

Republic of the Philippines
SUPREME COURT
MANILA

PROF. MERLIN M. MAGALLONA, AKBAYAN PARTY-LIST REP. RISA HONTIVEROS, PROF. H. HARRY L. ROQUE, JR., AND UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW STUDENTS ALTHEA BARBARA ACAS, VOLTAIRE ALFEREZ, CZARINA MAY ALTEZ, FRANCIS ALVIN ASILO, SHERYL BALOT, RUBY AMOR BARRACA, JOSE JAVIER BAUTISTA, ROMINA BERNARDO, VALERIE PAGASA BUENAVENTURA, EDAN MARRI CAÑETE, VANN ALLEN DELA CRUZ, RENE DELORINO, PAULYN MAY DUMAN, SHARON ESCOTO, RODRIGO FAJARDO III, GIRLIE FERRER, RAOULLE OSEN FERRER, CARLA REGINA GREPO, ANNA MARIE CECILIA GO, IRISH KAY KALAW, MARY ANN JOY LEE, MARIA LUISA MANALAYSAY, MIGUEL RAFAEL MUSNGI, MICHAEL OCAMPO, JAKLYN HANNA PINEDA, WILLIAM RAGAMAT, MARICAR RAMOS, ENRIK FORT REVILLAS, JAMES MARK TERRY RIDON, JOHANN FRANTZ RIVERA IV, CHRISTIAN RIVERO, DIANNE MARIE ROA, NICHOLAS SANTIZO, MELISSA CHRISTINA SANTOS, CRISTINE MAE TABING, VANESSA ANNE TORNO, MARIA ESTER VANGUARDIA, AND MARCELINO VELOSO III,

Petitioners,

- versus -

HON. EDUARDO ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, HON. ALBERTO ROMULO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, HON. ROLANDO ANDAYA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT, HON. DIONY VENTURA, IN HIS CAPACITY AS ADMINISTRATOR OF THE NATIONAL MAPPING & RESOURCE INFORMATION AUTHORITY, & HON. HILARIO DAVIDE JR., IN HIS CAPACITY AS PERMANENT REPRESENTATIVE OF THE PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS,

Respondents.

SC G.R. No. _____
For: CERTIORARI AND PROHIBITION
*with Prayer for the Issuance of a
Writ of Preliminary Prohibitory
Injunction and/or Temporary
Restraining Order*
(Re: Republic Act No. 9522 or the
New Philippine Baselines Law)

PETITION FOR CERTIORARI AND PROHIBITION
WITH PRAYER FOR THE ISSUANCE OF A WRIT OF PRELIMINARY PROHIBITORY
INJUNCTION AND/OR A TEMPORARY RESTRAINING ORDER

PREFATORY STATEMENT

...The President/Prime Minister of the Philippines is the political head of all the people. His is the sacred responsibility to protect and defend the security of all the people, the stability of the government and the integrity of the national territory, not only for the tenure to which he has been elected but for all times. (Emphasis supplied)

-UNIDO vs. COMELEC, G.R. No. 56515, April 3, 1981

This Petition presents to this Honorable Court a case both of first impression and of extreme urgency, dealing with no less than the question involving the reorganization of the country's territorial regime and profoundly affecting the determination of the political boundaries of the Philippines as a state.

For the very first time, this Honorable Court is being asked to pass upon an issue pivotal to the integrity of the Philippines as a state sovereign over its territory as understood both under constitutional law and under international law.

A law has been passed that, well-intentioned it may be inasmuch as it purportedly updates Philippine treaty commitments under the United Nations Convention on the Law of the Sea (UNCLOS) regime, actually deprives the Philippines of what has been established long before in historical, legal and scientific terms as part and parcel of its national territory.

Yes, long before the establishment of the different multilateral treaties under the UNCLOS regime, the Philippines has already staked a claim to certain vested rights over a well-defined area of national territory under the Treaty of Paris – controversial it may be as a document of colonization – as well as under a slew of subsequent

treaties and pieces of legislation enacted during the American colonial regime and under the post-1946 Republic of the Philippines.

These vested rights, well-recognized under the jurisprudence of the International Court of Justice (ICJ) on territorial disputes arising from the painful process of decolonization, have been constitutionalized in the Philippine domestic order, from the Commonwealth-era 1935 Constitution, to the Martial Law-era 1973 Constitution, and up to the present Post-Marcos 1987 Constitution. Clearly, a constitutional definition of the national territory cannot be remade by mere statutory act – in this case, by Republic Act No. 9522, otherwise known as *“An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes.”*

Republic Act No. 9522 (a copy is attached as ANNEX A) revises the Philippine national territory in violation of the Constitution and of the international law on decolonization itself. Without question, in working together for the enactment and implementation of the said law the Legislative and Executive Departments committed grave abuse of discretion amounting to lack or excess of jurisdiction.

Nevertheless, Republic Act No. 9522 having already been signed into law, all that remains for the Chief Executive is to register and deposit the new baselines law with the UN Secretary General to bind the Philippines under international law to the UNCLOS regime to give it effect under international law. The subsequent invalidation by this Honorable Court of the same law for being unconstitutional cannot undo the legal effect of its having been already registered and

deposited with the UN – the dismemberment of Philippine national territory.

It is therefore extremely urgent that the Respondents or any of their agents be restrained from implementing the new baselines law as well as from registering and depositing it with the UN Secretary General pursuant to the procedures outlined under the UNCLOS III regime, while the case is being heard before this Honorable Court.

Petitioners pray that this Honorable Court, upon receipt of this Petition, forthwith issue a Writ of Preliminary Prohibitory Injunction and/or a Temporary Restraining Order (TRO) directed at Respondents to restrain them from implementing Republic Act No. 9522 while the case is being heard. Petitioners plead that the same be issued against Hilario Davide, Jr., the Permanent Representative of the Permanent Mission of the Republic of the Philippines before the United Nations, or any of his agents, restraining them from registering and depositing with the UN Secretary General a copy of the new baselines law, Republic Act No. 9522, until this Honorable Court has passed upon the issues set forth in this Petition.

Finally, Petitioners respectfully call upon this Honorable Court to wield its Constitutional power, nay its supreme duty, to exercise its expanded certiorari jurisdiction over matters of transcendental and constitutional importance such as this, in order that it may uphold the fundamental law of the land and protect the integrity of the Philippine national territory for the entire Filipino people.

**PETITION
FOR CERTIORARI AND PROHIBITION
WITH PRAYER FOR THE ISSUANCE OF A WRIT OF PRELIMINARY
PROHIBITORY INJUNCTION
AND/OR TEMPORARY RESTRAINING ORDER**

PETITIONERS, by counsel, respectfully come to this Honorable Court assailing the constitutionality of Republic Act No. 9522, officially known as *“An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes”* and in support thereof submit the following:

NATURE OF THE PETITION

This is a Petition for Certiorari and Prohibition to nullify Republic Act No. 9522 for being unconstitutional, and to prohibit the Executive Department from implementing the same.

It also asks this Honorable Court, pending a final resolution on this Petition, to issue a Writ of Preliminary Prohibitory Injunction and/or a Temporary Restraining Order, prohibiting the Respondents and anyone acting under their authority, stead, or behalf, from registering and depositing the said law with the United Nations.

In particular, Petitioners ask of this Honorable Court to restrain the Philippine's Permanent Representative to the United Nations or any of his agents from depositing and registering Republic Act No. 9522 with the UN Secretary-General, while the case is pending; for as soon as the law is registered and deposited with the UN Secretary-General, it becomes immediately binding on the Philippines under international law, and its subsequent constitutional invalidation by this Honorable Court cannot anymore undo the irreparable harm resulting from the registration and deposit of the new baselines law before the designated UN registry.

In bringing this suit, Petitioners rely on the judicial power of this Honorable Court enshrined in Article VIII of the 1987 Constitution as the ultimate arbiter on constitutional questions with the unavoidable duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction and in violation of the fundamental law of the land on the part of any branch or instrumentality of the Government. What they assert in fact is a public right – that pertaining to their entitlement as citizens of the realm to the territorial integrity of the state of which they are an integral part.

PARTIES

The Petitioners are:

1. **PROF. MERLIN M. MAGALLONA**, is of legal age, Filipino citizen, married, taxpayer, and a Professor of Constitutional Law and Public International Law at the University of the Philippines College of Law. He may be served with pertinent papers and processes through the undersigned counsel, Roque and Butuyan Law Offices, at Unit 1904 Antel 2000 Corporate Centre, 121 Valero Street, Salcedo Village, Makati City.

2. **AKBAYAN PARTY-LIST REP. RISA HONTIVEROS**, is of legal age, Filipino citizen, taxpayer, and the representative of the party-list group Akbayan before the House of Representatives. She is suing as a legislator, and as taxpayer. She may be served with pertinent papers and processes through the undersigned counsel, Roque and Butuyan Law Offices, at Unit 1904 Antel 2000 Corporate Centre, 121 Valero Street, Salcedo Village, Makati City.

3. **PROF. H. HARRY L. ROQUE, JR.**, is of legal age, Filipino citizen, married, taxpayer, an active law practitioner, and a Professor of Constitutional Law and Public International Law at the University of the Philippines College of Law. He may be served with pertinent

papers and processes through the undersigned counsel, Roque and Butuyan Law Offices, at Unit 1904 Antel 2000 Corporate Centre, 121 Valero Street, Salcedo Village, Makati City.

