THE CIVILIAN COMMANDER

The Constitution of the Philippines, in adopting a principle embodied in the fundamental laws of possibly all the countries of the world, provides:

> The President shall be the Commander-in-Chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.[1]

This provision is almost an exact reproduction of a corresponding provision in the first draft of the Constitution. The provision in that draft was in turn influenced by the report of the Committee on Executive Powers. The corresponding portion of the latter was largely reproduced from the Jones Law.

As such Commander-in-Chierf, the President has powers and functions pertaining to a general in command of an army corps. All the military operations will be conducted under his orders. By virtue of this power, he may easily plunge the country into war, although it is Congress that, under the Constitution, has the power to declare war. The Legislature may indirectly interfere with the control of the armed forces thru its power to determine the contents of the military laws and to provide for the appropriations. However, once these have been accomplished the power and responsibility of direction and control are exclusively left to the President.

As the head of the armed forces, the President has certain powers and duties with which Congress cannot interfere. For instance, he may regulate the movements of the army and the stationing of its units at various posts. So also, he may direct the movements of the vessels of the navy, sending them wherever in his judgment it is expedient. The President has no power to declare war. That belongs exclusively to Congress. But when war has been declared, or when it is recognized as actually existing, then his functions as Commander-in-Chief become of the highest importance and his operations in that character are entirely beyond the control of the legislature. It is true that the

[1] Article VII. sec. 10. (2). CONST.

power of furnishing or withholding the necessary means and supplies may give Congress an indirect influence in the conduct of war. But the supreme command belongs to the President alone. In theory he plans all campaigns, establishes all blockades and seiges, directs all marches, fights all battles. [2]

POWERS OF THE CONSTITUTIONAL COMMANDER-IN-CHIEF: NATURE

Reflecting the American influence, (in the history of the Philippines) the makers of the Constitution of the Philippines drafted an instrument modelled in large part on the United States Constitution. And since the Constitution of the Philippines established an independent executive office, like that of the United States the comparative treatment of problems arising under the United States Constitution and interpretations of the relevant texts by the U.S. Supreme Court are particularly meaningful and illuminating.

Under the American regime, the First Philippine Commission substituted for the military authority, but the Military Governor was retained as chief executive of the government. Also, the Executive Commission, during the Japanese occupation was under the command of the military arm. The frequent overthrow of governments by military cliques prompted for the civil supremacy over the military. Speaking of the view prevailing at the time the American Constitution was adopted, Justice Black in *Kaid v. Covert* said:

> The tradition of keeping military subordinate to the civilian authority may not be so strong in the minds of this generation as it was in the minds of those who wrote the constitution. . . . The founders envisioned the Army as a necessary institution, but one dangerous to liberty if not confined within essential bounds. Their fears were rooted in history. They knew that ancient republics had been overthrown by their military leader. [3]

At the Constitutional Convention, a proposal was made to disqualify from the presidency any person in active military service or who has not retired therefrom at least one year before election. [4] This proposal was not adopted but the Constitution expressly prohibits "members of the armed forces" from engaging directly or indirectly in partisan political activities or taking part in any election except to vote (Art. XII, sec. 2). Hence, before any member of the armed forces can run for an elective

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[2] I ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 430.

[2] BLACK'S CONSTITUTIONAL LAW, (3rd. ed.) 115-116; 3 WILLOUGHBY (2nd ed.) Sec. 1031, pp. 1565-1566.

[3] 354 U.S. 1, 23-24 (1957); also Duncan v. Kahanomoku, 327 U.S. 304 (1946).

[4] Proceedings of the Constitutional Convention Journal No. 111, p. 4460, December 16, 1934.

office he will have to resign from the military service. The prohibition does not apply to those in the reserve force.[5] Also, under the National Defense Act[6] it is provided that the civil authority shall be supreme.

Does the commander-in-chief provision make the President a military officer? Undoubtedly, the provision puts the nation's forces under his command.[7] By reason of said provision, the American President was considered the "first General and Admiral of the Confederacy,"[8] and the United States Supreme Court said that this authorizes him "to direct the movement of the naval and the military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harrass, conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty of the United States."[9] Whether as commander-in-chief the President thus becomes a member of the armed forces is not clear. The problem has not received uniform treatment in the United States. Lincoln's assassins were tried in the military tribunals created by President Andrew Jackson and in *Ex Parte Mudd* the court upheld such jurisdiction saying "The crime of murdering the president of the U.S. in time of war is triable by a military commission."[10] In 1950 however, when the heirs of President Franklin D. Roosevelt invoked the tax benefits extended to persons dying in the active service or of the members of the military or naval forces, a New York Court held: "On the general principle of the civilian supremacy over the military Mr. Roosevelt did not die 'while in the active service as a member of the military or naval force of the U.S.' within the meaning of the Internal Revenue Code." When President Eisenhower however, spent a month and a half at an army hospital after his heart attack in 1955 he was given free hospitalization as commander-in-chief.[11]

The mere fact that, under the Constitution, the President is designated as the commander-in-chief he does not cease to be a civilian authority. The Presidency, which is vested of broad and divergent powers, is primarily civilian in character. The Contitution of the Philippines provides that "the President shall be the commander-in-chief of all armed forces x x" and not that the com-

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[5] Cailes v. Bonifacio 33 O.G. 2318. Cited in CORTES, THE PHILIPPINE PRESIDENCY 1956.

[6] Commonwealth Act No. 1, sec. 2 (d) (1935).

[7] Youngstown Co. v. Sawyer, 343 U.S. 534, 641 (1952)

[8] Hamilton, FEDERALIST, No. 69.

[9] Flemming v. Page 9, How. (50 U.S.) 603, 615 (1850).

[10] 17 Fed. Cases 954 (1868).

[11] CORTES, *op cit., supra*, citing SCHWARTZ, A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES 466.

mander-in-chief shall be the President. [12]

A timely reaffirmation of the principle of the civilian supremacy and the admonition to the armed forces as to their responsibility to civilians was made by Justice J.B.L. Reyes, speaking for the Court of Appeals. In affirming a judgment of homicide committed by a corporal of the Philippine Constabulary who, because the jeep he was driving was stopped by the victim thinking it was a civilian vehicle, hit the head of the latter causing cerebral hemorrhage, he bluntly and forcefully declared:

> This senseless and bloody crime emphasizes that the authorities in charge of the armed forces cannot afford to slacken their efforts to drill into the minds of officers and enlisted, until it becomes second nature to them, the principle that the defense and the protection of the civilians is the sole *raison d'etre* for the Armed Forces, and to the extent that soldiers and officers fail to keep it in mind at all times, to that extent does the army fail in its mission. The Constitution did not provide for an army in order to create a privileged caste apart from the rest of the citizens nor did it intend to set up the members of the armed forces as so many petty tyrants whom civilians may not offend except on the risk of life or limb. [13]

POWERS OF THE CONSTITUTIONAL COMMANDER-IN-CHIEF: SCOPE

What powers are embraced in the commander-in-chief provision? The Philippine Constitution contains a specific enumeration of said powers. To begin with, express authority is given the President to call out such armed forces to prevent and suppress lawless violence, invasion, or insurrection or rebellion (Art. VII, sec. 10, 2). One specific aspect of the power of the president as commander-in-chief which has received a great deal of judicial attention is his power to set up courts martial and military commissions. Courts martial is uually the term applied to military tribunals in which those who violate the military law are commonly tried, [14] and that part of the military law dealing with the duties and obligations of the military personnel is known as the Articles of War. [15]

In the United States, the awesome magnitude of the President's powers as commanderin-chief has resulted largely from their exercise in war and in peace. Combined with the duty to take care that the laws are executed faithfully, the commander-in-chief clause constitutes a rich source from which justification

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[12] CORTES, *op. cit. supra*, 158.

[13] People v. Pet. C.A.-G.R. No. 6990, March 10, 1952

[14] 3 WILLOUGHBY (3rd. ed.) 1553.

[15] *Id.*

for his exercise of the presidential powers may be drawn. In war the full powers of the commander-in-chief are exercised. A broad interpretation of these powers was given thus:

> Under the war powers he proclaimed the slaves of those in rebellion emancipated. He devised and put into execution his own peculiar plan of reconstruction. In disregard of law he increased the army and navy beyond the limits set by statute. The privilege of the writ of habeas corpus was suspended and martial law declared. Public money in the sum of millions was deliberately spent without congressional appropriation. [16]

> My oath to preserve the constitution imposed on me the duty of preserving by every indispensable means that government, that nation, of which the constitution was the organic law. Was it possible to lose the nation and yet preserve the constitution? By general law life and limb must be protected, yet often a limb must be amputated to save a life, but a life is never wisely given to save a limb. I felt that measures, otherwise unconstitutional, might become lawful by becoming indispensable to the preservation of the constitution through the preservation of the nation. Right or wrong I assumed this ground and now I avowed it. I could not feel that, to the best of ability, I have ever tried to preserve the constitution, if to save slavery or any other matter, I should permit the wreck of the government, country, and constitution altogether. [17]

The power to call the armed forces or the militia into actual service is, doubtless, of a very high and delicate nature. But it is not a power which can be executed without a corresponding responsibility. It is a limited power confined to cases of actual invasion or imminent danger of invasion, and the authority to decide whether there is invasion, insurrection or rebellion belongs exclusively to the President, and his decision is conclusive upon all other persons. The power itself is to be exercised upon sudden emergencies, and under circumstances which may be vital to the existence of the state, which the President alone can effectively exercise. [18]

The question of whether a state of war exists is for the President alone to determine and the court must be governed by the decisions and acts of the political department. The President must determine what degree of force the circumstances or crisis demands. And it has been held that the proclamation of a blockade is itself official and conclusive evidence to the court

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[16] BINKLEY, PRESIDENT AND CONGRESS, 154-155.

