grasped by a talented man who has specialized on the matter and is veteran long enough.

This argument gains strength when complemented with what has been said before, that rules of war govern the actions of rebels and that such rules have never accepted the theory that rebellion, during its pendency, can be complexed with some other crime.

Somewhere it was objected that the Huk rebellion has not reached the stage of full-scale war. It is only a series of armed clashes, skirmishes, ambuscades, and raids, not the whole scale conflict of civil war like that between the Union and the Confederate forces in the American Civil War. From this fact it was argued that the rules of war will not apply to the Huk rebellion, since the rules are meant only for a real war where the rebels are declared as belligerents, not for any other turbulence of lesser magnitude.

The answer is that, if these rules should govern war, then with more reason should they be applied at the very inception of an armed clash called rebellion so that it will not grow into a total war which humanity detests. For the movement of the rebels can be controlled right from the start and the horror rising along the trail of war may be diminished, if not avoided.

REFERENCE DIGEST

CRIMINAL LAW: REBELLION COMPLEXED WITH OTHER HIGH CRIMES? The resolution in G.R. Nos. L-6025-26, July 18, 1956, granting bail to Amado V. Hernandez, may have indeed dragged itself to some far-reaching implications when it abruptly settled the controversy heretofore unresolved—whether there can be a complex crime of rebellion with murder and other common crimes.

The two main premises upon which the resolution of the majority was based were: (a) that under the allegations of the information, Hernandez was guilty of the crime of simple rebellion, a non-capital offense; and, (b) that in the exercise of its discretion, the Court had laid down the policy of granting bail to persons accused of non-capital offenses while their cases are on appeal.

Under the allegations of the amended information, the majority believed that Hernandez was guilty of only one crime, that of rebellion plain and simple — and not of the complex crime of rebellion with murders, arsons and robberies because the latter crimes were alleged in the information as mere "necessary means to commit rebellion and in the furtherance thereof" and could, therefore, be considered as falling under two of the five ways of committing rebellion, namely, "engaging in war against the forces of the government," and "destroying property or committing serious violence."

That was the resolution of the majority as expressed thru Mr. Justice Concepcion who penned the resolution. The dissenting opinion interposed by Mr. Justice Montemayor expressed the view that "the commission of rebellion is complete and consummated if a group of persons, for the purpose enumerated in article 134 of the Revised Penal Code, rises publicly, takes up arms and assembles; and following the distinction pointed out by Groizard between an indispensable and necessary means, the murders, arsons and robberies are not indispensable means but only necessary means, and could, therefore, be complexed with rebellion.

According to the author in his comments, the majority opinion laid emphasis on the concept of rebellion rather than on the concept of complex crimes interposed by the dissenting opinion. The author goes on in his comments by analyzing par. 1, art. 135 of the Revised Penal Code, saying that the five classes of acts enumerated therein quality only their immediate antecedent, namely the public officer or employee. Par. 1, art. 135 in

question, is a special provision applicable to those who play a leading part in the rebellion either as head, promoter, maintainer and those who, though not playing such leading roles, are public officers or employers. The five classes of acts enumerated in par. 1, art. 135, are not intended to qualify both the public officer who takes part in the rebellion and the person who promotes, maintains or heads the movement.

The allegations of the information read as follows: "That he did then and there willfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command the Hukbalahaps." Note that Hernandez was not charged as a person "who, while holding any public office or employment, takes part therein" by committing the five classes of acts enumerated in par. 1, art. 135, Rev. Penal Code. If he was charged merely as a person playing a leading part in the rebellion, then the five classes of acts enumerated in said article cannot be made applicable to him because, according to the author, they "qualify only the immediate antecedent, namely, the public officer or employee." If this be the case, it is here advanced that the crimes of murders, arsons and robberies cannot be said to fall under two of the five ways of committing rebellion, namely, "engaging in war against the forces of the government" and "destroying property or committing serious violence," because these qualifying acts relate only to public officers or employees as opined by the author in his comments; but which acts were apparently held by the resolution of the majority to also qualify a person who "did help, support, promote, maintain, cause, direct and/or command the rebellion" as the case of Hernandez.

