the U.P. Law faculty and was later invited to act as General Counsel for the U.P. System, as well as its first Vice-President for Legal Affairs in 2005. He became the Dean of the U.P. College of Law in 2008.

He first appeared before the Supreme Court, defending the constitutionality of the Indigenous Peoples Rights Act, arguing against former Supreme Court Justice Isagani Cruz. He also served as the lead counsel in the case of *La Bugal-B'Laan Tribal Association vs. Ramos*,[20] which questioned the Mining Act of 1995. While serving as Dean of U.P. College of Law, he was appointed by President Aquino as chief negotiator for the government in peace talks with the Moro Islamic Liberation Front in 2010, which led to the signing of the framework agreement on the Bangsamoro, a historic milestone in the peace negotiations with the rebel group. In November 2012, he was appointed to the Supreme Court by President Aquino, becoming the youngest Supreme Court justice to be appointed in this century, set to serve the Philippine Supreme Court for 21 years. Justice Leonen received his Bachelor's Degree in Economics, with *Magna Cum Laude* honors, and his Juris Doctors degree from University of the Philippines. He received his Master's Degree in Law from Columbia University in New York. Ladies and gentlemen, colleagues, here to deliver the keynote address, please join us in welcoming Honorable Marvic Mario Victor F. Leonen, Associate Justice of the Supreme Court.

ADDRESS ON INVISIBLE PEOPLES IN INTERNATIONAL LAW: PROLEGOMENA TO DISCERN THE FUTURE OF INTERNATIONAL LAW

MARVIC M.V.F. LEONEN: Thank you again for the privilege to address your colloquium.

Partnerships between the Department of Foreign Affairs, through its many offices including the Foreign Service Institute, and the UP College of Law Complex through its Institute for International Legal Studies have always been, in the past, productive, creative and—on occasion—strategically provocative. This is rightly so since the world of practice exemplified by the diplomats of the Department of Foreign Affairs is always in a dialectical relationship with the

[20] G.R. No. 127882, December 1, 2004.

academic community represented by the UP's IILS. I note that in this forum you have also gathered not only personalities that currently lead your institutions but also those who may—imminently—lead both our Department of Foreign Affairs and the UP College of Law in the near future.

The topic that I was assigned was initially interesting, until I found out that it was not an easy one. A summary of the state of international law in the Philippines is already an ambitious undertaking and one that is subject to so many narratives. The projection of the future of International Law is likewise ambiguous and one that may call upon a divinity that I am not blessed with and often refuse to possess. Both aspects of the topic are minefields. The combination of status and future invites exciting but deep nuanced discussions among experts on selected topics in international law to the exclusion of all the rest. It does invite subjective choices that will reveal the speaker's view of where we should be headed making me vulnerable to a charge of making injudicious political statements.

I initially wrestled with the idea to find some standard and pretend objectivity in such a rich note, but as Jeremy Gatdula pointed out: there can be none. Then, after realizing the difficulty, I reconsidered. I admit that I will not cover all of International Law nor will I be able to present all the possible standpoints to describe the present and predict the future. This talk will be meant to provoke in an academic fashion, conversations, in the light of human maturity, should always take the character of impermanence. My views and yours as well, are hopefully open to evolution after conscious deliberation. After all, we are a country with so many complex issues and a hundred million ways to create solutions.

My title really is: "Invisible Peoples and International Law." Its subtitle is: "Prolegomena to Discern the Future of International Law."

The subtitle admits to the limitations of the present presentation and invites you to work both in practice and in theory. That I chose the concept of Invisible Peoples reveals my bias. I think that we should now start more consciously and more deliberately to think about the impact of international law not only for marginalized identities, groups, communities and peoples. But I invite you to even go further and look at the sub-sector of these marginalized identities and how it impacts those in conditions of extreme poverty among all

these sectors. So first, let me dispose of some of the basics, and in passing, refer to some recent decisions of the Supreme Court.

I

The classic discussion on the influence of International Law in the Philippines will inevitably engage the various provisions in the present Constitution. Basically, this includes Article II Section 2 and Article VII Section 21. Both provide the orthodox starting points that often shape our understanding of how international norms integrate into our own domestic legal order.

Article II, Section 2, as everyone knows in this room, provides:

> "Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

On the other hand, Article VII Section 21 states:

> "Sec. 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the State."

The current canonical interpretations of these provisions are well known. So are their ambiguities.

