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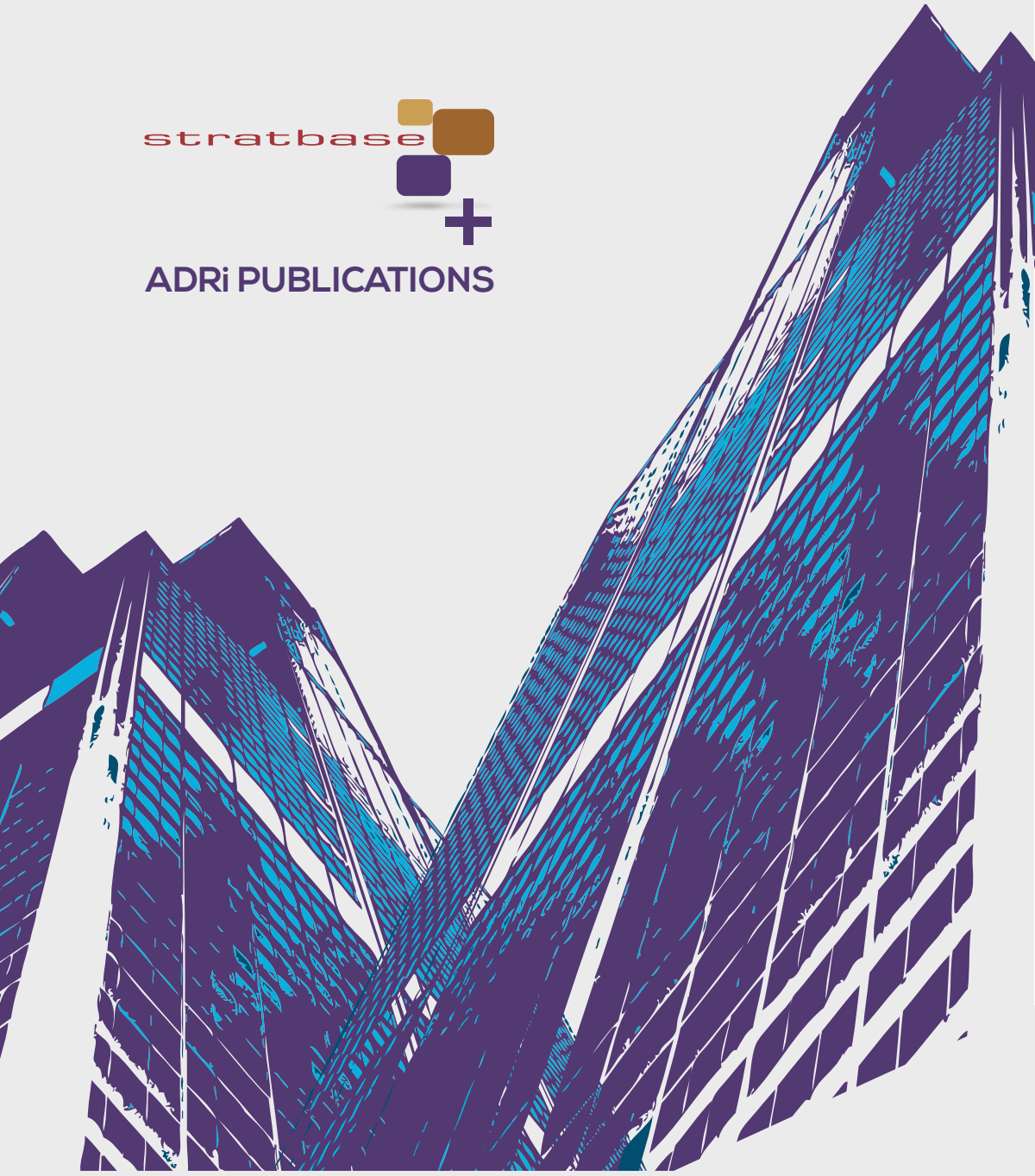

EBB AND FLOW:
SYNERGIES ON MARINE BIODIVERSITY CONSERVATION IN THE PHILIPPINES

MARY KRISTERIE A. BALEVA, ESQ, PHD

The Stratbase ADR Institute for Strategic and International Studies (ADRi) is an independent strategic research organization with the principal goal of addressing the issues affecting the Philippines and East Asia through:

1. Effecting national, regional, and international policy change or support
2. Fostering strategic ideas based on cooperation and innovative thinking
3. Providing a regional venue for collaboration and cooperation in dealing with critical issues in East Asia; and
4. Actively participating in regional debates and global conversations

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WRITTEN BY
MARY KRISTERIE A. BALEVA, ESQ, PHD

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ABSTRACT

The importance of marine ecosystems and their contribution to humanity and the planet cannot be overemphasized. The Philippines, being the "center of the center of marine shore fish biodiversity," is home to a myriad of marine life known to science and yet to be discovered. Despite the vast array of aquatic resources that the Philippines owns, the contribution of ocean-based industries to the gross domestic product remains below five percent, fisherfolk remain the poorest sectors in the society, and risk of depletion is looming due to anthropogenic activities, such as overexploitation, destructive fishing practices, illegal, unreported, and unregulated fishing, that exacerbate habitat loss and pollution. Assessing the risk and extent of loss resulting from the use and abuse of nature is crucial to formulate informed, evidence-based policies. It necessitates, however, the proper assessment and measurement of the value of nature which is an objective the Philippines aims to achieve through the passage and implementation of the Philippine Ecosystem and Natural Capital Accounting System Act. The Philippines is also casting wide its net with numerous multilateral environmental agreements, as it seeks to optimize the gains from the various values of biodiversity, while ensuring its protection. Notably, multilateral environmental agreements have the potential to promote regional stability and security by fostering cooperation on conservation and sustainable use, most recently through the Kunming-Montreal Global Biodiversity Framework. Moreover, a new implementing treaty under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, if ratified by a critical mass of States, may enhance necessary synergies that could help ease growing geopolitical tensions in the West Philippine Sea in pursuit of its main objective of protecting marine life that after all, knows no borders. Given the manifold environmental challenges facing the Philippines and the rest of the world, alongside a rapidly evolving geopolitical landscape, synergies among regional and international agreements, and more importantly, efforts to implement them, are crucial now more than ever.