4. ALTHEA BARBARA ACAS, VOLTAIRE ALFEREZ, CZARINA MAY ALTEZ, FRANCIS ALVIN ASILO, SHERYL BALOT, RUBY AMOR BARRACA, JOSE JAVIER BAUTISTA, ROMINA BERNARDO, VALERIE PAGASA BUENAVENTURA, EDAN MARRI CAÑETE, VANN ALLEN DELA CRUZ, RENE DELORINO, PAULYN MAY DUMAN, SHARON ESCOTO, RODRIGO FAJARDO III, GIRLIE FERRER, RAOULLE OSEN FERRER, CARLA REGINA GREPO, ANNA MARIE CECILIA GO, IRISH KAY KALAW, MARY ANN JOY LEE, MARIA LUISA MANALAYSAY, MIGUEL RAFAEL MUSNGI, MICHAEL OCAMPO, JAKLYN HANNA PINEDA, WILLIAM RAGAMAT, MARICAR RAMOS, ENRIK FORT REVILLAS, JAMES MARK TERRY RIDON, JOHANN FRANTZ RIVERA IV, CHRISTIAN RIVERO, DIANNE MARIE ROA, NICHOLAS SANTIZO, MELISSA CHRISTINA SANTOS, CRISTINE MAE TABING, VANESSA ANNE TORNÓ, MARIA ESTER VANGUARDIA, AND MARCELINO VELOSO III are all of legal age, Filipino citizens, taxpayers, and students of Public International Law in the evening program of the University of the Philippines College of Law, Diliman, Quezon City. They may be served with pertinent papers and processes through the undersigned counsel, the Roque and

Butuyan Law Offices, at Unit 1904 Antel Corporate Centre, 121 Valero Street, Salcedo Village, Makati City.

The Respondents are officials of the National Government:

5. **HON. EDUARDO ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY,** is a proper party to this suit since he and his principal, President Gloria Macapagal-Arroyo, are charged with implementing Republic Act No. 9522. He may be served with summons and notices of this Honorable Court, as well as all other papers and processes, at the Malacañang Palace, Manila.

6. **HON. ALBERTO ROMULO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS,** is a proper party to this suit since as an alter ego of President Macapagal-Arroyo, he has the responsibility of depositing and registering Republic Act No. 9522 with the Secretary-General of the United Nations, which will bind the Philippines under international law. He may be served with summons and notices of this Honorable Court, as well as all other papers and processes, at the Department of Foreign Affairs Building, Roxas Boulevard, Manila,

7. **HON. ROLANDO ANDAYA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,** heads a

department charged with the release of funds for the implementation of the new baselines law in question. He may be served with summons and other papers and processes of this Honorable Court at the Department of Budget and Management, Gen. Solano St., San Miguel, Manila.

8. **HON. DIONY VENTURA, IN HIS CAPACITY AS ADMINISTRATOR OF THE NATIONAL MAPPING & RESOURCE INFORMATION AUTHORITY,** is a proper party to this suit since he is tasked by Section 5 of Republic Act No. 9522 to produce and publish charts and maps pursuant to the baselines provided for in Section 1 of Republic Act No. 9522. He may be served with summons and notices of this Honorable Court, as well as all other papers and processes, at the NAMRIA Bldg., Fort Bonifacio, Taguig.

9. **HON. HILARIO DAVIDE JR., IN HIS CAPACITY AS PERMANENT REPRESENTATIVE OF THE PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES TO THE UNITED NATIONS,** will have the task of depositing and registering Republic Act No. 9522 with the Secretary General of the United Nations, together with the geographic coordinates and the charts and maps indicating the baselines defined by Republic Act No. 9522, if section 4 of the said law will be implemented. He may be served with summons and

notices of this Honorable Court, as well as all other papers and processes, through the Department of Foreign Affairs, DFA Building, Roxas Boulevard, Manila.

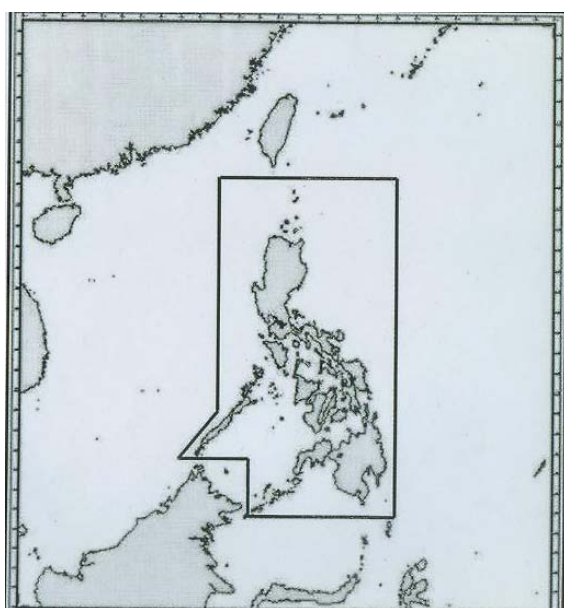
STATEMENT OF RELEVANT FACTS

10. On 10 December 1898, Spain and the United States of America signed the Treaty of Paris. In Article III of the Treaty of Paris, Spain ceded the archipelago known as the 'Philippine Islands' to the United States of America. Article III of the said Treaty provides:

Spain cedes to the United States **the archipelago known as the Philippine Islands**, and comprehending the islands lying within the following line: A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude, thence along the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol]

35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7 [degree symbol] 40') north, thence along the parallel of latitude of seven degrees and forty minutes (7 [degree symbol] 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning. The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty. (*Emphasis supplied*)

The international treaty limits of the 'Philippine archipelago' under Article III of the Treaty of Paris takes the form of a rectangle that measures 600 miles in width and 1200 miles in length. Inside this rectangle lie the 7,100 islands comprising the Philippine Islands. This is illustrated below:



11. On 11 April 1899, documents pertaining to the ratification of the Treaty of Paris by Spain and the United States of America were exchanged in Washington by representatives of both states.

12. On 07 November 1900, Spain and the United States concluded the Treaty of Washington wherein Spain relinquished to the United States islands belonging to the Philippine archipelago but lying outside the lines described in Article III of the Treaty of Paris, and particularly referred to the islands of Cagayan, Sulu and Sibutu. The Treaty of Washington complemented the Treaty of Paris.

13. On 01 July 1902, the Philippine Bill of 1902 was signed into law by United States President Theodore Roosevelt. The Philippine Bill of 1902 served as the *de facto* constitution of the Philippine Islands during this period, Section 53 of which refers to the Treaty of Paris:

Section 53. That every person above the age of twenty-one years, who is a citizen of the United States, or of the Philippine Islands, or who has acquired the rights of a native of said Islands under and by virtue of the treaty of Paris, or any association of persons severally qualified as above, shall, upon application to the proper provincial treasurer, have the right to enter any quality of vacant coal lands of said Islands not otherwise appropriated or reserved by competent authority, not exceeding sixty-four hectares to such individual person, or one hundred and twenty-eight hectares to such association, upon payment to the provincial

treasurer or the collector of internal revenue, as the case may be, of not less than twenty-five dollars per hectare for such lands, where the same shall be situated more than fifteen miles from any completed railroad or available harbour or navigable stream, and not less than fifty dollars per hectare for such lands as shall be within fifteen miles of such road, harbour, or stream: *Provided*, that such entries shall be taken in squares of sixteen or sixty-four hectares, in conformity with the rules and regulations governing the public-land surveys of the said Islands in plotting legal subdivisions.*(Emphasis supplied)*

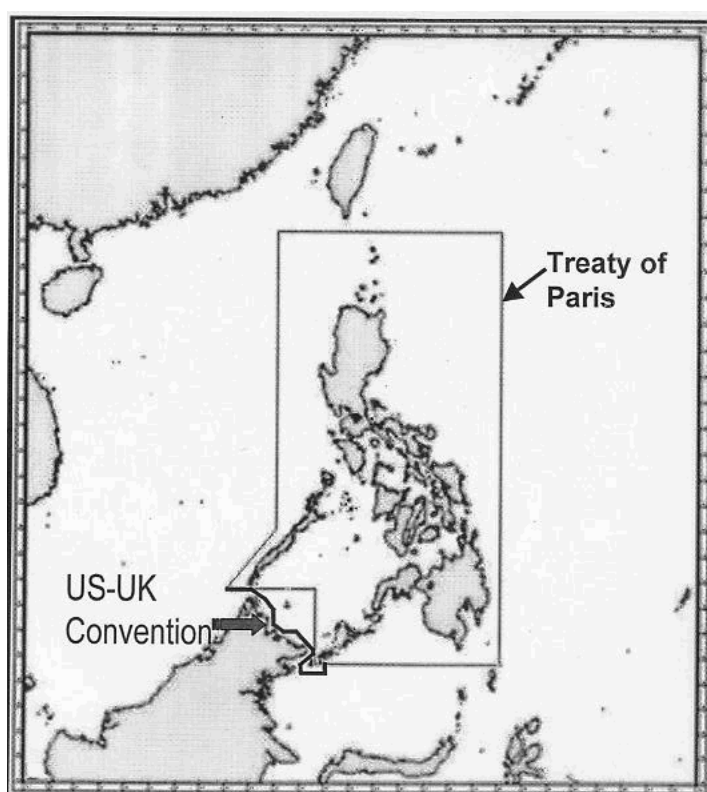
14. On 29 August 1916, the Jones Law was enacted by the United States Congress, the preambular paragraph of which refers, *inter alia*, to the Treaty of Paris in relation to the extent of the territory of the Philippines:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the provisions of this Act and the name "The Philippines" as used in this Act shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the eleventh day of April, eighteen hundred and ninety-nine, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the seventh day of November, nineteen hundred. (Emphasis supplied)

15. On 02 January 1930, a convention was concluded between Great Britain and the United States delimiting the boundary between the Philippine archipelago and the State of Northern Borneo. The

convention clarified that the United States has jurisdiction over the Turtle and Mangsee islands. The US-Great Britain Convention described the international treaty limits under Article III of the Treaty of Paris as “the boundary defined by the Treaty between the United States of America and Spain signed at Paris, December 10, 1898,”¹ to which is connected “the boundary between the Philippine Archipelago....and the State of Borneo” it has established.²

16. Due to the 1930 Convention concluded between Great Britain and the United States, and the 1900 Treaty of Washington between Spain and the United States, the *Philippine archipelago* as defined under the Treaty of Paris expanded as illustrated below:



¹ Article I. The US-Great Britain Convention is in 137 League of Nations Treaty Series 299.

² Preamble. The US-Great Britain Convention.

