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EDITORIAL NOTE

Just fifteen years into the 21st Century, the world has already witnessed a wide range of consequential transformations and dynamics that have shaped the terrain of order and chaos, cooperation and conflict, and amity and enmity within and among states for many decades to come. From the global war on terror triggered by the September 11 attacks in the United States of America to renewed tensions between and among claimant parties in the South China Sea disputes, from the fall of long-time autocrats triggering a wave of violence in the Middle East to the rise of non-state/sub-state actors as more potent players in the security landscape, from the use of economic statecraft in pursuit of national interests to the exposure of modern economies to cybersecurity threats, some of the security challenges have risen and/or metastasized to become more acute and deleterious. Notwithstanding some improvements in promoting global peace and security, the list of continuing and new security threats remains punishingly long.

Against this backdrop of new and heightened security challenges, the state—in most instances—persists as the most relevant actor in the domestic and international scenes. While it experiences challenges to its raison d’être and strains on its capabilities to promote peace and order within and outside its sovereign realm, the state remains to be the primary and the most relevant security actor that wields and exercises the greatest influence in either the domestic or international security environment. Despite some questions raised against its relevance as the primary actor in contemporary international system, the state is still privileged as the focus and source of solutions and strategies. In most instances, it is still the one, self-conscious, rational actor vested with effective capabilities to deal with most present-day security challenges.

Therefore, any informed and effective approach to security must proceed from a trenchant reflection on the strategic calculation and policy considerations of the state. Such highly cerebral exercise should take into account a plethora of interests and predicaments that cuts across the political, economic, socio-cultural, techno-scientific, environmental, and military dimensions of national security. Many times, as both the inextricably linked domestic and international levels are awash with competing interests that must be reconciled in the face of scant resources, limited time, and prevailing norms and values, the state is hard put to strike a delicate balance that promises solutions, permanent or otherwise. At the end of the day, however, the state favors one interest over the other, and arrives at key decisions, upon which all other policies and actions must be anchored. One can divine the fundamental ordering of preferences by the state by looking into the actual practice of national security administration. Strategies, actions, and the actual application of security policies directly or indirectly reveal the bedrock choices that the state has made amidst the multitude of interests and other relevant considerations.

This year’s edition of National Security Review (NSR), with the theme “Policy and Practice of National Security Administration,” takes the reader to some of the
actual applications of state policy decisions and initiatives that bear a wide range of implications to the security environment at the strategic, operational, and tactical levels. With focus on the Philippines, this year’s NSR presents articles that illuminate some actual and/or recommended cardinal choices on various paramount issues. Indeed, as a country situated in a region facing both traditional and non-traditional security concerns, the Philippines must prudently navigate its evolving security environment to ensure that its strategic interests are protected and enhanced. Benefitting from the intellectual acumen of renowned subject-matter experts, this NSR offers some perspectives and recommendations geared towards addressing key issues that have dominated the headlines in the past couple of months or years.

At this point, a short introduction to each of the article is in order.

In her article entitled “ASEAN Community Building and the South China Sea Issue: Implications for ASEAN ‘Centrality’,” Dr. Carolina G. Hernandez discusses how the South China Sea dispute deals a serious blow to the centrality of ASEAN in regional affairs. In particular, Dr. Hernandez expounds on the cracks in the unity of the organization that the tension between and among parties in the South China Sea dispute has threatened to deepen. The unsettling and highly combustible geopolitical dynamics that the dispute has generated provides a formidable challenge to efforts by ASEAN states to construct an ASEAN community in the near term.

In anticipation of the ASEAN economic integration, Commodore Joel S. Garcia outlines various policy options and imperatives that aim to harmonize and enhance the application of both domestic and international maritime laws. In his article entitled “Maritime Security and Law Enforcement in the Philippines in the Face of the ASEAN Economic Integration: Quid Agendum Est?,” Commodore Garcia stresses the need to prepare the country’s legal and administrative institutions in order for the Philippines to pursue more effectively its interests in an economically integrated region.

Focusing on the bilateral economic layer of the South China Sea dispute, Dr. Tina S. Clemente, in her article “Issues on Vulnerability and Security from Philippine-China Economic Relations,” invites the readers to have a more nuanced view of the vulnerabilities of the Philippines in a situation where the country is confronted by the flexing of China’s economic muscle. She also puts forward recommendations that seek to promote the national interests by bolstering the academic and institutional foundations of Philippine economic statecraft.

Zooming in on the Philippines’ own backyard, Lt. Gen. Felicito V. Virgilio M. Trinidad Jr. talks about an actual experience on crisis management in relation to the 2013 Zamboanga City Crisis. In the “Elements of an Effective Crisis Management: The Case of the 2013 Zamboanga City Crisis,” General Trinidad largely details the operational aspects of the government’s approach to managing and solving the crisis wrought by some rogue Moro National Liberation Front elements under the leadership of Nur Misuari. General Trinidad also takes stock of a number of political, social, military, and economic factors that had contributed to the occurrence of the said crisis. He then offers some recommendations aimed at improving the government’s organizational and operational readiness and policy orientation in dealing with future crises.

Notwithstanding good practice in some areas, Dr. Stephen P. Cutler in his article “Islands of Excellence in Cybersecurity: Perceptions and Prescriptions for Improving Preparedness in the Philippines,” highlights cybersecurity as a compelling priority that deserves more government attention. Specifically, he outlines in the article several specific imperatives that the government must initiate in the immediate, near, medium, and long term.

Through this issue of the NSR, the National Defense College of the Philippines (NDCP) hopes to contribute to the vibrant national and international discourse on the policy and practice of security administration. Through its Research and Special Studies Division (RSSD), the College works to engage academics and practitioners in order to vigorously promote and further deepen the wider public’s knowledge on current and emerging security issues.
About the Contributors

DR. CAROLINA G. HERNANDEZ is Founding President and Chief Executive Officer of the Institute for Strategic and Development Studies (ISDS Philippines). She is also Professor Emeritus in Political Science, University of the Philippines (Diliman) where she taught from 1984 until her retirement in 2006. A founding member of the ASEAN Institute of Strategic and International Studies (ASEAN ISIS), Council for Security Cooperation in the Asia Pacific (CSCAP), the Council for Asia-Europe Cooperation (CAEC), the Asia-Pacific Security Forum (APSF), and the Human Rights Resource Center, she has also served in the boards of various regional and global institutions, including the UN Secretary-General’s Advisory Board on Disarmament Matters which she chaired in 2009, Global Centre on the Responsibility to Protect, Global Development Network, the Governing Council of the International Institute for Strategic Studies, and the Multi-Sectoral Board of the Philippine Army's transformation roadmap (PA-MSAB).

Her writings in security sector reform/security sector governance (SSR/SSG) and peace building, democratization and human rights, East Asian regionalism, territorial disputes, human security, and track two diplomacy are in national, regional and international publications. She holds a doctoral degree in Political Science with a pioneering work on civil-military relations in the Philippines. She also worked in two official fact-finding bodies investigating coup attempts against incumbent presidents, was a member of the National Peace Forum, and was Presidential Adviser for the Implementation of the Feliciano Commission Recommendations. She is married with five children and five grandchildren.

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LIEUTENANT GENERAL FELICITIO VIRGILIO M. TRINIDAD, Jr or Chito, as he is commonly called, hails from Iriga City. He is a member of the Philippine Military Academy Class of 1982. Prior to his designation as Commander of the Northern Luzon Command, he assumed key command and staff positions in the AFP, to wit: Head of the Infantry Department, Combat Arms School at the Training and Doctrine Command, PA; Battalion Commander of 16th and 14th Infantry Battalions; Director of the Army Modernization Program Management Office; Assistant Chief of Staff for Plans, G5, PA; Commander of 702nd Infantry (Defender) Brigade; and Commander of the 1st Infantry Division, Philippine Army. Among his remarkable accomplishments are the successful hosting and conduct of the ASEAN Chiefs of Army Multilateral Meeting (ACAMM) during his stint as G5, PA; declaration of the provinces of Aurora, Nueva Ecija and Pangasinan as insurgency-free and the handover of the Internal Security Operations (ISO) lead role to the provincial governments when he was Commander of 702Bde; and the successful defense of Zamboanga City during the 2013 Zamboanga City Crisis/Stand-off as the overall Commanding General of all the involved AFP and PNP units. He is married to the former Fioredeles Jovy Rasay of Marikina with whom he has three children, Ms. Karina, Ms. Janina and Mario Luis.

STEPHEN P. CUTLER is a Director of GUIDE MERIDIAN, a Philippine technology company, with strategic level projects enabling information management and utilization enhancing national level data security/risk assessment and management and cyber security matters. He lectures frequently on related topics to senior level leadership groups. Mr. Cutler served twenty-two years with the Federal Bureau of Investigation (FBI), including assignment as head of all FBI operations in the Philippines. He retired from the FBI, earned a PhD in Criminology from the Philippines College of Criminology, co-authored two books on organized crime and terrorism, articles that have been published in books by the National Defense College of the Philippines, and published numerous articles that have appeared in international magazines on national security.
ASEAN Community Building and the South China Sea Issue: Implications for ASEAN 'Centrality'

Carolina G Hernandez

**ASEAN Community Building is being side-tracked by the South China Sea issue since the end of the “de-escalation” of the South China Sea issue in ASEAN-China relations. The end of this de-escalation came in the wake of the growing assertiveness of China in the South China Sea dispute particularly the stand-off between the Philippines and China on the Scarborough Shoal (Bajo de Masinloc) well-within the Philippine exclusive economic zone in April 2012. Since then, ASEAN has been side-tracked in its community building project whose target date is the end of 2015.**

*It is now widely recognized that the ASEAN Community will take longer to realize and that 2015 is only a landmark, a pause to mark a turning point in a project that remains work-in-progress, namely the building of the ASEAN Community of three pillars.*

*This paper argues that ASEAN Community Building and the South China Sea issue have serious implications for a key aspiration of ASEAN namely to remain at the core or center of regionalism in East Asia if not the broader Asia/Indo-Pacific region.*

According to the decision reached at the 12th Leaders Summit of the Association of Southeast Asian Nations (ASEAN) held in 2007 in Cebu, the Philippines, 2015 marks the year when the ASEAN Community (AC 2015) of three pillars envisioned by its 10 member countries is scheduled to be realized. Eight years hence, the end of 2015 is seen no longer as the completion date of the ASEAN Community as hoped for in 2007. The year 2015 is rather seen as a landmark, or an episode in the eventual realization of this community that is now increasingly recognized as work-in-progress. None of its member states, or the ASEAN Secretary-General and his staff in the ASEAN Secretariat in Jakarta, believes that the end of 2015 would see the realization of the ASEAN Community. In fact, the notion of ASEAN post-2015 has increasingly been widely shared

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1 These pillars are the ASEAN Political-Security Community (APSC), the ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASCC).

2 Established on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore, and Thailand (ASEAN’s original members or ASEAN-5), the Association of Southeast Asian Nations grew into its current membership of 10 countries with the entry - after independence from Great Britain - of Brunei Darussalam in 1984, followed by Vietnam in 1996, Lao PDR and Myanmar in 1997, and Cambodia in 1998.
as the end of 2015 nears. Knowledgeable individuals in both official and non-official circles know that this process of building the ASEAN Community described in numerous official documents of ASEAN will remain work-in-progress into the foreseeable future.

A declared aspiration of ASEAN leaders and officials as seen in various ASEAN documents is to remain at the center, or at the core, or the driving force of regional cooperation or regionalism in East Asia, if not the broader Asia-Pacific region. This goal is often expressed in terms of the concept of "centrality", such as for example in Articles 1 and 2 of the ASEAN Charter, Article 1, paragraph 15 states that among ASEAN's purposes is to maintain its "centrality" and proactive role...as the driving force in its relations and cooperation with its external partners in a regional architecture that is open, transparent and inclusive." Its Article 2 further states among the principles that would govern its member states, "the centrality of ASEAN in external political, economic, social and cultural relations while remaining actively engaged, outward-looking, inclusive and non-discriminatory." In addition to its own contribution towards the goal of realizing a stable and prosperous Southeast Asia, such centrality is documented in key initiatives ASEAN took - in particular, after the end of the Cold War from the late 1990s onwards. Chief among these initiatives are the ASEAN Regional Forum (ARF), the East Asia Summit (EAS), the ASEAN Defense Ministers Meeting Plus (ADMM+), and the ASEAN Maritime Forum (AMF) as well as its expanded version (AMF+).

There is no doubt that the project of building an ASEAN Community, whether in 2015 or beyond, has been affected by the South China Sea issue, particularly the disputes between China, Taiwan, and four other party-claimants from ASEAN. The failure to issue a Joint Statement at the end of the ASEAN Ministers Meeting (AMM) in 2012 as a result of the general perception that Cambodia - the ASEAN Chair at that time - succumbed to Chinese pressure, can be seen as evidence enough of the implications of the South China Sea disputes for ASEAN unity, a condition that is arguably key to ASEAN centrality.

Thus, it is important to analyze the implications of the South China Sea disputes for ASEAN community building and ASEAN centrality. This article is not an attempt to contribute to the continuing conversations and debates regarding this important issue. In this article, ASEAN centrality refers to the role ASEAN has played and will play as the driving force in setting up processes, mechanisms, and institutions to promote stability and prosperity in Southeast Asia, East Asia, and the broader Asia-Pacific region. It will be argued that the realization of the ASEAN Community of 3 pillars plays a critical role in the maintenance of ASEAN centrality, and that the South China Sea disputes challenge or even undermine

3 Discussions with officials in unofficial settings, for instance, reveal plans for post-2015. Even the 2015 ASEAN Chair has actively and openly planned for continued community building beyond this year.
Article 1, (15), The Charter of the Association of Southeast Asian Nations. 2007. Emphasis is the author's.

4 Article 2, (15), The Charter of the Association of Southeast Asian Nations. 2007. Emphasis is also provided by the author.

5 These party-claimants from ASEAN are Brunei, Malaysia, The Philippines, and Vietnam. Although Indonesia has disagreements with China in regard to Natuna Island, Jakarta is not a party-claimant to the territorial disputes in the South China Sea.

ASEAN Community Building and the South China Sea Issue: Implications for ASEAN 'Centrality'

ASEAN centrality.

ASEAN AND REGIONAL COOPERATION

Like other intergovernmental enterprises, ASEAN has acquired a mixed picture of success and failure. On the one hand, it has been seen as the most successful association of independent states, second only to the hugely successful European Union (EU). On the other hand, it has been seen as a failed model of integration, a judgment lodged at ASEAN in part due to the mistaken belief that the grouping was established to promote economic integration rather than 'comprehensive security', as understood by its founding members. A large part of the frustration expressed often about ASEAN is its inability to implement its declared goals and commitments, a deficit that can be attributed to the practice, now institutionalized through the ASEAN Charter, of voluntary compliance by its member states where there are no negative results of non-compliance such as in the form of penalties or sanctions.

At the risk of backtracking a bit and in the interest of clarifying ASEAN's contested history, it is necessary to point out that the founders of ASEAN, informed by the failure of at least two earlier experiments in regional cooperation in Southeast Asia - the Association of Southeast Asia or ASA composed of Malaysia, the Philippines, and Thailand, and MAPHILINDO among Malaysia, the Philippines and Indonesia - and aware of both domestic and external constraints, challenges, and risks, decided in 1967 to establish the Association of Southeast Asian Nations to undertake regional cooperation in a variety of fields which in the view of the founders are necessary to promote regional stability, peace, and prosperity. The emphasis is on regional cooperation in diverse fields, including economic, social, cultural, as well as in specific functional fields. The stress has been on 'cooperation' rather than 'economic integration'. Such diverse cooperation activities are seen as leading to regional peace and stability.


9 See for example, Rizal Sukma and Yoshihiko Søyca, editors, Beyond 2015: ASEAN-Japan Strategic Partnership for Democracy, Peace, and Prosperity in Southeast Asia (Tokyo: Japan Center for International Exchange, 2013), especially the recommendations on pp. 15-23.


12 See the ASEAN Declaration, ASEAN's founding document adopted in Bangkok on 8 August 1967.
Economic integration is about sharing markets, a step ASEAN did not take until after the 1987 decision of the Europeans to establish a Single Market in Europe and reinforced by the agreement in 1993 among Canada, Mexico, and the US to establish the North American Free Trade Area (NAFTA). ASEAN leaders were concerned about the exclusion of ASEAN economies from the Single Market in Europe and NAFTA, initiatives that were feared to set up exclusive economic blocs that could have injurious effects on ASEAN. This concern is often expressed in terms of 'closed' as opposed to 'open' regionalism, the latter type ASEAN has consistently upheld.

By way of an aside, ASEAN has also tried to avoid being dragged into initiatives that in its view would undermine the interests of its member states that are less powerful or influential as the established powers in the region. This must have been a reason behind its initial reluctance to support the Asia-Pacific Economic Cooperation (APEC) initiative until Indonesia's former President Soeharto showed leadership in delivering ASEAN support for APEC when Jakarta hosted the APEC Summit in Bogor, Indonesia. Within two years, the Philippines hosted the next APEC Summit in an ASEAN country, and carried forward the initiatives started in Bogor. This response to APEC must have come after serious consultations and deliberation on the costs and benefits for ASEAN of 'institutionalized' cooperation with larger economies in the Asia-Pacific region. In like manner, as a response to the perceived prospects of the Single Market in Europe, ASEAN leaders agreed to form the ASEAN Free Trade Area (AFTA) in 1992, clearly a departure from earlier economic cooperation programs and the first step towards integration. Just the same, the decision to embark on economic integration included a long time frame and a differentiated scheme in recognition of the varying levels of economic development of ASEAN member states. Thus, from the beginning of its existence, ASEAN's focus has been on the attainment of economic and functional cooperation among various aspects of economic and functional cooperation, rather than economic integration per se.

As mentioned earlier, ASEAN also understood 'security' in a manner different from the mainstream view at the time of its creation in 1967. Contrary to viewing security as simply military defense from external aggression, ASEAN's view has always been "comprehensive." This view considers the multidimensional character of security—with economic, political, social, military, cultural, even ecological dimensions—all of which interact with each other and operating at all levels of governance: from the local to the national, to the regional, and to the international. Consequently, ASEAN's view of security takes into account the interactive effects of developments at these levels. In time, ASEAN's view of security came to mean "resilience" beginning at the domestic/national level in order to achieve resilience at the external/regional level. Like military defense from external aggression, comprehensive security remains state-centric, a view that continues to inform the ASEAN Community in general, as well as the APFC in particular.

Related to its view of security, ASEAN since its establishment has sought to dispel any suspicion of it being a military alliance or that it was in favor of one over the other superpower during the Cold War. This is probably why its founding document highlighted economic and functional cooperation rather than political-security cooperation, a fact that is lost on those who do not fully understand the grouping. Aware of the fact that two of its founding members, i.e., the Philippines and Thailand are US treaty allies, ASEAN has recognized the temporary character of alliances and for good measure, declared in 1971 that the member states aspire to transform the ASEAN region into a Zone of Peace, Freedom, and Neutrality (ZOPFAN). Since then has studiously opposed the perception that it is a military alliance and in fact, has repeatedly included the ZOPFAN aspiration in its major political documents adopted thereafter. These documents include the ASEAN Treaty of Amity and Cooperation (TAC) signed in Bali, Indonesia in 1976, the 1995 Bangkok Treaty declaring Southeast Asia as a Nuclear-Weapons Free Zone (SEANWFZ), the ASEAN Charter (2008), and the Blueprint for the ASEAN Political-Security Community (2009). These are perhaps the most important pieces of documentary evidence to show that the likelihood of ASEAN turning into a military alliance is indeed very low.

The TAC reiterates the ZOPFAN Declaration and defines the principles of interstate behavior particularly the right to independence and sovereignty, to live in freedom and non-interference from other states, as well as non-use of force and pacific settlement of disputes. These principles, when operationalized would reduce the value of military alliances. On the other hand, SEANWFZ would ban the presence and use of nuclear weapons in the ASEAN region, a goal requiring the Treaty's observance by nuclear-weapons states such as China, India, and the US. ASEAN's recognition of the latter's cooperation is seen in its enlistment of these powers through the Protocol binding signatories to observe SEANWFZ. On the other hand, the ASEAN Charter's preamble, purposes, and principles are designed to ensure the independence, sovereignty, and territorial integrity not only of the ASEAN

15 For a brief account of ASEAN's evolution, including the path from regional cooperation to integration, see Hadi Soeastro, "ASEAN in 2030: The Long View", in Iay, Estanstiao, and Soeastro, editors, Reinventing ASEAN, pp. 273-310. The author passed on in May 2010 leaving an enviable legacy as a brilliant economist and a fervent regionalist.
16 ASEAN shares with Japan the concept of comprehensive security. In search of a "security role and constrained by its peace constitution, Japan crafted a comprehensive view of 'security' focusing on economic and functional cooperation. This left the military defense security role to the US and its other allies in the Asia Pacific. For a concise explanation of comprehensive security, see Council for Security Cooperation in Asia Pacific (CSCAP) Working Group, The Concept of Comprehensive and Cooperative Security (Kuala Lumpur: CSCAP Secretariat, 1995).
19 See Heiner Hattig for a fuller analysis of ZOPFAN in his ASEAN and the ZOPFAN Concept (Singapore: Institute of Southeast Asian Studies, 1991).
member states, but also of their external partners, reiterating in its preamble, purposes, and principles, ASEAN’s various decisions, documents, and agreements. Finally, the Blueprint for the APSC expresses ASEAN’s goal of consolidating the gains it has achieved over time through adherence to its principles of interstate relations which render military alliances irrelevant in international affairs.

ASEAN also defined its members as ‘non-communist’ rather than ‘anti-communist’, a description that sought to allay any suspicion of partiality and partisanship in the competition between the US and the former Soviet Union during the Cold War. A proper understanding of ASEAN would lead one to conclude that if left alone, ASEAN will craft mutually-beneficial relations with all relevant powers and would not take sides in any big-power competition. This policy of being impartial or non-partisan in the competition for power among the big players (such as the US and the former Soviet Union during the Cold War as already noted, or China, Russia, the US, and others after the Cold War), is sometimes described as ‘equidistance’ or ‘dynamic equilibrium’. In this regard, every power of note – in particular a risen and assertive China - should have an interest in a united ASEAN as it is only with the preservation of its unity and solidarity can ASEAN’s impartiality and non-partisanship be assured.

ASEAN also developed a number of principles of interstate behavior already cited above, which although not entirely original to ASEAN, collectively came to be known as the ASEAN way. Among them are non-use of force and peaceful settlement of disputes, respect for national independence, territory, and sovereignty of other states, non-interference in the domestic affairs of other states, as well as consultation and consensus in decision-making. Indeed, ASEAN developed an international reputation as the principal defender of the principle of non-interference or non-intervention, in spite of the fact that this principle is found in international agreements including the Charter of the United Nations (UN). Needless to say, ASEAN’s record in trying to live up to these principles encouraged many of its post-Cold War or new Dialogue Partners especially from the developing world to embark on closer relations with ASEAN. These new Dialogue Partners include China and India.

In spite of widespread criticisms made against ASEAN not only by analysts, academics, media practitioners, public intellectuals, and officials, there is also recognition that it has played an important role in the establishment of regional processes, mechanisms and even institutions which helped promote regional peace and stability. In fact, ASEAN can arguably be considered the driving force behind the ASEAN Regional Forum (ARF), the East Asia Summit (EAS), the ASEAN Defense Ministers Meeting Plus (ADMM+), and the ASEAN Maritime Forum and its expanded version (AMF and AMF+). Without ASEAN initiatives in these mechanisms and institutions, they would not have been established. And in spite of much diatribe against them, they remain part of the region’s security architecture (RSA) in addition to the system of bilateral military alliances centered on the US.

