Revisiting the Maritime Territories and Jurisdictions of the Philippines

JAY L BATONGBACAL

INTRODUCTION

The entry into force of the United Nations Convention on the Law of the Sea in November 16, 1994 created an internationally-recognized legal framework for management of the planet's oceans with the support of a great majority of nation states. The Philippines is a mid-ocean archipelago with definite maritime interests, straddling the Pacific Ocean, South China Sea and Celebes Sea, as well as enclosing the Sulu Sea is at the crossroads of international shipping and within a unique nexus of maritime interests of foreign nations. Yet since it signed the Convention in 1982, no concrete action for implementation has been taken in response to its eventual entry into force.

The main issue preventing the implementation of the Convention is its impact on the national territory. This paper intends to delve into this issue by providing an overview of the development of our national territory laws and the historical context for the introduction of the Convention. Thereafter, the impact of the Convention in the light of the current state of the law is briefly discussed and recommenda-

tions made on what needs to be done. It is hoped that as a result, serious discussion may be provoked as to what steps the Government should take to see its way clear out of what will be shown to be an intricate legal and historical problem.

The Pre-Spanish Period

In the Pre-Spanish Period, the country was largely made up of villages scattered among the islands. Chronicles of the Spanish expeditions show that the islands were already inhabited and teeming with activity, with the people organized into village governments.[1] But it is not clear how such governments conceptualized their territories, which apparently extended a short distance from their shores as far as their boats could reach. When Miguel Lopez de Legazpi and his lieutenants arrived in Cebu and Manila, for example, his ships anchored offshore and requested permission to land, indicating an awareness of and respect for the degree of control exercised by the inhabitants over those waters.[2] However, this may also have been merely in accordance with accepted maritime practices at that time with respect to landing in unknown inhabited territories.

The Spanish Period

It was during the consolidation of Spanish sovereignty over the country that the concept of the Philippines as a single territorial entity emerged, called the *Islas Filipinas* or Philippine Islands. The appellation itself bears significance, for it indicates that the Spanish sovereigns treated the islands as territories, giving little or no importance to the waters around and between them. This is consistent with the Western concept of territory which referred only to the land and not the sea.

The extension of a state's territory from the shoreline to a certain distance seawards had gained acceptance in international law at the time, under what was known as the "cannon-shot rule." According to this, the distance to which a state may lawfully extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea embraced by its harbors, extended as far as its

cannons could reach. Up until the late 1800s, this distance was accepted by a large number of states to be one marine league (about 3 miles) from the low water mark.[3]

The Spanish Law of Waters of 1866 became effective in the Philippines in 1871.[4] Included in this law was a provision which stated that:

"Art. I. The following are part of the national domain open to public use:

x x x

2. The coast sea, that is, the maritime zone encircling the coast, to the full width recognized by international law. The State provides for and regulates the police supervision and uses of this zone, as well as the right of refuge and immunity therein, in accordance with law and international treaties."[5]

It would appear, therefore, that during its reign, the Spanish Crown regarded the Philippine territory to extend about 3 miles from the low water line around each of the islands of the archipelago. But it permitted the breadth of the country's maritime territory to change with the times, depending on the degree of consensus reached by the international community.

The American Colonial Period

In the aftermath of the Spanish-American War, the Philippines was ceded to the United States in the *Treaty of Paris* of 1898.[6] In Article III of the treaty, Spain ceded to the United States "the archipelago known as the Philippine Islands, and comprehending the islands lying within" a line which described an irregular rectangle surrounding the country's main islands.[7] In the subsequent *Treaty of Washington* of 1900 supplementing the Treaty of Paris, a singular article stated that

"Spain relinquishes to the United States all title and claim of title, which she may have had at the time of the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside of the lines described in Article III of that Treaty and particularly to the islands of Cagayan, Sulu, and Sibutu and their dependencies, and agrees that all such islands shall be comprehended in the cession of the Archipelago as fully as if they had been expressly included within those lines."[8] (underscoring supplied)

The wording of the treaties clearly refers only to the islands and did not specifically refer to the waters within. This was consistent with the previous Spanish practice which did not consider the waters 3 miles from the island shoreline part of the territory. The inclusion of islands outside of the lines of the Treaty of Paris in the cession to the United States would also indicate that the lines described by Article III were not regarded as territorial boundaries. If they were, it would be inconsistent for places outside of such lines to be deemed included in "territorial" limits.

Apparently, the Americans considered the national territory to extend only to 3 miles from the low water mark. In an early commentary on the relevant provision of the Spanish Law of Waters, future Supreme Court Justices Ramon Aquino and Carolina Griño wrote:

> "(1) Meaning of maritime zone.- The jurisdictional limits of the Philippines generally include all of the land and water within its geographical boundaries including all rivers, lakes, bays, gulfs, straits, coves, inlets, creeks, roadsteads, and ports lying wholly within the 3-mile limit (Taylor, International Public Law, pp. 263, 293; Mr. Buchanan, Secretary of State, to Mr. Jordan, Jan. 23, quoted in I. Op. Atty. Gen. 542; Gallatin's Writings, II, 186). It further extends three geographical miles from the shore of the Islands of the Philippines, starting at low water mark. (Mr. Jefferson, Secretary of State, to Mr. Welles, Secretary of Navy, Aug. 1862; I Moore International Law Digest, 703, et.seq.; I Oppenheim International Law, p. 241).
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> "It further includes those bays, gulfs, adjacent parts of the sea or recesses of the coast line whose width at their entrance is not more than twelve miles measured in a straight line from headland to headland. (Taylor, International Public Law, p. 278; I Oppenheim International Law, p. 246; Opinion of Attorney-General Randolph, May 14, 1793, I Op. Atty. Gen. U.S. 32; Second Court of Commissioners of Alabama Claims, Stetson v. United States, No. 3993, class I; I Moore International Law Digest, pp. 699, 741). It further includes all straits only or less than six miles wide as wholly within the territory of the Philippines, while for those having more

than that width, the space in the center outside of the marine league limits is considered as open sea. (Taylor, International Public Law, pp. 279; I Oppenheim, International Law, pp. 249).

"It further extends for customs purposes at least four leagues from the coast. (Customs Administrative Act, sec. 79). It further can be said that the Philippine Islands exercises in matters of trade for the protection of her marine revenue and in matters of health for the protection of the lives of her people a permissive jurisdiction, the extent of which does not appear to be limited within any certain mixed boundaries further than that it cannot be exercised within the jurisdictional waters of any other State, and that it can only be exercised over her own vessels and over such foreign vessels bound to one of the ports of the Philippines as are approaching but not yet within the territorial maritime belt. (Op. Atty. Gen., Jan. 18, 1912)."[9]

In the case of *United States vs. Bull*,[10] the Philippine Supreme Court ruled that

"No court of the Philippine Islands had jurisdiction over an offense or crime committed on the high seas or within the territorial waters of any other country, but when she came within 3 miles of a line drawn from the headlands which embrace the entrance to Manila Bay, she was within territorial waters, and a new set of principles became applicable."

This was reiterated in the case of *People vs. Wong Cheng*.[11] Clearly, the concept of territorial waters was in accord with the 3-mile rule.

But the Americans also introduced elements which have been interpreted as extending the national territory beyond the normal 3 mile band and which would later become the basis of the Archipelagic Doctrine espoused by the Philippines. In the *Jones Law*[12] of 1916, the lines described by the Treaty of Paris were referred to as "boundaries." In 1930, the US and UK delimited the territories of the Philippines Islands and North Borneo,[13] the preambular paragraph referred to the desirability of delimiting the boundary between the US and UK territories. In the *Fish-*

eries Act,[14] the law referred to the existence of insular fisheries which were within territorial waters of the Philippines but not included within municipal waters described to extend 3 nautical miles from the low water mark.[15] The treaty lines were also referred to as boundaries in the Hare Hawes Cutting Act[16] of 1933, and in the Tydings-McDuffie Act[17] of 1934,

Unfortunately, however, the American practice was ambiguous, as in other documents[18], it consistently maintained the wording that referred to the national territory as comprised of islands within limits described in the *Treaty of Paris* and outside of the lines but encompassed by the *Treaty of Washington*. Although the word "boundaries" was used, the context in which the term was used did not indicate that it was intended to have the same meaning to be territorial boundaries. Moreover, an inconsistency emerges in that if the *Treaty of Paris* lines are considered as territorial boundaries, then the islands mentioned in the *Treaty of Washington* of 1900 are separate territorial entities since they are precisely outside of the *Treaty of Paris* lines. And while the treaty between the US and UK delimiting the respective territories referred to the delimitation of "boundaries," the actual wording of the pertinent article is:

> ... in negotiating the agreements, the parties only had the islands, not the waters, in mind as actual territories. It would certainly be odd to have indefinite and "mobile" territorial boundaries.

> "It is hereby agreed that the line separating the islands belonging to the Philippine Archipelago on the one hand and the islands belonging to the State of North Borneo which is under British protection on the other hand shall be and is hereby established..."[19] (underscoring supplied)

The treaty also provided for the contingencies that if the lines described were subsequently proven by more accurate surveys to pass between certain islands and reefs, the line would automatically be adjusted to pass between them;[20] and that if the line were found to pass through certain islands and rocks, the whole of such

islands and rocks would still pertain to the Philippines.[21] These provisions for contingencies not only acknowledged the uncertainty of the location of the lines but tended to prove that in negotiating the agreements, the parties only had the islands, not the waters, in mind as actual territories. It would certainly be odd to have indefinite and "mobile" territorial boundaries.

