IN DEFENSE OF THE RIGHT TO LIFE: INTERNATIONAL LAW AND DEATH PENALTY IN THE PHILIPPINES

A study by the

Commission on Human Rights of the Philippines*

and

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I. Introduction

On 24 June 2006, the Philippines abolished the death penalty for all crimes within Philippine jurisdiction when Republic Act (R.A.) No. 9346, otherwise known as "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" was enacted. Then on 20 November 2007, the Philippines ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights.[1] By each of these sovereign acts, the Philippines committed itself to the total, absolute, and permanent abolition of the death penalty.

* The Commission on Human Rights of the Philippines (CHR) is the National Human Rights Institution (NHRI) of the Philippines. Established by the 1987 Philippine Constitution, the CHR has a general jurisdiction for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection. An "A" NHRI, the CHR complies with the Paris Principles on the Status of National Human Rights Institutions adopted by the UN General Assembly in 1995. The CHR demonstrates the following characteristics of Paris Principles- compliant NHRI: independence, pluralism, broad mandate, transparency, accessibility and operational efficiency.

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[1] 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, opened for signature Dec. 15, 1989, 1642 U.N.T.S. 414 (entered into force July 11, 1991) [hereinafter ICCPR-OP2].

House Bill No. 4727,[2] presently before the House of Representatives, and a number of Bills before the Senate, seek to reintroduce the death penalty in the Philippines for certain crimes. For the many reasons given in this study, House Bill 4727 and the similar Bills before the Senate should not be passed.

This study is a joint collaboration between international law expert Dr Christopher Ward SC, Senior Counsel of the New South Wales Bar and Adjunct Professor of the Australian National University, and the Commission on Human Rights of the Philippines.

Overview of Proposed Bills to Re-impose Death Penalty

House Bill No. 4727 proposes the re-introduction of the death penalty in the Philippines for drug-related offenses particularly importation of dangerous drugs, the sale, trading, administration, dispensation, delivery, distribution or transportation of dangerous drugs, maintenance of a drug "den, dive or resort," manufacture of dangerous drugs, cultivation or culture of plants classified as dangerous drugs, criminal liability of a public officer or employee for misappropriation, misapplication, or failure to account for the confiscated, seized and/or surrendered dangerous drugs, and criminal liability for planting evidence concerning illegal drugs.

In the Senate, a variety of Bills are tabled. Proponents seek the reintroduction of the death penalty for crimes including treason, piracy, kidnapping, robbery with violence or intimidation, aggravated rape, arson, carjacking, drug trafficking, cultivation of narcotic plants, child trafficking, and the production of child pornography or child prostitution.

Proponents of House Bill No. 4727 and the Senate Bills that reintroduction of the death penalty is permissible because while Article III, Section 19 of the 1987 Philippine Constitution abolished death penalty, it also includes a reference to the possibility of its reintroduction by Congress for "compelling reasons involving heinous crimes."

Findings of the study show that this proposition is completely untenable. The reintroduction of the death penalty in any form in the Philippines will expose the Philippines to international ridicule and criticism as it breaches numerous rules of international law, including rules that it expressly and freely accepted in the free exercise of its sovereignty. Breach of international law by the Philippines in this context will undermine treaty commitments entered into by the Philippines. It will no longer be a respected member of the community of States.[3]

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[2] An Act Imposing the Death Penalty on Certain Heinous Crimes, Repealing for the Purpose Republic Act No. 9346, Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines", And Further Amending Act No. 3815, As Amended, Otherwise Known as the "Revised Penal Code", And Republic Act No. 9165, Otherwise Known as the "Comprehensive Dangerous Drugs Act of 2002," House Bill No. 4724, House of Representatives, 17th Congress (2017).

[3] Roy Stephen C. Canivel, *Death penalty revival spooks British* investors, INQUIRER.NET, Feb. 22, 2017, *available at* http://newsinfo.inquirer.net/874012/death-penalty-revival-spooking-british-investors#ixzz4ZtxuoqAl (last accessed Mar. 03, 2017).

The Philippine Daily Inquirer quoted the outgoing British Ambassador to the Philippines, speaking about the proposed revival of the death penalty, "I think there will be a severe blow. It basically says that the Philippines can walk away

This study advances a legal position that challenges the content of the various Bills seeking to re-impose the death penalty. It does so based on the Philippines' obligations under domestic and international laws. It provides empirical approaches and data which respond to the argument that the Philippines stands to breach international law as a result of Article III, Section 19 of the Philippine Constitution.

The authors also argue that the introduction of capital punishment will considerably impact the standing of the Philippines in the international community, its work within the United Nations (UN), and its economic relations with trade partners.

In truth, the Philippine Constitution and international laws binding upon the Philippines work together in upholding the right to life. This study advances a credible justice system that is objective, impartial and incorruptible.

Background to the death penalty in the Philippines

The Philippines first abolished the death penalty under the 1987 Constitution. It was the first Asian country to abolish the death penalty for all crimes.[4] Following this abolition, all death sentences were reduced to *reclusion perpetua* or life imprisonment.

During the early part of former President Fidel Ramos' administration, the death penalty was re-imposed by virtue of R.A. No. 7659, which was passed in December 1993. A convict, Leo Echagaray, was executed in February 1999, followed by six other executions for various allegedly heinous crimes. However, notwithstanding the re-imposition of the death penalty, national crime rate increased by 15.3 percent or a total of 82,538 (from 71,527 recorded crimes in the previous year).[5]

Subsequently, President Joseph Estrada declared a *de facto* moratorium on executions. President Gloria Arroyo lifted the *de facto* moratorium on 05 December 2003 "to sow fear into the hearts of criminals."[6] Although executions were set to resume on January 2004, the administration in fact issued reprieves on any scheduled executions.[7] At the same time, the Supreme Court decided to reopen the *Lara-Licayan* case.[8] The Court admitted newly-discovered evidence, which exonerated both Lara and Licayan from culpability.[9]

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from international treaties. If you can walk away from an international treaty, it's much more easy to walk away from a commercial treaty."

