A legal analysis on the implementation and enforcement of fishery laws of the coastal state in its exclusive economic zone: a Philippine perspective

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A LEGAL ANALYSIS ON THE IMPLEMENTATION AND ENFORCEMENT OF FISHERY LAWS OF THE COASTAL STATE IN ITS EXCLUSIVE ECONOMIC ZONE:
A Philippine Perspective

By
FATIMA ALELI ANGELES
Philippines

A dissertation to the World Maritime University in partial fulfillment of the requirements for the award of the degree of

MASTER OF SCIENCE
IN
MARITIME AFFAIRS
(MARITIME LAW AND POLICY)
2015

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DECLARATION

I certify that all material in this dissertation that is not my work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorse by the University.

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“Probatio dilectionis exhibitio est operis…”
The proof of love is work.
-St. Gregory
ABSTRACT

Title of Dissertation: A Legal Analysis on the Implementation and Enforcement of Fishery Laws of the Coastal State in its Exclusive Economic Zone: A Philippine Perspective

Degree: MSc

This dissertation scrutinizes the extent of the rights that the Philippines as a coastal State has with regards to the implementation and enforcement of fishery laws in its Exclusive Economic Zone (EEZ). By examining how the right to engage in fishing and the concept of EEZ emerged, as well as laying down the fishery rights of the States in the different maritime zones, this research was able to establish the legal regime involving the fishery laws implementation and enforcement in the EEZ. Thereafter, various States practices were probed to determine the trend of implementation and enforcement of fishery laws in the EEZ. The focus of the study shifted to the Philippine setting by discussing the review of pertinent national legislations and issuances as well as the data gathered from the relevant Philippine authorities which are mandated to implement and enforce fishery laws in the domestic sphere.

The aim of the study was to identify the existing gaps in the application of UNCLOS 1982 provisions to the Philippines concerning the implementation and enforcement of fishery laws in the Philippines’ EEZ and recommend measures to address these gaps.

An analysis of the existing laws, rules, and regulations divulged that there are indeed gaps in the implementation of fishery laws in the Philippines. The need to enact additional laws and consider entering into boundary delimitation treaties with neighboring countries with which Philippines has overlapping EEZs to comply with several UNCLOS 1982 provisions was revealed. On the other hand, the evaluation of the current Philippine enforcement machineries (i.e., assets and manpower) also showed gaps in the enforcement of fishery laws in the Philippines. The data from the Philippine authorities (Bureau of Fisheries and Aquatic Resources and Philippine Coast Guard) led to the conclusion that the country requires additional enforcement mechanisms to enhance its capability to ensure observance with fishery laws thereby curtailing violations thereof.

Key words: Exclusive Economic Zone, Implementation and Enforcement of Fishery Laws, Rights and Duties of a Coastal State in its Exclusive Economic Zone, Fishery Laws of the Philippines, Maritime Boundary Delimitation on Overlapping Exclusive Economic Zones, Enforcement Mechanisms in the Philippine Exclusive Economic Zone
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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ASEAN</td>
<td>Association of South-east Asian Nations</td>
</tr>
<tr>
<td>BFAR</td>
<td>Philippines’ Bureau of Fisheries and Aquatic Resources</td>
</tr>
<tr>
<td>BFAR-FAO</td>
<td>Bureau of Fisheries and Aquatic Resources - Fisheries Administrative Order</td>
</tr>
<tr>
<td>CMOA</td>
<td>Philippines’ Commission on Maritime and Ocean Affairs</td>
</tr>
<tr>
<td>CS</td>
<td>Continental Shelf</td>
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<tr>
<td>CZ</td>
<td>Contiguous Zone</td>
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<tr>
<td>DA</td>
<td>Philippines’ Department of Agriculture</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>EFZ</td>
<td>Exclusive Fishing Zone</td>
</tr>
<tr>
<td>FAO</td>
<td>Food and Agricultural Organization</td>
</tr>
<tr>
<td>FFV</td>
<td>Foreign Fishing Vessels</td>
</tr>
<tr>
<td>FIDC</td>
<td>Philippines’ Fishery Industry Development Council</td>
</tr>
<tr>
<td>FLEMO</td>
<td>Fisheries Law Enforcement Manual of Operations</td>
</tr>
<tr>
<td>HS</td>
<td>High Seas</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>IRR</td>
<td>Implementing Rules and Regulations</td>
</tr>
<tr>
<td>IUUF</td>
<td>Illegal, Unreported, and Unregulated Fishing</td>
</tr>
<tr>
<td>IW</td>
<td>Internal Waters</td>
</tr>
</tbody>
</table>
MCS  Monitoring, Control, and Surveillance
MOA  Memorandum of Agreement between BFAR and PCG
NBI  National Bureau of Investigation
PCG  Philippine Coast Guard
RA 3046  An Act to Define the Baselines of the Territorial Sea of the Philippines
RA 5446  An Act to Amend Section 1 of RA 3046
RA 8550  Fisheries Code of the Philippines
RA 9522  An Act to Define the Archipelagic Baseline of the Philippines and for Other Purposes dated 2009
RA 10654  An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending RA 8550 and for Other Purposes
ROE  Rules of Engagement
SBC  The Sea Bed Committee
TS  Territorial Sea
UN  United Nations
UNGA  United Nations General Assembly
CHAPTER 1

1. Introduction

The Republic of the Philippines is a sovereign, archipelagic country composed of more than 7,107 islands covering more than 300,000 square kilometers of territory. It is bounded to the west by Vietnam, to the north by Taiwan, to the south by Indonesia, to the southwest by Malaysia, and to the east by Palau (Mendoza, 2015). The Philippines is significantly linked to the maritime realm in terms of its economic and social activities. Bearing in mind its geographical configuration, the entire State depends profoundly on the marine resources found in its vast coastline.

Fisheries and the utilization of aquatic resources play a crucial role in the Philippine economical growth and sustenance. Considering this premise, it would be an understatement to pronounce that the Philippines hold a huge stake in the management, protection, preservation and conservation of its fisheries and aquatic resources for its own citizens.

Notably, the Philippines is divided into 15 administrative regions with 81 provinces, of which 80 % are coastal, themselves comprising 1,514 municipalities, of which 65 % are coastal (Palomares, 2014). As such, it is but natural that the Philippine government is focused on the implementation and enforcement of fishery laws, rules and regulations.
1.1. Background

Fisheries have been known to produce a significant global, economic, social and ecological impact. Fisheries are said to be a common property natural resource, i.e., fish in the sea are *res nullius* and property rights arise only when they are caught and thus anybody can fish in the sea. As a consequence, over-fishing, competition and conflict between fishers are inevitable (Rothwell, 2010). The afore-stated phenomena existed since time immemorial and still continue to transpire to this date. In the macro level, the international community also shares these phenomena. In fact, according to Churchill (1999), international fisheries law prior to mid-1970s was focused primarily on the access to resources, conservation measures and prevention of conflict between fishers. Further, the method of regulating access to fishery resources was to take into consideration the different jurisdictional zones of coastal States and subsequently, the regime of the high seas.

Indeed, it is beyond question that a coastal State has the territorial sovereignty over its internal waters and the territorial sea up to a limit not exceeding twelve nautical miles and the State enjoys exclusive access to fishery resources in the said zone. “Territorial sovereignty in international law is characterized by completeness and exclusiveness and accordingly, the coastal State can exercise complete legislative and enforcement jurisdiction over all matters” in this zone (Tanaka, 2015, p. 85).

Churchill (1999) further propounds that there have been a few claims by the States of the Exclusive Fishing Zones (EFZ) to 200-mile in the late 1940s and early 1950s, however, this has been the subject of debate among the international community. Later on, bilateral and regional agreements between States were concluded which espoused the 12-mile claim for the EFZ and such agreements were widespread that it became a rule of customary international law.
Aside from the various bilateral and regional agreements among States, there were multilateral agreements that dealt with fisheries such as the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, adopted at UNCLOS I and the 1967 Convention on the Conduct of Fishing Operation in the North Atlantic. In 1960, UNCLOS II deliberated on the questions of the breadth of the territorial sea and fishery limits and the adoption of conventions or other instruments related to that process. However, there was a failure to achieve the necessary two thirds vote and “the conference concluded without any agreement on the breadth of the territorial sea nor an adjacent fishing zone” (Rothwell, 2010, p. 67).

Articles 55 and 56 of UNCLOS 1982 provide that EEZ is neither part of the territorial sea nor the high seas. This zone is *sui generis* or a class of its own. The coastal State does not have the full sovereignty that it has in the internal waters and its territorial sea but certain right to exercise jurisdiction for certain purposes such as exploration, exploitation, conservation, and management of the natural resources of the seabed, subsoil, and superjacent waters, and sovereign rights related to other activities for the economic exploitation and exploration of the EEZ, i.e., generation of energy from water, currents and winds (Blay, 1989).

Under UNCLOS 1982, “the EEZ is an area beyond and adjacent to the territorial sea, subject to the special legal regime established in this Part, under which the rights and freedoms of other States are governed by relevant provisions.” In this zone, coastal States retain the sovereign rights to explore and exploit, conserve and manage the natural resources, whether living or non-living of the waters superjacent to the seabed and of the seabed and its subsoil, and includes the establishment and utilization of artificial islands, structures and installations, protection and preservation of the marine environment and the conduct of marine scientific research.
Hoyle (2013) declares that even though UNCLOS 1982 has clearly established the rights, duties and privileges encompassing the EEZ, these are still subject to various interpretation and application by States and the maritime stakeholders. The idea surrounding the setting up of the 200 nm zone is to establish a unique regime for vessels plying the EEZ and provide them with passage known as innocent and at the same time would guarantee the safety of life at sea and the protection of marine environment.

It is noteworthy to state that more than 90% of all fish currently caught in the sea are harvested 200 miles from the shore making the coastal State the primary beneficiary of a large amount of marine living resources. As a consequence, coastal States act as stewards for these abundant living resources and must protect and preserve them by setting up a ceiling for exploitation and espousing conservation measures that would ensure their sustainability for the generations to come. UNCLOS 1982 gives authority to the coastal States to enforce and implement their domestic fishery laws against violations therein by vessels found to be fishing in their EEZ (Balton, 1996).

Although the substantial percentage of the world’s fishing originate from 200 miles from shore, UNCLOS 1982 have given importance to the legal regime on the high seas by laying down the obligation of the States to cooperate in the management and conservation of fishery resources therein (Churchill, 1999). Rothwell (2010) emphasized that the freedom of fishing, aside from the freedom to navigate in the high seas, is recognized in accordance with Article 87 of UNCLOS 1982.

“Before the ratification of the United Nations Convention on the Law of the Seas (UNCLOS 1982), the Philippines already had statutes which governed the determination of its territorial sea as well as the extent of the Exclusive Economic Zone (EEZ)”
and as such, it has since established the limits of its territory and jurisdiction and the national laws needed to protect its rights and interests.

There are other underlying aspects involved in the enforcement of fishery laws in the EEZ. Political, social and economic factors come into play when coastal States implement and enforce the fishery laws in the EEZ. Issues involving political decisions have an impact on the establishment of international cooperation and agreements, entities which focus on marine environmental awareness pose certain challenges on fisheries management and fisheries regime. Marine environmental and scientific research, fishery law enforcement and even decisions of international bodies rely heavily on the decisions of States that mainly deal with political, social and economic underpinnings (Hoel, 1998).

The abundance and availability of marine resources whether living or non-living usually connote the tensions emanating from maritime territorial disputes in Asia (Goldstein, 2012). In the Greenland and Jan Mayen case (Denmark v. Norway), the International Court of Justice (ICJ) rendered a decision which implied that fisheries is a crucial aspect in determining maritime boundary delimitation considering the question of whether access to the resources of the area of overlapping claims constitute a factor relevant to the delimitation.

This research intends to render a careful scrutiny of the extent of the rights and duties that the Philippines as a coastal State has in terms of implementing and enforcing its fishery laws in its EEZ. As categorically stated in Article 56 of the UNCLOS 1982, in the EEZ, the coastal State has the sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources. Such principle is beyond question. However, what remains to be unclear is the extent to which the coastal State can exercise its so-called “sovereign rights” to enforce its national laws, most
particularly, its fishery laws 200 nautical miles from its baseline (Vicuña, 1989). Undeniably, coastal States are given the right to implement rules and establish its own enforcement procedures with regards to the utilization of resources in the EEZ (Smith, 1986).

The establishment of control and enforcement procedures in the EEZ is one of the primordial challenges to avoid and prevent unsafe activities, pollution to the environment and other illegal activities. These control procedures would be the patrolling, boarding and inspection activities (Hey, 1989). In fact, Article 73 of UNCLOS 1982 even made mention of measures such as boarding, inspection, arrest and judicial proceedings to guaranty that the laws and regulations imposed by the coastal States are complied with (Dahmani, 1987). Moreover, Article 73 of the UNCLOS 1982 provides for the “arrest and release” mechanism to be used by the coastal State in case a vessel violates the laws and regulations of the coastal State, barring imprisonment, in the absence of agreement between to the contrary of the States concerned. Albeit the existence of these provisions in one of the most important maritime conventions, gaps continue to emerge, leaving certain questions unanswered.

1.2. Objectives

The research aims to lay down the gaps found in the application and implementation of the existing provisions of UNCLOS 1982 in the Philippine setting with regards to the extent of the coastal State’s right to implement and enforce fishery laws in the EEZ and provide relevant recommendations to address these gaps.

1.3. Statement of the Problem/Research Questions

This research will determine whether the aforementioned allowable implementation and enforcement measures as embodied in UNCLOS 1982 are sufficient enough for the Philippines to curtail probable abuses by neighboring States that may intend to explore
and exploit its resources without authority or permission from the former. In a more general perspective, are the national laws sufficient and effective to address the issues of poaching in the Philippine EEZ? Further, should the coastal State lack the manpower and equipment in patrolling its EEZ, how can it protect its own interests and exercise its sovereign rights in the EEZ in the first place? Most importantly, this research will disclose the measures that the Philippine government must ensure to address the gaps in the implementation and enforcement of its fishery law in the country.

1.4. Hypothesis

There is a need for stringent measures to be adopted by the Philippines as a coastal State in the implementation and enforcement of its fishery laws in its EEZ.

