MARITIME ENFORCEMENT IN THE PHILIPPINES: ISSUES AND CHALLENGES

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The United Nations-Nippon Foundation Fellowship Programme 2012 – 2013

Oceans and Law of the Sea

Division for Ocean Affairs and the Law of the Sea

DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA
OFFICE OF LEGAL AFFAIRS, THE UNITED NATIONS
NEW YORK 2012

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Abstract

As an archipelagic and maritime nation, the Philippines recognizes the crucial need to protect, conserve and manage its marine and coastal resources and the environment. Protection, conservation and management entail enforcement of all maritime related laws by various government agencies. Maritime enforcement however is a very challenging task as an integrated part of ocean management given the strategic location of the country as an archipelago. Maritime enforcement in the Philippines covers a wide range of issues from policies, territorial disputes, law enforcerment capabilities, water assets to patrol crafts deployments, and system of information sharing to include surveillance and monitoring strategy. These challenges however, can best be categorized by either in maritime security, maritime safety, and marine environment protection encompassing maritime enforcement strategy in general.

With 7,107 number of recorded islands of the Philippines, the dilemma facing all the maritime agencies involved in protecting the nations sovereignty remains to be at stake and somehow critical. Given the delineated functions of the key players in maritime enforcement a number of factors must be addressed to ensure effective enforcement and preservation and protection of the marine resources. As everybody benefits in the rich natural resources of the sea it is imperative therefore that key agency involved in the protection of the sea must merge in order to play their roles well. In the business of promoting safety and protecting the sea from terrorist or any oil spill incident it takes collective effort to perform such multifarious functions of the government. Having a kind of merger between agencies that operate in Philippine ports and waters can be best achieved if given enough authority by providing them the necessary resources in establishing a one maritime enforcement policy encompassing, search and seizure operations, oil spill, ships and ports security, board and search, search and rescue, illegal fishing and other maritime related activities.

In other nations, mergers and joint operations or even joint task forces were proven effective by their governments. Like for instance the US, Australia and Finland, despite their technological advancement and resources, they still resort to joining their logistics and assets of their maritime, police, customs and border enforcement agencies. One of the rationales of these mergers was to increase interoperability and wide access of information on surveillance and monitoring.

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Acronyms

AFP	Armed Forces of the Philippines
AMIS	Australian Maritime Identification System
AOR	Area of Responsibility
ASG	Abu Sayyaf Group
ATON	Aids to Navigation
BFAR	Bureau of Fisheries and Aquatic Resources
BD	Bantay Dagat
BID	Bureau of Immigration
BIMP-EAGA	Brunei Darussalam, Indonesia, Malaysia, and Philippines - East ASEAN Growth Area
BPC	Border Protection Command
BuCos	Bureau of Customs
COLREGS	Convention on the International Regulations for Preventing Collisions at Sea
DENR	Department of Environment and Natural Resources
DILG	Department of Interior and Local Government
GIS	Geographical Information Systems
IMO	International Maritime Organization
ISPS	International Ship and Port Facility Security
ISRAP	Integrated Security Response Action Plan
JI	Jemaah Islamiyah
JMOC	Joint Maritime Operation Center
JOPC	Joint Offshore Protection Command
JWC	Joint War Committee Lloyds, London
LGC	Local Government Code
LGU	Local Government Unit
MARINA	Maritime Industry Authority
MARPOL	Marine Pollution
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
NCWS/CWS	National Coast Watch System
NICA	National Intelligence Coordinating Agency
NOSCP	National Oils Spill Contingency Plan
NPCC	National Pollution Control Commission
OTS	Office of Transportation Security

PA	Philippine Army
PCB	Police, Customs and Border Guard
PCG	Philippine Coast Guard
PDEA	Philippine Drug Enforcement Agency
PN	Philippine Navy
PNP-MG	Philippine National Police-Maritime Group
PSC	Port State Control
ReCAAP – ISC	Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia – Information Sharing Centre
SOLAS	Safety of Life at Sea
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
TFSM	Task Force Sea Marshall
TSS	Traffic Separation Scheme
VTMS	Vessel Traffic Monitoring System

Acknowledgements

My sincerest gratitude to the Nippon Foundation and to the United Nations Division for Ocean Affairs and Law of the Sea for the invaluable opportunity of being part of the Fellowship Programme 2012-2013.

Heartfelt thanks to my supervisor during the first phase of the fellowship, Professor Martin Tsamenyi, for taking me under his wings, despite my being a neophyte in the world of research. Also, I wish to thank Dr. Francois Bailet for his supervision and patience in dealing with a newbie like me.

My deepest gratitude to the Philippine Coast Guard for trusting my abilities and allowing me partake in the UN Nippon Fellowship Programme.

My earnest appreciation to the Australian National Centre for Ocean Resources and Security (ANCORS) for welcoming me into family and providing me everything I need for my research, from the resources, encouragement, friendship, down to free tea and snacks. I will forever be grateful to the staff, professors and PHD students for making my stay in Wollongong memorable.

Special thanks to Ara, Giselle, Kuya Rene and his lovely Italian wife Rosa, Sir Bel, Ed, Marge, Anne and Gaylord, my Filipino friends in Wollongong, without them I would not have survived my six months of being away from my family. They all have been the pill to my homesickness.

Many thanks to the kind hearted UN DOALOS staff and 2012-2013 Fellows. Seeing their cheerful faces everyday made me believe that there is no place for loneliness in NY.

To my ever supportive parents, family, and friends back home, I thank you for your prayers, love and encouragement. And to Charles, words are not enough to thank you for everything that you have done for me.

Last but not the least, thank you Lord for never leaving my side.

Table of Contents

List of Tables

List of Figures

Introduction

As an archipelagic and maritime nation, the Philippines recognizes the crucial need to protect, conserve and manage its marine and coastal resources and the environment. Protection, conservation and management entail enforcement of all maritime related laws by various government agencies. Maritime enforcement however is a very challenging task as an integrated part of ocean management given the strategic location of the country as an archipelago.

The Philippines is located in the heart of South East Asia, surrounded by three prominent waters, the Pacific Ocean on the east, the South China Sea on the west and north, and Celebes Sea on the south. It has a total land area, including inland bodies of water, of approximately 300,000 square kilometers (120,000 sq mi).[1] The 36,289 kilometers (22,549 mi) of coastline makes the country the 4th longest coastline in the world following Canada, Indonesia and Greenland, and Russia.[2] The Philippines as an archipelago is volcanic in origin consisting of about 7,107 islands and extends over 1,150 miles 1,850 kilometers from north to south[3]. The largest of the Philippine islands, Luzon, has an area of 41,000 square miles.[4] Over half of the islands that make up the country belong to the Visayan group with 22,226 sq. mi,[5] forming a rough circular pattern around the Visayan Sea. Mindanao, the second largest of the Philippine Islands, has an area of 37,000 square miles.[6]

The archipelagic nature of the Philippines explains the natural affinity of its people to the seas, either as the source of food or as a means of livelihood. The waters in and around the islands serves as an important medium for inter-island and international transportation and commerce, a source of food and livelihood for the Filipinos, and a home to a rich variety of

[1]World Atlas. "Philippines: Land Statistics"; available at http://www.worldatlas.com/webimage/countrys/asia/philippines/phlandst.htm.
[2] The CIA World Factbook (ISSN 1553-8133). Coastline; available at https://www.cia.gov/library/publications/the-world-factbook/fields/2060.html.
[3] Encyclopedia Britannica Online. Philippines 2012. available at http://www.britannica.com/EBchecked/topic/456399/Philippines.
[4] Alden Cutshall, "The Philippine Islands and Their People." Journal of Geography 41.6 (1942): 201-211.
[5] Encyclopedia Britannica Online. Visayas 2012. available at http://www.britannica.com/EBchecked/topic/630313/ Visayas.
[6] Cutshall, op. cit., pp. 201-202.

marine species and habitats.[7] The maritime industry plays a vital role in the achievement of the economic progress of the country. According to the 1994 Philippine Standard Industrial Classification, the economic activities of the maritime sector may cover the broad industries of fishery and forestry; mining and quarrying; construction; manufacturing; transport, communication and storage; trade; finance; and services. The maritime industry roughly accounts for 1.7 percent of revenue/sales of all industries, 1.0 percent of cost (of goods sold) of all industries and 3.3 percent of the employment of all industries.[8] The fishing industry in particular accounts for 83.50 percent of revenue[9]. The maritime activities for the transport and storage industry cover 15.6 percent of cost.[10] And the maritime activities in real estate, renting and business industry account for 13.1 percent of employment.[11]

With 7,107 number of recorded islands of the Philippines, the dilemma facing all the maritime agencies involved in protecting the nations sovereignty remains to be at stake and somehow critical. While the government through the leading maritime agencies like the Philippine Coast Guard, Philippine National Police Maritime Group, Philippine Navy, Maritime Industry Authority, and all other government maritime authorities like the Bureau of Fisheries Aquatic Resources, Department of Environment and Natural Resources, Bureau of Customs, Philippine Drug Enforcement Agency and Bureau of Immigration, continues to draft and executes policies exercising each mandates to ensure and maintain the sovereignty and safety of all the coastal areas surrounding the Philippine territorial jurisdiction.

Given the delineated functions of the key players in maritime enforcement a number of factors must be addressed to ensure effective enforcement and preservation and protection of the marine resources.

Objective of the Study

The study will examine ways in which enforcement agencies can be more relevant and effective to enable them to support maritime operations ashore and offshore. One of the most

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[7] One Ocean Information, "Philippine marine Biodiversity: A Unique World Treasure"; available from http://www.oneocean.org/flash/philippine_biodiversity.html.
[8] Romulo A. Virola et. al., "Republic of the Philippines National Statistical Coordination Board. Measuring the Contribution of the Maritime Sector in the Philippine Economy," East Asian Seas Congress 2009/23/November/2009.
[9] Ibid.
[10] Ibid.
[11] Ibid.

important elements of this study, however, are the law enforcers involved in effecting the laws given to the absolute dependence of the law enforcement agencies its advantage to manpower but limited logistical resources.

The Philippine Constitution (1987)

The 1987 Constitution provides general policies for the utilization and management of natural resources and the protection of the environment. The most basic element is the definition of the extent of Philippine territory in Article I of the 1987 Philippine Constitution, to wit:

> The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

Apart from the Constitution, statutes and judicial decisions, the structure of the Philippine legal system considers international laws, international customs, general principles of international laws, international jurisprudence and writings of legal luminaries as sources of laws. This is in fact affirmed in the incorporation clause[12] of the Philippine Constitution. Said recognition connotes that the treaties and international conventions which the Philippines enter into with other states have the same force of authority as legislative enactments. A treaty or international agreement is on equal footing with domestic legislation.

According to Isagani Cruz in Philippine Political Law,[13] in case of irreconcilable conflict between Philippine law proper and international law the former prevails. The Supreme Court, in the landmark case of Secretary of Justice v. Lantion[14], asserted that international law "has been made part of the law of the land," but this "does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere". Within domestic

[12] 1987 Philippine Constitution (hereafter: Constitution), Art. II (Sec.1).
[13] Isagani A. Cruz, Philippine Political Law (Central Law Book Publishing: Quezon City, 1991).
[14] Secretary of Justice v. Lantion 322 SCRA 160 (2000).

jurisdiction, a treaty cannot in any way be transformed into an instrument that derogates Philippine sovereignty, or of sovereign powers under the Constitution. The supremacy of the Constitution is inferred in the nature of judicial review involving the constitutionality or validity of a treaty or executive agreement.[15] In national law, there are no norms higher than the constitutional norms. Thus, before the national courts of the state where the statute has been enacted, that which is later in date must prevail, unless the treaty contains provisions of international law which have been adopted in the Constitution as part of the law of the land, in which case the treaty must prevail.

Government

The Constitution is the fundamental law of the land. The present political structure of the Philippines was defined by the 1987 Constitution and states that the Philippines is a democratic and republican state where sovereignty resides in the people and all government authority emanates from them.[16] The system of national government is divided into three branches: the Executive Department led by the President, the Legislative Department composed of the Senate and House of Representatives, and the Judicial Department composed of the Supreme Court and all other lower courts.[17] These branches are co-equal and are guided by the principle of separation of powers based on the theory of check and balance.

The role of policy-making traditionally belonged to the executive and legislative branches of the government. However, due to the ever expanding role of the government the administrative agencies composing the bureaucracy become an active participant in the policy making process. The administrative agencies implement such policies which forms part of the public law of the land. The bureaucracy on the other hand has the necessary resources and critical inputs to do so: people, experience, technology, and information.

Local government is subordinate to the national government. Local government generally acts within powers delegated to them by legislation or directives of the national government. The shift from national to local is aimed to "bring the government closer to the people" and involves the transfers of power, authority and responsibility or discretion to plan, decide,

[15] Constitution, Art. VIII, 5(2) (a).
[16] Constitution, Art. II (Sec. 2).
[17] 1987 Philippine Constitution, Art. VI (Sec. 1), VII (Sec. 1), and Art. VIII (Sec. 1).

manage the lower or local levels that are within the central or national government itself and the transfer of power and authority from the national government to Local Government Units (LGUs), defined in the 1987 Constitution as the territorial and political subdivisions of the state.[18] In the Local Government Code of 1991, the responsibility for the enforcement of certain regulatory powers that earlier were the job of national government devolves to LGUs such as the enforcement of environmental laws,[19] jurisdiction over municipal waters,[20] and the registration of municipal fishing boats three gross tons (3GT) and below,[21] among others.

Judicial System

Judicial power rests with the Supreme Court and the lower courts, as may be established by law.[22] Courts are the most prevalent formal institutional setting for sanctioning the violation of laws and regulations. Court litigation, in general, is the normal method of settling disputes in the Philippines. The judge determines all questions of law and fact of cases brought before him. While the Rules of Court govern the pleadings, practice and procedure for civil actions, special proceedings, criminal procedure and evidence before all courts in the Philippines.

Enforcement of environmental laws has been largely confined to administrative bodies with quasi-judicial mandates. Often, adjudication before administrative bodies does not fully realize the maximum impact of enforcement. Awareness among prosecutors and judges with regard to environmental concerns has been limited to specific legislation such as forestry. Along with the economic growth of the country, environmental problems have increased and become more complex. The need to provide a more deliberate framework for engaging the court system and other components of the administration of justice has been perceived. Resort to court action, especially with regard to criminal violations of environmental laws, would create more teeth in the enforcement of these laws.[23]

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[18] Roel Ravanera, "Decentralized Government in the Philippines, in Decentralized Rural Development and the Role Of Self Help Organizations," RAP Publication, 1999.
[19] Soliman Santos, Jr., "Local Government, Effectiveness and Human Rights: THE PHILIPPINES," International Council on Human Rights Policy, 2004.
[20] Republic Act 7160, The Local Government Code.
[21] Executive Order No. 305, Devolving to Municipal and City Governments the Registration of Fishing Vessels three (3) Gross Tonnage below.
[22] Constitution, Art. VIII (Sec. 1).
[23] Sedfrey Candelaria and Maria Milagros Ballesteros, "Designation of "GREEN BENCHES" in the Philippines: Regional Exchange in Support of Improved Judicial Institutions and Capacity".

One of the most significant recent developments in the judicial system is the designation by the Supreme Court of 117 municipal and regional trial courts as environmental courts to hear, try and decide cases involving violations of laws protecting the country's natural resources and to speed up their resolution[24]. The environmental courts are manned by skilful 'green judges' who not only master environmental laws, but also understand the philosophy of environmentalism. The special environment courts can try and decide violations of environmental laws committed within their respective territorial jurisdictions, including but not limited to the following: Marine Pollution Law, Toxic Substances and Hazardous Waste Act, Philippine Fisheries Code, Clean Water Act, Ecological Solid Waste Management.[25]

Part One – CONTEXT AND FRAMEWORK SETTING

Chapter 1 – MARITIME SECURITY AND SAFETY

Marine Transportation. The significant role of shipping is even more emphasized and remains the major means by which islands are linked and through which movement of goods and people is achieved. In fact, there is no known island that cannot be reached by ship or small boat as there are 69 coastal provinces out of 79 provinces in the country.

As an archipelago, inter-island travel via watercraft is often necessary.[26] There are 3,219 kilometers (2,000 mi) of navigable inland waterways.[27] The busiest seaports are Manila, Cebu, Iloilo, Davao, Cagayan de Oro, and Zamboanga. Passenger ships and other sea vessels such as those operated by Superferry, Negros Navigation, and Sulpicio Lines serve Manila, with links to various cities and towns. In 2003, the 919-kilometer (571 mi) Strong Republic Nautical Highway (SRNH)[28], an integrated set of highway segments and ferry routes covering 17 cities was established.[29] Some rivers that pass through metropolitan areas, such

[24] Supreme Court Administrative Order Nr 23-2008, Designation of Special Courts to Hear, Try and Decide Environmental Cases.
[25] Amado S. Tolentino, Jr and Ana Maria E. Tolentino, "Philippines: Environmental Law and Justice – Developments and Reforms," Environmental Policy and Law 41.3 (June 2011).
[26] "Gov't revives Pasig River ferry service," GMA News, 14 February 2007.
[27] Ibid., at footnote 2.
[28] Executive Order No. 170, January 22, 2003.
[29] The *Strong Republic Nautical Highway (SRNH)* in the Philippines is an integrated network of highway and vehicular ferry routes which form the backbone of a nationwide vehicle transport system, when combined with other road and ferry routes not formally part of the SRNH. The 919 kilometer nautical highway was opened to the public on April 12, 2003. Its route covers the provinces and cities of Oriental Mindoro, Tagaytay City

as the Pasig River and Marikina River, have air-conditioned commuter ferries. The Pasig River Ferry Services has numerous stops in Manila, Makati, Mandaluyong, Pasig and Marikina.

Security and Defense. Philippine defense is handled by the Armed Forces of the Philippines and is composed of three branches: the Air Force, the Army, and the Navy (including the Marine Corps).[30] Civilian security is handled by Philippine National Police under the Department of Interior and Local Government (DILG).[31] While the Philippine Coast Guard under the Department of Transportation and Communications (DOTC) works together with other uniformed services to ensure both security and safety of the archipelagic waters.[32]

The ability of terrorist groups, including the Abu Sayyaf Group (ASG), Jemaah Islamiya (JI), and the Communist People's Party/New People's Army (CPP/NPA), to conduct terrorist activities inside the Philippines remained constrained and their presence has decreased in recent years due to successful security provided by the Philippine government.[33] On September 2011, President Aquino signed Executive Order 57 creating the Coast Watch System to coordinate maritime security operations and help the country protect its maritime boundary against transit by violent extremists.[34] Accordingly, a center was established and spearheaded by the PCG to implement and coordinate maritime security operations in

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(Cavite), Marinduque, Romblon, and Batangas City in Luzon; Aklan, Antique, Iloilo, Capiz, Negros Oriental, Negros Occidental, Bohol, Cebu, Guimaras, and Siquijor, in the Visayas; and Misamis Occidental, Misamis Oriental, Lanao del Norte, and Dapitan City in Mindanao. This system reduces the usual travel time by 17 hours to the different key cities, enhances the accessibility of the prime tourist destinations, and minimizes the handling expenses of goods, all over the country. Several bus companies operate routes using the nautical highway. Each operates multiple daily bus trips over the SRNH between Manila bus terminals sited in Cubao and Pasay, and Iloilo City, with connections available in Iloilo for onwards transportation. The SRNH segment between Manila and Iloilo runs by road to Batangas City, by ferry to Calapan, by road to Roxas, Oriental Mindoro, by ferry to Caticlan (gateway to Boracay, located in Malay, Aklan) and onwards by road to Iloilo City. Private van transport is generally available for hire over individual SRNH road segments, and the ferry segments accept walk-aboard passengers as well as vehicles, available from The Macapagals website, Gloria Macapagal Arroyo SRNH Initiative page, http://web.archive.org.

[30] Commonwealth Act No. 1, National Defence Act, December 21, 1935.

[31] Republic Act 6975, entitled An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government and Other Purposes as amended by R.A, 8551 Philippine National Police Reform and Reorganization Act of 1998 and further amended by R.A. 9708.

[32] Republic Act No. 9993, The Coast Guard Law of 2009.

[33] United States Department of State, "Country Reports on Terrorism 2011 - Philippines," 31 July 2012, available from http://www.unhcr.org/refworld/docid/501fbca5c.html, internet accessed 27 November 2012]

[34] Executive Order No. 57. National Coast Watch System (NCWS) to expand the country's naval security operations to preserve the Philippine territory and protect its people and resources from maritime threats. The PCG, Navy, the PNP-Maritime Group, National Prosecution Service of the DOJ, Bureau of Customs, Bureau of Immigration, National Bureau of Investigation, Bureau of Fisheries and Aquatic Resources, and the Philippine Center on Transnational Crime shall provide manpower, equipment and material support to the National Coast Watch Center. 06 September 2011.

accordance with the strategic direction and policy guidance to be issued by the National Security Council.

