

ISABELITA C. VINUYA, VICTORIA C. DELA PEÑA, HERMINIHILDA MANIMBO, LEONOR H. SUMAWANG, CANDELARIA L. SOLIMAN, MARIA L. QUILANTANG, MARIA L. MAGISA, NATALIA M. ALONZO, LOURDES M. ...

G.R. No. 162230. August 12, 2014

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

Petitioners filed a Motion for Reconsideration[1] and a Supplemental Motion for Reconsideration,[2] praying that the Court reverse its decision of April 28, 2010, and grant their petition for certiorari.

In their Motion for Reconsideration, petitioners argue that our constitutional and jurisprudential histories have rejected the Court's ruling that the foreign policy prerogatives of the Executive Branch are unlimited; that under the relevant jurisprudence and constitutional provisions, such prerogatives are proscribed by international human rights and international conventions of which the Philippines is a party; that the Court, in holding that the Chief Executive has the prerogative whether to bring petitioners' claims against Japan, has read the foreign policy powers of the Office of the President in isolation from the rest of the constitutional protections that expressly textualize international human rights; that the foreign policy prerogatives are subject to obligations to promote international humanitarian law as incorporated into the laws of the land through the Incorporation Clause; that the Court must re-visit its decisions in *Yamashita v. Styer*[3] and *Kuroda v. Jalandoni*[4] which have been noted for their prescient articulation of the import of laws of humanity; that in said decision, the Court ruled that the State was bound to observe the laws of war and humanity; that in *Yamashita*, the Court expressly recognized rape as an international crime under international humanitarian law, and in *Jalandoni*, the Court declared that even if the Philippines had not acceded or signed the Hague Convention on Rules and Regulations covering Land Warfare, the Rules and Regulations formed part of the law of the nation by virtue of the Incorporation Clause; that such commitment to the laws of war and humanity has been enshrined in Section 2, Article II of the 1987 Constitution, which provides "that the Philippines...adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

The petitioners added that the status and applicability of the generally accepted principles of international law within the Philippine jurisdiction would be uncertain without the Incorporation Clause, and that the clause implied that the general international law forms part of Philippine law only insofar as they are expressly adopted; that in its rulings in *The Holy See, v. Rosario, Jr.*[5] and *U.S. v. Guinto*[6] the Court has said that international law is deemed part of the Philippine law as a consequence of Statehood; that in *Agustin v. Edu*,[7] the Court has declared that a treaty, though not yet ratified by the Philippines, was part of the law of the land through the Incorporation Clause; that by virtue of the Incorporation Clause, the Philippines is bound to abide by the *erga omnes* obligations arising from the *jus cogens* norms embodied in the laws of war and humanity that include the principle of the imprescriptibility of war crimes; that the crimes committed against petitioners are proscribed

under international human rights law as there were undeniable violations of jus cogens norms; that the need to punish crimes against the laws of humanity has long become jus cogens norms, and that international legal obligations prevail over national legal norms; that the Court's invocation of the political doctrine in the instant case is misplaced; and that the Chief Executive has the constitutional duty to afford redress and to give justice to the victims of the comfort women system in the Philippines.[8]

Petitioners further argue that the Court has confused diplomatic protection with the broader responsibility of states to protect the human rights of their citizens, especially where the rights asserted are subject of erga omnes obligations and pertain to jus cogens norms; that the claims raised by petitioners are not simple private claims that are the usual subject of diplomatic protection; that the crimes committed against petitioners are shocking to the conscience of humanity; and that the atrocities committed by the Japanese soldiers against petitioners are not subject to the statute of limitations under international law.[9]

Petitioners pray that the Court reconsider its April 28, 2010 decision, and declare: (1) that the rapes, sexual slavery, torture and other forms of sexual violence committed against the Filipina comfort women are crimes against humanity and war crimes under customary international law; (2) that the Philippines is not bound by the Treaty of Peace with Japan, insofar as the waiver of the claims of the Filipina comfort women against Japan is concerned; (3) that the Secretary of Foreign Affairs and the Executive Secretary committed grave abuse of discretion in refusing to espouse the claims of Filipina comfort women; and (4) that petitioners are entitled to the issuance of a writ of preliminary injunction against the respondents.

