

Defining the National Territory: Security and Foreign Relations Dimensions

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Introduction

This study, largely completed in 2008, examines the implications of redefining the Philippines' baselines, maritime boundaries, and jurisdictional areas on the country's security interests and on its diplomacy and foreign relations. Its primary goal, in tandem with its partner studies on living and non-living resources and on navigation, is to help develop a strategic and integrative framework for policy formulation, review, and evaluation that policy makers and government bodies may utilize in addressing the country's territorial and maritime jurisdictional concerns.

The Philippines is an archipelagic state¹ entirely surrounded by water that connects the estimated 7,100 islands that comprise the country. The combined coastlines of the islands extend to over 17,460 kilometers; 64 of the 79 provinces and 57 of its 117 cities are located in coastal areas.² The archipelago is strategically located, being at the crossroads of international trade and commerce (linking Southeast Asia with Northeast Asia as well as Asia with the Pacific) while in close proximity to international flashpoints threatening regional stability and involving the region's great powers (Korean Peninsula and Taiwan Strait). A Mutual Defense

Treaty has connected the country to the United States since 1951 resulting in the expectation that each side will help the other in meeting mutual security threats.

The Philippine government has increasingly pursued foreign policy coordination on functional, economic, as well as political-security concerns with the countries of the Association of Southeast Asian Nations (ASEAN), of which the Philippines is a founding member. It gives importance to relations with Japan (a long-time major trade, aid, and investment source) and China (the region's rising power and our fastest growing economic partner). The global presence of overseas Filipino workers, while helping the economy through foreign currency remittances, is seen as a vulnerability in its diplomatic relations (where they may be used as a bargaining chip by their host governments) and to its political and security interests (where Filipino nationals may be caught in situations of armed conflict). The country is otherwise actively engaged in the international community through commitments to international conventions and agreements, including the United Nations Convention on the Law of the Sea (UNCLOS), Convention on Safety of Life at Sea (SOLAS), and other International Maritime Organisation (IMO) conventions.

The Philippines can be characterized as a developing country with a fast-growing population, where development has unfortunately been stilted by chronic political instability, erratic and mainly low economic growth, declining environmental conditions, and what many decry as poor governance. Among the many challenges to nation building is the fact that Philippine territory, its boundaries, and corresponding areas of legal jurisdiction are ill-defined.

Some of the country's domestic laws run counter to its international law obligations. Specifically, Article II of the 1987 Constitution describes Philippine national territory as referring to the boundaries defined by international treaty limits (1898 Treaty of Paris, 1900 Treaty of Washington, and the 1930 Convention between the United States and the United Kingdom), Presidential Decree 1596 on the Kalayaan Island Group (KIG), and the Philippine claim to Sabah (Republic Act 5446). The United States has officially denied that the boundaries defined in the treaties (to which it was the original party) were regarded as territorial boundaries. The claims to the Kalayaan Islands are contested to different degrees by China, Taiwan, Vietnam, Malaysia, and Brunei, with all except Brunei having set up military facilities or civilian structures on many of the islands. Meanwhile, the Philippines still faces a dormant dispute with Malaysia over Sabah.

Such unresolved territorial claims and failure to delimit boundaries have in part led to resource-related problems such as Filipinos illegally fishing in foreign waters, foreigners illegally fishing in our waters, and our hesitation in developing offshore oil and gas resources. They have also led to confusion in the enforcement of national laws (such as on navigation and illegal entry) and of defense policies (such as rules of engagement with respect to foreign military presence).

Given the above context, there had long been an effort to re-define the country's baselines as the first requisite to determining its maritime jurisdictions and to negotiating overlaps and conflicts with neighboring states. The Arroyo administration finally enacted a new Philippine Baselines Law in 2009 on which basis it has become possible to claim rights over maritime resources and jurisdiction or responsibility over activities in our surrounding waters.

This study seeks to:

1. Identify the core security and diplomatic interests of the Philippines that are affected by the definition of Philippine national territory and the delimitation of our maritime boundaries and jurisdictional areas;
2. Identify strategic objectives the country might pursue based on the above-mentioned interests;
3. Provide insights into relevant regional and global factors that should be given consideration in addressing issues of Philippine territory; and
4. Explore policy implications, prospects and challenges that may arise from various courses of action pertaining to territory and boundaries.

The paper focuses mainly on strategic interests and objectives rather than operational-level concerns of diplomacy and security. This is intentional as the output, a proposed policy framework, hopes to emphasize the broader contexts and longer time horizons. The definition of interests and objectives which is the subject of this paper is thus only a first step; necessarily it must be followed by translation into medium-term goals and more situationally-defined short- to medium-term action plans for which specified political and legal support, and resources and capabilities will eventually need to be mobilized.

Moreover, the proposed policy framework requires further testing and validation involving a multi-disciplinary pool of experts, in particular, practitioners in the various relevant fields (foreign relations, international law, defense, law enforcement, fisheries, energy, environment, and others).

Relevant Concepts

In the process of defining security and foreign policy interests and objectives, and in examining the implications of defining Philippine baselines and maritime zones, the study makes use of concepts that require elaboration as to their meaning and significance.

Sovereignty, which is a key value all states seek to uphold, is an internal attribute of states that refers to the exercise of supreme authority within a territory; while externally it refers to the condition of being politically free from the influence of other states in the exercise of its basic governing prerogatives. Respect for state sovereignty has been an accepted norm in inter-state relations since the 1658 Peace of Westphalia, which renders a state's interference in the prerogatives of other states as illegitimate. However, in principle as well as in practice, sovereignty depends upon the recognition of other states. *Territoriality* remains the principle by which the members of a community are to be defined as belonging to a state; therefore, without a defined territory, there can be no sovereignty. And without recognition by other states of the defined territory, there can be no sovereignty.³ For purposes of this study, it is external sovereignty that is relevant, and Philippine sovereignty may be understood as a condition whereby member-states of the international community recognize and respect the supreme authority of the Philippine government and its legitimate instruments, over matters that occur within what the Philippines defines and is generally recognized as "Philippine territory."

Territorial integrity likewise has internal and external dimensions. Internally this means freedom from secessionist movements, while externally it is a norm also encapsulated in the UN Charter that proscribes any attempts to change the territorial status quo of a state by the threat or use of force.⁴ Operationally, territorial integrity of the Philippines means a condition wherein the scope of Philippine territory and

the limits of its boundaries are not being effectively challenged by other states or entities, nor would such a state/entity attempt to change the territorial status quo by using force or by threatening to use force. Neither would another state promote or encourage secession by any part of the Philippine population that will result in breaking up Philippine territory.

In the present context, threats to Philippine territorial integrity may include support by internal or external forces for a separate Muslim state in Mindanao and, potentially, attempts by other countries to address the territorial disputes in the Kalayaan Islands or over Sabah by use or threat of force. Illegal entry, conduct of economic activities such as fishing or oil exploration, and navigation in Philippine waters per se (i.e., without intent of changing the territorial status quo) may not constitute threats to territorial integrity, although the inability to prevent or regulate them may reflect failures in the country's assertion of sovereignty. However, should these activities take place with the strategic intent of undermining sovereignty or fragmenting the archipelago, such as may be undertaken by hostile states or parties, then they may be considered threats to territorial integrity.

