INTERNATIONAL LAW

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Let it be stated and suffice it to observe, by way of introduction and summing up, that in the more important 1959 cases falling under this title, one of which might have been landmark-making, the Supreme Court, wittingly or unwittingly, side-stepped significant issues. Consequently, it failed to make thereon definite rulings in international law which might be of particular importance in this country.

INTERNATIONAL AGREEMENTS

VALIDITY AND BINDING EFFECT OF TREATIES AND EXECUTIVE AGREEMENTS

In order that an international agreement may be binding upon a state, the negotiating functionary acting in its behalf must have been competent to conclude the same.[1] This means that he must not only have power or have been accorded full power so to act in accordance with his state's constitution and its relevant municipal legislation,[2] but he must also have remained within, that is to say, he must not have exceeded, his power.[3] Aside from this requisite of competence, it is also essential, in certain agreements and in certain countries,[4] that there be ratification given in conformity with the constitutional processes and requirements of the contracting state.[5] Thus in the Philippines,[6] as well as in the United States,[7] it is required by constitutional provision that treaties entered into by the President thereof must be concurred in by at least two-thirds of the members of the Senate. This, according as theory and practice in the United States (from which we bor-

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1 GOULD, AN INTRODUCTION TO INTERNATIONAL LAW, 308 (1957).

SVARLIEN, AN INTRODUCTION TO HE LAW OF NATIONS 275 (1955).

3 WILCOX, RATIFICATION OF INTERNATIONAL CONVENTION, 232-233 (1935), cited in 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW, 396.

4 GOULD, **op. cit.**, note 1, p. 309. Some authorities, however, like Hackworth, believe that even unconstitutionally concluded treaties impose international obligations. See BISHOP, INTERNATIONAL LAW: CASES AND MATERIALS, 90-91 (1953). In line with this view is that of Schwanzenberger who makes a distinction between "international ratification" and "internal ratification, that is to say, the approval of a treaty by a State under the constitution of any particular State. As distinct from internal ratification, international ratification means the final confirmation by the Head of State or the Government Department which is responsible for the conduct of a State's foreign affairs that the consensual engagement is binding between the parties to the treaty." SCHWARZENBERGER, INERNATIONAL LAW, 432 (1957). (Note: The tetrm "treaty" is here used in a comprehensive sense to cover all types of international agreements). Cf. HARVARD RESEARCH, DRAFT CONVENTION ON TREATIES, 29 A.J.I.L. (Supp.), 999-1008 (1935), on the tendency of national authorities, including the national courts, to deny the binding force of treaties concluded in violation of their own constitutions, while executive authorities insist upon the validity of treaties so concluded when the government of another state is the offender. The conclusion, p. 1008, is that treaties concluded by incompetent organs are not binding.

5 JESSUP, A MODERN LAW OF NATIONS, 125 (1948).

6 PHIL. CONST., Art. II, Sec. 2 (2):

"The President shall have the power, with the concurrence of two-thirds of the members of the Senate, to make treaties..."

7 U.S. CONST., Art. II, Sec. 2(2):

"He (the President) shall have the Power, by and with the Advice and Consent of the Senate, to make treaties..."

rowed this formal requirement) interpret it, places treaties on a different level from so-called executive agreements, as to which no ratification by the Senate is necessary.[8]

The presence or lack of both the above-stated conditions of validity — competence and ratification[9] — with respect to the Romulo-Snyder Agreement[10] was put in issue in the case of *USAFFE Veterans Association, Inc. v. The Treasurer of the Philippines, et al.*[11] By that Agreement the Philippine Government, in 1950, obtained as a loan from and undertook to return to the United States Government in ten annual installments total of about 35-million dollars advanced by the United States to, but unexpended by, the Armed Forces of the Philippines.[12] In compliance with that undertaking, our Government has appropriated by law and paid to the U.S. Government up to and including 1954, yearly installments totalling ₱33,187,663.24. In order to restrain the defendants[13] from further disbursing any fund in the National Treasury in pursuance of the Agreement and to have the payments thereunder declared illegal, the USAFFE Veterans Association brought the action in the above-entitled case to annul said Agreement. As a beneficial relief, it asked that the moneys available, instead of being remitted to the United States, should be turned over to the Armed Forces of the Philippines for the payment of all pending claims of the veterans represented by plaintiff. It was argued by plaintiff, *inter alia*, that the negotiating officers lacked authority to conclude the Agreement and that it was not given the needed ratification by the Senate to make it binding on our Government. With respect to the first part of this argument, the Supreme Court said that there was no doubt that President Quirino approved[14] the negotiations and that he had the power to contract for budgetary loans under Republic Act No. 213. On what it considered the most important argument, the lack of ratification by the Senate, the Court merely quoted the defendants contention that the Agreement is not a treaty as contemplated by the Constitution which needed the concurrence of the Senate; it is an executive agreement which may be classified under either of the two kinds of such agree-

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8 5 HACKWORTH, DIGEST OF INTENATIONAL LAW, 396.

9 The question of ratification, following the American distinction, logically involves the question of whether the Agreement is a treaty or an executive agreement and, if the latter, whether it was proper to have been entered into in that form. The Court, however, as will be seen later, did not make a direct pronouncement on this point, with respect to which it was seemingly indifferent. Thus the question remains unanswered whether, in this jurisdiction, it is proper to adopt, as some local writers or commentators on the Constitution assume, the distinction made in the United States between treaties and so-called executive agreements. A doubt as to the propriety of adopting such distinction is not altogether unfounded because of the undeniable danger that the President may, under such construction, at liberty disregard the ratifying power of the Senate, there being no established criterion by which it may be determined when a "treaty" should be intered into instead of an "executive agreement", and vice-versa. Besides, it must be remembered that in its international legal sense the term "treaty" is generally used to denote all kinds of international agreements.

10 Agreement relating to the repayment of Funds Advanced to the National Defense Forces, Republicof the Philippines, by the Philippine-Ryukus Command, 122 UN—TREATY SERIES, 63.

11 G.R. No. L-10500, June 30, 1959.

12 By order of President F. D. Roosevelt, who then foresaw the Pacific War, all the units of the Philippine Armed Forces were incorporated into the United States Armed Forces in the Far East in October, 1941, under the command of Gen. Douglas MacArthur, for the duration of the war.

13 The Treasurer of the Philippines, the Governor of the Central Bank, the Secretary of Finance, and the Auditor General.

14 This amounted to what Schwarzenberger calls "international ratification." See note 4, supra.

ments[15] and did not need such concurrence to be binding. The Court remarked that "such considerations *seem persuasive*."[16] (Emphasis supplied).

The Court then stated, by way of direct pronouncement, that "Senate Resolution No. 15(3)[17] practically admits the validity and binding force of such Agreement. Furthermore, the Acts of Congress appropriating the funds for the yearly installments necessary to comply with such Agreement, *constitute a ratification thereof*,[18] which places the question of validity out of the Courts' reach, no constitutional principle having been invoked to restrict Congress' plenary power to appropriate funds — loan or no loan.' (Emphasis supplied).

ALLEGED VIOLATION OF INTERNATIONAL AGREEMENTS

No principle is more fundamental, pervading, and sacred in international law than that which ultimately[19] gives to international agreements duly entered into their binding quality — that under which the contracting parties are expected to carry out their agreements in good faith: *pacta sunt servanda*.[20] In recognition of this basic norm, Republic Act No. 265, in authorizing the Monetary Board of the Central Bank to adopt, in times of crisis, temporary restrictive measures on exchange sales or operations, provides that the adoption of such emergency measures shall be subject to any executive and international agreements to which the Republic of the Philippines is a party.[21] In *People v. Koh, et al.*,[21a] the defendants, in order to absolve themselves of the charge of having violated C.B. Circular No. 20, which was issued

15 Purely executive agreements and legislative-executive agreements. See HACKWORTH, DIGEST OF INTERNATIONAL LAW, 394 et seq.

16 This does ..not necesssrily mean that the Court adopts the American distinction between treaties and executive agreements, see note 9, supra, for it continues: "...but we do not stop to check the authorities above-cited by the appellees nor test the conclusions arrived at by them thereunder, in order to render a definite pronouncement because Senate Resolution No. 15(3)...." (See quotation in the text).

17 This is a **concurrent** resolution, not an exclusive one of the Senate, adopted on May 19, 1954. Pertinent provisions of the preamble are the following:

WHEREAS, by virtue of the Romulo-Snyder Agreement, the Philippine Government is obliged to return to the Treasury of the United States the balance of USAFE funds in ten equal annual installments with the interest at the rate of 2-1/2 per cent annum:

"WHEREAS, the claims of Philippine veterans and the Philippine Government are direct charges against the funds subject of the Romulo-Snyder Agreement:

"WHEREAS, under Artitcle III of the said Romulo-Snyder Agreement, the rights of the Republic of the Philippines to negotiate with the Government of the United States for the settlement of any pending claims outstanding as of the effective date of said Agreement, are expressly recognized as subsisting.... Now, therefore, be it

"Resolved by the Senate, the House of Representatives of the Philippines concurring, that the President of the Philippines is hereby requested to take immediate and necessary steps.. for the renegotiation of the Romulo-Snyder Agreement with the view to making the funds thereunder, Available for the payment of pending claims in favor of Philippines veterans and the claims in favor of the Philippine Government."

18 Did the necessary number of Senators give their approval to these Acts, which may be approved by mere majority?

19 According to Kelsen, this maxim "is the reason for the validity of treaties, and hence the 'source' of all the law created by treaties" KELSEN PRINCIPLE OF INTERNATIONAL LAW, 314 (1952). The words of Cordell Hull aptly describe the importance of this rule: "Observance of understandings, agreements and treaties between nations constitutes the foundation of international order." Quoted in SVARLIEN, op. cit., note 2

20 Literally translated, it means: "Agreements must be observed."

21 "Sec. 74 **Emergency restrictions on exchange operations.** Notwithstanding the provisions of the third paragraph of the preceding section, in order to protect the international reserve of Central Bank during an exchange crisis and to give the Monetary Board and the Government time in which to take constructive measures to combat such a crisis, the Monetary Board, With the consurrence of at least five of its members, and with the approval of the President of the Philippines, may temporarily suspend or restrict sales of exchange by the Central Bank and may subject all transactions in gold and foreign exchange to license by the Central Bank. The adoption of the emergency measures authorized in this section shall be subject to any executive and international agreements to which the Republic of the Philippines is a party."

21a G.R. No. L-124, May 29, 1959.

pursuant to Section 74 of Republic Act No. 265, attacked said circular as invalid by alleging, *inter alia*, that it contravenes certain such international agreements. The lower court dismissed the information and absolved the defendants for lack of showing by the prosecution that no such contravention exists. In holding this ruling erroneous and declaring the circular valid, the Supreme Court observed:

> "As to the international aspect, it is not incumbent upon the prosecution to prove that the provisions of Circular No. 20 complied with all pertinent international agreements binding upon our Government. The Central Bank and the President certify that it accords therewith, and it is presumed that said officials knew whereof they spoke, and that they performed their duties properly. It is rather for the defense to show conflict, if any, between the Circular and our international commitments."

The Court also found that, contrary to the defendants' allegation, no provision of the International Monetary Fund Agreement[21b] may be interpreted to prohibit the action taken by the Central Bank. Neither is there, as defendants also alleged, a contravention of the provisions of Article V of the Agreement Between the Philippines and the United States Concerning Trade and Related Matters[21c] that:

> "That value of Philippine currency in relation with the United States dollar shall not be changed, and the convertibility of Philippine pesos in United States dollars shall not be suspended, and *no restriction shall be imposed upon the transfer of funds from the Philippines to the United States except by agreement with the President of the United States.*" (Emphasis by the Court).

According to the Court, the official statement of the American Embassy in Manila that the United States "would concur" in the adoption by the Philippines of temporary exchange controls constituted approval by the U.S. Government of the imposition of such measures.

SCOPE OF THE TAX EXEMPTION CLAUSE OF THE P.I.-U.S. AGREEMENT OF FEBRUARY 14, 1947

On February 14, 1947, the Philippines and the United States entered into an agreement regarding a road, street and bridge program to be effected with a view to enhancing the national defense and economic rehabilitation of the Philippines. Among other things, it was agreed upon that:

> "Pending the conclusion of negotiations now being considered by the Republic of the Philippines and the United States of America, no impost, excise, consumption, or other tax, duty or impost shall be levied on funds or property in the Republic of the Philippines which is owned by the Public Roads Administration and used for purposes under the present Agreement or on funds, materials, supplies and equipment imported into the Republic of the Philippines for use in connection with such purposes; neither shall any such tax, duty or impost be levied on personal funds or property, not intended for resale, imported into the Philippines for the use or consumption of the Public Roads Administration personnel who are United States citizens; nor shall export or other tax be placed on any such property in the event of its removal from the Philippines."[22]

In the case of *Ilagan & Alejandrino v. The Collector of Internal Revenue*,[22a] the petitioner, Ilagan & Alejandrino, a partnership engaged in busi-

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21b I UN TREATY SERIES 202, December 27, 1945.

21c 43 UN TREATY SERIES 136 (1949).

22 Agreement Between the Republic of the Philippines and the United States of America Regarding a Road, Street and Bridge program, Art. XIV. See: 174 UN TREATY SERIES 278.

22a G.R. No. L-11134, September 30, 1959.

ness as road contractor, claimed the benefit of this exemption clause with respect to sums received by it from contracts for the construction or rehabilitation projects, said receipts having come from funds owned by the U.S. Public Roads Administration by virtue of the Agreement herein mentioned. The Supreme Court found as of no merit the claim of the partnership. Neither, it held, the above-quoted clause nor any other provision of the Agreement exempts the gross receipts of the partnership for road constructions from taxes imposed by the Government of the Philippines. Such receipts are not *funds* or *property*, or *funds, materials, supplies* and *equipments* within the meaning of the Agreement. While still in the possession of the officers of the U.S. Government, they fall under the exemption. But once they are paid to a private citizen, like the partnership-appellant, they cease to be fund and property of the United States. They become receipts of the partnership subject to tax.

NATIONALITY

NATIONALITY OF AN ILLEGITIMATE CHILD

The long-settled[23] rule in this jurisdiction, sanctioned by international law,[24] that the illegitimate child of a Filipino woman by an alien father follows the citizenship of its mother, its legally recognized parent, is reiterated in *Zamboanga Transportation Co., Inc. v. Lim, et al.*[25]. In that case, the petitioner transportation company sought to disqualify the respondent, Rosalio Lim, from operating a TPU service on the ground that, not having elected,[26] as the child of a Filipino mother, Philippine citizenship within the time required by law, he was therefore an alien. The Public Service Commission, however, found out that respondent Lim is such an illegitimate child, and ruled that it was unnecessary for him to choose Philippine citizenship upon reaching majority. The high Court upheld the Commission's ruling.

ADMISSION AND EXPLUSION OF ALIENS

Owing to its sovereign status as member of the international community, a state is under no duty to admit aliens to its territory unless there is a treaty stipulation imposing that obligation.[27] If it does admit them, it may do so on such terms and conditions as may be deemed by it to be consonant with its national interest.[28] By the same token, a state is free to deport from its territory any allien whose presence therein may be regarded by it as undesirable,[29] as when his presence is a menace to the interest or tran-

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** For case in Naturalization law, a subject which leading writers in international law treat under this heading, see the survey of 1959 cases in Civil Law found elsewhere in this Journal.

23 U.S. v Ong Tianese, 29 Phil. 332 (1915); Santos Co. v. Government, 52 Phil. 513 (1928); Serra v. Republic, G.R. No. L-4223, May 12, 1952; Ratuñal Sy Quimsuan v. Republic, G.R. No. L-5111, February 28, 1954.

24 Article 1 of the **Special Protocol Relating to a Certain Case of Statelessness**, passed by the Hague Conference on the Codification of International Law of 1930, provides:

"In a state where nationality is not conferred by the mere fact of birth in its territory, a person born there of a mother possessing the nationality of that state and of a father without nationality or of unknown nationality shall have the nationality of that state."

25 G.R. No. L-10975, May 27, 1959.

26 PHIL. CONST., Article. IV, Sec. 1:

"The following are citizens of the Philippines:

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship."

27 SALONGA & YAP, PUBLIC INTERNATIONAL LAW, 127 (1958).

28 HACKWORTH, op. cit., notes, p. 549; Nishimura Ekiu, 142 U.S. 659 (1891), cited in KELSEN, op. cit. notet 19, p. 543n.

29 HACKWORTH, op. cit. note 8, p. 717.

quility of the expelling state, or his entry was illegal, or he has violated any condition or limitation under which he was admitted.[30]

These sovereign prerogatives have always been, and continue to be, jealously and assertively exercised by the Republic, as may be seen in the cases that follow.

NATURE AND EXTENT OF THE POWER OF THE COMMISSIONER OF IMMIGRATION TO DEPORT

In *Brito, et al. v. The Commissioner of Immigration*,[31] it appears that the petitioners. Olegario Brito, a Filipino citizen, and Tan Soo *alias* So Wa, were married in Hongkong in 1954. The wife, Tan Soo, was admitted to this country in 1955 as the lawful wife of a Filipino acquiring her husband's citizenship.[32] On January 16, 1957, however, the Commissioner of Immigration issued a warrant of arrest against Tan Soo on account of the discovery of the marriage contract between Olegario Brito and one Narciso Maya entered into in Manila in 1943. To prevent her arrest upon the warrant issued in order to show cause why she should not be deported, Tan Soo and her husband brought this petition for prohibition, mandamus and injunction against the Commissioner, which the lower court granted. The Commissioner appealed. The question was: Does the said Commissioner have the power to determine the validity of the marriage contracted by petitioners for the purpose of arresting and deporting Tan Soo? The high Court first described the nature of the power to deport, saying:

> "There is no question that the power to deport is limited to aliens, that the citizenship is determinative of the jurisdiction of the Commissioner of Immigration, and that the power to deport carries that of determining the respondent's nationality."

But, it then asked, if the question of nationality is dependent upon the validity of the respondent's marriage may the Commissioner pass judgment thereon?

> "It is true" — said the Court — "that in relation to the marriage of petitioners no assumption can arise or should be made from the mere discovery of the marriage ocntract between Olegario Brito and Narcisa Maya executed in 1943, without proof that the first wife was still alive or that said marriage was otherwise still subsisting in 1954 . . . . (But) in any event, these considerations going into the validity of the marriage of petitioners are not an obstacle to the preliminary proceedings to be conducted in this particular case by the appellant Commissioner of Immigration pursuant to Section 37(a) of the Philippine Immigration Act, as amended, to determine whether or not a *prima facie* case exists against apellee Tan Soo *alias* So Wa to warrant her deportation."

EFFECT OF ALIEN'S VOLUNTARY DEPARTURE ON DEPORTATION SENTENCE FOR ILLEGAL ENTRY

The mere fact that petitioner voluntarily left the country at her own expense did not have the effect of revoking the final order of deportation and the decision supporting the same. The mere fact that she voluntarily deported herself at her own expense did not erase the fact that she had en-

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30 Com. Act No. 613, Sec. 37(a); Ang Koo Liong v. Board of Commissioners, G.R. No. L-8789, May 18, 1956.

31 G.R. No. L-12325, Octoer 30, 1959.

32 Com. Act No. 473, as amended.

"Sec. 15. Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

tered the country surreptitiously and without permit from the proper authorities and without proper documents and is subject to deportation. Even admitting *arguendo* that, because of said fact, petitioner is not a deportee as she had not been actually deported, then at least she is a person who has been excluded from the Philippines within the meaning of Section 29 of the Immigration Act. As such she can only be admitted when the Commissioner waives the application of the law in favor of allowing the alien to enter the Philippines.[33]

RULE AS TO ALIEN TEMPORARY VISITOR

A temporary visitor is not entitled to stay in the Philippines beyond the period stated in the permit given her therefor. Upon the expiration of said permit, she is subject to deportation. Should the Secretary of Foreign Affairs and the Commissioner of Immigration attempt to deport her, they would, therefore, be acting, not with grave abuse of discretion, but in compliance with a duty imposed upon them by law, and, hence, within their jurisdiction. In such case it would be manifestly improper to issue a writ of prohibition against said officials.[34]

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33 Ko Wai Me v. Galang, et. al., G.R. No. L-13661, November 28, 1959.

34 Yeng v. Secretary of Foriegn Affairs, et. al., April 30, 1959; see also Ang Liong v. Commissioner of Immigration, G.R. No. L-12231. December 29, 1959 and Lee Suan Sy, et. al. v. Galang, et al., G.R. No L-11855, December 23, 1959.