URBAN PLANNING IN THE PHILIPPINES

INTRODUCTION

Urban planning is a relatively new concept. Its growing importance is keenly felt due to the ever-increasing demands on the welfare state. Planning is now a recognized necessity for the protection of land values and the systematic development of the community for the maintenance of the people's health and safety. It is mainly concerned with the problems of housing to prevent overcrowding and concentration of population as well as the regulation of land uses and the formulation of physical development plans for communities. These are matters necessary for the development of a healthy and organized community life.[1]

While planning lays down the general scheme of development, it is through legislation that the state can effectuate its plans. Laws and ordinances affecting vital property rights have been challenged as an impairment of vested rights, and a taking of private property without due process and the payment of just compensation.[2] However, such measures can be a valid exercise of the police power or of the right of eminent domain provided the constitutional requisites for their exercise are satisfied.[3]

BACKGROUND

In the Philippines the idea of urban planning as a distinct governmental activity has gained ground. The first known agency expressly vested with the task of preparing plans and specifications for the improvement and future development of all cities and municipalities was the Bureau of Public Works.[4] Plans once adopted by city, municipal or provincial authorities and approved by the Secretary of Interior became official plans and no change, modification or revision in their execution could be made without the approval of the Secretary of Interior upon the recommendation of the Director of Public Works. The Burnham Plans for the City of Manila and of Baguio were made the bases for the future development of these cities.[5] But because of the multiplicity of its functions, little activity was undertaken by the Bureau. Moreover,

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[1] RATHKOPF, LAW OF ZONING AND PLANNING, 1 (3rd ed. 1956)
[2] Francisco v. National Planning Commission, 100 Phil. 985 (1957)
[3] Hipolito v. City of Manila, 87 Phil. 180 (1950)
[4] Rev. Adm. Code, Secs. 1901 (f), 1903
[5] Rev. Adm. Code, Sec. 1905

many of the towns and cities of the Philippines are spontaneous outgrowths and unplanned settlements. These settlements have aptly been described as following a lineal pattern, where dwellings follow the lines of the coasts or hugged the river banks. This persists even today, where elongated settlements of houses string thinly along the roads and the highways laid out in modern times.[6]

The concept of urban planning in this country is of American origin. If any discernable plan existed before the American regime, it was the Spanish system of establishing towns and cities by laying out the sites for the church, the town hall, the school buildings, and residences of the chief citizens around a public square or plaza. The life and activity of the whole community was concentrated around this plaza.[7] The modern idea of urban planning is a far-cry from this medieval set-up. Planning today favors the spreading out of the population, with the expansion and the division of the division of the community into well ordered and well-organized districts. It is difficult to make radical alterations in the established towns and cities without encroaching on vested property rights, even in essential matters like the widening of streets which can no longer meet the needs of present day traffic.

POST-WAR DEVELOPMENTS

The post-war period would have been the most appropriate time for Philippine towns and cities to adopt adequate planning and zoning regulations. The metropolitan areas were devastated by the Pacific war. It was then possible to lay out and implement plans for future land-use and to promulgate objectives for the reconstruction and future development of communities. The cost of expropriation would not have been as high then as it is today. Resistance to ordinances regulating land uses would not have been as great where buildings originally constructed had been totally destroyed and new buildings had not been put up.

The possibility of a more organized development was in fact foreseen. On March 11, 1946, an Urban Planning Commission was created by President Sergio Osmeña.[8] This Commission was organized with the specific purpose of preparing general plans, zoning ordinances and subdivision regulations, to guide and accomplish a coordinated, adjusted, harmonious reconstruction and future development of urban areas. It

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[6] CORPUZ, THE PHILIPPINES, 7-8 (1965)

[7] HART, THE PHILIPPINE PLAZA COMPLEX, A FOCAL POINT IN CULTURAL CHANGE, (1955)

[8] Ex. O. No. 98, (1946) 42 O.G. 425 (March 1946)

superseded the Administrative Code provisions on urban planning. In 1947, a Real Property Board was also organized under Administrative Order No. 388[9], to attend to the real estate problems of the City of Manila. In 1948, a Capital City Planning Commission was created by Republic Act No. 333,[10] with powers to prepare the master plan for Quezon City, the capital city of the Philippines, including subdivision and zoning regulations. It was also charged with the duty to attend to various private estate problems arising from the formulation and execution of the plan. Republic Act No. 333, granted express authority to adopt rules and regulations to govern the acquisition of private lands and their subdivision into small lots for lease or sale as far as possible to the highest bidder.[11] This statutory authority differs from the expropriation authorized in the Constitution, of lots to be subdivided and conveyed at cost to individuals.[12] Under this constitutional authority the size of the land, the number of people benefited and the social and economic reform secured by the condemnation are primary considerations to justify the expropriation.[13] Republic Act No. 333, authorizes the government in effect to make an investment in a subdivision business, conveying lots to the highest bidders at the same time directing the urban development of the city. This provision is not only of doubtful constitutionality but also economically unsound. When the Capital City Planning Commission promulgated its land policy, in consonance with this provision, the Realty Board aired its criticism, stating its doubts as to the propriety and constitutionality, of the government engaging in a subdivision venture, considering its financial capacity and the need of funds for other public purposes.[14]

The presence of three independent entities with overlapping functions was not conducive to economy and efficiency. In 1950 by virtue of a Reorganization Act the President abolished these three agencies. Their powers, duties and functions were consolidated in a single body, the National Planning Commission.[15] The laws and orders creating them

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[9] Adm. O. No. 38 (1947), 43 O.G. 3036 (August, 1947)

[10] Rep. Act No. 333, (1948) 3 Laws and Res. 623

[11] Rep. Act No. 333, Sec. 8

[12] "The Congress may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals." Const. Art. XIII, Sec. 4

[13] Guido v. Rural Progress Administration, G.R. No. 2089, Oct. 31, 1949, 47 O.G. 1848 (1949)

[14] MANILA REALTY BOARD, COMMENTS AND RECOMMENDATIONS ON THE LAND POLICY OF THE CAPITAL CITY PLANNING COMMISSION 8, (1949).

[15] Ex. O. No. 367 (1950), 46 O.G. 5301 (Nov. 1950)
Sec. 1. The National Planning Commission shall have all the powers, duties and functions now vested by law upon the National Urban Plannning Commission, the Real Property Board except as are inconsistent therewith.

were not affected, it was only a reorganization for economy and efficiency.

THE NATIONAL PLANNING COMMISSION

The scope of the Commission's powers included planning at all levels local, regional and national. In planning for particular urban areas, the Commission prepares the physical development and master plan, the principal elements of which are: (1) proposal for streets, (2) location of transportation terminals, like railroad depots, bus stations, wharves, airports, etc., (3) sites for government buildings, (4) sites for parks, playgrounds, civic centers, etc., (5) proposal for land use or zones and (6) sometimes, the lines of utilities.[16] This master plan is aided by the enforcement of zoning, subdivision, building and other regulations. But before the Commission could adopt or amend any resolution or general plan, it had to hold a public hearing, giving adequate notice of its time, place and nature. This public hearing was specifically indicated, considering that these planning, subdivision and zoning regulations affect property interests and touch on assorted fields of human activity. Rules are also promulgated for the conservation, repair and alteration of buildings, to minimize fire hazards and to promote the public safety and welfare.[17]

The National Planning Commission could most effectively control the development of the urban areas by the exercise of its power to promulgate rules and regulations on zoning, subdivision and buildings. It is in these areas where controversies arise, because of encroachments on private property rights. The validity of these regulations have generally been upheld when they are aimed at a physical development of the community and its environs in the relations to the social and economic well-being and provide the legal framework within which the community may carry on a coordinate planning of all connected development.[18] But the courts have declared the inapplicability of some regulations and found for the individuals whose property was affected. In one case, a subdivision requirement of one-hundred eighty square meters (12 x 15) size of subdivided lots was considered inapplicable because another law provided for an area of one-hundred fifty square meters only. Moreover, it appeared that the tenants occupied the lots long before the regulation was formulated by the Commission and approved by the Municipal Board of

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[16] SINCO AND CORTES, PHILIPPINE LAW ON LOCAL GOVERNMENTS, 82, (1955)
[17] Ex. O. No. 98 (1946), Secs. 5, 8 (e)
[18] *Prevention of Subdivision Control Evasion in Indiana*, 40 IND. L.J. 445 (1965)

Manila. Thus, in *National Planning Commission v. Javillonar*,[19] the Supreme Court stated that:

> ". . . although the regulations were adopted with the purpose of promoting safety and security against fire and other conditions, by security an easy and unimpeded approach to buildings, of fire engines and other fire fighting appliances, of ambulances and other appliances used by the sanitation department of the government, the application and enforcement of these regulations should be done in such a way as not to work hardship and cause injustice and loss to persons living in the area affected. Their application should not be done with undue rigidity but with due regard to the equities of the persons affected."

In another case, involving the same subdivision requirement, the parties who wanted to terminate a co-ownership agreed to subdivide the estate into twelve lots. The plan did not conform to the area requirement of one-hundred eighty square meters, since the estate was to be divided equally among twelve co-owners. The Supreme Court again ruled in favor of the subdividers, holding that the regulations properly refers to those subdivisions for commercial purposes, i.e. for the purpose of selling the lots, and does not apply to a case where there was merely a partition to terminate a co-ownership, a substantive right recognized under the New Civil Code and the Rules of Court. In this case of *Francisco v. National Planning Commission*,[20] there was no transfer of ownership. A certificate of title prayed for was also in the name of the co-owners. There was only a fixing of specific portions over which, each of them may exercise complete ownership instead of having a right over an indefinite part of the whole. In these two cases, the Court refused to apply the regulations retroactively to rights already existing at the time of their enactment. In the case of *Javillonar*, the tenants were already occupying the land, long before the regulation. In the *Francisco* case, the certificate of title was already in the hands of the co-owners when the regulation took effect.

THE ROLE OF LOCAL GOVERNMENTS

A distinctive feature of our urban planning laws is the close relationship between the National Planning Commission and the local governments. This can be seen from the provisions on the legal status of general plans, zoning regulations, subdivision and building codes. General plans, once adopted by the Commission must be followed and later con-

[19] 100 Phil. 485 (1957)
[20] 100 Phil. 985 (1957)

structions must conform to such plans and must have the approval of the Commission or the District Engineer, delegated with the power to approve, but in case of disapproval by the Commission or the delegate, the municipal or city council of the area affected can nevertheless overrule the disapproval of the Commission for the District Engineer.[21] Zoning, subdivision and building regulations, must also be submitted to the legislative body having jurisdiction of the area affected. Unless the said body disapproves such resolutions by a three-fourths vote within thirty days from the date of their filing, these regulations shall become effective. If it is disapproved, the resolution shall not become effective.[22] These provisions show the need for a coordinated activity between the local govenments and the National Planning Commission.

