

COMMENTS

ON THE U.S.-P.I. MILITARY BASES AGREEMENT*

To observers of contemporary Fil-American relations, in the light of socio-politico-legal events, it indubitably appears that the two countries are destined to work hand in hand for their mutual benefits, proponents of the *go-it-alone policy* (isolationism) notwithstanding. It cannot be denied that there *were* (and still *are* and/or *will be*) basic differences of opinion as regards various aspects of U.S.-P.I. relations—the military bases agreement, for one; but, this is precisely the essence of democracy. Certainly, to countenance otherwise would speak well of an Iron Curtain thought-control machine.

Historical books are replete with Filipino courage and determination to speak his mind out; or even go to the extent of fighting against innumerable odds, if only to enthrone right¹ in the hearts of many-a-man. Even chief executives minced no words defining their firm stand against what they believed were encroachments of fundamental rights and principles, hence, the now-famous "I prefer a government run like hell by Filipinos to one run like heaven by Americans . . ."

Today, we notice a number of Filipinos who espouse assertive nationalism with nothing but the Republic's welfare as their primary concern. Indeed, if we want to have the untrammelled right to govern ourselves insuring maximum welfare, we must assume the concomitant responsibilities incident to that right. That means that we shall have to depend upon ourselves and take our chance exactly as every independent nation has to do. For some Filipinos, therefore, to have a nationalistic interpretation of treaties entered into by the Republic is nothing but the exercise of a right duly conferred by law to said party.

U.S. FOREIGN POLICY

In order to have a better insight of Fil-American agreements, let us first examine the nature of American foreign policy towards the Philippines.

In 1949, American Ambassador Myron M. Cowen re-defined American policy which may be summarized as follows:

* The observations appearing herein are the personal views of the writer, Mr. Roman D. Tanjuakio, a member of the Student Editorial Board of this Journal and at present connected with the Press Section of the United States Information Service in the Philippines.—*Editor's note.*

¹ Right is a well-founded claim; men are by their inherent nature moral and social beings having mutual claims upon one another. Every well-founded claim on others is called a *right* and since the social character of man gives the element of mutuality to each claim, every right conveys along with it the idea of obligation (II BOUVIER'S LAW DICTIONARY 2960 (1914)).

(1) The American Government is continuing the McKinley policy of assisting Filipinos in their progress to a sovereign nation paving the way for a Philippines for the Filipinos;

(2) A program of continued help to this end in cooperation with Filipino self-help;

(3) After independence, suggestions for self-help are in no sense a dictate, a *sine qua non*, but sincere, well-meant advice, the ultimate decision on which is up to the Filipino people.³

That a nation's foreign policy is dictated by its own best interests is substantially true:

"Though sentiment, moral purpose and a traditional idealism in our public opinion exert considerable qualifying influence, it is equally true of American foreign policy. Applying this truth to the Philippines, America considers that its interests are best served by having as a friend in Asia, a prosperous self-reliant and assertively independent Philippine Republic!"³

American relation with other nations is best expressed by President Dwight Eisenhower in his speech at the 10th anniversary celebration of United Nations founding:

"We shall always maintain a government at home that recognizes and constantly seeks to sustain for the individual those rich economic, intellectual and spiritual opportunities to which his human rights entitle him. In our relations with all other nations, our attitude will reflect full recognition of their sovereign and equal status. We shall deal with common problems in a spirit of partnership."^{3-a}

The achievement of a sound and lasting world peace is the prime motivation of American foreign policy. This is particularly true insofar as this policy applies to the Far East and to Asia:

"The goal of this policy is to make it possible for our people to enjoy in peace, the blessings of liberty. But we know we cannot achieve such a goal if we think in terms that include only the United States. We know that we must assist others in obtaining and maintaining their freedom. And by this policy, this determination, we are keeping faith with those men and women we honor today . . ."⁴

Economic assistance rendered the Philippines does not portray the position of guardian and ward, but as between two friends—each respecting the other's problems and capabilities. This kind of aid is determined by Philippine Government request and is limited only by American capability to make it available.⁵

In connection with mutual defense treaties, American reiteration of sincerity was made by Ambassador Ferguson:

³ See U.S. Embassy Official Text of speech, September 1, 1949 and editorial comments in *The Manila Times*, September 2, 1949.

³ U.S. Ambassador Homer Ferguson, *Rotary Club speech*, May 5, 1955.

^{3-a} Underlining supplied.

⁴ Ferguson, *Memorial Day speech*, May 30, 1955, USIS Official Text.

⁵ See note 3.

"The United States stands ready to defend its commitment to the Republic of the Philippines which has been so closely allied with us in war and in peace."⁶

The subject of Fil-American relations was again noted by the American Ambassador in subsequent public speeches:

"The friendliness and goodwill between the Philippines and the United States contributed to the success (of nine years of liberty) and is also attributed to the thousands of Americans and Filipinos who do not determine policy, but who, by their inner good graces, have projected a high order of conduct and concern, and have injected comradeship to projects, and humaneness to policies."⁷

". . . and the rule of brotherhood is the key to success and to the way of life we all want; it's very much a matter of helping each other to help ourselves; after all, it is in the common interest that we work together in solving our common problems."⁸

"We have mutual defense treaties which *we shall always honor*."⁹

All these treaties, declarations of intent and gestures of goodwill do not amount to anything unless they are backed by a purpose or a determination:

"that is ever sustained, by an intelligence that is ever alert, and by a power which is ever ready and able to punish aggressors so that aggressions will not pay."¹⁰

The American Ambassador again noted that mutual defense pacts with the Philippines help lay the foundation of a sound Philippine defense organization with a protective mantle of American military strength, meanwhile, affording an assurance of security so that the Filipinos can concentrate upon the task of nation building.¹¹

The Council of Ministers meeting under the Mutual Defense Treaty held in Manila on September 4, 1954; culminated in a ratification of America's sincerity to defend the Philippines in case of external attack. U.S. Secretary of State J. F. Dulles' note to Foreign Affairs Secretary Carlos Garcia, made public on September 9, 1955, categorically defined this stand, *viz.*:

"I wish to state in the most emphatic terms that the United States will honor fully its commitments under the Mutual Defense Treaty. If the Philippines were attacked, the United States would act immediately.

⁶ Ferguson, *Cebu City Lion's Club speech*, April 23, 1955.