EBB AND FLOW: SYNERGIES ON MARINE BIODIVERSITY CONSERVATION IN THE PHILIPPINES

MARY KRISTERIE A. BALEVA, ESQ, PHD

As far as global rankings on biological diversity are concerned, the Philippines belongs to the top tier. It is the 7th of the 18 mega-biodiverse countries on the planet, with half of its 52,000 species being endemic.[1] Moreover, its estimated 26,000-square-kilometer coral reef area[2] represents approximately 5% of the entire planet's. The country is at the heart of the highest concentration of corals in the world, the Coral Triangle – an immensely biodiversity-rich marine area that also encompasses the waters of Indonesia, Malaysia, Papua New Guinea, Solomon Islands, and Timor Leste – where 76% of the world's coral species are found, including 15 regionally endemic species.[3] Marine scientists describe the Philippines, particularly the Verde Island Passage Marine Corridor in Luzon, as the "center of the center of marine shore fish biodiversity,"[4] where multitudinous corals, fish, and mangroves, among many other marine life thrive.

With territorial waters of 2.2 million square kilometers[5] and the 5th longest coastline in the world of 36,289 kilometers[6] –surpassing the length of the coastlines of China and the United States–the Philippines is the natural habitat of a myriad of marine life known to science. These include charismatic species such as whale sharks and five of the world's seven species of sea turtles, and a host of species that are yet to be discovered. It is also part of the East Asian-Australasian Flyway that supports 50 million migratory waterbirds, 36 species of which are globally threatened, and spans across 22 countries from the

Russian Far East and Alaska, East Asia and Southeast Asia, to Australia and New Zealand.[7] This network of flyways is integral to ecological connectivity as coastal habitats serve as the fly path for shorebirds and waders during migration, and nesting sites for migratory seabirds.[8]

Image 1 . Photo of Tubbataha Reef
School of fish in Tubbataha Reef taken in June 2018 by Danny Ocampo

The Philippines is consistently among the foremost fish producing globally, given the astounding biota in its territorial waters.It ranked as high as 11th in the world in 2022, having produced over 4.34 million metric tons (MT) of fish, crustaceans, mollusks, and aquatic plants. In terms of gross value added (GVA), fishing and aquaculture contributed 12.82% equivalent to close to PHP270 billion of the PHP2.10 trillion GVA of the agriculture, forestry, and fishing sector.[10] In 2023, the Philippines generated 4.26 million MT of fish and fish products despite a decrease in production by 1.8%.[11]

True to the popular "*kanin* (rice) is life" local meme that articulates the predominant place of rice on the Filipino plate, only rice surpasses the prevalence of fish in the local diet, which contains 11.68% or 93.90 grams of

fish daily. Fish consumption is 63% higher than other sources of meat and 206% higher than poultry,[12] making aquatic food Filipinos' main source of animal meat protein. With these metrics, fish and fish products are clearly integral to food security in the Philippines.

Significantly, while the contribution of ocean-based industries to gross domestic product (GDP) declined from 4.7% in 2019 to a low of 3.4% in 2020 during the COVID-19 pandemic,[13] based on available data, it has been recovering since 2021 through an increase to 3.6% equivalent to PHP708.10 billion.[14] Growth by these industries by 21.1% reaped an increase to GDP contribution by 3.9% amounting to PHP857.74 billion in 2022, during which ocean-based industries expanded by 21.1%. Coastal tourism such as accommodations, food and beverage services activities, and recreation, as well as offshore and coastal mining, exhibited the highest growth rates.[15]

The resurgence of coastal tourism after the pandemic is unsurprising, not only due to the revival of tourist mobility but also because of the appeal of the beaches, seascapes, and marine ecosystems across the country. In 2022 and 2023, the World Travel Awards recognized the Philippines as the World's Leading Beach Destination, as well as Asia's Leading Beach Destination in 2013, 2016, 2018, and from 2020 to 2023.[16] Moreover, it received the awards for Asia's Leading Dive Destination and the World's Leading Dive Destination for five consecutive years, from 2019 to 2023.

Despite the vast array of the Philippines' aquatic resources, the contribution of ocean-based industries[17] to the GDP remains below 5%. Moreover, fisherfolk remain one of the poorest sectors in society with a poverty incidence of 30.6% in 2021.However alarming, this is already an improvement from 41.3% in 2009, 39.2% in 2012, 36.9% in 2015, but nevertheless a regression from 26.2% in 2018.[18]

Concurrent with the foundering performance of ocean-based industries is the ongoing risk of depletion of resources largely due to anthropogenic activities such as overexploitation, destructive fishing practices, and illegal, unreported, and unregulated (IUU) fishing that exacerbates habitat loss and pollution[19] that harm ecosystems and impair services that are vital to livelihoods, human and animal health, and indeed, to humanity's very survival.

Services "provided by an ecosystem as an intrinsic property of its functionality"[20] and from which people derive benefits are called "ecosystem

services." In 2005, the Millennium Ecosystem Assessment identified four benefits: "provisioning services such as food and water; regulating services such as flood and disease control; cultural services such as spiritual, recreational, and cultural benefits; and supporting services such as nutrient cycling that maintain the conditions for life on Earth."[21] According to the Kunming-Montreal Global Biodiversity Framework (the Biodiversity Plan), the world's roadmap towards living in harmony with nature by 2050 is underpinned in the following:

> *Biodiversity is fundamental to human well-being, a healthy planet, and economic prosperity for all people, including for living well in balance and in harmony with Mother Earth. We depend on it for food, medicine, energy, clean air and water, security from natural disasters as well as recreation and cultural inspiration, and it supports all systems of life on Earth.*

Coral reefs, for instance, serve as buffers against severe climatic events such as typhoons, and the storm surges that often accompany them. Being in the typhoon belt, seven to nine typhoons among an estimated 20 that enter the Philippine area of responsibility reach landfall. The frequency of extreme weather events is anticipated to increase given the country's vulnerability to the impacts of climate change, and will affect human and animal life and well-being, infrastructure and property, as well as the economy, making the protection of coral reefs crucial to the Philippines. Coral reefs also contribute to the regulation of erosion and sedimentation[23] that is necessary to sustain the shorelines and beaches that propel the Philippines' coastal tourism. According to the Philippine Clearing-House Mechanism, a square meter of a healthy coral reef produces one to five kilograms of white sand annually.[24]

The concept of ecosystem services has evolved into "nature's contribution to people," which recognizes both direct and indirect positive and negative contributions of nature, and that these may not fall exclusively under one of the four categories of ecosystem services.[25] As an example, food is a positive contribution that is both a provisioning and cultural service. An example of a negative contribution, on the other hand, are pathogens and the transmission of zoonotic diseases. Moreover, depending on context, a contribution could

