LT. (SG) EUGENE GONZALES, LT. (SG) ANDY TORRATO, LT. (SG) ANTONIO TRILLANES IV, CPT. GARY ALEJANO, LT. (SG) JAMES LAYUG, CPT. GERARDO GAMBALA, CPT. NICANOR FAELDON, LT. (SG) MAN...

G.R. NO. 164007. August 10, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the Petition for Prohibition (with prayer for a temporary restraining order) filed by the above-named members of the Armed Forces of the Philippines (AFP), herein petitioners, against the AFP Chief of Staff and the Judge Advocate General, respondents.

The facts are:

On July 26, 2003, President Gloria Macapagal Arroyo received intelligence reports that some members of the AFP, with high-powered weapons, had abandoned their designated places of assignment. Their aim was to destabilize the government. The President then directed the AFP and the Philippine National Police (PNP) to track and arrest them.

On July 27, 2003 at around 1:00 a.m., more than 300 heavily armed junior officers and enlisted men of the AFP – mostly from the elite units of the Army's Scout Rangers and the Navy's Special Warfare Group – entered the premises of the Oakwood Premier Luxury Apartments on Ayala Avenue, Makati City. They disarmed the security guards and planted explosive devices around the building.

Led by Navy Lt. (SG) Antonio Trillanes IV, the troops sported red armbands emblazoned with the emblem of the "Magdalo" faction of the Katipunan.[1] The troops then, through broadcast media, announced their grievances against the administration of President Gloria Macapagal Arroyo, such as the graft and corruption in the military, the illegal sale of arms and ammunition to the "enemies" of the State, and the bombings in Davao City intended to acquire more military assistance from the US government. They declared their withdrawal of support from their Commander-in-Chief and demanded that she resign as President of the Republic. They also called for the resignation of her cabinet members and the top brass of the AFP and PNP.

About noontime of the same day, President Arroyo issued Proclamation No. 427 declaring a state of rebellion, followed by General Order No. 4 directing the AFP and PNP to take all necessary measures to suppress the rebellion then taking place in Makati City. She then called the soldiers to surrender their weapons at five o'clock in the afternoon of that same day.

In order to avoid a bloody confrontation, the government sent negotiators to dialogue with the soldiers. The aim was to persuade them to peacefully return to the fold of the law. After several hours of negotiation, the government panel succeeded in convincing them to lay down their arms and defuse the explosives placed around the premises of the Oakwood Apartments. Eventually, they returned to their barracks.

A total of 321 soldiers, including petitioners herein, surrendered to the authorities.

The National Bureau of Investigation (NBI) investigated the incident and recommended that the military personnel involved be charged with coup d'etat defined and penalized under Article 134-A of the Revised Penal Code, as amended. On July 31, 2003, the Chief State Prosecutor of the Department of Justice (DOJ) recommended the filing of the corresponding Information against them.

Meanwhile, on August 2, 2003, pursuant to Article 70 of the Articles of War, respondent General Narciso Abaya, then AFP Chief of Staff, ordered the arrest and detention of the soldiers involved in the Oakwood incident and directed the AFP to conduct its own separate investigation.

On August 5, 2003, the DOJ filed with the Regional Trial Court (RTC), Makati City an Information for coup d'etat[2] against those soldiers, docketed as Criminal Case No. 03-2784 and eventually raffled off to Branch 61, presided by Judge Romeo F. Barza.[3] Subsequently, this case was consolidated with Criminal Case No. 03-2678, involving the other accused, pending before Branch 148 of the RTC, Makati City, presided by Judge Oscar B. Pimentel.

On August 13, 2003, the RTC directed the DOJ to conduct a reinvestigation of Criminal Case No. 03-2784.

On the same date, respondent Chief of Staff issued Letter Order No. 625 creating a Pre-Trial Investigation Panel tasked to determine the propriety of filing with the military tribunal charges for violations of the Articles of War under Commonwealth Act No. 408,[4] as amended, against the same military personnel. Specifically, the charges are: (a) violation of Article 63 for disrespect toward the President, the Secretary of National Defense, etc., (b) violation of Article 64 for disrespect toward a superior officer, (c) violation of Article 67 for mutiny or sedition, (d) violation of Article 96 for conduct unbecoming an officer and a gentleman, and (e) violation of Article 97 for conduct prejudicial to good order and military discipline.

Of the original 321 accused in Criminal Case No. 03-2784, only 243 (including petitioners herein) filed with the RTC, Branch 148 an Omnibus Motion praying that the said trial court assume jurisdiction over all the charges filed with the military tribunal. They invoked Republic Act (R.A.) No. 7055.[5]

On September 15, 2003, petitioners filed with the Judge Advocate General's Office (JAGO) a motion praying for the suspension of its proceedings until after the RTC shall have resolved their motion to assume jurisdiction.

On October 29, 2003, the Pre-Trial Investigation Panel submitted its Initial Report to the AFP Chief of Staff recommending that the military personnel involved in the Oakwood incident be charged before a general court martial with violations of Articles 63, 64, 67, 96, and 97 of the Articles of War.

Meanwhile, on November 11, 2003, the DOJ, after conducting a reinvestigation, found probable cause against only 31 (petitioners included) of the 321 accused in Criminal Case No. 03-2784. Accordingly, the prosecution filed with the RTC an Amended Information.[6]

In an Order dated November 14, 2003, the RTC admitted the Amended Information and dropped the charge of coup d'etat against the 290 accused.

Subsequently, or on December 12, 2003, the Pre-Trial Investigation Panel submitted its Final Pre-Trial Investigation Report[7] to the JAGO, recommending that, following the "doctrine of absorption," those charged with coup d'etat before the RTC should not be charged before the military tribunal for violation of the Articles of War.

For its part, the RTC, on February 11, 2004, issued an Order[8] stating that "all charges before the court martial against the accused" are hereby declared not service-connected, but rather absorbed and in furtherance of the

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alleged crime of coup d'etat." The trial court then proceeded to hear petitioners' applications for bail.

In the meantime, Colonel Julius A. Magno, in his capacity as officer-in-charge of the JAGO, reviewed the findings of the Pre-Trial Investigation Panel. He recommended that 29 of the officers involved in the Oakwood incident, including petitioners, be prosecuted before a general court martial for violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War.

On June 17, 2004, Colonel Magno's recommendation was approved by the AFP top brass. The AFP Judge Advocate General then directed petitioners to submit their answer to the charge. Instead of complying, they filed with this Court the instant Petition for Prohibition praying that respondents be ordered to desist from charging them with violation of Article 96 of the Articles of War in relation to the Oakwood incident.[9]

Petitioners maintain that since the RTC has made a determination in its Order of February 11, 2004 that the offense for violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War is not service-connected, but is absorbed in the crime of coup d'etat, the military tribunal cannot compel them to submit to its jurisdiction.

The Solicitor General, representing the respondents, counters that R.A. No. 7055 specifies which offenses covered by the Articles of War are service-connected. These are violations of Articles 54 to 70, 72 to 92, and 95 to 97. The law provides that violations of these Articles are properly cognizable by the court martial. As the charge against petitioners is violation of Article 96 which, under R.A. No. 7055 is a service-connected offense, then it falls under the jurisdiction of the court martial.

Subsequently, petitioners filed with this Court a Supplemental Petition raising the additional issue that the offense charged before the General Court Martial has prescribed. Petitioners alleged therein that during the pendency of their original petition, respondents proceeded with the Pre-Trial Investigation for purposes of charging them with violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War; that the Pre-Trial Investigation Panel then referred the case to the General Court Martial; that "almost two years since the Oakwood incident on July 27, 2003, only petitioner Lt. (SG) Antonio Trillanes was arraigned, and this was done under questionable circumstances;"[10] that in the hearing of July 26, 2005, herein petitioners moved for the dismissal of the case on the ground that they were not arraigned within the prescribed period of two (2) years from the date of the commission of the alleged offense, in violation of Article 38 of the Articles of War;[11] that "the offense charged prescribed on July 25, 2005;"[12] that the General Court Martial ruled, however, that "the prescriptive period shall end only at 12:00 midnight of July 26, 2005;"[13] that "(a)s midnight of July 26, 2005 was approaching and it was becoming apparent that the accused could not be arraigned, the prosecution suddenly changed its position and asserted that 23 of the accused have already been arraigned;"[14] and that petitioners moved for a reconsideration but it was denied by the general court martial in its Order dated September 14, 2005.[15]

In his Comment, the Solicitor General prays that the Supplemental Petition be denied for lack of merit. He alleges that "contrary to petitioners' pretensions, all the accused were duly arraigned on July 13 and 18, 2005."[16] The "(r)ecords show that in the hearing on July 13, 2005, all the 29 accused were present" and, "(o)n that day, Military Prosecutor Captain Karen Ong Jags read the Charges and Specifications from the Charge Sheet in open court (pp. 64, TSN, July 13, 2005)."[17]

The sole question for our resolution is whether the petitioners are entitled to the writ of prohibition.

There is no dispute that petitioners, being officers of the AFP, are subject to military law. Pursuant to Article 1 (a) of Commonwealth Act No. 408, as amended, otherwise known as the Articles of War, the term "officer" is

"construed to refer to a commissioned officer." Article 2 provides:

> Art. 2. Persons Subject to Military Law. – The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" or "persons subject to military law," whenever used in these articles:
>
> (a) All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary, all members of the reserve force, from the dates of their call to active duty and while on such active duty; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in the said service, from the dates they are required by the terms of the call, draft, or order to obey the same.

Upon the other hand, Section 1 of R.A. No. 7055 reads:

> SEC. 1. Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties, which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case, the offense shall be tried by court-martial, Provided, That the President of the Philippines may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.
>
> As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.
>
> In imposing the penalty for such crimes or offenses, the court-martial may take into consideration the penalty prescribed therefor in the Revised Penal Code, other special laws, or local government ordinances.

Section 1 of R.A. No. 7055, quoted above, is clear and unambiguous. First, it lays down the general rule that members of the AFP and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code (like coup d'etat), other special penal laws, or local ordinances shall be tried by the proper civil court. Next, it provides the exception to the general rule, i.e., where the civil court, before arraignment, has determined the offense to be service-connected, then the offending soldier shall be tried by a court martial. Lastly, the law states an exception to the exception, i.e., where the President of the Philippines, in the interest of justice, directs before arraignment that any such crimes or offenses be tried by the proper civil court.

The second paragraph of the same provision further identifies the "service-connected crimes or offenses" as "limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97" of the Articles of War. Violations of these specified Articles are triable by court martial. This delineates the jurisdiction between the civil courts and the court martial over crimes or offenses committed by military personnel.

Such delineation of jurisdiction by R.A. No. 7055 is necessary to preserve the peculiar nature of military justice system over military personnel charged with service-connected offenses. The military justice system is disciplinary in nature, aimed at achieving the highest form of discipline in order to ensure the highest degree of military efficiency.[18] Military law is established not merely to enforce discipline in times of war, but also to preserve the tranquility and security of the State in time of peace; for there is nothing more dangerous to the public peace and safety than a licentious and undisciplined military body.[19] The administration of military justice has been universally practiced. Since time immemorial, all the armies in almost all countries of the world look upon the power of military law and its administration as the most effective means of enforcing discipline.

