

Into China's Rough Seas: Troubled Maritime Institutions in the West Philippine Sea – Implications for Philippine National Security

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Abstract

The maritime dispute in the South China Sea challenged the efficacy of Philippine government institution and the applicability of its policies. In 2011, President Benigno Aquino proposed the establishment of the Zone of Peace, Freedom, Friendship, and Cooperation (ZOPFF/C) that provides a framework for separating disputed territorial features to be considered for joint activities from non-disputed waters. In the same year, President Aquino also employed the observance of Posse Comitatus (the principle of separating civilian and military authority and prohibiting the use of military in civilian law enforcement) as its first line of external defense to settle the issue peacefully. However, Posse Comitatus was not employed appropriately during the Scarborough Shoal incident on April 10, 2012, that resulted in the standoff. The Inter-agency Coordinating Committee on the West Philippine Sea (ICC-WPS) was created in 2014, together with the National Coast Watch Council (NCWC); these institutions were tasked to address maritime disputes.

This study utilizes the framework of Bureaucratic Politics Model (BPM) in Foreign Policy Analysis (FPA) to focus primarily on the relationship of bureaucracies in the formulation of foreign policy and how these agencies influence the process of foreign policy formulation. Findings of the study reveal that; first, the initiative embarked by the Philippine government caused a shift on how enforcers defined the issue as a traditional security concern to non-traditional security. The demilitarization of the issue thereby limits the role of the defense agency particularly the Navy in securing Philippine maritime entitlements in the South China Sea. As a consequence, the Navy felt deprived of their traditional roles at sea. Secondly, despite the Aquino administration's call for peaceful settlement of the dispute, inter-agency committees including the ICC-WPS and the NCWC that are tasked to monitor, propose and recommend policies concerning maritime security are dominated largely by the officials coming from the Department of National Defense. Therefore, the approach of the Philippines towards the issue is demilitarization in principle but there seems to have been a creeping militarization of policies as implied by the composition of these inter-agencies. Lastly, there is a main problem concerning government institutions that take part of these inter-agencies in their lack of archipelagic consciousness making them less committed to implement policies concerning territorial maritime concerns.

Keywords: *Philippine foreign policy, Scarborough Shoal standoff, West Philippine Sea, bureaucratic politics*

1. Introduction

Philippine foreign policy upholds peaceful coexistence and mutual respect with other states, neutrality, ideological openness, and adherence to international law for peaceful resolution of conflict (Morales, 2016:

59). The South China Sea issue is one of the many concerns that challenges the Philippines' commitment to international law and regional stability. Various measures were embarked by different administrations of the Philippine government, fundamentally inclined to the principle of its foreign policy that ensures the integrity of its national territory and sovereignty. However, initiatives were deemed ineffective at the level of implementation as each administration has a different approach in dealing with the South China Sea and in general, with China.

2. Development of Philippine Strategy in the South China Sea: Cabinet Committees on the Law of the Sea

The Marcos administration was responsible in the establishment of Pag-Asa Island as the Philippines' northernmost frontier. President Ferdinand Marcos issued Presidential Decree (PD) 1596 that defined the extent of Philippine territory including the Kalayaan Island Group with Pag-Asa Island as its municipality. When the Philippines became signatory to the International Tribunal for the Law of the Sea (ITLOS) in 1981, Marcos issued Executive Order (EO) 738 establishing a Cabinet Committee on the Treaty of the Law of the Sea (CABCOM-LOS) which is responsible for the implementation of the treaty at the domestic level headed by the Ministry of Foreign Affairs as coordinating agency (Morales, 2016: 63). With this initiative, succeeding administrations adapted the committee and modified its functions and composition to adjust to the current concerns about maritime issues (see Table 1). President Corazon Aquino expanded the structure of the CABCOM-LOS from the original six members to 12.¹

Table 1 Cabinet Committees (CABCOM) or Inter-agency Committees Focused on Maritime Affairs and the Law of the Sea from the Time of Marcos to Arroyo

Ferdinand Marcos	Corazon Aquino	Fidel Ramos
CABCOM-LOS Executive Order 738	CABCOM-LOS Executive Order 328	CABCOM-MoA Executive Order 186
Minister of Foreign Affairs as Chairman, with the Minister of National Defense, the Minister of Natural Resources, the Minister of Energy, the Minister of Justice, the Director-General of the National Economic Development Authority	Foreign Affairs – Chair Secretary of Environment and Natural Resources – Vice-Chairman <i>Members:</i> Secretary of Finance Secretary of Justice Secretary of Agriculture Secretary of National Defense Secretary of Trade and Industry Secretary of Transportation and Communications Director-General, National Economic and Development Authority Secretary of Budget and Management Executive Secretary Secretary of Science and Technology	Foreign Affairs – Chair Secretary of Environment and Natural Resources – Vice-Chairman <i>Members:</i> Secretary of Finance Secretary of Justice Secretary of Agriculture Secretary of National Defense Secretary of Trade and Industry Secretary of Transportation and Communications Director-General, National Economic and Development Authority Secretary of Budget and Management Executive Secretary Secretary of Science and Technology

Table 1 (Continued)

Joseph Ejercito Estrada		Gloria Macapagal-Arroyo
CABCOM-MOA Executive Order 132	MOAC Executive Order 37	CMOA Executive Order 612
Secretary of Foreign Affairs – Chair	Department of Foreign Affairs Secretary-General	Executive Secretary as Chair, the Secretary of Justice and the Secretary of Foreign Affairs as Vice-Chairs
<i>Members:</i> Executive Secretary Director-General of the National Security Council Secretary of National Defense Secretary of Environment and Natural Resources Secretary of Agriculture Secretary of Socio-Economic Planning Secretary of Science and Technology Secretary of Transportation and Communications Secretary of Energy Secretary of Trade and Industry Secretary of Justice Secretary of Finance Secretary of Budget and Management Secretary of Interior and Local Government Secretary of Labor and Employment Secretary of Tourism	<i>Six Divisions:</i> Division I – Territorial and other Maritime jurisdictions; Archipelagic Sealanes and Sealanes of Communications; Cartography Division II – International Seabed Authority (ISBA); Exclusively Economic Zone; Continental Shelf Division III – Fisheries; Marine Environmental Protection; Marine Scientific Research Division IV – Oceans Law and Policy; Research and Preparation of Negotiating briefs in various issues on UNCLOS and other fora or bilateral negotiations; International Dispute Settlement Procedures Division V – Other Law of the Sea issues; Piracy and Sea Robbery Division VI – Law of the Sea Library; Information dissemination; Records; Conference and Secretariat Services	<i>Members:</i> Department of National Defense (DND), National Security Council (NSC), Department of Environment and Natural Resources (DENR), Department of Budget and Management (DBM), Department of Transportation and Communications (DOTC), Department of Tourism (DOT), Department of Trade and Industry (DTI), Bureau of Fisheries and Aquatic Resources (BFAR), the Solicitor General (SolGen), the Chief Presidential Legal Counsel (CPLC), National Mapping and Resources Information Authority (NAMRIA), the Philippine Coast Guard (PCG).

