

*EN BANC*

G.R. No. 182734 – BAYAN MUNA PARTY-LIST REPRESENTATIVES SATUR C. OCAMPO and TEODORO A. CASIÑO, ANAKPAWIS REPRESENTATIVE CRISPIN B. BELTRAN, GABRIELA WOMEN'S PARTY REPRESENTATIVES LIZA L. MAZA and LUZVIMINDA C. ILAGAN, REPRESENTATIVE LORENZO R. TAÑADA III, and REPRESENTATIVE TEOFISTO L. GUINGONA III, Petitioners v. PRESIDENT GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY EDUARDO R. ERMITA, SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, SECRETARY OF THE DEPARTMENT OF ENERGY, PHILIPPINE NATIONAL OIL COMPANY, and PHILIPPINE NATIONAL OIL COMPANY EXPLORATION CORPORATION, Respondents.

Promulgated:

January 10, 2023



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**CONCURRING OPINION**

**LEONEN, J.:**

I concur in the *ponencia*. The Joint Marine Seismic Undertaking (the Undertaking) was executed in grave violation of Article XII, Section 2 of the Constitution. While the Undertaking expired in 2008, this issue is of paramount public interest, presenting an opportunity for this Court to navigate the limitations of how and what the State can bargain over the exploration of our natural resources.

The exploration of natural resources, as the *ponencia* says, is exclusively reserved for Filipinos, such that any information generated from this activity within the State's territory cannot be shared with foreign corporations. Ownership of data collected from exploration activities cannot be joint with other countries. However, the State may directly explore its natural resources by contracting foreign corporations under the limited exception provided under Article XII, Section 2 of the Constitution. In doing so, the State must retain exclusive control over the exploration activities, including any information they produce.

While I agree with the *ponencia* that the Undertaking is unconstitutional, there is a need to navigate the conceptual framework of the State's sovereignty and jurisdiction over its national territory and the extent of other countries' participation in it.



## I

Under Article I of the Constitution, 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[.]”<sup>1</sup>

At bottom, sovereignty is “the absolute right to govern” within a particular territory.<sup>2</sup> On the other hand, jurisdiction is an attribute of sovereignty that confers, through law, “power and authority to apply the law.”<sup>3</sup> *Reagan v. Commissioner of Internal Revenue*<sup>4</sup> describes the sovereign prerogatives of a state within its territory:

Nothing is better settled than that the Philippines being *independent and sovereign, its authority may be exercised over its entire domain*. There is no portion thereof that is beyond its power. *Within its limits, its decrees are supreme, its commands paramount*. Its laws govern therein, and everyone to whom it applies must submit to its terms. That is the extent of its jurisdiction, both territorial and personal. Necessarily, likewise, it has to be exclusive. If it were not thus, there is a diminution of its sovereignty.

*It is to be admitted that any state may, by its consent, express or implied, submit to a restriction of its sovereign rights. There may thus be a curtailment of what otherwise is a power plenary in character*. That is the *concept of sovereignty as auto-limitation*, which, in the succinct language of Jellinek, “is the property of a state-force due to which it has the exclusive capacity of legal self-determination and self-restriction.” A state then, if it chooses to, may refrain from the exercise of what otherwise is illimitable competence.<sup>5</sup> (Emphasis supplied, citation omitted)

Inherent in a state’s sovereignty is its power to define the limits of its national territory where it may exercise jurisdiction, as reflected under the Constitution and relevant national laws. It may also bind itself to international obligations limiting its jurisdiction through various international instruments to which a state may be a party.

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<sup>1</sup> CONST., art. I states:

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.

<sup>2</sup> C.J. Puno, Concurring Opinion in *Frivaldo v. Commission on Elections*, 327 Phil. 521, 578 (1996) [Per J. Panganiban, *En Banc*].

<sup>3</sup> *Saguisag v. Ochoa, Jr.*, 777 Phil. 280, 471 (2016) [Per J. Sereno, *En Banc*].

<sup>4</sup> 141 Phil. 621 (1969) [Per J. Fernando; *En Banc*].

<sup>5</sup> *Id.* at 625.

To define the national territory and the State's powers over the natural resources found in it, it is relevant to discuss the evolution of the national territory in the Constitution, relevant national laws, and international law.

### I (A)

The 1935 Constitution reflects our colonial history. It defines the national territory as comprising all the territories that Spain ceded to the United States of America under the Treaty of Paris on December 10, 1898, and the subsequent treaty in Washington on November 7, 1900, including the treaty between the United States and Great Britain on January 2, 1930. The definition includes the phrase "all territory over which the present Government of the Philippine Islands exercises jurisdiction."<sup>6</sup>

The 1973 Constitution amended the definition to remove reference to the treaties mentioned in the 1935 Constitution. Our national territory was defined to include all the islands and waters embraced in the Philippine archipelago and all territories that the Philippines own by historic right or legal title:

SECTION 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories *belonging to the Philippines by historic right or legal title*, including the territorial sea, the air space, the subsoil, the sea-bed, the insular shelves, and the other submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.<sup>7</sup>  
(Emphasis supplied)

The 1987 Constitution largely adopted the 1973 definition, but modified it to remove reference to historic right or legal title and replaced it with the phrase "all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains[.]" In other words, our national territory is what the State declares it to be. The provision reads:

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.<sup>8</sup>

<sup>6</sup> CONST. (1935), art. I, sec. 1.

<sup>7</sup> CONST. (1973), art. I, sec. 1.

<sup>8</sup> CONST., art. 1.

All throughout, the national territory was consistently defined as an archipelagic state. The concurring Opinion of Justice Presbiterio Velasco, Jr. in *Magallona v. Ermita*<sup>9</sup> detailed how the definition of national territory evolved:

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, 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 . . . .

