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Constitutionality of joint explorations in WPS

To avoid problems with China in extracting the natural resources of the Philippines in the West Philippine Sea, Secretary Harry Roque Jr. proposed "joint exploration agreements" with Chinese-owned companies, as had been done by Vietnam and Brunei, saying these agreements have been upheld in La Bugal-B'laan vs Ramos (Dec. 1, 2004).

Control by the state. *Au contraire*, Acting Chief Justice (ACJ) Antonio T. Carpio opined in an interview that La Bugal referred only to land extractions, not to those in water. He added that any deal with Chinese companies involving our country's exclusive economic zones, like the Recto Bank, would be unconstitutional unless these companies recognize Philippine sovereignty.

To be sure, the 246-page La Bugal, passed 10-4 with one abstention, held that all natural resources are owned by the state and their "exploration, development and utilization" (EDU) may be undertaken by the state itself or through 1) coproduction, 2) joint venture, or 3) production-sharing agreements with corporations owned at least 60 percent by Filipino citizens.

Additionally, the President may enter into financial and technical assistance agreements (FTAAs) with foreign-owned companies for the "large-scale" EDU of our "minerals, petroleum and other mineral oils." Within 30 days, he "shall notify Congress" of every such contract.

FTAAs, the Court said, must always be subject to the "full control" of the state. "Full control" is similar to "that exercised by the board of directors of a private corporation; the performance of managerial, operational, financial, marketing and other functions may be delegated to subordinate officials or

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given to contractual entities, but the board retains full residual control of the business."

Though La Bugal involved minerals located on land, nowhere can we find a statement limiting the ruling only to terrestrial minerals. Neither did it say that the President can enter into "joint exploration agreements" with foreign entities.

But, as the *ponente* of La Bugal, I think ACJ Carpio is right in stressing that "full control" must always remain with the Philippines. Nonetheless, Roque would also be correct if he can show that his proposed "joint exploration agreements" really refer to and will be treated as FTAAs. Then, they could be covered by La Bugal and the President (and not anyone else) can enter into FTAAs even with 100-percent Chinese companies to explore, develop and utilize the minerals and petroleum in the WPS. Understood in this context, Carpio's and Roque's positions are not irreconcilable.

Law scholars. ACJ Carpio will be the guest of honor and speaker at Ateneo de Manila in Rockwell, Makati, on March 23

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when the Foundation for Liberty and Prosperity and the Tan Yan Kee Foundation Inc. (TYKF), with the cooperation of the Philippine Association of Law Schools (PALS) award 21 law scholarships to:

Third year—Leo Francis Abot (Ateneo de Manila), John Anthony Almerino (U of San Carlos), Arvin Paolo Cortez (Ateneo de Manila), Mikael Gabrielle Ilao (U of Cordilleras), Kenneth Glenn Manuel (UST), King Anthony Perez (U of Cebu), Josiah David Quising (FEU), Jun Dexter Rojas (Polytechnic U), Julienne Therese Salvacion (San Beda Manila) and Ma. Vida Malaya Villarico (Polytechnic U).

Fourth year—Karina Mae Badua (UST), Sean James Borja (Ateneo de Manila), Kaycelle Anne Castillo (FEU), Ervin Fredrick Dy (UP), Rexlyn Anne Evora (Polytechnic U), Katrina Monica Gaw (Ateneo de Manila), Summerson Macasarte (St. Thomas More), Nigel Carmelo Reago (De La Salle U), Jose Angelo Tiglao (De La Salle U), Althea Vergara (U of San Carlos) and Vanessa Gloria Vergara (Ateneo de Manila).

P200,000 scholarships. Each of them will get a scholarship grant of P200,000 divided into P80,000 for monthly stipends, P20,000 for books and a maximum of P100,000 for tuition, plus a certificate of recognition.

They were selected by a board of judges composed of ACJ Carpio, chair, former education secretary Edilberto C. de Jesus, PALS president Sedfrey M. Candelaria, TYKF executive Elizabeth T. Alba, and Asian Development Bank consultant Joel Emerson J. Gregorio.

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