Philippine Air Force Visiting Fellow Program

Rules of Engagement for Long Range Patrol Aircraft of the Philippine Air Force

Captain Aristotle Gonzalez
Rules of Engagement for Long Range Patrol Aircraft of the Philippine Air Force

Captain Aristotle D. Gonzalez

Air Power Development Centre
Canberra
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The Air Power Development Centre

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The Director
Air Power Development Centre
Level 3
205 Anketell Street
Tuggeranong ACT 2900
Australia

Telephone: +61 2 6266 1355
Facsimile: +61 2 6266 1041
E-mail: airpower@defence.gov.au
Website: www.raaf.gov.au/airpower
About the Author


After completing his military pilot training, he was posted to Fernando Air Base where he held various positions, including School Adjutant of the Philippine Air Force Flying School, Administrative Officer of the 101st Pilot Training Squadron, Operations Officer of the 102nd Basic Pilot Training Squadron, Wing Adjutant of the 100th Training Wing, Acting Squadron Commander of the 102nd Basic Pilot Training Squadron and Squadron Commander of the 556th Air Base Squadron.

Captain Gonzalez is a Second Level Flight Examiner, a Test Pilot, a Flight Commander and an Instructor Pilot in both the T-41D and the SF-260 TP types of aircraft. He was instrumental in the completion of the test flights for the Layang-2, an aircraft developed by the Air Force Research and Development Centre, and in the conversion of the SF-260 Turbo Prop into a light attack aircraft.

In October 2001, he was reassigned with the 15th Strike Wing, where he earned his combat crew rating in the SF-260 Turbo Prop aircraft and where he was also assigned as the Executive Officer of the 17th Attack Squadron.

Captain Gonzalez is married to the former Sigrid Anne Los Baños Cajucom. They are blessed with two children: William Ariz and Arianne.
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<td>ADDP</td>
<td>Australian Defence Doctrine Publication</td>
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<td>ADIZ</td>
<td>Air Defence Identification Zone</td>
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<td>AFP</td>
<td>Armed Forces of the Philippines</td>
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<td>ASEAN</td>
<td>Association of South-East Asian Nations</td>
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<td>ADFP</td>
<td>Australian Defence Force Publication</td>
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<tr>
<td>AUC</td>
<td>Area Unified Command</td>
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<tr>
<td>BFAR</td>
<td>Bureau of Fisheries and Aquatic Resources</td>
</tr>
<tr>
<td>CCI</td>
<td>Command Control and Information</td>
</tr>
<tr>
<td>CDF</td>
<td>Chief of the Defence Force</td>
</tr>
<tr>
<td>CS, AFP</td>
<td>Chief of Staff, Armed Forces of the Philippines</td>
</tr>
<tr>
<td>CTW</td>
<td>Composite Tactical Wing</td>
</tr>
<tr>
<td>DFAT</td>
<td>Department of Foreign Affairs and Trade</td>
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<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<tr>
<td>ESM</td>
<td>Electronic Support Measures</td>
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<tr>
<td>FAS</td>
<td>Federation of American Scientists</td>
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<td>HQ</td>
<td>Headquarters</td>
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<td>HQAST</td>
<td>Headquarters Australian Theatre</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ISAR</td>
<td>Inverse Synthetic Aperture Radar</td>
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<td>JCSSROE</td>
<td>Joint Chiefs of Staff Standing Rules of Engagement</td>
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<td>LRPA</td>
<td>Long Range Patrol Aircraft</td>
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<td>LOAC</td>
<td>Law of Armed Conflict</td>
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<td>LOSC</td>
<td>Law of the Sea Convention</td>
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<td>MPA</td>
<td>Maritime Patrol Aircraft</td>
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<td>PAF</td>
<td>Philippine Air Force</td>
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<tr>
<td>RA</td>
<td>Republic Act</td>
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<td>RAAF</td>
<td>Royal Australian Air Force</td>
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INTRODUCTION

The Philippines is an archipelagic state consisting of 7100 islands with a total of 652,000 square nautical miles of interest in South-East Asia. With the country’s claim to the Spratly Islands, its Exclusive Economic Zone (EEZ) was increased by another 360,850 square nautical miles. As such, the Philippines must ensure that marine and coastal resources are properly managed and that its waters are protected against threats of pollution coming from foreign and domestic vessels. The current world trade and environmental concerns also necessitate that the Philippines must be able to maximise its rights to its EEZ.

Philippine sovereignty extends to the airspace above its land, territorial and archipelagic waters. This is the foundation of the rights of the Philippines as an archipelagic state and has a significant impact on the freedom of operation of other states’ surface vessels or aircraft. Unfortunately, the Philippines at the moment does not have the complete capability to patrol this vast sea area and implement domestic and international laws, because of obsolescent naval vessels and a lack of long range patrol aircraft (LRPA).

The American withdrawal from the Philippines in 1992 created a power vacuum in the South-East Asian region and paved the way for the emergence of a new conflict, the Spratly Islands dispute in the South China Sea. This, too, adds to the security concerns of the Philippines since Mischief Reef, which is occupied by the Chinese, is just 150 nautical miles west of Palawan and is well within the Philippines’ EEZ.

The security gap has been recognised by the Government, which has pinned its hopes on the Armed Forces of the Philippines (AFP) Modernization Act, otherwise known as Republic Act (RA) 7898, which was approved in February 1995. It declares the policy of the State to modernise the AFP to a level where it can effectively and fully perform the constitutional mandate to uphold the sovereignty and preserve the patrimony of the Republic of the Philippines. The said Act requires that the Philippine Air Force, being the country’s first line of external defence, should acquire long-range maritime patrol and reconnaissance aircraft as part of its Capability, Materiel and Technology Development component.

In order to comply with the requirements of RA 7898, the Philippine Air Force (PAF) planned for the acquisition of six LRPA. These aircraft should be capable of maritime patrol, intelligence gathering and search and rescue missions. Unfortunately, the economic crisis that plagued the Association of South-East Asian Nations (ASEAN) countries in 1997, and the financial constraints of the Philippines have significantly delayed acquisition of the much-needed aircraft for the PAF.

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1 Republic of the Philippines, AFP Modernization Act, Declaration of Policy, Section 2, 21 February 1995.
Nonetheless, the PAF drafted the Circular of Requirements for its would-be LRPA. Studies have also been carried out on the command and control of Philippine maritime air surveillance,\(^3\) and on the tactical employment and possible PAF organisational revisions, to determine the unit that will mainly be responsible for the operation of the aircraft.\(^4\)

However, the procedures on how the aircrew of the LRPA should react in case they come across unexpected circumstances in the course of their patrols—most especially when flying over the Philippines' EEZ or when over the Spratly Islands—have not yet been defined. Such circumstances could range from intrusions into the Philippines' area of responsibility through to situations that will endanger not only the LRPA but its aircrew as well. Hence it is necessary that Rules of Engagement (ROE) for the PAF LRPA be drafted.

**Aims and Purpose of the Study**

This paper proposes the ROE to be observed by PAF personnel when they encounter hostile acts and other activities that undermine Philippine sovereignty. With the appropriate set of ROE, the aircrew of a LRPA will be able to act in accordance with international laws and prevent undue escalation of any military confrontation. The ROE will also help standardise actions of all aircrew involved in maritime patrol through peacetime conditions or defensive contingencies that include responding to threats from surface vessels or land-based weapons.

The first chapter of this paper defines the total area of interest of the Philippines. This includes the country's EEZ and its claims to the Spratly Islands. The second chapter presents the threats to Philippine security brought about by its deficiency in its capability to patrol the country's territory. This leads to the third chapter, wherein the roles of the Armed Forces of the Philippines and the PAF in maintaining national security, which include the would-be missions of the PAF LRPA, are discussed. The fourth chapter is dedicated to the concepts of ROE, self-defence and chain of command. It is recognised that each threat scenario requires a particular set of ROE; thus the fifth chapter presents the legal basis that can always be referred to in drafting the ROE. This chapter will discuss the Laws of Armed Conflict, the United Nations Convention on the Law of the Sea, and the 1944 Chicago Convention on International Civil Aviation. The final chapter will present the recommended ROE for the PAF LRPA.

It is noted that the Circular of Requirements for the would-be PAF LRPA included the option of carrying weapons. This does not necessarily mean that the aircraft needs specific ROE because they are conducting an armed patrol. LRPA, even when unarmed, may be conducting missions over areas where considerable threats may be encountered. The mere act of shadowing or tracking a foreign vessel within the Philippine area of responsibility may already be considered as provocative by the intruding vessel and may prompt it to use its weapons against the PAF LRPA. The

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ROE must be able to tell the aircrew the procedures to be observed so as to avoid such compromising situations.

**METHODOLOGY**

This study was based on literature and readings on international laws, ROE and Australian Defence Force Publications that were accessed from the Australian Defence Force Warfare Centre, the Australian Defence Force Academy Library, and the unclassified elements of the Australian Defence Force computer network.

The author also interviewed the former Director of Operations and International Law of the Defence Legal Service, the former Director of the Air Power Development Centre, the current Deputy Director for Operations Law of the Strategic Command Division, the current Deputy Director for Strategic Assessment of the Air Power Development Centre, an Instructor in Maritime Patrol Operations from the Australian Defence Force Warfare Centre, legal officers of the Royal Australian Air Force from No 81 Wing in RAAF Base Williamtown and No 92 Wing in RAAF Base Edinburgh, and a navigator of the P3C Orion aircraft from No 10 Squadron.

The author sought the advice of a Research Fellow from the Air Power Development Centre, who is a Legal Officer, in writing Chapter Five, which deals with international law.

**SCOPE AND LIMITATIONS OF THE STUDY**

This paper does not prescribe all the ROE for a LRPA, as the aircraft may come across a wide range of circumstances that require different ROE. The ROE for more critical situations concerning Philippine security would require a higher level of authority of the AFP and the national Government.

The Philippine Constitution provides that ‘the Philippines renounces war as an instrument of national policy'. Taking this provision as a national policy, it could mean that the PAF LRPA would not be carrying any weapons in the performance of its missions. In this regard, the ROE that will be recommended by this paper will only be for scenarios where the LRPA will be conducting an unarmed patrol. Nevertheless, this paper includes chapters on the factors that influence the ROE, the right of self-defence, international laws and how ROE are drafted. Should there be a need to draft another set of ROE, these chapters would provide a useful reference.

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CHAPTER ONE

AREA OF RESPONSIBILITY

THE PHILIPPINE TERRITORY

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty of jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.¹

*The 1987 Philippine Constitution*

An archipelagic state and a maritime nation in South-East Asia, the Philippines is composed of more than 7100 islands, with more water than land jurisdiction (the ratio of the country’s land area relative to maritime space is about 1:8).² It is located above the equator from 4°30’N to 21°20’N and from 116°55’E to 126°36’E. The country has 300,000 square kilometres (115,830 square miles) of land area, with a coastline of 17,460 kilometres. It stretches 1854 kilometres from north to south, and spans 1107 kilometres at its widest point. The northernmost island is just 241 kilometres south of Taiwan, while the southernmost island is only 48 kilometres east of Malaysian Borneo. The Chinese coast is a mere 1000 kilometres to the west.³

Historical records show that the country’s total area was defined in the Treaty of Paris when Spain ceded the Philippines to the United States in 1898. The Treaty of Washington (1900), also between the United States and Spain, then established the international limits of the Philippine archipelago. The 1930 Convention between the United States and Great Britain established the boundary between the Philippine Archipelago and the State of North Borneo.

In 1961, Republic Act No. 3046, which was amended by Republic Act No. 5446, defined the baselines and territorial seas of the Philippines, which is drawn on the outermost islands and the drying reefs, including internal and territorial waters.⁴

⁴ ibid.
Presidential Proclamation No. 370 (1968) declared as subject to the jurisdiction and control of the Republic of the Philippines all mineral and other natural resources in the continental shelf of the Philippines.\(^5\)

On 11 June 1978, Presidential Decree No. 1596 declared certain areas part of the Philippine territory and provided for their government and administration. This decree laid the Philippine claim to the Kalayaan Island Group—a part of the Spratly Islands. Presidential Decree No. 1599 reinforced this claim by defining the EEZ of the Philippines.

Except for the Treaty of Paris, all aforementioned definitions of the Philippine territory do not run counter to the provisions of the Law of the Sea Convention.

**EFFECT OF THE LAW OF THE SEA CONVENTION ON PHILIPPINE TERRITORY**

The Law of the Sea Convention (LOSC), which was ratified by the Philippines on 8 May 1984, is one of the most significant instruments in international law that governs all issues relevant to the administration and activities of the sea. It further establishes a comprehensive framework for the regulation of all ocean space.\(^6\) This convention was signed at Montego Bay, Jamaica, on 10 December 1982 and entered into force on 16 November 1994. The Philippines is among the State Parties that signed this convention and has consented to be bound by its regulations.

Foremost among the provisions of the LOSC are the limits of territorial sea, which allows every coastal state to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from its baseline.\(^7\) Normal baselines are the low water line along the coast as marked on large-scale maps officially recognised by the coastal state.\(^8\)

An archipelagic baseline, on the other hand, is a straight baseline joining the outermost points of the outermost islands and drying reefs of the archipelago, provided that within such a baseline is a main island, and provided that the ratio of water to land area is between 1:1 and 9:1.\(^9\) The Philippines, having a ratio of eight water area to one land area (8:1) qualifies as an archipelagic state under the provisions of the LOSC. Thus a baseline can be drawn from Balabac Island (south-western part of Palawan) to Tawitawi Island (south-western tip of the Sulu archipelago), making the Sulu Sea part of the archipelagic waters of the Philippines and enabling the country to exercise full sovereignty from the airspace above, to the seabed, subsoil and all resources contained in the said body of water (see Figure 1).\(^10\) A PAF LRPA conducting maritime surveillance and patrols along the Philippine–Malaysia border may encounter aircraft or vessels from the Malaysian Armed Forces that are also

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\(^8\) ibid., Article 5.

\(^9\) ibid., Article 47, paragraph 1.