[17] BINKLEY, *op. cit., supra*, 154-155, quoting from Lincoln's letter to A.G. Hodges of April 4, 1864.

[18] Martin v. Mott, 12 Wheat, 19. (191827).

that a state of war exists, which demanded an authorized recourse to such a measure under the circumstances peculiar to the case.[19]

The authority to set up courts martial to try persons belonging to the armed forces, including guerrillas called to active service, attaches to the constitutional functions of the President as Commander-in-Chief, independently of legislation.[20] By virtue of the same constitutional function, the President may authorize the organization of the military commissions to try war criminals and may prescribe rules and regulations governing their trial.[21] Under the law, the President may authorize commanders of certain units to convene courts martial, and where no such authority has been delegated, the proceedings of a court martial convened by an unauthorized officer are null and void.[22]

In case of invsion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, the President may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.[23] With respect to the authority of the President to suspend the writ of *habeas corpus*, there were two camps of thought in the Convention. One was in favor of the provision of the first draft giving the authority to the President; the other, in favor of giving it to the National Assembly (now Congress) when it is in session, otherwise to the President with the consent of the majority of the Supreme Court. An amendment to the latter effect was presented by Delegate Araneta. Defending his amendment, Delegate Araneta pointed out that its object was to protect the life and the liberty of the people. Under the provision of the draft, he said, the Chief Executive would be the only authority to determine the existence of the reasons for the suspension of the writ of *habeas corpus*, and acording to Philippine jurisprudence, the Supreme Court would refuse to review the findings of the Executive on the matter. Consequently, he added, arrests would be effected by military men who were generally arbitrary. They would be arresting persons connected with the rebellion insurrection, invasion, some of them might also be arresting other persons without any cause whatsoever. The result would be that many persons might find themselves detained when in fact they had no connections whatsoever with the disturbances. And because there would be no legal remedy to bring about their release, they would be unduly deprived of their life and liberty—

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[19] Prize Cases, 2 Black 635 (1863).

[20] Ruffy v. Chief of Staff, 75 Phil. 875, (1946).

[21] Yamashita v. Styer, 75 Phil. 563, (1945). Kuroda v. Jalandoni, 83 Phil. 171. (1949).

[22] Ogbir v. Director of Prisons, 80 Phil. 10, (1948)

[23] Article VII, sec. 10. (2), CONST.

victims of abuses committed by military men. To give the National Assembly (now Congress) the power to suspend the writ of *habeas corpus* or even to the President provided that it be with the consent of the majority of the Supreme Court would reduce if not remove the possibility of abuse and, accordingly protect the life and liberty of the individuals.

Notwithstanding the brilliant defense by Delegate Araneta, the convention voted down the amendment, thereby approving the principle under the Jones Law of vesting the power of suspending the writ of *habeas corpus* in the Executive.

There was no opposition in the Convention to the provision of the draft giving the President the power to place the Philippines or any part thereof under martial law.[24]

The determination by the President of the existence of invasion, insurrection, rebellion or imminent danger thereof, and his decision on the necessity of suspending the writ of *habeas corpus* are conclusive upon all other persons. The courts have no power to inquire into or question the correctness of such decision. The conditions, giving rise to the suspension of the privilege of *habeas corpus* will be considered by the courts as continuing until the President shall declare it to be at an end.[25]

EXERCISE OF POWERS AS COMMANDER-IN-CHIEF

The American Presidents who have employed the full powers of Commander-in-Chief are Madison, in the war of 1812; Polk in the Mexican War; Lincoln in the civil war; McKinley in the Spanish-American War; Wilson in the First World War; Franklin D. Roosevelt in the second World War, and Truman in the Second World War and the Korean War. To the list may be added Lyndon B. Johnson in the Vietnam War.[26]

On the other hand, the Philippine President's war powers are virtually unused. Scarcely six years after the Philippine Constitution went into effect, the Philippines was engulfed in war, was invaded and occupied by hostile forces. But at that time the constitutional provisions on war had not as yet taken effect. The Philippies was under American sovereignty and the exercise of war powers pertained to the United States President as the commander-in-chief of all Philippine Forces. Shortly before the outbreak of the war these forces were integrated into the United States service by virtue of a military order issued on July 26,

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[24] ARUEGO, *op. cit. supra*, 430-432.

[25] Barcelon v. Baker, 5 Phil. 87 (1905).

[26] CORTES, *op. cit. supra*, 166, citing TOURTELLOT, THE PRESIDENTS ON THE PRESIDENCY, 308 (1964).

1941, by the United States President, the pertinent portion of which stated: ". . . as commander-in-chief of the Army and Navy of the United States, I hereby call an order into the Armed Forces of the United States for the period of the existing emergency, and place under the command of the general officer of the United States Army, to be designated by the Secretary of War, from time to time, all of the organized military forces of the Government of the Commonwealth." [27] It was by authority of the United States President that the trial by military commissions was made of persons charged with war crimes after the hostilities had terminated. The United States Supreme Court upheld the validity of such trials saying:

> We cannot say that there is no authority to convene a commission after the hostilities have ended to try violations of the laws of war committed before the cessation, at least until peace has been officially recognized by treaty or proclamation of the political branch of the government. In fact in most cases the practical administration of the system of military justice under the laws of war would fail if such authority were thought to end with the cessation of hostilities. For only after their cessation would the greater number of offenders and the principal ones be apprehended and subject to trial. . . . The conduct of the trials by the military commissions has been authorized by the political branch of the government by military command, by international law and usage, and by the terms of the surrender of the Japanese Government. [28]

Courts martial are agencies of executive character, and one of the authorities for the ordering of courts martial has been held to be attached to the constitutional functions of the President as Commander-in-Chief, independently of legislation. [29] Unlike courts of law they are not a portion of the judiciary. Not belonging to the judicial branch of the government it follows that courts martial must pertain to the executive department, and they are in fact simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief to aid him properly in commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives.

Since courts martial do not belong to the judicial but to the executive department, failure of the articles of war to provide for appeal to and review by the Supreme Court of convictions in such court wherein the penalty imposed is death or life

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[27] Cited in Ruffy v. Chief of Staff, (1946), *supra* n. 23.

[28] In re Yamashita, 327 U.S. 1, 12 (1945).

[29] WINTHROP'S MILITARY LAW AND PRECEDENTS, (2nd. ed.) 48, adopted in Ruffy v. Chief of Staff, *supra* n. 23.

imprisonment, does not violate the constitutional provision (Art. VIII, sec. 2 (4) that Congress may not deprive the Supreme Court of its jurisdiction to review criminal cases wherein death or life imprisonment is imposed. [30]

In a later case, [31] the Supreme Court held that only the President or the Chief of Staff of the Philippine Army can convene a general court martial. Under the law the President may empower the Provost Marshal General, the commanding officer of a division, the district commander, the superintendent of a military academy, and the commanding officer of a separate brigade or body of troops to appoint a general court martial.

In the *Ognir* case the petition for *habeas corpus* was granted as it was shown that the petitoner was convicted by a general court martial convened during the war by Colonel Fertig, Commanding Officer of the 10th Military District of Mindanao, who was not empowered to appoint a general court martial either by the President of the Commonwealth or by General McArthur, then Supreme Commander of the United States Army in the Far East. The court here assumed that the military power of the President of the Commonwealth as the Commander-in-Chief was *ipso facto* transferred to the government when the government of Philippines evacuated to Australia and then to the United States.

When the Philippines became independent in 1946 the war was over. The Philippine President's exercise of the Commander-in-Chief's power had to do with the trial and punishment of war criminals which the military commissions constituted by United States authorities had started. And, once more, the power of the commander-in-chief was brought to light in the *Kuroda v. Jalandoni* case. [32]

In the *Kuroda* case, petitioner formerly a Lieutenant-General of the Japanese Army and Commanding General of the Japanese Imperial Forces in the Philippines in 1943-1944, was charged before a military commission convened by the Chief of Staff. He was accused of having unlawfully disregarded and failed to discharge his duties as such commander to control the operations of members of his command permitting them to commit brutal atrocities and other high crimes against non-combatant civilians and prisoners of the Japanese Imperial Forces in violation of the laws and customs of war. He brought this action for prohibition in the Supreme Court seeking to establish the illegality of Executive Order No. 68 which established a National War Crimes Office and prescribed rules and regulations

[30] Ruffy v. Chief of Staff, *supra*.

[31] Ognir v. Director of Prisons, *supra* n. 25.

