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CHINA'S  
COAST  
GUARD  
LAW: A

'TIME BOMB'  
READY TO  
EXPLODE



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# CHINA'S COAST GUARD LAW: A 'TIME BOMB' READY TO EXPLODE

On February 1, the China Coast Guard Law (CCGL) took effect, ten days after the new statute was passed on January 22, allowing China's white ships to use lethal force on foreign vessels entering Chinese maritime boundaries. The law turned out to be a game-changer in an ambiguous and disruptive security environment in the region. It is considered a double-edged sword in a time of an uncertain peace-war spectrum amid the contagious Covid-19 pandemic.

While it is inherent for China as a sovereign state to craft special laws such as the CCGL, the overlapping territorial claims in the contested South China Sea (SCS) remain a vulnerable flashpoint area where rules on the use of force<sup>1</sup> are conflicting, inauspicious, and lacking.

Behind the calculated and draconian measures of the People's Republic of China (PRC) to safeguard its perceived marine resources, there are considerable perplexities within the world's largest Coast Guard in an act at institutionalizing its maritime law enforcement force which could be grasped as red flags for regional and global security.<sup>2</sup>

While in 2018, the China Coast Guard (CCG) did carry mandates on maritime rights and enforcement,<sup>3</sup> it was only in 2013 when this controversial Chinese institution merged four of its five dragons of maritime law enforcement agencies; namely, the China Marine Surveillance (CMS), Maritime Police, Fishery Law Enforcement (FLE), and Anti-Smuggling Police were placed into a unified Coast Guard.<sup>4</sup>

Following the 2013 amalgamate, the CCG suffered organizational identity when it revisited past laws planned for the CMS, Maritime Police, FLE, and Anti-Smuggling Police respectively, including the "Law of the People's Republic of China on the Administration of Sea Areas," the "Fisheries Law of the People's Republic of China," and the "Public Security Administration Punishment Law of the People's Republic of China."<sup>5</sup>

The camouflaged identity of CCG permeated a saber-rattling imagery in the Indo-Pacific region,<sup>6</sup> formerly regarded as a civilian guard or maritime police under the now-defunct China's State Oceanic Administration to its current umbrella under the People's Armed Police (PAP). It is now weaponized to execute military tendencies under the command of the Central Military Committee (CMC) agreed last July 2018 as a result of the revision of the Armed Police Law in June 2020 during the 19th Meeting of the Standing Committee of China's 13th National People's Congress.

In Article 3 of the CCGL,<sup>7</sup> it contradicts the provisions of the United Nations Convention on the Law of the Seas (UNCLOS) pertaining to waters under the jurisdiction of a state covering internal waters, territorial sea, contiguous zone, exclusive economic zone, and the waters of the continental shelf, including the extended continental shelf that is beyond the limits of Beijing's maritime entitlements that were clarified in the 2016 arbitral ruling in favor of the Philippines.

Contrary to Article 14 of China's 1998 Exclusive Economic Zone (EEZ) and Continental Shelf Act<sup>8</sup> that comprises of China's historical waters other than jurisdictional waters<sup>9</sup> by which the CCGL can be used as an innovative legal instrument to further Chinese regional interest. More so, five statutory issues should be raised in the CCGL,<sup>10</sup> given the ambiguity and vagueness of contextual restrictions in the use of force under clauses 46 to 50 where the provisions explicitly outline conditions for using "police implements,"<sup>11</sup> hand-held weapons,<sup>12</sup> ship-and-airborne weapons,<sup>13</sup> no warning when provoked to dangerous outcomes,<sup>14</sup> and the use of force itself.<sup>15</sup>

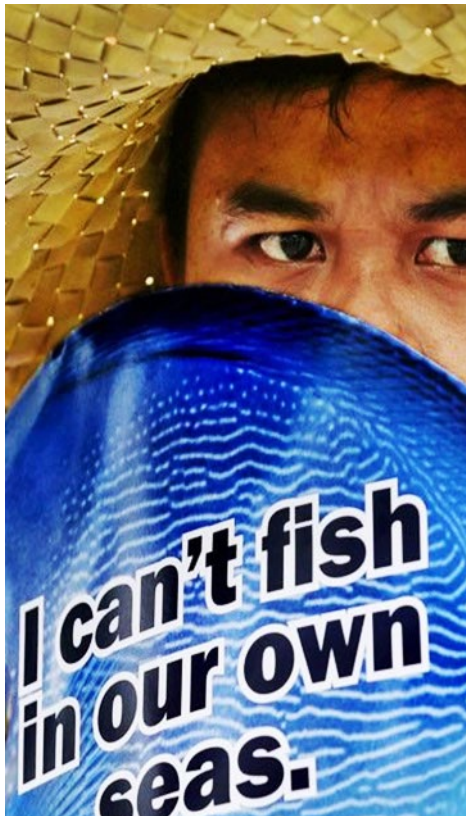
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While the Philippine Coast Guard (PCG)<sup>16</sup> sets to recruit at least 5,500 officers and personnel this year alone, it is mandated to perform maritime search-and-rescue (SAR) operations, implement maritime law enforcement and maritime safety as protectors of the marine environment that should be knowledgeable of maritime security; and as guardian of the seas committed to saving lives by ensuring safe maritime transport, clearer seas and secure maritime jurisdiction.

From the original mandate of PCG as the country's vanguard against the entry of unsafe foreign vessels through its Port State Control under Republic Act No. 5173, otherwise known as, '*An Act Creating a Philippine Coast Guard*,'<sup>17</sup> approved on August 1967, Section 4 of the Act prescribes in the organization and administration of the PCG that it shall be headed by a Commandant subject to the approval of the Secretary of National Defense. It clearly specified that the PCG shall be administered and maintained as a separate unit of the Philippine Navy (PN) and it shall be specially trained and equipped for the effective discharge of police and duties at sea.<sup>18</sup>



In its past de facto military role despite a delegation as a separate unit of the PN, the PCG was called to serve the country with 15 specific functions from the enforcement of maritime law, maritime safety, and maritime security. However, pursuant to Republic Act No. 9993 or *An Act Establishing the Philippines Coast Guard as an Armed and Uniformed Service Attaches to the Department of Transportation and Communications*, the latest law was also called the '*Philippines Coast Guard Law of 2009*' or PCGL of 2009<sup>19</sup> that included maritime SAR and maritime environmental protection in its core mandate aside from the three major functions agreed in the repealed R.A. No. 5173.<sup>20</sup>

A thread of chain reaction for the denunciation of China's expansive maritime claims and military aggression emanated from vocal countries in the region while the Philippines came as the first

## FEATURES

### ON THE COVER

Cover, title page, content page, pages 3, 6, 7 and 8:  
[philstar.com/headlines/2021/02/10/2076733/carpio-wait-china-use-coast-guard-law-going-un-tribunal](http://philstar.com/headlines/2021/02/10/2076733/carpio-wait-china-use-coast-guard-law-going-un-tribunal); [jurist.org/news/2021/01/the-philippines-opposes-new-china-coastguard-laws-in-south-china-sea](http://jurist.org/news/2021/01/the-philippines-opposes-new-china-coastguard-laws-in-south-china-sea); [tribune.net.ph/index.php/2019/05/30/rescue-boats-for-rainy-season](http://tribune.net.ph/index.php/2019/05/30/rescue-boats-for-rainy-season); [philstar.com/headlines/2018/06/12/1823895/china-control-panatag-shoal-say-filipino-fishermen](http://philstar.com/headlines/2018/06/12/1823895/china-control-panatag-shoal-say-filipino-fishermen); [chiangraimitimes.com/thailand-national-news/china-continues-its-bullying-of-philippines-with-south-china-sea-patrols](http://chiangraimitimes.com/thailand-national-news/china-continues-its-bullying-of-philippines-with-south-china-sea-patrols); [philstar.com/headlines/2019/11/19/1970113/coast-guard-sends-patrol-vessels-west-philippine-sea-sulu-sea](http://philstar.com/headlines/2019/11/19/1970113/coast-guard-sends-patrol-vessels-west-philippine-sea-sulu-sea); [usni.org/magazines/proceedings/2016/december/maritime-hybrid-warfare-coming](http://usni.org/magazines/proceedings/2016/december/maritime-hybrid-warfare-coming); [aljazeera.com/news/2019/12/14/us-navy-commander-china-bullying-southeast-asian-neighbours](http://aljazeera.com/news/2019/12/14/us-navy-commander-china-bullying-southeast-asian-neighbours); and [theguardian.com/world/2018/feb/06/photos-beijings-militarisation-south-china-sea-philippines](http://theguardian.com/world/2018/feb/06/photos-beijings-militarisation-south-china-sea-philippines)

