ARCHIPELAGIC PHILIPPINES
A Question of Policy and Law

by Atty. HENRY S. BENSURTO, JR.
Secretary-General
Commission on Maritime and Ocean Affairs Secretariat
PRESENTATION OUTLINE

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INTRODUCTION: ARCHIPELAGIC PHILIPPINES & UNCLOS AS POLICY CHOICES

• PH decided to participate in the several UN Conferences on the Law of the Sea and to sign and ratify the UNCLOS as a matter of policy choice.

• The analytical framework upon which the Philippines based its policy decision on UNCLOS was anchored on the larger perspective of national interest.

• The late Sen. Arturo Tolentino, Head of PH Delegation to UNCLOS, explained that the main reason for the PH signing the Convention -

  “...was not just one of strict law but more of a choice of policy, after weighing positive and negative factors. We put the question to ourselves in this form: Considering the Convention as a whole with both beneficial and adverse effects, which would be more advantageous to the Filipino people – to accept or to reject the Convention? We opted for acceptance. The provision of the exclusive economic zone and the recognition of the archipelago principle contributed to tilt the balance in favor of the signing of the Convention.”
The most critical aspect of UNCLOS, which impelled the Philippines to take the policy route of affirming UNCLOS, is the issue of **archipelagic doctrine**. Thus, the PH Delegation nonetheless signed UNCLOS on **10 December 1982** in Jamaica.

During the signing, the late Sen. Tolentino explained that “**the determining factor in arriving at this decision [of signing the Convention]…was the sovereignty of the archipelagic state over the archipelagic waters.**” He further elaborated on this point at the Batasan Pambansa indicating “**that the interest of our national security did not really require us to risk or sacrifice the entire concept of the archipelago and the last chance perhaps for decades if not centuries to have the archipelago principle accepted as part of public international law.**”
INTRODUCTION: ARCHIPELAGIC PHILIPPINES & UNCLOS AS POLICY CHOICES

- Batasan Pambansa concurred with the ratification of UNCLOS on 27 February 1984. In a subsequent Note Verbale to Australia in 1988, the PH indicated that “[t]he Philippine Government intends to harmonize its domestic legislation with the provisions of the Convention.”

It added that “[T]he necessary steps are being undertaken to enact legislation dealing with archipelagic sea lanes passage and the exercise of Philippine sovereign rights over archipelagic waters, in accordance with the Convention.”

The Note concluded by stating that “The Philippine Government, therefore, wishes to assure the Australian Government and the State Parties to the Convention that the Philippines will abide by the provisions of the said Convention.”
RA 3046(1961)
Territorial Sea
Scarborough Shoal
Kalayaan Islands Group

RA 9522 (2009)
Scarborough Shoal
Kalayaan Islands Group
Passage of RA 9522 (Archipelagic Baselines Law) was significant
- PH declared itself as an archipelagic state
- PH is availing itself of the archipelagic baselines
- PH is indicating that it would define its maritime zones

It clearly indicates a shift towards complete adherence to UNCLOS

Nonetheless, RA 9522 is just a first step. Further legislative measures need to be taken. One, is the passage of law establishing Philippine Maritime Zones, and; Two, is the enactment of a law establishing Archipelagic Sea Lanes in Philippine archipelagic waters. It must be noted in this regard that the passage of these three legislative measures are good for PH national interest.

In order to understand these measures in the context of PH national interest, it is important to have a prior understanding of the imperatives that impelled the PH in such policy direction.
• FIRST, the Philippines is an archipelagic state and an archipelago.
• 7,100 islands
• 31,800 km. coastline
• 62 of 71 provinces are coastal
SECOND, RP is geo-strategically located at the heart of Southeast Asia.

Lying between 21°5’N and 4°23’N, and 116°E and 127°E

Surrounded by three prominent waters: the Pacific Ocean on the East, the South China Sea on the West and North, and Celebes Sea on the South
THIRD, the Philippines is at the crossroad of major international navigational routes. More than half of the world’s tankers—estimated to contain 353.42 thousand barrels of oil—pass every year through the Straits of Malacca and Singapore and Sunda and Lombok Straits, with majority continuing on to the South China Sea.
FOURTH, the waters Southwest of the Philippines is a hotbed of geological resources and activity. There is a high potential for the area to yield oil and gas.
• **FIFTH,** the Philippines is the “center of center of marine biodiversity” having the highest in the world.

