The Supreme Court and Public International Law: 1945-2000

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I. General Observations

A survey of leading cases decided by the Supreme Court from 1945 to 2000 concerning public international law reveals, first, that the Court adopts a situational approach of developing the law through a changing factual environment. Second, primacy is given to the Constitution, with special attention to the provision that "the Philippines adopts the generally accepted principles of international law as part of the law of the land."[1]

A. Situational Approach

The surveyed cases show the range of factual situations faced by the country and, therefore, by the Court. From the aftermath of World War II in the 1940s, to the development of relations with other states through treaties and international agreements in the subsequent decades, to the latest concerns over international human rights and the environment, the Court has developed jurisprudence in response to the needs of the times.

Principles such as the privilege of extraterritoriality of a liberating army,[2] the Hague Resolutions and the impact of war on private property[3] were the thrusts of the decisions in the 1940s and early 1950s. So also was the treatment of an alien brought in as a spy by the belligerent occupant,[4] a concern arising from the war, even as the case paves the way for opening up to the requirements of international human rights law.

The late 1950s to the 1990s show the Court charting a course through international obligations and national exigencies, such as the nationalization of

1. PHIL. CONST. art. II, § 2.
2. *See* discussion *infra* Part II.A [Raquiza v. Bradford, 75 Phil. 50 (1945)].
3. *See* discussion *infra* Part II.B [Haw Pia v. The China Banking Corporation, 80 Phil. 604 (1948)]; Part II.D [Lo Ching Y So Yun Chong Co v. Tribunal de Apelacion y El Arzobispado Catolico Romano de Manila, 81 Phil. 601 (1948)]; Part III.A [Gibbs v. Rodriguez, 84 Phil. 230 (1949)].
4. *See* discussion *infra* Part III.B [Mejoff v. Director of Prisons, 90 Phil 70 (1951)].

retail trade.[5] It also ushers in the recognition of relations with other states, including the scope of treaties on the practice of professions,[6] and sovereign immunity from suit of foreign states[7] and of specialized international agencies.[8] The Court had several occasions to interpret one particular treaty, the Warsaw Convention on International Carriage by Air, particularly the exceptions to the limits of liability therein.[9]

Finally, the more recent cases deal with the environment and human rights,[10] the scope of the International Convention on Economic, Social and Cultural Rights,[11] and the sensitive issue of extradition.[12] The Court also tackled, albeit unconvincingly, the difficult question of the Constitution's requirement that treaties like the Visiting Forces Agreement with the United States must be "recognized as a treaty by the other contracting state."[13] A strong dissent by Justice Puno points out that the framers of the Constitution precisely wanted to end the "anomalous asymmetry" in treaties of the past, when the Philippines signed a treaty while the other state signed an executive agreement. And contrary to the statement of the *ponencia,* executive agreements are not as binding as treaties under international law.

B. Constitution as Prime Law

The decisions surveyed likewise reveal an approach of according the Philippine Constitution primacy as the fundamental and highest law. This approach, however, has taken the form of applying the provision in the Constitution that "adopts the generally accepted principles of international law as part of the law of the land."[14]

5. *See* discussion *infra* Part III.C [Ichong v. Hernandez, 101 Phil 1155 (1957)].
6. *See* discussion *infra* Part IV.A [*In re* Petition of Arturo Efren Garcia for Admission to the Philippine Bar Without Taking Examination, 1 SCRA 2 (1961)].
7. *See* discussion *infra* Part V.B [Baer v. Tizon, 57 SCRA 12 (1974)]; Part VI.B [Sanders v. Veridiano II, 162 SCRA 88 (1988)].
8. *See* discussion *infra* Part V.A [World Health Organization (WHO) v. Aquino, 48 SCRA 242 (1972)]; Part VII.B [International Catholic Migration Commission (ICMC) v. Calleja, 190 SCRA 130 (1990)].
9. *See* discussion *infra* Part IV.C [Northwest Airlines, Inc. v. Cuenca, 14 SCRA 1063 (1965)]; Part VII.D [Alitalia v. Intermediate Appellate Court, 192 SCRA 9 (1990)].
10. *See* discussion *infra* Part VII.G [Laguna Lake Development Authority v. Court of Appeals, 231 SCRA 292 (1994)].
11. *See* discussion *infra* Part VIII.A [International School Alliance of Educators (ISAE) v. Quisumbing, 333 SCRA 13 (2000)].
12. *See* discussion *infra* Part VIII.C [Secretary of Justice v. Lantion, G.R. No. 139465 (Oct. 17, 2000)]; Part VIII.D [Secretary of Justice v. Munoz, G.R. No. 140520 (Dec. 18, 2000)].
13. *See* discussion *infra* Part VIII.B [Bayan v. Zamora, G.R. No. 138570 (Oct. 10, 2000)].
14. PHIL. CONST. art. II, § 2.

