

# CONTENTS

VOLUME XXIV

OCTOBER 1979

NUMBER 1

## STATUS OF FORCES AGREEMENTS: PHILIPPINE PERSPECTIVES

*Arturo C. Corona* ..... 1

## TOWARDS MORE ECONOMICALLY LITERATE LAW GRADUATES

*Rodolfo V. Romero* ..... 42

## COLLECTIVE BARGAINING FOR GOVERNMENT EMPLOYEES: A CONSTITUTIONAL REFLECTION

*Francisco Edralin Lim* ..... 48

## SUPREME COURT DOCTRINES

*Dante Miguel V. Cadiz and  
Jose Victor V. Olaguera* ..... 55

## RECENT LEGISLATION

*Rolando J. De Guzman and  
Andres B. Soriano* ..... 69

## SELECTED OPINIONS OF THE MINISTER OF JUSTICE

*Imelda D. Bagamasbad and  
Valeriano del Rosario* ..... 74

## LABOR RULINGS OF THE NLRC

*Judy A. Esguerra and  
Gay S. Villaruz* ..... 80

## TAX RULINGS OF THE BIR

*Danilo A. Macatangay and  
Edgardo M. de Vera* ..... 85

The Ateneo Law Journal

Published twice during the academic year by the students  
of the Ateneo de Manila University College of Law

# STATUS OF FORCES AGREEMENTS: PHILIPPINE PERSPECTIVES

ARTURO C. CORONA

## PRELIMINARY STATEMENT

The year 1945 ushered in the Age of Anxiety<sup>1</sup> with the beginning of the Cold War as soon as the hot war was over<sup>2</sup> due to the disintegration of the war-time forged alliance of the United States, Great Britain and the Soviet Union over such issues as the post-war status of Poland and Romania.<sup>3</sup>

While the next succeeding three decades saw an almost imperceptible shift in American policy from containment in an outright effort to dam the tide of Communist expansion in Europe and the Far East,<sup>4</sup> to maintaining a stabilized, if at times delicate, balance of power<sup>5</sup> in those areas considered of 'unquestioned vital interests,' the strategic concept of a defense chain running close parallel to the iron and bamboo curtains<sup>6</sup> has not been modified to any significant degree since the early fifties when it was first enunciated and adopted primarily to check Chinese Communist advances in East Asia.<sup>7</sup> The concept now in fact continues to serve as mainstay of the current policy as evidenced by the post-Vietnam pullback of American military power to the Pacific rim where predictably the United States intends to maintain its line.

Central to the 'defense chain' concept even in these days of nuclear proliferation<sup>8</sup> is the establishment of a worldwide network and com-

\*A.B. (Cum Laude), Ateneo de Manila; LL.B. (Cum Laude) University of the Philippines; LL.M. and S.J.D. University of Michigan.

Editor's Note: On January 7, 1979, the Philippines and the United States of America signed the 6th Major Amendment to the RP-US Military Bases Agreement. The salient points of the Amendment are: a) recognition of Philippine sovereignty over the bases; b) reduction in the base area for use of the United States; c) installation of Filipino Base Commander for the bases; d) assumption by Philippine forces of responsibility for perimeter security; e) unhampered military operations; and f) thorough review of the Military Bases Agreement every five (5) years, including its implementation, objectives, and duration.

While the Amendment recognized Philippine sovereignty over the bases, it did not touch on the matter of jurisdiction. In fact, the Exchange of Notes on the Amendment merely made mention of the fact that "where the issue of official duty is involved it (USA) undertakes to develop procedure to ensure that accused US personnel will be retained in the country (Philippines) for a reasonable time and that inadvertent departure would be prevented to allow the two Governments time for discussion on the question of jurisdiction." Criminal jurisdiction, therefore, is still subject to the old RP-US Military Bases Agreement.

Hence, the principal subject of this study which delineates the issue of jurisdiction over crimes committed by US military personnel in the Philippines under the RP-US Military Bases Agreement remains unaffected by the 6th Major Amendments to that Agreement.

prehensive structure of conventional military bases and the stationing of armed forces principally by the United States and to an increasingly large extent by the Soviet Union outside their national boundaries in the pursuit of military equilibrium through an 'essential equivalence' in their deployed land, sea, air and strategic nuclear forces. Notwithstanding the hopes raised and the prospects held out by detente, the hard facts of life in this on-going race for military superiority or at least parity between the two superpowers are cast in metal and placed on launching pads, airfields and attack vessels spread out like a giant shadow from the Atlantic and the Mediterranean basin to the Indian and Pacific oceans. When the Nixon administration first came into office in 1969, the United States then maintained as many as 2,300 bases abroad which were subsequently reduced to 1,963 four years later.<sup>9</sup> American military personnel assigned abroad in 1973 totalled 315,000 in Europe<sup>10</sup> and 187,225 in the Far East.<sup>11</sup> The approximate operating cost of these military forces in foreign countries amounts to nearly ten billion dollars annually.<sup>12</sup> Today, even after base and troop level cutdowns particularly in the western Pacific -- east Asian region,<sup>13</sup> the United States still maintains overseas a formidable military presence.<sup>14</sup> In the Philippines alone, Clark Air Base and Subic Naval Base are considered the keystone to American strategic power in the Pacific. The first is the largest American military installation outside the United States and serves as the operational center of the 13th Air Force;<sup>15</sup> the second is the integrated repair, supply and maintenance base for the entire Seventh Fleet, whose 90 ships, ranging from giant aircraft carriers to ultra-modern nuclear submarines, 550 aircraft and 70,000 men oversee thirty-six million square miles from the Bering Sea in the north to Antarctica in the south and from Guam to the Indian Ocean.<sup>16</sup> No naval facility comparable to Subic exists between the Philippines and Pearl Harbor.

Largely within the framework of Articles 51 and 52 of the United Nations Charter,<sup>17</sup> a network of bilateral and regional defense arrangements and military alliances formalized in treaties<sup>18</sup> provides for and regulates the presence of these friendly foreign forces beyond their national frontiers. The legal status of these personnel overseas is defined in corollary agreements if not by the treaties themselves. Such protocols set forth the terms and conditions which control the status of forces sent by one state into the territory of another state, both parties to the agreement. Specifically, they treat the question of jurisdiction over criminal offenses committed within the receiving state by members of the forces of the sending state.<sup>19</sup> The achievement of an equitable allocation of criminal jurisdiction over these personnel between the sending and the receiving states has been one of the more serious, and certainly the most controversial and pressing, of the problems created by the peacetime stationing of military forces in allied foreign countries.<sup>20</sup> The stage for conflict is laid between the sending and the receiving states when it is at once conceded that a visiting army requires adequate authority to control its forces effectively while yet maintaining to the territorial sovereign the maximum substantial power to protect its own citizens and their property.<sup>21</sup> Prime Minister Kukrit Pramoj pithily defined the jurisdictional dilemma on the part of the receiving state when, referring to American military personnel still stationed in Thailand, he remarked: "(W)e don't want 4,000 American ambassadors here."<sup>22</sup>

While it has been suggested that "a treaty or an agreement which defines precisely the status of the visiting force and specifies the respective powers which the receiving and sending states may properly exercise with regard to each other is absolutely essential,"<sup>23</sup> in a concrete setting where "the sometimes radically different systems of law of two sovereign nations are operating within the same territory and in respect to the same individuals,"<sup>24</sup> even the meticulously drafted treaty may not infrequently prove inadequate by itself and it becomes conceivable in particularly troublesome instances for jurisdictional disputes to move beyond the scope of its terms toward the direction of a diplomatic settlement wherein the balancing of national interests and other extraneous factors necessarily becomes the paramount concern in order to effect a resolution which is mutually satisfactory to the states in dispute.

## SCOPE AND APPROACH

The criminal jurisdiction arrangements in the 1947 Agreement Concerning Military Bases between the United States and the Philippines<sup>25</sup> and in the 1965 Agreement Relating to Criminal Jurisdiction<sup>26</sup> between the same parties, amending Article XIII of the 1947 Agreement, are the basic subjects of this study.

As far as can be gleaned from these and other post-war status of forces agreements, has a substantive-wise rule for the allocation of criminal jurisdiction been established within the international context? To what extent does the actual allocation of criminal jurisdiction both under the original and the subsequent United States-Philippine agreements conform to or differ from this standard? The possibilities raised, by the comparative method promise to make this inquiry an absorbing study.