[4] Philippine Centrer for Investigative Journalism, *A timeline of death penalty in the Philippines*, PCIJ Blog, Apr. 18, 2006, *available* at http://pcij.org/blog/2006/04/18/a-timeline-of-death-penalty-in-the-philippines (last accessed Mar. 03, 2017).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *See* People of the Philippines v. Licayan, G.R. Nos. 140900 and 140911, Feb. 17, 2004.

[9] *Id.*

The Philippines ratified the International Covenant on Civil and Political Rights (ICCPR) on 23 October 1986. Ratification of the ICCPR reinforced the commitment of the Philippines to promote and protect civil and political rights, including the right to life enshrined in Article 6 of the Covenant.

In 2006, the Philippines signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (Second Optional Protocol). On 20 November 2007, the Philippines ratified the Second Optional Protocol. The Second Optional Protocol prohibits, absolutely and permanently, the imposition of the death penalty in the Philippines.[10]

Notwithstanding these binding legal commitments, House Bill No. 4727, is now before the House of Representatives, following approval by the House Justice Committee on 7 December 2016. Amendments to the Bill were the subject of vote in March 2017.

In the Senate, Senate Bill Nos. 4, 42, 185, 186, 187, 889, 985, and 1294 are under the consideration of the Committee on Justice and Human Rights. Further consideration of the Senate Bills are suspended as of writing pending consideration by officials of the effect of relevant international agreements ratified by the Philippines and other international obligations.

II. International Law, the Philippines, and the Death Penalty

The Second Optional Protocol to the ICCPR

The Philippines ratified the ICCPR in 1986. The ICCPR contains detailed provisions on the right to life, and places serious restrictions upon the application of the death penalty to any person within the jurisdiction of the State. These restrictions are considered below.

More significantly, the Philippines is also, unambiguously and without room for argument, a State Party to the Second Optional Protocol to the ICCPR.

The Second Optional Protocol is a significant international agreement. At the date of this Opinion, it has been ratified by 84 States and 2 other States have signed it. It provides for the complete, and permanent, abolition of the death penalty for all crimes within the jurisdiction of the state party.[11]

The act of abolition required by the Second Optional Protocol is absolute. Once ratified by a State, the obligations of the Second Optional Protocol are incapable of being retracted or altered by the State at any time in the future.

[10] ICCPR-OP2, art. 1.
[11] ICCPR-OP2, art. 1.

To reiterate, the Philippines signed and ratified the Second Optional Protocol to the ICCPR in 2006, and thereby became immediately obliged not to defeat the object and purpose of the Protocol. It then ratified the Second Optional Protocol in 2007. The circumstances of ratification, which are discussed below, do not permit any international law argument by the Philippines that it is not a party to the Second Optional Protocol.

Article 1 of the Second Optional Protocol provides for the abolition of the death penalty to persons within a state's jurisdiction. Article 1(1) contains an absolute prohibition upon a State party executing any person within its jurisdiction. While Article 1(2) mandates States to undertake a positive obligation to abolish the death penalty within their jurisdiction.

The prohibition in Article 1(1) is absolute and unqualified. It is not capable of interpretation in a manner that allows for the implementation of the death penalty upon any person within the jurisdiction of the Philippines.

The obligation in Article 1(2) is also absolute. By requiring States to take all necessary measures to abolish the death penalty within their jurisdiction, the Second Optional Protocol is completely inconsistent with a State party taking any steps towards the reintroduction of the death penalty.

It follows that the Philippines, as a State party to the Second Optional Protocol:

a. must not take any steps to reintroduce the death penalty within the Philippines or in relation to people within its jurisdiction; and
b. must not execute any person within its jurisdiction.

Following Article 2 of the Second Optional Protocol, no reservation to these obligations is permissible, save for a reservation made at the time of ratification in relation to wartime acts. In any event at the time of ratification, no reservation or declaration was made by the Philippines.

Notably, the UN Human Rights Committee (HRC) may receive individual complaints in relation to allegations of failures to comply with the Second Optional Protocol unless a reservation was made at the time of ratification.[12] Because no reservations or declarations were made by the Philippines at the time of ratification, that mechanism avenue for individual complaint and international scrutiny is open to any person within the jurisdiction of the Philippines.

The Second Optional Protocol in the Context of the Philippines Constitution

Article III, Section 19 of the 1987 Philippine Constitution purports to permit the reimposition of the death penalty in the Philippines for "compelling reasons" involving "heinous crimes."

[12] ICCPR-OP2, art. 5.

However, the existence of that constitutional provision does not affect the absolute nature of the obligations of the Philippines in international law. Any suggestion that domestic law and the 1987 Constitution may permit the reintroduction of the death penalty in the Philippines despite the ratification of the Second Optional Protocol is completely untenable for the purposes of international law.

It is a fundamental principle of international law that States may not rely upon a provision of domestic law to avoid their international legal obligations. As a matter of international law, an inconsistent constitutional provision of Philippines law does not affect the obligations of the Philippines at international law.

Under Article 26 of the Vienna Convention on the Law of Treaties (VCLT),[13] to which the Philippines is a party, the Philippines must comply with its treaty obligations and perform them in good faith. That is also an obligation binding upon the Philippines as a matter of customary international law.

Additionally, Article 27 of the VCLT expressly prohibits a State from relying upon any provision of its domestic law to justify a breach of international law. The *travaux préparatoires* to the VCLT confirms that the Constitutions of States are part of domestic law for the purposes of Article 27.[14]

As the Permanent Court of International Justice stated as long ago as 1932 in its advisory opinion in *Treatment of Polish Nationals,*

> … a State cannot adduce as against another State its own Constitution with a view to evading obligations incumbent upon it under international law or treaties in force."
>
> To the extent there was any doubt, the position is made absolute by the adoption by the General Assembly at its 56th Session in 2001 of the Articles on the Responsibility of States for Wrongful Acts (the "State Responsibility Articles").
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> Article 3 of the State Responsibility Articles provides that:
>
> "The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law."
>
> Article 32 of the State Responsibility Articles provides that:
>
> "The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part."

