

Chapter 1

POLITICAL LAW AND THE CONSTITUTION

Introduction

Political law is defined as the branch of public law which deals with the organization and operation of the governmental organs of the State and defines the relations of the state with the inhabitants of its territory. (*Macariola v. Asuncion*, A.M. No. 133-J, May 31, 1982)

The Constitution

It is a written and codified document which serves as the fundamental law of the state. A written instrument enacted by direct action of the people by which the fundamental powers of the government are established, limited, and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the people. (*Manila Prince Hotel v. GSIS*, G.R. No. 122156, February 3, 1997)

The constitution is the work or will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the legislature in its derivative and subordinate capacity. The one is the work of the creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority and prescribes the orbit within which it must move. In short, gentlemen, the constitution is the sun of the political system, around which all Legislative, Executive, and Judicial bodies must revolve. Whatever may be the case in other countries, yet in this, there can be no doubt, that every act of the legislature, repugnant to the Constitution, is absolutely void. (*Vanhorne's Lessee v. Dorrance*, 2 Dall. 308, April 1, 1795)

The Importance of the Constitution

The role of the constitution cannot be overlooked. It is through the constitution that the fundamental powers of government are

established, limited, and defined, and by which these powers are distributed among the several departments. The constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. Constitutional doctrines must remain steadfast no matter what may be the tides of time. It cannot be simply made to sway and accommodate the call of situations and much more tailor itself to the whims and caprices of government and the people who run it. (*Biraogo v. The Philippine Truth Commission*, G.R. No. 192935, December 7, 2010)

The constitution, as the fundamental law of the land, deserves the utmost respect and obedience of all the citizens of this nation. No one can trivialize the constitution by cavalierly amending or revising it in blatant violation of the clearly specified modes of amendment and revision laid down in the constitution itself. (*Lambino v. Comelec*, G.R. No. 174153, October 25, 2006)

A Constitution Is a System of Fundamental Laws

A constitution is a system of fundamental laws for the governance and administration of a nation. It is supreme, imperious, absolute, and unalterable except by the authority from which it emanates. It has been defined as *the fundamental and paramount law of the nation*. It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. (*Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997)

Types of Constitution

There are several types of constitution:

1. **Written constitution** is a kind of a constitution whose provisions are all contained in a single document. A good example of this constitution is the Philippine Constitution.
2. **Unwritten constitution** is a kind of constitution where the provisions are not contained in a single document but rather in different documents which are considered as part of the fundamental

law of the land. A more appropriate term for this kind would be *uncompiled constitution*. The constitution of United Kingdom is a fine example of this type of constitution.

3. **Conventional or enacted constitution** is a type of constitution that was formulated by a constitutional convention that is called to draft the constitution.

4. **Cumulative or evolved constitution** is a constitution which is not drafted by a positive act of the state, but it developed as a part of the history of the nation.

5. **Rigid or inelastic constitution** is one which cannot be easily amended unless such amendment is provided for by the constitution itself.

6. **Flexible or elastic constitution** is one which can easily be changed anytime.

Parts of the Constitution

The constitution as a fundamental law has three major parts namely:

1. **Constitution of Government** which refers to those provisions which set up the governmental structure specifically, Articles VI, VII, VIII, IX, and X of the 1987 Constitution,

2. **Constitution of Liberty** are the provisions which guarantee individual fundamental liberties against governmental abuse specifically provided in Articles III, IV, V, XII, XIII, XIV, and XV of the 1987 Constitution, and

3. **Constitution of Sovereignty** which refers to those provisions which outline the process whereby the sovereign people may change the constitution. These are provided in Article XVII and Article II, Section 1 of the 1987 Constitution.

Essential Qualities of a Written Constitution

A desirable written constitution must be **broad, brief, and definite**.

It must be **broad** in the sense that it provides for the organization and structure of the entire government. It must embody the political history of the nation, the present realities and the future prospects of the nation's destiny. The constitution must be **brief** for it must limit itself to the basic principles and leave

the implementations of such fundamental principles to the sound judgment of the legislative department. It must be **definite** in order to avoid unnecessary ambiguities which would later on lead to confusion, brought about by the different interpretations and constructions of its provisions. (Cruz, 2003)

Doctrine of Constitutional Supremacy

Under the doctrine of Constitutional Supremacy, if a law or contract violates any norm of the constitution, that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, since the constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract. (*Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997)

Interpretation of Constitutional Provisions

A doubtful provision shall be examined in the light of the history of the times and the conditions and circumstances under which the constitution was framed. (*Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991)

In case of doubt, the constitution should be considered self-executing rather than non-self-executing. Unless the contrary is clearly intended, the provisions of the constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. (*Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997)

Constitutional Construction

The interpretation and application of the constitution and of statutes are within the exclusive province and jurisdiction of the Judicial department, and that in enacting a law, the Legislature may not legally provide therein that it be interpreted in such a way that it may not violate a constitutional prohibition, thereby tying the hands of the courts in their task of later interpreting said statute, especially when the interpretation sought and provided in

said statute runs counter to a previous interpretation already given in a case by the highest court of the land. (*Endencia v. David*, G.R. No. L-6355-56, August 31, 1953)

Self-executing Provisions

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The Philippine Constitution

The Philippine Constitution is both written and rigid. (Article XVII) The 1987 Constitution took effect on February 2, 1987, the date of the plebiscite for its ratification and not on the date its ratification was proclaimed. (*De Leon v. Esguerra*, G.R. No. 78059, August 31, 1987)

As part of the evolution of the Philippine government, several constitutions were enacted, either as mandated by the changing needs of the times or as needed to satisfy the desires, whims, and caprices of the one holding the reins of the Philippine political life.

The Malolos Constitution

Based on the decrees of June 18 and 23, 1898, Aguinaldo convened the Revolutionary Congress at Barasoain Church in Malolos, Bulacan. The delegates were elected by the people but in areas which were still under the Spanish control, Aguinaldo appointed their delegates to Congress. The members composing the Congress included 43 lawyers, 18 doctors, five pharmacists, seven businessmen, four agriculturists, three educators, three soldiers, two engineers, two painters, and one priest. (*Constantino*, 1975)

The Malolos Constitution is the first important Filipino document produced by the people's representatives although not all the members who drafted and approved the Constitution were elected by the people. The Constitution was anchored on democratic traditions although it was based and patterned on the

constitutions of other countries. The Malolos Constitution created a state whose government was republican in character – popular and representative democracy composed of three distinct branches: the executive, the legislative, and the judicial. The Constitution specifically provided for safeguards against abuses and enumerated the national and individual rights not only of the Filipinos and of the aliens in the country as well.

The legislative powers were exercised by the Assembly of Representatives composed of delegates elected according to law. To make the function of Congress continuous, the document provided for a Permanent Commission which would sit as a law-making body when Congress was not in session – a result of the insecurities of the ilustrado members of congress that the president might abuse his powers while the assembly is not in session. The assembly elected the President of the Republic. The Cabinet, composed of the Secretaries of the different Departments of the government, was responsible not to the President, but to the Assembly. The administration of justice was vested in the Supreme Court and in inferior courts to be established according to law. The Chief Justice of the Supreme Court was to be elected by the Assembly with the concurrence of the President and the Cabinet. (*Agoncillo, 1990*)

The 1935 Constitution

Based on the provisions of the Tydings-McDuffie Law, a constitution must be drafted by a Constitutional Convention and ratified by the Filipino people prior to the establishment of the Commonwealth Government. On July 10, 1934, the Filipinos elected 202 delegates to the Constitutional Convention. On July 30, 1934, the Convention was formally inaugurated with Claro M. Recto as president.

The draft of the Constitution was approved with amendments on January 31, 1935. It was written in English and in Spanish. On February 8, 1935, the Convention approved the Constitution by a vote of 177 in favor and one against. The lone delegate who voted against the approval of the Constitution was Tomas Cabili of Lanao.

The Constitution was brought to Washington by Quezon, Recto, and Roxas for the approval of the President of the United States in accordance with the provisions of the Tydings-McDuffie Law. President Franklin Roosevelt approved the Charter on March 23, 1935. The Constitution was submitted to the Filipino people for ratification on a plebiscite held on May 14, 1935. The Filipinos

approved the Constitution by a vote of 1,213,046 and only 44,963 voted against the Constitution.

For the first time in Philippine history, the women voted in the plebiscite to ratify the 1935 Constitution. The 1935 Constitution provided that women suffrage or the right to vote would be granted if no less than 300,000 qualified women were to vote affirmatively for the grant of the right of suffrage within two years after the adoption of the Constitution. It divided the government into three co-equal branches namely the legislative, executive, and judicial. The executive power was vested on the President of the Philippines who would be elected directly by the people to serve for a term of four years and can be reelected for another four-year term. The legislative power was vested in the Congress of the Philippines composed of the Senate with twenty-four senators elected at large for a term of six years and the House of Representatives composed of not more than 120 members representing the different provinces of the country with a term of four years. The judicial power, on the other hand, was vested in the Supreme Court and other inferior courts as may be established by law.

The 1943 Constitution

On January 23, 1942, General Masaharu Homma, the Commander-in-Chief of the Japanese Imperial Army in the Philippines renamed the national government as Central Administrative Organization. He also issued an order to Jorge Vargas, who was then an acting mayor of Manila and appointed him Chairman of the newly created Executive Commission. All the Commissioners reported directly to the Chairman of the Executive Commission. Then on January 29, 1942, the Council of the State was created as an advisory body to the Chairman of the Executive Commission. The Japanese military authorities saw the difficulty of gaining the trust and cooperation of the people with the present setup of the national government. As such, they deemed it necessary to grant Philippine independence soon as part of their propaganda efforts in gaining Filipino support and cooperation.

On June 18, 1943, the KALIBAPI was tasked to form the Preparatory Commission for Philippine Independence. Two days later, the Commission was organized with Jose Laurel as president and Benigno Aquino and Ramon Avancena as vice presidents. The Commission drafted a Constitution which was ratified on September 4, 1943 according to the rules set by the Japanese military authorities.

The Constitution provided for a unicameral National Assembly. On September 20, 1943, delegates to the legislature were elected. On September 25, 1943, the Legislature elected Jose Laurel as President of the Republic of the Philippines that will soon be established as provided by the Constitution. On October 14, 1943, the second Philippine Republic which is known in history as the *puppet republic* was inaugurated, and Jose P. Laurel was sworn to power as president.

However, this Constitution was short-lived owing to the fact that it was only made effective following the dictates of the Japanese invaders. Thus, after the liberation of the Philippines and the restoration of the Commonwealth government, the 1943 Constitution became a mere scrap of paper in the eyes of the Filipinos.

The 1973 Constitution

After the declaration of martial law, Marcos reconvened the 1971 Constitutional Convention to continue their task of framing a new charter. On November 29, 1972, the final draft was finished and was presented to Marcos on December 1, 1972. Marcos scheduled a plebiscite to ratify the Constitution on January 15 to 17, 1973.

