

WHERE IN
THE WORLD
IS THE
PHILIPPINES?

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WHERE IN
THE WORLD
IS THE
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*Debating Its
National Territory*

Rodolfo C. Severino



Carlos P. Romulo Foundation

Philippines



INSTITUTE OF SOUTHEAST ASIAN STUDIES

Singapore

First published in Singapore in 2011 by
ISEAS Publishing
Institute of Southeast Asian Studies
30 Heng Mui Keng Terrace
Pasir Panjang
Singapore 119614

E-mail: publish@iseas.edu.sg
Website: <http://bookshop.iseas.edu.sg>

Co-published with
Carlos P. Romulo Foundation
30th floor, Citibank Tower
8741 Paseo de Roxas
Makati City, Philippines
<www.carlospromulo.org>

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ISEAS Library Cataloguing-in-Publication Data

Severino, Rodolfo C.

Where in the world is the Philippines? : debating its national territory.

1. Jurisdiction, Territorial—Philippines.
 2. Territory, National—Philippines.
 3. Territorial waters—Philippines.
 4. Philippines—Claims to Sabah.
 5. Philippines—Claims to South China Sea.
- I. Title.

KPM2055 S49

2011

ISBN 978-981-4311-70-0 (soft cover)
ISBN 978-981-4311-71-7 (hard cover)
ISBN 978-981-4311-72-4 (e-book PDF)

Typeset by Superskill Graphics Pte Ltd
Printed in Singapore by Utopia Press Pte Ltd

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FOREWORD

The Philippines was, and in my mind still is, an ardent supporter of the development of the concept of archipelagic states in the Law of the Sea. The Philippines, together with Indonesia, Fiji, and Mauritius, participated actively in the first meeting of the archipelagic states in New York on 13 March 1972, working together to formulate the principles for the archipelagic states, including their rights and obligations, to be submitted to the coming third UN Law of the Sea Conference, which was to start in 1973. They were able to agree tentatively on four principles, although they still had some basic differences on the details, especially on the criteria for their status as archipelagic states, their rights and obligations over the archipelagic waters, and the rights of other states over those waters. At the suggestion of the Philippines, another meeting was held in Manila on 25–26 May 1972 (Mauritius did not participate in the Manila meeting), attempting to further formulate the agreed principles. After lengthy discussions, including on a trip to Corregidor across Manila Bay, three basic principles were agreed on – the definition of an archipelagic state, the sovereignty of an archipelagic state over the waters within its archipelagic baselines, and “innocent passage” of foreign vessels through such sealanes as may be designated by the archipelagic state.

These three principles were later introduced during the third UN Law of the Sea Conference, which began in New York in 1973 and lasted until December 1982 in Montego Bay, Jamaica. The UNCLOS 1982 incorporated these basic principles after their development, “amendment”, and regulation into nine Articles (Articles 46–54).

Many years after the Law of the Sea Conference, I engaged Rodolfo C. Severino in discussions on Law of the Sea issues. There is no doubt that he

understands the basic elements of the Law of the Sea Convention, particularly the Philippine position on some of the major issues.

One of the most perplexing issues was the nature of the lines drawn by the Treaty of Paris of 1898, in which Spain delivered sovereignty over the Philippines to the United States. The Philippines later claimed that the lines were “territorial” in nature and encompassed an expanse of sea outside of the Philippines island group, up to the extent of some 250 miles from the Philippines’ coast lines. In fact, those 1898 lines also included an island that was part of the Dutch East Indies, later recognized as such in the Max Huber Arbitration in 1928. (The island is now part of the Indonesian archipelagic state and one of Indonesia’s outermost islands.) Many observers consider the 1898 lines as basically “allocation lines”, indicating that the islands within those lines were transferred by Spain to the United States, not “territorial lines”, since Spain did not have “sovereignty” over the extensive seas beyond the Philippine Islands at that time, and therefore could not have transferred what it did not have.

Both Indonesia and the Philippines originally considered the waters inside the Philippine baselines as “internal waters”, but recognizing “innocent passage” through those waters. After ratifying the 1982 UNCLOS, Indonesia basically adopted the UNCLOS provisions, and therefore recognized the principle of “archipelagic waters” with the rights of “archipelagic sealanes passage” through certain designated “archipelagic sealanes” in the archipelagic waters. Beyond the archipelagic sealanes, Indonesia also recognized the right of “innocent passage” for foreign vessels, except through “internal waters” inside the “archipelagic waters” as stipulated in Article 50 of UNCLOS. The Philippines, however, for a long time regarded the waters inside the baselines of the archipelagic state as “internal waters”, and therefore was not able to determine the archipelagic sealanes as stipulated in the UNCLOS 1982, as Indonesia has already done.

If the Philippines still considers the 1898 lines as territorial, thus the limits of its territorial sea, it would of course be interesting to ask from where the Philippines would measure its Contiguous Zone, Exclusive Economic Zone, and Continental Shelf, because these three UNCLOS regimes would be considered *beyond* the territorial sea (Article 33, Article 55, and Article 76(1)).

Like other archipelagic countries, the extent and scope of the Philippines’ national territory depend on the maritime regimes that it adopts for seas around the archipelago and between the islands.

The Philippines is among the few nations that define their territories in their constitutions. Those definitions mostly antedate UNCLOS and, therefore, could clash with the Convention's provisions.

The Philippines is a party to UNCLOS, which prescribes, in rather precise ways, the maritime regimes for signatory states.

Severino traces the historical evolution of the constitutional provisions on national territory and, just as importantly, the Philippines' attempts to expand its territory by asserting claims to territory beyond the Treaty of Paris limits, on which the original Philippine territorial concept, dating back to colonial times, was based. Later claims include those to land features in the South China Sea and to Sabah.

One effect of the uncertain nature of the Treaty of Paris and of the claim to Sabah: the excruciating pace of negotiations to delimit the maritime boundary between Indonesia and the Philippines where their maritime regimes overlap. Thus, Indonesia cannot complete the definition of the extent of the waters around its archipelago, especially the Contiguous Zone, the Exclusive Economic Zone, and the Continental Shelf bordering with the Philippines, although some progress has lately been achieved after decades of negotiations.

At the same time, Severino cites instances of recent Philippines Government attempts to reconcile maritime claims with UNCLOS provisions. Foremost among these is the 2009 legislation declaring regimes of islands for the land features in the Spratlys that the Philippines claims. To be sure, the legislation, as he points out, does not designate which are islands and which are mere rocks, "which cannot sustain human habitation or economic life of their own (and, therefore,) shall have no exclusive economic zone or continental shelf." (UNCLOS, Article 121(3))

Severino does not for the most part prescribe solutions to settle whatever inconsistencies may exist between the Philippines maritime claims and UNCLOS provisions, to which Manila is committed. The most that he does, for example, is to nudge the Philippines' policy more closely towards UNCLOS and urge that China (and Chinese Taipei) and, subsequently, Vietnam scale down their own claims to vast expanses of the South China Sea, claims which many believe cannot hold up under UNCLOS.

Instead, he seeks to shed light on issues involved in each important case and urges the Philippines Government to resolve them wherever possible and as quickly as possible. He cites likely consequences of not doing so, including poaching in claimed Philippine waters by foreign fishing vessels with impunity

and the inability of law-enforcement agencies to enforce Philippine laws in those waters.

Meanwhile, the workshop series on managing potential conflict in SCS continues among relevant ASEAN authorities and China/Chinese Taipei.

Severino acknowledges little prospect for the settlement of conflicting territorial claims anytime soon or successfully negotiating some overlapping maritime regimes, although the recent Malaysia-Brunei agreement is a step in the right direction. But he points to increasingly better prospects for managing disputes and keeping them from erupting into violence and, therefore, for keeping the area peaceful, stable and mostly free for navigation and overflight, provided states abide by their commitments and rhetorical promises.

It is for these reasons that Rodolfo C. Severino's book on the Philippines' national territory is of utmost significance for all international lawyers, particularly those who pay special attention to the development of the Law of the Sea. In particular, it would be a significant contribution to clarifying at least some of the ambiguities in the Philippine positions and could also be an encouragement for the Philippines' authorities to seek solutions to those questions, including those that Severino raises in the book.

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Third UN Law of the Sea Conference*

Carlos P. Romulo and the CPR Foundation

Carlos P. Romulo was a Filipino soldier, journalist, diplomat, author and educator who devoted his life to global peace and security. A basic truth that General Romulo expressed throughout his life, again and again, is that peace can be achieved only when there is economic security. “Peace is impossible without freedom,” he said before the Philippine Chamber of Commerce in February 1948. “Freedom, in turn, is impossible without economic security.”

Established in 1996, the Carlos P. Romulo Foundation was inspired by the memory of the General and of his dream of living in a secure and peaceful world. It is an independent Philippine organization that helps define the roles the public and private sectors play in the pursuit of peace and prosperity. Committed to promoting peace and development in the Philippines and the Asia-Pacific region, the Carlos P. Romulo Foundation is a private non-profit think-tank that brings together scholars and decision-makers from different parts of the world to discuss public policy and its impact on peace and development.

Its inaugural activity, a conference entitled “Deepening Asia-Pacific Cooperation”, brought together twenty representatives of government, academia and the private sector from eleven countries to discuss political/security cooperation, economic cooperation, and private-sector participation in the Asia-Pacific region. Roberto R. Romulo, son of General Romulo and Chairman of the Foundation, co-chaired the conference with Han Sung Joo, director of the Ilmin Institute of International Relations, Korea University.

General Romulo was a staunch advocate of international cooperation and the free market. As early as 1945 he foresaw that the Pacific, and not the Atlantic, would be the wave of the future. When socialism and central planning were the rage in 1955, he believed that the market, and not the state, would propel the region to record growth and development. A firm believer in interstate cooperation based on sovereign equality, Romulo devoted all his energies to this vision in his more than fifty years of public service under eight Philippine presidents.

In today's global environment, where governments are no longer the sole power-wielders, collaboration between the state and the private sector has become increasingly essential. As the private sector's clout continues to grow, so does its potential to contribute to world peace, freedom and human development. The Foundation provides neutral forums for bridging government, academe and the private sector, with the goal of harnessing this potential.

The Foundation also serves as an objective source of reliable analyses, to which Philippine political leaders can turn for sound policy guidance and from which corporations can glean insights about the opportunities emerging in the Asia-Pacific region. At the same time, it provides opportunities for scholars to dialogue with business and government decision-makers and get a practical look at public policy.

In 1998 the Foundation organized "Philippine-American Relations in a New Century". Among the American speakers were former U.S. ambassadors to the Philippines: Stephen Bosworth, Michael Armacost, Thomas Hubbard and Nicholas Platt. Filipino speakers included ASEAN Secretary-General Rodolfo Severino, Secretary of Foreign Affairs Domingo Siazon, and Secretary of Trade and Industry Manuel Roxas II. Key speakers from the business community included Maurice T. Greenberg (former American International Group chief) and Jaime Augusto Zobel de Ayala (Chairman and CEO of the Ayala Corporation).

As part of its efforts to bring international affairs to the top of the national agenda, the Foundation organized a debate among the country's top presidential candidates during the campaign period of the 2010 national elections. Presidential candidates Senator Richard Gordon, National Defense Secretary Gilberto Teodoro and Senator Manuel Villar gamely expounded on issues, such as achieving peace in the Philippine South, combating terrorism, growing foreign trade and investments in the country, establishing policies and improving conditions for Filipino labourers abroad, and boosting the Philippines' international competitiveness.

With Philippine President Benigno Aquino III taking the helm in 2010, Foundation activities in the years following his election will support efforts aimed at redefining the nation's place in the emergent global and regional order. Linkages with other institutions, such as the Johns Hopkins School for Advanced International Studies, will be actively pursued, and joint activities brought to fruition. The Foundation will also conduct studies and undertake seminars designed to develop Philippine thought-leadership on relevant issues; for example, ASEAN community building, refining the Asia-Pacific political/security architecture, sustainable economic growth, and information and communications technology.

This “re-engagement” initiative reaffirms the Foundation’s role as an intellectually rigorous institution dedicated to providing new perspectives to enhance the Philippines’ global competitiveness. Moreover, it is a response to President Aquino’s call to action and appeal for reform. For, as General Romulo said in a speech at the United Nations Appeal for Children in 1948, “Peace does not depend on the actuations of nations but principally on the actions of individuals. If we must insure the peace of the future, all precautions should be taken now.”

General Romulo’s career as a public servant included seventeen years as Secretary of Foreign Affairs and ten years as the Philippines’ ambassador to the United States. In World War II he was aide-de-camp to General Douglas MacArthur. He became a brigadier general in the U.S. Army, receiving the Purple Heart and the Silver Star for his service during the War, and later a major general in the Philippine Army.

As a journalist he wrote a series of articles, after a tour of what was then called the Far East, about Japanese imperialism, and predicted an attack on the United States. For this he won the Pulitzer Prize in Journalism for Distinguished Correspondence. He also authored twenty-two books, three plays, and several poems. In 1982 he was named a National Artist for Literature by the Philippine government. He was conferred the first Bayaning Republika Award for his outstanding service to the Filipino nation and the rank of Raja of the Order of Sikatuna, an honor usually reserved for heads of state.

Referred to by his colleagues as “Mr United Nations”, he was elected president of the United Nations General Assembly in 1949 — the first Asian to hold the position — and served as president of the UN Security Council four times, in 1981, in 1980 and twice in 1957. As a signatory of the charter forming the United Nations in 1945, he spoke the famous line, “Let us make this floor the last battlefield”, at the first General Assembly.

By the time he died in 1985, one month shy of his 88th birthday, he had served on the boards of a number of prestigious Philippine corporations, such as San Miguel and Equitable Bank. “The General,” as he was widely known, had received well over a hundred awards and decorations from other nations as well as over sixty honorary degrees from universities all over the world. Extolled by *Asiaweek* as “A Man of His Century,” he was the most admired Filipino in international diplomacy in the 20th century.

To learn more about the life of General Romulo, log on to www.carlospromulo.org.



Carlos P. Romulo Foundation