The Philippines receives various forms of U.S. military assistance as it is a strong political, economic and military ally outside of its territory and a close partner in the global war against terrorism. The two nations forged the U.S. - Philippines Mutual Defense Treaty and concluded the Visiting Forces Agreement, paving the way for increased military cooperation. The U.S. conducts ship visits to Philippine ports and engages in military exercises with Philippine forces. With the spread of Al Qaeda across the globe and the growth of the Al Qaeda-linked South East Asian terrorist network JI, the stability and security of the Philippines and U.S. - Philippines counterterrorism efforts take on a new urgency.[35]

Tourism. Tourism as well is a major source of income and employment for the Philippines.[36] In 2000, the Philippines' tourist arrivals totaled to 2.2 million.[37] In 2003, a growth of almost 29% was recorded, and expected to grow as much as 3.4 million in the following years.[38] In 2011, the Department of Tourism (DOT) recorded 3.9 million[39] tourists visiting the country surpassing by 4.6% DOT's 2011 target visitor arrivals of 3.7 million.[40]

Coastal and marine attractions are the most important tourism destinations. Destinations such as Boracay, Cebu and Palawan remain the core of beach-based tourism in the Philippines although there are a number of destinations emerging with important ecotourism potential. Scuba diving, snorkeling, sea kayaking and marine mammal viewing are some of the coastal-based ecotourism activities in the Philippines. Whale shark encounters have recently been established at Donsol; whale and dolphin watching is operating successfully in the Tañon Strait from Bais; diving in Tubbataha helps generate funds for the management of Tubbataha World Heritage Site; the Olango Island Birds and Seascape Tour is helping to protect an internationally important wetland and bird sanctuary; and El Nido Resorts in Palawan are

[35]The Anti-Defamation League website, "Article on The Philippines and Terrorism," available from http:// www.adl.org; posted on April 2004.
[36] National Statistics Coordination Board, "Philippine Tourism Satellite Account (PTSA) Total Employment in the Philippines and Employment in Tourism Industries, 2000 – 2010."
[37] National Statistics Coordination Board website, available from www.nscb.gov.ph.
[38] Ibid.
[39] Ibid.
[40] "Tourism Dept. claims 2011 a banner year for the Philippines," GMA News Online, February 9, 2012.

actively involved with community development and conservation of the El Nido Managed Resource Protected.[41]

Coastal tourism has also some disadvantages to the Philippines as it contributed to the pollution of coastal areas. Pollution from this sector is usually lumped under the household sector, as the generated waste is domestic.[42] Waste from tourism activities primarily affects the business itself. A concrete example of this is Boracay where, for a time, the number of tourists dwindled as a result of high coliform counts from the beaches. [43]

1.1 Maritime Security Threats

1.1.1 Maritime Terrorism

In the southern part of the country, the Philippines continues to be confronted with internal security threats coming from a protracted communist insurgency and a secessionist rebellion in parts of Mindanao, as well as the proliferation of partisan armed groups.[44] This is further aggravated by the existence and activities of the terrorist Al-Harakat Al-Islamiyah Islamic Movement, better known as Abu Sayyaf Group (ASG) with its links to international terror networks with Al Qaeda.[45] The ASG's home ground is the Sulu archipelago, primarily the islands of Basilan and Jolo where the group initially conducts acts of maritime terrorism, kidnappings, piracy, and other criminal activity but broadened its reach.[46]

In April 2000, ASG kidnapped 21 people, including 10 foreign tourists, from a resort in Malaysia and in a separate incident, abducted several foreign journalists and an American citizen.[47] In May 2001, ASG kidnapped 20 people from a resort island in the Philippines and

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[41] Department of Tourism, "National Ecotourism Strategy," July 2002.
[42] World Bank 2005, "Philippines Environment Monitor 2005: Coastal and Marine Resource Management," pp. 2-3
[43] World Bank 2003, "Philippines - Environment Monitor 2003," Washington D.C.
[44] 2011-2016 National Security Policy, "Securing the Gains of Democracy," available at http://www.gov.ph/NATIONAL-SECURITY-POLICY-2011-2016.pdf.
[45] Eusaquito P. Manalo, "The Philippine Response to Terrorism: The Abu Sayyaf Group" (Naval Postgraduate School Monterey, December 2004).
[46] Eduardo F. Ugarte, "The Alliance System of the Abu Sayyaf, 1993–2000," Studies in Conflict & Terrorism, 31:2, 125-144 (2008).
[47] Ian Storey, "Securing Southeast Asia's Sea Lanes: A Work in Progress," Asia Policy vol. 6 issue 1 (2008): pp.95-128

murdered several of the hostages.[48] Philippine authorities strongly believed that the ASG had a role in the October 2002 bombing near a Philippine military base in Zamboanga that killed three Filipinos and a U.S. serviceman.[49] In February 2004, the worst maritime attack in history of the Philippines transpired when the ASG mounted an operation by planting an explosives-laden television set in the tourist compartment of SuperFerry 14,[50] plying between Manila and the southern Philippines, killing 118 passengers. [51]

Another insurgent group is the Moro Islamic Liberation Front (MILF), the largest Islamist organization in the southern Philippines. Although MILF is mostly land-based entity it has utilized maritime conveyance to transport weapons, personnel and battle-related material in the region channelled to the group's bases via the tri-border area (TBA) (between the Philippines, Malaysia, and Indonesia) through the highly porous borders of Sabah the back door to the Philippines.[52] MILF was said to be very instrumental in supplying explosives to the factionalized Indonesian terrorist group Jemaah Islamiyah (JI) for terrorist attacks in Indonesia, including the 2002 Bali bombings that killed over 200 people.[53] These explosives were claimed to be smuggled from Mindanao and the shipments passed through the Sulu and Celebes Sea.[54]

1.1.2 Sea Robbery

Sea robbery comes in many forms such as small theft robbery, oil or petroleum smuggling initiated by the local informal settlers and some minor crimes committed by foreign nationals. A majority of sea robbery incidents in the country occur in ports or when the boat is at anchor.[55] The crew can be violently assaulted by armed groups that target cash, expensive equipment, and parts of the cargo.

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[48] S.L. Farris, "Joint Special Operations Task Force-Philippines (Monograph)" (Leavenworth KS. United States Army Command and General Staff College, 2009).
[49] Ibid., at footnote 35.
[50] Dr Rohan Gunaratna, "The Threat to the Maritime Domain: How Real Is the Terrorist Threat?" William B. Ruger Chair of National Security Economics Papers (2008), available at http: //www. nwc. navy. mil/nsdm/Rugerpapers.
[51] Ibid., at footnote 3535.
[52] Angel Rabasa and Peter Chalk, "Non-Traditional Threats and Maritime Domain Awareness in the Tri-Border Area of Southeast Asia; The Coast Watch System of the Philippines," RAND Defence Research Institute, p. 14.
[53] Billye G Hutchison, "Abu Sayyaf," The Counterproliferation Papers, Future Warfares series no. 49 (USAF Counterproliferation Papers, Air University, Maxwell Airforce Base, Alabama)
[54] Rabasa and Chalk, *op. ci,t.* p. 14.
[55] Sam Bateman, Joshua Ho and Jane Chan, "Good Order at Sea in Southeast Asia," S. Rajaratnam School of International Studies, Nanyang Technological University, 2009.

1.1.3 Piracy

In the Philippines, the disparity between piracy and terrorism is unclear.[56] The ASG, MILF and the Moro National Liberation Front (MNLF) are all engaged in maritime piracy to generate much needed funds rather than ideological and political goals.[57] Since 1993 to 2004, Philippine authorities have recorded over 1,300 cases of piracy and armed robbery against vessels, mainly in the Southern parts of the country.[58]

The best opportunities for small-scale pirate attacks are offered in and around harbours. Ships at anchor or berthed while waiting to enter a harbor are vulnerable to piracy as in the case of the four foreign vessels namely MV KING ADRIAN, containership of Marshall International Shipping Lines; MV KOTA NIPAH a containership of Singaporean registry; MV AGAMENON a bulk carrier of Liberian registry; and MV STX QINGDAO, a Marshall Island flag container vessel that were boarded by small-time pirates at the anchorage area of the Port of Manila in 2012.[59] MVs KOTA NIPAH and AGAMENON were divested of immersion suits while MVs KING ADRIAN and STX QINGDAO of their liferaft.[60]

The problem of piracy is considered a threat to the regional and international economic security.[61] The Philippines, together with Indonesia, Malaysia and Singapore are the ASEAN countries mostly affected by piracy.[62] The free and safe navigation of commercial vessels in Southeast Asia is essential for international trade.[63] Also, piracy attack on oil super-tankers could be worrisome as it has the danger of causing environmental disaster of massive proportions.[64]

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[56] Catherine Zara Raymond, "Piracy in Southeast Asia: New trends, issues and responses," Harvard Asia Quarterly 9.4 (2005): 62.

[57] Eduardo Ma R Santos, "Piracy & Armed Robbery Against Ships: Philippine Perspective," Paper delivered at ISEAS conference: Maritime Security, Maritime Terrorism and Piracy in Southeast Asia, 23-24 September 2004, p. 5. If a group becomes motivated by pecuniary rewards, the acts that it carries out no longer fall under the definition of terrorism, which states that: Terrorism is "the unlawful use or threatened use of force or violence against people or property to coerce or intimidate governments or societies, often to achieve political, religious, or ideological objectives." Also available from http://www.globalsecurity.org.

[58] Stefan Eklöf, "The Return of Piracy: Decolonization and International Relations in a Maritime Border Region (the Sulu Sea)" (1959).

[59] Philippine Coast Guard.

[60] Ibid.

[61] Ralf Emmers, "The threat of transnational crime in Southeast Asia: drug trafficking, human smuggling and trafficking, and sea piracy" (2009), p. 7.

[62] Emmers, *op. cit.*, p. 8.

[63] Emmers, *op. cit.*, p. 7.

[64] Emmers, *op. cit.*, p. 8.

The 2011 Annual Report from the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) showed that there has been improvement in the situation of piracy and armed robbery against ships in Asia with a large year-on-year decrease. Table 1 shows that the ReCAAP, over the past five years, have recorded 30 piracy incidents in the Philippines comprising of 24 actual and 6 attempted.[65]

	2007		2008		2009		2010		2011	
	Actual	Attempted	Actual	Attempted	Actual	Attempted	Actual	Attempted	Actual	Attempted
Philippines	5	1	6	2	4	1	5		4	2

Table 1. Piracy Incidents in the Philippines Excerpt from ReCAAP 2011 Report

1.1.4 Human Trafficking by Sea

The Philippines is a source,[66] transit, and destination country for human trafficking.[67] Internal trafficking of men, women, and children also remains a significant problem in the Philippines.[68] Traffickers used land and sea transportation to transfer victims from island provinces to major cities. According to Philippine government experts, about 71% of smuggled and trafficked persons are transported by air, through regular commercial flights, and 29% by sea, via big sea vessels, pump boats, speed boats and even fishing boats.[69] Traffickers use different tricks in the accomplishment of their ill-mission. Sometimes victims travel by themselves instead of being accompanied by the recruiters then receives instructions thru cellphone messaging, or victims are transferred from one boat to another until they reach their point of destination to avoid detection by enforcers.[70]A small number of women are occasionally trafficked by means of sea transport from Indonesia and Malaysia going inside the Philippines hoping to seek greener pasture or job opportunities.[71]

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[65] RECAAP, "Piracy and Armed Robbery Against Ships in Asia Annual Report January-December 2011," ReCAAP Information Sharing Centre.
[66] Joy Ngozi Ezeilo, "The Government of the Philippines should Strengthen Implementation of Measures to Combat Trafficking in Persons while Promoting Safe Migration for Development," The United Nations Human Rights, 9 November 2012.
[67] Integrated Regional Information Networks (IRIN), "Philippines: Legal system falls short on human trafficking," 22 July 2009, available from http://www.unhcr.org.
[68] United States Department of State, "2011 Trafficking in Persons Report - Philippines," 27 June 2011, available from http://www.unhcr.org.
[69] Ibid.
[70] Human Trafficking Organization, "News & Updates: Efforts vs. Exploitation in the Philippines," July 2012, available from http://www.humantrafficking.org/updates.
[71] "The Philippines (Tier 2 Watchlist)," Extracted from U.S. State Dept Trafficking in Persons Report, June 2009

1.1.5 Illicit Drug Trafficking

The problem of illegal drugs in the Philippines continues to pose a significant threat to national security. According to the 2009 UN World Drug Report, the Philippines ranked 5th in the seizures of crystal methamphetamine (shabu, as local name) and emerged as a significant source of methamphetamine in East and South-east Asia and Oceania.[72] Since 2000 up to the present time, bulk trading of "shabu", continues with the Philippines as a trans-shipment point to Japan, Australia, the United States and some European countries.[73] Ecstasy is believed to be smuggled into the Philippines from Canada and Europe, using sea ports, airports and post as there is no known ecstasy manufacturer in the Philippines.[74]

Reports also revealed that illegal drugs and precursor chemicals can easily be transported in and out of the country using seaports, airports, mail and parcel system, and free port areas.[75] Traffickers, especially for smuggling of bulk quantities, have taken the most daring action of the use of commercial container cargo to deter suspicion from customs authorities.[76] According to Bateman, the tactics includes the hiding of drugs in commercial goods, falsely declaration of commercial goods to avoid customs thorough checks and shipments using secondary port name and most often than not delivered by legitimate shipping companies unaware of its content.[77] Bateman further added that traffickers take advantage of the fact that the huge volume of commercial trade renders it impossible for the customs authority to inspect every single container or cargo without causing delay or huge economic loss.[78]

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[72] United Nations Office on Drugs and Crime, Vienna, "2011 UN World Drug Report".
[73] "Progress Report on the Actions Taken by the Philippine Government to Combat Illegal Drugs," Asean Inter-Parliamentary Assembly (AIPA) Fact Finding Committee (AIFOCOM) 7TH Meeting Ho Chi Minh, Republic of Vietnam April 22-25, 2010.
[74] United Nations Office on Drugs and Crimes (UNODC), "Philippines," The Global Smart Programme,Asia Pacific Amphetamine Type Stimulant Information Center (APAIC).
[75] "Progress Report on the Actions Taken by the Philippine Government to Combat Illegal Drugs Asean", Inter-Parliamentary Assembly (AIPA) Fact Finding Committee (AIFOCOM) 8th Meeting Cambodia May 25-29, 2011
[76] Bateman, Ho & Chan, *op. cit.*, p. 22.
[77] Ibid.
[78] Ibid.

1.1.6 Oil Smuggling

In a newspaper interview, a custom employee in the Philippines described oil as the most commonly smuggled items because it can easily be disposed of.[79] When oil is shipped in, they are quickly sold before investigation builds up. Oil products are either smuggled instantly or are shipped legally with values under declared.[80] Crude oil products which were imported through free ports exempt from value added tax and excise taxes find their way out of the zones and into the general market.[81] The increasing oil smuggling in the Philippines raised uncertainty for international companies to invest in the country.

Oil pilferage likely occurs in Manila and along Pasig River where oil firms are located.[82] According to a news report, in some cases oil tankers transfer the pilfered pump product to barges that were designed to look like fishing boats or motorboats to eliminate risk of getting apprehended by the enforcers.[83] Some of the oil tankers came all the way from Singapore.[84] Also, Oil barges enroute to designated depots are boarded by robbers and the products stolen are sold to smaller firms.[85] The government suffers a huge amount of revenue losses due to oil smuggling. It is estimated that P20 billion to P60 billion a year in foregone revenue due to oil smuggling.[86]

1.1.7 Trafficking of Small Arms and Explosives by Sea

Illicit trafficking of firearms is another menace to Philippine society. It is regarded as a stumbling block to the Philippine's economic development and poses a serious threat to national security.[87] Report said that the weapons of the insurgents are mostly obtained from foreign sources.[88]

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[79] "Problems in Customs weaken drive vs smuggling," Philippine Daily Inquirer, June 5th, 2012.
[80] Ibid.
[81] "Philippine oil firms back moves to reduce oil smuggling BIR to tax crude oil imports through free ports," Philippine Daily Inquirer, March 6, 2012.
[82] Mary Ann Palma, "The Philippines as an Archipelagic and Maritime Nation: Interests, Challenges, and Perspectives," S. Rajaratnam School of International Studies Singapore, July 2009.
[83] "NBI nabs 7 suspects for smuggling of oil," Philippine Daily Inquirer, September 10, 2011.
[84] "Big-time oil smuggling: NBI after brains of syndicate," Manila Bulletin, September 9, 2011.
[85] Palma, *op. cit.*, p. 19.
[86] "Philippine Oil Smuggling and Losing Tax Money," Agora Business Intelligence Website, April 20, 2012.
[87] Robert E Bedeski, Andrew Andersen and Santo Darmosumarto," Small Arms Trade and Proliferation in East Asia: Southeast Asia and the Russian Far East." *Working Paper* 24 (1998) pp. 10-11.
[88] Ibid.

In 2009, Philippine Coast Guard reported that arms shipments were cleverly concealed in three innocuous Balikbayan boxes bound to Zamboanga City.[89] The boxes were discovered to contain six pieces of high-powered M14 rifles, a .22 cal assault rifle, three empty M16 magazines, a bolt for a .60 cal-machine gun and a letter in Arabic was found among the firearms. In one of the joint operation of the BuCus, PCG and PNP, high-powered firearms were seized on board the vessel of MV CAPTAIN UFUK at the anchorage of the port of Mariveles, Bataan with five wooden crates containing 50 pieces of SS1-V1 Cal 5.56 A1 assault rifles that were made in Indonesia, 120 empty magazines, and 45 bayonets.[90] Fifteen other wooden crates believed to have contained firearms were already empty at the time of the search.

Trafficking of explosives is also rampant in the country and often surreptitiously conveyed on board passenger vessels. In separate incidents in July 2009, PCG personnel conducting mandatory pre-departure inspection of vessels discovered improvised explosives hidden in various places. On July 16, PCG personnel discovered 350 kilos of ammonium nitrate and 1,800 pieces of blasting caps on board a vessel docked at a port in Mandaue City, Cebu. The explosives were concealed in boxes and were declared as dry goods and biscuits. Nine days later, twelve bottles of improvised explosives were found inside a trash can in the female comfort room of a vessel docked at Talao-Talao Pier in Lucena City. Also seized were blasting caps, time fuse, and firing wire. Explosives experts reckon that the bombs were specifically designed to maim and kill people.[91]

Transnational arm trafficking occurs across Malacca Strait, and also Andaman Sea from southern Thailand to Aceh, Bangladesh, India and Sri Lanka, and also prevalent into and out of the Philippines.[92] The proliferation of illicit trade and trafficking of small arms in the Philippines and in Southeast Asia due to the porous borders has contributed to a growth in transnational organized crimes.[93] The illicit circulation of small arms and light weapons have resulted in the increasing number of loose firearms in the hands of groups that threaten the national and regional security of ASEAN member-states.[94]

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[89] Cdr Teotimo Borja PCG, "Philippine Maritime Security: An Interagency Imperative," RECAAP Report 1-69 (2009).
[90] Ibid.
[91] Ibid.
[92] Bateman, Ho & Chan, *op. cit.*, p. 24.
[93] Ibid., at footnote 44.
[94] Ibid.

1.2 Maritime Safety

1.2.1 Unseaworthy Condition of Vessel

Seaworthiness of the vessel is one of the most important characteristic of a vessel prior voyage and is particularly associated with the adequate equipment for voyage such as design, structure, condition and equipment of the ship, and sufficient and competent officers and crew members.[95] One can easily name a number of distresses caused by unseaworthiness of a vessel, ranging from the delay in the voyage, necessity of the deviation for repairs, damage to the goods caused both by the condition of the ship itself and deterioration due to the longer journey, business implications of the late delivery of goods caused directly or indirectly, and most importantly the danger it could cause to the lives of the passengers on board.[96]

Age does matter especially for second hand vessels of the Philippines. Most of the Philippine passenger vessels were brought from Japan after being phased out upon reaching the ten years statutory limit.[97] The average age of inter-island passenger domestic ships in this country ranges from 28 to 34 years.[98] As the vessel grows older, the vessels' seaworthiness design drops to the below safety standard, thus, too risky for the safety of the riding passengers/cargo and properties.[99] Vessels with weak structures have less resistance to stay afloat during bad weather at sea. Since most of the inter-island passenger vessels of the country were originally not a roro passenger or cargo-passenger vessels but merely rehabilitated suffers from design defects.[100] During rehabilitation, some companies skimp on steel during vessel overhaul, replace parts only when they break down, and leave problems uncorrected if they can get away with it.[101]

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[95] CALTEX (PHILIPPINES), INC., vs. SULPICIO LINES, INC., et. al. G.R. No. 131166, September 30, 1999.
[96] Zbigniew Jan Krüger, "Carrier's Duties in Carriage of Goods by Sea: Established Situation and Developments in Contemporary Maritime Law" (LL.M in International Business Law Thesis, Leiden University, 2005).
[97] Gerard Joseph M. Jumamil, "Toward a Safety Culture in the Philippine Shipping Industry: Re-Aligning the Domestic Maritime Safety Regime with the International Safety Management Code," Philippine Law Journal 84.3 (2011).
[98] "DOTC to Phase Out Aging Sea Vessels," Philippine Star, December 31, 2009.
[99] Engr Eriberto S. Sarmiento, "Ship Disasters in the Philippines - Causes & Recommendations," Philippine Naval Architect Website.
[100] Ibid.
[101] "Perils of Shipping: Philippine Shipping is a Maritime Disaster," Philippine Center for Investigative Journalism

Incomplete or fitted with defective navigational aid is another aspect affecting the seaworthiness of a vessel.[102] This is compounded by the lack of a unified standard for essential equipment, including radar, compass, electronic chart systems, voyage data recorders, communication equipment, navigational lights, shapes, sound, and different kind of indicators.

