

G.R. No. 159618

February 1, 2011

BAYAN MUNA, as represented by Rep. SATUR OCAMPO, Rep. CRISPIN BELTRAN, and Rep. LIZA L. MAZA, Petitioner,
vs.

ALBERTO ROMULO, in his capacity as Executive Secretary, and BLAS F. OPLE, in his capacity as Secretary of Foreign Affairs, Respondents.

VELASCO, JR., J.:

Facts: Petitioner Bayan Muna is a duly registered party-list group established to represent the marginalized sectors of society. Respondent Blas F. Ople, now deceased, was the Secretary of Foreign Affairs during the period material to this case. Respondent Alberto Romulo was impleaded in his capacity as then Executive Secretary.

Rome Statute of the International Criminal Court. Having a key determinative bearing on this case is the Rome Statute establishing the International Criminal Court (ICC) with the power to exercise its jurisdiction over persons for the most serious crimes of international concern and shall be complementary to the national criminal jurisdictions

These serious crimes adverted to cover those considered grave under international law, such as genocide, crimes against humanity, war crimes, and crimes of aggression. On December 28, 2000, the RP, through Charge d'Affaires Enrique A. Manalo, signed the Rome Statute which, by its terms, is subject to ratification, acceptance or approval by the signatory states. As of the filing of the instant petition, only 92 out of the 139 signatory countries appear to have completed the ratification, approval and concurrence process. The Philippines is not among the 92.

Issue: Whether or not the RP-US Non Surrender Agreement is void ab initio for contracting obligations that are either immoral or otherwise at variance with universally recognized principles of international law.

Held: No. Petitioner urges that the Agreement be struck down as void ab initio for imposing immoral obligations and/or being at variance with allegedly universally recognized principles of international law. The immoral aspect proceeds from the fact that the Agreement, as petitioner would put it, leaves criminals immune from responsibility for unimaginable atrocities that deeply shock the conscience of humanity; it precludes our country from delivering an American criminal to the ICC.

The above argument is a kind of recycling of petitioner's earlier position, which, as already discussed, contends that the RP, by entering into the Agreement, virtually abdicated its

sovereignty and in the process undermined its treaty obligations under the Rome Statute, contrary to international law principles.

The Court is not persuaded. Suffice it to state in this regard that the non-surrender agreement, as aptly described by the Solicitor General, is an assertion by the Philippines of its desire to try and punish crimes under its national law. The agreement is a recognition of the primacy and competence of the country's judiciary to try offenses under its national criminal laws and dispense justice fairly and judiciously. Petitioner, labors under the erroneous impression that the Agreement would allow Filipinos and Americans committing high crimes of international concern to escape criminal trial and punishment. This is manifestly incorrect. Persons who may have committed acts penalized under the Rome Statute can be prosecuted and punished in the Philippines or in the US; or with the consent of the RP or the US, before the ICC, assuming that all the formalities necessary to bind both countries to the Rome Statute have been met.

Perspective wise, what the Agreement contextually prohibits is the surrender by either party of individuals to international tribunals, like the ICC, without the consent of the other party, which may desire to prosecute the crime under its existing laws. With this view, there is nothing immoral or violative of international law concepts in the act of the Philippines of assuming criminal jurisdiction pursuant to the non-surrender agreement over an offense considered criminal by both Philippine laws and the Rome Statute

International Agreements; treaties and executive agreements. Under international law, there is no difference between treaties and executive agreements in terms of their binding effects on the contracting states concerned, as long as the negotiating functionaries have remained within their powers. However, a treaty has greater "dignity" than an executive agreement, because its constitutional efficacy is beyond doubt, a treaty having behind it the authority of the President, the Senate, and the people; a ratified treaty, unlike an executive agreement, takes precedence over any prior statutory enactment. Petitioner, in this case, argues that the *Non-Surrender Agreement* between the Philippines and the US is of dubious validity, partaking as it does of the nature of a treaty; hence, it must be duly concurred in by the Senate. Petitioner relies on the case, *Commissioner of Customs v. Eastern Sea Trading*, in which the Court stated: international agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties; while those embodying adjustments of detail carrying out well established national policies and traditions and those involving arrangements of a more or less temporary nature take the form of executive agreements. According to petitioner, the subject of the *Agreement* does not fall under any of the subject-categories that are enumerated in the *Eastern Sea Trading* case that may be covered by an executive agreement, such as commercial/consular relations, most-favored nation rights, patent rights, trademark and copyright protection, postal and

navigation arrangements and settlement of claims. The Supreme Court held, however, that the categorization of subject matters that may be covered by international agreements mentioned in Eastern Sea Trading is not cast in stone. There are no hard and fast rules on the propriety of entering, on a given subject, into a treaty or an executive agreement as an instrument of international relations. The primary consideration in the choice of the form of agreement is the parties' intent and desire to craft an international agreement in the form they so wish to further their respective interests. The matter of form takes a back seat when it comes to effectiveness and binding effect of the enforcement of a treaty or an executive agreement, as the parties in either international agreement each labor under the *pacta sunt servanda* principle.

International Agreements: limitations on sovereignty. The RP, by entering into the *Agreement*, does thereby abdicate its sovereignty, abdication being done by its waiving or abandoning its right to seek recourse through the Rome Statute of the ICC for erring Americans committing international crimes in the country. As it were, the *Agreement* is but a form of affirmance and confirmation of the Philippines' national criminal jurisdiction. National criminal jurisdiction being

primary, it is always the responsibility and within the prerogative of the RP either to prosecute criminal offenses equally covered by the Rome Statute or to accede to the jurisdiction of the ICC. Thus, the Philippines may decide to try "persons" of the US, as the term is understood in the *Agreement*, under our national criminal justice system; or it may opt not to exercise its criminal jurisdiction over its erring citizens or over US "persons" committing high crimes in the country and defer to the secondary criminal jurisdiction of the ICC over them. In the same breath, the US must extend the same privilege to the Philippines with respect to "persons" of the RP committing high crimes within US territorial jurisdiction. By their nature, treaties and international agreements actually have a limiting effect on the otherwise encompassing and absolute nature of sovereignty. By their voluntary act, nations may decide to surrender or waive some aspects of their state power or agree to limit the exercise of their otherwise exclusive and absolute jurisdiction. The usual underlying consideration in this partial surrender may be the greater benefits derived from a pact or a reciprocal undertaking of one contracting party to grant the same privileges or immunities to the other.