⁷ Ferguson, July 4, 1955 message to the Filipino people.

⁸ *Ibid.*

⁹ Ferguson, *Chamber of Commerce speech*, July 1, 1955. Italics supplied.

¹⁰ U.S. Secretary of State J. F. Dulles, *Foreign Policy Association speech*, February 17, 1955.

¹¹ Ferguson, *Rotary Club speech*, May 5, 1955.

We expect the Philippines to contribute to its own security to the extent of its capabilities. To that would be added United States air, naval and logistical support. The United States will take all practicable measures to maintain the security of the Philippines against external attack. The United States intends to maintain and use its air and naval bases in the Philippines. These provide concrete evidence of United States ability and intention to take necessary counter-measures. The United States emphasizes the fact that in the event of war, its power to take the offensive against points of its choosing will, in conjunction with the efforts of the Philippine forces, provide a major contribution to the security of the Philippines."¹³

ANTECEDENT FACTS LEADING TO CONCLUSION OF TREATY

On July 4, 1946, Manuel A. Roxas, first president of the Republic, emphatically observed:

"An historic drama has just been unfolded before our eyes. The American flag has been lowered from the flagstuffs in this land . . . not in defeat, not in surrender, not by compulsion, but by the voluntary act of a sovereign nation . . . The Stars and Stripes will no longer fly over this land, but in the hearts of 18,000,000 Filipinos and in the eyes of many millions more in this part of the world, *American sovereignty has been withdrawn. It has been transferred and is now possessed in full measure by the Filipino people.*" (Underlining supplied.)¹³

When the Constitution speaks of the Philippines being a republican state where sovereignty resides in the people and all government authority emanates from them,¹⁴ as a general proposition it necessary follows that the Republic has and is exercising jurisdiction¹⁵ and/or sovereignty¹⁶ over all persons and things found in the

¹³ See U.S. Embassy Diplomatic Note No. 0284; Malacañang Press Release No. 9-9-1, Sheet 1.

¹⁴ 43 O.G. 3, 954 (1947); see also XI *Lawyers' Journal* 7, 308 (1947).

¹⁵ PHIL. CONST. Art II, § 1.

¹⁶ Marshall, C. J.: The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that authority to the same extent in that power which would impose such restriction. All exceptions therefore to the complete and full power of a nation within its own territories, must be traced up to the consent of itself. They can flow from no other legitimate source. (*The Exchange*, 7 Cranch 116, cited in SINCO, *POLITICAL LAW* 30 (1955)). See also Kelsen, *PRINCIPLES OF INTERNATIONAL LAW* 236 (1952), BOUVIER'S *LAW DICTIONARY* 1761; BRIEBLY, *INTERNATIONAL LAW* 54 (1949).

¹⁷ Legal sovereignty is the possession of unlimited power to make laws; its personality is the legal sovereignty; it implies absence of any other party endowed with legal superior power and privilege. It is not subject to law "for it is the author and source of law." (*Yick Wo v. Hopkins*, 118 U.S. 356, 30 L. ed. 200). Sovereignty is the union and exercise of all human powers possessed in a state; it is a combination of all powers; the power to do everything in a state without accountability (STORY,

national territory.¹⁷ Precisely, over what terrestrial, maritime, and aerial domain, constituting Philippine territory is this legal power exercised? The following pertinent treaties and legislations will shed light:

a. Treaty of Paris.

"Spain cedes to the United States an archipelago known as the Philippine Islands, and comprehending the Islands lying within the following line . . ."

"The United States will pay to Spain the sum of twenty million dollars within three months after the exchange of ratifications of the present treaty."¹⁸

b. Act of Congress, July 1, 1902.

"All property and rights which may have been acquired in the Philippine Islands by the United States under the Treaty of peace with Spain, signed on December 10, 1898, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act."¹⁹

c. Jones Law, August 29, 1916:

"All the property and rights which may have been acquired in the Philippine Islands by the United States under the Treaty of peace with Spain . . . except such land or property as has been or shall be designated by the President of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections 63 and 64 of the Act of Congress of July 1, 1902, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said Islands to be administered and disposed of for the benefit of the inhabitants thereof, and the Philippine Legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine Legislature with reference to land of the public domain, timber, and mining, hereafter enacted shall not have the force of law until approved by the president of the United States . . ."

"Provided further, That where lands in the Philippine Islands have been or may be reserved for any public purpose of the United States and being no longer required for the purpose for which reserved, have been, or may be, by order of the President, placed under the control of the government of said Islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said Islands."²⁰

CONSTITUTION, cited in II BOUVIER'S LAW DICTIONARY 3096 (3d ed.). See also KELSEN, PRINCIPLES OF INTERNATIONAL LAW 236 (1952).

¹⁷ PHIL. CONST. Art 1.

¹⁸ Sen. Doc. No. 62, Part I, 55th Congr., 3rd Sess. (1899).

¹⁹ 32 Stat. 691.

²⁰ 39 Stat. 545.

d. Tydings-McDuffie Act, March 24, 1934.

"(a) On the fourth day immediately following the expiration of a period of ten years from the date of inauguration of the new government under the Constitution provided for in this Act, the President of the United States shall, by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands including all military and other reservations of the government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under sec. 5), and, on behalf of the United States shall recognize the independence of the Philippine Islands . . .

"(b) The President of the United States is hereby authorized and empowered to enter into negotiation with the government of the Philippine Islands not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement of the matter of naval reservations and fueling stations shall remain in its present status."²¹

e. Amendment to the Act of 1934.

Section 10 of the Act of March 24, 1934 is amended to add the following subsection:

"(c) (1) Whenever the President of the United States shall find that any properties in the Philippines owned by the Philippine government or by private persons, would be suitable for diplomatic or consular establishments of the United States after the inauguration of the independent government, he may, with the approval of the Philippine Government, and in exchange for the conveyance of title to the United States, transfer to the said Government or private persons any properties so transferred to private persons, and title to any properties so acquired by the United States, shall be vested in fee simple in such persons and the United States, respectively, notwithstanding the provisions contained in subsection (a) of this section.

"(2) Whenever, prior to July 4, 1946 the president of the United States shall find that any properties of the United States in the Philippines would be suitable for diplomatic or consular establishments of the United States after the inauguration of the independent government, he shall design to the same by the issuance of a proclamation or proclamations, and title to any properties so designated shall continue to be vested in fee simple in the United States notwithstanding the provisions of subsection (a) of this section.