• RP hosts a greater part of the Coral Triangle, which is an ocean space as having the highest degree of biological diversity.
ARCHIPELAGIC DOCTRINE AS POLICY CHOICE

• The Philippines looked at the archipelago as a unity of water and islands, and accordingly developed the “archipelagic doctrine” in order to protect the territorial integrity and security of the archipelago and ensure its access to the resources within its national waters.

• As the late Sen. Tolentino pointed out, “the archipelagic principle is important to the Philippines for two reasons: national security and exclusive exploitation of the living and mineral resources of the waters, seabed and subsoil thereof, in the baselines.”

• According to him “national security is endangered if warships of foreign countries can enter at will the waters within the archipelago, between the islands, with alien submarines playing hide and seek in the very heart of the country. The archipelagic principle is imperative for national safety, as protection from alien intruders.”

• He further added that “at the same time, the archipelagic principle is necessary to protect the resources at the sea. Philippine waters are rich fishing grounds and potential sources of oil and minerals. If people from other countries with better technology and know-how can freely enter these waters, they can easily deplete them of marine resources.”
“Archipelagic state” did not exist in international law

RP coined & pioneered the development of “archipelagic doctrine”
“The Philippines advanced the archipelago principle as early as 1956 and we have established it in our national legislation. We are therefore happy that the archipelago principle has finally been recognized and accepted as part of public international law.”
INTERNATIONAL RECOGNITION OF THE “ARCHIPELAGIC DOCTRINE”

THE PHILIPPINES IS A SIGNATORY AND PARTY TO THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS); SIGNED 10 DECEMBER 1982 AND RATIFIED 27 FEBRUARY 1984

Former Solicitor-General Estelito Mendoza
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<th>YEAR</th>
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<td>1987</td>
<td>HB 16085</td>
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<td>SB  206</td>
<td>Sen. Shahani</td>
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<td>2001</td>
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<td>HB 1202</td>
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<td>SB 1467</td>
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<td>2008</td>
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FIRST, The PH is a member of the family or community of nations, and as such, is subject to the law of nations or international law which governs inter-state relations. As held by the Int’l. Court of Justice in the Anglo-Norwegian Fisheries Case:

“The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal state is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.”

As observed by Fr. Joaquin Bernas, former member of the 1987 Constitutional Commission –

“A constitution is a municipal law. As such, it is binding only within the territorial limits of the sovereignty promulgating the constitution. For purposes of actual exercise of sovereignty, it is important for the sovereign state to know the extent of the territory over which it can legitimately exercise jurisdiction. For purposes of settling international conflicts, however, a legal instrument purporting to set out the territorial limits of the state must be supported by some recognized principle of international law.”
DOMESTIC STRUGGLE IN THE IMPLEMENTATION OF UNCLOS

• **SECOND**, the PH is a Party-Signatory to UNCLOS. The PH ratification of the Convention was communicated and deposited with the UN Secretary General.

• The PH is bound to perform its obligations in the Convention under the principle of *pacta sunt servanda*. Article 26 of the Vienna Convention on the Law of Treaties provides:

  "Article 26. Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

• As a State-Party to the UNCLOS, the PH cannot also invoke its domestic laws in order to escape its obligations under the Convention. Article 27 of the Vienna Convention on the Law of Treaties provides:

  "Article 27. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46."
DOMESTIC STRUGGLE IN THE IMPLEMENTATION OF UNCLOS

• THIRD, because the existing baseline law is not consistent with international law, specifically UNCLOS, no country recognizes it. As noted by the late Senator Arturo Tolentino during the Batasan debate on the ratification of UNCLOS –

