

PROF. MERLIN M. MAGALLONA, AKBAYAN PARTY-LIST REP. RISA HONTIVEROS, PROF. HARRY C. ROQUE, JR., AND UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW STUDENTS, ALITHEA BARBARA ACAS, V...

G.R. No. 187167. August 16, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This original action for the writs of certiorari and prohibition assails the constitutionality of Republic Act No. 9522[1] (RA 9522) adjusting the country's archipelagic baselines and classifying the baseline regime of nearby territories.

The Antecedents

In 1961, Congress passed Republic Act No. 3046 (RA 3046)[2] demarcating the maritime baselines of the Philippines as an archipelagic State.[3] This law followed the framing of the Convention on the Territorial Sea and the Contiguous Zone in 1958 (UNCLOS I),[4] codifying, among others, the sovereign right of States parties over their "territorial sea," the breadth of which, however, was left undetermined. Attempts to fill this void during the second round of negotiations in Geneva in 1960 (UNCLOS II) proved futile. Thus, domestically, RA 3046 remained unchanged for nearly five decades, save for legislation passed in 1968 (Republic Act No. 5446 [RA 5446]) correcting typographical errors and reserving the drawing of baselines around Sabah in North Borneo.

In March 2009, Congress amended RA 3046 by enacting RA 9522, the statute now under scrutiny. The change was prompted by the need to make RA 3046 compliant with the terms of the United Nations Convention on the Law of the Sea (UNCLOS III),[5] which the Philippines ratified on 27 February 1984.[6] Among others, UNCLOS III prescribes the water-land ratio, length, and contour of baselines of archipelagic States like the Philippines[7] and sets the deadline for the filing of application for the extended continental shelf.[8] Complying with these requirements, RA 9522 shortened one baseline, optimized the location of some basepoints around the Philippine archipelago and classified adjacent territories, namely, the Kalayaan Island Group (KIG) and the Scarborough Shoal, as "regimes of islands" whose islands generate their own applicable maritime zones.

Petitioners, professors of law, law students and a legislator, in their respective capacities as "citizens, taxpayers or x x x legislators,"[9] as the case may be, assail the constitutionality of RA 9522 on two principal grounds, namely: (1) RA 9522 reduces Philippine maritime territory, and logically, the reach of the Philippine state's sovereign power, in violation of Article 1 of the 1987 Constitution,[10] embodying the terms of the Treaty of Paris[11] and ancillary treaties,[12] and (2) RA 9522 opens the country's waters landward of the baselines to maritime passage by all vessels and aircrafts, undermining Philippine sovereignty and national security, contravening the country's nuclear-free policy, and damaging marine resources, in violation of relevant constitutional provisions.[13]

In addition, petitioners contend that RA 9522's treatment of the KIG as "regime of islands" not only results in the loss of a large maritime area but also prejudices the livelihood of subsistence fishermen.[14] To buttress their argument of territorial diminution, petitioners facially attack RA 9522 for what it excluded and included - its failure to reference either the Treaty of Paris or Sabah and its use of UNCLOS III's framework of regime of islands to determine the maritime zones of the KIG and the Scarborough Shoal.

Commenting on the petition, respondent officials raised threshold issues questioning (1) the petition's compliance with the case or controversy requirement for judicial review grounded on petitioners' alleged lack of locus standi and (2) the propriety of the writs of certiorari and prohibition to assail the constitutionality of RA 9522. On the merits, respondents defended RA 9522 as the country's compliance with the terms of UNCLOS III, preserving Philippine territory over the KIG or Scarborough Shoal. Respondents add that RA 9522 does not undermine the country's security, environment and economic interests or relinquish the Philippines' claim over Sabah.

Respondents also question the normative force, under international law, of petitioners' assertion that what Spain ceded to the United States under the Treaty of Paris were the islands and all the waters found within the boundaries of the rectangular area drawn under the Treaty of Paris.

We left unacted petitioners' prayer for an injunctive writ.

The Issues

The petition raises the following issues:

1. Preliminarily -

- Whether petitioners possess locus standi to bring this suit; and
- Whether the writs of certiorari and prohibition are the proper remedies to assail the constitutionality of RA 9522.

2. On the merits, whether RA 9522 is unconstitutional.

The Ruling of the Court

On the threshold issues, we hold that (1) petitioners possess locus standi to bring this suit as citizens and (2) the writs of certiorari and prohibition are proper remedies to test the constitutionality of RA 9522. On the merits, we find no basis to declare RA 9522 unconstitutional.

On the Threshold Issues

Petitioners Possess Locus

Standi as Citizens

Petitioners themselves undermine their assertion of locus standi as legislators and taxpayers because the petition alleges neither infringement of legislative prerogative[15] nor misuse of public funds,[16] occasioned by the passage and implementation of RA 9522. Nonetheless, we recognize petitioners' locus standi as citizens with constitutionally sufficient interest in the resolution of the merits of the case which undoubtedly raises issues of national significance necessitating urgent resolution. Indeed, owing to the peculiar nature of RA 9522, it is understandably difficult to find other litigants possessing "a more direct and specific interest" to bring the suit, thus satisfying one of the requirements for granting citizenship standing.[17]

The Writs of Certiorari and Prohibition

Are Proper Remedies to Test

the Constitutionality of Statutes

In praying for the dismissal of the petition on preliminary grounds, respondents seek a strict observance of the offices of the writs of certiorari and prohibition, noting that the writs cannot issue absent any showing of grave abuse of discretion in the exercise of judicial, quasi-judicial or ministerial powers on the part of respondents and resulting prejudice on the part of petitioners.[18]

Respondents' submission holds true in ordinary civil proceedings. When this Court exercises its constitutional power of judicial review, however, we have, by tradition, viewed the writs of certiorari and prohibition as proper remedial vehicles to test the constitutionality of statutes,[19] and indeed, of acts of other branches of government.[20] Issues of constitutional import are sometimes crafted out of statutes which, while having no bearing on the personal interests of the petitioners, carry such relevance in the life of this nation that the Court inevitably finds itself constrained to take cognizance of the case and pass upon the issues raised, non-compliance with the letter of procedural rules notwithstanding. The statute sought to be reviewed here is one such law.

RA 9522 is Not Unconstitutional
RA 9522 is a Statutory Tool
to Demarcate the Country's
Maritime Zones and Continental
Shelf Under UNCLOS III, not to
Delineate Philippine Territory

Petitioners submit that RA 9522 "dismembers a large portion of the national territory"[21] because it discards the pre-UNCLOS III demarcation of Philippine territory under the Treaty of Paris and related treaties, successively encoded in the definition of national territory under the 1935, 1973 and 1987 Constitutions. Petitioners theorize that this constitutional definition trumps any treaty or statutory provision denying the Philippines sovereign control over waters, beyond the territorial sea recognized at the time of the Treaty of Paris, that Spain supposedly ceded to the United States. Petitioners argue that from the Treaty of Paris' technical description, Philippine sovereignty over territorial waters extends hundreds of nautical miles around the Philippine archipelago, embracing the rectangular area delineated in the Treaty of Paris.[22]

Petitioners' theory fails to persuade us.

UNCLOS III has nothing to do with the acquisition (or loss) of territory. It is a multilateral treaty regulating, among others, sea-use rights over maritime zones (i.e., the territorial waters [12 nautical miles from the baselines], contiguous zone [24 nautical miles from the baselines], exclusive economic zone [200 nautical miles from the baselines]), and continental shelves that UNCLOS III delimits.[23] UNCLOS III was the culmination of decades-long negotiations among United Nations members to codify norms regulating the conduct of States in the world's oceans and submarine areas, recognizing coastal and archipelagic States' graduated authority over a limited span of waters and submarine lands along their coasts.

