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NOTES AND COMMENTS:

AVAILABILITY OF HABEAS CORPUS AS REMEDY AGAINST INDEFINITE DETENTION OF STATELESS ALIENS PENDING DEPORTATION

1. Rights of the Alien in the Philippines; Habeas Corpus, When Now Availiable to a Deportee

The position of the alien under the liberal legislation of modern times has so far outdistanced his status under the Roman Law that he is no longer regarded in another country as without a legal personality.[1] The progress of history finds him enjoying full civil equality with its nationals.[2] In the Philippines, the alien enjoys, among other civil rights, due process, equal protection of the laws,[3] and access to the courts. If illegally detained, the Courts will afford him relief through the writ of habeas corpus. In this connection,

[1] Irrizarry y Puente, J., "Exclusion and Expulsion of Aliens in Latin America," XXXVI *American Journal of International Law*, 252.

[2] By International Law, each state is free to concede to aliens resident within its territories such measures of right apart from protection of life and property, as it may see fit to confer on them. Most states, however, in modern times have come to concede to aliens substantially the same civil rights, which are enjoyed by citizens of the state. FENWICK, INTERNATIONAL LAW, p. 269.

[3] SINCO, POLITICAL LAW, p. 469, citing *Twining v. New Jersey*, 211 U.S. 78.

the Courts have heretofore consistently maintained that the writ will not issue where petitioner is detained by virtue of lawful order of competent authority.[4] Similarly, in deportation proceedings, the Courts have refused to issue the writ where deportation has been ordered by the President of the Philippines, after investigation under Sec. 69 of the Administrative Code or by the Immigration authorities where the action of the latter is not tainted with abuse of authority.[5] Abuse of authority has been held to exist only where (1) a person who does not belong to the excluded classes has been denied admission into the territory of the Philippines, or (2) a person seeking admission has not been given full and fair hearing; or (3) there is no proof at all presented against the right of the applicant seeking admission.[6] On the basis of the foregoing, an alien detained preparatory to deportation, the proceedings finding him liable for deportation being strictly aboveboard and regular, having been executed by proper authorities who did not abuse their discretion, can no longer secure his release until he finally gets shipped and deported. A difficult problem arises, however, when all proceedings for deportation having been accomplished, the deportation authorities find that no country, not even the country of which the intended deportee is a national, is willing to receive him. The problem grows when the deportee turns out to be stateless person. Must he be incarcerated until some country finally agrees to receive him, a contingency which may or may not come to pass, or must he be released? The Supreme court, confronted with this problem in the case of Mejoff v. Director of Prisons[7] and Borovsky v. Commissioner of Immigration[8] held that in such a case the writ of habeas corpus will issue to relieve the alien who cannot be deported and is being indefinitely imprisoned.

II. Facts of Mejoff and Borovsky cases Where New Ground for Granting Writ Pronounced

Boris Mejoff, an alien of Russian descent, was brought to the Philippines from Shanghai as a secret operative of the Japanese forces during the occupation. After it was discovered by the Deportation Board that he was staying in the country illegally, without the requisite travel documents, his case was referred to the Commissioner of Immigration. The Commissioner after investigation ordered the Deportation Board to effectuate the deportation on the

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[4] *Mekim v. Wolfe,* 2 Phil. 74; *In re Carr,* 1 Phil. 513; *In the Matter of Smith,* 14 Phil. 112; *Payomo v. Floye,* 42 Phil. 788; *Cabiling v. Prison Officer,* 41 O.G. No. 6, p. 465; *Velasquez v. Director,* 44 O.G. No. 4, 1237.

[5] See *In re McCullough Dick,* 38 Phil. 41—"Where the petitioner was ordered deported by the Governor-General who had power to deport aliens as an act of state and who followed the procedure for the exercise of the right in accordance with Sec. 69, Administrative Code, no other tribunal is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted." See also *Lorenzo v. McCoy,* 15 Phil. 589; *Edwards v. McCoy,* 22 Phil. 598.

[6] *Ang Eng Chong v. Collector of Customs,* 23 Phil. 614.

[7] G.R. No. L-4254, prom. Sept. 26, 1951.