\(^10\) ibid., Article 49, paragraph 2.
conducting their patrols. An appropriate set of ROE must be able to tell the aircrew of a PAF aircraft what they must observe to prevent any undue military confrontation.

![Map of the Philippines](image)

**Figure 1** — Map of the Philippines. The map shows the international boundary between the Philippines and Malaysia. The provision of LOSC on archipelagic states made Sulu Sea part of the archipelagic waters of the Philippines.

Besides territorial sea and archipelagic waters, the LOSC provides for the establishment of a contiguous zone, which extends up to 24 nautical miles from the coastal state’s baselines or 12 nautical miles beyond the breadth of the territorial sea.\(^{11}\)

Although the LOSC allows an archipelagic state like the Philippines to exercise control in these areas to prevent illegal acts like smuggling or dumping of waste within Philippine territory or territorial sea, an unnecessary or overwhelming use of force to implement domestic laws is not justified. Thus the ROE should be able to tell the aircrew the procedures to be followed when tasked to patrol against these illegal acts.

The LOSC also defines the EEZ where an archipelagic state like the Philippines enjoys sovereign rights for the purpose of using and managing marine and other natural resources of the waters adjacent to the seabed, the ocean floor and its subsoil.\(^{12}\) The LOSC does not, however, restrict vessels and aircraft of other countries from navigating over these waters. Thus, a PAF LRPA flying over these areas may

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\(^{11}\) ibid., Article 33, paragraph 1.

\(^{12}\) ibid., Article 56.
encounter agents from other states that are committing acts that are not consistent with Philippine laws regarding the management of resources in the country’s EEZ. Meanwhile, Article 76 of the LOSC provides that the outer limit of the continental shelf of the coastal state may extend up to 350 nautical miles from the baseline from which the territorial sea is measured.\(^\text{13}\) This provision reinforces the Philippine claim to eight of the islands in the Spratlys since these islands are approximately 280 nautical miles west of Palawan. But there are five other claimants to the Spratlys and four of these five countries have each occupied their claimed islands. The ROE must be able to aide the aircrew of a PAF LRPA on patrol over the Philippine EEZ or over the country’s claimed territory in the South China Sea, in preventing undue military confrontation with agents of other states operating in the same area.

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\(^\text{13}\) ibid., Article 76, paragraph 6.

\(^\text{14}\) Figure 2 contributed by Chantal Legault, Canadian Air Force.
CHAPTER TWO

CURRENT THREATS TO THE SECURITY OF THE PHILIPPINES

The Law of the Sea Convention (LOSC) created a number of guidelines concerning the status of islands, the continental shelf, enclosed seas, and territorial limits. This law allows a coastal state to explore, exploit and manage the natural resources of the body of water adjacent to its territorial sea. However, this has also created numerous conflicting interests, since the 200 nautical mile limit set by the convention resulted in overlapping EEZs in the South China Sea.

EMERGING TENSION IN THE SOUTH CHINA SEA

The South China Sea, a semi-enclosed large body of water with China at its north and the ASEAN countries at its eastern, southern and western ends is a venue where overlapping sovereignty claims generate territorial disputes and conflicting economic interests amongst individual states. Oil and natural gas reserves in the region are estimated to be around 17.7 billion tonnes, making it the fourth largest reserve bed in the world, even greater than Kuwait's oil reserve, which amounts to 13 billion tonnes. It is no wonder then that coastal states around the South China Sea would want to exert their rights on their respective EEZs. However, the establishment of an EEZ not only affects the right to exploit natural resources, but also has a significant impact on the territorial integrity of coastal states such as Vietnam, Malaysia and the Philippines.

Article 121 of the LOSC states that islands that cannot sustain human habitation or economic life of their own should have no EEZ or continental shelf. Conversely, any state that can establish a life-sustaining settlement on any island in the South China Sea may define an EEZ for that island. This will exacerbate territorial disputes, most especially if a country like China declares an EEZ from an island with an established garrison that is able to sustain life and is within the EEZ of the Philippines. Problems like these have prompted members of the ASEAN to be especially concerned because the US withdrawal of military troops from the region and the Soviet Union's disintegration have left the region without a counterbalance to China's overwhelming regional military capability. Although China's present military hardware is regarded as outdated when compared to the US, its military might in the region is still superior, both quantitatively and qualitatively, compared to the ASEAN countries.

It must be noted that the security of the South China Sea affects not only the ASEAN but also countries with advanced economies such as Korea, Japan and the United

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2 The United Nations, Law of the Sea Convention, Article 121.
States. This is due to the fact that the South China Sea serves as a major sea lane for oil tankers coming from the Middle East to North-East Asia and the Pacific. It is one of the world's busiest international sea lanes, through which more than half of the world's annual merchant fleet tonnage passes every year, coming from the straits of Malacca, Sunda and Lombok. This traffic is three times greater than that of the Suez Canal and well over five times more than the Panama Canal. The existence of unresolved territorial dispute over islands and reefs located along major sea lanes such as the Spratlys has been, and will continue to be, a destabilising factor in the South-East Asian region and a major security concern of the Philippines. This security concern is one of the major reasons why the Philippine Air Force has to develop ROE for its LRPA.

Figure 3 – Major Oil Trade Flow. The South China Sea serves as the maritime superhighway in the world economy. The chart indicates the major crude oil trade flow passing the Strait of Malacca and South China Sea from the Indian Ocean to North-Eastern Asia.

MILITARY CAPABILITIES INFLUENCING THE CONDITIONS IN THE SOUTH CHINA SEA

China has consistently made claims over the atolls and islands of the South China Sea. In February 1992, China passed the ‘Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone’, claiming 80 per cent of the South China Sea. This law specifically authorised the use of force in defending and enforcing China’s claim over all the island territories in the South China Sea. Although China says that it based its claims on accounts of historical presence in the region—dating as far back as the Han dynasty of the 2nd Century BC, it could be construed that the American withdrawal from the Philippines in 1992 paved the way for such a declaration.

The economic crisis that hit the South-East Asian region in 1997 forced ASEAN countries to cut back on their military expenditures, leaving China as the only country able to sustain a strong military presence amongst the states laying claim to the Spratly Islands. In the case of the Philippines, the Modernization Program of the Armed Forces of the Philippines has been held in abeyance in favour of more pressing social concerns of the Government, such as unemployment, housing, health and education. This has prevented the Philippines from acquiring advanced military capabilities that could be used to counter Chinese military strength. As a consequence, no ROE have been developed to address possible confrontation within the Philippine area of responsibility.

At the moment, the Armed Forces of the Philippines has a very limited capability to patrol, detect violations of, and enforce national claims in the disputed territories. As an example, the Philippine Navy—which is primarily tasked to guard the country’s EEZ, including coastal areas with 26.5 million hectares of coral reefs, 32 major fishing areas with 2145 fish species, 215 domestic sea routes, 14,155 domestic vessels, and archipelagic sea lanes—does not have the appropriate vessels to perform its missions. To be able to patrol the whole maritime area, the navy needs 270 vessels but according to 1995 figures, it only has 143 vessels, which means it has only 53 per cent of the capability it requires to provide maritime protection. For offshore patrol boats, the Philippine Navy needs 120 vessels, but there are no ships available at the moment.

The Philippine Air Force does not have a dedicated LRPA to complement the Philippine Navy’s patrol functions. In 1982, the PAF procured four RF-27 maritime

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9 Marsh, The Spratly Islands Dispute.
10 Peter Rixon, Deputy Director for Strategic Assessment, Aerospace Centre, Interview, 14 May 2002.
11 Cossa, Security Implications of Conflict in the South China Sea.
13 ibid., p. 71.
a aircraft to serve as LRPA. These maritime aircraft were assigned to the 220th Heavy Airlift Wing and subsequently placed under the 221st Airlift Squadron. But, due to lack of resources, these aircraft had to augment transport missions and administrative flights to islands within the archipelago. At the same time, information acquired during surveillance and reconnaissance missions was not properly handled since there was no database to store and process data.

An additional but different air asset was procured in the early 1980s and assigned to the 303rd Air Reconnaissance Squadron: a twin-engine TC-690 Aero Commander fitted with aerial wet-film camera. Although this aircraft is still being utilised to conduct various photographic missions, its capabilities are very limited since it does not have the required on-board sensors such as radar, nor does it have the endurance to perform maritime patrol missions.

In 1995, the aforementioned deficiencies in Philippine defence capabilities were major factors in China’s occupation of the Philippine claimed Mischief Reef, which is only some 150 miles from Philippine territory, but over 800 miles away from the Chinese mainland. The Chinese destroyed Philippine military structures on the reef and erected concrete markers.

Despite the ASEAN declaration in 1992 to resolve through peaceful means any dispute that might arise from territorial interests, China resorted to the use of force and pursued its creeping occupation of islands and reefs in the South China Sea. These moves by China virtually render the 1992 joint declaration null and void and might have serious repercussions on the Philippines’ oil explorations off the coast of Palawan.

Meanwhile, the Philippines cannot rely on its Mutual Defence Treaty with the United States to deal with the occupation of Mischief Reef, because the said occupation does not constitute an ‘attack on the metropolitan or on island territories’ but is a dispute over claimed territory between China and the Philippines. The American stand is that it would only be involved in the South China Sea disputes if any claimant country to the Spratly Islands threatened to inhibit freedom of navigation along international sea lines of communication (SLOC) in the region. Moreover, it would be very unlikely for the United States to intervene in territorial disputes during this time, when it is preoccupied with the ‘war against terror’ and has just come from two major political confrontations with China, caused by the accidental US aircraft bombing of the Chinese Embassy in Belgrade (May 1999), and the mid-air collision between a US EP-3 aircraft and a Chinese F-8 fighter aircraft (April 2001).

With the US policy of non-intervention in the South China Sea territorial disputes, China could continue its creeping occupation of uninhabited reefs as long as it does

15 Huerto, Command and Control of Philippine Maritime Air Surveillance, p. 5.  
17 Marsh, The Spratly Islands Dispute.  
19 Cossa, Security Implications of Conflict in the South China Sea.
not impede any sea lane.\footnote{20} Considering that most ASEAN countries are still recovering from the 1997 economic crisis, this act is not a remote possibility. A confrontation with China over territorial disputes may not be a top priority for these countries, leaving the Philippines alone to settle its Mischief Reef concerns with China.

\begin{center}
\includegraphics[width=\textwidth]{mischief_reef_map.png}
\end{center}

\textbf{Figure 4 - Map of Mischief Reef.} The map shows the proximity of Mischief Reef to the Philippines. There are reports that China placed sovereignty markers on Sabina Shoal and First Thomas Shoal, both a mere 60 miles from the Philippine island of Palawan.

In 1999, the Philippines and China reached an understanding to ‘refrain from acts which will increase tension and complicate the situation in the South China Sea’.\footnote{21} Nevertheless, China continued to fortify structures on Mischief Reef, claiming that such structures only served as fishing shelters. The report made by Representative Roiilo Golez in February 1999 revealed that these were observation and communication posts, which are fitted with anti-aircraft guns and missiles with an effective range of 16 kilometres, used to monitor and report all ships and aircraft in the vicinity.\footnote{22} They have a helipad and docking facilities for navy ships, which enable

\begin{footnotesize}
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\end{enumerate}
\end{footnotesize}
landing ships and missile frigates to stay longer in the area. China is also reported to be targeting other reefs and shoals that are close to the Philippines such as Sabina Shoal (60 miles from Palawan), First Thomas Shoal (60 miles from Palawan), Second Thomas Shoal (120 miles from Palawan) and Scarborough Shoal, which is not generally a part of the Spratly Island group but is 200 miles west of the Philippine province of Zambales. These incursions by the Chinese within the Philippine EEZ not only undermine the Philippine territorial integrity, but also have serious repercussions on Philippine food security. With the current military capabilities of the Philippines, it is likely that the most logical means of settling territorial disputes with China would be through diplomatic means. But this does not mean that the Philippines should allow China to take over its surrounding islands. An active surveillance system must be maintained by the AFP so that the Philippines can protect its vital economic interests and preserve the country’s marine resources. Nevertheless, the ROE to be observed in the conduct of surveillance missions should always consider the possible threats posed by Chinese military capabilities.

OTHER PLAYERS IN THE SPRATLY ISLANDS DISPUTE

The other claimant countries to the Spratly Islands are Malaysia, which occupies three islands; Taiwan, which occupies Pratas Island; and Brunei, which does not occupy any island but has defined an EEZ that includes Louisa Reef. The fourth claimant, Vietnam, based its claims on the French occupation of the Spratly and Paracel Islands in the 1930s on behalf of Vietnam, which was then a French colony. Vietnam currently occupies 20 of the Spratly islands. Paracel Island, which now serves as a forward maritime base of China, was seized from Vietnam in 1974.

Four of the six claimants to the Spratly Islands are ASEAN members and are bound to observe the 1992 ASEAN Declaration to use peaceful means in resolving disputes in the South China Sea. Therefore, conflict between ASEAN states is unlikely. Nevertheless, the Philippines maintains a military presence and conducts regular surveillance missions over the Spratlys to uphold the country’s claim to eight of the islands in the area.

23 ibid.
24 ibid.
26 ibid.
OTHER SECURITY CONCERNS

Besides territorial concerns, the Philippines must also guard against illegal fishing, smuggling, piracy and dumping of waste within its waters.

For the first half of the year 2000, the Philippine Coast Guard reported 41 cases of illegal fishing. The Philippine Bureau of Fisheries and Aquatic Resources (BFAR) estimates that the country loses 600,000 metric tonnes of fish per year due to illegal fishing practices. Such acts are not only detrimental to the fishing industry but to the Philippine economy as well, because the industry has been a main source of livelihood for 732,392 individuals and a considerable factor in the country’s gross domestic product.

Smuggling is another act that depletes the Philippine economy. The Philippine Coast Guard confiscated smuggled goods amounting to over US$30 million and reported 29 operations against illegal transport of forest products for the first half of 2000. The agency also reported nine cases of vessels loaded with illegal firearms. Although the

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27 ibid.
31 ibid., p. 4.
32 Philippine Coast Guard Accomplishment Report.
amount of confiscated goods and the number of reported illegal activities are already considerable, there is a great probability that the aforementioned data are only a meagre fraction of the entire illegal operations taking place all over the country.

