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[G.R. No. 256288, June 29, 2021]

**ATTY. ROMEO M. ESMERO, PETITIONER, VS. HIS EXCELLENCY,
HONORABLE PRESIDENT, RODRIGO ROA DUTERTE,
RESPONDENT.**

R E S O L U T I O N

ZALAMEDA, J.:

By this Petition for *Mandamus*,^[1] petitioner Atty. Romeo M. Esmero (petitioner) seeks the issuance of a writ to compel respondent President Rodrigo R. Duterte (President Duterte) to comply with his constitutional duty to defend the national territory, which includes the West Philippine Sea, against Chinese incursions^[2] Specifically, petitioner asserts that:

- (1) It is a prime duty of the Government to serve and protect the people and their rights, including those to the national territory. Given China's aggression, the President is not prohibited from (and by implication, should consider) engaging in a defensive war and, in so doing, call upon the people to defend the State against China's aggression. Americans, by virtue of the Mutual Defense Agreement, are also duty-bound to help us in this defensive war;^[3]
- (2) The President's public pronouncements and actions on the West Philippine Sea must be exercised within the limits prescribed by the Constitution and are ultimately subject to the power of judicial review;^[4]
- (3) It is the ministerial duty of the President to defend the national territory which includes the West Philippine Sea as established by the UN Arbitral Tribunal.^[5] There is unlawful neglect or inaction by the President in the performance of his constitutional duty resulting to the detriment of "paramount public interest involve (sic) the livelihood of all of our poor Filipino fishermen and their families who are living in the coastal areas of the many islands facing the West Philippine Sea";^[6]
- (4) The national territory (including the archipelagic principle) enshrined in the Constitution and the exclusive economic zone are fully recognized in international law;^[7]
- (5) This petition regarding his inaction/failure to perform his

presidential duties relative to the West Philippine Sea is an exception to the general rule on presidential immunity from suit;^[8]

- (6) The filing of diplomatic protests against China is not a defense by our country on the issue of the West Philippine Sea.^[9] According to petitioner, "the proper way for the Philippine[s] to act now is to go x x x to the [United Nations] Security Council and invoke the [U]niting for [P]eace [R]esolution of 1950"^[10] and sue China before the International Court of Justice to demand payment and damages for raking the Kalayaan Islands.^[11]

The petition is DISMISSED for utter lack of merit.

Our ruling in *De Lima v. Duterte*^[12] is clear: the President is immune from suit during his incumbency, regardless of the nature of the suit filed against him. Petitioner named President Duterte as the sole respondent in this case. For this reason, this suit should be dismissed outright.

Even if, for the sake of argument, the Court was inclined to overlook this fatal flaw and consider the case filed against the Executive Secretary, as the representative of the President,^[13] if only to save the petition from perfunctory dismissal, a writ of *mandamus* would still not lie in petitioner's favor.

Section 3, Rule 65 of the Rules of Court provides that a mandamus petition may be resorted to when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.^[14]

Mandamus is used merely to compel action and to coerce the performance of a pre-existing duty;^[15] it does not lie to control discretion.^[16] For a petition for *mandamus* to prosper, it must be shown that the subject of the petition is a **ministerial** act or duty on the part of the board, officer or person, and that the petitioner has a well-defined, clear and certain right to warrant the grant thereof.^[17] It falls on the petitioner to show that his clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act.^[18]

This Court, in *De Castro v. Judicial and Bar Council*,^[19] distinguished a ministerial act from one that is discretionary: "A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done."^[20]

Indeed, the President is the guardian of the Philippine archipelago, including all the islands and waters embraced therein and all other territories over which it has sovereignty or jurisdiction.^[21] By constitutional *fiat* and the intrinsic nature of his office, the President is also the sole organ and authority in the external affairs of the country.^[22]

In *Saguisag v. Ochoa, Jr.*,^[23] this Court had occasion to discuss the President's foreign affairs power:

As the sole organ of our foreign relations and the constitutionally assigned chief architect of our foreign policy, the President is vested with the exclusive power to conduct and manage the country's interface with other states and governments. Being the principal representative of the Philippines, the Chief Executive speaks and listens for the nation; initiates, maintains, and develops diplomatic relations with other states and governments; negotiates and enters into international agreements; promotes trade, investments, tourism and other economic relations; and settles international disputes with other states.

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This rule does not imply, though, that the President is given *carte blanche* to exercise this discretion. Although the Chief Executive wields the exclusive authority to conduct our foreign relations, **this power must still be exercised within the context and the parameters set by the Constitution, as well as by existing domestic and international laws.**^[24] [Emphasis supplied.]

The Court thereafter proceeded to list the following constitutional restrictions to the President's foreign affairs powers:

- a. The policy of freedom from nuclear weapons within Philippine territory;
- b. The fixing of tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, which must be pursuant to the authority granted by Congress;
- c. The grant of any tax exemption, which must be pursuant to a law concurred in by a majority of all the Members of Congress;
- d. The contracting or guaranteeing, on behalf of the Philippines, of foreign loans that must be previously concurred in by the Monetary Board;
- e. The authorization of the presence of foreign military bases, troops, or facilities in the country must be in the form of a treaty duly concurred in by the Senate; and
- f. For agreements that do not fall under paragraph 5, the concurrence of the Senate is required, should the form of the government chosen be a treaty.^[25]

In addition to treaty-making, the President also has the power to appoint ambassadors, other public ministers, and consuls;^[26] receive ambassadors and other public ministers duly accredited to the Philippines;^[27] and deport aliens.^[28]

Petitioner submits that it is the ministerial duty of the President, as part of his mandate to enforce the laws and see to their faithful execution, to "defend" the national territory by going before the United Nations (UN) to ask the latter to send "UN Patrol Boats x x x to protect our fishermen."^[29] It is also petitioner's view that

the Philippines should "sue China with (sic) the International Court of Justice [(ICJ)] and demand that China should pay for the Kalayaan Islands which it took from us for trillions of Dollars in damages."^[30]

For all his posturing, however, petitioner has failed to point to any law that specifically requires the President to go to the UN or the ICJ to sue China for its incursions into our exclusive economic zone (EEZ). Neither has he shown a clear and unmistakable constitutional or statutory provision which prescribes *how* the President is to respond to any threat (actual or imminent) from another State to our sovereignty or exercise of our sovereign rights.^[31]

Petitioner himself noted that a case *had* in fact been filed by the Philippines to vindicate its rights in the West Philippine Sea. In 2013, after years of unsuccessful attempts to reach a settlement through political and diplomatic channels and amid rising tensions in the region, Former President Benigno S. Aquino decided to avail of the legal mechanism under the United Nations Convention on the Law of the Sea (UNCLOS).^[32] He was under no obligation, certainly not one coercible *via* a writ of *mandamus*, to file a case against China. Taking China to binding arbitration was risky, as it could potentially damage relations with a major trading partner. On 12 July 2016, the arbitral tribunal issued an Award overwhelmingly in favor of claims by the Philippines and ultimately bringing some clarity to the overlapping claims in the area.^[33]

If President Duterte now sees fit to take a *different* approach with China despite said ruling, this does not by itself mean that he has, as petitioner suggests, unlawfully abdicated his duty to protect and defend our national territory, correctible with the issuance by this Court of the extraordinary writ of *mandamus*. Being the Head of State, he is free to use his own discretion in this matter, accountable only to his country in his political character and to his own conscience.^[34]

Ultimately, the decision of how best to address our disputes with China (be it militarily, diplomatically, legally) rests on the political branches of government.^[35] While we are loath to give a "blank check" especially where the risk of grave abuse of discretion may be high, we cannot have an "entrammeled executive" who will be ill-equipped to face the "amorphous threat[s] and perpetrators whose malign intent may be impossible to know until they strike."^[36] The Constitution vests executive power, which includes to duty to execute the law, protect the Philippines, and conduct foreign affairs, in the President- not this Court. Barring violations of the limits provided by law and the Constitution, we should take care not to substitute our exercise of discretion for his. As "the branch that knows least about the national security concerns that the subject entails," we cannot, in the words of Justice Scalia, just simply "blunder in."^[37]

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED**.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, M. Lopez, Delos Santos, Gaerlan, Rosario, and J. Lopez, JJ., concur. Leonen, J., concur. See separate concurring opinion.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 29, 2021 a Resolution copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 16, 2021 at 11:45 a.m.

Very truly yours,

**(Sgd.) MARIFE M. LOMIBAO-
CUEVAS**
Clerk of Court

[1] *Rollo*, pp. 3-24.

[2] *Id.* at 22.

[3] *Id.* at 7-8.

[4] *Id.* at 9-12.

[5] *Id.* at 13.

[6] *Id.*

[7] *Id.* at 14-20.

[8] *Id.* at 21.

[9] Supplement to the Petition, p. 2.

[10] *Id.* at 6.

[11] *Id.* at 8.

[12] G.R. No. 227635, 15 October 2019.

[13] *See Manila international Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated*, 508 Phil. 354, 374 (2005).

[14] *See also Zabala v. Duterte*, G.R. No. 238467, 12 February 2019.

[15] *Special People, Inc. Foundation v. Canda*, 701 Phil. 365, 386 (2013).

[16] *GMCR, Inc. v. Bell Telecommunication Philippines, Inc.*, 338 Phil. 507, 527 (1997).

[17] *Codilla, Sr. v. De Venecia*, 442 Phil. 139, 189 (2002).

[18] *Special People, Inc. Foundation v. Canda*, *supra* note 15, at 386-387.