

FOR THE JAPANESE PEACE TREATY

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As one of the delegates of the Philippine Government who signed the Japanese Peace Treaty in San Francisco on September 8, 1951, I feel I should explain briefly the reasons that impelled me to place my signature on the Treaty. But to understand and appreciate our position in the conference, the atmosphere prevailing in it should be known by those who are seven thousand miles away from the scene. It is only then that the decisions made by the delegates can be weighed with fairness and objectivity.

The Japanese Peace Conference in San Francisco was more than a mere gathering of victorious nations to dictate the terms and conditions of peace with the defeated power. It was in reality a contest, a show of strength, between the two leading powers of the world today, the United States of America and Russia, each representing a distinct political and social system, diametrically opposed to the other.

The bitter feelings between the two countries were openly and rudely expressed in the Conference. It was perhaps the most unusual and the strangest peace gathering that has ever been held in history. Unlike the Versailles Conference that ended the First World War where the defeated country, Germany, took an active and vocal part in the proceedings, in the San Francisco Conference the defeated country, Japan, was practically invisible. The United States stood for her and even defended her against attempts at punishing her. After removing from Japan her colonies and special spheres of influence, America expressed a firm determination to make Japan or what is now left of Japan completely sovereign and independent, externally and internally.

The United States resorted to steam roller methods in the conference. It railroaded the adoption of the rules of proceedings. Secretary Acheson who was the presiding officer, declared out of order every remark, comment, voice that had any tendency to alter the treaty terms or to suggest the slightest departure from the draft of the treaty. He made no effort to support his rulings with plausible reasons. He merely used the big stick. Before a dissenter could fully express himself, Secretary Acheson had already declared: "You are

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out of order. Your time is up. Please sit down." The audience that packed the seats and galleries in the San Francisco Opera House applauded all those blunt decisions and gave him strong moral support. Any dissident voice during the discussion received nothing but a hiss or a near uproar of contempt and disapproval.

Under such circumstances no country, claiming itself to be a member of the democratic camp represented by the United States, could have a full and fair opportunity to present demands that did not wholly conform with the American draft. Such demands were apt to be misinterpreted as gestures giving aid and comfort to the enemy. The fact was that the American State Department was really determined to make the San Francisco meeting not a conference at all but a mere formal gathering for the signing of the Japanese Peace Treaty. The so-called architects of the Treaty assumed that all the negotiations and all the conferences had already been made before the San Francisco spectacular show.

In my humble opinion America set a bad precedent in ruthlessly suppressing free discussion in the conference. America that can rightly take pride as an advocate of freedom of expression caused a deep disappointment to many thinking and sober observers when her policy makers deliberately abandoned her traditional principle and practice of free speech and fair play. The only explanation of that undemocratic conduct was that American foreign policy makers were panic-stricken. They were so afraid of the menace of communism that they lost their presence of mind resulting in Secretary Acheson duplicating the unsavory tactics of Mr. Vishinski in the Danube conference. That was unworthy of Mr. Acheson because we all know that he is different from Vishinski and America is different from Russia. And the worse part of it all was that Mr. Acheson did not have to imitate any communist personality because the votes of the democratic states present in that conference were at his command and they were far more numerous than the communist votes. Were it not for the phantom of fear, which many sober Americans including General McArthur consider unworthy of the present American policy makers, the San Francisco conference would have afforded the participating countries a better opportunity to explain their positions more fairly and openly. The presence of Russia in the conference, therefore, worked to our disadvantage. In our faith in the American practice of freedom of discussion, we did not foresee the situation that actually obtained in San Francisco.

Some persons have indulged in the presumption that the Philippine negotiators of the Treaty failed to make a strong case for reparations. The records, however, will show that the 15-man com-

mittee did the best humanly possible under the circumstances. And that committee was not a partisan body but was made up of Nacionalistas, Liberals, and independents. There were in that group not only politicians and bureaucrats but also businessmen, educators, and civic leaders. And for five long months, that group wrestled with American diplomats with desperate vigor. The Philippine position was indeed desperate because it was precisely on the question of reparations that Mr. Dulles, the so-called architect of this Treaty, had put all his force and eloquence against binding Japan with economic fetters. He justified his adamant stand against reparations by this statement: "If you use the lash, if you exact reparations, if you constrict Japanese economic opportunity, if you act as jailer and master of slave labor, if you drive Japanese shipping off the seas and shut down her textile mills, you will create a peace that can only lead to bitter animosity and in the end drive Japan into the orbit of Russia."

Article 14 is a concession primarily won through the insistent efforts of the Philippine negotiators of the Treaty. With all due modesty, it is but fair and just that recognition be made of this fact. No matter how much certain quarters may try to belittle the work of the Philippine treaty committee in this regard, the grant of reparations to Allied Powers under this article was the direct result of Philippine diplomatic labor. A responsible American writer himself said on this subject: "The whole question of a lenient peace treaty has aroused passionate controversy in countries that were occupied by the Japanese. None has reacted more violently than the Philippines. In Manila, Dulles's position on reparations has been resented bitterly. The Filipinos feel that they speak for all smaller nations who suffered under an arrogant Japan—and they are saying that substantial reparations and a limitation of arms are the only guarantee that Japan won't give a repeat performance."

It may thus be said in all humility that the Philippines assumed the leadership in securing reparations not only for itself but for all nations entitled to reparations. That the Philippine negotiators failed to obtain the maximum amount and the most desirable form of reparations that some people would want to have is no reason for disparaging this modest achievement of a small nation, such as the Philippines, in the diplomatic tug-of-war with great and powerful states such as America and England. Such disparagement is doubly unfortunate and painful when expressed repeatedly by Filipinos themselves after they are made aware of the circumstances attendant on the drafting and negotiation of the Treaty.

Theoretically, the terms of Article 14 do not totally preclude the payment of reparations other than services if and when Japan's economy permits Japan to pay in cash or kind at such time when her economic condition improves. This may be clearly implied from the statement that "the resources of Japan are *not presently sufficient*, if it is to maintain a viable economy, to make complete reparations for all such damage and suffering and at the same time meet its other obligations." The inference is that when the resources of Japan *will later be sufficient*, more adequate reparations should be paid by it. This inference finds further basis on the recognition of Japan's duty to "pay reparations to the Allied Powers for the damage and suffering caused by it during the war."

The favorable score made by the Philippines referred to above consists in its having effected three changes in the American draft of March, 1951, namely:

(1) Explicit recognition of Japan's obligation to pay reparations.

(2) Implicit admission of the *temporary nature* of Japan's inability to pay adequate reparations.

(3) Outright admission to pay reparations in the form of services of the Japanese people in production, salvaging, and other work for the Allied Powers. Under the March draft of the Treaty, it was provided that "Japan lacks the capacity to make payments in bullion, money, property or *services*." It is apparent that reparations in services made available in the present Treaty represents an act of compromise, a concession, on the part of the United States.

In order that we may fully understand the serious consequences of non-ratification, we should turn our attention to Article 25 of the Treaty and its implications. An Allied Power is defined by Article 25, for the purposes of the Treaty, as any of the States at War with Japan, or any State which previously formed a part of the territory of a State named in Article 23 (i. e. Australia, Canada, Ceylon, France, Indonesia, the Netherlands, New Zealand, Pakistan, the Philippines, U.K., and U.S.A.), *provided that in each case the State concerned has signed and ratified the Treaty*. There are, therefore, two elements that make a state an Allied Power under this Treaty, namely: (1) that the State was at war with Japan and (2) that it has signed and ratified this Treaty. The mere fact that a State was at war with Japan is by itself insufficient to make it an Allied Power. To be considered an Allied Power, it is absolutely necessary that such State has signed and ratified this Treaty.

With the exception of China and Korea (which are not Allied Powers as herein defined), no State which is not an Allied Power can claim any right or benefit granted by this Treaty; and Japan may not be deprived of any right or interest in favor of any State that does not come under the definition of an Allied Power.

It is, therefore, obvious that if the Philippines does not ratify this treaty, she cannot be considered an Allied Power; and as such she will not be entitled to any of the rights and benefits given by the Treaty provisions to Allied States nor will Japan's rights and interests in the Philippines or any-where else be diminished or prejudiced in favor of the Philippines.

In order to form an idea of the consequences of non-ratification of the Treaty by the Philippines, the following summary of adverse effects should be carefully considered:

1. The Philippines will remain in a state of war with Japan. On the other hand, Japan acquires her full sovereignty by the action of the United States, Great Britain, Pakistan, Australia, New Zealand, and Canada in ratifying the Treaty. This will place the Philippines in an awkward position which will not be desirable when account is taken of its minor role in international affairs.

2. Japan will be excused from entering into negotiations with the Philippines for the regulation or limitation of fishing and the conservation of fisheries on the high seas under Article 9 of the Treaty.

3. Japan will be excused from accepting the judgments of the Philippine War Crimes Court and from carrying out the sentences imposed by it upon Japanese nationals; and clemency, reduction of sentence, and parole may be granted to such prisoners by Japan without regard to the decision of the Philippine government, as provided by Article 11 of the Treaty.

4. Japan will not be under any obligation to promptly enter into negotiation with the Philippines for the conclusion of trading, maritime, or other commercial treaties, under Article 12(a).

5. The Philippines, its nationals, products, and vessels will not be accorded by Japan most-favored-nation treatment with respect to customs duties, charges, restrictions, and other regulations on importation or exportation of goods; nor will national treatment be accorded to the Philippines with respect to shipping, navigation, imported goods as well as with respect to natural and juridical persons in matters pertaining to the collection of taxes, access to courts, performance of contracts, property rights, and the conduct of all kinds of business and professional activities. Article 12, (b), (1) (i) and (ii).

6. The Philippines will have no right to ask Japan to promptly enter into negotiations for a treaty on civil air transport, under Article 13(a).

7. Japan will not be bound to grant the Philippines equality of air-traffic rights with other nations or equality of opportunity in respect to the operation and development of air service, under Article 13(b).

8. The Philippines will lose not only the right to recover reparations in the form of services under Article 14(a), 1, which may be used to salvage some 400 sunken ships in Philippine seas which, in turn, may be sold as scrap iron for several million pesos, but also the right to seize, retain, liquidate or otherwise dispose of all property and property rights of Japan and its nationals located in the Philippines under Article 14, (a), 2, (i). Consequently, the Philippines will lose all rights to Japanese sunken ships, land owned by the Japanese in the Philippines (including the Japanese land holdings in Davao), and other Japanese interests in this country.

9. The Philippines will lose the right to recover any property or right belonging to it or its nationals within Japan, as provided under Article 15. It is said that there is still a considerable amount of property in Japan which was looted by the Japanese forces from the Philippines. This property will have to be returned to the Philippines if the Treaty is ratified. Non-ratification of the Treaty will bar the return of such property.

10. Non-ratification of the Treaty will free Japan from the obligation to indemnify members of the Philippine armed forces who suffered hardships as prisoners of war of Japan under Article 16. Thus Filipinos, who were prisoners of war of Japan, will be deprived of the indemnity given them by this Treaty.

11. The Philippine government and Filipino nationals will be deprived of the right to secure a review and revision of orders and decision of Japanese prize courts or other Japanese tribunals rendered during the war and which the Philippine government or Filipino nationals consider wrongful and unjust. Thus they will lose the opportunity of regaining their property and other rights lost through unjust orders of Japanese military or other authorities. (See Art. 17).

12. By not ratifying the Treaty, Japan will have, under Article 18, the right to demand from the Philippines payment of whatever rights the government or the nationals of Japan might have against the government or nationals of the Philippines arising from obligations or contracts existing before the war.

13. The Philippines will not receive the benefits of Japan's waiver of all claims of the Japanese government and nationals arising out of the war or any action or operation of the Allied forces or authorities under Art. 19. Without this waiver, it is possible that Japan may set up counterclaims for its losses during the war. This contingency may prove most embarrassing and burdensome to the Philippines in the event that the Philippines enters into separate bilateral negotiations without the assistance of the United States or of some other equally strong nation.

These losses and adverse effects to the rights of the Philippines recognized by the Treaty have to be seriously considered by those who are determined to assume the responsibility of rejecting the Treaty. Then if rejection is to be finally agreed upon, let it not be said later that we were not forewarned of its consequences.

There is some talk of postponing action on the Treaty. There is nothing important to be gained by such step. Under Article 26 Japan is precluded from granting any State in a separate agreement greater advantages than those provided in this Treaty without extending those same advantages to the parties to this Treaty.

It has to be admitted that the Treaty does not give us all that we desire, specially in the matter of reparations. But we are not the only nation that finds itself in that situation. We have to be content with what we can get under that Treaty as long as nothing catastrophic will befall our country by so doing.

What vital interests affecting the future life of the Philippines and destroying our opportunities for progress are involved in our failure to secure all the reparations we want from Japan? Practically insignificant, in view of the liberality extended to this country by the United States. On the other hand, by refusing to follow the democratic principle of compromise and majority rule, we lay ourselves open to the charge that we, in the very infancy of our international life, are poor sports, stubborn, and unfit to play the game of give-and-take.