Republic of the Philippines
Supreme Court
Manila

EN BANC

MOST REV. PEDRO D. ARIGO, *Vicar Apostolic of Puerto Princesa* **D.D.; MOST REV. DEOGRACIAS S. INIGUEZ, JR.,** *Bishop-Emeritus of Caloocan*, **FRANCES Q. QUIMPO, CLEMENTE G. BAUTISTA, JR.,** *Kalikasan-PNE*, **MARIA CAROLINA P. ARAULLO, RENATO M. REYES, JR.,** *Bagong Alyansang Makabayan*, **HON. NERI JAVIER COLMENARES,** *Bayan Muna Party-list*, **ROLAND G. SIMBULAN, PH.D.,** *Junk VFA Movement*, **TERESITA R. PEREZ, PH.D., HON. RAYMOND V. PALATINO,** *Kabataan Party-list*, **PETER SJ. GONZALES,** *Pamalakaya*, **GIOVANNI A. TAPANG, PH. D.,** *Agham*, **ELMER C. LABOG,** *Kilusang Mayo Uno*, **JOAN MAY E. SALVADOR,** *Gabriela*, **JOSE ENRIQUE A. AFRICA, THERESA A. CONCEPCION, MARY JOAN A. GUAN, NESTOR T. BAGUINON, PH.D., A. EDSEL F. TUPAZ,**
Petitioners,

- versus -

SCOTT H. SWIFT *in his capacity as Commander of the U.S. 7th Fleet*, **MARK A. RICE** *in his capacity as Commanding Officer of the USS Guardian*, **PRESIDENT BENIGNO S. AQUINO III** *in his capacity as*

G.R. No. 206510

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,*
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,** *JJ.*

Promulgated:

SEPTEMBER 16, 2014

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* On official leave.
** No part.

Commander-in-Chief of the Armed Forces of the Philippines, **HON. ALBERT F. DEL ROSARIO,** *Secretary, Department of Foreign Affairs,* **HON. PAQUITO OCHOA, JR.,** *Executive Secretary, Office of the President,* **HON. VOLTAIRE T. GAZMIN,** *Secretary, Department of National Defense,* **HON. RAMON JESUS P. PAJE,** *Secretary, Department of Environment and Natural Resources,* **VICE ADMIRAL JOSE LUIS M. ALANO,** *Philippine Navy Flag Officer in Command, Armed Forces of the Philippines,* **ADMIRAL RODOLFO D. ISORENA,** *Commandant, Philippine Coast Guard,* **COMMODORE ENRICO EFREN EVANGELISTA,** *Philippine Coast Guard Palawan*, **MAJOR GEN. VIRGILIO O. DOMINGO,** *Commandant of Armed Forces of the Philippines Command* **and LT. GEN. TERRY G. ROBLING,** *US Marine Corps Forces, Pacific and Balikatan 2013 Exercise Co-Director,*

Respondents.

x- -x

DECISION

VILLARAMA, JR., *J*.:

Before us is a petition for the issuance of a Writ of *Kalikasan* with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) under Rule 7 of A.M. No. 09-6-8-SC, otherwise known as the *Rules of Procedure for Environmental Cases (*Rules), involving violations of environmental laws and regulations in relation to the grounding of the US military ship *USS Guardian* over the Tubbataha Reefs.

Factual Background

The name "Tubbataha" came from the Samal (seafaring people of southern Philippines) language which means "long reef exposed at low tide." Tubbataha is composed of two huge coral atolls – the north atoll and the south atoll – and the Jessie Beazley Reef, a smaller coral structure about 20

kilometers north of the atolls. The reefs of Tubbataha and Jessie Beazley are considered part of Cagayancillo, a remote island municipality of Palawan.[1]

In 1988, Tubbataha was declared a National Marine Park by virtue of Proclamation No. 306 issued by President Corazon C. Aquino on August 11, 1988. Located in the middle of Central Sulu Sea, 150 kilometers southeast of Puerto Princesa City, Tubbataha lies at the heart of the Coral Triangle, the global center of marine biodiversity.

In 1993, Tubbataha was inscribed by the United Nations Educational Scientific and Cultural Organization (UNESCO) as a World Heritage Site. It was recognized as one of the Philippines' oldest ecosystems, containing excellent examples of pristine reefs and a high diversity of marine life. The 97,030-hectare protected marine park is also an important habitat for internationally threatened and endangered marine species. UNESCO cited Tubbataha's outstanding universal value as an important and significant natural habitat for *in situ* conservation of biological diversity; an example representing significant on-going ecological and biological processes; and an area of exceptional natural beauty and aesthetic importance.[2]

On April 6, 2010, Congress passed Republic Act (R.A.) No. 10067,[3] otherwise known as the "Tubbataha Reefs Natural Park (TRNP) Act of 2009" "to ensure the protection and conservation of the globally significant economic, biological, sociocultural, educational and scientific values of the Tubbataha Reefs into perpetuity for the enjoyment of present and future generations." Under the "no-take" policy, entry into the waters of TRNP is strictly regulated and many human activities are prohibited and penalized or fined, including fishing, gathering, destroying and disturbing the resources within the TRNP. The law likewise created the Tubbataha Protected Area Management Board (TPAMB) which shall be the sole policy-making and permit-granting body of the TRNP.