[32] 83 Phil. 171, 177 (1949).

for the trial of accused war criminals. The Supreme Court, in sustaining the validity of Executive Order No. 68, stated:

> The promulgation of said Executive Order is an exercise by the President of his powers as commander-in-chief of all our armed forces, as upheld by this court in the case of Yamashita vs. Styer (75 Phil. 563; where the Philippine Supreme Court denied Yamashita's petition to be reinstated to his former status as prisoner of war and to prohibit the military commission from further trying him). In Cantos vs. Styer (76 Phil. 748), a Filipino citizen charged, with committing war crimes was tried before a military commission. The Supreme Court of the Philippines likewise upheld the jurisdiction of the commission constituted by direction of the President of the United States when we said: "War is not ended simply because the hostilities have ceased. After cessation of armed hostilities, incidents of war may remain pending which should be disposed of as in time of war. An important incident to the conduct of war is the adoption of measures by the military command not only to repel and defeat the enemies but to seize and subject to disciplinary measures these enemies who in their attempt to thwart or impede a military effort have violated the laws of war (Ex parte Quirin, 317 U.S. 1, 63 Sup. Ct. 2). Indeed the power to create a military commission for the trial and punishment of war criminals is an aspect of waging war. And in the language of a writer a military commission has jurisdiction so long as a technical state of war continues. This includes the period of an armistice or military occupation, up to the effective date of a treaty of peace and may extend beyond, by treaty agreement (Cowles, Trial of War Criminals by Military Tribunals, American Bar Association Journal, June, 1944).
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> Consequently, the President as commander-in-chief is fully empowered to consummate this unfinished aspect of war, namely the trial and punishment of war criminals, thus the issuance and enforcement of Executive Order No. 68

It is clear from the above decision that the Military Commission convoked by the President by virtue of his power as Commander-in-Chief may try not only members of the armed forces but also war criminals, belonging to the enemy forces.

It is within the power of the President as Commander-in-Chief to validly convene a general court martial even where the commander of the accused officer to be tried is not the accuser.[33]

In a case,[34] certain German subjects were detained by the Provost Marshall for having been found engaging in sabotaging

[33] Swaim v. U.S., 165 U.S. 555 (1887); Runkle v. U.S., 122 U.S. 543 (1887).
[34] Ex parte Quirin, 317 U.S. 1. (1942).

activities against the United States government. The President on July 2, 1942, appointed a military commission to try these German subjects for offenses against the laws of war and the Articles of War, and prescribed regulations for the procedure of the trial and for review of the record of the trial of any judgment or sentence of the commission. The President also ordered in express terms that all such persons be denied access to the courts. They attacked the constitutionality of the military commission created by the order of the President. It was held that the President by his order has undertaken to exercise the authority which the courts give the Commander-in-Chief, to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in times of war.

By order of the President of the United States, the Joint Chiefs of Staff of the American Military Forces, on September 12, 1945, instructed General MacArthur to proceed with the trial before appropriate military tribunals of such Japanese war criminals who have been or may be apprehended. Gen. MacArthur specifically instructed General Styer to proceed with the trial of General Yamashita for violation of the laws of war. The order of General MacArthur was accompanied by detailed rules and regulations prescribed for the trial of war criminals; it also directed that the review of the sentence imposed by the commission should be by the officer convening it, with authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed and that no sentence of death should be carried into effect until confirmed by the Commander-in-Chief, United States Armed Force, Pacific. Gen. Yamashita contended that the military commission was not lawfully created and, therefore, without jurisdiction to convict him. It was held that the order creating the commission for the trial of Gen. Yamashita was authorized by military command, and was in complete conformity with the Act of Congress sanctioning the creation of such tribunals to try offenses against the laws of war committed by enemy combatants. [35]

The powers of the Commander-in-Chief have been more frequently exercised in the Philippines in the maintenance of internal security through the suppression of local violence and internal subversion.

When the United States acquired the Philippines from Spain, Filipino armed resistance to American rule had to be overcome. A military government was set up under the war powers of the President and not until peace was restored was civil government established. But up to the end of the American administration sporadic uprisings and acts of lawlessness occurred. These were

[35] Yamashita v. Styer, U.S. C. ed. Adv. Op. Vol. 8, 343.

suppressed without too much difficulty by the Philippine Constabulary, a semi-military police force directly under the command of the Governor-General. [36] These uprisings, however, pale in comparison with the serious proportions reached by the communist-led Hukbalahap [37] which sought to overthrow the government. [38] The threat to the national security became so grave that President Quirino suspended the writ of *habeas corpus* throughout the Philpines on October 22, 1950 citing in his proclamation the overt acts of sedition, insurrection and rebellion committed by the organization. [39] The suspension was lifted, in few provinces at a time, where conditions of peace and order prevailed. [40] The President, as Commander-in-Chief, employed the armed forces in an all out campaign against the military arm of the organization in handling the HUK problem. Simultaneous to said measures was the extension of amnesty under certain conditions, [41] and recently was adopted the policy of attraction to win back the dissidents. the Agricultural Land Reform.

SUSPENSION OF THE WRIT OF HABEAS CORPUS.

It should not be assumed that the Constitution of the Philippines, in dealing with the executive office, is an exact replica of the United States Constitution. Unlike the latter, the Philippine Constitution categorically states that the power to suspend the writ belongs to the President under the conditions specified. Thus:

> In case of invasion, insurrection or rebellion, or imminent danger thereof when the public safety requires it he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law. [42]

Under the Constitution, the President may suspend the privileges of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Two conditions, are, however, necessary:

(a) that there exists insurrection, rebellion, or invasion, or imminent danger thereof; and,

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[36] HAYDEN, THE PHILIPPINES, A STUDY IN NATIONAL DEVELOPMENT.

[37] Hukbong Bayan Laban sa Hapon or People's Anti-Japanese Army, popularly known as HUKS, later as HMB or Hukbong Magpapalaya ng Bayan, meaning People's Liberation Army, supposedly fighting for the downtrodden peasants.

[38] CORTES, *op. cit. supra*, 168-169.

[39] Proclamaton No. 210 (46 O.G. 4682).

[40] Proclamation No. 238 (47 O.G. 586).

[41] Amnesty Proclamation No. 76 of June 21, 1948.

[42] Article VII, sec. (2), CONST.

(b) that the public safety demands it.

Any other reason oustide the enumeration by the Constitution is a mere surplusage not affecting the validity of the order of suspension. [43]

In the case of *Barcelon v. Baker*, [44] the petitioner took issue with the legislative and executive finding on the existence of rebellion, insurrection, or invasion in any form to justify the writ's suspension. Both the legislative resolution and the executive proclamation referred to the perpetration of unlawful acts "in open insurrection against constituted authorities." Both found that there existed a state of insecurity and terrorism among the people which made it impossible to conduct preliminary investigations before the justices of the peace (now Municipal Judges) and other judicial officers. The Supreme Court ruled that the determination by the President of the existence of invasion, insurrection or rebellion, or imminent danger thereof, and his decision on the necessity of suspending the writ of *habeas corpus* are conclusive upon all other persons. The courts have no power to inquire into or question the correctness of such decision. The condition giving ise to the suspension of the privileges of the writ of *habeas corpus* will be considered by the courts as continuing until the President shall declare it to be at an end.

In *Montenegro v. Castañeda*, [45] a person arrested for complicity with the Huks in the commission of the acts of rebellion, insurrection, or "sedition" challenged the validity of the proclamation. The Supreme Court summarily disposed of the claim that the proclamation was in the nature of a bill of attainder or *ex post facto* law. According to the court, if there was a conflict between the prohibition against bills of attainder or *ex post facto* laws and the suspension, the express power given to the President to suspend the writ must be taken as an exception to the general prohibition. The court agreed that there was a mistake as to the inclusion of "sedition" in the proclamation for sedition is not one of the causes for suspension enumerated in the constitution. However, the mistake did not taint the proclamation as a whole nor did it affect the petitioners charged with grave offenses of rebellion and insurrection. It was also claimed that the two provisions of the Philippine Constitution dealing with the suspension of the writ of *habeas corpus* are "irreconcilably repugnant" to each other. The Bill of Rights provides: "The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may

[43] Montenegro v. Castañeda, L-4221, August 30, 1952.

[44] 5 Phl. 87 (1905).

[45] 91 Phil. 882 (1952).

be suspended wherever during such period the necessity for such suspension exists.[46] But in giving the President the authority to suspend the writ, the following causes are enumerated: "invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it. . . ."[47] According to the Supreme Court the latter provision should prevail being last in order of time and position in the Constitution. However this interpretation has been criticized as a narrow and technical construction of a right under the Constitution in view of the fact that the Philippine Consitution was not ratified part by part on different dates but on one occasion and as one document.[48]

DECLARATION OF MARTIAL LAW

The Philippine Constitution expressly gives the President the power to "place the Philippines or any part thereof under martial law" for the same causes and under the same conditions that he has been given authority to suspend the writ of *habeas corpus.*

In Philippine jurisprudence, the precise meaning of "martial law" has not been laid down. The constitutional provision having been taken from an act of the United States Congress, reliance is placed on American authorities just as Americans look back to English authorities. In its most comprehensive sense, martial law includes all that has reference to, or is administered by, the military forces of the State. Thus it includes:

> (1) military law proper, that is, the body of administrative laws created by Congress for the government of the army and navy and the air corps as an organized force;
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> (2) the principles governing the conduct of military forces in time of war and in the government of occupied territory; and,
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> (3) martial law in *sensu strictiore,* or that law which has application when the military arm does not supersede civil authority but is called upon to aid it in the execution of its civil functions."[49]

Under the Philippine Constitution, there is no problem as to the location of the power or the occasion for the institution of martial law. The problem is what can be done under martial law.

