

philippine studies

Ateneo de Manila University • Loyola Heights, Quezon City • 1108 Philippines

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Philippine Studies vol. 12, no. 3 (1964): 391–423

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Fri June 30 13:30:20 2008

American Military Bases in the Philippines: the Brownell Opinion

ROBERTO PATERNO

ON 17 March 1954, three days after the seventh anniversary of the signing of the Military Bases Agreement and exactly seven years after President Manuel Roxas submitted the agreement for approval to the Philippine Senate, there appeared in Manila newspapers an Associated Press dispatch, dated Washington, 16 March, containing excerpts from a legal opinion written by United States Attorney-General Herbert Brownell, Jr. This legal opinion, the contents of which we shall deal with more fully, stated that the United States had title to ownership of the lands comprising the bases maintained by her in the Philippines. According to the press dispatch, this document, previously classified, was released that day by the Attorney-General's office and was to form the basis of the United States' position in formal negotiations with the Philippines expected to begin that month.¹

The claim of the United States to fee-simple ownership of base lands in the Philippines, supported and made public by the release of the Brownell Opinion in 1954, marked the substantial beginning of the modern "military bases question" which reached such alarming proportions and which became one of the most serious causes of friction between the Philippines and United States. For purposes of analysis, the question may be said to have undergone two phases. The first

¹ *The Manila Chronicle*, 17 March 1954, pp. 1, 3, 6.

centered around the problem of ownership. The second centered around the Philippine demand for a revision of the agreement of 1947 for a more *concrete* assertion of her sovereignty over the bases in her territory especially in the matter of legal and criminal jurisdiction. We shall deal only with the first phase here. Actually, these two phases are distinguishable chronologically only in a rough, not exact, manner; the two phases overlapped. But the distinction is necessary for purposes of analysis, and it has a certain validity because the first phase came earlier to the attention of the Filipinos, and the demand for revision marking the second phase grew largely from the attention excited by the Brownell Opinion.

This ownership claim of the United States caused great furor in the Philippines when it was made public. It is worthwhile and necessary to give a summary account of the historical milieu in which the claim was made.

Professor Claude A. Buss has written that "a psychological indifference or neglect seemed to characterize American relations with the Philippines between the declaration of Philippine independence and the outbreak of the Korean war. There was a general disposition to criticize local conditions in the Philippines, perhaps to preach a bit, but very little inclination to admit our own historical shortcomings."² Indeed, there was much to be disappointed about regarding conditions in the Philippines. There were certain elements of corruption in the government; there were very serious economic ills; there was the inability to cope with the Communist Hukbalahap problem; and there were the notorious elections of 1949. During this period, there was little talk and relatively little activity regarding the United States military bases in the Philippines. The United States was completely taken up with problems in Europe, China, Japan, and the Middle East.

The growing crises in the "cold war," however, awakened the United States Government to the little republic across

² See his introduction to Shirley Jenkins, *American Economic Policy toward the Philippines* (Stanford University Press, 1954), p. 22.

the Pacific with which she maintained special relations. The Communist movements in Asia in particular began to sharpen the importance of the various footholds held by the United States in that area. China fell to Communism in 1949, and in June, 1950, Communist North Korea invaded South Korea. The outbreak of the Korean War was the principal catalyst for this renewed interest. On 27 June, President Harry Truman issued his now famous statement informing the world that he had ordered American sea and air forces to help South Korea and that he had dispatched the Seventh Fleet to enforce his order for the neutralization of Formosa. In this same statement, he underlined the strategic importance of the Philippines: "I have also directed that United States Forces in the Philippines be strengthened and that military assistance to the Philippine Government be accelerated."³

On 30 August 1951, in Washington, the United States and the Philippines signed a Mutual Defense Treaty. Article IV of this treaty declared:

Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes.⁴

The two countries now had three military agreements: the Military Bases Agreement of 1947, the Military Assistance Agreement of 1947, and the newly signed Mutual Defense Treaty which entered into force on 27 August 1952 upon exchange of ratifications. There was need to implement this last treaty, coordinate it with the agreements of 1947, work out an up-to-date system of mutual defense in the face of the increasing threat of Communist expansion, and re-examine the role of each government in the implemen-

³ The statement is quoted in Harry S. Truman, *Memoirs* (Garden City, New York: Doubleday and Company, Inc., 1956), II, 338-339.

⁴ U.S., Department of State, *Mutual Defense Treaty between the United States of America and the Republic of the Philippines, Signed at Washington August 30, 1951, . . . Entered into Force August 27, 1952*, Treaties and Other International Acts Series (hereafter TIAS) 2529, Department of State Publication 4733, p. 6.

tation of the agreements. To this end, a mutual defense conference was held in the Philippines in October, 1952.⁵

The renewed interest in military cooperation between the two countries began to bring to the fore certain problems and questions which had been lying dormant. There was much unfinished business left with regard to the Military Bases Agreement. For instance, the definite metes and bounds of the bases had been left by the agreement for future determination; this had so far not been done. Filipinos were also beginning to express dissatisfaction with the limitations on Philippine sovereignty which the agreement sanctioned, particularly in the matter of jurisdiction. The bases were territories practically alien to the Philippines. The Philippine flag did not even fly over these bases. At the same time, the United States, in order to strengthen the bases system, wanted to expand the bases and to modernize them in their layout and distribution. For this, additional lands were required, and, as provided for by the Military Bases Agreement of 1947, this called for negotiations between the two governments, upon the request of the United States. In a diplomatic note to the Philippine Department of Foreign Affairs, dated 25 February 1953, for instance, the United States Embassy at Manila expressed the desire to acquire fee-simple title to extensive additional lands in the Subic Bay area. The project envisaged acquisition by the United States of a total area of (1) 1,400 acres — 866 on land and 534 on water — for a transmitter station and appurtenances, and (2) 3,800 acres for a receiver station. The United States wanted title, in absolute ownership, to all the land area covered in the project.⁶

The United States encountered difficulties with the Philippine Government, and this proved a hindrance to the program of expansion and modernization of the bases. One

⁵ Rafaelita Hilario-Soriano, "U.S.-P.I. Relations," *Progress* '56 (The Manila Times Publishing Company, Inc.), p. 42.

