

Philippine Studies

Discussion Paper Series

Discussion Paper No. 6

**PHILIPPINE TERRITORIAL CLAIMS:
PROBLEMS AND PROSPECTS**

Serafin P. Colmenares, Jr.

Center for Philippine Studies
School of Hawaiian, Asian and Pacific Studies
University of Hawaii at Manoa
Honolulu, Hawaii

Philippine Studies
Discussion Paper Series

- | Number | Title/ Author |
|---------------|---|
| 1 | Strain in Filipino Industrial Relations
Elias T. Ramos |
| 2 | The Advent of Disciplinary Power in the Philippines
Emmanuel C. Lallana |
| 3 | Colonization and the Moro-Indio Conflict in Mindanao
Fred V. Magdalena |
| 4 | The Philippine Political Economy
and the U.S. Military Bases: Two Papers
Senator Jovito R. Salonga |
| 5 | Basic Christian Communities in the Philippines:
A People-Empowering Response to Modernization
Teresita A. Herrera |
| 6 | Philippine Territorial Claims: Problems and Prospects
Serafin P. Colmenares, Jr. |

Copies of the Philippine Studies Discussion Paper Series may be obtained from the Center for Philippine Studies, University of Hawaii at Manoa, 414 Moore Hall, 1890 East-West Rd., Honolulu, HI 96822. A donation of \$2 per paper is requested.

PHILIPPINE TERRITORIAL CLAIMS: PROBLEMS AND PROSPECTS

by

SERAFIN P. COLMENARES, JR.
Department of Political Science
Mindanao State University

Paper presented during the Philippine Studies
Colloquium, Center for Philippine Studies, University
of Hawaii at Manoa, Honolulu, Hawaii, March 9, 1990.

PHILIPPINE TERRITORIAL QUESTIONS: PROBLEMS AND PROSPECTS

Territorial questions, whether in the form of boundary disputes or territorial claims, have become an important issue in Southeast Asian politics today. This phenomenon is brought about primarily by three reasons. The first stems from the fact that boundaries between Southeast Asian states did not develop or evolve from political frontiers of indigenous states but were rather dictated by colonial powers and decided in European capitals.(1) Such "unnatural" boundaries, which cut into ethnic, religious and even linguistic groups or areas, have resulted, after the departure of the colonial powers, to the filing of territorial claims, redefinitions of borders, moves for the recovery of "lost territories," and even secessionist movements. Second, territorial claims also stem from economic considerations. The need for economic resources brought about by economic difficulties, the dwindling of land resources and rapid population growth, have led countries to the recovery or acquisition of land and maritime areas which are considered rich in terms of natural resources. The struggle for the control of certain groups of islands in the South China Sea is a good example of this scramble for prospective economic resources. Finally, strategic reasons -- as in the control of an important trade or shipping route, the danger posed by the occupation by an unfriendly country of areas contiguous to the territory of a state, the need for military bases or communication facilities -- can prod countries to gain or regain control over certain territories. Territorial questions have the tendency to lead to disputes between states. These disputes, whether active or latent, are significant not only because they have affected or can affect the relations between countries, but also because they could (and in fact they had) turn back the process of peace and cooperation among states.

One of the Southeast Asian states afflicted by these territorial problems is the Philippines. Having been a colonial possession of Spain for almost four hundred years, and then of the United States for almost half a century, the Philippines is heir to the territorial arrangements made by her previous colonizers. The present-day Philippines itself is a creation of Spain -- carved out with the concurrence, not of the indigenous population, but of the other colonial powers of the time. It is interesting to note, though, that the present-day Philippines adhere to these colonial

creations when they are for its interests and seek to change such colonial arrangements when they are not.

The geographic character of the Philippine archipelago -- with its more than 7,000 islands -- and its location -- straddling the Pacific Ocean and the South China Sea, are additional determinants of her territorial problems. Her insular character makes it not only difficult to delineate her borders with her neighbors but also makes her very vulnerable security-wise. Her location gives her a very strategic position insofar as international shipping and communications are concerned. Finally, her economic difficulties, her being an archipelagic state, and her closeness to the oil belt in the Southeast Asian region, have gauged her to become interested in areas which are economically promising.

Philippine territorial claims may be divided into three: 1) her maritime claims; 2) her claim to a part of the Malaysian state of Sabah; and 3) her claim to the Kalayaan Islands in the Spratly group. This paper endeavors to take a look at the current status of these territorial claims. It will examine the issues and problems engendered by such claims, and will delve into the prospects for the settlement of the same.

I. Philippine Maritime Claims

Philippine maritime claims consist of her claims to her territorial sea, to her inland or archipelagic waters, and to an exclusive economic zone (see Figure 1).

a. Territorial waters

What may be considered as the oldest Philippine territorial claim is its claim to its territorial waters based on the limits set by a number of treaties during the colonial period. The Treaty of Paris of December 10, 1898, whereby Spain ceded the Philippines, among others, to the United States, draws an imaginary line along certain points around the Philippine islands and considers all islands "comprehended" therein as constituting the Philippine archipelago.(2) It was soon discovered however, that certain islands located in the southern part of the country (recognized as properly belonging to the Philippine archipelago) were not included in the territorial delimitation contained in article 3 of the Treaty of Paris. To rectify this error, the Spanish and American governments concluded the Washington Treaty of November 7, 1900 whereby:

"Spain relinquishes to the United States all title and claim of title, which she may have had at the time of

the conclusion of the Treaty of Peace of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines described in Article III of that Treaty and particularly to the islands of Cagayan Sulu and Sibutu and their dependencies, and agrees that all such islands shall be comprehended in the cession of the Archipelago as fully as if they had been expressly included within those lines."(3)

This definition of the southwestern limits of Philippine territory was however problematic since it did not really define the boundary between the Philippines and the British protected territory of North Borneo, but only allocated certain islands to the former. Furthermore, there was the problem of certain islands properly belonging to the Philippines which continued to be under the administration of the British North Borneo Company. Negotiations(4) between the American and British governments finally resulted in an agreement to define the boundary between the Philippine archipelago and the state of North Borneo. The Convention, signed on January 2, 1930, after drawing a line to separate the two territories, specified that "all islands to the north and east of the said line and all islands and rocks traversed by the said line, should there be any such, shall belong to the Philippine archipelago and all islands to the south and west of the said line shall belong to the state of North Borneo."(5)

This agreement gave definitive recognition of American sovereignty over certain islands (the Turtle and Mangsee Islands) which have for many years been administered by the British North Borneo Company. In accordance with the exchange of notes between the two governments dated June 2, 1933 it was agreed that the administration of said islands by the British North Borneo Company be left undisturbed unless or until the United States government gave notice to the British government of their desire to take over the administration of said islands.(6) On September 19, 1946, following the transfer of power from the United States to the newly-formed second republic of the Philippines, the Philippine government, as successor to the United States, gave such notice to the British government and on June 20, 1948, after some lengthy negotiations, the formal transfer of the two island groups to the Philippines was effected.(7)

The Philippines insists that these lines drawn by the two treaties set the limits of Philippine territorial waters and, inasmuch as the same has been recognized by other states since colonial times, then the Philippines has acquired not only legal but historic rights to the same. It is for this reason that the Philippines has defined its

territorial boundaries in its constitution(8) on the basis of such treaties. Such territorial waters are considered as such, according to the Philippines, "for the purposes of the protection of our fishing rights, conservation of our fishing resources, enforcement of revenue and anti-smuggling laws, defence and security, and protection of such other interests as the Philippines may deem vital to its national welfare and security, without prejudice to the exercise by friendly foreign vessels of the right of innocent passage over these waters."(9)

The maritime area of the so-called "Treaty Limits" is about 230,000 sq. nm. It is rectangular in shape with the width of the territorial sea ranging from 0.5-2 nm in the southwest corner, to 147-284 nm offshore on the South China Sea side, and 270 nm offshore into the Pacific Ocean. The Philippines stands to gain an increase of its territory by approximately 2.14-fold if these "Treaty Limits" are considered as the boundary of the Philippine territorial sea.(10)

b. Archipelagic or inland waters

The next Philippine maritime claim is to her archipelagic waters. This was first made on March 7, 1955 in a Note Verbale to the United Nations Secretary General which stated:

"The position of the Philippine Government...is that all waters around, between and connecting the different islands belonging to the Philippine Archipelago irrespective of their width or dimensions, are necessarily appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines."(11)

More popularly known as the "archipelagic doctrine", this Philippine proposal, which was subsequently adopted by such archipelagic states as Indonesia, Mauritius and Fiji, was based on the following principles:(12)

1) An archipelagic state, whose component islands and other natural features form an intrinsic geographical, economic and political entity, and historically have or may have been regarded as such, may draw straight baselines connecting the outermost points of the outermost island and drying reefs of the archipelago from which the extent of the territorial sea of the archipelagic state is or may be determined.

2) The waters within the baselines, regardless of their depth or distance from the coast, the sea-bed and the subsoil thereof, and the superjacent air space, as well as all their resources, belong to and are subject to the sovereignty of the archipelagic state.

3) Innocent passage of foreign vessels through the waters of the archipelagic state shall be allowed in accordance with its national legislation, having regard to the existing rules of international law. Such passage shall be through sea lanes as may be designated for that purpose by the archipelagic state.

