

INTEGRATED BAR OF THE PHILIPPINES, PETITIONER, VS. HON. RONALDO B. ZAMORA, GEN. PANFILO M. LACSON, GEN. EDGAR B. AGLIPAY, AND GEN. ANGELO REYES, RESPONDENTS.*G.R. No. 141284. August 15, 2000*

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141284/>**KAPUNAN, J.:**

At bar is a special civil action for certiorari and prohibition with prayer for issuance of a temporary restraining order seeking to nullify on constitutional grounds the order of President Joseph Ejercito Estrada commanding the deployment of the Philippine Marines (the “Marines”) to join the Philippine National Police (the “PNP”) in visibility patrols around the metropolis.

In view of the alarming increase in violent crimes in Metro Manila, like robberies, kidnappings and carnappings, the President, in a verbal directive, ordered the PNP and the Marines to conduct joint visibility patrols for the purpose of crime prevention and suppression. The Secretary of National Defense, the Chief of Staff of the Armed Forces of the Philippines (the “AFP”), the Chief of the PNP and the Secretary of the Interior and Local Government were tasked to execute and implement the said order. In compliance with the presidential mandate, the PNP Chief, through Police Chief Superintendent Edgar B. Aglipay, formulated Letter of Instruction 02/2000[1] (the “LOI”) which detailed the manner by which the joint visibility patrols, called Task Force Tulungan, would be conducted.[2] Task Force Tulungan was placed under the leadership of the Police Chief of Metro Manila.

Subsequently, the President confirmed his previous directive on the deployment of the Marines in a Memorandum, dated 24 January 2000, addressed to the Chief of Staff of the AFP and the PNP Chief.[3] In the Memorandum, the President expressed his desire to improve the peace and order situation in Metro Manila through a more effective crime prevention program including increased police patrols.[4] The President further stated that to heighten police visibility in the metropolis, augmentation from the AFP is necessary.[5] Invoking his powers as Commander-in-Chief under Section 18, Article VII of the Constitution, the President directed the AFP Chief of Staff and PNP Chief to coordinate with each other for the proper deployment and utilization of the Marines to assist the PNP in preventing or suppressing criminal or lawless violence.[6] Finally, the President declared that the services of the Marines in the anti-crime campaign are merely temporary in nature and for a reasonable period only, until such time when the situation shall have improved.[7]

The LOI explains the concept of the PNP-Philippine Marines joint visibility patrols as follows:

x x x

2. PURPOSE:

The Joint Implementing Police Visibility Patrols between the PNP NCRPO and the Philippine Marines partnership in the conduct of visibility patrols in Metro Manila for the suppression of crime prevention and

other serious threats to national security.

3. SITUATION:

Criminal incidents in Metro Manila have been perpetrated not only by ordinary criminals but also by organized syndicates whose members include active and former police/military personnel whose training, skill, discipline and firepower prove well-above the present capability of the local police alone to handle. The deployment of a joint PNP NCRPO-Philippine Marines in the conduct of police visibility patrol in urban areas will reduce the incidence of crimes specially those perpetrated by active or former police/military personnel.

4. MISSION:

The PNP NCRPO will organize a provisional Task Force to conduct joint NCRPO-PM visibility patrols to keep Metro Manila streets crime-free, through a sustained street patrolling to minimize or eradicate all forms of high-profile crimes especially those perpetrated by organized crime syndicates whose members include those that are well-trained, disciplined and well-armed active or former PNP/Military personnel.

5. CONCEPT IN JOINT VISIBILITY PATROL OPERATIONS:

a. The visibility patrols shall be conducted jointly by the NCRPO [National Capital Regional Police Office] and the Philippine Marines to curb criminality in Metro Manila and to preserve the internal security of the state against insurgents and other serious threat to national security, although the primary responsibility over Internal Security Operations still rests upon the AFP.

b. The principle of integration of efforts shall be applied to eradicate all forms of high-profile crimes perpetrated by organized crime syndicates operating in Metro Manila. This concept requires the military and police to work cohesively and unify efforts to ensure a focused, effective and holistic approach in addressing crime prevention. Along this line, the role of the military and police aside from neutralizing crime syndicates is to bring a wholesome atmosphere wherein delivery of basic services to the people and development is achieved. Hand-in-hand with this joint NCRPO-Philippine Marines visibility patrols, local Police Units are responsible for the maintenance of peace and order in their locality.

c. To ensure the effective implementation of this project, a provisional Task Force "TULUNGAN" shall be organized to provide the mechanism, structure, and procedures for the integrated planning, coordinating, monitoring and assessing the security situation.

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The selected areas of deployment under the LOI are: Monumento Circle, North Edsa (SM City), Araneta Shopping Center, Greenhills, SM Megamall, Makati Commercial Center, LRT/MRT Stations and the NAIA and Domestic Airport.[9]

On 17 January 2000, the Integrated Bar of the Philippines (the "IBP") filed the instant petition to annul LOI 02/2000 and to declare the deployment of the Philippine Marines, null and void and unconstitutional, arguing that:

I

THE DEPLOYMENT OF THE PHILIPPINE MARINES IN METRO MANILA IS VIOLATIVE OF THE CONSTITUTION, IN THAT:

A) NO EMERGENCY SITUATION OBTAINS IN METRO MANILA AS WOULD JUSTIFY, EVEN ONLY REMOTELY, THE DEPLOYMENT OF SOLDIERS FOR LAW ENFORCEMENT WORK; HENCE, SAID DEPLOYMENT IS IN DEROGATION OF ARTICLE II, SECTION 3 OF THE CONSTITUTION;

B) SAID DEPLOYMENT CONSTITUTES AN INSIDIOUS INCURSION BY THE MILITARY IN A

CIVILIAN FUNCTION OF GOVERNMENT (LAW ENFORCEMENT) IN DEROGATION OF ARTICLE XVI, SECTION 5 (4), OF THE CONSTITUTION;

C) SAID DEPLOYMENT CREATES A DANGEROUS TENDENCY TO RELY ON THE MILITARY TO PERFORM THE CIVILIAN FUNCTIONS OF THE GOVERNMENT.

II

IN MILITARIZING LAW ENFORCEMENT IN METRO MANILA, THE ADMINISTRATION IS UNWITTINGLY MAKING THE MILITARY MORE POWERFUL THAN WHAT IT SHOULD REALLY BE UNDER THE CONSTITUTION.[10]

Asserting itself as the official organization of Filipino lawyers tasked with the bounden duty to uphold the rule of law and the Constitution, the IBP questions the validity of the deployment and utilization of the Marines to assist the PNP in law enforcement.

Without granting due course to the petition, the Court in a Resolution,[11] dated 25 January 2000, required the Solicitor General to file his Comment on the petition. On 8 February 2000, the Solicitor General submitted his Comment.

The Solicitor General vigorously defends the constitutionality of the act of the President in deploying the Marines, contending, among others, that petitioner has no legal standing; that the question of deployment of the Marines is not proper for judicial scrutiny since the same involves a political question; that the organization and conduct of police visibility patrols, which feature the team-up of one police officer and one Philippine Marine soldier, does not violate the civilian supremacy clause in the Constitution.

The issues raised in the present petition are: (1) Whether or not petitioner has legal standing; (2) Whether or not the President's factual determination of the necessity of calling the armed forces is subject to judicial review; and, (3) Whether or not the calling of the armed forces to assist the PNP in joint visibility patrols violates the constitutional provisions on civilian supremacy over the military and the civilian character of the PNP.

The petition has no merit.

First, petitioner failed to sufficiently show that it is in possession of the requisites of standing to raise the issues in the petition. Second, the President did not commit grave abuse of discretion amounting to lack or excess of jurisdiction nor did he commit a violation of the civilian supremacy clause of the Constitution.

The power of judicial review is set forth in Section 1, Article VIII of the Constitution, to wit:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are complied with, namely: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[12]

The IBP has not sufficiently complied with the requisites of standing in this case.

“Legal standing” or locus standi has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[13] The term “interest” means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.[14] The gist of the question of standing is whether a party alleges “such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.”[15]

In the case at bar, the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its locus standi. The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines. It should also be noted that the interest of the National President of the IBP who signed the petition, is his alone, absent a formal board resolution authorizing him to file the present action. To be sure, members of the BAR, those in the judiciary included, have varying opinions on the issue. Moreover, the IBP, assuming that it has duly authorized the National President to file the petition, has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed “militarization” of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. Not only is the presumed “injury” not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. Since petitioner has not successfully established a direct and personal injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.

Having stated the foregoing, it must be emphasized that this Court has the discretion to take cognizance of a suit which does not satisfy the requirement of legal standing when paramount interest is involved.[16] In not a few cases, the Court has adopted a liberal attitude on the locus standi of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people.[17] Thus, when the issues raised are of paramount importance to the public, the Court may brush aside technicalities of procedure.[18] In this case, a reading of the petition shows that the IBP has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Moreover, because peace and order are under constant threat and lawless violence occurs in increasing tempo, undoubtedly aggravated by the Mindanao insurgency problem, the legal controversy raised in the petition almost certainly will not go away. It will stare us in the face again. It, therefore, behooves the Court to relax the rules on standing and to resolve the issue now, rather than later.