"(3) Title to lands and buildings pertaining to official residence of the U.S. High Commissioner . . . shall continue to be vested in the U.S. after July 4, 1946, notwithstanding the provisions of subsection (a) of this section."²²

²¹ Pub. No. 127, 73d Congr. HR 8573, March 24, 1934.

²² Pub. No. 300—76th Congr. Ch. 502, first session, HR 7096, amending Act of March 24, 1934).

PHILIPPINE INDEPENDENCE

When President Franklin D. Roosevelt learned that the Japanese Imperial Government was to grant independence to the occupation republic on October 14, 1943, he immediately sent to the United States Congress a message requesting (a) authority to advance the date of Philippine independence, which under the Tydings-McDuffie Act was scheduled for July 4, 1946²³ and (b) authority to negotiate with the Philippine Government for the establishment of military bases in the Philippines for their mutual defense.²⁴

The United States Congress acted swiftly on the message and passed Joint Resolution No. 93 which granted the presidential request. This resolution provided:

"That it is hereby declared to be the policy of the Congress that the United States . . . shall restore as quickly as possible the orderly and free democratic process of government to the Filipino people, and thereupon establish the complete independence of the Philippine Islands as a separate and self-governing nation.

". . . After negotiating with the president of the Commonwealth of the Philippines or the president of the Filipino Republic, the president of the United States is hereby authorized by such means as he finds appropriate to withhold or to acquire and to retain such bases, necessary appurtenances to such bases, and the rights incident thereto, in addition to any provided for by the Act of March 24, 1934 as he may deem necessary for the mutual protection of the Philippine Islands and the United States."²⁵

The Commonwealth Government under President Sergio Osmeña was reestablished in 1945. One of the first official acts undertaken was the approval of House Joint Resolution No. 4 which provided:

"Resolved that the Congress of the Philippines adheres to the policy and intent of Joint Resolution 93 (of the U.S. Congress) which it considers an acknowledgment by the people of the United States of the heroic role of the Filipino people in the war and that it recognizes in this action of the Congress the noble purpose of the American nation to make permanent in the Philippines the blessings of peace, liberty and democracy. . ."²⁶

Thus far, we note that the two Governments have agreed to negotiate on the establishment of military bases designed to give mutual protection and to preserve peace and tranquility in the Pacific Area. This, incidentally, is a realization of the pledge given by President Roosevelt during the war—the pledge "that their (Phil-

²³ This was never realized.

²⁴ DOCUMENT OF AMERICAN FOREIGN RELATIONS, 512.

²⁵ Public Law 380, Ch. 322, SJ RES. 93, June 29, 1944; 58 Stat. 625.

²⁶ 49 O.G. 5, 349 (1945).

ippine) freedom will be redeemed and their independence firmly established and protected."²⁷

Accordingly, U.S. President Harry S. Truman on July 4, 1946 proclaimed Philippine Independence thus:

"I, Harry S. Truman, president of the United States of America, acting under and by virtue of the authority vested in me by aforesaid Act of Congress, do proclaim that, in accord with and subject to the reservation provided for in the pertinent provisions of the existing Act of Congress, the United States of America hereby withdraws, and surrenders all rights of possession, supervision, jurisdiction, control or sovereignty now existing and exercised by the United States of America in and over the territory and people of the Philippines and on behalf of the United States of America I do hereby recognize the independence of the Philippines as a separate and self-governing nation and acknowledge the authority and control over the same, of the government instituted by the people thereof, under the constitution now in force."²⁸

On the same day, the Treaty of General Relations between the United States and the Philippine Republic was signed. Article 1 of said treaty is noteworthy:

"The United States of America agrees to withdraw and surrender, and does hereby withdraw and surrender, all rights of possession, supervision, jurisdiction, control or sovereignty existing and exercised by the United States of America in and over the territory and people of the Philippine Islands, except the use of such bases, and the rights incident thereto, as the United States of America, by agreement with the Republic of the Philippines may deem necessary to retain for the mutual protection of the Republic of the Philippines and of the United States of America. The United States of America further agrees to recognize, and does hereby acknowledge, the authority and control over the same of the government instituted by the people thereof, under the constitution of the Republic of the Philippines."²⁹ (underlining supplied.)

THE TREATY

The Military Bases Agreement was signed in Manila by U.S. Ambassador Paul V. McNutt, for the Government of the United States of America, and by Foreign Affairs Secretary Elpidio Qui-

²⁷ XVI, U.S. DEPT. OF STATE BUL. 403, p. 554.

²⁸ 60 Stat. 1352.

²⁹ Concurred in by the Philippine Senate, August 9, 1946; proclaimed, October 22, 1946. See also TREATY SERIES, DEPT. OF FOREIGN AFFAIRS, Vol. I, No. 1, August 1947.

Note also the protocol to this treaty which, in part, provided ". . . it is understood and agreed that this treaty does not attempt to regulate the details of arrangement between the two governments for their mutual defense, for the establishment, termination, or regulation of the rights and duties of the two countries, each with respect to the other, in the settlement of claims, as to the ownership or control of real or personal property . . ." (TREATY SERIES, *loc. cit.*)

rino, for the Republic of the Philippines, on March 14, 1947. The Treaty entered into force March 26, 1947.³⁰

In connection with the signing, the then Acting Secretary of State Dean Acheson underscored the amicable relations between the two thus:

"President Roxas has informed this government that the Philippine Congress and the Filipino people desire the maintenance of the United States bases in the Philippines. The present agreement was accordingly concluded. In the negotiation, the parties have been constantly guided by the principle of respect for each other's sovereignty, by the mutuality of interest, by regard for their equality of status as members of the United Nations and by the commitment of both nations to the purposes and principles of the United Nations . . . The present agreement will contribute to international security and peace in the Pacific and will supplement and support such future arrangements for world peace as may be reached under the Security Council of the United Nations."³¹

Seeking congressional support to the recently-concluded treaty, President Roxas appealed to the Senate on March 17, 1947 saying:

"This agreement has its bases in the Tydings-McDuffie Act of 1934 as amended. That Act, . . ., provided for the retention of American naval reservations and fueling stations in the Philippines after independence. The Filipino people . . . expressed their willingness that American defense establishments be located on Philippine soil after independence . . . Whereas the Tydings-McDuffie Act did not in any way commit the United States to use its bases in the Philippines for our defense, Joint Resolution 93 (of the U.S. Congress) took cognizance of our wartime association and pledge the use of American military facilities in the Philippines for our mutual protection . . . It was an historic departure from past policy, as set forth in the Independence Act. The present Bases Agreement is a happy outgrowth of that change . . ."³²

The preamble of a treaty may declare the purpose of its enactment as well as its general scope, yet it is strictly speaking no part of it;³³ it should not be regarded as a source of any substantive power conferred on the government established by the constitution and such as may be implied from those so granted;³⁴ but, in order to show its purpose and intent, when the articles of the treaty have doubt in these points, resort to preambles may even be more useful for ascertaining true intent of the High Contracting Parties.³⁵

The Preamble of the Bases Agreement brings to light the mutuality of interests existing between the contracting parties:

³⁰ TREATIES AND OTHER INTERNATIONAL ACTS SERIES, No. 1775, U.S. Department of State Publication No. 3257.

³¹ XVI DEPT. OF STATE BULLETIN (U.S.) 403, p. 554.

³² 53 O.G. 3, 954 (1949).

³³ I TUCKER ON THE CONST. 381.

³⁴ *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

³⁵ V HACKWORTH, DIGEST OF INTERNATIONAL LAW 245 (1940).

"WHEREAS, the Governments of the United States of America and the Republic of the Philippines are desirous of cooperating in the common defense of their two countries through arrangements consonant with the procedures and objectives of the United Nations, and particularly through a grant to the United States of America by the Republic of the Philippines in the exercise of its title and sovereignty, of the use, free of rent, in furtherance of the mutual interest of both countries, of certain lands of the public domain . . ." ²⁶

That the United States has agreed to this arrangement may be summed up as follows: her commitments to protect the Philippine Independence, Philippine loyalty to the United States during World War II, historical association, America's great desire that democracy and freedom flourish in this part of the world and to advance the great cause of world peace, security and freedom which America champions.²⁷

BODY OF THE TREATY

The Philippine Government under Article 1 grants to the Government of the United States the right to retain the use of the bases in the Philippines listed in Annex "A" of the treaty. In addition, the Philippines agrees to permit the United States, upon notice to the Philippines, to use such of those bases listed in Annex "B" as the United States determines to be required by military necessity.²⁸

President Truman in proclaiming the Philippine independence ²⁹ expressly stated such proclamation was "in accord with and subject to the *reservation* provided for in the pertinent provision of

²⁶ See note 30 at page 1.

²⁷ 43 O.G. 3, 954 (1947).

²⁸ Military necessity as understood by the U.S., justifies a resort to all measures which are indispensable to bring about the complete submission of the enemy as soon as possible, by means of regulated violence and which are not forbidden by modern laws and customs of war (War Dept. Rules of Land Warfare, 1940 No. 22 and 23; Cf. § XIV, Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, April 24, 1863 in MOORE, DIGEST OF INTERNATIONAL LAW 178 cited in III HYDE, INTERNATIONAL LAW 1801 (1927) in which it is stated that military necessity "consists in the necessity of those measures which are indispensable for securing the ends of war, and which are lawful according to the modern laws and usages of war."

If the term "military necessity" implies great latitude and is invoked by way of excuse in jurisdiction of harsh measures, it is because the law of nations itself permits recourse thereto in case of great need, and allows a belligerent commander to be the judge of the existence and sufficiency of the need. (HYDE *supra* at p. 1802).

See also concept of "military necessity" in Justice Secretary Pedro Tuason's opinion No. 40, S. 1955 citing McDougal and Lane, TREATIES AND CONGRESSIONAL-EXECUTIVE OR PRESIDENTIAL AGREEMENTS: INTERCHANGEABLE INSTRUMENTS OF NATIONAL POLICY, 54 YALE L. J. 181, 205, 209, 244-47; WRIGHT, THE U.S. AND INTERNATIONAL AGREEMENTS, 38 AM. J. INT. L. 341, 348-49.

See also the interpretation given by U.S. Attorney General Herbert Brownell, *infra*, note 59.

²⁹ See note 28.

the existing act of Congress." ^{39-a} What then is the connotation of this *reservation* in the light of the following excepted lands?

(1) land or other property which the United States President may, under the Act of 1902, designate for military and other reservations; (2) land or property as has been or shall be designated by the U.S. president and such as may have been sold and disposed of in accordance with the Act of 1902 and Act of 1916 in addition to such lands as may have been reserved for *any* public purpose of the United States; (3) naval reservations and fueling stations reserved under the Tydings-McDuffie Act; (4) diplomatic and consular lands and properties; and (5) the use of such bases and rights incident thereto as defined in the Treaty of General Relations.⁴⁰

Premises considered, was title and/or ownership to these excepted lands retained and/or withheld by the United States Government upon declaration of independence? Or, did the United States Government acquire only the *right to maintain and use* such bases for the mutual benefit of the two countries.⁴¹ It is noted that U.S. Secretary of State Dean Acheson said:

"The Bases Agreement of 1947 recognized the importance to both nations of the defense of the Philippines, and granted the United States the *right to maintain and to garrison* bases in the Philippines."⁴²

PROVISIONS ON JURISDICTION

Each state is said to have jurisdiction over all but specially excepted persons and in all but specially excepted matters within its territorial boundaries including the marginal seas to a minimum breadth of three miles and the air space above this land and water.⁴³ Territorial jurisdiction is the power of the tribunal considered with reference to the territory within which it is to be exercised;⁴⁴ and

^{39-a} Underscoring supplied.

⁴⁰ In general a *reservation* to a treaty is a formal statement made by a prospective party for the purpose of creating a different relationship between that party and the other parties or prospective parties than would result should the reserving State accept the arrangement without having made such a statement. A mere interpretative declaration made by a prospective party without such a design, and with a view merely to accentuate a common understanding, is not to be regarded as a reservation, unless another party or prospective party deems it to be productive of a different relationship between the State issuing the declaration and the other parties or prospective parties than would result were the declaration not made. "If a reservation, as a part of the ratification, makes a material addition to or a substantial change in the proposed treaty, other parties will not be bound unless they assent." (CONG. RECORD LVIII, part 4, p. 3302), II HYDE, INTERNATIONAL LAW [Sec. Rev. Ed.] 1435 (1947).

⁴¹ As regards interpretation given the terms *use, right to maintain* and others, see RECTO on the Bases Agreement, *infra* note 59.

⁴² See XXV U.S. DEPT. OF STATE BULLETIN No. 627, p. 424. Underscoring supplied.

⁴³ CORBET, P.E., LAW AND SOCIETY IN THE RELATIONS OF STATES 91 (1951).

⁴⁴ *Bissel v. Briggs*, 9 Mass. 462; 6 Am. Dec. 88 cited in I BOUVIER'S LAW DICTIONARY 1761 (1914).

at the early common law, the proper venue of a crime was the county where it was committed; this is generally the rule today in this (United States) country, the rule having been recognized by the courts or established by constitutional provision.^{44-a} Except as provided in the treaties and laws of preferential application penal statutes are generally enforceable not only with the Philippine archipelago including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction against certain offenders.⁴⁵ Accordingly, Article XIII of the Bases Agreement confers upon the United States military authorities jurisdiction over the following offenses: (a) any offense committed by any person within any base except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense committed is against the security of the Philippines: (b) any offense committed outside the bases by any member of the armed forces of the United States in which the offended party is also a member of the armed forces of the United States; and (c) any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States.⁴⁶ In all respects, except as to jurisdiction over offenses committed within the bases, the laws of the Philippine Republic will obtain in these areas. In no true aspect is extraterritoriality⁴⁷ indicated or authorized⁴⁸

In *Dizon v. Philrycom*,⁴⁹ citing *Miquiabas v. Commanding General*,⁵⁰ the Court found "the Philippines, being a sovereign nation, has jurisdiction over all offenses committed within its territory, but may, by treaty or by agreement consent that the United States or any other foreign nation, shall exercise jurisdiction over certain portions of said territory. If bases may be validly granted to the United States under the Constitution, there certainly is no plausible reason why the lesser attribute of jurisdiction cannot be waived!" And again, in *People v. Acierito*⁵¹ Justice Tuason deplored that by the agreement, *the Philippine government merely consents that the United States exercises jurisdiction in certain cases. The court, in this case, observed this consent was given purely as a matter of comity, courtesy or expediency and that the Philippine government has not abdicated its sovereignty over the bases as part of the Philippine territory or divested completely of jurisdiction over offenses committed therein.*^{51-a} Continuing, Justice Tuason ruled: the provision that in case the United States renounces jurisdiction reserved to

^{44-a} Territorial jurisdiction discussed; see 14 AM. JUR. § 232, p. 929 (1938).

⁴⁵ Rev. Penal Code, Art. 2.

⁴⁶ TREATIES AND OTHER INTERNATIONAL ACTS SERIES No. 1775, U.S. Dept. of State Pub. No. 3257 p. 7.

⁴⁷ Extraterritoriality is the right of a state to exercise its authority outside its own territory. WHITE, W. W., POLITICAL DICTIONARY 104 (1948).

⁴⁸ See Pres. Roxas statement in 43 O.G. 3, 954 (1947). Also 11 LAWYERS' JOURNAL 7, 308 (1947).

⁴⁹ G.R. No. L-2110, July 22, 1948.

⁵⁰ G.R. No. L-1988, Feb. 24, 1948.

⁵¹ G.R. Nos. L-2706; 3355-60, Jan. 30, 1953.

^{51-a} Italics supplied.

it in paragraphs 1 to 6 of Article XIII, the American officer holding the offender in custody should notify the corresponding prosecuting officer of that fact, is "an emphatic recognition and reaffirmation of Philippine sovereignty over the bases."

Heretofore, Manila civil courts did not take cognizance of cases involving American military personnel. But in July, 1955 Manila's Mayor Arsenio Lacson, in his weekly radio broadcast, said:

"I am serving notice to American authorities in the Philippines that from now on every member of the United States Armed Forces who gets in trouble in the city of Manila is not going to be bundled quietly to the Port Area and turned over to the American Provost Marshall. He is going to be booked and thrown into the city jail and he will be prosecuted and tried under the laws of the Philippine Republic."⁵³

Anent the legality of this declaration the City Fiscal of Manila explained that Philippine laws allow exceptions only to crimes committed by American servicemen within U.S. military bases, outside the jurisdiction of such military bases when the offender is in the performance of his duties. Under these exceptions, the Fiscal continued, the offender is to be turned over to the U.S. military authorities for decision on the matter; hence, the order for arrest of any member of the U.S. Armed Forces committing offenses within the city limits was perfectly legal.⁵³

OTHER PROVISIONS OF THE TREATY

As a corollary to the right granted in Article 1, it is mutually agreed by the signatories that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof and all the rights, power and authority within the limits of territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them, or appropriate for their control.⁵⁴

⁵³ Transcript of radio broadcast as appearing in *The Manila Chronicle*, July 28, 1955, p. 2, col. 8.

⁵³ Justice Undersecretary Barrera is of the opinion that Philippine courts have authority to try a member of the U.S. Airforce personnel at Clark Field who was accused of having allegedly mauled a Filipino in Angeles, Pampanga. Barrera noted that civil courts should not waive jurisdiction over CURTIS J. WILLIS, an American airman charged with having beaten up RUFINO CAMBURA, because any waiver would result in the prejudice of the offended parties who could no longer demand damages from accused American military personnel after they are transferred to other American bases outside the Philippines. See statement appearing in *The Manila Times* July 26, 1955, p. 1 col. 5.

⁵⁴ Other provisions deal with Shipping and Navigation, Article IV; Exemption from Customs and Other Duties, V; Manuever and Other Areas, VI; Use of Public Services, VII; Health Measures Outside the Bases, VIII; Surveys, IX; Cemeteries and Historical Sites, X; Immigration, XI; Internal Revenue Tax Exemption, XII; Arrest and Service of Process, XIX; Security Legislation, XV; Postal Facilities, XVI; Removal of Improvement, XVII; Sales and Services Within the Bases, XVIII; Com-

Attention is now invited to the term of the agreement—the agreement which entered into force March 26, 1947⁵⁵ shall remain in force for a period of ninety-nine years subject to extension thereafter as agreed by the two governments.

Does this provision contemplate "lease?" Lease of territory by one state to another clearly resembles ordinary leases of private law, for example, leases of specific areas in parts for transit purposes.⁵⁶ A mere lease of territory is established if the right to perform all functions of a state is conferred by this state upon another only for a *definite period of time* and without the right to transfer this right to other states. (underscoring supplied.)⁵⁷ A contract for the possession and profits of tenements on one side, and a recompense or rent as other income, on the other, partake the nature of a lease, although an agreement that the occupation is to be rented free does not make the contract without consideration.⁵⁸

THE ISSUE OF OWNERSHIP

U.S. Attorney General Herbert Brownell on August 28, 1953 submitted an opinion to the Secretary of State respecting title to

Commercial Concerns, XIX; Military/Naval Police, XX; Temporary Installations, XXI; Expropriation, XXII; Civil Liability, XXIII; Mineral Resources, XXIV; Grant of Bases to Third Powers, XXV; Definition of Bases, XXVI; Voluntary Enlistment of Philippine citizens, XXVII; U.S. Reserve Organizations, XXVIII; and Term of the Agreement, XXIX.

⁵⁵ See note 30.

⁵⁶ BRIERLY, INTERNATIONAL LAW 57 (1949). See also II BOUVIER'S LAW DICTIONARY 1890 (1914).

⁵⁷ KELSEN, PRINCIPLES OF INTERNATIONAL LAW 217 (1952).

⁵⁸ BOUVIER'S LAW DICTIONARY on p. 1887. What legal meaning should be given the terms used e.g. "grant," "use," "title," "underlet," and those *in pari materia* found in scattered provisions of the treaty? See opinions rendered by Atty. Gen. Brownell and Sen. Recto, *infra* note 59.

See also U.S. High Commissioner McNutt's radio broadcast on July 2, 1946 in which he said ". . . We will *maintain* military and naval bases here, in full agreement with the Philippine government, so that the land may be protected, so that our common interests in this part of the world may be defended and so that the Philippine Republic and the United States may continue to serve the cause of peace. (XI LAWYERS' JOURNAL 7, 308 (1946).

QUEZON, THE GOOD FIGHT, p. 119 cited by Recto (The Manila Times, The Manila Chronicle, The Philippines Herald of August 20, 1955):

"On the subject of military and naval bases in the Philippines you (Quezon) defined your stand in the following passage from *The Good Fight*:

". . . My main objection, however, was to the provision of the law (Haro-Hawes-Cutting) that called for the retention of military and naval establishments by the U.S. after the Philippine Republic should have been proclaimed. I did not object to the provision regarding the retention of naval stations so long as this was made dependent upon the consent of the Philippine Republic; but I did strenuously and definitely oppose the retention of military establishments for it *destroyed the very essence of independent existence for the Philippines.*

President Roosevelt readily agreed that the maintenance of military reservations in the Philippines after the proclamation of Philippine Republic would, in itself, make *the granting of independence a farce.*"

U.S. military bases, including naval reservations and fueling stations, in the Philippines. Publication of this opinion immediately drew response from Sen. Claro M. Recto, who, during the Fil-American Conference on the Revision of the Military Bases treaty, defined the Philippine position. A resumé of the differences of opinions between Brownell and Recto follow.⁵⁹

a. *On the Philippine Independence Act:*

Brownell: All property and rights acquired in the Philippine Islands by the treaties of 1898 and 1900 with Spain were transferred to the commonwealth government, *except*

(a) such land or other property as has been designated by the U.S. president for military and other reservations of the government of the U.S.

(b) such land or property as may have been sold.

Exercise of the authority granted to the president to designate land for military and other reservations *vested title* to the designated land in the U.S. until otherwise disposed by the president. Section 10 (a), appears to be a relinquishment to the Philippine Republic of sovereignty over the Philippine territory, including military and other reservations but *excluding* U.S. Naval reservations and fueling stations, and not a relinquishment or conveyance of title or proprietary right, such as was made in the language of Section 5 to the Commonwealth Government *except* for the military and other reservations, this phraseology of Section 10 (a) was entirely consistent with Section 5. There was no ambiguity since the Commonwealth Government was vested with title to public property to which the independent republic would succeed and it needed only the cession of sovereignty to complete its absolute control. In so far as U.S. military reservations were concerned, title in fee simple was in the U.S.

Recto: The Tydings-McDuffie Law of March 24, 1934 provides that "the Philippine Islands recognizes the right of the United States . . . to maintain military and other reservations . . ." Because only naval reservations and fueling stations were provided for in the Tydings-McDuffie Law, the right of the U.S. to negotiate for additional bases as was implemented in the Joint Resolution No. 93 . . . Under Art. 1 of Treaty of General Relations "use" discloses the nature of the interest retained by the U.S. in the bases and it implies that the title to the bases is in the Republic of the Philippines as the sovereign grantor of their use to the U.S.

b. *On U.S. Joint Resolution No. 93:*

Brownell: Discussions regarding further American bases in the Philippines arose in 1943 and culminated in the adoption of Joint Resolution No. 93 . . . The concept of the Tydings-McDuffie Act that the U.S. would withdraw almost entirely from the giving of military protection to the Philippines was thereby erased, and by mutual understanding. On their part, the Philippines . . . accepted Joint Resolution No. 93. In my view of all the changes in circumstances and in the nature and extent

⁵⁹ Recto on U.S. Bases: See Consolidated Report on Fil-American Conference on revision of the Bases Agreement, *Philippines Herald*, May 10, 1954 p. 4; refutation of Brownell's opinion, *XIX LAWYERS' JOURNAL* 3, 112 (1954) also published in *The Manila Daily Bulletin*, Mar. 17, 1954.

Brownell on U.S. Bases: Opinion of Aug. 28, 1953. See also text of opinion as appeared in *The Manila Daily Bulletin*, March 17, 1954, p. 1.

of U.S. property holdings, it was deemed manifestly improper to permit title to pass automatically to the Philippine Republic on July 4, 1946.

Recto: Joint Resolution No. 93 is not decisive of the intention to retain their title in the bases after the grant of independence; nothing in the resolution directly supports the theory that the U.S. retained ownership of the lands. Resolution should be construed as entitling the United States to retain merely the use and possession of additional base lands . . . This resolution contemplates a "negotiation" for additional bases. To negotiate cannot mean to acquire ownership because no part of the national territory can be alienated without violating the constitution.

c. On the Treaty of General Relations:

Brownell: The Treaty of General Relations signed July 4, 1946 effective Oct. 22, 1946 repeats in Art. VI the provisions of the Tydings-McDuffie Act . . . the treaty and protocol clearly reserved the question of U.S. property titles for future settlement.

Recto: The word use in Art. 1 ("except the use of such bases . . .") discloses the nature of the interest of the United States in the bases, and it implies that the title to the bases is in the Republic of the Philippines as the sovereign grantor of their use to the United States. It is inferable from Art. 1 . . . that there had already been a grant or surrender to the Philippines of the title held by the United States to all the base lands at the time of the proclamation of independence . . . The Philippines could not have concluded said treaty without being a sovereign nation, and that sovereignty could not have existed at the time of the treaty's conclusion without the United States having previously withdrawn and surrendered all its property and rights.

d. On the Bases Agreement:

Brownell: One of the recitals of the preamble to the military bases agreement might have raised a difficult-to-explain ambiguity regarding title were it not for the surrounding circumstances . . . An exchange of notes between the U.S. and Philippines makes clear that this reference to Philippine title is not to all of the lands comprising the bases and temporary installations but is to the parts of those lands and any additional lands that the U.S. might require in expansion or exchanges, which happen to be undisputed in Philippine Public lands. Nowhere in this background . . . is there any basis for as much as implying a general passage of title . . . to the Philippine government in and to the properties comprising the U.S. military and naval bases in the Philippines. Even if some bases could be developed of implying a grant, it would be of no legal consequence in the face of the well-established principle of law concerning grants of land by the sovereign, that a grant of the sovereign must be explicit and nothing passes by implication (*Northern Pacific Railway Co. v. United States*, 315 U.S. 526, 534 [1903]; *Great Northern Railway Co. v. United States*, 315 U.S. 262, 272). Therefore except for such military or naval properties as the U.S. has expressly and formally conveyed to the Philippine republic as in the exchange of notes contained in TIAS 1963 and TIAS 2406, the U.S. now has whatever title it had prior to July 4, 1946, in the land or areas comprising the bases listed in Annexes A and B . . ., in the naval reservations and fueling stations not so listed . . ., and in the areas covered by Art. 21 of the agreement.

Recto: Note that the preamble expressly recognizes the *title* to the base lands is held by the Philippines and that the U.S. is granted only the *use* thereof. The juxtaposition of the words *title* and *sovereignty* signifies that these two concepts are inseparably linked.

Then follows Mr. Recto's analysis of words used e.g. "grant," "use," "free of rent," "to retain the use," and others which, the Senator concludes that the United States has merely the use, possession and occupancy, by lease, but not the ownership of the base lands.)

Still on the subject of bases' ownership, Senator Jose P. Laurel was reported favoring the opening of additional bases in the Philippines provided, the expansion program is agreed upon in a two nation conference. The senator premised his statement on the alleged admission by American officials that the territory covered by the bases are only leased, not owned by the United States Government. If the previous claim of ownership by the United States were upheld, Laurel noted, the Philippines would possibly find itself deprived of one-half of the territory.⁶⁰ "As far as the Philippine government is concerned," Secretary Garcia said, "we are of the belief that the ownership of all American bases in the Islands was transferred to the Philippine government after the grant of independence," and as regards future bases to be reactivated, the principle of leasehold occupancy should prevail.⁶¹ The American-owned *Manila Daily Bulletin* editorially assessed the issue of ownership thus:

"The United States does not seek permanent ownership of any new bases it may acquire through negotiation with the Philippine government."⁶²

On April 26, 1955 Foreign Affairs Secretary Carlos Garcia sent Diplomatic Note No. 1295 to the American Ambassador stating:

"The Philippine Government agrees to provide suitable real property, it being understood that facilities to be provided under this agreement may be placed only on such real property to which the Philippine government has *clear title* (underlining supplied) or a court order of a court

⁶⁰ See *The Manila Times*, May 10, 1955 p. 1, col. 2.

⁶¹ See *The Manila Times*, May 12, 1955 p. 1, col. 1.

While press reports, at most, constitute persuasive authorities, it is submitted that in the absence of more competent authorities (outside of those treated herein) said reports may be presented in order to assist the reader in arriving at a sound conclusion.

⁶² See *Manila Daily Bulletin* editorial quoting U.S. Asst. Sec. of State Hensel during the latter's Manila visit; issue of March 3, 1955. The editorial also stated "This policy has been confirmed in Washington and the opinion added that it is not in conflict with the famous pronouncement of Atty. Gen. Brownell concerning ownership of bases . . . It is held that sovereignty is not involved any more than it would be in ownership of a piece of land by an individual American. It is strictly a legal question and should not be considered or interpreted as anything else. Public excitement over what has been made to look like a nationalistic issue is unwarranted."

For other editorials, see *The Manila Times*, September 6, 1955; *The Daily Mirror*, September 5, 1955 both of which dissent from the views of Atty. Gen. Brownell.

of competent jurisdiction in condemnation or expropriation proceedings authorizing the Philippine government to enter into and use the land, and is so certified by the Secretary of National Defense of the Republic of the Philippines . . ."⁴³

The following opinions of the Secretary of Justice have bearing on the subject of U.S. military bases:

*a. Opinion of February 16, 1955.*⁴⁴

"The establishment and maintenance of military bases in the Philippines by the United States were agreed upon to secure the military defense of the two countries. It cannot be doubted that as Commander-in-Chief of all the Armed Forces of the Country, and as its sole organ in the field of foreign relations (*United States v. Curtiss-Wright Export Corp.* 299 U.S. 804-819) the president is in the best position, and is competent to determine whether existing world conditions pose a clear and direct menace to national security. The expansion of military bases contemplated in par. 8 of Art. I of the Bases Agreement is a step to be taken in meeting the requirements of military necessity and is a matter that involves and affects critically the defense of the country."^{44-a}

*b. Opinion of February 2, 1953.*⁴⁵

"The acquisition of an additional base pursuant to par. 8 of Art. I of the Bases Agreement may be accomplished by an executive agreement which, by international law practice, has been frequently resorted to in entering into agreements between nations."^{45-a}

⁴³ See American Embassy-Malacañang Palace joint press release dated April 27, 1955 on the Philippine request for training of Philippine Army Division pursuant to discussions held at Manila, September, 1954 under the Mutual Defense Treaty; Sec. Garcia's Diplomatic Note No. 1295 was sent to the American Ambassador under date of April 26, 1955.

