MARITIME ENFORCEMENT IN THE PHILIPPINES: ISSUES AND CHALLENGES

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Abstract

As an archipelagic and maritime nation, the Philippines recognizes the crucial need to protect, conserve and manage its marine and coastal resources and the environment. Protection, conservation and management entail enforcement of all maritime related laws by various government agencies. Maritime enforcement however is a very challenging task as an integrated part of ocean management given the strategic location of the country as an archipelago. Maritime enforcement in the Philippines covers a wide range of issues from

Supervisors:

Professor Martin Tsamenyi

Acronyms

AFP	Armed Forces of the Philippines
AMIS	Australian Maritime Identification System
AOR	Area of Responsibility
ASG	Abu Sayyaf Group
ATON	Aids to Navigation
BFAR	Bureau of Fisheries and Aquatic Resources
BD	Bantay Dagat
BID	Bureau of Immigration
BIMP-EAGA	Brunei Darussalam, Indonesia, Malaysia, and Philippines - East ASEAN Growth Area
BPC	Border Protection Command
BuCos	Bureau of Customs
COLREGS	Convention on the International Regulations for Preventing Collisions at Sea
DENR	Department of Environment and Natural Resources
DILG	Department of Interior and Local Government
GIS	Geographical Information Systems
IMO	International Maritime Organization
ISPS	International Ship and Port Facility Security
ISRAP	Integrated Security Response Action Plan
JI	Jemaah Islamiyah
JMOC	Joint Maritime Operation Center
JOPC	Joint Offshore Protection Command
JWC	Joint War Committee Lloyds, London
LGC	Local Government Code
LGU	Local Government Unit
MARINA	Maritime Industry Authority
MARPOL	Marine Pollution
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
NCWS/CWS	National Coup

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PA	Philippine Army
PCB	Police, Customs and Border Guard
PCG	Philippine Coast Guard
PDEA	Philippine Drug Enforcement Agency
PN	Philippine Navy
PNP-MG	Philippine National Police-Maritime Group

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Introduction

As an archipelagic and maritime nation, the Philippines recognizes the crucial need to protect, conserve and manage its marine and coastal resources and the environment. Protection, conservation and management entail enforcement of all maritime related laws by various government agencies. Maritime enforcement however is a very challenging task as an integrated part of ocean management given the strategic location of the country as an archipelago.

The Philippines is located in the heart of South East Asia, surrounded by three prominent waters, the Pacific Ocean on the east, the South China Sea on the west and north, and Celebes Sea on the south. It has a total land area, including inland bodies of water, of approximately 300,000 square kilometers (120,000 sq mi).[1] The 36,289 kilometers (22,549 mi) of coastline makes the country the 4th longest coastline in the world following Canada,

marine species and habitats.[7] The maritime industry plays a vital role in the achievement of the economic progress of the country. According to the 1994 Philippine Standard Industrial Classification, the economic activities of the maritime sector may cover the broad industries of fishery and forestry; mining and quarrying; construction; manufacturing; transport, communication and storage; trade; finance; and services. The maritime industry roughly accounts for 1.7 percent of revenue/sales of all industries, 1.0 percent of cost (of goods sold) of all industries and 3.3 percent of the employment of all industries.[8] The fishing industry in particular accounts for 83.50 percent of revenue[9]. The maritime activities for the transport and storage industry cover 15.6 percent of cost.[10] And the maritime activities in real estate, renting and business industry account for 13.1 percent of employment.[11]

With 7,107 number of recorded islands of the Philip

important elements of this study, however, are the law enforcers involved in effecting the laws given to the absolute dependence of the law en

jurisdiction, a treaty cannot in any way be transformed into an instrument that derogates Philippine sovereignty, or of sovereign powers under the Constitution. The supremacy of the

manage the lower or local levels that are within the central or national government itself and the transfer of power and authority from the national government to Local Government Units (LGUs), defined in the 1987 Constitution as the territorial and political subdivisions of the state.[18] In the Local Government Code of 1991, the responsibility for the enforcement of certain regulatory powers that earlier were the job of national government devolves to LGUs such as the enforcement of environmental laws,[19] jurisdiction over municipal waters,[20] and the registration of municipal fishing boats three gross tons (3GT) and below,[21] among others.

Judicial System

Judicial power rests with the Supreme Court and the lower courts, as may be established by law.[22] Courts are the most prevalent formal institutional setting for sanctioning the violation of laws and regulations. Court litigation, in general, is the normal method of settling disputes

One of the most significant recent developments in

accordance with the strategic direction and policy guidance to be issued by the National Security Council.

The Philippines receives various forms of U.S. military assistance as it is a strong political, economic and military ally outside of its territory and a close partner in the global war against terrorism. The two nations forged the U.S. - Philippines Mutual Defense Treaty and concluded the Visiting Forces Agreement, paving the way for increased military cooperation. The U.S. conducts ship visits to Philippine ports and engages in military exercises with Philippine forces. With the spread of Al Qaeda across the globe and the growth of the Al Qaeda-linked South East Asian terrorist network JI, the stability and security of the Philippines and U.S. - Philippines counterterrorism efforts take on a new urgency.[35]

Tourism. Tourism as well is a major source of income and em

actively involved with community development and conservation of the El Nido Managed Resource Protected.[41]

murdered several of the hostages.[48] Philippine authorities strongly believed that the ASG had

1.1.3 Piracy

The 2011 Annual Report from the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) showed that there has been improvement in the situation of piracy and armed ro