Marcos and his cohorts convened the barangay assemblies and called the voters in every barangay including the youth. The people in the assembly supposedly voted to ratify the Constitution which was a handiwork of Marcos. Based on the record released by Malacañang, 95 percent of those present approved the new charter. On this basis, Marcos signed the Constitution and declared its ratification on January 17, 1973.

The legal luminaries of the country opposed to Marcos assailed the validity of the 1973 Constitution especially the manner it was ratified. However, the Supreme Court which at that time beholden to Marcos, instead of upholding the majesty of the law and equity ruled on January 22, 1973 that the question of legality was moot and academic. This controversial decision of the highest tribunal led to the resignation of Chief Justice Roberto Concepcion.

The 1973 Constitution established a parliamentary form of government with the prime minister as the chief executive. The legislative power was vested in the unicameral national assembly. The right of suffrage was made compulsory to all qualified voters. The Constitution also abolished the parity rights provisions of the 1935 Constitution, thus allowing only the Filipino citizens to own real property and exploit the natural resources of the country.

The 1973 charter had undergone several amendments to suit the desires and whims of the Marcos government. In 1976, an amendment was made which created the Interim Batasang Pambansa (IBP) with more than 120 members including Marcos. Marcos was also empowered to appoint sectoral representatives and his cabinet members to the Batasang Pambansa. Marcos assumed the powers of both the president and the prime minister. Another amendment, known as the sixth amendment, empowered Marcos to make laws in cases of grave national emergency and these laws shall form part of the laws of the land.

These amendments were submitted to the people in a plebiscite on October 16-17, 1976. As expected, more than 90 percent of the people ratified the amendments based on the data released by Malacañang and as reported by the Marcos controlled media.

On January 30, 1980, another plebiscite was conducted to ratify the amendment which extended the retirement age of the justices of the Supreme Court from 65 to 70 years old, purportedly to bar the liberal and progressive justices from becoming Chief Justices.

The 1987 Constitution

As a result of the revolutionary government established by Corazon Aquino, a 50-member Constitutional Commission was appointed purposively to draft a new constitution to replace the 1973 Constitution used by Marcos. On February 2, 1987, the new Philippine Constitution with 18 articles and 321 sections was submitted to the Filipino people in a plebiscite. The said charter received the approval of 17,059,495 as against the 5,058,714 who voted against it.

The 1987 Constitution is the **6th** and the latest Constitution of the Republic of the Philippines. The **first** recognized Philippine Constitution was the Malolos Constitution which was approved by Emilio Aguinaldo on January 21, 1899; it was followed by the 1935 Commonwealth Constitution which was ratified by the Filipino people on May 14, 1935. Historically, the **third** Philippine Constitution was the Constitution which was drafted and ratified on September 4, 1943 during the Japanese occupation. It was followed by the Marcos Constitution which was made effective on January 17, 1973. The **fifth** Constitution was the Freedom Constitution which was promulgated by virtue of Proclamation No. 3 issued by President Corazon Aquino on March 25, 1986.

On February 25, 1986, Corazon Aquino was inducted as the first lady President of the Philippines in Club Filipino, San Juan, Metro Manila. On June 2, 1986, Aquino appointed a Constitutional Commission composed of 50 members which drafted the 1987 Constitution.

On February 2, 1987, the Filipino people voted to ratify the Charter, thereby legalizing the restoration of democratic government and institutions in the country. On February 2, 1987, the new Philippine Constitution with 18 articles and 321 sections was submitted to the Filipino people in a plebiscite. The said charter received the approval of 17,059,495 as against the 5,058,714 who voted against it. On May 27, 1987, the first election of the members of the bicameral legislative body and the election of local executives took place.

Effectivity of the 1987 Constitution

The 1987 Constitution was ratified in a plebiscite on February 2, 1987. By that date, therefore, the Provisional Constitution must be deemed to have been superseded. Having become inoperative, respondent OIC Governor could no longer rely on Section 2, Article III, thereof to designate respondents to the elective positions occupied by petitioners. (*De Leon, et al. v. Esguerra, G.R. No. 78059, August 31, 1987*)

Chapter 2

THE STATE

Introduction

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a definite territory; (c) a government; and (d) capacity to enter into relations with other states. (*Article I, 1933 Montevideo Convention on the Rights and Duties of the State*)

Doctrine of "Acts of State"

The Acts of State Doctrine provides that every state is bound to respect the independence of every other state and the courts will not sit in judgment of another government's acts done within its own territory. (*Twomey, 2011*)

A further restriction of any national jurisdiction consists in the principle that no state has jurisdiction over another state. This principle has been known for ages as the maxim *par in parem non habet imperium* (Latin which means *equals do not have authority over one another*). It is based upon the mutual independence of sovereigns and the fact resulting therefrom, that no state in its capacity as a subject of international law can be subject to the laws of another state. This also means that acts carried out by a state in the exercise of its sovereign powers are exempted from the jurisdiction of other states by virtue of their very nature. Thus, foreign states are exempted from municipal jurisdiction of another state. The immunity granted to foreign states in the municipal courts of foreign states extends to the representatives of the said sovereign.

Elements of the State

From the above definition of the State, its elements can be extracted: people, territory, government, and sovereignty.

A. **People or Permanent Population**

Permanent population refers to an adequate number of people that is permanently linked to a specific piece of territory. There is no required number of people that would constitute as an element of the state. There is also no requirement for the population to be indigenous and the extent of social and cultural cohesion required is also unclear. In reality, most of the population of a state will be its 'nationals' and have a right to reside in that state. The criteria of qualification for nationality are determined by national law. The size of the population is immaterial. (<https://www.open.edu/openlearn/society-politics-law/exploring-the-boundaries-international-law/content-section-2> – accessed date: 1/15/2020)

Citizens and Subjects

Generally, the people comprising the state are referred to as citizens. Citizens are entitled to the rights and privileges of a freeman. Citizens are either natural born or naturalized and they owe allegiance to a government, and are entitled to protection from it.

Citizenship is the status of a person recognized under the custom or law of a state that bestows on that person the rights and privileges of membership in a political community. Such rights and privileges include the right to vote, work and live in the country and the right to return to the country, besides other rights. A **citizen** may also be subject to certain duties, such as the duty to serve in the army. A person may have multiple citizenships and a person who does not have citizenship of any state is said to be stateless. On the other hand, **subjects** are people of a monarchical state and governed by the monarch's law.

Nationality

Nationality is membership in a political community with corresponding rights and obligations. In exchange for the protection that the **national** gets from the state, he is required to obey its laws. This term is interchangeably used with the term citizenship. However, citizenship has a more exclusive scope and applies only to certain members of the state who are accorded more privileges than the rest of the people who owe the state their allegiance. For example, during the American colonization of the Philippines, Filipinos and Americans were considered nationals of the United States of America but Filipinos were not entitled to American

citizenship rights like the right to vote for the public officers of the United States. (Cruz, *International Law*)

B. Definite Territory

It refers to the portion of the earth that is under the effective control of the state, and which demarcates the state from its neighbors. The size of the territory of states can vary widely from Russia with 17 million square kilometers to the principality of Monaco with just two square kilometers territory. The borders of the state's territory need to be reasonably determinate. The territory of the state sometimes is defined by a treaty or mandated by its constitution. Territorial disputes with neighboring states would not normally affect the state's status in international law.

Territory is a geographical area that is owned and controlled by the state in order to exercise its sovereignty. The territory of the state must be permanent and with well-defined boundaries. There is no required size or extent of the state's territory, but it must be large enough to provide for the needs of the people of the state. The territory of the state consists of terrestrial or land territory, fluvial and maritime or water domain, and aerial domains. The territory of the Philippines is defined by *Article I of the 1987 Constitution*.

The Terrestrial or Land Domain

This is derived from Latin *terrestris* – from *terra* which means *earth*. The terrestrial domain refers to the landmass, which may be integrated or dismembered, or partly bound by water, or consists of one whole island. It may also be composed of several islands, like the Philippines. It also includes all the resources attached to the land. The state exercises jurisdiction over everything found within its territorial domain.

Exemption from Territorial Jurisdiction

The following are exempt from the territorial jurisdiction of state:

1. Foreign states, heads of states, diplomatic representatives, and consuls to a certain degree.
2. Foreign state property, including embassies, consulates, and public vessels engaged in non-commercial activities.
3. Acts of state.

4. Foreign merchant vessels exercising the rights of innocent passage or arrival under stress.
5. Foreign armies passing through or stationed in its territories with its permission.
6. Such other persons or property, including organizations like the United Nations, over which it may by agreement, waive jurisdiction.

The Polar Regions

The Sector Principle is applied in the Polar Region of the Arctic and Antarctica. Under this principle, no country currently owns the North Pole or the region of the Arctic Ocean surrounding it. The same principle applies to Antarctica and the South Pole.

The territory is shared out in the form of arbitrary sectors, each one having an apex at the poles and including an outer area bounded by the coast. The principle has worked well in establishing control of the Arctic ice, but there are disputed claims over the landmass of the Antarctic which may possibly yield mineral resources.

In the case of North Pole, the five surrounding Arctic countries, the Russian Federation, the United States (via Alaska), Canada, Norway and Denmark (via Greenland), are limited to an exclusive economic zone (EEZ) of 200 nautical miles (370 km) adjacent to their coasts. The waters beyond the territorial waters of the coastal states are considered as "high seas" (*i.e.*, international waters). The sea bottom beyond the exclusive economic zones and confirmed extended continental shelf claims are considered to be the "*heritage of all mankind*" and administered by the UN International Seabed Authority.

The Doctrine of Effective Occupation

The nationals of the discovering state, in its name or by its authority, must first take possession of the territory. Thereafter, they must establish thereon an organization or government capable of making laws and commanding respect for them.

Aerial Domain

The *aerial domain* refers to the air space above the land and waters of the state. The rules governing the high seas also apply to outer space, which is considered as *res communes*. Under customary international law, states have the right to launch satellites in orbit

over the territorial space of other states. The *Outer Space Treaty*, formally known as the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, is the basis of international space law.

Jurisdiction over Aerial Domain

It has been the consensus among states that the subjacent state has jurisdiction over the airspace above it to the upward limits of the atmosphere. Hence, no foreign aircraft, civil or military, may pass through the aerial domain of a state without its consent. The right of innocent passage is not recognized in any manner over the airspace of a state.

International Convention on Civil Aviation

The *International Convention on Civil Aviation* on December 7, 1944, states that "the contracting parties recognize that every state has complete and exclusive sovereignty over the air space above its territory" but this shall not include outer space, which is considered as *res communes*. Hence, the right of innocent passage is not recognized in the airspace of a state.

Five Air Freedoms

Although there is no right of innocent passage in air space, the following freedoms are recognized:

1. The freedom to fly across foreign territory without landing.
2. The freedom to land for non-traffic purposes.
3. The freedom to put down traffic originating in the state of the aircraft.
4. The freedom to embark traffic destined for the state of the aircraft.
5. The freedom to embark traffic destined for, or to put down traffic coming from a third state.

Korean Airlines Flight 007

A South Korean Civilian airliner was shot down by Soviet Air Force on September 1, 1983, over the Sea of Japan near Moneron

Island just west of Sakhalin Island. The aircraft was en route from New York City to Seoul via Anchorage, Alaska when it strayed into prohibited Soviet airspace. All 269 passengers and crew aboard were killed, including Lawrence McDonald, a sitting member of the US Congress.

The Soviet Union initially denied knowledge of the incident, but later admitted the shootdown, claiming that the aircraft was on a spy mission. The Politburo said it was a deliberate provocation by the United States to test the Soviet Union's military preparedness, or even to provoke a war. The White House accused the Soviet Union of obstructing search and rescue operations. The Soviet military suppressed evidence sought by the International Civil Aviation Organization (ICAO) investigation, notably the flight data recorders, which were eventually released eight years later after the collapse of the Soviet Union.

Outer Space

The outer space is *res communes* and belongs to all mankind. It is outside the commerce of man and cannot be the object of any mode of acquisition.

Under Customary International Law, states have the right to launch satellites in orbit over the territorial airspace of the other states. Pursuant to the Outer Space Treaty of 1967, outer space is free for exploration and use by all states, it cannot be annexed by any state, and it may be used exclusively for peaceful purposes. In the 1972 Convention on International liability for damage caused by space objects, states which launch objects into space may be held liable for the harmful contamination caused by such objects or for the damage which may be caused by falling objects.

Jurisdiction over Outer Space

Like the open sea, the outer space or the region beyond the earth's atmosphere is not subject to the jurisdiction of any state. Outer space and other celestial bodies are not subject to national appropriation. However, astronauts and their satellites and equipment, while in outer space, remain under the jurisdiction of the state that sends them.

The Outer Space Treaty

The Outer Space Treaty was considered by the Legal Subcommittee in 1966 and agreement was reached in the General

Assembly in the same year (*Resolution 2222 [XXI]*). The Treaty was largely based on the *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*, which had been adopted by the General Assembly in its resolution 1962 (XVIII) in 1963 but added a few new provisions.

The Treaty was opened for signature by the three depository Governments (the Russian Federation, the United Kingdom, and the United States of America) in January 1967, and it entered into force in October 1967.

The Outer Space Treaty provides the basic framework on international space law, including the following principles:

1. the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries and shall be the province of all mankind;
2. outer space shall be free for exploration and use by all States;
3. outer space is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means;
4. states shall not place nuclear weapons or other weapons of mass destruction in orbit or on celestial bodies or station them in outer space in any other manner;
5. the Moon and other celestial bodies shall be used exclusively for peaceful purposes;
6. astronauts shall be regarded as the envoys of mankind;
7. states shall be responsible for national space activities whether carried out by governmental or non-governmental entities;
8. states shall be liable for damage caused by their space objects; and
9. states shall avoid harmful contamination of space and celestial bodies.

The Convention on Registration of Launched Objects into Outer Space

The *Convention on Registration of Launched Objects into Outer Space (Registration Convention)* was adopted by the United Nations General Assembly in 1974 and went into force in 1976. As of 2014, it

has been ratified by 61 states. The Registration Convention and four other space law treaties are administered by the United Nations Committee on the Peaceful Uses of Outer Space.

Member States conducting space launches have been requested by the Committee to provide the United Nations with information on their launchings. A registry of launchings has been maintained by the Secretariat since 1962, in accordance with General Assembly resolution 1721 B (XVI), and information from Member States has been issued in United Nations documents in the A/AC.105/INF series. Since the Convention on Registration of Objects Launched into Outer Space entered into force in 1976, another register of launchings has been established for information received from Member States and intergovernmental organizations that are parties to the Convention.

The Registration Convention provides that the launching State should furnish to the United Nations, as soon as practicable, the following information concerning each space object:

1. Name of launching State;
2. An appropriate designator of the space object or its registration number;
3. Date and territory or location of launch;
4. Basic orbital parameters, including: Nodal period (the time between two successive northbound crossings of the equator – usually in minutes); Inclination (inclination of the orbit – polar orbit is 90 degrees and equatorial orbit is 0 degrees); Apogee (highest altitude above the Earth's surface – in kilometers); Perigee (lowest altitude above the Earth's surface – in kilometers);
5. General function of the space object.

Under these arrangements, information has been received from Algeria, Argentina, Australia, Brazil, Canada, China, Chile, Czech Republic, Democratic People's Republic of Korea, Denmark, Egypt, France, Germany, Greece, Hungary, India, Indonesia, Israel, Italy, Japan, Kazakhstan, Luxembourg, Malaysia, Mexico, Nigeria, Pakistan, Poland, Republic of Korea, Russian Federation, Spain, Sweden, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela as well as from the European Space Agency (ESA) and the European Organization for the Exploitation of Meteorological Satellites (EUMETSAT). (*Duka, 2017*)

2003 Bar Exam Question No. XIX

What is outer space? Who or which can exercise jurisdiction over astronauts while in outer space?

Suggested Answer:

Outer space is *res communes* and belongs to all mankind. It is outside the commerce of man and cannot be the object of any mode of acquisition. Astronauts are under the jurisdiction of their states of registry based on the Registration of Objects in Space Convention of 1974.

The Maritime or Fluvial Domain

Maritime domain refers to the navigable waters of the state like sea, lake, rivers and the likes. While fluvial is a term used in geography and Earth science to refer to the processes associated with rivers and streams and the deposits and landforms created by them. The state's fluvial domain includes internal waters, territorial sea, seabed, Exclusive Economic Zone (EEZ), insular shelves, and other submarine areas.

Archipelago Doctrine

This doctrine states that the baseline from which the inland and territorial sea of an archipelago is to be determined consists of the straight lines joining appropriate points of the outermost islands or edge of the archipelago. Connected baselines which are drawn to enclose the entire archipelago define the internal waters while the waters from the baselines up to the international treaty limits represent the territorial sea of the country. Because of extensive territorial waters, the Philippines adopted the Archipelago Doctrine as a basis in determining the inland and territorial waters of the country.

Archipelago

An archipelago is a chain or cluster of islands. The word archipelago literally means "chief sea," from Greek *arkhon* (arkhi-) meaning *leader* and *pelagos* meaning *sea*. In antiquity, the Archipelago (Greek: Αρχιπέλαγος) was the proper name for the Aegean Sea and, later, usage shifted to refer to the Aegean Islands (since the sea is remarkable for its large number of islands).

It is now used to generally refer to any island group or, sometimes, to a sea containing a large number of scattered islands like the Aegean. Archipelagos are usually found in the open sea; less commonly, a large landmass may be near them. Archipelagos are often volcanic, forming along mid-ocean ridges or hotspots, but there are many other processes involved in their construction, including erosion and deposition. The five largest modern states that are mainly archipelagos are Indonesia, United Kingdom, Japan, Philippines, and New Zealand.

United Nations Conventions on the Laws of the Sea (UNCLOS)

In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) in Geneva, Switzerland. UNCLOS I resulted in four treaties concluded in 1958:

1. Convention on the Territorial Sea and Contiguous Zone – 10 September 1964
2. Convention on the Continental Shelf – 10 June 1964
3. Convention on the High Seas – 30 September 1962
4. Convention on Fishing and Conservation of Living Resources of the High Seas – 20 March 1966

Although UNCLOS I was considered a success, it left open the important issue of breadth of territorial waters.

UNCLOS II

The United Nations followed this in 1960 with its second Conference on the Law of the Sea ("UNCLOS II"). UNCLOS II did not result in any international agreements. During the six-week conference at Geneva, UNCLOS II did not achieve much. Generally speaking, the developing countries participated only as clients, allies, or dependents of United States or the former Soviet Union; there was no voice for countries of the third world or the developing nations.

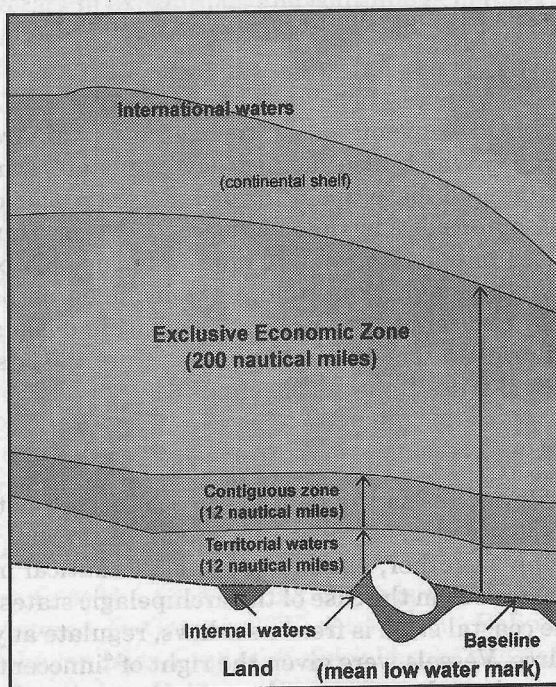
UNCLOS III

The issue of varying claims of territorial waters was raised in the UN in 1967 by Arvid Pardo, of Malta, and in 1973 the Third United Nations Conference on the Law of the Sea was convened in New York to write a new treaty covering the oceans. The conference

lasted until 1982 and over 160 nations participated. The conference was conducted under a process of consensus rather than majority vote in an attempt to reduce the possibility of groups of nation-states dominating the negotiations. The convention came into force on November 16, 1994, one year after the sixtieth state, Guyana, signed it.

The convention introduced a number of provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones (EEZ), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes. This was made effective on November 16, 1994. This governs the territorial jurisdiction of all archipelagic states.

The convention set the limit of various areas, measured from a carefully defined baseline, as follows:



Sea areas in international rights

(http://www.thefullwiki.org/United_Nations_Convention_on_Law_of_the_Sea –
accessed date: 3/4/2020)

Internal Waters

Internal waters cover all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate any use, and use any resource. Foreign vessels have no right of passage within internal waters. Bodies of water within the landmass, such as rivers, lakes, canals, gulfs, bays, and straits. The UN Convention on the Law of the Sea defines internal waters as all waters on the landward side of the baselines of the territorial sea.

Straight Baseline Method

In defining the internal waters of the archipelago, straight baseline should be drawn to connect appropriate points of the outermost islands without departing radically from the general direction of the coast so that the entire archipelago shall be encompassed as one whole territory. The waters inside these baselines shall be considered internal and thus not subject to entry by foreign vessels without consent of the local state.

Archipelagic Waters

The UNCLOS convention set the definition of Archipelagic States in Part IV, which also defined how the state can draw its territorial borders. A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline is described as Archipelagic Waters and are included as part of the state's territory and territorial waters. This baseline is also used to chart its territorial waters 12 nautical miles from the baseline and EEZ 200 nautical miles from the baseline.

Territorial Sea

The territorial sea is the belt of the sea located between the coast and internal waters of the coastal state on the one hand and the high seas on the other, extending up to 12 nautical miles from the low water mark or in the case of the archipelagic states, from the baselines. The coastal state is free to set laws, regulate any use, and use any resource. Vessels were given the right of "innocent passage" through any territorial waters, with strategic straits allowing the passage of military craft as "transit passage," in that naval vessels are allowed to maintain postures that would be illegal in territorial waters.

