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HOUSE OF REPRESENTATIVES
H.B. No. 2279

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Introduced by Representative Herminio Harry L. Roque Jr.

EXPLANATORY NOTE

The peremptory and non-derogable status of the right to self-determination of peoples has been recognized in international law. As held in the *East Timor* case, such right gives rise to erga omnes omnium (universal) obligations binding on all members of the international community, both state and non-state parties. This is of high relevance to our claims in the South China Sea. In its July 12, 2016 landmark ruling, the Permanent Court of Arbitration held that the Chinese Nine-Dash Line Claim cannot co-exist with the maritime entitlements of a coastal state under the UN Law of the Sea.

Once and for all, the Arbitral Court clarified in favor of the Philippines the status of many features in the contested Spratly islands and Scarborough Shoal with both scientific and legal criteria, in relation to a resource-rich Exclusive Economic Zone (EEZ) and Continental Shelf.

In particular, in the Spratly islands, Mischief Reef (Panganiban Reef) and Second Thomas Shoal (Ayungin) –these being low-tide elevations as we had argued– are part of the Philippines' Exclusive Economic Zone and Continental Shelf. Thus, China cannot prevent the Philippines from exercising its sovereign rights over waters and features found within its EEZ.

The other features in the Spratlys, namely Fiery Cross Reef, Johnson Reef, McKeenan Reef, and Gaven Reef (North) were held to be rocks unable to independently sustain human habitation or economic life and entitled only to a 12-nautical mile territorial sea. Meanwhile, Hughes Reef, Gaven Reef (South) and Subi Reef were held to be low-tide elevations not capable of appropriation by China. Thus, both sets of reefs do not and cannot generate any EEZ for China. The Arbitral Court also ruled that none of the high-tide features in the Spratlys –including

our Pag-asa (Thitu) island in the Kalayaan island group — can sustain human habitation or economic life on their own in their natural condition.

The Court rejected the Chinese position that the Spratlys is one archipelago generating as a whole its own territorial sea, contiguous zone, continental shelf and EEZ. This may prove to be an important factor if and when the question of who owns which island in the island chain is actually submitted to another international arbitration proceeding, this time, under principles of general international law. It bears noting that in its 2009 Baselines Law, Republic Act 9522, the Philippines also treated the islands in the Spratlys under its control as belonging to a regime of islands under Art. 121 of the UNCLOS.

There is in fact, a double aspect to the international legal obligations that arise from the PCA ruling, both complementing and reinforcing each other. Under the law on state responsibility, a *jus cogens* or peremptory norm such as the right to determination is binding on and opposable to all states. This binding obligation includes the recognition of a state's as sovereign rights to the EEZ and the Continental Shelf, as these are part and parcel of the right to self-determination, in particular to the exclusive use of natural resources pertaining to it.

States not party to the dispute in question have an obligation to respect the sovereign rights of the Philippines; they are legally bound to refuse to recognize the Chinese Nine-Dash Line as lawful, and to refrain from recognizing or entering into any agreements with China for the unlawful exploitation of natural resources in the Philippine EEZ and the Continental Shelf.

There is also the positive duty on the part of all states to cooperate to put a stop to such unlawful acts. Even non-parties to the UNCLOS are bound by such an obligation, given its peremptory and non-derogable status. Indeed, the Philippines' entitlement to the fruits of its sovereign rights to the EEZ and the Continental Shelf have already been confirmed and upheld by the landmark judgment of the Permanent Court of Arbitration in the *South China Sea Arbitration* case. There is, of course, the treaty obligations of all parties to the UNCLOS to recognize the holding of the PCA ruling in the arbitral case, which obligations mirror those arising from the right to self-determination.

There is an urgent need for the Philippines to appropriate the fruits of this singular international legal victory, if only to further bolster its position on maritime areas and features in the Spratly group of islands covered by the PCA ruling as well as those that pertain to its territorial claim itself. One of the best ways to realize this is through a legislative measure as an unequivocal exercise of a State's sovereign prerogatives.