Article II, Section 2 is a hybrid provision that provides for statements of policy as well as the incorporation of portions of international law into our legal system. The interpretative challenge in its language is classic for all international legal experts.

For example, fundamental to an understanding of international law is the ability to identify sources as defined within its own international legal dimension. At minimum, jurists point to the formulation in Article 38 of the Charter of the International Court of Justice which enumerates, among others, customary law conventions, general principles of law recognized by civil institutions, and subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of various nations as subsidiary means for the determination of the rules of law.

Our Constitution, however, states, and I quote: "It adopts the generally accepted principles of international law as part of the law of the land." In spite of this text, a catena of cases decided by our Court impliedly seems to reject a strict reading that this incorporation clause only applies to what Article 38 of the ICJ refers to as only "general principles of law recognized by civilized nations." In many cases, our Court has applied not only general principles of international law, but international customary norms as well as treaty provisions to resolve cases either directly or as a means to clarify the meanings of provisions in domestic statutes. This tendency, in my reckoning, knowing my colleagues, will perhaps be canonical for some time.

What exactly is meant by being "part of the law of the land" is still the subject of debate. I will just note some issues but decline to hazard a resolution. There are pending cases with the Court at present which I hope will crystallize these issues some more.

For example, *Tanada v. Angara*[21] involves the resolution of the apparent conflict between provisions of our constitution with the ratification of the treaties which created the World Trade Organization, among others. A reading of the discourse of the *ponente* in that case seems to suggest that some international law norms may reside at the level of constitutional duty. On the other hand, jurisprudence is also replete with cases which suggest that treaty law resides at the same level with domestic statute, not constitutional provision. This view implies that both the foreign policy powers of the President can amend domestic statute passed by Congress and vice versa. And Congress, on the other hand, may amend a treaty.

Article II, Section 2 also elevates certain policies as constitutional norms. First, that we "renounce war as an instrument of national policy." And second, that we adhere to a "policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

II

I am tempted to go for the second, but maybe more interesting, let me dwell a little on the concept of our obligations on the use of force, as this has come up in most recent cases.

[21] G.R. No. 118295, May 2, 1997.

War almost has a settled meaning in International Law. For instance, it is differentiated from "armed conflict" both of an international or non-international character found in the basic treaties that form the corpus of the field called International Humanitarian Law. It is also clear that war is not an "instrument of international policy" but that perhaps under conditions allowed by the UN Charter on the use of force, our armed forces can be deployed externally.

Those among you who have the slightest imagination will know that the evolving situation in North Korea may have challenging legal consequences on the duty of the Philippines in relation to our treaty partners. For instance, recall that we are signatories of the 1951 Mutual Defense Treaty with the United States. This includes Article IV which provides:

"ARTICLE IV.

> "Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional process."
>
> "Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security."

"Armed attack" is further clarified in Article V of the same treaty which provides:

"ARTICLE V.

> "For the purposes of Article IV, an armed attack on either of the Parties is deemed to include an armed attack on the metropolitan territory of either of the Parties, or on the island territories under its jurisdiction in the Pacific or on its armed forces, public vessels or aircraft in the Pacific."

Of course, the interpretation of these provisions, and thus our obligations to our treaty partner is further refined by Article I and VI of that same treaty.

Considering the latest posturing of some of the relevant heads of states in this conflict, I can only guess that these provisions are now the subject of study of a group within the Office of Legal Affairs of the DFA in the event that its provision may come to life. I am certain however that we may be in the thick of studying diplomatic options to prevent that abominable eventuality.

"Armed conflict" and our rules of engagement in situations of "armed conflict" as opposed to war, in its traditional sense, is another matter. It matters that we have adopted a statute where most of the disciplines required under most of the treaties in International Humanitarian Law now resides. However, in the near future, this will be further tested by the problem of terrorism and the modalities through which we characterized acts committed by terrorists and the kinds of governmental action we use to prevent and interdict them.