2004 Bar Exam Question No. II (B)

Distinguish clearly but briefly between: The territorial sea and the internal waters of the Philippines.

Suggested Answer:

The territorial sea is the belt of the sea located between the coast and internal waters of the coastal state on the one hand and the high seas on the other, extending up to 12 nautical miles from the low water mark or in the case of the archipelagic states, from the baselines, on the other hand, the internal waters cover all water and waterways on the landward side of the baseline. The coastal state is free to set laws, regulate any use, and use any resource.

Right of Innocent Passage

Innocent Passage is defined by the convention as passing through waters in expeditious and continuous manner, which is not "prejudicial to the peace, good order or the security" of the coastal state. Fishing, polluting, weapons practice, and spying are not "innocent." Nations can also temporarily suspend innocent passage in specific areas of their territorial seas if doing so is essential for the protection of its security.

Innocent passage means navigation through the territorial sea of a state for the purpose of traversing that sea without entering internal water, or of proceeding to internal waters, or making for the high seas from internal waters, as long as it is not prejudicial to the peace, good order or security of the coastal state.

Ships of all states enjoy the right of innocent passage through the territorial sea. The passage must be continuous and expeditious except in cases of *force majeure*. Submarines and underwater craft are required to navigate on the surface and to show their flag.

2004 Bar Exam Question No. II (B)

En route to the tuna fishing grounds in the Pacific Ocean, a vessel registered in Country TW entered the Balintang Channel north of Babuyan Island and with special hooks and nets dragged up red corals found near Batanes. By international convention, certain corals are protected species. Just before the vessel reached the high seas, the Coast Guard patrol intercepted the vessel and seized its cargo including tuna.

The master of the vessel and the owner of the cargo protested, claiming the rights of transit passage and innocent passage, and sought recovery of the cargo and the release of the ship. Is the claim meritorious or not? Reason briefly.

Suggested Answer:

There is no merit in that claim of innocent passage. To begin with, Balintang Channel is an internal water of the Philippines. Under the UNCLOS Convention, ships of all states enjoy the right of innocent passage only through the territorial sea and not in the internal waters.

Second, innocent passage is defined by the convention as passing through waters in expeditious and continuous manner, which is not "prejudicial to the peace, good order or the security" of the coastal state. Fishing, polluting, weapons practice, spying are not "innocent." Nations can also temporarily suspend innocent passage in specific areas of their territorial seas if doing so is essential for the protection of its security. That being the case, the claim of the master and owner of the vessel is not meritorious.

Contiguous Zone

The *contiguous zone* is the 12 nautical mile limit from the territorial sea. In that area, a state could continue to enforce laws regarding activities such as smuggling or illegal immigration. Under the UN Convention on the Laws of the Sea, the coastal state may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, and sanitary regulations and punish the said infringement.

2015 Bar Exam Question No. II

(2) Describe the following maritime regimes under UNCLOS (4%)

- (a) Territorial sea
- (b) Contiguous zone
- (c) Exclusive economic zone
- (d) Continental shelf

2005 Bar Exam Question No. 1 (c)

Enumerate the rights of the coastal state in the exclusive economic zone. (3%)

Exclusive Economic Zone (EEZ)

Technically, it is the area beyond the territorial sea and is not part of the territory of the state, but the coastal state may exercise sovereign rights over economic resources of the sea, seabed, subsoil although other states shall have freedom of navigation and over flight, to lay submarine cables and pipelines and other lawful uses.

States with overlapping exclusive economic zones are enjoined to enter into the appropriate treaty for the joint exploitation and utilization of the resources in the area. It extends 200 nautical miles from the baseline. Within this area, the coastal nation has sole exploitation rights over all-natural resources. The EEZ was introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The success of an offshore oil platform in the Gulf of Mexico in 1947 was soon repeated elsewhere in the world. By 1970, it was technically feasible to operate in waters 4,000 meters deep. Foreign nations have the freedom of navigation and overflight, subject to the regulation of the coastal states. Foreign states may also lay submarine pipes and cables.

Jurisdiction over Exclusive Economic Zone

Under the UN Convention on the law of the sea, the coastal state has sovereign rights over the exclusive economic zone for purposes of exploring and exploiting, conserving, and managing the natural resources, whether living or non-living, of the seabed, the subsoil, and the superjacent waters, as well as the production of energy from the water, currents, and winds. Other states shall have the freedom of navigation and over-flight, to lay submarine cables and pipes and other lawful uses.

Continental Shelf

The continental shelf is defined as natural prolongation of the land territory to the continental margin's outer edge, or 200 nautical miles from the coastal state's baseline, whichever is greater. State's continental shelf may exceed 200 nautical miles until the natural prolongation ends, but it may never exceed 350 nautical

miles, or 100 nautical miles beyond 2,500-meter isobath, which is a line connecting the depth of 2,500 meters. States have the right to harvest mineral and non-living material in the subsoil of their continental shelf, to the exclusion of others.

Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and protecting freedom of scientific research on the high seas and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an *International Seabed Authority*.

Landlocked states are given a right of access to and from the sea, without taxation of traffic through transit states.

Jurisdiction over the Continental Shelf

The coastal state also enjoys the right of exploitation of oil deposits and other resources in the continental shelf. In case the continental shelf extends to the shores of another state, or is shared with another state, the boundary shall be determined in accordance with equitable principles.

High Seas

These are treated as *res communes* or *res nullius*, or thus, are not a territory of any particular state. There is freedom of navigation or the right to sail ships on the high seas subject only to international law and the laws of the flag state.

International Water

The terms international waters or transboundary waters apply where any of the following types of bodies of water (or their drainage basins) transcend international boundaries: oceans, large marine ecosystems, enclosed or semi-enclosed regional seas, and estuaries, rivers, lakes, groundwater systems (aquifers), and wetlands. Oceans and seas or waters outside of national jurisdiction are also referred to as the high seas or *mare liberum*.

Ships sailing the high seas are generally under flag state jurisdiction. However, in cases of piracy or slave trade, any nation can exercise jurisdiction.

The International Tribunal on the Laws of the Sea (ITLOS)

The Tribunal is composed of 21 independent members elected through secret ballot by the State Parties to the Convention. Each State Party may nominate up to two candidates from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. Its permanent headquarters are in Hamburg, Germany. Hamburg was chosen to be the seat of the Tribunal by the representatives of the States participating in the Third United Nations Conference on the Law of the Sea by secret ballot on 21 August 1981. The choice of Hamburg, a well-known port city reputed for its long tradition in international shipping and maritime trade, is reflected in Article 1, paragraph 2, of the Statute of the Tribunal. (www.itlos.org – accessed date: 3/4/2020)

Jurisdiction

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with the Convention. It also includes all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal (*Statute, Article 21*). The Tribunal has jurisdiction to deal with disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it. (www.itlos.org – accessed date: 3/4/2020)

Contentious Jurisdiction

The Tribunal has jurisdiction over all disputes concerning the interpretation or application of the Convention, subject to the provisions of Article 297 and to the declarations made in accordance with Article 298 of the Convention.

Article 297 and declarations made under Article 298 of the Convention do not prevent parties from agreeing to submit to the Tribunal a dispute otherwise excluded from the Tribunal's jurisdiction under these provisions. (*Convention, Article 299*)

The Tribunal also has jurisdiction over all disputes submitted to it pursuant to the provisions of any other agreement between states which confers jurisdiction to it.

Advisory Jurisdiction

The Seabed Disputes Chamber is competent to give an advisory opinion on legal questions arising within the scope of the activities of the Assembly or Council of the International Seabed Authority. (*Article 191 of the Convention*)

The Tribunal may also give an advisory opinion on a legal question if this is provided for by "an international agreement related to the purposes of the Convention" (*Rules of the Tribunal, Article 138*). (www.itlos.org – accessed date: 3/4/2020)

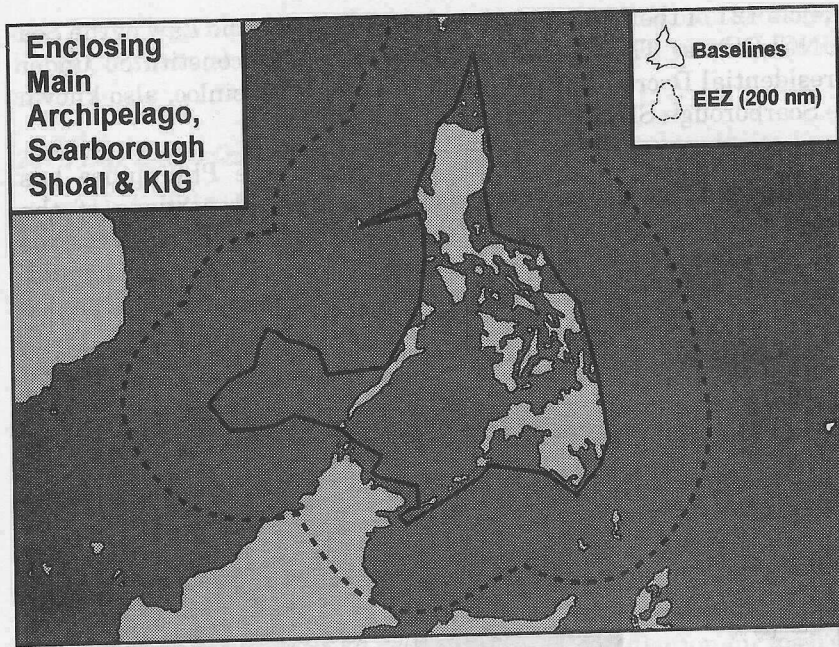
The Philippine Territory

The territory of the state consists of terrestrial or land territory, fluvial and maritime or water domain, and aerial domains. The territory of the Philippines is defined by *Article I of the 1987 Constitution*:

The National Territory comprises the Philippine Archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial seas, the seabed, the subsoil, the insular shelves, and other submarine areas. The water around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

Philippine Baselines Laws

On June 17, 1961, Congress enacted *Republic Act No. 3046* which was the first Philippine Baselines Law. The bases of the law were Article 3 of the Treaty of Paris concluded between the United States and Spain on December 10, 1898 – in which the Philippine Islands was ceded to the United States by Spain in the amount of twenty million US dollars, the treaty concluded at Washington, between the United States and Spain on November 7, 1900 – in which the United States paid another one hundred thousand US dollars to Spain, and the treaty concluded between the United States and Great Britain on January 2, 1930. Based on this law, the Philippine baselines included Spratly's Islands and Scarborough Shoal.



The Philippine Baselines based on R.A. No. 3046
(www.pinoyexchange.com – accessed date: 3/4/2020)

Republic Act No. 5446

On September 18, 1968, Republic Act No. 5446 was enacted to amend Section 1 of Republic Act No. 3046. The law was intended to correct typographical errors in Republic Act No. 3046. It also provided the definition of the baselines of the territorial sea of the Philippine Archipelago without prejudice to the delineation of the baselines of the territorial sea around the territory of Sabah, situated in North Borneo, over which the Republic of the Philippines has acquired dominion and sovereignty.

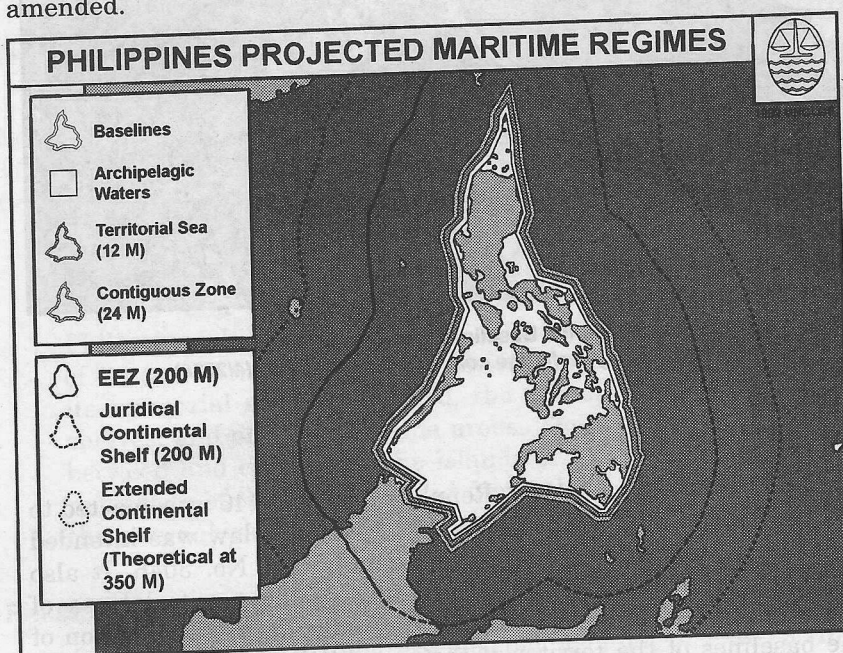
Republic Act No. 9522

Pursuant to UNCLOS III mandates, Congress enacted on March 10, 2009 Republic Act No. 9522 amending Republic Act No. 3046 and Republic Act No. 5446.

This law provided among others that the baseline in the following areas over which the Philippines likewise exercises sovereignty and jurisdiction shall be determined as “Regime of Islands” under the Republic of the Philippines consistent with

Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS): a) The Kalayaan Island Group as constituted under Presidential Decree No. 1596; and b) Bajo de Masinloc, also known as Scarborough Shoal.

This Act affirms that the Republic of the Philippines has dominion, sovereignty and jurisdiction over all portions of the national territory as defined in the Constitution and by provisions of applicable laws including, without limitation, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, as amended.



Philippine Baselines based on R.A. No. 9522
(www.yonip.com/wp-content/uploads/2013/03/map – accessed date: 3/4/2020)

Regime of Islands

Article 121 of the United Nations Convention on the Law of the Sea (UNCLOS) defines Regime of Islands as: 1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide; 2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory;

and 3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

2015 Bar Exam Question No. II

(1) A bill was introduced in the House of Representatives in order to implement faithfully the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to which the Philippines is a signatory. Congressman Pat Rio Tek questioned the constitutionality of the bill on the ground that the provisions of UNCLOS are violative of the provisions of the Constitution defining the Philippine internal waters and territorial sea. Do you agree or not with the said objection? Explain. (3%)

Magallona vs. Ermita, G.R. No. 187167, July 16, 2011

Republic Act No. 9522 is not unconstitutional. It is a Statutory Tool to Demarcate the Country's Maritime Zones and Continental Shelf under UNCLOS III, not to Delineate Philippine Territory.

UNCLOS III has nothing to do with the acquisition (or loss) of territory. It is a multilateral treaty regulating, among others, sea-use rights over maritime zones (*i.e.*, the territorial waters [12 nautical miles from the baselines], contiguous zone [24 nautical miles from the baselines], exclusive economic zone [200 nautical miles from the baselines]), and continental shelves that UNCLOS III delimits. UNCLOS III was the culmination of decades-long negotiations among United Nations members to codify norms regulating the conduct of States in the world's oceans and submarine areas, recognizing coastal and archipelagic States' graduated authority over a limited span of waters and submarine lands along their coasts.

On the other hand, baselines laws such as Republic Act No. 9522 are enacted by UNCLOS III State parties to mark out specific base points along their coasts from which baselines are drawn, either straight or contoured, to serve as geographic starting points to measure the breadth of the maritime zones and continental shelf.

Thus, baselines laws are nothing but statutory mechanisms for UNCLOS III States parties to delimit with precision the extent of their maritime zones and continental shelves. In turn, this gives notice to the rest of the international community of the scope of the maritime space and submarine areas within which State parties exercise treaty-based rights, namely, the exercise of sovereignty

over territorial waters (*Article 2*), the jurisdiction to enforce customs, fiscal, immigration, and sanitation laws in the contiguous zone (*Article 33*), and the right to exploit the living and non-living resources in the exclusive economic zone (*Article 56*) and continental shelf (*Article 77*).

Even under petitioners' theory that the Philippine territory embraces the islands and all the waters within the rectangular area delimited in the Treaty of Paris, the baselines of the Philippines would still have to be drawn in accordance with Republic Act No. 9522 because this is the only way to draw the baselines in conformity with UNCLOS III. The baselines cannot be drawn from the boundaries or other portions of the rectangular area delineated in the Treaty of Paris, but from the "outermost islands and drying reefs of the archipelago."

UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement, or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession, and prescription, not by executing multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III and are instead governed by the rules on general international law.

Had Congress in Republic Act No. 9522 enclosed the KIG and the Scarborough Shoal as part of the Philippine archipelago, adverse legal effects would have ensued. The Philippines would have committed a breach of two provisions of UNCLOS III. First, Article 47(3) of UNCLOS III requires that "the drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago." Second, Article 47(2) of UNCLOS III requires that "the length of the baselines shall not exceed 100 nautical miles," save for three percent (3%) of the total number of baselines which can reach up to 125 nautical miles.

Although the Philippines has consistently claimed sovereignty over the KIG³² and the Scarborough Shoal for several decades, these outlying areas are located at an appreciable distance from the nearest shoreline of the Philippine archipelago, such that any straight baseline loped around them from the nearest basepoint will inevitably "depart to an appreciable extent from the general configuration of the archipelago."

The principal sponsor of Republic Act No. 9522 in the Senate, Senator Miriam Defensor-Santiago, took pains to emphasize the foregoing during the Senate deliberations:

What we call the Kalayaan Island Group or what the rest of the world call the Spratlys and the Scarborough Shoal are outside our archipelagic baseline because *if we put them inside our baselines we might be accused of violating the provision of international law which states: "The drawing of such baseline shall not depart to any appreciable extent from the general configuration of the archipelago."* So sa loob ng ating baseline, dapat magkalapit ang mga islands. Dahil malayo ang Scarborough Shoal, hindi natin masasabing malapit sila sa atin although we are still allowed by international law to claim them as our own.

This is called contested islands outside our configuration. We see that our archipelago is defined by the orange line which [we] call archipelagic baseline. Ngayon, tingnan ninyo ang maliit na circle doon sa itaas, that is Scarborough Shoal, itong malaking circle sa ibaba, that is Kalayaan Group or the Spratlys. *Malayo na sila sa ating archipelago kaya kung ilihis pa natin ang dating archipelagic baselines para lamang masama itong dalawang circles, hindi na sila magkalapit at baka hindi na tatanggapin ng United Nations because of the rule that it should follow the natural configuration of the archipelago.*

Hence, far from surrendering the Philippines' claim over the KIG and the Scarborough Shoal, Congress' decision to classify the KIG and the Scarborough Shoal as "Regimes of Islands" under the Republic of the Philippines consistent with Article 121" of UNCLOS III manifests the Philippine State's responsible observance of its *pacta sunt servanda* obligation under UNCLOS III. Under Article 121 of UNCLOS III, any "naturally formed area of land, surrounded by water, which is above water at high tide," such as portions of the KIG, qualifies under the category of "regime of islands," whose islands generate their own applicable maritime zones.

As their final argument against the validity of Republic Act No. 9522, petitioners contend that the law unconstitutionally "converts" internal waters into archipelagic waters, hence subjecting these

waters to the right of innocent and sea lanes passage under UNCLOS III, including overflight. Petitioners extrapolate that these passage rights indubitably expose Philippine internal waters to nuclear and maritime pollution hazards, in violation of the Constitution.

Whether referred to as Philippine "internal waters" under Article I of the Constitution or as "archipelagic waters" under UNCLOS III (*Article 49 [1]*), the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the air space over it and the submarine areas underneath.

The fact of sovereignty, however, does not preclude the operation of municipal and international law norms subjecting the territorial sea or archipelagic waters to necessary, if not marginal, burdens in the interest of maintaining unimpeded, expeditious international navigation, consistent with the international law principle of freedom of navigation. Thus, domestically, the political branches of the Philippine government, in the competent discharge of their constitutional powers, may pass legislation designating routes within the archipelagic waters to regulate innocent and sea lanes passage. Indeed, bills drawing nautical highways for sea lanes passage are now pending in Congress.

In the absence of municipal legislation, international law norms, now codified in UNCLOS III, operate to grant innocent passage rights over the territorial sea or archipelagic waters, subject to the treaty's limitations and conditions for their exercise. Significantly, the right of innocent passage is a customary international law, thus automatically incorporated in the corpus of Philippine law. No modern State can validly invoke its sovereignty to absolutely forbid innocent passage that is exercised in accordance with customary international law without risking retaliatory measures from the international community.

The fact that for archipelagic States, their archipelagic waters are subject to both the right of innocent passage and sea lanes passage do not place them in lesser footing *vis-à-vis* continental coastal States which are subject, in their territorial sea, to the right of innocent passage and the right of transit passage through international straits. The imposition of these passage rights through archipelagic waters under UNCLOS III was a concession by archipelagic States, in exchange for their right to claim all the waters landward of their baselines, regardless of their depth or distance from the coast, as archipelagic waters subject to their territorial sovereignty. More importantly, the recognition of archipelagic States' archipelago and

the waters enclosed by their baselines as one cohesive entity prevent the treatment of their islands as separate islands under UNCLOS III. Separate islands generate their own maritime zones, placing the waters between islands separated by more than 24 nautical miles beyond the States' territorial sovereignty, subjecting these waters to the rights of other States under UNCLOS III.

Petitioners' invocation of non-executory constitutional provisions in Article II (Declaration of Principles and State Policies) must also fail. Our present state of jurisprudence considers the provisions in Article II as mere legislative guides, which, absent enabling legislation, "do not embody judicially enforceable constitutional rights x x x." Article II provisions serve as guides in formulating and interpreting implementing legislation, as well as in interpreting executory provisions of the Constitution. Although *Oposa v. Factoran* treated the right to a healthful and balanced ecology under Section 16 of Article II as an exception, the present petition lacks factual basis to substantiate the claimed constitutional violation. The other provisions petitioners cite, relating to the protection of marine wealth (*Article XII, Section 2, paragraph 251*) and subsistence fishermen (*Article XIII, Section 752*), are not violated by Republic Act No. 9522.

In fact, the demarcation of the baselines enables the Philippines to delimit its exclusive economic zone, reserving solely to the Philippines the exploitation of all living and non-living resources within such zone. Such a maritime delineation binds the international community since the delineation is in strict observance of UNCLOS III. If the maritime delineation is contrary to UNCLOS III, the international community will of course reject it and will refuse to be bound by it.

UNCLOS III favors States with a long coastline like the Philippines. UNCLOS III creates a *sui generis* maritime space – the exclusive economic zone – in waters previously part of the high seas. UNCLOS III grants new rights to coastal States to exclusively exploit the resources found within this zone up to 200 nautical miles. UNCLOS III, however, preserves the traditional freedom of navigation of other States that are attached to this zone beyond the territorial sea before UNCLOS III.

The enactment of UNCLOS III compliant baselines law for the Philippine archipelago and adjacent areas, as embodied in Republic Act No. 9522, allows an internationally recognized delimitation of the breadth of the Philippines' maritime zones and continental shelf.

Republic Act No. 9522 is therefore a most vital step on the part of the Philippines in safeguarding its maritime zones, consistent with the Constitution and our national interest.

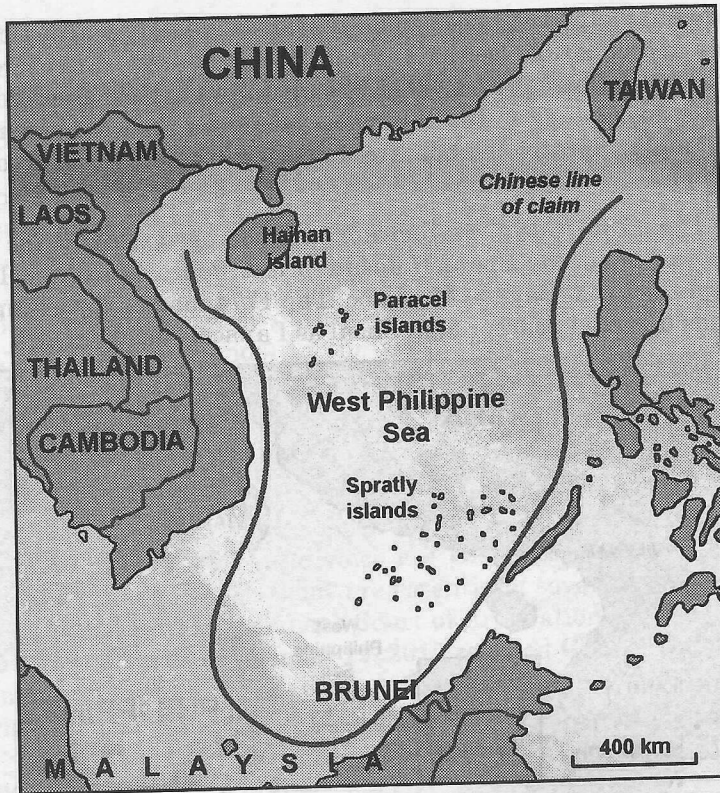
Kalayaan Islands

Kalayaan is composed of only one barangay, Pag-Asa. This island has a 1.3 km airstrip that is used both by the military and civilians. It has a regulated civilian population of about 350, most of whom are fishermen.

In 1947, Tomas Cloma, a Filipino adventurer and a fishing magnate, discovered several uninhabited and unoccupied groups of islands/islets in the vastness of the South China Sea. On May 11, 1956, together with 40 men, Tomas Cloma and his brother Filemon took formal possession of the islands, lying some 380 miles west of the southern end of Palawan and named it "Freedomland." Four days later, on May 15, 1956, Cloma issued and posted copies of his "Notice to the Whole World" on each of the islands as a decisive manifestation of unwavering claim over the territory.

Then on May 31, 1956, Tomas Cloma declared the establishment of the Free Territory of Freedomland, 10 days after he sent his second representation to the Secretary of Foreign Affairs, informing the latter that the territory claimed was named "Freedomland." On July 6, 1956, Cloma declared to the whole world his claim and the establishment of a separate government for the "Free Territory of Freedomland" with its capital on Flat Island (Patag Island). His declaration was met with violent and unfriendly reactions from several neighboring countries especially Taiwan when on September 24, 1956 it effectively garrisoned the nearby island of Itu Aba and intercepted Cloma's men and vessels found within its immediate waters.

Unable to surmount the difficulties and pressure, he ceded his claim to the Philippines for one peso. On March 1976, President Marcos issued the Letter of Instruction (LOI) No. 1-76 organizing the Western Command based in Palawan in response to the heightening conflict of interest in the region and to abate any untoward incident. To further the claim of the Philippines, on June 11, 1978 President Marcos, by virtue of Presidential Decree No. 1596, formally annexed the Kalayaan Islands creating a distinct and separate Municipality known as "Kalayaan" under the political jurisdiction of the Province of Palawan, but under the custody of the Department of National Defense.



Kalayaan Islands

(www.timawa.net/forum/index.php – accessed date: 3/4/2020)

Scarborough Shoal

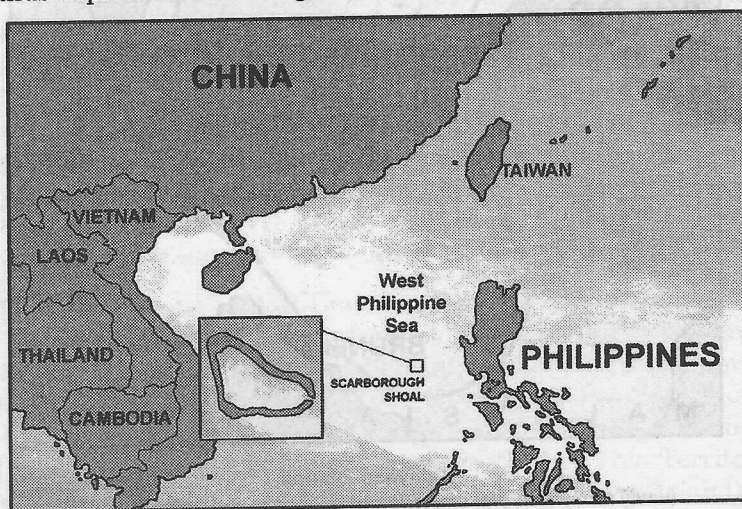
Scarborough Shoal forms a triangle-shaped chain of reefs and rocks or very small islands 55 kilometers (34 mi) in circumference with a total area including shallow water areas of 150 square kilometers. The shoal is about 123 miles (198 km) west of Subic Bay. To the east of the shoal is the 5,000-6,000-meter-deep Manila Trench. The nearest landmass is Palauig, Zambales, 137 miles (220 km) in east.

The name Scarborough shoal was taken after the East India company tea trade ship *Scarborough* that hit the rocks on September 12, 1784 in which everyone on board perished.

The Philippines' assertion of sovereignty over the shoal is based on the juridical criteria established by public international law on

the lawful methods for the acquisition of sovereignty which includes effective occupation, cession, prescription, conquest, and accretion. Presidential Decree No. 1596 issued on June 11, 1978 asserted that islands designated as the Kalayaan Island Group and comprising most of the Spratly Islands are subject to the sovereignty of the Philippines.

The 1734 "*Carta hydrographica y chorographica de las Islas Filipinas*" made by Spanish Jesuit priest Pedro Murillo Velarde, named the shoal Bajo de Masinloc. The 1774 map of the Philippine Islands depicted Scarborough Shoal as Panacot Shoal.



Scarborough Shoal

(www.interaksyon.com – accessed date: 3/4/2020)

Republic of the Philippines vs. People's Republic of China (PCA Case No. 2013–19)

On January 22, 2013, the Republic of the Philippines instituted arbitral proceedings against the People's Republic of China under Annex VII to the United Nations Convention on the Law of the Sea (the "Convention"), "with respect to the dispute with China over the maritime jurisdiction of the Philippines in the West Philippine Sea." On February 19, 2013, China presented a Note Verbale to the Philippines in which it described "the Position of China on the South China Sea issues," rejected and returned the Philippines' Notification. On March 30, 2013, the Philippines filed a voluminous (4,000-page) 'memorial' to the ITLOS.

In a Note Verbale to the Permanent Court of Arbitration on August 1, 2013, China reiterated its position that “it does not accept the arbitration initiated by the Philippines.” On December 2014, China published a “Position Paper on the Matter of Jurisdiction in the South China Sea Arbitration initiated by the Republic of the Philippines.” On June 21, 2013, the President of the International Tribunal for the Law of the Sea, *Judge Shunji Yanai*, appointed Thomas A. Mensah (Ghana) as arbitrator and president together with Judge Jean-Pierre Cot (France), Judge Stanislaw Pawlak (Poland), Judge Rüdiger Wolfrum (Germany), and Professor Alfred H. A. Soons (Netherlands) in the arbitral proceedings instituted by the Republic of the Philippines against the People’s Republic of China under Annex VII to the United Nations Convention on the Law of the Sea.

Beijing contends that the special arbitral tribunal at The Hague, where the Philippines filed a memorial earlier this year, has no jurisdiction over the issue since the UNCLOS does not accord it the mandate to address what are essentially sovereignty-related issues. However, the Permanent Court of Arbitration (PCA) at The Hague, Netherlands on October 29, 2015 rejected China’s strongest argument against the Philippines and ruled that the tribunal has the right to hear the Philippines’ case.

Ruling of the Arbitral Tribunal

On July 12, 2016, the arbitral tribunal ruled in a decision consisting of 501 pages in favor of the Philippines against China on the following issues:

a) *Historic Rights and the ‘Nine-Dash Line’*

China had historic rights to resources in the waters of the South China Sea, such rights were extinguished to the extent they were incompatible with the exclusive economic zones provided for in the Convention. There was no evidence that China had historically exercised exclusive control over the waters or their resources. The Tribunal concluded that there was no legal basis for China to claim historic rights to resources within the sea areas falling within the ‘nine-dash line.’

b) *Status of Features*

The Tribunal noted that the reefs have been heavily modified by land reclamation and construction, recalled that the Convention

classifies features on their natural condition, and relied on historical materials in evaluating the features. The Tribunal found historical evidence to be more relevant and noted that the Spratly Islands were historically used by small groups of fishermen and that several Japanese fishing and guano mining enterprises were attempted. The Tribunal concluded that such transient use does not constitute inhabitation by a stable community and that all of the historical economic activities had been extractive. Accordingly, the Tribunal concluded that none of the Spratly Islands is capable of generating extended maritime zones.

The Tribunal also held that the Spratly Islands cannot generate maritime zones collectively as a unit. Having found that none of the features claimed by China was capable of generating an exclusive economic zone, the Tribunal found that it could—without delimiting a boundary—declare that certain sea areas are within the exclusive economic zone of the Philippines because those areas are not overlapped by any possible entitlement of China.

c) Lawfulness of Chinese Actions

Having found that certain areas are within the exclusive economic zone of the Philippines, the Tribunal found that China had violated the Philippines' sovereign rights in its exclusive economic zone by (a) interfering with Philippine fishing and petroleum exploration, (b) constructing artificial islands, and (c) failing to prevent Chinese fishermen from fishing in the zone. The Tribunal also held that fishermen from the Philippines (like those from China) had traditional fishing rights at Scarborough Shoal and that China had interfered with these rights in restricting access. The Tribunal further held that Chinese law enforcement vessels had unlawfully created a serious risk of collision when they physically obstructed Philippine vessels.

d) Harm to Marine Environment

The Tribunal considered the effect on the marine environment of China's recent large-scale land reclamation and construction of artificial islands and other artificial features in the Spratly Islands and found that China had caused severe harm to the coral reef environment and violated its obligation to preserve and protect fragile ecosystems and the habitat of depleted, threatened, or endangered species. The Tribunal also found that Chinese authorities were aware that Chinese fishermen have harvested endangered sea turtles, coral, and giant clams on a substantial scale

in the South China Sea (using methods that inflict severe damage on the coral reef environment) and had not fulfilled their obligations to stop such activities.

e) Aggravation of Dispute

Finally, the Tribunal considered whether China's actions since the commencement of the arbitration had aggravated the dispute between the Parties. The Tribunal found that it lacked jurisdiction to consider the implications of a stand-off between Philippine marines and Chinese naval and law enforcement vessels at Second Thomas Shoal, holding that this dispute involved military activities and was therefore excluded from compulsory settlement.

The Tribunal found, however, that China's recent large-scale land reclamation and construction of artificial islands were incompatible with the obligations on a State during dispute resolution proceedings, in so far as China has inflicted irreparable harm to the marine environment, built a large artificial island in the Philippines' exclusive economic zone, and destroyed evidence of the natural condition of features in the South China Sea that formed part of the Parties' dispute. (*globalnation.inquirer.net* – accessed date: 3/4/2020)

The Sabah Issue

Sabah is the easternmost of the 13 member states of Malaysia. It is located on the northern portion of the island of Borneo and the second largest state in the country after Sarawak. In the 1640s, the Spanish government in the Philippines signed peace treaties with the strongest sultanates, Sulu and Maguindanao, recognizing their *de facto* independence.

The Sultan of Sulu became sovereign ruler of most of North Borneo in 1704 by virtue of a cession from the Sultan of Brunei whom he had helped in suppressing a rebellion which led to a 10-year civil war in Brunei. Due to the military aid from the Sulu sultan, the victor, Sultan Muaddin, later ceded Sabah to the Sulu sultan. However, there is no document stating the grant of North Borneo from Sultan of Brunei to Sultan of Sulu, but no one is questioning its veracity either.

On September 12, 1762, the Sultanate of Sulu ceded the island of Balambangan to British East India Company, but later abandoned it in 1805. The British resumed contact with the Sultanate of Sulu in 1814 when Sir Stanford Raffles sent John Hunt on a failed mission

to mend relations with sultanate. On January 22, 1878, Sir Alfred Dent obtained sovereign control over the northern part of Borneo for 5,300 ringgit (\$5,000) from the Sultans of Brunei and Sulu. Such concession was later confirmed by Her Majesty's Royal Charter in November, 1881 granted to the British North Borneo Co.

In 1878, Sultan Mohammed Jamalul Alam of Sulu appointed Baron de Overbeck as Datu Bendajara and Raja of North Borneo. Baron de Overbeck, an Austrian national heavily connected with the house of Dent and Co. at Hong Kong who was sent to Borneo as a representative of Dent and Co. to enter negotiations with Sultans and Chiefs of Brunei and Sulu.



Sabah (North Borneo)

(www.inquirer.net – accessed date: 3/4/2020)

On July 4, 1878, according to the letter of the Mohammed Jamalul Alam to the Captain-General of the Philippines, Sandakan was not ceded to the United Kingdom but was only leased. In 1892, Jose Rizal proposed to the Spanish government the establishment of a Filipino colony in Sabah, but the plan did not push through as it was rejected by Governor-General Eulogio Despujol.

On December 18, 1939, the High Court of the State of North Borneo handed a decision in Civil Suit No. 169/39. The North Borneo Chief Justice C.F.C. Mackaskie stated that the heirs of the sultan of Sulu were legally entitled to the payment for North Borneo, which the decision called as “cession payment” on the basis of an English translation by Maxwell and Gibson.

On May 27, 1961, the British government was due to grant Malaysia its independence which would include North Borneo (Sabah). It was during this time when then-President Diosdado Macapagal was forced to initiate the filing of the Philippine claim in North Borneo (Sabah) as it was being considered as a member of the proposed concept of Malaysia broached by Prime Minister Tengku Abdur Rahman in Singapore.

On April 24, 1962, the Heirs of the Sultan of Sulu ceded sovereignty rights over Sabah to the Philippine Government. Then on August 16-September 5, 1963, the United Nations Malaysia Mission was sent to Sabah and Sarawak in order to assess if their population agreed in joining Malaysia.

On September 16, 1963, the Federation of Malaysia came into being as a sovereign state, with North Borneo as one of the component states. On September 17, 1963, the Philippines refused to recognize Malaysia. The same act was done by Indonesia as both the Philippines and Indonesia rejected the UN findings and broke off diplomatic relations with Kuala Lumpur.

In August-December 1967, the Marcos administration initiated the Jabidah unit training for their mission to destabilize Sabah. And on December 30, 1967, 135 of the 180 trainees of Jabidah were brought to Corregidor for "Special Training." But due to various untoward events, on March 18, 1968 the infamous Jabidah Massacre happened, killing all except two trainees who managed to escape the carnage. On March 28, 1968, Oplan Jabidah was exposed in a privilege speech of Senator Benigno S. Aquino, Jr.

Then on February 12, 2013, the followers of Jamalul Kiram numbering over 200 men landed in Lahad Datu village in Sabah to take possession of their own territory and take it back from Malaysia. The incident resulted to the death or imprisonment of most of Kiram's followers.

C. Government

A government is the agency or machinery that carries out the will of the state. In its broad sense, to govern means to rule over or supervise, whether over a state, a set group of people, or a collection of people.

It refers to the organization, machinery, or agency through which a political unit exercises authority and performs functions and which is usually classified according to the distribution of power

within it. (www.merriam-webster.com/dictionary/government – accessed date: 3/4/2020)

The government must be organized, exercising control over, and capable of maintaining law and order within the territory. It can be held internationally responsible for the acts of the inhabitants. The identity of the state is not affected by changes in the government.

Forms of Government

The government as an entity comes in different forms as the people of the state may deem appropriate. The following are the major forms of government under international law:

1. **Monarchy** – is one in which the supreme authority is in the hands of a single person. Monarchies are classified into:

Absolute monarchy – one in which the ruler rules by divine right; and as the name suggests, the monarch has absolute rule over the lives of his subjects. Some authors call this government autocracy.

Limited monarchy – one in which the ruler governs in accordance with a constitution. The monarch is just a symbolic head of the state and has no absolute control of the government or over the lives of his subjects. This is the form of modern monarchical states.

2. **Aristocracy** – is a government in which political power is exercised by a few privileged individuals known as aristocrats. The term is derived from the Greek *aristokratia*, meaning *rule of the best*.

Oligarchy is a form of aristocracy but the basis of leadership is the wealth of the rulers, meaning only the rich can have the reigns of the government. The term is derived from the Greek *oligarkhía* meaning *to rule or to command*.

3. **Democracy** – is a government in which the political power is exercised by a majority of the people. The term is derived from the Greek *dēmokratía* meaning *rule of the people*, which was derived from words *demos* meaning *masses* and *kratos* meaning *power*.

The modern meaning of democracy is often attributed to the wordings of President Abraham Lincoln of the United States in his famous Gettysburg Address on November 19, 1863 “*That this nation under God shall have a new birth of freedom and that government*

of the people by the people for the people shall not perish from the earth."

Direct or pure democracy – It is one in which the will of the State is formulated or expressed directly through the people in a mass meeting or assembly. This is attributed to the governmental system of ancient Athens where every citizen has the right to participate in governance.

Indirect, representative or republican democracy – a government in which the will of the State is formulated through a relatively small and select body of persons chosen by the people to act as their representatives. This is the most common type of democracy today.

Based on *Article II, Section 1 of the 1987 Philippine Constitution*, the Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them.

Other Forms of Government

The following are the other common types of government of modern states:

1. **Unitary** – a government in which the control of national and local affairs is exercised by the national government. This is a centralized government, and the Philippines has this kind of government.

2. **Federal** – one in which the power of the government is divided between two agencies, one for national affairs and the other for local affairs, each organ being supreme within its own jurisdiction. A good example of this kind is the government of the United States of America.

3. **Parliamentary** – a government in which the state confers upon the legislature the power to terminate the tenure of the executive. Under this system, the Cabinet or Ministry is immediately and legally responsible to the legislature and politically responsible to the electorate. The people in this system directly elect the members of the legislative department but cannot directly elect the members of the executive branch because the members of the legislature are the ones who elect the executives particularly the prime minister.

4. **Presidential** – a government where the executive is independent of the legislative as to tenure, policies, and acts. The president and the members of the legislative department are directly and separately elected by the people.

5. **De Jure** – the administration of this government may or may not have the support of the people, but it is founded on existing constitutional laws of the state. The term *de jure* is a Latin expression which means *concerning law*.

6. **De Facto** – the government is founded not on existing constitutional laws of the state, but it has the support of the majority of the people. The term *de facto* is a Latin expression which means *concerning fact*.

2006 Bar Exam Question No. VI (1)

a) What is the principal identifying feature of a presidential form of government? Explain.

b) What are the essential characteristics of a parliamentary form of government?

Suggested Answer:

a) Presidential form is a government where the executive is independent of the legislative as to tenure, policies and acts. The president and the members of the legislative department are directly and separately elected by the people.

b) Parliamentary is a government in which the state confers upon the legislature the power to terminate the tenure of the executive. Under this system, the Cabinet or Ministry is immediately and legally responsible to the legislature and politically responsible to the electorate. The people in this system directly elect the member of the legislative department but cannot directly elect the members of the executive branch because the members of the legislative are the ones who elect the executives particularly the prime minister.

Estrada vs. Arroyo, G.R. No. 146738, March 2, 2001

On the line in the cases at bar is the office of the President. Petitioner Joseph Ejercito Estrada alleges that he is the President on leave while respondent Gloria Macapagal-Arroyo claims she is the President. The warring personalities are important enough, but more transcendental are the constitutional issues embedded on the

parties' dispute. While the significant issues are many, the jugular issue involves the relationship between the ruler and the ruled in a democracy, Philippine style.

Petitioner denies he resigned as President or that he suffers from a permanent disability. Hence, he submits that the office of the President was not vacant when respondent Arroyo took her oath as president.

The issue then is whether the petitioner resigned as President or should be considered resigned as of January 20, 2001 when respondent took her oath as the 14th President of the Republic. Resignation is not a high-level legal abstraction. It is a factual question and its elements are beyond quibble: there must be an intent to resign and the intent must be coupled by acts of relinquishment. The validity of a resignation is not governed by any formal requirement as to form. It can be oral. It can be written. It can be expressed. It can be implied. As long as the resignation is clear, it must be given legal effect.

In the cases at bar, the facts show that petitioner did not write any formal letter of resignation before he evacuated Malacañang Palace in the afternoon of January 20, 2001, after the oath-taking of respondent Arroyo. Consequently, whether or not petitioner resigned has to be determined from his acts and omissions before, during, and after January 20, 2001 or by the totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue. Using this totality test, We hold that petitioner resigned as President.

In sum, We hold that the resignation of the petitioner cannot be doubted. It was confirmed by his leaving Malacañang. In the press release containing his final statement, (1) he acknowledged the oath-taking of the respondent as President of the Republic albeit with the reservation about its legality; (2) he emphasized he was leaving the Palace, the seat of the presidency, for the sake of peace and in order to begin the healing process of our nation. He did not say he was leaving the Palace due to any kind of inability and that he was going to re-assume the presidency as soon as the disability disappears; (3) he expressed his gratitude to the people for the opportunity to serve them. Without doubt, he was referring to the past opportunity given him to serve the people as President; (4) he assured that he will not shirk from any future challenge that may come ahead in the same service of our country. Petitioner's reference is to a future challenge

after occupying the office of the president which he has given up; and (5) he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. Certainly, the national spirit of reconciliation and solidarity could not be attained if he did not give up the presidency. The press release was petitioner's valedictory, his final act of farewell. His presidency is now in the past tense. In fine, even if the petitioner can prove that he did not resign, still, he cannot successfully claim that he is a President on leave on the ground that he is merely unable to govern temporarily.

That claim has been laid to rest by Congress and the decision that respondent Arroyo is the *de jure* President made by a co-equal branch of government cannot be reviewed by this Court.

Effect of Change in Government

It is well settled that as far as the rights of the predecessor government are concerned, they are inherited *in toto* by the successor government. As regards the obligations, distinction is made according to the manner of the establishment of the new government. The rule is that where the new government was organized by virtue of a constitutional reform duly ratified in a plebiscite, the obligations of the replaced government are also completely assumed by the former. In other words, in case of a revolution the new government may lawfully reject the purely personal or political obligations of the predecessor government but not those contracted by it in the ordinary course of official business.

Doctrine of *Parens Patriae*

Parens patriae is Latin for "parent of his or her country." In juvenile justice legal system, *parens patriae* is a doctrine that allows the state to step in and serve as a guardian for children, the mentally ill, the incompetent, the elderly, or disabled persons who are unable to care for themselves. (<https://study.com/academy/lesson/parens-patriae-in-juvenile-justice-definition-doctrine.html> – accessed date: 1/16/2020)

The provisions of Articles 320 and 321 of the Civil Code provide that, "the father, or in his absence, the mother, is the legal administrator of the property pertaining to the child under parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of

the Court of First Instance." The latter provides that "The property which the unemancipated child has acquired or may acquire with his work or industry, or by any lucrative title, belongs to the child in ownership, and in usufruct to the father or mother under whom he is under parental authority and whose company he lives.

With the added circumstance that the child stays with the mother, not the uncle, without any evidence of lack of maternal care, the decision arrived at can stand the test of the strictest scrutiny. It is buttressed by its adherence to the concept that the judiciary, as an agency of the State acting as *parens patriae*, is called upon whenever a pending suit of litigation affects one who is a minor to accord priority to his best interest. This prerogative of *parens patriae* is inherent in the supreme power of every State, whether that power is lodged in a royal person or in the legislature, and has no affinity to those arbitrary powers which are sometimes exerted by irresponsible monarchs to the great detriment of the people and the destruction of their liberties." What is more, there is this constitutional provision vitalizing this concept. (*Cabanas v. Pilapil*, 58 SCRA 94, July 25, 1974)

2006 Bar Exam Question No. X

1. How is state sovereignty defined in International Law?
2.5%
2. Is state sovereignty absolute? 2.5%

D. Sovereignty

Sovereignty is the supreme power of the state to enforce its will on its members within its jurisdiction and to have freedom from foreign control. It is the quality of having supreme, independent authority over a territory. It covers the power to rule and make law.

Province of North Cotabato vs. Government of the Republic of the Philippines, G.R. No. 183591, October 14, 2008

Subject of these consolidated cases is the extent of the powers of the President in pursuing the peace process. While the facts surrounding this controversy center on the armed conflict in Mindanao between the government and the Moro Islamic Liberation Front (MILF), the legal issue involved has a bearing on all areas in the country where there has been a long-standing armed conflict. Yet again, the Court is tasked to perform a delicate balancing act.

It must uncompromisingly delineate the bounds within which the President may lawfully exercise her discretion, but it must do so in strict adherence to the Constitution, lest its ruling, unduly restricts the freedom of action vested by that same Constitution in the Chief Executive precisely to enable her to pursue the peace process effectively.

The sovereign people may, if it so desired, go to the extent of giving up a portion of its own territory to the Moros for the sake of peace, for it can change the Constitution in any way it wants, so long as the change is not inconsistent with what, in international law, is known as *Jus Cogens*. Respondents, however, may not preempt it in that decision.

The MOA-AD cannot be reconciled with the present Constitution and laws. Not only its specific provisions but the very concept underlying them, namely, the associative relationship envisioned between the GRP and the BJE, are unconstitutional, for the concept presupposes that the associated entity is a state and implies that the same is on its way to independence.

While there is a clause in the MOA-AD stating that the provisions thereof inconsistent with the present legal framework will not be effective until that framework is amended, the same does not cure its defect. The inclusion of provisions in the MOA-AD establishing an associative relationship between the BJE and the Central Government is, itself, a violation of the Memorandum of Instructions from the President dated March 1, 2001, addressed to the government peace panel. Moreover, as the clause is worded, it virtually guarantees that the necessary amendments to the Constitution and the laws will eventually be put in place. Neither the GRP Peace Panel nor the President herself is authorized to make such a guarantee. Upholding such an act would amount to authorizing a usurpation of the constituent powers vested only in Congress, a Constitutional Convention, or the people themselves through the process of initiative, for the only way that the Executive can ensure the outcome of the amendment process is through an undue influence or interference with that process.

While the MOA-AD would not amount to an international agreement or unilateral declaration binding on the Philippines under international law, respondents' act of guaranteeing amendments is, by itself, already a constitutional violation that renders the MOA-AD fatally defective.

Kinds of Sovereignty

Sovereignty is either internal or external. *Internal sovereignty* refers to the supreme power of the state to enforce the laws within its territorial jurisdiction. This is known as police power. External sovereignty, on the other hand, refers to the power of the state to be free from external or foreign control. This is known as independence.

Is Sovereignty Absolute?

While sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. Unquestionably, the Constitution did not envision a hermit-type isolation of the country from the rest of the world. In its Declaration of Principles and State Policies, the Constitution "adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation and amity, with all nations."

By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* – international agreements must be performed in good faith. "A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties x x x. A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken."

By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by or derived from a convention or pact. After all, states, like individuals, live with coequals, and in pursuit of mutually covenanted objectives and benefits, they also commonly agree to limit the exercise of their otherwise absolute rights. Thus, treaties have been used to record agreements between States concerning such widely diverse matters as, for example, the lease of naval bases, the sale or cession of territory, the termination of war, the regulation of conduct of hostilities, the formation of alliances, the regulation of commercial relations, the settling of claims, the laying down of rules

governing conduct in peace and the establishment of international organizations. The sovereignty of a state therefore cannot in fact and in reality, be considered absolute. Certain restrictions enter into the picture: (1) limitations imposed by the very nature of membership in the family of nations and (2) limitations imposed by treaty stipulations. As aptly put by John F. Kennedy, "Today, no nation can build its destiny alone. The age of self-sufficient nationalism is over. The age of interdependence is here." (*Tanada v. Angara, G.R. No. 118295, May 2, 1997*)

Effect of Change in Sovereignty

A change of sovereignty will bring about the following effects:

Political laws are suspended subject to revival under the principle of *jus postlimini* upon the end of occupation. This applies only to civilians and not to members of the armed forces, except laws on treason, because treason is a breach of allegiance to the sovereign.

Non-Political laws are not affected since nonpolitical laws are laws intended to govern the relations of individuals.

Judicial decisions are valid during the occupation and even beyond it, except those of political complexion, which are automatically annulled upon the restoration of the legitimate authority.

The Principle of State Continuity

From the moment of creation, the state continues as a juridical person regardless of the changes in its circumstances provided, they do not result in the loss of any of its essential elements. (*Cruz, International Law, p. 73*) The disappearance of any element of statehood would cause the extinction of the state, but mere changes in one or more of those elements would not necessarily, as a rule, bring about such extinction.

Creation of New State

On July 9, 2011, the Republic of South Sudan became an independent state following a referendum with 98.83% of the voters agreed to separate this from the Republic of Sudan. States are created by any of the following: by peaceful acquisition of independence as in the case of the Philippines when it was granted independence by the United States in 1946; the United States gained its statehood by

revolution against Great Britain in 1776; Italy became a state by the unification of Naples, Sicily, and Sardinia under Giuseppe Garibaldi in 1860; Bangladesh became a state when it seceded from Pakistan in 1971 following the Bangladesh-India Allied Forces' defeat of the Pakistani army, culminating in the Liberation of Dhaka and the Surrender of Pakistan on 16 December 1971; and the Kingdom of the Netherlands was born in 1815 by agreement.

With the dissolution of Union of Soviet Socialist Republics (USSR) on December 25, 1991 new states emerged: 1. Armenia, 2. Azerbaijan, 3. Belarus, 4. Estonia, 5. Georgia, 6. Kazakhstan, 7. Kyrgyzstan, 8. Latvia, 9. Lithuania, 10. Moldova, 11. Russia, 12. Tajikistan, 13. Turkmenistan, 14. Ukraine, and 15. Uzbekistan.

Extinction of State

State may also become extinct due to several reasons. Czechoslovakia for example disappeared from the map of the world on January 1, 1993 due to voluntary dissolution which paved the way for the creation of two separate states – Czech Republic and the Republic of Slovakia. The Socialist Federal Republic of Yugoslavia was dissolved in November 1991 when war broke out between its former member states, particularly Serbia and Bosnia Herzegovina.

On December 25, 1991, Soviet President Mikhail Gorbachev resigned, declaring his office extinct, and handed over the Soviet nuclear missile launching codes to Russian President Boris Yeltsin. That same evening, the Soviet flag was lowered from the Kremlin for the last time and replaced with the Russian tricolor. Two weeks later, eight of the remaining nine republics signed the Alma-Ata Protocol formally establishing the Commonwealth of Independent States and declaring that the Union of Soviet Socialist Republics (USSR) is dissolved. The dissolution of the state also marked an end to the Cold War.