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,” 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” found in the 1973 Constitution, covers areas linked to the Philippines with varying degrees of certainty. 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; (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. 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.<sup>10</sup> (Citations omitted)

The national territory includes “all other territories over which the Philippines has sovereignty or jurisdiction[.]” These other territories are defined in several national laws and international law.

<sup>9</sup> *Magallona v. Ermita*, 671 Phil. 243 (2011) [Per J. Carpio, *En Banc*].

<sup>10</sup> J. Velasco, Jr., Concurring Opinion in *Magallona v. Ermita*, 671 Phil. 243, 282–283 (2011) [Per J. Carpio, *En Banc*].

**I (B)**

Republic Act No. 3046 defined the baselines of the Philippine archipelago in 1961. It also delineated our internal waters, which include all bodies of water found within the baselines.<sup>11</sup> These waters “are within the land boundaries of the state or are closely linked to its land domain . . . [and] have been considered as legally equivalent to the national land.”<sup>12</sup> Under Republic Act No. 3046, the maritime regime of the Philippines comprised its internal waters and its territorial sea, or “all the waters beyond the outermost islands of the archipelago but within the limits of the boundaries set forth in the aforementioned treaties[.]”<sup>13</sup>

In 1968, Republic Act No. 5446 amended the archipelagic baselines to correct the topographical errors. More important, it declared that the drawing of archipelagic baselines is without prejudice to the country’s sovereignty and dominion over the territory of Sabah in North Borneo.<sup>14</sup>

In 1978, Presidential Decree No. 1596 declared the Kalayaan Island Group in the continental margin of the archipelago as part of the Philippine territory,<sup>15</sup> based on “history, indispensable need, and effective occupation and control established in accordance with international law[.]”<sup>16</sup>

As for natural resources, Republic Act No. 387 expanded the Philippines’ jurisdiction beyond its territorial waters to its continental shelf. It declared State ownership of “[a]ll natural deposits or occurrences of petroleum or natural gas in public and/or private lands in the Philippines”:

ARTICLE 3. *State ownership.* — All natural deposits or occurrences of petroleum or natural gas in public and/or private lands in the Philippines, whether found in, on or under the surface of dry lands, creeks, rivers, lakes, or other submerged lands *within the territorial waters or on the continental shelf, or its analogue in an archipelago*, seaward from the shores of the Philippines which are not within the territories of other countries, belong to the State, inalienably and imprescriptibly.<sup>17</sup>  
(Emphasis supplied)

Thus, in 1968, Proclamation No. 370 declared the Philippines’ jurisdiction and control over all mineral and other natural resources in its continental shelf. This was to encourage further exploration and exploitation

<sup>11</sup> Republic Act No. 3046 (1961), sec. 2.

<sup>12</sup> J. Puno, Concurring Opinion in *Republic v. Court of Appeals*, 359 Phil. 530, 625 (1998) [Per J. Purisima, *En Banc*].

<sup>13</sup> Republic Act No. 3046 (1961), fourth whereas clause.

<sup>14</sup> Republic Act No. 5446 (1968), sec. 2.

<sup>15</sup> Presidential Decree No. 1596 (1978), sec. 1.

<sup>16</sup> Presidential Decree No. 1596 (1978), third whereas clause.

<sup>17</sup> Republic Act No. 387 (1949), art. 3.

of new sources of petroleum and other natural resources.<sup>18</sup> The proclamation reads:

*[A]ll the mineral and other natural resources in the seabed and subsoil of the continental shelf adjacent to the Philippines, but outside the area of its territorial sea to where the depth of the superjacent waters admits of the exploitation of such resources, including living organisms belonging to sedentary species, appertain to the Philippines and are subject to its exclusive jurisdiction and control for purposes of exploration and exploitation. In any case where the continental shelf is shared with an adjacent state, the boundary shall be determined by the Philippines and that state in accordance with legal and equitable principles. The character of the waters above these submarine areas as high seas and that of the airspace above those waters, is not affected by this proclamation.*<sup>19</sup>  
(Emphasis supplied)

This proclamation expanded the national territory “over which the present Government of the Philippine Islands exercises jurisdiction”<sup>20</sup> to include the continental shelf. Natural resources and other minerals in the seabed and subsoil of the continental shelf, including sedentary living organisms, are within the State’s “exclusive jurisdiction and control for purposes of exploration and exploitation.” Excluded from the national territory are the “waters above these submarine areas as high seas and that of the airspace above those waters[.]”<sup>21</sup>

In 1978, Presidential Decree No. 1599 established the exclusive economic zone of the Philippines, which was described as a “recognized principle of international law[.]”<sup>22</sup> It provides the rights of the Philippines in its exclusive economic zone within 200 nautical miles “beyond and from the baselines from which the territorial sea is measured”:

SECTION 2. Without prejudice to the rights of the Republic of the Philippines over its territorial sea and continental shelf, it shall have and exercise in the exclusive economic zone established herein the following[:]

- (a) *Sovereignty rights for the purpose of exploration and exploitation, conservation and management of the natural resources, whether living or non-living, both renewable and non-renewable, of the sea-bed, including the subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and exploration of the resources of the zone, such as the production of energy from the water, currents and winds;*

<sup>18</sup> Proclamation No. 370 (1968), first whereas clause.

<sup>19</sup> Proclamation No. 370 (1968).

<sup>20</sup> CONST. (1935), art. I, sec. 1.

<sup>21</sup> Proclamation No. 370 (1968).

<sup>22</sup> Presidential Decree No. 1599 (1978), third whereas clause.