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[46] Article III, sec. 1 (14), CONST.

[47] Article VII, sec. 10 (2), CONST.

[48] SINCO, PHILIPPINE POLITICAL LAW, *op. cit. supra,* 264.

[49] 3 WILLOUGHBY, (3rd. ed.) sec. 1041, p. 1586; Ex parte Mulligan, 4 Wall. (U.S.) 2; (1866). Peralta v. Director of Prisons, 75 Phil. 285, (1945).

Is it the signal for the assumption of the military under the President's command of all the powers of the government? The case of *Duncan v. Kahanamoku* [50] pointed out in the concurring opinion of Chief Justice Stone that martial law is a law of necessity to be prescribed and administered by the executive power. Its object, the preservation of the public safety and good order, defines its scope, which will vary with the circumstances and necessities of the case. The exercise of the power may not extend beyond what is required by the exigency which calls it forth.

Since the same conditions under the Constitution warrant the suspension of the writ and the declaration of martial law, it follows that when the President takes the latter action, his determination of the existence of the cause and the exigency for the establishment of the martial law will likewise be conclusive. Will this preclude the courts from passing upon the validity of the acts that may be done under martial law? As has been stated, the term "martial law" as incorporated in the Philippine Constitution carries no precise meaning. The Convention did not discuss it and there was no opposition to giving the President this power. [51] On the understanding that the essence of martial law is the substitution of the authority of the executive as military commander for the power and jurisdiction of the civil courts. . . . it has been stated that "Even the Supreme Court of the Philippines may be silenced if the President should decide to place the entire Philippines under martial law." [52]

By a declaration of martial law the civil authority merely calls out and uses an armed force in suppressing a riot or tumult actually existing or reasonaby presumed. Said armed force, once so assembled has no power to act independenty of the civil authority. They are to act as an armed police only subject to the absolute and exclusive control and direction of the civil officers designated by law, as to the specific duty or service which they are to perform. The declaration does not work a substitution of the military for the civil authority. [53] Its only effect is the operation of martial law upon all the inhabitants, citizens as well as aliens, within the affected district, and although the writ of *habeas corpus* may be suspended, yet the suspension does not give any additional arbitrary authority either to the civil or military authorities — it does not operate to legalize any act of theirs that would otherwise have been illegal. When the country or any part thereof is placed under martial law, the civil authorities, and the civil laws are not neces-

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[50] 327 U.S. 304, 315 (1946).

[51] I ARUEGO, *op. cit. supra*, 432.

[52] SINCO, *op. cit. supra*, 259.

[53] 3 WILLOUGHBY, (2nd. ed.) 1046, 1591-1592.

sarily suspended. For the time being only the military authorities are supreme. [54]

Once martial law has been declared, arrest may be necessary not so much for punishment but by way of precaution to stop disorder. As long as such arrests are made in good faith and in the honest belief they are needed to maintain order, the President, as Commander-in-Chief, after he is out of office, cannot be subjected to an action on the ground that he had no reasonable ground for his belief. When it comes to a decision by the head of the state upon a matter involving its life, the ordinary rights of individuals must yield to what the President deems the necessities of the moment. Public danger warrants the substitution of executive for judicial process. This is admitted with regard to killing men in the actual clash of arms and the same is true of temporary detention to prevent apprehended harm. Good faith and honest belief in the necessity of the detention to maintain order thus furnishes a good defense to any claim for liability. [55]

Power To Grant Amnesty

Express constitutional power is given the President of the Philippines with the concurrence of Congress to grant amnesty.

Amnesty is an act of the sovereign power granting oblivion of a general pardon for past offense, and is rarely, if ever, exercised in favor of a single individual, but is usually in behalf of certain classes of persons, who are subject to trial but have not yet been convicted. [56] Amnesty abolishes and puts into oblivion the offense with which one is charged, so that the person released by amnesty stands before the law precisely as though he had committed no offense. [57]

In a case, [58] the Philippine Supreme Court observed that "an amnesty proclamation is intended as a human grant of mercy and grace. Acts occurring during the stress of war, which under ordinary conditions would merit punishment, are forgiven and forgotten. Where amnesty is invoked, the courts inquire into whether or not the defendant comes within the class embraced in the grant and if he does, whether he has satisfied all the conditions of a particular amnesty grant." And where the President has created an agency to determine those covered by amnesty, the cases may not reach the courts.

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[54] Aruego, The Philippine Constitution Explained 51.
[55] Moyer v. Peabody, 212 U.S. 78, (1908).
[56] Burdick v. U.S., 236 U.S 79, (1915) Curtin vs. U.S., 236 U.S. 96.
[57] Barrioquinto v. Fernandez, G.R. No. L-1178, January 21, 1949.
[58] U.S. v. Pagaduan, 37 Phil. 90, 96, (1917).

The amnesty power has been used in the Philippines not only at the end of a war to erase the effects of political offenses but also "to persuade those who took up arms in the course of hostilities to return to peaceful life and so restore national peace." [59]

LIMITS OF THE POWERS

Although the President's constitutional power as Commander-in-Chief is broad, yet it is not unlimited. In the celebrated American Steel Seizure Case, [60] the United States Supreme Court found that the President's power as commande-in-chief has been exercised beyond its proper constitutional bounds. In this case during the Korean War the American President directed the Secretary of Commerce, after efforts to settle a labor dispute in the steel industry had failed, to seize the steel mills and operate them in order to avert a nationwide strike. The seizure order was based on no specific statutory authority. It relied on the aggregate of the President's constitutional powers as chief executive and Commander-in-Chief. A majority of the Supreme Court in six separate opinions held that the President had no authority under the constitution to take private property in order to keep labor disputes from stopping production. This was a power which belonged to Congress. Justice Black writing the principal opinion said:"

> Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the commander-in-chief of the armed forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the nation's lawmakers, not for its military authorities.

In his concurring opinion Mr. Justice Jackson disposing of the claim that the seizure was a valid exercise of the President's power as Commander-in-Chief declared:

> No penance would ever expiate the sin against free government of holding that a President can escape control of executive power by law through assuming his military role.

Neither could Justice Douglas sustain such a contention:

> But our history and tradition rebel at the thought that the grant of military power carries with it authority over civilian affairs.

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[59] Proclamation No. 29. U.S., President, July 4, 1902, 32 Stat. 2014; Proclamation No. 76 of June 21, 1948, 44 OG 1794; Proclomation No. 164 of January 4, 1950, 40 O.G. 6.

[60] Youngstown Co. v. Sawyer, 343 U.S. 579 (1951).

In a recent case [61] an original action for prohibition with preliminary injunction was brought in the Supreme Court against the Executive Secretary to restrain the importation of rice and corn which importation was contrary to the provisions of the applicable statute. To justify the importation the powers conferred on the President as Commander-in-Chief under the National Defense Act were invoked. This Act sets out the national defense policy of the Philippines and states *inter alia*:

> The security of the Philippines and the freedom, independence and perpetual neutrality of the Philippine Republic shall be guaranteed by the employment of . . . all resources . . . The President of the Philippines as commander-in-chief of all military forces, shall be responsible that mobilization measures are prepared at all times.

This Act also specified the manner in which resources necessary for national defense may be secured during national mobilization. It was claimed that the situation in Laos, Vietnam and Malaysia called for the stockpiling of rice. The Supreme Court held that the importation violated the statute which Congress had enacted on the matter and it could not be justified by falling back on the President's war power or the power to declare martial law. The court said that to accept the theory that the President could disregard the applicable statute for the purpose of army stockpiling would "in effect, place the Philippines under martial law. without a declaration of the executive to that affect. What is worse, it would keep us perpetually under martial law." [62]

As to the President's exercise of the power of the suspension of the privileges of the writ of *habeas corpus* and the declaration of martial law, the following limitations may be stated:

> (1) The principle of civil supremacy over the military is part of the Philippine system of government;
>
> (2) The principle of separation of powers is carefully observed on the assumption that "arbitrary rule and abuse of authority would inevitably result from the concentration of the three powers of government in the same person, body of persons or organ." [63]
>
> (3) Exercise of power under martial law means interference with individual rights guaranteed in the Constitution, and to recognize no limits on this power would in the words of Justice Davis, "destroy every guarantee of the constitution."

Also, although the President is made the Commander-in-Chief

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[61] Gonzalez v. Hechanova, G.R. No. L-21897, October 22, 1963.
[62] Quoted in CORTES, THE PHILIPPINE PRESIDENCY, 166.
[63] SINCO, *op. cit. supra*, 131.

of all of the armed forces,[64] as Chief Executive, the President under his oath to "preserve and defend its Constitution"[65] is duty bound to carry out the declared principle that "the defense of the state is a prime duty of the government. . . ."[66] The principle that "The Philippines renounces war as an instrument of national policy, ..."[67] must, in this connection, be considered.

