EN BANC

G.R. No. 182734 – Bayan Muna Party-List Representatives Satur C. Ocampo and Teodoro A. Casiño, *et al.* v. President Gloria Macapagal-Arroyo, *et al.*

Promulgated:

January 10, 2023

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DISSENT

LAZARO-JAVIER, *J.*:

Antecedents

On March 14, 2005, the Philippine National Oil Company (PNOC) executed the Tripartite Agreement for Joint Marine Seismic Undertaking (JMSU) in the Agreement Area in the South China Sea with China National Offshore Oil Corporation (CNOOC) and Vietnam Oil and Gas Corporation (PETROVIETNAM).

PNOC is the national oil company of the Republic of the Philippines. CNOOC is the state-owned oil company of the People's Republic of China. PETROVIETNAM is the state-owned oil company of the Socialist Republic of Vietnam.

The JMSU recognized that the sovereign states were the true parties in interest when it required the approval of the named parties' respective governments before it could even be effective and binding. Thus, according to the *ponencia*, citing the petition and its reference to Article 11.6 of the JMSU:

> Nevertheless, the last clause of the JMSU states that it shall not be binding on the Parties should any party fail to obtain its government's approval within three months after the date on which it is signed. The latest date of the approvals shall be the effective date of the JMSU, while the date of the commencement of its implementation shall be the first day of the month following its effectivity.

To borrow the words of the *ponencia*, the JMSU was all about:

> The JMSU has a term of three years starting from the date of commencement of its implementation (Agreement Term). According to its fourth whereas clause, its execution is an expression of the Parties' commitment "to pursue efforts to transform the South China Sea into an area of peace, stability, cooperation, and development." Consequently, the Parties desire "to engage in a joint research of petroleum resource potential of a certain area of the South China Sea as a pre-exploration activity." The JMSU shall cover 142,886 square kilometers of the Agreement Area, defined, and marked out by the geographic location and coordinates of the connecting points of the boundary lines in the Annex attached to the agreement. Article 4(1) of the JMSU authorizes the conduct by the Parties of "seismic work" in the Agreement Area, viz.:
>
> > 4.1. It is agreed that certain amount of 2D and/or 3D seismic lines shall be collected and processed and certain amount of existing 2D seismic lines shall be reprocessed within the Agreement Term. The seismic work shall be conducted in accordance with the seismic program unanimously approved by the Parties taking into account the safety and protection of the environment in the Agreement Area.
>
> For the proper performance of the joint activity, the Parties shall establish a Joint Operating Committee (JOC) as soon as possible after the JMSU is signed. The Parties shall each appoint three representatives to the JOC. The JOC's powers, among others, include the formulation of a Joint Operating Procedure (JOP) for the conduct of the joint activity. As a rule, the Parties agreed to have effective and equal participation in all activities relevant to the implementation of the JMSU....

The **ultimate results** of the JMSU were "**documents**, **information**, **data**, and **reports** with respect to the **joint marine seismic undertaking**." As to these outcomes, the parties were bound by a confidential agreement which provided that outcomes would not be disclosed by any of them to any other party absent of their unanimous written consent.

The JMSU itself contained a **confidentiality clause** that prevented its disclosure. Hence, the *ponencia* could only surmise, as explained by the prefatory use of the word **"allegedly"** in the following narration:

> Allegedly, on June 5, 2005, then Department of Energy (DOE) Secretary Raphael P.M. Lotilla issued a six-month term permit (first permit) to the PNOC Exploration Corporation (PNOC-EC), the assignee of the PNOC under Article 9.1 of the JMSU. This permit constituted the Philippine Government's approval of the JMSU. On July 1, 2005, the JMSU commenced to be implemented for the Agreement Term or until July 1, 2008. On December 10, 2005, the first permit expired. On October 4, 2007, the DOE allegedly issued another permit for a six-month term (second permit).

There is **no certified copy of the JMSU** on record. Hence, it is also admitted that the **location of the JMSU activities** has **not** been **established with certainty**. The *ponencia* proceeded though:

> Before proceeding to the substance of the case, We clarify that **the JMSU covers the portion of the South China Sea claimed by the Philippines, China, and Vietnam**. The ninth whereas clause of the agreement declared that its signing will not undermine the basic positions held by the Government of each Party on the South China Sea issue. However, petitioners alleged that the Agreement Area is within the EEZ of the Philippines and includes almost 80% of the Spratly Group of Islands. This is not disputed by respondents. On September 5, 2012, then President Benigno C. Aquino III issued Administrative Order (AO) No. 29 titled, "Naming the West Philippine Sea of the Republic of the Philippines, and for Other Purposes." The AO stated that the maritime areas on the western side of the Philippine archipelago shall be named as the West Philippine Sea, which shall include the Luzon sea as well as the waters around, within and adjacent to the Kalayaan Island Group and Bajo De Masinloc, also known as the Scarborough Shoal.
>
> **Notwithstanding AO No. 29, We shall not refer to the Agreement Area as the West Philippine Sea. As admitted by petitioners, no official copy of the map covering the JMSU had been released to the public owing to the confidentiality clause in the agreement.** The maps attached to the petition were from (1) an online news article, and (2) made by Prof. Giovanni Tapang, Ph.D. of the National Institute of Physics, University of the Philippines Diliman based on the coordinates stated on the copy of the map from the said article. **As such, We cannot assume that the Agreement Area is included in the West Philippine Sea. We are only certain that based on the attached maps and the non-rebutted claim of petitioners, the Agreement Area is within the Philippines' EEZ.** Therefore, whatever natural resources found therein are owned by the Republic.

For sure, we cannot **assume facts not in evidence**. We cannot assist petitioners' case to meet. The Court after all is an impartial arbiter. There are *unanswered* **questions of fact** that in turn depended upon answers to prejudicial **questions of law**. What we have is an **incomplete case record to which we cannot supply the facts** to be able to come out with a judgment.

In any event, on **June 30, 2008**, as everyone admits, the JMSU **expired**.

My Dissent

1. Doctrine of Hierarchy of Courts

> ***But this is the natural outcome when we constantly push institutions to bend to politics. We care only about results. We dismiss underlying legal principles as technicalities, as malleable and negotiable, at least for our side…. But law must mean what it says, not be perpetually open to loopholes. It must be stable and predictable, or it cannot serve its purpose…. Are we willing to be loyal to law itself above the political fray, to rebuke legal vigilantism using outlandish cases, even the ones that suit us? If not, Sisyphus' lament is that we cannot protest***

> ***how laws are never followed. Law ultimately draws strength not from intellect, but from society's conviction.***[1]

As in Sisyphus' lament, my first issue with the *ponencia* is **fundamental**. Petitioners **bear the burden** of proving facts. This Court does **not** unearth the facts for them. Much less should we **supply the facts** to give substance to their petition. We **cannot overcome** the **weaknesses** of our legal system **unless** we learn to **abide by the rules** that are there in the first place to govern us.

Here, there are **unmistakable questions of fact**. This is the situation because respondents invoke the **confidentiality** of the entirety of the JMSU. Right or wrong, this invocation does **not** relieve petitioners of their burden **to challenge** this claim of **privilege** by invoking **discovery** and the **subpoena** power of our courts. Only then, when petitioners have **hurdled** the claim of privilege, they can **have their true copy** of the JMSU, with all its **verified contents** (both text and annexes) and **circumstances of execution** if at all, and for the Court, the **facts** at its doorstep, to be able to resolve the transcendental issues of the day.

But as it is, we **do not have** the facts – the JMSU itself and its circumstances. Because petitioners **chose to go directly** to this Court. Where could they have gone? The obvious answer is the court where **subpoenas** are applied for – the **trial courts**. Of course, we may also deign to issue the subpoenas, **but must we**?

We are **not triers of facts**. If we give petitioners this benefit today, should we not also accord the same preferential attention to others? The Court's lifeline is built on **precedents**. This is a rule both of **procedure** and **substance**. We follow **precedents** because it provides **stability** and **equality** to all. That is why, this Court and the other courts **should not simply cave in** to claims for **exceptions**.

We **must** also **not decide cases** on the basis of **online news articles** and **hearsay** (*i.e.*, out-of-court, unauthenticated) **statements** that **favor only petitioners**. Unfortunately, the *ponencia* **hinged its facts** on them too.

The **doctrine of hierarchy of courts** exists precisely to **filter** those cases that must **first pass** the trial courts where the **evidentiary record** and **findings** are completed. This is because:

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[1] Oscar Tan, "Vigilante Lawyering" at https://opinion.inquirer.net/111677/must-end-vigilante-lawyering#ixzz7eUqXU66H, last accessed on September 10, 2022.

> ... direct recourse to this Court is **allowed only to resolve questions of law**, notwithstanding the invocation of paramount or transcendental importance of the action. This doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land.[2]

We cannot **supply** the facts, and worse, **without evidence**. This procedure **goes against** the fabric of the Court's constitution as an impartial tribunal. We cannot accept as facts if **allegedly** they merely *appear* to be the facts. We cannot accept **allegations** as facts as a result of respondents' silence, **even if their silence is due to their claim of privilege**.

2. Mootness

The JMSU had **expired** on **June 30, 2008**. The **text** of this agreement is gone. There are **no lingering circumstances** that bother anyone of us. Truly, we **do not even know** if the JMSU was ever implemented at all. It is **unknown** if our country, the Socialist Republic of Vietnam, and the People's Republic of China, or their respective factotums, would **ever enter into** and **execute** another JMSU in the future.

Clearly, these circumstances **disqualify** this case from the **exceptions** to the doctrine of **mootness**:

> At present, courts will decide cases, otherwise moot and academic, if it feels that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review.[3]

For us to conclude that there ***is*** a **grave violation of the *Constitution***, there must be ***prima facie*** evidence of the **existence** of this grave violation, the **nature** of this grave violation, the **continuing state** of this grave violation, and the **nexus** between the assailed official act and the grave violation. Unfortunately, for the reasons already mentioned, the Court **does not have a true copy** of the JMSU and its places of execution, and **does not know** the **circumstances of its implementation**. With the JMSU's expiration, ***is*** the *Constitution* still being violated? Obviously, we **cannot** conclude that it is because there are **no facts** to base this conclusion on.

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2 GIOS-SAMAR v. Department of Transportation and Communications, 896 Phil. 213, 257 (2019) [Per *J.* Jardeleza, *En Banc*].

3 Madrilejos v. Gatdula, G.R. No. 184389, September 24, 2019 [Per *J.* Jardeleza, *En Banc*].

Neither can we say that "the situation is of exceptional character and paramount public interest is involved." To be sure, it is the **JMSU's exceptional character** as a result of **what it allegedly represents** that should **compel** this Court simply to **dismiss** this case. If we are to believe as facts the narration in the *ponencia*, this is because the JMSU is meant to be:

> ... an expression of the Parties' commitment "to **pursue efforts** to transform the South China Sea into an **area of peace, stability, cooperation**, and **development**." Consequently, the Parties' desire "to engage in a joint research of petroleum **resource potential** of a certain area of the South China Sea as a pre-exploration activity."

The **mootness doctrine** allows the Court to **by-pass** the very difficult route of deciding this case that **would definitely impact adversely upon the country's foreign relations posturing**. By leaving the constitutional issue undecided, *again assuming the ponencia's narration represents the facts*, we give our public officers that **flexibility and ability** to deal with our country's foreign relations in accordance with our **paramount public interests** as they unfold and **without embarrassing them** with the blot that what they did was unconstitutional. In other words, there is **valor in prudence at this time** when it is not even necessary to paint ourselves to a corner.

The **third exception** – the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public – does **not** apply. We are **not required** as of now to formulate any controlling principles for two reasons: (i) the facts **have not** been established as all we have are speculations based on an online article, a hearsay statement, and the admission by silence though due to a claim of privilege; and (ii) respondents are **content** with the present state of the law and there is **no clamor** for such controlling principles. If at all, the **clamor** is for **respectful** and **dignified unity** and **peace** with other countries, which the Court is **simply not competent to achieve**.

The **capable of repetition yet evading review exception** has two elements: (1) the duration of the challenged action must be **too short to be fully litigated** prior to its cessation or expiration; and (2) there must be **reasonable expectation** that the same complaining party will be subjected to the same action again.

It is **admitted** that the **JMSU was short-lived** – a **fact** that clearly calls for **restraint** and **prudence** on our part. Still, petitioners have **not shown** that respondents have in the **pipeline** another JMSU to be entered into and implemented. All that the *ponencia* refers to is the **potential** or **possibility** of another JMSU coming into existence. The standard is **not potential** or **possibility**. Everything is a **potential** or a **possibility** in life. This is an **unworkable** standard. Rather, the burden is to show a **reasonable expectation**. Reason **requires** a **basis**. We **cannot simply speculate** that

Neither can we say that "the situation is of exceptional character and paramount public interest is involved." To be sure, it is the **JMSU's exceptional character** as a result of **what it allegedly represents** that should **compel** this Court simply to **dismiss** this case. If we are to believe as facts the narration in the *ponencia*, this is because the JMSU is meant to be:

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another JMSU is coming. Petitioners have to **show facts** and **circumstances**, not merely allege them.

Overall, petitioner cannot **literally repeat** the **wordings** of the **exceptions without explaining** how each of them is present. It cannot **merely ask the Court to accept what in the first place should be proved**; especially for a case of **unforeseeable consequences** both here and abroad, and not just abroad but to **our ticklish relations with rivals where armed conflict is a factor.**

3. Lis mota

With the foregoing **exigent** bases for **resolving** the present case, the **constitutional** issue posed by petitioners sorely **lacks** the requisite peg of ***lis mota*** to stand on.

In *Estrada v. Desierto*,[4] We explained that:

> Basic is the principle that a constitutional issue may only be passed upon **if essential to the decision** of a case or controversy. Even if all the requisites for judicial review are present, this Court will not entertain a constitutional question unless it is the very *lis mota* of the case or **if the case can be disposed of on some other grounds**, such as the application of a statute or general law. Thus, in *Sotto v. Commission on Elections*, we held —
>
> . . . It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties, and that when it is raised, **if the record also presents some other ground upon which the court may rest its judgment, that course will be adopted and the constitutional question will be left for consideration until a case arises** in which a decision upon such question will be unavoidable. (Emphasis supplied.)
>
> In herein case, the question of who has jurisdiction to entertain petitions for *certiorari* questioning the Ombudsman's orders or resolutions in criminal cases can be answered by resorting to the aforecited cases of *Kuizon v. Ombudsman, Mendoza-Arce v. Office of the Ombudsman* and *Perez v. Office of the Ombudsman*. Consequently, **there is no need to delve into the constitutionality** of Section 14 of Rep. Act No. 6770 as case law already supplies the key. (Emphasis supplied.)

The clear and impeccable grounds to decide this case are **hierarchy of courts** and **mootness**. The case can be resolved on these grounds. Therefore, the **constitutionality** of the JMSU is **not triggered**.

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[4] 487 Phil. 169, 181 (2004) [Per *J.* Chico-Nazario, *En Banc*].

4. Characterization of the instant case as a predominantly foreign relations matter rather than an issue of exploration, development, and utilization of natural resources

Nonetheless, if we have to decide this case on the merits, with due respect, I still **cannot subscribe** to the *ponencia*.

I preface this discussion with the **assumption** that the narration in *ponencia* states the **correct facts** of this case.

With this, I respectfully **disagree** with the *ponencia*'s characterization of the instant case as one falling **solely** under Section 2, Article XII of the *Constitution* on the **exploration**, **development**, and **utilization** of the country's natural resources. Rather, to me, the issue is **predominantly** a **foreign relations** matter that requires **deference** to the **reasonable** actions of respondents. Consequently, our **definition** of the word **exploration** must be **sensitive** to the **foreign relations** element of the JMSU.

Section 2, Article XII of the *Constitution* states:

> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. (Emphasis supplied.)
>
> The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.
>
> The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.
>
> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and

> other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.
>
> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

One. The JMSU is **not primarily** for the purpose of inviting other countries to partake of the country's natural resources. Instead, the **primordial purpose** is to **trail-blaze efforts** at establishing a **code of conduct** among claimant-countries to **resolve amicably conflicting territorial claims** over disputed territories. This is clear from the **alleged** clauses of the JMSU, which to quote again are:

> … an expression of the Parties' commitment "to **pursue efforts** to transform the South China Sea into an **area of peace**, **stability**, **cooperation**, and **development**." Consequently, the Parties desire "to engage in a joint research of petroleum **resource potential** of a certain area of the South China Sea as a pre-exploration activity."

As a **foreign relations instrument**, rather than **just being** an exploration-development-utilization agreement, the JMSU must be interpreted in relation to our *Constitution* in the **most deferential light** to the **true** decision-makers' conceptualization of what it is. To reiterate the **doctrine** in **how courts should deal** with foreign relations' matters:

> In *Vinuya v. Romulo*, we stated that "the question whether the Philippine government should espouse claims of its nationals against a foreign government is a foreign relations matter, the authority for which is demonstrably committed by our Constitution not to the courts but to the political branches."[5]

Although the citation has to do with the matter of according *diplomatic immunity*, the reasoning therein is **with more reason applicable to the present case** where the very fabric of the country's **national security**, not simply **embarrassment to the world-at-large** as in the diplomatic immunity cases, is **at stake**. How we deal with real troublesome neighbor-sovereigns **should** be a **matter left deferentially** to the **resolution** of our **foreign affairs** officials. The Court must **not double dip** in these matters in **doubtful cases** because we risk adverse outcomes to both our **national security** and **international standing**.

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[5] *Arigo v. Swift*, 743 Phil. 8, 44 (2014) [Per *J.* Villarama, Jr., *En Banc*].

Thus, our courts have **limited** power under the *Constitution* to require the executive branch to do anything in the area of foreign policy. The **decision** to deal with the West Philippine Sea issue in the manner such as the JMSU **falls directly** within the prerogative powers of the executive to conduct foreign relations, including the **right to speak freely with foreign states** on all such matters.

This is one of the executive's **residual powers** that is legally left in the hands of the executive through the President.[6] While limited, it is nonetheless a **source of non-statutory administrative power** accorded by jurisprudence[7] and statute[8] to the Chief Executive. To stress, the power in foreign affairs includes the making of representations to foreign governments. The decision to **enter into the JMSU** was made in the exercise of this power over foreign relations.

In exercising its powers over foreign relations, the executive is not exempt from constitutional scrutiny. It is for the executive and not the courts to decide whether and how to exercise its powers, but the courts **clearly have the jurisdiction and the duty to determine** whether this power asserted by the executive does in fact exist and, if so, whether its exercise infringes the *Constitution*.

The **limited** power of the courts to review exercises of the foreign relations power for constitutionality reflects the fact that in a constitutional democracy, all government power must be exercised in accordance with the *Constitution*. This said, **judicial review** of the exercise of this power for constitutionality **remains sensitive** to the fact that **the executive branch of government is responsible for decisions under this power**, and that **the executive is better placed to make such decisions within a range of constitutional options**. The **government must have flexibility** in deciding how its duties under the power are to be discharged. But it is for the **courts to determine the legal and constitutional limits** within which such decisions are to be taken. It follows that in the case of **refusal by a government to abide by constitutional constraints**, courts are **empowered to make orders** ensuring that the government's foreign affairs powers are exercised in accordance with the *Constitution*.

Having concluded that the courts possess a **narrow power to review** and **intervene on matters of foreign affairs** to ensure the **constitutionality** of executive action, the final question is **how now to exercise this power**?

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6 *Marcos v. Manglapus*, 258 Phil. 479–541 (1989) [Per *J.* Cortes, *En Banc*].
7 *Id.*
8 Section 20, Chapter 7, Title I, Book III of the *Administrative Code of 1987*.

In my opinion, our **first concern** is that our review **must not give little weight** to the constitutional responsibility of the executive to make **decisions on matters of foreign affairs in the context of complex and ever-changing circumstances**, taking into account our **broader national interests**.

Our **second concern** is the **impact** of the **relief** the Court is going to provide in the premises. Here, the JMSU **involves areas**, which, if the *ponencia*'s narration were to be believed, are far from the **immediate control** of the Court and even the national government as a whole and where other countries are prowling with their own armed forces. The **likelihood** that the **remedy** will be **effective** is **unclear**. The **impact** on our foreign relations of a declaration of **unconstitutionality cannot be properly assessed** by the Court.

