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NOTES AND COMMENTS

THE JAPANESE PEACE TREATY AND THE PROCEDURE FOR ITS RATIFICATION

A. Historical Outline of the Treaty.

With the infamous bombing of Pearl Harbor which cost millions of dollars in lives and ships and properties lost and destroyed—a sanguine measure of the treachery of a wily foe unequalled in the chronicle of past armed conflicts, the Philippines was dragged into one of the most devastating wars it has ever known, the existence of which was officially declared by the United States of America on December 7, 1941.¹ By virtue of our relationship with that country,²

¹ ALLAN NEVINS AND HENRY STEELE COMMAGER, *A SHORT HISTORY OF THE UNITED STATES*, p. 492. These authors have characterized the Pearl Harbor bombing as the “most desperate throw of the dice in modern history.”

² We were then a protectorate of the United States, our independence having been granted only from the latter country on July 4, 1946.

the Philippines acquired a belligerent status since that declaration of a state of war. Whether we liked it or not, we were helplessly at war with Japan.³ The deeper involved we became when on June 14, 1942, the Philippines became a signatory to the United Nations, otherwise known as the Allied War Pact, pledging to employ its full resources in pursuing the war to its victorious end.⁴

The fighting phase of that war was brought to a close with the dropping of the dreaded atom bombs on Hiroshima and Nagasaki⁵—veritable and ill-fated guinea pigs of a tragic but necessary experiment on the endurance of human lives. But that did not end the state of war. Technically, the Allied Powers were, and the Philippines still is, at war with Japan.⁶ The situation being thus, the war had to be terminated. Charles Cheney Hyde, eminent writer on international law, gives us five modes of terminating a state of war.⁷

³ This is the justification of our claims for war damages from the United States when Japan was finally subdued. It was America's war we were fighting, not ours. In recognition of this, America sent us millions of dollars—a much needed serum in our country's veins, especially because we had just acquired our independence.

⁴ Explanatory note of Senator Zulueta to Senate Concurrent Resolution No. 33, "terminating the state of war between the Philippines and Japan."

⁵ The Hiroshima bombing took place on August 6, 1945; that of Nagasaki three days later. This brought about the capitulation of Japan on August 14, 1945, and on September 2, 1945, Japan signed an unconditional surrender on the decks of the *U. S. S. Missouri*. (NEVINS and COMMAGER, *op. cit.*, p. 531).

⁶ If there can have been any doubt as to the existence of this technical state of war, a reading of Article 1, sec. (a) of the Treaty of Peace with Japan will immediately dispel that doubt. It provides that "The state of war between Japan and each of the Allied Powers is terminated as from the date the present treaty comes into force between Japan and the Allied Power concerned as provided for in Article 23." (Official Text, issued by the Division of International Information, Department of Foreign Affairs, Arlegui, Manila).

⁷ In HYDE, *INTERNATIONAL LAW*, Vol. III, *CHIEFLY AS INTERPRETED AND APPLIED IN UNITED STATES*, we find the following:

(a) Cessation of hostilities. A cessation of hostilities, together with the withdrawal of military forces from hostile territory may, when followed by a sufficient lapse of time, be regarded as marking the termination of a war. What period of suspension of war is necessary to justify the presumption of restoration of peace must be determined with reference to the collateral facts and circumstances. The impracticability of this procedure is obvious. The difficulty of ascertaining the relationship during such interval makes this procedure clearly inadequate. (Sec. 904, pp. 2385-2386).

(b) Formal declaration by one party. This is termination by the appropriate act of one party to the war, provided the other party does not resume hostilities or otherwise declines to recognize the act as possessing the significance which its enemy attaches thereto. (Sec. 905, p. 2386).

(c) Public proclamation in relation to a civil war. (Sec. 906, p. 2389).

(d) Subjugation. Hyde cites OPPENHEIM, LAUTERPACHT'S 6th ed., Vol. II, p. 467, to the effect that "Subjugation may therefore be correctly defined extermination in war of one belligerent by another through annexation of the former's territory after conquest, the enemy forces having been annihilated." (Sec. 907, p. 2389).

Of these we shall be concerned with only two: the first is agreement, which is in the form of a treaty or a contract between the contracting parties, and the second, which will later be dealt with briefly, is the formal declaration by one party to the conflict that thereby the war is already terminated.