According to reports, about 200 sea tragedies occur in the Philippines each year.[103] The frequency of maritime incidents and the number of human casualties per maritime disaster evidence the state of the maritime safety regime of the country. Natural hazards such as storm, cyclones and fog are contributory causes of accidents. However, maritime accidents still occur even during good weather condition. The primary causes of which are those associated with ships themselves such as poor vessel design, the operation of old vessels suffering from metal fatigue, poor maintenance resulting in rust damage, and poor equipment, etc.,. Human errors were also held responsible for the increasing proportions of accidents at sea to include poor seamanship or poor decision-making as a result of inadequate training, failure to follow collision regulations, and fatigue.[104]

1.2.2 Crew Incompetence and Negligence

About 75-96% of marine casualties are caused, at least in part, by some form of human error.[105] These include trips and falls, fire, pollution and collisions, and invariably due to a failure in safe working practices. Such incidents often result in crew injuries or fatalities, with the ship being consequently delayed or damaged.

In 1986, the ship MV Doňa Josefina sailed from Isabel, Leyte carrying more than 200 passengers. Few minutes later, the ship started to list and sink, and led to the death of 150 passengers.[106] Result of the investigation showed that the cause of the fatal imbalance was that the ship's cargo officer stored too much cargo in the ship's stern, or rear.[107] Few months after, a tanker filled with gasoline, oil and other combustible products collided with MV

[102] Ibid., at footnote 99.
[103] "Philippine Maritime Safety laws archaic, need reforms," Philippine Daily Inquirer, December 21, 2010.
[104] Helen Sampson and Michael Bloor, "When Jack gets out of the box: the problems of regulating a global industry," Sociology 41.3 (2007): 551-569.
[105] Dr. Anita M. Rothblum, "Human Error and Marine Safety," U.S. Coast Guard Research & Development Centre.
[106] Ibid., at footnote 101.
[107] Philippine Coast Guard. Board of Marine Inquiry.

Doña Paz, and the exploded resulting to 1,856 official death toll, although there has been news reports citing as many as 4,000 were killed.[108] The cause of MV Doña Paz tragedy was again pointed to human error, as the lookout from was missing from the tanker's deck.[109] Several agrounding and collision incidents that have been reported were due to the result of neglect of pure basic seamanship and fatigue which is often associated with undercrewing where watchkeepers have fallen asleep while on duty.

As shown in Table 2 below, results of investigation revealed that many agrounding incidents happened at night time. Poor visibility at night and poor adaptation of the crew to darkness could be the main contributory factors for the agrounding incidents.[110] The unpreparedness of the crew to react immediately to changes in the sea and weather condition is another factor. Although the weather forecast is helpful in predicting the prevailing weather and sea condition in the area, the actual sea condition may even be worse. Whether by misreading the ship's radar or failing to issue evacuation orders, ship's officers have caused accidents and the loss of lives.[111]

Time							
0001 - 0300	0301 - 0600	0601 - 0900	0901 - 1200	1201 - 1500	1501 - 1800	1801 - 2100	2101 - 0000
0	2	1	1	0	2	6	3

Excerpt from PCG Maritime Statistics

Table 2. Frame of Agrounding Incidents in Philippines

Maritime accidents usually happen when the officers on board the vessel lack the necessary education, training and experience including sense of responsibility in the manner of manning and operating the vessel.

[108] Anthony R. Perez, Carl Abelardo T. Antonio and Rafael J. Consunji, "The Sinking of MV Dona Paz – A Critique on Maritime Disaster Preparedness in the Philippines: An Analysis of the Event.," 2011.
[109] Ibid.
[110] Marine Accident Investigation Branch (MAIB), "Bridge Watchkeeping Safety Study," July 2004. Southampton, United Kingdom.
[111] PCG Maritime Statistics Report 2010-2012.

1.2.3 Overloading of Passengers and Cargoes

Many ferry tragedies occur because of overloading, or when passengers all move to one side of an already overloaded vessel.[112] Overloading of passengers and cargoes is a major safety issue in the Philippines. Take for example the case of MV Doňa Paz with 1,518 passenger capacity but was estimated to have carried 4,000 passengers at the time of the tragedy.[113]

As a rule, vessels are required to have life rafts and life jackets that correspond to the official passenger and crew capacity of the ship, and designed limit for cargoes as well.[114] Vessels carrying more passengers than the required capacity is said to be top-heavy, thus greatly affecting the stability of vessel.[115]

1.3 Marine Environment Resources

Marine Living Resources. Philippine waters contain some of the world's richest ecosystems, characterized by extensive coral reefs, sea-grass beds, and dense mangrove forests[116]. American biologists, Kent Carpenter and Victor Springer regarded the coastal and marine waters of the Philippines with a higher concentration of marine species than anywhere in Indonesia, including Wallacea.[117] The Philippines is the 11th largest fish- and seafood-producing countries globally, and the export market is a major source of national income with a total annual fisheries catch worth an estimated US$2.5 billion, equivalent to 4.3% of the gross national product[118]. Marine fisheries account for about 62% of total annual fisheries yield while the rest comes from aquaculture and inland fisheries.[119] The fisheries sector accounts for about 3.9 percent of the gross domestic product at constant prices and

[112] Sam Bateman, "Ferry Safety: A Neglected Aspect of Maritime Security?" IDSS Commentaries 31.2006 (2006): p. 2
[113] Ibid., at footnote 108.
[114] International Convention for the Safety of Life at Sea (hereafter: SOLAS), Chapter III.
[115] Ibid., at footnote 99.
[116] Kent E. Carpenter and Victor G. Springer, "The center of the center of marine shore fish biodiversity: the Philippine Islands," *Environmental biology of fishes* 72.4 (2005): 467-480.
[117] Ibid., p. 473.
[118] World Vision, "Sanctuaries that bring security in a changing climate: Integrated Coastal Resource Management in the Philippines," June 2009.
[119] Porfirio M. Aliño, "An Overview of Philippine Fisheries," The Marine Science Institute University of the Philippines.

employs about 990,872 Filipinos[120] roughly 68 percent of whom are engaged in municipal or small-scale fishing.[121]

The Philippines' fishery resources are potentially rich and productive yet resources are declining and under threat due to human activities.[122] Overfishing, the use of destructive fishing practices such as dynamiting and habitat conversion, has affected coastal ecosystems threatening permanent damage[123] while coastal industrial and urban development has lowered coastal waters quality contributing to the declining coastal marine life and fisheries productivity.[124] In spite of current problems, prospects for improvement are bright based on experience elsewhere in the Philippines. The government first began to launch coastal resources management initiatives in the 1980s, particularly with marine protected areas that benefited coral cover biodiversity and the fish catch.[125]

The incidence of illegal fishing has declined significantly in some coastal areas as more coastal resource management staff is being trained since 2005.[126] In spite of these successes, threats to coastal management still persist for various reasons including weak law enforcement, high poverty levels among coastal fishing communities and the ease of access to marine resources in the Philippines archipelago.[127]

According to the 2012 survey conducted by the Ocean Health Index, the Philippines ranked 105th out of 171 territories among the most deteriorated marine ecosystem due to and based on the trend over five years, the Philippines' ocean health will further worsen in the short-term[128]. This raises serious concern as the Philippines is heavily dependent on coastal and marine resources for the many economic, employment, and biodiversity values and services they provide.

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[120] Ibid., at footnote 42.
[121] Municipal fishing refers to fishing within municipal coastal and inland waters with or without the use of boats of three gross tons or less. Municipal waters include streams, lakes, inland bodies and tidal waters, public forests, timberlands, forest or fishery reserves, and marine waters within 15 kilometers of the coastline.
[122] Ibid., at footnote 42.
[123] World Wide Fund (WWF), "Environmental problems in the Philippines: Saving Precious Remains".
[124] Ibid., at footnote 42.
[125] World Fishing and Aquaculture, "Philippines," 01 May 2007.
[126] Ibid.
[127] Ibid.
[128] Ocean Health Index 2012, available from http://www.oceanhealthindex.org/.

Non-Living Resources. The oceans are considered one of the best potential sources of renewable energy[129] although current technologies for these ocean energy systems are not yet economically competitive with conventional energy systems. Energy from the sea is a sustainable resource that will help reduce the dependence upon fossil fuels.[130] The Philippine water provides excellent condition for ocean thermal energy conversion (OTEC) systems in sites accessible to populated regions such as Manila and Davao.[131] With new developments in wave energy conversion systems, the Philippines' moderate wave energy resources (an average of 33 kilowatt per meter per year at the Pacific side and 35 kilowatt per meter per year at the South China Sea) will be more than sufficient to provide power to small islands.[132] The strong and continuous currents in the Surigao and San Bernardino Straits are also potential sites for sea current systems.[133]

Most of the Philippines natural gas production is from the Malampaya field, which was discovered in 1992.[134] The Malampaya gas field lies 80 kilometres off the island of Palawan in the South China Sea, and can provide as much as 3000 megawatts of clean energy for the Luzon grid over a 20-year period.[135] Other offshore gas deposits have been discovered in the Reed Bank and South Palawan. Dangerous Grounds and Spratly Islands, which are claimed in part by other nations as well as the Philippines, showed indication of potentially large petroleum reserves.[136]

Commercial deposits of oil and gas have been found in northern and southern Palawan.[137] Another major site for oil and gas exploration activities in the last three decades is the Western Sulu basin which is considered a "frontier" (underexplored) region with comparatively low drilling density.[138] Substantial reserves of geothermal energy[139] can also be found in the Philippines - ranking as the fourth geothermal power producers in the world.

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[129] "Ocean renewable energy: 2015-2050," An analysis of ocean energy in Australia, July 2012, available at www.csiro.au.
[130] Ibid., at footnote 42.
[131] Ibid.
[132] Ibid.
[133] Ibid.
[134] Xue Li, "Energy Development in ASEAN Countries and Sino-ASEAN Energy Cooperation," S. Rajaratnam School of International Studies Singapore, 2009.
[135] Li, *op. cit.*, p. 23.
[136] Ibid., at footnote 42.
[137] Ibid.
[138] Ibid.
[139] Asian Centre of Energy (ACE), 2002, Energy Statistics of ASEAN Member Countries, Jakarta, Indonesia.,

However, lack of mature technologies and sound economic policies limit development of these geothermal resources.[140]

1.3.1 Marine Pollution

Unregulated release of pollutants from both land and sea-based activities including industries, agriculture and shipping degrades water quality, causes fish kills, and can be toxic to larval marine life. The discharge of industrial waste water exceeding standards causes damage to the reefs, mangroves and shorelines scarring the ecosystem and causing seafood yields to significantly decrease.

Sewage is perceived as probably the most significant pollution problem in the Philippines.[141] An article of the WWF said that only about 10% of sewage in the Philippines is treated or disposed of in an environmentally sound manner and the rest goes back to nature – usually the sea.[142] Industrial pollution is likewise perceived to be increasing in importance for lack of adequate controls on effluent quality, leading to the indiscriminate discharge of contaminants such as nutrients and trace metals.[143] Manila bay is considered as a pollution ‘‘hotspot’’ in the Philippines.[144]

Oil pollution is a particular threat to the marine environment. The Guimaras oil spill in August 11, 2006 is considered as the worst oil spill ever recorded in the history of the Philippines affecting extensive areas of mangroves, sandy beaches and pebble and cobble shorelines along the southern coast of Guimaras Island and smaller islands in the Strait.[145] Due to its proximity to the oil spill incident location, the Taklong Island National Marine Reserve’s rich coastal habitats (mangroves, corals and seagrasses) were severely affected by oil-laden seawater dispersed onshore.[146] The oil slick likewise posed a threat to the blue crab

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[140] Shankar K. Karki Michael D. Mann,and Hossein Salehfar, "Energy and environment in the ASEAN: challenges and opportunities," Energy policy 33.4 (2005): p. 506.
[141] Helen T. Yap, "Marine environmental problems: experiences of developing regions," Marine pollution bulletin 25.1 (1992): 37-40.
[142] World Wildlife Fund, “Environmental problems in the Philippines,” available from http://wwf.panda.org.
[143] Yap, *op. cit.*, p. 38.
[144] E.J. Sta Maria, F. P. Siringan and E. Z. Sombrito, "Estimating sediment accumulation rates in Manila Bay, a marine pollution hot spot in the Seas of East Asia," Marine pollution bulletin 59.4 (2009): 164-174.
[145] Ruth Yender, Katharina Stanzel and CDR Anthony Lloyd, “Impacts and Response Challenges of the Tanker SOLAR 1 Oil Spill, Guimaras, Philippines: Observations of International Advisor.”
[146] Enrico C. Paringit and Jojene R. Santillan, "Analysis Of Multi-Temporal Remotely Sensed Images Of The Taklong Island National Marine Reserve (Tinmar) To Assess Impacts Of The 2006 Guimaras Oil Spill."

industry in the municipality of Negros Occidental.[147] Environment expert assessed that the damage may be felt by at least two generations.[148]

1.3.2 Fish Related Violations

The Philippines is home to 70% of the world's ornamental fish.[149] Dr. Alan White, former Coastal Resource Management Project in Central Visayas**,** in a magazine interview stated that the widespread use of illegal cyanide in the Philippine as kills thousands of tons of commercial fish and shellfish each year.[150] Repeated doses are also destroying coral reefs on which marine life depends for shelter.

In 2007, fishing ban was implemented around Apo Reef, the largest coral reef in the Philippines and the second largest contiguous reef in the world after the Great Barrier Reef.[151] All extractive activities, such as fishing, and coral collection and harvesting are completely forbidden. The ban was introduced to allow the reef and resources recover from years of fishing. It can be recalled that the reef was declared a national park in 1996[152] and was once one of the world's premier diving destinations but the years of fishing exploitation, to include dynamite and cyanide fishing, took its beauty.[153]

Recently, the BFAR reissued the ban on the exportation of elvers (young eel fry) in a bid to stop the excessive, widespread and unceasing exploitation of the specie.[154] Apparently the high demand of elvers and sharp rise in the buying price per kilo endangers the said specie.[155]

Michael Fabinyi, a researcher at Australia National University, in one of his study revealed that the increasing demand from China and Hong Kong pushed Filipinos to harvest species like grouper and snapper, which are considered "luxury" food, using methods damaging to

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[147] "Slick to ruin the blue crabs habitat in EB Magalona", Sun Star Bacolod, August 23, 2006.
[148] "Sensitive habitats can be smothered by oil," Inquirer, August 24, 2006.
[149] Henrylito D. Tacio, "Lethal Weapon" World Mission Magazine, November Issue.
[150] Ibid.
[151] World Wildlife Foundation International, "Fishing Ban Protects Largest Coral Reef in the Philippines," Environmental Panorama International, October of 2007, available from http:// www.wwf.org.
[152] Presidential Proclamation No. 868, dated September 6, 1996.
[153] "Fishing Bans Could Help Protect Coral Reefs," Environmental Science, November 27, 2009.
[154] Fisheries Administrative Order No. 242, "FAO 242 repeals FAO 159 s. 1886, which allowed elver exportation. The former upholds FAO 107 and 107-1 series of 1986, which earlier banned the exportation of said fishery commodity.
[155] Press release from the Department of Agriculture, Bureau of Fisheries**,** May 3, 2011, available from http://www.gov.ph.

the health of the fisherfolk and the marine environment.[156] Accordingly, local fishers are contacted by traders and middlemen based in cities like Manila and finance the fishing activities by paying the boats and fuels.[157] The live reef fishes are then transported to Manila, then Hong Kong, completing their journey in the Chinese mainland cities, where they are the main feature in social banquets and feasts.[158] Meanwhile, Dr. Elizabeth Wood, an expert from the Marine Conservation Society, believed that the Philippines is the "focal point" in the trade in aquarium fishes next to and has become the number one source of aquarium corals.[159] Wood further alleged that although there is no evidence at present of any species collected for the marine ornamental trade being at risk of global extinction yet there are indications of local depletions.[160] Moreover, Prof. Yvonne Sadovy, a marine biologist, claimed that the highly valued live fish species that were traditionally harvested in the South China Sea now referred to by the Philippines as the West Philippine Sea, but the fish resources in the said area are now dwindling.[161]

Most fisheries-related violations are based on Philippine Fisheries Code (RA 8550) and related FAOs. These violations covers the following: a) resource users and licenses such as intrusion of licensed and unlicensed commercial fishers in municipal waters; b) type of fishing method or technology employed and their corresponding permits and licenses such as use of active gear in municipal waters by fishers with boats less than 3 GT, the use of dynamite, cyanide, fine-mesh nets, and other forms of destructive fishing, tonnage of fishing vessels and area of operation; c) type and age of marine aquatic fishery species that may be caught or harvested such as the endangered and protected marine species including sea turtles, dugong, whale sharks, manta rays, dolphins, and whales; d) utilization of portions of land devoted to fishery activities; d) certain management regimes such as closed seasons and marine sanctuaries, and; e) practices in the merchant marine profession such as compliance to documentary requirements and labor standards.[162]

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[156] Michael Fabinyi, "The politics of patronage and live reef fish trade regulation in Palawan, Philippines." Human Organization 68.3 (2009): 258-268.
[157] "Philippines is center of illegal tropical and aquarium fish trade," Philippine Daily Inquirer. July 11, 2012
[158] Ibid.
[159] Ibid.
[160] Ibid.
[161] Ibid.
[162] Department of Environment and Natural Resources, Bureau of Fisheries and Aquatic Resources of the Department of Agriculture, and Department of the Interior and Local Government, "Philippine Coastal Management Guidebook No. 8: Coastal Law Enforcement," Coastal Resource Management Project of the Department of Environment and Natural Resources, Cebu City, Philippines (2001), p. 164.

1.3.3 Other Coastal Issues and Obstacles

Among others, illegal logging and mining in upland areas cause siltation and contamination of rivers and coastal waters.163 Illegal conversion of mangrove areas into reclamation projects and fishponds similarly degrades and can permanently destroy important coastal ecosystem functions including nursery grounds for juvenile fish, filtration of sediments and pollutants, and protection of coastal land from erosion.164 Mining marine sand and other structures in foreshore areas, and industrial facilities, shoreline development activities operating without or in noncompliance with terms of an Environmental Clearance Certificate likewise poses a great threat to the marine environment.165

Chapter 2 - ENFORCEMENT FRAMEWORK

As a general rule, the Philippines exercises full sovereignty over its land, internal waters, archipelagic waters and territorial Sea.[166]

2.1 Jurisdictional Competence under LOSC

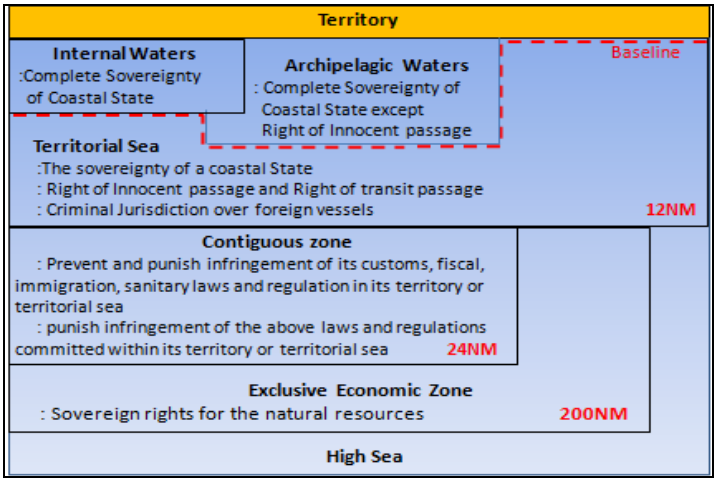

Figure 1. State Jurisdiction in each Maritime Zone under UNCLOS

[163] Ibid.
[164] Ibid.
[165] Ibid.
[166] United Nations Law of the Sea Convention (hereafter: LOSC), Art. 2.

2.1.1 Internal waters

Waters on the landward of the baseline of the territorial sea waters[167] as well as bays to which the breadth of the entry does not exceed 24 miles; waters considered to be historic gulfs, bays, inlets, and strait even if the breadth of entry exceed 24 miles;[168] waters of ports limited by a line passing through the most extended port installations seaward; waters of the deeply indented and enclosed by the territory of single state; waters in the case of islands situated on atolls or of islands having fringing reefs; mouth of river[169]; and archipelagic waters which is closed by closing line are defined as internal waters. The Philippines as coastal state exercises full sovereignty over its internal waters, and foreign ships while in this water, is to observe the laws and regulations of the Philippines as its land territory. Foreign merchant vessels and all its crew members are fully subject to the criminal, civil and administrative jurisdiction of the coastal state.

