

EN BANC

[G.R. No. 238875, March 16, 2021]

SENATORS FRANCIS "KIKO" N. PANGILINAN, FRANKLIN M. DRILON, PAOLO BENIGNO "BAM" AQUINO IV, LEILA M. DE LIMA, RISA HONTIVEROS, AND ANTONIO 'SONNY' F. TRILLANES IV, PETITIONERS, VS. ALAN PETER S. CAYETANO, SALVADOR C. MEDIALDEA, TEODORO L. LOCSIN, JR., AND SALVADOR S. PANELO, RESPONDENTS.

[G.R. No. 239483, March 16, 2021]

PHILIPPINE COALITION FOR THE INTERNATIONAL CRIMINAL COURT (PCICC), LORETTA ANN P. ROSALES, DR. AURORA CORAZON A. PARONG, EVELYN BALAIS-SERRANO, JOSE NOEL D. OLANO, REBECCA DESIREE E. LOZADA, EDELIZA P. HERNANDEZ, ANALIZA T. UGAY, NIZA CONCEPCION ARAZAS, GLORIA ESTER CATIBAYAN-GUARIN, RAY PAOLO "ARPEE" J. SANTIAGO, GILBERT TERUEL ANDRES, AND AXLE P. SIMEON, PETITIONERS, VS. OFFICE OF THE EXECUTIVE SECRETARY REPRESENTED BY HON. SALVADOR MEDIALDEA, THE DEPARTMENT OF FOREIGN AFFAIRS, REPRESENTED BY HON. ALAN PETER CAYETANO, AND THE PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS, REPRESENTED BY HON. TEODORO LOCSIN, JR., RESPONDENTS.

[G.R. No. 240954, March 16, 2021]

INTEGRATED BAR OF THE PHILIPPINES, PETITIONER, VS. OFFICE OF THE EXECUTIVE SECRETARY REPRESENTED BY HON. SALVADOR C. MEDIALDEA, THE DEPARTMENT OF FOREIGN AFFAIRS, REPRESENTED BY HON. ALAN PETER CAYETANO AND THE PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS, REPRESENTED BY HON. TEODORO LOCSIN, JR., RESPONDENTS.

D E C I S I O N

LEONEN, J.:

Treaties may effectively implement the constitutional imperative to protect human rights and consider social justice in all phases of development—but so can a statute, as Republic Act No. 9851, the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity, does.

The president, as primary architect of our foreign policy and as head of state, is allowed by the Constitution to make preliminary determinations on what, at any

given moment, might urgently be required in order that our foreign policy may manifest our national interest.

Absent a clear and convincing showing of a breach of the Constitution or a law, brought through an actual, live controversy and by a party that presents direct, material, and substantial injury as a result of such breach, this Court will stay its hand in declaring a diplomatic act as unconstitutional.

On March 15, 2018, the Philippines announced its withdrawal from the International Criminal Court. On March 16, 2018, it formally submitted its Notice of Withdrawal through a Note Verbale to the United Nations Secretary-General's Chef de Cabinet. The Secretary General received this communication the following day, March 17, 2018.

Through these actions, the Philippines completed the requisite acts of withdrawal. This was all consistent and in compliance with what the Rome Statute plainly requires. By this point, all that were needed to enable withdrawal have been consummated. Further, the International Criminal Court acknowledged the Philippines' action soon after it had withdrawn. This foreclosed the existence of a state of affairs correctible by this Court's finite jurisdiction. The Petitions were, therefore, moot when they were filed.^[1] The International Criminal Court's subsequent consummate acceptance of the withdrawal all but confirmed the futility of this Court's insisting on a reversal of completed actions.

In any case, despite the withdrawal, this Court finds no lesser protection of human rights within our system of laws. Neither do we agree with petitioners' implied statements that without the treaty, the judiciary will not be able to fulfill its mandate to protect human rights.

Moreover, the Senate never sought to enforce what would have been its prerogative to require its concurrence for withdrawal. To date, Resolution No. 249, which seeks to express the chamber's position on the need for concurrence, has yet to be tabled and voted on.^[2] Individual senators have standing to question the constitutionality of the actions of their chamber. Yet, in this case, as shown by the Resolution which petitioners co-authored, they acknowledged that an action by the Senate was necessary before coming to this Court. Thus, no actual conflict or constitutional impasse has yet arisen even as implied by their actions.

