

ASEAN REGIONAL FORUM
Seminar on the Law of the Sea

Cooperative Mechanisms under UNCLOS; Regime of Marine Scientific Research

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It is my privilege to participate in this seminar on the Law of the Sea. As with any participation I have had in fora like ours today, I always indicate at the outset that I am not presenting an academic paper but policy perspectives, practical insights and institutional knowledge arising from earlier involvement in ocean policy and issues as career specialization and assignments as a Foreign Service Officer of the Philippines. I treat the subject of this presentation from a Philippines' perspective. As a policy paper, the thrust is to design a cooperative mechanism to serve the country's maritime security interests. As shall be explained later, however, this seemingly narrow country perspective indeed reflects a regional perspective on maritime security **cooperation** in its broad definition. The views expressed herein are personal.

Introduction: UNCLOS and Philippines Vital National Interests

1. Firstly, the Philippines perspective. The UNCLOS is of utmost importance to the regional and global geopolitical stance of the Philippines, and the principal repository of its vital national interests. This is on account of twin concerns of the country in regard to the Oceans; as a maritime State and as an **archipelago** and **archipelagic State**. These two basic premises relating to oceans policy are "givens" and manifest in the case of the Philippines, and this paper will not touch on the characteristics that defines the Philippines as a maritime State and as an archipelagic State. A third premise that impacts the Philippines' vital national interests in regard to maritime security and sustainable economic development is it's bordering enclosed and semi-enclosed seas. Whether as a State bordering enclosed or semi-enclosed seas, or simply its geological/geographical circumstances as an archipelago/archipelagic State, cooperative mechanisms to address its maritime concerns would be a necessity, whether pursuant to UNCLOS

or other cooperation modalities between States. In UNCLOS, however, a governance design for cooperation exists conceptually and in normative terms at Part IX thereof. Another cooperation modality that can be pursued within or outside UNCLOS is provided for under Annex VI to the UNCLOS. As the archipelago character of the Philippines would be a defining element in addressing its maritime security doctrine and infrastructure under cooperative mechanisms, the UNCLOS definition of the term is supplied below:

Article 46 : For the purposes of this Convention:

(a) “archipelagic State” means a State constituted wholly by one or more archipelagos and may include other islands;

(b) “archipelago” means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

2. In creating a tailor-made ocean governance design for the Philippines, awareness is necessary of the critical factors that make cooperative arrangements with other countries indispensable. Generally stated, it has among the highest marine biodiversity in the world with, for example, almost twice the coral species as that in the Great Barrier Reef; and the substantial part of the “Coral Triangle”, its base, is within the maritime jurisdictions of the Philippines’. High value straddling and highly migratory fish stocks and endangered marine mammals breed and feed in its waters. It is also most vulnerable to threats to the marine environment arising from human activities such as shipping, and energy exploration and exploitation. Finally, the Philippines would be the quintessential coastal/archipelagic State in that, according to PEMSEA, none of its municipalities and cities are more than a hundred kilometres from the coast. Presented in another way, if UNCLOS Part IX cooperation modality were not there, the Philippines still needs to emplace a region-wide cooperative governance mechanism with Parts IX, XII, XIII, and XIV prescriptions, to address vital national interests.

Cooperative Mechanisms under UNCLOS

3. The general proposition is that cooperative mechanisms under the 1982 United Nations Convention on the Law of the Sea, UNCLOS, is limitless, whether bilaterally, multilaterally, or universally, and could cover all aspects of ocean management and governance such as conservation and exploitation of fisheries and other marine resources, exploitation of seabed minerals, the preservation of the marine environment and biodiversity, and the safety, security and good order of maritime navigation. The UNCLOS, regarded as the **Constitution of the Oceans**, is a compendium of protective mechanisms or arrangements for a comprehensive and seamless ocean governance and protection, and exploration/exploitation of marine resources for the benefit of all mankind. Cooperative ocean management and governance, needless to say, is engendered by the **connectivity** of the oceans that covers almost **eighty-five percent (85%)** of the Earth's surface; that characterizes **Earth** as the **Ocean Planet**. Because of the latter characteristic of the ocean, the essence and rationale of UNCLOS is **cooperation** among all States, whether coastal, landlocked or geographically disadvantaged.

4. The UNCLOS therefore, is **the** overall framework cooperative mechanism; it is replete with repeated exhortations for cooperation in every aspect of ocean governance. The narrower focus of this presentation, which is cooperative mechanism for the protection and preservation of the marine environment, marine scientific research, and the development and transfer of marine technology is to highlight areas of essential importance to the ocean governance requirements of the Philippines as an archipelago/archipelagic State, as indeed they are also specifically mentioned in UNCLOS Part IX. Although the foregoing subjects are covered by separate ocean governance regimes they shall be treated together because they are germane and intrinsically linked to each other; hardly useful each without the others.