[8] G.R. No. L-4352, prom. Sept. 25, 1951.

ground, that the alien had entered the country illegally, not having been inspected and admitted by the proper immigration authorities at a designated port of entry. Russian ships refused to take him aboard, and all other efforts to deport him have since failed. He claimed, and this was not disproved, to be a stateless person.

Victor Borovsky was born in Shanghai of Russian parents. He came to the Philippines in 1936 and stayed under legal permit. In 1946, the Deportation Board ordered his deportation as "an undesirable alien, being a vagrant and habitual drunkard, engaging in espionage activities." Again efforts to deport him failed. He claimed to be stateless, and like Mejoff his claim was not disproved.

Shuttled from one jail to another, both have since then been detained for more than two years. Although both were found engaging in espionage activities, no formal charges were filed against them. Their first petitions for the writ of habeas corpus were denied in 1949, the court then holding that "temporary detention is a necessary step in the process of exclusion or expulsion of an undesirable alien and that pending arrangements for his deportation, the government has the right to hold the undesirable alien under confinement for a reasonable length of time." But no period was fixed within which the immigration authorities were to carry out the contemplated deportation beyond the statement that "The meaning of reasonable time depends upon the circumstances especially the difficulties of obtaining a passport, the availability of transportation, the diplomatic arrangements with the government concerned and the efforts displayed to ship the deportee away." The Court, however, warned that "under established precedents, too long a detention may justify a writ of habeas corpus." And so, two and a half years later, with the chances for deportation still being slender the Court granted the writ conditioned upon petitioners' being placed under surveillance "to insure that they keep peace and be available when the government is ready to deport them."

There is here no inquiry by the Courts as to the ground or motive for deportation nor of the propriety or impropriety of the same, determination thereof being strictly executive in character.[9]

III. Bases for Allowance of the Writ

Normally, the Court would have refused to grant the writ prayed for. In fact the records here show, and the decisions themselves mention the fact that the first applications of the petitioners

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[9] It is a general rule that where a statute gives a discretionary office to be exercised by the officer upon his own opinion of certain facts, he is the sole and exclusive judge of the existence of the facts on which he acted and no one can controvert their sufficiency. *Lee Gon Yung v. U. S.*, 185 U.S. 306; see also *Nishimura Ekiu v. U. S.*, 142 U. S. 651, 35 L. ed. 1146.

"It is well established that the decision of the appropriate immigration authorities, affirmed by the Secretary of Labor, is conclusive and not subject to review by the courts, unless it affirmatively appears that by improper conduct or abuses of discretion, the applicant for admission, or expulsion, was not afforded a full hearing." *Tulsidas v. Insular Collector*, 262 U.S. 258; *Ng Ho v. White*, 253 U.S. 454; *Lewis v. Frick*, 233 U.S. 291.

for the writ were refused by the Court, mindful as it was of the rule of judicial non-interference in deportation proceedings. But the circumstances attending the two cases herein involved are distinctly different and peculiarly out of the ordinary. In the past, the Philippines never experienced unsuccessful deportation, the countries to which we chose to deport undesirable aliens never having refused to receive the deportees. Under the present circumstances, the Court could not have in all conscience acted differently. In granting relief to the petitioner, it based its decision to do so on the following grounds:

1. *On grounds of due process.*—In both instances, the aliens were being detained without specific charges having been filed against them. And while admitting that aliens illegally staying in the Philippines have no right of asylum herein,[10] even if they are stateless as petitioners claim to be, the Court held that they may not be indefinitely kept in detention. The Constitutional guarantee of due process is not limited to Philippine citizens, but extends to all residents regardless of nationality, provided these residents are not enemy aliens.

2. *On grounds of international obligation under the generally accepted principles of international law.*—The Philippines, being a signatory to the Universal Declaration of Human Rights, is honor bound to fulfill the undertakings specified thereunder. One such undertaking is that it shall within its jurisdiction see to it that no one shall be subject to arbitrary arrest, detention or exile.[11]

3. *Under the well-known principles of statutory construction that laws of foreign extraction are to be construed in the light of the construction given them in the country of origin.*[12]—Since our deportation and immigration laws are of American origin, American cases deciding similar questions should be given at least persuasive effect. Said cases have held, more or less uniformly, that an alien detained for an unreasonable length of time may be released if it becomes apparent that deportation cannot be effected.[13] The theory on which the Court is given the power to act is that the warrant of deportation, not having been able to be executed, is *functus oficio* and therefore the alien is being withheld without any authority of law.