Thus, the rules and principles of land warfare set forth in the Hague and Geneva Conventions were made applicable, not as treaty law, but as part of Philippine law as adopted by the Constitution.[15] The right against arbitrary detention, as guaranteed by the Universal Declaration of Human Rights, was enforced because of this same mechanism,[16] as with sovereign immunity from suit, including that of foreign States.[17]

In *Marcos v. Manglapus*,[18] the Court held that the right to return to one's country was not specifically guaranteed under the Bill of Rights. However, it may well be considered, said the Court, as a generally accepted principle of international law which is part of the law of the land.[19] Under the latter concept, it was held that the protection accorded the right was against arbitrary deprivation, and none was deemed to exist in the case.

Finally, in the curious case of the Road Signs,[20] the Court probably erred in saying that the 1968 Vienna Convention on Road Signs and Signals is impressed with the character of generally accepted principles of international law adopted by our Constitution as part of the law of the land. The principle of *pacta sunt servanda*, perhaps, which the Court also invoked, is what is impressed with such a character and the treaty should have been applied as a treaty, not as general principles of law.

Above all however, the Court upholds the sway and dominance of the Constitution.

II. THE 1940S[21]

A. Recognizing in the Liberating U.S. Army of 1945 the Privilege of Extraterritoriality of a Foreign Army Permitted to March Through a Friendly Country or to be Stationed in it

In *Raquiza v. Bradford*,[22] petitioners sought writs of *habeas corpus* against an officer of the United States Army who allegedly took them from their residences in February, March and April of 1948, and detained them, without

15. *See* discussion *infra* Part II.F [Kuroda v. Jalandoni, 83 Phil. 171 (1949)].
16. *See* discussion *infra* Part III.B [Mejoff v. Director of Prisons, 90 Phil 70 (1951)].
17. *See* discussion *infra* Part V.B [Baer v. Tizon, 57 SCRA 12 (1974)].
18. 177 SCRA 668 (1989).
19. *Id.* at 687.
20. *See* discussion infra Part V. E [Agustin v. Edu, 88 SCRA 195 (1979)].
21. The following case digests are presented *infra*, keeping as close as possible to the original of the Court's reasoning, to present a first-hand view of the Philippine Supreme Court's interaction with international law.
22. Lily Raquiza et al. v. Lt. Col. L.J. Bradford et al., 75 Phil. 50 (1945).

charges, under Gen. MacArthur's December 29, 1946 proclamation for the apprehension of Filipino citizens who voluntarily collaborated with the enemy.

The Supreme Court ruled that it has no jurisdiction over the United States Army, applying the ruling in *Coleman v. Tennessee*[23] that a foreign army permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place. Strong dissenting opinions were made questioning the validity of this stance, as the U.S. Army returning to liberate the Philippines is not a foreign army, the Philippines then being under U.S. sovereignty.

B. Applying the Hague Regulations on Military Authority Over Hostile Territory-Recognizing Sequestration/Liquidation of Respondent CBC as an "Enemy" Property

In *Haw Pia v. China Banking Corporation*,[24] plaintiff-appellant Haw Pia sued defendant-appellee China Banking Corporation to compel it to execute a deed of cancellation of the mortgage on his property, alleging that his indebtedness of PhP5,103.35 was completely paid through the defendant Bank of Taiwan, Ltd., appointed by the Japanese military authorities as liquidator of the CBC. The trial court held that there was no valid payment and that defendant Bank of Taiwan, as an agency of the Japanese invading army, was not authorized under international law to liquidate the business of CBC. The Supreme Court reversed, ruling that the Hague Regulations do not prohibit the confiscation of movables belonging to the State susceptible of military use or occupation. Defendant CBC is an "enemy" as it was controlled by Japan's enemies and incorporated under the laws of a country at war with Japan. Liquidation is even short of confiscation.

A dissent was made on the argument that the Hague Regulations protect private property. Belligerent occupants may not, therefore, liquidate the businesses of enemy subjects in occupied territories.

C. Waiver of Jurisdiction of Courts Under RP-U.S. Military Bases Agreement is Valid

In *Dizon v. The Commanding General*,[25] petitioner sought writs of *habeas corpus* against the U.S. Commanding General of the Philippine Ryukus Command. Defendant appointed a General Court Martial in which petitioner was prosecuted and convicted for an offense, allegedly committed at a U.S. Army depot area in Quezon City.

23. 97 U.S. 509, 24 L. ed. 1118 (1926).
24. 80 Phil. 604 (1948).
25. Godofredo Dizon v. The Commanding General of the Philippines Ryukus Command, United States Army, 81 Phil. 286 (1948).

Applying the March 14, 1947 Phil. - U.S. Agreement regarding military bases, the Supreme Court held that (1) the area in question falls within the Agreement, as it included temporary installations outside the bases then occupied by the U.S. Army; and (2) jurisdiction in such cases was validly waived in favor of the U.S. under the Agreement. If bases may be validly granted by Agreement under the Constitution, there is no reason why the attribute of jurisdiction may not be waived.