Philippine *national security* is defined in an integrative way, containing elements of both state security (defense against external armed threats and internal insurgencies) and human security (freedom from fear and freedom from want of individuals and communities). It emphasizes not only military threats but also challenges to the economy, social cohesion, and environment, among others. The National Security Council defines national security as an environment where “freedom, dignity and prosperity” is attained and the “nation’s core values, way of life and institutions; capacity to create and share wealth; living standards; sovereignty/territorial integrity; and strategic relationships” are protected and enhanced.⁵ *Maritime security* is a broad concept that includes law and maintenance of good order at sea, as well as the maritime aspects of food security, resource security, and environmental security. Threats to maritime security include territorial disputes, sea-based acts of terrorism, insurgency, transnational maritime crime (including piracy, smuggling, illegal

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immigration), and harm to the maritime environment. The traditional roles played by navies, and those of coast guards or maritime police, are considered to be contributing to maritime security.

This study outlines the country's core interests and strategic objectives. In the international arena, *core interests* are values that can be identified and must be agreed as the central, primordial, and vital driving forces of the country's development, security policy, and foreign relations, where failure to defend and promote such interests may have a long-term negative impact on the survival of the state and/or the welfare of the Filipino people. Among our often-cited core interests are the promotion of sovereignty and the protection of territorial integrity, economic growth and development, and the well-being of Filipinos wherever they may be. These are the so-called three pillars of Philippine foreign policy.

Strategic objectives, on the other hand, are the articulation of long-term national goals (possibly as long as up to 25 years) for national policy makers that will ensure the protection and promotion of the core interests of the Philippine state/Filipino people. It is ideally formulated in relation to a review of both the domestic situation and the regional/global environment.

The National Security Council under President Fidel V. Ramos identified several strategic objectives which it argued needed to be met before the Philippines can consider itself secure. These are: (1) moral consensus, (2) cultural cohesiveness, (3) ecological balance, (4) economic strength, (5) socio-political stability, (6) territorial integrity, (7) international harmony, (8) global competitiveness, (9) people empowerment, and (10) solid infrastructure.⁶

In the security and foreign relations arenas, one can define more specific indicators of strategic objectives, such as capable defense against armed threats, promotion of regional peace and stability, or other such examples.

Philippine Maritime Security

What are the core interests and strategic objectives of the Philippines in the area of maritime security? How will a redefinition of baselines and maritime jurisdictional areas affect these core interests and strategic objectives?

There are various challenges and potential threats to Philippine maritime security that need to be addressed, and the definition of Philippine baselines and territorial limits is the most crucial element and necessary starting point of managing such threats. According to a Philippine Navy source, “the main vulnerabilities of the Philippines are its vast maritime approaches and (in)ability to monitor activity levels in these areas effectively. The major approaches are across the west and north-west of the South China Sea, on the south by the Celebes Sea, and the north by the Bashi Channel and Straits of Luzon.” In addition, the 1994 entry into force of the UNCLOS significantly expanded the functions and capability requirements of the country for sustainable resource development as well as for the management of the transnational threats posed by piracy, smuggling, poaching, and illegal fishing. Finally, the territorial disputes over the South China Sea/Kalayaan Island Group (KIG) involving six countries pose a continuing—if, by some accounts, low level-risk of embroiling the country in armed conflict.⁷

Even in the face of these diverse challenges to maritime security, public spending and planning for national security have been concentrated mainly on internal security operations, most especially ground force operations of the Philippine Army against the communist and secessionist movements. This has left the Philippine Air Force and the Philippine Navy with only very limited maritime patrol and combat assets and low capability for maritime surveillance and interdiction.

Threats and challenges to Philippine maritime security may be categorized into four types, according to the question of “whose security?” or “threats against whom or what?” These four categories are: threats to State survival; threats to economic resources; threats to the safety of Filipino nationals; and threats to regional peace and stability.

Threats to State Survival

The most primordial duty of the state is to ensure its own survival, which is anchored on its ability to promote and sustain sovereignty and territorial integrity. In the present era of global interdependence, the danger of invasion and occupation of territory by foreign powers has been significantly reduced, albeit not entirely eliminated.⁸ For the Philippines, there appears to be no major threat to state survival arising from external powers since the Japanese invasions leading to war in the Pacific.

The major armed challenges to state security that continue to preoccupy government arise from internal sources such as Muslim secessionism, communist insurgency, kidnap-for-ransom gangs, and international terrorism. Of these internal challenges, only secessionism appears to pose a credible threat to sovereignty and territorial integrity. The secessionist movement in southern Philippines, alongside international terrorist elements operating in the country, is believed to be linked to pan-Islamic organizations in neighboring and even far-off countries drawing some cross-border support. The exact extent to which these linkages constitute serious threats remains unclear, as the strategic intent may not be matched by capabilities, and it is the local actors (both the Government of the Republic of the Philippines and the Moro Islamic Liberation Front) rather than outside forces that wield the initiative whether in suing for peace or waging war.

In the maritime arena, however, risks of limited armed conflict also arise from our territorial disputes with five other countries (China, Taiwan, Vietnam, Malaysia, and Brunei) in the Kalayaan Island Group;⁹ with China and Taiwan on Scarborough Shoal, and with Malaysia over the dormant but unresolved claims to Sabah in North Borneo. Should any of these disputes escalate into actual armed conflict, then the threat to territorial integrity of the Philippines becomes real. The standoff between China and the Philippines on Scarborough Shoal from April to June 2012, and how China ultimately wrested control of the shoal from Philippine administration, impacted Philippine territorial integrity.

With respect to ensuring state survival, the *core interests are the protection and promotion of Philippine sovereignty and territorial integrity, as earlier defined*. Consequently, the strategic imperatives or objectives for mitigating or eliminating threats to the state include:

1. To strengthen international recognition of Philippine territory and maritime jurisdictions by:
 - Clearly defining the territorial limits and jurisdictional areas, and ensuring they are in accordance with accepted international norms and laws, including UNCLOS;
 - Demonstrating effective control over jurisdictional areas by preventing intrusions and illegal activities, establishing clear legal regimes and

management mechanisms, and undertaking development activities for areas under its jurisdiction.

2. To strengthen internal political resiliency and national cohesion in order to prevent secessionism from within, and to resist opportunistic external forces who would take advantage of such;
3. To develop credible military capability for deterrence and defense against any hostile foreign power or entity that might challenge sovereignty and territorial integrity.

Threats to Economic Resources

From a security standpoint, threats to our maritime economic resources should be taken seriously, especially in light of our unimpeded population growth, depletion of resources on the main archipelago, and the worsening competition for resources taking place among the various states.

