

State Practice of Asian Countries in International Law

Philippines

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International & Regional Organisations

ILO Convention No. 187: Promotional Framework for Occupational Safety and Health Convention, 17 June 2020

The convention aims to promote continuous improvement of occupational safety and health to prevent occupational injuries, diseases, and deaths by the development, in consultation with the most representative organizations of employers and workers, of a national policy, national system, and national programme.

Each member shall undertake to formulate a national policy to promote a healthy working environment. This shall be done through consultations with organizations of employers and workers.

*Joint Ship Manning Group Inc., Petitioner, v. Social Security System,
Respondent [G.R. No. 247471. 7 July 2020]*

The petitioners assailed the constitutionality of Section 9-B of Republic Act No. 11199, (RA 11199), otherwise known as the “Social Security Act of 2018,” which mandates compulsory Social Security System (SSS) coverage for overseas Filipino workers (OFWs) on the ground that it violates due process and the equal protection of rights of manning agencies. The Supreme Court denied the petition ruling that Section 9-B of RA 11199 was passed into law to fulfill the country’s existing treaty and contractual obligations. The Court noted that in 2006, the International Labor Organization adopted the Maritime Labour Convention (2006 MLC) to establish the minimum working living standards for all seafarers. It provides for the labor rights of a seafarer, including social protection, and the implementation and enforcement of these rights. The Court also noted that the 74th Maritime Session of the International Labor Organization held on 24 September to 9 October 1987, which was participated in by the Philippines, stated that there shall be social security protection for seafarers, including those serving in ships flying flags other than those of their own country. The Court further cited provisions of the 2006 MLC, to which the Philippines is a party, which states that the members therein must provide social security protection to all seafarers.

ASEAN

Five Association of Southeast Asian Nations (ASEAN) agreements entered into force for the Philippines in 2020. One is a new framework agreement, another is a protocol to implement a package of commitments on Air Transport Services, and the other three are amendatory protocols.

The ASEAN Framework Agreement on the Facilitation of Cross Border Transport of Passengers by Road Vehicles intends to promote and develop tourism, investment, trade, and culture exchanges among the ASEAN Member States by facilitating the transport of passengers via road vehicles. The aim of this Agreement is to simplify and harmonize transport, customs, immigration, and quarantine procedures to facilitate the transport of passengers by road vehicles. The implementing protocol is the Protocol to Implement the Ninth Package of Commitments on Air Transport Services under the ASEAN Agreement on Services. With the effectivity of this Protocol, States are duty-bound to accord preferential treatment in air transport services to one another on a Most-Favoured Nation Basis subject to each one’s Schedules of Specific Commitments and the Lists of Most-Favoured Nation Exemptions.

The three amendatory Protocols which took effect in 2020 are as follows: the Protocol to Amend ASEAN Trade in Goods Agreement (ATIGA), the Second

Protocol to Amend the ASEAN Comprehensive Investment Agreement (ACIA), and the Third Protocol to Amend the ACIA.

In the First Protocol to Amend ASEAN Trade in Goods Agreement (ATIGA), Article 38 of ATIGA was amended, accepting a good as eligible for preferential tariff agreement which is to be supported by a Proof of Origin in accordance with the Operational Certification Procedures. This amendment addresses simplifying the Operational Certification Procedure for Rules of Origin.

The ASEAN Comprehensive Investment Agreement (ACIA)'s Second Protocol to Amend revised the definition of "Natural Person" (Article 4 subparagraph g). Pursuant to this amendment, paragraph 6 of ACIA Headnote for the List of Reservations is deleted. ACIA's Third Protocol to Amend deleted a reservation made by Thailand under paragraph 8 of the ACIA Headnote for the List of Reservations.

Celeste Ruth L. Cembrano-Mallari

International Relations & Co-operation

Agreement between the Government of the Republic of the Philippines and the Government of the United States of America on Scientific and Technological Cooperation, 3 June 2020

The Agreement will promote scientific collaboration, build relationships between the Philippines' and United States' respective scientific institutions and communities, and provide opportunities for capacity-building and exchange of ideas and information on emerging topics in science and technology, especially in the areas of public health, marine sciences, environmental protection, disaster risk resilience, climate change, renewable energy, and Science, Technology, Engineering, and Mathematics (STEM) education. This serves as the new agreement between the two Governments following the expiration of the 2012 PH-US Agreement on Science and Technology in 2015.

The Parties shall encourage cooperation through appropriate means, including exchanges of scientific and technical information; exchanges, training, and education of scientists and technical experts; the convening of joint seminars and meetings; the conduct of joint research projects; access to scientific and technical facilities; and such other forms of scientific and technological cooperation as may be mutually agreed upon.

