

# **Toward a Philippine Legal Response To Global Finance: A National Security Perspective\***

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## **Introduction**

National security has been defined as that state or condition of the nation wherein the people's way of life and institutions, their territorial integrity and sovereignty including their well-being are protected and enhanced. Its several components include the economic, political, military, environmental and socio-cultural dimensions of security. Threats to national existence that take any of these forms are actually threats to national security.

There are seven fundamental elements that lie at the core of national security. These are: territorial integrity, ecological balance, socio-political stability, cultural cohesiveness, moral-spiritual consensus, external peace and economic solidarity. Economic solidarity is achieved when the economy is strong, capable of supporting national endeavors and derives its strength from the people who have an organic stake in it through their participation and ownership. On dealing with economic issues and concerns, the state shall continue implementing reforms that would generally improve the people's lives and boost the economy by strengthening the capital markets, enhancing the foreign and domestic investment, and improving the business climate of the country.<sup>1</sup>

The recent Asian financial crisis of 1997 threatened the very existence of the Philippines as a state, just like other global financial crises that have left their indelible marks of destruction on other nations. The

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<sup>1</sup> Gen. Alex Aguirre, "The Bureaucratic Politics of National Security System in the Philippines", Jan. 27, 2005, lecture at the NDCP before MNSA RC 40.

Asian financial crisis arose from a fairly recent metamorphosis of globalization now known as the globalization of capital, as distinguished from the globalization of trade. Laws that are intended to address the grievous impact of this financial threat to the nation are tools of the state alongside the effort to attain the goals and aspirations of national security. Consequently, a national financial legal framework must be established to address these threats. The dimensions of national security and its elements should serve as its guide.

## Background

A recent publication<sup>2</sup> reported that, “in the first three (3) weeks of January 2005, \$263.3 million in net inflows went to the local bourse Philippine Stock Exchange, while \$190.5 million went to government securities and money market instruments.” Likewise, BSP reported that “hot money” came from Citibank N.A., Standard Chartered Bank, Deutsche Bank, HSBC, and ING Bank, which together account for over ninety-five percent (95%) of total portfolio funds flows to the country.<sup>3</sup> Portfolio funds are referred to as “hot money” because they can leave the economy as fast as they come in. These portfolio funds come into the country normally in the form of investments in the stock market, government securities, and money market instruments.<sup>4</sup>

In the search for global financial capital, developing nations like the Philippines are in a continuing competition in the global market to siphon funds and money to fund much desired and pre-charted plans for industrialization and development. Money comes in different forms and from different sources, but never for free. From the Philippine perspective, the country’s doors are open for the entry of foreign capital in the hope that when these funds come in, they would stay and propel the Philippine economy to grind and move towards further development. Conversely, the departure of foreign capital from the country is always viewed with despair.

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<sup>2</sup> Hot Money Can Raise Peso-Dollar Rate to P52. (2005, Jan. 31). *Business World*, p.1.

<sup>3</sup> Bangko Sentral expects increase in foreign portfolio investments to RP. (2005, Jan. 17). *Business World*, pp. 1 and 6.

<sup>4</sup> Hot Money Can Raise Peso-Dollar Rate to P52. (2005, Jan. 31). *Business World*, p.1.

Technically, the Philippines would want foreign capital to enter the country, and stay, to produce goods or services and yielding income, and be of use for national production and not to just ‘come-and-go’ after this host country has served its fleeting purpose of yielding profit for the foreign investor. From the perspective of the portfolio fund however, the objective is to gain profit. It imposes its presence without any condition as to its purpose or duration of stay in the Philippines. Thus, on its own terms, it will assess the Philippine capital market to determine whether it is a volatile or a risky economy. It will then attach a value to such risk and measure the required return that corresponds to the risk prior to their entry and investment in the Philippine financial market, because their western hornbook theory tells them that the higher the risk, the higher their return.

Embedded in this perspective is the theory that, while the return is high in this risky market from among the basket of Asian investment securities, it should be able to “get out when the kitchen gets hot” at the soonest possible time, even if it has just stayed in the Philippine financial jurisdiction for a day or two. This provides the rationale for the Western nation’s insistence that the capital markets in the world, including the Philippines, should be *transparent* and should be *free of restrictions or controls – transparent*, so that investing institutions would fully know the financial nuances of the investment instrument it is investing into, and *free of restriction or control*, so that if their investment strategy sours, they can cut their losses, sell out and move on to a different capital market.

At its macro-economic setting, which is the normal setting for these large foreign or domestic capital inflows, their gargantuan entry in Philippine capital market in a day gives the economy an apparent boost for the short-term. These global funds earn on margins and act or react at every bit of market information. However, it also situates the economy at an edge of anxiety and uncertainty, not knowing when these fund investments would sell-out and leave the country. This anxiety transforms into an economic panic because these funds normally depart the country *en masse*, followed by a herd of other fund investors, just like the Pied Piper playing his flute to mesmerized mice marching out of the town. This multi-billion-dollar-denominated uncertainty is so nerve-wracking to policy-makers that it sufficiently prevents a nation from sustaining a momentum for economic progress. The recent events of the 1997 Asian Financial Crisis and the 1999 BestWorld scam (better known as the BW

insider trading scam at the Philippine Stock Exchange) attests to the economic and political horrors of this massive flight of capital.

The Philippines is not new to economic growth and to economic crises that are accompanied with massive entry and flight of foreign capital. Since the early growth years of the 1950s, the nation's economic growth was financed by foreign money from war reparations. This was followed by the bust period in 1960 when exchange market pressure came about because of a binding foreign exchange constraint; recovery occurred with IMF assistance. Another bust period in 1983 occurred when the Philippines suffered a balance of payment crisis from which the country recovered only with IMF assistance and new inflow of foreign loaned funds.

Subsequently, another bust period emerged in 1986, resulting from the political instability where a President stepped down from office that led to massive capital flight. The nation regained foreign capital in 1994-95 only to suffer in the Asian financial crisis of 1997. For boom periods showing moderate growth rates, the economy is awash with dollars. Bust periods are characterized by foreign exchange shortages that curtail imports of raw materials and capital goods.<sup>5</sup>

This fluctuating trend of the economy shows a volatile economic foundation. Brought to the modern day era of globalization of finance, only the large fund speculators benefit from unwanted economic volatility because their nature is precisely to earn from increments in fluctuations or instability of prices. This contradicts the desired economic strategy of the Philippines that desires a progressive and stabilized economy, hopefully fitted to its developmental needs. If these funds leave the country just like other funds, the nation would not be troubled. But these funds leave catastrophic marks on the economy.

The recent flight of massive capital in the 1997 Asian financial crisis resulted to a national security issue in terms of poverty and the collapse of several sectors of the economy. The negative impact of the crisis on living standards was serious and prolonged. Poverty line rose from 31.8 percent

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<sup>5</sup> Bautista, Carlos C., (2000, October). *Boom-bust Cycles and Crisis Period in the Philippines: A Regime Switching Analysis*, (Discussion Paper No.0009) Diliman, Quezon City: UP School of Economics, p. 5.

in 1997 to 33.7 percent in 2003. This translated to 26.5 million Filipinos out of 79 million, or 4.5 million families, living in poverty. At the height of the crisis, about 200 building projects were suspended in the construction sector.<sup>6</sup>

Between 1997 and 2000, in the industry and manufacturing sectors, the cost of servicing dollar denominated debts rose where seventy-seven key enterprises filed for suspension of payments. Prof. Ed Morato of the Asian Institute of Management professed that for the Philippines to industrialize, steel and petrochemical are the two base industries that are *sine qua non* conditions. The country's prime steel producer, National Steel Corporation, closed in 1999 full of debts throwing hundreds jobless. The debt-burdened petrochemical sector continues to operate "below capacity because the economy has not yet fully stabilized since the 1997-98 Asian crisis!" Key corporations in the cement industry were taken over by foreign corporations. Even the public utility high-profile Maynilad that won the bid to manage the western portion of the old government water service of the MWSS became unviable due to its dollar denominated but unhedged credit prior to 1997.<sup>7</sup>

All key dimensions of the economy suffered, including the government's fiscal capacity. The government's ability to raise revenue from taxes is greatly dependent on the economy's rate of growth that had now declined from 19% in 1997 to 17% in 1998, 16% percent in 1999, and 15% in 2000. Poverty is a national concern by itself as are issues of steel manufacturing, petrochemical production by the state, water utilities and cement production. Moreover, there is no clearer stand-alone issue than the budget crisis resulting from a fiscal deficit as what the country has at present. But the largest and clearest present danger to the existence of the Philippines is when all these major disasters happen simultaneously to the nation. And if they are all caused by a singular event, which was what had happened with the entry of the 1997 Asian Financial Crisis (followed by a domestic financial crisis in the BW insider trading scam), then that would be the mother of all issues.

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<sup>6</sup> Bello, 2004, p. 114

<sup>7</sup> Bello, 2004, p. 115

It is clear that there exists in the Philippine financial market environment a diverging clash between the Philippine economic desire for a stable economy vis-à-vis the interest of global capital funds that speculates in search for profit. To the chagrin of policy makers, this occurrence is passively tolerated not only because the nation voluntarily subscribes to a free market economy in the context of *laissez faire*, but also because it is involuntarily in need of avenues to raise capital flows for its development. It is with this background that this paper attempts to evaluate the present legal framework as the Philippine legal response to the advent of globalization of finance. Laws related to the elements of global finance -- financial instruments, capital markets, global funds, and intermediaries -- shall be assessed as to their *effectiveness, efficiency, adequacy, equity, and appropriateness* in regulating the entry of portfolio funds into the Philippine capital market.

### **Legal considerations**

Existing policies related to the entry of global and portfolio funds into the Philippines are recognized in the existing securities and banking laws. These statutes basically define the various financial instruments that allow for the entry of these capital funds. Global and portfolio funds are used to buy financial instruments to either invest or speculate on, the latter being the more recent global trend. In addition, the intermediaries between the foreign capital and the holders of the financial instruments play the role of traders between the buyers (portfolio funders) and the sellers (stock or bond owners) of these financial instruments.

Laws relating to these intermediaries like the Securities Regulation and Enforcement Act, the General Banking Law, the Investment Houses Act, Financing Company Act and the Investment Company Act, among others, provide the nation's policies of regulating these financial intermediaries toward a more transparent management and accounting processes. Transparency passively allows the nation to monitor and record these fund investments. There are no goods produced or physical outputs to export and earn from in this sort of "fund flows".

In the context of the on-going and inevitable "globalization of trade", the "globalization of international finance" followed as a consequence. In the former, production was the subject; in the latter, stocks, bonds, interest

rate and foreign exchange rates are the major elements. Global players like CalPERS are being courted not to take the Philippines off its *investment* basket while global *credit* rating entities like the Standard & Poor or Moody's are being entreated not to downgrade the nation's credit rating. In both *investment* and *credit*, the country remains unclear of its long-term strategic direction in its co-existence with the fast-paced trading of global funds.

As global portfolio funds grow in the global environment in terms of its assets when it is compared to its traditional sibling known as "foreign direct investments" that are invested more in production, their influence grows larger in the open market of international finance where the Philippines is just another non-major financial market. Noam Chomsky has estimated that whereas in the early 1970s about 10% of total capital in international exchanges was for speculation and about 90% related to the real economy for investment in productive capacity and for trade, by the 1990, these figures were reversed – 90% was for speculation, never meant for investment in raw materials, factories and other productive ventures.<sup>8</sup> In the observation of Dr. Solita Monsod, no nation in the world can withstand the massive inflow and sudden egress of these funds within a short period of time, and survive.<sup>9</sup>

With the deluge of these speculative funds unrestricted in its ingress and egress in the local capital markets, and with the simultaneous globalization of finance at the background, there is need to determine the Philippine strategic policy in this regard that affects national security. Thus, there is a need to study and understand the impact that global finance has on national security as manifested in the changes and trends in the various laws that relate to global funds (including local funds) in the Philippine setting.

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<sup>8</sup> Bragg, Robert. (1998, September 26). "Scholar Offers Hope that Financial Turmoil Can Be Fixed." from <http://www.chomsky.info/onchomsky/19980926.htm>

<sup>9</sup> Interview by the author when Dr. Solita Monsod lectured at the NDCP before RC 40, MNSA, at Camp Aguinaldo, Quezon City, Metro Manila.

