

The Early 20th Century U.S.-Dutch Conflict over Pulau Mangias: Its Relevance to Asia's Contemporary Maritime and Territorial Disputes

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I

WHILE THE RECENTLY HELD Philippine national elections saw many new faces contending for the top positions of public office, the campaigns converged on the same promises. Iterations of platforms on inclusive growth, social justice, political maturity, and economic stability were projected over airwaves, plastered on screens, scattered in print, and spread by word-of-mouth with peculiar uniformity. Social media drew storms of conflicting opinions, with factions uncompromising in their deification of leaders who profess advocacy likewise echoed by political opponents. Parties and blocs rallied for candidates who, all announced, would perpetuate the same propaganda on meeting mutual needs. Slogans and banners shared cut-and-dry messages, where the better life was the catchphrase; accountability, the watchword; and prosperity, the seminal idea.

One senatorial candidate, however, stood out. Departing from the bandwagon and far removed from the old, familiar refrains, Jacel Kiram campaigned with the distinct and singular claim that she would take back Sabah, declaring further that “*ang teritoryo ng Pilipinas tayong mga Filipino lang ang makinabang*” (Only Filipinos should benefit from Philippine territory) (Legaspi 2016). And while she did not win a seat in the Senate, the issue of the disputed territory entered the generally prosaic roster of electoral topics (Espina 2016; Torregoza 2016). Her loss,

however, might evince the relatively little weight given to the issue as compared to other domestic concerns like job creation (Panti 2016; Quismundo 2016).

Be that as it may, the fact remains that the issue of contested Philippine territories is as ripe an issue as poverty or corruption. The basic premise that the country should protect its political independence and territorial integrity, after all, makes it imperative that it assert its sovereignty over areas it holds the title to. The 2013 Lahad Datu standoff in Sabah tested this position—and the incidents in the Scarborough shoal, the United Nations’ approval of the country’s claim to Benham Rise, the legal challenges against the Philippine Baselines Act (Magallona and Llaneta 2013; *Magallona v. Ermita* 2011), and the ongoing arbitral proceedings in the Permanent Court of Arbitration against China, all reframed Philippine sovereignty as timely and newsworthy affairs.

But if national experience were to give guidance, the same would be remanded to collective obscurity until another skirmish erupts. History, as they say, repeats itself. And history shows that it has happened before and, this being the case, that apocryphal or misattributed Santayana quote finds application now more than ever.

II

On 21 January 1906, while inspecting the reaches of its new acquisition, General Leonard Wood, Governor of the Moro Province, found that “a single, isolated island” (Huber 1928, 836) named Palmas or Mangias, which lies within the boundaries set in the Treaty of Paris as a territory ceded to the United States, was already occupied by the Netherlands, who was the colonial master of the Indonesian islands (*Id.*, 855). Both of them, of course, claimed Palmas as their own.

On the one hand, the Netherlands “contend[ed] that the East India Company established Dutch sovereignty over the Island of Palmas . . . as early as the 17th century, by means of conventions with . . . two native chieftains . . . and that sovereignty has been displayed during the past two

centuries” (855). On the other hand, America presented its proof of purchase, basing its claim “as successor of Spain” (843) and “on the ground of recognition by Treaty” (846). It also invoked the contiguity of Las Palmas with Mindanao (837), which was 78 miles from Davao City, as compared to 324 miles from Manado, the capital of North Sulawesi.

The island, the United States government maintained, “forms a geographical part of the Philippine group [of islands], and, by virtue of the principle of contiguity belongs to the Power having sovereignty over the Philippines” (837). Indeed, for America, Palmas must have been under Philippine territory. It claimed the Island of Palmas based on two legal theories. First, Spain’s earlier “discovery” of the island had given it the “original title” (837), which passed to the United States when it defeated Spain in the Spanish-American War and the United States took possession of the Philippines (Jessup 1928, 735). The Treaty of Paris would have “transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and therefore also those concerning the Island of Palmas (or Pulau Miangas)” (Huber 1928, 842).

Addressing these submissions, the Netherlands claimed the island because the Netherlands had had earlier contact with the region, and they contended that the island was a “tributary of native princes, [who were] vassals of the Netherlands Government” (Jessup 1928, 739). In fact, Netherlands presented evidence that since the 17th century, it had exercised its sovereignty over the area, as opposed to the United States’ contention that Spain had prior control over the small piece of island.

