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## Case Balangiga Bells – Philippines and United States

*Philippines – United States/États-Unis – Antiquity/antiquité – Spoils of war/butins de guerre – Diplomatic channel/voie diplomatique – Ownership/propriété – Procedural issue/limites procédurales – State responsibility/responsabilité internationale des États – Conditional restitution/restitution sous condition*

*The Balangiga Bells were removed in 1901 from the parish church of San Lorenzo de Martir in Balangiga, Eastern Samar, in the Philippines, by soldiers of the United States Armed Forces. The three bells returned to the Philippines in 2018 following the amendment of the law of the United States that originally prevented their return.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Spoils of war

- **1901: Three bells** (hereinafter “**Balangiga Bells**”) were **removed** from the parish church of San Lorenzo de Martir in Balangiga, Eastern Samar, in the Philippines, and **brought** to the United States (US) by the 11th Infantry of the US Armed Forces following a retaliatory attack on Filipino locals in the town.<sup>1</sup>
- **1904:** Two of the Balangiga Bells were **displayed** in a memorial shrine in Cheyenne, Wyoming, dedicated to fallen US soldiers from the Philippine-American War. The third bell was **displayed** in the 2nd Infantry Division Museum at Camp Red Cloud in the demilitarized zone between North and South Korea.<sup>2</sup>
- **1989:** The Balangiga Historical Society, through the Department of Foreign Affairs of the Government of the Philippines, made the first formal petition to the United States Government calling for the **return** of the bells. However, no action was taken.<sup>3</sup>
- **1994:** Philippine President Fidel V. Ramos discussed the **return** of the Balangiga Bells with US President Bill Clinton.<sup>4</sup>
- **27 May 1999:** Amendment No. 437 was introduced to Senate Bill No. 1059, the Defense Authorization Bill. The amendment added a provision **prohibiting** the US President to **transfer** any portion of a memorial (thus including the Balangiga Bells) without an authorizing law.<sup>5</sup> This Bill became Public Law No. 106-65, the National Defense Authorization Act (NDAA) for fiscal year 2000.<sup>6</sup> This prohibition was valid until 30 September 2001<sup>7</sup> and was renewed only in the NDAA for years 2006, 2013 and 2017.<sup>8</sup>
- **24 July 2017:** Philippine President Duterte, speaking at the House of Representatives in the Philippines, called for the **return** of the Bells of Balangiga.<sup>9</sup>
- **12 December 2017:** **Legislation** allowing for the **return** of objects taken from foreign States before 1907 (Public Law No. 115-91) **entered into force** in the United States.
- **11 December 2018:** The three bells arrived at Pasay City in the Philippines. They were **returned** to the church of San Lorenzo de Martir in Balangiga on **14 December 2018**.

<sup>1</sup> Borrinaga, *The Balangiga Conflict Revisited* 75-90; and Couttie, *Hang the Dogs*.

<sup>2</sup> McKinnon, *The Bells of San Lorenzo de Martir Desk Guide to Truth*, 24; and Helzer, “The Bells of Balangiga: A Case of Selective Amnesia”, 5-8.

<sup>3</sup> Chua, “The Bells of Balangiga; Angara, “The Balangiga Bells (Part 2)””; and Gomez, “Bells of Balangiga: Antecedents to the Retrieval”.

<sup>4</sup> Ramos, “Return the Balangiga Bells”; and Brooke, “U.S.-Philippines History Entwined in War Booty”.

<sup>5</sup> Congress. Gov. S. Amdt. 437 to S. 1059, 27 May 1999.

<sup>6</sup> Congress Gov. S. 1059, 5 October 1999.

<sup>7</sup> Found in Section 1051 of P.L. 106-65.

<sup>8</sup> See, respectively, Congress Gov. H.R. 1815, 6 January 2006; Congress Gov. H.R. 4310, 2 January 2013; and Congress Gov. H.R. 2810, 12 December 2017

<sup>9</sup> President Duterte’s State of the Nation Address, 24 July 2017.

## II. Dispute Resolution Process

### Diplomatic channel

- After being removed from the parish church in Balangiga during the Philippine-American War, the three Bells were on display as veterans' memorials at US military bases in the United States and in South Korea. Since their removal, various Filipino individuals and organizations, including clergymen, the youth and advocates of Philippine history, appealed for the return of the Balangiga Bells. The clamour was so intense that Philippine President Fidel V. Ramos discussed the return of the Balangiga Bells with US President Bill Clinton. President Ramos proposed a compromise whereby each country would be given a replica of one bell, and would be in the possession of one original bell. The request was not taken into consideration.<sup>10</sup> Moreover, bills were proposed in the US Congress either urging the return of the Bells<sup>11</sup> or prohibiting their transfer without an authorizing law.<sup>12</sup> The former bills, however, did not become laws. One reason is that the appeals to return the Balangiga Bells were met with opposition by US veterans groups asserting that the removal of the Bells from the veterans' memorial grounds would be a dishonour to the US soldiers who were killed in action during the Philippine-American war.
- There are no records of formal actions for the resolution of the dispute on the part of the Government of the Philippines (besides the discussions started by President Ramos with President Clinton). On the other hand, legislators in Wyoming introduced a provision to the National Defense Authorization Act (NDAA) that barred any incumbent US President from transferring veterans memorial objects to other governments without a law authorizing such transfer. The Bells were considered as veterans memorial objects and were thus covered under this moratorium. The amendment was introduced because Clinton seemed to have been receptive to Ramos' campaign.
- The NDAA is a law that concerns the United States' military affairs and provides budget allotments for the same. Every year a new version is proposed in the House of Representatives, taking into consideration specific budget allocations for relevant provisions and renewing expired provisions, if applicable. Although the moratorium on removing veterans memorial objects was in effect from 30 October 2000 to 30 September 2001, from 6 January 2006 to 30 September 2010, and from 2 January 2013 to 30 September 2017, there were no efforts by the US Congress to renew the same on 1 October 2001 to 5 January 2006, and from 1 October 2010 to 1 January 2013. During these window periods the appeals of Philippine Presidents for the return the Balangiga Bells (President Joseph Estrada from 1998 to 2001, President Gloria Arroyo from 2001 to 2010, and President Benigno Aquino III from 2010 to 2016) were not as pressing as those made by President Ramos (from 1992 to 1998).

<sup>10</sup> Ramos, "Return the Balangiga Bells"; and Brooke, "U.S.-Philippines History Entwined in War Booty".

<sup>11</sup> See Congress Gov. H. Res. 312, 7 November 1997.

<sup>12</sup> See Congress Gov. S. 1903, 1 April 1998; Congress Gov. H. Res. 3645, 1 April 1998; Congress Gov. S.404, 10 February 1999.

- Philippine President Rodrigo Duterte addressed the question of the return of the Balangiga Bells during his second speech to the House of Representatives in the Philippines in July 2017, whereby he emphasised that they were part of the cultural heritage of the Philippines.
- In June 2017, one month before President Rodrigo Duterte’s speech, House Resolution No. 2810, which was the NDAA for the year 2018, was introduced in Congress. The June version of the draft resolution did not contain any provision extending the moratorium on veterans memorial objects. However, the July engrossed version included Sec. 2841, which extended the moratorium on the transfer of veterans memorial objects to foreign governments to 30 September 2022.<sup>13</sup> The provision in Section 2841(a) also provided that it applied only to objects taken “from abroad before 1907”. Noticeably, after Duterte’s speech, that provision was cancelled.
- Furthermore, in November 2017, the House of Representatives submitted a “Conference Report to accompany House Resolution No. 2810”, which stated that the Senate had receded with an amendment that created an exception to the moratorium. This exception was expressly identified as the permission to transfer the Balangiga Bells, provided that the Secretary of State certifies that: (i) such transfer is done in the interest of national security; and (ii) appropriate steps have been taken to preserve the history of the veterans associated with the objects, including consultation with associations of veterans and legislators in Wyoming. US Defense Secretary James Mattis transmitted to the Armed Services Committees of both the House of Representatives and the Senate a signed document authorizing the return of the Bells. The content of such document was not disclosed to the public. This document presumably certified that the returning of the Bells was done in the interest of national security and that concerned veterans’ organizations and Wyoming legislators had been consulted on the matter.
- By November 2017, House Resolution No. 2810 was presented to President Donald Trump and became an enrolled Bill. It now included Section 2864(c), which expressly provided that the US Congress was permitting the transfer of the Balangiga Bells. It granted the authority to transfer the Bells to the President, provided that the Secretary of Defense certifies that the transfer is done in the national security interests and that appropriate steps have been taken to preserve the history of the veterans associated with the object, including consultation with associations of veterans and government officials in the State of Wyoming. The transfer may only be carried out 90 days after such certification is provided.<sup>14</sup>
- On 12 December 2017, House Resolution No. 2810 became Public Law No. 115-91.

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<sup>13</sup> Congress Gov. H.R. 2180 as Engrossed in House on 14 July 2017.

<sup>14</sup> See Section 2864 Congress. Gov. H.R. 2180 as an Enrolled Bill, 30 November 2017.

### III. Legal Issues

#### Ownership – Procedural issue – State responsibility

- The most pressing legal issue regarding the case of the Balangiga Bells is the question of ownership. Did the taking of the Bells by members of the US Army make the United States its legal owner? Or did the Bells belong to the Roman Catholic Church by virtue of their characteristics as church objects? Moreover, regardless of ownership, was the Philippine Government entitled to call for the return of the Bells?
- **The Bells as property of the United States pursuant to the Lieber Code.** According to one legal opinion, the Bells were lawfully taken by US soldiers and hence became property of the United States pursuant to the Lieber Code. The Lieber Code<sup>15</sup> was in effect at the time the Bells were removed from the parish church in Balangiga during the Philippine-American War. Under this Code, US forces were given the authority to appropriate all public moveable property until further direction of its government.<sup>16</sup> In particular, seizure of private property was lawful if that property was used in the commission of a crime by its owner, or if the taking could be justified on grounds of military necessity.<sup>17</sup> The use of the Bells to signal the beginning of the attack on US forces was considered as the unlawful act that justified the seizure of the Bells.<sup>18</sup> Furthermore, there was also a military necessity to remove them from the control of their adversaries because it was a common practice in Samar to melt brass bells to make weapons. Filipino historians have maintained that of the three Bells, it was only the (smallest) bell that was brought to South Korea that was used to signal attacks. This was one of the arguments justifying the return of the two tower bells from Wyoming.<sup>19</sup> The argument that the Balangiga Bells qualified as forfeitable objects under the Lieber Code because its owner used them to commit a crime was contested on the ground that the parish priest of Balangiga, who was considered the owner of the Bells, had left Balangiga the day before the attack on US soldiers. Thus, he could not have used it for an unlawful purpose. Moreover, the Bells did not have military use, and had no threat to the life and safety of US troops, thus, there was no military necessity to seize them.<sup>20</sup> In sum, the removal of the Bells from Balangiga could not have been authorized by the Lieber Code.

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<sup>15</sup> Also known as “Instructions for the Government of Armies of the United States in the Field”, and President Abraham Lincoln’s General Order No. 100.

<sup>16</sup> Article 31 reads: “A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or of that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation, and until the conquest is made complete”, cited in Espiritu, *Legal Ownership Over the Balangiga Bells: For Whom Do the Bells Toll?*.

<sup>17</sup> Lieber Code, Article 38, cited in Espiritu, *Legal Ownership Over the Balangiga Bells: For Whom Do the Bells Toll?*.

<sup>18</sup> Espiritu, *Legal Ownership Over the Balangiga Bells: For Whom Do the Bells Toll?*, 19

<sup>19</sup> Delmendo, *The Star-Entangled Banner: One Hundred Years of America in the Philippines*, 168-185.

<sup>20</sup> Espiritu, *Legal Ownership Over the Balangiga Bells: For Whom Do the Bells Toll?*, 20-28.

- **The Bells as property of the Roman Catholic Church by virtue of their characteristics as church objects.** It has been contended that the Lieber Code contains one exception to the power of victorious armies to appropriate moveable property from their adversaries where such property belongs to churches. This is precisely the case of the Bells of Balangiga.<sup>21</sup> Under the Lieber Code, church property was not to be considered as public property for purposes of appropriation by victorious armies. This was also made clear during the ceding of the Philippines to the United States by Spain through the treaty of Paris of 1898, where the principle of separation of church and State was introduced to the Philippines. Thus, the nature of the bells was private property belonging to the Church (and not State-owned property).<sup>22</sup>
- **The Philippines is entitled to call for the return of the Balangiga Bells under International Law.** Since the 1990s, calls for the return of the Balangiga Bells came from the Philippine Government and from private individuals and groups. They relied on the fact that the Bells are part of Philippine cultural heritage and on international law arguments. In international law, under the principle of State succession, colonial powers grant sovereignty to succession States through a treaty. It is common practice that cultural property obtained from a colonized State during colonization is returned by the colonizing State to the succession State upon the ceding of sovereignty by the former to the latter. This was institutionalized in the 1960 United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples. The United States formally ceded sovereignty to the Philippines through the Treaty of Manila of 4 July 1946. This contained no such provisions on the allocation of cultural property to the Philippines. Thus, the Philippines had a right to call for the return of the Bells. Furthermore, the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights provide that self-determination is a requisite for the exercise of the right to cultural life. Likewise, according to the United Nations General Assembly, the restitution of cultural objects removed from colonized States prior to their independence is key to the exercise of the right to self-determination. Thus, the return of the Balangiga Bells, a cultural property taken by the US Armed Forces from the Philippines prior to its independence, can be regarded as necessary for the Philippines to exercise its right to self-determination.<sup>23</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Article 34 reads: “As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it”, cited in Espiritu, *Legal Ownership Over the Balangiga Bells: For Whom Do the Bells Toll?*.

<sup>23</sup> Tantuico, “The Return of Unregistered Moveable Cultural Property of the Colonial Philippines”, 864.

#### IV. Adopted Solution

##### Conditional restitution

- The Balangiga Bells returned to the Philippines in December 2018 through the amendment of the legislation that originally prevented their return. However, it may be concluded that the return of the Bells of Balangiga was made possible not only because of the will of the United States but also as a result of the pressure exercised by the Government of the Philippines.
- The actual return of the Balangiga Bells was operated by US Admiral Philip Davidson, Deputy Assistant Secretary of Defense for Southeast Asia Joseph H. Felter, and US Ambassador to the Philippines Sung Kim. The Bells were handed over to the Department of National Defense of the Philippines and Philippine President Duterte.<sup>24</sup>
- The three Balangiga Bells arrived at the parish church of San Lorenzo de Martir in Balangiga on 14 December 2018.

#### V. Comment

- The complexity of this case mainly resides on the conflicting interests of the States involved. On the one hand, for the Philippines, the return of the Balangiga Bells was important because, regardless of the lawfulness of the taking, they formed part of the Philippines' cultural heritage, and had to be returned so as to provide Filipinos with the opportunity to enjoy such heritage. On the other hand, the Balangiga Bells had acquired an important function in the United States as they became symbols of the martyrdom of US soldiers who perished during the Philippine-American war. In effect, as explained, US law considered the Bells as veterans' memorial objects.
- This peculiar case of restitution shows that politics and law-making can play an important role in the resolution of cultural property-related disputes besides litigation.<sup>25</sup>

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<sup>24</sup> "Balangiga Bells Back in the Philippines after 117 Years", ABS-CBN New, 11 December 2018.

<sup>25</sup> See Bandle, "The Impact of Politics on the Resolution of Art Restitution Claims".

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