## Corporate fund raising

As stated by John M. Dalton, “Businesses” usually evolve, over time from one-man operations (sole proprietorship) to partnership and ultimately to full-fledged corporations. Corporations traditionally meet their short-term requirements, for carrying inventory or for similar reasons, by borrowing from banks. When corporations need long term financing, they may sell ownership interests in the company (common stocks and preferred stocks) to the public, or borrow from the public by selling bonds. There are two major subdivisions to the stock market: the primary market and the secondary market. The primary market involves only new issues, while the secondary market handles used items.<sup>10</sup>

And when a corporation (other than a financial intermediary) borrows from the general public, the debt instrument is deemed to be a *security*. A loan agreement which involves 15 or more lenders is deemed a borrowing from the public; otherwise, it is considered a private borrowing. A long-term debt security is generally referred to as a bond or a debenture. There are many types of bonds and debentures but only a few have been used in the Philippines. At present, the more widely used type of long-term debt security is the long-term commercial paper.<sup>11</sup>

Stocks exist to enable companies in need of long-term financing to “sell” pieces of the business –stocks (equity securities) – in exchange for cash. This is the principal method of raising business capital other than by issuing bonds. When the stocks of these corporations, which all corporations must issue, are owned by the public at large including both private investors and institutions- they are said to be publicly held. These publicly held shares can be easily traded (sold) to other investors in the stock market, and thus said to be liquid, or readily converted into cash.<sup>12</sup>

Over the counter trades generally refer to transactions undertaken outside the organized exchange or market for such securities. Listed securities are those traded in the exchange.<sup>13</sup>

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<sup>10</sup> Dalton, John M. (1993) *How the stock market works*, (2nd ed.). New York: Simon and Schuster, Inc., p. 1.

<sup>11</sup> Ilano, Alberto, et. al. (1997). *Philippine Corporate Finance*, Development Center for Finance, College of Business Administration, UP Diliman, Quezon City, p. 414.

<sup>12</sup> Dalton, 2.

<sup>13</sup> Ilano, 103.

A bond is a long-term debt security. It represents debt because the bond buyer actually lends the face amount to the bond issuer. The certificate itself, if there is one, is evidence of a lender-creditor relationship. It is security because, unlike car, home improvement loan, the debt can be bought and sold in the open market. In fact, a bond is loan intended to be called a bond. Generally, a loan that has a term longer than five (5) years are generally called bills, notes or other terms.<sup>14</sup>

Raising capital for corporations or other capital-takers is sourced in two ways: from investors and from creditors. In the case of investment, it is appropriate to distinguish at this point between “Foreign Direct Investment” (FDI) from “Portfolio Funds Investments” (PI). In the case of FDIs, investors exercise management control over the investment capital. It tends to have a long-term investment period as it involves capital equipment, factories, among others, which cannot be easily liquidated, and therefore, FDIs are more interested in the size and growth of the market, labor and production, costs and infrastructure. PI’s only provide finance capital, and are not involved in management control as they tend to be short-term ranging from a few weeks to a couple of years, and can move out quickly as they move in a country, and are motivated by the financial returns on their investments through capital gains and dividends. Therefore, they attach more importance to high disclosure standards and easy repatriation of capital.<sup>15</sup>

The PI flows are more volatile than FDI flows and that the total PI flows to emerging markets have fluctuated more widely than total FDI flows during the period 1986-1995.<sup>16</sup> The surge in FDIs contributed by transnational corporations and the rapid growth in international transactions like the PIs that invest in the emergence of global markets are three of the five major developments that characterized ‘globalization’.<sup>17</sup>

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<sup>14</sup> Zipt, Robert. *How The Bond Markets Works*, (2nd ed.). New York: New York Institute of Finance. 2,3.

<sup>15</sup> Singh, Kavaljit. (1999). *The Globalization of Finance: A Citizen’s Guide*, Zed Books, Ltd, New York, p.18.

<sup>16</sup> Singh, p 18.

<sup>17</sup> Singh, p 4.

## Globalization issues

Globalization is described as the process which involves growing economic ‘interdependence’ of countries worldwide.<sup>18</sup> The present phase of the globalisation process consists of two distinct phenomena - the globalisation of production and the globalisation of finance.

The driving force behind the “*globalisation of production*” is the transnational corporation (TNC). Faced with a stagnant demand and sharp rise in production costs in home countries, the TNCs are shifting their production bases to developing countries where the domestic markets of goods and services are growing and production costs are much lower because raw materials and labor are very cheap. The globalisation of production has been made further possible by recent technological changes and reductions in transport and communications costs.<sup>19</sup>

The process of “*globalisation of finance*” has assumed greater significance and power than that of production in recent years. Historically, most trading in foreign exchange was the result of international trade, as buyers and sellers of foreign goods and services needed another currency to settle their transactions. But now, the trade in currency has very little to do with international trade, which accounts for just two percent of the global currency movements. Thus, the present process of *globalisation of finance* is no longer complementary to international trade and investment, but has gained a life of its own.

Currently, financial flows are rarely associated with the flows of real resources and long-term productive investments. These flows are largely liquid and are attracted by short-term speculative gains, and can leave the country as quickly as they came. Besides currency trade, new financial instruments, such as bonds, mutual funds, Global Depositary Receipts and derivatives, have emerged in the recent past which has further contributed in the *globalisation of finance*.<sup>20</sup>

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<sup>18</sup> Singh, p 4.

<sup>19</sup> Singh, p 4.

<sup>20</sup> Singh, p 6-7.

## The importance of capital markets

Traditionally, capital funds were the monopolistic domain of banks which the latter dispense through loan agreements. But this is the more expensive way of distributing capital because when banks get involved, they impose a spread for their return because they take the risk.<sup>21</sup> When a financial system relies heavily on its banks, systemic vulnerability increases. The financial crisis provided ample evidence of this.<sup>22</sup> The Philippines is in this unpleasant state since no less than the *Bangko Sentral* Governor Rafael Buenaventura disclosed that, “over 90% of credit is provided for by banks” in the capital market.<sup>23</sup>

The Philippines is already in a budget deficit that could blow to proportions threatening the nation’s economic foundation and its very existence. Where now should it source its capital to spur national development? The only other institution that could be a source of capital that is already in existence outside of the banking system are the capital markets – particularly the bond, stock and money market. Capital markets are meant to support economic growth by providing effective means of transforming savings into investments. An efficient capital market affords banks more leeway in their intermediation operations since companies who want to borrow long term could go to the market and tap its resources.<sup>24</sup>

Capital market offers various advantages over the banking system.<sup>25</sup> The problem is that it takes time for the market to develop mainly due to two reasons: first there are only a few firms that are large and reputable whose information is sufficiently available and transferable in the market to make them creditworthy<sup>26</sup> and second is because households tend to hold their assets in the form of liquid and short-term bank deposits, reflecting low levels of per capita income and wealth accumulation.<sup>27</sup>

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<sup>21</sup> Reforms Needed to Modernize Domestic Capital Market citing the statement of The Financial Sector of the World Bank Group, (2005, Jan. 26). *BusinessWorld*, p. 25.

<sup>22</sup> *BusinessWorld*, (2005, Jan. 26). p. 25.

<sup>23</sup> *BusinessWorld*, (2005, Jan. 26). p. 25.

<sup>24</sup> *BusinessWorld*, (2005, Jan. 26). p. 25.

<sup>25</sup> Yoshitomi, Masaru and ADBI Staff. (2003). *Post Crisis Development Paradigms in Asia*, Asian Development Bank Institute, p.140

<sup>26</sup> Yoshitomi, (2003). P.140.

<sup>27</sup> Yoshitomi, (2003). p. 141.

In his book entitled *The Development and Regulation of Non-Bank Financial Institutions*, Jeffrey Carmichael and Michael Pomerleano discussed the positive relationship between financial sector functions and economic growth as well as the key role that the financial system plays in the smooth and efficient functioning of the economy.<sup>28</sup> The authors stated that a financial system channels resources from individuals and companies with surplus resources to those with deficits and thereby facilitates the accumulation of investment capital that is critical to growth and development. Financial institutions perform wide range of functions in the economic system, from deposit-taking to risk-pooling to specialized sectoral financing.

*Jeffrey* presents the proven finding that non-bank financial institutions (NBFIs) add to financial depth and diversity. NBFIs also provide major liquidity that banks inefficiently perform through enhancement of equity promises and encouraging investment and savings. According to US Federal Reserve Chairman Alan Greenspan, back-up financial institutions, including NBFIs, help economies to recover more quickly from financial shocks to one or another part of the financial system. Greenspan said: “*Multiple alternatives to transform an economy’s savings into capital investment act as backup facilities should the primary form of intermediation fail.*”<sup>29</sup>

In an open capital market like that of the Philippines, all foreign fund flows are free to come in. So that prior to the Asian Financial Crisis of 1997, the external financing flows into the five (5) Asian economies of South Korea, Malaysia, Thailand, Indonesia, including the Philippines, admitted several billions of dollars:

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<sup>28</sup> Carmichael, Jeffrey. (2000). *The Development and Regulation of Non-Bank Financial Institutions*, World Bank Publication.

<sup>29</sup> Carmichael, (2000).

Five Asian Economies: External Financing<sup>30</sup>  
(Billions of dollars)

	1994	1995	1996	1997	1998
Current Account Balance	-24.6	-41.3	54.9	26.0	-17.6
External financing, net	47.4	80.9	92.8	15.2	15.2
Private flows, net	40.5	77.4	93.0	-12.1	-9.4
Equity investment	12.2	15.5	19.1	-4.5	7.9
Direct equity	4.7	4.9	7.0	7.2	9.8
Portfolio equity	7.6	10.6	12.1	-11.6	-1.9

Source: Institute of International Finance Inc.

According to these estimates, net private inflows in the five Asian countries dropped in 1997 from \$93 billion to \$12.1 billion, a swing of \$105 billion on a combined pre-shock GDP of approximately \$935 billion, or a swing of 11 percent of GDP. Portfolio equity had a decline of \$24 billion by 1997.<sup>31</sup> The Philippines was indeed in the investment radar of portfolio funds, but how did it perform for the Philippines?

### **The evolution of Philippine national security and its effect on the economic and legal structure: Asian financial crisis context**

The book edited by Muthiah Alagappa investigates the security thinking and behaviour of Asian states including the Philippines. He claims that despite the 1997 Asian Financial Crisis, Asia has been economically vibrant and its leaders are taking advantage of this opportunity to protect and enhance the security and welfare of their states and to write the rules of the game in the political, economic and security arena. The chapter on the Philippines was written by Noel Morada who traced the development of national security over three (3) Presidents of the Philippines although the economic dimension of national security is the more pertinent part to this research.

Morada writes that the security under Pres. Ferdinand Marcos (1965-1986) justified the declaration of Martial Law in 1972 due to the threat

<sup>30</sup> Scott, citing his source as the Institute of International Finance, Inc. "Capital Flows to Emerging Market Economies". p. 1192.

<sup>31</sup> Scott, p. 1192.

posed by the growth of rebellion and subversion by the CPP-NPA and the secessionist MNLF. To Pres. Marcos, those groups could not be defeated without uprooting the oligarchic old society that nourished the CPP-NPA and the MNLF. The old society was ruled by social and political elites manipulating a precarious democracy of patronage, privilege and personal aggrandizement. In Marcos view, the “old society” needed fundamental alteration, not just modification. For the sake of social stability, government must be effective patron of the poor – a revolution from the center is needed (hence, the birth of the ‘New Society’). In practice, Marcos regime failed to achieve its stated goals, because political stability was prioritized at the expense of basic individual rights.<sup>32</sup>

Lessening the right of the people in favor of the state is revealed in the lesser powers of the Courts compared with the police power of the state. Marcos knew how to legalize the effects of his National Security policies. In the Martial Law era, the Courts were left to place their imprimatur of approval to the political acts of the President and how he viewed to implement policies of national security. While the Courts had the power of judicial review to adjudicate whether there were transgressions of the law and the Constitution, when it came to the issue of whether the Courts could look into the sufficiency of the bases of the declaration of Martial Law, the Supreme Court declared in the case of *In re: Benigno S. Aquino, Jr., et. al. vs. Juan Ponce Enrile, Jr., et. al.*<sup>33</sup>

"Finally, the political-or-justiciable question controversy — indeed, any inquiry by this Court in the present cases into the constitutional sufficiency of the factual bases for the proclamation of martial law — has become moot and purposeless as a consequence of the general referendum of July 27-28, 1973. The question propounded to the voters was: "Under the (1973) Constitution, the President, if he so desires, can continue in office beyond 1973. Do you want President Marcos to continue beyond 1973 and finish the reforms he initiated under Martial Law?" The overwhelming majority of those who cast their ballots, including citizens between 15 and 18

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<sup>32</sup> Morada, Noel M. & Collier, Christopher. (1998). The Philippines: States Versus Society. In Muthiah Alagappa (Ed.) *Asian Security Practice* (p. 554). Stanford, California: Stanford University Press.

