AN EXAMINATION OF THE PHILIPPINES’ ANTI-TERROR LAW—SUAVITER IN MODO, FORTITER IN RE

Brent H. Lyew†

Abstract: The Philippines is rife with competing struggles for rights of self-determination and international terrorist networks. For years, the Philippine government prosecuted suspected terrorists without an anti-terror law. The absence of an express criminal violation for acts of terrorism led to a blurred distinction between punishing terrorists and punishing secessionists. Responding to public outcry that the Philippine government was violating human rights by punishing secessionists unjustly, the United Nations conducted an investigation. This investigation led to the placement of the Philippine government on the United Nations’ human rights watch list. The Philippine legislature, shortly thereafter, passed the Human Security Act of 2007 (“HSA”). This law codified the acts punishable as crimes of terrorism. Since the HSA’s passage, five prominent advocacy groups petitioned the Philippine Supreme Court to strike down the anti-terror law as unconstitutional for being overly vague and unjustly intruding on individual rights. This comment analyzes the lawfulness of the HSA.

I. INTRODUCTION

Terrorism plagues the Philippines. On May 23, 1976, six hijackers took control of a commercial airliner and, after demands were not met, detonated grenades that exploded the plane on a runway in the Philippines.2 This hijacking was one of the Philippines’ earliest terror attacks that incurred international reverberations.3 International terrorists soon after infiltrated the Philippines and established operational networks.4 Attacks escalated5 In 1991, terrorists attempted to bomb the United States’ (“U.S.”) embassy in

† Juris Doctor expected 2010. The author would like to thank the editors of the Pacific Rim Law & Policy Journal and Prof. Joel Ngugi for his guidance in the development of this comment. .
1 Latin for: “Gently in manner, strongly in deed.” OXFORD LATIN DICTIONARY (P.G.W. Glare ed. 1982). Letter from Lord Chesterfield to his son, in Henry Belfield, Lord Chesterfield's Letters To His Son and Godson, Selected, at 125-26 (1897) (“The suaviter in modo alone would degenerate and sink into a mean, timid complaisance and passiveness, if not supported and dignified by the fortiter in re, which would also run into impetuosity and brutality, if not tempered and softened by the suaviter in modo: however, they are seldom united.”).…
4 Id. at 5.
Manila, and since 2000, terrorist acts in the Philippines have killed or injured more than 1,700 people. The attacks included bombings of “buses carrying workers, food markets where people were shopping, airports where relatives were waiting for loved ones, and ferry boats carrying families.”

The Philippine government responded to the growing terrorist problem with military force. No law, however, identified the acts that incurred terrorist liability, nor specified the manner in which the acts were punishable. The Philippine government’s fight against terrorists without an anti-terror law led to many complaints of human rights abuses.

After the United Nations ("U.N.") substantiated complaints of human rights abuses, the Philippine legislature attempted an about-face by enacting the Human Security Act of 2007 ("HSA"). The HSA made specific acts punishable as acts of terrorism and gave courts the authority to determine when a suspect’s actions qualified as acts of terrorism. Shortly after the HSA’s passage, five prominent advocacy groups petitioned the

---

6 SUPAPOL, supra note 3, at 2.
9 See Manalo, supra note 5, at 12-13, 23-24.
Philippine Supreme Court to strike down the law. These groups argue that the Philippine Supreme Court should nullify the HSA because it is unconstitutionally vague and violative of individual rights. The Philippine Supreme Court has yet to rule on these cases.

This comment analyzes the constitutionality of the HSA. Part II provides a historical background of terrorism in the Philippines and observes the Philippine government’s responses that led to the passage of the HSA. Part III examines whether the HSA is unconstitutionally vague in its definition of a punishable terrorist act, and Part IV explores whether the HSA impermissibly infringes on individual rights. Last, Part V examines policy considerations.

II. THE HSA IS THE PHILIPPINES’ SOLUTION TO STOPPING TERRORISM WHILE CURBING GOVERNMENTAL ABUSE OF POWER

For years, the Philippine government used its military to quell revolutionary factions. As terrorist networks grew and became increasingly problematic, the Philippine government used its military to fight concurrently against secessionists and terrorists. This response led to the U.N. taking action and the Philippine government passing the HSA, a law that distinguished between acts of secession and acts of terrorism.

A. Muslim Secessionism in Mindanao Set the Stage for the Incursion of International Terrorists

Violent struggle for secession in the Philippines provided fertile ground for the embedment of international terrorists. At the turn of the twentieth century, the U.S. took control of the Philippines and occupied it under the Treaty of Paris. After establishing sovereignty, the U.S. pushed for a policy that encouraged Christian settlers from Luzon and Visayas, the northern and central regions of the Philippines, to colonize the agricultural

15 Id.
19 Id. at 40-42.
lands in Mindanao, the predominately Muslim southern region of the Philippines.20

This land settlement policy has caused conflict since 1898.21 The policy diluted the existing aboriginal people’s land ownership.22 The original Mindanaons, known as the Moros, resented the land settlement policy23 and since 1898, have fought for independence.24 By the late 1960s, the Moros began to form militias to fight the northern Christian settlers.25 This conflict, still ongoing, has cost approximately 160,000 lives.26

As the Moros and other Filipino Muslims fought for rights of self-determination in Mindanao,27 the political structure deteriorated, which permitted incursion of international terrorists.28 Using military force to fight the rebelling Muslim militias,29 the Philippine government’s use of tactical offensives displaced over two million persons.30 These military offensives catalyzed a growth of socio-economic and political grievances that led to an unstable social climate.31 This instability, coupled with “weak political institutions, decentralized politics, poor resources, and... endemic corruption [in the government],”32 made Mindanao an ideal environment for the settlement of international terrorists.33 Terrorist groups, such as Al-Qa’ida,34 flocked to the aid of the suppressed insurgent militias and established the Mindanao region as an operation base.35

20 Id.
21 Id.
22 See id. at 40-42.
23 Id. at 66.
24 See David, supra note 18, at 40-42.
25 Id. at 59-60.
26 See Reuters AlertNet, supra note 16.
27 See David, supra note 18, at 41-42, 49-50.
28 See Reuters AlertNet, supra note 16.
29 Id.
30 Id.
31 See SUPAPO, supra note 3, at 5.
32 See Manalo, supra note 5, at 17-18.
33 Id.
34 Al-Qa’ida is an “international terrorist network” that was “[e]stablished around 1988 by bin Laden.” Al-Qa’ida’s “current goal is to establish a pan-Islamic Caliphate throughout the world by working with allied Islamic extremist groups to overthrow regimes it deems ‘non-Islamic’ and expelling Westerners and non-Muslims from Muslim countries.” Global Security, Al-Qaeda (2006), http://www.globalsecurity.org/military/world/para/al-qaida.htm (last visited Sept. 26, 2009).
B. The Philippine Government’s Use of Military Force to Fight Terrorism Made the HSA a Necessity

The Philippine government’s use of broad military force to fight its terrorist problem eventually led to U.N. action and the Philippine’s adoption of the HSA. In 2006, the Philippine government scheduled thirty-seven joint exercises with the U.S. military to fight terrorism. These exercises included Balikatan—a bilateral military operation precisely aimed at rooting out international terrorists. The military offensives produced some victories that slowed the growing terrorist footprint, but the Philippine government’s application of military force without an anti-terror law permitted abuses of power.

