State Practice of Asian Countries in International Law

Philippines

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JURISPRUDENCE

TREATIES – OBLIGATIONS – PACTA SUNT SERVANDA – EFFECT ON MUNICIPAL REGULATIONS – TAXATION

Air Canada v. Commissioner of Internal Revenue [G.R. No. 169507,
21 January 2016]

Air Canada, an offline air carrier selling passenger tickets in the Philippines through Aerotel, a general sales agent in the Philippines, sought a refund of income taxes for the period covering the 3rd Quarter of 2000 to the 2nd Quarter of 2002, paid to the Commissioner on Internal Revenue. The Commissioner based its assessment on provisions of the 1997 National Internal Revenue Code that imposed a 2.5% tax on gross billings and a 32% rate of income tax on foreign corporations engaged in business in the Philippines, but Air Canada invoked Article VIII of the 1977 Convention between the Philippines and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Philippines-Canada Tax Treaty) which provides that the Philippines will not impose a tax higher than 1.5% of the carrier's gross revenue derived from sources within the Philippines.

After payment under protest, Air Canada filed a petition for review with the Court of Tax Appeals and sought a refund of taxes erroneously paid. The Court of Tax Appeals held that Air Canada was not liable for the 2.5% tax on gross billings, but nevertheless liable for the 32% corporate income tax. Air Canada brought the decision to the Supreme Court upon a petition for review.

The Supreme Court ruled that Air Canada was not liable for either that 2.5% tax on gross billings nor the 32% corporate income tax. Since it was an offline air carrier that did not operate flights into and out of the Philippines, the tax on gross billings was not applicable as the National Internal Revenue Code defined "Gross Philippine Billings" as "the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the

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Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document.”

Neither could it be held liable for the corporate income tax considering the existence of an effective tax treaty between the Philippines and the home country of the foreign air carrier. The Philippines-Canada Tax Treaty was duly ratified on 21 December 1977 and became valid and effective on that date. The Court reiterated that a tax treaty is an agreement entered into by sovereign States “for purposes of eliminating double taxation of income and capital, preventing fiscal evasion promoting mutual trade and investment, and according fair and equitable tax treatment to foreign residents or nationals.” It invoked the constitutional provision that the Philippines “adopts the generally accepted principles of international law as part of the law of the land,” and *pacta sunt servanda* as basis for the application of the provisions of tax treaties entered into by the Philippines to its National Internal Revenue Code. Although Air Canada was deemed to be taxable as a resident foreign corporation due to the operation of Aerotel as its agent, it was nevertheless subject to not more than 1.5% tax on gross revenues pursuant to the Philippine-Canada Tax Treaty. The Court explained that tax treaties form part of the law of the land, and Philippine jurisprudence applied the statutory construction principle that specific laws prevail over general ones. Since the Philippine-Canada Tax Treaty is more specific than the general provisions of the National Internal Revenue Code, the former governs.

HUMAN RIGHTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS – TREATIES AND COVENANTS – RIGHTS OF THE CHILD – CITIZENSHIP

Poe-Llamanzares v. Commission on Elections [G.R. No. 221697, 221698–700, 8 March 2016]

Several petitions before the Commission on Elections questioned the qualifications of Senator Mary Grace Natividad S. Poe-Llamanzares to run for President in the 2016 national elections due to her having been a found abandoned as a newborn infant in the Parish Church of Jaro, Iloilo Province in 1968. Petitioners argued, among others, that she could not be considered a natural-born Filipino citizen on account of the fact that she was a foundling. The Commission denied all of the petitions for disqualification, and its resolutions were all brought to the Supreme Court for review.

On the issue of citizenship of foundlings, the Supreme Court ruled that Senator Poe-Llamanzares was to be considered a natural-born citizen consistently

with the provisions of Article 15 of the Universal Declaration of Human Rights (UDHR), Article 7 of the UN Convention on the Rights of the Child, and Article 24 of the International Covenant on Civil and Political Rights. The Court found that the three instruments all obligated the Philippines to grant nationality from birth and ensure that no child is stateless.

Further, the Court determined that it is a generally accepted principle of international law to presume foundlings as having been born of nationals of the country in which the foundling is found. It cited two conventions even though they were not ratified by the Philippines, namely, Article 14 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws and Article 2 of the 1961 UN Convention on the Reduction of Statelessness as giving effect to the UDHR. It also relied on evidence of State practice showing that at least sixty countries in Asia, North and South America, and Europe passed legislation recognizing foundlings as their citizens, while a survey demonstrated that 166 out of 189 countries recognized foundlings as citizens.

LAW OF THE SEA

COASTAL STATE – TERRITORIAL SEA – SUBMARINE CABLES

Capitol Wireless v. Provincial Treasurer of Batangas [G.R. No. 180110, 30 May 2016]

The Province of Batangas assessed real estate taxes upon Capital Wireless, Inc. for owning and operating a submarine cable within the municipal waters of the Municipality of Nasugbu, Batangas, and sought to levy and auction the submarine cable system. Capital Wireless refused to pay the real estate taxes, arguing that the cable system lay outside of Philippine territory, and tried to prevent the levy and auction sale by filing a petition with the Regional Trial Court. Its petition was dismissed for failure to pay under protest and appeal the assessment to the Local Board of Assessment Appeals. Capital Wireless then appealed to the Court of Appeals, but the latter affirmed the decision of the Regional Trial Court. The case was then brought to the Supreme Court.

The Supreme Court denied the petition for failure to exhaust administrative remedies, but nevertheless affirmed the decision of the lower court declaring that submarine wires or cables used for communications may be taxed like other real estate. The Court deemed submarine cables to be akin to electrical transmission lines that qualify as “machinery” subject to real property taxes. It took judicial notice that Nasugbu was a coastal municipality and

its surrounding sea falls within the 12 nautical mile territorial sea of the UN Convention on the Law of the Sea, over which the country has sovereignty, thus the portion of the submarine cable lies within Philippine territory and falls within the jurisdiction of the local taxing authorities in accordance with the taxation powers delegated to municipalities and provinces under the Local Government Code. In the absence of either domestic legislation or international agreement exempting the submarine cables from taxation, Capitol Wireless was deemed liable for real property taxes on the submarine cable.

EXCLUSIVE ECONOMIC ZONE – CONTINENTAL SHELF – DISPUTE SETTLEMENT

In the Matter of the South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China [PCA Case No. 2013–19, July 12, 2016]

The Republic of the Philippines commenced arbitration proceedings against the People's Republic of China under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS) on 22 January 2013. The Philippines disputed the nature and basis of China's claim to extensive areas in the South China Sea, represented by the "nine-dash line" map; contested the source of maritime entitlements in the Spratly Islands region and Scarborough Shoal; and challenged the legality of China's actions against Philippine fishing and petroleum activities, as well as building of artificial islands, within the latter's exclusive economic zone and continental shelf. China refused to participate in the proceedings. After a mostly favorable determination of jurisdiction on 29 October 2015, the *ad hoc* tribunal rendered an Award on the Merits.

The Tribunal characterized China's claims in the South China Sea as a historic claim to living and non-living resources within the area enclosed by the "nine-dash line", and held that any and all such historic claims to waters beyond the territorial sea were relinquished and abandoned by China when it signed and ratified the UNCLOS, and agreed to the establishment of the EEZ and continental shelf regimes for all coastal States. It then found that none of the features in the Spratly Islands region and Scarborough Shoal were capable of generating their own EEZ and continental shelf, by laying down nine criteria for determining whether or not a maritime feature was to be legally deemed an "island" or a "rock" as described in UNCLOS Article 121. Among these criteria are the natural capacity to sustain human habitation or economic life without external additions or modifications, stable and self-sustained habitation, and a resident

population. In the absence of EEZ or continental shelf zones appertaining to any island, the sea areas around the Spratly Islands region and Scarborough Shoal could be considered as either part of the Philippine EEZ and continental shelf measured from the Philippines baselines, or part of the high seas.

The Tribunal then found that China's interference with Philippine fishing and petroleum activities, construction of one of seven artificial islands, dangerous maneuvering against Philippine ships, and failure to prevent Chinese fishermen from fishing in the Philippine EEZ were all in contravention of the Philippines' sovereign rights over its EEZ and continental shelf. It also found that the construction of artificial islands and failure to prevent its fishermen from engaging in destructive fishing practices violated China's obligations to preserve and protect the marine environment. Finally, it ruled that the construction of artificial islands also violated China's obligations to refrain from taking actions that cause permanent damage and irreparable harm to the marine environment, and from acting prejudicially against the rights of the Philippines and aggravating the dispute.

TREATIES

ACCESSION – EXECUTIVE AGREEMENT

Intellectual Property Association of the Philippines v. Executive Secretary Ochoa, et al. [G.R. No. 204605, 19 July 2016]

The Intellectual Property Association of the Philippines commenced a special civil action for certiorari and prohibition to challenge the validity of the Philippines' accession to the Madrid Protocol without the concurrence of the Philippine Senate on the ground that it was classified as an executive agreement by the Department of Foreign Affairs.

The Supreme Court dismissed the action, finding no grave abuse of discretion on the part of the Executive Branch's classification since it was done in light of existing State policies and legislation on intellectual property. The Court observed that there are no hard and fast rules on the propriety of entering into either a treaty or an executive agreement on any given subject as an instrument of international relations; the primary consideration for such a choice appears to be the parties' intent and desire to craft their agreement in a way that furthered their respective interests. It reiterated that the matter of form is subordinate to the effectiveness and binding effect or enforcement of the instrument, inasmuch as the parties, regardless of form, are obliged to comply with the principle of *pacta sunt servanda*.

HUMAN RIGHTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS – TREATIES AND COVENANTS – RIGHTS OF THE CHILD – NON-DISCRIMINATION

David v. Senate Electoral Tribunal [G.R. 221538, 20 September 2016]

The petitioner instituted *quo warranto* proceedings before the Supreme Court against Senator Mary Grace Poe-Llamanzares, seeking to unseat her as Senator for allegedly not being a natural-born citizen of the Philippines and therefore not qualified to hold such public office under the 1987 Constitution. It is alleged that she cannot be a natural-born citizen because she is a foundling whose parents, and therefore citizenship, are unknown according to the principle of *jus sanguinis*, and that she failed to establish her Philippine “blood line.”

The Court dismissed the petition, citing among others, that even more basic than being citizens, foundlings are human persons whose dignity are valued and respected by civilized nations. In addition to provisions of domestic legislation and the Philippine Constitution, the Court invoked the UN Convention on the Rights of the Child which requires the States Parties to protect children’s rights to immediate registration and nationality after birth, against statelessness, and against discrimination on account of their birth status. The Court also invoked the International Covenant on Civil and Political Rights which requires that children be allowed immediate registration after birth and to acquire a nationality, as well as be defended against discrimination. To deny them these rights, deprive them of citizenship, and render them stateless would impose undue burdens and discrimination, and undermine their development.

TREATIES AND COVENANTS – INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ocampo, et al. v. Enriquez [G.R. No. 225973, 8 November 2016]

Petitioners challenged the decision of the Philippine Government to allow the burial of former President Ferdinand E. Marcos, who imposed authoritarian rule in the Philippines from 1972 to 1986, in the Libingan ng mga Bayani (National Heroes’ Cemetery). They argued that the burial violates the rights of human rights victims to “full and effective” reparations provided under the International Covenant on Civil and Political Rights (ICCPR), the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the UN General Assembly on

16 December 2005, and the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity issued by the UN Economic and Social Council on 8 February 2005.

The Supreme Court demurred, arguing that the ICCPR and cited UN documents on reparations and combatting impunity only called for legislative measures, national measures and provisions for administrative or judicial recourse. The Court declared that the Philippines is more than compliant with its international obligations, and since the People Power Revolution on 25 February 1986 had done its share to respect, protect, and fulfill the country's human rights obligations.

JURISDICTION – IMMUNITY FROM JURISDICTION

Association of Medical Clinics for Overseas Workers v. GCC Approved Medical Centers Association [G.R. Nos. 207132 and 207205, 6 December 2016]

The Department of Health (DOH) issued an administrative order to stop the practice of “referral decking,” or equal distribution of migrant workers among several clinics that were members of the GCC Approved Medical Centers Association (GAMCA) for purposes of securing medical clearances for their applications and permits to work overseas in the Gulf Cooperative Council States. The prohibition was issued in accordance with Section 16 of Republic Act No. 10022, which granted the DOH regulatory powers over all clinics that conduct medical examinations on Philippine migrant workers as a requirement for overseas employment. GAMCA filed a petition with the Regional Trial Court to annul the order of the DOH, arguing that the referral decking system was a requirement of the Gulf Cooperative Council States (GCC), which exempted the GAMCA from the prohibition of the DOH. The Association of Medical Clinics for Overseas Workers intervened in the proceedings on the side of the Department of Health. The court granted the petition and ordered the DOH to cease and desist from implementing the orders against GAMCA. The decision was brought to the Supreme Court on appeal.

The Court rejected GAMCA's argument that the referral decking system was a requirement of the GCC exempt from DOH regulation on the ground of sovereign equality and independence of States. While it recognized the principle of sovereign immunity, it also restricted such immunity to acts *jus imperii*, or public acts, and did not deem it extended to agents of foreign governments in the Philippines engaged in commercial transactions and complying with the latter's laws. GAMCA was unable to prove that the GCC extended its sovereign immunity to GAMCA. The Court also determined that the GCC's prerogative to apply visa requirements to any foreign nationals including overseas workers

who seek to enter their territory did not affect the legality of the prohibition against the referral decking system.

TREATIES AND COVENANTS – INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Wilson v. Ermita [G.R. No. 189220, 7 December 2016]

The petitioner, a British national, was accused and charged with the crime of rape before the Regional Trial Court, but the conviction was subsequently acquitted on appeal due to serious discrepancies and inconsistent statements in the testimony of the victim. Pending appeal, he filed with the UN Human Rights Committee a case against the Philippines for violations of the International Covenant on Civil and Political Rights (ICCPR), particularly the provisions on the rights of the accused. After his release from detention he returned to the UK, and sought compensation from the Board of Claims of the Department of Justice, which awarded him damages. However, the petitioner was denied a visa to be able to return to the Philippines to collect such damages due to the presence of his name on the immigration watch list for previously overstaying in the Philippines and conviction of a crime. Subsequently, the UN Human Rights Committee issued a View stating that the compensation awarded by the Philippines did not take into account the seriousness of the breaches of his human rights, nor did it refund the amounts unjustly imposed upon him for overstaying his tourist visa which was directly attributable to his wrongful conviction. The petitioner wrote to the Executive Secretary to comply with the conclusions of the View of the UN Human Rights Committee. No action having been taken a year later, the petitioner filed an action for *mandamus*, arguing that by virtue of the doctrine of transformation, the View issued by the Committee constitutes part of international law and the Philippines is obliged to enforce the same.

The Supreme Court denied the petition, noting that while the Philippines was indeed a party to the ICCPR and Optional Protocol, and expressly recognized the competence of the UN Human Rights Committee, nowhere in the instrument is it stated that the View of the Committee forms part of the treaty. Any Views issued only display “important characteristics of a judicial decision” but are not per se decisions that may be enforced outright by Philippine courts, and therefore are mere recommendations to guide the State. Action on such recommendations are within the purview of the Legislative and Executive branches, not the Judicial branch whose power under the 1987 Constitution is limited to the settlement of actual controversies and interpretation of law.

INTERNATIONAL AGREEMENTS**TREATIES – AGREEMENTS CONCURRED BY THE PHILIPPINE
SENATE*****Ratification of the Articles of Agreement of the Asian Infrastructure
Investment Bank, 5 December 2016***

The Philippine Senate issued Resolution No. 33 concurring with the ratification of the Articles of Agreement of the Asian Infrastructure Investment Bank. The Articles of Agreement were signed in China on 31 December 2015, and establishes the Asian Infrastructure Investment Bank as an international financial institution.