<sup>33</sup> G.R. No. L-35546, September 17, 1974.

years, voted affirmatively on the proposal. The question was thereby removed from the area of presidential power under the Constitution and transferred to the seat of sovereignty itself. Whatever may be the nature of the exercise of that power by the President in the beginning — whether or not purely political and therefore non-justiciable — this Court is precluded from applying its judicial yardstick to the act of the sovereign.”

During the Marcos administration, the magnitude of the exercise of power by the state in the name of protecting national security resulted to the corresponding weakness of the rights of the people. Even the right to strike in certain sectors of labor, like those in the processing zones, could not be pursued as soon as the labor department determines that the industry affected is one imbued with national interest,<sup>34</sup> treated no differently from national security. Thus, the labor law then provided that:

“(g) When in his opinion there exists a labor dispute causing or likely to cause strikes or lockouts adversely affecting the national interest, such as may occur in but not limited to public utilities, companies engaged in the generation or distribution of energy, banks, hospitals, and export-oriented industries including those within export processing zones, the Minister of Labor and Employment shall assume and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Minister may seek the assistance of law enforcement agencies to ensure compliance with this

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<sup>34</sup> G.R. No. L-62037, January 27, 1983.

provision as well as with such orders as he may issue to enforce the same.”

The “People Power” of 1986 ended the Marcos authoritarian rule and commenced that of Corazon Aquino (1986-92) who expressed that “national security” was synonymous with national defense, with public safety, with the preservation and re-imposition of order that included as the first order of priority the preservation of the rights and liberties of the people. National security is not a matter of keeping the people at arms length – or enticing higher walls or denser barbed wires between government and people, but bringing the people in....”<sup>35</sup> The power of judicial review was strengthened to make sure that courts could inquire into issues that are even in the nature of political questions that made the courts no longer the weakest of the three departments of government.<sup>36</sup>

In the pursuit of political settlement, Corazon Aquino released top CPP and NPA leaders from prison and started cease-fire peace negotiations. The military was unconvinced of the merits of this political approach. Some military pressure on her took the form of aborted coups. While peace negotiations were signed with the MNLF and a cease-fire agreement was signed with the left, both political settlements failed eventually and resulted to an ‘all-out war’. This political instability and the failure to pass meaningful economic reform laws scuttled Aquino’s economic reform programs. Despite the passage of the Foreign Investment Act, her government failed to attract new foreign investors due to political instability. Also, the problem of monopolies in strategic sectors of the economy (banking, telecommunications, transport) were not squarely dealt with, whose efforts focused on the recovery of “ill-gotten wealth” of Marcos.

Security under Pres. Fidel Ramos (1992-98) took into consideration the interrelationship of social, economic and political factors and how these factors affect the overall security of the nation. National security under the Ramos administration was broadly defined as a condition wherein the people’s way of life and institutions, their territorial integrity and sovereignty, as well as their welfare and well-being are protected and

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<sup>35</sup> Morada p. 549.

<sup>36</sup> 1987 Constitution.

enhanced. This definition struck a balance between the security interests of the state and those of the people.

Ramos continued with the process of democratic consolidation but not as an end in itself but as a means to political unity as well as rapid economic growth and development to attain social equity and increased economic opportunity for Filipinos. While both Aquino and Ramos administration recognized the link between poverty and armed rebellion, the Ramos administration was more candid in its identification of the oligarchic structure of society as the root cause of insurgency problem. Despite oligarchic resistance, Ramos liberalized the economy to spur economic growth, deregularized protectionist barriers, and gave incentives to local industries.

The prime targets were the big monopolies in banking, shipping, telecommunications and insurance industries that were protected under the Marcos and Aquino periods. Learning from Aquino's failure, Ramos worked closely with Congress, which provided the legal infrastructure for his reform policies. Ramos' principal constraint in his economic reforms was from the political system itself. Elected as a minority President, Ramos relied on building coalitions in the legislature to ensure that his policy initiatives were supported by law, which resulted in political bargaining.

Morado writes that although Ramos and his advisers recognize the obstacle that the oligarchic class presents to the goals of successful development and long-term security, their efforts to overcome it are constrained by the authoritarian experience. Morado adds that if anything is to be learned from the changing conceptions of security in the Philippines over the past decade, it is that the state should join forces with society in the pursuit of security goals, rather than taking up arms against its own people.

This writer agrees with the last observation of Morado. When the National Security Council met in plenary session on 21 January 1999 and 6 November 2000, and expanded Executive Committee sessions on 17 March 2000 and 26 September 2000, a policy decision on dealing with economic issues and concerns was established. The Council declared that the state *"should continue implementing reforms that would generally improve the people's lives and boost the economy. The policy environment*

*is being bolstered by reforms to strengthen the capital markets, enhance the foreign and domestic investment, and generally improve the business climate obtaining in the country.”*

The National Security Council defined ‘Economic Security’ to be one that requires that “*the economy is strong, capable of supporting national endeavors and derives its strength from the people who have an organic stake in it through their participation or ownership*”. So that when Morado declared “that the state should join forces with society in the pursuit of security goals, rather than taking up arms against its own people”, it is only in keeping with the defined objective of the country’s ‘economic security’ that derives its strength from the people. After all, and towards the latter part of this research, the best defense to the massive inflow of portfolio funds is simply the massive counter-savings that the country could raise from the participation of the people thru their savings.

Studies show that among the countries in Southeast Asia, the Philippines was least hit overall by the ‘1997 Asian Financial Crisis’.<sup>37</sup> It is interesting that the development of the Philippine national security and its elements through three Presidents closely dictated the economic and political landscape of the Philippines prior to the 1997 Asian Financial Crisis.

As the operational definition of national security evolved towards including economics and integrating itself with international finance from the time of Pres. Corazon Aquino’s liberalization efforts until the presidencies of Ramos (and later Arroyo), the Philippine legal structure came out with the corresponding legal framework to support these aspired goals, perhaps even unwittingly. So that by the time the actual Asian financial crisis arrived in the shores of the Philippine capital markets, the legal structure that was in place had resembled close integration with global finance that had established a ‘soft landing’ for the economic crisis that was to befall upon the nation. That legal structure was shaped by clear doctrinal parallelisms to the goals of national security although the laws did not express itself to relate to national security. The events that

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<sup>37</sup> Tan, Edita A., (2000, March). *1997-1999 Philippine Economic Downturn: A Preventable One*, (Discussion Paper No. 0002), Diliman, Quezon City: UP School of Economics, p 9.

follow relate this socio-economic, legal and international parallel development with national security in responding to global finance.

### **The economic, political and legal structure: the decade of the 80's in the Philippines**

The 1980's was characterized as vulnerable to external shocks due to the 'hybrid' industrialization strategy (export promotion under a fixed exchange rate regime) in the prior decade of the 1970s.<sup>38</sup> With a widening crisis in the financial sector, deficits on the fiscal side and the current account showing gap in the savings-investment factor, the worst balance of payment crisis hit the Philippines in the third quarter of 1983, two years after the second oil shock.<sup>39</sup> In October 1983, a moratorium on external debt payments was declared, which effectively meant that no new inflows from abroad would be forthcoming.<sup>40</sup> The total collapse of the Philippine economy was manifested by negative annual growth rates of -7.6 percent for both 1984 and 1985.<sup>41</sup>

This set the stage for the downfall of President Ferdinand Marcos and the rise of the first female Philippine president, Corazon Aquino.

At this time the Philippines carried a heavy international debt burden brought over from the administration of Pres. Marcos. However, the Philippines had a rosy picture ahead of her due to having toppled a dictator, an event considered by political analysts so historically rare at that time and opportunity-laden for Philippine politico-economic reforms.<sup>42</sup> At the same time in the international level, signs show the

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<sup>38</sup> Bautista, Carlos C., (2000, October). *Boom-bust Cycles and Crisis Periods in the Philippines: A Regime-switching Analysis*, (Discussion Paper No. 0009), Diliman, Quezon City: UP School of Economics, p.4

<sup>39</sup> Bautista (2000).

<sup>40</sup> Bautista (2000).

<sup>41</sup> Bautista (2000).

<sup>42</sup> The international accolade the Philippines received at that time resulted in an advocacy from the Presidential NEDA head, Prof. Solita Monsod, to seriously reject some of the international debts illegally obtained by Pres. Marcos. Prof. Solita Monsod lectured that she would not recommend the advice to reject international debts to jumpstart the Philippine economy except only at that time and that it is not well advised to do it now. (Lecture at the NDCP before MNSA RC 40, module in Macroeconomics)

beginnings of large flows of foreign direct investments to China and the rest of Southeast Asia especially to Thailand, Malaysia and Indonesia.<sup>43</sup> While the opportunity was there, one of Pres. Aquino's first acts was to decommission the nuclear power plant although almost finished and to abolish the Department of Energy,<sup>44</sup> acts that would prove detrimental to the country even until the present or more than twenty (20) years hence.

The economy recovered towards the end of the 1980-decade with IMF assistance but the crisis also forced the new government to seriously implement structural reforms in trade, finance and regulation.<sup>45</sup>

### **The economic, political and legal structure: the decade of the 90s in the Philippines.**

In the 1987-89 recovery, consumption demand was the primary source of growth followed by significant increases in public investment financed by domestic borrowing.<sup>46</sup> Apparently taking the opposite direction of her predecessor against borrowing from abroad for fiscal spending, the new administration took an opposite approach.<sup>47</sup> During this period, there were increases in investment rates and the government's pump-priming program that generated huge fiscal deficits raised capacity.<sup>48</sup>

However, these deficits led to a poor macroeconomic environment where the government resolved the fiscal crisis by adopting tight monetary policy, cutting spending and raising indirect taxes that, together with uncertainties in the international environment due to the gulf war, led to a slowdown beginning in 1990.<sup>49</sup> By 1991, without the nuclear energy and without an alternative source for oil energy, the power plants had broken down that forced firms to cut production and that led to negative growth.<sup>50</sup>

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<sup>43</sup> Sicat, Gerardo P. (2002, September). *Political Economy of Philippine Economic Reforms*, (Discussion Paper No. 0207), Diliman, Quezon City: UP School of Economics, Appendix 2.

<sup>44</sup> Sicat (2000).

<sup>45</sup> Sicat (2000).

<sup>46</sup> Sicat (2000), p.5.

<sup>47</sup> Sicat (2000), p. 5.

<sup>48</sup> Sicat (2000), p. 5.

<sup>49</sup> Sicat (2000), p. 5.

<sup>50</sup> Sicat (2000), p. 5.

The effects of the power crisis lasted until the first half of 1993, which political period was now under the new administration of President Fidel V. Ramos who took office in 1992.

A new government pursued trade liberalization in 1992 and liberalization of the foreign exchange market in 1993. Foreign capital began to come in at this time, and reached its highest level at approximately 7 percent of Gross Domestic Product (GDP) in 1996. The economy's average growth rate for the years 1994 to 1997 was 4.9 percent. However, the Asian financial crisis that hit the Philippines in August 1997, in addition to the El Niño weather phenomenon, halted the growth episode and GDP growth stood at -0.54 percent in 1998, just at the end of the term of office of Pres. Fidel V. Ramos. The legal and political policies adopted in this decade under the administration of Pres. Ramos showed that power shortage was an early priority with a fast-track authority to rebuild capacity of energy generation.<sup>51</sup> While the financial banking sector, as well as the non-bank financial sector, had undergone the beginnings of liberalization they had not adequately grasped the idea of 'good governance' at that time. There were, however, numerous legal infrastructures towards economic reforms that had commenced before the financial crisis arrived. Some of these major laws involved the following.<sup>52</sup>

- On the lack of capital as a factor of production (for infrastructure and energy), the use of the build-operate-and-transfer scheme and other innovative financing public investment programs using foreign capital was, legislated;
- Again on capital as factor of production, the old Central Bank was abolished and renamed the Banko Sentral ng Pilipinas, the banking sector was liberalized allowing for a liberal participation of foreign banks in local banking;<sup>53</sup> the World Trade Organization (WTO) entry also justified the liberalization of the insurance industry;

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<sup>51</sup> Sicat (2000), p. 5.

<sup>52</sup> Sicat (2000), p. 5.

<sup>53</sup> Sicat (2000), p.5., "Financial sector reforms have progressively moved forward. The average size of banks were raised by reforms requiring higher capitalization and competition among them has been promoted by requiring entry of foreign banks, either as strategic partners in the early phase of reforms, or as full service banks during the 1990s. This has broadened the area of services, encouraged consolidation of small and weak banks and raised the standards of performance of banks. In part,

- On other regulatory regimes, the WTO entry (and ASEAN membership) also committed the country to less restrictive trade policies, and allowed the liberalization of foreign exchange transactions to capital flows;
- The Philippine Export Zone Authority was created and liberalized setting up of export processing zones by private sector and joint ventures; the Subic Bay Naval Base becomes a Freeport zone and the Clark Air Base transformed into an Export Processing Zone; and
- In the same decade, but under the administration of Pres. Joseph Estrada, the retail trade was liberalized by law.