Petitioners also pray that the Court order the Secretary of Foreign Affairs and the Executive Secretary to espouse the claims of Filipina comfort women for an official apology, legal compensation and other forms of reparation from Japan.[10]

In their Supplemental Motion for Reconsideration, petitioners stress that it was highly improper for the April 28, 2010 decision to lift commentaries from at least three sources without proper attribution – an article published in 2009 in the Yale Law Journal of International Law; a book published by the Cambridge University Press in 2005; and an article published in 2006 in the Western Reserve Journal of International Law – and make it appear that such commentaries supported its arguments for dismissing the petition, when in truth the plagiarized sources even made a strong case in favour of petitioners' claims.[11]

In their Comment,[12] respondents disagree with petitioners, maintaining that aside from the statements on plagiarism, the arguments raised by petitioners merely rehashed those made in their June 7, 2005 Memorandum; that they already refuted such arguments in their Memorandum of June 6, 2005 that the Court resolved through its April 28, 2010 decision, specifically as follows:

1. The contentions pertaining to the alleged plagiarism were then already lodged with the Committee on Ethics and Ethical Standards of the Court; hence, the matter of alleged plagiarism should not be discussed or resolved herein.[13]
2. A writ of certiorari did not lie in the absence of grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, in view of the failure of petitioners to show any arbitrary or despotic act on the part of respondents, the relief of the writ of certiorari was not warranted.[14]
3. Respondents hold that the Waiver Clause in the Treaty of Peace with Japan, being valid, bound the Republic of the Philippines pursuant to the international law principle of pacta sunt servanda. The validity of the Treaty of Peace was the result of the ratification by two mutually consenting parties. Consequently, the obligations embodied in the Treaty of Peace must be carried out in accordance with the common and real intention of the parties at the time the treaty was concluded.[15]

4. Respondents assert that individuals did not have direct international remedies against any State that violated their human rights except where such remedies are provided by an international agreement. Herein, neither of the Treaty of Peace and the Reparations Agreement, the relevant agreements affecting herein petitioners, provided for the reparation of petitioners' claims. Respondents aver that the formal apology by the Government of Japan and the reparation the Government of Japan has provided through the Asian Women's Fund (AWF) are sufficient to recompense petitioners on their claims, specifically:

- About 700 million yen would be paid from the national treasury over the next 10 years as welfare and medical services;
- Instead of paying the money directly to the former comfort women, the services would be provided through organizations delegated by governmental bodies in the recipient countries (i.e., the Philippines, the Republic of Korea, and Taiwan); and
- Compensation would consist of assistance for nursing services (like home helpers), housing, environmental development, medical expenses, and medical goods.[16]

Ruling

The Court DENIES the Motion for Reconsideration and Supplemental Motion for Reconsideration for being devoid of merit.

1.

Petitioners did not show that their resort was timely under the Rules of Court.

Petitioners did not show that their bringing of the special civil action for certiorari was timely, i.e., within the 60-day period provided in Section 4, Rule 65 of the Rules of Court, to wit:

Section 4. When and where position filed. – The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

As the rule indicates, the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. To establish the timeliness of the petition for certiorari, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for certiorari must be dismissed. The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for certiorari. As the Court has emphasized in *Tambong v. R. Jorge Development Corporation*:^[17]

There are three essential dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of the denial thereof was received. Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules. (Emphasis supplied)

The Court has further said in *Santos v. Court of Appeals*:^[18]

The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed. Therefore, that the petition for certiorari was filed

forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated. It should not be assumed that in no event would the motion be filed later than fifteen (15) days. Technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of the Rules cannot justly be rationalized by harking on the policy of liberal construction.[19]

The petition for certiorari contains the following averments, viz:

82. Since 1998, petitioners and other victims of the “comfort women system,” approached the Executive Department through the Department of Justice in order to request for assistance to file a claim against the Japanese officials and military officers who ordered the establishment of the “comfort women” stations in the Philippines;

83. Officials of the Executive Department ignored their request and refused to file a claim against the said Japanese officials and military officers;

84. Undaunted, the Petitioners in turn approached the Department of Foreign Affairs, Department of Justice and Office of the Solicitor General to file their claim against the responsible Japanese officials and military officers, but their efforts were similarly and carelessly disregarded;[20]

The petition thus mentions the year 1998 only as the time when petitioners approached the Department of Justice for assistance, but does not specifically state when they received the denial of their request for assistance by the Executive Department of the Government. This alone warranted the outright dismissal of the petition.

Even assuming that petitioners received the notice of the denial of their request for assistance in 1998, their filing of the petition only on March 8, 2004 was still way beyond the 60-day period. Only the most compelling reasons could justify the Court’s acts of disregarding and lifting the strictures of the rule on the period. As we pointed out in *MTM Garment Mfg. Inc. v. Court of Appeals*: [21]

All these do not mean, however, that procedural rules are to be ignored or disdained at will to suit the convenience of a party. Procedural law has its own rationale in the orderly administration of justice, namely: to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. Hence, it is a mistake to suppose that substantive law and procedural law are contradictory to each other, or as often suggested, that enforcement of procedural rules should never be permitted if it would result in prejudice to the substantive rights of the litigants.

As we have repeatedly stressed, the right to file a special civil action of certiorari is neither a natural right nor an essential element of due process; a writ of certiorari is a prerogative writ, never demandable as a matter of right, and never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.

Herein petitioners have not shown any compelling reason for us to relax the rule and the requirements under current jurisprudence. x x x. (Emphasis supplied)

2.

Petitioners did not show that the assailed act was either judicial or quasi-judicial on the part of respondents.

Petitioners were required to show in their petition for certiorari that the assailed act was either judicial or quasi-judicial in character. Section 1, Rule 65 of the Rules of Court requires such showing, to wit:

Section 1. Petition for certiorari.—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order, or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

However, petitioners did not make such a showing.

3.

Petitioners were not entitled to the injunction.

The Court cannot grant petitioners' prayer for the writ of preliminary mandatory injunction.

Preliminary injunction is merely a provisional remedy that is adjunct to the main case, and is subject to the latter's outcome. It is not a cause of action itself.[22] It is provisional because it constitutes a temporary measure availed of during the pendency of the action; and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.[23] Following the dismissal of the petition for certiorari, there is no more legal basis to issue the writ of injunction sought. As an auxiliary remedy, the writ of preliminary mandatory injunction cannot be issued independently of the principal action.[24]

In any event, a mandatory injunction requires the performance of a particular act. Hence, it is an extreme remedy,[25] to be granted only if the following requisites are attendant, namely:

- (a) The applicant has a clear and unmistakable right, that is, a right in esse;
- (b) There is a material and substantial invasion of such right; and
- (c) There is an urgent need for the writ to prevent irreparable injury to the applicant; and no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.[26]

In *Marquez v. The Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City*,[27] we expounded as follows:

It is basic that the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, conditioned on the existence of a clear and positive right of the applicant which should be protected. It is an extraordinary, peremptory remedy available only on the grounds expressly provided by law, specifically Section 3, Rule 58 of the Rules of Court. Moreover, extreme caution must be observed in the exercise of such discretion. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it. The very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[28]

Here, the Constitution has entrusted to the Executive Department the conduct of foreign relations for the Philippines. Whether or not to espouse petitioners' claim against the Government of Japan is left to the exclusive determination and judgment of the Executive Department. The Court cannot interfere with or question the wisdom of the conduct of foreign relations by the Executive Department. Accordingly, we cannot direct the Executive Department, either by writ of certiorari or injunction, to conduct our foreign relations with Japan in a certain

manner.

WHEREFORE, the Court DENIES the Motion for Reconsideration and Supplemental Motion for Reconsideration for their lack of merit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.

Del Castillo, and Leonen, JJ., no part.

[1] Rollo, pp. 419-429.

[2] Id. at 435-529.

[3] 75 Phil. 563 (1945).

[4] 83 Phil. 171 (1949).

[5] G.R. No. 101949, December 1, 1994, 238 SCRA 524.

[6] G.R. No. 76607, February 26, 1990, 182 SCRA 644.

[7] No. L-49112, February 2, 1979, 88 SCRA 195.

[8] Supra note 1.

[9] Id. at 426-427.

[10] Id. at 427-428.

[11] Id. at 436.

[12] Id. at 665-709.

[13] Id. at 684-685.

[14] Id. at 686-690.

[15] Id. at 690-702.

[16] Id. at 703-706.

[17] G.R. No. 146068, August 31, 2006, 500 SCRA 399, 403-404.

[18] G.R. No. 141947, July 5, 2001, 360 SCRA 521, 527-528.

[19] Id. at 527-528.

[20] Rollo, p. 18.

[21] G.R. No. 152336, June 9, 2005, 460 SCRA 55, 66.

[22] Buyco v. Baraquia, G.R. No. 177486, December 21, 2009, 608 SCRA 699, 703-704.

[23] Id. at 704.

[24] Bangko Sentral ng Pilipinas Monetary Board v. Antonio-Valenzuela, G.R. No. 184778, October 2, 2009, 602

SCRA 698, 715, citing *Lim v. Court of Appeals*, G.R. No. 134617, February 13, 2006, 482 SCRA 326, 331.

[25] I Regalado, *Remedial Law Compendium*, Seventh Revised Edition, p. 638.

[26] *Philippine Leisure and Retirement Authority v. Court of Appeals*, G.R. No. 156303, December 19, 2007, 541 SCRA 85,99-100.

[27] G.R. No. 141849, February 13, 2007, 515 SCRA 577.

[28] At 589.

CONCURRING OPINION

SERENO, CJ:

[T]he phrase "comfort women" does not in the least reflect the suffering, such as multiple rapes on an everyday basis and severe physical abuse, that women victims had to endure during their forced prostitution and sexual subjugation and abuse in wartime. The Special Rapporteur, therefore, considers with conviction that the phrase "military sexual slaves" represents a much more accurate and appropriate terminology.[1]

Ms. Radhika Coornaraswamy
Special Rapporteur on
Violence Against Women

This Petition is a reminder to all public officials of the trust the Filipino people have reposed in them to ensure their well-being, address their sufferings, and promote the rule of law within the national and international sphere.[2] Our history as a nation and our brutal experiences at the hands of colonialists and authoritarians have impelled us to ensure, through the Constitution, that every Filipino will attain justice and will be guaranteed full respect for human rights.[3] This is one of the core duties imposed by our organic law on public officials.

Nevertheless, I concur with the Resolution holding that there is basis to dismiss the petition on various technical grounds. I also fully agree with this Court's Decision[4] dated 28 April 2010, which ruled that the matter of exercising diplomatic protection is within the sphere of discretion of the executive department.

I am of the opinion, however, that the statement in the 2010 ponencia - that the "wisdom of such decision [to waive all claims for reparations] is not for the courts to question"[5] - must be qualified. As party to the 1949 Geneva Conventions,[6] the Philippines has limited discretion to waive another state's reparations obligation arising from the commission of grave breaches of the convention. The 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV) expressly states the following:

ARTICLE 147

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

ARTICLE 148

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article. (Emphases supplied)

Legal commentators stress that Article 148 should be related to Article 3 of the 1907 Hague Convention IV[7] which reads:

A belligerent Party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces. (Emphases supplied)

It is said that the non-absolution clause under Article 148 is a logical consequence of the grave breaches under Article 147 of Geneva Convention IV. [8] A state is precluded from absolving other states from liability on the ground that the individual persons who actually perpetrated the grave breach of the convention have already been punished.[9] Indeed, it would seem unjust for individuals to be punished while the state in whose name or on whose instructions they acted is released from all liability.[10] Article 148 was meant to prevent the defeated state from being forced into entering into an armistice or peace treaty in which it would renounce all reparations for grave breaches committed by persons in the service of the victorious state.[11] Thus, pursuant to the 1949 Geneva Conventions, a state remains responsible - and continues to be liable to pay compensation for the grave breaches committed against protected persons.[12]

Nevertheless, I am of the opinion that respondents cannot be found entirely guilty of a whimsical or capricious exercise of judgment, or a patent and gross abuse of discretion. Their reliance on the Treaty of Peace with Japan (1951 Peace Treaty) and the Reparations Agreement Between the Republic of the Philippines and Japan (1956 Reparations Agreement) as bases for declining to espouse petitioners' claims against Japan was not without reason, especially if the treaties are analyzed in the light of the events leading to their conclusion.

The subject of reparations for damages suffered during the war was discussed during the occupation of Japan by the Allied Forces. At the time, the initial reparations policy that had been put forward by the U.S. was to utilize reparations for rehabilitating the war-devastated countries, particularly countries in Asia and the Pacific.[13] The plan was also envisioned as a "vital integral means" for Japan's economic demilitarization.[14] The U.S. supported an "early and just share of reparations" in favor of the Philippines and pledged that "Japan will be reduced to the level of a small power and her people will not be permitted to have in the future a living standard higher than those nations which she has overrun x x x." [15] It is said that an interim reparations removal policy was also adopted with the objective of transferring the industrial capacity of Japan to the Philippines.[16] Under this policy, Japan's industrial plants and facilities would be handed over to the Philippines as war reparations in order to aid its rehabilitation and agricultural development needs.[17] However, due to the opposition of the former Soviet Union, the proposals did not materialize.[18]

American reparations policy shifted in 1947.[19] As the Cold War developed, the U.S. initiated the drafting of a peace treaty with Japan.[20] On the issue of reparations, the U.S. negotiated for a complete waiver of all claims arising from Japan's war acts.[21] The alleged rationale for this "peace formula" rested on the U.S. assumption that if Japan were to be lured into the communist influence, the strength of the Sino-Soviet camp would significantly increase, and the resulting change in the power balance in Asia would be "dangerously formidable." [22] According to the U.S., Japan must be given a chance to recover full economic self-sufficiency "by not placing upon her any heavy economic or financial burdens or major commercial liabilities." [23] The peace treaty was to be "brief, liberal, and non-punitive." [24]

The Philippines rejected the U.S. proposal of total waiver of reparations claims against Japan.[25] While the

Philippine government had full appreciation of the international political reality of the spread of communism in Asia,[26] it remained firm that Japan should "sufficiently x x x repair the injuries they inflicted in a war of aggression x x x." [27] The U.S. tried to persuade the Philippine government. It pointed out that the problem of reparations was "not merely a matter of justice," but also a "matter of economics." [28] It argued that they could not see "any effective way" of demanding reparations from an economically depressed Japan. [29] In a last effort to convince the Philippines to accept a no-reparations peace arrangement, the U.S. emphasized the usually "intimate" relations between both countries. [30]

The U.S. was unsuccessful; the Philippines maintained an irrevocable stance on the matter of reparations. [31] Former Undersecretary of Foreign Affairs Pelino Neri criticized the American peace policy and remarked: "Reparations is first a matter of justice and the realities of economics are, in our view, a secondary consideration. In our case, reparations from Japan is a matter of absolute necessity." [32] The Philippines' condemnation of the American peace formula intensified when the U.S. government made available its draft of the treaty, which provided for the absolute abandonment of reparations claims on the ground that Japan lacked the "capacity to make payments" in any form. [33] The Philippines refused such claims. [34] It repeatedly declared that Japan was solvent, and that the Philippines would never withdraw its claims. [35]

At the height of the developing Cold War, the U.S. and the U.K. initiated a conference on the Japanese peace treaty. [36] During the discussions, the Philippines, through then Foreign Affairs Secretary Carlos P. Romulo, expressed that it had yet to be satisfied with the reparations provisions of the proposed treaty. [37] Secretary Romulo voiced out a reservation on an "inflexible restriction" on the form of reparations payment, asserting that the Philippines could not accept that reparations be made only through the "services" of the Japanese people in the processing of raw materials that would be supplied by the injured countries. [38] However, the reservation was neither accepted nor recorded. [39] Faced with the dilemma of supporting its allies in winning over Japan at the expense of fully satisfying security and reparations claims, the Philippines reluctantly signed the 1951 Peace Treaty. [40]

The decision of the Philippine government to eventually sign the peace treaty was met with strong resistance. The opposition insisted that the reparations issue was the foremost aspect of the country's peace settlement with Japan. [41] They also demanded the inclusion in the peace treaty of a more categorical statement of Japan's guilt and reparations obligation. [42] The government defended its decision to sign the peace treaty on the basis of its "security first policy." [43] It explained that security threats of the aggressive communist expansion impelled it to act swiftly in the ratification of the peace treaty. [44] The opposition countered that the Philippines was sufficiently safeguarded by its Mutual Defense Treaty with the U.S. [45]

The negotiations for reparations dragged on for almost five years after the signing of the 1951 Peace Treaty. [46] From the initial demand of USD 8 billion, the final reparations agreed upon amounted to a mere USD 550 million, [47] which was to be paid in the form of capital goods, cash, and services. [48] A note sent by President Magsaysay to the Senate reads as follows:

Considering the losses and suffering the Philippines sustained as a result of the Pacific War, these terms do not come up to the generally- accepted concept of reparations as compensation for damage done and injury suffered.

Judged, however, from the point of view of the requirements of our national interest and viewed in the light of the practical realities posed by the political and economic situation obtaining in both countries as well as in their part of the world, I subscribe to the conclusion reached by the Philippine Panel of Negotiators that this settlement is the best that can be obtained under the circumstances x x x. [49]

After a heated debate, the 1951 Peace Treaty and the 1956 Reparations Agreement were ratified on 16 July 1956. The pertinent provision of the 1951 Peace Treaty is reproduced below:

ARTICLE 14

(a) It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless it is also recognized that the resources of Japan are not presently sufficient if it is to maintain a viable economy, to make complete reparations for all such damage and suffering and at the same time meet its other obligations.

Therefore,

- Japan will promptly enter into negotiations with Allied Powers so desiring, whose present territories were occupied by Japanese forces and damaged by Japan, with a view to assisting to compensate those countries for the cost of repairing the damage done, by making available the services of the Japanese people in production, salvaging and other work for the Allied Powers in question. Such arrangements shall avoid the imposition of additional liabilities on other Allied Powers, and, where the manufacturing of raw materials is called for, they shall be supplied by the Allied Powers in question, so as not to throw any foreign exchange burden upon Japan.

- x x x x

"(b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparation claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation. (Emphases supplied)

On the other hand, the relevant provisions of the 1956 Reparations Agreement are quoted as follows:

ARTICLE 1

Japan, by way of reparations, shall supply the Republic of the Philippines with the services of the Japanese people and the products of Japan in the form of capital goods, the total value of which will be so much in yen as shall be equivalent to five hundred fifty million United States dollars (\$550,000,000) at present computed at one hundred ninety-eight billion yen (Y198,000,000,000), within the period and in the manner hereinafter prescribed.

ARTICLE 2

The supply of the services and products referred to in the preceding Article shall be made on an annual average of so much in yen as shall be equivalent to twenty-five million United States dollars (\$25,000,000) at present computed at nine billion yen (Y9,000,000,000), during the ten-year period from the date of coming into force of the present Agreement; and on an annual average of so much in yen as shall be equivalent to thirty million United States dollars (\$30,000,000) at present computed at ten billion eight hundred million yen (Y10,800,000,000), during the succeeding ten-year period. However, by agreement between the two Governments, this latter period may be reduced to a period shorter than ten years, provided the outstanding balance is settled in full within the remainder of the reduced period.

ARTICLE 6

1. In the discharge of the reparations obligation under Article 1 of the present Agreement, the Government of Japan shall, through procedures to be determined under Article 11, make payments to cover the obligations incurred by the Mission under Reparations Contracts and the expenses for the supply of services and products referred to in Article 5, paragraph 4 of the present Agreement. These payments shall be made in Japanese yen.

2. By and upon making a payment in yen under the preceding paragraph, Japan shall be deemed to have

supplied the Republic of the Philippines with the services and products thus paid for and shall be released from its reparations obligation to the extent of the equivalent value in United States dollars of such yen payment in accordance with Articles 1 and 2 of the present Agreement. (Emphases supplied)

In the light of the foregoing context, I vote to dismiss the petition for failure to establish that respondents committed grave abuse of discretion in declining to espouse the claims of petitioners. The dismissal thereof should not, however, be taken as a definitive ruling on the merits of the claims of petitioners, in the event that they bring the same to an appropriate forum or through a proper recourse. Neither should it be taken to mean that we should forget the suffering that our people, especially petitioners, bore in the Second World War, or the unfortunate story of our attempts to get the reparation that was due us, and learn. From such understanding, we must forge the elements that will make the Philippine state strong, able to protect its people and safeguard their well-being under the aegis of the Constitution. Justice demands no less.

[1] Special Rapporteur on Violence Against Women, its Causes and Consequences, Rep. on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime, Comm'n. on Human Rights, UN Doc. E/CN.4/1996/53/Add.I, at 4 (4 January 1996)(by Radhika Coomaraswamy).

[2] See: E.O. 292- Administrative Code of the Philippines, Book TV, Title III, Chap. 12, Sec. 34, pars. 10 & 11.

[3] Constitution, Art. II, Sec. II; Art. XIII, Sees. 1 & 18(3)

[4] *Vinuya v. Romulo*, G.R. No. 162230, 28 April 2010, 619 SCRA 533.

[5] *Id.* at 560.

[6] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 U.N.T.S. 31 (hereinafter "Geneva Convention I"); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 U.N.T.S. 85 (hereinafter "Geneva Convention II"); Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949, 75 U.N.T.S. 135 (hereinafter "Geneva Convention III"); and Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 U.N.T.S. 287 (hereinafter Geneva "Convention IV").

