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# Philippine territorial boundaries: internal tensions, colonial baggage, ambivalent conformity

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## Publication Details

L. Bautista, 'Philippine territorial boundaries: internal tensions, colonial baggage, ambivalent conformity' (2011) 16 (December) *Journal of Southeast Asian Studies* 35-53.

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# Philippine territorial boundaries: internal tensions, colonial baggage, ambivalent conformity

## **Abstract**

The territorial boundaries of the Philippines, inherited from Spain and the United States in 1898, are disputed in international law. The boundaries of the Philippines are not recognised by the international community for two principal reasons: first, because of the fundamental position of the Philippines that the limits of its national territory are the boundaries laid down in the 1898 Treaty of Paris which ceded the Philippines from Spain to the United States; and second, is its claim that all the waters embraced within these imaginary lines are its territorial waters. The Philippine Government is not unaware of these issues and has time and again assured the international community that it will harmonise its domestic legislation in conformity with its international legal obligations. This paper will address and clarify the above issues, and explain the internal tension between the country's colonial boundaries and its sincere yet seeming ambivalence to conform with international law.

## **Keywords**

era2015, baggage, colonial, conformity, tensions, ambivalent, internal, boundaries, philippine

## **Disciplines**

Arts and Humanities | Law

## **Publication Details**

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# **PHILIPPINE TERRITORIAL BOUNDARIES: INTERNAL TENSIONS, COLONIAL BAGGAGE, AMBIVALENT CONFORMITY**

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## **Abstract**

The territorial boundaries of the Philippines, inherited from Spain and the United States in 1898, are disputed in international law. The boundaries of the Philippines are not recognised by the international community for two principal reasons: first, because of the fundamental position of the Philippines that the limits of its national territory are the boundaries laid down in the 1898 Treaty of Paris which ceded the Philippines from Spain to the United States; and second, is its claim that all the waters embraced within these imaginary lines are its territorial waters. The Philippine Government is not unaware of these issues and has time and again assured the international community that it will harmonise its domestic legislation in conformity with its international legal obligations. This paper will address and clarify the above issues, and explain the internal tension between the country's colonial boundaries and its sincere yet seeming ambivalence to conform with international law.

*Keywords: Philippine territorial boundaries, Philippine Territorial Sea, Philippine Treaty Limits, law of the sea, territorial sea claim, Philippine maritime boundaries*