17. On 24 March 1934, the Tydings-McDuffie Act (otherwise known as the Philippine Independence Act) was approved by the United States Congress. The Tydings-McDuffie Act established the Commonwealth of the Philippines with a ten-year period of peaceful transition to full independence. Section 1 of the Tydings-McDuffie Act refers, *inter alia*, to the Treaty of Paris in relation to the extent of the territory of the Philippines:

Section 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the House of Representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the **Commonwealth of the Philippine Islands**, subject to the conditions and qualifications prescribed in this Act, which **shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December, 1898, the boundaries of which are set forth in Article III of said treaty**, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November, 1900. The Philippine Legislature shall provide for the necessary expenses of such convention. (*Emphasis supplied*)

18. On 14 May 1935, the 1935 Constitution was ratified. The 1935 Constitution's article on the National Territory refers, *inter alia*, to the Treaty of Paris in reference to the extent of the Philippine national territory:

Article I
The National Territory

Section 1. The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, **the limits which are set forth in Article III of said treaty**, together with all the islands embraced in the treaty concluded at Washington between the United States and Spain on the seventh day of November, nineteen hundred, and the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercises jurisdiction. *(Emphasis supplied)*

19. As an integral part of the 1935 Constitution, Article I on National Territory, quoted above, was approved by the President of the United States pursuant to Section 3 of the Tydings-McDuffie Law of 1934, mentioned above.

20. On 4 July 1946, the Philippines regained its independence from the United States of America.

21. In 1956, the United Nations held its first Conference on the Law of the Sea (UNCLOS I) at Geneva, Switzerland. Though UNCLOS I was considered a success, it failed to achieve agreement on the breadth of the territorial sea.

22. During UNCLOS I, the Philippines, through Sen. Arturo Tolentino, proposed a new legal regime wherein the *Philippine Archipelago* is a unity of land and water in which all waters within the straight baselines shall be treated as internal waters.

23. In 1960, due to the failure of UNCLOS I to arrive at acceptable proposals on the breadth of the territorial sea, the United Nations held its second Conference on the Law of the Sea (UNCLOS II) at Geneva, Switzerland. Despite the objective of UNCLOS II, no agreement was ever reached on the maximum limit of the territorial sea.

24. On 17 June 1961, Republic Act No. 3046 (An Act to Define the Baselines of the Territorial Sea of the Philippines) was enacted. The preambular paragraph of R.A. 3046 refers to the Treaty of Paris, *inter alia*, as determinative of the extent of the Philippine national territory:

WHEREAS, the Constitution of the Philippines describes the national territory as comprising all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on December 10, 1898, the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on November 7, 1900, and in the treaty concluded between the United States and Great Britain on January 2, 1930, and all the

territory over which the Government of the Philippine Islands exercised jurisdiction at the time of the adoption of the Constitution;

WHEREAS, all the waters within the limits set forth in the above-mentioned treaties have always been regarded as part of the territory of the Philippine Islands; (*Emphasis supplied*)

25. Based on the Treaty of Paris and the two companion treaties mentioned above, Sen. Arturo Tolentino authored R.A. 3046 in order to legislate the '*archipelagic doctrine*,' i.e., archipelago as the unity of land and water, which was espoused by the Philippines during UNCLOS I and as a reaction to the deliberations in UNCLOS I on the 'regime of islands' under which the Philippine archipelago may be treated. The '*archipelagic principle*' is stated in the preambular paragraph of R.A. 3046, to wit:

WHEREAS, all the waters around, between and connecting the various islands of the Philippines archipelago, irrespective of their width or dimension, have always been considered as necessary appurtenances of the land territory, forming part of the inland or internal waters of the Philippines;

WHEREAS, all the waters beyond the outermost islands of the archipelago but within the limits of the boundaries set forth in the aforementioned treaties comprise the territorial sea of the Philippines;

26. On 18 September 1968, Republic Act No. 5446 was enacted to correct the typographical errors in R.A. 3046.

27. On 16 August 1971, the Philippine delegation to the United Nations *Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction* delivered a statement, which in part reads:

...[T]he only rule that would be consistent with the nature of an archipelago as one State is that which would require and allow an archipelago to draw a single baseline around the islands that constitute it by joining appropriate points of the outermost islands of the archipelago with straight lines. We have followed this rule, having defined and clarified by legislation the baselines from which our territorial sea shall commence. *The waters within the baselines are internal waters; those outside proceeding seaward within defined limits constitute our territorial sea.*³

28. On 17 January 1973, the 1973 Constitution was ratified. The 1973 Constitution's article on the National Territory refers to the Philippine territory in this way:

ARTICLE I NATIONAL TERRITORY

Section 1. The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all the other territories belonging to the Philippines by historic or legal title, including the territorial sea, the air space, the subsoil, the sea-bed, the insular shelves, and the submarine areas over which the Philippines has sovereignty or jurisdiction.....

³ Estelito P. Mendoza, *The Base-lines of the Philippines*, 46 *Philippine Law Journal* 628, 633. (September 1971). The Philippine statement was delivered in the Sub-Committee II of this UN Committee by Prof. Estelito P. Mendoza.

29. The 1973 Constitution also enshrined the *archipelagic doctrine* which was espoused by the Philippine during UNCLOS I, to wit:

**ARTICLE I
NATIONAL TERRITORY**

Section 1.....The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines.

30. In 1973, the *Third United Nations Conference on the Law of the Sea* (UNCLOS III) was convened in New York. The first session of UNCLOS III devoted itself to organizational and procedural matters. The Conference decided that the resulting convention bear the official title, the United Nations Convention on the Law of the Sea.

31. On 11 June 1978, Presidential Decree No. 1596 (Declaring Certain Area Part of the Philippine Territory and Providing for Their Government and Administration) was enacted, declaring the Kalayaan Island Group (KIG) subject to the sovereignty of the Philippines and constituting a distinct and separate municipality of the Province of Palawan to be known as "Kalayaan."

32. On 10 December 1982, the United Nations Convention on the Law of the Sea (UNCLOS III) was concluded in Montego Bay,

Jamaica.⁴ The UNCLOS III achieved its objective to adopt a convention dealing with all matters concerning the law of the sea. While the Philippines wanted the waters within its baselines to be treated as internal waters, the UNCLOS III provides that these waters are 'archipelagic waters' and hence:

- a) subject to innocent passage; and
- b) subject to overflight.

33. Also, on 10 December 1982, the Philippines signed UNCLOS III but at the same time declared its reservations to the said treaty stating, *inter alia*, that:

1. The signing of the Convention by the Government of the Republic of the Philippines shall not in any manner impair or prejudice **the sovereign rights of the Republic of the Philippines under and arising from the Constitution of the Philippines;**

2. Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor of the United States of America, **under and arising out of the Treaty of Paris between Spain and the United States of America of December 10, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930;**

xxx xxx xxx

4. Such signing shall not in any manner impair or prejudice the sovereign rights of the Republic of the Philippines over any territory over which sovereign authority, such as the Kalayaan Islands,

⁴ http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm

and the waters appurtenant thereto; (*Emphasis supplied*)

34. On 27 February 1984, subject to reservations, the Batasang Pambansa adopted Resolution No. 121 (Resolution of the Batasang Pambansa Concurring in the United Nations Convention on the Law of the Sea) stating, *inter alia*, that:

Resolved by the Batasang Pambansa, To concur, as it is hereby concurs, in the United Nations Convention on the Law of the Sea entered into and signed by the Representative of the Republic of the Philippines on December 10, 1982 at Montego Bay, Jamaica, with the understanding embodied in the Declaration filed on behalf of the Republic of the Philippines by the Head of the Philippine delegation when he signed the said Convention, copy of which is attached as "Annex A". (Emphasis supplied)

35. On 08 May 1984, the Republic of the Philippines ratified the UNCLOS III, the 11th nation to do so, and likewise reiterated the same reservations with respect to the said Treaty.⁵

36. On 02 February 1987, in continuity with the 1935 Constitution in regard to the definition of National Territory, the 1987 Constitution was ratified. The 1987 Constitution's provision on national territory essentially adopted the text of the 1973 Constitution, with some modifications, and also retained the reference to the Philippine Archipelago as a unity of land and water,

⁵ *Id.*

particularly in characterizing “all the waters around, between, and connecting the islands of the archipelago” as internal waters.

ARTICLE 1

NATIONAL TERRITORY

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. **The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.** (*Emphasis supplied*)

37. On 16 November 1994, the UNCLOS III regime entered into force after Guyana became the Treaty's 60th signatory-state. Currently, 157 states have signed UNCLOS III.⁶

38. On 05 December 2007, House Bill No. 3216, entitled “An Act Defining the Archipelagic Baselines of the Philippine Archipelago, Amending for the Purpose Republic Act No. 3046, as Amended by Republic Act No. 5446”, was filed by its author Representative Antonio Cuenco.⁷ The intention of the Cuenco Bill was to implement UNCLOS III.

⁶ http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm

⁷ http://www.congress.gov.ph/bis/qry_show.php

39. On 10 November 2008, Senate Bill No. 2699, entitled “An Act to Amend Republic Act No. 3046, as Amended by Republic Act No. 5446, and for Other Purposes”, and authored by Senator Miriam Defensor-Santiago, was submitted jointly by the Senate Committees on Foreign Relations, Finance, and National Defense and Security.⁸

40. On 02 February 2009, the House of Representatives – with 177 affirmative votes, three (3) negative votes, and no abstention – approved on third and final reading HB 3216.⁹

41. On 26 January 2009, the President of the Philippines certified the said Senate Bill for its **immediate** enactment.¹⁰

42. On 28 January 2009, the Senate – with 15 affirmative votes, no negative votes, and no abstention – approved on third reading SB 2699.¹¹

43. On 17 February 2009, the Conference Committee Report was submitted to the Senate, recommending that SBN-2699 in consolidation with HBN-3216, be approved as reconciled. On the same date, the said Committee Report was approved by the Senate.

⁸ http://www.senate.gov.ph/lis/bill_res.aspx?congress=14&q=SBN-2699

⁹ http://positivewnewsmedia.net/am2/publish/Main_News_1/House_approves_baselines_bill_on_3rd_reading.shtml

¹⁰ *Id.*

¹¹ *Id.*

Subsequently, on 25 February 2009, the same was approved by the House of Representatives.¹²

44. On 04 March 2009, the consolidated version of SBN-2699 and HBN-3216 was transmitted to Office of the President of the Philippines for the signature and approval of President Gloria Macapagal-Arroyo.¹³

45. On 10 March 2009, President Gloria Macapagal-Arroyo signed the bill into law, now Republic Act No. 9522 or *“An Act to Amend Certain Provisions of Republic Act No. 3046, as amended by Republic Act No. 5446, to Define the Archipelagic Baselines of the Philippines, and for Other Purposes”*.¹⁴

46. Petitioners now file this Petition for Certiorari and Prohibition with Application for a Writ of Preliminary Prohibitory Injunction and/or a Temporary Restraining Order (TRO) before the Honorable Court, questioning the constitutionality of Republic Act No. 9522.