This is because in the recent case of *Lagman v. Medialdea*,[22] often referred to as the 2017 Martial Law cases. Now, I note that it is still under motion for reconsideration, so I will limit my discussion to the published opinions only. In those cases, I called attention to the necessity to make the power invoked by the executive very clear. Thus, if I may quote from the opinions so that I do not add anything anymore:

> "Martial law arises from necessity, when the civil government cannot maintain peace and order, and the powers to be exercised respond to that necessity. However, under his version of martial law, President Marcos placed all his actions beyond judicial review and vested in himself the power to "legally," by virtue of his General Orders, do anything, without limitation. It was clearly not necessary to make President Marcos a dictator to enable civil government to maintain peace and order. President Marcos also prohibited the expression of dissent, prohibiting "rallies, demonstrations... and other forms of group actions" in the premises not only of public utilities, but schools, colleges, and even companies engaged in the production of products of exports. Clearly, these powers were not necessary to enable the civil government to execute its functions and maintain peace and order, but rather, to enable him to continue as self-made dictator.

[22] G.R. No. 231658, July 4, 2017.

President Marcos' implementation of martial law was a total abuse and bastardization of the concept of martial law. A reading of the powers President Marcos intended to exercise makes it abundantly clear that there was no public necessity that demanded the President be given those powers. Thus, the 1987 Constitution imposed safeguards in response to President Marcos' implementation of martial law, precisely to prevent similar abuses in the future and to ensure the focus on public safety requiring extraordinary powers be exercised under a state of martial law.

Martial law under President Marcos was an aberration. We must return to the original concept of martial law, arising from necessity, declared because civil governance is no longer possible in any way. The authority to place the Philippines or any part thereof under martial law is not a definition of a power, but a declaration of a status – that there exists a situation wherein there is no capability for civilian government to continue. It is a declaration of a condition on the ground, that there is a vacuum of government authority, and by virtue of such vacuum, military rule becomes necessity. Further, it is a temporary state, for military rule to be exercised until civil government may be restored.

This Court cannot dictate the parameters of what powers the President may exercise under a state of martial law to address a rebellion or invasion. For this Court to tell the President exactly how to govern under a state of martial law would be undue interference with the President's powers. There may be many different permutations of governance under a martial law regime. It takes different forms, as may be necessary.

However, while this Court cannot state the parameters for the President's martial law, this Court's constitutional role implicitly requires that the President provide the parameters himself, upon declaring martial law. The proclamation must contain already the powers he intends to wield.

This Court has the power to determine the sufficiency of factual basis for determining that public safety requires the proclamation of

> martial law. The President evades review when he does not specify how martial law would be used.
>
> It may be assumed that any rebellion or invasion will involve arms and hostility and, consequently, will pose some danger to civilians. It may also be assumed that, in any state of rebellion or invasion, the executive branch of government will have to take some action, exercise some power, to address the disturbance, via police or military force. For so long as the President does not declare martial law or suspend the privilege of the writ of habeas corpus to address a disturbance of the peace, this Court does not have the power to look at whether public safety needs that action.
>
> But if the President does declare martial law or suspends the privilege, the Court does have the power to question whether public safety requires the declaration or suspension.
>
> It is not sufficient to declare "there is martial law." Because martial law can only be declared when public safety requires it. It is the burden of the President to state what powers public safety requires be exercised.

Not only should the powers invoked by the executive be clear for purposes of domestic law, it must be also so in order to avail of the entire infrastructure already in place of inter-state cooperation in cases of terrorism. A few of those have been mentioned, like mutual legal assistance. Likewise, it may also assist law enforcers to understand the parameters of their discretion in accordance with existing international human rights norms.

Even the problem to be addressed, in my view, must be labeled correctly. I have expressed the view that there is a difference between terrorism and armed conflict—as a matter of fact, not only domestically, but also under international law. I quote again from my opinion:

> Terrorism is a pre-meditated, politically-motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents. It is motivated by political, religious, or ideological beliefs and is intended to instill fear and to coerce or intimidate governments or societies in the pursuit of goals that are usually

> political or ideological. Terrorists plan their attack to draw attention to their cause, thus, the mode and venue of attacks are deliberately chosen to generate the most publicity.

I discussed the UN Conventions also in the opinion. But also, I said:

> On the other hand, rebellion is an act of armed resistance to an established government or leader. Conflicts between liberation movements and an established government present a unique form of conflict which would involve both guerrilla and regular armed warfare. International law distinguishes between 3 categories or stages of challenges to established state authority, on an ascending scale, (1) rebellion, then (2) insurgency, and (3) belligerency.

