

CENTRE FOR INTERNATIONAL LAW



CIL RESEARCH PROJECT ON INTERNATIONAL MARITIME CRIMES

THE PHILIPPINES' COUNTRY REPORT

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Philippine Country Report for the CIL Research Project on International Maritime Crimes

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Part I. General Questions on Treaty Ratification and Implementation

Legislative Provisions on Treaties

The Philippines is a democratic and republican state² with a mixed civil and common legal tradition.³ Its presidential system of government is divided into three branches: the Executive Department led by the President, the bicameral Legislative Department or Congress composed of the Senate and House of Representatives, and the Judicial Department composed of the Supreme Court and all other lower courts.⁴

The President is the sole authority in foreign policy and external relations, and hence, has authority to deal with foreign states and governments, maintain diplomatic relations as well as negotiate and conclude treaties.⁵ The **1987 Philippine Constitution** provides for the roles of the Senate and the Supreme Court as regards treaties, as follows:

Art. VII, Sec. 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all members of the Senate.⁶

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² Sec.2, Art. II, 1987 Constitution of the Republic of the Philippines, approved 12 October 1986. [1987 Philippine Constitution].

³ Soliman SANTOS, "Common Elements in the Philippine Mixed Legal System" (2000) 2 Australian Journal of Asian Law 34. Philippine law is based on Spanish civil legal tradition and influenced by the U.S. common law tradition. Shariah law (personal law) applies to Muslims.

⁴ Sec. 1, Art. VI; Sec. 1, Art. VII; Sec. 1, Art. VIII, 1987 Philippine Constitution, supra note 2.

⁵ Isagani CRUZ, *Philippine Political Law*, 2002 ed. (Quezon City, Philippines: Central Law Book Publishing Co., 2002). Also discussed in Pimentel Jr. vs. Office of the Executive Secretary, 462 SCRA 622 (2005).

⁶ Sec. 21, Art. VII, 1987 Philippine Constitution. There are 24 Senators.

Art. VII, Sec. 3(2). All cases involving the constitutionality of a treaty, international or executive agreement... which shall be heard by the Supreme Court *en banc*... shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.⁷

Treaty Ratification Procedure

The Philippines does not have any national legislation that governs the signing, ratification and implementation of treaties. Instead, it has an administrative regulation issued by the President in 1997, namely ***Executive Order 459 Providing for the Guidelines in the Negotiation of International Agreements and Its Ratification (EO 459)***⁸ to establish guidelines that will govern the negotiation, signing, provisional application and domestic requirements needed for entry into force of international agreements, by the Philippines.

EO 459 provides that the Department of Foreign Affairs (DFA) has the primary authority to negotiate treaties and other agreements pursuant to instructions from the President and in coordination with other government agencies. Within the DFA, the Office of Legal Affairs is responsible for providing legal assistance in the negotiation of treaties and international agreements as well as the interpretation and application of Philippine and international laws.⁹ DFA is also divided according to geographic and sectoral concerns. So, for example, ASEAN agreements are also handled by the Office of ASEAN Affairs under the Office of the Undersecretary for Policy while treaties pertaining to law of the sea are handled by the Commission on Maritime and Ocean Affairs under the Office of the Undersecretary for Special and Ocean Concerns.¹⁰

Aside from the DFA, other departments within the executive branch with mandates that have direct bearing on the subject matter of the treaty are also involved in the process. For example, negotiation of extradition and mutual legal assistance treaties is done with the Department of Justice (DOJ) because it is the primary government agency that handles requests for extradition

⁷ Sec. 3(2), Art. VIII, 1987 Philippine Constitution, *supra* note 2. The Supreme Court is composed of 1 Chief Justice and 14 Associate Justices.

⁸ Office of the President, "Executive Order 459 Providing for the Guidelines in the Negotiation of International Agreements and Its Ratification" (November 1997), online: PCTC <<http://www.pctc.gov.ph/laws/s97EO459.htm>>. [EO 459].

⁹ Department of Foreign Affairs, "Office of Legal Affairs" (November 2009), online: DFA <<http://dfa.gov.ph/main/index.php/office-of-the-undersecretary-for-administration/office-of-legal-affairs-ola.>>.

¹⁰ Department of Foreign Affairs, "Office of Undersecretary for Special Concerns" (June 2009) online: DFA <<http://dfa.gov.ph/main/index.php/office-of-the-undersecretary-for-special-concerns>>.

and mutual legal assistance as well as represents treaty partners in Philippine courts.¹¹ With various agencies involved in treaty negotiations, the composition of the Philippine delegation is determined by the President upon the recommendation of the Secretary of Foreign Affairs and the other lead government agency, if any.

EO 459 also requires that prior to any negotiation, authorization must be secured by the lead agency from the President through the Secretary of Foreign Affairs. The request will detail the composition of the Philippine delegation and recommend the range of positions to be taken. The negotiating panel is required to meet prior to any negotiation and establish the parameters of the negotiating position. EO 459 notes that there can be no deviation from the agreement parameters without prior consultation with the members of the negotiating panel.

The decision to be a party to a convention depends on the following considerations: (1) whether it is beneficial to the national interest; (2) whether it is needed by the country; (3) whether it can be implemented; and (4) whether it would be an effective measure for the country.

An authorization in the form of Full Powers¹² with formal instructions should be granted in case of negotiations of agreements that involve changes of national policy or arrangements of permanent character. Otherwise, a written authorization from the President to negotiate is sufficient.

After the international agreement has been signed, it will be submitted to the DFA for the preparation of the ratification papers. Supporting documents will include benefits that will accrue to the Philippines arising from the international agreement. The DFA then submits the documents for the President's ratification.

The Philippines classifies international agreements as either treaties or executive agreements.¹³ Treaties are "international agreements entered into by the Philippines which require legislative concurrence after executive ratification." Executive Agreements are "similar to treaties except they do not require legislative concurrence." The determination, whether an international agreement is a treaty or an executive agreement, is done by the DFA. As a guide, it was said

¹¹ Presidential Degree 1069, Prescribing the Procedure for the Extradition of Persons Who Have Committed Crimes in a Foreign Country [Philippine Extradition Law].

¹² It should be noted that Full Powers to negotiate are not needed if the negotiations are done by the Secretary of Foreign Affairs, Heads of Philippine diplomat missions (as to agreements with receiving State) and Representatives accredited by the Philippines to an international conference or to an international organization (as to the treaty of the conference or organization).

¹³ EO 459, *supra* note 8.

that international agreements that involve political issues; changes national policy; involving changes of permanent nature; in need of legislation to fund the agreement or impinges on any existing international legal obligation will need Senate concurrence.¹⁴

In the case of *Senator Pimentel vs. Office of Executive Secretary*¹⁵, the Supreme Court took the opportunity to explain that ratification is solely a presidential prerogative. As such, the Court could not issue a writ of mandamus to compel the President to transmit a signed text of the Rome Statute to the Senate for its concurrence. It reiterated that the President has the sole authority to negotiate with other states, and as such, the President “has the discretion even after the signing of the treaty by the Philippine representative whether or not to ratify the same.” When the Constitution required the Senate’s concurrence in the treaty-making process, it has not given the power to ratify treaties to the Senate but only provided it with the means to “check on the executive in the field of foreign relations.”

The concurrence process starts when the President, after ratifying/acceding to the treaty, transmits to the Senate the Instrument of Ratification or Instrument of Accession and the text of the treaty.¹⁶ Treaty concurrence by the Senate follows the same procedure as in the passage of any legislative bill.¹⁷ On the 1st reading, the number and title are read, with the title denoted as “Concurrence in the Ratification of (Treaty)” and the treaty is first referred to the Committee on Foreign Relations as well as other concerned Committees. The Committee then studies the treaty, conducts deliberation and public consultations, as may be deemed necessary, on the treaty.

Public consultations are usually extensive especially if the treaty involves significant public interest. Depending on the range of interested sectors, these consultations would necessarily involve participation of officials from executive agencies, non-government organizations, and civil society organizations. In these hearings, government officials whose agencies endorsed the treaty would need to present its advantages and disadvantages to the Senate committee. For

¹⁴ Suharni SAMANODI-CANDAO, “Jurisdiction of the Committee on Foreign Relations and the Process on Treaties/International Agreements Making and Concurrence”, Senate of the Philippines, undated, citing Joaquin Bernas, S.J. in *Constitutional Structure and Powers of the Government*, 2nd edition (1997) and Department of Foreign Affairs, Press Release No. 314-03 (June 2003). [Samanodi-Candao].

¹⁵ *Senator Aquilino Pimentel, et. al vs. Office of the Executive Secretary and Department of Foreign Affairs*, GR 158088 (6 July 2005) Online: ChanRobles < <http://www.chanrobles.com/scdecisions/jurisprudence2005/jul2005/158088.php>>.

¹⁶ Samanodi-Candao, supra note 14.

¹⁷ Rule XXXVI, Concurrence in Treaties, Rules of the Senate of the Philippines (on Reading of Bills and Concurrence in Treaties) and Philippine Constitution (Passage of Bills), online: Senate < http://www.senate.gov.ph/about/rules.asp#RULE_XXXVI> [Senate Rules].

example in the Senate hearing for the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT) with ASEAN Member Countries, representatives from the DFA, DOJ, National Bureau of Investigation, Philippine National Police and the Integrated Bar of the Philippines were present to discuss and endorse the treaty.¹⁸ Resource persons from the private sector and academe are also invited to present their positions, whether for or against, the treaty. Formal position papers are also received by the Committee.

The Committee then consolidates all the information and presents a Committee Report of the treaty to the Senate as a whole. By 2nd Reading, the treaty is opened for general debate on the floor; after which, the treaty is voted upon and approved for 3rd Reading. At this point, the Senate can only concur or refuse to concur to a treaty, but cannot amend it. Thus, if they concur, all other legitimate concerns raised by the Senate are set forth in the Senate resolution covering/concurring to the treaty.¹⁹ 2/3 of all 24 senators are needed for the approval in the 2nd and 3rd readings.²⁰

Unless certified as urgent, the process of getting Senate concurrence to a treaty can be a lengthy process. Because it follows the passage of a legislative bill, it may depend on the volume of bills filed and taken up in the Senate. Also depending on both the Senate's and public interest (or non-interest), the process can take more than a 3-year Congressional Term and, if not taken up will have to be re-filed again and presented as if for the first time in the next Congress. As an illustration, the MLAT with ASEAN Countries showed that it was signed by the Philippines on 29 November 2004 and thereafter submitted to the Senate for concurrence. It was only taken up in the next congressional term (2007-2010) with the hearing on August 2008, floor deliberations on September 2008 and Senate concurrence on October 2008, which was four years after the treaty was signed.²¹

Upon receipt of the Senate's concurrence, DFA will then determine whether requirements of the treaty for its entry into force are complied with. If the DFA so determines, it can also have provisional effectivity if it is a "pressing national interest" to do so. The DFA will then inform the concerned agency implementing the treaty of its entry into force.²²

¹⁸ Senate of the Philippines, Senate Committee Report No. 81, 14th Congress (16 June 2008), online: Senate <http://www.senate.gov.ph/lis/committee_rpt.aspx?congress=14&q=81>. [SCR 81]

¹⁹ Samanodi-Candao, supra note 14.

²⁰ Senate Rules, supra note 17.

²¹ SCR 81, Supra note 18.

²² EO 459, supra note 7.

TREATY IMPLEMENTATION PROCEDURE

The 1987 Philippine Constitution provides, in general terms, how international law is made operative and effective by incorporation or transformation. By incorporation, it states,

Art. 2. Sec. 3. The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.²³

Philippine constitutional scholars understand that what are to be incorporated are (1) “customary international norms or international custom” and (2) “general principles of law”.²⁴

For treaties, by transformation, it states:

Art. VII, Sec. 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.²⁵

Through this provision, the Constitution only requires the concurrence of the Senate for a treaty to be “valid and effective”. In many instances, the Supreme Court interpreted treaties as self-executory, needing no other legislation or act on the part of the government.²⁶ However, in some instances, a treaty the Philippine enters into may not be considered readily self-executory because, as worded, it may provide that the State Party will still have to do additional acts or measures such as passing legislation or administrative regulation. In this case, one is advised to look at the “character of the treaty, the intent of the state parties or by its object and purpose, as indicated by its language.”²⁷

With the above constitutional framework in mind, it was said that the two sources of international law are each assigned its own entry point into domestic law; customary norms do so through the Incorporation Clause while convention or treaty rules become part of Philippine

²³ Art. 2 Sec. III, 1987 Philippine Constitution, *supra* note 2.

²⁴ Merlin MAGALLONA, *A Primer in International Law in Relation to Philippine Law* (Quezon City: Central Professional Books, 1997). [Magallona].

²⁵ Art. 7 Sec. 21, 1987 Philippine Constitution, *supra* note 2. This so-called treaty clause is also not new to the Philippine legal system. The 1899, 1935 and 1973 Constitutions have similar provisions.

²⁶ Magallona, *supra* note 24.

²⁷ Magallona, *supra* note 24.

law through the Transformation Clause. As such, “by the juridical nature of these sources, the entry points or methods of entry are not interchangeable.”²⁸

Although the above explanations may be clear, it is important to note, at this juncture, that there remains confusion as to the doctrines of incorporation and transformation in the Philippine context. Although not a subject matter of this paper, suffice to say that this issue may have a bearing on the status of treaty implementation by the Philippines.

Although there is each an exclusive entry point for customary international law and for treaty law, it was also pointed that, in some cases, the court treated treaty provisions as customary international law. This was seen as serving no purpose at all because by doing so, the treaty provisions were made part of the law of the land twice, first by transformation and secondly by incorporation.²⁹ It was observed that, in some decisions, the Court took on an “attitude of overbreadth”; confusing and commingling sources of international law, such that in some instances, it has “incorporated” treaty provisions by declaring them as customary international law without necessarily undergoing the rigorous scrutiny needed to determine custom and generally accepted principles of international law.³⁰

It also was said that “challenges to the validity of transformation of treaty obligations are not unknown in this jurisdiction. Admittedly, some difficulty may be encountered when the provisions of the treaty differ from the content of municipal law, or when they present new matters not previously addressed by legislation. This may lead to questions regarding whether the treaty or any of its provisions is self-executing, consequently determining the need for further legislative enactment apart from ratification and approval.”³¹

The term “legislative lethargy” was mentioned by another author who noted that the Philippines then failed in complying with its obligations to enact legislation that penalized the core crimes in international humanitarian law.³² In discussing criminalization by incorporation

²⁸ Magallona, “A Survey of Problems in the Law of Treaties and Philippine Practice” (2009) 34 IBP Journal 2. [Magallona 2].