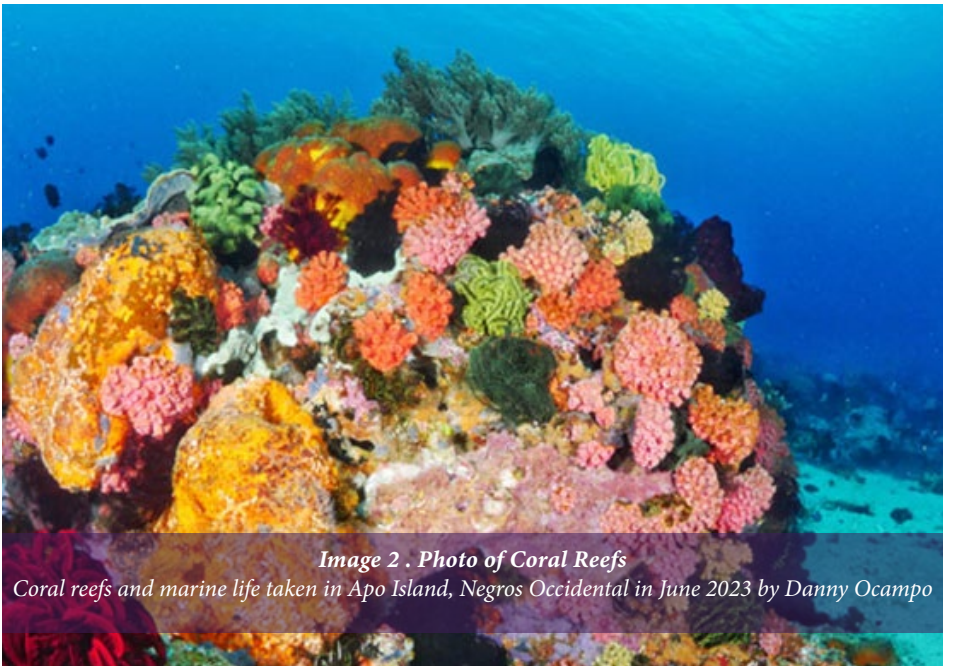

Image 2 . Photo of Coral Reefs
Coral reefs and marine life taken in Apo Island, Negros Occidental in June 2023 by Danny Ocampo

both be positive and negative, as in the case of some species of jellyfish whose sting may be considered harmful to humans but nevertheless play a role in nutrient cycling, regulating the plankton ecosystem, and the protection of some marine species,[26] the benefits of which redound to humans.

Clearly, aquatic biodiversity and its services are fundamental not only to Filipinos who are privileged to be surrounded by such bountiful resources but also to the entire planet, considering the "intrinsic value, as well as the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biodiversity and its components."[27]As expressed in the Biodiversity Plan:

> *Nature embodies different concepts for different people, including biodiversity, ecosystems, Mother Earth, and systems of life. Nature's contributions to people also embody different concepts, such as ecosystem goods and services and nature's gifts. Both nature and nature's contributions to people are vital for human existence and good quality of life, including human well-being, living in harmony with nature, and living well in balance and harmony with Mother Earth.*

Navigating Nature as Capital

Like other resources, the value of nature, "our most precious asset,"[28] needs to be assessed and measured to enable its conservation and sustainable use. Republic Act (RA) No. 11995, or the Philippine Ecosystem and Natural Capital Accounting System (PENCAS) Act of 2024, defines natural capital as "the stock of renewable and non-renewable resources including plants, animals, air, water, soils, ores, and minerals, that provide a flow of benefits to people and living things."[29] It includes "ecosystem services such as air and water filtration, flood protection, carbon sequestration, pollination of crops, and habitats for wildlife"[30] as natural capital. Unlike other resources, however, it is easy to take natural capital for granted and challenging to reduce into pesos because the processes that constitute this most valuable of assets are complex, invisible, and regarded as *just how things are*. Moreover, what are considered as "products" derived from natural capital are often components of processes that provide other ecosystem services. Going back to the example of coral reefs, their value – serving as biomes that support a wide array of marine life that provide food and medicine, protecting shorelines, regulating erosion, and performing biogeochemical functions – is impaired by people's overexploitation and destructive use of the very provisioning and cultural services from which they benefit. This devaluation of coral reefs is exacerbated by bleaching and ocean acidification that climate change brings, as well as pollution and land-and sea-use change, such as reclamation and the proliferation of artificial islands.

Assessing the risk and extent of loss resulting from the use (and abuse) of nature to formulate informed, evidence-based policies, necessitates the valuation of its contributions, which the PENCAS Act defines as the determination of "the value or worth, in both physical and economic terms, of natural capital and the service it provides at national and subnational levels."[31] It institutionalizes natural capital accounting (NCA), "an accounting framework that provides as systematic way of measuring and reporting on stocks and flows of natural capital,"[32] including individual environmental assets or natural resources, both biotic such as fish, and abiotic such as water, ores, minerals, and energy. It also covers biodiversity, as well as ecosystem services, which are mandated to be framed in the Environmental Impact Assessment (EIA) System as opportunities, benefits, or assets that may be put at risk.

The generation of data, particularly on the value of regulating and maintenance services as well as the mobilization of resources and expertise for these purposes, is anticipated to be challenging. Consequently, while the new law mandates the release of major PENCAS accounts, including the value of marine ecosystem services with national economic data, such as GDP and Gross National Income, it allows the progressive integration of natural capital statistics and accounts into these macroeconomic indicators. The implementation of the PENCAS Act will be a litmus test for mainstreaming biodiversity across the public and private sectors. Apart from requiring the Philippine Statistics Authority to compile NCAs, and environmental and ecosystem accounts based on data from the Department of Environment and Natural Resources (DENR), the Department of Agriculture (DA), and the National Economic and Development Authority (NEDA), it mandates the integration of NCA concepts and values in the policies, regulations, and programs of various government bodies, including the Departments of Interior and Local Government, Education, Finance, Energy, and Human Settlements and Urban Development.

Notably, despite the PENCAS Act's seeming anthropocentrism, it nevertheless recognizes nature's intrinsic value that is separate and distinct from its economic value. Its Section 12 on the "Rights of Nature" explains:

> *The maintenance of nature's vital cycles, functions, and processes ensures the sustainability and health of natural ecosystems. This is in recognition of the fact that there are limits to the ability of these natural ecosystems to regenerate and that human development that alters or affects them must be sustainable and must allow for their renewal and restoration.*

The foregoing is consistent with declared State policies to recognize "natural ecosystems as an integral part of patrimony and heritage"[33] and to "protect and promote ecological balance and resilience, and advance the right of the people to live in harmony with nature."[34]

With appreciation of nature as capital picking up steam, so does interest in the blue economy, which the Leaders of the 10 Member States of the Association of Southeast Asian Nations (ASEAN), broadly described at the 38th and 39th