¹² *Id.*

¹³ *Id.*

¹⁴ <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20090312-193661/Arroyo-signs-controversial-baselines-bill>

TIMELINESS OF THE PETITION

47. On 10 March 2009, the President signed into law Republic Act No. 9522. The effectivity clause of R.A. 9522 provides that it shall take effect 15 days following its publication in the *Official Gazette* or in any two (2) newspapers of general circulation.

48. Petitioners have no knowledge whether R.A. 9522 was published or when it was published. But assuming that it was published the very day after it was signed, it would have taken effect on 25 March 2009.

49. Under Rule 65, Petitioners have sixty (60) days from the date of the questioned acts or the date of receipt of the questioned document within which to file this Petition. Counting from its presumed date of effectivity, Petitioners have until 24 May 2009 within which to file the Petition. Petitioners therefore are filing the instant action on time. The corresponding docket and other lawful fees and deposit for costs are paid simultaneously with the filing of this Petition.

50. Also, Petitioners respectfully submit that since R.A. 9522 is an official act of the Legislative and Executive Departments subject

to judicial notice under Section 1, Rule 129 of the Rules of Court, there is no need for the submission in the instant proceeding of a certified true copy of the said law.

GROUNDS FOR THE PETITION

51. This Petition is for certiorari, and prohibition, with application for the issuance of a Writ of Preliminary Prohibitory Injunction and/or a Temporary Restraining Order. Petitioners submit that the passage of Republic Act No. 9522 was a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Legislative and Executive Departments.

52. Petitioners do not have at their disposal any appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, except the instant Petition for Certiorari, and Prohibition with Application for a Writ of Preliminary Prohibitory Injunction and/or Temporary Restraining Order.

53. Republic Act No. 9522, if not immediately restrained or enjoined, will cause grave and irreparable injury to petitioners as Filipino citizens, taxpayers, or as legislators, as the case may be, and

the entire Filipino people, as it dismembers a large portion of the national territory of the Philippines, in violation of the Constitution.

54. For the same reasons, the commission and continuance of the acts complained of during the pendency of this petition will work injustice to the Petitioners, the nation, and the Republic of the Philippines. Petitioners pray for the exemption from the posting of a bond in view of the nature of the instant petition, which is anchored on the following grounds:

A. PROCEDURAL MATTERS

I

PETITIONERS HAVE STANDING TO FILE THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION.

II

THE CONTROVERSY IS SUFFICIENTLY RIPE FOR THE HIGH COURT'S ADJUDICATION.

III

THE FILING OF THE INSTANT PETITION DOES NOT VIOLATE THE HIERARCHY OF COURTS, GIVEN THE URGENCY AND THE NATURE OF THE ISSUES INVOLVED.

IV

THE PETITION INVOLVES MATTERS OF PUBLIC INTEREST AND *TRANSCENDENTAL IMPORTANCE* SUCH AS WOULD JUSTIFY A RELAXATION OF PROCEDURAL REQUIREMENTS FOR CONSTITUTIONAL ADJUDICATION.

B. SUBSTANTIVE MATTERS

THE LEGISLATIVE AND EXECUTIVE DEPARTMENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ENACTING REPUBLIC ACT NO. 9522 FOR THE FOLLOWING REASONS:

V

REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR RADICALLY REVISING THE DEFINITION OF THE 'PHILIPPINE ARCHIPELAGO' UNDER THE TREATY OF PARIS, IN VIOLATION OF ARTICLE I OF THE CONSTITUTION INCORPORATING THE SAID DEFINITION OF THE TREATY OF PARIS.

VI

REPUBLIC ACT NO. 9522 WEAKENS OUR TERRITORIAL CLAIM TO THE KALAYAAN ISLAND GROUP (KIG), AND ALTOGETHER ABANDONS OUR CLAIM TO SABAH.

VII

REPUBLIC ACT NO. 9522 VIOLATES THE CONSTITUTION IN THAT IT CONTRAVENES THE INTERNATIONAL LAW PRINCIPLE OF 'UTI POSSIDETIS' ON WHICH THE CONSTITUTIONAL DEFINITION OF NATIONAL TERRITORY, PURSUANT TO ARTICLE III OF THE TREATY OF PARIS, IS BASED.

VIII

REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR CONVERTING OUR 'INTERNAL WATERS' "AROUND, BETWEEN, AND CONNECTING THE ISLANDS OF THE ARCHIPELAGO" INTO 'ARCHIPELAGIC WATERS' UNDER THE UNCLOS REGIME, IN VIOLATION OF ARTICLE I OF THE CONSTITUTION.

IX

REPUBLIC ACT NO. 9522 WILL RENDER NUGATORY THE PHILIPPINES' RESERVATIONS UNDER THE UNCLOS, WHICH ESPOUSE THE DEFINITION OF THE PHILIPPINE NATIONAL TERRITORY AS EMBODIED IN SECTION 1, ARTICLE I OF THE CONSTITUTION, THE SAID RESERVATIONS HAVING BEEN SET FORTH IN ANNEX "A" OF THE CONCURRENCE RESOLUTION NO. 121 OF THE BATASANG PAMBANSA.

X

REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR GIVING FOREIGN VESSELS THE RIGHT TO INNOCENT PASSAGE OVER PHILIPPINE INTERNAL WATERS "AROUND, BETWEEN, AND CONNECTING THE ISLANDS OF THE ARCHIPELAGO," AND WORSE, THE RIGHT OF AIRCRAFT OF OTHER STATES TO MAKE OVERFLIGHTS IN PHILIPPINE AIRSPACE, IN VIOLATION OF SECTION 7 AND SECTION 8 OF ARTICLE II OF THE CONSTITUTION.

XI

REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR VIOLATING SECTION 16, ARTICLE II OF THE CONSTITUTION. INEVITABLY, IT WILL OPEN THE WAY FOR THE UNCLOS IMPLEMENTATION OF THE RIGHT OF INNOCENT PASSAGE OF ALL SHIPS OF ALL STATES IN THE PHILIPPINE INTERNAL WATERS "AROUND, BETWEEN, AND CONNECTING THE ISLANDS" OF THE PHILIPPINE ARCHIPELAGO, THUS EXPOSING OUR INTERNAL WATERS AND OUR ISLANDS TO SERIOUS ENVIRONMENTAL HAZARDS.

XII

REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR VIOLATING SECTION 2, ARTICLE XII AND SECTION 7, ARTICLE XIII OF THE CONSTITUTION.

XIII

THE UNCLOS DOES NOT PROVIDE A HARD-LAW OBLIGATION FOR THE PHILIPPINES TO BE CATEGORIZED AS AN ARCHIPELAGIC STATE AND, THUS, THE LANGUAGE OF THE UNCLOS IN REGARD TO THE DRAWING OF THE STRAIGHT ARCHIPELAGIC BASELINES IS *PERMISSIVE*. THE UNCLOS DOES NOT AT ALL REQUIRE THE PHILIPPINES TO DRAW SUCH BASELINES ON OR BEFORE 13 MAY 2009.

ARGUMENTS AND DISCUSSION

I. PETITIONERS HAVE STANDING TO FILE THE INSTANT PETITION FOR CERTIORARI AND PROHIBITION.

55. Petitioners as Filipino citizens, taxpayers, or as legislators, as the case may be, have standing to file the instant suit. In a host of jurisprudence *locus standi* means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the act being challenged.¹⁵ Otherwise stated, a proper party is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of.¹⁶ Thus, for a party to have personal standing, he need only prove, first, injury to

¹⁵ Tankiko v. Cezar, G.R. No. 131277, February 2, 1999.

¹⁶ ISAGANI CRUZ, CONSTITUTIONAL LAW 25 (2000), citing Ex Parte Levitt, 303 US 633.

his right or interest¹⁷, and second, a "fairly traceable" causal connection between the claimed injury and the challenged conduct.¹⁸

56. With regard to the first requisite, which requires *injury in fact*,¹⁹ there is no rigid rule as to what may constitute such injury. It may refer to aesthetic or environmental injury²⁰ or pertain to a "spiritual stake" in the values of the Constitution,²¹ and may be held to exist when the assailed administrative ruling entail future loss of profits.²² Indeed, even the mere fact that many people suffer the same injury claimed does not preclude a finding that the requisite standing exists.²³ As for the second requisite, it is complied with when the Petitioners show that there is a substantial likelihood that the relief requested will redress the claimed injury.²⁴ Even if the line of causation between the injury and the conduct is attenuated, the existence of "an identifiable trifle" is sufficient for meeting this requisite.²⁵

¹⁷ Tankiko v. Cezar, G.R. No. 131277, February 2, 1999; CRUZ, *Id.*, at 25; Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978).

¹⁸ Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978).

¹⁹ Association of Data Processing Service Organizations v. Comp., 397 US 150 (1970) in RONALD ROTUNDA, MODERN CONSTITUTIONAL LAW: CASES AND NOTES 1054 (3rd ed., 1989) [Hereinafter, ROTUNDA].

²⁰ JOHN E. NOWAK AND RONALD ROTUNDA, CONSTITUTIONAL LAW 78 (4th ed., 1991), citing Sierra Club v. Morton, 405 U.S. 727 (1972). [Hereinafter, NOWAK & ROTUNDA].

²¹ *Id.*, at 77

²² Association of Data Processing Service Organizations v. Comp., 397 US 150 (1970), cited in ROTUNDA, *supra* note 19, at 1054

²³ Sierra Club v. Morton, 405 U.S. 727 (1972), cited in NOWAK AND ROTUNDA, *supra* note 9, at 78.

²⁴ Duke Power Co. v. Carolina Environmental Study Group, 438 US 59 (1978).

