# The Island of Palmas

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Scott, Hague Court Reports 2d 83 (1932) (Perm. Ct. 4rb. 1928),

2 U.N. Rep. Intl. 4rb. Awards 829

**Background**

Palmas (also referred to as Miangas) is an island about two miles long by three fourths of a mile wide which at the time of this case had a population of about 750 and was of little strategic or economic value. It sits about halfway between the islands of Mindanao in the Philippines and Nanusa in the Netherlands Indies. It is, however, within the boundaries of the Philippines as defined by Spain and thus ceded to the United States in 1898. In 1906 an American General, Leonard Wood, visited Palmas and discovered that the Netherlands also claimed sovereignty over the island. An agreement was signed on January 23, 1925, between the United States and the Netherlands to submit the dispute to binding arbitration. The Swiss jurist, Max Huber, was the selected arbitrator acting for the Permanent Court of Arbitration. Huber was charged to determine "whether the Island of Palmas (or Miangas) in its entirety forms a part of territory belonging to the United States of America or of Netherlands territory."

**HUBER, Arbitrator:**

The United States, as successor to the rights of Spain over the Philippines, bases its title in the first place on discovery. The existence of sovereignty thus acquired is, in the American view, confirmed not merely by the most reliable cartographers and authors, but also by treaty, in particular by the Treaty of Monster, of 1648, to which Spain and the Netherlands are themselves Contracting Parties. As, according to the same argument, nothing has occurred of a nature, in international law, to cause the acquired title to disappear, this latter title was intact at the moment when, by the Treaty of December 10th, 1898, Spain ceded the Philippines to the United States. In these circumstances, it is, in the American view, unnecessary to establish facts showing the actual display of sovereignty precisely over the Island of Palmas (or Miangas). The United States Government finally maintains that Palmas (or Miangas) forms a geographical part of the Philippine group and in virtue of the principle of contiguity belongs to the Power having the sovereignty over the Philippines. . . .

Sovereignty in the relation between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations. . . .

Titles of acquisition of territorial sovereignty in present-day international law are either based on an act of effective apprehension, such as occupation or conquest, or, like cession, presuppose that the ceding and the cessionary Power or at least one of them, have the faculty of effectively disposing of the ceded territory. In the same way natural accretion can only be conceived of as an accretion to a portion of territory where there exists an actual sovereignty capable of extending to a spot which falls within its sphere of activity. It seems therefore natural that an element which is essential for the constitution of sovereignty should not be lacking in its continuation. So true is this, that practice, as well as doctrine, recognizes-though under different legal formulae and with certain differences as to the conditions required-that the continuous and peaceful display of territorial sovereignty (peaceful in relation to other States) is as good as a title. The growing insistence with which international law, ever since the middle of the 18th century, has demanded that the occupation shall be effective would be inconceivable, if effectiveness were required only for the act of acquisition and not equally for the maintenance of the right. . . .

Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a state. 'has right bas as corollary a duty: the obligation to protect within the territory the rights of other states, in particular their night to integrity and inviolability in peace and in war, together with the rights which each state may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the state cannot fulfill this duty. Territorial sovereignty cannot limit itself to its negative side, i.e., to excluding the activities of other states; for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian. . . .

The principle that continuous and peaceful display of the functions of state within a given region is a constituent element of territorial sovereignty is not only based on the conditions of the formation of independent states and their boundaries (as shown by the experience of political history) as well as on an international jurisprudence and doctrine widely accepted; this principle has further been recognized in more than one federal state, where a jurisdiction is established in order to apply, as need arises, rules of international law to the interstate relations of the states members . . . .

Manifestations of territorial sovereignty assume, it is true, different forms, according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas. It is true that neighbouring states may by convention fix limits to their own sovereignty, even in regions such as the interior of scarcely explored continents where such

sovereignty is scarcely manifested, and in this way each may prevent the other from any penetration of its territory. The delimitation of hinterland may also be mentioned in this connection. . . .

The title alleged by the United States of America as constituting the immediate foundation. of its claim is that-of cession, brought about by the Treaty of Paris, which cession transferred all rights of sovereignty which Spain may have possessed in the region indicated in Article III of the said Treaty and therefore also those concerning the Island of Palmas (or Miangas).

It is evident that Spain could not transfer more rights than she herself possessed. . . .

It is recognized that the United States communicated, on February 3rd, 1899, the Treaty of Paris to the Netherlands, and that no reservations were made by the latter in respect of the delimitation of the Philippines in Article III. The question whether the silence of a third Power, in regard to a treaty notified to it, can exercise any influence on the rights of this Power, or on those of the Powers signatories of the treaty, is a question the answer to which may depend on the nature of such rights. Whilst it is conceivable that a conventional delimitation duly notified to third Powers and left without contestation on their part may have some bearing on an inchoate title not supported by any actual display of sovereignty, it would be entirely contrary to the principles laid down above as to territorial sovereignty to suppose that such sovereignty could be affected by the mere silence of the territorial sovereign as regards a treaty which has been notified to him and which seems to dispose of a part of his territory. . . .

In any case for the purpose of the present affair it may be admitted that the original title derived from discovery belonged to Spain. . . .

If the view most favourable to the American arguments is adopted -with every reservation as to the soundness of such view - that is to say, if ",e consider as positive law at the period in question the rule that discovery as such, i.e., the mere fact of seeing land, without any act, even symbolical, of taking possession, involved ipso jure territorial sovereignty and not merely an "Inchoate title," a jus ad rem, to be completed eventually by an actual and durable taking of possession within a reasonable time, the question arises whether sovereignty yet existed at the critical date, i.e., the moment of conclusion and coming into force of the Treaty of Paris.

As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called intertemporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law. International law in the 19th century, having regard to the fact that most parts of the globe were under the sovereignty of states members of the community of nations, and that territories without a master had become relatively few, took account of a tendency already existing and especially developed since the middle of the 18th century, and laid down the principle that occupation, to constitute a claim to territorial sovereignty, must be effective, that is, offer certain guarantees to other states and their nationals. It seems therefore incompatible with this rule of positive law that there should be regions which are neither under the effective sovereignty of a state, nor without a master, but which are reserved for the exclusive influence of one state, in virtue solely of a title of acquisition which is no longer recognized by existing law, even if such a title ever conferred territorial sovereignty. For these reasons, discovery alone, without any subsequent act, cannot at the present time suffice to prove sovereignty over the Island of Palmas (or Miangas); and in so far as there is no sovereignty, the question of an abandonment properly speaking of sovereignty by one state in order that the sovereignty of another may take its place does not arise.

. . .Even admitting that the Spanish title still existed as inchoate in 1898 and must be considered as included in the cession under Article Ill of the Treaty of Paris, an inchoate title could not prevail over the continuous and peaceful display of authority by another state; for such display may prevail even over a prior, definitive title put forward by another state. This point will be considered, when the Netherlands argument has been examined and the allegations of either party as to the display of their authority can be compared. . . .

In the last place there remains to be considered title arising out of contiguity. Although states have in certain circumstances maintained that islands relatively close to their shores belonged to them in virtue of their geographical situation, it is impossible to show the existence of a rule of positive international law to the effect that islands situated outside territorial waters should belong to a state from the mere fact that its territory forms the terra firma (nearest continent or island of considerable size). Not only would it seem that there are no precedents sufficiently frequent and sufficiently precise in their bearing to establish such a rule of international law, but the alleged principle itself is by its very nature so uncertain and contested that even governments of the same state have on different occasions maintained contradictory opinions as to its soundness. The principle of contiguity, in regard to islands, may not be out of place when it is a question of allotting them to one state rather than another, either by agreement between the parties, or by a decision not necessarily based on law; but as a rule establishing ipso jure the presumption of sovereignty in favour of a particular state, this principle would be in conflict with what has been said as to territorial sovereignty and as to the necessary relation between the right to exclude other states from a region and the duty to display therein the activities of a state. Nor is this principle of contiguity admissible as a legal method of deciding questions of territorial sovereignty; for it is wholly lacking in precision and would in its application lead to arbitrary results. This would be especially true in a case such as that of the island in question, which is not relatively close to one single continent, but forms part of a large archipelago in which strict delimitations between the different parts are not naturally obvious. . . .

It is, however, to be observed that international arbitral jurisprudence in disputes on territorial sovereignty (e.g., the award in the arbitration between Italy and Switzerland concerning the Alpe Craivarola; Lafontaine, Pasicrisie international, p. 201-209) would seem to attribute greater weight to - even isolated - acts of display of sovereignty than to continuity of territory, even if such continuity is combined with the existence of natural boundaries. . . .

In the opinion of the Arbitrator the Netherlands have succeeded in establishing the following facts:

a. The Island of Palmas (or Miangas) 'Is identical with an island designated by this or a similar name, which has formed, at least since 1700, successively a part of two of the native States of the Island of Sangi (Talautse Isles).

b. These native States were from 1677 onwards connected with the East India Company, and thereby with the Netherlands, by contracts of suzerainty, which conferred upon the suzerain such powers as would 'justify his considering the vassal state as a part of his territory.

c. Acts characteristic of state authority exercised either by the vassal state or by the suzerain Power in regard precisely to the Island of Palmas (or Miangas) have been established as occurring at different epochs between 1700 and 1898, as well as in the period between 1898 and 1906.

The acts of indirect or direct display of Netherlands sovereignty at Palmas (or Miangas), especially in the 18th and early 19th centuries are not numerous, and there are considerable gaps in the evidence of continuous display. But apart from the consideration that the manifestations of sovereignty over a small and distant island, inhabited only by natives, cannot be expected to be frequent, it is not necessary that the display of sovereignty should go back to a very far distant period. It may suffice that such display existed in 1898, and had already existed as continuous and peaceful before that date long enough to enable any Power who might have considered herself as possessing sovereignty over the island, or having a claim to sovereignty, to have, according to local conditions, a reasonable possibility for ascertaining the existence of a state of things contrary to her real or alleged rights. . . .

There is moreover no evidence which would establish any act of display of sovereignty over the island by Spain or another Power, such as might counterbalance or annihilate the manifestations of Netherlands sovereignty. As to third Powers, the evidence submitted to the Tribunal does not disclose any trace of such action, at least from the middle of the 17th century onwards. These circumstances, together with the absence of any evidence of a conflict between Spanish and Netherlands authorities during more than two centuries as regards Palmas (or Miangas), are an indirect proof of the exclusive display of Netherlands sovereignty. . . .

The conditions of acquisition of sovereignty by the Netherlands are therefore to be considered as fulfilled. It remains now to be seen whether the United States as successors of Spain are in a position to bring forward an equivalent or stronger title. This is to be answered in the negative.

The title of discovery, if it had not already been disposed of by the Treaties of Munster and Utrecht, would, under the most favourable and most extensive interpretation, exist only as an inchoate title, as a claim to establish sovereignty by effective occupation. An inchoate title however cannot prevail over a definite title founded on continuous and peaceful display of sovereignty.

The title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law. . . .

The Netherlands title of sovereignty, acquired by continuous and peaceful display of state authority during a long period of time going probably back beyond the year 1700, therefore holds good. . . .

For these reasons the Arbitrator . . . decides that:

The Island of Palmas (or Miangas) forms in its entirety a part of Netherlands territory.