

# Ocean frontier expansion and the Kalayaan Islands Group claim: Philippines' postwar pragmatism in the South China Sea

Ulises Granados

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*Faculty of Arts and Sciences, University of Tokyo, Komaba  
3-8-1, Building 18, 809 Tokyo, Japan  
Email: ugqxiaohu@yahoo.com; granados@ask.c.u-tokyo.ac.jp*

## Abstract

In 1946, the Philippines raised claims in the South China Sea over an area already known as Spratly Islands. This claim advanced through peculiar stages, starting when Thomas Cloma allegedly discovered islands in 1946, later named as Freedomland, and maturing to some extent in 1978 by the government's claim over the so-called Kalayaan Island Group. Considered as an oceanic expansion of its frontiers, this paper reviews the basis of the claim, first over the nature of Cloma's activities, and secondly over the measures the Philippine government took as a reaction of Cloma's claim of discovery of an area already known in western cartography as the Spratlys. Eventually, what is the nature of the link between the 1978 Kalayaan Islands Group's official claim and 1956 Cloma's private one?

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## 1 Introduction

The South China Sea, a semi-enclosed sea covering an area of around 3.5 million km<sup>2</sup>, remains a hot spot of legal disputes among China (PRC), Taiwan (ROC), Vietnam, Brunei, Malaysia, and the Philippines, neighboring actors claiming maritime space as well as islands, reefs, cays, atolls, and barren rocks. Fortunately, several high-level meetings have produced agreements on regional cooperation, while concrete measures to privilege non-sovereignty issues at the regional agenda have been recently agreed. The most recent were as follows: a declaration signed by ASEAN members and PRC on 4 November 2002, by which the countries involved adopted the Declaration on the Conduct of Parties in the South China Sea to promote a stable maritime area and to enhance conditions for a peaceful resolution of sovereignty disputes while agreeing to cooperate in several fields.<sup>1</sup> The other was a three-year tripartite agreement reached on 14 March 2005 among state oil companies from PRC, the Philippines, and Vietnam for the Joint Marine Seismic Undertaking (JMSU) in the South China Sea, in order to identify oil and natural gas deposits for possible future development.<sup>2</sup> Yet currently, none of the involved parties in this dispute has yielded any of its own sovereign claims over sectors of this sea or even tried to negotiate boundary limits. Meanwhile, fishermen from several countries are frequently arrested by naval forces of other states when incursions into claimed waters are detected.

In fact, what has been maintained by the parties is a *status quo* through pragmatic decisions. Here pragmatism is used first in a broad sense as a school of philosophy that privileges values, meanings, and truths that have practical benefits and that can shift or change in response to different concrete experiences. From the pragmatist theory emerges the maxim that knowledge is always embedded in a practical context ‘that in large part determines their relevant standards of justification and conditions of success’ (Bonham, 2002, p. 499). Following John Dewey’s line of thought, any idea can be judged by its consequences

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1 ASEAN Secretariat website at <http://www.aseansec.org/13163.htm>.

2 *Renmin Ribao* (People’s Daily) at [http://english.people.com.cn/200503/15/eng20050315\\_176845.htm](http://english.people.com.cn/200503/15/eng20050315_176845.htm). This US \$15 million JMSU in the South China Sea was signed by the Philippine National Oil Co. (PNOC), China National Offshore Oil Corp. (CNOOC) and Vietnam Oil and Gas Corp. (PetroVietnam.)

(Idem); in this particular imbroglio, regional stability has *justified* for the last two decades shelving the dispute among claimants, successfully avoiding a major naval clash through practical decisions and agreements in the region (Owen, 2002, p. 664).<sup>3</sup> Moreover, pragmatism is, here, also used in trying to approach, through history, a particular, immediate current problem. John Dewey and Jonathan Isacoff note that, in Political Science, ‘reinterpretations of the past are brought about by the need and desire to contend with the practical problem of the present’ (Isacoff, 2006, p. 20).

Among the several core issues discussed during the last decades over this conflict is the question of what insular features do in fact integrate the South China Sea archipelagoes, assuming, of course, that such insular features can be grouped together into identifiable clusters at all. Even though the exact delimitation and number of features may vary according to a particular documentary source, in most cartographical charts and maps the South China islands are divided into four groups: the Paracel Islands, the Pratas Island and Reefs, the Macclesfield Bank, and the Spratly Islands. The last group, the subject of this article, is claimed in totality by PRC, ROC, and Vietnam, while some islands are claimed by Malaysia, a water sector is also claimed by Brunei, and most of the area is claimed by the Philippines.<sup>4</sup> Having reviewed some other claimants’ arguments in different fora (Granados, 2005, 2006a), the author rather limits this research to the origin of Manila’s official claim, and more prominently, to the analysis of its pragmatic approach to the issue. From the perspective of all parties involved, it is clear

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3 David Owen underlines that ‘pragmatism directs us to a consideration of IR (International Relations) as a form of *practical* (-italics mine) philosophy oriented to the topic of the government’ of the common affairs of the international community.

4 Besides the Philippines, territory is disputed roughly as follows: the PRC and the ROC claim all insular features of the South China Sea on historical grounds as belonging to four groups: the Pratas Island and Reefs (Dongsha Qundao), the Macclesfield Bank (Zhongsha Qundao), the Paracel Islands (Xisha Qundao), and the Spratly Islands (Nansha Qundao.) Vietnam claims in its entirety the Paracels (Hoang Sa) and the Spratlys (Truong Sa) as its own, also on historical grounds. Malaysia claims some islands from the southern sector of the Spratly group, while Brunei has claimed from the Spratlys maritime space, covering Louisa Reef, as belonging to her continental platform (according to some sources, Rifleman Bank, including Bombay Castle, as well as Owen Shoal, might also be considered as part of Brunei’s claim, although no official information is available). Currently, a Philippine claim over Scarborough Shoal is considered by the PRC and the ROC as belonging rather to the Macclesfield Bank and not to the Spratlys. For the Brunei claim, see Dzurek (1996, p. 48).

that pragmatism has permeated the contemporary state practice and historiography of the conflict, and the Philippines is by no means the exception to the rule.

After 48 years under the US colonial rule, the new independent Philippine nation became abruptly involved as an active participant in the conflict over the Spratlys group at the end of the Pacific War. Since the mid-1920s, the official stance of the United States on the Spratlys conflict was characterized by a low profile, non-recognition of other parties' own claims, even though it paid close attention to Japan's interests. Washington was well aware of the colonial exploitation engaged in by Japanese nationals over the vast ocean area called Shinnan Gunto – New South Archipelago, namely the Spratly Islands in western sources (*Tuansha Qundao* in Chinese). Accordingly, by the mid-1930s, the US government seemed to have ordered its colonial authorities in the Philippines to prepare a naval circuit to the Spratlys. Inquiries had also been ordered since the mid-1920s over the possibility of claiming some islands north of Borneo as part of the Philippine territory.<sup>5</sup> However, it is known that during the colonial period in the Philippines, Washington never raised any official claim over the area.