To demonstrate ASEAN centrality in regional cooperation, a few examples are in order. For instance, the ARF was set up as an attempt to provide a dialogue mechanism to avert armed conflict that could disrupt regional stability once the Cold War overlay provided by superpower rivalry came to an end. The discussions that led to the formal adoption of the ARF started at the track-two level, among senior members of the ASEAN Institutes of Strategic and International Studies (ASEAN ISIS) and their counterparts from Australia, Canada, and Japan. Hosted by the Indonesian Center for Strategic and International Studies (CSIS) in Jakarta in June 1991, this small group brainstormed on the need to put in place a regional dialogue process to defuse tension and avert conflict after the end of the Cold War. It agreed to propose to ASEAN the establishment of such a process around the ASEAN Post- Ministerial Conference (PMC) when all the ASEAN member states and their Dialogue Partners would be present. ASEAN ISIS sought the help of their Japanese counterpart who was in charge at that time of the Japanese Foreign Ministry’s Planning Office to ensure the support of then Japanese Foreign Minister Tako Nakayama when ASEAN would formally propose the establishment of such a process. A misunderstanding apparently occurred leading Mr. Nakayama to table the proposal as Japan’s at the 1992 PMC in Kuala Lumpur. Due to lack of support from other Dialogue Partners, the proposal had to wait before its subsequent adoption as the ASEAN Regional Forum (ARF) as formally proposed by ASEAN. This incident suggests that a proposal for any security-related initiative that

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20 This is a term the author often uses in describing ASEAN’s impartial or non-partisan posture vis-à-vis strategically-relevant powers. These powers are never the same, but change according to the strategic realities of the times.

21 This term is attributed to Indonesian’s former Foreign Minister Marty Natalegawa.


25 The term track 2 as it came to be known in Southeast Asia (and by extension through counterparts, also in East Asia and the Asia-Pacific region), refers to a process of open dialogue among relevant participants in and out of government in their private capacities. Over time, it came to be known as dialogues among think tanks and members of epistemic communities whose outputs are non-official.

26 The author was at this track 2 meeting. See Complex Interdependence and Track Two Diplomacy in the Asia Pacific in the Post-Cold War Era (Quezon City: Center for Integrative and Development Studies, University of the Philippines, 1994), pp. 1-38. Further documentation in this regard, can be found in Caballero-Anthony; “ASEAN’s Track Two Diplomacy: Reconstructing Regional Mechanisms of Conflict Management”, in Her Regional Security in Southeast Asia, pp. 157-193, especially pp. 165-168. See also ASEAN ISIS Memorandum titled, A Time for Initiative: Proposals for the Consideration of the Fourth ASEAN Summit submitted to respective ASEAN member states and approved in principle by that summit in January 1992. This memorandum also contains proposals for AFTA and the Special SOM of Foreign and Defense Ministers.
its external partners. Although the cooperation of these external partners is crucial in material and other terms, it remains unimaginable for big powers such as the US and China, or even middle powers such as Japan, India, and Australia which have the hard-power potentials to dominate the maritime domain to sire any idea or process of enhanced maritime cooperation in the region, be it East Asia or the broader Asia Pacific. These examples show ASEAN’s centrality especially in regional defense and security cooperation.

THE ASEAN COMMUNITY

The ASEAN Community can be seen as a strategic vehicle for the maintenance of ASEAN centrality. This envisioned community of three pillars, once realized, can facilitate the forging of ASEAN cohesion and solidarity through enhanced political security cooperation as envisaged in the APSC Blueprint, through economic integration of ASEAN into a single market and production base sought by the AEC, and the achievement of a people-centered ASEAN community through the ASCC. No doubt these are extremely challenging for an intergovernmental organization whose members continue to behave as independent states instead of a united, single regional actor. Thus, the specific actions for each of the three pillars specified in their respective blueprints reflect the character of ASEAN as an intergovernmental organization seeking to become a community. Nevertheless, because decisions remain by consensus and are preceded by extensive consultations among its diverse member states, because compliance remains voluntary, and because actual power and authority remain with its member states, ASEAN as a regional actor continues to be challenged just like most intergovernmental organizations. 30

That enhanced political security cooperation through the APSC is necessary to realize the single market and production base sought by the ASEAN Economic Community (AEC) is an idea that has not been truly recognized in official ASEAN circles. The priority pillar remains the AEC. 31 Even the understanding of “narrowing the development gap” is strictly about gaps in economic development, 32 without recognizing the fact that there are more gaps beyond the economic sphere across ASEAN-10 and even within each of the member states. Without narrowing the political development gap, for example, it will be extremely difficult to realize ASEAN unity in the very processes involved in community building for the simple reason that only more liberal political perspectives are likely to empower the people, and even having this perspective is not a guarantee that a “people-centered” ASEAN Community would be realized at some foreseeable future.

That a community cannot be set up in the absence of people is not difficult to understand. 33 This understanding is probably why the third pillar, the ASEAN Socio-Cultural Community (ASCC) is the only pillar that has advanced the idea of realizing a “people-centered” ASEAN Community – even the ASEAN Charter champions the idea of a “people-oriented” community, an idea that is seen as a lower commitment to the well-being of the ASEAN peoples than a “people-centered” community and a retreat from the original proposal of the Eminent Persons Group (EPG) for the ASEAN Charter. 34 Yet, if the enhanced political-security cooperation in the APSC and the economic benefits of a single market and production base of the AEC do not reach the peoples of ASEAN, it is highly unlikely that they will consider themselves to be part of the ASEAN Community 2015 or beyond. In this regard, the ASCC needs to be seen in a new light, one that recognizes the centrality of the ASEAN peoples in community building.

Moreover, the realization of the ASEAN Community is perhaps one of the most important vehicles for the maintenance of ASEAN centrality, if only because it has the potential of providing ASEAN with a single platform and a single voice to engage its external partners. Short of its full realization, it is still possible to maintain this centrality if ASEAN solidarity and unity can be ensured. Unfortunately, however, the South China Sea disputes have posed a serious challenge to ASEAN solidarity, and therefore, can undermine ASEAN centrality. 35

THE SOUTH CHINA SEA ISSUE

While the South China Sea issue consists of many dimensions whose “legitimate” stakeholders vary depending on which dimension is under discussion, 36 this article confines

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30 Some of the criticisms regarding the obstacles that hinder the ability of ASEAN to become more effective may be found, for example, in the articles written by Rizal Sukma “Building the ASEAN Community” (pp. 258-277), Carolina G. Hernandez “The ASEAN Charter and the Building of an ASEAN Security Community” (pp. 296-311), and Herman Joseph S. Kraft “A Charter for ASEAN” (pp. 278-295), published in the Indonesian Quarterly Vol. 36 (2008). See also, Hernandez and Kraft. “Mainstreaming Elements of Human Security in the ASEAN Community”, pp. 134-138.

31 This tendency is evident in many circles, including those in the Philippines, where discussions about ASEAN Community 2015 center on the AEC. See for example, Sukma and Soeya, editors, Beyond 2015 whose organization of the group reports representing the three pillars of the ASEAN Community put the study group report for the AEC ahead of the other two even as the usual sequence would put the APSC ahead of the AEC and the ASCC always last. For its part, the Asian Institute of Management (AIM) organized a project named AIM ASEAN 2015, the focus of which skews heavily on the impact of ASEAN integration on businesses. See http://asean.aim.edu/research.

32 In this regard, see the Blueprints for the AEC and the ASCC on the matter of “narrowing the development gap”.

33 This argument is found in Carolina G. Hernandez and Motoko Shuto, co-chairs of the ASCC Pillar, “ASEAN-Japan Strategic Partnership in Southeast Asia: Socio-Cultural Pillar”, in Sukma and Soeya, editors, Beyond 2015, pp. 58-73. See also, Hernandez and Kraft, “Mainstreaming Elements of Human Security in the ASEAN Community”, pp. 133-134.

34 The Report of the EPG on the ASEAN Charter is seen in many non-official circles as more liberal than the ASEAN Charter itself. A comparison of the two documents is likely to evidence this view.


Policy and Practice of National Security Administration

itself to the South China Sea territorial disputes and only as they affect ASEAN solidarity or unity and therefore, its centrality. This paper merely notes that the Chinese claim is based on the so-called 'nine-dashed line' and the claims by the four ASEAN member states that are party claimants are based in varying degrees on the 1982 UN Convention on the Law of the Sea (UNCLOS).40

It will be recalled that the South China Sea disputes had long been regarded by ASEAN as an important strategic concern for the grouping. Writing in the wake of the Asian financial crisis of 1997, Jose T Almonte, former president Fidel V. Ramos's National Security Adviser (NSA), warned as among the immediate concerns ASEAN must deal with, the "[c]onflicting claims to the Spratlys in the South China Sea", as well as "[h]ow to manage ASEAN's relationships with the great powers – particularly ASEAN's big neighbor, China".41 Thinking in geostrategic terms, Almonte had also looked at the South China Sea as "the maritime heartland of Southeast Asia",42 a view he has consistently espoused. In this regard, he must be recognized as the country's leading political strategist in general, and in the country's dispute with China on the South China Sea in particular.43 Not only did he foresee the strategic importance of this issue for the Philippines, but also for ASEAN's strategic future as will be seen below.

Given the Philippines' geostrategic location and concerns over the maritime-based territorial disputes, it is not surprising that the 1992 ASEAN Declaration on the South China Sea, extending to the area the principles of good neighborly relations it had enshrined in the 1976 TAC, was adopted upon Manila's initiative. Vietnam acceded to this declaration ahead of its formal admission into ASEAN, but it would take a decade of tedious negotiations to forge the 2002 ASEAN-China Declaration on the Conduct of Parties in the South China Sea (DOC), a declaration between ASEAN as a group and China. The DOC was forged after the 1995 Chinese occupation of the Mischief Reef in an area under the Philippine claim. The contested reef is known in the Philippines as Pag-asa Reef. This incident occurred in the 20th year of normalization of China-Philippines relations, during which twenty-year period bilateral relations were at their highest point. The incident created serious concern within the region sufficiently enough to lead members of ASEAN ISIS who are among those who had believed that China could become a responsible regional actor and for this purpose, must be constructively engaged.

A track-two meeting between ASEAN ISIS and Chinese counterparts was held shortly after the 'discovery' of Chinese-built structures on Mischief Reef. It was hosted by the China Institute of International Studies (CIIS) with Chinese participants from the latter's network. When asked to explain the Mischief Reef incident, a retired admiral of the People's Liberation Army's Navy (PLAN) said that the building of 'fishermen's shelters' on Mischief Reef was an 'independent act of the Southern Command of the PLAN'. This author immediately posed two questions: (1) What happened to China's Party control over the Army in this case? and (2) What will Beijing do now that it knows what the PLAN's southern command did? Nobody on the Chinese side replied to these questions then, but it became clear that there was a misrepresentation to the effect that the structures were fishermen's shelters and an independent action of the PLAN's Southern Command. The future would soon show Chinese intentions to assert its 'indispensable sovereignty' in the contested areas in the South China Sea.

In 1998, Philippine authorities found a three-story naval base in Mischief Reef with the Chinese blast- ing coral reefs there to deepen the waters for its naval vessels. From the discovery of the so-called fishermen's shelters in 1995, bilateral relations were to reach their nadir, despite a general perception that the disputes have 'de-escalated' in ASEAN-China relations,44 a situation which was reversed soon after the effects of a risen China became manifest.45 Track-two experiences in general suggest a dramatic change in the behavior and attitude of colleagues from China once their country's 'peaceful' rise was assured. Cooperative and unassuming in the past, they have shown assertiveness once China has risen.46 This change is no less manifest in the South China Sea disputes as seen below.

It must be noted that in 2002 when the DOC was forged, Cambodia occupied the ASEAN Chair for the first time, having been the last country to be admitted into ASEAN (i.e., in 1999, after the elections following the coup launched by then second Prime Minister Han Sen against then first Prime Minister Prince Ranarriddh). Article 10 of the DOC provides for a binding Code of Conduct on the South China Sea. China

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40 Many legal luminaries and analysts have written about the legal, proprietary, and jurisdictional aspects of the territorial disputes. For information on these issues, see the works of China's National Institute for South China Sea Studies, Li Mingjiang, Mark J. Valencia, Carlyle L. Thayer, Hsiang Dijial, Yamin Sun, Song, Sam Bateman, Nguyen Hung Son, Tran Thong Thuy, and Jose T. Almonte, Antonio Carpio, Jay Batongbacal, Aileen Baviera, and Robert Beckman, among others.

41 For a sense of these varying claims and their implications for maritime boundary delimitation, see among others, Sam Bateman, "Maritime Boundary Delimitation: The Case of the South China Sea", Institute for Strategic and Development Studies, University of North Carolina at Chapel Hill. See also Carollin G. Hernandez, "The South China Sea and Implications for the Security of East Asia", in Toward One Southeast Asia: Collected Speeches (Quezon City: Institute for Strategic and Development Studies, 2004), p. 131.


43 His thoughts on this matter are well documented in Section IV of ibid., pp. 195-224.


45 The author thinks of this as 'de-escalation' is contemporaneous with the end of China's 'charm diplomacy' and its rhetoric about 'peaceful development'. See Hernandez, "The South China Sea issue and its implications for the security of East Asia", p. 62.

46 This author often questioned the general tendency of her colleagues in East Asia and beyond to pay an excessive attention to the issue of the 'rise of China'. This attention is now evidenced by many articles and books written as well as workshops, symposia, and conferences held on this issue. The relevant question, however, is what happens once China has risen? The answer has been before us since the end of 'charm diplomacy' and Chinese assertiveness in the regional maritime domain, including in the South China Sea. This assertiveness, in the author's view, is a huge challenge to ASEAN centrality.
has insisted on the full implementation of the DOC over the years. Therefore, its full implementation would include the conclusion of a binding COC, and since the DOC was forged between ASEAN and China, a COC must also be between the same parties. Being privy to track-two efforts towards this goal, this section will document the efforts made by senior ASEAN ISIS members and their friends in ASEAN to help in this effort. This small group could be seen as an actual representation of a formula to facilitate the making of decisions in bodies that are governed by consensus, a formula already implemented in the Chiang Mai Initiative (CMI)\(^4\), among the ASEAN+3 countries. The informal group from the ASEAN side consisted of senior members of ASEAN ISIS joined by ‘like-minded’ UNCLCS experts and security analysts from non-ASEAN ISIS think tanks - thus the formula of ASEAN ISIS minus X plus Y (A+X+Y) in the formation of this group.

Aware of the enormous difficulty of solving the complex and complicated issue of sovereignty and therefore, jurisdiction, in the contested areas, particularly the Chinese declared position that ‘China has indisputable sovereignty over the South China Sea’, ASEAN ISIS focused its attention to the strategy that informed the Informal Workshop on Managing Conflict in the South China Sea\(^\text{a}\) seeking not conflict resolution but conflict management. Subsequently, the small group of ASEAN analysts and sea-law experts met a number of times among themselves to brainstorm in various locations in Southeast Asia to develop what they thought were important elements of a COC. They were able to unofficially interface with an official ASEAN group working on the same issue as well. When they thought their draft was done, and in the spirit of transparency, they decided to share the outcome of their brainstorming efforts with their Chinese counterparts. A meeting was subsequently held in Kuala Lumpur with Chinese colleagues - from numerous relevant Chinese policy institutes such as the National Institute for South China Sea Studies (NISCSS) - being led by the official in charge of ASEAN affairs in the Ministry of Foreign Affairs.

This particular meeting held just prior to the 2012 AMM in Cambodia was a portent of things to come! Among others, the Chinese side tabled the following: (1) the creation out of the bilateral group meeting in Kuala Lumpur of an Eminent and Expert Persons Group on the South China Sea (an earlier Chinese official proposal to which ASEAN allegedly did not agree); (2) the full implementation of the DOC before a COC is discussed, and (3) the idea

\(^4\) The Chiang Mai Initiative (CMI) covers the agreement among ASEAN+3 members on financial cooperation and uses the formula of ASEAN minus X to skirt the tedious consensus-decision making process of ASEAN. See Pradumn B. Rana, “Monetary and Financial Cooperation in East Asia: The Chiang Mai Initiative and Beyond”, ERB Working Paper Series No. 6, February 2002 (Manila: Asian Development Bank).

\(^\text{a}\) This is a standard statement Beijing gives whenever the issue of the South China Sea disputes comes up. This was the response it gave when it refused to participate in track two meetings organized by ISDS in the 1990s on “The Regional Security Implications of Conflict in the South China Sea”.

\(^\text{b}\) The Working Group was set up in 1990 through the initiative of Indonesian sea-law expert and retired diplomat Hasjin Djalal, and Canadian sea-law expert, Ian Townsend-Gault. Its rich decadal-long experience is often told by these experts showing the enormous difficulty of dealing with sovereignty issues that shaped even those on functional cooperation in the contested areas.

that since only four ASEAN member states are party claimants in the disputed territories in the South China Sea, the COC should be only with each of them and China rather than with all of ASEAN and China, and (4) a reiteration of China’s indisputable sovereignty over the South China Sea. None of these items merited the support of the ASEAN side, and the track-two efforts for developing the elements of a COC came to naught.

It must be noted that it took Indonesian Chairmanship of ASEAN in 2011, ahead of its turn and with Brunei’s support for the Guidelines on the Implementation of the DOC to be adopted, nearly a decade since the DOC’s adoption in Phnom Penh in 2002. Moreover, and as already noted, the full implementation of the DOC includes the adoption of a binding COC. And finally as also noted above, the DOC is a document agreed upon by ASEAN as a group and China as the other party. Therefore, a binding COC must be between ASEAN as a group on the one hand, and China on the other hand. A former ASEAN Secretary-General during the long period following the adoption of the DOC had chided a Chinese participant in a track-two meeting in Brussels that China was the cause of the delay in the implementation of the DOC and to kindly tell the leadership in Beijing to speed it up. This remark could be seen as an evidence of China’s dilatory tactics in fulfilling its ‘end of the bargain’ so-to-speak in relation to the DOC.

Keen observers of regional affairs cannot miss the change in the behavior of some ASEAN member states responding to China’s charm diplomacy backed up by Beijing’s financial support for development projects of these member states. This includes Laos, a close partner of Vietnam working hand-in-glove with it in the past especially in regional affairs. Vientiane’s rapid economic growth is attributed to its close economic and political cooperation with China. It is no secret also that one of the strategic goals of ASEAN in the admission of Myanmar in 1997 is to multilateralize Yangon’s external relations which, at that time had been dominated by China. Due to its performance as the most economically dynamic region in the world, ASEAN sought to provide Yangon through admission into ASEAN with an alternative regional option. However, the Asian financial crisis of 1997 foiled ASEAN’s goal. Not only were the leading economies in ASEAN incapacitated by the crisis, but they also had to prioritize their own domestic concerns. Thus, Myanmar (and others in the CLMV\(^5\) group) failed to derive the economic benefits they thought membership in ASEAN would bring. Meanwhile, Myanmar continued to rely on Beijing, particularly because sanctions from the US and the EU left Yangon with little choice.

**IMPLICATIONS OF THE SOUTH CHINA SEA DISPUTES FOR ASEAN ‘CENTRALITY’**

The South China Sea disputes have sown disdain among the ASEAN member states. Already hampered by the tremendous sources of diversity rooted in their diverse history, with consequences for their foreign and security policies, their varying levels of economic development make close collaboration and even strategic partnership with external powers

\(^5\) CLMV stands for Cambodia, Laos, Myanmar, and Vietnam.
able to supply their economic development needs hugely, attractive if not utterly necessary. Thus, the attractiveness of a risen China whose impressive economic performance since its opening to the outside world in the late 1970s cannot be disregarded by developing and underdeveloped countries, including those in ASEAN. The increasing integration of the Chinese economy with ASEAN economies has been richly written about elsewhere. So critical to many ASEAN member states has China’s economic relations become that many colleagues in the region often ask why the Philippines risks the economic benefits of China’s goodwill in Manila’s pursuit of its territorial claims in the South China Sea. It might be important to note that unlike many ASEAN member states whose number one trading partner is China, the US has remained Manila’s primary trading partner. Moreover, unlike others in ASEAN, Manila’s trade with China appears to be in products not so critical to the country’s economic security.

Be that as it may, it is increasingly becoming clear that the South China Sea disputes constitute a critical challenge to ASEAN centrality. There appears to be disunity within ASEAN on how to react to the South China Sea challenge from China. Cambodia’s close relations with Beijing is widely known and acknowledged. In fact, the failure of ASEAN to adopt a Joint Statement after the annual AMM in 2012 is widely known to have been due to Chinese pressure on Cambodia. This is indeed a tragic watermark in ASEAN’s already checkered history, including on the issue of the South China Sea. This is also especially tragic, because Cambodia is the last country to be admitted into ASEAN as noted above, and also because it is rather a small country with little gravitas within the region. There are also those who had hoped that China would ‘gift’ Cambodia with a binding COC as part of its cordiality to ASEAN. The failure to adopt a Joint Statement in 2012 has strengthened the resolve of subsequent ASEAN Chairs like Brunei and Myanmar to include the South China Sea dispute in their agenda and subsequent Joint Statements following the AMM held in 2012. However, the fact that a key ASEAN member state, Thailand, is widely seen as insinuous to the South China Sea disputes and values highly its economic ties to China — and thus, inimical to the perceived unity in ASEAN — and Thai, inimical to the perception that the disputes are sowing disunity in ASEAN and thus, inimical to the sense that the disputes are sowing disunity in ASEAN and thus, inimical to the perception that the disputes are sowing disunity in ASEAN, China has been seen as creating some space to prosper the pace of developing a COC.

Although Brunei and Malaysia are also party claimants to the South China Sea, Brunei is the only claimant that has not occupied any feature in the disputed area. On the other hand, Malaysia has looked at its economic ties to China as


hugely critical to its continuing economic growth and goal of becoming a fully developed country by 2020. Malaysia’s strategy of keeping in the private sphere its concerns and complaints about Chinese assertiveness including Chinese patrols within its claims lately — without resorting to public displays of annoyance or protests — appears to have worked. A negative result, however, is the perception that Malaysia seems to be China’s interlocutor on the South China Sea issue. Although Laos is a land-locked state and used to be Vietnam’s partner as already noted, its apparent economic dependence on Beijing and China’s charm diplomacy have worked to reverse Vietnams’s orientation on issues involving China. The South China Sea issue is a case in point. Should a numbers game be played to determine the position of the ASEAN member countries on the South China Sea disputes, the results would most likely put Malaysia and Brunei with Cambodia, Laos, Myanmar, and Thailand on the Chinese side.

Chinese assertiveness has led the Philippines to improve its military alliance with the US through the Enhanced Defense Cooperation Agreement (EDCA) between their defense departments, as well as forge closer defense cooperation with Japan, developments strongly opposed by China. Similarly, Chinese assertiveness in the South China Sea has also led Vietnam to seriously reconsider its relations with the US, to the extent of opening to other US forces Can Ba, closed to US forces since Washington’s defeat in the Vietnam War and even considering a formal military alliance with Washington. In both the Philippines and Vietnamese cases, a less assertive China would have helped Manila and Hanoi to avoid resorting to closer military ties with the US, the only power perceived to have the military capacity to neutralize China. Vietnam’s declared intention to resort to legal means in a similar fashion as the Philippine resort to arbitration only strengthens the perception that in this numbers game, the Philippines and Vietnam cannot be on the Chinese side.

This strategic speculation leaves Indonesia and Singapore out. It is debatable whether Indonesia and Singapore can be counted on to shore up ASEAN unity on the issue of the South China Sea, although Singapore is a non-treaty ally of the US, and Indonesia has shored up ASEAN’s image in 2012 after the Cambodian debacle through its former foreign minister’s ‘shuttle diplomacy’. It will be recalled that then Indonesian Foreign Minister, Marty Natalegawa exerted every effort within his means to rescue the failure of issuing a Joint Statement in Phnom Penh. Some of the member states were apparently frustrated that ASEAN could not even say that regional security was being affected by


tension in the South China Sea.\textsuperscript{56} The standoff between the Philippines and China over the Scarborough Shoal (Bajo de Masinloc), a shoal rich in fisheries less than a hundred kilometers from the Philippine coastline, framed the AMM in Phnom Penh, with the Philippine decision to bring the case against China to the International Tribunal on the Law of the Sea (ITLOS) still far off. Marty Natalegawa’s shuttle diplomacy led to the adoption by the Foreign Ministers of ASEAN “The Six Principles on the South China Sea” which they formally released on 20 July 2012.\textsuperscript{57} Although hardly a substitute to a Joint Statement, the document can be seen as a testament to Indonesian leadership in times of crisis. However, it did not provide a clear picture of Jakarta’s position vis-à-vis the South China disputes either.

With regard to Singapore, its overall security policy as a “Chinese ship in a Malay sea” has led it to forge close military ties with the US even in the absence of a formal treaty. The end of Philippine-US basing relationship in 1992 left Singapore bereft of space in which to house its sizeable array of military aircraft. In search of a substantial military relationship with the US, and to contribute to the maintenance of US military presence in the region, Singapore agreed to provide access to the US military for refueling its ships and for rest and recreation (R&R) for its troops on a commercial basis. It has also provided access to Changi Naval Base for US naval forces, in addition to having joined the US-led counter terrorism Proliferation Security Initiative (PSI). Yet, Singapore is very much part of the concept of a “Greater China” consisting of the Chinese mainland, Taiwan, Hong Kong, and Singapore. Its economic ties to China are considerable. It is also very much part of China’s Maritime Silk Road.\textsuperscript{58} These realities are perhaps part of the difficulty of determining Singapore’s position on the South China Sea disputes.

Thus, ASEAN member states may be divided into three groups on the South China Sea disputes: Indonesia and Singapore as unknowns, the Philippines and Vietnam as opposed to China, while the rest might be counted upon by China in varying degrees for their support. We can then see in this constellation, a case where ASEAN unity and solidarity is of little help in the South China Sea disputes.

\section*{PROSPECTS}

From the foregoing, it can be said that indeed, the realization of the ASEAN community which can provide ASEAN with a common platform and common voice with which to engage external partners and facilitate the maintenance of ASEAN cohesion, to ecosystem.


\textsuperscript{57} Cited in Hernandez, “The South China Sea issue and its implications for the security of East Asia”, p. 66.


unity, and solidarity so essential to ASEAN centrality as well as the territorial disputes in the South China Sea have serious implications for the achievement of ASEAN’s goal of maintaining its centrality in regional cooperation in East Asia and beyond.

China’s cooperation in this regard is crucial. It has until the recent past shown its need for ASEAN’s support. However, there are some troubling realities ASEAN needs to deal with. These include the “China dream”,\textsuperscript{59} one that is fundamentally linked to the restoration of its former status in the world as the ‘Middle Kingdom’ brought to humiliation by Western powers including Japan. For this dream to materialize, the power transition in Asia\textsuperscript{60} must be accomplished, a goal much helped by China’s rapid economic growth. However, although still growing, China’s economic growth has slowed down\textsuperscript{61} causing concerns within and outside China, particularly for countries that are highly economically interdependent with Beijing, including key countries in ASEAN. Internally, rapid economic growth has resulted in many social and economic changes, including the rapid rise of the Chinese middle classes, their increased access to education, travel, and even information, among others. They could cause increasing demands that China may not be able to respond to adequately. In the face of these internal challenges, one tendency, common in world politics is for states to export their domestic troubles abroad. What better way to do this in China’s case, against the background of new nationalism cultivated by its leadership as the country rose, than to assert China’s claims in the South China Sea? Thus, this issue cannot be sidelined in ASEAN’s bid to maintain its central and pro-active role in regional cooperation.

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Maritime Security and Law Enforcement in the Philippines in the Face of the ASEAN Economic Integration: Quid Agendum Est?

Joel S Garcia

This paper aims to present a perspective on the country’s maritime security geography, its assumed and presumed responsibilities in maritime security and law enforcement vis-à-vis international maritime laws and conventions, including the United Nations Conventions on the Law of the Sea (UNCLOS), the tools it needs to attain the objectives, and the possible legislative actions and policy options the country may take to better leverage the Philippines’ “desired public value” in the advent of the AEC integration in the Asia-Pacific region.

INTRODUCTION

The ASEAN Economic Community (AEC) integration will come into fruition in December 2015 and this might just provide the much needed economic uplift the Philippines desires as it will practically trigger the free movement of goods, services, investments, skilled labor and the free flow of capital within the region. It is therefore imperative that, with just about 15 months to go until the said economic integration unfolds, our government must take the necessary measures and preparations to cope with the ramifications this novel economic development may bring to the region.

Integral to these preparations is the field of maritime security and law enforcement wherein the corresponding work plans must be laid out in response to the anticipated maritime transport demand. Otherwise, our country would be missing out on a lot of opportunities and may end up lagging behind its neighboring states in the ASEAN region. These work plans must be consistent with the AEC economic program of a singular maritime transport system within the region, necessitating the enhancement of a uniform regional maritime security services—a precondition for bridging the trading gaps among the dispersed ASEAN nations to achieve efficient shipment of goods and safe movement of people.


AEC MARITIME SECURITY GEOGRAPHY

The ASEAN region has on its inventory approximately 17 seas within its maritime jurisdiction, among which is the South China Sea where the West Philippine Sea straddles located on the Western seaboard of the Philippines. For this reason, the AEC’s Blueprint highlights the strategic importance of a “maritime transport system” to be able to reach a framework for an AEC Single Shipping Market and adopt its general principles through a unified regional “Rules-Based” maritime regime in line with its “Rules-Based Community of Shared Values and Norms”.

This would call for the implementation of numerous conventions of the International Maritime Organization (IMO), Law of the Sea Convention (LOS), and other applicable international treaties and agreements. It is in this context of achieving a synchronized maritime transport framework within the ASEAN region that the need for the proper enforcement of international laws has all the more become imperative, more so since the AEC’s economic objective implies a borderless, if not seamless, ASEAN region. This economic objective translates into establishing a strong maritime safety and security enforcement by ASEAN civil authorities.

The potential economic gains of the AEC is not without “trade-offs” in terms of increased maritime security threats. At any rate, this is all part of the birth pains and challenges of the economic metamorphosis of the region; thus, potential domestic and even intra-state conflicts are to be expected. To avoid these possible conflicts, it is a must that the rule of law be applied to provide order at sea. The only way to harmonize the enforcement of the rule of law in the ASEAN maritime domain is to uphold and implement the universally accepted legal principles of implementing the various international laws and maritime conventions that are overlaid in the ASEAN seas. This is in consonance with the AEC Blueprint.

Incidentally, the Philippine archipelago straddles quite a number of these seas in the ASEAN region. As such, the Philippines is required to adopt and harmonize the enforcement of these maritime conventions and treaties in its archipelagic waters and maritime zones as prescribed in international laws, particularly, the LOSC and the Vienna Convention. The Philippines should then simultaneously enforce those applicable international and domestic laws that are already in place. It is in this context of upholding its international obligations that the Philippines should frame its national maritime security and law enforcement strategy in defense of its sovereignty and sovereign rights against the so-called modern-day maritime security threats. The country cannot afford to isolate itself from the ambit of international influence, when it desperately needs the support and sympathy of the international community in its campaign to put order and promote peace and security in the West Philippine Sea.

CATEGORIES OF MARITIME SECURITY THREATS AND THEIR LEGAL ANTIDOTES

The world’s maritime domain, the entire seas along with their coastlines, is a threat cauldron if solely viewed from the threat perspective. As we learned from our history, where certain periods of human civilization were marred with various forms of conflicts and threats in the course of controlling space and resources, our conflict experience in the Philippine seas is derived from years of struggle towards economic independence. By reason of competing interests, threats ensue and usually come in the form of the following emerging trends:

- Threats as unlawful activities viewed within the function of law enforcement involving criminalities at sea, which include, among others: piracy; smuggling and trafficking, poaching and other illegal fishing activities; destruction of marine environment; maritime terrorism; drug menace; intelligence activities; illegal resource; and territorial aggression other than situations of war;

- Threats viewed under the perils of the sea, such as: collision and grounding, oil spills, cargo loss, sinking due to typhoon, fire on board, and other similar hazards;

- Threats under natural disasters, namely: the El Niño and La Niña phenomena, storm surges, earthquake, global warming, and siltation;

- Threats from transnational disease as in the recent cases of Ebola, Severe Acute Respiratory Syndrome (SARS), Middle East Respiratory Syndrome Coronavirus (MERS-CoV), and various others; and,

- Threats to the oceans from land and air.

At the turn of the 20th century, the world saw the unprecedented increase of shipping activities that propelled the growth of the industrialized economies. This phenomenon has given rise to the necessity of formulating numerous maritime rules and measures to promote safety of life and property at sea. These rules bind the whole global shipping community to act accordingly in order to preserve the shipping lines of communication to be safe, clean, and secure. The maritime rules and measures come in the form of international laws and maritime conventions of which member states of the United Nations adhere to upon ratification.

Consequently, member states enact national laws to make their domestic rules and policies conform to what has been agreed upon by the international community. Incidentally, most of these maritime conventions address the problem of threats encountered at sea which require prompt law enforcement response. In order, therefore, to prevent these maritime security threats from happening, concerned government agencies are expected to strictly enforce the applicable international and national laws within the Philippine maritime jurisdiction as shown in Table 1.

<table>
<thead>
<tr>
<th>National Laws</th>
<th>International Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>RA 8550 (Fisheries Code of the Philippines)</td>
<td>Convention on International Trade of Endangered Species (CITES)</td>
</tr>
<tr>
<td>RA 9208 (Anti-Human Trafficking Act)</td>
<td>Convention on Biological Diversity (CBD)</td>
</tr>
<tr>
<td>RA 9165 (Comprehensive Dangerous Drugs Act)</td>
<td>Suppression of Unlawful Act at Sea (SUA)</td>
</tr>
<tr>
<td>RA 8294 (Firearms, Ammunitions and Explosive Law)</td>
<td>Safety of Life and Property at Sea (SOLAS)</td>
</tr>
<tr>
<td>RA 9993 (Coast Guard Law of 2009)</td>
<td>Marine Pollution Convention (MARPOL)</td>
</tr>
<tr>
<td>RA 9275 (Clean Water Act)</td>
<td>International Ship and Port Facility Security Code (ISPS)</td>
</tr>
<tr>
<td>RA 9157 (Wildlife Resources Conservation and Protection Act)</td>
<td>Tonnage Convention</td>
</tr>
<tr>
<td>RA 7586 (National Integrated Protected Areas System Act)</td>
<td>Civil Liability Convention (CLC)</td>
</tr>
<tr>
<td>RA 6969 (Toxic Substance and Hazardous and Nuclear Wastes Control Act)</td>
<td>Collision Regulations Conventions (COLREGS)</td>
</tr>
<tr>
<td>RA 8292 (Domestic Shipping Act)</td>
<td>London Dumping Convention</td>
</tr>
</tbody>
</table>


Ibid.


Maritime Security and Law Enforcement in the Philippines in the Face of the ASEAN Economic Integration: Quid Agendum Est?

a. Philippine Maritime Architecture

It is interesting to note that the essential requirement in maritime law enforcement is the physical guarding and monitoring of the Philippine Archipelagic Waters (AW), Archipelagic Sea Lanes (ASL), Territorial Sea (TS), Continental Shelf (CS) and the Exclusive Economic Zone (EEZ) to prevent all forms of possible transgressions as exemplified earlier. Requiring close physical guarding and monitoring are thousands of commercial ships, both foreign and domestic, in addition to close to a million indigenous watercrafts (motorized bancas) plying our maritime waters every day.¹⁴

Just to illustrate the vastness of the area that has to be safeguarded, consider these figures: the Philippine archipelagic baseline is estimated to be 2,640 miles or 4,248 kilometers long while the six proposed Archipelagic Sea Lanes (ASL) entering and exiting on seven points within the country’s Archipelagic Waters (AW) has an approximate length of 2,572 miles or 4,139 kilometers. In addition, Philippine maritime waters, inclusive of the country’s EEZ, are estimated to cover an area of 2.8 million square kilometers while the country’s oceanic water, so situated in the Eastern seaboard, is reported to have a total area of 1.93 million square kilometers.

In order for the Philippines to “modestly guard” its vast AW, ASL, TS, CZ and EEZ and physically conduct civilian law enforcement operations, it is imperative for the country to have at least four ocean patrol vessels (140 meters), 12 off-shore patrol vessels (100 meters), and 30 multi-purpose patrol vessels (60 meters) working around the clock to enforce the LOSC, IMO Conventions and their corresponding national laws and regulations. This is notwithstanding the fact that the country, likewise, needs scores of smaller patrol boats, perhaps in the range of 15 to 35 meters, to appropriately guard the 14,000 coastal barangays under the administrative jurisdiction of the 822 coastal municipalities that have a total coastal population of 64.7 million people spread across the 36,289-kilometer coastline.¹⁵ Without these floating law enforcement assets, our laws, rules and regulations could easily be disregarded thus posing an outright risk to the country.

b. The Philippine Maritime Security Landscape: Threats Unveiled

We must look further beyond our horizon and enumerate the other maritime security threats existing in our maritime domain. Only then can one really gauge the multitude of maritime problems that the country is faced with right now. The pressing issues in the country’s maritime operational theater are not just the threats from the lingering insurgency and Islamic terrorists, but also from the myriad forms of criminality and environmental destruction befalling our nation. These maritime security threats looming in our maritime horizon will surely dwarf the threats posed by insurgency and terrorism.

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¹⁵Ibid.
Consider the following consequences:

- PhP 102 billion of potential economic losses every year due to smuggling.

- Various incidences involving the sinking of civilian water vessels (as in ferries), which resulted in the loss of lives and properties. How many “MV Princess of the Stars” tragedies can our country afford to happen? Such sinking alone caused the lives of 990 civilians and left hundreds of families in bereavement over the death of their loved ones. And what about the hundreds of similar accidents in Philippine maritime waters that went unnoticed by the media?

- Hundreds of “unreported” deaths at sea due to lawlessness. Like criminalities on land, there are hundreds of crimes of the same nature committed at sea that go unnoticed. Apparently, our media is not so familiar with the intricacies at sea, hence, most of their reports are just focused on land-based criminalities.

- Approximately PhP 12 billion of potential losses annually (conservative estimate) in the fishing industry due to illegal fishing methods and foreign poaching that affect the subsistence of thousands of families who rely on fishing as their means of livelihood. In Taganak, Tawi-Tawi alone, the country is poised to lose at least PhP 4 billion in illegal fishing activities due to “lampasak” operation, a Malaysian term for a specialized boat that catches tiger prawns.

- Big time drug traffickers use the sea to their advantage due to lack of monitoring by law enforcement. Right now, PDEA has recorded approximately 7 million Filipinos who are dependent on illegal drugs. How many Filipinos die each year because of illegal drug use? How many families have suffered because of drug-related crimes?

- Unquantifiable economic losses due to the destruction of our marine corals and other precious marine resources.

- Thousands of “unauthorized and unregistered” motorized bancas plying Philippine archipelagic waters, of which some are used in the commission of crimes.

- The occurrence of oil spills due to the deliberate discharge of used oil from ships in addition to the operational discharges out of normal vessel operations. How many oil discharges and spills happen in Philippine waters each day? How are we going to quantify these in terms of economic losses due to the destruction of our marine environment? The Exxon Valdez major oil spill experience in Alaska in 1990 will inform us that the U.S. has already spent more than USD 7 billion and is still counting up to this date for clean up alone. Can the Philippines afford to have a similar accident in our waters?

- The use of unsafe ships that operate in our seas. With this in mind how many oil tankers, both foreign and local, are potential oil spillers plying our archipelagic seas?

- The problem of enforcing the numerous IMO conventions in the country’s maritime domain. How will the Philippines enforce them? How will the Philippines enforce ninety percent (90%) of the civil maritime law enforcement provisions of the LOSC?

**MAN AND MACHINE TECHNOLOGY TO ADDRESS THE THREATS**

**a. Enforcement through the use of Hardware and other Infrastructure**

The hardest part of ensuring a safe, clean and secure maritime environment in the Philippine seas is the “physical enforcement requirements” of international laws and national legislations. This also entails building up the physical infrastructure required by these laws and the actual physical law enforcement activity by concerned law enforcement agencies, such as the Philippine Coast Guard (PCG), Philippine National Police (PNP), Armed Forces of the Philippines (AFP), and Bureau of Fisheries and Aquatic Resources (BFAR), among others.

Aside from the number of ships mentioned earlier to guard our seas which we still lack at present, the Philippines has first to put up the much needed infrastructures that are vital in the enforcement of the LOSC, such as the Vessel Traffic Management System (VTMS), Traffic Separation Scheme (TSS), Communications System, Buoyage System, Ships’ Routeing System, Coast Watch System, and the like to guide foreign and domestic ships to their safe passage within the Philippines’ AW, ASL, TS, CZ and EEZ. Otherwise, how will the transiting vessels observe Philippine rules within the country’s maritime jurisdiction if there are no such systems and infrastructure in place? Conversely, how will the Philippines enforce its archipelagic laws if the systems required by the laws are not present?

By parallelism, it is like driving a car in the middle of the street without any traffic lights, road markers and safety signage for direction. Without this road traffic infrastructure, how will we enforce our traffic rules against violators?

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b. Enforcement by Human Elements

The PCG, PNP, AFP and BFAR are the lead government agencies that have the necessary mandate and the "presumed" nationwide infrastructures to quell criminalities at sea. They are the country’s primary law enforcement agencies presumed to have the capabilities in enforcing the various maritime laws enumerated earlier since they are considered to be sea-going organizations. As law enforcers at sea, it is presumed that the members of these agencies are familiar with the laws they are supposed to be enforcing. But what if this is not the case?

Since international laws and maritime conventions, including our national laws, are overlaid in the Philippine seas, there is a need to enhance maritime law enforcement activities by government authorities to prevent the rise of the so-called modern-day maritime security threats. The effectiveness of law enforcement operations would only be as good as the legal knowledge and technical skills of law enforcers implementing the law in the maritime sphere. Otherwise, this legal and technical inadverterence in law enforcement will eventually lead up sowing the seeds of conflict and misconceptions as exemplified by numerous events in the past, particularly in the southern part of the Philippines. It is from these events that lessons can be learned and mistakes can be avoided.

One could just imagine how disastrous it would be for the country to direct its law enforcement units without equipping them first with the legal knowledge of international and national laws vis-a-vis the legal and technical skills on apprehension, preservation of evidence, custodial investigation and filing of complaints. Along this line, consider the following questions in order to have a comprehensive picture of the law enforcement capability of the human resource element of our country’s law enforcement agencies:

- Does our country have enough law enforcers at sea who are adept in law enforcement operation?

- Are these law enforcers familiar with the "technical" laws they are enforcing? How will they enforce the numerous laws overlaid on Philippine seas if they themselves are not familiar with these laws?

- Have we conducted a diagnostic and systems audit to determine the capability of our law enforcers when it comes to maritime security operations?

- Have we reviewed the training needs of our law enforcers in order to meet the demand of enforcing the laws that are overlaid in our maritime zones?

- Do our law enforcers have the minimum equipment and facilities to enforce the laws?

If all the questions posed are answered in the negative, it simply means our country is really in deep trouble when it comes to minimizing, if not eradicating maritime security threats. Therefore, there is a lot of catching up to do. There is a need to re-think our strategy in the defense of the country’s sovereignty and sovereign rights in the aspect of maritime security operations. If almost all of our law enforcers at sea are not familiar with the laws they are enforcing, then this is a clear indication that we are courting legal reprisals and troubles at sea due to training inadequacies and knowledge deficiencies. This can also be an indication that, most likely, the higher management policy makers or the technocrats of these agencies or departments have little appreciation and limited understanding of laws because of technical inadherence, if not outright non-conformance. Hence, we can now easily understand some of the reasons why we are encountering enforcement problems in the West Philippine Sea, Eastern oceanic property and the rest of our waters within the Philippine maritime jurisdiction.

It goes without saying, therefore, that it requires a comprehensive understanding of maritime laws in order for the policy makers to formulate "strategic" and "surgical" measures and to understand that their personnel at sea urgently need education and training – a sine qua non in law enforcement. The "man and machine" factors are important in our country’s quest to keep our seas safe, clean and secure from various forms of threats, including the threat from our own administrative and operational oversight, lapses and omissions.

Despite all these predicaments, are we still going to send law enforcers at sea to enforce our laws in order to uphold the country’s sovereignty and sovereign rights without equipping them with the basics of law enforcement? The choice is ours. Without adequate knowledge and skills, chances are that we will be encountering legal complications and reprisals from both foreign and domestic users of the sea, including other states, for not following or observing international laws and due legal processes. It will be a big legal embarrassment not just for our poor law enforcers, in particular, but also for our country, in general. It is apparent that there is a need to pause for a while and review the things that are supposed to be done in addition to providing the vital “Capacity Building and Institutional Enhancement Measures” (CBIEM) for our enforcers at sea. This move may appear to be delaying operations by several months but, in reality, we are actually fortifying our position in bringing to the bar of justice those violators of law in our maritime zones.

HARMONIZATION OF NATIONAL LAWS WITH INTERNATIONAL LAWS

The Philippines, as a signatory to the LOSC, is one of the few States belonging to the category of an archipelago. With its unique geographical configuration, the Philippines has its own additional set of special provisions under the “Archipelagic Doctrine” principle of the LOSC, on top of the provisions covering an ordinary State. To understand this variance, below are some provisions under the LOSC that make the Philippines unique:

a. Archipelagic Waters

The waters enclosed by the archipelagic baselines are categorized as Archipelagic Waters (AW) and not as internal waters as it is domestically known (i.e., Visayan Sea, Sulu Sea, Verde Island Passage, etc.). The waters enclosed by the archipelagic baselines are the rivers, bays and harbors. Within its AW, the Philippines exercises full sovereignty. Meaning, it can enforce its national laws, including international laws, except on the rights of foreign ships to “innocent passage” and the Archipelagic Sea Lane Passage (ASLP), if ever the country will have an Archipelagic Sea Lane to speak of in the near future.\(^{20}\)

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b. Territorial Sea

The Territorial Sea (TS) is measured 12 nautical miles going seaward from the surrounding Archipelagic Baseline. The Philippines has sovereignty over its waters in the TS, except that foreign ships also enjoy the right of “innocent passage” in the said waters. The LOSC sets out that foreign ships can travel across territorial seas of coastal States as long as they do not commit any activities listed in Article 19 (2) of the Convention since they are presumed to be undertaking “innocent passage”. As for coastal States, they enjoy full jurisdiction over ships sailing outside the scope of “innocent passage”, and even the right to suspend temporariness in specific areas for the purpose of its essential security. These are generally accepted and viewed as some of the most important rules of customary international law.\(^{24}\)

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c. Contiguous Zone

The Contiguous Zone (CZ) is measured 12 nautical miles seaward from the outer border limit of the Territorial Sea. The Philippines has sovereign rights over its CZ. Meaning, it can only enforce its laws pertaining to Customs, Immigration, Quarantine, and Sanitation, and, to some extent, fisheries and environmental laws. According to Article 33 of the LOSC, foreign vessels are put under the control (prevention and punishment) of a coastal State only when they violate the aforementioned laws of the concerning State in its territorial or territorial sea. This exception to the navigational rights of vessels in the CZ is based on the high pursuit principle. It provides that if a foreign ship was found committing infringement of local laws in the territorial sea of the coastal State, the ship could be pursued and arrested on the high seas.

d. Exclusive Economic Zone

The Exclusive Economic Zone (EEZ) is measured 200 nautical miles seaward from the surrounding Archipelagic Baseline. The Philippines has sovereign rights over its EEZ. Meaning, aside from its rights to explore, exploit, conserve and manage the living and non-living resources in the EEZ waters, it also enjoys rights in marine environmental protection and marine scientific research over this body of water starting from the border limit of the CZ going seaward. In addition, artificial islands and installations must respect recognized scale lines essential to international navigation. Article 50 on the other hand, states that foreign ships shall enjoy the freedom they are provided in Article 57, referred to as the navigational rights in the high seas. However, when exercising their rights, foreign ships need to take into account the coastal State's rights and duties (the due regard principle).

We have to take note that under the Law of the Sea, “sovereignty” and “sovereign right” have different meanings. When a State has sovereignty, it means it can apply and enforce its national laws over a specified maritime jurisdiction. In sovereign rights, a State can only apply and enforce a specific right identified under the provisions of the LOSC. The LOSC clearly states that a coastal State has no sovereignty over its EEZ,

Contiguous Zone and Continental Shelf, only sovereign rights. It has sovereignty only in its Territorial Sea and Archipelagic Waters.

Considering the aforementioned differences between the two, there are issues within Philippine maritime jurisdiction that ought to be addressed by the government before planning to enhance its law enforcement authority over Philippine waters. An enhanced law enforcement activity calls for a universally accepted Rules of Engagement (ROE) that is consistent with international laws, owing to the fact that the enforcement of these laws in Philippines waters has its own uniqueness and is blended with international legal elements.

Since all the maritime security threats discussed earlier are within the purview of the “civilian law enforcement” functions, the ROE should be designed to consist of the essential legal elements of national laws and international maritime conventions and treaties that are overlaid in Philippine maritime zones. This should also incorporate the relevant provisions of the International Humanitarian Law, otherwise known as the Laws of Armed Conflict (i.e., The Geneva and Hague Conventions and their protocols). After all, the ROE in itself is rules-based, and Philippine maritime zones have some international dimensions. Moreover, the due process of law is a “sine qua non” in the field of maritime security law enforcement. Otherwise, without the legal due process, there would be no ROE to speak of. Thus, the legal elements of the laws that are overlaid in Philippine waters must interplay with the conventional features of the ROE which is traditionally used, such as:

- Use of force in the defense of self and others (e.g., individual self-defense, unit self-defense, use of force to protect others).
- Orientation of mission accomplishments which would consider the protection of freedom of movement of persons, warning shots, disabling fire, search and detention of persons, indirect fire, and use of force to secure the release of persons.
- Operations related to property should, likewise, consider the use of force on how to protect property, including inspection, seizure and destruction of property.
- Maritime operations should consider activities in “maritime law enforcement”, such as board and search doctrine, suppression of piracy, detention and arrest of persons, treatment of detained and arrested persons, use of force in assistance to civil authorities, authority to carrying weapons, and rules on the principle of “force continuum”.

A thorough review of the country’s ROE is, therefore, a must as it should be harmonized with the international laws that the Philippines has ratified, particularly the LOSC. Since the prescribed approach in maritime operations is a “Rules-Based” approach,
it is equally important to review Philippine compliance to important provisions of the LOSC and IMO Conventions, among others, as this would be the cornerstone and legal basis of law enforcement activities in the entire maritime jurisdiction of the Philippines. This is in line with the principle of “Pacta sunt servanda” espoused under the Vienna Convention whereby a member State to an international agreement should subordinate its national laws to international laws. 64

Thus, along with these international principles, the Philippines is deemed obliged to harmonize its national laws with international laws to keep it attuned with international legal practices to dispel the image of a non-compliant State (or arrogant, as in the case of its neighbor on the North across the South China Sea?) in order to gain support from the global community of nations. This is in relation to the country’s current predicament in the West Philippine Sea in as much as the issues and concerns that are prevailing in the said area had already become internationalized. In this sense, the Philippines should lead the example in subscribing to the legal adage that, “he who comes to court must come with clean hands.” Meaning, the Philippines too must comply with the rule of law before it goes to court to complain.

The harmonization of Philippine domestic laws with international laws is, likewise, imperative in light of the ASEAN Economic Community integration in December 2015. The primary driving force of this novel economic undertaking is for the region to have a “singular maritime transport” operation for the shipment of goods and movement of people within the identified 17 ASEAN maritime waters. Given this shipping element, this will necessitate the immediate enhancement of maritime security law enforcement not just in the Philippines but in the entire ASEAN region as well. Before synthesizing the Philippine maritime law enforcement system with that of its counterparts in the ASEAN, it must first consider the elements earlier suggested relating to the “Capacity Building and Institutional Enhancement Measures” (CB&IEM) of its maritime law enforcement agencies. This is even more essential as the AEC integration is just months away from now.

SOME EXAMPLES OF PRESSING MARITIME ISSUES

One example of a pressing maritime issue is the question on whether or not the Filipinos own the fish in the so-called Philippine EEZ, that is if over the country indeed has an EEZ. Before we answer this question, let us review some crucial provisions of the LOSC. The Philippines, as a signatory to the LOSC,25 has acquired several rights and duties accruing to its maritime jurisdiction, foremost of which are the country's sovereign rights over its EEZ.

The specific legal regime of the EEZ does not only speak of the rights and duties of the coastal State (the Philippines) but also includes the rights and freedoms of other

States, such as the freedom of navigation, right to lay submarine cables and pipelines, and all other rights prescribed under Articles 88 to 115 of the LOSC.26 In addition, and as mentioned earlier, a coastal State has no sovereignty over its EEZ, only sovereign rights.

To further illustrate this, an archipelagic State has full sovereignty over its territorial and archipelagic waters only and not on its EEZ. Meaning, a State cannot impose its national laws in the EEZ except for its fishery and environmental laws provided that the same are consistent with the provisions of the UNCLOS/LOSC. If inconsistent, then that is another story.

It is in this context that we must revisit some concerns in the EEZ and further assess the political and diplomatic position of the Philippines in the light of its maritime assertion in the West Philippine Sea (WPS).

On the question as to whether the Philippines has an EEZ maritime boundary or none, two answers can be given: YES, there is, and NO, there is none.

For the “Yes” answer, Article 56 (1) of the LOSC provides the Philippines with the rights, jurisdiction and duties governing its EEZ, particularly, the 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, among others.

On the other hand, the second answer which is in the negative is due to the fact that Article 75 of the LOSC requires the coastal State (the Philippines) to publish the charts or list of geographical coordinates ascertaining the position of the outer limit lines of its EEZ and is further required to deposit a copy of each chart or list with the Secretary-General of the United Nations.27 Anent thereto, since there are overlapping EEZ claims by five countries in the WPS, the law further requires that such chart or list deposited with the U.N. should also contain the “lines of delimitations” drawn in accordance with Article 74.28 This is the delimitation of the EEZ between States with opposite and adjacent coasts, otherwise known as the Treaty of Delimitation.

In the absence of any submission to the U.N. of its EEZ geographical coordinates, can the Philippines claim that it has an EEZ to speak of? The country's judiciary system has laid down the doctrine of publication before a law can take effect as exemplified in a celebrated Supreme Court decided case of Tañada versus Tuvera.29 The same legal doctrine of publication is, likewise, observed internationally, particularly in the U.N., in addition

28 Ibid.
29 Ibid.
30 Tañada vs. Tuvera, 146 SCRA 446 (1985).
to providing other member States the right to lodge their opposition to such publication if they believe that the geographical coordinates drawn in the submitted chart or list run counter to their "sovereign rights" under the LOSC. This is especially so if no "Treaty of Delimitation" has been agreed upon by concerned coastal States. In the absence of the said Treaty espoused in Article 74 and the publication requisite under Article 75, can the Philippines then proceed to declare that it has an EEZ that is recognized internationally or by the United Nations?

According to Lowell B. Bautista (2010), a known international law expert and professor at Wollongong University in Australia, he asserts in his dissertation on Philippines Treaty Limits and Territorial Waters Claim in International Law that, "a unilateral declaration of sovereignty which is almost universally challenged is tantamount to no sovereignty". He added:

"While the idea of sovereignty carries a very strong emotional appeal to the nationalistic sentiments of Filipinos, being stubborn in holding on to an idea which might not have a secure basis in international law is more embarrassing to the Philippine Government... Ultimately, an act which is not in conformity with the international law is actually antithetical to the interests of the Philippines" (Underline supplied).

It must be remembered that in international law, a State which expresses its consent to be bound by an international undertaking must comply in good faith with its obligations arising from that undertaking. This is embodied in the international legal principle of "pacta sunt servanda" codified in the Vienna Convention on the Law of Treaties. Article 26 of the Convention states: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". Moreover, as a State-Party to the LOSC, the Philippines cannot invoke its domestic laws in order to escape its obligations under the Convention. This is articulately stated in Article 27 of the Vienna Convention, to wit: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty; this rule is without prejudice to Article 46". Since the Philippines has ratified the LOSC, it is expected that it shall observe and follow all the provisions of the Convention and must subordinate its national laws to the LOSC.

After sorting that issue as to whether the Philippines has an EEZ maritime boundary or not, we can now proceed to the main question: "Does the Philippines own the fish in the EEZ?"

42 Ibid.
43 Ibid.
44 Ibid.
46 Ibid.
47 Ibid.
49 Ibid.
50 Ibid.
Likewise, in the event that there is no surplus of the allowable catch, the said State may now initiate “conservation and management measures” (not prohibition) only after giving proof of dwindling fish stocks through the best scientific evidence available.\textsuperscript{51} To validate the “scientific proof” on the need to conserve dwindling fish stock, the available scientific information, such as catch and fishing effort statistics, shall be contributed and exchanged on a regular basis through competent international organizations, whether sub-regional, regional or global, and with the participation of all States concerned, including States whose nationals are allowed to fish in the EEZ.\textsuperscript{52} This means that the conservation measures envisioned by a coastal State is not “automatic” and will require validation and confirmation by competent international fishing commissions and other coastal States concerned.

In addition, Article 62 (4) clearly states that the terms and conditions established in the fishing laws and regulations of the coastal State and applied in the EEZ shall be consistent with the LOSC and the other concerned coastal State shall have been given appropriate notification of such conservation and management measures.\textsuperscript{53} This, therefore, necessitates a review of the country’s Fisheries Code vis-à-vis the LOSC to make the former consistent with the latter. Otherwise, as earlier explained by Professor Lowell B. Bautista, if we enforce our national laws that are inconsistent with international laws, this may diplomatically embarrass the Philippines and we may lose the respect of the international community as a result.

Relatively, the doctrine espoused by Grotius in 1604 was so powerful that it became the cornerstone of most colonial powers hundreds of years after when they formalized the “3-mile cannon shot doctrine” in laying territorial claims at sea. In fact, Spain enacted a law in 1886 pertaining to this and used it as a legal reference in claiming territorial seas for its colonies. The breadth of the territorial sea at that time was measured at three nautical miles from the coastline of an island. Anything beyond the 3-mile breadth was considered as part of the high seas. This was the prevailing law in Spain when they signed the Treaty of Paris (TOP) with the United States in 1898. For this reason, when the Philippines laid its claim of ownership and sovereignty on the waters inside the political polygon box as represented in the TOP, the international community, including the United States as a party to the TOP, did not accept the Philippine claim of ownership of the said body of water because of this prevailing universal doctrine.\textsuperscript{54} Today, under the UNCLOS version, the territorial sea of a coastal State, being part of its maritime jurisdiction, is measured 12 nautical miles from the baselines.

\textsuperscript{52} Ibid.
\textsuperscript{53} Ibid.
The question now is: What are the consequences of the Philippines' failure to comply with the aforementioned procedures and measures stipulated under Articles 56, 58, 61, 62, 63, 69, 70, 73, 74 and 75 of the LOSC? Can it still assert its rights in its EEZ? Although the Philippines is given sovereign rights in the EEZ under LOSC, doesn't it need to comply first with its obligations under the same LOSC prior to asserting its said rights, considering that the said rights do automatically accrue to the Philippines under the context of international law? In addition, if Philippine fishery laws and regulations are not consistent with the LOSC, can the country still invoke or enforce the said laws? Lastly, does the Philippines own the fish in its EEZ in the light of all the aforementioned discussions? If so, "where is the fish?" Given the recent events in the WPS that the Philippines has been involved in, will the country be able to catch more fish or will it be entangled in more "nets of issues?"

SYNTHESIS AND RECOMMENDATIONS

This paper has highlighted the significance of enhancing maritime security law enforcement in Philippine waters through the presentation and application of a "rules-based" operational undertaking coupled with the need to harmonize Philippine domestic laws with international laws. This approach is seen as vital in view of the forthcoming AEC integration in December 2015. Likewise, this necessitates the extensive fusion of Maritime Security and Confidence Building Measures (MSCBM) for Philippine law enforcement agencies (i.e., PCG, PNP, AFP, BFAR) and subsequent synthesis of the domestic maritime law enforcement system with those of its ASEAN counterparts. Synthesis is essential in developing unified maritime law enforcement rules in the ASEAN seas, considering the international nature of present day maritime security threats as earlier explained.

The harmonization of domestic laws with applicable international laws will be a challenge since this would not only entail the establishment of the necessary administrative and legal infrastructure but, likewise, the immediate development of maritime systems and facilities essential in enforcing the provisions of such laws. These systems and facilities are markers, signages, and "traffic lights" at sea which will aid both maritime users and law enforcers in upholding the law. For how can we enforce the law and apprehend violators without these systems in place?

Along with this, the paper also discussed the "urgent need" for the infusion of the required legal knowledge and technical skill on the part of the country's law enforcers. This is deemed important for our maritime law enforcers' professional development. For how can they enforce the numerous maritime laws if they themselves are not even familiar with such laws? If our law enforcers lack the necessary legal knowledge and technical skills in maritime security law enforcement, it may cause embarrassment to the Philippines and, when left unchecked, may redound to potential international disagreements and conflicts.

Figure 6

For presentation purposes only

After dichotomizing the essential elements of an effective and enhanced maritime security law enforcement in Philippine waters, the paper then proceeded to an evaluation and determination of the foundational geographies that can metamorphose into the desired maritime development and security strategies suited for the best interest of the country using the following strategic elements as the determinant tool: (a) the important public value we seek to produce; (b) the sources of legitimacy and support in authorizing the government to sustain the effort for the creation of that value; and, (c) the operational
Maritime Security and Law Enforcement in the Philippines in the Face of the ASEAN Economic Integration: Quo Vadimus?

The education and training of maritime law enforcers from PCG, PNP, AFP and BFAR is a “sine qua non” once the Philippines embarks on this epic economic journey towards AEC integration. Thus, maritime law enforcement agencies should conduct a “training needs analysis” of all their maritime law enforcers with respect to their capability to enforce maritime laws. This shall also include a diagnostic person analysis on the present performance of law enforcers based on their knowledge, skills, ability and other characteristics in maritime security operations, as well as an analytical needs assessment of law enforcers on how they react in critical incident situations. After the training diagnosis, law enforcement agencies should proceed to conduct a functional literacy training with emphasis on core competencies on the enforcement of maritime laws and acquisition of technical skills of apprehension, custodial investigation, preservation of evidence, and filing of complaint, among others. In sum, the technical aspects of maritime security law enforcement should be the foundation of all maritime law enforcement courses.

Since the LOSC was established under the universal principle that the seas are the “common heritage of mankind” under the precept of “Mare Liberum” (freedom of the seas), and considering the present day concern of the United Nations that the number one threat to humanity is environmental degradation, the Philippine Government, through the PCG, should lead the immediate implementation of the “Marine Environmental Protection Rules and Regulations” (MEPRR) of the country which is the answer to the LOSC’s direction for coastal States (the Philippines, in particular) to enact marine environmental protection laws in all their maritime zones. This MEPRR is not just legally fundamental in our country’s law enforcement effort but is also vital in sustaining the Philippines’ lead role in the preservation and conservation of the “Coral Triangle”, with our country being the epicenter of this global marine biodiversity area. The final draft of the MEPRR, which is the product of a series of public consultations, is now with Headquarters, PCG for its review and subsequent endorsement to DOTC for promulgation.

Near-Term Measures

Review Philippine compliance to its obligations under LOSC on issues and requirements pertaining to the Archipelagic Sea Lane Passage along with its maritime infrastructure and systems, such as: Buoyage System; Traffic Separation Scheme; Vessel Traffic Management System; Ship’s Routeing; and, SOLAS’ Security and Communication System. Likewise, the Philippines should also comply with the submission to the UN Secretary General of the geographical coordinates of the Philippine Territorial Sea, Contiguous Zones, Exclusive Economic Zone, and Treaty of Delimitation with its neighboring coastal States. Since the DOTC, DENR and DA share most of these concerns, they should utilize technical expertise by mobilizing agencies that have the principal mandates to implement the aforementioned LOSC obligations. These agencies include the PCG, MARINA, PPA, BFAR, NAMRIA and EMB. In the course of the review, the DFA can again serve as adviser on international diplomacy concerns.

Urgent Measures

- Establish plans and measures, including protocols with neighboring coastal States on “Border Management” in light of the coming AEC economic integration. Along this line, the National Coast Watch Council (NCWC), being the country’s leading inter-agency maritime development and security body, should shepherd the necessary preparations of the Philippines for the smooth AEC integration in the field of shipping operations, customs, immigration, border security and crossing agreements. Likewise, it should lead in the conduct of an inventory of national laws that should be harmonized with international laws, advocate for Capacity Building Measures (CBM) for maritime law enforcers, and spearhead the formulation of a “nationalized ROE”, along with the unified protocol on maritime activities with ASEAN member States, among many other maritime economic and security interests.

- Revisit and review the Fisheries Code of the Philippines, Tariff and Customs Code, Revised Penal Code, immigration laws and environmental laws, among others, to keep them attuned with international laws that the Philippines is a signatory to. As an example, the Philippines should clarify its stand on the apprehension and detention of alleged foreign poachers within the country’s EEZ in light of Article 73 (2 & 3) which directs coastal States to promptly release arrested vessels and crew upon posting of reasonable bond and other security, in addition to the non-imprisonment of the alleged violators in the absence of agreements with the other State concerned. This shall also include the obligation to notify the Flag State of which the vessel and crew belong to on the actions and penalties imposed on the violators. This is just one of the many critical legal issues that the Philippines has to address in the course of harmonizing its laws with international laws and maritime conventions. The DOTC, DENR, DOJ and DA should form a committee to review the applicable national laws that are inconsistent with the LOSC. In the course of the review, the DFA can serve as adviser on international diplomacy issues.

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[2] Ibid.
Since Philippine waters are part of the 17 seas in the ASEAN region and given the compelling reason to make the country’s ROE attuned with those of other ASEAN member States to realize the AEC Blueprint for a "singeular maritime transport system", the Philippines should initiate the adoption of Cooperative Maritime Security Building Measures (CMSBM) within ASEAN. One of these vital initiatives is the establishment of an ASEAN Coast Guard Forum or Alliance with the end-view of harmonizing all maritime security rules and their enforcement in the ASEAN seas and to keep the ASEAN seas safe, clean and secure. The DFA, along with concerned government agencies (e.g., PCG), should vigorously pursue this diplomatic and economic direction. There are a number of CMSBMs in the field of maritime security, maritime safety and marine environmental protection that can promote goodwill and solidarity among ASEAN member States.

**Near Future-Term Measures**

- As part of sustainable development cooperation, concerned government agencies should conduct an audit of their mandates and on how they can contribute towards Philippine compliance to its obligations under LOSC and other international maritime conventions. In addition, in order to fortify the country's position on maritime security enforcement vis-à-vis the international community, concerned government agencies like the DFA, PCG and MARINA should consider recommending to the Philippine Senate the ratification of relevant IMO Conventions which include, among others: Suppression of Unlawful Acts at Sea (SUA) of 2005, Search and Rescue (SAR) Convention of 1979, Marine Pollution Convention of 1978 (Annex VI), SAVAGE Convention of 1989, Hazardous and Noxious Substance (HNS) Convention of 1996, Bunkers Convention of 2001, Ballast Water Management Convention of 2004, Nuclear Convention of 1971, and Safety for Fishing Vessel Protocol of 1993.

- The government should, likewise, embark on a "modest" vessel acquisition program to physically guard and monitor the shipping activities in all Philippine maritime zones, such as procurement of four Ocean patrol vessels (140 meters), 12 off-shore patrol vessels (100 meters), 30 multi-purpose role vessels (60 meters), four environmental ships equipped with marine laboratory (90 meters) to monitor the "coral triangle" with the Philippines being the epicenter, and scores of coastal patrol boats (15, 20, 25 & 35 meters). Likewise, the Department of Budget and Management (DBM) should provide the resources needed to increase PCG personnel strength to a "realistic number" and equip them with basic law enforcement paraphernalia (i.e., small arms, handcuffs, baton, vest, etc.) so that they can satisfy a modest maritime security law enforcement force to aid in the maritime patrol efforts of the country. In addition, the PCG should consider the establishment of custodial investigation centers and other allied facilities nationwide to accommodate the anticipated increase in the number of apprehensions. The DOTC, DBM, NEDA and PCG should all work toward this direction. Without these "law enforcement tools and kits", the maritime security law enforcement effort to uphold the country's sovereignty and sovereign rights is just but a dream.

- The National Coast Watch Council (NCWC), in collaboration with the concerned maritime agencies (PCG, MARINA, BFAR, NAMRIA, PNP-MARIG and AFP-NAVY), should formulate a National Maritime Policy attuned with the present global maritime economic and security trends, in addition to drafting the first government strategic policy on National Maritime Security. Likewise, the Philippine Congress should legislate a comprehensive "Merchant Shipping Act" that will codify the country's laws on maritime economic development with the end-view of transforming the Philippines into a maritime power in this part of the world.

**CONCLUSION**

This article highlighted the essential considerations for our economic and maritime security quest in the advent of the AEC integration vis-à-vis the preservation of our sovereignty and national patrimony in the course of the ASEAN economic pivot in the Asia-Pacific region. The aforementioned plans and measures may serve as guidelines in our way forward.

As the Philippines joins the ASEAN parade under the cadence of this economic pivot, our country must be made aware that numerous spectators are watching us perform the economic "goose-march" in brisk manner and monitoring if we are in unison with our ASEAN comrades. As has been stated, the aim of the AEC integration is to trigger the free movement of goods, services, investments and skilled labor, and the free flow of capital within the region. Since the ASEAN region is comparable to a bigger version of an archipelago where islands are divided by waters, it envisages the necessity of a singular maritime transport system to carry goods and people from one island-State to the other. This is where the compelling need for the establishment of a civil maritime security law enforcement force lies.

In the context of maritime administration where the maritime transport system is the primordial economic driving mode, there is no way a coastal State can administer its shipping activities and maritime operation without strengthening its capabilities in maritime safety, marine environmental protection and maritime security. These are the vital transport elements to ensure a safe and smooth sail towards achieving maritime development goals. Without these economic navigational services, the voyage plan for a maritime transport system will not be successful. As the ASEAN ship embarks on this maiden voyage towards economic community integration by December 2015, it must look beyond its horizon for possible maritime security threats that may disrupt or stall its economic expedition. Thus, a credible civil maritime security force is imperative to guard its navigational course to ensure that its economic voyage is protected from all looming threats.

The Philippines, as part of this AEC merchant fleet, must do its share in enhancing and strengthening its civil maritime security law enforcement capability. In today's modern world, an Archipelagic State without its own civil security fleet and related navigation infrastructures is vulnerable to all forms of maritime security threats. This is anathema to
the country’s economic aspiration. As the Philippines aims to be part of the new economic order in the Asia-Pacific through the AEC economic pivot, it must aspire to contribute in guarding the ASEAN seas from all perils, navigational hazards and dangers lurking in the maritime domain of the region. But before the Philippines can do this, it must first get its act together and consider the hygienic maritime security elements that will keep its own national waters safe, clean and secure from threats of any sort, including from its own administrative and operational inexperience and inadequacies. It is only then when these and more shall have been established and accomplished “faite accompli” that the country can sail full speed ahead in order to catch up with the rest of the ASEAN fleet in the race towards economic community integration in 2015 and beyond.

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www://site-resources.worldbank.org/INTPHILIPPINES/Resources/PEMOS-ch


Issues on Vulnerability and Security from Philippine-China Economic Relations

Tina S Clemente

In light of the maritime disputes on the West Philippine Sea, it is not surprising that the outcome of economic sanctions from China is of great interest. The article explores how the nature of the bilateral economic relationship indicates Philippine vulnerability even without actual economic sanctions from China. Oftentimes, domestic conditions are overlooked and are only belatedly deemed important when crises happen. The article is descriptive in nature and sets out to be of utility to specialists interested in the interface of development, security and public policy. The analysis shall be limited to economic relations in trade, investment, labor and Official Development Assistance (ODA).

DESCRIBING ASYMMETRIES AS AN INSIGHT TO VULNERABILITY: 
THE BASIC QUESTION

The rise of China as an economic power has generated growing interest among countries in how they can and should engage with China. Tensions with China therefore heighten the need to know how conflict affects the economic relationship. The Philippines is in such a predicament. In light of the maritime disputes on the West Philippine Sea, the sour diplomatic relations between the Philippines and China have reached an unprecedented low with the Government of the Philippines filing a Memorial on March 30, 2014 (Del Rosario, 2014) as part of the United Nations Convention on the Law of the Sea (UNCLOS) Annex VII Arbitration Process ("United Nations Convention on the Law of the Sea," 1982). While the apprehensions surrounding this issue make up a complex picture of legal, political-diplomatic, defense and economic implications, the article, however, focuses on the bilateral relationship in trade, investment, labor and ODA. In particular, the descriptive study seeks to elucidate the nature of the economic relationship in terms of asymmetries and how these contribute to thinking about vulnerability to China’s possible actions.

* The author acknowledges the helpful comments of Aileen Baviera and Chito Stu. Romana.
How important is China's trade with the Philippines?\(^1\)

**Trade Volume.** Being the sum of the absolute value of export and import receipts, trade volume indicates how much goods both countries exchange. Whether or not export or import value exceed the other, the Philippine economy derives utility from the trade and disruption will not be costless. Based on this metric, Figure 1 shows that from 2011-2013, China's trade with the Philippines had increased and China remained in the top three trade partners of the Philippines together with Japan and the United States of America (USA).

![Figure 1. Philippine trade volume with top partners (% to total trade volume)](image)

Source: The graph was generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.

**Exports.** Focusing on the export figures alone (see Figure 2), we find that Japan is the top export market for Philippine products in 2011-2013. While China trailed the USA as an export market for the Philippines, it is notable that Philippine exports to China have increased in those years despite the maritime conflict.\(^2\)

![Figure 2. Philippine exports to top markets (% to total exports)](image)

Source: The graph was generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.

We compare data on the top Philippine exports to China in dollar value and percentage share from 2011-2013. Table 1 shows that dollar value of exports to China increased from 2011-2013 but the proportion of these exports to total Philippine exports to the world dipped from 2011 to 2012 but picked up in 2013 while still lower than the 2011 figure. In regard to the Philippines' top export, Electrical and Electronic Equipment, exports to China registered a share of 9.35% of total Philippine exports of this product group in 2013. What is interesting is that the top export to China registered the lowest percentage share to total Philippine exports of this product group, while the other four Philippine exports to China, which generated substantially smaller export value, had double digit percentage shares to total Philippine exports of the respective product groups.

![Table 1. Top 5 Philippine exports to China in 2013 in billion USD (% share of the export to total product group export to the world)](image)

\(^1\) Notwithstanding the discrepancies (owing to methodological differences) between trade data from the Philippine Statistical Authority (PSA) and the International Trade Centre (ITC), this study employs data from the latter for the purpose of country comparability. The paper compares bilateral statistics as reported by the Philippines, China, and each of the ASEAN countries (see Figures 3 and 6). It is imperative that only one source is used to ensure the same methodology in the generation of the statistics. For consistency, all other trade data in this study must be taken from the same source. PSA data can be viewed here http://www.nssb.gov.ph/seestat/d trade.asp. Note that the discrepancies do not change the arguments of the study.

\(^2\) We adopt the international convention of not consolidating figures of China and Hong Kong—a Special Administrative Region (SAR) of the former.
Ores, slag and ash 0.44 (41.50) 0.69 (60.2) 1.01 (43.19)  
Copper and articles thereof 0.33 (24.10) 0.14 (17.34) 0.39 (41.48)  
Mineral fuels, oils, distillation products, etc 0.18 (12.59) 0.15 (11.71) 0.26 (12.31)  
Edible fruit, nuts, peel of citrus fruit, melons* 0.09 (9.74) 0.11 (10.38) 0.16 (11.88)  

Source: Calculations generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.  
*Note: This product category is not in the top 5 but is included here for reference.  

For instance, the export of Ores, Slag and Ash to China registered the largest share of 43.19% to total Philippine exports of this product group in 2013. This shows that the export market for Electrical and Electronic Equipment is more diversified with China as one of the major buyers. On the other hand, export markets of the other top exports to China are significantly less diversified, with China being relatively more important to the domestic sectors that produce these goods. If these exports are impeded through the unfortunate event of sanctions, the producing sectors will be vulnerable. But there have not been instances of official sanctions along these lines.  

Notwithstanding the absence of official trade sanctions, quarantine restrictions on Philippine banana exports were implemented in 2012.2 In general, such restrictions can be contentious as instruments to further protectionist interests or foreign policy goals. In the past, the Philippines filed a case against Australia’s banana quarantine restrictions (Javelosa & Schmitz, 2006) but the Philippines did not take China to task even while banana exports to China constitute a huge chunk of Philippine banana exports. It was a matter of economic diplomacy, recognizing that stricter quarantine measures on unverified organisms functioned as a signaling mechanism of more sanctions. Using data on exports of ‘Bananas and Plantains, Fresh or Dried’7 we find that while Philippine exports to China take a hefty share (82.52%) of Philippine exports of Edible fruit, nuts, peel of citrus fruit, melons to China in 2013 and a respectable share of total Philippine exports of the commodity to the world (14.37%) in the same year, the share to total Philippine world exports of Edible fruit, nuts, peel of citrus fruit, melons is 9.81%. Furthermore, since other product categories dominate Philippine exports to China, the share of the banana trade is barely 1.99% of total exports to China. Relative to the total Philippine exports to the world, the banana trade contributes very little at 0.24%.6  

Figure 3 presents the large discrepancies between figures on Philippine exports to China as reported by China and the Philippines. In 2013, China’s figure was 176% higher than the Philippine figure in total exports to China and discrepancies were larger in the two previous years. In the past three years, Electrical and Electronic Equipment posted the largest discrepancy in 2011 at 790%. While the 2013 figure is so much lower at 363%, it still is the largest discrepancy among the exports of the listed product groups for the year. But even with the lower reported figures by the Philippines, China is still a major export market. We revisit the issue on trade data discrepancy in a later section.  

![Figure 3: Discrepancy between Philippine export data as reported by China and the Philippines, in % difference](image)  

Source: The graph was generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.  
5 Data are from the International Trade Centre (ITC), based on UN COMTRADE statistics.  
6 Prior to sending its own team of experts to ascertain China’s alleged pest infestation, Malacañang maintained that the issue was not the maritime conflict and producers in the Philippines must improve its own export standards. Reportedly, the Department of Agriculture seconded this statement, saying that industry must have stricter protocols so that the shipments of produce are thoroughly checked even before they leave Philippine borders. However, upon inspection by Philippine experts, no scale insects as claimed by China, were found on impounded Philippine bananas. Meanwhile, it is of curious insight that the other major Philippine banana export markets—particularly Japan—had not raised the same concerns while exports to those countries had been proceeding during the same period of China’s restrictions in 2012 (Alave, 2012; “The China-Philippines banana war,” 2012; “China’s Banana Diplomacy With the Philippines,” 2012; Higgins, 2012).  
7 Quarantine restrictions were used to restrict Philippine tuna and banana by the European Union and Australia respectively (Bello, 2003; Gonzalez, 2003; Javelosa & Schmitz, 2006). Farther, Sanitary and Phyto-sanitary Standards (SPS) measures are not easy to enforce and its susceptibility to abuse is what motivated the push for standards and alignment (“The WTO Agreements Series Sanitary and Phyto-sanitary Measures,” 2010)(Anderson, McRae, & Wilson, 2012). Ambiguity still remains since countries can adopt own standards as long as these are justified by science, proper risk analysis and consistency (“Introduction: The Sanitary and Phytosanitary Measures Agreement,” 1998; “The WTO Agreements Series Sanitary and Phyto-sanitary Measures,” 2010).  
8 Data are from the International Trade Centre (ITC), based on UN COMTRADE statistics.
Imports. China is the top source of imports for the Philippines (see Figure 4). In 2013, the level of imports from China registered a 32.31% increase over its level two years before. In contrast, imports from the USA marginally increased by 2.9% while that of Japan decreased by 20%, relative to their 2011 level. Table 2 shows that the top five imports that are sourced from China increased in 2011-2013. Usually, import figures are not popular in public reporting and are ignored at best and at worst, derided as negative but necessary for industry and domestic consumption. Interestingly, there is a social psychology towards the perception of imports and this perception is positively related to the level of social trust (Kaltenthaler & Miller, 2013; Nguyen & Bernauer, 2013).

Figure 4. Philippine imports with top markets (% to total imports)

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>10.2</td>
<td>10.9</td>
<td>10.9</td>
</tr>
<tr>
<td>United States of America</td>
<td>13.1</td>
<td>11.6</td>
<td>11.0</td>
</tr>
<tr>
<td>Japan</td>
<td>10.2</td>
<td>10.7</td>
<td>8.6</td>
</tr>
</tbody>
</table>

Source: The graph was generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.

Table 2. Top five Philippine imports from China in 2011-2013, USD billion (% share to total)

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total imports from China</td>
<td>6.50</td>
<td>7.14</td>
<td>8.55</td>
</tr>
<tr>
<td>Electrical equipment</td>
<td>1.06</td>
<td>1.53</td>
<td>1.65</td>
</tr>
<tr>
<td>Machinery, nuclear reactors, boilers, etc</td>
<td>0.88</td>
<td>1.05</td>
<td>1.18</td>
</tr>
<tr>
<td>Mineral fuels, oils, distillation products, etc</td>
<td>0.53</td>
<td>0.53</td>
<td>0.86</td>
</tr>
</tbody>
</table>

Source: Calculations generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.

However, in the context of possible future sanctions from China, its position as the largest import market for the Philippines raises the concern of the latter’s access to important raw materials that are critical to the Philippines’ industrial processes. For instance, in the case of the US and Japan, imports of rare earth elements (REEs) from China have been contentious given the latter’s supply advantage and its increasing domestic demand as well as the ease in using supply disruptions in REEs to influence foreign policy outcomes. The US filed a case with the WTO against China in 2012 for restricting REE imports while Japan is exploring sourcing REEs from other suppliers (Humphries, 2013, p. 18). In March 2014, China lost in the WTO ruling.

Trade statistics present a picture of asymmetry and trade losses if the sanctions sender can isolate effects on the target country. Where an asymmetric interdependence exists in the trade relationship, vulnerability from possible sanctions becomes a concern (Drzewiecki, 2003; Reilly, November 2013). The more that the sender is a major export market and source of imports for the target, the chances of success increase. However, this is qualified by the target’s trade partners’ ability to resist or cooperate with the sender (McLean & Whang, 2010). When the target’s trade partners resort to mitigate or neutralize sanctions (e.g. by providing alternative export markets) and function as “black knights” in the context of political alliances, sanctions success likelihood is compromised (Early, 2011).

Furthermore, the data alone cannot give an accurate picture of sanctions effects given sectoral linkages within the target country’s economy. A deeper investigation therefore in output effects is considered in further research. On the other hand, in the real world, it has been increasingly difficult to measure the effects of possible trade sanctions. That is, in the global system of production where tasks are tradable across national borders and business ownership is complicated, it is difficult to accurately segregate the effects of trade withdrawal on a target country unless a supply chain disaggregation can be done. Possible sanctions therefore, can have serious spillover effects on other countries in the supply chain (Carmel, 2013, pp. 49, 50-52) which might produce diplomatic repercussions on the sender.

Trade Balance. The trade balance, which measures export receipts net of import receipts, is a contentious trade figure. A trade surplus often gives the impression of a country’s increasing economic strength over the trade partner. This perception must be qualified. Figure 5 shows that in 2013, Japan is the Philippines’ top trade partner with which the country derives a trade surplus. The Philippines runs a USD 2 billion trade deficit with China and it is also notable that the deficit ballooned from 0.4 billion USD in 2011 to 2.0...
billion in 2013, notwithstanding the increase in Philippine exports to China in 2011-2013. Hence, Figures 2 and 4 show that the level of imports from China rose faster than that of Philippine exports to China. But the existence of a trade deficit in itself needs to be placed in perspective.

Figure 5. Philippine Trade Balance (in billion USD)

![Graph showing trade balance between Philippines and various countries](image)

Source: The graph was generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.

Figure 6 shows the trade balance discrepancies between China and ASEAN economies based on data reported by ASEAN countries (denoted by country A) and China (denoted by year C). Based on Philippine data in 2013, we find that among the seven ASEAN countries with published data for the year, the Philippines had the fifth largest trade deficit relative to Thailand, Indonesia, Malaysia and Cambodia which respectively ran deficits with China of USD 10.49 billion, USD 7.25 billion, USD 2.99 billion and 2.72 billion (as reported by those economies).

Figure 6. Trade balance between ASEAN economies and China as reported by both, in billion USD

![Table showing trade balance discrepancies between ASEAN economies and China](image)

Source: The graph was generated from statistics by International Trade Centre (ITC), based on UN COMTRADE statistics.; Laos and Myanmar do not have reported data

Statistical Discrepancies. What complicates the comparison of the bilateral trade figures is the discrepancy between the data reported by the Philippines and China. Interestingly, from China’s statistics, the Philippines ran a trade surplus in 2011 (USD 3.74 billion) and 2012 (USD 2.91 billion) and it was only in 2013 that the Philippines began running a trade deficit of USD 1.69 billion. Other countries such as the USA have also been concerned about resolving the discrepancy between its own bilateral trade figures with China (Ferrantino & Wang, 2007; Liu, Kemper, Magrath, & Giesze, 2008).

Curiously, information from the US Embassy Diplomatic Cables released by WikiLeaks intimate that, adjustments for goods transshipment to an entrepôt country (e.g. Hong Kong) and shipping costs hardly explain the discrepancy even if final value of goods accounts for value added and differences in statistical practices. The communicate mentions reports on the ground, which indicate smuggling or round-tripping as the more plausible explanation. In other words, Philippine exports to China are valued or invoiced below or above its true value (Manila, 2008).

More importantly, beyond the face value concerns regarding a current account gap, a deficit itself will only be a problem depending on a number of issues such as how net
capital inflows are financed. Also, if the gap is brought about by a transitory investment-savings imbalance and debt-financed investments are not productive, then the deficit can be an issue. Furthermore, if the deficit is attributed to loss in competitiveness or slow improvements in competitiveness, then it indicates a deeper problem.

Are China's investments small but critical?

What is often missed is the small proportion of Chinese Outbound Direct Investments (ODI) to total Philippine inward Foreign Direct Investments (FDI). Table 3 shows the top investor countries' ODI stock in the Philippines.

Table 3. FDI stock in the Philippines in 2011-2012 from top ten countries of origin, in million USD (% share to total FDI stock in the Philippines)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>6861 (28.00)</td>
<td>USA</td>
<td>7846 (30.35)</td>
</tr>
<tr>
<td>Japan</td>
<td>6330 (25.83)</td>
<td>Japan</td>
<td>6444 (24.93)</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>1940 (7.92)</td>
<td>Hong Kong</td>
<td>1935 (7.49)</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>1379 (5.63)</td>
<td>United Kingdom</td>
<td>1418 (5.49)</td>
</tr>
<tr>
<td>Singapore</td>
<td>1277 (5.21)</td>
<td>Singapore</td>
<td>1228 (4.75)</td>
</tr>
<tr>
<td>Korea</td>
<td>360 (1.47)</td>
<td>Australia</td>
<td>422 (1.63)</td>
</tr>
<tr>
<td>France</td>
<td>309 (1.26)</td>
<td>Korea</td>
<td>364 (1.41)</td>
</tr>
<tr>
<td>China</td>
<td>301 (1.23)</td>
<td>France</td>
<td>310 (1.20)</td>
</tr>
<tr>
<td>Taiwan</td>
<td>286 (1.17)</td>
<td>China</td>
<td>301 (1.16)</td>
</tr>
<tr>
<td>Switzerland</td>
<td>217 (0.89)</td>
<td>Switzerland</td>
<td>239 (0.92)</td>
</tr>
</tbody>
</table>

Source: UNCTAD (Bilateral FDI Statistics 2014, 2014)

China ODI stock in the Philippines is in the top ten list but was 7th and 6th in the rank respectively in 2011 and 2012 comprising 1.23% and 1.16% of total FDI in the country in the same period. The US is still the top source of FDI for the Philippines contributing 28% in 2011 and 30.35% in 2012 of total FDI in the country. Japan contributes 25.83% and 24.93% in the same period.

Solely in context of the proportion to the total FDI stock in the Philippines, if China restricts FDI flows as a sanction, its less than 2% contribution will not have a huge effect. China's influence over Hong Kong—its Special Administrative Region has the bigger implication as Hong Kong contributes close to 8% from 2011-2012. Hong Kong's ODI in the Philippines from 2001-2012 alarms the imagination because it was only in 2012 that net investment flows were recorded after a deficit of USD 1 million in 2006 (see Table 4).

Table 4. Hong Kong ODI in the Philippines in 2001-2012, in million USD

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
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<tbody>
<tr>
<td></td>
<td>1</td>
<td>8</td>
<td>2</td>
<td>258</td>
<td>-1</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7846</td>
<td>7846</td>
<td>6444</td>
<td>1935</td>
<td>1935</td>
<td>1935</td>
</tr>
<tr>
<td></td>
<td>(30.35)</td>
<td>(30.35)</td>
<td>(24.93)</td>
<td>(7.49)</td>
<td>(7.49)</td>
<td>(7.49)</td>
</tr>
</tbody>
</table>

Source: UNCTAD (Bilateral FDI Statistics 2014, 2014)

Obviously, the Philippines has never been an investment priority of China. Table 5 shows that China's ODI to the Philippines accounting for USD 494 million (0.12% to total China ODI) in 2011 and USD 593 million (0.11% to total China ODI) in 2012, pales in comparison to its ODI in the top ten host countries in the same period. Singapore was the only Southeast Asian country included in the top ten while South Africa and Kazakhstan were the only developing countries in the list. Comparing the importance that China puts on the Philippines in terms of investments relative to ASEAN countries.

Figures 7 shows that China's ODI to the Philippines was the second least out of ten countries in the region. Like trade data, there were discrepancies between the figures reported by China (denoted by year C) and figures reported by ASEAN countries (year A) but these discrepancies were smaller relative to that of trade data.

Table 5. China ODI stock in top ten host countries and RP, in million USD (% to total)

<table>
<thead>
<tr>
<th>Host Country</th>
<th>2011</th>
<th>Host Country</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Virgin</td>
<td>26151 (61.57)</td>
<td>British Virgin</td>
<td>306372 (57.60)</td>
</tr>
<tr>
<td></td>
<td>29261 (6.89)</td>
<td></td>
<td>30851 (5.8)</td>
</tr>
<tr>
<td></td>
<td>21692 (5.11)</td>
<td></td>
<td>30072 (5.65)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Investment withdrawal by the Chinese government will depend on how effective the government can restrain Chinese companies in acquiescing (Morgan & Bapat, 2003). While this is difficult due to intertwined supply chains and complicated ownership structures, assuming effectiveness, the percentage share of Chinese ODI in the Philippines seems non-critical at less than 2%. Even if there were no Chinese ODI flows into the Philippines in 2012, UNCTAD data in the period of 2006-2012 show that China's ODI flows have been zero except for the 2 million USD posted in 2006, 3 million in 2009 and 1 million in 2011 (Bilateral FDI Statistics 2014, 2014). Sanctions on direct investments and the movement of the latter—a less volatile economic interest compared to traded goods—need to be investigated further since acute withdrawals are not likely or immediately apparent.

But the better question to ask is if the investments themselves are critical to the workings of the Philippine economic system. For instance, in publicly reported interview statements, former Interior Secretary, Rafael Alunan III raised concerns on the possibility of China remotely shutting down the power grid considering that the State Grid Corporation of China (SGCC) owns 40% of the National Grid Corporation of the Philippines (NGCP). Table 6 shows the investment and contacts that are attributed to Chinese contractors from 2007-2010. Among the listed projects, Chinese investment in the power grid is the largest in terms of dollar amount (see Table 6).

### Table 6. Chinese Investments and Contracts in the Philippines, 2007-2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Month</th>
<th>Contractor</th>
<th>Sector</th>
<th>Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>December</td>
<td>State Grid-led consortium</td>
<td>energy</td>
<td>1.58</td>
</tr>
<tr>
<td>2008</td>
<td>November</td>
<td>MCC</td>
<td>metals (copper)</td>
<td>1.02</td>
</tr>
<tr>
<td>2009</td>
<td>February</td>
<td>Sinomach</td>
<td>energy</td>
<td>.580</td>
</tr>
<tr>
<td>2009</td>
<td>July</td>
<td>Three Gorges</td>
<td>agriculture</td>
<td>.110</td>
</tr>
<tr>
<td>2010</td>
<td>January</td>
<td>Gezhouba</td>
<td>energy (hydro)</td>
<td>.600</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td></td>
<td></td>
<td>3.89</td>
</tr>
</tbody>
</table>

Source: China Global Investment Tracker 2005-2013

While the stake of SGCC in the consortium, which also includes the Monte Oro Grid Resources Corporation and Calaca High Power Corporation, is not a controlling share, the perceived security concern is in regard to the fact that SGCC's role is in the technological aspects of NGCP. How far technology transfer has proceeded since interior
secretary Mar Roxas communicated this need to foreign affairs vice minister Fu Yung in 2012, is not ascertained (China Global Investment Tracker, 2005-2013; Diola, 2014; Raissa Robles, 2014; Raissa Robles, 2014).

Can China influence countries that employ OFWs?

China does not employ substantial numbers of workers from the Philippines given their own surplus labor. While any number of professional technical and related workers in China is not unimportant, China can hardly use this as a credible sanction against the Philippines. However, China can use an overseas labor sanction indirectly through its influence on Hong Kong and possibly Taiwan.

Based on the latest published data set, OFWs in Hong Kong were 114,374 (5.3%), 122,100 (5.5%) and 117,045 (5.1%) respectively in 2011, 2012 and 2013 (see Figure 8).

**Figure 8. Distribution of Overseas Filipino Workers by Place of Work, 2011-2013 (% to total)**

![Graph showing distribution of OFWs by place of work](image)

Source: *Survey on Overseas Filipinos 2011-2013*

Did the fall in employment in 2013 relative to its level in 2011 result from the 2010 hostage-taking incident in Manila that resulted in the deaths of 25 Hong Kong tourists? Official sanctions on diplomatic and official visas were put in effect in February 2014 while the possible sanction on the hiring of domestic helpers was dangled but not operationalized. In Hong Kong, Filipino domestic helpers are an integral part of Hong Kong society where households put great importance on the specialized role of helpers so that locals can productively participate in the labor force as professionals. While the issues surrounding OFW welfare are myriad, their contribution to social and economic development in Hong Kong at least is established (Thompson & Moore, 2013), making it difficult to impose labor sanctions on OFWs.

The tension between the Philippines and Taiwan over the death of a Taiwanese fisherman in May 2013 resulted in a temporary ban on new hires of OFWs. In contrast to Hong Kong, a substantial number is integral to Taiwan’s economy and hired as production and related workers and transport equipment operators and laborers. A statement from the Taipei Economic and Cultural Office in Manila expresses the significant role of these workers (Taipei Economic and Cultural Office in the Philippines (TECO), May 19, 2013).

A sanction by Taiwan will less likely result from China’s prodding. Freeze-hiring OFWs has costs to both sanctioner and target and the political gains for Taiwan in this context is less than the economic loss. In terms of remittances from OFWs in Hong Kong, the amount was PhP 4.1 billion (about USD 93.14 million) or 3.45% of total OFW remittances from all over the world in 2013 (see Figure 9). In the same year, remittances from OFWs in Taiwan were at PhP 3.75 billion (about USD 85.23 million), which is 3.16% of the total OFW remittances. The percentage shares of remittances from OFWs in Hong Kong and Taiwan in 2013 increased from its then share in 2011 and are important enough to be in the top ten countries of origin but not substantial enough as a threat to the Philippines to force compliance in relation to WPS disputes.
Is China’s ODA a compelling carrot?

Based on the Official Development Assistance (ODA) Portfolio Review Report of the National Economic Development Authority (NEDA) for CY 2013, China provides a small proportion of total net commitment by development partner at 1.72% or USD 0.21 billion (see Table 7). On the basis of the ODA loans from 2003 to 2012, China has an accumulated contribution of less than 10% of total loans at USD 1.26 billion (see Table 8).

Chinese Foreign Aid and Government-Sponsored Investment Activities (FAGIA) have three types. The first two—grants and interest-free loans—are sourced from the Chinese government. The third—concessional loans—are sourced from the Export-Import Bank of China. Among the types of FAGIA, the main mechanism of aid given China’s resource-access agenda is in the form of loans with large subsidies. Loans are complemented by meritorious terms of debt-servicing in contrast to the grant feature in the aid provided by the United States and the rest of the OECD. Further, China’s aid projects also require 50% share of Chinese-made goods among all inputs bought for the project. Committed FAGIA are dominated by natural-resource development and infrastructure projects, which complement each other. They have respective shares of 42 and 40%. Other projects such as debt forgiveness and humanitarian aid, took up 18% of committed funds. In Southeast Asia, projects on infrastructure took the lion’s share (Wolf, Wang, & Warner, 2013).

Source: Survey on Overseas Filipinos (2011-2013)

# Issues on Vulnerability and Security from Philippine-China Economic Relations

## Table 7. Total ODA by Top 9 Development Partners

<table>
<thead>
<tr>
<th>Development Partner</th>
<th>Total ODA (in billion USD)</th>
<th>% Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>3.30</td>
<td>27.40</td>
</tr>
<tr>
<td>WB</td>
<td>2.47</td>
<td>20.48</td>
</tr>
<tr>
<td>ADB</td>
<td>1.77</td>
<td>14.68</td>
</tr>
<tr>
<td>Australia</td>
<td>0.89</td>
<td>7.39</td>
</tr>
<tr>
<td>USA</td>
<td>0.88</td>
<td>7.26</td>
</tr>
<tr>
<td>France</td>
<td>0.82</td>
<td>6.78</td>
</tr>
<tr>
<td>Korea</td>
<td>0.61</td>
<td>5.05</td>
</tr>
<tr>
<td>UN System</td>
<td>0.49</td>
<td>4.05</td>
</tr>
<tr>
<td>China</td>
<td>0.21</td>
<td>1.72</td>
</tr>
</tbody>
</table>


## Table 8. Historical and New ODA Loans by Development Partner (USD billion)

<table>
<thead>
<tr>
<th>Development Partner</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB</td>
<td>0.22</td>
<td>-</td>
<td>0.39</td>
<td>0.65</td>
<td>0.28</td>
<td>0.62</td>
<td>0.56</td>
<td>0.4</td>
<td>0.2</td>
<td>0.71</td>
<td>4.03</td>
</tr>
<tr>
<td>China</td>
<td>-</td>
<td>0.4</td>
<td>-</td>
<td>0.05</td>
<td>0.6</td>
<td>-</td>
<td>-</td>
<td>0.09</td>
<td>0.12</td>
<td>-</td>
<td>1.26</td>
</tr>
<tr>
<td>JICA</td>
<td>0.12</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.25</td>
<td>0.27</td>
<td>0.61</td>
<td>0.38</td>
<td>0.52</td>
<td>0.94</td>
<td>3.09</td>
</tr>
<tr>
<td>Others(^7)</td>
<td>0.02</td>
<td>0.05</td>
<td>0.28</td>
<td>0.24</td>
<td>0.32</td>
<td>0.44</td>
<td>0.32</td>
<td>0.6</td>
<td>0.01</td>
<td>0.35</td>
<td>2.63</td>
</tr>
<tr>
<td>WB</td>
<td>0.11</td>
<td>0.06</td>
<td>0.09</td>
<td>0.41</td>
<td>0.39</td>
<td>0.44</td>
<td>0.12</td>
<td>0.74</td>
<td>0.76</td>
<td>0.33</td>
<td>3.45</td>
</tr>
<tr>
<td>Total</td>
<td>0.47</td>
<td>0.51</td>
<td>0.76</td>
<td>1.35</td>
<td>1.85</td>
<td>1.77</td>
<td>1.7</td>
<td>2.24</td>
<td>1.5</td>
<td>2.32</td>
<td>14.46</td>
</tr>
</tbody>
</table>


China emphasizes ODA to be an instrument for harmonious relations with other countries, economic cooperation and global development. Through the years, FAGIA in various countries have been focused on improving China’s access to supplies of energy and mineral resources and gaining political sway in partner countries has also been unmistakable("China’s Foreign Aid," April 2011; Lengauer, September-December 2011; Lunn, Fischer, Gomez-Granger, & Leland, February 25, 2009).

\(^7\) Other funding sources include: Austria, Belgium, Germany, IFAD, Italy, Korea, Netherlands, OFID, Saudi Arabia, Sweden, Spain and UK.
In the Philippines, China's aid was focused on a mix of infrastructure, energy, agriculture, and mining projects. While this is consistent with China's overall agenda, in which China's economic development is the primary motivation, PAGIA in the Philippines has been linked to political interests in relation to maritime disputes especially during the Arroyo administration (de Guzman, 2014). It is noteworthy that there were no new loans from China in 2011 and 2012 in the wake of corruption scandals souring the image of major aid projects with China as well as the escalation of the maritime dispute between the Philippines and China. On the whole, while aid from China pales in comparison to what the Philippines receives from other development partners and is small in terms of its contribution to gross domestic output, aid projects have nevertheless been influential in affecting political decisions in the Philippines with economic implications. Due to the political linkage, it is not surprising that aid financing moves with the degree of harmony in the political relationship between the two countries. However, the desired outcomes have not been consistent as desired, as in the case of the Philippines' and Vietnam's maritime disputes with China (Kalathil, 2012).

IN CLOSING: ASYMMETRY, CRITICALITY AND VULNERABILITY

The essay focused on describing patterns in the bilateral relationship between the Philippines and China in the areas of trade, investments, labor and ODA. The numbers show that in trade, the relationship is not only very asymmetric in China's favor but the trade is also critical for the Philippines with China being a major trade partner. Where investments are concerned, the Philippines investments may be more but such investments in China are negligible to the latter. In regard to OFWs in China, they are small in number but the concern is more on how China may influence Hong Kong and to a lesser extent, Taiwan in the issue of foreign workers, which may affect the Philippine government's public diplomacy. Last, China's ODA to the Philippines is likewise negligible. Investments and ODA, though relatively small, remain contentious in their political context as they affect decision-makers.

Taking these in consideration, there is one recurring theme in an investigation of vulnerability, and that is criticality. In other words, in elucidating the nature of vulnerability and as a corollary, leverage, we need to consider that sectoral importance is not simply equated with monetary value. The question to ask is how critical the sector is to the economy. The cost of adjustment in replacing lost markets (for both exports and imports, for instance) is a major consideration.

RECOMMENDATIONS ON AN ACADEMIC AND RESEARCH AGENDA

Encourage economic statecraft as a component in an academic program or a program in itself. Policy would benefit from a research agenda that also focuses on economic statecraft. This kind of research necessarily requires strategic thinking, which is intrinsically interdisciplinary, disparate approaches by disciplines — although important — are not sufficient. Furthermore, various units in the Philippine government are concerned with security issues and often the economic dimension in national security is the least considered in terms of a more thorough link with security. Therefore, it is worthwhile for government to support an academic program in public universities that can accommodate economic statecraft (e.g. through several graduate courses). Alternatively, the government can support the creation of a new program (executive or degree program). The first step is to identify national needs, review existing curricula and analyze possible innovations, considering international benchmarks.

Set up a fund for advance research. Also, a special fund can be set up to support advance research fellowships (preferably by faculty members), dissertation research, and publications on topics that are germane to economic statecraft. For instance, much discussion in the literature has been devoted to the effect of deepening ASEAN regionalism on vulnerability from exposure to Western markets. But further research can focus on how supply disruptions are processed within the global supply chain. The effects of sectoral oscillations in China are always of interest to economies whose own sectors are linked. However, seen from the point of view of deliberate disruptions due to the exercise of statecraft is another context altogether. This is an example of a specialized research area that can be accommodated by a research fellowship.

Establish foreign institutional linkages. Similar to the preceding recommendation, the government can consider securing linkages with foreign institutions (e.g. universities, institutes, think tanks) where advance research can be accommodated. A variety of arrangements can be forged through a memorandum of agreement that indicates specifics such as areas of research, duration and budget. The end in mind is to build Philippine capacity by encouraging cross-pollination between Philippine experts and experts based in foreign institutions.

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Elements of an Effective Crisis Management: The Case of the 2013 Zamboanga City Crisis

Felicito Virgilio M. Trinidad, Jr.

This paper is a study of the Zamboanga City Crisis of 2013, sifting through the significant events that transpired prior during and after the incident with the end view of having an objective analysis and assessment of all the factors involved in order to deduce effective crisis management tools that may be considered as best practices/guides in handling future crises. In the process, the paper will delve on the causes and effects of the Crisis, taking into consideration its political, social, military and economic dimensions, and will present policy recommendations to improve crisis management in the Philippines.

INTRODUCTION

In 2001, members of the Moro National Liberation Front (MNLF) under Nur Misuari, their founding Chairman, wrought havoc in Zamboanga City by forcibly entering private properties and holding innocent civilians as helpless human shields. To avoid escalation of the crisis which may result to an unreasonable loss of lives and properties, the government gave in to the demand of the MNLF to leave Zamboanga City with their firearms in tow in exchange for the release of the hostages. Twelve years after, nobody thought the MNLF would do it again. This time, however, the rebels were repelled from their stronghold by government forces. As the smoke cleared, the rebels were subdued, suffering tremendously with 208 killed, 270 captured, 24 surrendered and 314 firearms lost. Most importantly, civilian casualties were minimal.

EVENTS LEADING TO THE CRISIS

A number of related incidents transpired in Zamboanga Peninsula as well as in the island-provinces of Basilan and Sulu prior to the Zamboanga City Crisis which would somehow show the reason and intention of the Rogue MNLF Elements (RMEs) under Misuari in massing up its forces in September 2013.
Mainland Zamboanga. On 29 June 2013, Misuari called for an MNLF leadership assembly at his residence in San Roque, Zamboanga City followed by a press conference/media interview attended by more or less 200 MNLF allies from different areas in the Zamboanga Peninsula. During the said meeting, Misuari eventually discussed the issue of Moro independence in Mindanao. Accordingly, Misuari insulted the leadership of the Moro Islamic Liberation Front (MLF) and manifested that he is against the Framework Agreement on the Bangsamoro which is being negotiated by the MLF with the government. In that same meeting, Xavier Daniel, a suspected fake United Nations representative who negotiated with the MNLF, declared that he can call up thousands of United Nations (UN) forces anytime and facilitate direct talks between Misuari and UN Secretary General Ban Ki-moon should an MNLF conflict erupt again.

On 26 July 2013, an MNLF General Assembly was held at Barangay Pandan-Pandan in the town of Alicia, Zamboanga Sibugay province with by more or less 200 MNLF members in attendance. Topics discussed were: (a) the 1976 GRP-MNLF Tripoli agreement, specifically on the 13 provinces that were supposed to form part of the autonomous region but only five provinces (Lanao del Sur, Maguindanao, Basilan, Sulu and Tawi-Tawi) were eventually given to the MNLF; and, (b) formation of a parliamentary type of government within MNLF areas which they claim to be covered under Bangsamoro Independence.

A day prior to the MNLF General Assembly, Ener Misuari, Commander of the MNLF National Marines based at Sitio Talab, Barangay Labatan, in Payao, Zamboanga Sibugay Province, together with more or less 100 armed followers, consolidated at their MNLF base camp as ordered by Misuari to support the MNLF formal declaration of Bangsamoro Independence which will include the symbolic raising of the MNLF flag.

The following month, two MNLF forces were organized in Zamboanga City. The first forum held on 21 August 2013 was attended by Mujiv Hataman, Governor of the Autonomous Region in Muslim Mindanao (ARMM), and Yosup Padada, Director at the Office of the Presidential Adviser on the Peace Process (OPAPP), with about 100 top ranking MNLF leaders. The second forum held on 31 August-01 September 2013 was presided by Jose Tisof Lorena, OPAPP Undersecretary for Bangsamoro Programs. Accordingly, these fora were sanctioned by President Benigno Simeon Aquino III to sustain the peace accord between the government and the MNLF.

Basilan Province. On 08 July 2013, more or less 500 MNLF members, some of them with firearms and clad in camouflage uniform, marched from Barangay Parang Basak to Lamitan City Proper as part of their peace consultation caravan exercise in the province. This show of force by the MNLF was unauthorized and was not coordinated with the military units in the area.

Sulu Province. Significant MNLF activities in the province revolved around attempts at declaring Bangsamoro Independence. The first declaration of independence by the MNLF was done on 12 August 2013 in the municipality of Talipae. However, the first attempt did not create so much impact that another declaration of independence was programmed the following day in the town of Indanan with Misuari swearing in his 43 loyal Field Commanders (although some of them were just new) to pledge allegiance. A video footage of the activities was to be recovered later on by government troops in one of the encounters during the height of Zamboanga City Crisis.

Movement/Arrival of MNLF in Zamboanga City. As reported, Misuari's armed loyalists led by Khabier Malik, Misuari's trusted lieutenant, started massing up and moving out of Sulu discreetly on 05 September 2013 in connection with their plan to attack vulnerable cities and town centers in Zamboanga Peninsula and Basilan province. Accordingly, the group terminated their plan to attack Jolo in Sulu province due to the strong resistance of the local government unit (LGU) led by Vice Governor Sakur Tan and the negative mass support from the populace. As a result, the group diverted its hostile plan to Zamboanga City. Other MNLF members mostly from Basilan and Sulu, utilizing pump boats loaded with assorted high-powered firearms (HPFAs) and ammunitions, were monitored to have arrived in Barangays Mariki, Santa Catalina, Rio Hondo and Santa Barbara, all in Zamboanga City, on the three consecutive evenings of 5, 6 and 7 September 2013.
INITIAL ACTIONS BY GOVERNMENT FORCES/FORCE BUILD-UP

As an initial preemptive move in view of the reported MNLF activities, the 1st Infantry (Tabak) Division (1ID) of the Philippine Army (PA) transferred the location of the 32nd Infantry Battalion (32IB) battalion retraining from its Division Headquarters in Pulacan, Labangon, Zamboanga Del Sur to Camp General Emirle in Malaquite, Zamboanga City. Although the 32IB was placed on non-operational status while undergoing battalion retraining, its mere presence in Zamboanga City was to serve as a deterrent against the MNLF. In addition, a plan was crafted in anticipation of possible atrocities by the MNLF. The plan called for the activation of a Task Force under the 1ID composed of one Infantry Battalion and a Mechanized Infantry Company to serve as readily deployable forces once hostilities with the MNLF erupt.

On the night of 08 September 2013, Task Force Zamboanga (TFZ) of 1ID deployed troops in critical areas of Zamboanga City to establish checkpoints and blocking positions and preempt any hostile action of the MNLF. This was complemented by checkpoint operations and area security conducted by local elements of the Philippine National Police (PNP).

In the early morning of the following day, 09 September 2013, Naval Special Operations Unit 6 (NAVSOU) of the Philippine Navy (PN) undertaking maritime interdiction patrol along the coast of Barangays Mariki and Rio Hondo encountered more or less 100 armed members of the MNLF on board one baning and four bote-type pump boats (outtrigger). A firefight ensued which resulted in one Killed in Action (KIA) and six Wounded in Action (WIA) from the government side, and an undetermined number on the side of the MNLF. The 32IB was immediately placed on operational status. At around five o'clock in the morning, the TFZ Commander deployed troops from the 32IB and the 12th Division Reconnaissance Company (12DRC) in Barangays Rio Hondo, Sta Barbara and Sta Catalina for the conduct of security operations. The TFZ Cmdr. also attended a conference at the Headquarters, Western Mindanao Command (WMC) based in Camp Navarro, Calarian, Zamboanga City regarding preventive measures and counter actions of operating troops on the ground in order to prevent possible escalation of atrocities that may be carried out by the MNLF.

On that same day, Joint Task Force “ZAMPELAN” (JTF-Z) which was concurrently headed by CmDr. 1ID was tasked by the WMC to manage the conflict (see Figure 2 for JTF-Z Task Organization). JTF-Z immediately established its Tactical Command Post at Hqs, WMC and assumed overall command of all ground forces in Zamboanga City. The 7th Scout Ranger Company (7SRC) of the 3rd Scout Ranger Battalion (3SRBn), together with Scout Sniper Class 18, were quickly transported from Isabela City, Basilan to Zamboanga City as additional forces. The Commanding Officer (CO) of 44th Infantry Battalion (44IB), with his Command Group and two Infantry Companies, also arrived in Zamboanga City. Other follow-on forces that arrived came from the following units: Marine Battalion Landing Team 3 (MBLT3) of the Philippine Marines (PMAR); 43rd Mechanized Company (43Mec) composed of nine Wheeled Armored Vehicles (WAVs) with

SIGNIFICANT EVENTS DURING THE CRISIS

The situation in Zamboanga City became very restive due to the presence of an undetermined number of Rogue MNLF Elements from Sulu, Basilan and mainland Zamboanga who planned to conduct a rally and attempted to hoist the MNLF flag in the City as a sign of the establishment of a Bangsamoro Republic under MNLF Chairman Nur Misuari. The timely redeployment of government forces prompted the RMEs to occupy Barangays Sta. Catalina, Sta. Barbara, Kusanyangan, Mampang, Talon-Talon and Rio Hondo. The RMEs also started fortifying their defenses and even held hostages to serve as human shields against government forces. Initially, 220 civilians were reported to have been held captive by the RMEs. Among them were Father Michael Upana who was released.
three days later through negotiations made by Barangay Captain Abdurajac of Upper Patibulan, Panamao, Sulu. Meanwhile, firefight escalated in other neighboring barangays creating more chaos in the City. The fleeing RMEs, in an effort to mask their movement, set a number of houses on fire. This started the series of burning incidents/confflagration that resulted in huge amount of damage to properties during the course of the crisis. On the part of government forces, initial guidance given was for the rescue of hostages and avoidance of collateral damage.

**AFP CONCEPT OF OPERATIONS**

To restore normalcy in Zamboanga City, JTF-Z drafted its first operational plan dubbed as Operations Plan (OPLAN) “AYUDA” (local dialect meaning, to help) with the priority of effort aimed at the rescue of hostages and the welfare of affected civilians. The plan employed four Task Groups within the City thru clearing by sector (see Figure 3). One Task Group as main effort (ME) was to neutralize RMEs in Sector “A” in order to restore normalcy in Zamboanga City. Another Task Group as supporting effort 1 (SE1) was tasked to isolate RMEs in Sector “B” in order to prevent enemy reinforcement from the east. A separate Task Group as supporting effort 2 (SE2) was to isolate RMEs in Sector “C” in order to facilitate the assault of the ME and SE1. The remaining Task Group was supposed to act as reserve and was to conduct counter attack on orders. On the other hand, Inf Bdes/JTFs in other areas initiated proactive measures to preempt hostile plans and reinforcement from Misuari’s sympathizers. Significant to this operation was the ability of government troops to contain Nur Misuari’s supporters and prevent reinforcements to enter Zamboanga City. The Critical Factors, meanwhile, were the identification/location of supporters of Misuari, their planned intentions, and the safety of hostages. The Decisive Point came at that time when government troops were able to effectively contain the RMEs in an engagement area and subsequently neutralize them, particularly their known leader Khabier Malik.

**Figure 3. Area of Operation of JTF-Zampelan in Zamboanga City**

The concept of operation for OPLAN “AYUDA” is comprised of four phases, as follows:

**Phase I – Cordon and Contain**

- Redeployment/Prepositioning of forces to effectively cordon/contain the RMEs

**Phase II – Isolate armed elements & Build up forces**

- Forced evacuation of affected civilians to designated centers
- Cut off utilities to deny the RMEs of water and electricity
- Set deadline for people to evacuate
- Otherwise, they could be dealt with accordingly (effort will be heavy on Information Support Affairs)

**Phase III – Assault**

- To be ordered only when all negotiations have been exhausted and armed RMEs isolated
Phase IV – Post-Operation Activities

- Mopping-up to clear of hazards particularly RME stragglers/remnants and unexploded explosives and ordinances left in the conflict-affected areas
- Conduct of investigations and fling of cases to dispense justice to those responsible for the Crisis
- Rehabilitation of facilities, if destroyed, to restore stability and normalcy

NATIONAL AND LOCAL CRISIS MANAGEMENT EFFORTS

As JTF-Z troops and local PNP personnel were redeployed and repositioned to address the threat, the Crisis Management Committee (CMC) of Zamboanga City composed mostly of elected and appointed civilian leaders was quickly organized. The Zamboanga City CMC focused its task on the evacuation of Internally Displaced Persons (IDPs) and on the distribution of relief goods at designated evacuation centers. Meanwhile, the National Crisis Committee (NCC) with SND and SILG attempted to negotiate for the peaceful resolution of the crisis.

When all negotiation efforts failed, government forces launched a calibrated ground assault under the command and control of JTF-Z. With the magnitude of the forces-in-being, this is so far the biggest urban operation in terms of troops deployed in the history of the Philippine military. The offensive operation which lasted for two weeks successfully subdued the RMEs from their stronghold which resulted in 208 RMEs killed, 270 captured, 24 surrendered and 314 firearms recovered. Equally successful was the safe rescue of 195 hostages with minimal civilian casualties of 12 killed and 79 wounded. Significantly, the timely guidance of Cmdr, JTF-Z to his subordinate commanders outside the conflict-affected areas prevented possible sympathetic attacks or reinforcements from MNLF troops in the provinces of Lanao del Sur and Basilan as well as from the municipalities of Sibuco, Sirawai, Siocon and Baliguian (also known as “Triple SB”) in Zamboanga del Norte.

SIGNIFICANT EVENTS AFTER THE CRISIS

On 29 September 2013, no less than the SND, with the SILG and the CSAFF, declared that “the Zamboanga Crisis is over”. Government forces then proceeded to clear the conflict-affected areas from RME stragglers and remnants, unexploded explosives and ordinances (UXOs), improvised explosive devices (IEDs), and other hazards prior to the turn-over to the LGUs and return of affected residents to their residences. Task Group “SUYOD” (local dialect meaning, to sweep) of the PNP took the lead as ME in the conduct of clearing operations in conflict-affected areas although JTF-Z remained in charge of the overall conduct of post-crisis operations (See Figure 6). Task Group “IGSOON” (local dialect meaning, sibling) of 1ID assumed responsibility for area security in Sectors “A” and “B” as SE while Joint Special Operations Task Force – Vector (JSTF-V) composed of JISOF and SOCOM troops was deactivated and began its phased pull-out from the area of operations.
The concept of operation for the Post Crisis is comprised of three phases, as follows:

**Phase 1 – Mopping-up Operations, Consolidation and Assessment**
- Mopping up operations to clear the conflict areas of unexploded explosives/IEDs and enemy personnel
- Retention of area security to prevent reinforcement, resurgence, looting and other crimes
- CMC assessment
- Consolidation of forces

**Phase 2 – Handover to LGU and Redeployment of Forces**
- Handover of cleared conflict areas to LGU
- Redeployment of forces according to joint assessment
- Support to other agencies’ tasks implementation

**Phase 3: Sustainment and Review**
- Support to other agencies in the rehabilitation effort of the government
- Review of tactics, techniques & procedures (TTPs) and generate lessons learned

Figure 5 shows the Sketch of Sectors, Task Organization and Concept of Operation (Execution) of JTF-Z Operational Directive 17-2013 (Post Crisis Operation).

Interesting to note for the post crisis operation is the participation of Barangay Officials in clearing the houses/properties of affected families alongside with the AFP and PNP personnel (See Figure 6). For the execution of mopping up operation, the priority was given to Sector 1, being the part of business district in Zamboanga City, followed by Sector 2 then Sector 3. Sector 4 was last to be cleared as there were still pursuit operations being conducted in the area at that time (See Figure 7).
RESULT OF OPERATION

The government forces had accomplished their tasks of clearing the affected areas by sector as planned. The RMGs were effectively contained in the engagement areas and subsequently neutralized. The proactive measures that were implemented had likewise successfully prevented hostile plans and reinforcement from Misuari’s sympathizers. In the end, the hostages were rescued and the effort paved the way to the restoration of normalcy in Zamboanga City. Table 1 shows the outcome of the Crisis (See Table 1).

ANALYSIS AND ASSESSMENT

The analysis and assessment of the Zamboanga City Crisis shall use the AFP Crisis Management Module on Terrorism and Other Man-made Crises consisting of five stages, namely: Preparation, Prediction, Prevention, Preposition and Performance. The first three stages (Preparation, Prediction and Prevention) are part of the Proactive Phase designed to predict and anticipate the occurrence of the crises and at the same time respond to deter and contain said crises when they occur. Meanwhile, the remaining two stages (Preposition and Performance) are under the Reactive Phase covering the actual military action to contain and neutralize the threat (See Table 2).
Table 2. Crisis Management Module on Terrorism

<table>
<thead>
<tr>
<th>PREPARE</th>
<th>PROACTIVE PHASE</th>
<th>REACTIVE PHASE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ORGANIZE CRISS COMMITTEES</td>
<td>• INTL CONFLUENCE OF EVENTS</td>
<td>• BOTH PROACTIVE AND REACTIVE</td>
</tr>
<tr>
<td>• PREPARE DEDICATED UNITS</td>
<td>• INTELLIGENCE FORECAST</td>
<td>• INITIAL ACTION</td>
</tr>
<tr>
<td>• ORGANIZE TRAIN EQUIP REHEARSE</td>
<td>• RISK ASSESSMENT</td>
<td>• DEPLOYMENT</td>
</tr>
<tr>
<td>• CONTINGENCY PLAN</td>
<td>• INTERAGENCY EFFORTS</td>
<td>• COORDINATION</td>
</tr>
<tr>
<td>• RULES OF ENGAGEMENT</td>
<td>• SURVEILLANCE</td>
<td>• ONSITE PLANNING</td>
</tr>
<tr>
<td>• OPNS AQMSNTS</td>
<td>• ANTICIPATION OF FUTURE FLASHPOINTS</td>
<td>• ONSITE PREP</td>
</tr>
<tr>
<td></td>
<td>• INTERAGENCY COORDINATION</td>
<td>• FINAL REHEARSAL</td>
</tr>
<tr>
<td></td>
<td>• MONITORING &amp; SURVEILLANCE</td>
<td>• PREPARE FOR COMBAT</td>
</tr>
</tbody>
</table>

DETER CONTAIN DEFEAT RESTORE

PRE-ACTION MAINTAIN READINESS

ACTION POST-ACTION FEED BACK

INTERAGENCY EFFORTS DOMINATES MILITARY ACTION

PREDOMINANTLY MIL ACTION CIVIC ACTION

OBJECTIVE: PREVENT CRISIS TO OCCUR

CONTROLLD MEDIA THRU PAG DESHED ENDSSTATE RESOLVE CRISIS SQUIRST WITH MINIMUM COLLATERAL DAMAGE

Source: The Cabatangan Crisis Handbook, PA

Preparation Stage

The key elements in the preparation stage are the organization, training, equipping and orientation of AFP units to respond, contain and neutralize threat groups. The units that were involved in the Zamboanga City Crisis were organized, trained and equipped according to their respective missions. Basically, the battalions were highly capable of performing infantry tasks, particularly in Internal Peace and Security Operations (IPSO). Meanwhile, the AFP JSOG, as a composite unit of highly trained and better equipped soldiers from the Navy, Army and the Air Force, is capable to fight under complex conditions, including limited visibility, and its LRCs are specialized in hostage rescue operation and Close Quarter Battle (CQB).

On the organizational aspect, while the involved units are usually organized based on their primary missions, they are supposed to be flexible as well when task-organized and can operate as part of a larger force. To achieve flexibility when task-organized with other units, the experience factor will come into play. This was a downside as far as the involved units of the Crisis are concerned since they have very little to no experience at all operating jointly or in Combined Arms with other units, for instance, JSOG vis-a-vis Inf. Units, JSOG vis-à-vis SRBns (especially in urban terrain) or Inf Units/JSOG/FRBns vis-à-vis Mech Inf Units.

Another key issue on the organizational aspect is the term JTF “Zampelan” wherein the tag “JTF” is actually misleading or simply a misnomer as JTF “Zampelan” was not provided with air and naval assets. Hence, during the crisis, all requests concerning air and naval assets, especially to provide air support or secure the coastline, had to be forwarded to WMC; thus adding delay in the process.

The aspect of training and equipage go hand in hand as AFP units are refurbished while undergoing training. Adequate equipment coupled with continuous training, rehearsals and refinements are essential in maintaining unit readiness. All the involved units are basically trained and refurbished periodically. The Philippine Army observes that one infantry Bn per infantry Div is retrained and refurbished every year. In fact, the 321B was on Bn Retraining when the Crisis happened. Other involved units, particularly the LRCs of the AFP JSOG, are even retrained and refurbished in a shorter interval. However, training is done separately in their respective training facilities. Among the involved units, therefore, there was no joint training or exercise that they have participated with other units which, in turn, could have raised their overall capability and readiness to fight jointly during the Crisis. In addition, Inf Bns, in particular, are inadequately trained on Military Operations in Urban Terrain (MOUT) while Mech Units lack the expertise and experience on mechanized operation in urban setting.

On orientation, all the involved units have been oriented before the Crisis on the various threat groups in their areas of operation, either during formal training or mere Troop Education and Information. However, some involved units were not properly oriented on the MNLF as the group is not considered an enemy per the 1996 GRP-MNLF Peace Agreement. Likewise, some follow-on forces came from Luzon and Visayas, hence, were not used to the MNLF as a threat group. At any rate, these units were briefed and oriented by the JTF-Z on the prevailing situation prior to their deployment.

On the part of the LGU of Zamboanga City, it is presumed that they are also organized, trained, equipped and oriented to respond to crisis situations. For one, the Office of Civil Defense (OCD) -Region 9 based in Zamboanga City conducts regular training on Incident Command System (ICS) as a systematic tool for the command, control, and coordination of emergency response. Besides, Zamboanga City is quite oriented on the MNLF having experienced the MNLF atrocity in 2001 in Cabatangan Complex and Pasonanca.
Prediction Stage

Detection and Anticipation are critical components of the Prediction stage which requires interagency coordination and concerted efforts for continuous monitoring and surveillance of the threat group. Based on the significant events that transpired prior to the Crisis, the intelligence community did a good job in monitoring the developments on the MNLF. The MNLF Leader Assembly monitored on 29 June 2013 was clearly a consultation to regain sympathy and re-consolidate the MNLF under Misuari’s leadership. While bashing the MILF, Misuari conveyed his desperation on the notion that the GPH and the MILF had sidelined the MNLF in the Bangsamoro Framework Agreement. This intelligence report was essentially significant as it provided the necessary alarm for the government to watch closely the MNLF’s next move. Other reports that followed suit, such as the blatant display of arms by MNLF troops marching in Lamitan City, Basilan under the guise of a “peace caravan,” the introduction of a certain Xavier Daniel who claimed that he can muster the support of the UN for the MNLF, the declaration of the “Bangsamoro Republic Independence Day” with the pledge of allegiance of loyal MNLF Field Commanders, and the successive troop consolidation/movement of the MNLF towards Zamboanga were enough basis for government forces to forecast the imminent MNLF attack.

While reports have predicted Misuari’s desperate moves, it was unfortunate that the government was not able to make use of it as basis for policy direction, particularly on the handling of the MNLF Misuari Faction in the light of the 1996 Peace Agreement. Since the MNLF, including the Misuari Faction, was not considered a threat group initially, security forces were left in a quandary on how to handle the situation. Hence, policy direction is essential to provide clear guidance. On the part of the AFP, JTF-Z initiated preemptive measures to thwart the prevailing threat which in the end proved essential in the favorable outcome of the Crisis.

Prevention Stage

Prevention stage involves the deterrence and physical protection of the most likely targets of attack. In consideration of the developing situation concerning the MNLF, JTF-Z made initial preemptive measures two months prior to the Crisis. As discussed earlier, the venue for the Battalion Retraining of the 21B, 1ID was transferred from the 1ID in Camp Sang-an, Pulacan, Labangan, Zamboanga Del Sur to Camp Gen Emilio, Malaybalay, Zamboanga City to serve as deterrence against the MNLF. In addition, JTF-Z issued an OPLAN tasking the 102Bde and 2nd Mech Bde, among others, to provide one Infantry Battalion and one Mechanized Infantry Company, respectively. These units served as the nucleus of the readily deployable Task Force activated in response to the MNLF threat. Interestingly, OBAPP personalities and prominent political leaders also initiated backdoor channeling with key MNLF leaders in order to persuade the latter not to participate in the planned attack by Misuari, but to no avail.

Despite the preemptive measures initiated by JTF-Z and the efforts of government negotiators, Zamboanga City was not spared from the MNLF attack.

The case of Jolo is different. As reported, the MNLF terminated their planned attack on Jolo due to the strong resistance of the LGU led by Sulma Vice Governor Tan and the negative mass support of the local populace. Hence, the hostile plan was apparently diverted to Zamboanga City. If this is true, then the Zamboanga Crisis could have been prevented had local officials or conduits initiated appropriate interventions. One may argue that if the Zamboanga City LGU resisted and succeeded just like in Jolo, then the attack would only be diverted to another area. True, but the point is clear: the MNLF attack could have been prevented peacefully, without bloodshed, using non-kinetic means.

Preposition Stage

During the preposition stage, the local CMC was organized for negotiation while military forces were tasked to organize and preposition for combat. In view of the alarming reports of MNLF movements toward Zamboanga City, the troops of TTFZ, along with other security forces, were deployed within the City primarily to establish checkpoints and blocking positions in order to preempt any hostile action. One section of the 12DRC with armored vehicle was positioned at the Zamboanga City Maritime Institute of Technology while one team was positioned at the Sta Catalina Barangay Hall. These areas would later become part of the conflict area. Proper coordination was also made with other security forces operating in the city. The local PNP, together with the Regional Public Safety Battalion (RPSB), were tasked to secure the area from the intersection of Evangelista Street and Veterans Avenue extending down south to their HQs near the Land Transportation Office (LTO) while the Naval Special Operations Unit (NAVSOU) secured the seashore through maritime interdiction patrol along the coast of Barangays Maniki and Rio Hondo.

When NAVSOU encountered more or less 100 armed members of the MNLF in the early morning of 09 September, it was augmented by other follow-on forces prepositioned for combat. With the guidance given to Cmdr, JTF-Z to assume as the overall Ground Commander, JTF-Z quickly established a Tactical Command Post to provide command, control and supervision of all ground forces. The presence of the SLD, the SILG and the CSAFP in Zamboanga City was a big help in the organization/prepositioning of forces for combat. Under normal condition, the PNP units cannot be placed under the operational control (OPCON) of a military commander except when covered by a Memorandum of Agreement (MOA). With the nod of the SILG, all PNP units were placed under the control of the Cmdr, JTF-Z in no time, thus providing immediate manpower augmentation.

One remarkable feat that contributed significantly to the success of the operation was the quick build-up of government forces. In three days, around 2,000 military troops and 1,500 police personnel arrived in Zamboanga City to take part in the biggest urban fighting (MOUFT) undertaken by the AFP so far. This was made possible by the decisive action of no less than the SLD and the CSAFP to provide the necessary resources in support of the operation.
Although organized as early as Day 1 of the Crisis, the presence of the Zamboanga City CMC was somehow wanting. There was no clear designation of an On-Scene Commander who shall be the overall orchestrator of the entire government effort. The local CMC concentrated its effort instead on the transport of IDPs/evacuees and distribution of relief goods through the help of the military. The resources (mobility assets, equipment and personnel) of other government agencies like the Regional/City Department of Public Works and Highways (DPWH), Department of Social Welfare and Development (DSWD) and Philippine Information Agency (PIA) were not properly utilized to support the overall government effort. Although the effort per se of the Zamboanga City CMC on political settlement (negotiation) was inadequate, the presence of the National Crisis Committee (NCC) complemented the Zamboanga CMC on this aspect.

Performance Stage

Immediate steps expected in this stage include the containment and isolation of the crisis situation while post-action activities such as rehabilitation of affected areas, restoration of stability and normalcy and the dispensation of justice to all those responsible for the crisis are being undertaken. The Zamboanga City Crisis had undoubtedly placed JTF-Z in the annals of history following its remarkable accomplishments to manage the Crisis, to name a few:

* Prevented the hoisting of the RME banner at the Zamboanga City Capitol. One could just imagine the devastating effects of this bold political statement had the RMEs succeeded;  
* Successfully rescued 195 hostages as identified by the local CMC. The number of civilian casualties (12 killed and 79 wounded) is considered relatively low as compared to other crises of similar nature, such as the Beslan School Hostage Crisis in Russia;  
* Prevented spill-over or escalation of atrocities to the other critical areas of Zamboanga City;  
* Effectively sealed off the conflict area resulting in the neutralization of 502 RMEs who were either killed, captured/apprehended or surrendered. The captured/apprehended RMEs are presently facing charges and are detained at Camp Bagong Diwa in Bicutan, Taguig City;  
* Prevented possible sympathetic attacks or entry of RME reinforcements from other areas (Lanao del Sur, Basilan and the “Triple SB” area of Zamboanga del Norte); and,  
* Successfully cleared the conflict-affected areas from RME stragglers/remnants, UXOs, IEDs and other hazards prior to turn-over to the LGU and residents.

The successful management of the Crisis was not at all rocket science. For one, the adherence to the principle of Unity of Command greatly mattered. The Cmndr, JTF-Z only talked with the Cmndr, WMC, as his immediate boss in the chain of command, throughout the course of the operation. In turn, the Cmndr, WMC was the one who engaged with the SND, SILG and the CSAFP. This allowed the Cmndr, JTF-Z to focus on the operation as he was only dealing with a single commander above him and four subordinate commanders under him. More so, the Cmndr, JTF-Z was spared of the political and economic concerns relative to the Crisis.

The NCC had laid down its Four-Phased Approach to the Crisis with corresponding purposes and endstate per phase (See Table 3). It was composed of the following phases: Immediate Response Phase, Containment Phase, Negotiation Phase and Resolution Phase. The material had served as guidelines for the appreciation of the involved civilian leaders and police/military commanders during the Crisis.

Table 3. National Crisis Committee Four-Phased Approach to the Stand-off

<table>
<thead>
<tr>
<th>PHASES</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tasks</td>
<td>Immediate Response</td>
<td>Containment</td>
<td>Negotiation</td>
<td>Resolution</td>
</tr>
<tr>
<td>Purpose</td>
<td>Force generation</td>
<td>• To convey off hostage</td>
<td>• To sort out hostages</td>
<td>• To break the deadlock</td>
</tr>
<tr>
<td></td>
<td>Multi-agency organizational build-up</td>
<td>• Prevent hostage</td>
<td>• Separate hostages</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Task Organize National Crisis Committee into: Cordon off group</td>
<td>entry</td>
<td>hostage</td>
<td>• Neutralize Hostiles:</td>
</tr>
<tr>
<td></td>
<td>Incl. Negotiations, PIO</td>
<td>• Prevent hostage</td>
<td>• De-escalate hostages</td>
<td>• Assault Hostages</td>
</tr>
<tr>
<td></td>
<td>Assault Rescue</td>
<td>• Prevent hostage</td>
<td>• Reduce tension</td>
<td>• Facilitate exit</td>
</tr>
<tr>
<td></td>
<td>Logistics</td>
<td>• Prevent hostage</td>
<td>• Pave the way for conflict resolution</td>
<td>from Zambo?</td>
</tr>
<tr>
<td></td>
<td>Reception (hostage/RME/wounded processing)</td>
<td>• Prevent hostage</td>
<td>• Dissipate resistance</td>
<td>• Multiple</td>
</tr>
<tr>
<td></td>
<td>Post-crisis management</td>
<td>• Convene hostage</td>
<td>• Dilute belligerent posture</td>
<td></td>
</tr>
<tr>
<td>Endstate</td>
<td>To stabilize the situation</td>
<td>To dominate situation</td>
<td>Weaken strongholds</td>
<td>Defeat violent resolution</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Rescue status quo ante</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Non-violent resolution</td>
</tr>
</tbody>
</table>

Source: NCC (Given by members during the Crisis)

The use of hostages as human shield had been done before by the MNLF during the Cubatawan Siege of 2001 and they got away with it. They did it again in the 2013 Zamboanga City Crisis thinking perhaps that they would get the same leverage. This time, however, it did not work to their advantage. The tactic of taking hostages to gain concessions will probably become a precedent and a lesson that the military should take into consideration in future operations. Other bands or rebel groups would likely emulate this tactic if a similar situation occurs or if cornered by pursuing security forces. Hence, there is a need to revisit the doctrine on urban fighting (MOUT) in order to be responsive
to the changing trends in the operational environment.

The RMFs skillfully applied a unique fighting technique in an urban setting. They used conflagration by way of burning houses in order to delay government advance and hide their withdrawal. Initially, they gained tactical advantage but, eventually, it became more of a bane as they were slowly being constricted to a given area and their freedom of movement was being reduced each day. The RMFs also exploited the existence of gun smugglers and the abundance of food in the area considering that the conflict-affected areas do not only have a huge civilian population but are also known places for criminals, smugglers, gun runners and drug syndicate groups. All together, the RMFs had a good source of firearms and armaments and food to sustain them. This was partly the reason why the RMFs managed to fight back for a considerable amount of time without having problems in their armaments and food supply.

THE AFTERMATH

For a deeper analysis and assessment of the Zamboanga Crisis, the author finds it necessary to also consider the examination of the cause and effect of the Crisis vis-à-vis the political, social, military and economic dimensions. This will provide the reader a broader perspective on the effects of the Crisis not only in Mindanao but throughout the country in general.

Political Dimension

The MNLF as an organization is marred by several factions. Aside from the Misuari Faction, there is also the so-called MNLF Executive Council of 15, or simply Council of 15, which is comprised of 15 MNLF leaders believed to be chaired by Datu Muslimin G. Sema of Cotabato City. Perhaps, Misuari’s frustration on the GPH-MILF Peace Process was aggravated by an earlier report that the MNLF Council of 15 was said to have forged a unity agreement with the MILF. It could be recalled that the Government recognizes Sema as the Chairman and Representative of the MNLF despite the recognition of the Organization of Islamic Conference (OIC) on Misuari as MNLF Chairman. With Misuari’s unsuccessful Zamboanga attack now included in the equation, the effect is obvious. Once the GPH-MILF Peace Agreement becomes successful, the peacemaking resolution with the MNLF Council of 15 will follow suit while the MNLF Misuari Faction will remain bitter as peace spoilers.

Social Dimension

The National Disaster Risk Reduction Management Council (NDRRMC) reported that the Zamboanga City Crisis caused the displacement of 23,794 families or 118,819 individuals, most of whom are still being taken care of in different evacuation centers. As part of the Rehabilitation Plan for Zamboanga City, a total of PhP3.89 billion was earmarked for continued food assistance, construction of shelter units for displaced families, Cash-for-Work implementation and livelihood programs, among others. While the Government may be able to replace the material things that were lost, the anguish and misery brought about by the Crisis will forever remain in the minds of the people.

Military Dimension

The RMFs were completely devastated after the Crisis. A total of 208 of their forces were killed (body count), 270 captured/apprehended and 24 surrendered, in addition to the 272 HPFS (including 8 crew-served weapons) and 42 LPAFs recovered by government troops. With this great loss, the MNLF Misuari Faction will need time to recover; hence, the group will not be capable to pose a serious threat in the next couple of years. As for Misuari himself, the trust and confidence of the main MNLF group on him has been further reduced. On the part of the military, this Crisis is an eye-opener on the importance of Joint/Combined Arms Training and MOOT Training. The present combat landscape has significantly changed as evidenced by the expanding built-up areas not only in the urban terrain but even in the rural areas. Fighting will most likely occur in these built-up areas, hence, MOOT Training for AFP troops is essential.

Economic Dimension

Residential houses and establishments in the five barangays of Sta Barbara, Sta Catalina, Kasanyangan, Rio Hondo and Merici were severely damaged during the Crisis. Trade and commerce temporarily stopped as the airport and seaport were shut down. Zamboanga City, being a business hub, neighboring areas were naturally affected, particularly the island provinces of Basilan, Sulu and Tawi-Tawi. The estimated cost of damage in Zamboanga City alone was pegged at PhP200 million, in addition to about PhP5 billion of lost opportunities in trade and commerce. Although Zamboanga City is now back to business trying to recoup what had been lost, it will take time before the City can regain investor confidence.