[13] Vienna Convention on the Law of Treaties, opened for signature May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980) [hereinafter VCLT].
[14] *See* Vienna Conference, Documents, p. 145; Vienna Conference, First Session, p. 158, Vienna Conference, Second Session, p. 54; *See also* Merlin M. Magallona, *The Supreme Court and International Law: Problems and Approaches in Philippine Practice*, 85 PHIL. L.J. 1 (2010).

Article 12 of the State Responsibility Articles provides that:

> "There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character."[15]

It follows that whether the Constitution of the Philippines is capable of being interpreted to permit the reintroduction of the death penalty for certain very limited categories of crimes, the international legal obligations of the Philippines are completely unaffected and there is an absolute prohibition against the Philippines taking such a step.

If the Philippines reintroduces the death penalty for **any** crime, it would breach its absolute obligations under the Second Optional Protocol. It would immediately be committing an "internationally wrongful act" within the meaning of Article 2 of the State Responsibility Articles.[16]

The circumstances of ratification of the Second Optional Protocol

The circumstances in which the Philippines ratified the Second Optional Protocol are also incapable of affecting the absolute nature of the prohibition binding upon the Philippines as a matter of international law.

Article 46 of the VCLT provides that:

> 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.[17]

Before a State may rely upon the exception in Article 46, it must demonstrate each of the necessary criteria: that a provision of its internal law was violated, that the provision was fundamental, and that it was "manifest."

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[15] Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory, Advisory Opinion, 1932 P.C.I.J. (ser. A/B) No. 44, at 24. (Feb. 04, 1932).

[16] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10, U.N. Doc. A/56/10, chp.IV.E.1, *available at* http://www.refworld.org/docid/3ddb8f804.html (last accessed Mar. 03, 2017).

Art. 2 of the VCLT provides:

> There is an internationally wrongful act of a State when conduct consisting of an action or omission:
> (a) Is attributable to the State under international law; and
> (b) Constitutes a breach of an international obligation of the State.

[17] VCLT, art. 46.

No manifestly obvious and fundamental provision of the Philippines internal law was violated in the circumstances of the Philippine ratification of the Second Optional Protocol, and any argument made to that effect would fail in international law.

The Second Optional Protocol was signed by the Philippines' Secretary of Foreign Affairs (Minister of Foreign Affairs) on behalf of the Philippine government. As a matter of international law, the Minister for Foreign Affairs is entirely capable of binding the State, and the international community of states was, and is, justified in treating the act of ratification as effective. The circumstances of ratification do not meet any of the three necessary criteria to trigger the exception in Article 46.

No fundamental internal law of the Philippines was violated by the ratification of the Second Optional Protocol. Indeed, the better view is that the domestic law of the Philippines permits treaty actions of the nature of the Second Optional Protocol to be conducted by executive action.

While the Constitution generally requires treaties to be concurred by the Senate, an international agreement, which is in the nature of an executive agreement (*infra.*), does not require Senate concurrence. Such becomes valid and binding in the Philippines through executive or presidential ratification. This is because executive agreements become binding through executive action without the need of a vote by the Senate or Congress.[18] For over 50 years, the Philippines has recognized the validity of executive agreements which had been entered into by the executive branch of government.[19]

An executive agreement does not require Senate concurrence for efficacy. It is to be recalled, that under the Philippine Constitution, international agreements may be in the form of treaties (require legislative concurrence after executive ratification) or executive agreements (similar to treaties, except that they do not require legislative concurrence and are usually less formal and deal with a narrower range of subject matters).[20] The Court has reasoned that under international law, there is no difference between treaties and executive agreements in terms of binding effect as long as the negotiating functionaries have remained within their powers. Under Philippine domestic law, neither violates the Constitution.[21]

In *Bayan Muna v. Romulo*, the Supreme Court definitively held that the categorization of subject matters that may be covered by executive agreements is not cast in stone. The Court cited the dynamic nature of international law. One type of executive agreement is a treaty-authorized or a treaty-implementing executive agreement, which cover the same matters subject of the underlying treaty.[22] A Protocol, which carries the same object and purpose of a treaty, may be treated in domestic law as a valid executive agreement. An identical approach is taken in the United States, where in *US v. Belmont*, the United States Supreme Court declared that a treaty not requiring ratification by the

[18] Intellectual Property Association of the Philippines v. Ochoa, G.R. No. 204605 (July 19, 2016).
[19] *See, for instance,* Bayan Muna v. Romulo, G.R. No. 159618 (Feb. 01, 2011).
[20] Bayan Muna v. Romulo, G.R. No. 159618 (Feb. 01, 2011).
[21] *Id.*
[22] *Id.*

Senate—a compact negotiated and proclaimed under the authority of the President—was a "treaty" within the meaning of domestic law.[23]

It follows that it is not possible to identify any fundamental internal law of the Philippines that was offended or violated by the ratification of the Second Optional Protocol.

In any event, the suggestion that any failure to comply with the internal law of the Philippines was "manifest" is untenable. For a rule of internal law to be manifest within the meaning of Article 46, it must be a rule that is notorious or "objectively evident" to the external community of States. The circumstances in which the Second Optional Protocol was ratified do not raise any manifestly obvious, notorious, or objectively evident rule of the law of the Philippines. On the contrary, for the reasons given above, the case law of the Supreme Court of the Philippines deny the existence of any rule that would affect the validity of ratification within the Philippines legal system.

Any argument raised in international law under Article 46 of the Vienna Convention on the Law of Treaties would fail. The Second Optional Protocol is a binding treaty commitment of the Philippines as a matter of public international law.

A change in government does not permit withdrawal from the Second Optional Protocol.