Article 48 of our Revised Penal Code establishes two classes of complex crimes, namely, (a) when a single act constitutes two or more grave or less grave felonies; and, (b) when an offense is a necessary means for committing the other.

In the first class, two requisites must be present: (1) a single act, and (2) two or more grave or less grave felonies resulting from such act. If there is more than one act, it would likely fall under the second class, or be separate or indispensable. If one of the offenses is a light one, there could not be a complex crime since the light felony would either be absorbed or held separate depending upon the nature of the crime and its attending circumstances.

In the second class, there must be at least two offenses and one of them be committed as a *necessary means* to commit the other. "Necessary means . . . does not mean indispensable means, because if it did, then the offense as a necessary means to commit another would be an indispensable element of the latter and would be an ingredient thereof."

In a sedition case, *People v. Cabrera*,[1] our Supreme Court sentenced the

[1] 43 Phil. 64 (1922).

accused for murder after it had convicted them of sedition when it found out that murder was not necessary for committing sedition.

In treason cases, in some instances, the Supreme Court convicted traitors for the complex crime of treason with murder.[2] But in the majority of cases, the Court held that murders committed "as overt acts of treason would be absorbed in the latter offense."[3] In treason cases, apparently our Supreme Court shifted from one stand to the other. But in rebellion cases, our Supreme Court has never convicted a person of the complex crime of rebellion with murder or with some other crimes.

In theory at least, various tests were advanced to determine whether one offense could be complexed with rebellion instead of being merely absorbed in or held separate from said crime. They were:

(1) *Gravity test,* as laid down by Cuello Calon in summarizing the decisions of the Supreme Court of Spain. Under this test, for example, if a Huk kills a member of the Armed Forces of the Philippines in an encounter, the killing, being a grave offense, would not be absorbed in rebellion, and under the Spanish Penal Code, would be prosecuted separately.

(2) *Political intent or motive test* — This is the determination of whether the offense is a "political" offense or a "common crime." Mr. Justice Concepcion laid down the test in the following terms: "In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive."[4]

This test would seem to be too dangerous to adopt because it logically tends to imply that all crimes committed with the intent or motive to further rebellion must necessarily be absorbed in the political offense of rebellion despite their serious character.

In order to equalize or at least reasonably limit the far-reaching implications of the resolution in question, the Executive Department of the government had prepared an amendment to the Revised Penal Code on rebellion, proposing to impose a higher penalty for said crime. But rightly or wrongly, Congress failed to pass the bill.

In view of the fact that our law and jurisprudence on rebellion still stood and remained as before, two alternatives have been advanced to moderately regulate, at least, the consequences caused by the controversial resolution.

The first alternative would be to prosecute the rebels separately for the serious crimes they have committed in the course of the rebellion.

Continuing the discussion on the effects of the resolution, if murders

[2] People v. Alejo, 45 O.G. 2871 (1948); People v. Labra, G.R. No. L-1240, May 12, 1949.

[3] People v. Prieto, 45 O.G. 3329 (1948); People v. Labra, 46 O.G. (1s) 159 (1948); People v. Vilo, 46 O.G. 2517 (1949); People v. Delgado, 46 O.G. 4213 (1949); People v. Adlawan, 46 O.G. 4299 (1949); People v. Ingalla, 46 O.G. 4831 (1949); People v. Butawan, 46 O.G. 5452 (1949).

[4] People v. Hernandez, 52 O.G. 5506, 5521 (1956).

were alleged in the information as "necessary means to commit rebellion and in the furtherance thereof," the killings would be absorbed in said crime. This impliedly ruled out the possibility of rebellion being complexed with other crimes. The only possibility then next in line, would be to prosecute the rebels separately for other crimes committed in the course of the rebellion.

This proposal for separate prosecution as an alternative is not entirely new. In fact, in a treason case, *People v. Prieto*,[5] our Supreme Court made such a suggestion, saying: "This rule would not, of course, preclude the punishment of murder or physical injuries as such if the government should elect to prosecute the culprit specifically for those crimes instead of relying on them as an element of treason. It is where murder or physical injuries are charged as overt acts of treason that they cannot be regarded separately under their general denomination."