The year 1928 saw the loss of one island within the treaty lines in favor of the Netherlands. The US and Netherlands had entered into arbitration proceedings regarding a dispute of sovereignty over the Island of Palmas, also known as Miangas, near the southern tip of Mindanao Island, well within the *Treaty of Paris* lines. In his award,[22] the arbitrator referred to the treaty lines as a "geographical frontierline," and found that, based on a letter signed by the US Secretary of State, the American view towards the use of the lines in relation to Spain was:

> "The metes and bounds defined in the treaty were not understood by either party to limit or extend Spain's right of cession. Were any island within those described bounds ascertained to belong in fact to Japan, China, Great Britain, or Holland, the United States could derive no valid title from its ostensible inclusion in the Spanish cession. The compact upon which the United States negotiations insisted was that all Spanish title to the archipelago known as the Philippine Islands should pass to the United States - no less or more than Spain's actual holdings therein, but all. This Government must consequently hold that the only competent and equitable test of fact by which the title to a disputed cession in that quarter may be determined is simply this: "Was it Spain's to give? If valid title belonged to Spain, it passed; if Spain had no valid title, she could convey none."[23] (underscoring supplied)

Such a view tends to reinforce the argument that when the Treaty of Paris was negotiated, the intention of the US and Spain was to use the lines only as a means to identify the Spanish-held territories within them, as they acknowledged a possibility that other states could hold title to specific islands within the lines. They were not territorial boundaries in the same way that land boundaries were since

they were intended to allow "pockets" of non-Philippine territories within them, and did not accord the same status to the waters.

The Era of the 1935 Constitution

The Article on the National Territory

The 1935 Constitution focused attention on the concept of national territory. Although the debates in the Constitutional Convention dwelt more on the propriety of including a new and specific provision describing the national territory, what was important was that the delegation sought a legally-acceptable formula for considering the archipelago as a single legal and political unit to which the Fundamental Law would be applied. The Chairman of the Committee on Territorial Delimitation filed a report[24] which pointed out an anomaly in the Treaty of Paris lines where the description of the location of the northern line (running west to east) was inconsistent with the specific latitude, and proposed correction thereof in the Constitution being written "to avoid all possibility of confusion in the future regarding the real boundaries of our territory towards the north." This indicated an understanding that the national territory extended to the waters within the treaty lines, since what was involved in the adjustment of the lines was not the inclusion of islands but rather the Bashi Channel. The report recommended an article on the national territory which described its boundaries in metes and bounds similar to Article III of the *Treaty of Paris*, incorporating the correction of the anomaly as well as the adjustments necessary to accommodate other treaties.

However, the impact of regarding all the waters within the treaty lines as part of the national territory, equivalent to the land, is not so easily discernible. The debates[25] reveal an attitude of the delegates to consider only land as territory. Discussions among other things, on the propriety of including an article on the national territory, acquisition of other islands as additional territories by virtue of the new article, and the implications of the article on treaty-making. But they did not touch on the legal status of the waters around, between, and connecting them. There was only one reference to the importance of the seas,[26] and that, only incidentally. Sub-

sequently, the Committee Chair submitted an amended draft article on the national territory which stated that the national territory included "its jurisdictional water and air."

In the end, the Convention reached consensus on the following phraseology:

> "The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on the seventh day of November, nineteen hundred, and in the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercises jurisdiction."[27] (underscoring supplied)

Again, the above section refers to and reiterates the formulation of the national territory as islands. The use of the treaties as the reference points implies that "territory" referred only to land territory, considering that:

(1) Prior to the cession of the Philippines, Spain claimed only a maritime zone around the islands "to the full width recognized in international law", and therefore could not have intended to transfer to the US any waters beyond that distance;

(2) The official American viewpoint was that in negotiating the Treaty of Paris, they likewise referred only to the islands within the limits and did not make any claim as to the waters;

(3) It is inconsistent to consider the islands outside of the Treaty of Paris lines, referred to in the treaty of 1900, as part of the Philippine territory, if such territory was precisely defined by the treaty lines; in addition, it opens to question the status of the waters around the islands, and between them and the treaty lines;

(4) The exact phraseology of the treaty between the US and UK, referring to the line it described as merely separating one group of islands from an-

other, and the provision for adjustment if future survey and mapping revealed the more precise location of the islands and reefs near the line.

When President Truman issued the Proclamation declaring Philippine Independence in 1946,[28] the US again referred to the delimitation between the US and UK as a boundary. But this did not amount to a recognition of the entire Treaty of Paris lines as territorial limits, and at most referred only to the line between the Philippine Archipelago and the State of North Borneo.[29]

Subsequently, an exchange of notes took place between the Philippines and the UK, in which certain other groups of islands on the edge of North Borneo and the Sulu Sea were transferred to the Philippines[30] in accordance with the 1930 treaty between the US and UK.

The First Continental Shelf Claim

In 1949, the Philippines attempted to adopt and adapt the continental shelf doctrine as contained in the Truman Proclamation of 1945. This was through the promulgation of Republic Act No. 387 which claimed petroleum resources in the continental shelf or its analogue in the archipelago:

> "Art. 3. *State ownership*.- All natural deposits or occurrences of petroleum or natural gas in public and/or private lands in the Philippines, whether found in, on or under the surface of dry lands, creeks, rivers, lakes, or other submerged lands within the territorial waters or on the continental shelf, or its analogue in an archipelago, seaward from the shores of the Philippines which are not within the territories of other countries, belong to the State, inalienably and imprescriptibly."

This manifested the increasing official interest in the resources in the waters around the islands, as it was the first major legal development on marine resources other than navigation and fisheries. It would remain the *status quo* for the next few years, until the United Nations initiated what would eventually result in the first conference on the Law of the Sea.

The Archipelagic Doctrine

In the early 1950s, the international community still had not come to a consensus regarding the precise width of the territorial seas to which coastal states may validly lay claim. In response to a communication from the UN Secretary-General seeking comments on the work of the International Law Commission for a proposed convention for all nations of the world to agree on the limits of the territorial sea, the Philippines made its first formal declaration of the "archipelagic doctrine" in a Note Verbale in 1956,[31] wherein it stated:

> "All waters around, between and connecting the different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. All other water areas embraced within the lines described in the Treaty of Paris of 10 December 1898, the Treaty concluded at Washington, D.C., between the United States and Spain on 7 November 1900, the Agreement between the United States and the United Kingdom of 2 January 1930, and the Convention of 6 July 1932 between the United States and Great Britain, as reproduced in Section 6 of Commonwealth Act No. 4003 and article 1 (this was inadvertently given as article 2 in the note verbale of 7 March 1955) of the Philippine Constitution, are considered as maritime territorial waters of the Philippines for purposes of protection of its fishing rights, conservation of its fishery resources, enforcement of its revenue and anti-smuggling laws, defence and security, and protection of such other interests as the Philippines may deem vital to its national welfare and security, without prejudice to the exercise by friendly foreign vessels of the right of innocent passage over those waters. All natural deposits or occurences of petroleum or natural gas in public and/or private lands within the territorial waters or on the continental shelf, or its analogue in an archipelago, seaward from the shore of the Philippines which are not within the territories of other countries, belong

inalienably and imprescriptibly to the Philippines, subject to the right of innocent passage of ships of friendly foreign States over those waters.

"In view of the foregoing considerations, and in line with this article, the Philippine Government assumes that high seas cannot exist within the waters comprised by the territorial limits of the Philippines as set down in the international treaties referred to above. In case of archipelagoes or territories composed of many islands like the Philippines, which has many bodies of waters enclosed within the group of islands, the State would find the continuity of jurisdiction within its own territory disrupted, if certain bodies of water located between the islands composing its territory were declared or considered as high seas." (underscoring supplied)

This was the first official declaration seeking to define the status of the waters within the Treaty of Paris lines as both "national or internal" waters and "maritime territorial" waters. However, the ambiguity with which the internal waters are distinguished from the territorial waters, particularly the lack of a clear rule for determining which portions are internal and which are territorial waters, practically meant a fusion of the two regimes within the treaty lines. As far as the international community was concerned, internal waters had to be clearly distinguished from territorial waters because the right of innocent passage of foreign vessels[32] was recognized as applicable only in the latter.

It is important to note that in its statement, the Philippines apparently identified a functional basis for claiming the territorial sea, i.e. it claimed territorial waters for specific purposes (protection of fishing rights, conservation of fishery resources, enforcement of revenue and anti-smuggling laws, defense, and security). This is an important point since territorial waters are normally conceptualized as extensions of the land territory without a functional justification.