1.5. Methodology

This legal research will use the qualitative analysis method by reviewing and analyzing the data that will be collected in relation to the implementation and enforcement of fishery laws in the Philippines’ EEZ. In addition, this research will consider a multitude of sources of available data from public documents and official records from the Bureau of Fisheries and Aquatic Resources (BFAR) and the Philippine Coast Guard (PCG), among others which perform actual patrol and boarding operations in the Philippines’ EEZ, to gather the necessary statistics and relevant reports in line with the enforcement of fishery laws in the Philippines. Existing Rules of Engagement and Manual of Operations as well as the Memorandum of Agreement (MOA) between the BFAR and the PCG will be thoroughly scrutinized to discover existing loopholes and gaps in the said fishery law enforcement in the Philippines’ EEZ. Relevant researches shall be thoroughly studied and criticized to help in evaluating if the Philippine laws have already addressed the necessary aspects relating to implementation and enforcement of fishery laws in its EEZ.
1.6. **Key Assumptions and Limitations**

This research relies on the assumption that there is an existing problem in the implementation and enforcement of fishery laws in the Philippines’ EEZ given the myriad cases of poaching in Philippine waters, most especially in its EEZ. The primordial concern that would evidently limit the research would be the source of data that the BFAR and the PCG can provide. Given the logistical requirements that patrolling the EEZ necessitates, the Philippine law enforcers face certain constraints. These might affect the result of the research since not all incidents of infractions of fishery laws in the Philippine EEZ are reported and recorded. Upon initial coordination with BFAR and PCG, it was found that most reported cases occurred between the Philippines and China/Taiwan. This research will focus more on domestic legislation, dissecting whether there was lack of or poor implementation. Philippine laws, rules, regulations, administrative policies and circulars will be delved into to determine whether the problem lies on regulations that have irrelevant penalties hence the need to amend certain provisions thereof or that more laws or rules must be established or if there are enforcement measures that need to be improved or developed.
CHAPTER 2

2. Legal Regime Involving Fishery Laws in the EEZ

“The rules of international maritime law have been the product of mutual accommodation, reasonableness, and cooperation. So it was in the past, and so it is today.” (International Court of Justice: Fisheries Jurisdiction (United Kingdom vs Iceland), Merits, Judgment, ICJ Reports (1974), para.53)

2.1. Right to Engage in Fishing According to Customary Law

International custom is a proof that a specific practice is generally accepted as law. The test in determining the existence of a rule of customary international law is if the practice is generally and consistently applied by States and opinion juris, that the practice is one that is subject of international law (Churchill, 1999).

The earliest records show that parts of the sea belong to whoever has the power, military and political alike, to control them, as with land territory, otherwise known as mare nostrum. Roman Law has indoctrinated the concept of maris communen usum omnibus hominibus, i.e., the ocean is supposed to be for the common use of humankind and in the same vein, the head of the State governing the adjoining land territory has the obligation and jurisdiction over that specific area. The emergence of contending powers over the sea in the European region i.e., Denmark, Norway, Holland, Portugal, England, and Spain gradually eliminated the concept of mare nostrum and instead led to the advancement of the principle of mare clausum which means that the sea is under the exclusive control of a particular State responsible for it (Roots, 1986).
In 1609, Hugo Grotius published *Mare Liberum* or the principle of open seas otherwise known as the freedom of the seas espousing that the high seas must be open to and free for the use of all nations with the littoral State having sovereignty and jurisdiction over its territorial waters which it can control from its land territory (Kwiatkowska, 1989). On the other hand, *Mare Clausem*, authored by John Selden in 1617, aimed to refute *Mare Liberum*. Although both works were primarily written to advocate for their clients, these principles were utilized to settle the claims of States which wanted exclusive jurisdiction over the high seas to the exclusion of other States.

Van Bynkershoek in his work *De Dominio Maris Dissertatio* during the early 18th century merged both principles of *mare clausum* and *mare liberum* and thereby established the maritime zones known now as the territorial seas and the high seas. Bynkershoek promoted that one area is assigned to the coastal State for its exercise of sovereignty and jurisdiction only to be limited by the extent of a cannon shot which is three miles, also known as the cannon shot rule, and another area is assigned for the freedom of navigation. In 1972, the Secretary of Legislation in Paris, Fernando Galliani, established a limit of the territorial sea at three miles such that the three miles rule was widely adopted in European treaties as well as in the United States of America. The three miles rule was then considered as a customary international law in 1893 in the Bering Sea Tribunal Arbitration as a result of a fishery dispute between the United Kingdom and the United States.

In the 20th century, nations started to claim and set up various regimes in superjacent seas to protect its fishery resources. In 1910, Portugal proscribed trawling by steam vessels within a minimum of three miles from the coast. Corollary, Russia in 1907 established eleven miles as its territorial sea and increased the same to twelve miles after four years.
In the conclusion of the First World War in 1919, there was a need to outline concerns in the maritime domain that includes the establishment of the territorial sea, ergo, the League of Nations was created. However, no agreement was reached since the developed States sought for the maintenance of the three miles territorial sea rule albeit the disagreement of other States. The Council of the League of Nations commenced the drafting of international legal framework and set up a Committee of Experts for the Progressive Codification of International Law, nevertheless, in a Resolution in the Assembly of the League of Nations on 27 September 1927, it was stated that the establishment of said legal framework must not be confined to a mere registration of existing regulations, standards or rules but must be targeted to address the current circumstances of the international maritime community. Thereafter, a Codification Conference was held in Hague in 1930, however, an agreement was also not reached during this period (Hoyle, 2013).

At the end of the Second World War, there were four jurisdictional zones namely: the internal waters, landward of the baseline of the territorial sea; the territorial sea, with uncertain breadth, however not exceeding 12 miles; the contiguous zone of undetermined breadth which was claimed by a few States; and the high seas (Brown, 1986). It was said that the most vital development in the formation of customary law was the advent of the continental shelf as a legal notion. It was 1945 when United States President Truman in Presidential Proclamation No. 2667 asserted that the seabed adjacent to the coast of the United States belong to it. This assertion was followed suit by other States for the purpose of claiming exclusive rights over natural resources. In 1945 and 1946, Mexico and Argentina, respectively, claimed for the continental shelf. On the other hand, Chile, Ecuador, and Peru unilaterally claimed 200 nm and asserted exclusive jurisdiction over all facets of offshore resources, which includes conservation, use, management, and preservation of all marine resources thereby putting forth the concept of the EEZ (Smith, 1986).
It is interesting to note that since 1977, following the proclamation of the 200 mile fishing zone by a number of States, experts observed that the total recorded catch, instead of decreasing, had significantly increased. Experts predicted that said catch would drop in numbers as a consequence of the proclamations due to the fact that fishing vessels from distant States would have less allocations to the fisheries resources of the coastal States whereas the coastal States would have a surplus of the same. The reason for the increase was because the afore-stated fishing vessels found more ways to innovate and veered far from coastal States towards the high seas and some have been said to have intensified their fishing activities in the maritime zones within their national jurisdiction (Sanger, 1986).

2.2. Establishment of Fisheries Zones

The institution of the difference between the concepts of territorial sea and the exclusive fishing zone was made after the unsuccessful conclusion of UNCLOS II in 1960. It can be garnered from the various bilateral agreements between North Atlantic States that exclusive fishing zones beyond the territorial sea were broadly recognized. It was the 1964 European Fisheries Convention which integrated six mile territorial sea with another six mile for an exclusive fishing zone. A number of Latin American States and Iceland unilaterally claimed the fishing limit from 12, then 50 and then to 200 miles. There were reluctances from other States in the beginning, however, other States began to claim the 200 mile exclusive fishing zones too (Brown, 1986).

The Declaration of Santiago in 1952 where Chile, Ecuador, and Peru adopted the declaration on the maritime zone and thereby highlighted the economic nature of the claim for the 200 miles in order to increase the exercise of exclusive powers of the littoral State over that specific part of the sea. During this period, numerous coastal States were literally asserting for an extension of authority to gain a wider exclusive fishing zone to exploit resources within the 200 miles (Vicuña, 1989).
By 1985, coastal States have established the 200 mile EEZ or fisheries zone. Smith (1986) mentioned that as of May 1985, 92 States have already declared their entitlement to the resource zone of 200 miles with 64 States claiming EEZ and 28 claiming fisheries zone.

2.3. Origin and Development of the UNCLOS Provisions Relative to the Specific Legal Regime of the EEZ

In 1945, the United Nations (UN) was founded to uphold global peace and security, foster amicable relations among States and accomplish international cooperation in solving problems pertaining to economy, social, cultural or humanitarian. Two years thereafter, the UN General Assembly (UNGA) established the International Law Commission (ILC) to promote the development of international law as well as its codification. The regime of territorial seas and the regime of the high seas were included in the list for codification. The ILC submitted to the UNGA drafts in relation to continental shelf and fisheries. It thereafter recommended the same to be adopted in a Resolution. These drafts became the basis for deliberations in UNCLOS I.

UNCLOS I discussed various claims from States ranging from 3 to 200 nm in breadth and there were four treaties which were discussed and negotiated therein. However, as to the breadth of territorial sea and the extent of a State’s exclusive fishery rights, no agreement has been concluded. The four Conventions are as follows: the Territorial Sea and the Contiguous Zone Convention which adopted a 12 nm contiguous zone. Said limit was understood by some States as the territorial sea while other States understood the same as pertaining to fishing zones; the High Seas Convention outlined the high seas as the portions of the sea which are not integrated in the territorial sea or internal waters of a State; the Continental Shelf Convention has given the coastal States the power to explore and exploit the resources in the continental shelf; and lastly; the Fisheries Convention has acknowledged that a littoral State has the special interest in maintaining
the productivity as well as conserving the marine living resources in the sea. The special interest of the coastal State is directed to create a more far-reaching authority for coastal States to exploit fisheries resources beyond its territorial sea (Attard, 1987).

Two years after the unsuccessful conclusion of the first UNCLOS, the UNGA convened UNCLOS II. The UNGA considered that international strains would be significantly lessened if the issues involving the extension of the territorial sea as well as the parameters regarding fisheries in the high seas adjacent to the territorial sea were settled. The first two UNCLOS in 1958 (UNCLOS I) and 1960 (UNCLOS II) took into consideration the views propounded by the coastal States in Latin America as they have been also acknowledged by the ILC. The exclusive right to fish was not looked upon favourably by States during the first few deliberations and drafting of UNCLOS I and II. However, the principles of preferential fishing rights on the high seas and the special interests of the States have been successfully and progressively considered.

Nearing the end of 1967, the Ambassador from Malta, Arvid Pardo, made a historic discourse during the UNGA pronouncing that the seabed and the subsoil beyond the limits of national jurisdiction cannot be appropriated by any particular State and such must be preserved for peaceful utilization and for the benefit of the entire human race. The UNGA subsequently adopted a Resolution that includes the concepts espoused by Ambassador Pardo. Thereafter, the UNGA created a Committee on the Peaceful Use of the Sea Bed and Ocean Floor Beyond the Limits of National Jurisdiction with the task of scrutinizing the international legal regime of the sea bed outside the national jurisdiction. The Sea Bed Committee (SBC) acted as a preparatory committee for the third UNCLOS. SBC encountered debates in relation to fisheries and a number of States was questioning the outmoded principle on the absolute freedom to fish in the high seas emphasizing that modern technologies would make a tremendous impact on the fishery resources since the said marine resources can be depleted. It was pronounced that leaving the management, preservation and conservation of fishery and other marine living resources
to international regulations alone would pose an overwhelming risk of abuse to States who have the recent technology to fish and exhaust said resources. There was a loud and urgent call to grant extensive rights to the coastal States for efficient and effective management, conservation and preservation mechanisms over the marine resources. Correspondingly, this was the reason behind the coastal States’ clamour for additional exercise of powers beyond the territorial seas.

In 1972, based on a paper presented by Kenya at the 12th meeting of the Afro-Asian Legal Consultative Meeting in Colombo and later on during the regional seminar of African States on the Law of the Sea at Younde in June of the same year, the African States expounded their position that they recognize the right of coastal States to establish an EEZ beyond their territorial sea not to exceed 200 nm thereby granting coastal States to exercise permanent sovereignty over all resources both living and non-living. There were proposals from geographically advantaged States and land-locked States opposing the EEZ concept for the specific reason that the freedom of the high seas that they could readily exercise would be dramatically lessened should an EEZ be created. Several of the proposals submitted to the SBC were substantial enough to have an influence on State practice relative to freedom of fishing in the high seas. The so-called regional Latin American practice became widespread and a lot of States have asserted their claims on extended fishery zones (Yturriaga, 1997).

UNCLOS 1982 was first convened in 1973 with the call from the UNGA for State participation to adopt a convention that would deal with essentially all matters concerning the law of the sea.

The EEZ concept was developed via State practice due to unilateral State declarations and enactment of domestic legislations and thereafter in UNCLOS III or UNCLOS 1982. State Practice can be said to have led the establishment of EEZ as a part of customary international law (Brown, 1986).
EEZ as a concept was generally accepted even during the preliminary negotiations of UNCLOS 1982. The rationale for the conceptualization of the EEZ was to prevent the widespread assertions of extended territorial seas and thereby preserving the freedom of the high seas as much as possible whilst providing coastal States the power to exercise control of the resources on the parts of the sea adjacent to their territorial waters (Smith, 1986). The EEZ is the product of the developing States’ efforts to advocate for economic rights and have a uniform and fair treatment in terms of attaining control over the marine resources in the waters beyond their territorial sea (Churchill, 1999). Ironically though, the leading beneficiaries of the establishment of EEZ are principally developed States, namely: France, New Zealand, United States of America, Japan, Australia, Indonesia, and Russia (Tanaka, 2015).

More than 168 States participated in this conference and nine years thereafter, the UNCLOS 1982 was adopted by 130 States and such entered into force on 16 November 1994, a year after the ratification or accession of 60 State parties.

UNCLOS 1982 defines and establishes the different maritime zones as follows: Internal Waters, Archipelagic Waters, Territorial Seas, Contiguous Zone, Exclusive Economic Zone, Continental Shelf, the High Seas, and the Area. EEZ has been defined by UNCLOS 1982 and the rights and duties of the coastal States and other States were all discussed in Part V of the convention (Hoyle, 2013). The provisions in this section serves as a vital aid in addressing relevant issues on the exercise of rights and the duties that both coastal and other non-coastal States must perform.

2.4. Discussion on the Jurisprudence Concerning Fishery Laws in the EEZ

There are several cases which involve issues concerning the establishment of EEZ and the fisheries rights in the international arena. It has been held that the rights of a coastal State with regard to the continental shelf arises *ipso facto* because of the apparent natural prolongation, its sovereignty over the adjacent land territory and by virtue of the
exercise of control in order to exploit and explore the resources found in it (1969 North Sea Continental Shelf Case). It can be said that this principle was later on applied to the EEZ although the aspect of natural prolongation is obviously not necessarily present in the EEZ as the subject zone is based on measurement of distance from the baseline of the State.

The ICJ in the Iceland Fisheries Jurisdiction Case (1972) tackled two issues, to wit; the right of a coastal State to extend its limits for the purpose of fisheries and the obligation to allow other States to fish in the extended fishery zone. The Court refused to render a decision on the issue alleged by Germany and United Kingdom with regard to Iceland’s extension to 50 miles of fishery zone being made without any legal basis as far as international law is concerned. The Court merely held that Iceland’s extension of its exclusive fisheries jurisdiction is not opposable to Germany and the United Kingdom.

In the 1982 Tunisia Libya Continental Shelf Case and the 1985 Libya Malta Continental Shelf Case, the ICJ stated that it is undeniable that because of the prevalent State practice, the EEZ has become an integral part of customary law. While the Chamber of Court expressly acknowledged the maritime boundary delimitation between the two States, both of which have established their own 200 nm EEZ with Canada pertaining to the 200 nm as its exclusive fishery zone and the United States as an economic zone (1984 United States Canada Gulf of Maine Area Case).

Moreover, in the Franco-Canadian Fisheries Arbitration, the arbitral tribunal also recognized that in so far as the sovereign rights over the marine resources are concerned, EEZ was already a part of customary law. In the Franco-Canadian Maritime Boundary Arbitration, the arbitral tribunal declared that the institution of the 200 nm zone is as much as a customary law as the freedom of navigation therein (Kwiatkowska, 1989).
CHAPTER 3

3. General Discussion on the Fishery Rights of the States on the Territorial Sea (TS), Contiguous Zone (CZ), Exclusive Economic Zone (EEZ) and the High Seas (HS)

The advent of the innovative concepts of the division of maritime zones as established by UNCLOS 1982 comprehensively brought the focus of attention of the international community to the development of certain legal frameworks applicable to each zone that would be effective in delineating the rights therein of the coastal States, port States as well as the flag States and the entire international community. Consequently, those States with overlapping boundaries should deem it necessary to undergo the process of maritime boundary delimitation in accordance with UNCLOS 1982 and relevant international laws.

