

RECENT DOCUMENTS

OPINION OF THE SECRETARY OF JUSTICE No. 300, Series of 1955.

August 31, 1955

The Commission on Elections
Thru The Chairman
M a n i l a

S i r :

This is in reply to your request for a memorandum on the proposed "abolition of the thirty-two (32) election precincts within the United States military-naval reservation at Olongapo."

In the memorandum of the Chief Attorney of the Commission, it is stated that "the fact that Olongapo is a naval reservation of, and administered by, the United States seems to draw it out of (the) jurisdiction of the municipality of Subic," and that "the inhabitants of Olongapo not being under the political and administrative control of the government of Subic, they cannot be expected to intervene in the elections of the officials of Subic, upon the theory that they do not form part of the people to be governed by said officials." "The reservation not being a part of any municipality," the conclusion is drawn that the "voters of Olongapo should vote only for national officials." *Macolor v. Amores*, 49 O. G. 5336 is implicitly relied on.

Examination of the Agreement Between the Republic of the Philippines and the United States of America Concerning Military Bases, signed on March 14, 1947, 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, in part,

"WHEREAS, the Governments of the Republic of the Philippines and of the United States of America 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;"

In *People v. Acierlo*, 49 O. G. 518, the Supreme Court, in construing the Military Bases Agreement, said:

"By agreement, it should be noted, the Philippine Government merely consents that the United States exercise jurisdiction in certain cases. This consent was given purely as a matter of comity, courtesy, or expediency. *The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippines territory or divested itself completely of jurisdiction over offenses committed therein.* Under the terms of the treaty, the United States Government has prior or preferential but not exclusive jurisdiction of such offenses. The Philippine Government retains not only jurisdictional rights not granted, but also all such ceded rights as the United States Military authorities for reasons of their own decline to make use of. The first proposition is implied from *the fact of Philippine sovereignty over the bases*; the second from the express provisions of the treaty. The treaty expressly stipulates that offenses included therein may be tried by the proper Philippine courts if for any special reason the United States waives its jurisdiction over them." (49 O.G. at 524; italics supplied)

What the Philippines did concede to the United States by the Agreement was the right to use the base lands for a period of 99 years (Art. I, sections 1 and 2; Art. XXIX). 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 Article III is cast in comprehensive terms: "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." This 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 interests. (See Harvard Research in International Law, *The Law of Treaties* [1935] 29 Am. J. Int'l L. supp. 948-953). There was no intent to oust the organized municipal governments of their jurisdiction conferred by law nor to invest the United States military or naval authorities with general powers of local government over Filipino civilian inhabitants of the bases, which was unnecessary for the military utilization and for the military security of the base lands. And such an intent is not to be presumed. Reference may be usefully made to the rule of treaty interpretation that where the meaning of a stipulation is not free from doubt, that construction is to be preferred which would be less onerous for the party assuming an obligation and which interferes less with the territorial and personal supremacy of a party (1 Oppenheim, *International Law* [7th ed., Lauterpacht] 859; cf. Hall, *International Law* [7th ed., Pearce Higgins] 394).

Even assuming, for purposes of argument only, that the United States has fee simple title over the base lands—a claim vehemently contested by the Philippine Government—such ownership by the United States, without more, would not have the effect of excluding the areas from the territorial domain of the Philippines or from the political and administrative jurisdiction of the municipal government

concerned, any more than ownership by a private individual would have such an effect. It may be observed in this connection that there is considerable authority for the view that a foreign state enjoys no immunity from local jurisdiction in respect of the ownership, possession or use of immovable property, except to the extent that such property is devoted to diplomatic or consular purposes. (See Harvard Research in International Law, Competence of Courts in Regard to Foreign States [1932] 26 Am. J. Int'l L. supp. 514 et seq.; 2 Hyde, International Law [2d ed., 1945] 848; Fairman, Some Disputed Applications of the Principles of State Immunity [1928] 22 Am. J. Int'l L. 566, 567; Report of the Sub-Committee of the Committee of Experts for the Progressive Codification of International [League of Nations] in [1928] 22 Am. J. Int'l L. supp. at 122.)

Since the Philippines has sovereignty over Olongapo as part of Philippine territory, the Constitution and general laws of the Philippines, including in particular the Revised Administrative Code and the Revised Election Code, are applicable in Olongapo. The territorial application of laws is coextensive with the territorial limits of the sovereignty of whose will they are manifestations. The only qualification that can be admitted relates to laws whose operation inside the bases is absolutely incompatible with explicit provisions of the Bases Agreement.

The doctrine laid down in *Macolor v. Amores*, 49 O. G. 5336 is not applicable to the case of military and naval reservations. Culion Leper Colony is a national reservation for which an administrative organization, separate and distinct from the municipal government of Coron, is provided by law. Since Culion has no connection whatever with the municipal government of Coron, politically or otherwise, the residents of Culion were properly held as without a right to participate in the election of the municipal officials of Coron. In contrast, there is no law or treaty stipulation creating for Olongapo a political structure or administrative organization apart from and independent of the municipal government of Subic. On the contrary, Olongapo, as above indicated, is subject to the jurisdiction of the municipal government of Subic provided for in the Revised Administrative Code. There is no reason, therefore, for excluding Filipino civilians permanently residing in Olongapo from voting in the municipal elections of Subic.

The permanent Filipino residents of Olongapo are entitled to vote for national officials, according to your law officer, and I agree. This must be based on the recognition that the Philippines retains political sovereignty over that town. If the Bases Agreement, then, has not divested the Philippines of its sovereignty over Olongapo such that its Filipino residents may participate in national elections, I see no reason why it should not follow that they may also vote for municipal and provincial officials, unless, like Culion, Olongapo has been segregated as a separate political entity independent of Subic and Zambales, which is not the case.

The case of voters who are merely temporary residents in the naval reservation is expressly provided for in Section 16 of the Re-

vised Election Code. This Section provides that such temporary residents shall "exercise the right of suffrage as electors of the municipality where they lawfully resided immediately before they were employed in said bases or reservations." By clear inference voters whose permanent residences are in the bases may vote therein.

Respectfully,

(Sgd.) PEDRO TUASON
Secretary of Justice