According to Ambassador Tolentino, "the underlying basis of these principles is the unity of the land, water and people which makes them into a single unit so that the archipelago may not be splintered into as many islands as compose it, with the consequent fragmentation of the nation and the state itself."(13) Pursuant to this doctrine, the Philippine government passed Republic Act No. 3046 on June 17, 1961 defining the baselines of the Philippines based on the 1898 and 1900 treaty between the United States and Spain and the 1930 treaty between the United States and Britain. This was later on amended by Republic Act No. 5446 of September 18, 1968, which not only corrected typographical errors in the earlier legislation but, on account of the Philippine claim to Sabah, included the following section:

"Section 2. The definition of the baselines of the territorial sea of the Philippine Archipelago in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty."(14)

In line with this archipelagic doctrine, eighty straight baselines were drawn around the outermost islands of the Philippine archipelago, enclosing the 7,104 odd islands therein. The inclusion of the archipelagic area within the baselines increased the national territory of the Philippines by approximately 2.8-fold.(15)

The Philippines appended the above-mentioned doctrine to Article 1 of her 1973 and 1987 constitutions defining the national territory of the Philippines.

c. Exclusive economic zone

The third maritime claim of the Philippines was made on June 11, 1978 when then President Ferdinand Marcos signed

Presidential Decree No. 1599 establishing an exclusive economic zone for the Philippines which could extend to a distance of two hundred nautical miles from the baselines from which the territorial sea is measured. This decree came into force on May 30, 1979. This move by the Philippines was prompted by the proclamation of similar zones by other states.

The 200-mile exclusive economic zone, measured from the archipelagic baselines of the Philippines, is intended to afford the coastal state to exploit all living and non-living resources and to control scientific research at the same time. The traditional international freedoms, however, will be maintained including freedom of navigation and overflight and freedom to lay submarine cables and pipelines. According to PD 1599, the Philippines has the following rights over the economic zone:(16)

- 1) Sovereign rights for the purpose of exploration and exploitation, conservation and management of the natural resources, whether living or non-living, both renewable and non-renewable, of the sea-bed, including the sub-soil and superjacent waters, and with regard to other activities for the economic exploitation and exploration of the resources of the zone such as the production of energy from the water, current and winds;
- 2) Exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures, the preservation of the marine environment, including the prevention and control of pollution, and scientific research;
- 3) Such other rights as are recognized by international law or state practice.

The Decree further provides that where the outer limits of the zone as thus determined overlap the exclusive economic zone of an adjacent or neighboring state, the common boundaries shall be determined by agreement with the state concerned in accordance with the recognized principles of International Law on delimitation.

The area covered by the Philippines' exclusive economic zone is larger than that under the "Treaty Limits". It is estimated that the exclusive economic zone has an area of approximately 551,000 sq. nm -- this would add 321,000 sq. nm more than the "Treaty Limits" could to Philippine maritime territory. This area could be further increased if

the Philippines is able to acquire ownership of the Kalayaan group of islands or portions thereof. These islands will generate their own economic zones.(17)

There are, however, certain problems associated with these maritime claims, particularly with the adoption of the 1982 UN Law of the Sea convention and its impending ratification by the international community.(18) The new Law of the Sea has adopted the 200-mile exclusive economic zone for states and it would appear that the main problem this could engender is the overlapping of zones claimed by a number of countries. For example, Brunei's exclusive fishery zone overlaps with that of Malaysia, Indonesia, the Philippines and Vietnam. The same could apply to the Philippines' exclusive zone as it relates to the claims of Taiwan, Indonesia, and Malaysia. Article 74 of the 1982 Convention provides a solution to this problem. It states that

"the delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution."

This "equitable solution" has often been identified with the use of the equidistance method or principle by which boundaries are determined by drawing a middle line between the territories of states, equally-distant from the baselines (or low-water marks, as the case may be) of the states concerned. The application of this principle may however be problematic in those areas where there is conflict between the 'preferential' rights of some states and the traditional fishing rights of neighboring fishing states. If such traditional rights are recognized, then boundaries may not be delimited equitably. The International Court of Justice has ruled in 1984, however, that "the retention of such a traditional fishing area cannot be insisted upon as a matter of legal right or entitlement, but may only be sought out of expediency, with any necessary adjustment or compensation to the other state, during the course of negotiation between the states concerned."(19)

The Law of the Sea has also adopted the "archipelagic doctrine" as espoused by the Philippines and other archipelagic states, but with some modifications and conditions.(20) In the first place, the convention decided to fix a maximum length of a baseline segment of 125 nm. A segment of the Philippine baseline which encloses the Moro Gulf measures 136 nm, and hence, needs to be adjusted.

Secondly, it differentiated between archipelagic waters (waters enclosed by the archipelagic baselines) and internal waters (bays, gulfs, rivers and similar areas) as opposed to the Philippine proposal of identifying archipelagic waters as internal waters. This distinction made possible the application of different rules regarding passage over these two types of waters.

The question of passage through archipelagic waters was a very hot issue during the Law of the Sea conference. (21) States adversely affected by the archipelagic states' proposal that archipelagic waters are internal waters and thus subject to the sovereignty of the state included not only the immediate neighboring states but also the maritime powers whose strategic and commercial activities would be hampered if such a concept were accepted. It is to be noted that a number of major shipping routes pass through the Philippines, e.g. the Verde Island Passage, the San Bernardino Strait, and the Surigao Strait, all of which are found within the archipelagic baselines of the Philippines. To assuage the fears of the maritime states that these routes might be closed to them, the Philippines agreed to establish sea-lanes and to grant the right of 'innocent passage' through her archipelagic waters (a right normally given in territorial waters), but only to commercial vessels in the spirit of cooperation for the promotion of commercial navigation. But pressures from the maritime states plus lack of support from the other archipelagic states eventually resulted in the adoption of the rule that allows unimpeded passage for all types of vessels through archipelagic waters. In short, the rule on passage over archipelagic waters was made more liberal than the rule that applies over territorial waters. This provision has raised concerns on the part of the Philippines, since by allowing all kinds of vessels unimpeded passage through the archipelagic sea-lanes, one can just imagine the threat it would pose to the security of the Philippines or the disastrous effects on its environment if a vessel carrying nuclear substances or harmful pollutants breaks down during its passage through the archipelagic sea-lanes.

It was in this context that the Philippines, upon signing the convention, made a declaration that "the provisions...on archipelagic passage through sea-lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic state over the sea-lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence, and security; the concept of archipelagic waters is similar to the concept of internal waters under the Philippine Constitution." (22) In other words, as far as the Philippines is concerned, archipelagic waters are internal waters, and archipelagic sea-lanes

passage must be subject to the laws of the archipelagic state.

Finally, the 1982 Law of the Sea set a 12-mile limit to the territorial waters which could be claimed by a state, thus denying the "Treaty Limits" espoused by the Philippines. The United States provided the primary refutations to the Philippine claim of historic rights based on the "Treaty Limits." (23) The US pointed out that the treaties mentioned by the Philippines quite clearly refer to the islands or the land territory and not to the sea areas within the specified lines. In addition, she maintained that the US had followed the 3-mile territorial sea limit, this being the maximum allowable breadth of the territorial sea at the time of the conclusion of the treaties in question, and that she never intended to 'allocate' the maritime area as an inseparable appurtenance of the Philippine archipelago. In spite of the Philippines protestations to the contrary and her argument that the definition of a state's territorial waters is subject to the peculiar needs and character of the states concerned and hence should not be subject to a uniform rule, (24) the Law of the Sea's 12-mile limit was approved. On account of this, the Philippines included in its declaration after signing the convention that the signing shall not "impair or prejudice the sovereign rights of the Republic of the Philippines as successor of the U.S.A. under and arising out of the Treaty of 10 December 1898 and that of 2 January 1930," nor shall it "diminish or in any manner affect the rights and obligations under the Mutual Defense Treaty between the U.S. and the Philippines of 30 August 1951, and its related interpretative instruments," (25) owing to the fact that the Philippines has defined its metropolitan territory under such treaty based on the definitions of the 1898 and 1930 agreements.

The continued insistence by the Philippines on its "Treaty Limits" could lead to problems not only with the maritime countries but also with her neighbors. Since the "Treaty Limits" cuts across the Bashi Channel between Taiwan and the Philippines, which is an international passageway, navigational problems could arise with the maritime states using such waterway. In addition, it could lead to problems with Taiwan, whose claims to a 200-mile exclusive economic zone could jut out well into the Philippines' "Treaty Limits." A similar problem could arise with Malaysia, since the Treaty of Washington of 1930 did not make use of equidistant lines in delimiting the boundaries between North Borneo and the Philippines. With the adoption of the 12-mile territorial sea limit and the exclusive economic zone, Malaysia could claim additional waters in its border with the Philippines. Finally, the Philippines would surely have

problems with Indonesia inasmuch as Miangas Island (also known as Palmas Island) which is part of Indonesia and is point 56 of the Indonesian baseline system, is located inside the Philippines' "Treaty Limits" (see Figure 2).