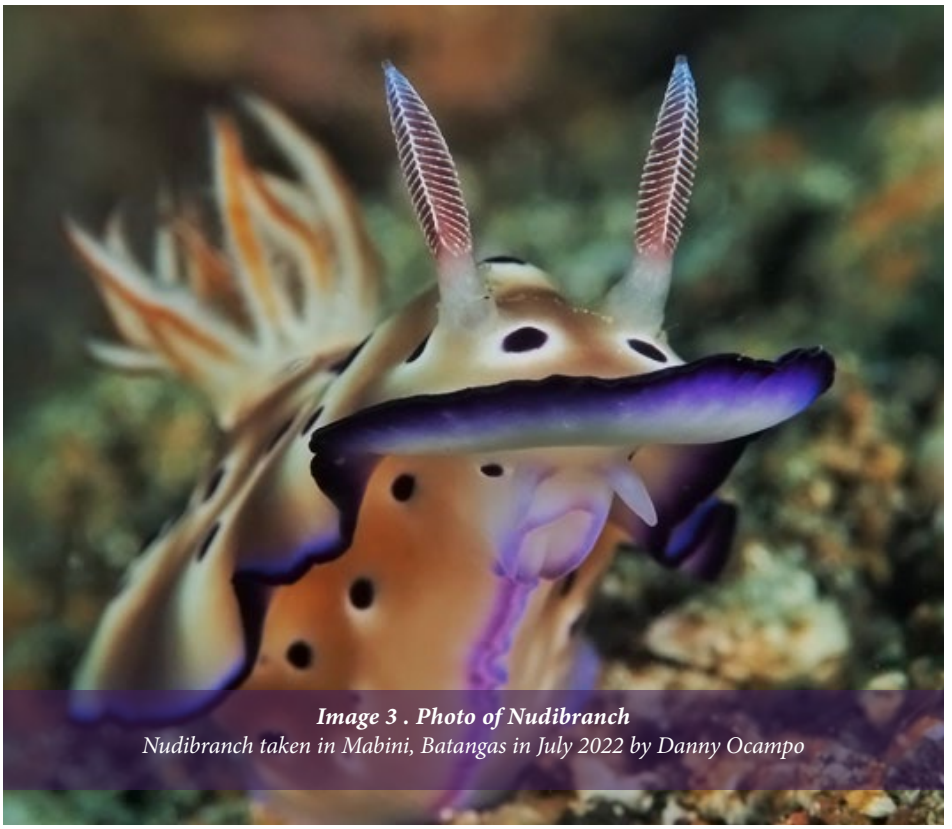

Image 3 . Photo of Nudibranch
Nudibranch taken in Mabini, Batangas in July 2022 by Danny Ocampo

ASEAN Summit as:

> *The sustainable, resilient and inclusive use, governance, management and conservation of oceans, seas as well as marine and coastal resources and ecosystems for economic growth across various sectors such as fishery, aquaculture, maritime transport, renewable energy, tourism, climate change, and research and development while improving human well-being and social equity.*[35]

To stimulate efforts on the blue economy in the region, the ASEAN Leaders agreed to explore cooperation in various areas of common interest that involve its three Pillars: the Political Security Community which facilitates peacekeeping in the region by diffusing political and security tensions; the Economic Community which promotes an economically competitive and prosperous region; and the Socio-Cultural Pillar which promotes social

development and ASEAN identity and centrality.[36] The ASEAN Ministerial Meeting on Environment (AMME), the ASEAN Senior Officials on Environment (ASOEN), the thematic ASEAN working groups on environment, as well as the Environment Division of the ASEAN Secretariat and the ASEAN Centre for Biodiversity (ACB), work within the rubric of the Socio-Cultural Pillar. The establishment of the ASEAN Centre for Climate Change under this Pillar is also being anticipated.

The region is adopting a multi-sectoral whole-of-community strategy to effectuate the blue economy which requires enhanced symbiosis, particularly since the ASEAN Leaders identified potential areas of collaboration that fall under different Pillars. For instance, sea and ocean governance and management, maritime security, and safety of navigation are within the purview of the Political Security Community, while the Economic Community streers regional policies on IUU fishing, sustainable aquaculture, and fishing practices, as well as production and consumption. Considering that the thrust of the blue economy is striking a balance among geopolitical concerns, economic development, and the conservation and sustainable use of coastal and marine resources, the contribution of the Socio-Cultural Community on environmental and ecosystems protection, enhancing marine science, as well as halting marine litter and pollution, serves as the tie that binds the ASEAN's joint efforts.

The ASEAN Blue Economy Framework, developed by virtue of the foregoing ASEAN Leaders' Declaration, adopts a "source-to-sea" approach[37] and includes inland waters, taking into account land-locked Member States and areas in the region. According to the Framework:

> *ASEAN defines the Blue Economy is an integrated, holistic, cross-sectoral, and cross-stakeholder approach that creates value-added and value-chain of resources from oceans, seas, and fresh water in inclusive and sustainable way, making the blue economy the new engine for ASEAN's future economic growth. The ASEAN Blue Economy covers upstream-downstream sectors, serving as an accelerator of the conventional marine sector such as fisheries, aquaculture, fish-only processing, and tourism and a catalyst for emerging sectors such as renewable energy, biotechnology, and marine and freshwater-based research and education*

as well as other emerging sectors from aquatic resources.

While the Philippines has yet to enact legislation on the blue economy, both Houses of Congress have produced their respective bills on this matter. Other interventions that have significant potential to contribute to the growth of the blue economy in the country are underway, such as the release by the Securities and Exchange Commission (SEC) of guidelines on projects and activities eligible for the issuance of blue bonds using ASEAN standards on green, social, and sustainability bonds.[38] For bonds to be considered as "blue bonds," the proceeds thereof should be exclusively applied to finance or refinance, in part or in full, new and/or existing Blue Projects or Activities. These include, but are not limited to, the restoration and management of aquatic ecosystems; tourism in the vicinity of marine conservation areas, fisheries, or aquaculture, all of which should be sustainable; and projects that prevent, control, and reduce