IV. Same; Aliens' Right to Due Process

While it cannot be gainsaid that the alien's right of free entry into the country is liberally recognized in our law and in our com-

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[10] *Soewapadjii v. Wixon* (1946), 157 F 2nd, 289, 290.

[11] Art. 9, Universal Declaration of Human Rights.

[12] Borrowed provisions are presumed to have the meaning given them under the constitution from which they were borrowed. The general rule is that such provisions are adopted with the construction already given them. I SUTHERLAND, STATUTORY CONSTRUCTION, 272-273.

[13] *U.S. v. Nichols,* 47 Fed. Supp. 201; *U.S. ex rel Ross v. Wallis,* 2 Cir., 279 F. 401, 404; *Caranica v. Nagle,* 9 Cir. 28 F. 21, 955; *Saksagansky v. Weedin,* 9 Cir., 53 F. 2d. 13; *Ex parte Matthews,* C.C.W.D. Wash., 277 F. 847; *Moraitis v. Delany,* D.C. Md. (1942), 46 F. Supp. 425. More recently, the case of *Staniszewski v. Watkins* (1948), 80 Fed. Supp. 132.

mitments with foreign countries, no one will contend that this right is unabridgeable under our views of International Law, of domestic policy, or of the treaties concurrently in effect. Were a state required to extend a welcome to all pernicious, subversive or undesirable elements knocking at its door for admission, the state would be in the extraordinary position of having to join in a tacit conspiracy with these elements against its own interests, its own security and its own public order.[14] Thus, every state is conceded the right to decide for itself the condition under which it will permit, forbid, or regulate the entry of aliens.[15] It is a well known principle of International Law that a state may forbid the entrance of aliens into its territory, or admit only in such cases as commend themselves to its judgment.[16] Correlative to this right of every state is the equally important right of the state to exclude aliens from its territory for reasons and under such conditions as it may see fit.[17] In the exercise of the right of expulsion, however, there must be, as in admission, no violation of the fundamental rights of person and property which accompany the individual alien wherever he goes as a part of his human inheritance. Privileges granted him may be revoked but the fundamental rights remain.[18] Normally, the alien may make no claim to a favored status.[19] But his rights of personal security and his personal liberty are as sacred as those of the citizens.[20] Under the Constitution, as the majority in the two cases under consideration correctly pointed out, the alien is as much entitled to the protection of the due process clause as the next citizen, whether the process be judicial, executive, administrative or legislative in charac-

[14] Irrizarry y Puente, J., "The Alien in International Law," XXXVI *American Journal of International Law,* 252.

[15] FENWICK, *op. cit.,* 267.

[16] This rule was stated clearly by Vattel in 1758, DROIT DE GENS, Eng. Trans. Vol. II, par. 94. The dictum in the case of *Nishimura Ekiu v. U.S.,* 142 U.S. 651 is often quoted: "It is an accepted maxim of international law that every sovereign nation has the power inherent in sovereignty and essential to self-preservation to forbid the entrance of aliens within its dominion or to admit them only in such cases and upon such conditions as it may see fit to prescribe."

[17] In the case of *In re Patterson,* 1 Phil. 94, our Court held: "We believe it is a doctrine generally professed by virtue of the fundamental right to which we have referred, that under no aspect of this case does the right of intercourse give rise to any obligation on the part of the state to admit foreigners under all circumstances into its territory. The international community, as Marten says, leaves states at liberty to fix the conditions under which foreigners shall be allowed to enter their territories. These conditions may be more or less convenient to foreigners, but they are a legitimate manifestation of territorial power and not contrary to law . . . In the same way a state possesses the right to expel from its territory any foreigner who does not conform to the provisions of the local law." See also *In re Dick,* 38 Phil. 42; *Forbes v. Tiaco,* 16 Phil. 534.

