

CENTRE FOR INTERNATIONAL LAW Seminar Series

CIL

4 Nov 2010, Thursday, 2.30pm – 4.00pm

NUS Bukit Timah Campus, Block B, Level 3, Executive Seminar Room

(This is a “by-invitation-only” event)

ARCHITECTURE FOR COOPERATION IN THE SCS: A VIEW FROM THE PHILIPPINES



SPEAKER

Atty. Henry Sicad Bensurto Jr.
Secretary General, CMOA

Atty. Henry Sicad Bensurto Jr. is the current Secretary General of the Commission on Maritime and Ocean Affairs (CMOA) Secretariat, Department of Foreign Affairs, Philippines. He is a recipient of the Presidential Award of Gawad Mabini (with the Rank of Commander) for his distinguished contribution and leadership in the passage of Republic Act No. 9522 otherwise known as the Philippine Archipelagic Baselines Law on March 10, 2009, which finally came into fruition after 27 years of government efforts in attempting to harmonize Philippine domestic laws with the UN Convention on the Law of the Sea (UNCLOS). As Secretary General of the CMOA, he likewise helped shepherd the preparation and submission of the Philippine partial claim for Extended Continental Shelf (ECS) before the UN Commission on the Limits of Continental Shelf (CLCS) in April 2009.

The Philippine Supreme Court appointed him as *Amicus Curiae* (Friend of the Court) in the case G.R. No. 170867 entitled *Republic of the Philippines, et.al., vs. Provincial Government of Palawan, et.al.*, which involves the issue relating to the nature of relationship between international law and Philippine municipal laws as applied in the Malampaya natural gas field located in the shores off the province of Palawan. Atty. Bensurto is a regular Philippine Delegate to the various meetings of the States Parties to the 1982 UNCLOS in New York. He was also a Delegate to the 17th Session of the Hague Conference on Private International Law for the Adoption of the Convention on Inter-Country Adoption in The Hague, Netherlands in 1993. He has chaired different Panels from the Philippines in several negotiations and consultation talks relative to maritime delimitation and bilateral cooperation such as the RP-Vietnam Joint Permanent Working Group on Maritime and Ocean Concerns (JPWG-MOC). During his tour of duty as First Secretary, Consul and Legal Officer in Washington D.C. in 2005, Atty. Bensurto acted as the Lead Government Counsel in the dismissed Anti-Trust case filed by the US Department of Justice against the major telecommunication companies of the Philippines including PLDT, Globe Telecoms and Bayantel.

Born May 5, 1965, he earned his Bachelor's Degree in Political Science (minor in Economics) at the University of the Philippines (UP) in 1985 and his law degree from the San Beda College of Law, Manila, in 1990. He pursued Graduate Studies on Foreign Service at Oxford University in 1995-96 with a Distinction on Public International Law and Merit on International Trade. He has a Diploma on the Law of the Sea at the Rhodes Academy of Oceans Law and Policy, Rhodes, Greece; Certificate on National Security Law from the National Security Law Institute, Center for National Security at the University of Virginia School of Law, Charlottesville, VA. He also attended short term courses on International Trade Law and Human Rights Law at the Georgetown Law Center and American University in Washington DC.

Atty. Bensurto has written various articles on international law including “A Question of Sovereignty & Jurisdiction: Extra-Territorial Application of US Anti-Trust Laws”; “International Law, Implications of US Reconnaissance within the Chinese 200-Mile EEZ”; “Criminal Jurisdiction under the RP-US Visiting Forces Agreement (VFA)”; “The Concept Of Self-Defense under International Law”; and “Trends in International Law on Recognition Of States”.

INTRODUCTION

The Chinese occupation of the Panganiban (Mischief) Reef in 1997 was a stark reminder of the perils and dangers of territorial disputes in the South China Sea (SCS) and the urgent need to resolve them. Panganiban Reef is an atoll off the province of Palawan and forms part of the Philippines' Kalayaan Island Group (KIG). The KIG constitutes a part of the larger Spratlys group of islands which is being claimed wholly or partly by several littoral countries including the Philippines, Vietnam, China, Malaysia, Brunei, and Taiwan.

In the aftermath of the Panganiban Reef incident, there was also a realization among the claimant states as to the urgency of establishing an interim mechanism to better manage their territorial disputes and prevent the same from escalating into a full conflict pending the resolution of their territorial claims. The need for such dispute-management architecture becomes more imperative in the light of the unwillingness of some of the claimant states to submit the matter to the International Court of Justice (ICJ) or international arbitration. Thus, the ASEAN-China Declaration of Conduct in the South China Sea (DOC-SCS) came into being from the crucible of the Panganiban Reef incident.

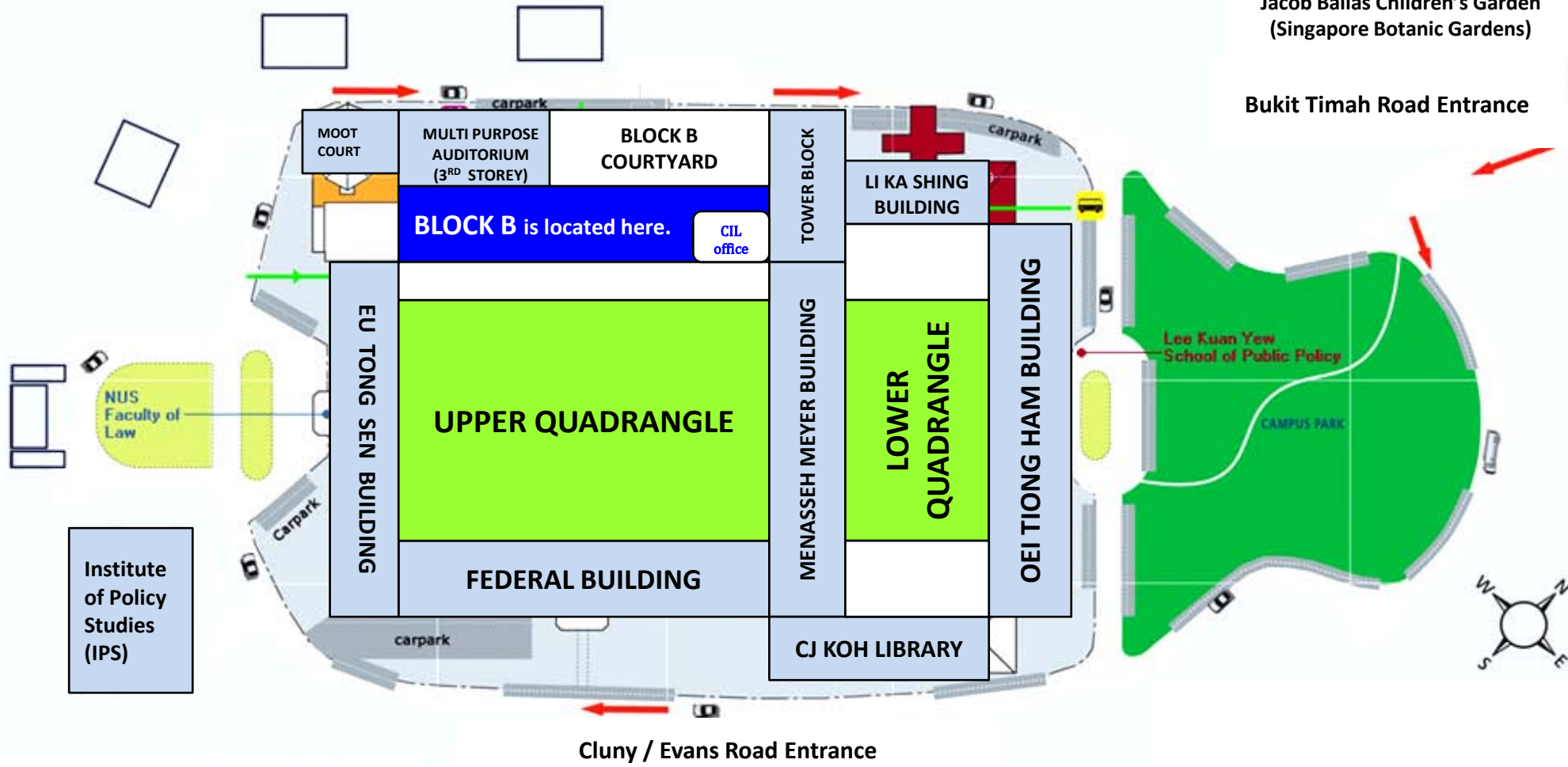
The DOC-SCS was signed on 4 November 2002 in Phnom Penh between the ASEAN member countries and the People's Republic of China. Originally intended as a regional Code of Conduct (COC), the DOC-SCS was toned down into a declaration of norms and principles that State-parties to the Declaration are to take into account as guideposts in their conduct of activities in the SCS. These norms are intended: 1) to prevent the escalation of tension in the SCS by prescribing the maintenance of status quo with respect to the occupied islands and proscribing new occupations of any geological features; 2) to respect and recognize the rights of third countries in the SCS in terms of navigational rights by affirming the UN Convention on the Law of the Sea (UNCLOS); and, 3) to foster cooperation in the SCS by encouraging confidence building measures (CBM) including the conduct of marine scientific research (MSR).

The DOC-SCS has arguably contributed to the maintenance of peace in the region since its inception 8 years ago. Nonetheless, incidents tending to create tension in the SCS still persist. Further, the official pronouncement of China regarding its 9-dash line claim over the whole of the SCS caused serious concerns on the part of other claimant states and complicated the implementation of the DOC-SCS. Calls for the respect of freedom of navigation also continue, indicating that it is either being violated or not observed in the SCS. Therefore, some claimants have called for the conversion of the DOC-SCS into a regional COC to make it legally binding. Will the conversion of the DOC into a COC really assuage the restlessness of the other claimant countries over the perceived assertiveness of China in the SCS? Is the full implementation of the DOC enough to prevent the escalation of tension in the SCS? Is the DOC defective? Is there a need for a broader legal architecture to ensure peace in the SCS? What role does UNCLOS have in the establishment of such cooperative architecture in the SCS? The Seminar will try to answer these questions and attempt to provide some prescriptions.

ABOUT THE CENTRE FOR INTERNATIONAL LAW (CIL)

The Centre for International Law (CIL) is based at the Bukit Timah campus of the National University of Singapore. CIL's mission is to enable Singapore and the Asia-Pacific region to play a more significant role in the promotion and development of international law and policy. The Centre's aim is to become the region's intellectual hub and thought leader for research on and teaching of international law and policy. The Director of CIL is Associate Professor Robert C Beckman and the Deputy Director is Dr Navin Raj. For more information, please visit the CIL website at <http://www.cil.nus.edu.sg> or email: cil.info@nus.edu.sg

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