Service of Judicial and Extrajudicial Documents

Convention in the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service Convention), 15 November 1965

The convention aims to create appropriate means to ensure that judicial and extrajudicial documents are brought to the addressee's notice in sufficient time.

The contracting states shall have a designated Central Authority which will receive requests for service coming from other contracting states. The Central Authority of each contracting state shall serve the document or shall arrange to have it served by an appropriate agency either pursuant to its local laws or by a particular method requested by the applicant (unless it is incompatible with the contracting state's local laws).

Rommel J. Casis

International Economic Law

Intellectual Property

Zuneca Pharmaceutical, Akram Arain and/or Venus Arain, M.D. and Style of Zuneca Pharmaceutical, Petitioners, vs. Natrapharm, Inc., Respondent [G.R. No. 211850. 8 September 2020]

Respondent Natrapharm filed a complaint against Petitioner Zuneca, alleging that Zuneca's "ZYNAPS" is confusingly similar to its registered trademark, "ZYNAPSE," and that the confusion is dangerous because these medical drugs are intended for different types of illnesses. Zuneca countered that it has been selling the medical drug under the mark "ZYNAPS" since 2004 and that it was impossible that Natrapharm was unaware of its existence before the latter had registered the name "ZYNAPSE" because Natrapharm and Zuneca had advertised its products in the same publications and conventions. Finally, Zuneca argued that as the prior user, it is the owner of the mark "ZYNAPS."

The Supreme Court held that Natrapharm is the lawful registrant of the "ZYNAPSE" but petitioners are considered prior users in good faith and may continue to use "ZYNAPS." The Court discussed that the lawmakers' intent for the Intellectual Property Code (hereafter "IPC") was to adopt a system of acquiring rights over marks wherein the mode of acquiring ownership is registration. The Court explained that the legislative intent behind the IPC is to abandon the rule that ownership of a mark is acquired through use and

that the country's adherence to treaties brought about this shift to a new system. The Court quoted from legislative records which stated that:

the Philippines adhered to the Lisbon Act of the Paris Convention for the Protection of Industrial Property (Paris Convention). This obliged the country to introduce a system of registration of marks of nationals of member-countries of the Paris Convention which is based not on use in the Philippines but on foreign registration.

Rommel J. Casis

International Financial Institutions

Memorandum of Understanding between the Anti-Money Laundering Council (AMLC), the Financial Intelligence Unit of the Republic of the Philippines and the Ministry of Finance, Financial Crimes Investigation Board (MASAK) of the Republic of Turkey Concerning Cooperation in the Exchange of Financial Intelligence Related to Money Laundering and Financing of Terrorism, 16 November 2012 and 20 December 2012

The MOU aims at promoting cooperation between the competent authorities of both countries to gather, develop, and analyze information and documents in their possession concerning financial transactions suspected of being related to money laundering or criminal activities connected to money laundering and financing of terrorism, which may be relevant to their investigation and prosecution and subject to their respective national legislations.

Authorities of both Parties will exchange, spontaneously or upon request, available financial intelligence that may be relevant to the investigation by the authorities into financial transactions related to money laundering and financing of terrorism and the persons or companies involved, subject to the requirements for their respective national legislation.

Rommel J. Casis

International Environmental Law

Minamata Convention on Mercury, 2 June 2013

The convention aims to protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

The parties shall not allow the establishment of new mercury mines and shall phase out existing ones. The parties shall also enact measures to phase out and phase-down mercury use in a number of products and processes; control measures on emissions to air and on releases to land and water; and regulate the informal sector of artisanal and small-scale mining.

Cecilia Therese T. Guiao

Law of the Sea

Fisheries Administrative Order No. 266

Under the Fisheries Administrative Order No. 266, s. 2020 (FAO 266), the Philippines adopted new rules and regulations on the implementation of vessel monitoring systems (VMS) and electronic reporting systems (ERS) for Philippine-flagged commercial fishing vessels. FAO 266 replaced an earlier issuance that dealt with the same matter (FAO 260, s. 2018) and implemented a key provision in the Fisheries Code that requires all vessels to comply with the monitoring, control, and surveillance measures implemented by the Department of Agriculture – Bureau of Fisheries and Aquatic Resources (DA-BFAR). The issuance of these new and more stringent rules on VMS is meant to help the country fulfill its international legal commitments under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western Central Pacific Ocean, and to the regional fisheries management organizations (RFMOs) to which it is a party – the Western Central Pacific Fisheries Commission (WCPFC), the Indian Ocean Tuna Commission (IOTC), and the International Commission for the Conservation of Atlantic Tunas (ICCAT).