For this reason, the court martial has become invariably an indispensable part of any organized armed forces, it being the most potent agency in enforcing discipline both in peace and in war.[20]

Here, petitioners are charged for violation of Article 96 (conduct unbecoming an officer and a gentleman) of the Articles of War before the court martial, thus:

> All persons subject to military law, did on or about 27 July 2003 at Oakwood Hotel, Makati City, Metro Manila, willfully, unlawfully and feloniously violate their solemn oath as officers to defend the Constitution, the law and the duly-constituted authorities and abused their constitutional duty to protect the people and the State by, among others, attempting to oust the incumbent duly-elected and legitimate President by force and violence, seriously disturbing the peace and tranquility of the people and the nation they are sworn to protect, thereby causing dishonor and disrespect to the military profession, conduct unbecoming an officer and a gentleman, in violation of AW 96 of the Articles of War.
>
> CONTRARY TO LAW. (Underscoring ours)

Article 96 of the Articles of War[21] provides:

> ART. 96. Conduct Unbecoming an Officer and Gentleman. – Any officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. (Underscoring ours)

We hold that the offense for violation of Article 96 of the Articles of War is service-connected. This is expressly provided in Section 1 (second paragraph) of R.A. No. 7055. It bears stressing that the charge against the petitioners concerns the alleged violation of their solemn oath as officers to defend the Constitution and the duly-constituted authorities. Such violation allegedly caused dishonor and disrespect to the military profession. In short, the charge has a bearing on their professional conduct or behavior as military officers. Equally indicative of the "service-connected" nature of the offense is the penalty prescribed for the same " dismissal from the service " imposable only by the military court. Such penalty is purely disciplinary in character, evidently intended to cleanse the military profession of misfits and to preserve the stringent standard of military discipline.

Obviously, there is no merit in petitioners' argument that they can no longer be charged before the court martial for violation of Article 96 of the Articles of War because the same has been declared by the RTC in its Order of February 11, 2004 as "not service-connected, but rather absorbed and in furtherance of the alleged crime of coup d'etat," hence, triable by said court (RTC). The RTC, in making such declaration, practically amended the law which expressly vests in the court martial the jurisdiction over "service-connected crimes or offenses." What the law has conferred the court should not take away. It is only the Constitution or the law that bestows jurisdiction on the court, tribunal, body or officer over the subject matter or nature of an action which can do so.[22] And it is only through a constitutional amendment or legislative enactment that such act can be done. The first and fundamental duty of the courts is merely to apply the law "as they find it, not as they like it to be."[23] Evidently, such declaration by the RTC constitutes grave abuse of discretion tantamount to lack or excess of jurisdiction and is, therefore, void.

In Navales v. Abaya.,[24] this Court, through Mr. Justice Romeo J. Callejo, Sr., held:

> We agree with the respondents that the sweeping declaration made by the RTC (Branch 148) in the dispositive portion of its Order dated February 11, 2004 that all charges before the court-martial against the accused were not service-connected, but absorbed and in furtherance of the crime of coup d'etat, cannot be given effect. x x x, such declaration was made without or in excess of jurisdiction; hence, a nullity.
>
> The second paragraph of the above provision (referring to Section 1 of R.A. No. 7055) explicitly specifies what are considered "service-connected crimes or offenses" under Commonwealth Act No. 408, as amended,

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also known as the Articles of War, to wit:

Articles 54 to 70:

Art. 54. Fraudulent Enlistment.
Art. 55.Officer Making Unlawful Enlistment.
Art. 56. False Muster.
Art. 57. False Returns.
Art. 58. Certain Acts to Constitute Desertion.
Art. 59. Desertion.
Art. 60. Advising or Aiding Another to Desert.
Art. 61. Entertaining a Deserter.
Art. 62. Absence Without Leave.
Art. 63. Disrespect Toward the President, Vice-President, Congress of the Philippines, or Secretary of National Defense.
Art. 64. Disrespect Toward Superior Officer.
Art. 65. Assaulting or Willfully Disobeying Superior Officer.
Art. 66. Insubordinate Conduct Toward Non-Commissioned Officer.
Art. 67. Mutiny or Sedition.
Art. 68. Failure to Suppress Mutiny or Sedition.
Art. 69. Quarrels; Frays; Disorders.
Art. 70. Arrest or Confinement.

Articles 72 to 92:

Art. 72. Refusal to Receive and Keep Prisoners.
Art. 73. Report of Prisoners Received.
Art. 74. Releasing Prisoner Without Authority.
Art. 75. Delivery of Offenders to Civil Authorities.
Art. 76. Misbehavior Before the Enemy.
Art. 77. Subordinates Compelling Commander to Surrender.
Art. 78. Improper Use of Countersign.
Art. 79. Forcing a Safeguard.
Art. 80. Captured Property to be Secured for Public Service.
Art. 81. Dealing in Captured or Abandoned Property.
Art. 82. Relieving, Corresponding With, or Aiding the Enemy.
Art. 83. Spies.
Art. 84. Military Property.–Willful or Negligent Loss, Damage or wrongful Disposition.
Art. 85. Waste or Unlawful Disposition of Military Property Issued to Soldiers.
Art. 86. Drunk on Duty.
Art. 87. Misbehavior of Sentinel.
Art. 88. Personal Interest in Sale of Provisions.
Art. 88-A. Unlawful Influencing Action of Court.
Art. 89. Intimidation of Persons Bringing Provisions.
Art. 90. Good Order to be Maintained and Wrongs Redressed.
Art. 91. Provoking Speeches or Gestures.
Art. 92. Dueling.

Articles 95 to 97:

Art. 95. Frauds Against the Government.
Art. 96. Conduct Unbecoming an Officer and Gentleman.

> Art. 97. General Article.
>
> Further, Section 1 of Rep. Act No. 7055 vests on the military courts the jurisdiction over the foregoing offenses. x x x.
>
> It is clear from the foregoing that Rep. Act No. 7055 did not divest the military courts of jurisdiction to try cases involving violations of Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of the Articles of War as these are considered"service-connected crimes or offenses." In fact, it mandates that these shall be tried by the court-martial.

Moreover, the observation made by Mr. Justice Antonio T. Carpio during the deliberation of this case is worth quoting, thus:

> The trial court aggravated its error when it justified its ruling by holding that the charge of Conduct Unbecoming an Officer and a Gentleman is "absorbed and in furtherance to the alleged crime of coup d'etat." Firstly, the doctrine of "absorption of crimes" is peculiar to criminal law and generally applies to crimes punished by the same statute,[25] unlike here where different statutes are involved. Secondly, the doctrine applies only if the trial court has jurisdiction over both offenses. Here, Section 1 of R.A. 7055 deprives civil courts of jurisdiction over service-connected offenses, including Article 96 of the Articles of War. Thus, the doctrine of absorption of crimes is not applicable to this case.
>
> Military law is sui generis (Calley v. Callaway, 519 F.2d 184 [1975]), applicable only to military personnel because the military constitutes an armed organization requiring a system of discipline separate from that of civilians (see Orloff v. Willoughby, 345 U.S. 83 [1953]). Military personnel carry high-powered arms and other lethal weapons not allowed to civilians. History, experience, and the nature of a military organization dictate that military personnel must be subjected to a separate disciplinary system not applicable to unarmed civilians or unarmed government personnel.
>
> A civilian government employee reassigned to another place by his superior may question his reassignment by asking a temporary restraining order or injunction from a civil court. However, a soldier cannot go to a civil court and ask for a restraining or injunction if his military commander reassigns him to another area of military operations. If this is allowed, military discipline will collapse.
>
> x x x
>
> This Court has recognized that courts-martial are instrumentalities of the Executive to enable the President, as Commander-in-Chief, to effectively command, control, and discipline the armed forces (see Ruffy v. Chief of Staff, 75 Phil. 875 [1946], citing Winthrop's Military Law and Precedents, 2nd edition, p. 49). In short, courts-martial form part of the disciplinary system that ensures the President's control, and thus civilian supremacy, over the military. At the apex of this disciplinary system is the President who exercises review powers over decisions of courts-martial (citing Article 50 of the Articles of War; quoted provisions omitted).
>
> x x x
>
> While the Court had intervened before in courts-martial or similar proceedings, it did so sparingly and only to release a military personnel illegally detained (Ognir v. Director of Prisons, 80 Phil. 401 [1948] or to correct objectionable procedures (Yamashita v. Styer, 75 Phil. 563 [1945]). The Court has never suppressed court-martial proceedings on the ground that the offense charged "is absorbed and in furtherance of" another criminal charge pending with the civil courts. The Court may now do so only if the offense charged is not one of the service-connected offenses specified in Section 1 of RA 7055. Such is not the situation in the present case.

With respect to the issue of prescription raised by petitioners in their Supplemental Petition, suffice it to say that we cannot entertain the same. The contending parties are at loggerheads as to (a) who among the petitioners were

actually arraigned, and (b) the dates of their arraignment. These are matters involving questions of fact, not within our power of review, as we are not a trier of facts. In a petition for prohibition, such as the one at bar, only legal issues affecting the jurisdiction of the tribunal, board or officer involved may be resolved on the basis of the undisputed facts.[26]

Clearly, the instant petition for prohibition must fail. The office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[27] Stated differently, prohibition is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law.[28]

In fine, this Court holds that herein respondents have the authority in convening a court martial and in charging petitioners with violation of Article 96 of the Articles of War.

WHEREFORE, the instant petition for prohibition is DISMISSED.
SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Carpio, Austria-Martinez, Corona, Carpio-Morales, Garcia and Velasco, Jr., JJ., concur.
Ynares-Santiago, J., joins Separate (Concurring Dissenting) Opinion of J. Tinga.
Callejo, Sr., J, Please see Concurring Opinion.
Azcuna, J., concurs in the Separate Opinion of Justice Tinga.
Tinga, J., Pls. see Separate(concurring/dissenting) Opinion

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[1] A group which spearheaded the Revolution of 1896 against Spain.

[2] As defined and penalized under Article 134-A of the Revised Penal Code, as amended.

[3] Now Associate Justice of the Court of Appeals.

[4] Entitled "An Act for Making Further and More Effectual Provision for the National Defense by Establishing a System of Military Justice for Persons Subject to Military Law."

[5] Entitled "An Act Strengthening Civilian Supremacy Over The Military By Returning To The Civil Courts The Jurisdiction Over Certain Offenses Involving Members Of The Armed Forces Of The Philippines, Other Persons Subject To Military Law, And The Members Of The Philippine National Police, Repealing For The Purpose Certain Presidential Decrees."

[6] Rollo, pp. 176-179.

[7] Id., pp. 370-380.

[8] Id., pp. 207-209.

[9] Id., pp. 14-15.

[10] Par. 4, Supplemental Petition, p. 4.

[11] Article 38 of the Articles of War partly provides:

> "Article 38. As to Time. – Except for desertion or murder committed in time of war, or for mutiny, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense

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committed more than two years before the arraignment of such person: x x x."

