

Aileen and the South China Sea

Jay BATONGBACAL

*Director, Institute for Maritime Affairs and Law of the Sea
University of the Philippines*

I first met Prof. Aileen S.P. Baviera back in the late 1990s when she was still with the Foreign Service Institute of the DFA. I was still doing my Master of Marine Management degree at Dalhousie University in Canada and accompanied a visiting delegation of Canadian scholars to hold a training workshop on the Law of the Sea. After I finished my degree, we began working together as part of the DFA Technical Committee on the Law of the Sea that regularly met to discuss maritime issues and problems as they arose. It was then that we faced our first national crisis: in 1999, China transformed its small huts on Mischief Reef into a large condominium-like reinforced structure. Aileen led the back-stopping team of the Philippine delegation that negotiated with China the following month, and we spent hours preparing scenarios, negotiating positions, and guidance notes for the panel as it faced China in a long session that ended in the wee hours of the morning, tussling over the contents of the record of discussions and joint communique to describe the outcome of the talks. By the end of the session we felt that we were moderately successful in that we were able to secure concessions within the range of what we had anticipated in our preparations. It was not earth-shaking, nor did it achieve the ideal objective of getting China to move out of Mischief Reef, but at least there was that sense that the Philippines held its own and achieve some measure of success, and if the way we prepared for the talks could be replicated and sustained, it could potentially derive more concessions in the future.

This trial by fire was the beginning of our long collaboration on the South China Sea issues. It led to our joint authorship of an early article, *When Will Conditions Be Ripe? Prospects for Joint Development in the South China Sea*,¹ the title of which takes off directly from the Mischief Reef talks. During the negotiation, the Philippines pressed for joint use of the facilities on Mischief Reef, to which the Chinese delegation responded, “when conditions are ripe.” The article explored the prospects and feasibility of engaging China in mutually-beneficial cooperative exploration and exploitation of marine resources, whether fisheries or petroleum, in an attempt to provide some guidance for future diplomatic engagements.

Appreciating the way in which we had prepared and assisted the delegation, Aileen and I were then requested by DFA to assist in the effort to craft a proposed Code of Conduct for ASEAN and China. In 1992, the ASEAN claimants to the South China Sea had agreed to and issued an ASEAN declaration committing them to self-restraint and the peaceful resolution of their respective competing claims. The incidents on Mischief Reef led to the decision to try to forge a similar agreement, but involving China, that would more strongly commit the parties to not carry out any more expansive activities by taking new features such as Mischief Reef. Thus, Aileen and I produced the first draft to initiate discussions, and over the next few years it eventually became the 2002 Declaration of Conduct in the South China Sea (2002 DOC). The resulting document was a pale shadow of its original draft, which originally had 11 sections and took up 7 pages of single-space text, but at least it provided a basis for a modus vivendi that was hoped to prevent another incursion like Mischief Reef.

While the 2002 DOC was being negotiated, the incursions of Chinese fishermen into Philippine waters were rising noticeably. Together with another long-time colleague at the Bureau of Fisheries and Aquatic Resources, we produced a confidential study entitled *Fisheries Conflict in the South China Sea: Philippine Interests, Problems, and Prospects*, which examined closely for the first time the international and local implications of increasing incidence of Chinese poaching in Philippine waters. We found

a direct correlation between the establishment of the Chinese facility on Mischief Reef and the increase in arrests of Chinese fishermen in Palawan, and noted the failure to effectively enforce the law against them, highlighting the policy of leniency in favor of the Chinese fishermen arrested and facing trial. We also determined that there was a pattern of the Philippines retreating from the Kalayaan Island Group: whereas Filipinos fished practically the entire area in the 1960s and 1970s, by the mid-1980s the Philippine government was actually discouraging them from fishing in order to avoid diplomatic problems. We warned that such a policy will amount to a retreat from our jurisdictional claims, and conversely a strengthening of the claims of other countries to our areas and traditional fishing grounds.

I left for doctoral studies in Canada in 2003, but as I reached the end of dissertation writing in 2007, Aileen reached out to me for the possibility of teaching in the University of the Philippines. She had become the Dean of the Asian Center, and had negotiated funding for a set of research institutes to be housed in the GT-Toyota Hall of Wisdom; she asked me to join the AC faculty in order to head one of the planned institutes. I agreed and joined the AC in 2008. By this time, the issue of the Joint Marine Seismic Undertaking between the Philippines, China, and Vietnam had also broken out in the papers; President Macapagal-Arroyo was accused of selling out the country's claims to China, and there was much uninformed and misleading talk about the country's maritime claims, jurisdictions, and UNCLOS. She asked me to write a four-part series of short essays about various aspects of the Philippines-China maritime disputes, which were published in the Asian Center's Asia-Pacific Policy Bulletin.