The several fleeting policies had now become laws. This was the legal framework then standing at the time the 1997 Asian Financial Crisis hit the Philippine financial capital market. The reforms undertaken during the Aquino and the Ramos administration have substantially strengthened the banking system and allowed it to withstand the contagion effects of the Asian crisis.<sup>54</sup> BSP Gov. Armando V. Tetangco would prefer to put it that if the impact of the crisis on the banking sector was not as dramatic as that observed in the other crisis-hit countries, this may have been attributable to the fact that other countries experienced a surge in capital flows earlier than the Philippines. Thus, the Philippine banking system was not as exposed as the other countries, such as in the property sector or in accumulating foreign exchange liabilities.<sup>55</sup>

### **The 1997 Asian Financial Crisis**

According to Hal S. Scott and Philip A. Wellons, in 1997, starting with Thailand, many countries in East and Southeast Asia were pulled into a calamitous financial crisis as their exchange rates collapsed. By the mid-1999, several of these countries seemed to be recovering. By March 31, 1999, the worry was that the same kind of crisis could recur. An understanding of the reasons for this crisis is important. The following are the two competing analyses of the causes of the crisis. The first analysis comes from the International Monetary Fund (IMF), which could be called

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this has come with improved regulation and supervision. Financial liberalization has included broadening of participation in the insurance business and other financial institutions like investment banking and stock brokerage of foreign investment.”

<sup>54</sup> Tan, p. 9.

<sup>55</sup> Tetangco, Armando M., (2003, November). The Composition and Management of Capital Flows in the Philippines

the official explanation that focuses on the failure of domestic economic policy. The second, from the two experts in macroeconomics, developing countries place more blame on foreign banks and portfolio investors, and on the IMF itself.<sup>56</sup>

Rapid outward-oriented growth was among several features of these emerging economies that attracted foreign investment.<sup>57</sup> The scale of difficulties that arose therefore depended on macroeconomic policies and the soundness of financial systems.<sup>58</sup> A development that contributed to the surge in capital inflows to emerging markets in the early to mid-1990s was the decline in the asset yields in the industrial economies.<sup>59</sup> Movements in exchange rates among the major currencies in recent years have been another significant external factor. More specifically when the dollar weakened during 1994 and early 1995, reaching all time lows against the yen in particular in the second quarter of 1995, these countries generally gained competitiveness as their currencies depreciated in the trade weighted terms<sup>60</sup>

Shortcomings in macroeconomic and exchange rate policy management were a third cause particularly in the context of the pegged or relatively fixed exchange rate arrangements maintained by most of the countries concerned (Korea being the most notable exemption from 1996 onward)<sup>61</sup>. Fourth, financial sector weaknesses and other structural weaknesses contributed to the low quality (or excessive) investment and made the economies vulnerable to adverse developments.

Inadequacies in the regulation and supervision of financial institutions, as well as the limited experiences among financial institutions in the pricing and managing of risks, lack of commercial orientation, poor corporate governance, and lax internal controls -- all in the face of movements toward liberalization and increased competitive pressure, had

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<sup>56</sup> Scott, Hal S. and Wellons, Philip A. (1999) *International Finance* (6th Ed.) New York Foundation Press, p. 1183.

<sup>57</sup> Scott, 1184.

<sup>58</sup> Scott, 1185.

<sup>59</sup> Scott, 1185.

<sup>60</sup> Scott, 1185.

<sup>61</sup> Scott, 1186.

contributed to imprudent lending, including lending associated with relationship banking and corrupt practices.<sup>62</sup>

In the Philippines also, in spite of measures that have been taken to improve prudential standards, there have been concerns about the quality of assets in the banking system following the rapid expansion of bank lending generated by the surge of capital inflows since the early 1990s, and the associated exposure of the banking system to real estate.<sup>63</sup> When the Thai property and bank sectors began to shake, tremors immediately hit Manila, where the rate of real estate development and bank lending had soared in recent years. Many investors predicted that the Philippines bubble would be the next to burst. Within days, the peso and the stocks in Manila made a sharp decline. The plummeting peso and the loss of ‘confidence’ among the foreign investors affected the Philippines badly. The peso fell by nearly 35 percent against the dollar during July-December 1997.<sup>64</sup>

The Asian countries can be understood as a “crisis of success” caused by a boom of international lending followed by a sudden withdrawal of funds. At the core of the Asian crisis were large-scale foreign capital inflows into financial systems that became vulnerable to panic. To be sure, there were significant underlying problems besetting the Asian economies, at both a macroeconomic and microeconomic level (especially within the financial sector).<sup>65</sup>

As a result of creditor panic, the bank runs, and the sovereign downgrades Korea Indonesia and Thailand were thrown into partial debt defaults. The withdrawal of financial funds triggered a chain reaction, which quickly developed into a financial panic. The exchange rate depreciation associated with the withdrawal itself sparked new withdrawals of foreign exchange, as domestic borrowers with unhedged currency positions rushed to buy dollars.

The withdrawal of funds also set off a liquidity squeeze and a sharp rise in interest rates. As a result firms that were profitable before the crisis

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<sup>62</sup> Scott, 1190.

<sup>63</sup> Scott, 1187-88.

<sup>64</sup> Singh, Kavaljit (1999). *The Globalisation of Finance: A Citizen's Guide*, Zed Books Ltd., London, p. 93.

<sup>65</sup> Scott, 1191.

found it difficult to obtain working capital or to remain profitable with significantly higher interest rates. Offshore creditors became concerned about the profitability of their customers and grew increasingly reluctant to roll over short-term loans. The lack of clear bankruptcy laws and workout mechanisms added to the withdrawal of credit, since foreign lenders feared they would have little recourse to collect on bad loans. The losses on foreign exchange exposure and the rise of non-performing loans eroded the stock market and, in turn, worsened the erosion of the capital base, since banks were allowed to hold some of the capital as equity in other companies.<sup>66</sup>

When a country's financial system relies heavily on banks, systemic vulnerabilities increase. The Asian financial crisis provided ample evidence of the risks associated with the absence of multiple channels of financial intermediation. Chairman Greenspan's "spare tires" speech at the 1999 meetings of the World Bank Group and the IMF captured this message:

"This leads one to wonder how severe East Asia's problems would have been during the past 18 months had those economies not relied so heavily on banks as their means of financial intermediation...Had a functioning capital market existed, the outcome might well have been far more benign...The lack of a spare tire is of no concern if you do not get a flat...East Asia had no spare tires"<sup>67</sup>

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<sup>66</sup> Scott, 1197.

<sup>67</sup> Jeffrey, (2000).

### Prevailing legal structure before the Asian Financial Crisis and just prior to the BestWorld (BW) Scam

Prior to the BW Scam, there were already laws existing related to securities trading:

Year Enacted	Law	Name	Issues Addressed
1909	Act. No. 1956	Insolvency Law	This law provides for voluntary and involuntary insolvency of an individual, partnership and corporation. By operation of this law, a debtor is discharged from his or her debts and liabilities when the court is satisfied that there is impossibility of meeting the obligations as they fall due. Property is then surrendered to the court where an assignee is named who, in turn shall distribute the assets to the creditors.
1980	B.P. 68	The Corporation Code of the Philippines	The Corporation Code defines what a corporation is, the different classes and how it is organized. It regulates the creation, operation and extinguishment of a corporation. It also provides for certain prohibitions and limitations, as well as for the operations of foreign corporation in the Philippines.
1982	B.P. 178	The Revised Securities Act	Provides for the registration of securities, the rules regarding its issuances and also the registration of dealers, brokers and salesmen, including registration of exchanges. Provisions regarding the maximum credit extended over any security are also present in this law, as well as a provision against manipulation of securities prices. This legislation makes it illegal to sell securities other than those that are registered and sale transactions are only allowed in exchanges registered with the SEC which is tasked to implement the law.
1993	R.A. 7653	The Central Bank Act	This law created the new Bangko Sentral ng Pilipinas (BSP) with a capital of PhP50 billion. The BSP is given the responsibility of providing policy directions in the areas of money, banking and credit. It shall supervise the banks and have regulatory powers as provided by law over the operations of finance companies and non-bank

			financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions. The primary objective of the BSP is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.
1994	R.A. 7721	An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes	This law liberalized the banking and financial system by allowing the foreign banks to operate in the Philippines. The limitation provides that foreign banks may own up to 60% of the voting stock. There are three modes of entry provided by the law: acquiring 60% of the voting stocks of an existing bank, establishing a new bank with the foreign bank having 60% ownership and by establishing a branch with full banking authority provided that only one mode of entry shall be used. This law was passed pursuant to the policy that the state shall develop a self-reliant and independent national economy effectively controlled by Filipinos and encourage, promote, and maintain a stable, competitive, efficient, and dynamic banking and financial system that will stimulate economic growth, attract foreign investments, provide a wider variety of financial services to Philippine enterprises, households and individuals, strengthen linkages with global financial centers, enhance the country's competitiveness in the international market and serve as a channel for the flow of funds and investments into the economy to promote industrialization.
1997	R.A. 8366	An Act Liberalizing the Philippine Investment House Industry	This law was passed to expand and strengthen the capital base of the economy in order to ensure sustained economic growth and development. Therefore, the Philippine investment house industry is liberalized, increasing foreign equity participation and raising the minimum capitalization of investment houses to enable them to meet the present and future demands of the market.
1998	R.A. 8556	Financing Company Act	The purpose of the law is to regulate and promote the activities of financing and leasing companies to place their operations on a sound, competitive, stable and efficient basis as other financial

			institutions. It seeks to recognize and strengthen their critical role in providing medium and long-term credit for investments in capital goods and equipment especially by small and medium enterprises particularly in the countryside and to curtail and prevent acts or practices prejudicial to the public interest so that they may be in a better position to extend efficient service in a fair manner to the general public and to industry, commerce and agriculture and thereby more fully contribute to the sound development of the national economy.
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### The BW Scam

Soon after the Philippines underwent the horrifying Asian Financial Crisis, it suffered another peculiar financial crisis in the capital market but which it suffered alone without infecting its other Asian neighbors. This effectively retarded the Philippines from the race to economic recovery that the Asian nations were performing in the aftermath of the recent Asian financial crisis. This, however, was just a locally initiated financial market disturbance. A scandal about a connected securities ‘insider trading’ received attention from the media. A gaming company, BW Corporation, was reported to have manipulated its stocks that pushed its price from P2.70 to P104 then to P3.0 in one month’s trading. The speculators were reported to have close friendship with the President of the Philippines.<sup>68</sup>

The BW Scam differentiated the course of the Philippines within the region. The neighboring nations commenced the return of their tiger economies after the 1997 Financial Crisis while the Philippines remained in its transition mode with the BW Scam event. In the effort to rectify the fraudulent practices associated with the BW scandal, the need for new rules on securities trading to attain transparency became the call of the time.

From the ashes of the BW Scandal arose the new securities regulation that supplanted the aging securities regulation that had

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<sup>68</sup> Tan, p. 11.

regulated the capital market since 1980. House Bill No. 8015 dated July 27, 1999 was introduced in Congress and was recommended for approval captioned as the Securities Act of 1999 that later became the Securities Regulation Code of 2000. Insofar as the non-bank sector of the capital market is concerned, the primary law that governs trading in securities where the foreign portfolio funds are invested is the Securities Regulation Code.<sup>69</sup>

After the fortuitous BW Scam event, the Philippine legal response was to add two (2) more regulations to securities trading as part of the direct legal response to the globalization of finance:

Year Enacted	Law	Name	Issues Addressed
2000	R.A. 8791	General Banking Law of 2000	The law was created to promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy. As such, the supervisory power of the BSP was expanded. This law also has provisions on the operations of all banks with special provisions for universal, commercial banks and foreign banks. It also has provisions for the cessation of banking business.
2000	R.A. 8799	Securities Regulation Code	The Securities Regulation Code was created to establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.

<sup>69</sup> The Securities Regulation Code also applies to bank transactions that involve securities trading.

## The Securities Regulation Code

The Securities Regulation Code (SRC) or Republic Act No. 8799 was enacted in July 2000 and aims to strengthen the regulatory framework over the securities market. Major provisions of the SRC, which are expected to enhance corporate governance, include the demutualization (public listing) of the Philippine Stock Exchange (PSE)<sup>70</sup>, the protection of minority shareholders, and the election of at least two independent directors to the board of the public corporation.