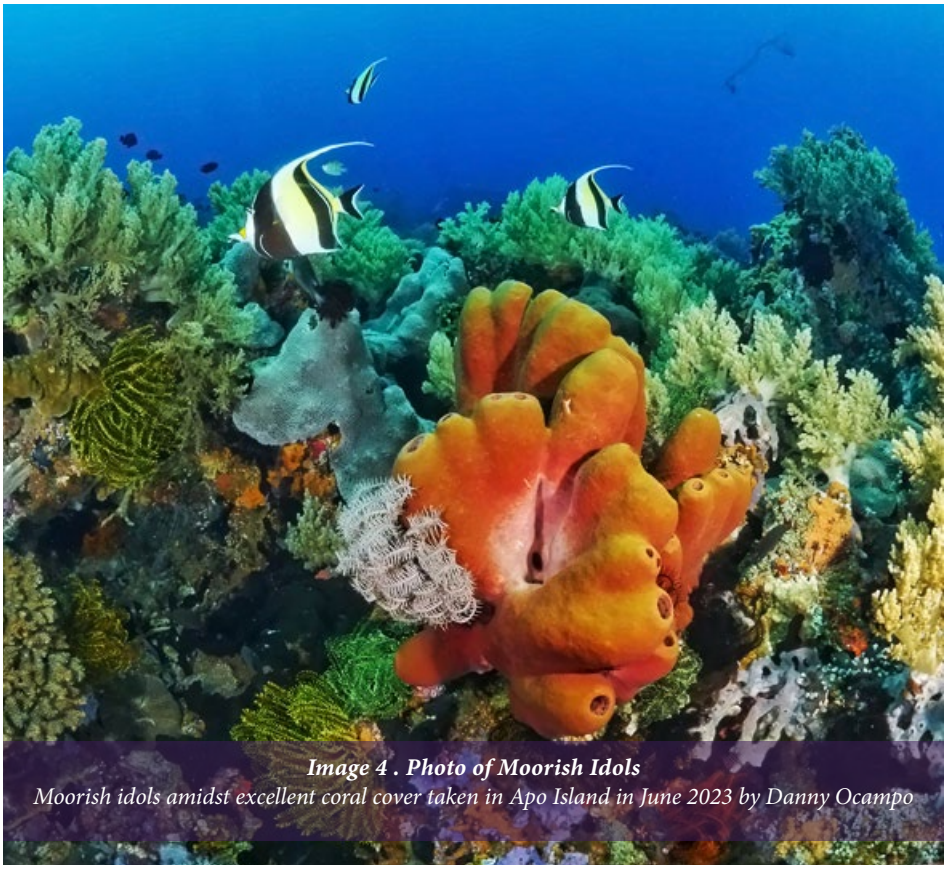

Image 4 . Photo of Moorish Idols
Moorish idols amidst excellent coral cover taken in Apo Island in June 2023 by Danny Ocampo

waste from entering coastal and marine environments.[39]

The introduction of blue bonds into the market is a promising means of engaging the private sector to infuse necessary investments in the conservation and sustainable use of aquatic ecosystems and their services. However, the evaluation of what qualifies as Blue Projects or Activities must be based on the best available science and would thus require the SEC's collaboration with other government bodies, most particularly the DENR, DA, the Department of Science and Technology (DOST), as well as the academe. Vigilant monitoring is likewise imperative to ensure that the bonds will truly be used to finance the Blue Projects and Activities for which they are issued and are not mere vehicles for blue washing.

Another propitious development is the entry into force in the Philippines of the Regional Comprehensive Economic Partnership (RCEP) Agreement in June 2023. All ten ASEAN Member States, as well as Australia, China, Japan, New Zealand, and the Republic of Korea are parties to the RCEP Agreement, representing 2.3 billion people or 30% of the world's population, and the combined GDP of close to USD40 billion or 30% of global GDP. Moreover, 2021 figures show that seven among the planet's top producers of fish, crustaceans, mollusks, and aquatic plants are RCEP Parties: China (1st), Indonesia (2nd), Viet Nam (4th), Japan (10th), Philippines (11th), Republic of Korea (13th), and Myanmar (14th).[40] While studies are needed to determine the impacts of this momentous trade deal on the environment and affected ecosystems, it is worth noting that pursuant to Article 17.10 of the RCEP Agreement, its Parties affirm their rights and responsibilities under the Convention on Biological Diversity (CBD), a multilateral environmental agreement (MEA) by which they are all legally bound. While this lone provision on the protection of the environment offers no specificity, the reference to the CBD nevertheless accords a comprehensive menu of legally binding obligations that are common to all the 15 parties to the RCEP Agreement.

Riding the Wave of Synergies among Multilateral Environmental Agreements

The Philippines is a State Party to several MEAs, including but not limited to the following:

Table 1 . Several Multilateral Environmental Agreements in the Philippines

Multilateral Environmental Agreement	Ratification or Accession (a)	Number of Contracting Parties
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	February 1994	184
CBD	October 1993	196
Cartagena Protocol on Biosafety to the CBD	October 2006	173
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD	September 2015 (a)	141
Convention on the Conservation of Migratory Species of Wild Animals (CMS)	February 1994	133
UN Framework Convention on Climate Change (UNFCCC)	August 1994	196
Kyoto Protocol to the United Nations Framework Convention on Climate Change	November 2003	192
Doha Amendment to the Kyoto Protocol	April 2016 (a)	148
Paris Agreement	March 2017	195
Convention on Wetlands of International Importance specially as Waterfowl Habitat (Wetlands Convention)	November 1994	172
UN Convention to Combat Desertification (UNCCD)	February 2000	197

Source: Author's Own

The CBD, United Nations Framework Convention on Climate Change (UNFCCC), and the United Nations Convention to Combat Desertification (UNCCD) were progenies of the United Nations Conference on Environment and Development that was held in Rio de Janeiro, Brazil in 1992 (the "1992 Earth Summit") and are often referred to as the "Rio Conventions." Their implementation is guided by the 27 Principles of the Rio Declaration on Environment and Development, a soft law instrument that articulates key concepts that continue to shape environmental protection.

A number of foundational precepts of the UNFCCC echo the Rio Declaration, including its Principle 7 on the common but differentiated responsibilities (CBDR) of States in the conservation, protection, and restoration of the health and integrity of ecosystems, considering their respective contributions to global environmental degradation. The text of the UNFCCC incorporates "common but differentiated responsibilities and respective capabilities" to pertain to developed country Parties taking the lead in combating climate

change and its adverse effects with equity as its basis.[41] Moreover, Principle 15 on the precautionary approach to protecting the environment, which states that, "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation," is integrated into Article 3.3 of the UNFCCC. It is also expressed in the Preamble of the CBD:

> *Noting also that where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.*

The precautionary principle or approach is likewise adopted in Philippine legislation, including in RA 9729 or the Climate Change Act of 2009, RA 10067 or the Tubbataha Reefs Natural Park Act, and RA 10654, which amended the Philippine Fisheries Code of 1998. Apart from being cited in jurisprudence, it also appears in Rule 20 of the Rules of Procedure for Environmental Cases.[42]

Synergies among MEAs are even more pronounced in the Biodiversity Plan that was adopted by the 15th Meeting of the Conference of the Parties to the CBD (CBD COP 15) in December 2022 in Kunming, China and Montreal, Canada. The vision of the Biodiversity Plan is a world that is living in harmony with nature where "by 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people."