One of the objectives of FAO 266 is to “enhance law enforcement to regulate the capture fisheries sector towards achieving long-term sustainability.” (Sec. 1(b), FAO 266). It does so by establishing a system that allows government regulators to have as much information as possible on vessel behavior, location, and catch in order to provide the basis for enforcement actions. Thus, FAO 266 requires the phased installation of VMS on all catcher fishing vessels operating in Philippine waters. (Sec. 3, FAO 266) Compliance with this rule is now made a condition for the issuance of fishing vessel licenses or for their renewal. (Sec. 10, FAO 266) A tamper-proof Automatic Location Communicator (ALC) or Mobile Transceiver Unit (MTU) must be installed on board which automatically transmits to the DA-BFAR’s Fisheries Monitoring Center the vessel’s

identity and position course, speed, and status of the vessels a minimum of 24 times a day. (Secs. 19 and 20, FAO 266) With this information, the DA-BFAR will be able to detect if a vessel is behaving in a suspicious manner warranting further investigation.

No Philippine-flagged fishing vessel will be allowed to engage in any fishing activity without complying with the VMS requirement. Failure to comply with the regulations or tampering with the ALC/MTU will result in the imposition of administrative and criminal penalties under the amended Fisheries Code (Sec. 24, FAO 266).

VMS data acquired under the provisions of the Fisheries Code as implemented by FAO 266 are classified as sensitive technical information subject to rules of strict access. Only authorized DA-BFAR personnel can process the VMS data, and data breaches or unauthorized sharing of the transmitted information can result in serious penalties for the disclosing entity. (Sec. 127, R.A. 10654) However, disclosure of the VMS data to domestic law enforcement agencies and to RFMOs is permitted. FAO 266 also allows the Protected Area Offices and local government units to have jurisdiction over relevant national Marine Protected Areas.

Jacqueline F. Espenilla

Human Rights

Implementation of Human Rights Treaties (e.g., Domestic Laws and Institutions)

During the Forty-Fifth session of the United Nations Human Rights Council from 14 September to 7 October 2020, the Philippines authored and sponsored a resolution entitled Technical Cooperation and Capacity-Building for the Promotion and Protection of Human Rights in the Philippines (U.N. Doc. A/HRC/45/L.38), co-sponsored by Nepal and a number of non-member states, [t]aking note of the Philippine Human Rights Situationer which set out the Philippine Government's account of the situation of human rights in the Philippines, including policy measures and responses to key allegations of human rights violations. The resolution also requested the Office of the High Commissioner on Human Rights, with a view to improving the situation of human rights in the Philippines, to provide support for the country through technical assistance and capacity-building in its continued fulfilment of its international human rights obligations and commitments.

Protection under International and Domestic Law

Anacleto Ballaho Alanis Hi, Petitioner, vs. Court of Appeals,
Cagayan De Oro City, and Hon. Gregorio Y. De La Pena III,
Presiding Judge, Br. 12, Regional Trial Court of Zamboanga City,
Respondents [G.R. No. 216425. 11 November 2020]

Petitioner filed a Petition before the Regional Trial Court (hereafter “RTC”) of Zamboanga to change his name on his birth certificate, using his mother’s maiden name, “Ballaho,” in place of his father’s surname, “Alanis III.” The Supreme Court held that as the Constitution and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international convention to which the Philippines is a party, ensures and protects the fundamental equality between women and men before the law, the petitioner should be allowed to use his mother’s maiden name. The Court quoted Articles 2(f) and 5 of CEDAW:

(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women;

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.] (Article 5)

The Court also noted that non-discrimination against women is also an emerging customary norm. Thus, the Court said that the State has the duty to actively modify what is in its power to modify and to ensure that women are not discriminated against.

SPECIFIC HUMAN RIGHTS INCIDENTS OR CASES – THE RIGHTS OF PERSONS DEPRIVED OF LIBERTY DURING THE COVID-19 PANDEMIC

***Almonte v. People* [G.R. No. 252117. 28 July 2020]**

In the case of *Almonte v. People* (G.R. No. 252117, 28 July 2020), the petitioners who were deprived of their liberty filed a petition asking the Supreme Court to exercise its “equity jurisdiction” and to provide temporary liberty on humanitarian grounds considering the COVID-19 pandemic. They alleged that they are at a greater risk of contracting the illness because they belong to the elderly,

sick, and pregnant population. Additionally, they petitioned to the Court to establish a Prisoner Release Committee to conduct a study and implement the release of prisoners in congested penal facilities.

The Supreme Court ultimately decided that the petition was one for bail, and denied the petition. It held that petitioners were not entitled to bail, as a matter of right, because they were charged with offenses punishable by *reclusion perpetua*. A key point of consideration in the decision and opinions of the Justices of the Supreme Court involved the applicability of the United Nations Standard Minimum Rules for the Treatment of Prisoners or The Nelson Mandela Rules (Mandela Rules) since petitioners were invoking their rights provided by the Mandela Rules. Three Associate Justices of the Supreme Court posited that local laws had expressly adopted the Rules. Justices Estela Perlas-Bernabe, Benjamin Caguioa, and Mario Victor MVF Leonen gave particular attention to the language found in the enabling statute of the Bureau of Corrections, which stated that the safekeeping of inmates shall be in “compliance with established United Nations standards.” Justice Leonen went so far as to argue that the principles espoused by the rules have attained the status of *jus cogens* norms. Justice Edgardo Delos Santos, however, took a different view. He argued that the Rules need to be transformed clearly and unequivocally since “compliance with United Nations standards” was worded in such a generic manner that it is silent as to its interpretation.

Michael T. Tiu, Jr.

International Humanitarian Law

Protection of Individuals under International Humanitarian Law

Having an extensive history of armed local resistance and secessionist movements, the Philippines is not a stranger to armed conflict. In recent decades, the Philippines has experienced a rise in incidents involving terrorist groups affiliated with and/or backed by larger, international terrorist organizations. While these terrorist groups often have unclear and inconsistent objectives, their acts frequently involve violence against civilians and state forces, including kidnapping for ransom and murder.

In 2007, the Philippines enacted the Human Security Act (hereafter “HSA”), the country’s first legal counterterrorism framework that attempted to address terrorism in a manner consistent with the international community’s approach. The HSA, however, proved unable to sufficiently respond to the evolving nature of terrorism, failing its biggest test in 2017 when a local terrorist group began a

five-month-long siege of Marawi City, located in the southern Philippines. Recognizing that terrorism requires a more effective and comprehensive approach that integrates the law with policies addressing the socio-economic drivers of conflict and terrorism, the Philippines in 2020 repealed the HSA and enacted the Anti-Terrorism Act (hereafter “ATL”).

Terrorism under the ATL includes acts intended to cause death or serious bodily injury to any person or endangers a person’s life; extensive damage or destruction to a government or public facility, public place, or private property; or extensive interference with, damage or destruction to critical infrastructure, with the purpose of intimidating the general public or a segment thereof, to create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety (Section 4). It specifically excludes advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person’s life, or to create a serious risk to public safety (Section 4).

Unlike the HSA, the ATL specifically provides a Humanitarian Exemption – a mechanism recognized under international security that facilitates the delivery of humanitarian assistance in areas affected by armed conflict, natural disasters, or other forms of emergency. Under Section 13 of the ATL, humanitarian activities of the International Committee of the Red Cross, the Philippine Red Cross, and other state-recognized impartial humanitarian partners or organizations in conformity with International Humanitarian Law, do not fall within the scope of “providing material support to terrorists” as penalized under Section 12. The humanitarian exemption provision also requires “state recognition” on the part of the humanitarian aid provider. While the provision appears to be broad enough to encompass known organizations engaged in providing humanitarian assistance, critics argue that the “state recognition” qualification restricts the ability of less known but bona fide groups to respond to urgent humanitarian crises. This restriction has two potential implications – the risk of principled humanitarian action qualifying as “material support” solely due to non-recognition of the humanitarian actor and the unnecessary restriction on legitimate movement and distribution of provisions to affected communities.

Joan Paula A. Deveraturda

International Criminal Law

Criminal Law; Adoption of a New Definition of Terrorism

On 3 July 2020, the Republic Act No. 11479, entitled “An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, Otherwise Known as the ‘Human Security Act of 2007’” (Anti-Terrorism Act of 2020), was enacted.

Upon the law’s enactment, the Philippines, in Section 4 of the law, adopted a new definition of terrorism as

an offense committed by any person who engages in acts intended to cause: (a) death or serious bodily injury to any person, or endangers a person’s life; (b) extensive damage or destruction to a government or public facility, public place or private property; or (c) extensive interference with, damage or destruction to critical infrastructure; or develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives or of biological, nuclear, radiological or chemical weapons; and or by a person who releases dangerous substances, or causing fire, floods or explosions.

Moreover, under the Anti-Terrorism Act of 2020, for an act to constitute terrorism, the

purpose of such act, by its nature and context, [must be] to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear, to provoke or influence by intimidation the government or any international organization, or seriously destabilize or destroy the fundamental political, economic, or social structures of the country, or create a public emergency or seriously undermine public safety.

This definition adopts elements of the offense defined in Article 2(1)(b) of the 1999 International Convention for the Suppression of the Financing of Terrorism. Similarly, it mirrors the elements of terrorism provided in Article 2 of the Draft Comprehensive Convention Against International Terrorism, which also contemplates conduct, the purpose of which should be “to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”

This purpose-driven approach changes the results-oriented analysis in the repealed Human Security Act of 2007, otherwise known as the Human Security Act, which provided that the predicate crimes of piracy, rebellion,

murder, coup d'etat, kidnapping, and serious illegal detention, and crimes involving destruction should have been committed and resulted in "sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand."

**CRIMINAL LAW – INTERNATIONAL CRIMINAL COURT –
PRELIMINARY EXAMINATION OF THE OFFICE OF THE
PROSECUTOR**

On 14 December 2020, the Office of the Prosecutor of the International Criminal Court (ICC OTP) released its Report on Preliminary Examination Activities, which included a discussion on preliminary examination of the situation in the Philippines opened by the ICC OTP on 8 February 2018.

In its report, the ICC OTP expressed that it is "satisfied that information available provides a reasonable basis to believe that the crimes against humanity of murder (article 7(1)(a)), torture (article 7(1)(f)) and the infliction of serious physical injury and mental harm as other inhumane Acts (article 7(1)(k)) were committed on the territory of the Philippines." According to the ICC OTP, the information it has gathered and collected revealed the killings of thousands of individuals since the launch of the anti-drug campaign on 1 July 2016, purportedly for reasons related to their alleged involvement in the use or selling of drugs.

The report recalled that on 17 March 2018, the Government of the Philippines deposited, through a Note Verbale, a written notification of withdrawal from the Rome Statute of the International Criminal Court with the UN Secretary-General. Thereafter, in accordance with article 127 of the Rome Statute, the withdrawal took effect on 17 March 2019. This withdrawal, however, does not halt the preliminary examinations of the ICC OTP because the Rome Statute provides that a withdrawing state shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute, and that such withdrawal shall not affect any cooperation with the ICC in connection with criminal investigations and proceedings which were commenced prior to the date on which the withdrawal became effective.

In this context, the ICC OTP is paying close attention to the announcement of Secretary of Justice Menardo Guevarra that an inter-agency panel to reinvestigate deaths that occurred in 5,655 anti-illegal drugs operations has been created. The establishment of this panel, posted on the Department of Justice's website as an article entitled Statement on the Enhanced Interactive Dialogue on Human Rights in the Philippines at the On-Going 44th Session of the United

Nations Human Rights Council in Geneva, Switzerland, was announced during the enhanced interactive dialogue on human rights in the Philippines at the Forty-Fourth Session of the United Nations Human Rights Council in Geneva, Switzerland.

Michael T. Tiu, Jr.

Treaty between the Republic of the Philippines and the Russian Federation on Mutual Legal Assistance in Criminal Matters, 12 March 2020

The objectives of the treaty are to strengthen the legal foundation of providing mutual legal assistance in criminal matters and to improve the effectiveness of activity of both Contracting States in combating crimes, including crimes related to terrorism, through cooperation and mutual legal assistance in criminal matters.

Legal assistance shall be provided in accordance with this Treaty if the offense, in connection with which the request was made is criminally punishable according to the laws of both Contracting States. The Requested State may, upon its own consideration, grant legal assistance even in the case the offense, in connection with which the request was made, is not criminally punishable under its laws. Where a request is made for a search and seizure of evidence, restraint, or confiscation of the proceeds of a crime, the Requested State may render assistance in accordance with its domestic laws.

Legal assistance shall also be granted in connection with investigations or proceedings relating to criminal offenses concerning taxation, customs, and similar duties, international transfer of financial assets, including the ones which to the Requesting State appears to be furthering organized criminal activity and crimes concerning public security.

Treaty between the Republic of the Philippines and the Russian Federation on Extradition, 12 March 2020

The objective of the treaty is to provide for more effective cooperation between the Contracting States in the suppression of crimes by concluding a treaty on the reciprocal extradition of criminal offenders on the basis of mutual respect for sovereignty, equality, non-intervention in the internal affairs of the Contracting States, and for mutual benefit.

The Contracting States agree to extradite to each other, pursuant to the provisions of this Treaty, persons whom the authorities in the Requesting State have charged with, or convicted of, an extraditable offense.

Rommel J. Casis