- (b) Exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures, the preservation of the marine environment, including the prevention and control of pollution, and scientific research;
- (c) Such other rights as are recognized by international law or state practice.<sup>23</sup> (Emphasis supplied)

While Proclamation No. 370 extended jurisdiction and control to the continental shelf, Presidential Decree No. 1599 is more expansive: It declares sovereign rights over the exclusive economic zone, which includes the seabed, subsoil, superjacent waters, and all the living and non-living resources found in it. Exploration and exploitation of any resources found in the country's exclusive economic zone require the State's prior agreement and authorization:

SECTION 3. Except in accordance with the terms of any agreement entered into with the Republic of the Philippines or of any license granted by it or under authority by the Republic of the Philippines, no person shall, in relation to the exclusive economic zone:

- (a) explore or exploit any resources;
- (b) carry out any search, excavation or drilling operations;
- (c) conduct any research;
- (d) construct, maintain or operate any artificial island, off-shore terminal, installation or other structure or device; or
- (e) perform any act or engage in any activity which is contrary to, or in derogation of, the sovereign rights and jurisdiction herein provided.

Nothing herein shall be deemed a prohibition on a citizen of the Philippines, whether natural or juridical, against the performance of any of the foregoing acts, if allowed under existing laws.<sup>24</sup>

As regards other states, they enjoy freedoms of navigation and overflight, laying of submarine cables and pipelines, and other internationally lawful uses of the sea relating to navigation and communications within the exclusive economic zone.<sup>25</sup>

Thus, before the Philippines became a party to the United Nations Convention on the Law of the Sea (UNCLOS),<sup>26</sup> it has already defined its

<sup>23</sup> Presidential Decree No. 1599 (1978), sec. 2.

<sup>24</sup> Presidential Decree No. 1599 (1978), sec. 3.

<sup>25</sup> Presidential Decree No. 1599 (1978), sec. 4.

<sup>26</sup> The United Nations Convention on the Law of the Sea (UNCLOS) entered into force on November 16, 1994.

national territory and the scope of its rights in its internal and territorial waters, establishing jurisdiction over its continental shelf and exclusive economic zone.

### I (C)

On December 10, 1982, the Philippines signed the UNCLOS, and ratified the same on May 8, 1984.<sup>27</sup>

Article 309 of the UNCLOS prohibited state parties from making reservations or exceptions, except when expressly permitted by the other articles.<sup>28</sup> Thus, the UNCLOS was also referred to as the “Constitution of the Ocean.”<sup>29</sup>

The farther the maritime zone is from land, the state’s sovereign rights over it are more limited. This follows the international law principle that “land is the legal source of the power which a State may exercise over territorial extensions to seaward,”<sup>30</sup> and is the general framework involving rights and obligations of states within different maritime zones.

The sovereignty of states is recognized within its land territory, archipelagic waters, and territorial sea,<sup>31</sup> subject to the right of innocent passage of foreign ships.<sup>32</sup> A state’s sovereign rights extend to the “air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.”<sup>33</sup>

Under the UNCLOS, a state has the following maritime regimes: territorial sea,<sup>34</sup> contiguous zone,<sup>35</sup> exclusive economic zone,<sup>36</sup> and the continental shelf.<sup>37</sup> The maritime zones of the Philippines, being an archipelagic state, proceed from its archipelagic baselines “joining the outermost points of [its] outermost islands and drying reefs[.]”<sup>38</sup> These baselines generally conform to the archipelago’s configuration.<sup>39</sup>

<sup>27</sup> See 6. *United Nations Convention on the Law of the Sea*, UNITED NATIONS TREATY COLLECTION, available at [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) (last accessed on March 13, 2023).

<sup>28</sup> UNCLOS, art. 309.

<sup>29</sup> Antonio T. Carpio, *The South China Sea Dispute: Philippine Sovereign Rights and Jurisdiction in the West Philippine Sea*, 90 PHIL. L.J. 459 (460) (2017).

<sup>30</sup> *North Sea Continental Shelf Cases* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. 3, 52 (February 20, 1969).

<sup>31</sup> UNCLOS, art. 2(1) in relation to art. 49.

<sup>32</sup> UNCLOS, arts. 17, 24 in relation to art. 52.

<sup>33</sup> UNCLOS, art. 49(2).

<sup>34</sup> UNCLOS, art. 3.

<sup>35</sup> UNCLOS, art. 33.

<sup>36</sup> UNCLOS, art. 55.

<sup>37</sup> UNCLOS, art. 76.

<sup>38</sup> UNCLOS, art. 47(1).

<sup>39</sup> UNCLOS, art. 47(3).



The UNLCLOS defines the rights and obligations of states within their maritime zones. It likewise provides a state's rights in another state's maritime zones.

### *Territorial sea*

A state's sovereignty over its territorial sea is subject to the right of all states to their ships' innocent passage,<sup>40</sup> or that which "is not prejudicial to the peace, good order or security of the coastal State."<sup>41</sup> Submarines are required to navigate the surface and show their flag.<sup>42</sup> Foreign ships shall be subjected to the laws and regulations that another state may prescribe when they pass through that state's territorial sea.<sup>43</sup> They may also be required to pass through designated sea lanes and traffic separation schemes.<sup>44</sup> A state may undertake steps to prevent passage that is not innocent, prevent the entry of ships to its internal waters in breach of the conditions for admission, or temporarily suspend the right of innocent passage for security purposes.<sup>45</sup> In certain cases, a state may also exercise its criminal or civil jurisdiction on foreign ships passing through its territorial seas.<sup>46</sup>

Again, a state's rights become more limited the farther the maritime zone is from the shore. The areas (i.e., airspace, superjacent waters, among others) where it may exercise sovereign rights are also reduced.