International law does not permit withdrawal from, nor denunciation of, the Second Optional Protocol. Once ratified by a State, its obligations are binding and perpetual.

A subsequent change of government does not affect that position. One of the fundamental features of the international legal system that provides stability and security is the understanding among States that a change in government does not affect existing treaty obligations. In other words, a treaty, once signed and ratified by a State, binds that State in accordance with the rules of international law whether or not the government of that state changes in the future.

The alternative model, by which States are free to renegotiate international terms on every change of government, is plainly unworkable and would destroy the fabric of the rules-based system of international law – a rules-based system that middle powers, such as the Philippines, rely upon for security and prosperity.

The VCLT is instructive in this situation. It provides that:

> 1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
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> it is established that the parties intended to admit the possibility of

[23] United States v. Belmont, 301 U.S. 324 (1937).

> denunciation or withdrawal; or a right of denunciation or withdrawal may be implied by the nature of the treaty.
>
> 2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.[24]

The Second Optional Protocol does not carry the necessary implication of such a right of withdrawal. In fact, to the contrary, every aspect of the Second Optional Protocol, its object and purpose, and the *travaux préparatoires* make it clear that no withdrawal from the Protocol, once ratified, is permissible.

Even if that conclusion was (hypothetically) wrong, a minimum period of notice of twelve months is required to effect a withdrawal from the Second Optional Protocol, following Article 56 of the VCLT. It would be expected that all other States party to the Second Optional Protocol would protest such a course in the most vigorous terms.

International law restricts the application of the death penalty to the "most serious crimes."

Even if the Philippines was not a party to the Second Optional Protocol, it is in any event bound by clear and unambiguous international laws which severely restrict the threat or use of the death penalty. International law, both treaty and customary, plainly prevents the imposition of the death penalty for anything other than the most serious crimes. All of the proposed Bills are inconsistent with that rule of international law, because they propose the reintroduction of the death penalty for crimes that do not fall within the definition as "the most serious" crimes.

The Philippines is a party to the ICCPR, which was drafted in the recognition that, at the time of its conclusion, the death penalty is not illegal *per se* but that its application should be severely limited.

Article 6 of the ICCPR relevantly provides as follows:

> (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
>
> (2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the **most serious crimes** in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.[25] (Emphasis supplied.)

[24] VCLT, art. 56.

[25] International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR], art. 6.

The reference within Article 6 to "the most serious crimes" is fundamental. It has been widely considered by domestic courts and international bodies.

As a party to the ICCPR, the Philippines is obliged to perform its treaty obligations in good faith[26] consistent with the time-honored principle of *pacta sunt servanda.* It must interpret treaties "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[27]

The UN HRC has considered the content of Article 6. The Committee is responsible for oversight of the ICCPR and may receive Communications from individuals seeking to lodge complaints under the Optional Protocols to the Covenant. The Views of the Committee on the interpretation of the Covenant are considered highly persuasive and authoritative.

General Comment No. 6 of the HRC elaborated on death penalty and the right to life. It notes that:

> 6. While it follows from article 6 (2) to (6) that State parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for the other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light, and in any event, are obliged to restrict the application of the death penalty to the "most serious crimes" …
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> 7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure.[28]

It is clear beyond doubt that Article 6 of the ICCPR, as interpreted by the HRC requires that the death penalty may only be imposed with respect to the most serious crimes.

The work of the HRC also establishes beyond doubt that property offences, crimes against the person falling short of murder, financial crimes, pornography and narcotics offences do not constitute "a most serious crime."

In the view of the HRC in *Kennedy v. Trinidad & Tobago*, a "most serious crime" is one which carries fatal or a similarly grave consequence.[29]

In its Concluding Observations for Kuwait (UN Doc CCPR/C/KWT/CO/2 (18 November 2011)) the Committee expressed the firm view that drug-related offences were not "most serious" within the meaning of Article 6.[30] Similarly, in its Concluding

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[26] VCLT, art. 26.
[27] VCLT, art. 31 (1).
[28] UN Human Rights Committee, *General Comment No. 6: Article 6 (Right to Life)* (Apr. 30, 1982), *available at* http://www.refworld.org/docid/453884o0a.html (last accessed Mar. 03, 2017) [hereinafter HRC GC No. 6], ¶ 6, 7.
[29] UN Human Rights Committee, Kennedy v. Trinidad and Tobago, Merits, Communication No. 845/1998, U.N. Doc. CCPR/C/74/D/845/1998 (Mar. 26, 2002).
[30] UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, U.N. Doc. CCPR/C/KWT/CO/2 (Nov. 18, 2011).

Observations for Sri Lanka, the HRC stated that "drug-related offences" were not "serious crimes" within the meaning of Article 6.[31]

Further, in *Luboto* v. *Zambia*, the HRC concluded that there had been a violation of Article 6(2) because the petitioner had been sentenced to death under a law imposing a mandatory sentence of death for aggravated robbery in which firearms were used. The Committee observed that "use of firearms did not produce the death or wounding of any person and that the court could not under the law take these elements into account in imposing sentence." [32]

The position of the HRC is consistent with that taken by other United Nations bodies.