²⁵ ROTUNDA, *supra* note 19, at 1055, citing U.S. v. SCRAP, 412 U.S. 669 (1973).

57. Petitioners will sustain direct injury as Filipino citizens, as taxpayers, or as legislators, as the case may be, if Republic Act No. 9522 is not immediately restrained or enjoined, as it dismembers a portion of the territory of the Republic of the Philippines, in violation of the Constitution and laws of Philippines. As Filipino citizens, Petitioners have a right, nay, a duty to ensure that Philippine sovereignty and territorial integrity are protected by the government in its relations with the international community. The promulgation of Republic Act No. 9522 and its deposit and registration with the Secretary-General of the United Nations involves *far-reaching adverse implications* on the life of the Republic, in general, and its citizens, in particular.

II. THE CONTROVERSY IS SUFFICIENTLY RIPE FOR THE HIGH COURT'S ADJUDICATION

58. The principle of ripeness is premised on the doctrine that, for the courts to act, there must be an actual case or controversy involving a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication.²⁶ Under this principle, a suit is not ripe where it was brought too early.²⁷ The principle is underlined by the fact that, until the controversy becomes concrete

²⁶ CRUZ, *supra* note 16, at 23. See also International Longshoremen's and Warehousemen's Union, Local 37 v. Boyd, 347 US 222 (1954), quoted in ROTUNDA, *supra* note 64, at 1026-1027.

²⁷ NOWAK & ROTUNDA, *supra* note 20, at 68

and focused, the court would find it difficult to evaluate the practical merits of each party.²⁸ However, the requirement of ripeness is not bound to any hard and fast rules,²⁹ and the degree of ripeness required may vary depending on the nature of the constitutional problem involved.³⁰

59. The controversy that compelled the Petitioners to file the instant petition before the Honorable Court is sufficiently ripe for adjudication. It has been held that where a party will sustain immediate injury and such injury would be redressed by the relief requested, then the case involved would already satisfy the requirement of ripeness.³¹

60. The nature of the constitutional problem involved, in its paramount importance, leaves no other conclusion than that the controversy is ripe for adjudication.

²⁸*Id.*

²⁹ *Id.*

³⁰ Barrett 125, citing *United Public Workers v. Mitchell*, 330 US 75 (1947) and *Adler v. Board of Education*, 342 US 485 (1952).

³¹ *Duke Power Co. v. Carolina Environmental Study Group*, 438 US 59 (1978), quoted in *ROTUNDA*, *supra* note 19, at 1053

III. THE FILING OF THE INSTANT PETITION DOES NOT VIOLATE THE HIERARCHY OF COURTS, GIVEN THE URGENCY AND THE NATURE OF THE ISSUES INVOLVED.

61. It may be argued that the instant Petition should be dismissed for being violative of the principle of the hierarchy of courts. However, in Article VIII, Section 5, paragraph 2 (a) of the Constitution, it is explicit that the Supreme Court has jurisdiction in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

62. Thus, it has been held that where a case raises constitutional issues of *transcendental importance* to the public and involves a petition for certiorari and prohibition within the court's original jurisdiction within the Constitution, the Court may exercise primary jurisdiction over said case though it apparently failed to observe the rule of hierarchy of courts.³² That a case involving constitutional issues regarding treatment of cooperatives and the need for speedy disposition of cases would, for instance, justify the

³² Chavez v. Public Estates Authority, G.R. No.133250, July 9, 2002.

Court's taking cognizance over a case invoking its primary jurisdiction.³³

63. Petitioners respectfully submit that the instant petition involves constitutional issues of *transcendental importance* as well as compelling circumstances that would merit a latitudinarian view of the principle of hierarchy of courts.

**IV. THE PETITION INVOLVES
MATTERS OF PUBLIC INTEREST
AND *TRANSCENDENTAL*
IMPORTANCE SUCH AS WOULD
JUSTIFY A RELAXATION OF ANY
PROCEDURAL REQUIREMENT FOR
CONSTITUTIONAL
ADJUDICATION.**

64. The Honorable Court has repeatedly and consistently affirmed that the Court may brush aside technicalities of procedure where a rigid adherence to the rules would prejudice substantial justice,³⁴ where the issues are of first impression and entail interpretation of key provisions of the Constitution and law,³⁵ or where the case involves matters of *transcendental importance*.³⁶

³³ Philippine Rural Electric Cooperatives Association v. Secretary, G.R. No.143076, June 10, 2003.

³⁴ Solicitor-General v. Metropolitan Manila Authority, G.R. No.102782, December 11, 1991.

³⁵ Philippine International Air Terminals Co., G.R. No.155001, May 5, 2003.

³⁶ Defensor-Santiago v. Comelec, G.R. No.127325, March 19, 1997. See KMU v. Garcia, G.R. No.115381, December 23, 1994 (standing); Kilosbayan v. Guingona, G.R. No.113375, May 5, 1994 (standing); Kilosbayan v. Morato, G.R. No.118910, November 16, 1995 (standing); Solicitor-General v. Metropolitan Manila Authority, G.R. No.102782, December 11, 1991.

65. Unquestionably, the Court has the power to suspend procedural rules in the exercise of its inherent power, as expressly recognized in the Constitution, to promulgate rules concerning pleading, practice and procedure in all courts. In proper cases, procedural rules may be relaxed or suspended in the interest of substantial justice, which otherwise may be miscarried because of a rigid and formalistic adherence to such rules.³⁷

66. As was held by this Honorable Court in the above-cited cases, the Court, in the exercise of its sound discretion, may brush aside procedural barriers and take cognizance of a case in view of the paramount importance and the constitutional significance of the issues raised. Thus, as the issues raised by the Petitioners in the instant case are of paramount public interest, the Petitioners humbly pray that the Honorable Court brush aside procedural barriers, if any, in taking cognizance of this case.

67. Petitioners humbly assert that due to the *transcendental importance* of this case, the exercise of judicial review is most

(standing, propriety of prohibition); *Osmena v. Comelec*, G.R. No.100318, July 30, 1991 (standing, etc.); *Daza v. Singson*, G.R. No.86344, December 21, 1989 (propriety of remedy); *Association of Small Landowners in the Philippines v. Secretary*, G.R. No.79310, July 14, 1989; *Philippine International Air Terminals Co.*, G.R. No.155001, May 5, 2003 (standing), particularly *J. Panganiban, sep.op.*

³⁷ *Solicitor-General v. Metropolitan Manila Authority*, G.R. No.102782, December 11, 1991.

opportune considering that the settlement of the issues herein, i.e., the declaration of unconstitutionality of Republic Act No. 9522, will uphold the Philippines' territorial integrity and sovereignty, and protect the rights of the citizens as provided for in the Constitution.

68. Petitioners contend that the Legislative and Executive Departments committed grave abuse of discretion amounting to lack or excess of jurisdiction in enacting Republic Act No. 9522 for the following reasons:

V. REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR RADICALLY REVISING THE DEFINITION OF THE 'PHILIPPINE ARCHIPELAGO' UNDER THE TREATY OF PARIS, IN VIOLATION OF ARTICLE I OF THE CONSTITUTION INCORPORATING THE SAID DEFINITION OF THE TREATY OF PARIS.

69. Republic Act No. 9522 (R.A. 9522) radically revises the scope and breadth of the '*Philippine archipelago*' as defined under the Treaty of Paris, together with the Treaty of Washington of 07 November 1900 between the United States and Spain and the Convention of 02 January 1930 between the United States and Great Britain, and which, in turn, has been incorporated in all the

Constitutions of the Philippines from the 1935 up to the present 1987

Constitution.

The definition of the 'Philippine Archipelago' under the Treaty of Paris has been incorporated in all the Constitutions of the Philippines

70. Article I of the Constitution defines the Philippine national territory as:

ARTICLE I

NATIONAL TERRITORY

The national territory comprises the **Philippine archipelago, with all the islands and waters embraced therein**, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines. *(Emphasis supplied)*

71. From Article I of the Constitution, the Philippine national territory is actually composed of two parts:

- a) the Philippine archipelago, with all the islands and waters embraced therein; and
- b) all other territories over which the Philippines has sovereignty or jurisdiction.

72. The '*Philippine archipelago*' referred to in Article I of the Constitution is actually the same Philippine archipelago defined under the 1898 Treaty of Paris between Spain and the United States of America and the two companion treaties aforementioned. Article III of the Treaty of Paris provides:

Spain cedes to the United States **the archipelago known as the Philippine Islands**, and comprehending the islands lying within the following line: A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty-seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude, thence along the parallel of four degrees and forty five minutes (4 [degree symbol] 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degree symbol] 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7 [degree symbol] 40') north, thence along the parallel of latitude of seven degrees and forty minutes (7 [degree symbol] 40') north to its intersection with the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and

thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning. The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty. (*Emphasis supplied*)

73. By express mention, the 1935 Constitution adopted the definition of the '*Philippine archipelago*' under the Treaty of Paris, and the two companion treaties, namely (a) the Treaty of Washington, and (b) the treaty between Great Britain and the United States. Article I of the 1935 Constitution states:

ARTICLE I
The National Territory

Section 1. **The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, the limits which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington between the United States and Spain on the seventh day of November, nineteen hundred, and the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercises jurisdiction.** (*Emphasis supplied*)

By this text, the limits set forth in the Treaty of Paris, together with those in the two companion treaties, have been constituted into the definition of Philippine territory, thereby establishing these as the territorial and international boundaries of the Philippines.

74. The 1973 Constitution corresponds with the national territory defined in the 1935 Constitution. Article I of the 1973 Constitution provides:

**ARTICLE I
NATIONAL TERRITORY**

Section 1. The national territory comprises the **Philippine archipelago, with all the islands and waters embraced therein**, and all the other territories belonging to the Philippines by historic or legal title, including the territorial sea, the air space, the subsoil, the sea-bed, the insular shelves, and the submarine areas over which the Philippines has sovereignty or jurisdiction. The waters around, between, and connecting the islands of the archipelago, irrespective of their breadth and dimensions, form part of the internal waters of the Philippines. *(Emphasis supplied)*

75. The present 1987 Constitution's Article I on national territory adopted the exact wordings of the 1973 Constitution in reference to the Philippine archipelago, as can be seen noted from the emphasized portion:

ARTICLE I

NATIONAL TERRITORY

The national territory comprises the **Philippine archipelago, with all the islands and waters embraced therein**, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless

of their breadth and dimensions, form part of the internal waters of the Philippines. (*Emphasis supplied*)

76. Hence, the definition of the 'Philippine archipelago' under the Treaty of Paris, has been consistently incorporated into all the Constitutions of the Philippines from the 1935, and 1973 Constitution up to the present 1987 Constitution.³⁸

77. Precisely due to the constitutionalization of the Treaty of Paris, our first baselines law, Republic Act No. 3046 (*An Act to Define the Baselines of the Territorial Sea of the Philippines*) as amended, refers to the Treaty of Paris in its preambular paragraphs, to wit:

WHEREAS, the Constitution of the Philippines describes the national territory as comprising all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on December 10, 1898, the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on November 7, 1900, and in the treaty concluded between the United States and Great Britain on January 2, 1930, and all the territory over which the Government of the Philippine Islands exercised jurisdiction at the time of the adoption of the Constitution; (*Emphasis supplied*)

78. Our first baselines law, R.A. 3046, further adds that all the waters within the limits defined in the Treaty of Paris have always

³⁸ JOAQUIN BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (1996 edition) 29.

been regarded as part of the territory of the Philippine Islands, to wit:

WHEREAS, all the waters within the limits set forth in the above-mentioned treaties have always been regarded as part of the territory of the Philippine Islands;

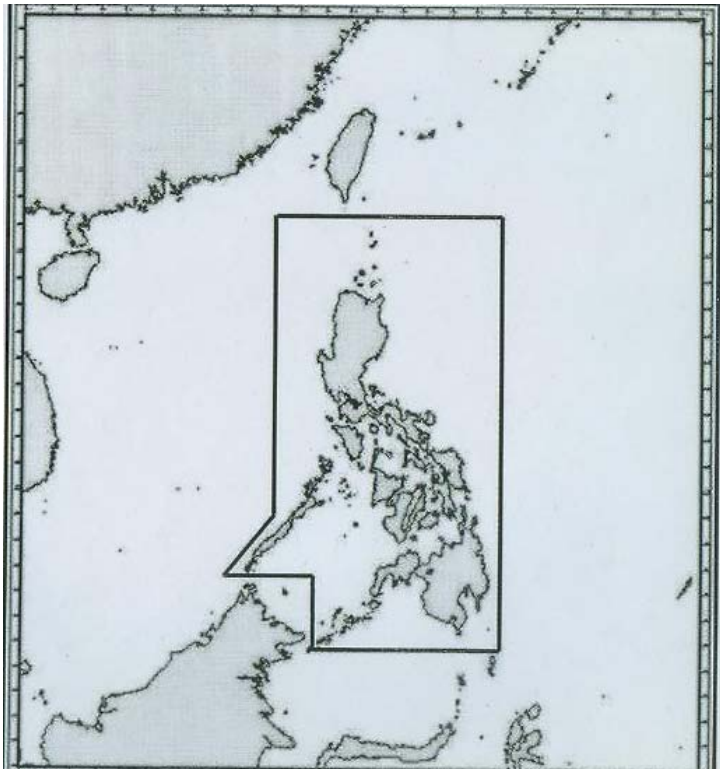
R.A. 9522 radically revises the definition of the 'Philippine Archipelago' by excluding large areas of waters set forth in the Treaty of Paris

79. R.A. 9522 radically revises the metes and bounds of the '*Philippine archipelago*' as defined under the Treaty of Paris by excluding large areas of waters that were set forth in the Treaty of Paris as part and parcel of the '*Philippine archipelago*'.

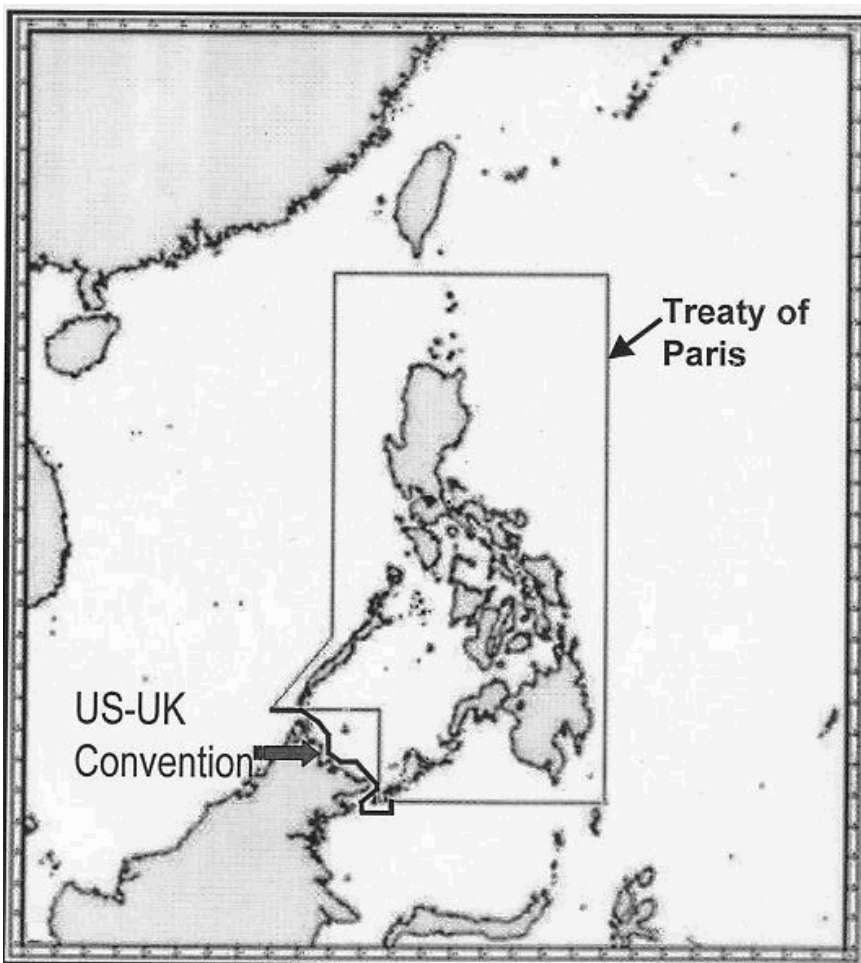
80. The '*Philippine archipelago*' as defined under Treaty of Paris takes the form of a rectangle that measures 600 miles in width and 1200 miles in length.³⁹ Inside this rectangle lie the 7,100 islands comprising the Philippine Islands.⁴⁰ This is illustrated below:

³⁹ Committee Report No. 01, Committee on National Territory, 1971 Constitutional Convention, 15 January 1972.

⁴⁰ *Id.*

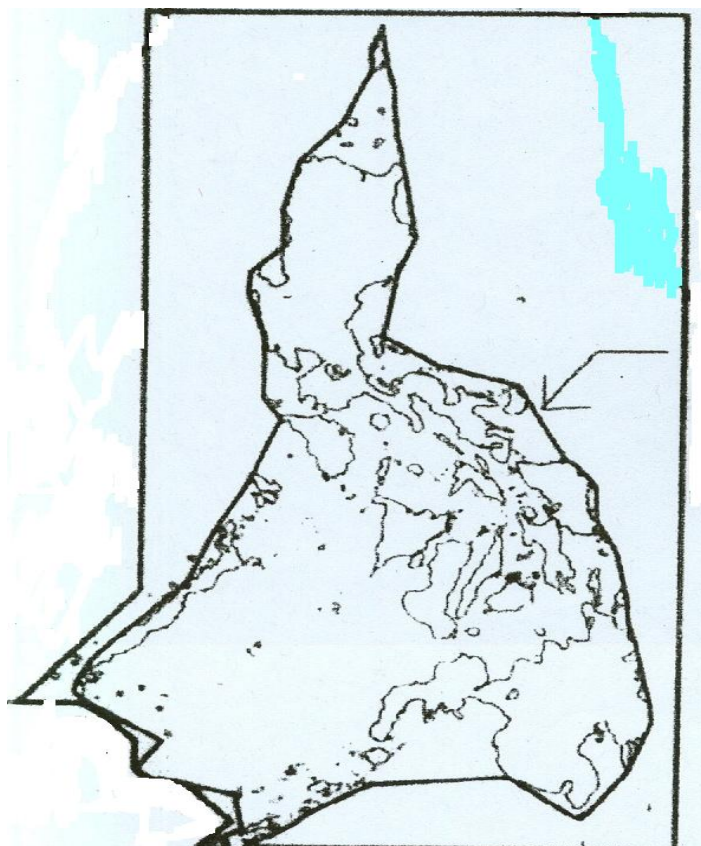


81. Due to the Treaty of Washington, and the Convention concluded between Great Britain and the United States, the Philippine territory expanded as illustrated below:



82. R.A. 9522 radically revises the definition of the '*Philippine Archipelago*' under the Treaty of Paris in two ways.

83. *First*, since R.A. 9522 never referred to the Treaty of Paris, its enactment is an open and express rejection of the said Treaty which had been built into the Preamble of R.A. 3046, as amended. Hence, R.A. 9522 chopped away huge swaths of the Philippine national territory, limiting its reach only to the areas within the outermost points enumerated in the said law. This can be clearly seen from the illustration below which shows the area defined by R.A. 9522 with the wider rectangular expanse of the national territory defined under Article III of the Treaty of Paris.



84. *Second*, R.A. 9522 essentially declares the Philippines as an “archipelagic state” under the UNCLOS, making use of the straight baselines method to delineate the national territory. The method entails drawing straight lines connecting the outermost points of the outermost islands following the general contour of the archipelago.

85. In conformity with the straight baselines method, R.A. 9522 identifies the outermost points through which the baselines delineating the Philippine national territory should be drawn. The result is a roughly triangular delineation which excludes large areas of waters within the 600 miles by 1200 miles rectangle enclosing the ‘*Philippine archipelago*’ as defined in the Treaty of Paris.

86. Hence, R.A. 9522 constitutes a drastic reduction of Philippine territory and a treasonous surrender of Philippine sovereignty, which is incomprehensible given that the Treaty of Paris has been consistently incorporated in all of our organic charters from the 1935 Constitution up to the present 1987 Constitution.

**VI. REPUBLIC ACT NO.
9522 WEAKENS OUR TERRITORIAL
CLAIM TO THE KALAYAAN
ISLAND GROUP (KIG), AND
ALTOGETHER ABANDONS OUR
CLAIM TO SABAH.**

87. The Legislative and Executive Departments committed grave abuse of discretion in classifying the Kalayaan Island Group (KIG) under a 'regime of islands' for this effectively weakens our territorial claim to the KIG.

88. The KIG and Sabah are embraced in the definition of the Philippine National Territory when Article I of the 1987 Constitution refers to "all other territories over which the Philippines has sovereignty or jurisdiction."

89. Also, the Philippines has effective occupation of the KIG by virtue of Presidential Decree No. 1596, which declared the KIG subject to the sovereignty of the Philippines and constituting a distinct and separate municipality of the Province of Palawan to be known as "Kalayaan." In fact, local and national elections are regularly held in the KIG, showing that the Philippines exercises sovereignty over it.

90. Nevertheless, R.A. 9522 weakens our otherwise strong territorial claim over the KIG, when it classified it under the 'regime of islands'. This constitutes a grave abuse of discretion amounting to an excess or lack of jurisdiction on the part of the Legislative and Executive Departments.

91. Worse, R.A. 9522 altogether abandons our territorial claim over Sabah, which is based on strong historical grounds. This further constitutes a grave abuse on the part of the Legislative and Executive Departments.

VII. REPUBLIC ACT NO. 9522 VIOLATES THE CONSTITUTION IN THAT IT CONTRAVENES THE INTERNATIONAL LAW PRINCIPLE OF 'UTI POSSIDETIS' ON WHICH THE CONSTITUTIONAL DEFINITION OF NATIONAL TERRITORY, PURSUANT TO ARTICLE III OF THE TREATY OF PARIS, IS BASED.

92. In accepting and recognizing the Treaty of Paris as the basis for defining the national territory, the 1935 and the 1973 Constitution as well as the present Constitution recognize the binding character of *uti possidetis* as general international law for the establishment of boundaries and international frontiers.

93. By reason of the Incorporation Clause of the 1987 Constitution in Section 2, Article II, *uti possidetis* is regarded as part of Philippine law as a “generally accepted principle of international law”.

94. The point deserving of emphasis, however, is that in the present instance at bar, we are not invoking *uti possidetis* as national law in parity with statutory law. Since it is sought to be applied here as embodied in the Constitution in defining national territory, as clearly spelled out in Section 1, Article I of the 1935 Constitution and in succeeding constitutional developments, *uti possidetis* is hereby established according to its constitutional status, i.e., as a principle of international law of constitutional standing. As thus integrated into the provision of the Constitution, *uti possidetis* is on a higher plane of normativity than when it is simply applied on account of the Incorporation Clause.

95. Hence, in the present context, breach of obligation by reason of *uti possidetis* is in contravention of the Constitution.

96. R.A. 9522 violates the international law principle of 'uti possidetis' since it does away with the Philippine territory as defined by the Treaty of Paris.

97. The principle of *uti possidetis* lies in securing respect for the territorial boundaries set by a colonial administration at the moment of a transfer of sovereignty then freezes the same boundaries as determinative of international frontiers. This principle was the main discussion of the International Court of Justice in the *Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*:

However, there is more to the principle of *uti possidetis* than this particular aspect. **The essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved.** Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign. In that case, the application of the principle of *uti possidetis* resulted in administrative boundaries being transformed into international frontiers in the full sense of the term..... **Uti possidetis, as a principle which upgraded former administrative delimitations, established during the colonial period, to international frontiers, is therefore a principle of a general kind which is logically connected with this form of decolonization wherever it occurs.**⁴¹ (*Emphasis supplied*)

98. Applying the principle of *uti possidetis*, when the Philippines regained its independence on 4 July 1946 from the United States, the colonial administrative boundaries of the Philippine Islands under the Treaty of Paris, has been transformed into the

⁴¹ Case Concerning the Frontier Dispute (Burkina Faso/ Republic of Mali) 1986 ICJ 566.

international frontiers of the Republic of the Philippines. All states must therefore respect the Philippine international frontiers as defined by the Treaty of Paris.

99. Hence, under the international law principle of *uti possidetis*, the the metes and bounds of the '*Philippine archipelago*' under the Treaty of Paris is intrinsically part of the definition of the national territory under the Constitution. The international law principle *uti possidetis* serves as another rationale for the incorporation of the Treaty of Paris into the 1987 Constitution, aside from the historical rationale. The UNCLOS III regime cannot trump the territorial rights of the Philippines vested under the international law principle of *uti possidetis*.

100. Therefore, R.A. 9522 cannot just do away with the metes and bounds of the '*Philippine archipelago*' as defined under the Treaty of Paris since the said treaty is binding even against other states based on the international law principle of *uti possidetis*.

VIII. REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR CONVERTING OUR 'INTERNAL WATERS' "AROUND, BETWEEN, AND CONNECTING THE ISLANDS OF THE ARCHIPELAGO" INTO 'ARCHIPELAGIC WATERS' UNDER THE UNCLOS REGIME, IN VIOLATION OF ARTICLE I OF THE CONSTITUTION.

101. Article I of the Constitution declares that the waters connecting our islands are *internal waters*:

ARTICLE I

NATIONAL TERRITORY

.....The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the **internal waters** of the Philippines. (*Emphasis supplied*)

102. R.A. 9522 effectively converts our *internal waters* into '*archipelagic waters*' under the UNCLOS III regime. This is the ultimate effect when R.A. 9522 adopted the straight baselines method in delineating the geographic scope of the Philippine national territory as well as the provisions of the UNCLOS III dealing with archipelagic states.

103. Ultimately, this means that the waters inside the baselines between our islands are no longer internal waters such that the Philippines has full and exclusive sovereignty over such waters.

Instead, these are now 'archipelagic waters' under UNCLOS III. This is in direct violation of Article I of the Constitution.

104. Hence, R.A. 9522 also abandons Philippines' sovereignty over our internal waters by impliedly declaring the Philippines an archipelagic state under the terms and conditions of UNCLOS.

105. The characterization of the waters within the baselines as internal waters under the Constitution has been emphasized by the Philippines in the UN Conference of the Law of the Sea as the **essence of the Philippines as an archipelago**. Representing the Philippines in the 1974 Caracas session of that Conference, Sen. Arturo Tolentino described the essence of the Philippine constitutional definition of an archipelago as follows:

The dominion and sovereignty of the archipelagic state within its baselines, which were so drawn as to preserve the territorial integrity of the archipelago by the inseparable unity of the land and water domain.⁴²

⁴² See UNCLOS III Official Record, Vol.II, at 246, para.65, and para.61-62 and 66.

IX. **REPUBLIC ACT NO. 9522 WILL RENDER NUGATORY THE PHILIPPINES' RESERVATIONS UNDER THE UNCLOS, WHICH ESPOUSE THE DEFINITION OF THE PHILIPPINE NATIONAL TERRITORY AS EMBODIED IN SECTION 1, ARTICLE I OF THE CONSTITUTION, THE SAID RESERVATIONS HAVING BEEN SET FORTH IN ANNEX "A" OF THE CONCURRENCE RESOLUTION NO. 121 OF THE BATASANG PAMBANSA.**

106. The Philippines manifested its reservations, as condition to concurrence by the Batasang Pambansa, even as it signed the UNCLOS in 1984. Pertinent to this discussion are the following declarations in the said reservation:

xxx

"2. Such signing shall not in any manner affect the sovereign rights of the Republic of the Philippines as successor to the United States of America, under and arising out of the Treaty of Paris between Spain and the United States of America of December 19, 1898, and the Treaty of Washington between the United States of America and Great Britain of January 2, 1930;

xxx

"4. Such signing shall not in any manner impair or prejudice the sovereignty of the Republic of the Philippines over any territory over which it exercises sovereign authority, such as the Kalayaan Islands, and the waters appurtenant thereto;

“5. The Convention shall not be construed as amending in any manner any pertinent laws and Presidential Decrees or Proclamations of the Republic of the Philippines; the **Government of the Republic of the Philippines maintains and reserves the right and authority to make any amendments to such laws, decrees, or proclamations pursuant to the provisions of the Philippine Constitution;**” (*Emphasis supplied.*)

xxx

107. The aforementioned reservations have the effect of qualifying our commitment to the UNCLOS III regime. These reservations form an integral part of the concurrence resolution of the Batasang Pambansa.

108. Therefore, R.A. 9522 contradicts the Philippines’ 1984 reservations to the UNCLOS III regime, - which were made, in the first place, pursuant to the definition of the national territory under Section 1, Article I of the Constitution. Hence, R.A. 9522 forever closes the door to any Philippine efforts to obtain the acceptance by the international community of our Constitutionally-defined national territory.

109. Consequently, in the realm of international law, R.A. 9522 abandons, or at the very least, severely weakens, any and all claims we have or may have over territories as defined by our Constitution.

110. Unless declared unconstitutional, therefore, the Philippines will divest itself of the opportunity to push for the acceptance of our Constitutionally-defined national territory before the international community.

111. Being integral to the Concurrence Resolution of the Batasan in regard to the UNCLOS, disregard of the said reservations will render the said concurrence ineffective, thus negating Philippine's qualified ratification of the UNCLOS III regime.

**X. REPUBLIC ACT NO. 9522
IS UNCONSTITUTIONAL FOR
GIVING FOREIGN VESSELS THE
RIGHT TO INNOCENT PASSAGE
OVER PHILIPPINE INTERNAL
WATERS "AROUND, BETWEEN,
AND CONNECTING THE ISLANDS
OF THE ARCHIPELAGO," AND
WORSE, THE RIGHT OF AIRCRAFT
OF OTHER STATES TO MAKE
OVERFLIGHTS IN PHILIPPINE
AIRSPACE, IN VIOLATION OF
SECTION 7 AND SECTION 8 OF
ARTICLE II OF THE CONSTITUTION.**

112. Article II, Section 7 of our Constitution provides that in our relations with other states, the paramount consideration shall be, *inter alia*, national sovereignty and territorial integrity:

Section 7. The State shall pursue an independent foreign policy. In its relations with other states the paramount

consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.