1.1.5 Illicit Drug Trafficking

The problem of illegal drugs in the Philippines continues to pose a significant threat to national security. According to the 2009 UN World Drug Report, the Philippines ranked 5th in the seizures of crystal methamphetamine (shabu, as local name) and emerged as a significant source of methamphetamine in East and South-east Asia and Oceania.[72] Since 2000 up to the present time, bulk trading of "shabu", continues with the Philippines as a trans-shipment point to Japan, Australia, the United States and some European countries.[73] Ecstasy is believed to be smuggled into the Philippines from Canada and Europe, using sea ports, airports and post as there is no known ecstasy manufacturer in the Philippines.[74]

Reports also revealed that illegal drugs and precursor chemicals can easily be transported in and out of the country using seaports, airports, mail and parcel system, and free port areas.[75] Traffickers, especially for smuggling of bulk quantities, have taken the most daring action of the use of commercial container cargo to deter suspicion from customs authorities.[76]

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[77] Bateman a-5.80816(Pe)-3.66653( )-133.71f th

unaware of its content.

1.1.6 Oil Smuggling

In a newspaper interview, a custom employee in the Philippines described oil as the most commonly smuggled items because it can easily be disposed of.[79] When oil is shipped in, they are quickly sold before investigation builds up. Oil products are either smuggled instantly or are shipped legally with values under declared.[80] Crude oil products which were imported through free ports exempt from value added tax and excise taxes find their way out of the zones and into the general market.[81] The increasing oil smuggling in the Philippines raised uncertainty for international companies to invest in the country.

Oil pilferage likely occurs in Manila and along Pasig River where oil firms are located.[82] According to a news report, in some cases oil tankers transfer the pilfered pump product to barges that were designed to look like fishing boats or motorboats to eliminate risk of getting apprehended by the enforcers.[83] Some of the oil tankers came all the way from Singapore.[84] Also, Oil barges enroute to designated depots are boarded by robbers and the products stolen are sold to smaller firms.[85] The government suffers a huge amount of revenue losses due to oil smuggling. It is estimated that P20 billion to P60 billion a year in foregone revenue due to oil smuggling.[86]

1.1.7 Trafficking of Small Arms and Explosives by Sea

Illicit traffi

In 2009, Philippine Coast Guard reported that arms shipments were cleverly concealed in three innocuous Balikbayan boxes bound to Zamboanga City.[89] The boxes were discovered to contain six pieces of high-powered M14 rifles, a .22 cal assault rifle, three empty M16 magazines, a bolt for a .60 cal-machine gun and a letter in Arabic was found among the firearms. In one of the joint operation of the BuCus, PCG and PNP, high-powered firearms were seized on board the vessel of MV CAPTAIN UFUK at the anchorage of the port of Mariveles, Bataan with five wooden crates containing 50 pieces of SS1-V1 Cal 5.56 A1 assault rifles that were made in Indonesia, 120 empty magazines, and 45 bayonets.[90] Fifteen other wooden crates believed to have contained firearms were already empty at the time of the search.

Trafficking of explosives is also rampant in the country and often surreptitiously conveyed on board passenger vessels. In separate incidents in July 2009, PCG personnel conducting mandatory pre-departure inspection of vessels discovered improvised explosives hidden in various places. On July 16, PCG personnel discovered 350 kilos of ammonium nitrate and 1,800 pieces of blasting caps on board a vessel docked at a port in Mandaue City, Cebu. The explosives were concealed in boxes and were declared as dry goods and biscuits. Nine days later, twelve bottles of improvised explosives were found inside a trash can in the female comfort room of a vessel docked at Talao-Talao Pier in Lucena City. Also seized were blasting caps, time fuse, and firing wire. Explosives experts reckon that the bombs were specifically designed to maim and kill people.[91]

Transnational arm trafficking occurs across Malacca Strait, and also Andaman Sea from southern Thailand to Aceh, Bangladesh, India and Sri Lanka, and also prevalent into and out of the Philippines.[92] The proliferation of illicit trade and trafficking of small arms in the Philippines and in Southeast Asia due to the porous borders has contributed to a growth in transnational organized crimes.[93] The illicit circulation of small arms and light weapons have resulted in the increasing number of loose firearms in the hands of groups that threaten the national and regional security of ASEAN member-states.[94]

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1.2 Maritime Safety

Incomplete or fitted with defective navigational aid is another aspect affecting the seaworthiness of a vessel.[102] This is compounded by the lack of a unified standard for essential equipment, including radar, compass, electronic chart systems, voyage data recorders, communication equipment, navigational lights, shapes, sound, and different kind of indicators.

According to reports, about 200 sea tragedies occur in the Philippines each year.[103] The frequency of maritime incidents and the number of human casualties per maritime disaster evidence the state of the maritime safety regime of the country. Natural hazards such as storm, cyclones and fog are contributory causes of accidents. However, maritime accidents still occur even during good weather condition. The primary causes of which are those associated with ships themselves such as poor vessel design, the operation of old vessels suffering from metal fatigue, poor maintenance resulting in rust damage, and poor equipment, etc.,. Human errors were also held responsible for the increasing proportions of accidents at sea to include poor seamanship or poor decision-making as a result of inadequate training, failure to follow collision regulations, and fatigue.[104]

1.2.2 Crew Incompetence and Negligence

About 75-96% of marine casualties are caused, at least in part, by some form of human error.[105] These include trips and falls, fire, pollution and collisions, and invariably due to a failure in safe working practices. Such incidents often result in crew injuries or fatalities, with the ship being consequently delayed or damaged.

