

The Historical Context and Legal Basis of the Philippine Treaty Limits

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I. INTRODUCTION

The Philippines, on the basis of historic right of title,¹ claims that its territorial sea extends to the limits set forth in the colonial treaties,² which define the extent of the archipelago at the time it was ceded from Spain to the U.S. in 1898.³ The line drawn around the archipelago marks the outer limits of the historic territorial seas of the Philippines, which will be referred to here as the Philippine Treaty Limits.⁴ The Philippine Treaty Limits are contested in international law because they evidently breach the twelve-mile breadth of the territorial sea provided for in the Law of the Sea Convention,⁵ which the Philippines signed and ratified.⁶

The Philippine Treaty Limits are almost universally contested and seemingly irreconcilable with conventional and customary international law. This paper will clarify the historical context, extent, and basis of the Philippine Treaty Limits. The international legal status of the Philippine Treaty Limits, which is a far more complex issue, will not be covered in this paper.

This paper is in four parts. Part I discusses the international legal norm of territorial integrity and provides a brief outline of the development of the Philippines as a nation-state. Part II discusses the

¹ Arturo M. Tolentino, *On Historic Waters and Archipelagos*, 3 PHIL. L. J. 31, 51 (1974); see also YEHUDA Z. BLUM, *HISTORIC TITLES IN INTERNATIONAL LAW* (1965) (providing a discussion of historic right of title in international law); Juridical Regime of Historic Waters Including Historic Bays, *reprinted in* [1963] 2 Y.B. INT'L L. COMM'N 6, U.N. Doc. A/CN.4/143, available at http://untreaty.un.org/ilc/documentation/english/a_cn4_143.pdf.

² Three colonial treaties define the Philippine territorial boundaries: (1) Treaty of Paris, U.S.-Spain, Dec. 10, 1898, T.S. No. 343; (2) Cession of Outlying Islands of Philippines, U.S.-Spain, Nov. 7, 1900, T.S. No. 345; (3) Boundaries, Philippines and North Borneo, U.S.-U.K., Jan. 2, 1930, T.S. No. 856.

³ ARTURO M. TOLENTINO, *THE WATERS AROUND US* 3 (1974).

⁴ Estelito P. Mendoza, *The Baselines of the Philippine Archipelago*, 46 Phil. L. J. 628 (1969-1973). The Philippine Treaty Limits boundary lines roughly form the shape of a rectangular frame, with the longitudinal and latitudinal lines specified in Art. III of the Treaty of Paris. See Treaty of Paris, *supra* note 2; see also, JORGE R. COQUIA, *SELECTED ESSAYS ON THE LAW OF THE SEA* 7 (1982).

⁵ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 3; 21 I.L.M. 1261, available at http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf [hereinafter LOS Convention]; see also Jose Victor Villarino Chan-Gonzaga, *UNCLOS and the Philippine Territorial Seas: Problems, Perspectives and Options*, 42 ATENEO L. J. 1 (1997).

⁶ See Juan M. Arreglado, *Legal Force and Effect of Philippine Ratification of the U.N. Convention on the Law of the Sea*, 10 PHIL.Y. B. INT'L L. 38, 45 (1984). The Philippines signed the LOS Convention on December 10, 1982 and ratified it on May 8, 1984. *Id.*

cession of the Philippines from Spain to the U.S. by looking at state succession in international law and examining the colonial treaties which collectively defined the Philippine Treaty Limits. Part II also analyzes the nature and defects of the Spanish and American titles over the Philippines. Part III illustrates the extent of the territorial boundaries claimed by the Philippines based on historic title by treaty, explains the juridical function of these lines from a municipal point of view, and discusses historic rights in international law and the basis of the Philippine historic right of title to its Treaty Limits. Part IV concludes with a discussion of the Philippines' burden of proof to overcome challenges to the validity of its territorial limits in international law.

A. *Territorial Integrity as an International Legal Norm*

The sovereignty of a State is co-extensive with its territorial limits.⁷ Within these limits a State exercises supreme authority, including legislative, judicial, and executive competence to the exclusion of other States, as well as the corollary obligation to refrain from acts of encroachment in foreign territory.⁸ The international legal order functions through the fundamental principle of the right of every State to exercise sovereignty within the limits of its territory.⁹ Territorial sovereignty constitutes the very nucleus of contemporary international law.¹⁰

In contemporary international law, territory is a *sine qua non* requirement for the existence of a State.¹¹ The extent of a State's territory

⁷ Island of Palmas (Neth. v. U.S.), 2 R. INT'L ARB. AWARDS 829 (Perm. Ct. Arb. 1928), available at http://untreaty.un.org/cod/riiaa/cases/vol_II/829-871.pdf; see also Lea Brilmayer & Natalie Klein, *Land and Sea: Two Sovereignty Regimes in Search of a Common Denominator*, 33 N.Y.U. J. INT'L L. & POL. 703, 706 (2001).

⁸ The sole arbitrator in the Island of Palmas case, Max Huber, then President of the Permanent Court of International Justice, declared that "territorial sovereignty involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and war, together with the rights which each State may claim for its nationals in foreign territory." Island of Palmas, *supra* note 7, at 839. ROBERT GILPIN, *WAR AND CHANGE IN WORLD POLITICS* 17 (1981).

⁹ Alexander B. Murphy, *National Claims to Territory in the Modern State System: Geographical Considerations*, 7 *GEOPOLITICS* 193, 194 (2002).

¹⁰ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 26 (1979). In Ian Brownlie's words, sovereignty constitutes "the basic constitutional doctrine of the law of nations." IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 287 (1990).

¹¹ Montevideo Convention on the Rights and Duties of States art.1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19, available at <http://www.mtholyoke.edu/acad/intrel/interwar/rights.htm> (last visited Oct 29, 2008) (setting the four criteria for statehood: "(a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states.").

consists of the unity of its land, water, and air domains.¹² The clear demarcation of the limits and extent of a State's territorial jurisdiction is critical to avoid territorial disputes that can escalate into international conflict and possibly lead to war.¹³ Indeed, history is replete with wars fought over territorial disputes.¹⁴

Territorial integrity is a fundamental principle of international legal relations.¹⁵ International relations enjoin States from the threat or use of force against the territorial integrity or political independence of any State.¹⁶ The obligation to respect the territorial integrity of a State presupposes the right of national self-determination in the drawing of its boundaries.¹⁷ These boundaries serve the dual function of determining the

¹² CHRISTOPHER C. JOYNER, *INTERNATIONAL LAW IN THE 21ST CENTURY: RULES FOR GLOBAL GOVERNANCE* 43 (2005).

¹³ David B. Knight, *The Fine Line Between Peace and War: Reflections Upon McLaren's Neighbours for What it Suggests About the Role of Territory in Conflict*, in *THE RAZOR'S EDGE: INTERNATIONAL BOUNDARIES AND POLITICAL GEOGRAPHY* 37 (Clive Schofield, et al. eds., 2002).

¹⁴ Paul K. Huth, *Why are Territorial Disputes between States a Central Cause of International Conflict?* in *WHAT DO WE KNOW ABOUT WAR?* 85 (John A. Vasquez ed., 2000).

¹⁵ Mark W. Zacher, *The Territorial Integrity Norm: International Boundaries and the Use of Force*, 55 *INT'L ORG.* 215, 221 (2001); see also Paul K. Huth, *Territorial Disputes and International Conflict: Empirical Findings and Theoretical Explanations*, in *BORDERLANDS UNDER STRESS* 97 (Martin Pratt et al. eds., 2000).

¹⁶ U.N. Charter art. 2, para. 4, available at <http://www.un.org/aboutun/charter/> (last visited Oct. 29, 2008) (providing that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations."); see also The Covenant of the League of Nations art. 10, available at http://avalon.law.yale.edu/20th_century/leagcov.asp (last visited Nov. 12, 2008) (stipulating that "[t]he Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League."); SHARON KORMAN, *THE RIGHT OF CONQUEST: THE ACQUISITION OF TERRITORY BY FORCE IN INTERNATIONAL LAW AND PRACTICE* (1996).

¹⁷ Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (Dec. 14, 1960), available at http://www.unhchr.ch/html/menu3/b/c_coloni.htm (last visited Oct. 29, 2008); Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, G.A. Res. 2625, at 121, U.N. GAOR, 25th Sess., 1883d plen. mtg., U.N. Doc. A/8028 (Oct. 24, 1970), available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf>; see also Vienna Convention on the Succession of States in Respect of Treaties art. 11, Aug. 23, 1978, 1946 U.N.T.S. 3, 17 I.L.M. 1488, available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf (noting that "a succession of States does not as such affect: (a) a boundary established by a treaty; or (b) obligations and rights established by a treaty and relating to the regime of a boundary.").

frontiers of a State's sovereignty and prescribing the limits of permissible encroachment by the international community.¹⁸

The notion of State sovereignty as inalienable, full, and absolute currently has become, in a strict Westphalian sense,¹⁹ increasingly qualified.²⁰ A State's right to exercise sovereignty must be in accordance with recognized principles of international law.²¹ As a member of the family of nations, a State is bound by principles of both customary and conventional international law in all international matters.²² However, when it is solely a question of municipal administration *sans* an international dimension, a State should reference only to its constitution, domestic laws, and the conduct of civilized States for guidance and direction.²³ International law urges States to uphold "the obligation not to intervene in the affairs of any other State."²⁴ Under international law, the preeminence of State territorial sovereignty is directly linked to the duty of nonintervention.²⁵

This article's discussion of the Philippines' territorial limits is based on these fundamental precepts. The idea that the current

¹⁸ Stuart Elden, *Contingent Sovereignty, Territorial Integrity and the Sanctity of Borders*, 26 S.A.I.S. REV. 11 (2006).

¹⁹ The Westphalian concept of nation-state sovereignty traces its origins to the Peace of Westphalia of 1648, which initiated a new order of states based on territorial integrity. Modernity and interdependence among states along with the blurring of state boundaries in a globalized free trade economy has since eroded and challenged this notion. See Stephanie Beaulac, *The Westphalian Model in Defining International Law: Challenging the Myth*, 8 AUSTL. J. LEG. HIST. 181 (2004).

²⁰ Martti Koskenniemi, *The Future of Statehood*, 32 HARV. INT'L L. J. 397, 397 (1991); STEPHEN D. KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY (1999); see also, BEYOND WESTPHALIA?: STATE SOVEREIGNTY AND INTERNATIONAL INTERVENTION 45 (Gene M. Lyons & Michael Mastanduno eds., 1995).

²¹ ANTHONY CARTY, THE DECAY OF INTERNATIONAL LAW?: A REAPPRAISAL OF THE LIMITS OF LEGAL IMAGINATION IN INTERNATIONAL AFFAIRS (1986); INGRID DETTER DELUPIS, THE INTERNATIONAL LEGAL ORDER (1994); JACK L. GOLDSMITH AND ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (2005).

²² I. I. Lukashuk, *Control in Contemporary International Law*, in CONTROL OVER COMPLIANCE WITH INTERNATIONAL LAW 5 (W.E. Butler ed., 1991).