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## A 'TIME BOMB' READY TO EXPLODE

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# sovereign rights

country to file for diplomatic protest against PRC that touted the new maritime law as a verbal threat of war.<sup>21</sup>

But China deliberately enacted the contentious CGL amid increasing regional security threats, and tried to debunk from its end certain conclusions, while persuading the world that the act was a normal domestic legislative action conforming to international conventions and practices for China's enduring robust maritime policy.<sup>22</sup>

On the other hand, Vietnam pointedly summoned all sovereign states to comply with international laws and treaties,<sup>23</sup> particularly for the PRC that is a signatory and contracting member of the 1982 UNCLOS. This call was made after Filipino and Vietnamese fishermen<sup>24</sup> repeatedly suffered from Chinese coastguards' harassments and several occasions of ramming and sinking of vessels.

Evidently, China's coastguards possess bigger vessels to intimidate Southeast Asian smaller maritime enforcers' white ships. Once the CCGL has teeth, it authorizes China's sea vanguards to demolish other countries' visible structures on reefs and in waters claimed by the PRC. It will have a clout to establish temporary exclusion zones as needed to halt vessels and personnel from entering China's maritime domains.

The Vietnam Coast Guard (VCG) was legally institutionalized in 2013 that has the same semblance and organizational identity likened to CCG. During the 10th National Assembly of Vietnam, the VCG was placed under the Vietnam People's Army of the Vietnamese Ministry of Defence since its foundation in March 1998. But it stood independently from the People's Navy ten years after on March 2008, expanding operational flexibility to in-scope intelligence on international exchange and cooperation with the Association of Southeast Asian Nations' (ASEAN) counterparts in smuggling and on-sea drug interdictions.

Article 3 of the Coastguard Law of Vietnam, otherwise known as Law 33/2018/QH14, was passed into law in November 2018 that took effect on July 2019, reinforcing VCG's identity as an armed force and a specialized force of the Communist Party of Vietnam under the Ministry of Defence.<sup>25</sup> The VCG also exercises a role in maintaining sea security and protection in Vietnam's exclusive economic zones (EEZs) and continental shelf boundary. However, the aim to flex muscles for defensive measures against foreign aggressors has placed the law into a distinct ambiguity particularly on linear trajectory to open fire in time of the call of duty to protect Vietnam's sovereignty and sovereign rights over its jurisdiction.



In its jurisdiction, Vietnam now has a naval diplomacy tool in its control that could advance militaristic prowess in the region. It possesses Khanh Hoa 01, coded as HQ-561,<sup>26</sup> a mobile hospital ship at sea that aids fishermen in Truong Sa (Spratly) island district to retain peace of mind and work on defending the national sovereignty over seas and islands. It is also accountable for providing healthcare services for military personnel, residents, and militia on the Truong Sa archipelago.

Indonesian coastguard through the *Kesatuan Penjagaan Laut dan Pantai Republik* (KPLP)<sup>27</sup> is in charge of ensuring the safety of shipping inside the Indonesian maritime zone under the Ministry of Transportation,<sup>28</sup> but often conducts joint-exercise and joint-operations with the Indonesian Navy. While Indonesia takes an effort to take a big leap by simplifying its complex and oftentimes contradicting laws, the omnibus law covers the maritime security sector<sup>29</sup> including the coastguard under the Indonesian Maritime Security Agency, locally known in Bahasa Indonesia as *Badan Keamanan Laut Republik Indonesia* (BAKAMLA)<sup>30</sup> which was formally organized in 1972.

In fact, there are approximately 17 legislative measures focused on Jakarta's 'authority at sea' giving various national agencies and ministries overlapping law enforcement capacities at sea.<sup>31</sup> At present, the world's largest archipelago has its BAKAMLA divided into three maritime zones with future projections of expanding more to seven around Indonesia's nautical frontlines and several choke points. Same as the rest of the coastguards worldwide, Indonesia's own coastguard conducts security and safety patrols in its territorial waters and jurisdiction.<sup>32</sup>

Act No. 32 of 2014<sup>33</sup> concerning Indonesia's marine affairs law has 13 chapters that regulate the operations at sea, conducting security and safety patrols in the territorial

waters and the implementation of the Early Warning System for a disaster-prone country that gives way to exercise SAR operations.<sup>34</sup> Compared with China and most of Southeast Asia's coastguards, Indonesia's coastguard law has a two-faced organizational identity and baffled normative juridical functions, either a military or a civilian establishment,<sup>35</sup> given the incremental measures designed to boost its maritime capabilities.

In flexing muscles at sea, the Indonesian coastguard even boasts some maritime technological achievements in the region in terms of possessing the first vessel monitoring system data equipped with global fishing watch (GFW) and fishing vessel tracing platform.

Meanwhile, Malaysia's coastguard under the Malaysian Maritime Enforcement Agency (MMEA) was commissioned in 1999 as a law enforcement agency but received a potential operational service only in August 2002<sup>36</sup> under the Ministry of Home Affairs but was officially launched in March 2006. As a response to maritime terrorism threat in 2004,<sup>37</sup> the *Malaysian Maritime Enforcement Agency Act of 2004* was enacted, consisting of four parts and 19 sections, but has remained silent on the legal liability issues of the MMEA in conducting maritime-related operations and the articles containing the nature, scope, and extent of liabilities.<sup>38</sup>





However, MMEA is considered a civilian maritime law enforcement and search-and-rescue organization that has a potential nature to be integrated under the Malaysian Armed Forces command in times of emergency and wartime.

So far, the Philippines and Malaysia<sup>39</sup> have collaborated on a wide range of cooperative endeavors such as anti-piracy, border patrol, and border crossing, and environmental protection. The two maritime and neighboring Southeast Asian countries have so far signed 12 agreements that include the Memorandum of Agreement (MOA) on the Establishment of the Turtle Island Heritage Protected Area on May 31, 1996, the Second Protocol to the 1976 Agreement on Anti-Smuggling Cooperation on March 29, 1995, and among many others.

Due to the increased security awareness, surveillance, and maritime law enforcement, Malaysia heavily patrols the Malacca Strait while the Philippines completely controls the Sibuti Strait, two vital sea lanes in the region as gateways leading to China and other maritime trading partners. However, these two essential straits have the same maritime security problems from piracy to armed robbery at sea. Hence, both nations are drawing from international partners' experiences to foster regional cooperation and advance the shared goal of securing these seas for coastal populations' economic and physical welfare and the safe and sustainable development of the regional blue economy.

## A 'Time Bomb' Ready to Explode

While Southeast Asia has significantly increased its investments in coastguards and other Maritime Law Enforcement Agencies (MLEAs), the rise of middle powers in the region has paved a way for countries to accommodate a hedge on balancing of power, balancing of order, balancing of relations, and balancing of narratives in asymmetrical maritime competition.

