THE NATIONAL TERRITORY OF THE PHILIPPINES: A BRIEF STUDY

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Contemporary history presents a ambivalence on the national territory. On the one hand, our thinkers and statesmen would expand the national territory, some by the addition of Sabah (North Borneo) and others by the inclusion of the area known as the Philippine territorial sea, instead of confining our claim to the 3-mile limit measured from our outlying islands; on the other hand, there are the so-called Muslim rebels who would want to set up an autonomous state composed of the islands of Mindanao, Palawan, Basilan and the Sulu Archipelago, including the Tawi-Tawi group. It may correctly be averred that at this critical juncture of our history we are at the crossroads once more, confronted with the ambigious question of whether to add or subtract, to consolidate or to dismember. It is rather ironic that the idea of dismemberment should come up with such dramatic force as to literally drip with the blood of Filipinos — with the civilian population, unarmed and innocent, often getting the worst of it at a time when the rest of the world has already recognized Philippine independence as a legal and factual reality.

The more than seven thousand islands which, thanks to Ruy Lopez de Villalobos, head of the fourth Spanish expedition to this country, later became known as Felipinas in honor of the Crown Prince of Spain, who became Philip II, are now known as the Republic of the Philippines, having been recognized and declared as such by the former colonial power, the United States of America, through its representative, *U.S. High Commissioner Paul v. McNutt*, at the inaugural ceremonies on July 4, 1946.

Why Territorial Delimitation?

But even as the United Nations-sponsored convention at Caracas, now at Geneva, wrestles with the problem of the so-called territorial sea, to arrive at a consensus on the law of the sea, it is of relevance to review the official instruments from which is derived the authoritative delimitation of Philippine national territory. The need for such delimitation arises not only from the necessities of national defense but also from jurisdictional considerations for the enforcement of customs and criminal laws and the pro-

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tection of fishing and mineral rights, including the tapping of undersea oil in offshore waters which, by historic right, legally belong to the Philippines.

Not so long ago, President Ferdinand E. Marcos gave utterance to the confident posture of the government and the Filipino people to defend their own territory despite the supply of sophisticated weapons and expertise to the rebels from outside sources, without having to invoke the U.S.-Philippine Treaty of Alliance or Mutual Defense Pact, and without having to summon the aid of other nations in East Asia with which the Philippines has regional arrangements for collective self-defense.[1]

What are the Instruments Officially Defining Philippine National Territory?

The quantum of space on this planet which, as land, sea, and superjacent atmosphere, may be internationally recognized as constituting Philippine national territory is defined in several historical documents. The first of these is the Treaty of Paris, concluded between the United States and Spain on December 10, 1898 whereby the Philippines was ceded for

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[1] See in particular chapters V, VI and VII of the U.N. Charter. Dr. Leland M. Goodrich, Director of the World Peace Foundation and Dr. Edward Hambro, member of the technical staff of the Norwegian delegation to the United Nations Conference on International Organization at San Francisco, make the following comments:

> "At the San Francisco Conference these demands for greater recognition of regional and limited arrangements and agencies received full consideration. While the general principle of subordination of regional arrangements and agencies to the purposes and principles of the Charter is retained in the final test, certain amendments were introduced which considerably strengthened the position of such regional arrangements and agencies. Under the provisions of Article 52 of the Charter, Members of the United Nations which enter into such arrangements or constitute such agencies, 'shall make every effort to such regional arrangements or by such regional agencies before referring them to the Security Council' (Charter of the United Nations, Article 52, paragraph 2)."

"The possibility of using regional arrangements and agencies as the basis for common action against acts of aggression without the requirement of Security Council authorization was attained by the insertion in Chapter VII of a new Article safeguarding the 'inherent right of individual or collective self-defense...'" GOODRICH & HAMBRO, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS 37-38 (1946).

The victorious Allies believed in regional arrangements for mutual cooperation:

"Nothing in this Chapter should preclude the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided such arrangements or agencies and their activities are consistent with the purposes and principles of the Organization. The Security Council should encourage settlement of local disputes through such regional arrangements or by such regional agencies, either on the initiative of the states concerned or by reference from the Security Council." (Dumbarton Oaks Proposals, Chapter VIII, Section 1, Washington, October 1, 1944).

twenty million dollars, containing 17 articles, the third of which defines the boundaries of the Philippine archipelago.[2]

The second instrument was the one-article "Treaty for Cession of Outlying Islands of the Philippines, November 7, 1900". For the nominal sum of one hundred thousand dollars these outlying islands "lying within certain described lines" were comprehended in the original cessions.[3]

The third instrument was the Anglo-American Convention of 1930, signed at Washington by the U.S. Secretary of State and the British Ambassador, but it was not until 1932 that the exchange of ratifications took place. However, it was only on October 16, 1947 that an exchange of notes with the British government effected the transfer of the Turtle Islands to the Philippines.

It remained for Section 16, Article IV of the Revised Administrative Code of 1917, to define the territorial extent of Philippine jurisdiction, thus:

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[2] Article III, Treaty of Paris:

"Spain cedes to the United States the Archipelago known as the Philippine Islands and comprehending the islands lying within the following lines:

"A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bashi, from the one hundred and eighteenth to the one hundred and twenty-seventh degree meridian of longitude east of Greenwich, thence along the one hundred and twenty-seventh degree meridian of longitude east of Greenwich to the parallel of four degrees and forty-five minutes north latitude, thence along the parallel of four degrees and forty-five minutes north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty-five minutes east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty-five minutes east of Greenwich to the parallel of latitude seven degrees and forty minutes, north thence along the parallel of latitude seven degrees and forty minutes north to its intersection with the one hundred and sixteenth degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth degree parallel of north latitude with the one hundred and eighteenth degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth degree meridian of longitude east of Greenwich to the point of beginning."

[3] *Treaty for Cession of Outlying Islands of the Philippines, November 7, 1900: Solo Article*

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 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.

The United States, in consideration of this relinquishment, will pay to Spain the sum of one hundred thousand dollars ($100,000) within six months after the exchange of the ratifications of the present Treaty.

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Majesty the Queen Regent of Spain, after approval by the Cortes of the Kingdom, and the ratifications shall be exchanged at Washington as soon as possible.

In faith whereof, we, the respective plenipotentiaries, have signed this Treaty and have hereunto affixed our seals.

Done in duplicate at the City of Washington, the 7th day of November, in the year of Our Lord one thousand nine hundred.