2.1.2 Archipelagic Water

The Philippines as an archipelagic state exercises full sovereignty over archipelagic waters qualified by an obligation under the LOSC to establish archipelagic sea lanes suitable for continuous, expeditious and unobstructed transit of foreign vessels,[170] otherwise the right of ASL passage may be exercised through the routes normally used for international navigation.[171] The Philippines is under obligation to establish regulations based on the International Maritime Conventions, such as, SOLAS, ISPS Code, Collision Regulations Convention, Marine Pollution Convention, IMO resolutions and other international maritime conventions. The putting up of Vessel Traffic Management System with Automatic Identification System capability, the designation of Traffic Separation Scheme with corresponding buoyage and lighthouse systems, the establishment of communication facilities and regulations on fishing and stowage of fishing gears, among others are likewise required. Along with these Archipelagic State requirements, it is necessary for the Philippines to submit the technical descriptions of its archipelagic sea lane, territorial sea, contiguous zone, continental shelf, exclusive economic zone, and to identify its Particularly Sensitive Sea Area in recognition of its maritime-dominion claims. Basically, archipelagic sea lanes cater to the needs of user states so they could have uninterrupted navigation through

[167] LOSC, Art. 8.
[168] LOSC, Art. 10.
[169] LOSC, Art. 9.
[170] LOSC, Art. 53 (1).
[171] Ibid., (12)

archipelagic waters. They facilitate the unobstructed passage of military vessels and aircrafts over the waters of the archipelagic state[172].

2.1.3 Territorial Sea

The Philippines has sovereignty in the territorial sea but qualified by its international obligation. Transit passage or innocent passage is the only right accorded to foreign state[173] yet can be suspended in certain circumstances.[174] From the Contiguous Zone seaward going to the high seas, the Philippines as coastal state has the right to exercise its fiscal authority, customs, immigration, sanitation, marine environmental protection,[175] and the removal of archaeological and historical objects from the seabed.[176] Fishing is absolutely prohibited in this zone. A foreign state has freedom of navigation or freedom of overflight and, foreign vessel can only be apprehend if she operates against good order, peace and security of the country.[177]

2.1.4 Exclusive Economic Zone

In the Exclusive Economic Zone, the Philippines as coastal state has the sovereign rights for purposes of exploring, exploiting, conserving, and managing the natural resources of the seabed and subsoil and the super adjacent waters,[178] and limited jurisdiction over matters involving customs, fiscals, health, safety, and immigration laws and regulations. Foreign state is accorded with the freedom of navigation or freedom of overflight and of laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms.[179] Consent from the Philippines to fish in this zone is a requirement.[180]

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[172] Muhammad Munawwar, "Ocean states: archipelagic regimes in the law of the sea," vol. 22, Martinus Nijhoff Publishers, 1995.
[173] LOSC, Art. 18 (2).
[174] LOSC, Art. 19 and 20.
[175] LOSC, Art. 33.
[176] LOSC, Art. 303 (2).
[177] Ibid., footnote 175.
[178] LOSC, Art 56.
[179] LOSC, Art 58.
[180] LOSC, Art 62.

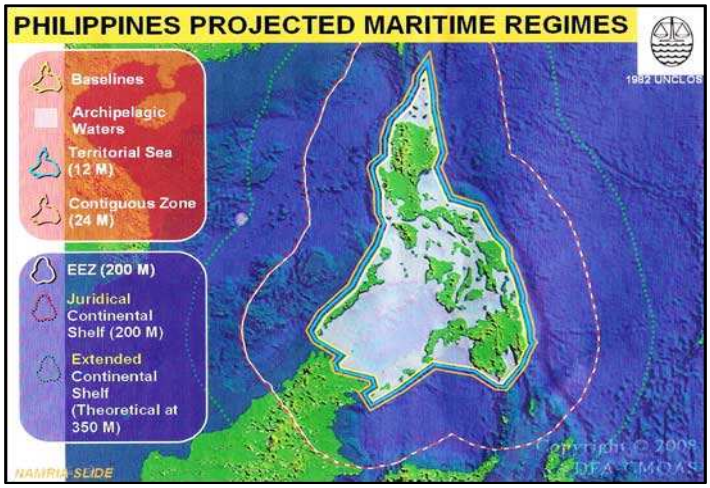

Figure 2. Philippines Projected Maritime Regimes

2.2 Relevant International Obligations

2.2.1 ISPS Code and SOLAS Convention

The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States. These security measures have been included as amendments to the Safety of Life at Sea Convention, 1974 (SOLAS Convention) through chapter XI-2 Special Measures

In essence, the Code takes the approach that ensuring the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be made in each particular case. The purpose is to provide a standardized, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.[181]

In Philippines, leading maritime agencies like the MARINA, Office of Transportation Security (OTS) and PCG ensures the application of the code both in foreign and domestic

[181] International Maritime Organization (IMO), Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 Agenda items 7 and 8, Conference resolutions 3 to 11 SOLAS/CONF.5/34, 17 December 2002.

ships. The MARINA thru its issued Memorandum Circular 193[182] provides the rules on the implementation of maritime security measures for Philippine-registered ships engaged in international voyages. The OTS thru Maritime Transportation Security Bureau (MTSB) ensures the implementation of Executive Order 311[183] specifically directing the implementation of the IMO, ISPS Code and that a National Maritime Security Program is formulated, developed and implemented. Consequently, all Philippine registered vessels engaged in international trade are required to conduct ship security assessment and correspondingly adopt ships security plans.

Philippine ports are likewise required to have facility security plans and engage port security officers. The ISPS Code requires, amongst others, contracting governments to gather and assess information with respect to security threats and exchange such information with other contracting governments. Shipboard and port facility personnel are duty-bound to be aware of security threats and report security concerns to the appropriate authorities for their assessment. Governments, on the other hand need to communicate security-related information to ships and port facilities. Hence, establishing an entirely new culture amongst those involved in the day-to-day running of the shipping and port industry.[184]

2.2.2 Port State Control (PSC)

Under PSC, foreign ships in national ports are inspected to verify that the condition of the ship and its equipment comply with the requirements of international regulations such as SOLAS, MARPOL, STCW, and that the ship is manned and operated in compliance with these rules.

Most of the IMO's important technical conventions contain inspection proviso for ships visiting foreign ports to ensure that they meet IMO requirements. These inspections were originally intended to be a backup to flag State implementation, but experience has shown that they can be extremely effective, especially if organized on a regional basis.[185] A ship

[182] Marina Circular No. 193, Series of 2003, "Rules on the Implementation of Maritime Security Measures for Philippine – Registered Ships Engaged in International Voyages".
[183] Executive Order No. 311, "Designating the Office for Transportation Security as the Single Authority Responsible for the Security of the Transportation Systems of the Country, Expanding its Powers and Functions and for Other Purposes," April 26, 2004.
[184] Chris Trelawny, "IMO maritime security policy Background paper," International Maritime Organization (2009).
[185] International Maritime Organization, "Port State Control," available at IMO website: http://www.imo.org.

going to a port in one country will normally visit other countries in the region before embarking on its return voyage and it is to everybody's advantage if inspections can be closely coordinated.[186] This ensures that as many ships as possible are inspected but at the same time prevents ships being delayed by unnecessary inspections. The primary responsibility for ships' standards rests with the flag State - but port State control provides a safety net to catch substandard ships.[187]

Philippines is a signatory of the Asia - Pacific MoU (TOKYO MOU) concluded in Tokyo on 1 December 1993. The main objective of the Memorandum is to establish an effective port state control regime in the Asia-Pacific region through co-operation of its members and harmonization of their activities, to eliminate substandard shipping so as to promote maritime safety, to protect the marine environment and to safeguard working and living conditions on board ships. A study showed that the enforcement of PSC is effective in improving the safety level of maritime transport.[188] In 2009, 43 maritime authorities of the Paris and Tokyo Memoranda on PSC conducted a joint Concentrated Inspection Campaign (CIC) aimed at verifying compliance of ships with the provisions of SOLAS Chapter III on Lifesaving Appliances and Arrangements.[189]

Philippine Coast Guard thru RA 9993 and all other international conventions is mandated to conduct Port State Inspection and to continue to rectify ship deficiencies until they reach the next port of call of flag state. Detention policies are being observed properly by Coast Guard authorities with the aid of Asia-Pacific Computerized Information System (APCIS).

2.2.3 Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG)

The COLREG set out the “rules of the road” or navigation rules to be followed by ships and other vessels at sea in order to prevent collisions between two or more vessels.

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[186] Ibid.

[187] B. Streeter, “No place to hide,” Address given at Mare Forum 99, Amsterdam, the Netherlands, 22 June1999, available at IMO website.

[188] Kevin X. Li and Haisha Zheng, "Enforcement of law by the Port State Control (PSC)," Maritime Policy & Management 35.1 (2008): 61-71.

[189] RINA, Maritime Information Notice. “Port State Control - Concentrated Inspection Campaign (CIC) on Lifeboat Launching Arrangements (SOLAS – Chapter III),” available from http://www.rina.org.

The 1972 Convention was designed to update and replace the Collision Regulations of 1960 which were adopted at the same time as the 1960 SOLAS Convention. One of the most important innovations in the 1972 COLREG was the recognition given to traffic separation schemes thereby giving guidance in the determination of safe speed, the risk of collision and the conduct of vessels operating in or near traffic separation schemes.[190] The first traffic separation scheme was established in the Dover Strait in 1967 and was operated on a voluntary basis at first but in 1971 the IMO Assembly adopted a resolution stating that observance of all traffic separation schemes be made mandatory - and the COLREG made this obligation clear.

The PCG thru its PSC Station is guided by the standard operating procedures stipulated in the provisions of the COLREG in the performance of its function to insure the safety aspects of the vessels coming into port.

2.2.4 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

The standards of training, certification and watchkeeping of officers and ratings were formerly established by individual governments, usually without reference to practices in other countries, resulting to varied standards and procedures. The 1978 STCW Convention was the first to establish basic requirements on training, certification and watchkeeping for seafarers on an international level. The Convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed.191 Major revisions to the STCW Convention and its associated Code have been adopted at a Diplomatic Conference in Manila192 ensuring that the necessary global

[190] International Maritime Organization. Convention on the International Regulations for Preventing Collisions at Sea, available from http://www.imo.org.

[191] International Maritime Organization. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), available at http://www.imo.org.

[192] The STCW Code 2010 Manila Amendments Among the important revisions were: Improved measures to prevent fraudulent practices associated with certificates of competency and strengthen the evaluation process; New certification requirements for able seafarers; New requirements relating to training in modern technology such as electronic charts and information systems (ECDIS); New requirements for marine environment awareness training and training in leadership and teamwork; New training and certification requirements for electro-technical officers; Updating of competence requirements for personnel serving on board all types of tankers, including new requirements for personnel serving on liquefied gas tankers; New requirements for security training, as well as provisions to ensure that seafarers are properly trained to cope if their ship comes under attack by pirates; as well as Introduction of modern training methodology including distance learning and web-based learning. Also, new training guidance for personnel serving on board ships operating in polar waters; and new training guidance for personnel operating Dynamic Positioning Systems. The Conference also adopted resolutions on Verification of certificates of competency and endorsements contained; Standards of training and

standards will be in place to train and certify seafarers to operate technologically advanced ships for some time to come.

DOTC thru MARINA, under EO No. 75, was designated as the single administration responsible in the implementation of STCW in the country. The said law transfers the maritime functions of Maritime Training Center and Technical Education and Skills Development Authority (TESDA) to DOTC-MARINA.

2.2.4 MARPOL 73/78

The MARPOL Convention is the main international convention covering prevention of pollution of marine environment by ships from operational or accidental causes. It is an international agreement between coastal states to have the standard sets to be followed for safety measures to prevent pollution. It is combination of two (2) treaties adopted in 1973 and 1978 respectively and updated by amendments through the years. It is known and called as MARPOL 73/78.[193] All ships flagged under countries that are signatories to MARPOL are subject to its requirements, regardless of where they sail and member nations are responsible for vessels registered under their respective nationalities.[194] As oil pollution of the seas was recognized as problem a couple of centuries ago, various countries introduced national regulations to control discharges of oil within their territorial waters.

2.2.6 UN Anti-Trafficking Protocol (Palermo Protocols)

The Palermo Protocols are the first international instrument to define and address the trafficking problem. These consist of the two of the three protocols adopted by the UN in 2000 in Palermo, Italy, attached to the Main Convention on Transnational Organized Crime. The first is, the Protocol to Prevent, Suppress and Punish Trafficking in Persons; Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime[195] and the second, the Protocol against the Smuggling of Migrants by Land,

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certification and ships' manning levels; Promotion of technical knowledge, skills and professionalism of seafarers; among others. Also see: Amendments' to the STCW Convention A Quick Guide for Seafarers International Shipping Federation at http://www.marisec.org., also see ics@marisec.org.

[193] MARPOL Manual (August 2011), PDF, pp. 2 and 4.

[194] Claudia Copeland, "Cruise Ship Pollution: Background, Laws and Regulations, and Key Issues," Congressional Research Service, 2008.

[195] The Protocol covers the definition of the crime of trafficking in human beings; essentially, trafficking is the transport of persons, by means of coercion, deception, or consent for the purpose of exploitation such as forced

Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.[196] The protocol requires the criminalization of the full range of conducts related to trafficking in persons and the criminalization of the attempt to commit trafficking, participation as an accomplice, and organizing or directing others to commit trafficking.

2.2.7 Firearm Protocol

The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol), was adopted in 2001 by the GA with resolution 55/255 and entered into force on 3 June 2005.[197] The Firearms Protocol addresses the issue of small arms. Shortly after, the principal UN policy framework was established by the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.[198] The implementation of the policy framework has led to the negotiation of other agreements both at the regional and global level. A significant example is the International Tracing Instrument, a political instrument adopted by GA on 8 December 2005 to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The Protocol provides for a series of control measures and normative provisions covering multiple aspects of the small arms issue.

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or consensual labor or prostitution: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used, available at http://www.uncjin.org.

[196] "Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime," United Nations 2000.

[197] United Nations General Assembly, Resolution adopted by the General Assembly [*without reference to a Main Committee (A/55/383/Add.2)*] 55/255, "Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime," Fifty-fifth session Agenda, item 105.. 8 June 2001.

[198] United Nations Programme of Action Implementation Support System (PoA-ISS), "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects," UN Document A/CONF.192/15.

2.3 National Enforcement Frameworks

From policy formulation to law enforcement, the Philippine maritime enforcers, in upholding the safety, security and protection of our environment, are guided by different sets of mandates.

2.3.1 Republic Act No. 9993 “Coast Guard Law of 2009”

Under the provisions of the law the PCG is vested with the following powers and functions: (a) to enforce regulations in accordance with all relevant maritime international conventions, treaties or instruments and national laws for the promotion of safety of life property at sea within the maritime jurisdiction of the Philippines and conduct port state control implementation; (b) to inspect all merchant ships and vessels, including but not be limited to inspections prior departure, to ensure and enforce compliance with safety standards, rules and regulations; (c) to detain, stop or prevent a ship or vessel which does not comply with safety standards, rules and regulations from sailing or leaving port; (d) to conduct emergency readiness evaluation on merchant marine vessels; (e) to issue and enforce rules and regulation for the promotion of safety and life and property at sea on all maritime-related activities; (f) to coordinate, develop, establish, maintain and operate aids to navigation, vessel traffic system, maritime communications and search and rescue facilities within the maritime jurisdiction of the Philippines; (g) to remove, destroy or low to port, sunken or floating hazards to navigation, including illegal fish and vessels, at or close to sea lanes which may cause hazards to the marine environment; (h) to issue permits for the salvage of vessels and to supervise all marine salvage operations, as well as prescribe and enforce rules and regulations governing the same; (i) to render aid to persons and vessels in distress and conduct search rescue in marine accidents within the maritime jurisdiction of the Philippines, including the high seas, in accordance with applicable international conventions; (j) to investigate the inquire into the causes of all maritime accidents involving death, casualties and damage to properties; (l) to assist in the enforcement of laws on fisheries, immigration, tariff and customs, forestry, firearms and explosives, human trafficking, dangerous drugs and controlled chemicals, transnational crimes and other applicable laws within the maritime jurisdiction of the Philippines; (m) to board and inspect all types of merchant ships and watercrafts in the performance of this functions; (n) to enforce laws and promulgated and

administer rules and regulations for the protection of marine environment and resources from offshore sources or pollution within the maritime jurisdiction of the Philippines; (o) to develop oil spill response, containment and recovery capabilities against ship-based pollution and; (p) to grant, within the capabilities and consistent with its mandate, requests for assistance of other government agencies in the performance of their functions. [199]

With the enactment of R.A. 9993, the PCG is now recognized as the third uniformed armed service of the country following the Armed Forces of the Philippines and the Philippine National Police. As such, the PCG is deemed as a law enforcement agency mandated to perform specific functions within the maritime and territorial jurisdiction of the Philippines. This law repeals Republic Act No. 5173, as amended.

2.3.2 Republic Act No 9375 "Human Security Act of 2007"

It is the declared policy of the Philippines to protect life, liberty, and property from all acts of terrorism, to condemn terrorism as inimical and dangerous to the national security of the country and to the welfare of the people, and to make terrorism a crime against the Filipino people, against humanity, and against the law of nations. In the implementation of the said policy, the State shall uphold the basic rights and fundamental liberties of the people as enshrined in the constitution.[200]

The Philippine also recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military, and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of conflict by building state capacity and promoting equitable economic development.[201]

[199] Ibid., at footnote 32.
[200] RA 9372, Sec 2, Declaration of Policy.
[201] Ibid.

2.3.3 National Security Policy 2011-1016

This policy identifies the strategic priorities in the establishment of correct balance in the so-called "guns or butter" debate for the allocation of scarce resources; and to establish the prioritization, among others, between external and internal defense.[202]

Territorial Integrity, Ecological Balance, Peace and Harmony, Socio Political Stability, Economic Solidarity, Cultural Cohesiveness and Moral-Spiritual Consensus are the seven elements of national security that amplifies national interests. The policy laid down the fundamental and comprehensive framework on inter-related issues and concerns that may impinge on national security and provides general guidelines for revisiting, enhancing, and formulating our related national policies as well.[203]

2.3.4 Republic Act No. 9208 "Anti-Trafficking in Persons Act of 2003"

In pursuit of human dignity and respect of individual rights, the Philippines gives highest priority to the enactment of measures and development of programs that promotes human dignity, protects the people from any threat of violence and exploitation, eliminates trafficking in persons, and mitigates pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.[204]

Consistent with the policy of international cooperation, the Philippines has become a party to various multilateral treaties to include the ones intended to address transnational organized crime and to protect the vulnerable sectors of society, such as women and children. Thus, became a party-signatory to the United Nations Convention against Transnational Organized Crime and its accompanying Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea.[205] The Philippines is also a party to various bilateral treaties

[202] Ibid., at footnote 44.
[203] Ibid.
[204] Republic Act No. 9208, "An Act to Institute Policies To Eliminate Trafficking In Persons Especially Women And Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for its Violations, and for other," 26 May 2003.
[205] Ibid., at footnote 195 and 196.

aimed at setting the legal framework or mechanism for international cooperation in preventing, suppressing and the punishment of crimes.[206]

The anti-trafficking law of the Philippines is an almost exact copy of the Palermo Protocol or the UN Anti-Trafficking Protocol, attached to the Main Convention on Transnational Organized Crime. It discourages demand in trafficking by punishing the buyers of trafficked persons, in accordance with the UN Anti-Trafficking Protocol, which encourages states to legislate against demand.[207]

2.3.5 Republic Act 9165 "Comprehensive Dangerous Drug Act of 2002"

Another state policy of the Philippines is to safeguard the integrity of its territory and the well-being of its citizenry particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being, and to defend the same against acts or omissions detrimental to their development and preservation. [208] In this regard, the State needs to enhance further the efficacy of the law against dangerous drugs, it being one of today's more serious social ills.

Toward this end, the government pursues an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and other similar substances through an integrated system of planning, implementation and enforcement of anti-drug abuse policies, programs, and projects. The government however aims to achieve a balance in the national drug control program so that people with legitimate medical needs are not prevented from being treated with adequate amounts of appropriate medications, which include the use of dangerous drugs.

Thru the Philippine Drug Enforcement Agency (PDEA),[209] the leading anti-drugs law enforcement, responsible for preventing, investigating and combating any dangerous drugs, controlled precursors and essential chemicals within the country.[210] The agency is tasked

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[206] Severino H. Gana Jr., "International Cooperation in Combating Trafficking In Human Beings and Smuggling Of Migrants," Resource Material Series No. 62: 94.
[207] Coalition against Trafficking in Women Asia Pacific (CATW-AP), "Domestic Implementation of International Standards Combating Human Trafficking," June 29, 2010.
[208] Republic Act No. 9165 (Sec. 2), Declared Policy, June 2002.
[209] Ibid., at 216, Art. IX (Sec. 82), Creation of the Philippine Drug Enforcement Agency (PDEA).
[210] Ibid., at 216. Art. IX (Sec. 84), Powers and Duties of the PDEA.

with the enforcement of the penal and regulatory provisions of the law.[211] Anti-illegal drugs campaign is bolstered by the participation of different agencies such as the PCG, AFP, PNP, National Bureau of Investigation (NBI) and the National Intelligence Coordinating Agency (NICA).[212]

2.3.6 Republic Act 9295 "Domestic Shipping Development Act of 2004"

The Philippines recognizes that shipping is a necessary infrastructure, which is vital to the economic development of the country. A strong and competitive domestic merchant fleet owned and controlled by Filipinos or by corporations at least sixty percent (60%) of the capital of which is owned by Filipinos and manned by qualified Filipino officers and crew is essentially the objective of the country under this law.