The fundamental obligation to limit the death penalty to the most serious crimes was emphasised by the UN Economic & Social Council in 1984 when it adopted the "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty."[33] The Safeguards were endorsed by the UN General Assembly in resolution 39/118.[34]

The Safeguards Guarantee stated that:

> In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.[35]

Similarly, Resolution 2005/59 of the former United Nations Commission on Human Rights provided that States which retained the death penalty were obliged:

> Not to impose the death penalty for any but the most serious crimes
>
> [and]
>
> to ensure also that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.[36]

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[31] UN General Assembly, *Report of the Human Rights Committee*, U.N. Doc. A/50/40 (Oct. 03, 1995), ¶ 449.
[32] UN Human Rights Committee, Luboto v. Zambia, Communication No. 390/1990, U.N. Doc. CCPR/C/55/D/390/1990/Rev.1 (1995) (June 30, 1994).
[33] UN Economic and Social Council, *Safeguards guaranteeing protection of the rights of those facing the death penalty,* resolution 1984/50 (25 May 1984), *available at* http://www.ohchr.org/Documents/ProfessionalInterest/protection.pdf (laast accessed Mar. 03, 2017).
[34] UN General Assembly, *Human rights in the administration of justice,* (14 December 1984), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/39/118 (last accessedFeb. 28, 2017).
[35] UN Economic and Social Council, *supra* note 33 at ¶ 1.
[36] UN Commission on Human Rights, *Human Rights Resolution 2005/59: The Question of the Death Penalty*, E/CN.4/RES/2005/59 (Apr. 20, 2005), *available at* http://www.refworld.org/docid/45377c730.html (last accessed Feb.27, 2017).

In 1996, the UN Economic and Social Council adopted resolution 1996/1529 *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty* as follows:

> Calls upon Member States in which the death penalty has not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it is stated that capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.[37]

Finally, in its draft General Comment No. 36, the HR elaborates on the meaning of the term "the most serious crimes" in Article 6(2) of the ICCPR. The Committee notes that the term must be "read restrictively and appertain to crimes of extreme gravity, such as... premeditated murder or genocidal killings."[38]

The Committee further states that in the case of offenses not resulting directly or intentionally in death, such as in drug offenses, attempted murder, corruption, armed robbery, piracy, abduction, repeated evasion of compulsory military service, and sexual offenses, the death penalty should not be imposed. In the view of the Committee, such crimes, although serious in nature, "do not manifest the extraordinary high levels of violence, utter disregard for human life, blatant anti-social attitude and irreversible consequences that could conceivably justify the imposition of the death penalty as a form of legal retribution."[39]

Numerous decisions of domestic Courts are consistent with the narrow construction of the term "most serious crimes," and, equally, the breadth of the Article 6 guarantee of a right to life.

For example, in South Africa, the imposition of the death penalty in any circumstances has been described as constituting inhuman and degrading treatment by the Constitutional Court in *S v Makwanyane*.[40]

More recently in 2011, the South Gauteng High Court in South Africa undertook a detailed consideration of the right to life in the context of an extradition request made by Botswana, a State which maintained the death penalty.[41] The South Gauteng High Court described Botswana as "a pariah state not synchronized with the majority of African countries that have either abandoned or are refusing to implement the death

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[37] UN Economic and Social Council, *Safeguards guaranteeing protection of the rights of those facing the death penalty* Resolution 1996/15 (July 23, 1996), ¶ 2, *available at* http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm (last accessed Feb. 28, 2017).

[38] UN Human Rights Committee, *Draft General Comment no. 36: Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/R.36/Rev.2 (Sept. 02, 2015), ¶ 37.

[39] *Id*.

[40] S v. Makwanyane, Constitutional Court (South Africa), ZACC 3; 1995 (3) SA 391 (CC) (1995).

[41] Tsebe and Another v Minister of Home Affairs and Others, Phale v Minister of Home Affairs and Others [2011] ZAGPJHC 115; 2012 (1) BCLR 77 (GSJ); [2012] 1 All SA 83 (GSJ); see also the decision of the Constitutional Court Minister of Home Affairs v Tsebe 2012 (5) SA 467).

penalty."[42] The Court went on to note that "[i]n South Africa [the death penalty] is regarded as a cruel, inhuman and degrading punishment."[43]

In *Khade v. State of Maharashtra*,[44] the Supreme Court of India adopted a narrow interpretation of the phrase "most serious crimes." The case involved sexual assault and murder of a minor child. The Court noted that the death penalty applied only to the rarest of rare cases which warrant it.

Because the proposed Bills seek to reintroduce death penalty for crimes which are not possible to be defined as 'the most serious crimes," as that phrase is understood in international law, these will, if passed, constitute a breach of the international legal obligations of the Philippines, and thereby subject the Philippines to international approbation and criticism.

To avoid doubt, international law clearly and unambiguously prohibits the imposition of the death penalty for:

- all narcotics crimes (including crimes of importation, supply, possession, distribution, manufacture, use, or maintaining "dens");
- kidnapping;
- crimes aggravated by being under the influence of a narcotic drug;
- all property crimes including the crime of "plunder" as that crime is understood in the Philippines, aggravated robbery and carjacking;
- all crimes of rape and sexual assault;
- child sexual offenses; and
- political crimes.

This is because such crimes are not "the most serious crimes" as that term in the ICCPR has been interpreted.

The proposed laws seek, in breach of the international law binding upon the Philippines, to impose the death penalty upon persons convicted of the property crime of "plunder". They attempt to impose the death penalty for narcotics crimes, including the crime of maintaining a narcotics "den" or "resort". They seek to impose the death penalty upon persons convicted of trivial or "ordinary" crimes where they are committed while under the influence of narcotic drugs. They arbitrarily attempt to impose the death penalty upon certain military and police officers who engage in broadly defined sexual assault or rape. They seek to impose the death penalty for offenses of child exploitation and pornography. They seek to impose the death penalty for those convicted of broadly defined treason.

[42] *Id.* at 67. The risk of the Philippines becoming a 'pariah State' by breaching a binding treaty commitment is equally very real.
[43] *Id.* at 68.
[44] Shankar Kinsanrao Khade v. State of Maharashta, 5 SCC 546 (2013) (India).

Several of the offenses are certainly capable of being described important. They deserve serious attention from law makers. However they are not "the most serious crimes" as international law defines that term. Because of the sovereign acts by which the Philippines accepts to be bound by international law, they cannot be made subject to the death penalty.

Therefore, quite apart from the insurmountable issue of the Second Optional Protocol, each proposed law is inconsistent with the State obligations of the Philippines in international law, and the international legal responsibility of the Philippines for wrongful acts will be engaged if the proposed Bills become law.