UNCLOS 1982 divides the world ocean into several legal maritime zones and each zone has its own legal regime that governs it. O’Connell (1982) clarified that the original purpose of the States in UNCLOS 1982 was to establish a legal framework on acquiring exclusive control and exercise the rights to manage, explore, and exploit marine resources on a specific maritime area. The outcome was the emergence of the legal concept now known as the EEZ. Hoyle (2013) elucidates that the most prominent feature of the newly established legal zones is that such zones permit a State to exercise certain rights over areas with much greater distance from its coast. In support of this statement, it is well acknowledged that international law allows a State to claim and extend its EEZ seaward to as far as 200 nm from the State’s baseline in accordance with Article 57 of UNCLOS 1982.
3.1. Fishery Rights and Obligations of the States on the TS

Kaye (2001) is very clear in noting that States are not given any guidance as to the manner of exploitation of the TS or internal waters (IW) thereby giving the coastal States the complete and unqualified control of the administration and implementation of management mechanisms regarding exploitation of resources in the TS. Article 2 of UNCLOS 1982 indicates that as a sovereign entity, the coastal State may adopt certain measures it may deem fit to employ within its TS. Aside from the broad obligation of protection and preservation of the marine environment as specified under Article 192 and 193 of UNCLOS 1982, States possess the inherent right of sovereignty in defining
and formulating policies and procedures with regard to management of fisheries and other marine resources. Since the main characteristic of the TS is its completeness and exclusiveness as expounded by Tanaka (2015), the coastal States have unfettered control and supervision over it. Further, based on the fact that UNCLOS 1982 did not include any restriction on the right of the States to manage its marine resources, the coastal States have the authority to enact and adopt legislation both in the aspects of implementation and enforcement regimes. It is noteworthy that since the aforementioned State sovereignty is recognized by UNCLOS 1982, it only necessarily follows that the framers of the Convention acknowledged the comprehensive competence and power of coastal States to effectively and efficiently conduct enforcement measures and enact national legislation to this end.

Article 17 of UNCLOS 1982 provides that ships of all States, whether coastal or land-locked, have the right of innocent passage through the TS. Moreover, as indicated in paragraph 1 (d) and (e), Article 21 thereof, coastal States are entitled to adopt laws and regulations with regards to the innocent passage through the TS more specifically involving the preservation of the living resources of the sea and the deterrence of any violation of the fishery laws, rules, and regulations of the coastal State. On the other hand, paragraph 1 (c) of Article 42 thereof expounds that States are also given the right to adopt laws and regulations involving transit passage through straits covering fishing vessels, the prevention of fishing and stowage of fishing gear. All these can be deduced as evidence of the universal recognition that coastal States exercise full sovereignty over the TS with regards to the marine resources in that area (Yturriaga, 1997).

The only limitation that can be found in the said Convention was that States are obliged to align their sovereign rights to exploit their natural resources to their environmental policies pursuant to the States’ primordial duty of protecting and preserving the marine
environment as dictated by UNCLOS 1982 and all allied international rules and regulations.

3.2. **Fishery Rights and Obligations of the States on the CZ**

UNCLOS 1982 specifically mentioned CZ only in Article 33 thereof describing CZ as the zone contiguous to the TS of a coastal State in which the latter could exercise the control needed for the prevention and imposition of punishment on violations of its customs, immigration, fiscal and sanitary laws in its TS. It can be gleaned that fishing rights and regulations pertaining to such rights in the CZ were not mentioned in the said provision. However, considering the description of what the CZ is comprised of, i.e., not extending 24 nm from the baselines from which the breadth of the TS is mentioned, and the view that CZ forms part of the EEZ whenever the latter is established, as a consequence, the provisions regarding fisheries, as discussed below, which apply to EEZ, must also govern the CZ (Yturriaga, 1997).

3.3. **Fishery Rights and Obligations of the States on the EEZ**

Virginia (2011) in quoting Diez De Velasco (1980, p. 341) described EEZ as having the characteristics as follows: “(a) it is an area beyond and adjacent to the territorial sea; (b) it is subject to a special legal regime; (c) the coastal State exercises certain rights of various types over it; and (d) other States also exercise certain rights and freedoms in it.”

The concept of EEZ emerged historically with an aim which was predominantly economic, as a result of the notion that States have sovereignty over their resources. “EEZ is not really exclusive..” since first, the rights and jurisdictions which are bestowed to a coastal State are not exclusive in such a way that no other State shall have analogous rights in the EEZ, and, second, UNCLOS 1982 affords clear rights for other States to have access with regards to the exploitation of the living marine resources in the EEZ (Yturriaga, 1997, p.115).
UNCLOS 1982 gives the coastal States exclusive power over fisheries aspects in its 200 nm EEZ yet failed to effectively regulate resources which are not in that specific maritime zone. A comprehensive discussion on the instruments that address the issue of conserving and ensuring the sustainable use of marine biological diversity ensued therein (Hey, 1999).

Churchill (1999) expounds that coastal States have sovereign rights related to exploration and exploitation, conservation and management of the fish stocks in the EEZ as embodied in Article 56 (1) of UNCLOS 1982. Accordingly, coastal States are bound to conserve and manage the fish stocks in this maritime zone such that over exploitation will be prevented and so as to ensure that the fish stocks maintain its levels in order to have maximum sustainable yield in consideration of various fishing patterns, and the interdependence of stocks (Article 61 (3) UNCLOS 1982). The coastal State is said to have the duty to stimulate full use of the living resources in this zone (Article 62 (1) UNCLOS 1982). Ultimately, coastal States must ascertain the total allowable catch for every fish stock within this zone (Article 61 (1) UNCLOS 1982). These provisions are worded in general terms such that coastal States are accorded wide discretion on the manner of its implementation.

Article 62 (2) and (3), UNCLOS 1982 states that the coastal State shall be responsible in determining the capacity to harvest the living resources in the EEZ and when it cannot harvest the total allowable catch, it is obliged to give other States access to the surplus of the said allowable catch by virtue of agreement and other arrangements and shall be dependent on the coastal State’s national interest and in consideration of the importance of the living resources in the zone to the coastal State’s economy. It can be observed that these provisions are broad statements and do not in any manner compel the coastal States to enter into any fisheries agreement whether regional, sub-regional or
international. States have an extensive discretionary power to unilaterally decide and determine its capability to harvest its own resources.

Corollary, Kaye (2001) espoused that States have the duty to cooperate with other States which consists of both the duties to negotiate and to enter into agreements in good faith. Nonetheless, quoting the *International Status of South West Africa*, it was indicated that the ICJ was not willing to impute other obligations to States other than “political or moral duties” in terms of entering into bilateral and/or multilateral fisheries agreements with neighboring States.

3.4. **Fishery Rights and Obligations of the States on the HS**

The 1958 Convention on the High Seas codified the customary principle of freedom of fishing in the HS which established that all States have the right to engage in fishing activities therein. This right is said to be subject to the respective State’s obligations based on any treaties that it has entered into with other States and the provisions of the convention relative to conserving the living marine resources (Yturriaga, 1997).

Article 87 of UNCLOS 1982 propounds the freedoms accorded to the States as regard to the HS. Both coastal and land-locked States have the freedom of navigation, over flight, laying down submarine cables and pipelines, construction of artificial islands and other installations as permitted in international law, scientific research, and freedom of fishing subject to conditions laid down in section 2. Section 2 deals with conservation and management of the living resources in the HS. Article 116 thereof also posits that the nationals of all States have the right to engage in fishing in the HS subject to their obligations based on treaties and other instruments, the duties, rights and interests of the coastal States as enunciated in articles 63, 64 and 67 (provisions on straddling stocks in both EEZ and HS, marine mammals, highly migratory species, anadromous stocks and catadromous species) and the conservation and management measures that the States
have a duty to implement. It is worthy to note that no State can declare sovereign or preferential rights to conduct fishing activities in the HS. However, this right to exploit the resources in the HS does not come without an obligation, as enunciated in the ICJ case of *United Kingdom v Iceland* (paragraph 72, Fisheries Jurisdiction Case, The Hague, 1974) to wit;

“It is one of the advances in maritime international law resulting from the intensification of fishing, that the former *laissez-faire* treatment of the living resources of the sea in the HS has been replaced by a recognition of duty to have due regard to the rights of other States and the needs of conservation for the benefit of all.”

In the book *Filling Regulatory Gaps in HS Fisheries*, Takei (2013) elaborated on the restraint that exists over the States’ freedom of the HS. In sum, freedom of fishing may be practiced in consideration of the rights and interests of other States and subject to the provisions of UNCLOS 1982 regarding the permissible activities in the HS. On the other hand, Tanaka (2015) discussed existing treaties concerning the conservation and management of biological diversity in the marine environment stating that there are three methodologies which can be known, to wit: (1) the regional aspect; (2) aspect pertaining to particular species; and (3) aspect which relates to a specific activity. Accordingly, it was emphasized that it is essential to have a global legal framework to address any future gaps regarding legitimate utilization, management and conservation of marine biological diversity.
CHAPTER 4

4. Implementation and Enforcement of Fishery Laws and Regulations of the Coastal State in the EEZ

4.1. Implementation and Enforcement Provisions Contained in UNCLOS 1982

Part V of UNCLOS 1982 expounds on the legal regime specifically applicable to the EEZ. Article 55 explicitly describes the EEZ as an area beyond and adjacent to the TS which is subject to the specific legal regime as established herein within which the rights and correlating duties of the coastal States are mentioned as well as the freedoms and rights of other States are conferred. These rights, jurisdictions, freedoms and duties were discussed in Chapter 3 of this Dissertation. The implementation of said rules and regulations as can be found in the provisions of Chapter V of UNCLOS 1982 depends entirely on how the States would adopt the said rules and regulations contained therewith and by enacting said provisions into their national legislations for effective implementation in their respective jurisdictions.

Article 73 of UNCLOS 1982 deals with the enforcement powers with regard to the laws and regulations of the coastal State. Said article specifically provides that as needed to make sure that the applicable laws and relevant rules which were adopted in accordance with UNCLOS 1982 are complied with, the coastal States may, as a sovereign entity, exploit, explore, conserve and manage the marine living resources in its EEZ which entails setting up of guidelines and pertinent methods such as boarding, inspection, arrest and the conduct of judicial proceedings.
Further, should a vessel and its crew be arrested, the same article used the term “shall” when it made mention that the vessel and its crew must be released promptly once a reasonable bond or other form of security is posted.

Article 73 (3) also mentioned that coastal States may not impose the penalty of imprisonment or corporal punishment to violators of its fishery laws in the EEZ unless there is an existing agreement to that effect with the States concerned. Article 73 (4) thereof cites the obligation of prompt notification to the flag State of the arrested and detained vessels, as well as the action made and penalties imposed on them.

Based on the afore-stated provisions, it can be deduced that the right of the coastal State to enforce the fishery laws in the EEZ is limited. There is no unfettered control in the right of the coastal State in its enforcement of the fishery laws in its EEZ. Prompt release upon posting of a bond, prompt notification to the flag State and the prohibition of the penalty of imprisonment and corporal punishment absent any agreement are clear restrictions that the coastal States must observe.

Virginia (2011) expounded on the various enforcement methods pertaining to the fisheries aspect of the coastal State in the different maritime zones. Accordingly, the right to fishery protection in the EEZ is said to be closely linked to the right of fishery protection that the coastal States exercise in its territorial waters. Article 19 (2) (i) UNCLOS 1982 on innocent passage propounds that passage of a foreign ship is considered as prejudicial to the coastal State’s peace, good order, or security when in the territorial sea it engages in fishing activities. Article 21 (1) (d) and (e) regarding the laws and regulations of the coastal States in relation to innocent passage in the TS also mentioned that coastal States has the right to adopt rules and regulations on the conservation of marine living resources and the prevention of violation of the coastal States’ fisheries laws and regulations. Further, Article 42 which provides for the laws
and regulations of States bordering straits in relation to transit passage utilized for international navigation, paragraph 1 (c) thereof provides that States bordering straits have the right to adopt its own laws and regulations pertaining to transit passage with respect to fishing vessels, the prevention of fishing therein and inclusive of the stowage of fishing gears. Article 54 which talks about the duties of vessels during their passage, duties of archipelagic States and the laws and regulations of archipelagic States in relation to archipelagic sea lanes passage postulates that said vessels must refrain from any activities other than those incident to their ordinary modes of continuous and expeditious transit (Article 39 (1) (c)). Article 44 expounds also on the duties of States bordering straits not to hamper transit passage. It has been provided in Article 54 that these provisions are equally applicable to archipelagic sea lanes passage.

There are various domestic legislations that deal with enforcement measures especially pertaining to legitimate rules and regulations in the EEZ. Said legislations dwell on the utilization of some States of their naval forces to enforce in this specific maritime zone, the detailed procedure regarding the arrest and detention of the vessels which committed certain infringements of laws applicable to the EEZ, penalties and fines that the violating vessels must settle as well as other applicable fiscal sanctions. There are some States that enacted their national laws providing for imprisonment as a penalty for violation of their laws and regulations referring to the EEZ (Nordquist, 2000). As a consequence, there exists certain inconsistency with the provisions of UNCLOS 1982, which calls for some kind of standardization and harmonization in the application of enforcement measures and procedures. One enforcement measure that can be found in numerous domestic legislations is the rule on the passage of fishing vessels in the EEZ. This paradigm can be observed in the national enactments of laws from Canada, New Zealand, Australia, the United Kingdom, and Spain. Another enforcement measure deals with the requirement of prior serving of notice for entry to and exit from the EEZ thereby
creating hindrances to the normal exercise of the freedom of navigation. Some States require earlier authorization for the fishing vessel’s passage in the EEZ (Vicuña, 1989).

4.2. Implementation and Enforcement of Fishery Laws in the EEZ of Other Countries

This section will discuss the States’ practices on the implementation and enforcement measures relative to fishery laws in the EEZ and will include some detailed information on Asian States like Malaysia, India, China, and Indonesia. Moore (1985) in the Food and Agricultural Organization’s (FAO) Coastal State Requirements for Foreign Fishing discussed that several countries allow the utilization of defense forces for surveillance and enforcement operations that includes civilian protection services (Brazil, Fiji, Gambia, New Zealand, and U.S.A.). Provisions for the authority to stop, board, inspect, seize and arrest when there are suspected infringement of rules and regulations are available. For some countries that traditionally follow the French legal system, comprehensive procedure for the recording and reporting of violations and procedures for the arrest of vessels are worded in details on their national legislations. The examples mentioned therein are: the Moroccan law, which provides for a standard procedure in the stopping and detention of vessels which violate laws that includes the authority to open fire when the violating vessel refuses to stop; the Senegalese Marine Fisheries Code, has three various procedures for reporting violations and arrest of vessels which is dependent on the condition and reaction of the offending vessel. The Senegalese procedures allows the pursuit of offending vessels even outside its jurisdiction with the condition that said pursuits are based on an existing agreement with neighboring countries. This is because even though “hot pursuit” is a concept in general international law as emanating from the TS or EFZ to the HS, the most common escape route for illegal foreign fishing vessels are often across national borders and further into the jurisdictional waters of the bordering countries. These types of enactments are
significant especially when it comes to the establishment of regional and sub-regional cooperation with regard to surveillance and enforcement.

