

# POSITION PAPER \*

## Prefatory Statement

Last November 9, the Philippine Daily Inquirer reported that “a Chinese ship again fired a water cannon to impede a routine resupply mission to BRP Sierra Madre, the country’s military outpost on Ayungin (Second Tomas) Shoal in the West Philippine Sea xxx.” Consequently, the Philippines filed another diplomatic protest against China, the 58<sup>th</sup> in number. Again, the Chinese Coast Guard dismissed the protest claiming the waters of Ayungin Shoal belongs to China. It warned that the Chinese Coast Guard “will continue to carry out law enforcement activities in the waters under China’s jurisdiction in accordance with the law, and resolutely safeguard China’s national sovereignty and maritime rights and interests.”

The clash of actions between the Philippines and China is not expected to be settled in the near future. On the contrary, it is developing into another potential flash point on international peace and security as other states have started to take active sides in the controversy.

Our Congress is conducting public hearings to promulgate necessary legislations to protect the sovereignty and sovereign rights of the Philippines in this dispute with China. With the intent of aiding in the crafting of these legislations, we are respectfully submitting this Position Paper to clarify the domestic and international laws on the matter.

This Position Paper addresses the following questions:

- 1. What is a military force? What is a law enforcement force? Is there a real distinction?*
- 2. What is the legal significance of the distinction between a military force and a law enforcement force in the context of the territorial, maritime and resource disputes in the West Philippine Sea (WPS)?*
- 3. What is the status of a coast guard in general? What is*

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\* Submitted to the Senate Committee on National Defense and Security, Peace, Unification and Reconciliation, Committees on Foreign Relations, Public Works and Finance and Special Committee on Philippine Maritime and Admiralty Zones, that are conducting public hearings on the West Philippine Sea by the **International Law and Relations Society of the Philippines (ISIP)**, an intellectual society composed of retired Chief Justice of the Supreme Court, Reynato S. Puno, retired CG Admiral Joel S. Garcia, Dr. Melissa Loja, Prof. Romel Bagares and Atty. Al Soriano.

*the status of the CCG? What about the Vietnamese Coast Guard (VCG) and the PCG?*

4. *Bearing in mind the nature of the CCG and PCG, are their law enforcement activities in the WPS transformed into military activities by the presence of the Philippine Navy (PN), US Navy (USN) and Chinese Navy (CN)?*

- 4.1 *Do the Mutual Defense Board (MDB) and Security Engagement Board (SEB) have legal authority to seek or allow the assistance of an armed or unarmed aircraft of the USN during a Philippine law enforcement activity in the WPS? What about in a military activity?*

- 4.2 *What are the legal and political implications of the prominent role of military forces in addressing disputes in the WPS?*

5. *What legal and non-military courses of action may the Philippines take to respond to the recent collision at sea and blockade by Chinese vessels against Philippine resupply vessels?*

- 5.1 *Was the collision an act of war?*

- 5.2 *Was the blocking maneuver an act of war?*

6. *Scenarios that can play out between the Philippines and China in their dispute in the WPS?*

Part 1 of this Position Paper discusses what is a military force *vis-à-vis* a law enforcement force and their difference. Parts 2, 3 and 4 discuss in general the nature and significance of the distinction between military and law enforcement forces. Part 5 examines the important implications in municipal and international law of the distinction between military and law enforcement forces in the concrete context of the disputed territorial, maritime and air spaces in the South China Sea (SCS). Part 6 plays out the different actions that China and the Philippines may take against each other in view of their dispute especially in regard to the EEZ/CS being claimed by the Philippines in the WPS.

## Legislative Background

The foregoing questions regarding military engagement and law enforcement and the legal significance of their difference were engendered by statements made in two public hearings at the Philippine Senate.

**First**, during the public hearing of the Special Committee on Philippine Maritime and Admiralty Zones on October 23, 2023, the discussion centered on on the proposed provision in the maritime zones bill regarding countermeasures that the Philippines can take against China for the collision and blockade that took place in the vicinity of Ayungin Shoal. The summary below is based on the official transcript of the hearing:<sup>2</sup>

Starting at 34:43: the Department of Justice (DOJ) explained that draft Section 12 of the bill expressly recognizes the right of the Philippines to take counter-measures other than use of force against the flag state of any foreign vessel found to have violated the United Nations Convention on the Law of the Sea (UNCLOS) in the Philippine EEZ as well as its archipelagic waters. The DOJ emphasized the appropriateness of such countermeasures as a response to incidents similar to that on 23 October 2023 when Chinese vessels rammed into and blockaded Philippine resupply vessels in the area of Ayungin Shoal.<sup>3</sup>

Starting at 38:14: Special Committee Chair Senator Francis Tolentino characterized the right recognized in draft Section 12 as a manifestation of Philippine sovereignty or the “inherent and supreme authority recognized by international law for a state or country to take control over its territory.”

Starting at 1:16:23: Senator Tolentino instructed that the bill expressly apply the provisions on maritime zones [and on countermeasures] to the Kalayaan Island Group (KIG) and Bajo de Masinloc (BDM), including such features as Subi Reef and those occupied by foreign countries. Resource person Prof. Jay Batongbacal affirmed that the application of maritime zones to the offshore features will not violate

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<sup>2</sup> The transcript is available in the YouTube channel of the Philippine Senate at [www.youtube.com/watch?v=CWnhH6lqmOI](https://www.youtube.com/watch?v=CWnhH6lqmOI).

<sup>3</sup> According to the PCG, in course of the rotation and resupply of BRP Seirra Madre in Ayungin Shoal, supply boat Unaiza May 2 (UM 2) and PCG vessel MRRV 4409 were struck by CCG vessel 5203 (CCGV 5203) and Chinese Maritime Militia vessel 00003, respectively. See PCG official statement at [coastguard.gov.ph/index.php/11-news/5369-philippines-remains-committed-to-protecting-and-securing-the-national-interest-despite-provocations#](https://coastguard.gov.ph/index.php/11-news/5369-philippines-remains-committed-to-protecting-and-securing-the-national-interest-despite-provocations#).

international law and the Award in the South China Sea Arbitration. Foreign resource person Prof. Stuart Kaye (University of Wollongong) pointed out that such maritime zones may only be generated by normal baselines around the various features. (insertions provided)

The legality of the proposed provisions is highly suspect. The proposed provisions appear to amend Presidential Decree (PD) No. 1596 as it will replace the boundaries enclosing the Kalayaan Island Group (KIG). They ascribe a full suite of maritime zones and air spaces to unnamed features being claimed by the Philippines, including those that are occupied by other states and those that have been declared by the Arbitral Tribunal in the South China Sea Arbitration to be mere low tide elevations. Moreover, the proposed provision on countermeasures would have contentious application to the personnel, vessels and aircrafts of foreign military and law-enforcement forces in the maritime zones and air spaces of disputed features in the WPS, including those of the state currently in possession.

**Second**, during the public hearing of the Committee on National Defense and Security on 12 September 2023, the exchange of views between Senator Robin Padilla and Department of National Defense (DND) Undersecretary for Strategic Assessments and Planning Ignacio Madriaga and PCG Admiral Artemio Abu revolved around the role of military forces vis-à-vis law enforcement forces in the enforcement and defense of the rights of the Philippines in the WPS. There is no available official transcript of the exchange. With caution, the following unofficial and partial summary is adopted:

Starting at 54:25: Senator Padilla inquired whether on 13 August 2023 an aircraft of the United States Navy conducted fly-bys while BRP Cabra and BRP Sindangan of the PCG escorted a vessel of the Armed Forces of the Philippines (AFP) that was transporting provisions for Philippine troops on board BRP Sierra Madre on Ayungin Shoal.

Starting at 54:49 and 55:07: Undersecretary Madriaga confirmed the presence of a US Navy Poseidon aircraft during the re-supply and added that said presence was coordinated with the AFP through the Mutual Defense Board (MDB) and Security Engagement Board (SEB).

Starting at 55:16 and 55:46: Senator Padilla inquired whether the Philippines is already deploying its military forces, with the support of the US military, vis-a-vis the Chinese Coast Guard (CCG) as a

civilian/non-military force, and whether such deployment of military forces violates international law.

Starting at 55:54 and 1:01:22: Undersecretary Madriaga responded that it is the presence of the CCG in the Philippine exclusive economic zone (EEZ) that is illegal whereas the presence of the Philippine military and PCG as well as the US military in the Philippine EEZ is legal. Senator Padilla pointed out that there is no question about the legality of the presence of the Philippine military and PCG in our own EEZ. Rather, the question is whether the deployment of the Philippine military units in the WPS would constitute an act of war or an escalatory action given that these military units are engaged in functions relating to the conduct of warfare whereas the CCG, a non-military unit, is engaged only in police functions. Senator Padilla reminded the Committee that when the Philippines deployed the navy to Scarborough Shoal, China also deployed its naval forces, thereby causing a naval stand-off.