[12] Pars. 8, 18, Supplemental Petition, pp. 5, 10.

[13] Par. 9, id.

[14] Par. 10, id. Petitioners stated, under this footnote, that the "(r)ulings before the General Court Martial were done orally; unavailability of the TSN for the July 26, 2005 hearing."

[15] Par. 14, id.

[16] Comment, p. 10.

[17] Id., p. 18.

[18] Gloria, PHILIPPINE MILITARY LAW Annotated, revised edition, p. 3.

[19] Id.

[20] Id., pp. 4-5.

[21] Commonwealth Act No. 408, as amended by Republic Act No. 242 (approved on June 12, 1948).

[22] Arnado v.Buban, A.M. No. MTJ-04-1543, May 31, 2004, 430 SCRA 382, 386; Republic v. Estipular, G.R. No. 136588, July 20, 2000, 336 SCRA 333, 340.

[23] Resins, Inc. v. Auditor General, G.R. No. 17888, October 29, 1968, 25 SCRA 754.

[24] G.R. Nos. 162318 and 162341, October 25, 2004, 441 SCRA 393, 409-421.

[25] E.g., Murder (Article 248) and Robbery (Articles 294-295) absorbed by Rebellion (Article 134) of the Revised Penal Code (People v. Hernandez, 99 Phil. 515 [1956]; Illegal Possession of Marijuana (Section 8, Republic Act No. 6425) absorbed by Illegal Sale of Marijuana (Section 4, Republic Act No. 6425) (People v. De Jesus, 229 Phil. 518 [1986]).

[26] Mafinco Trading Corp. v. Ople, No. L-37790, March 25, 1976, 70 SCRA 139, 160-161.

[27] Section 2, Rule 65 of the 1997 Rules of Civil Procedure, as amended; Vergara v. Rugue, No. L-32984, August 26, 1977, 78 SCRA 312.

[28] Matuguina Integrated Wood Products, Inc. v. Court of Appeals, G.R. No. 98310, October 24, 1996, 263 SCRA 490.

CONCURRING OPINION

CALLEJO, SR., J.:

I concur with the encompassing ponencia of Madame Justice Angelina Sandoval-Gutierrez ordering the dismissal of the petition. However, I find it necessary to elucidate on my opinion relative to the submission of petitioners that the punitive act for conduct unbecoming an officer and a gentleman defined in Article 96 of the Articles of War is absorbed by coup d'etat, a political felony, especially in light of the opinion of the Pre-Trial Investigation Panel that the punitive act as well as these service-connected punitive acts defined in Articles 63, 64, 96 and 97 of the Articles of War, are indeed absorbed by coup d'etat.

The charge against petitioners reads:

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> Violation of Article 96
>
> All persons subject to military law, did on or about 27 July 2003 at Oakwood Hotel, Makati City, Makati, Metro Manila, willfully, unlawfully and feloniously violate their solemn oath as officers to defend the Constitution, the law and the duly-constituted authorities and abuse their constitutional duty to protect the people and the State by, among others, attempting to oust the incumbent duly-elected and legitimate president by force and violence, seriously disturbing the peace and tranquility of the people and the nation they are sworn to protect, thereby causing dishonor and disrespect to the military profession, conduct unbecoming an officer and a gentleman, in violation of AW 96 of the Articles of War.
>
> CONTRARY TO LAW.

Article 96 of the Articles of War defines the punitive act of conduct unbecoming an officer and a gentleman as follows:

> Art. 96. Conduct Unbecoming an Officer and Gentleman. – Any officer, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

Case law has it that common crimes committed in furtherance of a political crime, such as rebellion, are therein absorbed. A political crime is one directly aimed against the political order as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. Coup d'etat is a political crime because the purpose of the plotters is to seize or diminish State power. If a crime usually regarded as common, like murder, is perpetrated to achieve a political purpose, then said common crime is stripped of its common complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.[1] Such common offenses assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same to justify the imposition of the graver penalty.[2]

In Ponce Enrile v. Amin,[3] the court ruled that the principle of absorption of common crimes by the political crime applies to crimes defined and penalized by special laws, such as Presidential Decree No. 1829, otherwise known as Obstruction of Justice. However, in Baylosis v. Chavez, Jr.,[4] the Court ruled that the rulings of this Court in People v. Hernandez,[5] Ponce Enrile v. Amin[6] and Enrile v. Salazar,[7] do not apply to crimes which, by statutory fiat, are sui generis.

Indeed, the service-connected punitive acts defined and penalized under the Articles of War are sui generis offenses not absorbed by rebellion perpetrated, inter alia, by the officers and enlisted personnel of the Armed Forces of the Philippines (AFP) or coup d'etat. This is so because such acts or omissions are merely violations of military discipline, designed to secure a higher efficiency in the military service; in other words, they are purely disciplinary in their nature, and have exclusive regard to the special character and relation of the AFP officers and enlisted personnel. Laws providing for the discipline as well as the organization of the AFP are essential to the efficiency for the military service in case their services should ever be required. "Deprive the executive branch of the government of the power to enforce proper military regulations by fine and imprisonment, and that, too, by its own courts-martial, which from time immemorial have exercised this right, and we at once paralyze all efforts to secure proper discipline in the military service, and have little left but a voluntary organization, without cohesive force."[8]

It bears stressing that for determining how best the AFP shall attend to the business of fighting or preparing to fight rests with Congress and with the President. Both Congress and this Court have found that the special character of the military requires civilian authorities to accord military commanders some flexibility in dealing

with matters that affect internal discipline and morale. In construing a statute that touches on such matters, therefore, courts must be careful not to circumscribe the authority of military commanders to an extent never intended by Congress. Under these and many similar cases reviewing legislative and executive control of the military, the sentencing scheme at issue in this case, and the manner in which it was created, are constitutionally unassailable.[9]

Officers and enlisted personnel committing punitive acts under the Articles of War may be prosecuted and convicted if found guilty of such acts independently of, and separately from, any charges filed in the civilian courts for the same or similar acts which are penalized under the Revised Penal Code, under special penal laws or ordinances; and prescinding from the outcome thereof.

At this point, it is well to have a basic understanding of the Articles of War under Commonwealth Act No. 408, which was essentially copied from that of the United States, which, in turn, had been superseded by the Uniform Code of Military Justice. Our Articles of War has since been amended by Republic Act Nos. 242 and 516.

The Articles of War is the organic law of the AFP and, in keeping with the history of military law, its primary function is to enforce "the highest form of discipline in order to ensure the highest degree of military efficiency." The following commentary is enlightening:

> History points out the fact that nations have always engaged in wars. For that purpose, bodies of men have been organized into armed forces under a commander-in-chief who, through his subordinate commanders, enforces the highest form of discipline in order to ensure the highest degree of military efficiency.
>
> Victory in battle is the ultimate aim of every military commander, and he knows that victory cannot be attained, no matter how superior his forces may be, in men and materials, if discipline among the rank-and-file is found wanting. For, "if an Army is to be anything but an uncontrolled mob, discipline is required and must be enforced." For this reason, in order to set an effective means of enforcing discipline, all organized armies of the world have promulgated sets of rules and regulations and later, laws as embodied in the articles of war, which define the duties of military personnel and distinguish infractions of military law and impose appropriate punishment for violation thereof.[10]

Every officer, before he enters in the duties of his office, subscribes to these articles and places himself within the powers of courts-martial to pass on any offense which he may have committed in contravention thereof.[11]

It is said that conduct unbecoming an officer and a gentleman is a uniquely military offense.[12] In order to constitute the said offense, the misconduct must offend so seriously against the law, justice, morality or decorum as to expose to disgrace, socially or as a man, the offender, and at the same time must be of such a nature or committed under such circumstances as to bring dishonor or disrepute upon the military profession which he represents.[13] The article proscribing conduct unbecoming an officer and a gentleman has been held to be wholly independent of other definitions of offenses, and the same course of conduct may constitute an offense elsewhere provided for and may also warrant a conviction under this provision; it is not subject to preemption by other punitive articles.[14]

The administration of military justice under the Articles of War has been exclusively vested in courts-martial whether as General Courts-Martial, Special Courts-Martial or Summary Courts-Martial.[15] Courts-martial pertain to the executive department and are, in fact, simply instrumentalities of the executive power, provided by Congress for the President as Commander-in-Chief to aid him in properly commanding the army and navy, and enforcing discipline therein.[16]

As enunciated by the United States Supreme Court, "the military is, by necessity, a specialized society separate from civilian society. It has, again by necessity, developed laws and traditions of its own during its long history.

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The differences between the military and civilian communities result from the fact that it is the primary business of armies and navies to fight or ready to fight wars should the occasion arise."[17] Further, the US Supreme Court quite succinctly stated that "the military constitutes a specialized community governed by a separate discipline from that of the civilian."[18]

I wish to emphasize, however, a caveat: not all service-connected punitive acts under the Articles of War may be prosecuted before the courts-martial independently of a crime defined and penalized under the Revised Penal Code against the same accused based on the same set of delictual acts. Congress may criminalize a service-connected punitive offense under the Articles of War.

A review of the deliberations in the Senate or the Report of the Conference Committee of Senate Bill 1500 will readily show that coup d'etat was incorporated in the Revised Penal Code in Article 134-A precisely to criminalize "mutiny" under Article 67 of the Articles of War and to penalize the punitive act of mutiny, under the Articles of War as coup d'etat. Article 67 of the Articles of War reads:

> Art. 67. Mutiny or Sedition. – Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

Without Article 134-A in the Revised Penal Code, the mutineers would be charged for mutiny under Article 67 of the Articles of War:

> Senator Lina. Yes, Mr. President.
>
> Senator Enrile. Then we added Article 134-A which deals with the new crime of coup d'etat.
>
> Senator Enrile. – and we defined how this newly characterized and defined crime would be committed in Article 134-A?
>
> Senator Lina. Yes, Mr. President.
>
> Senator Enrile. And, in fact, we made a distinction between the penalty of the crimes defined under Article 134 of the Revised Penal Code and the crime defined under Article 134-A, is this correct, Mr. President?
>
> Senator Lina. Yes, Mr. President.
>
> Senator Enrile. In fact, we distinguished between the conspiracy and proposal to commit the crime of rebellion from the conspiracy and proposal to commit coup d'etat?
>
> Senator Lina. Yes, Mr. President.
>
> Senator Enrile. So that, for all intents and purposes, therefore, we are defining a new crime under this proposed measure—
>
> Senator Lina. Yes, Mr. President.
> Senator Enrile.—which is coup d'etat. We are, in effect, bringing into the Revised Penal Code, a crime that was penalized under the Articles of War as far as military participants are concerned and call it with its name "coup d'etat"?
>
> Senator Lina. Yes, Mr. President. That is the . . .
>
> Senator Enrile. Because without this criminalization of coup d'etat under the Revised Penal Code, people in the active service would be charged with mutiny?
>
> Senator Lina. Yes, Mr. President. Especially when they are inside the camp, when the rank-and-file go up to

> arms or insubordination or against the orders of their superiors, they would be charged under the Articles of War.
>
> Senator Enrile. In fact, one of the distinguishing features of a coup d'etat as defined here is, apart from the overt acts of taking a swift attack with violence, intimidation, threat, strategy, or stealth against the duly-constituted authorities or an installation, et cetera, the primary ingredient of this would be the seizure or diminution of state power.
>
> Senator Lina. Yes, that is the objective, Mr. President.
>
> Senator Enrile. On the other hand, in the case of rebellion as defined under Article 134, it does not necessarily mean a seizure of State power or diminution of State power, but all that is needed would be to deprive the Chief Executive or the legislature of any of its powers.
>
> Senator Lina. That is correct, Mr. President.
>
> Senator Enrile. So that, there is a basis to consider a clear and definable distinction between the crime of coup d'etat and the crime of rebellion as defined under Article 135?
>
> Senator Lina. Yes, Mr. President.
>
> Senator Enrile. I just want to put that into the Record.

