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The 1960s Philippine Territorial Sea Laws in Sino-Philippine Territorial Disputes: A Historical and Legal Analysis

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Abstract

Before the territorial disputes in the South China Sea between China and the Philippines were crystallised, the Philippines enacted two territorial sea laws in the 1960s to promote international recognition of its special status as an archipelagic state. This marked the first time since its independence in 1946 that the Philippines defined its territorial scope and territorial sea claims through legislation. In these laws, the Philippines declared the baselines and basepoint coordinates of its territorial sea without mentioning certain islands and reefs in the Spratly Islands or Scarborough Shoal. China argues that the two laws explicitly defined the territorial scope of the Philippines, excluding the Spratly Islands and Scarborough Shoal from the baselines and basepoints of the Philippines' territorial sea, indicating that the Philippines did not consider these islands part of its territory at that time. According to discussions in the Philippine Congress regarding the two laws and on the basis of the precedent established by the International Court of Justice, while these laws do not explicitly address certain islands and reefs of the Spratly Islands or Scarborough Shoal and do not constitute recognition of China's

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territorial sovereignty, they do, to some extent, support China's claims. The Philippines has remained silent on this issue because a detailed discussion would undermine its position. It would also hinder its efforts to utilise the South China Sea arbitration ruling, which avoids addressing the issue of territorial sovereignty, for international propaganda.

Keywords: *Territorial sea, Spratly Islands, Scarborough Shoal, Territorial disputes, Philippine Congress.*

1. Introduction

The South China Sea is bordered by mainland China and the island of Taiwan to the north, the islands of Kalimantan and Sumatra to the south, the Philippine Islands to the east, and the central and southern peninsulas, along with the Malay Peninsula, to the west. China and the Philippines have territorial disputes over many maritime features in the South China Sea. These maritime features include "Huangyan Island", referred to in China, also known as "Panacot", "Bajo de Masinloc" or "Panatag Shoal" in the Philippines and "Scarborough Reef" or "Scarborough Shoal" internationally. They also include the "Kalayaan Islands" or "Kalayaan Island Group" in the Philippines, which are considered part of the "Nansha Islands" in China and part of the Spratly Islands globally.[1] The Philippines officially filed a competing territorial claim over the "Kalayaan Islands" on 10 July 1971, and the territorial dispute over these islands was crystallised (Official Gazette of the Republic of the Philippines, 1971). In May 1997, the Philippines lodged a competing territorial claim against China for Scarborough Shoal, and the territorial dispute over Scarborough Shoal was crystallised (Zou, 1997). From many perspectives, the Philippines' territorial claims in the South China Sea are much weaker than those of China (Austin, 2019). Among these claims, the domestic maritime-related legislation prior to the 1970s also provides clear evidence on this topic.

After the Philippines gained independence in 1946, its territorial scope remained the same as it had been during its time as an American colony. With over 7,000 islands comprising the Philippine Islands and varying distances between these islands, the country's geographical configuration poses significant challenges to maintaining national integrity and security, particularly given its relatively weak ability to defend against external threats (Batongbacal, 1997). To strengthen control over the Philippine Islands,

the Philippines enacted two territorial sea laws in the 1960s: Republic Act No. 3046 in 1961 and Republic Act No. 5446 in 1968, defining the extent of the country's territorial sea and establishing the baselines from which it is measured. This marked the first time since its independence in 1946 that the Philippines defined its territorial scope and territorial sea claims through legislation. These laws emphasise that the land and waters within the territorial sea baselines constitute the land territory and internal waters of the Philippines, whereas the waters from the baselines to the "treaty limits" are designated the territorial sea of the Philippines.[2] These laws play a significant role in demonstrating that, prior to the 1970s, some islands and reefs of the Spratly Islands and Scarborough Shoal were not within the territorial scope of the Philippines. The Philippine Archipelagic Baselines Law of 2009 (Republic Act No. 9522) declared that the "Kalayaan Island Group" and Scarborough Shoal fall under the "island regime", as defined in Article 121 of the United Nations Convention on the Law of the Sea (The Republic of the Philippines, 2009). China contends that Republic Act No. 3046 and Republic Act No. 5446 explicitly define the territorial extent of the Philippines, confirming that the "Kalayaan Island Group" or Scarborough Shoal does not belong to the Philippines. Furthermore, China asserts that Republic Act No. 9522 unlawfully designates China's Huangyan Island and certain islands and reefs in the Nansha Islands as part of the Philippine territory. In response, China promptly lodged formal representations and protests with the Philippine government (Zhong, 2012).

What were the circumstances surrounding the enactment of territorial sea laws in the 1960s? How did the Philippine Congress perceive territorial issues concerning islands and reefs in the South China Sea during that period? Did these laws support China's territorial claims in any way? Why does the current Philippine government refrain from commenting on the two laws enacted in the 1960s?

To address these questions, the rest of this paper is divided into four parts. The next two sections explore the background, evolution, key provisions, and congressional perspectives on territorial sovereignty in the 1960s Philippine territorial sea legislation. The fourth section examines international jurisprudence related to territorial sea law in the context of territorial disputes. The concluding section summarises the overall findings and their implications.

2. Evaluation of the Philippine Territorial Sea Law of 1961: Republic Act No. 3046

2.1 Legislative Background

In 1961, influenced by various international and domestic factors, the Philippines enacted Republic Act No. 3046, which laid the foundation for a territorial sea regime suited to the country's unique geographical configuration.