This Court cannot compel or annul actions where the relevant incidents are moot. Neither can this Court, without due deference to the actions of a co-equal constitutional branch, act before the Senate has acted.

Nonetheless, the President's discretion on unilaterally withdrawing from any treaty or international agreement is not absolute.

As primary architect of foreign policy, the president enjoys a degree of leeway to withdraw from treaties. However, this leeway cannot go beyond the president's authority under the Constitution and the laws. In appropriate cases, legislative involvement is imperative. The president cannot unilaterally withdraw from a treaty if there is subsequent legislation which affirms and implements it.

Conversely, a treaty cannot amend a statute. When the president enters into a treaty that is inconsistent with a prior statute, the president may unilaterally withdraw from it, unless the prior statute is amended to be consistent with the

treaty. A statute enjoys primacy over a treaty. It is passed by both the House of Representatives and the Senate, and is ultimately signed into law by the president. In contrast, a treaty is negotiated by the president, and legislative participation is limited to Senate concurrence. Thus, there is greater participation by the sovereign's democratically elected representatives in the enactment of statutes.

The extent of legislative involvement in withdrawing from treaties is further determined by circumstances attendant to how the treaty was entered into or came into effect. Where legislative imprimatur impelled the president's action to enter into a treaty, a withdrawal cannot be effected without concomitant legislative sanction. Similarly, where the Senate's concurrence imposes as a condition the same concurrence for withdrawal, the president enjoys no unilateral authority to withdraw, and must then secure Senate concurrence.

Thus, the president can withdraw from a treaty as a matter of policy in keeping with our legal system, if a treaty is unconstitutional or contrary to provisions of an existing prior statute. However, the president may not unilaterally withdraw from a treaty: (a) when the Senate conditionally concurs, such that it requires concurrence also to withdraw; or (b) when the withdrawal itself will be contrary to a statute, or to a legislative authority to negotiate and enter into a treaty, or an existing law which implements a treaty.

This Court resolves consolidated Petitions for Certiorari and Mandamus under Rule 65 of the 1997 Rules of Civil Procedure, seeking to: (a) declare the Philippines' withdrawal from the Rome Statute as invalid or ineffective, since it was done without the concurrence of at least two-thirds of all the Senate's members; and (b) compel the executive branch to notify the United Nations Secretary-General that it is cancelling, revoking, and withdrawing the Instrument of Withdrawal.^[3] Petitioners maintain that the Instrument of Withdrawal is inconsistent with the Constitution.

The Rome Statute is a multilateral treaty that established the International Criminal Court, where the gravest crimes under international law are prosecuted.^[4]

Since 1996, under Fidel V. Ramos's (President Ramos) presidency, the Philippines has participated in the court's establishment, taking an active role in the deliberations as a member of the Drafting Committee.^[5]

On December 28, 2000, the Philippines, through then President Joseph Ejercito Estrada (President Estrada), signed the Rome Statute of the International Criminal Court.^[6]

President Estrada's act of signing the Rome Statute signified the Philippines' intent to be bound by the provisions of the treaty, subject to the domestic requirements for its validity and enforceability.^[7] Particularly, Article VII, Section 21 of the 1987 Constitution^[8] requires the concurrence by at least two-thirds of all members of the Senate for a treaty to be valid, binding, effective, and enforceable.

In the meantime, on July 1, 2002, the International Criminal Court's Rome Statute entered into force.^[9]

On December 11, 2009, with Senate concurrence to the Rome Statute still pending, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) signed into law Republic Act No. 9851, otherwise known as the Philippine Act on Crimes Against

International Humanitarian Law, Genocide, and Other Crimes Against Humanity. Republic Act No. 9851 replicated many of the Rome Statute's provisions.^[10]

Senate concurrence to the Rome Statute was obtained following President Benigno Aquino III's (President Aquino) election. On August 23, 2011, the Senate, with a vote of 17-1, passed Resolution No. 546—enabling the Philippines' consummate accession to the Rome Statute.^[11]

On August 30, 2011, the Philippines deposited the instrument of ratification of the Rome Statute. On November 1, 2011, the Rome Statute entered into force in the Philippines. The country was the 16th state party to belong to the Group of Asia-Pacific State Parties in the International Criminal Court.^[12]

On June 30, 2016, President Aquino's term ended and President Rodrigo Roa Duterte (President Duterte) took his oath as chief executive.