113. R.A. 9522 undermines this Constitutional policy and brazenly violates Philippine territory and sovereignty which form the very cornerstones of our Charter.

114. Since R.A. 9522 effectively converts our 'internal waters' into 'archipelagic waters' under the UNCLOS regime the Philippines must give to ships of all states the right of innocent passage (UNCLOS Art. 52) and the right of archipelagic sea lanes passage, i.e., the rights of navigation and overflight solely for the purpose of continuous, expeditious, and unobstructed transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone (UNCLOS Art. 53).

115. Territorial sovereignty, from the standpoint of international law, refers to a State's right over a definite territory, to the exclusion of other States. Sovereignty signifies independence or exclusive competence of the State over its own territory. This is the overarching principle that governs Article II, Section 7 of the Constitution. Clearly then, the UNCLOS concept of '*archipelagic waters*' is a curtailment of Philippine sovereignty, in violation of the

Constitution. Also, since Republic Act 9522 surrenders portions of Philippines, especially the waters included in the Treaty of Paris, this is another violation of Article II, Section 7 of the Constitution.

116. Furthermore, Republic Act 9522 violates the Constitution's nuclear weapons-free policy enshrined in Section 7, Article II, to wit:

Section 8. The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

117. Since the Philippines will have to allow foreign ships of all kinds to navigate in Philippine waters - including nuclear-powered submarines, nuclear-powered warships and other ships carrying weapons-grade nuclear substances (UNCLOS Art. 52 in relation to Arts. 20, 22, 23), this clearly violates our Constitution's nuclear-weapons free policy.

XI. REPUBLIC ACT NO. 9522 IS UNCONSTITUTIONAL FOR VIOLATING SECTION 16, ARTICLE II OF THE CONSTITUTION. INEVITABLY, IT WILL OPEN THE WAY FOR THE UNCLOS IMPLEMENTATION OF THE RIGHT OF INNOCENT PASSAGE OF ALL SHIPS OF ALL STATES IN THE PHILIPPINE INTERNAL WATERS "AROUND, BETWEEN, AND CONNECTING THE ISLANDS" OF THE PHILIPPINE ARCHIPELAGO, THUS EXPOSING OUR INTERNAL WATERS AND OUR ISLANDS TO SERIOUS ENVIRONMENTAL HAZARDS.

118. Article II, Section 16, of the 1987 Constitution states: "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."

119. This provision, although found under the Declaration of Principles and State Policies and not under the Bill of Rights, is nonetheless self-executing.⁴³

120. Republic Act 9522 renders the primordial right of the Filipino people to a balanced and healthful ecology meaningless and pointless by classifying the Philippines as an archipelagic state

⁴³ Oposa v. Factoran, G.R. No. 101083, July 30, 1993.

which, under the UNCLOS III regime, carries with it the duty to respect the right of innocent passage of all States. Such right of innocent passage pertains even to warships, submarines, nuclear-powered ships, and ships carrying nuclear or other inherently dangerous or noxious substances. This defeats the objective of Republic Act No. 6969, which is precisely “to prevent the entry, even in transit, as well as the keeping or storage and disposal of hazardous and nuclear wastes into the country for whatever purpose.”

121. Since the right of innocent passage is not limited to the territorial sea but extends to waters around, between, and connecting the islands of the archipelago, R.A. 9522 will necessarily expose the Philippines to the hazards of marine pollution.

**XII. REPUBLIC ACT NO. 9522
IS UNCONSTITUTIONAL FOR
VIOLATING SECTION 2, ARTICLE
XII AND SECTION 7, ARTICLE XIII
OF THE CONSTITUTION.**

122. R.A. 9522 is also unconstitutional in light of the constitutional protection of the nation’s marine wealth, as stated in Section 2, paragraph 2 of Article XII of the Constitution, and the protection of offshore fishing grounds for fishermen, as stated in

Section 7, Article XIII of the Constitution. The Constitution provides in Section 2, paragraph 2, Article XII that:

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.

On the other hand, Section 7, Article XIII of the Constitution provides:

The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

123. With Section 2 of Republic Act 9522 declaring the KIG and Scarborough Shoal as mere regimes of islands, the State in effect shall have lost about 15,000 square nautical miles of territorial waters. By surrendering the above-mentioned territorial waters through the passage of Republic Act 9522 excluding the KIG and Scarborough Shoal from the baseline, the State has reneged on its constitutional

duty to protect our exclusive marine wealth and the offshore fishing grounds of our subsistence fishermen.

124. The failure by the State to preserve our territorial waters as originally construed by the Constitution and by our historic claims on the presently constituted regimes of islands is an affront to the constitutional mandate to protect our marine wealth and offshore fishing grounds.

125. The deprivation of these 15,000 square nautical miles of territorial waters, as a result of the State's failure to protect them, would then preclude Filipino citizens from the exclusive economic use, enjoyment and exploitation of marine resources as had historically been the case under a legal regime prior to Republic Act 9522. Particularly affected would be the fishermen in the underlying areas of the contested territorial waters as they now have to contend with severely limited offshore fishing grounds.

XIII. THE UNCLOS DOES NOT PROVIDE A HARD-LAW OBLIGATION FOR THE PHILIPPINES TO BE CATEGORIZED AS AN ARCHIPELAGIC STATE AND, THUS, THE LANGUAGE OF THE UNCLOS IN REGARD TO THE DRAWING OF THE STRAIGHT ARCHIPELAGIC BASELINES IS *PERMISSIVE*. THE UNCLOS DOES NOT AT ALL REQUIRE THE PHILIPPINES TO DRAW SUCH BASELINES ON OR BEFORE 13 MAY 2009.

126. The enactment of Republic Act 9522 is intended to fulfill our obligations under the UNCLOS III regime, which the Philippines signed on 08 May 1984. Moreover, the proponents argue that said enactment of the said law is intended to meet the 13 May 2009 deadline imposed by the United Nations on member-States to submit and register their baselines laws with the Secretary-General of the Security Council.

127. However, the language of UNCLOS III does not indicate any mandatory obligation of the member-States to draw straight archipelagic baselines, nor to submit a baselines law. **Moreover, the 13 May 2009 deadline is not a deadline to submit a baselines law, but rather to submit claims pertaining to the extension of the continental shelf.** Article 47(1) of the UNCLOS states:

An archipelagic State **may** draw straight archipelagic baselines joining the outermost points of the outermost islands and drying

reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. (*Emphasis supplied.*)

It is therefore misleading or, at the very least, a grievous error to say that the enactment of a new baselines law is necessary to meet the 13 May 2009 deadline.

128. As to the purported mandatory submission of a new baselines law to the UN, the use of the word “*may*” in Article 47(1) of UNCLOS III connotes a permissive, rather than a mandatory, obligation on the part of member-States.

129. The permissive nature of the obligation has been affirmed even by international law experts. According to Churchill and Lowe, it is not clear whether States have a choice as to whether or not they can consider themselves as archipelagic states. However, these authors assert that what is discernible is that **archipelagic states have an option as to whether they draw archipelagic baselines**, which is the necessary consequence of a State being designated an archipelagic state.⁴⁴

⁴⁴ Churchill, R. R. and Lowe, A. V. *The Law of the Sea*, Manchester University Press, 1983.

130. Clearly, the Philippines is **under no mandatory obligation** to draw straight archipelagic baselines such as those embodied in the recently enacted Baselines Law. The permissive nature of this treaty obligation is further highlighted by the very reservations the Philippines made when it signed the UNCLOS, which will be discussed in the latter part of this petition.

**APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY
PROHIBITORY INJUNCTION AND/OR A TEMPORARY RESTRAINING
ORDER (TRO)**

131. Pending action by this Honorable Court on the Petition, the Petitioners are entitled to have the Respondents, and all persons acting for or in their behalf, enjoined from implementing Republic Act 9522, since its implementation would clearly result in palpable violations of the Constitution to the extreme prejudice not only of Petitioners, but above all, of the Filipino people.

132. Unless the implementation of Republic Act 9522 is enjoined, the Permanent Representative to the United Nations in New York City, Hon. Hilario Davide, Jr., will deposit and register with the Secretary General of the United Nations (a) Republic Act 9522, and (b) the geographic coordinates and the charts and maps

indicating the baselines defined by Republic Act. 9522, in accordance with Section 4 of the assailed law.

133. The registration and deposit of Republic Act 9522 and other related documents before the UN Secretary-General will forever close the door to any Philippine efforts to obtain the acceptance by the international community of our Constitutionally-defined national territory.

134. More importantly, the registration and deposit of R.A. 9522 before the UN Secretary-General, will immediately bind the Philippines to the UNCLOS III regime, leading to the dismemberment of the Philippine national territory as defined in the 1987 Constitution.

135. Hence, if the implementation of Republic Act 9522 is not immediately enjoined, Petitioners and millions of Filipinos will suffer great or irreparable injury before the matter can be heard by the Honorable Court. Thus, Petitioners respectfully ask the Honorable Court to immediately enjoin the implementation of Republic Act 9522, pending the resolution of this petition.

PRAYER

WHEREFORE, Petitioners respectfully pray that:

1. Pending the resolution of this Petition, a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction be IMMEDIATELY ISSUED, prohibiting Respondents from implementing or invoking Republic Act 9522;

2. Upon due hearing, the instant Petition be GRANTED declaring Republic Act No. 9522 unconstitutional, and permanently enjoining the implementation of the said law

Other relief that are just and equitable under the premises are likewise prayed for.

Makati City for Manila, 27 March 2009.

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EXPLANATION

(Pursuant to Section 11, Rule 13 of the 1997 Rules of Civil Procedure)

This Petition for Certiorari and Prohibition with Prayer for a Writ of Preliminary Prohibitory Injunction and/or a Temporary Restraining Order is being served to the Respondents by registered mail in accordance with Section 11, Rule 13 of the Revised Rules of Court because of lack of personnel to effect personal service to each and every one of them.

ROMEL REGALADO BAGARES