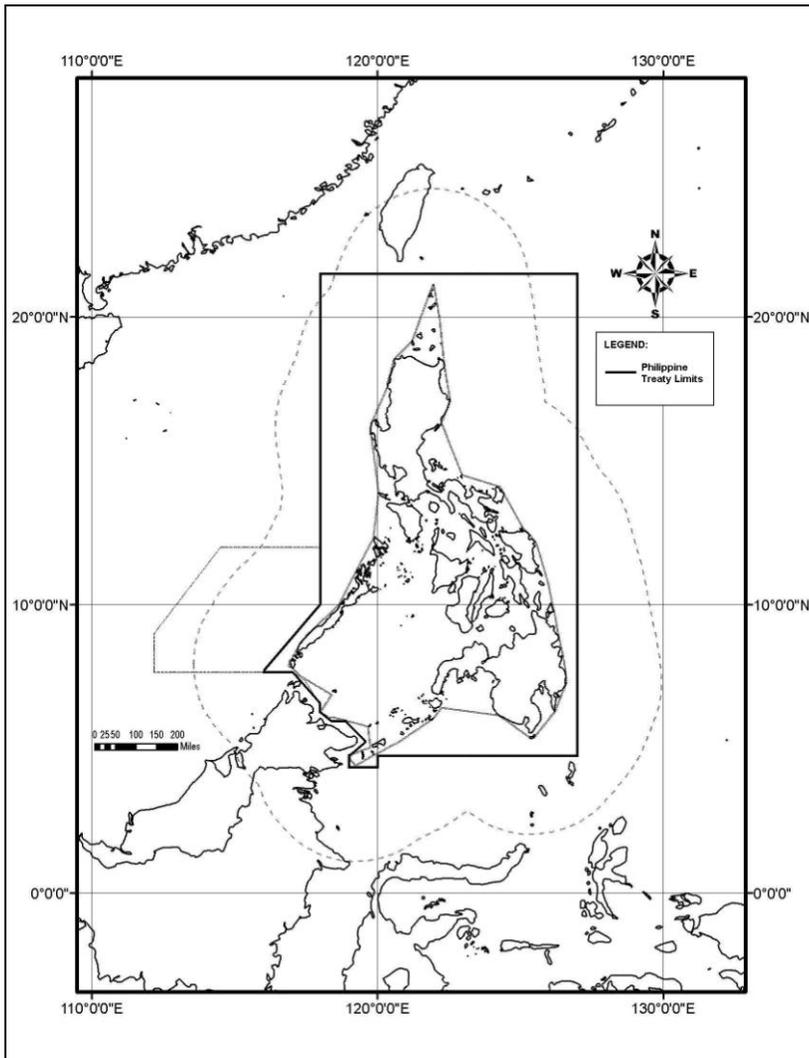
## **Introduction**

The extent and definition of the Philippine national territory is disputed in international law (Dellapenna, 1970, p. 51; Kaye, 2008, p. 34; Kwiatkowska, 1991, p. 4; Prescott & Schofield, 2001, p. 31). The non-recognition of the maritime and territorial boundaries of the Philippines by other States springs from two primary points of contention. The first is the fundamental position of the Philippines that the limits of its national territory are the boundaries laid down in the Treaty of Paris of 10 December 1898 which ceded the Philippines from Spain to the United States (Bautista, 2008, p. 2; Magallona, 1995b, p. 51);<sup>1</sup> and the second is its claim that all the waters embraced within the Philippine Treaty Limits seaward of its defined baselines are its territorial waters (Tolentino, 1974a, p. 53). The Philippine Treaty Limits is depicted in the Figure 1.

While the terms “territorial sea” and “territorial waters” are used interchangeably in modern literature, the Philippines does not claim a “territorial sea” in the strict sense as such is, by definition under the United Nations Convention on the Law of the Sea (LOSC) limited to a maximum breadth of twelve nautical miles (Article 3, LOSC). The territorial sea which the Philippines claims, based on historic right of title, is thus properly “historic waters” and more akin to the regime of internal waters in the LOSC.

The juridical regime of historic waters constitutes an exceptional regime in international law. (Symmons, 2008) The International Law Commission characterised historic waters as those over which a State has claimed historic right and exercised continuity of authority with the acquiescence or absence of opposition of other States (Secretariat of the International Law Commission, 1962, p. 13) Bouchez defined historic waters as “[w]aters over which the coastal State, contrary to the generally applicable rules of international law, clearly, effectively, continuously, and over a substantial period of time, exercises sovereign rights with the acquiescence of the community of States.” (1964, p. 199). The International Court of Justice in the *Anglo-Norwegian Fisheries Case* defined historic waters as “waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title.” (*Anglo-Norwegian Fisheries Case*, 1951, para. 132)

The international community contests the position of the Philippines primarily because it runs against rules in the LOSC. The Philippines signed the LOSC on 10 December 1982 at the close of the Third United Nations Law of Sea Conference in Montego Bay, Jamaica and ratified it on 8 May 1984. The LOSC entered into force for the Philippines on 16 November 1994. Specifically, the Philippine position is in conflict with the twelve-nautical mile (nm) maximum breadth of the territorial sea set in Article 3 of the LOSC, as well as the anomalous treatment of the waters enclosed by the baselines as internal waters instead of archipelagic waters, as provided for in the LOSC. (Article 1, 1987 Philippine Constitution in relation to Article 47, LOSC)



**Figure 1. Map Depicting the Philippine Treaty Limits**

The delineation and demarcation of the national boundaries and maritime jurisdictions of the Philippines have not proceeded because of these issues. (Batongbacal, 2001, pp. 157-159) The Philippines declared its independence from Spain on 12 June 1898. However, more than a century after gaining independence, the boundaries of the Philippines still remain an issue left unsettled. In addition to the already problematic situation, the Philippines also asserts territorial sovereignty over the Kalayaan Island Group (KIG) and Scarborough Shoal in the South China Sea (Bautista, 2007; Arreglado, 1982; Keyuan, 1999; Section 1, Presidential Decree No. 1596, 1978; Section 2, Republic Act No. 9522, 2009; Yorac 1983). In 2011, the Philippines started to officially refer to the South China Sea as the West Philippine Sea.

Scarborough Shoal, which the Philippines refers to as Isla Bajo de Masinloc or Panatag Shoal, is also being claimed by the People's Republic of China, and Republic of China (Taiwan). It is a group of islands and reefs located between the Macclesfield Bank and the Philippine island of Luzon in the South China Sea. It is worth mentioning that the Philippines still has a standing but dormant claim over Sabah (Ariff, 1970; Jayakumar, 1968; Leifer, 1968; Marston, 1967). It also shares overlapping maritime boundaries with the following seven neighbouring States: China, Indonesia, Malaysia, Palau, Japan, Vietnam and Taiwan, which the Philippines has not yet delimited. Thus, the contentious issue of the Philippine national territory actually involves both contested territorial claims and overlapping maritime jurisdictional areas.

This paper will address these issues and clarify the legal status of the Philippine Treaty Limits and the waters they enclose in international law, from a national and an international legal perspective.