Although it is a military practice among coastguards worldwide to put the organization of maritime police patrol under armed organizations in charge of maritime law enforcement that is not a unique feature in China alone; American and European navies also perform coastguard duties. But there is an imminent danger that PRC's overlapping territorial claims and increasing presence in the disputed SCS can create a scenario of dissonance to wedge alliances and reconfigure the regional security architecture.

A case in point was the 2019 Reed Bank ramming incident when *F/B-Gem-Ver*, a Filipino fishing vessel sank after it was rammed by a Chinese militia, *Yuemaobinyu 42212*, thereafter the stricken vessel's crew were rescued by a Vietnamese fishing boat. Violation of maritime law was incurred by non-observance of the provisions of international laws and maritime safety and security under the UNCLOS and International Convention for Safety of Life at Sea (SOLAS) agreed since in 1974.

China disregarded to highlight the ramming incident in the international community to negate the narrative that the SCS conundrum is well-managed and has not damaged the protracted crisis management dilemma. It was PRC's way of setting its foot in the contested waters securing the Paracel, the Spratlys where the Reed Bank is located, and also the



Scarborough Shoal. These triangular areas are major points for the Chinese militia and coastguard to patrol.<sup>40</sup>

Construed possibly as PRC's grey zone strategy<sup>41</sup> that goes back to a geostrategic ambiguity that falls between the wartime-peacetime spectrums. As China, a revisionist naval power, sophisticatedly applies a non-military, non-kinetic and unconventional means to achieve long-term political goals as it also exploits available means of national power to attain political objectives employing ambiguous expanse of the peace and war continuum.<sup>42</sup>

That while both China and the Philippines are practically engaging in geostrategic ambiguity along the wartime-peacetime spectrums, effectively demonstrating each other's refusal to budge as a function of their territorial claims in the SCS, the Philippines' hedging policy increasingly appears to play by Chinese objectives in the Chinese Lake which, on the surface, follows a single betting approach where Manila appears all-in on playing the China card.<sup>43</sup>

China responded aggressively by militarizing all its artificial islands as the People's Liberation Army Navy (PLAN) patrols extensively on Chinese maritime domain and claimed territories in the SCS to strengthen anti-access and area denial (A2/AD) capabilities that would limit the strategic capabilities of the United States and other Southeast Asian claimant-countries to deter future offensive actions.<sup>44</sup>

As a reaction to the implementation of CCGL which could heighten the risks of miscalculation, Manila will beef up its naval presence by deploying more naval assets in the contested waters of the SCS.<sup>45</sup> Although, the Philippines' armed forces can become an instrument for crisis management, not least for its deterrent effect on the opposition. With the thinking that deterrence works – when the costs of armed aggression, in the mind of the potential aggressor, seem larger than the benefits of going to war, the Philippines can decide to keep the peace by averting war first, at the same time maintaining the sovereignty of the state efficiently and credibly.<sup>46</sup>





Announcement of the extended suspension of the abrogation of the Philippines-United States (PH-US) Visiting Forces Agreement (VFA) effective December 2020 to June 2021 may lead to a power vacuum as experienced in 1995 when China took over the Mischief Reef three years after the Military Bases Agreement (MBA) between PH-US was terminated in 1992.

The VFA that operationalizes the effectiveness of the Mutual Defence Treaty (MDT) which will mark the 70 years of the military treaty may lead to the loss of Scarborough Shoal giving little incentive to the US to carry out the terms of the MDT, and immensely allowing a great power China to restructure and even upend the regional security environment without any credible deterrence. It will certainly pave a way for the Biden administration to restore the damaged security ties that coincides with the remaining one and a half years

## FOR THE PHILIPPINES TO ADDRESS CHINA'S ASSERTIVENESS AND UNDERHANDED CAMPAIGN IN THE SOUTH CHINA SEA, ROBUST DIPLOMATIC ENGAGEMENTS SHOULD BE FOSTERED TO INCLUDE BILATERAL, MULTILATERAL, MINILATERAL, AND LEGAL OPTIONS

of office of the Duterte regime that may be significant for the alliance. Although, the US-PH alliance will remain as long as the 1951 MDT is in place in spite of the possible termination of the VFA.

Meanwhile, the new US president will also have to face the fate of the Enhanced Defence Cooperation Agreement (EDCA) which will reach a 10-year mark in 2024 after its enactment in 2014. Given the domestic political considerations in the Philippines, it will further affect the efforts to improve the country's military readiness to handle territorial defense operations through joint-combat exercises such as the Balikatan (shoulder-to-shoulder) and DAGIT-PA exercises with the US caused by the spawning strategic competition between two rival powers that define the US-China relationship.

governance framework and mechanism would integrate and synchronize the efforts of concerned National Government Agencies (NGAs) and Local Government Units (LGUs) in the conduct of various economic activities to explore and exploit the country's maritime resources.<sup>49</sup>

For the Philippines to address China's assertiveness and underhanded campaign in the SCS, robust diplomatic engagements should be fostered to include bilateral, multilateral, minilateral, and legal options.<sup>50</sup> Related to the enhancement of operational strategies for the defense and security of the Philippines, particularly in the West Philippine Sea (WPS), as well as securing the key sea lane of communications (SLOCs) and maritime checkpoints within the Philippines' maritime territory, the expansion of military diplomacy will enhance the defense posture of the country through the conduct of maritime exercises and military-to-military engagements with other countries in the region.

## Maritime Governance Strategy

Maritime governance is a dynamic process consisting of interdependent areas of legal regulations, blue economy, security, and environmental elements. It covers horizontal and vertical interdependence and interrelation while dealing with oceans that will make maritime governance a necessary instrument for super and regional powers to attain respective interests. This strategy considers the role of oceans in the world affairs which becomes a valid indicator for maritime conflict and friction among nations.<sup>48</sup>

Implementation of a robust maritime

In developing the capabilities of national maritime law enforcement agencies like the PCG, it has to consider its vital role in maritime policing and security by training officers and personnel to maritime domain awareness and unique function on intelligence-gathering, surveillance and reconnaissance, and to hire and continue training experts on cybersecurity in maritime domains due to hybrid warfare<sup>51</sup> espoused by China.

Part of the increasing visibility of PCG and PN will be the deployment of more naval assets in the contested waterways to secure the territorial integrity and



national sovereignty of the Philippines.<sup>52</sup> As the maritime law enforcement agencies depend on the sophistication of technology leading to increasing maritime incidents on cyber-attacks and espionage on board and in ports, there should be procedural and strategic thinking in addressing these connivances and deterring attacks.

Maritime environmental protection is one of the five mandates in which the PCG remains weak aside from the maritime SAR, law enforcement, safety and security. As guardians of the sea, Filipino coastguards wear hats as protectors of marine life at sea. Considering the strategic location of the WPS, a part in the coral triangle covering the entirety of SCS, scientists and conservationists worldwide have baptized it as a metacentre of global marine biodiversity using the main criteria for high species biodiversity, habitat diversity, and oceanographic currents.

The coral triangle consists of 76 percent of the world's coral species having been endowed with 605 out of 798 coral species; 15 of which are regionally endemic species and share 41 regional endemic species. It has 37 percent of the world's reef fish species or 2,228 out of 6,000 of its kind are found in the area. It also houses 51 of the world's 70 mangrove species; six of the world's seven marine turtle species; seven of the world's 12 giant clam species; 23 of the world's 50 seagrass species; and various cetaceans including whales, dolphins, porpoises that are frequently observed in the region.<sup>53</sup>

In the end, to reach a pivotal transformation on maritime governance strategy, there is a need for governments in the region to invest in research and development (R&D) that are more critical than purchasing off-the-shelf equipment for maritime law enforcement agencies. These should be embedded in the curriculum of key maritime schools such as the Philippine Coast Guard Academy (PCGA), Philippine Military Academy (PMA), and Philippine National Police Academy (PNPA). The academe is the appropriate institution for the management of R&D centers because plebes and students have more devoted time for research and innovative ideas with the final developmental plan that is subject to the approval of the top brass, appropriately using public money and government funding.