²⁹ *Ibid.*

³⁰ Aloysius LLAMSON, “The Generally Accepted Principles of International Law’ as Philippine Law: Towards a Structurally Consistent Use of Customary International Law in Philippine Courts” (2002) 47 Ateneo Law Journal 243.

³¹ Jose M. ROY III, “A Note on Incorporation: Creating Municipal Jurisprudence from International Law” (2001), 46 Ateneo Law Journal 635.

³² Pedro Roman ARISTON, “Taking the Most Serious Crimes of International Concern Seriously” (2001), 47 Ateneo Law Journal 377. In 2009, the Philippines finally passed Republic Act 9851, *Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity* to implement the various IHL treaties the Philippines have ratified since 1948. It should be noted that such law has been pursued because

or by transformation, it was pointed out that treaties which criminalize certain acts cannot be deemed incorporated into the Philippines as they cannot yet be said to be part of customary international law. Being inherently non-self executing, the Philippines still has to pass the necessary criminal legislation to define the crimes and impose the penalties.³³

The above issues may be said to contribute partly to the resulting failure of the Philippines to pass implementing legislation for some of the treaties it enters into. But another reason that have certainly led to these state of affairs is that the Philippines does not have a clear policy or regulation that govern how, when, and in what instances should domestic legislation be passed after treaty ratification.

Without an established policy or procedure, we can only rely on what happens in practice, where this determination can happen anytime. For one, because they are charged with the implementation of the conventions, the implementing agencies determine the need to have enabling legislation and pursue that Congress pass the necessary laws. In some treaties, the implementing agency is readily known (example, Department of Labor and Employment for labor treaties). However, with treaties that involve the participation of several agencies, inter-agency coordination is necessary to study the treaty implementation.

The need for domestic legislation may also be determined by the Supreme Court, as it may happen in cases are brought to it and it will have to decide whether a treaty can be readily invoked in Philippine courts.

During the Senate committee hearings for treaty concurrence, the legislative branch also discuss with executive officials whether further implementing legislation should be passed. One major consideration in these committee discussions is whether the Philippines already have an existing law covering the subject matter of the treaty. Legislation is prioritized when the treaties require the enactment of a new law and there is no existing Philippine law yet. It is also prioritized when the treaty imposes a deadline on the state party for the passage of an implementing law. Sufficient public interest and lobbying from various non-governmental organizations may also contribute to passage of implementing law. Another crucial factor in the

Senator Richard Gordon, who is the principal sponsor of the law, is also the Chairman of the Philippine Chapter of the International Committee of the Red Cross (ICRC).

³³ *Ibid*, citing Carlos Manuel Vazquez, *The Four Doctrines of Self-Executing Treaties*, 89 *American Journal of International Law* 695 and Jordan Paust, *Self-Executing Treaties*, 82 *American Journal of International Law* 760. "...treaties that purport to raise revenue, *treaties that purport to make conduct criminal*, and treaties that purport to appropriate money are inherently self-executing."

process is when a Senator, and a corresponding Member of the lower House, takes sufficient interest to sponsor and push for the passage of the law implementing the treaty.

Prioritization of laws to be passed is also discussed by both executive and legislative branches together. Though separate branches of government, a Legislative-Executive Development Advisory Council (LEDAC)³⁴ was established to provide policy advice to the President on socio-economic development goals of the country. LEDAC formulates the Common Legislative Agenda (CLA) – a list of the priority legislative measures to pursue for the current year. It was said that the latest status of the CLA is almost always the first agenda item in every Council meeting.³⁵

One should note that, considering the volume of bills that Congress takes up during its 3 –year term as well as the speed of legislative mill from both houses, the passage of an implementing law may take 1-3 years, if at all. When Congress ends after 3 years without passing a particular law, the legislative bills have to be re-filed again in the next Congress.

It may also happen in some instances that the Philippines have already passed legislation even though it has not yet become a party to a treaty. In this case, there will be a technical working group that will draft the bill by taking into account the principles and required provisions of the conventions to anticipate the Philippines’s eventual adherence to the treaty. If there is a need for domestic legislation, these technical working groups from both executive and legislative branches, working separately or jointly, will draft the legislative bill. Usually these working groups are composed of specialists and officials from the executive agencies as well as Senate and House committees, whose mandates involve the subject matter of the treaty. The draft bill will then be proposed and sent to pertinent Congressional committees for further study, deliberations and public hearings.

Compliance reporting is also another mechanism to determine whether there is a need for further legislation. To monitor treaty compliance, DFA keeps a database of all conventions entered into by the Philippines and monitors their status. Likewise, after the Senate has concurred with the treaty ratification, the Senate Committee on Foreign Relations retains an oversight and monitoring function over the implementation of the treaties. It may also investigate activities and officials involved in the conduct of foreign relations.³⁶ As with some

³⁴ National Economic Development Authority, LEDAC (undated) online: NEDA <<http://ledac.neda.gov.ph/>>. LEDAC was created by Republic Act 7640 (1990) composed of President, Vice President, Senate President, Speaker of the House, cabinet officials and representatives from the local government units, youth sector and private sector.

³⁵ *Ibid.*

³⁶ Samanodi-Candao, *supra* note 14.

treaties, an oversight Senate committee is specifically created by law to monitor a particular treaty's implementation. This oversight function may be done *motu proprio*, but is generally triggered when a legislator files a resolution asking the Committee to look into a certain treaty to which the Philippines is a party to.

Criminal Jurisdiction Given to National Courts

Philippine criminal law comprises a general law and various special laws that define the punishable crimes and provide for their penalties. Criminal jurisdiction is, thus, given generally, through the Revised Penal Code and specifically for certain offenses, in special criminal laws.

For crimes punished by the ***Revised Penal Code of the Philippines***, general criminal jurisdiction is provided as follows:

Art. 2. Application of its provisions. — Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship;
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the presiding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.³⁷

For crimes punishable by special criminal laws, jurisdiction may depend on the specific law's provisions. The Revised Penal Code is supplementary to the specific law, unless the latter should prohibit application of the general law.³⁸

³⁷ Art. 2, Act No. 3815, An Act Revising the Penal Code and Other Penal Laws, promulgated on 8 December 1930 and made effective 1 January 1932 [Revised Penal Code].

³⁸ Art. 10, Revised Penal Code.

One special law, pertinent to this paper, the **Human Security Act of 2007**³⁹ has jurisdictional provisions that provide exceptions to territorial rule. As when terrorist acts are committed, the Philippine may exercise jurisdiction in the following circumstances:

SEC. 58. *Extra-Territorial Application of this Act.* Subject to the provision of an existing treaty of which the Philippines is a signatory and to any contrary provision of any law of preferential application, the provisions of this Act shall apply:

- (1) to individual persons who commit any of the crimes defined and punished in this Act within the terrestrial domain, interior waters, maritime zone, and airspace of the Philippines;
- (2) to individual persons who, although physically outside the territorial limits of the Philippines, commit, conspire or plot to commit any of the crimes defined and punished in this Act inside the territorial limits of the Philippines;
- (3) to individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes on board Philippine ship or Philippine airship;
- (4) to individual persons who commit any of said crimes within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity;
- (5) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes against Philippine citizens or persons of Philippine descent, where their citizenship or ethnicity was a factor in the commission of the crime; and
- (6) to individual persons who, although physically outside the territorial limits of the Philippines, commit said crimes directly against the Philippine government.

³⁹ Republic Act No. 9371, Human Security Act of 2007, An Act to Secure the State and Protect Our People From Terrorism (took effect 15 July 2007) [Human Security Act of 2007].

The *Civil Code of the Philippines*⁴⁰ also provides that:

Art. 14. Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in the Philippine territory, subject to the principles of public international law and to treaty stipulations.

Art. 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

From the foregoing provisions in the criminal and civil codes, it can be said that Philippine criminal law is generally territorial in nature, with only a few exceptions provided by laws. It also does not extend to Philippine nationals living abroad because only Philippine personal laws follow them.

⁴⁰ Republic Act No. 386, An Act to Ordain and Institute the Civil Code of the Philippines (approved 18 June 1949). [Civil Code of the Philippines].

Part II: Implementation of Global Conventions where the Philippines is a Party

1982 United Nations Convention on the Law of the Sea (UNCLOS)

The Philippines signed UNCLOS on 10 December 1982 and ratified it on 8 May 1984.⁴¹

Congress is responsible for passing UNCLOS-related legislation while the Executive Department is charged with implementing the law. Within the Executive Department is the Commission on Maritime and Ocean Affairs (CMOA)⁴² composed of various officials and agencies⁴³ which is given overall jurisdiction and direction over policy formulation, implementation and coordination with other departments and experts, foreign and local, on maritime issues. In this capacity, the CMOA was the lead agency in pushing for the passage of the Philippine Baselines Law in Congress in 2009. In 2009, Republic Act 9522⁴⁴ entitled "An Act to Define the Baselines of the Territorial Sea of the Philippines" amended the existing baselines law⁴⁵ to bring the "Philippine claim closer to the consistency of the law of the sea."⁴⁶ The DFA, acting as

⁴¹ UN Treaty Collection (November 2010), online: UN <http://www.un.org/Depts/los/reference_files/hronological_lists_of_ratifications.htm>

⁴² Established by Executive Order (EO) No. 612 in 2007 (see, online: <http://verafiles.org/docs/eo612.pdf>). The CMOA is a successor office of a series of committees and offices tasked to implement UNCLOS. In 1981, EO 738 established the Cabinet Committee on the Treaty on the Law of the Sea. EO 186 in 1994 later renamed it as the Cabinet Committee on Maritime and Ocean Affairs. EO 132 in 1999 strengthened it and established a Technical Committee with the secretariat renamed as Maritime and Ocean Affairs Centre (MOAC). EO 37 in 2001 abolished the Cabinet Committee and upgraded MOAC as an attached agency of the DFA.

⁴³ Chair: Executive Secretary (of the Office of the President) Vice-Chairs: Secretary of Justice and Secretary of Foreign Affairs. Members: Departments of National Defence; Environment and Natural Resources; Budget and Management; Transportation and Communications; Tourism; Trade and Industry; National Security Council, Bureau of Fisheries and Aquatic Resources, Solicitor General, Chief Presidential Legal Counsel, National Mapping and Resources Information Authority, Philippine Coast Guard and Department of Energy (an added agency in EO 612-A).

⁴⁴ Republic Act 9522, An Act to Amend Certain Provisions of RA 3046, as amended by RA 5446 to Define the Archipelagic Baseline of the Philippines and for other Purposes (approved 10 March 2009). Online: Lawphilnet <http://www.lawphil.net/statutes/repacts/ra2009/ra_9522_2009.html>.

⁴⁵ RA 3046 (17 June 1961) An Act to Define the Baselines of the Territorial Sea of the Philippines amended by RA 5446 (18 September 1968) An Act to Amend Section One of RA 3046. Other existing laws pertaining to law of the sea include: Presidential Proclamation 370 (20 March 1968) Declaring as Subject to the Jurisdiction and Control of the Republic of the Philippines all Mineral and other Natural Resources in the Continental Shelf and Presidential Decree 1599 (11 June 1978) establishing an Exclusive Economic Zone and for other purposes.

⁴⁶ Rodolfo SEVERINO, *Clarifying the New Philippine Baselines Law*, online: ISEAS, <<http://www.iseas.edu.sg/aseanstudiescentre/ascdf2c3.pdf>>

secretariat for CMOA, remains as the lead agency in conduct of Philippine participation in international meetings, conferences and negotiations on maritime and oceans policy.

Piracy in Philippine Law

Piracy had long historical roots in the Philippines such that as early as 1884, the Philippines already penalized piracy through the Penal Code of Spain of 1870. The law continued to remain in force after the Philippines was transferred to the United States in 1898.⁴⁷ In 1930, the Philippines promulgated the **Revised Penal Code of the Philippines**⁴⁸, adopted from the Spanish Penal Code and kept the piracy provisions of Spanish law as part of crimes against the law of nations.

As amended, the present Revised Penal Code's provisions on piracy are as follows:

Art. 122. Piracy in general and mutiny on the high seas or in Philippine waters⁴⁹ – The penalty of *reclusion perpetua*⁵⁰ shall be inflicted upon any person who, on the high seas, or in Philippine waters⁵¹, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment, or personal belongings of its complement or passengers. The same penalty shall be inflicted in case of mutiny on the high seas.

⁴⁷ Stanley, MORRISON, Stanley. "Part V: A Collection of Piracy Laws of Various Countries, American Society of International Law" (1932), 26 Supplement: Research in International Law 887.

⁴⁸ Revised Penal Code, supra note 37.

⁴⁹ Art. 122, Revised Penal Code, as amended by RA 7659.

⁵⁰ *Reclusion perpetua* is the penalty of life imprisonment. Previously the penalty for piracy was *reclusion temporal* (temporary seclusion – imprisonment of 12 years and 1 day to 20 years), but was increased to life imprisonment by the Death Penalty Law (RA 7659) in 1993.

⁵¹ One should not be confused with the crime of "Piracy in Philippine Waters". Although international law generally defines piracy as an attack against a vessel on the high seas (and armed robbery against ships when done in territorial waters), Philippine law is peculiar, in a sense, that it calls both instances as "piracy". With the spate of armed robberies and hijacking of ships in 1970s, a special law entitled Anti-Piracy and Anti-Highway Robbery Law of 1974 was promulgated to penalize "Piracy in Philippine Waters". It basically lifts in verbatim the definition of piracy on the high seas in the Revised Penal Code and included the phrase "irrespective of the value" (of the cargo, etc.) and qualified the crime "by means of violence and against or intimidation of persons or force upon things." When Art. 122 was amended by RA 7659 in 1993, "Piracy in Philippine waters" was included as a crime under the Revised Penal Code. In 2001, the case *People v. Tulin (G.R. No. 111709 August 30, 2001)*, discussed the existence of these two laws. The Court settled that both laws covering "Piracy in Philippine waters" can exist harmoniously as separate laws. While the offence under the Revised Penal Code, as amended, must be committed by any person not a member of its complement or a passenger thereof. The offence under the special law embraces "any person" - whether a passenger, a member of the complement or not.

Art. 123. Qualified piracy⁵² – The penalty of *reclusion perpetua* (to death)⁵³ shall be imposed upon those who commit ... (piracy)..., under any of the following circumstances:

- a. Whenever they have seized a vessel by boarding or firing upon the same;
- b. Whenever the pirates have abandoned their victims without means of saving themselves; or
- c. Whenever the crime is accompanied by murder, homicide, physical injuries or rape.

Piracy as defined by Philippine law may be said to be substantially compliant with the UNCLOS definition. Philippine law penalizes piracy as constituting any illegal acts of violence or detention or act of depredation (“attack or seize a vessel” or “seize in whole or part of its cargo, equipment or personal belongings”) committed for private ends by the crew or the passengers of a private ship or a private aircraft (any person or “not being a member of its complement”) on the high seas. By penalizing qualified piracy, Philippine law is also broader than the piracy definition in UNCLOS.

Moreover, piracy in Philippine law has a less restrictive definition than UNCLOS. It does not require the element of “private ends”. Intent to gain may be said to be assumed in piracy because, if intent is required, the Revised Penal Code would expressly require “intent to gain” to be an essential element of the crime like in robbery or theft.⁵⁴ Participation of principals⁵⁵, accomplices⁵⁶ and accessories⁵⁷ in the offense of piracy is also taken into account by the

⁵² Art. 123, Revised Penal Code, supra note 37.

⁵³ Qualified piracy used to have a penalty of *reclusion perpetua*. It was later amended to “reclusion perpetua to death” by the Death Penalty Law (RA 7659) in 1993. Death penalty was abolished in 2006 by RA 9346. In lieu of the death penalty, *reclusion perpetua* or life imprisonment was imposed, without the possibility of parole.

⁵⁴ Art. 293, Revised Penal Code, supra note 37. Who are guilty of robbery – Any person who, *with intent to gain*, shall take any personal property belonging to another ...” Art. 308. Who are liable for theft- Theft is committed by any person who, *with intent to gain* ... shall take personal property of another without the latter’s consent...

⁵⁵ Art. 17, Revised Penal Code. Principals: 1. Those who take a direct part in the execution of the act; 2. Those who directly force or induce others to commit it; 3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

⁵⁶ Art. 18, Revised Penal Code. Accomplices are the persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

⁵⁷ Art. 19, Revised Penal Code. Accessories are those who ... take part subsequent to its commission in any of the following manner: 1. By profiting themselves or assisting the offender to profit by the effects of the crime; 2. By

Revised Penal Code thereby substantially complying with the UNCLOS definition of “any act of voluntary participation ... with knowledge of facts” or “any act of inciting or of intentionally facilitating an act...”

Piracy as terrorism

Piracy on the high seas (and in Philippine waters) when committed as a terrorist act is also punished by the Human Security Act of 2007⁵⁸, which states that:

SEC. 3. *Terrorism.* Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

1. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

or under

5. Presidential Decree No. 532 (Anti-piracy and Anti-highway Robbery Law of 1974); and,

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Jurisdiction over Piracy

The Revised Penal Code provides for extra-territorial jurisdiction over piracy committed outside the Philippine territory because it specifically punishes the offence of “Piracy on the high seas.” It extends extra-territorial application to piracy, when it provided that the Revised Penal Code applies also to areas outside Philippine jurisdiction when, among others, (1) an offence is committed while on a Philippine ship or (2) an offence is committed against the law of the nations.⁵⁹ As noted above, piracy, mutiny and qualified piracy in Philippine law all fall under the

concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery; 3. By harboring, concealing or assisting in the escape of the principal of the crime ...

⁵⁸ Human Security Act of 2007, supra note 39.

⁵⁹ Art. 2, Revised Penal Code, supra note 37.

category of crimes against the law of nations. When piracy is considered as a terrorist act, the extra-territorial jurisdiction of the Human Security Act of 2007 also applies.⁶⁰

One of the Philippines's earliest piracy cases **People vs. Lol-lo**⁶¹, decided in 1922, discussed the Court's jurisdiction over pirates that attacked a Dutch boat within the Dutch East Indies, a crime which took place outside the Philippine Islands. The Court contended that local courts had jurisdiction since "Pirates are in law *hostes humani generis*. Piracy is a crime not against any particular state but against all mankind. It may be punished in the competent tribunal of any country where the offender may be found or into which he may be carried. The jurisdiction of piracy, unlike all other crimes, has no territorial limits." The Court based the decision on the piracy provisions of the Spanish Penal Code (which was deemed to be still in force, and not inconsistent with piracy laws of the US which was governing the Philippines at that time). Although the decision was based on the Spanish Penal Code, it may still be considered to be part of Philippine jurisprudence and may serve as a judicial precedent⁶² in piracy cases, as the present Revised Penal Code substantially adopted its piracy provisions from the Spanish Penal Code.

Piracy in Philippine EEZ

Although Piracy on the high seas and "Piracy in Philippine waters" are penalized in the Philippines, it is not clear whether or not these two offences are applicable in the Exclusive Economic Zone (EEZ).

The two pertinent laws on EEZ are (1) Presidential Degree No. 1599⁶³ (1978) which established the Philippine EEZ and (2) Philippine Fisheries Code of 1998⁶⁴. In these two laws, it is clear that

⁶⁰ Human Security Act, supra note 39.

⁶¹ People of the Philippine Islands vs. Lol-lo and Saraw, G.R. No. 17958 (27 February 1922), online: Lawphilnet, <http://www.lawphil.net/judjuris/juri1922/feb1922/gr_l-17958_1922.html>.

⁶² Cesar Lapuz VILLANUEVA, "A Comparative Study of the Judicial Role and its Effect on the Theory on Judicial Precedents in the Philippine Hybrid Legal Systems" (1989), online: DeanCLV <<http://www.deanclv.net/view.aspx?newsID=6>>. As a result of the mixed legal traditions, the Philippine legal system is said to be a blend of the "underlying philosophies of the principle of stare decisis of the common law system, and the evolving principles of judicial precedents of the civil law systems."

⁶³ EEZ was defined as that "extends to a distance of 200 nautical miles beyond and from the baselines from which the territorial sea is measured..." Provisions include:

Section 2. Without prejudice to the rights of the Republic of the Philippines over its territorial sea and continental shelf, it shall have and exercise in the exclusive economic zone established herein the following:

- (a) Sovereignty rights for the purpose of exploration and exploitation, conservation and management of the natural resources, whether living or non-living, both renewable and non-renewable, of the sea-bed, including the subsoil and the superjacent waters, and with regard to other activities for the economic exploitation and

the Philippines only contemplates the exercise of its economic-related rights over the EEZ, consistent with the rights provided by UNCLOS and state practice. They do not mention any exercise of criminal jurisdiction over piracy and other maritime crimes in the EEZ.

As mentioned above, the Philippines also have two laws criminalizing the offense of “Piracy in Philippine Waters”. However, it is also unclear whether such offence is applicable in the EEZ.⁶⁵ Although the EEZ is included as part of the definition of Philippine Waters in the Philippine Fisheries Code of 1998, it is safe to say that, unless expressly provided in law, such definition only applies to the fisheries law and cannot be considered to supplement jurisdictional provisions of special criminal laws.

ASTA/Atlantic Piracy cases

Two recent piracy cases are presently pending in Philippine courts, which authorities consider as “test cases” on the effectiveness of the legislation and judicial system over piracy cases.⁶⁶ It may be recalled that two separate incidents: (1) M/T Asta, a Singaporean vessel hijacked on 7 February 2010, later turned up in Surigao del Norte, in the northern part of Mindanao; and (2)

exploration of the resources of the zone, such as the production of energy from the water, currents and winds;

(b) Exclusive rights and jurisdiction with respect to the establishment and utilization of artificial islands, off-shore terminals, installations and structures, the preservation of the marine environment, including the prevention and control of pollution, and scientific research;

(c) Such other rights as are recognized by international law or state practice...

Section 4. Other states shall enjoy in the exclusive economic zone freedoms with respect to navigation and overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea relating to navigation and communications.

⁶⁴Sec. 3 (1) All Philippine waters including other waters over which the Philippines has sovereignty and jurisdiction, and the country’s 200 nautical mile Exclusive Economic Zone and continental shelf ...

18. Exclusive Economic Zone (EEZ). - an area beyond and adjacent to the territorial sea which shall not extend beyond 200 nautical miles from the baselines as defined under existing laws...

64. Philippine waters - include all bodies of water within the Philippine territory such as lakes, rivers, streams, creeks, brooks, ponds, swamps, lagoons, gulfs, bays and seas and other bodies of water now existing or which may hereafter exist in the provinces, cities, municipalities, and barangays and the waters around, between and connecting the islands of the archipelago regardless of their breadth and dimensions, the territorial sea, the sea beds, the insular shelves, and all other waters over which the Philippines has sovereignty and jurisdiction including the 200-nautical miles Exclusive Economic Zone and the continental shelf.

⁶⁵ To be read with the recent Philippine Baselines law, the Anti-Piracy and Anti-Highjacking Act of 1974 defines Philippine Waters as “all bodies of water, such as but not limited to, seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.

⁶⁶ Evelyn MACAIRAN, “ASEAN warned on new modus operandi of pirates” (26 May 2010) online: Philippine Star <<http://www.philstar.com/Article.aspx?articleId=578426&publicationSubCategoryId=67>>.

Atlantic 3/5, a Malaysian tugboat and barge hijacked on 30 April 2010, later turned up in General Santos City, in the southern part of Mindanao; showed a similar *modus operandi* by pirates. Instead of boarding and robbing the ship, the sea pirates took the entire ship; defaced its name and attempted to register it using fictitious new names to be sold later on. Responding to information sent out by ReCAAP Information Sharing Centre in Singapore, Philippine Coast Guard patrol boats had been in the look-out for these two vessels and apprehended them in Philippine territory.⁶⁷

Piracy cases under the Revised Penal Code were already filed in Regional Trial Courts in General Santos City but it remains to be seen as to how far their litigation will go. In the meantime, the City Prosecutor was reported to have appealed to the Chief State Prosecutor in Manila for assistance in the cases, considering that his office may not have the resources to bring in foreign witnesses from Malaysia and Indonesia. To quote him:

“The nature of the case requires the resources and intervention of the national government. It requires the intervention of the Department of Foreign Affairs to make proper representations in those countries to get their interest in the prosecution of the case.”⁶⁸

With this in mind, other than being test cases for the Philippine legislative and judicial system, it may also be said that these two cases will also provide an indicator on the effectiveness of the mutual legal assistance agreements between ASEAN member countries.

The two cases have alarmed the Philippine Coast Guard and the Mindanao Development Authority, a government agency tasked to promote Mindanao’s economic development, because of their impact on the fishing and ship-building industry in the island, especially since the industrial ports of General Santos City play a vital role in the Brunei-Indonesia-Malaysia-Philippines East Asian Growth Area (BIMP-EAGA). The growth area was created not only to enhance regional trade and diplomatic relations among the four countries but also to strengthen border security.⁶⁹

⁶⁷ Philippine Coast Guard, “Special Report: Recovery of pirated Malaysian Vessels in RP” (25 May 2010), online: PCG<http://www.coastguard.gov.ph/index.php?option=com_content&view=article&id=246:special-report-recovery-of-pirated-mt-atlantic-3-and-barge-atlantic-5>.

⁶⁸ Aquiles ZONIO, “Chief State Prosecutor Asked: Resolve piracy raps vs. 10 Indonesians, 4 Filipinos” (30 August 2010) online: PDI <http://services.inquirer.net/print/print.php?article_id=20100830-289572>

⁶⁹ *Ibid.*

1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988 SUA Convention)

The Philippines signed 1988 SUA Convention on 10 March 1998 and ratified it on 6 Jan 2004. It entered into force on 5 April 2004.⁷⁰

Congress is responsible for passing specific implementing legislation while the President is responsible for the country's implementation of the 1988 SUA Convention. Under the President are the DFA, DOJ, Department of Interior and Local Government (DILG) and Philippine Coast Guard.

SUA offenses v. related crimes in Philippine Law

The Philippines does not have any specific and comprehensive implementing legislation for SUA 1988. Instead, existing various Philippine laws have defined crimes similar to SUA offences. Provisions criminalizing offenses under 1988 SUA Convention 1999 cannot be considered "self-executing" in the Philippines because, as worded, it still requires state parties to pass implementing legislation.

In summary (see Table 2 below), the following existing crimes⁷¹ can be said to have correspondence with most SUA-related offenses:

1. Piracy in Philippine waters (violation of Anti-Piracy and Anti-Highway Robbery Law of 1977);
2. Piracy in Philippine waters (Revised Penal Code);
3. Qualified Piracy (referring to Piracy in Philippine Waters, Revised Penal Code);
4. Murder, Homicide, Discharge of Firearms, Mutilation, Physical Injuries, Maltreatment and Rape (Crimes Against Persons, Revised Penal Code);⁷²

⁷⁰ UN Treaty Collection, online: UN <<http://treaties.un.org/pages/showDetails.aspx?objid=08000002800b9bd7>>

⁷¹ In these crimes, the Revised Penal Code progressively graduates the severity of penalty. In 1979, Presidential Degree 1613 amended the Law on Arson by imposing a higher penalty when the property burned includes "... Any train, airplane or any craft, vessel or watercraft, or conveyance for transportation of persons or property." It also specified special aggravating circumstances when arson is committed (1) with intent to gain, or (2) for the benefit of another, or (3) motivated by spite or hatred towards owner or occupant of property, or (4) by a syndicate (carried out by 3 or more persons).

5. Destructive Arson, Other forms of Arson, Crimes Involving Destruction and Malicious Mischief (Crimes Against Property, Revised Penal Code);⁷³
6. Interference with Aids of Navigation (Violation of RA 5173);⁷⁴
7. Grave Threats and Grave Coercion (Crimes Against Security, Revised Penal Code);⁷⁵
8. Crimes involving (Other forms of) Destruction or under PD No. 1613 (The Law on Arson) under PD No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974) as a crime of terrorism (violation of Human Security Act).⁷⁶

Table 2. Comparative Table on the Definition of SUA Offenses and Existing Philippine Criminal Law

SUA Offenses	Existing Philippine Legislation
<p>1. Any person commits an offence if that person unlawfully and intentionally:</p> <p>(a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation; or</p>	<p>The offense of “Piracy in Philippine Waters” of the Revised Penal Code penalizes persons who “attack or seize a vessel, not being a member of its complement nor a passenger...” Qualified “piracy” under the same Code is also committed whenever such seizure is made by “<i>by boarding or firing</i>” upon the vessel.</p> <p>Anti-Piracy and Anti-Highway Robbery Law of 1974, also penalizes “any attack upon or seizure of any vessel, ... by means of violence against or intimidation of persons or force upon things, committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters...”</p>
<p>(b) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship; or</p>	<p>Crimes Against Persons such as murder, homicide, mutilation, physical injuries, maltreatment and rape are also included in the Revised Penal Code. There is no condition that the act should likely endanger maritime navigation.</p> <p>Qualified “piracy” under the same Code is also committed whenever there is an act of violence against a person on board as “whenever the crime is accompanied by murder, homicide, physical injuries or rape.”</p>
<p>(c) destroys a ship or causes damage to a ship or to its cargo</p>	<p>The Revised Penal Code provides for arson and crimes involving destruction as follows:</p>

⁷² Art. 241 Murder; Art. 249. Homicide; Art. 254 Discharge of Firearms; Art. 262 Mutilation; Art. 263 Serious Physical Injuries; Art. 265 Less Serious Physical Injuries; Art. 266 Slight Physical Injuries and Maltreatment, Revised Penal Code, supra note 37.

⁷³ Art. 320 Destructive Arson; Art. 321 Other Forms of Arson; Art. 324 Crimes Involving Destruction; Art. 327. Malicious Mischief, Revised Penal Code, supra note 37.

⁷⁴ Republic Act No. 5173, An Act Creating a Philippine Coast Guard (4 August 1967).

⁷⁵ Art. 282 Grave Threats and Art. 286 Grave Coercions, Revised Penal Code, supra note 37.

⁷⁶ Sec. 3, Human Security Act of 2007, supra note 39.

<p>which is likely to endanger the safe navigation of that ship; or</p> <p>(d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship; or</p>	<p>Art. 320. Destructive arson. — The penalty of <i>reclusion temporal</i> in its maximum period to <i>reclusion perpetua</i> shall be imposed upon any person who shall burn:</p> <p style="padding-left: 40px;">2. Any train or locomotive, <u>ship or vessel</u>, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.</p> <p>Art. 321. Other forms of arson. — When the arson consists in the burning of other property and under the circumstances given hereunder, the offender shall be punishable:</p> <p style="padding-left: 40px;">1. By <i>reclusion temporal</i> or <i>reclusion perpetua</i>: (a) if the offender shall set fire to any building, farmhouse, warehouse, hut, shelter, or <u>vessel in port</u>, knowing it to be occupied at the time by one or more persons;</p> <p>Art. 324. Crimes involving destruction. — Any person who shall cause destruction by means of explosion, discharge of electric current, inundation, <u>sinking or stranding of a vessel, intentional damaging of the engine of said vessel</u>, ... and, in general, by using any other agency or means of destruction as effective as those above enumerated, shall be punished by <i>reclusion temporal</i> if the commission has endangered the safety of any person, otherwise, the penalty of <i>prision mayor</i> shall be imposed.</p>
<p>(e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if any such act is likely to endanger the safe navigation of a ship; or</p>	<p>Deliberate damage to property not falling under arson or crimes against destruction is punishable as malicious mischief under the Penal Code.</p> <p>RA 5173 also penalizes interference with aids to navigation, such that:</p> <p style="padding-left: 40px;">Section 6. Interference with Aids to Navigation. — It shall be unlawful for any person, association or corporation, to remove, change the location of, obstruct, willfully damage, make fast to, or interfere with any aid to maritime navigation.</p> <p>The penalty is a fine of not less than one hundred pesos nor more than five hundred pesos or by imprisonment of not less than thirty days nor more than six months or both.</p>
<p>(f) communicates information which he knows to be false, thereby endangering the safe navigation of a ship; or</p>	<p>None.</p>
<p>(g) injures or kills any person, in connection with the commission or the attempted commission of any of the offences set forth in</p>	<p>Crimes Against Persons such as murder, homicide, mutilation, physical injuries, maltreatment and rape are also included in the Revised Penal Code.</p>

subparagraphs (a) to (f).	Qualified “piracy” under the same Code is also committed whenever there is an act of violence against a person on board as “whenever the crime is accompanied by murder, homicide, physical injuries or rape.”
2. Any person also commits an offence if that person: (a) attempts to commit any of the offences set forth in paragraph 1; or	As noted above, crimes punished by the Revised Penal Code also penalize attempted and frustrated felonies.
(b) abets the commission of any of the offences set forth in paragraph 1 perpetrated by any person or is otherwise an accomplice of a person who commits such an offence; or	Likewise, in the Revised Penal Code, principals (by direct participation, by instigation and by indispensable cooperation), accomplices and accessories are all liable for the crime.
(c) threatens, with or without a condition, as is provided for under national law, aimed at compelling a physical or juridical person to do or refrain from doing any act, to commit any of the offences set forth in paragraph 1, subparagraphs (b), (c) and (e), if that threat is likely to endanger the safe navigation of the ship in question.	<p>The Revised Penal Code also punishes grave threats and grave coercion such that:</p> <p style="padding-left: 40px;">Art. 282. Grave threats. — Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime.</p> <p style="padding-left: 40px;">Art. 286. Grave coercions. — ... any person who, without authority of law, shall, by means of violence, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong.</p> <p>The Human Security Act of 2007 also considers the Crimes involving (Other forms of) Destruction and violation of PD 1613 The Law on Arson; Anti-Piracy and Anti-Hijacking Act as a crime of terrorism, where there is “sowing and creating a widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand.”</p>

Jurisdiction over SUA offenses

Although there is substantial similarity between the definition of SUA offenses and crimes punished by existing Philippine laws, the Philippines is limited in prosecuting SUA offenses because it does not take into account the scope of application of 1988 SUA as stated in Article 4. As noted above on the part of criminal jurisdiction, since Philippine criminal legislation is generally applicable within its territorial waters only, all the offenses noted above are only punishable in the Philippines when the ship is navigating into Philippine waters. Only one jurisdictional exception applies, as when these offenses are committed onboard a ship of Philippine registry.

As a summary (see Table 3), with its existing legislation, the Philippines can only take jurisdiction over SUA offenses in the following circumstances:

- (1) committed by a foreign national or Philippine national outside Philippine territory against or onboard a ship flying the Philippine flag at the time of the offense, and
- (2) committed by a foreign national in Philippine territory, including territorial sea.

It cannot establish jurisdiction if the SUA offence is:

- (1) committed by a Philippine national outside Philippine territory,
- (2) committed by a foreign national outside Philippine territory when he is present in Philippine territory after the commission of offense,
- (3) committed outside Philippine territory by a stateless person who has habitual residence in the Philippines,
- (4) committed by any national and during its commission a Philippine national is seized, threatened, injured or killed and
- (5) committed by any national in an attempt to compel that State to do or abstain from doing any act.

Moreover, there is no law or specific provision in law that requires the Master to arrest a person who has committed a SUA offense and deliver that person to appropriate authorities in another State Party, as in Art. 8 of the 1988 SUA Convention. Philippine law allows citizen's arrest by private persons like the shipmaster, but the person arrested without a warrant should be delivered to the nearest police station or jail.⁷⁷ It may be possible, however yet untested, that such particular provision be considered self-executing in the Philippines, and the SUA Convention itself can be used by a shipmaster as a legal basis to deliver an offender to the authorities of any other state party because, as worded, the provision is permissive, does not require that the Philippines do any other act or oblige shipmasters to do so and may be said to be self-executory.

Although both Revised Penal Code and the Human Security Act also consider jurisdictional provisions of treaties that the Philippines is a party to, as providing additional exceptions to the

⁷⁷ Art. 113, Rules of Court of the Philippines.

territorial rule and other express exceptions under the law, the 1988 SUA Convention cannot be a basis for acquiring jurisdiction because the wording of the treaty still requires the Philippines to “take such measures as may be necessary to establish its jurisdiction.” Clearly, its jurisdictional provisions are not self-executing, and would still need to be expressly provided for in an implementing law.

Table 3. Jurisdiction: 1988 SUA Convention vs. Philippines

Jurisdiction contemplated under 1988 SUA	Philippine jurisdiction
Committed by a foreign national or Philippine national outside Philippine territory against or onboard a ship flying the Philippine flag at the time of the offense	<p>Yes. Under the Revised Penal Code, one of the five exceptions to the territorial rule allows Philippine courts to take jurisdiction when hostage-taking is committed on a ship of Philippine registry.⁷⁸</p> <p>The Human Security Act also applies to those who commit any of the said crimes on board Philippine ship, although physically outside the territorial limits of the Philippines.⁷⁹</p>
Committed by a foreign national in Philippine territory, including territorial sea.	Yes. Philippine criminal law is territorial, regardless nationality of offender.
Committed by a Philippine national outside Philippine territory.	<p>No. Philippine criminal law does not extend to its nationals outside Philippine territory except for public officers or employee who should commit an offense in the exercise of their functions.⁸⁰</p> <p>Although the Revised Penal Code stated that matters of jurisdiction may be “provided in treaties” and the Human Security Act of 2007 also stated that extraterritorial application is “subject to the provision of an existing treaty of which the Philippines is a signatory,” it is clear from the language of 1988 SUA that the State Party still needs to “take such measures as may be necessary to establish its jurisdiction”, the 1988 SUA cannot be the basis for acquiring jurisdiction.</p>
Committed by a foreign national outside Philippine territory when he is present in Philippine territory after the commission of offense.	No law provides for such jurisdiction. As explained above, the 1988 SUA cannot be the basis for acquiring jurisdiction.
Committed outside Philippine territory by a stateless person who has habitual	No law provides for such jurisdiction. As explained above, the 1988

⁷⁸ Sec. 2, Revised Penal Code, see supra note 37.

⁷⁹ Sec. 58, Human Security Act, see supra note 39.

⁸⁰ Sec. 2, Revised Penal Code, see supra note 37.

residence in the Philippines	SUA cannot be the basis for acquiring jurisdiction
Committed by any national and during its commission a Philippine national is seized, threatened, injured or killed	No law provides for such jurisdiction. As explained above, the 1988 SUA cannot be the basis for acquiring jurisdiction.
Committed by any national in an attempt to compel that State to do or abstain from doing any act.	No law provides for such jurisdiction, for prosecutions under the Revised Penal Code. Yes, but only when offense is considered a terrorist act, since the Human Security Act acquires jurisdiction over those who commit said crimes directly against the Philippine government, although physically outside the territorial limits of the Philippines.

1999 International Convention for the Suppression of the Financing of Terrorism (1999 Terrorism Financing Convention)

The Philippines signed the 1999 Terrorism Financing Convention on 16 November 2001 and ratified it three years after on 2 November 2004.⁸¹

Congress is responsible for passing specific implementing legislation while the Executive Department is responsible for the country’s implementation of the 1999 Terrorism Financing Convention. Within the Executive Department, implementing agencies include the various agencies composing the Anti-Terrorism Council and the Anti-Money Laundering Council (AMLC).

Criminalizing terrorism financing and money laundering are integral parts in the fight against maritime terrorism and terrorism in general. In the Philippines, this is all the more realized when it was reported that from the ransom taken by the Abu Sayyaf for the release of hostages from the Sipadan, Malaysia kidnapping⁸² in April 2000, the group has grown in size and have been able to buy new firearms and launching more operations out of Basilan and Sulu.⁸³

⁸¹ UN Treaty Collection, online: UN <http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-11&chapter=18&lang=en>.

⁸² The Abu Sayyaf Group, a terrorist group based in Southern Philippines, kidnapped 21 people - 19 foreigners and two Filipinos - from a dive resort in Sipadan, Malaysia. Using high-powered speedboats, the hostages were brought to Sulu, Philippines. See: Abu Sayyaf kidnappings, bombings and other attacks, posted in 23 August 2007, online: <http://www.gmanews.tv/story/154797/abu-sayyaf-kidnappings-bombings-and-other-attacks>

⁸³ Rodolfo MENDOZA Jr., “The Evolution of Terrorist Financing in the Philippines” (undated), online: PIPVTR <<http://www.pipvtr.com/pipvtr/files/Evolution%20of%20Terrorist%20Financing%20PH.pdf>>.

Terrorism Financing in Philippine Law

The Philippines is a party to all the treaties in the annex of the 1999 Terrorism Financing Convention. The same way that there is no implementing legislation for these conventions, the Philippines also does not have a specific implementing legislation for the 1999 Terrorism Financing Convention.

Provisions criminalizing offenses and establishing jurisdiction under the 1999 Terrorism Convention cannot be considered “self-executing” in the Philippines because, as one author noted, “even if the Convention should be ratified by the Philippines and thus become part of the law of the land, it will still not be enough to criminalize the offense. The Convention as worded is not self-executing. Each State Party to the Convention is enjoined by the text to ‘take such measures as may be necessary to establish jurisdiction over the offences’ described. Indeed, the commonly accepted international law doctrine is that international criminal legislation does not become domestic law unless adopted by local statute.”⁸⁴

Without implementing or existing legislation, terrorism financing is not a stand-alone offense in Philippine criminal law. Authorities cite the ***Anti-Money Laundering Act of 2001 (AMLA)***⁸⁵ and the ***Human Security Act of 2007***⁸⁶ as the closest-related legislation.

AMLA primarily punishes the *act of transacting the proceeds* from an ‘unlawful activity’ to make them appear as if from legitimate sources.⁸⁷ Neither does it criminalize the *act of financing* nor consider it as an ‘unlawful activity’ enumerated by law. However, AMLA remains to be a useful law to implement aspects of the Terrorism Financing Convention because it enables the Philippines to take appropriate measures to detect and freeze the funds used by terrorists. Also as required by the Terrorism Financing Convention, AMLA sets up the country’s measures to prevent the flow of terrorist funds such as reporting/monitoring of bank transactions and money remittances, inquiry into bank deposits and other investigative measures, freezing and forfeiture of accounts.

With respect to the Human Security Act of 2007, Philippine authorities argue that it is possible that financiers of terrorist acts be charged as ‘conspirators’, ‘principals’ or ‘accomplices’ under

⁸⁴ Joaquin BERNAS S.J., “Criminalizing Terrorism” in *A living constitution: the troubled Arroyo presidency* (Quezon City: Ateneo de Manila University Press, 2007), 115. First printed in Today Newspaper in 27 February 2002.

⁸⁵ Republic Act No. 9160, as amended, An Act Defining the Crime of Money Laundering, Providing Penalties herefor and for Other Purposes, approved on 29 September 2001. [AMLA]

⁸⁶ Human Security Act of 2007, supra note 37.

⁸⁷ Sec. 4, AMLA, supra note 85.

the law. However, the **2009 Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism**⁸⁸ on the Philippines notes that, although this argument may be applicable in some instances, it is not always sufficient to prosecute terrorism financing. One reason why the Convention seeks to penalize terrorism financing as a stand-alone offense is to separate the *act of terrorism financing* from the *act of terrorism*.

In the Philippine scenario, for example, the prosecution needs to prosecute the terrorist act itself in order to hold the financier liable as a conspirator, principal or accomplice. An offender cannot be prosecuted for the mere act of collecting or providing funds with the intention that they be used in any unspecified terrorist act.

The Financial Action Task Force (FATF)⁸⁹ as well as the United States of America (USA)⁹⁰ have already called the Philippine's attention to the lack of legislation punishing terrorism financing. Since then, legislative bills have been pending in Congress but until now have not yet been passed into law. A recent initiative is **House Bill 02158: An Act Criminalizing the Financing of Terrorism** filed on 11 August 2010 and still pending with the House Committee on Justice.⁹¹ Another initiative is **Senate Bill 2484: An Act to Further Strengthen the Anti-Money Laundering Law** filed on 7 September 2010 and still pending with the Senate Committees on Banks Financial Institutions and Currencies; Justice; and Human Rights.⁹² The latter is based on the draft submitted by the Anti-Money Laundering Council⁹³ which, among others, includes the addition of terrorism and terrorism financing as predicate crimes in money laundering offenses and giving AMLC the authority to issue freeze orders based on binding conventions, directives, or resolutions against terrorism or terrorist financing.

The proposal to give the power of AMLC to issue freeze orders on the basis of conventions and resolutions requires some discussion. Originally, the law gave AMLC the authority to issue

⁸⁸ Asia/Pacific Group on Money Laundering: The World Bank "Mutual Evaluation Report, Anti Money Laundering and Combating the Financing of Terrorism, Republic of the Philippines" (8 July 2009), online: APMG <<http://www.apgml.org/documents/docs/17/The%20Philippines%20DAR%20-%20Final%20%20210809.pdf>> [2009 Mutual Evaluation Report].

⁸⁹ *Ibid.*

⁹⁰ "US says law vs terrorist financing needed in RP" (5 March 2010) online: Zambo Times, <<http://www.zambotimes.com/archives/19320-US-says-law-vs-terrorist-financing-needed-in-RP.html>>.

⁹¹ House of Representatives of the Philippines, House Bill 02158 (11 August 2010) online: Congress <http://www.congress.gov.ph/legis/search/hist_show.php?save=1&journal=1&switch=0&bill_no=HB02158>

⁹² Senate of the Philippines, Senate Bill 2484 (7 September 2010), online: Senate http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2484 [Senate bill].

⁹³ William ESOSO, "At the very least, the AMLA needs dentures" (12 October 2010), online: Philippine Star <<http://www.philstar.com/Article.aspx?articleid=620172>>. [Esoso].

freeze orders. Two years after, AMLA was amended to require the AMLC to apply ex parte to the Court of Appeals for such freeze orders.⁹⁴ The proposed bill is now seeking that AMLC, notwithstanding the need to apply for freeze orders from the Court of Appeals, be given the power to do so, “effective immediately, to implement binding conventions, directives, or resolutions of the United Nations, its Security Council and other relevant UN Offices and Committees, *against terrorism and terrorism financing*.” The remedy of the aggrieved party is to file a petition with the Court of Appeals to determine the basis of the freeze order issued by AMLC.⁹⁵

This bill, in order to expedite and facilitate the freeze orders, specifically gives the AMLC this power only in cases that involve funds used in terrorism and terrorism financing. And, more significantly to the purpose of this paper, the legal basis will be conventions and resolutions of international organizations to which the Philippines is part of.

Presently, except for outright freezing of funds, AMLC may effectively invoke these conventions and resolutions as legal bases for their enforcement actions through a subsidiary legislation, the Revised Implementing Rules and Regulations of the AMLA (IRR-AMLA), which provides as follows:

Rule 13.7.2 Authority to Assist the United Nations and other International Organizations and Foreign States⁹⁶ – The AMLC is authorized under Section 7(8) and 13 (b) and (d) of the AMLA to receive and take action of any request of foreign states for assistance in their own anti-money laundering operations. It is also authorized under Section 7(7) of the AMLA to cooperate with the National Government and/or take appropriate action in respect of conventions, resolutions and other directives of the United Nations (UN), the UN Security Council, and other international organizations of which the Philippines is a member. However, the AMLC may refuse to comply with any such request, convention, resolution or directive where the action sought contravenes the provision of the Constitution or the execution thereof is likely to prejudice the national interest of the Philippines.

Section 7(7) of AMLA, the law on which the Rule is based, states that:

Sec. 7(7) [The AMLC has the authority] to implement such measures as may be necessary and justified under this Act to counteract money-laundering.

⁹⁴ Republic Act 9194 amended AMLA.

⁹⁵ Sec. 8, Senate Bill, supra note 92.

⁹⁶ “Implementing Rules and Regulations (IRR) of the Anti-Money Laundering Act of 2001, as amended”, online: AMLC <http://www.amlc.gov.ph/archive/irr.pdf>.

Such broad mandate under the law has allowed the executive agencies⁹⁷ to pass subsidiary legislation approved by the Congressional Oversight Committee and thereafter, to issue resolutions based on UNSCR resolutions. Thus, by virtue of Section 7(7) of AMLA and Rule 13.7.2 of IRR-AMLA, the AMLC have issued resolutions based on UNSCR 1822 (2008)⁹⁸ and UNSCR 1373 (2001)⁹⁹, directing covered institutions to submit to the AMLC reports of covered and suspicious transactions involving specific individuals included in the Security Council's Consolidated List of individuals and entities subject to asset freeze, travel ban and arms embargo. In these AMLC resolutions, a paragraph would also state that:

“As a charter member of the United Nations and as part of the international coalition against terrorism, the Philippines must actively support the actions required under the subject UNSC Resolutions.¹⁰⁰”

This is one example shows that although the Philippines, as yet, lacked implementing legislation on terrorism financing, it attempts through administrative or executive issuances (to the extent allowed in subsidiary legislation) to implement measures required by its obligations under international law.

Jurisdiction over Terrorism Financing

Since terrorism financing is not a criminal offence in Philippine law, it follows that Philippine courts cannot establish jurisdiction over the offence. As discussed above, to a limited extent, the only way the Philippines may assume jurisdiction over terrorism financing is when a financier may also be proved as a conspirator, principal or accomplice for violation of the Human Security Act of 2007. The law provides that extra-territorial application is “subject to the provision of an existing treaty of which the Philippines is a signatory¹⁰¹” but since the jurisdictional provisions of the Terrorism Financing Convention cannot be considered self-executing, the jurisdiction remains to be what the domestic law provides for.

⁹⁷ Executive agencies that composed the AMLC are Bangko Sentral ng Pilipinas, Securities Exchange Commission and Insurance Commission, Sec. 18, AMLA.

⁹⁸ UNSCR 1822 (2008) on *Threats to international peace and security caused by terrorist acts*, online: UN <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/404/90/PDF/N0840490.pdf?OpenElement>>

⁹⁹ UNSCR 1373 (2001) on *Threats to international peace and security caused by terrorist act*, online: UN <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>>

¹⁰⁰ Examples of these resolutions can be found at <<http://www.sec.gov.ph/amlc/amlc%20res.no.89,s2008.pdf>> and <http://www.pse.com.ph/html/NewsRoom/memos/2009/MEMO_2009-0250.pdf>

¹⁰¹ Sec. 58 Extra-Territorial Application of the Act, Human Security Act, supra note 39.

As summary (see Table 4 below), the Philippines may acquire jurisdiction over terrorism financing only over the following circumstances:

- (1) committed by a financier (if a conspirator, principal or accomplice in terrorist act) of any nationality in Philippine territory.
- (2) committed by a financier (if a conspirator, principal or accomplice in terrorist act) of any nationality on board a ship of Philippine registry.
- (3) committed by a foreigner-financier (if a conspirator, principal or accomplice in terrorist act) and directed towards ... the territory or national of the Philippines.
- (4) committed by a foreigner-financier (if a conspirator, principal or accomplice in terrorist act) and national directed towards... against a Philippine government facility abroad
- (5) committed by a financier (if a conspirator, principal or accomplice in terrorist act) of any nationality on board an aircraft which is operated by the Philippine government.

It cannot acquire jurisdiction when:

- (1) committed outside Philippine territory by a Philippine national, foreigner or stateless person with habitual residence in the Philippines. Jurisdiction can only be established when the terrorist act itself is directed against the Philippines/ Philippine government.

Table 4. Jurisdiction in Terrorism Financing Convention and Philippine Law

Jurisdiction contemplated under the Terrorism Financing Convention	Philippine jurisdiction over a financier (when considered as conspirator, principal or accomplice for violation of the Human Security Act of 2007)
Committed by foreign national in the Philippine territory (Art. 7(1)(a))	Yes. The law applies “to individual persons who commit any of the crimes ... within the terrestrial domain, interior waters, maritime zone, and airspace of the Philippines.”
Committed by foreign national or Philippine national on board a ship of Philippine registry (Art. 7(1)(b))	Yes. The law applies “to individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes on board Philippine ship or Philippine airship.”
Committed by a Philippine national outside Philippine territory (Art. 7(1)(c))	Yes, but only when the terrorist act itself is directed at the Philippines/ Philippine government.

	<p>The law applies to individual persons who</p> <ul style="list-style-type: none"> • “although physically outside the territorial limits of the Philippines, commit, conspire or plot to commit any of the crimes defined and punished in this Act inside the territorial limits of the Philippines.” • “commit any of said crimes within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity.” • “although physically outside the territorial limits of the Philippines, commit said crimes directly against the Philippine government.”
Committed by a foreign national outside Philippine territory when he is present in Philippine territory after the commission of offense. (Art. 7(1)(d))	Same rules as when committed by a Philippine national outside Philippine territory.
Committed by a foreign national directed towards ... the territory or national of the Philippines	<p>Yes. The law:</p> <ul style="list-style-type: none"> • Has territorial application • Follows the protective personality principle: “although physically outside the territorial limits of the Philippines, commit said crimes against Philippine citizens or persons of Philippine descent.” It should be note that citizenship or ethnicity should be a factor in the commission of the crime.
Committed by a foreign national directed towards... against a Philippine government facility abroad (Art. 7(2) (b))	Yes. The law applies to individual persons who “commit any of said crimes within any embassy, consulate, or diplomatic premises belonging to or occupied by the Philippine government in an official capacity.”
Committed by a foreign national directed ... in an attempt to compel that country to do or abstain from any act (Art.7 (2) (c))	Maybe. One element of the definition of terrorism in the law is “to coerce the government to give in to an unlawful demand”. The law also applies to those who “although physically outside the territorial limits of the Philippines, commit said crimes directly against the Philippine government.”
Committed by a stateless person who has habitual residence in the Philippines (Art. 7(2) (d))	Same rules as when committed by a Philippine national outside Philippine territory, above.
Committed on board an aircraft which is operated by Philippine government (Art. 7 (2) (e))	Yes. The law applies “to individual persons who, although physically outside the territorial limits of the Philippines, commit any of the said crimes on board Philippine ship or Philippine airship.”

1979 International Convention Against the Taking of Hostages (Hostage Taking Convention)

The Philippines signed the Hostage Taking Convention on 2 May 1980 and ratified it on 14 October 1980. It entered into force on 3 June 1983.¹⁰²

Congress is responsible for passing implementing legislation while the Executive Department is responsible for the country's compliance with the Hostage Taking Convention. Under the President, are the agencies charged with implementation, namely the DFA, DOJ and DILG with its police functions.

Hostage-taking in Philippine Law

The Philippines does not have any specific implementing legislation for the Hostages Convention. But it has an existing law, the same Revised Penal Code, which includes a category on Crimes against Personal Liberty and Security where two pertinent crimes are:

Art. 267. Kidnapping and serious illegal detention¹⁰³ — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, ... shall suffer the penalty of *reclusion perpetua (to death)*:

1. If the kidnapping or detention shall have lasted more than five days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, female or a public officer.

The penalty shall be *reclusion perpetua (death)* where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

Art. 268. Slight illegal detention¹⁰⁴ — The penalty of *reclusion temporal*¹⁰⁵ shall be imposed upon any private individual who shall commit the crimes described

¹⁰² UN Treaty Collection, online: UN <<http://www.un.int/philippines/webdoc4.htm>>.

¹⁰³ Art 267, Revised Penal Code. Penalty for kidnapping is *reclusion perpetua* only (no longer death) after abolition of Death Penalty Law but without the possibility of parole.

¹⁰⁴ Art 268, Revised Penal Code.

in the next preceding article without the attendance of any of circumstances enumerated therein.

The same penalty shall be incurred by anyone who shall furnish the place for the perpetration of the crime.

The crime of kidnapping and illegal detention as defined by Philippine law may be said to be substantially compliant with the acts contemplated in the Hostage Taking Convention. However, unlike the Convention, it does not require the element of compulsion for a third party “to do or abstain from doing any act as a condition for the release of the hostages”. Philippine law punishes the act of detention itself, notwithstanding any conditions imposed by the hostage takers. The demand for ransom only qualifies the penalty to life imprisonment but it is not an essential element of the crime.¹⁰⁶

Compulsion of a third party (specifically, the government) is an essential element only when kidnapping and serious illegal detention is considered as a crime of terrorism under a special criminal law, the **Human Security Act of 2007**¹⁰⁷, such that:

Sec. 3. Terrorism is committed by any person who commits an act punishable under any of the provisions of the Revised Penal Code, ... Art. 267 (Kidnapping and Serious Illegal Detention) ... thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand...”

The Revised Penal Code also makes attempted and frustrated felonies¹⁰⁸ punishable as well as participation of principals, accomplices and accessories¹⁰⁹, the same way that the Hostage Taking Convention requires creating offenses for attempts and abetment of hostage-taking.¹¹⁰

¹⁰⁵ *Reclusion temporal* (temporary seclusion). The penalty of reclusion temporal is imprisonment of 12 years and 1 day to 20 years.

¹⁰⁶ Art. 267, Revised Penal Code, supra note 37.

¹⁰⁷ Sec. 3, Human Security Act of 2007, supra note 39.

¹⁰⁸ Art. 6, Revised Penal Code. *Consummated, frustrated, and attempted felonies*. — Consummated felonies as well as those which are frustrated and attempted, are punishable. A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator. There is an attempt when the offender commences the commission of a felony directly or over acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance.

¹⁰⁹ Article 17-19, Revised Penal Code, see supra note 55-57.

¹¹⁰ Like the requirements of the Hostage Taking Convention, the penalties for kidnapping and illegal detention are graduated depending on the severity of circumstances. Life imprisonment (to death) is meted if detention

Jurisdiction over hostage taking

As a summary (see Table 1 below) in relation to the Hostage Taking Convention, Philippine law acquires jurisdiction over hostage-taking offenses only in the following circumstances:

- (1) when committed by a foreign national in Philippine territory,
- (2) when committed by a foreign national or Philippine national outside Philippine territory on board a ship or aircraft registered in the Philippines, and
- (3) committed by a foreign national or Philippine national in order to compel your country to do or abstain from doing any act - only when hostage-taking can be considered a terrorist act, under the Human Security Act.

It does not extend jurisdiction over hostage-taking incidents when:

- (1) committed by Philippine nationals outside Philippine territory,
- (2) committed by a foreign national outside Philippine territory when the foreign national who committed the offence is present in the Philippines after the commission of the offence,
- (3) committed outside Philippine territory by a stateless person who is also a Philippine resident and
- (4) committed by a foreign national outside Philippines territory with respect to a Philippine national as a hostage.

accompanied the graver circumstances listed in Art. 267. In 1993, life imprisonment (death penalty) is imposed “when the victim is killed or dies as a consequence of detention or is raped, or is subjected to torture or dehumanizing acts.” For detention without the attendant grave circumstances enumerated, the law imposes *reclusion temporal* or an imprisonment of 12 years to 20 years. If the detained person is voluntarily released within three days of detention, the penalty is *prision mayor* (imprisonment of 6 years and 1 day to 12 years) in its minimum and medium periods (minimum period will last from 6 years and 1 day to 8 years while medium period will last from 8 years and 1 day to 10 years) and a fine. A graduated scale of penalties is also imposed on attempted and frustrated felonies as well as those for those with different degrees of participation. If kidnapping and serious illegal detention is considered an act of terrorism under the Human Security Act of 2007, then the penalty for principals is 40 years of imprisonment, without the benefit of parole. Conspirators also suffer the same penalty. Accessories get a penalty of imprisonment for 17 years, 4 months and 1 day to 20 years. Accessories suffer the penalty of imprisonment from 10 years and 1 day to 12 years (Sec. 3-6, Human Security Act of 2007) .

As such, in the last instance, although Filipino seafarers comprising a third of the world's seafaring workforce are often taken as hostages by Somali pirates, the Philippine government have been limited to calling for deployment bans¹¹¹, mandating compensating benefits in high risk areas¹¹², requiring anti-piracy trainings¹¹³ to seamen and cooperation measures¹¹⁴ with other countries and ship-owners, because, assuming for the sake of argument that the country has enough resources and political will to do so, Philippine courts have no jurisdiction over these hostage-taking cases where Philippine nationals are taken as hostages in piracy situations.

Although both Revised Penal Code and the Human Security Act also consider jurisdictional provisions of treaties that the Philippines is a party to, as providing additional exceptions to the territorial rule and other express exceptions under the law, the Hostage Taking Convention cannot be a basis for acquiring jurisdiction because the wording of the treaty still requires the Philippines to "take such measures as may be necessary to establish its jurisdiction." The Convention cannot be readily invoked for the purpose of acquiring jurisdiction because the way it is written clearly shows that its jurisdictional provisions are not self-executing, and would still need to be expressly provided for in an implementing law.

¹¹¹ Robin WRIGHT and Roel LANDINGIN, "Philippine bans its sailors from Somali pirate waters" (21 April 2009), online: Financial Times, <<http://www.ft.com/cms/s/0/b4578b7c-2e0b-11de-9eba-00144feabdc0.html#axzz19IRqGGYP>>.

¹¹² "DOLE readies action plan to protect Pinoy seafarers against piracy" (2 August 2010) online: United Filipino Seafarers <<http://www.ufs.ph/2009-10/node/3951>>. The Philippine Overseas Employment Administration (POEA) issued board resolution no. 4 (2008), declaring 'high risk' areas along seafarers' route and mandated that seafarers passing such areas shall receive double the amount of their basic wage, overtime pay, and leave pay. They shall also be entitled to a double amount of compensation and benefits in cases of death, injury, or illness within the said areas. It also ordered the Master to inform the seafarer passing through high risk areas as the voyage is known. Other resolutions relevant to the Somalia piracy issue such as GBR No. 6 (adopting the 5th revision of the IBF High Risk Area for a definition of a new high risk zone); GBR No.5 (allowing the deployment of Filipino seafarers on board vessels transiting the Gulf of Aden on certain conditions); and GBR No.3 (extending the high risk zone coordinates).

¹¹³ *Ibid.* POEA issued memorandum circular no. 02 (2010), which required seafarers to be deployed to undergo training on practical measures to avoid, deter, or delay piracy attacks as a requirement for the processing of their contract.

¹¹⁴ Pia LEE-BRAGO, "RP seeks intensified cooperation vs. Pirate attacks on seafarers" (16 May 2010) online: Philippine Star <<http://www.philstar.com/Article.aspx?articleid=575682>>.

Table 1. Summary of Jurisdiction required in the Hostage Taking Convention versus Philippine Jurisdiction

Jurisdiction contemplated in Hostage Taking Convention	Philippine Jurisdiction
Committed by a foreign national in Philippine territory (Art. 5.1.a)	Yes. Provisions of the Revised Penal Code are generally only applicable within the Philippine Archipelago. If hostage taking is also considered an act of terrorism, the Human Security Act also applies.
Committed by a foreign national or Philippine national outside Philippine territory on board a ship or aircraft registered in the Philippines (Art. 5.1.a)	Yes. Under the Revised Penal Code, one of the five exceptions to the territorial rule allows Philippine courts to take jurisdiction when hostage-taking is committed on a ship or airship of Philippine registry. The Human Security Act also applies to those who commit any of the said crimes on board Philippine ship or Philippine airship, although physically outside the territorial limits of the Philippines.
Committed by a Philippine national outside Philippine territory (Art. 5.1.b)	No, Philippine criminal law is territorial, it generally does not extend to its nationals except when they are public officials in the performance of their duties. The Philippines allows for self-executing treaties such that the Revised Penal Code stated that matters of jurisdiction may be “provided in treaties” and the Human Security Act of 2007 also stated that extraterritorial application is “subject to the provision of an existing treaty of which the Philippines is a signatory.” However, it is clear from the language of the Hostage Taking Convention that the State Party still needs to “take such measures as may be necessary to establish its jurisdiction”, jurisdictional provisions are not self-executory and the Convention cannot be the basis for acquiring jurisdiction.
Committed by a foreign national or Philippine national in order to compel your country to do or abstain from doing any act (Article 5(1))	No, there is no law for this purpose. Yes, but only when hostage-taking can be considered a terrorist act, since the Human Security Act acquires jurisdiction over those who commit said crimes directly against the Philippine government, although physically outside the territorial limits of the Philippines.

Committed by a foreign national outside Philippine territory when the foreign national who committed the offence is present in your territory after the commission of the offence (Article 5.2)	No, there is no law for this purpose. The jurisdictional provisions of the Hostage Taking Convention are not self-executory and the Convention cannot be the basis for acquiring jurisdiction.
Committed outside Philippine territory by a stateless person who has habitual residence in the Philippines (Art. 5.1.b)	No, there is no law for this purpose. The jurisdictional provisions of the Hostage Taking Convention are not self-executory and the Convention cannot be the basis for acquiring jurisdiction.
Committed by a foreign national outside your territory with respect to a hostage who is a Philippine national (Art. 5.1.d)	Yes, but only when hostage-taking is considered a terrorist act. Under the Human Security Act, the Philippine courts may acquire jurisdiction over those who commit said crimes against Philippine citizens or persons of Philippine descent, although physically outside the territorial limits of the Philippines. There is a condition, though, the “citizenship or ethnicity [should be] a factor in the commission of the crime” ¹¹⁵ ;

2000 United Nations Convention on Transnational Organized Crime (2000 UNTOC)

The Philippines signed the UNTOC on 14 December 2000 and ratified it on 28 May 2002.¹¹⁶

Congress is responsible for passing specific implementing legislation while the Executive Department is responsible for the country’s implementation of 2000 UNTOC. Within the Executive Department are the various agencies composing the Philippine Center on Transnational Crime (PCTC).¹¹⁷

¹¹⁵ Sec. 58, Human Security Act, supra note 39.

¹¹⁶ UN Treaty Collection, online: <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en>

¹¹⁷ The PCTC was established under EO 62 on January 1999 supplemented by EO 100 in May 1999 specifically to strengthen the operational, administrative and information support system especially for law enforcement agencies in combating transnational crime. Online: PCTC, <<http://www.pctc.gov.ph/>>. Agencies involved in PCTC: Philippine National Police (PNP); National Bureau of Investigation (NBI); National Action Committee on Anti-Hijacking and Anti-Terrorism (NACAHT); Presidential Anti-Organized Crime Task Force (PAOCTF); Presidential Anti-Smuggling Task Force (PASTF); National Police Commission (NAPOLCOM); Department of the Interior and Local Government (DILG); Department of Justice (DOJ); Department of Finance (DOF); Department of Transportation and Communication (DOTC); Dangerous Drugs Board (DDB); National Prosecution Service (NPS); Bureau of Immigration and Deportation (BID); Bureau of Internal Revenue (BIR); Bureau of Customs (BOC); National Intelligence Coordinating Agency (NICA); Armed Forces of the Philippines (AFP); Land Transportation Office

The institutional mechanism also includes a Special Envoy on Transnational Crime who sets policy directions and program design standards; serves advisory role to the President; represents the Philippine Government in international meetings; and serves as focal point for coordinating, integrating and evaluating efforts of law enforcement and other government agencies. It also includes transnational crime councils and boards created under existing laws to address specific transnational crimes such as Anti-Terrorism Council, Anti-Money Laundering Council, Dangerous Drugs Board, etc.

Transnational Organized Crimes in Philippines Law

There is no specific or one legislation that implements UNTOC. Offenses under UNTOC such as corruption, money laundering and obstruction of justice are penalized respectively by the following special laws: Anti-Graft and Corrupt Practices Act¹¹⁸ and Plunder Law¹¹⁹; AMLA; and PD 1829.¹²⁰

An administrative order that unifies the country's efforts against transnational organized crimes, ***Executive Order No. 265 (EO 265) Defining the Approach and Institutional Mechanism for the Government's Comprehensive Program on Combating Transnational Crime***¹²¹ was issued, consistent with UNTOC's call for State Parties to formulate a coordinated approach to prevent and combat transnational crime more effectively. Transnational crime covered by the EO 265 includes: money laundering and other financial crimes, trafficking in persons, *piracy and armed robbery against ships*, illicit trade in small arms and light weapons, illegal trafficking of drugs and psychotropic substances, fraud, cyberspace crime, intellectual property rights violations, smuggling and "other crimes that have an impact on the country's stability and security."

It also seeks to pursue mutual assistance and cooperation as well as support all regional and international agreements on transnational crime to which the Philippines is a signatory.

(LTO); National Telecommunication Commission (NTC); National Statistics and Census Office (NSCO); and Other Government Agencies.

¹¹⁸ Republic Act 3019, Anti-Graft and Corrupt Practices Act, approved 17 August 1960.

¹¹⁹ Republic Act 7080, An Act Defining and Penalizing the Crime of Plunder, approved 12 July 1991.

¹²⁰ Presidential Decree No. 1829, Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders. Other special laws that deal with transnational crimes include: Human Security Act of 2007, Comprehensive Dangerous Drugs Act of 2002, Anti-Trafficking of Persons Act of 2003, Firearms Law of 1997, Intellectual Property Code, etc.

¹²¹ Executive Order No. 265 (EO 265) Defining the Approach and Institutional Mechanism for the Government's Comprehensive Program on Combating Transnational Crime (issued 23 January 2004), online: IOM < <http://www.iom.int/pbmp/PDF/00913.pdf>>.

Likewise, EO 265 directs all government instrumentalities concerned with transnational crime to align their programs and projects with the agreements.¹²²

Organized Crimes and Serious Crimes

Philippine criminal law does not define “organized crime” and “serious crime” as crimes per se.

When crimes are committed by organized groups, some Philippine criminal laws may consider it as having been committed by a “syndicate” or a “band”.¹²³ As such, the laws either impose heavier penalties or consider this as an aggravating circumstance. The Revised Penal Code only punishes conspiracy and proposal to commit conspiracy when the law specifically provides a penalty.¹²⁴ Conspiracy in special laws can also be a separate felony, too, when specifically provided so in law.¹²⁵ It should be noted that these Philippine criminal laws do not require that they be structured groups as UNTOC does.

There are a few instances though where special criminal laws identify ‘organized groups’. For example, in the Human Security Act of 2007, the government can apply in the courts to have a group of persons declared as a terrorist and outlawed organization, association or group if they actually commit the terrorist acts; or sow or create a condition of widespread and extraordinary fear to coerce the government to give in to an unlawful demand. With judicial authority, their bank accounts may be examined and assets may be seized.¹²⁶ Another example is the definition of “drug syndicate” in the Comprehensive Dangerous Drugs Act of 2002¹²⁷ is “any organized group of two (2) or more persons forming or joining together with the intention of committing any offense prescribed under this Act.”

¹²² Sec. 1, EO 265.

¹²³ Some examples include: *Robbery* (the Revised Penal Code states that when more than three armed malefactors commit robbery, it is deemed committed by a band and each will be punished as a principal, Art. 296); *Arson* (PD 1613 states that arson is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons which is an aggravating circumstance, Sec. 4). *Illegal recruitment* (The Labor Code states that it is committed by a syndicate if carried out by a group of three (3) or more persons and will be considered as economic sabotage with higher penalty, Sec. 38)

¹²⁴ Art. 8, Revised Penal Code, supra note 37.

¹²⁵ Examples are the offences of: *Conspiracy to Commit Terrorism* (Sec. 4 of Human Security Act) and *Conspiracy to Commit Treason* (Art. 115 Revised Penal Code)

¹²⁶ Sec. 17, Human Security Act of 2007., supra note 39.

¹²⁷ Republic Act No. 9165, An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, approved 7 June 2002.

Serious crimes as defined by UNTOC are closely related to what the Revised Penal Code considered as “grave felonies” to which the law attaches the capital punishment or afflictive penalties.¹²⁸

Money Laundering in Philippine Law

AMLA defines money laundering as follows:

Sec. 4. Money Laundering Offense. Money laundering offense is a crime whereby the proceeds of an unlawful activity ... are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

- (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.
- (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.
- (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.¹²⁹

The “unlawful activity” or predicate offenses to money laundering include the following:

- (a) Kidnapping for ransom;
- (b) Drug trafficking and related offenses;
- (c) Graft and corrupt practices;
- (d) Plunder;

¹²⁸ Penalties for grave felonies include *reclusion perpetua*, *reclusion temporal*, perpetual or temporary absolute/special disqualification and *prision mayor*. “Less grave felonies” which carry the penalty of *prision correccional* may also be considered as serious crimes. Art. 9, Revised Penal Code.

¹²⁹ Sec. 4, AMLA, as amended. A person convicted under Sec. 4 (a), will incur the penalty is imprisonment of 7 to 14 years and a fine of not less than 3 million pesos (US\$60,000) but not more than twice the value of the monetary instrument involved in the offense. For a person convicted under Sec. 4 (b), the penalty is 4 to 7 years imprisonment and fine ranging from 1.5 to 3 million pesos (US\$30,000 to US\$60,000). For a person convicted under Sec. 4 (c), the penalty is 6 months to 4 years imprisonment or a fine ranging from 100 to 500 thousand pesos (US\$2,000 to US\$10,000).

- (e) Robbery and Extortion;
- (f) Jueteng and Masiao¹³⁰;
- (g) Piracy on the high seas and violation of Anti-Piracy and Anti-Hijacking Act.¹³¹
- (h) Qualified theft;
- (i) Swindling;
- (j) Smuggling;
- (k) Violations under the Electronic Commerce Act of 2000;
- (l) Hijacking; destructive arson; and murder, including those perpetrated by terrorists against non-combatant persons and similar targets;
- (m) Fraudulent practices and other violations under the Securities Regulation Code of 2000;
- (n) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.¹³²

As noted, piracy on the high seas and “Piracy in Philippine waters” as well as other offences included in this paper’s discussion such as kidnapping, destructive arson, murder, etc. constitute unlawful activity under the AMLA. As such, if Philippine courts also have jurisdiction over the predicate offense – piracy, for example - the offender may be charged with and convicted of both the offense of money laundering and piracy. When this happens, the law will give precedence to the unlawful activity, the piracy case, over the prosecution of money laundering without prejudice to freezing and other remedies for the money laundering offense.¹³³

The last predicate offence in the list is significant to note. With this, AMLA does not require that these predicate offences be committed in Philippine territory because “felonies or similar nature that are punishable under the penal law of other countries” are included in the list of predicate offenses.¹³⁴ Because of this provision, AMLA complies with the 2000 UNTOC’s requirement that the predicate offences include those committed both within and outside the Philippines.

¹³⁰ Both are illegal-numbers games.

¹³¹ The Implementing Rules and Regulation of AMLA notes that these include 3 crimes: Piracy on the high seas; Piracy in inland Philippine waters; Aiding and abetting pirates and brigands.

¹³² Sec. 3(i), AMLA, supra note 85.

¹³³ Sec. 6, AMLA, supra note 85.

¹³⁴ Rule 3(N), IRR-AMLA notes that in determining whether or not a felony or offense punishable under the penal laws of other countries, is “of similar nature”, as to constitute the same as an unlawful activity under the AMLA, the nomenclature of said felony or offense need not be identical to any of the predicate crimes listed under Rule 3.i.

The 2009 Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism notes that there is still very little case law to determine how the elements of money laundering offence may be interpreted. Its evaluation, however, shows that the offence as punishable in the Philippines may be “more restrictive than provided for in the, more factual, provisions of the Vienna and Palermo Conventions.¹³⁵” It becomes restrictive because of how AMLA defines “transaction¹³⁶”, which requires that there should be a legal relationship between the offender and another party. The pending Senate Bill 2484¹³⁷ seeking to amend AMLA, as noted above, acknowledges as much in its explanatory note, which states that:

“One such serious deficiencies noted is the limited scope and definition of the crime of money laundering under RA 9160, otherwise known as the Anti-Money Laundering Act (AMLA) of 2001, as amended, which was found to be not in accordance with ... Vienna Convention and ... Palermo Convention. As defined in the AMLA, as amended, money laundering is confined to the transaction of the proceeds. In other words, if the illicit proceeds are not transacted, there is no crime of money laundering committed. Hence, the need to expand the scope of money laundering to include, among others, conversion, transfer, possession, concealment and disguise of the proceeds of any underlying unlawful activity.”

Some issues among others, which are addressed by the pending Senate Bill, includes¹³⁸:

- a. Revision of the definition of money laundering to include among others, possession, disguise, concealment, movement, and disposition of proceeds of predicate crimes.
- b. Inclusion of the designated non-financial businesses and professions as reporting entities/individuals.
- c. Inclusion of other serious offenses as predicate crimes like financing of terrorism, human trafficking, forgeries, bribery, counterfeiting and so forth.

¹³⁵ 2009 Mutual Evaluation Report, supra note 88. Vienna Convention refers to United Nations Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which covers money laundering from drug trafficking. Palermo Convention refers to UNTOC.

¹³⁶ Sec. 3 (h), AMLA states that “Transaction refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution.”

¹³⁷ Senate Bill, supra note 92.

¹³⁸ Esposito, supra note 93.

- d. Restoration of the power of the AMLC to issue a freeze order (to implement binding conventions, directives, or resolutions of the United Nations, its Security Council and other relevant UN Offices and Committees, against terrorism or terrorist financing.)

Jurisdiction over Transnational Organized Crimes (Money Laundering Offenses)

As a summary (see Table 5 below) in relation to UNTOC, Philippine law acquires jurisdiction over money-laundering offences only in the following circumstances:

- (1) Committed by a foreign national when the offense is committed in Philippine territory, and
- (2) Relating to participation in money-laundering outside your territory aimed at laundering of proceeds of crime in Philippine territory.

It cannot acquire jurisdiction in the following circumstances:

- (1) Committed on board a vessel of Philippine registry;
- (2) Committed by a Philippine national outside of Philippine territory where he is in the Philippines and he is not extradited on the grounds that he is a Philippine national;
- (3) Committed against a Philippine national;
- (4) Relating to participation in an organized crime group committed outside its territory with a view to the commission of a serious crime within Philippine territory; and
- (5) Committed outside your territory where the offender is in Philippine territory after the commission of the offense.

Table 5. Jurisdiction in UNTOC and Philippine Law on Anti-Money Laundering Act

Jurisdiction contemplated under UNTOC	Philippine jurisdiction over money laundering offenses (AMLA)
Committed by a foreign national when the offense is committed in Philippine territory. (Art. 15 (1) (a))	Yes. Like all Philippine criminal laws, AMLA is generally territorial.

<p>Committed on board a vessel of Philippine registry (Art. 15 (1) (b))</p>	<p>No. Although Philippine criminal jurisdiction extends to offences committed on board a Philippine ship, this only applies to crimes punishable under the Revised Penal Code and not to a special law like AMLA which did not provide for such applicability. Also as to AMLA, the unlawful activity should have been punishable under the Code, too.</p>
<p>Committed by a Philippine national outside of Philippine territory where he in the Philippines and he is not extradited on the grounds that he is a Philippine national. (Art. 15 (1) (c))</p>	<p>No. There is no law that provides for such jurisdiction.</p>
<p>Committed against a Philippine national (Art. 15 (2) (b))</p>	<p>No, Philippine criminal law does not generally follow the principle of passive personality in acquiring jurisdiction. AMLA does not provide any exception.</p>
<p>Committed by a Philippine national or a stateless or habitual resident in the Philippines</p>	<p>No, Philippine criminal law does not generally follow the nationality principle in acquiring jurisdiction. Exceptions include only if offenders are public officials in the performance of their functions, or those in violation of Anti-Graft and Corrupt Practices Act.</p>
<p>Relating to participation in an organized crime group committed outside its territory with a view to the commission of a serious crime within Philippine territory (Art. 15 (2) (c))</p>	<p>No, mere participation without the overt act is not included.</p>
<p>Relating to participation in money-laundering outside your territory aimed at laundering of proceeds of crime in Philippine territory (Art. 15 (2) (c) (iii))</p>	<p>Yes. The law punishes the act of laundering proceeds in Philippine territory, and it punishes:</p> <ul style="list-style-type: none"> (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property. (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above. (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the

	Anti-Money Laundering Council (AMLC), fails to do so.
Committed outside your territory where the offender is in Philippine territory after the commission of the offense (Art. 15 (4))	No. Money laundering should be done in Philippines. There is no law providing for this instance.

Extradition and Mutual Legal Assistance Under the Conventions

The Philippine Extradition Law¹³⁹ which prescribes extradition procedures was promulgated in 1977 in order “to guide the executive department and the courts in the proper implementation of the treaties to which the Philippines is a signatory.” Under the Executive Department, the DFA, DOJ (Office of the Chief State Counsel- International Affairs Division) and AMLC¹⁴⁰ are the agencies that facilitate extradition matters.¹⁴¹

According to the extradition law, extradition by the Philippines “may only be granted pursuant to a treaty or convention.”¹⁴²

¹³⁹ Philippine Extradition Law, supra note 11.

¹⁴⁰ For extradition requests under AMLA.

¹⁴¹ Severino GANA Jr., “International Cooperation in Combating Trafficking in Human Beings and Smuggling of Migrants in 122nd International Training Course Visiting Experts Papers” (undated) online: UNAFEI <http://www.unafei.or.jp/english/pdf/RS_No62/No62_13VE_Gana.pdf>. Under the extradition law, extradition requests must be first sent to the Secretary of Foreign Affairs to assess whether it meets the requirements of the law and relevant treaty. After which, he transmits it to the Secretary of Justice (DOJ) which in turn will file the necessary extradition petition and application for warrant of arrest with a Regional Trial Court. The time it takes to process an extradition request may take from a few months to a few years, depending on the remedies availed by the potential extraditee to oppose the petition. Generally, contests against an extradition petition involved constitutional ones (as person sought would argue that extradition and extradition treaties are unconstitutional because they violate human rights, deny them due process and allow extraterritorial application of foreign laws). In these cases, the Courts have ruled that extradition treaties are not criminal laws and an extradition proceeding is not a criminal proceeding which call into operation all the rights of an accused in the Bill of Rights

¹⁴² Sec. 3 Aims of Extradition - Extradition may only be granted pursuant to a treaty or convention, with a view to:

- a. A criminal investigation instituted by authorities of the requesting state or government charging the accused of an offense punishable under the laws of both the requesting state or government and the Republic of the Philippines by imprisonment or other form of relevant extradition treaty or convention.
- b. The execution of a prison sentence imposed by a court of the requesting state or government, with such duration as that stipulated in the relevant extradition treaty or convention, to be served in the jurisdiction of and as a punishment for an offense committed by the accused within the territorial jurisdiction of the requesting state or government.

As such, in the absence of a bilateral extradition treaty, an international convention entered into by the Philippines may be a legal basis for extradition if the Philippines did not declare reservation over its application. It can be said that there is no longer a need for an implementing legislation if the extradition provisions of a convention are worded as to be self-executing under Philippine law. Thus, with regard to conventions discussed in this paper to which the Philippines is a party to, the conventions themselves may be considered as a basis for extradition, as they all provided that a Requested State may do so at its option.

Thus, in the recent 5th Conference of the Parties to the UNTOC in October 2010, the Philippines reported to the Secretariat that it used Art. 16 of UNTOC, together with other bilateral and regional instruments, as the legal basis for extradition. The Philippines extradited persons sought to countries with which it has bilateral extradition treaty (Indonesia, Switzerland) and those without (Germany, Japan, Saudi Arabia, and Sweden). Bahrain, Malaysia, Singapore and Taiwan also conducted extraditions to the Philippines.¹⁴³

The AMLA also have an extradition provision which expressly mandates that the Philippines shall negotiate for the inclusion of money laundering offenses as among extraditable offenses in all future treaties¹⁴⁴. Its subsidiary legislation, the IRR-AMLA¹⁴⁵ also stated that:

“... With respect, however, to the state parties that are signatories to the United Nations Convention Against Transnational Organized Crime that was ratified by the Philippine Senate on 22 October 2001, money laundering is deemed included as an extraditable offense in any extradition treaty existing between said state parties, and the Philippines shall include money laundering as an extraditable offense in every extradition treaty that may be concluded between the Philippines and any of said state parties in the future.”

It should be noted that where the Philippines does not want the treaty to be a legal basis for extradition, it expressly declares so as it did with the United Nations Convention against Corruption (UNAC).¹⁴⁶

¹⁴³ Catalogue of cases involving extradition, mutual legal assistance and other forms of international legal cooperation requested on the basis of the UNTOC in the Conference of the Parties to the UNTOC, 5th session, Vienna, 18-22 October 2010, online: UNODC <http://www.unodc.org/documents/treaties/organized_crime/COP5/CTOC_COP_2010_CRP5/CTOC_COP_2010_CRP5_E.pdf> [5th UNTOC Conference of Parties].

¹⁴⁴ Sec. 13 (g), AMLA.

¹⁴⁵ Rule 13.8, IRR-AMLA.

¹⁴⁶ In its 24 December 2006 notification regarding UNAC, the Philippines states that “In accordance with Article 44, paragraph 6, the Republic of the Philippines declares that dual criminality is required under its extradition law and

The Philippines has presently bilateral extradition agreements with thirteen (13) other countries namely, Australia, Canada, China, Indonesia, Hongkong, Micronesia, South Korea, Spain, Switzerland, Thailand, United States of America and United Kingdom.¹⁴⁷

Following the listing approach for its treaty with Indonesia, Thailand and Hongkong, extraditable offenses included some maritime-related crimes such as hijacking, piracy, mutiny; arson, willful destruction of property; robbery, theft; smuggling; abduction, kidnapping, illegal or arbitrary detention and confinement; homicide; etc. The list with Indonesia and Thailand is not restrictive since extradition may still be granted at the discretion of the requested party for any other crimes which can be granted according to the laws of both parties.

As with the treaty with Hongkong, it is significant to note that the treaty included “offenses for which surrender may be granted under international conventions binding on the Parties, offenses created as a result of decisions of international organizations which are binding on the parties.” These conventions include the treaties considered in this Project, namely UNCLOS, Hostage Taking Convention and UNTOC where both Philippines and Hongkong are parties.¹⁴⁸

The extradition treaty with Australia, Canada, China, South Korea, and the United States of America all follow the double criminality principle such that extraditable offenses are those are punishable under the laws of Contracting States by imprisonment for a period of at least one (1) year, or by a more severe penalty.¹⁴⁹

the Philippines therefore cannot consider the Convention as the legal basis for cooperation on extradition with other States. UN Treaty Collection, Online: <http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSOLINE&tabid=2&mtdsg_no=XVIII14&chapter=18&lang=en>

¹⁴⁷ Email interview with Mildred Bernadette Alvor, State Counsel, Philippine Department of Justice. [Alvor].

¹⁴⁸ China notified the UN Secretary-General that UNCLOS and HTC will also apply to the Hong Kong Special Administrative Region (HKSAR) when it resumes sovereignty over Hong Kong, effective 1 July 1997. UN Treaty Collection, online: <[http://treaties.un.org/pages/HistoricalInfo.aspx?#"China"](http://treaties.un.org/pages/HistoricalInfo.aspx?#)>. China notified the UN Secretary General that UNTOC shall apply to HKSAR after the enactment of prior domestic legislation in 2006. Online: <http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en#2>

¹⁴⁹ There are many conditions to the grant of extradition under these bilateral treaties. Some provisions pertinent to the subject of jurisdiction discussed in this paper includes: (1) For an offense to be extraditable, if the offence was committed outside the territory of the Requesting State, the Requested State should also have punished the same crime outside its territory. If not, extradition may be refused. This applies to treaties with Australia, Canada and South Korea. (2) On nationality, the Requested State may refuse to extradite its national but has either an obligation to submit the case to appropriate authorities (treaty with Canada) or discretion not to (treaty with China) whereas refusal on the ground of nationality is not allowed (treaty with USA).

Mutual Legal Assistance in Criminal Matters

Unlike extradition which may only be granted by a treaty or convention, mutual legal assistance is extended by the Philippines by virtue of treaties, various special laws or in absence of the two, by informal cooperation. The Rules of Court promulgated by the Supreme Court also supplements the remedies provided to foreign courts seeking judicial assistance.¹⁵⁰ As with extradition, the DOJ is also the central authority in mutual legal assistance matters. Its DOJ-Anti Money Laundering Desk also works with the AMLC as regards assistance pertaining to money laundering and financing terrorism.¹⁵¹

Unlike with extradition, the Philippines does not have a mutual legal assistance law for the execution of MLA requests.¹⁵² Through practice by DOJ, mutual legal assistance treaties are considered as self-executory.¹⁵³

Aside from the multilateral Treaty on Mutual Legal Assistance with other ASEAN member countries¹⁵⁴, the Philippines entered into bilateral agreements on mutual legal assistance on criminal matters with eight (8) countries (Australia, China, Hongkong, USA, South Korea, Spain, Switzerland, UK and USA).¹⁵⁵

In the same vein, the mutual legal assistance provisions under the Conventions may also be considered as self-executory. In the recent 5th Conference of the Parties to the UNTOC, the Philippines reported to the Secretariat that it used Art. 18 of UNTOC, together with other bilateral and regional instruments, as the legal basis for mutual legal assistance. The Philippines extended assistance to countries which it has bilateral and/or regional MLAT with (Australia, Brunei, China, Republic of Korea, United Kingdom and United States) and without (Canada,

¹⁵⁰ Severino GANA Jr., "Extradition and Legal Assistance: The Philippine Experience" in 114th International Training Course Visiting Experts Papers, online: UNAFEI < http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-06.pdf>. [Gana 2]

¹⁵¹ 2009 Department of Justice Annual Report, online: <<http://www.doj.gov.ph/files/2009Annual.pdf>>. A Supplemental Memorandum of Agreement (2004) was entered into by DOJ and AMLC whereby MLA requests from or to States with an existing MLAT with the Philippines shall pass through DOJ while those without MLAT will be under the AMLC. (see Follow-up Report by ADB/OECD).

¹⁵² Gana, supra note 141.

¹⁵³ *Ibid.* In practice, the DOJ receives the MLA request. If the request requires a court order (freezing of accounts, examination of bank account, etc), DOJ files an ex-parte application with a Regional Trial Court. If the request does not require judicial action, DOJ directly coordinates with other government agencies to execute the request.

¹⁵⁴ Treaty on Mutual Legal Assistance in Criminal Matters, online: <<http://www.aseansec.org/17363.pdf>>.

¹⁵⁵ Alvor, supra note 147. Note that the MLAT with China and UK are not yet enforced as the Philippine Senate still has to give its concurrence.

Colombia, Ireland, Israel, Italy, Jordan, New Zealand, Norway, Sweden, United Arab Emirates).¹⁵⁶

Notwithstanding the absence of mutual assistance treaties, the Philippines extended assistance to other states with regards to law enforcement and suppression of crime. One notable instance is the long standing informal cooperation with Japan.¹⁵⁷ Over the years, the Philippines agreed to serve Japanese requests in gathering testimonial and object evidence as well as deportation of Japanese nationals. In such cases, there are no hard and fast procedures for such arrangements except for the receipt of official request through diplomatic channels.¹⁵⁸

The AMLA also have mutual legal assistance provisions that are governed by the principles of mutuality and reciprocity. The AMLC may execute a request for assistance from a foreign State by: (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of unlawful activity; (2) giving information; and (3) applying for order of forfeiture of any monetary instrument or property in court. As discussed above, the subsidiary legislation of AMLA also gave the AMLC authority to assist the United Nations and other international organizations as well as foreign states.¹⁵⁹

The existing legal framework for extradition and mutual legal assistance is said to have enabled the Philippines to cooperate with other States as regards legal matters. Other State Parties that have dealt with the Philippines have noted its efforts to cooperate.¹⁶⁰ However, some improvements may still be needed to make it more effective. In 2007, the ***Final Report on the Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific***¹⁶¹ identified several recommendations to improve the effectiveness of extradition and MLA procedures in the Philippines. In the follow-up report in 2010¹⁶², the Philippines reported on the status of ratification of bilateral and multi-lateral treaties and the measures it had undertaken. For one, with assistance from UNODC, DOJ is drafting the proposed amendments

¹⁵⁶ 5th UNTOC Conference of Parties, supra note 143.

¹⁵⁷ Gana 2, supra note 150. Japan is a signatory to UNTOC but has not yet ratified it. See online: <http://treaties.un.org/pages/ViewDetails.aspx?src=UNTS&tabid=2&mtdsg_no=XVIII-12&chapter=18&lang=en>

¹⁵⁸ Gana 2, supra note 157.

¹⁵⁹ Sec. 13, AMLA.

¹⁶⁰ ADB-OECD Anti Corruption Initiative for Asia and Pacific, "Final Report on the Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific, Frameworks and Practices in 27 Asian and Pacific Jurisdictions" (2007), online: <<http://www.oecd.org/dataoecd/28/47/37900503.pdf>>.

¹⁶¹ *Ibid.*

¹⁶² ADB-OECD Anti Corruption Initiative for Asia and Pacific, "2010 Follow-up Report on the Philippines", online: <<http://www.oecd.org/dataoecd/36/28/46610380.pdf>>.

to the Philippine Extradition Law for submission to Congress. The draft proposal incorporates the applicable provisions of the UNODC Model Law on Extradition and provisions of existing bilateral extradition treaties which provide, among others, for simplified extradition or consent to extradition as well as the combination of all appeals into a single review after extradition has been ordered, instead of immediate appeal for each decision in the process. The DOJ and AMLC also reported that they also keep a database of received, sent, executed and rejected requests to improve efficiency of the procedures.

Part III. Conventions which the Philippines is Not a Party To

Protocol of 2005 to 1988 Convention for the Suppression of Unlawful Acts Against Maritime Navigation (2005 SUA Protocol)

The Philippines participated in the Diplomatic Conference on the Revision of SUA Treaties on 10-14 October 2005¹⁶³ but has not signed the 2005 SUA Protocol because it has certain reservations on some of the Protocol's provisions. Presently, the accession to the 2005 SUA Protocol is not part of the executive agenda as it is more focused on national territory concerns and enforcement of existing maritime laws.

A Note on the Efforts on Philippine Maritime Security

Notwithstanding the lack of implementing legislation on international maritime crimes, archipelagic Philippines undertakes many programs and projects to enforce its existing maritime laws.

The Philippine Navy, the Maritime Group of the Philippine National Police, the Philippine Ports Authority and the Philippine Coast Guard are the Philippine agencies involved in maritime law enforcement.¹⁶⁴

The Philippine Coast Guard, also a member of CMOA, is the lead agency in enforcement of "regulations in accordance with all relevant maritime international conventions, treaties or

¹⁶³ See IMO doc LEG/CONF.15/INF.1, List of Participants, online:<<http://sjofartsverket.se/upload/5143/15-INF1.pdf>>

¹⁶⁴ Eduardo Ma R. SANTOS, "Piracy and Armed Robbery against Ships in the Philippine" in Graham Gerard Ong-Webb, ed. *Piracy, Maritime Terrorism and Securing the Malacca Straits*. (Singapore: ISEAS, 2006). [Santos].

instruments and national laws for the promotion of safety of life and property at sea within the maritime jurisdiction of the Philippines and conduct port state control implementation.”¹⁶⁵

As majority of maritime-related cases happened within Philippine waters, the Maritime Group under the Philippine National Police was constituted to repress piracy and exercise all police functions over Philippine territorial waters and rivers.¹⁶⁶ The Philippine Navy insofar as leading the counter-insurgency campaign has also a significant role in anti-piracy enforcement.¹⁶⁷ The Philippine Ports Authority which is mandated to regulate the ports and facilities is also part of the efforts to secure Philippine seaports and ships.¹⁶⁸

In the *Highlights of the Philippine Coast Guard Accomplishments for the year 2010*, it reported on its core functions on maritime safety; search and rescue; marine environmental protection; maritime law enforcement and maritime security. Among others, for maritime security, the Coast Guard enhanced the operational efficiency of its 556 lighthouses by 92%, up from 77% in 2008; undertook active port state control inspections of foreign vessels calling Philippine ports; providing 8,061 ships with sea marshals; conducted 4,918 missions covering 34,716 miles; as well as apprehending the ASTA/Atlantic pirates and recovering the vessels.¹⁶⁹

In a recent report in 2009, the DOJ reported that “on Conventions dealing with Maritime Safety ... the Philippine government is currently undertaking the Coast Watch South Program which encompasses the monitoring of relevant sea lanes that serve as entry and exit points for terrorist elements both operating domestically and within the region.”¹⁷⁰ The project also identified 3 possible terrorist routes between Malaysia and Philippines for monitoring and called for the upgrading of existing land-based radar stations as well as setting-up of new radar stations in Malaysia and Philippines. The Coast Guard would also establish four more stations in

¹⁶⁵ Philippine Coast Guard Law of 2009, Republic Act 9993, An Act Establishing the Philippine Coast Guard as an Armed and Uniform Service Attached to the Department of Transportation and Communications, thereby repealing RA 5173, as amended and for other purposes.

¹⁶⁶ Sec. 35 (b), RA 6975 Sec. 24, Republic Act No. 6975 (1990), An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, and for other purposes.

¹⁶⁷ Santos, *supra* note 164.

¹⁶⁸ Presidential Decree 505 (11 July 1974) Philippine Port Authority Decree of 1974.

¹⁶⁹ “Highlights of the PCG Accomplishments for the year 2010” (28 December 2010) online: PCG <http://www.coastguard.gov.ph/index.php?option=com_content&view=article&id=780:highlights-of-pcg-accomplishments-for-the-year-2010&catid=36:maritime-accidents&Itemid=50>.

¹⁷⁰ Ricardo BLANCAFLOR, “The Philippine experience: linkages between a strong adherence to human rights and countering terrorism” delivered during the International Workshop of National Counter-Terrorism Focal Points at the United Nations Headquarters in Vienna, Austria on 12-13 October 2009. Online: <<http://www.mb.com.ph/node/227004/the-philippine-experience-linkage>>.

Mindanao. Once operational, Coast Watch South would have 11 Coast Watch Stations to provide round-the-clock maritime surveillance coverage, covering approximately 21,500 square nautical miles in the Southern Philippines or more than four times the coverage of the existing capabilities.

In spite of the existence of such agencies, the Philippines has been unable to fully repress piracy due to lack of security and financial resources. Maritime law enforcement capability is inadequate to patrol over its vast coastal waters and the resources are often re-deployed to address internal security problems.¹⁷¹

Capability building and assistance have been provided by the national government, foreign governments, regional organizations, civilian organizations and local government units. For the past 10 years, the national government embarked on a “modest modernization program” for the Philippine Coast Guard. Through acquisition of brand new patrol vessels and recruitment of personnel, PCG is said to have achieved “reasonable presence within (its) maritime jurisdiction.”¹⁷² Civilian local maritime organizations contribute by providing information on pirate and terrorist groups. Local Government Units also assist in patrolling their coastal areas. Regional cooperation on information exchange, joint training exercises and training activities has been significant in Philippine piracy efforts.¹⁷³

Conclusion

In the initial discussion on treaty-making and implementation, it was shown that although the Philippines has a clear regulation for treaty making, the crux of the issue lies with the lack of settled policy or procedure on treaty implementation – on whether domestic legislation is needed to comply with its treaty obligations.

Partly because of this, as well as its issues in transformation/incorporation of international law and the lengthy legislative process, among other reasons, it can be said that although the Philippines is a party to most of the international dealing with international maritime crimes, in all instances, it does not have specific legislation implementing these treaties. The criminal provisions of these treaties are not self-executing, as they all require State Parties to pass the necessary criminal laws to penalize these maritime crimes.

¹⁷¹ Santos, *supra* note 164.

¹⁷² Cahinhinan, John Carlo, “Coast Guard honors GMA” (29 June 2010) online: Manila Bulletin <<http://www.mb.com.ph/articles/264324/coast-guard-honors-gma>>.

¹⁷³ Santos, *supra* note 164.

In lieu of implementing legislation, the Philippines relies on existing legislation – the Revised Penal Code of the Philippines and special criminal laws – to criminalize the offences as required by the conventions. Although piracy and hostage-taking may be substantially compliant with the international law definition, the Philippines has not criminalized the other maritime-related crimes as stand-alone offences. And no matter how creative, a prosecutor will conceivably have a hard time in prosecuting these precise offences using various pieces of existing criminal laws.

In the same vein, while international conventions oblige state parties to acquire a more expanded jurisdiction over particular offences and offenders, except for piracy on the high seas and maritime terrorism, the jurisdictional reach of existing Philippine criminal laws is traditionally territorial, with very few extra-territorial exceptions. In all instances, however, these conventions still cannot be used as a legal basis for acquiring jurisdiction because they still require the Philippines to take measures to establish jurisdiction.

The one positive note in the case of the extradition and mutual legal assistance provisions of the treaties is, as they are worded, they can be treated as self-executing by the Philippines. Thus, even without implementing legislation, by virtue of conventions such as UNTOC, the Philippines has been able to comply with extradition and assistance requests by other State Parties.

Aimed to carry out existing legislation and to a certain extent, supplement the lack of implementing legislation, some executive actions and regulations contributed in coordinating maritime law enforcement efforts. However, one must know that they can only go so far without the appropriate criminal laws.

Thus, unless the Philippines will pass amendatory or supplementary criminal laws or, better yet, specific comprehensive laws to define, penalize and establish jurisdiction over maritime crimes, it cannot be said that it substantially complies with its obligations under these treaties, and therefore its implementation of the treaties remains significantly constrained.