Meanwhile, there has been a steady increase in piracy in the late 1990s in the Southern Philippines. This is mostly attributed to the separatist guerillas operating in the area. In 1995, 97 incidents of piracy were recorded and claimed the lives of 49 individuals. Stanley Weeks, a senior scientist of the Science Applications International Corporation in the United States, reported that there were 14 acts of piracy committed in the Philippines from 1994–96 within the Hong Kong–Luzon–Hainan Triangle. He suggested that the increase in piracy in the area had broader implications for regional security.

With the foregoing, it is clear that the Philippines must address a number of concerns such as Chinese incursions into the Philippine territory, the Spratly Island claim, problems that relate to protection of its maritime resources and its internal security and economic concerns. These concerns demand that the AFP should conduct regular operations within the EEZ of the Philippines. These operations need robust ROE in order to establish clear rules by which international law can be enforced.  

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35 Peter Rixon, Interview, 14 May 2002.
CHAPTER THREE

THE ROLE OF THE ARMED FORCES OF THE PHILIPPINES AND THE PHILIPPINE AIR FORCE IN NATIONAL SECURITY

The Executive Branch of the Philippine Government is divided into various departments whose functions are mainly directed to address the issues discussed in Chapter Two. These agencies include the Department of Environment and Natural Resources; the Bureau of Fisheries and Aquatic Resources under the Department of Agriculture; the Bureau of Customs; the Bureau of Immigration and Deportation; the Department of Interior and Local Government, which is in charge of the Philippine National Police; the Philippine Coast Guard, under the Department of Transportation and Communication; and the Department of National Defence, which manages the affairs of the AFP. However, since the Philippine Government has been dealing with insurgencies in most regions of the country, most of these government agencies have not been funded to a desired level to enable them to acquire the equipment required in the performance of their respective functions. As a consequence, the AFP has had to shoulder the responsibility for defence, surveillance and civilian assistance.¹

The AFP is the most involved entity in all the aforementioned government functions by virtue of its constitutional mandate and the extent of its physical and human resources. It is the designated protector of the people and its primary goal is to secure the sovereignty of the state and the integrity of the national territory.² As such, its main function is to safeguard and defend the nation against any threat, be it man-made or the outcome of a process of nature.

THE NATIONAL DEFENCE OBJECTIVE

The functions of the AFP can be deduced from the Philippine National Defence Objectives, which prescribe the military duties of the armed forces and their role in national development. Such duties include supporting the Philippine National Police in maintaining peace and order, protecting the country’s EEZ from intrusion and illegal exploitation, securing the border from smuggling and piracy, preserving the country’s natural resources, assisting in search and rescue operations, and contributing to the stability of ASEAN.³

¹ Peter Rixon, Deputy Director for Strategic Assessment, Aerospace Centre, Interview, 14 May 2002.
² The 1987 Philippine Constitution, Article 2, Section 3.
³ AFP Joint Publication 01-99, Doctrine on AFP Joint Operations, AFP Joint Command and Staff College, 16 August 1999, p. 3.
THE NATIONAL DEFENCE STRATEGY

To adhere to these national objectives, the National Defence Strategy of the Armed Forces of the Philippines prescribes the employment of its resources during times of peace and crisis, and during periods of war. Peacetime efforts are mostly directed towards internal security concerns of the Philippines, while periods of crisis and war may involve conflicts with other states. During peacetime, the AFP is expected to deter any hostile armed provocation and establish an atmosphere that is conducive to national development. This concept involves the conduct of counter insurgency, maritime patrol, relief and rescue missions, and civic military operations. During periods of crisis, the AFP is expected to assist in the immediate resolution of a crisis in coordination with other government agencies such as the Department of Foreign Affairs and Trade (DFAT). The AFP will exercise maximum restraint in the use of force and the Philippine Government will explore diplomatic means to resolve the situation. In times of war, the objective of the AFP is to defeat enemy forces. The archipelagic nature of the Philippines would require concentric zones of defence around the Philippine territory. The outermost zones will be the realms of the Philippine Navy and the Philippine Air Force, with the Philippine Army being utilised as the battle shifts to the Philippine mainland.

THE CURRENT CAPABILITY OF THE AFP

To perform its duties effectively, the AFP requires not only manpower but also reliable military hardware. However, the AFP has been left behind in terms of military capabilities. While most ASEAN countries have acquired modern western military aircraft and surface vessels, the Philippines has to be content with 40-year-old fighter aircraft and warships dating back to World War II. The discussions in Chapter 2 have shown that the scarcity in defence capabilities is very detrimental to Philippine maritime interests and to the security of its territory. Chinese intrusions into Philippine territory have been unstoppable and the Philippines has not been able to readily invoke its Mutual Defence Treaty with the United States to come to its defence. Moreover, of the three countries that occupy the most number of islands in the Spratlys, the Philippines has the weakest military force (See Table 1).
Table 1 – Military Strength of China, Vietnam and the Philippines. The table depicts the military strength of each of the three main actors in the Spratly disputes—China, Vietnam and the Philippines. The asterisk only refers to the number of Main Battle Tanks possessed by the Vietnam and the Philippines.8

<table>
<thead>
<tr>
<th></th>
<th>China</th>
<th>Vietnam</th>
<th>the Philippines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armoured Vehicles/Main Battle Tanks</td>
<td>9200</td>
<td>1260*</td>
<td>0*</td>
</tr>
<tr>
<td>Submarines</td>
<td>70</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Major Naval Vessels</td>
<td>212</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>Combat Aircraft</td>
<td>5600</td>
<td>178</td>
<td>20</td>
</tr>
<tr>
<td>Armed Forces</td>
<td>2,480,000</td>
<td>492,000</td>
<td>108,000</td>
</tr>
</tbody>
</table>

THE AFP MODERNIZATION PROGRAM

The Philippine Government became aware of its defence deficiencies and prepared a modernisation program for the AFP. The Republic Act 7898, otherwise known as the AFP Modernization Act, declares the policy of the State to be ‘to modernize the Armed Forces of the Philippines to a level where it can effectively and fully perform its constitutional mandate to uphold the sovereignty and preserve the patrimony of the Republic of the Philippines’.9 It further entails the employment and development of capabilities so as to address any threat to the Philippines.

For the development of air defence capabilities, the Modernisation Act envisages the PAF acquiring state-of-the-art equipment to enable the air force to improve its capabilities.10 These enhanced capabilities should enable the PAF to detect and intercept any aircraft or surface vessel illegally intruding into the Philippine territory and to conduct more responsive search and rescue missions during civilian relief operations. The AFP, through the PAF, should effectively be able to assist civilian agencies in the preservation of all living and non-living marine, submarine, mineral, forest and other natural resources located within its territory and its EEZ.11 Further, the PAF should be able to improve its capacity to assist the Government in enforcing domestic and foreign policies, as well as international covenants such as those against hijacking of aircraft and sea craft, and the transport of toxic and other ecologically harmful substances through the Philippine territory.12 However, the AFP Modernization Program has barely taken off owing to financial constraints of the Philippines. Nevertheless, the PAF submitted its proposed modernisation program, which includes the acquisition of multi-role fighters and LRPA. It must be noted that these new weapons must be provided with an appropriate set of ROE in order to undertake missions in support of military operations in the Philippine EEZ.

9 Republic of the Philippines, AFP Modernization Act (RA 7898), Section 2, 1995.
10 ibid., Section 5-b.
11 ibid., Section 3-b.
12 ibid., Section 3-d.
THE ROLE OF THE PHILIPPINE AIR FORCE IN NATIONAL SECURITY

The mission of the PAF is to conduct sustained air operations to support the AFP. It is primarily responsible for the defence of Philippine airspace. It conducts close air support missions to assist the country's Internal Security Operations, provides airlifts to support various AFP units, performs search and rescue during times of natural calamities and disaster, and conducts aerial reconnaissance and border patrols.

It is recognised that the promotion and enhancement of maritime security should be given a high priority. To this end, territorial rights should be well protected against intrusion and unauthorised exploitation. Thus the PAF proposed the acquisition of six LRPA as part of the Capability, Materiel and Technology Development component of the AFP Modernization Program. These aircraft would be the mainstay of all patrol efforts in the country's EEZ. The sensors on board the aircraft should enable the location, classification, identification and documentation of any surface target within the assigned search area. Should interdiction be required, the LRPA should have the capability to direct other aircraft from established PAF air bases in the Philippines.

MISSIONS FOR LONG RANGE PATROL AIRCRAFT OF THE PHILIPPINE AIR FORCE

The envisaged LRPA for the PAF must be able to assume multiple roles so as to maximise their utility. The aircraft's primary mission would be maritime patrol. In the performance of this role, the aircraft would conduct sea and land border surveillance and would be tasked to support the detection and apprehension of smugglers, poachers, illegal migrants and other people committing illegal acts within Philippine territory. The aircraft would also be utilised for resource protection such as pollution control. However, there is a possibility that the persons committing illegal acts within the Philippine area of responsibility could be nationals of other states and non-military. The ROE must be able to prescribe procedures on how these individuals could be dealt with without creating any conflict with other states while enforcing domestic laws of the Philippines.

Complementing its maritime patrol functions, the LRPA would also have to conduct intelligence data gathering in the form of visual images and radar signatures, and should be capable of detecting, identifying, and recording information from designated targets to update intelligence databases and target profiles. To perform these missions effectively, the LRPA should have a search radar that can operate in either synthetic aperture (SAR) mode for mapping and reconnaissance, or inverse synthetic aperture (ISAR) mode for long-range discrimination of radar targets. Electronic support measures (ESM) should be available for signal gathering and electronic intelligence, and must be interfaced with the aircraft's on-board countermeasure system. It must be noted, however, that using these active sensors to track a warship may be interpreted as a provocative or even a hostile act and prompt the vessel to use its weapons on the LRPA. Thus, the ROE must be able to prescribe when these sensors may be used to avoid undue military confrontation.

13 Philippine Air Force, Circular of Requirements for PAF Long Range Patrol Aircraft, p. 3.
14 ibid., p. 7.
The AFP has a huge responsibility in protecting the Philippine territory. But with insufficient military resources, Philippine sovereignty over its established and claimed territories may always be threatened by acts of encroachment of other states. There must be a means that would enable the Philippines to safeguard its territory without going to war against more powerful states that have a common interest in the South China Sea. This will be addressed by the acquisition of a LRPA because it will provide an effective means of monitoring activities in the Philippine EEZ. It is recognised, however, that a LRPA would operate in an environment where the probability of encountering agents from other states is high. Thus there is a need to define the procedures that will guide the aircrew of the LRPA, most especially when threatening situations are encountered in the conduct of their patrols. These procedures are called ROE.
Rules of Engagement for Long Range Patrol Aircraft of the Philippine Air Force
CHAPTER FOUR

RULES OF ENGAGEMENT

In the course of its patrols, most especially when flying over the Philippine EEZ, the LRPA may come across circumstances or actions by persons that undermine Philippine security or are illegal within the country’s territory. To enable the aircrew to react within the bounds of the law and promote the interests of the Philippines, it is imperative for these personnel to be provided with guidance on how to deal with violations committed within Philippine territory. This guidance is termed Rules of Engagement (ROE).

ROE are instructions that define the degree and manner wherein force may be applied and are issued by competent authorities to operational and tactical level commanders. They delineate circumstances and limitations for the use of armed force in the realisation of military objectives and national policy.¹

ROE prescribe that the actions of a commander or a combatant must be in accordance with international and domestic laws, military operations, national policy and diplomacy. As such, ROE must be able to provide standing guidance in the use of force during peacetime, to control application of force during times of conflict, and to facilitate the return to peacetime conditions.

However, it must be emphasised that ROE are not substitutes for strategy and tactics and do not inhibit or replace the command function.² They also do not impose restrictions on safety considerations and on the inherent right of individual or collective self-defence. Hence, the right of self-defence can readily be invoked by any combatant and need not be stated under ROE as long as the use of force is an immediate response and is just enough to repel the attack or prevent the enemy from further committing hostile acts.³ Nevertheless, it is equally important that the chain of command for the promulgation of ROE be properly defined, in order to facilitate immediate relay and execution of all command instructions.

FACTORS THAT INFLUENCE THE RULES OF ENGAGEMENT

Domestic and International Laws

Domestic and international laws underpin all the factors that need to be considered in drafting ROE because they serve as the very foundation of a state’s national policy. These laws also govern diplomatic relations between states and further prescribe the limitations of a state’s action specifically with regard to its military operations.

² ibid., paragraph 102.
³ Squadron Leader Chris Warsito, Maritime Instructor, Australian Defence Force Warfare Centre, Interview, 4 April 2002.
Domestic law refers to all internal laws that govern the behaviour of persons within a nation, while international law is concerned with the principles and rules of conduct that nations feel themselves bound to observe in their relationships with each other.⁴

The five generally recognised sources of international law are international customs that have become accepted as laws; treaties and international conventions; general principles of laws recognised by civilised nations; judicial decisions; and influences of highly qualified experts.⁵ The most important of these sources are customary international laws and treaties.

Customary international laws represent general and consistent practice among most nations and are considered as binding laws. A custom becomes customary international law when the international community accepts a practice that has been observed for a certain period of time.⁶ Examples of customary laws are the medieval rules of chivalry and the principle of war that ‘the object of warfare is to destroy or weaken the enemy, and not to eliminate an entire nation’.⁷ Treaties on the other hand, are formal international agreements or commitments entered into by two or more independent nations. Examples of treaties are the Geneva Conventions, which are actually derived from customary laws of warfare.

It is important that states adhere to the provisions of international law because non-compliance with these laws may lead to an armed conflict if two nations cannot resolve their differences within the provisions of international law and diplomacy.⁸

The body of international law that governs the conduct of warfare is known as the Law of Armed Conflict (LOAC). It deals with general principles to be observed by belligerents during times of war and with the protection of non-combatants. This will be further discussed in the next chapter, together with the laws of the sea and the air.