[18] FENWICK, *op. cit.* 269.

[19] His rights are the rights of the citizen of the country minus those special civil and political rights reserved to the citizens of the country. Fenwick, *op. cit.* 269.

[20] FENWICK, *op. cit.* 279.

ter.[21] Police power may impose restrictions on his sphere of activity in the economic or professional field; public policy may prohibit him from acquiring lands; he may be deprived of the right to vote or to hold public office—but certainly he may under no circumstance be deprived of his right to life, liberty or property without due process of law. There is no question that the proceedings for deportation in the instant cases, from the initial stages until confinement and for a reasonable length of time afterwards were attended by due process. But would it still be within the realm of due process if the alien were to be confined for an indefinite period of time? The Court held that it would not be. And we approve the Court's stand. Firstly, because the specific purpose of confinement here was avowedly "preparatory to deportation." Since deportation, the primary objective, could not be effectuated, and appeared to be uncertain of attainment, the legal reason for the detention ceases. Secondly, because there are not even any specific charges to warrant further incarceration. Deportation proceedings are not criminal proceedings,[22] and can not assume the role of formal charges.

Justice Pablo in his dissenting opinion argued that the detention must be continued. "No es arbitraria la detencion de Mejoff (or Borovsky). Esta justificada por las circunstancias abnormales." Deportation proceedings having been initially proper and regular, he refused to conceive of the possibility of said detention later on becoming arbitrary by force of circumstances. He would have the petitioner detained as long as the "condiciones abnormales" continued. He points out that the release of petitioners may endanger the safety of the state. Such a possibility however is vague and half-formed. And even granting that the possibility exists, still the petitioners' unduly prolonged detention would be unwarranted by the law and the Constitution, if the only purpose of the detention is to eliminate a danger that is by no means actual, present or uncontrollable. As the late Justice Perfecto said in the case of Moncado v. People of the Philippines,[23] "Good ends do not justify foul means. What is bad per se cannot be good because it is done to attain a good object. No wrong is atoned by good intentions." Surely, beneficent aims however great and well directed can never serve in lieu of constitutional power.[24]

It is submitted that just as legal detention ceases to be legal upon failure to present the person detained to the authorities within six hours,[25] so, in the same way, legal detention for purposes of deportation ceases to be so and becomes arbitrary when deportation becomes impossible of attainment. To safeguard the interest of the state, however, the Court has ordered that the petitioners be

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[21] *Yick Wo v. Hopkins,* 118 U.S. 336; *Truax v. Raich,* 239 U.S. 33; *Smith Bell v. Natividad,* 40 Phil. 136; *People v. Chan Fook,* 42 Phil. 230; *Yu Kong Eng v. Trinidad,* 271 U.S. 550; *Kwong Sing v. City of Manila,* 41 Phil. 103.

[22] *Chua Go v. Coll. of Customs,* 59 Phil. 523; *Lao Hian v. Coll. of Customs,* 60 Phil. 556.

[23] 45 O.G. No. 7, 2863.

[24] *Carter v. Carter Coal Co.* 298 U.S. 228.

[25] Art. 124 R.P.C.

kept under the surveillance of immigration authorities to see to it that they keep the peace and be available the moment deportation can be successfully accomplished. Thus, the Court reached a fair compromise between the interest of the individual and of the state. In the Philippines, as in the Western democracies, there is no unit of existence except the individual and for him and by him and through him the state exists. Not its welfare, but his happiness is the paramount concern. In the event of a clash of interests, therefore, the individual cannot be ignored. This view, however, is mitigated by the realization that it is an individual in society who is being protected.[26]

