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The legal status of the Philippine Treaty Limits and territorial waters claim in international law: national and international legal perspectives

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**THE LEGAL STATUS OF THE PHILIPPINE TREATY LIMITS AND
TERRITORIAL WATERS CLAIM IN INTERNATIONAL LAW:
NATIONAL AND INTERNATIONAL LEGAL PERSPECTIVES**

A thesis submitted in fulfilment of the requirements
for the award of the degree

Doctor of Philosophy

from

University of Wollongong

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Bachelor of Arts in Political Science, University of the Philippines
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2010

Certification

I, **Lowell B. Bautista**, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Australian National Centre for Ocean Resources and Security (ANCORS), Faculty of Law, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Lowell B. Bautista

1 May 2010

Abstract

The fundamental position of the Philippines regarding the extent of its territorial and maritime boundaries is based on two contentious premises: first, that the limits of its national territory are the boundaries laid down in the Treaty of Paris which ceded the Philippines from Spain to the United States; and second, that all the waters embraced within these delineated lines seaward of the baselines constitute its territorial waters.

The position of the Philippine Government is contested in the international community and runs against rules in the United Nations Convention on the Law of the Sea, which the Philippines signed and ratified. This situation poses two fundamental unresolved issues of conflict: first, is the issue on the breadth of its territorial sea, and second, its treatment of supposed archipelagic waters as internal waters. The twin issues of the legal status of the Philippine Treaty Limits and its extensive historic claims to territorial waters have been subject of much academic debate and serious criticisms.

The delimitation of Philippine territorial and maritime boundaries in conformity with international law necessitates the reform of the existing national legal, policy and administrative framework to resolve fundamental issues of conflict between domestic legislation and international law. This thesis, proceeding from both a national and an international legal perspective, clarifies the legal status of the Philippine Treaty Limits and territorial waters claim in international law, with a view to facilitating such reforms.

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List of Acronyms

ADB	Asian Development Bank
AJIL	American Journal of International Law
AOMM	Asian Pacific Economic Cooperation Ocean Related Ministerial Meeting
APCEL	Asia-Pacific Center for Environmental Law
APEC	Asia-Pacific Economic Cooperation
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
ASG	Abu Sayyaf Group
ASL	archipelagic sea lanes
ASLP	archipelagic sea lanes passage
BC	Before Christ
BIMP-EAGA	Brunei-Indonesia-Malaysia-Philippines East-ASEAN Growth Area
CORPATPHILINDO	Coordinated Patrol Philippines Indonesia
CSCAP	Council for Security Cooperation in the Asia Pacific
CTI	Coral Triangle Initiative
DFA	Department of Foreign Affairs
DIAC	Australian Department of Immigration and Citizenship
DOE	Department of Energy
ECS	Extended continental shelf
EEZ	Exclusive Economic Zone
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
ICJ	International Court of Justice
IILS	Institute of International Legal Studies
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
IMF	International Monetary Fund
IPOA	International Plan of Action
ISDS	Institute for Strategic and Development Studies
ISPS Code	International Port Facilities Security Code
ITLOS	International Tribunal for the Law of the Sea
IUU Fishing	Illegal Unreported Unregulated Fishing
JI	Jemaah Islamiyah
JMSU	Joint Marine Seismic Undertaking
KIG	Kalayaan Island Group
Km	kilometre
LNTS	League of Nations Treaty Series
LOSC	United Nations Convention on the Law of the Sea
m	miles
MA	Master of Arts
MGB	Mines and Geosciences Bureau
MILF	Moro Islamic Liberation Front

MNLF	Moro National Liberation Front
MOAC	Maritime and Ocean Affairs Center
MOU	Memorandum of Understanding
NAM	Non-Aligned Movement
NAMRIA	National Mapping and Resource Information Authority
NIGS	National Institute of Geological Sciences
NM	Nautical mile
PCIJ	Permanent Court of International Justice
PCTC	Philippine Center on Transnational Crime
PD	Presidential Decree
PDR	People's Democratic Republic
PEMSEA	Partnerships in Environmental Management for the Seas of East Asia
PhD	Doctor of Philosophy
PRC	People's Republic of China
PSI	Proliferation Security Initiative
RA	Republic Act
RI	Republic of Indonesia
RIAA	Reports of International Arbitration Awards
ROC	Republic of China (Taiwan)
RP	Republic of the Philippines
RSM	Rajah Sulaiman Movement
SCRA	Supreme Court Reports Annotated
SCS	South China Sea
SDS-SEA	Sustainable Development Strategy for the Seas of East Asia
SEATO	Southeast Asia Treaty Organisation
SOMTC	Senior Officials Meeting on Transnational Crime
SOVFA	Status of Visiting Forces Agreement
TAC	Treaty of Amity and Cooperation
TIAS	Treaties and Other International Acts Series
TIHPA	Turtle Islands Heritage Protected Area
TOP	Treaty of Paris
TS	Treaty Series
TWG	Technical Working Group
UK	United Kingdom
UN	United Nations
UN GA Res	United Nations General Assembly Resolution
UN GAOR	United Nations General Assembly Official Records
UNCLCS	United Nations Commission on the Limits of the Continental Shelf
UNCLOS	United Nations Conference on the Law of the Sea
UNEP	
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNTS	United Nations Treaty Series
UP	University of the Philippines
US	United States
USD	United States Dollar
USS	United States Ship

VAP	Vientiane Action Programme
WHO	World Health Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

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- Republic Act No. 6235, Anti-Hijacking Law, 19 June 1971 (1971)
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- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, opened for signature 22 March 1989, 1673 UNTS 126; 28 ILM 657 (1989) (entered into force 5 May 1992)
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- Covenant of the League of Nations*, opened for signature on 28 June 1919, 225 Parry 195; 1 Hudson 1; 112 BFSP 13; 13 AJIL Supp. 128 (1919) (entered into force 10 January 1920)
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- Treaty of Amity and Cooperation in Southeast Asia*, Indonesia, 24 February 1976.
- Treaty of Peace Between the United States of America and the Kingdom of Spain (Treaty of Paris)*, U.S.-Spain, 10 December 1898, T.S. No. 343
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Publications:

Lowell B. Bautista, 'The Legal Status of the Philippine Treaty Limits in International Law' (2010) *Aegean Review of the Law of the Sea and Maritime Law* 111 – 139.

Lowell B. Bautista, 'The Historical Background, Geographical Extent and Legal Bases of the Philippine Territorial Water Claim' (2009) 8 *The Journal of Comparative Asian Development* 365 – 395.

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Forthcoming publication:

Lowell B. Bautista, *The Philippine Treaty Limits: Historical Context and Legal Basis in International Law* (2009). [Institute of International Legal Studies International Pamphlet Series]

Papers presented:

Lowell B. Bautista, *Philippine Boundaries: Internal Tensions, Colonial Baggage, Ambivalent Conformity*, ANU Asia-Pacific Week, Southeast Asian Studies Graduate School and Conference, Australian National University, Canberra, Australia, 8 - 11 February 2010.

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Lowell B. Bautista, *International Legal Implications of Recent Decisions of International Courts and Tribunals on the Territorial and Maritime Disputes in East and Southeast Asia*, Developing Disputed Maritime Energy Resources in Asia, Grand Hyatt Bali, Nusa Dua, Bali, Indonesia, 3 - 5 December 2009.

Lowell B. Bautista, *The Transition from Academic Research to Involvement in the Formulation of National Policies: A Philippine Perspective*. Paper presented at Transmission of Academic Values in Asian Studies Workshop, 25 & 26 June 2009, Canberra, Australia.

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Lowell B. Bautista, *The Philippine Treaty Limits: Historical Context, Legal Basis and Legal Status in International Law*. Paper presented at Roundtable Discussion on Current Developments on the Philippine National Territory, Institute of International Legal Studies, University of the Philippines, Diliman, Quezon City, Philippines, 28 May 2009.

Lowell B. Bautista, *The Lines that Continue to Separate Us: How the Contested Maritime and Territorial Boundaries of the Philippines Challenge the International Legal Order*. Paper presented at the 8th International Conference on Philippine Studies, Manila, Philippines, 23 – 26 July 2008.

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Other Conference Attended:

Delegate and Assistant Moderator, Indian Ocean Maritime Security Symposium, Australian Defence College, Canberra, Australia, 15 – 17 April 2009