This brings us to our **third concern**, already mentioned above: the **inadequacy of the evidentiary record**. The record before us gives a necessarily **incomplete picture of the range of considerations** currently faced by petitioners and respondents in assessing the relief prayed for. We **do not know** what **negotiations,** if at all, may have been taking place or will take place, between the parties to the JMSU. As observed elsewhere:

> The timing of representations if they are to be made, the language in which they should be couched, and the sanctions (if any) which should follow if such representations are rejected are matters with which courts are ill-equipped to deal.[9]

The **evidentiary uncertainties**, the **limitations of the Court's institutional competence**, and the **need to respect the foreign relations powers of the executive**, lead me to conclude that the proper remedy is to interpret the word **exploration** in Section 2, Article XII of the *Constitution* in a manner that **liberally considers** the **foreign relations element** in the instrument in which it is implicated, which is the JMSU, but which must still be **reasonable**.

Two. The JMSU **does not involve** the **exploration**, development and utilization of natural resources as envisioned in Section 2, Article XII of the *Constitution*. This is because the JMSU is **not intended to extract and carry off of natural resources** from the project areas. An **exploration** in this context is **not covered** by Section 2, Article XII. To fall under the latter, the **exploration must involve** the **extraction** and **carrying off of natural resources**.

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[9] *Kaunda v. President of the Republic of South Africa*, [2004] ZACC 5, 136 I.L.R. 452, at para. 77, South African Legal Information Institute, at https://www.saflii.org/za/cases/ZACC/2004/5.html (last accessed on September 9, 2022).

This interpretation is **not new** in the Philippines. It is **recognized** in subsections 3(q) and (aq) of *Philippine Mining Act of 1995*[10] and in *Apex Mining Co. Inc. v. Southeast Mindanao Gold Mining Corporation.*[11] This interpretation of **exploration** as being **exempt** from Section 2, Article XII has been **upheld** in *La Bugal-B'laan Tribal Association Inc. v. Ramos.*[12]This interpretation is also **consistent with** the **characterization** of this case as **predominantly** a **foreign relations** matter where the Court **should tread more carefully than usual** in **upsetting** the foreign relations power of the executive. **Only** in the **clearest** of cases *may* the Court dictate upon the executive on what to do in matters of foreign relations and impose a relief that is based on **clear** and **solid evidentiary footing** on how it upholds the *Constitution*, how it impacts on the executive's conduct of international relations, and how it involves our paramount public interests. In the absence of such evidentiary assurances, we ought to **defer within reason** to the executive's decision in the premises.

Based on the foregoing, I dissent. Accordingly, I vote to deny the petition.

AMY C. LAZARO-JAVIER
Associate Justice

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[10] SECTION 3. Definition of Terms. — As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean: (q) "Exploration" means the searching or prospecting for mineral resources by geological, geochemical or geophysical surveys, remote sensing, test pitting, trending, drilling, shaft sinking, tunneling, or any other means for the purpose of determining the existence, extent, quantity and quality thereof and the feasibility of mining them for profit.
(aq) "Qualified person" means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, or cooperative organized or authorized for the purpose of engaging in mining, with technical and financial capability to undertake mineral resources development and duly registered in accordance with law at least sixty *per centum* (60%) of the capital of which is owned by citizens of the Philippines: Provided, That a legally organized foreign-owned corporation shall be deemed a qualified person for purposes of granting an exploration permit, financial or technical assistance agreement or mineral processing permit.

[11] 620 Phil. 100, 129 (2009) [Per *J.* Chico-Nazario, *En Banc*]: "An exploration permit grantee is vested with the right to conduct exploration only, while an FTAA or MPSA contractor is authorized to extract and carry off the mineral resources that may be discovered in the area. An exploration permit holder still has to comply with the mining project feasibility and other requirements under the mining law. It has to obtain approval of such accomplished requirements from the appropriate government agencies. Upon obtaining this approval, the exploration permit holder has to file an application for an FTAA or an MPSA and have it approved also. Until the MPSA application of SEM is approved, it cannot lawfully claim that it possesses the rights of an MPSA or FTAA holder, thus: . . . prior to the issuance of such FTAA or mineral agreement, the exploration permit grantee (or prospective contractor) cannot yet be deemed to have entered into any contract or agreement with the State . . ."

[12] See 486 Phil. 754 (2004) [Per *J.* Panganiban, *En Banc*]