The resulting evils with this practice, however, would be: (1) binding the court and rendering it powerless in the face of the whims of the prosecuting officer who may choose to prosecute the accused for treason or for murder; (2) witnessing the anomaly of having two persons equally guilty for the same crime being sentenced to radically different penalties because one was prosecuted for rebellion and the other for murder because the fiscal, under this alternative, decides the manner of prosecuting the accused; and (3) having the accused to some extent, at least, invite a lighter penalty imposed for the crime of rebellion in his favor by merely presenting evidence and proving that the killing was committed as a "necessary means to commit rebellion and in the furtherance thereof," when on the other hand, the information charges him for murder and there would be a clear certainty of his being convicted for said crime.

The second alternative would be to prosecute the rebels for the crime of treason in order to impose on them a higher penalty. The difficulty with this proposal, however, lies in the fact of having the prosecution undergo the rigid requirement of the two-witness rule in treason before a person accused of said crime can be convicted. And, furthermore, our jurisprudence on treason is still not firmly settled as yet. The conflict whether the crime of treason can be committed both in times of war and in peace, as expressed in the case of *U.S. v. Lagnason*,[6] or only in time of war, as held in the case of *Laurel v. Misa*,[7] is yet clamoring for judicial ruling and reconciliation.

Concluding in this comment, if the information and evidence to prove such rebellion were examined in the light of the test laid down for the second class of complex crimes, the murders, arsons and robberies could be considered either as absorbed in, complexed with, or separate from

[5] 45 O.G. 3329 (1948).
[6] 3 Phil. 472 (1904).
[7] 77 Phil. 856 (1947).

rebellion, all depending upon the circumstances under which the crimes were committed.

If for example, in an actual combat between government forces and the rebels, one of the rebels should kill a member of the government forces, such killing would perhaps be *absorbed* in rebellion. If on the other hand, a rebel should kill another because of personal quarrel, not connected in any manner with the furtherance of rebellion, such killing would be treated as a *separate* crime. And if an offense is committed which is not indispensable to rebellion but nevertheless is reasonably and sufficiently connected with it, as a necessary means of committing rebellion, such offense may be *complexed* with rebellion. (Sabino Padilla, Jr., Comments, *The Hernandez Bail Resolution*, 31 PHIL. L.J. No. 4, at 521-538 (1956). ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Santos, *The Court of Agrarian Relations;* Golay, *The Case for Peso Devaluation.*)

CONSTITUTIONAL LAW: FREEDOM OF THE PRESS. Whether a publisher, editor or duly accredited reporter of any newspaper, magazine or periodical of general circulation can be compelled or not to reveal the source of any information appearing in the publication confided or related in confidence to such publisher, editor or reporter, is now well settled.

Under Republic Act No. 53, known as the Sotto Press Freedom Law, the court or the legislative authority has the right to compel the reporters to divulge the source or sources of information when the *interest of the state* so demands.

Now, under Republic Act No. 1477 amending the afore-cited law, the court or a House or Committee of Congress may compel newspapermen to reveal the sources of their publication when such revelation is demanded by the *security of the state.*

It is, indeed, interesting here to note that the amendment have perhaps been sparked when Judge Emilio Rilloraza of the Court of First Instance of Pasay, in his decision, condemned five newspapermen to thirty-days' imprisonment upon their refusal to reveal the source or sources of their news-stories. (See: *People v. Oscar Castelo,* Crim. Case No. 3023-P, [*In re* Manuel Salak, Jr., for Contempt]).

Said decision, we may say, must have been a blessing in disguise. It makes more apparent the fact that the former press freedom law (Republic Act No. 53) is no longer a law for the protection of newspapermen as it was supposed to be. This decision has stirred the most unfavorable reaction on the part of the press and perhaps due to its daring effects on the freedom of the press in the Philippines, top congressional leaders promised to amend said law, under which Judge Rilloraza based his authority

in compelling the reporters to divulge the source of information whence they derived their news stories.