Thus, officers and enlisted personnel of the AFP charged of coup d'etat can no longer be charged with mutiny under Article 67 of the Articles of War before courts-martial for the same delictual or punitive act.

I vote to DISMISS the petition.

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[1] People v. Hernandez, 99 Phil. 515, 536 (1956).
[2] Id. at 541.

[3] G.R. No. 93335, September 13, 1990, 189 SCRA 573, 580-581.

[4] G.R. No. 95136, October 3, 1991, 202 SCRA 405, 416.

[5] Supra note 1.

[6] Supra note 3.

[7] G.R. No. 92163, June 5, 1990, 186 SCRA 217.

[8] Michigan v. Wagner, 77 N.W. 422.

[9] Loving v. U.S., 517 U.S. 748, 778, 116 S.Ct. 1737 (1966).

[10] Gloria, Philippine Military Law Annotated, p. 3.

[11] Carter v. Roberto, 177 U.S. 497 (1900).

[12] U.S. v. Weldon, 7 M.J. 938 (1979).

[13] Parker v. Levy, 417 U.S. 733 (1974).

[14] U.S. v. Taylor, 23 M.J. 341 (1987).

[15] Article 3, Articles of War.

[16] Supra note 14, p.17, citing Winthrop, Military Law and Precedents (2nd ed.), 49.

[17] U.S. ex rel. Toth v. Quarles, 350 U.S. 11 (1955).

[18] Orloff v. Willoughby, 345 U.S. 83 (1953)

SEPARATE OPINION

(Concurring and Dissenting)

TINGA, J.:

My concurrence to the dismissal of the petition is limited to a much narrower ground than that offered by the majority opinion, which, with due respect, I am unable to fully join and thus impelled to mostly dissent from. The broad propositions adopted by the majority render inutile Republic Act No. 7055, (RA 7055) that generally restored civil jurisdiction over offenses involving members of the Armed Forces of the Philippines (AFP). This law stands as a key implement in the restoration of civilian supremacy over the military, a precept that was reinvigorated with the restoration of civil democracy in 1986. The rationale that sustains the majority position stands athwart to that important constitutional principle as effectuated through RA 7055.

Instead, my position hinges on the peculiar nature of Article 96 of the Articles of War, the violation of which petitioners stand accused of before the court-martial. Not only does Article 96 embody a rule uniquely military in nature, it also prescribes a penalty wholly administrative in character which the civilian courts are incapable of rendering. For that reason alone, I agree that petitioners may stand civilian trial for coup d'etat and court-martial for violation of Article 96.

Still, I acknowledge that I would have voted to grant the petition had petitioners faced other charges, instead of the sole Article 96 charge, before the court-martial in connection with the Oakwood mutiny. I submit that RA 7055 precisely authorizes the civil court to independently determine whether the offense subject of the information before it is actually service-connected. If the trial court does determine, before arraignment, that the offense is service-connected, it follows that, as a rule, the military court will not have jurisdiction over the acts constituting the offense.

Restatement of Relevant Facts

The following facts I consider relevant.

On 5 August 2003, just a little over a week after the so-called Oakwood mutiny, the Department of Justice filed an Information with the Regional Trial Court (RTC) of Makati against 321 military personnel, including petitioners, for violation of Article 134-A of the Revised Penal Code which is the crime of coup d'etat. After the case was docketed as Criminal Case No. 03-2784, the RTC directed the DOJ to conduct a reinvestigation of the said case. On the same day that the order for re-investigation was issued, the AFP Chief of Staff created a Pre-Trial Investigation Panel against the same persons to determine the propriety of filing charges with a military tribunal against petitioners, along with 300 or so other soldiers, for violation of the Articles of War, again in connection with the Oakwood mutiny. Thus, 243 of the accused before the RTC, including petitioners, filed a motion with the trial court praying that the court assume jurisdiction over all the charges filed with the military tribunal, following RA 7055.[1]

After re-investigation, the DOJ found probable cause for the crime of coup d'etat against only 31 of the original

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321 accused. The DOJ then filed a motion for dismissal of the charge of coup d'etat against the 290 others, which motion was granted by the RTC in an Order dated 14 November 2003. Petitioners were among the 31 who still faced the charge of coup d'etat before the RTC.

Notwithstanding the dismissal of the charge of coup d'etat against the 290 soldiers, they were still charged before the General Court Martial for violation of Articles 63, 64, 67, 96 and 97 of the Articles of War.[2] Among the charges faced by these soldiers was for "mutiny," punishable under Article 63. Only those soldiers the charge of coup d'etat against whom was dismissed were subjected to the charge of Articles of War violations before the court-martial. Some of these 290 soldiers challenged the jurisdiction of the court-martial in a petition for prohibition before this Court, which was denied in Navales v. Abaya[3] in 2004.

On the other hand, on 9 December 2003, the Pre-Trial Investigation Panel recommended that the 31 officers facing the charge of coup d'etat before the trial court be excluded from the court-martial proceedings. The rationale that the Panel offered was the assumption of civilian jurisdiction by the RTC based on RA 7055 and its belief that the charges against the 31 it was investigating were absorbed by the crime of coup d'etat, which was already within the jurisdiction of the RTC to try and decide.

It was on 11 February 2004 that the RTC issued an Order (RTC Order) stating that "all charges before the court-martial against the accused.. are hereby declared not service-connected, but rather absorbed and in furtherance of the alleged crime of coup d'etat." Note that as of then, only 31 officers remained within the jurisdiction of the RTC. If there are any relevant subjects of the RTC Order, it is these 31, including petitioners, and not the 290 others the case for coup d'etat against whom had already been dismissed.

Thus, as things stood as of 11 February 2004, only 31 officers, including petitioners, were still within the jurisdiction of the RTC, as they remained charged with coup d'etat. None of the 31 were facing any charge before the court-martial, the investigation against them by the AFP Pre-Trial Investigation Panel had already been concluded by then. On the other hand, the 290 other soldiers, including the Navales petitioners, were no longer facing any criminal cases before the RTC, but were instead facing court-martial charges. This symmetry is deliberate, cognizant as the DOJ and the AFP were of the general principle, embodied in RA 7055, that jurisdiction over acts by soldiers which constitute both a crime under the penal laws and a triable offense under the Articles of War is exercised exclusively by either the civilian court or the court-martial, depending on the circumstances as dictated under Section 1 of RA 7055.

It was in June of 2004 that this symmetry was shattered. It appears that at that point, the AFP reconsidered its earlier decision not to try the 31 officers before the court-martial. There appears per record, a letter dated 17 June 2004, captioned "Disposition Form," signed by a certain De Los Reyes, and recommending that the 31 be charged as well before the court-martial for violation of Article 96 of the Articles of War and that pre-trial investigation be reconducted for that purpose.[4] This recommendation was approved by then AFP Chief of Staff Narciso Abaya. It was this decision to reinitiate court-martial proceedings against the 31 that impelled the present petition for prohibition.

As stated earlier, I believe that ultimately, petitioners may still be charged with violation of Article 96 of the Articles of War, notwithstanding the pending case for coup d'etat before the RTC against them. My reason for such view lies in the wholly administrative nature of Article 96 and the sole penalty prescribed therein, dismissal from service, which is beyond the jurisdiction of civilian courts to impose. Yet I arrive at such view without any denigration of the RTC Order, which proceeds from fundamentally correct premises and which, to my mind, bears the effect of precluding any further charges before the court-martial against petitioners in relation to the Oakwood mutiny. Unfortunately, the majority gives undue short shrift to the RTC Order and the predicament confronting

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the present petitioners, who are now facing not only trial before the civilian court for the crime of coup d'etat, but also court-martial proceedings for acts which if not identical to those charged in the criminal case are at least integrally related. I respectfully submit that RA 7055 was precisely designed to generally prevent such anomaly, but that the majority fails to give fruition to such legislative intent.

Instead, the majority has laid down a general rule that if members of the military are charged before military tribunals with violation of Articles of War 54 to 70, 72 to 92, and 95 to 97, then the court-martial proceedings would progress unhampered even if the acts which constitute the violation of the Articles of War also constitute offenses under the Revised Penal Code. The court-martial proceedings would also ensue even if the said personnel are also charged for the same acts with a criminal case before the civilian court, and even if the civilian court determines that the acts are not service-connected. Most critically, this view would allow the defendant to be tried and convicted by both the military and civilian courts for the same acts, despite the consistent jurisprudential rule that double jeopardy applies even as between court-martial and criminal trials. I cannot agree to these general propositions, excepting when the defendants happen to be charged before the court-martial for violation of Article 96 of the Articles of War.

There are three fundamental questions that are consequently raised. First, can Congress by law limit the jurisdiction of military tribunals and court-martials? Second, does RA 7055 effectively deprive military courts jurisdiction over violations of Articles of War 54 to 70, 72 to 92, and 95 to 97 if the civilian court determines that the offenses charged do not constitute service-connected offenses? And third, does it constitute double jeopardy if the same military actor is tried and convicted before both civilian and military courts for the same acts? I respectfully submit that all these questions should generally be answered in the affirmative.

Jurisdictions of Courts-Martial Inthe Philippines Fundamentally Statutory

I begin with the constitutional and statutory parameters of courts-martial in the Philippines.

It is settled, in cases such as Ruffy v. Chief of Staff,[5] that court-martial proceedings are executive in character, deriving as they do from the authority of the President as the Commander-in-Chief of the armed forces.[6] Indeed, the authority of the President to discipline members of the armed forces stands as one of the hallmarks of the commander-in-chief powers. Obedience to the President and the chain-of-command are integral to a professional and effective military, and the proper juridical philosophy is to accede as much deference as possible to this prerogative of the President.