²³ THE FLUID STATE: INTERNATIONAL LAW AND NATIONAL LEGAL SYSTEMS 16 (Hilary Charlesworth ed., 2005); RUTH D. MASTERS, INTERNATIONAL LAW IN NATIONAL COURTS: A STUDY OF THE ENFORCEMENT OF INTERNATIONAL LAW IN GERMAN, SWISS, FRENCH, AND BELGIAN COURTS 11 (1968).

²⁴ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, Preamble, *supra* note 17, at 121.

²⁵ See R. J. VINCENT, NONINTERVENTION AND INTERNATIONAL ORDER (1974); GORONWY J. JONES, THE UNITED NATIONS AND THE DOMESTIC JURISDICTION OF STATES: INTERPRETATIONS AND APPLICATIONS OF THE NON-INTERVENTION PRINCIPLE (1979); NON-INTERVENTION AND STATE SOVEREIGNTY IN THE ASIA-PACIFIC (David Dickens & Guy Wilson-Roberts eds., 2000).

configuration of the Philippine archipelago is incompatible with international law challenges its territorial integrity.²⁶

B. *The Philippine Nation-State*

Even before the arrival of the first European on her shores, the Philippines already existed.²⁷ Extensive archaeological records and ancient narratives indicate that pre-colonial Philippines had robust trade relations with its neighboring countries.²⁸ Even before the Spaniards arrived in the archipelago, an established system of government existed in the islands.²⁹ When the first Spaniards arrived on the islands in 1521, they found that the Philippines had a civilization of its own.³⁰

1. The Philippine Archipelago as a Single Territorial Entity

Unfortunately, the Filipinos were never able to muster the critical mass necessary to oppose foreign colonial rule because they were divided by geography, religion, language, race, and culture.³¹ The Spanish colonial forces were masters of the ancient Roman military strategy of “divide and rule.”³² The Spanish government easily quelled local revolts and uprisings between natives of one region and natives from another region.³³ Further, they had no concept of a Philippine national

²⁶ Merlin M. Magallona, *The United Nations Convention on the Law of the Sea and Its Implications on the Territorial Sovereignty of the Philippines*, 11 WORLD BULLETIN 50, 76 (1995).

²⁷ TEODORO A. AGONCILLO, HISTORY OF THE FILIPINO PEOPLE 23 (1967); *see also* DANIEL W. TANTOCO, A SELECTED BIBLIOGRAPHY ON PHILIPPINE PREHISTORY (1970); F. LANDA JOCANO, PHILIPPINE PREHISTORY: AN ANTHROPOLOGICAL OVERVIEW OF THE BEGINNINGS OF FILIPINO SOCIETY AND CULTURE (1975).

²⁸ STANLEY KARNOW, IN OUR IMAGE: AMERICA'S EMPIRE IN THE PHILIPPINES 39 (1989); *see also* William Henry Scott, *Boat-Building and Seamanship in Classic Philippine Society*, in CRACKS IN THE PARCHMENT CURTAIN, AND OTHER ESSAYS IN PHILIPPINE HISTORY 60 (1985).

²⁹ THE FILIPINO NATION: A CONCISE HISTORY OF THE PHILIPPINES 17 (Helen R. Tubangui et al. eds., 1982) [hereinafter THE FILIPINO NATION].

³⁰ *Id.* at 20.

³¹ Frank L. Andrews, *The Philippine Insurrection (1899 -1902): Development of the U.S. Army's Counterinsurgency Policy* (Aug. 2002) (M.A. thesis, Louisiana State University), *available at* http://etd.lsu.edu/docs/available/etd-0419102-093318/unrestricted/Andrews_thesis.pdf.

³² AMADO GUERRERO, PHILIPPINE SOCIETY AND REVOLUTION 5 (1970); *see also* ROGER B. MERRIMAN, THE RISE OF THE SPANISH EMPIRE IN THE OLD WORLD AND THE NEW (1962); CLARENCE HENRY HARING, THE SPANISH EMPIRE IN AMERICA (1985); HUGH THOMAS, RIVERS OF GOLD: THE RISE OF THE SPANISH EMPIRE, FROM COLUMBUS TO MAGELLAN (2005).

³³ AUSTIN CRAIG, THE FILIPINOS' FIGHT FOR FREEDOM: TRUE HISTORY OF THE FILIPINO PEOPLE DURING THEIR 400 YEARS' STRUGGLE TOLD AFTER THE MANNER OF JOSE RIZAL 44 (1973); Consorcia L. Donovan, *The Philippine Revolution: A*

consciousness.³⁴ In the words of Dr. Jose Rizal, “A man in the Philippines is only an individual, he is not a member of a nation.”³⁵

The birth of Philippine nationalism, and consequently the idea of the Philippines as a nation, came only after three centuries of Spanish colonial rule.³⁶ Two factors contributed to the emergence of the notion of a unified Philippine State. First, the excesses and abuses of the Spanish regime caused the widespread discontent.³⁷ Second, the *ilustrados* (local elites), who studied in Europe brought home the idea of liberalism.³⁸ Emilio Aguinaldo states:

Spain maintained control of the Philippine Islands for more than three centuries and a half, during which period the tyranny, misconduct and abuses of the friars and the civil and military administrators exhausted the patience of the Filipinos and caused them to make a desperate effort to shake off the galling yoke of Spain.³⁹

To list all the civil and political abuses of the Spaniards is unnecessary. Suffice it to say that the situation in 1898 was deplorable and the conditions were ripe for a revolution.

"Decolonized" Version (November 1976) (unpublished Ph.D. thesis, Claremont Graduate School) (available on ProQuest digital dissertation database); *see also* DAVID R. STURTEVANT, *POPULAR UPRISINGS IN THE PHILIPPINES, 1840-1940* (1976).

³⁴ JOHN N. SCHUMACHER, *THE MAKING OF A NATION: ESSAYS ON NINETEENTH-CENTURY FILIPINO NATIONALISM* 37 (1991).

³⁵ AGONCILLO, *supra* note 27, at 123.

³⁶ *See* ERNEST GELLNER, *NATIONS AND NATIONALISM* (1983); BENEDICT R. ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1991); ERIC J. HOBBSBAWM, *NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY* (1992); *see also* Rizalino A. Oades, *The Social and Economic Background of Philippine Nationalism, 1830-1892* (1974) (Ph.D. thesis, University of Hawaii) (studying the development of Philippine nationalism); DAVID ROUTLEDGE, *DIEGO SILANG AND THE ORIGINS OF PHILIPPINE NATIONALISM* (1979); USHA MAHAJANI, *PHILIPPINE NATIONALISM: EXTERNAL CHALLENGE AND FILIPINO RESPONSE, 1565-1946* (1971); RENATO CONSTANTINO, *NEOCOLONIAL IDENTITY AND COUNTER-CONSCIOUSNESS: ESSAYS ON CULTURAL DECOLONIZATION* (1978).

³⁷ AGONCILLO, *supra* note 27, at 133.

³⁸ *See* CARLOS QUIRINO, *THE YOUNG AGUINALDO: FROM KAWIT TO BIYAK-NABATO* (1969); PEDRO S. DE ACHUTEGUI & MIGUEL A. BERNAD, *AGUINALDO AND THE REVOLUTION OF 1896: A DOCUMENTARY HISTORY* (1972); ALFREDO B. SAULO, *EMILIO AGUINALDO: GENERALISSIMO AND PRESIDENT OF THE FIRST PHILIPPINE REPUBLIC—FIRST REPUBLIC IN ASIA* (1983).

³⁹ EMILIO F. AGUINALDO, *TRUE VERSION OF THE PHILIPPINE REVOLUTION* 3 (1899), *available at* <http://www.gutenberg.org/etext/12996> (in English), *available at* <http://www.gutenberg.org/etext/12996> (in Spanish) (last visited Nov. 12, 2008).

2. The Philippine Declaration of Independence

The increasing patriotic sentiments and nationalistic ideals became the main ideologies that fueled the Philippine Revolution of 1896, which was the first Asian nationalist revolution.⁴⁰ On June 12, 1898, Filipino revolutionary forces under General Emilio Aguinaldo, who would later become the Philippines' first Republican President, proclaimed the Philippine Declaration of Independence.⁴¹ The Declaration proclaimed the sovereignty and independence of the Philippine Islands from the colonial rule of Spain after the latter was defeated at the Battle of Manila Bay during the Spanish-American War.⁴² On January 23, 1899, the First Philippine Republic, popularly known as the Malolos Republic,⁴³ was inaugurated amidst colourful ceremonies in the central Luzon province of Bulacan.⁴⁴

However, neither the U.S. nor Spain⁴⁵ recognized the Philippine Declaration of Independence.⁴⁶ In fact, even before the smoke from the rubbles of the War had cleared, the Philippines found itself with a new colonial master: the U.S. On December 10, 1898, in the aftermath of the

⁴⁰ See CARLOS QUIRINO, *WHY THE 1896 PHILIPPINE REVOLUTION FAILED* (1986); FLORENTINO RODAO GARCIA & FELICE NOELLE RODRIGUEZ, *THE PHILIPPINE REVOLUTION OF 1896: ORDINARY LIVES IN EXTRAORDINARY TIMES* (2001); CESAR ADIB MAJUL, *THE POLITICAL AND CONSTITUTIONAL IDEAS OF THE PHILIPPINE REVOLUTION* (1967).

⁴¹ HENRI TUROT, *EMILIO AGUINALDO, FIRST FILIPINO PRESIDENT, 1898-1901* 94 (1981).

⁴² For literature on the Spanish-American War, see RICHARD H. TITHERINGTON, *A HISTORY OF THE SPANISH-AMERICAN WAR OF 1898* (1971); R. A. ALGER, *THE SPANISH-AMERICAN WAR* (1901); ELBERT J. BENTON, *INTERNATIONAL LAW AND DIPLOMACY OF THE SPANISH-AMERICAN WAR*, (1968); W. NEPHEW KING, *THE STORY OF THE SPANISH-AMERICAN WAR AND THE REVOLT IN THE PHILIPPINES* (1900); THOMAS G. PATERSON AND STEPHEN G. RABE, *IMPERIAL SURGE: THE UNITED STATES ABROAD, THE 1890S—EARLY 1900S* (1992); JOSEPH SMITH, *THE SPANISH-AMERICAN WAR: CONFLICT IN THE CARIBBEAN AND THE PACIFIC, 1895-1902* (1995).

⁴³ ANTONIO M. MOLINA, *THE PHILIPPINES THROUGH THE CENTURIES, VOLUME II* 193 (1961); see TEODORO A. AGONCILLO, *MALOLOS: THE CRISIS OF THE REPUBLIC* (1960); see also CESAR ADIB MAJUL, *APOLINARIO MABINI REVOLUTIONARY: THE GREAT ROLE HE PLAYED IN THE MALOLOS CONGRESS, THE BIRTH OF THE PHILIPPINE REPUBLIC AND THE FILIPINO-AMERICAN WAR* (1998).

⁴⁴ AGONCILLO, *supra* note 27, at 249.