With regards to fines, Moore (1985) also elaborates that the fines imposed for foreign fishing has a range of six U.S. dollars (US$ 6.00) in Dominican Republic to as high as two million U.S. dollars (US$ 2,000,000.00) in Mauritania. Aside from the imposition of fines, several States (Brazil, Burma, Canada, El Salvador, Gambia, Ghana, Guyana, Japan, Madagascar, Mauritius, New Zealand, Nigeria, Norway, Papua New Guinea, Portugal, Senegal, Seychelles, Sri Lanka and U.S.A.) enacted laws giving their courts the authority to issue an order with regard to forfeiture of catch, fishing gears and fishing boats. In some countries (Papua New Guinea, Malta, New Zealand, Cook Islands, Niue, and Sri Lanka), the offending vessel can be automatically forfeited even when such offense was committed in the first instance thereby restricting the authority of the court and at times causing embarrassment to the government of the State concerned.

Notwithstanding Article 73 (3) of UNCLOS 1982, which provides that coastal States may not impose the penalty of imprisonment or corporal punishment to violators of its fishery laws in the EEZ, there are at least 32 countries that enacted laws providing for imprisonment as a penalty for illegal and unlicensed fishing in their EEZ. However there is a recent drift into the limitation of penalties to imposition of fines and forfeiture of catch, fishing gears and fishing boats. In the imposition of fines, it can be observed that most countries are inclined to use administrative proceedings to be able to settle cases more expeditiously. The legislation of U.S.A. has four kinds of penalties for infringements in accordance with the gravity of the infraction committed, to wit: citations which pertains to administrative notices of violations not requiring monetary penalties; assessment of civil monetary penalties; judicial forfeiture of the vessel and its catch; and criminal prosecution. A vast majority of States have also followed the provisions in UNCLOS 1982 relating to the prompt release of arrested vessels upon
posting of a reasonable bond or any form of security which can be used to pay the fines and other monetary penalties that the courts may impose (Moore, 1985).

Foreign fishing vessels that want to enter Malaysian EEZ to fish had to secure a valid permit or license as a proof of prior consent or agreement with the Malaysian government. Without the said permit, Malaysian authorities can arrest foreign fishing vessels that violate its fisheries laws. There are, however, instances where foreign fishing vessels are allowed to ply through Malaysian fishery waters such as innocent passage only when the vessel is in distress, to obtain emergency medical assistance for the vessel’s crew or to render assistance to persons, ships, or aircraft in danger or distress. Malaysian legislation (EEZ Act of 1984) necessitates prior notification for such visit, including certain information such as travel directions, fishing load, and compliance with Malaysian regulations pertaining to storage of fishing appliances. Malaysia’s Fishery Act of 1985 provides enforcement procedures in details, giving right to authorized officers to stop, board, search a vessel in Malaysian waters to inspect the same for its seaworthiness and fishing appliance or fish carried on board. The said Act includes a provision which states that any fish or fishing equipment found on board a foreign fishing vessel in Malaysian waters will be presumed to be caught and used for fishing therein, unless proved to the contrary in the court of law. The Act provides that any person guilty of an offense as enumerated therein shall be liable for a fine not exceeding one million (1,000,000,00.00) ringgit. Nonetheless, Section 38 (1) of the Act states that a person charged of an offense as hereby enumerated may be arrested and be remanded into custody or released on bail. Said provision clearly authorizes imprisonment as a penalty for violations made in Malaysian EEZ (Ahmad, 1988).

The Maritime Zones Act of 1976 was the law where India claimed an EEZ of up to 200 nm. As a consequence, India has claimed the twelfth biggest EEZ among the States all over the world and faced challenges pertaining to the implementation of the provisions
on enforcement jurisdiction in said law and in the later laws such as the Coast Guard Act 1978 and the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act of 1981. The Maritime Zones Act of 1976 provided for imprisonment of up to three years and imposition of fines up to any amount on the crew of any fishing vessel as a penalty for engaging in illegal fishing in the EEZ. However, because of the lack of direction and efficient coordination in the administration, implementing guidelines or rules were not promulgated.

The Maritime Zones of India Act of 1981 is the domestic law of India which governs its maritime zones and in which the government’s enforcement powers and procedures to carry out the same were set out in detail. The powers of the authorized officers were exhaustively enumerated as follows: stopping, boarding, and searching a foreign vessel for fish and for equipment used and capable of being used for fishing; requiring the vessel’s master to produce any permit, license, record book or any document as well as any catch, net, fishing gear or any other equipment on board the vessel; when the said officer has reasonable belief that the foreign vessel committed, or is committing a violation, the officer, even without any warrant may seize or detain the vessel together with the fishing gear, net equipment, stores or cargo found onboard the vessel, require the master to bring the vessel to any particular port, and arrest any one who committed the violation. It has been stated that the authorized officer has the latitude to use such force as may be reasonably necessary. This law was in conformity with UNCLOS 1982 in terms of the limitation of the enforcement powers as an exercise of India’s sovereign rights in the EEZ. More specifically, this law has provisions regarding the prompt release of arrested vessels upon posting of a reasonable bond or security and the prompt notification to the flag State of the arrested or detained vessel as well as the penalties imposed. It is important to cite that this law provides for the penalty of imprisonment of up to one year and a fine not exceeding fifty thousand (50,000.00) rupees or both for obstruction to the exercise of powers of authorized officers as mentioned above and for
refusing to stop the vessel, failure to produce the record book, license or permit to fish, for failure to allow the authorized officer to board the vessel. The penalty for imprisonment is imposable regardless if the offense was committed in the TS or the EEZ. Furthermore, a separate law in India provides that when an offense is committed in its EEZ, the offender may be dealt with respect of the offense, as if such offense was committed in any place where he may be found or where the Central Government may direct (Sharma, 1993).

The case of China’s claim of its EEZ, on the other hand, is very controversial and critical since many States contest the interpretation of its territory over its islands and the corresponding sovereignty over its maritime zones, particularly in the South China Sea. The People’s Republic of China has been asserting complete territorial sovereignty over the entire atolls, reefs, shoals and islands based on “historic rights” within an area called as the “nine-dotted line” thereby creating a large expanse of EEZ. The 1998 Law of the People’s Republic of China on the EEZ codifies several UNCLOS 1982 provisions, however, such law hinges on the basis of the 1992 Law on the TS and CZ thereby claiming 200 nautical miles extending from each of the islands in the South China Sea which covers nearly the entire South China Sea. China uses maritime military enforcement efforts in its EEZ that in reality causes extreme limitations in the foreign vessels’ operation in the area (Chuo, 2008). Moreover, Xue (2005) mentioned that China treats its EEZ as a “buffer zone” for its defense to its historical claims over the “nine-dash line” considering the same as a new zone with particular legal status where it has the right to use, explore, protect, and exploit the natural resources therein and adopt necessary measures and rules to prevent the resources from being impaired or polluted as well as to exercise full control and management of the marine environment and scientific research in the area. Xue also explained that even though China does not have in its national legislation the specific operational enforcement procedures, it has adopted stringent measures to control the activities of other States in China’s EEZ by using both
its Naval and Coast Guard Forces to intercept foreign vessels in its EEZ to the chagrin of the international community.

Indonesia’s enforcement measure in its EEZ is another highly contentious matter. Article 69 (4) of Indonesia Law No. 45/2009 on Fisheries empowers Indonesian authority to burn or sink foreign fishing vessels that conduct illegal fishing activities in its fishing management area consisting of its IW, TS and EEZ by mere “sufficient initial evidence.” This evidence is said to be a preliminary evidence to suspect that a foreign fishing vessel is committing unlawful fishery-related activities i.e., fishing sans permit or license or fishing without authority in the fishing zone of Indonesia. In an interview with The Wall Street Journal, Indonesian President Joko Widodo said that there are around 5,400 foreign vessels in Indonesian waters and about 90% of these vessels conduct illegal fishing activities therein such that burning and sinking these vessels is a necessary stern measure to teach these vessels a tough lesson that poaching in Indonesian waters is not tolerated by the government of Indonesia. President Widodo emphasized that this action is considered as a “purely criminal issue and has nothing to do with neighborly relations” (Thayer, 2014). Jumawana (2014) mentioned that Indonesia learned of this measure from its neighboring country Australia, which also has the power to burn and sink foreign vessels committing illegal activities in Australian maritime jurisdiction.

There is a widespread clamor from the international community questioning the legality of the burn and sink enforcement measure by the Indonesian government. As discussed in the previous chapters of this research, UNLOS 1982 detailed in Article 73 (2) that enforcement regime in the EEZ consists of the right of the coastal State to board, inspect, arrest, and conduct judicial proceedings on the offending vessel and the only penalties indicated are the posting of reasonable bonds or other financial security. States are even mandated to promptly notify the flag State of the vessels arrested or detained as
to the penalties imposed and promptly release the vessels and its crew upon the posting of the bond (Rustam, 2014). Article 59 of UNCLOS 1982 specifically states that in instances when there is any conflict between a coastal State and a flag State involving any rights in the EEZ, such conflict must be resolved on the basis of equity and in consideration of relevant circumstances, corresponding interests of the parties involved and the international community in general. As can be grasped from the said article, the afore-mentioned burn and sink procedure runs counter to the provisions of UNCLOS 1982.

4.3. Implementation and Enforcement of Fishery Laws in the EEZ of the Philippines

Republic Act No. 8550 (RA 8550) otherwise known as the Philippine Fisheries Code of 1998 as applicable to the Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction and the country’s 200 nm EEZ and CS. Section 87 thereof provides the rule against poaching in Philippine waters establishing a prima facie evidence that the entry of foreign fishing vessel in Philippine waters would be presumed that the said vessel is engaged in fishing activities in the Philippine waters. The same section indicates that any infringement of afore-stated rule is punishable by a fine of one hundred thousand U.S. dollars (US$ 100,000.00) plus confiscation of the fish caught, fishing equipment and the fishing vessel used in the particular illegal fishing activity. Further, the Department of Agriculture (DA) is authorized to impose an administrative fine of not less than fifty thousand U.S. dollars (US$ 50,000.00) to not more than two hundred thousand U.S. dollars (US$200,000.00).

Section 124 of the above-mentioned law enumerates the government officers who are deputized by the DA to enforce the provisions of the law such as enforcement officers of DA, Philippine Navy, Philippine Coast Guard, Philippine National Police - Maritime Group, and the law enforcement officers of the local government units and other
government agencies. Further, other government officials and employees and members of fisher folk associations who were trained on law enforcement may be deputized by the DA to enforce the subject law as well as other fishery laws, rules, and regulations.

On 27 February 2015, Republic Act 10654, which amends the Philippine Fisheries Code, lapsed into law. This law sought to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUUF) in Philippine waters. The fine was raised from the previous amount of one hundred thousand U.S. dollars (US$ 100,000.00) to one million two hundred thousand U.S dollars (US$ 1,200,000.00) plus confiscation of the fish caught, fishing equipment and the fishing vessel used in the particular illegal fishing activity. Likewise, the administrative fine that the DA is authorized to impose was increased from the previous range of fifty thousand U.S. dollars (US$ 50,000.00) to two hundred thousand U.S. dollars (US$ 200,000.00) to six hundred thousand U.S. dollars (US$ 600,000.00) to one million U.S. dollars (US$ 1,000,000.00). These amount of the said penalties were believed to be adequate in severity to discourage violations of Philippine fishery laws, rules, and regulations. The amended law likewise contains the establishment of BFAR Adjudication Committees that aim to expedite the finding of liability of offenders and the consequent imposition of penalties.
CHAPTER 5

5. Review and Analysis of the Philippine Laws, Regulations and Policies and Data Gathered Relative to Fishery Law Implementation and Enforcement in the Philippines

5.1. Review of the Philippine Laws, Regulations and Policies Relative to Fishery Law Implementation and Enforcement in the Philippines

5.1.1 Philippine Fisheries Legislations in the 18th and 19th Century

The foremost domestic legislation on fisheries in the Philippines was the 1866 Law of Waters that made categories of public waters or of waters of public ownership. Then, on 05 December 1932, the Philippine House of Representatives (Congress) enacted Act No. 4003, as amended: the Fisheries Act of 1932 which endorsed the collation of the entire gamut of laws, rules and regulations with respect to fisheries and aquatic resources. Act No. 4003 catalogued public fisheries in accordance with the government such as national, municipal and reserve fisheries.

Since the Philippines acknowledged the vital role of fisheries and the correlative significance of preserving and conserving marine resources the 1935 Constitution of the Philippines earmarked the preservation and conservation of natural resources exclusively to its citizens or to entities 60 percent of the capital stock of which should be owned by Filipinos.
Subsequently, numerous legislative enactments were made with the goal of “accelerating the development of the fishing industry of the country” as follows: Presidential Decree No. 43: the Philippines’ Fishery Industry Development Decree of 1972 for the accelerated development of the fishing industry of the Philippines and the creation of the Fishery Industry Development Council (FIDC). Thereafter, Presidential Decree No. 704: the Fisheries Decree of 1975 the legal framework on fisheries in the Philippines was promulgated. Several Presidential Decrees were promulgated thereafter amending Presidential Decree 704: Presidential Decree No. 1015 of 1976, amending Sections 17 and 35 of PD 704 wherein the President of the Philippines, upon recommendation of the Secretary of Natural Resources, may prohibit the operation of commercial or other fishing gear in waters within a distance of seven kilometers from the shoreline in case public interest entails or the ecology of marine resources may be damaged. Presidential Decree No. 1058 was promulgated later the same year, increasing the penalties for dynamite fishing, dealing in illegally caught fish and possession of explosives for dynamite fishing. Presidential Decree Nos. 1219 and 1698 were promulgated. These decrees deal with the exploration, exploitation, utilization and conservation of coral resources of the Philippines and prohibit the gathering, harvesting, collecting, transporting, possession, sale and/or exporting of ordinary corals in raw or processed form. The utilization of corals to build man-made structures i.e., dams, dikes, piers, is also banned (Mendoza, 2015).

5.1.2 Presidential Decree No. 1599 of 1976: Establishing an EEZ and for Other Purposes

Even before UNCLOS 1982, the Republic of the Philippines has acknowledged the significance of an EEZ and hence the law that establishes the EEZ of 200 nm from the baselines from which the TS is measured was enacted. This law also details the rights that the Philippines can exercise over its EEZ, to wit: sovereign rights for the purpose of
exploitation and exploration, management and conservation of living resources; exclusive rights and jurisdiction to establish and utilize artificial islands installation, off-shore terminal and other structures; and other rights as recognized by State practice or international law. Section 3 thereof enumerates that no one may explore or exploit any resources; search, excavate or drill therein; conduct research, construct, maintain or operate an artificial island, off-shore terminal, installation or other structure or device; or perform any act that is conflicting to or a derogation of the sovereign rights of the Philippines, unless there is an agreement with or a license or permit is issued by the government of the Philippines allowing the conduct of the afore-stated acts.