Cf. following diplomatic notes: (a) Note of July 1, 1947 on the transfer of Leyte-Samar Naval Bases (61 Stat. 4019); (b) Note 115 on the transfer of Corregidor; (c) Note 88 on the establishment of branch bank at Clark Field Re Art. 19 of the Treaty accepted by the Philippines Oct. 14, 1947; (d) Note 526 on the transfer of Mariveles Quarantine Reservation Station; (e) Note 559 on the transfer of Fort William McKinley Military Reservation (Nichols Field) dated Dec. 23, 1947; Philippine reply dated Dec. 24, 1947; (f) Note 1148 on the relinquishment of rights to U.S. Armed Forces Cemetery No. 2, San Francisco Del Monte.

These diplomatic notes may be resorted to in the determination of the real nature of American bases in the Philippines. For texts see U.S. TREATIES AND OTHER INTERNATIONAL AGREEMENTS, Dept. of State, Vol. 3 Part I, pp. 457 *et. seq.* (1952).

⁴⁴ Opinion No. 40, S. 1955, February 16, 1955, Department of Justice.

^{44-a} Citing McDougal and Lane, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy*, 54 YALE L. J. 181, 205; Wright, *The U.S. and International Agreements*, 38 AM. J. INT'L L. 341, 348-49.

⁴⁵ Opinion No. 38, S. 1953, Feb. 2, 1953, Dept. of Justice.

^{45-a} Citing II HYDE, INTERNATIONAL LAW, 1406 (1947).

*c. Opinion of August 31, 1955.*⁶⁶

"Examination of the agreement . . . compels me to submit a different view.* It bears strong emphasis that sovereignty over the areas comprised in all military and naval reservations, including that at Olongapo, Subic rests in the Philippines and that such areas constitute integral parts of the territorial domain of the Philippines. Olongapo, like all other military and naval reservations, is not foreign territory in any sense of the term. The above is made clear by the Military Bases Agreement whose preamble reads . . .

"What the Philippines did concede to the United States by the Agreement was the *right to use the base lands* (underscoring supplied) for a period of 99 years, Art. I, Section 1, and Art. 29. The Particular rights that comprise the right to use the base areas do not include a right to supplant the lawful authority and jurisdiction of the local governments concerned, nor any right generally to exercise sovereign or governmental powers over the civilian population that may be residing inside the bases. It is true that the general description of rights contained in Art. 3 is cast in comprehensive terms . . . The language however like any other provision of the Agreement, must be read and considered in the light of the fundamental and exclusive purpose or objective of the contracting parties—the securing of their mutual military defense interest."^{66-a}

"There was no intent to oust the organized municipal governments of their jurisdiction conferred by law nor to invest the U.S. military or naval authorities with general powers of local government over Filipino civilian inhabitants of the bases unnecessary for the military utilization and security of the base lands."⁶⁷

It is not the purpose of this paper to resolve the issue of ownership or title in the base lands; it is enough that the facts are surveyed with a view to inviting attention of all and sundry. The basic questions involved would seem to be the following:

(1) If ownership were resolved in favor of the United States Government, would it infringe on Philippine sovereignty?

* This opinion of the Secretary of Justice, Opinion No. 300, Series of 1955, Aug. 31, 1955, is reproduced in full in the Recent Documents section of this issue of the Journal.—*Editor's Note.*

⁶⁶ In a memorandum of the Chief Attorney, Commission on Elections, submitted to Justice Sec. Pedro Tuason, it was stated that because Olongapo is a naval reservation administered by the U.S. Navy, it was out of the jurisdiction of the Municipality of Subic. The reservation, not being a part of any municipality, the conclusion was drawn that voters of Olongapo should vote only for national officials. Tuason's opinion (as quoted herein) is in reply to the Commission on Elections' memorandum.

On Sept. 6, 1955, Commissioner Rodrigo Perez announced passage of resolution retaining the right of 6,000 electors in Olongapo to vote. The commission's resolution was said to be based on the study of the memoranda submitted by Sec. Tuason on August 31, 1955, and those of Undersecretary of Foreign Affairs Manglapus, Mr. Neri and the testimonies of Rep. Enrique Corpus of Zambales and other officials of Olongapo—all voting against the disenfranchisement of Olongapo voters.

^{66-a} citing HARVARD RESEARCH IN INT'L LAW, THE LAW OF TREATIES (1935) 29 AM. J. OF INT'L L.

⁶⁷ See note 66.

(2) On the other hand, with title/ownership in the Philippines, would the United States continue to fully maintain her military potential in this area? Or, would internal and external defense of the Philippines be grossly affected, insofar as U.S. military and naval bases are concerned?

(3) What effect has the existence and/or the expansion of military and naval bases in the Philippines on the socio-legal-political rights of Filipino inhabitants therein?⁶⁸

(4) What action would the United States Government take on Senator Recto's proposed amendments to the Bases Agreement? His proposals are:

(a) To require the Philippine flag to fly together with the American flag over the bases;

(b) To put bases under joint command of the Philippines and the United States;

(c) To withdraw grant of jurisdiction and extra-territorial^{69-a} rights to the U.S. under Art. XII, except in case of offenses committed within the bases, whenever both offender and offended parties are members of the U.S. Armed Forces; and

(d) To shorten the term of the Agreement.⁶⁹

In other words, would American foreign policy towards the Philippines (as has heretofore been pronounced by American statesmen) undergo a sudden face-lifting should the Bases Agreement be revised and/or amended to conform to Philippine demands?

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⁶⁸ *Ibid.*

^{69-a} Pres. Roxas believes "in no true aspect is extraterritoriality indicated or authorized." [See 43 O.G. 3, 945 (1947)].

⁶⁹ Sen. Recto is of the opinion "that these amendments will enable the Philippines to assume a position of co-equal responsibility with the United States in the prosecution of the defense program 'for the mutual security' of the two countries, as announced in the preamble of the Base Agreement, and will remove those features of the Agreement which are incongruous with and offensive to our dignity and status as a sovereign and independent Republic." (See Recto U.S. Bases, *supra* note 59)