

Towards a Strategic Framework for Management of the West Philippine Sea¹

A White Paper by the WPS Informal Expert Group

SUMMARY AND HIGHLIGHTS

Introduction

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

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

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

Contextualizing the Philippines and the West Philippine Sea Issues

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

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

¹In this paper, the term 'South China Sea' (SCS) refers to the entire semi-enclosed sea bordered by China, the Philippines, Malaysia, Indonesia, and Vietnam. On the other hand, the term 'West Philippine Sea' (WPS) refers to only the part of the South China Sea that is the subject of Philippine sovereignty and/or jurisdictional claims. WPS is inclusive of the Kalayaan Island Group or KIG, Bajo de Masinloc (a.k.a. Panatag or Scarborough Shoal), and the 200-nautical mile Exclusive Economic Zone (EEZ) and Continental Shelf (CS), accounted from the archipelagic baselines defined in Republic Act 9522 (Philippine Baselines Law).

communications and transportation, for defense and security, for leisure and the enjoyment of nature's blessings.

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

Through UNCLOS, the Philippines and Indonesia introduced and joined forces to gain acceptance of the concept of the archipelagic State. We successfully secured the international community's recognition of our exclusive sovereignty over all waters around, between and connecting the different islands within the Philippine Archipelago, subject to certain limitations on distances between base points. Without the archipelagic State concept enshrined in Part IV of the UNCLOS, the Philippines would have remained a scattering of islands separated by high seas.

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

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

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

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

5. The international and regional environments profoundly affect Philippine interests and its relationships with other states. Global financial woes, turbulence in the Middle East, and competition for energy supplies are but some significant global developments that may directly impact our economy. In the region, the emergence of new powers China and India, the potential for strategic rivalry between the US and China, military flashpoints (such as the Taiwan Straits, Korean peninsula and the SCS itself), a steady arms buildup among various countries, domestic political transitions in key neighboring states, and trends in ASEAN and East Asian regional integration are all relevant to stability and peace and therefore to the prospects for achieving greater development and security for the Philippines. Conversely, in this interdependent setting, what the Philippines does with respect to the WPS can and will have ripple effects on regional and global scenarios.
6. Rebuilding institutions for good governance, bringing the long-standing Mindanao conflict and the communist insurgency to a resolution, promoting social justice and human rights, improving the peace and order situation especially with respect to crime and terrorism, and consolidating gains in macroeconomic conditions – these are the domestic imperatives of long-standing that shall continue to demand the priority attention of government and the Filipino people. Each of these is critical to our national resilience, unity and progress, which in turn are indispensable for our ability to face emergent external challenges.

The fundamental problem

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

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

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

Imperatives of Philippine Policy in the WPS

Sustainable Development of the Marine Economy and Resources

Fisheries

1. The Philippines is the world's 6th largest producer of fish, with fish being a main protein source and fisheries a main source of livelihood for our people. The waters west of Palawan, which flow from the SCS, account for 20-25% of our annual fish

catch, while the areas offshore of Zambales are rich spawning grounds, underscoring the economic importance of the SCS to food security and economic welfare.

2. Republic Act 8550 or the Fisheries Code of 1998, declares as a national policy, among others: (1) to limit access to the fishery and aquatic resources of the Philippines for the exclusive use and enjoyment of Filipino citizens; and (2) to ensure the rational and sustainable development, management and conservation of the fishery and aquatic resources in Philippine waters including the Exclusive Economic Zone (EEZ) and in the adjacent high seas, consistent with the primordial objective of maintaining a sound ecological balance, protecting and enhancing the quality of the environment.

RA 8550 further defines the area of its application to "all Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country's 200-nautical mile EEZ and continental shelf".

3. In the WPS and other waters adjacent to the archipelago, fisheries are threatened by both reef degradation and overfishing. Foreign fishing fleets are systematically increasing efforts to improve catch, in some cases encouraged by their government as a means of asserting maritime claims. The Philippines, on the other hand, has not substantially increased its marine fishing effort for many years and places priority on resource conservation and protection. Uncontrolled fishing in the area will diminish resources for current and future needs of Filipinos, despite sovereign rights over fisheries and aquatic resources accorded to us under UNCLOS. Moreover, the biodiversity and productivity of the WPS are directly linked to the biodiversity and productivity of the country's inter-island waters. Any diminution in the resources of the WPS may have negative impacts on the viability of our own inter-island fisheries resources.