The President did not commit grave abuse of discretion in calling out the Marines.

In the case at bar, the bone of contention concerns the factual determination of the President of the necessity of calling the armed forces, particularly the Marines, to aid the PNP in visibility patrols. In this regard, the IBP

admits that the deployment of the military personnel falls under the Commander-in-Chief powers of the President as stated in Section 18, Article VII of the Constitution, specifically, the power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion. What the IBP questions, however, is the basis for the calling of the Marines under the aforesaid provision. According to the IBP, no emergency exists that would justify the need for the calling of the military to assist the police force. It contends that no lawless violence, invasion or rebellion exist to warrant the calling of the Marines. Thus, the IBP prays that this Court “review the sufficiency of the factual basis for said troop [Marine] deployment.”[19]

The Solicitor General, on the other hand, contends that the issue pertaining to the necessity of calling the armed forces is not proper for judicial scrutiny since it involves a political question and the resolution of factual issues which are beyond the review powers of this Court.

As framed by the parties, the underlying issues are the scope of presidential powers and limits, and the extent of judicial review. But, while this Court gives considerable weight to the parties’ formulation of the issues, the resolution of the controversy may warrant a creative approach that goes beyond the narrow confines of the issues raised. Thus, while the parties are in agreement that the power exercised by the President is the power to call out the armed forces, the Court is of the view that the power involved may be no more than the maintenance of peace and order and promotion of the general welfare.[20] For one, the realities on the ground do not show that there exist a state of warfare, widespread civil unrest or anarchy. Secondly, the full brunt of the military is not brought upon the citizenry, a point discussed in the latter part of this decision. In the words of the late Justice Irene Cortes in *Marcos v. Manglapus*:

More particularly, this case calls for the exercise of the President’s powers as protector of the peace. [Rossiter, *The American Presidency*]. The power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency or to leading the State against external and internal threats to its existence. The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquility in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. For in making the President commander-in-chief the enumeration of powers that follow cannot be said to exclude the President’s exercising as Commander-in-Chief powers short of the calling of the armed forces, or suspending the privilege of the writ of habeas corpus or declaring martial law, in order to keep the peace, and maintain public order and security.

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Nonetheless, even if it is conceded that the power involved is the President’s power to call out the armed forces to prevent or suppress lawless violence, invasion or rebellion, the resolution of the controversy will reach a similar result.

We now address the Solicitor General’s argument that the issue involved is not susceptible to review by the judiciary because it involves a political question, and thus, not justiciable.

As a general proposition, a controversy is justiciable if it refers to a matter which is appropriate for court review.[22] It pertains to issues which are inherently susceptible of being decided on grounds recognized by law. Nevertheless, the Court does not automatically assume jurisdiction over actual constitutional cases brought before it even in instances that are ripe for resolution. One class of cases wherein the Court hesitates to rule on are “political questions.” The reason is that political questions are concerned with issues dependent upon the wisdom, not the legality, of a particular act or measure being assailed. Moreover, the political question being a function of the separation of powers, the courts will not normally interfere with the workings of another co-equal branch

unless the case shows a clear need for the courts to step in to uphold the law and the Constitution.

As *Tañada v. Cuenco*[23] puts it, political questions refer “to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government.” Thus, if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question. In the classic formulation of Justice Brennan in *Baker v. Carr*,[24] “[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question.”

The 1987 Constitution expands the concept of judicial review by providing that “(T)he Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”[25] Under this definition, the Court cannot agree with the Solicitor General that the issue involved is a political question beyond the jurisdiction of this Court to review. When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected, is justiciable - the problem being one of legality or validity, not its wisdom.[26] Moreover, the jurisdiction to delimit constitutional boundaries has been given to this Court.[27] When political questions are involved, the Constitution limits the determination as to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.[28]

By grave abuse of discretion is meant simply capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[29] Under this definition, a court is without power to directly decide matters over which full discretionary authority has been delegated. But while this Court has no power to substitute its judgment for that of Congress or of the President, it may look into the question of whether such exercise has been made in grave abuse of discretion.[30] A showing that plenary power is granted either department of government, may not be an obstacle to judicial inquiry, for the improvident exercise or abuse thereof may give rise to justiciable controversy.[31]

When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom. This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President’s wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. In view of the constitutional intent to give the President full discretionary power to determine the necessity of calling out the armed forces, it is incumbent upon the petitioner to show that the President’s decision is totally bereft of factual basis. The present petition fails to discharge such heavy burden as there is no evidence to support the assertion that there exist no justification for calling out the armed forces. There is,

likewise, no evidence to support the proposition that grave abuse was committed because the power to call was exercised in such a manner as to violate the constitutional provision on civilian supremacy over the military. In the performance of this Court's duty of "purposeful hesitation"[32] before declaring an act of another branch as unconstitutional, only where such grave abuse of discretion is clearly shown shall the Court interfere with the President's judgment. To doubt is to sustain.

There is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. Section 18, Article VII of the Constitution, which embodies the powers of the President as Commander-in-Chief, provides in part:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

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The full discretionary power of the President to determine the factual basis for the exercise of the calling out power is also implied and further reinforced in the rest of Section 18, Article VII which reads, thus:

x x x

Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

Under the foregoing provisions, Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus, otherwise, the framers of the Constitution would have simply lumped together the three

powers and provided for their revocation and review without any qualification. Expressio unius est exclusio alterius. Where the terms are expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.[33] That the intent of the Constitution is exactly what its letter says, i.e., that the power to call is fully discretionary to the President, is extant in the deliberation of the Constitutional Commission, to wit:

FR. BERNAS. It will not make any difference. I may add that there is a graduated power of the President as Commander-in-Chief. First, he can call out such Armed Forces as may be necessary to suppress lawless violence; then he can suspend the privilege of the writ of habeas corpus, then he can impose martial law. This is a graduated sequence.

When he judges that it is necessary to impose martial law or suspend the privilege of the writ of habeas corpus, his judgment is subject to review. We are making it subject to review by the Supreme Court and subject to concurrence by the National Assembly. But when he exercises this lesser power of calling on the Armed Forces, when he says it is necessary, it is my opinion that his judgment cannot be reviewed by anybody.

x x x

FR. BERNAS. Let me just add that when we only have imminent danger, the matter can be handled by the first sentence: "The President may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger.

MR. DE LOS REYES. So actually, if a President feels that there is imminent danger, the matter can be handled by the First Sentence: "The President...may call out such Armed Forces to prevent or suppress lawless violence, invasion or rebellion." So we feel that that is sufficient for handling imminent danger, of invasion or rebellion, instead of imposing martial law or suspending the writ of habeas corpus, he must necessarily have to call the Armed Forces of the Philippines as their Commander-in-Chief. Is that the idea?

MR. REGALADO. That does not require any concurrence by the legislature nor is it subject to judicial review.[34]

The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of habeas corpus and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.

Moreover, under Section 18, Article VII of the Constitution, in the exercise of the power to suspend the privilege of the writ of habeas corpus or to impose martial law, two conditions must concur: (1) there must be an actual invasion or rebellion and, (2) public safety must require it. These conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary," the President may call the armed forces "to prevent or suppress lawless violence, invasion or rebellion." The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that

there is a need to call out the armed forces may be of a nature not constituting technical proof.

On the other hand, the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. Such a scenario is not farfetched when we consider the present situation in Mindanao, where the insurgency problem could spill over the other parts of the country. The determination of the necessity for the calling out power if subjected to unfettered judicial scrutiny could be a veritable prescription for disaster, as such power may be unduly straitjacketed by an injunction or a temporary restraining order every time it is exercised.

Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court.

The President has already determined the necessity and factual basis for calling the armed forces. In his Memorandum, he categorically asserted that, "[V]iolent crimes like bank/store robberies, holdups, kidnappings and carnappings continue to occur in Metro Manila..."[35] We do not doubt the veracity of the President's assessment of the situation, especially in the light of present developments. The Court takes judicial notice of the recent bombings perpetrated by lawless elements in the shopping malls, public utilities, and other public places. These are among the areas of deployment described in the LOI 2000. Considering all these facts, we hold that the President has sufficient factual basis to call for military aid in law enforcement and in the exercise of this constitutional power.

The deployment of the Marines does not violate the civilian supremacy clause nor does it infringe the civilian character of the police force.

Prescinding from its argument that no emergency situation exists to justify the calling of the Marines, the IBP asserts that by the deployment of the Marines, the civilian task of law enforcement is "militarized" in violation of Section 3, Article II[36] of the Constitution.

