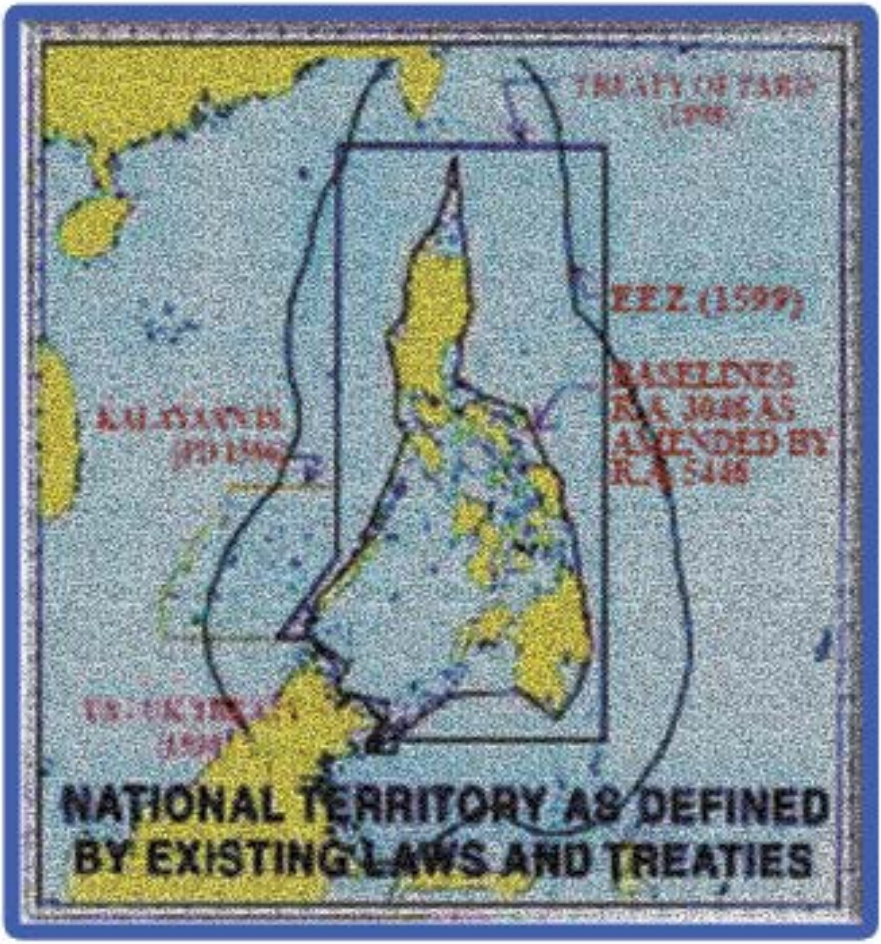

PRIMER ON THE EXCLUSIVE ECONOMIC ZONE

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PRIMER ON THE EXCLUSIVE ECONOMIC ZONE

1. What is an Exclusive Economic Zone (EEZ)?

An Exclusive Economic Zone (EEZ) is the area beyond and adjacent to the territorial sea which extends seaward to a maximum of 200 nautical miles from the baselines from which the territorial sea is measured. The coastal state exercises certain sovereign rights within this area for the purpose of exploring, and exploiting, conserving and managing the natural resources, living and non-living, of the sea-bed, subsoil and superjacent waters. These rights also extend to other activities associated with the economic exploitation of the Zone, as in the case of energy production from currents and tides.

The rights of the coastal state within the Zone are "exclusive" in the sense that, if the coastal state does not exploit these resources, no other party may do so, without the expressed consent of the coastal state.

2. What are the Origins of the EEZ Concept

The origins of the EEZ concept began as claims to offshore jurisdiction in a traditional three-mile extension of coastal state sovereignty. Argentina in 1907 declared a ten-mile fishing zone and Columbia in 1923 claimed a twelve-mile territorial sea to protect hydrocarbon and fishing. Similarly, in Europe the Soviet Union in 1923, laid claim to a twelve-mile territorial sea.

In September 1945 the US government issued proclamations, known as the Truman Proclamations. The first proclamation asserted US jurisdiction and control over the natural resources of the continental shelf contiguous to the United States. The proclamation, however, provided that the waters over the continental shelf would retain their character as "high seas" where freedom of navigation would be observed. The second proclamation established conservation zones for the protection of fisheries in certain areas of the high seas contiguous to the US where fishing activities had or would be maintained on a substantial scale.

In 1952, the Santiago Declaration save Chile, Ecuador and Peru the right to establish a "Maritime Zone" which was to extend not less than 200 nautical miles from their shores and in which the "sole sovereignty and jurisdiction over the area at sea adjacent to the coast…the sea floor and subsoil thereof," were claimed by the signatory states. This early proposal for multipurpose functional zone, one in which the coastal state would exercise exclusive economic jurisdiction for designated purposes but which will not prejudice the existing rights of navigation and associated uses of the ocean, was also implicit in vesting on the coastal State the duty to preserve and conserve the natural resources and the right to protect and control these resources (as a means for developing its economy) to the coastal state.

The Montevideo and Lima Declarations, both signed in 1972, recognized the coastal states' maritime sovereignty over all resources of the sea, sea-bed and subsoil. The former specified the distance of this sovereignty to be 200 nautical miles while the latter gave the coastal state the right to establish limits if extended jurisdiction. This concept of a total economic area was further enhanced when ten Caribberan countries signed the Santo Domingo Declaration (1972) on the Law of the Sea and established a "patrimonial sea." The agreement covered the following significant points:

i) The area not to exceed 230 nautical miles in which the state has sovereign rights over both renewable and non-renewable resources found in the waters, sea-bed and subsoil;

ii) Regulations of scientific research and prevention of marine pollution; and

iii) Freedoms of navigation, overflight, and laying of submarine cables and pipelines.

Between 1972 and 1973 several proposals for an economic zone were made before the UN Seabed Committee. These were:

i) General Report of the African Regional Seminar in Law of the Sea; Yaounde, June 1972;

ii) EEZ Proposal by Kenya (Adede Proposal) 1972; and

iii) Addis Ababa Declaration of May 1973.

The essence of these proposals lay in the extension of the jurisdiction of the coastal seaward for 200 n.m. from the baselines. Kenya's draft articles were essentially the same as those of the Santo Domingo Declaration but the term "patrimonial sea" was changed to "Economic Zone." In 1973, Columbia, Mexico and Venezuela introduced a proposal which was similar in concept. The Organization of African Unity (OAU) further harmonized their positions by setting 200 n.m. as the outer limit for the EEZ in which the coastal state would exercise "permanent sovereignty over living and mineral resources and would administer the zone."

3. Under What International Forum was the Concept of the EEZ First Introduced and Developed?

The EEZ concept was first introduced to the United Nations Seabed Committee of the International Law Commission.

The UN Seabed Committee was expanded as a preparatory step to the 3rd UNCLOS and consequently, three sub-committees were established to deal with the various proposals before it. In the July 1972 session of the Committee, Kenya submitted "Draft Articles on the EEZ" which was a formal and coherent presentation of the concept.

In its introduction, Kenya stated that "basically, the purpose of the EEZ is to safeguard the economic interests of the coastal state in its waters and seabed adjacent to their coasts without unduly interfering with on the legitimate uses by the other states." The Seabed Committee subsequently included the EEZ as part of the agenda issues for the 3rd UNCLOS sessions which started in 1972. After several sessions and extensive deliberations, the issues were transcribed in the Informal Composite Negotiating Text (ICNT) of 1975, which was essentially a comprehensive package of draft articles on the various issues dealing with a new order in the oceans.

4. Under the EEZ Regime, What are the Essential Rights of Coastal States? Of Other States and the International Community?

In the EEZ, the coastal state has:

a. The sovereign right to explore, exploit, conserve and manage the natural resources, whether living or non-living, of the seabed, subsoil and superjacent waters. These rights also apply to relayed economic activities such as the production of energy from the water currents, tides, and winds.

b. Jurisdiction with regards to:

i) The establishment and uses of artificial islands, installations and structures;

ii) Marine scientific research;

iii) The protection and preservation of the marine environment; and

iv) Other rights and duties as provided for in the Law of the Sea convention.

The state, in the exercise of the above-mentioned, shall have due regard to the rights and duties of other states and shall set in a manner compatible with the other provisions of the Convention.

Other states and members of the international community however, shall enjoy the freedom of overflight and navigations; the laying of submarine cables and pipelines; and other internationally lawful uses of the sea such as those associated with the operation of ships, aircraft and submarine cables and pipelines, compatible with the other provisions of the Convention.

5. What is the Difference Between the EEZ Regime from the Territorial Sea Regime? From the Continental Shelf Regime?

The territorial sea consists of the adjacent belt of sea in which a state also exercises jurisdictional and sovereign rights. The UNCLOS has set a maximum limit of 12 nautical miles measured from the baselines as the breadth of the territorial

sea. The EEZ, while being measured also from the baselines, extends for 200 nautical miles seaward. The rights exercised by the state in its territorial sea are sovereign rights while those exercised in the EEZ are limited economic rights as defined in the LKOS Convention. Ships may navigate in the territorial sea under the "right of innocent passage" but there is no freedom of overflight for aircraft, while in the EEZ there is a freedom both of navigation and overflight.

In the case of the Philippines, it has a peculiar territorial sea regime because the area extends to the international treaty limits defined in the Treaty of Paris concluded between the US and Spain on December 10, 1898 and subsequent treaties concluded with Spain and Great Britain.

The continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of the continental margin, or to a distance of 200 nautical miles from the baselines from which the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance. Within the continental shelf, the state also exercises the same economic rights and jurisdiction as in the EEZ.

6. <u>What are Some of the Major International and Regional Effects of the Setting up of the EEZ Regime</u>?

A 200-mile EEZ, if universally adopted and enforced, would enclose a total area approximately equivalent to 36% of the world's total ocean space. Many semi-enclosed seas which are formerly high seas areas would fall under the jurisdiction of coastal states. Among these seas would be the Baltic, Black, Carribbean, Celebes, East China, Japan, Java, Meditteranean, Norway, Persian, and South China Seas. Coastal state jurisdiction would also extend over 37.6% of arctic and Atlantic oceans, 32.3% of the Indian Ocean and 36.3% of the Pacific Ocean.

Of the 148 delegations in UNCLOS in 1974, 118 represented coastal states. Of these, fifteen States stood to garner 42% of the total area to be enclosed by a universal 200-mile EEZ regime with 30% going to the first ten. The US stood to gain the most area of all. At the same time, thirteen nations would acquire extensive EEZs. These are: Australia, Indonesia, New Zealand, Canada, Soviet Union, Japan, Brazil, Mexico, Chile, Norway, India, Philippines, Portugal and Madagascar.

The extended marine jurisdictional areas would, consequently, mean additional fishing grounds which could boost the economy of the coastal states. As of 1976, the landed value of the world fish catch in recent years has been between $8 and $12 million per annum. Most fish are caught within 200 miles off the coasts of various states and of the total catch a little over 50% is

obtained from the Pacific region and 40% from the Atlantic.

The continental margins and shelves would also fall under the jurisdiction of coastal states as a result of a universal EEZ regime. Economically, this is of major significance because oil and gas deposits are found in sedimentary basins which underlie 57% of the world's continental margins compared to 32% of the world's land area. Already some 20% of oil production and over 10% of natural gas is extracted from the continental shelves, and has an estimated value of over $10 billion as of 1976. One quarter of the world's proven reserves lie in the continental shelf and slope areas within 200 mile offshore. Other possible locations include the continental rises with their great depts of sediments.

7. When Did the Philippines Declare Its Own EEZ? The Other Members of ASEAN?

The Philippines declared its EEZ on June 11, 1978 by virtue of Presidential Decree 1599. The other ASEAN member countries followed suit on the following dates: Indonesia – March, 1980; Malaysia – April, 1980; Singapore – September 1980; and Thailand – February, 1981.

8. What is the Archipelagic Doctrines? And How Does it Relate to the EEZ Regime?

The Archipelagic Doctrine is composed of three basic principles:

i) An Archipelagic state, whose component islands and other natural features form an intrinsic, geographical, economic and political entity, and historically have or may have been regarded as such, may draw straight baselines connecting the outmost points of the outer islands and drying reafs of the archipelago from which the extent of the territorial sea of the archipelagic state is or may be determined.

ii) The waters within the baselines, regardless of their depth or distance from the coast, the seabed and subsoil thereof, and the airspace above, as well as their resources, belong to, and are subject to the sovereignty of the archipelagic state.

iii) Innocent passage of foreign vessels through the waters of the archipelagic state shall be allowed in accordance with its national legislation, having regard to the existing rules of international law. Such passage shall be through lanes as may be designated for that purpose by the state.

The archipelagic Doctrine laid the foundation for the baseline system, which was formalized in Republic Act No. 3046 as amended in RA No. 5446, which is the basis

of measurement of the breadth of the EEZ. It also delineated the different water regimes: internal waters, territorial sea and the EEZ. It also enunciated the freedom of navigation and overflights over the EEZ.

9. What are the Main Provisions of the EEZ Declaration and How Does it Compare with the EEZ Articles of the Draft Law of the Sea Treaty?

The Philippine 200-mile EEZ was established through Presidential Decree 1599 dated June 11, 1978. The Decree specifies 200 n.m. from the baselines system a Zone wherein the Philippines has the right to explore, exploit, conserve and manage the living or non-living resources of the seabed, subsoil and superjacent waters. Associated activities such as the production of energy from the water, currents and winds are sole prerogatives of the state. The state has also exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures. Also, the state has the exclusive right to preserve the marine environment through the prevention and control of marine pollution and in the conduct of scientific research.

Except when the state has entered into agreement with another person or state, the abovementioned activities shall be undertaken exclusively by the Philippine government and

its nationals. Other countries, however, enjoy freedom of navigation and overflight, the right to lay submarine cables and pipelines and other internationally lawful uses of the sea relating to navigation and communications. In exercising their rights, other countries shall give due cognizance and observe the laws and regulations promulgated by the government in its EEZ.

The main provisions of P.D. 1599 are in agreement with those delineated in the legal regime of the EEZ in the draft treaty of UNCLOS. Essentially, these basic rights are also those which the Convention allows.

10. How Much Area is Gained by the Philippines Through its EEZ Declaration?

The Philippines will gain an additional marine area of 362,000 square nautical miles by virtue of its EEZ declaration. At present, using the International Treaty Limits defined by the Treaty of Paris and subsequent treaties, the Philippine territorial sea has an approximate area of 521,000 square nautical miles.

The total marine EEZ area is approximately 653,000 square nautical miles.

11. What is the Extent of the Continental Shelf which Will Fall Under the Philippine EEZ Regime?

The total area of the Philippine continental shelf is only around 240,000 sq. kms. (or 72,500 sq. n.m). it has an average width of 10 kms. but varies widely in its features in the different part of the archipelago.

The Philippine shelf is limited, with the 200-meter isobaths varying from 1 mile to about 60 miles from the shore. On the eastern side of Mindanao, in the area of the Philippine trench, the submarine area is characterized by steep grades with practically no shelf at all or only a fraction of a mile. Essentially the same conditions hold for the areas off the shores of southern Cotabato, eastern Davao, eastern Samar, and eastern Luzon fronting the deep Luzon Basin. Off the northern coasts of the Camarines provinces, the isobaths reaches up to around 52 kms. (or 28 n.m.). A broad continental shelf occurs in the eastern and western coasts of Palawan and southwest ends of the Sulu Sea. The Calamian and Cuyo Islands, the Lingayen Gulf and Visayan areas are all on the continental shelf.

So far the most important portion of the shelf is located on the western flanks of Palawan Island where significant petroleum deposits have been found and shelf extends beyond the 200-mile EEZ, and, to end of the continental margin.

12. <u>What Are the Basic Interests of the Philippines in Its EEZ</u>?

Foremost among the national marine interests of the Philippines is the exploration and development of its indigenous offshore sources of energy. The country is 95% dependent on imported crude oil for its domestic every requirements and, among other reasons, due to escalating fuel costs, is presently hard-pressed for alternative solutions to the problem. Part of the solution lies in the development of local energy sources and reserves, of which there seems to be a moderate amount present in our continental shelf.

An equally important marine interest is its fishery resources. A total fisheries area of 653,000 sq. n.m. would fall under Philippine jurisdiction with the EEZ declaration. In terms of fish species and resources, the Philippines will gain more fishery resources especially in tuna. This is considered a significant gain since fish is a major staple of the Filipino diet and the tuna fishing industry is a growing industry as well as a potential export earner for the country.

Shipping is also considered as another primary marine interest since the industry not only provides a communication link between and among the many islands of the archipelago as well as the world, but as a significant factor for trade and mobility.

One concern which is expected to be a future major marine interest is the development

of the marine mineral resources. It is generally assumed that all useful resources of the oceans are confined to the coasts and continental margin until the major technological difficulties involved in the commercial mining of "manganese nodules" are resolved. The nodules are composed of high-grade metal ores, primarily nickel, cobalt, copper and manganese.

If the Philippines is to safeguard its nautical marine interests, it must necessarily prevent the degradation of the marine environment to preserve the ecological balance of the system. The prevention and control of marine pollution, therefore, is also considered as a fundamental marine interest in the EEZ.

13. Will the Philippine EEZ Boundaries Overlap with Those of the Neighboring States? If so Where and with What State?

The Malaysian EEZ overlaps with the Philippine EEZ. If the Malaysian EEZ is strictly imposed, it would affect: a) the continental shelf extending toward the southwestern tip of Palawan and which encroaches on the Kalayaan Island Group over which the Philippines has claimed sovereignty and jurisdiction in certain islands; b) the continental shelf southeast of Sabah which covers a territory in which the Philippines had previously established sovereignty, title and jurisdiction.

There is an overlapping of the EEZs of Indonesia and the Philippines which may not result in a significant conflict because the two countries have expressed their willingness to compromise and resolve the issue. A future source of irritation, however, could be the Miangas or Palmas Islands which is now considered Indonesian territory but is, in fact, inside the territorial sea of the Philippines. Miangas has already been incorporated into the Indonesian baseline system. Should Indonesia involve its right to claim a 12-mile territorial seal limit in Miangas Island, this very principle could also be used by Indonesia to justify its entrance into Philippine waters for its fishery and other marine activities.

14. What is the Basis of the Philippine Claim to the Kalayaan Islands?

The claim to Kalayaan Island was established through P.D. 1596 dated June 11, 1978 and entitled "Declaring Certain Area Part of the Philippine territory and Providing for their Government and Administration."

The government based its claims "by reason of history, indispensible need, and the effective occupation and control established in accordance with international law."

The Philippine occupation of the islands began in the mid-1950s when Tomas Cloma,

a Filipino citizen, briefly occupied the area named it Freedomland. Today, Filipino troops are stationed in seven islands: Panata, Lawak, Pag-asa, Kuta, Likas, Parola and Patag. These islands have an effective military as well as civilian presence.

P.D. 1596 further states that the claim also includes the seabed, subsoil, continental margin and air space over the islands. The area is constituted as a distinct and separate municipality of the province of Palawan and therefore subject to the laws of the Philippine government.

What are Some of the International Conventions and Agreements to which the Philippines has Ratified or Participated in, and which are Relevant to the EEZ?

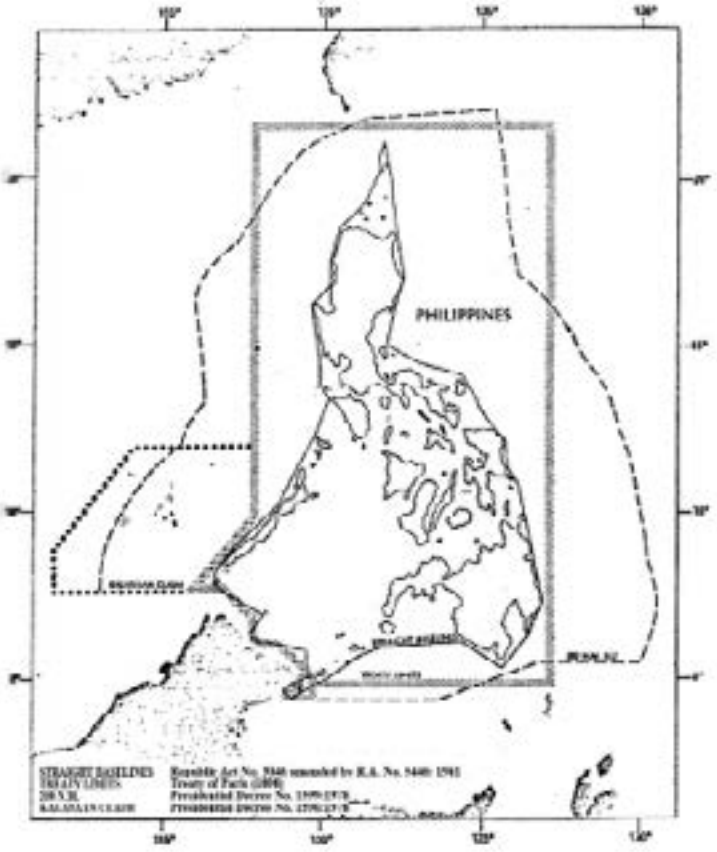
The Philippines participated in the Geneva Convention on the Continental Shelf. The treaty however was not formally ratified.

The Inter-Governmental Maritime Consultative Organization Conventions, which established international standards and a binding obligation on pollution control, was participated in by the Philippines in 13 of its 20 Conventions. In addition, the Philippines has already ratified and signed the International Convention for the Prevention of Pollution of the Sea by Oil (1954) as amended in 1960,

and is closely studying the International Convention for the Prevention of Pollution from Ships (1972) preparatory to signing of the treaty.

The country is also a participant to the UN Assembly Committee on the Peaceful Uses of the Sealed and Ocean Floor; the Specified Integrated Global Ocean Station System; the Inter-governmental Oceanographic Commission; the Committee for Coordination of Joint Prospecting for Mineral Resources in Asia's Offshore Areas of the UN Economic Mission for Asia and the Pacific; the UNDP/FAO South China Fisheries Development and Coordinating Programme; and the UN Environmental Programme.

Finally, the Philippines is an active member of the Association of Southeast Asian Nations (ASEAN) whose fundamental goal is economic unity through collaboration in transport and communications, agriculture, industry, and trade; the provision of mutual education, professional, technical and administrative training and research; and the promotion of regional peace.



Republic of the Philippines, showing marine jurisdictional boundaries. (Source: Geographic coordinates as listed in legislation and treaties cited above, as well as the "working map" of the Philippines' EEZ Claim (1979), as provided by Dr. Mario Manansala of the Bureau of Coast and Geodetic Survey in the Ministry of Defense, Republic of the Philippines)

Law of the Sea
The Continental Margin and Proposed Jurisdictional Zones
SHORELINE
12-MILE TERRITORIAL SEA (PROPOSED)
200-MILE EXCLUSIVE ECONOMIC ZONE (PROPOSED)
2,500-METER ISOBATH
SEA LEVEL
AVERAGE GRADIENT < 0.1°
CONTINENTAL SHELF
SLOPE
RISE
VERTICAL EXAGGERATION: 20X