However, in Marcos v. Chief of Staff,[7] decided five (5) years after Ruffy, the Court ruled that the word "court" as used in the Constitution included the General Court-Martial, citing Winthrop's Military Law and Precedents, which noted that "courts-martial are [in] the strictest sense courts of justice".[8] Indeed, it would be foolhardy to ignore, with semantics as expedient, the adjudicative characteristics of courts-martial and their ability to inflict punishment constituting deprivation of liberty, or even life. A court-martial is still a court of law and justice,[9] although it is not a part of the judicial system and judicial processes, but remains to be a specialized part of the over-all mechanism by which military discipline is preserved.[10]

Regardless of the accurate legal character of courts-martial, it should go without saying that the authority of the President to discipline military personnel through that process is still subject to a level of circumscription. Without such concession, the President could very well impose such draconian measures of military punishment, such as death by firing squad for overweight soldiers. The Court has indeed, on occasion, recognized limitations and regulations over courts-martial. In Olaguer v. Military Commission,[11] the Court reasserted that military tribunals cannot try and exercise jurisdiction over civilians for as long as the civil courts are open and functioning.[12] The authority of the Supreme Court to review decisions of the court-martial was affirmed in

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Ognir v. Director of Prisons,[13] and should be recognized in light of the judicial power of the Supreme Court under the 1987 Constitution, which extends to determining grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. And finally, there are the series of rulings on the subject of double jeopardy, which I shall soon discuss further.

Most strikingly, the "Articles of War" presently in use emanates not from executive fiat, but from a law passed by the National Assembly known as Commonwealth Act No. 408. As such, the determination of what acts or offenses are punishable by court-martial was in actuality made not by the President, but by the legislature. As such, the Articles of War are utterly susceptible to legislative amendment, augmentation, or even revocation.

I do not doubt that without an enabling law, the President would have the power to impose court-martial proceedings under the aegis of the Commander-in-Chief clause. Yet if there is an enabling law passed, such as Commonwealth Act No. 408, then the President is bound to exercise the power to prescribe court-martial proceedings only within the limits imposed by the law. These precepts should not preclude the President from mandating other forms of military discipline, but if the choice is to subject the soldier concerned to court-martial, then such proceedings should ensue within the boundaries determined by the legislature under Commonwealth Act No. 408.

American jurisprudence is actually quite emphatic that the jurisdiction of a court-martial is established by statute, and a court-martial has no jurisdiction beyond what is given by statute. "[A] court-martial [is] a special statutory tribunal, with limited powers."[14] To quote from Corpus Juris Secundum:

> The jurisdiction of a court-martial is premised on an authorized convening authority, court membership in accordance with the law, and power derived from congressional act to try the person and the offense charged.[15] Thus, in order for a court-martial to have jurisdiction, it must be convened and constituted in accordance with law[16]; and a court-martial has no jurisdiction beyond what is given it by statute.[17] General court-martial jurisdiction is not restricted territorially to the limits of a particular state or district.
>
> The long continued practice of military authorities in exercising court-martial jurisdiction may aid in the interpretation of statutes conferring such jurisdiction; but the authority of a Secretary of an armed forces department to issue regulations does not permit extension of the jurisdictions of courts-martial of the armed force controlled by that department beyond the limits fixed by Congress[18], and regulations issued or approved by the President even though not objected to by Congress may not extend the jurisdiction of courts-martial beyond that conferred by statute.[19]
>
> The language of statutes granting jurisdiction to courts-martial to try persons for offenses must be construed to conform as near as may be to the constitutional guarantees that protect the rights of citizens in general, it being assumed that Congress intended to guard jealously against dilution of the liberties of citizens by the enlargement of jurisdiction of military tribunals at the expense of the jurisdiction of the civil courts.[20]

Clearly then, while court-martial under military law may be sui generis, it is not supra legem. The power to try by court-martial is established, defined and limited by statute, even if it arises as a consequence of the power of the President as Commander-in-Chief.

What are the implications of these doctrines to the case at bar? To my mind, they sufficiently establish that Congress does have the power to exclude certain acts from the jurisdiction of the General Court-Martial. The same legislature that enacted Commonwealth Act No. 408 is very well empowered to amend that law, as it has done on occasion.[21] And I submit that Congress has done so with the enactment of RA 7055.

Republic Act No. 7055

The title of RA 7055 reads "An Act Strengthening Civilian Supremacy Over the Military By Returning to the

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Civil Courts the Jurisdiction Over Certain Offenses Involving Members of the Armed Forces of the Philippines, Other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees."[22] In the Philippines, the conferment of civil jurisdiction over members of the military charged with non-service connected offenses is predicated on the constitutional principle of civilian supremacy over the military.[23] As Senator Wigberto Tañada remarked in his sponsorship remarks over Senate Bill No. 1468, eventually enacted as RA 7055, "[A]s long as the civil courts in the land remain open and are regularly functioning, military tribunals cannot try and exercise jurisdiction over military men for criminal offenses committed by them and which are properly cognizable by the civil courts. To have it otherwise would be a violation of the aforementioned constitutional provisions on the supremacy of civilian authority over the military and the integrity and independence of the judiciary, as well as the due process and equal-protection clauses of the Constitution."[24]

The title of the law alone is already indicative of the law's general intent to exclude from the jurisdiction of the General Court-martial "certain offenses" which would now be tried by the civil courts. Section 1 operationalizes such intent, asserting as a general rule that members of the AFP "who commits crimes penalized under the Revised Penal Code, other special penal laws, or local government ordinances xxx shall be tried by the proper civil court xxx." Notably, the majority does concede the general rule.

The exception of course, are offenses which are service-connected. They are excluded from the jurisdiction of the civilian courts. It is worth mentioning at this juncture that the concept of "service-connected" offenses as a determinant of court-martial jurisdiction arose from American jurisprudence. In O'Callahan v. Parker,[25] decided in 1969, the U.S. Supreme Court reversed previous doctrines and announced a new constitutional principle â”€â”€ that a military tribunal ordinarily may not try a serviceman charged with a crime that has no service connection.[26]

RA 7055 Reposes on the Trial CourtThe Specific Role of Determining WhetherThe Offense is Service-Connected

Obviously, the ascertainment of whether or not a crime is service-connected is of controversial character, necessitating the exercise of judgment. Appropriately, that function is assigned by Section 1 not to the courts-martial, but to the civil courts. Indeed, Section 1 requires that before the offense shall be tried by court-martial, there must be first a determination before arraignment by the civil court that the offense is indeed service-connected. Section 1 states:

> Members of the Armed Forces of the Philippines and other persons subject to military law xxx who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims or offended parties which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial xxx
>
> As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.[27] (Emphasis supplied.)

There are two possible scenarios that may arise after a soldier commits a crime which is punishable under both the Revised Penal Code and under Commonwealth Act No. 408.

In one, the soldier is charged only with violation of the Articles of War and tried by the court-martial. In this situation wherein no criminal case is filed against the soldier, the court-martial continues unimpeded.

In the other, the soldier is charged with both violation of the Articles of War (triable by court-martial) and a

criminal offense involving the same act (triable by the civilian court). Here, a different set of rules operates. RA 7055 comes into application in such a case. Section 1 of RA 7055 clearly reposes on the trial court, and not the court-martial, the duty to determine whether the charges in the information are service-connected. If the civilian court makes a determination that the acts involved are not service-connected, then the court-martial will generally have no jurisdiction.

In this particular role, the trial court is merely guided in its determination by Articles of War 54 to 70, 72 to 92, and 95 to 97, the specific articles to which the determination of service-connected offenses according to RA 7055 is limited. The importance of the trial court's function of determination cannot be dismissed lightly. Since the law mandates that the trial court make such a determination, it necessarily follows that the court has to ascertain on its own whether the offenses charged do fall within the Articles of War. It would not bind the civilian court that the defendants are charged with the same acts before the court-martial under Articles of War 54 to 70, 72 to 92, and 95 to 97. The civilian court is required to still make a determination, independent of that of the court-martial, that the acts charged constitute a service-connected offense.

However, the majority is satisfied that since petitioners are charged before the military tribunal with violation of one of the Articles of War so mentioned in Section 1 of RA 7055, this offense is within the jurisdiction of the court-martial. The majority is thus of the position that regardless of whatever transpires in the civilian court trial, court-martial proceedings may ensue unimpeded so long as the defendants therein are charged with Articles of War 54 to 70, 72 to 92, and 95 to 97. Such jurisdiction of the court-martial subsists even if the civilian courts had determined that the acts which constitute the offense triable under court-martial are not service-connected. This position renders utterly worthless the function of the civilian courts to determine whether the offense is indeed service-connected, as such determination would no longer have any bearing on the jurisdiction of the courts-martial to try the same acts.

Justice Carpio, in particular, asserts in his Concurring Opinion that the civilian court is limited to "only a facial examination of the charge sheet in determining whether the offense charged is service connected."[28] This proposition negates the entire purpose of RA 7055, as it would ultimately render the military as the sole judge whether a civilian court can acquire jurisdiction over criminal acts by military personnel, even if such soldier has committed a crime under the Revised Penal Code. Under this position, all the military has to do is to charge the actor with violation of Articles of War 54 to 70, 72 to 92, and 95 to 97, and the civilian court would be effectively deprived of jurisdiction to try the offense, even if the act is clearly punishable under civil penal laws. With all due respect, such "facial examination", which would be undertaken by a learned judge of a civilian court, can be accomplished with ease by a non-lawyer, by a fifteen-year old, or anybody with rudimentary skills in the English language. After all, the only necessary act for such purpose would be to look at the charge sheet and the Articles of War. As long as the civilian court sees that charge sheet states that the defendants have been charged with any of the aforementioned Articles of War, the determinative function would already be accomplished.

Under the standard of "facial examination," the trial court can very well make its determination even without the benefit of charge sheet if there is no such charge sheet yet. In reality though, the trial courts primary source of information and basis for determination is the information in the criminal case before it, as well as the affidavits and documents which the prosecution may make available to it. Assuming that there is a court-martial charge sheet, the same on its face may be incapable of capturing the particulars of the criminal acts committed, as there is no prescribed demand for such particularity. As such, a "facial examination" could not suffice in affording the civilian court any significant appreciation of the relevant factors in determining whether the offense was indeed service-connected.

Worse, by advocating "facial examination" as a limit, this view would actually allow malfeasors in the military to

evade justice, if they are fortunate enough to have sympathizers within the military brass willing to charge them with a violation of the aforementioned articles of war in order that they escape the possibly harsher scrutiny of the civilian courts. For example, Article 69 of the Articles of War punishes persons subject to military law who commit frauds against the government, which include, among others, stealing, embezzling, knowingly and willfully misappropriating, applying to his own use or benefit or wrongfully or knowingly selling or disposing of "any ordinance, arms, equipment, ammunition, clothing, subsistence stores, money or other property of the Government furnished or intended for the military service."[29] The offense, which according to the majority is strictly a service-connected offense, is punishable by "fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties."[30] A military comptroller who embezzles the pension funds of soldiers could be made liable under Article 95, and thus could be appropriately charged before the court-martial. Also pursuant to Article 95, the court-martial has the discretion to impose as final punishment a fine of P1,000.00, even if the comptroller embezzled millions of pesos. If the said comptroller has friends within the military top brass, the prospect of such a disproportionate penalty is actually feasible.

Now, if Justice Carpio's position were to be pursued, no civilian court, whether the RTC or the Sandiganbayan, could acquire jurisdiction over the comptroller for the offense of embezzlement, which is punishable under the Revised Penal Code and the Anti-Graft and Corrupt Practices Act, the moment the comptroller faces the charge of violating Article 95 before the court-martial. Why? Because these civilian courts would be limited to "only a facial examination of the charge sheet in determining whether the offense is service-connected." Justice Carpio adds, "[i]f the offense, as alleged in the charge sheet, falls under the enumeration of service-connected offenses in Section 1 of RA No. 7055, then the military court has jurisdiction over the offense."

Applying Justice Carpio's analysis to this theoretical example, the offense is "as alleged in the charge sheet" is a violation of Article 95 of the Articles of War. Article 95 "falls under the enumeration of service-connected offenses in Section 1 of R.A. No. 7055." Then, according to Justice Carpio, "the military court has jurisdiction over the offense." Yet Section 1 also states that as a general rule that it is the civilian courts which have jurisdiction to try the offense, "except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by court-martial." The ineluctable conclusion, applying Justice Carpio's view to our theoretical example, is that the civilian court does not have jurisdiction to try the offense constituting embezzlement since it was forced to determine, following the limited facial examination of the charge sheet, that the act of embezzlement punishable under Article 95 of the Articles of War is a service-connected offense.

If "facial examination" ill-suffices as the appropriate standard of determination, what then should be the proper level of determination?

Full significance should be accorded the legislative tasking of the civil court, not the military court, to determine whether the offense before it is service-connected or not. Indeed, determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard pre-determined by some other body. The word "determination" implies deliberation[31] and is, in normal legal contemplation, equivalent to "the decision of a court of justice."[32] The Court in EPZA v. Dulay[33] declared as unconstitutional a presidential decree that deprived the courts the function of determining the value of just compensation in eminent domain cases. In doing so, the Court declared, "the determination of "just compensation" in eminent domain cases is a judicial function."[34]

The majority shows little respect for the plain language of the law. As earlier noted, they believe that the determination reposed in the civilian court is limited to a facial examination of the military charge sheet to ascertain whether the defendants have been charged before the court-martial with the violation of Articles of War

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54 to 70, 72 to 92, and 95 to 97. Their position could have been sustained had Section 1 read, "As used in this Section, service-connected crimes or offenses are those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended," discarding the phrase "shall be limited to" immediately preceding the words "those defined." Such phraseology makes it clear that "service-connected crimes or offenses" are equivalent to "Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97." Yet Section 1 is hardly styled in that fashion. Instead, it precisely reads, "xxx service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70 xxx."

What is the implication of the phrase "shall be limited to"? This has to be tied to the role of determination ascribed to the civilian court in the previous paragraph under Section 1. Note again, "determination" signifies that the civilian court has to undertake an inquiry whether or not the acts are service connected. As stated earlier, the Articles of War specified in Section 1 serve as guides for such determination. "shall be limited to" assures that the civilian court cannot rely on a ground not rooted on those aforementioned articles in ruling that an offense is service-connected. For example, the civilian court cannot declare that an offense is service-connected because the offender is a three-star general. Being a three-star general is in no way connected to Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97.

At the same time, Section 1 concedes that if the act or offense for which the defendant is prosecuted before the civilian court also falls within those specified Articles of War, then the civilian court has to further determine whether the offense is service-connected. For example, a soldier who knowingly harbors or protects an enemy of the state may be liable under Article 82 of the Articles of War, which generally punishes military persons who aid the enemy, or under Article 114 of the Revised Penal Code, which classifies giving aid or comfort to the enemy as an act of treason. If the soldier is charged with treason, the civilian court may be called upon to determine whether the acts of assistance are service-connected, and it should be able to take into account the particular circumstances surrounding such acts. If the trial court determines that the offense is indeed service-connected, finding for example that the defendant had used his/her rank to assist the enemy, then it may rely on Article 82 in its conclusion that the act is service-connected. If however, the actor's being also a soldier proved merely incidental and inconsequential to the assistance rendered to the enemy, the civilian court could very well declare that the offense is not service-connected and thus subject to trial for treason before it.

The function devolved by the law on the trial court involves the determination of which offenses are service-connected and which offenses are not. The power of determination, however, is circumscribed by the law itself. By employing the phrase "shall be limited to" and tying it with specifically enumerated Articles, the law precludes the trial court from characterizing acts which fall under the Articles not so enumerated as service-connected. Since Article 93 defining rape and Article 94 defining "various crimes" are not included in the enumeration in RA 7055 it follows that the trial court is devoid of authority to declare rape and "various crimes" as service-connected.

Again, the general purpose of RA 7055 is to deprive the court-martial of jurisdiction to try cases which are properly cognizable before the civilian courts. Hence, if a soldier is charged with violation of any of the articles other than those referred to in Section 1, the court-martial is deprived of jurisdiction under RA 7055 if such violation also constitutes a crime or offense under our penal laws. Section 1, by citing those aforementioned articles, carves an exception to the general rule, yet at the same time, qualifies this exception as subject to the determination of the trial court. Hence, if the trial court so determines that the "service-connected" exception does not apply, the general rule depriving the court-martial jurisdiction over the offense should continue to operate.

It is worth mentioning that prior to RA 7055, Commonwealth Act No. 408 recognized an exception to the rule that military persons are always subjected to court-martial in lieu of civil trial. Article 94 stipulated that a person

subject to military law who committed a felony, crime, breach of law or violation of municipal ordinance recognized as an offense of a penal nature was punishable by court-martial, provided that such act was committed "inside a reservation of the [AFP]," or outside such reservation when the offended party is a person subject to military law.[35] The implication, therefore, was that if such act described were committed outside a military reservation, the civilian courts would have jurisdiction to try such offense. As the official Manual for Courts-Martial of the AFP states, "[w]henever persons subject to military law commit any of the offenses above stated outside Philippine Army reservations, they fall under the exclusive jurisdiction of civil courts."[36]

RA 7055 clearly expands this exception, by now mandating that even crimes committed within military reservations fall within the jurisdiction of civil courts, the only exception remaining is if it is determined by the civilian court that the offense is actually service-connected. Significantly, Section 1 of RA 7055 did not include Article 94 as among the Articles of War which define service-connected offenses.[37] Evidently the situs of the offense is not material as to whether the acts committed are service-connected offenses.

Admittedly, RA 7055 effectively curtails the ability of the military leadership to discipline the soldiers under their command through the court-martial process. This is accomplished though not by shielding errant soldiers from the criminal processes, but instead through the opposite route, by entrusting to the civilian courts the authority and sufficient discretion to impose substantive justice on such soldiers, conformably with the constitutional principle of civilian supremacy over the military. It must be noted that the acquisition of exclusive jurisdiction by the court-martial to try soldiers for acts punishable under penal laws is a double-edged sword of mischief. It can be utilized by a military leadership with an unquenchable thirst to punish its soldiers, a procedure which is facilitated due to the relatively lighter evidentiary requirements under military justice. It can also be utilized by a military leadership greatly sympathetic to one of their "mistahs" under fire, since the ability to inflict the lightest and most disproportionate of punishments falls within the wide range of discretion in the punishment accorded by law to courts-martial. Either premise is undesirable, and precisely RA 7055 was enacted to ensure that the civilian courts have all the opportunity to acquire jurisdiction over military persons who commit crimes, and to assure the trial courts all the discretion necessary to determine whether it should assume jurisdiction if the exception provided under Section 1 of the law is invoked.

RA 7055 Generally Prevents Military PersonnelFrom Facing Simultaneous Criminal Trials and Courts-MartialOver the Same Acts or Offenses

It is thus not enough that petitioners have been charged with violating an Article of War referred to in Section 1 to authorize their court-martial to proceed, since the same act that constitutes the violation of an Article of War is also alleged in the complaint for coup d'etat now pending in the civilian courts. In order that the court-martial proceedings against petitioners could ensue, it is indisputably necessary that the RTC Order determining that the charges before the court-martial are not service-connected is directly nullified or reconsidered with the needed effect of terminating the criminal case for coup d'etat against them. If the act constituting the offense triable before the civilian courts and the court-martial are the same, then the defendants may be tried only either before the civilian courts or the court-martial, and not in both tribunals.

This is precisely why the exceptions under Section 1 of RA 7055 were provided for – to prevent the anomaly of the defendants being subjected to two different trials of equally punitive value for the same act. It is well worth noting that the Senate deliberations on RA 7055 indicate a strong concern on the part of the legislators over the situation wherein violations of the Articles of War also stand as violations of the Revised Penal Code. The following exchange between the late Senate President Neptali Gonzales and Senator Wigberto Tañada is worth noting:

> Senator Gonzales. Again, in line 16, it says: The offenses defined in Articles 54 to 93 and 95 to 97 of the

> Articles of War, established by Commonwealth Act Numbered Four Hundred Eight, as amended, the same shall be triable by court-martial.
>
> But there are many offenses which are also violations of the Articles of War. For example, murder. It may not necessarily be a murder of a fellow member of the Armed Forces. That is also a violation of the Articles of War; but, at the same time, it is also a crime punishable under the Penal Code. What do we do in such a situation?
>
> Senator Tañada. In such an example, that would be tried by the civil courts. We had accepted the amendment proposed by Senator Ziga to exclude Article 93 under the Articles of War which would refer to murder or rape committed in times of war. Now, we have excluded that, because we believe that the murder or rape, whether committed in times of war, should not be tried by the civil courts.
>
> Senator Gonzales. Do we have the distinguished Gentleman's assurance that after deleting Article 93, also with respect to Articles 54 to 92, 95 to 97, there is absolutely no situation wherein the same act constitutes a violation of the Revised Penal Code and at the same time a violation of the Articles of War?
>
> Senator Tañada. Yes, Mr. President. We excluded also Article 94 of the Articles of War, because this refers to various crimes that may be committed by persons subject to military law, which crimes can be considered as felonies, breach of law, or violation of municipal ordinance, which is recognized as an offense of a penal nature, and is punishable under the penal laws of the Philippines or under municipal ordinances.
>
> Senator Gonzales. We have the assurance of the distinguished Gentleman, and we rely on that assurance. xxx[38]

The passage deserves to be cited as it affirms the deliberate intent, already evident in the text of the law itself, to avoid the scenario of the civilian courts and the courts-martial exercising concurrent jurisdiction over the same acts. Hence, for as long as the act committed by the soldier does not fall within those Articles of War referred to in Section 1, the civilian courts alone exercises jurisdiction over the trial of the acts. If it is asserted by the courts-martial, or otherwise argued, that the act complained of falls within those Articles of War referred to in Section 1, then the civilian court must make a determination that the acts committed are "service-connected," with the cited Articles as reference, before it can exercise its jurisdiction to the exclusion of the courts-martial. If the trial court declares that the acts are service-connected, it then is obliged to decline jurisdiction in favor of the courts-martial.

The cited passage does express the opinion of Senator Tañada that there is absolutely no situation wherein the same act constitutes a violation of the Revised Penal Code and at the same time a violation of the Articles of War. Such opinion might be cited to refute the declaration in the RTC Order that the acts charged before the court-martial were absorbed in the crime of coup d'etat. Yet caution should be had before this opinion of Senator Tañada is cited for that purpose. The quoted remarks were made on 21 May 1990, or five (5) months before the crime of coup d'etat was incorporated into the Revised Penal Code with the enactment of Republic Act No. 6968 on 24 October 1990. Certainly, when Senator Tañada made such opinion, he had no reason to believe that the cited Articles of War did not constitute any violation of the Revised Penal Code, particularly the crime of coup d'etat, since no such crime existed then.

Double Jeopardy

There is another vital reason RA 7055 cannot be interpreted in such a way as to permit both civilian and military trials of military personnel over the same act. Double jeopardy would arise as a consequence if such an interpretation were foisted.

It is very well settled that double jeopardy attaches if one is tried by both a military court and a civilian court over

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the same act, notwithstanding the differing natures of both tribunals. The rule was pronounced by the Philippine Supreme Court as far back as 1903, in U.S. v. Colley.[39] Therein, the defendant was sentenced to death by a court-martial after murdering a fellow soldier, but the sentence could not be carried out after the reviewing authority of the Army concluded that the military authorities were without power to carry into execution the sentence. He then was charged with the same offense before a civilian court. In ruling that the criminal case should be dismissed, the Court ruled that the criminal trial was barred by double jeopardy. The Court pronounced: "So here there is but one offense, that against the United States, and when the Government chooses the tribunal in which to try an offender, when the trial takes place in that tribunal, and when the accused is convicted and sentenced, he can not again be put in jeopardy in another court of the same sovereignty. xxx It follows that the defendant having been once in jeopardy can not be tried again for the offense of which he was formerly convicted."[40] A similar situation obtained in U.S. v. Tubig,[41] decided some months later, and a similar judgment of acquittal was mandated by the Court on the ground of double jeopardy.

The doctrine has survived past the American occupation. In 1954, the Court was again confronted with the issue whether a sentence passed by a military court barred further prosecution of the same offense in a civilian court. The Court, in Crisologo v. People,[42] squarely ruled that double jeopardy indeed barred such prosecution:

> As we see it, the case hinges on whether the decision of the military court constitutes a bar to further prosecution for the same offense in the civil courts.
>
> The question is not of first impression in this jurisdiction. In the case of U. S. vs. Tubig, 3 Phil., 244, a soldier of the United States Army in the Philippines was charged in the Court of First Instance of Pampanga with having assassinated one Antonio Alivia. Upon arraignment, he pleaded double jeopardy in that he had already been previously convicted and sentenced by a court-martial for the same offense and had already served his sentence. The trial court overruled the plea on the grounds that as the province where the offense was committed was under civil jurisdiction, the military court had no jurisdiction to try the offense. But on appeal, this court held that "one who has been tried and convicted by a court-martial under circumstances giving that tribunal jurisdiction of the defendant and of the offense, has been once in jeopardy and cannot for the same offense be again prosecuted in another court of the same sovereignty." In a later case, Grafton vs. U. S. 11 Phil., 776, a private in the United States Army in the Philippines was tried by a general court-martial for homicide under the Articles of War. Having been acquitted in that court, he was prosecuted in the Court of First Instance of Iloilo for murder under the general laws of the Philippines. Invoking his previous acquittal in the military court, he pleaded it in bar of proceedings against him in the civil court, but the latter court overruled the plea and after trial found him guilty of homicide and sentenced him to prison. The sentence was affirmed by this Supreme Court, but on appeal to the Supreme Court of the United States, the sentence was reversed and defendant acquitted, that court holding that "defendant, having been acquitted of the crime of homicide alleged to have been committed by him by a court-martial of competent jurisdiction proceeding under the authority of the United States, cannot be subsequently tried for the same offense in a civil court exercising authority in the Philippines."
>
> There is, for sure, a rule that where an act transgresses both civil and military law and subjects the offender to punishment by both civil and military authority, a conviction or an acquittal in a civil court cannot be pleaded as a bar to a prosecution in the military court, and vice versa. But the rule "is strictly limited to the case of a single act which infringes both the civil and the military law in such a manner as to constitute two distinct offenses, one of which is within the cognizance of the military courts and the other a subject of civil jurisdiction" (15 Am. Jur., 72), and it does not apply where both courts derive their powers from the same sovereignty. (22 C. J. S., 449.) It therefore, has no application to the present case where the military court that convicted the petitioner and the civil court which proposes to try him again derive their powers from one sovereignty and it is not disputed that the charges of treason tried in the court-martial were punishable under the Articles of War, it being as a matter of fact impliedly admitted by the Solicitor General that the two courts

> have concurrent jurisdiction over the offense charged.[43]

As noted earlier, Marcos, relying on Winthrop's Military Law, pronounced that courts-martial are still courts in constitutional contemplation.[44] At the same time, the Court in Marcos pursued the logic of this thinking insofar as double jeopardy was concerned:

> Besides, that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case, and therefore it would be, under certain conditions, a bar to another prosecution of the defendant for the same offense, because the latter would place the accused in double jeopardy, is shown by the decision of the Supreme Court of the United States in the case of Grafton vs. United States, 206 U. S. 333; 51 Law. Ed., 1088, 1092, in which the following was held:
> "If a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance; . . . and restricting our decision to the above question of double jeopardy, we adjudge that, consistently with the above act of 1902, and for the reasons stated, the plaintiff in error, a soldier in the Army, having been acquitted of the crime of homicide, alleged to have been committed by him in the Philippines, by a military court of competent jurisdiction, proceeding under the authority of the United States, could not be subsequently tried for the same offense in a civil court exercising authority in that territory."

I am aware that following the Court's 1993 ruling in People v. Pineda,[45] double jeopardy will not attach unless either the RTC or the court-martial passes sentence on the petitioners. Yet even applying the Pineda doctrine, it is inevitable that, once either tribunal renders judgment on the merits, double jeopardy would bar the further prosecution by the court which was last in time to pronounce sentence, regardless whether petitioners were convicted or acquitted. If both the RTC trial for coup d'etat and the court-martial of the petitioners are allowed to proceed unhampered, the strong likelihood arises that either one will be eventually mooted, no matter the stage, should the other pronounce sentence.

I submit that RA 7055 precisely sought to avoid such a scenario by prescribing, as a general rule, an exclusively civilian trial for military personnel charged with offenses punishable under our penal laws, even if they are also punishable under the Articles of War. The only general exception lies if the civilian court determines that the acts constituting the court-martial offenses are service-connected, as defined under those Articles of War referred to in Section 1, in which case jurisdiction falls exclusively with the court-martial. If the civilian court arrives at a contrary determination, the civilian court retains jurisdiction to the exclusion of the court-martial unless and until such determination is reconsidered or set aside, or unless the criminal case is dismissed or dropped for reasons other than acquittal on the merits. The only exception I am willing to concede is if the charge before the court-martial falls under Article 96, which I will discuss further.

Notion of Absorption of CrimesIrrelevant to Determination under RA 7055

I would like to dwell briefly on the suggestion that the RTC erred in pronouncing that the acts for which petitioners were charged before the court-martial were "absorbed" in the crime of coup d'etat. Justice Callejo, Sr., in his Concurring Opinion, cites Baylosis v. Chavez,[46] and the rule that the doctrines laid down on the absorption of common crimes by political crimes do not apply to crimes which are sui generis offenses.

This aspect is no longer material to my own disposition of the petition, yet I think it is misplaced to apply the doctrine of absorption of crimes to the determination of service-connected offenses made by the civilian court pursuant to Section 1 of RA 7055. The function of such determination by the trial court under RA 7055 is wholly different from that utilized by the trial court in ascertaining whether crime A is absorbed by crime B in the classic criminal law context. The latter is material to the trial court in reaching conclusions as to which crimes may be

considered against the accused and which penalties may apply as to them. However, the purpose of the determination under RA 7055 is merely for establishing whether the acts for which the accused stand charged before the courts-martial are indeed service-connected offenses cognizable exclusively before the military courts, or non-service connected offenses cognizable exclusively before the civilian courts. The determining factor is whether the act is "service-connected," not whether one act is absorbed into the other.

The RTC may have been too loose in language when it utilized the word "absorbed," yet the word should not be appreciated in the context of absorption of crimes, as such consideration is wholly irrelevant for purposes of Section 1. Instead, I think that the pertinent conclusion of the RTC in its Order was that the acts charged before the court-martial were not service-connected, as they were committed in furtherance of the crime of coup d'etat. This, and not the notion of absorption of crimes, should be the foundational basis for any attack of the RTC Order.

The Special Circumstance Surrounding Article of War 96

It is my general conclusion that if the civilian court makes a determination that the acts for which the accused stands charged of, for violating those Articles of War referred to in Section 1 of RA 7055, are not service-connected, then such determination, once final, deprives the court-martial jurisdiction to try the offense. However, I submit that Article of War 96 warrants special consideration, as it differs in character from the other Articles of War referred to in Section 1 of RA 7055.

Article 96 of Commonwealth Act No. 408, as amended, reads:

> Art. 96. Conduct Unbecoming an Officer and a Gentleman. – Any officer, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

Justice Callejo, Sr. points out in his Concurring Opinion that "conduct unbecoming an officer and a gentleman is a uniquely military offense,"[47] and that "[t]he article proscribing conduct unbecoming an officer and a gentleman has been held to be wholly independent of other definitions of offenses xxx [and] is not subject to preemption by other punitive articles."[48] It is difficult to dispute these conclusions, which derive from American military case law. After all, "conduct unbecoming" pertains to the unique exigencies of military life and discipline, whereby an officer is expected to conform to an idiosyncratic etiquette not required of civilians.

Yet more pertinent to my position is the penalty prescribed by Article 96 for "conduct unbecoming." The penalty is dismissal from service, a penalty which is administrative in character, and beyond the jurisdiction of the civilian court to impose. Notably, of all the Articles of War referred to in Section 1 of RA 7055, it is only Article 96 that provides for dismissal from service as the exclusive penalty. All the other articles so mentioned allow for the penalty of death, imprisonment, or a punishment "as a court-martial may so direct" which could very well constitute any deprivation of life or liberty. While these other articles prescribes a penalty which is penal in nature, it is only Article 96 which provides for a penalty which is administrative in character.

As a result, I am prepared to conclude that courts-martial retain the jurisdiction to try violations of Article 96 of Commonwealth Act No. 408, or conduct unbecoming of an officer, even if the RTC determines that the acts constituting such violation are service-connected. The intent of RA 7055 is to restore to civilian courts jurisdiction over offenses which are properly cognizable by them to the exclusion of courts-martial. Such intent could obviously not extend to those offenses which the civilian courts do not have jurisdiction to try and punish. Civilian courts are utterly incapable of penalizing military officers with the penalty of discharge from the service, since the penalty is administrative in character[49] and imposable only by the military chain of command.

Petition Should Have Been Granted If PetitionersWere Charged Under A Different Article of War

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Still, if petitioners were facing the charge of mutiny under Article 63 of the Articles of War, or any other Article of War for that matter, in connection with the Oakwood incident, the petition would have been fully meritorious. The RTC has made a determination that all acts related to the Oakwood incident are not service-connected offenses. I am not fully prepared to subscribe to the position that the acts relating to Oakwood were "absorbed" in the offense of coup d'etat. However, I do concede two important points. First, the RTC did determine that the acts relating to Oakwood were not service-connected. Second, the determination of the RTC, as embodied in the 11 February 2004 Order, remains binding as the said Order has not been appealed. It has not been modified or set aside, even by the present decision or by the ruling in Navales.

The majority is clearly in a quandary, all too willing to pronounce that the Order is wrong, or even a nullity, yet unable to directly nullify the same. Respondents argue that the Order is already final and beyond challenge, and that contention should not be dismissed offhand. The suggestion has been raised that the principle of res judicata should not be made to apply in this case, since the AFP was not a party to the criminal case. This claim is off-tangent, assuming as it does that the AFP somehow has a distinct and segregate legal personality from the government of the Philippines. The AFP is part of the government. It is indeed headed by the same person who heads the executive branch of government. The AFP likewise answers to officers of the executive branch, such as the Secretary of Defense. Certainly, the rendition of the Order would have presumably caused the same level and degree of grief on the AFP as it would have on the Department of Justice.

But was the government truly offended by the RTC Order? If it were, it should have timely elevated the same for appellate review. The fact that it did not gives further indication that the government recognized that Order as fundamentally correct, especially considering that it contains the very same conclusions reached by the Pre-Trial Investigating Panel constituted by the AFP.

I think in the end, respondents fully understood and applied the correct implications of RA 7055 as it pertained to petitioners. Had respondents been aligned in thinking with the majority, they would have been emboldened to charge petitioners with violations of other Articles of War despite the RTC Order and the pendency of the coup d'etat case. Petitioners could have very well been charged before the court-martial with violation of Article 63, for mutiny, just as the 290 other participants in the "Oakwood mutiny." Respondents however did not do so, respecting in fact the assumption of jurisdiction by the civilian court over the crime of coup d'etat. Instead, respondents limited the court-martial charge against petitioners for violation of Article 96, a punitive article which is nonetheless wholly administrative in character and in penalty.

The majority unfortunately shows no similar prudence. Instead, it has opted to take the path that leads to most resistance. With the decision today, there now stands a very real danger tomorrow that persons standing criminal trial before the civil courts, including the Sandiganbayan, who also happen to be facing charges before the court-martial for violation of Articles 54 to 70, 72 to 92, 95 or 97, will move for the dismissal of all their cases before the civilian courts. Assuming that there is integral relation between the acts now cognizable under court-martial and the acts for which those defendants face criminal trial, the trial courts will feel but little choice to dismiss those charge, in light of the present majority ruling. Military justice was once supreme over civilian justice. We should not go down that way again. Too many ghosts haunt that road.

I vote to dismiss the petition, for the reason discussed above. Insofar as the majority ruling deviates from the views I stated herein, I respectfully dissent.

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[1] Rollo, pp. 107-115.

[2] See id. at 186-206.

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[3] G.R. No. 162318 & 162341, 25 October 2004, 441 SCRA 393. The author of this opinion was a member of the Court that unanimously decided Navales, which used a similar rationale in dismissing the petitions therein to that now employed by the majority. Even at present, the author submits that Navales was correctly decided, considering the following declaration made by the Court therein: " There was no factual and legal basis for the RTC (Branch 148) to rule that violations of Articles 63, 64, 67, 96, and 97 of the Articles of War were committed in furtherance of coup d'etat and, as such, absorbed by the latter crime. It bears stressing that, after a reinvestigation, the Panel of Prosecutors found no probable cause for coup d'etat against the petitioners and recommended the dismissal of the case against them. The trial court approved the recommendation and dismissed the case as against the petitioners. There is, as yet, no evidence on record that the petitioners committed the violations of Articles 63, 64, 96, and 97 of the Articles of War in furtherance of coup d'etat" Navales v. Abaya, id., at 417. Nonetheless, the author acknowledges that several passages in Navales are not consistent with the views expressed in this Opinion which now embodies the author's present thinking, arrived at after considerable reevaluation of the legal issues involved.

[4] Rollo, pp. 266-267.

[5]75 Phil. 875 (1946).

[6] See also e.g., S/Sgt. Santiago v. Lt. Col. Alikpala, et al., 134 Phil. 309, 318 (1968).

[7] 89 Phil. 246 (1951).

[8] Id. at 248-249.

[9]Claro C. Gloria, Philippine Military Law, p. 18 (1956), citing Winthrop, Military Law and Precedents , 2nd Ed., p. 54.

> "As a court of law, it is bound, like any court, by the fundamental principles of law, and in the absence of a special provision on the subject in the military code, it observes in general the rules of evidence as adopted in the civil courts. As a court of justice, it is required, by the terms of its statutory oath, to adjudicate between the Philippines and the accused "without partiality, favor, or affection," and according, not only to the laws and customs of the service, but to its "conscience, i.e., its sense of substantial right and justice unaffected by technicalities. In the strictest sense courts-martial are courts of justice.

[10]Magno v. de Villa, G.R. No. 92606, 26 July 1991, 199 SCRA 663, 673, citing Chief Justice Teehankee in Vargas v. RADM Kilcline, et al.

[11] GR. Nos. L-54558 & L-69882, 22 May 1987, 150 SCRA 144.

[12] Id. at 165.

[13]80 Phil. 401 (1948).

[14] Collins v. McDonald, 258 US 416, 417.

[15] NCMR - U.S. v. Moody, 10 M.J. 845.

[16] ACMR – U.S. v. Wilson, 27 M.J. 555.

[17] In re Wilson, D.C.Va., 33 F.2d 214.

[18] U.S. ex rel. Hirshberg v. Cooke, N.Y., 69 S.Ct. 530, 336 U.S. 210, 93 L.Ed. 621.

[19] U.S. ex rel. Flannery v. Commanding General, Second Service Command, D.C.N.Y., 69 F.Supp. 661.

[20] 57 C.J.S. Military Justice § 156. Emphasis supplied.

[21] Com. Act No. 408 has been amended by Rep. Act No. 242 (1948) and Rep. Act No. 516 (1950).

[22] Emphasis supplied.

[23] See Constitution, Art. II, Section 3.

[24] Record of the Senate, 9 May 1990, p. 671.

[25] 395 U.S. 298 (1969).

[26] See also Gosa v. Mayden, 413 U.S. 665, 672 (1973). O'Callahan in turn was reversed by the U.S. Supreme Court in its 1987 ruling in Solorio v. U.S., 483 U.S. 435, which reiterated the previous doctrine that the proper exercise of court-martial jurisdiction over an offense hinged on one factor: the military status of the accused. Solorio v. U.S., id. at 450-451. Still, it would be foolhardy to apply any persuasive value to the Solorio ruling to the present petition. The Court in Solorio whole-heartedly embraced the principle that it was the U.S. Congress that possessed "the authority to regulate the conduct of persons who are actually members of the armed services", id., at 441. The U.S. Supreme Court also acknowledged that "Congress has primary responsibility for the delicate task of balancing the rights of servicemen against the needs of the military. As [the U.S. Supreme Court] recently reiterated, "judicial deference" is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged.'" Id., at 447, citing Goldman v. Weinberger, 475 U.S. 503, 508 (1986). There was no American statute that prescribed the "service-connected" standard, even at the time O'Callahan was decided, the latter decision predicated instead on the Fifth and Six Amendments in the Bill of Rights. In the Philippine setting, "service-connected" is a standard duly legislated and enacted by Congress under Rep. Act No. 7055. My views in this Opinion are thus conformable even to the Solorio decision.

[27] Section 1, Rep. Act No. 7055. Emphasis supplied.

[28] Concurring Opinion, J. Carpio, infra.

[29] See Article 95, Com. Act No. 408, as amended.

[30] Id.

[31] "The words "a design, a determination, to kill, distinctly formed in the mind" in an instruction, imply deliberation. "xxx The word "determination in this instruction is not used in any technical sense; in fact, it has no technical sense in which it means less than it does in popular signification. Webster defines it to be a "decision of a question in the mind; firm resolution; settled purpose." Can it be said that a question can be decided, a wavering resolution made firm, or a hesitating purpose settled without deliberation?" 12 Words and Phrases (1954 ed.), p. 478-479; citing State v. Ah Mook, 12 Nev. 369, 390.

[32] 1 Bouvier's Law Dictionary (8th ed., 1914), p. 858.

[33] G.R. No. L-59603, 29 April 1987, 149 SCRA 305.

[34] Id. at 316. Justice Vicente Mendoza's declaration in Iglesia Ni Cristo v. Court of Appeals, 328 Phil. 893 (1996), is worth mentioning. "Indeed, I cannot understand why, after ruling that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, this Court should be willing to leave the valuation of that priceless commodity " expression, whether by means of motion picture or television " to administrative agencies with only occasional review by the courts. The trend may be

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toward greater delegation of judicial authority to administrative agencies in matters requiring technical knowledge and as a means of relieving courts of cases which such agencies can very well attend to. There is no justification, however, for such delegation in the area of our essential freedoms, particularly freedom of expression, where "only a judicial determination in an adversary proceeding [can] ensure the necessary sensitivity to freedom of expression." Id. at 962, J. Mendoza, Separate Opinion.

[35]This proviso was enacted as an amendment to Com. Act No. 408 by Rep. Act No. 242 in 1948.

[36] A Manual for Courts-Martial: Armed Forces of the Philippines, p. 181.

[37] See note 27.

[38] Record of the Senate, 21 May 1990, p. 840.

[39] 3 Phil. 58 (1903).

[40] Id. at 66.

[41] 3 Phil.244 (1904).

[42] 94 Phil. 477 (1954).

[43] Id. at 479-480.

[44]Supra note 9.

[45] G.R. No. 44205, 16 February 1993, 219 SCRA 1.

[46] G.R. 95136, 3 October 1991, 202 SCRA 405.

[47] Concurring Opinion of Justice Callejo, Sr., infra; citing U.S. v. Weldon, 7 M.J. 938 (1979).

[48] Id. citing U.S. v. Taylor, 23 M.J. 341 (1987).

[49] "The provisions of both the Civil Code and the Rules of Court regarding the relationship between the criminal and civil liabilities of an accused do not contemplate administrative actions against government officers and employees. While there may be specific statutes making criminal guilt indispensable to the dismissal or any other form of administrative punishment for certain public employees, and there have been instances when the court itself did order reinstatement as a consequence of absolute acquittal, as a rule xxx the administrative determination as to an employee's dismissal or punishment in any other way is not predicated in any respect on the result of corresponding criminal proceedings." Rice and Corn Administration v. Silao, G.R. No. L-25294, 21 August 1980, 99 SCRA 200, 207-208. "[T]he criminal action is separate and distinct from the administrative case. And, if only for that reason, so is administrative liability separate and distinct from penal liability. Hence, probation only affects the criminal aspect of the case, not its administrative dimension." Samalio v. Court of Appeals, G.R. No. 140079, 31 March 2005, 454 SCRA 462, 475.

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