State Practice of Asian Countries in International Law

Philippines

*Jay L. Batongbacal**

HUMAN RIGHTS – TREATIES AND COVENANTS – CONDUCT OF LAW ENFORCEMENT

Judicial Decisions

Representative Edcel C. Lagman, et al v Executive Secretary Salvador C. Medialdea, et al [G.R. No. 243522, February 19, 2019]

On May 23, 2017, the members of the Maute Group and Abu Sayyaf Group violently took over the government and private facilities, causing numerous casualties, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in Marawi City. President Rodrigo Roa Duterte issued Proclamation No. 216 declaring a state of martial law and suspending the writ of *habeas corpus* for a period not exceeding sixty (60) days in the whole island of Mindanao, where Marawi City is located. Two days later, both Houses of Congress expressed full support to the Proclamation through Senate Resolution No. 388 and House Resolution No. 1050, finding no cause to revoke the same. Subsequently, upon the request of the President, the effectiveness of the declaration was extended until December 31, 2017, in a Resolution of Both Houses No. 2 issued in a Special Session on July 22, 2017. On December 8, 2017, the President again asked both the Senate and House of Representatives to extend the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* for one year, from January 1, 2018, to December 31, 2018.

Before the expiration of the second extension of Proclamation No. 216, the President requested a third extension from January 1, 2019, to December 31, 2019, upon the recommendations of the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines citing their respective assessments of the need to eradicate local terrorist and other lawless armed groups, their foreign and local allies, and contain the rebellion in Mindanao and prevent it from escalating to other parts of the country, among other reasons.

* Associate Professor, University of the Philippines College of Law.

On December 12, 2018, the two Houses of Congress issued Joint Resolution No. 6, declaring the state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao for another year.

As they had done with the first proclamation and with the previous extensions, the petitioners filed a petition assailing the sufficiency of the factual basis of the third extension of the declaration of martial law and suspension of the privilege of the writ. Among the arguments raised, such as the cessation of seizure of Marawi City and procedural issues regarding the manner of extension of the declaration, the petitioners asserted that allegations of human rights violations in the implementation of martial law in Mindanao were sufficient to warrant the nullification of its extension.

The Supreme Court dismissed the petition, finding that the declaration of martial law was justified by the existence and persistence of a state of rebellion in Mindanao, and public safety warranted the extension thereof. It also found that Congress had the prerogative to cause its extension and there were no restrictions on the period for which it could be extended. Specifically, on the issue of alleged human rights violations, the Court ruled that judicial and administrative remedies remained available despite the state of martial law, and that in relation to the international human rights principles established under the Universal Declaration of Human Rights (UDHR), the law enforcement officials were still guided by the principles and safeguards declared in the International Covenant on Civil and Political Rights. The Court also cited specific soft law instruments relevant to law enforcement as upholding the principles of legality, proportionality, necessity, and accountability in situations involving their use of force. These included the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF), Code of Conduct for Law Enforcement Officials (CCLEO), Standard Minimum Rules for the Treatment of Prisoners (SMR), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Victims Declaration).

TREATIES – BINDING EFFECT – PACTA SUNT SERVANDA

Commissioner of Internal Revenue v Interpublic Group of Companies, Inc.
[G.R. No. 207039, August 14, 2019]

Interpublic Group of Companies, Inc. (IGC) is a non-resident foreign corporation that owns 30% of the outstanding and voting stock of McCann

Worldgroup Philippines, Inc. (McCann) a domestic corporation engaged in the general advertising business. In 2006, McCann declared cash dividends in favor of its stockholders, on which it withheld a Final Withholding Tax of 35%, in the amount of 21.6 Million PHP on IGC's cash dividends. IGC filed an administrative claim for refund or tax credit of 12.3 Million PHP representing alleged overpaid tax on its dividends, arguing that it was entitled to a preferential Final Withholding Tax rate of 15% received from a domestic corporation under the Tax Code. The Commissioner of Internal Revenue failed to act on the claim for refund, prompting the IGC to file a petition for review with the Court of Tax Appeals. The latter granted the petition and ordered the refund. The Commissioner of Internal Revenue brought a petition for review before the Supreme Court, arguing, among others, that the IGC was not entitled to a tax refund or credit on the ground that it failed to file a Tax Treaty Relief Application with the International Tax Affairs Division of the Bureau of Internal Revenue at least fifteen (15) days before it paid the tax on dividends in accordance with Revenue Memorandum Order (RMO) No. 1-2000.