This island, which is about 2 miles long and 3/4 mile wide, is located about 50 miles southeast of Mindanao and about 60 miles from Nanusa Islands in Indonesia. It lies within the boundaries of the Philippines as contained in the 1898 Treaty of Paris. It was the object of a territorial dispute between the United States (then controlling the Philippines) and the Netherlands (then holding Indonesia) in the early 1900s. As the story goes, General Leonard Wood, on a visit to the island in 1906, was surprised to find the Dutch flag flying over the island. Negotiations between the two governments eventually led to the special agreement signed on January 23, 1925 whereby the two countries agreed to submit the case for settlement to Max Huber, a Swiss arbitrator acting for the Permanent Court of Arbitration. The case (which has become a classic in international law) was decided in favor of the Netherlands government in 1928, on the basis of the argument that while Spain, and later the United States, claim the island on account of discovery, said countries were not able to exercise actual sovereignty, in terms of effective occupation, over it. The Netherlands, on the other hand, was able to show continuous occupation from 1677 onwards. According to Huber, the title of discovery, claimed by the United States, is but an inchoate title or a mere claim to establish sovereignty by effective occupation, and therefore, cannot prevail over a definite title founded on continuous and peaceful display of sovereignty. (26)

During the discussions that led to the adoption of the 1982 Law of the Sea, Indonesia submitted a proposal, among others, that "no claim to historic waters was to include land territory or waters under the established sovereignty, sovereign rights, or jurisdiction of another state." (27) This was obviously aimed at protecting Miangas Island and its surrounding maritime area which lie within the Philippines' "Treaty Limits."

II. The Philippine Claim to Sabah

The Philippine claim to Sabah, officially filed in June 1962, is not of recent origin, but is rather an extension of the long-standing claim by the Sultanate of Sulu of sovereignty over the territory in question. It is based on historical-legal grounds, that is, on the purported Sulu acquisition of the territory from Brunei in 1704 and the former's continued exercise of sovereignty over the same territory from the time it was acquired, then through the

period it was leased to the British North Borneo Company, up until 1962 when the heirs of the Sulu Sultan relinquished the same sovereignty in favor of the Philippines.(28) Since the regaining of Philippine independence in 1946 up to 1962, however, initiative by the Philippine government on the matter had not been forthcoming.(29)

It was only during the administration of President Macapagal, following an instrument of cession executed by the Sultanate of Sulu in favor of the Philippines, that the Philippine government finally filed its claim to sovereignty over North Borneo with the British government.(30) This move was of course aided by the strong and persistent call for the filing of the claim contained in a series of articles published in the Philippines Free Press, and the fervent calls for the same from the halls of Congress by Senator Jovito Salonga.(31) Definitely, the impending formation of the Federation of Malaysia, with Sabah as one of its constituent states, served as the catalyst for the filing of the claim.(32)

A number of motives for the filing of the claim could be forwarded. First, the filing of the claim is considered to be "a claim to independence," that is, an expression of the idea of promoting an Asian identity for the Philippines by striking an independent course in foreign policy matters, away from the American line with which Philippine foreign policy decisions had been equated in the past.(33)

The launching of the claim, however, was not limited only to an expression of Filipino nationalism in foreign affairs. Economic gain was also a motivation; so was the characteristic Filipino fear of communist expansion. Macapagal was aware of the economic advantages which success in the claim to North Borneo would have for the Philippines. To him, "the territory, if reacquired by the Philippines, would be a boon to future generations of Filipinos."(34) In this aspect, Macapagal was supported, if not prodded, by those who saw financial gain in the venture. Security -- from the spread of communism into the southern backdoor of the country -- was also forwarded by certain leaders as added rationale for claiming Sabah. This can be gleaned from the long letter which Macapagal wrote to the late President Kennedy on 20th April 1963:

"North Borneo (Sabah) as part of the Philippine territory is vital to the security of the Philippines. The Philippines is like an inverted bottle with the Sulu Sea as its open end in the south and to which North Borneo is the cork. North Borneo is only 18 miles from the nearest Philippine island while it is 1,000 miles from Malaya. The control of the northern

tip of Borneo by an unfriendly power would constitute a more deadly threat to the Philippines than would the island of Taiwan in the north in the hand of an enemy..."(35)

It was established during the Anglo-Philippine ministerial talks in London in 1963 that "the claim made by the Republic of the Philippines is to sovereignty and dominion principally over the territory described in the 1878 Deed and Commission as confirmed by the Deed of 1903 and...administered, in the view of the Philippine members of the Committee, by Her Majesty's Government."(36) The Contract of 1878 described the territory as follows:

"...all territories and lands tributary to us on the mainland of the Island of Borneo, commencing from the Pandassan River on the east, and thence along the whole east coast as far as the Sibuku river on the south, and including all territories on the Pandassan River and in the coastal area, known as Paitan, Sugut, Banggai, Labuk, Sandakan, China-batangan, Mumiang, and all other territories and coastal lands to the south, bordering on Darvel Bay, and as far as the Sibuku River, together with all the islands which lie within nine miles from the coast."(37)

The Confirmatory Deed of 1903 established that the following islands were included in the Contract of 1878:

"...all the islands that are near the territory of North Borneo from Banguay Island as far as Sibuco Bay. These are the names of them: Muliangin, Muliangin Kechil, Malawali, Tegabu, Bilian, Tegaypil, Lang Kayan, Boan, Lehiman, Bakungan, Bakungan Kechil, Libaran, Taganack, Beguan, Mantabuan, Gaya, Omadal Si Amil, Mabol, Kepalai, Dinawan, and the other islands that are situated alongside, or around or between the islands that are above-mentioned."(38)

The Philippines reserved its position in respect of the the remainder of the territory of North Borneo. The Philippine legal panel declined to fix definite limits of the territory claimed and alleged that this function properly belonged to a technical delimitation commission. A glance at the map (see Figure 3), however, would show that certain portions of the territory and islands mentioned in the Contract of 1878 and the Confirmatory Deed of 1903 have now come under the jurisdiction of Indonesia. So far, the Philippines have not impleaded Indonesia on the matter. Secondly, the map would show that, contrary to popular belief, the territory claimed by the Philippines constitute only a portion of present-day Sabah. It is to be noted that

there were actually two grants of territory made to Overbeck and Dent (precursors of the British North Borneo Company) -- one from the Sultan of Sulu and the other from the Sultan of Brunei and his minister. The Sulu grant covered only the northeastern portion of the entire territory, while the Brunei grant encompassed an area comparable to the size of present-day Sabah.(39) It is not surprising, therefore, that when Malaysia was formed, what was used as basis of title to the territory was the Brunei, not the Sulu, grant.(40)

Following the filing of the claim, talks were held between the Philippines and Great Britain in London in 1963 but this proved to be inconsequential. With the impending inclusion of Sabah into Malaysia, the Philippines (with Indonesia) tried to stop the formation of the new federation. The Manila Summit and the resulting Manila Accord of 1963 produced a compromise solution to the problem -- that the Philippines and Indonesia would welcome the formation of Malaysia if majority of the population of the Borneo territories would favor joining the same in a plebiscite to be undertaken by the United Nations Secretary-General or his representatives. Toward this end, observers from the Philippines and Indonesia will be sent. The failure of the Philippine and Indonesian observers to observe the entire ascertainment proceedings and the haste by which the decision to go ahead with the formation of Malaysia was made gave the two opposing countries grounds not to recognize the new federation that came into being. Upon Marcos' assumption of the Philippine presidency in 1966 however, he decided to open diplomatic relations with Malaysia "without prejudice to the Philippine claim to Sabah," hoping that open communications between the two states could lead to discussion and settlement of the claim.(41) It was only in mid-1968, however, following the ruckus brought about by the Jabidah incident, that talks were held between the two countries in Bangkok. The talks collapsed following the Philippine decision to stop the clarification proceedings and the Malaysian rejection of the Philippine claim.(42) This led to a rupture of diplomatic relations and a tense border situation which lasted until December 1969 when the Philippines, noting the ill effects of the claim on the life of ASEAN and the promise of regional cooperation, decided to resume diplomatic ties with Malaysia.(43)

In 1977, during the opening of the ASEAN summit in Kuala Lumpur, President Marcos declared that the Philippines was dropping the claim.(44) There was, however, no follow-up moves to this announcement, although the claim was not allowed to spoil Philippine-Malaysian relations in the years that followed. After the capture of power by Corazon Aquino in 1986, the new Philippine president announced that "the

issue should be resolved through justice and self-determination."(45) Vice-President and then Foreign Affairs Secretary Salvador Laurel also averred that the Sabah dispute will be faced "frontally and will be resolved under this administration. It is a nagging problem that this administration will resolve once and for all, one way or another."(46) No definite moves were taken by the Philippines, however, due mainly to the inaction which characterized Laurel's stint as foreign secretary. The appointment of Raul Manglapus as foreign secretary in September 1988 injected determination into the issue. Late in 1988, in an obvious attempt by the Philippine government to gain the goodwill of Malaysia just before the opening of the ASEAN Summit meeting in Manila, a bill was sponsored by Senator Leticia Ramos-Shahani for the purpose of dropping the claim.(47) The bill, however, was stopped cold in the Senate, with Senate President Jovito Salonga (who was Macapagal's supporter when the claim was originally filed) and the other members of the Senate objecting to it and demanding that the claim, if ever dropped, should be conditional upon a satisfactory settlement of the proprietary rights of the heirs of the Sultan of Sulu.