A strong dissent was made by Justice Perfecto, who contended that the judicial extraterritoriality provided in the Agreement is a violation of the judicial power provisions in the Constitution.

D. The Belligerent Army Has No Right to Confiscate Private Property in Territory Invaded

In *Lo Ching v. Tribunal De Apelacion,*[26] property was leased and used as a hotel by the lessee. During the Japanese occupation, Japanese soldiers dispossessed the lessee and put it under a German, Otto Schulze. After the war, the lessee claimed that the five-year contract period should not include the time he was dispossessed by the Japanese soldiers.

The Supreme Court ruled that the acts of the Japanese soldiers were mere disturbances in fact, with no bearing on the title of the lessor. The Hague Convention of 1907 does not authorize an occupying army to appropriate private property in the territory invaded.

E. Application of International Comity Regarding the Practice of Accountancy Under Act 3105

In *Sison v. Board of Accountancy,*[27] petitioner for *certiorari,* J.A. Sison, sought to revoke the certificate issued to a British subject, admitting him to practice accountancy in the Philippines without examination, alleging the absence of reciprocity on the matter.

The Supreme Court held that pursuant to Section 12, Act 3105, respondent Robert Orr Ferguzon was validly granted a certificate to practice here, not under the provision on reciprocity but under that on comity, *i.e.*, his country does not restrict the right of a Filipino certified public accountant to practice therein. "Comity ... is the recognition which one nation allows within its territory to the acts of foreign governments and their tribunals, having regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws."[28]

26. Lo Ching Y So Yun Chong Co. v. Tribunal de Apelación y El Arzobispado Catolico Romano de Manila, 81 Phil. 401 (1948).

27. J. A. Sison v. The Board of Accountancy and Robert Orr Ferguzon, 85 Phil. 276 (1949).

28. *Id.* at 282.

F. Rules and Principles of Land Warfare Contained in Hague and Geneva Conventions Adopted as Part of Philippine Law by the Constitution

In *Kuroda v. Jalandoni,*[29] petitioner Shigenori Kuroda, formerly a Lt. Gen. of the Japanese Imperial Army and Commanding General of the Japanese Imperial Forces in the Philippines in 1943 and 1944, was charged before a Military Commission formed by the Chief of Staff of the Armed Forces of the Philippines for war crimes. Among his contentions was that he was being charged of "crimes" not based on law, national or international, because the Philippines was not a signatory to the Hague Convention on Rules and Regulations Covering Land Warfare and that it signed the Geneva Convention only in 1947.

The Supreme Court held that the rules and regulations of the Hague and Geneva Conventions form part of and are wholly based on the generally accepted principles of international law. The Court ruled that our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory.

III. THE 1950S

A. Decisions of Municipal Tribunals as One of the Sources of Public International Law

In *Gibbs v. Rodriquez,*[30] Haw Pia paid his pre-war debt to China Bank by paying war notes to the wartime appointed liquidator, the Bank of Taiwan. The Supreme Court upheld it as valid payment. In a motion for reconsideration, the article/opinion of Prof. Hyde is cited stating that the decision violates international law.

The Court held that Prof. Hyde missed the point. At issue was not the validity of Japanese decrees permitting a local debtor to satisfy his pre-war peso indebtedness fully, by payment to the local office of a foreign creditor bank in a greatly depreciated military currency. Rather, the issue concerned the power of the Japanese Military Administration to validly order the liquidation or winding up of a hostile bank, appoint a liquidator, and authorize it to demand and accept payment by debtors of the bank in order to sequestrate the latter's assets.

As to sources of International Law, decisions of municipal tribunals are subsidiary means for the determination of rules of international law.[31] Although courts are not organs of the State for expressing in a binding manner its views on foreign affairs, they are nevertheless organs of the State giving, as a rule,

29. Shigenori Kuroda v. Major General Rafael Jalandoni et al., 83 Phil. 171 (1949).

30 Allison J. Gibbs et al. v. Eulogio Rodriguez, Sr. et al., 84 Phil. 230 (1949).

31. Statute of the International Court of Justice, art. 38 (1) (d).

impartial expression to what is believed to be International Law. For this reason, judgments of municipal tribunals are of considerable practical importance for determining what the right rule of International Law is.

B. Alien Ordered Deported but Detained for Too Long Due to Difficulty in Carrying Out Deportation is Ordered Released Under Surveillance and Surety, on Ground of International Human Rights Law

In *Mejoff v. Director Of Prisons*[32] petitioner for *habeas corpus* was an alien of Russian descent who was brought to this country from Shanghai as a secret operative by the Japanese forces during the latter's regime in these islands and entered the Philippines against its immigration laws during the war. After the war, he was arrested as a Japanese spy by the U.S. Army and turned over to the Philippine Commonwealth Government. He was detained by the Government after he was ordered deported, but pending arrangements for his deportation on the first available transport to Russia. His first petition was denied, but after two years of continued detention, he filed a second petition.