The Philippines further sought exemption from the proposed rule limiting the extent of the territorial sea to a fixed distance measured from the coast, as follows:

"The Philippine Government considers the limitation of its territorial sea as referring to those waters within the recognized treaty limits, and for

this reason, it takes the view that the breadth of the territorial sea may extend beyond twelve miles. It may therefore be necessary to make exception, upon historical grounds, by means of treaties or conventions between States. It would seem also that the rule prescribing the limits of the territorial sea has been based largely on the continental nature of a coastal State. The Philippine Government is of the opinion that certain provisions should be made taking into account the archipelagic nature of certain States like the Philippines."

In claiming rights to its resources in the "continental shelf, or its analogue in an archipelago," the Philippines broke new ground in the first Law of the Sea Conference in 1958. During the conference, it was able to persuade the international community that the "continental shelf" doctrine applied equally to islands as to coastal states.[33]

Soon after, the US challenged the Philippine claim to sovereignty over all the waters within the Treaty of Paris lines. In a telegram, the US Department of State declared:

"The United States' attitude with reference to the position of the Philippine Government quoted supra was that the lines referred to in the bilateral treaties between the United States and the United Kingdom and Spain merely delimited the area within which the land areas belong to the Philippines and that they were not intended as boundary lines. The United States, in 1958, stated that it recognized only a 3-mile territorial sea for each island."

This began a long battle for the Philippine Archipelagic Doctrine to bind the international community into legally recognizing the archipelago as a single social, geographic and political unit. In the 1958 and 1960 sessions of the United Nations Conference on the Law of the Sea, the international community rejected the archipelagic principles proposed by the Philippine delegation.

The Philippine Baselines Law

Seeing the unmistakable trend in the international community to come to agreement on the breadth of the territorial seas, a clearer definition of the maritime zones around the country to negotiate with others, Senator Arturo Tolentino introduced a bill that defined straight baselines around the country. This was based on his observation that in the previous UNCLOS sessions, the international community accepted two major points, namely, that (1) baselines are the basis for determining the territorial seas, and that (2) the territorial sea shall have a fixed width measured from the baselines. Although the 1958 and 1960 sessions did not produce a consensus, it nevertheless revealed that there was a need to consolidate the Philippine position by clarifying which were internal waters under the complete sovereignty of the State and which were territorial waters through which the right of innocent passage applied. Thus was born Republic Act No. 3046.[34]

Republic Act No. 3046 enclosed the outermost points of the archipelago within straight baselines and declared all waters between the island shorelines up to and within the baselines to be internal waters, and all waters between the baselines and the Treaty of Paris limits to be territorial waters. It would subsequently be clarified that the baseline system was without prejudice to the Philippine claim to Sabah.[35]

The legislative debates on both laws were lengthy, but focused on only a few major concerns, namely, the impact of the bill on the fishing rights of Filipinos within and outside the national territory, the entry of foreign vessels into the territorial and internal waters, and its impact on the claims to Sabah and Freedomland.[36] In the debates on the amendatory bill,[37] there was awareness of the need for the law to stave off the imminent fragmentation of the archipelago if the international community limited itself to consideration of territorial seas based on a fixed, short distance from the baselines.[38] However, the attention of the legislators was soon largely absorbed by the Sabah issue.

Nonetheless, the importance of Rep. Act No. 3046 cannot be overemphasized. More than the 1956 Note Verbale, the Philippine Baselines Law represents the first unequivocal Philippine legal claim to maritime spaces beyond that recognized by international law. Despite the discussions of the delegates to the Constitutional

Convention regarding the article on the national territory in the 1935 Constitution, the resulting phraseology did not reflect a clear claim to both the land and water within the treaty limits. The 1956 Note Verbale clarified this intent, but while revolutionary in itself, it could be regarded as a mere executive declaration or statement of administrative policy. Rep. Act No. 3046 gave the Archipelagic Concept of the Philippines the status of law, and later on would become the basis for elevating the same into a constitutional edict.

The Revised Continental Shelf Claim

In 1968, the Philippines issued a proclamation formally stating its claim to the continental shelf, as follows:

> "WHEREAS, it is established international practice sanctioned by the law of nations that a coastal state is vested with jurisdiction and control over the mineral and other natural resources in its seabed and subsoil of the continental shelf adjacent to its coasts but outside the area of the territorial sea to where the depth of the superjacent waters admits of the exploitation of such resources;
>
> "NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby proclaim that all the mineral and other natural resources in the seabed and subsoil of the continental shelf adjacent to the Philippines, but outside the area of its territorial sea to where the depth of the superjacent waters admits of the exploitation of such resources, including living organisms belonging to sedentary species, appertain to the Philippines and are subject to its exclusive jurisdiction and control for the purposes of exploration and exploitation. In any case where the continental shelf is shared with an adjacent state, the boundary shall be determined by the Philippines and that state in accordance with legal and equitable principles. The character of the waters above these submarine areas as high seas and that of the airspace above those waters, is not affected by this proclamation."[39]

There are two problems with the phraseology of this proclamation. First, it makes the extent of the continental shelf dependent on a technology-driven criterion, i.e. "to where the depth of the superjacent waters admit of exploitation," which is not a fixed measure as its changes with the development of technologies to exploit offshore resources. When the Truman Proclamation first declared the continental shelf doctrine, the maximum depth of exploitation was only about 30 feet; at present, such depth can be measured in the thousands. Thus, the criteria leaves the extent of the continental shelf indeterminate.

Secondly, the proclamation refers to submarine areas outside of the area of the territorial sea, and states further that it does not affect the status of high seas and airspace above the waters. If the term "territorial seas" refers to the area defined by Rep. Act No. 3046, extending to the Treaty of Paris limits, it is not clear what other areas would be covered by the proclamation. On the other hand, if it were to follow international law, then the continental shelf areas would indeed be extensive.

The Era of the 1973 Constitution

The 1971 Constitutional Convention presented an opportunity for the Philippines to revise its constitutional formulation of the concept of national territory and accommodate the legal developments that had taken place since 1935. The new article in the 1973 Constitution stated:

> "The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic right and legal title including the territorial sea, the air space, the subsoil, the seabed, the insular shelves, and the other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines."[40] (underscoring supplied)

The above provision formally elevated the Archipelagic Doctrine to the status of a Fundamental Law. Aside from re-igniting the debate on the implications of the

provision on national territory to Philippine claims to Sabah, Freedomland, and even the Marianas Islands, the record reveals that a vigorous discussion ensued on the importance of incorporating the archipelagic principles in the Constitution as a means of legally protecting the inland waters from intrusion by foreigners. Of primary concern were "considerations of national defense and internal security" which demanded absolute control and dominion over all the inter-island waters which were the main links of communication and transportation.[41] In a public hearing held for the Convention, Senator Tolentino, who participated in the UNCLOS conferences, pointed to the need for such a provision to support the Philippine position at the Law of the Sea conferences where the country was fighting a losing battle with the maritime powers over the archipelagic principles.[42] Indeed, such a provision was required to legally demonstrate the archipelagic elements in the Philippine concept of the national territory because the provisions of the 1935 Constitution clearly referred to the country as a single political unit of geographically fragmented groups of islands without regard for the intervening waters.

The constitutional provision was subsequently incorporated in Philippine laws.[43]

The Kalayaan Island Group Claim

The Philippine claim to the Kalayaan Island Group was the next major legal development in our national territory laws after the promulgation of the 1973 Constitution. Prior to 1971, there was very little indication of any official inclination to include the islands west of Palawan in the national territory. The earliest official and recorded statement could be that of a delegate to the 1935 Constitution, made during deliberations on the national territory provision, where it was stated that the islands were clearly outside of the territorial limits contemplated, but nevertheless could be subject to a Philippine claim.[44] At that time, Japan had only begun to occupy the islands.

Japan eventually placed the islands under the *Shinnan Gunto* or New South Islands administrative region under the jurisdiction of Japanese-occupied Taiwan. When World War Two ensued, Japan launched attacks from the islands, such that in the post-war period, Filipino policymakers saw the need to place the islands within its national defense perimeters. The first official statement to this effect was

made in 1946 by the Foreign Affairs Secretary but this was not pursued at the San Francisco Treaty negotiations; then President Quirino merely said that possession of the islands "by an enemy" was a threat to national security.[45]

In 1956, Tomas Cloma laid claim to the islands west of Palawan, calling them Freedomland, but could not get government support for his claim. The Philippine Government did was to issue a declaration which did not make a formal claim to the island group, but allowed that it was subject to legitimate exploitation and exploration by Filipino citizens.[46]

It was only in 1972 that the Philippines took definite action to establish a claim; President Marcos officially announced that it had occupied several islands as a measure of ensuring national security.[47] In 1978, President Marcos promulgated Presidential Decree No. 1596, proclaiming Philippine sovereignty over the area encompassed in a modified parallelogram extending from the Palawan side of the Treaty of Paris limits, officially calling it the Kalayaan Island Group and constituting a municipality of Palawan province. The decree asserted absolute sovereignty over the islands, waters, seabed and subsoil of the area within the described boundaries.[48]

The Philippine EEZ Declaration

Presidential Decree No. 1599[49] was issued on the same day as Pres. Decree No. 1596. It declared an Exclusive Economic Zone (EEZ) in conformity with the EEZ provisions of the negotiating text of the ongoing Third United Nations Conference on the Law of the Sea. Within a 200 nautical mile zone measured from the baselines of the territorial sea, set down in Republic Act No. 3046, the Philippines asserted that

> "Sec. 2. Without prejudice to the rights of the Republic of the Philippines over its territorial sea and continental shelf, it shall have and exercise in the exclusive economic zone established herein the following:
>
> a. Sovereign rights for the purpose of exploration and exploitation, conservation and management of the natural resources, whether living or non-living, both renewable and non-renewable, of the seabed, including the subsoil and the superjacent waters, and with regard to other activities

for the economic exploitation and exploration of the resources of the zone, such as the production of energy from the water, currents, and winds;

b. Exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures, the preservation of the marine environment, including the prevention and control of pollution, and scientific research;

c. Such other rights as are recognized by international law or state practice."