The Biodiversity Plan aims to "catalyze, enable, and galvanize urgent and transformative action"[43] through a whole-of-government and whole-of-society approach to halt and reverse biodiversity loss and contribute to accomplishment of the three objectives of the CBD, which are the conservation and sustainable use of biodiversity, and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. It is aligned with the 2030 Agenda for Sustainable Development and the UN Decade on Ecosystem Restoration, and adopts an inclusive, rights-based perspective that is consistent with the human right to a clean, healthy, and sustainable environment. It also adopts an inclusive, rights-based perspective that is consistent with the human right to a clean, healthy, and sustainable environment.[44] Additionally, the Biodiversity Plan's implementation must ensure that the rights and traditional knowledge

associated with biodiversity of indigenous peoples and local communities are respected, documented, and preserved with their free, prior, and informed consent in accordance with national legislation, the UN Declaration on the Rights of Indigenous Peoples, and international human rights law.[45]

For the 2050 Vision to come into fruition, the Biodiversity Plan's 4 Goals and 23 Targets are to be implemented together because like the biodiversity that they seek to protect and the environmental challenges that beset the planet,

Four Long-term Goals of the Biodiversity Plan

Goal A
To protect and restore the integrity, connectivity and resilience of all ecosystems

Goal B
To prosper with nature through the sustainable use and management of biodiversity, and to value, maintain, and enhance nature's contributions to people, including ecosystem functions and services

Goal C
To fairly and equitably share the monetary and non-monetary benefits from the utilization of genetic resources and digital sequence information, and of traditional knowledge associated with genetic resources, as applicable

Goal D
To secure adequate means of implementation, including financial resources, capacity-building, technical and scientific cooperation, as well as access to and transfer of technology, are equitably available to all Parties especially developing country Parties

Source: KMGBF, Sec. G.; CBD. The Biodiversity Plan for Life on Earth, 2050 Goals. 20 December 2023. https://www.cbd.int/gbf/goals. 18 May 2024

they are inextricably linked. The Goals and Targets respond to the five direct drivers of biodiversity loss: land-use change, climate change, pollution, natural resource use and exploitation, and invasive species. Notwithstanding, and indeed because it is the Biodiversity Plan, it addresses not only biodiversity loss but also climate change and pollution: the triple planetary crisis.

The Biodiversity Plan's Mission contains 23 targets that need to be accomplished by 2030 if humanity is to live in harmony with nature by 2050.

The Targets are not standalone objectives but in fact, feed into each other and are emblematic of the reality that working in silos is no longer an option. Comprehensive and concerted efforts are pivotal to an effective and affective response to our shared environmental challenges.

For instance, Target 3, or the "30 x 30 Target," seeks to ensure the conservation and effective management of at least 30% of terrestrial, inland water, and coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services. To accomplish this Target, it is necessary to drive action in conjunction with, among others, Target 8 on minimizing the impacts of climate change and ocean acidification on biodiversity by mitigation, adaptation, and disaster-risk reduction actions, including through nature-based solutions and/or ecosystem-based approaches. Concomitantly, Target 10 exhorts the substantial increase of biodiversity-friendly practices in fisheries and aquaculture. To address pollution, including marine debris, the objectives under Target 16 include reducing waste generation.

The foregoing targets are inexorably significant to several MEAs. Under the Wetlands Convention, Parties designate wetlands within their territories for inclusion in the List of Wetlands of International Importance to safeguard the "fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, especially waterfowl." Wetlands[46]– habitats or breeding grounds of 40% of all plant and animal species,[47] extensive carbon sinks, as well as protection from floods and drought, among many other contributions – and the protection thereof that the Targets of the Biodiversity Plan seek to ensure, are thus integral not only to the CBD and the Wetlands Convention, but also to the UNFCCC, UNCCD, Convention on International Trade of Endangered Wild Fauna and Flora, and Convention on Migratory Species. In November 2022, the 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands adopted with the support of the Philippines Resolution IX.7 on the *protection, conservation, restoration, sustainable use and management of wetland ecosystems in addressing climate change*, which –

> *Recognizes that nature-based solutions, as defined by the Fifth United Nations Environment Assembly, and ecosystem-based approaches, as identified under the Convention on Biological Diversity, delivered by*

> *wetland ecosystems, are among the approaches that can significantly contribute to climate action, while simultaneously providing biodiversity and human wellbeing benefits and addressing other social, economic and environmental challenges.*

These are but a few examples of the synergies among the MEAs and the Biodiversity Plan's potential to strengthen these connections. Target 14 reveals a means for the comprehensive delivery of various global commitments that cut across the distinct but interdependent MEAs: the integration of biodiversity and its multiple values in decision-making at every level. Additionally, Target 21 underscores the need for the best available data to be accessible to decision makers, practitioners, and the public to engender informed, integrated, equitable, and participatory governance.

Following a series of nationwide consultations with other government bodies, local government units, and stakeholders, the Philippines is finalizing its National Biodiversity Strategies and Action Plan (NBSAP) for it to align with the Biodiversity Plan, consistent with its rights and obligations under other MEAs, its national laws, needs, and priorities.

An array of concerted actions is also underway at the regional level. In June 2024, the ACB[48] was selected as one of the 18 entities and organizations that will host subregional technical and scientific support centers as part of the technical and scientific cooperation mechanism established by the CBD COP 15 Decision 15/8 on *Capacity-building and Development and Technical and Scientific Cooperation*.[49] According to the Secretariat of the CBD:

> *The mandate of the regional and/or subregional support centres is to promote and facilitate cooperation among Parties to enable them to effectively utilize science, technology and innovation in support of the Convention and its Protocols, including the Kunming-Montreal Global Biodiversity Framework. The core functions of the centres include serving as a "one-stop service centre" in their subregions and providing access to technical and scientific knowledge, expertise, tools and other resources related to the Framework, in collaboration with a diverse network of entities, organizations, consortia and initiatives, leveraging their expertise, experience, resources and capabilities.*

The Philippines also engages in international fora, including at the Sixth Session of the United Nations Environment Assembly (UNEA-6), which focused on multilateralism and synergies among MEAs. Its national statement reads in part, as follows:

> *As one of the world's mega-biodiverse countries, the Philippines is fully aware of the nexus of climate change, biodiversity loss and pollution. Balance and synergy in managing them is a must so that solutions in one do not lead to bigger problems in another, just as one area can be the source of solutions to the other.*
>
> …
>
> *The Philippines has scaled-up ecosystem-based adaptation efforts and nature-based solutions to comprehensively address the drivers of degradation of its marine ecosystems.*[50]

The Wild Wild West Philippine Sea

It is useful to clarify from the onset that the West Philippine Sea (WPS) does not cover the entirety of the South China Sea (SCS). Administrative Order (AO) No. 29, *Naming the West Philippine Sea of the Republic of the Philippines*, *and for Other Purposes*, issued by President Benigno Aquino, Jr. in 2012, designates the maritime areas on the western side of the Philippines, including the "Luzon Sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as Scarborough Shoal" as the "West Philippine Sea."

In the 2016 Award on the SCS Arbitration between the Philippines and China, the Arbitral Tribunal described the SCS as "a semi enclosed sea in the western Pacific Ocean, spanning an area of almost 3.5 million square kilometres… The South China Sea lies to the south of China; to the west of the Philippines, to the east of Viet Nam; and to the north of Malaysia, Brunei, Singapore, and Indonesia."[51] It did not determine the State that enjoys sovereignty over any land territory in the SCS, particularly over the Spratly Islands or Scarborough Shoal, which have been the subject of protracted disputes among the littoral

countries.[52] Neither did the Tribunal delimit maritime boundaries between the Philippines and China, or among any other State bordering on the SCS.[53] Nevertheless, it dashed China's claim to historic rights to the living and non-living resources within its purported "nine-dash line" as being incompatible with the extent of its maritime zones under the UN Convention on the Law of the Sea (UNCLOS or the Convention).[54]

While the UNCLOS is not a MEA, protection of the marine environment forms part of its ethos, as evident from its fourth preambular paragraph:

> *Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment…*

Part XII of the UNCLOS is dedicated to the Protection and Preservation of the Environment, Article 192 of which expresses the general obligation of States to protect and preserve the marine environment. Moreover, according to its Article 193, "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment." Interestingly, although the UNCLOS entered into force in 1994, two years after the 1992 Earth Summit, it was adopted in 1982 and contains an application of the precautionary principle that predates the Rio Declaration by 10 years: Article 290 provides recourse through provisional measures to prevent serious harm to the marine environment pending the final decision by a court or tribunal of a dispute.

In the SCS Arbitration, the Tribunal found that China breached its obligations under Articles 192 and 194(5) of the UNCLOS and it is bound to take necessary measures to protect and preserve the marine environment, rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species and other forms of marine life. It relied on evidence of poaching by Chinese vessels of endangered species including corals, marine turtles, and sharks, and China's toleration and use of the propeller chopping

method to harvest giant clams.[55] The Tribunal expressed concern over findings that the sea turtles found on board Chinese fishing vessels are listed under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as species threatened with extinction, and subject to the strictest level of international trade controls. It underscored interlinkages between CITES and UNCLOS, thus: "CITES is the subject of nearly universal adherence, including by the Philippines and China, and in the Tribunal's view forms part of the general corpus of international law that informs the content of Article 192 and 194(5) of the Convention."[56] There were also findings that China's artificial islands in the Spratly Islands have caused

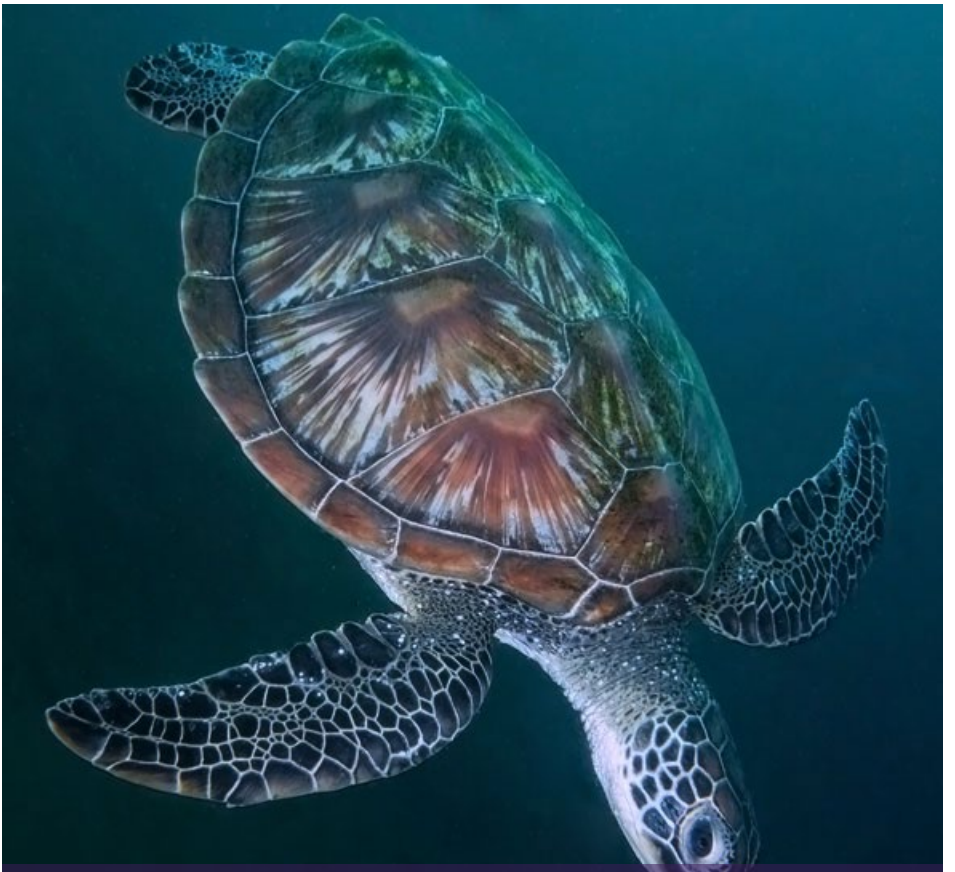

Image 5 . Photo of Green Sea Turtle
Green sea turtle taken in Mabini, Batangas in January 2024 by Danny Ocampo

"devastating and long-lasting damage to the marine environment."[57] The Tribunal concluded that China's island-building activities at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef, and Mischief Reef breached Articles 192, 194(1), 194(5), 197, 123, and 206 of the UNCLOS.[58]

There have been numerous reports of harmful fishing, unlawful harvesting activities, and destructive artificial island-building in the WPS since the 2016 Arbitral Award. At the time of writing, tensions in the WPS are escalating, following a skirmish in June 2024 near the Second Thomas Shoal (also referred to as Ayungin Shoal) between Chinese coast guard ships and Philippine government vessels that left several Filipino sailors injured, with one reportedly losing a finger.[59] This incident prompted the Philippines to send a note verbale to China in protest of the latter's "illegal and aggressive actions."[60] In its statement, the Department of Foreign Affairs called "for China to adhere to international law, especially UNCLOS and the 2016 Arbitral Award, and respect the Philippines' sovereignty, sovereign rights and jurisdiction in our own waters."[61]

Immediately after the Ayungin Shoal melee, the DENR also issued a statement that "expresses grave concern over the reported destruction of coral reefs, marine ecosystems and biodiversity resources in the West Philippine Sea."[62] According to the DENR:

> *We strongly deplore any activity that leads to the damage and destruction of the coral reefs in the Kalayaan Island Group. We join the call for signatory States and their citizens to adhere to Article 192 of the United Nations Convention on the Law of the Sea – to protect and preserve the marine environment.*

The statement was issued in recognition of the signing by 60 countries of the agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement), which was adopted in June 2023.

The BBNJ Agreement is often referred to as the "High Seas Treaty," albeit inaccurately since its Article 2 defines "areas beyond national jurisdiction" as

referring to both the high seas and the Area.[63] It is an implementing treaty of the UNCLOS that is informed by environmental treaties and reflective of their synergies, as may be gleaned from Article 7 on General Principles and Approaches, which is an iteration of precepts that are embodied in MEAs. These include but not limited to, the polluter-pays principle; the precautionary principle or approach; an ecosystem approach; an integrated approach to ocean management; building ecosystem resilience to adverse effects of climate change and ocean acidification; and the use of the best available science.

The following issues are covered by the BBNJ Agreement: (1) marine genetic resources, including the fair and equitable sharing of benefits from the use thereof; (2) measures such as area-based management tools, including marine protected areas; (3) environmental impact assessments; and (4) capacity-building and the transfer of marine technology. A deep dive into these four areas is a prodigious task better addressed in other studies that will perhaps answer a threshold question: how much of the SCS is considered beyond national jurisdiction and is thus within the purview of the BBNJ Agreement? Moreover, considering the protracted disputes among the littoral states, can the BBNJ Agreement achieve its objectives and contribute to geopolitical stability and security in the region? To what extent will the Biodiversity Plan, particularly its 30 x 30 Target, serve as an impetus for the ratification of the BBNJ Agreement, with the view of establishing marine protected areas in the high seas?

Lessons abound from jointly managed, transboundary marine protected areas such as the Turtle Islands Heritage Protected Area that covers Malaysia and the Philippines, and the Sulu Sulawesi Marine Ecoregion that involves Indonesia, Malaysia, and the Philippines. The Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security is also an example of the concerted efforts of six countries, notwithstanding the fact that some of them have conflicting claims over areas in the SCS.

Recommendations: Time and Tide Wait for No One

The importance of marine ecosystems and their contribution to humanity and the planet cannot be overemphasized, especially to the Philippines, a

country so rich in biodiversity that it is undeniably beholden to it. The BBNJ Agreement, if ratified by a critical mass of States, has the potential to enhance necessary synergies that could help ease growing geopolitical tensions in the WPS. China, as well as the three of the five ASEAN Member States that have competing claims in the SCS – Indonesia, the Philippines, and Vietnam – are signatories to the BBNJ Agreement, and are State Parties to the UNCLOS, as well as the CBD and the UNFCCC. The ratification by these countries of the BBNJ Agreement may be a cause for cautious optimism, as it provides an additional legally binding framework for international cooperation specific to areas beyond national jurisdiction, including on the establishment of area-based management tools, such as marine protected areas, which the BBNJ Agreement emphasizes are neither bases for asserting or denying any claims to sovereignty, sovereign rights, or jurisdiction, nor in respect of any disputes relating thereto.[64]

If the Philippines becomes a State Party, it must proceed with vigilance to avoid being constrained from protecting its interests, particularly if a proposal to establish a marine protected area beyond national jurisdiction involves States that are not Parties to the BBNJ Agreement. It would also be useful for the Philippines to engage meaningfully in negotiations at the Conference of the Parties, not only on substantive issues but also on the composition of the bodies created by the BBNJ Agreement by nominating experts and facilitating their selection as members of these bodies. The Scientific and Technical Body will play a crucial role in a number of the BBNJ Agreement's key features, including in the assessment of proposals for the establishment of area-based management tools; the provision of recommendations on emergency measures to ensure that serious or irreversible harm caused by natural or anthropogenic disasters is not exacerbated; and the development of standards related to Environmental Impact Assessments on planned activities in areas beyond national jurisdiction. Other bodies are the Access and Benefit-Sharing Committee, which will be tasked with crafting guidelines for benefit-sharing to ensure transparency and the fair and equitable sharing of both monetary and non-monetary benefits; and the Capacity-Building and Transfer of Marine Technology Committee, which will be responsible for submitting reports and recommendations to the Conference of the Parties.

Despite prospects from the BBNJ Agreement, the Philippines has yet to

become a State Party, a process that would require the concurrence by the Senate in the ratification by the President. Moreover, it might not enter into force in the next few years, which would only be 20 days after the date of deposit of the 60th instrument of ratification, approval, acceptance, or accession. To date, there are 91 Signatories – including the Philippines – and eight parties to the BBNJ Agreement. In the here and now however, MEAs particularly the CBD and the UNFCCC, have close to global adherence and provide existing frameworks and mechanism such as the Biodiversity Plan and the Sharm-Al Sheikh Implementation Plan, whose implementation require more than business-as-usual tokenism but transformative change and scaling up efforts to address the triple planetary crisis.

Indeed, the Philippines' net is cast wide with numerous MEAs and domestic legislation that are already in force to optimize the gains from the multiple values of biodiversity, even as it endeavors to conserve and sustainably use its resources. It may access funding and technical support partnerships and new financing mechanisms, such as the CBD's Global Biodiversity Framework Fund, and the UNFCCC's Loss and Damage Fund, which provides funding arrangements for responding to loss and damage associated with the adverse effects of climate change. In July 2024, the Philippines was selected to host the Board of the Loss and Damage Fund.

Also significant is ensuring the Philippines' consistent negotiation positions across the various MEAs, considering that the issues involved are cross-cutting in nature. Since 1992, the Philippine Council for Sustainable Development has been a vehicle for convening government agencies[65] and civil society to provide policy recommendations and deliberate on points for negotiation at the meetings of the Rio Conventions. However, there is a continuous need to promote the participation of its members, enhance the negotiation and diplomacy skills of its representatives to international meetings, and build institutional memory. The country has several avenues by which to assert its interests and seek recourse for harm inflicted on its marine environment, each one an exercise in legal prowess, political and diplomatic acuity, scientific acumen, and media savvy that necessitates breaking silos and adopting a whole-of-community approach where biodiversity and its values are mainstreamed across sectors.

The Philippines, together with its ASEAN neighbors, can also demonstrate

the potency of the region's consensus building at international fora by agreeing on shared interests and negotiating positions that are backed by 10 ASEAN Member States, possibly 11, with Timor Leste as its newest member. The ASEAN voice is already being heard on general agreements through Joint Statements to the UNFCCC, and with the support of the ACB, the CBD but consensus on more specific points of negotiations especially at the bureau level, could be further developed.

Given the manifold environmental challenges facing the Philippines and the rest of the world, it is clear that notwithstanding anthropocentric maps and geopolitics, synergies among regional and international agreements, and more importantly, efforts to implement them, are crucial now more than ever. Time and tide wait for no one, just as marine life knows no borders.

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