On the other hand, baselines laws such as RA 9522 are enacted by UNCLOS III States parties to mark-out specific basepoints along their coasts from which baselines are drawn, either straight or contoured, to serve as geographic starting points to measure the breadth of the maritime zones and continental shelf. Article 48 of UNCLOS III on archipelagic States like ours could not be any clearer:

Article 48. Measurement of the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. - The breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from archipelagic baselines drawn in accordance with article 47.
(Emphasis supplied)

Thus, baselines laws are nothing but statutory mechanisms for UNCLOS III States parties to delimit with

precision the extent of their maritime zones and continental shelves. In turn, this gives notice to the rest of the international community of the scope of the maritime space and submarine areas within which States parties exercise treaty-based rights, namely, the exercise of sovereignty over territorial waters (Article 2), the jurisdiction to enforce customs, fiscal, immigration, and sanitation laws in the contiguous zone (Article 33), and the right to exploit the living and non-living resources in the exclusive economic zone (Article 56) and continental shelf (Article 77).

Even under petitioners' theory that the Philippine territory embraces the islands and all the waters within the rectangular area delimited in the Treaty of Paris, the baselines of the Philippines would still have to be drawn in accordance with RA 9522 because this is the only way to draw the baselines in conformity with UNCLOS III. The baselines cannot be drawn from the boundaries or other portions of the rectangular area delineated in the Treaty of Paris, but from the "outermost islands and drying reefs of the archipelago." [24]

UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription, [25] not by executing multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law. [26]

RA 9522's Use of the Framework
of Regime of Islands to Determine the
Maritime Zones of the KIG and the
Scarborough Shoal, not Inconsistent
with the Philippines' Claim of Sovereignty
Over these Areas

Petitioners next submit that RA 9522's use of UNCLOS III's regime of islands framework to draw the baselines, and to measure the breadth of the applicable maritime zones of the KIG, "weakens our territorial claim" over that area. [27] Petitioners add that the KIG's (and Scarborough Shoal's) exclusion from the Philippine archipelagic baselines results in the loss of "about 15,000 square nautical miles of territorial waters," prejudicing the livelihood of subsistence fishermen. [28] A comparison of the configuration of the baselines drawn under RA 3046 and RA 9522 and the extent of maritime space encompassed by each law, coupled with a reading of the text of RA 9522 and its congressional deliberations, vis-à-vis the Philippines' obligations under UNCLOS III, belie this view.

The configuration of the baselines drawn under RA 3046 and RA 9522 shows that RA 9522 merely followed the basepoints mapped by RA 3046, save for at least nine basepoints that RA 9522 skipped to optimize the location of basepoints and adjust the length of one baseline (and thus comply with UNCLOS III's limitation on the maximum length of baselines). Under RA 3046, as under RA 9522, the KIG and the Scarborough Shoal lie outside of the baselines drawn around the Philippine archipelago. This undeniable cartographic fact takes the wind out of petitioners' argument branding RA 9522 as a statutory renunciation of the Philippines' claim over the KIG, assuming that baselines are relevant for this purpose.

Petitioners' assertion of loss of "about 15,000 square nautical miles of territorial waters" under RA 9522 is similarly unfounded both in fact and law. On the contrary, RA 9522, by optimizing the location of basepoints, increased the Philippines' total maritime space (covering its internal waters, territorial sea and exclusive economic zone) by 145,216 square nautical miles, as shown in the table below: [29]

Extent of maritime area using RA 3046, as amended, taking into account the Treaty of Paris' delimitation (in

square nautical miles)

Extent of maritime area using RA 9522, taking into account UNCLOS III (in square nautical miles)

Internal or archipelagic waters

166,858

171,435

Territorial Sea

274,136

32,106

Exclusive Economic Zone

382,669

TOTAL

440,994

586,210

Thus, as the map below shows, the reach of the exclusive economic zone drawn under RA 9522 even extends way beyond the waters covered by the rectangular demarcation under the Treaty of Paris. Of course, where there are overlapping exclusive economic zones of opposite or adjacent States, there will have to be a delineation of maritime boundaries in accordance with UNCLOS III.[30]

Further, petitioners' argument that the KIG now lies outside Philippine territory because the baselines that RA 9522 draws do not enclose the KIG is negated by RA 9522 itself. Section 2 of the law commits to text the Philippines' continued claim of sovereignty and jurisdiction over the KIG and the Scarborough Shoal:

SEC. 2. The baselines in the following areas over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as "Regime of Islands" under the Republic of the Philippines consistent with Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS):

a) The Kalayaan Island Group as constituted under Presidential Decree No. 1596 and

b) Bajo de Masinloc, also known as Scarborough Shoal. (Emphasis supplied)

Had Congress in RA 9522 enclosed the KIG and the Scarborough Shoal as part of the Philippine archipelago, adverse legal effects would have ensued. The Philippines would have committed a breach of two provisions of UNCLOS III. First, Article 47 (3) of UNCLOS III requires that "[t]he drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago." Second, Article 47 (2) of UNCLOS III requires that "the length of the baselines shall not exceed 100 nautical miles," save for three per cent (3%) of the total number of baselines which can reach up to 125 nautical miles.[31]

Although the Philippines has consistently claimed sovereignty over the KIG[32] and the Scarborough Shoal for several decades, these outlying areas are located at an appreciable distance from the nearest shoreline of the Philippine archipelago,[33] such that any straight baseline loped around them from the nearest basepoint will inevitably "depart to an appreciable extent from the general configuration of the archipelago."

The principal sponsor of RA 9522 in the Senate, Senator Miriam Defensor-Santiago, took pains to emphasize the

foregoing during the Senate deliberations:

What we call the Kalayaan Island Group or what the rest of the world call[] the Spratlys and the Scarborough Shoal are outside our archipelagic baseline because if we put them inside our baselines we might be accused of violating the provision of international law which states: "The drawing of such baseline shall not depart to any appreciable extent from the general configuration of the archipelago." So sa loob ng ating baseline, dapat magkalapit ang mga islands. Dahil malayo ang Scarborough Shoal, hindi natin masasabing malapit sila sa atin although we are still allowed by international law to claim them as our own.

This is called contested islands outside our configuration. We see that our archipelago is defined by the orange line which [we] call[] archipelagic baseline. Ngayon, tingnan ninyo ang maliit na circle doon sa itaas, that is Scarborough Shoal, itong malaking circle sa ibaba, that is Kalayaan Group or the Spratlys. Malayo na sila sa ating archipelago kaya kung ilihis pa natin ang dating archipelagic baselines para lamang masama itong dalawang circles, hindi na sila magkalapit at baka hindi na tatanggapin ng United Nations because of the rule that it should follow the natural configuration of the archipelago.[34] (Emphasis supplied)

Similarly, the length of one baseline that RA 3046 drew exceeded UNCLOS III's limits. The need to shorten this baseline, and in addition, to optimize the location of basepoints using current maps, became imperative as discussed by respondents:

[T]he amendment of the baselines law was necessary to enable the Philippines to draw the outer limits of its maritime zones including the extended continental shelf in the manner provided by Article 47 of [UNCLOS III]. As defined by R.A. 3046, as amended by R.A. 5446, the baselines suffer from some technical deficiencies, to wit:

- The length of the baseline across Moro Gulf (from Middle of 3 Rock Awash to Tongquil Point) is 140.06 nautical miles x x x. This exceeds the maximum length allowed under Article 47(2) of the [UNCLOS III], which states that "The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles."
- The selection of basepoints is not optimal. At least 9 basepoints can be skipped or deleted from the baselines system. This will enclose an additional 2,195 nautical miles of water.
- Finally, the basepoints were drawn from maps existing in 1968, and not established by geodetic survey methods. Accordingly, some of the points, particularly along the west coasts of Luzon down to Palawan were later found to be located either inland or on water, not on low-water line and drying reefs as prescribed by Article 47.[35]