Fisheries and hydrocarbons are the principal maritime natural resources at stake, and are of interest and relevance to Philippine food security and energy security, respectively. Of the two, hydrocarbons (oil and gas) are considered the more strategic as economic growth and industrialization depend heavily on access to fossil fuels and in light of the geopolitical competition among the major powers over this resource. Fisheries, on the other hand, as well as minerals and other aquatic flora and fauna, are important sources of food in the Filipino diet, livelihood and potential income for both traditional and commercial fishers, and have other scientific and industrial applications, presumably including many that are yet to be discovered.

Moreover, with the Philippines being at the center of the center of marine biodiversity in the world, it carries a huge responsibility for ensuring a sustainable future for the ocean's diverse species and for ensuring a balance between resource exploitation and conservation.

The principal threats to economic resources arise from competition with traditional and commercial fishing operators of other countries for dwindling fish stocks; the conduct of IUU (illegal, unregulated, and unreported) fishing practices both in disputed maritime areas and in Philippine internal waters; accidental oil

spills, dumping of toxic substances, and other activities that are harmful to marine life; and foreign military or law enforcement activities intended to secure access to fisheries and hydrocarbons for foreign nationals while impeding use and development by Filipinos. In addition, the possibility of the contest for oil and gas escalating into armed conflict, whether including or excluding the Philippines, is a cause for concern.

With respect to securing access to and jurisdiction over natural resources, the core interests of the Philippines may be articulated as: ensuring equitable access to and sustainable development of both living and non-living resources for the welfare of Filipino people, based on actual and projected needs; and preventing armed conflict over resources from impeding our effective management of the oceans.

Consequently, the strategic objectives for mitigating or eliminating threats to economic resources include:

1. To prevent and regulate foreign resource exploitation activities in the Philippines' territorial waters, exclusive economic zone, and extended continental shelf, employing measures that are consistent with international laws and norms;
2. To encourage and provide support to our own traditional fishers, commercial fishing industry, and energy sector players to undertake sustainable resource use activities where feasible and profitable; and
3. To move toward de-securitization of the resource disputes in the KIG, Scarborough Shoal, and surrounding areas, and for eventual demilitarization of foreign presence pending final settlement of disputes.

Threats to Filipino Nationals

Aside from the security of the state and its resources, there are direct challenges to human security that include risks to safety of persons engaged in navigation and economic activities at sea. Such risks may arise from natural hazards (typhoons, running aground on reefs), vessel collisions, piracy, and maritime terrorism. They may also be a consequence of inter-state armed conflict, such as when foreign military forces apprehend, harass, or otherwise obstruct fishing or other economic activities of Filipino nationals.¹⁰ A third type of challenge arises from the natural movements

of people, including illegal migration or human trafficking, where Filipino nationals may suffer misfortunes at sea, not to mention ending up as victims of abuse once they reach their destination.

Some of these situations may be mitigated by setting into place preventive measures, such as typhoon early warning systems, lighthouses, and improved traffic schemes, but others may require drastically enhanced capabilities for vessel monitoring, search and rescue, for quick response to situations of distress, and, under the worst case scenarios, for naval or air force engagement.

Ensuring the safety of Filipino nationals—whether fishers, seafarers, coastal communities, members of the armed forces, migrant workers, or others against both natural hazards and man-made dangers to life and property—is a core interest. As such, among our strategic objectives would be:

1. To have in place an effective system of both preventive and quick response measures with respect to threats to persons that arise from natural hazards;
2. To significantly improve the capabilities of the Coast Guard, Navy, and Air Force for regular patrols as well as rapid reaction search and rescue, hot pursuit, and interdiction; and
3. To develop cooperative regimes with other littoral states for responding to emergencies at sea.

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Threats to Regional Peace and Stability

As a developing country faced with problems of internal political stability and lacking in national unity, having a peaceful and stable regional environment is requisite to our ability to concentrate our efforts on the many challenges of nation-building. Moreover, we are constrained to seek cooperation with many other states, particularly major trade and investment partners, sources of official development assistance (ODA), as well as markets for our tourism and labor exports, for as long as the domestic economy remains unable to generate the jobs, capital, and technology to sustain its population.

Successive Philippine administrations have also supported a close security relationship with the United States as a crucial element in our defense against external threats and, under the Arroyo government, in efforts as well to defeat internal insurgencies and so-called terrorist groups, notwithstanding the resulting erosion of Philippine sovereignty.

In this light, any situation that may lead to sustained armed conflict in the surrounding maritime areas, or abrupt changes in the power equation involving major military powers of the region (e.g., United States, China, Japan), may be seen as a potential threat to Philippine security. These could lead to disruption of regular commercial traffic through the region's sea lanes of communication, to a dampened regional investment climate, or worse, to the country becoming drawn into conflicts by supporting one party, e.g., by providing bases, facilities, or services for military campaigns. The greatest risks of armed conflict arise from interstate border, territorial or resource conflicts, and the continuing rivalry among the major powers for strategic influence in East Asia. Possible triggers of the latter type of conflict are present in the Taiwan Straits, the Korean Peninsula, and in the territorial and maritime disputes in the East China Sea and South China Sea.

It is a core interest of the Philippines that conflict in East Asia among the major powers be prevented, that our entanglement in such conflicts be avoided, and that peaceful relations with and among neighboring countries be maintained. The emergence of any single hegemon in the East Asian region may also threaten the sovereignty and independence of small and medium-sized states and may lead to a security dilemma¹¹ by inciting rival states to coalesce and challenge its power.

On these premises, our strategic objectives include maintaining a balance of influence¹² among the region's major powers and strengthening regional multilateral institutions and mechanisms (e.g., ASEAN, ASEAN Regional Forum, APEC, and more recently ASEAN Defense Ministers Meeting (ADMM), and ADMM Plus) that prioritize the development of cooperative security approaches as a hedge against power politics. Resiliency against regional instability will moreover be enhanced if we take steps to resolve our own territorial and boundary disputes that get in the way of building a strong ASEAN security community, as well as to promote regional cooperation against terrorism.

As one of several claimants to the KIG, the Philippines also bears responsibility and can in fact continue to take initiatives in ensuring that relations among the claimant countries remain peaceful and stable, and that any moves to address the disputes be confined to diplomatic means. A continuing commitment to the principles and norms that we have helped set in place, such as the 2002 ASEAN-China Declaration of Conduct of Parties in the South China Sea, and further efforts to build trust and reassurance with rival claimants are in our interest and must be pursued in balance with the protection of our security interests and promotion of our sovereign rights over the resources of the Exclusive Economic Zone (EEZ) and the continental shelf.

Policy and Legal Environment

Weak Defense and Law Enforcement Capability

There are a number of conditions that constrain or even militate against the country pursuing its core interests and attaining the strategic objectives outlined above. Already mentioned are the weak capability of the Navy and Air Force (relative to most of our neighboring states) to deal with external threats, and the lack of financial resources and political commitment dedicated to any serious upgrading of such capability. Aside from the Armed Forces, the Philippine Coast Guard and other civilian institutions with maritime security-related mandates are ill-equipped. The outcome is an inability to effectively monitor foreign presence and regulate foreign civilian or military activities in our waters, failure to prevent or act against territorial incursions, and a lack of readiness to protect and defend our own nationals in various threat situations. Aggravating poor defense and law enforcement capabilities is the lack of national consensus and unity on how to approach our maritime heritage, partly arising from a low level of awareness of the interests at stake. Disagreements abound and are difficult to resolve even between the central and local governments (e.g., Manila and Palawan over jurisdiction over the Malampaya oil and gas exploration site), between branches of government, and even between agencies of the Executive when faced with conflicting institutional mandates (e.g., Department of National Defense and Department of Foreign Affairs.) Poor leadership at the highest levels results in policy stalemates within the Executive branch, while partisan politics in the Legislature often lead to the same outcome.

Unfortunately, weak maritime defense capability has spiraling consequences: diplomacy becomes a necessity rather than an instrument of initiative and choice. Even in pursuing diplomatic negotiations over territory or boundaries, we find out that with a weak military, we have little leverage when dealing with a superior military power. Military weakness forces us to rely on a great power ally such as the United States even when there is reason to doubt the reliability of the ally¹³ and even though the asymmetry may mean costs to our aspirations for an independent foreign policy, as well as higher risk of being caught in a security dilemma.

Absence of Clear Laws and Implementing Guidelines

On the other hand, even if we had the wherewithal, the absence of clear jurisdictional boundaries to the north, south, and southwest confuses and impedes law enforcement. Implementation of law depends on clear jurisdictions, which assumes uncontested boundaries; clarity of boundaries allows precise determination of the geographic extent of the application of national law. For decades, then, we have had a situation where military and law enforcement units are forced to operate without legally and administratively consistent boundaries. Even the courts, before which violations of law are brought, get caught in legal inconsistencies. For example, there is no guidance in the law for how we should treat Sabah, although we infer from Article II of the Constitution and from Republic Act 5446 Section 2 that we continue to claim it. There is also no guidance in the law available for continental shelf claims, which will be crucial for our offshore oil and gas interests.¹⁴

Where we do have interim boundary management mechanisms in place, such as border crossing agreements with Indonesia and Malaysia, the proximity of islands, vast areas of water, and easily navigable sea conditions around the borders make it easy for people and goods to pass between them given the lack of law enforcement assets.

Regional Strategic Factors

Regional strategic factors also help shape the foreign policy environment that we find ourselves operating in. To name a few: the rise of China and the deepening economic and security engagement between Manila and Beijing, especially under the Arroyo

administration; the reassertion of US primacy following the 9-11 terrorist attacks; and the increasing trend of regionalism and community building, especially among the ASEAN countries. The rise of China and our deepening engagement with Beijing have caused the Arroyo administration to moderate its territorial claims to avoid confrontation with China, with the Joint Marine Seismic Undertaking (JMSU) in the KIG area an early indication of such a shift. The reassertion of US primacy, on the other hand (albeit there are increasing numbers who now theorize or predict a decline in US influence and power), raises for us the imperative of re-examining the purposes and expected benefits of the RP-US Mutual Defense Treaty and other security cooperation frameworks as they may apply to the maritime arena. The trend toward regionalization and regionalism is also significant as it expands the diplomatic options available for the Philippines in dealing with maritime security issues, while at the same time offering a less asymmetrical forum for negotiating or addressing ocean concerns compared with bilateral diplomacy.

The latest factor to weigh in would be the global financial downturn and its effects on the foreign policy priorities of the United States and China. Specifically, the question arises on whether the domestic demands and pressures on the new Obama administration may eventually lead to protectionist economics, trade wars, and increasing tensions between Washington and its major trading partners, including China. Will this lead to diminished interest and attention to Southeast Asia and regional maritime security, including that of the Philippines? Or will a fraying of the economic ties between US and China spill over to tensions in the political-security arena, escalating their rivalry for influence in East and Southeast Asia, and thus threatening regional peace and stability? On the other hand, will the apparent weakening of the Chinese economy also lead to an inward turn by its leaders and less likelihood of foreign military adventurism on the part of China as they focus on internal socio-economic consolidation? Or will domestic as well as external economic pressures provoke a nationalist, and, in particular, irredentist backlash in China that may not bode well for its neighboring states?

Options for Re-defining Baselines and Their Implications for Foreign Policy and Security

The status quo with respect to the definition of Philippine territory is one in which the present boundaries (Treaty Limits, PD 1596) and territorial claims

(Kalayaan Islands, Sabah) are not recognized by the international community and are not in full compliance with UNCLOS. That they are not in full compliance weakens our legal basis for the exploitation and management of resources in our EEZ and is a continuing source of disagreement. The fact that even the United States (as the original party to the Treaty of Paris and our closest security partner) denies recognition of our expansive territorial claims, the fact that we are unable and apparently even unwilling to consistently enforce national laws within the present limits renders the status quo no longer tenable and even outrightly counter-productive insofar as securing the country's sovereignty and territorial integrity, protecting the economic resources, and promoting the safety of nationals are concerned.

The option of redefining our areas of jurisdiction by enclosing KIG and Scarborough Shoal together with the main archipelago within new baselines may be considered by many as the preferred option for promoting sovereignty and territorial integrity, if only in the sense that the farther away our boundaries, the more secure we should be from foreign intrusions and interference. Moreover, at least hypothetically, the more land and water we claim, the more ocean resources (especially oil and gas) we may claim for exclusive use.

The downside of enclosing the maximum possible area within baselines will come in terms of the huge requirements for human, technological, and financial resources to ensure the effective implementation of our rights and responsibilities as coastal states. We might also expect that the greater the area, the more it will invite interest by the major powers; and the more difficult it will be for us to negotiate overlaps with neighboring states. Such a claim is certain to be heavily contested and more costly (time and resource-wise) to defend.

A third option, a bill already passed by the bicameral committee of the Senate and House of Representatives, encloses only the main archipelago within archipelagic baselines while treating the Kalayaan Islands and Scarborough Shoal as falling under a "regime of islands" as defined by UNCLOS. Some quarters, including advocates of the maximalist definition of Philippine territory based on Treaty Limits and KIG, skeptics about UNCLOS, local stakeholders in Palawan concerned over possible loss of political jurisdiction and revenue, and other anti-administration critics who oppose Malacanang's advocacy of this option, criticize it as a "sell-out." From the security standpoint, the implications may be as follows:

- A reduced area of the ocean will fall under the jurisdiction of our defense and law enforcement authorities, but not in all aspects, as much of the waters will remain within the 200-nm EEZ over which we should exercise our sovereign rights, subject to agreement with neighbors over overlapping EEZs. The effect of treating waters as EEZ rather than territorial waters may be a de-securitization of the resource conflicts and of the presence of foreign ships close to our main archipelago, as these will no longer constitute intrusion into what we presently consider territorial waters. However, should there be an increase in vessel traffic and fishing presence in the PD 1596 waters, then the islands and waters of the main archipelago also become even more vulnerable to intrusions and illegal activity in the waters that surround and connect the islands. In effect, since there will be less ocean spaces to watch over, we must concentrate border patrols around the most vulnerable coastlines of the main archipelago where the need for them may increase.
- The JMSU may have produced data that can give a clearer picture of the likely location of hydrocarbons. Will pulling back to a “regime of islands” position not result in surrendering our rights over such resources as may lie in the belt between Palawan and the outlying islands of the Spratlys?
- The outlying islands in KIG will become separated from the main archipelago, but will nevertheless require regular military presence and replenishment.

From the diplomatic standpoint, possible implications are:

- “regime of islands” is only of value if it can be established that the features are indeed islands and under our sovereignty. While we may appear to be stepping back from a more hardline to a softer position, thus helping build confidence and paving the way for negotiations if so desired, what exactly will the new baselines mean in terms of the status of PD 1596. If it effectively repeals or amends the law, then what shall be the basis of our sovereignty claim in the first instance?

Thus, even with this option, the imperative remains that the country pursue the following policy directions: building and improving enforcement capability of the Coast Guard, Navy, and Air Force; establishing and implementing sustainable

development programs for the EEZ to secure use by our nationals; and conducting careful and more in-depth studies of our legal position, and preparing an agenda and strategy for negotiations.

Epilogue

Since this paper was written in 2008, a number of significant changes have taken place, rendering parts of the paper outdated. In March 2009 the Philippine President signed into law Republic Act 9522, or the Philippine Baselines Law. The new law amended the previous baselines law (RA 3036 as amended by RA 5446) in order to make the national baselines compliant with international obligations under the UN Convention on the Law of the Sea. It enclosed only the Philippines' main archipelago in baselines, but declared the Kalayaan Island Group as well as Scarborough Shoal under a "regime of islands."

In 2012 China wrested control of Scarborough Shoal from the Philippines after a ten-week standoff. Fishermen from Zambales, Pangasinan, and Bataan who traditionally fished in those seas lost valuable fishing grounds. In response, the Philippines filed a case for arbitration under the International Tribunal of the Law of the Sea against China's nine-dash lines claims enclosing nearly 90 percent of the South China Sea. Tensions over disputed territories and maritime resources mounted not only between the Philippines and China, but between China and Vietnam in both the Paracels and Spratlys, and between China and Japan in the Senkakus, as China expanded administrative jurisdictions. China also started reclamation and construction on certain reefs within the Philippines' Exclusive Economic Zone.

Moreover, research and advocacy work related to this paper was pursued by the author in 2012 when she convened, in her capacity as a member of the Philippine Navy Board of Advisers and with partial funding from the University of the Philippines, an Informal Experts Group on the West Philippine Sea. The author co-chaired the Informal Experts Group with former Senator Leticia Ramos-Shahani. Eight other members, including former senior government officials, participated. They produced a white paper titled "Towards a Strategic Framework for Management of the West Philippine Sea," the public version of which has been published and widely circulated. The Summary and Highlights of the white paper are annexed to this paper.

ANNEX

Towards a Strategic Framework for Management of the West Philippine Sea

A WHITE PAPER BY THE WPS INFORMAL EXPERT GROUP¹⁵

SUMMARY AND HIGHLIGHTS

Introduction

Tensions among rival claimant-states to the waters and land features of the South China Sea (SCS)—particularly China, the Philippines and Vietnam—have escalated significantly in the last several years, bringing the Philippines to center stage as a key participant in the future of security and stability in our part of the world. While the surge in confrontational rhetoric and actions directed against the Philippines have added to the urgency of ensuring calibrated and effective responses, the territorial and resource disputes themselves are not new and have been the subject of policy action and deliberation for decades. The challenges arising therefrom are not expected to be resolved easily or soon, but will likely continue to demand the attention of government and the Filipino public for decades to come.

This White Paper seeks to draw the attention of all concerned Filipino stakeholders—particularly those in government—to the urgent need for a strategic framework for the management of our territorial, maritime jurisdiction, and resource disputes in the West Philippine Sea (WPS). The authors are former or current public servants, coming from various areas of specialization, who have long been involved in past initiatives relating to Philippine policy in the WPS.

The paper is not intended to provide answers to all the policy questions, but to suggest a policy agenda, and to underscore the urgent need for a strategic vision, more permanent institutions, as well as for more effective arrangements for policymaking and coordination to address such agenda.

Contextualizing the Philippines and the West Philippine Sea Issues

1. The Philippines is a strategically located, resource-rich archipelago, lying at the maritime crossroads of Northeast and Southeast Asia, and connecting the South China Sea with the Pacific Ocean.

It has been called a quintessential coastal state, an archipelagic and maritime nation with over 7,000 islands, entirely surrounded and interconnected by seas. Not many towns or cities in the country are more than 100 km from shore. 78% of its provinces and 54% of municipalities, almost all major cities, and 62% of the population are coastal. Just as the seas have shaped our history and the formation of the nation, we continue to depend on them for our livelihood and welfare, for communications and transportation, for defense and security, for leisure and the enjoyment of nature's blessings.

2. The Philippines is the 12th most populous country in the world. While endowed with considerable mineral wealth, the world's richest marine biodiversity and a strong pool of human resources, we suffer from widespread poverty, frequent natural disasters and vulnerability to climate change hazards. Generations of poor governance and inequitable social structures have also impeded economic progress, especially in comparison with rapidly growing neighboring states in the East Asian region.
3. The Philippines has signed and ratified the United Nations Convention on the Law of the Sea (UNCLOS), which grants coastal states sovereign rights over economic resources, as well as legal jurisdictions over certain types of sea-based activities within the 200 nm EEZ and the continental shelf measured from their baselines. UNCLOS offers the Philippines major advantages in terms of access to resources and some forms of regulatory jurisdiction over two million square kilometers of water and the seabed beneath.

Through UNCLOS, the Philippines and Indonesia introduced and joined forces to gain acceptance of the concept of the archipelagic State. We successfully secured the international community's recognition of our exclusive sovereignty over all waters around, between and connecting the different islands within the Philippine Archipelago, subject to certain limitations on distances between base points. Without the archipelagic State

concept enshrined in Part IV of the UNCLOS, the Philippines would have remained a scattering of islands separated by high seas.

UNCLOS also provides guidance for states with overlapping jurisdictional claims, who may then resort to a range of peaceful dispute settlement mechanisms, among them the International Tribunal on the Law of the Sea (ITLOS), the International Court of Justice (ICJ), and arbitration arrangements. As of June 3, 2011, 163 states had ratified the UNCLOS.

4. The SCS borders the entire western seaboard of the country. Several key provinces including Ilocos Norte, Ilocos Sur, La Union, Pangasinan, Zambales, Bataan, Mindoro, and Palawan face the SCS. The sea is extremely significant from an international navigational, economic, geopolitical and strategic perspective, thus making the Philippines strategically important.

Oil and gas resources have been proven to exist in areas adjacent to and closest to the coastlines of littoral states. Fisheries throughout the area have historically supported the survival of coastal populations and are vital to food security in the region. Coral reef ecosystems in the nearshore and offshore areas nurture and propagate the region's supply of fish. Commercial as well as military navigation have established the SCS as a major waterway and a lifeline for trade and energy supplies connecting countries in the Middle East, Africa, and South, Southeast, and Northeast Asia.

Several countries—the Philippines, Brunei, China, Malaysia, Taiwan and Vietnam—have competing claims to all or part of the SCS, while great powers such as the United States and China are beginning to compete for naval power and influence here, thus making it a potential regional flashpoint.

5. The international and regional environments profoundly affect Philippine interests and its relationships with other states. Global financial woes, turbulence in the Middle East, and competition for energy supplies are but some significant global developments that may directly impact our economy. In the region, the emergence of new powers China and India, the potential for strategic rivalry between the US and China, military flashpoints (such as the Taiwan Straits, Korean peninsula and the SCS itself), a steady arms buildup among various countries, domestic political transitions in key

neighboring states, and trends in ASEAN and East Asian regional integration are all relevant to stability and peace and therefore to the prospects for achieving greater development and security for the Philippines. Conversely, in this interdependent setting, what the Philippines does with respect to the WPS can and will have ripple effects on regional and global scenarios.

6. Rebuilding institutions for good governance, bringing the long-standing Mindanao conflict and the communist insurgency to a resolution, promoting social justice and human rights, improving the peace and order situation especially with respect to crime and terrorism, and consolidating gains in macroeconomic conditions—these are the domestic imperatives of long standing that shall continue to demand the priority attention of government and the Filipino people. Each of these is critical to our national resilience, unity and progress, which in turn are indispensable for our ability to face emergent external challenges.

The Fundamental Problem

The Philippines has long-standing territorial and jurisdictional disputes with several states bordering the SCS, as well as undelimited maritime boundaries in various waters adjacent to the archipelago. These disputes affect the economic, national security, human security and environmental interests of the country, and moreover impact on regional stability and the prospects for successful regional integration in East Asia.

Philippine efforts to assert sovereignty in the WPS and to implement provisions of the UNCLOS in its EEZ in line with national development and security goals are stymied by the claims and actions of other countries. In the last several years, territorial tensions among some countries bordering the sea have escalated, and these have occurred against the backdrop of broader geopolitical shifts, including rivalry for regional influence between great powers. This current geopolitical context may provide both challenges and opportunities for the advancement of Philippine interests and for the peaceful resolution of said disputes.

There is a need for a comprehensive and strategic approach to policymaking on the WPS, taking into consideration the myriad short- to long-term interests of the country at stake, the fluid regional and international environment, and the domestic imperatives that will affect how government prioritizes the allocation of its efforts and resources.

Imperatives of Philippine Policy in the WPS

Sustainable Development of the Marine Economy and Resources

Fisheries

1. The Philippines is the world's 6th largest producer of fish, with fish being a main protein source and fisheries a main source of livelihood for our people. The waters west of Palawan, which flow from the SCS, account for 20-25% of our annual fish catch, while the areas offshore of Zambales are rich spawning grounds, underscoring the economic importance of the SCS to food security and economic welfare.
2. Republic Act 8550 or the Fisheries Code of 1998, declares as a national policy, among others: (1) to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens; and (2) to ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting and enhancing the quality of the environment.
RA 8550 further defines the area of its application to "all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile EEZ and continental shelf."
3. In the WPS and other waters adjacent to the archipelago, fisheries are threatened by both reef degradation and overfishing. Foreign fishing fleets are systematically increasing efforts to improve catch, in some cases encouraged by their government as a means of asserting maritime claims. The Philippines, on the other hand, has not substantially increased its marine fishing effort for many years and places priority on resource conservation and protection. Uncontrolled fishing in the area will diminish resources for current and future needs of Filipinos, despite sovereign rights over fisheries and aquatic resources accorded to us under UNCLOS. Moreover, the biodiversity and productivity of the WPS are directly linked to the biodiversity and productivity of the country's inter-island waters. Any diminution in the resources of the WPS may have negative impacts on the viability of our own inter-island fisheries resources.

Hydrocarbons and Minerals

1. International research data indicate that the Philippines has significant oil and gas as well as other mineral deposits particularly around the Palawan/Reed Bank area. It is now believed that they are of such quantity that they could have transformative potential for a developing country such as ours. Access to these resources is therefore a core Philippine interest in the WPS.
2. Presidential Decree 87, also known as the Oil Exploration and Development Act of 1972, declares it a policy of the State to “hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign, under the arrangements embodied in this Act which are calculated to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government for use in furtherance of national economic development, and to assure just returns to participating private enterprises, particularly those that will provide the necessary services, financing and technology and fully assume all exploration risks.”
3. The country’s energy infrastructure, as well as energy supply and demand projections, will soon urgently require a fresh infusion of indigenous energy sources. Oil industry players have thus been preparing to begin commercial drilling activities. There is an unavoidable need for foreign capital and technology, but the international disputes in the area and recent escalation of tensions over drilling and exploration activities have created a perception of risk and uncertainty that discourages long-term investors.
4. Philippine policies on oil and gas cooperation or joint development in the WPS need to be clarified. The key obstacles to joint development are security concerns and commercial reservations about partnering with oil companies from rival claimant states, as well as fear of potential negative impacts on the country’s legal position.
5. Aside from fisheries and hydrocarbons, there is a need to conduct thorough assessments of other offshore mineral resources, such as rare earths, iron, titanium, vanadium sands, manganese nodules and massive sulfides, as well as of the renewable energy potentials of the ocean.

Promoting Maritime Security and Defense

1. The Philippine government, in its National Security Policy (2011-2016), outlines as one of its objectives to “capacitate the Philippines to exercise full sovereignty over its territory and to provide protection to its maritime and other strategic interests.” The Philippine defense establishment is in transition from focusing on Internal Security Operations (counter-insurgency, counter-separatism, and counter-terrorism) to Territorial Defense.
2. Most states bordering the SCS have embarked on military upgrades and civilian or paramilitary law enforcement modernization efforts that are partly intended for the protection of their EEZ resources. Recent tensions arising over resource competition underscore the need for the Philippines to do the same. However, regional defense buildup in general raises the risk of confrontation in the area, and in view of the existing territorial and maritime jurisdiction disputes among regional states, may spark an arms race that will clearly not be in the Philippines’ national interest.
3. Of particular concern is the growing power projection of the People’s Republic of China (PRC), with its systematic blue water naval development and the so-called Island Chain Strategy contributing to uncertainty in the regional security environment, particularly in light of its expansive maritime claims and growing nationalism among its people. In addition, the active deployment in the SCS of PRC civilian or paramilitary law enforcement vessels, and provincial government organs taking action on their own have made the security environment in the SCS more complicated.
4. In the WPS, there is a conflation of defense challenges and law enforcement imperatives due to the geographical overlap of Philippine EEZ/continental shelf (areas that are subject to civilian jurisdiction) with the disputed areas including KIG and Bajo de Masinloc which harbor foreign military presence (and are therefore a military concern). In view of the limited capabilities of both our military and civilian law enforcement agencies, and the need to allocate resources for their upgrading, their respective roles and mandates will need to be clarified for the short-term, medium-term and long-term planning horizons.

Law Enforcement and Contributing to Good Order at Sea

1. Pursuant to UNCLOS, the Philippines as a coastal and archipelagic state has exclusive sovereign rights to explore and exploit the living and non-living resources within its 200 nm EEZ and continental shelf. It exercises full sovereignty over its 12 nm territorial sea measured from its archipelagic baselines, and over all archipelagic waters enclosed within them, subject only to the recognition of innocent and archipelagic sea lane passage rights in favor of foreign ships. There is debate, however, on whether, when, and where to establish archipelagic sea lanes.
2. The most topical dimension of the disputes triggering the tensions is foreign fishing activities in Philippine territory and EEZ. Given the lack of capability and assets of our civilian law enforcement agencies, the Navy has had to be deputized for ‘anti-poaching’ operations. Use of the Navy against fishermen projects a militarist posture and leaves us vulnerable to allegations of threat to use force. Demilitarization of the fisheries disputes had in fact earlier been recommended by various quarters. There must be a proper mix of military action and civilian law enforcement approaches to the disputes, as determined by the nature of the specific threat or challenge.
3. In consideration of the territorial disputes, we need a clearer definition of where the metes and bounds of Philippine law enforcement jurisdiction are, balancing the promotion of vital national interests with the need to prevent armed hostilities. The growing deployment of vessels by PRC to protect Chinese fishermen and to obstruct Philippine enforcement operations in our territory/EEZ creates new challenges to our law enforcement efforts. Fishing and other activities by Filipino nationals will be constrained, while allowing Chinese law enforcement to go uncontested may be interpreted as a negation of Philippine sovereignty.
4. A National Coast Watch System was established through Executive Order 57, as a “central inter-agency mechanism for a coordinated and coherent approach on maritime issues and maritime security operations towards enhancing governance in the country’s maritime domain.” EO 57 also abolished the Commission on Maritime and Ocean Affairs, which since 2007 had functioned as the coordinating mechanism at the strategic level.

Asserting Sovereignty over Territory and Exercising Sovereign Rights over the Exclusive Economic Zone

1. The EEZ/continental shelf under UNCLOS should not be confused with and regarded as equivalent to land territory over which a coastal State exercises *full sovereignty and control*. Within the EEZ/continental shelf, a coastal State is generally entitled to *exclusive sovereign rights* to explore and exploit the living and non-living natural resources of the superjacent waters (in the case of the EEZ) and the seabed and subsoil (in the case of the continental shelf). These are rights that are less than full sovereignty, and are ancillary to an adjacent territorial sea or land area.
2. While focus has been on the exclusivity of maritime territories and jurisdictions, UNCLOS also requires coastal States to cooperate pending the resolution of disputes, and encourages them to share the resources of the sea through provisional agreements like joint development arrangements. Part IX of UNCLOS also allows cooperation and shared management of semi-enclosed seas like the South China Sea.
3. While international litigation may be helpful, it is not a singular solution to the multiple and complex problems that have arisen, or may arise in the future, in the West Philippine Sea. It will take much time and effort to bring just one case before an international tribunal, and it often takes many years to be resolved; in the meantime, incidents and issues may arise that will require practical, timely, or urgent responses.

Advancing an Effective and Pro-Filipino Diplomacy and Foreign Relations

1. Art. 2 Sec. 7 of the Constitution states that “The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest and the right to self-determination.” Art. 2, Sec. 2 of the Constitution also states that “the Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.”

2. In the field of foreign relations, the WPS disputes have had the most impact on our ties with China, the United States, and with Southeast Asia/ASEAN. The disputes have led to an undesirable sharp deterioration in our relations with China, an increased need to strengthen defense cooperation with the United States, while challenging us to help build a common ASEAN position that would help the Philippines and the region withstand any threat to stability and peace. The United Nations moreover continues to serve as a main pillar framing our approach to the WPS challenges.
3. The Philippines has been actively promoting peaceful settlement of the WPS disputes, through bilateral and multilateral initiatives, since the early 1990s. The Philippines also proposed, initiated, and led in drafting the ASEAN-China Declaration of Conduct (DOC), and has been most insistent in further evolving the DOC into a legally binding Code of Conduct.
4. In the last two years, the Aquino government's strategy in addressing the disputes have focused on pursuing a rules-based approach, reliance on international law, and a preference for multilateral diplomacy. These appear to enjoy considerable domestic as well as international support. On the other hand, its staunchly nationalist and at times seemingly provocative stance against China, as well as open calls for US involvement and support, have caused concern among some neighboring states in ASEAN.

Organizing for Future Challenges

1. Law of the Sea concerns in the WPS are cross-cutting issues that impinge on both foreign policy and domestic policy. Domestic archipelagic imperatives (i.e., access to resources, protection of the environment, national security) are the true driving force behind national policy. Only a strong domestic capability (e.g., credible defense and pro-active maritime resource development programs) can be the basis of effective diplomacy and relations with the international community. Archipelagic development and security requires a strategic and whole-of-government approach.
2. Recent challenges facing the country in asserting its sovereignty and sovereign rights in the WPS have helped in uniting the Filipino people. Territorial integrity,

national patrimony, and the principles and norms we choose to live by in our relations with other countries and peoples all help shape our national identity. But there is little informed policy debate among Filipinos on the maritime challenges we face. Carrying this forward to the next generations requires developing a critical mass of experts and enthusiasts, as well as promoting lively debates and discourses about maritime issues and the challenges and opportunities they present. These will involve participation by government, academe, media, NGOs, private industry, and grassroots local communities.

3. Coverage of maritime issues in popular media is also lacking. There is a need for the Filipino people to rediscover our archipelagic heritage and to write our own story as a maritime and seafaring nation. The mass media, social networks on the Internet, the educational system, and government information agencies are all potential instruments for information dissemination, awareness-raising, stimulating lively and analytical debates, and mobilizing public support on the one hand. They are also instruments for gauging public sentiment and soliciting feedback on government policies and actions. Ultimately, the tough decisions government will have to make with regard to the WPS should be for the benefit of the people. Their understanding of the issues and participation in the decision making will be vital to any successful policy.

Guiding Principles and Major Recommendations

The following are proposed guiding principles for Philippine policy on the West Philippine Sea.

1. The West Philippine Sea and its resources are part of the national patrimony. Our national interest in the WPS is defined as that which will serve the greatest good of the greatest number of the Filipino people.
2. Our policies and strategies with respect to resource development, defense, law enforcement, diplomacy, and international law shall be consistent with this definition of the national interest.

3. We affirm commitment to the peaceful settlement of inter-state disputes on the basis of justice, equality, mutual respect, and upholding internationally accepted rules and norms of behavior.
4. We affirm commitment to an independent foreign policy that upholds the dignity of the Filipino people and our tradition of courage and self-reliance;
5. WPS policy should demonstrate the positive contributions that the Philippines and the Filipino people can make to the Asia Pacific region and to the world.

This White Paper recommends the following courses of action.

1. That government take steps to establish, revive, or strengthen permanent, high-level institutions that shall:
 - a. Undertake policy formulation, strategic planning, policy coordination, and periodic assessments of the policy environment;
 - b. Ensure that the implementation of plans and programs will be in accordance with policy guidelines;
 - c. Serve as crisis management mechanisms tasked to provide early warning and quick response to incidents;
 - d. Be supported by adequate resources and staff, including provision of strategic analyses and real-time intelligence; and
 - e. Provide institutional continuity regardless of changes in administration and leadership.
2. That government develop a comprehensive, long-term program for international legal action on issues relating to the disputes, and establish the appropriate institutions and rules for undertaking such a program. Such a program may include but not be limited to the negotiation of boundaries, filing of cases, seeking arbitration and/or advisory opinion on critical issues from competent bodies, while taking into consideration the need to create favorable political, diplomatic and security conditions for conflict resolution.
3. That government develop strategic economic resources development programs for the Philippine EEZ with respect to:

- a. Sustainable and responsible fisheries, with government assistance for artisanal/small-scale fishermen;
 - b. Optimized exploitation of oil and gas resources, balancing economic interests and the sovereignty/security concerns;
 - c. Exploratory surveys of other offshore mineral resources;
 - d. Establishing, where necessary, transitional guidelines and rules for law enforcement in selected EEZ areas under dispute, taking into consideration domestic laws and the relevant UNCLOS provisions; and
 - e. Enabling and capacitating organs for law enforcement and for the protection of Filipinos engaged in the exercise of sovereign rights over the EEZ.
4. That government develop a clear, feasible, and resolute security and defense strategy for the WPS based on:
- a. Sound understanding of shifting regional dynamics and geopolitical rebalancing taking place;
 - b. Factual and accurate threat and risk assessments looking at capabilities, political intentions, and actions of adversaries;
 - c. Correct appreciation of our own security and defense capabilities and weaknesses, including the potential for allied assistance and the influence of remaining internal security challenges,
 - d. Clear definition of the distinct as well as coordinated roles and responsibilities of our civilian and military organizations in ways that build on and build up their core competencies and primary mandates; and
 - e. Anticipation of various scenarios which security forces may encounter, taking into consideration the shift from internal security operations to territorial security operations and the shift from “threat based” to “scenario-based” contingencies.
5. That bilateral and regional diplomacy pertaining to WPS:
- a. Should be strategized in the context of comprehensive foreign policy goals, such as promotion of national security, economic development, and the welfare of nationals;

- b. Should contribute ultimately to strengthening regional and international peace and stability based on international law, norms, and standards;
 - c. Be guided by our long-term aspirations for our relations with ASEAN, China, the United States, neighboring countries in Southeast Asia and Northeast Asia, and other key stakeholders.
6. That programs be undertaken to inculcate archipelagic consciousness and identity of the Philippines and the Filipinos as a maritime nation, including but not limited to:
- a. Preparation and wide dissemination of information (e.g., primers and reference materials) outlining Philippine interests for popular consumption;
 - b. Building grassroots constituencies for advocacy for the marine and coastal environment, safety and freedom of navigation, disaster-preparedness and response, good neighborliness and regional cooperation, among others;
 - c. Introduction of relevant multidisciplinary courses and content into all levels of education and training in government;
 - d. Investment in developing next-generation expertise on the legal, security, international relations, fisheries, geography, geology, marine scientific, and other dimensions relevant to the WPS.

This initiative began months before the most recent tensions with China erupted over Bajo de Masinloc. Intended to draw attention to the strategic questions, the paper does not provide specific recommendations on how to manage the most pressing or immediate concerns. The problems we face in the WPS are not new, as we have been grappling with many of these issues for decades. It is possible that many more years will pass before we achieve our aspirations of a West Philippine Sea that is truly free from conflict, safe from any form of violence or illegal activity, where Filipinos are able to enjoy as well as to share nature's bounty, where countries live in equality and mutual respect, and where strong regional institutions are in place upholding shared principles and norms.

We hope that this White Paper will be an important step in that direction.

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Notes

- 1 1987 Philippine Constitution.
- 2 Michael Garcia, "Progress in the Implementation of the Philippine National Marine Policy: Issues and Options" (working paper, United Nations – The Nippon Foundation Fellow, New York, November 2005), 20.
- 3 Stanford Encyclopedia of Philosophy. Accessed 29 January 2009 at <http://plato.stanford.edu/entries/sovereignty/>.
- 4 Marck W. Zacher, "The Territorial Integrity Norms: International Boundaries and the Use of Force," *International Organization* 55(2): 215-250.
- 5 A. Francisco J. Mier, "National Security Concept" (Presentation at the National Defense and Security Review, National Defense College of the Philippines, September 3, 2007), 3.
- 6 Mier, "National Security Concept," 3.
- 7 Col Alfredo Ramirez GSC (PAF), "Maritime Air Surveillance for the Philippines: Protecting the Exclusive Economic Zone and the Kalayaan Island Group," *Air Force Review*, Vol.1, No.1. (circa 2001).
- 8 As the US invasion and occupation of a sovereign state, Iraq, in violation of international norms will attest.
- 9 Claimed by the Philippines; see Presidential Decree 1596.
- 10 For instance, we recall some specific recorded incidents such as the capture by Vietnamese troops of two fishermen from Mangsee island and their detention for over a month on a Vietnamese garrison in KIG (1997), imprisonment of fishermen and confiscation of property by the Malaysian authorities (1988), and deportation by sea of migrants as well as Mindanao war refugees who had entered Sabah illegally.
- 11 Security dilemma is a situation where one state's attempts to increase its security appear threatening to others and unnecessarily provoke a confrontation.
- 12 Evelyn Goh (Meeting the China Challenge, 2005, 39) noted how Southeast Asian elites, particularly the Singapore policy elite, expect the big powers to play a geopolitical balancing game, where political, diplomatic and economic clout (i.e. soft power) will play a bigger role than military confrontation in shaping preferences and outcomes in the region.
- 13 The United States' response to Chinese occupation of Philippine-claimed Mischief Reef was a tepid statement saying that it took no sides in the disputes, were merely concerned that freedom of navigation be respected, and that no party should resort to the use of force to resolve sovereignty claims.
- 14 The closest regulatory measure is the Philippine Mining Act of 1995.
- 15 In this paper, the term 'South China Sea' (SCS) refers to the entire semi-enclosed sea bordered by China, the Philippines, Malaysia, Indonesia, and Vietnam. On the other hand, the term 'West Philippine Sea' (WPS) refers to only the part of the South China Sea that is the subject of Philippine sovereignty and/or jurisdictional claims. WPS is inclusive of the Kalayaan Island Group or KIG, Bajo de Masinloc (a.k.a. Panatag or Scarborough Shoal), and the 200-nautical mile Exclusive Economic Zone (EEZ) and Continental Shelf (CS), accounted from the archipelagic baselines defined in Republic Act 9522 (Philippine Baselines Law).