Resource-related activities, construction of artificial islands and installations and other activities falling within the sovereign rights and jurisdiction of the country were limited to Filipino citizens, and any other person would be allowed to do so only under the terms of a prior agreement with the Philippines or a license granted by it. It also stated, in a separate provision, that

"Sec. 4. Other states shall enjoy in the exclusive economic zone freedoms with respect to navigation and overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea relating to navigation and communications."

This provision, however, presents a potentially anomalous situation in relation to the territorial seas under Rep. Act No. 3046 as amended. One nuance undetected by the incorporation of the negotiating text into the decree was that the EEZ was defined in the negotiating text to be a zone beyond the territorial sea. This distinction is not made in the text of the decree.[50] Sec. 2 makes a reservation that the Philippine sovereign rights within the EEZ are without prejudice to its rights over the territorial sea and continental shelf, implying that despite the apparently limited scope of EEZ enumerated, the rights arising out of full exercise of sovereignty are not affected in areas falling with the territorial sea as defined by Rep. Act No. 3046. However, this reservation is not made with respect to Sec. 4, which refers to the recognition in the EEZ of full freedom of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the EEZ relating to navigation and communication. Since the EEZ overlaps with

much of the territorial sea area delineated by Rep. Act No. 3046 as amended, the anomalous interpretation may be made, that the Philippines recognizes freedom of navigation and communication in its territorial sea!

The EEZ Declaration likewise converted about 2/3 of the Kalayaan Island Group claim area, beyond the territorial sea defined in Rep. Act No. 3046 and declared to be under complete sovereignty, into EEZ waters subject to the abovementioned freedoms, apparently reducing the extent of sovereignty over much of the waters of the KIG to only sovereign EEZ rights. No reservation was made to provide for the KIG claim area.

The Montego Bay Conference

The Third United Nations Conference on the Law of the Sea in Montego Bay, Jamaica (1982) ended with the signing by the Philippine delegation of the United Nations Convention on the Law of the Sea at the final session. Though the conference would come into force only on November 16, 1994, the impact of the Convention on the national territory of the Philippines would be significant.

The Law of the Sea created a system of maritime zones based on the fundamental stage of establishing baselines from which the zones would be measured. These could be normal baselines using the low-water mark; straight baselines pursuant to the rules in the Anglo-Norwegian Fisheries Case which permitted the use of straight lines connecting the outermost points of deeply-indented coasts or fringing islands along the coastline; or archipelagic straight baselines connecting the outermost points of the outermost islands of a mid-ocean archipelagic state, subject to certain conditions.

These baselines generated the following maritime zones in favor of the coastal state:

1. Internal Waters, referring to those waters lying within the landward side of the baseline forming an integral part of the State territory that was no different from the land. It included bays, estuaries and ports, mouths of rivers, navigable rivers and canals, subject to specific rules in the Convention.

2. Territorial Sea, referring to the waters from the baseline and seaward to a distance of 12 nautical miles. It was deemed to be included in the territory of a State and under its sovereignty but subject to the Right of Innocent Passage of foreign ships. This right was further defined by the Convention.
3. Archipelagic Waters, referring to the waters enclosed within straight archipelagic baselines, if such were validly used. Such waters are also deemed to be under the sovereignty of an archipelagic state but subject to recognition of the Right of Innocent Passage, designation of Archipelagic Sea Lanes and recognition of traditional fishing rights under international agreements.
4. Contiguous Zone, or the area contiguous to and beyond the Territorial Sea to a distance of another 12 nautical miles, in which the Coastal State exercises limited powers to prevent infringement of customs, fiscal, immigration, or sanitary regulations or to punish infringements of those regulations committed within the state's territory or territorial sea.
5. Exclusive Economic Zone extending up to 200 nautical miles from the baselines wherein the Coastal State has extensive rights and jurisdictions essentially with respect to natural resources, structures, marine scientific research and marine environmental protection. All other States enjoy freedom of navigation and overflight, laying of submarine cables and pipelines within the EEZ.

The Convention also codified the international law on the Continental Shelf which referred to the natural prolongation of the land territory of the state beneath the sea but contiguous to the coast, and as an "inherent right" of the coastal state that exists *ipso facto* and *ab initio*, to explore the seabed and exploit its natural resources. The Convention contained various rules of delimiting the outer limits of the Continental Shelf of states.

Outside all the maritime zones were the High Seas, or all parts of the sea not included in internal waters, territorial sea, EEZ or archipelagic waters. They were deemed to be beyond the sovereignty of any state, wherein traditional High Seas Freedoms could be exercised. States could only exercise special limited jurisdictions within the High Seas.

Beneath the waters lay the International Seabed Area, referring to the seabed, ocean floor and subsoil beyond the limits of national jurisdiction. Regarded as the "common heritage of mankind", these were not subject to private appropriation, nor to the sovereignty of any state. The Convention laid down the rules for any exploitation of this Area.

The Convention also provided for special regimes not previously existent in international law. These special regimes included:

1. The Right of Transit Passage in straits used for international navigation. This meant the exercise of freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one area of the EEZ or High Seas and another, or to enter or leave a state bordering the strait. The Convention greatly limits the jurisdiction of the coastal state in matters which may affect passage.[51]
2. The Right of Archipelagic Sea Lanes Passage through archipelagic waters. This is the right of navigation and overflight in "normal mode" making for continuous, expeditious and unobstructed passage from one part of the High Seas or EEZ to another part thereof. The right is exercised in sea lanes and air routes designated by the archipelagic state in consultation with IMO. In theory, the sea lanes and air routes can extend to 50 nautical miles in width; but the rules also provide that ships and aircraft cannot come closer to the coast than 1/10 of the distance between bordering islands. If sea lanes and air routes are not designated, the right may be exercised through routes normally used for international navigation.
3. Provisions for management and conservation of fishing in the High Seas;
4. Provisions to encourage control of marine pollution;
5. Provisions to regulate marine scientific research.

The first two bear special relevance to the Philippines. Without the archipelagic state provisions, the international community would likely claim the Right of Transit Passage through the Philippines. So long as the Philippines does not implement the archipelagic state provisions, the international community can plausibly claim that only a 12 nautical mile territorial sea around each island can be recog-

nized, implying that all straits within the Philippines are subject to Transit Passage and that pockets of High Seas exist within the islands. This can be obviated by application of the archipelagic state principles and the passage of ships moderated by the designation of archipelagic sea lanes under the management of the Philippines. The Philippines is likewise allowed to suspend innocent passage in portions of archipelagic waters thereby regulating inter-island passage activities of foreign vessels which it could not do if such waters were regarded as pockets of High Seas.

Main Philippine Concerns

In sum, the main Philippine concerns in the negotiation of the Convention on the Law of the Sea were:

1. Recognition of sovereignty over waters around, between, and connecting the islands of the archipelago regardless of breadth and dimension, which were in danger of disregard by the territorial sea concepts then proposed;
2. Exercise of the degree of control over passage of vessels through the same waters necessary to protect national security;
3. Recognition of the rights to the marine wealth embraced within the areas described by the Treaty of Paris lines.

Looking over the Convention's regime of maritime zones, the Philippines was able to protect its interests in Nos. 1 and 3 above to a much more significant degree than what it would have had not the archipelagic state provisions in the Convention not been included. Without the archipelagic principles, the country would have been subject to the ordinary regimes and the archipelago fragmented because of pockets of High Seas between the islands, and the application of the Transit Passage in the various straits. A corresponding increase would be noted in the area where resource and management rights could be legitimately exercised under the Convention were to be compared to the areas claimed within the Treaty of Paris.[52]

There were also compromises, as there was a corresponding responsibility to acknowledge innocent passage, archipelagic sea lanes passage, and traditional fishing rights. The impact of the latter issue was moderated by the requirements of

The Philippine delegation believed that the accommodation of the maritime powers was not too high a price to pay for recognition of the remaining essence of archipelagic principles...

bilateral agreements prior to implementation. The Philippine delegation believed that the accommodation of the maritime powers was not too high a price to pay for recognition of the remaining essence of archipelagic principles; they also believed that in time, technological developments would allow the country to compensate for weaknesses it would be exposed to by allowing such passage rights.[53]

Philippine Declarations Upon Signing of the Convention

The decision to sign the Convention was not made easily. After nearly 30 years of negotiations, the Philippines gained some headway in the recognition of the archipelagic principles, but also had to make compromises. In signing the Convention, the Head of the Philippine delegation declared:

> "Among the new concepts in the Convention is that of the archipelago. The Philippines advanced the archipelago principle as early as 1956 and we have established it in our national legislation. We are therefore happy that the archipelago principle has finally been recognized and accepted as part of public international law. Although we would have been much happier if our proposed amendments in this area had gained general acceptance, we are satisfied, principally because of the inclusion of two basic considerations in the text of the Convention.
>
> "The first of these is the recognition of the concept that an archipelago is an integrated unit in which the "islands, waters and other natural features form an intrinsic geographical, economic, and political entity." No longer will the various islands of the archipelago be regarded as separate units, each with its own individual maritime areas, and the waters between them as distinct from the land territory. This archipelago con-

cept carries far-reaching implications which can influence the interpretations of the provisions of the convention.