Military Operations

The capability to conduct a successful military operation, both in times of peace and during periods of hostility, would have to be considered when drafting ROE. A state with a limited military capability is most unlikely to take an aggressive stance against another more powerful state. This does not mean, however, that all ROE employed by a state with limited military capabilities will always have the intent of reducing tension. There must be ROE for operational and tactical levels where military actions are not directed against foreign entities but towards local insurgents. This situation calls for the armed forces of a state to perform police functions to protect its citizens from any danger that may be created by rebel forces. As a result, a Philippine LRPA may have to be provided with different sets of ROE, depending on its area of operation. ROE over the Spratly Islands would be different from ROE over the Philippine mainland. ROE must be carefully drafted so as to avoid conflict escalation over the South China Sea and prevent the Philippines from being dragged into a costly

⁵ ibid., paragraph 107.
⁶ ibid., paragraph 109.
⁸ ADFP 37, paragraph 111.
war with another state. Consequently, ROE for a LRPA would need to vary according to the situation.

National Policy

The intent of governments can be one of the most restricting factors in the formulation of ROE because all instructions pertaining to the attainment of military objectives must be within the framework of national policy. Such policies include options such as reduction of military tension, maintenance of the status quo, and escalation of tension. The first option, reduction of military tension, means that the government would refrain from any act that may lead to any military conflict. Meanwhile, maintenance of the status quo or a military balance means having the same number of military activities as those being exhibited by an enemy or a potential enemy. The last option, escalation of tension, means that the government is prepared to take the risk of escalating the conflict and engage in war if necessary.

It is essential that ROE provide the means to interpret the political intentions of the government. The options that a government will take may be motivated by various factors such as the promotion of national interests, the capability of winning a war, the clarity of political and military objectives, the reactions of the international community and public support. Other factors may include internal political pressures, troop casualties and collateral damage that may be incurred in the conflict. A government may also resort to the use of force if acting under the authority of the United Nations Security Council, or when invoking the right of self-defence as provided for by Article 51 of the United Nations Charter. In the 1990s, humanitarian intervention, a controversial and still debatable justification for the use of force, emerged. Marc Weller defines humanitarian intervention as:

forcible action by one state, a group of states or an inter-governmental organisation in the territory of another state without the consent of the latter, undertaken on humanitarian grounds in order to restore constitutional government.

This form of intervention was brought about by the acts of genocide and crimes against humanity in countries like Iraq, Croatia, Bosnia-Hercegovina and Kosovo.

In the case of the Philippines, the Constitution states that the Philippines renounces war as an instrument of national policy. This means that the Philippines considers war as the last alternative in settling domestic and international disputes. Associating the Philippine policy with the aforementioned options, a Philippine LRPA conducting

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9 ADFP 3, paragraph 103.
10 Group Captain Allan Crowe, former Director of the Aerospace Centre, Interview, February 2002.
11 ADFP 3, paragraph 105.
15 Ibid., p. 5.
16 *The 1987 Philippine Constitution*, Section 2, Article 2.
its patrol over the South China Sea would most likely be provided with ROE that are aimed at reducing military tension.

**Diplomacy**

Diplomacy can be easily linked with national policy because it serves as an avenue for resolution of any conflict between states. The United Nations Charter states:

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.\(^\text{17}\)

The Charter adds that parties to any dispute shall first 'seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice.'\(^\text{18}\) The United Nations Security Council may investigate any dispute and may recommend or decide what measures should be taken to maintain or restore international peace and security.\(^\text{19}\) Such measures may include complete or partial interruption of economic relations, severance of diplomatic relations, or even a call on the members of the UN for military action. Thus, conflicting states should always consider the impact of their actions on the international community, preferring to avoid escalation of any conflict than to suffer international sanctions or to engage in a costly war. ROE must be designed to align with diplomatic intentions to ensure that a carefully measured but flexible national response is available in any contingency.\(^\text{20}\)

![Venn Diagrams](image)

**Figure 6 – Rules of Engagement Venn Diagrams.** The Venn Diagram on the left shows the four factors that influence the Rules of Engagement (ROE).\(^\text{21}\) Another Venn Diagram indicates three factors since diplomacy and policy are merged under political factors.\(^\text{22}\) ROE, at the centre of both diagrams, depict how restricted military actions will be after various factors are considered.

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\(^{18}\) ibid., Article 33.

\(^{19}\) ibid., Articles 34 & 39.

\(^{20}\) ADFF 3, paragraph 110.

\(^{21}\) ADFF 3, paragraph 109.

\(^{22}\) Swinnerton, Rules of Engagement in Maritime Operations, p. 6.
THE RIGHT OF SELF-DEFENCE

The right of self-defence does not need to be specified in ROE because the use of force in this case is independent of political control. This is manifested in Article 51 of the United Nations Charter, which states that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Personnel who use force to defend themselves must be very sure that their adversary has committed a hostile act or has ‘embarked on an irreversible path to an attack’.

The right of self-defence has three categories, namely personal, unit and national self-defence, which also include collective self-defence. Personal self-defence basically refers to the right of individuals to defend themselves from an attack. Unit self-defence is the right of defence force elements to defend themselves spontaneously, while national self-defence is the right of a defence force to use armed force to protect its country’s territory, citizens and property from armed attacks or threats or anticipated armed attack. As provided for by Article 51 of the United Nations Charter, any country may use force to prevent invasion, attack, bombardment, or other acts of aggression. While both unit and national self-defence refer to the United Nations Charter for the authority to use force, both concepts are not the same in terms of duration and intensity of operation. Collective self-defence is a subset of national self-defence and refers to defending other designated forces, personnel and their property from a hostile act or demonstration of a hostile intent. Collective self-defence is applied when states are engaged in a collective effort to defend another state from any act of aggression.

The Australian Defence Force (ADF) recognises that the ROE cannot abate the fundamental right of self-defence from an armed attack or a clearly anticipated armed attack. Australian Defence Force Publication 3 (ADFP 3) defines ‘armed attack’ as an act committed when a hostile force has discharged its weapon against any ADF element, while an ‘anticipated armed attack’ is when there is compelling evidence that a hostile force is committed to launching an immediate attack. In both cases, the ADF permits the use of force to counter the source of the attack. However, it must be established that there is an overwhelming need to use force and that the armed response is regulated in terms of time, space and intensity. This indicates that the use of force must be an immediate and proportionate response to an attack. The right

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23 ibid., p. 8.
24 The United Nations Charter, Article 51, Chapter VIII.
26 Squadron Leader Duncan Blake, Legal Officer, No 81 Wing, Interview, 4 April 2002.
27 ADFP 3, paragraph 207.
28 The United Nations Charter, Article 51.
30 ADFP 3.
31 ibid.
32 ibid.
of self-defence may not be justified if the military response is carried out the following day or a week after an attack.\(^{33}\)

The United States' Standing ROE define national self-defence as:

> the act of defending the United States, US forces, and in certain circumstances, US citizens and their property, US commercial assets, and other designated non-US forces, foreign nationals and their property, from a hostile act or a hostile intent.\(^{34}\)

However, once a force or a terrorist unit is declared hostile by an appropriate authority exercising the right and obligation of national self-defence, individual US units do not need to observe a hostile act or determine hostile intent before engaging that force.\(^{35}\) Brad Hayes, the author of *Naval Rules of Engagement*, used the phrase 'defensive reprisal' in referring to 'acts of self-defence' by the United States that are retaliatory in nature.\(^{36}\) These acts include the bombing of Muammar Gaddafi's palace in 1986 as an American response to terrorism, and the current offensive against the Al Qaeda network in Afghanistan.\(^{37}\) Although these acts might not bring conflicts to an end, they are supposed to deter more substantial military engagements. It should be noted that both the ADF and US Armed Forces adhere to the concept of pre-emptive self-defence. But this principle of pre-emptive self-defence is very unlikely to be pursued by countries with limited military capabilities. For example, the act of pre-emptive self-defence may not be practicable for the Philippines due to factors like national policy and military capability. Thus, however, should not deny elements of the AFP, most especially crews of LRPA conducting patrols over the country's EEZ, from invoking self-defence or pre-emptive self-defence when their survival is under great risk from an overwhelmingly obvious threat. But to do so, the aircrew of the LRPA, most especially the pilot-in-command, must be able to observe the thresholds of conflict and differentiate hostile acts from hostile intentions.

For the purpose of this paper, a hostile act is committed when a source of threat has actually used 'armed force' against the PAF LRPA.\(^{38}\) There will not be any difficulty justifying the use of weapons for self-defence in such a scenario (should the aircraft be armed in the conduct of its patrols). A hostile intent on the other hand is the 'demonstration of a potential enemy to commit an immediate hostile act'.

Nevertheless, it must be emphasised that the ability to distinguish a hostile act from a hostile intent is not the only means of determining if the mission commander or the pilot-in-command of an armed LRPA should resort to pre-emptive self-defence. The pilot-in-command, who acts on behalf of all the crew, must analyse the situation carefully and consider critical and specific details before taking any offensive action.

Both the pilot-in-command and the copilot must have a thorough knowledge of the intelligence reports on the area of patrol. These include previous reports of hostile

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\(^{34}\) FAS Military Network, *Joint Chiefs of Staff Standing Rules of Engagement*.

\(^{35}\) ibid.


\(^{37}\) ibid.

\(^{38}\) ADFP 3, *Glossary*. 

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armed vessels or aircraft within the vicinity of patrol, the nationality or affiliations of
the hostile vessel or aircraft within the search area, presence of combatants and non-
combatants, and the type of activities being conducted by the potential enemy within
the patrol area.

The pilot-in-command must also be aware of previous incidents wherein a threatening
scenario was similarly encountered by another patrol aircraft or vessel of the AFP. The
said incident must have actually led to an armed confrontation or to the loss of a
PAF aircraft or a Philippine Navy vessel. A previous hostile act is a strong indicator
that the enemy might commit the same act again.

The aircrew of the LRPA must also be sure of the capability of the potential enemy to
inflict damage or casualty. There must be a visual confirmation that the source of the
threat is ready to use its weapons. Being locked upon by the fire control radar of the
enemy's vessel or aircraft does not necessarily constitute a threat, if there are no
visible rockets or missiles on board the aforementioned enemy platforms. Bluffing,
harassment and radio silence by a potential enemy are not sufficient reason for pre-
emptive self-defence.

Thus, before resorting to pre-emptive self-defence, it is imperative for the aircrews of
the LRPA to take into account intelligence briefings, history of incidents over the
search area and capability of the potential enemy. It must also be established that the
use of force is the only remaining option to neutralise the source of threat. The pilot-
in-command must be very quick but certain in his decision before using force,
considering the very limited time he is allotted and the magnitude of the repercussions
should force be used unnecessarily. The right of self-defence requires that the force
used is reasonable in intensity, duration, and magnitude, based on all facts known to
counter the hostile act or hostile intent and to ensure the continued safety of the PAF
LRPA.

THE CHAIN OF COMMAND FOR THE RULES OF ENGAGEMENT

One of the key elements for ROE to be effective is the manner in which these
instructions are relayed to an operating unit like the aircrew of a LRPA. This is
because of the limited time element involved in a rapidly developing scenario, should
a LRPA encounter violations being committed within the Philippine territory. The
pilot-in-command of the LRPA, if not provided with appropriate and timely guidance,
could run the risk of endangering the lives of his entire crew or inadvertently
triggering a greater interstate conflict. Thus it is important for people who are
entrusted with the use of force, at all levels, to have a thorough understanding of the
mechanisms of the ROE. It is also vital for the chain of command to be very clear so
that the intent of the Government will always be manifested in the actions of the
aircrew of the LRPA.

39 Squadron Leader Chris Warsito, Interview, 4 April 2002.
40 FAS Military Network, Joint Chiefs of Staff Standing Rules of Engagement.
41 Swinnerton, Rules of Engagement in Maritime Operations, Strategic and Defence Studies Centre,
Australian Chain of Command

In the Australian Defence Force, ROE emanate from the Chief of the Defence Force (CDF) down to the Joint Commanders or Joint Force Commanders. However, approval of ROE is subject to the general control of the Minister for Defence, the National Security Committee of Cabinet, and the Cabinet. 'In effect, the Rules of Engagement translate Government policy direction into specific instructions that can be applied by the ADF in the operational environment.'

In the case of a maritime patrol aircraft operating during peacetime conditions, the normal chain of command for promulgation of ROE starts from the Chief of the Defence Force down to Headquarters Australian Theatre (HQAST). Headquarters Air Command, which is the air component of HQAST, has a legal staff officer to provide guidelines on ROE. The instructions are then relayed to No 92 Wing before reaching the operating squadrons where ROE are briefed prior to every mission. If the maritime patrol aircraft is operating under a joint operation in Northern Australia, instructions may also be relayed from HQAST to Headquarters Northern Command, which functions at the regional operational or tactical levels.

During times of extreme emergency, the CDF, who receives direct instructions from the Prime Minister, may invoke dormant ROE. An example of an extreme emergency is when a maritime patrol aircraft needs clearance to fire a missile against a surface vessel that has committed a hostile act. Under such circumstances, the Component Commander at HQAST may communicate directly to the pilot-in-command of the maritime patrol aircraft. It is emphasised that all commanders are not permitted to exceed the ROE and must seek clarification if the authorised ROE are unclear or inadequate.

American Chain of Command

The American arrangement for the promulgation of their ROE for unit self-defence is made simple by the issuance of the Joint Chiefs of Staff Standing Rules of Engagement (JCSSROE) on 1 October 1994. The American ROE would seem to allow the commander more leeway in the use of force since the rules emphasise the commander’s inherent authority and obligation to use all necessary means available and to take all appropriate actions to defend that commander’s unit and other US forces in the vicinity from hostile act or demonstrated hostile intent.