[7] OSCAR M. UHLER & HENRI COURSIER, COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR, 602-603 (Jean S. Pictet ed., 1958).

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] TAKUSHI OHNO, WAR REPARATIONS & PEACE SETTLEMENT: PHILIPPINES-JAPAN RELATIONS 1945-1956,

[8] (1986); Yang Zhihui, From War Reparation to Postwar Reparation (Louisa Rubinfién trans.), in TOWARD A HISTORY BEYOND BORDERS: CONTENTIOUS ISSUES IN SINO-JAPANESE RELATIONS 374-375

(Daqing Yang, Jie Liu, Hiroshi Mitani & Andrew Gordon eds., 2012).

[14] OHNO, *supra*.

[15] OHNO, *supra*, at 9.

[16] OHNO, *supra*, at II.

[17] OHNO, *supra*; Yang Zhihui, *supra* note 13.

[18] OHNO, *supra*, at 13.

[19] OHNO, *supra*, at 18-26; JOHN F. DULLES, A PEACE TREATY IN THE MAKING (ADDRESSES AND REMARKS REGARDING THE MAKING OF THE JAPANESE PEACE TREATY AND THE CAUSE OF WORLD FREEDOM) 3-7 (1951); Yang Zhihui, *supra* note 13, at 375-377.

[20] OHNO, *supra*, at 36.

[21] OHNO, *supra*, at 37-38 (citing United States Memorandum to the Government on the Far Eastern Commission, in Royal Institute of International Affairs, Documents on International Affairs, 1947-1949, 615-616 [1952]); Yang Zhihui, *supra* note 13, at 376.

[22] OHNO, *supra*, at 38; See also DULLES, *supra* note 19, at 40-42; Yang Zhihui, *supra* note 13, at 376.

[23] OHNO, *supra*, at 37 (citing John Foster Dulles, "Peace May Be Won," U.S.A. Department of State, DSB, Vol. 24 No. 605, at 255 [195 I]); See DULLES, *supra* note 19, at 19-21.

[24] OHNO, *supra* (citing U.S.A., Department of State, "An Estimate of Conditions in Asia and the Pacific at the Close of the War in the Far East and the Objectives and Policies of the United States," Diplomatic Papers, 1945, Vol. VI, at 556-580 [1969]); See DULLES, *supra* note 19, at 19-21.

[25] OHNO, *supra*, at 40; Yang Zhihui, *supra* note 13, at 376.

[26] OHNO, *supra*, at 39.

[27] OHNO, *supra*, at 40 (citing The President's Inaugural Address, December 30, 1949, Official Gazette, Vol. 45 No. 12, at 5384 [1949]).

[28] OHNO, *supra*, at 42 (citing Truman's Envoy has long conference on Jap pact with EQ, the Manila Times, February 12, 1951, 1-2).

[29] OHNO, *supra*.

[30] *Id.*

[31] *Id.* at 42-43; See also DULLES, *supra* note 19, at 48; Yang Zhihui, *supra* note 13, at 376.

[32] OHNO, *supra*, at 43 (citing Neri assails Dulles stand, the Manila Times, 3 March 1951, 1, 12).

[33] *Id.*; See also DULLES, *supra* note 19, at 48.

[34] OHNO, *supra*.

[35] *Id.*

[36] *Id.* at 52.

[37] *Id.* at 54.

[38] Id.

[39] Id. at 54-55 (citing Acheson's Speech, delivered on September 8, 1951, in U.S. Dep't of State Publications, Record of Proceedings of the Conference for the Conclusion and Signature of the Treaty of Peace with Japan, 175-177 [1951]).

[40] Id. at 55-56.

[41] Id. at 58, 80.

[42] Id. at 58.

[43] Id. at 75-80.

[44] Id.

[45] Id. at 80.

[46] Id. at 64-134.

[47] Id. at 121.

[48] President's Letter of Transmittal, reproduced in PHILIPPINE SENATE, REPARATIONS AGREEMENT, THE ANNEX THERETO, THE EXCHANGE NOTES AID THE OTHER SUPPORTING DOCUMENTS: TREATY OF PEACE WITH JAPAN, UNDERSTANDING OF THE SENATE ON CERTAIN PROVISIONS OF THE REPARATIONS AGREEMENT, 3 (1956).

[49] Id. at 4.

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