5. The respective chapters in the Convention on the aforementioned subjects are always premised with hortatory prescriptions for cooperation. What will be projected here would only be the general provisions on cooperation covering the said subject areas. For emphasis and greater appreciation, the relevant UNCLOS provisions, and accompanying calls for cooperation, are reproduced below:

➤ **Part XII – Protection and preservation of the marine environment**

Section 1 – General Provisions

Article 192. General Obligation - States have the obligation to protect and preserve the marine environment.

Section 2 – Global and Regional Co-operation

Article 197. Co-operation on a global or regional basis - States shall co-operate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.

Article 200. Studies, research programmes and exchange of information data – States shall co-operate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment. They shall endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution, exposure to it, and its pathways, risks and remedies.

Section 3 – Technical Assistance

Article 202. Scientific and technical assistance to developing States – States shall, directly or through competent international organizations:

- a) promote programmes of scientific, educational, technical and other assistance to developing States for the protection and preservation of the marine environment and the prevention, reduction and control of marine pollution. Such assistance shall include, *inter alia*:**

- (i) training of their scientific and technical personnel;
 - (ii) facilitating their participation in relevant international programmes;
 - (iii) supplying them with necessary equipment and facilities;
 - (iv) enhancing their capacity to manufacture such equipment;
 - (v) advice on and developing facilities for research, monitoring, educational and other programmes;
- b) provide appropriate assistance, especially to developing States, for the minimization of the effects of major incidents which may cause serious pollution of the marine environment;
- c) provide appropriate assistance, especially to developing States, concerning the preparation of environmental assessments.

➤ **Part XIII – Marine Scientific Research**

Section 2 – International Cooperation

Article 242. Promotion of international co-operation

1. States and competent international organizations shall, in accordance with the principle of respect for sovereignty and jurisdiction and on the basis of mutual benefit, promote international co-operation in marine scientific research for peaceful purposes.
2. In this context, without prejudice to the rights and duties of States under this Convention, a State, in the application of this Part, shall provide, as appropriate, other States with a reasonable opportunity to obtain from it, or with its co-operation, information necessary to prevent and control damage to the health and safety of persons and to the marine environment.

Article 243. Creation of favourable conditions - States and competent international organizations shall co-operate, through

the conclusion of bilateral and multilateral agreements, to create favourable conditions for the conduct of marine scientific research in the marine environment and to integrate the efforts of scientists in studying the essence of phenomena and processes occurring in the marine environment and the interrelations between them.

[The above provision should be read in conjunction with **Section 1 General Provisions** at Article 238.]

➤ **Part XIV – Development and transfer of marine technology**
Section I – General Provisions

Article 266. Promotion of the development and transfer of marine technology

1. States, directly or through competent international organizations, shall co-operate in accordance with their capabilities to promote actively the development and transfer of marine science and marine technology on fair and reasonable terms and conditions.

2. States shall promote the development of the marine scientific and technological capacity of States which may need and request technical assistance in this field, particularly developing States, including land-locked and geographically disadvantaged States, with regard to the exploration, exploitation, conservation and management of marine resources, the protection and preservation of the marine environment, marine scientific research and other activities in the marine environment compatible with this Convention, with a view to accelerating the social and economic development of the developing States.

3. States shall endeavour to foster favourable economic and legal conditions for the transfer of marine technology for the benefit of all parties concerned on an equitable basis.

The sense and import of the foregoing provisions and cooperation concept, especially in regard to special consideration in favour of developing

countries, is further consolidated and restated in Annex VI to the Convention as a Resolution of the Third Law of the Sea Conference, discussed later.

UNCLOS Channels of Cooperation for the Philippines

6. While, as indicated above, there can be no conceivable limit to unilateral actions and bilateral/regional cooperation to protect and advance Philippines vital maritime security interests, two types of multilateral cooperation under UNCLOS could most suitably and appropriately serve those interests, to wit:

- cooperation among States bordering enclosed and semi-enclosed seas, at Part IX thereof
- cooperation under Annex VI thereof.

7. In regard to the first cooperation modality mentioned above, a cooperative mechanism is deemed necessary and compelled under UNCLOS in an ocean geographical/geological configuration called **enclosed or semi-enclosed seas**, defined below:

Article 122: Definition – For the purposes of this Convention, “enclosed semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

In such an ocean geological configuration, UNCLOS Part IX compels cooperation as follows:

Article 123: Cooperation of States bordering enclosed or semi-enclosed seas – States bordering an enclosed or semi-enclosed sea should cooperate with each other in the exercise of their rights and in the performance of their duties

under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization . . .

8. Cooperation under UNCLOS Part IX is compelled cooperation for the Philippines being encompassed by enclosed or semi-enclosed seas at its northern, western and southern boundaries and maritime jurisdictions. Moreover, and parenthetically, the unique geographical/geological circumstances of the Philippines, UNCLOS mandate or not, the specialized governance scheme under UNCLOS Part IX would be most suitable to the archipelago character and circumstances of the country, and indeed, of neighbouring regional States. Among a few enclosed and semi-enclosed seas in the world, the classic layout for application of UNCLOS Part IX on a regional scale is the maritime region encompassing Southeast and East Asia, wherein the **“maritime heartland”** and **epicentre** for conservation and protection is the Philippines. To appreciate the mandatory nature of cooperation in the setting of enclosed or semi-enclosed seas, attention is invited back to Article 197 earlier cited, where cooperation on the protection and preservation of the marine environment is specially called for, **on a regional basis . . . “taking into account characteristic regional features”**.

9. The second cooperation modality compelled for the Philippines mentioned above adopts a concept otherwise extraneous to UNCLOS which is transported from the United Nations Conference on Trade and Development (UNCTAD). This concept relates to the economic/social aspect of the ocean in sustainable economic development that focuses on assistance to developing countries among themselves, or in the form of development assistance and cooperation from developed countries to developing countries. The aforementioned ocean cooperation modality is derived from the Technical Cooperation among Developing Countries (TCDC) and is reflected in Article 202, Article 244 (2), and Article 266 (2). The essence of this UNCTAD arrangement incorporated/restated in UNCLOS and forming part thereof as Annex VI (please see Attachment 1), is that all countries must exert cooperative effort to promote the **“development of national marine science, technology and ocean service infrastructure”**. For the Philippines the earlier enumeration of a basket for cooperation in ocean research and environmental protection, and development and transfer of marine technology, can also be subsumed under this cooperation modality which would serve as a catch-all cooperation under UNCLOS outside of UNCLOS Part IX. The Philippines earlier attempted to implement this provision under its own TCDC

program as handled by the Technical Cooperation Council of the Philippines (TCCP) attached to the Department of Foreign Affairs (please see Attachment 2).

Regional Cooperation under UNCLOS Part IX for the Seas of Southeast and East Asia

10. In another vein, cooperative mechanisms under UNCLOS Part IX, and Parts XII, XIII and XIV for that matter, must necessarily be extrapolated to apply in an extended manner, to the interconnected enclosed and semi-enclosed seas surrounding the chain of archipelagos that is in a south-north alignment constituting the Pacific Ocean rampart of the Asian continent, from Papua-New Guinea to Indonesia and Philippines (the aforementioned are the three largest archipelagic States), and Japan (a large archipelago). The sheer size of the maritime area covered by these collection of archipelagos would amount to an archipelagic **continent** that makes application of UNCLOS Part IX even more pertinent and compelling. Indeed the southern region of this continent-sized island chain is a direct concern of Australia through the **Torres Strait**.

Cooperating Entities

11. Another important point to consider is that, on the matter of cooperation under UNCLOS Part IX, the stakeholders in Ocean governance in an enclosed or semi-enclosed sea(s) are not only the States bordering such seas but, upon invitation of those States, could include the following: (1) as appropriate, other interested States or international organizations, and (2) an appropriate regional organization, if so desired. To recapitulate, stakeholders under an UNCLOS Part IX cooperative scheme would be:

- states bordering an enclosed or semi-enclosed sea(s)
- other appropriate invited interested States
- appropriate invited international organizations (in the modern context this could include non-governmental organizations or NGO's)
- an appropriate regional organization

Once again, the separate treatment. In most UNCLOS provisions relating to cooperation, the call is, simply, to States to cooperate directly or through an international organization. In the case of an enclosed or semi-enclosed seas, the exhortation is in effect, for universal participation of all possible stakeholders, that would include, as worded at paragraph (d), Article 123, to wit: “other interested States or international organizations” ... and even ... “an appropriate regional organization”. In the latter case, a liberal reading should not preclude the establishment of a regional maritime organization among States bordering an enclosed or semi-enclosed sea. The same arrangement could be achieved if the International Maritime Organization (IMO) could be made to establish a regional office as it did in Africa sometime ago.

Broad Areas of Cooperation

12. Article 123 broadly exhorts cooperation, directly or through an appropriate regional organization, in the following manner:

- (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea;**
- (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment;**
- (c) to coordinate their scientific research policies and undertake, where appropriate joint programmes of scientific research in the area;**

* * *

As mentioned earlier, the above basket of ocean governance aspects is critical to the Philippines’ situation.