⁶ This diplomatic note is described by Philippine Secretary of Justice Pedro Tuason in his Opinion No. 40, S. 1955, Manila, 16 February 1955, submitted to Secretary of Foreign Affairs Carlos P. Garcia, (typewritten, "true copy"), p. 1.

of the sources of difficulty was the fact that the United States took for granted that she held title in fee-simple to the lands comprising the military bases she was operating in the Philippines under the Agreement of 1947. The Philippine Government, then headed by President Elpidio Quirino, did not accept this claim.⁷ This basic difficulty was further complicated by the fact that the United States was now asking for additional lands to be transferred in like fee-simple title in the projected expansion, and this request was based on the Agreement of 1947. The United States, however, was having difficulty in getting the Philippine Government to release these properties desired by the United States for expansion of the bases.⁸

Finally, the legal adviser of Secretary of State John Foster Dulles, in a letter dated 17 April 1953, requested an opinion on the ownership question from Attorney-General Herbert Brownell, Jr. On 28 August, Brownell submitted his now famous opinion to the Secretary of State. Brownell assured Dulles in his letter of transmittal that for the time being his office would not release the opinion to the public because "in view of the possible negotiations with the Philippine government, which lie ahead, it is my understanding that you do not want this opinion to be published."⁹

Meanwhile, in the Philippines, interest in the questions regarding the bases was still confined, for the most part, to official circles. In November, 1953, Ramon Magsaysay, staunchly and openly pro-American, was elected President of the Philippines. In December, *The New York Times* reassuringly reported that the new Filipino President-elect would "respect" the Military Bases Agreement and would

⁷ Claro M. Recto, "Opinion on the Questions of Ownership of Lands Comprised within U.S. Bases in the Philippines," Letter to Vice-President and Secretary of Foreign Affairs Carlos P. Garcia, Manila, 1 February 1954, mimeographed, p. 1.

⁸ Attorney-General Brownell alluded to this difficulty being met by the United States in the text of his letter to Secretary Dulles embodying the opinion on ownership; see *The Lawyers Journal* XIX (Manila, 31 March 1954), 159.

⁹ *Ibid.*, pp. 112, 159.

cooperate with the United States on this matter.¹⁰ One month after his inauguration in January, 1954, however, President Magsaysay instructed his personal representative to the United States, Carlos P. Romulo, another Filipino who cannot be accused of anti-Americanism, to take up the question of the bases with the United States Government. Romulo quotes Magsaysay as saying: "We must have the Filipino flag displayed on all these military bases and we must have our court jurisdiction respected. On these points no Filipino can yield. I hope our American friends will understand how important it is for me to keep the confidence of the people."¹¹

Indeed, Magsaysay was already being accused by his political rivals of being too subservient to the United States. The candidate whom he defeated, the former President Elpidio Quirino, had been criticizing the United States, particularly the Joint United States Military Advisory Group in the Philippines, for actively "meddling" in the Philippine elections, and he accused Magsaysay of accepting funds from American sources for his election campaign.¹²

Meanwhile, the new Philippine Government continued the interest in the controversial question of ownership of the lands comprising the military bases. Newly elected Vice-President Carlos P. Garcia, who was serving concurrently as Secretary of Foreign Affairs, requested Senator Claro M. Recto to look into the pending legal questions involved in the matter of military bases. On 1 February 1954, Senator Recto submitted to Secretary Garcia his opinion on the question of ownership of the lands in question. Citing arguments which we shall describe later, Senator Recto concluded that title to these lands resided with the Philippines. The United States did not own the lands; she merely had the right by the agree-

¹⁰ *The New York Times*, 17 December 1953, p. 5; 30 December 1953, p. 2.

¹¹ Carlos P. Romulo, "GIs and Asian Justice," *The Nation* CLXXXIV (New York, 15 June 1957), 513.

¹² *The New York Times*, 1 April 1953, p. 3; 2 April 1953, p. 10; 13 October 1953, p. 18; 19 November 1953, p. 10.

ment to the *use* of the lands.¹³ This was a direct denial of the claim of the United States.

Nevertheless, the United States Government decided to press its claim. In spite of the known opposition in Philippine official circles, the American Embassy at Manila sent a formal diplomatic note to the Philippine Department of Foreign Affairs. This note claimed United States title to the bases lands, and it based this claim on the arguments set forth by the Brownell Opinion which was attached to the note.¹⁴

Senator Recto's attention was called to this legal opinion. He studied it, and on 3 March 1954, he sent a memorandum to Secretary Garcia. This memorandum has since become famous in the Philippines in the same degree that the Brownell Opinion has become infamous. It contained substantially the same arguments contained in his 1 February 1954 opinion submitted to Garcia. This new memorandum, however, also included an extensive rebuttal of Brownell's arguments.¹⁵

So far, the question was kept generally within government circles. But it was not to remain so. On 16 March 1954 in Washington, the Brownell Opinion was released and it was announced that the opinion would form the basis of the argument with the Philippine Government in the coming negotiations for the expansion and modernization of the United States military bases system in the Philippines. The question "blew wide open" in the Philippines, and it became a public issue. On 17 March, Manila dailies printed the dispatch from Washington and also gave full play to

¹³ Claro M. Recto "Opinion on the Questions of Ownership of Lands Comprised within the U.S. Bases in the Philippines," Letter to Vice-President and Secretary of Foreign Affairs Carlos P. Garcia, Manila, 1 February 1954, mimeographed.

¹⁴ Republic of the Philippines, Congress, House, Special Committee to Re-examine Philippine-American Relations and Agreements, "Report on the Military Bases Agreement of 1947 between the Philippines and the United States," 3rd Cong., 3rd Special Sess., 10 July 1956, mimeographed, p. 14.

¹⁵ *The Lawyers Journal* XIX (Manila, 31 March 1954), 112-119.

the rebuttal by Senator Recto.¹⁶ Editorials and speeches were delivered with great vehemence. The repercussions are still being felt today.

Because of the limitations of space, it is not possible to do justice to either the Brownell Opinion or Recto's rebuttal. In order to do that, one would have to quote the entire texts of both documents. However, an attempt will be made to summarize the arguments on both sides.

THE BROWNELL OPINION

First of all, let it be said that the Brownell Opinion¹⁷ dealt with the question of ownership, not with that of sovereignty over the bases. The subject at issue was *ownership* or *proprietary title* to the lands comprised by the bases. The Brownell Opinion was an answer to three questions: (1) whether the United States retained title — the proprietary interest as distinguished from sovereignty — in the lands or areas in the Philippines comprising the military and naval bases, reservations, and stations which it held prior to Philippine independence achieved on 4 July 1946; (2) if the United States continued to own the lands, whether she was obliged to transfer the title to the Philippine Government presently without compensation; and finally (3) if the United States was under no such obligation, whether the United States President was authorized to make such a transfer if he so wished. The principal question was, of course, the first one. Brownell excluded from this first question those bases and installations which the United States had formally and expressly turned over to the Philippines since independence. Brownell's answer to the principal question of ownership was as follows:

Except for such military or naval properties as the United States has expressly and formally conveyed to the Philippine republic, . . .

¹⁶ See for instance *The Manila Chronicle*, pp. 1, 3, 6 (the Associated Press dispatch containing excerpts of the Brownell Opinion); p. 5 (a text of Recto's rebuttal).

¹⁷ The text of the Brownell Opinion submitted to the Secretary of State on 28 August 1953 may be found in *The Lawyers Journal* XIX (Manila, 31 March 1954), 112-120, 159. The following account is based on this text.

the United States now has whatever title it had prior to July 4, 1946, in the land or areas comprising the bases listed in Annexes A and B of the Military Bases agreement of March 14, 1947, in the naval reservations and fueling stations not so listed in that agreement, and in the areas covered by Article XXI of the agreement.¹⁸

The main thesis that Brownell endeavored to prove was that in all the legal instruments involved in the question, from the Tydings-McDuffie Law to the Military Bases Agreement of 1947, there was no over-all transfer of title to the Philippines meant or effected with regard to the bases, and that the adjustment or settlement of these property rights was left to future disposition. Now since no such general settlement of United States property rights in the Philippines had as yet been made, the bases lands still belonged to the United States even if sovereignty had been transferred.