Recognizing the essential contribution of the whole capital market to the economy, the Committee on Banks and Financial Intermediaries of the Eleventh Congress of the House of Representatives proposed that:

“There is an urgent need to review the philosophies underlying our securities laws and give more emphasis to full disclosure as the principal method for investor protection. The Committee believes that the legal framework that will provide for the development of a capital market needs to keep pace with the fast changing domestic and international economic developments. Responding to these imperatives, a comprehensive legislative measure has been drawn up to supplant and supersede the Revised Securities Act, to be known as the Securities Act of 1999.

The proposed law will meet the following objectives: (a) Shift from merit regulation to full disclosure; (b) Strengthen anti-fraud provisions; (c) Strengthen self regulation; (d) Keeping up with contemporary market practices; (e) Strengthen SEC rule-making and reorganization powers.”

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<sup>70</sup> With the demutualization of the PSE in August 2001, the PSE became a publicly held corporation with diverse ownership governed by a majority of non-brokers, and managed by an independent and professional group. This will make the PSE more transparent as it will be subject to the rules on full disclosure. <http://www.apecsec.org>.

The Revised Securities Act passed by the Philippine Congress focused on investor protection, not only by requiring adequate disclosure of information to prospective investors, but also by empowering the government to look into the merit of the securities to be sold to the public.<sup>71</sup> In the delivery address of Rep. Laurel before the Eleventh Congress, he urged:

“Today, given the national economic objective of democratizing wealth and the competition offered by stock markets in the region for investible funds, there is an urgent need to review the philosophies underlying our securities laws and giving more emphasis to full disclosure as the principal method for investor protection. We need to overhaul this existing legal framework that will provide for the development of a capital market that is credible, fair, and transparent.”<sup>72</sup>

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<sup>71</sup> Endorsement Speech by Rep. Laurel for House Bill No. 8015 or the Securities Act of 1999, September 14, 1999 before the Eleventh Congress.

<sup>72</sup> Laurel, (1999).

### Legal structure after the Asian Financial Crisis and the BW scam until the present

After the Philippines had undergone the rigors of both the Asian Financial Crisis and the BW Scandal, the country went on to add more legislation that affected the regulation of securities transactions. Some of the principal legislations are:

Year Enacted	Law	Name	Issues Addressed
2001	R.A. 9160	Anti-Money Laundering Act	This law was passed to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity. It also provides for cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed.
	R.A. 9182	Special Assets Vehicle Law	Also known as the SPV law, this legislation provides for tax exemptions and privileges to companies, which acquire or invest in non-performing assets wherein it provides for the regulatory framework and for other purposes. It was enacted to maintain a sound financial sector in the country, address the sector's non-performing assets problem, improve the liquidity of the financial system, encourage the investment in non-performing assets, eliminate the barriers in the acquisition thereof and to help rehabilitate distressed businesses with the end view of contributing to the economic value added.

2004	R.A. 9267	The Securitization Act	The law seeks to promote the development of the capital market by supporting securitization, by providing a legal and regulatory framework for securitization and by creating a favorable market environment for a range of asset-backed securities. The law also aims to rationalize the rules, regulations, and other laws that impact upon the securitization process, particularly on matters of taxation and sale of real estate on installment. Furthermore, this legislation shall pursue the development of a secondary market, particularly for residential mortgage-backed securities and other housing-related financial instruments, as essential to its goal of generating investment and accelerating the growth of the housing finance sector, especially for socialized and low-income housing. Furthermore, it shall likewise pursue the development of a secondary market for other types of asset-backed securities (ABS).
2005	R.A. 9337	The E-VAT Law	This law was passed to raise additional revenue for the government as part of its fiscal policy to cure the budget deficit. In the E-VAT law, the National Internal Revenue Code and other tax legislation was amended to be able to raise additional revenues. One of the amendments was the corporate income tax, which was raised to 35% from 32% provided that in 2009, the corporate income tax shall be 30%. It also allows the President to raise the VAT rate to 12% (from 10%) by 2006 depending on certain conditions. It also removed some transactions previously excepted from VAT by the repealed VAT law.

## National Security Issues Arising from Related Literature

### *Dollar impact on the national debt burden*

Portfolio fund inflows are also known as “hot money” because they can leave the economy as fast as they come in. Invested normally in the stock market, government securities and money market instruments,<sup>73</sup> it can contribute to the peso’s overall stability against the dollar, and can

<sup>73</sup> Hot Money can raise peso-dollar rate to P52. (2005, Jan. 28). *BusinessWorld*, p. 1.

support the central bank's yearend balance of payments target.<sup>74</sup> Philippine foreign exchange volatility rose from an average of P1.12 between the periods 1990 and 1994 to P1.33 between 1995 and 1999 as a result of heightened pressure on the peso following domestic and external shocks, such as the 1995 Tequila, 1997 Asian and 1998 Russian financial crises and the 1995 rice crisis.<sup>75</sup> The spread of investor pessimism on emerging markets following the financial crisis in mid-1997 led to the slowdown in capital inflows into the Philippines and severe depreciation pressure on the peso.<sup>76</sup> Volatility again rose to an average of P1.74 in 2000-2003 with the sharp depreciation of the peso as a result of persistent negative market sentiment. Domestic political concerns led to a slowdown in foreign exchange inflows and fluctuations in the peso-dollar rate.<sup>77</sup>

By directly affecting the exchange rate through its entry and exit to the country, portfolio funds also affect the Philippines' sovereign debt. In 2004, the Freedom from Debt Coalition, citing the Bureau of Treasury, stated that the Philippines has PhP1,810,734,000,000 worth of foreign debts<sup>78</sup>. Using the then exchange rate of PhP56.04 to US\$1.00<sup>79</sup> (**Appendix 2.2**), the Philippines then had a debt of about US\$32,311,456,102.<sup>80</sup> If the exchange rate moves by 10 centavos (PhP0.10) therefore the exchange would now be at PhP56.14 to US\$1.00, and the Philippine foreign debt would have been PhP1,813,965,140,000.00. Thus, for a depreciation of PhP0.10, an additional PhP3.2 billion, or US \$57 million, is needed for the Philippines to pay its foreign debts, just by watching the portfolio funds enter and exit the market. Given that in January 2005, the Philippines' dollar reserve stood at US\$16.05 billion<sup>81</sup>, the fluctuation of US\$57 million is equivalent to 3.6% of the nation's dollar reserve. A sudden outflow of foreign

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<sup>74</sup> Foreign Money Dips on Political Concerns. (2005, Jul. 18). *BusinessWorld*, p.1.

<sup>75</sup> Tetangco, p. 4.

<sup>76</sup> Tetangco, p. 5.

<sup>77</sup> Tetangco, p. 5.

<sup>78</sup> Freedom from Debt Coalition website: [www.freedomfromdebtcoalition.org](http://www.freedomfromdebtcoalition.org).

<sup>79</sup> Bangko Sentral ng Pilipinas Website: [www.bsp.gov.ph](http://www.bsp.gov.ph); the exchange rate is the average for 2004.

<sup>80</sup> The amount covers only the outstanding foreign debt of the national government of the Philippines.

<sup>81</sup> [www.bsp.gov.ph](http://www.bsp.gov.ph).

portfolio investment can obviously be very damaging to the economy, and thereby a threat to national security.

Between 1997 and 2003, the national government's debt rose by P2.01 trillion, from P1.35 trillion to P3.36 trillion. Of this total increase, nearly nineteen percent (18.8% to be exact) was caused by exchange-rate changes: with half of the debt being foreign-currency denominated, the peso equivalent of the debt increases every time that the peso depreciates.

(Table 2.1) *Accounting for the increase in debt 1997-2003*

	Amount Billions in pesos	Percent Distribution
Increase in the national gov't debt	2009.45	100.00
Due to national gov't deficits	855.69	42.6
<b>Due to exchange-rate change</b>	<b>377.54</b>	<b>18.8</b>
Due to non-budgetary accounts	320.55	16.0
Due to assumed liabilities and lending to corporations	428.10	21.3
Increase in cash	27.54	1.4

Source: UP School of Economics, Discussion Paper No. 0409, Aug. 2004

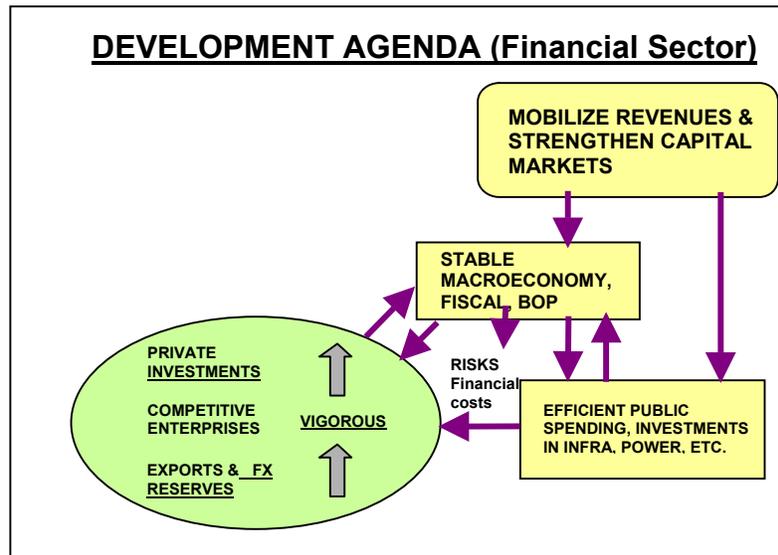
The impact that portfolio funds could create on the Philippine debt problem cannot therefore be underestimated. It fairly amounts to a real threat to the existence of the Philippines and is thereby deemed, not just a mere public issue, but a proper issue of national security.

#### *Other national security issues*

The meeting between the global portfolio funds and the various local laws regulating the Philippine capital market occurs within the Philippine economic environment and within the global context. This meeting between global finance thru the free flow of portfolio funds and the Philippine economy though is fraught with diverging and conflicting interests between the desire of global funds to earn in the volatility of asset prices (and exchange rate) and the desire of the nation for economic growth but with stability.

What the Philippines can do to its finance sector in pursuit of national security to respond to the advent of globalization of finance and the entry of portfolio funds within its legal framework is the subject of this research, but confined to the aspect of legal and regulatory responses to the free flow of foreign funds. The National Economic Development Authority (NEDA) has distinctively recognized the development of the

Philippine financial capital market within the national development agenda in the following graphic presentation of its Development Agenda:<sup>82</sup>



Source: NEDA

In the pursuit of the goals and aspirations of national security in the finance sector, or in the national as whole, the need to recognize the scarcity of resources in the capital market is imperative. National Economic Development Authority (NEDA) recognizes in the Medium-Term Philippine Development Plan 2004-2010 that the Philippine finance sector is characterized by:

- inflation and fiscal risks that undermine long-term savings
- oversight agencies which do not have adequate regulatory powers to prevent systemic risk
- weak protection of creditor and investor rights
- dominated by government securities
- lack of instruments designed for small savers

<sup>82</sup> Source from the slide presentation of Director General Romulo Neri of the NEDA, lecture at the NDCP, MNSA RC 40, module on Macroeconomics.

- tax distortions that discourage investments in financial instruments
- emerging funding gap in public pension system

Capital markets are meant to support economic growth by providing effective means of transforming savings into investments. An efficient capital market affords banks more leeway in their intermediation operations since companies who want to borrow long term could go to the market and tap its resources.<sup>83</sup>

Given the features of developing countries having low savings and their preference to keep their assets in liquid form and in short-term bank deposits<sup>84</sup>, foreign portfolio enter the Philippine capital market in this savings-starved setting and thereby provide the needed liquidity. The Philippine capital market environment is confronted with a limited domestic ‘savings’ and an infinite amount of global funds in the Philippine setting.

At a national computation level, the savings rate in the Philippines as a percentage of GDP is the lowest among her Asian neighbors like Malaysia, Singapore, Thailand, Indonesia, Korea, Hong Kong and China (**Table 2.2**). At the family level, the savings as a percentage of income shows that while the average annual family savings rate was at 19.18% in 1997, it went lower in 2000 at 18.11% and, again, even lower in 2003 at only 15.78% (**Table 2.3**).

When limited savings is mixed with foreign portfolio funds in that ratio in the capital market, radical and damaging economic fluctuation particularly in the currency exchange rate is no longer guesswork but highly predictable in the event of sudden and massive inflow or outflow of foreign portfolio funds. In that scenario, the Philippine national security goals and aspirations for economic stability will not be well situated especially in the current global situation that has been described as ‘*where international financial markets resemble a global casino*’ and ‘*traders gamble on minute market fluctuations that have no grounding in real*

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<sup>83</sup> Reforms Needed to Modernize Domestic Capital Market citing the statement of The Financial Sector of the World Bank Group, (2005, Jan. 26). *BusinessWorld*, p. 25.