While coordinated effort is highly commendable, there is also the possibility of conflicts in the exercise of interrelated powers. This is shown in the case of *University of the East v. City of Manila*,[23] involving an application for a building permit. Plans and specifications were submitted in accordance with Zoning Ordinance No. 2930 as amended, of the City of Manila, but the National Planning Commission objected on

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[21] Ex. O. No. 98 (1946) Sec. 6 (a)

[22] Ibid., Sec. 7. Legal status of zoning regulations—(a) Any resolution of the Commission adopting zoning regulation for any urban area or any part thereof, shall be filed with the President of the legislative body having jurisdiction over the area affected by said resolution. Unless said legislative body shall disapprove such resolution by a 3/4 vote within 30 days from the date of filing it shall thereupon take effect and shall supercede any similar regulation of said urban area or any part thereof effective at the date such regulation takes effect. Disapproval of any such resolution shall not be effective unless it is filed with the Chairman of the Commission together with a statement in writing giving the reason for such disapproval.

Such regulation once they become effective and adopted by resolution of the Commission may be amended, repealed and added to only in the following manner: The Commission may upon its own initiative at any time or upon application as provided in the following paragraph (b) adopt a resolution for any such purpose. Any such resolution shall be filed with the President of the legislative body having jurisdiction over the area affected by said resolution. Unless said legislative body shall disapprove said resolution by a 3/4 vote within 30 days from the date of filing it shall thereupon take effect. Disapproval of any such resolution shall not be effective unless it is filed with the Chairman of the Commission together with a statement in writing giving the reasons for such disapproval.

Sec. 8(a) — Legal status of subdivision regulations — Any resolution of the Commission adopting or amending subdivision regulation for any urban area or any part thereof shall be filed with the President of the legislative body having jurisdiction over the area affected by said resolution. Unless said legislative body shall modify or disapprove such resolution by a 3/4 vote within 30 days from the date of filing, it shall thereupon take effect and shall supercede any similar regulation of said urban area or any part thereof effective at the date such regulation takes effect.

[23] 96 Phil. 317 (1955)

the ground that the plans did not conform with the zoning regulation of the Commission.[24] However the Supreme Court ruled against the Commission, declaring that the regulation was ineffective because it was rejected by the Municipal Board of Manila, pursuant to Section 6 (a) of Executive Order No. 9824. For a regulation of the Commission to become binding, it was necessary for the local legislative body to adopt it. If rejected, the regulation would have no force and effect. The Supreme Court further declared that the issuance of zoning regulations which affect valuable property rights throughout the whole country, cannot be delegated to an administrative body without specific standards and limitations to guide in the exercise of such wide discretion. In effect, the Court upheld the power of the municipal corporations to enact zoning ordinances and regulations in the exercise of police power. The fact that the law requires submission of regulations adopted by the Commission to the local legislature for approval is an indication, that the power to enact zoning and similar ordinances, properly belongs to the municipal corporations, in the exercise of police power as delegated to it by law, under the general welfare clause.[25]

A similar issue was also involved in the case of *Hipolito v. City of*

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[24] Ex. O. No. 98 (1946)

Sec. 6(a) Legal status of general plans — Whenever the Commission shall have adopted a general plan, amendment, extension and addition thereto of any urban area and any part thereof, then and thenceforth no street, park or other public way, ground, place or space, no public building or structure, including residential building subsidized in whole or part by public funds or assistance; or no public utility whether publicly or privately owned, shall be constructed or authorized in such urban area until and unless the location and extent thereof conform to said general plan or have been submitted and approved by the Commission, except that the Commission may delegate its authority to approve to the District Engineer of the Engineering District in which said urban area or any part thereof is located, Provided the case of disapproval the Commission or District Engineer, as the case may be, shall communicate the reason for such disapproval to the legislative body authorizing the construction of or constructing any such improvement. And provided further, that such legislative body may overrule such disapproval by 3/4 vote and upon such overruling shall have the power to proceed. The widening, narrowing, relocation, vacating, change in the use, acceptance, requisition, sale or lease of any street or other public way, ground, place, property or structure shall be subject to similar submission and approval and the failure to approve may be similarly overruled. The failure of the Commission or such District Engineer as the case may be, to act within 30 days from and after the date of such official submission shall be deemed approval.

[25] Rev. Adm. Code, Sec. 2238

"The municipal council shall enact such ordinance and make such regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health, and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein"

Manila,[26] as to the binding effect of regulations of the Commission. The Supreme declared:

> ". . . It is not claimed that the City of Manila has expropriated or intends to expropriate that portion of petitioner's lot between the existing street line and the new street line adopted by the National Planning Commission. No law or ordinance is cited requiring private landowners in Manila to conform to the new street line marked by the National Planning Commission."

By this ruling, the court implies that the effectivity of regulations of the Commission, would depend on whether or not the local legislative body has adopted those regulations.

The source of ambiguity is apparently, the provision governing the legal status of the regulations promulgated by the Planning Commission. This is now clarified by the Local Autonomy Act of 1956, which authorizes municipal, city and municipal districts councils to enact zoning and subdivision ordinances and makes the National Planning Commission an advisory body on matters pertaining to planning. While Executive Order No. 98 of 1946 and Executive Order No. 367 of 1950, authorized the Commission to control development in accordance with plans and regulations, the Local Autonomy Act gives local governments power to prepare plans and regulations, a power concurrently vested in the Commission. In practice however, the Commission has largely kept out of local planning unless asked by local government authorities for advice.[27] The pronouncements of the Commission are merely advisory and are ineffective unless acted upon by the local governing body. While the Commission continues to prepare plans, for a number of areas these are inoperative unless adopted by the local authorities. As reported by the Commission, it has during its life prepared 246 developments plans for barrios, towns and cities. It estimates that only 112 of these have to some extent been acted upon by the local authorities concerned.[28]

The Local Autonomy Act, in recognizing more extensive powers of local governments did so at the expense of the National Planning Com-

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[26] 87 Phil. 180 (1950).

[27] Rep. Act No. 2264 (1959), 55 O.G. 5736 No. 30 (July 1959)

> Sec. 3. Power to adopt zoning and planning ordinances — Any provision of law to the contrary notwithstanding Municipal Councils in municipalities are hereby authorized to adopt zoning and subdivision ordinances or regulations for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor as the case may be. Cities and municipalities may, however, consult the National Planning Commission on matters pertaining to planning and zoning.

[28] *Request from the Government of the Philippines to the United Nations Special Funds for Technical Cooperation in the Establishment of an Institute of Planning,* September, 1966, p. 7

mission. This has proven to be more beneficial. Interest in urban and regional planning is now spreading to other sectors of the Philippine communtiy. Many local authorities have started to plan or have requested the National Planning Commission for assistance. This is a salutary trend to be encouraged because the Philippines with its many islands, variations in climate and local conditions necessarily must deal with widely diverse development problems. The Republic now embraces 62 provinces, 49 chartered cities and 1,382 municipalities.[29] Urban development problems of the country can only be solved through systematic planning, but not a single plan can uniformly be imposed in the different areas.

CURRENT TRENDS AND DEVELOPMENTS

The problems that confront the country today are mainly socio-economic, relating to agrarian poverty, land reform and industrialization. More specifically, there are increasing problems of housing and replacement of deteriorated tenements, interisland and provincial transport improvement, and adequate water supply for consumption and industry. The uneven distribution of population, with an increasing concentration in urban areas likewise create serious problems. A systematic method of meeting these problems is necessary in order to achieve progress with the least expense and inconvenience to the public. Lack of organization hampers efficiency and economy. This is vividly exemplified by the constant diggings and rerouting of traffic in the City of Manila because of the city projects belatedly undertaken.

The approach to these problems has been mainly socio-economic through a national development programme. However, the aspect of physical planning cannot be overlooked. In the implementation of the government's development programs urban planning is vital for the promotion of good civic design and arrangement, healthy and orderly environment and economic expenditure of public funds. Interest in the physical development of the community is now diffused and local governments are likewise aware of the importance of a well-organized community planning. Further impetus was given by the issuance of Administrative Order No. 31, series of 1962,[30] calling all municipal boards and city councils,

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[29] Ibid., p. 2. citing *"The Population and Other Demographic Facts of the Philippines,* II THE PHILIPPINE ECONOMY BULLETIN (1964)

[30] Adm. O. No. 31 (1962), 58 O.G. 8566-A (December 1962)
These planning boards have the following duties and functions:

(1) To initiate the preparation of physical development plans for their respective areas in consultation with the National Planning Commission under the Office of the President.

(2) To prepare the necessary subdivision, zoning and building regulations in their respective localities for approval by the local legislative body concerned.

(3) To have all public improvements harmonize with a duly approved town or city development plan.

municipal district councils to create planning boards in order to prepare physical development plans for their respective areas in consultation with the National Planning Commission. This involves the preparation of subdivision, zoning and building regulations by the local legislative bodies to harmonize with duly approved town or city plans. As a result, Manila has now its Urban Renewal Committee assisting the Mayor. It is also conducting a special housing survey. Quezon City has also organized a Planning Board. Some cities like Angeles and Iligan have employed and consulted planners.[31] The government has also established regional planning authorities.[32] While these development authorities are not mainly concerned with urban physical planning, the plans they intend to implement also touch upon aspects of transportation, resettlement, conservation and other activities leading to the rapid socio-economic growth of the regions.

With the present trend towards more planning, several problems confront the planning agencies of the country. One such problem is the lack of professional planners. At present, the National Planning Commission with a total staff of about 42 people, cannot meet all the requests of local authorities for assistance. The provincial, municipal and city planning boards also need personnel and consultants adequately trained for the job, particularly considering the fact that Administrative Order No. 31, requires local governments to organize planning boards. By May 1965, one-hundred two towns and seventeen cities and eight provinces had in fact created local planning boards and forty-nine of these had requested the assistance of the National Planning Commission. These requests were of course, overwhelming and despite the most exhaustive efforts of the Commission, only a few could be met. Aside from the local governments, the regional development authorities also need planners, with good training and technical know-how.[33] Because of this pressing problem, Congress passed Republic Act No. 4341, authorizing the University of the

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[31] See note 28, *supra*

[32] Among the regional authorities are the following:

The Development Authorities of Mindanao; Central Luzon-Cagayan Valley; Mountain Province; Panay; Mindoro; Northern Samar; San Juanico; Laguna de Bay; Bicol; Catanduanes, Hundred Islands; Cavite.

These are government corporations created to draw up necessary plans for regional development, providing leadership in the setting up of pioneering or groundbreaking industrial and agricultural enterprises, coordinating or integrating the diverse efforts of the various public and private entities directly engaged in implementing plans and projects affecting power, manufacturing, mining, transportation and communication, conservation, resettlement, education, health and other activities leading to the rapid socio-economic growth of the region and extending or facilitating the extension of financial management and technical support to worthwhile industrial and commercial ventures within the region.