All military operations in time of peace as well as in time of war would be conducted through the orders and under the direction of the President as Commander-in-Chief. He would have the power to determine and control the movement and destination of the armed forces and to lay out and execute campaign plans. However, Congress has the power to raise and support the armed forces, determining their number and nature of their organization, the methods of their recruitment, and the appropriations for their maintenance. Thus, the members of the armed forces of the Philippines sent to South Vietnam are of specified numbers and as a mere engineering batallion to do engineering and construction jobs, and of the nature of a non-combatant organization. Its maintenance was made possible by an appropriation made by Congress and, in the future, failure to so appropriate would make a pull-out from their present stations inevitable.

MANUEL J. JIMENEZ, JR.

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[64] Article VII, sec. 10 (2) CONST.
[65] Article VI, sec. 25, CONST.
[66] Article II, sec. 2, CONST.
[67] Article II, sec. 3, CONST.

TREATING OF TREATIES

I. INTRODUCTION

In a world that is rapidly shrinking as the means of communications are improving, every member of the family of nations has to deal with other countries. Not even the strongest or the most self-sufficient nation can afford to ignore the existence of other countries. The isolationist policy that the United States adopted from her birth till the outbreak of World War II is a memory of the past.

The problem of maintaining world peace concerns all nations. Because of interlocking alliances, no country can afford to shrug its shoulders should war break out in one corner of the world.

In dealing with other countries, it is usually the head of the government, the head of the executive department to be more precise, who is instrumental in drafting the national policies. The Philippines is no exception. It is the President who takes the initiative in foreign affairs.

The past few years have witnessed a drifting away from excessive closeness to the United States. The Philippines has finally realized that she is an Asian country. Therefore, she must develop strong ties with other countries in Southeast Asia.

With the approaching expiration of the Laurel-Langley Agreement, the Philippines has realized the need of opening trade relations with other countries. Recently, a Philippine mission concluded a trade agreement with France. The Philippines is also eyeing West Germany.

One of the aspirations of the Philippines is socio-economic development. The Philippines realizes that she needs the help of the industrialized countries to fulfill this dream.

In the face of this growing involvement of the Philippines with other countries, the treaty-making power of the President will come to play more and more. By entering into executive agreements, which do not need the concurrence of the Senate, the President can bind thirty-two million Filipinos. Thus, it is important to examine the extent of the treaty-making power of the President.

II. CONSTITUTIONAL PROVISIONS

A. *Power of the President*

The treaty-making power of the President is found in Article VII, Section 10 (7) of the Constitution, which reads in part, "The President shall have the power, with the concurrence of two-thirds of all the members of the Senate, to make treaties, and with the consent of the Commission on Appointments, he shall appoint ambassadors, other public ministers, and consuls."

The grant of the treaty-making power to the President is all for the best. Compared to the other branches of the government, the President enjoys vast advantages in the field of foreign affairs.

The office of the President is united in one person with capacity for secrecy and dispatch. Unlike Congress, there is no period of adjournment for the Presidency.[1]

It is the President alone who negotiates treaties. In the negotiations, neither Congress nor the Senate can intrude. Secrecy, dispatch, unity, and access to information are essential in this task; and the President alone possesses them. Besides, premature disclosure of confidential information exchanged may cause embarrassment or imperil the outcome of the negotiations.

A more basic reason for letting the President handle the negotiation of treaties is the principle of separation of powers. The Constitution has given the treaty-making power to the President. The role of the Senate is limited to ratification. For the Senate to meddle in the negotiation of treaties would amount to encroaching upon the domain of the President. This would violate the principle of separation of powers.

B. *Ratification by the Senate*

The system of checks and balances also operates upon the treaty-making power of the President. To check this power, the Constitution requires the ratification of all treaties by two-thirds of all the Senators.

The Constitution requires the approval of two-thirds of all the Senators, not two-thirds of the Senators present during a session with a quorum. This means that unless sixteen of the twenty-four Senators vote for ratification of a treaty, the treaty is inoperative.

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[1] II FERNANDO, POLITICAL LAW 647.

Even under international law, the Senate is not bound to ratify treaties negotiated by the President. Under international law, if the treaty-making power and the power of ratification are vested in different bodies, there is no obligation to ratify.[3]

The power of the Senate is not limited to approving or rejecting a treaty in its entirety. The Senate may offer amendments to the treaty.[4] If the President rejects them or cannot convince the other contracting party to accept them, that is the end of the whole affair.

C. *Judicial Review*

It is clear from the Constitution that the Supreme Court can declare a treaty unconstitutional.

Article VIII, Section 2 of the Constitution reads in part, "The Congress . . . may not deprive the Supreme Court . . . of its jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari, or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts in— (1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulations is in question."

Article VIII, Section 10 of the Constitution provides, "All cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court *in banc*, and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court."

To quote from the decision in *Gonzales v. Hechanova*:[5]

> As regards the question whether an international agreement may be invalidated by our courts, suffice it to say that the Constitution of the Philippines, has clearly settled it in the affirmative, by providing in Section 2 of Article VIII thereof that the Supreme Court may not be deprived of its jurisdiction to review, revise, reverse, modify or affirm on appeal, certiorari, or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts in — (1) All cases in which the constitutionality or validity of any treaty, law ordinance, or executive order or regulations is in question.[5A]

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[2] U.S. v. Curtiss-Wright Export Corp., 81 L. ed. 255, 262-263 (1936).
[3] PANLILIO, NOTES ON PUBLIC INTERNATIONAL LAW 350.
[4] Fourteen Diamond Rings v. U.S., 183 U.S. 176, 183 (1901).
[5] 60 O.G. 802 (1963).
[5A] *Id.*, at 812.

While Article VIII, Section 10 of the Constitution requires the concurrence of two-thirds of all the justices of the Supreme Court to declare a treaty unconstitutional, Section 9, paragraph 3 of the Judiciary Act of 1948 requires the concurrence of at least eight justices of the Supreme Court.

Section 9, paragraph 3 of the Judiciary Act of 1948 provides in part, "However, for the purpose of declaring a law or a treaty unconstitutional, at least eight justices must concur. When the necessary majority, as herein provided, to declare a law or a treaty unconstitutional cannot be had, the Court shall so declare, and in such case the validity or constitutionality of the act or treaty involved shall be deemed upheld."

This law can apply only if there are eleven incumbent justices of the Supreme Court. The Constitution requires the concurrence of two-thirds of all the justices of the Supreme Court to declare a treaty unconstitutional.

Two-thirds of eleven is seven and one-third. Hence, if there are eleven justices of the Supreme Court, the vote of seven is not sufficient to declare a treaty unconstitutional. At least eight justices must concur to declare a treaty unconstitutional. According to the Judiciary Act of 1948, the vote of eight justices is needed. Clearly, to apply this would diminish the jurisdiction which the Constitution has granted the Supreme Court. Besides, if there are only seven incumbent justices of the Supreme Court, it would never be able to declare a treaty unconstitutional.

If Congress can change the number of votes the Constitution prescribes for the declaration of a treaty unconstitutional, by the same line of reasoning, Congress should be allowed to change the number of votes required to propose amendments to the Constitution, to expel a member of Congress, to override a veto by the President, to declare war, and to impeach the constitutioanl officers. Surely, no jurist will go this far in setting the limits to the legislative discretion Congress has.

The next question that arises is this: How can the jurisdiction of the Supreme Court to declare a treaty unconstitutional be reconciled with Article II, Section 3 of the Constitution?

Article II, Section 3 of the Constitution provides, "The Philippines renounces war as an instrument of national policy and adopts the generally accepted principles of international law as part of the law of the nation."

From this, it seems that the generally accepted principles of international law have the force of a constitutional provision in this jurisdiction. One of the generally accepted principles of international law is that treaties must be observed. If the Sup-

reme Court were to declare a treaty unconstitutional, the generally accepted principle of international law that treaties must be observed will no longer be part of the law of the nation.

It may be argued that treaties stand on the same footing as municipal laws. Hence, the Supreme Court can declare them unconstitutional just like ordinary laws.

This does not answer the problem that in the international forum, the Philippines will be violating the generally accepted principle of international law that treaties must be observed, to which the Constitution injects the force of a constitutional provision.

Perhaps, an analysis of the treaty-making power of the President can be more fruitful.

The treaty-making power of the President is curbed by the restrictions found in the Constitution against the action of the government or of its departments and those arising from the nature of the government itself. The treaty-making power of the President cannot authorize what the Constitution forbids or effect a change in the character of the government.[6] This power is also subject to the implied restrictions that nothing can be done under it which changes the Constitution or robs a department of the government of its constitutional authority.[7]

The weight of authority favors the view that, as a general rule, treaties made in behalf of a state by organs which are not constitutionally competent to conclude them are not binding internationally upon the state.[8]

Thus, the power of the President to enter into treaties with other countries is not absolute. The provisions of the Constitution of the Philippines should serve as a warning to the other states of the extent of the treaty-making power of the President.

III. Conflict Between Treaties And Laws

Some Philippine law writers blindly following Cooley, believe that in case of conflict between a treaty and a law, the last one in point of time must prevail.