The Supreme Court denied the petition. On the matter of IGC's failure to file a Tax Treaty Relief Application, the Court emphasized the binding effect of an international tax treaty pursuant to the principle of *pacta sunt servanda*, and its purpose of reconciling national fiscal legislation to eliminate international juridical double taxation, or the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods. The Court noted that RMO No. 1-2000 should not operate to divest entitlement to the tax relief as it would constitute a violation of the duty of good faith compliance with the tax treaty. Since the Philippines-US Tax Treaty does not provide for any other prerequisite for availing of its benefits, the imposition of additional requirements such as the prior filing of an application would negate the availment of the reliefs provided by international agreement.

**HUMAN RIGHTS – UNIVERSAL DECLARATION OF HUMAN
RIGHTS – INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS – RIGHT TO EDUCATION**

Oscar B. Pimentel, et al v Legal Education Board, et al. [G.R. No. 230642, September 10, 2019]

The Legal Education Board (LEB), an executive agency created under Republic Act No. 7662 to regulate and improve legal education in the Philippines,

issued orders, circulars, resolutions, and other directives, which included the establishment of a nationwide uniform law school admission test known as the PhiLSAT, an aptitude test designed to measure the academic potential of the examinee to pursue the study of law. The LEB barred admission to law school to any applicant who did not take and pass the PhiLSAT. However, the implementation of the PhiLSAT from 2016 to 2018 was beset with a number of problems, leading the LEB to permit conditional admissions/enrollments that could be nullified, and the LEB imposed additional requirements for schools to be allowed conditional admissions/enrollments, lest they be administratively penalized. Before the holding of the fourth PhiLSAT, numerous petitioners, who included law schools, law professors, and law students, filed a petition for prohibition with the Supreme Court seeking to declare Republic Act No. 7662 unconstitutional and to invalidate the creation of the LEB together with all of its issuances, especially the PhiLSAT.

One of the issues raised by the petitions was the broad scope of LEB's exercise of powers and functions and its impact on the right to education recognized under the 1987 Constitution and international human rights law to which the Philippines is a signatory and concomitantly bound. The Court found that Article 13(2) of the ICESCR recognized the right to receive an education with the essential features of availability, accessibility, acceptability, and adaptability. It focused on accessibility as giving everyone access to educational institutions and programs without discrimination and having three dimensions of non-discrimination, physical accessibility, and economic accessibility. The Court nevertheless interpreted the right to receive higher education to be not absolute. It noted differences between Article 26(1) of the UDHR which provides that "technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit," while the ICESCR states that "higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular b the progressive introduction of free education." Thus, the Court declared that higher education is not generally available, but accessible only on the basis of capacity which should be assessed by reference to all their relevant expertise and experience.

With this understanding, the Court proceeded to rule on various issues concerning the validity of Republic Act No. 7662, the creation of the LEB, and its directives. It sustained the validity of the law and the LEB but declared several provisions and directives unconstitutional for either encroaching on the power of the Court to regulate the practice of law, or violative of the academic freedom of law schools, or being *ultra vires*. Concerning the PhiLSAT, which

petitioners argued transgresses the right to education, the Court stated that it was merely a minimum admission standard rationally related to the interest of the State in improving the quality of legal education, thus it could not be voided on the ground of violating the right to education. However, it was declared void for violating the institutional academic freedom on who to admit to law schools in prescribing the passing of the PhiLSAT as a prerequisite for admission to law schools and requiring them to admit only those who passed the test at least two years before commencement of law studies.

TREATIES – BINDING EFFECT – PACTA SUNT SERVANDA

Manila International Airport Authority v Commission on Audit [G.R. No. 218388, October 15, 2019]

The governments of the Philippines and Japan had an Exchange of Notes on August 16, 1993, which led to the execution of Loan Agreement No. PH-136 between the Government of the Philippines and the Overseas Economic Cooperation Fund, the implementing agency for loan aid of the Japanese Government. The Loan Agreement in turn financed an Agreement for Consulting Services for the NAIA Terminal 2 Development Project between the Manila International Airport Authority (MIAA) and the Aeroports de Paris-Japan Airport Consultants Inc. Consortium (Consultants) the following year. It covered 795 man-months of consulting services, spread over a project duration of 53 months that included 14-months of post-construction services. However, the duration of services was extended, and the number of man-months due to prolonged contracting procedures, delayed approvals, and numerous additional construction work. The extension was covered by three Supplementary Agreements. In 1999, the Commission on Audit (COA) disallowed the Agreement's remuneration and contingency costs for exceeding the project's original estimated costs and the National Economic Development Authority Guidelines which placed a ceiling of 5% for payments charged to a contingency; after reconsideration, it reversed its position on the remuneration cost but maintained that the contingency payments were excessive. After unsuccessful attempts to have the decision reconsidered and reversed, MIAA brought a petition for review before the Supreme Court. MIAA argued that the 5% ceiling for contingency payments did not apply since the agreement was an international agreement with an international financing institution, which normally provided for a 10% contingency. The COA countered that the 5% ceiling was

applicable in the absence of any provision that Philippine laws should not apply, and the Loan Agreement did not mention international laws, regulations, or practices concerning the payments.