Acting on this cue, Malaysia encouraged certain Sabahan businessmen to put up an amount to settle the proprietary claim. According to a newspaper report, a total of \$ 80 million was raised in early 1990 and was dangled to the Sultan of Sulu by somebody connected with the Office of the Malaysian Prime Minister. But the Sulu Sultan appeared to be unwilling to make a settlement, insisting on his stand that "Sabah is not for sale."(48)

III. The Claim to the Kalayaan Islands

The Philippines laid its claim on the Kalayaan Islands on June 11, 1978 with the issuance of Presidential Decree No. 1596 by then President Ferdinand Marcos. The claim was justified on the following grounds: that it was vital to the country's security and economic survival; that the territory did not legally belong to any other country, that any claims by other states have been abandoned, and that the Philippines had established its sovereignty by indispensable need and effective occupation and control. The decree goes on to state that such area is constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."(49)

The Philippine claim is actually based on an earlier 1956 claim to the area in question by Tomas Cloma and associates,(50) who charted and gave the islands their Filipino names and proceeded to occupy the islands for the

purpose of exploiting its resources. Eventually, Cloma and company constituted the islands into the State of Freedomland, but with the growing difficulties encountered with the Taiwanese forces (which proceeded to occupy a major island as a reaction to the Cloma claim), Cloma decided to transfer his rights to the Philippine government. The Philippine government immediately proceeded to occupy the islands in 1968, in the process building an airstrip as proof of its intent to protect what it considers as part of its national territory.

The Spratly archipelago, of which Kalayaan Islands is part, refers to a group of islands, cays and rocks found in the southeastern part of the South China Sea (see Figure 4). They lie south of parallel 12 degrees north and east of meridian 112 degrees east, but exclude all islands within the archipelagic baselines of the Philippines and those which lie within 40 nautical miles of the Borneo coast. They are located about 300 miles from Palawan, about 470 miles from Saigon, and 960 miles from Taiwan. They occupy a total area of more or less 64,976 square miles. According to Prescott, the Spratly group is made up of about 26 islands or cays, with 7 sets of rocks which stand above high water.(51)

Most of these islands are not habitable, but they are considered important for economic and strategic reasons. The area is a good source of numerous short-lived species of fish, which may however be of little commercial value. The sea-bed of these islands however, is believed to have extensive hydrocarbon and fossil oil deposits. Hence, ownership of the islands would entail substantial extensions of national jurisdiction over the resources of the exclusive economic zones and of the continental shelf.

Strategically, the islands lie along one of the most strategic waterways in the world -- insofar as military and commercial routes are concerned. According to Djalal, "the control over the islands would give the controlling state(s) tremendous power over the stability of the South China Sea area, since the islands straddle the routes of international sea and air communications."(52) In addition, for the countries nearest the islands, control over said islands is important for their security.

The Spratly Islands are claimed by China (known to them as Nansha Islands), Taiwan, and Vietnam (known to them as Truong Sa Islands).(53) The Philippines claims a portion of the Spratly group which she calls as Kalayaan Island (originally Freedomland) and, as shown in the map, such claim does not include Spratly Island in the west and a number of reefs in the south. Malaysia, on the other hand,

claims seven islands and reefs in the south, four of which are within the Philippine-claimed area. (Table 1 shows the different islands and reefs as named by the claimant states.)

A number of islands in the group are presently occupied by the different claimant countries. Seven islands are occupied by the Philippines -- three were occupied in 1968 and an additional four were later occupied and fortified. Taiwan has occupied Itu Aba Island, the largest in the group, since 1956. Malaysia has maintained a military presence on Swallow Reef since 1983. Vietnam has maintained forces on five islands. China, which has always maintained that the islands belong to it and has warned other countries from occupying them, recently entered the picture when it attacked and drove away the Vietnamese from a number of their occupied islands. At present, China maintains her presence at Sin Cowe Island and at Fiery Cross reef where it had built a maritime observation station.(54)

There has not been any problems or military encounters between the Philippine forces occupying the seven islands with the occupation forces of Vietnam, China or Taiwan. There have, however, been some problems with the Malaysians, the latest of which was the apprehension of a number of Filipino fishermen by Malaysian naval forces in fishing areas which Malaysia claims to be within her continental shelf but which the Philippines considers to be part of the Kalayaan island group.(55) These problems have led to talks between the two countries to settle their respective claims to the area. So far, four rounds of preliminary talks had been held. The first and third rounds of maritime talks were held in Kuala Lumpur early in 1989, while the Philippines hosted the second and fourth rounds of discussions. The fourth round of talks were held last November 1989, where the two sides were expected to explore the possibility of an interim arrangement on the overlapping claims. It is reported that the Philippines has proposed that the area be declared a "common fishing ground."(56) The Philippines and Vietnam have had also some understanding that their conflicting claims to the islands would be settled amicably through negotiations. However, to date there has been no official discussions on this matter.

IV. Prospects for Settlement

Given the problems posed by the various territorial claims of the Philippines, what are the prospects for their settlement?

It would appear that the basic concerns behind the Philippines' maritime claims are economic and security-related in nature. The rationale for the preservation of national security is quite overwhelming in the Philippine situation in view of her insular character and her experiences with threats to her survival as a nation. The economic rationale is no less significant -- the dependence of the Filipino people on marine resources and fisheries has been consistently emphasized as vital to Philippine economic survival. Any solutions to the problems engendered by her maritime claims, therefore, would have to take into consideration these primary concerns.

The claim to the "Treaty Limits" is apparently more of an economic one, prompted by the desire to have vast expanses of the ocean within its territory for the purpose of exploiting the resources on and underneath the maritime areas. However, inasmuch as the exclusive economic zone would give the Philippines a maritime area much bigger than that of the "Treaty Limits", there is reason to believe that the Philippines will sooner or later abandon this 'historic' claim and accept the provisions of the 1982 UN Law of the Sea. In fact, then Foreign Minister Tolentino pointed out that the problem of the "Treaty Limits" was alleviated by the new concept of the economic zone and that it was this net gain in maritime area that contributed to the decision of the Philippine government to sign the 1982 Law of the Sea convention on December 10, 1982 and to ratify it on May 8, 1984.(57) It is to be noted too, that in the new (1987) Philippine constitution, the phrase "historic rights or legal title" was deleted from the provision on national territory -- "to avoid the continuing irritation it has generated among neighbors" according to one constitutional delegate(58) -- and although it would appear that the object of the deletion was the long-standing Sabah claim, still it could be argued that the same also applies to the Philippine interpretation of the "Treaty Limits" which it has always considered to be a "historic" right. Other considerations, particularly the problems that the Philippines would encounter with the maritime states and Taiwan, and her ASEAN partners Malaysia and Indonesia, would obviously help in making that decision. As soon as this comes to pass, what would remain to be done then is for the Philippines to discuss with her neighbors the delimitation of their boundaries based on the principle of equity.

The Philippine archipelagic waters claim is based on both economic and security considerations, and can be considered more vital than her other claims. This is because the Philippines considers the archipelagic waters as forming part of her core national territory. We therefore cannot expect the Philippines to compromise or to agree with

the provisions of the 1982 convention on the law of the sea, especially so that its provisions on archipelagic waters has restricted the exercise of Philippine sovereignty over said areas. In other words, the Philippines will insist in treating archipelagic waters as internal waters and would apply the appropriate rule of international law over the same.(59) Hence, the only solution that could be found, if maritime states would insist to pass unimpeded through inland straits, is for an amendment of the pertinent provisions of the convention on archipelagic waters. Otherwise, they should adhere to Philippine rules on passage through these waters.

As regards the Philippine baseline segment which exceeded the limits set in the law of the sea, experts claim that some adjustments could be made. Also, although the Philippine baselines are already determined by Republic Act Nos. 3046 and 5446, there is a need for enacting a new baselines law to incorporate the islands of the Kalayaan group which the Philippines have acquired. Actually, the short-lived bill that was proposed dropping the claim to Sabah included the fixing of such baselines for the Kalayaan group. It is to be noted that of all the claimants to the Spratly Islands, only the Philippines could enclose them by archipelagic baselines. According to Prescott, the islands could be linked to the existing baseline system by lines connecting Alicia Annie Reef to a point on Palawan just south of Tagbita Bay, and connecting Commodore Reef to Ligas Point on Balabac Island.(60) Of course it could be expected that the other claimants would object to this move, as China did vis-a-vis the proposed bill. Thus, a redefinition of the baselines to include the Kalayaan group would have to wait until the overlapping claims in the Spratlys are settled.

