

INTERNATIONAL LAW

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Admission Of Aliens And Deportation

On account of its sovereignty, no state, at least in theory, is under obligation to admit aliens in the absence of treaty stipulations imposing that duty.¹ As a necessary corollary, states are at liberty to impose conditions under which foreigners shall be allowed to enter their territory,² if such states shall open their doors to aliens. Expulsion and/or deportation 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.³

It is clear that if an alien gains admission to the Philippines on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secure the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently without first departing from the Philippines as he had promised. The law prohibits aliens from entering the Philippines on false pretense, for if the contrary would be entertained and abetted, every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort in examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered.⁴

The above-cited principles were succinctly discussed in *Ang It v. Commissioner of Immigration*,⁵ the facts of which are briefly as follows: petitioner, a permanent resident in this country prior to 1946, went to China for a temporary visit; that when she came back to the Philippines on November 17, 1948, she was admitted as a temporary visitor; and that petitioner's stay as a temporary visitor having expired, she was ordered deported, warrant of deportation having been issued on March 27, 1952, for having violated the Philippine Immigration Act.⁶ The Court, citing a recent case⁷ which has very similar facts as the instant case, suggested that the only remedy or course open to the petitioner to gain permanent admission to this country is to voluntarily depart to some foreign country and procure

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¹ SALONGA AND YAP, *PUBLIC INTERNATIONAL LAW*, 185 (1956).

² *In re Paterson*, 1 Phil. 93 (1902.)

³ See C.A. No. 613, sec. 37(a); *Ang Koo Liong v. Board of Commissioners of the Bureau of Immigration*, G.R. No. L-8789, May 18, 1956.

⁴ *Chiong Tiao Bing v. Commissioner of Immigration*, G.R. No. L-9966, Sept. 28 1956

⁵ G.R. No. L-10225, Nov. 29, 1957.

from the appropriate consular office the proper visa for admission to the Philippines as a permanent resident.

Rights And Responsibilities Of Aliens Under Republic Act No. 1180

Republic Act No. 1180⁶ was enacted to remedy a real threat and danger to national economy posed by alien dominance and control of the retail business and free citizens and country from such dominance and control; that the enactment clearly falls within the scope of the police power of the state, thru which and by which it protects its own personality and insures its security and future; that the law does not violate the equal protection clause of the Constitution because sufficient grounds exist for the distinction between alien and citizen in the exercise of the occupation regulated, nor the due process of law clause, because the law is prospective in operation and recognizes the privilege of aliens already engaged in the occupation and reasonably protects their privilege.

The above-mentioned doctrines were clearly enunciated in *Ichong et al. v. Hernandez et al.*⁷ *Ichong et al.* brought this action for declaratory relief alleging the unconstitutionality of Republic Act No. 1180. Petitioners' principal ground of attack is that said Act denies to alien residents the equal protection of the laws¹⁰ and due process of law.¹¹ The important provisions of the disputed law are: a prohibition against persons, not citizens of the Philippines, and against associations, partnerships, or corporations the capitals of which are not wholly owned by citizens of the Philippines, from engaging directly or indirectly in the retail trade;¹² an exception from the above prohibition in favor of aliens actually engaged in said business on May 15, 1954, who are allowed to continue to engage therein, unless their licenses are forfeited in accordance with the law, until their death or voluntary retirement in case of natural persons, and for ten years after the approval of the Act or until the expiration of the term in case of juridical persons;¹³ an exception therefrom in favor of citizens and juridical entities of the United States;¹⁴ a provision allowing the heirs of aliens now engaged in the retail business who die, to continue such business for a period of six months for purposes of liquidation.¹⁵

Alleged Violation Of International Treaties And Obligations

Another subordinate argument against the validity of Republic Act No. 1180 in the *Ichong case* is the supposed violation thereby of the Charter of the United Nations¹⁶ and of the Universal Declaration

⁶ C.A. No. 613 (An Act to control and regulate the immigration of aliens into the Philippines) August 26, 1940.

⁷ *Sy Hong et al. v. Commissioner of Immigration*, G.R. No. L-10224, May 11, 1957.

⁸ An Act to Regulate the Retail Business, June 19, 1954.

⁹ G.R. No. L-7995, May 31, 1957.

¹⁰ PHIL. CONST., Art. III, Sec. 1 (1).

¹¹ *Ibid.*

¹² Rep. Act No. 1180, sec. 1 (June 19, 1954).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*, sec. 3.

of Human Rights¹⁷ adopted by the United Nations General Assembly. The Court found no merit in this contention. The United Nations Charter imposes no strict or legal obligations regarding the rights and freedom of their subjects,¹⁸ and the Declaration of Human Rights contains nothing more than a mere recommendation, or a common standard of achievement for all peoples and all nations.¹⁹ That such is the import of the United Nations Charter and of the Declaration of Human Rights can be inferred from the fact that members of the United Nations Organization, such as Norway and Denmark, prohibit foreigners from engaging in retail trade, and in most nations of the world laws against foreigners engaged in domestic trade are adopted.

The Treaty of Amity between the Republic of the Philippines and the Republic of China²⁰ is also claimed to be violated by the law in question. All that the treaty guarantees is equality of treatment to the Chinese nationals "upon the same terms as the nationals of any other country." The Court made the observation that "the nationals of China are not discriminated against because nationals of all other countries, except those of the United States, who are granted special rights by the Constitution, are all prohibited from engaging in the retail trade." But even supposing that the law infringes upon the said treaty, the treaty is always subject to qualification or amendment by a subsequent law,²¹ and the same may never curtail or restrict the scope of the police power of the State.²² The Court stressed the point that the disputed law "cannot be said to be void for supposed conflict with treaty obligations because no treaty has actually been entered into on the subject."

Termination Of The Greater East Asia War

War terminates in a legal sense upon official proclamation.²³ In the legal sense, war formally ended in the Philippines the moment President Truman officially issued a proclamation of peace on December 31, 1946 upon the theory that the Philippines, even if already independent, was an ally of the United States.²⁴ And if counsel meant that there should be a formal treaty of peace, the purpose has been accomplished when the treaty of peace with Japan had been signed in San Francisco, California on September 8, 1951 by the United States and the Allied Powers, including the Philippines.²⁵

*Kare et al. v. Imperial et al.*²⁶ illustrates the above-stated principles. On June 12, 1944, Jose Imperial Samson executed a pacto de

¹⁶ June 26, 1945.

¹⁷ Dec. 10, 1948.

¹⁸ KELSEN, THE LAW OF THE UNITED NATIONS, 29-32 (1951).

¹⁹ *Id.* at 39.

²⁰ April 18, 1947.

²¹ *United States v. Thompson*, 258 Fed. 257, 260.

²² *Patson v. Pennsylvania*, 58 L. ed. 539 (1914).

²³ *De la Paz Fabie v. Court of Appeals*, G.R. No. L-6386, March 29, 1955.

²⁴ *Navarre v. Barredo et al.*, G.R. No. L-8660, May 21, 1956; *Mercado v. Punalan*, G.R. No. L. 8366, April 27, 1956.

²⁵ *Ibid.*

²⁶ G.R. No. L-10176, Oct. 22, 1957.

retro sale in favor of Morales, the period of redemption being as follows: "3.—Que la SEGUNDA PARTE por la presente concede a la PRIMERA PARTE el derecho de recomprar la propiedad arriba mencionada, entendiendose expresamente sin embargo, que dicha compra se podra ejercitar por dicha un (1) año a partir de la expiracion de seis (6) meses despues de la terminacion de la presente guerra en el Asia Oriental Mas Grande, y que dicho retracto no se efectuara en ningun caso antes de la expiracion de dichos seis (6) meses aqui estipulados. x x x" In other words, the parties stipulated that the repurchase could be made at the end of the Greater East Asia War, not sooner than six months, but not later than eighteen months thereafter. From the termination of the war on December 31, 1946 to the filing of said action on March 12, 1947, there was an interval of only about three months, so that the offer to repurchase was made well within the period fixed by the parties.

Ratification Of Treaty Of Peace Concluding The Greater East Asia War

As the Treaty of Peace was expressly described as "concluding the present Greater East Asia War," not a war between the Philippines and Japan, said ratification should be only by a majority of the signatory powers. Indeed, Article 23 (a) of the Treaty of Peace provides that "the present Treaty shall be ratified by the States which sign it, including Japan, and will come into force for all the States which have then ratified it, when instruments of ratification have been deposited by a majority, including the United States of America as the principal occupying Power, of the following States, namely, Australia, Canada, Ceylon, France, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America."

This is the ruling in *Arellano v. De Domingo et al.*²⁷ Plaintiff-appellant sold a parcel of land to the defendant-appellees for the sum of ₱150,000.00, and the transaction was evidenced by a deed of sale with mortgage executed on December 18, 1943. The contract provided that "no payment... shall be made... until after one year counted from the date of ratification of the Treaty of Peace concluding the present Greater East Asia War...." The only question that arises is whether by the terms, "after the ratification of the Treaty of Peace concluding the present Greater East Asia War," the parties contemplated the factual termination of the Greater East Asia War on September 2, 1945 upon the formal signing of the treaty of surrender of the Japanese Imperial Forces to the Allied Forces at Tokyo Bay (as contended by the appellants), or to the actual ratification by the Philippines of the Treaty of Peace concluding the Greater East Asia War, which has not yet taken place (as contended by the appellees). The Court agreed to appellees' observation that the contract expressly mentions "ratification" of the Treaty of Peace; but the Court did not accept the further view that the required ratification should be by the Philippines.

²⁷ G.R. No. L-8679, July 26, 1957.

The Court declared that the participating countries, namely, Japan, Australia, Canada, Ceylon, France, New Zealand, Pakistan, United Kingdom of Great Britain and Northern Ireland, and the United States, constituting the majority and all concerned with the Great East Asia War, had already ratified the Treaty of Peace. The United States (which together with Ceylon, last ratified the Treaty) deposited its instrument of ratification on April 28, 1952 when in accordance with article 23 (a), the Treaty came into force. Said date should be, the Court concluded, the starting point of the periods stipulated in the contract.²⁸

²⁸ With due respect to the Court, it should be observed that although on April 28, 1952, the United States, together with Ceylon, deposited its instrument of ratification and thus attaining the majority required by Article 23(a) of the Peace Treaty, and thus the Treaty comes into force for all the States which have *then* ratified it, the fact remains that the Philippines ratified the Peace Treaty only in 1956, and that as far as the Philippines is concerned, the state of war with Japan was formally ended only on July 23, 1956 when the Philippines represented by Ambassador Carlos P. Romulo deposited its instrument of ratification of the 1951 Peace Treaty in Washington, D.C., at almost the same time that in Tokyo, Philippine Minister Jose F. Imperial and Japanese Foreign Minister Mamoru Shigemitsu exchanged instruments of ratification of the \$550 million Reparations Agreement signed May 9, 1956.