THE TREATY OF PARIS OF 10 DECEMBER 1898: HISTORY AND MORALITY IN INTERNATIONAL LAW

Merlin M. Magallona[*]

I. INTRODUCTORY PERSPECTIVE

Under the international law of the nineteenth century, Spanish sovereignty over the Philippines passed to the United States by virtue of the Treaty of Paris of 10 December 1898.[1] In the reality of Spain's defeat in the war with the United States, this agreement formalized the conditions exacted by the victor. What began ostensibly as a war for the liberation of Cuba ended as successful military operations for territorial acquisitions from the West Indies into the far Pacific regions which the Treaty of Paris enthroned in the law governing the relations of "civilized states" at the time. By this agreement, Spain relinquished sovereignty over Cuba for its occupation by the United States.[2] It ceded to the United States Puerto Rico and other islands under Spanish sovereignty in the West Indies, as well as Guam and the Marianas islands.[3]

The Treaty ceded, "to the United States the archipelago known as the Philippine Islands."[4] The totalizing impact of the Treaty on the Philippines acquires focus not so much in the shift of sovereign control over the country from Spain to the United States, as in the obliteration of the status of a sovereign community on the part of the Filipino people as they emerged from the otherwise victorious Philippine Revolution. The Treaty thus consolidated this historic crime and transformed it into a legitimate civilizing mission of imperialism; it established

[*] Professor of Law, University of the Philippines

[1] U.S. S. Doc. No. 55-63, pt.2, at 3-11 (1899).

[2] *Id*, at 3.

[3] *Id*, at 4.

[4] *Id*. *See* art. III, at 4.

the threshold of legality for a transition from "the physical violence of the battlefield... [to] the psychological violence of the classroom."[5]

The Treaty became an integral part of a legal regime of the international community constructed by the great powers based on their interests in the division and re-division of the world into colonies and protectorates. They were the makers of international law because they were the "civilized states" and they needed the rules of the game to stabilize their power relations and to maintain a balance of interests among themselves. Colonial powers engaged in the conquest of territorial frontiers and exploitation of the natives could not be wrong from the legal standpoint, because law was the normative expression of their interests and morality was defined by their own motive power.

Compliance with legality of conquest and occupation in territorial acquisition was not addressed to the subjugated native populations; compliance with the rules assumed pertinence only in the relations of rival colonial powers. As noted by Fisch, "this process of justification and legitimation deeply influenced the development of modern international law."[6] Appropriately, to Thomas Lawrence, publicist of the early twentieth century, international law was defined "as the rules which determine the conduct of the general body of civilized states in their mutual dealings."[7] International law to him was an instrument of European expansionism, a means of repression and control of the inferior non-European races.[8]

The international legal order divided humanity into civilized and uncivilized categories. International law publicists of this period observed this classification. To Lawrence this distinction was "a real one" that characterized the nature and function of international law.[9] Wheaton was of the view that, "public law, with few exceptions, has always been and remains limited to the civilized and Christian peoples of Europe or to peoples of European origin,"[10] To Von Liszt, the relations of the international community with the uncivilized entities was "bound only by principles of moral order deriving from Christian

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[5] An expression from NGUGI WA THIONGÓ, DECOLONIZING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE 9 (1987).

[6] Jorg Fisch, *The Role of International law in the Territorial Expansion of Europe, 16th-20th Centuries*, 3 ICCLP REVIEW 5, 6 (2000).

[7] THOMAS LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW 1 (4th ed., 1910).

[8] THOMAS LAWRENCE, THE PRINCIPLES OF INTERNATIONAL LAW 145 (1st ed., 1895).

[9] LAWRENCE, *supra* note 7, at 170.

[10] As quoted in INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 8 (Mohammed Bedjaoui ed., 1991).

sentiment and feelings of humanity."[11] Much earlier, Francisco de Vittoria was of the mind that Spain's subjugation of the infidels, together with the annexation of their territories, was a just war, based as it was on the right to spread Christianity.[12] Lorimer divided the human race of 1883-84 into categories of "civilized," "barbarian" and "savage."[13] In 1898, Von Liszt classified it into "civilized," "semi-civilized," and "uncivilized."[14]

The international community of civilized states did not recognize the barbarian peoples and uncivilized entities as persons in law. By their lack of legal status uncivilized peoples and nations could not assume personality to deal with the civilized world and did not have the competence to conclude treaties with the community of the great powers. Customary international law, based on the "general practice" of civilized states, did not give room for uncivilized and unrecognized nations to participate in law-making processes.

II. IDEOLOGY OF INTERNATIONAL LAW

The rise of classical international law from the relations of "civilized states" following the break-up of the Holy Roman Empire marked the emergence of a "European System of States." The Treaty of Westphalia of 1648 established a balance of interests among the members of this exclusive club. The Eurocentric international law became their rules of the game based on sovereign equality as a juridical expression of the balance of power among themselves. Equality of status in their relations was maintained as an imperative norm. But as applied to the "barbarians" and "semi-civilized peoples" of Asia, Africa, and America their sovereignty knew no bounds under the international law of the 18th and 19th century. It was a normal expression of sovereign right for civilized Christian states to subjugate native populations and occupy their territories. It was the destined fortune of the natives to be colonized and thus to be civilized or Christianized. They were the natural object of commerce between civilized States.

Only civilized states possessed sovereign status and they alone had the *imperium* to acquire title of sovereignty over a territory, provided these were

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[11] *Id.*

[12] *See* Fisch, *supra* note 6 at 9.

[13] INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS 8 (Mohammed Bedjaoui ed., 1991).

[14] *Id.*

territorium nullius. A territory seized or occupied under the title of sovereignty by a civilized state ceased to be *terra nullius*. But a territory inhabited by native population, not being a sovereign community under the acceptable standard of civilization, retained its *terra nullius* status and open to discovery and effective occupation by a civilized colonial power. In context, the natives did not acquire legal significance for themselves and, collectively, they were of no moment in the status of the territory they occupied for centuries vis-à-vis the title of sovereignty over it by the colonial power.

Thus, in the *Island of Palmas* arbitration case[15] between the United States and the Netherlands as to which State had the better title to Palmas or Miangas Island off the coast of northeast Mindanao, Judge Max Huber, the sole arbitrator, ruled for the Netherlands in 1928 by reason of continuous public and peaceful display of sovereign authority, as against mere discovery without occupation by Spain of which the United States was successor in interest as a result of the Treaty of Paris of 1898 following the Spanish-American War. Judge Huber described Palmas island as "inhabited only by natives." That they were inhabitants of the island was no legal impediment to its occupation by the Netherlands through the East Indian Company or by Spain. The natives themselves had no standing under international law at that time to assert any legal claim over the island they inhabited. From the viewpoint of international law at the time, Palmas Island was *terra nullius*; it was clean of people who could acquire title to territory under international law. They served one function, however. They became a piece of material evidence to prove to the satisfaction of Judge Huber that Netherlands exercised sovereign powers over the island in that its treatment of the natives constituted political or sovereign acts as elements of effective occupation for acquisition of title to Palmas Island. Its sovereign authority over Palmas materialized through the protected status of the natives under the agreement with the Dutch government. Referring to contracts entered into by the East Indian Company (in the exercise of suzerain powers given by the Netherlands) and the native chiefs, Judge Huber declared that they "are not, in the international law sense, treaties or conventions capable of creating rights and obligations such as may, in international law, arise out of treaties." The natives were not qualified to be bearers of rights and duties in law. The shift in legal thinking did not become evident until 1975 in the *Western Sahara* advisory opinion[16] in which the International Court of Justice rejected the claim that Western Sahara was *terra nullius* by 1880 and recognized in law the rights of the native occupants. But this

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[15] Island of Palmas Case (U.S. v. Neth.) 2 RIAA 831 (1928).

[16] 1975 I.C.J. 6 (October 16).

came in the light of the principle of self-determination of peoples under the UN Charter.

In 1928, the Permanent Court of International Justice rendered judgment in the *Eastern Greenland* case.[17] Its remark on the legal implications of the downfall of the early Norwegian settlements in Greenland as a result of the Eskimo resistance is instructive. It observed that –

> Conquest only operates as a cause of the loss of sovereignty where there is a war between two states, and by reason of the defeat of one of them sovereignty over the territory passes from the loser to the victorious state. The principle does not apply in the case where a settlement has been established in distant country and its inhabitants are massacred by the aboriginal population.[18]

This view implies that the Eskimo victory could not affect Norway's effective occupation and never gave the Eskimos capacity to acquire territorial sovereignty over Eastern Greenland as against the Norwegian claim over the same territory. Their community did not have the benefit of recognition as a state and so it could not have legitimately gone to war in the legal sense. Even as the Eskimos exterminated all the early Norwegian settlers occupying their lands, international law told them they were not engaged in conquest that gave them sovereign rights over the disputed territory.

The same legal logic could run through the course of the Philippine revolution against Spain, in the mind of the American leaders. The politico-military reality was clear months before the American and Spanish peace commissioners signed the Treaty of Paris on 10 December 1898. In the memorandum of 27 August 1898, General Greene of the American expeditionary forces to the Philippine wrote: "The Spanish power is dead, beyond the possibility of resurrection. Spain would be unable to govern these islands if we surrender them."[19] Reporting to General Merritt on August 29, Major J.P. Bell concluded: "I have met no one cognizant of the conditions now existing in these islands and in Spain who believes that Spain can ever again bring the Philippine Islands under subjection to its government."[20] What sovereign title could Spain pass or cede to the United States under these conditions, as Felipe Agoncillo argued? But imperialist power, operating through international law phraseology, subjected the

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[17] 1928 P.C.I.J. (ser. A/B) No. 53.

[18] *Id.*, at 47.

[19] As quoted in ESTEBAN A. DE OCAMPO, FIRST FILIPINO DIPLOMAT 122 (1994).

[20] *Id.*

newly proclaimed Philippine independent community to the Eskimo treatment; as Spanish authorities lost control over the Philippines, sovereignty could not legitimately pass to the victorious Filipino revolutionary movement. Instead, the general rule was applicable: when there was war between two states, and by reason of the defeat of one, the sovereignty over the territory was to pass to the victorious state. And thus on October 26, US President McKinley insisted on the American peace commissioners in Paris that the US could claim the Philippines "by right of conquest" (a statement which the latter considered as politically unwise).[21]

III. THE PHILIPPINES AS OBJECT OF POWER RELATIONS AND IN INTERNATIONAL LAW

The treatment given to the Philippines and its people by the United States government as well as by the Peace Commission which concluded the Treaty of Paris, was not much different from the legal status of the native inhabitants in the *Palmas* case. Recall the interplay of their interests over Cuba and the Philippines as the object of their power relations, thus:

First of all, the Spanish-American War of 1898 was an episode in the broader field of relations among the great powers of the times, in which the United States gained entry as a relatively new member. Cuba and the Philippines became the object of these power relations. They were the medium by which the United States asserted its place in the community of the great powers.

In the attempt to bring to an end the Ten Years War in Cuba, a revolutionary uprising for the establishment of a Cuban Republic by the natives, US President Grant found it necessary to sound out England, France, Austria, Italy, Portugal, and Russia on a plan of the United States to intervene in Cuba. US Secretary of State Hamilton Fish was criticized for this consultation on a matter regarded as exclusively an American question, presumably by virtue of the Monroe Doctrine which shielded off the American sphere of influence from the European powers. "The naval and commercial importance of Cuba," one historian observes, "made it a prize too valuable to be acquired by any one of the great maritime powers without exciting the jealousy and opposition of the others,"[22] In this context, Cuba figured as a pawn in the relations of the great

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[21] *Id.*, at 93-94.

[22] JOHN HOLLADAY LATANÉ, A HISTORY OF AMERICAN FOREIGN POLICY 294 (1927).

powers, without personality to determine its status in the international community.

The Monroe Doctrine, together with Cuba as its incident, was born out of the Napoleonic invasion of Spain, as a consequence of which Spanish power in the West Indies and in America suffered considerable reduction. This became the source of apprehension that Napoleon's dream of regaining a colonial enterprise in America would clash with US interests in the region. But earlier, Cuba's role in US relations with the European powers was outlined by US President Madison as early as 1810, thus:

> The position of Cuba gives the United States so deep an interest in the destiny, even, of that island, that although they might be an inactive they could not be a satisfied spectator at its falling under any European government, which might make a fulcrum of that position against the commerce and security of the United States.[23]

As France prepared for the invasion of Spain in 1823 the European press indicated a possible British occupation of Cuba and France itself later should have some design on Cuba. To ward off the danger of British annexation of Cuba, in 1848 the United States began negotiation with Spain for the purchase of Cuba with an offer of $100,000,000 as a maximum bid.[24] In 1849, this negotiation was renewed while France and England continued to press for their own protection against invasion of Cuba by any power. In 1852 they suggested a tripartite convention for the guarantee of Cuba to Spain. To this proposal for a protectorate over Cuba, US Secretary of State Daniel Webster reiterated a firm policy, "that the government of the United States could not be expected to acquiesce in the cession of Cuba to an European power,"[25] Under the administration of US President Pierce, who declared in his inaugural speech that his policy would not be controlled by any timid foreboding of evils from expansion, Secretary of State William Macey authorized once again negotiation with Spain for the purchase of Cuba.[26] The Cuban question appeared in the platform of the Democratic Party as an endorsement for acquisition and, accordingly, President Buchanan renewed efforts for the purchase of Cuba, involving this time a move for the two houses of Congress to approve a budget for this purpose.[27]

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[23] *See* LATANÉ, *supra* note 22, at 285.
[24] *Id.*, at 292.
[25] *Id.* at 297.
[26] *Id.*, at 298.
[27] *Id*, at 304.

This trend of events ripened the conditions leading to the raising of the first American flag in Havana on 24 September 1898, with Cuba as the object of commerce and the subject-matter of power play in the hands of the United States and the European Powers. American strategic plans and tactical operations were primarily addressed to the broader frame of US relations with other powers in which US interest must assume supremacy, as a vital element in the balance of power from the perception of American leaders. As to the interests of Cuba and of the Cuban people, these must be located in the equation of US interest in the process of inter-imperialist relations of conflict as well as of cooperation. They deserved to be recognized and upheld or, on the other hand, suppressed or derogated, depending on how either policy will subserve the US interests.

The Philippines was of the same status in this power paradigm that formed the substance and application of international law rules at the time.

Secondly, the Spanish - American War was a clash of two great powers and the Treaty of Paris of 1898 which ended the war was a settlement of their interests. There was no place in this process by which the Philippines as a colony of Spain — the very object of their negotiation as a booty of war — could be recognized as a participant. International law as applied by the parties in the peace negotiations in Paris and in the conclusion of the Treaty of Paris shut off representation from the Philippine Republic proclaimed by Aguinaldo on 12 June 1898. While the two panels in the peace commission, "represented the conflicting interests of the United States and Spain," one Filipino historian has observed, "they were nonetheless united vis-a-vis the Philippines represented by [Felipe] Agoncillo, who was sarcastically referred to as the 'unrecognized ambassador of an unrecognized government'."[28] Sadly, Felipe Agoncillo carried a power of attorney signed by Aguinaldo on 26 August 1898, providing full authority to represent him in the Paris conference which was to decide the fate of the Filipino nation.[29] Unrecognized by the United States and Spain, the Philippines was regarded as a non-entity, i.e., possessing no personality in law and in diplomacy.

Earlier, even as the Filipino revolutionary forces had liberated the greater part of the archipelago from Spanish troops and placed Manila under siege, unknown to them the two governments were preparing for cessation of military operations and for preliminary terms of peace. After about two weeks of negotiations, the protocol of August 12, 1898 was concluded in Washington and

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[28] DE OCAMPO, *supra* note 19, at 111.
[29] *Id.* at 112.

thus paved the way for the Paris conference of the Spanish-American peace commissioners.

Under the protocol, Spain agreed to the occupation by the United States of" the city, bay, and harbor of Manila pending the conclusion of a treaty of peace which shall determine the control, disposition, and government of the Philippines."[30] This meant in reality the immediate surrender of Manila by the Spanish forces, the capture of which was the central objective of the Filipino revolutionaries.

In this light, one cannot help but view the Philippine situation with a tragic sense. Days after the signing of the protocol in Wshington, Aguinaldo continued to communicate with the American commanding generals in Manila. On August 13 and 14, he wrote General Anderson to allow his troops besieging Manila to enter the city because, as he said, "we have given proofs many times of our friendship, ceding our positions in Paranaque, Pasay, Cingalong, and Mytubig."[31] Also on August 13 he sent a "most urgent" message to General Anderson complaining of threats of violence on his troops who were being forced to withdraw from their positions further away from the City of Intramuros. He told Anderson to order his troops to avoid "difficulty with Filipino forces, as until now they have conducted themselves as brothers to take Manila."[32] And in a letter to General Merritt on August 21, Aguinaldo asked him that, "in consequence of a treaty of peace which may be signed between the United States of America and Spain, the Philippines should continue in possession of the last named [i.e., Paco], that the American forces should turn over to the Filipinos all of the suburbs in consideration of the cooperation given by them in the taking of Plaza of Manila."[33]

The capitulation by the Spanish authorities came on August 13, after the staging of a mock battle secretly agreed by the American and Spanish forces. The French consul in Manila, G. de Berard, observed in his letter to his Foreign Minister of 5 August 1898, that, "This capitulation after only three quarters of an hour of firing at the advance posts of the Spaniards leads to the suspicion that everything was pre-arranged."[34] Presumably, this subterfuge was intended to

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[30] LATANÉ, *supra*, note 22, at 509.

[31] US S. Doc. No. 55-63 at 399 (1899).

[32] *Id.*

[33] DE OCAMPO, *supra* note 19, at 400-401.

[34] As translated to English from French in MA. LUISA CAMAGAY, FRENCH CONSULAR DISPATCHES ON THE PHILIPPINE REVOLUTION 62-64 (1997).

achieve a swift turnover of power and to bar the Filipino revolutionaries from any significant role in the capture of Manila, particularly the seat of government in Intramuros — a trick that assumes some legal implication vis-a-vis the claim of belligerency on the part of the Filipino forces. The mock battle was staged not only as a face-saving measure for the Spaniards, but, of strategic importance to the two powers, as a measure to legitimize the settlement of peace between them to the exclusion of the Filipino revolutionary movement.

Thirdly, this attitude towards the Filipinos becomes more discernible in the conduct of Admiral Dewey in his avoidance of acts that may associate him with support for the independence movement or recognition of belligerent status to the Filipino revolutionaries makes. The language of General Greene, commander of the American volunteers sent to the Philippines, in his report to Washington on 30 September 1898, is instructive as to Dewey's actuations towards the "insurgents," thus:

> The United States Government, through its naval commander, has to some extent made use of them for a distinct military purpose, *viz*, to harass and annoy the Spanish troops, to wear them out in the trenches, to blockade Manila on the land side, and to do as much damage as much as possible to the Spanish Government prior to the arrival of our troops; and for this purpose the admiral allowed them to take arms and munitions which he had captured at Cavite and their ships to pass in and out of Manila Bay in their expeditions against other provinces. But the admiral has been very careful to give Aguinaldo no assurances of recognition and no pledges or promises of any description.[35]

That Dewey "made use [of the Filipino revolutionaries] for a distinct military purpose," serving the strategy of the American campaign, is in derogation of their status worse than refusal to recognize them as a belligerency.

As thus characterized, they could not be legally capable of placing an area or territory under their effective control for purpose of claiming belligerency status. No more than an adjunct of the U.S. forces, the areas they occupied may be regarded as under the control of the US military command which exercised responsibility over their military activities. Significantly, in the Paris conference of the peace commissioners, the Spanish Commission submitted a statement which

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[35] US S. Doc. No. 55-63 at 424.

described the Filipino revolutionaries as "the Tagalog rebels, who formed during the campaign and still form an auxiliary force to the regular American troops."[36]

Finally, in a lecture on the Spanish - American War, George F. Kennan observed that –

> [I]t looks very much as though, ... the action of the United States government had been determined primarily on the basis of a very able quiet intrigue by a few strategically placed persons in Washington, an intrigue which received absolution, forgiveness, and a sort of blessing by virtue of a war hysteria ....[37]

Is Keenan referring to Theodore Roosevelt, Henry Cabot Lodge, and Albert J. Beveridge, who prepared a plan for an American empire in the Pacific, involving the conquest of the Philippines as "key to the markets of Asia," with Manila as the "American Hongkong?"[38] Further, the Philippines was viewed as "the pickets of the Pacific, standing guard at the entrances to trade with the millions of China and Korea, French Indo-China, the Malay Peninsula, and the islands of Indonesia."[39] In September 1897, Roosevelt vigorously pushed for a naval attack on the Philippines in case of war with Spain. Even before the U.S. Congress could pass the war power resolution in regard to Spain, Senator Beveridge acting on his thesis that "commerce follows the flag," had in his mind the Philippines as "logically our first target." "The Philippines," he said, "give us a base at the door of all the East ... The Power that rules the Pacific ... is the Power that rules the world .... and, with the Philippines, that Power is and will forever be the American Republic."[40]

Following the US congressional appropriation for war against Spain, on 25 February 1898 Theodore Roosevelt as Assistant Secretary of the Navy gave Admiral Dewey a secret order that, "in the event of declaration of war with Spain," he would take "offensive operations in the Philippine Islands."[41] In January 1898, Dewey took command of the U.S. Asiatic Squadron in Japan and on the watch as to the approaching war against Spain he moved his fleet to Hong

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[36] *Id.*, at 15.

[37] GEORGE F. KENNAN, AMERICAN DIPLOMACY 1900-1950 18 (1951).

[38] *See* ALEJANDRO FERNANDEZ, THE PHILIPPINES AND THE UNITED STATES: THE FORGING OF NEW RELATIONS 59 (1977).

[39] *Id.*

[40] *Id.*, at 60

[41] *Id.*, at 64

Kong in February, two months before the outbreak of the Spanish - American War.

In regard to the policy question as to the occupation of the entire Philippine Archipelago, relevant was the decision of US President McKinley on 2 May 1898 to dispatch a military expedition to the Philippines following Dewey's victory at Manila Bay a day before McKinley selected General Wesley Merritt to take command of the expedition. Concerned with the size of the military force needed, Merritt wrote McKinley presenting a pointed policy issue: "I do not yet know whether it is your desire to subdue and hold all the Spanish territory in the islands, or merely to seize and hold the capital."[42]

General Miles recommended to McKinley a force three times the estimate of Dewey of 5,000 men, "with the view to maintaining our possession and our flag on the Philippine Island."[43] And Merritt wrote the War Department detailing the work to be done, which consisted of "conquering a territory of 7,000 islands from our base, defended by a regularly trained and acclimated army of 10,000 to 25,000 men, and inhabited by 14,000,000 people, the majority of whom will regard us with the intense hatred born of race and religion."[44]

McKinley's instruction relayed by the War Department to Merritt was vague enough to accommodate US occupation of the entire archipelago, saying that Dewey's victory "rendered it necessary ... to send an army of occupation to the Philippines for the two-fold purpose of completing the reduction of the Spanish power ... and giving order and security to the islands while in the possession of the United States."[45] On the political front, the generals were under strict orders "not to have political alliances with the insurgents or any faction in the islands that would incur liability to maintain their cause in the future," as Secretary Long instructed Dewey.[46] Earlier, Secretary of State William R. Day reprimanded US Consuls Pratt and Wildman for actuations in relation to Aguinaldo in Singapore that may be interpreted as political support for the independence movement.

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[42] FRANK HINDMAN GOLAY, FACE OF EMPIRE UNITED STATES - PHILIPPINE RELATIONS, 1898-1946 23 (1997).

[43] *Id.*, at 24.

[44] *Id.*

[45] *Id.*

[46] *Id.*

If it appears — as it does clearly — that the program of conquest and annexation of the Philippines was a settled decision long before Dewey's victory at Manila Bay, it was all the while futile for the Filipino revolutionary movement to have directed its will and strategy on recognition by the United States, giving rise to lack of decisive military action against the very seat of Spanish power before the arrival of the U.S. expeditionary forces and to territorial concessions by the Aguinaldo forces to US troops as the Americans prepared to carry out the occupation of the city, pursuant to the protocol of 12 August 1898 and the capitulation agreement with the Spanish forces.

Turning back now to the Treaty of Paris, we have a sample of supreme formalism of the law, by legal provision ceding the entire country and people to conquest. But it is a formalism that serves as a dressing for power, designed with deception in the classic style of imperialism that might is not only right but also moral. It is a formalism designed to obliterate a history of liberation struggle of a people and to fabricate their destiny on the motive power of imperialist exploitation.

For those who now count themselves as part of the Filipino nation it is of cardinal importance for them to look back and see American conquest and annexation in the light of the morality of purpose and how this has profoundly affected our reason for being as a people. As we look forward on the path of national self-determination, we may have in mind the advice of an international jurist that, "[I]n law we must beware of petrifying the rules of yesterday and thereby halting progress in the name of process [and] [i]f one consolidates the past and call it law he may find himself outlawing the future."[47]

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[47] Judge Manfred Lachs, former President of the International Court of Justice, commemorative speech at the United Nations General Assembly, October 12, 1973.