In the case of the Philippine claim to the Kalayaan islands, the main problem is the presence of a number of claimants who, like herself, have made themselves physically felt in the area through the occupation of certain islands. If there were only two countries involved, it would be possible to create a joint zone or a 'condominium,' but the involvement of five countries makes this very unlikely. There appears to be no present indications as to how these conflicting claims will be resolved. While the Philippines, Malaysia, Taiwan and Vietnam appear to be satisfied with their claims to portions of the island group, there is no indication that China will relinquish her total claims, or accept any form of divided ownership. The recent attack by China on the Vietnamese-held islands seem to point out that force is the only way to settle the problem. Vietnam, however, like the other claimants, had persisted with its view that the problems could be settled through

negotiations.(61) China's use of force against Vietnam seem to be related to their differences over Cambodia, and does not necessarily mean a similar policy towards the other claimant states. Chinese and Taiwanese interests evidently coincide, while China does not want to tangle with the Philippines and Malaysia since it wants to improve her relations with the ASEAN. China's move against Vietnam, however, raised some fears among certain ASEAN countries, leading to pressures exerted on the Philippines to allow the continued stay of American bases in the country as a check to China's perceived bellicosity.(62)

The case of Sabah is a difficult problem to solve, for it not only involves both issues of sovereignty and proprietary rights, but cuts into one of the most delicate issues in Philippine politics, the Muslim question. The question of sovereign rights appear to be a moot one, and the Philippine government appears to be intent in dropping it, for obvious reasons. It is my contention that the Philippines never had sovereign rights over Sabah, for what she received from the Sulu Sultan in 1962 was but a nominal grant.(63) In addition, the Philippines is already subject to 'estoppel' under international law, for she has already recognized Malaysia, of which Sabah is a constituent part. Furthermore, the Philippines has already made official announcements of its decision to drop her claim to sovereignty over the territory in question, and should honor such pronouncements. Besides, the Sabah territory being claimed, unlike the other territorial claims of the Philippines, is not 'terra nullius,' but involves people living on the territory whose right to self-determination must be respected. And the people of Sabah have, several times, expressed their will to stay within Malaysia.(64)

Certain people in and outside Congress however, do not relish the thought of the Philippines just giving up what they consider as something vital to the national interest. According to Senator Rasul, the Philippines would be losing much - in terms of land, economic and financial resources - if the Philippines dropped the claim.(65) There are those however who believe otherwise - that dropping the claim would redound to the good of the Philippines since it would spell closer cooperation with Malaysia and would remove a thorn in the growth of ASEAN cooperation. This group is of the belief that there is much more to be gained from ASEAN than from pursuing something unenforceable and which anyway we have no chance of getting. It is to be noted that Malaysia had steadfastly refused to bring the matter to the World Court, and she could not be forced to do so since she has not accepted the compulsory jurisdiction of the International Court of Justice. The question however involves the proprietary rights of the Sultan of Sulu's

heirs. While the Philippines may drop its claim to sovereignty over the territory, there is a need for her to insure that the proprietary rights of the heirs are respected, and towards this end she should endeavor to negotiate with the Malaysians for a fair and satisfactory settlement. There are however problems to this: one, would the heirs agree? two, if they agree, how much would a fair settlement be? I believe that a financial settlement of the proprietary rights is the best compromise under the present situation. And although the existing Sulu Sultan has maintained the view that Sabah is not for sale, I believe that with the proper prodding from the Philippine government and if a just compensation is offered, he and the heirs would be willing to accept. Determining the right amount is a difficult problem, for not only would one have to determine the size of the territory involved and its corresponding value but one has to contend with the total number of heirs who expect to get a share of the proceeds.(66)

Would the dropping of the claim affect the Philippine government's relations with her Muslim population particularly those of Sulu? Or as Senator Santanina Rasul puts it: "are we not risking discord within the country and the possible heightening of tension in the Sulu Archipelago?"(67)

My answer would be: it would have an adverse effect, if proper consultations are not made and the heirs' proprietary rights are not safeguarded. Dropping of the claim by what is considered as a "Christian-dominated" government without consultation with the parties who are mainly concerned and affected by the decision could be interpreted as a lack of concern by the government with the needs, sensibilities and aspirations of the minority Muslim community in the country, and could lead to the dangers pointed out above by Senator Rasul. So far, the Moro National Liberation Front (MNLF), which spearheads the autonomy (originally secessionist) movement in the Philippine south, has not come out openly in support of the claim. This is quite understandable, given the fact that Sabah was used (and apparently still being used) as a supply and training base of the MNLF fighters, with the help of certain Sabahan elements. Thus, MNLF support for the claim would be a self-defeating move. It was because of this support given by some people in Sabah to the MNLF - perceived as a reaction to the Philippines' continued pursuance of the claim - that former President Marcos considered the dropping of the claim as the "key to peace" in southern Philippines. He was of the belief that dropping the claim would result to cooperation on the part of Malaysia in curbing these illegal activities and thus would greatly weaken the logistics of the movement.(68) This argument apparently still holds.

It would appear then that, in the present circumstances, what the Philippine government could do would be first to come up with a definite policy on the Sabah question based on consultations with the parties directly involved, i.e. the heirs of the Sultan of Sulu. As soon as an agreement is reached, then the Philippines should enter into a contract with the Malaysian government for a satisfactory settlement of the proprietary rights of the heirs of the Sultan of Sulu. The Philippines could then proceed to adopt a legislation dropping the pertinent portion of the so-called 'Sabah annexation bill.' It has been suggested, too, that the Malaysians could help, by way of a face-saving device for the Philippines, by holding a sort of referendum whereby Sabahans will be asked whether they want to join the Philippines or not.(69) If this is done, and it should be done, then that, in my view, would be a settlement that is, in President Aquino's view, "with justice and self-determination."

V. Concluding Observations

Historical, economic and strategic considerations evidently motivated the Philippines to file her various territorial claims. In the process of their pursuance, these claims have engendered certain problems for the Philippines that have continued to affect her relations with her neighbors. The most problematic appears to be her relations with Malaysia who is involved in all of the Philippine territorial claims, both land and maritime.

Prospects for the settlement of these territorial claims appear to depend on several factors: whether the claim involves populated or unpopulated territories; the importance of the claim insofar as the core interests of the Philippines are concerned; the number of parties involved; and the attitudes of the countries concerned. The Philippine maritime claims have the best chance of being settled quickly and amicably with the acceptance of the 1982 UN Law of the Sea and its provisions for the settlement of maritime disputes, although there might be some difficulty in solving the concerns of the Philippines over the rule on passage through its archipelagic waters. This could be settled through negotiations between the parties concerned. The case of the Kalayaan islands is a problematic one since it involves five claimants, with at least one of them unwilling to give up its claim to the total area or to accept any form of divided ownership. The rest of the claimants are willing to negotiate, though, and this attitude could eventually influence the intransigent one to come to the negotiating table. The Sabah claim stands out not only because it involves a large tract of land but more important, because

it is populated. The Philippines have apparently recognized the right to self-determination of the people of Sabah, and have, for all intents and purposes, dropped the claim. The formal renunciation awaits the settlement of the proprietary rights of the Sulu Sultan's heirs. Negotiations with the parties concerned regarding a financial settlement are going on.

The Philippines, then, is ready to settle her territorial claims amicably and in the spirit of good neighborliness. If the countries who are affected by these territorial claims share the same attitude, then these problems can be solved, thereby leading to the development of closer and friendlier ties between the Philippines and her neighbors and the sustenance of regional groups like the ASEAN. In the process, the twin aspirations of peace and development in the region of Southeast Asia shall have been given a big boost.

NOTES:

- 1 Lee Yong Leng, 'The Colonial Legacy in Southeast Asia: Maritime Boundary Problems,' in Contemporary Southeast Asia, Vol.8, No.2, September 1986, pp. 119-130.
- 2 For text of treaty, see Consolidated Treaty Series, pp. 100-105.
- 3 For text of treaty, see ibid., pp. 108-109.
- 4 See exchange of notes of July 1907 in Treaties and Other International Agreements of the United States of America 1776-1949, vol. 12 (U.S. Government Printing Office, Washington, 1974) pp. 287-289. For exchange of notes from 1926 to 1929, see Papers Relating to the Foreign Relations of the United States 1927, vol. 2 (U.S. Government Printing Office, Washington, 1942) pp. 775-781, and ibid., 1928, vol. 2 (1943) pp. 985-986, and ibid., 1929, vol.3 (1944) pp. 70-80.
- 5 For text of convention, see Papers Relating to the Foreign Relations of the United States 1930, vol.3 (U.S. Government Printing Office, Washington, 1945) pp. 147-150.
- 6 For text of notes exchanged, see ibid., pp. 150-155.

- 7 For text of notes exchanged, see Haydee Yorac, Philippine Treaty Series, vol.1 (U.P. Law Center, Quezon City, 1968) pp. 705-706. Only the notes of September 19 and 24, 1946 are available; the notes of October 11, December 16, 1947 and April 20, 1948, which provided for the details of the transfer could no longer be traced.
- 8 Article 1, section 1 of the 1935 Constitution states: "The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, the limits of which are set forth in Article II of the said Treaty, together with all the islands embraced in the treaty concluded at Washington between the United States and Spain on the seventh day of November, nineteen hundred and in the treaty concluded between the United States and Great Britain in the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercise jurisdiction."
- 9 UN Doc. A/2934, 1955, pp. 52-53.
- 10 Kriangsak Kittichaisaree, The Law of the Sea and Maritime Boundary Delimitation in Southeast Asia (Oxford University Press, New York, 1987) p. 154.
- 11 UN Doc. A/2934, 1955, pp. 52-53.
- 12 Document A/AC, 138/SC, 11/L.15, Report of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction, Vol.3, U.N. General Assembly Records, 28th Session, Supplement 21, pp. 1-2, as cited in Jorge R. Coquia, Selected Essays on the Law of the Sea (Development Academy of the Philippines Press, Manila, 1982) p. 47.
- 13 Statement by Ambassador Arturo M. Tolentino, chairman of the Philippine Delegation to the U.N. Seabed Committee, quoted in Coquia, ibid., p. 9.
- 14 For texts of the two legislations, see Myron H. Nordquist and Choon Ho Park, North America and Asia Pacific and the Development of the Law of the Sea: Treaties and National Legislation

(Oceana Publications Inc., New York, 1981)
Section on the Philippines, pp. 3-9.

- 15 Kittichaisaree, op. cit., p. 154.
- 16 For text, see Philippine Presidential Decrees and Other Vital Legal Documents, vol. 65, pp. 33-36.
- 17 Article 121 of the 1982 UN Law of the Sea considers islands to be entitled to a territorial sea, contiguous zone, exclusive economic zone and continental shelf.
- 18 The 1982 Law of the Sea Convention was adopted by 117 states in Montego Bay, Jamaica on December 10, 1982 and will take effect upon its ratification by 60 states. For text of convention and accompanying documents, see The Law of the Sea (United Nations, New York, 1983).
- 19 Delimitation of Maritime Boundary in the Gulf of Maine Area Case (Canada/USA), ICJ Reports 1984, cited in Kittichaisaree, op. cit., p. 132.
- 20 See Part IV (Articles 46-54) of the 1982 UN Law of the Sea Convention.
- 21 See Coquia, op. cit.
- 22 For text of Philippine declaration, see Appendix 10 of Kittichaisaree, op. cit., p. 199.
- 23 See Kittichaisaree, op. cit., pp. 155-156.
- 24 For the Philippine arguments, see Coquia, op. cit., pp. 8-9, 19-22; also Priphat Tangsubkul, ASEAN and The Law of the Sea (ISEAS, Singapore, 1982) pp. 12-15.
- 25 Philippine Declaration, in Kittichaisaree, op.cit., p.199.
- 26 See The Island of Palmas Case (United States and Netherlands) in William W. Bishop Jr., International Law: Cases and Materials, 3rd ed. (Little Brown and Co., Boston, 1971) pp. 400-405.
- 27 Draft Article on Historic Waters, UN Document A/Conf.62/C.2/L.67, August 16, 1974, as cited in Tangsubkul, op. cit., p. 15.

- 28 Philippine Claim to North Borneo, vol. 1 (Bureau of Printing, Manila) 1963, p. 13; also, ibid., vol. 2, 1967, pp. 14-54.
- 29 For moves undertaken by the Philippine government from 1946 to 1962, see Serafin P. Colmenares Jr., Philippine Malaysian Relations with Special Reference to the Sabah Issue (unpublished Ph.D. dissertation, University of Delhi, 1975) pp. 57-68.
- 30 For text of the Philippine note to Great Britain, see Philippine Claim to North Borneo, vol. 1, pp.152-153.
- 31 See the articles of Napoleon Rama in the Philippines Free Press, issues of December 30, 1961; January 20, March 10, April 7 and April 21, 1962; and also the speech of Senator Salonga in Department of Foreign Affairs Review, vol.IV, no. 2, pp. 179-188.
- 32 For moves toward the formation of Malaysia, see William Hanna, The Formation of Malaysia: New Factor in World Politics (American University Field Staff Inc., New York, 1964).
- 33 See Colmenares, op. cit., pp. 71-73; also Lela Noble, Philippine Policy Toward Sabah: A Claim to Independence (University of Arizona Press, Tucson, 1977).
- 34 Diosdado Macapagal, A Stone for the Edifice (Mac Publishing House, Quezon City, 1968) p. 269. See also Colmenares, op. cit., pp. 74-75.
- 35 For text of letter, see Macapagal, ibid., pp. 509-519.
- 36 Philippine Claim to North Borneo, vol.2, p. 10.
- 37 For text of the 1878 Deed, see ibid., vol.1, pp. 61-62.
- 38 For text of Confirmatory Deed, see ibid., p. 125.
- 39 See K.G. Tregonning, A History of Modern Sabah, 2nd ed. (University of Malaya Press, Kuala Lumpur, 1965) p. 10.
- 40 According to R. Ramani, legal adviser to the Malaysian Foreign Ministry: "Insofar as any

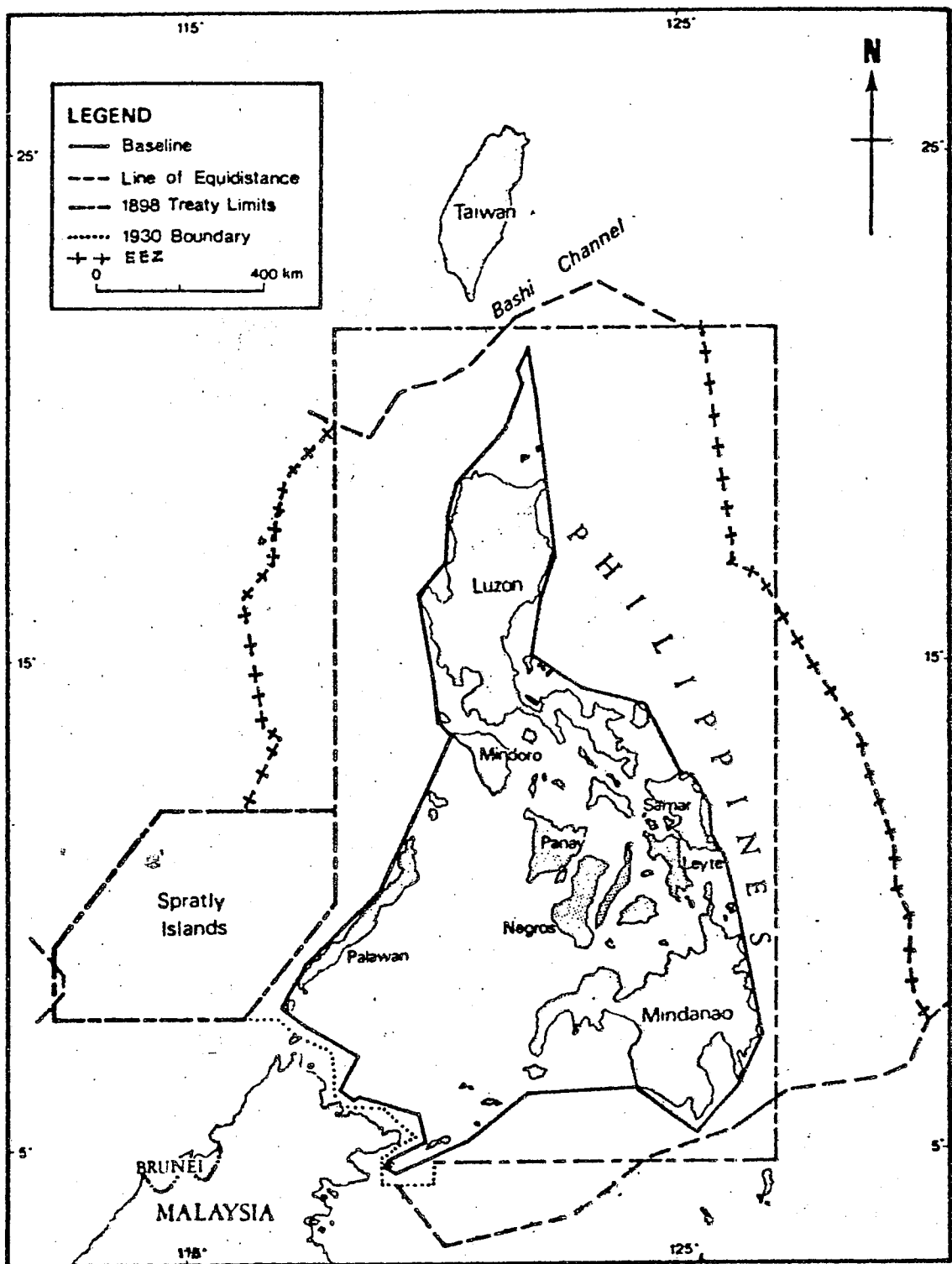
title to territory as such in North Borneo was obtained by Messrs. Dent and Overbeck, that was derived clearly and without a doubt from four Grants made by the Sultan of Brunei and his Minister, three weeks prior to the execution of the Sulu document... (T)hose four grants cover the entire territory of Modern Sabah." Foreign Affairs Malaysia, vol.1, nos. 9 & 10, p. 50. See North Borneo Cession Order in Council 1946 and the Agreement for the Transfer of the Borneo Sovereign Rights and Assets from the British North Borneo Company to the British Crown, 26th June 1946, which serve as the basis of British and Malaysian title to the territory, in Philippine Claim to North Borneo, vol.1, pp. 129-143.

- 41 For a discussion of the reasons behind the decision to recognize Malaysia, see Colmenares, op. cit., pp. 150-158.
- 42 For a look into the causes of the collapse of the Bangkok talks, see Serafin P. Colmenares Jr., "Notes on the Philippine-Malaysian Talks of 1968," in Arts and Sciences Journal, vol.1, no.2, 1982, pp. 69-83.
- 43 See Opening Statement of Foreign Minister Carlos Romulo during the Third ASEAN Ministerial Meeting, December 16, 1969, in Foreign Affairs Malaysia, vol.2, nos. 1 and 2, December 1969, p. 39; also Press Statement, The Philippines at the Third ASEAN Ministerial Conference (Department of Foreign Affairs, Manila, 1970) pp. 25-26.
- 44 Marcos said: "As a measure of sacrifice and as an earnest of our faith in the future of ASEAN, I therefore wish to announce that the Philippine government is taking definite steps to eliminate one of the burdens of ASEAN -- the claim of the Philippine government to Sabah." Philippines Daily Express, August 5, 1977. See also his speech before the Batasang Pambansa on August 27, 1977 in Bulletin Today, issues of August 28, 29 and 30, 1977. For a discussion of the reasons behind the decision, see Serafin P. Colmenares Jr., "The Sabah Case Revisited," in Arts and Sciences Journal, vol.1, no.1, 1981, pp. 39-51.
- 45 Manila Bulletin, March 4, 1986, as cited in Alfredo G. Parpan, S.J., "The Philippine Claim On

- North Borneo: Another Look," in Philippine Studies, vol.36, 1988, pp. 3-15.
- 46 Cited in Parpan, ibid. See also Salvador Laurel, "New Directions in Philippine Foreign Policy," in Foreign Relations Journal, vol.1, no.2, June 1986, pp. 1-6.
- 47 The bill was intended to amend Republic Acts 3046 and 5446 which define the baselines of the Philippine archipelago by removing a section that pertains to Sabah and by placing the Kalayaan islands within the baseline system of the Philippines. See James Clad, "Surrendering Sovereignty," in Far Eastern Economic Review, December 3, 1987, pp. 24-25.
- 48 Philippine Daily Inquirer, January 22, 1990, p. 13.
- 49 For text, see Philippine Presidential Decrees and Other Vital Legal Documents, vol. 65, pp. 29-31.
- 50 For a background to the Cloma Claim, see Juan Arreglado, Kalayaan: Historical, Legal and Political Background (Foreign Service Institute, Manila, 1982).
- 51 J.R.V. Prescott, The Maritime Political Boundaries of the World (Methuen, New York, 1985) p. 218.
- 52 Hasjim Djalal, "Conflicting Territorial and Jurisdictional Claims in South China Sea," in The Indonesian Quarterly, vol.3, no.3, 1979, p. 42.
- 53 For the competing claims, see Kittichaisaree, op. cit., pp. 142-144. See also Marwyn S. Samuels, Contest for the South China Sea (Methuen, New York, 1982).
- 54 Lee Yong Leng, "The Malaysian-Philippine Maritime Dispute," in Contemporary Southeast Asia, vol.11, no.1, June 1989, p. 70.
- 55 Ibid., p. 69.
- 56 Philippine Daily Inquirer, November 28, 1989, p. 8.
- 57 Cited in Kittichaisaree, op. cit., p. 157.
- 58 Delegate Joaquin Bernas, quoted in Malaya, July 8, 1986 and cited in Parpan, op. cit.

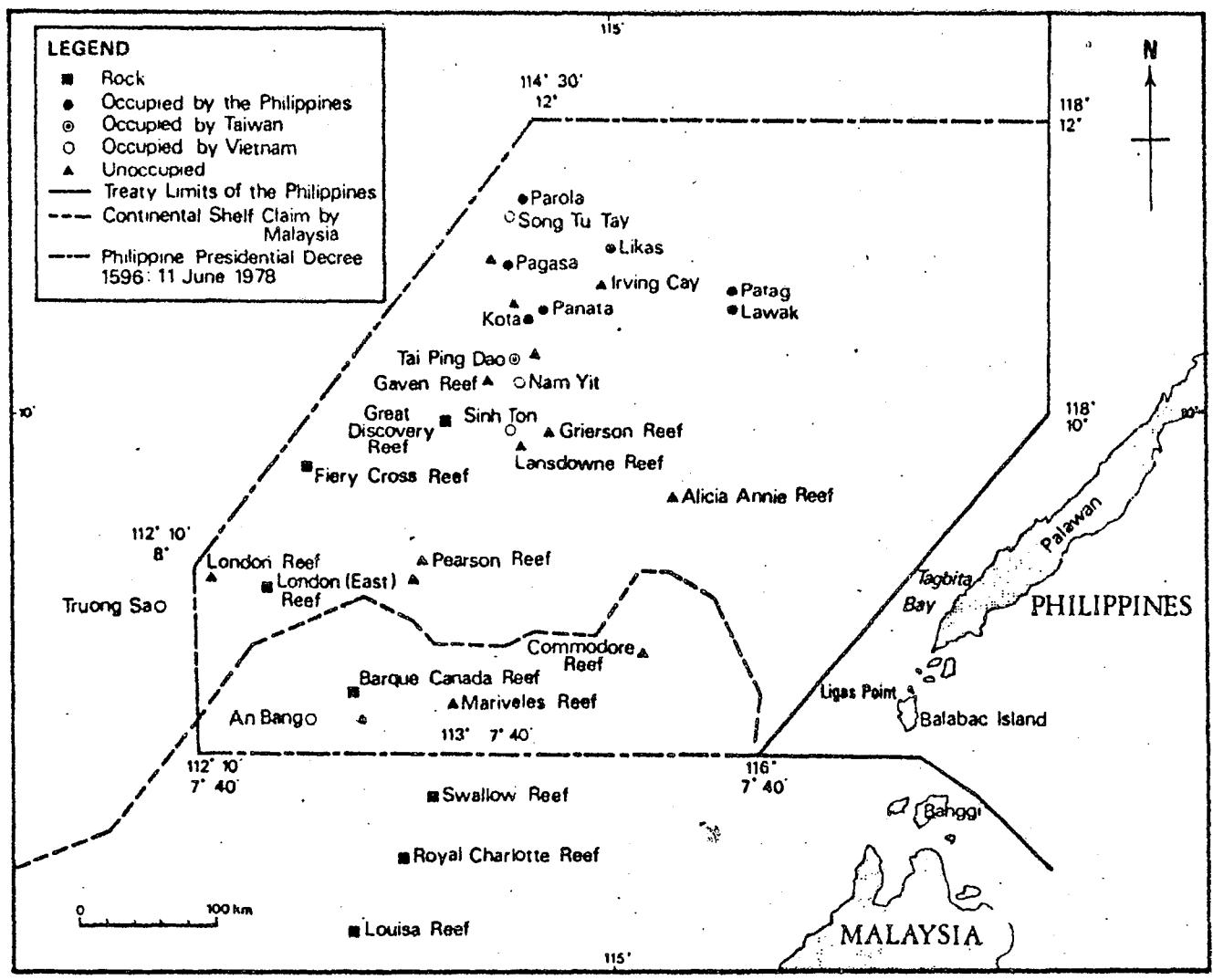
- 59 See Jose D. Ingles, "Implementing the Convention on the Law of the Sea," in Foreign Relations Journal, vol.2, no.4, December 1987, pp. 36-44.
- 60 Prescott, op. cit., pp. 230-231.
- 61 New Straits Times (Kuala Lumpur), June 1, 1988, p. 14.
- 62 See Far Eastern Economic Review, April 21, 1988, pp. 26-27.
- 63 See Colmenares, "The Sabah Case Revisited."
- 64 Ibid.
- 65 Santanina T. Rasul, "The Resolution of the Philippine Claim to Sabah," in Foreign Relations Journal, vol 3, no.4, December 1988, pp. 89-94.
- 66 Sultan Jamalul Kiram died in 1936 without leaving an heir to the throne. In 1939, in the so-called Macaskie decision, nine heirs were recognized, coming from both the father's and mother's side. In 1950, a new sultan was eventually elected, Sultan Esmail Kiram. He and the other heirs have since died. The present sultan, Jamalul Kiram III, was crowned in 1987, and "speaks" for the nine heirs and their descendants.
- 67 Rasul, op. cit., p. 92.
- 68 See Colmenares, "The Sabah Case Revisited," p. 46.
- 69 Parpan, op. cit., pp. 14-15.

FIGURE 1
PHILIPPINE MARITIME CLAIMS.