The *USS Guardian* is an Avenger-class mine countermeasures ship of the US Navy. In December 2012, the US Embassy in the Philippines requested diplomatic clearance for the said vessel "to enter and exit the territorial waters of the Philippines and to arrive at the port of Subic Bay for the purpose of routine ship replenishment, maintenance, and crew liberty."[4] On January 6, 2013, the ship left Sasebo, Japan for Subic Bay, arriving on January 13, 2013 after a brief stop for fuel in Okinawa, Japan.

On January 15, 2013, the *USS Guardian* departed Subic Bay for its next port of call in Makassar, Indonesia. On January 17, 2013 at 2:20 a.m.

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1 Tubbataha Reefs Natural Park – <*http://tubbatahareef.org*>.

2 Id.

3 "AN ACT ESTABLISHING THE TUBBATAHA REEFS NATURAL PARK IN THE PROVINCE OF PALAWAN AS A PROTECTED AREA UNDER THE NIPAS ACT (R.A. 7586) AND THE STRATEGIC ENVIRONMENTAL PLAN (SEP) FOR PALAWAN ACT (R.A. 7611), PROVIDING FOR ITS MANAGEMENT AND FOR OTHER PURPOSES."

4 *Rollo*, pp. 194-199.

while transiting the Sulu Sea, the ship ran aground on the northwest side of South Shoal of the Tubbataha Reefs, about 80 miles east-southeast of Palawan. No one was injured in the incident, and there have been no reports of leaking fuel or oil.

On January 20, 2013, U.S. 7th Fleet Commander, Vice Admiral Scott Swift, expressed regret for the incident in a press statement.[5] Likewise, US Ambassador to the Philippines Harry K. Thomas, Jr., in a meeting at the Department of Foreign Affairs (DFA) on February 4, "reiterated his regrets over the grounding incident and assured Foreign Affairs Secretary Albert F. del Rosario that the United States will provide appropriate compensation for damage to the reef caused by the ship."[6] By March 30, 2013, the US Navy-led salvage team had finished removing the last piece of the grounded ship from the coral reef.

On April 17, 2013, the above-named petitioners on their behalf and in representation of their respective sector/organization and others, including minors or generations yet unborn, filed the present petition against Scott H. Swift in his capacity as Commander of the US 7th Fleet, Mark A. Rice in his capacity as Commanding Officer of the *USS Guardian* and Lt. Gen. Terry G. Robling, US Marine Corps Forces, Pacific and *Balikatan* 2013 Exercises Co-Director ("US respondents"); President Benigno S. Aquino III in his capacity as Commander-in-Chief of the Armed Forces of the Philippines (AFP), DFA Secretary Albert F. Del Rosario, Executive Secretary Paquito Ochoa, Jr., Secretary Voltaire T. Gazmin (Department of National Defense), Secretary Jesus P. Paje (Department of Environment and Natural Resources), Vice-Admiral Jose Luis M. Alano (Philippine Navy Flag Officer in Command, AFP), Admiral Rodolfo D. Isorena (Philippine Coast Guard Commandant), Commodore Enrico Efren Evangelista (Philippine Coast Guard-Palawan), and Major General Virgilio O. Domingo (AFP Commandant), collectively the "Philippine respondents."

The Petition

Petitioners claim that the grounding, salvaging and post-salvaging operations of the *USS Guardian* cause and continue to cause environmental damage of such magnitude as to affect the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi, which events violate their constitutional rights to a balanced and healthful ecology. They also seek a directive from this Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident.

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5 <*http://manila.usembassy.gov/pressphotoreleases2013/navy-commander-expresses-regret-concerning-uss-guardian-grounding.html*>.

6 "Joint Statement Between The Philippines And The United States On The USS Guardian Grounding On Tubbataha Reef," February 5, 2013. Accessed at US Embassy website - <*http://manila.usembassy.gov/jointstatementguardiantubbataha.html*>.

Specifically, petitioners cite the following violations committed by US respondents under R.A. No. 10067: unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Furthermore, petitioners assail certain provisions of the Visiting Forces Agreement (VFA) which they want this Court to nullify for being unconstitutional.