This is one among a series of bills filed in order to strengthen the Philippines' claim of sovereignty and sovereign rights over the Spratly group of islands, a region that contains vast amounts of natural resources – including oil and gas and fisheries – vital to the growth and development of the Philippines. To maximize the use and conservation of such resources, a development authority should be tasked to administer the area, following the success of the various conversion authorities under Republic Act 7227. As such, this bill is based heavily on such law, cognizant of the efficiency of a separate corporate personality in administering and developing new territories.



HERMINIO HARRY L. ROQUE JR.

HOUSE OF REPRESENTATIVES
H.B. No. 2279

Introduced by Representative Herminio Harry L. Roque, Jr.

AN ACT
CREATING THE SPRATLY ISLANDS DEVELOPMENT AUTHORITY

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* – This Act shall be known as the “Spratly Islands Development Authority Act”

SECTION 2. *Declaration of Policy.* – It is hereby declared the policy of the Government to explore, exploit, and protect the Spratly group of islands consistent with its Constitutional mandate and rights under international law. It is likewise the policy of the Government to maximize the resources within the Spratly group of islands to enhance the benefits derived from such lands in order to promote the economic and social development of the country in general.

SECTION. 3. *Creation of the Spratly Islands Development Authority.* — There is hereby created a body corporate to be known as the Spratly Islands Development Authority, which shall have the attribute of perpetual succession and shall be vested with the powers of a corporation.

It shall be organized within thirty (30) days after approval of this Act. It shall have a term of fifty (50) years from its organization: provided, that Congress, by a joint resolution, may dissolve the Spratly Islands Conversion Authority whenever in its judgment the primary purpose for its creation has been accomplished. It shall establish its principal office in Metropolitan Manila unless otherwise provided by the Spratly Islands Conversion Authority and may put up such branches as may be necessary.

1 Sec. 4. Purposes of the Spratly Islands Conversion Authority. — The Spratly Islands
2 Conversion Authority shall have the following purposes:

3 (a) To own, hold and/or administer the Spratly group of islands which shall be
4 transferred to it by the President;

5 (b) To adopt, prepare and implement a comprehensive and detailed development plan
6 embodying a list of projects for a sound and balanced development consistent with ecological
7 and environmental standards, into other productive uses to promote the economic and social
8 development of the country in general;

9 (c) To encourage the active participation of the private sector in transforming the
10 Spratly group of islands into other productive uses;

11 (d) To establish a mechanism in coordination with the appropriate local government
12 units to effect meaningful consultation regarding the plans, programs and projects within the
13 regions; and

14 (e) To plan, program and undertake the readjustment, relocation, or resettlement of
15 population within the Spratly group of islands as may be deemed necessary and beneficial by the
16 Spratly Islands Conversion Authority, in coordination with the appropriate government agencies
17 and local government units.

18 Sec. 5. Powers of the Spratly Islands Conversion Authority. — To carry out its
19 objectives under this Act, the Spratly Islands Conversion Authority is hereby vested with the
20 following powers:

21 (a) To succeed in its corporate name, to sue and be sued in such corporate name and to
22 adopt, alter and use a corporate seal which shall be judicially noticed;

23 (b) To adopt, amend and repeal its bylaws;

24

(c) To enter into, make, perform and carry out contracts of every class, kind and description which are necessary or incidental to the realization of its purposes with any person, firm or corporation, private or public, and with foreign government entities;

(d) To contract loans, indebtedness, credit and issue commercial papers and bonds, in any local or convertible foreign currency from any international financial institutions, foreign government entities, and local or foreign private commercial banks or similar institutions under terms and conditions prescribed by law, rules and regulations;

(e) To execute any deed of guarantee, mortgage, pledge, trust or assignment of any property for the purpose of financing the programs and projects deemed vital for the early attainment of its goals and objectives, subject to the provisions of Article VII, Sec. 20, and Article XII, Sec. 2, paragraphs (4) and (5) of the Constitution;

(f) To construct, own, lease, operate and maintain public utilities as well as infrastructure facilities;

(g) To reclaim or undertake reclamation projects as it may deem necessary in areas adjacent or contiguous to the Spratly Islands Conversion Authority's lands described in Sec. 7 of this Act either by itself or in collaboration with the Public Estates Authority (PEA) established under Presidential Decree No. 1084 as amended;

(h) To acquire, own, hold, administer, and lease real and personal properties, including agricultural lands, property rights and interests and encumber, lease, mortgage, sell, alienate or otherwise dispose of the same at fair market value it may deem appropriate;

(i) To receive donations, grants, bequests and assistance of all kinds from local and foreign governments and private sectors and utilize the same;

(j) To invest its funds and other assets under Section 12 and 15 of this Act in such areas it may deem wise;

(k) To exercise the right of eminent domain;

(l) To exercise oversight functions over the Spratly group of islands declared under this Act and by subsequent presidential proclamations within the framework of the declared policies of this Act;

(m) To promulgate all necessary rules and regulations; and

(n) To perform such other powers as may be necessary and proper to carry out the purposes of this Act.

Sec. 6. Capitalization. — The Spratly Islands Conversion Authority shall have an authorized capital of One hundred billion pesos (P100,000,000,000) which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Sec. 8 of this Act or by transferring to the Spratly Islands Conversion Authority properties valued in such amount.

An initial operating capital in the amount of Seventy million pesos (P70,000,000) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated which shall be covered by preferred shares of the Spratly Islands Conversion Authority retireable within two (2) years.

Sec. 7. Transfer of Properties. — Pursuant to paragraph (a), Sec. 4 hereof, the President shall transfer forthwith to the Spratly Islands Conversion Authority the Spratly group of islands, the technical descriptions provided hereunder based on Presidential Decree 1596 and subject to ground survey and verification to be conducted by the DENR, for which additional funds are to be requested for the purpose from the Department of Budget and Management:

The Spratly group of islands

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7° 40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the inter-section of the parallel of 12°00' N with the

1 meridian of longitude 114° 30' E, thence, due East along the parallel of 12°00' N
2 to its intersection with the meridian of 118°00' E, thence, due South along the
3 meridian of longitude 118° 00' E to its intersection with the parallel of 10°00' N,
4 thence Southwestwards to the point of beginning at 7°40' N, latitude and 116° 00'
5 E longitude.

6 Sec. 8. Funding Scheme. — The capital of the Spratly Islands Conversion Authority
7 shall come from the budget of the national government.

8 Sec. 9. Board of Directors: Composition. — The powers and functions of the Spratly
9 Islands Conversion Authority shall be exercised by a Board of Directors to be composed of nine
10 (9) members, as follows:

11 (a) A full-time chairman who shall also be the president of the Spratly Islands
12 Conversion Authority; and

13 (b) Eight (8) other members from the private sector, two (2) of whom coming from the
14 labor sector.

15 The chairman and members shall be appointed by the President with the consent of the
16 Commission on Appointments. Of the initial members of the Board, three (3) including the
17 chairman, a representative from the private sector and a representative from the labor sector shall
18 be appointed for a term of six (6) years, three (3) for a term of four (4) years and the other three
19 (3) for a term of two (2) years. In case of vacancy in the Board, the appointee shall serve the
20 unexpired term of the predecessor.

21 No person shall be appointed or designated unless he is a natural-born Filipino citizen, of
22 good moral character, of unquestionable integrity, and of recognized competence in relevant
23 fields including, but not limited to, economics, management, international relations, law or
24 engineering, preferably naval or aeronautical.

25 The chairman and president of the Spratly Islands Conversion Authority shall have a
26 fixed term of six (6) years.

1 All procedural matters in the conduct of board meetings shall be prescribed in its internal
2 rules.

3 Members of the Board shall receive a per diem of not more than Five thousand pesos
4 (P5,000) for every board meeting: provided, however, that the per diem collected per month does
5 not exceed the equivalent of four (4) meetings: provided further, that the amount of per diem for
6 every board meeting may be increased by the President but such amount shall not be increased
7 within two (2) years after its last increase.

8 *SECTION 10. Functions of the Board.* — The Board of Directors shall be the policy-
9 making body of the Spratly Islands Conversion Authority and shall perform the following
10 functions:

11 (a) Determine the organizational structure of the Spratly Islands Conversion Authority,
12 define the duties and responsibilities of all officials and employees and adopt a compensation
13 and benefit scheme at least equivalent to that of the Central Bank of the Philippines;

14 (b) Appoint all officials down to the third level and authorize the president of the
15 Spratly Islands Conversion Authority to appoint all others: provided, that all appointments shall
16 be on the basis of merit and fitness and all personnel action shall be in pursuance of Civil Service
17 Laws, rules and regulations, except those coterminous employees of the members of the Board;

18 (c) Prepare the annual and supplemental budgets of the Spratly Islands Conversion
19 Authority;

20 (d) Submit an annual report of the operation of the Spratly Islands Conversion
21 Authority to the President of the Philippines, President of the Senate and Speaker of the House of
22 Representatives;

23 (e) Carry out the purposes of the Spratly Islands Conversion Authority with the
24 following terms and references:

25 (1) As much as possible, major conversion projects shall be undertaken under

1 the complete project turnkey or build-operate-transfer (BOT) scheme, as provided under
2 Republic Act Numbered Sixty-nine hundred and fifty-seven (RA 6957); and

3 (2) Starting the fourth year of the Spratly Islands Conversion Authority's full
4 operation, a privatization or divestment program of its projects and subsidiaries shall
5 begin under general guidelines prescribed by the President of the Philippines.

6 SECTION 11. Duties and Responsibilities of the President of the Spratly Islands
7 Conversion Authority. — The president of the Spratly Islands Conversion Authority shall have
8 the following duties and responsibilities:

9 (a) To act as Chief Executive Officer of the Spratly Islands Conversion Authority;

10 (b) To execute, administer and implement the policies and measures approved by the
11 Board;

12 (c) To direct and supervise the operations and administration of the Spratly Islands
13 Conversion Authority;

14 (d) To represent the Spratly Islands Conversion Authority in all dealings with offices,
15 agencies and instrumentalities of the Government and with all persons and entities, public or
16 private, domestic or foreign;

17 (e) To direct and supervise the preparation of the agenda for the meeting of the Board,
18 and to submit for the consideration of the Board such policies and measures as he believes
19 necessary to carry out the purposes and objectives of this Act; and

20 (f) To exercise such other powers and functions provided in the bylaws and as may be
21 vested in him by the Board.

22 SECTION 13. The Spratly Islands Metropolitan Authority. —

23 (a) Creation of the Spratly Islands Metropolitan Authority. — A body corporate to be
24 known as the Spratly Islands Metropolitan Authority, is hereby created as an operating and

1 implementing arm of the Spratly Islands Conversion Authority.

2 (b) Powers and Functions of the Spratly Islands Metropolitan Authority. — The Spratly
3 Islands Metropolitan Authority, otherwise known as the Spratly Islands Metropolitan Authority,
4 shall have the following powers and functions:

5 (1) To accept any local or foreign investment, business or enterprise, subject
6 only to such rules and regulations to be promulgated by the Spratly Islands Metropolitan
7 Authority in conformity with the policies of the Spratly Islands Conversion Authority
8 without prejudice to the nationalization requirements provided for in the Constitution;

9 (2) To undertake and regulate the establishment, operation and maintenance of
10 utilities, other services and infrastructure in the Spratly group of islands including
11 shipping and related business, stevedoring and port terminal services or concessions,
12 incidental thereto and airport operations in coordination with the Civil Aeronautics
13 Board, and to fix just and reasonable rates, fares, charges and other prices therefore;

14 (3) To construct, acquire, own, lease, operate and maintain on its own or
15 through contract, franchise, license permits bulk purchase from the private sector and
16 build-operate-transfer scheme or joint-venture the required utilities and infrastructure in
17 coordination with local government units and appropriate government agencies
18 concerned and in conformity with existing applicable laws therefore;

19 (4) To adopt, alter and use a corporate seal, to contract, lease, sell, dispose,
20 acquire and own properties; to sue and be sued in order to carry out its duties and
21 functions as provided for in this Act and to exercise the power of eminent domain for
22 public use and public purpose;

23 (5) Within the limitation provided by law, to raise and/or borrow the necessary
24 funds from local and international financial institutions and to issue bonds, promissory
25 notes and other securities for that purpose and to secure the same by guarantee, pledge,
26 mortgage, deed of trust, or assignment of its properties held by the Spratly Islands

1 Metropolitan Authority for the purpose of financing its projects and programs within the
2 framework and limitations of this Act;

3 (6) To authorize the establishment of appropriate educational and medical
4 institutions;

5 (7) To protect, maintain and develop the virgin forests within the islands which
6 will be proclaimed as a national park and subject to a permanent total log ban, and for
7 this purpose, the rules and regulations of the Department of Environment and Natural
8 Resources and other government agencies directly involved in the above functions shall
9 be implemented by the Spratly Islands Metropolitan Authority;

10 (8) To adopt and implement measures and standards for environmental pollution
11 control of all areas within its territory, including, but not limited to all bodies of water
12 and to enforce the same. For which purpose the Spratly Islands Metropolitan Authority
13 shall create an Ecology Center; and

14 (c) Board of Directors. — The powers of the Spratly Islands Metropolitan Authority
15 shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board,
16 which shall be composed of fifteen (15) members, to wit:

17 (1) Representatives of the local government units that govern the Spratly group
18 of islands;

19 (2) Two (2) representatives from the National Government;

20 (3) Five (5) representatives from the private sector coming from the present
21 naval stations, public works center, ship repair facility, naval supply depot and naval air
22 station; and

23 (4) The remaining balance to complete the Board shall be composed of
24 representatives from the business and investment sectors.

1 The chairman and the members of the Board shall be appointed by the President to serve
2 for a term of six (6) years, unless sooner removed for cause except for the representatives of the
3 local government units who shall serve for a term of three (3) years. In case of removal for cause,
4 the replacement shall serve only the unexpired portion of the term.

5 No person shall be appointed as a member of the Board unless he is a Filipino citizen, of
6 good moral character, and of recognized competence in relevant fields including, but not limited
7 to economics, management, international relations, law or engineering. Preference in the
8 appointment of the members of the Board shall be given to residents within the Subic Special
9 Economic Zone.

10 Members of the Board shall receive a per diem of not more than Five thousand pesos
11 (P5,000.00) for every board meeting: provided, however, that the per diem collected per month
12 does not exceed the equivalent of four (4) meetings: provided, further, that the amount of per
13 diem for every board meeting may be increased by the President: provided finally, that the
14 amount of per diem shall not be increased within two (2) years after its last increase.

15 (d) Chairman/Administrator. — The President shall appoint a professional manager as
16 administrator of the Spratly Islands Metropolitan Authority with a compensation to be
17 determined by the Board subject to the approval of the Secretary of Budget, who shall be the ex
18 officio chairman of the Board and who shall serve as the chief executive officer of the Spratly
19 Islands Metropolitan Authority.

20 (e) Capitalization. — The Spratly Islands Metropolitan Authority shall have an
21 authorized capital stock of Twenty billion pesos (P20,000,000,000) divided into twenty thousand
22 (P20,000) no-par shares fully subscribed and paid up by the Republic of the Philippines with:

23 (1) All lands embraced, covered and defined in Section 12 hereof, as well as
24 permanent improvements and fixtures upon proper inventory not otherwise alienated,
25 conveyed, or transferred to another government agency;

26 (2) All other assets which the President may transfer to the Spratly Islands

1 Metropolitan Authority as part of the equity contribution of the Government; and

2 (3) Cash contribution by the Government in the amount of Three hundred
3 million pesos (P300,000,000) a year for the next three (3) years, which is hereby
4 appropriated out of any fund in the National Treasury not otherwise appropriated.

5 SECTION 14. Relationship with the Spratly Islands Conversion Authority and the
6 Local Government Units. —

7 (a) The provisions of existing laws, rules and regulations to the contrary
8 notwithstanding, the Spratly Islands Metropolitan Authority shall exercise administrative
9 powers, rule-making and disbursement of funds over the Spratly group of islands in conformity
10 with the oversight function of the Spratly Islands Conversion Authority.

11 (b) In case of conflict between the Spratly Islands Metropolitan Authority and the local
12 government units concerned on matters affecting the Spratly group of islands other than defense
13 and security, the decision of the Spratly Islands Metropolitan Authority shall prevail.

14 SECTION 15. Subsidiaries. — The Spratly Islands Conversion Authority shall have the
15 power to form, establish, organize and maintain a subsidiary corporation or corporations. Such
16 subsidiary or subsidiaries shall be formed in accordance with the Philippine Corporation Law
17 and existing rules and regulations promulgated by the Securities and Exchange Commission,
18 unless otherwise provided in this Act. In all cases, the Spratly Islands Conversion Authority shall
19 own initially at least fifty-one per centum (51%) of the capital stock of a subsidiary. The Spratly
20 Islands Conversion Authority shall also initially have the majority of the Board of Directors of
21 the subsidiaries, of which at least one (1) director shall be the chairman of the Spratly Islands
22 Conversion Authority and a second director shall be the president of the Spratly Islands
23 Conversion Authority or his designated representative.

24 Such subsidiaries shall be exempt from the coverage of the Civil Service Laws, rules and
25 regulations.

1 SECTION 16. Supervision. — The Spratly Islands Conversion Authority shall be under
2 the direct control and supervision of the Office of the President for purposes of policy direction
3 and coordination.

4 SECTION 17. Legal Counsel. — Without prejudice to the hiring of an outside counsel,
5 the Government Corporate Counsel shall be the ex officio legal counsel of the Spratly Islands
6 Conversion Authority and the subsidiaries wherein the Spratly Islands Conversion Authority
7 owns the majority of the shares of stocks, and for this purpose he may designate a full time
8 representative whose compensation shall be approved by the Board.

9
10 SECTION 18. Auditor. — The Commission on Audit shall appoint a representative
11 who shall be the full time auditor of the Spratly Islands Conversion Authority and such personnel
12 as may be necessary to assist said representative in the performance of his duties. He is mandated
13 to impose pre-audit within thirty (30) days after submission of all proposed substantial sales,
14 transfers, and alienations of property. He shall likewise render a full report thereof to Congress
15 every sixty (60) days. The salaries of the auditor and his staff shall be approved by the Board.

16 Sec. 19. Interim Capacity. — Except for the chairman of the Spratly Islands
17 Metropolitan Authority, the chairman and other members of the Board of the Spratly Islands
18 Conversion Authority and the Spratly Islands Metropolitan Authority shall act in an interim
19 capacity and shall serve until the 31st of July 2017 or until such time that their successors shall
20 have been duly appointed.

21 Sec. 20. Injunction and Restraining Order. — The implementation of the projects for
22 the conversion and development of the Spratly group of islands are urgent and necessary and
23 shall not be restrained or enjoined except by an order issued by the Supreme Court of the
24 Philippines.

25 Sec. 21. Separability Clause. — If any provision of this Act shall be held
26 unconstitutional or invalid, the other provisions not otherwise affected shall remain in full force

1 and effect.

2 Sec. 22. Repealing Clause. — All laws, executive issuances or parts thereof which are
3 inconsistent herewith are hereby repealed or amended accordingly.

4 Sec. 24. Effectivity Clause. — This Act shall take effect upon its publication in at least
5 one (1) newspaper of general circulation.

Approved,