The committee was renamed by President Fidel Ramos through his Executive Order 186 into Cabinet Committee on Maritime Affairs. The committee was transformed into a recommendatory body that proposed practical solutions and policies in the implementation of the United Nations Convention on the Laws of the Sea (UNCLOS) and other issues related to marine security. In 1994, the Philippine government adopted the National Marine Policy (NMP). The NMP was the initial effort of the government in its attempt to frame guidelines and frameworks in coming up with a definitive national marine strategy and ocean management (Morales, 2016: 62). The initiatives of the Ramos administration were challenged when the Mischief Reef incident erupted in 1994-95. The Chinese started to install military posts in the area said to be claimed by the Philippines. The incident raised tensions between China and the Philippines. Alberto Romulo, the Department of Foreign Affairs (DFA) Secretary, assured that Philippine laws will be applied in the area as sovereign owner while committed to peaceful means in resolving the issue (Severino, 2010: 66-104). The short-lived administration of President Joseph Estrada succeeded Fidel Ramos, and he was responsible in renaming the previously Cabinet Committee on Maritime Affairs into Cabinet Committee on Maritime and Ocean Affairs (CABCOM-MOA) and tasked the committee to recommend a national maritime policy to the President.² The administration of President Gloria Macapagal-Arroyo was crucial in the passing of Republic Act (RA) 9522 that articulated the Archipelagic Baseline of the Philippines defining the extent of Philippine territory. Under the RA 9522 the Philippines exercises sovereignty and jurisdiction over Kalayaan Group of Islands as stated by PD 1596 and Bajo de Masinloc. The RA 9522 was the Philippines' first step to conform to the requirements of the United Nations Convention on the Laws of the Sea (UNCLOS). The CABCOM-MOA, under Executive Order (EO) 37 issued by Gloria

Macapagal-Arroyo, was abolished and all necessary functions most particularly the updating and implementing of the National Marine Policy were transferred to the Department of Foreign Affairs.³ EO 37 also called for the establishment of a Maritime and Ocean Affairs Center (MOAC) attached to the DFA with general functions that include promoting the development of national capabilities and institutions through consultations with government and non-government agencies concerning the maritime and ocean-related matter, producing research program and policy studies for strategic or maritime security purposes, and harmonizing and updating domestic legislation with international agreements to which the Philippines is a party. After the MOAC became defunct, Arroyo issued EO 612 calling for the reorganization of DFA-MOAC into the Commission on Maritime and Ocean Affairs (CMOA) and transferred the commission under the Office of the President. The CMOA is tasked to continue the responsibilities of the previous commissions specifically the updating and implementation of a Philippine Marine policy.

3. Amidst Crucial Seas: Joint Exploration and Peaceful Settlement

Since the Philippines launched its formal claims in the South China Sea, through the initiative of Ferdinand Marcos's PD 1596, the Philippines has continuously committed itself to a peaceful settlement of the dispute in the area. Ferdinand Marcos foresaw the anticipated crises in the Asian region. Thus, he formulated a foreign policy that will bring the nation closer to its Asian neighbors. In his speech he mentioned: "*As the situation arises in Asian nations, it would be most dangerous to procrastinate, for we have time to prepare ourselves and strengthen our defense if we act now.*"

Marcos established the Zone of Peace, Freedom and Neutrality (ZOPFAN) that aimed to set Southeast Asian nations apart from any strategic posturing of superpowers in the Cold War. The Philippines also adhered to the Treaty of Amity and Cooperation in Southeast Asia and the Manila Declaration for Peaceful Settlement of International Disputes. These two initiatives provided the Philippines frameworks to settle disputes peacefully while preserving stability and cooperation in the region. The South China Sea was less of a concern during the time of Corazon Aquino. In his official visit to China, Vice-President Salvador Laurel was received by the Chinese leader Deng Xiaoping; he mentioned the South China Sea, the latter assured him that the issue in South China Sea should not concern the two nations (Villa, 2014). The Philippine adopted the 1992 ASEAN Declaration on the South China Sea. The Declaration emphasized the necessity to resolve all sovereignty and jurisdictional issues on the South China Sea by peaceful means without resort to force and urged all parties concerned to exercise restraint with the view of creating a favorable climate for the eventual resolution of all disputes. In congruence with the Declaration, President Ramos called for demilitarization in the South China Sea during the Mischief Reef incident and started cooperative undertakings in the area. He also proposed joint development of resources among claimant states. President Joseph Estrada saw the importance to strengthen the capacity of the Philippines to defend its territorial integrity and sovereignty. In his first State of the Nation Address (SONA), President Estrada included the protection of the territorial security of the region.

“Effective national defense requires not just modern weaponry but better fighting men. Before we spend on expensive hardware, let us have the right kind of soldiers. It is not the weapon that wins wars but the men who fight them. Until we develop a credible military

deterrent, we must depend on the goodwill of our neighbors, on our treaty commitments with the United States, and on the skills of our diplomats in the conveying to everyone that we want only peace, stability, and shared prosperity. It is said that my stand as a senator against the US BASE Treaty disqualifies me as President from endorsing the Visiting Forces Agreement. On the contrary, because I stood up for the Philippine sovereignty in 1991, now as your President, I have the moral right to stand up for Philippine security today.”

The approved Visiting Forces Agreement posed constraints to the relations of Philippines and China. The Philippines called for the support from the United States over the Spratly issue; however, the United States maintained its neutrality to the conflicting claims in the South China Sea. Apart from enhancement of defense and security cooperation between the Philippines and the United States for external security, President Estrada called for peaceful settlements in the South China Sea together with other ASEAN claimant states as a means to protect territorial sovereignty. During the bilateral meeting with Chinese President Jiang Zemin and President Joseph Estrada in Malaysia, they vowed to settle conflicting claims over the islands peacefully that caused the diffusion of the tension in the Mischief Reef, and both agreed on the creation of expert groups which will pursue negotiations to enhance confidence-building measures over the Kalayaan Islands.

Philippine-China relation was at the time of significant confidence-building during the Arroyo administration. Under the Arroyo presidency, the Philippines adopted the Regional Code of Conduct in the South China Sea that set as the basis for the prevention of conflict and establishment of peaceful resolution among claimant states. However, the “China card strategy” of the Arroyo administration was marked with

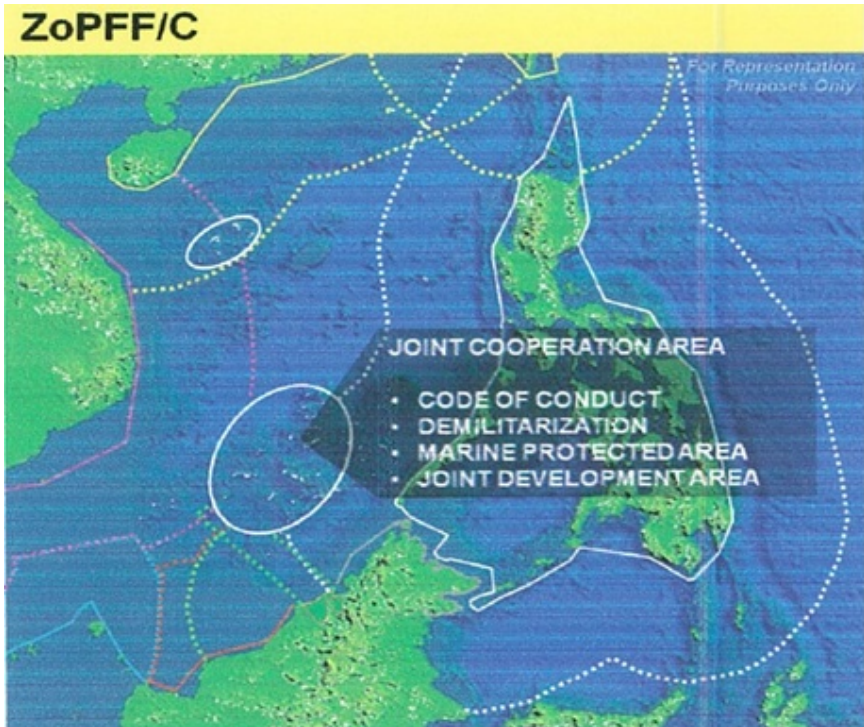
controversies due to irregular undertakings. In 2005 the Philippines, China and Vietnam signed the Tripartite Agreement for Joint Maritime Scientific Research in Certain Areas in the South China Sea, under which China National Offshore Oil Cooperation, Vietnam Oil and Gas Cooperation and Philippine National Company aimed to ensure cooperation in the seismic exploration and marine research as well as the use of each country's vessels and ports to accumulate supplies. In that same year, China provided large amounts of Overseas Development Assistance to the Philippines; loans were approved swiftly, and funds for the North Luzon Railway and South Luzon Railway were also fast. Another crucial issue during the time of Arroyo was the National Broadband Network aimed to link 2,295 offices and 24, 549 barangay municipal offices using Chinese telecom provider ZTE, which later on was revealed to be anomalous as local politicians and lawmakers allegedly received bribes and payoffs (Bower, 2010: 3). Critics of the Arroyo government linked the tripartite agreement to the generous loans and funds provided by China to the Philippines, accusing Arroyo of selling Philippine sovereignty over the Spratly Islands to the Chinese.