Brownell recalled the legal history of the bases problem since the Tydings-McDuffie Independence Law of 1934. Section 5 of this law transferred to the Commonwealth all property and rights acquired by the United States in the Philippines, "except such land or other property as has heretofore been designated by the President of the United States for military and other reservations of the government of the United States," and except such land or property as may have been sold. Section 10 (a) provided that on the specified fourth day of July ten years later, the United States was to withdraw and surrender "all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under Section 5)," and she was to recognize the full independence of the Philippines. Section 10 (b) of the same Independence Law authorized the United States President to enter into negotiations with the Philippine Government not later than two

¹⁸ *Ibid.*, p. 120.

years after independence, for the "adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status." Under Section 2 (b) (1) and (2) it was required that the Philippine Constitution provide, effective upon independence, that the property rights of the United States and the Philippines should be promptly adjusted and settled; and that by way of further assurance the Philippine Government would embody the foregoing provision, and certain others, in a treaty with the United States.

Subsequently, it was found that certain lands and properties meant for future diplomatic and consular establishments of the United States in the Philippines were located in lands which were within military reservations. Hence, in 1939, Congress passed certain amendments to the Tydings-McDuffie Law. A new subsection (c) was added to Section 10, and this authorized the United States President, among other things, to designate properties of the United States in the Philippines suitable for diplomatic and consular establishments. This property "shall continue to be vested in fee-simple in the United States notwithstanding the provisions contained in subsection (a) of this section."¹⁹ Brownell recalled that the Senate and House reports indicated that it was necessary to make these provisions in the amendments, else all properties held or owned by the United States in the Philippines would be transferred to the independent Government of the Philippines.

Brownell therefore concluded that prior to the war with Japan, contemporary interpretation and expectation was that upon achievement of Philippine independence, the United States was to relinquish operation and ownership of all military and other reservations, *except* only (1) *operation and ownership* of naval reservations and fueling stations, subject to subsequent negotiations with the Philippine Republic, and

¹⁹ U.S. Statutes at Large LIII, 1226, 1230-1231.

(2) ownership of consular and diplomatic properties, including the residence of the former American High Commissioner.²⁰

The war with Japan, however, brought about a complete change in the mutual relationships between the two countries. Both agreed that there was more need of adequate American military installations in the Islands than was contemplated in the Tydings-McDuffie Law. A resolution of the United States Congress of 29 June 1944 authorized the United States President "to withhold or to acquire and retain such bases, necessary appurtenances to such bases, and the rights incident thereto, in addition to any provided for by the Act of March 24, 1934, as he may deem necessary for the mutual protection of the Philippine Islands and of the United States." This, Brownell pointed out, altered the intentions of the Tydings-McDuffie Law in favor of a policy looking toward the expansion of military (i.e., army and air force), as well as naval bases in the Philippines. In the words of Brownell, this change was "a policy wholly inconsistent with the idea of automatic transfer of property constituting the bases upon the achieving of independence." Since the United States President was authorized to do these things in negotiating with the President of the future Philippine Republic, as well as with the then President of the Commonwealth, it was clear, according to Brownell, that *ownership* as well as operation was to continue even after independence. Though not technically required then, the Philippine Commonwealth President and Legislature accepted the spirit and the intent of the United States congressional resolution.²¹

Brownell further pointed out that on the eve of Philippine independence, the United States Congress, on 3 July 1946, passed the Philippine Property Act.²² This Act provided that all property of the United States and its agen-

²⁰ *The Lawyers Journal* XIX, 115.

²¹ *Ibid.*, p. 117. See U.S. *Statutes at Large* LVIII, Part 1, 625-626; Phil., Office of the President, *Official Gazette* XLIII (March, 1947), 955-956.

²² U.S. *Statutes at Large* LX, 418.

cies and instrumentalities was to remain vested in the United States. The Act also provided that the United States President was authorized to dispose of the properties.

Brownell argued that in none of these legal instruments was there envisioned any automatic transfer of United States property to the Philippines at the grant of independence and the transfer of sovereignty. These titles were to be retained by the United States, and their adjustment was left to the United States President for future disposition with the Philippine Republic. Thus, the proclamation of independence on 4 July 1946 recited that "in accord with and subject to the reservations provided for in the applicable statutes of the United States" the United States withdrew and surrendered all rights of possession, supervision, jurisdiction, control, or sovereignty in and over the territory and people of the Philippines.

The Treaty of General Relations between the United States and the Philippines signed on 4 July 1946 repeated the provisions of the Tydings-McDuffie Law stating that property rights of the United States and the Philippine Republic shall be promptly adjusted and settled by mutual agreement. Brownell pointed out that the protocol attached to the treaty stated explicitly that "this treaty does not attempt to regulate the details of arrangements between the two governments for their mutual defense; for the establishment, termination or regulation of the rights and duties of the two countries, each with respect to the other, in the settlement of claims, as to the ownership or control of real and personal property," and so forth. This, according to Brownell, clearly reserved the question of United States property titles for future settlement.

Brownell admitted that one of the passages in the subsequent Military Bases Agreement of 1947 raised a "difficult-to-explain ambiguity regarding the title were it not for the surrounding circumstances."²³ This clause in the agreement stated that the two countries were desirous of coope-

²³ *The Lawyers Journal* XIX, 119.

rating in their common defense, "particularly through a grant to the United States of America by the Republic of the Philippines in the exercise of its title and sovereignty of the use, free of rent, in furtherance of the mutual interest of both countries, of certain lands of the public domain." Brownell, however, interpreted this clause as referring, not to the military bases and temporary installations which the United States was granted the right to retain and occupy, but to the parts of those lands and any additional lands that the United States might require in expansion or exchanges, which happened to be undisputed Philippine public lands.²⁴

Brownell buttressed this interpretation of the "ambiguity" by calling attention to the exchange of notes between the American Ambassador and the Philippine Secretary of Foreign Affairs, which notes were attached to the agreement. The American Ambassador referred to the various statutes involved and stated that it was "the understanding of my government that the question of the adjustment of any rights and titles held by the United States... to real property in any of the bases covered by the aforementioned Agreement or any naval reservations or fueling stations not so covered is reserved and will be settled subsequently in accordance with the terms of the Acts and Joint Resolution of the Congress mentioned above." The Philippine Secretary of Foreign Affairs answered that "without conceding the existence of any rights or titles to the real property herein referred to, my government concurs with the understanding above set forth."²⁵

Brownell concluded from this that again the matter of United States title to the bases lands was not settled directly or indirectly, so that the matter was left to future determination. Thus, even if there might be some basis in

²⁴ *Ibid.*

²⁵ See U.S., Department of State, *Military Bases in the Philippines: Agreement and Accompanying Notes between the United States of America and the Republic of the Philippines, Signed at Manila, March 14, 1947, Entered into Force March 26, 1947*, TIAS 1775, Department of State Publication 3257, pp. 17-18.

