

## **JUDICIAL DECISIONS**

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### **REPUBLIC vs. PROVINCIAL GOVERNMENT OF PALAWAN**

#### **EN BANC**

**[ G.R. No. 170867, December 04, 2018 ]**

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY RAPHAEL P.M. LOTILLA, SECRETARY, DEPARTMENT OF ENERGY (DOE), MARGARITO B. TEVES, SECRETARY, DEPARTMENT OF FINANCE (DOF), AND ROMULO L. NERI, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), PETITIONERS, VS. PROVINCIAL GOVERNMENT OF PALAWAN, REPRESENTED BY GOVERNOR ABRAHAM KAHLIL B. MITRA, *Respondent*.

**[G.R. No. 185941]**

BISHOP PEDRO DULAY ARIGO, CESAR N. SARINO, DR. JOSE ANTONIO N. SOCRATES, PROF. H. HARRY L. ROQUE, JR., PETITIONERS, VS. HON. EXECUTIVE SECRETARY EDUARDO R. ERMITA, HON. ENERGY SECRETARY ANGELO T. REYES, HON. FINANCE SECRETARY MARGARITO B. TEVES, HON. BUDGET AND MANAGEMENT SECRETARY ROLANDO D. ANDAYA, JR., HON. PALAWAN GOVERNOR JOEL T. REYES, HON. REPRESENTATIVE ANTONIO C. ALVAREZ (1<sup>ST</sup> DISTRICT), HON. REPRESENTATIVE ABRAHAM MITRA (2<sup>ND</sup> DISTRICT), RAFAEL E. DEL PILAR, PRESIDENT AND CEO, PNOC EXPLORATION CORPORATION, *Respondents*.

#### **DECISION**

TIJAM, *J.*:

#### **Facts**

On December 11, 1990, the Republic of the Philippines entered into Service Contract No. 38 with Shell Philippines Exploration B.V. and Occidental Philippines, Incorporated (collectively SPEX/OXY) for the

exclusive conduct of petroleum operations in the area known as “Camago-Malampaya” located offshore northwest of Palawan. The exploration led to the drilling of the Camago-Malampaya natural gas reservoir about 80 kilometers from the main island of Palawan and 30 kms from the platform.

The said service contract provided for a production sharing scheme entitling the National Government to sixty percent (60%) of the net proceeds from the sale of petroleum produced from petroleum operations. The Government of Palawan is thus claiming that it is entitled to 40% of the National Government’s share pursuant to Sec. 290 of the Local Government Code, since the reservoir is located within its jurisdiction. The Republic, however, is arguing that a local government unit’s jurisdiction refers only to its land area, hence the reservoir is outside the territorial boundaries of Palawan as defined in its Charter. In deciding a petition for declaratory relief filed by the Government of Palawan, the RTC declared that the province was entitled to 40% share of the national wealth pursuant to the provisions of Sec. 7, Article X of the 1987 Constitution and this right is in accord with the provisions of the Enabling Act, R.A. 7160 (The Local Government Code of 1991. A petition for review on *certiorari* under Rule 45 was thus filed before the Supreme Court, assailing this decision.

During the oral arguments, one of the appointed *amici curiae*, Dean Raul Pangalangan of the University of the Philippines, posited that under *the United Nations Convention on the Law of the Sea* (UNCLOS) and applying the doctrine of transformation, Palawan’s territorial boundaries may be considered to include the continental shelf where the Camago-Malampaya reservoir is located. The court disagreed with the said argument and ruled in favor of the Republic.

## **Ruling**

### **No law clearly granting the Province of Palawan territorial jurisdiction over the Camago-Malampaya reservoir**

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As defined in its organic law, the Province of Palawan is comprised merely of islands. The continental shelf, where the Camago-Malampaya reservoir is located, was clearly not included in its territory.

An island, as herein before-mentioned, is defined under Article 121 of the UNCLOS as “a naturally formed **area of land**, surrounded by water, which is **above water** at high tide.” The continental shelf, on the other hand, is defined in Article 76 of the same Convention as comprising “**the seabed and subsoil** of the submarine areas that extend beyond (the coastal State’s) territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.” Where the continental shelf of the coastal state extends beyond 200 nm, Article 76 allows the State to claim an extended continental shelf up to 350 nm from the baselines.

Under Palawan’s charter, therefore, the Camago-Malampaya reservoir is not located within its territorial boundaries.

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### **The UNCLOS did not confer on LGUs their own continental shelf**

Dean Pangalangan posited that since the Constitution has incorporated into Philippine law the concepts of the UNCLOS, including the concept of the continental shelf, Palawan’s “area” could be construed as including its own continental shelf. The Province of Palawan and Arigo, et al. accordingly assert that Camago-Malampaya reservoir forms part of Palawan’s continental shelf.

The Court is unconvinced. The Republic was correct in arguing that the concept of continental shelf under the UNCLOS does not, by the doctrine of transformation, automatically apply to the LGUs. We quote with approval its disquisition on this issue:

The Batasang Pambansa ratified the UNCLOS through Resolution No. 121 adopted on February 27, 1984. Through this process, the UNCLOS attained the force and effect of municipal law. But even if the UNCLOS were to be considered to have been transformed to be part of the municipal law, after its ratification by the Batasang Pambansa, the UNCLOS did not automatically amend the Local Government Code and the charters of the local government units. No such intent is manifest either in the UNCLOS or in Resolution No. 121. Instead, the

UNCLOS, transformed into our municipal laws, should be applied as it is worded. *Verba legis*.

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It must be stressed that the provisions under the UNCLOS are specific in declaring the rights and duties of a state, not a local government unit. The UNCLOS confirms the sovereign rights of the States over the continental shelf and the maritime zones. The UNCLOS did not confer any rights to the States' local government units.

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At the risk of being repetitive, it is respectfully emphasized that the foregoing indubitably established that under the express terms of the UNCLOS, the rights and duties over the maritime zones and continental shelf pertain to the State. No provision was set forth to even suggest any reference to a local government unit. Simply put, the UNCLOS did not obligate the States to grant to, much less automatically vest upon, their respective local government units territorial jurisdiction over the different maritime zones and the continental shelf. Hence, contrary to the submission of Dean Pangalangan, no such application can be made.

Atty. Bensurto took a similar stand, declaring during the oral argument that:

ATTY. HENRY BENSURTO: x x x x [T]here was an assertion earlier, Your Honor, that there was a reference in fact to the continental shelf, that there is an automatic application of the continental shelf with respect to the municipal territories. I submit, Your Honor that this should not be the case, why? Because **the United Nation Convention on the Law of the Sea which is the conventional law directly applicable in this case is an International Law. International Law by definition is a body of rules governing relations between sovereign States or other entities which are capable of having rights and obligations under International Law.** Therefore, it is the State that is the subject of International Law, the only exception to this is with respect to individuals with respect to the issue of Humanitarian and Human

Rights Law. From there, it flows the principal [sic] therefore that International Law affects only sovereign States. With respect to the relationship between the State and its Local Government Units this is reserved to the sovereign right of the sovereign State. It is a dangerous proposition for us to make that there is an automatic application because to do that would mean a violation of the sovereign right of a State and the State always reserves the right to promulgate laws governing its domestic jurisdiction. **Therefore, the United Nations Convention of the Law of the Sea affects only the right of the Philippines vis a vis another sovereign State.** And so, when we talk of the different maritime jurisdictions enumerated, illustrated and explained under the United Nations Convention on the Law of the Sea **we are actually referring to inter state relations not intra state relations.** x x x (Emphasis ours)

In fact, Arigo, et al. acknowledged during the oral argument that the UNCLOS applies to the coastal state and not to their provinces, and that Palawan, both under constitutional and international, has no distinct and separate continental shelf, thus:

ASSOCIATE JUSTICE VELASCO: **You admit that under UNCLOS it is only the coastal states that are recognized not the provinces of the coastal state.**

ATTY. BAGARES: **That is true, Your Honor, and we do not dispute that, Your Honor.**

ASSOCIATE JUSTICE VELASCO: That's correct. And you cited that in your petition ....

ATTY. BAGARES: Yes, Your Honor. That is true, Your Honor.

ASSOCIATE JUSTICE VELASCO: .... **that under Article 76, it is the continental shelf of the coastal state.**

ATTY. BAGARES: **Yes, Your Honor.**

ASSOCIATE JUSTICE VELASCO: **And in our case, the Republic of the Philippines, right?**

ATTY. BAGARES: **Yes, Your Honor.**

ASSOCIATE JUSTICE VELASCO: Okay. You also made the submission that under Republic Act 7611 and Administrative Order 381, there is a provision there that serves as basis for, what you call again the continental shelf of Palawan. What provisions in 7611 and AO 381 are there that serves as basis, for you to say that there is such a continental shelf of Palawan?

ATTY. BAGARES: Your Honor, I apologize that perhaps I've been like Atty. Roque very academic in the language in which we make our presentations but our position, Your Honor, exactly just to make it clear, Your Honor, we're not saying that there's a separate continental shelf of the Province of Palawan outside the territorial bounds of the sovereign State of the Republic of the Philippines. We are only saying, Your Honor, that that continental shelf is reckoned, Your Honor, from the Province of Palawan. **We are not saying, Your Honor, that there is a distinct and separate continental shelf that Palawan may lay acclaim [sic] to, under the Constitutional Law and under International Law, Your Honor.**

ASSOCIATE JUSTICE VELASCO: Alright. **And that is only the continental shelf of the coastal State, which is the Philippines.**

ATTY. BAGARES. **Yes, Your Honor. I hope that is clear, Your Honor.** (Emphasis ours)

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**WHEREFORE**, the Petition in G.R. No. 170867 is **GRANTED**. The Decision dated December 16, 2005 of the Regional Trial Court of the Province of Palawan, Branch 95 in Civil Case No. 3779 is **REVERSED** and **SET ASIDE**. The Court declares that under existing law, the Province of Palawan is not entitled to share in the proceeds of the Camago-Malampaya natural gas project. The Petition in G.R. No. 185941 is **DENIED**.

**SO ORDERED.**