In 1986, the ship MV Doňa Josefina sailed from Isabel, Leyte carrying more than 200 passengers. Few minutes later, the ship started to list and sink, and led to the death of 150 passengers.[106] Result of the investigation showed that the cause of the fatal imbalance was that the ship's cargo officer stored too much cargo in the ship's stern, or rear.[107] Few months after, a tanker filled with gasoline, oil and other combustible products collided with MV

[102] Ibid., at footnote 99.
[103] "Philippine Maritime Safety laws archaic, need reforms," Philippine Daily Inquirer, December 21, 2010.
[104] Helen Sampson and Michael Bloor, "When Jack gets out of the box: the problems of regulating a global industry," Sociology 41.3 (2007): 551-569.
[105] Dr. Anita M. Rothblum, "Human Error and Marine Saf

Doña Paz, and the exploded resulting to 1,856 official death toll, although there has been news reports citing as many as 4,000 were killed.[108] The cause of MV Doña Paz tragedy was again pointed to human error, as the lookout from was missing from the tanker's deck.[109] Several agrounding and collision incidents that have been reported were due to the result of neglect of pure basic seamanship and fatigue which is often associated with undercrewing where watchkeepers have fallen asleep while on duty.

As shown in Table 2 below, results of investigation revealed that many agrounding incidents happened at night time. Poor visibility at night and poor adaptation of the crew to darkness could be the main contributory factors for the agrounding incidents.[110] The unpreparedness of the crew to react immediately to changes in the sea and weather condition is another factor. Although the weather forecast is helpful in predicting the prevailing weather and sea condition in the area, the actual sea condition may even be worse. Whether by misreading the ship's radar or failing to issue evacuation orders, ship's officers have caused accidents and the loss of lives.[111]

Time							
0001 - 0300	0301 - 0600	0601 - 0900	0901 - 1200	1201 - 1500	1501 - 1800	1801 - 2100	2101 - 0000
0	2	1	1	0	2	6	3

Excerpt from PCG Maritime Statistics

Table 2. Frame of Agrounding Incidents in Philippines

Maritime accidents usually happen when the officers on board the vessel lack the necessary education, training and experience including sense of responsibility in the manner of manning and operating the vessel.

[108] Anthony R. Perez, Carl Abelardo T. Antonio and Rafael J. Consunji, "The Sinking of MV Dona Paz – A Critique on Maritime Disaster Preparedness in the Philippines: An Analysis of the Event.," 2011.
[109] Ibid.
[110] Marine Accident Investigation Branch (MAIB), "Bridge Watchkeeping Safety Study," July 2004. Southampton, United Kingdom.
[111] PCG Maritime Statistics Report 2010-2012.

1.2.3 Overloading of Passengers and Cargoes

Many ferry tragedies occur because of overloading, or when passengers all move to one side of an already overloaded vessel.[112] Overloading of passengers and cargoes is a major safety issue in the Philippines. Take for example the case of MV Doňa Paz with 1,518 passenger capacity but was estimated to have carried 4,000 passengers at the time of the tragedy.[113]

As a rule, vessels are required to have life rafts and life jackets that correspond to the official passenger and crew capacity of the ship, and designed limit for cargoes as well.[114] Vessels carrying more passengers than the required capacity is said to be top-heavy, thus greatly

employs about 990,872 Filipinos[120] roughly 68 percent of whom are engaged in municipal or small-scale fishing.[121]

Non-Living Resources. The oceans are considered one of the best potentia

industry in the municipality of Negros Occidental.[147] Environment expert assessed that the damage may be felt by at least two generations.[148]

1.3.2 Fish Related Violations

The Philippines is home to 70% of the world's ornamental fish.[149] Dr. Alan White, former Coastal Resource Management Project in Central Visayas**,** in a magazine interview stated that the widespread use of illegal cyanide in the Philippine as kills thousands of tons of commercial fish and shellfish each year.[150] Repeated doses are also destroying coral reefs on which marine life depends for shelter.

In 2007, fishing ban was implemented around Apo Reef, the largest coral reef in the Philippines and the second largest contiguous reef in the world after the Great e.

the health of the fisherfolk and the marine environment.[156] Accordingly, local fishers are contacted by traders and middlemen based in cities like Manila and finance the fishing activities by paying the boats and fuels.[157] The live reef fishes are then transported to Manila, then Hong Kong, completing their journey in the Chinese mainland cities, where they are the main feature in social banquets and feasts.[158] Meanwhile, Dr. Elizabeth Wood, an expert from the Marine Conservation Society, believed that the Philippines is the "focal point" in the trade in aquarium fishes next to and has become the number one source of aquarium corals.[159] Wood further alleged that although there is no evidence at present of any species collected for the marine ornamental trade being at risk of global extinction yet there are indications of local depletions.[160] Moreover, Prof. Yvonne Sadovy, a marine biologist, claimed that the highly valued live fish species that were traditionally harvested in the South China Sea now referred to by the Philippines as the West Philippine Sea, but the fish

1.3.3 Other Coastal Issues and Obstacles

2.1.1 Internal waters

Waters on the landward of the baseline of the territorial sea waters[167] as well as bays to which the breadth of the entry does not exceed 24 miles; waters considered to be historic gulfs, bays, inlets, and strait even if the breadth of entry exceed 24 miles;[168] waters of ports limited by a line passing through the most extended port installations seaward; waters of the deeply indented and enclosed by the territory of si

archipelagic waters. They facilitate the unobstructed passage of military vessels and aircrafts over the waters of the archipelagic state[172].

2.1.3 Territorial Sea

The Philippines has sovereignty in the territorial sea but qualified by its international obligation. Transit passage or innocent passage is the only right accorded to foreign state[173]

2.2 Relevant International Obligations

2.2.1 ISPS Code and SOLAS Convention

The International Ship and Port Facility Security Code (ISPS Code) is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States. These security measures have been included as amendments to the Safety of Life at Sea Convention, 1974 (SOLAS Convention) through chapter XI-2 Special Measures

In essence, the Code takes the approach that ensuring the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be made in each particular case. The purpose is to provide a standardized, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.[181]

In Philippines, leading maritime agencies like the MARINA, Office of Transportation Security (OTS) and PCG ensures the application of the code both in foreign and domestic

[181] International Maritime Organization (IMO), Conference of Contracting Governments to the International Convention for the Sag/653(l)-9.78436(6945.46151(t)-4g3(l)-9.7843(s0)-4.516151(r)-26.569 Tc 0.80

ships. The MARINA thru its issued Memorandum Circular 193[182] provides the rules on the

going to a port in one country will normally visit other countries in the region before embarking on its return voyage and it is to everybody's advantage if inspections can be closely coordinated.[186] This ensures that as many ships as possible are inspected but at the same time prevents ships being delayed by unnecessary inspections. The primary responsibility for ships' standards rests with the flag State - but port State control provides a safety net to catch substandard ships.[187]

Philippines is a signatory of the Asia - Pacific MoU (TOKYO MOU) concluded in Tokyo on

The 1972 Convention was designed to update and replace the Collision Regulations of 1960 which were adopted at the same time as the 1960 SOLAS Convention. One of the most important innovations in the 1972 COLREG was the recognition given to traffic separation schemes thereby giving guidance in the determination of safe speed, the risk of collision and the conduct of vessels operating in or near traffic separation schemes.[190] The first traffic separation scheme was established in the Dover Strait in 1967 and was operated on a voluntary basis at first but in 1971 the IMO Assembly adopted a resolution stating that observance of all traffic separation schemes be made mandatory - and the COLREG made this obligation clear.

The PCG thru its PSC Station is guided by the standard operating procedures stipulated in the provisions of the COLREG in the performance of its function to insure the safety aspects of the vessels coming into port.

2.2.4 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

The standards of training, certification and watchkeeping of officers and ratings were formerly established by individual governments, usually without reference to practices in other countries, resulting to varied standards and procedures. The 1978 STCW Convention was the first to establish basic requirements on training, certification and watchkeeping for seafarers on an international level. The Convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed.191 Major revisions to the STCW Convention and its associated Code have been adopted at a Diplomatic Conference in Manila192 ensuring that the necessary global

[190] International Maritime Organization. Convention on the International Regulations for Preventing Collisions at Sea, available from http://www.imo.org.

[191] International Maritime Organization. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), available at http://www.imo.org.

[192] The STCW Code 2010 Manila Amendments Among the important revisions were: Improved measures to prevent

standards will be in place to train and certify seafarers to operate technologically advanced

Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.[196] The protocol requires the criminalization of the full range of conducts related to trafficking in persons and the criminalization of the attempt to commit trafficking, participation as an accomplice, and organizing or directing others to commit trafficking.

2.2.7 Firearm Protocol

The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol), was adopted in 2001 by the GA with resolution 55/255 and entered into force on 3 June 2005.[197] The Firearms Protocol addresses the issue of small arms. Shortly after, the principal UN policy framework was established by the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.[198] The implementation of the policy framework has led to the negotiation of other agreements both at the regional and global level. A significant example is the International Tracing Instrument, a political instrument adopted by GA on 8 December 2005 to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

The purpose of this Protocol is to promote, facilitate and strengthen cooperation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The Protocol provides for a series of control measures and normative provisions covering multiple aspects of the small arms issue.

or consensual labor or prostitution: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of 1 171.12 301.32 T2mse p(f)-0.88025rhero,i.s

2.3 National Enforcement Frameworks

From policy formulation to law enforcement, the Philippine maritime enforcers, in upholding the safety, security and protection of our environment, are guided by different sets of mandates.

2.3.1 Republic Act No. 9993 “Coast Guard Law of 2009”

Under the provisions of the law the PCG is vested with the following powers and functions: (a) to enforce regulations in accordance with all relevant maritime international conventions, treaties or instruments and national laws for the promotion of safety of life property at sea within the maritime jurisdiction of the Philippines and conduct port state control implementation; (b) to inspect all merchant ships and vessels, including but not be limited to inspections prior departure, to ensure and enforce compliance with safety standards, rules and regulations; (c) to detain, stop or prevent a ship or vessel which does not comply with safety standards, rules and regulations from sailing or leaving port; (d) to conduct emergency readiness evaluation on merchant marine vessels; (e) to issue and enforce rules and regulation for the promotion of safety and life and property at sea on all maritime-related activities; (f) to coordinate, develop, establish, maintain and operate aids to navigation, vessel traffic system, maritime communications and search and rescue facilities within the maritime jurisdiction of the Philippines; (g) to remove, destroy or low to port, sunken or floating hazards to navigation, including illegal fish and vessels, at or close to sea lanes which may cause hazards to the marine environment; (h) to issue permits for the salvage of vessels and to supervise all marine salvage operations, as well as prescribe and enforce rules and regulations governing the same; (i) to render aid to persons and vessels in distress and conduct search rescue in marine accidents within the maritime jurisdiction of the Philippines, including the high seas, in accordance with applicable international conventions; (j) to investigate the inquire into the causes of all maritime accidents involving death, casualties and damage to properties; (l) to assist in the enforcement of laws on fisheries, immigration, tariff and customs, forestry, firearms and explosives, human trafficking, dangerous drugs and controlled chemicals, transnational crimes and other applicable laws within the maritime jurisdiction of the Philippines; (m) to board and inspect all types of merchant ships and watercrafts in the performance of this functions; (n) to enforce laws and promulgated and

2.3.3 National Security Policy 2011-1016

This policy identifies the strategic priorities in the establishment of correct balance in the so-called “guns or butter” debate for the allocation of scarce resources; and to establish the prioritization, among others, between external and internal defense.[202]

Territorial Integrity, Ecological Balance, Peace and Harmony, Socio Political Stability, Economic Solidarity, Cultural Cohesiveness and Moral-Spiritual Consensus are the seven elements of national security that amplifies national interests. The policy laid down the fundamental and comprehensive framework on inter-related issues and concerns that may impinge on national security and provides general guidelines for revisiting, enhancing, and formulating our related national policies as well.[203]

2.3.4 Republic Act No. 9208 “Anti-Trafficking in Persons Act of 2003”

In pursuit of human dignity and respect of individual rights, the Philippines gives highest priority to the enactment of measures and development of programs that promotes human dignity, protects the people from any threat of violence and exploitation, eliminates trafficking in persons, and mitigates pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation and reintegration into the mainstream of society.[204]

Consistent with the policy of international cooperation, the Philippines has become a party to various multilateral treaties to include the ones intended to address transnational organized crime and to protect the vulnerable sectors of society, such as women and children. Thus,

with the enforcement of the penal and regulatory provisions of the law.[211] Anti-illegal drugs campaign is bolstered by the participation of different agencies such as the PCG, AFP, PNP, National Bureau of Investigation (NBI) and the National Intelligence Coordinating Agency (NICA).[212]

consultation with and concurrence of the NPCC.[216] Listed below are the existing national laws governing marine environment protection relating to MARPOL 73/78 and the respective agencies in-charge of its implementation.

EXISTING NATIONAL LAWS GOVE SOGI

Part Two – TOOLS AND INITIATIVES FOR ENHANCING MARITIME ENFORCEMENT IN THE PHILIPPINES

how units are organized and utilized), retooling (a

agreement committed the signatories to share airline passenger lists, blacklists, and computerized fingerprint databases, as well as engage in joint training exercises and

working facility, installation of computer, communication, information gathering and analysis, databasing and information, and technology systems.[241] By 2013, the NCWS is anticipated to be ready for the full implementation of the information-sharing and coordinated operations; to conduct inter-agency exercises to test and validate procedures, address system and equipment malfunctions, and populates databases; to fill up inter-agency personnel complement and; to develop and manage common operating picture and situational awareness.[242]

The area of responsibility (AOR) is divided between four main monitoring stations: CWS West (based in West Palawan), CWS North (based in Luzon), CWS South (based in western Mindanao), and CWS East (based in Davao City). These facilities act as local fusion hubs for offshore radar platforms that fall within their jurisdiction. The sites are equipped with radars, an Automated Information System (AIS), UHF-band radios, high-powered binoculars, and infrared and colored cameras. The whole system is coordinated by the Maritime Research Information Center (MRIC) in Manila, which is operational 24/7. The MRIC is primarily responsible for compiling strategic threat assessments and providing an informed, unified picture of the maritime environment in the Philippines. Presently, CWS-owned assets consist mostly of light patrol gunboats deployed in Zamboanga, Davao and Tawi-Tawi, and and fixed-wing Islander aircraft that can transport up to ten people and have an endurance of 5.5 hours flying time at a speed of 120 knots.[243] There are also plans to equip the planes with

as they tend to monopolize and keep to themselves whatever information they have.[246] Recently, a CWS Capability exercise was conducted to promote and intensify inter-agency collaboration between PN, PCG and PNP-MG. Observers from allied maritime countries of Australia, Malaysia, and Indonesia were invited to participate during the exercise.[247]

3.1.4 Davao Gulf Watch

Addressing security challenges in Davao Gulf, the PCG has conceived and developed the Davao Gulf Watch. The gulf watch is an operational system aimed to enhance maritime enforcers' presence and control over critical choke points in the gulf and along its coastline with its limited available assets and resources. The system initially aid the monitoring of the movement of vessels and significant maritime activities in the critical areas of the gulf for security purposes but later expanded to cover the whole gulf addressing not only maritime security but maritime safety as well.[248] The primary backbone of *Davao Gulf Watch* is its radio communications system which is mainly dependent on VHF radios. The communications system required a repeater station installed in Tagum City to cover the whole area of the gulf extending to parts of Davao Oriental. Serving as radio and response stations for the gulf watch are Detachment Panabo, Detachment Malalag, Detachment Malita of CGS Davao, Detachment Lupon and Detachment Tibanban of CGS Mati. The communications system allows real time transmission of information where events are actually taking place or allows decision makers to be virtually present where events are actually taking place.[249]

Integrated Security and Response Action Plan (ISRAP) to demonstrate that areas within Davao Gulf no longer poses threat to maritime industry and a safe haven for international commercial trade ships especially during the peak of the world's financial crisis.