The numerous reliefs sought in this case are set forth in the final prayer of the petition, to wit:

> WHEREFORE, in view of the foregoing, Petitioners respectfully pray that the Honorable Court:
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> 1. Immediately issue upon the filing of this petition a Temporary Environmental Protection Order (TEPO) and/or a Writ of Kalikasan, which shall, in particular,
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> a. Order Respondents and any person acting on their behalf, to cease and desist all operations over the *Guardian* grounding incident;
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> b. Initially demarcating the metes and bounds of the damaged area as well as an additional buffer zone;
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> c. Order Respondents to stop all port calls and war games under '*Balikatan*' because of the absence of clear guidelines, duties, and liability schemes for breaches of those duties, and require Respondents to assume responsibility for prior and future environmental damage in general, and environmental damage under the Visiting Forces Agreement in particular.
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> d. Temporarily define and describe allowable activities of ecotourism, diving, recreation, and limited commercial activities by fisherfolk and indigenous communities near or around the TRNP but away from the damaged site and an additional buffer zone;
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> 2. After summary hearing, issue a Resolution extending the TEPO until further orders of the Court;
>
> 3. After due proceedings, render a Decision which shall include, without limitation:
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> a. Order Respondents Secretary of Foreign Affairs, following the dispositive portion of *Nicolas v. Romulo*, "to forthwith negotiate with the United States representatives for the appropriate agreement on [environmental guidelines and environmental accountability] under Philippine authorities as provided in Art. V[ ] of the VFA…"
>
> b. Direct Respondents and appropriate agencies to commence administrative, civil, and criminal proceedings against erring officers and individuals to the full extent of the law, and to make such proceedings public;

c. Declare that Philippine authorities may exercise primary and exclusive criminal jurisdiction over erring U.S. personnel under the circumstances of this case;

d. Require Respondents to pay just and reasonable compensation in the settlement of all meritorious claims for damages caused to the Tubbataha Reef on terms and conditions no less severe than those applicable to other States, and damages for personal injury or death, if such had been the case;

e. Direct Respondents to cooperate in providing for the attendance of witnesses and in the collection and production of evidence, including seizure and delivery of objects connected with the offenses related to the grounding of the *Guardian*;

f. Require the authorities of the Philippines and the United States to notify each other of the disposition of all cases, wherever heard, related to the grounding of the *Guardian*;

g. Restrain Respondents from proceeding with any purported restoration, repair, salvage or post salvage plan or plans, including cleanup plans covering the damaged area of the Tubbataha Reef absent a just settlement approved by the Honorable Court;

h. Require Respondents to engage in stakeholder and LGU consultations in accordance with the Local Government Code and R.A. 10067;

i. Require Respondent US officials and their representatives to place a deposit to the TRNP Trust Fund defined under Section 17 of RA 10067 as a *bona fide* gesture towards full reparations;

j. Direct Respondents to undertake measures to rehabilitate the areas affected by the grounding of the *Guardian* in light of Respondents' experience in the *Port Royale* grounding in 2009, among other similar grounding incidents;

k. Require Respondents to regularly publish on a quarterly basis and in the name of transparency and accountability such environmental damage assessment, valuation, and valuation methods, in all stages of negotiation;

l. Convene a multisectoral technical working group to provide scientific and technical support to the TPAMB;

m. Order the Department of Foreign Affairs, Department of National Defense, and the Department of Environment and Natural Resources to review the Visiting Forces Agreement and the Mutual Defense Treaty to consider whether their provisions allow for the exercise of *erga omnes* rights to a balanced and healthful ecology and for damages which follow from any violation of those rights;

n. Narrowly tailor the provisions of the Visiting Forces Agreement for purposes of protecting the damaged areas of TRNP;

o. Declare the grant of immunity found in Article V ("Criminal Jurisdiction") and Article VI of the Visiting Forces Agreement unconstitutional for violating equal protection and/or for violating the preemptory norm of nondiscrimination incorporated as part of the law of the land under Section 2, Article II, of the Philippine Constitution;

p. Allow for continuing discovery measures;

q. Supervise marine wildlife rehabilitation in the Tubbataha Reefs in all other respects; and

4. Provide just and equitable environmental rehabilitation measures and such other reliefs as are just and equitable under the premises.[7] (Underscoring supplied.)

Since only the Philippine respondents filed their comment[8] to the petition, petitioners also filed a motion for early resolution and motion to proceed *ex parte* against the US respondents.[9]

Respondents' Consolidated Comment

In their consolidated comment with opposition to the application for a TEPO and ocular inspection and production orders, respondents assert that: (1) the grounds relied upon for the issuance of a TEPO or writ of *Kalikasan* have become *fait accompli* as the salvage operations on the *USS Guardian* were already completed; (2) the petition is defective in form and substance; (3) the petition improperly raises issues involving the VFA between the Republic of the Philippines and the United States of America; and (4) the determination of the extent of responsibility of the US Government as regards the damage to the Tubbataha Reefs rests exclusively with the executive branch.

The Court's Ruling

As a preliminary matter, there is no dispute on the legal standing of petitioners to file the present petition.

Locus standi is "a right of appearance in a court of justice on a given question."[10] Specifically, it is "a party's personal and substantial interest in

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7 *Rollo*, pp. 89-92.