certain ambiguities in the agreement for implying a transfer of title, Brownell declared: "It would be of no legal consequence in the face of the well-established principle of law concerning grants of land by the sovereign, that a grant of the sovereign must be explicit and nothing passes by implication."²⁶

In keeping with the Military Bases Agreement of 1947, the United States retained some bases and turned over other pre-independence bases to the Philippines. Thus in 1947 and 1949, the United States turned over to the Philippines some thirty or more military reservations deemed to be in excess of United States military requirements. Among these were certain bases held by the United States prior to independence but which had not been included in the Agreement of 1947. Among them also were some bases not included in the Agreement but which the United States had continued to use and occupy as temporary installations and which the Agreement provided should be abandoned within a period of two years. Thus it was, for instance, that the United States turned over to the Philippines the present Philippine Air Force center, Nichols Field, which had been part of the Fort William McKinley reservation. Brownell pointed out that in these transfers, the United States followed the practice of referring specifically to each property conveyed and of transferring the certificates of ownership — mostly United States Presidential Executive Orders during the colonial period and Torrens Certificates of Title — by which the United States had held title to the lands previous to independence.²⁷ To Brownell, this clearly showed that there was clear under-

²⁶ *The Lawyers Journal* XIX, 119-120.

²⁷ For these transfers, see U.S., Department of State, *Military Bases in the Philippines: Agreements between the United States of America and the Republic of the Philippines Implementing the Agreement of March 14, 1947*, TIAS 2406, Department of State Publication 4604, pp. 2-10, 12-34; U.S., Department of State, *Transfer of Certain Military Reservations to the Philippines: Agreement between the United States of America and the Republic of the Philippines, Effected by Exchange of Notes Signed at Manila May 14 and 16, 1949, Entered into Force May 16, 1949, Operative Retroactively March 27, 1949*, TIAS 1963, Department of State Publication 3670.

standing of "the actual state of facts, and possibly of law," namely that titles to the bases lands had never been generally transferred to the Philippines, and that therefore only specific conveyances like the above effected such a transfer of ownership.²⁸

Thus, if Brownell was correct, the United States, in effect, still held in absolute ownership very extensive bases lands in the Philippines. This would include the bases actually listed in the annexes of the Agreement of 1947, except for certain expansions subsequently undertaken with the approval of the Philippine Government. It would also include any pre-independence reservation that was not included in the Agreement but which had not been formally turned over to the Philippines in a formal transfer of title. It would further include the temporary installations which the United States had not yet so transferred, very notably, Fort William McKinley (not including Nichols Field) and the Port of Manila Reservation.²⁹

Brownell also concluded that the United States President had complete and legally unhampered discretion on whether or not to transfer title to these properties to the Philippine Government, and if he decided to transfer any one, whether or not to demand compensation.³⁰

RECTO'S REBUTTAL

The main brunt of the task in the Philippines of refuting Attorney-General Brownell's and the United States' claim on ownership was borne by Senator Claro M. Recto.³¹ Recto was then serving as the Chairman of the Senate

²⁸ *The Lawyers Journal* XIX, 120.

²⁹ Some idea of the content of these claims may be gleaned from the fact that, when the problem of ownership was finally solved by the United States formally transferring all certificates of ownership available at the end of 1956, the title papers covered an aggregate area of some 199,570 hectares of land; see Phil., Office of the President, *Official Gazette* LII (15 December 1956), 7226.

³⁰ *The Lawyers Journal* XIX, 120, 159.

³¹ Senator Recto's opinion on this question may be found in three separate documents utilized by the present writer. All three contain

Committee on National Defense and Security. Having served in various capacities in the Philippine Government since colonial times and most notably as President of the Philippine Constitutional Convention under the Tydings-McDuffie Law, Recto was considered as one of the Philippines' legal luminaries. He was also one of the most feared debaters in Filipino public life. As we have seen earlier, Vice-President and Secretary of Foreign Affairs Carlos P. Garcia had asked him to look into the United States claim of ownership of the lands comprised in the military bases. Early in 1954, President Ramon Magsaysay had also appointed him as one of the members of a panel of public officials created to take up the problem of bases with the United States.

substantially the same arguments, except that the first one, written before the Brownell Opinion was submitted to the Philippine Government in a diplomatic note, did not contain any specific refutation of Brownell's arguments as the later ones did. These three documents are:

(a) Claro M. Recto, "Opinion on the Questions of Ownership of Lands Comprised within U.S. Bases in the Philippines," Letter to Vice-President and Secretary of Foreign Affairs Carlos P. Garcia, Manila, 1 February 1954, mimeographed.

(b) Memorandum of Senator Claro M. Recto to the Secretary of Foreign Affairs in Reply to the United States Claim of Ownership over Its Naval and Military Bases in the Philippines, Manila, 3 March 1954, reproduced in "Mr. Recto States the Philippine Case," *The Lawyers Journal* XIX (Manila, 31 March 1954), 112-119. (This same version, with minor alterations, namely the omission of the first two paragraphs indicating it as a memorandum to the Secretary of Foreign Affairs, appears as Senator Claro M. Recto, "The Title to American Bases in the Philippines," *The Manila Chronicle*, 17 March 1947, p. 5).

(c) Senator Claro M. Recto, "The Ownership of the United States Bases in the Philippines," Consolidated Report as Submitted to the Chairman and Members of the Philippine Panel of Negotiators for the Revision of the Military Bases Agreement, [Manila, 1955 (?)], mimeographed. (This report may also be found in four installments in *The Manila Chronicle*, 7, 8, 9, and 10 May 1955).

Actually, the most authoritative document is the mimeographed form of the report listed under (c), which was the latest written and organized by Senator Recto. However, for the purposes of this study, we use the 3 March 1954 memorandum as printed in *The Lawyers Journal* and listed under (b) above.

Recto's main contention was a direct denial of the claim of Brownell and the United States that the title to the lands comprising the American bases in the Philippines resided in the United States. His thesis was that the lands in question — as distinguished from the improvements thereon in the form of buildings and other types of real property — belonged to the Philippines in absolute or fee-simple ownership. The United States had the right merely to *use* these lands for military bases. In effect, Recto's thesis was that these lands were held by the United States by a ninety-nine year *lease* granted by the Republic of the Philippines, which remained the owner of the lands.³²

Recto's thesis was based mainly on the provisions of the Tydings-McDuffie Law, and on the stipulations of the Treaty of General Relations between the Philippines and the United States signed on 4 July 1946 and of the Military Bases Agreement of 1947. He argued that "the implications of the two treaties on the question of title to the base lands were not fully considered in Mr. Brownell's Opinion."³³

Recto also recounted the legal history of the military bases, describing more or less the same legal instruments cited by Brownell. It is therefore unnecessary for us to repeat this. However, Recto naturally interpreted these instruments differently from Brownell.

