Fourth, we should adopt our own law on mutual legal assistance to widen the scope of request for investigations and aid prosecution in cases.

And, finally, on TSPA, we have always encountered deadlocks in negotiations on the authority to grant pardon or executive clemency as we have to abide by the constitutional provision, which vests solely in the President the exercise of such power. To make our stand more palatable in the negotiating table, I suggest that we study a counter proposal of allowing the other State to grant pardon or executive clemency, provided that it be concurred in by the authority/ authorities of the Philippines. If the result of the study is to consider such a counter proposal, I would propose to the Office of the President such a course of action.

Well, this ends my presentation and thank you very much.

Atty. Wahab-Manantan: Thank you very much, Sir for that insightful presentation.

INTERNATIONAL JUDICIAL COOPERATION THROUGH THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH) CONVENTIONS

PROF. ELIZABETH AGUILING-PANGALANGAN

Our second presenter is well-known to many of us as our professor in Persons and Family Relations, Private International Law, Contracts, Agency, Partnership, Children's Rights and Legal Ethics at the U.P. College of Law. Currently, she is the Director of the U.P. Institute of Human Rights and she is the author several reference textbooks, namely: *Marriage and Unmarried Cohabitations: The Rights of Husbands, Wives and Lovers* and *Not Bone of My Bone But Still My Own: A Treatise on the Philippine Law on Adoption*, and the co-author of the *Conflict of Laws: Cases, Materials and Comments*.

Aside from being a prolific member of the academe, she has also been designated as the Philippine expert to the Experts' Group on Parentage/ Surrogacy Project for The Hague Conference on Private International Law and served as a Philippine delegate to the Special Commission on the Recognition and Enforcement of Foreign Judgments in 2016. She is also a member of the Philippine

delegation to the 56th Session of the Commission on the Status of Women in the United Nations in 2015.

Ladies and gentlemen, let us welcome Professor Elizabeth Aguiling-Pangalangan.

PROF. ELIZABETH AGUILING-PANGALANGAN: Ambassador Eduardo Malaya, Ambassador Claro Cristobal, Chief State Counsel Ricardo Paras, Retired Justice Adolf Azcuna, ladies and gentlemen, good morning.

Before I go to the meat of my topic, allow me to provide a brief background on private international law in order to establish the necessity of legal and judicial cooperation.

There is diversity in the legal systems of 195 sovereign states including the most recently independent nations, such as Kosovo and South Sudan. This number does not count the various territories like Hong Kong, Taiwan, Puerto Rico, Guam and Greenland, which though not sovereign states have their own laws and legal procedures.

Consider further that ten percent (10%) of the Philippine population are working and residing abroad. Data also show that four thousand five hundred (4,500) Filipinos travel daily, 33.6 million Filipinos are internet users, and 103 million are mobile phone subscribers. Given that international travel and communications are now relatively easy and within reach of many Filipinos, interactions among people across state lines are common. These situations have given rise to people entering into commercial and civil transactions, including that of marriage, and have thus increased the number of cases with a foreign element.

This is exactly what private international law is. Also called conflict of laws, it refers to that part of law where a foreign element, by way of a fact, event or transaction, is closely connected to more than one state or legal system. Conflict of laws gives rise to three separate but interrelated issues: jurisdiction, choice of law, and recognition and enforcement of a foreign judgment.

Jurisdiction and Choice of Law

Jurisdiction refers to the power of the court to try a case, issue a judgment and execute it in accordance with law. When the courts of a state have

adjudicatory jurisdiction and render the original decision by applying the law of the various relevant states, courts may either use the traditional approach to choice of law, which is anchored on the principle that choice of law rules that are simple and capable of easy administration will promote uniformity of results and enhance predictability. On the other hand, courts may use modern approaches which reject the rigidity of territorially-focused rules and instead look at policies or factual contacts between the state and each case and evaluate the contacts in relation to their relative importance. In deciding to hear the case and determining the governing law of the case these courts exercise direct jurisdiction as the rendering state.

Recognition and enforcement of a foreign judgment

The third issue in Conflict of Laws, and that which is most significant for us in this Colloquium, is the recognition and enforcement of a foreign judgment. A foreign judgment refers to all decisions rendered outside the forum and encompasses the judgments, decrees, and orders of courts of foreign countries whose recognition and enforcement are sought in another state. That other state, called the requested court, will not hear the case, much less issue a decree unless it concludes that the court that rendered the original decision was a court of competent jurisdiction.

The general rule is that Philippine courts do not take judicial notice of foreign judgments and laws. Laws have effect only in the country that enacted or issued them. If we look, for instance, at a divorce decree issued in one State which seeks recognition and enforcement in the Philippines, it will have to go through several steps, rather difficult and laborious.

The first step is to have the original divorce decree legalized at the State Chancery of the issuing court. Step 2 calls for submission of the legalized divorce decree together with the English translation if the original was not written in English to the Philippine Embassy or Philippine Consulate General for authentication. In step 3, the authenticated divorce decree document must be submitted to the authentication division of the Department of Foreign Affairs (DFA).

Step 4 requires the submission of this authenticated divorce decree to the Regional Trial Court (RTC) for civil action and judicial recognition to prove its validity. Here, we follow the requirements under Section 24, Rule 132 of the Rules

of Court with the submission of an official publication thereof, or a copy attested by the officer having the legal custody of the record, or by his deputy. If the record is not kept within the Philippines, there must be a certificate from the head of the embassy or consular office authenticating the certification with his/her office seal.

Under Step 5, the RTC judgment is submitted for registration at the local civil registry office of the city or municipality where said RTC functions and the affected civil registry documents are affected. In Step 6, after registration of the RTC judgment at the local or city civil register office, the latter will annotate the civil registry documents and several other certifications are required in annotating.

After annotation, the civil registry documents together with the above requirements are submitted to the Office of the Civil Registrar General in Manila and the National Statistics Office, this comprises Step 7.

Thus, we see that a foreign judgment to be recognized and enforced in the Philippines, must go through a rather tenuous process. Not only will it take time, but also money, since one has to secure the assistance of a lawyer in pursuing this legal route. We can imagine then that if these states impose roughly similar procedural steps in each of their jurisdictions, then international judicial cooperation is crucial to ease the legal burdens on the public.

International judicial cooperation is achieved through multilateral agreements and conventions that are initiated by international organizations such as the United Nations and The Hague Conference on Private International Law. A government agency in each of the contracting States is identified as the central authority whose main task is to coordinate with other States in terms of exchanging information and expediting administrative and judicial procedures that attend cross-border case in civil, commercial, or criminal matters.

International judicial cooperation is also facilitated through the creation of a judicial network. For instance, The Hague Conference has created the International Hague Network of Judges, with over a hundred judges coming from 72 member States. This network of judges acts as a channel of communication and liaison with their national central authorities, other judges within their jurisdiction, and judges from other contracting States. They facilitate communication and cooperation between judges at the international level, and assist and ensure the effective operation of various Hague Conventions, with the ultimate goal of expediting access to justice.

My talk this morning centers on the Conventions that we have signed or are before our government agencies for possible signing in order to facilitate international judicial cooperation.

Convention Abolishing the Requirement of Legalization for Foreign Public Documents

The Hague Apostille Convention aims to simplify the authentication of public documents with respect to the signature, the capacity in which the person signing the document has acted and where appropriate, the identity of the seal or stamp which it bears. As stated in its Preamble, its purpose is "to abolish the requirement of diplomatic or consular legalization of foreign public document."

Earlier I explained that authentication by Philippine consular officials is one of the immediate steps that must be taken for recognition of foreign laws and judgments that include those emanating from an authority of the State, administrative documents, notarial acts and official certificates signed by persons in their private capacity. In the Convention, the only formality required is a certificate that the public document was issued by the competent authority of the State from which the document emanates. Contracting States designate which authorities will be competent to issue such certificate.

Acceding to the Convention will require amending Rule 132, Section 19 of the Rules of Court. First, the definition or the enumeration of public documents in the Rules vary from those in the Convention. Second, there is likewise a difference in the authentication procedure under the Rules of Court and those under the Convention. I underscore that the clear advantage of acceding to the Apostille Convention is the simplification of the process of attestation, since the Convention requires only the certification issued by a competent authority.

This Convention is awaiting the signature of the President and we hope to hear good news soon.

Asec. Malaya: Very soon.

Prof. Pangalangan: Ambassador Malaya confirms this. I will next discuss the Evidence Convention.

The Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters

The main feature of Evidence Convention is that, it allows for the taking of evidence for civil or commercial purposes by a judicial authority of a Contracting State via a request from a competent authority of another Contracting State.

The letter of request is similar to the Letters rogatory that are addressed to the judicial authority of a foreign state with respect to taking of depositions in that foreign state. The relevant provisions on Letters rogatory are found in Sections 11 and 12, Rule 23 of the Philippine Rules of Court. While a Letter rogatory is limited to testimonial evidence, the Letter of Request under the Convention covers a broader scope as it also includes the taking of documentary evidence.

For document discovery, the Convention requires that a Letter of Request is issued by the court where the action is pending. As I have mentioned earlier, the identification by each State of a competent authority or central authority is one of the first things that we see in all Hague Conventions. The central authority is important here in that the Letter of Request is transmitted to the Central Authority of the jurisdiction where the discovery is located and it reviews the letters of request to determine compliance with the requirements of the Convention. The Central Authority is then responsible for sending the request to the appropriate judicial body for a response.

The Convention allows parties the freedom to define the procedures for document discovery and dispositions and enter into an express agreement on these. In the absence of such, the Convention standardizes the discovery procedures which typically differ greatly between nations that either follow civil or common law. This is of importance given that as a general rule, the taking of evidence across borders for a Philippine court proceeding is governed by Philippine procedural rules as well as rules in the state where evidence is to be taken.

If both countries are contracting states which have accepted each other's accession to the Convention, then the procedure for evidence taking overseas is simplified. However, the task of checking whether the documents comply with the Convention will be an additional responsibility our courts will have to assume.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

The Hague Service Convention focuses on the service of judicial and extrajudicial documents abroad in civil or commercial matters. It requires the designation of a Central Authority that will undertake to receive requests for service coming from other Contracting States. The Central Authority of State A shall serve the document by a method prescribed by its internal law or by a particular method requested by the applicant. Upon receiving the request, the Central Authority in State B arranges for service, usually through a court process, and then sends a certificate of service to the judicial officer from whom the request was received.

As Philippine law states, service of documents overseas must be by order of the Court directed to the Department of Foreign Affairs through its Office of Legal Affairs. It may be effected through our Consular Office in the respective country where the documents shall be served.

The main advantages of The Hague Service Convention over letters rogatory earlier discussed is that it entails a shorter turn around period and uses standardized forms, specifically the request for service, a summary of the proceedings and certificate of service- all of which are recognized in other member states. Finally, it is less financially onerous to the litigants because service can be done by a local lawyer and without the need for counsel from a foreign attorney on foreign service procedures.

The advantage to acceding to this Convention is that it will introduce a standardized and more efficient method of serving documents among states.

According to my research, the documents have already been prepared for Philippine accession to the Convention. So again, this is something exciting, Ambassador Malaya. Moreover, the Supreme Court has expressed willingness to be the Central Authority. There are still budgetary concerns pertaining to its implementation that have to be ironed out, but we are almost there.

Convention on the Civil Aspects of International Child Abduction

In April 2016, the Philippines acceded to the Child Abduction Convention thus taking our country out of the list of nine (9) remaining member countries that

had not signed, acceded or ratified the Convention.Among the Asia Pacific Hague Conference members, the Philippines joined New Zealand, Sri Lanka, and later Singapore, in acceding to the Convention, while only Australia, Hong Kong and Macao have ratified it. Thailand and Singapore, both non-members of the Hague Conference, have acceded to the Convention.

The goal of the Convention is to secure the prompt return of children wrongfully removed or retained in any Contracting State and to ensure that rights of custody are respected. These terms are defined in Article 5 of the Convention, as follows:

> Article 5. For the purposes of this Convention –
>
> a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
>
> b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

The role of judicial authorities is highlighted in several Articles, among them Article 11, the judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children. Article 12, where a child has been wrongfully removed or retained, and at the date of the commencement of the proceeding before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith. Article 13 of the judicial or administrative authority may refuse to order the return of the child if it finds certain objectionable reasons. Under Article 18, the provisions of this chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

The role of the courts is central in The Hague Child Abduction Convention. It provides for a more expeditious means of returning a child by means of its standardized procedures. At present, Philippine domestic law provides mainly for the parent who was wrongfully deprived of custody or visitation rights to file a petition for the *Writ of Habeas Corpus*. The Convention however, gives the left-behind parent an additional remedy in order to recover his/her child.

Accession to the Convention enabled the Philippines to comply with its state obligations under the Convention on the Rights of the Child (CRC), one of which is the duty of state parties to "take measures to combat illicit transfer and non-return of children abroad[.] found in Article 11 of the CRC. Furthermore, Article 35 of the CRC mandates state parties to "take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."

Convention on the International Recovery of Child Support and other Forms of Family Maintenance

Another significant Convention which the Philippines should examine closely is the Child Support Convention. The main feature of this Convention is the expedited proceedings with respect to ensuring recovery of child support and other forms of family maintenance. The role of the judiciary under this Convention is mainly with respect to recognition and enforcement of 'maintenance decisions' of other Contracting States.

The first obligation of the Contracting State is to establish a Central Authority which shall process the applications and requests for enforcement of judicial and/or administrative decisions. The Convention stipulates for an additional and expeditious remedy which will provide redress to the aggrieved party.

It shall be noted that the Philippines has signed the UN 1956 Convention on the Recovery Abroad of Maintenance where the Office of the Solicitor-General is the identified transmitting and receiving agency. However, The Hague Convention is more current. For instance, the Convention provides that the only allowable reason for not recognizing a foreign maintenance order is that such violates the public policy of the state whose recognition is being sought. The other usual grounds for refusal to recognize a foreign judgment such as the absence of reciprocity are not allowed. So the only ground for the Philippines not to recognize a foreign judgment compelling a Filipino husband who is living in the Philippines to pay for support of his child residing in another State is when recognizing such foreign judgment will violate Philippine public policy. This is an unlikely result considering the strongly-held policy of our country to protect the best interest of children.

Convention on Choice of Court Agreements

The *Choice of Court Convention* aims to advance international trade and investment by enabling parties in commercial contracts and international litigation to incorporate forum selection clauses and minimize, if not eradicate, obstacles in the subsequent recognition and enforcement of a judgment given by a court designated in a choice of court agreement.

The Choice of Court Agreement may identify either the courts of a Contracting State in general, or to one or more specific courts in the Contracting State. The Choice of Court Agreement is regarded as exclusive, even absent specificity of which the Court in the Contracting State will hear the proceedings and even in the absence of an express exclusion from the jurisdiction of courts of other states.

Recall that at the start of my talk I said that each court decides for itself whether it can and will acquire jurisdiction. However, consistent with the *lex loci intentionis* as the governing law for contracts, the parties are allowed to identify a particular court where the case will be heard should there be any dispute arising from contract. The Choice of Court Convention likewise gives the parties the power to clothe said court with exclusive jurisdiction over the case. Hence, once there is an agreement, other courts which by their own rules may exercise jurisdiction, will not.

The Rules of Court allow the parties to agree on an exclusive venue. However, our courts have consistently interpreted this choice of court stipulation as merely an agreement on an additional forum; not as limiting venue to the specified place. Signing the Convention means that the Philippines must abide by the three (3) basic rules which will give effect to the Choice of Court agreements: one, the chosen court must in principle hear the case. It cannot refuse to hear it and refer it to another court. Two, any court not chosen must, in principle, decline to hear the case. And three, any judgment rendered by the chosen court must be recognized and enforced in other Contracting States, except for specific grounds for refusal.

The chief advantage of accession to the Convention is the uniform procedure across contracting States. Review of the merits of the judgment irrespective of whether they relate to questions of fact or law is prohibited by the

Convention. This differs from extant Philippine law that allows some Courts to review questions of law.

Today, while it is claimed that several countries are interested in signing the Convention, only few have actually done so. The Hague Convention entered into force on 1 October 2016 as between all EU member states (except Denmark), Mexico and Singapore. Among these states, not all have enacted domestic measures to implement the Convention.

Thus, if what we expect is across-the-board recognition by other states of our choice of forum agreement, then there are very few of these, as of yet. But whenever I raise this argument before the Permanent Bureau of the HCCH, the response I get is: "Professor, if that is the logic, then nobody will sign, because everyone says that very few have signed." Thus, I encourage our DFA to examine the advantages and disadvantages of acceding to the Choice of Court Convention.

Conclusion

In sum, although some changes both in legislation and procedural rules will be indispensable, the Philippines' accession to these various Hague Conventions will be advantageous to us.

The chief idea behind these Conventions is that despite the different legal systems of The Hague Conference member states, a judgment rendered in one will be recognized in another member state. This will eliminate the necessity of filing a case anew, a practice that is time-consuming and expensive.

A basic principle in the rule of law is access to justice. Signing these Conventions will facilitate cooperation among states and empower people to have their voices heard, exercise their rights and overcome the systemic legal barriers faced by many Filipinos.

Thank you very much.

ATTY. WAHAB-MANANTAN: Thank you Prof. Pangalangan.

Our next speaker was appointed Associate Justice of the Supreme Court by President Gloria Macapagal-Arroyo in 2002. He retired from the Supreme Court in 2009 and was subsequently appointed as Chancellor of the Philippine Judicial

Academy, a post which he currently holds. He has also been elected by the International Commission of Jurists as one of its five new commissioners for a term of five years from August 12, 2014 to August 11, 2019.

He received his Bachelor's Degree with academic honors from the Ateneo de Manila in 1959 and the degree of Bachelor of Laws, *cum laude*, from the same institution in 1962. He was admitted to the Philippine Bar in 1963, placing 4th in the bar examinations.

He was a member of the 1971 Constitutional Convention and was subsequently appointed as a member of the 1986 Constitutional Commission. He has held several government posts, first, during the term of president Corazon Aquino as Presidential Legal Counsel, then as Press Secretary, and subsequently as Presidential Spokesperson.

Friends, let us welcome on the stage to share with us his thoughts on the earlier presentations, Justice Adolfo Azcuna.

COMMENTARY BY SUPREME COURT JUSTICE ADOLFO S. AZCUNA (Ret.)

JUSTICE ADOLFO S. AZCUNA: Thank you very much. Your honors, participants, my friends, good morning. I am tasked to react to the excellent presentations by our two panelists here, my good friend Chief State Counsel Paras and another good friend, Professor Beth Pangalangan. From what they have presented, I can surmise that these are all very useful and long-standing treaties that the Philippines should have signed a long time ago. We had a forum on this six years ago. I thought the Apostille Convention was already signed and effective but until now we are talking about adopting it. The Evidence Convention, Service Convention, Child Support, the Mutual Legal Assistance, Extradition, as well as the service of sentence abroad are non-controversial agreements that would benefit the country if adopted. So why are they not yet in force in the Philippines? I think it is because we tend to pay more attention to the more controversial events. So, I would suggest that a national summit be held in order to consider these pending treaties and proposed treaty agreements that are internationally useful and being implemented already by other countries.

In a national summit to be attended by all the branches of our government, we will have the executive there, the legislative, and the judiciary so that they can already thresh out what is needed from them. If it needs a law, then the representatives of Congress can come in, weigh in and discuss what law is needed. If it needs funding, the Supreme Court may be willing to be the focal person, but they cannot perform executive functions. There is Congress. All sectors can thresh out in the same way when the national summit on extrajudicial killing was held upon the initiative of the Supreme Court. Ten years ago, we had 12 tables, each presided by a Justice of the Supreme Court and you had representatives from the executive, legislative, and non-governmental organizations (NGOs). Even the military and the NDF sat down together and discussed what is supposed to be done in order to solve the problem. You can have this in one day or two days I think, then we can resolve, finally adopt these long standing very good agreements as presented by our panelists. But before we can do that, I think the DFA has to inventory. We need to inventory what are the agreements already existing. I think that is partly here already with the checklist of who are the present signatories and who are the target signatories and so forth. We should also inventory not just treaty law, but also customary international law. Many of these agreements or many of these activities are already covered by customary international law. For instance, we mentioned reciprocity as a basis for extradition, this is under customary international law and can be done without a treaty. Normally, extradition has to be pursuant to a treaty, but the practice nowadays is, if there is reciprocity, they can do it on their own on a country-to-country basis.

Aside from an inventory, we have to settle the question of the domestic application of international law. How is public international law applied by our courts? Can Philippine courts apply public international law, without a domestic legislation that implements that law? In the United States, the rule is "no". The US has adopted the rule that there is a need for a congressional legislation to implement a treaty and a treaty that has not been implemented by a local, congressional law, is not enforceable in the US. Is that the same rule in the Philippines? Or do we follow, as it would seem, Prof. Magallona is the expert on this – whether or not the Supreme Court, whether or not Philippine courts, can directly apply rules of public international law, even if there is no implementing legislation on the ground that a treaty stands on equal footing as a statute under our legal framework. So that has to be settled and really clarified. How are we going to implement and enforce in our jurisdiction international law?

The other interesting case I always refer to, is the case of *Republic v. Sandiganbayan.*[1] This referred to a situation where we had no Constitution. There was an interregnum in our history sometime after the 1973 Constitution fell to the ground after the successful EDSA Revolution. You know, the effect of a successful revolution is that all political laws fall to the ground and the Constitution is the most political of all laws, so it was the first to fall. The 1973 Constitution fell to the ground when the EDSA Revolution succeeded. We had no Constitution until President Cory Aquino as revolutionary president, adopted not the present Constitution but what is known as the Freedom Constitution. Hastily, we assembled a fundamental law based mostly on the Bill of Rights and the skeleton of a government – the three branches, we call it now the Freedom Constitution which was drafted by Joker Arroyo and Reynato Puno. It was promulgated by Cory under her powers under a revolutionary government as our Constitution on March 25, 1986.

So there was an interregnum between February 25 and March 25, where we had no Constitution. During that interregnum, there was a chain of events leading to seizure of personal properties. There was a search warrant but the search warrant did not include these properties. These were electronic equipment belonging to General Ramas, and they were left for his friend, Elizabeth Dimaano. And Elizabeth Dimaano filed a case to recover these properties on the ground that these were seized in violation of her fundamental rights. The response of the team of the government, this was the Cory government already, the government of freedom, democracy and all that, was there was no basis for claiming violation of fundamental human rights because there was no Constitution. Imagine that, these were the Cory people who said, we can seize anything at that time without a warrant because there was no Constitution. And this was presented as a case in the Supreme Court and how did the Supreme Court rule? It said that "it is not correct to say that absent a Constitution, there are no fundamental rights, because fundamental rights continue to be protected even without a Constitution by customary international law." That is a precedent, that is a warning to all those who seek to overthrow the government, that if they succeed, they are still obliged to observe fundamental human rights. That is the effect of that *Republic v. Sandiganbayan* case. That even during a constitutional interregnum, fundamental human rights continue to be protected. It is such a landmark decision that the

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[1] *Republic of the Philippines vs. Sandiganbayan, Major General Josephus Q. Ramas and Elizabeth Dimaano*, G.R. No. 104768, July 21, 2003.

Venice Commission of Europe asked for a copy, and we gave them a copy of this decision because they were looking for an authority like this.

So we should assemble all these. What are the provisions that apply to our relations with other countries and how we can improve them? How can we adopt all these necessary treaties and agreements, as well as streamline our observance of customary international law, in order better to perform as one of the 195 sovereign States around the world today. The other thing I noticed, is that all these are just normal administrative matters. These are not controversial. But we are talking about shaping foreign policy. This is not foreign policy, this is day to day, ordinary humdrum activities. I would recommend to Ambassador Malaya to have the OLA shape a foreign policy that will truly respond to the dynamic forces occurring around the world today. Today, we are observing, we are witnessing the breakdown of the Westphalian world order which held sway since the Treaty of Westphalia until today. It has been challenged by Russia when it invaded Crimea. This is Westphalian world order based on sovereign states with fixed boundaries. When the boundaries are disturbed, when the freedom of the high seas for instance is challenged, these are breaking down boundaries, there is an attempt therefore to do away, as obsolete, with the Westphalian world order. What is the Philippine response to this? I think there is a need for us to be proactive, and to adopt, for the sake of national interest, to be ready to respond to these fast-changing occurrences in the world today.

There is also cybercrime, the field of computer hacking. Have you heard of the Shadow Brokers? The Shadow Brokers struck in April of this year. It is different from Snowden. Snowden just stole some files and the code names used by the National Security Agency (NSA). The Shadow Brokers stole the codes themselves. And so, the NSA or its hacking arm, the TAO, the Technical Access Operations Group, headed by Jake Williams, were devastated because they found out that not only did they lose files and code names, they lost the codes themselves. And after April the loss of the codes was announced. The Shadow Brokers, which is an unknown group up to now, tweeted Jake Williams and told him what they had. Since then there was that series of hacking including what they call ransomware that attack hospitals, attack international delivery groups showing their capability. What is the Philippine response to this very grave danger of the disturbance of the Internet which we are all dependent on? So I think this is a lot of work that OLA should be at the forefront of. Thank you.

ATTY. WAHAB-MANANTAN: Thank you Justice. At this point we proceed to our open forum. I would like to invite Atty. Celeste Cembrano-Mallari of the U.P. Institute of International Legal Studies to join our panelists on the stage as moderator.

OPEN FORUM

ATTY. CELESTE RUTH L. CEMBRANO-MALLARI: Thank you, Attorney Wahab- Manantan. We are now at the part where the participants can raise their questions or comments to the speakers that we have in front. May we request, for documentation purposes that you identify yourself and the institution, or the office where you come from. Since the proceedings of this colloquium will be included in the *Philippine Yearbook of International Law*. Due to time constraints, we only have five minutes for this open forum, so we request to make your questions and comments brief, and the answers to be likewise brief. So, shall we begin? Who is the first person to ask or make a comment? Yes, sir.

AMB. JAIME BAUTISTA: Jaime Bautista with the Philippine Ambassadors Foundation and the Philippine Foreign Service Council. Maybe to add some controversy. I heard Usec. Paras recommending that the Philippines should pass laws, where applying the passive nationality basis for jurisdiction, and maybe this is a good idea in the sense that this will prod our justice system to apply the constitutional provision for speedy justice. I would like also to mention that with respect to the case of the ex-President of Catalonia, Puigdemont, the Belgian court, I think from what I read, would be applying the principle of double criminality even with respect to the crimes of rebellion and sedition. So I would just like to be informed, what is now the law in the Philippines, with respect to political offenses, involving extradition. Thank you.

CHIEF STATE COUNSEL PARAS: Well, passive jurisdiction is defined as the sovereign right to prosecute crimes which are committed against their nationals who fall victims of the crime. I think that is already in our statute books in the Anti-Trafficking Law, but not in all. So maybe we have to explore. There are other principles of course. There is the Protective Principle, such that if an act is done outside of the territory of the Philippines but it has an effect on the security of the Philippines, then we can also assume jurisdiction. There is also the

Universality principle where the crime is against the law of nations. We have that in our Revised Penal Code, because piracy can be prosecuted in any of the States where the pirates would be found. But because of the number of our Overseas Filipino Workers who go abroad, ten percent (10%) of the population are abroad and they are vulnerable, so I think pursuing the Passive Jurisdiction principle would be the best solution, plus the fact that we should explore expanding the coverage of our extradition and mutual legal assistance treaties.

ATTY. CEMBRANO-MALLARI: Thank you very much, State Counsel Paras. Yes, the members of the panel may comment.

JUSTICE ADOLFO AZCUNA: I think that is precisely the need for legislation so that you will have a definite authority for other judges to follow, whether we subscribe to the passive personality principle or not. Because otherwise, there will be no uniformity and our own ten percent (10%) who are abroad may not be protected. I think this is the case of that collision between the Turkish vessel and French vessel. There was a claim whether or not the victims in the vessels could sue the State who owned the vessel that rammed them on the theory of the passive personality principle. And that was handed through a snap because there was no proof that there was customary international law establishing the passive personality principle. In fact, that is the authority for the definition of a customary international law, whether the person who failed to act did so because of a recognition that his non-action is required by law, or maybe just because he did not feel like acting. It has to be shown that it is because of a recognition that the action is dictated as a mandatory rule of law, that you can have a customary international law. So absent customary international law, there is need for legislation. I agree with Ambassador Bautista that we should recommend to Congress to adopt this principle to protect our citizens abroad.

PROF. AGUILING-PANGALANGAN: The basic principle that we follow is territoriality when it comes to crime. The only exceptions are extradition and those crimes committed under Article 2 of the Revised Penal Code, where though committed outside of the Philippines because they are an affront, these crimes are an affront to the laws of the Republic, then we can acquire jurisdiction over those cases. So I think it is high time also that we explicitly state that we will follow, we will acquire jurisdiction over certain cases, so expand Article 2, especially under

the circumstances where we have thousands or millions rather of OFWs abroad. Thank you.

ATTY. CEMBRANO-MALLARI: Thank you, Prof. Pangalangan.

DIR. SHEILA MONEDERO-ARNESTO: I'm Director Sheila Monedero-Arnesto from the Office of Legal Affairs of DFA. I would like to thank, of course, our distinguished presenters today. Thank you for your very informative and thought-provoking comments. Chief State Counsel Paras earlier mentioned about the Strasbourg Convention and I am pleased to inform everyone that the DFA is working with the DOJ on the possible accession of the Philippines to the Strasbourg Convention. Because if we accede to the Strasbourg Convention, it is in essence like entering into a TSPA agreement with a lot of countries, all in one. We don't have to negotiate separate TSPA agreements with different countries, like what we are doing now. The DOJ has some concerns on some provisions of the Strasbourg Convention, and we discussed with them the possibility that, perhaps, by putting in reservations to our accession, these concerns can be addressed.

The first concern of the DOJ is with regard to the power of our President to grant clemency or pardon to the transferred persons. Reservations have been similarly made by other countries, thus this particular power of our government can be protected. The second issue that concerns the DOJ pertains to the two modes of effecting the remaining sentence after the transfer: one, by continued enforcement of the remaining sentence in the other country, or, two, the conversion of the sentence into a local one. The Strasbourg Convention provides that we can choose either mode. It is thus possible for us to choose the first mode, the continued enforcement of remaining sentence which are already found in our bilateral TSPAs.

The DFA-OLA also assists the DOJ in handling other international legal cooperation agreements. With respect to extradition agreements, the preliminary assessment of the extradition requests from other countries is done by the DFA, as mandated by the Philippine Extradition Treaty to ensure that they comply with the requirements of our Philippine Extradition Law before we refer the request to the DOJ.

With respect to the Mutual Legal Assistance (MLAT), there are two types: one, MLAT with respect to criminal matters that was earlier discussed , and two, mutual legal assistance with respect to civil matters. For assistance in civil cases, the Philippines through DFA-OLA provides the assistance the service of processes, including judicial documents. The basis of the assistance is Article 5(j) of the Vienna Convention on Consular Relations, which authorizes consular officers to transmit judicial and extrajudicial documents. So even without an MLAT agreement, if it is a civil case, the Philippine Government can assist with respect to both inbound and outbound requests. As Prof. Beth Pangalangan earlier explained, if we accede to the Service Convention, the service of processes will be faster and more efficient, because it will be done through the designated Central Authorities, rather than through the current diplomatic channels.

And as to Mutual Legal Assistance in criminal cases, the general rule is that, if there is a bilateral agreement, it is obligatory for the Philippines to grant the assistance requested. But even in the absence of an MLAT Agreement, the Philippines can still assist. The latter request can be coursed through the DFA, and the DFA will refer the matter to the DOJ which can consider the request. It is discretionary on the DOJ whether or not to grant the assistance requested.

ATTY. CEMBRANO-MALLARI: Thank you very much for sharing your experiences at the DFA. I think there is room for one more quick comment from Dean Merlin Magallona, our distinguished scholar in international law.

DEAN MERLIN M. MAGALLONA: Good morning, I am glad that Justice Azcuna has reminded us of the decision of the Supreme Court with respect to the Bill of Rights. But in context, may I add that the provisions of the Philippine Constitution relating to international law may be seen to be derived from our international obligation under the United Nations Charter. Articles 55 and 56 of the United Nations Charter would require the Philippines to respect and recognize human rights and fundamental freedom, and this in particular, would refer to the Universal Declaration of Human Rights which is recognized by international commentators as making a litany of rights that were involved in the Sandigan case of the Supreme Court in the first place. In addition, it may be said that at the time of the decision of the Supreme Court in the Sandigan case, the Philippines was already a State party to the Statute of the International Court of Justice, which gives us an enumeration of what are the sources of law. This would include general legal principles and customary international law, in which case, we

can see that the incorporation clause of the Constitution and that the treaty clause of the Constitution may be said to have been derived from the statute, in particular Article 38 of the Statute of the International Court of Justice, which would impose upon the Philippines the international obligation to comply with the sources of law enumerated. Thank you.

ATTY. CEMBRANO-MALLARI: Thank you very much, Dean Magallona. I think we are ready to proceed with the next part of the program.

SESSION 2: TRADE AND INVESTMENT FACILITATION

ATTY. WAHAB-MANANTAN: Our main presenter for this session received his LL.M from Columbia University in 2010, where he earned the distinction of being a Harlan Fiske Stone Scholar, a *magna cum laude* equivalent, specializing in International Law, Climate Change Law, and Environmental Law. A member of the Order of the Purple Feather, U.P. College of Law's honor society, for all his years in law school, he graduated in the top ten of his class, receiving the Dean's Medal for Academic Excellence.

He has been teaching at U.P. College of Law since 2005 and became a full-time faculty member in 2008. He has taught subjects such as Public International Law, Obligations and Contracts, Torts and Damages, Credit Transactions, Transportation and Public Utilities, and Land Titles and Deeds. He has also published law treatises on Agency, Partnership, Damages and Torts. His latest book on Philippine Contract Law, "*The Law on Contracts*," is published by Lexis-Nexis. He is currently the director of the Institute of International Legal Studies of the U.P. Law Center.

Ladies and gentlemen, let us welcome Professor Rommel Casis.