Starting at 56:28, 58:37 and 1:00:40: Undersecretary Madriaga replied that no act of war was committed as no armed attack took place. Moreover, the deployment of the Philippine military and US navy was not escalatory as the CCG is also a military force, given that it is part of China's People's Liberation Army (PLA). Admiral Artemio Abu confirmed that the CCG is under the PLA.

The line of questioning of Senator Padilla presupposes a distinction between a military force and a law enforcement force. The responses of Undersecretary Madriaga and Admiral Abu appear to deny the distinction.

## **PART I**

### **What is a military force? What is a law enforcement force? Is there a real difference?**

We start with the basic proposition that there is a distinction between military forces and law enforcement forces. The distinction is based on the principle of *posse comitatus*. In the Philippines, the principle of *posse comitatus* is mandated by the Constitution, laws and case law. International conventions also recognize the distinction between military forces and law enforcement forces and their respective activities.

#### **1.1 *Posse comitatus***

According to the principle of *posse comitatus*, a government may call upon its civilian citizens to assist in law enforcement but it “may not use any part of the armed forces to execute the laws,”<sup>4</sup> except as provided by the Constitution or law. The prohibition generally covers situations in which civilians are subjected to regulatory, prescriptive or compulsory military power.<sup>5</sup> While the grant of exception is a legislative function, the determination of the factual necessity for permissible military intervention in civilian affairs is an executive function.<sup>6</sup>

## 1.2 Philippine Constitution, laws and jurisprudence.

The 1987 Philippine Constitution and laws distinguish between military forces and law enforcement forces following the principle of *posse comitatus*. Thus, our Constitution defines the armed forces and law enforcement forces differently.<sup>7</sup> Article II, Section 3 enshrines the principle that “civilian authority is, at all times, supreme over the military,” and assigns to the Armed Forces of the Philippines (AFP) the function of “secur[ing] the sovereignty of the State and the integrity of the national territory.” Article XVI, Section 6 provides that the AFP shall be a “citizen armed force” whose function is to ensure the “security of the State.”

In contrast, Article XVI, Section 4 provides that the Philippines National Police (PNP) shall be “one police force, which shall be national in scope and civilian in character.” To ensure the civilian character of the PNP, Article XVI, Section 5(4) prohibits any “member of the armed forces in the active service [from being] appointed or designated in any capacity to a civilian position in the Government including government-owned or controlled corporations or any of their subsidiaries.”<sup>8</sup>

Executive Order (EO) No. 292 (Administrative Code)<sup>9</sup> and Republic Act (RA) No. 6975 (Department of Interior and Local Government Act) maintain the distinction between the AFP and the PNP. RA No. 6975 expressly provides that the Philippine National Police (PNP) shall perform police functions<sup>10</sup> and remain of “civilian character,” hence, “[n]o element of the police force shall be military nor shall any position be occupied by active members of the Armed

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<sup>4</sup> US Navy, US Marine Corps, US Coast Guard, The Commander’s Handbook on the Law of Naval Operations (NWP 1-14M/MCTP 11-10B/COMDTPUB P5800.7A), 2022, p. 3-14.

<sup>5</sup> *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *Laird v. Tatum*, 343 U.S. at 632.

<sup>6</sup> *Luther v. Borden*, 48 U.S. 1 (1849).

<sup>7</sup> *Manalo v. Sistoza*, G.R. No. 107369, [August 11, 1999], 371 PHIL 165-175.

<sup>8</sup> *Magdalo Para Sa Pagbabago v. Commission on Elections*, G.R. No. 190793, [June 19, 2012], 688 PHIL 293-317.

<sup>9</sup> Section 17 and Section 69(3).

<sup>10</sup> The PNP absorbed the police functions of the Philippine Constabulary and PCG (Section 86).

Forces of the Philippines.”<sup>11</sup> The PNP assumed the maritime law enforcement functions of the PCG<sup>12</sup> when the latter was under the Philippine Navy.<sup>13</sup>

As early as Commonwealth Act (CA) No. 1 (National Defense Act of 1935), the function of the armed forces has been the preservation of the state.<sup>14</sup> The Administrative Code defined this to mean the defense of “the territory of the Republic of the Philippines against all enemies, foreign and domestic.”<sup>15</sup> In line with this function, it prohibits any active member of the armed forces from being “appointed or designated in any capacity to a civilian position in the Government including government-owned or controlled corporations or any of their subsidiaries.”<sup>16</sup>

In *Carpio v. Executive Secretary*, the Supreme Court stressed that the deliberate separation between military and law enforcement forces follows the principle of *posse comitatus* that “a police force is a civilian function, a public service, and should not be performed by military force.”<sup>17</sup> In *Alih v. Castro*, it further held that law enforcement through the military violates the principle of civilian supremacy at all times.<sup>18</sup> In *Integrated Bar of the Philippines v. Zamora*, however, the Supreme Court upheld the President’s use of the Philippine Marines in conducting joint visibility patrols with the PNP to address the rise in violent crimes.<sup>19</sup>

It is important to distinguish between military forces and law enforcement forces because the level of force that they can employ in the discharge of their duty differs from each other. The level of force that can be used by the military is higher for it follows the principle of military necessity.

The Supreme Court recognizes the principle of military necessity, according to which, in times of international or non-international armed conflict,<sup>20</sup> the military may employ the level of force necessary to ensure that a person is denied “any opportunity to threaten the security of our military forces

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<sup>11</sup> RA No. 6975, Section 2.

<sup>12</sup> *Ibid*, Section 24.

<sup>13</sup> EO 292, Book 2, Title VIII, Chapter 6, Section 54.

<sup>14</sup> CA No. 1, Article 1(2).

<sup>15</sup> EO 292, Book 2, Title VIII, Chapter 6, Section 33.

<sup>16</sup> *Ibid*, Section 17.

<sup>17</sup> G.R. No. 96409, [February 14, 1992], 283 PHIL 196-214, citing the 1986 Constitutional Commission.

<sup>18</sup> *Alih v. Castro*, G.R. No. L-69401, [June 23, 1987], 235 PHIL 270-279.

<sup>19</sup> G.R. No. 141284, [August 15, 2000], 392 PHIL 618-675).

<sup>20</sup> An “armed conflict means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” An “armed conflict may be international, that is, between two (2) or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a state.” See Section 3, Republic Act No. 9851 (Philippine Act on Crimes against International Humanitarian Law, Genocide, and other Crimes against Humanity) December 11, 2009.

or the success of our military operation.”<sup>21</sup> Military necessity is a criminal defense under Article 11(5) of the Revised Penal Code,<sup>22</sup> provided the conditions are fulfilled.<sup>23</sup>

In international law, “military necessity ... permits the destruction of life of armed enemies and other persons whose destruction is incidentally unavoidable by the armed conflicts of the war.”<sup>24</sup> The US Military Tribunal in Nuremberg acquitted a Nazi commander as he carried out a “scorched earth policy in Finnmark.”<sup>25</sup> The Tribunal held that the scorched earth policy was “a precautionary measure against an attack by superior forces” and “that the conditions as they appeared to the defendant at the time were sufficient, upon which he could honestly conclude that urgent military necessity warranted the decision made.”<sup>26</sup>

In contrast, the level of force that law enforcement agencies may employ is restricted by the PNP Rules of Engagement<sup>27</sup> and the Rules of Criminal Procedure when it comes to the execution of search or arrest warrants.<sup>28</sup> In *Yapyuco y Enriquez v. Sandiganbayan*, the Supreme Court ruled:

The rules of engagement, of which every law enforcer must be thoroughly knowledgeable and for which he must always exercise the highest caution, do not require that he should immediately draw or fire his weapon if the person to be accosted does not heed his call.<sup>29</sup>

The rationale of the ruling is that “the law does not clothe police officers with authority to arbitrarily judge the necessity to kill ... they must always bear in mind that although they are dealing with criminal elements against whom society must be protected, these criminals are also human beings with human rights.”<sup>30</sup>

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<sup>21</sup> *Raquiza v. Bradford*, G.R. No. L-44 [September 13, 1945], 75 Phil 50-95.

<sup>22</sup> Article 11. Justifying Circumstances. - The following do not incur any criminal liability: ... 6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

<sup>23</sup> *U.S. v. Garcia*, G.R. No. 2288 [September 27, 1905], 5 Phil 58-60; *People v. Cruz*, G.R. No. L-2620 [February 27, 1950], 85 Phil 577-591.

<sup>24</sup> Case No. 47, The Hostages Trial of Wilhelm List and Others, United States Military Tribunal, Nuremberg 8th July, 1947, to 19th February, 1948, 8 *Law Reports of Trials of War Criminals* (UN War Crimes Commission, 1949) 34.

<sup>25</sup> *Ibid*, 69.

<sup>26</sup> *Ibid*.

<sup>27</sup> *People v. Tan*, G.R. Nos. 116200-02, [June 21, 2001], 411 PHIL 813-844.

<sup>28</sup> *Hildawa v. Enrile*, G.R. No. L-67766, 70881, [August 14, 1986], 222 PHIL 450-467, citing Rule 113 that “[n]o violence or unnecessary force shall be used in making an arrest.” This case involved special operations against rampant criminality.

<sup>29</sup> *Yapyuco y Enriquez v. Sandiganbayan*, G.R. Nos. 120744-46, 122677 & 122776, [June 25, 2012], 689 PHIL 75-127.

<sup>30</sup> *People v. Ulep*, G.R. No. 132547, [September 20, 2000], 395 PHIL 78-92



### 1.3 Other domestic legal systems

Under the United States (US) Constitution, the government may call out civilian militias to execute the laws.<sup>31</sup> However, the US Posse Comitatus Act penalizes “[w]hoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force as a posse comitatus or otherwise to execute the laws.”<sup>32</sup> One statutory exception is extended to the US Coast Guard (USCG) which is expressly authorized to perform law enforcement functions.<sup>33</sup> The USCG is part of the Department of Homeland Security (DHS) during peacetime and part of the US Navy during wartime.<sup>34</sup>

In US practice, the “principle of military necessity recognizes that force resulting in death and destruction will have to be applied to achieve military objectives.”<sup>35</sup>

There is no fixed, universal rule for ascertaining whether a national coast guard is a military force or a civilian law enforcement force. For instance, the USCG is part of the “military service and a branch of the armed forces ... at all times,”<sup>36</sup> and its cutters “designated USCGC under the command of a commissioned officer are warships under international law.”<sup>37</sup> Yet, its personnel are also considered customs officers for purpose of customs law enforcement.<sup>38</sup> Their primary duty is to “enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States,” but it must also “maintain a state of readiness to assist in the defense of the United States.”<sup>39</sup>

As it is part of the DHS during peacetime, the USCG is subject to the Department Policy on Use of Force, according to which its personnel is permitted to use reasonable force but, when feasible, they must first give verbal warning.<sup>40</sup> They may use “deadly force only when the LEO [law enforcement officer] has a reasonable belief that the subject of such force poses an imminent

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<sup>31</sup> 18 U.S.C. Section 1385 (1878).

<sup>32</sup> 18 U.S.C. § 1385 (1878). See, however, A Ghiotto, ‘Defending Against the Military: The Posse Comitatus Act’s Exclusionary Rule’ (2020) 11 *Harvard National Security Journal* 359-419 which notes the reality that the military is engaged in domestic law enforcement such as border patrol, drug interdiction and counter-terrorism.

<sup>33</sup> 14 U.S.C. § 102 (2018).

<sup>34</sup> 14 U.S.C. § 101 & 103.

<sup>35</sup> The Commander’s Handbook on the Law of Naval Operations, 2022, p. 5-3.

<sup>36</sup> 14 U.S.C. §101.

<sup>37</sup> The Commander’s Handbook

<sup>38</sup> 19 U.S.C. § 1401(i) (2018).

<sup>39</sup> 14 U.S.C. §102.

<sup>40</sup> DHS, Policy Statement 044-05, September 7, 2018, III(C), (D) and (E).

threat of death or serious bodily injury to [said] LEO or to another person.”<sup>41</sup>

When it is part of the US Navy during wartime, the USCG is subject to the Standing Rules of Engagement for US Forces, according to which the latter shall “comply with the Law of Armed Conflict during military operations involving armed conflict,”<sup>42</sup> such as the principle of necessity arising from the commission of a hostile act or the use of force on the US or the threat of imminent use of force on the US.<sup>43</sup>

Similar to the USCG, the Coast Guard of Russia is part of the Federal Security Service (FSB) with both law enforcement and territorial defense functions. In *Ukraine v. Russia*,<sup>44</sup> the resolution of the case revolved around the issue of whether the questioned activities of the FSB-CG were a form of military engagement or a mere law enforcement. ITLOS resolved the issue based not only on the organizational unit of the FSB-CG but also on the context and purpose of the activities in question. ITLOS held that even as the FSB-CG vessels had given chase and fired upon Ukrainian naval vessels, the purpose of the use of force was limited to the enforcement of a regulation on innocent passage through the Kersch Strait rather than the defense or assertion of the sovereignty of Russia. It is important to note that FSB-CG was then performing a civilian law enforcement function rather than engaging in a military activity.

#### **1.4 International law**

International law also differentiates between military forces and law enforcement forces.

Under international humanitarian law, an armed law enforcement agency of a state whose function is limited to the maintenance of internal order is presumed to be a civilian entity.<sup>45</sup> As such, it is entitled to the protection of the principle of distinction, according to which civilians are not a legitimate target of military attack or threat of attack.<sup>46</sup> However, they are not considered a civilian entity if they “operate under the control of the military.”<sup>47</sup>

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<sup>41</sup> Ibid, IV(A).

<sup>42</sup> CJCSI3121.01B, 13 June 2005, Enclosure A, 1(d).

<sup>43</sup> Ibid, Enclosure A, 3 & 4.

<sup>44</sup> *Dispute Concerning the Detention of Ukrainian Naval Vessels and Servicemen (Ukraine v. The Russian Federation)*, Award on the Preliminary Objections of the Russian Federation, 27 June 2022.

<sup>45</sup> *Kaing Case*, Judgment of the Extraordinary Chambers in the Courts of Cambodia, 26 July 2010, §§ 304 and 311–312.

<sup>46</sup> Articles 48, 51(2) and 52(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>47</sup> *Fofana and Kondewa case*, Judgment of the Special Court for Sierra Leone, 2 August 2007, §§ 116–117 and 136–137.

Use of lethal force by law enforcements forces is subject to the rules of engagements, specifically the stringent elements of self-defense;<sup>48</sup> whereas use of lethal force by military forces is subject to the principles of *jus in bello*, such as necessity, distinction and proportionality.<sup>49</sup>

We followed this distinction when the Regional Trial Court of Manila convicted seven PCG officers and one PNP officer in connection with the 2013 Balintang Channel incident.<sup>50</sup> Although Taiwan claimed that the incident took place in disputed waters,<sup>51</sup> it accepted the decision convicting the accused persons of homicide after finding that no circumstance justified their act of opening fire at a Taiwanese vessel fishing in Balintang Channel, and in the process killing a Taiwanese fisherman.<sup>52</sup> In 2015, the Taipei Economic and Cultural Office in the Philippines (TECO) and the Manila Economic and Cultural Office in Taiwan (MECO) entered into an Agreement Concerning the Facilitation of Cooperation on Law Enforcement in Fisheries Matters.<sup>53</sup> Article 2 provides that the “relevant authorities of the Parties shall avoid using violence or unnecessary force in the implementation of their fisheries laws and other relevant regulations consistent with international law and practice.”<sup>54</sup>

## 1.5 Summary

In sum, there is a real distinction between a military force and a law enforcement force. In the Philippines, such distinction is recognized by the Constitution, laws and jurisprudence. The distinction is based on the organizational unit, with those belonging to the AFP being considered military forces whereas those belonging to the PNP are law enforcement forces that are civilian in nature. The distinction is also based on their function: preservation of the state by the military calls for the highest form of self-defense and justifies the immediate use of lethal force to achieve a military objective; in contrast, enforcement of the law and preservation of order by law enforcement forces are limited by strict constitutional procedural and substantive requirements, including the rules of engagement.

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<sup>48</sup> *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, pp. 102-103.

<sup>49</sup> *Prosecutor v. Pavle Strugar, Case No. IT-01-42-T*, Judgment of the International Tribunal for the Former Yugoslavia, 31 January 2005, pp. 130-134.

<sup>50</sup> Balintang Channel Incident Report, August 7, 2013, available at [www.officialgazette.gov.ph/2013/08/07/balintang-channel-incident-report/](http://www.officialgazette.gov.ph/2013/08/07/balintang-channel-incident-report/). It is notable that in this report, the Philippine National Bureau of Investigation cited the Red Crusader Case to conclude that the PCG and PNP used excessive force.

<sup>51</sup> The Government of the Republic of China (Taiwan) Welcomes the Court Verdict in the Case of the Guang Da Xing No. 28 Shooting Incident at Balintang Channel, 18 September 2019, available at [https://www.roc-taiwan.org/ph\\_en/post/4180.html](https://www.roc-taiwan.org/ph_en/post/4180.html).

<sup>52</sup> See “8 Coast Guard personnel convicted over 2013 killing of Taiwanese fisherman,” Kristine Joy Patag, 18 September 2019, Philippine Star. The full text of the decision is not available in the public domain.

<sup>53</sup> Copy available at [law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Y0110542](http://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Y0110542).

<sup>54</sup> *Ibid.*

## PART II

### **The significance of the distinction between a military force and a law enforcement force.**

The distinction between military forces and law enforcement forces is not mere hairsplitting. It has profound legal significance. The significance vary according to the time (peacetime or wartime); place and space (territorial, maritime and air space); and type of activities.

#### **2.1 Peacetime or wartime<sup>55</sup>**

**During peacetime**, in the international legal system, both military forces and law enforcement forces, as well as their public or non-commercial vessels and aircrafts enjoy sovereign immunity. Wherever they may be situated, these forces and their vessels and aircrafts are an extension of the territory of their state and, as such, immune from arrest, search, inspection/boarding or other exercise of jurisdiction by a foreign state.<sup>56</sup> Thus, any threat or use of force upon these forces, vessels and aircrafts would amount to an act of aggression against the territory of the flag state.<sup>57</sup> Self-defense against such acts of aggression would be a just cause for war.<sup>58</sup>

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<sup>55</sup> A state of war is synonymous to a state of armed conflict between two or more states. See Commentary of the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, International Committee of the Red Cross, 1952, p. 32.

“Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict” or war. See International Criminal Court (ICC), *Lubanga Decision on the confirmation of charges*, 29 January 2007, para. 207; International Criminal Tribunal for the Former Yugoslavia (ICTY), *Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995, para. 70. Such state of war may exist regardless of whether there is a declaration of war or an authorization to use force or even if there is a lack of resistance to an occupation or a non-recognition by one party of the existence of a state of war.

The purpose of a formal declaration of war or authorization to use force is merely to legalize budgetary allocation, mobilization and deployment. Flexibility in the determination of a state of war ensures the immediate activation of the protections of common Article 2 of the four Geneva Conventions of 12 August 1949. See *Armed Activities on the Territory of the Congo, (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2005, pp. 167-168.

Conversely, a state of peace would be synonymous to cessation of armed conflict. However, for certain legal effects, such as the termination of *force majeure*, there must be “some formal proclamation of peace by an authority competent to proclaim it.” See *Untal v. Chief of Staff, Armed Forces of the Philippines*, G.R. No. L-7777, [September 23, 1949], 84 PHIL 586-596; *Navarre v. Barredo*, G.R. No. L-8660, [May 21, 1956], 99 PHIL 164-168.

<sup>56</sup> UNCLOS, Article 32. In *The “Ara Libertad” Case (Argentina V. Ghana)*, Provisional Measures Order of 15 December 2012, the International Tribunal on the Law of the Sea (ITLOS) declared a Ghana in breach of international law for the illegal court seizure of an Argentinian warship while the latter was docked in the internal waters of Ghana.

<sup>57</sup> UNDOC A/RES/3314(XXIX), United Nations General Assembly (UNGA) Resolution No. 3314, adopting Annex A on the Definition of Aggression, 14 December 1974. Under Article 3(d), an “attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State” would qualify as an act of aggression.

<sup>58</sup> Article 51, Charter of the United Nations available at [treaties.un.org/doc/Publication/UNTS/No%20Volume/Part/un\\_charter.pdf](http://treaties.un.org/doc/Publication/UNTS/No%20Volume/Part/un_charter.pdf). The ICJ has avoided a categorical

**During an international or non-international armed conflict** in which a flag state is either a belligerent state or a third state whose territory has been placed at the disposal of a belligerent state, its military forces and their vessels and aircrafts are a legitimate military objective.<sup>59</sup> In contrast, being civilian in nature and function, law enforcement forces are not a legitimate military objective, unless they have been incorporated into or tasked to perform the functions of a military force.<sup>60</sup>

## 2.2 Disputed and undisputed territorial, maritime and air space

Whether it is peacetime or wartime, within the **undisputed** internal waters, archipelagic waters, territorial waters and the superjacent airspace of a coastal state, its law enforcement forces, vessels and aircrafts may exercise all rights of territorial sovereignty, including prescriptive and enforcement jurisdiction over political, criminal, civil, tax and commercial activities,<sup>61</sup> subject to the sovereign immunities of foreign states.<sup>62</sup> Its military forces, vessels and aircrafts have the right to defend the territorial sovereignty of the state from internal or external threats.<sup>63</sup>

If said territorial, maritime and air spaces are **disputed**, the occupying claimant state may exercise all rights of territorial sovereignty pending resolution of the dispute by peaceful means.<sup>64</sup> An opposing but non-occupying claimant state may not use force to alter the territorial situation of such disputed areas; otherwise, it would be committing acts of aggression.<sup>65</sup> Hence, the military forces, vessels or aircrafts of said opposing non-occupying claimant state may not claim innocent or transit passage through or into said disputed land territory, territorial sea and territorial air space, for such presence could be

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declaration that an armed response to aggression is just. See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 128. and *Armed Activities on the Territory of the Congo*, supra note 56. The UNGA has also failed to apply Article 51 to the situations in Ukraine and Gaza. See

<sup>59</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict, June 8, 1977, 1125 United Nations Treaty Series (UNTS) 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977, 1125 UNTS 609.

<sup>60</sup> Protocol Additional to the Geneva Conventions, Article 43(3); Case No. IT-98-29-T, *Prosecutor v. Stanislav Galic*, Judgement of 5 December 2003, International Criminal Tribunal for the former Yugoslavia.

<sup>61</sup> United Nations Convention on the Law of the Sea (UNCLOS), Part II.

<sup>62</sup> *Case Concerning the Detention of Three Ukrainian Naval Vessels (Ukraine v. Russian Federation)*, Provisional Measure Order, 25 May 2019, ITLOS.

<sup>63</sup> *Armed Activities on the Territory of the Congo*, supra note 56.

<sup>64</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, ICJ Reports 2015, p. 705; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I C J Reports 2004, p. 171.

<sup>65</sup> *Costa Rica v. Nicaragua*, *ibid.*

considered an act or threat of aggression.<sup>66</sup> Said opposing non-occupying claimant state may resort only to peaceful or diplomatic means to resolve the dispute.<sup>67</sup>

The military and law enforcement vessels and aircrafts of a **non-belligerent foreign state** may exercise the following freedom of navigation and overflight<sup>68</sup> in the maritime and air spaces of another state, such as an archipelagic state like the Philippines.

Space	Transit passage <sup>1</sup>	Innocent passage <sup>1</sup>	Archipelagic sea-lanes passage <sup>1</sup>	Overflight
<b>Internal waters and airspace</b>	Art. 35 (a) <sup>1</sup> in relation to Art. 8(2) <sup>1</sup>	Art. 35 (a) in relation to Art. 8(2)	Art. 35 (a) in relation to Art. 8(2)	None except under Art. 35 (a) or with authorization
<b>Archipelagic waters outside archipelagic sea-lanes and airspace</b>	None except under Art. 35 (a)	Art. 52 with reference to Art. 17-26	Art. 53 (12)	Art. 53 (12)
<b>Archipelagic sea-lanes and airspace</b>	Art. 53 in relation to Art. 39, 40, 42, 44	Subsumed under transit passage	Art. 53 in relation to Art. 17-26	Art. 53
<b>Territorial sea<sup>1</sup> and airspace</b>	None except under Art. 35 (a)	Art. 17-26; suspension		None except under Art. 35 (a) or with authorization
<b>Straits used for international navigation and airspace</b>	Art. 37-44; no suspension but Art. 40 (scientific research) require prior authorization	Art. 45; no suspension		Yes

To emphasize, a **foreign state's** submarine, nuclear ship, military vessel (or warship) or law enforcement vessel (also called government ship operated for non-commercial purposes) may exercise transit and innocent passage through the territorial sea or straits used for international navigation of a coastal state.<sup>69</sup> Such passage is subject to regulations under UNCLOS<sup>70</sup> and the laws of the coastal state,<sup>71</sup> provided that, with respect to domestic regulations, the same

<sup>66</sup> See Article 19(2), supra note 27. See, also, Article 39 ... 1. Ships and aircraft, while exercising the right of transit passage, shall ... (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law.

<sup>67</sup> UN Charter, Article 2(3); *Arbitral Award of 3 October 1899 (Guyana V. Venezuela)*, 6 April 2023 Judgment on Preliminary Objection, p. 24.

<sup>68</sup> In *Detention of Three Ukrainian Naval Vessels*, (Case No. 26, Order of May 25, 2019, ITLOS Rep), ITLOS declared that the passage regimes under UNCLOS apply to “all ships”, including the military vessels of Ukraine (p. 18).

<sup>69</sup> *Corfu Channel Case, Judgment of April 9, 1949*, ICJ Reports 1949, pp. 27-28.

<sup>70</sup> UNCLOS, Article 20 and Article 23.

<sup>71</sup> UNCLOS, Article 21, Article 22 and Article 25.

must not impair freedom of navigation.<sup>72</sup> The coastal state may require a non-compliant military vessel to leave its territorial sea,<sup>73</sup> whereas it may only hold the flag state of a law enforcement vessel liable for any damage that the latter may have caused.<sup>74</sup>

**Transit passage** by a foreign military or law enforcement vessel through the internal waters of a coastal state is available only when said waters were previously part of straits used for international navigation but were recently “enclose[ed] as internal waters” following adoption by the coastal state of straight baselines.<sup>75</sup> Otherwise, their transit passage through internal waters is subject to prior and specific consent of the coastal state.<sup>76</sup> In *Arigo v. Swift*, the Supreme Court noted that the presence of a US military vessel in Philippine internal waters was unauthorized given that the latter had deviated from its permitted route.<sup>77</sup>

**Freedom of overflight** by a foreign military or law enforcement aircraft is not available in the territorial sea or internal waters of a coastal state, except with the prior consent of the latter.<sup>78</sup> Such freedom is available through archipelagic air routes<sup>79</sup> or through straits previously used for international overflight but was recently “enclose[ed] as internal waters.”<sup>80</sup>

To reiterate, given the precondition for the exercise of transit, innocent and archipelagic passage and overflight, a state may deny such passage by the military and law enforcement vessels and aircraft of another state which has an adverse claim to the very territorial sea, archipelagic waters or internal waters in which such passage is sought.<sup>81</sup>

The freedoms available in disputed or undisputed waters beyond the limit of the 12 nautical mile territorial sea of a state are discussed in the next section.

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<sup>72</sup> UNCLOS, Article 30.

<sup>73</sup> UNCLOS, Article 29 and Article 30.

<sup>74</sup> UNCLOS, Article 31.

<sup>75</sup> UNCLOS, Article 35(a).

<sup>76</sup> See, for example, US OPNAVINST 3128.10H N2N6 8 February 2022, Clearance Procedures for Visits to United States Ports by Foreign Naval Vessels.

<sup>77</sup> *Arigo v. Swift*, G.R. No. 206510 [September 16, 2014], 743 PHIL 8-130.

<sup>78</sup> Convention for the Regulation of Aerial Navigation of 1919, Article 32 (October 13, 1919, 11 League of Nations Treaty Series (LNTS) 173); Convention on International Civil Aviation, Article 3(c), 15 UNTS 295 (1948).

<sup>79</sup> UNCLOS, Article 53 (1) and (2)

<sup>80</sup> UNCLOS, Article 35.

<sup>81</sup> See Article 19(2), *supra* note 27. See, also, Article 39 ... 1. Ships and aircraft, while exercising the right of transit passage, shall ... (b) refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering the strait, or in any other manner in violation of the principles of international law.

## 2.3 Specific activities

In international waters **beyond the 12-nautical mile limit** of its territorial sea, a coastal state does not have territorial sovereignty or prescriptive and enforcement jurisdiction. That is to say, the coastal state has no right or authority to enforce its constitutional, administrative, criminal, civil, tax, commercial and labor laws within its EEZ, continental shelf, extended continental shelf, or on the high seas<sup>82</sup> and the Area.<sup>83</sup> Its law making and law enforcement authority is confined to matters relating to its exercise of sovereign rights in the CZ/EEZ, continental shelf and extended CS, such as on fisheries and offshore oil and gas<sup>84</sup>

**In disputed or overlapping** or undelimited EEZ/CS/eCS, the exercise of conflicting sovereign rights, specifically the rule of capture,<sup>85</sup> has led to naval stand-off, if not armed conflict.<sup>86</sup> Oftentimes, coastal states exercise their conflicting sovereign rights within the framework of cooperation agreements.<sup>87</sup>

On the other hand, **all states enjoy High Seas (HS) freedoms for peaceful purposes**,<sup>88</sup> namely, freedom of navigation; freedom of overflight; freedom to lay submarine cables and pipelines; freedom to construct artificial

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<sup>82</sup> The High Seas are “all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State (Article 86).

<sup>83</sup> *M/V "SAIGA" (Saint Vincent and the Grenadines v. Guinea)*, Prompt release, Judgment, ITLOS Reports 1997, pp. 32-33. In this case, ITLOS declared that Guinea had no authority to enforce its criminal and customs laws against foreign vessels situated within its EEZ.

<sup>84</sup> *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)* Judgment, ICJ Reports 2022, pp. 340-341; *Monte Confurco (Seychelles v. France)*, Prompt Release, Judgment, ITLOS Reports 2000, pp. 108-109.

<sup>85</sup> The rule of capture describes the situation in which a petroleum or oil and gas or hydrocarbon structure straddles a delimited or undelimited EEZ/CS. Given its fluid and fungible character, said resource can be completely drained by one state to the prejudice of the other state, especially when there is technological asymmetry between them. The latter has no legal recourse given that ownership of the resource is deemed transferred at the wellhead of the former. Legal remedy will have to be provided for in a boundary agreement or an international unitization agreement or joint development agreement. See Formulation of United States Policy on the Resources of the Continental Shelf and on Coastal Fisheries in United States Department of State (USDOS), Foreign Relations of the United States, 1945, vol II, 1502.

<sup>86</sup> A gunboat incident between Malta and Libya over Texaco’s petroleum activity on a disputed continental shelf area is narrated in Memorial of Malta, Continental Shelf (*Libyan Arab Jarnahiriya/Malta*), Judgment [1985] ICJ Rep 422 – 28. In the Caspian Sea, Iran, Azerbaijan and Turkmenistan have shared resources in their overlapping maritime zones. In 2001, an Iranian gunboat and aircraft forced British Petroleum to halt exploration of an area licensed from Azerbaijan. See H Zimnitskaya and J von Geldern, ‘Is the Caspian Sea a Sea; and Why Does it Matter?’ (2011) 2 *Journal of Eurasian Studies* 12. In 2008, it was Azerbaijan’s turn to send a gunboat to disrupt the survey work of Turkmenistan’s Canadian contractor Buried Hill Energy in the Caspian Sea. See N Grison, ‘NATO’s Energy Security Policy Put to the Caspian Test’ (2003) 12 *Connections: The Quarterly Journal* 85 – 86. See also E Brunet-Jailly (ed), *Border Disputes: A Global Encyclopedia, Vol 1, Territorial Disputes* (Santa Barbara, ABC-CLIO, 2015) 113, 252 on disputes over petroleum resources between Colombia and Venezuela over Coquivacoa, and Malaysia and Indonesia over Ambalat.

<sup>87</sup> See, for example, Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries, 4 June 1993,

<sup>88</sup> UNCLOS, Article 88.



islands and other installations; freedom of fishing; and freedom of scientific research. Under UNCLOS, in its CZ, EEZ and CS/eCS, the coastal state may, while exercising its sovereign rights, regulate enjoyment of these freedoms by other states. Under other conventions, the freedom of overflight over the EEZ of a coastal state may be subject to the requirement of prior identification.<sup>89</sup>

The following table compares the two regimes:

Space	Freedom of all States in the HS	Sovereign Rights of the Coastal State in the EEZ
<b>Contiguous Zone</b>	Article 58 - Freedom of navigation and overflight	Article 11 and Article 33. Prevent and punish infringement of its customs, fiscal, immigration, and sanitary laws that may occur within its territory (including its territorial sea); engage in hot pursuit
<b>Exclusive Economic Zone</b>	Article 58 - Freedom of navigation; freedom of overflight; freedom of laying of submarine cables and pipelines; other internationally lawful uses of the sea related to these freedoms, such as the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.	Article 56. (a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; (b) jurisdiction with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment; (c) other rights and duties provided for in this Convention.
<b>High Seas, including waters superjacent the seabed beyond the 200 nm limit of the CS</b>	Article 87 and Article 90 - Freedom of the high seas; freedom of navigation; freedom of overflight; freedom to lay submarine cables and pipelines; freedom to construct artificial islands and other installations; freedom of fishing; and freedom of scientific research.	Article 87 and Article 90 – Freedom of the high seas

Moreover, the sovereign rights of a coastal state vis-à-vis the freedoms of the high seas continue to be available even in disputed EEZ or CS/eCS. Hence, **as occupant** of Pag-asa Island or Thitu Island, the Philippines may exercise the rights of territorial sovereignty over the island itself and its territorial sea. At the same time, the Philippines may exercise its limited sovereign rights in the Philippine EEZ provided this is beyond the territorial seas of rocks that are disputed but occupied by the other claimant states.<sup>90</sup>

<sup>89</sup> See Aircraft Identification Rules for the East China Sea Air Defense Identification Zone (ADIZ) of the P.R.C. announced by the Ministry of Foreign Affairs at [in.china-embassy.gov.cn/eng/gdxw/201312/t20131204\\_2143850.htm](http://in.china-embassy.gov.cn/eng/gdxw/201312/t20131204_2143850.htm). The US refused to be bound by this ADIZ. See Statement on the East China Sea Air Defense Identification Zone, November 23, 2013, available at [2009-2017.state.gov/secretary/remarks/2013/11/218013.htm](http://2009-2017.state.gov/secretary/remarks/2013/11/218013.htm). ADIZ is based on such conventions as the 1944 Chicago Convention.

<sup>90</sup> The legal counsel of the Philippines represented to the Arbitral Tribunal in the South China Sea Arbitration (SCS Arbitration) that the Philippine EEZ/CS consists of “the waters, seabed and subsoil of the South China Sea within 200 M of the Philippine coasts, but beyond 12 M from any high-tide feature within the South China Sea.” See *PCA Case N° 2013-19, In the Matter of the South China Sea Arbitration between The Republic of the*

During peacetime, the law enforcement authority of the coastal state in the CZ, EEZ and CS/eCS is limited to the exercise of its economic or sovereign rights. This role is vested primarily in its law enforcement agencies, which may not use lethal force,<sup>91</sup> except in self-defense.<sup>92</sup> At the same time, said coastal state, as all other states, enjoy freedom of the high seas, specifically in its own CZ, EEZ, CS/eCS or those of other coastal states and in the waters and air space that are beyond the national jurisdiction of any state. Thus, in said high seas and the superjacent airspace, its military forces and their vessels and aircrafts may exercise freedom of navigation and overflight, such as the conduct of naval patrol and fly-by, provided the same are for peaceful purposes.<sup>93</sup>

It bears stressing that the suppression of international maritime crimes, such as piracy, is the duty of every state, “all states have the right and duty to protect their vessels against piracy at sea including in the exclusive economic zone of a coastal.”<sup>94</sup> In *The Enrica Lexie Incident*, Indian fishermen plying the EEZ of India were mistaken for pirates and shot and killed by Italian military personnel on board an Italian vessel.<sup>95</sup> ITLOS held that said incident was not an impairment of the sovereign rights of India to fish in its EEZ as Italy also had a right to protect its vessels against piracy in said waters.<sup>96</sup>

It is also underscored that the foregoing freedoms of navigation and overflight are available to a state, such as China, even if the latter is involved in a territorial or maritime dispute with another state, such as the Philippines, provided the same is exercised in the territories, maritime zones and air spaces that are not disputed between them. Conversely, the Philippines enjoys freedom of navigation and overflight in the territories, maritime zones and air spaces of China that are not disputed between them. Any restriction on such freedom of navigation or overflight by one against the other would be in violation of Article 24 of UNCLOS proscribing discriminatory regulation or restriction of freedom of navigation and overflight.

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*Philippines and The People's Republic of China*, Final Award, 12 July 2016, p. 275. This definition of the EEZ/CS binds the Philippines notwithstanding any contrary definition in existing laws or pending legislations.

<sup>91</sup> *In the Matter of an Arbitration between: Guyana - and - Suriname*, Award of the Arbitral Tribunal, 17 September 2007, pp. 147-148.

<sup>92</sup> *S.S. I'm Alone (Canada v. US, 1935)*, Reports of International Arbitral Awards (RIAA), vol. 3, p. 1609; *Investigation of certain incidents affecting the British trawler Red Crusader Report of 23 March 1962 of the Commission of Enquiry established by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark on 15 November 1961*, RIAA vol. 29, p. 529.

<sup>93</sup> UNCLOS, Article 88.

<sup>94</sup> *PCA Case No. 2015-28, The Italian Republic v. The Republic of India (The “Enrica Lexie” Incident)*, Award 21 May 2020, pp. 267-268.

<sup>95</sup> The role of the military as a vessel protection department was defined by Law Decree No. 107 of 12 July 2011.

<sup>96</sup> *Ibid.*

However, freedom of navigation and overflight does not engender freedom of military or paramilitary presence by one state on the territory or territorial extension of another state. The presence of the military or paramilitary forces of a foreign state on the territory of another state constitute a violation of the latter's territorial sovereignty and territorial integrity,<sup>97</sup> unless such presence has been invited.<sup>98</sup>

Nonetheless, during wartime, a belligerent state may engage in belligerent acts at sea, such as by establishing a naval blockade,<sup>99</sup> even in the EEZ of a neutral state.<sup>100</sup>

## 2.4 Summary

In sum, it is important to distinguish between military forces, vessels and aircrafts vis-à-vis law enforcement forces, vessels and aircrafts. Their distinction has legal significance in terms of their allowable activities during peacetime or wartime, and within disputed or undisputed territorial, maritime and air spaces.

The regime applicable to the CCG or PCG in the SCS would depend on their exact organizational status, mandate, and the level of force they may employ.

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<sup>97</sup> Military and Paramilitary Activities in and against Nicaragua, supra note 60.

<sup>98</sup> *Dizon v. Commanding General of the Philippine Ryukus Command, U.S. Army*, G.R. No. L-2110 [July 22, 1948], 81 PHIL 286-303) regarding the constitutionality of the US-Philippines Military Bases Agreement. See, however, Resolution No. 141, September 16, 1991 (Secretariat of the Senate of the Philippines, BASES OF THEIR DECISIONS (Legislative Publications Staff, 1991), p. 349), in which the Philippine Senate refused to concur in the ratification of the RP-US Treaty of Friendship, Cooperation and Security and its Supplementary Agreements on the ground that the presence of US military forces and equipment on Philippine territory exposes the Philippines to nuclear and conventional attacks.

<sup>99</sup> There is no single instrument containing the laws of naval warfare. Rather, the laws are based on customary international law. Only a few have been codified. An example is the customary law on naval blockade according to which a belligerent has the right to prevent vessels and aircraft, regardless of their cargo, from crossing an established and publicized cordon separating the enemy from international waters and/or airspace.

<sup>100</sup> The Commander's Handbook on the Law of Naval Operations, p. 7-6.

## PART III

### What is the status of a coast guard in general?

#### What is the status of the CCG?

#### What about the Vietnamese Coast Guard (VCG) and the PCG?

In the SCS Arbitration, the non-military vessels of China's navy and coast guard were considered to have been engaging in military activities when they prevented a vessel of the Philippine Bureau of Fisheries from resupplying BRP Sierra Madre in Second Thomas Shoal. The military vessels of China were also in the vicinity. The Arbitral Tribunal cited the purpose of the Chinese vessels, which was to prevent the Philippines from asserting and protecting its territorial sovereignty over BRP Sierra Madre in a contested maritime zone.<sup>101</sup>

The **2021 Coast Guard Law of the People's Republic of China**<sup>102</sup> transferred supervision of the CCG from the Ministry of Land and Resources to the People's Armed Police Force.<sup>103</sup> At the same time, it placed the CCG under the disciplinary supervision of the Central Military Commission for certain offenses.<sup>104</sup> It vested the CCG with both military and law enforcement functions, specifically patrolling China's waters, defending its islands, reefs and artificial islands<sup>105</sup> and designating maritime exclusion zones;<sup>106</sup> as well as enforcing its laws, such as customs, marine resources, marine ecology and fisheries.<sup>107</sup>

Under their law, the CCG may use non-lethal force to stop a violation of the law,<sup>108</sup> although it may also issue a warning and employ a hand-held weapon if the order to stop is not heeded.<sup>109</sup> It may also use lethal seaborne and airborne weapons to counter terrorism or serious violence at sea.<sup>110</sup> It is notable that use of lethal force by the CCG is not subject to the condition of self-defense or military necessity.

Clearly, the nature of the CCG as a military force or a law enforcement force depends on the scope of the functions it is performing at any given moment, and on the level of force it may employ at that point. Its military

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<sup>101</sup> SCS Arbitration, Final Award, pp. 454-456.

<sup>102</sup> Copy available at [xinhuanet.com/politics/2021-01/23/c\\_1127015293.htm](http://xinhuanet.com/politics/2021-01/23/c_1127015293.htm).

<sup>103</sup> CCG Law, Article 2.

<sup>104</sup> Ibid, Article 74.

<sup>105</sup> Ibid, Chapter 3.

<sup>106</sup> Ibid, Article 25.

<sup>107</sup> Ibid, Chapter 4.

<sup>108</sup> Ibid, Article 46.

<sup>109</sup> Ibid, Article 47.

<sup>110</sup> Ibid, Article 48.

functions is not conditioned upon the existence of war.

Under the **Ordinance on the Vietnam Coast Guard**,<sup>111</sup> the VCG is considered the “people’s armed force” under the management and administration of the Ministry of Defense.<sup>112</sup> It is tasked to protect the country’s national sovereignty and jurisdiction not only in the internal and territorial waters but also in the CZ, EEZ and CS.<sup>113</sup> It has authority to enforce in said areas laws and treaties relating to natural resources, environmental pollution, customs, piracy, terrorism, human trafficking and drug trade.<sup>114</sup>

The VCG has authority to stop a violation of the laws.<sup>115</sup> If its order to stop is not heeded, it may use force to effect compliance<sup>116</sup> by using weapons,<sup>117</sup> including by opening fire in certain cases, such as to defend one’s self or others or prevent escape, provided that a prior warning has been issued.<sup>118</sup>

Similar to the CCG, use of lethal force by the VCG is not conditioned upon self-defense or necessity (as mere prevention of escape justifies lethal force). Moreover, the military function of the VCG of defending the sovereignty of Vietnam is not conditioned upon a declaration of war.

Upon the other hand, **our RA 9993** provides that the PCG shall be attached to the Department of Transportation and Communication (DOTC) during peacetime and to the Department of National Defense during wartime.<sup>119</sup> It vested the PCG with maritime law enforcement, safety and security functions,<sup>120</sup> and does not mention the military functions that the PCG might perform following a declaration of war.

In a separate instrument, namely a PCG Manual on the Rules on the Use of Force,<sup>121</sup> the DOTC authorized that the PCG to use deadly force “under extreme necessity” in order to deal with “foreign registered vessels and their crew within the internal waters, archipelagic waters and territorial sea.”<sup>122</sup> It may also be resorted to in the course of law enforcement in order to defend oneself and others.<sup>123</sup> In both cases, prior warning is required.<sup>124</sup>

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<sup>111</sup> Ordinance No. 03/2008/UBTCQH12, March 1, 2008.

<sup>112</sup> Ibid, Article 2.

<sup>113</sup> Ibid, Article 6 and Article 7.

<sup>114</sup> Ibid, Article 7.

<sup>115</sup> Ibid, Article 11.

<sup>116</sup> Ibid, Article 12.

<sup>117</sup> Ibid, Article 14.

<sup>118</sup> Ibid, Article 15.

<sup>119</sup> RA 9993, Section 2.

<sup>120</sup> Ibid, Section 3.

<sup>121</sup> Approved by the DOTC Secretary on 23 June 2020.

<sup>122</sup> Manual, Part 4.I.2(c).

<sup>123</sup> Ibid, Part 4, J.

More importantly, the Manual provides that, within the Philippine CZ, the use of deadly force against a state actor is proscribed, except when the Operations Order (OPORD) provides otherwise.<sup>125</sup> Within “non-contested areas in the exclusive economic zone” of the Philippines, use of deadly force is not countenanced even against vessel engaged in “hostile actors”, unless the OPOED provides otherwise.<sup>126</sup> There is no guideline on use of force in contested areas, such as the TS of disputed rocks.

The PCG is a civilian law enforcement force during peacetime. While it may transform into a military force upon a declaration of war, the rules governing its military activities have yet to be defined.

To summarize, the CCG and VCG have military functions even during peacetime. The PCG is a purely civilian law enforcement unit during peacetime.

## **PART IV**

**Bearing in mind the nature of the CCG and PCG, did the presence of the Philippine Navy, US Navy and Chinese Navy in the WPS transform the incident into a military situation? What are the legal and political implications of the deployment of the Philippine military to the WPS and its use of the assistance of the US Navy? Does the MDB SEB have legal authority to seek or allow the assistance of an armed or unarmed aircraft of the US Navy during a Philippine law enforcement activity in the WPS?**

It is respectfully submitted that a **military situation** was in effect in the WPS on 13 August 2023. As held by the Arbitral Tribunal in the SCS Arbitration, the acts of Chinese non-military vessels in preventing the Philippine resupply mission amounted to a military activity. In effect, the Chinese vessels were performing a military function of territorial defense. Further, the Chinese Navy and Philippine Navy were present in the vicinity

The presence of an aircraft of the US Navy while a military situation was in place in the Second Thomas Shoal engenders the question of whether the Mutual Defense Board (MDB) and Security Engagement Board (SEB) had authority to allow such presence. Under the Enhanced Defense Cooperation Agreement (EDCA), the MDB and SEB have two specific functions.

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<sup>124</sup> Ibid, Part 5, A.4.

<sup>125</sup> Part 5, A.5.C.

<sup>126</sup> Part 5, D.

First, the MDB and SEB shall be the bilateral security mechanism through which the Philippines shall grant the US “operational control of Agreed Locations for constructions activities and authority to undertake such activities on, and make alterations and improvements to, Agreed Locations.”<sup>127</sup>

Second, the MDB and SEB shall serve as the bilateral security mechanism through which the Philippines may authorize the United States to “preposition and store defense equipment, supplies, and materials ... including, but not limited to, humanitarian assistance and disaster relief equipment, supplies, and materiel, at Agreed Locations.”<sup>128</sup>

Nowhere in the foregoing provisions of EDCA are the MDB and SEB authorized to request and allow the deployment of an aircraft of the US Navy to assist in an actual and live Philippine military activity of resupplying BRP Sierra Madre in an area contested by China.

To be sure, under Article IX of Supplementary Agreement No. 2 to the Treaty of Friendship, Cooperation and Security between the Government of the Republic of the Philippines and the Government of the United States of America: Agreement on Installations and Military Operating Procedures, the MDB shall decide on matters regarding US projection of forces in times of war or peace.<sup>129</sup> However, in 1991, the Philippine Senate did not concur in the ratification of said supplementary agreement.

More importantly, as established in 1958,<sup>130</sup> the MDB shall have equal representation from the Philippines and the US, and its decisions shall be made by agreement between the Philippine co-chair and US co-chair. As created in 2006,<sup>131</sup> the SEB shall likewise have equal representation from the US and Philippines and its decisions shall be made by agreement by the Philippine and US Co-chairs. In effect, decisions by the MDB and SEB on matters relating to the conduct of foreign relations by the Philippines vis-à-vis China would not be decisions rendered by the Philippine President as head of state and commander in chief, much less by the Philippines as a sovereign state.

Thus, the following questions would require deliberation and appropriate

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<sup>127</sup> EDCA, Article III(4).

<sup>128</sup> EDCA, Article IV(1).

<sup>129</sup> Bases of their Decisions, supra note 63, Appendix, p. 275.

<sup>130</sup> Exchange of Notes constituting an agreement between the Republic of the Philippines and the United States of America relating to the Establishment of Mutual Defense Board and the assignment of Military Liaison Officer, May 15, 1958.

<sup>131</sup> Agreement Between the United States of America and the Philippines effected by Exchange of Notes at Manila, April 11 and April 12, 2006.

legislation by the Philippine Congress:

- (1) What is the source of power in getting the assistance of the US Navy?
- (2) Can the President do it as Commander in Chief? What is the role of Congress?
- (3) Can the President invoke the EDCA to authorize the MDB and SEB?
  - (3-1) In relation to the role of the MDB and SEB, what is meant by “agreed locations” ? Do they cover the disputed areas?
  - (3-2) What is meant by “operational control”?
  - (3-3) What is meant by “defense equipment, supplies and materials...”
  - (3-4) What is the process to be followed by the US if the EDCA is invoked? Was this process followed?
  - (3-5) Can the MDB and SEB invoke EDCA without the express authority of the President?

## **PART V**

### ***What legal and non-military courses of action may the Philippines take to respond to the recent collision at sea and blockade by Chinese vessels against Philippine resupply vessels?***

#### ***5.1 Was the collision an act of war?***

#### ***5.2 Was the blocking maneuver an act of war?***

It is important to ascertain the precise location of and nature of all the vessels involved, before and at the time of the collision, to be ascertained. As there is no official source of this information, the discussion below would have to be based on certain surmises.

Assuming that the Chinese vessels were within the EEZ of the Philippines and, at the same time, outside the territorial sea of any of the rocks being



occupied by China, the presence of said Chinese vessels would be justified only under freedom of navigation. Moreover, the collision that take place within the EEZ of the Philippines would not qualify as an act of war as no armed force was used upon a territory or territorial extension of the Philippines. Assuming that the blocking maneuver took place also within the Philippine EEZ, the same would not amount to an act of war if no armed force was applied. However, such blocking maneuver by China would be an impairment of freedom of navigation by the Philippines in its own (Philippine) EEZ or an internationally wrongful act under Article 31 of UNCLOS in relation to existing conventions on safety of navigation.<sup>132</sup>

Assuming that the Chinese vessels were inside the territorial sea of any of the rocks being occupied by it, said vessels would be engaged in the exercise of territorial sovereignty by China. The collision would not be an act of war by China against the Philippines as no armed force was applied against a Philippine territory or territorial extension. Had the blocking maneuver taken place within said waters, the same would not be considered an act of war. China's refusal of passage by Philippine vessels would also be justified as the latter is an opposing claimant state to the territorial waters in question.

Without a doubt, there is escalation from diplomatic negotiations to military maneuvers as the principal means employed by the parties to address their disputes. Nonetheless, the prohibition against use of force still applies. The only available recourse of the Philippines is to open a permanent and direct diplomatic channel between the Philippines and China. The existing bilateral mechanism may not be adequate as it is activated only once or twice a year.

Moreover, the provision on counter-measures in the proposed maritime zones law would not be enforceable in the territorial and maritime and air spaces that are occupied by China, Vietnam or Malaysia, though claimed by the Philippines. Even in the Philippine EEZ/CS, the forcible application of such countermeasures against foreign state vessels would amount to acts of aggression. As Prof. Stuart emphasized by citing the *Ara Libertad* case, no countermeasures, such as boarding and seizure, can be brought against state vessels that enjoy sovereign immunity.<sup>133</sup>

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<sup>132</sup> International Convention for the Safety of Life at Sea (SOLAS), 1974. Chapter V applies to all vessels, except ships of war and ships solely navigating the Great Lakes of North America, etc.

<sup>133</sup> Arbitration or adjudication for damages would have to be instituted under Article 31 of UNCLOS, which provides that the "flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with ... with the provisions of [UNCLOS] or other rules of international law." This type of claim is pending before ITLOS in the *Ukraine v. Russia* where all the vessels involved are state vessels.

## PART VI

### SCENARIOS

As such blocking maneuvers and collisions are likely to recur, and may become kinetic, it may be useful to anticipate scenarios to which the foregoing discussion and some additional preliminary guidance might be relevant:

(1) **Assume that there are no conflicting claims** between Philippines and China over the area within 200 nautical miles from the Philippines baselines or the Philippine EEZ/CS.

(1-1) What are the rights that can be exercised by the Philippines in its EEZ and CS? What rights can the Philippines not exercise?

