CLARIFYING THE NEW PHILIPPINE BASELINES LAW

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On 10 March 2009, President Gloria Macapagal-Arroyo signed a new law adjusting the Philippines' archipelagic baselines. Baselines are lines on a map, identified by coordinates, from which is measured the 12-mile territorial sea, where, according to the United Nations Convention on the Law of the Sea (UNCLOS), a coastal state or an archipelagic state like the Philippines has sovereignty. The UNCLOS provides for a "contiguous zone", with a maximum breadth of 24 miles from the baselines, where the coastal or archipelagic state enforces "its customs, fiscal, immigration or sanitary laws and regulations". States also have an exclusive economic zone, measured up to 200 miles from the baselines, where they have "sovereign rights" to explore, exploit, conserve and manage the natural resources in the waters and on and beneath the seabed.

Significantly, the new law, in its title, indicates its purpose as mainly to amend the existing baselines act and "to define the archipelagic baselines of the Philippines". It does *not* extend the baselines to the Spratlys or to Scarborough Shoal, both of which China and Vietnam claim in their entirety, while the Philippines claims a part of what are called the Spratlys and all of Scarborough Shoal.

Unfortunately, some observers and commentators think that the new law extends the baselines to encompass both the claimed area of the Spratlys and Scarborough Shoal. It does not. The contrary impression may have arisen from the fact that the first bill that would adjust the baselines, which Representative Antonio Cuenco filed in the House of

Representatives in November 2007, would extend those baselines to parts of the Spratlys and Scarborough Shoal. The basepoints that the baselines would connect would include 12 in the Spratlys area and six in Scarborough Shoal.

However, the Department of Foreign Affairs opposed this provision in the Cuenco bill. Instead, it backed, and President Arroyo endorsed, a Senate version that would limit the baselines to the main Philippine archipelago and declare a "regime of islands" for the land features in the areas of the Spratlys and Scarborough Shoal that Manila claims.

According to Article 121 of the UNCLOS, an island, "a naturally formed area of land, surrounded by water, which is above water at high tide", can generate its own territorial sea, contiguous zone, exclusive economic zone, and continental shelf. On the other hand, rocks, "which cannot sustain human habitation or economic life of their own", cannot.

In the Senate-House committee that reconciled the differences between the Senate and House bills, the Senate version basically prevailed. It was this reconciled version, substantially the Senate text, that the Philippine Congress eventually passed and the President signed into law on 10 March.

Thus, the new law keeps the Philippine baselines around the main archipelago and, invoking Article 121 of the UNCLOS, declares a "regime of islands" within the areas that the Philippines claims in the South China Sea. Although it does not indicate which land features are islands in the UNCLOS sense and which ones are mere rocks, the new legislation brings the Philippine claim closer to consistency with the law of the sea, as far as maritime regimes are concerned.

While Beijing and Hanoi may feel obliged to voice protests, which they did promptly upon the Philippine law's enactment, this is something that they should take into account in considering the Philippine claim and in adjusting their own in the light of the UNCLOS provisions on maritime regimes.