Unfortunately, the planned research institutes did not come to pass after Aileen's tenure as Dean ended, and I transferred to the College of Law. But we continued to work together through various seminars and symposia on Philippine-China relations that Aileen organized. In 2013, when Philippine-China relations took a turn for the worse during the Aquino Administration, Aileen and I cowrote a primer, *The West Philippine Sea:*

Philippine territorial and maritime jurisdictional disputes from a Filipino perspective,² which remains the simplest and most compact reference material about the complex Philippine-China disputes in the South China Sea. As relations went off the rails and shut down, Aileen organized a delegation of select scholars to travel to China to try to keep informal communications going through scholars and think-tanks, and we tried to get a good sense of how China viewed the Philippines and what kind of perspectives and information were driving decisions in Beijing. One member of the delegation eventually became the Philippine ambassador to Beijing, while another rose to become the Flag Officer in Command of the Philippine Navy.

Within U.P., our collaborative circle also expanded, as we continued to organize events and put together projects to train more intellectual resources into the South China Sea and also expand our scope to other national issues and concerns. Aileen tried to put together a framework for a certificate course in national security and international relations that we hoped could be the basis for creating a full-blown Master's course. We continued to hold Track Two dialogues, or discussions between government officials and scholars in a private capacity, not only with China (though they were certainly among the most numerous at the time) but also other countries with interests in the Southeast Asian region. She helped conceptualize and organize what we now call the Katipunan Conferences, intended as an annual forum for the discussion of national security issues and geopolitical concerns, that could hopefully serve as a starting point for a community of scholars and practitioners who could help the country better deal with foreign policy and the international community. And we continued to provide quiet and informal support to various government offices especially in dealing with China, as relations under President Aquino ran cold and at times turned quite antagonistic during the conduct of the litigation of the South China Sea Arbitration. As the national electoral campaign revved up in 2015, we tried to reach out to all the Presidential candidates to provide foreign policy briefs and what we thought were policy initiatives needed to change and recover from the downward spiral of relations with China.

When the decision in the South China Sea Arbitration was announced in 2016, I was with Aileen as a guest at a TV5 news show. We both raised eyebrows at the near-total victory that the Philippines had achieved; on one hand, we celebrated the victory, but on the other, we were both very keenly aware, due to our continuing interactions with counterpart think-tanks and scholars in China, that it would create a new set of challenges. But as the Duterte Administration began making decisions and policies that were diametrically opposed to those of its predecessor, we became increasingly alarmed at how far and how totally the foreign policy pendulum swung to the other side, squandering so much capital and leverage that was built up in the years before.

Aileen continued to spearhead Track Two discussions and try new initiatives to keep our foreign policy with China on an even keel, and as the radical shift of the Duterte Administration created new national security problems. The suddenly close relations between the Philippines and China seemed to dispense with our assistance, but after a few years things began changing a little bit and we soon were called upon again to participate in very serious discussions about how to deal with China on various issues. Before she went to France on her fateful final conference, we had been meeting about the developments in the negotiations for the ASEAN-China Code of Conduct for the South China Sea and the concerns about Chinese investments that could undermine national security.

With her untimely passing, Aileen leaves a void in the country's intellectual resources on China in general and the South China Sea disputes in particular. She was the quintessential scholar: always thinking and researching, always questioning and seeking greater understanding. She was also a great mentor and colleague: having collaborated with her for two decades was one of the most productive and fulfilling aspects of my own academic and professional career, and I have observed her also similarly huge influence on the career paths of her students and researchers. She was also a true patriot, who always kept the Philippines' national interests and future at heart, and never wavered in the quest for solutions

and initiatives to try to strengthen our capacity to deal with the many challenges of foreign policy and international relations. Her equanimity and analytical eye was always a stable counterpoint to sometimes wild and impulsive thinking, and acted as a sobering and reflective influence that enabled one to improve one's perspective.

I can only hope that some of that has rubbed off sufficiently on myself and all others who have had the privilege of working with her on this overarching and intractable national issue. But I am sure that everyone who experienced her guidance and interacted with her scholarship will have been somehow enriched and advanced in their knowledge and understanding of our world and the great challenges we face as a nation. The South China Sea, and China, are among the greatest challenges we face as we grow and develop as a nation in a world of increasing uncertainty and in the midst of major shifts in our geopolitical landscape, global power alignments, and economic centers of gravity. We are less fortunate to have lost one of our most capable and learned scholars at a time we most need her, but I am hopeful that she has sown enough seeds to enable us to clear our paths to the future.

Notes

¹ UP-CIDS Chronicle, Vol. 4, No. 1-2. UP Center for Integrative Development Studies, Quezon City, 1999.

² Published in 2013 by the Asian Center and Institute for Maritime Affairs & Law of the Sea. Diliman, Quezon City