As early as September 14, 1950, the United States of America had publicly announced its intention to speed the conclusion of peace between the Allied powers and Japan.⁸ It was with this intention also that John Foster Dulles was appointed to make a draft of a treaty of peace with Japan.⁹ Never has a treaty been discussed in the Philippines with so much fervor and sentiment as this one, sometimes sarcastically referred to as the "Dulles Treaty."¹⁰ The draft of the treaty was finished, and, except for minor changes, mainly in the language of the reparations clause¹¹ due mostly to the proposals of the Philippine delegation for better guaranteed reparations,¹² the resulting final text of the treaty was the same in form and substance as that drafted by its architect, John Foster Dulles. On September 8, 1951,¹³ in San Francisco's War Memorial House—birthplace of the United Nations, forty-nine nations including the Philippines¹⁴ signed the Treaty of Peace with Japan after Russia's

(e) Agreement. This assumes the form of a treaty of peace between the opposing states. (Sec. 908, pp. 2390-2392).

⁸ Statement by Prime Minister Shigeru Yoshida in a speech delivered before the Diet on August 16, 1951, published in the *Nippon Times*, August 17, 1951.

⁹ Speech of President Truman at the San Francisco Conference for the signing of the Japanese Peace Treaty.

¹⁰ Wide and divergent are the views that have emerged as a result of this treaty, but all the fervor and sentiment with which this treaty was discussed, both in official and unofficial circles, were centered on the issue of reparations.

Dean Acheson, U. S. Secretary of State, has extolled the treaty as "something unique in history—an act of greatness of spirit." (*Manila Times*, September 10, 1951).

Senator Recto maintains that a Senate Concurrent Resolution terminating the state of war with Japan would be "more in accordance than the Dulles Treaty with the dignity of our sovereign nation and the known desires of our people." This with the reference to the resumption of our relations with Japan and the greater certainty of obtaining reparations from Japan than under the Japanese Peace Treaty. (Speech delivered by Senator Recto on May 21, 1952, in support of Senate Conc. Res. No. 33, terminating the state of war with Japan, issued through the courtesy of the Senate Journal Division.)

Judge Guillermo Guevarra has dubbed the treaty as an "essentially Americo-Anglo-Japanese agreement, in which our national interests were sacrificed on the altar of global strategy." (*Manila Bulletin*, April 14, 1952).

The Japanese stand on the reparations issue is candidly, if bluntly, expressed by a cartoonist of the *Manila Chronicle*, dated October 8, 1951. The cartoon shows a bespectacled Japanese ambassador, lying supinely with his legs crossed, tossing coins, with dollar bags around him. It is captioned: "I pay, but on my own terms."

¹¹ Article 14, Treaty of Peace with Japan.

¹² *Manila Times*, August 6, 1951.

¹³ September 9, Manila time.

¹⁴ For the other signatory nations, refer to the text of the treaty.

Andrei Gromyko staged another of his now notorious walkouts following his abortive attempts to prevent the conclusion of the treaty of peace.¹⁵ Foreign Secretary Carlos P. Romulo signed on behalf of the Philippines.¹⁶

It now remained for the signatory countries to ratify the treaty, for the treaty provided ¹⁷ that "The present Treaty shall be ratified by the States which sign it, including Japan, and will come into force for all states which have then ratified it, when instruments of ratification have been deposited by Japan and a majority, including the United States of America as the principal occupying power, of the following states, namely, Australia, Canada, Ceylon, France, Indonesia, the Netherlands, New Zealand, Pakistan, the Philippines, United Kingdom of Great Britain and Northern Ireland, and the United States of America. The present treaty shall come into force for each state which subsequently ratified it, on the date of the deposit of its instrument of ratification." The treaty was formally ratified by the Senate of the United States on March 20, 1952.¹⁸ The resolution of ratification was signed by President Truman on April 15, 1952.¹⁹ With the deposit of the instrument of ratification by Secretary of State Dean Acheson with the State Department on April 28, 1952,²⁰ and a majority of the countries specified above having previously ratified the treaty,²¹ the Treaty of Peace with Japan went into effect, ten years, four months, and twenty-one days after the attack on Pearl Harbor. Japan is now at peace with these countries. The treaty not having been ratified during the last regular and special sessions of our Congress, the Philippines is still in a technical state of war with Japan.