### *Contiguous zone*

In the contiguous zone, the area 12 nautical miles beyond the territorial sea, the state may only exercise limited jurisdiction to "prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea" and "punish infringement of . . . laws and regulations that is committed in the contiguous zone."<sup>47</sup>

### *Exclusive economic zone*

Beyond the contiguous zone, 200 nautical miles from the baseline, lies the exclusive economic zone.<sup>48</sup> A state retains its sovereign rights over the exploration, exploitation, conservation, and management of its natural resources, living or nonliving, that may be found within the seabed, its subsoil, and the waters superjacent to the seabed.<sup>49</sup> The state also determines the allowable limits for catching living resources within its

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<sup>40</sup> UNCLOS, art. 17.

<sup>41</sup> UNCLOS, art. 19.

<sup>42</sup> UNCLOS, art. 20.

<sup>43</sup> UNCLOS, art. 21(1), (4).

<sup>44</sup> UNCLOS, arts. 22, 53.

<sup>45</sup> UNCLOS, art. 25.

<sup>46</sup> UNCLOS, arts. 27, 28.

<sup>47</sup> UNCLOS, art. 33.

<sup>48</sup> UNCLOS, art. 57.

<sup>49</sup> UNCLOS, art. 56(1).

exclusive economic zone.<sup>50</sup> It also has the discretion to allow other states to harvest what it cannot.<sup>51</sup>

Moreover, the state has jurisdiction over artificial islands, installations, and structures that may be established and used, marine scientific research, and the protection and preservation of its marine environment.<sup>52</sup> The provisions on high seas also apply within the exclusive economic zone.<sup>53</sup> Foreign states have the freedoms of “navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful use of the sea related to these freedoms[.]”<sup>54</sup>

### *Continental shelf*

A coastal state’s continental shelf includes “the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin,” not exceeding 350 nautical miles from the baselines.<sup>55</sup> Within its continental shelf, a state has the exclusive rights to explore and exploit its mineral and nonliving resources found in the seabed and subsoil, including sedentary living organisms.<sup>56</sup> These rights do not extend to the superjacent waters and the air space above it.<sup>57</sup>

## I (D)

Upon signing the UNCLOS in 1982, the Philippines made several declarations, one of which is the characterization of its archipelagic waters as internal waters.<sup>58</sup> Due to the objections of several countries, the Philippines, seemingly withdrawing its previous declaration, stated in 1988 that it “intends to harmonize its domestic legislation with the provisions of the Convention” and that it “will abide by the provisions of the said Convention.”<sup>59</sup>

Thus, in 2009, the Philippines amended its archipelagic baselines through Republic Act No. 9522. It designated the Kalayaan Island Group and Bajo de Masinloc as the Regime of Islands, generating maritime zones.<sup>60</sup>

<sup>50</sup> UNCLOS, art. 61(1).

<sup>51</sup> UNCLOS, art. 62(2).

<sup>52</sup> UNCLOS, art. 56(1)(b).

<sup>53</sup> UNCLOS, art. 58(2).

<sup>54</sup> UNCLOS, art. 58(1).

<sup>55</sup> UNCLOS, art. 76.

<sup>56</sup> UNCLOS, art. 77.

<sup>57</sup> UNCLOS, art. 78.

<sup>58</sup> See 6. *United Nations Convention on the Law of the Sea*, UNITED NATIONS TREATY COLLECTION, available at [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) (last accessed on March 13, 2023).

<sup>59</sup> *Id.* The Philippines made the declaration in response to Australia’s objection to the previous declaration.

<sup>60</sup> Republic Act No. 9522 (2009), sec. 2.


In *Magallona*, this Court affirmed the constitutionality of Republic Act No. 9522 as the Philippines' compliance with its obligations under the UNCLOS. This Court explained the compromise and benefits under the new maritime regimes:

*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. Indeed, bills drawing nautical highways for sea lanes passage are now pending in Congress.*

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. Significantly, the right of innocent passage is a customary international law, thus automatically incorporated in the corpus of Philippine law. 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 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.* 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.

Petitioners' invocation of non-executory constitutional provisions in Article II (Declaration of Principles and State Policies) 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 . . . ." 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* 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) and



subsistence fishermen (Article XIII, Section 7), 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. UNCLOS III, however, preserves the traditional freedom of navigation of other States that attached to this zone beyond the territorial sea before UNCLOS III.<sup>61</sup> (Emphasis supplied, citations omitted)

### I (E)

In 2012, President Benigno Aquino III issued Administrative Order No. 29, naming the western portion of our territorial seas as the West Philippine Sea.<sup>62</sup> It expressly includes the “waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as Scarborough Shoal” as part of the West Philippine Sea.<sup>63</sup>

On January 22, 2013,<sup>64</sup> the Philippines initiated arbitration proceedings before the Permanent Court of Arbitration in the Hague to resolve its dispute against China as to its source of maritime rights and entitlements in the West Philippine Sea.

Among others, the Philippines asked the Permanent Court of Arbitration to rule on China’s claim of historical rights and entitlements in the West Philippine Sea vis-à-vis UNCLOS provisions. It also asked the court to rule on the maritime zones and entitlements of the disputed Scarborough Shoal and Spratly Islands, which are both claimed by parties and nonparties to the case. It also sought a ruling on the legality of China’s actions within the Philippines’ exclusive economic zone.<sup>65</sup>

<sup>61</sup> *Magallona v. Ermita*, 671 Phil. 243, 267–274 (2011) [Per J. Carpio, *En Banc*].

<sup>62</sup> Administrative Order No. 29 (2012). Naming the West Philippine Sea of the Republic of the Philippines, and for Other Purpose.

<sup>63</sup> Administrative Order No. 29 (2012), sec. 1.

<sup>64</sup> *In re South Sea China Arbitration* (Philippines v. China), PCA Case N° 2013-19 (Perm. CT. Arb. 2016) at 11–12, par. 28. This pinpoint citation refers to the copy of the award uploaded to the official website of the Permanent Court of Arbitration.