4. Philippines' Approach before the Scarborough Standoff: The Doctrine of Posse Comitatus

“Now, our message to the world is clear: What is ours is ours; setting foot on Recto Bank is no different from setting foot on Recto Avenue.”⁴

Prior to the Scarborough Standoff, President Benigno “Pnoy” Aquino clearly stated his assertion over the South China Sea. He launched the Zone of Peace, Freedom, Friendship and Cooperation (ZOPFF/C) and directed the Department of Foreign Affairs to promote the ZOPFF/C concept through sustained consultations and dialogue. The ZOPFF/C

Figure 1 Zone of Peace, Freedom, Friendship and Cooperation (ZOPFF/C) and the Proposed Joint Cooperation Area (JCA)



Source: Banlaoi (2012: 5).

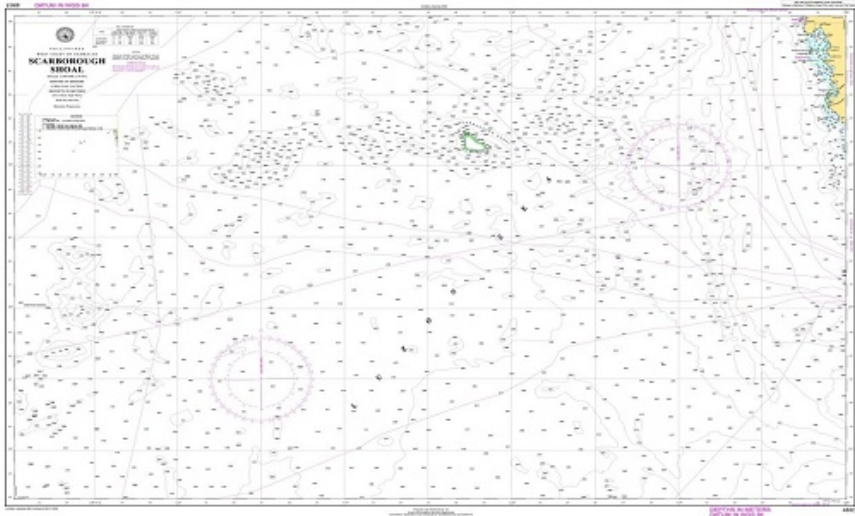
provides a framework for separating the disputed territorial features that may be considered for collaborative activities from non-disputed waters in the West Philippine Sea in accordance with international law in general and UNCLOS in particular (Thayer, 2011: 24). The ZOPFF/C separates the disputed area from the non-disputed areas through “enclaving” or implies the shelving of territorial disputes.

The “enclaved” area could be designated as Joint Cooperation Area (JCA) (Banlaoi, 2012). Under the JCA, the ASEAN Code of Conduct should be applied to prevent accidental military encounters between and among parties, demilitarization should also be established within the JCA by replacing military personnel with civilian law enforcement agencies, and joint activities can be done in the area including marine protecting activities and research, search and rescue operations as well as safety navigation and communication in the sea (see Figure 1).

To realize the implementation of this policy, President Aquino issued a memorandum with the subject “Ensuring Safety and Security to Off-shore oil and Gas Exploration and Production in Western Philippine Seaboard”, employed “international diplomacy” as its first line of external defense and ordered the observance of the international doctrine of Posse Comitatus. It is the principle of separating civilian and military authority and prohibiting the use of the military in civilian law enforcement, as acceptable and customary practice in the international community, in ensuring the safety and security of the country’s offshore oil and gas exploration and production in the Western Philippine Seaboard. This strategy is also known as the policy of “White on White” which meant sending coast guard vessel to uphold law enforcement.

Under the International Doctrine of Posse Comitatus, states adherent to international conventions such as the UNCLOS and the various international maritime conventions will help establish an environment of “maritime cooperation” to address maritime concerns such as fighting piracy, marine environmental protection, anti-drug trafficking, and anti-human smuggling, all of which requires civilian law enforcement and not military intervention. The Philippine Coast Guard (PCG) was tasked to uphold this requirement as dictated by the doctrine because it can enforce the national and international maritime laws with wide power of arresting both foreigners and national citizens.

Figure 2 Scarborough Shoal



Source: Courtesy of the National Mapping Resource and Information Agency (NAMRIA).

The initiative caused an alteration of traditional security roles set to address the West Philippine Sea. As a consequence, a sense of traditional entitlements arouse from the part of the Philippine Navy (PN). There was a need for the Navy to prove their capacity to regulate and monitor traditional maritime concerns. To prove this capacity, on April 8, 2012, the Navy boarding BRP Gregorio del Pilar of which at that time was in Malampaya near Palawan received information that there was a presence of illegal Chinese fishermen poaching in Scarborough Shoal. Scarborough Shoal is a ring-shaped coral reefs with several rocks encircling the lagoon. It is 124 nautical miles (N) from the Municipality of Masinloc, located within 200N of the Philippine exclusive economic zone (EEZ) and 200N Philippine continental shelf (see Figure 2 and

Figure 3 Approximate Distance of the Scarborough Shoal from the Masinloc Town in Zambales



Source: Author.

Figure 3). After two days of travel from Malampaya to Scarborough Shoal, they inspected eight Chinese fishing vessels. The Navy discovered endangered maritime resources such as corals, sharks, turtles, and clams. In a personal communication with an anonymous officer from the Philippine Coast Guard, he said:

“So there was a race who can do, what were. So you can imagine the PCG has no big platforms the Navy has so there was a rush to prove to the world, who can do it, they can do it, so they did it. They were able to do it in April 2012 in Scarborough, and it backfired, it

attracted adverse Chinese reactions. There was disquiet at the policy circle as to why the Navy was there. But because in traditional security it was the Navy who can project maritime and naval power, they felt the need to prove their role.”

The Navy perceived the PCG was incapable of patrolling the area; therefore it is by tradition the Navy's responsibility to provide support and enact the arrest of the Chinese fishermen:

“So there is a need to capacitate the capabilities of the PCG so that the law enforcement operations will be handled not by the Navy but by the PCG. The reason why the Navy was asked to patrol the area is that as of this moment the PCG has limited capability to do so.”⁵

“In terms of using coast guarding as the tool to defend national interest in the WPS, I think we are capable; we just have to rationalize all these things.”⁶

The Scarborough Shoal was an outcome of the competing relationship between law enforcement agency and defense sector caused by the policy issued by President Benigno Aquino. The presence of illegal Chinese poachers called for the initiation of maritime policing – a task directed to the PCG, however, with the perception of proving its traditional role in maritime security; the responding BRP Gregorio del Pilar faced by the Chinese Maritime Surveillance caused the Standoff. The Philippine Navy was supposed to act as the muscle of the policy and protect civilian agencies like the PCG in the frontline.

5. The Philippines after the Scarborough Standoff: Strengthening Commitment to International Law and Diplomacy

A Senate Hearing was held on April 27, 2012, headed by the Chairperson of the Committee of Foreign Affairs Senator Loren Legarda and Senate President Juan Ponce Enrile together with prominent scholars and academics as well as officers from the Coast Guard, the Navy and the Department of Foreign Affairs, to discuss and address the incident. The Department of Foreign Affairs Secretary General of the Commission of the Maritime and Oceans Affairs (CMOA), Atty. Henry Bensurto explained that there is still a mechanism within the UNCLOS that the Philippines can utilize to peacefully settle the problem in contesting claims over areas in the South China Sea. As for Professor Clarita Carlos of the University of the Philippines' Political Science Department, the problem in the South China Sea is rather scientific and not legal. According to Professor Carlos, claimant states should focus on cooperative actions to protect the resources of the South China Sea. The Coral Triangle is located in the South China Sea, known for its importance to the marine life, and scholars are proposing the protection of the triangle as a means to protect the biodiversity of natural resources in the area. Senator Juan Ponce Enrile emphasized the possibility that China might have deployed underwater military vessels in the West Philippine Sea; hence, he called for the review of the Mutual Defense Treaty (MDT) with the United States as a means to counter China's aggression. At the end of the hearing, the Philippines was decisive to bring the matter to international arbitration particularly the UNCLOS. However, China strongly disagreed on any international arbitrations, and instead, offered that the issue should be dealt with bilaterally between the two claimant states.

The Department of Foreign Affairs utilized the Rules-Based Approach as its primary mechanism to address maritime and territorial debacle in the South China Sea. Then Foreign Affairs Secretary perceived that the only legitimate and viable way to resolve the territorial dispute with China over the South China Sea is Rules-Based Approach. The Rules-Based Approach consists of three tracks: diplomatic, political and legal. The political track constitutes the unrelenting efforts to create the disputed areas as a zone of peace for claimant states in a way that will further cooperation between China and the ASEAN countries; the diplomatic track involves the incessant bilateral negotiations between the Philippines and China; and lastly, the legal track resorts to international arbitration like the UNCLOS and other legal mechanisms that will be an appropriate measure to address the issue in accordance to international law. On September 5, 2012, President Benigno Aquino passed the Administrative Order No. 29 or known as the Naming of West Philippine Sea (WPS) of the Republic of the Philippines – a step of the Aquino administration to inculcate a sense of ownership in the Filipinos over three areas that compose the WPS: Scarborough Shoal, Reed Bank and Kalayaan Group of Islands.

The Benigno “Pnoy” Aquino administration called for a peaceful resolution while simultaneously amassing defense and security capability to protect its territorial integrity. President Aquino envisioned the Philippine to be well equipped and modernized in terms of its defense capability. President Aquino vaunted the allocation worth 28 billion pesos for the Armed Forces of the Philippines Modernization Program and would continue to allocate 75 billion pesos for defense in the next five years as soon as the Armed Forces Modernization Bill had been passed in the Congress.⁷ He also added that the 30 million dollar fund entrusted to the Philippines by the United States for Defense Capability Upgrade and Sustainment of Equipment Program of the

Armed Forces of the Philippines (AFP), as an addition to their assistance in improving the country's coast guard patrols under the Coast Watch Center of the Philippines which will soon be established, was readily available.

President Aquino also perceived the importance of a well-developed and upgraded military to defend national territory:

*"In our agenda for good governance, it is clear that we are telling the whole world: the Philippines is for the Philippines and we are capable of protecting our territory against any aggressor in our territory."*⁸

However, President Aquino ensured the international community that this development is not to counter any aggressive moves of China, but it is a sign to the world that the Philippines will vigorously defend its right over its territory:

*"We do not wish to increase tensions with anyone, but we must let the world know that we are ready to protect what is ours. We are also studying the possibility of elevating the case on the West Philippine Sea to the International Tribunal for the Law of the Sea, to make certain that all involved nations approach the dispute with calm and forbearance."*⁹

The commitment of the Philippines to international law and diplomacy urged the country to bring the case to the Permanent Court of Arbitration (PCA). On March 30, 2014, the Philippines submitted a memorial to the PCA and expected China to respond; however, China did not participate but instead circulated its position paper, outside the ambit of the arbitration (Ambassador Maria Hellen Barbers-De La Vega,

interview with the author, December 18, 2014). Ambassador De La Vega from the DFA explained that the PCA will be giving questions to the Philippine side and is expected to respond to these questions until March 15, 2015, oral arguments will be presented in July 2015, and an award will be issued during the first quarter of 2016. Philippines received a favorable decision coming from the Permanent Courts of Arbitration on July 12, 2016. The ruling coming from the Arbitral Court fueled the country's moral high-ground, but it does not imply victory of ownership over territorial claims in the region. The ruling simply clarified the maritime entitlements of the Philippines in the West Philippine Sea, the severity of damage of marine ecosystem, and the recommendations to mitigate the continuous destruction of marine and oceanic environment due to ongoing reclamation in the area. Maritime entitlements intend to define low-tide and high-tide elevations responding to the UNCLOS definition of what features could be identified as islands which can generate an EEZ and are subject to territorial ownership. Whereas the Scarborough Shoal cannot generate an EEZ, it cannot sustain life. Therefore, it is not an island, contrary to China's belief.

The Philippines' close relations to the United States made the issue of settlement problematic. China was unremittingly insisting on discussing the issue between the Philippines and China, not to include other superpowers like the United States to interfere. However, the Philippines continuously involves the United States being its ally to the issue with the belief that in the escalation of the conflict, the United States will support the Philippines under the Mutual Defense Treaty signed by the two countries. In April 28, 2014, United States President Barack Obama visited the Philippines. The two-day State Visit of President Obama resulted in two important developments to the "special" relationship between the United States and its sole ally in the Pacific, the Philippines: one is the signing of the Enhanced Defense

Cooperation Agreement (EDCA) that was signed before Obama arrived in the country, with Philippine Defense Secretary Voltaire Gazmin and US Ambassador to the Philippines Philip Goldberg; second is the assurance of the US President that the United States will ensure to defend the Philippines against any potential aggressor. President Obama assured that its commitment to protect the Philippines is ironclad and the United States will keep that commitment because he believed that allies never standalone.

Under the Enhanced Defense Cooperation Agreement (EDCA), the Philippines and the United States strengthen their defense cooperation to maintain and develop their military capacities. In furtherance of Article II of the Mutual Defense Treaty which states that “Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack”, and within the context of the Visiting Forces Agreement which states the supporting of parties’ shared goal of improving interoperability of the parties’ forces and for the AFP. President Aquino took pride in the developments in the defense and avowed that with the challenges then faced by the country, the AFP had acquired brand new assets including 8 Sokol Combat Utility Helicopters, 3 AgustaWestland-109 helicopters, the BRP Tagbanua known as the first landing craft utility ship built in the country, 4 refurbished UH-1 helicopter and 2 navy cutters, and inaugurated the Naval Forces West’s state-of-the-art Command Center in Palawan.¹⁰

Prior to these defense and military advancements, the Aquino government had procured several armaments particularly the BRP Gregorio del Pilar and BRP Ramon Alcaraz that were deployed to patrol the West Philippine Sea. There is an increase in military expenditure under the Aquino government, as part of the military modernization to protect national and territorial integrity. The creation of the new Naval Command Center in Palawan signified the government’s firm move to

deter China's naval forces over the disputed areas in the South China Sea. But regardless of the increase in military procurement and defense enhancement of the Aquino administration, President Aquino continuously called for a peaceful settlement of the South China Sea issue and bringing the case to international arbitration. During the Joint Press Conference held in Kuala Lumpur, Malaysia, on February 27, 2014, President Aquino mentioned the close kinship between nations and firmly believed that the prosperity and peace can be fulfilled in the South China Sea region if the problem could be addressed peacefully in accordance with international law and the UNCLOS.

On August 8, 2014, DFA Secretary Alberto del Rosario presented the proposed Triple Action Plan (TAP) to the Foreign Ministers of ASEAN member-states during the 47th ASEAN Foreign Minister's Meeting (AMM) held in Nay Pyi Taw, Myanmar (Department of Foreign Affairs, 2014). The Triple Action Plan is aimed to reduce and manage the tensions in the South China Sea until a settlement of disputes is obtained (*ibid.*). The TAP involves three approaches: first, the immediate approach which calls for a suspension of specific activities that will escalate tension in the South China Sea through an effective exercise of self-restraint in the conduct of activities coming from claimant states; second, the intermediate approach which highlights the need for the implementation of the Declaration of Conduct and the efficient conclusion of the Code of Conduct; and lastly, the final approach which emphasizes the need for settlement mechanism to bring the disputes to a final and enduring resolution anchored on international law. In pursuance of the TAP in October 2014, President Aquino ordered a moratorium on all military infrastructure development and the repair of the airport on Pag-Asa Island in the Kalayaan Island Group. According to former Defense Secretary Voltaire Gazmin, the action taken by the Executive will boost the Philippines' moral high ground to pursue its