B. Ratification in General.

Insistent and eloquent are the sentiments that have been stirred by this much discussed treaty. Arguments, both cogent and stale, have been marshalled in favor of, and against, ratification. These comments, however, will be concerned mainly with the procedural aspect of ratification—not whether the treaty will or should be ratified or not, but what ratification is, where the power lies, how it is done in the Philippines, as well as in the United States, for the Congress of the Philippines and its predecessors in the legislative branch were modelled in name and procedure after the Congress of the United States. This is not to say, however, that our Congress is a literal imitation of American precedents.²²

¹⁵ *Manila Times*, September 10, 1951.

¹⁶ *Op. cit.*

¹⁷ Article 23, Treaty of Peace with Japan.

¹⁸ *Manila Times*, April 17, 1952.

¹⁹ *Manila Bulletin*, April 16, 1952.

²⁰ *Philippines Herald*, April 29, 1952.

²¹ The other countries which had previously deposited their instruments of ratification as of that date were: Argentina, Australia, Canada, Ceylon, France, Mexico, New Zealand, Pakistan, and the United Kingdom of Great Britain. (*New York Times*, April 29, 1950).

²² See GEORGE A. MALCOLM, *FIRST MALAYAN REPUBLIC*, p. 232.

Ratification is the act by which the provisions of a treaty are formally confirmed and approved by a state.²³ It is the final confirmation given by the parties to an international agreement concluded by their representatives, and is commonly used to include the exchange of documents embodying that confirmation.²⁴ In ancient times when, more often than not, only one man or a select group of men carved the destiny of nations, ratification was practically unknown. Treaties were in fact considered personal. Except for the religious rites observed and the subsequent confirmation by oath of a treaty already entered into between foreign powers, ratification as we know now was not practiced in any form.²⁵ This must have been so since ratification is founded upon consent—consent of the body in whose power ratification lies.²⁶ Ordinarily this body is a representative group of that larger portion of the people called the governed which, until comparatively recent times, has not been in existence. In this respect, it may be said that the institution of ratification in treaty-making practice has been brought about by the shift of many countries from absolutism to parliamentary forms of government,²⁷ where the popular voice was heard if not heeded. Interests in treaties may be of various kinds. They may undergo a change immediately after the signing by their representatives. They may appear to public opinion in a different light from that in which they appear to the Governments, so that the latter may want to reconsider the matter, in deference to the will of the people which must always be held paramount and supreme. Governments have therefore the opportunity of withdrawing from a treaty in case the parliaments refuse their approval.²⁸ And this change has popularized treaties and increased confidence in them as shown by a marked rise in the number of treaties concluded since ratification began. For while the attainment of international agreements became more difficult with their conclusion being made to depend upon legislative bodies, at the same time the participation of the legislature added much to the strength of international obligations under such treaties.²⁹

²³ GREEN HAYWOOD HACKWORTH, *DIGEST OF INTERNATIONAL LAW*, Vol. V, sec. 469, p. 48.

²⁴ LAUTERPACHT'S Ed., *OPPENHEIM'S INTERNATIONAL LAW*, Vol. I, sec. 510, p. 813.

²⁵ ARTHUR NUSSBAUM, in *A CONCISE HISTORY OF THE LAW OF NATIONS*, gives us several instances of treaties concluded between ancient states and, in a general way, mentions the solemnities attendant to its execution, but nowhere is there made any mention of ratification. (See pp. 8-11).

²⁶ HACKWORTH, *op. cit.* tells us that, although the advice and consent of the Senate is frequently spoken of as "ratification," as a matter of fact the Senate does not ratify treaties, but instead, advices and consents to their ratification by the President. (Sec. 49, p. 48). Whether we speak of ratification in this sense, or in the sense "frequently spoken of," still there has to be the consent of some sort of a parliamentary body representative of the opinion of the governed—a peculiar characteristic of later forms of government.

²⁷ NUSSBAUM, *op. cit.*, p. 194-195.

²⁸ OPPENHEIM, *op. cit.*, sec. 511, pp. 814-815.

²⁹ NUSSBAUM, *op. cit.*

There is certainly more assurance that an agreement which has been consented to by a representative body of the people concerned will be fulfilled than that entered into by the head of a state without the consent of the people, and possibly contrary to their expressed wishes and desires.

The function of ratification then is to make the treaty binding. If ratification is refused the treaty falls to the ground.³⁰

However, ratification is not always essential in all cases. Treaties concluded by such state functionaries as have, *ipso facto* by their office, the power to exercise within certain limits, the treaty-making power of their states, do not require ratification, but are binding at once when they are concluded, provided that the respective functionaries do not exceed their powers.³¹ For instance, in time of war, military and naval officers in command can enter into agreements concerning the suspension of arms, the surrender of a fortress, the exchange of prisoners, and the like. However, it must be emphasized that treaties of this kind are valid only when their respective functionaries have not exceeded their powers.³² Or the necessity of ratification may be dispensed with altogether. For example, Article 6 of the alliance between Great Britain and Japan of 1902, Article 8 of the alliance of 1905, and Article 6 of the alliance of 1911, stipulated that "the agreement shall come into effect immediately after the date of the signature."³³ But again, it must be emphasized that renunciation of ratification is valid only if given by representatives duly authorized to make such renunciations; otherwise, their renunciation will not be binding upon states which they represent.³⁴

C. Procedure in the United States.

The Constitution of the United States of America confers upon the President "power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."³⁵ While it is expedient and advisable for the President to seek and obtain the advice of the Senate preliminary to the negotiation of a treaty, this practice has long been stopped.³⁶ This practice of consulting the Senate by special message, in advance of the negotiation and conclusion of treaties has gradually fallen into disuse, and, since the administration of Jefferson, has only been casually resorted to.³⁷ Occasionally, however, the Senate has passed resolu-

³⁰ OPPENHEIM, *op. cit.*, sec. 510, p. 813. There has been some question as to which concludes the treaty—the ratification, or the manifestation of mutual consent by acts of duly authorized representatives. (See OPPENHEIM, *op. cit.*) But whichever concludes the treaty, the fact remains that it is not perfect, and therefore not binding, until ratification is given.

³¹ *Op. cit.*, sec. 512, p. 815.

³² *Op. cit.*, sec. 496, pp. 797-798.

³³ *Op. cit.*, p. 816.

³⁴ *Op. cit.*, sec. 512, p. 816.

³⁵ Article II, sec. 2, par. 2.

³⁶ HYDE, *op. cit.*, sec. 517, pp. 1433-1434.

³⁷ MOORE, DIGEST OF INTERNATIONAL LAW, Vol. V, p. 197, cited by HYDE, *op. cit.*, Vol. II, sec. 517, pp. 1443-1444.

tions in advance of signature, authorizing the President to enter into a treaty and particularly described in the resolution. An example of this occurred when the conventions signed between the United States and Mexico on August 16, 1927 and August 27, 1929, extending the duration of the claims commissions provided for in earlier conventions, were authorized by the Senate prior to adjournment and the authorization was acted upon by the President during the recess of the senate.³⁸ Since the initiation, negotiation, framing and signature and ratification of the treaty is with the President alone, the Senate may give its advice and consent to general treaty plans, and there is no need for resubmission to the Senate for its advice and consent. In the secret article negotiated with the Indians in 1790, the Senate approved the substance of the article before it was signed by both parties, and there is no record that it was resubmitted to the Senate for its advice and consent before it was proclaimed by the President.³⁹ These, however, are the exceptions rather than the rule or regular procedure.

Normally, after the signing of the treaty by the duly authorized representative of the President, the original intended for the government of the United States shall be forwarded by the diplomatic agent to the secretary of state to be laid before the President, and if approved, to be transmitted by him to the Senate to receive the advice and consent of the Senate to ratification.⁴⁰

Following this transmission, the Senate proceeds to consider the same.

The procedure in the Senate is governed by its rules. The Senate rules provide⁴¹ that:

"1. When a treaty shall be laid before the Senate for ratification, it shall be read for the first time; and no motion in respect to it shall be in order, except to refer it to a committee, to print it in confidence for the use of the Senate, to remove the injunction of secrecy, or to consider it in open executive session.

"When a treaty is reported from a committee with or without amendment, it shall, unless the Senate unanimously direct, lie one day for consideration; after which it may be read a second time and considered as in Committee of the Whole, when it shall be proceeded with by articles, and the amendments reported by the committee shall be first acted upon, after which other amendments may be proposed; and when through with, the proceedings had as in the Committee as a Whole shall be reported to the Senate, when the question shall be, "Will the Senate concur in the amendments made in the Committee as a Whole?" And the amendments may be taken separately or in gross, if no senator shall object; after which new amendments may be proposed. At any stage of such proceedings, the

³⁸ HACKWORTH, *op. cit.*, p. 58.