<sup>65</sup> *Id.* at 2–3, pars. 7–10.

The Permanent Court of Arbitration did not give credence to China's historic rights under the nine-dash line because it exceeds the UNCLOS limits of maritime zones of states.<sup>66</sup> It held that upon acceding to the UNCLOS, China superseded its other claims as a matter of law and as a matter of international commitment to resolve its incompatible claims within the UNCLOS framework.<sup>67</sup> As for China's claim of having enforced its historic rights to the living and nonliving resources within the nine-dash line, the court found no evidence that China restricted exploiting these resources, to the exclusion and acquiescence of other states.<sup>68</sup> Notably, it qualified that China, upon being a party to the UNCLOS, relinquished not its claim of historic rights, but the freedoms it enjoyed in the high seas, which the UNCLOS states to be part of the exclusive economic zone of other states.<sup>69</sup>

As for the Philippines' rights within its exclusive economic zone, the Permanent Court of Arbitration held:

698. The Convention is clear on the allocation of rights within the exclusive economic zone and continental shelf. With respect to non-living resources, Article 77 of the Convention provides that the "coastal State"—which in this case is necessarily the Philippines—"exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." *The Convention goes on to make clear that "[t]he rights referred to . . . are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State."* These provisions are unequivocal and require no further interpretation. *Within its continental shelf, only the Philippines, or another State acting with its permission, may exploit the resources of the sea-bed.*

700. The same clarity is evident with respect to living resources and the provisions of the exclusive economic zone. Article 56 is clear in allocating to the coastal State—which again is necessarily the Philippines in the areas in question—"sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone . . . ." The rights of other States in the exclusive economic zone are detailed in Article 58 and are limited to "navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms." *The rights of other States do not include restricting a coastal State from exploiting the living resources of its own exclusive economic zone. Indeed, the very notion is incompatible with the concept of sovereign rights and the*

<sup>66</sup> *Id.* at 111, par. 261.

<sup>67</sup> *Id.* at 111–112, par. 262.

<sup>68</sup> *Id.* at 114, par. 270.

<sup>69</sup> *Id.* at 115, par. 271.

*exclusive jurisdiction over fisheries that was the central objective motivating the introduction of the exclusive economic zone concept.*<sup>70</sup> (Emphasis supplied, citations omitted)

The Permanent Court of Arbitration held that only the Philippines has sovereign rights over its exclusive economic zone and continental shelf. China has no overlapping maritime zones with the Philippines, and thus, no overlapping entitlements.<sup>71</sup> China breached its obligations under the UNCLOS when it disregarded the Philippines' sovereign rights over its exclusive economic zone and continental shelf:

B. In relation to the merits of the Parties' disputes, the Tribunal:

....

- (8) DECLARES that China has, through the operation of its marine surveillance vessels in relation to M/V Veritas Voyager on 1 and 2 March 2011 breached its obligations under Article 77 of the Convention with respect to the Philippines' sovereign rights over the non-living resources of its continental shelf in the area of Reed Bank;
- (9) DECLARES that China has, by promulgating its 2012 moratorium on fishing in the South China Sea, without exception for areas of the South China Sea falling within the exclusive economic zone of the Philippines and without limiting the moratorium to Chinese flagged vessels, breached its obligations under Article 56 of the Convention with respect to the Philippines' sovereign rights over the living resources of its exclusive economic zone;
- (10) FINDS, with respect to fishing by Chinese vessels at Mischief Reef and Second Thomas Shoal:
- a. that, in May 2013, fishermen from Chinese flagged vessels engaged in fishing within the Philippines' exclusive economic zone at Mischief Reef and Second Thomas Shoal; and
  - b. that China, through the operation of its marine surveillance vessels, was aware of, tolerated, and failed to exercise due diligence to prevent such fishing by Chinese flagged vessels; and
  - c. that therefore China has failed to exhibit due regard for the Philippines' sovereign rights with respect to fisheries in its exclusive economic zone; and

DECLARES that China has breached its obligations under Article 58(3) of the Convention;

- (11) FINDS that Scarborough Shoal has been a traditional fishing ground for fishermen of many nationalities and DECLARES that China has, through the operation of its official vessels at Scarborough Shoal from May 2012 onwards, unlawfully prevented fishermen from the

<sup>70</sup> *Id.* at 279–280, pars. 698, 700.

<sup>71</sup> *Id.* at 278, pars. 692–694.

Philippines from engaging in traditional fishing at Scarborough Shoal;

(12) FINDS, with respect to the protection and preservation of the marine environment in the South China Sea:

- a. that fishermen from Chinese flagged vessels have engaged in the harvesting of endangered species on a significant scale;
- b. that fishermen from Chinese flagged vessels have engaged in the harvesting of giant clams in a manner that is severely destructive of the coral reef ecosystem; and
- c. that China was aware of, tolerated, protected, and failed to prevent the aforementioned harmful activities; and

DECLARES that China has breached its obligations under Articles 192 and 194(5) of the Convention;

(13) FINDS further, with respect to the protection and preservation of the marine environment in the South China Sea:

- a. that China's land reclamation and construction of artificial islands, installations, and structures at Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, Subi Reef, and Mischief Reef has caused severe, irreparable harm to the coral reef ecosystem;
- b. that China has not cooperated or coordinated with the other States bordering the South China Sea concerning the protection and preservation of the marine environment concerning such activities; and
- c. that China has failed to communicate an assessment of the potential effects of such activities on the marine environment, within the meaning of Article 206 of the Convention; and

DECLARES that China has breached its obligations under Articles 123, 192, 194(1), 194(5), 197, and 206 of the Convention;

(14) With respect to China's construction of artificial islands, installations, and structures at Mischief Reef:

- a. FINDS that China has engaged in the construction of artificial islands, installations, and structures at Mischief Reef without the authorisation of the Philippines;

.....