In the original amendatory bill presented by Congressman Floro Crisologo, *absolute* exemption was urged. The supporters of this idea advanced the theory that an editor or reporter should never be harrassed by a constant threat of vexing judicial or legislative inquiry as to the source of confidential reports received by them. It was further urged that the confidential informations received by reporters should be placed in the same category as confidences given to a lawyer, a doctor, or a priest by persons coming to them by virtue of their professional or ecclesiastical authority.

While there are those who urged absolute exemption on one side, there are those who clamored for only a *qualified* exemption on the other side. The reasons advanced by those supporting the latter, were thus:

(a) That courts, in the fulfillment of their judicial functions, should have the power, at least, to require and compel a newspaperman to disclose the source or sources of their news-stories when the interest of justice so demands;

(b) That the canons of journalistic ethics forbidding the disclosures of a reporter's source of information must yield when it conflicts with the interest of justice;

(c) That the freedom of speech and of the press is inferior or subordinate to the administration of justice;

(d) That by their very nature, information given to a reporter can never be given the same privileged character as that given to information received by lawyers or doctors because the former are intended primarily for public consumption; while the latter are only to be used as guides by the recipients as to what course of conduct they are going to take.

(e) That while a reporter, in case of the publication of a libelous article based on information given to him in confidence, may be personally held liable if he refuses to name his informant, such privilege will, in effect, be used as a shield to the real infractor of the law, thereby allowing him to go unpunished. If it is indeed the policy of the law to protect and safeguard the freedom of the press or the liberty of expression so that true and real facts and useful information will reach the general public, then the power to compel revelation must, to a certain extent at least, be limited and nothing less than the safety of the state must be the basis upon which such disclosure of information from the newsmen may be demanded. (Augusto S. San Pedro, Comments, *The Press Freedom Law as Amended*, 31 PHIL. L.J. No. 4, at 539-544 (1956). ₱2.50 at U.P., Diliman, Q.C. This issue also contains: Santos, *The Court of Agrarian Relations;* Golay, *The Case for Peso Devaluation.*)

LABOR LAW: THE C.I.R. AND COMPULSORY ARBITRATION. The jurisdiction of the Court of Industrial Relations has been under attack in many instances, but the issue has not come to a sizzling point except where the court's power of compulsory arbitration was involved. When Congress passed Republic Act No. 875, otherwise known as the Magna Carta of Labor, there was not the slightest doubt as to its objective to do away with compulsory arbitration. This can be gleaned from the positive and clear declarations of the exponents of the law, one of which was Senator Briones who stated, "El principio fundamental de este proyecto, tal como lo propone el Comite ahora, es lo que llamomos 'collective bargaining.' Deja que las partes mismas sean las que resuelvan sus dificultades con la intervencion minima posible del Tribunal Industrial. . . ."

Inspite of the clear intention of the Legislature to do away with compulsory arbitration, several cases came up before the industrial court which proved that the compulsory arbitration question was anything but settled. The source of the present confusion is section 7 of Republic Act No. 875 which provides that: "In order to prevent undue restriction of free enterprise for capital and labor and to encourage the truly democratic method of regulating the relations between the employer and employee by means of an agreement freely entered into in collective bargaining, no court of the Philippines shall have the power to set wages, rates of pay, hours of employment except as is provided in Republic Act Numbered Six Hundred Two and Commonwealth Act Numbered Four Hundred Forty-Four as to the hours of work."

The Court of Industrial Relations' power to arbitrate disputes concerning terms and conditions of employment has been both disputed and invoked in cases involving claims for underpayment, maternity pay, separation pay, and other odd claims. The highly controversial character of the question is proved by the disparity in the decisions not only of the individual judges but also in the decisions of the Court en banc.

In one case a judge of the Court of Industrial Relations ruled that the court has no jurisdiction in claims for overtime pay and underpayment of wages,[1] while in another case another judge maintained that the Court has jurisdiction not under Republic Act No. 875 but under Republic Act No. 602,[2] stating further that the facts alleged in the complaint do not constitute unfair labor practice, as defined by section 4 (a) of Republic Act No. 875. In Case No. 994-V entitled "Albano v. Pacific Equipment Corporation," the majority held that the industrial tribunal has no jurisdiction in claims for separation pay, overtime compensation, and personal damages, one judge declaring that recovery of personal properties is definitely one

[1] Case No. 204-ULP
[2] Case No. 51-ULP

for the ordinary civil courts to decide. These cases are now on appeal to the Supreme Court.

The CIR has clarified its position on the question further when it ruled it "has no jurisdiction to entertain a claim for separation pay when not connected with unfair labor practice,"[3] and that it has jurisdiction in claims for unpaid differential pay and overtime compensation when these are directly and closely linked with anti-labor acts.[4]

Judge Martinez said that the "court of competent jurisdiction" mentioned in section 16 of Republic Act No. 602 is not the Court of Industrial Relations[5] and that the proper action concerning claims for overtime compensation, separation pay, etc., should be recovery for sum of money in a purely civil case.[6]

The two opposing schools of thought in the industrial court were typically expressed in the dissenting opinion in the case of *Almin v. NASSCO*[7] and the opinion of the Court in Case Nos. 925-V and 926-V (Order, February 14, 1954). The former expressed the view that the Magna Carta of Labor was passed for the virtual abolition of compulsory arbitration, the reason being that "sound and stable relations must rest, in keeping with the spirit of our democratic institutions, on an essentially voluntary basis." The latter opinion maintained that the C.I.R. has jurisdiction over these matters by provisions of Republic Act No. 602 and Commonwealth Act No. 444.

Ironically, the Department of Labor[8] which started the move against compulsory arbitration has, wittingly or unwittingly, taken sides on the controversial issue by indirectly supporting the pro-jurisdiction faction in the C.I.R. when it endorsed to the C.I.R. a case not involving an industry indispensable to the national interest[9] allegedly under section 16 (c) of Republic Act No. 602 which provides that: "Where the demands of minimum wages involve an actual strike, the matter shall be submitted to the Secretary of Labor, who shall attempt to secure a settlement between the parties through conciliation. Should the Secretary fail within fifteen days to effect said settlement, he shall indorse the matter together with other issues involved, to the Court of Industrial Relations, which will acquire jurisdiction on the case including the minimum wage issue,. . ."

It should be noted however, that when Republic Act No. 602 was passed, the Magna Carta of Labor was not yet in existence. Under Republic Act

[3] Felix Abe v. Foster Wheeler Corporation, Case No. 963-V, Res., June 30, 1955.

[4] Vicente Yacob v. Amado Cruz and WAS, Case No. 758-V (now 682-ULP), Order, May 17, 1955.

[5] PLASLU v. CEPOC, Case No. 241-V (9), May 8, 1956.

[6] Samahan Ng Mga Panadero sa Pilipinas v. Dalisay Bakery, Case No. 933-V, Order, August 31, 1954.

[7] No. 934-V.

[8] H. Bill No. 825, which is the basis of Republic Act No. 875, was sponsored by the Department of Labor under then Secretary Jose Figueras.

[9] Case No. 1029.

No. 875, the cases that may be certified to the Court of Industrial Relations are only those where a labor dispute exists in any industry indispensable to the national interest and this dispute is certified by the President of the Philippines, not by the Secretary of Labor, as was the practice under Commonwealth Act No. 103 when compulsory arbitration was still the general rule and not the exception. The only exception therefore under the Magna Carta of Labor to the prohibition against the court's exercise of its compulsory arbitration power are those cases endorsed to it by the President of the Philippines as "national interest" disputes. The law has to make an exception in national interest cases in order that, as in the case of the President of the United States under the Taft-Hartley Act, the Chief Executive may lend the whole weight and prestige of his office to the aid of the industrial court in handling or treating a labor dispute which imperils the national interest.[10] This is precisely the reason why Congress, instead of maintaining the old practice existing under Commonwealth Act No. 103 of requiring the Secretary of Labor to certify a labor dispute to the C.I.R., has thrown such responsibility on the lap of the President of the Philippines.

It is significant that when section 16 (c) of Republic Act No. 602 was proposed, that is when the Secretary of Labor was authorized to certify a case to the C.I.R. for compulsory arbitration, there was still no Republic Act No. 875 which abolished compulsory arbitration except in certain instances. Had Republic Act No. 875 been in existence at that time, said section 16 (c) permitting compulsory arbitration would not have been proposed.

The enforcement of section 16 (c) can render nugatory the policy of Republic Act No. 875 against compulsory arbitration. What can prevent any union desiring to bring to the C.I.R. by a Department of Labor certification a dispute which is not of "national interest" by simply inserting a claim for a minimum wage among the other demands and staging a strike not for a minimum wage but actually for other demands? It should be observed that section 16 (c) was inserted in Republic Act No. 602 because the industrial court was the court thought most competent to handle all sorts of disputes at the time whether they affect national interest or merely an ordinary dispute. Now, however, the Magna Carta of Labor seems to leave no room for doubt that the C.I.R. may hear cases for compulsory arbitration only in "national interest" and "transitory" cases. It would be erroneous to justify a return to compulsory arbitration under any other circumstances much less under an anterior law.

The C.I.R. should not permit itself to be used as an instrument to frustrate the will of Congress and the labor elements that agitated for the abolition of compulsory arbitration even under the guise of safeguarding its power.

[10] 1 LEGISLATIVE HISTORY OF THE U.S. LABOR-MANAGEMENT RELATIONS ACT OF 1947, at 336.

(Emiliano Morable, *The C.I.R. and Compulsory Arbitration,* 7 THE LAW REVIEW No. 2, at 106-112 (1956). ₱2.00 at U.S.T. College of Law, España, Manila. This issue also contains: Molina, *Do Schools Enjoy Freedom of Conscience?;* Arostegui, *Francisco De Vitoria and the United Nations.*)

LEGISLATION

FREEDOM OF THE PRESS — All the aspects of this subject have been so thoroughly discussed by legal luminaries, both local and foreign, in their various works, textbooks, and commentaries, that a further discussion on the subject is not necessary. This Comment is thus limited to the latest legislation regarding the freedom of the press.

R.A. No. 1477 was passed with the view of further implementing the constitutional guarantee of the freedom of the press. This Act, like R.A. No. 53, deals specifically with the right of publishers, editors and reporters to refuse to reveal the source of any information confided to them.

R.A. No. 1477 amends R.A. No. 53 by substituting the phrase "security of the state" in lieu of the phrase "interest of the state." Under R.A. No. 53, publishers, editors and reporters could be compelled to reveal the source of their information only when the courts, Congress, or any House or Senate committee finds that it is in the "interest of the state." Under R.A. No. 1477, they can be compelled only when the "security of the state" demands it.

It is interesting to note that the enactment of R.A. No. 1477 was prompted by incidents which led to the prosecution of newspapermen for contempt of court for refusing to reveal the source of their information. Both R.A. No. 1477 and R.A. No. 53, when introduced as House Bill No. 4601 and Senate Bill No. 6 respectively, provided for an absolute exemption — that newspapermen cannot be compelled to reveal the source of their information under any and all circumstances. Fortunately or unfortunately, however, both suffered amendments in the course of the proceedings for their enactment. An exception was incorporated both under R.A. No. 53 and R.A. No. 1477.

R.A. No. 1477 was introduced in the House of Representatives to make the exemption absolute. The proponent of the bill justified the granting of absolute exemption by stating that such absolute exemption was just as important for the unbridled freedom of the press as freedom from previous restraint or censorship and subsequent liability.

Going back to the amendment introduced by R.A. No. 1477, the question now is — What is the difference between "interest of the state" and "security of the state"?

Our Supreme Court had occasion to interpret the phrase "interest of the state" in the case of *In re Parazo,*[1] where it said:

[1] 45 O.G. 4382 (1948).