Upholding The Right to Freedom From Fear: An Examination of the Jurisprudential Response of Criminal Procedure and the Law on Public Officer to the Threat of Kidnapping For Ransom

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I. INTRODUCTION

> [F]reedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor – anywhere in the world. That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called "new order" of tyranny which the dictators seek to create with the crash of a bomb.[1]
>
> – Franklin Delano Roosevelt

On January 6, 1941, Franklin Delano Roosevelt addressed the 77th Congress of the United States of America and the whole of America, which was at the brink of joining the Allied Forces in the second world war. He rallied the American people into the sacrifices that the war effort would entail, by calling forth a vision of a world founded upon four essential human freedoms. These were freedom of speech and expression, freedom of religion, freedom from want, and the freedom from fear.[2]

Dean Harold Koh of the Yale Law School observes that the framework for these four freedoms foreshadowed the post-war human-rights construct – embedded in the Universal Declaration of Human Rights and subsequent international covenants.[3] Thus, the freedom of speech and religion receives protection under International Covenant on Civil and Political Rights. The freedom from want is embodied in the International Covenant on Economic, Social and Cultural Rights. Both these covenants were signed by the Philippines on 19 December 1966. Lastly, the freedom from fear, including freedom from gross violations and persecution are embodied in international instruments such as the 1951 Convention Relating to the Status of Refugees, the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Philippines is a signatory to all these international instruments. As a result, the Philippines has obligations that arise from these conventions to its nationals.

1. Franklin Delano Roosevelt, The Four Freedoms, a speech delivered on January 6, 1941, *available at* http://www.libertynet.org/~edcivic/fdr.html (last access Dec. 31, 2003).
2. *Id.*
3. Koh, *supra* note 3.

These four freedoms were to encapsulate all is important in a good society. And a study of law reveals that it is these four fundamental freedoms that the law seeks to guaranty.[4] The Philippines complies with its obligations under the international conventions through the provisions provided in the Constitution and in statutory law. In the freedom to speak are encompassed the constitutional rights of privacy of communication, freedom from prior restraint or subsequent punishment, the freedom to associate and petition the government for redress of grievances. In the freedom of religion are encompassed the free exercise and non-establishment clauses. The freedom from want encompasses the limitations on the exercise of the Government of its great powers of taxation and eminent domain, as well as the bulk of Commercial Law, Tax Law, and Labor Law. And the right to be free from fear encompasses the largest portion of the Bill of Rights of the Constitution, which includes the right against arbitrary arrest and detention, the rights in custodial investigation, the right to bail and the protection from double jeopardy. Legislations such as Criminal Law, Procedural Law that deals with the accused, and Humanitarian Law is also brought about by the desire to free the people from fear.

But the fact that the the bulk of the provisions of the Bill of Rights concern itself with giving the people the right of freedom from fear is expected. In the introductory remarks made by Fr. Joaquin Bernas, in the presentation of the Committee Report on the Bill of Rights, he notes that it is customary to distinguish between civil liberties, political freedoms, and

4. Dean Harold Koh posits that the same may be said for most international conventions:

> This framework foreshadowed the post-war human-rights construct—embedded in the Universal Declaration of Human Rights and subsequent international covenants—that emphasised comprehensive protection of civil and political rights (freedom of speech and religion), economic, social and cultural rights (freedom from want), and freedom from gross violations and persecution (the Refugee Convention, the Genocide Convention and the Torture Convention). But Bush administration officials have now reprioritised "freedom from fear" as the number-one freedom we need to preserve. Freedom from fear has become the obsessive watchword of America's human-rights policy.

By invitation: Harold Hongju Koh, Rights to remember, Oct 30th 2003, NEW HAVEN, CONNECTICUT, From The Economist print edition, (last access Dec. 31, 2003).

economic freedoms.[5] The Bill of Rights was to be the province of civil liberties and political freedoms, lest the Bill of Rights, "steal the thunder of the Committee on Social Justice...."[6]

When Fr. Bernas annotates the due process clause of the Bill of Rights in his monumental treatise on Constitutional Law, he speaks of the protection against the deprivation of life with tender regard to those who do not enjoy full economic freedom, by virtue of their impoverishment:

> The constitutional protection of the right to life is not just a protection of the right to be alive or to the security of one's limb against physical harm. The right to life is the right to a good life. The emphasis on the quality of living is found in Article II where Section 6 commands the State to promote a life of "dignity" and where Section 7 guarantees "a decent standard of living.[7]

Thus, even when it is acknowledged that the Bill of Rights protect human rights over property rights for these freedoms are delicate and vulnerable,[8] Supreme Court pronouncements on disputes involving basic sectors reveals a heavy inclination towards the promotion and establishment of a socio-political and economic system that will achieve for the people, benefits such as full employment, a high standard of living and equality in economic opportunities. The provisions of the Constitution on alleviating economic problems, "reflects a preoccupation with poverty as resulting from the structures that mire the people in a life of dependence."[9]

Elsewhere in the world however, events have transpired which have lead to the shift in which among these four fundamental freedoms are to be given foremost importance. Dean Koh writes that the September 11 attacks on the World Trade Center has brought upon America exceptional vulnerability, in the face of its exceptional power.[10] Its response has lead to the attacks on Afghanistan, the invasion of Iraq and the subsequent capture of its ruler,

5. JOAQUIN G. BERNAS, S.J., THE INTENT OF THE 1986 CONSTITUTION WRITERS 164 (1995 ed.)

6. *Id.* at 165. Fr. Bernas complete statement is, "We do not wish to steal the thunder of the Committee on Social Justice, although in certain instances where certain economic rights, claims on the state, are intimately related to strict rights, we put them in also."

7. JOAQUIN G. BERNAS, S.J., CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, NOTES AND CASES, PART II 1 (1996 ed).

8. Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co. Inc., 50 SCRA 189 (1973).

9. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 69 (1996 ed.) [hereinafter BERNAS COMMENTARY].

10. Koh, *supra* note 3..

Saddam Hussein. Koh writes that to preserve American power and prevent future attack, the government has asserted a novel right under International Law to disarm through "pre-emptive self-defence" any country that poses a threat. In the United States, it has instituted sweeping strategies of immigration control, security detention, governmental secrecy and information awareness.[11]

Events in the Philippines have also impelled a re-examination of the great importance given to the freedom from want. The Al-Queda has been established to have links in the Philippines. Terrorism is at hand in the Philippines and in various places in Southeast Asia. A perennial problem in the Philippines, which continuously becomes more pressing each year, is the kidnap for ransom incidents. In a summary of kidnapping cases compiled by the Citizens Action Against Crime and Movement for Restoration of Peace and Order, it has been estimated that from January to October of 2003, there had been a total of 162 instances of document kidnapping cases, and PhP 182 million ransom paid.[12] Reports state that while the Chinese-Filipinos remain the more common targets, an increasing number of foreigners and non-ethnic Chinese Filipinos has been victimized over the last three years.[13] The economy has also suffered: kidnapping has bled the country of billions of pesos more in foregone investments, capital flight, migration of students overseas, and the decline in tourist arrivals.[14] Various measures have been implemented by the government in order to try to halt the unabated rise in incidents involving crime. These measures should be analyzed not only as to the desired effect of curbing kidnapping incidents, but also how these measures will affect the rights of the greater populace who, while not involved in the matter, may be subject to collateral damage. These measures will also have implications that will reach beyond Philippine shores, as post-World War II developments now finds a growing acceptance of the view that the way nations treat people under their jurisdiction is no longer just a domestic concern but also one that calls for the attention of the international community.[15] The "old concept of sovereignty" has gradually been chipped

11. *Id.*

12. Malou C. Mangahas, *Captive Market*, Philippine Center for Investigative Journalism *at* http://www.pcij.org/imag/SpecialReport/kidnapping.html (last accessed Dec. 31, 2003).

13. *Id.*

14. Malou C. Mangahas, *Captive Market*, Philippine Center for Investigative Journalism *at* http://www.pcij.org/imag/SpecialReport/kidnapping2.html (last accessed Dec. 31, 2003).

15. JOAQUIN G. BERNAS, AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 291-92 (2002) [hereinafter BERNAS INTERNATIONAL LAW].

away as it is recognized that individuals can be subjects of International Law and that they can find protection within the international community.[16]

This essay examines the impelling factor of the demand to be free from fear as the moving force behind various pieces of legislation. Despite of its existence in the statute books and jurisprudence, how has the freedom from fear been treated, in comparison with the other four fundamental freedoms? This examination is imperative in analyzing the State's response to the incidents of crime. Only by identifying precisely the response of the State, and testing this response against the rubric of Constitutional Law, can the issue be joined as to the issue of whether or not there is a need to re-orient the application of laws, in response to a uniquely domestic problem, as the Philippines complies with its obligations in the international conventions.

II. TRACING THE PRESENCE OF LEGISLATION IMPELLED BY THE RIGHT OF FREEDOM FROM FEAR

The contention that there has been branches of legislation that have been spurred by the assertion of the people's right to the freedom from fear does not have startling implications that it seems to signal. A re-examination of various branches of law, ranging from Constitutional Law, Immigration Law, Criminal Law, and even Commercial Law will reveal that the motivating factor has been to dispel some form of fear from the minds of the populace. This study will reveal how the State has used the law to react to threats in society, both real and apparent, and how the current response of the State to the resurgence of the kidnap for ransom incidents is not really surprising.

A. Criminal Law and Procedure

Criminal Law pertains to that field of law which defines crimes, treats of their nature, and provides for punishment.[17] Criminal Law has been observed to be existent in all civilizations, as a forceful strike against the rebellious individual who goes against the law.[18] There are an ensemble of doctrines which seek to explain the end which ought to guide the State in the establishment of penal sanction.[19] These are called "penal schools," the foremost of which are the Classical and the Positivist schools.[20]

16. *Id.* at 292.

17. 1 LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW 1 (14th ed. 1998).

18. Lorenzo U. Padilla, The History of Penal Law, 40 Ateneo L.J. 109 (Dec. 1996).

19. *Id.* at 111.

20. Padilla identifies five penal schools: Classical, Correctionalist, Positivist, Critical, and Sociological. *Id.* at 111.

The Classical School theorizes that the basis of criminal liability is human free will, that "man is an essentially moral creature with an absolutely free will to choose between good and evil."[21] Therefore, penalty is a means of juridical tutelege.[22] The Positivist School on the other hand theorizes that crime is essentially a social and natural phenomenon. Man is sometimes subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong, in spite of or contrary to his volition. Hence, the criminal cannot be checked by the application of abstract principles of law but requires the enforcement of individual measures in each particular case.[23]

The unanimous conclusion of authors on Criminal Law that the Revised Penal code is based mainly on the principles of the classical school reflects that Criminal Law is essentially a piece of legislation prompted by a desire of the people to apprehend and marginalize the wicked and the foul in society. Even when some provisions of the Revised Penal Code are positivist in their thrust, such as those pertaining to juvenile delinquency, mitigating circumstances, and the punishment of impossible crimes, the Revised Penal Code and the whole of Criminal Law does not exist to coddle those who have lied, cheated, raped, killed or stolen, whether it may have arisen from malicious intent, or from poverty, uncontrollable fear, vindication of an offense, or passion or obfuscation. Even when the accused raises the defense of a justifying, exempting or mitigating circumstance, the accused is deemed to have admitted the commission of the criminal act, and the burden shifts to him in order to prove the circumstance that he claims.[24]

But this fear of crime and the need to suppress it does not seem to be reflected in the rules that govern the method by which a person accused of a crime is arrested, tried and punished, that is, the Rules on Criminal Procedure. In fact, the body of concepts that pertain to how crimes are to be punished reveals a distrust of the strong arm of the law.

Criminal procedure has evolved since its inception in Philippine jurisprudence. The inquisitorial system, where the prosecution of crimes was wholly in the hands of the prosecuting officer and the court and the procedure is characterized by secrecy, the presence of the accused before the magistrate not being a requirement before the magistrate may proceed with the inquiry and render judgment of the case, was used in the Philippines during the Spanish period and remained in force up to the coming of the

21. REYES, *supra* note 14, at 22.

22. ANTONIO L. GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW 12 (1997).

23. REYES, *supra* note 14, at 22.

24. REYES, *supra* note 14, at 140.

American.[25] The present system, where the prosecution of offenses requires an adversarial process, is the accusatorial system. In this system, all crimes, except private offenses, must be prosecuted by a public prosecutor. The accused has the right to be present at any stage of the proceedings and trial is conducted publicly, with the right of the accused against self-incrimination guaranteed. The essence of the accusatorial system is grounded in the due process, that there be moral certainty of guilty in order to convict.[26]

The entire process of the accusation, trial and conviction of the accused is a web of procedural steps that must be taken by the State, and in each step, there are safeguards that seek to weed out the accusations that do not meet certain standards. In the arrest or the search of persons, no warrant shall issue except upon probable cause to be determined personally by the judge under certain conditions.[27] During such arrest, he is entitled to the rights granted to the indigent Mexican defendant, Mr. Miranda, which are the rights to be informed of his right to remain silent, the right to the accompanying explanation that anything said can and will be used against the individual in court, and the right to have counsel present at the interrogation.[28] Philippine Constitutional Law expands this by making the waiver of these rights extremely exacting – only when in writing and when done so in the presence of counsel.[29] There are many other procedural safeguards – the right to be presumed innocent, the right to bail, the right not to be compelled to be a witness against himself. All these reveals the policy of the State, in the often repeated statement: better for a guilty man to go free, rather than for an innocent man to be wrongfully convicted. Therefore, the safeguards that protect the accused are so stringent, that it may indeed be possible for those who are truly guilty to escape conviction, and this is so because the law would rather err on the side of caution.

Thus, this cursory overview of Criminal Law and Procedure reveals that penal law arises from society's need to protect itself against its malevolent elements. But society is simultaneously distrustful of a body that would wield the power to prosecute such criminal acts. So it places various safeguards to ensure that when the citizens are wrongfully accused, that it would be extremely difficult for these individuals to be convicted to the end.

25. MANUEL R. PAMARAN, REVISED RULES OF CRIMINAL PROCEDURE ANNOTATED 2 (2003 ed.).

26. *Id.* at 3 (citing People v. Egot, 129 SCRA 96 (19xx)).

27. Phil. Const., art. III, § 2.

28. Miranda v. Arizona, 384 U.S. 436 (1966).

29. Phil. Const., art. III, § 12 (1).

B. Immigration Law

Immigration Law pertains to the body of laws governing the entry, admission, exclusion, registration, monitoring, repatriation & deportation of foreigners within the national territory of the Philippines. No other branch of law reflects a more defensive stance by the State than Immigration Law. The Supreme Court has said the international community, leaves States at liberty to fix the conditions under which foreigners should be allowed to enter their territory. These conditions are a legitimate manifestation of territorial power and not contrary to law:

> If it can not be denied that under normal circumstances when foreigners are present in the country the sovereign power has the right to take all necessary precautions to prevent such foreigners from imperiling the public safety, and to apply repressive measures in case they should abuse the hospitality extended them, neither can we shut our eyes to the fact that there may be danger to personal liberty and international liberty if to the executive branch of the Government there should be conceded absolutely the power to order the expulsion of foreigners by means of summary and discretional proceedings; nevertheless, the greater part of modern laws, notwithstanding these objections, have sanctioned the maxim that the expulsion of foreigners is a political measure and that the executive power may expel without appeal any person whose presence tends to disturb the public peace. [30]

Fr. Bernas writes that no state is obliged to admit aliens into its territory unless there is a treaty requiring it. This principle is an aspect of sovereignty. Although states usually do not deny admission to all aliens and simply impose legal standards for their admission, once they are admitted, aliens may not be expelled without due process.[31]

Commonwealth Act 613, or The Philippine Immigration Act of 1940, provides for the grounds for the deportation of aliens. But despite the existence of these grounds, there is a due process guaranty for such deportation. The alien shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him, and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien.[32] Furthermore, no alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration.[33]

30. In re *Patterson, 1 Phil. 93(1902).*

31. BERNAS INTERNATIONAL LAW, *supra* note 14, at 264.

32. Commonwealth Act 613, The Philippine Immigration Act of 1940, § 37 (A).

33. *Id.* § 37 (C).

But jurisprudence and law has taken away much of this guaranty to the aliens. It has been held that the temporary stay of aliens in the Philippines is but a privilege not a right subject to the dictates of public policy.[34] This recognition that the temporary stay is but a mere privilege is crucial, because as against rights which can be exercised without question, privileges cannot be exercised in all instances, but discretionary upon the government authority. Deportation proceedings are not similar in character to trials for criminal cases. Deportation proceedings are administrative in character, summary in nature and need not be conducted strictly in accordance with ordinary court proceedings.[35]

The deportation involves the filing of complaints and memoranda and the convening of the Board of Commissioners as a collegial body to resolve the memoranda of the Special Prosecutor and the alien. The Judgment shall indicate a brief narration of facts, the findings of the Board of Commissioners, the issues involved and a definitive ruling.[36] But there are instances when summary deportation is allowed, such as when the foreign embassy cancels the passport of an aliens, or does not re-issue a valid passport or travel document.[37]

During such investigation, a warrant of arrest issued by the Commissioner of Immigration for purposes of investigation only is null and void for being unconstitutional. The aliens shall be arrested upon warrant of the Commissioner of Immigration only after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien.[38] Before any alien may be deported upon a warrant of the Commissioner of Immigration, there should be a prior determination by the Board of Commissioners of the existence of the ground as charged against the alien.[39]

But the case of *Harvey v. Defensor Santiago*[40] has severely warped this established rule. In *Harvey*, petitioner aliens were arrested by virtue of Mission Orders issued by the Commissioner of Immigration. They filed a petition for writ of habeas corpus, claiming that the law does not legally clothe the Commissioner with any authority to arrest and detain petitioners pending determination of the existence of a probable cause leading to an administrative investigation.

34. Ngo Chiao Lin vs. Commissioner, 16 SCRA 317 (1966).

35. Revised Rules on Deportation, Rule I.

36. *Id.* Rule XI.

37. *Id.* Rule XVI.

38. Board of Commissioners v. Dela Rosa, 197 SCRA 853 (1991)

39. Lao Gi vs. CA, 180 SCRA 756 (1989)

40. 162 SCRA 140 (1988).

The Supreme Court rejected the petitioner alien's contentions and held that there was a valid arrest, since it was occasioned by probable cause. The Supreme Court accepted the presentation by the Office of the Solicitor General, that the arrest of petitioners was based on probable cause determined after close surveillance for three months during which period their activities were monitored. The Court went on to say that even though the petitioners were not apprehended *in flagrante delicto*, one of the instances permitting a warrantless arrest, their apprehension was not illegal, since the petitioners were found with young boys in their respective rooms, and "the CID agents had reasonable grounds to believe that petitioners had committed "pedophilia" which, "while not a crime under the Revised Penal Code, it is behavior offensive to public morals and violative of the declared policy of the State to promote and protect the physical, moral, spiritual, and social well-being of our youth."[41]

This examination of Immigration Law is concluded with the similar treatment of the right to bail of aliens under detention pending deportation. The Immigration Act confers upon the Commissioner of Immigration, to the exclusion of the courts of justice, the power and discretion to grant bail and to impose the conditions thereof, in deportation proceedings, but does not grant aliens the right to be released on bail. Since deportation proceedings do not constitute a criminal proceeding and an order of deportation is not punishment for a crime, the right to bail guaranteed by the Constitution may not be invoked by an alien in said proceedings. [42] The writ of habeas corpus may be used in immigration cases to test the legality of the alien's confinment. But it is afforded in immigration cases only to determine whether or not there was a fair hearing conducted and not for the purpose of inquiring whether the decision of the Bureau of Immigration is right or wrong. This is because the exclusive and full discretion to determine whether an alien subject to deportation should be granted bail is vested with the Commissioner of Immigration.[43]

The survey of doctrines in Immigration Law is astounding, as it reflects the extent to which the Supreme Court will bend, in order to alienate, if not to destroy and obliterate, that which is strange, horrific, and appalling – that which society fears.

41. Harvey v. Defensor Santiago, 162 SCRA 140 (1988).

42. Immigration Act, § 37 (9). *See* Ong See Hang v. Commissioner of Immigration, 4 SCRA 442 (1962), Magno v. Court of Appeals, [GR 1011148], Go Tian Chai v. Commissioner of Immigration, 18 SCRA 42 (1966), Harvey vs. Defensor Santiago, 162 SCRA 140 (1988), Galang v. CA, GR L-15569 (1961).

43. GENEROSO V. JACINTO, COMMENTARIES AND JURSIPRUDENCE ON THE REVISED RULES OF COURT 452-53 (1991 ed.).

C. Law on Nationalized Activities and Undertakings

This seeming aversion towards what is alien to the country is reflected in the laws that govern nationalized activities or undertakings. The Constitution provides seven of such cases:

> 1. Exploitation of Natural Resources - The state may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens or corporations at least 60% of whose capital is owned by such citizens.[44]
>
> 2. Owning and Operating Public Utilities – Franchises for the operation of public utilities shall be granted only to Filipino citizens or corporations at least 60% of whose capital is owned by such citizens. The participation of foreign investors shall be limited to their proportionate share in its capital and all executive and managing officers of such corporation must be citizens of the Philippines.[45]
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> 3. Mass Media – Both ownership and management of mass media is limited to Filipino citizens or to corporations wholly owned and managed by such citizens.[46]
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> 4. Advertising – Only Filipino citizens or corporations at least 70% of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry. The participation of foreign investors in the governing bodies shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.[47]
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> 5. Ownership of Land – only those corporations with at least 60% of whose capital is owned by Filipino citizens are permitted to own land.[48]
>
> 6. Educational institutions – apart from those established by religious groups and missions, educational institutions must be owned by corporations or associations at least 60% of whose capital is owned by Filipino citizens.[49]

Various pieces of statutes also provide certain lines of businesses where the capital stock is limited to Filipino citizens in part or in its entirety. These businesses include banks, savings and loan associations, financing companies,

44. PHIL. CONST., art. XII, § 2.

45. PHIL. CONST., art. XII, § 11.

46. PHIL. CONST., art. XVI, § 11 (1).

47. PHIL. CONST., art. XVI, § 11 (2).

48. PHIL. CONST., art. XII, § 2.

49. PHIL. CONST., art. XIV, § 4 (2).

investment houses, fishing and business activities relating to the fishery industry, and the security, watchmen and detective agencies.

The nationalization of certain fields of commercial activities reveals important underlying philosophies in the manner by which a State prepares itself against any impending struggles against other foreign powers. Commercial law is that portion of substantive law dealing with the sale and distribution of goods, the financing of credit transactions on the security of the goods sold, and negotiable instruments.[50] War necessitates huge efforts and the flow of goods has to be regulated to aid this cause. In 1914, World War I was in a stalemate and the key to the victory would primarily be industrial might and access to raw materials. The entry of the United States in the war, to shore up a flagging France and Britain with money, food, munitions and troops turned the tide against the Central Powers.[51] In the provision of these commercial goods, corporations enter into transactions, issuing negotiable instruments, ensuring cargo, transporting goods. Any commercial transaction which involves the enemy state can, intentionally or unintentionally, aid in the war effort against one's own state.

Thus, there are two policies relating to the flow of goods during war. First, the enemy has to be deprived of goods since the purpose of war is to cripple the power and exhaust the resources of the enemy.[52] Second, the state requires more resources in order to overcome the belligerent forces, and this may require the taking of private property. These two policies are evident in the survey of commercial law provisions on war.

The Constitution provides that Congress, when dictated by national interest, shall reserve to citizens of the Philippines or to corporations at least 60% of whose capital is owned by such citizens or a higher percentage as may be, certain areas of investment.[53] This clearly shows a distrust of foreign ownership of certain sectors that are considered vital to national economy and patrimony. This is in accordance with the policy of depriving enemy forces of both resources and control over important local mechanisms.

As for the requirement of accumulating resources for the war effort, the Constitution provides that in times of national emergency or when public interest so requires, the state may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.[54] The Constitution also provides that the state may, in the

50. BLACK'S LAW DICTIONARY at 263 (7th ed. 1999).

51. STANLEY CHODOROW, et al., THE MAINSTREAM OF CIVILIZATION 772-73 (1994 ed).

52. Filipinas Cia de Seguros v. Christern Huenefeld & Co., Inc., 89 Phil. 54 (1951).

53. PHIL. CONST. art. XII, § 10.

54. PHIL. CONST. art. XII, § 17.

interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership, utilities and other private enterprises to be operated by the government.[55] Apparent here is the exercise of police power for public good. Fr. Bernas comments that when the State takes over the control of a public utility, the phrase "affected with public interest" refers to businesses which involve characteristics of public utilities, such as mass-based consumers, even if these are not in fact operated as public utilities.[56] At this point, an examination of the provisions of various field of Commercial Law relating to war is in order.

1. *Corporate Law*

The provision in the Corporation Code[57] gives the pertinent rules on determining the citizenship of a corporation. Case law nuances these rules during wartime.

The principal doctrine on the test of nationality of a corporate entity is the *place of incorporation test*. This test provides that a corporation is a national of the country under whose laws it has been organized and registered.[58] This is embodied in the Corporation Code which defines a foreign corporation to be one formed, organized, or existing under any law other than Philippine law.[59] Thus, all those corporations not formed under the Corporation Code are considered foreign corporations.

The exception to this principal doctrine of the place of incorporation test is the *control test*. Under this test, the nationality of a corporation is determined by the nationality of the majority of the stockholders on whom ownership and, in certain instances, control, is vested. Thus, in certain instances, both the place of incorporation test and the control test are applied.

Thus, there is a clear distinction drawn by the law between ownership of capital in a corporation and the control of the corporation. In certain instances, this distinction is vital, as both control and ownership of capital is required, such as in the operation of a mass media company. In the exploitation of natural resources, the Constitution merely requires that at least 60% of the capital be owned by Filipino citizens. Even if the voting

55. PHIL. CONST. art. XII, § 18.

56. BERNAS COMMENTARY, *supra* note 8, 1053-54 (citing Munn v. Illinois, 94 U.S. 113 (1877)).

57. Batas Pambansa Blg. 68.

58. CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 46 (2001) [hereinafter VILLANUEVA CORPORATE LAW].

59. Corporation Code, Sec. 123. The Code adds that such corporation must, in the laws under which it was organized, allow Filipino citizens and corporations to do business in its own country or state, to be considered a foreign corporation.

shares are controlled by Filipinos, if the total shareholdings of the company, both voting and non-voting does not meet the minimum 60% Filipino ownership requirement, such corporation would not be qualified to engage in the exploitation of natural resources.[60] But it seems that as long as a corporation meets the minimum Filipino ownership requirement, even if the voting shares are controlled by foreigners, it would be qualified to engage in the exploitation of natural resources.

The Supreme Court decided, almost 20 years before the present Constitution, that this would not be the case. In *Register of Deeds of Rizal v. Ung Siu Si Temple*,[61] a donation of land to the religious organization composed of Chinese nationals was prohibited. The fact that the appellant religious organization had no capital stock did not suffice to allow it to escape the constitutional inhibition, since it is admitted that its members are of foreign nationality. The purpose of the 60% requirement is obviously to ensure that corporations or associations allowed to acquire agricultural land or to exploit natural resources shall be controlled by Filipinos, and the spirit of the Constitution demands that in the absence of capital stock, the controlling membership should be composed of Filipino citizens.

The war-time test enunciated in *Filipinas Compania de Seguros v. Christern Huenefeld & Co.*[62] clarifies the nationality test during times of war. Here, the issue was whether the nationality of a corporation is determined by the country or state by and under the laws of which it was created or organized or by the character or citizenship of its controlling stockholders. The Supreme Court cited *Clark v. Uebersee Finanz Korporation*,[63] in which the control test has been adopted in the United States. Thus, since the corporation in this case was controlled by German nationals, it was deemed an enemy foreign corporation. This control test was used again in *Winship v. Philippine Trust Company*,[64] where plaintiff American corporation claimed from defendant bank money it deposited with the latter. Defendant bank claims that the Japanese Military Administration in the Philippines issued an order requiring all deposit accounts of *hostile people, including corporations,* to be transferred to the Bank of Taiwan, as the depository of the Bureau of Enemy Property Custody, and the defendant bank was specifically directed to comply with this. Thus, it claims that plaintiff's deposits were transferred and paid the credit balances of the current account deposits of the Eastern Isles Import Corporation and of the Eastern Isles, Inc. to the Bank of Taiwan.

60. VILLANUEVA CORPORATE LAW, *supra* note 42, at 48.

61. 97 Phil. 58 (1955).

62. 89 Phil. 54 (1951).

63. 92 Law. Ed. Advance Opinions, No. 4, pp. 148-53, decided on December 8, 1947.

64. G.R. No. L-3869, Jan. 31, 1952.

The Supreme Court affirmed the defendant bank's contention. First, the transfer or payment by the defendant bank to the Bank of Taiwan of plaintiff's deposit, by order of the Japanese Military Administration, was valid and released the defendant's obligation to the plaintiff. At any rate, the defendant corporation has not impugned its validity. The plaintiff corporation, being controlled by American citizens, was held to be of hostile nationality, thus making it fall within the Japanese deposit order.

During wartime therefore, the nationality of a corporation is determined both by the place of incorporation test, and the wartime control test. Under the wartime control test, both ownership and control of the corporation is considered. When this is vested with citizens possessing the nationality of a foreign state, then it is considered a foreign corporation. The practical consequences of this is that the foreign corporation's assets become subject to freezing regulations and other administrative practice in the treatment of foreign-owned property within the state. The power of seizure and vesting was extended to all property of any foreign country or national so that, "no innocent appearing device could become a Trojan horse."[65]

2. Insurance Law

The Insurance Code[66] provides that anyone except a public enemy may be insured.[67] Although the term evokes the picture of a notorious criminal, as it is used in the Insurance Code, a "public enemy" is a state with which another state is at war. It also pertains to a person possessing the nationality of the state with which one is at war.[68]

Thus, in *Filipinas Cia de Seguros v. Christern Huenefeld & Co.*,[69] respondent corporation, after payment of corresponding premium, obtained from the petitioner insurer a fire insurance policy covering merchandise. During the Japanese military occupation, the building and insured merchandise were burned. The petitioner insurer refused to pay the claim on the ground that the policy in favor of the respondent had ceased to be in force on the date the United States declared war against Germany, the respondent corporation was controlled by German subjects and the petitioner being a company under American jurisdiction when said policy was issued, the contract was void.

65. Filipinas Compania de Seguros v. Christern Huenefeld & Co., 89 Phil. 54 (1951).

66. Presidential Decree No. 1460.

67. Insurance Code, § 7.

68. Black's Law Dictionary at 548, RUFUS RODRIGUEZ, THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED 25 (4th. ed. 1999).

69. 89 Phil. 54 (1951).

The Supreme Court held that an insurance policy ceases to be allowable as soon as an insured becomes a public enemy. Using the control test, it found that since majority of the controlling stock was vested with Germans, it was an enemy foreign corporation. Inasmuch as all acts which will increase, or tend to increase, its income or resources are prohibited, insurance upon trade with or by the enemy, and upon the life or lives of aliens engaged in service with the enemy is void for the reason that the subjects of one country cannot be permitted to lend their assistance to protect by insurance the commerce or property of belligerent, alien subjects, or to do anything detrimental to their country's interest. In the interest of justice however, it was required for petitioner insurer to return the premiums paid by the defendant insured.

3. Carriage of Goods and Transportation Law

In the carriage of goods and in the carriage of persons, there is a contract of carriage which the law imbues with a public interest. Thus, the law creates certain presumptions against the carrier in case of loss, destruction, death, and physical injuries.

As for the carriage of goods, the common carrier is liable for the loss, destruction, or deterioration of goods while these are in his possession. To be exempted from liability, such common carrier must prove that the damage was caused by one of the exceptions provided by law, among which is when the damage is caused by acts of public enemy in war, whether civil or international.[70] Only then does the shipper have the *onus probandi* to show the carrier's fault to make the latter liable.[71] Note that in claiming exemption from damages on account of acts of public enemy in war, these acts must have been the proximate and only cause of the loss. The common carrier must have exercised due diligence to prevent or minimize loss before, during, and after the occurrence of the acts in order that it may be exempted from liability.[72] Act of war is also one of the liability exceptions provided under the Carriage of Goods by Sea Act.[73] Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from acts of war.[74]

As for the carriage of persons, there is no special provision that deals with acts committed in war to exempt the common carrier from liability. This reflects the high standard imposed upon public transportation operators

70. Civil Code, Art. 1734.

71. HERNANDO B. PEREZ, TRANSPORTATION LAWS AND PUBLIC SERVICE ACT 14 (2001).

72. Civil Code, Art. 1739.

73. Act. 521.

74. Carriage of Goods by Sea Act, § 2 (e).

such that the mere allegation that the death or injury was occasioned by acts of public enemies in war does not deter from the obligation of the common carrier to carry the passenger safely as far as human care and foresight can provide, using the utmost diligence of a very cautious person. The law provides that this should be done with a due regard for all the circumstances, presumably, including the acts that would ordinarily occur in wartime.[75]

4. Other Commercial Laws

Some other provisions found in Commercial Laws exemplify the government's greater power during war to accumulate advantage against belligerents. The Omnibus Investment Code[76] provides that all investors and registered enterprises are entitled to the basic rights and guarantees provided in the Constitution. There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency.[77]

Employees in private enterprises may be required by the employer to perform overtime work in certain cases, among which is when the country is at war.[78]

A special right is reserved to the President of the Republic of the Philippines in time of war, or other national emergencies and when public safety requires, to cause the closing of the satellite frachisee's circuits and/or stations or to authorize the use or possession thereof by any Department of the government without compensation to the franchise grantee for the use of the said station during the continuance of the national emergency.[79]

D. The Springboard for the Analysis

The survey of various fields of law reveals that fear has motivated and shaped the manner of the crafting of laws and adjudication of conflicts that present themselves to the courts. In the field of Criminal Law, the fear of the populace is double-edged. While they wish to be protected from harmful elements of society, they would seem to likewise fear the very forces that seeks to protect them from such harmful elements. Thus, while Criminal Law will go to the extent of penalizing the criminal for purposes of

75. Civil Code, Art. 1755.

76. Executive Order 226.

77. Omnibus Investment Code, Art. 38 (e).

78. Labor Code of the Philippines, Presidential Decree No. 442, Art. 89.

79. Presidential Decree No. 947, § 5.

exemplarity, Criminal Procedure makes the entire process from accusation to conviction a procedural quagmire, almost assuming error on the part of the government at every step. The field of Immigration Law is in stark contrast to Criminal Law. Here, the Filipino psyche does not vacillate with regard to aliens. The procedural safeguards that are so stringent for the protection of the accused in criminal cases are virtually non-existent in Immigration Law, and full discretion is granted to the abatement of alien threats. This seeming xenophobia is confirmed in the laws that govern nationalized activities and undertakings.

The fact that fear has motivated so much of the law which govern the lives of the people is not in itself an evil that should be stamped out. It was earlier observed that a large portion of Labor Law, Social Justice Legislation, Tax Law, Commercial Law and even Remedial Law is crafted with the need to free the Filipino from its most pressing concern – that of material want.

But legislation that is induced by fear has to be analyzed and studied. Future generations will very well have the benefit of the entire context by which to judge the manner by which legislation has been shaped by fear. But pressing concerns necessitate answers to certain questions. First, has the policy considerations that have lead to the shaping of traditional Criminal Law changed, so much so that the center has shifted, requiring a relocation of the balance? And second, what are the implications of these realizations on Constitutional Law on the Bill of Rights?

III. KIDNAPPING FOR RANSOM: THE THREATS THAT UNDERMINE THE FOUNDATIONS OF PEACE AND ORDER

Kidnapping has been described as "a virtual cottage industry in which little capital and apparently equally little risk can mean millions of pesos in profits."[80] According to data compiled by the CAAC and the Movement for Restoration of Peace and Order, nearly 2,000 persons have been kidnapped in 1,020 incidents since 1993. This translates to an annual average of 213 kidnap victims and 113 kidnapping incidents in the last nine years. But what is even more alarming is that these numbers are "at best partial and represent only the reported cases logged in police files, news reports, and the CAAC's database."[81]

80. Malou C. Mangahas, Kidnapping gangs are out on the loose, confident they can elude an inept and divided police force, Philippine Center for Investigative Journalism *at* http://www.pcij.org/imag/SpecialReport/kidnapping.html, Oct - Dec 2001, Vol. VII, No. 4 (last accessed Mar. 10, 2004) [hereinafter Mangahas Kidnapping Gangs].

81. *Id.*

Summary of Kidnapping Cases (January to October 2003)[82]

Month	NCR	Luzon	Visayas	Mindanao	Total
January	4	4	1	3	12
February	6	-	-	2	8
March	3	4	-	2	9
April	8	1	-	2	11
May	9	2	-	2	13
June	8	1	-	-	9
July	5	3	-	-	8
August	8	4	-	4	16
September	12	2	-	3	17
October	6	1	-	-	7
TOTAL	**69**	**22**	**1**	**18**	**110**

Reports indicate:

> [W]hile the Chinese-Filipinos remain the more common targets, an increasing number of foreigners and nonethnic Chinese Filipinos has been victimized over the last three years. In addition, the victims now cut across gender and age groups, and the number of repeat cases — or families with two or more members kidnapped — is on the rise as well. In other words, families who paid ransom fast and did not report cases to the police are finding themselves being targeted again.

It was reported that in a meeting with President Gloria Macapagal-Arroyo in October 2003, Chinese-Filipino leader Benjamin Chua expressed the concern of the Filipino Chinese that:

> Members of the community do not feel safe. They live in fear, under constant threat of being victimized. They want the government to realize

82. Mangahas Kidnapping Gangs, *supra* note 79.

> the gravity of the problem: *that kidnapping is not only a form of terrorism, it is also a form of human rights violation.* It is a national problem.[83]

Police records showed that many of the convicted kidnappers were either dismissed or active policemen and soldiers, which experts say is an indication that bad military and police elements are easily lured into kidnapping activities because of the promise of money.[84]

It was reported that in 2002, there were 209 kidnap victims nationwide, broken down into 51 for Metro Manila, 44 for the rest of Luzon, seven in the Visayas, and 32 in Mindanao. Ransom paid was a total of P103.7 million. This compares with 93 kidnap victims from January to July this year, or 35 for Metro Manila, 13 for the rest of Luzon, one for the Visayas, and nine for Mindanao. Total ransom paid was P80.7 million.[85]

Contrary to popular perception that most of the victims are rich Chinoys, many of the kidnap victims are in the upper to lower middle-class bracket. Ms. Teresita Ang See, founding president of Kaisa Para sa Kaunlaran, Inc. (Unity for Development), observes however that the Filipino Chinese are still the most vulnerable nationwide, because they make- up only one percent of the population, when compared with the total number of kidnap victims.[86]

Police enforcers, of course, ask that families of kidnap victims cooperate with the police. But part of the problem, however, is that there is a public mistrust toward authorities. In various instances, the police have also accidentally killed the victims they were trying to rescue. There have also been suspicions that neighborhood thugs and former rebels are not the only members of kidnapping syndicates, but police and military personnel as well.[87] Thus, it has been opined that if a kidnap victim is in mortal danger and his family or associates can afford it, and if the government can't help

83. *Id.* (emphasis supplied).

84. Mer Layson, Kidnap cases rising again – watchdog, *available at* http://www.manilatimes.net/national/2003/may/16/top_stories/20030516top5.html, May 16, 2003 (last accessed Mar. 15, 2004).

85. Amadis Ma. Guerrero, Teresita Ang See: Chinoy Crime Buster, *available at* http://www.planetphilippines.com/archives/aug1-15/current/features_current/feature4.html (last accessed Mar. 15, 2004).

86. *Id.*

87. Philippine Center for Investigative Journalism, Special Report: Captive Market, *available at* http://www.pcij.org/imag/SpecialReport/kidnapping2.html (last accessed April 6, 2004).

him anyway, the government should not fulminate if ransom is then paid to gain his freedom.[88]

IV. GOVERNMENT RESPONSE TO KIDNAPPING FOR RANSOM

This section presents the most recent action taken by the government as to the kidnap-for-ransom cases that have arisen. An analysis of these acts will allow a discernment of the direction that the government may be taking in the seeming war against crime. This will also bring to full circle the analysis, by testing current action against the posited theory that a substantial portion of government action and legislation is prompted by the need to protect the citizenry against fear.

A. Executive Action

After three brutal murders of kidnap for ransom victims in 2003, President Arroyo ordered the Philippine National Police to draw up a "new order of battle" to combat the resurgence of kidnapping in the country.[89] The President reported that a significant number of kidnapping syndicates had been neutralized. President Arroyo, at the start of her term, recognized the problem of kidnap for ransom as one of the most pressing problems of the country. In the National Socio-Economic Pact of 2001, kidnap-for-ransom was one of the things that was foremost in the agenda. The Pact provided, in part:

> Recognizing the shared vision of a peaceful and prosperous Philippines where poverty shall have been significantly reduced within the decade as espoused in the Medium-Term Philippine Development Plan, 2001-2004 and the President's State of the Nation Address of 2001;
>
> Aware that efforts to boost the domestic economy have enabled the Philippines to post one of the highest growth rates in Asia even as exports slowed and industrial activity slackened;
>
> Acknowledging that the September 11 terrorist attacks on the United States have given rise to new uncertainty and darkened the prospect of a global recovery initially anticipated to come in the latter half of 2001, and that such delays could have telling impacts on the welfare of the people, especially the poor, and on the domestic economy particularly export-oriented sectors, tourism-related industries, and the financial markets;

88. Federico D. Pascual, Jr. Government has lost right to ban ransom deals, *available at* http://www.manilamail.com/archive/jun2001/01jun19.htm, June 19, 2001 (last accessed Mar. 15, 2004).

89. Ma. Theresa Torres, et al., Arroyo orders PNP to intensify drive vs. new kidnap syndicates, *available at* http://www.manilatimes.net/national/2003/sept/20/top_stories/20030920top3.html (last accessed Mar. 15, 2004).

> Concerned that a severe downturn in the domestic economy can lead to exacerbation of poverty through loss of jobs and diminished access to education, health, housing and other social services;
>
> x x x
>
> THEREFORE, we, the leaders of the political branches of government, labor organizations, business sector, and civil society, commit steadfastly to accelerate the implementation of the Medium-Term Philippine Development Plan and the President's State of the Nation Address of 2001 and that in the immediate term, we focus our efforts to achieve the following:
>
> x x x
>
> 1. Accelerate the integration and coordination of intelligence activities and resources of law enforcement and security agencies; maximize all mechanisms to identify, locate and neutralize kidnap-for-ransom groups, drug syndicates, terrorists, smugglers, and coup plotters; and improve the reward system for information on these groups;
>
> 2. Mobilize the peace and order councils more actively and organize self-defense units which are authorized to carry firearms and effect citizens' arrest under existing laws and under close supervision of DILG/PNP; and
>
> 3. Intensify efforts to rid the PNP of scalawags.[90]

Executive action has been observed in the increased use of checkpoints and the reinstitution of the death penalty.

3. Checkpoints and Military Support

On November 2003, President Arroyo ordered Presidential Adviser on Kidnapping Angelo Reyes to put up more police visibility and checkpoints in Metro Manila to deter kidnap gangs and bank robbing syndicates. This came after criticism by some sectors of the capability of the administration to address the issue, and the threat of the Chinese-Filipino community to

[90] National Socio-Economic Pact of 2001, "National Unity to Face the Challenge of the Global Economic Crisis", http://www.neda.gov.ph/nsepact/pact2001.htm, signed this 10th day of December 2001 in the City of Manila, Republic of the Philippines. Signed by Gloria Macapagal-Arroyo, Franklin M. Drilon, Jose C. De Venedia, Jr., Executive Committee composed of Alberto G. Romulo as Chair, Blas F. Ople, Co-Chair, Members Democrito T. Mendoza, Labor, Luisita Z. Ezmao, Civil Society, Miguel B. Varela, Business. (emphasis supplied).

boycott classes until the peace and order situation in the country, particularly in Metro Manila, stabilizes.[91]

The policemen who would be manning the planned mobile checkpoints will get an augmentation from members of the Armed Forces of the Philippines but the soldiers will not be visible and they will act as the police "extra manpower."[92] Interior and Local Government Secretary Joey Lina assured the public that the police would strictly observe the guidelines set by the Supreme Court in the conduct of checkpoints, supported by these principles:

> 1. The search would be limited only to visual search, neither the vehicle itself nor the occupants will be subjected to a search.
>
> 2. The police conducting the checkpoint would not be limited to the plain view doctrine with regards to safety.
>
> 3. The police, however, [should] ask permission to conduct further search on the vehicle or its occupants by asking the driver to open the car compartment or let the occupants step down for further search.
>
> 4. Should the driver or occupants allow the police to conduct search more than just a visual search or gave permission to the police for the conduct of search on a vehicle or the occupant, this would be tantamount to a valid waiver against unreasonable searches.[93]

The guidelines issued by the National Anti-Kidnapping Task Force (NAKTF) on the conduct of the checkpoints were as follows:

> 1. The conduct of the checkpoints, chokepoints and police and military foot patrols shall increase visibility of law enforcement authorities to effectively deter the incidence of kidnapping, particularly in Metro Manila. Checkpoints, in particular, are meant to cut the movement of kidnap-for-ransom groups and other criminals and deny them freedom of movement in the conduct of their activities.
>
> 2. Under the guidelines issued by the NAKTF, there is a high probability that your car will be subjected to inspection. As a general rule, the most likely vehicles to be examined are those that are heavily tinted, those occupied by armed or uniformed individuals, those with suspicious-looking passengers, those carrying a dubious number of occupants, those with irregular identification numbers, those that have special plates and those that have no license plates.

91. Glo: Checkpoints not a prelude to martial law, *available at* http://www.sunstar.com.ph/static/net/2003/11/27/glo.checkpoints.not.a.prelude.to.martial.law.html, November 27, 2003 (last accessed Mar. 14, 2004).

92. *Id.*

93. *Id.*

3. Legitimate checkpoints shall have proper signage, e.g., "Slow down, NAKTF/PNP Checkpoint." Marked police and military vehicles are parked right beside the checkpoint. Secretary Angelo Reyes, NAKTF chief, has issued specific instructions that all checkpoints should be led by an officer, not lower in rank than a lieutenant or police inspector.

4. Motorists should slow down, switch headlights off, stop upon signal, roll windows down, switch on cabin lights and submit their vehicles to ocular inspection.

5. Personnel manning the checkpoints have been instructed to be strict, stern but courteous at all times. Motorists will be signaled to slow down, and if necessary, signaled to stop. Further, the motorists will be requested to roll down their windows for a visual search of the vehicle. Personnel manning the checkpoints are also instructed to conduct inspections as briefly as possible to avoid inconveniencing motorists and obstructing the continuous flow of traffic.

6. Under the general guidelines issued by NAKTF, strict adherence to human rights shall be emphasized in all undertakings. Searches made at checkpoints and chokepoints shall be limited to visual search.[94]

Motorists who encounter problems in checkpoints were informed that they could contact a 24-hour NAKTF Hotline or a DILG/PNP Hotline.[95]

2. Lifting of the Moratorium on Death Penalty

Later that year, President Arroyo made these statements, as she lifted the moratorium on death penalty:

> Much as I am averse, as a matter of moral principle, to the taking of human lives in this manner – the president must yield to the higher public interest when dictated by extraordinary circumstances. The pain of victims of heinous crimes has spread all over the national community, and I shall not turn my back against the cry for just retribution under the law.[96]

B. Judicial Pronouncements

A more telling indicator of government action would however be the judicial decisions where the crime enforcers have been charged. This case takes a look at the series of cases where it was law enforcement officer who

94. *Guidelines on Metro checkpoints*, Inquirer *at* http://www.inq7.net/met/2003/dec/22/met_4-1.htm (last accessed Mar. 14, 2004).

95. *Id.*

96. Hrvoje Hranjski, Philippine president won't stop executions, Associated Press, *available at* http://cnews.canoe.ca/CNEWS/World/2003/12/05/278070-ap.html, December 5, 2003 (last accessed Mar. 14, 2004).

was brought to account for his actions in the pursuit of his mandate. A survey of these cases will present the judicial policy in official action in the solution of such cases, as well as their involvement in such cases.

1. People v. Reynaldo Berroya

In *People v. Berroya*,[97] Jack Chou, a Taiwanese national, was kidnapped and was kept captive for seven days until his family paid a ransom of P 10 Million. Only then was he set free. Chief Supt. Eduardo Berroya, Central Luzon police regional commander, SPO4 Jose Vienes, Francisco "Kit" Mateo and 13 others were charged with the crime of kidnapping. The Regional Trial Court found Berroya and Mateo guilty beyond reasonable doubt of the crime of kidnapping.

The Supreme Court overturned the conviction. Only circumstantial evidence was presented in this case. The Supreme Court observed that circumstantial evidence can, in certain instances, be sufficient to establish the guilt of the accused. The Court held that crimes are not usually intended to be accomplished under the direct gaze of witnesses, nor is the planning thereof done in public, so it is sometimes necessary to use circumstantial evidence to prove the same. But for circumstantial evidence to be sufficient to support a conviction, all the circumstances must be consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt. But in this case, the prosecution has failed to overthrow the constitutional presumption of innocence in favor of appellant Berroya.

But the Supreme Court waxed poetic when it seemed to mourn the inevitable decision that it has to impose:

> Now for a final point that needs must be stressed lest it be misconstrued that the ruling of this Court is a categorical declaration as to the innocence of accused-appellants Berroya and Vienes. It is the law that requires proof beyond reasonable doubt. This, the prosecution has failed to even approximate. *It does not mean that accused-appellants are lilywhite or as pure as driven snow.* To be sure, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. This, from the beginning, has been the lodestar of our accusatorial system of criminal justice.[98]

97. 283 SCRA 111 (1997)

98. *Id.* (emphasis supplied).

2. Lacson v. Executive Secretary

The constitutionality of Sections 4 and 7 of Republic Act No. 8249 an act which further defines the jurisdiction of the Sandiganbayan - is being, challenged in the case of *Lacson v. Executive Secretary*.[99] In this case, 11 members of the *Kuratong Baleleng* gang were killed in a shootout with police elements. Later, SPO2 Eduardo delos Reyes had claimed that the killing of the 11 gang members was a "rub-out" or summary execution and not a shootout. The Ombudsman filed before the Sandiganbayan 11 Informations for murder against respondents, among whom was Panfilo M. Lacson and 25 other accused.

On March 5-6, 1996, all the accused filed separate motions questioning the jurisdiction of the Sandiganbayan, asserting that under the amended informations, the cases fall within the jurisdiction of the Regional Trial Court pursuant to Section 2 (paragraphs a and c) of Republic Act No. 7975.7 They contend that the said law limited the jurisdiction of the Sandiganbayan to cases where one or more of the "principal accused" are government officials with Salary Grade (SG) 27 or higher, or PNP officials with the rank of Chief Superintendent (Brigadier General) or higher. The highest ranking principal accused in the amended informations has the rank of only a Chief Inspector, and none has the equivalent of at least SG 27.

Thereafter, the Sandiganbayan held that it retained jurisdiction to try and decide the cases. The petitioners appealed, claiming that the questioned provisions of the statute were introduced by the authors thereof in bad faith as it was made to precisely suit the situation in which petitioner's cases were in at the Sandiganbayan by restoring jurisdiction thereover to it, thereby violating his right to procedural due process and the equal protection clause of the Constitution.

The Supreme Court held that petitioners claim that Sections 4 and 7 of R.A. 8249 violate their right to equal protection of the law 33 because its enactment was particularly directed only to the Kuratong Baleleng cases in the Sandiganbayan, is a contention too shallow to deserve merit. No concrete evidence and convincing argument were presented to warrant a declaration of an act of the entire Congress and signed into law by the highest officer of the co-equal executive department as unconstitutional. Every classification made by law is presumed reasonable. Thus, the party who challenges the law must present proof of arbitrariness. The Supreme Court held that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. The challengers of Sections 4 and 7 of R.A. 8249 failed to rebut the presumption of constitutionality and reasonableness of the questioned provisions.

99. 301 SCRA 298 (1999).

The Court continued that since it is within the power of Congress to define the jurisdiction of courts subject to the constitutional limitations, it can be reasonably anticipated that an alteration of that jurisdiction would necessarily affect pending cases, which is why it has to provide for a remedy in the form of atransitory provision. Thus, petitioner could not claim that Sections 4 and 7 placed them under a different category from those similarly situated as them.

But on the issue of whether the offense of multiple murder was committed in relation to the office of the accused PNP officers, the Supreme Court held that it had previously held that an offense is said to have been committed in relation to the office if it (the offense) is "intimately connected" with the office of the offender and perpetrated while he was in the performance of his official functions.[100] This intimate relation between the offense charged and the discharge of official duties must be alleged in the information. On this note, the Court held that while the information states that the above-named principal accused committed the crime of murder "in relation to their public office," there is, however, no specific allegation of facts that the shooting of the victim by the said principal accused was intimately related to the discharge of their official duties as police officers. Likewise, the amended information does not indicate that the said accused arrested and investigated the victim and then killed the latter while in their custody.

Consequently, for failure to show in the amended informations that the charge of murder was intimately connected with the discharge of official functions of the accused PNP officers, the offense charged in the subject criminal cases is plain murder and, therefore, within the exclusive original jurisdiction of the Regional Trial Court,73 not the Sandiganbayan.

100. The Court held: "The object of this written accusations was - First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complain with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstance necessary to constitute the crime charged."

3. People v. Lacson

People v. Lacson,[101] is the continuation of the preceding case where 11 members of the Kuratong Baleleng Gang were killed in a shootout with police elements. Later, SPO2 Eduardo delos Reyes had claimed that the killing of the 11 gang members was a "rub-out" or summary execution and not a shootout. The Ombudsman filed before the Sandiganbayan 11 Informations for murder against respondents, among whom was Panfilo M. Lacson and 25 other accused.

Based on the ruling in *Lacson v. Executive Secretary*,[102] the case was transferred from the Sandiganbayan to the Regional Trial Court. But before the accused could be arraigned, prosecution witnesses recanted their affidavits which implicated respondent Lacson in the murder of the KBG members. On the other hand, private complainants also executed their respective affidavits of desistance declaring that they were no longer interested to prosecute these cases. Due to these developments, the 26 accused, including respondent Lacson, filed motions to (1) make a judicial determination of the existence of probable cause for the issuance of warrants of arrest; (2) hold in abeyance the issuance of the warrants, and (3) dismiss the cases should the trial court find lack of probable cause. On March 29, 1999, the judge issued a resolution dismissing the cases.

On March 27, 2001, the PNP Director indorsed to the Department of Justice, new affidavits of certain witnesses regarding the Kuratong Baleleng incident for preliminary investigation. On the strength of this indorsement, Secretary of Justice Hernando B. Perez formed a panel to investigate the matter. On April 17, 2001, the respondent was subpoenaed to attend the investigation of the criminal cases. Respondent Lacson, et al., invoking their constitutional right against double jeopardy, filed a petition for prohibition with application for temporary restraining order and/or writ of preliminary injunction with the Regional Trial Court of Manila, primarily to enjoin the State prosecutors from conducting the preliminary investigation.

The issue eventually presented to the Supreme Court was the applicability of the rule that bars bars the filing of the 11 informations against the respondent Lacson involving the killing of some members of the Kuratong Baleleng gang, which provides:

> SEC. 8. *Provisional dismissal.*- A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

101. G.R. No. 149453, May 28, 2002.

102. 301 SCRA 298 (1999).

> The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.[103]

Like any other favorable procedural rule, this new rule can be given retroactive effect. However, the Supreme Court held that they could not rule on the jugular of the issue because of the lack of sufficient factual bases. The Supreme Court required proof on the following facts, to wit: (1) whether the provisional dismissal of the cases had the express consent of the accused; (2) whether it was ordered by the court after notice to the offended party, (3) whether the 2-year period to revive has already lapsed, and (4) whether there is any justification for the filing of the cases beyond the 2-year period.

The case was therefore remanded to the RTC so that the State prosecutors and the respondent Lacson can adduce evidence and be heard on whether the requirements of Section 8, Rule 117 have been complied with on the basis of the evidence of which the trial court should make a ruling on whether the informations in the criminal cases should be dismissed or not.

C. Legislative Action

Legislative participation in the what can be observed as a united front against kidnapping came in the form of the passage of the laws against money laundering. The passage of Republic Act 9160, the Anti-Money Laundering Act of 2001, had as its immediate impetus, the threatened imposition by the Financial Action Task Force of certain measures that would paralyze commercial transactions in the Philippines, to wit: 1) isolation of all incoming and outgoing Philippine transactions, and 2) imposition of hefty documentary and regulatory requirements for investments into the Philippines.[104] The sanctions would have wrought havoc on our economy that was already suffering from the effects of a global economic slowdown triggered by the September 11 terrorist attacks in the united states.[105] The

103. 2000 Rules on Criminal Procedure, Rule 117, § 8.

104. CESAR L. VILLANUEVA, COMMERCIAL LAW REVIEW 961 (2d ed. 2002) [hereinafter VILLANUEVA COMMERCIAL REVIEW].

105. Rafael Buenaventura, Keynote Address in Seminar on "Anti-Money Laundering Law (R.A. 9160): Its Whats, Whys and Wherefores," December 10, 2001, *available at* http://www.bsp.gov.ph/archive/Speeches_2001/speech_121001.htm (last accessed Mar. 15, 2004).

Philippine situation as to kidnapping was also considered in the immediate imposition of laws on anti-money laundering, since the Philippines was in the top 10 of the most dangerous nations with respect to kidnapping.[106]

Thus, under RA 9160, money laundering was penalized, and this is committed when the proceeds of an unlawful activity are transacted to make them appear to have originated from legitimate sources by, among others, transacting or attempting to transact, with monetary instruments, knowing that it relates to the proceeds of any unlawful activity.[107] Kidnapping for ransom was among those considered "unlawful activities," where the transacting of funds thereof could lead to conviction under RA 9160. In addition, the Anti-Money Laundering Council (AMLC) could, on determining probable cause that any account is in anyway related to an unlawful activity, may issue orders to freeze the account. But to examine the bank account, the AMLC must seek a court order to inquire into or examine a particular deposit with a banking institution. Such order of examination may be granted only upon the finding of probable cause that the deposits or investments are in any way related to a money-laundering offense. RA 9160 also required covered institutions such as banks or insurance companies to report to the AMLC certain covered transactions, which were those in excess of Php 4 million in a single transaction, or in a series or combination of transactions, within five consecutive banking days, with certain exceptions.[108]

Last March 7, 2003, President Arroyo signed into law, Republic Act 9140, the Anti-Money Laundering Act II, which lowered threshold of covered transactions from Php 4 million, to Php 500,000 in any transaction in one banking day.[109] Those transactions which are perceived to be structured to avoid being subject to reportorial requirements were among those considered suspicious transactions. Both covered transactions and suspicious transactions now have to be reported by the covered bank or insurance company to the AMLC.

Kidnapping for ransom is still considered an "unlawful activities." The AMLC could no longer freeze the accounts, but must now apply *ex parte* with the Court of Appeals for freeze orders for any monetary instrument or

106. VILLANUEVA COMMERCIAL REVIEW, *supra* note 101, at 962, based on figures of the U.S. Treasury.

107. RA 9160, § 4.

108. RA 9160 excepted those transactions with 1) properly identified client, when the amount is commensurate with the business or financial capacity of such client; and 2) those with an underlying legal or trade obligation, purpose, origin, or economic justification.

109. RA 9140, § 3 (b).

property related to an unlawful activity.[110] However, the AMLC could now inquire into any deposit without need of a court order in cases involving certain unlawful activities, among which is kidnapping for ransom.[111] Note that in other cases, the AMLC may inquire into deposits or investments with any bank or financial institution only upon order of a court if there is probable cause that is related to an unlawful activity or a money laundering activity.[112]

It therefore appears that by requiring the report of covered and suspicious transactions and by severely lessening the degree of privacy as to bank deposits, the government has called on banks and financial institutions, which may have been used to facilitate ransom collection before, active participants in its drive against kidnapping.

D. International Response

The problem of kidnapping exists not only in the Philippines but also in other countries. On 2 February 1971, the Organization of American States[113] concluded the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance[114] at Washington. The Convention strongly condemned acts of terrorism, especially the kidnapping of persons and extortion in connection with that crime, which it declared to be serious common crimes. It observed that criminal acts against persons entitled to special protection under International Law are occurring frequently, and those acts are of international significance because of the consequences that may flow from them for relations among states. Therefore, it adopted general standards that will progressively develop International Law as regards cooperation in the prevention and punishment of such acts, at the same time recognizing that the principle of nonintervention should not be impaired.[115] Under this Convention, member states were required the duty to give special protection according to international law in cases of kidnapping, murder, and other assaults against the life or personal integrity of those

110. *Id.* § 10.

111. *Id.* § 11.

112. *Id.*

113. The member states are composed of Costa Rica, Dominican Republic, El Salvador, Guatemala, Mexico, Nicaragua, United States of America, Uruguay, and Venezuela.

114. United Nations Treaty Collection, February 2, 1971 *available at* http://www.ciaonet.org/cbr/cbr00/video/cbr_ctd/cbr_ctd_42.html#txt1 (last accessed Mar. 15, 2004).

115. *Id.* Whereas clauses ¶ 3-5.

persons to whom the state has the, as well as extortion. Those crimes enumerated were considered "common crimes of international significance," regardless of motive.[116]

In 2002, over 120 nations signed the United Nations Convention Against Transnational Organized Crime.[117] This Convention was for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the international instruments addressing trafficking in women and children, combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and illegal trafficking in and transporting of migrants, including by sea:

> The Convention noted with deep concern the growing links between transnational organized crime and terrorist crimes, taking into account the Charter of the United Nations and the relevant resolutions of the General Assembly, and it was determined to deny safe havens to those who engage in transnational organized crime by prosecuting their crimes wherever they occur and by cooperating at the international level. Thus, the Convention The treaty has two main goals. One is to eliminate differences among national legal systems, which have blocked mutual assistance in the past. The second is to set standards for domestic laws so that they can effectively combat organized crime.
>
> The new convention also aims to tackle the root cause of transnational crime-profit. It will include strong measures that will allow law enforcers to confiscate criminal assets and crack down on money laundering. And it will call for the protection of witnesses.[118]

But the results have not been very visible. There are 12 major multilateral conventions and protocols related to states' responsibilities for combating terrorism. But many states are not yet party to these legal instruments, or are not yet implementing them.[119] It is reported that these

116. *Id.*, art 2.

117. *Copy available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/383e.pdf (last accessed Mar. 15, 2004).

118. Brett D. Schaefer, After Palermo: An Overview of what the Convention and Protocols Hope to Accomplish *available at* http://www.unodc.org/palermo/convmain.html January 17, 2002 (last accessed Mar. 15, 2004).

119. *Conventions Against Terrorism*, United Nations Office on Drug and Crime *available at* http://www.unodc.org/terrorism_conventions.html (last accessed Mar. 15, 2004). These pertain to:

1. Convention on Offences and Certain Other Acts Committed On Board Aircraft ("Tokyo Convention", 1963--safety of aviation);

have had no substantial impact, and this is underscored by the striking fact that all seven of the state sponsors of terrorism identified by the United States Department of State are signatories or state parties to one or more of these 12 treaties or conventions.[120]

V. PLACING GOVERNMENT ACTION AGAINST THE CONTEXT OF UPHOLDING THE CITIZEN'S RIGHT TO FREEDOM FROM FEAR

From a perspective of Constitutional Law and Criminal Law, the measures adopted by the government to combat the rising kidnapping incidents skirt the thin line that separates what is permissible and what is not. In the Law on Public Officers, it appears that the judicial policy is that the Supreme Court will not countenance any malfeasance on the part of the public officers. When the error is not in the official character of the public officer's duties, the Court will not hesitate to hold the public officer liable as an ordinary citizen. When the error is one which violates basic laws of citizens, the court

2. Convention for the Suppression of Unlawful Seizure of Aircraft ("Hague Convention", 1970--aircraft hijackings);
3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation ("Montreal Convention", 1971--applies to acts of aviation sabotage such as bombings aboard aircraft in flight);
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (1973- outlaws attacks on senior government officials and diplomats);
5. International Convention Against the Taking of Hostages ("Hostages Convention", 1979);
6. Convention on the Physical Protection of Nuclear Material ("Nuclear Materials Convention", 1980--combats unlawful taking and use of nuclear material);
7. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Extends and supplements the Montreal Convention on Air Safety), (1988);
8. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, (1988--applies to terrorist activities on ships);
9. 9.Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (1988--applies to terrorist activities on fixed offshore platforms);
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991--provides for chemical marking to facilitate detection of plastic explosives, e.g., to combat aircraft sabotage);
11. International Convention for the Suppression of Terrorist Bombing (1997): (UN General Assembly Resolution); and
12. International Convention for the Suppression of the Financing of Terrorism (1999).

120. Schaefer, *supra* note 117.

will not hesitate to sanction the public officer. The Court, as with all citizens, is imploring public officers to perform their duties. It will then hold those public officers who fall below the minimum requirements to task. But when the public officer should perform his duty, the courts will hesitate to strike down their actions as invalid, even though there may be abuse of discretion. The Court will put their trust on the public officer who errs while performing their duties. But when the equation now involves the interests of private citizens were involved, will their action enjoy the same benefit of the doubt? The survey of government action reveals what may be the result when such competing values are brought to bear, taking into consideration the compelling societal demands brought about by kidnapping incidents.

In the case of Valmonte v. General De Villa,[121] the Supreme Court had occasion to rule that not all searches and seizures are prohibited. In this case, the Court declared that checkpoints are not illegal per se. Under exceptional circumstances, as where the survival of organized government is on the balance or where the lives and safety of the people are in grave peril, checkpoints may be allowed and installed by the government. Then the Court continued that when the situation clears and such grave perils are removed, checkpoints will have absolutely no reason to remain.

Given this backdrop, the guidelines provided by the NAKTF on the checkpoints to be conducted in Metro Manila meet the standards given by the Supreme Court. However, something notable in the guidelines is the manner by which the premises of the vehicle may be searched. The guidelines provide that when the police wish to search the inside of the vehicle, the police should obtain permission by asking the driver to open the car compartment or let the occupants step down for further search. Should the driver or occupants allow the police to conduct search more than just a visual search or gave permission to the police for the conduct of search on a vehicle or the occupant, this would be tantamount to a valid waiver against unreasonable searches.

Consented searches is an instance where a warrantless search is permissible. When one voluntarily submits to a search or consents to have it made of his person or premises, he is precluded from later complaining thereof.[122] The person searched is considered to have waived his right to be secure from unreasonable search. This right is, as enunciated by the Supreme Court, much like every right which can be waived, and such waiver may be made expressly or impliedly.[123] It can be observed that the rights of a person searched is lesser than that accorded to a person under custodial investigation. The latter is accorded the right to be informed, at the outset, in clear and

121. 178 SCRA 21 (1990).

122. PAMARAN, *supra* note 22 at 744.

123. People v. Kagui Malasugui, 63 Phil. 221 (19xx).

unequivocal terms that he has a right to remain silent. After being so informed, he must be told that anything he says can and will be used against him in court, then he must be informed that he has the right to consult with a lawyer and to have the lawyer with him during the investigation. Waiver of the rights to counsel and the right to remain silent during such custodial investigation is permissible. But such waiver must be in writing and accomplished in the presence of counsel. *No safeguards of any sort are adopted in consented warrantless searches in case law.*[124]

The distinction between the rule on waiver with respect to custodial investigation and with respect to searches does not seem to be justified. In both instances, the waiver of the right can lead to incrimination. But a person subject to custodial investigation is conclusively presumed to be unaware of his rights – therefore, the need to inform him of such rights. No such presumption is present in the case of the person subject to a search in a checkpoint. To be sure, the atmosphere in a police checkpoint is less intimidating than that which is present in a police custodial investigation. A checkpoint is visible from afar and motorists who may wish to avoid the checkpoint can easily avoid it. Furthermore, a checkpoint may be conducted on public roads and streets, where the authorities exert less coercive pressure. But the strict rule in custodial investigations, which would render any confession or admission obtained inadmissible in evidence when taken in violation of the same rules is a remarkable contrast from the rule in consented searches.

On the other hand, the military augmentation ordered by President Arroyo was carefully crafted to conform with the guidelines of military backup of police forces as provided by the Supreme Court in the case of *Integrated Bar of the Philippines v. Zamora.*[125] The policemen who would be manning the planned mobile checkpoints will get an augmentation from members of the Armed Forces of the Philippines but the soldiers will not be visible and they will act as the police "extra manpower."

A series of cases on foreign military presence has given the possible direction of the Court in this regard. In the case of *Bagong Alyansang Makabayan v. Zamora,*[126] the case pertained to the Visiting Forces Agreement that the Philippines entered into with the United States. Advocacy groups, religious and civic leaders sought to nullify the agreement. Although these parties were given standing to question the agreement, on the ground of the paramount importance and the constitutional significance of the issues raised

124. *See* ANTONIO R. BAUTISTA, BASIC CRIMINAL PROCEDURE 27 (2003 ed) which states that it is not clear whether the police should follow the *Miranda* warnings in obtaining a person's consent to a warrantless search.

125. GR 138570, Aug. 15, 2000.

126. 342 SCRA 449 (2000).

in the petitions, the Supreme Court eventually upheld the constitutionality of the Visiting Forces Agreement.[127]

The latest case on foreign military presence was that of *Lim v. Executive Secretary*.[128] Beginning January of this year 2002, personnel from the armed forces of the United States of America started arriving in Mindanao to take part, in conjunction with the Philippine military, in "Balikatan 02-1." These joint military maneuvers were pursuant to the Mutual Defense Treaty, a bilateral defense agreement entered into by the Philippines and the United States in 1951. Petitioners sought the enjoinment of the joint exercises on two grounds: First, that the Philippines and the United States signed the Mutual Defense Treaty in 1951 to provide mutual military assistance in accordance with the constitutional processes of each country only in the case of an armed attack by an external aggressor, meaning a third country against one of them and the Abu Sayyaf bandits in Basilan cannot be considered an external armed force, and second, that the VFA authorizes American soldiers to engage in combat operations in Philippine territory. Once again, the Supreme Court allowed the petitioners standing to settle their concerns. It reiterated the doctrine about liberalizing standing in cases of transcendental importance and grave national concern. Eventually however, the Court upheld the constitutionality of the Balikatan exercises.

These cases show that the military has become an ally in this fight of the government against kidnapping incidents and the problem of terrorism. The agitation that might be brought about by the increased presence of soldiers in the country may be a valid concern, but this will not outweigh the fear brought about by the threats of kidnapping incidents. In this second instance, the government reflects a consistent end towards quelling the threats of abduction and kidnapping.

The three cases summarized earlier serves to reflect a similar conjoining of government efforts against kidnap-for-ransom cases. When officials are charged and involved in cases where they are the accused in kidnap for ransom cases, the Court does not disguise its revulsion over it, even when it has to make a finding of innocence because of reasonable doubt, as in the case of *Berroya*. But the *Lacson* cases are controversial, because both involve a leaning of the Supreme Court on the side of government officials when they are charged for offenses that arrive from the pursuit of their duties pertaining to the fight against kidnapping. The ruling in *People v. Lacson*[129] is particularly interesting, because here, the Court held the accused may raise the defense of double jeopardy when the criminal case was provisionally

127. *Id.* at 480.

128. G.R. No. 151445. April 11, 2002.

129. G.R. No. 149453. May 28, 2002.

dismissed for more than the permissible period.[130] In the criminal case of murder against the accused in *Lacson*, the permissible period of provisional dismissal was two years, since the offense was punishable by imprisonment of more than six years. But these rules are mere procedural law. The substantive law that governs in this case are those of the Revised Penal Code. In the Code, criminal liability may be totally extinguished by the prescription of the crime.[131] Prescription of the crime is the forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain period of time.[132] In the case of murder, it shall prescribe in 20 years, since it is among those punishable by death, *reclusion perpetua* or *reclusion temporal*.[133] Under substantive law therefore, the accused in *Lacson* can still be subject to prosecution. Time and again, it has been held that substantive law is supreme over procedural law. Have the overwhelming needs of an alarmed and petrified society started the erosion of certain immutable principles in jurisprudence?

Senator Jovito Salonga observes that it was in the setting of anarchy, public confusion, terror and despair that President Ferdinant Marcos proclaimed martial law. The President then assumed all the powers of government and placed all its agencies and instrumentalities under his personal control – a one-man rule supported by the Armed Forces. The situation improved. But at a huge cost:

> Suddenly, the people realized that while public order had been restored and the crime rate had dropped dramatically, they lost in turn their freedom to speak and publish their views. Mass action was prohibited. Criticism of public officials was forbidden. Workers lost the right to strike and [to] picket. [P]rominent oppositionists were thrown into army camps. Outspoken journalists and publishers were imprisoned. [S]tudent leaders, professors, intellectuals and union organizers who had protested against gross social injustices, were rounded up by the military.[134]

Since then, every government action that evoked fears of martial law abuse was promptly criticized into non-existence. But do the tidings reveal the coming of age of a time when certain elements of the criminal justice system must be strengthened?

The increasing inclination of government action towards a strong arm policy of dealing with kidnapping threats may meet the knee-jerk reaction that propelled the Filipino people to a bloodless revolution nearly two

130. 2000 Rules on Criminal Procedure, Rule 117, § 8.

131. Revised Penal Code, art. 89 (5).

132. REYES, *supra* note 14, 834.

133. Revised Penal Code, art. 90.

134. Jovito R. Salonga, *A Message of Hope to Filipinos Who Care* in THE INTANGIBLES THAT MAKE A NATION GREAT 301-302 (2003).

decades ago – that human rights are sacred, and that it is anathema to diminish or weaken it to any extent, no matter how miniscule the reduction may be. But these days find situations where force may be needed to uphold the supremacy of law.

The Philippines joins the international community as states find themselves between Scylla and Charybdis, where no action can be accepted by all as perfect. In launching the pre-emptive attacks against Afghanistan, President Bush of the United States has been considered, by some sectors, as a "broad manifestation of American national character than of short-sighted decisions made by a particularly extreme American administration."[135] It has been suggested that the American President could have dealt with the attacks through a "multilateralist strategy of using global co-operation to solve global problems."[136] But it is apparent that nations have obligations under international treaties and conventions to protect its citizens from violence, gross violence, and persecution.

The concept of *international standard of justice* in International Law requires states to adopt minimum standards for the protection not only of aliens in a state, but also to their own nationals.[137] Although the relationship of the state with its own national is purely municipal, the international conventions to which the Philippines is signatory to requires it to comply with them. For instance, the United Nations Convention on the Rights of the Child provides that no one is allowed to kidnap or to sell a child.[138] A universally accepted postulate is that with or without an express declaration to this effect, states admitted to the family of nations are bound by the rules prescribed by it for the regulation of international intercourse.[139] And treaties are upehdl by international tribunals as demandable obligations of the signatories under the maxim of *pacta sunt servanda*. Thus, States have the duty to carry out in good faith its obligations arising from treaties and other sources of International Law and it may not invoke provisions in its constitutions or laws as an excuse for failure to perform this duty.[140]

The Philippine situation does not require any transgression of statute, constitutional or legislative, to meet with its international obligations under the treaties. But it does require a commitment to meeting the standards which it has set for itself. These obligations arise not only from international

135. Koh, *supra* note 3.

136. *Id.*

137. Isagani A. Cruz, International Law 194 (2000 ed.)

138. United Nations Convention on the Rights of the Child, Art. 35.

139. Cruz, *supra* note 137, at 5.

140. *Id.*

sources, but also from the mandate to govern which is granted by the populace to its leaders.

VII. CONCLUSION

This essay presents a framework of human rights which reduces the entire spectrum of human rights into four fundamental freedoms – the freedom of speech and expression, freedom of religion, freedom from want, and the freedom from fear. It then posits that legislation and government action has been propelled by these four freedoms. Philippine jurisprudence has given the greatest attention to the freedom from want. For in this time and age, the nation is still a people of great material want. But rising crime rates, particularly in kidnap for ransom incidents, has lead the government to join in what can be observed as a global battle against forces that would make life miserable and wretched. And these forces are legion.

The great democracy of the Philippine nation is a precarious balance. After the end of the martial law years, it was the right of freedom from fear which was most prominent. This has lead to the greatest body of human rights that can be enjoyed in this day by a people. The right of the people to be free from want has now taken center stage in government policy, but fear continues to impel government action and legislation. But this fear is almost vague and unclear. While the populace fears criminal elements, it also fears the authorities that wish to bring these criminal elements to justice. Government response apparently flirts with what was once chartered territory, in the fields of Criminal Procedure and the Law on Public Officers. This speculation concludes with the proposition that this affair may not be unthinkable. The scales that the blindfolded mistress holds may, in certain instances of the direst circumstance, require a tilting in either side. And the times at hand may indeed require the scales to weigh more heavily on the side of forceful state action. But great care must be taken as the government now moves towards upholding the right of the people to be free from fear in their lives.

A study of the obligations of the Philippines under international conventions give rise to the realization that the Philippines faces the problems brought about by kidnapping for ransom together with the international community. Kidnapping is an international problem and nations have made commitments to try to eradicate it. It seems that what is at stake is not only the enforcement of official obligations, but also of international obligations that arise from agreements with other states.

In *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills, Inc.*,[141] the Supreme Court had occasion to uphold the primacy of

141. 50 SCRA 189 (1973).

human rights, because these freedoms are delicate and vulnerable, as well as supremely precious in our society, and the threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Justice Makasiar held that for there to be a constitutional or valid infringement of human rights, there is a more stringent criterion, that is, the existence of a grave and immediate danger of a substantive evil which the State has the right to prevent. This grave and immediate danger that we find in our time is that of kidnapping. Having found the common denominator that underpins government action –upholding the freedom from fear – it remains to be seen where the equilibrium point lies, between the values of living our lives free from anxiety and that of exercising the rights that make life human.

On Bloodshed, National Healing and the Rule of Law: The Genocide Convention and its Progress, Problems and Prospects*

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