Hence, far from surrendering the Philippines' claim over the KIG and the Scarborough Shoal, Congress' decision to classify the KIG and the Scarborough Shoal as "Regime[s] of Islands' under the Republic of the Philippines consistent with Article 121"[36] of UNCLOS III manifests the Philippine State's responsible observance of its pacta sunt servanda obligation under UNCLOS III. Under Article 121 of UNCLOS III, any "naturally formed area of land, surrounded by water, which is above water at high tide," such as portions of the KIG, qualifies under the category of "regime of islands," whose islands generate their own applicable maritime zones.[37]

Statutory Claim Over Sabah under RA 5446 Retained

Petitioners' argument for the invalidity of RA 9522 for its failure to textualize the Philippines' claim over Sabah in North Borneo is also untenable. Section 2 of RA 5446, which RA 9522 did not repeal, keeps open the door for drawing the baselines of Sabah:

Section 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty. (Emphasis supplied)

UNCLOS III and RA 9522 not
Incompatible with the Constitution's
Delineation of Internal Waters

As their final argument against the validity of RA 9522, petitioners contend that the law unconstitutionally "converts" internal waters into archipelagic waters, hence subjecting these waters to the right of innocent and sea lanes passage under UNCLOS III, including overflight. Petitioners extrapolate that these passage rights indubitably expose Philippine internal waters to nuclear and maritime pollution hazards, in violation of the Constitution.[38]

Whether referred to as Philippine "internal waters" under Article I of the Constitution[39] or as "archipelagic waters" under UNCLOS III (Article 49 [1]), the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the air space over it and the submarine areas underneath. UNCLOS III affirms this:

Article 49. Legal status of archipelagic waters, of the air space over archipelagic waters and of their bed and subsoil. -

- The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.
- This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.

x x x x

- The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein.

(Emphasis supplied)

The fact of sovereignty, however, does not preclude the operation of municipal and international law norms subjecting the territorial sea or archipelagic waters to necessary, if not marginal, burdens in the interest of maintaining unimpeded, expeditious international navigation, consistent with the international law principle of freedom of navigation. Thus, domestically, the political branches of the Philippine government, in the competent discharge of their constitutional powers, may pass legislation designating routes within the archipelagic waters to regulate innocent and sea lanes passage.[40] Indeed, bills drawing nautical highways for sea lanes passage are now pending in Congress.[41]

In the absence of municipal legislation, international law norms, now codified in UNCLOS III, operate to grant innocent passage rights over the territorial sea or archipelagic waters, subject to the treaty's limitations and conditions for their exercise.[42] Significantly, the right of innocent passage is a customary international law,[43] thus automatically incorporated in the corpus of Philippine law.[44] No modern State can validly invoke its sovereignty to absolutely forbid innocent passage that is exercised in accordance with customary international law without risking retaliatory measures from the international community.

The fact that for archipelagic States, their archipelagic waters are subject to both the right of innocent passage and sea lanes passage[45] does not place them in lesser footing vis-à-vis continental coastal States which are subject, in their territorial sea, to the right of innocent passage and the right of transit passage through international straits. The imposition of these passage rights through archipelagic waters under UNCLOS III was a concession by archipelagic States, in exchange for their right to claim all the waters landward of their baselines, regardless of their depth or distance from the coast, as archipelagic waters subject to their territorial sovereignty. More importantly, the recognition of archipelagic States' archipelago and the waters enclosed by their baselines as one cohesive entity prevents the treatment of their islands as separate islands under UNCLOS III.[46] Separate islands generate their own maritime zones, placing the waters between islands separated by more than 24 nautical miles beyond the States' territorial sovereignty, subjecting these waters to the rights of other States under UNCLOS III.[47]

Petitioners' invocation of non-executory constitutional provisions in Article II (Declaration of Principles and State Policies)[48] must also fail. Our present state of jurisprudence considers the provisions in Article II as mere legislative guides, which, absent enabling legislation, "do not embody judicially enforceable constitutional rights x x x." [49] Article II provisions serve as guides in formulating and interpreting implementing legislation, as well as in interpreting executory provisions of the Constitution. Although *Oposa v. Factoran*[50] treated the right to a healthful and balanced ecology under Section 16 of Article II as an exception, the present petition lacks factual basis to substantiate the claimed constitutional violation. The other provisions petitioners cite, relating to the protection of marine wealth (Article XII, Section 2, paragraph 2[51]) and subsistence fishermen (Article XIII, Section 7[52]), are not violated by RA 9522.

In fact, the demarcation of the baselines enables the Philippines to delimit its exclusive economic zone, reserving solely to the Philippines the exploitation of all living and non-living resources within such zone. Such a maritime delineation binds the international community since the delineation is in strict observance of UNCLOS III. If the maritime delineation is contrary to UNCLOS III, the international community will of course reject it and will refuse to be bound by it.

UNCLOS III favors States with a long coastline like the Philippines. UNCLOS III creates a sui generis maritime space - the exclusive economic zone - in waters previously part of the high seas. UNCLOS III grants new rights to coastal States to exclusively exploit the resources found within this zone up to 200 nautical miles.[53] UNCLOS III, however, preserves the traditional freedom of navigation of other States that attached to this zone beyond the territorial sea before UNCLOS III.

RA 9522 and the Philippines' Maritime Zones

Petitioners hold the view that, based on the permissive text of UNCLOS III, Congress was not bound to pass RA 9522.[54] We have looked at the relevant provision of UNCLOS III[55] and we find petitioners' reading plausible. Nevertheless, the prerogative of choosing this option belongs to Congress, not to this Court. Moreover, the luxury of choosing this option comes at a very steep price. Absent an UNCLOS III compliant baselines law, an archipelagic State like the Philippines will find itself devoid of internationally acceptable baselines from where the breadth of its maritime zones and continental shelf is measured. This is recipe for a two-fronted disaster: first, it sends an open invitation to the seafaring powers to freely enter and exploit the resources in the waters and submarine areas around our archipelago; and second, it weakens the country's case in any international dispute over Philippine maritime space. These are consequences Congress wisely avoided.

The enactment of UNCLOS III compliant baselines law for the Philippine archipelago and adjacent areas, as embodied in RA 9522, allows an internationally-recognized delimitation of the breadth of the Philippines'

maritime zones and continental shelf. RA 9522 is therefore a most vital step on the part of the Philippines in safeguarding its maritime zones, consistent with the Constitution and our national interest.

WHEREFORE, we DISMISS the petition.

SO ORDERED.

Corona, C.J., Leonardo-De Castro, Brion, Bersamin, Peralta, Villarama, Jr., Del Castillo, Abad, Mendoza, and Sereno, JJ., concur.

Velasco, Jr., J., pls. see concurring opinion.

Perez, J., on leave.

[1] Entitled "An Act to Amend Certain Provisions of Republic Act No. 3046, as Amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes."

[2] Entitled "An Act to Define the Baselines of the Territorial Sea of the Philippines."

[3] The third "Whereas Clause" of RA 3046 expresses the import of treating the Philippines as an archipelagic State:

"WHEREAS, all the waters around, between, and connecting the various islands of the Philippine archipelago, irrespective of their width or dimensions, have always been considered as necessary appurtenances of the land territory, forming part of the inland waters of the Philippines."

[4] One of the four conventions framed during the first United Nations Convention on the Law of the Sea in Geneva, this treaty, excluding the Philippines, entered into force on 10 September 1964.

[5] UNCLOS III entered into force on 16 November 1994.

[6] The Philippines signed the treaty on 10 December 1982.

[7] Article 47, paragraphs 1-3, provide:

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

2. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago. (Emphasis supplied)

x x x x

[8] UNCLOS III entered into force on 16 November 1994. The deadline for the filing of application is mandated in Article 4, Annex II: "Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State. The coastal State shall at the same time give the names of any Commission members who have provided it with scientific and technical advice." (Underscoring supplied)

In a subsequent meeting, the States parties agreed that for States which became bound by the treaty before 13 May 1999 (such as the Philippines) the ten-year period will be counted from that date. Thus, RA 9522, which took effect on 27 March 2009, barely met the deadline.

[9] Rollo, p. 34.

[10] Which provides: "The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines."

[11] Entered into between the United States and Spain on 10 December 1898 following the conclusion of the Spanish-American War. Under the terms of the treaty, Spain ceded to the United States "the archipelago known as the Philippine Islands" lying within its technical description.

[12] The Treaty of Washington, between Spain and the United States (7 November 1900), transferring to the US the islands of Cagayan, Sulu, and Sibutu and the US-Great Britain Convention (2 January 1930) demarcating boundary lines between the Philippines and North Borneo.

[13] Article II, Section 7, Section 8, and Section 16.

[14] Allegedly in violation of Article XII, Section 2, paragraph 2 and Article XIII, Section 7 of the Constitution.

[15] *Kilosbayan, Inc. v. Morato*, 320 Phil. 171, 186 (1995).

[16] *Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960); *Sanidad v. COMELEC*, 165 Phil. 303 (1976).

[17] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 899 (2003) citing *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, 5 May 1994, 232 SCRA 110, 155-156 (1995) (Feliciano, J., concurring). The two other factors are: "the character of funds or assets involved in the controversy and a clear disregard of constitutional or statutory prohibition." *Id.*

[18] Rollo, pp. 144-147.

[19] See e.g. *Aquino III v. COMELEC*, G.R. No. 189793, 7 April 2010, 617 SCRA 623 (dismissing a petition for certiorari and prohibition assailing the constitutionality of Republic Act No. 9716, not for the impropriety of remedy but for lack of merit); *Aldaba v. COMELEC*, G.R. No. 188078, 25 January 2010, 611 SCRA 137 (issuing the writ of prohibition to declare unconstitutional Republic Act No. 9591); *Macalintal v. COMELEC*, 453 Phil. 586 (2003) (issuing the writs of certiorari and prohibition declaring unconstitutional portions of Republic Act No. 9189).

[20] See e.g. *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, 25 March 2008, 549 SCRA 77 (granting a writ of certiorari against the Philippine Senate and nullifying the Senate contempt order issued against petitioner).

[21] Rollo, p. 31.

[22] Respondents state in their Comment that petitioners' theory "has not been accepted or recognized by either the United States or Spain," the parties to the Treaty of Paris. Respondents add that "no State is known to have supported this proposition." Rollo, p. 179.

[23] UNCLOS III belongs to that larger corpus of international law of the sea, which petitioner Magallona himself

defined as "a body of treaty rules and customary norms governing the uses of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes. x x x" (Merlin M. Magallona, Primer on the Law of the Sea 1 [1997]) (Italicization supplied).

[24] Following Article 47 (1) of UNCLOS III which provides:

An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. (Emphasis supplied)

[25] Under the United Nations Charter, use of force is no longer a valid means of acquiring territory.

[26] The last paragraph of the preamble of UNCLOS III states that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law."

[27] Rollo, p. 51.

[28] Id. at 51-52, 64-66.

[29] Based on figures respondents submitted in their Comment (id. at 182).

[30] Under Article 74.

[31] See note 7.

[32] Presidential Decree No. 1596 classifies the KIG as a municipality of Palawan.

[33] KIG lies around 80 nautical miles west of Palawan while Scarborough Shoal is around 123 nautical west of Zambales.

[34] Journal, Senate 14th Congress 44th Session 1416 (27 January 2009).

[35] Rollo, p. 159.

[36] Section 2, RA 9522.

[37] Article 121 provides: "Regime of islands. --

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

[38] Rollo, pp. 56-57, 60-64.

[39] Paragraph 2, Section 2, Article XII of the Constitution uses the term "archipelagic waters" separately from "territorial sea." Under UNCLOS III, an archipelagic State may have internal waters - such as those enclosed by closing lines across bays and mouths of rivers. See Article 50, UNCLOS III. Moreover, Article 8 (2) of UNCLOS III provides: "Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters." (Emphasis supplied)

[40] Mandated under Articles 52 and 53 of UNCLOS III:

Article 52. Right of innocent passage. --

1. Subject to article 53 and without prejudice to article 50, ships of all States enjoy the right of innocent passage through archipelagic waters, in accordance with Part II, section 3.
2. The archipelagic State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its archipelagic waters the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published. (Emphasis supplied)

Article 53. Right of archipelagic sea lanes passage. --

1. An archipelagic State may designate sea lanes and air routes thereabove, suitable for the continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
2. All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.
3. Archipelagic sea lanes passage means the exercise in accordance with this Convention of the rights of navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.
4. Such sea lanes and air routes shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all normal navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.
5. Such sea lanes and air routes shall be defined by a series of continuous axis lines from the entry points of passage routes to the exit points. Ships and aircraft in archipelagic sea lanes passage shall not deviate more than 25 nautical miles to either side of such axis lines during passage, provided that such ships and aircraft shall not navigate closer to the coasts than 10 per cent of the distance between the nearest points on islands bordering the sea lane.
6. An archipelagic State which designates sea lanes under this article may also prescribe traffic separation schemes for the safe passage of ships through narrow channels in such sea lanes.
7. An archipelagic State may, when circumstances require, after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by it.
8. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.
9. In designating or substituting sea lanes or prescribing or substituting traffic separation schemes, an archipelagic State shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them.
10. The archipelagic State shall clearly indicate the axis of the sea lanes and the traffic separation schemes designated or prescribed by it on charts to which due publicity shall be given.
11. Ships in archipelagic sea lanes passage shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

12. If an archipelagic State does not designate sea lanes or air routes, the right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation. (Emphasis supplied)

[41] Namely, House Bill No. 4153 and Senate Bill No. 2738, identically titled "AN ACT TO ESTABLISH THE ARCHIPELAGIC SEA LANES IN THE PHILIPPINE ARCHIPELAGIC WATERS, PRESCRIBING THE RIGHTS AND OBLIGATIONS OF FOREIGN SHIPS AND AIRCRAFTS EXERCISING THE RIGHT OF ARCHIPELAGIC SEA LANES PASSAGE THROUGH THE ESTABLISHED ARCHIPELAGIC SEA LANES AND PROVIDING FOR THE ASSOCIATED PROTECTIVE MEASURES THEREIN."

[42] The relevant provision of UNCLOS III provides:

Article 17. Right of innocent passage. --

Subject to this Convention, ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea. (Emphasis supplied)

Article 19. Meaning of innocent passage. --

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with this Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if in the territorial sea it engages in any of the following activities:

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(b) any exercise or practice with weapons of any kind;

(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;

(e) the launching, landing or taking on board of any aircraft;

(f) the launching, landing or taking on board of any military device;

(g) the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;

(h) any act of willful and serious pollution contrary to this Convention;

(i) any fishing activities;

(j) the carrying out of research or survey activities;

(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State;

(l) any other activity not having a direct bearing on passage

Article 21. Laws and regulations of the coastal State relating to innocent passage. --

1. The coastal State may adopt laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, in respect of all or any of the following:

- (a) the safety of navigation and the regulation of maritime traffic;
- (b) the protection of navigational aids and facilities and other facilities or installations;
- (c) the protection of cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the prevention of infringement of the fisheries laws and regulations of the coastal State;
- (f) the preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof;
- (g) marine scientific research and hydrographic surveys;
- (h) the prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State.

2. Such laws and regulations shall not apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards.

3. The coastal State shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations and all generally accepted international regulations relating to the prevention of collisions at sea.

