A TREATISE ON TERRITORIAL AND MARITIME DISPUTES IN WEST PHILIPPINES SEA: ITS IMPLICATION TO THE SOVEREIGNTY OF THE PHILIPPINES

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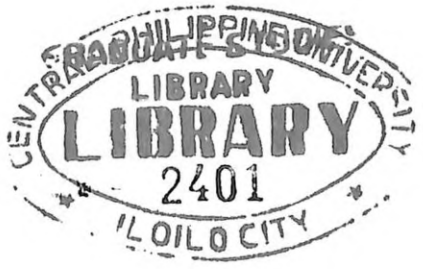

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ABSTRACT

Amongst the pivotal issues of international law is the aftermath of the multifold territorial and maritime disputes.

As discussed by Prof. Merlin M. Magallona in his book, "Fundamentals of Public International Law", the international law governing treaties between states has been codified and developed into a single instrument, the "Vienna Convention on the Law of Treaties". Furthermore, it was discussed under his authority; the convention provides for the capacity of states to conclude treaties, under Article 6 of the Convention provides: "Every State possess capacity to conclude treaties." This provision is merely declaratory of general international law which is expressed by the Permanent Court of International Justice when it declared in the *Wimbledon Case* that, "the right of entering international engagements is an attribute of state sovereignty". Another treaty of significant importance is the United Nations Convention on the Law of the Sea (UNCLOS), it is defined as a body of treaty rules and customary norms governing the uses of the sea, the exploration of its resources,

and the exercise of jurisdiction over maritime regimes. It is the branch of public international law which regulates the relations of states with respect to the uses of the oceans. Appurtenant thereto, State sovereignty is defined by the widely accepted opinion of Judge Huber, the sole Arbitrator in the *Islands of Las Palmas Case*, "Sovereignty in the relations between States signifies independence. Independence in the portion of the globe is the right to exercise therein to the exclusion of any other state, the functions of a State.

The developments of the national organization of States during the last few centuries, and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations". It is important to view sovereignty in international law as the sovereignty of one State in relation to the sovereignty of another State in conditions of co-existence.

In reference to the quoted definitions by the well-known author, the possible future effect or result of the treaties to the sovereignty of the Philippines, and also with the other States, is with paramount significance in settling territorial and maritime disputes. It is indeed, easier said than done, but the mere adherence of the States to the treaties with utmost respect to the conventions and subordination to the international law will bring harmony to all States. However, it is a virtual reality that all States will conform to the treaties without asserting their rights. Henceforth, Prof. Merlin M. Magallona cited that, the sovereignty of one State ends where the

sovereignty of another State begins. That the limitation is built into the nature of state sovereignty under international law. To conceive it as unlimited is to negate its existence in the context of the co-existence of sovereignties, resulting in the negation of international community composed of juridically equal States.

The above quoted summary of this study found out that the possibility of settling territorial and maritime disputes, are enumerated by Father Bernas in his book Introduction to Public International Law, by a.) non-judicial or diplomatic methods, b.) quasi- judicial method or c.) within the bounds of the power of the different modes of settlement in International Court of Justice. Furthermore, the cardinal rule in international courts is that states cannot be compelled to submit disputes to international adjudication unless they have consented to it either before a dispute has arisen or thereafter. States are also free to limit their acceptance to certain types of disputes and to attach various conditions or reservations to their acceptance.

This study found out that the Philippines has claimed many lands throughout its history. These include the Spratly Islands, Sabah, Scarborough Shoal. According to Ji Guoxing, author of Maritime Jurisdiction in the Three China Seas; Option for Equitable Settlement on October 1995, "The Philippine assertion of sovereignty over the Spratly Islands began in May 1956, when Tomas Cloma, owner of a Philippine fishing vessel company and director of the Philippine Maritime Institute, declared the founding of the new municipality called "*Kalayaan*" (Eng.:freedom)". Next is Sabah, previously known as North Borneo, is currently disputed between Malaysia and the

Philippines. Presently, Sabah is one of the states that formed Malaysia in 1963. Despite that, the Philippines and the heirs of the Sultanate of Sulu have made claims to the territory since 1877 upto the present. While the claim for the Scarborough Shoal was established since 1774, it was included in the map of the Philippines.

The claims of the Philippines are anchored on the modes of acquisition as provided by the International Law, United Nations Convention on the Law of the Sea and the Treaty of Washington. The United Nations officially came into existence on 24 October 1945, after ratification of the United Nations Charter by the five permanent members of the United Nations Security Council are the following; the Republic of China, France, the Soviet Union, the United Kingdom, and the United States. As this study trace the history of the United Nations, thus, the reason behind for the impossibility of settlement between the Philippines and China for several decades, and there is still no such case filed to the International Court of Justice is, either China knows that they have the power over the Philippines, or China will actually realized that the United Nations will show impartiality towards the claims of the Philippines against their permanent member, and the irony of it all, China will not even submit the issues to the jurisdiction of the International Court of Justice. Do they have the power? Yes, unfortunately they have the technology and the means to take justice into their own hands. The objective of settling disputes by submitting the issues to the International Court of Justice was done since year 1947. The main point of settlement and the greed for power are way beyond the control and scope of the International Court of Justice.