Burma, Ko Maung Tin v. U Gon Man

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: *AD*, vol. 14, 1947, pp. 233-235]

KO MAUNG TIN

v.

U GON MAN

Burma, High Court (Appellate Civil)

(Roberts, C.J., Ba U, Blagden, Wright, and E. Maung, JJ.) May 3, 1947

THE FACTS. During the Japanese occupation of Burma the appellant advanced Rs. 1,000 in Japanese notes to the respondent, who executed a promissory note in favour of the appellant promising to repay Rs. 1,000 only in Japanese notes with interest, and deposited title deeds of his properties with intent to create a mortgage by deposit of title deeds. After the British reoccupation appellant filed a suit against the respondent on the promissory note. For the respondent it was contended that the issue of the Japanese currency was unlawful and that Rs. 1,000 (Japanese currency) was not currency within the meaning of "sum certain" in the definition of a promissory note. [...]

Held: that the action on the promissory note must be dismissed [...]. The Japanese Military Authorities acted in excess of their authority under international law, in issuing a system of currency parallel to the currency established by the lawful Government.

Per E. Maung, J.: "In holding that the Japanese Military Authorities in occupation of Burma acted in excess of their legitimate authority at international law in setting up a parallel system of currency and relating the same to the system established by the lawful Government for Burma, I am not unmindful of the precedents set in the War of 1914-18 by Germans in France and Belgium and Austrians in Serbia, repeated in the War of 1939 onwards by Germany and powers associated with her. German jurists and the *Reichsgericht* sought to justify these actions on the theory that in an effective occupation of enemy territory the power of the occupying country totally excludes and replaces the State power of a lawful Government. This theory has not received general acceptance and is not in consonance with modern views on the status of the occupying power. The right of an occupant in occupied territory is merely a right of administration. See McNair, *Legal Effects of War* (2nd ed.) at page 337.

"Articles 42 to 56 of the Hague Regulations of 1907 clearly cannot be invoked in support of the exercise of the occupying power of effecting a change in the currency system of the occupied territory and to make that change binding on the lawful Government.

[...]

Discussion

1. May an occupying power legislate for a territory it occupies? In which respects? Under which conditions? (HR, Art. 43; GC IV, Art. 64)

2. May an occupying power introduce its own currency in an occupied territory as a legal currency? At least alongside the local currency? May it create a separate legal currency for the occupied territory? When does the introduction of a currency constitute an act of legislation?