These abuses spurred many complaints of human rights violations. Until the passage of the HSA, military commanders had unilateral authority to determine which persons to target as terrorists. Human rights groups contend military commanders abused their discretion and estimate during President Macapagal-Arroyo’s administration “at least 830 people [were] killed in an extrajudicial fashion, including 365 mostly left-leaning political and social activists, . . . journalists, judges, and lawyers known to be sympathetic to leftist causes.” These extrajudicial killings were not all caused exclusively by the Philippine government’s fight against terrorism, but they were “committed by death squads . . . [that] operate[d] under the protective umbrella of regional [Mindanao] military commands” aimed at stopping terrorism.

A commission led by former Philippine Supreme Court Justice Jose Melo confirmed that members of the military were responsible for the “majority” of the extrajudicial killings. A formal U.N. investigation

---

36 See Bhattacharji, supra note 35.
37 Id.
39 See Jimenez, supra note 10.
40 See Bhattacharji, supra note 35.
42 President Macapagal-Arroyo “was sworn in as the 14th President of the Philippines on January 20, 2001.” AsianInfo.org, Confusion and Hope, Politics in the Philippines (2008), http://www.asianinfo.org/asianinfo/issues/gloria_macapagal.htm (last visited Oct. 25, 2009).
43 See Jimenez, supra note 10.
45 See Jimenez, supra note 10.
subsequently affirmed the Melo Commission’s findings, and as a result, the U.N. placed the Philippine government on its human rights watch list. The Philippine government then enacted the HSA to protect its people’s “basic rights and fundamental liberties” while continuing its fight against terrorism. The HSA codified the specific acts punishable as crimes of terrorism, delegated authority to the courts to determine when acts qualified as being punishable, and made other certain acts also punishable as abuses of governmental power.

C. Advocacy Groups Petitioned the Philippine Supreme Court to Strike the HSA for Being Unconstitutionally Vague

Dubious of the law and deeply afraid of the far-reaching and unfettered power of the government as experienced by the alleged officially sanctioned extrajudicial killings, five prominent advocacy groups petitioned the Philippine Supreme Court to strike the HSA. Under writs of certiorari for prohibition and mandamus, these advocacy groups argue the

---

46 See U.N. Human Rights Council, supra note 11.
51 See Bagayaua, supra note 14.
52 Philippine Rule of Civil Procedure 65, the writ of certiorari for prohibition and mandamus, authorizes the Philippine Supreme Court to nullify the HSA based on a grave abuse of discretion by Philippine lawmakers. See R. Civ. P. 65, Certiorari, Prohibition and Mandamus (1997) (Phil.), available at http://www.chanrobles.com/specialcivilactions.htm#RULE%2065.
HSA is a legitimization for the Philippine government to continue violating constitutionally protected individual rights.\textsuperscript{53} The Philippine Supreme Court has not accepted any of these cases.\textsuperscript{54} The Court’s refusal to rule on the HSA permitted the anti-terror law to gain notoriety as “one of the [Philippines’] most controversial laws passed in this decade—if not in this century.”\textsuperscript{55}

III. THE HSA’S DEFINITION OF TERRORISM IS CONSTITUTIONALLY VIABLE

At the heart of the five petitions before the Philippine Supreme Court is criticism that the HSA contains an overly vague definition of terrorism.\textsuperscript{56} The HSA defines a terrorist act by listing a set of specific acts incorporated from other statutes and presidential decrees, and requires that these acts create “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.”\textsuperscript{57} Some of the acts listed are piracy, coup d’état, murder, kidnapping, arson, hijacking, and the unlawful possession of a firearm.\textsuperscript{58} The petitioners characterize this definition as overly vague and made so with intent to permit continued arbitrary punishment of “legitimate expressions of political dissent and social protest.”\textsuperscript{59} This section analyzes whether the HSA’s definition of a punishable act of terrorism is unconstitutionally vague.

A vagueness challenge to a statute proceeds in one of two ways: 1) a court can examine whether the statute is vague on its face; or 2) a court can examine the statute as it is applied in a particular case that involves a specific set of facts.\textsuperscript{60} The Philippine Constitution also incorporates international law into Philippine domestic law,\textsuperscript{61} so the Philippine Supreme Court may also analyze the HSA against international norms. This section examines the HSA’s definition under all three possible analyses: Part A

\begin{itemize}
\item \textsuperscript{53} Id.
\item \textsuperscript{56} See Bagayaua, supra note 14.
\item \textsuperscript{57} An Act to Secure the State and Protect Our People from Terrorism (“Human Security Act”), Rep. Act 9372 § 3 (2007) (Phil.).
\item \textsuperscript{58} Id.
\item \textsuperscript{60} RUFUS RODRIGUEZ, THE CRIME OF PLUNDER IN THE PHILIPPINES 363 (2002).
\item \textsuperscript{61} CONST. (1987), Art. III § 2 (Phil), available at http://www.chanrobles.com/philsupremelaw2.html.
\end{itemize}
examines whether the definition is facially unconstitutional; Part B explores an applied challenge; and Part C determines whether the HSA’s definition violates international law.