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42 ADFP 3, paragraph 114.
44 ibid., Chapter 7, paragraph 7.17.
46 ADDP, Foundations of Australian Military Doctrine, Chapter 7.
47 ADFP 3, paragraph 120.
48 Peter Rixon, Interview, 17 April 2002.
49 ADFP 3, paragraph 114.
50 FAS Military Network, Joint Chiefs of Staff Standing Rules of Engagement.
The JCSSROE allow subordinate commanders to modify the standing ROE and provide that under no circumstances will US forces operate with ROE that restrict the right of self-defence.\(^{51}\) Hence, the unit commanders can use all necessary means to defend their units as long as the degree of force used is substantive to decisively counter the hostile intent and ensures the continued safety of US forces.\(^{52}\) However, the requirements of necessity and proportionality should always be the primary considerations of a commander in determining the appropriate response to a particular hostile act or demonstration of a hostile intent.\(^{53}\) The local commanders, when invoking unit self-defence, may expect to receive specific orders from their superiors as circumstances require and should report all hostile acts and evidence of hostile intent.\(^{54}\) They may also request supplemental measures, which are detailed instructions established by senior authorities, whenever such are required.

The JCSSROE also identify the three levels of authority required before the execution of any military action and the delegation of authority for a specific military operation. The highest level of authority would emanate from the National Command Authority. This consists of the President of the United States and the Secretary of Defense or their duly deputised alternates or successors.\(^{55}\) Measures covered by the National Command Authority include the exercise of national defence and the act of determining and declaring certain forces hostile.\(^{56}\) Declaration of a hostile force is very critical because it allows US forces to invoke pre-emptive self-defence. The National Command Authority is also the sole authority for US forces to exercise collective self-defence.

The measures that require Joint Chiefs of Staff (JCS) or Unified Combatant Command approval include declaration of a hostile force and the delegation of authority to exercise national defence. The JCS include the Chairman-JCS, the Vice Chairman-JCS, the respective Chiefs of Staff of the US Army and the US Air Force, the Chief of Naval Operations and the Commandant of the US Marine Corps. The Unified Combatant Commands include Central Command, European Command, Joint Forces Command, Pacific Command, Southern Command, Space Command, Special Operations Command, Strategic Command and Transportation Command. It must be noted that the authority to declare certain forces hostile and the exercise of national defence usually needs approval from the National Command Authority. The JCSSROE, however, allows such authority to be delegated to the Joint Chiefs and the Combatant Commanders under certain conditions. Other acts that need combatant commander or higher authority clearance are pursuit of hostile aircraft across international borders and entry into designated foreign territorial seas for search and rescue operations. The use of all types of weapons to destroy or neutralise enemy force, such as launching missiles across international borders, use of cruise missiles and attack of unidentified submarines, also require higher authority clearance.\(^{57}\)

\(^{51}\) ibid., paragraph 1.
\(^{52}\) ibid., paragraph 2.i.3.
\(^{53}\) ibid., paragraph 2.a.
\(^{54}\) ibid., paragraph 2.c.
\(^{56}\) FAS Military Network, *Joint Chiefs of Staff Standing Rules of Engagement*, paragraph 2.i.1.
\(^{57}\) ibid., paragraph 4.b.
Lastly, the measures that may be delegated to subordinate commanders are air defence rules for aircraft interception, reconnaissance, surveillance, target acquisition, movement of forces near hostile areas, civilian control, Command Control and Information (CCI) Warfare, maritime, air and land operations and the use of force for self-defence.58

The Philippine Chain of Command

The highest authority in the chain of command of the AFP is the President who is also the Commander-in-Chief. From the President, the intent of the Government is relayed to the Chief of Staff through the Secretary of National Defense. Typically, instructions are issued to the major Service Command that is tasked to carry out a relevant mission. So in the case of a mission that is specifically for the air force, instructions are handed down from General Headquarters of the AFP to Headquarters PAF. The Commanding General of the PAF then issues appropriate guidelines to the operating units through the Assistant Chief of Air Staff for Operations or A-3. From the A-3, directives are given to the Tactical Operations Command then to the Tactical Operations Wing where specific types of aircraft are placed under operational control.

In the case of maritime patrol operations, however, instructions from General Headquarters are given to the Area Unified Command, which could be Western or Southern Command, depending on the area of operation. Western Command is normally in charge of maritime patrol missions over the Spratly Islands. From Western Command, instructions are given to the 570th Tactical Composite Wing where PAF air assets are placed on operational control status.

Comparing this structure with the ADF, it would seem that both are parallel in the chain of command. The President of the Philippines, being the main source of authority for any military action, is like the Australian Prime Minister. The Philippines has a Secretary of National Defense, who performs similar roles to the Australian Minister for Defence. The Chief of Staff of the AFP would be equivalent to the Australian Chief of the Defence Force. The functions of the Philippine Deputy Chief of Staff for Operations (J-3) may be equated to those of the Chief of the Australian Strategic Command. The Philippine Area Unified Command directs operational-level planning and conduct of military activities over a specific area of the Philippines. The Composite Tactical Wing of the PAF acts as the Component Command that orchestrates the activities of the PAF in support of the Area Unified Command’s plans and goals.59 In the Australian Defence Force, HQAST assumes operational-level planning and conduct of ADF campaigns.60 Headquarters Air Command is the component of HQAST that provides operational advice regarding air operations to the Commander Australian Theatre. But unlike Australia, the Philippines has no dedicated unit for maritime patrol functions like No 92 Wing. In the ADF, operational instructions from HQAST go to No 92 Wing or to Headquarters Northern Command.

58 ibid., paragraph 4.c.
59 AFP Joint Publication 01-99, Doctrine on AFP Joint Operations, AFP Joint Command and Staff College, 16 August 1999, p. 43.
Figure 7 – PAF and ADF Chain of Command. The chart above shows the comparison between the Chain of Command of the Armed Forces of the Philippines (AFP) and the Australian Defence Force (ADF). During circumstances of extreme emergency, the Component Commander at Headquarters Australian Theatre (HQAST) can communicate directly to the maritime patrol aircraft.

Australian and American chains of command highlight four critical factors in the promulgation of ROE. Firstly, authority is identified for each commander in the chain. The American JCSSROE define the extent of authority and responsibility of each commander in the chain of command, while the ADF enumerates these authorities and responsibilities in its defence force publication relevant to ROE. However, it is emphasised that commanders are not allowed to exceed the acts permitted by ROE. Secondly, ‘dormant’ ROE are available, which are additional instructions issued by higher authorities to allow subordinate commanders the flexibility to counter any hostile act when circumstances are changing too rapidly to observe the normal ROE.\(^{61}\) It must be noted that dormant ROE may be invoked during cases of extreme emergency. Thus, an effective communications network, which is the third critical factor, is essential in the promulgation and relay of instructions to the lower units of the command. It is crucial for the highest authority in the chain of command to have the capability to communicate with the operating units to ensure that the intent of the government is manifested in all military actions, even in rapidly developing situations. The fourth critical factor is the involvement of legal officers, not only during planning, but even in actual conduct of operations. In the ADF, each operating Wing has a legal officer who gives advice on the legal implications of all military operations. The legal officers prescribe the acts that may be permitted by ROE based

\(^{61}\) ADFP 3, paragraph 120.
on international laws. Thus it is also important for the legal basis for ROE to be understood.

It is recommended that these factors be considered by the AFP to allow the aircrew of a LRPA to react immediately and legally in any developing military crisis.
CHAPTER FIVE

LEGAL BASIS FOR THE RULES OF ENGAGEMENT

International law provides the framework for military operations. Thus in the case of a PAF LRPA, Rules of Engagement (ROE) issued for its operations must be based on the provisions of international laws. This is due to the fact that this aircraft will be conducting most of its missions over the Philippine EEZ, where foreign ships and aircraft enjoy freedom of navigation. The situation is made more complex by disputes, such as that over the Spratly Islands, and the archipelagic nature of the Philippines. An unwanted military conflict with other states may ensue if the aircrew of a LRPA are not able to react within the context of the law or are provided with ROE that go beyond what the law permits.

It is envisaged that every threat scenario would require a different set of ROE. Hence, individuals entrusted with the use of force, and those who draft the rules of engagement, must always refer to international laws to determine the acts that are permissible in a military crisis. It is therefore deemed necessary to present provisions of the Law of Armed Conflict and other international laws like the 1982 United Nations Conventions on the Laws of the Sea and the Laws of the Air set by the 1944 Chicago Convention, which may serve as the basis for ROE.

LAW OF ARMED CONFLICT (LOAC)

The LOAC (also referred to as the law of war) seeks not only to regulate the conduct of states during war, but also to govern the behaviour and prescribe the permissible acts of individuals engaged in an armed conflict. It may restrict the conduct of operations and may sometimes even be expressed as ROE. This law also intends to protect both combatants and non-combatants from unnecessary suffering caused by war.

The origins of the modern LOAC can be traced back to 1859 when a Swiss banker named Henry Dunant witnessed the carnage during the Battle of Solferino in northern Italy. Soon after, Dunant wrote a book entitled A Memory of Solferino wherein he suggested the formation of relief societies that can provide care to those wounded in war and the adoption of an international agreement to be applied for the relief of the wounded in the different European countries. This paved the way for the foundation

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2 ADFP 3, paragraph 231.
3 ibid., paragraph 114.
4 Kewly, Humanitarian Law in Armed Conflicts, pp. 3–4.
of the Red Cross on 17 February 1863 and for the first Geneva Convention of 1864 regarding ‘the amelioration of the condition of the wounded in armies in the field’.

The contemporary regimes for LOAC draw from the Hague Conventions and the 1949 Geneva Conventions. The Hague Conventions refer to the set of international laws that regulate the means and methods of warfare and are accepted as customary international laws. The Geneva Conventions on the other hand are fundamentally concerned with the protection of persons not involved or no longer involved in a conflict. However, the Hague laws and the Geneva laws were merged with the introduction of the 1977 Additional Protocols 1 & 2 to the 1949 Geneva Conventions, since these protocols do not only deal with the protection of the victims of war, but also with the means and methods of warfare.

**The Basic Principles of LOAC**

LOAC revolves around four basic principles that must be observed in the conduct of war. These are the principles of military necessity, humanity, proportionality and distinction. These principles prescribe that the methods or means employed in warfare are not unlimited.

*Military necessity* is the legitimate application of force to obtain a military objective. The concept is to apply only the necessary force during a conflict to defeat an enemy as quickly as possible. The US Air Force Pamphlet 110-31 defines military necessity as:

> the principle which justifies measures of regulated force not forbidden by international law that are indispensable for securing the prompt submission of the enemy with the least possible expenditures of economic and human resources.

Although the principle of military necessity may permit the destruction of property if demanded by the necessities of war, there must be a reasonable connection between the destruction of property and overcoming the enemy forces. It is emphasised that the need to accomplish a mission does not justify resorting to actions that are prohibited by the law.

The principle of *humanity* or unnecessary suffering forbids the use of means or methods of warfare that are calculated to cause suffering that is excessive in the achievement of a legitimate military purpose.

The principle of *proportionality* links the principles of military necessity and humanity. It requires the reduction of incidental injuries caused by military operations and that the damage resulting from a military action should be proportionate to the anticipated military advantage. This prescribes that parties to a conflict should refrain

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5 ibid., p. 5.
7 ADFP 37, paragraph 118.
8 ibid., paragraph 120.
9 ADFP 3, paragraph 234.
11 ADFP 37, paragraph 206.
from attacks, even against legitimate military targets, that are likely to cause civilian suffering and damage disproportionate to the expected military gain. This principle can be illustrated in a situation wherein an attack aircraft would be prohibited from dropping a 1000-pound bomb on a dyke just to destroy a machine-gun emplacement of the enemy. Not only would there be an excessive amount of force used against the target, but the destruction of the dyke could cause severe damage to the civilian community being protected by the said structure.

The principle of distinction seeks to ensure that only military objects are attacked. It is important for military planners, or those who are employing the use of force, to distinguish between combatants and non-combatants, and to delineate military from non-military objects. Combatants are members of the armed forces that are engaged in a conflict under a responsible command and participate directly in hostilities. Non-combatants consist of the wounded and the sick, the shipwrecked, medical and religious personnel, and civilians who are not engaged in hostilities and are covered by the protection of the Geneva Conventions. Military objects are ‘objects which by their own nature, location, purpose or use, make an effective contribution to [the enemy’s] military action and whose destruction offers a definite military advantage [to friendly forces]’. Meanwhile, non-military objects include hospitals, ambulances, churches, schools and prison camps, and must not be subject to an attack.

THE GENEVA CONVENTIONS

The four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 1977 do not only underpin international humanitarian law but are also the foundations for LOAC. The Conventions are:

- The Amelioration of the Condition of the Wounded and Sick in the Field (Geneva Convention I, dated 12 August 1949);

- The Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Geneva Convention II, dated 12 August 1949);

- The Treatment of the Prisoners of War (Geneva Convention III, dated 12 August 1949); and


The two additional Protocols deal with the Protection of the Victims of International Conflict (8 June 1977) and the Protection of Victims of Non-International Conflict (8 June 1977).

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14 ibid., Article 8, paragraphs 1–4.
The following section focuses on the common provisions of the Geneva Conventions and the Additional Protocols.

**PROVISIONS COMMON TO THE FOUR GENEVA CONVENTIONS AND THE PROTOCOLS**

**Field of Application and General Principle**

The provisions of the Geneva Conventions and Protocol I should be observed at the onset of any armed conflict between two or more Parties to the Conventions even though a state of war is not recognised by one of them. These provisions shall only cease to apply when all military operations have terminated or when the occupation of the enemy for occupied territories has ended.\(^{16}\) All prisoners of war or individuals taken by the adversary must continue to be protected by the provisions of these Conventions until they have been repatriated to their own country. If any of the conflicting parties has not acceded to the Conventions or has denounced these Conventions, both combatants and non-combatants must still be protected by ‘the principles of international law derived from established customs, from the principles of humanity and from the dictates of public conscience’.\(^{17}\) This provision makes it clear that the principles of LOAC must always be upheld. Adherence to this law will help avoid conflict escalation during time of peace, and protect humanity during times of war until such time that peace is restored.