Recto's principal argument was based on the Treaty of General Relations and the Military Bases Agreement. On 4 July 1964, President Truman proclaimed the independence of the Philippines. In this proclamation, the United States withdrew all United States rights in and over the territory and people of the Philippines "except certain reservations therein and thereafter to be made." Then, on that same day the two countries, each now sovereign over its own territory and people, signed the Treaty of General Relations. Article I of this treaty stated that the United States withdrew and surrendered to the Republic of the Philippines, "all right of possession, supervision, jurisdiction,

³² *The Lawyers Journal* XIX, 113, 116.

³³ *Ibid.*, p. 113.

control, or sovereignty existing and exercised by the United States in and over the territory and people" of the Philippines, "except the *use* of such bases, necessary appurtenances to such bases, and the rights incident thereto, as the United States of America by agreement with the Republic of the Philippines, may deem necessary to retain for the mutual protection" of the two countries. It is to be recalled that Brownell in his opinion did not mention this provision of the Treaty of General Relations. Recto, on the other hand, cited it, and he underscored the word "use." He reasoned that the word "discloses the nature of the interest retained by the United States in the bases and it implies that title to the bases is in the Republic of the Philippines as the sovereign grantor of their use to the United States."³⁴ Recto then stated:

It is inferable from article I of the treaty that there had already been a grant or surrender to the Philippines of the title held by the United States to all the base lands at the time of the proclamation of independence.³⁵

On 14 March 1947, the Philippines and the United States signed the Military Bases Agreement which was referred to in the Treaty of General Relations. The subject of this Agreement, according to its preamble, was the "*grant to the United States of America by the Republic of the Philippines, in the exercise of its title and sovereignty, of the use, free of rent, in the furtherance of the mutual interest of both countries, of certain lands of the public domain.*" Recto, unlike Brownell, found no "ambiguity" in this clause. He underscored the whole passage, and concluded:

It may be noted that the preamble recognizes that the "title" to the bases is held by the Philippines and that the United States acquires only the "use" of certain lands of the public domain. The juxtaposition of the words "title" and "sovereignty" signifies that these two concepts are inseparably linked.³⁶

Article I of the Agreement defined the "grant." It provided that "the Government of the Republic of the Phil-

³⁴ *Ibid.*, pp. 113-114.

³⁵ *Ibid.*, p. 114.

³⁶ *Ibid.*

ippines...grants to the Government of the United States the right to *retain the use* of the bases in the Philippines listed in Annex A attached hereto," and that the Philippines agrees to permit the United States, upon notice to the Philippines, "to use" such of those bases listed in Annex B as the United States determines to be required by military necessity. And under Article XXI, the United States was to retain the right "to occupy" certain temporary installations for a period not exceeding two years.

Other provisions of the Agreement also spoke of "use" and "lease." Article XXV, for instance, bound the United States not to "underlet" any part or the whole of any base to a third power without the consent of the Philippines.

It must be recalled that Brownell had pointed out that Section 10 (b) of the Tydings-McDuffie Law provided that the United States President was to enter into negotiations with the Philippine President not later than two years after independence for the "adjustment and settlement" of all questions regarding naval reservations and fueling stations, and that these "questions" included the question of ownership. Since the United States Congress' joint resolution of 1944 had expanded the reservation to any kind of bases in general, hence the title to all these bases was left to this future "adjustment and settlement." In Recto's opinion, the Military Bases Agreement of 1947 "represents and constitutes the very 'adjustment and settlement'" referred to, and that "Mr. Brownell's opinion erroneously presupposes that there has been no such adjustment yet."⁸⁷ The Agreement consisted of a grant by the Philippines to the United States, in the exercise of its title and sovereignty, "of the use, free of rent," of certain lands of the "public domain" of the Philippines.

Recto argued that Brownell had missed the significance of the term "use," and that Brownell had erroneously claimed that title to base lands had been left to future determination. He stated:

⁸⁷ *Ibid.*, pp. 114-115.

The term "use" in its ordinary and legal conception (whether in the common law or civil law) is not synonymous with title or dominion. It connotes a right included in, and therefore inferior to, title or ownership.

And further on:

The component elements of ownership are the *jus fruendi*, *jus utendi*, *jus disponendi*, *jus vindicandi*, and *jus abutendi*. It is evident from the terms of the Bases Agreement that the United States acquired only the *jus utendi*, which right, in law and jurisprudence anywhere is separable from ownership.

And near the end of his rebuttal, Recto observed:

The Philippines could not have granted the use of the base lands if it were not in the first place, the owner thereof. Under a well known principle of the law of lease, the United States government as the lessee or beneficiary of the use, is estopped to deny the title of the lessor or grantor.³⁸

Recto declared:

It appears to me that to resolve the question regarding the title to the base lands there is no need to consult other documents, laws or agreements, nor to consider other antecedent and collateral circumstances, which would only tend to mislead or obscure the issue. The two treaties I have mentioned, viz., the Treaty of General Relations and the Bases Agreement, are covenants which are in full force and effect and have not been modified or altered. They are law-making treaties conclusive on the high contracting parties and are the sole repository and the best evidence of the intention of the two countries with reference to the status of the bases. Their language as to the nature of United States' interest in the base lands is clear and unmistakable.³⁹

Recto, however, also discussed the legal instruments appealed to by Brownell. Recto chose to interpret Section 5 of the Tydings-McDuffie Law as reserving to the United States only the *use*, *possession* or *occupancy* of the military reservations excepted from the over-all grant or transfer of all United States property and rights to the Philippine Commonwealth which was provided for in this section. He strengthened this interpretation by Section 10 (a) of the same law which provided that at independence, the United States

³⁸ *Ibid.*, pp. 115, 116, 118.

³⁹ *Ibid.*, p. 115.

was to relinquish "possession" (not title) of military bases in the Philippines, the implication being that during the Commonwealth period, the United States retained only the possession or occupancy of the bases and that their ownership had become vested in the Commonwealth Government, as contemplated in Section 5. He therefore denied the contention of Brownell that the 1944 Joint Resolution of the United States Congress, which expanded the concept of bases beyond naval stations but which mentioned nothing about ownership, was, in the words of Brownell "decisive of the intention to retain title, and of the fact that title was retained," in the bases after the grant of independence.⁴⁰

Brownell had also cited the 1939 amendments passed by the United States Congress, which among other things, were intended by the Congress to clarify certain questions regarding the transfer of ownership contemplated by the Tydings-McDuffie Law. Recto pointed out that these amendments stated explicitly that the United States was to retain fee-simple ownership of "diplomatic and consular properties" after independence. There was no mention of bases. Recto argued:

If it had ever been intended to vest in the United States the ownership of military bases and other reservations in the Philippines, that intention could have been clearly and unequivocally expressed by the United States Congress in the same Tydings-McDuffie Law; in the Joint Resolution of the U.S. Congress of June 29, 1944, authorizing the President of the United States to acquire bases for the mutual protection of the Philippines and of the United States; in the Treaty of General Relations, . . . and in the Bases Agreement itself, in the same manner as its intention with respect to the [diplomatic] properties contemplated in the Act of Congress of August 7, 1939. Since the Treaty of General Relations and the Bases Agreement merely speak of the grant of the *use* of the bases to the United States, said grant can by no means be construed as a relinquishment of ownership. In short, the bases were in effect leased to the United States for 99 years and only their possession was transferred thereby, inasmuch as there is no transfer of ownership in lease.⁴¹

Brownell had also quoted the words of the American Ambassador in the exchange of notes attached to the Military

⁴⁰ *Ibid.*, p. 117.