Seeing the growing potentials of the anchorage areas in Davao Gulf, security measures to safeguard laid up vessel from perceived threats were formulated and implemented. The concept of operation is divided into three phases; namely, Identification and Detection Phase, Prevention Phase, and Response Phase.[251] The identification and detection of threats involves intelligence fusion with other intelligence units and concerned agencies and law enforcement units, regular consultation and dialogue with the various vessel security officers in the lay-up facility and regular security survey inspection of the facility. The prevention phase involves a random seaborne and foot patrol, coordination with local officials for continuous profiling of all residents and new faces in their respective areas and the dissemination of hotlines to populace and other concerned agencies and individuals, the activation of one entry-exit point security measure and the deployment of multi-layered defense system. The last phase concerns the establishment of Incident Command System or Command Post, deployment of support units and task elements for assistance and the exercise of lead agency concept depending on the nature of threat. The ISRAP concept was proved to be effective by conducting intelligence fusion exercise and MARPOL exercise in 2010.

In the March 2012 report of the JWC another area in Mindanao was delisted, the area between Polloc Harbor and General Santos,

seafarers. Table 3 shows that since 2009, the threat of armed robbery incidents continues to escalate.

	2009	2010	2011	2012
Number of incidents	13	10	17	11
Number of vessels Robbed/Pirated	9	7	17	10
Number of vessels seajacked * vessels taken outright.				1
Number of Persons killed	3	2		4
Number of Persons Wounded				3
Number of Persons Missing		6		
Number of Persons Held Hostage	4			

worldwide seaborne terrorist threat, specifically the troubling transnational and piracy threats found in the Strait of Malacca.

The Philippines is spearheading moves to promote and enhance a transparent and effective institutional means of coastal surveillance in and around the Tri-Border Area. Central to these efforts is the CWS, a collaborative initiative involving the United States, Australia, and the Philippines. The CWS has the potential to play a significant role in helping to augment MDA and border security in the Philippines and in the larger tri-border area. The initiative

armed robbery; and for cooperation on joint exercises.[260] The ReCAAP-ISC was established under the Agreement, and was officially launched in Singapore on 29 November 2006. It was formally recognised as an international organisation on 30 January 2007. The ReCAAP-ISC facilitates exchange of information among the ReCAAP Focal Points, through a secure web-based Information Network system. Through this network, the ReCAAP Focal Points are linked to each other as well as the ReCAAP-ISC on a 24/7 basis, and are able to facilitate appropriate responses to incident. The PCG is the

Ensuring maritime safety is an intertwining effort carried out by the various players in the industry.[263] The ship owners or operators are responsible for t

found, actions by the port State varies from recording a deficiency and instructing the master to rectify it within a certain period and serious deficiencies can lead to vessel detention with consequent cost until serious deficiencies have been rectified.[267] In the case of detention, publication in the monthly detention lists of the Paris and Tokyo MoU web sites will take place.[268]

The Memorandum of Understanding on Port State Control in the Asia Pacific Region (Tokyo MOU) is a regional mechanism intended for a better implementation of PSC to eliminate substandard vessels for maritime safety, to protect the marine environment and to safeguard working and living conditions onboard. The MOU was concluded in December 1993 and came into operation four months after. Philippines is among the 18 signatories of the Tokyo MOU.

The Asia-Pacific Computerized Information System is the established PSC reporting system for the purpose of exchanging information on port State inspections, in order to: a) make available to Authorities information on inspections of ships in other regional ports to assist them in their selection of foreign flag ships to be inspected and their exercise of port State control on selected ships; and b) provide effective information exchange facilities regarding port aned phta a

to the governing bodies of the MOU for submission to the IMO. Other MOU may also carry out a CIC on the same topic during this period. For 2012, the CIC was focused on Fire Safety System. The 43 Maritime Authorities of the Paris and the Tokyo MOU on Port State Control launched a joint CIC with the purpose of ensuring compliance with SOLAS Chapter II-2/ Construction - fire protection, fire detection and fire extinction arrangements on board ships.

Addressing the country's role as a Port State to foreign vessels calling on Philippine ports, the PCG ensures that these foreign vessels are compliant to applicable and in forced IMO and International Labor Organization (ILO) Conventions through the PSC regime. The PCG was vested with this authority when it became a member of the Tokyo MOU in 1994.[269] The PCG since 2007 until November 2011 conducted inspections to 9,962 to cover both initial and follow-up inspections of foreign vessels calling on the various ports in the country resulting to 2,820 total inspections with deficiencies and detention of 13 foreign vessels.[270] To further improve the competence of PCG personnel on PSC, 14 personnel have so far been sent for Basic and Fellowship trainings in Australia, Japan, China, Canada, Vietnam and Malaysia since October 2008.[271] PSC Committee meetings, seminars and workshops were actively participated by the PSC Officers.[272]

3.2.2 Aids to Navigation

The Philippines' poor safety record is said to be p

stations were damaged and non-operating due to the onslaught of several typhoons in the country.[276]

Lighthouses are recognized to be very crucial to navigation particularly at night. Despite the advancement in technology and the use of satellite guided positioning devices, mariners still depend on these light stations to confirm electronic readings of their positions. Further still, a great percentage of boats operating in our waters depend largely on these aids to navigation. This is recognized with several projects implementing the upgrading and installation of lighthouses all over the country. Several foreign funded projects have resulted in the rehabilitation of old lighthouses and the installation of new ones. In 1999, the project funded by Japan's Overseas Economic Co-operation Fund had helped the Philippines rehabilitate and upgrade 39 lighthouses, acquired a newly-built lighthouse tender, established a buoy depot at Sangley Point in Cavite and installed two radar beacons.[277] JICA likewise sponsored training programme providing Philippine Coast Guard personnel technical skills in operating and maintaining the country's lighthouses.[278] An extensive rehabilitation program is currently being undertaken by the MSSC in order keep those lights of safety burning. Particular attention has been given to the more travelled routes such as the Manila to Cebu route where