**International Committee of the Red Cross**

The conflicting states may entrust to an organisation that guarantees impartiality, the performance of humanitarian duties.\(^{18}\) Thus delegates of the International Committee of the Red Cross (ICRC), who must be granted all the necessary facilities to carry out their humanitarian work, are authorised to go to all places where there are protected persons, prisoners of war or civil internees.\(^{19}\) These delegates also enjoy the protection of the Geneva Conventions and its Additional Protocols. However, volunteers of the ICRC or any civilian medical personnel, including military medical and religious personnel, must be recognisable by a distinctive emblem and an identity card certifying their status.\(^{20}\) The internationally recognised emblem of the ICRC is a dark red cross or a red crescent painted against a white background. These signs must be displayed on the flags, installations of medical units and on their means of transport, as well as on armlets, clothes and headgear of medical and religious personnel and must be readily identifiable.\(^{21}\) While it is prohibited to attack any installation or vehicle displaying the symbol of the ICRC or any protecting emblem, it

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\(^{17}\) ibid., common to Convention 1, Article 63; Convention 2, Article 62; Convention 3, Article 142; Convention 4, Article 158; Protocol I, Article 1.

\(^{18}\) ibid., common to Convention 1, Article 10; Convention 2, Article 10; Convention 3, Article 10; Convention 4, Article 11.

\(^{19}\) ibid., common to Convention 3, Article 126; Convention 4, Article 143; Protocol I, Article 81.

\(^{20}\) Protocol I, Article 18, paragraph 3.

is also prohibited to make improper use of these distinctive emblems to mislead the enemy.\textsuperscript{22}

**Protected Persons and Objects**

Protected persons and objects are not to be subjected to any form of attack, reprisal or hostility. An attack is any form of violence whether in offence or defence.\textsuperscript{23} Protected persons include the wounded, the sick and the shipwrecked, medical personnel, civil defence personnel, prisoners of war, chaplains and civilians. The terms 'wounded and the sick' refer to military and civilian persons who are in need of medical assistance, while 'shipwrecked' refers to military or civilian persons in a perilous situation at sea following a misfortune that has befallen them.\textsuperscript{24} A prisoner of war is any member of the armed forces of a party to a conflict who falls under the power of an adverse party.\textsuperscript{25} It is imperative for all protected persons to refrain from acts of hostility to retain their protected status. Protected objects are non-military objects such as cultural property, the natural environment and works and installations containing dangerous forces like dams, dykes or nuclear power plants.\textsuperscript{26}

**Treatment of Protected Persons**

All protected persons, whichever party they belong to and whether they are on land or at sea, must be treated humanely and receive, to the fullest possible extent and with the least possible delay, the medical care and attention required by their condition.\textsuperscript{27}

**Medical Units**

Medical units, whether fixed or mobile and regardless of affiliations, must be respected and protected at all times.\textsuperscript{28} It is, however, specified that the protection to which these medical units are entitled may cease if they are used to commit acts harmful to the enemy, for example, shielding military objects from an attack or if they are directly participating in the conduct of hostilities. Nevertheless, protection may only cease after the medical unit aiding the enemy has been warned and has been given a reasonable time limit to refrain from hostilities but has continued to ignore the warning.\textsuperscript{29}

**Medical Transport**

Medical transportation refers to the conveyance by land, water or air of the wounded, sick and shipwrecked, medical and religious personnel and medical equipment protected by the Conventions and Protocols.\textsuperscript{30} Medical transport by land (ambulance) must be respected and protected in the same way as mobile medical units. Should

\begin{itemize}
\item Protocol I, Article 38, paragraph 1.
\item ibid., Article 49, paragraph 1.
\item ibid., Article 8, paragraph 1–2.
\item ibid., Article 44, paragraph 1.
\item ICRC, *Basic Rules of the Geneva Conventions and their Additional Protocols*, common to Convention 1, Article 46; Convention 2, Article 47; Convention 3, Article 13; Convention 4, Article 33; Protocol I, Article 20, paragraphs 51–56.
\item ibid., common to Convention 1, Article 12; Convention 2, Article 12; Protocol I, Article 10.
\item ibid., common to Convention 1, Article 19; Protocol I, Article 12.
\item ibid., common to Convention 1, Article 21; Protocol I, Article 13.
\item Protocol I, Article 8, paragraph 6.
\end{itemize}
military ambulances fall into enemy hands, the capturing party assumes responsibility for the sick and wounded being transported.\textsuperscript{31}

Medical transport by water is carried out either by hospital ships or by other medical ships and craft.\textsuperscript{32} These ships may not be attacked and may not be captured but may be boarded and inspected by parties to a conflict.\textsuperscript{33} Medical ships and craft are painted white with one or more recognisable dark red crosses (or red crescents) painted on each side of the hull as well as on the ship's horizontal surfaces. A white flag with a red cross (or red crescent) is also flown at the main mast of the ship.\textsuperscript{34}

The same protection applies to medical transport by air (medical aircraft). However, when flying over areas where opposing forces are in contact with each other, protection for medical aircraft can be fully effective only by prior agreement between authorities of the parties to the conflict. Medical aircraft must nevertheless be respected, even in the absence of such agreement, after they have been recognised as such. When flying over enemy territory where no agreement has been established between the conflicting parties, the medical aircraft must make every effort to identify itself. The adverse party on the other hand must make all reasonable efforts to order the medical aircraft to land for inspection and allow the said aircraft time to comply before resorting to an attack if warnings remain unheeded.\textsuperscript{35} The parties to a conflict are absolutely prohibited from using their medical aircraft to render military objectives immune from attack or to gain military advantage.\textsuperscript{36} This means that a medical aircraft must never be used to airlift paratroopers or be used as a surveillance platform.

\section*{Methods and Means of Warfare}

\textbf{Basic Principle of Conflict}

The basic principle of armed conflict is that the right of the parties to the conflict to choose methods or means of warfare is not unlimited. As such, it is prohibited to employ weapons, projectiles and material and methods of warfare that can cause superfluous injury or unnecessary suffering. It is further prohibited to employ methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.\textsuperscript{37} These rules must always be applied in selecting the type of weapon to be used against a legitimate military target. As an example, a maritime aircraft on patrol should not use a Harpoon anti-ship missile against a small wooden gunboat because of the superfluous injury the missile would create.


\textsuperscript{33} ibid., Article 31.

\textsuperscript{34} ibid., Article 43.

\textsuperscript{35} Protocol I, Articles 24–27.

\textsuperscript{36} ibid., Article 28.

\textsuperscript{37} ibid., Article 35, paragraphs 1–3.
**Precautions in Attack**

Those who plan or decide upon an attack must do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection. For example, a pilot of an attack aircraft must be able to distinguish between a fishing vessel and a mine-laying ship. The pilot should also take precautions in the choice of means and methods of attack.

Military commanders who plan on an attack must refrain from deciding to launch any attack that may be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects that would be excessive in relation to the direct military advantage anticipated. An attack must be immediately cancelled or suspended once it becomes apparent that the objective is not a military one or is subject to special protection. Should there be more than one military objective, the objective to be attacked must be the target that poses the least danger to civilians and to civilian objects. In the conduct of military operations at sea or in the air, each party to the conflict must, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

**Rule on Perfidy**

It is prohibited to kill, injure or capture an adversary through acts of perfidy. Perfidy is a form of betrayal because it gives the enemy a false impression that an adversary is entitled to the protection of the rules applicable to armed conflict. Hence parties to a conflict must never feign intent to negotiate under the flag of truce or surrender if they do not intend to do so. They must not pretend to be incapacitated or assume a non-combatant status and must not use recognised emblems such as the red cross or red crescent to protect themselves or to subdue the enemy. Further, any party to a conflict must not use the national insignia of a neutral state, or those of their enemies, during attacks in order to shield, favour, protect or impede military operations.

**Quarter**

Adhering to the principle of humanity, it is prohibited to give an order that there be no survivors or to conduct hostilities on this basis. It is also prohibited to attack a recognised hors de combat. A person is hors de combat if a combatant clearly expresses an intention to surrender, is a prisoner of war, or has been rendered unconscious or is incapacitated by wounds or sickness. The Additional Protocol I also forbids attacking a person parachuting from a distressed aircraft. A ship transporting prisoners of war must also not be the subject of an attack.

**Breaches of the Conventions**

The following acts against persons are considered grave breaches of the Conventions: wilful killing, torture, or inhumane treatment causing great suffering or serious injury.
to body or health; wilful omission that may seriously endanger the physical or mental health or integrity of a person; unlawful deportation or transfer; and illegal detention. Compelling a protected person to serve in the armed forces of an enemy, wilfully depriving a protected person of the right to a fair and regular trial, and taking of hostages are also forbidden. It is further prohibited to destroy property not justified by military necessity. 44

The following wilful acts are also grave breaches when they result in death or cause serious injury and are excessive in relation to the actual and direct military advantage expected: attacks on the civilian population and civilian property, attacks launched indiscriminately and attacks on works and installations containing dangerous forces. 45 However, dams, dykes and nuclear power plants may be subject to attacks if they are used for purposes other than their normal functions, such as directly supporting military operations of the enemy and if such attack is the only way to terminate this support. 46

Attacks on non-defended localities and demilitarised zones, attacks on people known to be hors de combat and the perfidious use of the emblem of the Red Cross or Red Crescent and other recognised protective signs are also considered grave breaches of the Geneva Conventions. It is imperative therefore for military commanders to prevent breaches of the Conventions and the Protocols and suppress these acts if necessary or report them to competent authorities. 47

The first four Geneva Conventions are very important pillars of LOAC because they are intended to alleviate the sufferings of the victims of war. The introduction of the Additional Protocols reinforced the spirit of the Geneva Conventions because it focused, not only on the protection of the victims of war, but also on the methods of warfare—especially during military operations other than war. The principles of warfare and the precautions to be observed before resorting to an attack are serious considerations in drafting ROE. This is because the principles of warfare require that the means employed in a military action are weighed against the advantage to be gained and the damage such action would create. The Geneva Conventions further demand the target be positively identified as a legitimate military objective before any act of hostility is conducted.

THE LAW OF THE SEA CONVENTION (LOSC)

The LOSC established international law principles governing the use by states of the world’s oceans and seas. This Convention also affects aircraft operations as sovereignty of the seas extends to the airspace above them. 48 Therefore, the rights of

44 ICRC, *Basic Rules of the Geneva Conventions and their Additional Protocols*, common to Convention 1, Article 50; Convention 2, Article 51; Convention 3, Article 130; Convention 4, Article 174; Protocol I, Article 11.
45 Protocol I, Article 56, paragraph 1.
46 ibid., paragraph 2.
47 ICRC, *Basic Rules of the Geneva Conventions and their Additional Protocols*, common to Convention 1, Article 49; Convention 2, Article 50; Convention 3, Article 129; Convention 4, Article 146.
the Philippines over its territorial seas and EEZ extend to the airspace above these bodies of water and define the edges of the airspace where a PAF LRPA will operate.

The LOSC has a significant impact on the security of a coastal and archipelagic state like the Philippines. This is due to the fact that the law grants foreign vessels and aircraft certain navigational rights over EEZ and archipelagic waters. It is therefore imperative for the Law of the Sea to be clearly understood for two important reasons. First, it defines the part of the sea where the Philippines can exercise its sovereignty and maximise its economic rights. Thus the Law of the Sea addresses issues that are relevant to security such as those on the prevention of piracy, the right to conduct hot pursuit and the protection of marine resources. The second reason is that this law prescribes the conduct of other countries when exercising their rights of passage through the Philippine archipelagic waters or when foreign vessels and warships are within the Philippine EEZ.

This section will present provisions of the 1982 United Nations Convention on the Law of the Sea that are relevant to an archipelagic state like the Philippines and to the rights of foreign vessels and aircraft within each legal division of the ocean. An understanding of these legal divisions is necessary so that the aircrew of a LRPA is made aware of the rights of other aircraft and vessels that transit Philippine waters.49 Hence, these provisions are significant in the drafting of ROE because they do not only justify military actions but also prescribe the degree of control that a coastal state may exercise over foreign aircraft and vessels.

**Territorial Sea**

The territorial sea of a coastal state extends from its land territory up to 12 nautical miles of the adjacent belt of sea described as the territorial sea.50 In the case of an archipelagic state, the territorial sea is measured 12 nautical miles seaward from the archipelagic baseline. It is in this area where the coastal or archipelagic state enjoys full sovereignty—although foreign ships, including warships, enjoy the right of innocent passage through these waters.

**Archipelagic Waters**

The sovereignty of an archipelagic state includes all bodies of water enclosed by the archipelagic baselines and is referred to as the archipelagic waters, regardless of their depth or distance from the coast. The archipelagic state’s sovereignty includes the airspace over the archipelagic waters, as well as their bed and subsoil, and the resources contained therein.51

**Archipelagic Sea Lane Passage**

An archipelagic state may designate archipelagic sea lanes and air routes suitable for passage of foreign ships and aircraft. This allows freedom for ships and aircraft to transit through an archipelagic state at will, provided that the transit over the sea lanes is continuous and expeditious and does not pose any threat to the security of the

49 ADFP 37, Chapter 8, paragraph 807.
51 ibid., Article 49.
archipelagic state. All submarines, however, are required to navigate on the surface and show their flag. It is also necessary for all civil and military aircraft flying over archipelagic sea lanes to monitor the radio frequency assigned by an international air traffic control authority or the appropriate international distress radio frequency. An archipelagic state cannot suspend the right of sea lane passage and must give appropriate publicity to any danger to navigation or overflight.

**Innocent Passage**

The coastal state cannot hamper nor suspend the right of innocent passage except when suspension is necessary for the protection of its security. Innocent passage means expeditiously navigating through the territorial sea or archipelagic waters of a coastal state without jeopardising peace, good order or the security of the coastal state. This provides that a ship invoking the right of innocent passage must not use threat or force against the territorial integrity or security of the coastal state. Innocent passage further entails that a ship must not launch any form of weapon or aircraft; conduct surveillance activities prejudicial to the coastal state; and load or unload any commodity, currency or person contrary to the customs, fiscal and immigration laws of the coastal state. Dumping pollutants, illegal fishing, conducting research or survey activities, and interfering with the communications system of the coastal state are other acts that must not be performed by a ship invoking the right of innocent passage. Hence, if a ship committed an act that is not consistent with the right of innocent passage, a coastal state may undertake measures to prevent its passage.