<sup>84</sup> *BusinessWorld*, (2005, Jan. 26). p.141.

*economic activities*’; where *‘nine-tenths of capital flows are speculative, rather than productive in nature*’; where *“‘hot money” can flow out of a country instantaneously*’ resulting in *‘ricocheting financial crisis that has devastated lives around the world,*’ and where *‘the effects of a free market financial deregulation are even threatening global elite*’, like the US.<sup>85</sup>

Until such a time that the fierce approach of global and portfolio funds are tamed at the level of international regulation, how should the varying dimensions of Philippine national security respond to the occasion? Asset pricing and the exchange rate peso-dollar fluctuations that interrupt the economic flow are major threats to the economic existence of the nation and are therefore concerns in the economic dimension of national security. With this economic threat, labor unrests arise and lead to worsening poverty and scarcity of resources that give the political dimension added burden to consider in establishing policies to allocate the already scarce resources to address the other socio-cultural and environmental dimensions of national security. Likewise, military modernization can be marginalized in the process of budgetary compromises in the allocation processes<sup>86</sup> of scarce resources and thereby impact on the military dimension of national security.

Only a domestic solution is within the control of the nation in response to the globalized financial economy to attain national security.<sup>87</sup> But should the Philippines control the flow of portfolio funds into the country at all?

In *De Souza’s* edited book, on *Economic Strategy and National Security: A Next Generation Approach (2000)*, *De Souza* cited *Jeffrey R.*

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<sup>85</sup> “A Call to Action: A Citizen’s Agenda for Reform of the Global Economic System, Third World Network, 1999 cited in [www.twinside.org](http://www.twinside.org)

<sup>86</sup> De Souza, Patrick J. (editor), *Economic Strategy and National Security: A next Generation Approach*, Westview Press, 2000, p.24

<sup>87</sup> The government approach in planning the development of the finance sector can be found in performing the following:

- amend BSP Charter and CDA Charter to strengthen supervisory capacity
- amend Corporation Code to protect minority shareholders,
- propose enactment of Pre-Need Code, Revised Investment Company Bill, Lending Investors Bill, Central Credit Information Bureau,
- strengthen consolidated supervision among regulatory agencies,
- apply Risk-based capital adequacy framework for SEC-regulated companies,
- increase SME access to financing (MTPDP, NEDA)

*Shafer* when the latter wrote that an outdated thinking today is to believe that foreign and domestic financial markets can be compartmentalized by ignoring economic problems in other parts of the world. In other countries, one hears another version of the compartmentalization fallacy: capital controls can insulate a country from the global markets and provide a tranquil environment for economic growth. Financial isolation can never be achieved. As the effectiveness of barriers erodes over time, the costs of maintaining capital controls rise in terms of administrative costs, the efficiency of the financial sector, and the erosion of respect for rules as financial players use new technologies.

So, while controls may sometimes be the best available emergency response, they should have no place in the permanent architecture of international financial system. What would much better meet the needs of all countries would be a collective effort to strengthen and reduce the instability of global markets combined with a determined effort by each country to create more resilient domestic financial systems.<sup>88</sup>

*De Souza's* editorial of several articles by illustrious and expert strategists on economic and national security issues recognized the remarkable extent to which the United States has become financially interlinked with the rest of the world. In the 50<sup>th</sup> anniversary forum of the US National Security Council (NSC), the panel discussion with the Council on Foreign Relations (CFR) and the NSC dealt with the issue how the NSC would deal with the continued rise of new economic issues as integral to the US security?<sup>89</sup>

He also noted that ever improving transmission mechanisms make shocks in foreign economies felt in the US as never before, including the impact of the Mexican, Asian and Russian financial crises on the US.<sup>90</sup> Because of the increasingly integrated capital markets, volatile markets

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<sup>88</sup> De Souza, p.164-165.

<sup>89</sup> De Souza., p. 1.

<sup>90</sup> De Souza, p.156, "Mexico's financial crisis knocked a percentage off U.S. growth in early 1995 despite an unprecedented commitment of support for Mexico's stabilization effort. When a slide in the Hong Kong market in October 1997 (Asian Financial Crisis) triggered the second largest one-day drop in the Dow Jones Average in history, any thought that the United States was too big or too insulated to be affected by financial developments abroad went out the window. The paralysis of U.S. capital markets in the fall of 1998, following financial collapse in Russia, was yet another lesson."

have produced regional tensions where economic resources were abruptly reallocated in affected countries producing internal conflict and have contagion effects producing negative economic consequences in the form of lower demand for US exports, devaluation of US investment abroad,<sup>91</sup> among others. It is illustrative to consider that the widespread ramifications of economic dislocation at the US border motivated the Clinton Administration to define the Mexican peso crisis as a national security threat!<sup>92</sup>

The national security question then was: “Should we (USA) expand understandings of security that focus on military matters to include traditionally domestic economic concerns such as Americans’ retirement savings”?<sup>93</sup> After all, volatility of integrated capital markets in which U.S. pension plans are invested creates new transnational threats to the well-being of U.S. citizens.<sup>94</sup> Important international dimensions to retirement savings should be noticed,<sup>95</sup> and that includes the aspect that the recent international financial crises have threatened the savings of American seniors as pension funds with exposure to emerging markets have seen their assets dramatically reduced as a result of external volatility.<sup>96</sup>

Another national security question is, from a foreign policy perspective, could currency speculation by global financial players constitute a security threat to the United States?<sup>97</sup> After all, such attacks on currencies are destabilizing to US capital markets because of the volatility they produce abroad.<sup>98</sup> Countries around the world are treating such (speculative) attacks as matters of national security.<sup>99</sup>

This writer also agrees with the perspective taken by *De Souza* that the widespread ramifications of economic dislocation of financial crises motivated the US to declare the Mexican financial crisis as a threat to national security, probably the first to declare a financial crisis as an issue

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<sup>91</sup> De Souza, p. 3

<sup>92</sup> De Souza.

<sup>93</sup> De Souza, p. 4.

<sup>94</sup> De Souza.

<sup>95</sup> De Souza, p. 24.

<sup>96</sup> De Souza, p. 24-25.

<sup>97</sup> De Souza, p. 4

<sup>98</sup> De Souza, p. 24.

<sup>99</sup> De Souza, p. 26.

of national security. If this were so, it becomes an interesting question whether the Philippines should have considered the same thing for the recent Asian Financial Crisis as a national security threat considering that it occurred not just as a neighboring event but even included the Philippines as part of the crisis-hit sovereign nation.

Between 1997 and mid 2000, seventy-seven companies filed for suspension of payments with the Securities and Exchange Commission. These included enterprises such as Philippine Airlines, Victorias Milling, Uniwide Group of Companies, ASB Group of Companies, Urbancorp, Investment, Inc., EYCO Group of Companies. Even National Steel Corporation found itself in P16 Million debts that forced it to close in 1999. The French giant La farge took over control of Republic Cement, Iligan Cement, Mindanao Portland Cement, and others while another Swiss-based Holcim took control of Alsons Cement Corporation and Union Cement Corporation. Banks were most hit. While the Non-performing loans came to only 4.7% of outstanding loans by end of 1997, by 2003, banks' NPAs stood at 30%. Necessarily, government's fiscal capacity to raise revenue from taxes, which is dependent on rate of growth, declined.<sup>100</sup>

Florian Albuero's article on the '*Asian Financial Crisis and Philippine Responses: Long Run Considerations*' expressed the grave economic and financial impact of the Asian Crisis to the nation in this wise:

“The crisis was immediately transmitted to the country through the sharp depreciation of the peso—from a stable rate of P 26.4 to a U.S. dollar in June 1997 to a rate of P 42.7 by January 1998.... Via the route of exchange rate changes the rest of the economic and financial sectors were immediately affected. As private debt obligations in foreign currency were due (or re-financed as the case may be) their local currency requirements multiplied endangering the viability of projects (and debtors) and threatening the financial system as a whole. Consequently the inflation rate shot up by 1998 after falling to a cyclical low in 1996 (Reyes et al. 1999)....

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<sup>100</sup> Bello, 2004, p. 114.

The economy still managed to post a respectable growth rate of 5.8 per cent in 1996 before settling at 5.2 per cent in 1997 and then crashing to a 0.5 per cent decline by 1998. Indeed the year 1996 was the cycle's peak....

The economic and financial impacts of the crisis were not only immediate but were also clear in the sense that the transmission process is readily traceable. In fact, Table I shows some economic and financial indicators for the country in the three-year period 1996 through 1998. The peso depreciation raised the inflation rate, lowered the current account/GDP ratio (through import contraction), and of course led to the decline in the overall growth rate. The contraction in the money supply was equally drastic from 20.5 per cent in 1997 to 7.1 per cent in 1998. On the fiscal side, there was a slight increase in the deficit in 1998 from a surplus in 1997."

*Economic and Financial Indicators: Philippines, 1996-98*

	1996	1997	1998
Real GDP growth rate (%)	5.7	5.2	- 0.5
Inflation rate (%)	8.4	5.0	9.0
Interest rate (T-bill rate in %)	12.3	12.9	13.4
Money supply growth rate (M2 in %)	15.8	20.5	7.1
Real growth of private consumption (%)		5.0	3.5
Fiscal balance (% of GDP)	0.4	0.1	- 1.8
Current account balance (% of GDP)	- 4.7	- 5.3	2.0

Sources: National Statistics Office, Bangko Sentral ng Pilipinas, and National Statistical Coordination Board.<sup>101</sup>

But the other social impact of the Asian Financial Crisis to unemployment was even more damaging. Prof. Albuero explained that:

"First of all, the contraction of the economy triggered by the immediate currency depreciation raised the unemployment and related indicators. However measured, the unemployment rate increased in 1998 to its highest rate in the decade keeping in mind that this rate is also the highest among the ASEAN countries and among those affected by the crisis (ADB 1998). In addition the underemployment rate also increased between 1996 and 1998 though not as marked as unemployment itself. Associated data from the Bureau of Labor and Employment Statistics show that the number of firms reporting either closure, retrenchment, or worker rotation more than tripled between the first quarter of 1997 (before the crisis) and the first quarter of 1998 (in the midst of the crisis). At the same time the number of workers affected likewise tripled during the same period. However the largest components of the workers affected were on temporary lay-off (47.6 per cent) rather than permanently laid-off (42.5 per cent). The 1997 figures had 77 per cent of the affected workers permanently laid-off.

<sup>101</sup> Albuero, Florian A. (1999, December). Asian Financial Crisis and Philippine Responses: Long Run Considerations. August 12, 2005 from [http://www.ide.go.jp/English/Publish/De/pdf/99\\_04\\_04.pdf](http://www.ide.go.jp/English/Publish/De/pdf/99_04_04.pdf).

The increase in unemployment that the crisis caused set off a chain reaction throughout the economic system unleashing more adverse effects. The incidence of poverty quickly rose as fixed income earners and other vulnerable groups were affected through loss of livelihood and through increases in prices. These affected groups in turn responded by cutting down on expenditures, forgoing further education of their children, postponing consumption of medical and related services, and other amenities. In one sense these impacts were direct results of the crisis. xxx"

Table II presents a selected set of social indicators that describe the effects of the crisis in the Philippines.

TABLE II  
*Selected Social Indicators: Philippines, 1995-99*

	1995	1996	1997	1998	1999
Unemployment rate (3rd qtr., in %)	8.8	7.5	8.7	8.9	9.0
Underemployment rate (3rd qtr., in %)	21.3	21.5	23.1	20.8	22.1
Poverty incidence (%)			32.1 <sup>a</sup>		43.0 <sup>b</sup>
Enrollment rate (% of school age group):					
Elementary		3.3	0.7		
Secondary		0.6	- 7.9		
Dropout rate (% of school age group):					
Elementary		10.3	-7.9		
Secondary		8.7	8.7		

Sources: Bureau of Labor Statistics. National Statistics Office and Department of Education.<sup>102</sup> (Based on income and expenditure surveys and on self-rating)

This writer also notes that the data presented by Prof. Albuero on the rise in unemployment and the poverty incidence are basic concerns of national security particularly in its socio-cultural dimension. Perhaps there may not be a rule-of-thumb threshold measure of what are acceptable rates of unemployment or poverty that threatens the state. But when nearly one out of every two citizens of the Philippines fall in the poverty level, by any standard, that should qualify to threaten the very people as an element of the state.

<sup>102</sup> Albuero, (1999, December).

## Operational definitions

*Globalization* involves the integration of markets, nation states and technologies to a degree never witnessed before – in a way that is enabling individuals, corporations, and nation-states to reach around the world farther, faster, deeper and cheaper than ever before.<sup>103</sup>

*Global or International finance* involves either a non-resident or assets denominated in a foreign currency, or both, that pertain to financial transactions across borders or across currencies.<sup>104</sup> It includes currency trade, and trade in new financial instruments, such as bonds, mutual funds, Global Depositary Receipts (GDR) and derivatives.<sup>105</sup>

*National Security* is a state or condition where the values and institutions of governance and the unity, welfare as a nation and people are protected.<sup>106</sup> It can also be defined as that state or condition of the nation wherein the people's way of life and institutions, their territorial integrity and sovereignty including their well-being are protected and enhanced.<sup>107</sup>

*Law* refers to the body of legislation enacted by Congress of the Republic of the Philippines and other rules and regulations issued by appropriate government agencies within their rule-making powers that relate to global finance.

*Economics* is the science which studies human behavior as a relationship between ends and scarce means which have alternative uses.<sup>108</sup>

*Responsive* means the reaction that the securities law and the other various laws, rules and regulations enacted to address securities trading

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<sup>103</sup> Lecture notes of Col. Edmundo Gammad before the General Staff Corps (GSC) Students, Class 12 on "RP National Security Strategy", 2002.

<sup>104</sup> Michie, Jonathan, (1995) *Managing the Global Economy*, Oxford Univ. Press, citing the article of Yilmaz Akyuz, "Taming International Finance", p. 58.

<sup>105</sup> Singh, 7.

<sup>106</sup> Lecture notes of Col. Edmundo Gammad before the General Staff Corps (GSC) Students, Class 12 on "RP National Security Strategy", 2002.

<sup>107</sup> NSCP Definition of National Security.

<sup>108</sup> Gwartney, James D., Stroup, Richard L. & Sobel, Russell S. (2000). *Economics: Private and Public Choice*. Orlando, Florida. The Dryden Press, p. 6.

and the regulation of financial instruments have to the advent of global finance and the free flow of entry of portfolio funds in the Philippine markets and includes all laws relating to trade, investment, finance and the capital markets.

Responsiveness is measured by policy criteria in terms of adequacy, efficiency, effectiveness, appropriateness and equity as recommended in Public Policy Analysis by Willam Dunn and the Likert scale.

### **Summary/Conclusion/Recommendation**

#### *Summary of Findings*

In recapitulation, the following questions call for answers in this research:

How responsive is the legal structure on securities and related laws in regulating securities trading and the free flow of portfolio funds in the capital market within the framework of national security and from the perspective of major personalities in the capital markets, its regulators, the legal profession and experts in national security in the last twenty (20) years?

This study also endeavored to answer the following questions:

- a. What are the factors that influence the entry of portfolio funds into the Philippine capital market?
- b. What are the existing laws that are already involved in the regulation of securities trading of portfolio funds in the Philippine capital markets?
  - What has been the trend or changes in laws, rules or regulations that relate to global finance?
  - What allied or related laws are there that assist to respond to globalization of finance?
  - Is there a legal framework used by legislators and the other regulators in their approach to regulate securities relative to portfolio funds within the context

of globalization of finance to achieve a minimum level of financial security for the nation?

- c. What are the qualities or elements of Philippine national security that are affected by global funds?
- d. Are there other dimensions of national security to be considered in the development of laws regulating the capital markets that could be relevant in response to portfolio funds and the globalization of finance?

Briefly, the results of this study and answer to the foregoing questions are summarized to wit:

*a. Factors that influence the entry of portfolio funds into the Philippine capital market.*

As perceived in the survey utilized in this study, respondents found the securities law to be a factor for portfolio fund investment.

The respondents agree that the Securities Law possesses the attributes of adequacy, efficiency, effectiveness, appropriateness and equitability. It helps portfolio fund managers to consider investing in the Philippines because the securities law allows for a full and fair disclosure about securities resulting in transparency. Since the enactment of the Securities Regulation Code, portfolio funds have increased its participation in the capital market and since its enactment, domestic portfolio funds have increased against prior investments.

Respondents agree that the Securities Law allows for protection of investors and makes it now easier for local investors to participate and to own shares in the capital market.

However, the respondents disagree that the Securities Law minimizes, if not eliminates insider trading and other fraudulent and manipulative devices and practices that create distortions in the market.

In fact, respondents have a neutral feeling that the securities law promotes the placement of funds in the market both local and foreign and

that there is now a wider base of participants from the domestic portfolio fund investors since the enactment of the Securities Regulation Code.

On the basis of documentary analysis, the strategic objectives of portfolio funds seem clear in setting minimum standards of investibility for emerging country markets to be permissible for investment to control risk and enhance return. In the case of CalPERS, the macro-factors of evaluation include, not only those that pertain specifically to the public equity market within each country (or the *market factors*), but also those that can be generalized to the entire country (or the *country factors*). Thus, *market factors* include market liquidity and volatility, market regulation/legal and system/investor protection, capital market openness and settlement proficiency/transaction costs while *country factors* include political stability, transparency and productive labor practices. CalPERS uses an aggregate but weighing score system for every macro-factor with country and market factors each receiving in aggregate a weight of 50% of a country market's total score.

*b. Existing laws that are already involved in the regulation of securities trading of portfolio funds in the Philippine capital markets*

In the meantime, Philippine securities regulation is found in the Securities Regulation Code or R.A. No. 8799 and it is part of the legal response to the globalization of finance and the free flow of portfolio funds, or the so-called “hot money”. The trend on regulation under the securities law is towards transparency, good governance and self-regulatory organization in the Philippine Stock Exchange.

The allied laws that assist the Securities law involve R.A. No. 8791 or the General Banking Law of 2000, the Corporation Code, R.A. 8366, or the law that liberalized the investment houses, R.A. No. 8556 or the Financing Company Act, R.A. No. 7721 or the law that liberalized the banking and financing institutions, R.A. No. 9160 or the Anti Money Laundering Law, R.A. No. 9182 or the Special Asset Vehicle Law that aided the banks to rationalize their non-performing assets, R.A. No. 9267 or the Securitization Act.

*c. Existing legal framework approach to regulate securities relative to portfolio funds within the context of globalization of finance to achieve a minimum level of financial security for the nation.*

This writer did not find any specific legal framework that the Philippines utilizes in response to a major phenomenon like the globalization of finance that contains issues like the free flow of portfolio capital into the Philippine capital market or the Asian Financial crisis (or the BW Scam). On the contrary, it is the portfolio fund capital that has a framework concept and rules of thumb in their effort to invest in emerging market economies, like the Philippines.

What the research did find was a development agenda of the National Economic Development Authority (NEDA) where government recognizes in the Medium-Term Philippine Development Plan 2004-2010 that the Philippine finance sector is characterized by:

- inflation and fiscal risks undermine long-term savings
- oversight agencies do not have adequate regulatory powers to prevent systemic risk
- weak protection of creditor and investor rights
- dominated by government securities
- lack of instruments designed for small savers
- tax distortions discourage investments in financial instruments
- emerging funding gap in public pension system

The government approach, thru NEDA, in planning the development of the finance sector can be found in performing the following:

- amend BSP Charter and CDA Charter to strengthen supervisory capacity
- amend Corporation Code to protect minority shareholders
- propose enactment of Pre-Need Code, Revised Investment Company Bill, Lending Investors Bill, Central Credit Information Bureau
- strengthen consolidated supervision among regulatory agencies
- apply Risk-based capital adequacy framework for SEC-regulated companies
- increase SME access to financing

On the other hand, there are other laws that tangentially co-exist with the above laws that assist in the environment of the development of the capital market and thereby facilitates in the achievement of the goals of the above laws. The Value Added Tax Law (VAT) is an example and the build-operate-and-transfer scheme and other innovative financing public

investment programs using foreign capital. Also, the ratification treaty with the WTO that dictated the beginning of liberalization with foreign capital and the integration with other financial markets provided the environment for streamlined regulation of foreign capital. Then, there were legislation on the creation of processing zones under the Philippine Export Zone Authority to set up export processing zones by private sector or thru joint ventures, and the Subic Bay Naval Base that established the Freeport zone and the Clark Air Base that transformed another US military installation into an export processing zone.

In fine, there is no integrated national legal framework to reply to global finance and the free flow of portfolio capital or the recognition that domestic capital markets could fail in the face of domestic fraudulent practices. In lieu thereof, there exists a NEDA development agenda that could approximate a needed legal framework and a hodgepodge of varying laws that were enacted over a period of ten (10) years that all cascade towards assisting in attaining financial security and national security.

*d. Elements of Philippine national security that are affected by global funds and other relevant dimensions affected in response to global finance and the free flow of funds.*

If there is any dimension of national security that is affected at all by global finance thru the free flow of portfolio capital it would primarily be the economic dimension of it, though not exclusively.

Asset pricing and the exchange rate peso-dollar fluctuations that interrupt the economic flow are major threats to the economic existence of the nation and is therefore a concern at the economic dimension of national security. With this economic threat, labor unrests arise and lead to worsening poverty and scarcity of resources that give the political dimension added burden to consider in establishing policies to allocate the already scarce resources to address the other socio-cultural and environmental dimensions of national security. In the effort to allocate scarce resources, military modernization can be marginalized in the process of budgetary compromises in the allocation processes and thereby impact on the military dimension of national security.

As earlier stated elsewhere in this paper, a strong Philippine ally, the US, noted the ever improving transmission mechanisms that make shocks

in foreign economies felt in the US as never before, including the impact of the Mexican, Asian and Russian financial crises on the US. Due to increasingly integrated capital markets, volatile markets have produced regional tensions where economic resources were abruptly reallocated in affected countries producing internal conflict and have contagion effects producing negative economic consequences in the form of lower demand for US exports, devaluation of US investment abroad, among others.

It is illustrative to consider that the widespread ramifications of economic dislocation at the US border motivated the Clinton Administration to define the Mexican peso crisis as a national security threat! Another national security question is, from a foreign policy perspective, is whether or not could currency speculation by global financial players constitute a security threat to the United States? After all, such attacks on currencies are destabilizing to US capital markets because of the volatility they produce abroad. Countries around the world are treating such (speculative) attacks as matters of national security.<sup>109</sup>

It is interesting to note that the US declared a neighboring Mexican financial crisis as a threat to its national security, probably the first to declare such a financial crisis as an issue of national security. If this were so, it becomes an interesting question whether the Philippines should have considered the same thing for the recent Asian Financial Crisis as a national security threat considering that it occurred not just as a neighboring event but even included the Philippines as part of the crisis-hit sovereign nation. But the differences between the economies of the US and the Philippines call for a different bases to declare the 1997 Asian Financial Crisis a threat to national security. These domestic bases could be found in the existing dollar-denominated debt and fact that the Philippines is a net importer of basic commodities like rice and basic factors of production like oil, both of which are purchased with US dollars.

Therefore from the aforementioned answers, the principal problem can now be answered on how responsive is the legal structure on securities and related laws in regulating securities trading and the free flow of

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<sup>109</sup> De Souza, Patrick J. (ed.). (2000). *Economic Strategy and National Security: A next Generation Approach*, Westview Press, 2000.

portfolio funds in the capital market within the framework of national security and from the perspective of major personalities in the capital markets, its regulators, the legal profession and experts in national security in the last twenty (20) years? The conclusions below derived from the summary of the survey and document analysis would tend to show that the securities law is adequate, effective, equitable, efficient and appropriate in monitoring the registration and reportorial requirements of securities trading, in regulating the market exchanges and the securities traders and professionals. However, it was not equally as is adequate, effective, equitable, efficient and appropriate in the categories of being able to prevent securities fraud and allow for redress of grievances,

### *Conclusion*

The review of the evolution of Philippine National Security across three Presidents of the Philippines strikingly magnifies how National Security has influenced the policies laid down in law to respond to global finance. While one President would strictly construe national security as an effort related to militarism, the recent ones prefer to include economic policies as part of the definition of national security. Also with the changing trend of National Security as perceived by the successive administrations of the executive departments of government, the landscape of political, social and economic emphasis and institutions correspondingly change.

With these shifts in national security focus, particularly when national security started to include economic principles, the policies leaned towards opening the economy to '*globalization of trade*' and '*globalization of finance*'. Resultantly, the socio-economic and political landscape perforce changed, which necessarily included changes in the legal structure and legal responses to global finance by the Philippines. Portfolio funds found the latter situation more accommodating to their nature.