⁴⁵ Teodoro A. Agoncillo, *The Filipino Plea for Independence, in* *IMPERIAL SURGE: THE UNITED STATES ABROAD, THE EARLY 1890S - EARLY 1900S* 98, 102 (Thomas G. Paterson et al. eds., 1992).

⁴⁶ See *THE DECLARATION OF INDEPENDENCE* (Phil. 1898), available at http://en.wikisource.org/wiki/Philippine_Declaration_of_Independence.

Spanish-American War, the Philippines was ceded to the U.S. in the Treaty of Paris.⁴⁷

To be historically precise, the Philippines struggled for independence twice: first from Spain, then from the U.S..⁴⁸ The Philippines declared independence from Spanish rule on June 12, 1898.⁴⁹ This was not recognized by the U.S. or Spain because Spain still ceded the Philippines to the U.S. in the Treaty of Paris on December 10, 1898. The U.S. only formally recognized independence to the Philippines on July 4, 1946.⁵⁰

This historical summary may seem but a sidebar to the discussion, but will be fully explored in the following section. The question of when sovereignty was validly transferred is a crucial issue in determining succession of States in international law.⁵¹

II. THE CESSION OF THE PHILIPPINES FROM SPAIN TO THE U.S.

A. *State Succession in International Law*

In international law, “[w]hen one State takes the place of another and undertakes a permanent exercise of its sovereign territorial rights or

⁴⁷ Merlin M. Magallona, *The Treaty of Paris: History and Morality in International Law*, 75 PHIL. L. J. 159, 159 (2000); *see also* Leon R. Camp, *The Senate Debates on the Treaty of Paris of 1898* (1969) (unpublished Ph.D. thesis, Pennsylvania State University) (on file with author) (providing excellent background on the historical context and rhetorical background of the Treaty of Paris debates in the U.S. Senate).

⁴⁸ Reynaldo C. Ileto, *Philippine Wars and the Politics of Memory*, 13 POSITIONS 214, 217 (Spring 2005).

⁴⁹ AGONCILLO, *supra* note 27, at 241.

⁵⁰ *Id.* at 507. In official recognition of Philippine independence, the U.S. and the Republic of the Philippines entered into a treaty of general relations, the first treaty to be concluded between the two nations. *See* Proclamation No. 2695 (Jul. 4, 1946), *available at* <http://www.presidency.ucsb.edu/ws/index.php?pid=58813> (U.S. President Harry S. Truman proclaiming the independence of the Philippines) In 1964, then-Philippine President Diosdado Macapagal signed Republic Act No. 4166 which officially proclaimed June 12 as Philippine Independence Day in the name of nationalism, upon the advice of historians. Republic Act No. 4166, Aug. 4, 1964 *available at* http://www.lawphil.net/statutes/repacts/ra1964/ra_4166_1964.html.

⁵¹ *See* DANIEL PATRICK O'CONNELL, *STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW* (1967) (discussing state succession in international law and its corresponding legal effects); ARTHUR BERRIEDALE KEITH, *THE THEORY OF STATE SUCCESSION: WITH SPECIAL REFERENCE TO ENGLISH AND COLONIAL LAW* (1907); R. W. G. DE MURALT, *THE PROBLEM OF STATE SUCCESSION WITH REGARD TO TREATIES* (1954); DANIEL PATRICK O'CONNELL, *STATE SUCCESSION AND PROBLEMS OF TREATY INTERPRETATION* (1964); DANIEL PATRICK O'CONNELL, *THE LAW OF STATE SUCCESSION* (1956); *see also* LUNG-FONG CHEN, *STATE SUCCESSION RELATING TO UNEQUAL TREATIES* (1974); YILMA MAKONNEN, *INTERNATIONAL LAW AND THE NEW STATES OF AFRICA: A STUDY OF THE INTERNATIONAL LEGAL PROBLEMS OF STATE SUCCESSION IN THE NEWLY INDEPENDENT STATES OF EASTERN AFRICA* (1983).

powers, there is said to be a succession of States.”⁵² In most instances, State succession entails the loss or acquisition of territory.⁵³ International law recognizes five traditional modes of territory acquisition: (1) cession, (2) occupation, (3) accretion, (4) conquest or subjugation, and (5) prescription.⁵⁴ In most cases, there is more than one mode of territorial acquisition because the modes may be inextricably linked.⁵⁵

The legitimacy of a territorial acquisition is a complex issue in international law.⁵⁶ Sometimes, similar to the case at hand, the basic point of inquiry is when the territorial acquisition took place. For instance, while annexation, or “discovery,” was historically a permissible mode of acquiring title to territory, it is now regarded as illegitimate.⁵⁷ The United Nations (U.N.) Charter prohibits the threat or use of force against the territorial integrity or political independence of any State.⁵⁸ Over the course of time, the prohibition on the use of force has also become customary international law.⁵⁹

⁵² Amos S. Hershey, *The Succession of States*, 5 AM. J. INT’L L. 285, 285 (1911); see also J. Mervyn Jones, *State Succession in the Matter of Treaties*, 24 BRIT. Y. B. INT’L L. 360, 360 (1947) (differentiating between succession *in fact*, when one state follows another in possession of territory; and succession *in law*, or the succession of an heir to the deceased).

⁵³ Rein Mullerson, *Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia*, 42 INT’L & COMP. L. Q. 473, 475 (1993); JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 400 (1979).

⁵⁴ R. Y. JENNINGS, *THE ACQUISITION OF TERRITORY IN INTERNATIONAL LAW* 16-28 (1963); BROWNLIE, *supra* note 10, at 131.

⁵⁵ Randall Lesaffer, *Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription*, 16 EUR. J. INT’L L. 25, 39 (2005).

⁵⁶ Sean Fern, *Tokdo or Takeshima? The International Law of Territorial Acquisition in the Japan-Korea Island Dispute*, 5 STAN. J. EAST ASIAN AFF. 78, 81 (2005).

⁵⁷ SHARON KORMAN, *THE RIGHT OF CONQUEST: THE ACQUISITION OF TERRITORY BY FORCE IN INTERNATIONAL LAW AND PRACTICE* 209-12 (1996).

⁵⁸ Compare U.N. Chart., *supra* note 16, at art. 2 para. 4, and Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, *supra* note 17 (providing that “the territory of a State shall not be the object of acquisition by another State resulting from the threat of use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal”), with Stephen M. Schwebel, *What Weight to Conquest?*, 64 AM. J. INT’L L. 344, 345 (1970) (differentiating between aggressive and defensive conquest).

⁵⁹ Olivier Corten, *The Controversies Over the Customary Prohibition on the Use of Force: A Methodological Debate*, 16 EUR. J. INT’L L. 803, 803 (2005). For academic literature on the use of force in international law, see IAN BROWNLIE, *INTERNATIONAL LAW AND THE USE OF FORCE BY STATES* (1963); ANTHONY C. AREND AND ROBERT J. BECK, *INTERNATIONAL LAW AND THE USE OF FORCE: BEYOND THE UN CHARTER PARADIGM* (1993); THOMAS EHRLICH AND MARY ELLEN O’CONNELL, *INTERNATIONAL LAW AND THE USE OF FORCE* (1993); CHRISTINE D. GRAY, *INTERNATIONAL LAW AND*

In practical terms, this means that the creation of new States in violation of this peremptory norm is illegal—*ex iniuria ius non oritur*: right can not grow out of injustice.⁶⁰ Clearly, a treaty of cession is void if it arises out of an act of annexation procured by the threat or use of force in violation of the U.N. Charter.⁶¹

Cession of State territory is the peaceful transfer of ownership to another State.⁶² According to R.Y. Jennings:

The cession of a territory means the renunciation made by one State in favor of another of the rights and title which the former may have to the territory in question. This is affected by a treaty of cession expressing agreement to the transfer.⁶³

Although by today's standards the 1898 annexation of the Philippines by the U.S. was unlawful, it does not follow that the U.S. claims of sovereignty are unfounded.⁶⁴ Under the doctrine of intertemporal law, "a juridical fact must be appreciated in light of the law contemporary with it, and not the law in force at the time when a dispute in regard to it arises or falls to be settled."⁶⁵ Thus, the legality of any act should be determined in accordance with the law of the time the act was

THE USE OF FORCE (2000); MARY ELLEN O'CONNELL, *INTERNATIONAL LAW AND THE USE OF FORCE: CASES AND MATERIALS* (2005).

⁶⁰ Such a principle has been recognized in following cases: Case of the Free Zones of Upper Savoy and the District of Gex (Fr. v. Switz.), 1932 P.C.I.J. (ser. A/B) No. 46 (Mar. 29); Case Concerning the Legal Status of the South-Eastern Territory of Greenland (Nor. v. Den.), 1932 P.C.I.J. (ser. A/B) No. 48, at 277 (Aug. 3); Jurisdiction of the Courts of Danzig, Advisory Opinion (Danzig v. Pol.), 1928 P.C.I.J. (ser. B) No. 15, at 5 (Mar. 3); Legal Status of Eastern Greenland Dissenting Opinion (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 53, at 75 (Apr. 5).

⁶¹ Vienna Convention on the Law of Treaties art 52, May 23, 1969, 1155 U.N.T.S. 331 (stating that "a treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations), *available at* http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf; *Id.* at art. 53 (stating "a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law . . .")

⁶² JENNINGS, *supra* note 54, at 16.

⁶³ *Id.*

⁶⁴ Carman F. Randolph, *Constitutional Aspects of Annexation*, 12 HARV. L. REV. 291, 304-15 (1898).

⁶⁵ Island of Palmas, *supra* note 7, at 839; see T. O. Elias, *The Doctrine of Intertemporal Law*, 74 AM. J. INT'L L. 285, 305-07 (1980); R. Y. JENNINGS AND ARTHUR SIR WATTS, *OPPENHEIM'S INTERNATIONAL LAW* 1281-82 (1997) (discussing that "juridical fact must be appreciated in the light of the law contemporary with it. Similarly, a treaty's terms are normally to be interpreted on the basis of their meaning at the time that the treaty was concluded, and in the light of circumstances then prevailing.").

committed, and not by reference to law as it might have become at a later date.⁶⁶

B. *The Spanish Title over the Philippine Archipelago*

Making the first circumnavigation of the globe in 1521, Ferdinand Magellan, a Portuguese sailing the flag of Spain, landed in the Philippines and claimed it for Spain.⁶⁷ Spain claimed dominion over the Philippine archipelago on the basis of discovery, a valid mode of acquisition at the time.⁶⁸ In 1565, the first permanent Spanish settlement was established by Miguel López de Legazpi.⁶⁹ Legazpi was later appointed governor general and Manila was made capital in 1571.⁷⁰ In the same year he named the new colony “*Filipinas*” in honor of the Spanish king, King Philip II (Felipe II de España).