A. The HSA’s Vagueness Does Not Render It Facialy Unconstitutional

The five petitions before the Philippine Supreme Court disputing the HSA’s vagueness are all facial challenges. As facial challenges, the petitioners lack factual cases where a trier of fact may determine whether the law provided adequate notice to a suspected violator of the prohibited action. The petitioners accordingly argue the HSA is unconstitutional in every application. Four of the five complaints contend the HSA’s definition of terrorism is unlawfully vague and petition the Philippine Supreme Court to strike the HSA using the void-for-vagueness doctrine. Subpart 1 explains why the Philippine Supreme Court will most likely not apply the void-for-vagueness doctrine; Subpart 2 explains why the HSA passes the void-for-vagueness test even if the Court applies the void-for-vagueness doctrine; and Subpart 3 examines why the Court would uphold the HSA despite some vagueness in the law’s definition of terrorism.

1. The Void-For-Vagueness Doctrine Is Inapplicable to the HSA

The void-for-vagueness doctrine is limited in its scope of application. The doctrine provides “that what makes a statute susceptible to [void-for-vagueness] is an enactment either forbidding or requiring the doing of an act that men of common intelligence must necessarily guess at its meaning and differ as to its application.” The petitioners argue the Philippine Supreme

---

63 Id.
Court should apply the void-for-vagueness doctrine to strike the HSA for two reasons. First, the petitioners argue the doctrine applies because the HSA restricts freedom of speech. The second argument lobbies the Philippine Supreme Court to expand the void-for-vagueness doctrine’s application to criminal statutes because it is the best test to determine statutory unconstitutional vagueness.

The petitioners find support in Philippine Supreme Court’s dissents. In the 2001 case of Estrada v. Sandiganbayan, Justice Kapunan argued in a dissent that a vagueness challenge to a penal statute should be allowed because an unconstitutionally vague penal statute involves a “deprivation of liberty, and even life, which inarguably, are rights as important as, if not more than, free speech.” In the 2004 case of Romualdez v. Sandiganbayan, Justice Tinga, also in a dissent, noted “the void-for-vagueness doctrine must not only apply to free-speech cases but also, if not with greater force, to penal statutes.” These dissents, however, are overshadowed by the majority opinions.

The likelihood is that the Philippine Supreme Court will follow its precedent and not apply the void-for-vagueness doctrine. The Court’s case law currently restricts the void-for-vagueness doctrine to free-speech cases, and the HSA is not speech limiting legislation. The Philippine Supreme Court’s most recent address of whether the void-for-vagueness doctrine applies to penal statutes was in the 2008 case of Carlos Romualdez and Erlinda Romualdez, v. Commission on Elections and Dennis Garay. Here, the Philippine Supreme Court refused to apply the void-for-vagueness doctrine to criminal statutes, reasoning that an overextension of the doctrine “would result in a mass acquittal of parties whose cases may not have even reached the courts.” The Court explained, “[s]uch invalidation would constitute a departure from the usual requirement of ‘actual case and controversy’ and permit decisions to be made in a sterile abstract context.

---


68 Id.


having no factual concreteness.” Thus, unless the Court diverges from its precedent, it will not apply the void-for-vagueness doctrine to the HSA.

2. **The HSA Would Pass the Test Set Out Under the Void-For-Vagueness Doctrine**

Assuming the Philippine Supreme Court applies the void-for-vagueness doctrine, the HSA is nevertheless within constitutional limits. The void-for-vagueness doctrine makes the HSA unconstitutional only if it is vague “in all its possible applications.” In the 2004 case of Alfredo Romualdez v. Sandiganbayan, the Philippine Supreme Court explained that an unconstitutionally vague law “lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application.” Four years later, in Romulo Neri v. Senate Committee on Accountability of Public Officers and Investigations, the Philippine Supreme Court provided that a law is void for vagueness when it fails to give “fair notice of the conduct to avoid, and it leaves law enforcers unbridled discretion in carrying out [the law’s] provisions.” The HSA does not meet these criteria.

Contrary to the petitioners’ arguments, the HSA passes the void-for-vagueness test because it is not vague “in all its possible applications.” The HSA defines an act of terrorism by enumerating a finite list of criminal acts that are already punishable in the Revised Penal Code, Presidential Decrees, or Republic Acts, and requires that the action create “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.”

---

72 Id.
“widespread and extraordinary fear and panic among the populace.”78 While not drawing a bright line that distinctly demarks which acts are punishable, the HSA requires the judiciary to determine when the requisite intent and attendant circumstances exist to make the violative act a punishable act of terrorism. This requirement dispels the petitioners’ challenged vagueness.

Using the plain meaning rule to interpret the HSA’s definition of a punishable terrorist act,79 the words’ meanings do not seem confusing to “men of common intelligence” in all possible applications.80 An ordinary reading suggests the HSA forbids certain acts aimed at creating “a state of danger, panic, fear, or chaos to the general public or segment thereof [done to coerce or intimidate] the government to do or refrain from doing an act.”81 While individual terms within the HSA’s definition are subject to interpretation—narrow or broad—the entire definition, when read as a whole, manifests comprehensible notice to an ordinary reader. The cumulative effect therefore does not deprive an ordinary reader of fair notice in every possible application. While the HSA is not void-for-vagueness because the terms are sufficiently defined, the Court may also examine the HSA to determine whether the HSA is so vague that the law cannot accomplish its purpose.

3. **The Prospect of Abuse Does Not Warrant Invalidation**

Apart from the void-for-vagueness test, the Philippine Supreme Court may also analyze whether the HSA’s definition of terrorism is so vague that it impedes the law’s purpose. The HSA also passes this inquiry. In the 2006 case of *Randolf David v. Pres. Gloria Macapagal-Arroyo*, the Philippine Supreme Court held “[t]he validity of a statute or ordinance is to be determined from its general purpose and its efficiency to accomplish the end desired.”82 The Court concluded “courts are not at liberty to declare statutes invalid although they may be abused in the manner of application.”83 The HSA makes clear that its purpose is to “protect life, liberty, and property

---

78 Id.
81 See PEREIRE, supra note 13, at 1.
83 Id.
from acts of terrorism."\textsuperscript{84} The HSA’s definition of terrorism accomplishes this purpose because it provides notice that courts can punish specific acts as crimes of terrorism if the violator possessed the necessary criminal intent, and the required attendant circumstances existed. Therefore, despite allegations that the Philippine government may be apt to abuse the HSA,\textsuperscript{85} such propensity does not warrant invalidation. While the HSA is likely constitutional on its face, it may be challenged as unconstitutional when applied to a specific set of facts. The following section explores an as-applied challenge.

B. **In an As-Applied Challenge, the HSA May Be Unconstitutionally Vague If Wrongly Applied**

Absent a factual case in which the Philippine Supreme Court may determine the lawfulness of the HSA’s application, a case study is used here to test an as-applied challenge. This examination shows that the lawfulness of an as-applied challenge to the HSA is dependent on the facts of the situation. The test case is a recent Philippine criminal case.

The case of Edgar de la Cruz Candule began on March 21, 2008.\textsuperscript{86} Police arrested Candule for illegal possession of a firearm.\textsuperscript{87} Candule alleges police tortured him during his arrest and incarceration, which caused him to admit he owned the pistol seized and was a member of the Communist Party of the Philippines-New People’s Army (“CPP-NPA”).\textsuperscript{88} On April 1, 2008, the prosecuting attorney amended Candule’s charge to include a violation of the HSA.\textsuperscript{89} The prosecutor charged Candule with violating the HSA for:

\begin{quote}
[O]penly professing himself as a member of the New People’s Army (NPA) and advocating the overthrow of the
\end{quote}

\textsuperscript{87} \textit{Id}.  
\textsuperscript{88} \textit{Id}.  
\textsuperscript{89} \textit{See Aeta Recounts Nightmarish Encounter with the Philippines’s Anti-Terrorism Law, supra note 86.}
legitimate government by force of arms using unlicensed firearms and ammunitions and by inciting others to commit acts of rebellion 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 their demands.\(^90\)

Applying the HSA’s definition of terrorism to Candule’s case, the HSA makes clear which acts it prohibits. It is well established in the “Philippines [that] no act is a crime unless it is made so by statute.”\(^91\) The Philippine Supreme Court has required specificity in criminal statutes but has also given wide latitude to the Philippine Congress.

In adjudicating vagueness challenges, the Philippine Supreme Court has required a high threshold of unconstitutional vagueness for it to strike down a law. In the en banc case of In re: Arsenio Gonzales v. Comm’n on Elections, the Philippine Supreme Court held that a criminal law may be struck if it “suffers from [a] fatal constitutional infirmity of vagueness,”\(^92\) Arsenio Gonzales shows the vagueness threshold to be a high bar; the Philippine Supreme Court determined that the law challenged was vague, but the Court nevertheless upheld the law because other Filipino laws defined the vague terms.\(^93\) Also, in the 2000 case of Sajul v. Sandiganbayan, the Philippine Supreme Court reinforced its Dans v. People holding that a penal statute is constitutional as long as it answers “the basic query [of] ‘[w]hat is the violation.’”\(^94\) The Court in Sajul provided, “[a]nything beyond this, the ‘hows’ and the ‘whys,’ are evidentiary matters, which the law cannot possibly disclose in view of the uniqueness of every case.”\(^95\)

Applying the law to the HSA as applied in Candule’s situation, the Philippine Supreme Court would have to determine whether the HSA punishes the actions of owning a firearm and associating with the CPP-NPA. The HSA is clear on this point. The HSA does punish unlawful possession

\(^90\) Id.


\(^93\) Id.

\(^94\) See Rodriguez, supra note 60, at 243 (citing Sajul v. Sandiganbayan, G.R. No. 135294 (S.C. Nov. 20, 2000). (Phil.)).

\(^95\) Id.
of a firearm, but only when the act accompanies the required attendant circumstances, and the perpetrator possessed the required specific intent. 96

The HSA does not prohibit owning a firearm or associating with the CPP-NPA. The evidence does not clearly support the charge that Candule used the pistol to create “a condition of widespread and extraordinary fear and panic among the populace.” 97 Any vagueness contained in differing interpretations of the HSA’s wording, “widespread and extraordinary fear and panic among the populace,” 98 seem evidentiary—a matter of the “hows” and “whys” rather than the “whats.” 99

Additionally, there is no evidence that Candule possessed the required specific criminal intent. Candule’s membership in the CPP-NPA does not suffice to prove that while possessing the firearm he intended “to coerce the government to give in to an unlawful demand.” 100 The “basic query [of] ‘[w]hat is the violation’” 101 is therefore clear: the HSA is not prohibitive of Candule’s actions because his possession of the firearm did not accompany the requisite attendant circumstances. Other permutations of the facts, however, may substantiate that Candule did possess the required specific intent. Therefore, the constitutionality of the HSA in an as-applied challenge hinges on the facts of the case. Nevertheless, indicia of definitional vagueness in the HSA do not frustrate the law’s purpose. Because Philippine domestic law incorporates international law, the following section analyzes the HSA’s definitional vagueness against international standards.

C. The HSA’s Definitional Vagueness Does Not Unconstitutionally Violate International Law

The Philippine Supreme Court may also conduct an analysis of the HSA in light of international law as integrated by the Philippine Constitution. 102 Article II of the Constitution states the Philippines “adopts the generally accepted principles of international law as part of the law of

---

96 An Act to Secure the State and Protect Our People from Terrorism (“Human Security Act”), Rep. Act 9372 § 3 (2007) (Phil.) (referencing in part Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)).
97 Id.
98 Id.
99 See RODRIGUEZ, supra note 60, at 243 (citing Sajul v. Sandiganbayan, G.R. No. 135294 (S.C. Nov. 20, 2000). (Phil.)).
101 See RODRIGUEZ, supra note 60, at 243 (citing Sajul v. Sandiganbayan, G.R. No. 135294 (S.C. Nov. 20, 2000). (Phil.)).
the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.” In the 1949 Philippine Supreme Court case of Kuroda v. Jalandoni, Chief Justice Moran interpreted Article II to incorporate into Philippine law the Hague Convention, the Geneva Conventions, and the “significant precedents of international jurisprudence.” The analysis here examines the international legal disagreement on the definition of terrorism, evaluates the HSA with regard to the most widely accepted international conventions, and finds that the HSA comports.

International law lacks a consensual definition of which acts comprehensively constitute acts of terrorism. The fundamental impediment to defining terrorism is a general disagreement on whether acts related to rebellions or insurgencies are acts of terrorism. This impasse is apparent in the October 2008 report of the Chairman of the Working Group on Terrorism and in the March 2008 conclusion of the U.N. General Assembly’s Ad Hoc Committee on Measures to Eliminate International Terrorism. Both groups concluded without agreement. The definitional disagreement on whether acts of terrorism include acts related to rebellions or insurgencies manifests principally between the Arab and the Western world’s uncompromising positions. The Arab Convention for the Suppression of Terrorism and the Convention of the Organization of the Islamic Conference on Combating International Terrorism believes the definition of terrorism does not include acts related to struggles for liberation and self-determination. Contrarily, Western countries oppose absolute exclusion and believe acts of terrorism should encompass greater inclusivity.