The reason cited to justify this stand is that both a treaty and a law are acts of sovereignty, differing only in the form and in the agency through which the sovereign will is declared. Both are laws of the land. Hence, the latest must repeal everything that is of no higher authority which conflicts with it.

[6] Tañada & Carreon, Political Law of the Philippines 336.
[7] I Martin, Political Law of the Philippines 217.
[8] Salonga & Yap, Public International Law (3rd ed.) 194-295.

This position is understandable in the light of the decisions of the Supreme Court. During the American regime, the Supreme Court held in the case of *Singh v. Collector of Customs* [9]:

> Even though there existed a treaty between two countries (the United States and Great Britain), the Act of Congress (of the United States) being of later date, its provision would control.
>
> By the Constitution, a treaty is placed on the same footing and made of like obligation with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. . . .
>
> As Congress may by statute abrogate, so far at least as the United States is concerned, a treaty previously made by the United States with another nation, so the United States may by treaty supersede a prior act of Congress. [9A]

In *Ichong v. Hernandez*, [10] Justice Labrador, speaking for the majority of the Supreme Court, wrote, "But even supposing that the law (Retail Trade Nationalization Law) infringes upon the said treaty (Treaty of Amity between the Philippines and Nationalist China), the treaty is always subject to qualification or amendment by a subsequent law." [10A]

The Supreme Court handed down the decision in *Singh v. Collector of Customs* before the adoption of the Philippine Constitution. Besides, what was being interpreted in that case was the Constitution of the United States. The Constitution of the United States does not contain a provision similar to Article II, Section 3 of the Philippine Constitution, which makes the generally accepted principles of international law part of the law of the nation.

The observations of Justice Labrador in *Ichong v. Hernandez* are mere *obiter dicta*. Hence, they cannot be given the force of a legal precedent.

The better view seems to be that Congress cannot pass a law that will conflict with the obligations of the Philippines under a treaty. In case of conflict between a treaty and a law, the courts must always uphold the supremacy of the treaty over the law.

One of the generally accepted principles of international law is that treaties must be observed. By virtue of the constitutional provision making the generally accepted principles of international law part of the law of the land, Congress cannot pass

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[9] 38 Phil. 867 (1918).

[9A] *Id.*, at 872-873.

[10] 101 Phil. 1155 (1957).

[10A] *Id.*, at 1191.

a subsequent law inconsistent with any treaty. Such a law would conflict with the constitutional provision making the generally accepted principles of international law part of the law of the nation. Such a law would in effect make the generally accepted principle of international law that treaties must be observed no longer part of the law of the nation.

The generally accepted principles of international law are not part of the Constitution, but they have the force of a constitutional provision in this jurisdicton. Thus, Congress cannot pass any law conflicting with any of them. For instance, Congress cannot enact a law stripping ambassadors assigned to the Philippines of their diplomatic immunity.

IV. TREATIES DURING THE COMMONWEALTH ERA

In a footnote to its decision in *Hooven & Allison Co. v. Evatt,*[11] the United States Supreme Court noted:

> The Philippine Commonwealth participated as a signatory in the following: Agreement and Protocol Regarding Production and Marketing of Sugar of May 6, 1937; Universal Postal Convention of May 23, 1939; Declaration by United Nations of January 1, 1942 (the Philippines signed the declaration on June 14, 1942); Agreement for United Nations Relief and Rehabilitation Administration of November 9, 1943; United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire, of July 1 to 22, 1944; the Protocol Prolonging the Production and Marketing of Sugar of August 31, 1944; the International Civil Aviation Conference of November 1 to December 7, 1944.[11A]

The Philippines also signed the Charter of the United Nations on June 26, 1945. This was before the proclamation of Philippine independence on July 4, 1946.

The question that naturally arises is this: Did the Philippines validly enter into these agreements?

Under the Tydings-McDuffie Act, which authorized the calling of the Philippine constitutional convention and the establishment of the Philippine Commonwealth, the United States retained exclusive control over the foreign affairs of the Philippines. Section 2 (a) (10) of the Tydings-McDuffie Act provides, "Foreign affairs shall be under the direct supervision and control of the United States."

This problem calls for an inquiry into the status of the Philippines during the Commonwealth Era.

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[11] 89 L. ed. 1252 (1945).

[11A] *Id.*, at 1270.

A. *American Jurisprudence*

As early as 1937, the United States Supreme Court had already handed down a decision touching on the political status of the Philippines.

In Cincinnati Soap Co. v. U.S., [12] the United States Supreme Court described the Philippines as a mere dependency.

> A dependency has no government but that of the United States, except in so far as the United States may permit. The national government may do for one of its dependencies whatever a state might do for itself or one of its political subdivisions, since over such a dependency the nation possesses the sovereign powers of the general government plus the powers of a local or a state government in all cases where legislation is possible. [12A]

However, Judge Cooley of the Federal District Court of New York did not follow the views of the United States Supreme Court. He wrote in his decision in *Bradford v. Chase Nat. Bank of City of New York*: "I think I must take judicial notice of the Philippine Independence Act (Tydings-McDuffie Act) providing for the creation of a sovereign state in the Philippine Islands. . . . Thus the status of the Philippine Commonwealth as a sovereign is established without recourse to the suggestion of the Secretary of War." [13]

The status of the Philippine Commonwealth as a sovereign state was again denied in *Berger v. Chase Nat. Bank of City of New York.* The Circuit Court of Appeals pointed out, "Now it is clear that power to regulate the natural internal affairs of its constituency can be properly delegated to the territorial legislature." [14A]

Ultimately, the United States Supreme Court changed its stand. It adopted the position that the Philippine Supreme Court later took.

The numerous international agreements into which the Philippines had entered during the period that lapsed from the date of the ruling in *Cincinnati Soap Co v. U.S.* influenced the United States Supreme Court to a certain extent to hold, "Thus by the organization of the new Philippine Government under the Constitution of 1935, the Islands have been given, in many as-

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[12] 81 L. ed. 1122 (1937).

[12A] *Id.*, at 1130.

[13] Bradford v. Chase Nat. Bank, 24 F. Supp. 28 (1938).

[14] 105 F 2d 1001 (1939).

[14A] *Id.*, at 1006.

pects, the status of an independent government, which has been reflected in its relations as such with the outside world." [15]

B. Philippine Jurisprudence

The ruling of the Supreme Court on the political status of the Philippine Commonwealth is embodied in its resolution in *Laurel v. Misa.* [16]

In dismissing Laurel's petition for habeas corpus, the majority adopted the views Justice Feria voiced in his concurring opinion in *Brodgett v. De la Rosa.* [17]

The resolution of the Supreme Court reads as follows:

> Considering that the Philippines was a sovereign government, though not absolute but subject to certain limitations imposed in the Independence Act and incorporated as Ordinance appended to our Constitution, was recognized not only by the Legislative Department or Congress of the United States in approving the Independence Law above quoted and the Constitution of the Philippines, which contains the declaration that "Sovereignty resides in the people and all government authority emanates from them," but also by the Executive Department of the United States; that the late President Roosevelt in one of his messages to Congress said, among others, "As I stated on August 12, 1942, the United States in practice regards the Philippines as having now the status as a government of other independent nations — in fact all the attributes of complete and respected nationhood." . . .
>
> Considering that Section I (1) of the Ordinance appended to the Constitution which provides that pending the final and complete withdrawal of the sovereignty of the United States, "All citizens of the Philippines shall owe allegiance to the United States." was one of the few limitations of the sovereignty of the Filipino people retained by the United States but these limitations do not do away or are not inconsistent with said sovereignty, in the same way that the people of each State of the Union preserves its own sovereignty although limited by that of the United States conferred upon the latter by the States. . . . Article XVIII of our Constitution provides that, "The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines;

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[15] Hooven & Allison Co. v. Evatt, *supra* note 11.
[16] 77 Phil. 856 (1947).
[17] 77 Phil. 752 (1946).

> This Court resolves . . . to deny the petitioner's petition . . .[18]

Justice Paras analyzed the same provision of the Constitution (Article II, Section 1) on which the majority pegged their decision and came out with a different conclusion. He explained:

> The framers of the Constitution had to make said declaration of principle (Article II, Section 1), because the document was ultimately intended for the independent Philippines. . . . No one, we suppose, will dare allege that the Philippines was an independent country under the Commonwealth Government.
>
> The Commonwealth Government might have been more autonomous than that existing under the Jones Law, but its non-sovereign status nevertheless remained unaltered; and what was enjoyed was the exercise of sovereignty delegated by the United States, whose sovereignty over the Philippines continued to be complete.[19]

The opinion of Justice Paras seems to be the better one. The United States did not transfer sovereignty to the Commonwealth Government. What was delegated was the mere exercise of sovereignty. The United States retained the right of control. Whatever autonomy the Philippine Government had was enjoyed with the consent of the United States, who was free to withdraw such autonomy any time.

It is true that the Commonwealth Government entered into several international agreements. From this we cannot conclude that the other parties to such agreements were recognizing the Philippines as a sovereign state.

Conclusion of a bilateral treaty implies recognition, but not the conclusion of a multilateral treaty.[20]

Neither can admission of the Philippines to the United Nations before the proclamation of independence be deemed as an act of recognition by the other members of the family of nations. Both the Philippines and Russia are members of the United Nations. Yet, the Philippines does not recognize Russia.

