

Certain Questions Arising out of Sea-Level Rise in the Boni Sea

(Boka v. Palaman)

1. The Commonwealth of Boka (“Boka”) and the Republic of Palaman (“Palaman”) are situated in the Boni Sea region [Annex I]. Boka is a developed continental state and Palaman is a developing archipelagic state. Palaman’s territory consists of five main islands and the Satun Archipelago to the northwest. The nearest point between Boka’s territory and Palaman’s main island is 420 nautical miles. The nearest point of Boka’s territory and the nearest point of Palaman’s main islands to Satun Archipelago are 205 nautical miles and 328 nautical miles, respectively. Boka and Palaman ratified the *United Nations Convention on the Law of the Sea* (“LOSC”) respectively on 1 January 1997 and 15 March 1998. When ratifying the Convention, Boka and Palaman chose by written declarations the means for the settlement of disputes concerning the interpretation or application of the LOSC [Annex II].

2. Boka and Palaman are also parties to the following treaties: the 1969 *Vienna Convention on the Law of Treaties*, ratified by Boka in March 1974 and by Palaman in November 1972; the *United Nations Framework Convention on Climate Change* (“UNFCCC”), ratified by Boka in September 1993 and by Palaman in February 1994; the *Kyoto Protocol* to the UNFCCC, ratified by Boka in August 1998 and by Palaman in January 1999; the *Paris Agreement* to the UNFCCC, ratified by Boka in October 2019 and by Palaman in November 2018.

3. Satun Archipelago consists of three maritime features: Malo, Kili, and Wake. Malo sits 402 nautical miles from Palaman’s main island and 256 nautical miles from Boka. According to the *Report on Satun Archipelago*, published in 1995 by Palaman’s State Administration of the Sea and Islands, in the year 1994, Malo had an area of 6.33 square kilometers and 640 habitual residents. Sixty percent of Malo’s residents made a living by fishing. The fish was sold to the Packing House based on Malo, which shipped them to Palaman’s main islands for sale. The other forty percent of the residents lived on farming taro and collecting fruits. Most of the houses were built around the flat southeast coast of Malo. There were four wells from which fresh water for drinking, sanitation and irrigation were collected.

4. Kili is located 50 nautical miles southwest of Malo and 205 nautical miles from Boka's continent. According to the *Report on Satun Archipelago 1995*, in 1994, the total land area of Kili was 2.32 square kilometers. It was covered by a large scale of vegetation and home to a variety of migratory birds. The report further mentioned that Palaman government granted permission to its citizens to collect herbs on Kili since 1994.

5. Wake is situated 73 nautical miles southeast of Malo and 233 nautical miles to Boka continent. According to the *Report on Satun Archipelago 1995*, in 1994, Wake had a long and narrow shape that was low and flat. It stood above water at high tide. The coast of Wake consisted of sandy beaches. Throughout 1994, Wake was used as a safe harbor and shelter by the fishermen to avoid typhoons.

6. On 27 May 1998, Palaman enacted its *Baselines Regulations* [Annex III]. The length of the baselines does not exceed 100 nautical miles. The ratio of the area of the water to the area of the land is 5.32:1. On 17 June 1998, Palaman government deposited the lists of coordinates as contained in the *Baseline Regulations* with the Secretary-General of the United Nations. On 16 July 2000, Palaman enacted its *Maritime Zones Act*, establishing 12 nautical miles territorial sea, 200 nautical miles exclusive economic zone and 200 nautical miles continental shelf from the baselines as drawn in accordance with the 1998 *Baselines Regulations*.

7. On 6 August 1999, Boka adopted its *Exclusive Economic Zone and Continental Shelf Act*. Article 2 of the Act prescribes:

(1) The exclusive economic zone of the Commonwealth of Boka is an area beyond and adjacent to the territorial sea of the Commonwealth of Boka extending up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

(2) The continental shelf of the Commonwealth of Boka comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

8. Boka and Palaman were aware of the fact that their claims of exclusive economic zone and continental shelf overlap in part with each other. From 2001 to 2006, representatives of the two countries had five rounds of negotiations on maritime delimitation. Due to wide differences between the two sides on the effect to be given to the features of Satun Archipelago, they failed to reach an agreement on maritime boundary.

9. Rising seas affect homes, roads as well as water supplies and habitats in Satun Archipelago. In 2000, sea water began to intrude into the farmlands in Malo. The villages in Malo were gradually submerged, and the residents had to rebuild their houses on the roofs of the sunken ones since 2005. According to the *Report on the Water Quality on Malo* published by Palaman's National University in 2006, due to salinization caused by sea water intrusion, the water in the four wells was not safe for drinking. In 2007, two sets of desalination equipment were installed on Malo to meet the population's daily water need. Being unable to make a profit on Malo, the Packing House was closed on 8 May 2011. With the help of the government, most of the desperate residents on Malo resettled on the main islands of Palaman. According to the demographic statistics in 2012, only fifteen fishermen remained on Malo, whose lives depends substantially on imported foods and other necessities from the main islands of Palaman.

10. On 31 March 2012, Digital Global, a technology-based institute tracking the impacts of global sea-level rise, published a *Report on the Impact of Sea-Level Rise on Satun Archipelago*. According to the report, average sea level in Satun Archipelago has swelled 8 centimeters since 1990. The report also shows that in 2012, the land area of Malo was 1.31 square kilometers at high tide, Kili was below water at high tide and above water at low tide, and Wake was submerged under the sea at low tide.

11. On 18 June 2012, Boka made a declaration on the legal status of Malo, Kili and Wake. The declaration stated that:

“The legal status of Malo, Kili and Wake have changed due to the physical changes caused by sea level rise, a natural phenomenon. None of these features can now generate 200 nautical miles exclusive economic zone or continental shelf.”

12. In July 2012, Palaman government started large-scale land reclamation and fortification activities at Malo, Kili and Wake as response measures to deal with the impacts of sea-level rise. Around Malo, reinforced seawalls were built along the previous general configuration of Malo. The land inside the seawalls were reclaimed by sands dredged from the seabed. As the results of these activities, satellite images taken in 2015 shows that the land area of Malo is 5.33 square kilometers. To encourage the former residents to return to Malo, concrete shelters equipped with water tanks and water filters and other daily related infrastructures were built. To maintain a more stable fresh water supply, desalination plants capable of providing fresh water to 1500 people were built in 2017. The Packing House reopened on 22 April 2018. Demographic statistics shows that there are 423 residents on Malo in 2019. The above-mentioned activities carried out by Palaman cost up to \$ 7.5 USD billion. The estimated cost for the reclamation and fortification activities at Kili and Wake is \$ 10 USD billion. Palaman planned to launch these activities in 2022.

13. The abundant fisheries resources in Satun Archipelago waters have supported the livelihood of Boka and Palaman's native communities from time immemorial. Black Bella is a precious fish in the waters around Kili, and it is essential for the religious festivals in Palaman. Historical documents also show that fishermen from the main islands of Palaman and Malo have been fishing Black Bella around Kili since 1880.

14. In order to manage the escalating fishery conflicts and protect Black Bella in their overlapping area, Boka and Palaman concluded on 22 April 2008, the *Agreement on Fishery Cooperation between the Commonwealth of Boka and the Republic of Palaman* ("2008 Agreement") which entered into force on 22 April 2009. The 2008 Agreement determines the total allowable catch for joint stocks, including Black Bella.

15. Since 2014, Palaman's fishermen complained frequently to the Directorate of Fisheries of Palaman that they had been expelled by Coast Guard of Boka ("CGB") from the overlapping area as defined by the 2008 Agreement. About 15 reports have been received by Directorate of Fisheries of Palaman from 2014 to 2019. On 29 May 2019, Palaman sent *Note Verbale* to Boka, reiterating its fishing rights pursuant to the

LOSC and the 2008 Agreement in the overlapping area, and demanding Boka not to prevent Palaman's fishermen from fishing in the overlapping area.

16. On 2 June 2019, Boka sent a *Note Verbale* to Palaman, stating that

“Due to the sea-level rise, the legal status of the maritime features of Satun Archipelago has changed. Malo is no longer an island but a rock within the meaning of Article 121(3) of the LOSC. Kili becomes a low-tide elevation within the meaning of Article 13 of the LOSC. Wake is a completely submerged feature. As a result, none of the maritime features is entitled to 200 nautical miles exclusive economic zone or continental shelf. The archipelagic baselines in Satun Archipelago no longer reflect the current situation and they are inconsistent with Article 47 of the LOSC. Thus, there is no overlapping maritime area between Boka and Palaman. Boka enjoys the sovereign rights and jurisdiction under the LOSC in its undisputable exclusive economic zone and continental shelf”

17. In its reply dated 20 June 2019, Palaman insisted that the status of the features of Satun Archipelago remains unaffected by sea-level rise and unchanged. The archipelagic baselines are still valid since Palaman had deposited lists of coordinates and the *Baseline Regulations* with the Secretary-General of the United Nations

18. On 10 July 2019, Boka reiterated its position in the aforementioned *Note Verbale*, adding that the reclamation and fortification activities implemented by Palaman cannot change the current legal status of Malo as rock under Article 121 of LOSC, Kili as a low-tide elevation under Article 13 of LOSC, and Wake as a submerged maritime feature even at low-tide. Boka would take necessary actions to defend its sovereign rights in its exclusive economic zone. On 16 May 2020, Boka informed Palaman that it would consider submitting the aforementioned disputes to the International Tribunal for the Law of the Sea (“ITLOS”) if Palaman continued to refuse to engage in meaningful consultations with Boka.

19. On 31 March 2021, Boka initiated proceedings against Palaman at the ITLOS and requested the Tribunal to adjudge and declare:

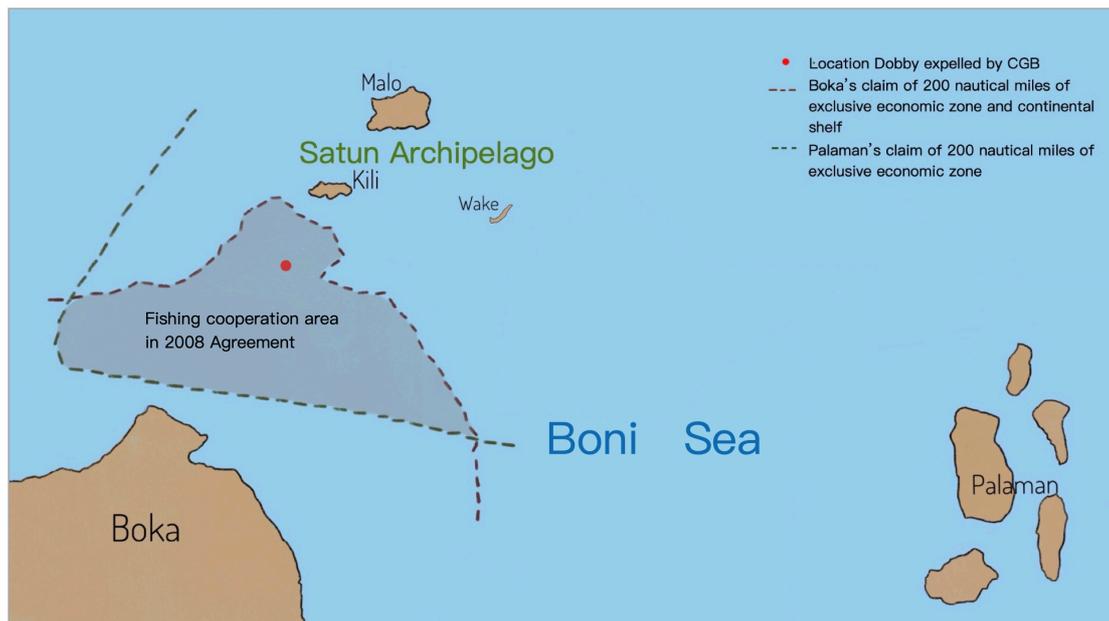
- (1) Malo is a rock under Article 121(3) of the LOSC, Kili is a low-tide elevation under Article 13 of LOSC, and Wake is a submerged maritime feature;
- (2) The archipelagic baselines of Satun Archipelago as drawn by Palaman on 27

May 1998 are inconsistent with Article 47 of the LOSC;

- (3) There are no more overlapping areas in the sea between Boka and Palaman;
- (4) Boka enjoys sovereign rights and jurisdiction in its 200 nautical miles' exclusive economic zone, and the fishing activities conducted by Palaman's fishermen infringed Boka's sovereign rights in its exclusive economic zone.