- c. DECLARES that China has breached Articles 60 and 80 of the Convention with respect to the Philippines' sovereign rights in its exclusive economic zone and continental shelf;

(15) FINDS, with respect to the operation of Chinese law enforcement vessels in the vicinity of Scarborough Shoal:

- a. that China's operation of its law enforcement vessels on 28 April 2012 and 26 May 2012 created serious risk of collision and danger to Philippine ships and personnel; and
- b. that China's operation of its law enforcement vessels on 28 April 2012 and 26 May 2012 violated Rules 2, 6, 7, 8, 15, and 16 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972; and

DECLARES that China has breached its obligations under Article 94 of the Convention; and

(16) FINDS that, during the time in which these dispute resolution proceedings were ongoing, China:

- a. has built a large artificial island on Mischief Reef, a low-tide elevation located in the exclusive economic zone of the Philippines;
- b. has caused—through its land reclamation and construction of artificial islands, installations, and structures—severe, irreparable harm to the coral reef ecosystem at Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef; and
- c. has permanently destroyed—through its land reclamation and construction of artificial islands, installations, and structures—evidence of the natural condition of Mischief Reef, Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef; and

FINDS further that China:

- d. has aggravated the Parties' dispute concerning their respective rights and entitlements in the area of Mischief Reef;
- e. has aggravated the Parties' dispute concerning the protection preservation of the marine environment at Mischief Reef;
- f. has extended the scope of the Parties' dispute concerning the protection and preservation of the marine environment to Cuarteron Reef, Fiery Cross Reef, Gaven Reef (North), Johnson Reef, Hughes Reef, and Subi Reef; and
- g. has aggravated the Parties' dispute concerning the status of maritime features in the Spratly Islands and their capacity to generate entitlements to maritime zones; and

DECLARES that China has breached its obligations pursuant to Articles 279, 296, and 300 of the Convention, as well as pursuant to general international law, to abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decisions to be given and in general, not to allow any step of any kind to be taken which might aggravate or extend the dispute during such time as dispute resolution proceedings were ongoing.<sup>72</sup>

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<sup>72</sup> *Id.* at 473-477.



The foregoing shows that both at the national and international levels, the Philippines established its jurisdiction and sovereign rights over its exclusive economic zone and continental shelf. It prevailed before the Permanent Court of Arbitration in defending its sovereign rights against China's blatant disregard of these rights. This shows that the State has been actively exercising its sovereignty over its national territory.

I take exception to the *ponencia's* caution in refusing to call the agreement area as within the West Philippine Sea due to the lack of official map made publicly available, following its confidentiality clause.<sup>73</sup> While the metes and bounds of the agreement area are uncertain, the *ponencia* noted that the agreement area is within our exclusive economic zone, and that it covers 80% of the Spratly Islands.<sup>74</sup> It is a matter of judicial notice that the Spratly Islands include the Kalayaan Island Group and Scarborough Shoal, which form part of our territory.

This is sufficient basis to refer to the West Philippine Sea in relation to the agreement area. Since the agreement area is highly contested by several states, the simplest exercise of ownership that we should do is to refer to our maritime areas using the name designated by the Republic. More so here, where the controversy is the State's ownership and prerogatives over its natural resources found within its national territory.

## II

The 1987 Constitution incorporates "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."<sup>75</sup> The community of nations governed by international law is built on consent of sovereign states.<sup>76</sup> The principles of reciprocity, comity, independence, and equality of states are the foundations of international law.<sup>77</sup> International peace and order are achieved through recognition and deference to the equality and sovereignty of states. This means that a "state is not subject to a legal order superior to its own legal order, i.e., the national law."<sup>78</sup> The paramount law of a state is found in its constitution:

*A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as the fundamental and paramount law of the nation. It prescribes*

<sup>73</sup> *Ponencia*, p. 17.

<sup>74</sup> *Id.*

<sup>75</sup> CONST., art. II, sec. 2.

<sup>76</sup> Ronald A. Brand, *External Sovereignty and International Law*, 18 FORDHAM INT'L L.J. 1685 (1995).

<sup>77</sup> J. Leonen, *Concurring Opinion in Arigo v. Swift*, 743 Phil. 8 (2014) [Per J. Villarama, Jr., *En Banc*].

<sup>78</sup> Hans Kelsen, *Sovereignty and International Law*, 48 GEO. L. J. 627 (1960).

the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. *The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered.* Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract.<sup>79</sup> (Emphasis supplied)

Thus, international law also recognizes the constitutional prerogatives of a sovereign state, in the same manner that its principles are considered part of the law of the land. Inherent in a state's sovereignty are its all-encompassing powers and prerogatives over its national territory, including the use, enjoyment, and development of its natural resources.

Our Constitution provides the State's ownership of all natural resources,<sup>80</sup> with the exception of those within ancestral domains.<sup>81</sup> This ownership is based on public trust, where the State holds the natural resources for the benefit of the Filipino people.<sup>82</sup> In my concurring opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*,<sup>83</sup> I observed that the public trust doctrine in our natural resources is incorporated in several constitutional provisions as a necessary consequence of a republican democracy. Thus, in any dealing involving the State's natural patrimony, the primary consideration is the good of the community and the public interest it serves:

The constitutional provisions on national economy and patrimony, as found in Article XII of the 1987 Constitution, emphasizes that the State's power is always subject to the common good, public welfare, and public interest or benefit. Many of its provisions put primacy in favor of the State's citizens:

....

These constitutional provisions on the State's national patrimony and economy, on which the public trust doctrine is anchored, highlight that the common good, public interest, public welfare—the people—are of primary consideration.