If what the Commonwealth of the Philippines had was mere administrative autonomy and not sovereignty, would the signature of the Philippines in the Charter of the United Nations be void? Would all the international agreements into which the Commonwealth of the Philippines entered be void?

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[18] Laurel v. Misa, *supra* note 16, at 863-864. See also *People v. Bagalawis*, 78 Phil. 174 (1947), where the Supreme Court handed down a similar ruling.

[19] *Id.*, at 902.

[20] III WHITEMAN, DIGEST OF INTERNATIONAL LAW 49.

The disastrous consequences which these questions portend need not loosen our grip from the theory that the Commonwealth of the Philippines was not sovereign.

The Republic of the Philippines has not rejected any of the international agreements into which the Commonwealth of the Philippines entered. Whatever defects existed in those international agreements in so far as the Philippines is concerned have been cured. The failure of the Republic of the Philippines to repudiate those international agreements imply that she is recognizing their validity and assuming her obligations under them.

Although the Philippines was not yet sovereign when she signed the Charter of the United Nations, the defect has been cured. The Republic of the Philippines keeps sending representatives to the United Nations and paying dues to support the United Nations. She has been elected to various positions in the United Nations, such as the presidency of the General Assembly and a seat in the International Court of Justice. She even sent troops to South Korea in answer to the call of the United Nations for joint action to stop Communist aggression.

IV. The Military Bases Agreement

On March 14, 1947, the Philippines entered into the Military Bases Agreement with the United States. What the Philippines conceded to the United States under the agreement was mere use of the area covered by the American military bases in the Philippines. The Philippines retained sovereignty over the American military bases.

To quote from the Supreme Court:

> By the Agreement (Military Bases Agreement), it should be noted, the Philippine Government merely consents that the United States exercise jurisdiction in certain cases. The consent was given purely as a matter of comity, courtesy, or expediency. The Philippine Government has not abdicated its sovereignty over the bases as part of the Philippine territory or divested itself completely of jurisdiction over offenses committed therein.[21]

Although the Philippines retained sovereignty over the American military bases, she granted the American military authorities criminal jurisdiction over certain cases.[22]

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[21] People v. Acierto, 92 Phil. 534, 542 (1953). See also *Molina v. Pamaligan*, G.R. No. L-10842, May 27, 1957, where the Supreme Court reiterated this ruling.

[22] See paragraphs 1 and 2 of Article XIII of the revised text of the Military Bases Agreement.

This raises the question of the constitutionality of the grant of criminal jurisdiction to the American military authorities. Is this not a diminution of the judicial power which Article VII, Section 1 of the Constitution confers upon Philippine courts? Article VIII, Section 1 reads, "The judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law."

In *Miquiabas v. Philippines-Ryukus Command*,[23] the Supreme Court conceded that the grant of criminal jurisdiction to the American military authorities is valid.

> It may be stated as a rule that the Philippines, being a sovereign nation, has jurisdiction over all offenses committed within its territory, but it may, by treaty or agreement, consent that the United States or any other foreign nation, shall exercise jurisdiction over certain offenses committed within certain portions of said territory.[24]

In *Dizon v. Philippines-Ryukus Command*,[25] the Supreme Court spurned the contention that the Military Bases Agreement unconstitutionally robbed Philippine courts of part of their criminal jurisdiction.

> Under the Agreement of March 14, 1967, the United States was given express permission to establish military bases on certain portions of the Philippine territory and to exercise jurisdiction over certain offenses. The rights thus granted are no less than those conceded by the rule of international law to a foreign army allowed to march through a friendly country or to be stationed in it, by permission of its government or sovereign. For this reason, if for no other, the constitutional point raised by the petitioner becomes untenable. The jurisdiction granted to the United States under the Agreement may be wider than what is recognized by international law, but the fact remains that the lesser right is fundamentally as much a diminution of the jurisdiction of the Philippines as the greater right.[26]

The Supreme Court further pointed out, "If bases may be validly granted to the United States under the Constitution, there is no plausible reason why the lesser attribute of jurisdiction cannot be waived."[27]

In a strongly worded dissenting opinion, Justice Perfecto lashed at the Military Bases Agreement as an unconstitutional arrangement.

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[23] 80 Phil. 262 (1948).
[24] *Id.*, at 264.
[25] 81 Phil. 286 (1948).
[26] *Id.*, at 292.
[27] *Id.*, at 294.

> **The jurisdiction granted is judicial in nature. As such, it constitutes the essential function of one of the elemental powers and attributes of sovereignty, the judicial power.**
>
> **The Filipino people, in the exercise of their sovereignty (section 1, Article II of the Constitution), decided to vest the judicial power in one Supreme Court and such inferior courts as may be established by law. . . . When they delegated it to one Supreme Court and to such inferior courts as may be established by law, the delegation cannot be enlarged or extended without contravening the will of the people.**
>
> **To name one Supreme Court and inferior courts established by law is to exclude the United States of America, as a nation, and its military personnel, establishments, and organizations that may happen to occupy, use, or stay in the military bases covered by the Agreement.** [28]

What Justice Perfecto failed to take into account is that the agreement is perfectly valid under international law. Nothing in the Constitution prohibits the Philippines from entering into an arrangement such as the Military Bases Agreement. Although the Constitution vests the judicial power in the Supreme Court and the inferior courts, it also leaves to the discretion of Congress the apportionment of jurisdiction. Article VIII, Section 2 provides in part, "The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts. . . ."

What is intriguing is the questions that crop up because of the cases of *Miquiabas v. Philippines-Ryukus Command* and *Dizon v. Philippines-Ryukus Command, supra*. Suppose in *Miquiabas v. Philippines-Ryukus Command*, Miquiabas did not ask for a writ of habeas corpus to secure his release but for a writ of certiorari to annul the proceedings in the court-martial that tried him, would the Supreme Court have had jurisdiction in view of the fact that the Philippines has not relinquished sovereignty over the American military bases?

Suppose in *Dizon v. Philippines-Ryukus Command*, Dizon was denied the rights the Constitution guarantees the accused. could Dizon appeal to the Supreme Court? Would his remedy be to appeal to the higher American authorities?

Anyway, these questions seem to have become academic because of the revision of the Military Bases Agreement on August 10, 1965. [28A] Now, the American military authorities exercise jurisdiction only over certain crimes for the protection of the security of the United States and the enforcement of discipline within the bases.

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[28] *Id.*, at 296.

[28A] See pars. 1 & 2, Article XIII, original Text of Agreement.

V. TREATIES

Like other states, the Philippines has made use of treaties to regulate her relations with other countries. As of 1965, the Philippines had signed 432 international agreements. So far, the Supreme Court has not declared any treaty unconstitutional. In fact, decisions dealing with treaties are very scanty.

In *Co Chiong v. Mayor of Manila,*[29] some Chinese citizens questioned the validity of Ordinance No. 3051, which terminated their occupancy of stalls in the public markets. They argued that Ordinance No. 3051 violated the generally accepted principles of international law, the treaty obligations of the Philippines with respect to the commercial activities of the Chinese and other aliens, and the basic principles laid down in the Charter of the United Nations.

The Supreme Court answered this argument, "Neither does it (Ordinance No. 3051) violate any principle of international law nor any of the provisions of the Charter of the United Nations Organization. It does not impair any treaty commitment, as the treaties mentioned by petitioners have no binding effect upon the Republic of the Philippines, which is not a party to said treaties. The Philippines is bound only by treaties concluded and ratified in accordance with our Constitution."[29A]

No dispute can spring from the ruling in this case. Clearly, a state cannot be bound by a treaty to which it is not a signatory. Besides, the enactment of Ordinance No. 3051 can be justified under the principle of self-determination guaranteed by the Charter of the United Nations.

Article 2 (7) of the Charter of the United Nations reads in part, "Nothing in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state under the present Charter. . . ."

It is the decision in *Ichong v. Hernandez,*[30] *supra,* that has been criticized. Unlike in *Co Chiong v. Mayor of Manila, supra,* what was involved in this case was a law, not an ordinance.

Ichong filed a petition to declare the Retail Trade Nationalization Law unconstitutional and to enjoin the Secretary of Finance from enforcing it. One of the grounds on which he based his petition was that the law violated the international and treaty obligations of the Philippines.

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[29] 83 Phil. 257 (1949).

[29A] *Id.,* at 262.

[30] *Supra* note 10.

Writing the majority decision, Justice Labrador said:

> Another subordinate argument against the law is the supposed violation thereby of the Charter of the United Nations and the Declaration of Human Rights adopted by the United Nations General Assembly. We find no merit in the above contention. The United Nations Charter imposes no strict or legal obligations regarding the rights and freedom of their subjects, and the Declaration of Human Rights contains nothing more than a mere recommendation, or a common standard of achievement for all peoples and all nations . . .
>
> The Treaty of Amity between the Republic of the Philippines and the Republic of China of April 18, 1947 is also claimed to be violated by the law in question. All that the treaty guarantees is equality of treatment to the Chinese nationals upon the same terms as the nationals of any other country. But the nationals of China are not discriminated against because nationals of all other countries, except those of the United States, who are granted special rights by the retail trade. But even supposing the law infringes upon the said treaty, the treaty is always subject to qualification or amendment by a subsequent law, and the same may never curtail or restrict the scope of the police power of the State.[31]

It is the last sentence of the above quotation which has been roundly criticized. This sentence, which is a mere *obiter dictum*, seems to be anchored on the premise that sovereignty is absolute and indivisible. Since the police power of the State is an inherent attribute of sovereignty, it cannot be bargained away. To restrict the police power of the State by means of a treaty would be tantamount to impairing the absoluteness of sovereignty.