## **The Philippine National Territory**

### *Geographical Context*

The Republic of the Philippines constitutes an archipelago of 7,107 islands in the western Pacific Ocean, located off the southeastern coast of the Asian mainland, across the South China Sea in a strategic zone between China, Taiwan, Borneo and Indonesia. The Philippines, being entirely surrounded by the sea, is the only Southeast Asian country which shares no land boundaries with its neighbors. The total land area of the Philippines is 300,055 square kilometres which stretches for 1,850 kilometres from north to south while spanning 1,100 kilometres from east to west. The Philippines which lies between 116° 40' and 126° 34' E. longitude, and 4° 40' and 21° 10' N. latitude, is bordered on the east by the Philippine Sea, the South China Sea on the west, and the Celebes Sea on the south.

Interestingly, even very early references in books published in the United States at the turn of the previous century already refer to the location of the Philippine archipelago in the same longitude and latitude (Morris, 1899, p. 334; Forbes-Lindsay, 1906, p. 17). The geographical configuration of the Philippine archipelago, as defined in the Treaty of Paris, appears to be in the form of a vast rectangle, measuring 600 miles in width and over 1,200 miles in length.

### *Statement of the Philippine Position*

The Philippines traces its present title to that of the United States as its successor-state to the territory ceded by Spain to the United States. The Philippines claims that it acquired its current territorial boundaries marked on the map by what is called the "Philippine Treaty Limits" on the basis of three treaties: first, the Treaty of Paris between Spain and the United States of 10 December 1898; second, the Treaty of Washington between the United and Spain of 7 November 1900; and lastly, the Treaty concluded between the United States and Great Britain on 2 January 1930. (Bautista, 2008).

The Republic of the Philippines argues that the line described in accordance with the Philippine Treaty Limits constitute the territorial limits of the Philippine archipelago. The Constitution of the Republic of the Philippines specifically defines the extent of its national territory. It is categorically defined both in the 1935 and 1973 Constitutions, and in the latest and still in force, 1987 Constitution. However, it should be noted that it is only in the 1935 Philippine Constitution that there is explicit reference to the colonial treaties defining the Philippine Treaty Limits as comprising the national territory of the Philippines. The 1973 and 1987 Philippine Constitutions no longer mention these colonial treaties; which has raised questions internally whether the treaties remain incorporated in the constitutional definition of the Philippine national territory.

The constitutional definition of the national territory is the primary source of the difficulty of aligning domestic legislation with the obligations of the Philippines under the LOSC. This constitutional definition is further reflected in domestic legislation. The Philippines has enacted domestic legislation that provide for the various maritime jurisdictional zones in the LOSC, such as the territorial sea, contiguous zone, exclusive economic zone, and continental shelf, which all predate the Convention itself. Existing laws defining the national territory, include: Republic Act No. 3046: An Act to Define the Baselines of the Territorial Sea of the Philippines (1961); Republic Act No. 5446: An Act to Amend Section One of R.A. 3046 (1968); Presidential Proclamation No. 370: Declaring as Subject to the Jurisdiction and Control of the Republic of the Philippines All Mineral and Other Natural Resources in the Continental Shelf of the Philippines (1968); Presidential Decree No. 1596: Declaring Certain Areas Part of the Philippine Territory and Providing for their Government and Administration (1978); Presidential Decree No. 1599: Establishing an Exclusive Economic Zone and for Other Purposes (1978); and (6) Republic Act No. 9522, Republic Act No. 9522, An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for other purposes (2009). The illustration that follows is a map of the Philippines depicting the various LOSC maritime zones as defined in domestic law (Figure 2).

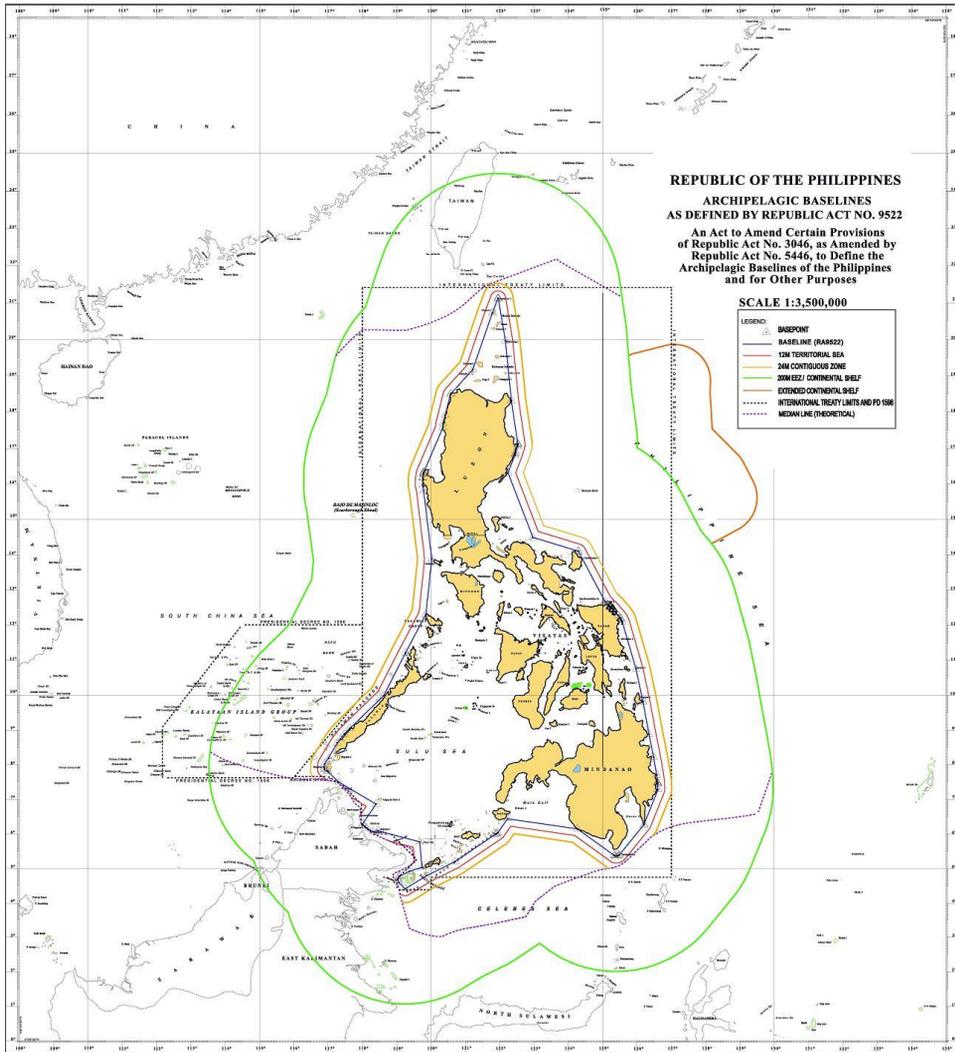


Figure 2. Philippine Map depicting LOSC maritime zones<sup>2</sup>

### The Philippine Treaty Limits

The Philippine Treaty Limits describe the territorial domain of the Philippine archipelago which passed from the sovereignty of Spain to that of the United States by virtue of the Treaty of Paris of 10 December 1898. (Chan-Gonzaga, 1997, p.3) The Philippine Treaty Limits, from a national perspective, constitute the unilateral declaration of the Philippines of the limits of its national territory. These lines were not pulled out of thin air but drawn from the colonial treaties that defined the unity of land, water and people which is the Philippine archipelago. (Tolentino, 1974b, p.

29) Thus, the question of the legal status of the Treaty Limits puts into scrutiny the very integrity of the Philippine polity. (Magallona, 1995b, p. 76)

The argument that the 1898 Treaty of Paris between the United and Spain fixed the international limits of Philippine territory is predicated on the unchallenged title held by Spain over the same territory across a colonial span of more than three centuries. (Santiago, 1974, p. 363) This title was acknowledged by the United States in the Treaty of Paris and was recognised by subsequent and contemporaneous acts of State such as in the Hare-Hawes-Cutting Act, the Jones Law and eventually in the 1935 Philippine Constitution, which was approved by US President Franklin D. Roosevelt. (Magallona, 1995a. *But see*, Batongbacal, 2001, pp. 128-129) However, the United States which is an original party to the Treaty of Paris does not share this interpretation. (Roach & Smith, 1996, p. 221) The United States argues that the cession, as will be borne by the clear language of Treaty, merely covered a transfer of the islands lying, and not the waters, within the lines. (See also (Dellapenna, 1970-1971, p. 54; Feliciano, 1962, pp. 160 161; Prescott & Schofield, 2001, p. 55) Furthermore, the United States argues that it could not have contemplated such vast expanses of water as territorial waters since at that time it only claimed a territorial sea of three-nautical miles. (Arruda, 1988-1989) This is obviously incongruous with the historic territorial seas claimed by the Philippines. (Coquia, 2004, p. 4)

### **The Philippine Territorial Water Claim**

The Philippines claims a territorial sea that is unique in international law. (Dellapenna, 1970-1971, p. 48) The breadth of the Philippine territorial sea is not proscribed by a maximum breadth, but is variable in width, defined by coordinates set forth in its international treaty limits. (Manansala, 1974, p. 135; Tolentino, 1974b, p. 34) The Philippines, on the basis of historic right of title, claims that its territorial sea extends to the limits set forth in the colonial treaties which defined the extent of the archipelago at the time it was ceded from Spain to the United States in 1898. (Tolentino, 1974c, p. 34) The line drawn around the archipelago marks the outer limits of the historic territorial seas of the Philippines which are contested in international law and evidently breach the twelve-mile breadth of the territorial sea provided for in the LOSC, which the Philippines signed and ratified.

The position of the Philippine Government is that all waters around, between and connecting the different islands of the Philippines irrespective of their width or dimensions, are subject to the exclusive sovereignty of the Philippines being necessarily appurtenances of its land territory, and an integral part of its internal waters. (Article 1, 1987 Philippine Constitution; Bernas, 1987) In Philippine legislation, no distinction is made between internal waters and archipelagic waters. From a domestic standpoint, the waters enclosed by the Philippine straight baselines are treated as internal waters. (Republic Act No. 3046, 1961) As such, the Philippines asserts full sovereignty over these waters. (Tolentino, 1983, p. 4) And since in international law the legal regime of internal waters is no different from

the regime of land territory, this has serious consequences for navigation, passage, and access to resources in these waters. (Lotilla, 2000; Payoyo, 1992)

## **The Legal Status of the Philippine Treaty Limits and Territorial Water Claim in International Law**

### ***Legal Bases of the Philippine Position***

In essence, the Philippine claim to historic rights of title over its maritime and territorial boundaries arises from several sources. First, there was no protest subsequent or simultaneous to the ratification of the Treaty of Paris with respect to the exercise of sovereignty by the United States over all the land and sea territory embraced in that Treaty. This spans a period of almost half a century. In 1946, when the United States granted independence to the Philippines which duly exercised sovereignty and jurisdiction over the same territory, neither was there any protest. (Francalanci and Scovazzi, 1994, p. 100; Santiago, 1974, p. 362). The Philippine claim over its entire maritime and territorial domain arising from the colonial treaties have been open and public; as well as continuous and peaceful, and was exercised for a considerable length of time without protest from other States. Thus, the Philippines can also raise the argument of prescription. (*See, Island of Palmas Case*, p. 868). The territorial title acquired from this process is respected in international law and is enshrined in the maxim *quieta non movere*. (Jennings, 1963, pp. 23-27; *Anglo-Norwegian Fisheries Case*, 1951, p. 130) The title is acquired and cannot be disturbed irrespective of the unlawfulness of the original taking of possession as well as the subsequent protests thereto in the interest of promoting peace and order. (O'Brien, 2001, p. 211) It is actually historically and factually inaccurate to declare that the Philippine claim has not found recognition outside the Philippines. Spain had consistently recognised the boundaries set by the Treaty of Paris of 10 December 1898. The United States opposed the claim during the Law of the Sea Conferences but can be considered in estoppel in view of its previous contemporaneous acts of State which treated the international treaty limits as boundaries of the Philippine archipelago. (Magallona, 1995b, p. 57; Santiago, 1974, pp. 362-363).

Second, the Philippines has given due notice of its claim to the world, as early as 1955, which has not been protested by any State. This notice was in form of *note verbales* to the Secretary General of the United Nations, which asserted that "All waters around, between and connecting different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. All other water areas embraced within the lines described in the Treaty of Paris of 10 December 1898 ... are considered as maritime territorial waters of the Philippines..." (Note Verbale, 1955, pp. 52-53; Note Verbale, 1956, pp. 69-70) The Philippines also sent diplomatic notes of the same tenor to various States regarding

the extent of its internal waters and territorial sea. Yet again, no protest has been raised. The silence of these States can be implied as a tacit recognition of the Philippine claim. (Ingles, 1974, p. 63; Shaw, 2003, p. 85; MacGibbon, 1954, pp. 108-109)

Third, the present configuration of the Philippine archipelago, with its territorial and maritime limits clearly indicated by the famous rectangular box known as the Philippine Treaty Limits or Treaty of Paris lines has been indicated in almost all known maps of the Philippines. In 1902, the Bureau of Insular Affairs of the United States released a map of the Philippine Islands which reproduced the lines indicated in Article III of the Treaty of Paris of 10 December 1898. On 24 July 1929, the United States Coast and Geodetic Survey also published charts which indicated the line delimiting the boundary separating the Philippine Archipelago and North Borneo, then a British protectorate. On 2 January 1930 when the United States and Great Britain signed the Convention delimiting the boundary between the Philippine Archipelago and the State of North Borneo, marked portions of these charts indicating the Treaty of Paris lines were attached to the same treaty and made a part thereof. (Ridao, 1974, p. 71; Article II, 1930 Convention).

Of course, the evidentiary value of these maps in establishing the sovereignty of the Philippines over the maritime and territorial areas depicted is at best *prima facie* and thus, disputable. However, maps do carry some weight as evidence in maritime boundary disputes and questions of title to territory in international law. (Hyde, 1933; Lee, 2005; Rushworth, 1998; Weissberg, 1963) In the case of the Philippines, the ancient nature of some of these maps depicting the territorial jurisdiction of the Philippines in addition to the fact that such maps were drawn by third parties may prove of value to support the Philippine claim.

### *The Philippine Position in Foreign Policy*

The Philippines, in the conduct of its foreign policy and in all its participation and representations in regional and international fora have been consistent in its position with respect to its treaty limits and territorial waters claim. The Philippines has consistently argued its position clarifying and building up its case in various national, regional and international fora over the years.

### *The Archipelago Principle*

In fact, it is through the efforts of the Philippines, along with other archipelagic States, such as Indonesia, Fiji and Mauritius, that the archipelago principle found its way into the LOSC. (See for example, Coquia, 1983; Demirali, 1975-1976; Ku, 1991; Talaie, 1998) The Philippines argued that the unity of the archipelagic State and the protection of its security, the preservation of its political and economic unity, the preservation of its marine environment and the exploitation of its marine resources justified the inclusion of the waters inside an archipelago under the sovereignty of the archipelagic State and the granting of special status over such waters. (Anand, 1975, p. 153; Munavvar, 1995, pp. 87-88)

*The Law of the Sea Conferences*

In the 1958 and 1960 Conferences on the Law of the Sea, when it was clear that no uniform rule on the breadth of the territorial sea exists, (See for example, Churchill & Lowe, 1999, pp. 78 -79; Oda, 1955, p. 417; Talaie, 1998) the Philippines proposed the archipelago theory, which sought to treat outlying or mid-ocean archipelagos such as the Philippines as a whole for the delimitation of territorial waters by drawing baselines from the outermost points of the archipelago and the belt of marginal seas outside of such baselines. (Coquia, 1982, p. 5) The archipelago theory was not adopted by the Conference for which reason the Philippines did not sign the four Geneva Conventions of 1958.<sup>3</sup> (Coquia, 2004, p. 3; Jayewardene, 1990, p. 31)

Throughout all the Law of the Sea Conferences, the Philippines pleaded for the recognition of its international treaty limits as encompassing its territorial sea on the basis of historic title. (Ingles, 1983, p. 55) However, the decision of the Conference to achieve agreement by consensus and largely due to the unexpected objection of the United States, the Philippine proposal was not included in the Informal Composite Negotiating Text (ICNT) or in the earlier drafts of the negotiating texts. (Van Dyke, 1985; Buzan, 1981).

*The Philippine LOSC Declaration*

Consistent with its position, the Philippines in 1984 submitted a Declaration at the time of signing the LOSC, which stated, among others, that its signature shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, under and arising from the colonial treaties that defined its territory. (Paragraph 2, Philippine Declaration) Further, the Philippines declared in the same instrument that the signing of the LOSC shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines and over any territory over which it exercises sovereign authority and the waters appurtenant thereto. (Paragraph 1, Philippine Declaration) The Philippine Declaration was protested by several nations including Australia, Bulgaria, Byelorussia, Czechoslovakia, the Ukraine and USSR. (See in Lotilla, 1995, pp. 541 - 547) The Philippine Declaration has been criticised for amounting to a prohibited reservation under the LOSC. (Blay, Piotrowicz, & Tsamenyi, 1984 - 1987, p. 96 - 97; Nelson, 2001, p. 780)

The said Declaration ostensibly made under the provisions of Article 310 of the LOSC, in order to be permissible, must "not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State Party." It is clear that the Philippine Declaration, which does not seek to harmonise Philippine legislation with the Convention and instead appears to subvert it, does not constitute a declaration or statement allowed by the LOSC. It is in effect in the nature of a reservation which is expressly forbidden by Article 309 of the Convention. (McDorman, 1981-1982) Moreover, in consideration of the "package deal" nature of the LOSC, a reservation is incompatible with its object and purpose

rendering it impermissible. (Buzan, 1981; Caminos and Molitor, 1985; Article 19(c), Vienna Convention on the Law of Treaties)

On 26 October 1988, in response to the objection made by Australia, the Government of the Philippines submitted a Declaration that it intends to harmonise its domestic legislation with the provisions of the Convention and that necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention. In the same Declaration, the Philippine Government assured the Australian Government and the States Parties to the Convention that the Philippines will abide by the provisions of the Convention. (See in Lotilla, 1995, p. 548.) The tenor of the Philippine response to the Australian protest seems to be a clear statement of a position of compliance with the LOSC and an implied abandonment of the Philippine Treaty Limits position.

While the Philippines has yet to reform its legislation to conform with the provisions of the LOSC, the statement indicates its willingness to do so and constitutes a positive act of State that is not without legal significance in international law. The Philippine Congress has recently enacted a new baselines law which is compliant with the technical requirements of the LOSC pertaining to archipelagos. (Republic Act No. 9552, 2009) This is part of the Philippine Government's efforts to align the national legal and policy frameworks on the various maritime jurisdictional zones with the LOSC.

## Conclusion

The issue of the limits of the national territory of the Philippines is a politically sensitive process both from a national and international perspective. Domestically, the constitutional definition of the national territory is the paramount obstacle in the performance of the Philippines of its treaty obligations under the LOSC. Article 1 of the 1987 Philippine Constitution and other domestic laws define the national territory and the various maritime jurisdictional zones under the LOSC. Thus, from a constitutional perspective, the Philippine Treaty Limits define the boundaries of the country's national territory. Proceeding from this premise, a re-definition of the national territory would require an amendment of the Constitution. This, however, is not the only hurdle. The Philippines is a nation with a strong democratic tradition, a people which takes empowerment seriously, having toppled dictators and removed erring presidents, and a judiciary known for its independence. It will take more than the empty coercive forces of international law for the Philippines to 'give up' claimed maritime space the country has defended to be part of its patrimony. (Magallona, 1995b, pp. 51-52, *et seq.*, Tolentino, 1974, p. 51; Mendoza, 1969-1973, pp. 632-633. *But see*, Coquia, 2004, p. 12; Feliciano, 1962, pp. 160-161; Batongbacal, 2001, p. 157; Chan-Gonzaga, 1997, pp. 47- 48).

From an international perspective, the issue is more straightforward. The international community is not interested in colonial treaties which supposedly defined the territorial and maritime boundaries of the Philippines. The paramount interest of the international community is to safeguard their rights and interests

with regard to access to resources, freedom of navigation and other lawful uses of the sea in Philippine waters. The Philippine claims to expansive territorial waters and maritime space claimed as territory necessarily call these rights into question.

#### *Philippine International Legal Obligations*

A State's territory is a precious heritage, as well as an inestimable acquisition that cannot be taken lightly by anyone - either by those who enjoy it or by those who dispute it. The intricate issues discussed above raise a single question of profound importance to the integrity of the territorial and maritime domains of the Philippines as a sovereign nation.

The issue of the validity of the limits of the Philippine's national territory lies at the intersection of international law and municipal law. The Philippines, as a member of the family of nations, recognises and is bound by principle of international law - both conventional and customary - in all matters having an international character. In a strict sense, the extent of a nation's territory is never truly determined unilaterally by that State. More so, it can neither be determined arbitrarily nor in violation of customary international law or treaty obligations.

The basic principle is that public international law leaves it to the constitutional law of each State to settle problems arising in the application of international law, by its courts or rules of international law, especially rules contained in a treaty. It is certainly true that a State may not invoke the provisions of its internal law as justification for its failure to perform the treaty; (Article 27, Vienna Convention on the Law of Treaties) but it remains free to choose the means of implementation it sees fit according to its traditions and to the fundamental principles of its political organisation. Its choice may of course have consequences in terms of international responsibility. (Reuter, 1989, p. 17).

In numerous fora and academic literature, the legal debate on the validity of the Philippine Treaty Limits in international law has centred on whether it is in conformity with the Law of the Sea Convention. (*See for example*, Batongbacal, 2002; Chan-Gonzaga, 1997; Coquia, 1995; Kwiatkowska, 1990, 1991; Magallona, 1995a; Tolosa, 1997) It has also been strongly argued that the claim likewise violates customary rules of international law pertaining to the breadth of the territorial sea which have crystallised into that status over the passage of time since the entry into force of the Convention. However, this ignores two main premises that underlie the Philippine claim. First, the fact that the maritime and territorial boundaries claimed by the Philippines as defined in its Treaty Limits pre-dated the Law of the Sea Convention by over a century. (Ingles, 1983, p. 49) Second, although the onus of proof is high, since the juridical regime of historic waters is an exceptional regime, international law allows the Philippines to lay claim to the waters within the Treaty Limits on the basis of historic right of title. (D'Amato, 1969, p. 216; Goldie, 1984, p. 248 - 263; Kent, 1954, p. 522; Murphy, 1990, p. 537; Pharand, 1971, pp. 2 -3)

However, it must be remembered that in international law, once a State expresses its consent to be bound by an international undertaking, that State must comply with its obligations arising from that undertaking in good faith. This is

embodied in the international legal principle of *pacta sunt servanda*, codified in the Vienna Convention on the Law of Treaties, which in Article 26 states: “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” Thus, the Philippine Government is obliged to observe this rule vis-à-vis its commitments under the LOSC. In fact, the contracting parties may demand that the Philippines fully comply with its obligations. This is made more acute by the fact that the LOSC, widely regarded as the “constitution for the oceans,” is almost universally accepted with many of its provisions considered codification of customary international law or slowly crystallising norms of international law.

On the other hand, it must be emphasised that the international legal rules and principles governing maritime delimitation distilled from State practice, judicial and arbitral decisions and treaties are formulated at a high level of generality and abstraction. The entire corpus of legal principles on maritime boundary delimitation is at best, mere guidelines and not iron-clad rules that apply in any situation. Ultimately, even these rules will need to bend to respect the pre-eminence of State territorial sovereignty in international law.

#### *A Reform Agenda*

The issue of non-compliance with an international norm is not to be taken lightly. Discussing uniformity of legislation within a transnational context is rendered easy if the law in question is obviously inconsistent. But what does one do after? How does one proceed? What are the means of addressing this inconsistency within the international legal order and within the domestic legal framework? The Philippine legal framework pertaining to its maritime zones should be put on the reform agenda. The problem has dragged long enough. These are some of the steps that need to be done: first, the Philippines must take the necessary legal, regulatory and administrative reforms to adopt, amend or withdraw existing legal or administrative domestic issuances with a view towards the harmonisation of its domestic legal framework with customary and conventional international law; second, seriously commit a whole-of-government approach towards the proper implementation of the LOSC within its domestic legal system including the designation of archipelagic baselines, archipelagic sea lanes, the delimitation of its overlapping maritime boundaries with its neighbours, among others. These essentially call for the vertical harmonisation of laws with the international legal order and a horizontal harmonisation of laws across administrative agencies implementing national policies and legislation.

There is always that fragile balance between obeying international law and maintaining sovereign autonomy. Especially from a political standpoint, the leaders of a country are not always keen to lose face with their fellowmen for acts that may be interpreted domestically as treasonous or un-nationalistic. A sound objective is to ensure that Philippine leaders are cognisant of the need to clearly articulate the strategic rationale for the Treaty of Paris lines and the constitutional changes needed in prospect to avoid any misperceptions about their intent and purpose both within the nation and in the international community. The Philippines needs to strike the right balance between excessive timidity and

unbridled nationalism in foreign policy. It is important for the Philippines to understand that the Treaty of Paris lines still carry a great deal of colonial historical baggage. The Philippines must be aware of its strategic concerns in the contemporary context.

The Philippine government needs to find a near optimal solution that will secure for the Philippines the greatest extent of claims with the most likelihood of being accepted by the community of nations. The unilateral declaration of sovereignty which is almost universally challenged is tantamount to no sovereignty. Even despite the fear of suffering the embarrassment of inconsistency, the Philippines should once and for all settle this issue. The idea of sovereignty carries a very strong emotional appeal to the nationalistic sentiments of Filipinos, or to the people of every nation for that matter. However, obstinately holding on to an idea which does not have a secure basis in international law is more embarrassing to the Philippine Government.

As a democracy, a maritime nation and member of the community of nations, the Philippines has a vested interest in becoming a more influential and constructive actor in the security affairs of the region. This means that the Philippines will need to pay greater attention to the strategic dimension of its treaty commitments, its multilateral relationships and to work more cooperatively on transnational issues. Ultimately, an act which is not in conformity with international law is actually antithetical to the interests of the Philippines.

## Endnotes

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<sup>1</sup> To be precise, three colonial treaties define the territorial boundaries of the Philippines: (1) Treaty of Peace Between the United States of America and the Kingdom of Spain, U.S.-Spain, 10 December 1898, T.S. No. 343 [Hereinafter referred to as *Treaty of Paris*]; (2) Treaty Between the Kingdom of Spain and the United States of America for Cession of Outlying Islands of the Philippines, U.S.-Spain, 7 November 1900, T.S. No. 345; (3) Convention Between the United States of America and Great Britain Delimiting the Boundary Between the Philippine Archipelago and the State of North Borneo, U.S.-U.K., 2 January 1930, T.S. No. 856.

<sup>2</sup> Philippine National Mapping and Resource Information Authority

<sup>3</sup> In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958: (1) *Convention on the Territorial Sea and Contiguous Zone*, U.N. Doc. A/Conf.13/52, entry into force: 10 September 1964; (2) *Convention on the Continental Shelf*, U.N. Doc. A/Conf.13/L55, entry into force: 10 June 1964; (3) *Convention on the High Seas*, U.N. Doc. A/Conf.13/L.53, entry into force: 30 September 1962; and (4) *Convention on Fishing and Conservation of Living Resources of the High Seas*, U.N. Doc. A/Conf.13/L.54, entry into force: 20 March 1966.

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