## Enhancing Military Diplomacy in the Region

The increasing great power competition between the US and China,<sup>54</sup> both using contrasting grand strategies in the Indo-Pacific region,<sup>55</sup> led to the rise of middle powers in Southeast Asia.<sup>56</sup> As the US is determined to maintain a strong foothold and influence in the region by revitalizing alliances, still leading in the current power rivalry, the US employs diplomatic, economic, strategic, and informational strategies while China is anchored in increasing economic prowess and military command to counter US-led dominance in the region.<sup>57</sup>

In stringent action to flex muscles, China launched the "New Security Concept"<sup>58</sup> (NSC) that marks the shift from self-help security to what it termed mutual or common security that meant a win-win diplomacy as well as the promotion of mutual

“The Philippines’ territorial defense operations in the WPS, have been dependent on the evolving policy and security environment. The past policies were conceived as more reactive and limited in scope and lacked clever long-term objectives with neither effective nor substantive gains being achieved.”



trust and common interests through dialogue, cooperation, respect for each other's sovereignty, resolution of disputes through peaceful means, and common development.<sup>59</sup>

As the two competing superpowers are banking on hard and soft powers, the Armed Forces of the Philippines (AFP) pushes its throttle to reach a straight and level flight attitude and land smoothly in its bid to attain a long-awaited enhancement in the defense system and modernization programs,<sup>60</sup> as it needed all the necessary efforts in achieving this endeavor – from personnel readiness, materiel equipment, and training that must go hand-in-hand in coming up with an essential solution to sustain and maintain the capabilities of the armed forces.<sup>61</sup>

Historically speaking, the United States helped improve the AFP's defence capabilities in the past; considered as one of the most advanced armed forces in Asia in the 1970s. Not until a natural disaster due to Mt. Pinatubo's eruption and the controversial legislative action of disapproving the US bases that led to its primordial decline and deteriorating US military assistance, making the Philippines' armed forces the weakest in the world's largest continent.

Now that there is an improvement for a chance to engage again the AFP's defence capabilities obtained through US assistance,<sup>62</sup> with the United States' commitment to stability and prosperity in the area through the pursuit of preparedness, partnerships, and the promotion of a networked region.<sup>63</sup> On one hand, the Foreign Military Sales (FMS) has been an essential tool in projecting the US's security and

stability influence in the region that also enhances the capability of the AFP and other agencies in the security sector.<sup>64</sup> The US recently sent a list of weapons and military hardware to gratify the demand of payment of the most powerful nation to Asia's one of the weakest armed forces in exchange for retaining the VFA as part of the AFP's second phase of modernization program.<sup>65</sup>

It is deemed that for the past years, the Philippines' territorial defense operations in the WPS, have been dependent on the evolving policy and security environment. The past policies were conceived as more reactive and limited in scope and lacked clever long-term objectives with neither effective nor substantive gains being achieved. This led to the construction of perception that the AFP's military campaign strategy is internal security operations (ISO) – centric that declined to focus on the external defense.

The absence of the National Security Policy (NSP),<sup>66</sup> National Security Strategy (NSS),<sup>67</sup> National Defense Strategy (NDS)<sup>68</sup> and National Military Strategy (NMS)<sup>69</sup> from 2000 to 2011 solely led to the dependence of the AFP to the Defense Planning Guidance (DPG)<sup>70</sup> for its security programming and other executive pronouncements that lacked higher and strategic concept – making the Philippines' national security very military-centric.

With the presence and issuance of the NSP in 2011 aimed at providing for strategic direction of the country's national security, there were lacking elements to achieve the wholeness of the NSP in terms of strategic operability. From 2016 to 2020, security thinkers and policy-makers wrote the NSP, NSS,

NDS and NMS, providing the necessary compass in the country's security trajectory, armed with a realistic vision that it will take intergenerational time before the desired results can be realized.

What was thought of for the Philippines to achieve a robust strategic culture<sup>71</sup> was further complicated by the lack of overarching and comprehensive mechanisms offered by the NSP, NSS, NDS and NMS that would integrate all the instruments of national power of the Philippines to produce tangible results in terms of improving the territorial defence posture of the country through its armed forces and maritime law enforcement agencies in the WPS considering the present security situation in the contested waters.

An enhanced military diplomacy in the region will pacify tensions to achieve a future joint operating environment that may endure the changing conditions. The result is a complex interactive security architecture in which events are largely unpredictable and sometimes counterintuitive. Thus, the foreseeable future promises to be an era of persistent conflict – a period of protracted confrontation among states, non-state entities, and individual actors increasingly willing to use violence to achieve its political ends.

## A Strengthened Philippine Coast Guard

Despite being the first country in Asia to have established its own coastguard, the PCG still lags with its counterparts in terms of maritime assets and technological advancements, policy crafting and strategy development that would help the organization navigate

through the challenges of times, and be able to become more responsive in the face of geopolitical changes and massive destruction of marine resources.

The PCG maritime environmental protection<sup>72</sup> is one of the major areas of concern in the country specifically that the prevalence of illegal fishing methods is a paramount dilemma in the region. In the Philippines alone - illegal, unreported, and unregulated fishing (IUU) cases are relatively increasing due to geographical constraints affecting the reach of government efforts, and causing fishing communities and intermittent Chinese incursions in the WPS to engage in IUU fishing to sustain their livelihood and day-to-day survival.<sup>73</sup>

The Marine Environmental Protection Command (MEPCOM), a major unit of the PCG is vested with the primary responsibility to perform the marine environmental protection (MEP) function of the PCG.<sup>74</sup> Its mission is to prevent and mitigate pollution at sea and rivers and tributaries within the territorial jurisdiction of the Philippines to preserve a healthful and well-balanced marine environment and resources of the country. With all these mandated functions of the MEPCOM,<sup>75</sup> it is clear that the PCG is way behind in ensuring marine environmental protection. Until the present, the PCG is mostly active only in coastal clean-up, mangrove planting and reforestation, which is more on coastal and surface activities.

Mastery of knowledge and deep education of maritime environmental protection and policing it to halt the propensity of abuse in illegal fishing practices and destroying marine resources must be strengthened through the lead of the PCG. This leading maritime law enforcement agency identifies improvement of government and law enforcement reach as key factors in addressing the domestic fishing crisis by protecting ocean biodiversity and boosting local tourism. The coast guard seeks to address these gaps by proposing the following solutions through solid collaboration with other LGUs and regional partners to provide alternative livelihood to local communities by improving government reach to fishermen and promoting sustainable fishing to elevating tourism in the country.<sup>76</sup>

Effective information campaigns are vital and should be focused on two areas that include alternative fishing methods and access to capital to invest in new equipment to adopt these new procedures. Campaigns may be carried out in partnership with non-government organizations (NGOs) with the financial support of private organizations to conduct small workshops in local communities to train fishing communities to use safer fishing procedures while also providing them access towards private organizations willing to invest capital in their new equipment.

In order for the PCG to be able to attain leadership on environmental protection in terms of regional cooperation, it must explore international conventions and instrumentalities. The country's premier coast guard must be active in the International Seabed Authority (ISA) which is composed of 167 member-states that

are tasked to organize, regulate and control all mineral-related activities in the international seabed area for the benefit of mankind as a whole. Officers and personnel of the PCG must be trained for policy development to formulate laws that will protect the country's vast maritime jurisdiction including the exclusive continental shelf (ECS).

It must formulate and establish a regional fishing cooperation agreement with other claimant states within the grey areas in the WPS. In this case, the Philippines can respect the historical fishing rights of other maritime states without compromising the country's sovereignty; advancing the interest of Filipino fishermen as they compete with technologically advanced fishing fleets of other states. The PCG must craft policies in relation to maritime jurisdiction for the prevention and control, penalizing violators in terms of ship to sea pollution, and other substances within its EEZ.

The PCG must envision itself as the lead maritime agency in the country to perform blue water functions in maritime territorial jurisdiction; craft its own asset deployment plan; identify possible forward operating bases and integration of surveillance systems to strengthen the country's maritime domain awareness capabilities. Given this perspective, the PCG must not put its hand occupied with domestic problems such as illegal fishing activities, peace and order, and local rescue operations only since there are other government agencies responsible for these illegal and marine criminal felonies.<sup>79</sup>

It must be aggressive in the conduct of bilateral and multilateral cooperation among other coastguard agencies in the region in order to prevent miscalculations on the use of force and to prevent unnecessary armed conflicts in its grey areas. This must be taken into one of the primordial concerns of the PCG



as it takes on the responsibility of performing monitoring, control and surveillance activities beyond its territorial waters in terms of managing its maritime environment and natural resources.

By subscribing to normative rules-based behavior, the PCG should explore 'The Nairobi International Convention on the Removal of Wrecks' which was adopted by an international conference held in Kenya in 2007. The Convention provides the legal basis for nation-states to remove shipwrecks that may have the potential to affect adversely the safety of lives, goods and property at sea, as well as the marine environment. Currently, there is no comprehensive policy of the PCG when it comes to wreck removal and how it can be of use as additional revenue to the government. Given that the Philippines covers a vast maritime jurisdiction that should be treated as the nation's main resource, as such, the protection of the country's archipelagic waters must be a patrimonial duty to our national security.

Relatively, the International Union for Conservation of Nature (IUCN) standards can be an excellent source of environmental conservation standards. Moreover, IUCN is a membership Union that is composed of both government and civil society organizations. It harnesses the experience, resources and reach of its more than 1,400 member organizations and the input of more than 17,000 experts. This diversity and vast expertise make IUCN the global authority on the status of the natural world and the measures needed to safeguard it.

However, despite these odds, the PCG can identify areas where it can find equal footing with other coast guard agencies in the region. Although the organization had never been left out in the maritime strategy games, it has also carved out its own niche by creating

a Coast Guard Attaché Office at the International Maritime Organization (IMO)<sup>80</sup> in London. It has seconded Filipino Coast Guard officers in Regional Cooperation on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)<sup>81</sup> and International Fusion Centre in Singapore, all of these may be small steps that would eventually become a full journey for the organization.

Lastly, the Philippines as a maritime and archipelagic nation has not really focused on its national assets with untapped blue water economy ready to be explored for full economic potential, the mismanagement of its marine natural resources, and dilemma in securing the nation's sovereignty. The Philippines must refocus its policy particularly on defense and strategy from its land-based security actions towards an archipelagic nation strategy. By doing this, the PCG as the lead agency on maritime law enforcement<sup>82</sup> must craft and establish the deployment plan of its floating and aerial assets to conduct maritime domain awareness (MDA)<sup>83</sup> patrols in the country's EEZ and ECS to provide a clear picture of an effective administration of its maritime jurisdiction and management of its maritime resources.

# references

<sup>1</sup> Rules on the Use of Force is highly recommended in maritime conflicts to de-escalate the pressures of plausible shooting wars while claimant-countries in the SCS and other involved parties are awaiting for the completion and implementation of the Code of Conduct (CoC) to set regional norms and rules in order to avoid skirmishes in the disputed man-made islands by setting parameters for the Rules of Engagement (RoE) in any kind of disagreements and violations. While the CoC is a good opportunity to stabilize the situation in the SCS and countervail the coercive actions of China, however, the potential of the CoC is anchored on three factors that include: (1) the CoC should be legally-binding agreement, (2) the CoC should contain provisions on a legally-binding dispute resolution mechanism, and (3) the CoC should be anchored on UNCLOS provisions.

<sup>2</sup> The rapid expansion of the People's Liberation Army Navy (PLAN) has been undergirded by China's growing shipbuilding capability. During the mid-1990s, favourable market conditions and joint ventures with Japan and South Korea enabled China to upgrade its shipbuilding facilities and operational techniques. These advances have also facilitated China's transition into a commercial shipbuilding superpower. Merchant shipbuilding production rose from just 1 million gross tons in 1996 to a high of 39 million gross tons in 2011, which was more than double the output of Japan in the same year. In 2018, China surpassed South Korea as the global leader in shipbuilding orders. China's shipbuilding industry captured 43.9 percent of the global market in 2018, and 37.8 percent of global new orders in the first three quarters of 2019. The outbreak of the novel coronavirus pandemic severely disrupted new shipbuilding orders in early 2020, leading China to fall from the top spot in January to fourth in February. Nevertheless, China retained its global leadership accounting for 35 percent of the market total as of February 2020. If the great minds of our country can properly plan a strategy to attain the same positive output, the Philippines will be able to rise as a naval power in the future (DAP-PCG Class Paper, 2021).

<sup>3</sup> See <https://npcobserver.com/2018/06/22/npcsc-defers-vote-on-e-commerce-law-grants-law-enforcement-powers-to-military-controlled-coast-guard/>, accessed on February 12, 2021.

<sup>4</sup> Luo, Shuxian, The Diplomat, <https://thediplomat.com/2021/01/chinas-coast-guard-law-debilitating-or-reassuring/>, February 12, 2021.

<sup>5</sup> Ibid.

<sup>6</sup> Another important innovation that will have a major effect on the SCS is the Chinese and Russian adoption of hypersonic missile technology. China's latest anti-ship cruise missiles (ASCM) and re-entry vehicles on intercontinental missiles have the capability to outrange, evade and overwhelm all US countermeasures other than air launched ASCM, especially when launched en masse. This puts US carriers at risk, especially the closer they operate to China. In Phase 0, the shift from carrier building and continued operations, to more and smaller ships,

that include submarines which can escape detection and vulnerability to ASCM and intercontinental missiles. New technologies like rail guns, including magnetic shotgun shot, are being developed by both the US and Chinese navies. In Phase 1, a Chinese strike on even a single aircraft carrier would likely lead to 5,000 deaths and a massive nuclear first strike on all Chinese military assets, with the expectation of a counter-strike of many fewer nuclear weapons on US military assets (of lesser degree, because a US first strike would destroy most Chinese nuclear forces). The idea of sinking two US carriers would even cause 10,000 deaths. China, Russia, the US and Israel have begun placing missiles in standard containerized cargo, meaning that missiles can be loaded and fired from normal civilian cargo ships, and potentially from the larger of the 150,000 maritime militia vessels (DAP-PCG paper, 2021).

<sup>7</sup> "The CCG organization shall conduct law enforcement operations in the waters under the jurisdiction of China and in the airspace above the waters under the jurisdiction of China, and apply this Law."

<sup>8</sup> It stipulates that "the provisions of this law shall not affect the historical rights of China" and recognizes the existence of waters other than the exclusive economic zone and continental shelf over which China exercises jurisdiction. The same law also adds historical waters other than those recognized by the UNCLOS as China's jurisdictional waters by using the expression "other jurisdictional waters."

<sup>9</sup> Sakamoto, Shigeki, Lawfare, <https://www.lawfareblog.com/chinas-new-coast-guard-law-and-implications-maritime-security-east-and-south-china-seas>, accessed on February 17, 2021.

<sup>10</sup> Luo, Shuxian, The Diplomat, <https://thediplomat.com/2021/01/chinas-coast-guard-law-debilitating-or-reassuring/>, February 12, 2021.

<sup>11</sup> Clause 46 outlines four conditions for using "police implements": 1) when forcing the other vessel to stop during the course of boarding, inspection, interception, and pursuit; 2) when expelling or towing away the vessel by force; 3) when encountering obstruction or harm in the course of enforcing the law; 4) when handling other situations that need to stop crimes on the scene.

<sup>12</sup> Clause 47 stipulates two conditions for using hand-held weapons: 1) when evidence shows the vessel carries criminal suspects or illegally carries weapons, ammunitions, materials related to state secrets, narcotics, etc., and refuses to comply with orders to stop; 2) when foreign vessels enter sea areas under China's jurisdiction to conduct illegal production operations, refuse to comply with orders to stop, or resist boarding or inspection by other means, and other measures have failed to stop these illegal activities.

<sup>13</sup> Clause 48 specifies three scenarios for using ship- and air-borne weapons in addition to hand-held weapons: 1) when conducting counter-terrorism operations at sea; 2) when handling serious

violent incidents at sea; 3) when law enforcement vessels or aircraft are attacked by weapons or other dangerous means.

<sup>14</sup> Clause 49 states that CCG personnel may use weapons pursuant to law should there be no time to issue a warning or if a warning may provoke more dangerous outcomes.

<sup>15</sup> Clause 50 underscores that CCG personnel should reasonably assess the necessary level of force being used based on the nature, extent, and urgency of the danger posed by the illegal activity and criminals in order to avoid or reduce unwanted casualties or property losses.

<sup>16</sup> See Philippine Coast Guard at <https://coastguard.gov.ph/>, accessed on February 12, 2021.

<sup>17</sup> See LawPhil.com on R.A. No. 5173, [https://lawphil.net/statutes/repacts/ra1967/ra\\_5173\\_1967.html](https://lawphil.net/statutes/repacts/ra1967/ra_5173_1967.html), accessed on February 12, 2021.

<sup>18</sup> Ibid.

<sup>19</sup> See LawPhil.com on R.A. No. 9993, [https://www.lawphil.net/statutes/repacts/ra2010/ra\\_9993\\_2010.html](https://www.lawphil.net/statutes/repacts/ra2010/ra_9993_2010.html), accessed on February 12, 2021.

<sup>20</sup> This time, the Commandant of PCG shall carry the rank of Coast Guard Admiral with a maximum term of three years. Hence, pursuant to R.A. No. 9993, the PCG is mandated to enforce regulations in accordance with all relevant maritime international conventions, treaties or instruments of which the Philippine government is signatory and integrated to national laws.

<sup>21</sup> Gomez, Jim, ABC News, <https://abcnews.go.com/International/wireStory/philippines-protests-china-law-verbal-threat-war-75511461>, accessed on February 17, 2021.

<sup>22</sup> Limpot, Kristel, CNN Philippines, <https://www.cnnphilippines.com/news/2021/2/1/china-coast-guard-law-not-threat-of-war.html>, accessed on February 17, 2021.

<sup>23</sup> Anh Ngoc, VN Express International, <https://e.vnexpress.net/news/news/vietnam-calls-out-china-s-new-coast-guard-law-4228791.html>, accessed on February 17, 2021.

<sup>24</sup> Even though Vietnam's military spending in terms of percentage to GDP has remained around 2.2 percent, the insignificant value has been steadily increasing. The main reason is that Vietnam is one of the world's fastest growing economies.

<sup>25</sup> See Vietnam Coast Guard Law at <https://english.luatvietnam.vn/aw-no-33-2018-gh14-dated-november-19-2018-of-the-national-assembly-on-vietnam-coast-guard-law-169345-Doc1.html>, accessed on February 17, 2021.

<sup>26</sup> The ship was launched on April 26, 2012, and put in operation in 2013. With a capacity of 2,070 tons, HQ-561 is able to carry 200 people, operating



unceasingly during 45 days at sea and can deal with level-10 waves. This makes it a very important maritime asset for Vietnam. Built by the Z189 Shipbuilding Company of the Ministry of National Defence and based at Khanh Hoa province's Cam Ranh port, the ship takes military officers, servicemen and passengers to visit and work on the archipelago.

<sup>27</sup> The agency is not part or associated with the Indonesian National Armed Forces, although the top-ranking leadership is handpicked from the Indonesian Navy.

<sup>28</sup> The Indonesian Government's transport department has set up a three-pronged archipelago belt project – the Northern, Middle, and Southern Archipelago Belts to connect different parts of Indonesia. Though the idea of interconnecting thousands of Indonesian islands has long existed, it received severe governmental attention for the first time in the Defence White Paper of 2003. It was further elaborated in the Defence White Paper of 2008 (DAP-PCG paper, 2021).

<sup>29</sup> Darmawan, Aristyo Rizka, The ASEAN Post, <https://theaseanpost.com/article/omnibus-law-indonesias-maritime-security>, accessed on February 17, 2021.

<sup>30</sup> It is a non-ministerial government institution that reports directly to the President through the Coordinating Ministry for Political, Legal, and Security Affairs.

<sup>31</sup> Dwi Astuti Palupi and Dwi Astuti Palupi, <https://www.atlantispress.com/proceedings/sores-18/55915311>, accessed on February 17, 2021.

<sup>32</sup> See BAKAMLA at <https://dpd.go.id/berita-269-komite-ii-dpd-ri-peran-bakamla-belum-optimal>, accessed on February 17, 2021.

<sup>33</sup> See Law of the Republic of Indonesia No. 32 of 2014 about the Sea at <https://www.informea.org/en/legislation/law-republic-indonesia-no-32-2014-about-sea>, accessed on February 17, 2021.

<sup>34</sup> While it carries authority “to conduct instant chase; dismiss, inspect, arrest, carry and deliver the ship to the relevant agency authorized to carry out further legal proceedings; and integrating security and safety information systems in the territorial waters of Indonesia and Indonesia's jurisdiction,” under Article 63 of the said Act

<sup>35</sup> Dwi Astuti Palupi and Dwi Astuti Palupi, <https://www.atlantispress.com/proceedings/sores-18/55915311>, accessed on February 17, 2021.

<sup>36</sup> Dolbow, Jim, US Naval Institute, <https://www.usni.org/magazines/proceedings/2018/april/malaysia-coast-guard-one-watch>, accessed on February 17, 2021.

<sup>37</sup> In 2016, the PCG and PN increased patrols in the Sulu Sea in response to a spate of ship hijackings, kidnappings, and armed robberies perpetrated by the Abu Sayaff Group (ASG), an Islamic extrem-

ist group. Considering the growing presence and geographical reach of kidnapped-for-ransom groups with perceived linkages to violent extremism within the tri-border area, securing the maritime borders has become a priority for Malaysian and Philippine authorities recently.

<sup>38</sup> Ui Joo Ooi, Irwin, Australian and New Zealand Maritime Law Journal, <https://ssl.law.uq.edu.au/journals/index.php/maritimejournal/article/view/31>, accessed on February 17, 2021.

<sup>39</sup> Malaysia has a weak stand on southern islands' claim nearest to them under the Law of the Sea. They receive large infrastructure development investments from China, thus cannot pressure its share more aggressively.

<sup>40</sup> ABS-CBN News, <https://news.abs-cbn.com/spotlight/06/18/19/reed-bank-incident-may-have-been-meant-to-drive-away-filipino-fishermen>, accessed on February 18, 2021.

<sup>41</sup> The adverse impact of China's grey zone strategy in the SCS on the Philippines' territorial integrity and national sovereignty has been documented in several academic security discourses. For one, China's seven (7) artificial islands in the Spratly Islands, including the three (3) biggest ones – Fier Cross Reef, Subi Reef, and Mischief Reef, are within the country's claimed Kalayaan Island Group (KIG), while three out of seven are within the Philippines' EEZ. The large presence of Chinese maritime forces employing “swarming tactics” and “cabbage strategy” has effectively given China a de facto control over the KIG and the entire WPS. The pervasive and intimidating presence of Chinese maritime forces discouraged potential investors from exploring the huge potential of oil and gas deposits within the WPS. Environmental crimes perpetuated by the Chinese for maritime wildlife trafficking in Palawan and other areas certainly threatened the ecological balance and sustainability of the Philippines' economic development.

<sup>42</sup> Cabalza, Chester, Law and Society blog, <http://cbclawmatters.blogspot.com/2019/02/philippine-policy-options-to-chinas.html>, accessed on February 17, 2021.

<sup>43</sup> Cabalza, Chester and Payumo, Mark, Diplomatic Courier, <https://www.diplomaticcourier.com/posts/manila-gives-rise-to-philippinization>, accessed on February 18, 2021.

<sup>44</sup> Cabalza, Chester, Law and Society blog, <http://cbclawmatters.blogspot.com/2019/08/>, accessed on February 18, 2021.

<sup>45</sup> Islands nearest the Philippines and Vietnam's EEZ oil fields were left to their respective countries, but not allowed to develop exclusively. This makes China's continued incrementalism — for example its occupation of Scarborough Shoal in 2012. But it is how Beijing increases nationalistic sentiment, maintains domestic control, and makes gains over time, hoping not to provoke a defensive reaction. It waits for opportunities for the U.S. government

to take over vacant territory, even though that territory has been claimed by other countries and those claims are validated by international law (DAP-PCG paper, 2021).

<sup>46</sup> Cabalza, Chester, Rappler, <https://www.rappler.com/voices/imho/analysis-how-can-france-modernize-philippines-armed-forces>, accessed on February 18, 2021.

<sup>47</sup> It is important for the Philippines to deter Chinese aggression and to convince Beijing to compromise by achieving a common ground as China continuously employs grey zone strategy in the disputed waterways. The Philippine government recently called for payment of the US in its VFA operations in the Philippines and around the region amounting to US\$16 billion but there is also a demand for the PRC to compensate the Philippines for 800 billion pesos for the destruction of marine resources in the WPS as Japan and the US previously paid the archipelagic Southeast Asian country for its damages during World War II and the maritime environmental destruction caused by a US Navy ship in Tubbataha Reef. There are doubts that it could generate a cash register diplomacy, however, it can be viewed as pragmatic for economic support to survive the current pandemic.

<sup>48</sup> Lukaszuk, Tomasz, University of Warsaw, [https://www.researchgate.net/publication/336774990\\_The\\_Concept\\_of\\_Maritime\\_Governance\\_in\\_International\\_Relations](https://www.researchgate.net/publication/336774990_The_Concept_of_Maritime_Governance_in_International_Relations), accessed on February 21, 2020.

<sup>49</sup> Among PCG's five mandates, maritime environmental protection is one of its weakest tasks due to the following conditions: (1) lacy of unity of command and effort relative to addressing the issues in the SCS, (2) lack of capability in the policy framework and lack of coordination in the enforcement of maritime laws, (3) economic vulnerabilities due to economic dependencies with China and the lack of economic resources for the modernization of AFP and PCG, (4) lack of robust maritime governance framework and mechanisms; (5) weak intelligence capabilities to monitor entry of foreign nationals and Chinese investments in strategic sectors and industries; (6) inability of the PCG to effectively perform some of its mandates, and (7) lack of adequate naval and air assets to defend and safeguard the sovereignty and sovereign rights of the Philippines.

<sup>50</sup> Bilateral relations refer to the strengthening of Philippine diplomatic relations with the US or China and other countries. Multilateral options relate to exploiting the potential of the ASEAN UN and other international forums. Minilateral options refer to an emerging diplomatic mechanism relative to developing and taking advantage of a smaller grouping of states with common interests ranging from trilateral or quadrilateral arrangements. The last diplomatic option is to explore the Philippine legal strengths brought about by the favourable 2016 PCA ruling that invalidates China's historic rights in the SCS.

# references

<sup>51</sup> This approach can be construed as “as guerrilla war at sea”.

<sup>52</sup> The Straits Times, “Manila to beef up naval presence in the South China Sea,” <https://www.straitstimes.com/asia/se-asia/manila-to-beef-up-naval-presence-in-s-china-sea>, accessed on February 21, 2020.

<sup>53</sup> The Philippines is an archipelagic nation of 7,107 islands covering 800,000 square miles or about 30 million hectares. The country does not share any land borders with neighboring countries; instead, it is bordered by the Pacific Ocean in the east, the South China Sea in the west, the Celebes Sea in the south, and the Bashi Channel up north. In 2012, the island territory of the Philippines increased by 13 million hectares when the UNCLOS approved the Philippines’ claim to Benham Rise; a seismically active region and volcanic ridge located 250 kilometres off the northern coastline of Dinapigue, Isabela. Interestingly, these vast surroundings are complemented by a naval and air military that has no force to project. The Philippines possesses an ill-equipped, deteriorated, and obsolete Navy and Air Force in Asia. Military spending of the Philippines, especially the scale for its coast guard and navy upgrade and modernization, is significantly less than Vietnam, Thailand, Malaysia, Indonesia and Singapore. That being said, there now exists a huge capability asymmetry between the Philippines and its neighbours in Southeast Asia, to achieve parity with the surface and air force capabilities. It can possibly consider shore-based missiles, mine warfare, and submarine warfare to level the Asian playing field.

<sup>54</sup> Despite the perceived age of hegemonic transition with the Covid-19 pandemic contributing to change and continuity in the global order and impacting the US grand strategy, China is a new challenger but it is challenging the US and the West in its global liberal order, alliances, and democratic ideals. China is still no match militarily, catching up economically and has very little soft power compared to the widely-accepted American soft and hard powers.

<sup>55</sup> There are at least three types of regional security order in the Asia-Pacific, namely: hegemonic; balance of power; and, community-based that overlap in the evolving security architecture.

<sup>56</sup> ASEAN and other ASEAN-related institutions such as the ASEAN Regional Forum (ARF) represent a normative, community-based order that may form the basis of an emerging security community.

<sup>57</sup> “China is leveraging military modernization, influence operations, and predatory economics to coerce neighbouring countries to reorder the Indo-Pacific region to their advantage” (US NDS, 2018). Further, “it seeks to displace the United States in the Indo-Pacific region, expand the reaches of its state-driven economic model, and reorder the region in its favour” (US NSS, 2017).

<sup>58</sup> China is redefining its role. As such, it envisions a multipolar world order and a new regional security architecture based on the new global dis-

tribution of power. Included in the China’s “peaceful rise” mantra and “charm offensive” strategy is the altering of the geopolitical landscape by challenging America’s continuing regional supremacy (Kumar, Anil, 2012).

<sup>59</sup> The NSC identifies five types of security, namely: military; political/regime; economic; social/environmental; and, scientific and technological.

<sup>60</sup> The AFP Modernization Act includes Bases and Support System Development. It entails to develop permanent bases for land, air, and naval forces to conform to the national defence strategies and the government’s socioeconomic thrusts; provide a systematic relocation of AFP units to enhance their capabilities; provide an adequate support system and housing to AFP units and personnel; provide training grounds for manoeuvre and territorial forces and reserve components; and develop bases and camps with standard criteria for space allocations, zoning, and efficient correlation of land areas and structures.

<sup>61</sup> R.A. 9184 requires all procurement to be tendered through public bidding. However, the Act provides other alternative procurement modes. The Negotiated Procurement points to Section 53.8 under the Defence Cooperation Agreement which can become an option for defence-related procurement. The AFP may prefer negotiated procurement as the security purchase provides confidence to the purchaser because of its degree of assurance in managing contracts. Hence, this is where Foreign Military Sales (FMS) finds its role in the AFP’s procurement efforts.

<sup>62</sup> The FMS allows the US’s transfer or shares for current stocks or new procurements of defence equipment or services and training to international partners (Defence and Security Cooperation Agency, 2020). It can be in the form of grants or through acquisition using the negotiated procurement, specifically the government-to-government negotiation. In this procurement model, an eligible country enters into contract with the US Department of Defence through a Letter of Offer and Acceptance (LOA). The majority of FMS cases are paid with national funds from the partner nations.

<sup>63</sup> It was pronounced in the 2019 US Department of Defence Indo-Pacific Strategy Report (Department of Defence, 2019).

<sup>64</sup> Since President Duterte’s declaration of anti-US sentiments, access to capability was limited by the US government especially in the air munitions. Besides that, third-party restrictions emerged, which was absent in the past administrations. The General Security of Military Information Agreement (GSOMIA) is another restriction that the AFP is facing and must address that requires the organization of its system’s security to be stringent to protect sensitive defence equipment’s data and information.

<sup>65</sup> Salaverria, Leila, Philippine Daily Inquirer, <https://globalnation.inquirer.net/194205/us-weapons-hardware-in-exchange-for-vfa>, accessed on

March 10, 2021.

<sup>66</sup> The National Policy (NSP) 2017-2022 presents the national vision that safeguards the national interest of the Philippines which includes, among others the protection of the people, their way of life, welfare, and well-being, by strengthening the country’s democratic institutions, safeguarding its territorial integrity and sovereign rights.

<sup>67</sup> The National Security Strategy (NSS) was published in 2018, entitled “Security and Development for Transformational Change and Wellbeing of the Filipino People” that imprints a manifestation of President Duterte’s commitment to the security and development of the Filipino nation. Ideally, it underscores the “overarching principle that national security and economic development are closely intertwined and mutually reinforcing concepts.

<sup>68</sup> The National Defence Strategy (NDS) maps the planning, prioritization and resourcing processes to keep the Department of National Defence (DND) at the forefront of the country’s defence and security.

<sup>69</sup> The National Military Strategy (NMS) is about the AFP strategy for achieving our military objectives utilizing internal and external defence mission area capabilities, across the full spectrum of military operations, using the influence to shape the national and regional security environment, deter to prevent conflict brought about by complex and hybrid threats and defend to win against all internal and external security threats as general approaches.

<sup>70</sup> The DPG is a tool to guide military departments to set goals, priorities, and objectives including fiscal constraints for the development of the armed forces.

<sup>71</sup> Configurations and patterns of culture are rooted in the formative experiences of the state. These are influenced to some degree by the philosophical, political, cultural and cognitive characteristics of the nation and its elites (Johnston, 2005). Thus, a strategic culture defines a set of patterns of and for behaviour on war and peace issues. It helps shape behaviour on such issues as the use of force in diplomacy, civil-military relations and strategic doctrine (Booth, 2005).

<sup>72</sup> It is identified by PCG stakeholders that maritime environmental protection is one of the weakest in terms of implementation of laws among the mandates of the marine law enforcement agency.

<sup>73</sup> Cases of IUU fishing and destructive fishing practices (DFPs) basically threaten fishing sustainability and Philippine biodiversity through overfishing of endangered species. Without teeth in the law enforcement and limited reach to communities exercising criminal acts against the country’s marine resources, it threatens fishing sustainability in the long-term affecting the welfare of local fishing communities and the archipelagic state of the country.



<sup>74</sup> The MEP function of the PCG through the MEPCOM has been more on regulations, monitoring, inspections, policy making, and oil spill preparedness planning. Additionally, MEPCOM is also vested with the function to prepare doctrines related to pollution control and prevention, and marine resources preservation. It will recommend to the Commandant the promulgation of such rules and regulations. Although the MEPCOM has the capability to conduct water quality assessment but it is only limited to assessment while oil spill response is just reactionary to any oil spill incidents.

<sup>75</sup> This could be achieved by conducting meetings within the PCG involving concerned personnel, offices and commands to fully analyse where and what area PCG is lacking in terms of marine environmental protection (MAREP) enforcement. Next step would be an inter-agency coordination and meetings. The PCG on these forums should present clear descriptions of its authority regarding MAREP. This is essential since there are overlapping authorities with different government agencies on different marine conservation issues. Lastly, there should also be public consultation meetings so that the citizenry would have a say on what they really need in their communities.

<sup>76</sup> It would also be appropriate that by following and improving government response through tourism and infrastructure, the Philippine government should focus on making areas with high biodiversity into tourism areas. The shifts towards tourism will encourage the national government to designate areas with high biodiversity as protected areas for certain species of marine life, allowing it to repopulate and refill fish stocks in maritime regions around the country. Construction of ports in local communities to improve access to government services is also highly recommended. The PCG can increase its operations in areas where the Philippine government will develop port areas to ensure maritime environmental protection through improving government capability to enforce fishing laws and to provide alternative livelihood to the locals.

<sup>77</sup> Aside from its gradual time of change, information campaigns may have a hard time in finding private organizations willing to fund such equipment in communities it determines as a high-risk. Information campaigns may yield long-term changes if monitored well as investment in safer fishing gear and practices will allow them to pass these skills on to their descendants and create norms within the communities of the feasibility of sustainable fishing without destroying the environment.

<sup>78</sup> This will matter not only for the illegal fishing approach but also in partnerships with the NGOs like Coral Movement Philippines that sponsored the creation of artificial corals in Marinduque, employing the Miss Earth beauties for its campaign. This will also help in saving our coral reefs if this will be adopted nationwide. For methods improving law enforcement, these methods should be focused on three areas: protection of endangered species, implementing fishing restrictions and mitigating IUU fishing and DFPs. Proposals will cover international cooperation as well.

<sup>79</sup> The presence of the PNP Maritime Group can answer the peace and order problems, BFAR can answer the illegal fishing activities. While the LGU can strengthen its own SAR capability given that the LGU has its own budget on the risk reduction and response programs.

<sup>80</sup> IMO is a UN agency that looks at the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.

<sup>81</sup> ReCAAP was launched in November 2006 and the first government-to-government agreement aimed at promoting and enhancing cooperation against piracy and armed robbery against ships in Asia.

<sup>82</sup> The Philippines through PCG has greatly invested in the safeguarding of our ports, waterways, and coastal security. The Philippine Coast Guard Modernization Plan is continuously going forward to fully obtain its organization's vision and solely perform its mandates. Currently, procurement of new and modern equipment and floating assets such as patrol vessels, rescue helicopters, rescue planes and other search and rescue vehicles, equipped with advanced communication system and can able to conduct operations even in high seas. The institution also formulated the Philippine Coast Guard Maritime Strategy (PCG MS) strategic framework that guides all actions of the PCG organization to fulfil its mandates and meet strategic objectives toward enhancing its core functions. It also serves as the PCG's inputs to higher-level national and international policies.

<sup>83</sup> The PCG should invest on MDA, asset capability upgrades, and capacity building of the workforce. The MDA is an effective tool and system in order to be aware on what is happening in the maritime environment. This will provide actionable intelligence, common operating picture and real-time information to the decision makers in order to give real-time orders and commands to the PCG units on the ground to respond swiftly before endangering the marine environment. The PCG MDA should not only limit its own sensor capabilities within the country but likewise develop a mechanism for an inter-agency, regional and international cooperation and collaboration. While the Asset Capability Upgrades are adversaries in marine environment that is changing so fast and it needs to keep up with innovation. On the other hand, the Capacity Building employs human element that plays a big role in driving tangible and intangible actions and responses in protecting the marine environment. Operationally, it is paramount to train and educate PCG personnel on the utilization and operation of technology especially in the digital era and the presence of internet of things (IoT). Technology is becoming a revolutionary tool in today's applications in monitoring and analysing big data of marine resources.

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# ADR

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FOR STRATEGIC AND INTERNATIONAL STUDIES

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