"The second welcome basic consideration that gives us satisfaction is the recognition of the sovereignty of the archipelagic state over the archipelagic waters, the air space above them, the seabed and subsoil below them, and the resources contained therein. The text states explicitly in clear terms the only qualification of this sovereignty, by providing that this sovereignty is to be exercised "subject to the part," referring to Part IV on archipelagic states.

"No qualification or limitation, therefore, outside of Part IV, on the exercise of sovereignty by the archipelagic states over the archipelagic waters would be valid. To make provisions outside of Part IV applicable to archipelagic states, the Convention expressly so provides. (Art. 52 and 54)

"One consequence of this is that the archipelagic waters are subject only to two kinds of passage by foreign ships provided in Part IV of the Convention: (1) innocent passage, and (2) archipelagic sealanes passage. This refers to all archipelagic waters, or waters inside the archipelagic baselines, wherever located, whether around or between the islands and whatever their breadth or dimension. Transit passage, therefore, available to foreign ships in straits used for international navigation under Part III of the Convention, would not be available to them on national or domestic straits entirely within the archipelagic sealanes.

"Such national straits could be subject to sea lanes passage if the archipelagic state so decides. Of course, the elements of sea lanes passage are practically the same as those of transit passage; but while transit passage is imposed by the Convention on the waters of the coastal states concerned, sea lanes passage can be exercised by foreign ships only in such sea lanes as the archipelagic state may designate and establish.

"Sea lanes passage does not impair the sovereignty of the archipelagic state over the waters of the sea lanes. It is thus expressly provided in article 49, paragraph 4, that: "The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the

archipelagic waters, including the sea lanes, or the exercise by the archipelagic state of its sovereignty over such waters and their air space, seabed and subsoils, and the resources contained therein."

x x x

"You can readily see, Mr. President, that we have some problem with the 12-mile breadth of the territorial sea provided in the Convention. My government has studied the problem; it is a very difficult one for us. But this notwithstanding, my government nevertheless decided that it shall sign the Convention. The determining factor in arriving at this decision, as we have repeatedly stated, was the sovereignty of the archipelagic state over the archipelagic waters, their air space, seabed, and subsoil and their resources. This sovereignty will bind together, in the eyes of International Law, the islands, waters, and other natural features of the Philippines as an "intrinsic geographical, economic and political entity."

x x x

"Our satisfaction with the EEZ may be better appreciated when we consider that the Philippine EEZ is more than 132,000 square nautical miles bigger than our historic territorial sea and therefore has a compensating effect."[54]

Despite the non-acceptance of the Treaty of Paris lines which defined the extent of Philippine territory, the head of the delegation considered that sufficient protection was accorded Philippine interests in the recognition of the archipelagic principle insofar as they allowed for a concept of the archipelagic state as a single unified political entity and for sovereignty over archipelagic waters. Archipelagic sea lanes passage was accepted as an alternative to the more onerous transit passage regime provided straits used for international navigation. The recognition of the EEZ regime was also seen to compensate for the non-recognition of the Treaty of Paris limits as the maximum extent of Philippine national territory.

These statements, however, were cast in some ambiguity when the Philippines submitted a formal declaration upon signing the Convention, which pertinently stated:

"2. Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippine as successor to the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 19, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930;

x x x

4. Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over any territory over which it exercises sovereign authority, such as the Kalayaan Islands, and the waters appurtenant thereto;

5. The Convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees or Proclamations of the Republic of the Philippines; the Government of the Republic of the Philippines maintains and reserves the right and authority to make any amendments to such laws, decrees, or proclamations pursuant to the provisions of the Philippine Constitution;

6. The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic state over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence, and security;

7. The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation;"[55]

A number of nations soon filed protests against the above declaration, averring, among others, that the matters referred to in the first paragraphs were in the nature of reservations prohibited by the Convention. The Convention was ratified two years later by the Batasang Pambansa[56] after legislative deliberations which focused largely on the implications of the Convention to national security, fishing activities and passage of foreign vessels.[57]

Under the 1987 Constitution

The Article on National Territory Revised

When a new Constitution was promulgated under the Aquino Administration, it also contained a provision on the national territory which was not too different from that in the 1973 formulation:

> "The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines." (underscoring supplied)

New provisions were also added indicating acceptance of certain concepts in the Law of the Sea such as that on the protection of the marine wealth:

> "The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."[58]

Debates in the Constitutional Commission, however, reveal that the intention in adopting the article on the national territory was simply to use the 1973 formulation, though the Commissioners decided to emphasize on the fact that the Philippines is an archipelago. But discussions focused on the impact of the new provision on the Sabah claim, rather than on the maritime territorial areas. There were also disturbing indications that the Constitutional Commissioners were not properly informed of the meaning of the maritime zones, rights and jurisdictions involved.[59]

Commitment to Abide by the Law of the Sea

Since 1985, the Philippines had received a number of protests against the Declaration it filed when it signed the Convention on the Law of the Sea in 1982.

Countries such as the Byellorussian Socialist Republic, China, Czechoslovakia, the USSR, the Ukrainian Socialist Republic, the United States and Vietnam filed their protests with the Secretary General of the United Nations. In 1988, Australia filed its own protest. These countries mostly argued that the Philippine Declaration was in the nature of reservations which were not allowed under the Convention.[60] Responding to the Australian protest, the Philippines issued a statement directed to all State Parties to the Convention saying:

> "The Philippine Declaration was made in conformity with article 310 of the United Nations Convention on the Law of the Sea. The declaration consists of interpretative statements concerning certain provisions of the Convention.
>
> "The Philippine Government intends to harmonize its domestic legislation with the provisions of the Convention.
>
> "The necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention.
>
> "The Philippine Government, therefore, wishes to assure the Australian Government and the States Parties to the Convention that the Philippines will abide by the provisions of the Convention."

The meaning of the Philippine Response is clear and unequivocal — the Philippines intends to abide by the Convention. But since 1988, no concrete legislative or executive action has definitely resolved the issues of implementation of the Convention on the Law of the Sea.

Major Problem Areas and Issues

The Limitation of Choices

At the outset, it must be stated that the Philippine ratification of the Law of the Sea, together with subsequent official declarations reiterating the commitment to abide by its provisions, has charted the country's course irrevocably into compliance with the Convention. Not only does the rule of *pacta sunt servanda* demand

it,[61] not even the ultimate and extreme option of denunciation of the Convention will result in any advantage to the Philippines, as it is expressly provided that in the event of denunciation,

> "2. A State shall not be discharged by reason of the denunciation from the financial and contractual obligations which accrued while it was a Party to this Convention, nor shall the denunciation affect any right, obligation, or legal situation of the State created through the execution of this Convention prior to its termination for that State.
>
> 3. The denunciation shall not in any way affect the duty of the State Party to fulfill any obligation embodied in this Convention to which it would be subject under international law independently of the Convention."[62] (underscoring supplied)

Even if the Philippines were to attempt to withdraw from the Convention, it would still be legally bound, as far as the international community is concerned, to comply with its provisions. The second part of the first paragraph could be interpreted to mean that rights, obligations, or duties created by the express provisions of the Convention upon ratification and entry into force will remain enforceable, while the third paragraph could mean that portions of the Convention deemed to have become customary international law, as far as the international community is concerned, would be enforceable as well.

But the problem remains that if the Convention is denounced and the country does not implement its provisions, other countries could still demand that the more onerous obligations of the Convention be complied with by the Philippines (e.g. transit passage through straits within the archipelago) while the latter would not be able to exercise the relevant rights that would enable it to mitigate the impact of such obligations on the country.

Treaties and Philippine Constitutional Law

While the Constitution provided for the incorporation of the general principles of international law as part of the law of the land,[63] it also placed treaties on the

same level as statutes and therefore subject to challenge before Supreme Court.[64] But though a treaty may be declared invalid or unconstitutional, it is also accepted that a party to a treaty may not invoke provisions from its own internal law as justification for failure to perform its obligations under the treaty. Considering these rules, the Supreme Court concluded that when a treaty is thus repealed or abrogated or amended as part of the law of the land, it continues to be as an obligation of the Philippines to the other State Party or Parties, although it may not be enforceable internally by the courts.[65]

The practical impact would be that even if the Convention were successfully challenged before the Supreme Court, then there would be no duty on the part of agencies of the Government to implement it. The practical implication, perhaps, is that no appropriations will be devoted towards any activity that implements the Convention. In that case, then it would be as if the Government were to completely abdicate management of ocean activities insofar as it is covered by the Convention (which is quite a lot), because the Philippines would still be bound to comply with its obligations to the international community.