In the attainment of this objective, RA 9295 aims to promote the development of Philippine domestic shipping, shipbuilding, ship repair and ship breaking, and ordains reforms in the shipping industry.[213]

Maritime Industry Authority (MARINA), created under Presidential Decree No. 474 in 1974, was mandated, among other things, to provide for the effective supervision, regulation and rationalization of the organizational management, ownership and operations of all water transport utilities and other maritime enterprises.[214]

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[211] Ibid.

[212] CDR Teotimo R Borja JR PCG, "Philippine Maritime Security: An Inter Agency Imperative," available at Philippine Coast Guard website, http://www.coastguard.gov.ph.

[213] Republic Act 9295, "An Act Promoting the Development of Philippine Domestic Shipping, Shipbuilding, Ship Repair and Ship Breaking, Ordaining Reforms in Government Policies Towards Shipping in the Philippines and for other purposes," May 03, 2004.

[214] By virtue of RA 9295, Marina was vested with the following mandates: 1) Register vessels; 2) Issue certificate of public convenience, or any extensions or amendments thereto, authorizing the operation of all kinds, classes and types of vessels in domestic shipping: *Provided*, that no such certificate shall be valid for a period or more than twenty-five (25) years; 3) Modify, suspend or revoke at any time, upon notice and hearing, any certificate, license or accreditation it may have issued to any domestic ship operator; 4) Establish and prescribe routes, zones or areas of operations of domestic ship operators; 5) Require any domestic ship operator to provide shipping services to any coastal area, island or region in the country where such services are necessary for the development of the area, to meet emergency sealift requirements, or when the public interest so requires; 6) Set safety standards for vessels in accordance with applicable conventions and regulations; 7) Require all domestic ship operators to comply with operational and safety standards for vessels set by applicable conventions and regulations, maintain its vessels in safe and serviceable condition, meet the standards of safety of life at sea and safe manning requirements, and furnish safe, adequate, reliable and proper service at all times; 8) Inspect all vessels to ensure and enforce compliance with safety standards and other regulations; 9) Ensure that all domestic ship operators shall have the financial capacity to provide and sustain safe, reliable, efficient and economic passenger or cargo service, or both; 10) Determine the impact which any new service shall have to the locality it will serve; 11) Adopt and enforce such rules and regulations which will

2.3.7 Presidential Decree 979 "Marine Pollution Decree of 1976"

The law declared as national policy the prevention and control of pollution of seas by the dumping of wastes and other matter which create hazards to human health, harm living resources and marine life, damage amenities, or interfere with the legitimate uses of the sea within the territorial jurisdiction of the Philippines.

The primary responsibility of promulgation of national rules and policies governing marine pollution, including but not limited to the discharge of effluents from any outfall structure, industrial and manufacturing establishments or mill of any kind to the extent that it is regulated under the provisions of RA 3931[215], and to issue the appropriate rules and regulations upon consultation with the PCG rest upon the National Pollution Control Commission (NPCC). Conversely, the PCG is given the primary responsibility of enforcing the laws, rules and regulations governing marine pollution. However, the PCG and the NPCC jointly coordinate and cooperate with each other in the enforcement of the provisions of this decree and its implementing rules and regulations, and may call upon any other government office, instrumentality or agency to extend every assistance in this respect.

The deposits of oyster, shells, or other materials when such deposit is made for the purpose of developing, maintaining or harvesting fisheries resources and is otherwise regulated by law or occurs pursuant to an authorized government program is not within the purview of the rules and regulations issued by the NPCC or the PCG. The PCG, nevertheless, may permit the deposit of any of the materials above-mentioned in navigable waters, and whenever any permit is so granted, whenever in its judgment navigation will not be hampered and upon

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ensure compliance by every domestic ship operator with required safety standards and other rules and regulations on vessel safety; 12) Adopt such rules and regulations which will ensure the reasonable stability of passengers and freight rates and, if necessary, to intervene in order to protect public interest; 13) Hear and adjudicate any complaint made in writing involving any violation of this law or the rules and regulations of the Authority; 14) Impose such fines and penalties on, including the revocation of licenses of, any domestic ship operator who shall fail to maintain its vessels in safe and serviceable condition, or who shall violate or fail to comply with safety regulations; 15) Investigate any complaint made in writing against any domestic ship operator, or any shipper, or any group of shippers regarding any matter involving violations of the provisions of this Act; and 16) Upon notice and hearing, impose such fines, suspend or revoke certificates of public convenience or other license issued, or otherwise penalize any ship operator, shipper or group of shippers found violating the provisions of this Act, available at Marina Website http://www.marina.gov.ph

[215] Republic Act No. 3931, "An Act Creating the National Water and Air Pollution Control Commission," June 18, 1964.

consultation with and concurrence of the NPCC.[216] Listed below are the existing national laws governing marine environment protection relating to MARPOL 73/78 and the respective agencies in-charge of its implementation.

EXISTING NATIONAL LAWS GOVERNING MARINE ENVIRONMENTAL PROTECTION IN RELATION TO THE RATIFICATION OF MARPOL 73/78	AGENCIES INVOLVED
R.A 9993 – The Philippine Coast Guard Law of 2009	PCG
P.D. 979 amending P.D. 600 – Marine Pollution Decree of 1976	PCG
P.D. 602 - Establishing Oil Pollution Operations Center in the Philippine Coast Guard Headquarters	PCG
R.A. 9483 - Oil Pollution Compensation Act of 2007	MARINA/PCG
R.A. 9275 - Philippine Clean Water Act of 2004	DENR
R.A. 9003 - Ecological Solid Waste Management Act of 2000	DENR
R.A. 8749 - Philippine Clean Air Act of 1999	DENR
R.A. 6969 - Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990	DENR

Table 3. Existing National Laws Governing Marine Environmental Protection In Relation To the Ratification of MARPOL 73/78

2.3.8 Republic Act 8550 "The Philippine Fisheries Code of 1998"

All fishery-related legislations are consolidated in The Philippine Fisheries Code of 1998. The general policies of the law are 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 EEZ and the adjacent high seas; ensure preferential rights of the fishermen to the fishery and aquatic resources municipal waters and provide state protection against foreign intrusion; manage fishery and aquatic resources based on integrated coastal area management; and regulate fishery access and effort with the

[216] Presidential Decree No. 979, "Providing for the Revision of Presidential Decree No. 600, Governing Marine Pollution," August 18, 1976.

application of regulatory instruments based on, but not limited to, Maximum Sustainable Yield and Total Allowable Catch.[217]

The Fisheries Code established clearly the jurisdiction of coastal cities and municipalities over the municipal waters consistent with the decentralization policy pursuant to the Local Government Code. Under the law, the Local Government Units (LGU) are mandated to enforce all national fishery laws and regulations and retains its legislative powers to enact ordinances for the purpose of prohibiting or limiting fishery, impose licensing fees, and establish fishery reserves and sanctuaries, closed seasons, and catch limitations. LGU are also required to establish and maintain a registry of fisherfolk and fishing vessels for the purpose of regulating access to fishery and protect the preferential rights of the registered municipal fisherfolk.

The Fisheries Code in addition established mechanisms for consultation and coordination in formulating and enforcement of fishery regulations. The Bureau of Fisheries and Aquatic Resources (BFAR) is designated to provide assistance in the establishment of the City/Municipal Fisheries and Aquatic Resources Management Council, a consultative body comprising representatives from the municipal government, civil society, private sector, and municipal fisherfolk and people's organizations. Among its functions are to assist in the formulation of the Municipal/City Fisheries Development Plan; recommend regulatory measures related to controlling fishery access; determine the appropriate license fees, closes seasons, and catch ceilings; and provide recommendations regarding authorization of commercial fishing within the municipal waters and establishment of fishery reserve, sanctuary, and refuge.

Coastal LGUs are required to identify and designate at least 15% of the municipal waters under their jurisdiction as fishery sanctuary. Marine protected areas, however, established under existing legislation and those areas proclaimed as such by the President will remain under the management of specified agencies. In the case of contiguous fishery resources, coastal cities or municipalities are encouraged to manage the shared resources as a single resource system consistent with the principles of integrated resource management.

[217] Republic Act No. 8550, "An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent thereto, And for Other Purposes," February 25, 1998.

Part Two – TOOLS AND INITIATIVES FOR ENHANCING MARITIME ENFORCEMENT IN THE PHILIPPINES

Chapter 3 – PREVAILING INITIATIVES AND PROGRAMS

3.1 Maritime Security Response Initiatives

Being an archipelagic country where a significant part of the national economy heavily relies on maritime transport services, the security of maritime trade and shipping routes is of vital importance and must at all times be free from any kind of threats. Maritime Security are those measures employed by maritime administrations, flag States, vessel owners and operators, port facilities, offshore installations, other maritime organizations and entities to protect against unlawful acts such as piracy, armed robbery, terrorism or other forms of violence against ships, crews, passengers, port and facilities, offshore installations and other targets at sea or in coastal areas, espousing a broader spectrum of national security and interest that is geared towards sustainable development and socio-political cum economic progress of the nation.[218]

As flag state, the maritime enforcement agencies of the Philippines projects its capabilities in coherence with the law and for the protection of life, liberty and property against all acts of inimical and dangerous to the national security of the country.[219] The national security policy, goals, and objectives define the strategy and programs in response to threats and opportunities that would have bearing on the peace and stability of the nation as well as on the well-being of Filipinos.

The Philippines is in pursuit of real modernization and transformation efforts in both the Armed Forces of the Philippines (AFP) and the PNP as well as the PCG. Both the military and the non-military aims to rebuild themselves as institutions by way of reorganizing (as to

[218] PCG MARSLEN Manual 2011, pp. 17.
[219] ibid., at footnote 200.

how units are organized and utilized), retooling (as to equipment, weaponry and facilities), and reorienting their approaches (as to values and even strategy) in order to be more responsive to the constantly changing policy and security environments. This also includes the strengthening of the government's coordinative and integrative mechanisms (Security Council, Peace and Order Councils, Anti-Terrorism Council, etc.) to synergize the capabilities of the various institutions in attaining a common goal. [220]

3.1.1 Counter-Terrorism Initiatives

Philippines is among those countries who consider maritime security operations as law enforcement operations, not military operations. Non-military or law enforcement agencies such as PCG are being moulded and equipped with excellent opportunities to promote security cooperation in the coastal, at the same time avoiding the political sensitivities. It has been viewed that non-military enforcement agencies have a lower political profile than the navy, and are particularly useful for operating in maritime waters that are either politically sensitive or subject to overlapping claims to maritime jurisdiction.[221] Sam Bateman hails this scheme as 'a revolution in maritime strategic thinking'.[222]

The 2004 Superferry 14 bombing triggered many law enforcement agencies in the maritime sector to harmonize their efforts to combat terrorism in coherence with their respective mandates. The Philippine Navy, an exemplar of defense in the territorial seas of the country, was given additional mandate by the state under Department Order 36 of Department of National Defense dated 29 November 2006, to lead and chair the Coast Watch system of the government. This paved the way for a more reliable intelligence information gathering and surveillance involving foreign and domestic ships equipped with automatic identification system plying the sea area of jurisdiction. The PNP Maritime Group on the other hand, whose primary function was to insure peace, order and security at sea, strengthens its capabilities by procuring[223] and acquiring through donation of the US[224] of new facilities and equipment such as police gunboats, 31 – footer Police Patrol Boats, tow trucks for rubber

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[220] Ibid., at footnote 44.
[221] Ruijie He, "Coast guards and maritime piracy: sailing past the impediments to cooperation in Asia," The Pacific Review 22.5 (2009): 667-689.
[222] Sam Bateman, "Coast guards: new forces for regional order and security," (2003).
[223] "PNP buys 85 new rubber boats," Inquirer.net, June 21, 2010.
[224] "PNP thanks US for beefing up maritime force," Journal Online, September 04, 2012; "PNP maritime group to get gunboats for border patrols," Malay Business Insight, 16 July 2012.

boats and train more personnel in close coordination with the Local government units and local barangays as well. The PNP took charge of filing and apprehending criminals who committed crimes at sea. Most common crimes committed were usually attributed to piracy, transnational crimes, drug related incidents and small scale robbery.

Prior to 9/11, terrorism is not major topic of special importance to ASEAN.[225] Instead, ASEAN counted terrorism under the category of transnational crime, along with narcotics trafficking, arms smuggling, money laundering, and piracy. Even the "ASEAN Vision 2020", which laid out the organizations long range goals, and the 1998 Hanoi Plan of Action to implement the vision did not mention terrorism.[226] The terrorist attacks of September 11, 2001, led to a crucial change in the way ASEAN approached terrorism.[227] The ministers, during the Third ASEAN Ministers Meeting on Transnational Crime (AMMTC) on October 11, 2001, in Singapore, mutually concurred that the efforts to fight transnational crime "should have a particular focus on terrorism" which presupposed the shared perception of terrorism as a threat.[228] This, in turn, influenced their positions on regional counterterrorism cooperation.

Former Philippine President Gloria Macapagal Arroyo, facing a major separatist insurgency in the south during her stint, enthusiastically supported the United States and was the first leader of an Asian country to proffer combat troops in support of Operation Enduring Freedom.[229] The Philippines then received a ten-fold increase in military aid from US$1.9 million in FY 2001 to US$19 million for FY 2002 in Foreign Military Fund (FMF) as the US found it in its interest to strengthen the AFP's counter-terrorism capability.[230] American involvement in the Philippines, however, was limited to the provision of counter-terrorist training such as Balikatan Exercise 2002-02 in Mindanao, CARAT 02, and Talon Vision, secure radios, and other military equipment to the AFP.[231] In May 2002, the Philippines, together with Indonesia, and Malaysia signed the Agreement on Exchange and Establishment of Communication Procedures, to which Thailand and Cambodia later acceded. The

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[225] Jonathan T. Chow, "ASEAN counterterrorism cooperation since 9/11," Asian Survey 45.2 (2005): 304.
[226] Chow, *op. cit.*, pp. 303-305.
[227] Chow, *op. cit.*, p. 305.
[228] Chow, *op. cit.*, p. 305
[229] Chow, *op. cit.*, p. 308
[230] Renato Cruz De Castro, "Addressing international terrorism in Southeast Asia: A matter of strategic or functional approach?", Contemporary Southeast Asia: A Journal of International and Strategic Affairs 26.2 (2004): 193-217.
[231] Cruz, *op. cit.*, pp. 201-202.

agreement committed the signatories to share airline passenger lists, blacklists, and computerized fingerprint databases, as well as engage in joint training exercises and strengthen border controls by designating common entry and exit points.[232] Notably, the Philippines also begun to participate and conduct multilateral military exercises involving other Asian allies such as Thailand in RIMPAC West, Thai MTWSEX, and Marcie 03-1.[233]

3.1.2 Sea Marshalling

One of the measures of the Philippine government to ensure security in the maritime industry is by integrating the ISPS Code in the local context. It is the establishment of Task Force Sea Marshall (TFSM) which was created by virtue of the authority vested by the President in 2004 immediately after the Superferry 14 bombing. The task force is composed of four branches of government coming from the security sector, the PCG, PN, PA and PNP composing of one (1) team to provide covert and overt operation to all passenger vessels plying domestically from North to South voyages of the country.[234] The TFSM likewise contributes in the promotion of maritime safety, environmental protection, and in helping contain drug trafficking, illegal traffic of persons, explosives, contrabands, illegal entrants, petty crimes, and transnational crimes while the vessels are escorted underway between ports and destination. [235]

A random survey conducted in 2010 on passengers and crew of various passenger ferries by the PCG disclosed an overwhelming support for the continued deployment of the composite teams together with blue guards from the shipping companies. 326 out of 342 respondents said that the presence of sea marshals make them feel safe and secure during the voyage.[236] Four members of PCG's TFSM were in fact cited by the IMO in recognition of their actions in the conduct of actual evacuation and disembarkation of the passengers and crew of the ill-fated M/V Super Ferry 9.[237]

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[232] Chow, *op. cit.*, p. 313.
[233] Cruz, *op. cit.*, pp. 201-202.
[234] Speech of COMMO Luis Tuason PCG, "PCG Maritime Challenges: Lessons and Experiences," APHOMSA16-19 Jun 2010.
[235] "Passengers continued to laud Sea Marshal services," Philippine Coast Guard website, 23 August 2012, available at www.coastguard.gov.ph.
[236] Ibid.
[237] Ibid.

The PCG is at the forefront of organizations seeking to protect minors from being trafficked to Manila for illegal work, more specifically, prostitution or domestic work. The young victims from the provinces are enticed by recruiters to leave their homes and work in Manila. Once the recruiter and his young victims disembark from a ferry at the port of Manila, authorities will have difficulties in tracking them down. This is why Coast Guard personnel and the TFSM patrol passenger decks looking for minors, usually young girls who seem to be alone or accompanied by suspicious characters, to see whether they are falling victims to human traffickers. They make the most of the three opportunities that they have to immediately intercept human traffickers: during embarkation, while en route, and during disembarkation. From 2007 up to the 2nd quarter of 2012, the PCG has rescued 543 would-be victims of human trafficking.[238]

3.1.3 Coast Watch System

One of the most interesting collaborative initiatives is the evolving National Coast Watch System (NCWS) in the Philippines. The CWS was first conceptualized in 2006 and came into being on November 28, 2008. Originally designed to improve maritime domain awareness in the dangerous Sulu Sea and, eventually, the Philippine territory of the disputed Spratly island chain in the South China Sea. This vast area of water is not only the frequent venue of piracy, smuggling and terrorist activity but also a lucrative site for oil and gas exploration.[239] The NCWS concept has now been extended to cover the entire Philippine archipelago.[240] In line with the above mentioned core function, the NCWS has the operational tasks of countering threat groups—notably the New People's Army (NPA), the ASG, renegade elements from the MILF, pirates, and criminal trafficking organizations—enforcing maritime law, and providing disaster relief.

The NCWS is composed of three levels of management; the National Coast Watch Council is involved in the strategic direction and policy formulation, the National Coast Watch Secretariat is in-charge of the administrative and technical support to the Council while the National Coast Watch Center (NCWC) is responsible for the implementation and enforcement of maritime policies and laws. According to the PCG, the agency in-charge, the NCWC is currently working on the approval of permanent locations/office, refurbishment of

[238] Philippine Coast Guard Report.
[239] "Making Philippine Seas Secure,: Defense News [Springfield, Va], 11 Apr 2011.
[240] "National Coast Watch System established," Manila Standard, 12 September 2011.

working facility, installation of computer, communication, information gathering and analysis, databasing and information, and technology systems.[241] By 2013, the NCWS is anticipated to be ready for the full implementation of the information-sharing and coordinated operations; to conduct inter-agency exercises to test and validate procedures, address system and equipment malfunctions, and populates databases; to fill up inter-agency personnel complement and; to develop and manage common operating picture and situational awareness.[242]

The area of responsibility (AOR) is divided between four main monitoring stations: CWS West (based in West Palawan), CWS North (based in Luzon), CWS South (based in western Mindanao), and CWS East (based in Davao City). These facilities act as local fusion hubs for offshore radar platforms that fall within their jurisdiction. The sites are equipped with radars, an Automated Information System (AIS), UHF-band radios, high-powered binoculars, and infrared and colored cameras. The whole system is coordinated by the Maritime Research Information Center (MRIC) in Manila, which is operational 24/7. The MRIC is primarily responsible for compiling strategic threat assessments and providing an informed, unified picture of the maritime environment in the Philippines. Presently, CWS-owned assets consist mostly of light patrol gunboats deployed in Zamboanga, Davao and Tawi-Tawi, and and fixed-wing Islander aircraft that can transport up to ten people and have an endurance of 5.5 hours flying time at a speed of 120 knots.[243] There are also plans to equip the planes with flares to enhance their ability to operate at night using the U.S. 1207 funds to pay for these modifications. Apart from these vessels, the CWS can draw on assets from the PN on an as-needed basis.[244]

The NCWS calls on an interagency effort involving the PN, PNP-MG, PCG, National Anti-Terrorism Task Force, NICA, BuCus, BID, BFAR, Bureau of Quarantine and Health Services, PPA, MARINA, and Philippine Center for Transnational Crime for manpower, equipment and material support.[245] A commander of naval forces in western Mindanao CWS, in an interview, expressed his dismay in information sharing among the concerned agencies

[241] ibid., at footnote 238.
[242] Ibid.
[243] Rabasa and Chalk, *op. cit.*, p. 24.
[244] Ibid.
[245] "Maritime Security: Philippines Establishes National Coast Watch System," September 13, 2011, available at http: //www.eaglespeak.us/2011/09/maritime-security-philippines.html.

as they tend to monopolize and keep to themselves whatever information they have.[246] Recently, a CWS Capability exercise was conducted to promote and intensify inter-agency collaboration between PN, PCG and PNP-MG. Observers from allied maritime countries of Australia, Malaysia, and Indonesia were invited to participate during the exercise.[247]

3.1.4 Davao Gulf Watch

Addressing security challenges in Davao Gulf, the PCG has conceived and developed the Davao Gulf Watch. The gulf watch is an operational system aimed to enhance maritime enforcers' presence and control over critical choke points in the gulf and along its coastline with its limited available assets and resources. The system initially aid the monitoring of the movement of vessels and significant maritime activities in the critical areas of the gulf for security purposes but later expanded to cover the whole gulf addressing not only maritime security but maritime safety as well.[248] The primary backbone of *Davao Gulf Watch* is its radio communications system which is mainly dependent on VHF radios. The communications system required a repeater station installed in Tagum City to cover the whole area of the gulf extending to parts of Davao Oriental. Serving as radio and response stations for the gulf watch are Detachment Panabo, Detachment Malalag, Detachment Malita of CGS Davao, Detachment Lupon and Detachment Tibanban of CGS Mati. The communications system allows real time transmission of information where events are actually taking place or allows decision makers to be virtually present where events are actually taking place.[249]

Delisting of Mindanao Area from War Risk Zones. The Philippines, particularly the southern part of the country is listed as area with "perceived enhanced risk" from various threats such as hull war, piracy, terrorism and other related perils by the Lloyds List Joint War Committee (JWC). In 2009, the anchorage areas in Davao Gulf, particularly Malalag and Bunawan Bays, Pujada Bay, and Mayo Bay, after a successful security assessment, was delisted.250 DOTC thru PCG and Marina and in cooperation with PN, PNP, BuCos, BID and DILG prepared an

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[246] Ibid., at footnote 239.
[247] "Philippines to hold Coast Watch Exercise, U.S. surveillance aircraft to participate," Xinhua News Agency - CEIS [Woodside], 02 Sep 2012.
[248] COMMO Lino H Dabi PCG, "Coast Guard District Southeastern Mindanao: Its Vital role in Protecting Security interests in Davao Gulf."
[249] Ibid.
[250] "Lloyd's joint war committee delists Davao Gulf from risk list," Manila Bulletin, September 25, 2009, available at http://www.mb.com.ph/articles/222164/lloyd-s-joint-war-committee-delists-davao-gulf-risk-list.

