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INTRODUCTION

Where in the world is the Philippines? In other words, where does the Philippines have jurisdiction? Of what kind? Where does that jurisdiction end? Because the Philippines is an archipelago, that is, a nation of many islands, these questions apply importantly to the country's maritime regime. In contemporary terms, what is the extent of the Philippines' territorial sea? Its exclusive economic zone (EEZ)? Its contiguous zone? Its continental shelf? From where does or should the Philippines measure its territorial sea, contiguous zone and exclusive economic zone? What is the character of the large expanses of sea between some islands of the Philippines? What is the nature of the Philippine claim to the Kalayaan Island Group? What about the Philippine claim to Sabah?

For most countries, questions similar to these and the answers to them are fairly straightforward. They have long been settled, and other countries have accepted, or at least acknowledged, those answers. However, in the Philippine case, many of the questions remain unanswered. Fierce, often arcane debates go on within the government, in the academic community, and, of course, with other, especially neighbouring, countries. Once in a while, the controversies erupt into public view. One example is the case of the agreement between the Philippine National Oil Company and the China National Offshore Oil Corporation on a Joint Marine Seismic Undertaking and the subsequent agreement among these two firms and their Vietnamese counterpart to convert it to a tripartite endeavour. Another is the new legislation on the baselines from which to measure the territorial sea, the contiguous zone, the extended continental shelf, and the exclusive economic zone. In a move to make the country's declared maritime jurisdiction compatible with the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the new baselines

law declares a “regime of islands” with respect to Scarborough Shoal and to the land features in the part of the South China Sea that the Philippines claims. Enactment of the law immediately elicited protests from China and Vietnam, both of which claim all of the Spratlys, as well as disagreement, for other reasons, from some Philippine academics and legislators. China also claims Scarborough Shoal, which it calls Huangyan.

The result of all this uncertainty, which the Philippine Government is now attempting to reduce, is that Philippine law enforcement agencies have not been sure of what to allow and what to prohibit where, particularly by way of sea passage, overflight, fishing activities, and environmental protection. The protection of the resources in the purported Philippine EEZ has been uncertain, inconsistent and ineffective. The Philippines has been unable to negotiate with neighbours on overlapping maritime jurisdictions on anything like a sound footing. These consequences have everything to do with people’s lives and communities — the integrity of the marine ecology, the ability to fish, the availability of energy resources, the capacity of the sea to sustain life in its many forms, the responsibility for search and rescue in case of maritime accidents, the safety and viability of coastal communities, and so on.

There are no easy answers to the questions raised at the beginning of this chapter. There are no obvious positions that the Philippine government ought to take. This book does not suggest answers; it raises questions, hopefully the right ones. Nor does it go into the intricate legal arguments that are the province of scholars much more learned than I am. It is not meant for specialists but for Filipinos concerned over a vital issue in their national life and for others who are interested in a fascinating case of geography’s role in a nation’s history and development. What this book does is try to illuminate the many complex issues involved and urge the country to make up its mind on the positions to take on them; that is, at last, definitively to define the extent of the Philippine national territory and maritime jurisdiction. This requires overcoming the tendency of politicians to defer the resolution of these difficult and explosive issues to the next administration or the next legislature; in other words, it demands national leadership of the highest order.

First, the book reviews the measures taken by the colonial powers — Spain, the United States, and both of them together — and by the pre-independence Philippines, including in the 1935 Constitution, to define the extent of the Philippines’ territory and jurisdiction, unilaterally and through agreements with other countries. Among the considerations taken into account was the difficult relationship of the Muslim Filipinos with the colonial powers and with the rest of the country. The book then examines such definitions in the 1973 and 1987 Constitutions and in various pertinent pieces of legislation and

international agreements and how they resolve the territorial and jurisdictional questions — or fail to do so or even complicate them. The book summarizes the nature of the Philippine claim to Sabah and discusses its implications for the territorial and jurisdictional issues. A whole host of maritime questions are discussed, with the South China Sea being treated more extensively and in greater detail in a separate chapter. Much of this is done in the light of the UNCLOS, which the Philippines ratified but on which it issued a declaration, made upon signature and reiterated upon ratification, but challenged by others as not allowed under the UNCLOS. Finally, the book makes a point of stressing the necessity for the nation to resolve definitively, first within itself and then by agreement with others involved, the country's territorial and maritime jurisdiction, recognising the obstacles to such a determination and pointing to the consequences of leaving things undecided.

The occasional duplication between chapters results from the intention to allow readers to read individual chapters by themselves.

Unless an endnote indicates otherwise, primary sources cited are compiled in Raphael Perpetuo Lotilla, ed., *The Philippine National Territory: A Collection of Related Documents* (Diliman, Quezon City: Institute of International Legal Studies, University of the Philippines Law Center, and Manila: Foreign Service Institute, Department of Foreign Affairs, 1995) or in *The Philippine Claim to a Portion of North Borneo: Materials and Documents* (Diliman, Quezon City: Institute of International Legal Studies, University of the Philippines Law Center, 2003).

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Needless to say, any errors and other shortcomings in this book can be attributed only to me.

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