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<sup>79</sup> *Manila Prince Hotel v. Government Service Insurance System*, 335 Phil. 82, 101 (1997) [Per J. Bellosillo, *En Banc*].

<sup>80</sup> CONST., art. XII, sec. 2.

<sup>81</sup> J. Leonen, Separate Opinion in *Sama v. People*, G.R. No. 224469, January 5, 2021 [Per J. Lazaro-Javier, *En Banc*].

<sup>82</sup> J. Leonen, Concurring Opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. Nos. 202897 et al., August 6, 2019 [Per J. Hernando, *En Banc*].

<sup>83</sup> G.R. Nos. 202897 et al., August 6, 2019 [Per J. Hernando, *En Banc*].

In addition, the public trust doctrine is founded on both social justice and equity.

The people, as a community, depend and rely on their ecology. They will not exist without it. This ecology cannot have unlimited resources, especially in the face of climate and environmental changes, as well as unrestrained policies in connection with the exploitation of resources. *The public trust doctrine recognizes these limitations and expands the concept of property, giving it a more equitable, just, and reasonable interpretation.* Land and water are not simply owned and disposed of at will by the State. They are part of a community and an ecosystem, interdependent with each other.<sup>84</sup> (Emphasis supplied, citation omitted)

Corollary to this doctrine of public trust in natural resources, the Constitution has nationalized and reserved certain areas in the economy exclusively for Filipino citizens. This is to give effect to the State policy of developing “a self-reliant and independent national economy effectively controlled by Filipinos.”<sup>85</sup>

Thus, the Constitution reserved the “nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone” for the exclusive use and enjoyment of Filipino citizens.<sup>86</sup> This includes the exploration and development of the marine wealth in the State’s territory.<sup>87</sup>

The State’s ownership of natural resources as a public trust, together with nationalizing participation in it, furthers the broad goals of the national economy. The Constitution directs the State to run the economy to enable “a more equitable distribution of opportunities, income, and wealth” to raise the quality and standards of living for all, most especially the poor, marginalized, and oppressed.<sup>88</sup> Among the goals of the economy, “equity is given prominence as the first objective of national economic development.”<sup>89</sup>

While the State promotes competitive Filipino enterprises in domestic and foreign markets, it did not use corporations or associations in the mandatory reservation of the country’s marine wealth. Instead, the Constitution deliberately referred to “Filipino citizens” as the ones who have the exclusive use and enjoyment of the nation’s marine wealth. This means that natural persons are the ultimate beneficiaries of the public trust, not

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<sup>84</sup> J. Leonen, Concurring Opinion in *Maynilad Water Services, Inc. v. Secretary of the Department of Environment and Natural Resources*, G.R. Nos. 202897, 206823 & 207969, August 6, 2019 [Per J. Hernando, *En Banc*].

<sup>85</sup> CONST., art. II, sec. 19.

<sup>86</sup> CONST., art. XII, sec. 2.

<sup>87</sup> CONST., art. XII, sec. 2.

<sup>88</sup> CONST., art. XII, sec. 1.

<sup>89</sup> J. Kapunan, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 1059 (2000) [Per Curiam, *En Banc*].

juridical persons. Regardless of the nationality of corporations, the ultimate beneficiary of the nation's patrimony should be the Filipino people.

*In Miners Association of the Philippines v. Factoran:*<sup>90</sup>

The economic policy on the exploration, development and utilization of the country's natural resources under Article XII, Section 1 of the 1987 Constitution could not be any clearer. As enunciated in Article XII, Section 2 of the 1987 Constitution, the exploration, development and utilization of natural resources under the new system mandated in Section 2, is geared towards a more equitable distribution of opportunities, income, and wealth, a sustained increase in the amount of goods and services produced by the nation for the benefit of the people, and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

*The exploration, development and utilization of the country's natural resources are matters vital to the public interest and the general welfare of the people. The recognition of the importance of the country's natural resources was expressed as early as the 1934 Constitutional Convention. In connection therewith, the 1986 U.P. Constitution Project observed: "The 1934 Constitutional Convention recognized the importance of our natural resources not only for its security and national defense. Our natural resources which constitute the exclusive heritage of the Filipino nation, should be preserved for those under the sovereign authority of that nation and for their posterity. This will ensure the country's survival as a viable sovereign republic."*<sup>91</sup> (Emphasis supplied, citations omitted)

As the owner of the natural resources, the State has the power and primary responsibility in its exploration, development, and utilization.<sup>92</sup> Giving effect to the policies of national economy and patrimony, the 1987 Constitution has given the State a more dynamic role in managing its natural resources<sup>93</sup> by retaining the State's full control and supervision of the activities under Article XII, Section 2, which reads:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. *The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.* The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five

<sup>90</sup> 310 Phil. 113 (1995) [Per J. Romero, *En Banc*].

<sup>91</sup> *Id.* at 136-137.

<sup>92</sup> C.J. Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, 400 Phil. 904, 941-942 (2000) [Per *Curiam, En Banc*].

<sup>93</sup> *Miners Association of the Philippines v. Factoran*, 310 Phil. 113 (1995) [Per J. Romero, *En Banc*].

years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

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.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

This provision outlines the different methods through which natural resources can be explored, developed, and used, namely: (1) the State directly; (2) the State in collaboration with Filipino citizens, or corporations or associations with capital that is at least 60% Filipino-owned; (3) Filipino citizens through small-scale use of natural resources, as allowed by law; or (4) agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and use of natural resources. In any of these modes, the State must maintain full control and supervision over any kind of participation in its natural resources.<sup>94</sup> Its agreements over its natural resources cannot be purely private endeavors.<sup>95</sup>

### III

Notwithstanding these economic policies, the reality is that ordinary people, especially municipal fisherfolk, have little to no resources to research on and explore the area. If at all, their catch is sufficient only for their families' sustenance. They lack technical knowledge and financial resources to explore the country's marine wealth. e

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<sup>94</sup> 1987 Const., art. XII, sec. 2.