A derivative conclusion could thus be made that it is perhaps due to the lack of international influence or power on the part of the Philippines to influence the trend of international events that the Philippine legal response seems to pale against the damaging impact that global funds has on the country's economy. So that without the ability to impact upon international institutions and global events, the national security

perspective of the Philippines to global finance and portfolio funds could be described as inward-looking, if not totally defensive. And to the extent that the defense has been too inward-oriented, one could understand why, at present, legal responses to Financial Crises are not in the radar of concern of the National Security Council, but relegated to a bureaucratic departmental concern of either NEDA or the Department of Finance (DOF).

The Securities Regulation Code, as a proxy legal response to the free flow of portfolio capital, fits both descriptions as inward-looking and regulated merely by the Securities and Exchange Commission of the DOF. The SRC allows portfolio capital to come into the country but has not defended well against the ill-effects of the free flow of funds. Even much less, the SRC has not promoted an offensive charge with the use of domestic portfolio to influence global finance.

The Securities Regulation Code is indeed adequate, effective, equitable, efficient and responsive to achieve its desired objectives towards spreading wealth and achieving transparency although not equally so towards the enforcement of liabilities of violators, both civil and criminal and towards seeking compensation and redress for their grievances. However, it does help portfolio fund managers to consider investing in the Philippines. In fact, foreign investments are already more than half of the funds in the stock market and are increasing annually. Consequently, the larger the flows of portfolio funds in the Philippine capital market, the larger the fluctuation will be on the asset prices as well as on the currency exchange rate.

Portfolio capital has its own set of criteria in investing into emerging capital markets like the Philippines. CalPERS has shown that its criteria cut across several categories of national life and are thoroughly comprehensive, nearly covering the entire dimensions of national security. The Philippines, as part of the global securities market where portfolio capital freely flows and are invested, should harness this situation to its advantage and attain the goals of national security. But to perform at this level, a legal framework is necessary that integrates the several national policies towards achieving this capital market and financial development. There is need for a legal framework that could guide our legislators on the urgent national security concern that is involved in the protection and development of the Philippine financial system.

The need for an appropriate or an integrated legal framework in response to global finance and the free flow of portfolio capital can only find meaning in the context of national security of the Philippines. The nation's debts are dollar denominated and the fluctuation effect that the global portfolio funds have on an open capital market like that of the Philippines wrecks havoc on its already depleting budgetary constraints. Studies show that the enactment into laws of sound economic policies has a favorable effect on the economic performance of the country and bodes well as indicators for foreign funds entry into the nation's capital market.

Reforms to strengthen the capital market and improve the business climate in the country is exactly the declared policy approach of the National Security Council on dealing with general economic issues to achieve the goals and aspirations of national security. Institutionalizing them into law relays the message of permanence. So that the required legal framework in response to global finance needs to adhere to the principles and dimension of national security where it should integrate and focus to attain the goals of national security.

#### *Implications to national security*

In the NDCP accepted definition, national security is defined as that state or condition of the nation wherein the people's way of life and institutions, their territorial integrity and sovereignty including their well-being are protected and enhanced. Its several components include the economic, political, military, environmental and socio-cultural dimensions of security. Threats to national existence that take any of these forms are actually threats to national security.

The seven fundamental elements that lie at the core of national security are: territorial integrity, ecological balance, socio-political stability, cultural cohesiveness, moral-spiritual consensus, external peace and economic solidarity. Economic solidarity is achieved when the economy is strong, capable of supporting national endeavors and derives its strength from the people who have an organic stake in it through their participation and ownership. On dealing with economic issues and concerns, the state shall continue implementing reforms that would generally improve the people's lives and boost the economy by

strengthening the capital markets, enhancing the foreign and domestic investment, and improving the business climate of the country.<sup>110</sup>

The element of national security, specifically on economic security, is achieved by the strengthening of the capital markets and improving the business climate of the country. It is planned and achieved through the NEDA and the enforcement authority of the SEC, but should be promoted by no less than the National Security Council. It is from these elements of national security that a national legal framework to place safety nets to the disastrous impact of global portfolio funds to the economy could be based or pro-actively move to influence, at least, the regional capital markets, or both. Specific legal responses to global finance could accordingly be enacted. Thus, economic policies that seek to strengthen the capital market, boost the economy and improve the people's lives should be crafted within a reformed legal framework premised on economic solidarity as a defined element of national security.

It is practically costless to adopt the above legal framework. Yet, plain observation would show that, with the data presented, the benefit could be unlimited. The difference in amount between the inflows of portfolio funds in the year 1997 just before the Asian Financial Crisis and the portfolio inflow amount in 2004 is at more than US\$7 billion that could have stayed in the country in the form of dollar reserves. At the least, had there been a legal framework as suggested above, any flight of capital may not have been massive to create the financial crisis.

### *Recommendations*

This writer agrees to use some of the already existing guidelines that are streamlined in the MTPDP for the development of a 'stronger, stable and deeper financial system'. Some of these factors could be the bases to establish a legal framework as a response to global finance represented by global portfolio funds. The general MTPDP plan includes:

1. Accelerate reduction of non-performing assets in the banking sector;

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<sup>110</sup> Gen. Alex Aguirre, "The Bureaucratic Politics of National Security System in the Philippines", Jan. 27, 2005, lecture at the NDCP before MNSA RC 40.

2. Prevent and minimize systemic risks by strengthening regulations in accordance with international standards for greater transparency and accountability;
3. Improve market liquidity;
4. Protect investor and creditor rights;
5. Tap savings through new financial products;
6. Remove tax distortion and harmonize tax treatment of financial instruments,

*MTPDP compared with CalPERS criteria*

For purposes of comparison, the MTPDP objectives may be presented in tabular form as follows:

**Table 5.1. MTPDP Objectives for financial sector development**

Accelerate reduction of non-performing assets in the banking sector	Prevent and minimize systemic risks by strengthening regulations in accordance with international standards for greater transparency and accountability	Improve market liquidity	Protect investor and creditor rights	Tap savings through new financial products	Remove tax distortion and harmonize tax treatment of financial instruments
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In the case of CalPERS, the macro-factors of evaluation include the *market factors* and the *country factors*.

*Market factors* include market liquidity and volatility, market regulation/legal and system/investor protection, capital market openness and settlement proficiency/transaction costs while *country factors* include political stability, transparency and productive labor practices. CalPERS uses an aggregate but weighing score system for every macro-factor with country and market factors each receiving in aggregate a weight of 50% of a country market's total score. In table form, it appears as:

**Table 5.2. CalPERS criteria to invest in emerging market.**

Country Factors	Political Stability	Transparency	Labor Practices
Market Factors	Liquidity & volatility	Market regulation / legal and system / investor protection	Capital market openness & settlement proficiency / transaction cost

When the MTPDP objectives to develop the Philippine financial market on the domestic level are fitted into the criteria of CalPERS to enter the Philippine capital market, the MTPDP finds its niche in the CalPERS criteria as shown in the table matrix, thus:

**Table 5.3. Combined MTPDP objectives fitted in CalPERS criteria to invest in emerging market.**

Country Factors	Political Stability	Transparency	Labor Practices
		Prevent and minimize systemic risks by strengthening regulations in accordance with international standards for greater transparency and accountability	
Market Factors	<b>Liquidity &amp; volatility</b>	<b>Market regulation/ legal and system/ investor protection</b>	<b>Capital market openness &amp; settlement proficiency/ transaction cost</b>
	Improve market liquidity	Accelerate reduction of non-performing assets in the banking sector	
	Remove tax distortion and harmonize tax treatment of financial instruments		
	Prevent and minimize systemic risks by strengthening regulations in accordance with international standards for greater transparency and accountability	Prevent and minimize systemic risks by strengthening regulations in accordance with international standards for greater transparency and accountability	Protect investor and creditor rights
	Tap savings through new financial products	Protect investor and creditor rights	

From the combination of the MTPDP reforms and the criteria set by CalPERS, one could readily see where the country lacks in reforms that could measure to the standards of portfolio funds – there is the need for legislative political reforms, labor legislations and more of transparency. This legal framework already discounts the existing Securities Code and the General Banking law that were duly enacted in 2000 along with several other legislations in the last twenty (20) years, covered by the time period of this research.

In this framework, it is well to remember the data presentation in Chapter 4 where global finance represented by the portfolio funds exhibited a behavior of not leaving the country in the midst of a ‘Gloria gate’ scandal, at least for a period of time. Had it not been for the restraining order of the Supreme Court against the EVAT law, these portfolio funds may not have reason to exit the country. Notably, the failure to place the EVAT law could negatively affect the budget deficit and result to more borrowings that could impact on the currency risk. Nonetheless, what the free flow of these portfolio funds indicate is that, unlike in the past, there is a possibility to isolate the impact of Philippine politics from the Philippine financial system and thereby, the Philippine economy, to the beneficial gain of national security.

This research is not a support paper for the EVAT law. That law does indicate that with a fair understanding of where the Philippine financial system lies in the global financial investment arena. A legal framework that supports a Philippine financial policy should be established to gain the goals and aspirations of national security despite the volatility of Philippine political events. Several other laws that are now pending in Congress may be enacted in this framework.<sup>111</sup>

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<sup>111</sup> Most recent is House Bill 286 or the proposed Corporate Reform Act of 2004 that seeks to regulate corporate abuses by coming up with a more stringent set of rules showing transparency and accurate accounting to investors and the general public. It bans accounting firms from providing most consulting services to companies they are auditing. It also requires principal executive offices to certify to the accuracy of reports filed and prohibiting them to engage in insider trading. Off-balance sheet transactions and transactions involving management and principal stockholders must be disclosed in the financial report. Companies are also mandated to regularly disclose to the public any changes in their financial condition or operations. (BusinessWorld, January 26, 2005, p.26.)

Interviews with the Securities and Exchange Commission regulators<sup>112</sup> of the capital market reveal that their present structure for regulation is one of division of labor: the *Market Regulation Department* for the players and the intermediaries of the capital market (like the stockbrokers), the *Corporation Finance Department* for the financial product itself or the securities, and the *Compliance Enforcement Department* for the prosecution of violators of the securities law. These regulators have described that the trend of securities regulation leads towards the areas of corporate governance and for self-regulation where the stakeholders in the capital market are required and expected to police themselves in the face of existing laws, rules and regulations. The present status conferred on the PSE as a Self-Regulatory Organization (SRO) seal attests to this event that is sanctioned in the Securities Regulation Code itself.

Prior interviews with the Market Integrity Board<sup>113</sup> of the Philippine Stock Exchange also attest to this trend.

Transparency, disclosure rules, self-regulation and enforcement are future concerns that a legal framework for a financial system should include to attain a national financial security to lead to national security. They could be fitted with ease in **Table 5.3** above.

#### *Recommendation for future study*

There is empirical evidence that the volume of portfolio funds are ever increasing by the year. This is a peculiarity of the Philippine capital market that does not augur too well for it is but important to recognize such today as a matter of fact for an accurate medicinal prescription tomorrow. The proportion of the foreign portfolio funds that could easily depart the capital market in a blip of a computer button could leave the economic taste bud with a bad taste in the aftermath of their sudden capital flight.

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<sup>112</sup> This information was obtained from an interview with Atty. Carol Lerma and Mr. Graciano P. Felizmenio, Jr. of the Market Regulation Department, Securities and Exchange Commission last July 20, 2005.

<sup>113</sup> This information was obtained from an interview with Justice Jose Vitug of the PSE, Market Integrity Board last July 19, 2005.

Controlling the volume of entry of these funds was shown in the Review of Literature to be not feasible. Thus, if this cannot be done, then the only option is to increase the domestic funds in the market relative to the gargantuan amount of the freely flowing portfolio capital, i.e. increase domestic savings. This may perhaps be easier said than done, in a manner of speaking but there are precedents to legislating on the propensity of the people to save like the GSIS, SSS, Pag-Ibig and OWWA laws that deduct from salaries.

At an intuition level, the OCW may be the better option to jumpstart the funds for a new savings institution in the nature of a pension fund like CalPERS. Legislation could be strategically streamlined towards increasing this fund base. These are forced savings that could circulate in the Philippine capital market in response to the free flow of foreign funds. It is not an issue of increasing the deductions more than it is an issue of efficiently using this capital. Be that as it may, it could nonetheless be included in a Philippine Legal Framework for a Financial Policy<sup>114</sup>, as proposed in this research to attain the goals and aspirations of national security.

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<sup>114</sup> This recommendation has allowed the researcher to come full circle with his essay in the entrance examinations of the MNSA at the NDCP a year ago, or sometime in August 2004. He wrote in his essay (as part of the admission exams), then an applicant, his contribution to the nation as a student of the MNSA is to propose a framework for the government to have a 'National Finance Policy' that carries the same magnitude as the Philippines' existing foreign policy to protect the nation against threats to national security in the category of global finance.