Hydrocarbons and Minerals

1. International research data indicate that the Philippines has significant oil and gas as well as other mineral deposits particularly around the Palawan/Reed Bank area. It is now believed that they are of such quantity that they could have transformative potential for a developing country such as ours. Access to these resources is therefore a core Philippine interest in the WPS.
2. Presidential Decree 87, also known as the Oil Exploration and Development Act of 1972, declares it a policy of the State to "hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign, under the arrangements embodied in this Act which are calculated to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government for use in furtherance of national economic development, and to assure just returns to participating private enterprises, particularly those that will provide the necessary services, financing and technology and fully assume all exploration risks."
3. The country's energy infrastructure, as well as energy supply and demand projections, will soon urgently require a fresh infusion of indigenous energy sources. Oil industry players have thus been preparing to begin commercial drilling activities. There is an unavoidable need for foreign capital and technology, but the international disputes in the area and recent escalation of tensions over drilling and exploration activities have created a perception of risk and uncertainty that discourages long-term investors.

4. Philippine policies on oil and gas cooperation or joint development in the WPS need to be clarified. The key obstacles to joint development are security concerns and commercial reservations about partnering with oil companies from rival claimant states, as well as fear of potential negative impacts on the country's legal position.
5. Aside from fisheries and hydrocarbons, there is a need to conduct thorough assessments of other offshore mineral resources such as rare earths, iron, titanium, vanadium sands, manganese nodules and massive sulfides, as well as of the renewable energy potentials of the ocean.

Promoting Maritime Security and Defense

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

Law Enforcement and Contributing to Good Order at Sea

1. Pursuant to UNCLOS, the Philippines as a coastal and archipelagic state has exclusive sovereign rights to explore and exploit the living and non-living resources within its 200 n.m. EEZ and continental shelf. It exercises full sovereignty over its 12 n.m. territorial sea measured from its archipelagic baselines, and over all archipelagic waters enclosed within them, subject only to the recognition of innocent and archipelagic sealane passage rights in favor of foreign ships. There is debate, however, on whether, when, and where to establish archipelagic sealanes.

2. The most topical dimension of the disputes triggering the tensions is foreign fishing activities in Philippine territory and EEZ. Given the lack of capability and assets of our civilian law enforcement agencies, the Navy has had to be deputized for 'anti-poaching' operations. Use of the Navy against fishermen projects a militarist posture and leaves us vulnerable to allegations of threat to use force. Demilitarization of the fisheries disputes had in fact earlier been recommended by various quarters. There must be a proper mix of military action and civilian law enforcement approaches to the disputes, as determined by the nature of the specific threat or challenge.
3. In consideration of the territorial disputes, we need a clearer definition of where the metes and bounds of Philippine law enforcement jurisdiction are, balancing the promotion of vital national interests with the need to prevent armed hostilities. The growing deployment of vessels by PRC to protect Chinese fishermen and to obstruct Philippine enforcement operations in our territory/EEZ, creates new challenges to our law enforcement efforts. Fishing and other activities by Filipino nationals will be constrained, while allowing Chinese law enforcement to go uncontested may be interpreted as a negation of Philippine sovereignty.
4. A National Coast Watch System was established through Executive Order 57, as a "central inter-agency mechanism for a coordinated and coherent approach on maritime issues and maritime security operations towards enhancing governance in the country's maritime domain". EO 57 also abolished the Commission on Maritime and Ocean Affairs which since 2007 had functioned as the coordinating mechanism at the strategic level.

Asserting Sovereignty Over Territory And Exercising Sovereign Rights Over The Exclusive Economic Zone

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

Advancing An Effective And Pro-Filipino Diplomacy And Foreign Relations

1. Art.2 Sec.7 of the Constitution states that "The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall

be national sovereignty, territorial integrity, national interest and the right to self-determination.” Art.2, Sec. 2 of the Constitution also states that “the Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.”

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

Organizing For Future Challenges

1. Law of the Sea concerns in the WPS are cross-cutting issues that impinge on both foreign policy and domestic policy. Domestic archipelagic imperatives (i.e. access to resources, protection of the environment, national security) are the true driving force behind national policy. Only a strong domestic capability (e.g. credible defense and pro-active maritime resource development programs) can be the basis of effective diplomacy and relations with the international community. Archipelagic development and security requires a strategic and whole-of-government approach.
2. Recent challenges facing the country in asserting its sovereignty and sovereign rights in the WPS have helped in uniting the Filipino people. Territorial integrity, national patrimony, and the principles and norms we choose to live by in our relations with other countries and peoples all help shape our national identity. But there is little informed policy debate among Filipinos on the maritime challenges we face. Carrying this forward to the next generations requires developing a critical mass of experts and enthusiasts, as well as promoting lively debates and discourses about maritime issues and the challenges and opportunities they present. These will involve participation by government, academe, media, NGOs, private industry, and grassroots local communities.
3. Coverage of maritime issues in popular media is also lacking. There is a need for the Filipino people to rediscover our archipelagic heritage and to write our own story as a maritime and seafaring nation. The mass media, social networks on the Internet, the educational system, and government information agencies are all potential

instruments for information dissemination, awareness-raising, stimulating lively and analytical debates, and mobilizing public support on the one hand. They are also instruments for gauging public sentiment and soliciting feedback on government policies and actions. Ultimately, the tough decisions government will have to make with regard to the WPS should be for the benefit of the people. Their understanding of the issues and participation in the decision making will be vital to any successful policy.

GUIDING PRINCIPLES AND MAJOR RECOMMENDATIONS

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

1. The West Philippine Sea and its resources are part of the national patrimony. Our national interest in the WPS is defined as that which will serve the greatest good of the greatest number of the Filipino people;
2. Our policies and strategies with respect to resource development, defense, law enforcement, diplomacy and international law shall be consistent with this definition of the national interest;
3. We affirm commitment to the peaceful settlement of inter-state disputes on the basis of justice, equality, mutual respect, and upholding internationally accepted rules and norms of behavior.
4. We affirm commitment to an independent foreign policy that upholds the dignity of the Filipino people and our tradition of courage and self-reliance;
5. WPS policy should demonstrate the positive contributions that the Philippines and the Filipino people can make to the Asia Pacific region and to the world.

This White Paper recommends the following courses of action.

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

3. That government develop strategic economic resources development programs for the Philippine EEZ, with respect to:
 - a. Sustainable and responsible fisheries, with government assistance for artisanal/small-scale fishermen;
 - b. Optimized exploitation of oil and gas resources, balancing economic interests and the sovereignty/security concerns;
 - c. Exploratory surveys of other offshore mineral resources;
 - d. Establishing where necessary, transitional guidelines and rules for law enforcement in selected EEZ areas under dispute, taking into consideration domestic laws and the relevant UNCLOS provisions; and
 - e. Enabling and capacitating organs for law enforcement and for the protection of Filipinos engaged in the exercise of sovereign rights over the EEZ.

4. That government develop a clear, feasible, and resolute security and defense strategy for the WPS, based on:
 - a. Sound understanding of shifting regional dynamics and geopolitical rebalancing taking place;
 - b. Factual and accurate threat and risk assessments looking at capabilities, political intentions and actions of adversaries;
 - c. Correct appreciation of our own security and defense capabilities and weaknesses, including the potential for allied assistance and the influence of remaining internal security challenges,
 - d. Clear definition of the distinct as well as coordinated roles and responsibilities of our civilian and military organizations, in ways that build on and build up their core competencies and primary mandates; and
 - e. Anticipation of various scenarios which security forces may encounter, taking into consideration the shift from internal security operations to territorial security operations and the shift from “threat based” to “scenario-based” contingencies.

5. That bilateral and regional diplomacy pertaining to WPS:
 - a. Should be strategized in the context of comprehensive foreign policy goals such as promotion of national security, economic development and the welfare of nationals;
 - b. Should contribute ultimately to strengthening regional and international peace and stability based on international law, norms and standards;
 - c. Be guided by our long-term aspirations for our relations with ASEAN, China, the United States, neighboring countries in Southeast Asia and Northeast Asia, and other key stakeholders.

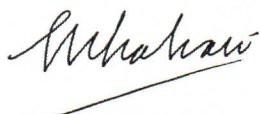
6. That programs be undertaken to inculcate archipelagic consciousness and identity of the Philippines and the Filipinos as a maritime nation, including but not limited to:
 - a. Preparation and wide dissemination of information (e.g. primers and reference materials) outlining Philippine interests for popular consumption;
 - b. Building grassroots constituencies for advocacy for the marine and coastal environment, safety and freedom of navigation, disaster-preparedness and response, good neighborliness and regional cooperation, among others;
 - c. Introduction of relevant multidisciplinary courses and content into all levels of education and training in government;
 - d. Investment in developing next-generation expertise on the legal, security, international relations, fisheries, geography, geology, marine scientific and other dimensions relevant to the WPS.

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

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

10 August 2012, Quezon City

INFORMAL EXPERT GROUP ON THE WEST PHILIPPINE SEA



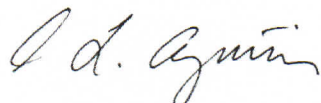
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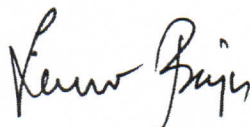


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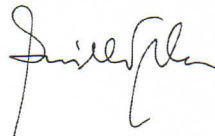
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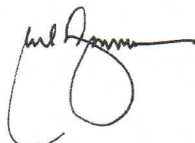


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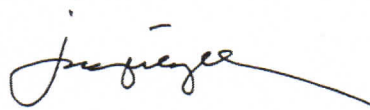
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