But by the end of the war, conditions in the region quickly changed. Between 1946 and 1956, the nascent Philippine claim over those islands advanced through peculiar stages; the islands fully came to the attention of the Philippine government because first claims were raised, and activities were initiated, at the initiative of a Philippine national.

I am rather inclined to consider the overall Philippine approach since then as a pragmatic one, because its assertion of sovereignty over the area and its defense of interests (both economical and political), either by a private national or by the government, have not been seen as entirely and coherently dependent on objective, already given norms which are universally accepted (such as those principles of acquiring and recognizing sovereignty title over territory as it has been developed within the doctrine of modern International Public Law), but instead as contingent acts of creative problem-solving, which nonetheless have been self-legitimized since the 1960s and 1970s through state practice, interpretation of domestic law, and contemporary rules of International Maritime Law. This, as already mentioned, is not exclusive to the

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5 As mentioned in the *Manila Times*, 4 October 1926. See Gaimusho File 1, pp. 135–136.

Philippine side, for all involved actors in the conflict have devised their own pragmatic attitudes and problem-solution approaches at different times.

In the Philippine claim over the area that is geographically almost identical to the entire Spratlys group, Manila's official stance has been intrinsically intertwined with a private claim proclaimed in 1956 by the Philippine national, Tomas Cloma, over an area he called Kalayaan (Freedomland in Tagalog). Currently, when refuting other states' claims, the Philippine government and academics analyzing the issue usually mention the Presidential Decree 1596. In this document, dated 11 June 1978, namely 22 years after the first private claim by Cloma was made public, the government decreed sovereignty rights over the so-called Kalayaan Island Group – KIG, using the same name Cloma gave to the area (Baviera, 1992, p. 55).<sup>6</sup> Geographically, the area in fact coincides with most of the Spratlys archipelago, and yet the official Philippine position maintains that the Spratly Islands are a different geographical entity. That is, as it is the opinion of several Philippine and non-Philippine authors (Villacorta, 1991, pp. 207–215; Fernandez, 1992, pp. 19–24; Valero, 1993, pp. 65–66; Johnson, 1994, pp. 39–59), the current claim is not over the Spratly Islands, but rather over another insular group, namely the KIG.

This intent to expand the Philippine maritime frontier in the South China Sea has been criticized by neighboring claimant countries as baseless in both historical and legal grounds. Regardless of the validity of claims ascertained by other involved parties, I will develop the argument that this intended Philippine oceanic expansion can be viewed as a result of a pragmatic approach that first profited from a power vacuum in the region during the 1950s. Later, such an approach strengthened within the realm of national interest under the premise of finding huge deposits of oil and natural gas since such prospective studies fully began in the early 1970s, a potential that became one of the main reasons behind the modification of Article 1 of the 1973 Constitution and Presidential Decree 1596. Since 2005, a real opportunity of finding and developing such resources has finally emerged under the frame of 'regional cooperation'.

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6 In Tagalog language, Kalayaan means 'Freedom', thus Freedomland from the same origin being the islands referred to.

Currently a concrete problem threatens to disrupt a fragile stability and peace hammered out by policymakers and leaders of the region. Having been recognized by the Third United Nations Convention of the Law of the Sea (UNCLOS III) as an Archipelagic State,<sup>7</sup> the Philippines seems now to be moving towards defining new territorial baselines, which would in turn define internal waters, its 12 nautical miles (nm) of Territorial Sea, 12 nm of contiguous zone, and, most importantly, 200 nm of economic exclusive zone (EEZ) and continental shelf. These baselines, if approved, might include the Kalayaan and some other sectors of the Spratlys and the Macclesfield Bank, which in turn may once again disturb the fragile stability fostered among neighbors in the South China Sea.

This paper intends to portray the Philippine claim's basis as depicted in their historical narrative, starting with Tomas Cloma's actions for the period stretching between the years 1946 and 1956, to be followed by a review of how the government dealt with this private claim before and after 1956. Finally, it presents the importance of this historical narrative for the current debate in the Philippines at the current Fourteenth Congress. Some legislators have recently discussed the need to adjust the wording of the Constitution and relevant laws in order to protect self-recognized rights offshore, including those over the Kalayaan group (and Sabah state), in accordance with the archipelagic regime of the International Maritime Law. Here, three questions will be guiding the reader. First, what was the nature of those activities engaged in by Cloma in the area until 1956 when he proclaimed his discovery of Freedomland? Secondly, what measures did the Philippine government take as a reaction to Cloma's claim of the discovery of an area already claimed by some states and known in western cartography (as well as Chinese and Japanese) as the Spratlys group and what were those factors conditioning Manila's own responses? Thirdly, what is the nature of the link between the official Philippine claim over the KIG and Cloma's claim? The historical analysis of the current Philippine position should shed light on this problem among Philippines lawmakers interested in the protection of national interest in the South China Sea, as much as

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7 The concept crystallized during the 1980s but, unfortunately, has further complicated the current conflict and fueled the controversy over another Philippine claim in a sector of the Macclesfield Bank: Scarborough Shoal–Huangyang reef, in Chinese.

among other involved parties in the region that have been heatedly refuting Manila's arguments. A pragmatic approach, too, for the sake of knowledge, is imperative.

## 2 Tomas Cloma's claim of discovery of Freedomland and events in the Spratlys area

The Philippine historiography over the insular claim in the South China Sea began in 1947. Before the Pacific War, Tomas Cloma started to build his own enterprise involving fishery and transportation. Owing to the hostilities, his activities were severely diminished, even though it is known that he still engaged in inter-island shipping and trade through his own Dagohoy Trading firm. In 1947, he invested a sum to set up his Visayan Fish Corporation and, one year later, he opened the Philippine Maritime Institute (Abueva *et al.*, 1999, p. 20).

According to Jose Veloso Abueva, Cloma's men discovered some islands in 1947. Tomas' brother, Filemon Cloma, led a team that advanced far into the region off Palawan Island, reaching what is believed to be a sector of the Spratlys area. According to an interview given by Tomas Cloma in 1996 for a biographical book, he organized several trips to that area after 1947 (Abueva *et al.*, 1999, p. 95). On one major island, it was reported that his men found written and painted signs that remained in semi-destroyed, abandoned Japanese constructions, leading his team to suspect that some islands must have been used as Japanese naval posts. However, according to the testimony, Cloma made inquiries and a documentary search on available data in Manila over the islets, only to ascertain that there seemed to be no records; eventually, he decided to claim a huge area, apparently not charted, as his own discovery. He soon made plans for what he believed to be virgin land (*terra nullius*), in order to exploit its natural resources by setting up a cannery factory. By around 1948, he hoisted the flag of his Philippine Maritime Institute, buried markers (*mohones*) and purportedly occupied some of the islands.<sup>8</sup>

Between 1948 and 1956, there is scarce information on Cloma's activities, but it is known that (between 1948 and 1953) Cloma requested his friend, Philippine senator and later president Carlos P. Garcia, to provide

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8 Idem, p. 36. However, it now remains unclear upon which island Cloma's team hoisted the flag.

