

# The WEST PHILIPPINE SEA

The TERRITORIAL and MARITIME JURISDICTION DISPUTES from a FILIPINO PERSPECTIVE

A Primer

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## The Territorial and Maritime Jurisdiction Disputes from a Filipino Perspective

A Primer

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## LIST OF ACRONYMS

AFP	Armed Forces of the Philippines
ASEAN	Association of Southeast Asian Nations
BdM	Bajo de Masinloc
BFAR	Bureau of Fisheries and Aquatic Resources
CoC	Proposed ASEAN-China Code of Conduct
DoC	ASEAN-China Declaration of Conduct of Parties in the SCS
DENR	Department of Environment and Natural Resources
DBM	Department of Budget and Management
DND	Department of National Defense
DOTC	Department of Transportation and Communications
DOT	Department of Tourism
DTI	Department of Trade and Industry
ECS	Extended Continental Shelf
EEZ	Exclusive Economic Zone
EO	Executive Order
KIG	Kalayaan Island Group
MT	metric tons
NAMRIA	National Mapping and Resource Information Authority
NM	nautical mile
NSC	National Security Council
NW	Northwest
PCG	Philippine Coast Guard
PD	Presidential Decree
PN	Philippine Navy
RA	Republic Act
SCS	South China Sea
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States (of America)
WPS	West Philippine Sea

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## PREFACE

THE PRIMER is an initiative of independent researchers. The facts and analyses presented herein represent the authors' own appreciation of published material and primary sources that were accessible to them during the course of the research. They do not represent any position of the government of the Republic of the Philippines, unless stated otherwise, nor of the publisher.

The purpose of this Primer is to make available in a single updated volume a simplified and objective rendering of the historical background, current conditions, pertinent issues and policy questions regarding the territorial and maritime disputes in the West Philippine Sea.

It is intended to assist students, researchers, media practitioners, non-specialist members of the civil service, as well as the general public, in deepening their understanding of the many different issues of the West Philippine Sea disputes. The questions and answers are framed from a Filipino perspective that focuses on information that the authors considered to be most important and of interest to citizens of this country, rather than information that may be highlighted by various foreign authors, organizations or governments. The contents are not intended as advocacy of any particular position or policy recommendation.

The authors would like to thank Lucio B. Pitlo III for his invaluable research assistance in the preparation of this Primer. For inquiries and comments, please contact the Asian Center, University of the Philippines Diliman.

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# General Introduction

## WHAT IS THE “WEST PHILIPPINE SEA”?

THE WEST PHILIPPINE SEA refers to the part of the South China Sea that is closest, and of vital interest, to the Philippines. On September 5, 2012, President Benigno Simeon C. Aquino III issued Administrative Order No. 29, with Section I stating that the “maritime areas on the western side of the Philippine archipelago are hereby named as the West Philippine Sea.” It includes “the Luzon Sea, as well as the waters around, within and adjacent to the Kalayaan Island Group (KIG), and Bajo de Masinloc also known as Scarborough Shoal.”

## WHAT IS THE “SOUTH CHINA SEA”?

The South China Sea is the much broader expanse of water, often described as a semi-enclosed sea, bounded by China/Taiwan in the north, by the Philippines in the east, and by Vietnam, Malaysia, Singapore, Indonesia, and Brunei in the west and south. The Gulf of Tonkin and Gulf of Thailand also abut the South China Sea. Scattered over the South China Sea are various geographic features, the most prominent of which are known internationally as the Spratlys, the Paracels, Macclesfield Bank and Pratas Island. There are overlapping claims by various countries to these features and to the waters and resources surrounding them, including parts of the West Philippine Sea.

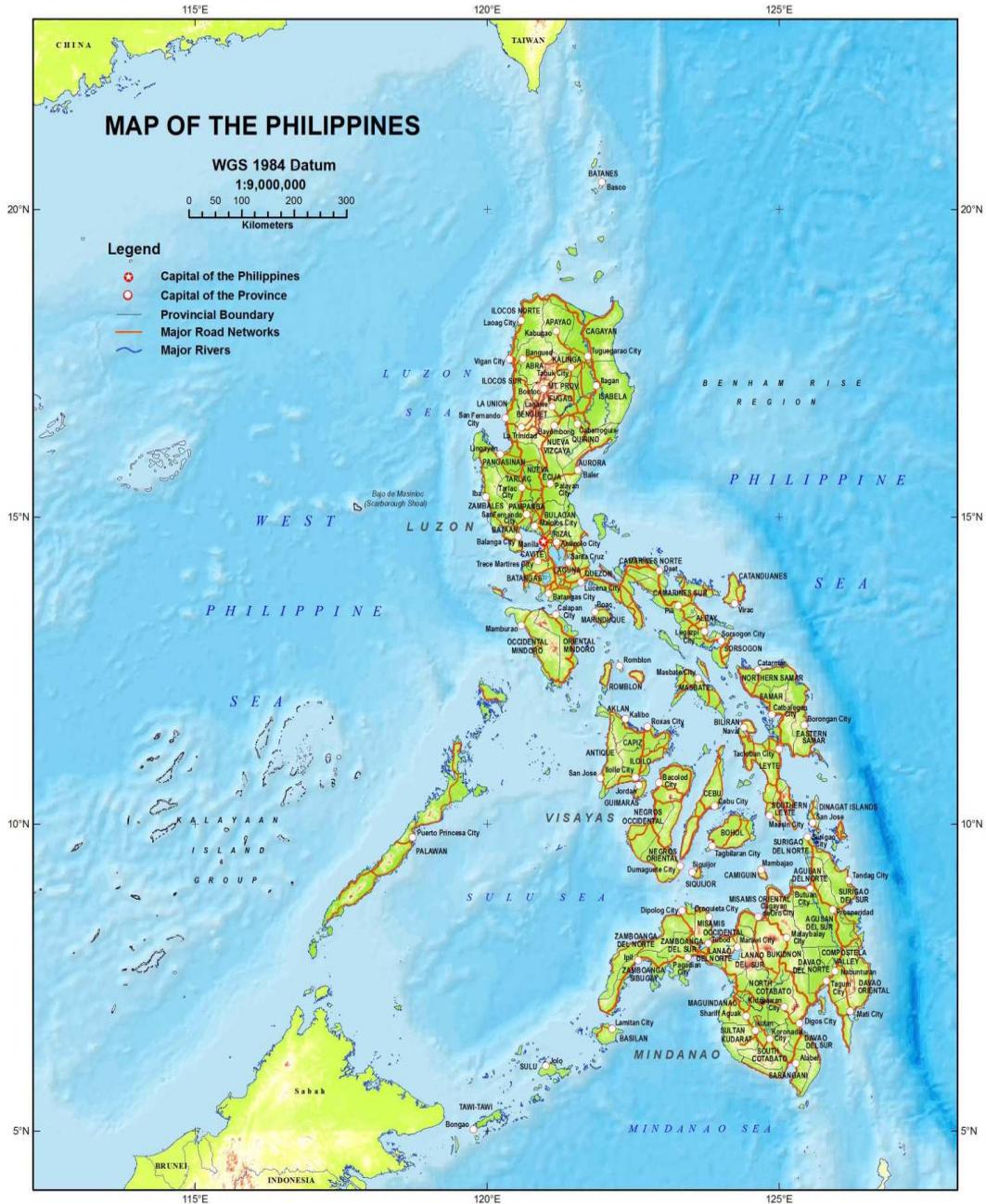


FIGURE I  
The Philippines, including the West Philippine Sea.

## WHAT IS THE “KALAYAAN ISLAND GROUP (KIG)”?

The Kalayaan Island Group (KIG) is a group of over fifty features and their surrounding waters that belong to the Philippines, located in what is internationally known as the Spratly Islands. The KIG is not the same as the Spratlys, however, as there are features in the Spratlys that are not part of the KIG.<sup>1</sup>

The KIG has been the subject of the Philippines’ official and private interests since before it became an independent republic. The islands, reefs and rocks of the KIG are nearest the Philippine main archipelago, and are believed to be both economically valuable and strategically important for purposes of national security. The KIG was formally incorporated as a municipality of Palawan province in 1978 during the administration of President Ferdinand E. Marcos through Presidential Decree No. 1596. Nine (9) of its islands and reefs presently host Philippine civilians and troops.

Philippine sovereignty over the KIG is contested by some states in the region.

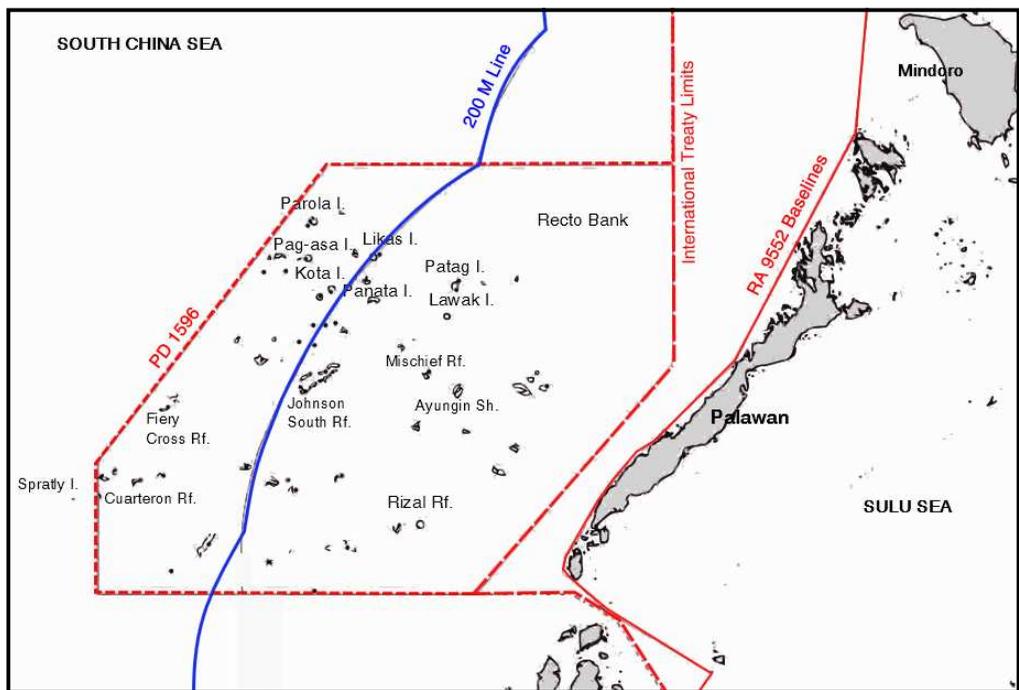


FIGURE 2

The Kalayaan Island Group, with some prominent features indicated. A larger and more detailed map, such as the official chart issued by the National Mapping and Resources Information Authority (NAMRIA), reveals in greater detail the presence of more islands, rocks, reefs, and other features.

TABLE I. Features in the KIG currently occupied by Philippine civilians and military personnel. (Source: Philippine Navy)

Philippine Name	International Designation
Lawak Island	Nanshan Island
Kota Island	Loaita Island
Likas Island	West York Island
Pag-asa Island	Thitu Island
Parola Island	Lankiam Cay
Panata Island	Northeast Cay
Patag Island	Flat Island
Rizal Reef	Commodore Reef
Ayungin Shoal	Second Thomas Shoal

## WHAT IS BAJO DE MASINLOC (SCARBOROUGH/PANATAG SHOAL)?

Bajo de Masinloc is a large coral reef which lies off the coast of the Province of Zambales. It is nearest to the Municipality of Palauig. Although uninhabited, with only some rocks visible above water, the shoal has been considered part of the Philippines from Spanish colonial times. Bajo de Masinloc is an area of fishing, navigation and other activities by Filipinos as well as other nationalities. The 1734 Pedro Murillo Velarde map shows the shoal designated as Panacot (meaning ‘to terrify’)<sup>2</sup>, while an 1899 “Mapa General, Islas Filipinas” by the Observatorio de Manila marks it as Bajo de Masinloc (Shoal of Masinloc).<sup>3</sup> It is also locally known as Panatag and Karbuero. Its international name ‘Scarborough Shoal’ came into use after the British tea trading ship Scarborough was shipwrecked in the area in 1748, as documented in the journals of the Malaspina Expedition (1789-1794).<sup>4</sup>

In 2009, when the Philippine Legislature passed Republic Act No. 9522, Bajo de Masinloc and the KIG were explicitly mentioned to be under Philippine sovereignty and jurisdiction. In 2012, Bajo de Masinloc became the subject of a heated dispute with China.

## HOW FAR ARE THE KALAYAAN ISLANDS AND BAJO DE MASINLOC FROM THE MAIN PHILIPPINE ARCHIPELAGO?

The distance between Puerto Princesa (Palawan's capital) and Pag-asa Island (the biggest island of KIG municipality) is approximately 280 nautical miles.<sup>5</sup> It takes 1 hour and 30 minutes to reach Pag-asa Island by C-130 Hercules transport plane from Puerto Princesa, and 32 hours by motor launch to get there from Ulugan Bay.<sup>6</sup>

Bajo de Masinloc, on the other hand, is only 124 nautical miles away from the main archipelago's coastline<sup>7</sup>. It takes 12 hours for fishermen from Zambales, Pangasinan and Bataan to travel to Bajo de Masinloc during the fishing season<sup>8</sup>.

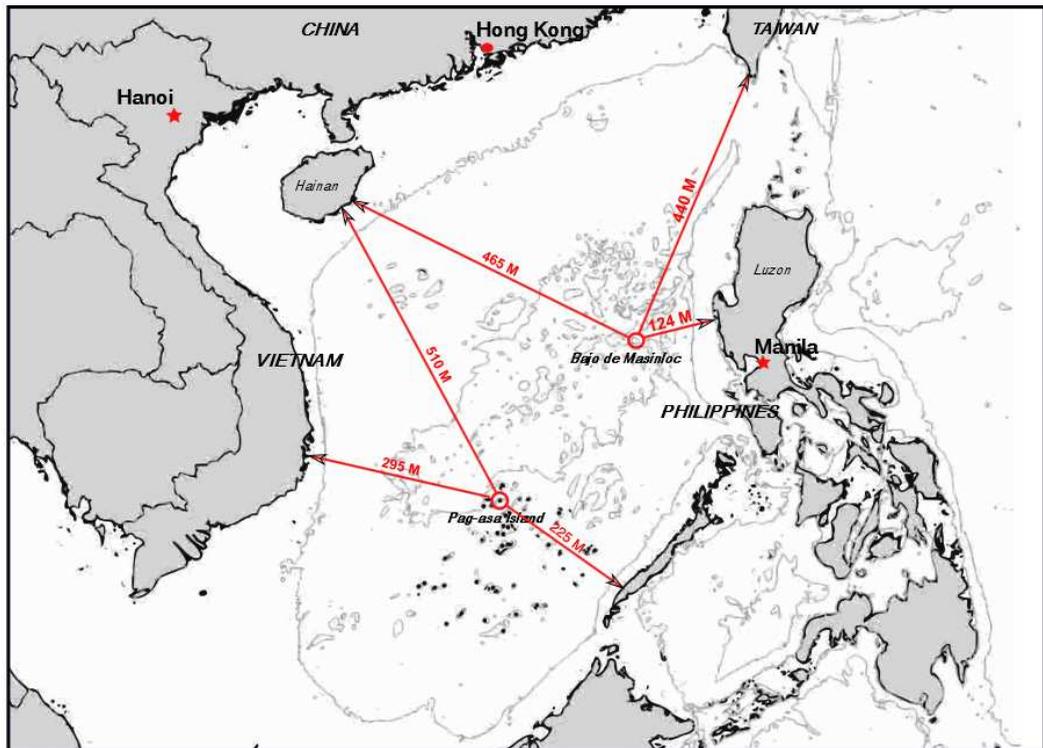


FIGURE 3

Comparison of the approximate distances between Pag-asa Island of the KIG, Bajo de Masinloc, and the nearest relevant coastlines.