Philippines Initiative to pursue cooperative mechanisms under UNCLOS

13. The thrust of this paper is cooperative mechanisms under UNCLOS that could be designed and constructed to serve maritime security interests and

requirements of the Philippines. Further, two complementary modalities for cooperation in a regional scope have been identified: (1) UNCLOS Part IX on enclosed and semi-enclosed seas, and (2) Annex II of the 1982 Convention on the Law of the Sea. While there does not seem to be any official or formal initiatives on the part of the Government of the Philippines to pursue cooperative maritime security arrangements, there are programmes that can be considered initial building blocks towards this direction that can be placed under the umbrella of UNCLOS Part IX. Among the more recent ones are: (1) the Joint Oceanographic and Marine Scientific Research Expedition (JOMSRE), and (2) the Joint Marine Seismic Survey Undertaking (JMSU).

14. The premises have already been established that it would be imperative for the Philippines, in the context of its maritime security requirements as an archipelago/archipelagic State bordering enclosed and semi-enclosed seas to institute cooperative arrangements which have to be regional in scale. The twin modalities for pursuing cooperation on a regional scale could in the circumstances of the seas of Southeast and East Asia, still be under UNCLOS, at Part IX and Annex VI. In both instances aforementioned, the stakeholders need not be regional States. Stakeholders can be “other interested States” from all over the globe. In an UNCLOS Part IX arrangement, looking beyond the participation of regional countries which is “compulsory”, an excellent candidate for the Philippines to invite as “other interested States” would be Australia. The Philippines and other regional countries already have interactions with Australia under AUSAID which can be developed further and formalized as an UNCLOS Part IX or Annex VI modality. In this context, the Australian contribution, even leadership, in certain aspects would be more than altruism. It would be a proper stakeholder role if just for the following reasons, among others, that serves its own national interests.

- the southern base for marine environmental protection stretch would be the Torres Strait
- Australian seaborne foreign trade goes north through Southeast and East Asia regional seas
- the southern Blue Fin tuna and other tuna-like species that migrate within Australia breed from Indonesian waters

15. Finally, if Australia is interested in the foregoing proposition cooperation can quickly take off. The building blocks are already there through AUSAID as previously mentioned, and programs and projects can even begin and pursued in a Track II setting which is also the vehicle for many of its AUSAID programs. Among the known capabilities of Australia in pursuing maritime cooperation are in the following areas: Hydrography and Oceanography, Marine Science and Technology, Information Services and Surveillance, Port Development and Management, Maritime Transport and Joint Cooperation/Development in Oil and Gas. Australian assistance would also be sought after in the establishment of National and Regional Marine Scientific and Technical Centres under UNCLOS Part IX Section 3, and Philippines would be a most interested and appropriate location. In inviting Australia's enhanced stakeholder participation, reproduced below is an excerpt from a book "**Australia's MARITIME BRIDGE INTO Asia**", edited by Commodore Sam Bateman;

"The maritime environment is a particularly fertile field for both cooperation and competition. Countries can rarely take a truly independent, national view of the problems that can arise from their uses of the sea. They have to talk about and agree on issues such as the principles of the law of the sea, the prevention of marine pollution, the conservation of fish stocks, the safety and security of shipping, the delimitation of maritime boundaries, the monitoring of sea levels, and the responsible development of the mineral resources which may lie on or under the seabed. In implementing policies on these issues, nations have to take into account the interests and rights of their neighbours, as well as those of other countries which legitimately send ships into and through their waters for whatever purpose. These common interests provide much scope for cooperation and benefit in terms of both regional security and economic development."

The foregoing, however, is a motherhood statement in regard to cooperation among all States in regard to the ocean.

Conclusion:

16. This concluding chapter would be very brief. This paper as stated at the outset, is the Philippines perspective in the context of a regional maritime security arrangement under UNCLOS. If there are merits to this paper, its utility could in a very real sense be applied in an expanded regional scope. The modalities and approaches herein suggested, and all the elements, would be relevant to the seas of Southeast and East Asia. To reemphasize, the maritime region that is the concern of this paper is an archipelagic continent along the eastern flank of the Pacific Ocean interconnected by enclosed and semi-enclosed seas. In this maritime area is found three of the world's largest archipelagic States in an adjacency alignment, plus a fairly large archipelago, at the northern end. All States bordering Southeast and East Asia seas are stakeholders obliged to **cooperate** in ocean governance under UNCLOS ... at Part IX or Annex IV. In cooperative arrangements for ocean governance, however, whether in a Part IX or Annex VI setting, participation can be universal.