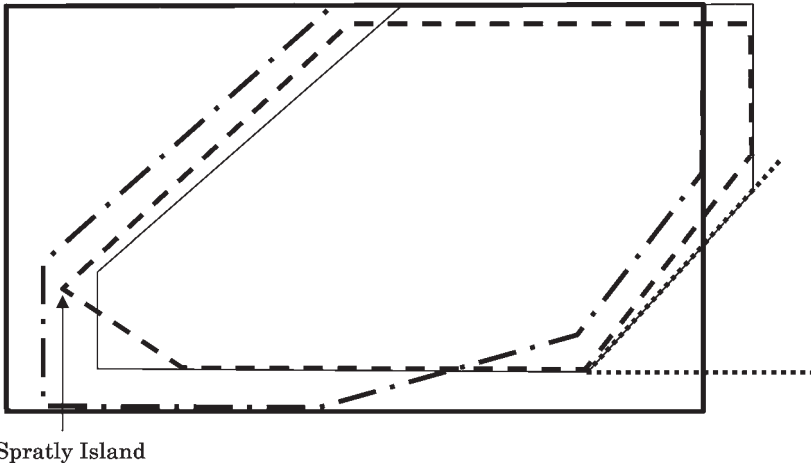
assistance over technical issues regarding the possibility of claiming sovereignty of the uncharted sea and islands (Abueva *et al.*, 1999, p. 36). Finally, in 1956, Cloma publicly issued his own claim over Freedomland. On 11 May, he sent a vessel to the area, landing men on Itu Aba Island, among other places, and hoisting the flag of his Philippine Maritime Institute; during May and June of the same year he instructed that proclamations be posted on several islands, thus claiming ownership over them.<sup>9</sup> On the same 11 May, Cloma claimed rights by discovery and announced the occupation of 33 islands, reefs, and shoals covering an area of almost 65,000 nm<sup>2</sup> (Villacorta, 1991, p. 210; Johnson, 1994, p. 39), and on 15 May and 21 May he informed the then vice-president, Garcia, that Freedomland was located *outside* Philippine territorial waters and that his discovery did not correspond within an area under other state administration (Samuels, 1982, p. 82). In a final gesture, Cloma sent notifications to some foreign embassies in Manila on the new boundary limits (for the geographical limits of Cloma's claim, see Diagram 1).

However, it seems highly probable that Cloma already knew that several years before, in 1946, the ROC navy had sent a recovery mission to reclaim both the Paracels and the Spratlys (claims that predated the Pacific War), and that the Spratlys ROC naval garrison set up there had evacuated to Taiwan later, in 1949, when the communist victory over the mainland became imminent. Cloma's decision to notify several parties in Manila seemed to be an astute move in order to receive international recognition, or at least awareness, for his designs over the area, while trying to preempt action against other governments' claims. On 6 July 1956, he proclaimed himself as Freedomland *Head of State and Chairman of the Supreme Council*, named relatives as members of a Cabinet, and purportedly set up the state capital at Pag-asa Island. Furthermore, he devised his new territory to be administered as a 'protectorate' under a United Nations (UN) and/or Philippine authority, following, he thought, a similar formula to that of the British Commonwealth of Nations (Abueva *et al.*, 1999, p. 45).<sup>10</sup>

9 One notice reads as follows: 'Notice: this Island is Claimed by Atty. Tomas Cloma and Party, Manila, Philippines, and Forms Part of Freedom Land'. A great deal of information is found in *Haijun xunyi nansha haijiang jingguo*, 1975, pp. 121.

10 It is probable that this sovereignty formula was devised by Cloma either as a UN trustee-ship or as a UN-Philippines combined trusteeship-style protectorate.





**Diagram 1** Freedomland in 1956 and 1978: geographical boundaries vs. the Spratly Islands. Thick line indicates Spratly Islands (*Shinnan Gunto*) as recognized by France (13 April 1930) and Japan (17 April 1939) (7–12 N, 111–117E). (*Shinnan gunto ichi oyobi jokyo* (position and situation of the New South Archipelago) Japanese Ministry of Foreign Affairs document dated 17 April 1939, in Urano, 1997, pp. 332–333.) Continuous line with dots indicates Spratly Islands (*Shinnan Gunto*) as recognized by Japan (30 March 1939). (12 N–117E, 9'30 N–117E, 8 N–116E, 7 N–114E, 7 N–111'30E, 9 N–111'30E, 12 N–114E). (I. Letter sent to the US Department of State from the Japanese embassy in Washington dated 31 March 1939, in Gaimusho File 2. p. 239; II. Order No. 31, Governor-General Taiwan dated 31 March 1939 (Urano, 1997, pp. 335–336).) Dotted line shows Philippines southwest boundary limits according to the Treaty of Paris and additional protocol (US–Spain, 1898, 1900). Dashed line illustrates Cloma's Freedomland (1956) (11'50 N–118E, 10'30 N–118E, 7'40 N–116E, 7'40 N–113'7''40E, 8'36 N–111'50E, 11'50 N–114'10E). (Haller-Trost, 1990, p. 90.) Continuous line indicates the KIG. Philippine government (11 June 1978) (12 N–118E, 10 N–118E, 7'40 N–116E, 7'40–112'10E, 9 N–112'10E, 12 N–114'30E) (Baviera, p. 55).

Eventually, it was Cloma's proactive moves that triggered in the same year swift reactions by South Vietnam, the UK, France, the PRC, and the ROC, opening what has been described as a Pandora's box (Samuels, 1982, p. 84).<sup>11</sup> On the same July 6, a vessel from Cloma's Philippine Maritime Institute set course for Itu Aba Island, the biggest formation in the Spratlys, and, after the crew disembarked, they withdrew the ROC flag. Later, Cloma delivered it to the Chinese embassy in Manila. As a

11 Before the Pacific War, France and the UK claimed rights over the whole and part, respectively, of the Spratlys. While France continued to claim rights over the islands in the 1950s, the UK maintained a low profile, not publicly raising its claims over the Spratly Islands and Amboyna Cay. However, as expressed in an Australian enquiry on 24 October 1950, the UK was more concerned that the Spratlys group would not fall into the PRC naval control (FO 371/83022, PRO, as quoted in Lu, 1995, p. 50, footnote 4).

result, the ROC navy was promptly ordered to carry out three circuits to the Spratlys from June to late September, and on 1 October the ROC navy intercepted the training vessel PMI-IV with Cloma's brother, Filemon, and crew on board. Weapons were confiscated, as well as gun powder and ammunition, and Clomás men were 'advised' to sign written declarations promising not to return again (Urano, 1997, pp. 419–422).

Over the span of 10 years, what was the reaction of the Philippine government and to what extent did it oppose Cloma's ambitions? Soon after achieving its independence from the United States, what decisions did the Philippines take over the issue?

### 3 The initial attitude of the Philippine government to the South China Sea islands

The first reference to the Philippines' interest in the area known as the Spratlys seems to date back to 1946, soon after the Japanese defeat by the Allies.<sup>12</sup> Amid the turmoil following the Japanese surrender some months before, the new Republic was founded on 4 July. In the same month, Vice-President and Secretary of Foreign Affairs, Elpidio Quirino, mentioned that the government should incorporate the Spratly Islands within a defense perimeter, as it was essential to its security (Haijun, 1975, p. 16; Tonneson, 2006, p. 21).

However, according to the information purportedly provided to the Philippine government in 1986 by some individuals named decades ago as *ministers* of Freedomland, the first official Philippine claim went back to late 1946. By November, Quirino reportedly sent a note to the Supreme Allied Commander, US General Douglas MacArthur, notifying him of the country's intention to claim sovereignty rights over the Shinnan Gunto (Abueva *et al.*, 1999, p. 47). Later, in January 1947, the Department of Foreign Affairs demanded that this archipelago, as a territory invaded by Japan during the Second World War, should be given to the Philippines (Villacorta, p. 210; Lu, p. 50).<sup>13</sup>

However, these intentions did not advance beyond declaration. For the immediate period following the Pacific War, the Philippine

12 According to Tonneson, Philippine Vice-President Quirino had 'eagerly' tried to convince the US to occupy the Spratlys in 1938. See Tonneson (2006, p. 21).

13 See also Baviera, p. 53, as stated during the Second Workshop on Managing Potential Conflicts in the South China Sea held in Bandung, Indonesia, on 15–18 July 1991.

government had to take into account the international environment, particularly its bilateral relations with France, PRC, and, above all, with the United States, all of them allies during the war. In particular, interests between Washington and Manila lay elsewhere. The most important of these was regional security: the Military Bases Agreement (MBA) and the Military Assistance Agreement (MAA) were signed in 1947. The Philippine intention to be granted islands which were already openly claimed by the ROC and France (and some of them also challenged by the UK before the war) did not compare those needs for stability in the heavily damaged post-war Southeast Asia, an area already confronting communist advance. As the head of the Philippines diplomacy, Quirino was more interested in improving the country's relations with its allies, as proved during his trip to the United States, France, and the UK in 1947 (Lopez, 1990, p. 51).<sup>14</sup> Secondly, it seemed a more demanding task for Manila to focus on national reconstruction and to eventually invoke war reparations from Japan (one of the Philippines' interests in the San Francisco Peace Conference), rather than dispute Nanjing and Paris claims over barren islands in the region.

However, an opportunity seemed to arise amid the civil war in PRC. At the same time that the People's Liberation Army was assuring its total victory in the Chinese mainland by mid-1949, the Philippine government again started to discuss the Spratlys issue. During a cabinet meeting held in April of the same year, it was decided to send Rear Admiral Jose V. Andrade as the head of a naval mission to the Spratlys to disembark in Itu Aba Island (the base of the recently withdrawn Chinese Nationalist naval forces) (Haijun, 1975, p. 16; Lu, 1995, p. 50). This prompted the Chinese consul in Manila, Chen Zhiping, to inform the Philippine government that the Spratlys (then called *Tuansha Qundao* by Nanjing) were Chinese territory; this in turn led the Philippine government to demand its ROC counterpart to show documentary proof of Chinese links with the maritime area (Urano, 1997, p. 396). Later, in May 1950, and coinciding with the communist People's Liberation Army's naval occupation of Hainan island (expelling remnant Nationalist

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14 In London, President Quirino discussed with the British Foreign Office the issue concerning the transfer of administration of the Turtle Islands as provided in a treaty between the UK and the United States in the 1930s. See Lopez (1990, p. 51). For the Turtle Islands dispute, see Santos (1951, pp. 680–688).

forces to Taiwan), the then President Quirino said during a press conference on 17 May that if enemy forces were to occupy the Spratlys, it would mean a threat to the security of his country (Urano, p. 397; Lo, 1989, p. 138; Tonneson, 2006, p. 22).<sup>15</sup>

Whether President Quirino's May comments to the press were indeed the official position of the Philippine government has already been challenged by some specialists. Lu Ning denies that Quirino's words denoted an official claim over the Spratlys, but rather that they merely expressed his opinion over the fear of communist naval forces invading some reefs and islands (forces whose existence in the Spratlys is now even doubted to have ever existed by 1949–1950). What seems to have been meant by Quirino, according to what was reported in a press conference, is that if a friendly country occupied the Spratlys, then the Philippines would not invoke sovereignty claims over the group (Haijun, 1975, p. 17; Lu, 1995, p. 28).<sup>16</sup> Undoubtedly, Quirino's words were quite consonant with the overall concern regarding events which were unfolding in PRC, including the threat to the Philippines' own national security, as clearly referenced in his inaugural address of December 1949 (Fonacier, 1973, p. 80–81).<sup>17</sup>

For the years 1950–51, the Philippines' interest over the group has also been documented through indirect sources. According to French archives, there were rumors that President Quirino even considered buying the islands from the Chiang Kai-shek regime in Taiwan (Tonneson, 2006, p. 22). What is evident is that during this period, at the height of the Korean War, there was no clear policy over the islands implemented at the official level, either unilaterally or at international fora. Nor was it discussed during the 1951 San Francisco Peace

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15 See also *Renmin Ribao*, 20 May 1950. According to Tonneson, Quirino said that in 1946 he even requested assistance from the US State Department in acquiring a foothold on the islands.

16 Quirino reportedly said that 'as long as Nationalist China is holding them (i.e. the Spratlys), there is no necessity for the Philippines to seize control'. See Tonneson, p. 22, and footnote 62. The tone of the Quirino declaration might well be understood also within the current anti-communist environment within national politics and the rise in subversive activities. Hukbalahaps guerrilla activities in the country led the government to put the whole Luzon Island under military control by presidential order on 1 April 1950. Chronology, *Current History* 18, 105 (May 1950), p. 314.

17 During his inaugural address as president, on 30 December 1949, he said: '... In our relations with the Chinese people, with whom we have had such close contacts over many centuries, we shall maintain an open mind giving due heed to the requirements of our national security and the security of Asia as a whole', Fonacier (1973, pp. 80–81).

Conference, which would have been the most obvious international forum at the time. During the peace conference in September 1951, the Philippine Secretary of Foreign Affairs and envoy, Carlos P. Romulo, did not raise the Spratlys issue during his intervention in the sixth plenary session, in clear contrast with prompt declarations issued by the (South) Vietnamese government delegate, and even the Soviet delegate (on behalf of the PRC) (Granados, 2006b). Philippine interests were mainly centered on war reparations from Japan, a Pacific security pact (first loosely devised in 1949 under a so-called Pacific Union) (Lopez, 1990, p. 100) and guarantees from Washington of a non-militaristic Japan in the future (Fiefield, 1952, p. 104). Seven days before the signature of the San Francisco Peace Treaty, the *Agreement between the United States and the Philippines Concerning Mutual Defense*, the so-called Mutual Defense Treaty, was signed on 8 September 1951. Its articles would become the framework for the question of whether, when, and how the US should assist the Philippines in case of an armed attack on its territory, including its island territories (Waseda, 1951, pp. 210–215).

#### **4 The Garcia Declaration and the new Philippine ocean border policy**

A new moment for official action emerged five years later. The following section lists the main steps taken by the Philippine government in regard to its claim over the South China Sea islands between 1956 and 1978. These were steps, problem-solving solutions in the pragmatic sense of the definition, no doubt initially triggered by Cloma's ambitions and actions, but steps that eventually were successfully and fully rationalized within the canvas of national interest and in accordance with the Philippine national law. In particular, since the late-1960s, the Kalayaan policy became increasingly framed within the prospects of finding oil and natural gas in the area. Emerging factors (both internal and external) conditioned the government to become fully involved in the decision-making process that ultimately led to Presidential Decree 1596 of 1978. This was the period during which the private claim became a matter of national interest. This new truth of sovereign rights is what can be

interpreted as the emergence of a new (pragmatic) truth in the political praxis (Cochran, 2002, p. 527).<sup>18</sup>

It is known that when, on 7 July 1956, Tomas Cloma delivered the Chinese Nationalist flag to the ROC embassy in Manila, the Philippine government criticized his actions as threatening the security of the region (Abueva, 1999, p. 41). However, the government viewed with increasing concern the subsequent protests by Taipei, Beijing, Saigon, and Paris (France did not renounce its own claim over the Spratlys, contrary to its yielding of the Paracels claim). Eventually, and as a direct response to the interception of Cloma's ship by the ROC Chinese navy in October of the same year, the Philippine government had to take a side in the escalating regional quarrel over this area. After receiving some notes from Cloma, Foreign Secretary Garcia sent him a formal note in December of the same year. Among the main points of the so-called Garcia Declaration, officially issued on 15 February 1957, were (1) the Philippine government did not claim the area called Freedomland as part of its own territory, yet supported the private activities of Philippine nationals over the area; and (2) the 'terra nullius' area referred to as Freedomland, was indeed different from the 'terra nullius' of the Spratly Islands, a group of 'seven islands' considered by Manila as already under a 'de facto trusteeship of the victorious Allies Powers of the Second World War', and under their control 'as a result of the Japanese Peace Treaty' (Samuels, 1982, pp. 82–83; Urano, 1997, p. 421).

The so-called Cloma incident of 1956 triggered counterclaims, even though in the Philippines the whole issue was given a low profile until 1971. The PRC unilaterally defined its maritime boundaries on 4 September 1958 by announcing her 12 nm of territorial sea and naming the Paracels and Spratlys as islands belonging to its territory. Meanwhile, an ROC naval circuit was ordered some years later (in October 1963) to Itu Aba; during the 1960s, ROC naval teams were also dispatched to several islands of the Spratlys in order to patrol and erect boundary markers.

After the Cloma incident, several legal and political decisions taken by the Philippine government are worthy of analysis, because they allow

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18 Molly Cochran says that '... To establish a truth pragmatically is to settle a controversial or complex issue for the time being, until something comes along to dislodge the comfort and reassurance that has therés been achieved, forcing inquire to begin again'.

us to discern how national and regional factors increasingly led to a more open and proactive approach to the Kalayaan issue, factors that eventually shaped the official position since the early-1970s.

After US President Harry Truman issued the Presidential Proclamation 2667 in 1945 on the continental shelf, many countries started to extend jurisdiction off their coastlines. Fourteen years later, the first United Nations Conference of the Law of the Sea – UNCLOS I – (February to April 1958) was held, resulting in four legal documents, including the Convention on the Territorial Sea and the Contiguous Zone. However, Manila did not sign the final act of the Convention or those documents, in spite of being part of the previous deliberations.<sup>19</sup> Three years before, during the preparatory work at the UN, the Philippines government clearly stated the criteria for defining its own internal waters and territorial sea (according to relevant treaties), as well as its official position over the natural resources beneath the continental shelf.<sup>20</sup> Moreover, the Philippines had been insisting during the process of codification of UNCLOS I on its claim over historic waters surrounding the archipelago (Sucharitkul, n.d., p. 15). Instead, the government proclaimed through the Republic Act 3046 of 17 June 1961, the 81 baselines delimiting the territorial sea, not including yet the Kalayaan area.<sup>21</sup> Later, the Republic Act 3046 was amended by the Republic Act 5446 on 18 September 1968 in order to correct some typographical errors.<sup>22</sup> Six months earlier, in March, President Ferdinand E. Marcos issued Presidential Proclamation 370, declaring the country's jurisdiction over

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19 United Nations Conference on the Law of the Sea, *The American Journal of International Law*, 52, 830–864. UNCLOS I reached the agreement that the sovereign of the State extends to the territorial sea, but could not reach an agreement on the extent of it.

20 See *Nota verbale* dated 7 March 1955 from the permanent delegation of the Philippines to the United Nations, at *Report of the International Law Commission Covering the Work of its Seventh Session. 2 May–8 July 1955, Official Records of the General Assembly, Tenth Session, Supplement No. 9 (A/2934)*; available at: [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_94.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_94.pdf).

21 Republic Act No. 3046 of 17 June 1961. An Act to Define the Baselines of the Territorial Sea of the Philippines. National legislation – DOALOS/OLA – United Nations; available at [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL\\_1961\\_Act.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1961_Act.pdf).

22 Republic Act 3046. An Act to Amend Section One of Republic Act Numbered Thirty Hundred and Forty-Six, entitled 'An Act to Define the Baselines of the Territorial Sea of the Philippines', 18 September 1968. National legislation – DOALOS/OLA – United Nations; available at: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL\\_1968\\_Act.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1968_Act.pdf).

all mineral resources on and in its continental shelf.<sup>23</sup> And yet, during that decade, a parallel debate of the Kalayaan issue, or concrete legislation over the islands, did not occur. It seems that the Vietnam War imposed a low profile in their own public claims, not only for the Philippines, but also for China (PRC and ROC) and (North and South) Vietnam.<sup>24</sup>

Those republic acts and presidential proclamation aforementioned, as *state practice* in the most legal meaning, nonetheless emerged as a result of efforts to protect newly discovered and potential natural resources in its littorals. After the UN in 1969 sponsored a study suggesting the existence of offshore fossil fuel beneath the Yellow and East China seas, exploration promptly commenced off Palawan Island in 1970 (Dzurek, 1996, p. 21). That year, Philippine forces occupied three islands from the Spratlys, even attempting to land on Itu Aba (only to be impeded by the ROC naval units.) Manila eventually decided to somehow recognize Cloma's own claim as part of the Philippines. In July 1971, President Marcos convoked the National Security Council; as a result, the government recognized claims over the 53 insular features that Cloma purportedly discovered in 1947 and which he proclaimed in 1956 as being the virgin territory of Freedomland. Without claiming ownership, the government ordered the establishment of garrisons on three islands,<sup>25</sup> thus giving protection to a Freedomland government under the leadership of *Head of State*, Tomas Cloma. In April 1972, the Philippines officially declared the Kalayaan islands part of the Palawan province, to be administered as a single *poblacion* (township) (Abueva, 1979, p. 33; Samuels, 1982, pp. 89–90).

Cloma must have considered the endorsement coming from Manila to be a generous one. He even formed an Advisory Council with Dr Juan Arreglado (one of the most fervent advocates of the Philippine

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23 Presidential Proclamation No. 370 of 20 March 1968 Declaring as Subject of the Jurisdiction and Control of the Republic of the Philippines All Mineral and Other Natural Resources in the Continental Shelf. National legislation – DOALOS/OLA – United Nations; available at: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL\\_1968\\_Proclamation.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1968_Proclamation.pdf).

24 On territorial issues, Philippine diplomacy kept a low profile during the 1960s. One of President Diosdado Macapagal's (1961–65) major regional initiatives was the announcement of a claim of North Borneo in 1962. However, the result for Manila was nonetheless a deterioration of relations with Kuala Lumpur. See Garner (1986, p. 73).

25 Thi Tu Island, Flat Island, and Nanshan Island.



archipelagic doctrine in the Department of Foreign Affairs and a legal advisor of the Department in 1951) as its chairman, but any plan for his authority over the region was short-lived. The eclipse of Cloma by the early-1970s can be understood from several perspectives. First, the incorporation of Kalayaan into Palawan was decreed shortly before the new Constitution was promulgated. The Constitutional Convention delegates had prepared, since June 1971, a more nationalistic and progressive constitution (Abueva, 1979, pp. 37–38), the document that entered into force after the referendum of January 1973. Article 1 of the 1935 Constitution stated as territory the area stipulated in the Treaty of Paris of 1898, the Treaty of Washington of 1900, and the treaty between the United States and the UK of 1930, as well as *all territory over which the present Government of the Philippine Islands exercises jurisdiction*. The 1973 Constitution broadened the scope to all other territories belonging to the country by historic or legal title *including the territorial sea, the air space, the subsoil, the sea-bed, the insular shelves, and the submarine areas over which the Philippines has sovereignty or jurisdiction*.<sup>26</sup> Clearly, the article prepared by the Constitutional Convention incorporated previous legislative and presidential proclamations (Republic Acts 3046 and 5446 and Presidential Decree 370). Therefore, the absorption of the Kalayaan islands under the jurisdiction of Palawan was part of the process of assimilation of maritime areas into the country and subject to economic exploitation, a process that by 1973 acquired constitutional legitimacy. It is known that under the *New Society* of President Marcos, under the martial law, foreign oil companies signed contracts for development of oil fields, including those in offshore areas (Stauffer, 1979, p. 210).

Clomás own claim over the area might well have been considered a problem within this process. Under the martial law regime, Cloma was arrested and imprisoned; on 4 December 1974, the self-proclaimed discoverer of Freedomland eventually signed a *Deed of Assignment and Waiver of Rights* to the Philippine government for all his claims in the area (Fernandez, 1992, pp. 22, 50). Four years later, on 11 June 1978, one day before the interim Batasang Pambansa (National Assembly) met for the first time in several years, President Marcos officially proclaimed the boundary limits of the KIG through Presidential Decree 1596

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26 Article 1 of the 1973 Constitution of the Republic of the Philippines.

(Diagram 1). The very same day, Presidential Decree 1599 established the 200 nm of EEZ of the Philippines,<sup>27</sup> while Presidential Decree 1573 created the Department of Energy in order to regulate activities related to exploration and development of fossil fuels.<sup>28</sup>

Some interpretations can be advanced on the reasons and timing of these decrees in 1978. David Wurfel considers that, under martial law, one of the means to legitimize President Marcos's regime was the pursuit of nationalism (Wurfel, 1977, p. 10); undoubtedly, a very visible manifestation of it was in the Executive (not the Legislative) branch decreeing the legal documents allocating maritime areas into the territory. Another interpretation, more elaborated, fully takes into account the unfolding process of contemporary International Maritime Law, namely UNCLOS III. Since 1970, the Philippines had put forward in the UN, along with other states (resembling its stance during the 1950s), the concept of *archipelagic states* and *archipelagic waters* during the preparatory work for UNCLOS III, which formally started in 1973 (Stevenson and Oxman, 1974, p. 10). Four years before the UNCLOS III treaty was signed in 1982 in Montego Bay, the Philippines proclaimed what was later accepted in the Convention, that is, issuing (through unilateral declarations) (1) the boundaries of Kalayaan area as territory where it (purportedly) exercises sovereignty authority, and (2) the EEZ beyond the territorial sea of the Philippine archipelago (irrespective of the fact that the government had not defined those baselines to measure the outermost points of the territorial sea).<sup>29</sup>

Yet another interpretation, partially linked with the abovementioned one, led to the United States–Philippine military alliance.<sup>30</sup> As a result of growing discontent over what was labeled in some quarters as

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27 Presidential Decree No. 1599 of 11 June 1978 establishing an exclusive zone and for other purposes; available at: [http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL\\_1978\\_Decree.pdf](http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1978_Decree.pdf).

28 Presidential Decree No. 1573 – Amending Presidential Decree No. 1206 Creating the Department of Energy; available at: <http://www.chanrobles.com/presidentialdecrees/presidentialdecreeno1573.html>.

29 At the signing of UNCLOS III, the Philippines issued a declaration mentioning, among several issues, the Kalayaan as its national territory. See [http://www.un.org/Depts/los/convention\\_agreements/convention\\_declarations.htm](http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm).

30 The Philippine declaration explicitly mentioned that the security framework and agreements between Manila and Washington did not diminish, nor were affected by the UNCLOS III treaty.

compromised national sovereignty, the Philippines in 1978 negotiated with the United States on the terms of the MBA (through the Marcos–Mondale Communiqué, later confirmed by Exchange of Notes in 1979), laying the framework for regular reviews of the status of the US military presence, among other stipulations (Corning, 1990, p. 15). These negotiations led to a first revision of the MBA in 1983, by which the mutual security relationship, based on the reaffirmation of commitments of the 1947 MBA and the 1951 Mutual Defense Treaty, was reassured. A clear national legislation and a bilateral military relationship with the United States might thus have been factors which weighted in favor of the dangerous decision to incorporate the Kalayaan Islands into the boundaries of the country vis-a-vis a possible military response by Vietnam or the PRC.<sup>31</sup>

Most probably, the decision taken in 1978 can be understood under these three aforementioned interpretations. Eventually, Presidential Decree 1596 closed, for the time being, a chapter of slow expansion of the sea frontier, initiated and conditioned by several concrete problems to be eventually solved by the government.

At this point, it is pertinent to be reminded that soon after the Philippines set up garrisons on several islands in 1971, a parallel history emerged over another private claim by some American and British nationals, led by Morton Frederick Meads, to represent a so-called *Kingdom of Humanity – Republic of Morac-Songhrati-Maeds*. These individuals tried to involve the United States in the dispute in order to gain recognition, only for the US government to confirm its long standing neutrality in the conflict (Samuels, 1982, pp. 168–172).<sup>32</sup>

## 5 Pragmatism and border expansion: the Philippine narrative in retrospective

Thirty years after the Presidential Decree 1596, and amid the tripartite JSMU project in the South China Sea, some Philippine legislators have

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31 Four years before, the PRC and Vietnamese naval forces clashed in the Paracels.

32 On this issue, nothing new is known regarding the years after 1972, but currently an Internet site administered (from Australia?) by some individuals claiming to represent the Kingdom-Republic ‘government-in-exile’ is online at <http://www.angelfire.com/ri/songhrati/>. Another obscure, motives-yet-to-known site of the so-called Songhrati Republic of Thaumaturgy remains posted on the Internet at <http://republic-of-thaumaturgy.tk/>.

set in motion deliberations within the Congress (since 2005) in order to (1) pass new legislation to amend Article 1 of the Constitution so as to further assert the Philippines' territorial rights over certain claimed areas, including the Kalayaan group<sup>33</sup>; and (2) to promulgate new archipelagic baselines that might include those same islands.<sup>34</sup> Particularly imperative for some congressmen is the fact that 12 May 2009 is the deadline for all countries to submit their baselines for measuring the extended continental shelf to the UN Commission on the Limits of the Continental Shelf. Meanwhile, Philippine geologic studies in late-2006 suggested huge oil and gas deposits in the Marantao Petroleum Fields at the South Palawan Shelf-Reed Sedimentary Basin in the Kalayaan, within the range of an estimated one billion barrels of crude oil.<sup>35</sup> As the prospect of finding deposits is now realistic, particularly within the framework of regional scientific cooperation with Hanoi and Beijing, some legislators in Manila see the urgency of passing these bills and amendments before any real unilateral or multilateral development of resources.

Approaching the Kalayaan-Spratlys issue from a broad time-frame perspective, the biggest problem for the Philippine government since the beginning of the post-war is how to legitimize, under contemporary international law standards, the incorporation of the Spratlys-Kalayaan sector into the national territory. The Philippine archipelago boundaries are basically set by the Treaty of Paris of 1898, by the subsequent Treaty

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33 The amendment might contain the inclusion of the paragraph 'and/or historic right or legal title' after the word 'jurisdiction' in the 1987 Constitution's Article 1 on national territory, in order to include the KIG claim on the Spratlys and the Philippine claimed state of Sabah in Malaysia. Congress of the Philippines, House of Representatives, Committee on Constitutional Amendments, Committee News, Vol. 13, No. 88, 25 January 2006; available online at [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=521](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=521).

34 During the Thirteenth Congress, House of Representatives Foreign Affairs Committee president, Antonio Veloso Cuenco, submitted House Bill 6087 on 5 February 2007, which would define new archipelagic baselines for the Philippines. Later, on 17 July 2007, congressman Cuenco submitted House Bill 1202, which was referred back to the Committee on Foreign Affairs in August. That month, at the beginning of the Fourteenth Congress, Senator Antonio F. Trillanes submitted to the Congress the Senate Bill 1467. By December, Representative Cuenco's House Bill 3216, currently the subject of a heated debate, was approved during its Second Reading. It has been recently referred back to Committee on Foreign Affairs.

35 Such information was made public during the annual conference of the Philippine Geological Society in December 2006. See Manila Times, 22 February 2007; available online at <http://www.manilatimes.net/national/2007/feb/22/yehey/prov/20070222pro2.html>.

of Washington of 1900, and by the Treaty between the United States and the UK in 1930, all recognized by the subsequent Constitution of 1935<sup>36</sup>; within these three documents, it is clear that the Spratlys area is not included. Nonetheless, the 1935, 1973, and 1987 constitutions also include within their Article 1 clear paragraphs mentioning as belonging to the Philippines all (other) territories over which the government exercises jurisdiction or has sovereignty. Eventually, such an open wording allows the government to incorporate the Kalayaan by decree, regardless of the limits defined by both the Treaty of Paris and the Treaty of Washington.

As obvious as the conclusion might appear at this stage, important points deserve to be mentioned for a Philippine narrative that has tried to justify a link between the extent of the Philippine current archipelagic territory and the KIG after the end of the Pacific War.

As it has become clear through the above lines, the Philippine government did not have a clear idea of how to formally claim rights over the Spratlys soon after the Pacific War ended, and at best supported Cloma's own intentions over that sea region in 1956 through a loose, ambiguously stated (although well-planned) declaration that currently might have created more problems than solutions. Indeed, it was rather obvious that the whole Freedomland issue damaged Manila's international relations in the region during this period and put the Philippine government in an awkward position. This was something certainly not sought, as the task of national reconstruction after the Pacific War undoubtedly had priority over a question of small islands and reefs.

It is precisely for that reason that during the negotiations of the multi-lateral peace treaty with Japan, the principal objective of the Philippines was to claim possible war compensation from Tokyo, rather than publicly show interest in the islands. This prioritization of goals explains why during the 1951 San Francisco Peace Conference the Philippine

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36 Article 1 of the 1935 Constitution delimited the territory as follows: 'The National Territory Section 1. The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the 10th day of December, 1898, the limits which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on the seventh day of November, nineteen hundred, and in the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present government of the Philippine islands exercises jurisdiction'. See Lotilla (1992, p. 13).

delegation did not raise the issue during its intervention. This ran in sharp contrast to prompt declarations made by other states.

But in spite of such a passive attitude towards the issue, only five years later, on December 1956, Manila issued the Garcia Declaration, when the Secretary of Foreign Affairs declared that the area called Freedomland was *different* from that of the Spratlys. Whether Garcia was fully aware of the future consequences that such a distinction between two groups of islands might have in the future is difficult to answer. At least it can be understood as a pragmatic solution for Clomás actions and those responses by neighboring countries. Five years earlier, the pragmatic solution was to not raise the Spratlys issue in San Francisco. The Philippine government, by viewing itself as an ally that signed the peace treaty, also recognized Japan's renunciation of the Paracels and the Spratlys through Article 2(f) of the document. According to the prevailing current view among Philippine specialists on this issue, after the San Francisco Peace Conference, the Spratlys legally reverted to a pre-war status of *terra nullius* (Valero, 1993, p. 16),<sup>37</sup> something denounced as totally spurious by the PRC, ROC, and Vietnam, and subject to heated controversy. And yet, it remains nowadays to be explained in full why in September 1951 the Philippine mission did not publicly raise the Spratlys issue at the peace conference, considering that since 1946 Manila had expressed interest over the area several times.

Finally, on the Philippine historical narrative over the geographical extent of the KIG, there still remains a central issue that has been insufficiently debated. This is the boundary limit itself of both Cloma's Kalayaan in 1956 and the official government delimitation of 1978, and, subsequently, a comparison between both areas. Specifically, are these really the same island groups or not? This is an extremely important question for the current imbroglio, at both a historical and international law level, between the Philippines and the other claimant states. The Philippine mass media usually identifies the Kalayaan group as *part* of the Spratlys; Philippine Congress debates frequently make the same point. But the history of the claim tells us that one should not be considered the same as the other. In 1956, Tomas Cloma was the first to make the distinction between his Freedomland

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37 Valero, *Spratly Archipelago*, p. 16.

and the internationally recognized Spratly Islands area, and later, by the Garcia Declaration, the Philippine government recognized, although vaguely, the same division.