8 Id. at 156-191. In a letter dated 27 May 2013, the DFA's Office of Legal Affairs informed this Court that it has received from the Embassy of the United States the Notice sent by this Court, with a request to return the same. It said that the US Embassy "asserts that it is not an agent for the service of process upon the individuals named in court documents, and that the transmission of the Court documents should have been done through diplomatic channels." (Id. at 255.)

9 Id. at 215-247.

10 *Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011, 641 SCRA 244, 254, citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 755 (2006).

a case where he has sustained or will sustain direct injury as a result" of the act being challenged, and "calls for more than just a generalized grievance."[11] However, the rule on standing is a procedural matter which this Court has relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers and legislators when the public interest so requires, such as when the subject matter of the controversy is of transcendental importance, of overreaching significance to society, or of paramount public interest.[12]

In the landmark case of *Oposa v. Factoran, Jr.*,[13] we recognized the "public right" of citizens to "a balanced and healthful ecology which, for the first time in our constitutional history, is solemnly incorporated in the fundamental law." We declared that the right to a balanced and healthful ecology need not be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Such right carries with it the correlative duty to refrain from impairing the environment.[14]

On the novel element in the class suit filed by the petitioners minors in *Oposa*, this Court ruled that not only do ordinary citizens have legal standing to sue for the enforcement of environmental rights, they can do so in representation of their own and future generations. Thus:

> Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. **Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.** Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.[15] (Emphasis supplied.)

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11 Id., citing *Jumamil v. Cafe*, 507 Phil. 455, 465 (2005), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 632-633 (2000).

12 *Biraogo v. Philippine Truth Commission of 2010*, G.R. Nos. 192935 & 193036, December 7, 2010, 637 SCRA 78, 151, citing *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*, 591 Phil. 393, 404 (2008); *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321 (1997) and *De Guia v. COMELEC*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 422.

13 G.R. No. 101083, July 30, 1993, 224 SCRA 792.

14 Id. at 804-805.

15 Id. at 802-803.

The liberalization of standing first enunciated in *Oposa*, insofar as it refers to minors and generations yet unborn, is now enshrined in the Rules which allows the filing of a citizen suit in environmental cases. The provision on citizen suits in the Rules "collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature."[16]

Having settled the issue of *locus standi*, we shall address the more fundamental question of whether this Court has jurisdiction over the US respondents who did not submit any pleading or manifestation in this case.

The immunity of the State from suit, known also as the doctrine of sovereign immunity or non-suability of the State,[17] is expressly provided in Article XVI of the 1987 Constitution which states:

> Section 3. The State may not be sued without its consent.

In *United States of America v. Judge Guinto*,[18] we discussed the principle of state immunity from suit, as follows:

> The rule that a state may not be sued without its consent, now expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2. x x x.
>
> Even without such affirmation, we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states.
>
> As applied to the local state, the doctrine of state immunity is based on the justification given by Justice Holmes that "there can be no legal right against the authority which makes the law on which the right depends." [*Kawanakoa v. Polybank*, 205 U.S. 349] There are other practical reasons for the enforcement of the doctrine. **In the case of the foreign state sought to be impleaded in the local jurisdiction, the added inhibition is expressed in the maxim *par in parem, non habet imperium*. All states are sovereign equals and cannot assert jurisdiction over one another. A contrary disposition would, in the language of a celebrated case, "unduly vex the peace of nations."** [*De Haber v. Queen of Portugal*, 17 Q. B. 171]
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> While the doctrine appears to prohibit only suits against the state without its consent, it is **also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties.** The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy

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16 See ANNOTATION TO THE RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

17 *Air Transportation Office v. Ramos*, G.R. No. 159402, February 23, 2011, 644 SCRA 36, 41.

18 261 Phil. 777 (1990).

> the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded. [*Garcia v. Chief of Staff*, 16 SCRA 120] In such a situation, the state may move to dismiss the complaint on the ground that it has been filed without its consent.[19] (Emphasis supplied.)

Under the American Constitution, the doctrine is expressed in the Eleventh Amendment which reads:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

In the case of *Minucher v. Court of Appeals*,[20] we further expounded on the immunity of foreign states from the jurisdiction of local courts, as follows:

> The *precept that a State cannot be sued in the courts of a foreign state* is a long-standing rule of customary international law then closely identified with the personal immunity of a foreign sovereign from suit and, with the emergence of democratic states, made to attach not just to the person of the head of state, or his representative, but also distinctly to the state itself in its sovereign capacity. **If the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent.** Suing a representative of a state is believed to be, in effect, suing the state itself. The proscription is not accorded for the benefit of an individual but for the State, in whose service he is, under the maxim - *par in parem, non habet imperium* - that all states are sovereign equals and cannot assert jurisdiction over one another. The implication, in broad terms, is that if the judgment against an official would require the state itself to perform an affirmative act to satisfy the award, such as the appropriation of the amount needed to pay the damages decreed against him, the suit must be regarded as being against the state itself, although it has not been formally impleaded.[21] (Emphasis supplied.)