The Existing Straight Baseline System

Republic Act No. 3046 establishes straight baselines in accordance with the *Anglo-Norwegian Fisheries Case*. Among the options proposed is the maintenance of this baseline system, or at least the use of modified straight baselines instead of archipelagic baselines to enclose the islands of the archipelago, so that the waters within the baselines would retain their "internal" character. Such an option, however, is actually far less attractive than the archipelagic baseline system.

First of all, the "new" internal character of the waters does not affect the right of innocent passage previously exercised by foreign ships through those waters.[66] Second, the establishment of straight baselines brings all the straits in the archipelago within the ambit of the regime of Transit Passage,[67] which is even more onerous than Archipelagic Sea Lanes Passage.[68] In giving the nomenclature of "internal waters" to the waters within the straight baselines, the country would in effect be giving up even more control over foreign ships' passage through those waters.

Striking A Middle Ground

It thus appears that the Philippines has no choice but to implement the Convention; non-implementation places it in a far less favorable position because of the non-recognition by foreign nations of any action inconsistent with the Convention's rules. In truth however, this is not as negative a situation as it would seem.

Constitutional Flexibility

The ultimate impact of the Convention on the Constitution will no doubt focus upon the article concerning the National Territory. However, the phraseology of the article is flexible enough to permit the incorporation of the system of maritime zones under the Convention into the Philippine legal system. This is so if one were to momentarily disregard the historical antecedents of the Treaty of Paris and related agreements and consider the article in light of the Convention. Since the article on national territory does not specify the location or breadth of the territorial sea or internal waters, there is no apparent inconsistency between it and the system of maritime zones described in the Convention.

The only major inconsistency would be the article's declaration that the waters "around, between and connecting" the islands of the archipelago are deemed "internal waters," whereas the Convention defines "internal waters" as waters on the landward side of the baseline of the territorial sea or waters within closing lines drawn across mouths of rivers, bays, and harbor works in the case of archipelagic waters. It is possible to adopt a new national legal definition of "internal waters" to encompass the "archipelagic waters" as defined in the Convention. To date, no piece of Philippine legislation precisely defines "internal waters." The Constitution refers to the waters around, between, and connecting the islands as "part of the internal waters," implying that other Philippine waters (inland waters, for example) are also internal waters. Such a national legal definition would bring the Convention within the ambit of the provision of the national territory. In any case, "archipelagic waters", which are not expressly defined in statutory law are recognized by the Constitution in a separate provision.[69]

Ultimately, it is not whether the bodies of water around, between and connecting the islands are called "internal" or not which determines the effectiveness of State control over foreign vessels. It is international law which will be the basis for the legitimacy or illegitimacy of State actions vis-à-vis foreign vessels within the waters of the archipelago. But to exercise the rights and jurisdiction already recognized by international law, it is necessary to make use of the concepts provided by the Convention and adapt them to the Philippine legal system.

The character and extent of the territorial sea has also been at the center of the debate on the impact of the Convention. Diminution of the territorial sea, it is contended, is a diminution of our resource base and defense. But at its core, the need for a territorial sea arose from the need to (1) secure fisheries and other resources within the extension of the land territory, and (2) protect the State from threats posed by naval ships.

The dimensions of the territorial sea no longer figure heavily in national defense planning because of the nature of modern weaponry.

With respect to the first, the concern for resources is adequately addressed by the EEZ and continental shelf concepts which extends the State's exclusive jurisdiction and protects its sole access to the resources seaward to at least 200 nautical miles. In fact, the area covered by the EEZ is far greater than that contained in the original treaty limits. As for the second, it should be noted that the idea of a definite breadth for the territorial sea sprang from the cannon-shot rule. As such, the security value of the territorial sea was tied to the range of naval artillery. In an era of guided missiles reaching far beyond 500 miles, the importance of the security consideration for determining the breadth of the territorial sea obviously needs re-examination. The dimensions of the territorial sea no longer figure heavily in national defense planning because of the nature of modern weaponry. It thus, would be more practical and useful to focus on the benefits of access to resources rather than on the (now admittedly low) military value of the territorial sea.

Advantageous Rights and Duties

The objection to the Convention's focus on the impact on the national territory provision and the issue of passage of foreign vessels has unfortunately obscured the greater advantages of the majority of the Convention's new recognition of State rights and jurisdiction in extended maritime areas. The Convention does not deal with territory, after all, but rather with the management of the oceans and covers such activities as marine pollution, scientific research and use of marine resources. Because of the debate over some provisions of the Convention, the Philippines failed to take advantage of the rights, jurisdictions and obligations in all the other parts of the Convention in managing its oceans, some areas of which extend far beyond the original limits of the national territory. Using the Convention as basis or reference, other countries have gone far ahead in managing marine activities in their EEZs, territorial waters, or archipelagic waters, and have successfully entered into cooperative agreements with other states regarding the exploitation of living and non-living resources.[70]

It must be noted that the Philippines cannot afford to be left out of the continuing developments in the Law of the Sea. It has great maritime interests which have not been properly articulated because of the deadlock created by the debate on its impact on the national territory. In the meantime, other countries have pushed forward, continuously building a regime for management of the ocean and its resources.

Mitigation of Impacts of Onerous Obligations

The main concerns of the Philippines about the Convention have been on the grant of archipelagic sea lanes passage and its impact on national security and territorial integrity and the recognition of traditional fishing rights within archipelagic waters.

While there is a duty to recognize traditional fishing rights, the modalities will still be subject to bilateral agreements between the archipelagic state and the state to which the fishers belong. This moderates to a great extent the impact of mere recognition and allows the Philippines a degree of flexibility as well as a mandate to

manage the traditional fishing activities of foreigners. To date, no work has been done on how this provision may be implemented by the Philippines, in contrast to other countries like Indonesia which has come up with a working definition of "traditional fishing,"[71] and Australia which forged agreements on it.[72] Yet many traditional Malaysian and Indonesian fishers traverse our waters in the southern fringes of the archipelago.

As for the first concern, what needs to be considered is that without implementation of the Convention, the Philippines cannot exercise any regulation of international passage through its waters, either because the regime of Transit Passage can be invoked or because the Right of Archipelagic Sea Lanes Passage may be exercised by foreign ships in all normal routes of navigation for as long as no designation is made. Part IV of the Convention provides the basis for at least limiting the passage of ships to designated Archipelagic Sea Lanes, which can be substituted under conditions that the archipelagic state may define. In archipelagic waters outside of those designated for Archipelagic Sea Lane Passage, the exercise of the right of innocent passage may likewise be moderated by the designation of sea lanes[73] and can even be suspended for reasons of security. What is important is that Part IV allows the Philippines a greater degree of control over passage than what would ensue if Transit Passage rights were to be invoked by the international community in Philippine waters, as they have grounds to do so under existing legal conditions. Moreover, having a system of internationally recognized sea lanes allows the Philippines to rationalize its monitoring of foreign vessels use of the waters of the archipelago, and to more efficiently allocate its meager resources for management of Philippine waters.

Redefining Our Maritime Zones

The system of maritime zones created by our laws and under the Convention, are very different and will undoubtedly cause conflicts with other nations. Even if recognized by international law, the maritime zones created by Rep. Act No. 3046 as amended, Pres. Decree No. 1596, and Pres. Decree No. 1599 demand an enormous and complicated legal and logistical support structure so that the country's

rights and jurisdictions can be exercised effectively to protect and pursue the national interest in those areas. In view of the Law of the Sea, undoubtedly the law as far as the international community is concerned, this task is made even more difficult, perhaps even impossible, to accomplish.

At this point, it may be useful to discuss whether the Treaty of Paris lines have any more relevance in the management of the ocean. This author believes that in truth, the Treaty of Paris (and associated treaties) no longer serve a practical purpose for ocean management, have been reduced to a historical artifact. This is because in the management of the oceans, the interactivity of the marine environment and the mobility of the marine resources are such that boundary lines drawn on a map have little meaning. Activities on one side of the border can impact upon the environment on the other side, perhaps to an even worse degree. Ocean management issues are transboundary in nature, and whether we advocate the Treaty of Paris lines or the Convention lines, the effectiveness of our actions will ultimately be based on the extent that we can address the issues on multiple levels that are not geographically-defined, not on lines on a map. Internationally, the Law of the Sea has led to the rapid and progressive development of international law on practically every aspect of ocean use except the military; these developments render the Treaty of Paris lines all the more irrelevant as the existence of such lines do not pose an obstacle to the development and implementation of international law.

What matters is human activity, and how to manage or influence such activity so that they do not diminish our interests in the areas where they occur, and that Philippine interests... are protected

The Philippines' location at the nexus of Southeast Asia, the South China Sea, and the Pacific Ocean renders it most prone to multiple overlaps of maritime jurisdiction. To date, there is no clear policy on how the problems and issues created by these overlaps can be dealt with, because of the rigid territorial structure presumed to have been created by existing laws on the national territory. But these problems and issues exist, continue to exist and are getting worse. For

example, there are Malaysian and Philippine settlements in the various islands along the Philippine-Malaysian border, in effect, rendering the border irrelevant to the people in those fringes of the territory. The competition for occupation of the features of the Spratly Island Group, of which the Kalayaan Island Group is a part, continually threatens to throw the littoral claimant states into conflict. In the north, Taiwanese fishers continually encroach upon fishing grounds in the Batanes and in northern portions of Luzon, to the detriment of the disadvantaged Filipino fishing communities in those areas. These are but some of the slowly escalating conflicts that are brewing; yet the Philippines has not laid any groundwork for managing the existing problems.

Conclusion

There is no doubt that the Philippines is bound to implement the United Nations Convention on the Law of the Sea, as it has publicly declared to the international community for about 10 years now. But the real questions should not be whether or not the Convention increases or diminishes the extent of the national territory as drawn on a map, as the debates have been about, but on how the Philippines can exercise its rights under the Convention to more effectively pursue its maritime interests in the areas to be covered by the expanse of such territory.

Ultimately, the lines of a map, whether they are those of the Treaty of Paris or the Convention's maritime zones, are meaningless out at sea. Those lines do not impede the movement of resources, nor do they act as barriers to the impacts of the many uses of the ocean. What matters is human activity, and how to manage or influence such activity so that they do not diminish our interests in the areas where they occur, and that Philippine interests in the resources and activities in those ocean areas are protected. The provision on the national territory becomes irrelevant where foreign vessels and the interests of the international community are concerned; what will matter will be the provisions of international agreements.

The United Nations Convention on the Law of the Sea provides the acceptable framework for engendering the cooperation of the international community in the management of shared resources and ocean spaces. It is high time that the

Philippines commits itself to a program implementing the Convention, and thus to exercise its rights, as well as to require compliance by other states of their duties and obligations.

NOTES

1 Pacis, V. A., et. Al., *Founders of Freedom*, Capitol Publishing House, Manila 1971, p. 10-17
2 *Id.*, at pp. 9-10
3 However, this was not really universally accepted. Up until the 1950's, countries claimed varying distances for different reasons. Many claimed 3 miles, others 4, some 12, and in the case of South American countries, 200 miles. It was only after the First Law of the Sea Conference in 1958 that the a consensus developed towards either 3 or 12 nautical miles.
4 Kok Wing vs. Philippine National Railways, 54 Phil 438 (1930)
5 Villongco vs Moreno, G.R. L-17240, January 31, 1962; The full text of the provision may be found in Aquino, R. and C. Griño, *Law of Natural Resources*, E.F. David & Sons, 789 Washington Ave., Manila, 1957, at p. 425.
6 Treaty of Peace Between the United States of America and the Kingdom of Spain signed in Paris, 10 December 1898. *In* Lotilla, R.P. (Ed.), *The Philippine National Territory*, UP Institute of International Legal Studies and Foreign Service Institute, Manila 1995. (Hereafter referred to as PNT) Document 10, pp. 32-37
7 *Ibid.*
8 Treaty Between the of Kingdom Spain and the United States of America for Cession of Outlying Islands of the Philippines (1900). *In* PNT Doc. No. 11, pp. 38-39
9 Aquino, R. and C. Griño, Law of Natural Resources, E.F. David & Sons, 789 Washington Ave., Manila, 1957, at pp. 425-426.
10 15 Phil 7 (1910). Also *in* PNT Doc. No. 13, pp. 61-75, at
11 46 Phil 729 (1922). *In* PNT, Doc. No. 17, pp. 90-93
12 Public Law No. 240, Chapter 416. An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands, and to Provide a More Autonomous Government for thos Islands. *In* PNT Document 14, pp. 76-87
13 Convention Between the United States of America and Great Britain Delimiting the Boundary Between the Philippine Archipelago and the State of North Borneo, 1930. *In* PNT Document 19, pp. 134-136
14 Act No. 4003, An Act to Amend and Compile the Laws Relating to Fish and Other Aquatic Resources of the Philippine Islands, and for Other Purposes (1932). *In* PNT Document No. 20:1, pp. 146-147
15 Little comfort is to be drawn from this piece of legislation, however, as nowhere in the Act is it expressly mentioned that the waters between the seaward boundary of municipal waters to the Treaty limits are of the character of territorial waters. Designation of areas as fishing grounds are not in themselves indicative of a territorial character, as it is possible to have designated fishing grounds in the high seas.
16 Sec 1, Public Law Act No. 311. An Act to Enable the People of the Philippine Islands to Adopt a Constitution and Form a Government for the Philippine Islands, To Provide for the Independence of the Same, and for Other Purposes (1933). *In* PNT, Document No. 21, pp. 148-156
17 Sec. 1, Public Law No. 127. An Act to Provide for the Complete Independence of the Philippine Islands, to Provide for the Adoption of a Constitution and A Form of Government for the Philippine Islands, and for Other Purposes (1934). *In* PNT, Document No. 22, pp. 157-166

18 Art. IV, Sec. 14, Act No. 2657 (Administrative Code of 1916). *In* PNT, Document No. 15, p. 88; Art. IV, Sec. 16, Act No. 2711 (Revised Administrative Code of 1917). *In* PNT,Document No. 16, p. 89

19 Art. I, Convention Between the United States of America and Great Britain Delimiting the Boundary Between the Philippine Archipelago and the State of North Borneo (1930). *In* PNT, Document No. 19, pp. 134-136, at p. 134

20 Art. II, Id.

21 Art. III, Id.

22 Arbitral Award Rendered in Conformity with the Special Agreement Concluded on January 23, 1925 Between the United States of America and the Netherlands Relating to the Arbitration of Differences Respecting Sovereignty Over the Island of Palmas (Miangas), 1928. *In* PNT, Doc. No. 18, pp. 94-133

23 *Id.*, at p. 105, citing a Letter dated April 7, 1900 of the Secretary of State of the United States to the Spanish Minister at Washington.

24 Committee Report No. 7, dated August 31, 1934. *In* PNT, Doc. No. 23A, pp. 168-171

25 Proceedings on the National Territory of the 1934-1935 Constitutional Convention. Record of the Constitutional Convention, Vol. 11, Journal Nos. 21-40. *In* PNT, Doc. No. 23B, pp. 172-258

26 Interventions of Delegates Bautista Razona, Id., pp. 247-248. Explaining the reason for including the proposed provision on the national territory, he stated:

"El objeto es cortar el paso de extrañas potencias, que, movidas por la avaricia, quiseran algún día valerse de nuestros propios compatriotas para adueñarse de una parte de nuestro territorio; y al mismo tiempo ahuyehtar la posibilidad de que, por ciertas dádivas, el Presidente de la República y la Asemblea Nacional dispongan de un municipio, de una provincia o de una isla de este Archipiélago a favor de uno de los varios países que, por saber sue en el seno de nuestras montañas se guardia oro de altísima ley, en el corazón de nuestros bosque se encierra un tesoro de inmenso valor y en el fondo de nuestros mares se esconden riquezas inagotables, codician tanto esta tierra de nuestros amores."

27 Sec. 1, Art. I, 1935 Constitution

28 Proclamation of Independence of the Philippines by the President of the United States of America (1946), 60 US Stat 1352. *In* PNT, Doc. No. 24, pp. 261-262

29 *Ibid*. The pertinent paragraph of the Proclamation reads:

"WHEREAS the United States of America by the Treaty of Peace with Spain of December 10, 1898, commonly known as the Treaty of Paris, and by the Treaty with Spain of November 7, 1900, did acquire sovereignty over the Philippines, and by the Convention of January 2, 1930, with Great Britain did delimit the boundary between the Philippine Archipelago and the State of North Borneo; x x x"

30 Exchange of Notes between the United Kingdom and the Philippine Republic Regarding the Transfer of Administration of the Turtle and Mangsee Islands to the Philippine Republic. *In* PNT, Doc. No. 26, pp. 265-269

31 Note Verbale dated 20 January 1956 from the Permanent Mission of the Philippines to the United Nations. *In* PNT, Doc. No. 28, pp. 272-273

32 The right of innocent passage refers to the right accorded to foreign vessels to traverse the territorial waters of a foreign state without having to seek permission to do so, as long as the vessel did not act in a manner that was prejudicial to the peace, good order, and security of the said state.

33 Sanger, C. *Ordering the Oceans: The Making of the Law of the Sea*. Zed Books Ltd., 1986. Pp. 71, 73-74.

34 Rep. Act No. 3046 (1961). An Act to Define the Baselines of the Territorial Sea of the Philippines. *In* PNT, Doc. No. 29, pp. 276-280

35 Rep. Act No. 5446 (1968). An Act to Amend Section One of Republic Act No. 3046, Entitled "An Act to Define the Baselines of the Territorial Sea of the Philippines". *In* PNT, Doc. No. 30, pp.365-370

36 See Proceedings of the Philippine Senate on Senate Bill No. 541: Baselines of the Philippine Territorial Sea (1960). *In* PNT, Doc. No. 29A and 29B, pp. 281-364

37 Rep. Act No. 5446 (1968)

38 See Proceedings of the Philippine House of Representatives on Senate Bill No. 954: An Act Amending Section One of Republic Act No. 3046, Entitled "An Act to Define the Baselines of the Territorial Sea of the Philippines" (1968). *In* PNT, Doc. No. 30B, pp. 375-409

39 Presidential Proclamation No. 370. Declaring as Subject to the Jurisdiction and Control of the Republic of the Philippines All Mineral and Other Natural Resources in the Continental Shelf of the Philippines (1968). *In* PNT, Doc. No. 31, pp. 410-411.