The dispute over this island by then two major colonial powers, over a stretch of sandy beach a third the size of Boracay island and whose only apparent economic value were palm trees (hence the name), seemed to be a tempest in a teapot. Yet small as it is, the decision over whom to award this small piece of earth would be the most influential precedents in public international law concerning territorial conflicts (Roque 2003; Häusler and Hofbauer 2011).

“Desiring to terminate” the dispute “in accordance with the principles of International Law and any applicable treaty provisions” (Huber 1928, 831), the two nations referred the matter to the Permanent Court of Arbitration at The Hague, where Swiss lawyer and diplomat Hans Max Huber acted as the sole arbitrator. He decided in favor of the Netherlands.

And in one stroke of a pen, he erased from public international law any notion that contiguity may be a basis of territorial claim. “The title of contiguity,” he mentioned, “understood as a basis of territorial sovereignty, has no foundation in international law” (869). In the same vein, he penned a new guideline which would be followed by international tribunals in the next decades.

These facts at least constitute a beginning of *establishment of sovereignty by continuous and peaceful display* of State authority, or a commencement of occupation of an island not yet forming a part of the territory of a State; and such a state of things would create in favour of the Netherlands an inchoate title for completing the conditions of sovereignty. Such inchoate title, based on display of State authority, would, in the opinion of the Arbitrator, prevail over an inchoate title derived from discovery, especially if this latter title has been left for a very long time without completion by occupation; and it would equally prevail over any claim which, in equity, might be deduced from the notion of contiguity. (870)

Several times has the legal reasoning behind the *Island of Palmas* case been adopted by the International Court of Justice, the judicial body of the United Nations (Scharf and Day 2012; Häusler and Hofbauer 2011). From this decision, international law found such classical formulations as “continuous and peaceful display of territorial sovereignty,” which is now considered as an indispensable prerequisite for a valid title arising from occupation (Khan 2007, 165).

But as with any idea, which invokes paradigm shifts, the decision has created heavy controversy. One critique argues that the decision “leads

to intolerable consequences if interpreted as suggesting that a right simply ceases to exist at the very moment that its holder fails to comply with new rules for its emergence and/or continuance which are different from those valid at the time when the right was lawfully obtained” (168). A legal luminary went so far as to say that he found the logic of the arbitral decision “highly disturbing” (Jessup 1928, 740).

III

The loss of the United States in the arbitral decision consolidated Dutch control over the island, divesting with finality the Philippines of this territory. As it stands today, the island creates little recollection to Filipinos. Unlike Sabah, it did not have sultanates that claimed dominion over it. Unlike the islands in the South China Sea, it did not promise vast deposits of fossil fuels. This piece of earth for Filipinos has never been among the stock of the textbook 7,107 islands that stretch from Aparri to Jolo.

Yet the island, at least for Indonesia, carries a very vital role, “*Jika Pulau Miangas lepas, Indonesia akan kehilangan wilayah laut yang luas berikut sumber daya yang terkandung di dalamnya.*” [If the island of Miangias were not considered [as a basis for delineating territorial waters], Indonesia will lose a vast sea area and the resources it contains.] (Rahajo 2012). As its northernmost tip, “*pulau-pulau kecil ini turut menentukan batas-batas kedaulatan NKRP*” [these small islands also determine the limits of the sovereignty of the homeland] (*Id.*). Of course, it could have gone the other way. Palmas would have been the country’s southernmost tip and the Philippines would have gained the expanse of water and airspace owing the baselines drawn for the island. As Professor Harry Roque observed, given Indonesia’s drawing of its baselines with Palmas as a basepoint, “[T]he Philippines would lose . . . some 15,000 square miles of archipelagic and territorial waters [as] currently defined under the Treaty of Paris.”¹ He added, “[c]learly, the sheer area of maritime territory which the Philippines stand to lose . . . should warrant a re-examination of the root of Indonesia’s claim to the Palmas Island” (2003, 439–40).

But the Philippines had practically already lost this island down south. And today, it might lose plenty more in the west given that since September 2013, China has undertaken extensive reclamation and construction on several reefs in the Spratly Island chain in the West Philippine Sea (Dolven et al. 2015). China has found this to be legal. After all, they say that these are their own islands and reefs, that they have incontestable title over them. Everything contained in the South China Sea is theirs, including the sea and everything in it. In justifying this assertion against the protests of Viet Nam, Malaysia, Indonesia, Brunei, and the Philippines, China invokes arguments and theories that ring ominously similar to those thrown by the United States and Netherlands, when the two were both claiming Palmas: they discovered them and had irrefutable “historical title;” they were there first and they have maps to prove it. And since they are there now, having built lighthouses, airstrips, and installations on reclaimed beaches and on top of buried reefs, they have nothing else to prove. As the Chinese Foreign Minister expressed, “[W]e do not accept criticism from others when we are merely building facilities in our own yard. We have every right to do things that are lawful and justified” (Wang 2015).

In response to China’s increasingly assertive stance, the Philippines has, just as America did regarding Palmas, filed for arbitration, “challenging the legality of China’s nine-dash line claim over the South China Sea” (Wong 2014; Deutsch 2015) amidst the slim chance that China would ever abide with an arbitral decision favorable to the Philippines,² much like suggestions that the Philippines could not be bound by the 1928 arbitration (Roque 2003, 461–62).

IV

The controversy over the island of Palmas was rooted into the forays of world powers into nations that had little capacity to defend themselves. Both the Philippines and Indonesia then were free game. But while Indonesia has joined the G-20 and has become a dominant power in the region in terms of economics and foreign affairs, the Philippines lagged behind, eking from its untapped and underutilized resources a nation’s survival.

The controversy with Palmas was catalyzed by shifts in powers, by the rise and falls of empires. The dispute was a fight for more possessions, of an island that neither of them truly owned, an island both of them merely seized from locals at gunpoint. More than that, the dispute was a fight for a greater sphere of influence in a world and community of nations that stands by the quaint, archaic notion, or illusion, of sovereign equality. And much like then, we see a similar scenario today. Just that, now, we have a closer superpower in our midst, emerging from the diminishing influence of the West in this side of the globe—a China complacent with its Monroe-like doctrine of the East. So, graced with autonomy and freedom, the Filipino nation now sees its self-rule threatened by the fear that 300 years in the convent and 50 years in Hollywood shall be followed with scores and years in the Forbidden City.

That the very charter of the Philippine Republic, according to the Chief Justice, is a product of the “ferment” of “injustice . . . perpetrated over centuries against a majority of [the Filipino] people by foreign invaders and even its own governments” (*Atong Paglaum, Inc. v. Commission on Elections* 2013, 575) should at least guide the Filipino people in its next path. Its Constitution, after all, embodies the “new hope” that “all the oppressions and repressions of the past [may be] banished forever” (*Javier v. Commission on Elections* 1986, 209). Through this constitutional order, the nation fortifies its statehood—its collective aspiration and destiny—uniting each of the 7,107 or so island “where every Filipino [is] truly be sovereign in his own country.” (*Id.*)

And as the nation's history continues to unfold with the long narratives of subjugation, as it sheds colonial legacies to create an identity of its own, as it tests the leadership of a new government—with Palmas forgotten, like Mischief Reef of the Spratly Islands in the 1990s, impunity and historical revisionism purged from national consciousness—the country must not let the issue of its rights die from this generation's consciousness. If the nation were to stand by Jacel Kiram's declaration that Filipino land is rightfully the Filipino people's; if the preambular “blessings of independence and democracy under the rule of law and

regime of . . . peace” were to be real; and if its Constitution were to hold true to its purpose, the People needs to do much more than their acquiescence to a past revisited.

Notes

- ¹ See Batongbacal (2001) for a different interpretation of the Treaty of Paris.
- ² “On 19 February 2013, China presented a Note Verbale to the Philippines in which it described ‘the Position of China on the South China Sea issues,’ and rejected and returned the Philippines’ Notification.” Furthermore, “[i]n a Note Verbale to the Permanent Court of Arbitration at the Hague on 1 August 2013, China reiterated ‘its position that it does not accept the arbitration initiated by the Philippines.’” Permanent Court of Arbitration, <http://www.pcacases.com/web/view/7>, accessed March 23, 2016.

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