The Supreme Court held that petitioner's entry was not unlawful, as he was brought in by the armed and belligerent forces of a *de facto* government whose decrees were law during the occupation. Art. II, Sec. 3 of the Philippine Constitution "adopts the generally accepted principles of international law as part of the law of nations." The Universal Declaration of Human Rights, approved by the U.N. General Assembly, on December 10, 1948, proclaimed the right to life and liberty and all other fundamental rights as applied to all human beings. It further proclaimed that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law."[33]

Moreover, "no one shall be subjected to arbitrary arrest, detention or exile."[34] Petitioner was ordered released but put under surveillance by Immigration authorities and ordered to file a bond of PhP5,000.00.

C. Retail Trade Nationalization Law Does Not Violate International Law on Treaty Obligations

Ichong v. Hernandez[35] involved a petition for injunction and *mandamus* to assail the validity/constitutionality of Republic Act 1180,[36] the Retail Trade Nationalization Law.

32. Boris Mejoff v. The Director of Prisons, 90 Phil. 70 (1951).

33. The Universal Declaration of Human Rights, art. 8, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., U.N. Doc. A/Res/217A (1948).

34. *See id.* art. 9.

35. Lao H. Ichong et al. v. Jaime Hernandez, 101 Phil. 1155 (1957).

36. An Act to Regulate the Retail Business, Republic Act No. 1180, 50 OG 4118 (1954).

One of the issues raised was that the law violated international treaties and obligations. The Supreme Court held that the United Nations Charter imposed no strict or legal obligations regarding the rights and freedom of their subjects. The Declaration of Human Rights contains nothing more than a mere recommendation or a common standard of achievement for all people and all nations. Other UN members, *e.g.*, Norway and Denmark, prohibit foreigners from engaging in retail trade, and most nations of the world have adopted laws against foreigners engaged in domestic trade.

The Treaty of Amity with China was not violated, as it only grants Chinese nationals treatment upon the same terms as the nationals of any other country. No such discrimination obtains and even if the law infringes upon said trade, the treaty is always subject to qualification or amendment of a subsequent law and the same may never curtail or restrict the scope of the police power of the State.

IV. THE 1960S

A. Philippines-Spain Treaty For Practice of Professions Interpreted

In *In re Garcia*,[37] petitioner was a Filipino citizen who invoked a Treaty between the Philippines and Spain allowing their respective citizens to practice their professions in the territory of the other state. The Supreme Court held that the Treaty does not apply to a Filipino who seeks to practice his profession in the Philippines even if he was allowed by Spain to practice there.

B. Unlike Treaties, Executive Agreements Cannot Prevail Over Earlier Statutes

In *Gonzales v. Hechanova*,[38] petitioner questioned the rice and corn importation by the government through Executive Acts and contracts with foreign governments (Vietnam and Burma), as prohibited by statute.[39] It was claimed by the government that in case of conflict between statute and treaty, the later in point of time prevails. As the contracts with foreign governments partake of international agreements, they should prevail over earlier statutes.

The Court held that the doctrine applies only to treaties and not to executive agreements. Unlike treaties, executive agreements cannot prevail over earlier statutes.

37. *In re* Petition of Arturo Efren Garcia for Admission to the Philippine Bar Without Taking Examination, 1 SCRA 2 (1961).

38. Ramon A. Gonzales v. Rufino G. Hechanova, 9 SCRA 230 (1963).

39. An Act Prohibiting the Importation of Rice and Corn and to Provide Penalties for the Violation Thereof, Republic Act No. 2207, 27 O.G. 4978 (1959).

C. *Air Carrier's Liability Under the Warsaw Convention for Nominal and Exemplary Damages Upheld*

Northwest Airlines, Inc. v. Cuenca[40] was an action for damages for alleged breach of contract of airline carriage. Despite being a first class ticket holder, the passenger was rudely compelled by petitioner's agent to move to tourist class. He was an official of the Philippine government and petitioner air carrier knew of this fact.

The Court held that petitioner's agent acted in a wanton, reckless and oppressive manner, justifying the award of PhP20,000 as one for exemplary damages.

D. *Philippine Customs Laws Apply to Philippine Ships Outside Philippine Territory*

In *Asaali v. Commissioner of Customs,*[41] petitioners owned five sailing vessels and the cargo loaded therein were declared forfeited by respondent Customs Commissioner for smuggling. The issue raised was the validity of the interception and seizure on the high seas, since importation had not yet begun and seizure was effected outside our territorial waters and all vessels involved were of Philippine registry.

The Court ruled that the Revised Penal Code applies not only within the Philippines but also outside its territory against those committing offences while on a Philippine ship. Moreover, a state has the right to protect itself and its revenues, a right not limited to its own territory but extending to the high seas.