<sup>95</sup> *Alvarez v. PICOP Resources, Inc.*, 621 Phil. 403, 484 (2009) [Per J. Chico-Nazario, First Division].

Addressing these limitations, the Constitution allowed the fourth mode as discussed earlier: foreign participation in the form of “technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils.”<sup>96</sup>

For pragmatic reasons, therefore, foreigners are not prohibited from participating in the country’s national patrimony. Their participation is a limited exception to the reservation of the exploration, development, and utilization of natural resources to Filipino citizens and qualified corporations.<sup>97</sup> In entering into an agreement, they must strictly comply with the requirements of Article XII, Section 2 as to the authority, scope, terms and conditions, source, effect, and notice requirements of the agreement. These requirements are not formalities but are essential conditions for the contract’s validity.<sup>98</sup>

Specifically, only the president can be the signing authority of foreign agreements; this cannot be delegated to other members of the executive branch. The scale of the project must be sufficiently large as to significantly contribute to the economic growth and general welfare of the country, since small-scale exploration, development, and use of natural resources are reserved for Filipino citizens. Local scientific and technical resources should also be availed to ensure transfer of technology and capacity. The terms and conditions of the agreement must comply with the law, in this case, Petroleum Act of 1949.<sup>99</sup> Moreover, every foreign contract must be reported to Congress within 30 days from its execution.<sup>100</sup>

As the *ponencia* noted, none of the safeguards were complied with. Instead of the president, respondent Philippine National Oil Company signed the Undertaking for the Republic. I agree that the president is the only authorized signatory under the fourth mode of exploration, development, and use, and their authority cannot be delegated to another government agency or instrumentality.<sup>101</sup> This is fatal to the validity of the Undertaking.

Moreover, I agree with the *ponencia* that information on exploration activities is exclusively reserved to Filipinos; its ownership cannot be jointly held with foreign corporations.<sup>102</sup> The petroleum exploration activities in the Undertaking do not fall under any of the four modes under Article XII, Section 2 of the Constitution. The Undertaking allowed foreign ownership over information gathered from the exploration activities in our exclusive economic zone. In executing the Undertaking, the *ponencia* notes, the

<sup>96</sup> CONST., art. XII, sec. 2, par. 4.

<sup>97</sup> *La Bugal-B’Laan v. DENR Secretary*, 486 Phil. 754 (2004) [Per J. Carpio Morales, *En Banc*].

<sup>98</sup> *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 758 Phil. 724, 761–762 (2015) [Per J. Leonardo-De Castro, *En Banc*].

<sup>99</sup> Republic Act No. 387 (1949).

<sup>100</sup> CONST., art. XII, sec. 2, par. 2.

<sup>101</sup> *Ponencia*, p. 29.

<sup>102</sup> *Id.* at 29–30.

Philippine National Oil Company illegally bargained away the State's full control and supervision over exploration activities within the country's exclusive economic zone.<sup>103</sup>

The Republic cannot agree to a joint ownership of any information derived from exploration activities within its territory. National and international laws recognize the Philippines' sovereign rights "of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil" within its exclusive economic zone.<sup>104</sup> Our sovereign rights do not only extend to the natural resources found there, but also to the information as to its existence. The reason is simple. The use and enjoyment of natural resources may only be possible if resources are found to exist in a particular area. Discovery of natural resources is the ultimate purpose of all exploration activities, which may eventually lead to the development and use of the natural resources found there.

Any information from exploration activities is just as crucial as the actual resources discovered in a specific area. Access to information shapes economic and ecological policies affecting the lives of the people. It gives a state confidence to invest in developing certain areas known to be resource-rich and maximizing their use for high results. With access to correct and reliable information, the state stands at an improved bargaining position with foreign entities that want to enter into large-scale technical or financial assistance agreements for the exploration, development, and use of the state's natural resources. Information is crucial in national security and defense. A state cannot be careless in exposing the vulnerabilities of its territory for economic gain.

The provisions of the Constitution are not mere ideals and aspirations. These are rooted from the people's long colonial history and their rejection of foreign ownership and control over their lands and natural resources.<sup>105</sup> To remove all doubts, the policy that all natural resources are reserved for Filipino citizens has been written into the Constitution.<sup>106</sup> Until the people renounce their beneficial ownership over their natural resources, the State must fulfill its duty to conserve and preserve its national patrimony.<sup>107</sup> Thus, any information from exploration activities conducted within our exclusive economic zone belongs to the Republic and is reserved for Filipino citizens. The State cannot bargain its ownership away without violating the Constitution.

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<sup>103</sup> *Id.*

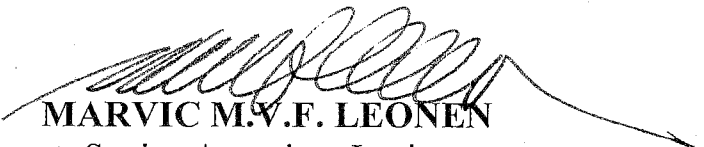
<sup>104</sup> UNCLOS, art. 56(1).

<sup>105</sup> J. Perfecto, Concurring Opinion in *Krivenko v. Register of Deeds*, 79 Phil. 461, 490-491 (1947) [Per J. Moran, Second Division].

<sup>106</sup> *Id.*

<sup>107</sup> CONST., preamble.

Accordingly, I vote to **GRANT** the Petition and declare the Joint Marine Seismic Undertaking as **VOID** and **UNCONSTITUTIONAL**.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice