EN BANC

G.R. No. 211146 (Secretary Proceso J. Alcala, et al. v. Judge Emmanuel C. Carpio, et al. and G.R. No. 211375 (Secretary Proceso J. Alcala, et al. v. Judge Cicero D. Jurado, et al.)

Promulgated:
April 11, 2023

CONCURRENCE

LAZARO-JAVIER, *J.*:

These consolidated Petitions for *Certiorari* with prayer for injunction assail the Orders issued by respondents Regional Trial Court Judges Emmanuel Carpio (Judge Carpio) and Cicero Jurado (Judge Jurado) enjoining the District Collectors from seizing, holding, and detaining the rice shipments of private respondents Joseph Ngo (Ngo) and Danilo Galang (Galang) due to lack of import license from the National Food Authority (NFA).

As a member of the World Trade Organization (WTO),[1] the Philippines obtained its *first concession* or special treatment for rice. A special treatment or concession means that the country may impose trade restrictions as exemption from its free trade commitments in the global agricultural market. The *first concession* expired on December 31, 2004 but was extended to July 30, 2012. This extension was the country's *second concession.* Pursuant to paragraph 5.1 of the *second concession,* "any continuation of **special treatment** for rice shall be **contingent on** the outcome of the Doha Development Agenda (DDA) **negotiations**."

On March 20, 2012, the Philippines submitted a Request for Waiver on Special Treatment for Rice. This in effect sought a *third concession* which was proposed to expire on June 30, 2017.

Meantime, on March 22, 2013, pursuant to **Republic Act No. 8178** (1996) and **Presidential Decree No. 4** (1972), the NFA issued **Memorandum Circular (M.C.) No. AO-2K13-03-003** which (a) set a quota of 163,000 metric tons of rice imports from specified source countries for 2013; (b) provided guidelines by which NFA-licensed importers may apply when importing rice; and (c) indicated the requisites for the issuance of Certificate of Eligibility to import.

On December 5, 2013, private respondent Ngo filed a complaint for permanent injunction with prayer for temporary restraining order and/or

[1]Member since January 1, 1995. Accessed at https://www.wto.org/english/thewto_e/countries_e/philippines_e.htm on August 14, 2022.

preliminary injunction docketed as Civil Case No. 35,354-2013 against the District Collector of the Port of Davao for alleged unlawful seizure of his rice shipments due to lack of import license as required under M.C. No. AO-2K13-03-003. The case was then raffled to Judge Carpio.

On January 14, 2014, private respondent Galang filed a similar complaint docketed as Civil Case No. CV-14-131261 with the same allegations and prayer as those of Ngo. The case was raffled to Judge Jurado.

Judge Carpio and Judge Jurado ruled in favor of Ngo and Galang, respectively, and ordered the issuance of a writ of preliminary injunction, *viz.*:

December 12, 2013 Order of Judge Carpio:

> FOR REASONS STATED, pending trial, let a Writ of Preliminary Mandatory Injunction issue, upon Plaintiff's posting a bond in the amount of P5,000,000.00 and upon payment of the required fees, enjoining and restraining defendant, all those acting for and in their behalf, and all their agents and responsible officers from:
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> a. Seizing, alerting, and/or holding Plaintiff's rice shipments xxx;
> b. **Implementing** any Alert Orders, Hold Orders, and **issuances** in relation to Plaintiff's rice shipments and/or refusing to lift any such orders or issuances; and
> c. Doing any act that would prejudice Plaintiff while the propriety and validity of its actions as enumerated in the preceding paragraphs, are still at issue and subject to judicial determination.
>
> SO ORDERED. (Emphasis supplied)

February 27, 2014 Order of Judge Jurado:

> WHEREFORE, foregoing premises considered, let a writ if preliminary injunction be issued in favor of BOLD BIDDER MARKETING AND GENERAL MERCHANDISE, from whom plaintiff Danilo G. Galang doing business under the name and style St. Hildegard Grains Enterprises, bought the rice shipments subject matter of this case enjoining and restraining defendants Bureau of Customs, the District Collectors of the Ports of Manila, North Harbor and South Harbor, in their capacities as the incumbent District Collectors for the Ports of Manila, North and South Harbor and all persons acting for and in their behalf and all their agents from a) **implementing NFA Memorandum Circular No. AO-2K13-03-003**; b) seizing, alerting, and/or holding BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipment referred in this petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; c) **implementing** any Alert Orders, Hold Orders, and **issuances** and/or refusing to lift any such orders or issuances in relation to BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff's rice shipments referred in this Petition and those shipments, similarly situated as those in the Petition, which the plaintiff may acquire by sale or by importation after the filing of this Petition; and d) doing any act that would prejudice BOLD BIDDER MARKETING AND GENERAL MERCHANDISE and/or plaintiff while

> the propriety and validity of its actions as enumerated in the preceding paragraphs are still at issue and subject to judicial determination. (Emphasis supplied)

On July 24, 2014, or pending these *certiorari* proceedings, the WTO released a Decision allowing a *third concession* effective until June 30, 2017.

I thank my good friend the esteemed Associate Justice Jhosep Y. Lopez for now taking a position consistent with my position to dissolve the writs of injunction granted by Judges Carpio and Jurado in Civil Case Nos. 35,354-2013, and CV-14-131261, respectively. At the outset, Justice Lopez emphasized that private respondents Ngo and Galang failed to establish a right *in esse* to engage in the importation of rice, the first element for the issuance of an injunction. Judges Carpio and Jurado, therefore, committed grave abuse of discretion when they issued the subject writs of injunction.[2]

May I, nonetheless, humbly add to the discussion why respondent Judges committed grave abuse of discretion when they granted injunctive relief relative to the subject rice importations.

Private respondents had no clear and unmistakable legal right that would have warranted protection by preliminary injunction

Though not articulated in the draft *ponencia*, there were 189,540[3] bags of rice that arrived at the Port of Manila in 2013 **without proper documents.** To echo the draft *ponencia,* Ngo and Galang possessed **no clear and unmistakable legal rights** over these **undocumented** rice shipments that would have merited protection via the courts' writs of preliminary injunction.[4]

In *Ocampo v. Sison*,[5] the Court held that to be entitled to the injunctive writ, the applicant **must show** that there exists a **right to be protected** which **must** be **clear** and **unmistakable.** Where the applicant's **right** or **title** is **doubtful** or **disputed,** injunction is **not proper**. The Court further elucidated, *viz.*:

> **In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion.** Where the applicant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.

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2 Decision of J. J. Lopez, pp. 17-18; p. 32.

3 Tetch Tupas, 2014. Supreme Court Stops Release of Illegally Imported Rice. Accessed at https://newsinfo.inquirer.net/587022/supreme-court-stops-release-of-illegally-imported-rice on August 14, 2022.

4 *See Philippine Amusement and Gaming Corp. v. Thunderbird Pilipinas Hotels & Resorts, Inc.*, 730 Phil. 543, 559 (2014) [Per J. Reyes, First Division].

5 552 Phil. 166 (2007) [Per J. Chico-Nazario, Third Division], as cited in *Roman Catholic Archbishop of San Fernando v. Soriano, Jr.*, 671 Phil. 308, 319 (2011) [Per J. Villarama, Jr., First Division].

> A clear and positive right especially calling for judicial protection must be shown. **Injunction is not a remedy to protect or enforce contingent, abstract, or future rights**; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an act which does not give rise to a cause of action. There must exist an actual right. There must be a patent showing by the applicant that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right. (Emphasis and underscoring supplied)

Sumifru Philippines Corp. v. Spouses Cereño[6] discussed the concept of a **clear** and **unmistakable right** that could be protected by a writ of preliminary injunction, thus:

> A writ of preliminary injunction, being an extraordinary event, one deemed as a strong arm of equity or a transcendent remedy, must be granted only in the face of injury to actual and existing substantial rights. A right to be protected by injunction means a right clearly founded on or granted by law or is enforceable as a matter of law. An injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse*, and which may never arise, or to restrain an act which does not give rise to a cause of action. **When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, injunction is not proper. While it is not required that the right claimed by the applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.** (Emphasis supplied)

The Court cannot act contrary to the exercise of the exclusive authority of the President and his subalterns at the Department of Foreign Affairs to conduct and determine the outcome of the country's foreign relations, including their interpretation of international instruments in the course of such exclusive authority.