³⁹ *Op. cit.*, pp. 59-60. Numerous other examples are given in these pages.

⁴⁰ *Op. cit.*, p. 48.

⁴¹ SENATE MANUAL OF THE 82ND CONGRESS OF THE UNITED STATES, RULE XXXVII.

Senate may remove the injunction of secrecy from the treaty, or proceed with its consideration in open executive session.

"The decisions thus made shall be reduced in the form of a resolution of ratification, with or without amendments, as the case may be, which shall be proposed on a subsequent day unless by unanimous consent, the Senate determines otherwise at which stage no amendment shall be received unless by unanimous consent.

"On the final question advice and consent to ratification in the form agreed to, the concurrence of two-thirds of the Senators present shall be necessary to determine it in the affirmative; but all other motions and questions upon a treaty shall be decided by a majority vote, except a motion to postpone indefinitely, which shall be decided by a vote of two-thirds.

"2. Treaties submitted by the President to the Senate for ratification shall be resumed at the second or any subsequent session of the same Congress at the stage in which they were left at the final adjournment of the session at which they were transmitted; but all proceedings on treaties shall terminate with the Congress, and they shall be resumed at the commencement of the next Congress as if no proceedings had previously been had thereon."

Senate discussions having ended and the resolution consenting to the ratification having been made, the treaty proceeds to ratification by the President. An instrument of ratification is drawn up which begins with certain recitals, then usually incorporates *in extenso* the exact and complete wording of the treaty, and concludes with words of confirmation and ratification.⁴² The ratification of the treaty of commerce and navigation between the United States and the Kingdom of Iraq in 1939, after a recital of the fact that the Senate has consented to the ratification, carried the following concluding words: "Now, therefore, be it known that I, Franklin Delano Roosevelt, President of the United States of America, having seen and considered the said treaty, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same, and every article and clause thereof."⁴³

The President ratifies treaties in duplicate originals, one of which is exchanged with the other government on whose behalf the treaty is signed for a like instrument of ratification executed by the head of that government. This, and the other original, are deposited in the archives of the state department.⁴⁴ The ratification ceremonies of the Treaty of Peace with Japan took place in the State Department's Conference Room in Pennsylvania, U. S. A.⁴⁵

There is no legal, or even perhaps moral, obligation on the part of the Senate to ratify treaties. In practice, ratification is given or withheld at its discretion.⁴⁶ If the Senate refuses or fails to give

⁴² HACKWORTH, *op. cit.* p. 49, citing I MILLER, *TREATIES, ETC.* 1931), p. 18.

⁴³ *Op. cit.*, pp. 49-50. Text of President Truman's ratification of the Treaty of Peace with Japan not available at the time of this writing.

⁴⁴ *Op. cit.*, pp. 50-51.

⁴⁵ *New York Times*, April 29, 1952.

⁴⁶ OPPENHEIM, *op. cit.*, sec. 514, p. 818.

its advice and consent to ratification, the President cannot of course ratify it. The Senate stands on the same footing with the Executive as under the Federal Constitution ⁴⁷ their joint action is necessary for the conclusion of a treaty.

D. Procedure in the Philippines.

Under the Philippine Constitution,⁴⁸ the President is vested with "power, with the concurrence of two thirds of all the Members of the Senate, to make treaties, * * *" ⁴⁹ The President being the sole organ of the government in the field of international relations,⁵⁰ he alone can initiate treaties. He makes treaties with the advice and consent of the Senate; but he alone negotiates. In the field of negotiation, the Senate cannot intrude; and Congress itself is powerless to invade it.⁵¹ Once, however, the treaty has passed the negotiation stage, it cannot have any effect without ratification by the Senate of the Philippines. For under the above quoted portion of our Constitution, the President and the Senate stand on equal footing, and the action of both is necessary for the treaty to have any binding effect on the Philippines.⁵²

Pursuant to this provision, the Japanese Peace Treaty was negotiated, and, after discussions centered mainly on the reparations question ⁵³ which brought about a slight change in the language of the reparations clause, the treaty was signed at the San Francisco conference by Foreign Secretary Carlos P. Romulo on September 8, 1951.⁵⁴ On March 17, 1952, President Quirino certified the Japanese Peace Treaty (together with the Mutual Defense Treaty with the United States now also pending consideration by the Senate) to the

⁴⁷ See note 35, *supra*.