V. THE 1970S

A. *Diplomatic Immunity Recognized by Executive Branch Will be Followed by the Courts*

In *World Health Organization (WHO) v. Aquino,*[42] petitioner Dr. Leonce Verstuyft, an official of the WHO, questioned the jurisdiction of respondent police officers who searched and seized his personal effects, petitioner claiming diplomatic immunity. The Executive Branch, thru the Department of Foreign Affairs and the Solicitor General, formally stated its position that petitioner is so entitled to diplomatic immunity.

In this case, it was held that where the plea of immunity is recognized and affirmed by the Executive Branch, it is the duty of the courts to accept the claim of immunity. In such cases, the Judicial Department follows the action of

40. 14 SCRA 1063 (1965).

41. Illuh Asaali, Hatib Abdurasid, et al. v. The Commissioner of Customs, 26 SCRA 382 (1968).

42. World Health Organization, et al. v. Hon. Benjamin H. Aquino, 48 SCRA 242 (1972).

the political branch and will not embarrass the latter by assuming an antagonistic jurisdiction.

B. *Sovereign Immunity From Suit Follows From Adoption of Generally Accepted Principles of International Law*

In *Baer v. Tizon,*[43] petitioner, a U.S. Naval Base Commander in Olongapo, ordered the cessation of respondent Gener's logging operation inside the Naval Base. The issue was whether respondent court had jurisdiction over petitioner in a suit filed to restrain him from stopping the logging operation.

The Court held that the suit was one against a foreign sovereign without its consent. The doctrine of immunity from suit was clearly recognized by the 1935 Constitution, which stated that the Philippines adopts the generally accepted principles of international law as part of the law of the nation.[44] Sovereign immunity from suit follows from the adoption of generally accepted principles of international law.

C. *Assignment of Sovereign Credits - Extraterritorial Effect of Foreign Law if Accepted by the Forum's Government*

Republic of the Philippines v. Guanzon[45] involved the assignment by the U.S. to the Philippine government of credits owing enemy institutions during the war. It was held that the Republic of the Philippines possessed a legal interest over the subject matter of the controversy and had the right to sue for said credits.

The Philippine Property Act of 1946 passed by the U.S. Congress applies extraterritorially. A foreign law may have extraterritorial effect in a country other than the country of origin, provided the latter, in which it is sought to be operative, gives its consent thereto.

D. *A Treaty is Both an International Agreement Between States and a Municipal Law For the Citizens of Each Contracting Party*

Guerrero's Transport Services, Inc. v. Blaylock Transportation Services Employees Association-Kiluasan[46] involved the provision Art. I, Sec. 2 of the RP-U.S. Bases Agreement dated May 27, 1968 requiring the contractor or concessionaire to give priority consideration to affected employees for employment. It was held that a treaty has two aspects: first as an international agreement between states; and second, as municipal law for the people of each state to observe.

43. Donald Baer et al. v. Hon. Tito Tizon et al., 57 SCRA 12 (1974).

44. 1935 PHIL. CONST. art. II, § 3.

45. 61 SCRA 360 (1974).

46. 71 SCRA 621 (1976).

As part of the municipal law, the aforesaid treaty provision enters into, and forms part of, the contract between petitioner and the U.S. Naval authorities. In view of said stipulation, the new contractor is therefore bound to give "priority" to the employment of qualified employees of the previous contractor.

E. Vienna Convention on Road Signs and Signals Applied as Part of Generally Accepted Principles of International Law

Agustin v. Edu[47] involved the constitutionality of Letter of Instruction No. 229, requiring the installation of early warning devices to vehicles. The 1968 Vienna Convention on Road Signs and Signals, ratified by the Philippines under Presidential Decree 207, recognized the hazards posed by obstructions to traffic and recommended enactment of local legislation for the installation of road safety signs and devices.

The Declaration of Principles of the Philippine Constitution is relevant. The Philippines adopts the generally accepted principles of international law as part of the law of the land. The 1968 Vienna Convention on Road Signs and Signals is impressed with such a character. It is not for this country to repudiate a commitment to which it had pledged its word. The concept of *pacta sunt servanda* stands on the way of such an attitude, which is, moreover, at war with the principle of international morality.

VI. THE 1980S

A. Clear and Present Danger Rule Applied to Permits to Rally Before Diplomatic Missions

In *Reyes v. Bagatsing,*[48] the Anti-Bases Coalition, through former Supreme Court Justice J.B.L. Reyes, filed this suit to compel issuance of a permit to rally in front of the U.S. Embassy. In delineating the boundaries of the rights to free speech and peaceable assembly, the Supreme Court held that the 1961 Vienna Convention on Diplomatic Relations,[49] ratified by the Philippines in 1965,[50] bound the Philippines as receiving state to a "special duty to take appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the place of the mission or impairment of its dignity."[51] It added that, "to the extent that the Vienna Convention is a

47. Leovillo C. Agustin v. Hon. Romeo F. Edu, 88 SCRA 195 (1979).

48. Jose B.L. Reyes, in behalf of the Anti-Cases Coalition (ABC) v. Ramon Bagatsing, as Mayor of the City of Manila, 152 SCRA 553 (1983).

49. IV PHILIPPINE TREATY SERIES 445.

50. *Id.*

51. *Reyes*, 152 SCRA at 566.

restatement of the generally accepted principles of international law, it should be a part of the law of the land."[52]

It then noted, in a footnote, that as early as 1951, the Philippines accepted the UN Declaration of Human Rights as binding law, and applied it in *Mejoff v. Director of Prisons*[53] and similar cases. Then it ruled: "[t]hat being the case, if there were a clear and present danger of any intrusion or damage, or disturbances of the peace of the mission or impairment of its dignity, there would be justification for the denial of the permit."[54] Not satisfied that clear and present danger existed in this case, the Supreme Court granted *mandamus*.

B. Doctrine of State Immunity From Suit Applies to Foreign State, Not Just Our Own

Sanders v. Veridiano[55] involved a suit for damages arising from alleged libelous statements made by petitioner, who was then Special Services Director of the U.S. Naval Station. It was held that the Court had no jurisdiction, as the suit was against a foreign state without its consent.

C. The Right to Return to One's Country is Not Among the Rights Specifically Guaranteed Under the Bill of Rights, Though it May Well Be Considered as a Generally Accepted Principle of International Law Which is Part of the Law of the Land

In *Marcos v. Manglapus,*[56] former President Marcos and his family, forced into exile after he was deposed *via* the non-violent "People Power Revolution," filed suit to compel the issuance of travel papers to return to the Philippines.

Finding that the respondents did not act arbitrarily or with grave abuse of discretion in determining that the return of petitioners during that time and under circumstances then existing posed a serious threat to national interest and welfare, the Supreme Court dismissed the petition. The Supreme Court distinguished between the right to travel and the right to return to one's country, the latter being a totally distinct right under International Law, although related to the former. The protection accorded the right to enter his own country is that it cannot be "arbitrarily deprived."[57]

52. *Id.*

53. 90 Phil 70 (1951).

54. *Reyes*, 152 SCRA at 566.

55. Dale Sanders & A.S. Moreau, Jr. v. Hon. Regino T. Veridiano II, as Presiding Judge, Branch I, Court of First Instance of Zambales, Olongapo City, 162 SCRA 88 (1988).

56. Ferdinand E. Marcos, Imelda R. Marcos, et al. v. Hon. Raul Manglapus, Catalino Macaraig, et al., 177 SCRA 668 (1989).

57. International Covenant of Civil and Political Rights, arts. 12(3) and 12(4), 999 U.N.T.S. 171, *reprinted in* 61 AM. J. INT'L. L. 870 (1967).

VII. THE 1990S

A. *Immunity From Suit Not Applicable Where State Enters Into a Contract of a Commercial Nature*

In *U.S. v. Guinto,*[58] suits were sought to be dismissed on the ground of sovereign immunity. Officers of the U.S. Air Force stationed in Clark Air Base were being sued in connection with the bidding conducted by them for contracts for barbering services.

The Court held that the contracts in question were decidedly commercial thus, the petitioners could not plead immunity.

B. *Specialized Agencies are Granted Immunity From Local Jurisdiction.*

The case *International Catholic Migration Commission v. Calleja*[59] involved the right of labor to petition for certification election in the face of the diplomatic immunity invoked by recognized specialized agencies of the U.N.

The Court held that specialized agencies are international organizations having functions in particular fields. The grant of immunity from local jurisdiction to these specialized agencies, (the ICMC and IRRI in these cases) is clearly necessitated by their international character and recognized purposes. Furthermore, even with the grant of immunity, the labor organizations had recourse to other avenues to pursue their right to resolve disputes with management.

C. *Doctrine of State Immunity From Suit Not Applicable to Cover Unauthorized Acts for Which Private Responsibility is Sought*

Shauf v. Court of Appeals[60] involved a suit for damages against an official of the Third Combat Support Group, a unit of Clark Air Base, for alleged discrimination in employment. State immunity was raised as a defense. The Court ruled, however, that the doctrine does not apply here where the official is sued for unauthorized acts. Such an action is not a suit against the State, inasmuch as the State authorizes only legal acts by its officers. The public official here is being sued in his private and personal capacity as an ordinary citizen. The doctrine cannot be used as an instrument for perpetrating an injustice.

58. United States of America, Frederick M. Smouse, et al. v. Hon. Euodoro B. Guinto, et al., 182 SCRA 644 (1990).

59. International Catholic Migration Commission v. Hon. Calleja, et al. & Kapisanan Ng Manggagawa at Tac sa IRRI-Organized Labor Association In Line Industries and Agriculture v. Secretary of Labor and Employment, et al., 190 SCRA 130 (1990).

60. Loida Q. Shauf and Jacob Shauf v. Court of Appeals, et al., 191 SCRA 713 (1990).

D. *Warsaw Convention*[61] *— Exceptions to Limits Applied*

In *Alitalia v. Intermediate Appellate Court,*[62] a suit for damages was filed against Alitalia for delay in transporting a professor's luggage that resulted in her inability to deliver a lecture in an international forum.