First, the failure of international efforts to establish a uniform standard for the breadth of the territorial sea strengthened the Philippines' ability to safeguard its territorial sea claims and secure the special status of an archipelagic state. Before World War I, the generally accepted breadth of the territorial sea was three nautical miles. However, following World War I, an increasing number of countries expanded their territorial sea limits. By 1958, at the first United Nations Conference on the Law of the Sea, only 22 of the 76 participating countries adhered to the three-mile principle (Proelß, 2017). Since various states had divergent practices, demand for a uniform standard regarding the breadth of the territorial sea increased. Before the First United Nations Conference on the Law of the Sea convened, the Preparatory Group for the Conference invited states to submit their respective proposals. On 7 March 1955, the Philippines submitted a note to the United Nations International Law Commission, stating that

> *"All waters around, between and connecting different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines. All other water areas embraced within the lines described in the Treaty of Paris of 10 December 1898, the Treaty concluded at Washington, D.C., between the United States and Spain on 7 November 1900, the Agreement between the United States and the United Kingdom of 2 January 1930, and the Convention of 6 July 1932 between the United States and Great Britain, as reproduced in Section 6 of Commonwealth Act No. 4003 and Article 2 of the Philippine Constitution, are considered as maritime territorial waters of the Philippines for purposes of protection of its fishing rights, conservation of its*

> *fishery resources, enforcement of its 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 those waters"* (The Permanent Delegation of the Philippines to the United Nations, 1955)

This marked the first instance in which the Philippines presented its territorial sea claims in an international forum, laying the foundation for its pursuit of the special status of the archipelagic state—a position reiterated in a subsequent note dated 20 January 1956—also addressed the United Nations International Law Commission (the Permanent Delegation of the Philippines to the United Nations, 1956). Neither of these notes specified the starting point for measuring the breadth of the territorial sea. The 1958 Convention on the Territorial Sea and the Contiguous Zone failed to resolve the issue of the breadth of the territorial sea due to the significant divergence of views among participating states (United Nations Treaty Series [UNTS], 1964). Consequently, the Philippines declined to accede to the convention, as its territorial sea claims were not supported by the participating states. From 17 March to 28 April 1960, delegates convened in Geneva for further consultations on the breadth of the territorial sea. The Philippines appeared to place limited importance on the meeting, initially sending only a two-member delegation led by Senator Tolentino and accompanied by the Philippine Ambassador to Switzerland (Lotilla, 1995). The limited size of the delegation severely constrained its ability to fulfil its responsibilities, prompting Senator Tolentino to make significant efforts to enlist Avelino de Guzman, the Deputy Director of the Coastal and Geodetic Survey, as an advisor.

At the Geneva Conference, the delimitation of baselines for the territorial sea and the determination of its breadth were matters of critical importance to the Philippines. With respect to the former, the International Law Commission established the principle of the low-water line, which provides that each island has its own territorial sea. However, the Philippines objected to the application of this norm in its case. Several authorities in international law have argued that archipelagos should be treated as a single unit with a unified territorial sea rather than assigning a separate territorial sea to each individual island (Evensen, 1957). With respect to the

latter, maritime powers, led by the United States, advocated for a territorial sea limit of six nautical miles. However, for the Philippines, "with the application of this six-mile limit the Sibuyan Sea would become high seas or international waters. And way down in the Sulu Sea, it would become international water, and likewise, the Mindanao Sea. So that Luzon would be practically separated from the Visayan islands and the Visayan islands separated from Mindanao and Sulu, and Palawan would be isolated from the rest of the country, from the Straits of Mindanao" (Lotilla, 1995). Additionally, "With that converting the Sibuyan and the Mindanao Seas into high seas or international waters that means that any warship of any country can enter these waters with full rights under international law and we cannot do anything about it legally. It also means that fishermen of any country can bring their ships into and enter these seas and bring any fish resources from those far countries" (Lotilla, 1995). Thus, the Philippine delegation sought to prevent the application of general rules on the territorial sea to the Philippines and worked to secure recognition of the country's special status. Their strategy involved two key approaches: first, articulating in the General Assembly the unique basis and exceptional nature of the Philippines' territorial sea claim; second, supporting the resolutions proposed by other states while requesting the inclusion of a clause explicitly stating that the rules established in those resolutions would not apply to the historic waters of the Philippines (Lotilla, 1995).

Both approaches were unsuccessful. Nonetheless, according to Tolentino,

> *"the failure of the Geneva Conference to agree on the breadth of the territorial sea means that the Philippines' claim to the legal status of the waters within the 'treaty limits' remains unaffected. While debates over 6 nautical miles and 12 nautical miles created deadlock, with some even advocating for a 200-nautical-mile territorial sea, the Philippine claim, grounded in historical sources of entitlement, was neither attacked nor countered by any country in the General Assembly. Although the United States refused to include our exception in the resolution, it did so out of concern that other countries might follow suit. The motion to establish the Philippine territorial sea regime is now being introduced to consolidate the advantages gained by the Philippines at the Geneva Conference.*

> *If the international community adopts a uniform breadth of the territorial sea without recognizing the Philippine exception, I would recommend to the Department of Foreign Affairs and the government that the regime not be recognized. Should a future dispute arise between the Philippines and a foreign country over the breadth of the territorial sea, the Philippines will submit the matter to the International Court of Justice for resolution"* (Lotilla, 1995).

Second, the "national territory" clause in the Constitution had shortcomings. To gain international acceptance of the Philippines' special territorial sea claims, the first step is to establish the 1987 Philippine Constitution as the legal title for recognising both the land and sea within the "treaty limits" as part of the Philippine territory. However, the "treaty limits" alone were insufficient, as the three international treaties provided no clear basis for transferring large areas of waters within these limits to the Philippines.4 Consequently, the Filipinos identified two additional legal instruments to support their claims: the Tydings-McDuffie Act of 1934 and the Fisheries Act of 1932, despite differences in their wording. The fisheries law enacted in 1932 declared, in its Article II ("Definitions"), that "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" (Severino, 2011). The Philippines asserts that both laws were recognised by the United States and that its exercise of sovereignty over the specified sea areas has not been challenged by any country. The second step involved determining the boundary between the internal waters and the territorial sea. However, there is no clear basis for this in the Philippine Constitution, and the Philippine note submitted to the United Nations on 7 March 1955, contains only a vague statement on the matter.

Third, there was a practical need to negotiate with Japan. At the time, representatives from the Philippines and Japan were engaged in discussions on a treaty concerning trade and navigation in Tokyo. Upon his return from the Geneva Conference, Tolentino met with the Philippine negotiating team in Tokyo. He believed that the adoption of territorial sea law would support and facilitate the efforts of the expert negotiating team (Republic of the Philippines National Assembly, 1983-1984).

Fourth, in 1951, the International Court of Justice, in the *Anglo-Norwegian Fisheries* case, upheld the Norwegian King's Dahir, which

connected 48 baselines linking headlands, islands, and reefs along the outer edge of the Norwegian coastline to form a straight baseline. The court declared that the sea area extending four nautical miles seaward from the baseline constituted Norway's exclusive fishing zone. This decision inspired the Philippines to develop its state practice for establishing a regime of special territorial sea (Lotilla, 1995).

2.2 Legislative Process of Republic Act No. 3046

The issue of establishing a territorial sea baseline ordinance was first raised in the Philippine Senate on 3 May 1960, when Senator Tolentino introduced Senate Bill No. 541, "An Ordinance Establishing the Baseline of the Territorial Sea of the Philippines", which was first read and passed on 4 May 1960, and referred to the Committee on Foreign Affairs the same day. On 6 May 1960, the Committee on Foreign Affairs returned the bill to the Senate with Committee Report No. 1264, which concurred with the Tolentino version and recommended its passage without amendment. On 7 May 1960, the Senate passed the bill on its first reading. On 17 May 1960, the Senate approved the bill on second reading with amendments, followed by its passage on third reading the same day. On 18 May 1960, the bill was sent to the House of Representatives for concurrence. On 19 May 1960, the House read the bill first and referred it to the Committee on Transportation and Communications. On the same day, the Committee on Transportation and Communications submitted the Committee Report No. 3072, which recommended passage. Finally, on 5 May 1961, the House unanimously passed the bill on second reading without amendment (House of Representatives, 1964). On 18 May 1961, the House of Representatives passed the bill on third reading without amendment, with 35 votes in favour, 29 against, and 4 abstentions. On the same day, the United States issued Note Verbale No. 836 through its embassy in the Philippines, declaring that the United States Government could not regard claims based on the present legislation as binding upon it or its nationals (The Geographer, 1973). On 17 June 1961, a certified copy of the bill was submitted to the presidential office, and on the same day, President Macapagal approved it as Republic Act No. 3046.

2.3 Main Elements of Republic Act No. 3046

Republic Act No. 3046 establishes the baselines from which the territorial sea of the Philippines is to be measured, using straight lines connecting the appropriate points of the islands on the outer edge of the archipelago. The sea between the baselines and the "treaty limits" is designated the territorial sea, whereas the waters enclosed by the baselines are classified as the internal waters of the Philippines (Lotilla, 1995). The contents of the Act and the Congressional Record highlight four key aspects: reaffirmation of the legal status of the "treaty limits"; establishment of the baselines of the territorial sea, consisting of 80 straight baselines connecting the outermost points of the outermost islands of the Philippine mainland; clarification of the extent and status of internal waters, within which the Philippines exercises exclusive sovereignty; and clarification of the extent and status of the territorial sea, where foreign vessels are granted only the right of innocent passage. This law effectively provides the foundation for establishing the Philippines as an archipelagic state (Chiang, 2016).

According to a report by the United States Department of State, the total length of the 80 straight baselines established by the act, which is based on 82 selected points, is 15,139.910 nautical miles, with an average baseline length of 102.185 nautical miles. The longest baseline, Baseline 26, which connects Moro Bay, measures approximately 140.05 nautical miles, whereas the shortest baseline, Baseline 63, which is located far north, connects Yami Island (west) to Yami Island (centre) and measures approximately 0.1279 nautical miles. Of the 80 baselines, three exceed 100 nautical miles, accounting for approximately 3.75 per cent of the total. The land-to-water ratio within the baselines is 1.841:1. The baselines encompass key waterways, including the Sibutu Passage in the Surigao Strait, the Balabac Strait, the Mindoro Strait, and internal passages between various Philippine islands. Significant bodies of water, such as the Sulu Sea, Moro Bay, Mindanao Sea, and Sibuyan Sea, are also enclosed within the baselines. Notably, the island of Palmas, which belongs to Indonesia, falls within the territorial waters claimed by the Philippines. The area enclosed within the baselines is approximately 2.8 times the size of the original "national territory", whereas the area within the "treaty limits" is approximately six times larger than the original "national territory" (The Geographer, 1973).

2.4 Philippine Congressional Discussions on the Waters West of Palawan and Certain Islands or Reefs of the Spratly Islands during the Legislative Process of Republic Act No. 3046

The Philippine Congressional Record contains four references to the issue of the waters west of Palawan and parts of the Spratly Islands. The first three occurred on 17 May 1960, during the Senate's second reading of Senate Bill No. 541. The fourth reference was made on 18 May 1961, when the House of Representatives conducted its third reading vote.

First, Senator Fernandez raised questions to Senator Tolentino regarding the waters west of Palawan.

Senator Fernandez and Senator Tolentino engaged in a dialogue addressing concerns over the territorial sea west of Palawan. Senator Fernandez highlighted the richness of fish and natural resources in the waters around Palawan and expressed concern over the relatively narrow territorial sea in this area compared with the broader sea boundaries around Luzon. He questioned whether it would be possible to extend the territorial sea west of Palawan to prevent incursions by foreign fishermen. However, Senator Tolentino stated that such an extension would be legally challenging due to the constraints of the Philippine Constitution, which delimits the country's territory. Tolentino emphasised that the "black lines" ("treaty limits") on the map reflect the boundaries outlined in the Constitution and that any expansion would need to conform to these constitutional limits. Fernandez, referencing the concept of "historic waters", suggested that the long-standing presence of Filipino fishermen in the waters west of Palawan could justify an expanded territorial sea. However, Tolentino raised concerns about diplomatic and legal implications, particularly during international conferences. He argued that claims extending beyond the constitutional boundaries would place the Philippine delegation in an "embarrassing position", especially if challenged by other states such as the United States. The conversation also touched upon "Freedom Island", with Fernandez inquiring about its location.[3] Tolentino admitted that he could not identify it on the map and speculated that it might lie outside the Philippine territorial limits, as it was contested by other countries. Fernandez reiterated his concern that without expanding the territorial sea, foreign fishermen could exploit the resources west of Palawan. Tolentino explained that during international conferences, the Philippine delegation supported amendments recognising "preferential rights" for coastal states

to fish beyond their territorial seas. However, these amendments failed to secure the necessary votes for adoption. Fernandez proposed a hypothetical scenario in which future unilateral action might allow the Philippines to expand its territorial sea. He expressed concern that the current baseline law could later be invoked as a form of estoppel by adversely affected countries. In response, Tolentino clarified that future congresses could repeal or amend the law to widen the territorial sea, provided that such actions are aligned with constitutional provisions. He humorously added that the Constitution might even be amended to claim parts of Borneo or Formosa in the future. Finally, Fernandez argued that the act of Filipino fishermen operating in waters beyond "treaty limits" could serve as a basis for territorial expansion. Tolentino disagreed, stating that these fishermen acted as individuals, not representatives of the state. He cautioned against recognising such acts as assertions of sovereignty, noting that it could create a precedent for other nations, such as Japan, to claim seas near Philippine coasts. He emphasised the risks of such an approach, given the Philippines' smaller fishing fleets than Japan's (Lotilla, 1995).

These dialogues indicate that Tolentino did not believe there was justification for extending the Philippines' territorial sea into the fishery-rich waters west of Palawan. He was unaware of the specific location of "Freedom Island" and did not consider the mere acts of possession by fishermen as sufficient grounds to claim ownership over the sea areas where they operated. Furthermore, he argued that the activities of individual Filipino fishermen fishing beyond the "treaty limits" could not represent the intent of the Philippine government, nor could the government use such activities as a basis for asserting possession or sovereignty. Recognising this principle, he warned, would place the Philippines in a disadvantageous position.

Second, Senator Rodrigo questions Senator Tolentino about "Freedom Island".

Senator Rodrigo and Senator Tolentino discussed the implications of the Philippine Constitution for territorial adjustments. Senator Rodrigo sought clarification, emphasising that the Constitution does not prevent the Philippines from adding to or subtracting from its territory without amendment. Senator Tolentino affirmed this, explaining that territory can be ceded or acquired through constitutional processes or methods recognised by international law. Senator Rodrigo used "Freedom Island" as an example,

acknowledging uncertainty about its location relative to the "treaty limits". Tolentino confirmed that it lies outside these limits. Rodrigo then asked if claiming an unoccupied, unclaimed island outside the "treaty limits" would be prohibited by the Constitution. Tolentino responded that claiming such territory by discovery, for instance, would constitute a legal title. He noted that the Constitution does not prevent asserting sovereignty over newly discovered territories outside the "treaty limits", provided that it aligns with international law (Lotilla, 1995).

This dialogue reveals that Tolentino believes that the Philippines' "treaty limits" do not prevent the country from acquiring new territory. However, he asserts that such acquisition would be subject to specific conditions: the territory must be *terra nullius* and must be discovered by individuals authorised by the government. Tolentino's comments were hypothetical, as it is evident that the Spratly Islands were not terra *nullius* at that time and that the activities of Philippine vessels in parts of the Spratly Islands and their surrounding waters had not been officially sanctioned by the government.

Third, Senator Marcos questioned Senator Tolentino.

Senator Marcos and Senator Tolentino discussed the status of islands between the baselines and "treaty limits" marked on the map in detail. Senator Marcos asked about the fate of these islands, to which Senator Tolentino clarified that islands outside the baselines are not considered part of the internal waters but fall within the territorial sea, remaining Philippine territory. Tolentino stated that all major islands are included within the baselines since the baselines are drawn from appropriate points in the outermost islands. Marcos pressed further, questioning whether there were any substantial islands beyond the baselines. Tolentino explained that most features outside the baselines are coral formations, which, if submerged at high tide, do not meet the international definition of islands. Marcos noted reports suggesting that some islands might exist outside the baselines, which had been studied by geographers. Tolentino noted that the baselines were reevaluated in the latter part of the previous year. Marcos then shifted to inquire about the three-mile limit and whether it could extend below the waterline, to which Tolentino agreed. Marcos highlighted the controversy surrounding "Freedom Island" and noted the absence of islands west of Palawan within the baselines. Tolentino explained that these features are primarily shoals and not islands in the true sense. Marcos then posed a hypothetical question about the possibility of claiming that islands that

might be discovered, formed, or otherwise appear outside the baselines but within the territorial limits. Tolentino noted that such claims would not be possible under the current framework. He emphasised that the primary function of baselines for an archipelago such as the Philippines is to define the boundary between territorial waters and the territorial sea. Regardless of whether features fall within territorial waters or the territorial sea, they remain part of the Philippine territory as long as they are within the "treaty limits" (Lotilla, 1995).

In this dialogue, Senator Marcos referred to "Freedom Island" west of Palawan, but his use of the singular form suggested that he was unaware of the full extent of Cloma's so-called "Freedom Island". He did not indicate that the Philippine government had a territorial claim to "Freedom Island". According to Tolentino's interpretation, the Philippines could have potentially acquired it on the basis of principles recognised by international law. However, if Tolentino's perspective is followed, the coral islands in the Spratly Islands cannot be considered true islands. It seems likely that Tolentino does not view some of the Spratly Islands west of Palawan as subject to Philippine territorial acquisition.

Fourth, on the third reading, Representative Ligot (R-IL) voted against the passage of the bill.

Mr. Ligot expressed strong opposition to the bill, labelling it an act of treason for unilaterally limiting the country's territorial jurisdiction. He criticised the bill as "stupidity" for curtailing the Philippines' rights of conquest, discovery, and territorial claims, specifically referencing North Borneo and "Freedom Island" discovered by Commander Cloma. Ligot firmly stated, "I vote a thousand times No on this bill" (House of Representatives, 1964). Ligot noted Cloma's territorial claim of "Freedom Island", but his use of the singular suggests that he was unaware of the full details. He expressed concern that the passage of the bill could negatively affect future Philippine claims to Sabah and certain islands in the South China Sea. However, his opposition was brief and was not shared by the majority of lawmakers. His opposition was short-lived and was not followed by the other legislators.

2.5 Comments

Tolentino's proposal for an act on the baselines of the territorial sea was significantly influenced by his experience at the Second United Nations

Conference on the Law of the Sea. Although the conference failed to reach an agreement on the exact breadth of the territorial sea, there was a noticeable trend within the international community towards establishing a uniform width for territorial seas. Regardless of the breadth ultimately adopted, it is unlikely to fully satisfy the Philippines. Therefore, the Philippines needs to clarify its territorial sea regime before a universally accepted territorial sea breadth can be established. Tolentino addressed this challenge by proposing the adoption of a straight baseline approach, drawing on the precedent set by the *Anglo–Norwegian Fisheries* case. From both theoretical and practical perspectives, Tolentino also considered the potential adverse effects that the territorial sea baseline law might have on Sabah, which lies outside the baselines. The final conclusion was that no such adverse effects exist, as the Constitution does not restrict the Philippines from acquiring new territory on the basis of internationally recognised principles of international law. Furthermore, the current Republic Act No. 3046, which aimed to establish state practices for the territorial sea claims of archipelagic states, would have long-term implications for the Philippines without hindering its future ability to define the baselines of other territories. The only practical concern, however, was to avoid antagonising the Malaysian government.

While Republic Act No. 3046 reaffirms the three international treaties that define the territorial limits of the Philippines and establishes territorial sea baselines for the mainland, it does not preclude the Philippines from asserting new or reaffirming existing territorial claims. However, on the basis of the four congressional references concerning the west waters of Palawan, even key figures such as Tolentino and Marcos (who later became President of the Philippines) were unaware of the exact location of "Freedom Island". According to Tolentino, claims to new territories beyond the "treaty limits" were contingent on the principles of *terra nullius* and discovery by government-authorised persons. He further argued that at the time, the Philippines lacked the capacity for distant-water fishing, and thus, even if individual fishermen ventured beyond the "treaty limits", their actions could not be considered representative of the Philippine government's intentions. In Tolentino's view, the Philippines could not claim ownership on the basis solely of the fishing activities of private individuals. If this principle was acknowledged, it could imply that Japanese fishing vessels would be legally allowed to operate within the Philippines' "treaty limits". Tolentino's

statements suggest that, at that time, he did not recognise "Freedom Island", as claimed by Cloma, as Philippine territory. Given his knowledge and position, it is unlikely that he would have made such a statement if he had regarded it as part of the Philippines. It is also evident that Republic Act No. 3046 was not intended as a legislative exercise concerning the "Kalayaan Islands" or Scarborough Shoal. Neither the Act nor its accompanying tables identify the "Kalayaan Islands" or the Scarborough Shoal as Philippine territorial sea basepoints.

3. Evaluation of the Philippine Territorial Sea Law of 1968: Republic Act No. 5446

3.1 Legislative Background

Senate Bill No. 954, filed by Tolentino on 18 July 1968, served as the basis for Republic Act No. 5446. Tolentino's primary motivation for introducing the bill was to address errors in the names and technical descriptions of several baselines in Republic Act No. 3046, emphasising that these corrections "would in no way alter the baselines of the territorial sea of the Philippines" (Senate of the Philippines, 1968). Additionally, the bill was filed in response to a request from the Secretary-General of the United Nations for the Philippines to submit a copy of the baseline descriptions of its territorial sea, accompanied by a map illustrating those baselines (Senate of the Philippines, 1968).

3.2 Legislative Process of Philippine Law 5446

On 19 July 1968, Senate Bill No. 954 passed its first reading in the Senate and was referred to the Committee on Foreign Relations for consideration. On 22 July 1968, the Committee on Foreign Relations filed Report No. 1788, which recommended the immediate passage of the bill. On 24 July 1968, the Senate began deliberating on the bill during its second reading, which was passed with amendments on 5 August 1968. The Senate unanimously passed the bill on third reading on 8 August 1968, and it was sent to the House of Representatives for concurrence on the next day. The House passed the bill on first reading on August 9, referring it to the Committee on Foreign Affairs. On August 22, the Committee on Foreign Affairs filed Report No. 4013, which recommended that Senate Bill No. 954 be considered after being consolidated with House Bill Nos. 17834 and 17936. On August 26,

the bill was read a second time and passed with amendments on the third reading. It was returned to the Senate on August 27 and referred to the Rules and Foreign Relations Committees on August 28. On August 28, the House signalled its willingness to accept the Senate's request for a joint committee if the Senate disagreed with the House amendments. The Senate responded by rejecting the amendments and requesting the formation of a joint committee. The joint committee issued a report on the same day, indicating that both chambers had reached an agreement. The House and Senate subsequently approved the report and the final version of the bill, incorporating changes from the joint committee. On 12 September 1968, the finalised bill was sent to the presidential office and was signed into law by the president on 18 September 1968, becoming Republic Act No. 5446.

3.3 Key Elements of the Republic Act No. 5446

Republic Act No. 5446 amended Section 1 of Republic Act No. 3046 to address typographical errors, primarily errors in the measurement of baseline lengths. Additionally, the act directly reaffirmed the Philippines' territorial sovereignty over Sabah in northern Borneo, reflecting a response to nationalist pressures (Lotilla, 1995). Republic Act No. 5446 establishes a total of 80 straight baselines, although the serial numbers of the baselines identified only reach 64, with some baselines listed using numbers followed by "a" and "b". The total baseline length is approximately 15,140 kilometres (approximately 8,175 nautical miles), with three baselines exceeding 100 nautical miles, accounting for approximately 3.75 per cent of the total. The longest baseline is approximately 259.4 kilometres (140 nautical miles), whereas the shortest baseline is approximately 0.178 kilometres. The average baseline length is 64 kilometres (35 nautical miles), enclosing an area of approximately 884,000 square kilometres with a land-to-water ratio of approximately 1.9:1. It has been argued that the ratio of land to water in the baseline had a decisive influence on the relevant provisions of the 1982 Convention that were to follow, since this land–water ratio allowed the Convention to set the land–water ratio at a level between 9:1 and 1:1 (Chiang, 2016).

3.4 Discussions in the Philippine Congress on the Legal Status of the Maritime Features in the Spratly Islands During the Legislative Process of Republic Act No. 5446

Senator Pelaez and Senator Tolentino addressed the scope of the Philippines' maritime claims and their implications for security and resource exploration.

Senator Pelaez raised the issue of whether the Philippines' territorial sea definition would preclude the country from asserting mineral rights beyond inland waters, referencing claims made by other nations such as Venezuela and New Zealand to resources located far beyond their territorial boundaries. Senator Tolentino explained that the Philippines, as an archipelagic state, follows a unique system of baselines. Unlike continental states, which base their territorial sea claims on fixed distances (e.g., 3, 6, 12, or 24 miles), the Philippines connects the outermost points of its islands with baselines, designating all waters within as inland waters akin to rivers and lakes. The waters beyond these baselines but within the "treaty limits" defined in the Constitution are considered territorial seas. He clarified that this approach allows the Philippines to claim significant areas of maritime territory, including distances of up to 100 miles on the South China Sea side of Luzon and 200 miles on the Pacific Ocean side, reflecting a special rule for archipelagos. Senator Pelaez, however, expressed concerns about the implications of this definition for the Philippines' ability to assert rights beyond these limits, particularly in sea areas such as the continental shelf. He cited examples of Venezuela and New Zealand exercising rights to resources far beyond their territorial seas and sought confirmation that the Philippines' baseline delineation would not preclude similar claims or actions. Senator Tolentino affirmed that the delineation of archipelagic baselines would not affect the Philippines' right to explore or claim resources on the continental shelf, which extends far beyond territorial boundaries. Senator Pelaez also voiced specific security concerns about the large area west of Palawan, noting that it is not a navigable sea but could be strategically significant if it was controlled by hostile power. He stressed the importance of ensuring that the definition of baselines and inland territorial waters does not prevent the Republic from taking measures to secure this sea area or from exercising rights over marine resources in these waters. Senator Tolentino assured him that the delineation of baselines would not hinder the Philippines from asserting its rights for security or resource exploration beyond its territorial waters (Senate of the Philippines, 1968).

From this discussion, it is evident that the senators were aware of the islands west of Palawan and expressed concerns that control of this sea area by hostile countries could threaten Philippine security. The issuance of mineral resource licences was seen as a means of safeguarding the security of the western Philippines. Tolentino, however, was merely reiterating the general provisions of the recently issued Proclamation No. 370, and it appears that even he lacked a clear understanding of the exact extent of the Philippine continental shelf. No senator has raised the issue of territorial claims over any islands or reefs in the Spratly Islands, let alone territorial claims to Scarborough Shoal. This indicates that, at most, legislators were concerned about security issues but did not consider some of the islands and reefs in the Spratly Islands to be part of the Philippine territory. It also highlights that the 1956 "Freedom Island" territorial request made by Filipino Cloma had not yet been recognised by these legislators, who still did not consider the islands and reefs scattered across the sea west of Palawan to be part of the Philippine territory. Otherwise, given the strong reactions of legislators regarding the Sabah issue, a territorial sovereignty claim over these islands would likely have been frequently raised during discussions or included in Republic Act No. 5446. However, no such records can be found in congressional debates.

3.5 Comments

Senate Bill No. 954, initially introduced by Tolentino, aimed primarily at clarifying the archipelagic status of the Philippines and the special regime of its territorial sea, specifically to correct typographical errors in the names, coordinates, and lengths of several baselines established under Republic Act No. 3046. To avoid objections from other states, it was decided to connect only the outermost points of the Philippines' outermost islands with straight baselines extending from the mainland, designating the waters within these baselines as internal waters and the sea areas up to the "treaty limits" as the territorial sea. However, three of the 80 straight baselines in the proposed amendment exceeded 100 nautical miles, which did not meet the 3 percent criterion outlined in the 1982 United Nations Convention on the Law of the Sea, leading to a revision of the act in 2009. For other areas over which the Philippines asserts sovereignty—such as Sabah and areas it may acquire in the future—Tolentino maintained that none of these claims were affected

by the current territorial sea baseline law. Tolentino's decision to submit the bill solely aimed at correcting typographical errors, without diminishing the country's territorial claims, was a strategic move designed to ensure international recognition of the Philippines' archipelagic state status. This approach was made with the long-term interests of the Philippines in mind.

The Philippines has never denied that the "Kalayaan Islands" or Scarborough Shoal lies outside the "treaty limits" established by Republic Act No. 5446. However, like Republic Act No. 3046, Republic Act No. 5446 represents a state practice aimed at advancing the Philippines' territorial sea claims or its status as an archipelagic state, without addressing territorial claims beyond the "treaty limits". During the legislative process for both laws, the relationship between the "treaty limits" and territorial acquisition was extensively debated in Congress and received broad support from legislators. Without such support, it would have been impossible for these laws to pass, given the political dynamics in the Philippines. From an international law perspective, Republic Act No. 5446 does not constrain the Philippines from making new territorial claims. However, owing to its general applicability, it also does not support the Philippines' territorial claim to the "Kalayaan Island Group" or Scarborough Shoal. Congressional records of the discussions surrounding Republic Act No. 5446 reveal that, at the time, Cloma's territorial claim to "Freedom Island" had not been recognised by Congress. While unrelated to the South China Sea disputes, the Sabah issue provides a "mirror". The impassioned speeches delivered by members of the House and Senate on the issue of Sabah left a striking impression. If Cloma's "Freedom Island" claim had been considered Philippine territory, the legislators would not have remained silent. This stands in stark contrast to the legislative process surrounding Republic Act No. 9522 in 2009. Thus, while Republic Act No. 5446 does not restrict the Philippines from asserting new territorial claims, the silence of nearly all legislators on the issue of sovereignty over the Spratly Islands or Scarborough Shoal, compared with their fierce reactions over Sabah, suggests that the majority of Filipinos at the time did not regard "Freedom Island" as Philippine territory. At this stage, the primary driver of Philippine interest in the South China Sea was security concerns, with oil and gas resources only beginning to enter the nation's strategic considerations.

4. International Jurisprudence on Territorial Sea Laws in Territorial Disputes

The 1961 and 1968 Philippine territorial sea laws do not constitute recognition of China's territorial sovereignty in the South China Sea. However, they do provide some support for China's claims. This conclusion is based not only on the facts mentioned above but also on international jurisprudence.

In the Pulau Ligitan and Pulau Sipadan Sovereignty Case between Indonesia and Malaysia, which was decided by the International Court of Justice (ICJ) in 2002, Indonesia referred to its Indonesian Territorial Sea Law of 18 February 1960, which defined the country's territorial sea. This law established baselines for Indonesia's territorial waters but did not include Ligitan and Sipadan as baselines for the purpose of defining the extent of Indonesia's archipelagic waters and territorial sea. Indonesia argued that this omission should not be interpreted as a denial of the islands' inclusion in its territory. The 1960 law, which was introduced promptly, was intended to set a precedent on the concept of archipelagic state waters ahead of the Second United Nations Conference on the Law of the Sea. In contrast, Malaysia noted that Indonesia had shown no interest in the islands of Ligitan and Sipadan during the first 25 years of independence, nor had Indonesia enacted any laws or regulations concerning the disputed islands and their adjacent waters. Malaysia further emphasised that Indonesia's 1960 legislation included a map defining its waters and listing specific datums, but the two disputed islands were not included in the baselines of the territorial sea. This omission in both the legislation and the map suggested that Indonesia did not consider Ligitan and Sipadan as part of its territory at the time. The ICJ concluded that Indonesia's 1960 legislation and the accompanying map did not reflect any legislative action regarding the disputed islands and that the omission of Ligitan and Sipadan from the baselines of Indonesia's territorial sea did not constitute a formal recognition of Malaysia's sovereignty over the islands. However, the Court acknowledged that the omission provided some support for Malaysia's claim, even though it was not a conclusive or direct recognition of Malaysian sovereignty (ICJ, 2002).

Although the Philippines does not base its claim to territorial sovereignty over "Kalayaan Island Group" or Scarborough Shoal on Republic Act No. 3046 and 5446, it is highly likely to follow Indonesia's example by asserting that this approach should not be interpreted as the

Philippines not regarding these islands as part of its territory; the swift enactment of the 1961 law was primarily aimed at setting a precedent for the concept of archipelagic waters before the Second United Nations Conference on the Law of the Sea. The 1961 and 1968 Philippine legislations included tables that defined the country's waters by listing basepoints, but they did not designate "Kalayaan Island Group" or Scarborough Shoal as basepoints of the territorial sea. China could argue that this legislation and its accompanying tables indicate that the Philippines did not regard "Kalayaan Island Group" or Scarborough Shoal as part of its territory at the time. The two legislations delineating the baselines of its archipelago do not constitute a legislative activity specifically targeting the "Kalayaan Island Group" or the Scarborough Shoal. Neither the legislation nor its accompanying tables designated these islands as base points of the Philippines' territorial sea. While this does not amount to recognition of China's sovereignty, it does provide some degree of support for China's claims.

In March 2009, the Philippines enacted Republic Act No. 9522, which was harmonised with the UNCLOS and declared that the "island regime" applies to "Kalayaan Island Group" or Scarborough Shoal, over which "the Philippines has sovereignty and jurisdiction". However, this law does little to demonstrate that the territorial disputes over "Kalayaan Island Group" or Scarborough Shoal were not crystallised prior to 2009. Although the law is a continuation of Republic Act No. 5446, it is clearly inconsistent with the earlier act in terms of the territorial scope of its application. The Philippines has also relied on Republic Act No. 9522 to increase its legal status with respect to the "Kalayaan Island Group" or the Scarborough Shoal. Therefore, according to the "critical date" doctrine, the value of the 2009 Philippine legislation in determining sovereignty over the "Kalayaan Island Group" or Scarborough Shoal should be disregarded.[4]

5. Conclusion

This study examines the legislative development of the Philippines' territorial sea claims after its independence in 1946, focusing on Republic Acts No. 3046 and No. 5446 enacted in the 1960s, which defined the territorial scope of the Philippines and established the baselines of its territorial sea without mentioning the Spratly Islands or Scarborough Shoal. The acts reflect the historical reality that these islands were not considered part of the Philippine territory at the time, with Philippine congressional

records and international jurisprudence supporting this inference. The Philippines' occupation of parts of the Spratly Islands and Scarborough Shoal after the 1970s was new and untenable. The Philippines has remained silent on this issue because engaging in a thorough discussion undermines its position and hinders its efforts to use the South China Sea arbitration ruling, which avoids addressing territorial sovereignty, for international propaganda. The recent enactment of the 2024 Philippine Maritime Zones Act, aimed at aligning domestic legislation with UNCLOS, represents an effort to expand maritime claims, including in the South China Sea. Such measures are intended to obscure the fragility and illegality of the Philippines' territorial claims in the South China Sea, divert the attention of the international community, and mislead its perception. Rather than unilaterally enacting legislation, the Philippines should acknowledge historical facts and pursue constructive dialogue to resolve disputes. The resolution of the South China Sea issue depends on adherence to bilateral agreements, regional cooperation, and the avoidance of actions that escalate tensions, thereby promoting stability and mutual benefit for all parties.

Notes

[1] Throughout the rest of the text, the name Spratly Islands or Scarborough Shoal is used unless otherwise stated.

[2] The "treaty limits" of the Philippines refer to the boundaries established during its colonial period under the Treaty of Paris (1898), the Treaty of Washington (1900), and the Convention between the United States and Great Britain (1930). These treaties defined the geographical extent of the Philippine territory as recognised internationally at the time, encompassing the islands ceded by Spain to the United States. The concept of "treaty limits" has been cited in Philippine legislation to outline its territorial sea and jurisdiction, although its relevance under modern international law remains contested.

[3] The so-called "Freedom Island" was identified by the Philippine national Tomas Cloma in the 1950s as part of his self-declared "Freedomland". In reality, it is part of the Spratly Islands, a group of islands, reefs, and shoals in the South China Sea. The Spratly Islands

have been historically regarded as a unified geographical entity (Valencia, 1997).

[4] In 1928, arbitrator Max Huber first introduced the concept of the critical date in the Palmas Island Sovereignty Arbitration case as follows: "If a dispute arises as to the sovereignty over a portion of territory, it is customary to examine which of the States claiming sovereignty possesses a title—cession conquest, occupation, etc.—superior to that which the other State might possibly bring forward against it. However, if the contestation is based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereign" (Reports of International Arbitral Awards [RIAA], 1928). The critical date plays an important role in distinguishing between two kinds of sovereign acts, one occurring prior to the crystallisation of the dispute, which should be considered by the tribunal in establishing or determining sovereignty over the disputed territory, and the other occurring after that date, which has no significance for the establishment or determination of sovereignty over the disputed territory. There are various methods of determining the critical date, but "generally, the critical date can be set when the dispute arises or crystalizes between the parties. This may occur where one state asserts that it has gained title by prescription against another with an original but lapsed title or, as is more likely, where the original sovereign protests" (Triggs, 2010).

Reference List

Austin G. (1998), "China's Equal Rights in the Spratly Islands", in Austin G., *China's Ocean Frontier: International Law, Military Force and National Development*, Australia: Allen and Unwin, pp. 131-161.

Batongbacal J. L. (1997), "The Philippines' Right to Designate Sea Lanes in Its Archipelagic Waters under International Law", *The Ocean Law and Policy Series*, Vol. 1, No. 1, p. 82.

Evensen J. (1957), "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Archipelagos", Document No. A/CONF.13/18, Extract from the Official Records of the United Nations Conference on the Law of the Sea, Vol. 1 (Preparatory Documents).

House of Representatives (1964), Congressional Record, 4th Congress (1958-1961), *Proceedings and Debates, 4th Regular Session, Jan. 23, 1961—May. 18*, 1961, Vol. IV-Part II, Apr. 11—May. 18, Capitol Publishing House, Inc, p. 2646.

Huang-chih, C. (2016), "An Analysis of the Archipelagic Regime of the Philippines: From an International Law Perspective", *Taiwan International Studies Quarterly*, No. 4, p. 19.

Lotilla, R. P. M. (1995), *The Philippine National Territory: A Collection of Related Documents*, Institute of International Legal Studies, University of the Philippines Law Center.

Official Gazette of the Republic of the Philippines (1971), Vol. 67:29, pp. 5673-5674.

Proelß A. (2017), *United Nations Convention on the Law of the Sea: A Commentary*, C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden, pp. 37-38.

Republic of the Philippines National Assembly [*Batasang Pambansa*] (1983-1984), *Record of the National Assembly* [*Batasan*], *First Batasan Sixth Regular Session*, Vol. 4, p. 707.

Republic of the Philippines (2009), "Republic Act No. 9522, An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baseline of the Philippines and for Other Purposes", *Philippine Laws and Jurisprudence Databank*, http://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html.

Reports of International Arbitral Awards (1928), "Island of Palmas Case (Netherlands/United States of America)", *Reports of International Arbitral Awards*, Vol. 2, pp. 829-871.

Senate of the Philippines (1968), *Congressional Record*, p. 355.

Severino, R. (2011), *Where in the World is the Philippines? Debating Its National Territory*, Institute of Southeast Asian Studies, p. 22.

State Council News Office of the People's Republic of China (2016), "China Adheres to the Position of Settling Through Negotiation the Relevant Disputes Between China and the Philippines in the South

China Sea", https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/201607/t20160713_8527301.htm.

The Geographer (1973), *Straight Baselines: Philippines, Limits in the Sea*, No. 33, p. 9.

The Permanent Delegation of the Philippines to the United Nations (1955), "Note Verbale from the Permanent Delegation of the Philippines to the United Nations", Document A/CN.4/94, 2. In: UN, *Yearbook of the International Law Commission* (pp. 52–53). New York: UN.

The Permanent Delegation of the Philippines to the United Nations (1956), Document A/CN.4/99, A/CN.4/SER.A/1956/Add. 1, 2. In: UN, *Yearbook of the International Law Commission* (pp. 69–70). New York: UN.

Triggs, G. D. (2010), *International Law: Contemporary Principles and Practices*, Chatswood, N.S.W.: Lexis Nexis Butterworths.

United States Embassy (1961), *Note No. 836 of May 18, Declaring Inter Alia "...the United States Government Could Not Regard Claims Based on the Present Legislation as Binding Upon It or Its Nationals.*"

United Nations Treaty Series (1964), "No. 7477. Convention1 on the Territorial Sea and The Contiguous Zone. Done at Geneva, on 29 April 1958", *United Nations — Treaty Series*, https://treaties.un.org/doc/Publication/UNTS/Volume%20516/volume-516-I-7477-English.pdf.

Valencia, M. J., Van Dyke, J. M., and Ludwig, N. A (1997), *Sharing the Resources of the South China Sea*, Martinus Nijhoff Publishers.

Zhong, S (2012), "China has a Strong Legal Basis for Sovereignty over Huangyan Island", *People's Daily*, May 9, p. 3.

Zou, K. Y. (1999), "Scarborough Reef: A New Flashpoint in Sino-Philippine Relations?", *IBRU Boundary & Security Bulletin*, Vol. 7, No. 2, p. 71.