

## INTERNATIONAL LAW

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### THE POWER OF A U.S. BASE PROVOST MARSHAL TO FILE COMPLAINTS

Under the U.S.-P.I. Military Bases Agreement signed on March 14, 1947,<sup>1</sup> the Republic of the Philippines granted to the United States the right to retain the use free of rent of certain military bases in the Philippines specified in Annex A and Annex B of the Agreement. Under Article III, Section 1 of said Agreement, the United States has all the rights, powers and authority within the bases which are necessary for the establishment, use, and operation or which are appropriate for the control thereof. Instances were provided, too, where the United States shall be free to exercise jurisdiction, namely, (1) any offense committed by any person within any base, except where the offender and the offended parties are citizens of the Philippines or the offense is against the security of the Philippines;<sup>2</sup> (2) any offense committed outside the bases by any member of the armed forces of the United States if the offended party is also a member of the armed forces of the United States;<sup>3</sup> (3) any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States;<sup>4</sup> (4) any offense committed outside the bases by any member of the armed forces of the United States while engaged in the actual performance of a specific military duty;<sup>5</sup> (5) any offense committed outside the bases by any member of the armed forces of the United States during a period of national emergency declared by either the Philippines or the United States;<sup>6</sup> and (6) any offense committed by any member of the armed forces of the United States in time of war.<sup>7</sup> Philippine courts retain jurisdiction over all other offenses.<sup>8</sup>

In the case of *Liwanag v. Hamill*,<sup>9</sup> it appears that the crime for which the petitioner was being held to answer was not among those enumerated above. The question arose as to whether a United States Provost Marshal of the military base wherein the supposed crime was committed may file a complaint in our courts of justice for the prosecution of the alleged offense. The antecedent facts of the case are as follows: The petitioner was accused of violating Section

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<sup>1</sup> 43 O.G. No. 3, 1020 (1947).

<sup>2</sup> U.S.-P.I. Military Base Agreement, Article XIII, §1(a).

<sup>3</sup> *Id.*, Article XIII, §1(b).

<sup>4</sup> *Id.*, Article XIII, §1(c).

<sup>5</sup> *Id.*, Article XIII, §4(a).

<sup>6</sup> *Id.*, Article XIII, §4(b).

<sup>7</sup> *Id.*, Article XIII, §8.

<sup>8</sup> *Id.*, Article XIII, §2.

<sup>9</sup> G.R. No. L-7881, Feb. 2, 1956; 52 O.G. No. 3, 1396.

174 of the Internal Revenue Code committed in the Clark Air Force Base. He moved to quash the complaint on the ground that the respondent, the Assistant Base Provost Marshal of CAFB, who signed the complaint, was not a peace officer of the Republic of the Philippines and therefore not authorized to file a criminal complaint in accordance with Section 2 of Rule 106 of the Rules of Court. This motion to dismiss was denied. Liwanag filed a petition for prohibition which was granted, hence this appeal by Hamill. In finding the appeal meritorious, the Supreme Court said:

"Under the Base Agreement between the United States and the Philippines, Philippine laws continue to be in force in said bases except when otherwise agreed upon. For the purpose of hearing cases therein, Justices of the Peace are appointed and hold offices. They are not appointed by the United States but by the President of the Philippines. But other than Justices of the Peace, no other officers of the Republic of the Philippines are appointed in the bases, much less, peace officers, although agents of the Republic of the Philippines may have access to the bases to see that the laws of the Philippines are enforced. But the question of peace and order within the bases is left to the peace officers of the United States' Army, the chief of whom is the Provost Marshall."

The Court continued:

"To allow peace officers of the Republic of the Philippines to go therein and make arrests or institute prosecutions for violation of Philippine laws would certainly give occasions for conflict of authority. Hence, no provision is made for the appointment of peace officers of the Republic of the Philippines within the bases, and it is understood that the enforcement of Philippine laws is left to the officers of the United States."

The Court concluded:

"It is illogical to deny to these peace officers (of the United States) the power to prosecute violations of Philippine laws in military bases. Hence, provost marshals in military bases have the authority to file complaints for violations of Philippine laws committed in said bases."

#### MEANING OF "TERMINATION OF WAR" WITH REFERENCE TO PRIVATE CONTRACTS

"Termination of war," when used in private contracts, refers to the formal proclamation of peace.<sup>10</sup> Parties, however, may intend otherwise and mean the mere cessation of hostilities, in which case, their intention must be given effect. But this exception, to be given application, must be proved by adequate circumstances, facts and declarations; otherwise, the general rule shall still apply.

Thus, where the parties merely stipulated that the debt shall be paid "within two years after the complete termination of the present Greater East Asia War," or "payable within two years after

<sup>10</sup> *Fabie v. Court of Appeals and Moreno*, G.R. No. L-6368, March 29, 1955.

the end of the war in the Philippines," both stipulations being found in contracts entered into in 1944, it could be presumed, according to the Supreme Court, that the parties contemplated the formal or official declaration of peace, which according to the case of *Mercado v. Punzalan*,<sup>11</sup> where the first stipulation mentioned above was construed, occurred when the San Francisco Peace Treaty was signed on September 8, 1951. In throwing over-board the contention of the defendant that the action to collect brought by the plaintiff on February 20, 1954, was premature because Congress had not yet ratified the San Francisco Peace Treaty and therefore the Philippines was still in a state of war with Japan, the Supreme Court held that to ordinary citizens "uninitiated in technicalities and fine points of international law, war terminates in the common and practical sense, that is upon signing of the treaty of peace."

In the case of *Navarre v. Barredo, et. al.*<sup>12</sup> where the second stipulation mentioned above was found, the Court went further by declaring that war could be considered as terminated as early as December 31, 1946 (prior to the San Francisco Peace Treaty) when President Harry S. Truman issued a proclamation declaring the termination of the Pacific War. This pronouncement was based on the theory that the Philippines, although already an independent republic when said proclamation was issued, was an ally of the United States in the war which was declared terminated.

#### ADMISSION OF ALIENS INTO THE PHILIPPINES

Because of its sovereignty, no state, at least in theory, is under obligation to admit aliens in the absence of treaty stipulations imposing that duty.<sup>13</sup> As a corollary, states are at liberty to impose conditions under which foreigners shall be allowed to enter their territory<sup>14</sup> if such states shall open their doors to aliens. From the foregoing rights of the state, it could be inferred also that a state has the power to exclude or expel aliens. Expulsion may be on the ground that the alien's presence is a menace to the interest or tranquility of the state where he is found, that his entry was illegal, or that he has violated any limitation or condition under which he was admitted.<sup>15</sup>

The state's power to improve conditions for admission of aliens and to expel them for violation of the same is illustrated in the case of *Ang Koo Liong v. Board of Commissioners of the Bureau of Im-*

<sup>11</sup> G.R. No. L-8366, April 27, 1956.

<sup>12</sup> G.R. No. L-8660, May 21, 1956.

<sup>13</sup> SALONGA AND YAP, PUBLIC INTERNATIONAL LAW 185 (1956).

<sup>14</sup> *In re Paterson*, 1 Phil. 93 (1902).

<sup>15</sup> See Com. Act No. 613, §37(a).

migration.<sup>11</sup> It appears in that case that upon petition of the Chinese Chamber of Commerce Elementary School in Daet, Camarines Norte in behalf of the petitioner, who as prearranged, was to teach at the said school, the respondent Board granted to the petitioner a visa as a non-quota immigrant under Section 13(a) of the Philippine Immigration Act of 1940, subject to the condition that he would remain in the Philippines only for two years. Four years after his arrival, he requested an extension of stay in this country for another two years, which petition was denied. He was required to leave the Philippines voluntarily or else be deported; hence this petition for certiorari with preliminary injunction, petitioner claiming grave abuse of discretion on the part of the respondent.

In denying the writs prayed for, the Supreme Court held that since the visa issued to the petitioner allowed him to stay in the Philippines only for two years, the government had the right to expel him after the lapse of the two-year period. The limitation on the duration of the stay of the petitioner in the Philippines is valid.

The Supreme Court further pointed out that since the petitioner had taken advantage of the visa in question, he was estopped from claiming that he was entitled to a permanent stay. The Supreme Court concluded: "The mere fact that the respondent did not choose to enforce the limitation on petitioner's stay immediately upon the expiration of the period given, did not confer upon the petitioner a right to stay longer in these islands."

#### DOMICILE

While it is true that the Philippine conflict rules, in so far as personal status and capacity are concerned, are based primarily on the nationality principle,<sup>17</sup> there are instances when the Supreme Court has found the question of domicile important in the resolution of cases in private international law. Thus, prior to the effectivity of the new Civil Code when an absolute divorce was still allowed, the Court in determining the validity of foreign divorce decrees obtained by Filipinos, ordinarily inquires as to whether the parties to the divorce obtained bona fide domicile in the jurisdiction in which the divorce was obtained.<sup>18</sup>

The case of *Intestate Estate of Andres Eugenio*,<sup>19</sup> while not exactly involving any conflict rule, is noted herein for the light it

<sup>16</sup> G.R. No. L-8789; May 18, 1956.

<sup>17</sup> Article 15, Civil Code.

<sup>18</sup> See *Ramirez v. Gmur*, 42 Phil. 855 (1918); *Gorayeb v. Hashim*, 50 Phil. 22 (1927); *Barretto v. Gonzales*, 58 Phil. 67 (1933); and *Sikat v. Canson*, 67 Phil. 207 (1939).

<sup>19</sup> G.R. No. L-8409, Dec. 28, 1956.

throws on the concept of domicile. This case was instituted in the Court of First Instance of Rizal by Eugenio Eusebio who prayed that he be appointed administrator of the estate of his deceased father who died on November 28, 1952, residing, according to said petitioner in Quezon City. Opposition was filed attacking the jurisdiction of the court on the ground that the domicile of the deceased was in San Fernando, Pampanga and not in Quezon City. It was not disputed that the decedent's domicile for more than seventy years up to at least October 29, 1952 had always been in San Fernando, Pampanga, where he had his home as well as some other property. Inasmuch as his heart was in a bad condition and his son-doctor who was treating him was residing in Quezon City, the deceased bought a house and lot at España Extension in the said city. While transferring his belongings to this house, the deceased suffered a stroke which caused his death on November 28, 1952. Based on the foregoing, the lower court ruled that the decedent was, at the time of his death, domiciled at Quezon City, hence this appeal by the oppositors.

In reversing the decision of the lower court, the Supreme Court, held that since Pampanga was the domicile of origin of the deceased, there was a presumption that he retained such domicile. Under the circumstances of the case, if the deceased established another domicile, it must have been one of choice, for which the following conditions are essential: (1) capacity to choose and freedom of choice, (2) physical presence at the place chosen, and (3) intention to stay therein permanently. Admitting, said the Court, that the decedent was juridically capable of choosing a domicile and that he had been physically present at Quezon City for several days before his demise, there was no direct evidence as to whether he intended to stay at Quezon City permanently. Hence, a new domicile could not have been obtained.

In rejecting the reasoning of the lower court to the effect that the intention in question could be inferred from the acquisition of a house and a lot by the deceased, the Supreme Court pointed out that said acquisition was made upon advice so that he might be placed nearer his doctor and have a more effective treatment. Domicile, according to the Court, "is not commonly changed by presence in a place merely for one's own health even if coupled with the knowledge that one will never again be able, on account of illness, to return home."

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