## WHAT ARE THE TERRITORIAL DISPUTES IN THE WEST PHILIPPINE SEA ALL ABOUT?

The disputes over the Kalayaan Island Group involve six parties that lay claim, for different reasons, to all or part of the South China Sea. These parties are the People's Republic of China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei Darussalam. The basic disagreements are about sovereignty or ownership of the islands, rocks, and reefs in the ocean, including the adjacent waters and seabed areas. Following the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in 1994, countries also began to contest each other's rights to the 200 nautical mile Exclusive Economic Zone and to a Continental Shelf, particularly the rights to explore for, and exploit, fisheries, petroleum, and other marine resources in these zones. Military garrisons and other facilities have been set up by various claimant states to protect their claims.

With regard to Bajo de Masinloc, on the other hand, Philippine sovereignty is being disputed only by China and Taiwan. China and Taiwan call it Huangyan Island, and claim sovereignty and historic rights over the shoal. In 2012, China stationed ships on the shoal and began preventing Filipino fishermen from regaining access to the shoal and its surrounding waters.

## ASIDE FROM THOSE WHO CLAIM SOVEREIGNTY, ARE ANY OTHER COUNTRIES ALSO INTERESTED IN THE WEST PHILIPPINE SEA?

Yes. Many countries consider the South China Sea as a whole to be important especially because of the sea lines of communication (SLOCs), i.e. the navigation routes connecting seas and ports through which critical commodities like oil and other goods are transported to and from the Middle East and the Indian Ocean, through Southeast and East Asia, and on to the Pacific Ocean. Regional states such as Japan, Republic of Korea, Australia and members of ASEAN are concerned that the ongoing disputes might break out into armed conflict, because any instability in the region can upset regular economic activities and derail development.

The South China Sea also appears to play an important role in the naval strategies of major powers, including China and the United States. There are disagreements between them over navigational rights, with China asserting that military activities may not be undertaken in the Exclusive Economic Zones of coastal states without their consent, while the US believes the EEZs are international waters in which all states' rights to freedom of navigation and overflight are assured, subject only to the sovereign rights of coastal states to economically exploit the resources within their own EEZs.<sup>9</sup>

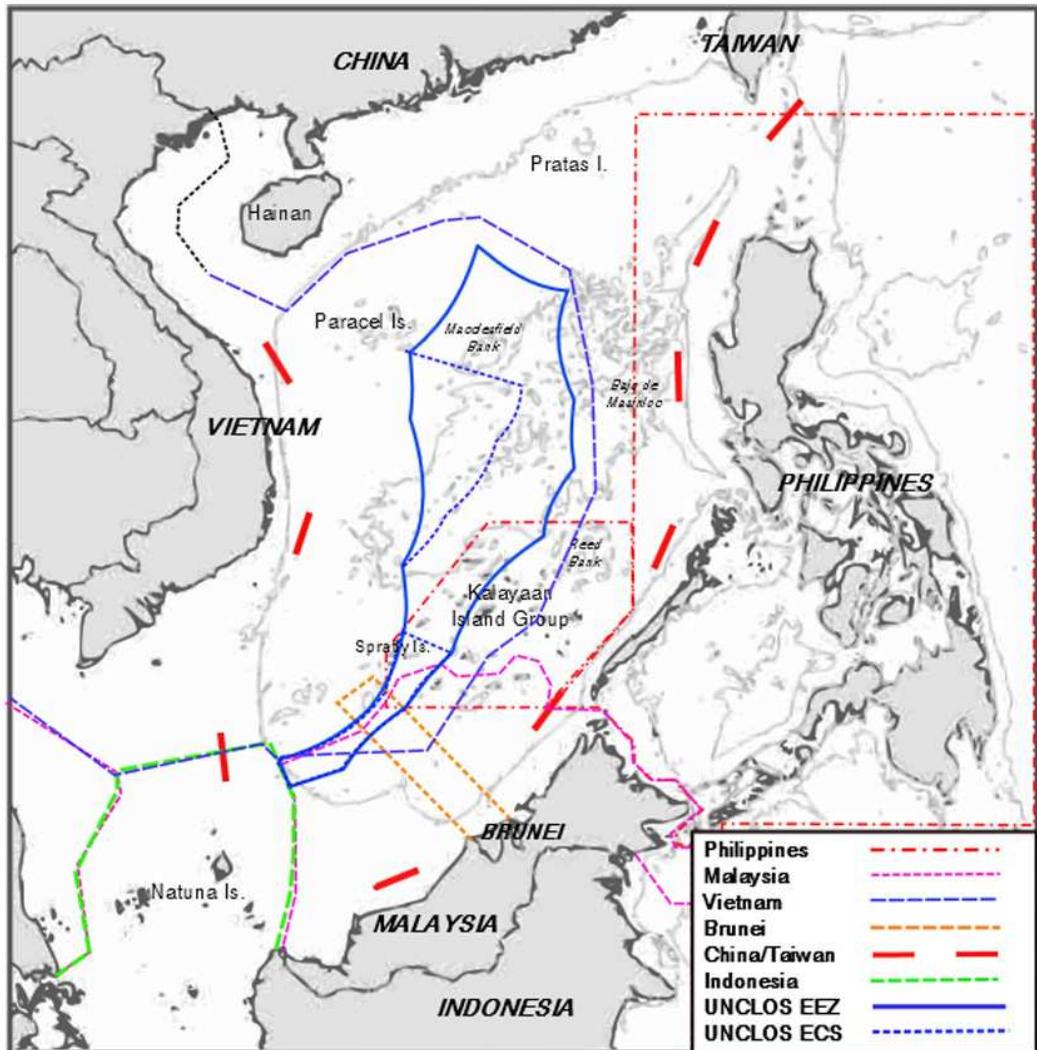


FIGURE 4

Map of multiple competing claims in the South China Sea beyond the 12 nautical mile (M) territorial seas measured from the baselines of all States. For clarity, the respective baselines and 12 M territorial seas of each country are not shown. If any one, some or all of the islands within the Spratly, Paracel, or Pratas Islands generate their own EEZ or continental shelf, then a correspondingly large adjacent area of the SCS could also be claimed by the coastal State to which they belong.

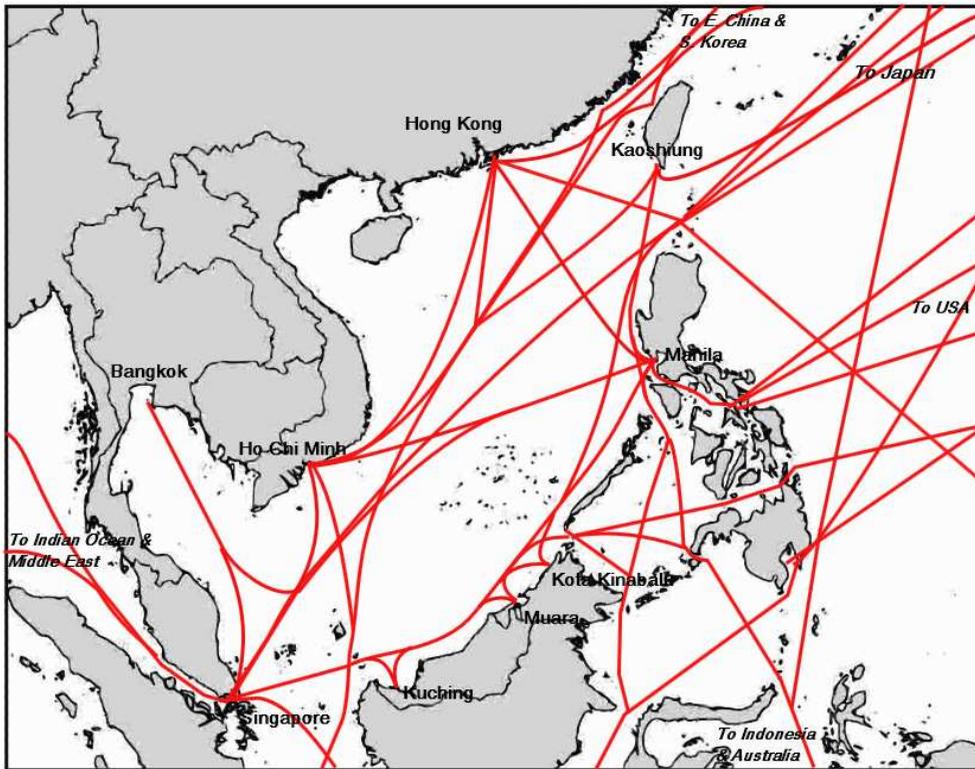


FIGURE 5

The “sea lines of communication” or SLOCs running through Southeast Asia and the South China Sea and West Philippine Sea. SLOCs link seas and ports within the regional and global maritime transportation network and are absolutely essential to international trade.

## HAVE STATES EVER ENGAGED IN ARMED CONFLICT OVER THESE ISLANDS AND REEFS?

Yes. There were two instances of armed conflict in the past, both of them between China and Vietnam. The first was in 1974 when China seized the Paracels from Vietnam, and the second was in 1988, where three Vietnamese vessels were sunk and 70 of its soldiers killed near Mabini (Johnson) Reef in the Spratlys.<sup>10</sup> These incidents were symptomatic of other deep-seated problems in their bilateral relations.

Since then, there have been reports of minor skirmishes involving various claimant States - especially over conflicting claims to resources. At times the tensions threatened to escalate into violent confrontations, but fortunately these were managed without resort to the use of force.

Because of periodic tensions, growing nationalism, and the presence of armed troops of various countries in the islands and reefs of the West Philippine Sea, some consider the territorial disputes here as ‘an accident waiting to happen’.<sup>11</sup>

## HOW MANY FEATURES ARE PRESENTLY OCCUPIED BY THE CLAIMANT STATES?

At present, the Philippines occupies 9 features in the KIG, with both civilian and military personnel present. China occupies 7, Taiwan occupies 1 (the biggest island of Ligaw or Taiping/Itu Aba), and Vietnam holds the most number at 22 features. Malaysia occupies 4 features with civilian personnel, while Brunei has not physically occupied any feature. Most claimant states are known to also send naval vessels to conduct patrols and military exercises in the waters around their possessions.<sup>12</sup>

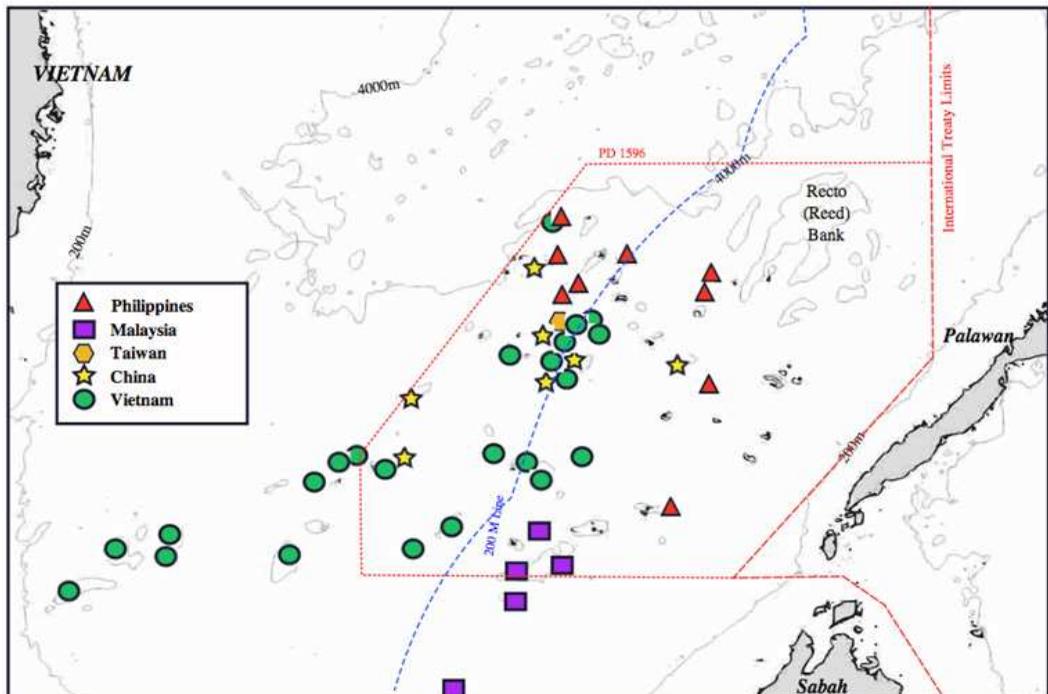


FIGURE 6

Map showing the features in the Spratly Islands presently occupied by various claimant countries in the West Philippine Sea, in the area of the KIG.

TABLE 2. Maritime features in the South China Sea  
occupied by the various claimants at present

<b>Claimant</b>	<b>Number</b>	<b>Feature Names</b>
Brunei Darussalam	0	
China	7	Chigua (Kennan) Reef; Cuarteron (Calderon) Reef; Fiery Cross (Kagitingan) Reef; Gaven Reef; Johnson (Mabini) Reef; Mischief (Panganiban) Reef; Subi (Zamora) Reef
Malaysia	5	Ardasier Reef; Erica (Gabriela Silang) Reef; Investigator (Pawikan) Shoal; Mariveles Reef; Swallow Reef
Philippines	9	Kota (Loaita) Island; Lawak (Nanshan) Island; Likas (West York) Island; Pag-asa (Thitu) Island; Parola (Lankiam) Island; Panata (Northeast Cay) Island; Patag (Flat) Island; Rizal (Commodore) Reef; Ayungin (Second Thomas) Shoal
Taiwan	1	Itu Aba (Ligaw) Island
Vietnam	22	Allison (De Jesus) Reef; Amboyna (Kalantiyaw) Cay; Barque Canada (Mascardo) Reef; Central London (Gitna) Reef; Collins Reef; Cornwallis (Osmeña) Reef; Discovery Great (Paredes) Reef; East (Silangan) Reef; Ladd Reef; Lendao Reef; Namyit (Binago) Island; Pearson (Hizon) Reef; Petley Reef; Pigeon/Tennent Reef; Sand Cay; Sincowe East Island; Sincowe (Rurok) Island; South Reef; Southwest (Pugad) Cay; Spratly (Lagos) Island; West (Kanluran) Reef; Bombay Castle

# The Kalayaan Island Group

## NATIONAL INTERESTS

### WHAT IS THE STATUS OF THE KIG IN THE PHILIPPINE POLITICAL STRUCTURE?

THE KIG IS A 5TH CLASS MUNICIPALITY of the Province of Palawan, with a total land area of 85 hectares made up of one barangay (Pag-Asa) and with a population of 305 as of 2010.<sup>13</sup> The first election for local officials of the KIG was held in 1980.<sup>14</sup> As of November 2012, the Mayor of Kalayaan is Eugenio B. Bito-Onon Jr. while the Vice Mayor is Rosendo L. Mantes.<sup>15</sup> For 2012, the municipality proposed to the provincial government priority development projects, mainly infrastructure improvements, worth P7.404 million.<sup>16</sup>

In 2009, Rep. Act No. 9522 described the baselines around the KIG (together with Bajo de Masinloc) as subject to determination in accordance with the “regime of islands” under the UNCLOS. This has no impact on the legal status of KIG within the Philippine political structure, as enacted in 1978 Presidential Decree No. 1596.<sup>17</sup>

### WHY IS THE KIG IMPORTANT TO THE PHILIPPINES?

The KIG and its waters off Palawan are vital to the national security and economic survival of the Philippines.

The KIG is critical to Philippine territorial integrity and security against external threats, keeping in mind the country's strategic location, history of foreign invasions, and its fragmented geographic configuration which makes it vulnerable to intrusion from the seas. We must avoid a repetition of history when, during the Second World War, Ligaw Island (Itu Aba/Taiping) was used by the Japanese to launch aggression against the Philippines and other Southeast Asian nations.<sup>18</sup>

The KIG is important to the Philippines' food security because of its rich fisheries and fish breeding areas. Filipino scientists believe its ecosystem is linked to the Sulu Sea and other marine ecosystems of the archipelago, which makes the fisheries resources in these areas interrelated and interdependent.<sup>19</sup> The livelihood and economic welfare, especially of hundreds of our coastal communities, are tied to all our marine waters.

The KIG is important to energy security since it is known to have largely untapped petroleum reserves as well as mineral deposits. Geological studies show that the Spratlys (also known as 'Dangerous Grounds'), Palawan, the Reed Bank, and the Calamian block all form part of a single micro-continent.<sup>20</sup> The nature and characteristics of the seabed underneath the KIG are similar to those of the seabed elsewhere in the Philippine continental shelf, according to studies conducted in 1988 and 1989, showing that KIG is a submerged natural prolongation of Palawan.<sup>21</sup> Under UNCLOS, the Philippines is entitled to the area's petroleum, mineral and other non-living resources.

Finally, the KIG and West Philippine Sea also represent vital sealanes of communication, where freedom of navigation is critical to trade and other activities of user states. The Philippines shares this interest with many other states.

## HOW IMPORTANT IS THE KIG TO THE MARINE ENVIRONMENT AND TO OUR FISHERIES?

The KIG is very important to the Philippine environment, because it is a coral-rich province with a reef area of about 1000 sq. km. that hosts breeding grounds and shelters for fish and other marine organisms.<sup>22</sup> Filipino marine scientists have found, through years of research, that the marine species found in the KIG and Sulu Sea are genetically linked. These point to a clear connection between the marine resources of the KIG and of the country's archipelagic waters. It is believed that these areas exchange and replenish each other's living marine resources on account of the constant and seasonal interchange of seawater between them. The marine biodiversity in the KIG could account for the richness of the marine waters west of Palawan.<sup>23</sup> Some members of the Philippine and international scientific communities have proposed that the KIG and its surroundings be declared a "Spratly Island Marine Park", a proposal that will benefit many countries of the region<sup>24</sup>.

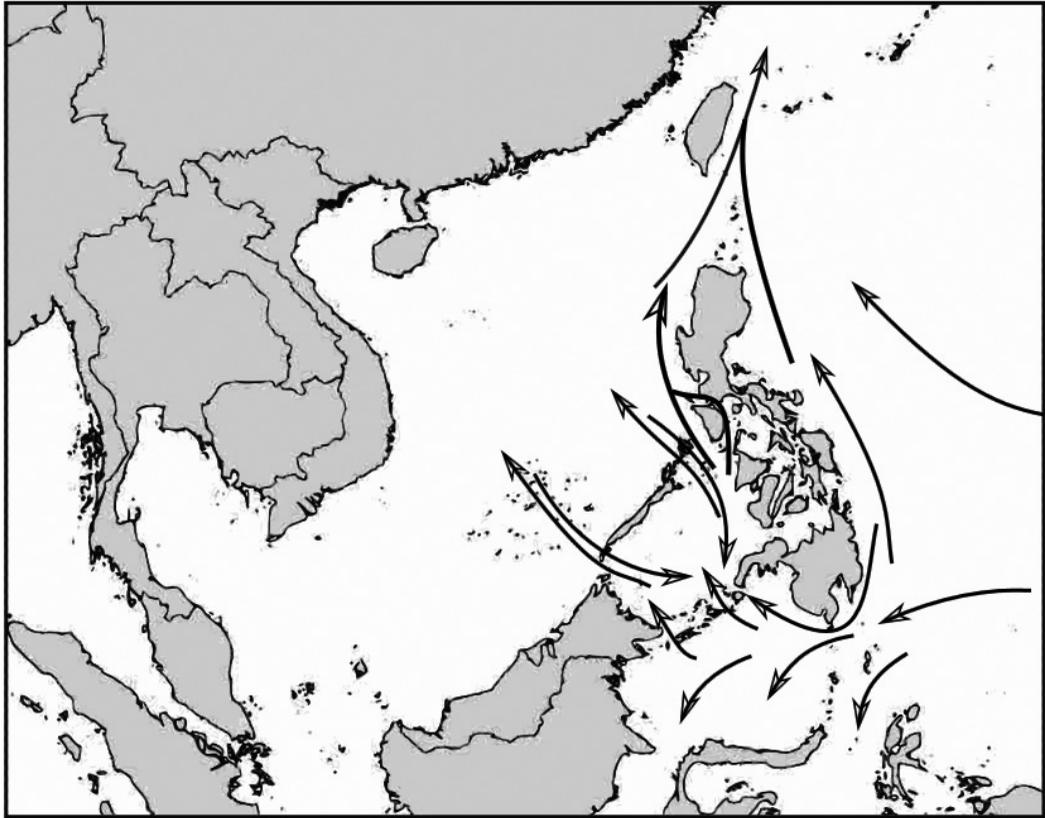


FIGURE 7

Migratory routes of some tuna species passing through the Philippines.

(Source: Morgan and Valencia, Atlas for Marine Policy in Southeast Asian Seas, 1983)

## DO WE DEPEND ON THE KIG FOR FOOD SECURITY AND ECONOMIC WELFARE?

Yes. Although not many commercial fishing companies operate in the KIG, its extensive reef complexes have long been major grounds of pa-aling operators.<sup>25</sup> Moreover, the waters west of Palawan, which are linked to the KIG, accounted for 13% of the country's tuna production in 2007.<sup>26</sup> The potential annual yield of these waters is estimated at 5 million tons,<sup>27</sup> or around 20% of the country's annual fish catch.<sup>28</sup> Since fish constitutes 22.4% of the total protein intake of the average Filipino, the KIG is considered important for national food security.<sup>29</sup>

## WHAT IS THE POTENTIAL ECONOMIC VALUE OF THE FISHERIES AND OTHER LIVING RESOURCES?

There are no comprehensive or systematic studies yet that quantify the economic value of the fisheries and other living resources, but there are various estimates. One source in 1998 valued the annual fish catch at US\$ 47-105 Million.<sup>30</sup> Another study in 2004 placed it at PhP 773 Million, comprising 11% of the total value of the country's fish production in 2002.<sup>31</sup> It has also been said that the potential revenue from fisheries, tourism and research activities from Philippine coral reefs in the KIG may run close to PhP 3 Billion.<sup>32</sup>

The tourism potential of the KIG remains largely underdeveloped despite its extensive coral reefs.<sup>33</sup> Pag-Asa Island, the largest feature in the KIG, is very rich in marine life and is known to have giant clams, sea turtles and a rare species of land crab found nowhere else in the country.<sup>34</sup> Game fishing, swimming, snorkelling, frontier and scuba diving, and fish feeding are among the activities that can attract local as well as foreign tourists to Pag-Asa. Likas Island is a sea turtle sanctuary,<sup>35</sup> while Lawak Island is a bird sanctuary.<sup>36</sup>

Aside from the obvious economic benefits, the features in the KIG can also serve as fishermen's shelters during storms, as refueling and naval stations, meteorological stations, and bases from which to conduct marine biodiversity research.

## IS IT TRUE THAT OIL AND GAS DEPOSITS CAN BE FOUND IN THE KIG AND THE WEST PHILIPPINE SEA?

Based on the fact that many offshore oil and gas deposits have already been discovered in the South China Sea coastal areas, it is believed that there may be deposits in the area of the KIG. There are conflicting estimates of their quantities, however, and most deposits remain unconfirmed, partly because vast areas of the Philippines, including its Exclusive Economic Zone and Continental Shelf, have yet to be fully explored.<sup>37</sup>

Of the Philippines' 16 sedimentary basins, or potential areas where hydrocarbon deposits could be found, 3 are located in the West Philippine Sea: Northwest Palawan, Southwest Palawan and Reed Bank.<sup>38</sup> The area of Northwest Palawan, including Reed Bank, is where significant discoveries have already been made and where we are most likely to find petroleum resources, especially natural gas, in the near future.<sup>39</sup>

## WHAT IS THE POTENTIAL ECONOMIC VALUE OF THE OIL AND GAS DEPOSITS?

Due to the absence of data on verifiable reserves, there are few available estimates of the potential economic value of oil and gas resources in the KIG. But according to one expert, it may be possible for the combined oil and gas resources in the WPS to cover the total fuel demand of the country for the next twenty years.<sup>40</sup>

Offshore energy resources can have a potentially transformative impact for a developing country like the Philippines, providing not only energy security but revenues from oil and gas exports. For example, the Malampaya Deepwater Gas to Power Project alone contributed about US\$1 billion/year at current gas prices to the national coffers, at the same time resulting in foreign exchange savings from foregone energy importation estimated at US\$500 million/year.<sup>41</sup> It also led to the emergence of a local natural gas industry.

## IS THE PHILIPPINES CURRENTLY EXPLORING AND EXPLOITING THESE OIL AND GAS DEPOSITS IN THE WEST PHILIPPINE SEA?

Yes. These activities have however been concentrated in the West Palawan region. Petroleum exploration in West Palawan began in the mid-1960s. Since the introduction of the Service Contract system in 1973, extensive exploration resulted in several oil and gas discoveries, not all of commercial value and some of which were rapidly depleted. Nido-1 was the first commercial oil discovery, in 1976.<sup>42</sup> To date, it has produced 20 million barrels of oil, and is still producing at a very reduced rate on a cyclical basis. Other discoveries include Cadlao, West Linapacan, Matinloc, and Malampaya. The Malampaya Deepwater Gas to Power Project is the country's first petroleum production facility.<sup>43</sup> It is located close to the shores of Palawan, adjacent to Recto (Reed) Bank.

For many decades, the Philippines had explored Recto Bank and drilled wells in the area without encountering official protest from any country, until an incident in March 2011 where a Philippine-licensed oil vessel MV Veritas Voyager was harrassed by a foreign ship. The Philippine government had also issued Service Contracts to local and foreign companies to explore for oil in the Kalayaan Islands. Such contracts have been published in maps, including the International Petroleum Encyclopedia, for years.

TABLE 3. Estimates of oil and gas based on US Geological Survey

Total Petroleum Systems (TPS) and Assessment Units (AU)	Field Type	Largest expected field size	Total undiscovered resources (Mean)		
			Oil (MMBO)	Gas (BCFG)	NGL (MMBNGL)
<b>South China Sea Platform (Miocene TPS)</b>					
Dangerous Grounds – Reed Bank AU	Oil	703	2,522	10,370	197
	Gas	4,217	N/A	15,149	881
<b>Palawan Shelf Province (Eocene-Miocene Composite TPS)</b>					
Eocene-Miocene Reservoirs AU	Oil	101	270	179	6
	Gas	514	N/A	1,229	38
BCFG = billion cubic feet of gas MMBNGL = million barrels of natural gas liquids MMBO = million barrels of oil NGL = natural gas liquids					
Largest expected field size for oil is measured in MMBO and for gas in BCFG					

Source: “Assessment of Undiscovered Oil and Gas Resources of Southeast Asia, 2010,” US Geological Survey, accessed January 22, 2013, <http://pubs.usgs.gov/fs/2010/3015/pdf/FS10-3015.pdf>

TABLE 4: Estimates of hydrocarbon resources in Reed (Recto) Bank based on Weatherford Petroleum

	Resource type	Estimate type		
		Low	High	Best estimate
Gross prospective resources	Gas	4.666 TCF	16.612 TCF	8.799 TCF
	Oil	117 MBO	416 MBO	220 MBO and liquids in place
Gross contingent resources	Gas	1.474 TCF	2.603 TCF	4.598 TCF
	Oil	37 MBO	115 MBO	65 MBO and liquids in place

Survey Commissioned by Forum Energy

TCF = trillion cubic feet  
MBO = million barrels of oil

#### NOTES

- “Prospective resources refer to quantities of oil and gas estimated at a given date to be potentially recoverable from undiscovered accumulations, which are technically and economically viable to recover...”
- “Contingent resources refer to quantities of oil and gas estimated on a given date to be potentially recoverable from known accumulations but are not currently economically viable to recover. Such resources include accumulations for which there is no viable market...”
- Pre-drill estimates of resources are based on certain assumptions and information and interpretations currently available, with no assurances of accuracy.

(Source: “Recto Bank sitting on 16T cubic feet of gas,” *Business Mirror*, April 26, 2012, pg. A1-A2)

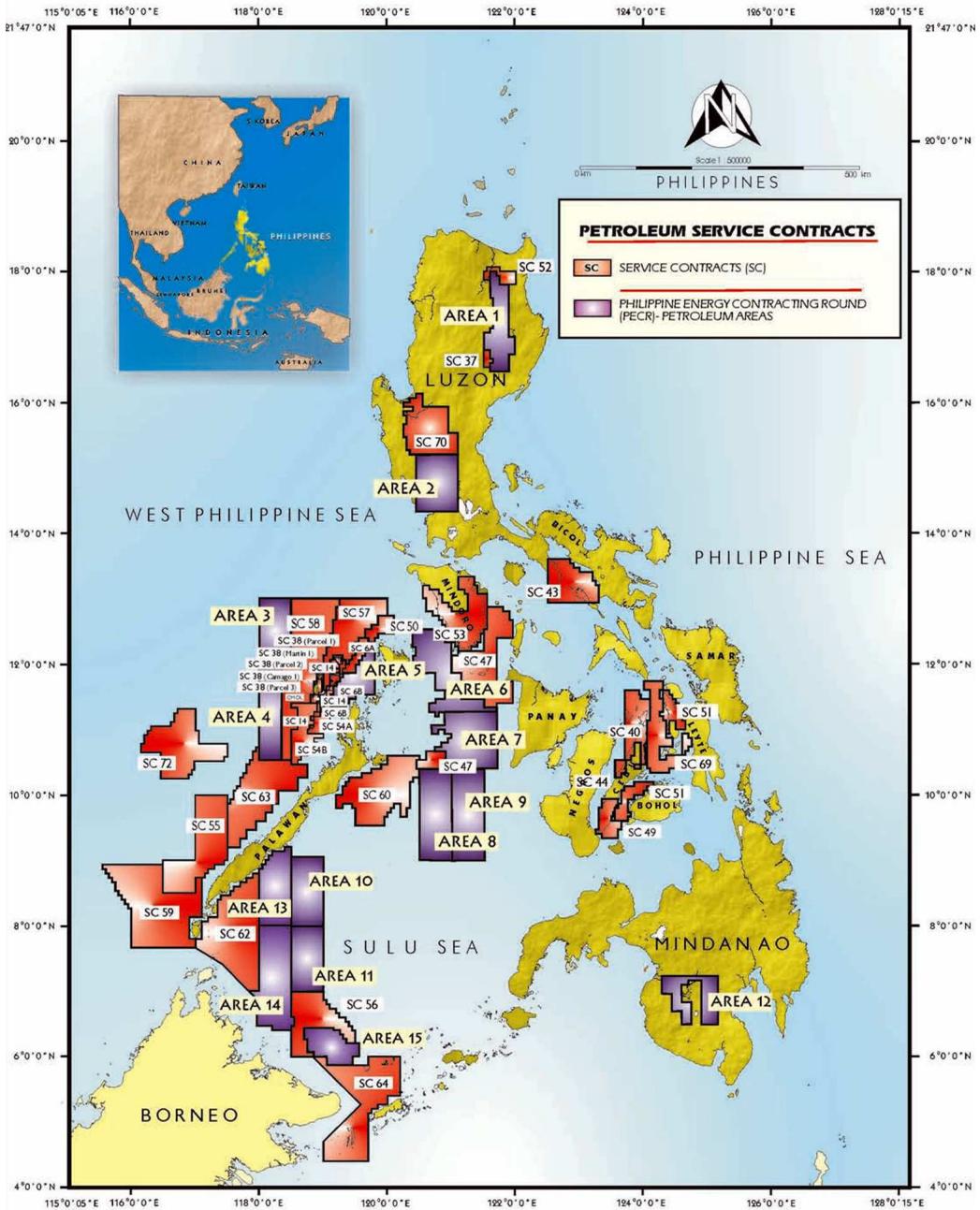


FIGURE 8

Active Petroleum Service Contracts and areas on offer for petroleum exploration, as issued or identified by the Department of Energy of the Philippines in late 2011/early 2012. (Source: DOE)

## WHAT HINDERS THE PHILIPPINES FROM MORE ACTIVE PETROLEUM EXPLORATION AND EXPLOITATION IN THE KIG?

Lack of investment, poor access to technology, bureaucratic red tape, and tensions over the unresolved territorial and maritime disputes are the main factors that have hindered further exploration and exploitation of these resources. The dearth of reliable seismic studies is also to be blamed for the failure to develop commercial oil production.<sup>44</sup> The country has to drill more wells in order to enhance its prospectivity which would, in turn, enable it to attract new investors.

Governance is a major factor. The country must develop a sound fiscal regime, strong links between the public and private sectors, and stable policies commensurate to its geological potentials.<sup>45</sup> It can take as long as twenty years for a petroleum project to move from the exploration to the production phase, but in the Philippine experience, there have been frequent changes in leadership of the sector, conflicting requirements by various government offices, and a need to harmonize national and local laws. The attitudes of various stakeholders, such as local government units, mass media, church and environmental groups, also have an effect on the investment climate in the country.<sup>46</sup>

## ARE THERE SOURCES OF MINERAL WEALTH OTHER THAN OIL AND GAS IN THE SURROUNDING SEAS?

Yes. The Kalayaan Islands are known to be rich in phosphates and guano deposits, and the seabed is a source of manganese nodules that yield magnesium, cobalt, nickel and molybdenum. Experts have also listed beach to shallow shelf placers of gold, tin titaniferous magnetite, zircon, monazite, phosphate, quartz sand, chromite sands, etc.; polymetallic massive sulfide deposits, and rare-earth bearing monazite placers as being present in the West Philippine Sea and North Palawan coastal areas.<sup>47</sup>

## HISTORY AND DEVELOPMENT

### HOW DID THE KIG BECOME OFFICIALLY PART OF THE PHILIPPINES?

In the late 1960s and early 1970s, the Philippines decided to occupy the largest features of the KIG, and later formally established the Municipality of Kalayaan through Presidential Decree No. 1596 signed in June 11, 1978. PD 1596 reaffirmed and formalized the long-standing interest of the country in the KIG.

#### PRESIDENTIAL DECREE NO. 1596 - DECLARING CERTAIN AREA PART OF THE PHILIPPINE TERRITORY AND PROVIDING FOR THEIR GOVERNMENT AND ADMINISTRATION

WHEREAS, by reason of their proximity the cluster of islands and islets in the South China Sea situated within the following:

##### KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the meridian of longitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude 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 the international law, such areas must now 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.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree as follows:

Section 1. The area within the following boundaries:

**KALAYAAN ISLAND GROUP**

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the intersection of parallel of 12°00' N with the meridian of longitude

114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude;

including the sea-bed, sub-soil, continental margin andr 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."

Section 2. Pending the election of its regular officials and during the period of emergency declared in Proclamation No. 1081, and unless earlier provided by law, the administration and government of the area shall be vested in the Secretary of National Defense or in such officers of the Civil government or the Armed Forces of the Philippines as the President may designate.

Section 3. This Decree shall take effect immediately.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

## HAS THE PHILIPPINES DEMONSTRATED LONG-STANDING INTEREST IN THE KIG?

Yes, it has, over many decades and even preceding formal independence.

In 1933, legislators led by Senator Isabelo de los Reyes, who were then negotiating the transition to independence with the American colonial government, proposed the inclusion of nine features of the KIG (at that time known as “Las Corales”) that lay near Palawan into Philippine territory.<sup>48</sup> In 1937, Interior Secretary Elpidio Quirino filed a claim on the Philippines’ behalf with the US State Department, citing national defense and geographical proximity as grounds.<sup>49</sup> The country’s security worries were validated when Japan annexed the features and placed them under the Shinnan Gunto administrative region in 1939, and later used Ligaw (Itu Aba/Taiping) Island as a base from which it launched attacks on the Philippines, Indonesia and Malaysia.<sup>50</sup>

In 1946, Quirino as Secretary of Foreign Affairs reiterated Philippine interests in the KIG in a letter to Gen. Douglas MacArthur. In 1947, Quirino’s successor Carlos P. Garcia demanded that the features be turned over to the Philippines as a security guarantee.<sup>51</sup> With Japan’s defeat, the negotiations for the 1951 San Francisco Peace Treaty resulted in Japan’s renunciation of its claims to the Spratlys Islands and Paracel Islands without specifying who would obtain control.

Filipino navigator Tomas Cloma claimed to have found the reefs and islands unoccupied in 1948. He took an active personal interest in the area and set out with associates on a 38-day expedition in 1956. A farewell dinner for the expedition party was attended by Vice President Carlos P. Garcia and Senator Lorenzo Tanada, among other officials.<sup>52</sup> The Philippine government’s position at the time was that the islands were under de facto trusteeship of the Allied Powers, but were open for economic exploitation.<sup>53</sup> Cloma’s efforts to develop the area for phosphate mining were however countered by military forces from Taiwan.<sup>54</sup>

The Philippines started sending troops to the area in 1968, and the issue did not come into prominence again until 1971, when the Philippines officially announced through a Presidential Communique that it had occupied several of the features now known as the Kalayaan Island Group, for reasons of national security and “to protect the interest of the state and its citizens”.<sup>55</sup>

<b>No. 1832</b>		
<b>ARGENTINA, AUSTRALIA, BELGIUM, BOLIVIA, BRAZIL, etc.</b>		
<b>Treaty of Peace with Japan (with two declarations). Signed at San Francisco, on 8 September 1951</b>		
<i>Official texts: English, French, Spanish and Japanese.</i>		
<i>Registered by the United States of America on 21 August 1952.</i>		
<b>50</b>	<i>United Nations — Treaty Series</i>	<b>1952</b>
<p>Council of April 2, 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan.<sup>1</sup></p> <p>(e) Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise.</p> <p>(f) Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.</p> <p style="text-align: center;"><i>Article 3</i></p> <p>Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.</p>		

## WHY WAS PHILIPPINE INTEREST IN THE KIG REKINDLED UNDER THE MARCOS GOVERNMENT?

A confluence of regional and global geopolitical developments at the time may have prompted the Marcos government to take a more active stance in the KIG.

In 1968, the Economic Commission for Asia and the Far East reported that the South China Sea's continental shelf may contain oil and gas deposits.<sup>56</sup> This was followed by claimant states unilaterally drawing maritime boundaries which overlapped with one another, and deploying troops on various maritime features. Vietnam, Malaysia and Indonesia all began offshore oil exploration.<sup>57</sup> Amid major discoveries of offshore petroleum reserves and the 1970s oil crisis and price hikes, most countries began to search for indigenous or alternative sources of energy, further fuelling the contest in the South China Sea. In March 1976, after 80 years of unsuccessful commercial petroleum exploration in the Philippines, a significant quantity of oil was discovered in offshore northwest Palawan, re-igniting national interest in the KIG.<sup>58</sup>

Security concerns also apparently persuaded the Marcos government to take action. In July 1971, Taiwan troops on Ligaw (Itu Aba/Taiping) islands were reported to have fired on a boat carrying then Philippine Congressman Ramon Mitra. The Philippine government sent a diplomatic note asking Taiwan to withdraw its military garrison on Ligaw, arguing that the presence of Chinese forces constituted a threat to the security of the Philippines.<sup>59</sup>

## WHEN DID THE PHILIPPINES BEGIN ITS OCCUPATION OF THE KIG?

The Philippines posted troops on Lawak island in 1970, followed with Kota, Likas, Pag-asa and Parola islands in 1971. The Philippines lost one feature to the Vietnamese in 1975, then occupied two more in 1978. A weather station was established on Pag-asa, along with a fishery research unit and laboratory. Likewise, a modest runway for logistics support craft, a lighthouse, an air force unit and a naval station were constructed. The Armed Forces of the Philippines' Western Command, which has jurisdiction over the Kalayaan Islands, was activated as a unified military unit on March 12, 1976.

## HAS THE PHILIPPINES ACTUALLY EXERCISED SOVEREIGNTY AND JURISDICTION OVER THE KIG?

Yes. The Philippine has engaged in normal civilian exercise of sovereignty and state administration in the KIG since 1971. Among such acts are the conduct of local elections, the establishment of and exercise of functions by a municipal government with main and satellite offices, the settlement of a small population on the KIG, and the conduct of development and research activities.

A weather station was established on Pag-Asa Island in 1979 and a lighthouse was built in 1993. A town hall, police station, health center, and local election building were built, along with houses to accommodate the growing number of settlers. Livelihood projects were also introduced, such as an ice plant and cold storage facilities to boost local fishing and animal husbandry. Water filtration and solar power were also installed in 2004<sup>60</sup>.

The Philippine government has also granted permits for exploration for petroleum resources, commercial fishing activities and the conduct of scientific studies on the islands and surrounding waters.



FIGURE 9  
 Official marker of the Municipality of Kalayaan on Pag-asa Island.

## WHAT KINDS OF ACTIVITIES DO THE KALAYAAN POPULATION ENGAGE IN?

The civilian population live by means of fishing and aquaculture. There have been many efforts to jumpstart development projects, including discovery tours, settlement programs, and trainings on fisheries law enforcement.<sup>61</sup> Economic progress in KIG has however been hampered by lack of social services, regular transportation means, and fish storage facilities.<sup>62</sup> In 2008, the Municipal Government of Kalayaan commissioned the Western Philippines University (WPU) to conduct a baseline survey of KIG's resources.<sup>63</sup> The WPU study recommended, among other things, the establishment of a marine protected area in Pag-Asa.<sup>64</sup>

## HAS THE PHILIPPINES EVER BEEN INVOLVED IN ARMED CLASHES IN THE KIG?

No major armed clashes in the KIG have transpired involving the Philippines. Through the decades, Filipino fishermen as well as Philippine Air Force planes have however reported being issued warning shots by Chinese, Vietnamese and Malaysian troops from their respective vessels or island-garrisons.

Tensions between Manila and Beijing rose following China's occupation of Panganiban (Mischief) Reef in early 1995. The Philippines discovered that the Chinese had set up manned structures on the hitherto unoccupied reef lying within the Philippine EEZ, which according to the Chinese then were fishing shelters. Although China had in the past erected markers on the reef, which the Philippine Navy would remove when found,<sup>65</sup> the 1995 occupation was the first time that China physically challenged the Philippine claim. There was a brief standoff between a Philippine navy ship conducting law enforcement operations and two Chinese fishing vessels reportedly backed up by PLA-Navy frigates in May 1995.<sup>66</sup> More recently, in March 2011, a Philippine petroleum exploration vessel operating near Recto (Reed) Bank was harassed by two Chinese vessels which maneuvered alongside it as if threatening to ram the survey ship.<sup>67</sup>

## WHAT WAS THE PHILIPPINE REACTION TO CHINA'S OCCUPATION OF MISCHIEF REEF?

In the aftermath of the occupation of Mischief Reef by China, Philippine maritime law enforcement agencies took more active measures in curbing poaching and intrusions in KIG, as well as removing Chinese sovereignty markers put up on nearby features.<sup>68</sup> To defuse the tensions, Philippine and Chinese officials met in August 1995, signed a "Joint Statement on the South China Sea and on Other Areas of Cooperation," and embarked on bilateral confidence-building measures.<sup>69</sup>

However, by 1998, what the Chinese had initially claimed as fishermen's shelters had been developed into a fortified military garrison, a move that was strongly protested by the Philippines as a clear violation of the 1995 "code of conduct" agreed upon by both parties.<sup>70</sup> No effort was made to physically dislodge the Chinese due to Manila's concern that it may provoke actual hostilities. This incident gave momentum to the approval by the Philippine Senate of the Philippine defense modernization plan. It also eventually led to renewed interest in security ties with the US that had been in effect suspended since the 1991 closure of the US military bases in Clark and Subic.<sup>71</sup>



FIGURE 10  
Chinese structures on Mischief Reef, from 1995 to the present.  
(Source: Armed Forces of the Philippines-Western Command)

## WHAT WAS THE RECENT MEDIA COVERAGE OF CHINESE ACTIVITIES AROUND AYUNGIN SHOAL ALL ABOUT?

After China installed structures on Panganiban (Mischief) Reef in 1995 and then fortified them in 1999, the Philippine Navy stationed the BRP Sierra Madre on Ayungin Shoal, one of the reefs closest to Panganiban (Mischief) Reef. Ayungin Shoal is located within the Philippine EEZ about 120 nautical miles from Palawan. The ship ran aground on the shoal, and since then it was used to monitor activities around Panganiban (Mischief) Reef and to try to discourage any further incursions into Philippine waters.

In May 2013, the station reported an unusual increase in Chinese activities around Ayungin Shoal. Chinese fishing vessels, accompanied by armed Chinese maritime law enforcement ships, conducted fishing activities in and around the shoal in full view of Philippine soldiers stationed there. The Chinese ships ventured closer to the BRP Sierra Madre than ever before, prompting the Philippines to protest their presence as provocative and illegal.<sup>72</sup> The Philippines was understandably concerned considering what had happened on Bajo de Masinloc (Scarborough Shoal) the year before.

# Bajo de Masinloc

## NATIONAL INTERESTS

### WHAT IS THE STATUS OF BAJO DE MASINLOC IN THE PHILIPPINE POLITICAL STRUCTURE?

BAJO DE MASINLOC is an integral part of Philippine territory, being part of the Municipality of Masinloc, Province of Zambales. It is located 124 nautical miles west of Zambales proper and is within the 200 nautical-mile Exclusive Economic Zone (EEZ) and the Philippine Continental Shelf.<sup>73</sup>

The Philippine government asserts that under international law, the Philippines exercises full sovereignty and jurisdiction over the rocks of Bajo de Masinloc, and sovereign rights over the waters and continental shelf where the said rock features of Bajo de Masinloc are situated.<sup>74</sup>

### WHY IS BAJO DE MASINLOC IMPORTANT FOR THE PHILIPPINES?

Philippine interests in Bajo de Masinloc mainly relate to its national security and environmental as well as food security. Bajo de Masinloc's location west of Luzon, almost adjacent to the major ports of Manila and Subic, makes it important for purposes of national

security. From there, one can observe shipping traffic into and out of the two largest ports on that side of the country. In the 1960s, local smugglers frequently used the shoal as a base, prompting the Philippine Navy on at least two occasions to destroy structures that smugglers had built on the feature.<sup>75</sup>

Being the only large reef structure west of Luzon,<sup>76</sup> Bajo de Masinloc is also important from an ecological perspective. It acts as a rich feeding and breeding ground for all kinds of fish and marine species. Filipino fishermen, especially those based in Zambales, have been using the reef as their main offshore fishing area.

## CAN OIL AND GAS OR OTHER MINERALS BE FOUND IN BAJO DE MASINLOC?

Available data on the geology of the area indicate that there is little probability of finding any petroleum in Bajo de Masinloc or its immediate vicinity.<sup>77</sup> However, massive sulfides and cobalt-rich crusts are expected in the seamounts of the Bajo de Masinloc area.<sup>78</sup>

## IS BAJO DE MASINLOC VALUABLE AS A SOURCE OF FISHERIES?

Bajo de Masinloc is an important fishing ground for local fishermen of Zambales, as well as neighboring provinces Bataan and Pangasinan. Eleven of the 13 municipalities of Zambales are coastal, so that for many Zambaleños, fisheries are an important source of livelihood.<sup>79</sup> Three of the major fish landing sites of Region 3 (Central Luzon) can be found in Zambales - Masinloc, Subic and Sta. Cruz - with a minor fish landing site in Candelaria. In the Northern Zambales coast, motorized municipal fishermen are generally based in Sta. Cruz, while commercial fishing vessels are usually based out of Masinloc and Sta. Cruz.<sup>80</sup>

The potential yield of fisheries resources in offshore Northern Zambales including Bajo de Masinloc is about 5,021.69 mt annually.<sup>81</sup> 121 species from 33 fish families may be caught in its waters<sup>82</sup>; among them are yellowfin tuna, skipjack and shortfin scad. Most of the tuna are caught near fish aggregating devices or payaos.<sup>83</sup>

## HISTORY AND DEVELOPMENT

### HOW LONG HAS BAJO DE MASINLOC BEEN CONSIDERED PART OF THE PHILIPPINE ARCHIPELAGO?

“Bajo de Masinloc” is Spanish for “Masinloc Reef” or “Masinloc Shoal”. The name Masinloc belongs to the oldest town in Zambales, founded by the Spaniards in 1607. In early Spanish maps of the Philippines (e.g. the 1734 Pedro Murillo Velarde map), the shoal appears under different names such as “Panacot” and “Baxo de Masinglo”, and was likely also mistaken in various maps to be different reefs with local place names such as “Galit”, “Lumbay”, “Bajo de Bolinao”, and “Bajo de Miravelles.” British surveyors charted the reef and gave it the name Scarborough Reef on account of the shipwreck there of the British tea trading ship SS Scarborough in 1748.<sup>84</sup>

Spanish cartographers named the feature Maroona when it was surveyed in April 1800 by the Spanish frigate Santa Lucia, dispatched by Admiral Malaspina from Manila<sup>85</sup>. The results of this survey were published in 1808 wherein Maroona Shoal was renamed Bajo de Masingloc.

Filipino fishermen have long used the shoal as fishing ground and sanctuary.<sup>86</sup> Historically, traders have long been familiar with the value of the shoal as a source of pearl shells of excellent quality.<sup>87</sup>

### WAS BAJO DE MASINLOC ALSO PART OF THE PHILIPPINE ISLANDS UNDER THE AMERICAN COLONIAL ADMINISTRATION?

After the Spaniards ceded the ‘Philippine Islands’ to the United States in 1898 through the Treaty of Paris, the United States conducted a census of all islands belonging to the archipelago, and the published report listed ‘Scarborough Reef’ among them. Some confusion about the status of the shoal resulted from the fact that maps of the archipelago marking the Treaty of Paris Limits showed the shoal as lying outside the Treaty limits. However, there are sources that consider the shoal to have been included in the cession under the terms of the Treaty of Washington of 1900. Under the Treaty of Washington, Spain ceded to the US all other islands and places to which it had “title or claim of title”, even if they were not within the lines drawn by the Treaty of Paris.<sup>88</sup>

Commonwealth President Manuel L. Quezon, hoping to set up navigational aids on the shoal, had also confirmed from the US State Department in 1937-38 that there were no other ownership claims that would hinder his government from doing so. The 1900 Treaty of Washington was invoked by both the US Coast Guard and Geodetic Survey and the US State Department as their legal basis for transferring control of Bajo de Masinloc to the Philippines.<sup>89</sup>

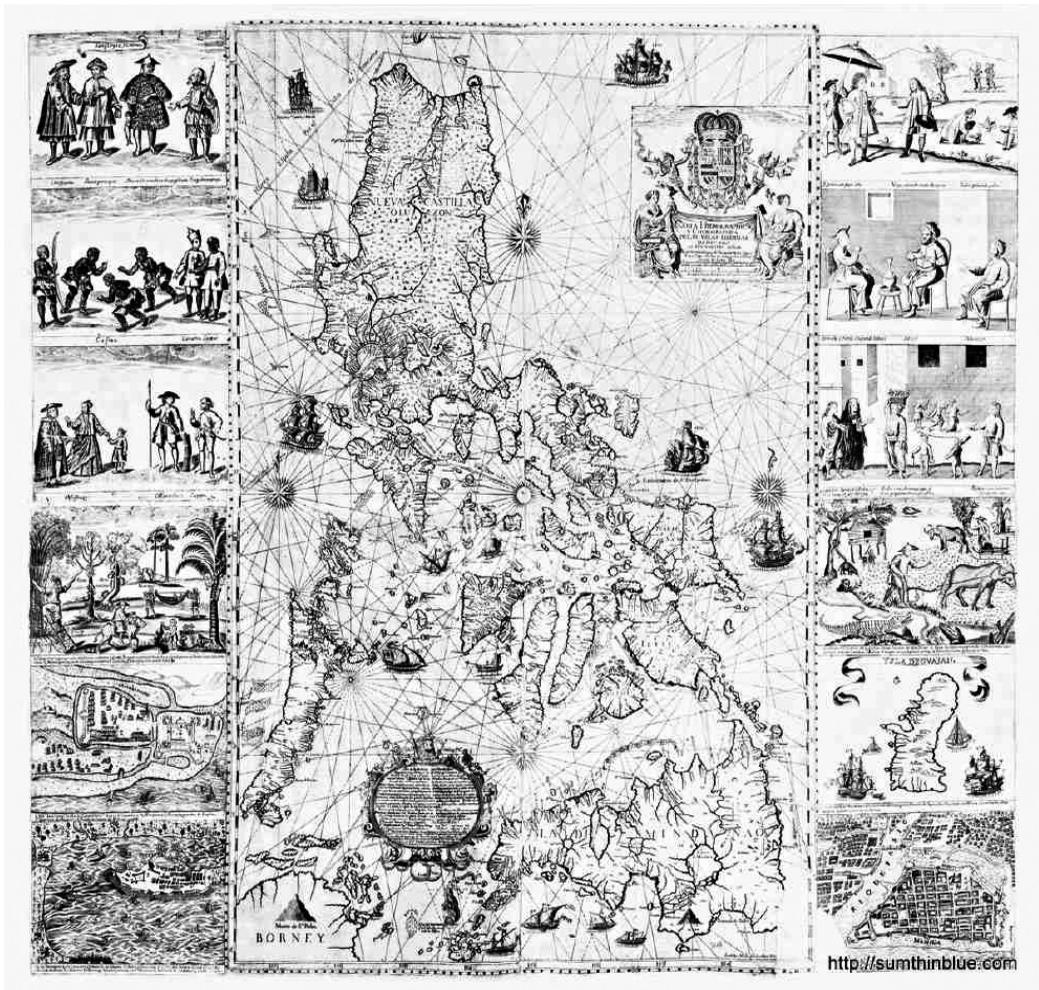


FIGURE 11

The Murillo Velarde Map, the earliest complete map of the Philippine archipelago, published in 1734.



## HAS THE PHILIPPINES ACTUALLY EXERCISED JURISDICTION OVER BAJO DE MASINLOC?

Yes. Records at the turn of the 20th century show that the government of the Philippine Islands had indeed exercised jurisdiction over the reef, particularly in incidents involving maritime navigation.

During the American occupation, the Coast Guard exercised jurisdiction over the shoal for purposes of search, rescue, and salvage of ships that were wrecked or stranded there. For instance, in 1913, the Swedish steamship *Nippon*—loaded with copra and other goods bound for Singapore from Manila—was stranded in Bajo de Masinloc and its crew was rescued by Philippine Coast Guard cutter *Mindoro* which was sent by the Bureau of Navigation of Manila.<sup>90</sup> When disputes broke out between the salvaging company and the insurance company



FIGURE 13

The automated light station installed by the Philippines on Scarborough Shoal, circa 1991, to replace a lighthouse built earlier. The light station was duly listed in the international listing of navigational lights published by the International Maritime Organization at the time.

(Source: Philippine Coast Guard)

over the proceeds of the salvaged cargo of copra, the case was heard in the Manila Court of First Instance, then elevated to the Supreme Court of the Philippines.<sup>91</sup>

There are numerous other demonstrations of jurisdiction, including a 1961 hydrographic survey by the Philippine Coast and Geodetic Survey<sup>92</sup>, and law enforcement operations against smugglers, such as the bombing of illegal pier facilities and warehouses by the Philippine Navy in 1963<sup>93</sup> It must be noted that no other country protested these anti-smuggling activities.

A lighthouse and an 8.3-meter high flag pole flying the Philippine colors were built on the feature in 1965.<sup>94</sup> In the 1980s, it was used as an impact range of Philippine and US air force pilots.<sup>95</sup> Bajo de Masinloc has also been a site of Philippine oceanographic and marine scientific studies.<sup>96</sup>

The Philippines built another light station in April 1991, as listed in the Admiralty List of Lights and Fogs Signals No. 2681. The lighthouse remained unrepaired for years but is included among 129 lighthouses slated to be rehabilitated under the foreign-funded Maritime Safety Improvement Projects III of the Philippines.<sup>97</sup>

## **SINCE WHEN HAS PHILIPPINE SOVEREIGNTY OVER BAJO DE MASINLOC BEEN CHALLENGED BY OTHER COUNTRIES?**

No government questioned Philippine activities in and jurisdiction over Bajo de Masinloc until the 1980s. It appears that China and Taiwan lay claim to Bajo de Masinloc, naming it Huangyan Island in 1983, as part of their extensive 'nine-dash line' claim over practically the entire South China Sea.<sup>98</sup>

In 1997, a Chinese amateur radio association attempted to put up a communication station on the shoal, claiming to have been authorized by the Chinese government. They were expelled by the Philippine Navy. Filipino fishermen then helped remove the Chinese markers that they found on the rocks and hoisted the Philippine flag.<sup>99</sup> This incident was followed by a notable increase in Chinese fishing activities in the vicinity of the shoal in the following years. Noteworthy were cases of the use of illegal fishing methods and capture of endangered species, which sometimes led to arrests and prosecution in Philippine courts.

Attempts by the Philippines to minimize foreign fishing in the Bajo de Masinloc area led to periodic tensions with China beginning in 1997. In 1999, there was a collision incident involving Chinese fishing boats and a Philippine naval vessel.<sup>100</sup>

## WHAT STARTED THE STANDOFF WITH CHINA IN APRIL 2012?

In April 2012, a Philippine naval vessel approached a group of Chinese fishing vessels near the shoal and boarded them for inspection. The Chinese fishermen were discovered to have illegally harvested live corals and captured sharks and giant clams. Ships of the paramilitary Chinese Maritime Surveillance agency moved quickly to prevent the Philippine Navy from apprehending the fishermen. The Philippines withdrew its naval vessel as ships from the civilian Philippine Coast Guard (PCG) and Bureau of Fisheries and Aquatic Resources (BFAR) arrived, as part of the country's effort to de-escalate the tensions, even as the Chinese fishermen were extracted by the ships sent by China. This incident led to a two-month long standoff between government vessels of both sides, as neither side wanted to leave the shoal. At the height of the standoff in May, nearly 80 Chinese vessels were sighted in Bajo de Masinloc and its vicinity.<sup>101</sup>

At the beginning of the standoff, staff of the Philippine National Museum on board M/Y Sarangani, which was to conduct an archaeological survey in the vicinity of Bajo de Masinloc, also reported that they were harassed and intimidated by Chinese Maritime Surveillance ships as well as aircraft.<sup>102</sup>

# The Search for Solutions in KIG and Bajo de Masinloc

## WHAT HAS THE PHILIPPINES DONE TO PROMOTE ITS INTERESTS IN THE WEST PHILIPPINE SEA?

THE PHILIPPINES HAS UNDERTAKEN many measures to assert sovereignty and promote the country's interests in the West Philippine Sea. To strengthen our legal position before the international community, we have been mapping the seabed to register continental shelf claims with the Commission on the Limits of the Continental Shelf. We also amended our baselines law through Rep. Act No. 9522 so that it adheres to the UNCLOS, giving us firm legal basis for determination of sovereignty and jurisdiction and for purposes of negotiation with countries whose claims overlap with Philippine territory and maritime jurisdictions. On January 22, 2013, the Philippines initiated a process provided for by UNCLOS that would enable it to legally question the validity of China's nine-dash line claim before an international arbitral tribunal.

To secure our economic interests, authorities have been apprehending poachers and preventing intrusions and the conduct of illegal fishing activities. On the other hand, service contracts for the development of oil resources have been granted.

Administrative jurisdiction over the area has moreover been exercised through the years. The Philippine Coast Guard (PCG) and other maritime services – in furtherance of the

Safety of Life at Sea (SOLAS) Convention, the principles of UNCLOS, the 2010 ASEAN Declaration on Cooperation in Search and Rescue on Persons and Vessels in Distress, and the international Search and Rescue Convention - renders search and rescue assistance to distressed vessels, regardless of flag, that are transiting the West Philippine Sea.<sup>103</sup> Likewise, per obligations under the MARPOL Convention and the joint oil spill response plan with neighbor-states, oil spill response capability along tanker routes through the West Philippine Sea has been put in place.<sup>104</sup> Philippine exercise of said obligations as a responsible coastal state was, for instance, offered to China when a PLA Navy frigate was accidentally grounded during the height of the Bajo de Masinloc stand-off in 2012.<sup>105</sup>

At the same time, we continue to explore the possibility of cooperative solutions through bilateral and multilateral diplomacy involving other claimants and neighboring states, with whom we share aspirations for regional peace and prosperity. We have also engaged other claimant states in confidence building measures, including high-level diplomatic exchanges among foreign affairs and defense officials.

## WHAT HAS THE PHILIPPINES DONE ABOUT FOREIGN FISHING ACTIVITIES IN THE WPS?

Republic Act No. 8550, also known as The Philippine Fisheries Code of 1998, mandates the government to protect the rights of the Filipino people to exclusively benefit from the fishery resources; ensure the sustainable development, management, and conservation of the fishery resources in the Exclusive Economic Zone and the adjacent high seas; and provide protection against foreign intrusion.<sup>106</sup>

Despite limited capabilities and means, authorities from the Philippine Navy, the Philippine Coast Guard, and the Bureau of Fisheries and Aquatic Resources singly or jointly have been implementing this mandate, governed by Rules of Engagement (ROE) which include consideration of prevailing international agreements.<sup>107</sup> The National Committee on Illegal Entrants also mandates Philippine authorities to effect arrests of foreign vessels upon determining that a violation of Philippine laws has been committed. The proper inspection procedures include the use of written message cards in the language of the foreign offenders indicating, among others, their rights under Philippine law. The normal procedure is for the offending vessels to be impounded pending the disposition of the case. The crew are then documented and detained at the local police detention center pending inquest proceedings, or preliminary investigation, and the articles seized are turned over to proper administrative/judicial authorities.<sup>108</sup>

In March 1995, four Chinese marine vessels (00373 w/ 15 Chinese nationals, 003008 with 16 Chinese nationals, 00488 with 12 Chinese nationals and 00406 with 19 Chinese nationals) were apprehended at Alicia Annie Shoal, KIG. The Chinese nationals were charged with violating Sec. 33 of PD 704 (illegal possession of explosives intended for illegal fishing and the use of noxious substances. Only one vessel (00373) was convicted on 09 Aug 1995. After pleading to a lesser offense, charges were amended to one month imprisonment plus an administrative fine of P1000. The crewmen were released after payment of administrative fine and serving the sentence.

## ARE FILIPINO FISHERMEN AT RISK WHEN THEY GO TO THE KIG AND BAJO DE MASINLOC?

Yes. Fishermen follow the seasonal migration of fishes in the West Philippine Sea, and are at times subjected to harassment or intimidation as they venture into different areas in pursuit of catch. There have been reports of Filipino fishermen being harassed, detained, intimidated, fired upon or otherwise threatened by warships, vessels and fighter planes of other claimants in the KIG.<sup>109</sup>

For example, in April 1988, three Filipino fishing vessels were arrested and 49 of their crew detained by Malaysian authorities for allegedly “fishing without permit” in the vicinity of Rizal (Commodore) Reef in KIG<sup>110</sup>. The case was dismissed after one year. There have also been instances of Filipino fishers being held captive by Vietnamese soldiers.<sup>111</sup> In 1995, it was Filipino fishermen who had been detained and later freed by Chinese troops who informed Philippine authorities of the structures built by the Chinese in Panganiban (Mischief) Reef<sup>112</sup>. Since the April 2012 standoff between the Philippines and China at Bajo de Masinloc, Filipino fishermen have been prevented from fishing in the area.<sup>113</sup>

Fishermen are also at risk from harsh natural conditions. Lack of fishermen’s shelters and the relative remoteness of the area from coasts also make them susceptible to storms and typhoons.

## HAVE WE USED DIPLOMATIC AVENUES FOR A RESOLUTION OF THE DISPUTES IN THE WEST PHILIPPINE SEA?

Yes. The 1992 Manila Declaration on the South China Sea, signed by the ASEAN foreign affairs authorities and supported in principle by China and Vietnam, was a major Philippine initiative intended to establish principles that would help avoid conflict. In 1995, the Philippines proposed demilitarization of the features and a freezing of the status quo, i.e., that no further militarization should take place. Following China's occupation of Mischief Reef, bilateral dialogue and agreements were concluded with China and Vietnam, calling for peaceful settlement of the disputes in accordance with recognized principles of international law, urging the parties to undertake confidence-building measures while refraining from use or threat of force, and expressing the need to cooperate for the protection and conservation of maritime resources.<sup>114</sup>

The Philippines also played a key role in the successful negotiation of the ASEAN-China Declaration of Conduct on the South China Sea (DOC) in November 2002. While the Declaration is not legally binding, it commits the parties to consultative and peaceful processes of dispute settlement. Other provisions of the Declaration include calls for the exercise of self-restraint; a halt to new occupations; mutual notification of military exercises; and the extension of humanitarian treatment to all persons in situations of danger or distress in the area.<sup>115</sup> The DOC provisions remain to be fully implemented. In May 2011, the Philippines proposed the establishment of a Zone of Peace, Freedom, Friendship and Cooperation (ZOPFFC) in the South China Sea, a proposal which did not get much regional support. It also moved for the conclusion of a legally-binding Code of Conduct among the parties concerned.<sup>116</sup>

These measures, however, are not intended to resolve the territorial and maritime jurisdiction disputes *per se*, but rather to help build mutual trust and prevent armed conflict particularly involving KIG.

The status of Bajo de Masinloc, on the other hand, is a relatively new problem and has not yet been the subject of any major diplomatic discussion with China, other than attempts to end the April-June 2012 standoff.

## DID THE PHILIPPINES AGREE TO JOINT DEVELOPMENT OF ENERGY RESOURCES WITH CHINA AND VIETNAM?

The Arroyo government agreed to the Joint Marine Seismic Undertaking (JMSU) which was a tripartite agreement between the state-owned oil companies of the Philippines (PNOC),

China (CNOOC) and Vietnam (Petrovietnam) to conduct a joint seismic survey for three years in an area of the West Philippine Sea including KIG and Reed Bank. The agreement was initially approved on September 2004 by the Philippines and China, but Vietnam protested and was invited to participate, making it a tripartite deal signed on March 14, 2005.<sup>117</sup>

The JMSU was limited to seismic research and did not involve joint development activities. Nonetheless, some people considered the JMSU as a “sell-out” by the Philippines, because it gave China an opportunity to claim access to Philippine areas that had never been disputed before, such as the Recto (Reed) Bank.<sup>118</sup> A provision of the JMSU agreement however maintained that the “signing of this Agreement shall not undermine the basic position held by the Government of each Party on the South China Sea.”<sup>119</sup> The Philippine Department of Energy also issued a “Non-Exclusive Geophysical Permit” in June 10, 2005 permitting the other JMSU parties to conduct seismic activities in the JMSU area,<sup>120</sup> indicating that the Philippine government continued to exercise jurisdiction over the affected areas. Because of the confusion that arose and intense public opposition to the Arroyo Administration’s role in the JMSU, particularly allegations that tied the JMSU to corruption, the deal was allowed to lapse without extension in 2008.

## WHAT IS THE ROLE OF ASEAN IN MANAGING THE WEST PHILIPPINE SEA DISPUTES?

The Association of Southeast Asian Nations (ASEAN) was founded in 1967 to help ensure that peace and stability prevails in Southeast Asia. The South China Sea is a shared maritime space among China and most of the member states of ASEAN. Among the six claimant states in the Spratlys and KIG, four are in ASEAN: Brunei, Malaysia, the Philippines, and Vietnam.

Rather than directly solving conflicts among regional states, however, ASEAN’s approach has been to introduce principles and behavioral norms that guide inter-state relations, such as eschewing the threat of force or use of force to resolve disputes. The 1992 Manila Declaration on the South China Sea, the 2002 ASEAN-China Declaration of Conduct of Parties in the South China Sea, and ongoing efforts to negotiate with China a legally binding Code of Conduct all result from the patient, gradualist, multilateral diplomacy that has become the hallmark of ASEAN.

ASEAN also encourages inclusive dialogue and consultations which contribute to confidence building and mutual assurance among regional states, including parties in dispute. Through the ASEAN +1, ASEAN + 3, ASEAN Regional Forum, the East Asia Summit and through various official and unofficial mechanisms, it has successfully engaged the major powers, in effect making them stakeholders in Southeast Asia’s prosperity, security and progress.<sup>121</sup> Maritime security

### Statements of President Aquino

2nd State of the Nation Address, July 25, 2011

*“Wala tayong balak mang-away, pero kailangan ding mabatid ng mundo na handa tayong ipagtanggol ang atin. Pinag-aaralan na rin po natin ang pag-angat ng kaso sa West Philippine Sea sa International Tribunal for the Law of the Sea, upang masigurong sa mga susunod na pagkakataon ay hinahon at pagtitimpi ang maghahari tuwing may alitan sa teritoryo.”*

Before departure for the 20th ASEAN Summit in Cambodia, April 2, 2012

*“Bukod sa mga paksang ito, itutulak din natin sa mapayapang paraan ang ating adbokasiya upang protektahan ang integridad ng ating teritoryo. Igigiit natin ang ating paninindigan sa implementasyon ng Declaration on the Conduct of Parties in the South China Sea, upang mapanatili ang kapayapaan at estabilidad sa West Philippine Sea...”*

is one of the important areas of cooperation that ASEAN has pursued. The Philippines hopes that cooperation among the four ASEAN claimant states and the unity and solidarity of ASEAN as a whole can bring about early and fair resolution of the maritime and territorial disputes.

## WHAT IS THE PROPOSED ASEAN-CHINA CODE OF CONDUCT (COC) ON THE SOUTH CHINA SEA?

As of April 2013, ASEAN and China are still working towards the drafting of a Code of Conduct that would guide all parties in creating conditions for the peaceful and durable settlement of disputes. Possible elements of such a Code are measures to ensure non-use of force by claimant states, establishing communication hotlines among military commanders in the field, or even a rules-based dispute settlement regime. Provisions to avoid fishermen and civilians being caught in conflict are especially important.

Some analysts believe that although a code of conduct may help in the prevention of conflict and in crisis management, what it will NOT do is resolve the competing sovereignty claims in the SCS, or determine who owns what. That is something that will have to be worked out between or among the claimant states. But pending that resolution, a code of conduct will guide the actions of all parties in their relations with each other as it relates to the area in dispute. ASEAN and China want to work towards a peaceful settlement of the disputes, and to do that ASEAN and China must be guided by certain rules of what can and cannot be done in the area.

## IS INTERNATIONAL LAW APPLICABLE TO THE KIG?

Yes. Since the issues in the KIG involve both land territories and maritime jurisdictions, both customary international law and treaty law are applicable.

Customary international law governs mainly the question of who has sovereignty over the land territories, including islands and rocks. Generally the decisions of the International Court of Justice may be used as the main reference for determining what principles and norms may be used to resolve the competing claims.

On the other hand – normally after the issue of sovereignty of the land territories is determined – treaty law, primarily the UNCLOS, governs the entitlement to the seas around them. The UNCLOS provides that such territories may be entitled to at least a territorial sea of 12 nautical miles, and a contiguous zone of 24 nautical miles, extending from the shore. Depending on whether the land is capable of human habitation or an economic life of its own, it may then be entitled additionally to an exclusive economic zone and continental shelf of at least 200 nautical miles in breadth. These provisions are however modified in application in cases where special geographic circumstances prevail, with considerations of equity coming into play.

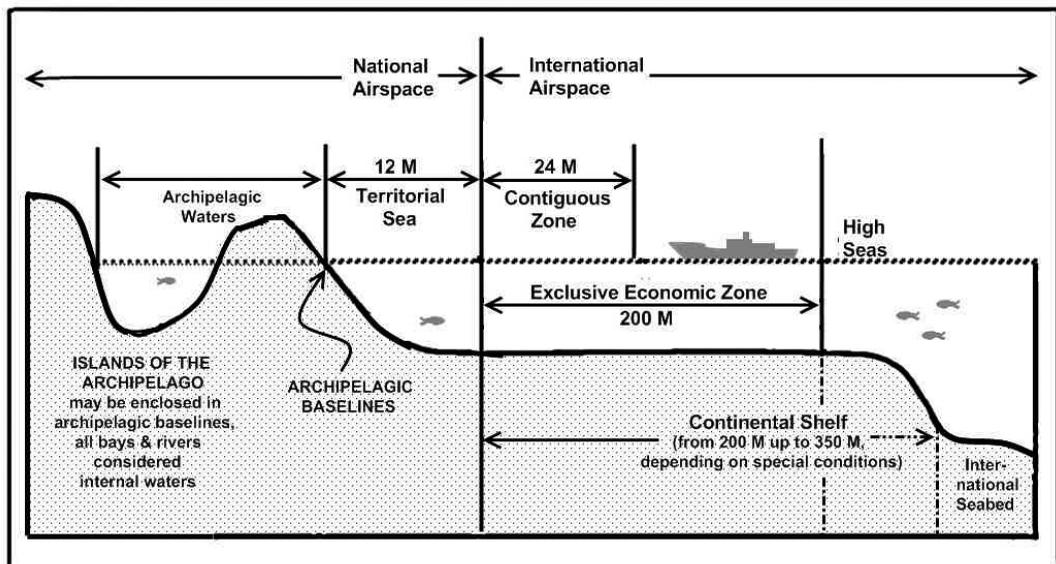


FIGURE 14

UNCLOS maritime zones applicable to the Philippines.

(Source: Batongbacal, adapted from Schofield 2003)

TABLE 5. Rights and Obligations of States in UNCLOS maritime zones

<b>Maritime zone</b>	<b>Rights and obligations</b>
Territorial Sea	A coastal state is entitled to claim a belt of sea adjacent to its coast as its “territorial sea.” This territorial sea may extend up to 12 miles from the coast, and in this belt of sea the coastal state may exercise full sovereignty. Foreign vessels are entitled to innocent passage but this does not apply to overflight.
Contiguous Zone	Within this zone the coastal state is not sovereign, but it may exercise the control necessary to prevent and punish infringements of the customs, fiscal, immigration, and sanitary laws and regulations that apply in its territorial sea. The contiguous zone may extend up to 24 miles from the coast.
Exclusive Economic Zone	A coastal state may claim a belt of sea up to 200 miles from its coast as its “exclusive economic zone (EEZ).” In this area the coastal state is entitled to exercise sovereign rights over the living and non-living resources of the sea, the seabed, and the subsoil of the seabed. Other user states are however entitled to inclusive rights, such as freedom of navigation and overflight, freedom to lay submarine cables and pipelines and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines.
Continental Shelf	The LOS Convention recognizes the legal right of every coastal state to control and exploit the natural resources of its continental shelf up to 350 miles from its coast. Other user states enjoy freedom of navigation and overflight, right to lay submarine cables and pipelines (but consent required for routing), right to fishing (except sedentary species) and right to marine scientific research in the water column (but consent required for the sea bed).

## ARE THE PHILIPPINE POSITIONS IN THE WEST PHILIPPINE SEA SUPPORTED BY INTERNATIONAL LAW?

Yes. The Philippines' position on the KIG, as well as on Bajo de Masinloc, and the West Philippine Sea itself, are consistent with international law. Its sovereignty and jurisdiction over the islands and rocks of Bajo de Masinloc and the KIG were established in accordance with customary international law through effective occupation and the exercise of acts consistent with sovereignty, and its jurisdiction over adjacent waters is being exercised in accordance with treaty law, particularly UNCLOS.

The Philippines has gradually been undertaking measures to bring its domestic laws on territory in line with international legal obligations. For a long period, the absence of UNCLOS-compliant baselines prevented us from determining our precise maritime zones. In 2009, through Republic Act No. 9522, the Philippines enclosed the historic main archipelago within archipelagic baselines in accordance with UNCLOS Art. 54, while the baselines around the KIG and Bajo de Masinloc are to be determined in accordance with the regime of islands under UNCLOS Art. 121.

## WHAT ARE THE POSSIBLE OPTIONS FOR ADDRESSING TERRITORIAL DISPUTES?

Territorial disputes are normally addressed through various approaches. (See Appendix for examples).

Most countries resort to bilateral diplomatic negotiations in search of a political settlement. Such processes may take decades to conclude, and always entail efforts to achieve a win-win solution, thus ultimately requiring compromise.

Some countries opt for conciliation or mediation involving third parties, such as a neutral government or organization playing the role of an honest broker, while others prefer resolution through arbitration by an international court or arbitral panel. The outcomes of conciliation, mediation, or arbitration may not always be entirely satisfactory to either disputing party, but they may help defuse tensions and preserve normal ties.

Yet another approach, as we have seen from history - including when negotiations or other modes have failed - is to resolve a dispute by the use of force, which the international community naturally frowns upon.

In some instances, disputing countries opt not to address the sovereignty question directly but merely try to “manage” rather than “resolve” disputes through pragmatic arrangements. In cases where the territorial disputes are complicated by competition for resources (e.g. oil and fisheries), joint development has been used by disputing states as a means to cooperate in the exploitation of much-needed resources while setting aside sensitive questions of sovereignty and ownership.

Although all these approaches remain open in the case of the Kalayaan Island Group, it is complicated by the fact that there are more than two parties to the dispute; a total of six countries claim different portions of the West Philippine Sea.

## CAN WE BRING THE TERRITORIAL AND MARITIME DISPUTES TO AN INTERNATIONAL COURT OR TRIBUNAL FOR RESOLUTION?

Yes. Under international law, or “the law of nations” that governs the relations between all States, taking any dispute before an international court is based ultimately upon the consent of States. This consent is usually expressed in an international agreement, such as a *compromis d’arbitrage* or agreement for arbitration, or a dispute settlement mechanism in a broader treaty or convention to which the state has expressly given consent by ratification or accession.<sup>122</sup>

Part XV of the UNCLOS provides for dispute settlement mechanisms in cases of maritime disputes. These range from bilateral modes such as fact-finding and negotiations, to those involving third parties like good offices, conciliation, arbitration and adjudication. By ratifying UNCLOS, the Philippines, China, and other claimants to various parts of the South China Sea accepted that these mechanisms should be used to resolve maritime disputes that may arise between them.

Disputes over land territory, however, are not covered by UNCLOS, but may be resolved in accordance with Chapter VI of the United Nations Charter which all the claimant countries have ratified.<sup>123</sup> Chapter VI also obliges all members of the UN to resort to peaceful modes of dispute settlement especially in cases where the disputes may endanger the maintenance of international peace and security. Like UNCLOS, these modes include arbitration and adjudication. Since all claimants are also parties to the United Nations, they are also deemed to have committed to use these peaceful modes of dispute settlement in cases of territorial disputes.

## CAN'T AN INTERNATIONAL COURT JUST ORDER THE OTHER CLAIMANT STATES NOT TO OCCUPY OR EXPLOIT RESOURCES IN THE WEST PHILIPPINE SEA OR THE PHILIPPINE EEZ?

Not exactly. Under international law at present, sovereignty is still the most important principle governing the relations between States. This means that no State, whether large or small, can be subject to the sovereignty of another, or subordinated to any international body, without its consent. Moreover, there is no international law-making body that can enact laws independently of states, nor is there any international executive agency that can act as a law enforcer against States. While there is an International Court of Justice and many other international tribunals, they cannot compel any State to submit to their jurisdiction. Neither do they have any power to enforce their judgments against an unwilling State.<sup>124</sup>

In the case of the KIG and Bajo de Masinloc, the Philippines has expressed its willingness to have its sovereignty and jurisdiction adjudicated upon by an international tribunal, to the extent that it has initiated arbitration proceedings against China. Considering the latter's express objection to the proceedings, the success of the arbitration thus initially depends upon whether or not the arbitral tribunal will find that China gave consent to the arbitration upon its ratification of UNCLOS. This could have major implications on the future of the SCS disputes, because to date none of the other States parties to the dispute have been similarly inclined to expressly submit themselves to the jurisdiction of an international tribunal.

## CHINA SAYS IT EXPRESSED RESERVATIONS TO UNCLOS PART XV EARLIER ON AND SHOULD NOT BE COVERED BY IT. WHAT DOES THAT MEAN?

UNCLOS allows States to make reservations against the application of the third party dispute settlement procedures of UNCLOS Part XV to certain types of disputes. These are disputes concerning sea boundary delimitations, historic bays or titles; disputes concerning military activities and law enforcement activities relating to marine scientific research or EEZ rights; and disputes already being addressed by the UN Security Council.<sup>125</sup>

Ten years after ratifying UNCLOS in 1996, China made such reservations through a diplomatic note submitted to the UN Secretary General in August 2006. It has been argued that these reservations are applicable against the case that the Philippines brought before the international arbitral tribunal, in support of its position rejecting the arbitration.<sup>126</sup> The Philippines, on the other hand, argues that the case it has brought is not covered by these reservations.

## WHAT IS THE SIGNIFICANCE OF THE PHILIPPINE DECISION TO BRING ITS DISPUTE WITH CHINA BEFORE AN ARBITRAL BODY UNDER UNCLOS?

The decision to bring the dispute before an arbitral body is quite significant. First, normally adjudication is only a last resort, as international disputes should be resolved primarily by negotiations and most States would rather not bring their disputes before a third party settlement mechanism. The decision to initiate arbitral proceedings indicates that the Philippine government is not optimistic that a negotiated resolution to the issue is possible under the prevailing circumstances.

Second, the Philippines' attempt to bring China before an arbitral tribunal demonstrates its confidence in its legal position, and its belief that China's claims based on the nine-dash line will not be recognized by the international community. The Philippines' application directly challenges the validity of China's expansive claims to the South China Sea, and asks for a declaration of its illegality in light of UNCLOS.

If the arbitration is successful, it may vindicate the Philippines' position that it is entitled to a full 200nm EEZ and continental shelf within the SCS, and exclusive rights to explore and exploit the resources therein, despite China's claims to sovereignty and jurisdiction within the area of the nine-dash line.

## WHAT CAN WE EXPECT TO BE THE PROCESS OF THE ARBITRATION CASE INSTITUTED BY THE PHILIPPINES AGAINST CHINA?

Annex VII of UNCLOS contains a procedure for coastal States to submit a maritime dispute to arbitration by a 5-member arbitral panel. In accordance with this, the Philippines initiated arbitration proceedings against China by sending a diplomatic note on January 22, 2013 containing a Notification and Application for arbitration. The Application also nominated ITLOS Judge Rudiger Wolfrum (Germany) as arbitrator.

Under the procedure laid out in UNCLOS Annex VII, China had 30 days from receipt of the Notification and Application within which to make a response to the Philippines' Application, and appoint its own arbitrator. If no arbitrator is appointed, the Philippines may within two weeks from the expiration of the 30 days, request the President of the International Tribunal on the Law of the Sea to appoint the arbitrator for China. China officially returned the note

and rejected the arbitration on February 19, 2013; thus the Philippines on February 22, 2013 requested the President of ITLOS to appoint the second arbitrator. ITLOS Judge Stanislaw Pawlak (Poland) was thereafter appointed.<sup>127</sup>

UNCLOS Annex VII provides that within 30 days after the appointment of the second arbitrator, the parties should agree upon the appointment of three more arbitrators to complete the 5-man panel, as well as the panel's president. If they cannot do so, one of the parties may request the President of ITLOS to make those appointments. The Philippines made such a request on March 25, 2013. The President of ITLOS subsequently appointed Jean-Pierre Cot (France), Alfred Soons (Netherlands), and Chris Pinto (Sri Lanka) as members of the panel.<sup>128</sup> Subsequently, Chris Pinto was replaced by Thomas Mensah (Ghana).<sup>129</sup>

The panel is expected to undertake some organizational activities like determining its venue, rules of procedure, and timetable for the proceedings. It will then decide on the issues of its jurisdiction and the sufficiency of the Philippines' claim as stated in its Application for Arbitration, and afterwards proceed to hear the merits of the case before making its decision. There is no strict timetable for the panel to complete its work, but Philippines has stated that it expected the entire proceedings may take up to 2 or 3 years.<sup>130</sup>

# Governance of the West Philippine Sea

## WHICH DEPARTMENT IN GOVERNMENT TAKES RESPONSIBILITY FOR WEST PHILIPPINE SEA ISSUES?

THE ISSUES IN THE WEST PHILIPPINE SEA are cross-cutting and cannot be handled solely by any single department of government. They require a whole-of-government approach.

In 2011, Pres. Aquino, responding to proposals for better monitoring and surveillance capability facing the West Philippine Sea, issued Executive Order No. 57 establishing a National Coast Watch System “as a central inter-agency mechanism for a coordinated and coherent approach on maritime issues and maritime security operations toward enhancing governance in the country’s maritime domain.” An inter-agency National Coast Watch Council was established and mandated to provide strategic direction and policy guidance primarily for maritime security affairs. It was also tasked to “exercise overall jurisdiction and direction over policy formulation, implementation and coordination with other government agencies, experts and organizations, both foreign and local, on all maritime issues affecting the country.” A National Coast Watch Center headed by the Philippine Coast Guard was established.

The Coast Watch Council is the latest in a series of institutional arrangements that have been established for maritime governance. Upon signing UNCLOS in 1981, the Marcos

government set up a Cabinet Committee on the Law of the Sea, bringing together different government agencies with the mandate to implement UNCLOS and harmonize domestic laws and regulations with the Convention. When UNCLOS came into force in 1994 under President Fidel V. Ramos, this body was renamed the Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA) and was given the additional mandate to formulate practical and viable policies on various concerns affecting implementation of UNCLOS. CABCOM-MOA published the 1994 National Marine Policy which called for a shift in development policy emphasizing the Philippines' status as an archipelagic state.<sup>131</sup> The Department of Foreign Affairs (DFA) served as the Secretariat of CABCOM-MOA.

In 1995, the National Committee on Illegal Entrants (NCIE) was organized to facilitate investigation and disposition of cases of illegal entry by foreign nationals and vessels in Philippine territory.<sup>132</sup> Also during the Ramos administration, issues pertaining to the territorial conflicts in the Kalayaan Islands or Scarborough Shoal were addressed by a Cabinet Cluster on Security. This Cabinet Cluster system was abolished when President Arroyo took over. CABCOM-MOA had itself been abolished by President Estrada in 1999. However, in 2007, a Commission on Maritime and Ocean Affairs (CMOA) was established to fast-track the preparation of extended continental shelf claims which originally had a deadline for submission in May 2009. President Aquino's EO 57 abolished the CMOA and transferred its functions to the Coast Watch Council.

## WHAT IS THE ROLE OF THE DEPARTMENT OF FOREIGN AFFAIRS?

Among the primary purposes of the DFA is “to contribute to the enhancement of national security and the protection of the territorial integrity and national sovereignty” of the Philippines. It is also mandated “to participate in the national endeavor to sustain development and to enhance the Philippines' competitive edge in a global milieu.”

It is often said that “diplomacy is the country's first line of defense.” In this connection, the Department of Foreign Affairs is a frontline agency of government in the processes of obtaining recognition by the international community of Philippine sovereignty and support for its legitimate national interests and aspirations. It is also tasked to negotiate agreements with other countries and organizations, including over boundaries and overlapping territories and maritime zones, ever mindful of the norms and principles of international law such as peaceful settlement of disputes and non-use of force.

Among the agreements and proposals negotiated by the DFA in relation to the West Philippine Sea issues are: the 1992 ASEAN Declaration on the South China Sea, the 1995 bilateral agreement with China on principles for a code of conduct, a similar 1997 bilateral agreement with Vietnam, and the ASEAN-China talks leading to the 2002 Declaration of Conduct of Parties in the South China Sea.

## WHAT IS THE ROLE OF THE PHILIPPINE COAST GUARD?

The Philippine Coast Guard (PCG) is a search and rescue, law enforcement, marine pollution response and defense-support agency, Rep. Act No. 9993 or the Philippine Coast Guard Law of 2009 strengthened the powers and roles of the PCG. In addition, President Benigno S. Aquino III issued the National Security Policy of 2012-2016 tasking the Armed Forces of the Philippines and the PCG to secure the maritime borders of the country. In May 2011, the Office of the President further issued a Memorandum Order designating the PCG to take the lead role in providing security to offshore oil exploration and production activities in the West Philippine Sea.

In September 2011, Executive Order No. 57 was issued mandating the establishment of the National Coast Watch Center to be headed by the PCG. The enforcement of relevant UNCLOS provisions, along with compliance with international conventions such as Search and Rescue (SAR), International Convention for the Prevention of Pollution from Ships (MARPOL), and Safety of Life at Sea (SOLAS), are tasks of the PCG.

## WHAT IS THE ROLE OF THE ARMED FORCES?

As stated in the Philippine Constitution, the Armed Forces of the Philippines (AFP) is mandated as “the protector of the people and the state. Its goal is to secure the sovereignty of the state and the integrity of the national territory.” Inherent to the mission and function of the AFP is the maintenance of control over national territory, airspace and territorial waters. The vast maritime approaches to the country constitute a major vulnerability to the country’s security.

During peacetime, the AFP is also tasked to support the national government’s socio-economic and development programs, through activities such as coastal surveillance, air traffic control, survey and mapping. Notably, the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) in November 1994, establishing the 200

nautical mile Exclusive Economic Zone (EEZ), has significantly expanded the coastal surveillance needs of the country.<sup>133</sup>

As a result of past emphasis on internal security operations and despite the vast maritime challenges, the capabilities of the Philippine Air Force (PAF) and the Philippine Navy (PN) have been maintained at very modest levels and will need to be upgraded. The priority of government has been to enhance the capability of our military as well as civilian law enforcement agencies so that they may better contribute to preventing infringements on our sovereignty and sovereign rights, and provide credible deterrence against external threat.

Capability-building also serves broader maritime security objectives, including enabling better performance in search and rescue, anti-piracy, disaster response operations, and environmental concerns. The support of traditional allies as well as other security partners is being maximized toward such ends.

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# APPENDIX

## CASE STUDIES: WHAT ARE THE POSSIBLE OPTIONS STATES MAY RESORT TO FOR ADDRESSING TERRITORIAL DISPUTES?

### *MILITARY OPTIONS*

- **Falklands/Malvinas**

Open conflict broke out between Great Britain and Argentina over the Falklands/Malvinas in 1982 when Argentina decided to dispatch troops to the disputed islands. The United Nations passed resolutions demanding cessation of hostilities and a diplomatic solution, but it was unable to prevent bloodshed, especially when Britain decided to regain control of the islands.

Britain has occupied and administered the islands since 1833, but Buenos Aires refused to recognize British sovereignty. In 1965, Argentina brought the issue before the UN. Many negotiations between the two parties transpired. At one point, Britain appeared inclined to cede sovereignty to Argentina but Falklands' British islanders, supported by a strong lobby in London, vehemently opposed such measures, including a proposed lease-back agreement under which sovereignty will be given to Argentina but actual control will be handed over only after 99 years. It was said that the Argentine military junta's decision to capture the islands in 1982 was a way to divert brewing domestic discontent over the country's political and socioeconomic woes.

- **Paracel Islands**

The Paracel Islands (Xisha in Chinese and Hoang Sa in Vietnamese) is a group of features in the South China Sea (SCS) presently occupied by China but claimed by Vietnam. In 1947-1950, the Paracels was divided into two groups, with ROC forces based on Woody Island and the Amphitrite Group, while the Franco-Vietnamese troops held Pattle Island and the Crescent Group. PRC forces took over the Amphitrite in 1956 and, in 1974, military victory enabled China to wrest complete control of the Paracels from Vietnam. However, Vietnam still contests what it considers as Chinese occupation of its territory.

China has effective occupation of the features and had set up a garrison in Sansha (in Woody or Yongxing Island, the largest in the group) to administer its extensive claims in the SCS.

## LEGAL OPTIONS

- **Beagle Channel dispute between Argentina and Chile**

In the 1970s, a dispute arose between Argentina and Chile over islands, features and waters in the eastern Beagle Channel located at the extreme end of the South American continent. In 1971, both countries agreed to bring the matter to international arbitration, a decision of which came out in 1977 recognizing Chilean sovereignty over all the disputed islands. However, Argentina considered the award as null and void, and mobilized its military forces to challenge Chile.

In 1979, both countries requested the Holy See to act as mediator in their dispute. In 1980, a papal proposal for a dispute resolution process was produced. In January 23, 1984, the two signed a joint declaration of peace and friendship, reaffirming their interest to resolve their dispute submitted to papal mediation without delay and in November 29, 1984, a more binding Treaty was signed defining their boundaries and their rights over the sea, seabed and subsoil in their disputed southern zone.

The 1984 Treaty created a joint Permanent Conciliation Commission and provided for arbitral procedures to resolve incidents and disputes that may arise after the Treaty came into effect. It also accorded navigational rights for vessels of both countries via designated shipping routes.

- **Sipadan and Ligitan Arbitration (2002)**

In 1998, Indonesia and Malaysia brought before the International Court of Justice (ICJ) their sovereignty dispute over the islands of Sipadan and Ligitan. This notice was preceded by an agreement between the two countries signed in 1997 and ratified in 1998 submitting the case for arbitration. The dispute, which began in 1969, arose largely from their differing interpretations of Article IV of the 1891 Convention between Great Britain (the former colonizer of Malaysia) and Netherlands (the former colonizer of Indonesia) demarcating their colonial possessions in Borneo.

In 2002, ICJ ruled in favor of Malaysia, granting her sovereignty over the two islands on the basis of Malaysia's effective occupation and administration, including the passing of legislative, administrative and quasi-judicial measures regulating economic activities and environmental preservation in the islands, as well as the construction of lighthouses.

- **The Minquiers and Ecrehos Case (France/UK)**

In 1950, Great Britain and France agreed to bring their competing sovereignty claims over the Minquiers and Ecrehos groups for arbitration, such notice of which was transmitted to ICJ in 1951. The two groups are made up of mostly small and largely uninhabited features in the English Channel. Evidences presented in the Court included medieval period grants, local legal proceedings, fishing regulations, sanitary edicts and criminal inquests. ICJ gave little weight to indirect deductions from ancient title claims, but instead looked at activities that demonstrated actual possession of the contested groups.

In 1953, the Court ruled in favor of the United Kingdom. The Court inferred that the case was not one of acquisition of sovereignty over terra nullius. In its decision, the Court placed great importance on evidences of continued exercise of British jurisdiction and administration over the two groups by way of Jersey, part of the Channel Islands, since the 17<sup>th</sup> to the 20<sup>th</sup> centuries. This include inquests on corpses found in the features, inclusion of the names of temporary residents of the features to a parish in Jersey and their payment of property taxes for the huts and houses they built on the features which they use during the fishing season, census, registration of contracts, sale of real estate property, establishing of customs house and construction projects (e.g. slipway, mooring buoy, beacons) all of which were sanctioned by local authorities from Jersey.

- **Eritrea/Yemen Arbitration (1998 & 1999)**

The Eritrea/Yemen case was among the noteworthy cases in the history of international arbitration. The decision was unanimously rendered by an Arbitral Tribunal in two Awards – I) Territorial Sovereignty and Scope of the Dispute Award (Phase I) in 1998 and the Maritime Delimitation Award (Phase II) in 1999. Prior to this, in 1996, both parties entered into an Arbitration Agreement, which, in turn, was preceded by an Agreement on Principles signed in Paris and witnessed by the Governments of France, Ethiopia and Egypt, as well as a concurrent Joint Statement of the two parties stressing their desire to settle the dispute, normalize relations and contribute to regional peace and stability. The area under dispute by the two countries covers the southern Red Sea features and their surrounding waters which are located strategically in the southern approaches to the Suez Canal, an important international waterway.

The Award affirmed the pre-eminence of actual and effective occupation over claims on the basis of historic titles. The geographical proximity argument (i.e. appurtenance to the closest coast) was used by the Tribunal in the absence of a superior title presented by another party.

In relation to the subsequent maritime boundary delimitation, an equidistant median line was drawn between the opposite coastlines of the two disputants using normal baselines (low-water line) as reference points. The Tribunal, however, reminded both parties about their international obligation to ensure freedom of navigation for international commerce in the area. The Tribunal avoided the question of mineral resources straddling the demarcated maritime boundary between the two parties, although parties were encouraged to inform and consult one another and consider the possibility of joint or unitised exploitation of such resources. It also provided for “perpetuation of the traditional fishing regime in the region including free access and enjoyment for the fishermen of both Eritrea and Yemen” for areas awarded to Yemen.

## *FUNCTIONAL OPTIONS (NEGOTIATED SETTLEMENT)*

- **Nigeria-Sao Tome & Principe Joint Development Zone (2000)**

As a result of deadlock in their bilateral maritime boundary delimitation beginning 1998, the two countries signed a Joint Development Treaty in their disputed EEZs

in 2000, which entered into force in 2003. The Treaty created a Joint Development Authority to administer the Joint Development Zone (JDZ) in 2002.

The two countries agreed to a 60/40 sharing of costs and benefits, with Nigeria getting 60% and Sao Tome & Principe (STP) receiving 40%. Nigeria agreed to provide “economic assistance” to STP in the form of refinery and crude oil allocation, working interest in a block, establishing a port/logistic facility and equipping and training STP’s coast guard. Joint development of fisheries resources is also very promising as the two countries’ EEZs are among Africa’s most productive fishing grounds. To this end, cooperation with the Norwegian government was made to conduct a marine resource survey of the JDZ.

- **Timor Gap Treaty (1989)**

In 1989, Australia and Indonesia entered into an agreement creating a provisional zone of cooperation for joint development in the Timor Gap, addressing a 17-year seabed boundary delimitation. The Treaty came into force in 1991. Reports of petroleum discoveries in the area prompted both sides to close the gap and delineate their seabed boundaries.

Deadlock in the negotiations led the two states to establish a joint development zone in October 1985, with a final agreement reached in 1988. The Treaty established a Zone of Cooperation divided into three areas, A, B and C. It is valid for 40 years, extendable for 20-year terms, or until a final delimitation had been reached. Area C is under the jurisdiction of Australia, but it has to notify Indonesia of petroleum operations in the area and share 16% of tax revenue with Jakarta. Area C, on the other hand, is under Indonesian jurisdiction but it is likewise mandated to notify Australia of petroleum activities in the area and share 10% of tax revenues generated with Canberra. Area A, which is in the central part of the zone, is subject to joint development of both countries under which proceeds will be equally shared.

The Treaty created joint bodies to oversee joint petroleum exploration and production in Area A, as well as in adjacent areas. The Treaty also provides for cooperation in other areas beyond hydrocarbons development, such as security, search and rescue, air traffic control, marine scientific research and environmental protection.

The Timor Gap Treaty strengthened ties between the two parties, which were strained by their long drawn out territorial and maritime spat over the resource-

rich area. Since the signing of the Treaty, several production sharing contracts had already been approved and significant discoveries have been made. With the independence of Timor Leste in 2005, a new treaty had been reached (Timor Sea Treaty, 2002), which allowed Timor Leste to take the place of Indonesia in the joint development of the Timor Gap.

- **Thailand- Malaysia Joint Development Area (1979, 1990)**

In 1972, Thailand and Malaysia entered into a territorial sea and continental shelf boundary delimitation by drawing equidistant lines. However, a dispute arose concerning the effect of a geographic feature, Ko Losin, in the demarcation. To address the dispute, the two sides agreed to enter into a provisional arrangement on their overlapping maritime claims in 1979. It created a Joint Development Authority to govern the exploration and exploitation of oil and gas resources in the seabed and subsoil of the Joint Development Area (JDA).

The MoU provides for unitization, maintaining that in the event that oil and gas deposits are found in a structure or field that extends beyond the confines of the JDA (either to the side of Malaysia or Thailand), both parties will endeavor to reach an agreement on the appropriate manner by which such resource will be exploited. It also stipulates that the Joint Authority recognizes the rights of the national authorities of both countries in relation to fishing, navigation, conduct of oceanographic and hydrographic surveys, combating marine pollution and related concerns.

In 1990, the Agreement on the Constitution of the JDA was approved and by 1992, the Joint Development Authority Headquarters was set up in Kuala Lumpur. In 1994, the first Production Sharing Contract was signed and the first gas flowed in 2005. Both parties agree to equally share costs incurred and benefits derived hydrocarbon resources extracted from the area. Royalty, petroleum profit (under a 50:50 sharing) and income tax is remitted to both governments. In relation to dispute settlement, the MoU encourages both parties to peacefully consult or negotiate with one another on the “basis of good neighbourliness and conformity with international law.” The Thai-Malaysian JDA was the first significant joint development undertaking in the Gulf of Thailand, which set the tone for later similar JDAs in the area, including the one between Cambodia and Vietnam (1982), Malaysia and Vietnam (1992) and a tripartite deal between Malaysia, Vietnam and Thailand (1999).

- **Tonkin Gulf Agreement on Fishery Cooperation (2000)**

The Tonkin Gulf is a rich traditional fishing ground for many Chinese and Vietnamese fishermen. In recognition of its great economic importance to thousands of its fishermen, China insisted in linking its maritime boundary delimitation negotiations with Vietnam over the area to access to these fisheries resources and their management. China also proposed a wider subject area and no time limit for the cooperation. Vietnam's position, on the other hand, was fisheries cooperation on the basis of the results of the delimitation, limited cooperation zone and defined time limit, which is renewable upon negotiation.

Maritime boundary negotiations occurred in three phases: in 1974, 1977-78 and 1992-2000. The first two were unproductive because of poor bilateral ties between the two countries then, but the third phase was more fruitful following the normalization of relations in 1991. In 1993, both parties reached a general agreement on the principles to be adopted for settling their land and maritime boundary disputes. Both countries eventually signed the Boundary and Fishery Agreements simultaneously and exchanged instruments of ratification respectively in 2004. Delayed ratification of both Agreements was attributed to lingering issues arising from fisheries management.

The Fishery Agreement would be managed by a Joint Fishery Committee. Both countries agreed to cooperate in the granting of licenses and labelling authorized fishing vessels, conduct of fishery scientific research, preservation of living marine resources and joint monitoring and inspection. The Agreement aimed to address overexploitation and promote sustainable fisheries management. It established a Common Fishery Zone, a buffer zone for small fishing vessels and a transitional zone.

The success of the Fishery Agreement can be attributed to the good will and compromise between the two parties, agreement on the identification of contested areas and common delimitation rules. It also adopted a simpler regulatory structure and a short duration period to assess feasibility. In addition, prior to the 2000 Fishery Agreement, there were already precedents of fisheries cooperation between the two countries.

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