Integrated Security and Response Action Plan (ISRAP) to demonstrate that areas within Davao Gulf no longer poses threat to maritime industry and a safe haven for international commercial trade ships especially during the peak of the world's financial crisis.

Seeing the growing potentials of the anchorage areas in Davao Gulf, security measures to safeguard laid up vessel from perceived threats were formulated and implemented. The concept of operation is divided into three phases; namely, Identification and Detection Phase, Prevention Phase, and Response Phase.[251] The identification and detection of threats involves intelligence fusion with other intelligence units and concerned agencies and law enforcement units, regular consultation and dialogue with the various vessel security officers in the lay-up facility and regular security survey inspection of the facility. The prevention phase involves a random seaborne and foot patrol, coordination with local officials for continuous profiling of all residents and new faces in their respective areas and the dissemination of hotlines to populace and other concerned agencies and individuals, the activation of one entry-exit point security measure and the deployment of multi-layered defense system. The last phase concerns the establishment of Incident Command System or Command Post, deployment of support units and task elements for assistance and the exercise of lead agency concept depending on the nature of threat. The ISRAP concept was proved to be effective by conducting intelligence fusion exercise and MARPOL exercise in 2010.

In the March 2012 report of the JWC another area in Mindanao was delisted, the area between Polloc Harbor and General Santos,[252] with the joint cooperation of DOTC thru MARINA and PCG, and the local government, Davao Gulf. Former DOTC Secretary Mar Roxas said that the delisting basically affirms that Mindanao is stable and safe for business activities, particularly for international shipping and ancillary services.[253]

3.1.5 Armed Robbery against Ships

The Philippines' physical make-up as an archipelago has made it vulnerable to armed robbery attacks that can undermine not only its national security but also the security of its

[251] "Integrated Security & Response Action Plan (ISRAP)," Philippine Coast Guard Coast Guard District South Eastern Mindanao.
[252] "Hull War, Piracy, Terrorism and Related Perils Listed Areas," Joint War Committee (JWC), 28th March 2012, available at Lloyds, London. http://www.lmalloyds.com/lma/jointwar.
[253] "Secretary MAR Roxas Hails Delisting Of Mindanao From JWC List Of War Risks Areas," DOTC News Article, 11 January, 2012.

seafarers. Table 3 shows that since 2009, the threat of armed robbery incidents continues to escalate.

	2009	2010	2011	2012
Number of incidents	13	10	17	11
Number of vessels Robbed/Pirated	9	7	17	10
Number of vessels seajacked * vessels taken outright.				1
Number of Persons killed	3	2		4
Number of Persons Wounded				3
Number of Persons Missing		6		
Number of Persons Held Hostage	4			

Excerpt from PCG Intelligence Report

Table 4. Piracy Incidents in the Philippines (2009-2012)

3.1.6 Sea of Cooperation

To effectively and efficiently address lawless maritime activities and other problems in the maritime domain, the maritime enforcement agencies needs to strengthen cooperation with other national government agencies and local government units and foreign counterparts while at the same time improving its capabilities.

Local Partnership. The Philippines believes that there is strength in cooperation and coordination. To this extent, several coordinative and cooperative efforts of various government agencies in the form of agreements has been formed, participated and entered into. For example, the PCG is an active member of the National Law Enforcement Coordinating Committee and its various sub-committees. The PCG and the BUCUS have a long record of collaboration in the fight against smuggling. As the techniques adopted by smugglers grow more complex and the venues for the operations become broader, the two agencies renewed their partnership by executing a memorandum of agreement.

In anti-illegal fishing, the BFAR has existing agreements with other government agencies like the PCG to provide the manning requirement to 14 BFAR vessels that are used for anti-illegal fishing operations and patrols. The PCG has also been working closely with the OTS

and the PPA in the implementation of the ISPS Code. The PCG similarly maintains an active membership in the National Committee on Illegal Entrants (NCIE) where it coordinates for the prosecution of apprehended illegal aliens. Recently, the PCG has been deputized by the BID thru a memorandum of agreement for cooperative enforcement and implementation of immigration laws particularly in Mindanao.

The anti-illegal drugs campaign is bolstered by the participation in the Interagency Counternarcotics Operations Network (ICON) of PDEA, AFP, PCG, PNP, NBI, NICA and BOC which is under the supervision and control of PDEA. The ICON is a coordinating body that serves as a center for information and intelligence relating to anti-illegal drugs operations. Its mission is to support law enforcement through timely analysis and dissemination of intelligence on the movement of illicit drugs, and coordinate detection, monitoring and interdiction operations. The PCG, in working closely with PDEA counterparts in carrying out an all-out war against drugs, apprehended 17 suspected drug traffickers and seized some Php306, 000 worth of illegal drugs and paraphernalia in 2008.[254]In early 2009, PCG operatives seized some Php432, 500 worth of illegal drugs and paraphernalia and arresting five suspects.[255] Anti-illegal drug collaboration is continuously being strengthened by a string of operations jointly undertaken by the agencies.

International Collaboration. Piracy issue in the southern part of country is very rampant due to its proximity distance from neighbouring countries of Borneo, Malaysia, and Indonesia. That is why PCG as the leading maritime agency for law enforcement, strengthen its ties with ASEAN countries by joining actively in bilateral agreements and exercises such as the BIMP-EAGA[256] and the integration of CIQS (customs, immigration, quarantine, and security) in the maritime industry. The country likewise joins Cooperation Afloat Readiness and Training (CARAT), an exercise series, with Indonesia, Singapore, Malaysia, Brunei, and the United States. Another regional collaboration that the country has enlisted is the South East Asia Cooperation against Terrorism (SEACAT), whose purpose is to focus on the

[254] Ibid., at footnote 89.
[255] Ibid.
[256] BIMP-EAGA was launched in 1994 as a cooperation initiative by Brunei Darussalam, Indonesia, Malaysia, and the Philippines, all of which are member-countries of the regional Association of Southeast Asian Nations (ASEAN). The objective behind the creation of BIMP-EAGA is to accelerate economic development in the four countries' "focus areas" which, although geographically distant from their national capitals, are in strategic proximity to each other, in one of the world's most resource-rich regions. The BIMP-EAGA initiative is market-driven, and operates through a decentralized organization structure involving the four governments and the private sector.

worldwide seaborne terrorist threat, specifically the troubling transnational and piracy threats found in the Strait of Malacca.

The Philippines is spearheading moves to promote and enhance a transparent and effective institutional means of coastal surveillance in and around the Tri-Border Area. Central to these efforts is the CWS, a collaborative initiative involving the United States, Australia, and the Philippines. The CWS has the potential to play a significant role in helping to augment MDA and border security in the Philippines and in the larger tri-border area. The initiative has been universally endorsed in the United States and Australia, is generally welcomed by the Philippines, and represents a cost-effective means for countering maritime transnational threats.[257] Likewise, Australia and the Philippines signed an MOU pertaining to the combating of international terrorism and transnational crime in 2003. The Philippines-Australia relationship is particularly important as both countries work together to improve international and national security and reduce the threat of terrorism. The cooperation on security issues is exemplified by the success of the Philippines-Australia Port Security Capacity Building Project.[258]

The United States and the Philippines alliance have always promoted cooperation and force interoperability in the areas of maritime law enforcement and maritime security. The United States provided advanced officer training and communications equipment to the PN, PCG and PNP. In September 2012, the Defense Threat Reduction Agency assessment team of the U.S. in connection with its current cooperative threat reduction effort with the PCG to determine the assistance needed in support to the NCWS and the PCG's Weapons of Mass Destruction Proliferation Prevention Missions.[259]

Philippines is one of the contracting parties to the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). The ReCAAP-Information Sharing Centre (ReCAAP-ISC) was established under the agreement to serve as platform of information exchange with the focal points for the improvement of incidence response by member countries; analyse and approve accurate statistics of piracy and armed robbery incidents; for capability building of member countries in combating piracy and

[257] Rabasa and Chalk, *op. cit.* p. 29.
[258] ibid., at footnote 238.
[259] Ibid.

armed robbery; and for cooperation on joint exercises.[260] The ReCAAP-ISC was established under the Agreement, and was officially launched in Singapore on 29 November 2006. It was formally recognised as an international organisation on 30 January 2007. The ReCAAP-ISC facilitates exchange of information among the ReCAAP Focal Points, through a secure web-based Information Network system. Through this network, the ReCAAP Focal Points are linked to each other as well as the ReCAAP-ISC on a 24/7 basis, and are able to facilitate appropriate responses to incident. The PCG is the country's focal point in ReCAAP-ISC.

Furthermore, the PCG is regularly participating in combined exercises and conferences in order to enhance the agency's interoperability and cooperation with allied countries and local authorities. These include the Anti-Piracy exercise with Japan Coast Guard, the CARAT Exercise with the US and PN, and the fleet exercise with Australia. Such collaboration is not limited to sea exercises. Japan International Cooperation Agency sustains support to PCG's capability-building and human resource development, by providing training to PCG personnel, providing equipment and extending grant aid to enhance the PCG's communication System for Maritime Safety and Security. Likewise, Australia and the Philippines signed an MOU pertaining to the combating of international terrorism and transnational crime in 2003. The Philippines-Australia relationship is particularly important as both countries work together to improve international and national security and reduce the threat of terrorism. The cooperation on security issues is exemplified by the success of the Philippines-Australia Port Security Capacity Building Project which has also benefited the PCG.[261] The United States and the Philippines alliance have always promoted cooperation and force interoperability in the areas of maritime law enforcement and maritime security. The United States provided advanced officer training and communications equipment to the PCG and AFP. The PCG is looking forward for the visit of the Defense Threat Reduction Agency assessment team of the U.S. for the determination of the assistance needed in support to the NCWS and the PCG's Weapons of Mass Destruction Proliferation Prevention Missions.[262]

3.2 Maritime safety Tools and Initiatives

[260] ReCAAP Information Sharing Center Website, available from http://www.recaap.org/.
[261] Ibid., at footnote 238.
[262] Ibid.

Ensuring maritime safety is an intertwining effort carried out by the various players in the industry.[263] The ship owners or operators are responsible for the day to day operation and maintenance of their vessel. The crew steers and navigates the vessel to timely and safely reaches the people and goods' destination. The shipyards and naval architects designs and constructs ships that are safe and ready to face the perils of the sea. The government provides and enforces the safety standards of safety imperatives in every vessel and initiate support services for a safe environment for ship's navigation. The riding public and the owners or facilitators of cargoes on board likewise plays a significant role in ensuring maritime safety.

To overcome the challenges in the promotion of safety at sea, every government entity has to play its role in a most responsive manner if maritime safety is to be enhanced and ensured in every voyage at sea.[264] Co-existence is a must among these players – MARINA, PPA, Philippine Regulations Commission, MTC, National Telecommunications Company, OTS and the PCG. Each must play its part, according to its mandate and duty – to make things happen, to reach and meet the needs and interests of the maritime industry. In maintaining navigation safety however, PCG plays a major role particularly in terms of providing adequate safety support infrastructures for a safe environment so vessels could safely navigate the Philippine waters. MARINA on the other hand is concerned with the safety of the vessel and everything within it.

3.2.1 Port State Control (PSC)

All maritime safety measures and activities covering equipment, communication, seaworthiness of ship, navigational aids, manning, crew training, safety assistance, inspection, pollution and international cooperation are responsibilities of a flag state.[265] However, as difficulties in fulfilling their expansive responsibilities were experienced by a number of economies, port states were given some of the tasks of the flag states. Port states carry out inspection regime by ensuring foreign ships visiting its port to comply with international safety and marine environment protection conventions.[266] When deficiencies are

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[263] CDR Allan DelaVega PCG, "PCG: Full Speed in Promoting Safety at Sea," available at www.coastguard.gov.ph.

[264] Ibid.

[265] Nivedita M. Hosanee, "A Critical Analysis of Flag State Duties as Laid Down Under Article 94 of the 1982 United Nations Convention On the Law of the Sea," DOALOS NY 2009.

[266] Hak Bong Chang, "Toward More Efficient Maritime Safety Administrative Structures in the APEC Region," *해양정책연구* 18.2 (2003): 69-100.

found, actions by the port State varies from recording a deficiency and instructing the master to rectify it within a certain period and serious deficiencies can lead to vessel detention with consequent cost until serious deficiencies have been rectified.[267] In the case of detention, publication in the monthly detention lists of the Paris and Tokyo MoU web sites will take place.[268]

The Memorandum of Understanding on Port State Control in the Asia Pacific Region (Tokyo MOU) is a regional mechanism intended for a better implementation of PSC to eliminate substandard vessels for maritime safety, to protect the marine environment and to safeguard working and living conditions onboard. The MOU was concluded in December 1993 and came into operation four months after. Philippines is among the 18 signatories of the Tokyo MOU.

The Asia-Pacific Computerized Information System is the established PSC reporting system for the purpose of exchanging information on port State inspections, in order to: a) make available to Authorities information on inspections of ships in other regional ports to assist them in their selection of foreign flag ships to be inspected and their exercise of port State control on selected ships; and b) provide effective information exchange facilities regarding port State control in the region. The PCG, as the country's PSC Authority, have access to this system.

Concentrated Inspection Campaign (CIC). Each year the major PSC regions are carrying out a Concentrated Inspection Campaign on an agreed topic. When boarding a ship the PSC inspector will check certain equipment or documentation onboard besides the general routine PSC inspection. The check is normally carried out by a checklist which is prepared by the regions. Each CIC is lasting for 3 months in all countries of the region. Generally the regions are starting the campaigns in September. Port State Control Officers (PSCO) will use a list of 12 selected items to verify critical areas on the agreed topic some of which are related to documentation, equipment and crew familiarization. For this purpose, PSCO will apply a questionnaire listing a number of items to be covered during the concentrated inspection. It is expected that the Paris and Tokyo MoUs will carry out approximately 10,000 inspections during the CIC. The results of the campaign will be analysed and findings will be presented

[267] Sampson and Bloor, *op. cit.,* p. 555
[268] Sampson and Bloor, *op. cit.,* p. 557.

to the governing bodies of the MOU for submission to the IMO. Other MOU may also carry out a CIC on the same topic during this period. For 2012, the CIC was focused on Fire Safety System. The 43 Maritime Authorities of the Paris and the Tokyo MOU on Port State Control launched a joint CIC with the purpose of ensuring compliance with SOLAS Chapter II-2/ Construction - fire protection, fire detection and fire extinction arrangements on board ships.

Addressing the country's role as a Port State to foreign vessels calling on Philippine ports, the PCG ensures that these foreign vessels are compliant to applicable and in forced IMO and International Labor Organization (ILO) Conventions through the PSC regime. The PCG was vested with this authority when it became a member of the Tokyo MOU in 1994.[269] The PCG since 2007 until November 2011 conducted inspections to 9,962 to cover both initial and follow-up inspections of foreign vessels calling on the various ports in the country resulting to 2,820 total inspections with deficiencies and detention of 13 foreign vessels.[270] To further improve the competence of PCG personnel on PSC, 14 personnel have so far been sent for Basic and Fellowship trainings in Australia, Japan, China, Canada, Vietnam and Malaysia since October 2008.[271] PSC Committee meetings, seminars and workshops were actively participated by the PSC Officers.[272]

3.2.2 Aids to Navigation

The Philippines' poor safety record is said to be partly attributable to the shortage of navigational aids and poor condition of existing facilities. It is ideally presumed that since the Philippines has a coastline longer than the United States, it should have six to seven lighthouses per 100km of coastline.[273] Mr Akira Matsuya of JICA claims that least 1,200 light stations are needed to adequately cover most of the country's sea routes.[274] The country however has only 561 light stations and 63 buoys and beacons throughout the country.[275] Recent PCG Maritime Safety Services Command (MSSC) report revealed that 149 light

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[269] Ibid., at footnote 263.
[270] Philippine Coast Guard, "PSC Inspections from 2007 – Present (Nov 2012)," Port State Control Center Manila.
[271] Philippine Coast Guard, "PSC Report on Trainings and Meetings from 2008 – Present (Sept 2012)," Port State Control Center Manila.
[272] Ibid.
[273] "Lloyd's Casualty Week," Vol. 317, No. 10, September 3, 1999.
[274] Ibid.
[275] Philippine Coast Guard Maritime Safety Service Command 2012 Report.

stations were damaged and non-operating due to the onslaught of several typhoons in the country.[276]

Lighthouses are recognized to be very crucial to navigation particularly at night. Despite the advancement in technology and the use of satellite guided positioning devices, mariners still depend on these light stations to confirm electronic readings of their positions. Further still, a great percentage of boats operating in our waters depend largely on these aids to navigation. This is recognized with several projects implementing the upgrading and installation of lighthouses all over the country. Several foreign funded projects have resulted in the rehabilitation of old lighthouses and the installation of new ones. In 1999, the project funded by Japan's Overseas Economic Co-operation Fund had helped the Philippines rehabilitate and upgrade 39 lighthouses, acquired a newly-built lighthouse tender, established a buoy depot at Sangley Point in Cavite and installed two radar beacons.[277] JICA likewise sponsored training programme providing Philippine Coast Guard personnel technical skills in operating and maintaining the country's lighthouses.[278] An extensive rehabilitation program is currently being undertaken by the MSSC in order keep those lights of safety burning. Particular attention has been given to the more travelled routes such as the Manila to Cebu route where most of the waypoints and critical landmarks have lighthouses installed.[279]

Geographical Information Systems (GIS). MARINA, in collaboration with the JICA and the National Mapping and Resource Information Agency (NAMRIA), pursued project on categorization of navigational areas. The project is designed to reduce the number of maritime accidents in the Philippines through categorization of the existing navigational and restricted areas with the use of the GIS software and to determine the type and size of ships that can be allowed to ply therein. The identified set of parameters such as ship design, weather conditions and hydrographic factors to determine the type of ships that could navigate in specific navigational areas were pilot tested in Subic, Corregidor, Central and Western Nautical Highway routes.[280] In line with this, a series of 5-day On the Job Training in the Central and MARINA Regional Offices on Basic Application of the GIS and the

[276] Ibid.
[277] Ibid., at footnote 273.
[278] Ibid.
[279] Ricardo G. Sigua and Glenn D. Aguilar, "Maritime Incident Analysis Using GIS," Journal of the Eastern Asia Society for Transportation Studies, Vol.5, October, 2003.
[280] "Highlights Of Accomplishments (CY 2011)," Maritime Industry Authority (MARINA).

operation of the Manifold Software and its applications to concerned MARINA employees were conducted. Several workshops was likewise held which resulted in the identification of parameters in the categorization of navigational areas into protected waters and coastal waters or open seas and the corresponding license to be issued to vessels based on these categories.[281]

3.2.3 Maritime Safety Information Dissemination

The PCG continues to disseminate maritime safety information through the issuance of Notices to All Mariners (NOTAM) to all vessels transiting Philippine waters. NOTAM is a special category of navigational safety data that warns the mariners at sea of hazards to navigation such as off-shore drillings, marine research and naval exercises, among others, which might encounter while underway. The office of Maritime Safety Services diligently issue such warnings and information so mariners can take the necessary precautionary measures during navigation. Since 2008 up to 2012, 780 NOTAMS were already issued.[282]

3.2.4 Traffic Separation Scheme (TSS)

The continuing increase of vessel traffic in the Philippine sealanes has prompted the PCG to establish the Traffic Separation Scheme (TSS) within Batangas sealane, Corregidor and Verde Island Passages. These TSS are established to provide order and ensure the safety of navigation in major thoroughfares where density of traffic is great or where freedom of movement of ships is inhibited by restricted sea room or the existence of hazard and or obstruction to navigation. Lanes and boundaries of the TSS are reflected in nautical maps printed by NAMRIA. The Batangas TSS was likewise set to protect marine sanctuaries within Batangas Bay and Maricaban Strait. The PCG is studying fifteen (15) sea routes for possible establishment of TSS.[283]

3.2.5 Joint PPA-PCG Manning of VTMS Centers

As part of the PCG Aids to Navigation (ATON) Development Master Plan, Vessel Traffic Monitoring System (VTMS) Centers are being put up in various major sealanes as part of the navigational safety enhancement project. The VTMS is designed to improve safety and

[281] Ibid.
[282] Ibid., at footnote 275.
[283] Ibid., at footnote 263.

efficiency of vessel traffic, as well as, to protect the environment. It is capable of interacting with traffic and responding to traffic situations developing in the VTMS area. While funding constraints is yet to be resolved for this infrastructure, the PCG continuously negotiates with PPA for the joint manning and operations of existing VTMS Centers located at the Ports of Manila and Batangas.[284] In a newspaper interview, PCG senior officer announced that the PCG is eyeing to construct three VTMS stations with coverage of at least 30 to 35 nautical miles by 2013 to be set up north of Tablas Island and in Sibuyan Island in Romblon as well as in the north part of Iloilo.[285] The use of VTMS greatly contribute to safety at sea, optimizing its potentials in the broadcasting of NOTAM, weather bulletins and other maritime safety information; supervision of vessel traffic within existing TSS sea lanes established by the PCG; distress signal monitoring station; and monitoring and surveillance of illegal activities such as piracy and armed robbery at sea.[286]

3.2.6 Domestic Vessels Regulation

MARINA in the performance of its vessel safety function promulgates and implements policies for Philippine registered vessels plying domestically in adherence to the standards set by law and other international obligations. The recent MARINA issuances are implementation of load line survey, marking and certification in support to the International Convention on Load Lines, as amended; new standards on the quality and kind of lifejackets and lifebuoys that are deemed acceptable for use on board ships were set; regulation of the operation of tankers and tanker-barges and ships for purposes of safety standards and protection of marine environments; the minimum standards for construction of wooden hull ships or wooden hull boats with outriggers and; the implementation of code of safety practice for cargo stowage with the requirement of the submission of cargo securing manual, among others.

3.3 Conservation and Protection of Marine Environment

The marine environmental problems of developing regions are a particular cause for concern because of the great dependence of their human populations on marine resources for survival,

[284] Memorandum Of Agreement – PCG and Philippine Ports Authority, Joint Operation of VTMS, 26 February 2009.
[285] "PCG to set up three VTMS stations," Buhay Marino Dyaryo, August 13, 2012.
[286] Ibid., at footnote 263.

and because a significant portion of the world's natural heritage is threatened. Of the problems, the destruction of shallow-water ecosystems and organic (sewage) pollution are the most prominent.

3.3.1 Fishing Regulation

The primary implementing agency for the 1998 Fisheries Code is the BFAR, [287] however, many of the provisions in the law relate specifically to LGU. The role of provincial LGU under both the LGC and 1998 Fisheries Code is said to be not well defined. Surveys conducted in 1996 and 2000 suggest that LGU staff are unclear about what their responsibilities really mean and how to go about fulfilling them.[288] While LGU are generally well versed in the provisions of the LGC, they are less knowledgeable about special laws, such as the Fisheries Code and environmental laws that are primarily under the jurisdiction of national government agencies.[289] BFAR as well lacks the capacity to assist LGU in their fisheries management planning activities and generally takes a hands-off attitude regarding assistance to LGUs.[290]

Police and law enforcement functions rest with the PNP-MG, PCG and LGU. It is the mandate, among others, of the PNP-MG to assist in the suppression of fishing by means of dynamite, explosives or toxic substances or other methods as may be declared destructive by proper authorities; to promulgate, administer and enforce all laws, ordinances and regulations for the protection and promotion of safety of life and property at sea and; to perform investigation and inspection for the effective prosecution of criminal cases involving maritime laws. The PCG is considered as the primary law enforcement arm at sea that covers the enforcement of all maritime laws and other applicable laws on all bodies of water in Philippine jurisdiction and the high seas.[291] Since municipal waters (i.e., 15-km seaward from the shore) are technically under the PNP-MG and the LGU by virtue of the LGC, the PCG provides law enforcement beyond the 15-km municipal waters.[292] The MARINA on the other hand is responsible for the promotion and development of the maritime industry, the

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[287] Ibid., at footnote 217.
[288] Miriam C. Balgos, "Integrated coastal management and marine protected areas in the Philippines: Concurrent developments," Ocean & coastal management 48.11 (2005): 972-995.
[289] Balgos, *op. cit.*, p. 10
[290] Balgos, *op. cit.*, p. 6
[291] Balgos, *op. cit.*, p. 14
[292] R. Rivera, et al., "Aquatic resources in the Philippines and the extent of poverty in the sector," (2002).

regulation of shipping, and maritime safety regulatory functions in collaboration with the PCG. It is in charge of and requires the registration of commercial fishing vessels in Philippine waters.[293]

Marine Protected Area (MPA) regulations are enforced by a team composed of the Coast Guard, PNP, volunteers from NGOs involved in the MPAs, and members of local organizations commonly called ‘‘Bantay Dagat’’ who are trained and deputized to apprehend sanctuary violators.

3.3.2 Oil Spill Response

Oil spills response is divested to the PCG as primary responder. The PCG operates its oil spill response program through its Marine Environmental Protection Command (MEPCOM).

The MV Solar I oil spill incident in August 2006 awaken the need to reorganize response activities in the country at all levels and to revise the Philippine National Oil Spill Contingency Plan (NOSCP).[294] The NOSCP designed and tailored not only on the national level scope of response but in the local area is being participated and joined regularly by the stakeholders in the maritime industry as well. Other government agencies (such as the National Disaster Risk Reduction Management Centre, Environment and Management Bureau of the DENR, PNP, AFP), oil companies, private vessel operators and other technical experts plays supporting role depending on the severity of the spill. Oil terminals, tankers and oil companies are mandated to maintain capabilities for emergency response to handle Tier 1 and 2 spills. Government involvement may be required (but not mandatory) in Tier 2 spills.[295] In large spills, all the national assets of the PCG can be utilized (including national strike teams), and augmented by foreign assistance where such is available.[296] The PCG may also seek international assistance in large oil spills and ask the support of the ports authority, air transportation bureau, bureau of quarantine and immigration bureau in facilitating the entry of foreign response teams.[297]

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[293] Ibid., at footnote 214.
[294] Heather A. Parker, Richard T. Teubner and Jonathon C. Sawicki, "Spill Response Planning in the Philippines: 3-Tier Interaction between Government and Industry."
[295] “National Oil Spill Contingency Plan,” Philippine Coast Guard.
[296] Ibid.
[297] Rosalie Arcala Hall, "Governance during Disasters: Intra-Governmental and Non-Governmental Coordination in the 2006 Guimaras Oil Spill," Philippine Political Science Journal 31.54 (2010): 117-152.

At present, the PCG has four regional centers with its own stockpile of equipment (booms, chemical dispersants, and skimmers) and vessels for containment, recovery and mitigation measures. A senior officer, however, candidly admitted that the centers were trained only for shore spill, not off shore.[298] Take for instance the MV Solar I (Guimaras) oil spill wherein the on-scene commander in Iloilo had no boat for Tier 3 containment operation and had to wait for reinforcements from Manila, which arrived 3 days after the disaster since the nearest stockpile is in Cebu.[299] Neither was there any stockpile of personal protective equipment for their personnel who immediately started the coastal clean-up.[300] Moreover, the frameworks in place for the oil spill response are observed to be government line agency dominated and devoid of serious NGO and local government involvement.[301] During the MV Solar I oil spill, the manner in which the coordinative locus shifted from the PCG NOSCP to the Guimaras-province Task Force Sunrise, to the regional Task Force Solar I Oil Spill was likewise observed to have suggested a lack of definitional clarity as to the scope of the disaster and appropriate response.[302]

An extensive training program for LGUs was also being conducted by PCG-MEPCOM from time to time as a residual support to the NOSCP. Five regions already benefitted the said stimulus training with the participants not only coming from LGU but even from the national government agencies, the AFP, PNP and the private sector. The training also serves as assessment to the existing capabilities to institutionalize best practices in providing assistance and training to sectors of society, and caused the publication of the "LGU Oil Spill Responders Handbook".

The Philippines continuous to strengthen its network/cooperation regionally with the ASEAN-members, Korea and Japan; and internationally with Norway, Sweden, Canada, Australia, Italy, USA, France, Malta, Spain, Germany, Denmark and UK.

Hazardous Noxious Substance (HNS) Spill Response. The landmark case of the HNS spill response capability in the Philippines is the incident involving MV Superferry 9 where more

[298] Hall, *op. cit.*, p. 127.
[299] Ibid.
[300] Ibid.
[301] Hall, *op. cit.*, p. 118.
[302] Ibid.

or less 250MT of oil was on board at the time of the incident. Air and floating assets were deployed together with the Oil Spill Response Teams and the Science & Technical Team equipped with the necessary containment, recovery, mitigation and water quality equipment and sampling kits. During the incident, the National Strike Team of PCG MEPCOM was likewise deployed and tested for the first time. The NST served as technical adviser to the on-scene commander simultaneously feeding important information and images to the Resource Management and Research and Development Center for an immediate assessment of the situation.[303]

Technology-Based & Technology-Driven. The PCG MEPCOM is now equipped with GIS that has evolved to become more than just an information gadget. Acquired in 2006, it only became fully operational sometime 2009. The GIS is considered indispensable aid especially for oil spill management planning, and even in the case of chemical spill. However, at present there are only 2 administrators installed with GIS software which is not enough to cover the entire archipelago.[304] Ideally, each MEP unit should be equipped with GIS for a much wider scope of monitoring. Meantime, it is aiding MEPCOM to map its oil trajectory projection and enable them to point out sensitive areas for priority protection thus, providing sound technical advices to operational Commanders and responders.[305] A good number of PCG personnel is already trained and developed to become technically adept with the system.

3.3.3 Marine Pollution Prevention

With the growing number of companies venturing in the oil exploration business, particularly on the western seaboard of the Philippines it is imperative to exercise regulatory control over such facilities considering the risk it poses on the marine environment in case of a major blow out. The PCG endeavors to ensure that the offshore fixed and floating facilities comply with the requirements of ships 400 GT and above, particularly that of the prohibition to discharge into the sea of oil and oily mixture, garbage, sewage and other noxious liquid and hazardous substances in compliance with the provisions of MARPOL 73/78.[306] The PCG moreover embarked on the synchronization of policy implementation with the times and developments in the country's economy, the maritime environment and legislations.

[303] Commo Arturo C Olavario PCG, "Response to HNS Spills: PCG's Emerging Challenge," available at http://www.coastguard.gov.ph.
[304] PCG Marine Environmental Command 2012 Update.
[305] Ibid.
[306] Ibid., at footnote 303.

CONCLUSION

Maritime enforcement in the Philippines covers a wide range of issues from policies, territorial disputes, law enforcer capabilities, water assets or patrol crafts deployment, and system information sharing to include surveillance and monitoring strategy. These challenges however, can best be categorized by either in maritime security, maritime safety, and marine environmental protection encompassing maritime enforcement strategy in general.

As an archipelagic nation, the Philippines needs to establish a strong maritime enforcement approach to protect its sea from any forms of threats. The real problem in the policy implementation of the country cannot be seen in the written laws per se but rather the way it is being implemented by the authorities. The Philippine legislation thru its national Congress has competent lawmakers to localize the international laws. In the case of Port State Control implementation, the PCG being the sole agency to inspect the safety aspect of the foreign vessels has only restricted powers to detain or sanction any foreign vessels coming from a flag state who have been found with very serious violations, thus this is through the memorandum of understanding with Tokyo-MOU's, the only existing references that the country has signed to. Flag state control implementation on the other hand is another dilemma as well in maritime safety. It lacks the technology to implement the system of monitoring safety and security aspect.

For maritime security, the problem however lies on the capability of the agency to operate within its area of responsibility. This is brought about by lack of water mobility for every maritime agency like the navy, coast guard and the police which by far still bereft of latest monitoring technology.[307] One of the most vital concerns now in maritime enforcement in the country is the security aspect of the islands. The protection and security of the territorial waters remains to be a challenge especially in the western part of the Philippines i.e. territorial disputes on the spratly island[308] and Scarborough Shoal[309].

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[307] ibid., at footnote 162. p. 20

[308] Leo Lito A Ausan Jr., "The On-going national territorial Debate: Issues and Perspective," Integrated bar of the Philippines Journal Vol. 33 no. 2, September 2008. Also see: Amado D Valdez, "The Exploration, Development and Utilization of the Spartlys," Integrated bar of the Philippines, Journal Vol. 33 no. 2, September 2008. Philippines claim only the western section of the Spratlys, which is called the Kalayaan Island Group. Kalayaan was incorporated as a municipality of the Province of Palawan under a 1971 Presidential Proclamation and Presidential Decree No. 1594. It was made part of the 200-mile exclusive economic zone

The increasing number of contrabands and illicit drugs entering the maritime jurisdiction remain prevalent in years and will still continue to increase in numbers every year because of lack of maritime power to monitoring capabilities and systems. The Philippine government invests much of its resources not on systems or even in technology but rather on manpower resources. In such case drug enforcement capabilities are only good to control and suppress drug syndicates while on land but very poor in the maritime enforcement. This is also the same case with the PN, while their emergence as national agency to defend the national sovereignty now remains to be in question since most of their patrol vessels are World War II built vessels and poorly reconstructed, precisely incapable of defending the nation from any terrorist attack. Their relevance is beginning to die down as well, due to poor in technology but with surplus of manpower.

For the protection of marine environment, what the country lacks are systems of monitoring and the limited capability for marine pollution specifically on hazardous noxious substances.[310] Marine oil pollution is quite common in the Philippines due to its maritime traffic and increasing congestion of population which adds up to the waste pollution all over the country. This challenge however is properly addressed if given the right equipment and dissemination among local maritime industries in every region.

On coastal management, a community-based resources management is being implemented in the Philippines.[311] The local government struggles to provide a prime institutional mechanism for a successful implementation of marine environmental protection by translating international standards and recommendations into well-grounded local programs.[312] But the diversity of issues in coastal areas requires multi-sectoral collaboration,

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(EEZ) of the Philippines under Presidential Decree No. 1599. See also: Nien-Tsu Alfred Hu, "South China Sea: Troubled Waters or a Sea of Opportunity?," Ocean Development & International Law, 41:3, 203-213 (2010).

[309] Ibid. Formerly known as "Bajo de Masinloc", the Scarborough Shoal or the Panatag can be said to have already been declared by the Philippines as part of its territory when in the Administrative Code of 1916 it enumerated Masinloc as a municipality of Zambales, one of its provinces.

[310] Antonio GM. La Viña, "Community-based approaches to marine and coastal resources management in the Philippines: a policy perspective." *Institutional issues and perspectives in the management of fisheries and coastal resources in Southeast Asia* (2002): 91-142.

[311] Ibid.

[312] JL Batongbakal, "A proposed framework for local marine environmental Protection in the Philippines," Philippine Law Journal 1997; 72:92.

government commitment, and endless resources, and are often lacking in the Philippines.[313] Most of the initiatives, however, have been limited in geographic scope and relied on donor-funding.[314] Even in areas where external funding or projects are available, coastal resource management initiatives have failed.[315]

Much has yet to be done in terms of replicating the successful management practices for adoption by the many coastal municipalities that have not yet adopted their respective coastal resource management plans. The current challenge for national agencies involved in coastal resource management is to enhance coordination of technical and financial support to the local government units and attain a harmonized adoption of coastal management strategies.[316]

Identified Challenges

Duplication or Overlapping of enforcement functions

The problem of duplication has always connoted organizational problems, such as inefficiency and waste of resources, and has been raised by the World Bank since 1983 in its observations of Philippine government organization.[317] Overlapping jurisdictions of coastal law enforcement units hamper effective enforcement of coastal management laws.[318]

A good example is the fisheries law, a number of national and local enforcement agencies are involved in implementing all laws pertaining to fisheries management. At the national level, BFAR is assigned as the lead agency in planning and implementation of fisheries related functions. In September 2003, BFAR signed a Memorandum of Agreement with the PCG for patrolling waters exclusively to detect illegal fishing within the Philippine Exclusive Economic Zone. Yet, the PN is the law enforcement agency authorized by RA 8550 to enforce fishery laws. Under the said law, the PN has the main responsibility is to assist LGU and other government agencies and non-government organizations in coastal environmental

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[313] ibid., at footnote 42. Also see Rose-Liza V. Eisma, Patrick Christie, and Marc Hershman, "Legal issues affecting sustainability of integrated coastal management in the Philippines," Ocean & coastal management 48.3 (2005): 336-359.

[314] Michael Garcia, "Progress in the implementation of Philippine Marine Policy: Issues and Options," UN-Nippon Foundation Fellowship Programme 2005, p 78.

[315] Ibid., at footnote 42.

[316] Ibid., at footnote 314.

[317] Raul P. De Guzman, Alex B. Brillantes, JR., & Arturo G. Pactio, "The Bureaucracy," available from http://upncpag.ucoz.com/load/0-0-0-24-20.

[318] Christie Patrick, et al., "Key findings from a multidisciplinary examination of integrated coastal management process sustainability," Ocean & Coastal Management 48.3 (2005): p. 49.

conservation and protection efforts. Likewise, a PNP-MG was formed specifically for maritime matters. It is vested with the authority to perform all police functions over Philippine waters. At the local level, many coastal municipalities have formed their own Bantay Dagat (BD) Task Force to augment the lack of PNP personnel assigned to their respective areas. The BD is a participatory approach designed for coastal law enforcement, which has existed in the Philippines since the 1970s. A BD group consists of a number of fishing community members who undergo training as fish wardens. They work closely with local government enforcement authorities, i.e. the local PNP but the BD for example cannot fully prosecute cases because their function overlap with those of the PCG or PNP.[319]

Lack of Legal force

This problem is a fact in the case of the oil spill response wherein the PCG will take charge and everybody will automatically follow.[320] With the deficiency in any legal measure to compel spillers to shoulder the cost of containment and clean-up, or an emergency fund from which such operations may derive resources from, the NOSCP coordinating framework is unrealistically appended on the PCG's weak capacity to carry out its tasks.[321]

Limited enforcement resources

The problem on scarcity of resources embraces logistical funding, personnel, and facilities. The shortage of trained personnel and lack of modern equipment poses a great hazard in maritime enforcement and is tantamount to a weak maritime law enforcement capability of the national agencies. Take for instance the local BD volunteers who assist in the enforcement of laws on illegal fishing within the coastal area of Concepcion, Iloilo with only two patrol boats and with a target of illegal fishing vessel of which are usually commercial boats that are faster than the patrol boats. [322] The BD can be vulnerable to abuses in their given authority in the absence of sufficient formal enforcement training as a case study showed that major regular violators identified were government officials or if not influential

[319] Rina Maria P. Rosales, "Costs in Enforcing Fishing Rules and Regulations in Verde Passage," (2008).
[320] Hall, *op. cit.*, p. 127.
[321] Ibid.
[322] Ida M. Siason et al,. "Philippine Case Study on Conflict over Use of Municipal Water: Synthesis of three case studies in the Visayan Sea."

within the society.[323] Moreover, the Philippines as an archipelago with twice the coastline of the US have much fewer assets and resources than those of the United States Coast Guard.[324]

The PNP-MG who is in-charge in the suppression of criminal activities at sea also lacks the necessary manpower and navigational skills and often times their involvement in maritime security provides duplication of functions that of the coast guard and navy. The navy as responsible for the defense of the maritime domain of the country has been less productive in their interdiction operations and other maritime activity due to limited resources and necessary systems of monitoring. The 2007 AFP assessment report showed that PN lacks the assets for conduct of maritime patrols over territorial waters as it does not have any anti-air capability and is incapable of conducting anti- submarine and mine warfare operations.[325]

Lack of funding for repairs of vessels

The BFAR has acquired ten MCS 30 meter vessels and four 11 meters manned mostly by Coast Guard personnel with its deployment limited only to the protection of aquatic fisheries and resources.[326] However, one of the main concerns of the both agencies is the repair and maintenance of those vessels subject for annual inspection and maintenance check.