Article 56(1)(a) of UNCLOS declares that coastal states like the Philippines shall have only sovereign rights rather than territorial sovereignty rights. Sovereign rights relate to the purpose of exploring and exploiting and conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, as well as the production of energy from the water, currents and winds.

Article 56(1)(b) defines the nature of sovereign rights as jurisdictional and limits its scope to (i) the establishment and use of artificial islands, installations and structures (Article 60); (ii) marine scientific research (Part XIII); (iii) the protection and preservation of the marine environment (Part XI: Article 220). Article 56(1)(c) provides that the coastal state shall have “other rights and duties provided for” under UNCLOS, such as the establishment of continental shelf installations (Article 60) and the right of hot pursuit for violations of the sovereign rights of the coastal state (Article 111). The Philippines may issue and enforce laws and regulations for the exercise of said enumerated sovereign rights.

No state, such as the Philippines, may claim territorial sovereignty over any area beyond the limit of its 12 nautical mile territorial sea.<sup>134</sup> While said state may exercise

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<sup>134</sup> Article 2 (1) of the UN Charter and Article 2 of UNCLOS provides that territorial sovereignty of a coastal

jurisdiction in its CZ to prevent or punish violations committed in its TS or land territory of its fiscal, immigration, custom and sanitation laws, it may not exercise constitutional, criminal, civil and tax/customs/commercial/labor laws in its EEZ/CS.<sup>135</sup> Such claim to territorial sovereignty is precluded by the express recognition by customary international law, as codified in Article 58 in relation to Articles 87 to 111 of UNCLOS, that in the EEZ/CS of any state, other states, such as China, enjoy freedom of the high seas, such as, navigation, overflight, laying and maintenance of submarine cables and pipelines.”

Moreover, according to the US, freedom of the high seas includes the conduct of military activities, such as “anchoring, launching and landing of aircraft, operating military devices, intelligence collection, exercises, operations and conducting military surveys,” provided that the state engaging in military activities in the EEZ/CS of another state, complies with the obligation to give due regard to the enjoyment by the latter of its sovereign rights.<sup>136</sup>

- (1-2) What are the rights of any vessel of China or any foreign state in said undisputed Philippine EEZ?

As discussed under (1-1), in the undisputed EEZ/CS of the Philippines, China and other foreign states enjoy freedom of the high seas, such as, navigation, overflight, laying and maintenance of submarine cables and pipelines, and the conduct of certain military activities.

- (2) **Assume there are conflicting territorial and maritime claims between China and the Philippines over the area within 200 nautical miles from the Philippine baselines.**

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state extends only to “its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea ... air space over the territorial sea as well as to its bed and subsoil.”

<sup>135</sup> See discussion on MV Saiga. The tax/customs/commercial/labor laws that it may enforce in the EEZ/CS are only those relating to the exercise of its sovereign rights, such as on fisheries and offshore petroleum.

<sup>136</sup> Message from the President of the United States Transmitting the United Nations Convention on the Law of the Sea and its Annexes to the Senate for its advice and consent to accession, 7 October 1994, p. 24. The US emphasized that “it is the duty of the flag State, not the right of the coastal State, to enforce this “due regard” obligation.”

- (2-1) Given the decision of the SCS Arbitral Tribunal, can China intrude into our EEZ/CS without the permission of Philippine authorities?

No, provided the term “intrude” means exercise of sovereign rights and the term “EEZ/CS” means the maritime zone and seabed up to the limit of 200 nautical miles from the Philippine archipelagic baselines “but beyond the territorial sea” of the rocks being disputed in the SCS.

Yes, if the term “intrude” means activities in exercise of freedom of the high seas and the term “EEZ/CS” encompasses the territorial seas of rocks that are disputed in the SCS but occupied by China.

According to the SCS Arbitral Tribunal, in the TS and/or internal waters of BDM, Philippines, China and Vietnam have common rights to ancestral fishing.<sup>137</sup>

- (2-2) What acts can be done by China short of threats or use of force while inside Philippine EEZ/CS?

In areas within the Philippine EEZ/CS but are encompassed by the TS and seabed of rocks that are occupied by China, the latter may exercise territorial sovereignty, including the use of force to defend itself.

In areas within the Philippine EEZ/CS that are encompassed by the TS and seabed of rocks that are not occupied by China, the latter may not exercise territorial sovereignty. It may not use force to claim the territories.

In areas within the Philippine EEZ/CS but beyond the TS and seabed of rocks that are disputed in the SCS, China may not claim or exercise sovereign rights. However, it may exercise freedoms of the high seas.

Notwithstanding the language of existing laws and pending bills, for the SCS Arbitral Tribunal the Philippine represented to it that the Philippine EEZ/CS is defined as follows:

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<sup>137</sup> SCS Final Award, pp. 315-316, supra note 98.

683. The Philippines submits that “the waters, seabed and subsoil of the South China Sea within 200 M of the Philippine coast, but beyond 12 M from any high-tide feature within the South China Sea, constitute the EEZ and continental shelf of the Philippines” under Articles 57 and 76 of the Convention ...<sup>138</sup>

(2-3) What acts constitute “armed attacks?” **Is the use of laser, water cannon or blocking maneuver an “armed attack?”**

Not every act of aggression or use of force can rise to the level of an armed attack as would justify the right to self-defense under Article 51 of the UN Charter.<sup>139</sup> Noting that there is no definition of armed attack in the UN Charter or the San Francisco proceedings, the ICJ merely delineated thresholds. Thus, it held that, because of its scale and effect, the operation of the US of sending “armed bands to the territory of [Nicaragua]” would have been considered an armed attack “rather than a mere frontier incident ... had it been carried out by regular armed force.”<sup>140</sup> On the other hand, it categorically declared as an armed attack the act of armed Iranian militants of “overrunning ... [the premises of the US Embassy in Tehran] the seizure of its inmates as hostages, the appropriation of its property and archives and the conduct of the Iranian authorities in the face of those occurrences.”<sup>141</sup>

From the foregoing cases, it is apparent that a territorial target is indispensable. Thus, while use of force on an artificial island of China or Vietnam would amount to aggression, it would not qualify as an armed attack for an artificial island is not a territory unless the same is situated on the territorial sea.

Given the foregoing threshold, the use of lasers or water cannons and the blocking maneuver of vessels do not amount to armed attacks. Whether or not an attack by a swarm of Chinese militia vessels upon Philippine military or law enforcement vessels would amount to an armed attack as

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<sup>138</sup> SCS Arbitral Award, p. 275, supra note 98.

<sup>139</sup> Military and Paramilitary Activities, supra note 60, paras. 210-211.

<sup>140</sup> Ibid, para. 195.

<sup>141</sup> *United States Diplomatic and Consular Staff in Tehran*, Judgment, 1. C. J. Reports 1980, p. 3, para. 57.

would activate Article 51 would depend on the threshold in the foregoing ICJ cases.

(2-4) What responses can be done by the Philippines vis-à-vis the above actions of China?

i. What is the significance of the use of the PCG?

Having the PCG at the frontline signals adherence by the Philippines with the UN Charter on recourse to peaceful means rather than use of force in the settlement of disputes.

However, a dedicated 24/7 diplomatic team would be more effective.

ii. What is the significance of the use of our military, the Philippine Navy?

Having the military at the frontline increases the risk of immediate recourse to lethal force rather than peaceful means of settlement.

iii. What is the significance of the invitation of foreign military forces, i.e., USN?

The presence of the USN *per se* is not contrary to Philippine law or international law, especially if the latter's presence is merely in exercise of freedom of navigation. As pointed out earlier, the US position is that freedom of navigation includes the conduct of military activities in the high seas as well as the EEZ/CS of other states.

However, the participation of US military officers in decision making through the MDB and SEB, is legally suspect. It also places the Philippines under the category of a non-neutral state in the event of an armed conflict between the US and China/Russia/Iran/North Korea.

(3) Assume China resorts to an “armed attack” against the Philippines.

(3-1) What lawful acts of self-defense can the Philippines do?

The Philippines may resort to an armed counter-attack in self-defense under Article 51 of the UN Charter. At the same time, it may bring the matter to the UN Security Council in order to activate the provisions of Chapter VII of the UN Charter.

(3-2) Will the armed attacks, acts of self-defense, acts of retaliation let loose an all-out war between the China and the Philippines and their allies?

Yes.

(3-3) In case of an all-out war, can the Philippines lose not only its sovereign rights over its EEZ but even its sovereignty over its territory (land and territorial seas)?

As a rule, conquest or armed occupation is not a valid means of territorial acquisition.

However, the reality shown by Israel's and Russia's military occupations is that the way in which a state controls its territory can be perceived by a powerful neighbor as a threat to its own security.

(3-4) In that eventuality, does the Philippines have any effective remedy under international law?

The continuing saga of Palestine and Chagos Archipelago demonstrates the reality that no effective institutional enforcement mechanism is available under international law. Perhaps proactive neutrality and conflict-prevention through diplomacy are the more rational choices.

Respectfully submitted for the consideration of the Philippine Senate.

**International Law and Relations Society of the Philippines (ISIP)**

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