

pendent and perpetually neutral state." Subsequent treaties reaffirmed this principle.

The City of Cracow, which was under the Treaty of 1815 to be forever a "strictly neutral city," was annexed to Austria in 1846, thus giving the words "forever" and "always" an unduly restricted meaning of 31 years.

Switzerland has stated that her "neutrality and inviolability" rested to a considerable degree upon her ability to "maintain and defend" the "integrity of her territory."

The Treaty of 1867, providing for the perpetual neutrality of the Grand Duchy of Luxemburg, was held by some of its negotiators to be one of "limited liability" which could call merely for "collective action" but in which no one of the Powers may "be called upon to act singly or separately."

In the Franco-Prussian War, Great Britain negotiated treaties with Prussia and with France which declared "that if France (Prussia) should violate Belgian neutrality she will coöperate with Prussia (France) for its defense," and this treaty was to remain in effect for a year from the treaty of peace.

It is evident that a treaty of neutralization with no sanction is not an ample guarantee of the security of the neutralized area. Even Mr. Gladstone, speaking in 1870 in reference to the British action in regard to Belgium, said that he was unable to subscribe to the doctrine that "the simple fact of the existence of a guarantee is binding on every party to it, irrespectively altogether of the particular position in which it may find itself at the time when the occasion for acting on the guarantee arises," and he further said that the great authorities to whom he had been accustomed to listen never "took that rigid and, if I may venture to say so, that impracticable view of a guarantee." Subsequent events seem to have supported Gladstone's opinion.

The "perpetual neutralization of the Philippine Islands" for which provision is made in the Act of March 24, 1934, may or may not involve any of the problems of previous attempts at neutralization, but it is evident that mere words may not be sufficient for the realization of the ends sought.

GEORGE GRAFTON WILSON

PHILIPPINE INDEPENDENCE

There are several aspects of the Tydings-McDuffie Act of March 24, 1934,¹ providing "for the complete independence of the Philippine Islands" which attract the attention of international lawyers. Some of them are provocative of considerable discussion, to which this comment may serve as a signpost but not as a solution. Others are perhaps of equal or greater general importance but will not be considered here.²

In the first place it should be noted that this act in general follows the

¹ Public No. 127, 73d Congress.

² The economic effects are considered in the Bulletins of the American Council, Institute of Pacific Relations, Vol. III, Nos. 19 and 20, Oct. 5 and 19, 1934.

scheme of the Hare-Hawes-Cutting Act which was passed over the President's veto on January 17, 1933, and which was rejected by the Philippine Legislature.³ The new act was accepted by that Legislature on May 1, 1934. It retains the general scheme of a ten-year interim period preliminary to complete independence, the system of free import quotas, graduated Philippine export taxes after the fifth year, and restriction on immigration from the islands to the United States.

In ratifying the Peace Treaty of Paris in 1899 the Senate adopted a resolution disavowing an intention to annex the Philippine Islands permanently. The United States was already committed to the independence of Cuba. In Cuba we exercised control for a time under a military government. By the famous Platt Amendment to the Army Appropriation Bill of 1901, the Congress laid down the provisions which should "substantially" be incorporated in a Cuban constitution before Cuban independence was recognized. The Philippine Independence Act in Section 2 similarly outlines, but in greater detail, the provisions which must be incorporated in the new Philippine constitution and, before complete independence is assured, the President of the United States must find that "the proposed constitution conforms substantially with the provisions of this act." In the case of Cuba, however, the adoption of an appropriate constitution was a sufficient prerequisite to the recognition of the independence of the new state; in the case of the Philippines, there is to be an interim period of ten years during which there will exist a "Commonwealth of the Philippine Islands," the relations of which to the United States are in some respects similar to those of the Dominions to the British Empire during some stages of their progression toward statehood.

There are further similarities between the Platt Amendment and the Philippine Act.⁴ Article II of the Platt Amendment limited the capacity of Cuba to contract foreign debts; paragraph 6 of Section 2 (a) of the Philippine Act contains like restrictions. It is interesting to compare the exact language of Article 3 of the Platt Amendment and paragraph 14 of Section 2 (a) of the Philippine Act:

Platt Amendment

III. That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to

Philippine Act

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and

³ This act is analyzed in *Foreign Policy Reports*, Vol. IX, No. 22, Jan. 3, 1934.

⁴ Some of the similarities between the Platt Amendment and the Philippine Act of 1933 are pointed out by the Honorable F. C. Fisher, former Associate Justice of the Supreme Court of the Philippine Islands, in an article entitled "The Status of the Philippine Islands under the Independence Act," *American Bar Association Journal* (1933), Vol. XIX, p. 465.

Cuba imposed by the Treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

In this connection, along with paragraph 14 of Section 2 (a) should be read paragraph 4 of Section 2 (b):

That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

Article 4 of the Platt Amendment provided for the ratification and validation of all acts of the United States and rights acquired thereunder. Under Section 2 (b), paragraphs 1 and 3, there are similar safeguards, to become effective upon the complete independence of the Philippines.

Article 7 of the Platt Amendment assured to the United States the acquisition of coaling and naval stations. The 1933 Philippine Act had provided that when the sovereignty of the United States was finally relinquished all military and other reservations of the United States in the islands should be transferred to the new government except such as the President of the United States should "re-designate" within two years after his proclamation of withdrawal. This provision would have left the United States free to retain all, some or none of these reservations. Under Section 5 of the new act, all military and naval reservations are retained by the United States during the Commonwealth period, but upon the proclamation of independence only the naval and fueling stations are reserved (Section 10 (a)). With respect to these, the President is "authorized and empowered" under Section 10 (b) "to enter into negotiations with the government of the Philippine Islands, not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status."

Article 8 of the Platt Amendment and Section 2 (b), paragraph 5, of the Philippine Act are almost identical:

Platt Amendment

VIII. That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

Philippine Act

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

The paragraph (2) referred to in the Philippine Act deals with the election and service of officials of the Philippine Government.

During the Commonwealth period, "Foreign affairs shall be under the di-

rect supervision and control of the United States" (Section 2 (a), paragraph 10).⁵

The phraseology of Section 10 (a) of the Philippine Act has other points of interest. On the 4th of July immediately following the expiration of the ten-year Commonwealth period, the President of the United States "shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or [*sic*] sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands," subject to the proviso on naval bases, "and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation . . ." It may be noted that by Article I of the Treaty of Paris, Spain "*relinquishes* all claim of sovereignty over and title to Cuba." With reference to recognition, Section 12 of the act further provides:

Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

The application of the immigration laws of the United States to the Philippine Islands during the Commonwealth period is interesting, but will not be gone into here. It may be noted, however, that Section 8 (a), paragraph 3, of the act provides that "Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer . . . during which assignment such officer shall be considered as stationed in a foreign country" although his activities are confined to the performance of duties connected with the administration of the immigration laws. Under this authority, Vice-Consul Henry B. Day has been assigned as the officer in charge of the new American Consulate at Manila, and thus becomes, it is believed, the first United States consular officer ever to exercise consular functions in United States territory. His commission invests him "with all the privileges and authorities of right appertaining to that office" but "subject to the conditions prescribed by law." Although Article 1, paragraph 27, of the United States Consular Regulations as in force January 11, 1932, contemplates the description of the consular district in the commission, no such description is here made. It is understood to extend to all the Philippine Islands. Mr. Day does not function under an *exequatur*, but was instructed to report to the Governor General for authorization to act in lieu thereof. It is understood that he has received no authorization from the Philippine Government.⁶

⁵ In discussing this and other provisions of the 1933 Act, Judge Fisher, in the article cited above, concludes that during the Commonwealth period the Philippine Government will be in a state of "semi-sovereignty."

⁶ Information supplied to the writer by the Department of State.

From the point of view of international politics, the relinquishment of the Philippines is an event of capital importance. According to some British opinion,⁷ it means the withdrawal of the United States to Hawaii and the abandonment of our position as a power in the Far East, with the result that the British navy would be left alone as a counterweight to the rapidly increasing power of Japan, whose attitude on her naval position in the East has recently been made abundantly clear at London. This change is more apparent than real.⁸ Even before the limitations on fortifications imposed by Article XIX of the Washington Naval Treaty, a considerable weight of naval opinion in the United States held that we could not retain the Philippines in the face of a hostile attack. Even if this were not the case, the provisions of the Philippine Act do not automatically alter our naval position in the islands, even at the end of the ten-year period. However, Section 11 of the act contains a highly important provision:

The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

Apparently these negotiations need not wait upon the termination of the ten-year Commonwealth period.⁹ It is probable that they will play an important part in any future naval conference dealing with affairs in the Pacific. They may play as important a part as the agreement to limit fortifications played in 1922 at the Washington Conference. If they result in placing the islands under a demilitarized régime guaranteed by all the Pacific Powers, they may free the United States from some of the false bases on which our recent naval policy has been popularly supported.¹⁰

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THE COMPLAINT OF YUGOSLAVIA AGAINST HUNGARY WITH REFERENCE TO THE ASSASSINATION OF KING ALEXANDER

King Alexander of Yugoslavia and M. Louis Barthou, the French Minister of Foreign Affairs, were assassinated in Marseille on October 9, 1934, while the former was paying an official visit to the French Republic. The assassin died from wounds received in the *melée*, but was promptly identified

⁷ See the views of the Marquess of Lothian in the *London Observer*, as quoted in the *New York Times*, Nov. 18, 1934. Cf. Sir Frederick White, "The Philippines as a Pawn in the Game," *Pacific Affairs*, Vol. VII (1934), p. 163.

⁸ Cf. Quincy Wright, "A Pawn Approaches the Eighth Square," *ibid.*, p. 326.

⁹ As far back as 1911, Mr. Cyrus French Wicker discussed the neutralization of the Philippines, concluding that this could be accomplished without a relinquishment of sovereignty. *Neutralization*, p. 81 ff.

¹⁰ The recommendations of the Committee on the Philippines sponsored by the Foreign Policy Association and the World Peace Foundation state: "From the strategic standpoint, the majority of the Committee regards the possession of the Philippines by the United States as a definite liability." *Foreign Policy Committee Reports No. 2, January, 1934*, p. 5.