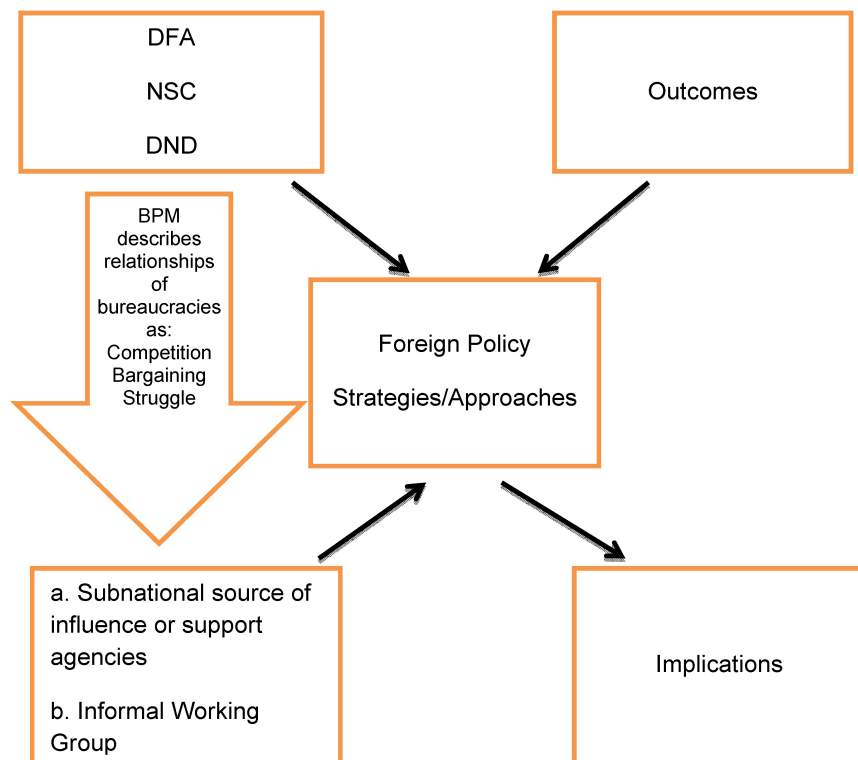
arbitration case against China before the International Tribunal for Law of the Seas over the territorial claim in the West Philippine Sea (see Figure 4).

6. Bureaucratic Institutions in the West Philippine Sea Claims: Shared Image in Foreign Policy Making

6.1. Bureaucratic Politics Model in Foreign Policy Analysis

The South China Sea policy covers overlapping subsets of public policies in fisheries, environmental, energy, shipping, foreign affairs, defense, trade and economics, which are handled by specific agencies involved in the process of making South China Sea policy decision (Song, 1999). Bureaucratic Politics Model in Foreign Policy Analysis (FPA) is used to understand the roles of different agencies and their relationship with each other in the process of foreign policy-making. The Bureaucratic Policy Model approach of Foreign Policy Analysis (FPA) encompasses all necessary agencies that influence the states foreign policy highlighting the decision-making process to explain the dynamics of state conduct in the international system. The role of bureaucratic organizations is relevant to foreign policy because of the outputs (e.g., information provided to the government, foreign policy alternatives presented, and the standard operating procedures which shape how foreign policy decisions are implemented) generated by these bureaucracies in which policy-makers take decisions (Alden and Aran, 2012: 33). Bureaucracies develop common attitudes and shared images through the establishment of an inter-agency committee that helps in framing how a particular agenda or problem should be perceived by policymakers and what are the implications of the actions embarked. Thus, the BPM presents the interplay among government bureaucracies in the formulation of specialized agencies involved in the policy-making

Figure 4 The Bureaucratic Politics Model (BPM) in Foreign Policy Analysis



process. However, different agencies uphold different views and positions towards the issue, in this case, the West Philippine Sea. Thus, Bureaucratic Politics Model (BPM) describes the relationship of agencies as bargaining, struggling and competing (see Figure 4).

6.2. Roles of Bureaucracies

The approach of the Philippines to address the West Philippine Sea issue involves the different subset of policies on defense and security, foreign affairs, maritime law enforcement, energy, mapping and maritime resource protection. Agencies tasked to uphold these policies draw their influence over foreign policy from the roles they played in the policy-making process.

After the Scarborough Shoal Standoff, the Department of Foreign Affairs was into public diplomacy campaign for the Filipino people to understand the West Philippine Sea and the country as an archipelagic nation linking it to the ASEAN integration as well (De La Vega interviewed 2015) The National Security Council (NSC) secures three elements: safety; welfare of the Filipino people; territorial integrity and safeguarding sovereignty of the country as with the West Philippine Sea (Agdamag, interviewed 2015). The NSC capacitates the full sovereignty over the Philippines' territory and protects its maritime and strategic interests. The interpretation of provisions of international agreements like the UNCLOS, the Law of the Sea Convention and all other international agreements as well as domestic laws, the Philippine Constitution, and the definition of national territory by existing law was under the obligation of the National Mapping Resource and Information Agency (NAMRIA) (Carandang, interviewed 2014). The Philippine Coast Guard (PCG) was tasked to enforce the national and international maritime laws with a wide power of arresting both foreigners and national citizens under the Doctrine of Posse Comitatus. The Coast Guard installed a coast guard detachment in the Municipality of Kalayaan Island for search and rescue operation, marine environmental cooperation and maritime safety enforcement as dictated by the Doctrine of Posse Comitatus. The PCG coordinated closely with other civilian

agencies particularly the Bureau of Fisheries and Aquatic Resources (BFAR) and the NAMRIA; the Coast Guard crews both. These civilian agencies are in the frontline while being secured by the Defense: the Navy and the Air Force in consonance with the policy of “White on White” embarked by the Aquino administration:

“Because we are deterring war, by creating a condition that the use of military might is morally wrong as an option. If we fail then we retreat, and they (Navy) will lead, and we will render aid to them (Defense sector), in terms of security and logistics like transporting their supplies if they sink, we will rescue.”¹¹

6.3. Roles of the Informal Working Group

The academe has minimal involvement in the policy-making process. The government relates to the academe informally but not as an official institution (Batongbacal, interviewed 2014). An Informal Working Group (IWG) was organized with the initiatives of former Senator Leticia Ramos-Shahani and University of the Philippines Professor Aileen S.P. Baviera. The IWG was an independent effort initiated by technical experts from the academe and retired officials from different agencies including the NAMRIA, BFAR, DND, PCG, and Navy. Members of the IWG drafted a White Paper on the West Philippine Sea which calls on the government to (1) establish, eradicate or strengthen permanent high-level institutions that shall undertake policy formulation, planning, coordination assessment; (2) provide sustainable and responsible fisheries, with government assistance for artisanal and small-scale fishermen and optimized oil exploration and resource exhaustion without jeopardizing the environment; (3) develop a clear, feasible and resolute security and defense strategy for the West Philippine Sea; (4) establish strategic, comprehensive foreign policy

goals such as promotion of national security, economic development and the welfare of nationals in a way that will not affect the country's long-term aspirations for its relationship with China, ASEAN, and the US; (6) organize programs that will inculcate archipelagic consciousness and identity of the Philippines and the Filipinos as a maritime nation. The White Paper was sent to the government; however, only the National Security Council responded but no with formal feedback afterward. The National Security Council admits that they consult with local experts and scholars from the academe on a personal basis, but in the formulation of strategy and action plans that define the policy of the government, they deal with it among bureaucracies themselves in a close-door set-up to minimize different interpretations and slants or biases coming from private individuals and the media (Batongbacal, interviewed 2014). Initiatives to discuss about the West Philippine Sea are conducted on an unofficial basis and informative in nature, for instance the Maritime League, an institution that advances the need of the maritime profession, conducts a bi-monthly meeting (7-8 times a year) to incorporate the West Philippine Sea in the agenda (Agustin, interviewed 2014). Although scholars and technical experts are consulted informally, there was no official consultation or formal meeting involving the Informal Working Group in the process of policy formulation.