⁴⁸ Article VII, sec. 10, par. 7.

⁴⁹ While in the Philippines two-thirds of *all* the members of the Senate must concur, in the United States, only two-thirds of the members *present* need concur. See note 35, *op. cit.*

⁵⁰ GARCIA, QUESTIONS AND PROBLEMS IN PHILIPPINE POLITICAL LAW, Question No. 624, p. 406.

⁵¹ *U. S. v. Curtiss-Wright Export Corporation*, 299 U. S. 304.

⁵² As has been observed, the same is true with the United States. See note 35, *supra*.

⁵³ The Philippines was demanding cash reparations of six to eight billion dollars in war damage claims but it did not get it under the treaty. (*Manila Times*, August 6, 1951).

⁵⁴ See note 16, *supra*. In this connection, one interesting observation was made by Vicente Villamin, columnist for the *Manila Bulletin*. It is to be recalled that originally it was the intention of President Quirino to attend the conference and sign the treaty himself. Later he desisted, and sent Foreign Secretary Carlos P. Romulo instead. According to this columnist, this move saved the President from possible embarrassment. He recalled that President Wilson himself signed the Treaty of Versailles in behalf of the United States. When this treaty came to the United States Senate, the Senate refused to ratify the action of the President, thus embarrassing him before the other signatories to the treaty. (*Manila Bulletin*, September 3, 1951). This could have happened to President Quirino had he signed the Japanese Peace Treaty himself.

Senate of the Philippines for its concurrence. In the last part of his message, he said:

"Those two treaties—The Mutual Defense Treaty and the Treaty of Peace with Japan—are steps of the utmost importance toward liquidating the old war and preventing a new one. They will help restore stability and peace to the Pacific and thus make it possible for the peace-loving nations of this area to follow their fruitful pursuits in freedom and without fear. I therefore recommend that the Senate give its concurrence to their ratification."⁵⁵

The procedure now is governed by the *Reglamentos del Senado*. Under its rules,⁵⁶

"Section 89. When a treaty is received in the Senate for its concurrence, the same shall be included in the calendar of ordinary business, whereupon its first reading shall take place and the same shall thereafter be referred to the Committee on Foreign Affairs. Three days after the Committee has reported the treaty to the Senate, or after a shorter period, if the body so resolves by special order, the second reading of the treaty shall take place, and during the period it shall be open to general debate and to amendments, if any. After the close of the debate, the treaty shall be voted upon and, once approved, shall pass to its third reading.

"Any action taken by the Senate on the treaty shall be set forth in a resolution of concurrence with or without amendments or reservation, as the case may be, by the Committee on Foreign Affairs. This resolution shall be printed and distributed to the Senators as a bill on third reading.

"Three days after the distribution of the resolution of concurrence with printed copies of the treaty attached thereto, the resolution shall be submitted to a nominal voting, and if two-thirds of the Senators approve it, the treaty shall be deemed approved.

"When the Senate fails to concur definitely in the treaty in one session, the consideration of the same, in the status in which it was voted upon adjournment of the preceding session, shall be resumed in the next session; but all proceedings on treaties shall terminate at the expiration of the Congress, and the same shall be taken up in the succeeding session of the Senate, as if they were presented to the body for the first time."

The Japanese Peace Treaty does not seem to have made much headway in the Senate. In pursuance of the above quoted rules of the Senate, the treaty upon receipt by the Senate was referred to the Committee on Foreign Affairs after its first reading, for its study and subsequent report. The report of this committee was submitted only on May 22, the last day of the regular session of Congress, under what one senator reportedly called, "peculiar and mysterious circumstances."⁵⁷ No action was taken or could have possibly been

⁵⁵ Message of the President to the Senate of the Philippines.

⁵⁶ *Reglamentos del Senado*, approved January 25, 1950.

⁵⁷ *Philippines Herald*, May 26, 1952.

taken on the report since it was submitted only some fifteen minutes before adjournment.⁵⁸

The Alternative. Even before the submission of this report to the Senate, the sentiments seemed to be against the ratification of the treaty. On April 28, 1952, Senator Zulueta submitted to the Senate a draft of Senate Joint Resolution No. 11, as a "substitute" for ratification, purporting to bring the state of war with Japan to a close "as to remove Japan from its present enemy status with respect to the Philippines,"⁵⁹ since we were not able to ratify the treaty before its coming into effect.