In the same case we also mentioned that in the case of diplomatic immunity, the privilege is not an immunity from the observance of the law of the territorial sovereign or from ensuing legal liability; it is, rather, an immunity from the exercise of territorial jurisdiction.[22]

In *United States of America v. Judge Guinto*,[23] one of the consolidated cases therein involved a Filipino employed at Clark Air Base who was arrested following a buy-bust operation conducted by two officers of the US Air Force, and was eventually dismissed from his employment when he was

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19 Id. at 790-792.
20 445 Phil. 250 (2003).
21 Id. at 269-270. Citations omitted.
22 Id. at 268, citing J.L. Brierly, "*The Law of Nations*," Oxford University Press, 6th Edition, 1963, p. 244.
23 Supra note 18, at 788-789 & 797.

charged in court for violation of R.A. No. 6425. In a complaint for damages filed by the said employee against the military officers, the latter moved to dismiss the case on the ground that the suit was against the US Government which had not given its consent. The RTC denied the motion but on a petition for certiorari and prohibition filed before this Court, we reversed the RTC and dismissed the complaint. We held that petitioners US military officers were acting in the exercise of their official functions when they conducted the buy-bust operation against the complainant and thereafter testified against him at his trial. It follows that for discharging their duties as agents of the United States, they cannot be directly impleaded for acts imputable to their principal, which has not given its consent to be sued.

This traditional rule of State immunity which exempts a State from being sued in the courts of another State without the former's consent or waiver has evolved into a restrictive doctrine which distinguishes sovereign and governmental acts (*jure imperii*) from private, commercial and proprietary acts (*jure gestionis*). Under the restrictive rule of State immunity, State immunity extends only to acts *jure imperii.* The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs.[24]

In *Shauf v. Court of Appeals*,[25] we discussed the limitations of the State immunity principle, thus:

> **It is a different matter where the public official is made to account in his capacity as such for acts contrary to law and injurious to the rights of plaintiff.** As was clearly set forth by Justice Zaldivar in *Director of the Bureau of Telecommunications, et al. vs. Aligaen, etc., et al.*: "Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority which he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent." The rationale for this ruling is that the doctrine of state immunity cannot be used as an instrument for perpetrating an injustice.
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> x x x x
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> The aforecited authorities are clear on the matter. They state that **the doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen**. The cloak of protection afforded the

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24 *United States of America v. Ruiz*, 221 Phil. 179, 182-183 & 184 (1985).
25 G.R. No. 90314, November 27, 1990, 191 SCRA 713.

> officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that **a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction.**[26] (Emphasis supplied.)

In this case, the US respondents were sued in their official capacity as commanding officers of the US Navy who had control and supervision over the *USS Guardian* and its crew. The alleged act or omission resulting in the unfortunate grounding of the *USS Guardian* on the TRNP was committed while they were performing official military duties. Considering that the satisfaction of a judgment against said officials will require remedial actions and appropriation of funds by the US government, the suit is deemed to be one against the US itself. The principle of State immunity therefore bars the exercise of jurisdiction by this Court over the persons of respondents Swift, Rice and Robling.

During the deliberations, Senior Associate Justice Antonio T. Carpio took the position that the conduct of the US in this case, when its warship entered a restricted area in violation of R.A. No. 10067 and caused damage to the TRNP reef system, brings the matter within the ambit of Article 31 of the United Nations Convention on the Law of the Sea (UNCLOS). He explained that while historically, warships enjoy sovereign immunity from suit as extensions of their flag State, Art. 31 of the UNCLOS creates an exception to this rule in cases where they fail to comply with the rules and regulations of the coastal State regarding passage through the latter's internal waters and the territorial sea.

According to Justice Carpio, although the US to date has not ratified the UNCLOS, as a matter of long-standing policy the US considers itself bound by customary international rules on the "traditional uses of the oceans" as codified in UNCLOS, as can be gleaned from previous declarations by former Presidents Reagan and Clinton, and the US judiciary in the case of *United States v. Royal Caribbean Cruise Lines, Ltd.*[27]

The *international law of the sea* is generally defined as "a body of treaty rules and customary norms governing the uses of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes. It is a branch of public international law, regulating the relations of states with respect to the uses of the oceans."[28] The UNCLOS is a multilateral treaty which was opened for signature on December 10, 1982 at Montego Bay, Jamaica. It was ratified by the Philippines in 1984 but came into force on November 16, 1994 upon the submission of the 60th ratification.

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[26] Id. at 727-728.
[27] 24 F Supp. 2d 155, 159 (D.P.R. 1997).
[28] Merlin M. Magallona, A Primer on the Law of the Sea, 1997, p. 1.