The right of innocent passage is enjoyed only by ships, including warships, and not by aircraft. This means that all aircraft flying over territorial or archipelagic waters must only fly over designated sea lanes except in the case of recognised international straits. The LOSC allows transit passage for both ships and aircraft through straits that have been used over a long period of time for international navigation.

Besides restrictions on aircraft and non-existence of sea lanes, the right of innocent passage differs from the right of sea-lane passage in the sense that a warship invoking innocent passage is absolutely prohibited from employing its weapons. The right of sea lane passage on the other hand permits warships in transit to use its weapons but only for defensive purposes. It is emphasised that a warship or belligerent vessel, invoking the right of sea lane passage, cannot launch an attack on an enemy state from a neutral state’s territorial waters or sea lanes. This would compromise the neutral state because a belligerent ship should not use neutral territorial waters as sanctuary or a base of operation. Should such an event occur, the neutral state may use all possible measures to prevent violations of its neutrality.

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52 ibid., Article 53.
53 ibid., Article 20.
54 ibid., Article 39.
55 Mordike and Casagrande, The 1982 Law of the Sea Convention, p. 9; Law of the Sea Convention, Article 44.
56 Law of the Sea Convention, Article 24–25.
57 ibid., Article 17; Article 18, paragraph 2.
58 ibid., Article 19, paragraph 2.
59 ibid., Article 25.
60 Mordike and Casagrande, The 1982 Law of the Sea Convention, p. 11.
61 ICRC, San Remo Manual on International Law Applicable to Armed Conflict at Sea, June 1944.
**Rules Applicable to Warships**

The coastal state may require a foreign warship to leave its territorial sea immediately if the said ship does not comply with the laws and regulations of the coastal state regarding Territorial Sea passage. A warship is a vessel under the command of an officer who is commissioned by the government and manned by a crew under the regular armed forces discipline of a particular state. The coastal state must seek permission before boarding any warship because of the latter’s sovereign immunity from foreign laws in relation to search and inspection.

**Contiguous Zone**

A coastal state’s contiguous zone is where it may exercise control over the actions of other states. However, the control must only be intended to prevent or to punish any infringement of the coastal state’s customs, fiscal, immigration, or sanitary laws and must never affect the right of foreign ships and aircraft to navigate over the adjacent body of water. It is important to note that while a coastal state may implement measures in accordance with its domestic laws, such measures must not contradict the provisions of the international laws of the sea. A contiguous zone extends 24 nautical miles from the baseline of a coastal state.

**Exclusive Economic Zone (EEZ)**

The EEZ comprises of the body of water, the seabed and the subsoil that extend 188 nautical miles beyond a coastal state’s territorial sea. It must be noted that the sovereign rights being enjoyed by the coastal state in this zone only relate to exploration, exploitation, management and conservation of natural resources contained therein. A coastal state has no right to control access into its EEZ so that other states can enjoy freedom of navigation and overflight over the said area. However, a coastal state may take measures including boarding, inspection, arrest and judicial proceedings to ensure compliance with the laws and regulations adopted by the United Nations. In cases where conflicts with other states are brought about by overlapping EEZs, the states concerned, in a spirit of understanding and cooperation, must make every effort to enter into provisional arrangements or seek the intervention of the International Court of Justice.

**Piracy**

All states are bound to cooperate in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state. Piracy consists of acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft. A state may arrest the persons and seize the ship or aircraft taken and controlled by pirates. However, a seizure on account of piracy may only be carried out by warships or military aircraft, or other

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62 Law of the Sea Convention, Article 30.
63 ibid., Article 29.
64 ADPP 37.
65 ibid., Article 33, paragraphs 1–2.
66 ibid., Articles 55, 56, 58.
67 ibid., Articles 73, 74.
68 Law of the Sea Convention, Articles 100–101.
69 ibid., Article 105.
ships or aircraft clearly marked and identified as a government service and authorised to that effect.⁷⁰

**Right of Hot Pursuit**

The LOSC allows a coastal state to use its warships or military aircraft to pursue a foreign vessel that has violated the state’s laws and regulations. The pursuit, however, must commence from the territorial waters, contiguous zone or EEZ and must be uninterrupted. This means that the pursuit must commence immediately after a violation and must be continuous. Another aircraft or vessel may relieve the pursuer but the pursuit must cease once the pursued vessel enters the territorial sea of its own or another state.⁷¹ Thus, if a LRPA is tasked to pursue a foreign vessel that has violated laws of the Philippines, the pursuit will terminate if the pursued vessel enters the territorial sea of another state.

<table>
<thead>
<tr>
<th>Boundaries</th>
<th>Rights of the Coastal/Archipelagic State</th>
<th>Rights of Other States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal and Archipelagic Waters</td>
<td>Full territorial sovereignty, but can only suspend the right of innocent passage temporarily for specified areas for security purposes.</td>
<td>Sea lane passage. Innocent passage (except for aircraft).</td>
</tr>
<tr>
<td>All bodies of water within the archipelagic baseline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Territorial Sea</td>
<td>Full territorial sovereignty, but can only suspend the right of innocent passage temporarily for specified areas for security purposes.</td>
<td>Sea lane passage. Innocent passage (except for aircraft).</td>
</tr>
<tr>
<td>12 nm from baseline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contiguous Zone</td>
<td>State has the right to prevent or punish infringements of its customs, fiscal, immigration or sanitary laws and other regulations that may be committed within the territorial sea, but has no right to control access of foreign vessels into the contiguous zone.</td>
<td>Freedom of navigation and overflight outside the coastal state’s Territorial Sea.</td>
</tr>
<tr>
<td>24 nm from baseline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exclusive Economic Zone</td>
<td>State’s sovereignty only limited to exploration, exploitation, management and conservation of all natural resources, but has no right to control access of foreign vessels into the EEZ.</td>
<td>Freedom of navigation and overflight outside the coastal state’s territorial sea.</td>
</tr>
<tr>
<td>200 nm from baseline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>High Sea</td>
<td></td>
<td>Freedom of navigation and overflight.</td>
</tr>
<tr>
<td>Beyond 200 nm</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 2 – Rights of Coastal States. The table shows the rights of the coastal state compared to the rights of other states over the coastal state’s territorial sea, contiguous zone and EEZ.⁷²

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⁷⁰ ibid., Article 107.
⁷¹ ADFP 3; *Law of the Sea Convention*, Article 37.
THE CONVENTION ON INTERNATIONAL CIVIL AVIATION (CHICAGO CONVENTION)

International law recognises that the legal status of a nation’s territory extends directly to the airspace above. The concept of territorial sovereignty includes the right of a state to regulate and if necessary prevent access, exit or transit of foreign aircraft, whether piloted or not. However, the provisions of the Convention of International Civil Aviation modified this right in relation to civil aircraft because it promulgated rules that reduced the need to seek diplomatic clearance before entering another nation’s airspace to a procedural level. Consequently, civil aircraft are only required to file flight plans and obey the rules and directives of a duly authorised air traffic control authority. The Chicago Convention recognises that a civil aircraft can fly across the territory of another nation, land for non-traffic purposes, and transport passengers, mail and cargo from one nation to another.

Rights of Aircraft

Both civil and military aircraft have no right of innocent passage through the airspace over the territorial seas of other states. But they enjoy the right of archipelagic sea lanes passage over designated archipelagic sea lanes or over all routes normally used for international navigation, provided they respect the rights of the coastal or archipelagic state. Both civil and military aircraft also have the right to operate in international airspace without interference from any other state.

Treatment of Military Aircraft

Military aircraft are classified as state aircraft and are not subject to the provisions of the Convention of International Civil Aviation. Thus, military aircraft do not enjoy the overflight rights of civil aircraft permitted by international law unless a bilateral agreement exists. Further, military aircraft must operate with due regard to safety of civil aircraft at all times. However, military aircraft have sovereign immunity from foreign laws and may not be boarded, searched or inspected by foreign authorities without permission.

Air Defence Identification Zones

The Chicago Convention allows nations to establish conditions and procedures for entry into another state’s airspace, thereby allowing the establishment of air defence identification zones (ADIZ). An ADIZ is established airspace above the high seas adjacent to the coast, and over the territorial sea, land and territory, within which civil aircraft are required to identify themselves. Declaration of an ADIZ does not constitute a claim of any sovereign rights but may be made for military exercise purposes. Any aircraft bound for national airspace or another state must file a flight

73 ADFP 37, Chapter 8, paragraph 805.
75 ibid.
76 ADFP 37, paragraph 814.
77 ibid., paragraph 815.
78 ibid., paragraph 809.
79 ibid., paragraph 818.
80 ibid., paragraph 811.
81 ibid., paragraph 820.
plan and render position reports periodically. Should an aircraft fail to voluntarily identify itself, an intercept aircraft may be sent to identify it. However, the declaration of an ADIZ does not allow the intercepting pilot to engage intruding aircraft. The ROE of the coastal state should provide guidance on the circumstances in which an aircraft may be engaged.\textsuperscript{82}

**Interception of Aircraft**

If an aircraft enters another state’s airspace without permission, the intercepting aircraft must attempt to control the intruding aircraft without the use of force and must not expose the intruder to unnecessary or unreasonable danger. The intercepting pilot must determine the character of the intruding aircraft, probable motives for intrusion, proximity of the aircraft from important installations and the frequency of previous intrusions. If there is no reason to believe that the intrusion is hostile or harmful to the security or other appropriate interests of the nation, the intruder may not be attacked. But if the intruder’s intentions are unknown, granting that it is a civil aircraft and has disregarded appropriate warnings, it may be required to land.\textsuperscript{83}

The Chicago Convention stipulates that states are to ‘refrain from the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of the aircraft must not be endangered”.\textsuperscript{84}

**SUMMARY**

LOAC makes it clear that the means and methods to be employed during warfare are not unlimited. Thus, an individual entrusted with the use of force must always consider critical factors that will not only justify military actions, but also ensure that no innocent persons become victims of hostilities. Although collateral damage may seem unavoidable during war, LOAC provides guidelines on how sufferings should be alleviated. Meanwhile, the LOSC and the Convention on International Civil Aviation define the limits where a state can assert its authority and also prescribe the conduct of agents of a state when they are within the territory of another nation.

These laws—the Geneva Laws, the LOSC and the Convention on International Civil Aviation—prescribe procedures for the pacific settlement of any dispute and allude to the overarching principle of the UN that requires nations to refrain from the use of force against the territorial integrity or political independence of any state.\textsuperscript{85} A thorough understanding of these laws is essential, particularly in drafting ROE for the LRPA of the PAF. This is due to the fact that varying conflict scenarios will require particular ROE. Nonetheless, ROE must always be based on these international laws to protect lives and prevent escalation of conflicts.

\textsuperscript{82} ibid., paragraph 821.
\textsuperscript{83} ibid., paragraph 828.
\textsuperscript{84} Convention of International Civil Aviation, Chicago, 7 December 1944.
\textsuperscript{85} The United Nations Charter, Article 2, paragraph 4.
CHAPTER SIX

THE RULES OF ENGAGEMENT FOR THE PAF LRPA

The first five chapters of this paper have highlighted all the factors that must be considered in drafting ROE for a LRPA of the PAF. Chapter One presented the total area of responsibility of the Philippines, while Chapter Two showed the different security threats to the Philippine territory. Chapter Three focused on the missions to be performed by a LRPA to support the Armed Forces of the Philippines and the PAF in assuring the security of the Philippines. However, it was noted that a LRPA could not perform its missions without the appropriate ROE, most especially when it conducted patrols over areas where there was a high probability that agents from other states were also operating. ROE should prevent escalation of any conflict and delineate circumstances when force may be applied. It is emphasised that these rules must be within the framework of the law. Thus Chapters Four and Five discussed the mechanisms and the legal basis involved in drafting ROE.

This chapter draws on the foregoing discussions in drafting ROE for a LRPA of the PAF and recommends ROE for aircraft conducting patrols.

DRAFTING RULES OF ENGAGEMENT FOR A PAF LRPA

The very first consideration in drafting ROE would be the Philippine national policy. Any person drafting the ROE must determine the intent of the Government and what it wants to achieve from each military operation. In the Philippines, the overarching policy in relation to the use of force is defined in the 1987 Constitution, which provides that

The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation and amity with all nations.

The second consideration in drafting ROE is the military factor. ROE must be relevant to a country’s military capability and must be consistent with the goals of the operation. Table 1 in Chapter Three shows the military capability of the Philippines as compared with other major claimants to the Spratly Islands. In this circumstance, military capability could easily be a major restricting factor for ROE. ROE must also

1 Flight Lieutenant Rebecca Lewis, Legal Officer and CAF Aerospace Fellow, Interview, 10 May 2002.
2 Wing Commander Chris Hanna, Deputy Director Operations Law (Strategic Command Division), Interview, 6 May 2002.
3 ibid.
4 The 1987 Philippine Constitution, Article 2, Section 2.
5 Wing Commander Chris Hanna, Interview, 6 May 2002.
be applicable to the area of operation. For example, if a LRPA is conducting its patrol over the western part of the Philippines, its main mission would be to look for intrusions into the country’s EEZ. The LRPA would probably be unarmed in the conduct of this mission, due to the high probability of encountering foreign vessels in the said area. Displaying weapons from a LRPA may be interpreted as a hostile act. This, however, does not mean that it would have no need for a set of ROE. Once active sensors are used to track a foreign vessel, the LRPA is already performing an act of engagement. Foreign warships may interpret this act as provocative and may sometimes even lock their fire control radars on a maritime patrol aircraft. Therefore, ROE must prescribe situations when active sensors may be used, and they must be able to tell the aircrew what to do when they are in a perilous situation.

ROE must also give due regard to diplomatic factors. The Philippines, being a member of the UN and ASEAN, must uphold the principles being promulgated by these organisations. This means that the Philippines must adhere to the pacific settlement of any dispute and respect the code of conduct over the South China Sea that was agreed upon by all ASEAN countries. This requires that ROE for a patrol aircraft must be able to pre-empt any military confrontation with agents of other states.

The fourth consideration in drafting ROE for a LRPA concerns legal factors. If an aircraft were conducting its patrol over the Philippine EEZ, the international law that may have to be considered would include the United Nations Charter, LOAC and LOSC. Article 51 of the United Nations Charter allows the use of force only for self-defence or when under the authority of the United Nations Security Council. LOAC states that the rights of a party to a conflict to choose the methods and means of warfare are not unlimited. However, should weapons be used, the amount of force to be applied must only be enough to prevent the source of threat from committing further hostile acts. Meanwhile, LOSC defines the part of the sea where the Philippines can exercise its sovereignty and also prescribes the procedures in settling disputes regarding conflicting interests over the EEZ. For instance, it must be noted that Mischief Reef is 150 nautical miles west of the Philippines and LOSC allows the Philippines certain privileges with regards to use and management of resources in these areas. However, this does not mean that the Philippines can apply an excessive amount of force when implementing domestic laws regarding the protection of the country’s EEZ.

The three areas of international law cited in the preceding paragraph imply that the Philippines should first utilise diplomatic means to resolve any conflict over the country’s EEZ. This necessitates that ROE should not prescribe the use of force as a first resort. It must be emphasised that ROE should not permit actions that are illegal under international or domestic laws.

When all four factors are considered, a PAF LRPA flying over the disputed Mischief Reef or over the Spratly Islands may require ROE that are ‘benign’ or non-provocative.

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6 Squadron Leader Lindsay Campbell, Operations Officer, No 92 Wing, Interview, 7 May 2002.
7 Wing Commander Chris Hanna, Interview, 6 May 2002.
8 Squadron Leader Emma Wise, Legal Officer, No 92 Wing, Interview, 7 May 2002.
Figure 8 – Factors that Restrict Rules of Engagement. The concentric boxes show the various factors affecting the development of ROE for a PAF LRPA. The biggest box represents all possible acts that may be performed by the LRPA. However, as other boxes representing the various factors are superimposed, the ROE become more restricted.\(^9\)

**Recommended Rules of Engagement**

**ROE for Patrol over the Philippine EEZ and over the disputed islands in the South China Sea**

In the following scenarios, it is presumed that the PAF LRPA will adhere to the mission flight plan and the aircraft will be unarmed. This is based on the premise that the Philippines renounces war as an instrument of national policy.\(^10\) It is also presumed that the aircraft may use its active and passive sensors in searching and identifying vessels entering the Philippine area of responsibility, and that all surface vessels are also presumed to be carrying weapons. The Command Operations Centre being referred to in this chapter would be the operations centre of the Area Command that is monitoring the flight of the aircraft.

*Scenario 1 – If a foreign warship is encountered within Philippine territorial waters:*

- Check if the ship is on an established archipelagic sea lane.

LOSC allows ships and aircraft the right of archipelagic sea lane passage. Thus, a foreign vessel may navigate through Philippine waters provided that the ship observes its duties when invoking this right and it does not pose any danger to the archipelagic state.

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\(^9\) The figure was adopted from the interviews with Squadron Leader Warsito, Squadron Leader Blake and Squadron Leader Wise.

\(^10\) *The 1987 Philippine Constitution,* Article 2, Section 2.
If the warship is not on an established sea lane:

- Check if the warship’s activities violate the provisions of the right of innocent passage.
- Establish communication with the warship.

LOSC allows foreign ships, including warships, the right of innocent passage provided they do not commit acts that are prejudicial to the peace, good order or security of the archipelagic state.\textsuperscript{11}

If the warship is violating provisions of the right of innocent passage:

- Continue attempts to communicate with the vessel.
- Active sensors may be used to identify, and get a better profile of, the vessel and its weapons on board.
- Report the type of vessel, its location, speed and direction and activities being conducted by the vessel to the Command Operations Centre.

If no communication is established and further identification is required:

- Ensure that the warship is not preparing to use its weapons on the LRPA.
- Fly parallel to the warship to identify and allow photos to be taken if necessary, maintaining a safe distance.

If the warship locks its fire control radar on the LRPA or if it is observed that the crew of the vessel are preparing to use their weapons against the LRPA:

- Fly away from the warship in the most expeditious manner.
- Report developments to the Command Operations Centre.
- Stay out of the effective range of the weapons on board the warship and continue monitoring activities of the warship.

If the warship does not manifest any hostile act and another pass is necessary to take more photos:

- Turn away from the warship for another approach but maintain the same or greater distance between the vessel and the aircraft.
- Do not fly low and perpendicular to the warship.
- Do not fly across the bow or fly overhead the warship.

\textit{Scenario 2 – If a foreign warship is encountered over the Philippine EEZ:}

In this scenario, ROE will be more restrictive because the Philippines does not have the right to control access of other states into the country’s EEZ.

- Observe activities of the warship and report the type, location, speed, direction and activity of the vessel to the Command Operations Centre.

\textsuperscript{11} \textit{Law of the Sea Convention, Article 19, paragraph 2.}
The Rules of Engagement for the PAF LRPA

- Use active sensors to identify the warship when practicable and when the LRPA is outside the vessel's missile or gun engagement zones.
- Establish communication with the vessel.
- Do not fly alongside the warship unless the officer in command of the vessel has granted the LRPA permission to do so.
- Do not fly across the bow even if permission has been granted to fly alongside or approach the vessel.

If it is observed that the warship is performing activities that are against domestic laws of the Philippines in relation to the use and management of the EEZ:

- Establish communication with the warship to identify its nationality and to inform its crew of the violations being committed.
- Maintain a distance that is not within the engagement zone of the ship's weapons.
- Do not conduct any flight manoeuvre that may be provocative, such as approaching the ship at low altitude or flying perpendicular to the mid-section of the vessel.

If the warship is stationary and no communication has been established:

- Fly parallel to the ship but at a safe distance.
- Report the location and activity of the vessel to the Command Operations Centre.

Scenario 3 – A foreign vessel is conducting illegal fishing within Philippine territorial waters:

- Communicate with vessel to verify its nationality.

If no communication is established:

- Fly across the bow of the vessel to get attention.
- Take photos of the vessel.

If the fishing vessel fires at the LRPA:

- Fly away from the danger zone or from the effective range of the weapons employed by the crew of the fishing vessel, but continue monitoring activities of the fishing vessel.
- Report the location of the fishing vessel to the Command Operations Centre or the nearest Philippine Navy vessel in the patrol area.
Scenario 4 – A foreign vessel is conducting illegal fishing in the Philippine EEZ:

In this situation, it is emphasised that other states must respect the rights and comply with the laws and regulations being implemented by the Philippines in relation to the management of its EEZ.\(^\text{12}\)

- Communicate with the vessel to verify its nationality.

If no communication is established and if no weapons are visible:
- Fly parallel the vessel to enable photos of the vessel to be taken.
- Report the location of the fishing vessel to the Command Operations Centre.
- Do not fly across the bow of the fishing vessel.

If given orders to pursue:
- Stop the pursuit if the fishing vessel enters another state’s territory.

If the fishing vessel fires at the LRPA:
- Fly away from the danger zone or from the effective range of the weapons employed by the crew of the fishing vessel, but continue monitoring activities of the fishing vessel.
- Report the location of the fishing vessel to the Command Operations Centre.

Scenario 5 – If the LRPA encounters a merchant vessel that is suspected to be engaged in smuggling:

- Establish communication with the vessel.
- Use active and passive sensors to get a clearer profile of the vessel and to ensure that the vessel has no missile firing capability.
- Report position, direction and speed of vessel to the Command Operations Centre or to the nearest Philippine Navy vessel in the patrol area.

If no communication is established:
- Always assume that there are weapons on board the vessel.
- Fly parallel to the vessel to observe activities and enable photos to be taken.
- Do not fly across the bow or directly above the vessel.
- Stay away from the danger zone or from the effective range of the weapons employed by the crew of the vessel.

If the vessel fires at the LRPA:
- Fly away from the vessel in the most expeditious manner.
- Report developments to the Command Operations Centre or to the nearest Philippine Navy vessel in the patrol area.

\(^{12}\) Law of the Sea Convention, Article 58, paragraph 3; Article 62, paragraph 4.
Scenario 6 – If the LRPA is tasked to patrol over the disputed islands in the South China Sea:

- Never overfly islands claimed by other countries.
- Stay outside the missile or gun engagement zones.
- Give due consideration to navigational error when flying near islands claimed by other countries.

If foreign warships are observed disembarking military provisions on an island:

- Report activities to the Command Operations Centre.
- Stay away from the weapon engagement zone of the warship.

Scenario 7 – If the LRPA encounters a vessel containing suspected illegal immigrants:

- Establish communication with the vessel.
- Report the location, direction and description of the vessel to the Command Operations Centre or to the nearest Philippine Navy vessel in the patrol area.
- Do not fly low and across the bow of the said vessel.

Scenario 8 – If the LRPA is tasked to track a pirate vessel:

In this situation, it must be noted that all states have a duty to cooperate in the suppression of piracy regardless if the act is committed within the territorial waters of the Philippines.\(^\text{13}\)

- Report the location, speed and direction of the vessel to the Command Operations Centre or to the nearest Philippine Navy Vessel.
- Stay outside the effective range of the weapons on board the vessel.

If the LRPA is directed to pursue the vessel:

- Stop the pursuit if the vessel enters the territorial waters of another state.

The foregoing recommended ROE prescribe procedures that prevent provocation and give due priority to the safety of the aircrew of the LRPA. These ROE are designed to avoid military confrontation with other states, thus allowing the Philippine Government to pursue resolution of any conflict with other states through diplomatic means.

Should there be a need to draft another set of ROE, owing to changes in national policy or changes in the circumstances under which the LRPA operates, Chapter Four and Chapter Five of this research paper provide a useful reference.

\(^{13}\) Law of the Sea Convention, Article 100.
Rules of Engagement for Long Range Patrol Aircraft of the Philippine Air Force
CONCLUSION

The PAF, being the country’s first line of external defence, has programmed for the acquisition of LRPA, which will be utilised for maritime patrol, intelligence gathering and search and rescue missions. To this effect, the Circular of Requirements for the LRPA has been drafted to include studies on their tactical employment and deployment throughout the Philippine archipelago and the country’s EEZ. However, the procedures for the aircrew when faced with unexpected circumstances in the conduct of their patrols have not yet been defined. Thus, this paper has recommended ROE for the LRPA of the PAF.

ROE are instructions that define the degree and manner wherein force may be applied, and are issued by competent authorities to operational and tactical level commanders. They delineate circumstances and limitations for the use of armed force in the realisation of military objectives, and they prescribe that the actions of a commander or a combatant must be in accordance with the national policy, diplomacy, military operations and international laws.

National policy is the most important factor in the formulation of ROE because all instructions pertaining to the attainment of military objectives must interpret the political intentions of the government. The national policy may include options such as the reduction of military tension, maintenance of the status quo or the escalation of tension. In the case of the Philippines, the Constitution states that the Philippines has renounced war as an instrument of national policy. This means that the Philippines has adopted a policy that considers war as the last resort in settling domestic and international disputes. This could easily be associated with diplomacy, which is another factor in drafting ROE, serving as an avenue for the resolution of any conflict between states. These two factors imply that ROE for a PAF LRPA should be aimed at reducing tension and should be designed to align with the diplomatic intentions of the Philippines to contribute to the maintenance of peace in the South-East Asian region.

Meanwhile, the capability of conducting a successful military operation, both in times of peace and during periods of hostility, has to be considered when drafting ROE. In the case of the Philippines, the country’s military capabilities suggest that ROE for a PAF LRPA should not be provocative.

It is also important to consider the provisions of international laws because these laws prescribe the behaviour of all parties to any conflict. They are intended to protect non-combatants and alleviate the sufferings of the victims of any conflict. These laws further prescribe that the rights of parties involved in any conflict to choose the means of warfare are not unlimited. It is imperative that ROE always uphold the principles of protecting lives, delineating targets and applying just the right amount of force to achieve the military objective.

However, it must be emphasised that ROE are not substitutes for strategy and tactics. Therefore ROE do not prescribe procedures on how weapons will be used, but instead
focus on the circumstances when and where these weapons will be utilised. Thus the 
ROE recommended in this paper do not prescribe how the sensors or radars of the 
LRPA should be used, but tell the aircrew under what circumstances these sensors 
should be employed and the procedures to follow during threatening scenarios.

It is also emphasised that ROE do not inhibit or replace Command functions. 
Although ROE define the circumstances when force may be applied, they do not give 
the commander the freedom to issue orders that are more permissive or that use ROE 
as a justification for any irresponsible military action. A commander should always 
seek clarification from higher authorities in cases where ROE are unclear or 
inadequate for a particular situation. That is why the chain of command for the 
promulgation of ROE, and the authority of each individual in the chain, should also be 
clearly defined.

Nevertheless, it must be clear that ROE do not impose restrictions on safety 
considerations and on the inherent right of individual or collective self-defence. 
Should the AFP consider arming the LRPA, ROE must not deny its aircrew the right 
to defend themselves when exposed to hostile acts. Should force be used under such 
circumstances, it should only be directed at the immediate source of the threat, and the 
amount of force used should only be enough to prevent the source of threat from 
committing further hostile acts.

The proposed ROE in this paper are based on the current national policy and on the 
existing capabilities of the AFP. With these rules, it is envisaged that the aircrew of 
the LRPA will be able to act in accordance with international laws, prevent undue 
escalation of any military confrontation and more importantly, save lives.

Should there be a need for another set of ROE due to changes in national policy or 
military capabilities of the AFP, it is recommended that the four factors in drafting 
ROE always be considered. ROE should always reflect the intent of the government; 
thus the AFP should always confer with the Government, especially on policies 
regarding the use of force. The AFP may also consider preparing a 'dormant' set of 
ROE to enable its agents to be responsive to other situations, especially when national 
security is threatened.
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