V. Same; Nature of Philippine Commitment under the "Universal Declaration of Human Rights."

The majority in the two cases held that we are bound by the Universal Declaration of Human Rights, that monumental document of the rights of man, to which the Philippines is a signatory. It is a fact, however, that the Declaration as such cannot be legally binding.[27] Mrs. Eleanor Roosevelt speaking on the Charter in the Third Committee of the General Assembly declared that "the draft declaration was not a treaty or international agreement, and that if it was adopted it would not be legally binding." [28] Manley O. Hudson, speaking on the same point, stated that "clearly, the Charter provisions on human rights have not been included into the laws of the United States . . . they are not self executing. They state general principles and created for the state only an obligation to cooperate in promoting certain ends. Insofar as the United States is concerned, they address themselves to the political, not the judicial, department and the legislative must execute the contract before they can become a rule for the court. Apart from the action taken by the legislative to implement them, the application of the Charter's human rights provisions is not for the courts to undertake." [29] Because the United Nations is an organization of sovereign states, it cannot have legislative powers. It can recommend, but it cannot impose its recommendations upon its members.[30] Although devoid of legal compulsion however, the Declaration may have moral force,[31]

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[26] Fernando, "An Inquiry into the Constitutional Right to Liberty," XXVI *Phil. Law Journal,* 184.

[27] Hudson, Manley O., "The Universal Declaration of Human Rights," XLIV *American Journal of International Law,* 543-548.

[28] Off. Record, Third Com. Third Session, Par. 1, p. 32.

[29] *Op. cit.,* p. 545.

[30] Mr. Edward Stettinius Jr., who served as chief of the U.S. delegation to the San Francisco Conference, stressed this point in the hearings on the Charter before the Senate Committee on Foreign Relations in 1945. Hearings Part I, p. 45.

[31] See FERNANDO, AN INTERNATIONAL BILL OF HUMAN RIGHTS, p. 13: A declaration of manifesto would amount to a recommendation by the General Assembly to member states of the United Nations and while devoid of legal compulsion would be possessed of moral weight."

and may be considered in determining the national public policy.[32] It would appear, therefore, that until and after a covenant on Human Rights is ratified by the Philippines and until and after it has come into force by the required action provided for, the Philippines will not be bound to observe the Declarations provisions.[33] The Declaration therefore has, at most, only a moral force. But this, it seems, together with our declared constitutional principle that "the Philippines adopts the generally accepted principles of International Law as part of the law of the nation," provides sufficient reason for the court's action to abide by the undertaking to see to it that "no person shall be subject to arbitrary . . . detention . . ." within its territory.[34]

VI. Same; Interpretation of Borrowed Provision.

When a law fails to provide for a certain contingency and local precedents are not available to make up for such a deficiency, courts may properly look to the country of origin of said law for case law on the point to help it resolve a question. The majority, in the instant cases, cited a long list of American decisions to support its stand.[35] The most recent case was the case of Staniszewski v. Watkins decided in 1948.[36] Here, a stateless person of Polish descent who had served in the American Navy through the war years, was ordered deported for failure to have the proper papers and for having once perjured himself by declaring himself an American citizen. As in the instant case, the government was at a loss as to what ought to be done with him, since no state would receive him. In the meantime, his detention was costing the steamship company which employed him three dollars a day at the place of confinement. Our own Court considered this case as providing the solution to the instant problem, "a solution which we think is sensible, sound and compatible with law and the Constitution." But in doing so the majority ignored the fact that in that case the petitioner had rendered highly commendable services for the United States and that, the ground upon which his proposed deportation was based was very much less serious than those authorizing the deportation of the instant petitioners. It was on this particular point, that Justice Pablo strongly objected to the grant of the writ of habeas corpus. It was, in fact, his only real ground of dissent, for he said: "Si el solicitante no hubiera sido espia, si no venido aqui para ayudar los japones, en el subyugacion del pueblo filipino, si hubiera venido como visitante, por ejemplo, y por azares de la fortuna, no pude salir, yo sere el primero en abogar por su liberacion inmediata . . . dicho caso (Stanis-

[32] See HUDSON, *op. cit.*, p. 548. Mr. Hudson opined that the U.S. obligation to cooperate may be taken into consideration in determining the national public policy.

[33] HUDSON, *supra*, p. 548. See also FERNANDO, *op. cit.*, p. 13, "A covenant of human rights open to acceptance by every member state of the United Nations and coming into force by a vote of two-thirds of said members has legal force and effect for those member states."

[34] Article 9 of the Declaration.

[35] *Supra*, note 13.

[36] 80 Fed. Sup. 132.

zewski) no tiene similitud con el presente . . . poner en libertad a un espia es poner en peligro la seguridad del estado." Truly, to accord equal treatment to one who has committed a grave offense and to one who has not, seems obnoxious to the sense of justice and fairness. Under well recognized principles of criminal law, the first merits harsher treatment than the second. But, such treatment is in our opinion for the state to determine and to accord.

VII. The Spy Under International Law; Aliens Here Liable Under Our Espionage Laws; Aliens Not To Suffer For State Negligence

International law recognizes the right of the state violated to treat the spy in any manner it chooses, put him to death even, while at the same time recognizing espionage as a valid measure of warfare.[37]

During the progress of war, the boundaries of countries expand and contract. Japan expanded to the Philippines, but in the progress of contraction she left a spy behind. We could have legally held him liable as a spy. The Mejoff decision makes reference to the fact that he could not have been held liable for treason since our treason laws had not yet been amended by Executive Act No. 44 [38] as to include aliens. Article 114 of the Revised Penal Code, however, which punishes espionage make no distinction between citizens and aliens. Hence, an alien could be equally guilty of espionage under said article as any Filipino. And espionage was precisely the crime committed by Mejoff. But no charges were filed against him, to hold him liable therefor. In the same manner, Borovsky was found by the authorities to have engaged in espionage activities. For some reason or other, no charges were brought against him either. We have here, therefore, two cases of failure or negligence of the state to enforce its rights against those who would seek to undermine its security. For such negligence it has only itself to blame. If because of such failure to take adequate measures to protect its interests an anomalous condition arises, the individual should not be made to pay. Admittedly, espionage conveys a world of odium, but though this be so, a spy as such should not thereby be deprived of civil liberties. The mantle of protection extended by the due process clause of the Constitution covers both citizen and resident aliens alike. Hence, the court here could not have sanctioned the continued detention of the alien petitioners, in the same way that it could not have done so had the petitioners been citizens of the Philippines.

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[37] 3 HYDE, 1861. According to The Hague Regulations, a spy taken in the act is not to be punished without previous trial. Art. XXX. Moreover, a spy who, after rejoining the enemy, is to be treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage. The War Department Rules of Land Warfare of 1940 declare that The Hague Regulations "tacitly recognize the well established rights of belligerents to employ spies and other secret agents for obtaining information from the enemy." Resort to that practice is said to involve no offense against international law.

[38] May 31, 1945.

VIII. Without Reciprocity, State Right of Expulsion Effectively Destroyed and Rendered a Nullity

Apropos of the right of expulsion, effective expulsion of an alien normally calls for cooperative acquiescence of the state of which such alien is a national. Thus, it is generally deemed to be its duty to accept him if he seeks access to its territory.[39] No doubt the special difficulty encountered by the deportation authorities here arises in great measure from the fact of petitioners' statelessness. Though of Russian descent, both have since then lost their nationality and stand as the literal counterparts of the proverbial "man without a country." The majority opinions claim that "aliens illegally staying in the Philippines have no right of asylum therein, even if they are stateless, which the petitioners claim to be." This finds support in Hyde who says that a "state is not precluded from expelling an alien from its domain by the circumstance that he has been denationalized by his country of origin and has failed to attain the nationality of another." [40] No international duty rests on the state which has recourse to expulsion, to allow the alien to remain within its limits, until a foreign state evinces willingness to receive him within its domains. In a recent case,[41] our Supreme Court held that even if the petitioner is a stateless person, "he is nevertheless subject to deportation, because he is an alien still. There is no legal status as a quasi-alien or a quasi-citizen." And under our law "an alien subject to deportation may in the opinion of the Commissioner of Immigration be removed to a country whence he came, or to a foreign port at which he embarked for the Philippines, or to the country in which he resided prior to coming to the Philippines." [42] This is substantially the same rule obtaining in the United States.[43] Both petitioners in the present cases were refused by the Russian ships which docked here. Borovsky was, in addition, refused by the Shanghai authorities, the place from which he came to the Philippines. In Mejoff's case, however, we believe that the government should have attempted negotiations with Japan for his deportation to that country. In all justice that country should receive him if only in gratitude for past services. But this is as far as we can go. Neither our law nor international law can compel any country to receive any of these aliens. In the face of such circumstances, the Philippines, and any other state for that matter under similar cir-

[39] 1 HYDE, 231. States are duty bound to receive their nationals expelled from foreign soil who seek to enter their territory. Article 6 of the Convention on the Status of Aliens, 6th International Conference of American States at Havana, Feb. 20, 1928, U. S. Treaty, Vol. IV, 2722, 4724; see also Mar. Donovan, assistant to the Attorney General, Oct. 12, 1926. III Hackworth, Digest, 740. Also the Special Protocol Concerning Stateslessness, Hague Conference for the Codification of International Law, 1930, XXIV *American Journal of International Law,* Official Document, 211.

[40] 1 HYDE 230.

[41] *Co Pak v. Caluag et al.,* G.R. No. L-4516.

[42] Sec. 38, C.A. No. 613.

[43] 2 *American Journal of International Law,* par. 126 p. 531—U.S.C.A. title 8, par. 156.

cumstances, is helpless. True, nobody denies the proposition that every state possesses the power of expulsion as a corollary to its right to determine the conditions of entry upon its territory. But this right presupposes reciprocity at all times. It is effectively destroyed and rendered a nullity when the other state refuses to accede to the request for acceptance, the condition *sine qua non* for its exercise.[44] Faced with this reality, the deportation authorities can only hope that in the near future, some country will consent to receive these aliens. Meantime, they cannot retain the said aliens under indefinite detention. On this point our Court has acted wisely and well. These unfortunates are stateless. Under traditional international law, a view to which mounting opposition has been voiced by Lauterpacht, Jessup, Idelson, Rolin and Aufricht, the individual is not the subject but only the object of international law. He can enforce his rights against a state only through the intercession of his own state.[45] Thus, there is no responsibility if the injured individual is stateless, that is, has no nationality, as the petitioners are, for there would be no state immediately interested in their welfare.

IX. Statelessness, an Anomaly under Present International Law.

Statelessness is an anomaly in the international legal order and noted internationalists are aware of the resulting hardships of the stateless person. Speaking of him, Lauterpacht says, "He may be treated according to the discretion of the State in which he resides. In cases in which aliens enjoy rights and advantages subject to reciprocity, the stateless person is excluded from such rights and advantages for that reason that he is not a national of any State offering reciprocity. He can not, as a rule, possess a passport and his freedom of movement is correspondingly impeded." [46] More realistically, he even goes as far as saying that "there is no state to which he can be deported." He claims that the proper way to eliminate this anomalous condition and to provide some degree of protection for stateless persons is to impose on states an obligation to accord their nationality to all persons born in their territory and not to deprive a person of his nationality by way of punishment or until

[44] Thus the deportation of aliens may, under American decisions, be to the country whence they came, or the foreign port where such alien embarked for the U.S.; or if the embarkation was for a foreign contiguous territory, then to the foreign port at which they embarked for such territory; or if such aliens entered foreign contiguous territory from the U.S. and later entered the U.S., and such aliens are held by the country from which they entered the U.S., not to be citizens or subjects of such country, and such country refuses to permit their reentry, or imposes conditions for permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering that country from which they entered the U.S.

[45] JESSUP, A MODERN LAW OF NATIONS, p. 9. The responsibility of the state for injuries to an individual is owed to another state and not to the individual.

[46] LAUTERPACHT, AN INTERNATIONAL BILL OF RIGHTS OF MAN, cited in Jessup, *op. cit.*, p. 69.

he has concurrently acquired another nationality.[47] Jessup [48] would have the individual be made the subject of international law, having rights in his own capacity and not derivatively through the state of which he is a national. In such a case, a violation of a right of a stateless person might be made the concern of an international Commission on Human Rights to which the individual could appeal by right of petition.[49] But until any of these things come to pass, the stateless person must hold his life, liberty and property at the mercy of the country in which he happens to be. If for this reason alone, and no other, we must be doubly vigilant for his protection. He is as a man "handicapped" within the meaning of Article 24 of the New Civil Code which reads: "In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection." The welfare of the individual, without regard to nationality, race, color, or religion, is still and will always be the prime concern in a democracy. And the Court has merely upheld this doctrine.

X. Mejoff Doctrine Reiterated

The decision in the two above cases have been subsequently reiterated in the case of Vadim Chirskoff v. Commissioner of Immigration [50] and more recently in the case of Charles K. Andreu v. Commissioner of Immigration.[51]

Chirskoff was a stateless Russian. Although found by the authorities to have been engaged in aiding, helping and promoting the "final objective of the Hukbalahap to overthrow the Government," no formal charges therefor were ever filed against him. Instead, the Deportation Board found him subject to deportation for having violated conditions of the temporary stay given him, by failing to depart from the Philippines upon its expiration. On the other hand, Andreu was a stateless Latvian who was likewise slated for deportation having been found by the authorities as another undesirable alien. There were no formal charges filed against him either. He was shipped to Shanghai but was refused admission there because he was not a Chinese citizen. Attempts to ship him and Chirskoff on board a Russian vessel failed, as in the cases of Mejoff and Borovsky. Since then, both of them had been under detention for more than two years with no prospects of removing them in sight.

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[47] Lauterpacht, cited in JESSUP, *op cit.*, p. 69.

[48] At p. 70.

[49] Jessup suggests that another procedural solution under the hypothesis of individual rights could be found in the specific acknowledgment of the rights of the stateless person, against the state of his residence, with duties imposed on all states to provide local or national machinery, open to the stateless person, for the vindication of such rights. In this case, some type of international review or right of appeal might be recognized.

[50] G.R. No. L-3802, prom. Oct. 26, 1951.

[51] G.R. No. L-4253, prom. Oct. 31, 1951.

Following its decisions in Borovsky v. Commissioner of Immigration, supra, and Mejoff v. Director of Prisons, the Court ordered that the writ issue and the detainees released. As precaution against the possibility of petitioners becoming a menace to public peace and safety the Court conditioned their release on the following terms: The petitioners shall be placed under surveillance of the immigration authorities or their agents in such form and manner as may be adequate to insure that they keep the peace and be available when the government is ready to deport them. The surveillance shall be reasonable and the question of reasonableness shall be submitted to the Supreme Court or to the Court of First Instance of Manila in case of abuse. Each of them shall likewise file a bond of ₱5,000.00 with sufficient surety or sureties.

PAZ MAURICIO

DOES THE SENATE HAVE POWER TO CONTINUE INDEFINITE DETENTION OF A RECALCITRANT WITNESS FOR CONTEMPT WHEN SUCH WITNESS' ANSWER IS CONSIDERED UNSATISFACTORY?

I. *Arnault's Efforts to Purge Himself of Contempt*

Jean Arnault was committed to the custody of the Sergeant-at-Arms and imprisoned in the New Bilibid Prison for his refusal to reveal the identity of the person to whom he allegedly gave the ₱440,000 representing part of the ₱5,000,000 stipulated purchase price of the Buenavista and Tambobong landed estates.[1] The resolution of the Senate committing him to prison was dated May 15, 1950. After months of incarceration, he asked the Senate committee for leave to purge himself of the contempt and on December 14, 1951, he testified under oath before the Senate committee that he gave the ₱440,000 to one "Jesse D. Santos." His counsel also introduced a 66-page affidavit subscribed to by Arnault in which he revealed the name of the person to whom he had delivered the ₱440,000. Arnault explained to the committee why in his previous testimony he failed to name "Jesse D. Santos" as the person to whom he gave the ₱440,000. He explained that he had a very vague recollection of the name of the man at the time and it was only after consultation with his secretary that he recalled the right name.[2]

II. *The Problem*

After he had given a reply to the question asked of him by the committee, does the fact, if it be a fact, that he did not truthfully answer the question justify his further detention?

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[1] See *Arnault v. Nazareno*, 46 O.G. No. 7, 3100.

[2] The *Manila Chronicle*, December 15, 1951, p. 1.