efficiency of vessel traffic, as well as, to protect the environment. It is capable of interacting with traffic and responding to traffic situations developing in the VTMS area. While funding constraints is yet to be resolved for this infrastructure, the PCG continuously negotiates with PPA for the joint manning and operations of existing VTMS Centers located at the Ports of Manila and Batangas.[284] In a newspaper interview, PCG senior officer announced that the PCG is eyeing to construct three VTMS stations with coverage of at least 30 to 35 nautical miles by 2013 to be set up north of Tablas Island and in Sibuyan Island in Romblon as well as in the north part of Iloilo.[285] The use of VTMS greatly contribute to safety at sea, optimizing its potentials in the broadcasting of NOTAM, weather bulletins and other maritime safety information; supervision of vessel traffic within existing TSS sea lanes established by the PCG; distress signal monitoring station; and monitoring and surveillance of illegal activities such as piracy and armed robbery at sea.[286]

3.2.6 Domestic Vessels Regulation

MARINA in the performance of its vessel safety function promulgates and implements policies for Philippine registered vessels plying domestically in adherence to the standards set by law and other international obligations. The recent MARINA issuances are

and because a significant portion of the world's natural heritage is threatened. Of the problems, the destruction of shallow-water ecosystems and organic (sewage) pollution are the most prominent.

3.3.1 Fishing Regulation

The primary implementing agency for the 1998 Fisheries Code is the BFAR, [287] however, many of the provisions in the law relate specifically to LGU. The role of provincial LGU under both the LGC and 1998 Fisheries Code is said to be not well defined. Surveys conducted in 1996 and 2000 suggest that LGU staff are unclear about what their responsibilities really mean and how to go about fulfilling them.[288] While LGU are generally well versed in the provisions of the LGC, they are less knowledgeable about special laws, such as the Fisheries Code and environmental laws that are primarily under the jurisdiction of national government agencies.[289] BFAR as well lacks the capacity to assist LGU in their fisheries management planning activities and generally takes a hands-off attitude regarding assistance to LGUs.[290]

Police and law enforcement functions rest with the PNP-MG, PCG and LGU. It is the mandate, among others, of the PNP-MG to assist in the suppression of fishing by means of dynamite, explosives or toxic substances or other methods as may be declared destructive by proper authorities; to promulgate, administer and enforce all laws, ordinances and regulations for the protection and promotion of safety of life and property at sea and; to perform investigation and inspection for the effective prosecution of criminal cases involving maritime laws. The PCG is considered as the primary law enforcement arm at sea that covers the enforcement of all maritime laws and other applicable laws on all bodies of water in Philippine jurisdiction and the high seas.[291] Since municipal waters (i.e., 15-km seaward from the shore) are technically under the PNP-MG and the LGU by virtue of the LGC, the PCG provides law enforcement beyond the 15-km municipal waters.[292] The MARINA on the other hand is responsible for the promotion and development of the maritime industry, the

[287] Ibid., at footnote 217.
[288] Miriam C. Balgos, "Integrated coastal management and marine protected areas in the Philippines: Concurrent developments," Ocean & coastal management 48.11 (2005): 972-995.
[289] Balgos, *op. cit.*, p. 10
[290] Balgos, *op. cit.*, p. 6
[291] Balgos, *op. cit.*, p. 14
[292] R. Rivera, et al., "Aquatic resources in the Philippines and the extent of poverty in the sector," (2002).

or less 250MT of oil was on board at the time of the incident. Air and floating assets were deployed together with the Oil Spill Response Teams and the Science & Technical Team equipped with the necessary containment, recovery, mitigation and water quality equipment and sampling kits. During the incident, the National Strike Team of PCG MEPCOM was likewise deployed and tested for the first time. The NST served as technical adviser to the on-scene commander simultaneously feeding important information and images to the Resource Management and Research and Development Center for an immediate assessment of the situation.[303]

Technology-Based & Technology-Driven. The PCG MEPCOM is now equipped with GIS that has evolved to become more than just an information gadget. Acquired in 2006, it only became fully operational sometime 2009. The GIS is considered indispensable aid especially for oil spill management planning, and even in the case of chemical spill. However, at present there are only 2 administrators installed with GIS software which is not enough to cover the entire archipelago.[304] Ideally, each MEP unit should be equipped with GIS for a much wider scope of monitoring. Meantime, it is aiding MEPCOM to map its oil trajectory projection and enable them to point out sensitive areas for priority protection thus, providing sound technical advices to operational Commanders and responders.[305] A good number of PCG personnel is already trained and developed to become technically adept with the system.

3.3.3 Marine Pollution Prevention

With the growing number of companies venturing in the oil exploration business, particularly on the western seaboard of the Philippines it is imperative to exercise regulatory control over such facilities considering the risk it poses on the marine environment in case of a major

CONCLUSION

government commitment, and endless resources, and are often lacking in the Philippines.[313] Most of the initiatives, however, have been limited in geographic scope and relied on donor-funding.[314] Even in areas where external funding or projects are available, coastal resource management initiatives have failed.[315]

Much has yet to be done in terms of replicating the successful management practices for adoption by the many coastal municipalities that have not yet adopted their respective coastal resource management plans. The current challenge for national agencies involved in coastal resource management is to enhance coordination of technical and financial support to the local government units and attain a harmonized adoption of coastal management strategies.[316]

Identified Challenges

Duplication or Overlapping of enforcement functions

The problem of duplication has always connoted organizational problems, such as inefficiency and waste of resources, and has been raised by the World Bank since 1983 in its observations of Philippine government organization.[317] Overlapping jurisdictions of coastal law enforcement units hamper effective enforcement of coastal management laws.[318]

A good example is the fisheries law, a number of national and local enforcement agencies are involved in implementing all laws pertaining to fisheries management. At the national level, BFAR is assigned as the lead agency in planning and implementation of fisheries related functions. In September 2003, BFAR signed a Memorandum of Agreement with the PCG for patrolling waters exclusively to detect illegal fishing within the Philippine Exclusive

conservation and protection efforts. Likewise, a PNP-MG was formed specifically for maritime matters. It is vested with the authority to perform all police functions over Philippine waters. At the local level, many coastal municipalities have formed their own Bantay Dagat (BD) Task Force to augment the lack of PNP personnel assigned to their respective areas. The BD is a participatory approach designed for coastal law enforcement, which has existed in the Philippines since the 1970s. A BD group consists of a number of fishing community members who undergo training as fish wardens. They work closely with local government enforcement authorities, i.e. the local PNP but the BD for example cannot fully prosecute cases because their function overlap with those of the PCG or PNP.[319]

Lack of Legal force

This problem is a fact in the case of the oil spill response wherein the PCG will take charge and everybody will automatically follow.[320] With the deficiency in any legal measure to compel spillers to shoulder the cost of containment and clean-up, or an emergency fund from which such operations may derive resources from, the NOSCP coordinating framework is unrealistically appended on the PCG's weak capacity to carry out its tasks.[321]

Limited enforcement resources

The problem on scarcity of resources embraces logis

within the society.[323] Moreover, the Philippines as an archipelago with twice the coastline of the US have much fewer assets and resources than those of the United States Coast Guard.[324]

The PNP-MG who is in-charge in the suppression of criminal activities at sea also lacks the necessary manpower and navigational skills and often times their involvement in maritime security provides duplication of functions that of the coast guard and navy. The navy as

national capabilities. Arrangements for the exchange of maritime information are underdeveloped. For instance, there is no good database of what ships are, moving where in the region and with what cargo. Data on maritime activities is available only at a national level and significanst E8.78849( )-123.054(a)-36jpuilersions e97(h)-53(a)0ir74347(c)-0.96021( )-272.263(t)0.87

Recently, the Philippines rectified its action by replacing the naval warship with a coast guard vessel to man the Scarborough shoal during the recent (2012) maritime stand-off[333] of China against the Philippines.[334] The Philippines' decision to have their Coast Guard deployed in the disputed area is based upon the premise that the matter is a maritime law enforcement operation and not war, and at the same time employing a diplomatic means to resolve the dispute.[335] The initial action of sending naval warship was scrutinized to be "overboard" and an "overreaching provocation".[336] Bateman similarly stated that coast guard units are more suitable than warships for employment in sensitive areas where there are conflicting claims to maritime jurisdiction and/or political tensions between parties.[337] Also, the arrest of a foreign vessel by a warship may be highly provocative whereas arrest by a coast guard vessel may be accepted as legitimate law enforcement and signal that the arresting party views the incident as relatively minor.[338]

It cannot be denied however that naval force plays a vital role in maritime security particularly in the counter piracy efforts. Yet some view that anti-piracy and other maritime security operation 788( )-59.B0.95892523(v)9.699 aR1 0 0 55724 missi788( )-59.B1y international 788( )-59(e

handful of small boats, cutters and personnel directly involved in the enforcement functions the government is limited of its exposure and in containing the protection of the whole archipelago.

In the Philippines, having a kind of merger between agencies that operate in ports and

The first experimental JHOCs were constructed and successfully tested in San Diego and Norfolk, ports that represented high strategic interest due to major Navy presence and the volume of overseas commercial traffic. The JHOC-coordinated operations was said to have contributed directly to the interdiction of 1,103 illegal immigrants and 80,500 pounds of illegal drugs in FY 2011 and FY 2012 (up to May 27th).[348]

Model 2 - AUSTRALIA Border Protection Command

The Australian Maritime Security Operations Centre which is located in Canberra conducts 24-hour monitoring, co-ordination and communications support for all offshore protection activities. Communications, intelligence gathering and analysis, and satellite technology allow coordination of the maritime surveillance and response capability. Analysts in the

appropriate outcome and will be carried out in a manner that considers highly the main tasks and operational preparedness of each PCB authority. However, the Police is left to decide in case no agreement has been reached.

The Act expanded to cover crime intelligence focused on serious and cross-border crimes,

Strategic Departments	DOTC	DND	DILG	DENR	DFA
Billet	Coast Guard	Navy	PNP-Maritime Group	Fisheries	Customs/ Immigration
Mission Function Operational	Search and Rescue, Law Enforcement, Marine Environment Protection, Maritime Security, Maritime Safety	National Defense, Maritime Security, Disaster Response	Internal security, Criminal Investigation	Illegal fishing activities	Anti-trafficking of persons
Tactical Control	Fleets, Patrol, Aircrafts, Rescue divers,	Fleets, Cutters, Aircrafts, Special Operation	Small Boats, Patrol Boats,	Monitoring Surveillance, Boats, Bantay Dagat	Boarder Control Units, Customs police

The Philippine National Police Maritime Group shall become the subordinate maritime agency of the Coast Guard in law enforcement to provide criminal investigation and

personnel and communication allowing efficient access for coordinated planning. It is

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