The Court held that the Warsaw Convention limiting the amount of damages recoverable does not apply where there is some special or extraordinary form of resulting injury. This is so even where, as in this case, the Court said there is no finding that defendant airline acted recklessly or through willful misconduct.

E. *Doctrine of Immunity From Suit Not Applicable to Private Acts*

Khosrow Minucher v. Court of Appeals[63] was a suit for damages was filed against the Labor Attache of the Embassy of Iran in the Philippines. The private respondent was being sued for acts done in his private capacity as an ordinary citizen. The Court, citing the case of *Shauf v. Court of Appeals,*[64] held that the doctrine of immunity did not apply. The Diplomatic Note submitted by respondent was found to be self-serving and the Court ruled that no evidence was shown that private respondent had acted in the discharge of his official functions (then as Drug Enforcement Agency agent of the U.S.) in causing the false arrest and detention of complainants.

F. *Philippine Statute Prevails Over International Agreement in Municipal Sphere*

Philip Morris, Inc. v. Court Of Appeals[65] involved conflicting claims to the right to use a trademark for cigarettes. Petitioner claimed that actual use of their trademark in Philippine commercial dealings is not an indispensable element, citing Art. 2 of the Paris Convention.[66] However, Sections 2 and 2-A of the Trademark Law[67] speak loudly of the necessity of actual commercial use of the trademark in the local forum.

Following universal acquiescence and comity, the Court held that our municipal law on trademarks, which required actual use in the Philippines,

61. Convention for the Unification of Certain Rules Relating to International Carriage by Air. Oct. 12, 1929, 137 L.N.T.S. 11 (1929).

62. Alitalia v. Intermediate Appellate Court and Felipe E. Pablo, 192 SCRA 9 (1990).

63. 214 SCRA 242 (1992).

64. 191 SCRA 713, 728 (1990).

65. 224 SCRA 576 (1993).

66. Paris Convention for the Protection of Industrial Property, *reprinted in* LIST OF TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE REPUBLIC OF THE PHILIPPINES 1 (UP Law Center, 1966).

67. An Act to Provide for the Registration, and Protection of Trademarks, Tradenames and Service Marks, Defining Unfair Competition and False Marketing and Providing Remedies Against the Same, and for Other Purposes, Republic Act No. 166 (1947).

must subordinate an international agreement, as the apparent clash is being decided by a municipal tribunal. Withal, the fact that international law has been made part of the law of the land does not presuppose the primacy of international law over national law in the municipal sphere. Under the doctrine of incorporation as applied in most countries, rules of International Law are given a standing equal, not superior, to national legislative enactments.

G. The Right to Health as a Human Right

Laguna Lake Development Authority v. Court of Appeals[68] involved an order restraining the City Mayor of Caloocan and/or the City Government from dumping their garbage at the Tala Estate, Barangay Camarin, Caloocan City.

The Supreme Court observed that the Declaration of Principles and State Policies of the 1987 Constitution, Art. II, Sec. 16, provides: "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."[69]

The Court continued: "the Philippines, it must be borne in mind, is a party to the Universal Declaration of Human Rights and the Alma Conference Declaration of 1978 which recognize health as a fundamental human right."[70]

The petition was granted and the restraining order made permanent.

H. Specialized Agencies of the UN Enjoy Diplomatic Immunity

Lasco v. United Nations Revolving Fund For Natural Resources Exploration (UNRFNRE)[71] concerned the purported diplomatic immunity, or the lack of it, of respondent UNRFNRE.

The Court held that respondent enjoys diplomatic immunity as a specialized agency of the United Nations. Thus, petitioners who were dismissed by respondent from employment cannot file suit against the respondent in our courts.

I. The World Trade Organization Agreement is Not Violative of Philippine Sovereignty

Tañada v. Angara[72] concerned a number of suits contesting the constitutionality of the WTO Agreement entered into by the Philippines. The Court held that sovereignty may be limited by international law and treaties, where the state

68. 231 SCRA 292 (1994).

69. *Id.* at 307.

70. *Id.* at 308.

71. 241 SCRA 681 (1995).

72. Wigberto E. Tañada & Anna Dominique Coseteng, et al. v. Edgardo Angara, Alberto Romulo, Leticia Ramos-Shahani, et al., 272 SCRA 18 (1997).

consented to restrict its sovereign rights under the concept of sovereignty as auto-limitation.

VIII. 2000

A. Art. 7 of the Covenant on Economic, Social and Cultural Rights Applied

International School Alliance Of Educators (ISAE) v. Quisumbing[73] was a suit to recover equal pay for equal work. The Supreme Court granted the petition on the basis, *inter alia*, of the provision in the International Covenant on Economic, Social and Cultural Rights requiring the parties thereto to ensure remuneration which provides all workers with fair wages and equal remuneration for work of equal value without distinction of any kind.[74]

B. The Validity of the Visiting Forces Agreement

In a consolidation of four cases: *BAYAN v. Zamora, PHILCONSA v. Zamora, Guingona v. Estrada, IBP v. Estrada* and *Salonga v. Executive Secretary*,[75] petitions for *certiorari* and prohibition were filed to question the constitutionality of the RP-U.S. Visiting Forces Agreement.

The Supreme Court held that the Agreement defined the treatment of U.S. troops and personnel visiting the Philippines. It provided guidelines to govern such visits and further defined the rights of the U.S. and the Philippine government on criminal jurisdiction, movement of vessel and aircraft, and import and export of equipment, materials and supplies. As such, it fell under Sec. 25, Art. XVIII of the Constitution, which requires that: (1) it must be under a treaty; (2) the treaty must be duly concurred in by the Senate; and (3) it must be recognized as a treaty by the other contracting state. The Court ruled:

> [t]his Court is of the firm view that the phrase 'recognized as a treaty' means that the other contracting party accepts or acknowledges the agreement as a treaty. To require the other contracting state, the United States of America in this case, to submit the VFA to the U.S. Senate for concurrence pursuant to its Constitution, is to accord strict meaning to the phrase.
>
> Well-entrenched is the principle that the words used in the Constitution are to be given their ordinary meaning except where technical terms are employed, in which case the significance thus attached to them prevails. Its language should be understood in the sense they have in common use.

73. International School Alliance of Educators (ISAE) v. Hon. Leonardo A. Quisimbing, in his capacity as the Secretary of Labor and Employment, et al., 333 SCRA 13 (2000).

74. International Covenant on Economic, Social and Cultural Rights, Art. 7, 993 U.N.T.S. 3, *reprinted in* 6 I.L.M. 360 (1967).

75. G.R. Nos. 138570, 138572, 138587, 148680 (Oct. 10, 2000).

> Moreover, it is inconsequential whether the United States treats the VFA only as an executive agreement because, under international law, an executive agreement is as binding as a treaty.[76]
>
> ...The records reveal that the U.S. government, through Ambassador Thomas C. Hubbard, has stated that the U.S. government has fully committed to living up to the terms of the VFA. For as long as the United States of America accepts or acknowledges the VFA as a treaty, and binds itself further to comply with its obligations under the treaty, there is indeed marked compliance with the mandate of the Constitution.[77]

The petitions were thus dismissed.

A strong dissent by Justice Puno pointed out that the intent of the framers of our Constitution was precisely to require a treaty, not an executive agreement, so that the anomalous asymmetry of previous practice will never be repeated. The dissent also points out the advantages of a treaty over an executive agreement in international law. Justices Melo and Vitug joined in this dissent. Justice Panganiban took no part and Justice Mendoza only voted in the result.

C. RP-U.S. Extradition Treaty Interpreted; No Right to Notice and Hearing at Evaluation Stage

Secretary of Justice v. Hon. Ralph C. Lantion[78] involved a resolution of the Supreme Court reversing its decision in the same case dated January 18, 2000.[79] At issue is whether under the RP-U.S. Extradition Treaty and the Philippine Extradition Law,[80] private respondent Mark B. Jimenez was granted the right to notice and hearing during the evaluation stage of an extradition process by the DFA.

The Court held that no such right is granted thereunder. Extradition is not a criminal proceeding. The process does not involve the determination of the guilt or innocence of an accused. P.D. 1069, implementing the RP-U.S. Extradition Treaty, provides the time when an extraditee shall be furnished a copy of the petition for extradition as well as the supporting papers, *i.e.* after the filing of the petition for extradition in the extradition court. The Court concluded:

> in sum, we rule that the *temporary hold* on private respondent's privilege of notice and hearing is a *soft restraint* on his right to due process which will not deprive him of *fundamental fairness* should he decide to resist the request for his extradition to the United States. *There is no denial of due process as long as fundamental fairness is assured a party.*

76. *Citing* Altman Co. v. U.S., 224 US 263 [1942], *as cited in* COQUIA AND DEFENSOR-SANTIAGO, INTERNATIONAL LAW (1998).

77. G.R. Nos. 138570, 138572, 138587, 148680 at 39 (Oct. 10, 2000).

78. G.R. No. 139465 (Oct. 17, 2000).

79. 322 SCRA 160 (2000).

80. Presidential Decree No. 1069 (1977).

D. RP-Hongkong Extradition Agreement Applied

In *Secretary of Justice v. Munoz*,[81] petitioner Secretary of Justice sought a review of the Court of Appeals decision finding respondent's arrest null and void.

The Court held that the provisional arrest of the respondent was valid, both under P.D. 1069, the Philippine Extradition Law, and the RP-Hongkong Extradition Agreement. The requirements of the Agreement on documentation and the finding of probable cause have been duly complied with.

81. G.R. No. 140520 (Dec. 18, 2000).