However, as depicted in Diagram 1, the territory officially claimed by Cloma, according to the coordinates given at the time, was virtually the same area as that of the Japanese Shinnan Gunto, an area that obviously also covered Spratly Island (*nishi torishima*, in Japanese). Both areas were covered virtually within the same coordinates, with no substantial difference, something that is quite surprising if the argument that Cloma did not find cartographical or source references to the area is to be taken seriously. The Philippine government recognized almost all this Kalayaan area as part of the territory through Presidential Decree 1596 in 1978. Manila, however, *produced* a slight, even though extremely important, differentiation in that decree. In order to protect the official view that the KIG is *not* the Spratlys, the coordinates for the new area were slightly changed: the western tip of the border was moved eastward so as to exclude Spratly Island proper. In other words, Manila was partially distancing itself from Cloma's claim and putting the new area in safer grounds for future legal purposes. In International Law, the doctrine that recognizes the naming of a group of islands by the name of its main feature (Spratly Island in this particular case) is widely accepted. For the Philippines, this is *pragmatism in action*.

In sum, it seems rather clear that the history of the Philippines' claim over the contentious South China Sea islands since the end of the Pacific War has been marked by a series of pragmatic decisions taken at crucial times. The claim started at the sidelines of any governmental initiative, commencing, rather, with the 'discovery of Freedomland' by Cloma; it is most probable that Cloma's first moves were motivated from the consideration that the government did not have a clear policy to incorporate that region into its national territory in 1946.

However, the first real pragmatic reaction (in the form of a declaration) occurred as soon as 1949, coinciding with the defeat of ROC Nationalist forces on the mainland and the consequent retreat of the Spratlys garrison in the mid-year amid the communist victory in the PRC; under such a scenario, there was in the area a real vacuum of naval power, a vacuum not filled by any substantial People's Liberation Army's navy from the PRC. A second pragmatic problem-solving solution from Manila, that of 1956, despite not resulting in a formal claim

over the area designated by Cloma as the Philippines' own, had nonetheless the effect of recognizing the existence of a Philippine individual's claim against other states (states whose arguments for legitimizing their own rights go back well before the Pacific War). A third period of practical solutions started in the early-1970s, mainly motivated by the prospects of finding huge deposits of hydrocarbon, also probably encouraged by a Philippine–American military alliance, and backed by the interpretation of International Maritime Law and the Constitution. By this time, the government had in fact expanded its presence on some islands, gradually eclipsing the whole figure of Cloma, until the Philippine government eventually decided to assume the official claim in 1978. As erratic and weak as this history has become, it is now quite difficult for the Philippine government to engage in a dialog with neighboring claimant states on this boundary delimitation, knowing that the basis itself of the claim is subject to multiple attacks.

The Philippines must act now with extreme prudence, starting with whether or not to enact House Bill 3216, which will define new archipelagic baselines, if a code of conduct is to be respected and fostered. By June 2008, four options had been discussed in the Philippine Congress. These are (1) to enclose the Philippines archipelago and Scarborough Shoal with 135 baselines, declaring the Kalayaan under the regime of islands<sup>38</sup>; (2) to enclose only the Philippines archipelago with 111 baselines and leave the Scarborough Shoal and the Kalayaan under the regime of islands; (3) to enclose the Philippines archipelago and the Kalayaan with 102 baselines (leaving the Scarborough Shoal outside the baselines); and (4) to include all, the Philippine archipelago, the Kalayaan, and the Scarborough, with 134 baselines.<sup>39</sup> By early-2007, the first option discussed seemed the most favored.<sup>40</sup> In August 2007, Senator Trillanes submitted his own Senate Bill 1467, proposing the first option, whose text was incorporated in the same month in House Bill

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38 Part VIII, Article 121 of UNCLOS. Under the regime of islands, in a natural formation recognized as such, territorial sea, contiguous zone, and EEZ are determined in accordance with provisions of the treaty applicable to other land territory.

39 Committee of Foreign Affairs, Committee News, Vol. 14, No. 15, 27 September 2006; available at [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=701](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=701).

40 [http://www.congress.gov.ph/bis/print\\_history.php?save=1&journal=&switch=0&bill\\_no=HB01202](http://www.congress.gov.ph/bis/print_history.php?save=1&journal=&switch=0&bill_no=HB01202) (accessed on 15 October 2007).



1202. Later, this bill was referred back to the Committee on Foreign Affairs, pending further debate for possible approval on the drawing of straight baselines at the outermost points of Scarborough Shoal and joining them with the other Philippine baselines. By the year-end, however, the Congress had received House Bill 3216 from Representant Cuenco, which embraced the fourth option (i.e. 135 baselines). This option, among the four, seems the boldest and most controversial for including both areas claimed by the PRC and the ROC. However, purportedly under the pressure from the office of President Gloria Macapagal Arroyo, the bill has also been referred back to the Committee on Foreign Affairs until revisions are done.<sup>41</sup> Evidently, the PRC has been seen as the primary concern regarding the content of this bill, knowing the long history of its claim over the Spratlys and the Macclesfield Bank (the Scarborough Shoal is claimed to be part of the last group).

Unilateral actions that undermine the *status quo* are perceived as detrimental to the regional stability, as a parallel Vietnamese natural gas project in the Spratlys has recently proved.<sup>42</sup> Here, more than ever pragmatism and practical problem-solving solutions are needed, whether in the form of action or inaction, to preserve stability. Unfortunately, knowing what potential interests may be at stake for Manila, a delicate balance between regional cooperation and unilateral assertion of self-recognized rights might be difficult to maintain in the forthcoming years.

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41 On 23 April 2008, Senator Miriam Defensor Santiago, Chair of the Committee on Foreign Relations, sent a letter to House Speaker Prospero Nograles enumerating reasons why Senate Bill 1467 and House Bill 1202 were shelved in order to prepare comprehensive revisions to them – and evidently to the House Bill 3216 – conforming both with International Maritime Law (UNCLOS III) stipulations and the Treaty of Paris. Apparently, the intention of the government is to keep the Kalayaan and the Scarborough Shoal under the regime of islands. The text of this letter, together with other drafts proposed by members of the Congress more prone to the government position, are available at <http://www.verafiles.org/index.php/documents>.

42 On April 2007, the PRC denounced that a Vietnamese contract for a British Petroleum-led \$2 billion gas field and pipeline project outside the tripartite agreement among the PRC, Philippines, and Vietnam in a sector of the Spratlys infringed China's territory. See 'Vietnam defends Spratly gas project', *International Herald Tribune*, 12 April 2007; available at <http://www.ihf.com/articles/2007/04/12/business/spratly.php>.

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