20. Palaman respectfully requests ITLOS to find that it has no jurisdiction over the Case, or to reject all of Boka's submissions on the merits in case it decides otherwise.

Annex I: Sketch map of the Boni Sea



(This Sketch map has been prepared for illustrative purposes only)

Annex II

Declaration of the Commonwealth of Boka (upon signature and confirmed upon ratification)

In accordance with Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea, the Commonwealth of Boka declares that, it accepts the jurisdiction of the International Tribunal for the Law of the Sea for the interpretation or application of the Convention.

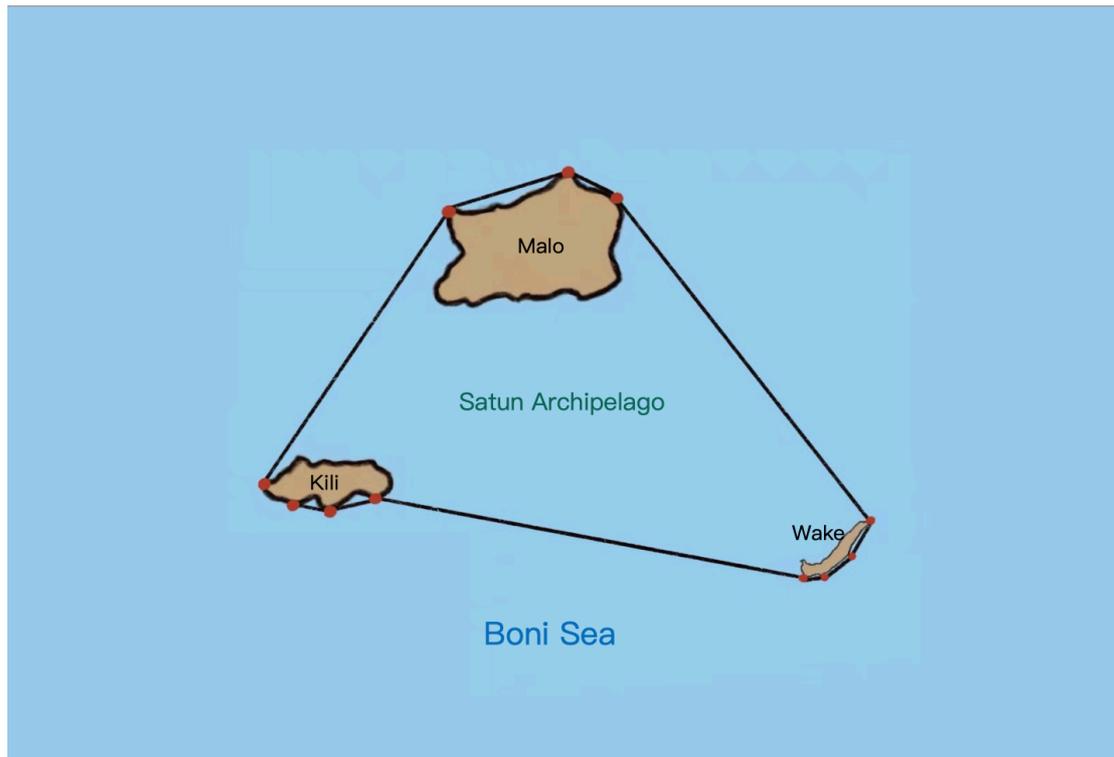
Declaration of the Republic of the Palaman (upon signature)

Pursuant to Article 287, paragraph 1, of the 1982 United Nations Convention on the Law of the Sea, the Republic of Palaman hereby declares that it chooses the International Tribunal for the Law of the Sea as a means for the settlement of disputes concerning the interpretation or application of the Convention.

Declaration of the Republic of the Palaman under Article 298 (upon ratification)

In accordance with paragraph 1 of Article 298 of the 1982 United Nations Convention on Law of the Sea, the Republic of Palaman does not accept any of the procedures provided for in section 2 of Part XV of the Convention with respect of disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations as well as those involving historic rights or titles.

Annex III: Sketch Map of the baselines



(This Sketch map has been prepared for illustrative purposes only)