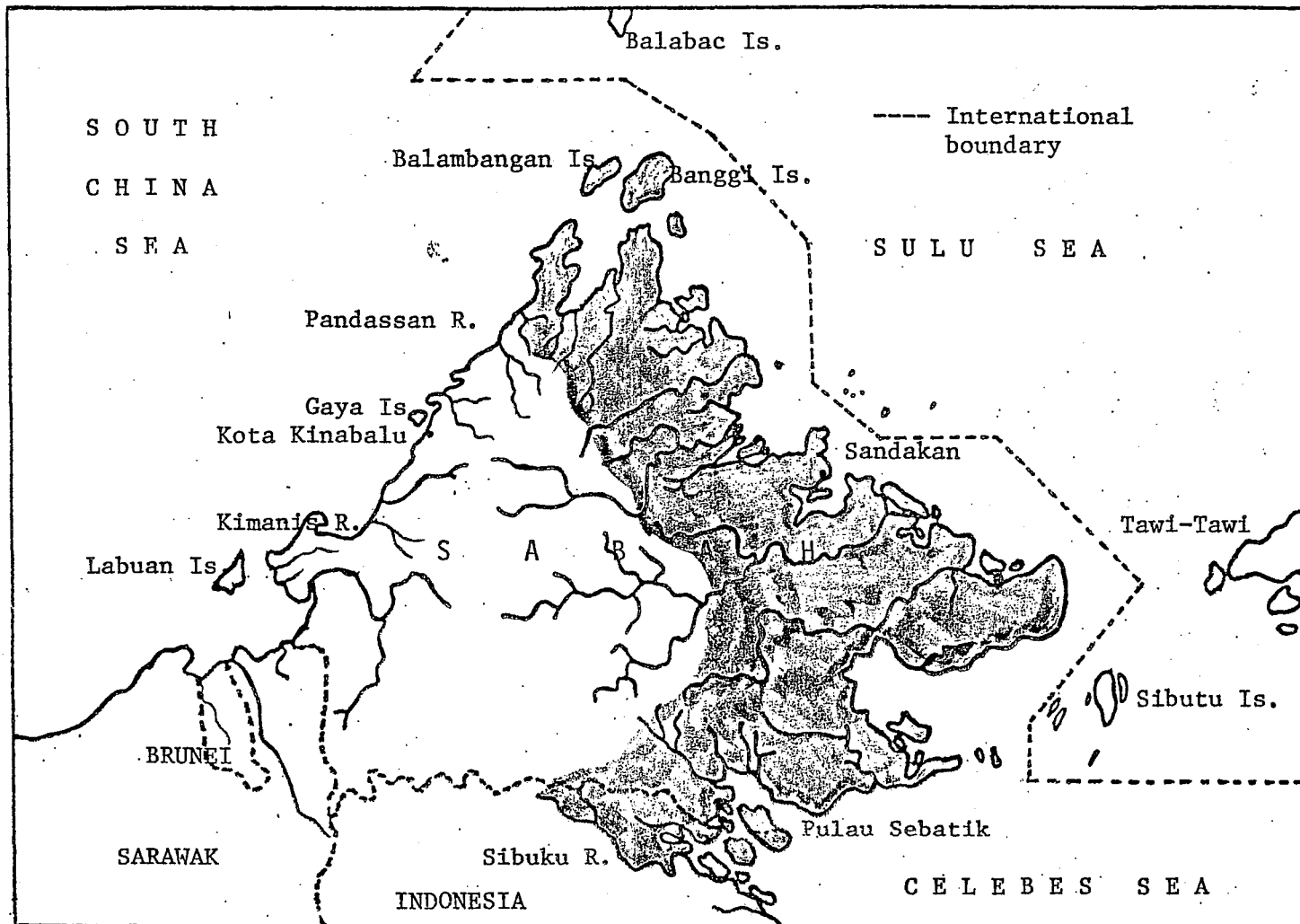
SOURCE: Adapted from J.R. Morgan and M.J. Valencia, eds., *Atlas for Marine Policy in Southeast Asian Seas* (Berkeley: University of California Press, 1983), p. 50.

FIGURE 2
The Spratly Islands



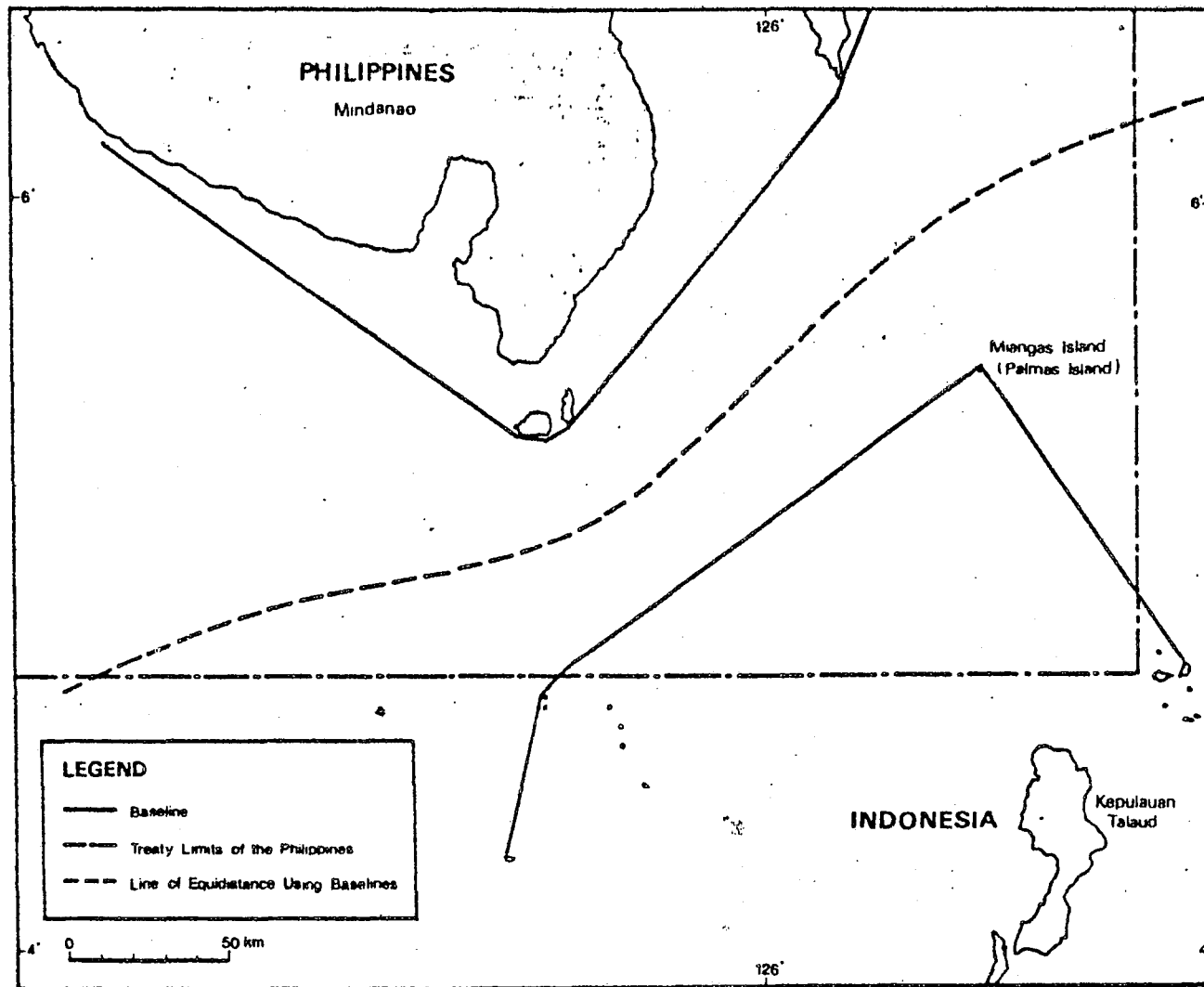
SOURCE: Adapted from J.R. Morgan and M.J. Valencia, eds., op. cit., p. 51.

FIGURE 3 : Territory Granted by the Sultan of Sulu, January 22, 1878



Source: Adapted from S.P.Colmenares, Jr., Philippine-Malaysian Relations with Special Reference to the Sabah Issue (unpublished Ph.D. dissertation, University of Delhi, 1975, p. 266b).

FIGURE 4
POSITION OF MIANGAS ISLAND



SOURCE: Adapted from J.R. Morgan and M.J. Valencia, eds., *Atlas for Marine Policy in Southeast Asian Seas* (Berkeley: University of California Press, 1983), p. 51.

Table 1: Islands and known rocks in the Spratly Group

Standard Name	Chinese	Vietnamese	Philippine	Malaysian
Alicia Annie Reef	Xian o Jiao		Arellano	
Amboyna Cay	An Po Na Sha Zhou	An Bang	Kalantiyaw	Kecil Amboyna
Commodore Reef	Siling Jiao		Rizal	Terumbu Laksamana
Flat Island	Fei Xin Dao		Patag	
Gaven Reef	Nan Xun Jiao			
Grierson Reef				
Irving Reef			Balagtas	
Itu Aba	Tai Ping Dao	Thai Binh	Ligaw	
Lankiam Cay	Yang Xin Zhou		Panata	
Landsdowne Reef				
Loaita Cay	Nan Yao Zhou			
Loaita Island	Nan Yao Dao	Loaita	Kofa	
London Reef	Yin Qing Qun Jiao		Quezon	
Mariveles Reef	Han Hao Jiao			Terumbu Mantanani
Namyit Island	Hung Ma Dao	Nam Yit	Binago	
Nanshan	Ha Huan Dao		Lawak	
Northeast Cay	Pei Zi Jiao	Song Tu Dong	Parola	
Pearson Reef	Pi Sheng Dao		Hizon	
Sin Cowe Island	Jing Hong Dao	Sinh Ton	Rurok	
Southwest Cay	Nan Zi Dao	Song Tu Tay	Pugad	
Spratly Island	Nan Wei Dao	Truong Sa	Lagos	
Thitu Island	Zhong Ye Dao	Thi Tu	Pagasa	
West York Island	Xi Yue Dao		Likas	
Barque Canada Reef	Yin Qing Qun Jiao		Mascado	Terumbu Perahu
London (East) Reef	Yin Qing Qun Jiao		Silangan	
Fiery Cross Reef	Yung Shu Jiao		Kalingan	
Great Discovery Reef	Da Xien Dao		Paredes	
Louisa Reef	Nan Tong Jiao			Terumbu Samarang Barat Kecil
Royal Charlotte Reef	Huang Lu Jiao			Terumbu Samarang Barat Besar
Swallow Reef*	Dan Wan Jiao			Terumbu Layang Layang

* It is reported by Malaysia that Swallow Reef is surmounted by an island.

Source: J.R.V. Prescott, The Maritime Political Boundaries of the World (Methuen, New York, 1985) p. 219.