The “deadlock” in the relationship between government and the Informal Working Group is a clear manifestation of the resistance of some actors to compromise their traditional roles concerning their mandates to other stakeholders involved in the issue. There is a sense of exclusivity coming from government agencies that decision-making process should be handled only by the government officials leaving no room for the informal working group. The high political nature of the current problem justifies the reluctance of the government to involve the academe. Government agencies consult with scholars informally and

not as a group. But among scholars and academics, they have different stands and analysis on the issue, making it difficult to establish an integrated group of think tanks that will provide a collaborative perspective on the problem. Even official institutions, for instance, the Maritime League, are incapable of establishing a formal agenda to discuss the issue and release a joint output of information, updates and mechanism that will raise consciousness to the public and even to the government agencies. Hence, it will be difficult for the government to commission an Informal Working Group who has like-minded perceptions that pertain to the WPS issue.

6.4. *Inter-agency Institutions*

The National Security Council (NSC) relates to the Department of Foreign Affairs in dealing with territorial issues on the West Philippines Sea. The objectives of the Department of Foreign Affairs ran in consonance with the National Security Policy of the NSC in the process of policy-making. The Coast Guard crews and escorts ships of the National Mapping Resource and Information Agency (NAMRIA) and the Bureau of Fisheries and Aquatic Resources (BFAR) for its surveillance operation. The Department of Energy, the Bureau of Fisheries and Maritime Resource and the Department of Energy and the Navy are members of the National Coast Watch Council (NCWC) and relate with the Department of Foreign Affairs in as far as territorial claims over the West Philippine Sea is concern.

Prior to the Scarborough Shoal Standoff, the National Coast Watch Council was emergent; although it was issued under Executive Order 57 in 2011, it took its effect in 2013. The established National Coast Watch System will act as the central inter-agency mechanism for a coordinated and coherent approach on maritime issues and maritime security operations towards enhancing governance in the country's maritime

domain.¹² There are identified fifty government agencies, offices and departments that had something to do with the maritime domain and the role of the Council is to review their mandates and determine the probable gaps or overlaps and recommend to these agencies action plans that will minimize if not avoid the overlaps and gaps. The central mechanism in doing an inter-agency coordination is by inviting all member agencies to discuss issues that will impact an agency's mandate and work it out so no resources will be overspent in a particular concern while other funds are being spent on other concerns as well (Zata, interviewed 2014).

The Standoff did not only challenged the newly established National Coast Watch Council, but it also revealed how unprepared the country was in responding to an event such as the Scarborough Shoal Standoff:

*The country was not prepared in terms of policy response like that of the Scarborough Standoff, the government had exerted its efforts, it has already recognized its weakness when it comes to policy, so the Office of the President issue that Executive Order 57 to bring in at one body relevant agencies involved in policy formulation and even in strategy formulation.*¹³

In 1994, the Philippine government formulated the National Marine Policy; however, since its formulation it has not been applied nor evaluated until the Scarborough Shoal Standoff. Although cabinet committees established by previous administrations called for the formulation and review of the marine policy, it was not provided with full attention by the Philippine government. After the standoff, government agencies saw the need to come up with a National Marine Policy (NMP) as a means to capacitate the Philippines to protect its maritime domain and prevent incidents at sea from happening.

The NCWC is under review, and it plans to define, evaluate or reevaluate the NMP, and the next president should present the NMP (Zata, interviewed 2014).

Although the government has been continuously exerting diplomatic efforts to deal with the West Philippine Sea issue under the framework of the Declaration of Conduct and bilateral negotiations with China, it recognizes the need for a greater inter-agency coordination that will specifically respond to the problems in the West Philippine Sea (WPS) particularly on security matters pertaining to the areas within the WPS. Hence, the Inter-Agency Coordinating Committee on the West Philippine Sea (ICC-WPS) was created in 2014. Ambassador Hellen Barbers-De La Vega of the Office of the Undersecretary for Policy of the Department of Foreign Affairs admitted that because of the incident in the Scarborough Shoal the bilateral negotiation with China had been suspended, so there is a need to move and speak in one voice. For this reason, the government created the ICC-WPS that will directly handle the territorial issues in the West Philippine Sea which includes Scarborough Shoal and the Kalayaan Island Group (KIG):

“The ICCWPS chaired by the Department of Foreign Affairs Undersecretary for Policy, co-chaired by the Office of the Executive Secretary; however, the one sitting now is the National Coast Watch Council; the Department of National Defense as Vice-Chair and the National Security Council headed the Secretariat.”¹⁴

Members of the ICC-WPS are: (a) Department of Justice, (b) Department of the Interior and Local Government, (c) Presidential Communications Development and Strategic Planning Office, (d) Philippine Coast Guard, (e) Armed Forces of the Philippines, (f) National Intelligence Coordinating Agency, (g) Bureau of Fisheries

and Aquatic Resources, (h) National Coast Watch Council, and (i) Bureau of Immigration.

As for external or territorial security, the ICC-WPS ensures the steadiness of the diplomatic and political efforts of the government as it pursues a continuous implementation of strategies (political, diplomatic, economic and military) that will define the country's foreign policy on its claims over the West Philippine Sea yet maintaining a good relationship with China. The National Coast Watch Council (NCWC) and the Inter-agency Committee on the West Philippine Sea (ICC-WPS) are two mechanisms embarked by the government to deal with the issue in the West Philippine Sea, after the Scarborough Shoal Standoff (see Figure 5 and Figure 6). Both inter-agency mechanisms aim to harmonize the roles and relationships of different bureaucracies and monitor that these agencies share similar understanding defining their strategic objectives. The only difference between these agencies is the scope of their respective objectives: while the National Coast Watch Council handles the general direction of policy formulation, coordination and operation with member-agencies on all maritime issues of the country, the Inter-agency Committee for the West Philippine Sea monitors diplomatic, political and military strategies that will support claims over the Scarborough Shoal and the Kalayaan Island Group and how they affect the Philippine's relations with China and other claimant states.

Despite the need for demilitarization and civilian approach in dealing with maritime issues in the West Philippine Sea, the inter-agency institutions primarily involved in identifying actions that define the country's policy in the WPS are predominantly composed of officials from the defense sector, and hence projecting a military nature. The National Coast Watch Council is currently headed by a Navy official; most of its key personnel are Navy officers. The ICC-WPS is co-chaired by the DFA under the Office of Policy and the National Coast Watch

Figure 5 Members of the National Coast Watch Council

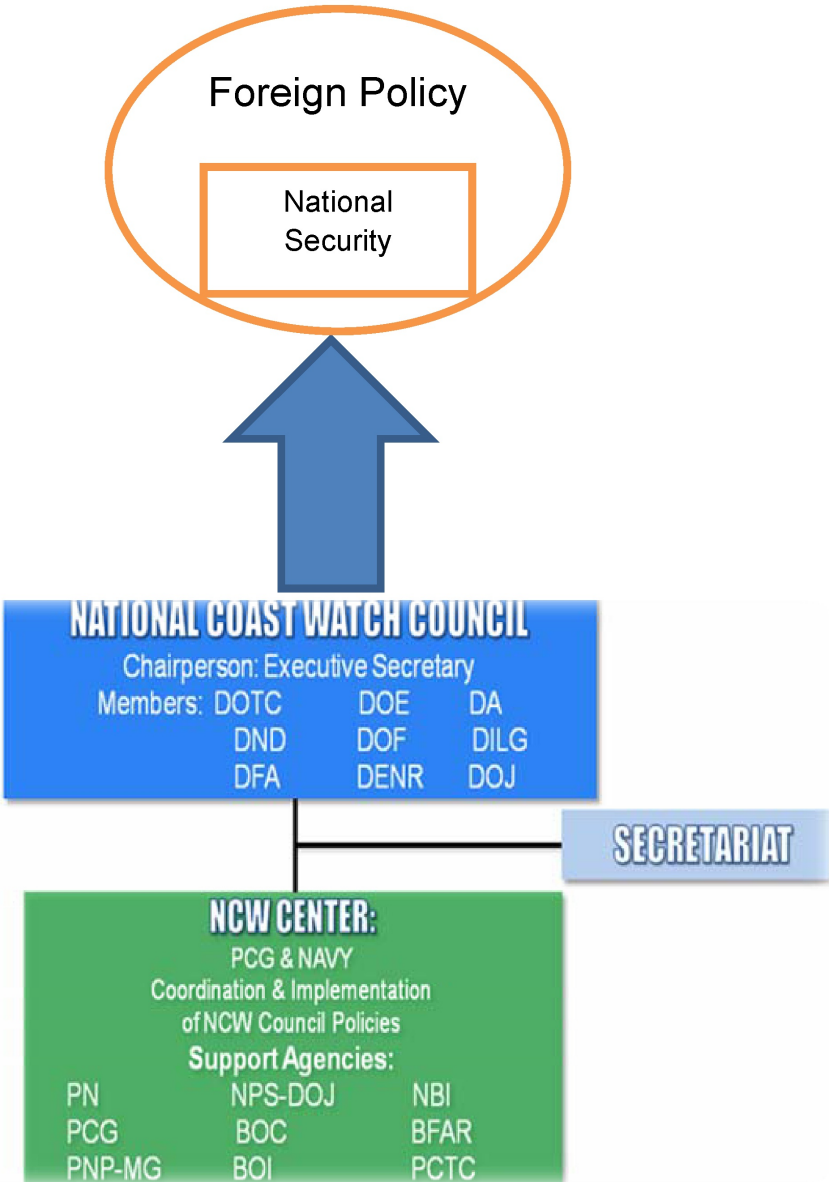
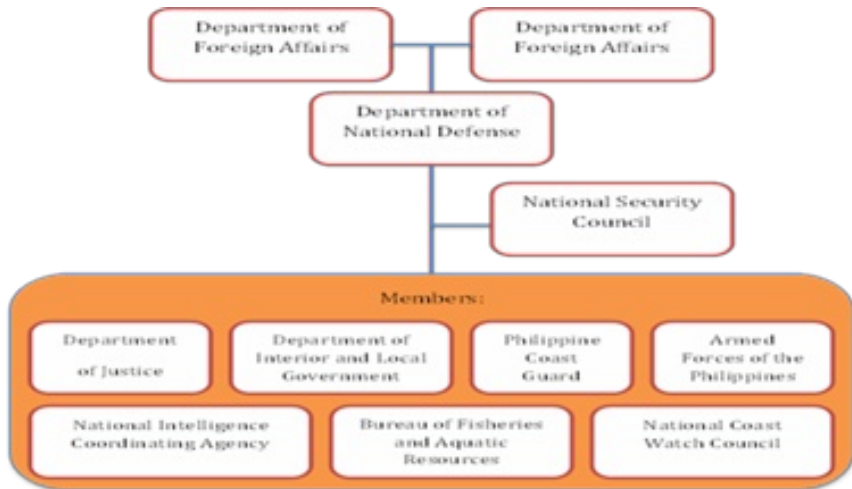


Figure 6 Inter-agency Committee on the West Philippine Sea (ICC-WPS) /National Task Force on the West Philippine Sea



Council. The Navy looks at the Scarborough Shoal in a traditional security framework as compared to the Coast Guard who looks at it from a non-traditional perspective. As for the Navy, it is an issue of naval defense, while for the PCG it involves law enforcement. The Philippines' strategy in the South China Sea calls for "demilitarization", deploying civilian agencies at the forefront as the country's campaign to assert rights over the WPS. However, in reality, the country's strategy is still maneuvered with a traditional military approach. The approach of the Philippines to address the South China Sea issue involves heavily the role of the Coast Guard. However, the strategy to demilitarize the issue has not been fully implemented due to the reason that major decision-makers in the maritime inter-agency institutions are from the defense sector and they perceive the problem in a traditional security sense. Nevertheless, the Philippines' attempt to develop a holistic and unified

approach through the establishment of maritime inter-agency institutions has manifested clearly in its strategies, but it does not necessarily imply success at the level of implementation. Questions as to who is willing to bargain traditional roles and who is going to enact new roles have challenged member-agencies.

6.5. Outcomes and Implication of the Decision-making Process among Agencies of Government

For a long time, the Philippines' primary security concern is to combat the internal insurgency, particularly in Mindanao. The primary focus of the Philippine government is to address domestic security concerns, neglecting external or territorial security. Since the country lacks a long-term approach that will address maritime issues, the Scarborough Shoal Standoff proved its incapacity to secure its territorial claims in the West Philippine Sea. Prior to the Scarborough Shoal Standoff, the Philippines focused itself on internal security issues; it is only after the Standoff that territorial sovereignty became an issue perceived to be a more significant problem.¹⁵ To address the security concerns of the Philippines, its National Security Council releases the National Security Policy for 2011-2016 that will deal with three security issues of the country: internal security; territorial security; and other security concerns involving transnational crimes, protection of overseas Filipino workers, environmental disaster, and crises. The National Security Policy serves as a guide among agencies particularly the DFA, the DND and other supporting agencies like the Navy. To ensure that these concerns are addressed, agencies cooperate to establish balance in disseminating military resources. For this reason, the government has created the National Coast Watch Council as an inter-agency institution tasked to harmonize the different mandates of each agency concerning maritime issue; allocates tasking for a particular agency; and crafting a standard

protocol for agencies on the rules of engagement pertaining to security issues. The NCWC continuously meets with member-agencies, creating a monitoring group that supervises each agency in coming up with standard operating procedures aimed to improve maritime cooperation and coordination.

After the standoff in 2012, the Philippines reassessed its security concerns and considered the West Philippine Sea a major security issue of the country. As a response, the Philippine government issued the policy on “White on White”, thereby shifted the Philippines approach from military to civilian, deploying the Philippine Coast Guard on the frontline to meet with the Chinese Coastguard to diffuse tension in the area. The situation in the West Philippine Sea requires demilitarization as well as the observance of maritime law enforcement to ensure maritime cooperation among claimant states:

“As of now geopolitics calls for demilitarization, geopolitics require non-use of force, globalization discourages war amongst states. The more that you can prevent war, the more that you can achieve national interest, and what is the national interest, means the people way of life. The practical thing for us to do, is to create that environment that would render China impotent in terms their military might, that they cannot use their military might because it is politically, morally wrong and more costly for them to use their military might. One thing in our country that we can bolster: our legal and moral high ground that we are the good guys and we follow the rules.”¹⁶

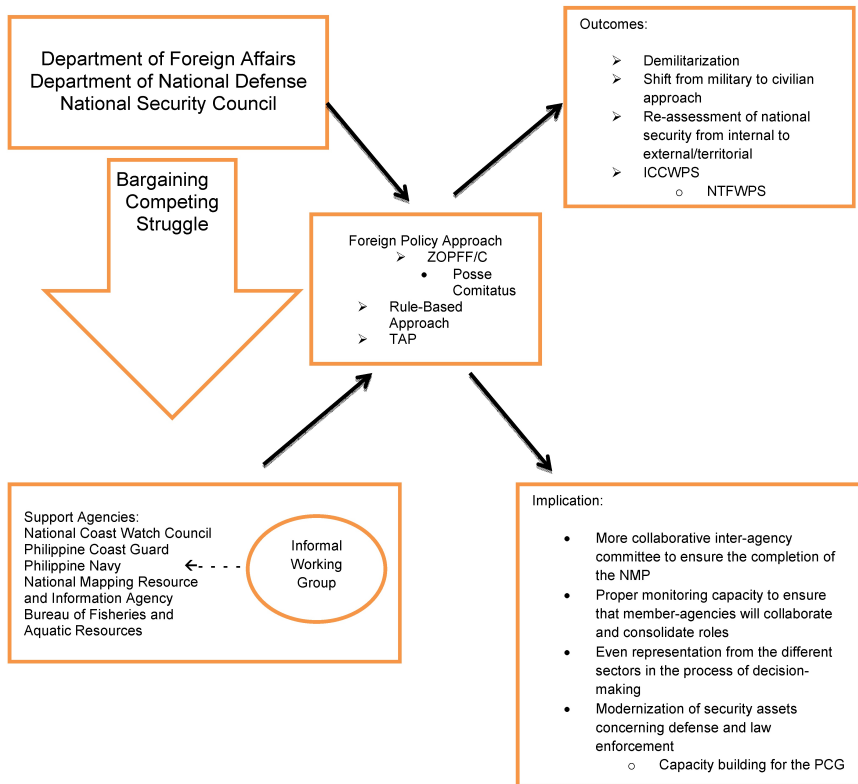
As part of the Triple Action Plan, boosting the Philippines’ moral high ground is the new strategy embarked by the Aquino administration to show the international community that the country abides by international laws so that it could win the support of other claimant

states like Vietnam to rally against Chinese aggression in the South China Sea. However, the shift of approach has caused a problem among agencies that are not willing to consolidate their traditional roles. The Navy has a different mindset compared with the Coast Guard. While the Coast Guard sees it as a maritime law enforcement concern, the Navy defines the West Philippine Sea as a defense issue.

The Scarborough Shoal Standoff in April 2012 made the Philippine government realize that it had neglected external or territorial security for a long time. Hence the government reassessed the security concerns of the country and categorized them into three: internal, external or territorial and environmental, disasters and crises management. The main concerns that were tackled under these inter-agency mechanisms include: the review of the National Maritime Policy in 1994, the establishment of a mechanism that will monitor the country's archipelagic sea lanes, the harmonization of roles that will ensure cooperation among agency-members so that there will be a balance in the allocation of military capacity that will render support to the security operations in the country, and the continuous efforts to create and recommend policies to help alleviate the overlapping claims in the West Philippine Sea. With the three security concerns, it implies stronger inter-agency coordination to manage military resources and deploy it equally to areas in Mindanao for internal security operations, in the West Philippine Sea for territorial security operations and to calamity and crises response in other areas of the country (see Figure 7).

In March 2016, Memorandum Circular No. 94 was issued creating the National Task Force for the West Philippine Sea (NTFWPS). The functions of the ICC-WPS were transferred to the task force. Unlike the ICC-WPS, the task force is chaired by National Security Adviser. The DFA and the DND are still part of the task force along with new member-agencies that were not formerly part of the ICC-WPS, namely

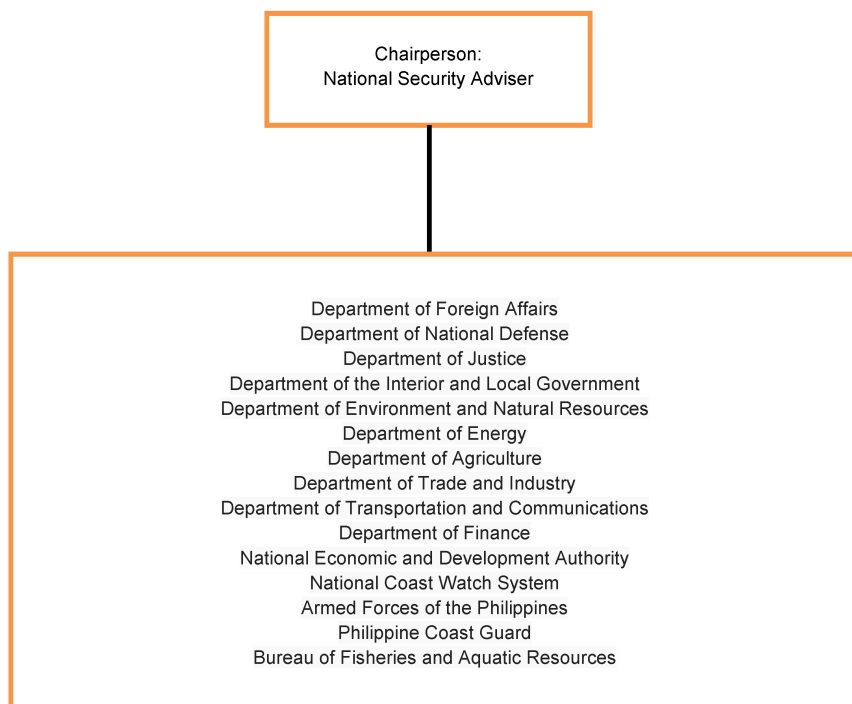
Figure 7 Analyzing the Philippine Foreign Policy in the West Philippine Sea Using the Bureaucratic Politics Model (BPM)



Department of Energy, Department of Agriculture, Department of Trade and Industry, Department of Transportation and Communications, Department of Finance, and National Economic Development Authority. The Task Force has expanded its recommendatory role by providing recommendations to the President through the Security Cluster, in contrast to the previous inter-agency committee. Furthermore, the task

force emphasizes the improvement of more synchronized efforts of different member-agencies through the creation of area-level and tactical-level forces which were not present in the ICC-WPS¹⁷ (see Figure 8).

Figure 8 National Task Force for the West Philippine Sea



The Philippines received a favorable decision coming from the Permanent Court of Arbitration on July 12, 2016. The decision from the Arbitral Court fueled the Philippine moral victory in the issue. However, with the new administration of President Rodrigo Duterte, the question

after the release of the arbitral ruling is how to maximize the country's moral victory into concrete and practical initiatives that will address the territorial brawl in the South China Sea. However, Rodrigo Duterte clearly stated not to use the decision of the Arbitral Court but instead to engage with China peacefully and collaboratively, considering China's massive investment in the country, particularly in Mindanao under its Belt and Road Initiative. Mindanao has become a crucial part for the Chinese government to establish routes connecting China to Asia and the Pacific.

7. Conclusion: Setting Lessons for the Duterte Administration

The Scarborough Shoal Standoff implies three lessons that the Rodrigo Duterte administration should reflect on. First, there is a need to establish a long-term approach to address the maritime security issue. This long-term approach includes the formulation, recommendation, and implementation of an updated National Marine Policy (NMP) that articulates the different mechanisms set to address, prevent or at least mitigate issues that challenge the Philippines' maritime sovereignty. The marine policy not only covers border security but also includes ocean governance and marine protection. The NMP sets guides to be followed by every administration incapacitating agencies responsible for protecting the country's maritime territory. Thus, it will ensure the Philippines' establishing a consistent attitude towards other claimant states of the South China Sea.

Secondly, the success of a fully realized marine policy is contingent on the commitment of not only the executive but other agencies involved in crafting the NMP. This commitment is rooted in a developed archipelagic consciousness. Although this consciousness may take time to flourish since it requires constant inculcation of ideas about the

importance of being an archipelagic state as well as the responsibilities tasked to protect and conserve the domain of the country's archipelago. There is a need to raise the awareness of every Filipino about how the maritime dispute and the installation of military posts that continuously destroy the Philippines' marine ecosystem could affect the entire nation. For the longest time, the Philippines neglected its identity being a quintessential archipelagic state. The continuous disregard of this identity is influencing how the country crafts policies related to the protection of its coastal and maritime areas.

Third, parochial interests of bureaucracies resulting in constant rivalries and oppositions from member-agencies of Philippine maritime institutions have affected the establishment of an effective inter-agency committee. The territorial debacle in the South China Sea requires an effective maritime inter-agency coordination, and to attain this, there is a need for even representation of members coming from other stakeholders like the informal working group, the academe, local NGOs representing direct stakeholders (e.g., fishermen, coastal folks), and technical experts. The South China Sea issue concerns maritime policing and law enforcement. Hence, it is essential to establish a capacity-building mechanism for the Philippine Coast Guard.

The Philippines should equate the importance of protecting its territorial integrity with that of other national concerns like poverty, corruption, insurgencies and drug-related issues. A long-term approach defined in policies about marine protection and policing has to be enacted consistently regardless of the existing administration. Territorial dispute is a vital national issue that affects the integrity of the whole nation. The protection of territories should foremost be through occupation, deployment of assets, empowering the country's maritime and defense agencies in the call for exercising territorial sovereignty. As the Philippines witnesses the rise of China, the Duterte Administration

has supported its development programs through the Belt and Road Initiative deemed compatible with that of the country's development and infrastructure plans. The Duterte Administration has to provide importance to the South China Sea similar to that of his campaign against drugs and corruption. More importantly, while the Philippines engages with other countries it is crucial to uphold the primary consideration of its foreign policy: to protect the country's territorial integrity and national sovereignty.

Notes

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