In the long analysis, however, every treaty limits the sovereignty of a state. It may be argued that ordinary treaties differ from treaties which restrict the police power of the state, because police power is an inherent attribute of sovereignty.

The power of taxation is also an inherent attribute of sovereignty. Yet, under the Military Bases Agreement, the Philippines granted members of the United States Armed Forces and nationals serving in the Philippines in connection with the construction, maintenance, operation, and defense of the military bases numerous tax exemptions.

The Supreme Court recognized the validity of this concession when it held in *Araneta v. Manila, Pencil Co.*,[32] that the operation of transportation cargoes for the United States Army is exempt from the percentage tax Section 192 of the National Internal Revenue Code imposes on transportation contractors.

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[31] *Id.*, at 1190-91.

[32] G.R. No. L-8182, June 29, 1957.

What is important is not whether the treaty limits the police power or the power of taxation. What matters is to determine whether the state consented to the restriction of its police power or power of taxation.

VI. Executive Agreements

Treaties are not the only instrumentalities by which the Philippines regulates her foreign relations. The President may enter into executive agreements with the government of other countries. Such agreements are binding even without the concurrence of the Senate.

It is in the field of executive agreements that the bulk of the decisions of the Supreme Court on the treaty-making power of the President can be found.

In an early case, the Supreme Court held that the Philippines may consent to the extension here of the application of a foreign law. This was the case of *Brownell v. Sun Life Assurance Co.*[33]

A. Brownell v. Sun Life Assurance Co.

The Attorney General of the United States filed a petition to compel the Sun Life Assurance Co. to pay one-half of an endowment policy payable to a Japanese national which matured on August 20, 1946. The Attorney General brought the action pursuant to the Trading with the Enemy Act of the United States. The Philippine Property Act, as passed by the United States Congress, provided that the Trading with the Enemy Act would continue in force in the Philippines even after the proclamation of independence.

While the law was still pending approval in the Senate of the United States Congress, Carlos Romulo, the Philippine Ambassador to the United States, expressed the conformity of the Philippine Government to the approval of the act.

Before the law was passed, President Manuel Roxas of the Commonwealth Government and United States Commissioner Paul McNutt entered into an agreement that title to enemy agricultural lands and other properties would be conveyed to the Philippines and that to avoid legal problems the Alien Property Custodian of the United States would continue operations in the Philippines, even after the proclamation of independence, to settle claims against enemy property.

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[33] 95 Phil. 228 (1954).

After the passage of the law, President Roxas showed his approval of the law by signing a joint statement with United States Commissioner McNutt.

Congress passed Republic Act No. 8 empowering the President to enter into a contract to effect transfer to the Philippines of property authorized and providing for the administration and disposition of the property that may be transferred to the Philippine Government.

The Sun Life Assurance Co. opposed just the same the petition of the United States Attorney General. One of the defenses it put up was that the Trading with the Enemy Act did not apply to the Philippines, since it was an American law.

The Supreme Court rejected this defense in this tenor:

> It is evident, therefore, that the consent of the Philippine Government to the application of the Philippine Property Act of 1946 to the Philippines after independence was given, not only by the Executive Department of the Philippine Government, but also by the Congress, which enacted the laws that would implement or carry out the benefits accruing from the operation of the United States law.
>
> There is no question that a foreign law may have extraterritorial effect in a country other than the country of origin, provided the latter in which it is sought to be made operative, gives its consent thereto.
>
> Consent of a State to the operation of a foreign law within its territory does not need to be express; it is enough that said consent be implied from its conduct or from that of its authorized officers. [34]

What was involved in this case was an executive agreement. Hence, concurrence of the Senate was not needed for its effectivity. Strictly speaking, the passage of Republic Acts Nos. 3 and 477 cannot be considered as ratification. Such laws were passed by both chambers of the legislature. In the case of treaties, only the Senate has the power of concurrence. To pass a law, only the majority of a quorum present is needed. To ratify a treaty, two-thirds of all the Senators must concur.

B. Subordinate Executive Officials

So jealously has the Constitution reserved the treaty-making power to the President, that subordinate executive officials cannot exercise this power or interfere with its exercise. This is the import of the rulings of the Supreme Court in *Central Bank v. Cabuag* [35] and *Villegas v. Teehankee.* [36]

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[34] *Id.*, at 233-235.

[35] G.R. No. L-12361, September 28, 1957.

[36] G.R. No. L-27028, January 8, 1967.

The *Central Bank* case involved an agreement between the Deputy Governor of the Central Bank and the Ambassador of the United States. To prevent the channeling of American treasury warrants to the blackmarket, the Central Bank agreed with the Ambassador of the United States and representatives of the United States Treasury Department that the United States Treasury Department would issue treasury warrants payable to the Manila branch of the National City Bank of New York and that American citizens residing in the Philippines would be allowed to remit to the United States the dollar amount of the treasury warrants issued in their names.

As some Americans abused this privilege by selling their treasury warrants in the blackmarket, the Central Bank prohibited American residents from remitting treasury warrants to the United States. A retired member of the Armed Forces of the United States sued to stop the Central Bank from enforcing the circular. One of the grounds on which he based his action was that the privilege granted American citizens was the result of an agreement between the government of the Philippines and the United States and could not be withdrawn by a unilateral act of the Philippines.

The Supreme Court disposed of this argument by saying:

> The claim that the authorization given by Deputy Governor Calalang on August 31, 1950 was the result of a formal bilateral agreement between the United States and the Philippine governments cannot be seriously entertained, for the truth is the same is but the result of an informal negotiation conducted between a representative of the Central Bank on one hand and the American ambassador and representatives of the United States on the other. It was a mere arrangement arrived at between them in order merely to accommodate the American citizens in the Philippines, and the same cannot be deemed to be a formal agreement between the two governments.[37]

This implies that the President alone can enter into executive agreements binding upon the Philippine Government. Other executive officials, such as the Deputy Governor of the Central Bank, cannot do so.

This doctrine was further clarified in the recent *Villegas* case which involved interpretation of the Retail Trade Nationalization Law.

The Assistant Executive Secretary, by authority of the President, issued a directive that until the issues raised by the decision of Judge Hilarion Jarencio of the Court of First Instance of Manila in the case of *Philippine Packing Corporation v. Reyes*

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[37] *Supra* note 35.

The treaty-making power is a prerogative solely of the President. Agreements entered into by subordinate government officials, such as the Deputy Governor of the Central Bank, do not bind the Philippine Government.[45] The views of the President regarding the interpretation and enforcement of a treaty or law must prevail over those of local executive officials, such as the Mayor of Manila.[46]

Treaties to which the Philippines is not a signatory do not bind the Philippines.[47] However, once a treaty is concluded and ratified in accordance with the Constitution, it binds the Philippines. Congress cannot pass a law inconsistent with any treaty. In case of conflict between a treaty and a law, the courts must uphold the treaty over the law.

Although the Constitution has provided for Senate concurrence in treaties negotiated by the President, there are devices by which the President can circumvent this. If the President cannot muster the concurrence of two-thirds of all the Senators but can whip up the approval of the majority of a quorum in both chambers of Congress, he can ask Congress to enact the treaty as a law. In such a case, the treaty will be binding not as a treaty but as a statute. The consequence of this is that the theory that Congress cannot pass a law inconsistent with any treaty will not apply, since the treaty was never ratified in accordance with the Constitution.

Another means by which the President can go around the requirement of ratification by the Senate is entering into executive agreements instead of treaties. Executive agreements are binding even without ratification by the Senate. This is particularly important if the President is being opposed at every turn by an obstructionist Senate.

Of course, the President cannot enter into any executive agreement that is against an existing law.[48] Otherwise, the President can nullify the legislative power of Congress and repeal existing laws by entering into executive agreements.

Thus, it seems that the President can render nugatory the provision of the Constitution requiring ratification of all treaties by two-thirds of all the Senators. The idea that one man can bind thirty-two million Filipinos by entering into numerous treaties and executive agreements may sound frightening.

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[45] Central Bank v. Caluag, *supra* note 35.
[46] Villegas v. Teehankee, *supra* note 36.
[47] Co Chiong v. Mayor of Manila, *supra* note 29.
[48] Gonzales v. Hechanova, *supra* note 5.

Yet, there is a check that is more effective than any constitutional provision that the human mind can devise. That is the conscience of the President. Although the President may indulge in partisan politics in handling local affairs, he exercises statesmanship in dealing with international affairs. In entering into any treaty or executive agreement, the President will have in mind solely the good of the country. That is the greatest guarantee we can have that the President will exercise his treaty-making power solely for the common good.

JACINTO D. JIMENEZ