⁴¹ *Ibid.*, p. 116.

Bases Agreement, in which the Ambassador said that it was the understanding of the United States that the adjustment "of any rights and titles held by the United States. . . to real property in any of the bases" was reserved and left to future determination. Recto pointed out that the phrase was "real property in any of the bases," not the base lands themselves. He said: "The base lands should not be confused with the improvements and other forms of real property installed or constructed therein, at the expense of the United States for military and naval purposes."⁴²

Besides, the Philippine Secretary of Foreign Affairs, in the same exchange of notes attached to the Agreement, had not conceded any United States rights to real property in the bases.⁴³

Brownell had also appealed to the subsequent practice of the United States of specifically transferring title papers in surrendering bases it no longer needed or could continue to operate under the Agreement. Recto pointed out that the Philippine Secretary of Foreign Affairs, in accepting the transfer of Fort Mills at Corregidor, the Mariveles Military Reservation, Nichols Field, and the Zamboanga Petit Barracks, clarified the turn-over as merely "a *formalization* of the transfer and surrender of possession, supervision, control or sovereignty over these areas already made by the United States in favor of the Philippines in the Treaty of General Relations (including the Protocol thereto)."⁴⁴ Recto underscored the term "*formalization*."

Recto made several other serious observations. For instance, he wrote:

It is argued that a distinction should be made between "proprietary interest" and "sovereignty" in the bases, the premise being that while the Philippines has sovereignty over the base lands, the United

⁴² *Ibid.*, p. 118.

⁴³ See the exchange of notes cited in footnote 25 above; see also *The Lawyers Journal* XIX, 114.

⁴⁴ *Ibid.*, p. 116; U.S., Department of State, *Military Bases in the Philippines: Agreements between the United States of America and the Republic of the Philippines Implementing the Agreement of March 14, 1947*, TIAS 2406, pp. 9, 19, 23.

States has the title. The distinction has no basis because, as has been said, the acquisition of territory by a state "can mean nothing else than the acquisition of sovereignty." (Oppenheim's Int. Law, Lauterpacht, Vol. I, 6th ed., p. 496; I. Hachworth's Digest of Int. Law, p. 395). To concede that the United States retained title to the base lands after the proclamation of independence, is to concede her right to exercise sovereignty over the same to the exclusion of the Philippine government. The result would be a species of obnoxious extraterritoriality, impairing the status of the Republic of the Philippines as a sovereign state contrary to the letter and spirit of the independence law and the professed altruistic policy of the United States to the Islands.⁴⁵

Elsewhere in the same rebuttal, Recto made another observation:

I have also refrained from discussing the fundamental question of whether, as between the United States and the inhabitants of the Philippines, the former, in strict legal theory, really acquired any absolute proprietary title to the Philippine territory which Spain ceded to her under the Treaty of Paris. This point was touched upon, but not definitely resolved by Justice Holmes in the cases of *Carino v. Insular Government*. It is tied up with the doctrine of the insular cases to the effect that the Philippines was an unincorporated, as distinguished from incorporated, territory of the United States, and was foreign to the United States in a "domestic sense," although a part thereof in the "international" sense.⁴⁶

Assuming however that the United States had had legal title to Philippine lands, Recto's main contention was:

As repeatedly stated, the Bases Agreement correctly assumes that the title to the base lands had become vested in the Philippines, if not upon the inauguration of the Commonwealth Government in 1935, then as a direct and immediate consequence of the grant of independence and the total withdrawal of American sovereignty in the Philippines on July 4, 1946. There has, however, been no formalization of the transfer in the sense that the muniments of title to the bases if any, have not been actually delivered to the Philippine government.⁴⁷

After his lengthly rebuttal on a strictly legal basis, Senator Recto ended his disputation with what may be called an *argumentum ad hominem*:

⁴⁵ *The Lawyers Journal* XIX, 116-117.

⁴⁶ *Ibid.*, p. 119, The famous "Insular Cases" referred to by Recto may be found in *United States Supreme Court Reports* CLXXXII, 176 ff.; 244 ff.

⁴⁷ *The Lawyers Journal* XIX, 118-119.

I would like to venture a final observation, by way of conclusion, that the belated assertion by Federal officials of the retention of title by the United States in the base lands after the recognition of independence is not only in plain contravention of the unambiguous terms of the Treaty of General Relations and the Bases Agreement, but is irreconcilable with the traditional American policy toward the Philippines. That policy found vivid expression in [William Howard] Taft's announcement of "the Philippines for the Filipinos." It was reiterated in the preamble of the Jones Law wherein the United States Congress clarified that the acquisition of the Philippines was not "for territorial aggrandizement" and that it has always been the purpose of the American people to withdraw their sovereignty over the Islands and to recognize their independence. The policy culminated in the recognition of independence on July 4, 1946, an independence which is supposed to be full and complete.

The claim of title to the base lands, after the recognition of independence, would make that same independence incomplete, and impair the territorial integrity and sovereignty of our Republic.

The retention by the United States in the Philippines of the use and possession of military and naval bases is a matter of expediency, dictated by the needs of the two countries for mutual defense and protection, not to serve and foster any other interest of the United States. For the attainment of that objective, it is wholly unnecessary for the United States to have title ownership to or proprietary interest in the base lands.⁴⁸

PHILIPPINE REACTIONS

The present writer has not found a single instance of a Filipino journalist, public figure, or private person, writing or speaking publicly on the question, who has not accepted Senator Recto's rebuttal as against the opinion of Attorney-General Brownell. The present writer, however, has not been able to make the same judgment, or its opposite for that matter. His unenviable experience has been that after reading the Brownell Opinion, he seems to be convinced by it, and then, on the other hand, after reading Recto's rebuttal, he seems in turn to be won over by it.

The strength of Brownell's position seems to lie in the legal instruments which reserved the settlement of property questions to future adjustment. And his contention that

⁴⁸ *Ibid.*, p. 119.

there had so far not been any over-all or automatic formal transfer of all bases lands to the Philippines appears to be very strong. But he is weak in his attempt to explain away the language of the Military Bases Agreement of 1947. Recto's strength, on the other hand, seems to lie in the language of the Treaty of General Relations and the Military Bases Agreement itself. His thesis of "use" and "lease" are strengthened by the very terms used in these covenants. It is also supported by some other factors.

In 1947, Senator Vicente J. Francisco, in explaining the Military Bases Agreement to Senator Eulogio Rodriguez, said: "The ownership of the bases does not pass, with the treaty, to the United States. It is as if I were to permit you, sir, to use an estate of mine."⁴⁹ This interpretation is very significant, because Senator Francisco was then the chairman of the Senate Committee on Foreign Relations which was favorably reporting the Agreement for approval by the Philippine Senate after its submission to that body by President Manuel Roxas. Moreover, Senator Francisco had served in the special committee appointed by President Roxas to assist Secretary of Foreign Affairs Elpidio Quirino negotiate that very agreement with Ambassador Paul V. McNutt.⁵⁰ However, Senator Recto's rebuttal appears to be rather weak in other points, especially in his attempt at explaining the meaning of the other legal instruments quoted by Brownell.

From a strictly legal point of view, therefore, the present writer, totally ignorant of legal affairs, has not been able to choose one opinion as against the other. Arguments on both sides appear to him to be very strong. This is not to say that both could have been correct in their respective theses. But, as far as the present writer is concerned, the legal question as to which country owned the lands comprised in the bases remains problematic.

⁴⁹ Phil., *Congressional Record*, Senate, 1st Cong., 2nd Sess., 25 March 1947, II, No. 23, p. 213. Senators Francisco and Rodriguez carried on their exchange in Spanish. The above is a translation.

⁵⁰ See President Roxas' message to Congress, 17 March 1947, in Phil., Office of the President, *Official Gazette* XLIII (March, 1947), 954-957, 958.

From a diplomatic point of view, however, the assertion of this claim by the United States in 1954, eight years after independence, seems to have been a very serious blunder. Whatever proprietary rights the United States may have had over the extensive lands in the Philippines in which she operated bases and managed affairs almost without any interference from the Philippine Government, to have formally pressed them in 1954 was, to say the least, anachronistic. It was a time when Asia was going through a great nationalistic upheaval, when Communist gains necessitated more than ever continued cordial and close friendship between the United States and her allies, when the United States and the Philippines were about to embark on negotiations upon the request of the former and the agreement of the latter that the bases had to be strengthened, when a man like Ramon Magsaysay had just been inaugurated as President of the Philippine Government. The claim of the United States, moreover, placed ammunition in the hands of an increasing number of Filipinos who for some years had been expressing growing criticism of American policies toward the Philippines.

In order to understand the vehemence of the Philippine reaction to the American claim, it would be profitable to review certain developments in the Philippines during the few years before the release of the Brownell Opinion. There had been, on the part of certain important Filipino leaders, a growing dissatisfaction with the state of Philippine-American relations. They were resenting more and more what they believed to be the overbearing dominance of the United States and her representatives in the affairs of the Philippines.

After the renewed American interest brought about by the Korean War, several official missions and agencies of the United States in the Philippines put out reports highly critical of local conditions. The United States had become interested, not only in strengthening the military position of the Philippines, but also its economy, and these various reports were meant to find where and how American aid would be most effective, the suspicion being that the existing

Philippine Government could not be trusted completely with the efficient, or even honest, management of funds which the United States should decide to disburse.⁵¹ As we have said, these reports were critical of local conditions in the Philippines.

The Rivera-McMillan report, for instance, spoke of "feudalistic" conditions in the Philippine countryside. The Hardie report on land reform showed that the situation was critical. These criticisms irked Filipino officials. Filipinos love to criticize their officials, and officials are often vitriolic in their criticism of one another. The Philippine press, moreover, is one of the freest in the world if one is to gauge freedom of the press by the dubious standard of the degree to which journalists feel free to write unfavorably of their government. But the phenomenon has been that many Filipinos deeply resent criticism when it comes from foreigners, and in particular, from Americans. Speaker Eugenio Perez, for instance, balked at these reports and asked pointedly: "Do our well-meaning friends expect us to change these deep-rooted systems and customs [in land tenure] in seven short years when the Americans themselves failed to cause a dent in the situation during the 47 years in which they ruled the country?" Speaker Perez moreover resented the fact that "some of the so-called experts sent to the Philippines have sometimes been officious in their enthusiasm and overbearing in their criticism."⁵²

The Hardie report of September, 1952, moreover, stated that the pernicious problem of land tenure in the Philippines threatened the very existence of that republic and the stand of the United States against Communism in Asia. The report committed the indiscretion of intimating that the United States might have to intervene directly unless something were done about the land problem. Unless conditions were corrected, the report found, the United States might conceivably be forced to take direct, expensive, and arbitrary steps to insure

⁵¹ Jenkins, *American Economic Policy toward the Philippines*, pp. 156-157.

⁵² Quoted in Robert Strausz-Hupé, Alvin J. Cottrell, and James E. Dougherty (eds.), *American-Asian Tensions* (New York: Frederick A. Praeger, 1956), p. 139.

against the loss of the Philippines to the Communist bloc. Needless to say, Filipino officials were up in arms. Speeches were delivered in Congress. President Quirino denounced these "subtle threats" of American intervention, and he announced that the United States "shall not be permitted to exert coercive influence on our thinking and actions."⁵³

The earlier report of the Bell Mission, released in October, 1950, received similar but more sober criticism from important Filipinos. This report found very serious economic problems in the Philippines—serious unemployment, low production, low incomes. It ascribed most of the difficulties to the injudicious use by the Filipino people of the funds made available by the Philippine Rehabilitation Act of 1946. Too much had been spent on luxury goods, imports, and other unproductive expenses. It suggested that the United States make funds available to the Philippines, but also added that in order to prevent the dissipation of the funds, the United States should maintain an agency in the Philippines which would have control of the disbursement of these funds. Many Filipinos resented the implications of the proviso and resented having to receive such funds "with strings attached." Filipinos who criticized the Bell report fully agreed with what the report found to be serious economic problems in the Philippines. But they pointed out that the report did not give enough weight to the detrimental effects of the Bell Trade Act as a *cause* of these difficulties. According to them, free trade during the colonial period had created in the Philippines a distinctively "colonial economy" producing agricultural products for export and having to import from the United States manufactured goods and even necessities. The Bell Trade Act of 1946 had prolonged the process; American imports stifled infant local industries, encouraged the dissipation of funds in unproductive enterprises, produced the chronic trade deficit with the United States which reduced the country's dollar reserves on which the financial structure of the Philippines was largely based, and in short encouraged the continuation of the characteristic agricultural colonial economy

⁵³ *Ibid.*

with its attendant unemployment and low income problems.⁵⁴ Old "skeletons in the closet" regarding the Bell Trade Act were also aired, such as the highly sensitive question of the "parity" rights of Americans and the charge that the United States was deliberately fostering a colonial economy in the Philippines.

One of the greatest irritants in Philippine-American relations had to do with the peace treaty signed with Japan at San Francisco in 1951. The United States had realized by this time that Japan, already industrialized, would be a strong ally in the cold war. Filipinos complained that the United States was giving Japan, a former enemy, more aid than the Philippines which had suffered so much in the Japanese-American war. In the negotiations for the peace treaty undertaken at the initiative of the United States, the Filipinos found it difficult to swallow the fact that they received no support from the United States in their demand for full war reparations from Japan. In fact, they found very definite hostility on the part of the United States towards the Philippine demand for reparation. Carlos P. Romulo, whom Americans have called America's best friend in Asia, signed the peace treaty with great reluctance and said that the treaty was "punitive in respect to the claims of the great powers," while it signified "forgiveness in respect to the claims of the smaller countries."