[43] The right of innocent passage through the territorial sea applies only to ships and not to aircrafts (Article 17, UNCLOS III). The right of innocent passage of aircrafts through the sovereign territory of a State arises only under an international agreement. In contrast, the right of innocent passage through archipelagic waters applies to both ships and aircrafts (Article 53 (12), UNCLOS III).

[44] Following Section 2, Article II of the Constitution: "Section 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations." (Emphasis supplied)

[45] "Archipelagic sea lanes passage is essentially the same as transit passage through straits" to which the territorial sea of continental coastal State is subject. R.R. Churabill and A.V. Lowe, *The Law of the Sea* 127 (1999).

[46] Falling under Article 121 of UNCLOS III (see note 37).

[47] Within the exclusive economic zone, other States enjoy the following rights under UNCLOS III:

Article 58. Rights and duties of other States in the exclusive economic zone. --

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

2. Articles 88 to 115 and other pertinent rules of international law apply to the exclusive economic zone in so far as they are not incompatible with this Part.

x x x x

Beyond the exclusive economic zone, other States enjoy the freedom of the high seas, defined under UNCLOS III as follows:

Article 87. Freedom of the high seas. --

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

[48] See note 13.

[49] *Kilosbayan, Inc. v. Morato*, 316 Phil. 652, 698 (1995); *Tañada v. Angara*, 338 Phil. 546, 580-581 (1997).

[50] G.R. No. 101083, 30 July 1993, 224 SCRA 792.

[51] "The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens."

[52] "The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources."

[53] This can extend up to 350 nautical miles if the coastal State proves its right to claim an extended continental shelf (see UNCLOS III, Article 76, paragraphs 4(a), 5 and 6, in relation to Article 77).

[54] Rollo, pp. 67-69.

[55] Article 47 (1) provides: "An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1." (Emphasis supplied)

CONCURRING OPINION

VELASCO, JR., J.:

I concur with the ponencia and add the following complementary arguments and observations:

A statute is a product of hard work and earnest studies of Congress to ensure that no constitutional provision, prescription or concept is infringed. Withal, before a law, in an appropriate proceeding, is nullified, an

unequivocal breach of, or a clear conflict with, the Constitution must be demonstrated in such a way as to leave no doubt in the mind of the Court.[1] In the same token, if a law runs directly afoul of the Constitution, the Court's duty on the matter should be clear and simple: Pursuant to its judicial power and as final arbiter of all legal questions,[2] it should strike such law down, however laudable its purpose/s might be and regardless of the deleterious effect such action may carry in its wake.

Challenged in these proceedings is the constitutionality of Republic Act (RA 9522) entitled "An Act to Amend Certain Provisions of [RA] 3046, as Amended by [RA] 5446 to Define the Archipelagic Baselines Of The Philippines and for Other Purposes." For perspective, RA 3046, "An Act to Define the Baselines of the Territorial Sea of the Philippines, was enacted in 1961 to comply with the United Nations Convention on the Law of the Sea (UNCLOS) I. Eight years later, RA 5446 was enacted to amend typographical errors relating to coordinates in RA 3046. The latter law also added a provision asserting Philippine sovereignty over Sabah.

As its title suggests, RA 9522 delineates archipelagic baselines of the country, amending in the process the old baselines law, RA 3046. Everybody is agreed that RA 9522 was enacted in response to the country's commitment to conform to some 1982 Law of the Sea Convention (LOSC) or UNCLOS III provisions to define new archipelagic baselines through legislation, the Philippines having signed[3] and eventually ratified[4] this multilateral treaty. The Court can take judicial notice that RA 9522 was registered and deposited with the UN on April 4, 2009.

As indicated in its Preamble,[5] 1982 LOSC aims, among other things, to establish, with due regard for the sovereignty of all States, "a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans." One of the measures to attain the order adverted to is to have a rule on baselines. Of particular relevance to the Philippines, as an archipelagic state, is Article 47 of UNCLOS III which deals with baselines:

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.
2. The length of such baseline shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.
3. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

x x x x

9. The archipelagic State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations.[6] (Emphasis added.)

To obviate, however, the possibility that certain UNCLOS III baseline provisions would, in their implementation, undermine its sovereign and/or jurisdictional interests over what it considers its territory,[7] the Philippines, when it signed UNCLOS III on December 10, 1982, made the following "Declaration" to said treaty:

The Government of the Republic of the Philippines [GRP] hereby manifests that in signing the 1982 United Nations Convention on the Law of the Sea, it does so with the understandings embodied in this declaration, made under the provisions of Article 310 of the Convention, to wit:

The signing of the Convention by the [GRP] shall not in any manner impair or prejudice the sovereign rights of the [RP] under and arising from the Constitution of the Philippines;

Such signing shall not in any manner affect the sovereign rights of the [RP] as successor of the United States of America [USA], under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the [USA] and Great Britain of January 2, 1930;

x x x x

Such signing shall not in any manner impair or prejudice the sovereignty of the [RP] over any territory over which it exercises sovereign authority, such as the Kalayaan Islands, and the waters appurtenant thereto;

The Convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees or Proclamations of the Republic of the Philippines. The [GRP] maintains and reserves the right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippine Constitution;

The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic state over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty independence and security;

The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessels to transit passage for international navigation.[8] (Emphasis added.)

Petitioners challenge the constitutionality of RA 9522 on the principal ground that the law violates Section 1, Article I of the 1987 Constitution on national territory which states:

Section 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines. (Emphasis supplied.)

According to Fr. Joaquin Bernas, S.J., himself a member of the 1986 Constitutional Commission which drafted the 1987 Constitution, the aforequoted Section 1 on national territory was "in substance a copy of its 1973 counterpart." [9] Art. I of the 1973 Constitution reads:

Section 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories belonging to the Philippines by historic right or legal title, including the territorial sea, the air space, the subsoil, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines. (Emphasis added.)

As may be noted both constitutions speak of the "Philippine archipelago," and, via the last sentence of their respective provisions, assert the country's adherence to the "archipelagic principle." Both constitutions divide the national territory into two main groups: (1) the Philippine archipelago and (2) other territories belonging to the Philippines. So what or where is Philippine archipelago contemplated in the 1973 and 1987 Constitutions then? Fr. Bernas answers the poser in the following wise:

Article I of the 1987 Constitution cannot be fully understood without reference to Article I of the 1973 Constitution. x x x

x x x x

x x x To understand [the meaning of national territory as comprising the Philippine archipelago], one must look into the evolution of [Art. I of the 1973 Constitution] from its first draft to its final form.

Section 1 of the first draft submitted by the Committee on National Territory almost literally reproduced Article I of the 1935 Constitution x x x. Unlike the 1935 version, however, the draft designated the Philippines not simply as the Philippines but as "the Philippine archipelago.[10] In response to the criticism that the definition was colonial in tone x x x, the second draft further designated the Philippine archipelago, as the historic home of the Filipino people from its beginning.[11]

After debates x x x, the Committee reported out a final draft, which became the initially approved version: "The national territory consists of the Philippine archipelago which is the ancestral home of the Filipino people and which is composed of all the islands and waters embraced therein..."

What was the intent behind the designation of the Philippines as an "archipelago"? x x x Asked by Delegate Roseller Lim (Zamboanga) where this archipelago was, Committee Chairman Quintero answered that it was the area delineated in the Treaty of Paris. He said that objections to the colonial implication of mentioning the Treaty of Paris was responsible for the omission of the express mention of the Treaty of Paris.

Report No. 01 of the Committee on National Territory had in fact been explicit in its delineation of the expanse of this archipelago. It said:

Now if we plot on a map the boundaries of this archipelago as set forth in the Treaty of Paris, a huge or giant rectangle will emerge, measuring about 600 miles in width and 1,200 miles in length. Inside this giant rectangle are the 7,100 islands comprising the Philippine Islands. From the east coast of Luzon to the eastern boundary of this huge rectangle in the Pacific Ocean, there is a distance of over 300 miles. From the west coast of Luzon to the western boundary of this giant rectangle in the China sea, there is a distance of over 150 miles.

When the [US] Government enacted the Jones Law, the Hare-Hawes Cutting Law and the Tydings McDuffie Law, it in reality announced to the whole world that it was turning over to the Government of the Philippine Islands an archipelago (that is a big body of water studded with islands), the boundaries of which archipelago are set forth in Article III of the Treaty of Paris. It also announced to the whole world that the waters inside the giant rectangle belong to the Philippines - that they are not part of the high seas.

When Spain signed the Treaty of Paris, in effect she announced to the whole world that she was ceding to the [US] the Philippine archipelago x x x, that this archipelago was bounded by lines specified in the treaty, and that the archipelago consisted of the huge body of water inside the boundaries and the islands inside said boundaries.

The delineation of the extent of the Philippine archipelago must be understood in the context of the modifications made both by the Treaty of Washington of November 7, 1900, and of the Convention of January 12, 1930, in order to include the Islands of Sibutu and of Cagayan de Sulu and the Turtle and Mangsee Islands. However, x x x the definition of the archipelago did not include the Batanes group[, being] outside the boundaries of the Philippine archipelago as set forth in the Treaty of Paris. In literal terms, therefore, the Batanes islands would come not under the Philippine archipelago but under the phrase "all other territories belong to the Philippines." [12] x x x (Emphasis added.)

From the foregoing discussions on the deliberations of the provisions on national territory, the following conclusion is abundantly evident: the "Philippine archipelago" of the 1987 Constitution is the same "Philippine archipelago" referred to in Art. I of the 1973 Constitution which in turn corresponds to the territory defined and described in Art. 1 of the 1935 Constitution,[13] which pertinently reads:

Section 1. The Philippines comprises all the territory ceded to the [US] by the Treaty of Paris concluded between the [US] and Spain on the tenth day of December, [1898], the limits of which are set forth in Article III of said treaty, together with all the islands in the treaty concluded at Washington, between the [US] and Spain on November [7, 1900] and the treaty concluded between the [US] and Great Britain x x x.

While the Treaty of Paris is not mentioned in both the 1973 and 1987 Constitutions, its mention, so the nationalistic arguments went, being "a repulsive reminder of the indignity of our colonial past,"[14] it is at once clear that the Treaty of Paris had been utilized as key reference point in the definition of the national territory.

On the other hand, the phrase "all other territories over which the Philippines has sovereignty or jurisdiction," found in the 1987 Constitution, which replaced the deleted phrase "all territories belonging to the Philippines by historic right or legal title"[15] found in the 1973 Constitution, covers areas linked to the Philippines with varying degrees of certainty.[16] Under this category would fall: (a) Batanes, which then 1971 Convention Delegate Eduardo Quintero, Chairperson of the Committee on National Territory, described as belonging to the Philippines in all its history;[17] (b) Sabah, over which a formal claim had been filed, the so-called Freedomland (a group of islands known as Spratleys); and (c) any other territory, over which the Philippines had filed a claim or might acquire in the future through recognized modes of acquiring territory.[18] As an author puts it, the deletion of the words "by historic right or legal title" is not to be interpreted as precluding future claims to areas over which the Philippines does not actually exercise sovereignty.[19]

Upon the foregoing perspective and going into specifics, petitioners would have RA 9522 stricken down as unconstitutional for the reasons that it deprives the Philippines of what has long been established as part and parcel of its national territory under the Treaty of Paris, as supplemented by the aforementioned 1900 Treaty of Washington or, to the same effect, revises the definition on or dismembers the national territory. Pushing their case, petitioners argue that the constitutional definition of the national territory cannot be remade by a mere statutory act.[20] As another point, petitioners parlay the theory that the law in question virtually weakens the country's territorial claim over the Kalayaan Island Group (KIG) and Sabah, both of which come under the category of "other territories" over the Philippines has sovereignty or jurisdiction. Petitioners would also assail the law on grounds related to territorial sea lanes and internal waters transit passage by foreign vessels.

It is remarkable that petitioners could seriously argue that RA 9522 revises the Philippine territory as defined in the Constitution, or worse, constitutes an abdication of territory.

It cannot be over-emphasized enough that RA 9522 is a baseline law enacted to implement the 1982 LOSC, which in turn seeks to regulate and establish an orderly sea use rights over maritime zones. Or as the ponencia aptly states, RA 9522 aims to mark-out specific base points along the Philippine coast from which baselines are drawn to serve as starting points to measure the breadth of the territorial sea and maritime zones.[21] The baselines are set to define the sea limits of a state, be it coastal or archipelagic, under the UNCLOS III regime. By setting the baselines to conform to the prescriptions of UNCLOS III, RA 9522 did not surrender any territory, as petitioners would insist at every turn, for UNCLOS III is concerned with setting order in the exercise of sea-use rights, not the acquisition or cession of territory. And let it be noted that under UNCLOS III, it is recognized that countries can have territories outside their baselines. Far from having a dismembering effect, then, RA 9522 has in a limited but real sense increased the country's maritime boundaries. How this situation comes about was extensively explained by then Minister of State and head of the Philippine delegation to UNCLOS III Arturo Tolentino in his sponsorship speech[22] on the concurrence of the Batasang Pambansa with the LOSC:

x x x x

Then, we should consider, Mr. Speaker, that under the archipelagic principle, the whole area inside the

archipelagic base lines become a unified whole and the waters between the islands which formerly were regarded by international law as open or international seas now become waters under the complete sovereignty of the Filipino people. In this light there would be an additional area of 141,800 square nautical miles inside the base lines that will be recognized by international law as Philippine waters, equivalent to 45,351,050 hectares. These gains in the waters of the sea, 45,211,225 hectares outside the base lines and 141,531,000 hectares inside the base lines, total 93,742,275 hectares as a total gain in the waters under Philippine jurisdiction.

From a pragmatic standpoint, therefore, the advantage to our country and people not only in terms of the legal unification of land and waters of the archipelago in the light of international law, but also in terms of the vast resources that will come under the dominion and jurisdiction of the Republic of the Philippines, your Committee on Foreign Affairs does not hesitate to ask this august Body to concur in the Convention by approving the resolution before us today.

May I say it was the unanimous view of delegations at the Conference on the Law of the Sea that archipelagos are among the biggest gainers or beneficiaries under the Convention on the Law of the Sea.

Lest it be overlooked, the constitutional provision on national territory, as couched, is broad enough to encompass RA 9522's definition of the archipelagic baselines. To reiterate, the laying down of baselines is not a mode of acquiring or asserting ownership a territory over which a state exercises sovereignty. They are drawn for the purpose of defining or establishing the maritime areas over which a state can exercise sovereign rights. Baselines are used for fixing starting point from which the territorial belt is measured seawards or from which the adjacent maritime waters are measured. Thus, the territorial sea, a marginal belt of maritime waters, is measured from the baselines extending twelve (12) nautical miles outward.[23] Similarly, Art. 57 of the 1982 LOSC provides that the Exclusive Economic Zone (EEZ) "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured." [24] Most important to note is that the baselines indicated under RA 9522 are derived from Art. 47 of the 1982 LOSC which was earlier quoted.

Since the 1987 Constitution's definition of national territory does not delimit where the Philippine's baselines are located, it is up to the political branches of the government to supply the deficiency. Through Congress, the Philippines has taken an official position regarding its baselines to the international community through RA 3046,[25] as amended by RA 5446[26] and RA 9522. When the Philippines deposited a copy of RA 9522 with the UN Secretary General, we effectively complied in good faith with our obligation under the 1982 LOSC. A declaration by the Court of the constitutionality of the law will complete the bona fides of the Philippines vis-a-vis the law of the sea treaty.

It may be that baseline provisions of UNCLOS III, if strictly implemented, may have an imposing impact on the signatory states' jurisdiction and even their sovereignty. But this actuality, without more, can hardly provide a justifying dimension to nullify the complying RA 9522. As held by the Court in *Bayan Muna v. Romulo*, [27] treaties and international agreements have a limiting effect on the otherwise encompassing and absolute nature of sovereignty. By their voluntary acts, states may decide to surrender or waive some aspects of their sovereignty. The usual underlying consideration in this partial surrender may be the greater benefits derived from a pact or reciprocal undertaking. On the premise that the Philippines has adopted the generally accepted principles of international law as part of the law of the land, a portion of sovereignty may be waived without violating the Constitution.

As a signatory of the 1982 LOSC, it behooves the Philippines to honor its obligations thereunder. *Pacta sunt servanda*, a basic international law postulate that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." [28] The exacting imperative of this principle is such that a state may not

invoke provisions in its constitution or its laws as an excuse for failure to perform this duty." [29]

The allegation that Sabah has been surrendered by virtue of RA 9522, which supposedly repealed the hereunder provision of RA 5446, is likewise unfounded.

Section 2. The definition of the baselines of the territorial sea of the Philippine Archipelago as provided in this Act is without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

There is nothing in RA 9522 indicating a clear intention to supersede Sec. 2 of RA 5446. Petitioners obviously have read too much into RA 9522's amendment on the baselines found in an older law. Aside from setting the country's baselines, RA 9522 is, in its Sec. 3, quite explicit in its reiteration of the Philippines' exercise of sovereignty, thus:

Section 3. This Act affirms that the Republic of the Philippines has dominion, sovereignty and jurisdiction over all portions of the national territory as defined in the Constitution and by provisions of applicable laws including, without limitation, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, as amended.

To emphasize, baselines are used to measure the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. Having KIG and the Scarborough Shoal outside Philippine baselines will not diminish our sovereignty over these areas. Art. 46 of UNCLOS III in fact recognizes that an archipelagic state, such as the Philippines, is a state "constituted wholly by one or more archipelagos and may include other islands." (emphasis supplied) The "other islands" referred to in Art. 46 are doubtless islands not forming part of the archipelago but are nevertheless part of the state's territory.

The Philippines' sovereignty over KIG and Scarborough Shoal are, thus, in no way diminished. Consider: Other countries such as Malaysia and the United States have territories that are located outside its baselines, yet there is no territorial question arising from this arrangement. [30]

It may well be apropos to point out that the Senate version of the baseline bill that would become RA 9522 contained the following explanatory note: The law "reiterates our sovereignty over the Kalayaan Group of Islands declared as part of the Philippine territory under Presidential Decree No. 1596. As part of the Philippine territory, they shall be considered as a 'regime of islands' under Article 121 of the Convention." [31] Thus, instead of being in the nature of a "treasonous surrender" that petitioners have described it to be, RA 9522 even harmonizes our baseline laws with our international agreements, without limiting our territory to those confined within the country's baselines.

Contrary to petitioners' contention, the classification of KIG and the Scarborough Shoal as falling under the Philippine's regime of islands is not constitutionally objectionable. Such a classification serves as compliance with LOSC and the Philippines' assertion of sovereignty over KIG and Scarborough Shoal. In setting the baseline in KIG and Scarborough Shoal, RA 9522 states that these are areas "over which the Philippines likewise exercises sovereignty and jurisdiction." It is, thus, not correct for petitioners to claim that the Philippines has lost 15,000 square nautical miles of territorial waters upon making this classification. Having 15,000 square nautical miles of Philippine waters outside of our baselines, to reiterate, does not translate to a surrender of these waters. The Philippines maintains its assertion of ownership over territories outside of its baselines. Even China views RA 9522 as an assertion of ownership, as seen in its Protest [32] filed with the UN Secretary-General upon the deposit of RA 9522.

We take judicial notice of the effective occupation of KIG by the Philippines. Petitioners even point out that

national and local elections are regularly held there. The classification of KIG as under a "regime of islands" does not in any manner affect the Philippines' consistent position with regard to sovereignty over KIG. It does not affect the Philippines' other acts of ownership such as occupation or amend Presidential Decree No. 1596, which declared KIG as a municipality of Palawan.

The fact that the baselines of KIG and Scarborough Shoal have yet to be defined would not detract to the constitutionality of the law in question. The resolution of the problem lies with the political departments of the government.

All told, the concerns raised by the petitioners about the diminution or the virtual dismemberment of the Philippine territory by the enactment of RA 9522 are, to me, not well grounded. To repeat, UNCLOS III pertains to a law on the seas, not territory. As part of its Preamble,[33] LOSC recognizes "the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans x x x."

This brings me to the matter of transit passage of foreign vessels through Philippine waters.

Apropos thereto, petitioners allege that RA 9522 violates the nuclear weapons-free policy under Sec. 8, in relation to Sec. 16, Art. II of the Constitution, and exposes the Philippines to marine pollution hazards, since under the LOSC the Philippines supposedly must give to ships of all states the right of innocent passage and the right of archipelagic sea-lane passage.

The adverted Sec. 8, Art. II of the 1987 Constitution declares the adoption and pursuit by the Philippines of "a policy of freedom from nuclear weapons in its territory." On the other hand, the succeeding Sec. 16 underscores the State's firm commitment "to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." Following the allegations of petitioners, these twin provisions will supposedly be violated inasmuch as RA 9522 accedes to the right of innocent passage and the right of archipelagic sea-lane passage provided under the LOSC. Therefore, ships of all nations--be they nuclear-carrying warships or neutral commercial vessels transporting goods--can assert the right to traverse the waters within our islands.

A cursory reading of RA 9522 would belie petitioners' posture. In context, RA 9522 simply seeks to conform to our international agreement on the setting of baselines and provides nothing about the designation of archipelagic sea-lane passage or the regulation of innocent passage within our waters. Again, petitioners have read into the amendatory RA 9522 something not intended.

Indeed, the 1982 LOSC enumerates the rights and obligations of archipelagic party-states in terms of transit under Arts. 51 to 53, which are explained below:

To safeguard, in explicit terms, the general balance struck by [Articles 51 and 52] between the need for passage through the area (other than straits used for international navigation) and the archipelagic state's need for security, Article 53 gave the archipelagic state the right to regulate where and how ships and aircraft pass through its territory by designating specific sea lanes. Rights of passage through these archipelagic sea lanes are regarded as those of transit passage:

- (1) An archipelagic State may designate sea lanes and air routes thereabove, suitable for safe, continuous and expeditious passage of foreign ships and aircraft through or over its archipelagic waters and the adjacent territorial sea.
- (2) All ships and aircraft enjoy the right of archipelagic sea lanes passage in such sea lanes and air routes.
- (3) Archipelagic sea lanes passage is the exercise in accordance with the present Convention of the rights of

navigation and overflight in the normal mode solely for the purpose of continuous, expeditious and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone.[34]

But owing to the geographic structure and physical features of the country, i.e., where it is "essentially a body of water studded with islands, rather than islands with water around them,"[35] the Philippines has consistently maintained the conceptual unity of land and water as a necessary element for territorial integrity,[36] national security (which may be compromised by the presence of warships and surveillance ships on waters between the islands),[37] and the preservation of its maritime resources. As succinctly explained by Minister Arturo Tolentino, the essence of the archipelagic concept is "the dominion and sovereignty of the archipelagic State within its baselines, which were so drawn as to preserve the territorial integrity of the archipelago by the inseparable unity of the land and water domain." [38] Indonesia, like the Philippines, in terms of geographic reality, has expressed agreement with this interpretation of the archipelagic concept. So it was that in 1957, the Indonesian Government issued the Djuanda Declaration, therein stating :

[H]istorically, the Indonesian archipelago has been an entity since time immemorial. In view of the territorial entirety and of preserving the wealth of the Indonesian state, it is deemed necessary to consider all waters between the islands and entire entity.

x x x On the ground of the above considerations, the Government states that all waters around, between and connecting, the islands or parts of islands belonging to the Indonesian archipelago irrespective of their width or dimension are natural appurtenances of its land territory and therefore an integral part of the inland or national waters subject to the absolute sovereignty of Indonesia.[39] (Emphasis supplied.)

Hence, the Philippines maintains the sui generis character of our archipelagic waters as equivalent to the internal waters of continental coastal states. In other words, the landward waters embraced within the baselines determined by RA 9522, i.e., all waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.[40] Accordingly, such waters are not covered by the jurisdiction of the LOSC and cannot be subjected to the rights granted to foreign states in archipelagic waters, e.g., the right of innocent passage,[41] which is allowed only in the territorial seas, or that area of the ocean comprising 12 miles from the baselines of our archipelago; archipelagic sea-lane passage;[42] over flight;[43] and traditional fishing rights.[44]

Our position that all waters within our baselines are internal waters, which are outside the jurisdiction of the 1982 LOSC,[45] was abundantly made clear by the Philippine Declaration at the time of the signing of the LOSC on December 10, 1982. To reiterate, paragraphs 5, 6 and 7 of the Declaration state:

5. The Convention shall not be construed as amending in any manner any pertinent laws and Presidential decrees of Proclamation of the republic of the Philippines; the Government x x x maintains and reserves the right and authority to make any amendments to such laws, decrees or proclamations pursuant to the provisions of the Philippine Constitution;

6. The provisions of the Convention on archipelagic passage through sea lanes do not nullify or impair the sovereignty of the Philippines as an archipelagic State over the sea lanes and do not deprive it of authority to enact legislation to protect its sovereignty, independence and security;

7. The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines and removes straits connecting this water with the economic zone or high seas from the rights of foreign vessels to transit passage for international navigation. (Emphasis supplied.)[46]

More importantly, by the ratification of the 1987 Constitution on February 2, 1987, the integrity of the Philippine

state as comprising both water and land was strengthened by the proviso in its first article, viz: "The waters around, between, and connecting the islands of the [Philippine] archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines. (emphasis supplied)

In effect, contrary to petitioners' allegations, the Philippines' ratification of the 1982 LOSC did not matter-of-factly open our internal waters to passage by foreign ships, either in the concept of innocent passage or archipelagic sea-lane passage, in exchange for the international community's recognition of the Philippines as an archipelagic state. The Filipino people, by ratifying the 1987 Constitution, veritably rejected the quid pro quo petitioners take as being subsumed in that treaty.

Harmonized with the Declaration and the Constitution, the designation of baselines made in RA 9522 likewise designates our internal waters, through which passage by foreign ships is not a right, but may be granted by the Philippines to foreign states but only as a dissolvable privilege.

In view of the foregoing, I vote to DISMISS the Petition.

[1] *League of Cities of the Phil. v. COMELEC*, G.R. No. 176951, December 21, 2009, 608 SCRA 636.

[2] Under Art. VIII, Sec. 5 of the Constitution, the Supreme Court is empowered to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in: all cases in which the Constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question. (Emphasis supplied.)

[3] December 10, 1982.

[4] May 8, 1984.

[5] Available on (visited July 28, 2011).

[6] UNCLOS, Art. 47, December 10, 1982.

[7] J. Bernas, S.J., *The 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES A COMMENTARY* 57 (2003).

[8] See J. Batongbacal, *The Metes and Bounds of the Philippine National Territory, An International Law and Policy Perspective*, Supreme Court of the Philippines, Philippine Judicial Academy Third Distinguished Lecture, Far Eastern University, June 27, 2008.

[9] J. Bernas, *supra* note 7, at 10.

[10] Citing Report No. 01 of the Committee on National Territory.

[11] Citing Report No. 02 of the Committee on National Territory.

[12] J. Bernas, *supra* note 7, at 11-14.

[13] *Id.* at 14.

[14] *Id.* at 9; citing Speech, Session February 15, 1972, of Delegates Amanio Sorongon, et al.

[15] The history of this deleted phrase goes back to the last clause of Art. I of the 1935 Constitution which included "all territory over which the present Government of the Philippine Islands exercises jurisdiction. See J. Bernas, *supra* note 7, at 14.

[16] J. Bernas, *supra* note 7, at 16.

[17] *Id.*; citing deliberations of the February 17, 1972 Session.

[18] *Id.*

[19] DE LEON, PHILIPPINE CONSTITUTION 62 (2011).

[20] Petition, pp. 4-5.

[21] Art. 48 of UNCLOS III provides that the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf shall be measured from the archipelagic baseline drawn in accordance with Art. 47.

[22] R.P. Lotilla, *THE PHILIPPINE NATIONAL TERRITORY: A COLLECTION OF RELATED DOCUMENTS* 513-517 (1995); citing Batasang Pambansa, Acts and Resolution, 6[th] Regular Session.

[23] J. Bernas, *supra* note 7, at 22.

[24] UNCLOS III, Art. 57.

[25] June 17, 1961.

[26] September 18, 1968.

[27] G.R. No. 159618, February 1, 2011; citing *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.

[28] Art. 26, Vienna Convention on the Law of Treaties, 1969.

[29] Art. 13, Declaration of Rights and Duties of States Adopted by the International Law Commission, 1949.

[30] See J. Batongbacal, *supra* note 8.

[31] *Id.*

[32] The Protest reads in part: "The above-mentioned Philippine Act illegally claims Huangyan Island (referred as "Bajo de Masinloc" in the Act) of China as "areas over which the Philippines likewise exercises sovereignty and jurisdiction." The Chinese Government hereby reiterates that Huangyan Island and Nansha Islands have been part of the territory of China since ancient time. The People's Republic of China has indisputable sovereignty over Huangyan Island and Nansha Islands and their surrounding areas. Any claim to territorial sovereignty over Huangyan Island and Nansha Islands by any other State is, therefore, null and void." Available on (visited August 9, 2011).

[33] *Supra* note 5.

[34] C. Ku, *The Archipelagic States Concept and Regional Stability in Southeast Asia*, Case W. Res. J. Int'l L., Vol. 23:463, 469; citing 1958 U.N. Conference on the Law of the Sea, Summary Records 44, Doc. A/Conf. 13/42.

[35] *Id.*

[36] Hiran W. Jayewardene, *The Regime of Islands in International Law*, AD Dordrecht: Martinus Nijhoff Publishers, p. 103 (1990).

[37] *Id.* at 112.

[38] UNCLOS III Off. Rec., Vol. II, 264, par. 65, and also pars. 61-62 and 66; cited in B. Kwiatkowska, "The

Archipelagic Regime in Practice in the Philippines and Indonesia - Making or Breaking International Law?", *International Journal of Estuarine and Coastal Law*, Vol. 6, No. 1, pp. 6-7.

[39] 4 Whiteman D.G., *International Law* 284 (1965); quoted in C. Ku, *supra* note 34, at 470.

[40] 1987 Constitution, Art. I.

[41] LOSC, Arts. 52 and 54.

[42] LOSC, Art. 53, par. 2.

[43] LOSC, Art. 53, par. 2.

[44] LOSC, Art. 51.

[45] LOSC, Art. 8, par. 2.

[46] Cf. B. Kwiatkowska, *supra* note 38; citing J.D. Ingles, "The United Nations Convention on the Law of the Sea: Implications of Philippine Ratification," 9 *Philippine Yil* (1983) 48-9 and 61-2; and Congress of the Philippines, First Regular Session, Senate, S. No. 232, Explanatory Note and An Act to Repeal Section 2 (concerning TS baselines around Sabah disputed with Malaysia) of the 1968 Act No. 5446.

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