On April 24, 2017, Atty. Jude Sabio filed a complaint before the International Criminal Court pertaining to alleged summary killings when President Duterte was the mayor of Davao City.^[13]

On June 6, 2017, Senator Antonio Trillanes IV and Representative Gary Alejano filed a "supplemental communication" before the International Criminal Court with regard to President Duterte's drug war.^[14]

On February 8, 2018, the Office of International Criminal Court Trial Prosecutor Fatou Bensouda (Prosecutor Bensouda) commenced the preliminary examination of the atrocities allegedly committed in the Philippines pursuant to the Duterte administration's "war on drugs."^[15]

On March 15, 2018, the Philippines announced that it was withdrawing from the International Criminal Court. President Duterte claimed that the country never became a state party to the Rome Statute since the treaty was not published in the Official Gazette.^[16]

On March 16, 2018, the Philippines formally submitted its Notice of Withdrawal from the International Criminal Court to the United Nations. Enrique Manalo, the Permanent Representative of the Republic of the Philippines to the United Nations in New York, deposited the Note Verbale to Maria Luiza Ribeiro Viotti, Chef de Cabinet of the United Nations' Secretary-General Antonio Guterres.^[17]

The full text of this notification reads:

The Permanent Mission of the Republic of the Philippines to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honor to inform the Secretary-General of the decision of the Government of the Republic of the Philippines to withdraw from the Rome Statute of the International Criminal Court in accordance with the relevant provisions of the Statute.

The Philippines assures the community of nations that the Philippine Government continues to be guided by the rule of law embodied in its Constitution, which also enshrines the country's long-standing tradition of upholding human rights.

The Government affirms its commitment to fight against impunity for atrocity crimes, notwithstanding its withdrawal from the Rome Statute, especially since the Philippines has a national legislation punishing atrocity crimes. The Government remains resolute in effecting its principal responsibility to ensure the long-term safety of the nation in order to promote inclusive national development and secure a decent and dignified life for all.

The decision to withdraw is the Philippines' principled stand against those who politicize and weaponize human rights, even as its independent and well-functioning organs and agencies continue to exercise jurisdiction over complaints, issues, problems and concerns arising from its efforts to protect its people.

The Permanent Mission of the Republic of the Philippines to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.^[18]

On March 17, 2018, the Secretary-General of the United Nations received the notification from the Philippine government.^[19]

On May 16, 2018, Senators Francis Pangilinan (Senator Pangilinan), Franklin Drilon, Paolo Benigno Aquino, Leila De Lima, Risa Hontiveros, and Antonio Trillanes IV filed a Petition for Certiorari and Mandamus,^[20] assailing the executive's unilateral act of withdrawing from the Rome Statute for being unconstitutional. This Petition was docketed as G.R. No. 238875.

Later, Senator Pangilinan would manifest in the oral arguments incidents relating to Senate Resolution No. 289, a "Resolution Expressing the Sense of the Senate that Termination of, or Withdrawal from, Treaties and International Agreements Concurred in by the Senate shall be Valid and Effective Only Upon Concurrence by the Senate." The Resolution was noted to have not been calendared for agenda in the Senate.^[21]

Meanwhile, on June 13, 2018, the Philippine Coalition for the Establishment of the International Criminal Court, and its members, Loretta Ann P. Rosales, Dr. Aurora Corazon A. Parong, Evelyn Balais-Serrano, among others, also filed a Petition for Certiorari and Mandamus, docketed as G.R. No. 239483.^[22]

On July 6, 2018, the Office of the Solicitor General filed its Consolidated Comment to the Petitions.^[23]

On August 14, 2018, the Integrated Bar of the Philippines filed its own Petition,^[24] and an Omnibus *Ex-Parte* Motion for Consolidation and for Inclusion in the Oral Arguments.^[25] This Petition was docketed as G.R. No. 240954.

Oral arguments were conducted on August 28, 2018, September 4, 2018, and October 9, 2018. At the termination of oral arguments, this Court required the parties to file their respective memoranda within 30 days.^[26]

In his March 18, 2019 press release, the Assembly of State Parties' President Mr. O-Gon Kwon "reiterated his regret regarding the withdrawal of the Philippines,