Senator Camilo Osias declared before the Philippine Senate that the United States must realize "that the shells and bombs intended for America and the American people did not fall upon the continental United States but upon the sacred soil of the Philippines." The United States "must be convinced that we are right, and righteous in our insistence upon just, fair, and adequate reparations." The devastation was wrought not by a war "of our own making, but because of our involvement in that maelstrom of war as a result of America's declaration of war."

⁵⁴ Jenkins, *American Economic Policy toward the Philippines*, pp. 151-161; see also Miguel Cuaderno, "The Bell Trade Act and the Philippine Economy," *Pacific Affairs* XXV (December, 1952), 323-333.

Much of the odium was heaped on John Foster Dulles who had engineered the peace treaty, and he was actually burned in effigy in Manila.⁵⁵

Senator Claro M. Recto's indictment was in support of a movement which he had long espoused:

I should think that in such a bewildering world, where, it seems friends can so suddenly turn indifferent if not hostile, and former enemies so unreasonably be hailed as allies and protégés depending on the fluctuating values in the market of power politics, we would all be a little tired of always being taken for granted, of always depending on the so-called generosity of others. . . . Let us take heart and play the part of an independent nation which, I presume, we are.⁵⁶

This movement for a more independent foreign policy, one not so subservient to the "dictation" of the United States, had for some time been espoused by Senator Recto. He knew that in the eyes not only of Russia but of many non-communist neighbors in Asia, the Philippines was disdained as a "satellite" of the United States. In July, 1951, he said:

More than two years ago I suggested that we should promote closer relations with our neighbors in Asia on the basis of an independent nationalism. . . .

The Philippines can never hope to exercise any real influence in Asia as long as it is identified, rightly or wrongly, in Asian eyes, as an American puppet, having no policies but the policies of the United States. . . .

Even laying aside such realistic considerations as the geographic isolation of the Philippines, and the military and industrial weakness of our country, it should be clear to any disinterested observer that Asian nationalism will never accept the "leadership" of any puppet or protectorate, whether western or soviet, no matter what attractive gilding is provided for it.⁵⁷

Senator Recto wanted a policy geared exclusively to the self-preservation of the Philippines, not to the interests of the United States in its power struggle with Russia. He believed that the Philippines should not talk so toughly against those

⁵⁵ Strausz-Hupé, Cotrell, and Dougherty, *American-Asian Tensions*, p. 125.

⁵⁶ *Philippine Law Journal*, XXVII (July, 1952), 386.

⁵⁷ *The Manila Daily Bulletin*, 23 July 1951.

not aligned with the United States, because the United States, as history proved at least to his satisfaction, would act only according to what she considered to be her own interests, and if she should some day consider the Philippines expendable, she would abandon the Philippines forthwith. There was also of course the consideration of national pride in his thinking, which directed that the Philippines should have more independence in judgment and action. In April, 1951, he spoke as follows in a commencement address at the University of the Philippines:

If America really believes that war is inevitable, then let her give Asia a resolute leadership we can trust; let her give us the same unconditional pledges and guarantees and the same actual evidence of spiritual equality and common fate that she has given her kinsmen and allies in the Atlantic community; and we shall have justification for the risk of war and incentive to make common cause.

Otherwise we must restrain our enthusiasms, dissemble our sympathies, moderate our words and actions, and in fulfillment of the primitive duty of self-preservation, make no enemies where we can make no friends, and hold our peace. . . .

Let not Macaulay's traveller from New Zealand, exploring the spectral ruins of Manila in the course of his post-atomic-war peregrinations, and cautiously testing the radioactive waters of the Pasig, from the broken arches of Quezon Bridge, have cause to ponder that in those shattered tenements and poisoned fields and rivers once lived a nation unique to the annals of mankind; free men who put their liberties on the auction block, a sacrificial race with a mysterious urge to suicide, who, being weak and weaponless, took upon themselves the quarrels of the strong, and having been warned of their abandonment still persisted in their lonely course, and whose brutalized and deformed survivors, scrambling with stunted limbs in the infected debris of their liberated cities, had forgotten even the echo of the memory of the strange illusion for which their race had fought and perished.⁵⁸

There is no anti-Americanism here, but there is very definitely a lack of that unquestioning faith in the United States which was a very strong mark in the ordinary Filipino's attitude toward the United States.

Close on the heels of this speech by Recto, President Truman, partly to allay such fears, issued a statement on 18 April

⁵⁸ *The Manila Times*, 18 April 1951.

1951: "The whole world knows that the United States recognizes that an armed attack on the Philippines would be looked upon by the United States as dangerous to its own peace and safety and that it would act accordingly."⁵⁹ And on 30 August 1951, at Washington, the Philippines and the United States finally concluded the Mutual Defense Treaty. But there were still a few, notably Recto again, who criticized this treaty.

Recto noticed that the wording in this treaty⁶⁰ was conspicuously different from the NATO agreement which considered an attack on one as an attack on all the other signatories. "In plain language," he said, "the United States promises us nothing." He went on that the United States "may decide to send a mere note of protest against the aggression. It may decide to take up the case in the next meeting of the Security Council and, if we are still alive at the time, . . . we may be the recipients of a powerless resolution of condolence."⁶¹ Recto was not satisfied with the promises of protection from American officials individually, even highly placed ones like President Truman. Under the republican system, Congress could withhold the necessary authorization. Recto wanted a clear and a formal agreement for "automatic retaliation," and he wanted it in black and white. This indeed was a cynical view of the United States, but there were those who thought that "cynicism should mark the relationship between nations, since self-interest rules their conduct."⁶²

Recto further pointed out that the Mutual Defense Treaty, according to its provisions, could be terminated by either country with a one-year's notice. He said that the United States granted the white ANZUS allies and even Japan more favor-

⁵⁹ Quoted by John Foster Dulles, "Pacific Regional Pacts," *The United States and International Organizations*, ed. Robert E. Summers (New York: The H. W. Wilson Company, 1952), p. 110.

⁶⁰ See Article IV of the treaty quoted above, p. 393.

⁶¹ Strausz-Hupé, Cottrell, and Dougherty, *American-Asian Tensions*, p. 126.

⁶² *Philippines Free Press*, 7 July 1956, p. 2.

able terms, because in the mutual defense treaties with them, termination could be effected by mutual agreement only.⁶³

It must be noted, however, that this lack of trust in the United States was not widespread in the Philippines. Though there were a few Rectos, there were many more Magsaysays who had great faith in the United States, and who believed that the best interests of the Philippines lay in very close and intimate alignment with the United States. Nevertheless, by 1954, the number of Rectos were increasing. If perhaps these did not take so cynical a view of the United States as did Recto, they were at least becoming more and more dissatisfied with the conditions in which this alignment with the United States was carried out.

It was in such an atmosphere that the United States decided to press her claim of ownership over the lands comprising her military bases in the Philippines.

⁶³Strausz-Hupé, Cottrell, and Dougherty, *American-Asian Tensions*, p. 126. For a convenient sourcebook of Recto's views on different aspects of foreign policy, see Claro M. Recto, *My Crusade* (Manila: Pio C. Calica and Nicanor Carag, 1955).