The Philippines is party to specific treaties which are inconsistent with the application of the death penalty to narcotics offences.

Apart from international law instruments prohibiting the application of the death penalty to narcotics crimes, the Philippines is also a party to two treaties dealing specifically with these crimes. This study advances that proper interpretation of these treaties in a manner consistent with the VCLT makes it clear that the Philippines has agreed that narcotics crimes should not subject to the death penalty.

The Philippines is a party to the 1961 Single Convention on Narcotic Drugs, which provides that

> Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.[45]

The proper interpretation of the 1961 Convention is inconsistent with the imposition of the death penalty for narcotics offenses of any description.

Clearly, the drafters of the 1961 Convention intended that the commission of a serious offense should be the subject to an appropriately grave sanction. However, the 1961 Convention makes reference only to the sanction of "imprisonment or deprivation of liberty". A similar formulation (referring to imprisonment, deprivation of liberty, pecuniary

[45] Single Convention on Narcotic Drugs, opened for signature Mar. 30, 1961, 520 U.N.T.S. 204 (entered into force Dec. 13, 1964), art. 36 (1).

sanctions and confiscation) appears in Article 3(4) of the related 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[46]

This leads to an overwhelming inference that the imposition of the death penalty is excluded as an appropriate or available punishment for narcotics crimes for States, such as the Philippines, which are parties the 1961 or 1988 Conventions.

This is not affected by the *travaux préparatoires* to the two Conventions, which make it clear that it was the intention of the parties that narcotics trafficking be the subject of serious penalties which would adequately deter narcotics trafficking. While it may well be the case that some of the parties to the Conventions retain the death penalty for narcotics offences, it does not follow that the Conventions are capable of an interpretation permitting, today, the fresh imposition of the death penalty for narcotics offences.

In any event, there is an obligation under customary international law to move towards abolition, and that obligation is inconsistent with re-imposition by abolitionist States is of death penalty.

International law requires States to move towards eventual abolition of the death penalty. Where a State, such as the Philippines, has already abolished the death penalty by ratifying the Second Optional Protocol, any attempt to reintroduce the death penalty is inconsistent with the obligation contained in the ICCPR to move towards abolition.

The HRC has considered the question of whether there exists an obligation, independent of the Second Optional Protocol, to move towards abolition of the death penalty. In General Comment No. 6, the Committee states that

> The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee

[46] Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature Dec. 20, 1988, U.N. Doc. E/CONF.82/15 (1988) (entered into force Nov. 11, 1990).

Article 3 (4) states

> (a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.
> (b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration.
> (c) Notwithstanding the preceding subparagraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social reintegration, as well as, when the offender is a drug abuser, treatment and aftercare.
> (d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.

> concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee.[47]

Further, Resolution 2005/59 of the UN Commission on Human Rights:

> Calls upon all States that still maintain the death penalty:
>
> (a) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;
>
> (b) Progressively to restrict the number of offences for which the death penalty may be imposed and, at the least, not to extend its application to crimes to which it does not at present apply.[48]

Therefore, a State which has abolished the death penalty, and which is a party to the ICCPR and therefore bound by Article 6, is prevented from re-introducing the penalty.

Customary international law, also binding upon the Philippines,[49] is to the same effect. State practice may be evidenced by pronouncements of the UN General Assembly. Resolution 32/61 of 8 December 1977 provides:

> [T]hat, as established by the General Assembly in resolution 2857 (XXVI) and by the Economic and Social Council in resolutions 1574 (L), 1745 (LIV) and 1930 (LVIII), the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment. . .[50]

III. The Global Movement Towards Abolition

The number of countries abolishing the death penalty has significantly increased since the late 1980s. The data of the World Coalition Against the Death Penalty provides that more than two thirds (2/3) of the world's countries have abolished the death penalty in law or practice.[51] A hundred and five (105) countries have abolished the death penalty for all crimes; six (6) countries have abolished the death penalty for all crimes except extraordinary crimes such as those committed in times of war; thirty (30) countries can be considered abolitionist in practice in that they have not executed anyone during the last ten (10) years and are believed to have a policy or established practice of not carrying out executions; therefore, one hundred forty one (141) countries have

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[47] HRC GC No. 6, ¶ 6.
[48] UN Economic and Social Council, *supra* note 36, ¶ 5.
[49] PHIL. CONST. art. II, § 2.
[50] UN General Assembly, *Capital punishment,* U.N. Doc. A/RES/32/61 (Dec. 8, 1977), *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/32/61 (last accessed Feb. 28, 2017).
[51] World Coalition Against the Death Penalty, *Death Penalty and Terrorism: Facts and Figures. 14th World Day Against the Death Penalty, available at* http://www.worldcoalition.org/media/resourcecenter/FactsFigures2016_EN.pdf (last accessed Mar. 03, 2017).

abolished the death penalty in law or in practice.[52] There is a clear movement towards the abolition of the death penalty. That movement is consistent with the customary law obligation described above, and is consistent with the views of the General Assembly.[53]

Successive United Nations General Assembly resolutions have seen growing numbers in favor of abolition.[54]

Table 1: UN General Assembly voting on resolutions concerning moratorium on the use of the death penalty towards abolition[55]

2007 vote 62nd session	**2008 vote 63rd session**	**2010 vote 65th session**	**2012 vote 68th session**	**2014 vote 69th session**	**2016 vote 71st session**
In favour: 104 Against: 54 Abstentions: 29	In favour: 106 Against: 46 Abstentions: 34	In favour: 109 Against: 41 Abstentions: 35	In favour: 111 Against: 41 Abstentions: 34	In favour: 117 Against: 37 Abstentions: 34	In favour: 117 Against:40 Abstentions: 31
Source: United Nations General Assembly records; Joint Standing Committee on Foreign Affairs, Defence and Trade, The Parliament of the Commonwealth of Australia; and World Coalition Against the Death Penalty.					

While not legally binding, the growing support for the General Assembly resolutions shows that world opinion is hardening against the use of the death penalty.[56] As described above, customary international law requires movement towards abolition.

States are also explicitly expressing their decisions to move for abolition in their national reports. The government of India for example recommended the abolition of the death penalty:

> Despite the prevalence of death sentences handed down by first instance courts, there is some movement within the government towards abolition. In August 2015, the Law Commission of India, comprised of legal experts mandated by the government of India to advise the ministry of Law and Justice on legal reform, published a report sharing its conclusions of an extensive study on the death penalty in India, which recommends the abolition of the death penalty. The report concluded

[52] *Id.*
[53] *See generally* UN General Assembly, *supra* note 50.
[54] Joint Standing Committee on Foreign Affairs, Defence and Trade, The Parliament of the Commonwealth of Australia, *A world without the death penalty: Australia's Advocacy for the Abolition of the Death Penalty*, May 2016, at 24, *available at* http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Death_Penalty/Report (last accessed Feb.27, 2017).
[55] The Philippines voted in favor of the resolutions from 2007-2014, sponsoring / co-sponsoring the 2007 and 2014 resolutions.
[56] Joint Standing Committee on Foreign Affairs, *supra* note 54.

> that the death penalty does not serve the goal of deterrence of crime, and loses sight of the restorative and rehabilitative aspects of justice.[57]

The efforts by the Philippines to reintroduce the death penalty are inconsistent with customary law obligations and with the overwhelming views of the community of States.

IV. The Relationship Between International Law and the Philippine Constitution

In any event, the Philippines is bound by its international obligations both as a matter of international law, and as a matter of domestic law.

The relationship between (customary) international law and Philippine law has been first laid down in the 1935 Constitution, which established the Commonwealth of the Philippines. The present provision in the 1987 Constitution has the same tenor as the 1935 Constitution.

According to Article II, Section 2 of the 1987 Constitution, "[t]he 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."[58]

The Philippine Supreme Court has consistently held that customary law is part of the law of the land. There is no need for treaty law, valid or otherwise, to be applicable in the Philippines. In a recent case on this point, *Magallona v. Ermita*, the Philippine Supreme declared that principles of international customary law (such as the right of innocent passage) is "automatically incorporated in the corpus of Philippine law." Thusly, Philippine Congress is not bound to pass a law for the principle to apply.[59]

While there have been arguments that the Philippines is a monist state,[60] even if the Philippines were to be considered a dualist state (one which does not generally automatically applies international law without domestic enablements), it is beyond doubt that the Philippine Constitution is explicit in its treatment of customary law. When it comes to customary law (as opposed to treaties and international agreements), principles of customary law are automatically part of Philippine law without the need for any domestic law. This is because principles of international customary law are general principles of international law.[61]

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[57] World Coalition Against the Death Penalty and International Federation for Human Rights (FiDh), *The Death Penalty For Drug Crimes in Asia*, Oct. 2015 at 26, *available at* https://www.fidh.org/IMG/pdf/asia_death_penalty_drug_crimes_fidh_wcadp_report_oct_2015_pdf.pdf (last accessed Feb. 27, 2017).

[58] PHIL. CONST., art. II, § 2.

[59] Magallona v. Ermita, G.R. No. 187167 (Aug. 16, 2011).

[60] *See*, debate on this, Francis Tom Temprosa, *Reflections on a Legal Confluence: International Law in the Philippine Court, 1940-2000*, (2013) 19 AsYBIL 90, 115-116 (2017).

[61] JOAQUIN G. BERNAS, AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 57(2002).

Protection of human right to life as international customary law.

With regard to human rights principles which are of international customary nature, in a long line of cases, the Philippine Supreme Court has consistently applied the same as valid and binding under local law.

In one of the most recent explanations of the principle, in *Poe-Llamanzares v. Elamparo*, the Philippine Supreme Court held that generally accepted principles of international law include international custom as evidence of a general practice accepted as law, and general principles of law recognized by civilized nations. The term "general principles of law recognized by civilized nations" are principles "established by a process of reasoning" or judicial logic, based on principles which are "basic to legal systems generally."[62]

Examples are "general principles of equity, i.e., the general principles of fairness and justice," and the "general principle against discrimination" which is embodied in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention Against Discrimination in Education, the C ILO Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation. The Court declared with definitiveness that these are the same core principles which underlie the Philippine Constitution itself, as embodied in the due process and equal protection clauses of the Bill of Rights.[63]

In Philippine jurisprudence, the right to life has been explained as forming part of international customary law. These have been included in cases on arbitrary deprivation of life, the writ of *amparo*, and other protections of the right.

In cases bearing on the right to life, *Razon v. Tagitis* applied the International Convention for the Protection of All Persons from Enforced Disappearance even though the Philippines is not a party to the treaty. The Court declared that the proscription against enforced disappearances, relating as it is to the right to life, is part of the corpus of this general principle of international law as it is a principle of international customary law.[64]

On the whole, under Philippine jurisprudence, the protection for the right to life is part of customary law, even absent a treaty or domestic law operationalizing the same in domestic law.

Treaties are generally regarded are self-executing—requiring no further action for their validity within Philippine jurisdiction.[65] In very exceptional cases, it is however possible that the treaty itself may provide for its application through a legislative or executive

[62] Poe-Llamanzares v. Elamparo, G.R. No. 221697 (Mar. 08, 2016).
[63] *Id.*
[64] Razon, Jr. v. Tagitis, 621 Phil. 536, 600 (2009) c*iting* Pharmaceutical and Health Care Philippines v. Duque III, 561 Phil. 386, 398 (2007).
[65] MERLIN M. MAGALLONA, A PRIMER IN INTERNATIONAL LAW IN RELATION TO PHILIPPINE LAW 49 (1997).

act.[66] The Philippines has a long tradition in law and practice of honoring its international obligations under treaties.[67] It is most accepted that a treaty assumes a double character, as a source of international obligations and as domestic law.[68]

For the Philippines to renege on its international obligations under treaties is to also disregard its domestic law.

V. "Heinous Crimes": The 1987 Philippine Constitution

Because, for the reasons given above, any attempt to reintroduce the death penalty in the Philippines is illegal. Strictly speaking, it is not necessary to consider the effect of Section 19 of the Bill of Rights of the 1987 Philippine Constitution. But the same provision in fact provides additional compelling grounds for the invalidity and illegality of the proposed laws.

Section 19 provides:

> Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.[69]

Section 19 represents a considered recognition that at the time it was drafted, the domestic law of the Philippines should no longer provide for the death penalty in any circumstances. The proviso to Section 19 was limited in two ways.

First, it required an assessment by Congress that there existed compelling reasons to reinstate the death penalty. Secondly, it imposed a permanent limitation for the purposes of the domestic law of the Philippines – the death penalty could thereafter be re-imposed **only** for "heinous crimes."[70] Finally, there can never be any compelling reasons to justify reinstatement of the death penalty, "the compelling reason required by the constitution was that the State has done everything in its command so that it can be justified to use an inhuman punishment called death penalty."[71]

The framers of the 1987 Constitution provided various reasons why this provision was included. Fr. Joaquin Bernas, SJ, one of the constitutional commissioners, explained that the imposition of death penalty inflicts traumatic pain on the convict and the family

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[66] *Id.* at 55.
[67] *See, e.g.*, Marubeni v. Comm'r of Internal Revenue, G.R. No. 76573, 177 S.C.R.A. 500 (Sept. 14, 1989); La Chemise Lacoste v. Fernandez, G.R. No. L-63796-97, 129 S.C.R.A. 373 (May 02, 1984); KLM Royal Dutch Airlines v. Court of Appeals, G.R. Nos. L-52153-54 (Nov. 17, 1980).
[68] MAGALLONA, *supra* note 65 at 51.
[69] PHIL. CONST. art. III, § 19 (1).
[70] People v. Echegaray, G.R. No. 117427 (Feb. 07, 1997).
[71] *Id.*

and stated that there was a lack of convincing evidence that death penalty deters the commission of crimes.[72] The Philippines penal system favored restorative justice.[73]

The Court in *People v. Echegaray* discussed the meaning of the term "heinous." The Court first pointed to Republic Act No. 7659. The preamble to that Act characterizes heinous crimes as acts which are "grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society."[74]

The Court also considered Justice Santiago Kapunan's definition of heinous in his dissenting opinion in *People v. Alicando*.[75] He traced the etymological root of the word "heinous" to the Early Spartans' word, *haineus*, meaning, hateful and abominable, which, in turn, was from the Greek prefix *haton*, denoting acts "so hatefully or shockingly evil".[76] The Supreme Court also agreed with this definition.

The Court in *People v Echegaray* also ruled that the elements of heinousness and compulsion are inseparable and are interspersed with each other. It concluded that an "alarming upsurge of such crimes" as stated in R.A. No. 7659 is immaterial and irrelevant in the act of Congress in the same for it was never intended by said law to be the yardstick to determine the existence of compelling reasons involving heinous crimes.[77] Neither is it necessary to show statistical data on higher incidences of crimes to constitute "compelling reasons" to re-impose death penalty.[78]

It follows that the domestic understanding of the phrase "heinous crimes" should be interpreted narrowly, in the same manner as the international law interpretation of the phrase "the most serious crimes". Since, as shown above, the Constitution must be read consistently with the international legal obligations of the Philippines, the proposed laws fail to comply with the limitation within Section 19 of the Constitution, providing additional grounds for their rejection by Congress.

Conclusion

Article III, Section 19 of the 1987 Philippine Constitution purporting to permit the reimposition of the death penalty in the Philippines for "compelling reasons" involving "heinous crimes" notwithstanding, it is doubtful whether the Philippines may be allowed to reimpose the death penalty, in view of the absolute nature of the obligations of the Philippines in international law. The ratification of the Second Optional Protocol by the

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[72] JOAQUIN G. BERNAS, SJ, THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 173 (2006).
[73] *Id.*
[74] An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for the Purpose the Revised Penal Laws, as amended, other Special Penal Laws, and for Other Purposes [DEATH PENALTY LAW], Republic Act No. 7659 (1993).
[75] G.R. No. 117487, Dec. 12, 1995.
[76] People v. Echegaray, G.R. No. 117427 (Feb. 07, 1997).
[77] *Id.*
[78] *Id.*

Philippines in 2007, twenty years after the passage of the Constitution, is a valid sovereign act of the Philippines as a matter of international law. The Philippines may not withdraw from the Second Optional Protocol as this treaty unambiguously prohibits, permanently, the imposition of the death penalty in the Philippines for all crimes.

The VCLT, to which the Philippines is a party, requires the state to comply with its treaty obligations and perform them in good faith. That is also an obligation binding upon the Philippines as a matter of customary international law.

International law does not permit withdrawal from, nor denunciation of, the Second Optional Protocol. Once ratified by a State, its obligations are binding and perpetual. Even if that conclusion was (hypothetically) wrong, a minimum period of notice of twelve months would be required to effect a withdrawal from the Second Optional Protocol. It would be expected that all other States party to the Second Optional Protocol would protest such a course in the most vigorous terms.

The Bills that are before the House of Representatives and the Senate are in any event inconsistent with the international legal obligations of the Philippines because they seek to re-impose the death penalty for crimes that are not "the most serious crimes." The Philippine Constitution itself prohibits the imposition of the death penalty for crimes that are not "heinous." "Heinous" has the same meaning as "the most serious" both because of the decisions of the Supreme Court of the Philippines and because international law is part of the law of the land of the Philippines by Article II, Section 2 of the Constitution.

Passage of any of the Bills will trigger the international responsibility of the Philippines and it will commit an internationally wrongful act.