40 Art. I, Sec. 1, 1973 Constitution

41 Sponsorship Speech of Delegate Cabal, Record of the Constitutional Convention, Session of February 14, 1972, No 106

42 Stenographic Notes on the Public Hearing of the Committee on National Territory held on September 29, 1971 (unpublished), pp. 8-10

43 For example, Sec. 5 and 6, Presidential Decree No. 1587, The Revised Administrative Code of 1978 (1978). *In* PNT, Doc. No. 41, p. 467

44 See Intervention of Delegate Buendia, Proceedings on the National Territory of the 1934-1935 Constitutional Convention. Record of the Constitutional Convention, Vol. 11, Journal Nos. 21-40. In PNT, Doc. No. 23B, pp. 172-258, at pp. 203-204. He stated:

"También quisiera hacer constar, como una mera información, que las islas disputadas entre el Japon y Francia, están fuera de nuestro territorio, de acuerdo con el Tratado de Paris y los siguientes de 1900 y 1930.

"Hago esta declaración después de haber hecho un esfuerzo por localizar las citadas islas situadas hacia el Oeste de Palawan, con la ayuda de la Oficina de Coasta y Geodesia. Estas islas distan 165 millas marinas del puerto mas próximo de la Isla de Palawan, o sea, 70 millas menos que la distancia que media entre las citadas islas hacia el punto mas cercano de Indo-China, y están entre los 114° y 115° Este de Greenwich. Como quiera que nuestro territorio esta entre los 116° y 127° de longitud Este, dicho se está que las citadas islas están fuera de nuestro territorio.

"Los distinguidos Miembros del Comité de Ponencías habían oído de boca del P. Ylla, en una declaración que hiciera nte el citado Comité, que las citadas islas están dentro de nuestro territorio; pero parece que el mismo P. Ylla ha cambiado de parecer sobre el particular, ante la realidad de los hechos arriba mencionados.

"Esto, sin embargo, no quiere decir que no tenemos derecho para reclamar dichas islas. Al contrario, tenemos sobradas razones para reclamarlas, como son, a saber: su proximidad a la Isla de Palawan; y porque entre dichas Islas y Paragua sólo media un canal estrecho y foca profundidad, al paso que entre las mismas e Indo-China media un canal muy ancho y de mucha profundidad.

45 Chiu, H. and C. Park, "Legal Status of the Paracels and Spratly Islands," *In* Ocean Development and International Law Journal, Vol. 3, No. 1 (1975), cited in Lu Ning, Flashpoint Spratlys!, Dolphin Books, Singapore 1995 at p. 25

46 Valero, G.M.C., *Spratly Archipelago: Is the Question of Sovereignty Still Relevant?* Institute of International Legal Studies, Quezon City, 1993, p.63-65

47 Press Statement, July 10, 1971, quoted in the Sponsorship Speech of Delegate Cabal, *op. cit.*

48 Presidential Decree No. 1596, Declaring Certain Areas Parts of Philippine Territory and Providing for their Government and Administration (1978). *In* PNT, Doc. No. 40, pp. 465-466. The decree stated:

"WHEREAS, by reason of their proximity the cluster of islands and islets in the South China Sea situated in the following: x x x are vital to the security and economic survival of the Philippines;

"WHEREAS, much of the above area is part of the continental margin of the Philippine archipelago;

"WHEREAS, these areas do not legally belong to any state or nation but, by reason of history, indispensable need, and effective occupation and control established in accordance with international law, such areas must now be deemed to belong and subject to the sovereignty of the Philippines;

"WHEREAS, while other states have laid claims to some of these areas, their claims have lapsed by abandonment and can not prevail over that of the Philippines on legal, historical, and equitable grounds.

x x x

"Section 1. The area within the following boundaries: x x x including the seabed, subsoil, continental margin, and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan".

49 Presidential Decree No. 1599, Establishing an Exclusive Economic Zone and For Other Purposes (1979). *In* PNT, Doc. No. 42, pp. 468-469

50 Sec. 1 of Pres. Decree No. 1599 states:

"Section 1. There is hereby established a zone to be known as the exclusive economic zone of the Philippines. The exclusive economic zone shall extend to a distance of two hundred nautical miles beyond and from the baselines from which the territorial sea is measured; Provided, that, where the outer limits of the zone as thus determined overlap the exclusive economic zone of an adjacent or neighboring state, the common boundaries shall be determined by agreement with the state concerned or in accordance with pertinent generally recognized principles of international law on delimitation."

51 Art. 42, LOSC allows bordering States to adopt rules and regulations only with respect to the safety of navigation and regulation of maritime traffic, marine pollution management by giving effect to international regulations, prevention of fishing by fishing vessels, and loading or unloading of commodities, currency, or persons in violation of customs, fiscal, immigration, or sanitary laws. Transit passage cannot be suspended or impeded in any manner by bordering states.

52 The main trade-off, according to Senator Tolentino, was the EEZ, which resulted in an increase of 132,100 square nautical miles to the area wherein the Philippines could avail of the marine resources. The archipelagic waters provisions also meant that 141,800 square nautical miles of waters previously regarded by the international community as high seas came under the sovereignty of the Philippines. See Proceedings of the Batasang Pambansa Concurring in the United Nations Convention on the Law of the Sea. In PNT, Doc. No. 44D, pp. 513-540, at p. 517

53 *Id.*, at p. 515

54 Statement of the Head of the Philippine Delegation, Jamaica, December 10, 1982. *In* PNT, Doc. No. 44A, pp. 505-508.

55 The Philippine Declaration on the Signing of the Convention on the Law of the Sea. In PNT, Doc. No. 44B, pp. 509-510

56 Resolution No. 121, Resolution of the Batasang Pambansa Concurring in the United Nations Convention on the Law of the Sea (1984). *In* PNT, Doc. No. 44C, pp. 511-512.

57 *See* Proceedings of the Batasang Pambansa Convention on the Law of the Sea. *In* PNT, Doc. No. 44D, pp. 513-540.

58 Para. 2, Sec. 2, Art. XII, 1987 Constitution.

59 *See* Proceedings of the Deliberations of June 26, 1986, where the EEZ is referred to as expanding the country's territory as against the 3 mile rule which was observed, and the right of innocent passage as necessary to save lives during fortuitous events. The EEZ is again referred to as the national territory in the record of Deliberations of June 30, 1986, and additionally it is said that the provisions of the Convention on the Law of the Sea are reproductions of the definition of the country's national territory; straits are discussed as not being part of high seas and not the national territory. In the Deliberations of August 7, 1986, one Commissioner stated that the EEZ is now part of the internal waters of the Philippines, another said that the territorial waters can extend up to 300 miles from the nearest baselines under the archipelagic theory. In PNT, Doc. No. 48A, pp. 555-593, and Doc. No. 49A, pp. 595-608.

60 China and Vietnam additionally contradicted the Philippines' claim to the Kalayaan Island Group.

61 Art. 26, Vienna Convention on the Law of Treaties. Reiterated in Art.300 of the LOSC, as follows: "State Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right."

62 Art. 317, LOSC

63 Sec. 2, Art. II, 1987 Constitution

64 Sec. 4(2), Art. VIII, 1987 Constitution, wherein the Supreme Court is granted jurisdiction to rule upon the constitutionality or validity of any treaty. This provision also existed under the previous Constitutions.

65 *See* Abbas vs Commision on Elections, 179 SCRA 287 (1989)

66 Art. 8, LOSC. The second paragraph states:

"2. Where the establishment of straight baselines in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided by this Convention shall exist in those waters."

67 Part III, LOSC.

68 There is no recognition of sovereignty over the waters beyond the 12 nautical mile limit, passage (both transit and innocent) cannot be suspended, and coastal state jurisdiction over passage is limited to only the select areas specified in the Convention.

69 Para. 2, Sec. 2, Art. XII, 1987 Constitution.

70 For example, Indonesia has taken full advantage of the Convention to engage its neighbors in oil and gas exploration and fisheries cooperation, instituted a management regime for shipping in its archipelagic waters, and taken an active part in multi-lateral activities on marine pollution, fisheries, and ocean management. Before the financial crisis, Indonesia had achieved economic development at a better pace in spite of the burdens of the Convention which the Philippines has been so concerned about.

71 In fact, it is a rather restrictive definition applicable to what may generally be described as artisanal fishers using small dug-out boats to fish for subsistence. Personal conversation with Amb. Hasjim Djalal at the First ASEAN Legal Experts Meeting on the UN Convention on the Law of the Sea, Manila Hotel, November 26-27, 1997.

72 The Torres Straits Treaty between Australia and Papua New Guinea signed in 1978 included a provision for access of traditional fishers; and a Memorandum of Understanding on Access by Traditional Indonesian Fisherpersons was signed between Australia and Indonesia in 1974.

73 In the same manner that a coastal state is allowed to designate sea lanes and trafffic separation schemes through the territorial sea; this is different from Archipelagic Sea Lanes where the Right of Archipelagic Sea Lanes Passage may be exercised.