> "Section 16. *Territorial jurisdiction and extent of powers of Philippine Government.* — The territory over which the Government of the Philippine Islands exercises jurisdiction consists of the entire Philippine Archipelago and is comprised in the limits defined by the treaties between the United States and Spain, respectively signed in the City of Paris on the tenth day of December, eighteen hundred and ninety-eight, and in the City of Washington on the seventh day of November, one thousand nine hundred."

The fifth official source of the definition of Philippine territory was the Philippine Independence Act, the Tydings-McDuffie Law, Section 1 of which is the same as that of the prior Hare-Hawes-Cutting Act, authorizing the Philippine Legislature to

> ". . . provide for the election of delegates to a constitutional convention, . . . to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December, 1898, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November, 1900 . . ."

The sixth instrument is section 1 of the 1935 Constitution, a simplification of the technical description of Philippine boundaries in section 1 of the Report of the Committee on Territorial Delimitation, of the Constitutional Convention.

The seventh instrument is the 1973 Constitution, Article I of which is clearly an improvement over the corresponding section of the 1935 Constitution. It reads as follows:

> "Section 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic or legal title, including the territorial sea, the air space, the subsoil, the sea bed, the insular shelves, and the other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines."

As in the 1935 Constitution, there has been a studied departure from a technical delimitation of boundary lines — those rules that, in the language of Professor Fenwick, ". . . have been worked out which may be regarded as the prescriptive or customary law of the subject holding good in the absence of treaty stipulations."[4] Implicit in the new Philip-

[4] FENWICK, INTERNATIONAL LAW, 274-75 (2d ed., 1934).

pine Constitution is not only the assertion of sovereignty over territory subject of historic claims but also a projection of the importance to the Philippines of the waters embraced in the national territory as defined by treaties. In his statement on July 8, 1974 at a plenary session of the Third United Nations Conference on the Law of the Sea at Caracas, Venezuela, Secretary of Justice Vicente Abad Santos, co-chairman of the Philippine delegation remarked:

> "For centuries the use of the sea as an artery for the movement of people and articles of trade and commerce and as a source of livelihood has been governed by the customary rules of international law. As the sea took on greater importance as a result of the multiplication of peoples and nations, it became manifest that the customary rules were inadequate and needed revision and expansion."[5]

Obviously, the historical and political considerations affecting our national boundaries have to dovetail with the overriding geographical factors. This introduces us to a brief treatment of the various parts of the national territory.

What Are the Parts of Our National Territory?

A contemporary source is a *Textbook on the New Philippine Constitution* by Professors Hector S. de Leon and Emilio E. Lugue, Jr.[6] They have painstakingly identified these parts, thus:

> "The phrase 'all the other territories belonging to the Philippines by historic right or legal title' is intended to cover pending Philippine claim to Sabah (formerly North Borneo) against Malaysia, and the possible claim to the so-called Freedomland (a group of islands known as 'Spratly' islands which are also being claimed by other nations notably the Republic of China and South Vietnam), and the Marianas Islands, including Guam (which according to historical documents were under the control of the civil and ecclesiastical authorities in the Philippines during the Spanish Regime), or any other territory over which the Philippines may in the future find it has a right to claim.
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> "Other areas included in Philippine archipelago. They are:
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> "(1) The territorial sea. — It is that part of the sea extending three nautical miles from the low-water mark. It is also called the 'marginal sea', the 'marginal belt', the 'marine belt', or a certain limit as '3-mile limit'. This three-mile rule is now considered obsolete. The International Law Commission of the United Nations which has been undertaking a comprehensive study of the Law of the Sea, particularly the subject of the breadth of the territorial sea of a coastal state, has recommended that it should not be more than twelve miles;

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[5] Abad Santos, *The Archipelagic Concept — I*, 2 J. INTEG. BAR PHIL., 136 (1974).
[6] 34-38, (1973 Ed.).

"(2) The air space. — This refers to that part of the air above the land and water territory of the Philippines. The present state of development in space navigation does not permit any delimitation of the height of air space subject to the sovereign jurisdiction of a state;

"(3) The sub-soil. — This refers to the soil below the surface soil, including mineral and natural resources;

"(4) The sea-bed (or sea floor or sea bottom). — This refers to the land that holds the sea; including mineral and natural resources;

"(5) Insular shelves (or continental shelves). — They are the submerged portions of a continent or offshore island, which slope gently seaward from the low waterline to a point where a substantial break in grade occurs, at which point the bottom slopes seaward at a considerable increase in slope until the great ocean depths are reached; and

"(6) Other submarine areas. — Among oceanographic terms used are seamount, trough, trench, basin, deep, bank, shoal, and reef.

"Three-fold division of navigable waters. From the standpoint of International Law, the waters of the earth are divided into:

"(1) Inland or internal waters. — They are the parts of the sea within the land territory. They are considered in the same light as rivers and lakes within the land territory of a state;

"(2) Territorial sea (*supra.*). — It is a belt of water outside and parallel to the coastline or to the outer limits of the inland or internal waters; and

"(3) High or open seas. — They are waters that lie seaward of the territorial sea.

"The inland or internal waters and the territorial sea together comprise what is generally known as the territorial waters of a state. Over these waters, a state exercises sovereignty to the same extent as its land territory but foreign vessels have the right of innocent passage through the territorial sea. On the other hand, the open seas are international waters which means that they are not subject to the sovereignty of any state but every state has equal rights of use in them."

Hershey,[7] classifies the extent of a state's territory into (1) the Land Domain; (2) the Maritime and Fluvial Domain, or territorial waters, using the latter phrase in a general sense; and (3) Aerial Space. To avoid the ambiguity of the word "territory", Professor Foulke suggests the use of "maritime belt" when referring to marginal waters, and the word "territory" when referring to the surface over which the jurisdiction of the state extends, whether land or waters, and "territorial waters" when referring to inland waters.[8]

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[7] INTERNATIONAL LAW 173 (1912). *Cf.* 1 FOULKE, A TREATISE ON INTERNATIONAL LAW 286 (1920).

[8] See also 1 OPPENHEIM, INTERNATIONAL LAW 235 (2d ed., 1912); and WILSON, INTERNATIONAL LAW 78 (1920).

Professor Alf Ross[9] attributes to a particular state that area in which *the organs of power assert themselves effectively and continually*, for it is only the continual assertion of power that the law cannot disregard. Otherwise stated, it is the principle of effectiveness that determines both the *static* description of the area and the *dynamic* rules concerning the acquisition and loss of territory.