The Philippines remained a crown colony of Spain for over three centuries.⁷¹ Spain relinquished title over the Philippine islands in the aftermath of the Spanish-American War, when the U.S. emerged as the victor.⁷² The Treaty of Paris⁷³ was signed in Paris on December 10, 1898, which ceded the archipelago to the U.S.⁷⁴

⁶⁶ This is enshrined in the legal principle universally accepted in all modern democracies called *nulla poena sine lege*, which literally means, “no penalty without a law.” One cannot be penalized for doing something that is not prohibited by law, nor can penal laws be applied retroactively. Jerome Hall, *Nulla Poena Sine Lege*, 47 YALE L.J. 165 (1937).

⁶⁷ See ANTONIO PIGAFETTA, *MAGELLAN'S VOYAGE: A NARRATIVE ACCOUNT OF THE FIRST NAVIGATION* (R.A. Skelton trans., 1975) (providing an eye-witness account of Magellan's expedition).

⁶⁸ SURYA P. SHARMA, *TERRITORIAL ACQUISITION, DISPUTES AND INTERNATIONAL LAW* 40 (1997). Sharma opines that although discovery as a mode of acquisition of territorial rights was acknowledged during the fifteenth and sixteenth century by eminent writers on the law of nations like Vitoria, Freitas and Suarez it stood on shaky grounds as a source of title. Discovery as a mode of acquisition failed to receive the approval of reputed jurists such as Hugo Grotius, Pufendorf, and was contrary to state practice and the Roman Law, the source from which rules of international law were deduced. Sharma adds that since the discovery doctrine could not stand independently, it was accorded at most an inchoate title which needed to be perfected by some other evidence; see also Friedrich August Freiherr Von Der Heydte, *Discovery, Symbolic Annexation and Virtual Effectiveness in International Law*, 29 AM. J. INT'L L. 448, 452 (1935); CONRADO BENITEZ, *HISTORY OF THE PHILIPPINES* 20 (1954).

⁶⁹ AGONCILLO, *supra* note 27, at 83 (discussing the Cebu settlement on an island in Southern Philippines originally named *San Miguel*, later renamed *Santisimo Nombre de Jesus*).

⁷⁰ THE FILIPINO NATION, *supra* note 29, at 37 (recording that Legazpi declared Manila a city on June 3, 1571 and proceeded to organize a municipal government).

⁷¹ HENRY ARTHUR FRANCIS KAMEN, *EMPIRE: HOW SPAIN BECAME A WORLD POWER 1492-1763* 197 (2003).

⁷² Eastern Green Land Case (Den. v Nor.), 1933 P.C.I.J. (ser. A/B) No. 53, at 47 (Apr. 1933) (declaring “conquest . . . operates as a cause of loss of sovereignty when

Prior to the cession, the Philippines had already declared independence from Spain on June 12, 1898.⁷⁵ During the last months of 1898, when the Treaty of Paris was negotiated, Filipinos sought sovereignty with legal and historical arguments and declared that the cession to the U.S. was illegitimate.⁷⁶ By August 1898, the Filipinos possessed most of their country, except for Manila and its surrounding areas.⁷⁷

Thus, the crucial question is: Was the cession of the Philippine archipelago valid under international law? Obviously, absent an established title, Spain cannot be said to have ceded whatever title it did not possess to the U.S.. In this respect, the rather confused “chains of title” successively or jointly invoked by the U.S. do not matter: no title, no “cession.”⁷⁸ Whether in 1898 or 1900 through treaties with the U.S., or in 1930 through treaty with the U.K., Spain could not have transferred more territorial rights than it actually possessed.

In 1898, at the time Spain ceded its sovereign rights of the Philippine archipelago to the U.S., the prevailing international law theory was that an area inhabited by people not “permanently united for political action was deemed *territorium nullius* (empty territory).”⁷⁹ It was widely acknowledged that a claim grounded on *territorium nullius* was binding over foreign powers. The two foreign powers simply ignored the fact that Spain never fully exercised control over the entire archipelago.⁸⁰ During the transfer of the Philippines, the parties did not obtain the native

there is war between two States and by reason of the defeat of one of them sovereignty passes from the loser to the victorious State”); AGONCILLO, *supra* note 27, at 251.

⁷³ Though originally titled the Treaty of Peace, this treaty is now referred to as the Treaty of Paris in most literature. This article will refer to the treaty as the Treaty of Paris. Treaty of Paris, *supra* note 2.

⁷⁴ JOSEPH SMITH, *THE SPANISH-AMERICAN WAR: CONFLICT IN THE CARIBBEAN AND THE PACIFIC, 1895-1902* (1995).

⁷⁵ AGONCILLO, *supra* note 27, at 240, 568.

⁷⁶ ARTHUR JUDSON BROWN, *THE NEW ERA IN THE PHILIPPINES* 21 (1903).

⁷⁷ PETER W. STANLEY, *A NATION IN THE MAKING: THE PHILIPPINES AND THE UNITED STATES, 1899-1921* 51 (1974).

⁷⁸ Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51 AM. J. INT’L L. 308 (1957); J. G. Starke, *The Acquisition of Title to Territory by Newly Emerged States*, 41 BRITISH Y.B. INT’L L. 411 (1965-1966).

⁷⁹ Owen J. Lynch, Jr., *The Legal Bases of Philippine Colonial Sovereignty: An Inquiry*, 62 PHIL. L. J. 279, 293 (1987) (citing MARK F. LINDLEY, *THE ACQUISITION AND GOVERNMENT OF BACKWARD TERRITORY IN INTERNATIONAL LAW* 80 (1926); GORDON BENNETT, *ABORIGINAL RIGHTS IN INTERNATIONAL LAW* 5 (1978)).

⁸⁰ CESAR ADIB MAJUL, *MUSLIMS IN THE PHILIPPINES* 290-308 (1973) (discussing international recognition of Spanish sovereignty over the Sulu Sultanate as problematic with respect to the British and German governments).

inhabitants' consent, thus rendering their consent immaterial to the validity of the treaty.⁸¹ Even if its title was challenged, the U.S. could rely on the international character of the cession of Philippines territory from Spain.⁸² First, Spain's claim of title rests on the theory of *territorium nullius*.⁸³ Second, the massive military victories of the U.S. over the nativist resistance allow the U.S. to claim legal title on the basis of conquest.⁸⁴ However, there was no need to raise these alternative theories; "[i]t was simply assumed, without question, that the Spanish cession was valid and that it applied to all parts of the colony."⁸⁵

C. *The American Title over the Philippine Archipelago*

The U.S. bases its title to the Philippine archipelago on Spain's title, which was based on discovery, and the subsequent cession of the Philippines to the U.S. pursuant to the Treaty of Paris. This assumes that Spain had sovereign rights over the Philippines until the Spanish-American War, enabling the cession.

The U.S., however, was hardly concerned about the validity of its title over the Philippines islands.⁸⁶ After all, it was the era of American imperialist expansion, and the Philippines constituted a strategic possession in America's growing empire.⁸⁷ The Philippines was regarded as the "*el dorado* of the Orient."⁸⁸ It was seen as a source for vital raw materials, a market for American goods, a strategic naval base, and as Spain had done nearly three and one-half centuries earlier, an essential commercial trading post to China.⁸⁹ A series of recurrent economic crises exacerbated the need for new spiritual and commercial frontiers to replace

⁸¹ AGONCILLO, *supra* note 27, at 256.

⁸² D.H.N. Johnson, *Consolidation as a Root of Title in International Law*, 1955 CAMBRIDGE L. J. 215, 215-56 (1955).

⁸³ SHARMA, *supra* note 68, at 45-46; BENJAMIN OBI NWABUEZE, *A CONSTITUTIONAL HISTORY OF NIGERIA I* (1982).

⁸⁴ Stephen Beaulac, *Vattel's Doctrine on Territory Transfers in International Law and the Cession of Louisiana to the United States of America*, 63 LA. L. REV. 1327, 1342 (2002-2003); KORMAN, *supra* note 16, at 7-12.

⁸⁵ Lynch, *supra* note 79, at 293.

⁸⁶ ANTONIO M. MOLINA, *THE PHILIPPINES THROUGH THE CENTURIES, VOLUME II* 199 (1961).

⁸⁷ PAUL ALEXANDER KRAMER, *THE BLOOD OF GOVERNMENT: RACE, EMPIRE, THE U.S., & THE PHILIPPINES* 82-84 (2006); MAX BOOT, *THE SAVAGE WARS OF PEACE: SMALL WARS AND THE RISE OF AMERICAN POWER* 105 (2002).

⁸⁸ MURAT HALSTEAD, *THE STORY OF THE PHILIPPINES AND OUR NEW POSSESSIONS* 92 (1898).

⁸⁹ Thomas J. McCormick, *Insular Possessions for the China Market, in IMPERIAL SURGE: THE UNITED STATES ABROAD, THE 1890S - EARLY 1900S* 56 (Thomas G. Paterson et al. eds., 1992).

an exhausted continental frontier and a saturated home market.⁹⁰ To many, the nation's future prosperity hinged on the outcome of the acquisition of the Philippines.

The Spanish-American War signaled the demise of the Spanish Empire and heralded the entry of the U.S. as a global power.⁹¹ The U.S. proudly brandished its democratic ideals and waged war against despotic Spain under the guise of its alleged commitment to democratic ideals and to the principle of self-determination.⁹² Soon enough, it was clear that despite all promises to the contrary, the U.S. had no intention of granting independence to its new possession.⁹³ The Philippines realized its liberator was just another colonizer.

D. *Treaties Defining the Philippine Treaty Limits*

The Philippines traces its boundaries from the territory ceded by Spain to the U.S.⁹⁴ The Philippines claims that it acquired its current territorial boundaries, the "Philippine Treaty Limits," on the basis of three treaties: (1) Treaty of Paris⁹⁵ Between Spain and the U.S., signed in Paris on December 10, 1898;⁹⁶ (2) Treaty Between Spain and the U.S. for the Cession of Outlying Islands of the Philippines, signed in Washington on November 7, 1900;⁹⁷ and (3) Convention Between the U.S. and Great Britain Delimiting the Philippine Archipelago and the State of Borneo, signed in Washington on January 2, 1930.⁹⁸

⁹⁰ Walter Lafeber, *The Need for Foreign Markets, in AMERICAN EXPANSION IN THE LATE NINETEENTH CENTURY: COLONIALIST OR ANTICOLONIALIST?* 41 (Joseph Rogers Hollingsworth ed., 1968).

⁹¹ JOSEPH SMITH, *THE SPANISH-AMERICAN WAR: CONFLICT IN THE CARIBBEAN AND THE PACIFIC, 1895-1902* 226 (1995).

⁹² Michael H. Hunt, *American Ideology: Visions of National Greatness and Racism, in IMPERIAL SURGE: THE UNITED STATES ABROAD, THE 1890S - EARLY 1900S* 14 (Thomas G. Paterson et al. eds., 1992).

⁹³ FRANK HINDMAN GOLAY, *FACE OF EMPIRE: UNITED STATES-PHILIPPINE RELATIONS, 1898 - 1946* 47 (1997).

⁹⁴ See Treaty of Paris, *supra* note 2.

⁹⁵ This treaty is now referred to in most literature as Treaty of Paris. See *supra* note 73 and accompanying text.

⁹⁶ Treaty of Paris, *supra* note 2; see also *THE PHILIPPINE NATIONAL TERRITORY: A COLLECTION OF RELATED DOCUMENTS* (Raphael L. Lotilla ed., 1995) [hereinafter *THE PHILIPPINE NATIONAL TERRITORY*].

⁹⁷ Cession of Outlying Islands of Philippines, *supra* note 2 (also known as The Washington Treaty of 7 November 1900 in Philippine literature); see also *THE PHILIPPINE NATIONAL TERRITORY, supra* note 96, at 887-88.

⁹⁸ Boundaries, Philippines and North Borneo, *supra* note 2 (also known as the Treaty of 2 January 1930 in Philippine literature); see also *THE PHILIPPINE NATIONAL TERRITORY, supra* note 96, at 134.

Under Article 11 of the Vienna Convention on the Succession of States in Respect of Treaties, “a succession of States does not as such affect: (a) a boundary established by a treaty; or (b) obligations and rights established by a treaty and relating to the regime of a boundary.”⁹⁹ However, Article 6 provides that this Convention only applies to cases of succession occurring in conformity with international law, such as principles embodied in the U.N. Charter.¹⁰⁰ This is also enshrined in the doctrine of *uti possidetis*, which provides the crucial link between the norm of territorial integrity and self determination.¹⁰¹ The doctrine ensures that frontiers of newly independent States are respected following decolonization.¹⁰²

1. The Treaty of Paris of 1898

The ratification of the Treaty of Paris of 1898 was significant to American foreign policy for three reasons. First, the treaty marked the end of the Spanish-American War.¹⁰³ Second, it gave the U.S. control over Puerto Rico, Guam, and the Philippines.¹⁰⁴ The annexation of the Philippines, with the exception of Hawaii, marked the first extension of U.S. territorial sovereignty beyond the hemispheric limits of North America.¹⁰⁵ Third, the treaty signaled the entry of the U.S. into the theater of Asian power politics and into the race for global supremacy.¹⁰⁶

The destruction of the U.S.S. *Maine* in Havana Harbor on February 15, 1898 was a critical event in the Spanish-American War.¹⁰⁷ Following

⁹⁹ Vienna Convention on the Succession of States in Respect of Treaties, *supra* note 17.

¹⁰⁰ *Id.* at art. 6.

¹⁰¹ Tomas Bartos, *Uti Possidetis. Quo Vadis?*, 18 AUSTL. Y. B. INT’L L. 37, 40 (1997).

¹⁰² Steven R. Ratner, *Drawing a Better Line: Uti Possidetis and the Border of New States*, 90 AM. J. INT’L L. 590, 590 (1996).

¹⁰³ See RICHARD H. TITHERINGTON, A HISTORY OF THE SPANISH-AMERICAN WAR OF 1898 (1900); R. A. ALGER, THE SPANISH-AMERICAN WAR (1901); ELBERT J. BENTON, INTERNATIONAL LAW AND DIPLOMACY OF THE SPANISH-AMERICAN WAR (1968).

¹⁰⁴ IVAN MUSICANT, EMPIRE BY DEFAULT: THE SPANISH AMERICAN WAR AND THE DAWN OF THE AMERICAN CENTURY 626 (1998).

¹⁰⁵ Irene E. Newton, *The Treaty of Paris of 1898* (1927) (unpublished Ph.D. Thesis, University of California) (on file with author).

¹⁰⁶ ROBERT E. HANNIGAN, THE NEW WORLD POWER: AMERICAN FOREIGN POLICY, 1898-1917 97 (2002).

¹⁰⁷ The sinking of the *Maine* has been an area of great speculation. Four major investigations (two Naval Courts of Inquiry in 1898 and 1911 and two major private investigations commissioned by Admiral Hyman G. Rickover in 1976 and the National Geographic Society in 1999) were conducted to find the actual cause of the sinking of the *Maine*. These investigations yielded different conclusions. See HYMAN GEORGE

the destruction, the U.S. declared war on Spain on April 19, 1898.¹⁰⁸ It was the first war waged by America beyond its continental boundaries. The Spanish-American War was a global war which involved the Philippines, Guam, Puerto Rico, and Cuba. On August 12, 1898, President McKinley issued a proclamation suspending all hostilities.¹⁰⁹ After six months of hostilities, commissioners from the U.S. and Spain met in Paris on October 1, 1898 to end the war. However, the Philippines was not represented in Paris.¹¹⁰

The Treaty of Paris transferred Philippine sovereignty from Spain to the U.S. upon payment of twenty million dollars (\$20,000,000) within three months after treaty ratification.¹¹¹ Some commentators viewed the U.S. as purchasing the Philippines from Spain. As one American senator put it, the U.S. “purchased the Filipinos at \$2.00 per head.”¹¹²

Under Article III of the Treaty of Paris, the territorial limits of the Philippine Islands were delineated as such:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh

RICKOVER, HOW THE BATTLESHIP MAINE WAS DESTROYED (1976), MICHAEL BLOW, A SHIP TO REMEMBER: THE MAINE AND THE SPANISH-AMERICAN WAR (1992); Thomas B. Allen, *Remember the Maine?*, 193 NATIONAL GEOGRAPHIC 92 (1998); *A Special Report: What Really Sank the Maine?*, 11 NAVAL HISTORY 30 (Thomas B. Allen ed., 1998).

¹⁰⁸ For materials on the diplomacy and causes of the war, see CRUCIBLE OF EMPIRE: THE SPANISH-AMERICAN WAR AND ITS AFTERMATH (James C. Bradford ed., 1993); LEWIS L. GOULD, THE SPANISH-AMERICAN WAR AND PRESIDENT MCKINLEY (1982); ERNEST R. MAY, IMPERIAL DEMOCRACY: THE EMERGENCE OF AMERICA AS A GREAT POWER (1961); WALTER MILLIS, THE MARTIAL SPIRIT: A STUDY OF OUR WAR WITH SPAIN (1931); H. WAYNE MORGAN, AMERICA'S ROAD TO EMPIRE: THE WAR WITH SPAIN AND OVERSEAS EXPANSION (1965); JOHN L. OFFNER, AN UNWANTED WAR: THE DIPLOMACY OF THE UNITED STATES AND SPAIN OVER CUBA, 1895-1898 (1992); John L. Offner, *McKinley and the Spanish-American War*, 34 PRESIDENTIAL STUD. Q. 50-61 (2004); JULIUS W. PRATT, THE EXPANSIONISTS OF 1898 (1936); THOMAS SCHOONOVER, UNCLE SAM'S WAR OF 1898 AND THE ORIGINS OF GLOBALIZATION (2003); JOHN LAWRENCE TONE, WAR AND GENOCIDE IN CUBA, 1895-1898 (2006).

¹⁰⁹ Honesto A. Villanueva, *Diplomacy of the Spanish-American War, Chapter III*, 14 PHIL. SOC. SCI. & HUMAN. REV. 429, 467 (1949).

¹¹⁰ The American-Paris Commission consisted of William R. Day, Sen. Cushman K. Davis, Sen. William P. Frye, Sen. George Gray, and the Honorable Whitelaw Reid. The Queen Regent of Spain appointed the following to compose the Spanish Paris commission: Don Eugenio Montero Rios, Don Buenaventura de Abarzuza, Don Jose de Garnica y Diaz, Don Wenceslao Ramirez de VillaUrrutia, and Don Rafael Cerero y Saens. See Treaty of Paris, *supra* note 2, at Preamble; AGONCILLO, *supra* note 27, at 251.

¹¹¹ Treaty of Paris, *supra* note 2.

¹¹² THE FILIPINO NATION, *supra* note 29, at 109.

(127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4° 5') north latitude, thence along the parallel of four degrees and forty five minutes (4° 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119° 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119° 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7° 40') north, thence along the parallel of latitude of seven degrees and forty minutes (7° 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning.

Drawn on a map, these coordinates represent the international treaty limits. This article of cession is the most contentious and problematic aspect of the Treaty of Paris. Although the American commissioners' boundaries proposal was adopted almost exactly as they had proposed in during the Paris Peace Conference,¹¹³ the U.S. now contests these boundaries.¹¹⁴

After the Treaty of Paris was signed in December 1898, the treaty required ratification by at least a two-thirds majority of the U.S. Senate. The President of the U.S., with no attempt to influence the opinion of the body, transmitted the treaty to the U.S. Senate on January 4, 1899 with a brief message: "I transmit herewith, with a view to its ratification, a treaty of peace between the U.S. and Spain, signed at the city of Paris, on December 10, 1898; together with the protocols and papers indicated in the list accompanying the report of the Secretary of State."¹¹⁵

The heated and highly emotional debate regarding the ratification of the treaty polarized the Senate and even the entire nation as citizens

¹¹³ Protocol No. 11 of the U.S. Delegation, Conference of October 31, 1898; *see* JAMES A. LE ROY, *THE AMERICANS IN THE PHILIPPINES: A HISTORY OF THE CONQUEST AND FIRST YEARS OF OCCUPATION, WITH AN INTRODUCTORY ACCOUNT OF THE SPANISH RULE* 374 (1970).

¹¹⁴ J. ASHLEY ROACH AND ROBERT W. SMITH, *UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS* 157 (1996).

¹¹⁵ *UNITED STATES FOREIGN RELATIONS*, 1898 at 906.

questioned U.S. imperialism and the nation's future role in Cuba and the Philippines.¹¹⁶ The treaty was approved February 6, 1899 by a vote of fifty-seven to twenty-seven, only one vote more than the two-thirds majority required.¹¹⁷ The Spanish legislature refused to ratify the treaty, but Queen Regent Christina ratified it on March 19, 1899.¹¹⁸ After the formal exchange of ratifications, the treaty went into force on April 11, 1899.¹¹⁹ In accordance with the treaty, Spain gave up all rights to Cuba and its possessions in the West Indies and surrendered Puerto Rico, the islands of Guam, and the Philippines to the U.S.¹²⁰ This marked the end of the Spanish Empire in American and, for the most part, in the Pacific. The year 1898 marked a turning point in American history, forcing the world to recognize the U.S. as a great power.¹²¹

The boundaries of the Philippine archipelago defined in Article III of the Treaty of Paris of 1898 did not include two small islands: Sibutu at the extreme southwest of the Sulu group toward Borneo and Kagayan de Sulu, lying northwest of Jolo and of some strategic value. In 1900, the U.S. and Spain met in Washington to address title to this territory.

2. The Cession Treaty of 1900

Philippine islands lying outside the boundary lines, set in the Treaty of Paris, were dealt with under the Cession Treaty of 1900¹²² between the U.S. and Spain. The treaty states:

Spain relinquishes to the U.S. all title and claim of title, which she may have had at the time of the conclusion of the Treaty of Paris, to any and all islands belonging to the Philippine Archipelago, lying outside the lines described in Article III of that Treaty and particularly to the islands of

¹¹⁶ Fred H. Harrington, *The Anti-Imperialist Movement in the United States, 1898-1900*, 22 MISS. VALLEY HISTORICAL REV. 211 (1935); Christopher Lasch, *The Anti-Imperialists and the Inequality of Men, in AMERICAN EXPANSION IN THE LATE NINETEENTH CENTURY: COLONIALIST OR ANTICOLONIALIST?*, 89 (Joseph Rogers Hollingsworth ed., 1968).

¹¹⁷ Honesto A. Villanueva, *Diplomacy of the Spanish-American War, Chapter VI*, 15 PHIL. SOC. SCI. & HUM. REV. 305, 319 (1950).

¹¹⁸ *Id.* at 329 (citing *Diario de las Sesiones de Cortes-Senado Legislatura de 1899* [Diary of the Cortes Senate Legislature Sessions of 1899], I, Apendice 2.0 al num. 9 (Spain) "Spanish ratification of the treaty, March 19, 1899," in Department of State, Treaty Series 343, Exchange File).

¹¹⁹ *Id.* at 319.

¹²⁰ Treaty of Paris, *supra* note 2, at art. V.

¹²¹ JOSEPH ROGERS HOLLINGSWORTH, *AMERICAN EXPANSION IN THE LATE NINETEENTH CENTURY: COLONIALIST OR ANTICOLONIALIST?* 1 (1968).

¹²² This treaty is known as the Washington Treaty of 7 November 1900 in Philippine literature. See Cession of Outlying Islands of Philippines, *supra* note 2

Cagayan, Sulu and Sibutu and their dependencies, and agrees that all such islands shall be comprehended in the cession of the Archipelago as fully as if they had been included within those lines.¹²³

The purpose of the Cession Treaty of 1900 was to consolidate the American possessions in the Sulu archipelago by including the islands of Sibutu and Cagayan, both of which had always formed part of the possessions of the Sulu sultanate.¹²⁴ The possession of these islands has been disputed since the middle of the eighteenth century. The dispute continued until the U.K., Germany, and Spain signed a protocol on March 7, 1885, which granted Spain sovereignty over the islands. In return, Spain renounced all claims of sovereignty over any part of Borneo. This included renouncing claims over certain adjoining islands named specifically as well as others comprised within the zone of three marine leagues from the coast of Borneo.¹²⁵ Spain took possession of these islands by this prior specific agreement with the U.K. The later general provisions of the Treaty of Paris in 1898 did not include this territory. The delimitation as stated in Article III of the Treaty of Paris failed to enclose them within the lines drawn around the archipelago. Spain protested against the inclusion of these islands in the ceded territory. It argued the previous specific particular description of the islands should prevail in law as it overrides the general description in the Treaty of Paris.¹²⁶

The U.S. contended that because other powers were anxious to secure the two islands, it could not advantageously allow them to pass into the possession of another State.¹²⁷ In the end, the U.S. purchased islands for one hundred thousand dollars (\$100,000) to remove all doubt as to the validity of the title.

3. The Boundaries Treaty of 1930¹²⁸

On January 2, 1930, the U.S. and the U.K. entered into a treaty concerning the boundaries of the Philippines and North Borneo, which

¹²³ Cession of Outlying Islands of Philippines, *supra* note 2; see also THE PHILIPPINE NATIONAL TERRITORY, *supra* note 96, at 38.

¹²⁴ Vicente A. Santos & Charles D. T. Lennhoff, *The Taganak Island Lighthouse Dispute*, 45 AM. J. INT'L L. 680, 681 (1951) (citing FOREIGN RELATIONS OF THE UNITED STATES 542 (1907)).

¹²⁵ Newton, *supra* note 105, at 222.

¹²⁶ *Id.*

¹²⁷ During the peace negotiations, Germany had made attempts to secure a foothold in the Sulu group. *Id.*

¹²⁸ This treaty is also referred to as The Treaty of 2 January 1930 in Philippine literature. See Boundaries, Philippines and North Borneo, *supra* note 2.

was then under the rule of the British.¹²⁹ North Borneo, which is now the Malaysian state of Sabah, was then a protectorate of Great Britain even though its administration remained entirely in the hands of the British North Borneo Company.¹³⁰

The Boundaries Treaty of 1930 clarifies those islands in the region belonging to U.S. and those to the State of North Borneo and delimits the boundary between the Philippine Archipelago (under U.S. sovereignty) and the State of North Borneo (under British protection). The negotiations between the U.S. and Great Britain leading up to the conclusion of the Boundaries Treaty solely focused on the status of the Turtle Islands and the Mangsee Islands. The matter was ultimately resolved on January 2, 1930 with the conclusion of a convention between the U.S. and Great Britain setting out the boundary line separating the islands belonging to the U.S. from those belonging to British North Borneo. When the Boundaries Treaty of 1930 was finalized, an exchange of notes supplemented the Treaty. Pursuant to the notes, sovereignty over these islands was transferred to the U.S., and it was agreed that Great Britain should continue to administer these islands until the U.S. gave notice to the contrary.

III. THE TERRITORIAL BOUNDARIES OF THE PHILIPPINES

A. *Historic Rights in International Law*

Historic rights of title over land or maritime territories are acquired by a State through a process of historical consolidation.¹³¹ This involves a long period of continuous and undisturbed exercise of State sovereignty.¹³² In order to ripen into a valid title in international law, historic rights require not only effective occupation¹³³ but more importantly, the acquiescence of the international community.¹³⁴ In international law, the concept of historic waters, akin to the historic bays concept, is an amorphous concept. According to Leo Bouchez, “[h]istoric waters are waters over which the coastal State, contrary to the generally applicable

¹²⁹ Boundaries, Philippines and North Borneo, *supra* note 2.

¹³⁰ See materials on the history of Sabah: KENNETH G. TREGONNING, A HISTORY OF MODERN SABAH (NORTH BORNEO 1881-1963) (1958); KENNEDY G. TREGONNING, NORTH BORNEO (1960); LEIGH R. WRIGHT, THE ORIGINS OF BRITISH BORNEO (1970); LELA GARNER NOBLE, PHILIPPINE POLICY TOWARD SABAH: A CLAIM TO INDEPENDENCE (1977); NICHOLAS TARLING, SULU AND SABAH: A STUDY OF BRITISH POLICY TOWARDS THE PHILIPPINES AND NORTH BORNEO FROM THE LATE EIGHTEENTH CENTURY (1978).

¹³¹ JENNINGS, *supra* note 54, at 27.

¹³² See YEHUDA Z. BLUM, HISTORIC TITLES IN INTERNATIONAL LAW (1965).

¹³³ Yehuda Z. Blum, *Historic Rights*, in ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 120 (Rudolf Bernhardt ed., 1984).

¹³⁴ BING BING JIA, THE REGIME OF STRAITS IN INTERNATIONAL LAW 74 (1998) .

rules of international law, clearly, effectively, continuously, and over a substantial period of time, exercises sovereign rights with the acquiescence of the community of States.”¹³⁵ The International Court of Justice (ICJ) defines historic waters as “waters which are treated as internal waters but which would not have that character were it not for the existence of an historic title.”¹³⁶

According to a memorandum circulated during the United Nations Conference on the Law of the Sea in 1958, historic rights were claimed not only of bays, but also other maritime areas.¹³⁷ In the words of Sir Gerald Fitzmaurice:

There seems to be no ground of principle for confining the concept of historic waters merely to the waters of a bay Even if the cases would in practice be fewer, a claim could equally be made on an historic basis to other waters.¹³⁸

Using this U.N. formulation, historic title can exist over other waters than bays. In fact, “[h]istoric rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of an archipelago and the water area lying between an archipelago and the neighbouring mainland; historic rights are also claimed in respect of straits, estuaries and other similar bodies.”¹³⁹ The juridical regime of historic waters is an exceptional regime.¹⁴⁰ Title to historic waters constitutes an exception to the general rules of delimitation of a State’s maritime domains under international law.¹⁴¹ However, that title must be based on some form of acquiescence by other States.¹⁴² To sustain a historic water claim, the International Law Commission recommends the fulfillment of three conditions: (1) the actual exercise of

¹³⁵ LEO J. BOUCHEZ, THE REGIME OF BAYS IN INTERNATIONAL LAW 199 (1964).

¹³⁶ The Anglo-Norwegian Fisheries Case (U.K. v. Nor.), 1951 I.C.J. 116, 132 (Jan. 10).

¹³⁷ Memorandum, Secretariat of the U.N., *Historic Bays*, U.N. Doc. A/CONF.13/1 (1958) available at http://untreaty.un.org/ilc/guide/8_4.htm.

¹³⁸ *Juridical Regime of Historic Waters Including Historic Bays—Study Prepared by the Secretariat*, [1962] 2 Y.B. INT’L L. COMM’N 7, U.N. Doc. A/CN.4/143/1962, available at http://untreaty.un.org/ilc/documentation/english/a_cn4_143.pdf.

¹³⁹ See *id.* at 5 (citing Secretariat of the U.N., *supra* note 137).

¹⁴⁰ *Id.* at 9.

¹⁴¹ *Id.* at 10.

¹⁴² *Id.* at 8.

coastal State authority over the area, (2) continuity over time of this exercise of authority, and (3) the attitude of foreign States to the claim.¹⁴³

Although the LOS Convention recognizes such regimes in Articles 10(6), 15, and 46(b), it does not define the legal regime of historic title or historic waters.¹⁴⁴ Instead, customary international law determines the extent of the regime for such waters. As noted by the ICJ in the *Libya/Tunisia Continental Shelf Case*,¹⁴⁵ general international law “does not provide for a *single* ‘regime’ for ‘historic waters’ or ‘historic bays,’ but only for a particular regime for each of the concrete, recognized cases of ‘historic waters’ or ‘historic bays.’”¹⁴⁶ Further, this regime is based on acquisition and occupation, which are distinct from the regime of the continental shelf, which is based on rights existing *ipso facto* and *ab initio*.¹⁴⁷ In all instances, historic title necessitates the general acquiescence or recognition by other States.¹⁴⁸

Thus, while the Philippines can validly assert a claim to the waters enclosed within the Philippine Treaty Limits on the basis of historic right of title as historic waters, the burden of proof rests upon the Philippines to prove the validity under international law.

B. *The Philippine Historic Right of Title over the Treaty Limits*

The Philippines claims historic title over its territorial waters on the basis of three treaties, which constitute the “Philippine Treaty Limits.”¹⁴⁹ The Philippine national territory, as defined in the 1987 Philippine Constitution, covers the territorial areas set for in the Treaty of Paris, the Cession Treaty of 1900, and the Boundaries Treaty of 1930.¹⁵⁰

¹⁴³ *Id.* at 13.

¹⁴⁴ United Nations Convention on the Law of the Sea, *supra* note 5, at art. 10, 13. Articles 10(6) and 15 of the United Nations Convention on the Law of the Sea respectively reflect Articles 7(6) and 12 of the United Nations Convention on the Territorial Sea and the Contiguous Zone, art. 7, art. 12, Apr. 29, 1958, 516 U.N.T.S. 205. There is no precursor to Article 46(b) in the 1958 Convention.

¹⁴⁵ Case Concerning the Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1982 I.C.J. 18 (Feb. 24).

¹⁴⁶ *Id.* at 71.

¹⁴⁷ *Id.* at 77, 86.

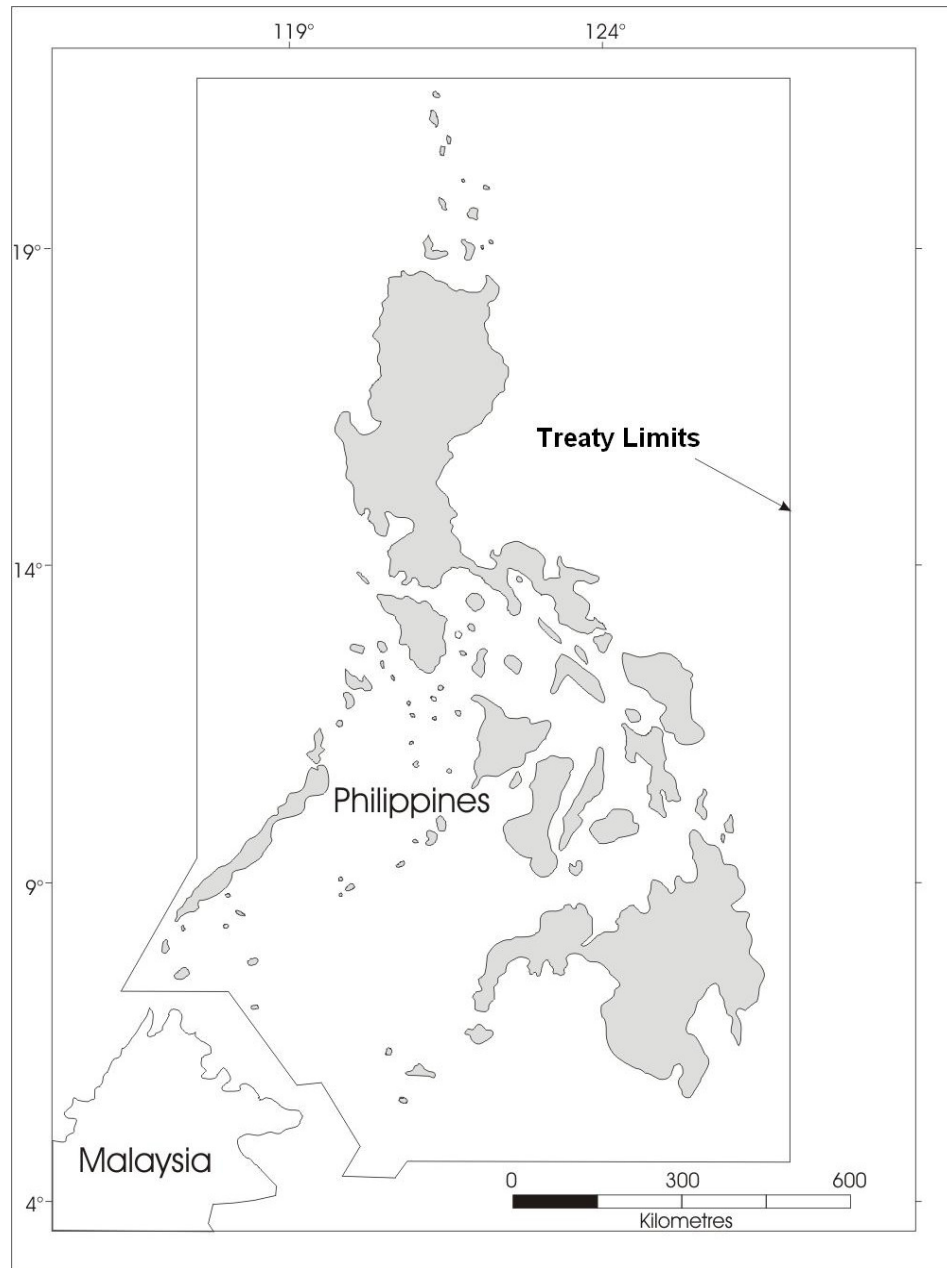
¹⁴⁸ See BLUM, *supra* note 1, at 38-98; I. BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 159-61 (1993); N.S. Marques Antunes, *Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement*, 2:8 IBRU, BOUNDARY AND TERRITORY BRIEFINGS (2000) (discussing the role of acquiescence and recognition).

¹⁴⁹ ARTURO M. TOLENTINO, THE PHILIPPINES AND THE LAW OF THE SEA: A COLLECTION OF ARTICLES, STATEMENTS AND SPEECHES 9 (1982); see also Tolentino, *supra* note 1.

¹⁵⁰ Boundaries, Philippines and North Borneo, *supra* note 2; see THE PHILIPPINE NATIONAL TERRITORY, *supra* note 96, at 38, 134.

The maritime and territorial boundaries of the Philippines, which integrally are the lines of Treaty Limits, are graphically represented in Figure 1.

Figure 1. The Treaty Limits of the Philippines



The Treaty of Paris between the U.S. and Spain fixed the international limits of Philippine territory, predicated on Spain's title over these waters. The title had been unchallenged across a colonial span of more than three centuries and recognized by the U.S. in the Hare-Hawes-Cutting Act and the Jones Law, eventually culminating in the 1935 Philippine Constitution.¹⁵¹

According to Filipino jurist Miriam Defensor-Santiago, the Philippines's claim to historic rights of title over its maritime and territorial boundaries arises from several sources. First, there was no subsequent or simultaneous protest to the ratification of the Treaty of Paris with respect to the exercise of sovereignty by the U.S. over all the land and sea territory embraced in that treaty. After the Philippines gained independence, there was still no protest when it exercised sovereignty and jurisdiction over the same territory.¹⁵²

Second, on January 20, 1956, the Philippines tendered a *note verbale* to the Secretary General of the U.N. with the clarification of the limits of its territorial seas:

The Philippine Government considers the limitation of its territorial sea as referring to those waters within the recognized treaty limits, and for this reason it takes the view that the breadth of the territorial sea may extend beyond twelve miles. It may therefore be necessary to make exceptions, upon historical grounds, by means of treaties or conventions between States¹⁵³

The Philippines also sent diplomatic notes of the same tenor to various States regarding the extent of its domestic waters and territorial sea. Only the U.S. protested the Philippine claims; the silence of other States can be interpreted as a tacit recognition of the Philippine claim.¹⁵⁴

The Committee on the National Territory of the Constitutional Convention invoked historic rights in drafting the 1971 Philippine Constitution, stating that the Treaty of Paris was a declaration to the world that the Philippine archipelago, occupied by Spain for over three centuries and ceded to the U.S., has always been bound by the lines specified in the

¹⁵¹ Magallona, *supra* note 26, at 51.

¹⁵² Miriam Defensor-Santiago, *The Archipelago Concept in the Law of the Sea: Problems and Perspectives*, 49 PHIL. L. J. 315, 363 (1974).

¹⁵³ Comments by Governments on the Provisional Articles Concerning the Regime of the High Seas and the Draft Articles on the Regime of the Territorial Sea, Note Verbale from the Permanent Mission of the Philippines to the United Nations, U.N. Doc. A/CN.4/99 (1956), reprinted in [1956] 2 Y.B.. INT'L L. COMM'N 37, 70, available at http://untreaty.un.org/ilc/documentation/english/a_cn4_99_add1-9.pdf.

¹⁵⁴ Defensor-Santiago, *supra* note 154, at 363.

Treaty.¹⁵⁵ The claim has been unchallenged except in isolated instances.¹⁵⁶

C. *The Juridical Function of the Boundaries*

The right to determine the extent of a State's territory belongs to that State. The Constitution of the Republic of the Philippines specifically defines the extent of its national territory.¹⁵⁷ The Philippine Constitution considers treaties and generally accepted principles of international law as part of the law of the land.¹⁵⁸ However, in instances of conflict international customary law and treaties do not take precedence over the Constitution.¹⁵⁹ The Constitution conferred upon the Supreme Court of the Philippines the power to review the "constitutionality or validity of any treaty."¹⁶⁰

Of course, this is only strictly true from the point of view of municipal law. One may ask, though, which should prevail in a clash between the Constitution and a treaty.¹⁶¹ When faced with this question, the Philippine Supreme Court has favored the Constitution. The Supreme Court has not once mentioned that international law "must give way to the supremacy of the Constitution."¹⁶² The Supreme Court has stated that the Constitution "must always prevail . . . without exempting principles of international law, no matter how generally or universally they may be accepted."¹⁶³

In a recent case, the Supreme Court boldly declared, "[F]ollowing

¹⁵⁵ JOSE NOLLEDO, CONSTITUTION OF THE PHILIPPINES ANNOTATED (1987).

¹⁵⁶ Jose Nolleto, Delegate, Philippine Constitutional Convention of 1971, Speech, Opposing the Deletion of the National Territory (Feb. 15, 1972).

¹⁵⁷ CONST. (1987), Art. I (Phil.).

¹⁵⁸ CONST. (1987), Art. II, sec. 2 (Phil.); see *Co Kim Chan v. Valdez Tan Keh*, 75 PHIL. 113; *Tubb v. Griess*, 78 PHIL. 249; *Dizon v. Commanding General*, 81 PHIL. 286 (providing judicial interpretation); see also MERLIN M. MAGALLONA, AN INTRODUCTION TO INTERNATIONAL LAW IN RELATION TO PHILIPPINE LAW 44 (1997).

¹⁵⁹ See CONST. (1987), Art. VIII, sec. 4, para. 2 (Phil.) (vesting the Philippine Supreme Court with the power to declare a treaty unconstitutional, stating, "All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Court en banc . . . shall be decided with the concurrence of the majority of the members who actually took part in the deliberations on the issues in the case and voted thereon.").

¹⁶⁰ CONST. (1987), Art. VIII, sec. 5, para. 2 (Phil.).

¹⁶¹ John Trone, *International Law as Domestic Law in the Philippines*, 7 INTERNATIONAL TRADE AND BUSINESS LAW 265 (2002); Mark Richard D. Evidente, *The Interaction of Domestic and International Law: The Doctrine of Incorporation in Philippine Practice*, 78 PHIL. L. J. 395, 402 (2004).

¹⁶² *George L. Tubb and Wesley Tedrow v. Thomas E. Griess*, G.R. No. L-1325 (S.C. Apr. 7, 1947) (Phil.) (J. Perfecto, dissenting).

¹⁶³ *Id.*

universal acquiescence and comity, our municipal law . . . must subordinate an international agreement inasmuch as the apparent clash is being decided by a municipal tribunal.”¹⁶⁴ It also added:

Withal, the fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere. Under the doctrine of incorporation as applied in most countries, rules of international law are given a standing equal, not superior, to national legislative enactments.¹⁶⁵

The juridical function of the boundaries set forth in Article III of the Treaty of Paris is unambiguous from a municipal law standpoint. The territorial limits include all water areas outlined in the three colonial treaties,¹⁶⁶ which constitute the territorial domain of the Philippines that passed from the sovereignty of Spain to the U.S. by the Treaty of Paris. This is the same territory that was transferred to the Philippines after it gained independence following decolonization. The Philippine Constitution of 1935 expressly incorporated the three treaties in the definition of the national territory.¹⁶⁷

The 1935 Constitution included this definition of territory and was submitted to President Theodore Roosevelt for approval, as the Philippines was still under U.S. sovereignty.¹⁶⁸ To some Filipino legal commentators, this approval carried the two countries’ mutual pledges to maintain the territorial integrity of the Philippines as specified in the political boundaries provided therein.¹⁶⁹

¹⁶⁴ Philip Morris, Inc. v. Court of Appeals, 224 SCRA 576 (1993) (Phil.) (citing *Mortisen v. Peters*, (1906) 8 Sess. Cas. (J.) 93); *see also* PARAS, *INTERNATIONAL LAW AND WORLD ORGANIZATION* 20 (1971).

¹⁶⁵ *Id.*

¹⁶⁶ UN DOC. A/2 934, 1955, at 52-53 (The full text of this Note, dated March 7, 1955, is also reprinted in 3 PHIL Y. B. INT’L L. 168-69 (reprinting the full text of the note dated March 7, 1955)); *see also* UN LEGISLATIVE SERIES 39-40 (1957) (“All water areas embraced within the lines described in The Treaty of Paris, the Treaty concluded at Washington, D.C., between the United States and Spain on 7 November 1900, the Agreement between the United States and the United Kingdom of 2 January 1930, and the Convention of 6 July 1932 between the United States and Great Britain . . . are considered maritime territorial waters of the Philippines . . .”).

¹⁶⁷ CONST. (1935), Art. I, sec. 1 (Phil.) (The 1935 Constitution was written in 1934, approved and adopted by the Commonwealth of the Philippines (1935-1946), and later used by the Third Republic of the Philippines (1946-1972)).

¹⁶⁸ *See* THE FILIPINO NATION, *supra* note 30, at 145 (noting that President Roosevelt approved the 1935 Constitution on March 23, 1935).

¹⁶⁹ Magallona, *supra* note 26, at 51 (citing VICENTE G. SINCO, *PHILIPPINE POLITICAL LAW* 118 (1954)).

In 1971, the Constitutional Convention convened to amend the 1935 Philippine Constitution. The Committee again made reference to the Treaty of Paris boundaries when outlining the boundaries of the Philippines. The Committee on National Territory included language from the Treaty of Paris that described the territory as a broad rectangle “having about 600 miles in width and over 12,000 miles in length. Inside this rectangle are the 7,100 islands that comprise the Philippine islands.”¹⁷⁰

The records from the deliberations show that the definition of the national territory in the 1973 Philippine Constitution¹⁷¹ corresponds to the definition in Article I of the 1935 Constitution.¹⁷² The minutes of the February 14, 1972 session reflects delegates’ views that Philippine territory should be defined by the territorial boundaries set by the Treaty of Paris. Delegate Ceferino P. Padua viewed the Philippine sea territory in relation to the Treaty of Paris,¹⁷³ which, according to Delegate Pedro N. Laggui, delimited the location of the Philippine archipelago.¹⁷⁴

The current 1987 Philippine Constitution includes the same intent and contemplation expressed by the delegates in 1935. It envisions the national territory as including the territorial sea and “waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions.”¹⁷⁵ This definition deliberately deleted references to the colonial treaties. Instead, the article uses the words “all other territories over which the Philippines has sovereignty or jurisdiction.” To the framers of the 1987 Philippine Constitution, it was

¹⁷⁰ Committee Report No. 01, Committee on National Territory, 1971 Constitutional Convention, January 15, 1972.

¹⁷¹ The Constitution defines the national territory:

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines 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. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.

CONST. (1973), Art. I, sec. 1 (Phil.)

¹⁷² See JOAQUIN G. BERNAS, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (1987).

¹⁷³ Minutes of the Session, February 14, 1972, Minutes of the Proceedings of the National Territory of the 1971 Constitutional Convention; see *THE PHILIPPINE NATIONAL TERRITORY*, *supra* note 96, at 417.

¹⁷⁴ Minutes of the Session, February 14, 1972, *supra* note 173; see *THE PHILIPPINE NATIONAL TERRITORY*, *supra* note 96, at 418.

¹⁷⁵ CONST. (1987), Art. I (Phil) (defining the territory the same as Section 3 of Executive Order No. 292, Instituting the Administrative Code of 1987, July 25, 1987).

clear that the definition of national territory includes all territories ceded by Spain to the U.S. and eventually transferred to the sovereignty of the Republic of the Philippines.¹⁷⁶

IV. CONCLUSION

A State's territory is a precious heritage, as well as an inestimable acquisition that cannot be taken lightly by anyone—both by those who enjoy it and by those who dispute it. The intricate issues before us raise a single question of profound importance as to the integrity of the territorial and maritime domains of the Philippines as a sovereign nation.

The issue of the validity of the limits of the Philippines's national territory lies at the intersection of international law and municipal law. The Philippines, as a member of the family of nations, recognizes and is bound by principles of both conventional and customary international law in all matters having an international character. In a strict sense, the extent of a nation's territory is never truly determined unilaterally by that State. More so, it can neither be determined arbitrarily nor in violation of customary international law or treaty obligations.

The basic principle is that public international law leaves it to the constitutional law of each State to settle problems arising in the application by its courts or rules of international law, especially rules contained in a treaty. It is certainly true that a State may not invoke domestic law as justification for its failure to comply with a treaty,¹⁷⁷ but the State remains free to choose the means of implementation according to its traditions and the fundamental principles of its political organization. Of course, its choice may have consequences related to its international responsibilities.¹⁷⁸

In numerous fora and academic literature, the legal debate on the validity of the Philippine treaty limits in international law has centred on whether it is in conformity with the Law of the Sea Convention.¹⁷⁹ It has

¹⁷⁶ Commissioner Joaquin Bernas, Committee Report No. 3 on Proposed Resolution No. 263 on National Territory, Deliberations of July 9, 1986; *see* THE PHILIPPINE NATIONAL TERRITORY, *supra* note 96, at 583.

¹⁷⁷ Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331, *entered into force* Jan. 27.1980, 8 I.L.M 679.

¹⁷⁸ PAUL REUTER, INTRODUCTION TO THE LAW OF TREATIES 17 (1989).

¹⁷⁹ *See* Barbara Kwiatkowska, *An Evaluation of State Legislation on Archipelagic Waters*, 6 WORLD BULLETIN 22 (1990); Barbara Kwiatkowska, *The Archipelagic Regime in Practice in the Philippines and Indonesia—Making or Breaking International Law*, 6 INT'L J. ESTUARINE & COASTAL L. 1 (1991); Jorge R. Coquia, *Legal and Economic Aspects of the Philippine Implementation of the UN Convention on the Law of the Sea*, THE LAWYER'S REV. 9, 11 (1995); Merlin M. Magallona, *Problems in Establishing Archipelagic Baselines for the Philippines: The UNCLOS and the National Territory*, in INSTITUTE OF INTERNATIONAL LEGAL STUDIES, ROUNDTABLE DISCUSSION ON BASELINES OF PHILIPPINE MARITIME TERRITORY AND JURISDICTION 1 (1995); Magallona, *supra* note 27, at 50; Jose Victor Villarino Chan-Gonzaga, *UNCLOS and the Philippine*

also been strongly argued that the claim likewise violates customary rules of international law pertaining to the breadth of the territorial sea which have crystallized into that status over the passage of time since the entry into force of the Convention.¹⁸⁰ However, this argument ignores two main presumptions that underlie the Philippine claim. First, it ignores the fact that the maritime and territorial boundaries claimed by the Philippines as defined in its Treaty Limits pre-dates the Law of the Sea Convention by over a century.¹⁸¹ Second, although the onus of proof is high, it ignores the fact that juridical regime of historic waters in international law allows the Philippines to lay claim to the waters within the Treaty Limits on the basis of historic right of title.¹⁸²

In sum, the burden is upon the Philippines to prove that its claim to the Treaty Limits is defensible under international law. In order to succeed, the Philippines must show title vested in the territory at each stage of the cession process, whether this right of title is by its own right

Territorial Seas: Problems, Perspectives and Options, 42 ATENEO L. J. 1 (1997); Jay L. Batongbacal, *The Maritime Territories and Jurisdictions of the Philippines and the United Nations Convention on the Law of the Sea*, 76 PHIL. L. J. 123 (2001).

¹⁸⁰ Interestingly enough, it was only on December 27, 1988, by virtue of Proclamation No. 5928 that President Ronald Reagan, acting under his constitutional authority “and in accordance with international law,” extended the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, to 12 nautical miles from the baselines of the United States determined “in accordance with international law.” It must be further noted that neither of the two previous UN Conferences on the Law of the Sea had reached agreement on the breadth of the territorial sea, which according to customary international law remained at three nautical miles, or one marine league, the maximum range of an 18th-century cannon shot. In 1988, an informal survey of state practices by the United States Department of State indicated that 104 states claimed a territorial sea breadth of 12 miles, and only 1212 states, including the United States at that time, retained a 3-mile territorial sea. Six claimed a territorial sea breadth of more than 3 but less than 12 miles, and 22 claimed territorial sea limits ranging from 15 to 200 miles. See Marian Nash Leich, *Contemporary Practice of the United States Relating to International Law*, 83 AM. J. INT’L L. 348, 351 (1989); see also ROBIN R. CHURCHILL AND VAUGHAN LOWE, *THE LAW OF THE SEA* 80 (1999).

¹⁸¹ Jose D. Ingles, *The U.N. Convention on the Law of the Sea: Implications of Philippine Ratification*, 9 PHIL. Y. B. INT’L L. 47, 49 (1983).

¹⁸² Anthony A. D’amato, *The Concept of Special Custom in International Law*, 63 AM. J. INT’L L. 211, 216 (1969); L.F.E. Goldie, *Historic Bays in International Law: An Impressionistic Overview*, 11 SYRACUSE J. INT’L L. & COM. 211, 248-63 (1984); H.S.K. Kent, *Historical Origins of the Three-Mile Limit*, 48 AM. J. INT’L L. 537, 552 (1954); Alexander A. Murphy, *Historical Justifications for Territorial Claims*, 80 ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS 531, 537 (1990); Donat Pharand, *Historic Waters in International Law with Special Reference to the Arctic*, 21 U. TORONTO L. J. 1, 2-3 (1971).

or by the U.S. or Spain.¹⁸³ If the Philippines is unable to support even one of these propositions standing alone, it follows that the Philippines's claim based on a so-called treaty title must fail. This question, of course, is theoretically and practically more complex than it appears and must be the subject of a more thorough study.¹⁸⁴

¹⁸³ See Douglas H.N. Johnson, *Acquisitive Prescription in International Law*, 27 BRIT. Y.B. INT'L L. 332 (1950), Douglas H.N. Johnson, *Consolidation as a Root of Title in International Law*, CAMBRIDGE L. J. 215 (1955) (providing further discussion).

¹⁸⁴ The author's Ph.D. dissertation, tentatively entitled, "The Legal Status of the Philippine Treaty Limits and Territorial Water Claim in International Law: National and International Legal Perspectives," addresses this matter further.