICAL PRECEDENT AND RELAISM

In publicly castigating China's move into the SCS, President Aquino noted, "I'm an amateur student of history and I'm reminded of, just watching several documentaries on World War II, especially how Germany was testing the waters and what the response was by various other European powers. . . . They tested the waters and what the response was by various other European powers. They tested the waters and they were ready to back down if, for instance in that aspect, France said stop. But unfortunately, up to the annexation of the Sudetenland, Czechoslovakia . . . the annexation of the entire country of Czechoslovakia, nobody said stop. The commentators on these documentaries were saying what if somebody [had] said 'stop' to (Adolf) Hitler at that point in time, or to Germany at that time, could we have avoided World War II? That is a question that still occupies the thoughts of so many individuals."²⁴

Perhaps the most accurate statement in the above quote is that President Aquino is an amateur student of history. No one who studies history should be surprised by China's move into the SCS. Part and parcel of a rising superpower is the extension of its hegemonic borders. From the ancient Persian, Greek and Roman empires to the more recent Spanish, British, and American empires, there is not one example from the above list where a dramatic increase in economic and military affluence did not translate into the state flexing its hegemonic and colonial muscles at the expense of weaker states. If this is the case in every historical scenario of an emerging superpower, why should China have to play by different rules? One might answer that question by saying that international policies have changed so China must play by these new rules. That notion echoes back to the somewhat unbridled optimism of the post-Darwinian nineteenth and early twentieth centuries where the idea that social progress and modernity had curbed the darker side of human nature. The two world wars and the anemic League of Nations and the United Nations should disabuse anyone of this optimistic opinion of a species gaining ground on global peace.

V. A CASE STUDY OF SCS HEGEMONY

We do not have to study ancient or modern Western empires to understand China's move into the SCS because there is a recent scenario to draw upon. Coming out of more than two centuries of self-imposed isolation, Meiji Japan's (1868-1912) policy-makers set the course to make their decentralized, feudal country economically rich and militarily strong.²⁵ Meiji officials changed their country's economic patterns, government structure, education curriculum, and military system. With regard to the latter change, the samu-

24 Masaaki and Riji Yoshida Kameda, "China is Acting like Nazi Germany, says Philippines' Aquino", *The Japan Times*, 3 June 2015, available at <<http://www.japantimes.co.jp/news/2015/06/03/national/politics-diplomacy/china-is-acting-like-nazi-germany-says-philippines-aquino/#.VjE3K7erRhF>>.

25 Marius B. Jansen, *The Emergence of Meiji Japan* (New York: Cambridge University Press, 1995).

rai class was replaced by universal conscription and as one scholar noted, "Having abolished the samurai class, Japan needed a nation of samurai."²⁶

Meiji officials assumed that Western powers would welcome an industrialized Asian country into the club of modernity. That optimism was reflected in Fukuzawa Yukichi's admiration for modern Western imperial powers. He noted in 1860, Western nations "...teach and learn from each other, pray for each other's welfare, and associate with each other in accordance with the laws of nature and man."²⁷ But it did not take long for the Japanese to realize modernity did not erase prejudice. Writing twenty years later, Fukuzawa noted that "...the world operated according to the law of the jungle."²⁸

Concomitant with Japan's meteoric economic and military rise was its dominance and outright annexation of surrounding territories including, the Kuril and Ryukyu island chains, Taiwan, and Korea. Its justification for these actions was twofold: Japan was intent on lifting its neighbors into more advanced civilization and prosperity; and Japan needed buffers between potential rivals such as Russia. In truth, Japan's acquisition of colonies was less blatant than the Western nations that carved up the world and had colonies 10,000 miles away from the motherland. At the turn of the twentieth century, these colonies included 10 of the 11 modern Southeast Asia countries. What is most instructive for the current situation in the SCS is a review of Japan's progression from its peaceful move into East and Southeast Asia to a more confrontational approach.

World War I created a military and economic vacuum in Asia. Western powers were caught in a three-year bloody stalemate in Europe which provided Japan with an opportunity to extend its growing influence. During World War I, Japan's economy grew by 40 percent and its industrial output grew by more than 70 percent. In 1913 there were 11,000 Japanese in Southeast Asia; by the early 1920s that had more than doubled to 23,000. Between 1913 and 1923 exports from Japan to Southeast Asia increased eightfold while imports from Southeast Asia to Japan increased fivefold.²⁹

Japan peacefully entered the Southeast Asian markets and quickly dominated them. However, after World War I and the subsequent Great Depression, Western states enacted protectionist policies to curb Japan's economic activities in the SCS.³⁰ Japan's frustration with being economically hamstrung in the SCS by distant Western powers was noted in this 1934 statement by Nagaoka Shun'ichi, a Japanese official on trade negotiations. He responded to the Dutch authorities placing limits on Japanese trade with these thoughts:

Japanese products, both in terms of quality and prices, are the most suitable for the general public in the Dutch East Indies. ...Japan and the Dutch East Indies are inseparably connected by natural law. ...Therefore, I would have to say that trying to sever

26 Marius B. Jansen, *The Making of Modern Japan* (Cambridge: Belknap Press of Harvard University Press, 2000), p. 399.

27 James L. McClain, *Japan, a Modern History* (New York: W.W. Norton & Co., 2002), p. 292.

28 *Ibid.* p. 293.

29 Shimizu Hajime, "Japanese Economic Penetration into Southeast Asia and the 'Southward Expansion' School of Thought", in *International Commercial Rivalry in Southeast Asia in the Interwar Period* ed. Sinya Sugiuama and Milagros C. Guerrero (New Haven: Yale Southeast Asia Studies, 1994): 11-39.

30 Ian Brown, "The British Merchant Community in Singapore and Japanese Commercial Expansion in the 1930s", in *International Commercial Rivalry in Southeast Asia in the Interwar Period* ed. Sinya Sugiuama and Milagros C. Guerrero (New Haven: Yale Southeast Asia Studies, 1994): 111-132.

this natural relationship is like disobeying the order of God. . . If Japanese goods impaired the welfare and prosperity of the Dutch East Indies, Japan would not hesitate to give due consideration to this matter. . . I believe that because Japan's trail-blazing development of untapped lands and the increase in the number of Japanese shops are being appreciated by the indigenous people, this means that the Japanese are being welcomed by the general public in the East Indies.³¹

In East Asia, Japan's slow and steady move into Manchuria culminated with the creation of Manchukuo in 1932. Like the Philippines' recent appeal to an international organization, China appealed to the League of Nations for international support against Japan's actions in Manchuria. Japan's response to a 40-1-1 vote against its Manchuria policies was to walk out of the League. Five years later the nation that brought the case to the League experienced the full fury of Japan's Imperial armed forces. Japanese attitudes toward what they considered unfair and hypocritical international condemnation of its hegemonic expansion was not contrition but a greater rigidity of their national polity also known as the *kokutai*.³²

A careful reflection reveals that there are similarities between the meteoric rise of Meiji (1868-1912), Taisho (1912-1926), and Showa (1926-1989) Japan and the more recent dramatic growth of China. If neighboring countries and international organizations try to stifle what China strongly believes is its historical and legal position in the South China Sea, it will respond the way past rising superpowers have—with a greater determination to prove its righteous position.

VI. POLICY OPTIONS FOR THE PHILIPPINES

There is a significant silver lining in the current potential crisis and one that should have made the Philippines think twice before making a public case against China. Unlike Japan, the United States, France, Great Britain, and other past great powers, China's long history is not defined by crossing oceans to fight lesser states and create colonies. For more than 5,000 years, China has yet to send its navy to other lands in order to incorporate more people into its empire. While China's naval battles in Vietnam may be an exception to this rule, one must remember that for more than a thousand years Vietnam was a province of China and geographically-attached to the Middle Kingdom. Even when China dominated ocean travel during the Ming Dynasty, the seven voyages by its massive fleets were not primarily intended for making war and conquering weaker states.³³

At present, China does not want to invade and/or colonize any Southeast Asian state. China does not want a war with any of the claimants of the SCS. It does not want to test its mettle of its rapidly modernizing navy—unlike Japan's desire to do so in the 1894-1895 Sino-Japan War.³⁴ Rather, China is serving notice that its new superpower status brings with it a return to its regional dominance. If this is the pattern of all past super powers, to say the rules have changed for China is, in China's estimation, wrong.

So, should the Philippines just roll over and let China take whatever it wants in the SCS? In truth, the Philippines does not have to simply acquiesce

31 Hajime, "Japanese Economic Penetration", p. 25.

32 W.G. Beasley, *The Rise of Modern Japan* (New York: St. Martin's Press, 1990).

33 Louise Levathes, *When China Ruled the Seas: The Treasure Fleet of the Dragon Throne 1405-1433* (New York: Simon & Schuster, 1994).

34 S.C.M. Paine, *The Sino-Japanese War of 1894-1895: Perceptions, Power, and Primacy* (New York: Cambridge University Press, 2003).

to China; it has other options. For example, it should pursue clandestine bilateral talks with China. These negotiations should be somewhat private as public debates played out in the media lead to widespread anger and protests. Philippine negotiators should also approach the talks knowing what China does and does not seek in the SCS.

With such a checkered history of experiencing outside exploitation, there is good reason for Filipinos to fear the next hegemonic power. One can imagine that after the Spanish, American, and Japanese incursions, Filipinos would be wary of China's encroachment. But China's move into the SCS actually represents an opportunity for the Philippines. Based on the cruel lessons from the past and the blood spilt from Magellan to Yamashita, there is no reason for the Filipinos to remain amateur historians.

VII. ASEAN AS AN OPTION

The Philippines is not alone in facing China's move into the SCS. Vietnam, Brunei, and Malaysia have similar complaints regarding China's SCS aggression, though no other ASEAN member has brought a case to the UNCLOS against China. In that sense, the Philippines is on its own in terms of trying to stand up to China. Neither bilateral nor unilateral agreements have enough specificity to warrant any security for the Philippines.

Multiple voices have called for ASEAN to develop an agreement and speak with one voice in response to China's SCS activities. Not surprisingly, President Aquino has championed this cause. At the 2013 Brunei-hosted ASEAN conference the Philippine president called for consensus in standing up to China's illegal activities. It is not just Filipino fishermen who are being chased off by China's nascent build-up in the region; Vietnamese and Malaysian fishermen also complain about losing access to traditional fishing spots.

The Philippines, however, should not depend on ASEAN in its Sino dispute. There are many humanitarian projects that ASEAN champions, and the various countries' cooperation in providing aid to tsunami and typhoon victims is impressive. But each ASEAN member must consider its support for a policy directed against China's SCS claims with the desire for continued positive relations with Asia's dominant power. Myanmar, Laos, and Thailand for example have much more to lose (in immediate terms) in angering China over the SCS than in insisting China tear down its newly constructed infrastructures in the SCS. Furthermore, ASEAN's decisions are only approved and implemented with a consensus vote. It is highly unlikely that every Southeast Asian state will sign off on the Philippines' insistence that China withdraw from the archipelago's exclusive economic zone area.³⁵ Even in the current Philippine UNCLOS case, the only ASEAN country to indicate any support for the plaintiff is Vietnam and it has done so rather quietly. An expert on the Philippine-China SCS dispute noted, "As the December 15 deadline for China to submit a counter-memorial in the UN Convention on the Law of the Sea (UNCLOS) Annex VII arbitration case launched by the Philippines passed, the more significant and unexpected development turned out to be Vietnam's discreet submission of a formal statement to the tribunal. The *South China Morning Post* reports that Vietnam asked the tribunal to give due regard to Vietnam's legal rights and interests that may be

35 Sheldon W Simon, "The US Rebalance and Southeast Asia", *Asian Survey*, vol. 55, no. 3 (2015): 572-595.

affected by the arbitration."³⁶ This act was also described as one where Vietnam "At the same time, quietly submitted a confidential statement to the Tribunal regarding the case."³⁷ ASEAN is an important and healthy organization but it is not a unilateral group that will defend the Philippines in its dispute with China.

VII. US SUPPORT AS AN OPTION

While some describe the foreign policy of former Philippine President Gloria Macapagal-Arroyo as one favoring closer relations with Beijing, Professor Renato Cruz De Castro notes that "[a]s a close neighbor of China, the Philippines has not yet totally trusted Beijing, and Manila still considers Washington as the least dangerous among the big powers, the best balancer, and the most reliable insurance against an emerging China. . . . [The] US is the sole strategic partner of the Philippines', signaling a gradual path back into the US sphere of influence after years of drifting toward China during the previous Arroyo administration."³⁸

Of all the bilateral support options for the Philippines, the US makes the most sense. Even with the enormous US budget deficit, its national debt, and political gridlock in Washington, the US accounts for 48 percent of the world's defense spending; China spends 8 percent. In 2012 the US Pacific Command included six aircraft carrier groups, 180 ships, and 1,500 aircraft along with 100,000 troops. In five years 60 percent of the US Navy will be in the Pacific theatre.³⁹ Added to this military might is the US economic foundational principle of free trade and open access to ocean and sea lanes. The 5.3 trillion dollars of trade that annually passes through the SCS is the proverbial rising tide that lifts all ships.⁴⁰ The US has the capacity and motivation to make sure that the SCS remains accessible to global trading. Even before the submission of the Philippine arbitration document, former Secretary of State Hillary Clinton noted that the US would work to protect the freedom for all to use the SCS shipping route. Shortly after making that statement the US served notice that its global interests and attention was pivoting toward the Pacific in what is now being referred to as a rebalance of US global focus.⁴¹

In a recent article Sheldon Simon noted, "By 2013, the United States had identified six strategic partners. Singapore probably tops the list, though it has no formal defense treaty with the United States. Nevertheless, it is the state where Washington has deployed its latest Pacific Fleet vessel, the littoral combat ship. Next came the Philippines and Thailand, with which Washington has formal defense commitments; then Indonesia, Malaysia, and Vietnam, with which Washington is developing strategic partnerships—an

36 Jay Batongbacal, "Vietnam's Impact on the Philippines/China Arbitration: A Closer Look", 18 December 2014, <<http://cogitasia.com/vietnams-impact-on-the-philippineschina-arbitration-a-closer-look/>>.

37 Batongbacal, "Arbitration 101".

38 Zhao Hong, "China-Philippines Relations Stunted by the South China Sea Dispute", *Forging a New Philippine Foreign Policy*, 28 March 2013, available at <<http://philippinesintheworld.org/?q=node/2145>>.

39 Simon, "The US Rebalance".

40 Frederick Pai, "Territorial Disputes in the South China Sea", *Nato Association of Canada*, 5 May 2014, available at <<http://natoassociation.ca/territorial-disputes-in-the-south-china-sea/>>.

41 Hillary Clinton, "America's Pacific Century", *Foreign Policy*, vol. 189, no. 1 (2011): 56-63.

expression of security importance for both sides somewhat short of a formal commitment."⁴²

Of all these partners, it is the Philippines that has responded most favorably to offers of US assistance. President Obama's April 2014 visit to the Philippines was, in part, to celebrate the recently concluded Enhanced Defense Cooperation Agreement (EDCA).⁴³ A provision in the EDCA includes building facilities for US military personnel and equipment within Philippine bases. Filipinos would have open access to these US supported areas within the Philippine bases. American troops will rotate through these installations as they do in similar circumstances in Australia.

Despite the seemingly positive aspects of the US presence in the SCS and its fostering partnerships, the Philippines cannot entrust its security to the US. Domestically, many Filipinos remain distrustful and ambivalent toward the US. Multiple petitions were filed with the Philippine Supreme Court to nullify the EDCA. This played out publicly with the Supreme Court treating the bilateral agreement like a hot potato. The majority of the justices ruled that EDCA's legitimacy should be determined by the Philippine Senate not the Philippine Supreme Court.

Finally, and most importantly, like China, the US does not want a war in the South China Sea. For this reason the US is clear in all its interactions with the Philippines that it will not guarantee an alliance with the archipelago nation should it get into a war with China. As Pacific Command Admiral Locklear noted at the 2013 Shangri-La Dialogue, "We don't take sides, but we have an interest. . . . On the issue of sovereignty. . . maintaining the status quo is very important."⁴⁴ Diplomacy is the weapon of choice for the US in the SCS. China's trade with other Asian nations is larger than its trade with the US and so its stake in the SCS is not only rooted in national and historical pride, but also in its somewhat fragile economy.⁴⁵ Moreover, America's recent spotty record of military engagements (Vietnam, Iraq, and Afghanistan) and continued domestic crises also temper its enthusiasm for a cross-oceanic war.

VIII. CONCLUSION

With little hope that China will abide by whatever UNCLOS decides on the Philippine arbitration case, and with no solid bilateral or unilateral backing, the Philippines should rethink its decision to publicly force China to clarify its position and its intentions in the SCS. As the Distinguished Professor of Constitutional Law, Julian Ku noted, ". . . the Philippines' effort to force China to accept arbitration now is doomed to fail and will probably backfire. The Philippines will be in no stronger position vis-à-vis China than it was before the arbitration, even if it wins an award. Meanwhile, the overall credibility and effectiveness of the UNCLOS dispute resolution system will be called into question. And the U.S. goal of a China that 'abides by and reinforces' international law and norms will be even farther off."⁴⁶ China's unwelcome incursion into Philippine waters presents opportunities as much as

42 Simon, "The US Rebalance," p. 579.

43 Jonathan Marcus, "Obama in Asia: Military Deal Tops Philippine Agenda", *BBC News*, 28 April 2014.

44 Simon, "The US Rebalance".

45 *Ibid.*, p. 590.

46 Ku, "The Philippines' Massive".

challenges. In its colonial experience, the Philippines were unable to stave off eventual domination by the Spanish, Americans and Japanese. Perhaps a more nuanced response to the latest dominant power in the region will end with much better results than those of the past.