This resolution was submitted to the Committee on Foreign Affairs and on May 15, 1952, the Committee recommended that the joint resolution be changed to Senate Concurrent Resolution No. 33.⁶⁰ This resolution was adopted by the Senate but it was not acted upon by the House of Representatives.⁶¹

One point in connection with this resolution is interesting. The foreign secretary was reported⁶² to have said that the approval of this resolution would deprive President Quirino of a say on the Japanese question, adding that this situation would be odd, considering that the President is the initiator of our foreign policy. If Congress should have a hand, a joint resolution would be more feasible. In that event, according to him, the President could cooperate with Congress in shaping a resolution acceptable to Japan. A concurrent resolution would require no presidential action, and in effect would constitute a seizure on the part of Congress of the President's initiative in foreign affairs. This argument, however, has not been left unanswered. In Senator Recto's speech in support of Senate Concurrent Res. No. 33, he stated that "if, under our constitution, we the Congress of the Philippines have the sole power to declare war by concurrent resolution, I believe it is only logical and good law to conclude that we also have the power to terminate war by a similar resolution."⁶³

This question, of course, has now become academic, since that resolution which, if approved, would have amounted to a virtual rejection of the treaty, has been lost through the failure of the House of Representatives to act upon it.

The special session has now ended, and the treaty of peace with Japan remains unratified. We are still in a technical state of war with Japan and at least until January of next year when Congress convenes, we will continue to be in that state. Some have expressed opinions that we will be considered legally *non-grata* to Japan. Fears

⁵⁸ *Op. cit.*

⁵⁹ Explanatory Note of Senator Zulueta to Senate Concurrent Resolution No. 33. This is what Hyde calls "formal declaration by one party." See note 7 (b), *supra*.

⁶⁰ Committee Report No. 865.

⁶¹ *Manila Bulletin*, May 23, 1952.

⁶² *Philippines Herald*, May 29, 1952.

⁶³ Senator Recto's Speech in support of Senate Concurrent Resolution No. 33, issued through the courtesy of the Senate Journal Division.

have been expressed from some quarters that the Philippine Mission in Japan may be eventually reduced to a mere governmental agency if the state of war with Japan is not terminated. And in the event Japan decides to withdraw the privileges accorded the mission and its personnel, the Philippine ambassador may be stripped of his diplomatic privileges and immunities. The wide business interests of Filipinos in Japan may be adversely affected by this failure to ratify, and may produce serious repercussions in the general scheme of Philippine economy.⁶⁴ The time will not now be long when these fears will be confirmed or dispelled. In the meantime, we cannot do anything but wait.

E. Conclusion.

Whether posterity will judge our senators right or wrong, one thing will stand out clearly silhouetted in the canvas of our history: that whatever they did, they did for the sake of the country, conscious always of their responsibility to their people, acting always with the view to implementing the security of our nation. Today, when our foreign policy is being put on trial before searching and scrutinizing eyes, this will serve to show that when our opportunity came, we took it, and were able to stand our own ground. If history proves our Senate wrong, there is the consolation that it fought for what it believed was ours; that it firmly stood for what according to its conscience belonged to us, and that in the fight for what we believed was ours, anything was worth the risk.

BIENVENIDO P. FAUSTINO

THE POWER OF THE PRESIDENT TO SEND TROOPS TO FIGHT ABROAD WITHOUT DECLARATION OF WAR

The President does not have the power to declare war. Under our Constitution, only Congress has the power to declare war.¹ A similar provision is found in the American Constitution.² Today, however, without any formal declaration of war by Congress, Filipino troops are fighting side by side with American troops against the Communist hordes in Korea. The question then may well be asked as to whether today, the Constitutional provision giving Congress the sole power to declare war has been abrogated and repealed. Has the power to declare war been transferred from Congress to the President? If not, whence the authority of the President to send troops, material, and equipment to Korea?

⁶⁴ *Manila Times*, July 4, 1952.

¹ "The Congress shall, with the concurrence of two thirds of all the members of each House, have the sole power to declare war." Art. VI, Sec. 25.

² "Congress shall have power to declare war, grant letters of marque and reprisal and make rules concerning captures on land and water." Art. 1, Sec. VIII, Subsec. 11.