107 Id.
108 Id.
109 Id.
110 Id.
The USA PATRIOT Act’s definition of terrorism exemplifies a broad inclusion of most violent acts.111 Under the USA PATRIOT Act, a domestic terrorist is any person who engages within the territorial jurisdiction of the U.S. in illegal “acts dangerous to human life” with the purpose to “(i) intimidate or coerce a civilian population; (ii) influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.”112 Broadly, the USA PATRIOT Act includes as acts of terrorism all illegal “acts dangerous to human life” performed to influence the U.S. government.113

Despite the stalemate between the East and the West, the U.N. has promulgated some guidance. A 2004 U.N. report suggested the definition of terrorism should include as elements: the use of force against civilians; the use of force to intimidate civilians; or the use of force “to compel a [g]overnment or an international organization to do or abstain from doing an act.”114 This report also stated that such a definition should include provisions from the Geneva Conventions and the U.N. Security Council Resolution 1566.115 The Geneva Conventions explicitly prohibit acts or threats of violence aimed at spreading terror among a civilian population.116 The U.N. Security Resolution 1566 explicitly provides that the purpose of a terrorist act is “to provoke a state of terror in the general public or in a group of persons or particular persons, or to intimidate a population or compel a government or an international organization to do or to abstain from doing any act.”117 Additionally, a 2005 report by the U.N. Secretary-General Kofi Annan also provided guidance. The Secretary-General’s report “proposed to define terrorism as ‘any action . . . intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a

---

113 See How the USA PATRIOT Act Redefines “Domestic Terrorism,” supra note 111.
115 Id.
population or compelling a government or an international organization to do or abstain from doing any act.”118

The HSA’s definition of a punishable terrorist act complies with these guidelines. The HSA’s required attendant circumstances of “sowing and creating a condition of widespread and extraordinary fear and panic among the populace” and its mens rea requirement “to coerce the government to give in to an unlawful demand”119 conform to the 2004 U.N. report, which suggests the definition of terrorism should prohibit the use of force against civilians, the use of force to intimidate civilians, or the use of force “to compel a [g]overnment . . . to do or abstain from doing an act.”120 The HSA’s definition also conforms with the Geneva Conventions because the law prohibits acts or threats of violence aimed at spreading terror among the Philippine population;121 comports with the U.N. Security Resolution 1566 because the law prohibits coercion of the Philippine government;122 and is congruent with the Secretary General Kofi Annan’s 2005 proposed definition.123 Therefore, the HSA’s definition of a terrorist act satisfies the widely accepted provisions of international law. The following section examines the HSA’s substantive measures.

IV. THE HSA SURVIVES SUBSTANTIVE CHALLENGES

The second most prominent complaint against the HSA is it unconstitutionally infringes on individual rights.124 This section explores the constitutionality of the HSA’s detention and search and seizure provisions. The petitioners argue the authority granted to law enforcers in the HSA to detain suspected terrorists, limit confined individuals’ access to cell phones and email, and to search and seize suspected terrorists’ communications and

---

122 See S.C. Res. 1566, supra note 117.
123 See Applegarth, supra note 118.
financial property unjustly abridges constitutional liberties. Part A analyzes the HSA against the Philippine jurisprudence’s three-part test of due process. Part B then examines the legality of the HSA’s measures in light of international law as interpreted by the Philippine Supreme Court.

A. For an Invasive Statute to Be Constitutional, It Must Pass the Due Process Three-Prong Test

The chief complaint is the HSA violates the constitutional right of due process. The due process clause of the Philippine Constitution protects against governmental deprivation of “life, liberty, or property without due process of law.” A noted authority on Philippine constitutional law, J. Isagani Cruz, wrote, “[d]ue process is a guaranty against any arbitrariness [from] the government . . . [and] the law [that] unreasonably deprives a person of his life, liberty, or his property.” To determine whether a law unconstitutionally curtails due process, the Philippine Supreme Court adopted a three-part test: 1) the problem the law cures must affect the “interests of the public generally”; 2) “the means adopted must be reasonably necessary for the accomplishment of the [law’s] purpose and not unduly oppressive”; and 3) “[a] reasonable relation must exist between the purposes of the police measure and the means employed for [the law’s] accomplishment.”

1. As Terrorism Afflicts All Filipinos, the HSA Affects the Interests of the General Public

In punishing acts of terrorism, the HSA succeeds in the first prong of the due process test: the problem addressed affects the general interests of the public. Terrorism is a malignancy that afflicts the Filipino society as a whole. Terrorist attacks are not symptomatic of private interests, but comprise an indiscriminate plague that has included murder in Filipino markets, on public-transportation, and in other public meeting places.

---

125 See COLMENARES, *supra* note 85, at 4.
127 Id.
128 Id.
Reinforcing this conclusion, section two of the HSA provides that terrorism is “a crime against [all] the Filipino people.”\footnote{131 An Act to Secure the State and Protect Our People from Terrorism (“Human Security Act”), Rep. Act 9372 § 2 (2007) (Phil.).} Thus, because the HSA is a law passed to curb a societal ill, it passes the first criterion of the due process test.

2. The HSA’s Preventative Detention, House Arrest, and Search and Seizure Measures Are Reasonably Necessary and Not Overly Oppressive

The HSA also passes the second part of the due process test: its means are reasonably necessary and not overly oppressive. The petitioners find fault with the HSA’s provisions that authorize preventative detention; house arrest; and search and seizure. Subpart a) analyzes whether the HSA’s preventative detention provisions are reasonably necessary and not overly oppressive; Subpart b) examines the HSA’s house arrest provisions; Subpart c) tests the HSA’s search and seizure measures; and Subpart d) looks at the HSA’s built-in punishments and protections that curb potential abuse.

a. Preventative Detention

First, the petitioners contend the HSA’s authorization for law enforcers to present a terror suspect to a judge for formal charging three days after arrest is unconstitutional.\footnote{132 See Petition for Writ of Certiorari, Integrated Bar of the Philippines v. Eduardo Ermita, 39-40 (Aug. 2007). (Phil.), available at http://newsbreak.com.ph/index.php?option=com_remository&Itemid=88889273&func=startdown&cid=114.} To stop a terrorist attack, however, law enforcers may have to travel to remote locations on distant islands, and transportation delays may slow the delivery of a suspect to judicial authorities for formal charging.\footnote{133 “The Philippines is an archipelago of 7,107 islands. It stretches from the south of China to the northern tip of Borneo.” Government of the Philippines, Philippines: General Information (2007), http://web.archive.org/web/20071022221129/http://www.gov.ph/aboutphil/general.asp (last visited Oct. 5, 2009).} Because of this reality, the HSA’s authorization of a three-day detention before presentment for charging seems reasonably necessary.

The HSA’s delayed presentment does not seem overly oppressive. First, the narrowness of codifying an express limit of three days explicitly cabins the duration of oppression. Second, the HSA requires law enforcers to present a person suspected of the crime of terrorism to a judge in the jurisdiction where the arrest occurred before subjecting that person to
custodial confinement.\textsuperscript{134} Third, the HSA explicitly requires that this judge determine whether the law enforcers misused their power and whether national security concerns merit custodial confinement.\textsuperscript{135} Cumulatively, these conditions keep the harshness of the HSA’s detention measure within reasonable limits.

\textit{b. House Arrest}

Second, the petitioners argue the HSA’s authorization for house arrest and restricted communication, despite little evidence of guilt, is unconstitutional.\textsuperscript{136} After a prosecutor formally charges a suspect with the crime of terrorism, the HSA permits a court to confine the defendant to house arrest and to restrict his or her access to electronic communications.\textsuperscript{137} Because many will die if a terrorist attack is successful and the recipients of electronic communications are difficult to vet, confining an accused to his or her home without access to electronic communications while the case is pending seems reasonably necessary to stop a suspected attack. The existence of strong or weak evidence does not detract from the criticality of this measure.

The narrowness of the HSA’s authorization for house arrest with restricted communication also limits undue oppression. While the HSA allows for a lower burden of proof to justify the implementation of this measure, the anti-terror law requires judicial determination to execute the procedure.\textsuperscript{138} This judicial oversight and required authorization serve to limit undue oppression from political bias. Furthermore, the HSA demands that restrictions cease “upon the acquittal of the accused or of the dismissal of the case.”\textsuperscript{139} This durational cap, bounded by standard trial procedures, places a firm ceiling on the scope of oppression. Therefore, the HSA’s provisions that authorize house arrest with restricted access to electronic communications seem reasonably necessary and not overly oppressive.

\begin{flushright}
\begin{minipage}{0.9	extwidth}
\textsuperscript{134} An Act to Secure the State and Protect Our People from Terrorism (“Human Security Act”), Rep. Act 9372 § 18 (2007) (Phil.).
\textsuperscript{135} Id.
\textsuperscript{137} See id.\textsuperscript{138} An Act to Secure the State and Protect Our People from Terrorism (“Human Security Act”), Rep. Act 9372 § 26 (2007) (Phil.).
\textsuperscript{139} See id.
\end{minipage}
\end{flushright}
c. Search and Seizure

Third, the petitioners assert the HSA unconstitutionally permits arbitrariness and undue oppression because it authorizes law enforcers to conduct wiretaps and to examine or seize an individual’s financial assets. The HSA specifically requires a court of appeals to approve a search and seizure of a suspected terrorist’s communications and monetary assets. This process is distinguishable from that in Executive Order 626-A, which was found unconstitutional in *Ynot v. Intermediate Court of Appeals.*

*Ynot v. Intermediate Court of Appeals* involved police confiscation of the petitioner’s carabaos because the petitioner violated Executive Order 626-A. Executive Order 626-A prohibited the transport of carabaos between provinces. The Philippine Supreme Court concluded the application of the law was overly oppressive because Executive Order 626-A allowed for “violation[s] [to] have been pronounced not by the police only but by a court of justice.” The Court held “[d]ue process [was] violated because the owner of the property confiscated denied the right to be heard in his defense and [was] immediately condemned and punished.”

The HSA is distinguishable from Executive Order 626-A because the HSA does not allow police autonomously to condemn a violator. The HSA demands that an appellate court judge determine the reasonableness of a search or seizure before police execution. Therefore, because the HSA relies on the independent and impartial discretion of a senior judicial officer to ensure that invasive procedures are not overly oppressive before police execution, the HSA, unlike Executive Order 626-A, is within constitutional limits.

---


145 Id.

146 Id.

147 Id.

d. The HSA Intrinsically Protects Against Undue Oppression

The HSA also provides explicit duties for and punishments on government officials, which limit the law from being used in an overly oppressive manner. Before enactment of the HSA, the military was the government’s main tool to eradicate terrorism.¹⁴⁹ Unlike the military, which had few checks on its decision-making outside the chain-of-command, the HSA empowers police through a limited grant of power. Thirty of the HSA’s sixty-two provisions limit police discretion, which in turn limits the potential for misuse of power and undue oppression.¹⁵⁰ The legislative history provides that the rationale supporting the limited grant of power was “to discourage [government] accusations . . . [and to] help compel the authorities to make certain that . . . [o]nly charges . . . backed [with] solid evidence [would] be used as [the] basis for the detention of persons accused of terrorism.”¹⁵¹

The HSA’s specific punishments and protections include, inter alia, a monetary sanction “of P500,000 for every day in detention of a person falsely accused of terrorism;”¹⁵² a ten- to twelve-year imprisonment sentence on law enforcers who fail to notify judicial authorities as prescribed;¹⁵³ and protected privileged communications between “lawyers and clients, doctors and patients, journalists and their sources, and confidential business correspondence.”¹⁵⁴ The HSA also created a legal grievance committee to receive and evaluate complaints against law enforcers;¹⁵⁵ created a congressional oversight committee to review the law one year after its implementation;¹⁵⁶ and delegated authority to the Commission on Human Rights to give the highest priority to investigating and prosecuting civil and political rights violations.¹⁵⁷ Therefore, while the HSA grants expanded authority to law enforcers in the areas of preventative detention, house arrest, and search and seizure, the HSA forestalls potential undue oppression by explicitly providing significant protections to suspected lawbreakers and

¹⁴⁹ See Bhattacharji, supra note 35.
¹⁵¹ Id. at 216.
¹⁵⁴ Id. § 7.
¹⁵⁵ Id. § 56.
¹⁵⁶ Id. § 59.
¹⁵⁷ Id. § 55.
witnesses from governmental misuse of power. The following section examines prong three of the due process test.