[33] See note 28, *supra*

Philippines to establish an Institute of Planning. Its purposes are to make available a pool of capable professional urban and regional planners, to strengthen and assist the government and local agencies and private organizations in the study and solution of development problems, to facilitate the realization of development proposals at all levels and to improve human settlements and their environments by the integration of social, economic, physical and administrative consideration to produce coordinated and comprehensive development studies and plans.[34]

Another problem facing the planning agencies, particularly the National Planning Commission is the lack of planning coordination between the local government and other offices. This pertains particularly to the housing projects, now handled by the People's Homesite and Housing Corporation, and to urban and regional planning now conducted by the different regional and local planning boards. The National Planning Commission is the central planning agency, but it is too weak to have its formulated plans enforced. It is merely consultative and its advice is sought only when the local authorities deem it expedient to consult the Commission. With local governments preparing their own plans, no discernible national plan will emerge unless local governments and the National Planning Commission coordinate and integrate their planning activities. A lesson can be drawn from English planning and zoning experience. The nineteenth century practice was to leave to local authorities wide discretion in planning their communities. The present trend is towards centralized national control to consider local or regional needs in the light of national resources, requirements and interest as a whole, for a national plan conceived as a whole would likely differ substantial from a national plan constituted by merely piecing together the local and regional plans.[35]

It was to achieve more integrated planning in the field of housing, regional and urban planning that the UNTAB[36] Mission on Housing in 1958 made a number of recommendations including some on comprehensive neighborhood planning. The National Planning Commission collaborated in making such plans. But the recommendations for legislation, integrating housing and urban and regional planning was not implemented.[37] Another attempt at reform was made in 1964 by the submission of a

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[34] Rep. Act No. 4341, 62 O.G. 4759, (July 1966) "An Act Act Authorizing the Appropriation of Funds for Buildings, Facilities and Operating Expenses of the Institute of Planning Within the University of the Philippines and for Other Purposes." (approved June 19, 1965)

[35] HAAR, LAND PLANNING IN A FREE SOCIETY, 12, (1951)

[36] United Nations Technical Assistance Board

[37] See note 28, *supra* p. 5

draft bill, House Bill No. 9491, entitled "National Urban Planning, Housing and Financing Authority" including the establishment of a "Philippine Centre of Urban Studies". It was passed by the House of Representatives only. This bill was again before Congress in 1965, but was not approved by the Senate. The proposed center for urban studies aims at professional training in urban planning of appropriately qualified graduates, the holding of seminars, conferences and workshops for the discussion of all problems connected with urban development and extension services to university departments dealing with associated fields of study. An important duty of the centre would be to undertake fundamental research projects, to conduct investigations directed towards the solving of current planning and development problems and to provide advisory and consultative services to public and private agencies concerned with planning and development.[38]

CONCLUSION

The main problems of the present planning activity is the dearth of technical men and professional planners. Our statutes have provided for the establishment of agencies to undertake planning functions, but have failed to provide for the men who will be charged with this highly specialized job. As a result, the progress of community planning has been slow and defective. These defective plans aggravate the problems of traffic, light and water as well as the zoning of our communities. A typical example of this is the City of Manila itself, with the perennial problem of traffic jams, water shortage and unsystematic set-up. In view of these, certain reforms have been suggested,[39] namely, (1) the training of more technical men, for research and engineering, traffic planning, statistics and economics, (2) a more effective planning coordination with local government and the National Planning Commission and other government agencies connected with urban and regional planning, (3) more facility in the administration of plans and regulations and implementation of plans, (4) the strengthening and modification of all laws relating to urban and regional planning in the Philippines, (5) providing for a training ground for planners in the future by the granting of government scholarships and study grants to students of urban and regional planning to keep abreast with the modern trends and concepts in planning, and (6) providing for more adequate facilities for the National Planning Commission.

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[38] Report by Professor Denis Winston at the Conference For the Inauguration of a Philippine Center for Urban Studies.

[39] Interview with Director Benjamin Gomez, National Planning Commission.

These reforms have partly been covered. Provisions have been made for the training of future planners by the establishment of the Institute of Planning within the University of the Philippines. As to the matter of modifying laws affecting the legal relations between the local government and the National Planning Commission, it is unlikely that local governments will be divested of the power to prepare plans and promulgate zoning and subdivision regulations. The present trend is towards the granting of more and more local autonomy. What the National Planning Commission can do is to take an active part in the preparation of plans rather than to wait passively for requests from the local authorities for help in the formulation of plans or of zoning and subdivision regulations. The National Planning Commission has not actually been divested of any of its powers. There is, however, a change in emphasis, a shift in the source of initiative in planning. Whereas before, it was the Commission which promulgated regulations and plans which were submitted to the local council for approval or disapproval, now under the Local Autonomy Act, the local legislative bodies initiate, with discretion to consult the Commission. There is, however, no provision in the later law which expressly or impliedly prohibits the Commission from adopting its former course of action.

Urban planning is no longer novel in this country but its importance has not been fully appreciated. The government and the people have yet to realize the necessity for a more systematic development of our urban areas. Substandard or unsanitary areas tend to impair and arrest the sound growth and development of the town or city. While working for the development of the community, the deterioration of the community must also be guarded against. The government and the citizenry have to cooperate if the objectives of urban planning for the health, safety and beauty of the Philippine community are to be realized.

SOLEDAD M. CAGAMPANG

CRIMINAL JURISDICTION UNDER THE REVISED BASES AGREEMENT

During the Commonwealth period and before the grant of complete independence to our country by the United States, the right of the United States to maintain military and other reservations and armed forces in the Philippines was recognized in Section 1 subsection (12) of the ordinance appended to the Constitution. The provision states:

> "Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines —
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> (12) The Philippines recognizes the right of the United States . . . to maintain military and other reservations and armed forces in the Philippines . . ."

It was to be expected that with the establishment of the independent Republic of the Philippines, complete control over military establishments within Philippine territory would pass to it. The Tydings-McDuffie Act provided for the retention by the United States only of naval reservations and fueling stations, after independence. However, even before the establishment of the Republic, the ground was laid for the maintenance and expansion of United States military reservations and establishments in the Philippines. In 1943, the Commonwealth Government-in-Exile held a series of conversations[1] with officials of the United States Government regarding the military relations between the Republic of the Philippines and the United States after independence. Our government at that time, recognizing the conditions which had arisen and the total warfare that was being waged, agreed to the expansion of the military cooperation between the United States and the Philippines after independence through the establishment and maintenance of the Army, Navy and Air Force bases. This arrangement was embodied in a Joint Resolution of the United States Congress and approved by the President of the United States on June 29, 1944. This Joint Resolution gave the President of the United States the authority, after negotiation with the President of the Commonwealth of the Philippines, to withhold or to acquire and retain such bases, necessary appurtenances to such bases, and the rights incident thereto in addition to any provided for by the Act of March 4, 1934 (Philippine Independence Act), as he may deem necessary for the mutual

[1] Message to the Senate by President Roxas, 12 L.J. 157 (1947).

protection of the Philippine Islands and of the United States. On July 28, 1945, the Philippine Congress unanimously passed a Joint Resolution stating in the final paragraph:

> "Resolved, finally, that in order to speedily effectuate the policy declared by the Congress of the United States and approved by the Government of the Commonwealth of the Philippines, the President of the Philippines be authorized to negotiate with the President of the United States the establishment of the aforesaid bases, so as to insure the territorial integrity of the Philippines, the mutual protection of the Philippines and the United States, and the maintenance of peace in the Pacific."

In May 1946, President-elect Roxas held the first informal conferences[2] with the representatives of the US Army and Navy regarding the implementation of the mutual defense commitments of the Philippines and the United States. In pursuance of the policy and program laid down in the Joint Resolution of the US Congress, the American Government prepared a draft of an agreement, based on what military experts felt as essential requirements for the mutual protection of the Philippines and of the United States.[3] Shortly after the proclamation of Philippine independence, negotiations for these bases were formally begun. Ambassador Paul V. McNutt represented the United States government, while Vice-President Elpidio Quirino, who was then Secretary of Foreign Affairs, negotiated on behalf of the Philippine government. A committee, composed of the Secretary of National Defense, the Secretary of Justice, four senators who were members of the Senate Foreign Affairs Committee, and members of the General Staff of the Philippine Army, was formed to serve as an advisory body for the Philippine side. President Manuel Roxas described the nature and work of the committee in his message to the Senate, asking for its concurrence to the agreement, as follows:

> "The members of this committee were more than mere advisers to the Vice-President. They participated in the negotiations, formed sub-committees for the drafting and revision of various portions of the Agreement, legal and otherwise, which arose from time to time. Individual members of the committee made visits to the various areas where bases were proposed to be established and interviewed inhabitants of the vicinity and ascertained their sentiments on the matter.
>
> "Our committee held frequent and prolonged sessions with the American negotiators, extending over many weeks. Every paragraph, every sentence and every phrase were gone over, scrutinized and discussed. From time to time, I was consulted concerning matters of vital policy involved

[2] *Ibid.*, p. 158.
[3] *Ibid.*

> in the negotiations. But in a major sense, this agreement is the result of the work of the negotiating committee headed by Vice-President Quirino. The final draft of this agreement was recommended to me and had the approval of Vice-President Quirino and the four senators who were members of the negotiating committee, as well as of the committee itself. The great credit that is due for the successful conclusion of this agreement is due to our negotiators, for their skill, patience and industry. Never has there been a finer example of a democratic, non-partisan, non-political approach to a vital national problem. Members of this committee gave unselfishly of their time and energy. All of them had other concerns and other assignments. They devoted days and weeks to these negotiations. I am proud of their achievement and contribution."

The result of these negotiations was the United States-Philippines Military Bases Agreement, signed on March 14, 1947 between the two countries, represented by Ambassador Paul V. McNutt of the United States and President Manuel Roxas of the Philippines. The United States-Philippines Military Bases Agreement was entered into for the purpose of mutual defense, whereby, the Philippines granted to the United States the use, rent free, of certain lands of the public domain, and surrendered the exercise of criminal jurisdiction within the areas covered by the agreement.

The surrender of the exercise of jurisdiction is made in Article XIII, Section 1 of the Bases Agreement.

> "Section 1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:
>
> (a) Any offense committed by any person within any base except where the offender and the offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense 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."

Under this provision, all offenses committed within the military bases, with the exception of (1) where the offender and offended parties are both Philippine citizens, and (2) where the offense is against the security of the Philippines, are under the exclusive jurisdiction of the United States military authorities.

The military courts also exercise exclusive criminal jurisdiction over offenses committed outside the military bases where the offense is com-

mitted by any member of the armed forces of the United States while engaged in the actual performance of a specific military duty. This is provided for in Article XIII, Section 4 which states, ". . . If any offense falling under paragraph 2 of this Article (offenses committed outside the bases) is committed by any member of the armed forces of the United States:

> "a) while engaged in the actual performance of a specific military duty . . ., he (the fiscal) shall immediately notify the officer holding the offender in custody that the United States is free to exercise jurisdiction."

The onerous terms of this agreement were criticized as a surrender of sovereignty and independence, and several negotiations[4] were undertaken to revise or amend the terms of the treaty. The exchange of notes between President Eisenhower of the United States and Philippine President Quirino on July 15, 1953 formed the basis for the creation of a special mission of February 1954, led by American Ambassador Raymond Spruance. The Philippine side was represented by then Vice-President Carlos Garcia, Secretary of Foreign Affairs, who was designated by newly-elected President Ramon Magsaysay. However, during the negotiations, another issue arose, the issue of ownership over the lands covered by the military bases, which caused the suspension of the negotiations. This issue, which saw the American cause championed by United States Attorney General Herbert Brownell,[5] and the Philippine side defended by Senator Claro Recto,[6] was however, resolved on July 4, 1956 when the United States, through Vice-President Richard Nixon, acknowledged and recognized the sovereignty of the Philippines over such bases since the independence of the Philippines, and formally delivered the muniments[7] of title to the lands covered by the military bases.

The military bases negotiation was resumed with Ambassador Albert Nufer and Karl Bendetsen composing the American panel, and Senator Emmanuel Pelaez and Secretary of National Defense Eulogio Balao representing the Philippines. Nothing resulted from this negotiation. The subsequent "exploratory talks" undertaken by Foreign Affairs Secretary Felixberto Serrano and Ambassador Bohlen of the United States ended in a similar vein on December 9, 1965.

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[4] Valeros, *Jurisdiction of Philippine Courts over Personnel of the United States Military Reservations in the Philippines*, 4 U.E.L.J. 19 (1961).

[5] Legal Opinion of United States Attorney General Herbert Brownell Jr., submitted to the Secretary of State, Aug. 28, 1953, 19 L.J. 112 (1954)

[6] Memorandum of Senator Claro Recto, March 3, 1954, 4 L.J. 112 (1954).

[7] ABAD SANTOS, CASES ON INTERNATIONAL LAW, 217 (1966).

Considered by many writers as the most onerous part of the Agreement was Article XIII, dealing with criminal jurisdiction. The legal controversies arising from the application and interpretation of the provisions on criminal jurisdiction increased the public clamor for the revision of the terms of the bases agreement. In one case, George Roe,[8] an American naval serviceman stationed in Sangley Point, committed an offense outside the base resulting in serious physical injuries to a certain Filipino woman. He was not in the performance of any military duty. The charge of serious physical injuries through reckless imprudence was presented before the local court. The base authorities were notified. Roe was represented by an attorney from the legal office of Sangley Point during the proceedings. However, before the case could be properly adjudicated, Roe was shipped back to the United States and demobilized. The United States military authorities informed the Philippine authorities that the demobilization of George Roe was a mistake, but they could not do anything to correct it. The question was whether, under the terms of the treaty, the United States military authorities in the military bases were duty bound to secure and surrender the offender to the Philippine authorities after the offender had already been demobilized and shipped back to the United States. This question has been left unanswered.

The pertinent provisions of the original Bases Agreement in question are Section 5 and Section 7 of Article XIII.

> 'Section 5. In all cases over which the Philippines exercise jurisdiction, the custody of the accused, pending trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing that such accused has been delivered to him for custody pending trial in a competent court of the Philippines and that he will be held ready to appear and will be produced before said court when required by it . . ."
>
> "Section 7. The United States agrees that it will not grant asylum in any of the bases to any person fleeing from the lawful jurisdiction of the Philippines. Should any of such person be found in any base, he will be surrendered on demand to the competent authorities of the Philippines."

Under these provisions, it is clear that if the offender is under custody of the bases authorities, the commanding officer is under obligation to surrender the offender to the authorities of the Philippines on demand. However, if the offender had already been shipped back to the United States and demobilized, as a consequence of which he is no longer

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[8] Castro, *United States Jurisdiction Over Armed Forces in the Philippines*, 7 F.E.L.J. 646 (1960).

under the custody of the commanding officer, it would seem that the commanding officer is no longer under obligation to secure and surrender him to the Philippine authorities. This deduction is supported by Section 7, just quoted, under which a person fleeing from lawful jurisdiction of the Philippines will be surrendered on demand to the Philippine authorities should any such person be found in any base. Thus, if the offender is already shipped out of the country, the United States military authorities are not bound to surrender the offender to the Philippine authorities. But the question also arises as to whether the obligation to secure and surrender the offender is binding not only to the base authorities, but also on the United States Government. This question under the Revised Bases Agreement, as can be seen later, seems to have been answered in the negative.

Other situations considered iniquitous as far as Philippine interests are concerned, result from the almost absolute jurisdiction of the United States military authorities over all offenses committed within the base areas. It must be remembered that jurisdiction over a military area in a foreign country is conferred only to the military authorities because of a special and definite reason — that it is a fundamental doctrine in the armed forces that a Commanding Officer must have complete control of his troops, especially in the matter of discipline.[9] Such consideration would not be applicable in a case where a citizen of another country and a Filipino citizen are the ones involved in an offense, whoever be the offender, within the military bases. Also, such consideration would not come in where a civilian component or a dependent of of any member of the armed forces are the ones involved, or a civilian component and a Filipino citizen or a citizen of another country. Surely the assumption of jurisdiction in such cases by the courts of the area or the place where the offense was committed (a basic principle in criminal law) would not prejudice the purpose of discipline and control of the troops. It must be noted that under the United States Military Code, the civilian components and dependents are subject to military law and court martial only in time of war, and not in time of peace. Commenting on an article of the US Military Code, Winthrop, author of Military Law and Precepts, states:

> "The class now to be considered (civilian components) are persons whose liability to military government and trial by court martial arises only in time of war, and is the result solely of the exceptional relations prevailing during a state of war."[10]

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[9] Message to the Senate by President Manuel Roxas, *op. cit.*, p. 159.

[10] WINTHROP, MILITARY LAW AND PRECEDENTS (2nd ed.) 98. Cited in Castro, *op. cit.*, p. 630.

Another source of conflict between the United States and the Philippines was the provision that jurisdiction will be exercised by the United States military authorities if the offense was committed by any member of the armed forces while engaged in the actual performance of a specific military duty even if committed outside the bases.[11]

Applying this provision, any member of the United States armed forces who commits an offense anywhere in the Philippines, not within the military bases, would be subject not to Philippine jurisdiction, but to United States military jurisdiction, so long as the offense is committed while he is in the performance of duty. This certainly is a considerable impairment of the territorial sovereignty of the Philippines. Even if a state, in the exercise of its sovereignty, surrenders jurisdiction over a portion of its territory, surely, it is a definite portion of its territory, and not an indefinite and unspecified portion, subject to no qualification at all, excepting that the offense is committed while the personnel of the United States armed forces is engaged in the performance of a duty. It goes too far if the surrender of jurisdiction should include the whole of the territory, without definiteness or limitation as to place. It might also be noted that this provision contradicts the basic principle in criminal law of "lex loci delicti commissi" (the law of the place where the offense was committed). So that in a case where a US soldier on an errand, while driving along a thoroughfare in Manila runs over a Filipino because of reckless driving, thus answerable for the crime of homicide through reckless imprudence, the local courts cannot try him.

Also criticized by many writers on the subject, was the absence of provisions in the agreement for production and gathering of evidence in cases where a Filipino civilian employee (employed as guard — not subject to military law) commits an offense inside the base, involving another Filipino citizen, such as the killing of alleged pilferers within the base. In such cases, the Philippine courts would have jurisdiction. How effective would this jurisdiction be if the evidence required by the prosecution cannot be had? The United States military authorities would protect their Filipino guards because there is nothing in the Bases Agreement which compel the United States military authorities to cooperate with the Philippine authorities in the gathering and acquisition of the necessary evidence. One writer has well said:

> "It would only be appropriate for the US military authorities to protect their Filipino guards because the killings were committed in connection with the strict performance of the official duties to protect United

[11] United States-Philippines Military Bases Agreement, Art. XIII, Sect. 4.

> States property, although such killings are not justified under Philippine laws. If they will not protect these guards under such circumstances, there would no longer be sufficient Filipinos whom they can employ for the purpose"[12]

As to the case of a United States military policeman committing the same offense, he said,

> ". . . It is unquestionable that the United States has jurisdiction over them (United States military policemen) because the supposed offense is committed inside the base . . . by members of the US armed forces. But will the United States military authorities prosecute their military policemen under these circumstances?"[13]

Incidents in the US military base at Clark Field involving guards who shot pilferers inside the base and the consequent public indignation over the shooting incidents precipitated the renegotiation of the Military Bases Agreement. On August 10, 1965, an exchange of notes took place between then Secretary of Foreign Affairs Mauro Mendez of the Philippines and Ambassador William Blair of the United States. This exchange of notes put into effect the proposed amendment to the Article on Jurisdiction of the Military Bases Agreement. It also provided that the new criminal jurisdiction arrangements shall be implemented immediately.

This exchange of notes amending Article XIII of the Bases Agreement is, strictly speaking, not a simple amendment. It effects a revision of the Agreement by the repeal of the article on jurisdiction, Article XIII, with the exception of Section 8 thereof, and the substitution in its place of an entirely new set of provisions, to constitute the new article on jurisdiction.

The revision corrects existing sources of conflict. Before the revision, the US military authorities had absolute jurisdiction over all offense committed within the military bases. This is provided in Section 1 of Article XIII, of the original agreement, which states:

> "1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:
>
> "(a) Any offense committed by any person within any base . . ." (exceptions omitted).

This was a source of conflict because under the provision, all offenses so long as they were committed within the military bases were

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[12] Castro, *op. cit.*, p. 643.
[13] *Ibid.*

subject to the jurisdiction of the United States military authorities, even if the parties involved, except where the offender and the offended parties are both Philippine citizens, or the offense was against the security of the Philippines, were not members of the US armed forces nor members of the civilian components or dependents of the US servicemen. Offenses involving citizens of third states among themselves or between citizens, having no connection with armed forces whatsoever, would fall under the jurisdiction of the United States military authorities.

The revision limited the subject of jurisdiction of the US military authorities so as to exclude all persons except persons subject to the military law of the United States. Section 3, subsection (b) of the Revised Article XIII provides,

> **"3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:**
>
> **"(b) The military authorities of the United States shall have the primary right to exercise jurisdiction over all persons subject to the military of law of the United States."**

Section 4 of Article XIII also provides,

> **"4. The foregoing provisions of this Article shall not imply any right for the military authorities of the United States to exercise jurisdiction over persons who are nationals of or ordinarily resident in the Republic of the Philippines, unless they are members of the United States armed forces."**

These provisions of the revision eliminated the objections to the original Bases Agreement that gave almost absolute jurisdiction to the US military authorities in cases of offenses committed within the military bases.

Before the revision, there was no provision in the Bases Agreement for investigations of offenses, and the collection and production of evidence and objects connected with an offense. The absence of this provision in the original agreement made it difficult for Philippine authorities to take effective steps in the prosecution of offenses where the Philippine authorities had jurisdiction over offenses committed within the military bases.

Under the revision, a provision fills up this gap. Section 6, subsection (a) provides,

> "The authorities of the Republic of the Philippines and the United States shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence

> including the seizure, and in proper cases, the handing over of objects connected with an offense . . ."

The revision makes mutual assistance in the investigation into offenses and the collection and production of evidence connected with an offense a duty of the US military and Philippine authorities.

Although some provisions of the revision minimize the sources of conflict, the revision leaves much to be desired. This conclusion is inescapable if one takes into account the fact that (1) the Bases Agreement is for the purpose of mutual defense, (2) the grant of jurisdiction to the military authorities is for the purpose of maintenance of control and discipline over the troops, and 3) it is the Philippines which is granting rights and surrendering jurisdiction.

The revised Bases Agreement is in need of further revision or amendment for the following reasons:

(1) Some provisions of the original Bases Agreement beneficial to Philippine interests were deleted and provisions which are prejudicial to Philippine interests have been substituted;

(2) The revision of the Bases Agreement enlarges both the territorial jurisdiction of the US military authorities, in cases where it exercises primary jurisdiction, and, the instances under which US military personnel are subject to US military jurisdiction; and

(3) The revision makes possible a unilateral extension of jurisdiction of the United States military authorities by the United States Government without the consent of the Philippine Government.

Under the original bases agreement, as well as under the revision, an offense arising out of an act done in the performance of duty gives to the US military authorities the right to exercise jurisdiction. However, under the original Bases Agreement, the determination of whether an offense arose out of any act done in the performance of duty is left to the Philippine authorities. Article XIII, Section 4 of the original Bases Agreement provides,

> "4. . . . If any offense falling under paragraph 2 (offenses committed outside the bases by any member of the armed forces of the United States) of this Article is committed by any member of the armed forces of the United States:
>
> "(a) While engaged in the actual performance of a specific military duty . . . and the fiscal (prosecuting attorney) finds from the evidence, he shall immediately notify the officer holding the offender in custody

> that the United States is free to exercise jurisdiction. In the event the fiscal finds that the offense was not committed in the actual performance of a specific military duty, the offender's commanding officer shall have the right to appeal from such finding to the Secretary of Justice (of the Philippines) within ten days from the receipt of the decision of the fiscal and the decision of the Secretary of Justice shall be final."

In other words, where a member of the US armed forces commits an offense outside the military bases, the right to exercise jurisdiction is in the hands of Philippine officials, in accordance with Article XIII Section 2, which provides, "2. The Philippines shall have the right to exercise jurisdiction over all other offenses committed outside the bases by any member of the armed forces of the United States." For the US military authorities to exercise jurisdiction, there must be a finding that the offense committed by the member of the US armed forces outside the military bases arose out of an act while engaged in the actual performance of a specific military duty. Under the original bases agreement, this determination is made by the fiscal or prosecuting attorney of the city or province where the offense was committed. However, under the revision, this determination is surrendered or transferred to the United States military authorities. The "Agreed Official Minutes" which is a part of the revision by express reference in the Exchange of Notes, provides,

> "3. Whenever it is necessary to determine whether an alleged offense arose out of an act or omission done in the performance of official duty, a certificate issued by or on behalf of the commanding officer of the alleged offender or offenders, an advice of the Staff Legal Officer or Staff Judge Advocate, will be delivered promptly to the city or provisional fiscal (prosecuting attorney) concerned, and this certificate will be honored by the Philippine authorities."

The Philippines is thus deprived of the authority to determine a fact upon which depends the exercise of jurisdiction of either the Philippine authorities or the US military authorities over cases involving a member of the US armed forces who commits an offense outside the military bases. It must be noted that surrender of jurisdiction is based on the consent of the state making the surrender. The state as a sovereign has the right to lay down the conditions under which the surrender should be made. It is to the interest of that state to reserve the right to determine the existence of the conditions under which the surrender of jurisdiction can be considered to exist.

Furthermore, under the original Bases Agreement, the term "performance of duty" is qualified by the adjective "specific" and "military."

This has the effect of narrowing the instances when an offense would fall within the jurisdiction of the US military authorities. The term "military" denotes a specific category of duty or work. The adjective "specific" means that the duty must come from a definite order or command of a superior or from a requirement of military rules or regulations. On the other hand, the revised Bases Agreement not only deleted the terms "military" and "specific" but also broadens the concept of performance of duty to include any duty or service required or authorized to be done by military usage. This particular provisions is found in the Agreed Official Minutes of the Exchange of Notes, Section 2 of which provides, "2. The term "official duty" appearing in section 3 (b) (ii) of this Article is understood to be any duty or service required or authorized to be done by statute, regulation, the order of a superior or *military usage.* (Italics supplied).

As a consequence of this revision, the United States military courts would have jurisdiction, and primary at that, in cases where a serviceman commits an offense outside the military bases so long as he is engaged in the performance of any act required or authorized by military usage. Military usage is a term capable of varied significations. The situation is compounded by the fact that it is the commanding officer of the offender who determines whether an offense arose out of an act required or authorized by military usage or not.

Another reason why the revision should be further amended is that it enlarges the jurisdiction of the US military courts, both as to territory and as to the instances under which US military personnel are subject to US military jurisdiction.

The original Bases Agreement confined the jurisdiction of the US military authorities, with the exception of certain specified instances, within the military bases. Thus, Article XIII, Section 1 provides, "1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:

"(a) Any offense committed by any person within any base except where the offender and offfended parties are both Philippine citizens or the offense is against the security of the Philippines;" In the case of offenses committed outside the military bases, the general rule was that Philippine courts had jurisdiction.

Under the revision, it is provided that, "1. _ _ _ (b) the military authorities of the United States shall have the right to exercise within the Republic of the Philippines all criminal and disciplinary jurisdiction

conferred on them by the law of the United States over all person subject to the military law of the United States." Thus, the revision in effect removes the territorial limitation, in general, of the US military authorities i.e. "within any base", and extends the jurisdiction of the United States military courts to the whole of the Philippine territory or "within the Republic of the Philippines". The result is that although, by virtue of the revision, the persons subject to US military jurisdiction have been limited to persons subject to the military law of the United States, the revision at the same time extends the US military jurisdiction to the whole of the Philippine territory.

The revision of the Bases Agreement also enlarges the instances under which US military personnel are subject to US military jurisdiction. The original Bases Agreement enumerates the cases when US military personnel are subject to the military courts, thus: (in case of offenses committed outside the bases): 1. Where the offended party is also a US military personnel;[14] 2. Offense is against the security of the United States;[15] 3. Offense committed while in the performance of duty;[16] and 4. Offense is committed during a period of national emergency.[17] Under the revision, the following are added: 1. Offense against the property of the United States;[18] 2. Offense against a civilian component; and 3. Offense against a dependent of the armed forces of the United States.[19] It must be noted that these offenses fall within the jurisdiction of the military courts regardless of whether they are committed while in the performance of a military or official duty or not, and whether within or outside the military bases. Thus, under the revision, if a US military personnel, not in the performance of duty criminally destroys US property in Manila, for instance, a shipment of office supplies in a warehouse along South Harbor, the Philippine courts cannot exercise jurisdiction, it falls primarily under the US military courts. Before the revision, this case would fall under the courts of the City of Manila. Also, applying the provisions of the revision, if a US serviceman criminally assaults a Filipino civilian employee while they are in Manila, the military courts exercise primary jurisdiction. The same would be true if a US serviceman criminally injures or even kills a dependent of a member of the US armed forces in Manila or anywhere in the Philippines.

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[14] United States-Philippines Military Bases Agreement, Art. XIII, Sec. 1, (b).
[15] *Ibid.*, Art. XIII, Sec. 1, (a).
[16] *Ibid.*, Art. XIII, Sec. 4, (a).
[17] *Ibid.*, Art. XIII, Sec. 4, (b).
[18] United States-Philippines Military Bases Agreement, as revised by Exchange of Notes of August 10, 1965, Art. XIII, Sec. 3, (b), (i).
[19] *Ibid.*, Art. XIII, Sec. 3, (b), (ii).

Before the revision, these cases would be subject to jurisdiction of Philippine courts.

The provision under which these situations are made possible is Subsection (b) of Section 3 of Article XIII of the revision. This subsection provides, "The military authorities of the United States shall have the primary right to exercise jurisdiction over all persons subject to the military law of the United States in relation to

"(i) offenses solely against the *property* or security of the United States, or offenses against the person or property of a member of the United States armed forces or *civilian component* or of a *dependent.*" The italicized words are not found in the original of the bases agreement.

The revision should be further amended because the terms of the revision make possible the unilateral extension of jurisdiction of the US military authorities by the United States Government even without the consent of the Philippine Government. Section 1, Subsection (b), Article XIII of the revision provides: "The military authorities of the United States shall have the right to exercise within the Republic of the Philippines all criminal and disciplinary jurisdiction conferred on them by the law of the United States over all persons subject to the military law of the United States;" Subsection (b) of Section 3 provides, "The military authorities of the United States shall have the primary right to exercise jurisdiction over all persons subject to the military law of the United States . . ." Finally, the last paragraph of Section 1 of the Agreed Official Minutes attached to the Exchange of Notes provides, "The term 'persons subject to the military law of the United States' does not apply to members of the civilian components or dependents, with respect to whom there is no effective military jurisdiction at the time this arrangement enters into force. If the scope of US military jurisdiction changes as a result of subsequent legislation, constitutional amendment or decision by appropriate authorities of the United States, the Government of the United States shall inform the Government of the Philippines through diplomatic channels."

Thus, under the revision, the US military jurisdiction could be enlarged unilaterally by the United States Government. Such extension of jurisdiction may include not only the civilian component and dependents, but also other classes of persons, like citizens of other states. And this can be done without the consent of the Philippine Government. It must be borne in mind that a treaty or an agreement between two nations is similar to a contract between two natural persons. Once the

terms and conditions are laid down in the contract or agreement, its scope cannot be enlarged or the terms changed without the consent of both parties. Mere notice to the other party is not sufficient, to change the terms of the contract. An amendment is indeed necessary to correct this defect. Any extension of jurisdiction of the US military courts would surely prejudice our interest and our jurisdictional sovereignty. Thus, such extension should not be made without the consent of the Philippine Government. This provision referred to can be deleted, and in its place a provision which states that "no change in the scope of the US military jurisdiction can be affected without the express consent of the Philippines, notwithstanding subsequent legislation, constitutional amendment or decisions by authorities of the United States to the contrary," could be inserted.

In analyzing the revision of the Article on Jurisdiction of the Bases Agreement, it is interesting to note that these provisions are similar to Article VII of the Status of Forces Agreement (SOFA) of the North Atlantic Treaty.[20] This two agreements are similar in that they define the jurisdiction to be exercised by both the sending state and the receiving state in the territory of the receiving state, and in the fact that agreements deal with the status of the military forces of states having military defense agreements. Also, in both the Bases Agreement and in the Status of Forces Agreement of the NATO, the United States is a contracting party, in the former, with the Philippines, and in the latter, with the contracting parties of the North Atlantic Treaty.

However, the SOFA differs from the Bases Agreement in several respects. First, the SOFA provides for mutual defense, mutual grant of rights and mutual surrender of jurisdiction. The Bases Agreement is also for mutual defense, but there is neither mutual grant of rights, nor mutual or reciprocal surrender of jurisdiction. The Bases Agreement is an agreement regarding rights to be enjoyed and the jurisdiction to be granted to a single party to the treaty, the United States. It does not speak of rights granted to nor any surrender of jurisdiction in favor of the Philippines. The grant here is unilateral. On the other hand, the NATO Status of Forces Agreement contemplates the mutual grant of rights, use of territory, and the mutual surrender of jurisdiction by and to the parties to the agreement. Thus, the SOFA defines

[20] Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, Signed at London on 19, June 1951 (Contracting Parties — Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, United Kingdom of Great Britain and Northern Ireland and United States of America), 199 U.N.T.S. 67 (1954).

the relations in an agreement wherein there is reciprocity of grant of rights and mutuality of surrender of jurisdiction. The military forces of France or of the United Kingdom in the United States, in instances where France or the United Kingdom decides to station troops in the US under North Atlantic Treaty, would enjoy the same extent of jurisdiction immunity and privileges in the United States as the military forces of the United States enjoy in France or in the United Kingdom right now. The same is true of any other member nation of the NATO-SOFA. The Preamble of the SOFA states, "The parties to the North Atlantic Treaty signed in Washington ... considering that the forces of one Party may be sent, by arrangement, to serve in the territory of another party. Bearing in mind that the decision to send them and the conditions under which they will be sent... will continue to be the subject of separate arrangement between the parties concerned: Desiring however to define the status of such forces while in the territory of another party; Have agreed as follows." The Bases Agreement, on the other hand, provides, "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 procedure and objectives of the United Nations, and particularly through the 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;" and "Therefore, the Governments of the Republic of the Philippines and of the United States of America agree upon the following terms for the delimitation, establishment, maintenance, and operation of military bases in the Philippines:"[21]

Another difference between the Bases Agreement, before and after the revision, and the SOFA is in relation to the award of damages arising from act, done in the performance of duty and in cases where damage is caused while not in the performance of duty.

In cases of damages caused while not in the performance of duty, the SOFA, under Article VIII paragraph 6, provides that the receiving state shall consider the claim and assess compensation to the claimant, and the sending state shall then decide whether they will offer an *ex gratia* payment, and if so, of what amount. (Under this article, civil action can also be resorted to as an alternative). Thus, under the SOFA, although the decision to make an *ex gratia* payment is in the sending state, the assessment of damages is made by the receiving state. On the

[21] United States Philippines Military Bases Agreement, Preamble.

other hand, under the provision of the Bases Agreement, the civil liability from damages arising while not in the performance of duty is determined by the United States military authorities. Article XXIII provides, "... The United States shall pay just and reasonable compensation, when accepted by claimants in full satisfaction and in final settlement, for claims, on account of damage to or loss or destruction of private property or personal injury or death of inhabitants of the Philippines, when such damage, loss, destruction or injury is caused by the armed forces of the United States, ..." implying clearly that the assessment of damages is to be made by the US military authorities, and not by the Philippine authorities.

If the damage is caused by an act done while in the performance of duty, the SOFA provides that the damages may be compensated, besides by judicial action, also through settlement by the receiving state. Article VIII, Section 5 of the SOFA states: "Claims arising out of acts or omissions of members of a force ... done in the performance of official duty — shall be dealt with by the receiving state in accordance with the following provisions (b) The *receving state may settle any such claims*, and payment of the amount agreed upon or determined by adjudication shall be made by the receiving state —." The Bases Agreement and its revision, on the other hand, do not provide for such settlement by the receiving state of such claims for damages. The Exchange of Notes expressly retains section 8 of Article XIII which provides in similar cases as that mentioned, only for the institution of separate civil action against the offender. It must be noted that a judicial action is a much more burdensome proceeding as far as the plaintiff or the damaged party is concerned.

Furthermore, the Bases Agreement and the SOFA differ also in the determination of whether an offense arose from an act done in the performance of duty. As already explained, under the revised Bases Agreement, the authority to determine is placed in the hands of the Commanding Officer of the offender.[22] Under the Status of Forces Agreement, however the receiving state is possessed of a greater right. The determination is left to an arbitrator[23] to be selected by agreement between the Contracting Parties concerned from among the *nationals of the receiving state* (receiving states are defined in the SOFA as the party in the territory of which the military forces or civilian component is located), who hold or have held high judicial office. It must be remembered that

[22] Exchange of Notes of August 10, 1965, Agreed Official Minutes, Sec. 3.
[23] Status of Forces Agreement, Art. VIII, Sec. 8.

before the revision, the authority to determine whether an act giving rise to the offense was committed while in the performance of duty or not was vested in the Filipino fiscal, subject to appeal to the Secretary of Justice.

Finally, the Bases Agreement differs from the SOFA in relation to the custody of the offender who has committed an offense which falls under the jurisdiction of the receiving state. Under the SOFA, custody of the offender remains in the hands of the sending state only until the offender is charged. This is provided in Article VII, Section 5, Subsection (c) which states, "The custody of an accused member of the armed forces of the sending state over whom the receiving state is to exercise jurisdiction, shall, if he is in the hands of the sending state, remain with the sending state until he is charged by the receiving state." On the other hand, under Bases Agreement, both before and after revision, the custody of an offender remains with the United States until the final judgment. This is so provided in the Agreed Official Minutes, Section 5 of which provides, "5. In all cases over which the Republic of the Philippines exercises jurisdiction, the custody of an accused member of the United States armed forces, civilian component or dependent pending investigation, trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base...". It is interesting to note, however, that the main annex of the Exchange of Notes contains a provision similar to the SOFA provision on custody.

Another shortcoming of the revised Bases Agreement is that it fails to provide a solution for two legal problems, which, if not remedied, could be a frequent cause of friction between the two countries. One problem relates to the actual exercise of jurisdiction by the US military authorities in cases where an offense committed by a serviceman falls within its primary jurisdiction. The question here is the possibility that the US military authorities, in cases falling under their jurisdiction, might not exercise that jurisdiction. Under the revised agreement, if a US military policeman kills an alleged pilferer, an offense clearly falling under the jurisdiction of the military courts, and the US military authorities refuse to prosecute him, does the Philippines have power to compel the trial of the offending military policeman? Can the Philippines assume jurisdiction if the US military authorities refuse to exercise jurisdiction and at the same time refuse to grant a waiver of jurisdiction? Under the Bases Agreement, the answers are in the negative Section 3, Subsection (c) of Article XIII states:

> "If the state having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other state as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other state considers such waiver to be of particular importance."

It must be noted that there is nothing to compel the state having primary jurisdiction to decide at any time either to exercise or not to exercise jurisdiction. It would only notify the other state if it decides not to exercise jurisdiction. It may not decide at all whether to exercise jurisdiction or not, or even if it has to decide, there is no remedy if it delays decision. This possibility presents the danger of denial of justice. Where primary jurisdiction belongs to the US military authorities, the Philippines may only acquire jurisdiction if the former agrees to a request for waiver of jurisdiction in favor of the Philippines. The decision to grant a waiver is discretionary, hence, the danger of denial of justice is present.

The second problem is more serious. It relates to cases over which the Philippines has primary jurisdiction. This problem arises where the US military authorities have allowed the offender to be shipped back and demobilized before or during the trial of the case. The Philippine authorities have no power to compel the US military authorities to secure and deliver the person of the offender to the Philippine courts if he has been shipped back and demobilized.

The most prominent case under the original Bases Agreement is the case of George Roe, a United States naval serviceman stationed at Sangley Point. In 1957, while he was not in the performance of any military or official duty, as he drove along a road in Cavite City, he hit and seriously injured Rosario Ortiz, a Filipino. Roe was charged in the local court with serious physical injuries through reckless imprudence. The commanding officer was notified of the offense and the proper warrant of arrest was served through him. During the trial, although Roe was not personally present, he was represented by an attorney from the Legal Office of Sangley Point. However, during the pendency of the trial, and without previous notification to Philippine authorities, George Roe was shipped out of the country and demobilized upon arrival in the United States. Played up in the papers, the case aroused public indignation. The commanding officer, Cole stated that Roe's being shipped back and demobilization was a mistake; nothing could be done to correct it. Philippine authorities requested Roe's return to the Philippines for

trial, to no avail. Extradition of George Roe was sought but the United States Embassy[24] answered by stating that "it is impossible to return George Roe to the Philippines since there is no extradition treaty between the United States and the Philippines and the United States law permits extradition from the United States to another country only where there exists such a treaty."[25] Thus, the case of George Roe proved that even though a case falls under the jurisdiction of Philippine courts, such jurisdiction can not be exercised if an offending serviceman is sent out of the Philippines. And there is no way to get him back. It should be noted, however, that the assertion in the note of the Embassy is not altogether accurate.[26] Because the absence of a treaty is not an insuperable obstacle to extradition. It is true that without an extradition agreement, a state is under no obligation to extradite a person from its territory who is accused of a crime by another state. But this will not deprive it of the power to extradite. The exercise of the power is discretionary on the part of the state in the absence of a treaty. A treaty of extradition imposes upon the state the obligation to extradite an offender in favor of the party or parties to the treaty of extradition. In the case of George Roe, since there was no treaty of extradition between the United States and the Philippines, the Philippines could not compel the United States to extradite George Roe. But the United States could have done so. One case in point is that of Ang Chio Kio, a Chinese, who hijacked a Philippine aircraft and killed the pilot of the plane as well as its purser. Ang was apprehended in Nationalist China. The Chinese Government surrendered him to the Philippines although no extradition treaty exists between the Philippines and Nationalist China.

This problem was not remedied in the revision of the Bases Agreement. Section 5, Subsection (a) of Article XIII provides:

> "The appropriate authorities of the Republic of the Philippines and the appropriate authorities of the United States shall assist each other in the arrest of members of the United States Armed Forces or civilian components and their dependents in the Republic of the Philippines and handing them over to the authority which is to exercise jurisdiction. ..."

Section 5 of the Agreed Official Minutes states:

> "In all cases over which the Republic of the Philippines exercises jurisdiction, the custody of an accused member of the United States armed

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[24] Manila Chronicle, July 5, 1957, p. 1.

[25] Soliongco, *Seriously Speaking*, Manila Chronicle, July 25, 1957, p. 4, col. 7, (Commenting on Bases Agreement issue and featuring a comment of a professor of law).

[26] *Ibid.*

> forces . . . pending investigation, trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing (a) that such accused has been delivered to him for custody pending investigation, trial and final judgment in a competent court of the Philippines and (b) that he will be made available to the Philippine authorities for investigation upon their request and (c) that he will be produced before said court when required by it."

Under the first provision, assistance in the arrest of the offender and the handing over of the offender to the authority to exercise jurisdiction is subject to two requisites: First, that the offender is a member of the United States armed forces at the time of the arrest and handing over, and that the offender must be in the Republic of the Philippines. Thus, if an offender is shipped out of the country and demobilized during the pendency of the trial, the US military authorities cannot be compelled, under the Revised Bases Agreement, to secure and deliver an accused who is neither in the Philippines nor a member of the US armed forces. The danger of denial of justice is made more apparent by the fact that custody of the offender is in the hands of the commanding officer until the final judgment. His being shipped back to the United States cannot be prevented, and after he has been shipped back and demobilized, there is no means by which Philippine courts can exercise its jurisdiction.

Under Section 5 of the Agreed Official Minutes, the duty of the commanding officer to produce the offender before the Philippine courts when required presupposes that the offender is still in the custody of the commanding officer. If the offender has already been shipped back and demobilized, custody of the offender is no longer in the commanding officer.

The case of George Roe was repeated under the Revised Bases Agreement. In August, 1966, in Cavite City, a Filipino woman was slapped and manhandled by an American Naval serviceman, Earl Travers,[27] stationed in Sangley Point. The offended woman filed a complaint for maltreatment with the office of the fiscal of the city. On September 15, 1966, on the date of the arraignment, Earl Travers failed to appear. It turned out that on September 3, he had been sent back to the United States, "on orders from higher headquarters," as explained by the representatives of the Sangley Point Legal Office.

The cases of George Roe and Earl Travers show that the Bases Agreement as revised is deficient as far as the delivery or surrender of

[27] Manila Daily Bulletin, Sept. 16, 1966, p. 1.

offenders to Philippine authorities are concerned in the cases where Philippine courts have jurisdiction. Such deficiency can bring about the actual nullification of jurisdiction of Philippine courts.

This problem can be remedied however. This can be done by an amendment of the provision referring to the arrest and handing over of offenders. The handing over or delivery of offenders should be made obligatory on the part of the United States Government, and not only of the "appropriate authorities," which refers only to the US military authorities in the military bases in the Philippines. And the offender should be secured and delivered irrespective of whether he has already been demobilized, as long as at the time of the commission of the offense, he is a member of the armed forces of the United States, and irrespective of the place where he may be found, so long as he is covered by process of the United States Government or authorities.

The problem of non-exercise of jurisdiction in cases where jurisdiction is under the US military authorities can be remedied by an amendment imposing a period of time within which the US military authorities may exercise jurisdiction, and providing that failure to do so should be deemed as automatic waiver of jurisdiction. The Philippine authorities would then have the right to proceed in the prosecution of the offender, as if primary jurisdiction originally belonged to it.

It must be remembered that surrender of the exercise of jurisdiction of a state within its territory is based solely on the consent of the state surrendering such jurisdiction. Thus, the state has the power to lay down the conditions under which the surrender will be made. If the state to whom jurisdiction has been surrendered fails to comply with the terms of the surrender of jurisdiction, the state granting such jurisdiction has the right to withdraw its consent.

The problems and questions presented show the shortcomings of the revised Bases Agreement. These defects demand a further restudy of its provisions so that further changes can be made. Not only would such amendments be for the interest of the Philippines, but, in lessening the sources of conflicts, it would promote better relations between the two countries.

JESUS R. AGUILAR

People v. Consigna*: Acquittal of Accused Public Officer and His Reinstatement

The decision of the Supreme Court in this case involved the issue of whether or not the Court of First Instance besides acquitting the accused (upon a charge of malversation) for "absolute lack of evidence" had the authority to order his reinstatement. The decision was in the affirmative, and the reasons given by the Court were: decisions of the Commissioner of Civil Service are not binding upon the courts, so that, if, as in this case, he dismisses the accused during the pendency of the criminal case for malversation, reinstatement should follow in case of acquittal in the criminal case; and, since a conviction for an offense committed through negligence could be had under an information exclusively charging the commission of a wilful offense upon the theory that the greater offense includes the lesser, his acquittal by judgment "for absolute lack of evidence" impliedly, but necessarily acquitted him of malversation through negligence.

The decision of our Supreme Court in this case is of far-reaching significance to the law of public officers for two main reasons, namely, the Court had for the first time made definite pronouncements on the effects of an acquittal in criminal cases involving public officers relating to reinstatement and payment of back salaries; and the Court, in effect, overturned with one swift stroke a long-standing practice adhered to by the Commissioner of Civil Service and the Civil Service Board of Appeals of conducting investigations and imposing the necessary penalty of suspension or removal even while a criminal action arising from the same acts is pending in the court.

It must be remembered that in previous cases of similar nature decided by the Supreme Court, the appeal made to it had only revolved around the issue of payment of back salaries, and the Court, confining itself on this issue had ruled that the courts have no power to order the payment of back salaries because the right of a public officer to back salaries was not involved in the criminal cases filed against him.[2]

In the *Consigna* case, however, the High Tribunal ruled that "this matter — of reinstatement would seem to be involved in the case of

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* G.R. No. 18087, August 31, 1965.

[1] Cayetano Valones, *et al.*, Administrative Case No. R-9418, August 1, 1956; Petronila Zarate, Administrative Case No. R-7561, August 14, 1956; Celedonio Castro, Administrative Case No. R-10737, August 5, 1957; Ramon H. Hinojales, Administrative Case No. 120, May 25, 1953.

[2] People v. Daleon, G.R. No. 15630, March 24, 1961.

malversation — albeit a mere incident — because conviction of the offense charged necessarily results in a denial of such right of reinstatement in view of the penalty of disqualification provided by law."

On the matter of the Commissioner's practice of conducting simultaneous investigations during the pendency of criminal cases against public officers, the Court said: "It must be observed . . . that although this administrative investigation was started after the filing of the criminal case, Consigna's administrative superiors went ahead with said investigation . . . instead of waiting for the result of the criminal case,"[3] thus creating the *dictum* that when a criminal case is pending against a public officer, administrative investigation based on the same facts should stop altogether, and that if administrative proceedings had been conducted, the determination of the Commissioner as to the guilt of the accused would be subordinated to that of the Court's findings in the criminal case.

It is submitted, however, that strong reasons exist for not disturbing the practice of the Commissioner of conducting administrative investigations during the pendency of a criminal action against the public officer concerned, and of giving effect to his findings regardless of the result of the criminal case.

Concept of the Civil Service System.

The Civil Service System has been established for the exclusive purpose of creating and maintaining an efficient and effective public service. No person has a vested right to a public office for the "holding of a public office is a privilege and the same may be withdrawn the moment the integrity, efficiency and ability of an officer or employee have been impeached. His reputation and conduct should be such as to win and retain public respect, and above all to preserve and enforce confidence of the public in the Civil Service."[4]

Administrative as Distinguished from Penal Proceedings.

Administrative proceedings are regarded as an executive function. It is also considered as remedial rather than penal in character. The reason for this is clear: an individual is punished under the criminal law

[3] People v. Consigna, G.R. No. 18087, August 31, 1965.

[4] Gregorio Rasalan, *Philippine Civil Service Law*, (Manila, 1961 Edition) 41. See also Baltazar Gazzigan, Administrative Case No. R-13215, August 17, 1956. See Rivera, *Decisions of the Civil Service Board of Appeals*: 1941-1961, (Manila, 1962 edition) 234.

as a member of society; whereas in an administrative case, forfeiture of a public office is not so much a punishment as it is for the purpose of improving the public service and preserving the faith and confidence of the people in their government and its officials. Thus, the consequences of a conviction in an administrative case extend only to the possession of the office and its emoluments, while conviction in a criminal case would almost always involve deprivation of individual liberty, including accessory penalties, like disqualification for office. Indeed, the loss of the right to hold a public office which results from conviction of a crime is no part of the punishment for the offense, but it is a collateral consequence not flowing from the same.[5]

Another salient distinction perceivable in administrative proceedings *contra* penal cases is that in the latter, the accused must be found guilty beyond reasonable doubt before a conviction may be secured; whereas in the former, only a moral persuasion of guilt is required.[6] The reason for this lies in the "fundamental distinction between the purposes of criminal and administrative action: for, while criminal proceedings are initiated with the view of making the accused 'atone for his social deviation which has disturbed the even tenor of our ways', administrative proceedings, on the other hand, are directed to afford the public immediate protection from the acts of incompetent officials so as to improve the standards of public service."[7] Moreover, rules of evidence are not adhered to strictly in administrative cases. Certain classes of evidence although inadmissible before the courts, like extra-judicial confessions of a state witness, may be admissible before administrative bodies.[8]

It is for these reasons, among others, that the Commissioner as well as the Civil Service Board of Appeals have consistently ruled that an acquittal in a criminal case is not controlling upon the determination nor the outcome of the administrative case, especially when no hearing on the merits was had.[9] Indeed, a public office being a position of trust, it should be held only as long as its holder enjoys the trust of the employer, in this case, the Government.

The point now may be raised as to whether or not the acquittal by the courts of justice stands as a guaranty that the government considers

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[5] State *ex rel.* Attorney General v. Irby, 81 S.W. 2d 419, 56 S.Ct. 136, 296 U.S. 616, 80 L. Ed. 437 (1935).

[6] Cesar M. Paraso, Administrative Case No. R-9517, August 31, 1956.

[7] Rodolfo Tepora, Administrative Case No. R-13671, March 30, 1957.

[8] Benjamin Cardenas, Administrative Case No. R-15889, December 13, 1957; Salvador Macaranas, Administrative Case No. R-6107, June 13, 1955; Marcial Antigua, Administrative Case No. R-8328, November 21, 1955.

[9] See, note 1, *supra;* also Federico David, Administrative Case No. 1, June 25, 1947.

the accused fit to continue in the service. The answer to this is that the finality and conclusiveness of administrative decisions is a well-settled rule and the courts generally, do not interfere therein as long as the Commissioner's decision is within his jurisdiction and not arbitrary and oppressive.[10] Thus, it was held in the American case of *Mulligan v. Dunlap*,[11] that where action is taken in removing from office an employee in the classified service, and action is in accordance with procedural and statutory requirements, a court of law has no jurisdiction to inquire into the guilt or innocence of the employee as to the charge upon which he was removed. Cases adhering to this doctrine never considered the fact that during the pendency of the criminal case, administrative proceedings were also initiated against the same person for a similar offense. It is felt that it is inconsequential whether the hearing of the administrative case was conducted simultaneously with the criminal case, so long as the facts of the case show that the Commissioner followed what the law required in the conduct of administrative proceedings. The primordial issue in cases of this nature is not whether or not the Commissioner should have waited for the termination of the criminal case, but whether or not he followed procedural due process in imposing the necessary disciplinary measure. Thus, in *Negado v. Castro*,[12] the Supreme Court held that "the courts will intervene only when there is a denial of due process or a capricious exercise of judgment."

Due process, as it is generally understood in administrative proceedings, means "that there must first be an investigation at which the officer must be given a fair hearing and an opportunity to defend himself"[13] In the *Consigna* case, the accused had been given a hearing after which the Commissioner found that he should be dismissed from office for "gross negligence." Hence, it would seem that the Supreme Court should not have disturbed the decision of the Commissioner since the only ground advanced by the Court for ordering the reinstatement of Consigna was that the wilful act includes the negligent act. That Consigna had also been acquitted for "absolute lack of evidence" as found by the trial court should not control the decision of the Commissioner as in practice the findings of fact of the latter when no abuse of dicretion is shown has always been considered as conclusive by the Court, apart from the fact that evidence that may be admitted by the Commissioner may not necessarily be admissible in a court proceeding.

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[10] Administrative Case No. 14, March 19, 1941. See Rivera, *op cit.*, 113. See also Blanco v. Board of Medical Examiners, 46 Phil. 190.

[11] 108 F. Supp. 296 (1952).

[12] Negado v. Castro, G.R. No. 11809, June 30, 1959.

[13] Lacson v. Romero, 84 Phil. 753 (1949).

Furthermore, even if it be accepted that a negligent act is included in a charge of a wilful one done, it would seem that this concept is true only under the penal law, but not under the Civil Service Law, for the latter enumerates the specific instances under which removal or suspension are warranted. Conviction of a crime involving moral turpitude is only one of those grounds. Neglect of duty, dishonesty, *inter alia* are grounds for suspension or removal. A decision of the Commissioner finding one guilty of gross negligence or dishonesty should not, indeed, be binding on the courts of justice, considering the quantum of evidence required in criminal cases. On the other hand, in case of judicial review, decisions of the Commissioner based on substantial evidence have heretofore been left undisturbed. A finding by the Commissioner of gross negligence or dishonesty would not solely on these grounds warrant a conviction of a crime. By parity of reasoning: considering the purpose, the procedure, and the necessary quantum of evidence required in a criminal case, the decision of the courts should not also be binding upon the Commissioner. Thus, in another American case,[14] it was held that the acquittal of an officer on criminal charges does not necessarily mean that that officer is not guilty of such charges and may not be found guilty in a departmental hearing. In another case,[15] decided in Ohio, the court held that the law does not comprehend that public employees shall be found guilty of having committed some violation of criminal laws before cause for removal arises. In fact, cases decided by the Civil Service Board of Appeals show that even in cases of criminal conviction by a Court of First Instance, the Commissioner cannot exclusively rely on such conviction and summarily suspend or dismiss the accused, particularly when the criminal case is appealed because of the possibility of reversal by the appellate court. There must be a showing that a formal inquiry or hearing of the charges had been conducted in accordance with Executive Order No. 370. Even when the case is reversed on appeal, the long-standing practice of the Board is to remand the administrative case to the Commissioner for investigation and decision of the administrative charge. This seems to be a practice followed by the executive branch even during the American regime.[16] The doctrine that "the

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[14] Pinck v. Bliss, 129 N.Y.S. 2d 64 (1954).

[15] In re Fortune, 101 N.E. 2d 174 (1951).

[16] See Memorandum Order of the Governor-General, dated November 7, 1917, to wit: "Generally, a conviction by the lower court would be sufficient *to warrant the institution of administrative proceedings* for the removal of the employee concerned and his immediate suspension, even though an appeal from the sentence is taken before a higher court." See also Executive Order No. 370, series of 1941. See also Rafael Pastoriza v. Superintendent of Schools, G.R. No. L-1423, September 23, 1959 holding that Executive Order 370 "substantially conforms in its general outline" to Republic Act No. 2260, known as the Civil Service Act of 1959.

greater offense includes the lesser one" should not be extended nor should it govern the outcome of an administrative proceeding since, the public officer who has committed an infraction of the civil service law is not being tried for an offense as this concept is understood in penal law.

Jurisdiction of the Civil Service Commission and the Courts

Our Constitution confers upon Congress the power to define, prescribe, and apportion the jurisdiction of the various courts in the Philippines.[17] At the same time, it provides that "A Civil Service embracing all branches and subdivisions of the Government shall be provided by law,"[18] and that appointment in the Civil Service shall, in general, be made only according to merit and fitness to be determined as far as practicable by competitive competition.[19] Since the adoption of the Constitution, Congress has enacted various laws concerning the civil service and all those laws show that matters of appointment and discipline in the civil service is an executive function, the role of the courts being merely limited to matters proper for judicial review.[20]

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[17] Const. Art. VIII, sec. 2.

[18] Const. Art. XII, sec. 1.

[19] *Ibid.*

[20] Rep. Act No. 2260, sec. 16, known as Civil Service Act of 1959 provides:

"Sec. 16. *Powers and Duties of the Commissioner of Civil Service.*—It shall be among the powers and duties of the Commissioner of Civil Service —

(b) To enforce, execute and carry out the constitutional and statutory provisions on the merit system;

(f) To make investigations and special reports upon all matters relating to the enforcement of the Civil Service Law and Rules; . . .

(i) Except as otherwise provided by law, to have final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service and upon all matters relating to the conduct, discipline, and efficiency of such officers and employees; and to prescribe standards, guidelines and regulations governing the administration of discipline; . . ."

The same law provides:

"Sec. 33. *Administrative Jurisdiction for Disciplining Officers and Employees.*— The Commissioner may, for dishonesty, oppression, misconduct, neglect of duty, conviction for a crime involving moral turpitude, notoriously disgraceful or immoral conduct, improper or unauthorized solicitation of contributions from subordinate employees . . . or in the interest of the service, remove any subordinate officer or employee from the service, demote him in rank, suspend him for not more than one year without pay or fine him in an amount not exceeding six months' salary." At the same time, the Civil Service Law outlines the procedure to be followed in the discipline of officers and employees in the Government.

On the other hand, the Revised Penal Code provides:

"Art. 73. *Presumption in regard to the imposition of accessory penalties.*— Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provision of articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict."

A cursory reading of these laws would reveal that Congress has delegated to the Commissioner and not to the courts the exclusive jurisdiction finally to determine when, under what circumstances, and for what causes, those in the classified civil service may be removed therefrom, subject only to the requirements of good faith and compliance with prescribed procedure which are prope rsubjects of inquiry on judicial review under our legal system. Thus, even in case of conviction for a crime for which the penalty of disqualification is imposed by law, the Revised Penal Code provides that "it must be understood that the accessory penalties are also imposed upon the convict" thereby implying that there is no necessity of making an express pronouncement to that effect by the court.[21] Indeed, while the law is positive and specific on the extent of the jurisdiction of the Commissioner in the discipline of civil servants, nowhere is there any mention of the powers of the courts over these matters. In fact, under the Civil Service Law, even in case of conviction of a crime involving moral turpitude, the Commissioner is given the power either to remove or suspend or simply impose a fine upon the erring officials.

The point may, however, be raised to the effect that the power to reinstate in case of acquittal of the accused of a crime must be implied in the court's exercise of its criminal jurisdiction, or, at least, necessarily incidental to the latter to render the decision effective. This conclusion, however, may perhaps, be true if we have no laws specifically defining the jurisdiction of the Commissioner on matters involving the civil service. Indeed, the constitutional mandate for the creation of a civil service system and the subsequent implementing legislations serve but to point out a deliberate and clear recognition of the distinction between the nature and character of a proceeding for the discipline of public officers and employees, as contra-distinguished from a penal proceeding. It has been held that "the general question of executive policy involved in the removal of an officer cannot be turned over to the courts."[22] And as observed in the case of *Negado v. Castro*,[23] "The question of whether the facts disclosed in the investigation require the separation of the employee in the interest of the public service is largely one to be determined by the corresponding *administrative* authorities." On this subject, another authoritative source said:[24]

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[21] See People v. Jarumayan, C.A.-G.R. No. 13200-R, August 30, 1955.

[22] In re Opinion of Justices, 118 A.L.R. 166 (1938).

[23] Negado v. Castro, see note 12., *supra*.

[24] Gregorio Rasalan, *op. cit.* 57 at note 4, citing Opinion (Fifth Indorsement) of the Commissioner of Civil Service, dated November 18, 1952, re Anastacio Mulato.

> "An acquittal in a court of law does not necessarily free one from administrative liability. He may not be guilty of having violated a legal prescription, and yet 'he cannot escape administrative responsibility because of certain ethical or moral implications involved in the act which fall within the sphere of administrative law.' It therefore follows that the acquittal by the court would not be a valid defense in an administrative action based on the same facts, and there is no double jeopardy in such case."

If then, an acquittal in a criminal case would not bar a subsequent administrative investigation of the offender, there seems to be no sound and practical reason why the Commissioner may not immediately proceed to investigate the administrative charge against an officer and, if found guilty, remove him outright without waiting for the results of the criminal case, since different issues are involved in the two proceedings, apart from the fact that not infrequently, a lot of people will be found willing to testify in an administrative case, but whose cooperation will be found unavailing in a criminal prosecution.

These considerations, perhaps, must have influenced the Court of Appeals when it declared in *People v. Pedraza*[25] that the "matter of reinstatement together with the payment of back salaries is not within the jurisdiction of the Court of Appeals, that is a matter which should be submitted to and passed upon by the corresponding executive authorities."

FEDERICO PASCUAL
JAIME N. SALAZAR, JR.

[25] C.A.-G.R. No. 17130-R, May 19, 1958, 54 O.G. 8246 (December 1958)