Relevant to the Philippine situation is the observation of Pascual Fiore,[10] that —

> "Territorial waters, that is to say, those contained between the shores of a state and the line that constitutes its maritime or river boundary, must be deemed to be in the juridical possession of the territorial sovereign."

An enlightening backgrounder for our espousal of the archipelagic concept is the following resume' of some international maritime boundaries.[11]

> "But where the maritime boundary comes into contact with a strait separating the territory of a single state, it is governed by the same principles that control bays and gulfs. In general, if a strait is less than six miles in width its waters are territorial waters subject to the exclusive jurisdiction of the state; although in a number of cases custom has given a prescriptive title to territorial sovereignty over straits greater than six miles in width. The Great Belt of Denmark, being of an average width of ten miles, is part of the territory of Denmark, so that the two parts of the state east and west of the Belt, form continuous territory. So also the Bosporus and the Dardanelles are territorial waters of Turkey; while the strait of Kertch, connecting the Sea of Azov with the Black Sea, is Russian. The United States and Great Britain claim territorial sovereignty divided by the middle boundary-line, over the strait of Juan de Fuca, which has an average width of fifteen miles. Chile claims territorial jurisdiction over the Straits of Magellan. It should be noted that the question of territorial jurisdiction over straits is closely associated with the more important question of the servitudes upon such waters by which freedom of navigation is secured for the commerce of all nations. Consequently, in certain cases, such as those of Long Island Sound and the Strait of Solent, where the strait does not form an international highway, third states have been indifferent to the assertion of territorial claims by the state in possession of the land on both sides."

What About Territorial Atmosphere? Any Limits?

It is quite certain that international law has developed a long way from the ancient Roman law doctrine that "the air is free."[12]

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[9] A TEXTBOOK OF INTERNATIONAL LAW 139 (1947).

[10] INTERNATIONAL LAW CODIFIED 416-17 (1918).

[11] Fenwick, *op. cit., supra* note 4 at 387.

[12] Williams, *Developments in Aerial Law*, 75 U. PA. L. REV. 139, 140 (1926). See DICKINSON, CASES AND OTHER READINGS IN THE LAW OF NATIONS 376 (1929).

". . . In the nineteenth century some writers advocated the establishment of an aerial zone above corresponding to the maritime zone adjacent to state territory. The development during the twentieth century of radio communication and the use of the atmosphere as a highway for many types of aircraft, balloons, etc., has given rise to questions in regard to aerial jurisdiction. Some of these questions have been settled by conventions and others have gone before courts. While the Hague Peace Conference of 1899 provided for the use of balloons in war, these provisions were inadequate to meet changing conditions and aerial navigation, and during the first decade of the twentieth century attempts were made to draw up rules in regard to the use of the air. In a preliminary statement, the Institute of International Law in 1906 declared that 'The air is free. States have over it, in time of peace and in time of war, only the rights necessary for preservation,' but the idea gradually gave way to the idea that jurisdiction in the air appertained to the subjacent state."

Prior to World War II, rules were drawn up regulating the use of radio communication both in peace and in the event of war. During the war, countries found it necessary to issue proclamations limiting activity in its airspace in addition to the censorship of radio messages. The Convention for the Regulation of Aerial Navigation of 1919 stated in its first article:[12a]

"The High Contracting Parties recognize that every Power has complete and exclusive sovereignty over the air space above its territory.'

"For the purpose of the present Convention the territory of a State shall be understood as including the national territory, both that of the mother country and of the colonies, and the territorial waters adjacent thereto."

Despite the universal experience in two world wars that "States would accept nothing less than complete authority over the air space above their territory," a number of international conferences have been called to thresh out the problem of aerial domain, such as that in 1944.[13]

Extent of Philippine Territorial Waters

It has not been easy to formulate a universally acceptable rule on the distance from the coastline to which national jurisdictional competence may extend. The UN Conference on the Law of the Sea at Caracas, Venezuela was to be followed by another at Geneva in April and May, 1975. The position of the Philippine Government was authoritatively stated by former Senator Arturo M. Tolentino, co-chairman of the Philippine delegation, on August 12, 1974, at the Caracas conference, as follows:[14]

[12a] Dickinson, *supra*, at 377.

[13] SALONGA & YAP, PUBLIC INTERNATIONAL LAW 175 (4th ed., 1974).

[14] Tolentino, *The Archipelagic Concept — II*, 2 J. INTEG. BAR 141 (1947).

"In urging the favorable consideration of these new drafts, may I emphasize on some new features, particularly the following:

"1. The new draft clarifies that these articles apply only or exclusively to outlying or oceanic archipelagic States, no part of which State is on a continent or mainland, and which has its own independent government.

"2. Although an archipelagic State, by definition 'may include other islands,' which do not geographically form an integral part of the archipelago of such State, the drawing of baselines by that State is limited only to the archipelago proper. The baselines are not to be extended to the 'other islands', which will, therefore, be outside the baselines, and the waters between the archipelago proper and the 'other islands' are not going to be archipelagic waters.

"3. Although the archipelagic State may restrict innocent passage of foreign ships through the archipelagic waters to sealanes designated by it, if it does not establish such sealanes, then, the entire archipelagic waters are open to innocent passage of foreign ships.

"4. In designating sealanes, the archipelagic State must take into account (a) the recommendation or technical advice of competent international organizations, (b) the channels customarily used for international navigation, (c) the special characteristics of particular channels, and (d) the special characteristics of particular ships.

"5. The authority of the archipelagic State to make laws and regulations relating to passage of foreign ships through the archipelagic waters is subjected to two important limitations, namely; (a) Such laws and regulations must not be 'inconsistent with the provisions of these articles' and must have 'due regard to other applicable rules of international law,' and (b) Such laws and regulations cannot go beyond the subject matters listed in paragraph 6 of Article 5, thereby preventing the possibility of surprise to the maritime community."

As expressed by Ambassador Tolentino, his delegation was "ready and willing to negotiate, compromise, and accommodate with the end in view of reaching satisfactory agreement, as long as the essence of the archipelagic concept is maintained."

In that speech, Ambassador Tolentino had occasion to stress that our historic waters are small, the total surface area of the waters within our baselines being only about 170,000 square miles, compared to about half a million square miles of the Hudson Bay alone claimed by a single country as part of its territory. These small Philippine historic waters are comprehended in the following provision of Section 6 of Act No. 4003, otherwise known as the Fisheries Act, to wit:

"Sec. 6. *Words and phrases defined.* — Words and terms used in this Act shall be construed as follows:

'Philippine waters, or territorial waters of the Philippines' includes all waters pertaining to the Philippine Archipelago as defined in the treaties between the United States and Spain, dated respectively the

> tenth of December eighteen hundred and ninety-eight, and the seventh of November, nineteen hundred."

Sovereignty and Jurisdiction Over the National Territory

The case of Port Arthur is a classic instance of sove eignty and jurisdiction not being exercised by the same country over particular territory. Thus when years ago China leased Port Arthur to Germany and to Russia, we had a case, as Wilson said, of a leased territory "remaining under the sovereignty of the lessor," but passing "within the jurisdiction of the lessee."[15]

Sovereignty has been defined as the "union and exercise of all human power possessed in a state; it is a combination of all power; it is the power to do everything in a state without accountability, — to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of aliance or of commerce with foreign nations, and the like.[16]

There are many elements of sovereignty as a collective force in the perspective of world politics, according to Madariaga[17], such as: Juridical idea, psychological reaction, the instinctive projection that all nationals make their nation on the plane of ideals, the subconscious force for the expansion or growth of the community. In the legal or juridical sense, the remarks of Max Huber, who said that "Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other state, the functions of a state."[18]

Jurisdiction, which Wilson has defined as "the right to exercise state authority," was touched upon by Chief Justice Marshall in these terms:[19]

> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its own sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which would impose such restriction.
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> "All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the con-

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[15] Wilson, HANDBOOK OF INTERNATIONAL LAW 95 (1910).

[16] STORY, CONSTITUTION 207; *Cf.* 3 Bouvier's LAW DICTIONARY AND CONCISE ENCYCLOPEDIA 3096-97 (3rd ed.).

[17] DE MADARIAGA, THEORY AND PRACTICE IN INTERNAL RELATIONS 15-16 (1937).

[18] Publication of the International Bureau of the Permanent Court of Arbitration (1928); also published in 22 A.J. INT'L 867 (1928). See BRIGGS, THE LAW OF NATIONS; CASES, DOCUMENTS, AND NOTES 173 (1942). It will be recalled that Huber was the Arbitrator chosen by the Netherlands and the United States in the Las Palmas (Miangas) case to determine the question of sovereignty over the Island of Palmas (Miangas) in 1928.

[19] Schooner Exchange v. McFadden, 7 Cranch. 116, 3 L.Ed. 287 (1812).

sent of the nation itself. They can flow from no other legitimate source.

"This consent may be either expressed or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction, but, if understood, no less obligatory."

The extent of jurisdiction, according to Charles C. Soule and C. McCauley is as follows: (1) Territorial jurisdiction, (2) Jurisdiction over persons, (3) Aerial jurisdiction, and (4) Maritime jurisdiction. Quite enlightening are their comments on these areas of jurisdiction:[20]

Territorial Jurisdiction

"Territorial jurisdiction of a state extends over all land and enclosed water within its boundaries together with a three-mile margin of water where it abuts upon the sea.

"The marine league. It has become a well established principle of international law that a state exercises jurisdiction over a marginal sea extending a marine league (three miles) from a coast at low tide. This principle was generally accepted at the time when the effective range of artillery was about three miles. Efforts have been made in recent years to increase the breadth of this belt to correspond to the increase in artillery range, but such agreement has not been reached to date.

"Jurisdiction over this marginal belt extends to police control, customs duties, secrecy of coast fortification, and to the control of fisheries. Vessels of all nations are allowed passage through these waters in peace time but belligerent public vessels are forbidden their use in war, except under restricted conditions.

Jurisdiction Over the Air

"Jurisdiction over the air has become a question of major importance since the advent of balloons, radio, aeroplanes, and airships. The experience during the World War practically determined that the air above a state comes under the jurisdiction of the state. In time of war, neutrals shall forbid belligerents to use it, but in time of peace, free passage will be granted to all innocent aircraft.

"The International Air Navigation Convention formulated a set of aerial rules and regulations in 1919. . .

Jurisdiction on the High Seas

"The high seas include all waters outside of the territorial three-mile limit. In times of peace the high seas are free for the passage of ships of all states which carry recognized flags and are engaged in innocent voyages.

Piracy — Slave Trade

"Piracy and trading in slaves has (sic) been outlawed by the nations and any vessel found engaging in those pursuits is subject to capture and punishment by any state.

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[20] SOULE & MCCAULEY, INTERNATIONAL LAW FOR NAVAL OFFICERS 16 (1928).

Jurisdiction Over Vessels

"Public vessels are owned by the government, are engaged in government business, and are commanded by government officers.

"Private vessels are those operated by individuals.

"The state exercises jurisdiction over its public vessels at all times, whether upon the high seas or within the territorial waters of another state, with the exception that they are subject to local harbor regulations, such as the place of anchorage. A state has the right, and frequently exercises it, to prevent entry to its harbors of foreign vessels.

"A state exercises complete jurisdiction over its private vessels within its own waters and upon the high seas. Crimes committed upon the high seas come within the jurisdiction of the state whose flag the vessel flies. When upon the high seas, a private vessel is considered as part of the territory of the state whose flag it flies, but when within the territorial waters of another state she becomes almost wholly subject to the jurisdiction of that state. The extent of jurisdiction varies in different states.

"A private vessel when within the territorial waters of a foreign state is subject to the civil and criminal jurisdiction of that state, but ordinarily the interior discipline and customs of the ship are not interfered with unless a law of the port is violated.

Special Jurisdiction for Revenue, Police, Fisheries, etc.

For special jurisdiction and for that on straits, gulfs, bays, inland seas and lakes, rivers, navigation, and fisheries, we have to turn to Wilson[21] whom we quoted earlier:

"Within the three-mile limit exclusive jurisdiction over fisheries and other undertakings is generally admitted.

"A wider special jurisdiction is often claimed, and generally admitted, for purposes of administration of revenue, fisheries, and sanitary regulations, and for better policing of a coast. This is often extended to ten miles, and sometimes to twelve miles. States often make regulations for the coast trade, limiting such trade to vessels flying their own flag.

"Jurisdiction — Straits

"The rule in regard to marginal seas applies to straits which are six miles or more in width.

"Straits less than six miles in width are within the jurisdiction of the shore state or states.

"Jurisdiction — Gulfs and Bays

"Over gulfs and bays wholly within the territorial limits, and over such as are not more than six miles in width at the opening into the sea, the jurisdiction is in the shore state or states. More extended jurisdiction is in some cases claimed and admitted.

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21 WILSON, *supra*, note 13 at 99-115.

"*Jurisdiction — Inland Seas and Lakes*

"In general, the jurisdiction over inclosed waters is in the state whose land surrounds the water.

"If an inland sea or lake is surrounded by land belonging to two or more states, in absence of conventional agreement, jurisdiction is in such state in proportion to its coast line.

"*Jurisdiction — Rivers*

"A state has exclusive jurisdiction over rivers wholly within its boundaries.

"When a river flows through two or more states, each state, in absence of other agreement, has jurisdiction to the middle of the river, or in case of a navigable river to the middle of the main channel, or thalweg.

"*Navigation*

"The high seas beyond the marine league are open to the free navigation of all states.

"There is a qualified right of navigation in most other waters.

"*Fisheries*

"Fishing in the open sea is free to all, though sometimes regulated by treaties or domestic law binding those subject to them.

"A state may control or forbid fishing within the maritime or fluvial domain."

Is Joint Jurisdiction Possible?

Yes, by two or more states, over the same area — some sort of condominium, as in the case of Samoa by a general act of the United States, Germany and Great Britain from 1889 to 1899.[22]

May Sovereignty Be Limited?

Again, the answer is in the affirmative. As a member of the United Nations and as a signatory to regional arrangements or bilateral treaties, such as with the United States, we know only too well that some portion of our sovereignty has been diminished, as Chief Justice Marshall said in the *Schooner v. McFadden* case,[23] to the extent of the restriction deriving validity from an external source although, theoretically, such jurisdiction "is susceptible of no limitation not imposed by itself."

For his part, Madariaga mentions several limitations, such as ethical or financial (required contributions to the UN Budget), and judicial limitations (by solidarity, by public opinion, or by executive and legislative powers of the UN (General Assembly and Security Council).[24]

On the Expansion of the National Territory

Although territorial expansion through discovery, conquest or exploration is past, as even the lunar landing by Neil Armstrong and other

[22] *Cf. Ibid.*, 91.
[23] Schooner Exchange v. McFadden, *supra*, note 19.
[24] DE MADARIAGA, *supra*, note 17 at 40.

American astronauts has not been made a basis for claims to additional territory but rather for the common benefit of mankind, yet the flux of historic development poses the possibility of such expansion. At any rate, legal history points to various modes of territorial acquisition which cannot fail to interest the student of international law.

Oppenheim[25] classifies these modes into *original*, such as occupation, accretion, subjugation and prescription, and *derivative*, such as cession.

Can Sovereignty Be Suspended?

It can, indeed, as what happened in this country during the Japanese occupation, when the decrees of the Japanese military administration rather than the laws of the United States or of the Commonwealth Government prevailed. After the war, American sovereignty was fully restored, but prior to liberation the Filipinos had to pass under the temporary submission to the Japanese military regime and to the Republic under President Jose P. Laurel. In the interregnum, the imperial and military rescripts replaced the American and Philippine laws.

It is, therefore, settled that wartime military occupation suspends sovereignty.[26]

Some Relevant Observations on Territorial Acquisition

As in the acquisition of a corporeal thing, so in the case of ceded territory occupancy must unite with possession, i.e., there must be a formal instrument of cession.[27] Better still, a ratification (such as by U.S. Senate) after a treaty of cession of territory (Treaty of Paris, for example). But like in donation in municipal law, a country can cede only that which it has.

As to prescription, the length of time and other circumstances needed to create a title cannot be determined in a fixed rule, but such time of continuous and undisturbed exercise of sovereignty would suffice "as is necessary to create the general conviction that the present condition of things is in conformity with international order."[28]

As to accretion, there seems to be no question that alluvium and increment can add territory, whether appended to the coastline of a country or as reefs or islands within the territorial waters.

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[25] OPPENHEIN, *supra*, note 8 at 284.

[26] Fleming v. Page, 9 How. 603, 13 L.Ed. 276 (1850); United States v. Rice, 4 Wheat. 246, 4 L.Ed. 562 (1819).

[27] DICKINSON, CASES AND MATERIALS ON INTERNATIONAL LAW 325-327 (1950). Citing 1 Op. Atty. Gen. 483; Keene v. M'Donough, 8 Pet. 308, 8 L.Ed. 955 (1834); Great Britain High Court of Admiralty, 1804. 5 C. Robinson's Reports 106.

[28] OPPENHEIM, *supra*, note 8 at 400-03.

Modes of Losing Territory

Oppenheim[29] gives these modes in a single sentence:

> "To the five modes of acquiring sovereignty over territory correspond five modes of losing — namely, cession, dereliction, operation of nature, subjugation, prescription, except that it is of some importance to report here, that the historical cases of pledging, leasing, and giving territory to another State to administer are in fact, although not in strict law, nothing else than cessions of territory. But operation of nature, revolt and dereliction must be specially discussed."

Are These Modes Applicable To The Philippines?

We believe so. As a member of the family of nations, the Philippines, as a subject of international law, has experienced (and will further experience) these various modes of acquiring and/or losing territory.

As to acquisition of territory, the mode of *discovery*[30] was invoked by Spain after the epochal voyage of Magellan and Elcano. But it was *discovery* followed by *occupation* and *conquest* which won the Philippines for Spain, as against the mere reliance by Portugal on the confirmation by the Treaty of Tordesillas of the papal demarcation line.

The theory of *suspended sovereignty* found application in the Philippines during the last War. "Three Years of Enemy Occupation" by the late Senator Claro M. Recto remains as an outstanding reference on this period of Philippine history.

The mode of *cession* became applicable to the Philippines at the close of the Spanish-American War. The Treaty of Paris of December 10, 1898 was later supplemented by the treaty concluded at Washington on November 7, 1900.

As to *prescription,* there is hardly any question that all the waters comprehended within the territorial baselines of the Philippines, although beyond three miles from the coastlines, may be considered to have been acquired through this mode, aside from their being historic waters as encompassed within the limits of Philippine territory defined in the Paris and Washington treaties just cited, for as Foulke[31] observed, "No taking of territory, therefore, which continues as a fact can be unlawful according to international law, however repugnant to the principles of the municipal law or ideas of morality and ethics." The present exertions of our statesmen and thinkers in espousing the archipelagic doctrine find justification not only in enlightened self-interest but in the very methods which inter-

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[29] OPPENHEIM, *Id.*, p. 311.

[30] Drs. Gregorio F. Zaide (Philippine History and Civilization) and Eufronio M. Alip (Cultural and Political History of the Philippines), Filipino historians, would prefer the term "rediscovery", considering that it was the Malays who first found the Philippine Archipelago.

[31] FOULKE, *supra*, note 7 at 329-30.

national law has sanctioned since time out of mind as part of the Law of Nations. What only remains is for the doctrine to gain acceptance among the rest of the nations most of which, unfortunately, are not archipelagoes like the Philippines, and therefore find no compulsion from their own self-interest to actively support the stand of the Philippine delegation. The very decision of the Permanent Court of Arbitration which recognized Las Palmas (Miangas) to belong to the Netherlands through long occupation although that island is twenty miles inside the eastern baseline of the Philippines as defined in Article III of the Treaty of Paris — that very decision having recognized the uncontested title of the United States to the entire Philippine Archipelago, excepting said island of Las Palmas — may now be invoked as giving sinews to the Philippine advocacy of the archipelagic doctrine and Philippine sovereignty over the said historic waters, for it is the entire area embraced in said Article III of the Treaty of Paris which the United States recognized as belonging to the Republic of the Philippines when President Franklin Delano Roosevelt approved the 1935 Constitution containing the identical definition of Philippine National Territory in Article I thereof.

Hall mentions *gift* as another mode of acquiring or losing territory, but it is believed that *cession* is sufficiently suggestive to include gift, for cession may be either onerous or gratuitous, or, more precisely, in obedience to historical circumstances, such as defeat in war.

What is the Extent of Philippine Territorial Waters?

In answering, this question, it is the better part of prudence to start from the geographical fact that the Philippines is an *archipelago*. The etymology of the word, according to the dictionaries and encyclopedias, shows that it originally meant the sea or ocean, and in fact the Greeks applied it to the Aegean Sea. It was only a concession to reality that the word was later made to mean a broad sheet of water interspersed with many islands. The Spanish and American commissioners who drafted the Treaty of Paris in 1898, and the Spanish Ambassador and American Secretary of State who drafted the treaty concluded at Washington in 1900, in using the word Archipelago applied to the Philippines could not, therefore, have been thinking merely of the islands but as well of the waters studded by those islands. Stated otherwise, in defining Philippine territory in Article III of the Treaty of Paris, they meant to include both land and sea.

Such an assumption logically follows from the technical description the Paris Commissioners gave to Philippine territory in Article III. The baselines had to be made to pass wholly on water from west to east and from north to south, then from east to west and from south to north to the point of beginning at the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich at or near the twentieth (20th)

parallel of north latitude. As practical men, they did not intend their instrument to be later nullified by theorists on the maritime belt or the three-mile limit by excluding the waters comprehended in the baselines fixed by them. The ratification of these treaties by the Spanish and American governments and by the world community of the political realities thus brought about not only during the entire period of American rule but also, and especially, after Philippine independence was granted and the Republic of the Philippines became a full-fledged member of the United Nations, have endowed the entire national territory of this country with a prescriptive title of unimpeachable validity.

The Paris Commissioners must have considered also the large bodies of water between the principal islands which ruled out a literal observance of the three-mile limit then in vogue. From the Balintang Channel in the north to the Polillo Strait, the Verde Island Passage, the Mindoro Strait, the Sibuyan Sea, the Visayan Sea, the Leyte Gulf, the Cuyo East and West Passes, the Panay Gulf, the Mindanao Sea, the Sulu Sea, the Moro Gulf, the Davao Gulf — all these and more are internal waters of the Philippines; if excluded from Philippine sovereignty just because a ship may not be nearer than three miles from the coasts of the nearest islands while passing through, the independence contemplated in the Tydings-McDuffie Act would be set at naught, with a corresponding inefficacy in criminal, customs, revenue, and fishery administration, and anemia in national security and defense.

It can be pointed out, of course, that Philippine jurisprudence has given sanction to the three-mile rule. As the Supreme Court ruled in the case of *U.S. v. Bull.*[32]

> ". . . But the Standard (of which Bull was master) was a Norwegian vessel, and it is conceded that it was not registered or licensed in the Philippine Islands under the laws thereof. . . No court of the Philippine Islands had jurisdiction over an offense or crime committed on the high seas or within the territorial waters of any other country, but when she came within three miles of a line drawn from the headlands which embrace the entrance to Manila Bay, she was within territorial waters, and a new set of principles became applicable. . ."

This ruling came at a time when Americans were a majority in the Supreme Court. It is to be admitted that the modern champions of the three-mile limit are Great Britain, the United States, and, more recently, Soviet Russia. These are maritime nations, with navies controlling the seven seas; and although Great Britain herself is an island nation, the British still believe, as Churchill said in the House of Commons during the past War, that "Britannia still rules the waves." Since most countries

[32] 15 Phil. 7, 12 (1910). See also People v. Lol-lo and Saraw, 43 Phil. 19, 22-23 (1922), and People v. Wong Cheng, 46 Phil. 729 (1922).

of the world are not archipelagoes like the Philippines, the archipelagic doctrine is experiencing an uphill fight for general acceptance. Even the one-world concept, however, should not dishearten us into abandoning the doctrine which we share by geographic destiny with Indonesia and other independent archipelagoes. Since our geography compels us to disagree with those who would confine our control to the maritime belt as contradistinguished from the Open Sea,[33] it is to our interest to make common cause with countries with geographic configurations and structures similar to ours in the espousal of the archipelagic doctrine while acceding to the right of innocent passage for ships of non-belligerent States.

Does the Philippines Have A Continental Shelf?

The inquiry would almost be academic if consideration were accorded merely to the fact that the Philippines is not situated on the Asian mainland or on any of the other six continents. An island, however, does have a shelf, and our country being a group of islands gives relevance to Philippine claims to the littoral shelves which international law has accorded to nations situated along the submerged platforms of the various continents. Fishing, mineral (including oil), and other resources as well as jurisdictional rights are involved, hence the importance of more than a passing glance at this phase of the Law of Nations.

As explained in the Encyclopedia Britannica,[34] "The shelf varies greatly in width. Almost everywhere it represents simply a continuation of the land surface beneath the ocean margins; hence, it is broad and relatively level offshore from plains, and narrow, rough and steep off mountainous coasts." The Philippine Deep, 34,583 feet according to the latest recording, was for a long time the deepest canyon beneath the ocean surface known to geographical cartographers and geodetic engineers. On the other hand, a look at a recent map of the soundings made by our Bureau of Coast and Geodetic Survey shows that the broadest extension of the coastal plains seaward are found west of Palawan, east of the two Camarines provinces and southwest of Polillo island. For a brief history of various claims and formulations on the doctrine of the continental shelf, we cull hereunder the remarks of F.V. Garcia Amador, a member of the International Law Commission of the United Nations, Cuba's representative in the International Council of Jurists:[35]

> "The first formulations of the doctrine were scientific and economic in character. At the National Conference on Fisheries at Madrid in 1918, the Spanish oceanographer Odon de Buen maintained the thesis that while the domain of the ocean should be for all, 'The

[33] *Cf.* OPPENHEIM, *supra*, note 8 at 255-56.
[34] Vol. 6, 420 (1965 ed.).
[35] AMADOR, THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA, 70-72 (2nd ed., 1959).

continental shelf should belong to the nation to whom the coast belongs, because it is a continuation of it and the land has an even greater influence on it than the sea.' Arguing from the fact that 'the sedentary species are, so to speak, domiciled there — species that support the local fishing industry on which the greater part of the activities of the coastal population depends,' he proposed that the 'jurisdictional waters be extended to cover the whole continental shelf.' The Argentinian professor, Jose Leon Suarez, in some lectures delivered the same year in Sao Paolo, Brazil, went at greater length into the scientific and economic aspects of the new theory and also agreed on the need to extend the territorial sea, because 'trade required it and, above all, fishing, whaling and sealing, as the life cycle of the most valuable species gravitates between the territorial sea and the open sea, which are separated from each other only by an imaginary man-made barrier but constitute by their nature and form a single, continuous whole.' This theory was maintained on subsequent occasions though not always in connexion with the idea that the territorial sea should extend to the limits of the continental shelf. Barbosa de Magalhaes, for instance, in his observations on Dr. Schucking's Report on Territorial waters, proposed fixing the breadth of the latter at twelve miles, basing his arguments on the conclusions reached by Admiral Almeida d'Eca regarding the species living or to be found in the waters covering the shelf."

As reported by Salonga and Yap:[36]

"One of the conventions adopted by the United Nations Conference on the Law of the Sea in 1958 was on the continental shelf. The convention defined the term 'continental shelf' as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

"The Convention recognizes the sovereign right of the coastal State over the continental shelf for the purpose of exploring it and exploiting its natural resources. These rights of the coastal State are exclusive in the sense that if it does not explore the continental shelf or exploit its natural resources, no other State may do so or make a claim thereto without its express consent. The rights of the coastal State do not depend on occupation, or on any express proclamation.

"The rights of the coastal State to the continental shelf do not affect the legal status of the superjacent waters, which continue to be regarded as part of the high seas, or that of the airspace above those waters.

"The coastal State may construct and maintain or operate on the continental shelf installations or other devices necessary for its exploration and the exploitation of its natural resources, establish safety

[36] *Supra*, note 13 at 169-71.

zones around such installations and devices, and take measures necessary for their protection. However, no unjustified interference with navigation, fishing or conservation of the living resources of the sea should result thereby. The laying of submarine cables or pipelines on the continental shelf shall not be impeded.

"The Philippines, it may be noted, has joined the large number of States which have asserted dominion over continental shelf resources. Under the Petroleum Act, Republic Act No. 387, all natural deposits or occurrences of petroleum or natural gas on the continental shelf 'seaward from the shores of the Philippines belong to the State, inalienably and imprescriptively.'

"How about the area beyond the continental shelf? On December 17, 1970, the General Assembly adopted a Resolution which affirmed that there is an area of the sea-bed and the ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, 'the precise limits of which are yet to be determined,' and declared among other things: (1) that said area should be the common heritage of mankind; (2) that not being subject of appropriation by any means, no State shall claim or exercise sovereignty or sovereign rights over any part thereof; (3) that the area shall be open to use exclusively for peaceful purposes by all States, whether coastal or landlocked, without discrimination, in accordance with the international regime to be established; (4) that the exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of the States, whether landlocked or coastal, and taking into particular consideration the interests and needs of the developing countries; (5) that an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally agreed upon. The regime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether landlocked or coastal. The limits of national jurisdiction, the international regime, including an international machinery, for the area and the resources of the sea-bed and the ocean floor, and the subsoil thereof, beyond such limits, were taken up in the Third Conference on the Law of the Sea."

What of the Philippine Claim to North Borneo (Sabah)?

In any extended treatment of the subject of the Philippine national territory, it is not possible to omit even a passing reference to our historic claim to Sabah, that area which used to be called British North Borneo on standard maps of the Orient up to September 16, 1963 when the Federation of Malaysia was established under British sponsorship, including North

Borneo (Sabah), Singapore and Sarawak.[37] There is every possibility in the not too distant future that the Philippine claim to Sabah will be revived.

Briefly, this claim derives from the following historical facts:

Around 1704 the Sultan of Brunei, by way of compensating the Sultan of Sulu for the latter's aid in quelling a rebellion, ceded Sabah to the Sultan of Sulu who thereafter exercised acts of ownership and sovereignty over Sabah, which was recognized in treaties of friendship by foreign powers continuously, including Spain (1737), Great Britain (1761), and the United States (1899), and as late as May 4, 1923 by a letter of recognition of sovereign rights of the Sultan of Sulu from then Governor Frank W. Carpenter.

On February 8, 1962, the Sultan of Sulu and his co-heirs petitioned the Department of Foreign Affairs, manifesting that Sabah be a part of Philippine territory. Accordingly, on September 12, 1962, an "Instrument of Cession of North Borneo to the Philippine Government" was signed by Sultan Esmail Kiram, with Vice-President Emmanuel Pelaez accepting on behalf of the government.

On the other hand, the British government annexed North Borneo as a Crown Colony on July 16, 1946, or just 12 days after the declaration of Philippine independence, basing its claim on the transfer by the British North Borneo Company on June 26, 1946 to the British government of the Sabah territory which said company had acquired from an Austrian, Gustavus Baron de Overbeck to whom Sultan Agham of Sulu had leased Sabah in 1878 for the nominal sum of $5,000.00 a year. Since the contract of lease executed by the Sultan of Sulu was in writing and it was terminated by him on November 25, 1957, the annexation of Sabah by the British government was clearly illegal and, according to former Governor General Francis Burton Harrison, was an act of naked aggression. As the Republic of the Philippines gradually got its bearings after being prostrate under enemy occupation for four years, it asserted its claim to Sabah.

On April 28, 1950, a concurrent resolution (No. 42) was unanimously adopted by the Congress of the Philippines recognizing ultimate Philippine sovereignty over North Borneo. Eventually, talks with Malaysian officials were held on the level of officials at Bangkok on June 17 to July 16, 1968, and when the Malaysian delegation "rejected" the Philippine claim, such rejection was denounced as a gross violation of the solemn obligations undertaken by the Malaysian government, including the Marcos-Rahman Communique of January 11, 1968 whereby Malaysia agreed to discuss the

[37] Brunei was included in the proposed federation, but the Sultan of Brunei later decided not to join, but for Brunei to remain a British colony. Singapore withdrew from the federation in 1966, having established its own independent government.

peaceful settlement of the Philippine claim to North Borneo embodied in the Manila Accord of 1963.

The likelihood of the revival of this Philippine claim springs partly from the refusal of the Federation of Malaysia to agree to leave this matter for adjudication by the International Court of Justice at the Hague, developing thereby a conviction among Filipinos that the Malaysian position is basically weak and cannot stand judicial scrutiny.

In the meantime there is this meaningful phrase in Article 1 of the 1973 Constitution: "The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the *other territories* belonging to the Philippines by *historic right or legal title . . .*" (underscoring supplied) which, not having been placed in so many words in the 1935 Constitution, must look ominous to the Malaysians, considering that North Borneo is just 18 miles from the Philippines while it is over 1,000 miles from Malaya.

Precisely because it is the Muslims in the Sulu and Tawi-Tawi groups, as well as in Palawan, Basilan and other parts of Southern Mindanao who have been raring to organize an invasion of Sabah to make it a factual part of the Philippines as it used to be in the three hundred and sixty years since it was ceded to the Sultan of Sulu, there is statesmanlike wisdom in endeavoring to strengthen national unity by a policy of attraction towards the Muslim dissidents to convince them that they are fighting the wrong enemy and are being encouraged and even supported by the wrong "friends."

"To put it in capsule form: it is our legal position that the Sultanate of Sulu had been recognized by the United Kingdom contract of 1878 whereby the Sultan of Sulu granted certain concessions and privileges to Overbeck and Dent in consideration of an annual tribute of 5,000 Malayan Dollars (about 570 pounds or 1,000 U.S. Dollars); that it was one of lease; that whatever be the characterization of the contract, Overbeck and Dent did not in any even acquire, as they could not have acquired, under applicable rules of international law, sovereignty or dominion over North Borneo; that the British North Borneo Company did not acquire, as in fact it was not authorized to acquire, sovereignty or dominion over North Borneo; that the British Government consistently barred the British North Borneo Company from acquiring sovereignty or dominion over North Borneo by maintaining that the same resided in the Sultanate of Sulu; that, as a consequence, the British Crown, on the strength of the North Borneo Cession Order of 1946, did not acquire from the British North Borneo Company sovereignty or dominion over North Borneo, since the Company itself did not have them; that the said Cession Order was a unilateral act which did not produce legal results in the form of a new title; and that the Sultanate of Sulu, which in 1957 publicly and formally repudiated the Cession Order and terminated the lease contract of 1878, continued to exist, in reference to North Borneo, until the Philippines, by virtue of

the title it had acquired from the Sultanate, became vested with sovereignty and dominion over North Borneo."[38]

Prospects of the Philippine Position on Archipelagic Doctrine

At this writing we can only see bright prospects for the Philippine position on the archipelagic doctrine, although the Geneva Conference on the Law of the Sea did not make concrete decisions on the Philippine proposal. Basis of our optimism is the fact that we are not introducing something new in juristic concept that still needs to find acceptance in world chancelleries and international conferences. We are merely stating a right which we have long exercised over our historic waters and in the international project to codify the law of the sea, that such right be given expression to the mutual advantage of the participating nations. As Ambassador Tolentino said in his speech earlier alluded to:

> "May I stress that in advocating the inclusion of the regime of archipelagos in a convention on the law of the sea, the Philippines is not seeking a new right for itself. While various proposals before this Conference would create new rights and benefits — rights that have never been asserted and benefits that were never enjoyed before — the archipelagic proposals would simply give international recognition to our existing right — long asserted, exercised and enjoyed — over our historic archipelagic waters."[39]

What To Do With Foreign Military and Naval Bases

Any discussion of Philippine territory would inevitably have to touch on military and naval bases at present maintained by the United States in the Philippines. They used to be considered necessary to us as part of our mutual defense arrangements with the United States. Contemporary events in South Vietnam and Cambodia, however, have brought the eye-opening realization that we cannot always depend on American assurances of instantaneous retaliation in case of attack, and that, in fact, American assistance may not be forthcoming at the very hour that it is most needed. So much so that during the state visit of Romanian President Nicolae Ceausescu, President Ferdinand E. Marcos had occasion to remark that developments in Indochina have compelled the government to review its policies on security and development.[40] Clark Field, Subic Bay, Olongapo at once suggest limitations on Philippine sovereignty over these bastions of American military, naval and air power, although they also serve as siphons for dollars very much needed by us. Martial law having ingrained in us more reliance on our resources and capabilities, the setting is pro-

[38] 1 PHILIPPINE CLAIM TO NORTH BORNEO (1963).
[39] Tolentino, *supra*, note 14 at 142.
[40] Bulletin Today, April 13, 1975, p. 1.

pitious for a re-examination not only of economic relations but as well of mutual defense ties with America. Of crucial interest to our subject is the need to make absolute and complete Philippine sovereignty, jurisdiction and control over every inch of our territory, for while our loss in dollars would be merely temporary and negligible compared to our gross national product, the gain in self-respect and the esteem of the rest of the world would be permanent and provide historic impetus to our national development and standing in the world community.[41]

[41] As a matter of fact, we have not had occasion to invoke our mutual defense treaty with the United States. Even at the height of the Huk and Muslim rebellion the latter of which the President has called the remaining obstacle to the lifting of martial law, he publicly announced that the Philippine Armed Forces could handle the situation without outside assistance. This, despite the fact, no longer a secret, that some foreign power was helping finance the rebellion and supplying its minions with sophisticated weapons.