We disagree. The deployment of the Marines does not constitute a breach of the civilian supremacy clause. The calling of the Marines in this case constitutes permissible use of military assets for civilian law enforcement. The participation of the Marines in the conduct of joint visibility patrols is appropriately circumscribed. The limited participation of the Marines is evident in the provisions of the LOI itself, which sufficiently provides the metes and bounds of the Marines' authority. It is noteworthy that the local police forces are the ones in charge of the visibility patrols at all times, the real authority belonging to the PNP. In fact, the Metro Manila Police Chief is the overall leader of the PNP-Philippine Marines joint visibility patrols.[37] Under the LOI, the police forces are tasked to brief or orient the soldiers on police patrol procedures.[38] It is their responsibility to direct and manage the deployment of the Marines.[39] It is, likewise, their duty to provide the necessary equipment to the Marines and render logistical support to these soldiers.[40] In view of the foregoing, it cannot be properly argued that military authority is supreme over civilian authority.

Moreover, the deployment of the Marines to assist the PNP does not unmake the civilian character of the police force. Neither does it amount to an "insidious incursion" of the military in the task of law enforcement in violation of Section 5(4), Article XVI of the Constitution.[41]

In this regard, it is not correct to say that General Angelo Reyes, Chief of Staff of the AFP, by his alleged involvement in civilian law enforcement, has been virtually appointed to a civilian post in derogation of the aforecited provision. The real authority in these operations, as stated in the LOI, is lodged with the head of a civilian institution, the PNP, and not with the military. Such being the case, it does not matter whether the AFP Chief actually participates in the Task Force Tulungan since he does not exercise any authority or control over the same. Since none of the Marines was incorporated or enlisted as members of the PNP, there can be no appointment to civilian position to speak of. Hence, the deployment of the Marines in the joint visibility patrols does not destroy the civilian character of the PNP.

Considering the above circumstances, the Marines render nothing more than assistance required in conducting the patrols. As such, there can be no “insidious incursion” of the military in civilian affairs nor can there be a violation of the civilian supremacy clause in the Constitution.

It is worth mentioning that military assistance to civilian authorities in various forms persists in Philippine jurisdiction. The Philippine experience reveals that it is not averse to requesting the assistance of the military in the implementation and execution of certain traditionally “civil” functions. As correctly pointed out by the Solicitor General, some of the multifarious activities wherein military aid has been rendered, exemplifying the activities that bring both the civilian and the military together in a relationship of cooperation, are:

- Elections;^[42]
- Administration of the Philippine National Red Cross;^[43]
- Relief and rescue operations during calamities and disasters;^[44]
- Amateur sports promotion and development;^[45]
- Development of the culture and the arts;^[46]
- Conservation of natural resources;^[47]
- Implementation of the agrarian reform program;^[48]
- Enforcement of customs laws;^[49]
- Composite civilian-military law enforcement activities;^[50]
- Conduct of licensure examinations;^[51]
- Conduct of nationwide tests for elementary and high school students;^[52]
- Anti-drug enforcement activities;^[53]
- Sanitary inspections;^[54]
- Conduct of census work;^[55]
- Administration of the Civil Aeronautics Board;^[56]
- Assistance in installation of weather forecasting devices;^[57]
- Peace and order policy formulation in local government units.^[58]

This unquestionably constitutes a gloss on executive power resulting from a systematic, unbroken, executive practice, long pursued to the knowledge of Congress and, yet, never before questioned.^[59] What we have here is mutual support and cooperation between the military and civilian authorities, not derogation of civilian

supremacy.

In the United States, where a long tradition of suspicion and hostility towards the use of military force for domestic purposes has persisted,[60] and whose Constitution, unlike ours, does not expressly provide for the power to call, the use of military personnel by civilian law enforcement officers is allowed under circumstances similar to those surrounding the present deployment of the Philippine Marines. Under the Posse Comitatus Act[61] of the US, the use of the military in civilian law enforcement is generally prohibited, except in certain allowable circumstances. A provision of the Act states:

§ 1385. Use of Army and Air Force as posse comitatus

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both.[62]

To determine whether there is a violation of the Posse Comitatus Act in the use of military personnel, the US courts[63] apply the following standards, to wit:

Were Army or Air Force personnel used by the civilian law enforcement officers at Wounded Knee in such a manner that the military personnel subjected the citizens to the exercise of military power which was regulatory, proscriptive, or compulsory[64] *George Washington Law Review*, pp. 404-433 (1986), which discusses the four divergent standards for assessing acceptable involvement of military personnel in civil law enforcement. See likewise *HONORED IN THE BREACH: PRESIDENTIAL AUTHORITY TO EXECUTE THE LAWS WITH MILITARY FORCE*, 83 *Yale Law Journal*, pp. 130-152, 1973. 64 in nature, either presently or prospectively?

x x x

When this concept is transplanted into the present legal context, we take it to mean that military involvement, even when not expressly authorized by the Constitution or a statute, does not violate the Posse Comitatus Act unless it actually regulates, forbids or compels some conduct on the part of those claiming relief. A mere threat of some future injury would be insufficient. (emphasis supplied)

Even if the Court were to apply the above rigid standards to the present case to determine whether there is permissible use of the military in civilian law enforcement, the conclusion is inevitable that no violation of the civilian supremacy clause in the Constitution is committed. On this point, the Court agrees with the observation of the Solicitor General:

3. The designation of tasks in Annex A[65] does not constitute the exercise of regulatory, proscriptive, or compulsory military power. First, the soldiers do not control or direct the operation. This is evident from Nos. 6,[66] 8(k)[67] and 9(a)[68] of Annex A. These soldiers, second, also have no power to prohibit or condemn. In No. 9(d)[69] of Annex A, all arrested persons are brought to the nearest police stations for proper disposition. And last, these soldiers apply no coercive force. The materials or equipment issued to them, as shown in No. 8(c)[70] of Annex A, are all low impact and defensive in character. The conclusion is that there being no exercise of regulatory, proscriptive or compulsory military power, the deployment of a handful of Philippine Marines constitutes no impermissible use of military power for civilian law enforcement.[71]

It appears that the present petition is anchored on fear that once the armed forces are deployed, the military will gain ascendancy, and thus place in peril our cherished liberties. Such apprehensions, however, are unfounded. The power to call the armed forces is just that - calling out the armed forces. Unless, petitioner IBP can show, which it has not, that in the deployment of the Marines, the President has violated the fundamental law, exceeded his authority or jeopardized the civil liberties of the people, this Court is not inclined to overrule the President's

determination of the factual basis for the calling of the Marines to prevent or suppress lawless violence.

One last point. Since the institution of the joint visibility patrol in January, 2000, not a single citizen has complained that his political or civil rights have been violated as a result of the deployment of the Marines. It was precisely to safeguard peace, tranquility and the civil liberties of the people that the joint visibility patrol was conceived. Freedom and democracy will be in full bloom only when people feel secure in their homes and in the streets, not when the shadows of violence and anarchy constantly lurk in their midst.

WHEREFORE, premises considered, the petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Melo, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.
Bellosillo, J., on official leave.

Puno and Vitug, JJ., see separate opinions.

Mendoza, J., see concurring and dissenting opinion.

Panganiban, J., in the result.

Quisumbing, J., joins the opinion of J. Mendoza.

[1] Rollo, pp. 17-21.

[2] As of 19 May 2000, the Marines have been recalled from their areas of deployment to join the military operations in Mindanao, and replaced by Air Force personnel who took over their functions in the joint visibility patrols. The Air Force personnel, just like the Marines, were ordered to assist the PNP, also by virtue of LOI 2/2000. Since both the Marines and Air Force belong to the Armed Forces, the controversy has not been rendered moot and academic by the replacement of the former by the latter. The validity of the deployment of the armed forces in the joint visibility patrols thus remain an issue.

[3] Rollo, pp. 75-76.

[4] *Id.*, at 75.

[5] *Id.*

[6] *Id.*

[7] Rollo, p. 75.

[8] *Id.*, at 17-18.

[9] *Id.*

[10] Rollo, p. 7.

[11] *Id.*, at 24.

[12] *Philippine Constitution Association v. Enriquez*, 235 SCRA 506 (1994) citing *Luz Farms v. Secretary of the Department of Agrarian Reform*, 192 SCRA 51 (1990); *Dumlao v. Commission on Elections*, 95 SCRA 392 (1980); and, *People v. Vera*, 65 Phil. 56 (1937).

[13] *Joya v. Presidential Commission on Good Government*, 225 SCRA 568, 576 (1993).

[14] Ibid., citing *House International Building Tenants Association, Inc. v. Intermediate Appellate Court*, 151 SCRA 703 (1987).

[15] *Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, 678 (1962).

[16] *Joya v. Presidential Commission on Good Government*, supra note 13, at 579 citing *Dumlao v. Commission on Elections*, 95 SCRA 392 (1980).

[17] *Tatad v. Secretary of the Department of Energy*, 281 SCRA 330, 349 (1997) citing *Garcia v. Executive Secretary*, 211 SCRA 219 (1992); *Osmeña v. COMELEC*, 199 SCRA 750 (1991); *Basco v. Pagcor*, 197 SCRA 52 (1991); and, *Araneta v. Dinglasan*, 84 Phil. 368 (1949).

[18] *Santiago v. COMELEC*, 270 SCRA 106 (1997); *Joya v. Presidential Commission on Good Government*, 225 SCRA 568 (1993); *Daza v. Singson*, 180 SCRA 496 (1989). As formulated by Mr. Justice (now Chief Justice) Hilario G. Davide, Jr. in *Kilosbayan, Inc. vs. Guingona, Jr.*, [232 SCRA 110 (1994)] "(a) party's standing before this Court is a procedural technicality which it may, in the exercise of its discretion, set aside in view of the importance of the issues raised," favorably citing our ruling in the Emergency Powers Cases [L-2044 (*Araneta v. Dinglasan*); L-2756 (*Araneta v. Angeles*); L-3054 (*Rodriguez v. Tesorero de Filipinas*); and L-3056 (*Barredo v. COMELEC*), 84 Phil. 368 (1940)] where this Court brushed aside this technicality because "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technical rules of procedure." An inflexible rule on locus standi would result in what Mr. Justice Florentino P. Feliciano aptly described as a "doctrinal ball and chain xxx clamped on our own limbs." [*Kilosbayan, Inc. v. Morato*, 250 SCRA 130 (1995)].

[19] Rollo, p. 12

[20] Article II, Sections 4 and 5 of the Constitution provide:

Sec. 4. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.

Sec. 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

[21] 177 SCRA 668, 694 (1989).

[22] WEST'S LEGAL THESAURUS/Dictionary (Special Deluxe Edition) p. 440 (1986).

[23] 103 Phil. 1051 (1957).

[24] 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663, 678 (1962).

[25] Article VIII, Sec. 1 of the 1987 CONSTITUTION.

[26] *Santiago v. Guingona, Jr.*, 298 SCRA 756 (1998).

[27] *Bengzon, Jr. v. Senate Blue Ribbon Committee*, 203 SCRA 767 (1991).

[28] *Marcos v. Manglapus*, supra note 21, see also *Daza v. Singson*, 180 SCRA 496 (1988); *Coseteng v. Mitra*, 187 SCRA 377 (1990).

[29] *Sinon v. Civil Service Commission*, 215 SCRA 410 (1992); See also *Producers Bank v. NLRC*, 165 SCRA 284 (1988); *Litton Mills v. Galleon Trader, Inc.*, 163 SCRA 494 (1988).

[30] *Ledesma v. Court of Appeals*, 278 SCRA 659 (1997).

[31] *Bondoc v. Pineda*, 201 SCRA 792 (1991).

[32] *Drilon v. Lim*, 235 SCRA 135 (1994).

[33] *Sarmiento v. Mison*, 156 SCRA 549 (1987).

[34] II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 409, 412 (1986).

[35] *Rollo*, p. 75.

[36] Section 3, provides:

Civilian authority, is at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

[37] No. 9 of the LOI provides: COORDINATING INSTRUCTIONS:

a. RD, NCRPO is designated as Task Force Commander "TULUNGAN".

[38] No. 6 of the LOI states: DEPLOYMENT/EMPLOYMENT OF JOINT NCRPO-PHILIPPINE MARINES

b. Before their deployment/employment, receiving units shall properly brief/orient the troops on police patrol/visibility procedures.

[39] No. 8 of the LOI provides TASKS:

k. POLICE DISTRICTS/STATIONS

-Provide direction and manage the deployment of all Philippine Marines personnel deployed in your AOR for police visibility operations.

-Conduct briefing/orientation to Philippine Marines' personnel on the do's and don'ts of police visibility patrols.

-Provide transportation to Philippine Marines from districts headquarters to different stations and PCPs.

-Perform other tasks as directed.

[40] No. 8 of the LOI states: TASKS:

c. RLD/R4

-Coordinate with the Directorate for Logistics for the issuance of the following equipments (sic) to be utilize (sic) by the Philippine Marines personnel: 500 pieces Probaton, 500 whistle (sic), 500 pieces brazzard blazoned.

-Coordinate with the Directorate for Logistics for the issuance of the following for use of PNP personnel involved in the visibility patrol operations:

1,000 sets of PNP GOA Uniform

500 each raincoats

500 each Probaton

500 each Whistle

500 each handcuffs

500 each Combat Boots

500 each low cut shoes

- Provide transportation to the Philippine Marines personnel in coordination with LSS, NHQ PNP.
- Provide additional gas allocation to Philippine Marines' members of the Inspection Teams.
- Perform other tasks as directed.

[41] Sec. 5(4), Article XVI, provides:

No member of the Armed Forces in the active service shall, at any time, be appointed in the government including government-owned and controlled corporations or any of their subsidiaries.

[42] CONSTITUTION, Article IX-C, Section 2; Comelec Resolution No. 3071 (1999), which is entitled "In Re Guidelines for the Designation of Registration Centers and the Accountable Officers for the Polaroid Instant Cameras for Purposes of the Registration of Voters on 8-9 May 1999 in the Autonomous Region in Muslim Mindanao;" Comelec Resolution No. 3059 (1999), which is entitled, "In the Matter of Deputizing the Armed Forces of the Philippines and the Three (3) AFP Components, Namely: Philippine Army, Philippine Navy and Philippine Air Force, for the Purpose of Ensuring Free, Orderly, Honest and Peaceful Precinct Mapping, Registration of Voters and the Holding of the September 13, 1999 Elections in the Autonomous Region in Muslim Mindanao (ARMM);" Republic Act No. 7166 (1991), Section 33, which is entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations therefor, and for other Purposes;" Administrative Code of 1987, Book V, Title I, Subtitle C, Chapter 1, Sections 2 (4) and 3; Batas Pambansa Blg. 881, Article VI, Sections 52 (b) and 57 (3) (1985), which is also known as "Omnibus Election Code."

[43] Republic Act No. 95 (1947), Section 5, which is entitled "An Act to Incorporate the Philippine National Red Cross Section;" Republic Act No. 855 (1953), Section 1, which is entitled "An Act to Amend Section V of Republic Act Numbered Ninety-Five, entitled "An Act to Incorporate the Philippine National Red Cross."

[44] Republic Act No. 7077 (1991), Article III, Section 7, which is entitled "An Act Providing for the Development, Administration, Organization, Training, Maintenance and Utilization of the Citizen Armed Forces of the Armed Forces of the Philippines and for other Purposes."

[45] Republic Act No. 6847 (1990), Section 7, which is entitled "An Act Creating and Establishing The Philippine Sports Commission, Defining its Powers, Functions and Responsibilities, Appropriating Funds therefor, and for other Purposes."

[46] Republic Act No. 8492 (1998), Section 20, which is entitled "An Act Establishing a National Museum System, Providing for its Permanent Home and for other Purposes."

[47] Republic Act No. 8550 (1998), Section 124, which is entitled "An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for other Purposes;" Memorandum Circular No. 150 (1996), which is entitled "Amending Memorandum Circular No. 128, dated July 20, 1995 by Reorganizing the Presidential Task Force on Tubbataha Reef National Marine Park;" Executive Order No. 544 (1979), Letter I, which is entitled "Creating a Presidential Committee for the Conservation of the Tamaraw, Defining its Powers and for other Purposes."

[48] Executive Order No. 129-A (1987) Section 5 (m), which is entitled "Modifying Executive Order No. 129 Reorganizing and Strengthening the Department of Agrarian Reform and for other Purposes."

[49] Republic Act No. 1937 (1957), Section 2003, which is entitled "An Act to Revised and Codify the Tariff and Customs Laws of the Philippines;" Executive Order No. 45 (1998), which is entitled "Creating a Presidential Anti-Smuggling Task Force to Investigate and Prosecute Crimes Involving Large-Scale Smuggling and other Frauds upon Customs and Providing Measures to Expedite Seizure Proceedings;"

[50] These cases involved joint military and civilian law enforcement operations: *People v. Escalante*, G.R. No. 106633, December 1, 1994; *People v. Bernardo*, G.R. No. 97393, March 17, 1993; *People v. De la Cruz*, G.R. No. 83260, April 18, 1990; *Guanzon v. de Villa*, 181 SCRA 623, 631 (1990). (This case recognizes the complementary roles of the PNP and the military in conducting anti-crime campaigns, provided that the people's rights are not violated in these words: "If the military and the police must conduct concerted campaigns to flush out and catch criminal elements, such drives must be consistent with the constitutional and statutory rights of all people affected by such actions." The creation of the Task Force also finds support in *Valmonte v. de Villa*, 185 SCRA 665 (1990). Executive Order No. 62 (1999), which is entitled "Creating the Philippine Center on Transnational Crime to Formulate and Implement a Concerted Program of Action of All Law Enforcement, Intelligence and other Agencies for the Prevention and Control of Transnational Crime;" Executive Order No. 8 (1998), which is entitled "Creating a Presidential Anti-Organized Crime Commission and a Presidential Anti-Organized Crime Task Force, to Investigate and Prosecute Criminal Elements in the Country;" Executive Order No. 280 (1995), which is entitled "Creating a Presidential Task Force of Intelligence and Counter-Intelligence to Identify, Arrest and Cause the Investigation and Prosecution of Military and other Law Enforcement Personnel on their Former Members and Their Cohorts Involved in Criminal Activities."

[51] Memorandum Circular No. 141 (1996), which is entitled "Enjoining Government Agencies Concerned to Extend Optimum Support and Assistance to the Professional Regulation Commission in its Conduct of Licensure Examinations."

[52] Memorandum Circular No. 32 (1999), which is entitled "Directing the Government Agencies Concerned to Extend Maximum Support and Assistance to the National Educational Testing and Research Center (NETRC) of the Department of Education, Culture and Sports (DECS) in the Conduct of Tests of National Coverage."

[53] Executive Order No. 61 (1999), which is entitled "Creating the National Drug Law Enforcement and Prevention Coordinating Center to Orchestrate Efforts of national Government Agencies, Local Government Units, and Non-Government Organizations for a More Effective Anti-Drug Campaign."

[54] Republic Act No. 4089 (1964), which is entitled "An Act Making the City Health Officer of Bacolod City the Local Civil Registrar, Amending for the Purpose Section Forty-Three of the Charter of said City;" Republic Act No. 537 (1950), which is entitled "An Act to Revise the Charter of Quezon City;" Commonwealth Act No. 592 (1940), which is entitled "An Act to Create the City of Dansalan;" Commonwealth Act No. 509 (1939), which is entitled "An Act to Create Quezon City;" Commonwealth Act No. 326 (1938), which is entitled "An Act Creating the City of Bacolod;" Commonwealth Act No. 39 (1936), which is entitled "An Act Creating the City of Zamboanga;" Commonwealth Act No. 51 (1936), which is entitled "An Act Creating the City of Davao."

[55] Republic Act No. 36 (1946), which is entitled "Census Act of Nineteen Hundred and Forty-Six."

[56] Republic Act No. 776 (1952), Section 5, which is entitled "An Act to Reorganize the Civil Aeronautics Board and the Civil Aeronautics Administration, To Provide for the Regulation of Civil Aeronautics in the Philippines and Authorizing the Appropriation of Funds Therefor."

[57] Republic Act No. 6613 (1972), Section 4, which is entitled "An Act Declaring a Policy of the State to Adopt Modern Scientific Methods to Moderate Typhoons and Prevent Destruction by Floods, Rains and Droughts, Creating a Council on Typhoons and Prevent Destruction by Flood, Rains and Droughts, Creating a Council on Typhoon Moderation and Flood Control Research and Development, Providing for its Powers and Functions and Appropriating Funds Therefor."

[58] Local Government Code of 1991, Book I, Title Seven, Section 116.

[59] This theory on gloss of executive power was advanced by Justice Frankfurter in his concurring opinion in *Youngstown Sheet and Tube v. Sawyer*, 343 US 579, 610-611 (1952).

[60] *Bissonette v. Haig*, 766 F.2d 1384, 1389 (1985).

[61] 18 U.S.C.A § 1385 (1878).

[62] *Ibid.*

[63] *Bissonette v. Haig*, *supra* note 60, at 1390.

[64] A power regulatory in nature is one which controls or directs. It is proscriptive if it prohibits or condemns and compulsory if it exerts some coercive force. See *US v. Yunis*, 681 F.Supp. 891 (D.D.C., 1988). See also *FOURTH AMENDMENT AND POSSE COMITATUS ACT RESTRICTIONS ON MILITARY INVOLVEMENT IN CIVIL LAW ENFORCEMENT*, 54 *George Washington Law Review*, pp. 404-433 (1986), which discusses the four divergent standards for assessing acceptable involvement of military personnel in civil law enforcement. See likewise *HONORED IN THE BREACH: PRESIDENTIAL AUTHORITY TO EXECUTE THE LAWS WITH MILITARY FORCE*, 83 *Yale Law Journal*, pp/ 130-152, 1973.

[65] L.O.I. 02/2000, "TULUNGAN," Rollo, pp. 17-22.

[66] No. 6 of the LOI states: DEPLOYMENT/EMPLOYMENT OF JOINT NCRPO-PHILIPPINE MARINES:

- a. The PNP NCPRO thru Police Districts will continue to deploy uniformed PNP personnel dedicated for police visibility patrols in tandem with the Philippine Marines.
- b. Before their deployment/employment, receiving units shall properly brief/orient the troops on police patrol/visibility procedures.

[67] *Supra* note 34.

[68] *Supra* note 32.

[69] No. 9 of the LOI states:

- d. In case of apprehensions, arrested person/s shall be brought to the nearest police stations/PCPs.

[70] *Supra* note 35.

[71] Rollo, p. 70.

SEPARATE OPINION

PUNO, J.:

If the case at bar is significant, it is because of the government attempt to foist the political question doctrine to shield an executive act done in the exercise of the commander-in-chief powers from judicial scrutiny. If the attempt succeeded, it would have diminished the power of judicial review and weakened the checking authority of this Court over the Chief Executive when he exercises his commander-in-chief powers. The attempt should

remind us of the tragedy that befell the country when this Court sought refuge in the political question doctrine and forfeited its most important role as protector of the civil and political rights of our people. The ongoing conflict in Mindanao may worsen and can force the Chief Executive to resort to the use of his greater commander-in-chief powers, hence, this Court should be extra cautious in assaying similar attempts. A laid back posture may not sit well with our people considering that the 1987 Constitution strengthened the checking powers of this Court and expanded its jurisdiction precisely to stop any act constituting “xxx grave abuse of jurisdiction xxx on the part of any branch or instrumentality of the Government.”[1]

The importance of the issue at bar includes this humble separate opinion. We can best perceive the different intersecting dimensions of the political question doctrine by viewing them from the broader canvass of history. Political questions are defined as “those questions which under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of government.”[2] They have two aspects: (1) those matters that are to be exercised by the people in their primary political capacity and (2) matters which have been specifically delegated to some other department or particular office of the government, with discretionary power to act.[3] The exercise of the discretionary power of the legislative or executive branch of government was often the area where the Court had to wrestle with the political question doctrine.[4]

A brief review of some of our case law will thus give us a sharper perspective of the political question doctrine. This question confronted the Court as early as 1905 in the case of *Barcelon v. Baker*.^[5] The Governor-General of the Philippine Islands, pursuant to a resolution of the Philippine Commission, suspended the privilege of the writ of habeas corpus in Cavite and Batangas based on a finding of open insurrection in said provinces. Felix Barcelon, who was detained by constabulary officers in Batangas, filed a petition for the issuance of a writ of habeas corpus alleging that there was no open insurrection in Batangas. The issue to resolve was whether or not the judicial department may investigate the facts upon which the legislative (the Philippine Commission) and executive (the Governor-General) branches of government acted in suspending the privilege of the writ.

The Court ruled that under our form of government, one department has no authority to inquire into the acts of another, which acts are performed within the discretion of the other department.^[6] Surveying American law and jurisprudence, it held that whenever a statute gives discretionary power to any person, to be exercised by him upon his own opinion of certain facts, the statute constitutes him the sole judge of the existence of those facts.^[7] Since the Philippine Bill of 1902 empowered the Philippine Commission and the Governor-General to suspend the privilege of the writ of habeas corpus, this power is exclusively within the discretion of the legislative and executive branches of government. The exercise of this discretion is conclusive upon the courts.^[8]

The Court further held that once a determination is made by the executive and legislative departments that the conditions justifying the assailed acts exists, it will presume that the conditions continue until the same authority decide that they no longer exist.^[9] It adopted the rationale that the executive branch, thru its civil and military branches, are better situated to obtain information about peace and order from every corner of the nation, in contrast with the judicial department, with its very limited machinery.^[10] The seed of the political question doctrine was thus planted in Philippine soil.

The doctrine barring judicial review because of the political question doctrine was next applied to the internal affairs of the legislature. The Court refused to interfere in the legislative exercise of disciplinary power over its own members. In the 1924 case of *Alejandrino v. Quezon*,^[11] Alejandrino, who was appointed Senator by the Governor-General, was declared by Senate Resolution as guilty of disorderly conduct for assaulting another Senator in the course of a debate, and was suspended from office for one year. Senator Alejandrino filed a petition for mandamus and injunction to compel the Senate to reinstate him. The Court held that under the Jones Law, the

power of the Senate to punish its members for disorderly behavior does not authorize it to suspend an appointive member from the exercise of his office. While the Court found that the suspension was illegal, it refused to issue the writ of mandamus on the ground that "the Supreme Court does not possess the power of coercion to make the Philippine Senate take any particular action. [T]he Philippine Legislature or any branch thereof cannot be directly controlled in the exercise of their legislative powers by any judicial process." [12]

The issue revisited the Court twenty-two (22) years later. In 1946, in *Vera v. Avelino*, [13] three senators-elect who had been prevented from taking their oaths of office by a Senate resolution repaired to this Court to compel their colleagues to allow them to occupy their seats contending that only the Electoral Tribunal had jurisdiction over contests relating to their election, returns and qualifications. Again, the Court refused to intervene citing *Alejandrino* and affirmed the inherent right of the legislature to determine who shall be admitted to its membership.

In the 1947 case of *Mabanag v. Lopez-Vito*, [14] three Senators and eight representatives who were proclaimed elected by Comelec were not allowed by Congress to take part in the voting for the passage of the Parity amendment to the Constitution. If their votes had been counted, the affirmative votes in favor of the proposed amendment would have been short of the necessary three-fourths vote in either House of Congress to pass the amendment. The amendment was eventually submitted to the people for ratification. The Court declined to intervene and held that a proposal to amend the Constitution is a highly political function performed by Congress in its sovereign legislative capacity. [15]

In the 1955 case of *Arnault v. Balagtas*, [16] petitioner, a private citizen, assailed the legality of his detention ordered by the Senate for his refusal to answer questions put to him by members of one of its investigating committees. This Court refused to order his release holding that the process by which a contumacious witness is dealt with by the legislature is a necessary concomitant of the legislative process and the legislature's exercise of its discretionary authority is not subject to judicial interference.

In the 1960 case of *Osmena v. Pendatun*, [17] the Court followed the traditional line. Congressman Sergio Osmena, Jr. was suspended by the House of Representatives for serious disorderly behavior for making a privilege speech imputing "malicious charges" against the President of the Philippines. Osmena, Jr. invoked the power of review of this Court but the Court once more did not interfere with Congress' power to discipline its members.

The contours of the political question doctrine have always been tricky. To be sure, the Court did not always stay its hand whenever the doctrine is invoked. In the 1949 case of *Avelino v. Cuenco*, [18] Senate President Jose Avelino, who was deposed and replaced, questioned his successor's title claiming that the latter had been elected without a quorum. The petition was initially dismissed on the ground that the selection of Senate President was an internal matter and not subject to judicial review. [19] On reconsideration, however, the Court ruled that it could assume jurisdiction over the controversy in light of subsequent events justifying intervention among which was the existence of a quorum. [20] Though the petition was ultimately dismissed, the Court declared respondent Cuenco as the legally elected Senate President.

In the 1957 case of *Tanada v. Cuenco*, [21] the Court assumed jurisdiction over a dispute involving the formation and composition of the Senate Electoral Tribunal. It rejected the Solicitor General's claim that the dispute involved a political question. Instead, it declared that the Senate is not clothed with "full discretionary authority" in the choice of members of the Senate Electoral Tribunal and the exercise of its power thereon is subject to constitutional limitations which are mandatory in nature. [22] It held that under the Constitution, the membership of the Senate Electoral Tribunal was designed to insure the exercise of judicial impartiality in the disposition of

election contests affecting members of the lawmaking body.[23] The Court then nullified the election to the Senate Electoral Tribunal made by Senators belonging to the party having the largest number of votes of two of their party members but purporting to act on behalf of the party having the second highest number of votes.

In the 1962 case of *Cunanan v. Tan, Jr.*,[24] the Court passed judgment on whether Congress had formed the Commission on Appointments in accordance with the Constitution and found that it did not. It declared that the Commission on Appointments is a creature of the Constitution and its power does not come from Congress but from the Constitution.

The 1967 case of *Gonzales v. Comelec*[25] and the 1971 case of *Tolentino v. Comelec*[26] abandoned *Mabanag v. Lopez-Vito*. The question of whether or not Congress, acting as a constituent assembly in proposing amendments to the Constitution violates the Constitution was held to be a justiciable and not a political issue. In *Gonzales*, the Court ruled:

"It is true that in *Mabanag v. Lopez-Vito*, this Court characterizing the issue submitted thereto as a political one, declined to pass upon the question whether or not a given number of votes cast in Congress in favor of a proposed amendment to the Constitution-which was being submitted to the people for ratification-satisfied the three-fourths vote requirement of the fundamental law. The force of this precedent has been weakened, however, by *Suanes v. Chief Accountant of the Senate*, *Avelino v. Cuenco*, *Tanada v. Cuenco*, and *Macias v. Commission on Elections*. In the first, we held that the officers and employees of the Senate Electoral Tribunal are under its supervision and control, not of that of the Senate President, as claimed by the latter; in the second, this Court proceeded to determine the number of Senators necessary for a quorum in the Senate; in the third, we nullified the election, by Senators belonging to the party having the largest number of votes in said chamber, purporting to act on behalf of the party having the second largest number of votes therein, of two (2) Senators belonging to the first party, as members, for the second party, of the Senate Electoral Tribunal; and in the fourth, we declared unconstitutional an act of Congress purporting to apportion the representative districts for the House of Representatives upon the ground that the apportionment had not been made as may be possible according to the number of inhabitants of each province. Thus, we rejected the theory, advanced in these four cases, that the issues therein raised were political questions the determination of which is beyond judicial review." [27]

The Court explained that the power to amend the Constitution or to propose amendments thereto is not included in the general grant of legislative powers to Congress. As a constituent assembly, the members of Congress derive their authority from the fundamental law and they do not have the final say on whether their acts are within or beyond constitutional limits.[28] This ruling was reiterated in *Tolentino* which held that acts of a constitutional convention called for the purpose of proposing amendments to the Constitution are at par with acts of Congress acting as a constituent assembly.[29]

In sum, this Court brushed aside the political question doctrine and assumed jurisdiction whenever it found constitutionally-imposed limits on the exercise of powers conferred upon the Legislature.[30]

The Court hewed to the same line as regards the exercise of Executive power. Thus, the respect accorded executive discretion was observed in *Severino v. Governor-General*,[31] where it was held that the Governor-General, as head of the executive department, could not be compelled by mandamus to call a special election in the town of Silay for the purpose of electing a municipal president. Mandamus and injunction could not lie to enforce or restrain a duty which is discretionary. It was held that when the Legislature conferred upon the Governor-General powers and duties, it did so for the reason that he was in a better position to know the needs of the country than any other member of the executive department, and with full confidence that he will perform such duties as his best judgment dictates.[32]

Similarly, in *Abueva v. Wood*,^[33] the Court held that the Governor-General could not be compelled by mandamus to produce certain vouchers showing the various expenditures of the Independence Commission. Under the principle of separation of powers, it ruled that it was not intended by the Constitution that one branch of government could encroach upon the field of duty of the other. Each department has an exclusive field within which it can perform its part within certain discretionary limits.^[34] It observed that "the executive and legislative departments of government are frequently called upon to deal with what are known as political questions, with which the judicial department of government has no intervention. In all such questions, the courts uniformly refused to intervene for the purpose of directing or controlling the actions of the other department; such questions being many times reserved to those departments in the organic law of the state."^[35]

In *Forbes v. Tiaco*,^[36] the Court also refused to take cognizance of a case enjoining the Chief Executive from deporting an obnoxious alien whose continued presence in the Philippines was found by him to be injurious to the public interest. It noted that sudden and unexpected conditions may arise, growing out of the presence of untrustworthy aliens, which demand immediate action. The President's inherent power to deport undesirable aliens is universally denominated as political, and this power continues to exist for the preservation of the peace and domestic tranquility of the nation.^[37]

In *Manalang v. Quitariano*,^[38] the Court also declined to interfere in the exercise of the President's appointing power. It held that the appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing concurrence of the Commission on Appointments and from the exercise of the limited legislative power to prescribe qualifications to a given appointive office.

We now come to the exercise by the President of his powers as Commander-in-Chief vis-a-vis the political question doctrine. In the 1940's, this Court has held that as Commander-in-Chief of the Armed Forces, the President has the power to determine whether war, in the legal sense, still continues or has terminated. It ruled that it is within the province of the political department and not of the judicial department of government to determine when war is at end.^[39]

In 1952, the Court decided the landmark case of *Montenegro v. Castaneda*.^[40] President Quirino suspended the privilege of the writ of habeas corpus for persons detained or to be detained for crimes of sedition, insurrection or rebellion. The Court, citing *Barcelon*, declared that the authority to decide whether the exigency has arisen requiring the suspension of the privilege belongs to the President and his decision is final and conclusive on the courts.^[41]

Barcelon was the ruling case law until the 1971 case of *Lansang v. Garcia* came.^[42] *Lansang* reversed the previous cases and held that the suspension of the privilege of the writ of habeas corpus was not a political question. According to the Court, the weight of *Barcelon* was diluted by two factors: (1) it relied heavily on *Martin v. Mott*, which involved the U.S. President's power to call out the militia which is a much broader power than suspension of the privilege of the writ; and (2) the privilege was suspended by the American Governor-General whose act, as representative of the sovereign affecting the freedom of its subjects, could not be equated with that of the President of the Philippines dealing with the freedom of the sovereign Filipino people.

The Court declared that the power to suspend the privilege of the writ of habeas corpus is neither absolute nor unqualified because the Constitution sets limits on the exercise of executive discretion on the matter. These limits are: (1) that the privilege must not be suspended except only in cases of invasion, insurrection or rebellion or imminent danger thereof; and (2) when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for the suspension shall exist. The extent of the power which

may be inquired into by courts is defined by these limitations.[43]

On the vital issue of how the Court may inquire into the President's exercise of power, it ruled that the function of the Court is not to supplant but merely to check the Executive; to ascertain whether the President has gone beyond the constitutional limits of his jurisdiction, not to exercise the power vested in him or to determine the wisdom of his act. Judicial inquiry is confined to the question of whether the President did not act arbitrarily.[44] Using this yardstick, the Court found that the President did not.

The emergency period of the 1970's flooded the Court with cases which raised the political question defense. The issue divided the Court down the middle. *Javellana v. Executive Secretary*[45] showed that while a majority of the Court held that the issue of whether or not the 1973 Constitution had been ratified in accordance with the 1935 Constitution was justiciable, a majority also ruled that the decisive issue of whether the 1973 Constitution had come into force and effect, with or without constitutional ratification, was a political question.[46]

The validity of the declaration of martial law by then President Marcos was next litigated before the Court. In *Aquino, Jr. v. Enrile*,[47] it upheld the President's declaration of martial law. On whether the validity of the imposition of martial law was a political or justiciable question, the Court was almost evenly divided. One-half embraced the political question position and the other half subscribed to the justiciable position in *Lansang*. Those adhering to the political question doctrine used different methods of approach to it.[48]

In 1983, the *Lansang* ruling was weakened by the Court in *Garcia-Padilla v. Enrile*. [49] The petitioners therein were arrested and detained by the Philippine Constabulary by virtue of a Presidential Commitment Order (PCO). Petitioners sought the issuance of a writ of habeas corpus. The Court found that the PCO had the function of validating a person's detention for any of the offenses covered in Proclamation No. 2045 which continued in force the suspension of the privilege of the writ of habeas corpus. It held that the issuance of the PCO by the President was not subject to judicial inquiry.[50] It went further by declaring that there was a need to re-examine *Lansang* with a view to reverting to *Barcelon* and *Montenegro*. It observed that in times of war or national emergency, the President must be given absolute control for the very life of the nation and government is in great peril. The President, it intoned, is answerable only to his conscience, the people, and God.[51]

But barely six (6) days after *Garcia-Padilla*, the Court promulgated *Morales, Jr. v. Enrile*[52] reiterating *Lansang*. It held that by the power of judicial review, the Court must inquire into every phase and aspect of a person's detention from the moment he was taken into custody up to the moment the court passes upon the merits of the petition. Only after such a scrutiny can the court satisfy itself that the due process clause of the Constitution has been met.[53]

It is now history that the improper reliance by the Court on the political question doctrine eroded the people's faith in its capacity to check abuses committed by the then Executive in the exercise of his commander-in-chief powers, particularly violations against human rights. The refusal of courts to be pro-active in the exercise of its checking power drove the people to the streets to resort to extralegal remedies. They gave birth to EDSA.

Two lessons were not lost to the members of the Constitutional Commission that drafted the 1987 Constitution. The first was the need to grant this Court the express power to review the exercise of the powers as commander-in-chief by the President and deny it of any discretion to decline its exercise. The second was the need to compel the Court to be pro-active by expanding its jurisdiction and, thus, reject its laid back stance against acts constituting grave abuse of discretion on the part of any branch or instrumentality of government. Then Chief Justice Roberto Concepcion, a member of the Constitutional Commission, worked for the insertion of the second paragraph of Section 1, Article VIII in the draft Constitution,[54] which reads:

"Sec. 1. x x x.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

The language of the provision clearly gives the Court the power to strike down acts amounting to grave abuse of discretion of both the legislative and executive branches of government.

We should interpret Section 18, Article VII of the 1987 Constitution in light of our constitutional history. The provision states:

"Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

x x x."

It is clear from the foregoing that the President, as Commander-in-Chief of the armed forces of the Philippines, may call out the armed forces subject to two conditions: (1) whenever it becomes necessary; and (2) to prevent or suppress lawless violence, invasion or rebellion. Undeniably, these conditions lay down the sine qua requirement for the exercise of the power and the objective sought to be attained by the exercise of the power. They define the constitutional parameters of the calling out power. Whether or not there is compliance with these parameters is a justiciable issue and is not a political question.

I am not unaware that in the deliberations of the Constitutional Commission, Commissioner Bernas opined that the President's exercise of the "calling out power," unlike the suspension of the privilege of the writ of habeas corpus and the declaration of martial law, is not a justiciable issue but a political question and therefore not subject to judicial review.

It must be borne in mind, however, that while a member's opinion expressed on the floor of the Constitutional Convention is valuable, it is not necessarily expressive of the people's intent.[55] The proceedings of the Convention are less conclusive on the proper construction of the fundamental law than are legislative proceedings of the proper construction of a statute, for in the latter case it is the intent of the legislature the courts seek, while in the former, courts seek to arrive at the intent of the people through the discussions and deliberations of their representatives.[56] The conventional wisdom is that the Constitution does not derive its force from the convention which framed it, but from the people who ratified it, the intent to be arrived at is that of the

people.[57]

It is true that the third paragraph of Section 18, Article VII of the 1987 Constitution expressly gives the Court the power to review the sufficiency of the factual bases used by the President in the suspension of the privilege of the writ of habeas corpus and the declaration of martial law. It does not follow, however, that just because the same provision did not grant to this Court the power to review the exercise of the calling out power by the President, ergo, this Court cannot pass upon the validity of its exercise.

Given the light of our constitutional history, this express grant of power merely means that the Court cannot decline the exercise of its power because of the political question doctrine as it did in the past. In fine, the express grant simply stresses the mandatory duty of this Court to check the exercise of the commander-in-chief powers of the President. It eliminated the discretion of the Court not to wield its power of review thru the use of the political question doctrine.

It may be conceded that the calling out power may be a "lesser power" compared to the power to suspend the privilege of the writ of habeas corpus and the power to declare martial law. Even then, its exercise cannot be left to the absolute discretion of the Chief Executive as Commander-in-Chief of the armed forces, as its impact on the rights of our people protected by the Constitution cannot be downgraded. We cannot hold that acts of the commander-in-chief cannot be reviewed on the ground that they have lesser impact on the civil and political rights of our people. The exercise of the calling out power may be "benign" in the case at bar but may not be so in future cases.

The counsel of Mr. Chief Justice Enrique M. Fernando, in his Dissenting and Concurring Opinion in *Lansang* that it would be dangerous and misleading to push the political question doctrine too far, is apropos. It will not be complementary to the Court if it handcuffs itself to helplessness when a grievously injured citizen seeks relief from a palpably unwarranted use of presidential or military power, especially when the question at issue falls in the penumbra between the "political" and the "justiciable." [58]

We should not water down the ruling that deciding whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is a delicate exercise in constitutional interpretation, and is a responsibility of the Court as ultimate interpreter of the fundamental law.[59] When private justiciable rights are involved in a suit, the Court must not refuse to assume jurisdiction even though questions of extreme political importance are necessarily involved.[60] Every officer under a constitutional government must act according to law and subject to the controlling power of the people, acting through the courts, as well as through the executive and legislative. One department is just as representative of the other, and the judiciary is the department which is charged with the special duty of determining the limitations which the law places upon all official action.[61] This historic role of the Court is the foundation stone of a government of laws and not of men.[62]

I join the Decision in its result.

[1] Sec. 1, Article VIII, 1987 Constitution.

[2] *Tanada v. Cuenco*, 103 Phil. 1051, 1067 [1957], citing 16 C.J.S. 413.

[3] *Tanada v. Cuenco*, supra, 1067, quoting *In re McConaughy*, 119 NW 408 [1909].

[4] *Bernas*, *The 1987 Constitution of the Republic of the Philippines A Commentary*, p. 859 [1996].

[5] 5 Phil. 87 [1905].

[6] Id. at 97.

[7] Id. at 104.

[8] See Cruz, Philippine Political law, p. 87 [1998].

[9] Id. at 113-114.

[10] Id. at 106-107.

[11] 46 Phil. 83 [1924].

[12] Id. at 97.

[13] 77 Phil. 192 [1946].

[14] 78 Phil. 1 [1947].

[15] Id. at 4-5. The court also adopted the enrolled bill theory which, like findings under the political question doctrine, “imports absolute verity on the courts”- at 12.

[16] 97 Phil. 358 [1955].

[17] 109 Phil. 863 [1960].

[18] 83 Phil. 17 [1949].

[19] Id. at 21-22.

[20] Id. at 68-69.

[21] 103 Phil. 1051 [1957].

[22] Id. at 1068.

[23] Id. at 1083.

[24] 5 SCRA 1 [1962].

[25] 21 SCRA 774 [1967].

[26] 41 SCRA 702 [1971].

[27] Id. at 785-786.

[28] Id. at 787.

[29] 41 SCRA at 713.

[30] Bernas, The 1987 Constitution of the Republic of the Philippines A Commentary, p. 861 [1996].

[31] 16 Phil. 366 [1910].

[32] Id. at 401.

[33] 45 Phil. 612 [1924].

[34] Id. At 630.

[35] Id. at 637-638.

[36] 16 Phil. 534 [1910].

[37] Id. at 568-569, 576.

[38] 94 Phil. 903 [1954].

[39] Untal v. Chief of Staff, AFP, 84 Phil. 586 [1949]; Raquiza v. Bradford, 75 Phil. 50 [1945].

[40] 91 Phil. 882 [1952].

[41] Id. at 887.

[42] 42 SCRA 448 [1971].

[43] Id. at 474.

[44] Id. at 480-481.

[45] 50 SCRA 30 [1973].

[46] Id. at 138, 140-141.

[47] 59 SCRA 183 [1973].

[48] Ibid.

[49] 121 SCRA 472 [1983].

[50] Id. at 490-491.

[51] Id. at 500-501.

[52] 121 SCRA 538 [1983].

[53] Id. at 563.

[54] See Concepcion's sponsorship speech, I Record 434-435; see also Bernas, the Constitution of the Republic of the Philippines A Commentary, p. 863 [1996].

[55] J.M. Tuason & Co., Inc. v. Land Tenure Administration, 31 SCRA 413, 423-426 [1970].

[56] Vera v. Avelino, 77 Phil. 192, 215 [1946]; see also Agpalo, Statutory Construction, 4th ed., p. 454 [1998].

[57] Black, Handbook on the Construction and Interpretation of the laws, 2d ed., p. 39 [1911].

[58] SCRA at 506-507, see also Rossiter, The Supreme Court and the Commander-in-Chief, pp. 16-17 [1951].

[59] Baker v. Carr, 7 L Ed 2d at 682.

[60] Willoughby on the Constitution of the United States, vol. 3, 2d ed., p. 1336 [1929].

[61] Tanada v. Macapagal, 103 Phil. At 1067, quoting In re McConaughy, 119 NW 408 [1909].

[62] Id.

SEPARATE OPINION

VITUG, J.:

In the equation of judicial power, neither of two extremes - one totalistic and the other bounded - is acceptable nor ideal. The 1987 Constitution has introduced its definition of the term "judicial power" to be that which -

"x x x includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." [1]

It is not meant that the Supreme Court must be deemed vested with the awesome power of overseeing the entire bureaucracy, let alone of institutionalizing judicial absolutism, under its mandate. But while this Court does not wield unlimited authority to strike down an act of its two co-equal branches of government, it must not wither under technical guise on its constitutionally ordained task to intervene, and to nullify if need be, any such act as and when it is attended by grave abuse of discretion amounting to lack or excess of jurisdiction. The proscription then against an interposition by the Court into purely political questions, heretofore known, no longer holds within that context.

Justice Feria, in the case of *Avelino vs. Cuenco*, [2] has aptly elucidated in his concurring opinion:

"x x x [I] concur with the majority that this Court has jurisdiction over cases like the present x x x so as to establish in this country the judicial supremacy, with the Supreme Court as the final arbiter, to see that no one branch or agency of the government transcends the Constitution, not only in justiceable but political questions as well." [3]

It is here when the Court must have to depart from the broad principle of separation of powers that disallows an intrusion by it in respect to the purely political decisions of its independent and coordinate agencies of government.

The term grave abuse of discretion is long understood in our jurisprudence as being, and confined to, a capricious and whimsical or despotic exercise of judgment amounting to lack or excess of jurisdiction. Minus the not-so-unusual exaggerations often invoked by litigants in the duel of views, the act of the President in simply calling on the Armed Forces of the Philippines, an executive prerogative, to assist the Philippine National Police in "joint visibility patrols" in the metropolis does not, I believe, constitute grave abuse of discretion that would now warrant an exercise by the Supreme Court of its extraordinary power as so envisioned by the fundamental law.

Accordingly, I vote for the dismissal of the petition.

[1] Section 1, Article VIII of the Constitution.

[2] 83 Phil. 17.

[3] *Sen. Miriam Defensor Santiago, et al. vs. Sen. Teofisto Guingona, Jr., et al.*, 298 SCRA 756.

CONCURRING AND DISSENTING OPINION

MENDOZA, J.:

I concur in the opinion of the Court insofar as it holds petitioner to be without standing to question the validity of LOI 02/2000 which mandates the Philippine Marines to conduct "joint visibility" patrols with the police in Metro Manila. But I dissent insofar as the opinion dismisses the petition in this case on other grounds. I submit that judgment on the substantive constitutional issues raised by petitioner must await an actual case involving real parties with "injuries" to show as a result of the operation of the challenged executive action. While as an organization for the advancement of the rule of law petitioner has an interest in upholding the Constitution, its interest is indistinguishable from the interest of the rest of the citizenry and falls short of that which is necessary to give petitioner standing.

As I have indicated elsewhere, a citizens' suit challenging the constitutionality of governmental action requires that (1) the petitioner must have suffered an "injury in fact" of an actual or imminent nature; (2) there must be a causal connection between the injury and the conduct complained of; and (3) the injury is likely to be redressed by a favorable action by this Court.[1] The "injury in fact" test requires more than injury to a cognizable interest. It requires that the party seeking review be himself among those injured.[2]

My insistence on compliance with the standing requirement is grounded in the conviction that only a party injured by the operation of the governmental action challenged is in the best position to aid the Court in determining the precise nature of the problem presented. Many a time we have adverted to the power of judicial review as an awesome power not to be exercised save in the most exigent situation. For, indeed, sound judgment on momentous constitutional questions is not likely to be reached unless it is the result of a clash of adversary arguments which only parties with direct and specific interest in the outcome of the controversy can make. This is true not only when we strike down a law or official action but also when we uphold it.

In this case, because of the absence of parties with real and substantial interest to protect, we do not have evidence on the effect of military presence in malls and commercial centers, i.e., whether such presence is coercive or benign. We do not know whether the presence of so many marines and policemen scares shoppers, tourists, and peaceful civilians, or whether it is reassuring to them. To be sure, the deployment of troops to such places is not like parading them at the Luneta on Independence Day. Neither is it, however, like calling them out because of actual fighting or the outbreak of violence.

We need to have evidence on these questions because, under the Constitution, the President's power to call out the armed forces in order to suppress lawless violence, invasion or rebellion is subject to the limitation that the exercise of this power is required in the interest of public safety.[3]

Indeed, whether it is the calling out of the armed forces alone in order to suppress lawless violence, invasion or rebellion or also the suspension of the privilege of the writ of habeas corpus or the proclamation of martial law (in case of invasion or rebellion), the exercise of the President's powers as commander-in-chief, requires proof — not mere assertion.[4] As has been pointed out, "Standing is not 'an ingenious academic exercise in the conceivable' . . . but requires . . . a factual showing of perceptible harm." [5]

Because of the absence of such record evidence, we are left to guess or even speculate on these questions. Thus, at one point, the majority opinion says that what is involved here is not even the calling out of the armed forces but only the use of marines for law enforcement. (p. 13) At another point, however, the majority opinion somersaults and says that because of bombings perpetrated by lawless elements, the deployment of troops in shopping centers and public utilities is justified. (p. 24)

We are likely to err in dismissing the suit brought in this case on the ground that the calling out of the military does not violate the Constitution, just as we are likely to do so if we grant the petition and invalidate the executive issuance in question. For indeed, the lack of a real, earnest and vital controversy can only impoverish the judicial process. That is why, as Justice Laurel emphasized in the Angara case, "this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented."^[6]

We are told, however, that the issues raised in this case are of "paramount interest" to the nation. It is precisely because the issues raised are of paramount importance that we should all the more forego ruling on the constitutional issues raised by petitioner and limit the dismissal of this petition on the ground of lack of standing of petitioner. A Fabian policy of leaving well enough alone is a counsel of prudence.

For these reasons and with due appreciation of the scholarly attention lavished by the majority opinion on the constitutional questions raised, I am constrained to limit my concurrence to the dismissal of this suit on the ground of lack of standing of petitioner and the consequent lack of an actual case or controversy.

[1] *Tatad v. Garcia*, 243 SCRA 436, 473 (1995) (concurring). Accord, *Telecommunication and Broadcast Attorneys of the Philippines v. COMELEC*, 289 SCRA 343 (1998).

[2] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 119 L. Ed. 2d 351 (1992).

[3] See CONST., ART. VII, §18.

[4] See *Lansang v. Garcia*, 42 SCRA 448 (1971).

[5] *Lujan v. Defenders of Wildlife*, *supra*.

[6] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936)

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