RECOMMENDATIONS

The rich experience and lessons learned provided by the Zamboanga Crisis will be put to naught if these were not utilized in addressing future crises. Hence, the following are highly recommended to improve future crisis management:

1. The Government should provide timely policy direction on potential threat groups, such as the MNLF Misuari Faction, in order to guide security forces at the earliest possible opportunity. With clear guidance, the security forces will be better prepared confronting these potential threats.

2. The AFP/PNP should assess the changing trends in the operational environment (use of human shield) which will bear yield strategic implications. The Government has to protect innocent civilians in times of conflict.
3. The National Crisis Management Committee should revisit the protocols on crisis management with the end in view of making the national/local CMCs more responsive in the performance of their mandate during crisis situations.

4. Crisis Management is a multi-stakeholders effort that needs to be enhanced through constant trainings. While ODCs at regional level conduct ICS to concerned government agencies/institutions like the AFP and the PNP, it would be best for them to also consider training the Local Chief Executives as crisis managers.

5. Zamboanga City apparently failed to come up with a Contingency Plan to address the RME threat. This happened despite the fact that the RME plan to attack the city had been known months before the Crisis. For better preparation, the National Government should require all LGUs to craft Contingency Plans for potential threats in their respective areas.

CONCLUSION

The Zamboanga City Crisis is a costly experience for the Filipinos, leaving behind 245 dead, 23,794 families displaced, damages estimated at Php200 million estimated cost of damages and about Php5 billion lost opportunities in trade and commerce. It has exposed the RMEs as bitter peace spoilers with a ruthless tactic of taking hostages to gain concessions. Remarkable though, is the remarkable showcase of “Bayanihan” spirit among the members of the NCC, the local CMC, and the security forces who worked hand in hand in resolving the Crisis. While Zamboanga City is now back to business with the support of the National Government, the hard lessons of the Crisis must be put in good use for a peaceful and progressive Philippines.

LIST OF REFERENCES


"Islands of Excellence" in Cybersecurity: Perceptions and Prescriptions for Improving Preparedness in the Philippines

Stephen P Cutler

Philippine society, government processes and critical infrastructures are becoming increasingly reliant on computerization, networks, and automation. But the mindset of many people in the Philippines sees cyberspace as the domain only of the major powers, or the realm of the youngsters who actively use social media. But the reality is quite different. This haunts and hinders cyber security national economic and defense preparedness of the Philippines. This paper will define the concept of cyber security, especially in the Philippine context. The paper will also lay out a description of actions that will enhance cyber security preparedness for the Philippines, thus, enhancing national security.

INTRODUCTION AND METHODOLOGY

The Philippines is the leader in providing voice support to business processes around the globe. The Philippine domestic marketplace is being transformed through automation, computer controlled robotics, and mobile devices. Government processes and critical infrastructures are becoming increasingly reliant on computerization, networks and automation. Many people in the Philippines see cyberspace as the domain of the major powers or the realm of the youngsters because they are the active users of social media. Reality is quite different. What the country has are “islands of excellence” in cyber security, in the sense that there are some people and some entities that understand and practice cyber security skills and policies, but the vast majority of companies and people either have little or no grasp at all of the concepts, needs and dangers of the cyber world. This reality haunts and hinders the state of cyber security in the country and the level of preparedness of the Philippines as a nation, and as a member of ASEAN.

The paper obtained its data from a review of literature related to the topic. An anonymous survey of approximately fifty private industry and government service practitioners, as well as academics in the field was conducted during the third quarter of 2014. The survey respondents were located primarily in the Metro Manila area, but had nationwide systems responsibilities and experience. Interviews were conducted of about twenty selected respondents, in the government, academe, and private industry. Some of the interview subjects completed the survey most of the subjects, however, were not able to complete the survey. The results were collated and reviewed, and the findings summarized in narrative format.
DEFINING CYBER SECURITY

A foundational question posed to survey participants is “What is ‘cyber security’?” The answer to this question shapes the entire discussion on this topic. The majority of the survey respondents accept the definition as the “ability to protect networks, computers, programs and data from attack, damage, or unauthorized access.” While at first blush this definition seems to be quite comprehensive, it leaves concepts such as “attack” and “damage” undefined. This may cause some confusion over time as different people and entities work with different ideas on what acts constitute an “attack” with various responses deriving from those acts, and what would be considered as “damage” resulting from an attack.

In the physical world, an “attack” could be demonstrated by envisioning the landing of one state’s armed forces on the beaches of another state. It is characterized by the presence of identifiable and attributable people in places where they are not authorized, having arrived and are staying by force or threat of force. However, in the cyber context, these characteristics are rarely present. Degrees of unauthorized presence are more nuanced and attribution of an attack is often difficult.

It is important to note that the definitions of attack and damage do not restrict their application to traditional Westphalian political states nor to actions by states. The terms include non-state actors, whether criminal groups, terrorist groups or individuals who simply seek a challenge in “hacking” a security system on a network or computer.

Similarly, the concept of “damage” is difficult to define. Oftentimes, loss of data does not involve an actual removal of data but rather a copying of the data. Thus, the original data remains but the data is also now in the possession of an unauthorized person. On occasion, damage is quite obvious as we may physically see computer operated equipment and systems malfunction, or even destroyed. With these problems in mind, one survey respondent defined cyber security as “the practice of protecting information/data from unauthorized access, use, disclosure, disruption, modification, penetration, inspection, recording or destruction.” This definition avoids the problems and potential confusion that arise from use of the words “attack,” “damage,” and “loss.” It only requires a determination whether access was authorized, or not. That eases the requirements for the cyber security professional in that he or she must only deny, detect and deter the unauthorized acts enumerated in the definition above.

Another survey respondent offered the definition of cyber security as “the ability of an IT security system to protect computer networks and peripherals, programs, data and information against unauthorized access, and its capability to contain the security intrusion, and restore the computing system into its normal working condition.” This definition focuses on access to a system, as well as on an automated information technology system response contrasted with actions directly involving humans. It does not have any guidance or restrictions on what results from the unauthorized access. Neither does it require any action beyond the access. This definition adds the concepts of containment and restoration to normality, which the other definitions do not address at all. This attention to an end state is interesting since it will shape the thinking and planning for the practitioners, and will restore a focus on the “Why?” of security. This definition, together with the mindset it shapes, help to justify and provide a “return on investment” of the time, effort and financial expense of security equipment, policies and processes, where the more commonly accepted definition arguably makes protection an end in itself.

The general ideas behind each of the definitions put forward are not much different, and none is in opposition to another. Nevertheless, they shape the discussion of work in various ways, which may move governments, businesses and practitioners to behave in discrete and distinct action paths while discarding others that may also be valid. This, then, has a direct impact on what is considered a cyber security concern and shapes the discussion of what it means to be “prepared”. Without common language and lines of thinking, the field of cyber security is left disorganized and its outputs and activities less effective.

PERCEPTIONS OF CYBER SECURITY PREPAREDNESS

Merriam-Webster defines the verb “prepare” as “to make yourself ready for something that you will be doing, something that you expect to happen, etc.” (Merriam-Webster) This is a nearly ideal definition for the purposes of this study. It highlights the need to take action, to get organized and equipped to deal with issues that may arise around the cyber and data infrastructure of the Philippines.

The same source defines “preparedness” as “the quality or state of being prepared.” This progression of the definition highlights that making oneself ready for something eventually arrives at an end state of preparedness. While this sounds simple, it is an important concept. It implies that the participants must be proactive. They must take steps and cannot simply rely on others. Neither can they merely hope that things come together in some magical way for them to be prepared. James J. Carafano and Eric Sayers note that “Addressing cyber issues begins with the premise that all national security challenges are a series of actions and counteractions between competitors, and inquiring how these competitions might progress in the future.” (Carafano, 2008)

This undergirds the examination of the concept of preparedness. Carafano’s characterization implies that there is no single answer to the ideal of being “prepared.” It implies that the concept is a continually evolving state that will lead at some time and follow or flow from the actions of others at other times. It implies that the actors taking steps to prepare or making ready for something are not alone and can expect that the actions they take will need to be revised, refit and changed over time. For many businesses and especially for governments, this may be a difficult concept to accept, especially at budget preparation time.
Carafano also states that “nearly every domestic cyber program—from managing movement of goods, people, services and ideas to controlling a border and investigating terrorist groups—requires international cooperation.” (Carafano, 2008) Thus, in the Philippine context, the actors responsible for cyber security must look at developing international mind-sets and views. As Em To notes in his 2013 paper on ASEAN cybersecurity “Countries in Southeast Asia seem to be unprepared to design cyber security cooperation as a consequence of gaps in development of Information and Communications Technology (ICT).” (To, 2013) The Philippines must take great steps to prepare itself, but it must also work within the ASEAN and larger international scale while doing so to receive the greatest benefits of its work.

The Philippines, and ASEAN in general, may benefit from adapting some successful ideas from other nations. One example is the United States’ National Cyber Security Preparedness Consortium. It is a group composed of the top five American universities that have developed a working structure to push forward cyber security in the United States. In comments about issues of cyber threats and attacks, the Consortium noted that “despite this growing threat, training and technical assistance that focus on countering these attacks has failed to increase in response. While the nation has spent considerable time focusing on ways to prevent, detect, respond to, and recover from a terrorist attack using conventional, chemical, nuclear, or biological weapons, the nation’s preparedness for a cyber-attack is not being addressed.” (National Cyber Security Preparedness Consortium, 2013)

Using the United States’ experience as a yardstick, the Philippines seems to be even less prepared on cyber security. Based on the results of the survey, a clear majority of respondents indicated that their “home agency” or permanent employer has a designated person or office responsible, at least in name, for cyber security. The respondents were, however, split evenly on whether their entity had been subject to attack in the last twelve months. For those who claimed that they had not been attacked, the survey left unanswered the question on whether or not adequate “alarms” and “trip wires” were in place to identify an attack, or if, or if their entity truly had not been attacked. Nearly all respondents claimed that their systems are equipped with firewalls and auto-detection systems or anti-intrusion systems, but again the survey was not able to determine if those systems were truly adequate or simply providing a potentially false sense of security. Additional research is needed on this.

Moving from the systemic and hardware issues, the survey also queried on the respondents’ assessments in several other areas of security and protection against attacks. When asked if the Philippine population has any awareness of the dangers and risks of cyber attacks to themselves personally or to their business, all respondents replied “No.” When asked if the Philippine civilian population, as a nation, has an understanding of the nature and extent of cyber security threats, three-fourths of the respondents replied “No.” This indicates a severe lack of knowledge of the general population on the risks they face to their information and livelihoods. A number of respondents noted, however, that some members of the information technology sector do have a grasp of the dangers and threats but the general population had none. One respondent observed that technology personnel are generally aware of the threats, but they must balance this knowledge with the convenience of the system users and budgetary constraints. Another respondent noted that there is a lively discussion of cyber crime law and cyber crimes in the media, and many people are made aware of it, including data breaches. However, those issues neither cover the entire scope nor are they synonymous with cyber security.

To carry a different angle on the lack of knowledge in the cyber security field, one survey respondent noted the limited understanding of the general population on the power that technology holds over their everyday life support. Thus, the public has no frame of reference as to why they need to be alert to developments in the field. The respondent added that information about many serious issues such as data breaches, data loss in the Philippines are not provided or reported to the public and government. While many people can speak about breaching and problems occurring in the United States or Europe, they have no idea of the extent of the threat in the Philippines.

The survey also asked if the Philippine government, at all levels, provide reasonable leadership to enhance cyber security. The respondents provided mixed answers on this matter with those in government answering “Yes” and those in the private industry and academe responding “No”. Most noted that the executive branch has a number of agencies that touch on cyber security issues. In addition, government agencies have submitted an “Information System Strategic Plan.” Respondents noted that a decent data protection law was passed in the form of Republic Act 10173, commonly referred to as the “Data Privacy Act of 2012”, but no Implementing Rules and Regulations have been released, making the law essentially non-enforceable. The apparent lack of follow-through by the government has been frustrating to many respondents.

The survey then asked for the views of the respondents on the leadership of Philippine national commercial/business sector to enhance cyber security in the country. Interestingly, the sectoral split on this question was about the same as the split on government leadership, with most respondents from the industry and academe saying “No.” One respondent observed that there is no real information sharing about data breaches, losses or other issues. There is no real push to raise the awareness of the public and business leaders on the issues. In fact, most businesses would rather not discuss them at all.

In light of the comments of Em to about ASEAN, and the impact that ASEAN integration may have on Philippine cyber security, the survey requested views on the preparedness status of the Philippines compared to other ASEAN nations and to commercial competitor nations such as India. Overwhelmingly, the respondents said that the Philippines is not as prepared as these nations. One respondent noted that the views on the lack of comparative preparedness of the Philippines could be verified by doing a “Google” search on “Cyber Security Asia.” According to the respondent, Singapore, Hong Kong, Thailand, and ASEAN countries have allocated significant budgets to fund cyber security initiatives which include state-backed regulations, education programs, and hosting of awareness conferences.
Respondents to the survey were, likewise, asked if they saw an adequate academic effort to teach cyber security topics and practices to students in fields related to information technology to reduce future risks. Again, majority of respondents answered “No.” This bodes ill for the future of cyber security in the Philippines since many students are not being prepared to “weave” security into their work and information technology projects when they take their place in the professional world, whether in the private industry or in government. One respondent noted that “cyber security” is not an approved Bachelor’s degree program in the Philippines. It was also noted that several schools offer “short courses” in some seminar or workshop format which fails to integrate the security knowledge into the larger knowledge and skills set the student is developing. This “add-on” then is often relegated to the side lines of the student or new workers’ production. The same respondent did note, however, that schools such as the University of the Philippines (UP) and De La Salle University do make what appear to be strong efforts to include security awareness and practices in all computer science and related topics classes. Accordingly, UP students are frequently selected as regional winners in the Kaspersky Labs security development competitions.

SPECIFIC CYBER THREATS IN THE NEAR AND MID TERM

It is one thing to speak of preparedness in general terms and quite another to raise specific issues. The survey shows that many believe the Philippines is not prepared, as a whole, in cyber security. But what specific threats do the survey respondents see on the near and mid-term horizon? The time frame is defined as being from 2014 to 2020, and in the Philippine context.

Data base breaches/theft of data, including personal identity information, is rated as the top issue or threat for the Philippines. This concern cuts across the government and private sector. National security information, such as defense plans, defense spending and weapons/systems budgeting and other critical information are at risk due to the use of older information technology systems that have not been well maintained. Even worse, important data is still processed and stored in paper files that have little or no accountability and access tracking mechanics. Paper files have no encryption capacity and thus can be read by anyone who can access them. Economic planning and forecasting as well as government records dealing with private information, such as tax status/income records, property records, voter’s registration, and many other similar records are often stored on older systems that do not have updated software, encryption and other security measures in place. Information is often stored unencrypted, which allows easy access to the data if someone gains unauthorized access. The survey reveals that any number of systems have no automated nor formal review of access and access attempts. Without such procedures security personnel are unable to determine that the system has, in fact, been breached.

Second to the actual breach and resultant exposure of classified or private data, survey respondents recognized that reputational damage to the nation, government and business entity is a significant cyber security issue from 2014 to 2020. The survey respondents observed that the nation must develop a reputation as a safe, secure and forward-thinking place that takes the security of its data and infrastructure seriously and competently. While this reputation is hard to build, it can easily be tarnished. Thus, reputation is of great value because it is a key factor in the development of businesses and jobs, and national prosperity.

The third cyber security issue that survey respondents identified as significant in the Philippine context included the very broad field of damage from “hackers,” ranging from people defacing websites to foreign governments attacking computers systems and industrial “Supervisory Control and Data Acquisition”, also known as “SCADA” systems, control networks, and business interruption due to loss of computer networks. These fall under the traditional idea of a “computer attack” and it is interesting to note that it only ranked third as a threat to the Philippines. This gives us an idea on whether remediation practices rank high in budget requests.

A number of respondents saw the lack of government regulations and guidance as a concern, as the nation becomes more and more dependent on computers. They noted with dismay and disappointment that implementing rules and regulations are still not in place for important statutes, and that it is only recently that guidelines have been issued for government-wide computer networks. Respondents further noted the lack of enterprise-wide knowledge and understanding of the guidelines that do exist and expressed the need for stronger emphasis by many schools and training agencies on cyber security practices.

On the other hand, only a few respondents expressed concern about cyber terrorism as a growing threat to the Philippines. The survey is unable to determine if this reflects a true lack of concern or a resignation to the fact that other issues are of greater priority than terrorism. This study, likewise, is unable to determine if the Philippine context of terrorism, which has seen a plethora of what are perceived as non-technologically adept people quite active with rifles and improvised explosive devices, discourages people from thinking that terrorists could also threaten computer systems.

FUTURE ACTIONS AND POLICY

The Philippines has some “islands of excellence” in individuals, entities and practices who understand and practice world-class cyber security. However, these “islands of excellence” are awash in a sea of mediocrity, apathy and almost wilful ignorance. The survey provides a very interesting look at the concerns and threats in the Philippine context and provides the foundation on which policies and action points may be developed and built. Below are some discrete and distinct actions and policy recommendations that will improve the cyber security of the Philippines. It is strongly noted, however, that, as James Carafano states: “Looking for single “silver-bullet” solutions will not work.” (Carafano, 2008) Thus, these recommendations must, first, be seen as aids to security and not as the ideal “end state” that will, in and of themselves, provide perfect cyber security. Cyber security, similar to the concept of “cyber threats,” is a constantly evolving concept and
practice. Practitioners must develop a habit and mindset of change and adaptation to new challenges. There are various valid approaches to cyber security. Some will emphasize hardware, others will emphasize software, and others, still, will focus on policies and procedures or rules and regulations. Each approach has something to add to the overall picture of security. Thus, each aspect must be developed and judged in relation to its “return on investment” to the organization.

A number of recommendations flow from the survey findings. These are laid out below, in clusters by priority of importance of impact of the recommendation on the nation. Within each cluster, the recommendations are labelled to identify the agents/actors that are best positioned to implement the recommendation.

**Very Important, urgent action needed with quick implementation (6 mos to 1 yr)**

**LEGISLATIVE:** Congress should budget appropriate funding to ensure that all government operated computers are equipped with licensed software that is regularly and automatically updated to ensure that security standards are consistently maintained. The laws must specifically prohibit the installation and use of any unlicensed software on any government computer and system.

**ALL BRANCHES OF GOVERNMENT:** Each branch of government should adopt and ensure use of encryption programs for all sensitive data, especially personal identification data stored on, or passing through, their networks.

**Moderately Important, near term time frame for implementation, (1yr to 2yrs)**

**ALL BRANCHES OF GOVERNMENT:** All government entities must establish and implement a robust system to identify agency appropriate programs to deny, deter, detect and disrupt probes, intrusions and attacks on their networks and computers.

**ACADEME:** In order to develop a strong cadre of national leadership in cyber security, it is recommended that an institution that is well regarded in national security, such as the National Defense College of the Philippines, develop education and training programs in cyber security for a wide range of national security professionals. Expertise in the cyber environment, risk management, best practices, effective interagency cooperation, and public-private partnerships will serve the nation well.

**EXECUTIVE BRANCH:** Each Department and agency of the Executive branch should issue appropriate executive orders requiring up to date software and security features on all hardware that access their respective networks and data. This would include privately owned computers, such as those owned by contractors, but not privately owned computers which access firewalled and protected government “e-commerce” sites.

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**EXECUTIVE BRANCH:** The executive branch should establish and provide adequate funding for a multi-sectoral/multi-agency entity to address cyber security and cyber attack of whatever kind that breached agreed upon "trigger" points, or "trip wires." The survey respondents were split on whether this entity should take the form of a The Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) "Cyber Corps" or be civilian, or mixed. There was agreement, though, that a DND/AFP Cyber Corps must be authorized to help protect civilian computers and systems, not just those belonging to DND/AFP. Several suggested that the entity be placed under the Philippines Department of Science and Technology.

The government must establish and fund the above agency so that it establishes and actively maintains outreach and information exchange process with cyber security agencies at the international level, especially in the ASEAN context, but also in the bilateral and multi-lateral context.

The government must mandate that this agency actively facilitate, but not control, exchanges of cyber security information among private sector entities, and among those agencies and government agencies. Regulations must protect the exchange of data from liability concerns.

**EXECUTIVE BRANCH:** The Department of Justice and the Department of Foreign Affairs must proactively develop and update Mutual Legal Assistance Treaties and other legal mechanisms to rapidly provide and obtain cyber evidence and information that will allow appropriately aggressive investigation of cyber incidents and attacks, in a manner that permits courts to accept the information into evidence if a prosecution occurs.

**LEGISLATIVE:** Congress should pass appropriate cyber security statutes, patterned on international standards and practices, adapted to the Philippine context, that enhance regional and international secure connectivity. These laws should apply to all government and private sector networks and computers. In this context, “computers” is defined as both “stationary” and “mobile” devices.

**LEGISLATIVE:** Congress should pass legislation requiring ISP’s and other network providers, including operators of fiber optic cable networks to install in partnership with the government, technology that allows the collection and monitoring of metadta passing over the network for the detection of cyber attacks and crimes. The enumerated crimes may be those, for example, that serve as predicates for money laundering violations.

**Important, mid to long term time frame for implementation, (2yrs to 4yrs)**

**EXECUTIVE BRANCH:** The Department of National Defense (DND) and the Armed Forces of the Philippines (AFP) should establish a central office that establishes effective liaison and cooperation with allied nations, and nations who are friendly with the Philippines to exchange information on cyber security matters.
EXECUTIVE BRANCH: The government, perhaps with DND/ AFP as the lead, should conduct robust “war games” yearly to test and develop cyber security plans, responses and strategies. These exercises should be patterned after similar North Atlantic Treaty Organization (NATO) exercises and those conducted yearly in Tallinn, Estonia. The exercises should adopt a “whole of government” and an appropriate “whole of society” inclusiveness model. DND/ AFP should strongly consider the inclusion, too, of selected ASEAN nations.

EXECUTIVE BRANCH: Each agency should inventory, and then establish measures that effectively monitor critical infrastructures, especially those that affect life safety and the financial industry, for probes and attacks, and allow response and defense of that infrastructure.

EXECUTIVE BRANCH: The Department of Education and the Commission on Higher Education (CHED) must require all grades of schooling to include cyber security instruction, integrated into the existing curricula. This may be on-line safety practices for elementary school level, to more complex practices at the higher grades.

EXECUTIVE BRANCH: CHEd and the Technical Education and Skills Development Authority (TESDA) should require that all classes dealing with computers and computer related topics integrate cyber security related modules and instruction into the classes.

JUDICIAL and EXECUTIVE BRANCH: Law enforcement investigators from many agencies, fiscales and prosecutors, and judges/justices at all court levels must receive training in cyber security and legal issues related to cyber security in order to properly adjudicate allegations of cyber crimes.

EXECUTIVE BRANCH: Agencies such as the Securities and Exchange Commission should examine and issue rules and regulations for businesses mandating, pursuant to law, the public disclosure of data breaches and losses.

LEGISLATIVE: Congress should pass legislation that mandates the exchange of redacted confidential data between government entities and private entities, and among private entities, domestically within the Philippines and internationally, for the purpose of denying, deterring, detecting and disrupting cyber security events. Such sharing must be protected from liability law suits, in a manner similar to that accorded health information for disease and epidemic control.

LEGISLATIVE: Congress should pass legislation requiring the reporting by government and private sector entities, no matter the size, to a designated “lead agency” of all data base breaches and data losses that reach an agreed upon threshold, and require the reporting of attacks, cyber and physical, on networks and infrastructure. The reporting is to be considered confidential non-public information, but redacted information must be shared with government agencies, and private sector entities, on a need to know basis.