The Supreme Court found merit in the petition and reversed the decision of the COA. It found that the case involved an international agreement, and as such, the parties' intention as to how payments should be charged to contingency should govern. It rejected the COA's argument that domestic law should apply in the absence of any reference to international law in the agreement, noting that as a loan agreement executed in conjunction with an Exchange of Notes between the Philippine government and a foreign government, it was an executive agreement whose interpretation and construction were governed by international law. The Philippines was found to faithfully comply with the provisions of the loan agreement in accordance with the doctrine of *pacta sunt servanda*. This extended to its accessory contracts, i.e., the Agreement for Consulting Services for the NAIA Terminal 2 Development Project and their Supplementary Agreements extending it. No express stipulation by the contracting parties was necessary. The COA's disallowance of disbursements for the extended contract period for exceeding the NEDA Guidelines 5% ceiling was therefore erroneous because it would contravene *pacta sunt servanda* and practically negate the government's accession to the executive agreements without any valid justification.

Treaties – Agreements Concurred in the Philippine Senate in 2019

In 2019, with the concurrence of the Senate, the Philippines ratified a treaty establishing a common exclusive economic zone boundary, an extradition treaty, and a treaty for mutual legal assistance.

LAW OF THE SEA – EXCLUSIVE ECONOMIC ZONE

Resolution concurring in the ratification of the Agreement between the Government of the Republic of the Philippines and the Government of the Republic of Indonesia concerning the delimitation of the Exclusive Economic Zone boundary, Senate Resolution No. 1048

03 June 2019

The Senate concurred in the Agreement signed on 23 May 2014 delimiting the overlapping Exclusive Economic Zones between the Philippines and Indonesia, without prejudice to the delimitation of the continental shelf boundary.

**TERRORISM – EXTRADITION – EXTRADITION TREATIES –
TERRORISM – INTERNATIONAL COOPERATION**

Resolution concurring in the ratification of the Treaty between the Republic of the Philippines and the Russian Federation on Extradition, Philippine Senate Resolution No. 34

18 December 2019

The Senate concurred in the ratification of the extradition treaty between the Philippines and Russian Federation signed on 13 November 2017, which obliges the parties to extradite to each other persons whom the authorities in the requesting State have charged with, or convicted of, an extraditable offense, citing it as an effective tool in the fight against criminality particularly terrorism and other transnational crimes.

**TERRORISM – EXTRADITION – PROCEDURE – INTERNATIONAL
COOPERATION**

Resolution concurring in the ratification of the Treaty between the Republic of the Philippines and the Russian Federation on mutual legal assistance in criminal matters, Senate Resolution No. 35

18 December 2019

The Senate concurred in the ratification of the Treaty between the Philippines and the Russian Federation obliging the contracting States to grant each other comprehensive mutual legal assistance in criminal matters, especially where the request would involve compulsory processes for its execution such as freezing and confiscation of the proceeds of crimes, search and seizure, and enforcement of forfeiture orders, likewise citing it as a tool against criminality and the global war against terrorism and other transnational crimes.

Legislation and Administrative Regulations

In 2019, the Philippines enacted a law that directly references and implements international conventions.

An Act establishing the Philippine Space Development and Utilization Policy and creating the Philippine Space Agency, and for other purposes.
Republic Act No. 11363

On August 8, 2019, the Philippine legislature enacted a law establishing for the first time a policy for the utilization and development of space science and technology for its many different applications, ensure the country's official representation, participation, and cooperation in space development, and ensure the Philippines abides by the various international space treaties and principles promulgated by the United Nations and international space community. It provides for the Philippine Space Development and Utilization Policy as a strategic roadmap to enable the country's central goal of becoming a space-capable and space-faring nation within the next decade, with a focus on national security and development, hazard management and climate studies, space research and development, space industry capacity building, space education and awareness, and international cooperation. The law created the Philippine Space Agency (PhilSA) with a mandate for primary policy, planning, coordination, implementation, and administration of the national space program, supported by a Philippine Space Development Fund that may draw on public and private sources, both local and foreign. The law specifically requires the maintenance of a National Registry of Space Objects in accordance with the UN Convention on the Registration of Objects Launched into Outer Space and directs the PhilSA to furnish the UN Office for Outer Space Affairs with the information required under the Registration Convention. It also acknowledges responsibility for damages caused by space objects registered in the National Registry of Space Objects in accordance with the UN Convention on International Liability for Damage Caused by Space Objects, which shall take effect immediately upon ratification of the Liability Convention and Registration Convention.