

The Baseline Issue

(A Position Paper)

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Last August 2007, this author filed Senate Bill No. 1467 entitled “An Act Defining the Archipelagic Baselines of the Philippine Archipelago, Amending for the Purpose Republic Act No. 3046, as Amended by Republic Act No. 5446.” or otherwise known as the “Archipelagic Baselines Law of the Philippines.” The bill was the result of a series of consultations primarily with former Senator Leticia Ramos-Shahani, who first pushed for the Baselines bill way back in 1993. It basically defines the archipelagic baselines to include the Scarborough Shoal and designates the Kalayaan Island Group (KIG) as a “regime of islands.” To further facilitate the passing of the bill, the technical details provided by the National Mapping and Resource Information Authority (NAMRIA) as enumerated in House Bill No. 1202 filed by Congressman Antonio V. Cuenco as well as its other provisions were adopted in toto. Congress, however, filed HB 3216 that substituted for HB 1202.

Recently, controversies arose with the discovery of the particulars of the Joint Marine Seismic Undertaking (JMSU) being conducted by RP, China and Vietnam within the waters

off Palawan. Thereafter, Malacanang pressured Congress to revert HB 3216 back to the Committee on Foreign Relations ostensibly to push for certain amendments. These two seemingly unrelated events inevitably pushed the baselines issue at the top of the national policy agenda. Given this context, now is the best time for us to finally resolve this issue.

This paper intends to explain and justify the position adopted in SB 1467 and differentiate it with the other options, as well as to clarify other closely related subjects surrounding the baseline issue.

PD 1599, TREATY OF PARIS and UNCLOS

The first time the author studied the United Nations Convention on the Law of the Sea (UNCLOS) agreement was in 1994 as part of a course in International Law given to graduating cadets of the Philippine Military Academy who intend to join the Philippine Navy. The course focused on the UNCLOS provisions particularly: the archipelagic doctrine; the coastal state's rights and duties within the territorial sea, contiguous zone and the exclusive economic zone (EEZ); the right of innocent passage; the doctrine of hot pursuit; and other provisions concerning enforcement of maritime laws.

After graduating, however, the new Navy officers were surprised to find out that the NAMRIA-supplied nautical charts used aboard Philippine Navy ships defined the territorial limits of the country as those stated in the Treaty of Paris plus the attached KIG borders defined by PD 1596, and not the UNCLOS definitions as taught to them at PMA. To be fair, NAMRIA has no other basis than the Treaty of Paris because our country, precisely, has yet to pass a new baselines law that would amend the pre-UNCLOS baseline law, the RA 5446, which is not compliant with the UNCLOS criteria. To complicate matters, the Navy uses PD 1599, a pre-UNCLOS

unilateral declaration of our country's EEZ, as a mandate to enforce maritime laws in these areas. As a consequence, the author remembers that when their ship patrolled as far east as the Anson Shoal in the Pacific, they used the Treaty of Paris as reference. And when they patrolled as far west as the Scarborough Shoal in the South China Sea, they used PD 1599. In short, as of the moment, we have two sets of boundaries (PD 1599 and Treaty of Paris with PD 1596) and we will yet define another one (UNCLOS).

- 1. PD 1599**, as mentioned above, is a unilateral declaration by the Philippines of its EEZ as measured from the baselines as defined by RA 5446. It was signed by then Pres. Ferdinand Marcos on 11 June 1978.
- 2. The Treaty of Paris** is a peace treaty forged between the US and Spain in 10 December 1898. It detailed, among others, the territorial limits of the Philippine archipelago as being ceded by Spain to the US. These same limits were then used to define our national territory when we eventually gained independence from the US in 1946.
- 3. The UNCLOS**, formally known as the Third United Nations Convention on the Law of the Sea or UNCLOS III and also called the Law of the Sea Convention, refers to the international agreement that came out of the UN conferences from 1973 to 1982. The agreement consists of 320 articles and 9 annexes. To date, 155 countries have already ratified the UNCLOS and it officially came into force in 16 November 1994. The Philippines became the 11th country to ratify UNCLOS on 08 May 1984. It defines, among others, the