The conduct and outcome of international relations have always been part and parcel of the President's **residual** or *prerogative powers* since time immemorial, which has also been codified in Book IV, Title I, Chapter 1, Sections 1 to 3 of the ***Administrative Code of 1987*** as amended.

Residual or prerogative powers are those unspoken powers but exist as a matter of national survival. As held in *Marcos v. Manglapus*:[7]

> **To the President, the problem is one of balancing the general welfare and the common good against the exercise of rights of certain**

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6 825 Phil. 743, 750-751 (2018) [Per J. Carpio, Second Division], as cited in *Bureau of Customs v. Court of Appeals-Cagayan de Oro Station*, G.R. Nos. 192809, 193588, 193590-91 & 201650, April 26, 2021 [Per J. Hernando, Third Division].

7 258 Phil. 479 (1989) [Per J. Cortes, En Banc].

> **individuals.** The power involved is the President's **residual power to protect the general welfare of the people.** It is founded on **the duty of the President, as steward of the people**. To paraphrase Theodore Roosevelt, it is **not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws** that the needs of the nation demand [See Corwin, supra, at 153]. It is a power borne by the President's duty to preserve and defend the Constitution. It also may be viewed as a power implicit in the President's duty to take care that the laws are faithfully executed [see Hyman, The American President, where the author advances the view that an allowance of discretionary power is unavoidable in any government and is best lodged in the President].
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> More particularly, this case calls for the exercise of the President's powers as protector of the peace. [Rossiter, The American Presidency]. The **power of the President to keep the peace is not limited merely to exercising the commander-in-chief powers in times of emergency** or to leading the State against external and internal threats to its existence. The President is **not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquility** in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. For in making the President commander-in-chief the enumeration of powers that follow cannot be said to exclude the President's exercising as Commander-in-Chief powers short of the calling of the armed forces, or suspending the privilege of the writ of habeas corpus or declaring martial law, in order to keep the peace, and maintain public order and security. (Emphasis supplied)

The President's *prerogative* consists of the residue of miscellaneous powers, rights, privileges, immunities, and duties accepted under our law as vested in and exercised by him or her, including his or her subalterns. The prerogative power is subject to the doctrine of constitutional supremacy, and to a certain degree, Congress, by statute, may regulate the exercise of this power. It has also been codified in Section 20, Chapter 7, Title I, Book III of the *Administrative Code of 1987* which expresses it in this manner:

> Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law.

The President's power in dealing with international relations is plenary in the sense that only express limitations circumscribe this power. This legal principle is too basic to be ignored. Its latest iteration in *Esmero v. Duterte*[8] did not diminish its nature as a legal doctrine:

> Indeed, the President is the guardian of the Philippine archipelago, including all the islands and waters embraced therein and all other territories over which it has sovereignty or jurisdiction. **By constitutional fiat and the**

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[8] G.R. No. 256288. July 29, 2021 [Per J. Zalameda, En Banc].

intrinsic nature of his office, the President is also the sole organ and authority in the external affairs of the country.

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

> **As the sole organ of our foreign relations and the constitutionally assigned chief architect of our foreign policy, the President is vested with the exclusive power to conduct and manage the country's interface with other states and governments.** Being the principal representative of the Philippines, the Chief Executive speaks and listens for the nation; initiates, maintains, and develops diplomatic relations with other states and governments; negotiates and enters into international agreements; promotes trade, investments, tourism and other economic relations; and settles international disputes with other states.
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> xxx xxx xxx
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> This rule does not imply, though, that the President is given carte blanche to exercise this discretion. Although **the Chief Executive wields the exclusive authority to conduct our foreign relations**, this power must still be **exercised within the context and the parameters set by the Constitution, as well as by existing domestic and international laws**.

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

> a. The policy of freedom from nuclear weapons within Philippine territory;
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> b. The fixing of tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, which must be pursuant to the authority granted by Congress;
>
> c. The grant of any tax exemption, which must be pursuant to a law concurred in by a majority of all the Members of Congress;
>
> d. The contracting or guaranteeing, on behalf of the Philippines, of foreign loans that must be previously concurred in by the Monetary Board;
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> e. The authorization of the presence of foreign military bases, troops, or facilities in the country must be in the form of a treaty duly concurred in by the Senate; and
>
> f. For agreements that do not fall under paragraph 5, the concurrence of the Senate is required, should the form of the government chosen be a treaty.
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> In addition to treaty-making, the President also has the power to appoint ambassadors, other public ministers, and consuls; receive ambassadors and other public ministers duly accredited to the Philippines; and deport aliens. (Emphasis supplied)

Hence, when the President and his subalterns asked for the extension of the rice *concession*, they in effect were **imposing the rules to be followed** so

far as the country's **participation in the international regimes** of the World Trade Organization and the Agreement of Agriculture ought to be. That these were in fact the rules of international law to which we as a country were bound in the course of conducting foreign relations was confirmed and made definite and categorical by the **domestic laws** then in place, namely, **Memorandum Circular (M.C.) No. AO-2K13-03-003**, **Republic Act No. 8178** and **Presidential Decree 4**, as amended, which all support the *concession* for the imposition of quantitative restrictions then being requested. As we held in ***Esmero***:

> If President Duterte now sees fit to take a different approach with China despite said ruling, this does not by itself mean that he has, as petitioner suggests, unlawfully abdicated his duty to protect and defend our national territory, correctible with the issuance by this Court of the extraordinary writ of mandamus. **Being the Head of State, he is free to use his own discretion in this matter, accountable only to his country in his political character and to his own conscience.**
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> **Ultimately, the decision of how best to address our disputes with China (be it militarily, diplomatically, legally) rests on the political branches of government.** While we are loath to give a "blank check" especially where the risk of grave abuse of discretion may be high, **we cannot have an "entrammeled executive" who will be ill-equipped to face the "amorphous threat[s] and perpetrators whose malign intent may be impossible to know until they strike." The Constitution vests executive power, which includes the duty to** execute the law, protect the Philippines, and **conduct foreign affairs, in the President – not this Court. Barring violations of the limits provided by law and the Constitution, we should take care not to substitute our exercise of discretion for his**. As **"the branch that knows least about the national security concerns that the subject entails," we cannot**, in the words of Justice Scalia, **just simply "blunder in."** (Emphasis supplied)

The **legalization of international relations** did not give rise to supranational institutions of law and order that operates over and above traditional state apparatuses of law and justice. International law remains for the greater part to be a matter of **soft law**.[9] Traditionally, investment rules or agreements amongst states were enforced through **diplomacy** and **parley**. States would pursue the causes and cases of its nationals.[10] While convenience and deficiencies in diplomatic procedures resulted in the evolution of commissions allowing for direct investor participation and the system of investment arbitration is now widespread, and thus, standing is provided to a state's investors, nonetheless, the obligations enforced continue to be **those of the states themselves** which are parties to the international agreements

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9 Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

10 Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

entered into.[11] This means that the evolution of even well-defined rules and clear-cut modes of enforcement **did not supersede** the *real politik* of international relations where diplomacy and parley, the self-serving interests of states, and the hierarchy of world order determined *how states should behave* and *what international rules governed.*[12]

As one article puts it, "[c]ontemporary international relations are legalized to an impressive extent, yet international legalization displays great variety. A few international institutions and issue areas approach the theoretical ideal of hard legalization, but most international law is 'soft' in distinctive ways."[13]

Executive Order No. 459 (1997), *Providing for the Guidelines in the Negotiation of International Agreements and its Ratification,* has categorically identified the talking heads and thinking minds when dealing with international law as soft law. Executive Order No. 459 mandates:

> WHEREAS, the negotiations of international agreements are made in pursuance of the foreign policy of the country;
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> WHEREAS, Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides that the Department of Foreign Affairs shall be the lead agency that shall advise and assist the President in planning, organizing, directing, coordinating and evaluating the total national effort in the field of foreign relations;
>
> WHEREAS, Executive Order No. 292 further provides that the Department of Foreign Affairs shall negotiate treaties and other agreements pursuant to the instructions of the President, and in coordination with other government agencies;
>
> WHEREAS, there is a need to establish guidelines to govern the negotiation and ratification of international agreements by the different agencies of the government;
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> ....
>
> SECTION 1. Declaration of Policy. — It is hereby declared the policy of the State that the negotiations of all treaties and executive agreements, or any amendment thereto, shall be coordinated with, and made only with the participation of, the Department of Foreign Affairs in accordance with Executive Order No. 292. It is also declared the policy of the State that the composition of any Philippine negotiation panel and the designation of the chairman thereof shall be made in coordination with the Department of Foreign Affairs.

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[11] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

[12] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

[13] Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," Researchgate at https://www.researchgate.net/publication/4770665_Hard_and_Soft_Law_in_International_Governance/link/5611bf7b08aec422d1171340/download (last accessed on August 20, 2022).

...

SECTION 3. Authority to Negotiate. — Prior to any international meeting or negotiation of a treaty or executive agreement, authorization must be secured by the lead agency from the President through the Secretary of Foreign Affairs. The request for authorization shall be in writing, proposing the composition of the Philippine delegation and recommending the range of positions to be taken by that delegation. In case of negotiations of agreements, changes of national policy or those involving international arrangements of a permanent character entered into in the name of the Government of the Republic of the Philippines, the authorization shall be in the form of Full Powers and formal instructions. In cases of other agreements, a written authorization from the President shall be sufficient.

SECTION 4. Full Powers. — The issuance of Full Powers shall be made by the President of the Philippines who may delegate this function to the Secretary of Foreign Affairs.

The following persons, however, shall not require Full Powers prior to negotiating or signing a treaty or an executive agreement, or any amendment thereto, by virtue of the nature of their functions:

a. Secretary of Foreign Affairs;

b. Heads of Philippine diplomatic missions, for the purpose of adopting the text of a treaty or an agreement between the Philippines and the State to which they are accredited;

c. Representatives accredited by the Philippines to an international conference or to an international organization or one of its organs, for the purpose of adopting the text of a treaty in that conference, organization or organ.

SECTION 5. Negotiations. —

a. In cases involving negotiations of agreements, the composition of the Philippine panel or delegation shall be determined by the President upon the recommendation of the Secretary of Foreign Affairs and the lead agency if it is not the Department of Foreign Affairs.

b. The lead agency in the negotiation of a treaty or an executive agreement, or any amendment thereto, shall convene a meeting of the panel members prior to the commencement of any negotiations for the purpose of establishing the parameters of the negotiating position of the panel. No deviation from the agreed parameters shall be made without prior consultations with the members of the negotiating panel.

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Clearly, when we talk about international law that is developed through negotiations and parleys, the talking heads and thinking minds are the President and his or her subalterns.

It is therefore easy to discern **why the domestic courts of states, including the highest courts of their lands, are not expert purveyors of**

what international law is and what it means, when the *interpretations of international law arise in the context of the conduct of foreign relations and the determination of their outcomes vis-à-vis other states and international organizations*. In this situation, **we are not experts** in discovering and discerning the mold of international law. This is especially true in areas where, as in the request for rice *concessions* under the Agreement on Agriculture, **diplomacy and parley remain to be the accurate measure of outcomes**.

Hence, in situations where international negotiations are taking place *or* where the Executive Branch is pre-occupied with parallel involvement in foreign relations, *Pangilinan v. Cayetano*[14] correctly cautioned:

> In any case, this Court has **no competence to interpret with finality – let alone bind** the International Criminal Court, the Assembly of States Parties, individual state parties, and the entire international community – what this provision means, and conclude that undoing a withdrawal is viable. In the face of how the Rome Statute enables withdrawal but does not contemplate the undoing of a withdrawal, **this Court cannot compel external recognition of any prospective undoing which it shall order**. To do so could even mean **courting international embarrassment**.
>
> Just the same, **any such potential embarrassment or other unpalatable consequences are risks that we, as a country, are willing to take is better left to those tasked with crafting foreign policy**. (Emphasis supplied)

As explained elsewhere,[15] echoing the principle expressed in *Esmero* and *Pangilinan* as stressed above:

> [24] The basic principles regarding treaty interpretation are summarized by Lord Oliver of Aylmerton in the case of *JH Rayner Ltd. vs. Dept. of Trade, [1989] 3 WLR 969 (HL)*, at pp. 1001 and 1002:
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> "It is **axiomatic that municipal courts have not and cannot have the competence to adjudicate upon or to enforce the rights arising out of transactions entered into by independent sovereign states between themselves on the plane of international law**. That was firmly established by this House in *Cook v. Sprigg*, [1899] AC 572, 578, and was succinctly and convincingly expressed in the opinion of the Privy Council delivered by Lord Kingsdown in *Secretary of State in Council of India v. Kamachee Boye Sahaba (1859)*, 13 Moo. CCP 22, 75:
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> **'The *transactions of independent states between each other* are governed by other laws than those which municipal courts administer; such courts have neither the means of deciding what is right, nor the power of enforcing any decision which they may make.'**
>
> "On the **domestic plane**, the power of the Crown to conclude treaties with other sovereign states is an exercise of the Royal Prerogative, **the validity of which cannot be challenged in municipal law**: see

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[14] G.R. No. 238875. March 16, 2021 [Per J. Leonen, En Banc].
[15] R. v. Vincent, 12 OR (3d) 427 (1993) (Ontario Court of Appeal).

Blackburn v. Attorney General, [1971] 1 WLR 1037. **The Sovereign acts 'throughout the making of the treaty and in relation to each and every of its stipulations in her sovereign character, and by her own inherent authority; and, as in making the treaty, so in performing the treaty, she is beyond the control of municipal law, and her acts are not to be examined in her own courts:'** *Rustomjee v. The Queen* (1876), 2 QBD 69, 74, by Lord Coleridge, CJ.

"That is the first of the underlying principles....

[25] These principles are very well summarized by Lord Diplock in *British Airways v. Laker Airways*, [1985] AC 58 (HL), at pp. 85 and 86:

"The **interpretation of treaties** to which the United Kingdom is a party but **the terms of which have not either expressly or by reference been incorporated in** English **domestic law by legislation** is **not a matter that falls within the interpretative jurisdiction of** an English **court of law**." (Emphasis and underscoring supplied)

This is *not to say* that our courts are forever unskilled at interpreting international law. As again explained elsewhere,[16] local courts may interpret international law in the following instances:

[26] However, **these principles have exceptions**, as noted by Lord Oliver of Aylmerton in Rayner, supra, at p. 1002:

"These **propositions do not, however, involve as a corollary that the court must never look at or construe a treaty**. Where, for instance, a **treaty is directly incorporated into** English **law by Act of the legislature, its terms become subject to the interpretative jurisdiction of the court in the same way as any other Act** of the legislature. *Fothergil v. Monarch Airlines Ltd.*, [1981] AC 251is a recent example. Again, it is well established that **where a statute is enacted in order to give effect to the** United Kingdom's **obligations under a treaty, the terms of the treaty may have to be considered and, if necessary, construed in order to resolve any ambiguity or obscurity** as to the meaning or scope of the statute. Clearly, also, **where parties have entered into a domestic contact in which they have chosen to incorporate the terms of the treaty**, the **court may be called upon to interpret the treaty for the purposes of ascertaining the rights and obligations of the parties** under their contract: see, for instance, *Philippson v. Imperial Airways Ltd.*, [1939] 332."

[27] Lord Oliver of Aylmerton continues at page 1003:

"It must be borne in mind, moreover, that the conclusion of an international treaty and its terms are as much matters of fact as any other fact. **That a treaty may be referred to where it is necessary to do so as part of the factual background against which a particular issue arises may seem a statement of the obvious.** But it is, I think, necessary to stress that the purpose for which such reference can legitimately be made is purely an evidential one. **Which states have become parties to a treaty and when and what the terms of the treaty are questions of fact.** The **legal results which flow from it in international law, whether between the parties**

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16 *R. v. Vincent,* 12 OR (3d) 427 (1993) (Ontario Court of Appeal).

> **inter se or between the parties or any of them and outsiders are not and they are not justiciable by municipal courts**. (Emphasis supplied)

But the orders of Judge Carpio and Judge Jurado do not fall within the circumstances contemplated by the exceptions. They are clearly out-of-step with the legal doctrine that textually commits foreign relations exclusively to the President and his or her subalterns. The right which these assailed orders have recognized to be allegedly clear and unmistakable crumbles in the face of the fact that the architects of the country's foreign affairs **have not at any instance endorsed it in the course of their exercise of this exclusive power**.

In other words, there is no clear and unmistakable right to import rice without restrictions and *sans* license because by seeking to negotiate for another rice *concession* in the international domain, the President and his subalterns in the foreign affairs department **have refused to accept it (or at least have ignored it) as a rule of international law**.

The Court cannot second guess the wisdom of the President and his subalterns on this matter since it falls within their exclusive domain to determine. This is the rule that they have the power to impose as it is part and parcel of the conduct and outcome of international relations.

The absence of clear and unmistakable legal right on the part of private respondents is the law of the case.

Notably, in its Resolution dated April 22, 2014, the Court **already denied** the respective Motions and/or Manifestations for the Release of Perishable Goods of Ngo and Galang. Subsequently, the Court denied their reconsideration per Resolution dated June 23, 2015 emphasizing that "**private respondents had not even clearly shown their legal right to the rice shipments.**"[17] The *ponencia* has admitted this important fact when it also mentioned:

> xxx private respondents' brazen act of importation without a permit during the gap of the second concession's expiry and the grant for the third concession was clearly a gamble that they made at their own risk.[18]

The **absence of clear and unmistakable legal right** on the part of private respondents is already therefore the **law of the case** in the present matter.

In *Philippine Ports Authority v. Nasipit Integrated Arrastre and Stevedoring Services Inc.*,[19] the Court explained the legal principle of the ***law of the case***:

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[17] Decision of J. Lopez, p. 11.
[18] Decision of J. Lopez, p. 28.
[19] 807 Phil. 942 (2017) [Per J. Caguioa, First Division].

> The **doctrine of the law of the case precludes departure from a rule previously made by an appellate court in a subsequent proceeding essentially involving the same case**. Pursuant to this doctrine, the Court, in De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU), (DLSU) denied therein petitioner's prayer for review, since the petition involved a **single issue which had been resolved with finality** by the CA in a previous case involving the same facts, arguments and relief.
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> ....
>
> The law of the case has been defined as the opinion delivered on a former appeal. It means that **whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case**, whether correct on general principles or not, **so long as the facts on which such decision was predicated continue to be the facts of the case before the court**.
>
> In *Heirs of Felino M. Timbol, Jr. v. Philippine National Bank* (Heirs of Timbol), the Court was confronted with procedural antecedents similar to those attendant in this case. Therein, the Court affirmed the CA's decision declaring as valid the extrajudicial foreclosure assailed by petitioners on the basis of factual findings which were affirmed by the Court in a previous decision that dealt with the dissolution of a writ of preliminary injunction issued in the same case. Thus, in Heirs of Timbol, the Court ruled that the CA correctly applied the doctrine of the law of the case.
>
> ....
>
> Thus, **"[q]uestions necessarily involved in the decision on a former appeal will be regarded as the law of the case on a subsequent appeal, although the questions are not expressly treated in the opinion of the court**, as the presumption is that all the facts in the case bearing on the point decided have received due consideration whether all or none of them are mentioned in the opinion."[20] (Emphasis supplied)

Here, the Court has ruled with finality that the respondent judges' preliminary injunction cannot be given effect since **private respondents had no clear and unmistakable legal right**. Hence, this declaration ought to bind us so far as this element matters.

By way of resolution, the Court should not only reiterate that private respondents have no clear and legal right to be protected by the writs of preliminary injunction issued by the respondent judges but must also dismiss the actions below for lack of cause of action.

The **absence of a clear and unmistakable legal right** on the part of private respondents has already been **resolved** by the Court when it granted the preliminary injunction prayed for by petitioners. The Court was definite and categorical that private respondents were **unable to show this character** to their alleged legal right to benefit from preliminary injunction. I commend

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[20] *Id.* at 957-958.

Justice Lopez for reiterating this point in his *ponencia* as it is now the **law of the case**.

But more important, the Court **must already declare the absence of any right** on the part of the private respondents to import rice without license from the NFA. Hence, their actions utterly **lack a cause of action** and must therefore be **dismissed**. These resolutions necessarily arise from the legal doctrines discussed above.

The President and his subalterns were **negotiating for quantitative** restrictions for rice importations. This was **the rule of international law** to which the country, *including the Court*, was **bound to recognize** and **abide by**. This is because their exclusive power in this regard is **exclusive** and the outcomes of the exercise of this power are **unquestionable**. No one can summon them to our courts to compel them to reverse or retract their negotiating positions. Further, as also keenly noted above, international law **cannot trump** domestic laws, which here were then **Republic Act No. 8178** (1996), **Presidential Decree 4** (1972) and **Memorandum Circular (M.C.) No. AO-2K13-03-003**. Private respondents **cannot find** a **cause of action** on the basis of allegations and conclusions that are **contrary to our domestic laws**, though they anchor the same upon international law, the existence and relevance of which anyway are absolutely disputed.

In any event, private respondents are *technically* **not without any remedy**. Under international law, a wronged investor could seek the intervention of its state to protect its interests. The state, if it so desires, could then espouse the investor's claim under the principle of "diplomatic protection." This principle is part of customary international law. When a national is injured by an act contrary to international law, the state itself is injured. The concept is that an investor, or the investment, carries with it a little piece of the sovereign. So that injury to an investor or their property, if unremedied, is an injury to the state of that investor, or the sending state of the investment.

In the present case, the WTO and the Agreement on Agriculture has ordained that Articles XXII and XXIII of the General Agreement on Tariffs and Trade (GATT) of 1994 shall apply, thus:

> Part XI: Article 19
> Consultation and Dispute Settlement
>
> The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.[21]

The mechanism involving dispute settlement covers **consultations** where WTO Members other than the consulting parties are informed in

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[21] World Trade Organization – Agreement on Agriculture. Accessed at https://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm#articleXIX on August 14, 2022.

writing of requests for consultations, and any Member that has a substantial trade interest in consultations may request to join in the consultations as a third party.[22] When the Dispute Settlement Body has ruled that a provision of GATT 1994 has not been observed, the responsible Member-State shall take such reasonable measures as may be available to ensure its observance.[23] It is now up to private respondents to locate a Member willing to take up the cudgels for them.

Finally, records show that the tariffs and taxes over the rice shipments were only paid upon filing of the complaint in 2013 insofar as respondent Ngo is concerned.[24] Indeed, the Court cannot simply turn a blind eye to the shortcomings of private respondents, nor coddle the perpetuation of rampant smuggling of rice which continues to threaten the livelihood of millions of local rice farmers in the country. This is another ground for the Court to dismiss outright the actions below for utter lack of cause of action.

Conclusion

ACCORDINGLY, I vote to grant the petition, nullify the assailed orders of respondent judges, make the injunction granted by the Court permanent, and finally, order the dismissal of Civil Case No. 35,354-2013 and Civil Case No. CV-14-131261.

AMY C. LAZARO-JAVIER
Associate Justice

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[22] See General Agreement on Tariffs and Trade 1994. Accessed at https://www.jus.uio.no/english/services/library/treaties/09/9-01/gatt-1994.xml on August 14, 2022.

[23] See General Agreement on Tariffs and Trade 1994. Accessed at https://www.jus.uio.no/english/services/library/treaties/09/9-01/gatt-1994.xml on August 14, 2022.

[24] Draft *ponencia*, p. 25, circulated last July 26, 2022.