5.1.3 Executive Order No. 1047 of 1985: Encouraging Distant Water Fisheries by the Philippine Commercial Fishing Fleet

Then Philippine President Ferdinand Marcos promulgated the subject Executive Order encouraging the Philippine commercial fishing fleet to engage in distant water fisheries. Section 1 of said law provides that the fish caught in waters outside the jurisdiction of the Philippines by vessels of Philippine registry are considered Philippine-caught fish which would render the same as exempt from import license or permit requirements and not subject to quota restrictions, import duties, taxes and other charges. Said law also stated that the said vessels shall be treated as international vessels so that they can have the advantage of the duty drawback on the fuel oil used in their fishery operations outside the Philippines (Mendoza, 2015).
5.1.4 Republic Act No. 8550: The Philippine Fisheries Code of 1998

The pertinent provisions of RA 8550 were discussed in Chapter 4 (4.3). The Implementing Rules and Regulations (IRR) of the above-stated law emphasized that it is the policy of the Philippines to limit access to its fishery and aquatic resources for the exclusive use and enjoyment of Filipino citizens (Section 2 (b)) as well as the protection of municipal fisher folk against foreign intrusion which shall extend to offshore fishing grounds (Section 2 (e)).

Section 87 thereof elaborates that a technical working group from the DA through the Bureau of Fisheries and Aquatic Resources (BFAR) and other law enforcement agencies would issue a Fisheries Administrative Order (FAO) regarding poaching in Philippine waters.

On 06 September 2000, the BFAR FAO No. 200 Series of 2000 was made effective. Said FAO contains the Guidelines and Procedures in Implementing Section 87 of the Philippine Fisheries Code of 1998. The FAO defined the following vital terms as follows:

“Poaching – means fishing or operating any fishing vessel in Philippine waters, committed by any foreign person, corporation, or entity;

*Prima facie* evidence – means one which establishes a fact and unless rebutted or explained by the evidence becomes conclusive and is to be considered as fully proved;

EEZ – an area beyond and adjacent to the territorial sea which shall not extend beyond 200 nm from the baselines as defined under existing laws;
Foreign Fishing Vessel (FFV) – a fishing vessel not duly licensed with the Philippine government.”

Section 2 of the FAO explicitly declares that it is unlawful for any foreign person, corporation or entity to fish or operate any fishing vessel in Philippine waters. Section 3 thereof enumerates the circumstances when an entry of a FFV in the Philippine waters shall be considered as a *prima facie* evidence that it is poaching: when the FFV navigates with its fishing gear is deployed; or with an irregular route; or through Philippine territorial waters without advance notice to, clearance of, or permission from relevant Philippine authority; or in a way that is not considered as innocent passage or if the FFV navigates beyond known fishing grounds or established routes; or FFV that flies without its national flag; when the FFV is anchored without any valid reason; or near to an identified fishing grounds or marine protected area; or when FFV was found to have freshly caught fish when inspected in Philippine waters. Section 7 of the FAO itemizes the procedure for the inspection and apprehension of a FFV in support of the provisions found in Republic Act 8550.

5.1.5 Republic Act No. 9993: The Philippine Coast Guard Law of 2009

One of the most important mandates of the Philippine Coast Guard (PCG) is its enforcement authority, i.e., enforce regulations according to maritime international conventions, treaties or instruments as well as domestic laws for the furtherance of safety of life and property at sea (Section 3 (a)); assist in the enforcement of laws on fisheries, and other applicable laws within the maritime jurisdiction of the Philippines (Section 3 (l)); enforce laws, promulgate and administer rules and regulation for the protection of marine environment and resources (Section 3 (n)); and board and inspect all types of merchant ships and watercrafts in the performance of these functions (Section 3 (m)).
The IRR of the subject law specifies the duty of the PCG to assist in the suppression and prevention of illegal fishing and violations of fishery laws, illegal gathering of corals and other marine products (Rule 3 (l) 1). Further, in the performance of its functions, the PCG shall board, visit, and inspect all types of merchant ships vessels, watercrafts, and offshore structures or oil rigs whether underway, anchored or moored within the maritime jurisdiction of the Philippines (Rule 3 (m)).


On 22 November 2013, the DA through BFAR issued a Memorandum Circular for the Adoption and Implementation of the Fisheries Law Enforcement Manual of Operations (FLEMO). Notably, the DA considered that the unremitting degeneration of the Philippine fisheries and aquatic resources as well as the overwhelming decline of the condition of the marine ecology accentuate the urgent need to intensify the enforcement of fishery laws in the country. Its aim was to establish the FLEMO as the uniform or standard operating procedure in dealing with infractions of the existing fishery laws, and to enforce primarily RA 8550 and other fishery laws, rules and regulations.

Moreover, the existence of FLEMO was expected to bolster the curtailment of fishery laws violation and provide step-by-step procedure on how to conduct surveillance, gathering of information, patrolling, boarding, inspection, detection of illegally caught fish and other marine resources, determination of illegal importation and exportation of fish and other marine resources, arrest and detention of the FFV and its crew, search, seizure, proper recording and handling of vital evidence, filing of cases before the Office of the Prosecutor, as applicable, imposition of administrative fines and penalties by the BFAR, as applicable, manner of disposition of the confiscated fish and other marine
resources, fishing equipment, the FFV itself and other paraphernalia used in the particular illegal fishing activity. The said Manual should be used as the guide to all the law enforcers deputized by the BFAR as mandated by RA 8550 and other relevant fishery laws in the country.

As an illustration of how fishery laws are enforced in the Philippines, this research will include the MOA between the BFAR and the PCG with respect to the conduct of joint operations in the enforcement of laws concerning the management, preservation, protection and conservation of the Philippine fisheries and aquatic resources. Said coordination would provide a clear picture as to how fisheries law enforcement is being conducted by the authorities in the country.

The aforementioned MOA indicates the responsibilities of both parties BFAR and PCG in deploying and dispatching the vessel for patrolling or conducting law enforcement missions. BFAR and PCG agreed to coordinate closely with each other for the suppression of poaching, fishing by means of illegal fishing means especially in combating illegal, unreported, unregulated fishing (IUUF) activities. Additionally, Section 3 (a) thereof states that the BFAR and PCG personnel deployed on missions for patrolling and/or enforcement of fishery legislations shall be bound by the protocols, rules, and guidelines expressed in the FLEMO. On the other hand, Section 3 (c) embodies the duty of both PCG and BFAR personnel to follow their own Rules of Engagement (ROE) in each mission that they were given. The current MOA took effect on 26 June 2014 and is renewable every five years.

The PCG ROE, which was promulgated on 19 January 2012, encompasses the delineation of the limitations and possible circumstances by which PCG personnel on board PCG vessels and crafts will commence and engage with the use of graduated and
well defined force over vessels and their crew while performing maritime law enforcement operations or missions within the maritime jurisdiction of the Philippines.

Remarkably, Part IV (a) of the ROE sets out the perimeters of the policy by mentioning therein that subject to the limits established by the Philippine Constitution and the applicable provisions of UNCLOS 1982 together with the pertinent national laws, the Republic of the Philippines exercises “absolute jurisdiction and sovereignty” over the inland waters, territorial seas, contiguous zone, EEZ and the extended continental shelf. Corollary, the ROE also cited that all maritime law enforcement operations to be carried out by the PCG personnel engaged in those law enforcement activities must adhere to the Philippines’ policy and declaration on the protection of human rights as safeguarded by the Philippine Constitution and relevant international laws and national legislations concerning human rights vis-à-vis law enforcement. The international instruments cited are those relating to the proper deportment of law enforcement officials as follows: the Code of Conduct for Law Enforcement Officials which was adopted by the UNGA on 17 December 1979; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which was then adopted by the UNGA on 27 August 1990. With these said, it can be garnered that the rudimentary tenets of law enforcement procedures were well considered in the drafting of the PCG ROE of 2012.

5.2. Analysis of the Data Gathered from the Philippines Relative to Fishery Laws Implementation and Enforcement in the Philippines

5.2.1 Incidents of Poaching in the Philippines’ EEZ

As what was mentioned in Chapter 1 of this dissertation, the Philippines is being surrounded by the territories of other States, which, through their own domestic legislations have also claimed their respective maritime zones and EEZ. It is not far-fetched that the Philippines would have overlapping claims of EEZ with these countries
Further, it is also not a surprise when the fishing vessels of these neighboring countries would often enter into the Philippine maritime jurisdiction to take their opportunities to fish therein. The following table represents the recorded number of intrusions of foreign fishing vessels into the Philippines’ EEZ from China, Taiwan, Vietnam, Indonesia, and Malaysia.

Table 1: Number of Recorded Intrusions Per Year/ Per Foreign Fishing Vessel (FV), 2006-2014

<table>
<thead>
<tr>
<th>YEAR</th>
<th>Chinese FVs</th>
<th>Taiwanese FVs</th>
<th>Vietnamese FVs</th>
<th>Indonesian FVs</th>
<th>Malaysian FVs</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>35</td>
<td>96</td>
<td>47</td>
<td></td>
<td></td>
<td>476</td>
</tr>
<tr>
<td>2007</td>
<td>54</td>
<td>69</td>
<td>48</td>
<td></td>
<td></td>
<td>554</td>
</tr>
<tr>
<td>2008</td>
<td>31</td>
<td>40</td>
<td>53</td>
<td></td>
<td></td>
<td>500</td>
</tr>
<tr>
<td>2009</td>
<td>36</td>
<td>46</td>
<td>64</td>
<td>1</td>
<td></td>
<td>388</td>
</tr>
<tr>
<td>2010</td>
<td>58</td>
<td>27</td>
<td>35</td>
<td></td>
<td></td>
<td>272</td>
</tr>
<tr>
<td>2011</td>
<td>132</td>
<td>40</td>
<td>67</td>
<td></td>
<td>64</td>
<td>303</td>
</tr>
<tr>
<td>2012</td>
<td>100</td>
<td>13</td>
<td>12</td>
<td></td>
<td>19</td>
<td>144</td>
</tr>
<tr>
<td>2013</td>
<td>21</td>
<td>71</td>
<td>33</td>
<td></td>
<td>9</td>
<td>134</td>
</tr>
<tr>
<td>2014</td>
<td>83</td>
<td>6</td>
<td>316</td>
<td>13</td>
<td></td>
<td>418</td>
</tr>
<tr>
<td>2015</td>
<td>51</td>
<td>12</td>
<td>92</td>
<td></td>
<td>3</td>
<td>158</td>
</tr>
<tr>
<td>TOTAL</td>
<td>601</td>
<td>420</td>
<td>767</td>
<td>1</td>
<td>1,558</td>
<td>3,347</td>
</tr>
</tbody>
</table>

*Source: Philippine Coast Guard Office of the Deputy Chief of Staff for Intelligence, Security and Law Enforcement (ISLEN), CG-2*

5.2.1.1 Philippines-Indonesia Relations

It can be observed that out of the five flag States, Indonesia has the least number of intrusions into the Philippines’ EEZ. This can be ascribed to other factors such as distance of Indonesia from the Philippines, the capability of Indonesia’s fishing fleet to ply through the said distance, or that Indonesia’s waters are also rich with fish and other marine resources. These factors and the relation of these factors with each other can be an apt subject for further research. However, it is also probable that the fact that the Republic of the Philippines was able to finally enter into an agreement with the Republic of Indonesia concerning the delimitation of their respective EEZ was the reason why the recorded number of Indonesian fishing vessel was almost nil. The boundary delimitation agreement was the product of 20 years of discussions and negotiations to delimit the overlapping EEZs of both Philippines and Indonesia. Said agreement is contemplated as groundbreaking in terms of the two countries’ diplomatic affairs since the established EEZ boundary will “open opportunities for closer cooperation in the preservation and protection of the rich marine environment in the area, increased trade and enhanced maritime security” (Mendoza, 2015, p. 26).

5.2.1.2 Philippines-Malaysia Relations

The official relations between the Republic of the Philippines and Malaysia can be traced back to forty-two (42) years (Philippine Embassy, n.d.). However, despite these
long standing relations, the two countries weren’t able to enter into any fisheries agreements nor maritime boundary agreements mainly because they have conflicting claims over the island of North Borneo (Sabah). Sabah is an island considered to be rich in natural resources thus making it very important to the economy of both Philippines and Malaysia. The said issue remains unresolved. The Association of Southeast Asian Nations (ASEAN), which was found in 1967 to help in the upkeep of peace among Southeast Asian States, is one of the welcome developments concerning diplomatic relations in the Southeast Asian region. The ASEAN presented a fundamental mechanism for peaceful resolutions between member States through coordination and cooperation. However, it has not provided any solution so far with regards to any boundary delimitation issues between Philippines and Malaysia. No fisheries agreement also exists between the two countries (Soomro, 2014).

5.2.1.3 Philippines-Vietnam Relations

The Republic of the Philippines and the Socialist Republic of Vietnam concluded a bilateral treaty to strengthen the diplomatic relations between the two States with regard to political, economy, defense, security, fisheries, maritime and ocean concerns, regional, and international cooperation (CPV, n.d.). This Philippines-Vietnam Plan of Action 2007-2010 was an agreement albeit written in broad terms. As such, the agreement did not solve any substantial issues relative to maritime boundary delimitation between the two countries nor fisheries.

In the book *Maritime Challenges and Priorities in Asia: Implications for Regional Security*, it was stated that overfishing is the primary problem of Vietnam in its coastal waters as well as offshore (Ho, 2012). This might be the major reason why Vietnamese fishing fleets engage in distant water fishing activities and eventually enter into the EEZs of other countries like the Philippines to conduct fishing activities therein.
As an effort to address problems on fishing competition and IUUF, Vietnam decided to commence fishery talks with its neighboring countries with goal of establishing cooperation and entering into fisheries agreements with said countries, specifically Indonesia, Philippines, and China. In aiming to improve the situation, Vietnam has set up procedures on allowing foreign fishing vessels to exploit the marine resources in its waters and by boosting the Vietnam Maritime Police thereby providing channels of communication with States whose vessels and crew conduct fishing activities in its waters and in the States where Vietnamese fishing vessels and crew engage fishing activities in (Ho, 2012).

Aforementioned statement regarding channels of communication with States is evidenced by the fact that this type of MOA currently exists between PCG and the Vietnam Marine Police. The MOA on the Establishment of a Hotline Communication Mechanism contains an agreement between the two parties to “contribute to the preservation of the adjacent sea area as an area of peace, friendship, and cooperation in a spirit of understanding and mutual respect, mutual benefit and strengthening the close relations and mutual trust, and through information sharing and exchanges between the parties.” As can be observed, the terms used were mostly for diplomatic relations and the usage of general terms is obvious. No concrete agreement on maritime boundary delimitation or fishing activities was mentioned in the provisions of the MOA.

5.2.1.4 Philippines-China Relations

As can be gleaned in the data gathered, one of the flag States which has a huge number of recorded intrusions in the Philippine waters is China. This has presented an impasse to the Philippine authorities since the maritime dispute between China and the Philippines concerning the West Philippine Sea/South China Sea has long been existing. In fact, the Philippines formally sent a Notification and Statement of Claim to China in accordance with Article 1 and 3 of Annex VII, UNCLOS 1982, asserting that the
Philippines is questioning the legality of the nine-dash line claimed by China on the South China Sea and contains a request for a peaceful settlement of dispute between the two countries before the Arbitral Tribunal. In the same Notification, the Philippines beseeched the Arbitral Tribunal to pronounce that the rights of both countries in the South China Sea are founded by UNCLOS 1982 and obligate China to stop any activity that would violate the rights of the Philippines over its own EEZ and CS in the West Philippine Sea. It can be noted that Chinese military vessels started to interdict Philippine fishing vessels which were conducting fishing activities in the disputed waters. Documented major frictions that occurred between China and the Philippines happened on May 1995 in Panganiban (Mischief) Reef, on March 2011 in Recto (Reed) Bank, and most recently on April 2012 in Bajo de Masinloc (Scarborough Shoal). The latest occurrence caused to a standoff between Chinese and Philippine government vessels when eight (8) Chinese fishing vessels anchored in Bajo de Masinloc were boarded and apprehended by the Philippine Navy. The standoff persisted for two months. The said Arbitration procedure is still pending and currently awaiting for resolution (Baviera, 2013).

5.2.1.5 Philippines-Taiwan Relations

On the other hand, there is no louder clamour for attention than the incident which transpired on 09 May 2013 involving BFAR MCS 3001 and a certain Taiwanese fishing vessel in the Balintang Channel. Philippine Official Gazette (2013) quoted the report submitted by the Philippines’ National Bureau of Investigation (NBI), the incident transpired, to wit:

“On 09 May 2013, the Philippines’ Bureau of Fisheries and Aquatic Resources’ (BFAR) Monitoring, Control, and Surveillance (MCS) 3001, manned by seventeen (17) Philippine Coast Guard (PCG) personnel and three (3) BFAR staff conducted its usual sea-borne monitoring, control
and surveillance operation at the vicinity of Balintang Channel en route to Batanes Islands. During this operation, the men on board MCS 3001 sighted two typical fishing vessels, with visible foreign alphabet characters, presumably Taiwanese, but flying no flag at approximately 40 nm from the Philippines’ baseline and within the latter’s 200 nm EEZ. Thereafter, the master of the MCS 3001 decided to board the fishing vessel to inquire as to their business in the Philippine waters.

Per the PCG personnel’s account, despite their efforts to stop the foreign fishing vessel, with the MCS-3001 repeatedly announcing its authority and sounding off its horns, the said fishing vessel continued to maneuver going in circles which later on was interpreted by some MCS-3001 crew as an attempt to ram their vessel. Accordingly, the master of MCS 3001 decided to fire warning shots on the fishing vessel and later on ordered the firing on the fishing vessel’s engine in order to immobilize the same but to no avail. After several hours of chasing, and upon seeing an unidentified gray vessel seemingly approaching MCS 3001, the master of the said vessel decided to return to port and discontinue the chase on the foreign fishing vessel, which the PCG personnel confirmed to be engaged in illegal fishing activities (poaching) in the Philippine waters.

Several days after the incident, the men on board the MCS-3001 were invited by the NBI to shed light on the incident which allegedly resulted to the death of one Taiwanese fisherman and have the Taiwanese government’s treat to impose sanctions against the Philippines and several incidents of harassments against overseas Filipino workers in Taiwan.
The Philippines’ BFAR locates the incident 43 nm east of Balintang Island and 170 nm southeast from Taiwan’s southernmost tip Cape Eluanbi, while Taiwan’s Coast Guard Administration map and other sources locate the incident at roughly 170 nm from Taiwan.”

As a result of the incident, Taiwan imposed several economic sanctions to the Philippines as follows: banning import of Filipino labor which in effect led to approximately 3,000 Filipinos to depart from Taiwan each month and preventing Filipinos from processing for new labor contracts as well as issuing a travel ban to Taiwanese to visit the Philippines with the demand for the Philippines to release a statement formally apologizing to the family of the deceased Taiwanese fisherman, recompense the victims of the shooting, penalize the persons who shot the fisherman and commence negotiations concerning bilateral fishery agreement immediately.

Correspondingly, Philippine President Benigno Simeon Aquino, issued the statement demanded, and offered recompense for the victims. Also, eight (8) PCG personnel who confessed to have fired their weapons during the incident are now being charged before the Regional Trial Court in the Philippines for Homicide. It is worth noting that neither complaint nor charge was ever filed against BFAR personnel who were also aboard the vessel during the Balintang Channel incident. Similarly, the Philippines and Taiwan started drafting a Fisheries Facilitation Agreement to address the issues pertaining to fisheries that both countries are facing.

The case between the Philippines and Taiwan can prove to be as problematic or even more challenging than the China-Philippines dilemma. It cannot be denied that it is the ripe time to conclude a similar maritime boundary delimitation agreement in relation to the overlapping EEZ in the Philippines northern waters with Taiwan. Nonetheless, this objective is definitely much more arduous when compared to the situation with
Indonesia ruminating the international and legal status of Taiwan as a mere part of China (R.O.C. - Republic of China) (Mendoza, 2015).

As quoted by Mendoza (2015, p. 28), Rodolfo Severino appropriately perceived the predicament of the Philippines with regard to its affairs with Taiwan, which in a nutshell would be described as:

“This Taiwan is the Philippines’ closest neighbor to the north, and an EEZ projected from it clearly overlaps with the Philippines’ northern EEZ. In fact, the Philippines’ EEZ encompasses much of the mainland of Taiwan. However, because of the Philippines’ recognition of the People’s Republic of China as the sole legal government of all of China, including Taiwan, the Philippines is unable to negotiate with the authorities in Taiwan the delimitation of the maritime boundary. Manila cannot possibly negotiate on such a politically sensitive subject as jurisdictional boundaries with a government that it does not recognize. On the other hand, negotiating with China on a boundary involving Taiwan without the latter’s participation would not make much sense or have much effect.”

Premises considered, the Philippines must seriously contemplate on the manner in which it should resolve the boundary issues with its neighboring countries since its social and economic survival largely depends on its peaceful relations with the bordering States and the international community in general.

Moreover, based on the data gathered from the PCG Office of the Deputy Chief of Staff for Intelligence, Security and Law Enforcement, the average recorded number of intrusions of foreign fishing vessels from the year 2006 to 2012 has decreased by 38.2 %
as compared to the average recorded number of intrusions of foreign fishing vessels from the year 2013 to 2015. Although said decline can be attributed to a number of various factors for which further studies are recommended, the researcher would like to accentuate that during the process of public consultations and information dissemination relating to the formulation of FLEMO among the law enforcement authorities of the Philippine government prior to 2013 and the consequent issuance of the Memorandum Circular on the standardized procedure thereafter resulting to the enhanced collaborative efforts of all government agencies involved in fisheries law enforcement functions, law enforcers have become considerably more efficient in the conduct of their law enforcement operations. Said improvement chiefly originated from the implementation of the policy as stated above in furtherance of the implementation of RA 8550 otherwise known as the Fisheries Code of the Philippines as well as the later law amending the same. The aforesaid decline is hereby reflected in Figure 2 below.

![Figure 2: The Comparative Figure on the Recorded Intrusions, 2006-2015](image)
As discussed in the previous Chapter, Section 124 of RA 8550 enumerates the persons deputized or authorized to enforce the said law and other fisheries laws, rules and regulations. Among those deputized is the PCG law enforcement officer/s. Section 3 (a) of RA 9993 or the PCG Law of 2009 mandates the PCG to assist in the enforcement of fisheries law. Indeed, the data gathered from both the BFAR and the PCG would merely represent one arm of fishery laws enforcement. However, considering that the PCG is the agency primarily authorized to conduct maritime law enforcement operations in the maritime jurisdiction of the Philippines inclusive of the Philippines’ EEZ as opposed to other Philippine law enforcement authorities, the researcher has given weight to the data provided by the two primary agencies handling the enforcement of fishery laws.

Source: Philippine Coast Guard Action Center (CGAC)

Figure 3: Manpower and Equipment involved in Fisheries Law Enforcement (BFAR and PCG)
In light of Figure 3 above, it can be observed that the Monitoring, Control and Surveillance (MCS) vessels that are subject of the MOA between BFAR and PCG are of two categories, the 11-meters vessels and the 30-meters vessels. By virtue of its capability, design and functionality, the 11-meters vessels are utilized within territorial waters while the 30-meters vessels are the platforms used to patrol and conduct fishery law enforcement operations until the extent of the entire EEZ of the Philippines or basically all the maritime zones of the country. Based on the MOA between PCG and BFAR, there are currently fourteen (14) MCS vessels dedicated for the enforcement of fishery laws. Out of the 14 vessels, one (1) is not ready for sail or on an NRFS status, then the four (4) 11-meters size, and finally, the nine (9) 30-meters size. Only the latter (9) are used for fishery law enforcement purposes. From the figure above, it can be noted that the number of personnel required by the MOA (189) is less than the actual number of personnel assigned (177) to complement the vessel. Although the difference between the two is a measly 6.4%, in actual law enforcement operations, every member of the team (boarding team, etc.) could dictate the success or failure of the mission.

5.2.1.6 Philippines as an Archipelagic State

Given the geographical configuration of the Philippines as an island State, the Philippines defined the baselines of its territorial seas through the enactment of Republic Act No. 3046 (RA 3046): An Act to Define the Baselines of the Territorial Seas of the Philippines on 17 June 1961, as amended by Republic Act No. 5446 (RA 5446): An Act to Amend Section One of Republic Act Numbered Thirty Hundred And Forty-Six, dated 18 September 1968.

Article 46 of UNCLOS 1982 defined an archipelagic State and an archipelago as follows:
“Archipelagic State - as a State wholly by one or more archipelagos and may include other islands.

Archipelago – means a group of islands, interconnecting waters, and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic, and political entity, or which historically have been regarded as such.”

The Philippines reinforced its status as an archipelagic State in Article 1 of the 1987 Philippine Constitution by describing its national territory therein, to wit:

"The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines."

Dugan-Listana (2015) stated that in several UNCLOS conferences, the Philippines and other archipelago States propositioned that an archipelagic State comprised of groups of islands forming a State is to be considered a single unit, with the islands and the waters within the baselines as internal waters. The idea of archipelagic doctrine is “where an archipelago shall be regarded as a single unit, so that the waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the state, subject to its exclusive
sovereignty.” She aptly explained the application of the archipelagic doctrine to the Philippines on saying the following:

“On the strength of these assertions, the Philippine archipelago is considered as one integrated unit instead of being divided into more than seven thousand islands. The outermost of our archipelago are connected with straight baselines and all waters inside the baselines are considered as internal waters. This makes the large bodies of waters connecting the islands of the archipelago like Mindanao Sea, Sulu Sea and the Sibuyan Sea part of the Philippines as its internal waters, similar to the rivers and lakes found within the islands themselves.”

Source: www.politicsandgovernance.se

Figure 4: Baselines Measurement
Notwithstanding the resistance of other States, the Philippines, Indonesia, Fiji, Bahamas, Palau, Antigua and Barbuda, Cape Verde, Comoros, Jamaica, Kiribati, Marshall Island, St. Vincent and Genadines, Sao Tome e Principe, the Solomon Islands, Trinidad and Tobago, Tuvalu, Vanuatu, and Papua New Guinea acquired the needed support in the UNCLOS 1982 Conference which transpired in Jamaica on 10 December 1982 and thereafter and were found to have satisfied the requisites of being archipelagic States (Oegroseno, 2014).

Article 47 and 48 of UNCLOS 1982 provide the measurement of the breadth of the TS, CZ, EEZ and the CS by stating that “an archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost island and drying reefs of the archipelago.” Article 49 further elucidates the legal status of archipelagic waters such that “the sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with Article 47, described as archipelagic waters, regardless of their depth or distance from the coast.”

In contemplation of the provisions afore-stated, it can be noted that having the archipelagic status entitles the States to have a wider range of territorial claim wherein sovereignty is exercised and rights thereto is accorded. In the same vein, the archipelagic States are required to follow through with their duties and the limitations they entail. In Part IV of UNCLOS 1982, there are certain limitations to the rights of archipelagic States which are enlisted as follows: respect for the existing agreements with other States and recognition of traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States (Article 51); right of innocent passage through the archipelagic waters (Article 52); and right of archipelagic sea lanes passage (Article 53).

However, since RA 3046 as amended by RA 5446 still do not comply with the provisions of UNCLOS 1982, the Philippine Congress enacted Republic Act No. 9522:
An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to define the Archipelagic Baseline of the Philippines and for other Purposes which took effect on 10 March 2009. The Philippine Supreme Court thereafter rendered a decision declaring that Republic Act 9522 is finally in compliance with the provisions of UNCLOS 1982 (Mendoza, 2015).

Source: www.virginia.edu

Figure 5: Comparative Map of Pre and Post-R.A. 9522

Henry Bensurto, Jr., the Secretary-General of the Commission on Maritime and Ocean Affairs (CMOA) cited the late Philippine senator Arturo Tolentino, when the latter
stated that “the archipelagic principle is important to the Philippines for two reasons: national security and the exclusive exploitation of the living and mineral resources of the waters, seabed and subsoil thereof, in the baselines” (Bensurto, n.d.). Certainly, the qualification of the Philippines as an archipelagic State and the subsequent passage of a national legislation to harmonize the same to Part IV of UNCLOS 1982 is a significant development for the country.

By virtue of the above premises, we can see on Figure 5 below that there was a substantial effect on the Philippines’ maritime zones as a consequence of the passage of the law Republic Act 9522. The expanse of the Philippine EEZ has definitely become larger.

Source: www.globalsecurity.org

Figure 6: Philippines’ Maritime Zones
Figure 6 above connotes the maritime regimes of the Philippines. With its EEZ measuring 135,783 km\(^2\) (Marine Regions, n.d.), it can be deduced that in the available nine (9) MCS vessels, each vessel has to cover at least 15,087 km\(^2\) for patrolling and fishery law enforcement measures. With this given figure, it is evident that the Philippine authorities encounter difficulty in efficiently enforcing fishery laws in its EEZ.

5.2.2 Identifying Gaps and Loopholes in the Implementation and Enforcement of Fishery Laws in the Philippines’ EEZ

As discussed in the preceding chapters, the Philippines have sufficient fishery legislations in place, with timely amendments to older laws. The government authorities in the Philippines are very well aware of the importance of managing, preserving, and conserving the marine resources of the country.

In principle, the Philippine laws are compliant with the relevant UNCLOS 1982 provisions. As explained in the afore-stated chapters, Philippine laws provide for the penalties imposable against violators i.e., administrative fines, confiscation of fish caught, fishing gears and equipment and the fishing vessel itself. Philippine domestic legislation does not contain corporal punishment or imprisonment of offenders as prohibited by UNCLOS 1982.

Notably, the amount of charges imposable to the violators have been updated hence would lead one to surmise that the amount is enough to deter possible violations to the fishery laws, rules, and regulations.

Moreover, the Philippine government is vigilant in terms of issuances of administrative policies, memorandum circulars, and standard operating procedures as evidenced by the Fishery Law Enforcement Manual of Operations for Law Enforcement Officers, Fisheries Administrative Orders, and Rules of Engagement. Collaboration between
government agencies that need to coordinate with each other is also in place. Said administrative issuances have adequately laid down the essential details on guidelines to follow commencing from the gathering of information, receiving of reports, recording, boarding, inspection, apprehension, arrest, preservation of vital evidence, handling and disposal of seized fish, equipment and fishing vessel used by the violators, as well as the administrative and judicial procedure for expeditious and efficient imposition of fines, charges and penalties.

As denoted in the declaration of policy of RA 8550, the Philippines is committed to international treaties and agreements. Nevertheless, as amply put by Mendoza (2015, p. 25):

“...the country is yet to comply with its duties and responsibilities as prescribed in Articles 61 and 62 of the UNCLOS 1982. Unfortunately, the number of islands composing the Philippines and the vast extent of waters comprising its EEZ seems to make it difficult for the Philippines to determine the allowable catch within the EEZ or even its capacity to harvest as prescribed in Article 61 and 62 respectively. As to date, the determination of allowable catch in the different Philippine maritime zones as well as the country’s capacity to harvest is yet to be complied with by the Philippines.”

It would be a momentous milestone for the Philippines should it comply with Articles 61 and 62 of UNCLOS 1982 and thereafter enter into agreements with its neighboring States. The same would definitely curtail a significant number of violations, as the same would be able to legally share with the country’s surplus of marine resources. These types of agreements must be welcomed by the Philippine authorities as such would spell out the difference between poaching and international comity and coordination thereby
helping the Philippines to achieve a more efficient use of marine resources and equally important, maintain successful international relations.

With regards to enforcement, however, much has to be improved and developed in the domestic sphere. In the foregoing chapters, data gathered from both BFAR and PCG revealed that there is still a substantial number of foreign fishing vessels’ intrusions into the Philippines’ EEZ despite the persistent patrol and enforcement mechanisms of the Philippine fishery law enforcement authorities. One factor that must be deliberated is the apparent lack of an adequate number of MCS vessels that conduct patrol and law enforcement operations in the EEZ to prevent or deter infractions of fishery laws, rules, and regulations therein. Another critical factor is the absence of boundary delimitation agreements with the neighboring countries that has overlapping EEZs with the Philippines.
6. Conclusion and Recommendations

6.1. Conclusion

The legal concept that is EEZ has resulted to a significant development in the realm of fisheries, both in the implementation and enforcement aspects. The extension of the jurisdiction of coastal States to the 200 nm limit from its original 3 nm (cannon-shot rule) range presented vast opportunities for the coastal State to exercise its legislative powers in terms of exploration, exploitation, management, conservation, and preservation thereof. The emergence of the EEZ has indeed caused the reduction of the area of the high seas that other States can have access to and increased the coastal States’ jurisdiction where it could exercise regulatory powers. This has been proven to be a challenge to developing countries since they need to not only have experts within the government to draft fishery legislations for effective implementation thereof but more crucial is the need to allocate funds for the required enforcement machinery.

The objective of this dissertation is to lay down the gaps found in the application and implementation of the existing provisions of the UNCLOS 1982 in the Philippine setting with regards to the extent of the coastal State’s right to implement and enforce fishery laws in the EEZ and provide relevant recommendations to address these gaps. Through an analysis of the relevant UNCLOS 1982 provisions, the careful scrutiny of pertinent domestic fishery legislations and the examination of the data gathered germane to the implementation and enforcement thereof, this research discovered several areas that the Philippines as a coastal State can improve on.
The first four chapters of this dissertation discussed the development of the concept of EEZ, the legal regime involving fishery laws in the EEZ, the rights that the coastal States can exercise over the EEZ and the duties that in essence limits the exercise of the afore-stated rights. These chapters facilitated the foundation of this dissertation and established the required groundwork in discerning the fundamental points that have to be translated into concrete research findings. It was in Chapter 5 when the review of the Philippine laws, regulations and policies as well as the data gathered concerning the implementation and enforcement of the fishery laws in the Philippines where the gaps were found.

As previously mentioned, there are already national legislations that satisfy the numerous UNCLOS 1982 provisions dealing with implementation and enforcement. Among other Philippine fishery laws, the Fisheries Code of the Philippines (RA 8550), its Implementing Rules and Regulations, the Fisheries Administrative Order, the most recent law that amended RA 8550 (RA 10654) raising the amount of fines and penalties for fishery law violations, the Fisheries Law Enforcement Manual, the Philippine Coast Guard (RA 9993), and the PCG Rules of Engagement addressed Articles 55, 56, 57, 58, and 73 of UNCLOS 1982. The aforesaid laws, rules and regulations contain the details on the boarding, inspection, arrest, administrative and judicial proceedings, prompt release upon posting of bond, and prompt notification to the flag State in case of arrest or detention of the vessel and its crew. The Philippine domestic laws do not include imprisonment nor any form of corporal punishment for infractions of fishery laws.

Aside from the Philippines’ needed compliance to the following UNCLOS 1982 provisions, to wit: (1) Article 61 on the aspect of determining the allowable catch and/or capacity to harvest the living marine resources in its EEZ; (2) Article 62 regarding entering into an agreement or other arrangements with other States with regards to
access to the surplus of the allowable catch; and (3) Article 74 on the delimitation of the EEZ between Philippines and its neighboring States (with the exception of Indonesia), not much is left to be enacted or accomplished as the legal framework in the Philippine setting is already in place.

Legal standing must be the basis of any State pursuing to exercise its jurisdiction and control over its maritime zones. The existence of international instruments such as UNCLOS 1982 and the ensuing enactment of national legislations symbolizes the potency of the coastal State role in the exercise of its sovereign rights in the EEZ. These regulations serve to be the pillars of the exercise of the said rights because the aforesaid national laws ascertain the metes and bounds of the government’s duties to its citizens and to the international community to preclude any unwarranted curbing of rights that they may exercise.

Based on the review of various State practices, applicable laws and data gathered, the Philippines cannot enact legislations that would run counter with the international rule of law (like the burn and sink policy of Indonesia). All that the Philippines have to do is to effectuate capacity building measures in terms of strengthening its manpower and acquiring additional equipment such as the MCS vessels that would be sufficient in number and capability to conduct efficient and effective patrolling and monitoring activities to deter and interdict violations of fishery laws.

In addition, the Philippines legislative department must also take into consideration the fact that one single authority to enforce Philippine fisheries laws as to be enabled by a law would redound to the benefit of the nation. The PCG can be considered as the agency with the chief function of enforcing fishery laws, rules and regulations henceforth the assets, equipment and manpower of PCG may be employed in fishery law enforcement operations.
Indeed, in a perfect world, every State should be proficient in the execution of its duties and its responsibilities as decreed by existing laws, rules, and regulations, whether it be in the national and/or international level. However, such is not the case in the real world. Currently, developing countries such as the Philippines face several challenges in the actualization of the roles and responsibilities dictated by international instruments such as UNCLOS 1982.

Notably, there is a need to highlight that a State’s strength to implement and enforce its laws depends on its capability to efficiently portray and fulfill its mandate as represented by the national laws and international instruments it needs to enforce. Taking into consideration the immense quantity of the laws, rules, and regulations covering fishery law enforcement, one would acknowledge that roughly all that has to be accomplished to manage, preserve, protect, and conserve fisheries and other marine natural resources has now been codified.

However, as advocated by Mansell (2009), the widespread recognition of these instruments is not in any way indicative of neither successful implementation nor enforcement of States. The problem, as proven above, is not that there is a scarcity of relevant instruments, but in actually implementing and enforcing the same. Undoubtedly, some gaps may seem taxing to fill-in in the outset. Nevertheless, when properly and efficiently rectified and resolved, these would optimistically lead to the advancement of fishery law enforcement and in the end benefit not only the Philippines but also the entire international community in general.

6.2. Recommendations

Above conclusion considered, this dissertation arrives at the following recommendations:
(1) The Republic of the Philippines must aim to comply with the UNCLOS 1982 provisions, to wit:

(a) Article 61 - determine the allowable catch and/or capacity to harvest the living marine resources in its EEZ;

(b) Article 62 - enter into an agreement or any other arrangement with other States on the access to the surplus of the allowable catch; and

(c) Article 74 – enter into boundary delimitation agreements with neighboring States with which the Philippines has overlapping EEZs.

(2) The Republic of the Philippines to continue its mission of achieving effective and efficient enforcement of fishery laws by undertaking capacity building measures in improving its necessary manpower and equipment requirements.

(3) The Republic of the Philippines (BFAR and PCG) to do further research and/or feasibility studies on an enhanced deployment plan to utilize the current equipment (MCS vessels) most especially during fishing seasons.

(4) The Republic of the Philippines (Congress) to seriously consider enacting a law that would in effect mandate one single authority that would enforce Philippine fisheries laws i.e., PCG to be given the primary mandate to enforce fishery laws in the country so that the funds will be allocated to PCG hence the assets, equipment and manpower of PCG could all be utilized in fishery law enforcement.
REFERENCES


LIST OF CASES

Greenland and Jan Mayen Case (Denmark vs Norway) ICJ Reports

United Kingdom vs Iceland, Merits, Judgment, ICJ Reports (1974)

North Sea Continental Shelf Case (1969) ICJ Reports 3, para 63

Iceland Fisheries Jurisdiction Case (1972)

Tunisia Libya Continental Shelf Case (1982)

Libya Malta Continental shelf Case (1985)

Franco Canadian Fisheries Arbitration

Franco Canadian Maritime Boundary Arbitration

United States Canada Gulf of Maine Area Case

International status of South West Africa ICJ Report

Bering Sea Tribunal of Arbitration (1983)

LIST OF INTERNATIONAL CONVENTIONS AND OTHER INSTRUMENTS

Convention of Fishing and Conservation of the Living resources of the High Seas, 1958

European Fisheries Convention, 1964

Convention on the Conduct of Fishing Operation in the North Atlantic, 1967

The Territorial Sea and the Contiguous Zone Convention
The High Seas Convention

The Continental Shelf Convention

The Fisheries Convention


Code of Conduct for Law Enforcement Officials, 1979

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990

**LIST OF PHILIPPINE LEGISLATIONS**

1866 Law of Waters

Act No. 4003 of 1932

Fisheries Act of 1932

1935 Constitution of the Philippines

Presidential Degree No. 43: The Philippines’ Fishery Industry Development Decree, 1972

Presidential Decree No. 704: The Fisheries Decree of 1975

Presidential Decree No. 1219

Presidential Decree No. 1698

Presidential Decree No. 1015 of 1976

Presidential Decree No. 1599 of 1976: Establishing an EEZ and for Other Purposes
Executive Order No. 1047 of 1985: Encouraging Distant Water Fisheries by the Philippine Commercial Fishing Fleet


Republic Act No. 10654: An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending RA 8550 and for Other Purposes

Republic Act No. 9993: The Philippine Coast Guard Law of 2009

Republic Act No. 3046: An Act to Define the Baselines of the Territorial Seas of the Philippines, 1961

Republic Act No. 5446: An Act to Amend Section One of RA 3046, 1968

Republic Act No. 9522: The Archipelagic Baselines of the Philippines
PCG-BFAR MOA SIGNING

Headquarters Philippine Coast Guard  
139 25th Street Port Area, Manila  
261400H June 2014  
Aboard HPCG Conference Room
KNOW ALL MEN BY THESE PRESENTS:

The Memorandum of Agreement (MOA) made and entered into by and between:
The Bureau of Fisheries and Aquatic Resources, a National Agency of the
Philippine Government under the Department of Agriculture reconstituted under
R.A. No. 8850 with principal office address at 3/F PCA Bldg., Elliptical Road,
Diliman, Quezon City, represented by its Director, Asis G. Perez, and hereinafter
referred to as “BFAR”.

and

The Philippine Coast Guard, a Government Agency duly created by R.A 9993
otherwise known as Philippine Coast Guard Law of 2009 with office address at
139 25th Street, Port Area, Manila represented herein by its Commandant, VADM
RODOLFO D ISORENA PCG, and hereinafter referred to as “PCG”.

WITNESSETH:

WHEREAS, the BFAR under RA 8550 otherwise known as the Philippine
Fisheries Code of 1998 is mandated to develop, manage, conserve and protect
the country’s fisheries and aquatic resources;

WHEREAS, Section 14 of RA 8550 provides that a monitoring, control and
surveillance system shall be established by the Department of Agriculture (DA) –
Bureau of Fisheries and Aquatic Resources (BFAR) in coordination with other
concerned agencies to ensure that the Fisheries and Aquatic Resources in the
Philippine waters are judiciously and wisely utilized and manage on a sustainable
basis and conserved for the benefit and enjoyment exclusively of the Filipino
citizens;

WHEREAS, Section 87, 88 and 89 of RA 8550 provides that poaching in
the Philippine waters, fishing through explosive, noxious or poisonous substance
and/or electricity and use of fine mesh net respectively are strictly prohibited and
punishable by law;

WHEREAS, the Department of Agriculture through the BFAR, in order to
implement its nationwide Monitoring Control and Surveillance Program, has
acquired fourteen (14) units of combined 30-meter and 11-meter long fisheries
patrol vessels, hereinafter referred to as “MCS Vessels”, which is a partial
compliance of its sea components program for the nationwide Monitoring, Control
and Surveillance;

WHEREAS, the MCS vessels are primarily intended for the conduct of
regular monitoring and surveillance of the Philippine waters against illegal fishing
activities of both foreign and local fishing fleets to strictly implement ocean laws
and regulations, thereby safeguarding the Philippine marine resources.
ARTICLE II
OWNERSHIP

Section 1. These MCS vessels shall be operated as vessels owned by the Republic of the Philippines, through BFAR.

ARTICLE III
RESPONSIBILITIES OF BOTH PARTIES

Section 1. BFAR shall have the authority and responsibility to deploy and dispatch the vessels for patrol/law enforcement mission within Philippine maritime jurisdictions in consultation with the Philippine Coast Guard.

Section 2. BFAR and PCG shall jointly prepare the deployment plans, programs and operation of the vessels. Both parties shall also maintain close working linkages with the respective LGUs where the vessels will be deployed and operated.

Section 3. In case of national calamities and emergencies, such as war, rebellion and/or insurrection, especially for search and rescue operation and responding to marine pollution incident where the security, defense and peace and order of the Republic of the Philippines is at stake, the CO/Boat Captain assigned-on-board shall have the prerogative and authority to utilize vessels, or as may be directed by the higher authorities of PCG, over and above the purpose and mission of the vessel, pursuant to this MOA. For this purpose, the CO/Boat Captain on-board shall then immediately inform the BFAR Director or its authorized representative of the diversions and/or utilization of the vessels.

Section 4. The vessels shall display mark and symbol of both Agencies for identification purposes. Personnel onboard of MCS Vessels shall wear the appropriate uniform of their respective agencies.

ARTICLE IV
ADMINISTRATION, OPERATION AND MANAGEMENT OF THE VESSEL

Section 1. Personnel Administration

a. For the 11-meter MCS Vessels, there shall be seven (7) personnel onboard, with at least four (4) from PCG, and three (3) from the BFAR, with the PCG Non-officer as the Boat Captain. The organizational set-up, designation and duties of the personnel on board is defined in “Annex I” and form part of this MOA.

b. For the 30-meters MCS Vessels, there shall be twenty one (21) personnel on board with PCG Commanding Officer. Seven (7) personnel from BFAR; and at least three (3) PCG Commissioned Officers and eleven (11) non-officers. The organizational set-up designation and duties of personnel onboard is defined in “Annex II” and forms part of this MOA.
b. The BFAR Central Office shall be responsible for the issuance of Sailing Orders. Prior to the issuance of Sailing Orders, BFAR shall ensure that concerned MCS vessels are operational ready particularly on the status of major machineries and equipment. The MCS Commanding Officers shall inform the Coast Guard District Commander of its current deployment and mission.

c. In every particular mission, both Rules of Engagement (ROEs) of PCG and BFAR shall be known and understood at all times by all personnel onboard for proper and strict adherence.