The UNCLOS is a product of international negotiation that seeks to balance State sovereignty (*mare clausum*) and the principle of freedom of the high seas (*mare liberum*).[29] The freedom to use the world's marine waters is one of the oldest customary principles of international law.[30] The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located.[31]

Insofar as the internal waters and territorial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.[32]

In the case of warships,[33] as pointed out by Justice Carpio, they continue to enjoy sovereign immunity subject to the following exceptions:

> *Article 30*
> *Non-compliance by warships with the laws and regulations of the coastal State*
>
> If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately.
>
> *Article 31*
> *Responsibility of the flag State for damage caused by a warship or other government ship operated for non-commercial purposes*
>
> The flag State shall bear international responsibility for any **loss or damage to the coastal State resulting from the non-compliance** by a warship or other government ship operated for non-commercial purposes **with the laws and regulations of the coastal State concerning passage through the territorial sea** or with the provisions of this Convention or other rules of international law.
>
> *Article 32*
> *Immunities of warships and other government ships operated for non-commercial purposes*
>
> With such exceptions as are contained in subsection A and in articles 30 and 31, nothing in this Convention affects the immunities of

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29 Bertrand Theodor L. Santos, "*Untangling a Tangled Net of Confusion: Reconciling the Philippine Fishery Poaching Law and the UNCLOS*" World Bulletin, Vol. 18: 83-116 (July-December 2002), p. 96.

30 Anne Bardin, "*Coastal State's Jurisdiction Over Foreign Vessels*" 14 Pace Int'l. Rev. 27, 28 (2002).

31 Id. at 29.

32 Art. 2, UNCLOS.

33 Art. 29 of UNCLOS defines warship as "a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline."

> warships and other government ships operated for non-commercial purposes. (Emphasis supplied.)

A foreign warship's unauthorized entry into our internal waters with resulting damage to marine resources is one situation in which the above provisions may apply. But what if the offending warship is a non-party to the UNCLOS, as in this case, the US?

An overwhelming majority – over 80% -- of nation states are now members of UNCLOS, but despite this the US, the world's leading maritime power, has not ratified it.

> While the Reagan administration was instrumental in UNCLOS' negotiation and drafting, the U.S. delegation ultimately voted against and refrained from signing it due to concerns over deep seabed mining technology transfer provisions contained in Part XI. In a remarkable, multilateral effort to induce U.S. membership, the bulk of UNCLOS member states cooperated over the succeeding decade to revise the objectionable provisions. The revisions satisfied the Clinton administration, which signed the revised Part XI implementing agreement in 1994. In the fall of 1994, President Clinton transmitted UNCLOS and the Part XI implementing agreement to the Senate requesting its advice and consent. Despite consistent support from President Clinton, each of his successors, and an ideologically diverse array of stakeholders, the Senate has since withheld the consent required for the President to internationally bind the United States to UNCLOS.
>
> While UNCLOS cleared the Senate Foreign Relations Committee (SFRC) during the 108th and 110th Congresses, its progress continues to be hamstrung by significant pockets of political ambivalence over U.S. participation in international institutions. Most recently, 111th Congress SFRC Chairman Senator John Kerry included "voting out" UNCLOS for full Senate consideration among his highest priorities. This did not occur, and no Senate action has been taken on UNCLOS by the 112th Congress.[34]

Justice Carpio invited our attention to the policy statement given by President Reagan on March 10, 1983 that the US will "recognize the rights of the other states in the waters off their coasts, as reflected in the convention [UNCLOS], so long as the rights and freedom of the United States and others under international law are recognized by such coastal states", and President Clinton's reiteration of the US policy "to act in a manner consistent with its [UNCLOS] provisions relating to traditional uses of the oceans and to encourage other countries to do likewise." Since Article 31 relates to the "traditional uses of the oceans," and "if under its policy, the US 'recognize[s] the rights of the other states in the waters *off their coasts,*'" Justice Carpio postulates that "there is more reason to expect it to recognize the rights of other states in their *internal waters*, such as the Sulu Sea in this case."

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[34] Commander Robert C. "Rock" De Tolve, JAGC, USN, *"At What Cost? America's UNCLOS Allergy in the Time of 'Lawfare'"*, 61 Naval L. Rev. 1, 3 (2012).

As to the non-ratification by the US, Justice Carpio emphasizes that "the US' refusal to join the UNCLOS was centered on its disagreement with UNCLOS' regime of deep seabed mining (Part XI) which considers the oceans and deep seabed commonly owned by mankind," pointing out that such "has nothing to do with its [the US'] acceptance of customary international rules on navigation."

It may be mentioned that even the US Navy Judge Advocate General's Corps publicly endorses the ratification of the UNCLOS, as shown by the following statement posted on its official website:

> The Convention is in the national interest of the United States because it establishes stable maritime zones, including a maximum outer limit for territorial seas; codifies innocent passage, transit passage, and archipelagic sea lanes passage rights; works against "jurisdictional creep" by preventing coastal nations from expanding their own maritime zones; and reaffirms sovereign immunity of warships, auxiliaries and government aircraft.
>
> x x x x
>
> Economically, accession to the Convention would support our national interests by enhancing the ability of the US to assert its sovereign rights over the resources of one of the largest continental shelves in the world. Further, it is the Law of the Sea Convention that first established the concept of a maritime Exclusive Economic Zone out to 200 nautical miles, and recognized the rights of coastal states to conserve and manage the natural resources in this Zone.[35]

We fully concur with Justice Carpio's view that non-membership in the UNCLOS does not mean that the US will disregard the rights of the Philippines as a Coastal State over its internal waters and territorial sea. We thus expect the US to bear "international responsibility" under Art. 31 in connection with the *USS Guardian* grounding which adversely affected the Tubbataha reefs. Indeed, it is difficult to imagine that our long-time ally and trading partner, which has been actively supporting the country's efforts to preserve our vital marine resources, would shirk from its obligation to compensate the damage caused by its warship while transiting our internal waters. Much less can we comprehend a Government exercising leadership in international affairs, unwilling to comply with the UNCLOS directive for all nations to cooperate in the global task to protect and preserve the marine environment as provided in Article 197, *viz*:

> *Article 197*
> *Cooperation on a global or regional basis*
>
> States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention,

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35 <*http://www.jag.navy.mil/organization/code 10 law of the sea.htm*>.

> for the protection and preservation of the marine environment, taking into account characteristic regional features.

In fine, the relevance of UNCLOS provisions to the present controversy is beyond dispute. Although the said treaty upholds the immunity of warships from the jurisdiction of Coastal States while navigating the latter's territorial sea, the flag States shall be required to leave the territorial sea immediately if they flout the laws and regulations of the Coastal State, and they will be liable for damages caused by their warships or any other government vessel operated for non-commercial purposes under Article 31.

Petitioners argue that there is a waiver of immunity from suit found in the VFA. Likewise, they invoke federal statutes in the US under which agencies of the US have statutorily waived their immunity to any action. Even under the common law tort claims, petitioners asseverate that the US respondents are liable for negligence, trespass and nuisance.

We are not persuaded.

The VFA is an agreement which defines the treatment of United States troops and personnel visiting the Philippines to promote "common security interests" between the US and the Philippines in the region. It provides for the guidelines to govern such visits of military personnel, and further defines the rights of the United States and the Philippine government in the matter of criminal jurisdiction, movement of vessel and aircraft, importation and exportation of equipment, materials and supplies.[36] The invocation of US federal tort laws and even common law is thus improper considering that it is the VFA which governs disputes involving US military ships and crew navigating Philippine waters in pursuance of the objectives of the agreement.

As it is, the waiver of State immunity under the VFA pertains only to criminal jurisdiction and not to special civil actions such as the present petition for issuance of a writ of *Kalikasan*. In fact, it can be inferred from Section 17, Rule 7 of the Rules that a criminal case against a person charged with a violation of an environmental law is to be filed separately:

> SEC. 17. *Institution of separate actions.*—The filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions.

In any case, it is our considered view that a ruling on the application or non-application of criminal jurisdiction provisions of the VFA to US personnel who may be found responsible for the grounding of the *USS Guardian,* would be premature and beyond the province of a petition for a writ of *Kalikasan*. We also find it unnecessary at this point to determine

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[36] See *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, 396 Phil. 623, 652 (2000).

whether such waiver of State immunity is indeed absolute. In the same vein, we cannot grant damages which have resulted from the violation of environmental laws. The Rules allows the recovery of damages, including the collection of administrative fines under R.A. No. 10067, in a separate civil suit or that deemed instituted with the criminal action charging the same violation of an environmental law.[37]

Section 15, Rule 7 enumerates the reliefs which may be granted in a petition for issuance of a writ of *Kalikasan*, to wit:

> SEC. 15. *Judgment.*—Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.
>
> The reliefs that may be granted under the writ are the following:
>
> (a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;
>
> (b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;
>
> (c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;
>
> (d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and
>
> (e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, **except the award of damages to individual petitioners.** (Emphasis supplied.)

We agree with respondents (Philippine officials) in asserting that this petition has become moot in the sense that the salvage operation sought to be enjoined or restrained had already been accomplished when petitioners sought recourse from this Court. But insofar as the directives to Philippine respondents to protect and rehabilitate the coral reef structure and marine habitat adversely affected by the grounding incident are concerned, petitioners are entitled to these reliefs notwithstanding the completion of the removal of the *USS Guardian* from the coral reef.

However, we are mindful of the fact that the US and Philippine governments both expressed readiness to negotiate and discuss the matter of compensation for the damage caused by the *USS Guardian.* The US Embassy has also declared it is closely coordinating with local scientists and experts in assessing the extent of the damage and appropriate methods of

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[37] Rule 10, RULES OF PROCEDURE FOR ENVIRONMENTAL CASES.

rehabilitation.

Exploring avenues for settlement of environmental cases is not proscribed by the Rules. As can be gleaned from the following provisions, mediation and settlement are available for the consideration of the parties, and which dispute resolution methods are encouraged by the court, to wit:

RULE 3

x x x x

SEC. 3. *Referral to mediation*.–At the start of the pre-trial conference, the court shall inquire from the parties if they have settled the dispute; otherwise, the court shall immediately refer the parties or their counsel, if authorized by their clients, to the Philippine Mediation Center (PMC) unit for purposes of mediation. If not available, the court shall refer the case to the clerk of court or legal researcher for mediation.

Mediation must be conducted within a non-extendible period of thirty (30) days from receipt of notice of referral to mediation.

The mediation report must be submitted within ten (10) days from the expiration of the 30-day period.

SEC. 4. *Preliminary conference*.–If mediation fails, the court will schedule the continuance of the pre-trial. Before the scheduled date of continuance, the court may refer the case to the branch clerk of court for a preliminary conference for the following purposes:

(a) To assist the parties in reaching a settlement;

x x x x

SEC. 5. *Pre-trial conference; consent decree*.–The judge shall put the parties and their counsels under oath, and they shall remain under oath in all pre-trial conferences.

The judge shall exert best efforts to persuade the parties to arrive at a settlement of the dispute. The judge may issue a consent decree approving the agreement between the parties in accordance with law, morals, public order and public policy to protect the right of the people to a balanced and healthful ecology.

x x x x

SEC. 10. *Efforts to settle*.–The court shall endeavor to make the parties to agree to compromise or settle in accordance with law at any stage of the proceedings before rendition of judgment. (Underscoring supplied.)

The Court takes judicial notice of a similar incident in 2009 when a guided-missile cruiser, the *USS Port Royal*, ran aground about half a mile off the Honolulu Airport Reef Runway and remained stuck for four days. After spending $6.5 million restoring the coral reef, the US government was reported to have paid the State of Hawaii $8.5 million in settlement over

coral reef damage caused by the grounding.[38]

To underscore that the US government is prepared to pay appropriate compensation for the damage caused by the *USS Guardian* grounding, the US Embassy in the Philippines has announced the formation of a US interdisciplinary scientific team which will "initiate discussions with the Government of the Philippines to review coral reef rehabilitation options in Tubbataha, based on assessments by Philippine-based marine scientists." The US team intends to "help assess damage and remediation options, in coordination with the Tubbataha Management Office, appropriate Philippine government entities, non-governmental organizations, and scientific experts from Philippine universities."[39]

A rehabilitation or restoration program to be implemented at the cost of the violator is also a major relief that may be obtained under a judgment rendered in a citizens' suit under the Rules, *viz*:

RULE 5

> SECTION 1. *Reliefs in a citizen suit*.–If warranted, the court may grant to the plaintiff proper reliefs which shall include the protection, preservation or rehabilitation of the environment and the payment of attorney's fees, costs of suit and other litigation expenses. It may also require the violator to submit a program of rehabilitation or restoration of the environment, the costs of which shall be borne by the violator, or to contribute to a special trust fund for that purpose subject to the control of the court.

In the light of the foregoing, the Court defers to the Executive Branch on the matter of compensation and rehabilitation measures through diplomatic channels. Resolution of these issues impinges on our relations with another State in the context of common security interests under the VFA. It is settled that "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—"the political"--departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."[40]

On the other hand, we cannot grant the additional reliefs prayed for in the petition to order a review of the VFA and to nullify certain immunity provisions thereof.

As held in *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*,[41] the VFA was duly concurred in by the Philippine Senate and has

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38 "USS Port Royal (CG73)" – <*http://navysite.de/cg/cg73.html*>; "USS Port Royal Returns to Homeport" , Navy Military Home Page, Story Number NNS090211-02 Release Date: 2/11/2009 6:00 AM – <*http://www.navy.mil/submit/display.asp?story_id=42502*>; "Navy, state reach settlement on USS Port Royal damage", posted Feb. 05, 2011 8:26 AM – <*http://www.hawaiinewsnow.com/story/13974224/navy-state-reach-settlement-on-uss-port-royal-reef-damage*>.

39 <*http://manila.usembassy.gov/usgtargetedassistancetubbataha.html*>.

40 *Vinuya v. Romulo*, G.R. No. 162230, April 28, 2010, 619 SCRA 533, 559, citing *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918).

41 Supra note 36.

been recognized as a treaty by the United States as attested and certified by the duly authorized representative of the United States government. The VFA being a valid and binding agreement, the parties are required as a matter of international law to abide by its terms and provisions.[42] The present petition under the Rules is not the proper remedy to assail the constitutionality of its provisions.

WHEREFORE, the petition for the issuance of the privilege of the Writ of *Kalikasan* is hereby **DENIED.**

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

See Concurring Opinion

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

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42 *Nicolas v. Secretary Romulo, et al.*, 598 Phil. 262, 280 & 285.

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

(On official leave)
JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

See separate concurring opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice