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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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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<br>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<br>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<br>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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**Other Conference Attended:**

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