3. **A Reasonable Relation Exists Between the Purposes of the HSA and the Means Adopted**

The HSA also passes the last prong of the due process test: The HSA's preventative detention, house arrest, and search and seizure measures are reasonably related to the law's purpose. Subpart a) analyzes whether the HSA's preventative detention provisions are reasonably related to the purpose of stopping terrorism; Subpart b) examines the HSA's house arrest provisions; and Subpart c) looks at the HSA's search and seizure measures.

a. **Preventative Detention**

First, preventative detention of a terror suspect is not a prima facie unconstitutional deprivation of an individual's right to travel. The Philippine Constitution provides that "the right to travel [shall not] be impaired except in the interest of national security, public safety, or public health." Stopping a terrorist attack falls under this ambit. The Revised Penal Code, since its inception in 1930, has also authorized preventative detention. With increase in the severity of the crime and punishment, the Revised Penal Code has authorized increasing preventative detention times. As a terrorist act is a crime of immense severity, the history of preventative detention in Revised Penal Code shows a longstanding practice that supports the reasonableness of the HSA's three-day preventative detention.

b. **House Arrest**

Second, the HSA permits a court to confine a suspected terrorist to house arrest without access to electronic communications. It is widely

---

158 See PERERE, supra note 13, at 2.
160 See An Act Revising the Penal Code and Other Penal Laws, Act No. 3815, Art. 125 (1930), available at http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook2.htm (permitting preventive suspension for up to twelve hours for crimes punishable by light penalties, eighteen hours for crimes punishable by correctional penalties, and thirty-six hours for crimes punishable by afflictive or capital penalties).
161 Id.
known that electronic communications may be used to trigger the detonation of an explosive device. 164 In November 2007, four people, including two Philippine congressmen, died from a bomb packed with nails that was detonated from afar by a cell phone. 165 Therefore, limiting a suspected terrorist’s ability to detonate a blast seems reasonably related to stopping a suspected attack.

c. Search and Seizure

Sources of domestic and international law manifest the reasonableness of the relation between the HSA’s search and seizure authorizations and fighting terrorism. The HSA permits law enforcers who have court authorization to search and seize a suspected terrorist's financial assets. 166 Other sources of Philippine and international law that permit similar invasive measures illustrate that a limited and court authorized intrusion into a suspected terrorist’s financial matters is reasonably related to stopping a terrorist attack. 167 For example, the Philippine Anti-Money Laundering Act of 2001 (“AMLA”) allows government officials to examine and freeze bank deposits to prevent the crime of money laundering, a known source of financing for terrorist activities. 168 Also, the Association of Southeast Asian Nations (“ASEAN”) Regional Forum, which manages collective Southeast Asian regional anti-terrorism measures, called upon member countries 169 to adhere to its Statement on Measures Against Terrorist Financing. 170 This ASEAN dictate required member countries to search and seize terrorists’ financial assets as a means to effectively fight terrorism. 171 Additionally, the Financial Action Task Force, an inter-governmental organization, “recognized as the international standard setter for anti-money laundering (AML) efforts,” finds that money laundering is fundamentally linked to

---

164 See Blancaflor, supra note 162.
167 See Blancaflor, supra note 162.
168 Id.
170 H. E. Mr. HOR Namhong, Chairman, Ass’n of Southeast Asian Nations, Statement at Tenth Meeting of ASEAN Regional Forum (June 18, 2003), available at http://www.aseansec.org/14845.htm.
funding terrorists. Accordingly, it is reasonable that the HSA permits law enforcers, after a judge has weighed the intrusion against the suspect’s right of privacy and granted authorization, to identify the character of financial assets and to seize these assets if they would likely support terrorist activities.

The HSA also authorizes wiretaps. The Philippine Republic Act Number 4200, also known as the Anti-Wire Tapping Law ("AWTL"), supports the reasonableness of the HSA’s authorization for law enforcers to conduct wiretaps on suspected terrorists. Since 1965, the AWTL has permitted Philippine governmental authorities, when authorized by a court order, to wiretap a suspect in order to stop a crime “against national security.” The longevity of this practice illustrates its reasonable relation to stopping a crime against national security. Likewise, the HSA’s near identical authorization is reasonably related to stopping a terrorist attack—a crime against national security. Next, the HSA’s substantive police measures are analyzed against the Philippine Supreme Court’s interpretation of international law.

B. The Philippine Supreme Court Is Likely to Find the HSA’s Measures Lawful Under International Law

Prominent skeptical voices such as Amnesty International and the International Commission of Jurists ("ICJ") voiced concern that the HSA may violate the International Covenant on Civil Political Rights ("ICCPR"). The ICCPR, a multilateral treaty that the Philippines ratified

---

174 See Blancaflor, supra note 162.
in 1986,\textsuperscript{177} memorializes the protection of fundamental human rights.\textsuperscript{178} In a letter to the Philippine Senate, the Director of the ICJ’s Global Security and Rule of Law Programme posited that the HSA’s surveillance provisions may not contain enough safeguards to protect against violation of the ICCPR’s Article 17.\textsuperscript{179} Article 17 protects against arbitrary privacy intrusions by providing, “[n]one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.”\textsuperscript{180} Because Article II of the Philippine Constitution states the Philippines “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,”\textsuperscript{181} the Philippine Supreme Court may conduct an analysis of the HSA with regard to international law.\textsuperscript{182} Based on precedential Philippine case law related to the ICCPR, the Philippine Supreme Court is likely to find the HSA in good standing. This section first explains the legal construct behind analyzing Philippine Supreme Court case law to understand international law, then examines two precedential Philippine cases, and finds the HSA lawful.

The theory of international legal pluralism provides the construct to examine how the Philippine Supreme Court would most likely analyze the HSA against international law. A pluralist understanding of international law helps to explain the phenomenon that various supreme courts may interpret the same concept differently.\textsuperscript{183} A pluralistic view of international law recognizes that just as “the simplest legal regimes are constituted by a plurality of decision-making institutions,”\textsuperscript{184} the global stage is likewise comprised of various countries that interpret legal concepts differently. The pluralist viewpoint requires distinction between the law as applied in a sovereign land by the sovereign’s courts and a “single global law that

\begin{itemize}
\item \textsuperscript{177} The Philippines is a member of the ICCPR. See Universal Human Rights Index of United Nations Documents, Philippines, http://www.universalhumanrightsindex.org/hrsearch/search.do?accessType=country&regionCountry=country&orderBy=category&countries=128&lang=en (last visited Oct. 3, 2009).
\item \textsuperscript{179} See Staberock, supra note 176, § 5.
\item \textsuperscript{180} See International Covenant on Civil and Political Rights, supra note 178, art. 17.
\item \textsuperscript{181} CONST. (1987), Art. III § 2 (Phil.), available at http://www.chanrobles.com/philsupremelaw2.html.
\item \textsuperscript{182} CONST. (1987), Art. VIII § 5(2) (Phil.), available at http://www.chanrobles.com/philsupremelaw2.html.
\end{itemize}
'embraces the totality of a group of items.'” In light of this difference, this section analyzes the HSA with regard to the Philippine Supreme Court’s interpretation of the ICCPR.

Two Philippine Supreme Court cases suggest the Philippine Supreme Court would interpret the ICCPR to support a subordination of individual liberties for reasons of national security. In both cases, petitioners asked the Philippine Supreme Court to strike laws based on alleged transgression of international law. The first case, *Ferdinand E. Marcos v. Raul Manglapus*, involved a law that restricted personal travel. The Philippine Supreme Court held that while Article 12 of the ICCPR protects the “right to liberty of movement and freedom to choose his residence,” such rights may be restricted by laws that “are necessary to protect national security, public order, public health or morals . . .” or the separate rights and freedom of others. The second case, *Bayan v. Eduardo Ermita*, was a challenge to a statute that restricted individuals’ right to assemble. In *Ermita*, the Philippine Supreme Court held the right of peaceful assembly is both guaranteed and limited. Finding support in Article 19 of the ICCPR, which allows a nation state to deny assembly “on grounds of clear and present danger to public order, public safety, public convenience, public morals or public health,” the Philippine Supreme Court concluded that a law limiting the right to assemble for reason of national security was “not a violation of the right but a valid restriction of its exercise.” Both these cases demonstrate that the Philippine Supreme Court concluded the ICCPR permits the restriction of protected liberties to ensure the maintenance of national security and public order.

185 See Vanderlinden, supra note 183.
189 Id.
Manglapus and Ermita support the argument that a reasonable subordination of privacy under the HSA to prevent acts of terrorism is also justified by the need to protect national security. In Manglapus and in Ermita, the Philippine Supreme Court restricted individuals’ rights of liberty of movement and assembly,193 which are no less important than the right of privacy. However, in Articles 12 and 19, the ICCPR specifically provides that movement and assembly may be restricted for reasons of national security.194 Article 17, conversely, protects individuals’ privacy from “arbitrary or unlawful interference” from the government, but does not, like Articles 12 and 19, provide for the express exception of national security.195 The HSA nevertheless complies with Article 17 because the anti-terror law requires before-the-fact judicial authorization.196 The before-the-fact judicial authorization in the HSA forestalls arbitrary or unlawful interference, while facilitating protection of the Philippine national security. Therefore, Manglapus and Ermita illustrate that if the Philippine Supreme Court employs its previous analyses, it will interpret the HSA’s restriction on individual liberties as in conformance with the letter and spirit of the ICCPR. The following section examines policy considerations of the HSA.

V. THE HSA IS GOOD POLICY BECAUSE IT STRENGTHENS DEMOCRATIC IDEALS

Most national anti-terror laws have been part of a larger political effort to create a broad international response to fighting terrorism.197 In the wake of the September 11th attacks in the U.S., the U.N. Security Council passed Resolution 1373, which required criminalization of terrorist acts and terrorist financing.198 Most countries enacted new laws or modified current ones to largely permit political branches of government to determine the

194 See International Covenant on Civil and Political Rights, supra note 178, arts. 12, 19.
195 Id. art. 17.
proper balance between individual liberty and collective security. The HSA did not follow this trend. Rather, the HSA innovatively required Philippine courts to supervise and to ensure lawful practices by agents of the political branches of government.

In drafting the HSA, the Philippine lawmakers abstained from defining terrorism and instead listed which acts may be punishable under certain circumstances as acts of terrorism. By defining a punishable terrorist act as requiring the existence of “widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand,” the HSA granted the Philippine judiciary sole discretion to decide which acts are punishable under terrorist liability. Assuming that Philippine judges are impartial and insulated from political bias, the HSA’s allocation of adjudicative decision-making to the judiciary and away from the political branches, in theory, adheres to the doctrine of the separation of powers. This structure strengthens the compartmentalization of power within the Philippine government and provides for a legal check on executive abuse of power.

The HSA also serves democratic ideals through the reviewability of the judicial process. In 2008, the Philippine Supreme Court ruled on the supremacy of the writs of amparo and habeas data. The Court declared that the writ of amparo is “a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act . . . of a public official . . . [regarding] extralegal killings and enforced disappearances.” The writ of habeas data also applies to all aggrieved parties “whose right to privacy in life, liberty or security is violated or threatened by an unlawful act . . . of a public official . . . engaged in the gathering, collecting or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party.” Unlike the secrecy surrounding the pre-HSA extrajudicial killings, the HSA makes

---


200 See PIMENTEL, supra note 49, at 58.


the prosecution of terrorists a transparent matter that proceeds under the supervision of the Philippine judiciary. Also, actions executed under the HSA do not trump the writs of amparo or habeas data, so individual liberties may always be aggrieved through judicial recourse. This opportunity for review strengthens the democratic ideal of “a government of the people, by the people.”

VI. CONCLUSION

Challenged with enduring struggles for secession and growing terrorist networks, the Philippine Congress drafted the HSA to distinguish between punishing terrorists and punishing secessionists. To punish a person under the HSA, a court must decide precisely when the actus reus accompanied the requisite attendant circumstances and whether there existed the required specific intent. The HSA accomplishes its purpose of safeguarding the Philippine people from terrorist acts by expressly enumerating which actions are punishable, while allowing the judiciary to be the impartial bearer of the sword.

The HSA is beneficial for Philippine democracy because it pivoted the country’s anti-terrorism policy toward the protection of human rights. The Philippine legislature crafted the HSA in part to curb governmental abuse: thirty of the HSA’s sections expressly punish governmental overreaching. Philippine Senator Pimentel reflected on the HSA’s dual purpose in his note that when read separately, sections of the HSA “may cause an intense societal anxiety,” but when read as a whole, “the readers may well find that there are remedies embedded in the Act that uphold the people’s human rights and civil liberties and afford them some defense from an oppressive government.” Thus, the HSA strengthens Philippine democracy because it facilitates the curbing of terrorism through the judiciary’s ensuring that the law is applied *suaviter in modo, fortiter in re*—gently in manner, strongly in deed.

---


206 See PIMENTEL, supra note 49, at x.