The Coast Guard as well as the Navy, although they have ships deployed in various areas, shares the same problem in maintaining the sea worthiness of their ships and cutters.[327] Reliability and dependency is not an option for both agencies that is why most of the time they depend on defense assistance from other nations or soft loans granted by other funding government agencies.[328]

Lack of inter-agency coordination mechanism and communications

Cooperation between and among enforcement agencies, including the exchange of information on maritime activities, is a relatively 'low cost' method of easing the burden on

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[323] Siason, *op. cit.*, p. 19
[324]Parker, Teubner and Sawicki, *op. cit.*, p
[325] Office of Plans and Programs, AFP Capability Assessment.
[326] Philippine Coast Guard.
[327] Felix K. Chang, "Transforming The Philippines' Defense Architecture: How to Create a Credible and Sustainable Maritime Deterrent," Foreign Policy Research Institute, May 2012.
[328] Remarks of Department of Foreign Affairs Secretary HONORABLE ALBERT F. DEL ROSARIO. "MOPC Diplomatic Night, "Advancing The Three Pillars Of Philippine Foreign Policy", Grand Ballroom, Intercontinental Hotel, Makati City, 29 February 2012.

national capabilities. Arrangements for the exchange of maritime information are underdeveloped. For instance, there is no good database of what ships are, moving where in the region and with what cargo. Data on maritime activities is available only at a national level and significant barriers exist to the collection of this data, including commercial confidentiality.

RECOMMENDATION

Administration and Operational Capabilities

Relevance of the Coast Guard and the Navy

Bateman in one of his article described the Western Pacific, the seas of East Asia, and proximate areas of South Asia as the new setting for some of the world's most perplexing problems of maritime management and jurisdiction.[329] The physical makeup and the uses of the sea in these regions are particularly intense with high levels of shipping traffic and resource exploitation. With the problems on maritime terrorism, sea robbery, piracy (small scale), drug trafficking, illegal fishing, people smuggling, willful acts of marine pollution and destruction of marine habitats, the building of a secured environment without the need and the possibility of naval arms race increasing tension at sea is very challenging.[330]

The role of coast guards in the protection of the national sovereignty in home waters is not anymore novel. The latest trend is that coast guards are being used more widely in the national interest. Bateman observed that most countries with Coast Guards deploy CG vessels and personnel in sensitive situations at sea rather than naval ships and personnel and to use coast guards for cooperative activities with other countries.[331] Bateman further said that Coast Guards may offer advantages over navies for cooperative activities as they might overcome sensitivities that inhibit naval cooperation and provide a means of conducting law enforcement in areas where the use of naval vessels may aggravate the situation.[332]

[329] Bateman, *op. cit.,* p. 2.
[330] Ibid.
[331] Bateman, *op. cit.,* p. 4.
[332] Bateman, *op. cit.,* p. 2.

Recently, the Philippines rectified its action by replacing the naval warship with a coast guard vessel to man the Scarborough shoal during the recent (2012) maritime stand-off[333] of China against the Philippines.[334] The Philippines' decision to have their Coast Guard deployed in the disputed area is based upon the premise that the matter is a maritime law enforcement operation and not war, and at the same time employing a diplomatic means to resolve the dispute.[335] The initial action of sending naval warship was scrutinized to be "overboard" and an "overreaching provocation".[336] Bateman similarly stated that coast guard units are more suitable than warships for employment in sensitive areas where there are conflicting claims to maritime jurisdiction and/or political tensions between parties.[337] Also, the arrest of a foreign vessel by a warship may be highly provocative whereas arrest by a coast guard vessel may be accepted as legitimate law enforcement and signal that the arresting party views the incident as relatively minor.[338]

It cannot be denied however that naval force plays a vital role in maritime security particularly in the counter piracy efforts. Yet some view that anti-piracy and other maritime security operation as fundamentally international law enforcement missions carried out with military assets, thus making the line between the functions of navy and coast guard obscure.[339]

Coast Guard Expansion

With the Aquino Administration's 2011 decision to shift Philippine defense policy from internal security to territorial defense, the need for a stronger and better Coast Guard is forthcoming. In line with President Aquino's marching orders, the DND made a pronouncement that the number of army and marine battalions would be reduced so that

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[333] On 10 April 2012, A Philippine Navy surveillance aircraft had sighted eight Chinese fishing vessels in the shoal, where they found a trove of Philippine marine life such as giant clams, sharks and corals in the holds. But the sudden arrival of two Chinese surveillance ships prevented the Philippine troops from arresting the Chinese fishermen for poaching. Once more the tension between the China and Philippines in a continuing battle of possession over the Scarborough shoal was reawakened. See also Carlyle A. Thayer. China-ASEAN: Tensions Promote Discussions on a Code of Conduct, available from http://csis.org/files/media/csis/pubs/0001qchina_seasia.pdf.

[334] "Standoff at Scarborough Shoal: Implications for US-China Relations," China-US Focus, May 9, 2012.

[335] "PHL's biggest warship leaves Panatag Shoal, replaced by smaller boat," GMA News, April 12, 2012

[336] "PHL, China both 'mishandled' Panatag dispute," GMA News Online, November 19, 2012.

[337] Bateman, *op. cit.*, p. 3.

[338] Bateman, *op. cit.*, p. 5.

[339] Vice Admirals Fernando del Pozo, Anthony Dymock, Lutz Feldt, Patrick Hebrard, Ferdinando Sanfelice di Monteforte, "Maritime Surveillance in Support of CSDP," The Wise Pen Team Final Report to EDA Steering Board, 26 April 2010.

resources and personnel used for internal security and civil-military operations can be redirected to current priorities such as maritime security and territorial defense.[340] As the Philippine government endeavors to settle territorial disputes in a very diplomatic manner, navies focusing on warfare roles and the types of disputes that conceivably might lead to armed conflict are less suitable.[341] A coast guard-type civilian or paramilitary organization with a focus on maritime enforcement, safety, marine environmental protection, and other nonmilitary tasks is very significant.[342] Moreover, as to cost effectiveness, coast guard vessels and aircraft are generally less expensive than naval units and as Bateman posit that the civil nature of the coast guard's role may support access to funding from international aid agencies to acquire new vessels.[343]

Maritime power projection of the Philippine Coast Guard is considered weak and an upgrade of its present capabilities is needed. With a handful of boats and cutters deployed in some coastal areas of the Philippines, the Coast Guard capabilities limit their maritime missions such as patrolling, search and rescue, and protection of the marine resources. Most operations of the coast guards are geared towards shore duties but no longer capable of sea faring because of some restrictions. This is one reason why other law enforcement agencies emerges their coast watch operations because PCG in general precisely has limited water assets available in every areas.

Multilateral Law Enforcement Agency Approach

With the 22,549 miles of coastlines and the vast information requirements to obtain maritime domain awareness, the responsibility for securing Philippines waters is widely spread among agencies of both the national and of the local government units. As everybody benefits on the resources of the rich natural resources of the sea it is imperative therefore that key agency involved in the protection of the sea must merge in order to play their roles well. In the business of promoting safety and protecting the sea from terrorist or any oil spill incident it takes collective effort to perform such multifarious functions of the government. With

[340] "Philippines Mulls Reorganization of Military to Boost Territorial Defense," BBC Monitoring Asia-Pacific, January 2, 2012, available from http://search.proquest.com/docview/913215230 /fultext/1348735E9.
[341] Chris Rahman and Martin Tsamenyi, "A Strategic Perspective on Security and Naval Issues in the South China Sea." Ocean Development & International Law 41.4 (2010): 315-333.
[342] Rahman and Tsamenyi, *op. cit.,* p. 321.
[343] Bateman, *op. cit.,* p. 3.

handful of small boats, cutters and personnel directly involved in the enforcement functions the government is limited of its exposure and in containing the protection of the whole archipelago.

In the Philippines, having a kind of merger between agencies that operate in ports and Philippine waters can be best achieved if they will be given enough authority by providing them the necessary resources in establishing a one maritime enforcement policy encompassing, search and seizure operations, oil spill, ships and ports security, board and search, search and rescue, illegal fishing and other maritime related activities.

Model I - U.S. Joint Harbor Operation

In the United States, a joint operation at the port level was formalized after the 9/11 incident combining the functions and relationship of not only their coast guard and navy but also of their customs, port operations and local policemen.[344] In line with this, Joint Harbor Operational Centers (JHOCs) were created to improve port security and safety. The JHOCs were intended to be fusion centers for federal law enforcements (namely US Coast Guard, US Navy, Federal Bureau of Investigation, and Customs and Border Protection) and local law enforcement (Harbor Police and Port Agencies, state and city police assigned to port areas, and local Joint Terrorism Task Force) to share intelligence and equipment (e.g., patrol boats), and to coordinate response when the need arises.[345] Although primarily manned by Coast Guard personnel, billets are established from all agencies that have port responsibility, representing a unique merger of personnel with regulatory, law enforcement, and military expertise. The liaison system is fundamental to the success of tactical maritime domain awareness not only for coordination of operations, but also to reach an understanding of multi-agency procedures and practices.[346] Given the large number of regulatory agencies operating in each port, there are a number of procedures specific to each agency that can have critical impact on other multi-agency operations.[347]

[344] Robert B. Watts, "Maritime Critical Infrastructure Protection: Multi-Agency Command and Control in an Asymmetric Environment," Naval Postgraduate School Monterey CA Center for Homeland Defense and Security, 2005.
[345] John Frittelli, "Ship Navigation in Harbors: Safety Issues." 2008.
[346] Watts, *op. cit.*, p. 8.
[347] Watts, *op. cit.*, p. 9.

The first experimental JHOCs were constructed and successfully tested in San Diego and Norfolk, ports that represented high strategic interest due to major Navy presence and the volume of overseas commercial traffic. The JHOC-coordinated operations was said to have contributed directly to the interdiction of 1,103 illegal immigrants and 80,500 pounds of illegal drugs in FY 2011 and FY 2012 (up to May 27th).[348]

Model 2 - AUSTRALIA Border Protection Command

The Joint Offshore Protection Command (JOPC), a multi-agency entity which coordinated maritime security using tasked military and civilian assets, was formed in 2005. The JOPC is given unimpeded access to all maritime related information and is empowered to build a secret-level ocean surveillance system called Australian Maritime Identification System (AMIS). In 2006, JOPC was renamed Border Protection Command (BPC) to better reflect its maritime surveillance and response role.[349] The BPC is composed of seconded personnel/staff coming from customs, military, federal police, quarantine, fisheries and other agencies with maritime and port responsibility.

The Command detects and deters illegal activities using a combination of Customs and Border Protection and Defence aircraft, ships, technology and people. Its activities are conducted under legislation covering areas such as customs, fisheries, quarantine, immigration, environment and law enforcement.[350] The Command is developing the AMIS, a multi-level secure and global ocean surveillance system. The AMIS provides the security and risk analysts with a greater appreciation of any threat posed by the thousands of vessels, crew, passengers and cargo shipments in Australian waters, and enhance the Government's ability to respond to threats as far from the Australian coast as possible. [351] AMIS is said to be very cost-effective as it uses information already supplied by various government agencies including that from Defence and commercial sources like Lloyds.[352]

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[348] Written testimony of U.S. Coast Guard Deputy for Operations Policy and Capabilities Rear Admiral William Lee for a House Committee on Homeland Security Subcommittee on Border and Maritime Security hearing titled "Threats to the Homeland: DHS' Response to Innovative Tactics and Techniques," Department of Homeland Security, June 18, 2012.

[349] Mark Farrer, "Good Operations and Bad Government Policy-Australia's Border Protection," Asia-Pacific Defence Reporter (2002) 37.2 (2011): 10.

[350] "Border Protection Command," Australian Government, available from BPC website http://www.bpc.gov.au.

[351] Ibid.

[352] Farrer, *op. cit.*, p. 11.

The Australian Maritime Security Operations Centre which is located in Canberra conducts 24-hour monitoring, co-ordination and communications support for all offshore protection activities. Communications, intelligence gathering and analysis, and satellite technology allow coordination of the maritime surveillance and response capability. Analysts in the Command Intelligence Cell coordinate the collection, study and dissemination of information. They conduct risk assessments and develop plans for surveillance and response missions based on strategic and tactical needs. Regional bases provide operational planning and flight briefings for contractor aircraft and liaise with partner agencies and contractors.[353]

The JOPC and BPC, between 2005 and 2008, was said to be a great success and had a major beneficial impact by greatly reducing illegal fishing inside Australian waters.[354]

Model 3 - Cooperation between the Police, Customs and Border Guard Authorities of FINLAND

In 2010, the Government of Finland pass an Act on the cooperation between its Police, Customs and Border Guard (PCB Authorities). The cooperation is focused on the carrying out of measures relating to the combating of crime, control, and monitoring activities or international cooperation on behalf or in assistance of another PCB authority within its area of responsibility (AOR), and cooperation in the PCB authorities' common area of responsibility.[355] Just like model 1 and model II, the aim is to promote cooperation between the authorities so that duties related to internal safety and security can be performed efficiently and flexibly.

Under the Act, the PCB authority may operate in an AOR of another PCB or in the common AOR. In the first, the PCB authority may carry out measures either on request or without on urgent matters by using the powers that it may use in its own crime-combating tasks. Notification of the crime and the measures taken to the PCB authority within whose AOR the measure falls is a very essential factor in this cooperation. In the second, a PCB authority shall notify the other PCB authority within whose AOR the matter also falls, of the crime and the concerned PCB authorities shall agree on the measures to be taken for the operation. In agreeing on the measures, the cooperation on the operation will most likely produce the most

[353] ibid., at footnote 350.
[354] Farrer, *op. cit.*, p. 12.
[355] Sec. 1 (2), Act on Cooperation between the Police, Customs and Border Guard (687/2009).

appropriate outcome and will be carried out in a manner that considers highly the main tasks and operational preparedness of each PCB authority. However, the Police is left to decide in case no agreement has been reached.

The Act expanded to cover crime intelligence focused on serious and cross-border crimes, surveillance, and observation information sharing to other PBC authority. The PBC authorities taking part in the work of the team were likewise given the authority to establish and participate in a joint criminal intelligence and investigation team to aide them in preventing, detecting or investigating crimes. In addition, the PBC authorities are under the obligation to share their equipment, facilities, personnel resources or special expert services to each other for use in measures that are necessary for cooperation in crime combating, control and monitoring or for international cooperation.

The PCB cooperation has been recognized by the authorities themselves that it makes the management of their job easier and more efficient due to an efficient and continuous flow of information between parties involved in the cooperation.[356] Every counterpart has its own responsibility, the information exchange is effortless, and help is offered when needed, joint training, uniform practices and methods, as well as the use of joint technologies.[357]

Effective Enforcement Strategy for the Philippines

Joint Maritime Operations: Merger Strategy

In other nations, mergers and joint operations or even joint task forces were proven effective by their governments. Like for instance the 3 Models of multilateral agency approach that I have discussed above, despite their technological advancement and resources, they still resort to joining their logistics and assets with other agencies. One of the rationales of these mergers was to increase interoperability and wide access of information on surveillance and monitoring.

[356] "Cooperation between Traffic Police, Customs and Border Guard in Southeast Fnland – Key Findings," Connecting Authorities for Safer Heavy Goods Traffic in the Baltic Sea Region Report (CASH), Note 10, Issue 3, September 2012, available at http://www.cash-project.eu/tiedostot/CASH% 20report%2009_2012 %20LUT%20FINAL%20PDF%20nettiin1.pdf

[357] Ibid.

In the concept of this merger strategy, agencies involved may play multiple roles and their respective intelligence information, manpower, technology, mobility, training and capabilities will be shared. Their relationship with each other is that of operational and tactical level. All the agencies involved in the merger shall have one common goal, which is, to protect the interest of the archipelago and secure national prosperity, and preserve the rich natural resources of the country for peace and order, public safety, tourism and economic stability in general.

The command and control shall be delegated to the agency with the largest scope of responsibility tasked to maintain and provide directives to all of the relevant agencies which will be named as Joint Maritime Operations Center (JMOC) for maritime affairs. The JMOC will control all operations from monitoring and surveillance, deployment for SAR operations, boarding and interdiction operations, and criminal investigations, illegal fishing and all others connected with maritime jurisdiction activities.

The head maritime agencies involved will be represented by officers specialized in intelligence, operations, and maritime safety. The administration of assets and personnel will be the responsibility of each agency from recruitment, repairs, procurement, training, plans and programs.

In the case of an archipelago such as the Philippines, a joint maritime operation is one effective strategy to contain all spectrums of maritime operations. Random patrolling will be more visible because other agencies will be synergized to achieve one common objective. Movement of operation will be fast since access to all maritime related information will be unimpeded. Proper rules of engagement and use of force continuum model will be applied for law enforcement operations.

The future of this strategy relies much on the maturity level of the authorities and the demand of the key agencies in their approach of enforcement.

Below is a diagram of organization that can be replicated in the supposed Joint Maritime Operation:

Strategic Departments	DOTC	DND	DILG	DENR	DFA
Billet	Coast Guard	Navy	PNP-Maritime Group	Fisheries	Customs/ Immigration
Mission Function Operational	Search and Rescue, Law Enforcement, Marine Environment Protection, Maritime Security, Maritime Safety	National Defense, Maritime Security, Disaster Response	Internal security, Criminal Investigation	Illegal fishing activities	Anti-trafficking of persons
Tactical Control	Fleets, Patrol, Aircrafts, Rescue divers,	Fleets, Cutters, Aircrafts, Special Operation	Small Boats, Patrol Boats,	Monitoring Surveillance, Boats, Bantay Dagat	Boarder Control Units, Customs police

Table 5. Joint Maritime Operations Command

In the table above, missions and functions of the maritime enforcement agencies involved are properly delineated on the tactical and operational level. Navy will focus on its territorial defense function on Philippine waters, intelligence monitoring, peace keeping forces, and initiating strong ties with other ASEAN nations as they build cooperation and strong maritime defense both in internal and external security. While Coast Guard will deal both the flag state and port state implementation not only concerning security but most importantly also safety and protection of marine environment. Together, armed with enough resources and logistics would ensure force protection services for the local maritime industry and provide better platforms for other member agencies involved in Joint maritime operations.

The Philippine National Police Maritime Group shall become the subordinate maritime agency of the Coast Guard in law enforcement to provide criminal investigation and protection of local citizens in both territorial and internal waters. The establishment of Sea Marshall operations after the Superferry terrorist attack back in 2004, made a good breakthrough for establishing linkages and cooperation among law enforcement agencies deploying them as one team during regular voyage operations of passenger vessels.

As the Bureau of Fisheries and Aquatic Resources had already established a good relationship with the PCG by procuring MCS vessels to suppress illegal fishing, however, their responsibility must broaden in scope since their vessels are deployed in almost all parts of the region. Their responsibility is geared towards combating illegal fishing activities with the use of coast guard but lacks coordination with local authorities on manner of policies and monitoring strategies.

Philippine Ports Authorities shall also be involved in this operation, since they provide the proper order and conduct of security while ships are docked on port. As ports authority they will be the lead agency in the protection of ports and harbors while coordinating closely with Bureau of Customs for the traffic of smuggled goods.

Tactical Intelligence Fusion. The JMOC shall be designed to address the weakness of the maritime enforcement on the tactical level, serving as fusion center that effectively gather the various intelligence databases of each participating agency. Databases at present include the PCG Maritime Information Safety and Law Enforcement system, the CWS, and intelligence from the local regions of PNP, BUCUS, BID, and BFAR. In addition to using established databases, JMOC will also use inter-agency sensors and local inter-agency liaisons to collect, fuse, and disseminate information critical in the achievement of multi-agency tactical picture. The increased multi-agency awareness provides for streamlined operations between all port agencies, while the use of multi-agency coordination and databases allows a tremendous enhanced capability for surveillance and anomaly detection, a crucial element in maritime critical infrastructure protection.

Coordinated Planning. The advantage of a joint personnel structure in an operation is that it allows both rapid and long-term on-scene multi agency cooperation. Agencies with background in military, law enforcement and regulatory expertise will merge together in

personnel and communication allowing efficient access for coordinated planning. It is fundamental in its type of system to reach an understanding of a multi-agency procedures, practices and infrastructures that each agency can provide in terms of safety, security and environmental protection. This is important for multi-agency planning as well. In the Philippines, the Philippine Ports Authority being the regulatory body of ports and harbors, both in private and public can provide the suitable venue for setting up the proposed "Joint Maritime Operations Command Center" since the said department has already established the vessel traffic monitoring system which is presently manned 24 hours 7 days a week.

Command and Control. Command and Control operations connote tactical and operational control of assets of particular agencies. It covers the control and monitoring of assets including movements of particular response units in marine related incidents. It shall employ direct lateral coordination made by the head operation commander to direct involved task units or elements. Like for example, the case of Integrated Response Action Plan of Davao Gulf Watch where said operation was chaired by MARINA and co-chaired by Coast Guard in its objective to secure the Malalag Bay of Davao Del Sur of the Philippines, wherein it employed agencies to play a particular role after a thorough intelligence fusion and was proven effective after the said area was deleted in the list of War risk zone area of the Lloyds of London Joints war committee.

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