ARTICLE V
COMPENSATION AND OTHER FUNDING REQUIREMENTS

Section 1. Salaries and pays, subsistence allowance, sea duty pays and other allowances as prescribe of BFAR and PCG personnel onboard the MCS vessel shall be borne by their respective agencies.

Section 2. The operating and maintenance cost of the vessel as regards to petroleum, Oil and lubricant (POL) during the conduct of MCS activities including travel, per diem of BFAR and PCG personnel, other incidental expenses, procurement of spare parts, consumables, emergency and regular drydocking/repair activities shall be provided by the BFAR subject to the availability of funds and the usual government accounting and auditing laws, rules and regulations on this matter. However, the PCG shall provide counterpart provision for the POL as needed during the conduct of Search and Rescue Operations and other PCG activities.

ARTICLE VI
SAVING CLAUSE

Section 1. If any provision of this MOA is held invalid for any reason, the remainder shall be held valid and shall continue to be in effect and enforced.

ARTICLE VII
EFFECTIVITY CLAUSE

THIS Memorandum of Agreement shall take effect upon signing of the parties herein stated.

IN WITNESS WHEREOF, the Parties hereto, acting through their representative duly authorized for this purpose, have caused this MOA to be signed this 26th day of June 2014.
Annex I - Inter-Agency MCS Regional Organizational Chart

(Vessel Operation Level - 11 Meter)
Annex II: Inter-Agency MICS Organizational Chart

(Vessel Operation Level - 30 Meter)
APPENDIX B
MEMORANDUM

To : Coast Guard Adjutant

From : Deputy Chief of coast Guard Staff for Operations, CG-3

Subject : Approved ROE Circular

Date : 19 January 2012

1. Attached herewith is the approved Rules of Engagement (ROE) in the Conduct of Maritime Law Enforcement (MARLEN) Operations Circular.

2. Request that same be distributed to all units and concerned staff.

3. For consideration.

JERRY A. NIBRE
CAPT. PCG
recommending the approval of the proposed circular so as to serve as a guide for all concerned in the conduct of MARLEN operations.

RECOMMENDATION:

7. Approval of the proposed circular on the Rules of Engagement (ROE) in the Conduct of Maritime Law Enforcement (MARLEN) Operations.

[Signature]

[Stamp: Approved]

"Serving Our Nation by Ensuring Safe, Clean and Secure Maritime Environment"
V. DEFINITION OF TERMS:

a. Rules of Engagement (ROE) – are guidelines and procedures issued by competent authority that defines the extent to which law enforcement units or its individual members may use force in the performance of their duties and to ensure that MARLEN operations are conducted within the rule of law.

b. Maritime Law Enforcement (MARLEN) Operations- generally connotes PCG operations conducted against violations of penal laws (customs, immigration, fisheries, forestry, dangerous drugs, firearms, piracy, human smuggling, and environmental laws) and other maritime violations committed within the maritime jurisdiction of the Philippines.

c. Target vessel/craft – a vessel or watercraft that is the subject for law enforcement operations. Target vessel/craft are classified into the following:

i. Non-hostile watercraft – a target vessel/craft that has expressed their willingness to be subjected to inspection when signaled or challenged by a maritime patrol ship/craft. The crew of subject target vessel/craft readily respond and cooperate with the boarding officers during the course of inspection.

ii. Assumed hostile watercraft – a target vessel/craft that is assumed to be hostile by virtue of credible intelligence report, which indicates that the said vessel/craft intends or is being used to commit maritime violations.

iii. Hostile watercraft – a target vessel/craft is considered hostile if it manifests the following overt hostile actions:

1) Increase speed, refuses to stop or conduct evasive action when challenged or signaled to stop;
2) Perform a tactical maneuver towards or to a position with an unmistakable intention to attack or ram the patrol vessel/craft;
3) Attacks or fires back with the use of any firearm or any other violent method at the patrol vessel/craft;
4) The crew showing antagonism towards the boarding team and attempts to resist or fight back when being boarded.

d. Unit afloat – refers to PCG manned ship/ small craft under the command of a PCG commissioned or a non-commissioned officer. It also includes any watercraft used by PCG personnel in the conduct of MARLEN operations.

e. Sweep Search – initial search conducted aboard a target vessel to eliminate safety hazards, which could cause disruption, injury or death to anyone on board. Safety hazards include vessel hazards (vessel discrepancies which can cause danger), weapons and any persons who have not been accounted for or who threaten the boarding team’s safety.
ii. Contiguous Zone — The sea area extending twelve (12) nautical miles from the territorial sea or twenty four (24) nautical miles from the baseline of a coastal State. The coastal State may exercise the control necessary to prevent or punish infringement of its customs, fiscal, immigration, and sanitary laws and regulations.

iii. Exclusive Economic Zone (EEZ) — The sea area extending up to 200 nautical miles seaward from the baseline of a coastal State. A coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and with regards to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds. A coastal state likewise has jurisdiction within the EEZ, wit activities relating to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment.

m. Non-combatant — any person who does not belong to the uniform service, armed group, terrorist, dissidents and other lawless elements, foreign and domestic.

VI. POLICIES:

a. Subject to the limits established by the Constitution of the Philippines and the applicable provisions of UNCLOS 82 and the provisions of applicable national laws, the Philippines exercises absolute jurisdiction and sovereignty as applicable over the inland waters, territorial waters, contiguous zone, EEZ and the extended continental shelf.

b. RA 9993 (Coast Guard Law) authorizes the PCG to enforce all maritime laws, rules and regulations and other applicable laws within maritime jurisdiction of the Republic of the Philippines.

c. All MARLEN operations should adhere to the government’s policy and declaration on the protection of human rights as enshrined in the constitution and applicable international and national laws relating to human rights and law enforcement. Among the applicable provisions of these laws are as follows (see ANNEX for brief descriptions):

1. Bill of Rights of the Philippine Constitution.

   i. Section 2 of Article III
   ii. Section 12 of Article III

2. International Instruments Relating to the Proper Departement of law Enforcement Officials

   i. Code of Conduct for Law Enforcement Officials — Adopted by the UN General Assembly on 17 December 1979.
civilians. Shooting shall not be resorted to if it will endanger innocent people within the target area.

e. Commanding Officers, OICs, Boat Captains and other personnel in charge of the MARLEN operation should ensure that all personnel are properly briefed and acquainted with the overall operational plan before the start of operations. The levels of authority particularly the authority to use deadly force should always be clear and delegated, if appropriate, to team leaders and subordinate units, before the start of the operation.

f. PCG personnel in charge of unit afloat is authorized to declare a target vessel/craft as hostile prior to boarding. In the event that a non-hostile target vessel/craft show overt hostile actions during the conduct of the boarding operations, status of vessel automatically changed to that of a hostile watercraft without such declaration. As such, appropriate board and search procedures shall be automatically applied.

g. If applicable, maximum coordination with other law enforcement units (i.e. PNP, AFP, other government agencies) shall be resorted to at all times.

h. Warning shots to prevent the target vessel from escaping or to force the target vessel to comply with instructions to stop and be boarded are prohibited. Instead, personnel in charge of unit afloat shall employ other means necessary to force the target vessel to comply with instructions given.

i. In the event that it is necessary to use deadly force (firearms) to prevent hostile vessel/craft or its crew members from inflicting injury or harm to patrol vessel/craft crew or boarding team members, necessary warning shot(s) should be fired first prior directly firing at the hostile vessel/craft or its crew members. In such case, the intention for the use of deadly force should only be primarily for self-defense and to disable the target vessel or the offending crewmembers and not cause serious bodily harm or death.

j. Nothing in this guideline should undermine the commander’s responsibility and decision-making capacity to use any or all means necessary within the bounds of law to effect mission accomplishment.

k. All incidents or encounters shall be fully documented and reported to the HPCG (Attn: CG-3/ CGAC) without delay IAW current reporting procedures.

VIII. PROCEDURES:

a. Prior to any actual board and search operation, the Commanding officer or personnel in charge should established appropriate jurisdiction over the target vessel. This is to ensure the legality of the operation to be conducted and that the operators are clothed with the authority to act in a legal manner.
g. All personnel concerned should likewise make every effort that board and search operation proceeds in a smooth and orderly manner. All MARLEN operations should therefore include a briefing on the objective of the particular operation by the unit commander or personnel in charge of the said operation. The said briefing should cover all the necessary aspects to include among others, embarkation of the boarding party, appropriate tactics to control target vessel and its crew, method of search to be used, use of weapons and/or other means necessary to counter threats, checking of documents, documentation of seized articles/evidences, return of crew property, detention of suspects and target vessel disembarkation. A debriefing should always follow every board and search operation conducted.

h. In choosing a place to embark a target vessel, the following should be considered:

   i. Maximum safety of the boarding team;
   ii. Weather and sea state;
   iii. Safety of both vessels;
   iv. Size of target vessel;
   v. Location of target vessel’s crew;
   vi. Location of gears (i.e. nets, cargo) and obstacles

i. Boarding team leader should always introduce himself to the master or ship captain upon boarding the target vessel. This is to ensure that the master is properly identified, that the team leader is properly identified to the master, that the target vessel knows the purpose of the boarding and to inquire if there any weapons on board. An example introduction is as follows: “Good morning/afternoon captain, my name is ______. The PCG is boarding your vessel to determine your status and ensure compliance with the laws and regulations. Captain, without reaching for them, do you have any weapons on board?” It is advisable if ready-made translation in the local prevailing dialect or language (in the case of a foreign vessel) of the above statement can be prepared.

j. All members of the boarding team should always use the minimum force necessary to control or get compliance from the crew of the target vessel. As such, they are responsible to thoroughly acquaint themselves with the established “Range of Response Continuum” in dealing with threats encountered during the board and search operation. Below is the established “Range of Response Continuum”:

   [Signature]

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assigned duties and responsibilities and above all the safety of the whole boarding team.

I. Safe search techniques should be used at all times. The intensity with which the safe search techniques are used depends on the degree of risk as determined before the boarding team embarked on the target vessel. In high-risk board and search situations, the full use of safe search techniques is required. In lower risk situations, safe search techniques maybe modified.

m. Sweep search should always be conducted first prior searching for other items or evidences. This is to ensure that all safety hazards are identified, removed or secured prior the conduct of the more thorough search for contraband items or evidences relating to the commission of an illegal activity. Thorough search can only be done upon the report that the sweep search was completed and all safety hazards found were secured. Team members should always ensure the presence of a target vessel’s crewmember in searching crews’ compartment and personal belongings.

n. Team members are allowed to draw their sidearm when there is a possibility that deadly force maybe necessary during the conduct of the search. In this case, weapon ready stance (for lead team member) and weapon down technique (rear team members) should be practiced by the team members.

o. Boarding team should thoroughly check vessel documents as presented by the target vessel captain for any discrepancies (required signatures appear, authenticity and expiration). Documents include vessel registration, cargo manifest, licenses, crew manifest and personal identification.

p. Upon completion of the board and search activity and no violations are found, boarding team should depart without delay. Always depart the target vessel with safety in mind and in an orderly manner. More so, all team members should ensure that they have all the equipment that they have brought. Prior departure, return all items which were temporarily secured. Don not forget to express appreciation for the cooperation shown by the target vessel’s captain and her crew.

q. Proper documentation should always be followed no matter what the outcome of the board and search activity. For this purpose, documentation would mean any form of permanent record of any aspect of the operation. The following is a partial list of types of documentation:

i. After boarding report (radio message, formal report, etc);
ii. Videos;
iii. Photographs;
iv. Written statements;
v. Certificate that the boarding was done in an orderly manner;
vi. Inspection and Apprehension Report (IAR);
events upon arrest and data on the situation. Specifically, it should include the following:

i. When and how the arrest was made;
ii. How the suspect was restrained;
iii. Any statements made by the suspect;
iv. Suspect particulars (name, age, address);
v. Suspect’s health status or physical condition.

w. The transport of suspects from the target vessel to the patrol vessel could be done if the target vessel is unsafe or if the situation could be better controlled on the patrol vessel. The transport of suspects should be done taking into consideration the on-scene weather, health/physical condition of the suspect(s), distance to the nearest port, target vessel condition, number of suspects and the security of the prize crew, which will be left aboard the target vessel. If the decision has been made to transport the suspect(s), the following steps should be taken to ensure the safety of both the team members and the suspect(s):

i. Thoroughly search the suspect(s) prior transport;
ii. Putting a life jacket on the suspect(s);
iii. Helping the suspect(s) into the small boat or patrol vessel.

x. All suspect(s) while in custody are the primary responsibility of the commanding officer or person in charge. As such, they should ensure that the suspect(s) are treated in accordance with established laws on the humane treatment of suspect(s) while in custody. Basic necessities such as food, water, sanitation and medication, if necessary, should be provided.

y. Upon arrival to the nearest port, commanding officers or person in charge should ensure that the suspects/seized items/evidences are properly turned over to competent authorities.

IX. RESPONSIBILITY:

a. All COs, OICs and Boat Captains of units afloat shall be responsible for the strict implementation of these ROE. Non-observance or violation of these rules shall be dealt with accordingly and shall, ipso facto, be considered evidence of negligence in any administrative proceeding.

b. All COs, OICs and Boat Captains of units afloat are responsible for the dissemination and proper orientation of personnel under their command on the different provisions of the ROE. As such, TI and E on the above topic should be made upon effectivity of this circular and all personnel shall certify that they have read and understood the provisions of this circular. Report of compliance should be reported to CCGFleet NLT 30 days upon effectivity of this circular.
ANNEX

1. Bill of Rights of the Philippine Constitution.
   i. Article III, Section 2 of the Constitution reads:
      "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any person shall be inviolable, and no search warrant or warrant of arrest shall be issued except upon probable cause to be determined personally by the judge after examination under oath and or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons and things to be seized"
   ii. Section 12 of Article III also reads:
      (1) "Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
      (2) No torture, force, violence, threat, intimidation, or any other means, which vitiate the free will, shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited."

2. International Instruments Relating to the Proper Deportment of law Enforcement Officials
   i. Code of Conduct for Law Enforcement Officials – Adopted by the UN General Assembly on 17 December 1979.
      1. Article 1.
      "Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession."
      2. Article 2
threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

3. Republic Act No. 7438

i. Section 2 - Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officer.

“(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel”

“(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understand by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer in private with the person arrested, detained or under custodial investigation. If such person cannot afford services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer

XXX

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person’s "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece and guardian or ward

4. Republic Act No. 9372 (Human Security Act of 2007)


The moment a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism is apprehended or arrested and detained, he shall forthwith be
informed, by the arresting police or law enforcement officers or by the police or law enforcement officers to whose custody the person concerned is brought, of his or her right: (a) to be informed of the nature and cause of his arrest, (b) to remain silent and (c) to have competent and independent counsel preferably of his choice. If the person cannot afford the services of counsel of his or her choice, the police or law enforcement officers concerned shall immediately contact the free legal assistance unit of the Integrated Bar of the Philippines (IBP) or the Public Attorney’s Office (PAO). It shall be the duty of the free legal assistance unit of the IBP or the PAO thus contacted to immediately visit the person(s) detained and provide him or her with legal assistance. These rights cannot be waived except in writing and in the presence of the counsel of choice; (b) informed of the cause or causes of his detention in the presence of his legal counsel; (c) allowed to communicate freely with his legal counsel and to confer with them at any time without restriction; (d) allowed to communicate freely and privately without restrictions with the members of his family or with his nearest relatives and to be visited by them; and, (e) allowed freely to avail of the service of a physician or physicians of choice.