“...I am very sorry to say that there was no country at all in that conference of over 150 states that would agree with us with our domestic claim under the Constitution. In other words, insofar as international law was concerned, our claim of historic waters is not recognized as part of international law. The only historic waters recognized under international law are those which are known as historic base. Outside of that, there is no other specifically recognized historic waters. In fact, I would like to state, and I think I have already stated it yesterday, that even our claim to historic waters, was contested by our very neighbor, a companion in the ASEAN, Indonesia. She would not agree to our claim of historic waters... ...So that even if domestically we assert this claim all the time, as far as international law is concerned, this claim has never been recognized. The United States itself in answering our intervention during the conference categorically denied that she exercised sovereignty over waters extending to the treaty limits, but stated that she exercised sovereignty only over three miles of the sea from the different islands. And that according to the United States delegation, what Spain ceded to the United States under the Treaty of Paris was the land area within the boundaries not including the sea as what is conceded as part of the sea under international law which is only three miles.”
• On 10 March 2009 Archipelagic Baselines Bill was signed into law as RA 9522

• In April 2009, a Petition was filed before the Supreme Court to declare RA 9522 unconstitutional.

• A Prayer for Temporary Restraining Order (TRO) on the deposit of a copy of RA 9522 to the UN.
ON THE BASIC ARGUMENT OF THE PETITION

...RA 9522 changes the maritime territorial boundary of the Philippines under the Treaty of Paris (TOP)...

• Premise is that the TOP defines the maritime territorial boundary of the Philippines -- that the polygon/rectangular lines under the TOP are allegedly the extent of the Philippine territorial sea.

• Accordingly, since the TOP is enshrined in the 1935, 1973, and 1985 Constitution, it could not be amended via a mere statute. To do so, would make the said law unconstitutional, as alleged in the present case.
ON THE CONSTITUTIONALITY OF RA 9522

• FIRST, RA 9522 does not change the character of the water provided for under the old baselines law. It is a mere clinical and technical adjustment of the basepoints under RA 3046 as amended by RA 5446.

RA 3046 contains two (2) Sections:

• Section 1 identifies the 80 basepoints; and,
• Section 2 defines the character of water inside baselines as “internal water” and the waters outside of baselines up to the TOP lines as “territorial water”.

RA 9522 merely amends Section 1 of the said law relating to the technical basepoints to align them with UNCLOS. Section 2 remains standing.
ON THE CONSTITUTIONALITY OF RA 9522

• SECOND, if one is to assume that RA 9522 changes the character of the water under RA 3046, it would still not be violating the Constitution, specifically the TOP.

A closer view of the TOP would indicate that it does not necessarily define the territorial water of the Philippines, and that its lines do not necessarily constitute the outer limits of the territorial sea of the Philippines

• **Text of the TOP**
• **State practice**
“Spain cedes to the United States the archipelago known as the Philippine Islands and comprehending the islands lying within the following lines:...”
“The natural import of these words is, it is submitted, that what was intended to be ceded was the **land area** found within the said imaginary lines. The regular geometric nature of the line suggests that its purpose was not so much to mark a political boundary but rather to make certain that all the islands comprising the archipelago were included in the transfer.”
“You will see that the reference is to the lands contained within certain lines of allocation. This is not an unusual way of attempting to delineate territory and there are other examples of territories being determined in treaties by the use of lines of definition. You will see that the reference in the three treaties [Treaty of Paris, Washington Treaty, US-UK Treaty] is to the actual islands and that the lines referred to are lines of allocation and not boundaries with a function of their own. In fact, none of the three treaties makes any reference to territorial waters.”
The Spanish Law of Waters of 1866 indicates that Spain observed the maritime delimitation prescribed under international law, which at that time is only three nautical miles from the coastline, to wit:

SPANISH LAW OF WATERS of 3 AUGUST 1866
ARTICLE 1

... includes as part of the national domain the coast of the sea, “that is, the maritime zone encircling the coast, to the full width recognized by international law.”
The US is adamant in denying that the TOP includes the maritime area. In response to a Philippine declaration that its territorial water extends to the limits of the TOP, the US stated:

“The Government of the United States does not share its view concerning the proper interpretation of the provision of those treaties as they relate to the rights of the Philippines in the waters surrounding the Philippine islands. The Government of the United States continues to be of the opinion that neither those treaties, nor subsequent practice, has conferred upon the United States, nor upon the Republic of the Philippines as successor to the United States, greater rights in the waters surrounding the Philippine islands than are otherwise recognized in customary international law.”
THIRD, what actually classified the water up to the limits of the TOP as Territorial Sea is not the TOP, but rather a municipal law, specifically RA 3046.

If the characterization of the water around the archipelago is defined merely under a municipal law, then the same could be amended merely via another legislative act. While the TOP is part of or included in Article I of the Constitution, RA 3046 & RA 5446 are mere legislative acts. While the TOP could only be amended or abrogated through an amendment of the Constitution, municipal laws such as RA 3046 and/or RA 5446 could be amended by subsequent legislations.
Territorial Sea (12 M)

Baselines

PHILIPPINES PROPOSED ASL

Sea Lane I (E-W)

Sea Lane II (E-W)

Sea Lane III (N-S)
The criticism against the designation of ASL could be summed up as follows:

ARCHIPELAGIC SEA LANES PASSAGE IS ONLY PERMISSIVE AND NOT MANDATORY, AND THAT AS SUCH, THE PHILIPPINES CAN DECIDE NOT TO ALLOW ARCHIPELAGIC SEA LANES BY REFRAINING FROM DESIGNATING ARCHIPELAGIC SEA LANES IN PHILIPPINE WATERS. ACCORDINGLY, BECAUSE ARCHIPELAGIC SEA LANES PASSAGE IS GOING TO BE A BURDEN ON PHILIPPINE SECURITY, CONGRESS SHOULD NOT ALLOW ASL IN PHILIPPINE WATERS AND NOT DESIGNATE ARCHIPELAGIC SEA LANES ON PHILIPPINE WATERS.
• Critics have confused ASLP with ASL

• ASLP is a right accorded to foreign vessels with corresponding obligation on the part of the archipelagic state

• ASL is a tool that archipelagic states could use to rationalize the exercise of the right (ASLP) by foreign vessels as one form to protect its security and marine environment. Although ASL designation by the archipelagic State is PERMISSIVE, ASLP is nonetheless MANDATORY
“The Philippine delegation argued very strongly against the mandatory establishment of archipelagic passage ... But it was finally adopted as a concession by the archipelagic states to the great maritime and naval powers... Only with the recognition of sea-lanes passage through archipelagic waters as the price and the trade-off given as compromise did these big powers agree to the archipelagic principle. We, therefore, had to give this passage, sea-lanes passage as a sort of compensation to the maritime and naval powers who were going to be deprived of large area of water of free navigation.”
The issue on Archipelagic Sea Lanes (ASL) is **NOT** about:

1. WHETHER OR NOT ARCHIPELAGIC SEA LANES PASSAGE IS A BURDEN ON PHILIPPINE WATERS OR ARE REALLY FOR THE BENEFIT OF THE MILITARY;
ARCHIPELAGIC SEA LANES PASSAGE (ASLP) IS PERMISSIVE

The issue on ASL is also NOT about:

2. WHETHER OR NOT ARCHIPELAGIC SEA LANES PASSAGE IS PERMISSIVE, SUCH THAT THE PHILIPPINES HAS THE DISCRETION TO PREVENT OR DISALLOW ITS EXERCISE IN PHILIPPINE WATERS BY NOT DESIGNATING ARCHIPELAGIC SEA LANES.

UNCLOS, Art. 53 - Right of archipelagic sea lanes passage

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.
The REAL issue on Archipelagic Sea Lanes (ASL) is:

WHETHER OR NOT, THE PHILIPPINES SHOULD EXERCISE THE ACT OF DESIGNATING ARCHIPELAGIC SEA LANES UNDER PARAGRAPH 1 OF ARTICLE 53 OF UNCLOS, OR WAIVE ITS EXERCISE IN FAVOR OF FOREIGN VESSELS UNDER PARAGRAPH 12 OF ARTICLE 53 OF UNCLOS.
Philippine National Interest:

- **WOULD PHILIPPINE NATIONAL INTEREST BE SERVED BETTER IF THE GOVERNMENT DECIDES TO EXERCISE THE ACT OF DESIGNATING ARCHIPELAGIC SEA LANES, OR IF THE GOVERNMENT JUST LEAVES THE EXERCISE OF THAT RIGHT TO THE DISCRETION OF FOREIGN POWERS?**

- **WILL MARITIME SECURITY, LOCAL FISHERIES RESOURCES, AND MARINE BIODIVERSITY BE MADE LESS VULNERABLE IF AND WHEN THE PHILIPPINES DECIDES TO EXERCISE THE ACT OF DESIGNATING ARCHIPELAGIC SEA LANES?**

- **WILL MARITIME SECURITY, LOCAL FISHERIES AND MARINE BIODIVERSITY BE MADE MORE VULNERABLE IF AND WHEN THE PHILIPPINES WAIVE ITS RIGHT TO EXERCISE THE ACT OF DESIGNATING ARCHIPELAGIC SEA LANES TO FOREIGN POWERS?**
ARCHIPELAGIC SEA LANES DESIGNATION

• ASLP IS BOTH BURDENSOME AND MANDATORY. IT WOULD BE BETTER FOR THE DESIGNATION OF ASLP TO BE EXERCISED BY THE PH RATHER THAN WAIVING IT TO THE ARBITRARY EXERCISE BY FOREIGN VESSELS.

• BECAUSE UNCLOS IS ALREADY IN FULL EFFECT SINCE 1997 INCLUDING ITS PROVISION ON MANDATORY ASLs, IT IS SUBMITTED THAT THEIR CONTINUING NON-DESIGNATION BY THE ARCHIPELAGIC STATE – PHILIPPINES – AMOUNTS TO A CONTINUING WAIVER OF SUCH RIGHT IN FAVOR OF FOREIGN POWERS. ABDICATION OF THIS RIGHT IN FAVOR OF FOREIGN POWERS IS NECESSARILY INCONSISTENT WITH NATIONAL INTEREST AND FAVORS FOREIGN INTEREST.

• IN THE FINAL ANALYSIS, THE CONTINUING ABDICATION OF THIS RIGHT MAKES PH ARCHIPELAGO MORE VULNERABLE IN TERMS OF ITS MARITIME SECURITY, LOCAL FISHERIES RESOURCES AND MARINE PROTECTED AREAS.
A. Maritime Security Implications of Non-ASL Designation: ASLP on all Archipelagic Waters

UNCLOS, Art. 53 - Right of archipelagic sea lanes passage

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation.

“routes normally used for international navigation” has no precise definition and measurable definitive technical meaning. Since the PH has not designated ASLs, we are practically conceding to a foreign power’s definition of what is “normally used for navigation” based on their own estimate of what is good for their own national interest.
A. Maritime Security Implications of Non-ASL Designation: ASLP on all Archipelagic Waters

Passage of Submarines on “Normal Mode”

The matter is made worse by the fact that submarines are allowed to traverse Philippine waters in “normal mode” which actually means that this particular type of vessel can pass in a submerged modality. Since the Philippines have not designated archipelagic sea lanes, these submarines can practically pass unrestrictedly in any parts of Philippine waters, which in their determination (not ours) are “normal” navigational routes, again in light of Paragraph 12, Article 53 of UNCLOS.

Innocent Passage vs. Archipelagic Passage

Critics have implied that since innocent passage is already being practiced by foreign vessels on Philippine archipelagic waters, there is no longer need for the Philippines to designate ASLs. Further, since innocent passage precludes passage by military vessels, it would be better for the Philippines to just stick with innocent passage lest it opens the door for unrestricted military passage on Philippine waters.
A. Maritime Security Implications of Non-ASL Designation: ASLP on all Archipelagic Waters

Innocent Passage vs. Archipelagic Passage

This assumption is plainly wrong. Innocent passage does not preclude the exercise of ASLP on archipelagic waters. Innocent passage (Article 52, UNCLOS) is a separate regime from archipelagic sea lanes passage (Article 53, UNCLOS). Archipelagic waters are subject to both passages. Innocent passage is non-suspendable within ASL, while innocent passage outside of ASL is suspendable. This makes the designation of ASL more imperative because ASLP with non-suspendable innocent passage could be exercised anywhere in the archipelago if the archipelagic state does not designate ASL.

Innocent passage and archipelagic passage apply to both commercial and military vessels alike. If Philippine waters are indeed historically traversed by foreign commercial vessels under the concept of innocent passage, as opined by some critics, then it could be safely assumed that nothing prevented military vessels from traversing Philippine waters since innocent passage does not distinguish between military and commercial. These type of vessels need not wait for the designation of ASL to be able to pass through Philippine waters ...
A. Maritime Security Implications of Non-ASL Designation: ASLP on all Archipelagic Waters

Innocent Passage vs. Archipelagic Passage

...for they are already allowed under the concept of innocent passage. Critics are therefore wrong in asserting that ASL designation will paved the way for Philippine waters to be swamped with foreign military vessels including aircraft carriers.

The truth is that military aircrafts from the former Union of Soviet Socialist Republic (USSR) and naval vessels from the United Kingdom, Australia, and the US had deliberately traversed Philippine waters in the past for the purpose of challenging the country’s old maritime claims.
A. Maritime Security Implications of Non-ASL Designation: ASLP on all Archipelagic Waters

Non-Effect of Outside Tanker Routes on ASLP on PH Archipelagic Waters
The mandatory ASLP on Philippine archipelagic waters would not be prevented by the fact that tankers pass through routes outside of the archipelago. Although this is obviously good news, the routes nonetheless are not ASLs for they are outside of the Philippine archipelago. These tanker routes could not be used as substitutes for the mandatory ASLP on Philippine archipelagic waters. Irrespective of these routes being “most” used by tankers, ASLP is and would still be imposed on Philippine archipelagic waters on routes “normally” (not “most”) used for international navigation. Article 53 (Paragraph 12) only uses the word “normally” for purposes of archipelagic sea lanes passage.
B. ASL and PH Marine Bio-Diversity: ASLP vis-à-vis Due Regard Principle

If the Philippines does not designate, MPAs would be vulnerable. Thus, it is better for the Philippines designate ASL in order to protect MPAs by limiting the area covered by ASL. Indeed, this was one of the rationale behind the designation of ASL so as to avoid as many MPAs and Fishery areas as possible.

The allegation that Tubattaha Reef will be violated and ran over by the proposed ASL is not correct. The axis lines actually do not touch the protective zone of Tubattaha Reef. The extent of the theoretical 20 M limit beyond which, ships traversing the ASL are not allowed to deviate is not a license for ships or the ASL to violate the protective zone of Tubattaha Reef. Tubattaha Reef is protected by law and the ASL 20m limit for deviation does not repeal or modify this particular law. The ASL is by no means a license to disregard the protective zone of Tubattaha. On the contrary, ships traversing the ASL are obligated to respect Philippine law in this regard under the “due regard” principle.
C. **ASL Designation and the IMO**

It has been argued that the Philippine designation of archipelagic sea lanes prior to its adoption by the IMO would be “premature.”

**UNCLOS, Art. 53 - Right of archipelagic sea lanes passage**

9. *In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic state, after which the archipelagic state may designate, prescribe or substitute them.*
Therefore, the term “premature” in such context, implies the following as its underlying assumptions:

1. That because the designation is procedurally premature, it can not be urgent. Even if it is urgent, such urgency should strictly – in absolute terms – wait for the IMO before any ASL could be designated. It doesn’t matter whether or not the designation of ASL is urgent. What is important and most fundamental is that prior IMO approval is procedurally required before the Philippines could designate ASLs.

2. That as such, the term “premature” also assumes that the Philippines is legally prohibited from designating sea lanes without the approval of the IMO. That to do so would be a violation of international law, specifically UNCLOS, thereby invalidating such act. Accordingly, the ASLs that were designated is most likely to be disapproved by the IMO. And once disapproved by IMO, the Philippines would have no other choice but to repeal its own laws because the IMO says so.

Contrary to these assumptions, the designation of ASL 1) is not only necessary but it is also urgent for the Philippines to protect its security and marine environment; and 2) for which reason, the designation of sea lanes as a valid exercise of a state’s substantive and inherent right to preserve itself could not be negated by the procedural requirement under Article 53.9.
URGENCY OF ASL DESIGNATION

• The country’s vanishing reefs and marine bio-diversity typified by the massive destruction of the corals in Bakud Coral Reef at Sarangani Point caused by a foreign cargo vessel last May bring to fore the urgent need to designate sea lanes in Philippine archipelagic waters.

• Indeed, the unregulated and unrestricted passage of foreign vessels into Philippine waters put to risk precious coral reefs and marine bio-diversity situated in the archipelago.

• Although the reason for the destruction of Philippine coral reefs could be attributed to several factors such as exploitative fishing, global warming, poachers and profiteers; nonetheless, these are compounded by the unregulated passage of vessels through Philippine archipelagic waters i.e. Indian cargo vessel, including the pollution caused by these ships.

• The implications of degradations of Philippine corals can not be under-emphasized. “Coral reefs serve as breeding grounds for fish and other forms of marine life.” A large percentage of our population depends on reefs for their livelihood.
It is precisely because of the urgency of providing protection to the country’s marine biodiversity and corals that the procedure under Article 53.9 should not be looked at as something that prevents the archipelagic state from exercising its substantive and inherent right to protect its marine resources for its people. This is state-preservation.

Owing to the urgency of the situation, the Philippines need not procedurally wait for IMO’s adoption before it takes action to protect its marine biodiversity. To do otherwise, might be too late and fatal. Coral regeneration is a long process. According to science, it takes about ten to 50 years for a destroyed coral reef to regenerate again.

The substantive and inherent right of the Philippines to protect and preserve its resources for its people takes precedence over the procedural guideline laid in Article 53.9. To do otherwise would be absurd and unintelligent. Article 53.9 should not be interpreted to the point of absurdity and in utter disregard of an inherent sovereign right.
LEGITIMACY OF ASL DESIGNATION

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• The substantive and inherent right of the Philippines to protect and preserve its resources for its people takes precedence over the procedural guideline laid in Article 53.9. To do otherwise would be absurd and unintelligent. Article 53.9 should not be interpreted to the point of absurdity and in utter disregard of an inherent sovereign right.
• Article 53, Paragraph 9, consists of 2 parts:

In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.
1st part is mandatory and substantive –

In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption…
The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.
• PH will refer its designated sea lanes to the IMO.

• However, as to the procedure of when to designate sea lanes and when to refer the same to the IMO, the second part of Article 53.9 is merely suggestive and directory. Although the 2nd part of Article 53.9 indicates that the Archipelagic State “may designate, prescribe or substitute” sea lanes “after” the same has been “adopted” by and “agreed” with the IMO; nonetheless, it does not necessarily prohibit the Archipelagic State from designating sea lanes even before these are referred to IMO.

• The act of designating sea lanes is an inherent sovereign right of a State under public international law, which is likewise recognized under Article 53.1 of UNCLOS, to wit –

**UNCLOS, Art. 53 - Right of archipelagic sea lanes passage**

1. **An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.**
• As such, the taking of a different procedure to comply with international law will not necessarily give the IMO the authority not to adopt the sea lanes earlier designated by an Archipelagic State. In the first place, IMO is not empowered to approve or disapprove designated sea lanes. Its exact function under Article 53.9 is specifically limited to “may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic state.”

• The only issue is on whether or not such sea lanes would command respect from the international community or not. To address this, a question may be asked a priori: is the PH’ designation of sea lanes consistent with UNCLOS? If NO, then the same is not expected to command respect. If YES, then it should. However, what if the designation is partially consistent? Will such partial designation or partial compliance not command respect?

• It is submitted that for as long as the intention is to comply in good faith with the substantive mandatory requirement of UNCLOS, it would not necessarily deny the designated sea lanes any respect from the international community.
LEGITIMACY OF ASL DESIGNATION

The designation is consistent and pursuant to UNCLOS:

1. Article 53.1 provides that the archipelagic state may designate sea lanes for purposes of continuous and expeditious passage;

2. The sea lanes proposed to be designated are the most expeditious and continuous routes for ship passage;

3. The routes proposed for designation are normally used for international navigation
The harmonization of Philippine municipal laws with UNCLOS is not just a matter of obligation on the part of the country. It is actually also in the best interest of the country.

The archipelagic doctrine alone embodied in UNCLOS is critical to the integrity of the Philippine archipelago.

RA 9522 is a culmination of the country’s efforts to promote the archipelagic doctrine which started in the 1950s, and which the country painstakingly fought for to gain international recognition. While the Philippines was successful in having the archipelagic doctrine embodied under Part IV of the 1982 UNCLOS, the country faced difficulty in its implementation. It took more than twenty five years of struggle, confronting both domestic and international challenges, before the Philippines was able to enact an archipelagic baselines law that is consistent with UNCLOS.
Pockets of high seas
THANK YOU