

# 2017 COLLOQUIUM ON INTERNATIONAL LAW ISSUES\*

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## ABSTRACT

THE 2017 COLLOQUIUM on International Law Issues was convened by the Office of Treaties and Legal Affairs of the Department of Foreign Affairs, in cooperation with the University of the Philippines Law Center - Institute of International Legal Studies and the Foreign Service Institute. It focused on two key areas in international law, which present opportunities and challenges for the advancement of Philippine foreign policy priorities, namely international legal and judicial cooperation, and trade and investment facilitation. The initiative was undertaken as an effort to proactively engage the law academe and legal practitioners, and contribute to the international law agenda of Philippine foreign policy by identifying and addressing international law issues that affect Philippine entities in various political, social and economic transactions.

Conducted on December 4, 2017 at the Hotel Jen in Pasay City, the event brought together 120 international law experts and practitioners from the public and private sectors, and the academe.

The following are the papers presented at the Colloquium:

- I. *International Legal and Judicial Cooperation (Extradition, Mutual Legal Assistance and Transfer of Sentenced Persons Agreements)* by Chief State Counsel Ricardo V. Paras III, Department of Justice (pp. 150-157 in this Yearbook).
- II. *International Judicial Cooperation through The Hague Conference on Private International Law (HCCH) Conventions* by Professor Elizabeth Aguilin-Pangalangan, U.P. College of Law (pp. 157-167).
- III. *Trade and Investment Facilitation: Ratification of Trade Treaties* by Professor Rommel J. Casis, U.P. Law Center (pp. 177-190).
- IV. *Invisible Peoples in International Law: Prolegomena to Discern the Future of International Law* by the Honorable Marvic M.V.F. Leonen, Associate Justice of the Supreme Court of the Philippines (pp. 212-229).

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\* Conducted on 4 December 2017, 8:30 am-1:30 pm, Hotel Jen Manila, Roxas Boulevard, Pasay City.

## INTRODUCTION

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**ATTY. JOHAIRA WAHAB-MANANTAN:** Good Morning. My name is Johaira Wahab-Manantan from the Department of Foreign Affairs – Office of Treaties and Legal Affairs. Today’s Colloquium is the first of its kind, hosted by the Department of Foreign Affairs, in partnership with the Foreign Service Institute and the U.P. Law Center’s Institute of International Legal Studies. This Colloquium is being held under the auspices of the Foreign Service Institute’s Mabini Dialogue Series.

Before we open our program, we would like to acknowledge some of our guests who are present here today: Supreme Court Justice (ret.) Adolfo Azcuna, Chancellor of the Philippine Judicial Academy; Undersecretary Manuel Antonio Teehankee, Director-General Claro S. Cristobal, Foreign Service Institute; Assistant Secretary J. Eduardo Malaya of the Office of Treaties and Legal Affairs of the DFA; Chief State Counsel Ricardo V. Paras III of the Department of Justice; Commissioner Ernesto L. Albano, Tariff Commission; Commissioner Allan B. Gepty of the Tariff Commission; former Dean of the U.P. College of Law and former Undersecretary of the Department of Foreign Affairs for Migrant Workers Affairs, Dean Merlin Magallona; Dean Sedfrey Candelaria of the Ateneo Law School; Dean Rodel A. Taton of the San Sebastian College Graduate School of Law; Dean John Paolo A. Villasor of the University of Negros Occidental – Recoletos; and Atty. Andre Palacios, Chair of the Integrated Bar of the Philippines’s Committee on International Law and International Affairs.

To formally open our program, we would like to invite Ambassador Claro S. Cristobal of the Foreign Service Institute to give the welcome remarks.

## WELCOME REMARKS

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**FSI DIRECTOR-GENERAL CLARO S. CRISTOBAL:** Honorable Justice Adolfo Azcuna, Honorable Ricardo V. Paras, Chief State Counsel, Dean Sedfrey Candelaria, Dean Rodel Taton, friends, colleagues, ladies and gentlemen.

It is with great pleasure that I welcome you to the 2017 Colloquium on International Law Issues. I would also like to take this opportunity to thank the Office of Treaties and Legal Affairs of DFA and the University of the Philippines’

Institute of International Legal Studies for the opportunity to co-organize this timely event.

International Law has always played an important role in ensuring the cordial and harmonious relationship between and among states. International law is duly regarded as one of the key instruments in international relations that guide the community of nations to the path of harmony, peace and security.

This Colloquium will underscore this facet of international law and highlight the important relationship between international law and Philippine foreign policy. With wide-ranging topics to be discussed from international, legal, and judicial cooperation to international trade and investment, this Colloquium will be of valuable help to the Department of Foreign Affairs and other relevant government institutions in determining issues and areas of international law that affect the Philippines' economic, social and political undertakings. This meeting of brilliant legal minds is also expected to identify priorities under international law and legal research that are essential in shaping the international law agenda of Philippine foreign policy.

With its distinguished speakers and panelists, this Colloquium, I am certain, will produce outcomes that provide policy directions to the DFA, particularly the Office of Treaties and Legal Affairs, which is the DFA's primary adviser on international law, as well as other offices in the department, particularly the UN and International Organizations Office.

Therefore, I look forward to the fruitful and dynamic discussions in today's Colloquium. Once again, welcome to the first Colloquium on International Law Issues.

Thank you.

**ATTY. WAHAB-MANANTAN:** Thank you Ambassador Cristobal. We would now like to call on Assistant Secretary J. Eduardo Malaya to deliver his remarks.

## ADDRESS

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**ASSISTANT SECRETARY J. EDUARDO MALAYA:** *Maraming salamat, Johaira.*

Justice Adolfo Azcuna, Chief State Counsel Ricardo Paras Undersecretary Dondi Teehankee, distinguished guests, fellow members of the Bar, friends, ladies and gentlemen.

On behalf of Secretary of Foreign Affairs Alan Peter Cayetano, I wish to welcome you all to this 2017 Colloquium on International Law Issues. Today, we have assembled a distinguished array of law practitioners and other friends of the law, from both public and private sectors, to jumpstart our initiative to foster a sustained partnership in helping shape a Philippine agenda in international law.

The idea for convening today's colloquium was first conceptualized by the DFA Office of Treaties and Legal Affairs (DFA-OTLA). You may ask, why the DFA Office of Legal Affairs? What is the significance of this office to international law? Like its counterparts in other government departments and agencies, as well as in large corporations, it serves as the in-house counsel of the Department. In the case of DFA-OTLA, it provides legal advice and assistance to the Secretary of Foreign Affairs on matters concerning the interpretation and application of Philippine laws and regulations, as well as, treaties, conventions and other international agreements and assist in the negotiations of treaties and international agreements. It also facilitates the service of legal documents and taking of depositions, and together with the Department of Justice, processes requests for extradition and mutual legal assistance from other countries.

As can be noted above, DFA-OTLA's linkage to international law is direct and pronounced inasmuch the Office is consulted and often involved in the negotiations of international agreements, and reviews and facilitates the ratification of agreements concluded by the DFA and other government agencies. In this sense, the Office services not only the DFA but also the entire Philippine bureaucracy in the negotiation and conclusion of treaties. Its role in the treaty-making process is pre-eminent as underscored by the fact that to the DFA-OTLA is reposed the prerogative in making a determination whether an agreement is an executive agreement or a treaty. As we can recall from Political Law, an executive agreement requires the ratification by the President in order to be valid and effective; while a treaty requires both presidential ratification and concurrence by the Senate. Reflecting on his experience as legal adviser in the Croatian foreign

ministry, Nick Stanco observed that in connection with the conclusion of agreements and their ratification, he and his service must, and I quote, “take care not only of the conformity of a new treaty with the general rules of international law, particularly *jus cogens*, but also of the legal, technical correctness and necessary precision of the text, clear and non-ambiguous formulation, appropriate final and transitory provisions, and the like.”

The most important duty of the legal adviser, obviously, is to advise the Secretary of Foreign Affairs, other agencies and often the Office of the President and even Congress, of the existing international law with respect to a particular issue, problem or situation. The purpose is to give the proper legal framework in making appropriate foreign policy decisions so that the country’s policy does not come in conflict with international law and the broad interest of the international community. It is significant to note that even countries and their leaders who bluntly break fundamental rules and principles of international law almost invariably make a considerable effort to wrap their acts in a legally presentable or at least justifiable form.

The finest tradition of the foreign ministry lawyer is perhaps described by the scholar-practitioner Harold Koh, who said that, and I quote, “He must shift back and forth constantly between four rich and varied roles: that of counselor, conscience, defender of the national interest, and spokesperson for international law.” In a similar manner, the DFA-OTLA in 2011 for instance, led the way in the country’s accession to both the Convention for the Pacific Settlement of International Disputes which established the Permanent Court of Arbitration, and The Hague Convention on Private International Law, as well as helped sustain the interest to accede to the Rome Statute of the International Criminal Court, to which the Philippines became a State party later in that same year. All these three major developments in international law for the country took place in 2011. With respect to membership in the Permanent Court of Arbitration (PCA), one would recall that a few years ago, in 2014, we filed an arbitration case over the West Philippine Sea dispute, and an arbitral tribunal under the auspices of the PCA heard the case. A curious question could have been, “If the Philippines was not a State-Party to the Convention for the Pacific Settlement of International Disputes, would it have been possible for the case to be heard by an arbitral tribunal operating under the auspices of the PCA?” Well, we don’t have to go deeper into this issue because, lucky enough, a few years earlier, our country became a State-Party to the Convention.

To fulfill more fully its mandate, DFA-OTLA has increasingly taken a proactive role in helping shape foreign policy options through strengthening capabilities in treaty law and practice on the side of the government, and deepening appreciation of international law as a tool and guide for Philippine foreign policy. To this end, OTLA conducted last September, a Seminar on Philippine Treaty Law and Practice for Government Agencies and circulated the *Philippine Treaty Handbook* for the reference of DFA and other government agencies. And today, we are having this Colloquium on International Law.

There are two main objectives that inspired the conceptualization of this Colloquium. The first is to proactively shape a Philippine agenda in international law by identifying international law issues which affect Philippine entities in various political, social, and economic transactions. And second, to bring together Filipino international law experts and practitioners from the government sector, academe and law firms, as a starting point for a domestic international law interest group in the Philippines that the DFA-OTLA and similar entities can engage with. Hopefully, by tapping expertise in the academe and the varied and cumulative experiences of practitioners in both the public and private sector, OTLA can identify pragmatic legal issues confronted by Philippine entities and industries which may be addressed through international law advocacies and effectively pursued through diplomatic initiatives, initially focusing on the subjects that we will be discussing this morning, enhancing international legal cooperation, and trade and investment facilitation.

We are pleased to announce that today's proceedings are expected to be published by the U.P. Law Center in the soon to be revived *Philippine Yearbook of International Law*, which last saw print in 1989, the details of which will be presented later by Atty. Celeste Mallari of the U.P. Law Center's Institute of International Law Studies (IILS). And thanks indeed to the IILS director, Prof. Rommel Casis, for his consent to the revival of the *Philippine Yearbook of International Law*.

Ladies and gentlemen, today we reaffirm our conviction on the reality of International Law as both a product and influencer of international political dynamics. We recognize the role of international law as a means of strengthening international peace and security, and promoting friendly relations and cooperation among states. OTLA would like to take this opportunity, as a concluding comment to call your attention to certain upcoming international legal conferences in 2018 wherein the DFA is involved with and which you may find

practice or areas of expertise. We have included in your kit a listing of major activities and conferences that will take place next year, notably those under the auspices of The Hague Conference on Private International Law and the UNCITRAL. If anyone is interested to join and help us out in these conferences, you are welcome. Of course, we are hoping that you can find your way to those conferences. But certainly, we would like to have an inclusive process as much as possible, which is why we are having this Colloquium.

I would like to conclude these remarks by reiterating our thanks to all of you for joining us this morning and allowing me to share these thoughts. As an advocate and student of law, I have much to learn and I look forward to the sessions ahead.

**ATTY. WAHAB-MANANTAN:** Thank you Assistant Secretary Malaya.

Proceeding now to the heart of our program, and to get us started with our first session on International Legal and Judicial Cooperation, we are honored to introduce our first main presenter, Chief State Counsel Ricardo Paras III from the Department of Justice.

## **SESSION I: INTERNATIONAL LEGAL AND JUDICIAL COOPERATION**

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**ATTY. WAHAB-MANANTAN:** Chief State Counsel Paras has been in government service for thirty-two years. He started as Trial Attorney and Solicitor at the Office of the Solicitor-General, before moving to the Department of Justice (DOJ) as State Counsel in 1987. He was appointed as Assistant Secretary in 1988 and served as such until 2004. He served as Undersecretary for six months, before he was appointed as Chief State Counsel in 2004.

He received his law degree from the Ateneo Law School in 1982 and taught Public International Law at the Lyceum College of Law for four years. And he belongs to a family of lawyers and jurists that we all know. His father was the late Atty. Ricardo Paras Jr., while his grandfather was the late Chief Justice of the Supreme Court of the Philippines, Ricardo M. Paras. His late uncle, Supreme