In that opinion, I called to the danger in international law regarding the failure to characterize the events correctly, and I quote:

> The danger of mischaracterizing the protagonists in the Marawi incident is that this Court will officially accord them with a status far from who they really are—common local criminals.
>
> Rebellion is a political crime with the ultimate objective of overthrowing or replacing the current government. The acts comprising rebellion, no matter how violent or depraved they might be, are not considered separately from the crime of rebellion.
>
> Being a political crime, the law has adopted a relatively benign attitude when it comes to rebellion. Recall *People v. Hernandez*[23] which remarked that the deliberate downgrading of the penalty or treatment of rebellion in the law can be chalked up to the recognition that rebels are usually created by the "social and economic evils" in our society.
>
> Despite the law's benign attitude towards local terrorist groups, by characterizing them as rebels, we risk giving the impression that what are mere sporadic or isolated acts of violence during peacetime,

[23] G.R. Nos. L-6025-26, July 18, 1956.

which are considered law enforcement problems, have been transformed to a non-international armed conflict covered under International Humanitarian Law.

International Humanitarian Law applies during armed conflict. An armed conflict is defined as (1) any use of force or armed violence between the State (international armed conflict), or (2) a protracted armed violence between governmental authorities and organized armed groups, or between such groups and that State.

Rebellion may be considered (a) an international armed conflict if it is waged by a national liberation movement, (b) a non-international armed conflict if the fighting is protracted and it is committed by an additional armed group that has control of territory under Additional Protocol II, or (c) a law enforcement situation outside the contemplation of International Humanitarian Law if there is no armed conflict as defined by the Geneva Convention. Under Additional Protocol II, organized armed groups are those that under certain situations.

The situation we have in Mindanao is not one waged by a national liberation movement that would call into application rules during an international armed conflict. At present, the Philippines is not occupied by a foreign invader or colonist; neither is it being run by a regime that seeks to persecute an entire race. The combatant status applies only during international armed conflict. Because there is no international armed conflict there, those who take up arms against the government are not considered combatants. As a consequence, they are not immune for acts of war and do not have prisoner-of-war status.

The armed hostilities in Marawi, if any at all, may be considered a non-international armed conflict if the Maute group falls under the category of "organized armed group" and if the fighting may be considered "protracted" under Additional Protocol II.

The present challenge of terrorism involves comprehensive engagements domestically and internationally. International law with respect to human rights

and humanitarian law will be shaped by the contingencies necessary to wage this long war.

III

Now let me go to another point recently decided. Responses to the question of domestic liability of foreign actors still constantly engage both international and domestic law. It draws the balance between our conception of the sovereign with the point of view of a sovereign immunity.

The case of *Arigo v. Swift*[24] is the most recent case wherein a naval vessel of the United States that ditched itself in the Tubbataha Reef. The case was filed and the unanimous decision of the Court was to deny the petition on procedural grounds. However, in my concurring in that case I took a more expanded position of sovereign immunity, and I quote:

> It is my position that doctrine on relative jurisdictional immunity of foreign state or otherwise referred to as sovereign immunity should be further refined. I am of the view that immunity does not necessarily apply to all the foreign respondents should the case have been brought in a timely manner, with the proper remedy, and in the proper court. Those who have directly and actually committed culpable acts or acts resulting from gross negligence resulting in the grounding of a foreign warship in violation of our laws defining a tortuous act or one that protects the environment which implement binding international obligations cannot claim sovereign immunity.
>
> Some clarification may be necessary to map the contours of relative jurisdictional immunity of foreign states otherwise known as the doctrine of sovereign immunity.

In coming to that conclusion, I drew upon the cases of San Fernando, and of course the international ICJ case of *Germany v. Italy*.[25]

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[24] G.R. No. 206510, September 16, 2014.
[25] Judgment, I.C.J. Reports 2012.

IV

Let us proceed now to article VII, section 21 which has presented its own share of problems to the Court. Clearly, it makes a distinction between international treaties, on the one hand, and international agreements, on the other. And international agreements might be different from executive agreements. Thus, in *Saguisag v. Ochoa et al*[26] or the the EDCA case, I had the opportunity to make this distinction:

> Article VII, Section 21 of the Constitution complements Article XVIII, Section 25 as it provides for the requisite Senate concurrence, thus:
>
> > Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.
>
> The provision covers both "treaty and international agreement." Treaties are traditionally understood as international agreements entered into between states or by states with international organizations with international legal personalities. The deliberate inclusion of the term "international agreement" is the subject of a number of academic discussions pertaining to foreign relations and international law. Its addition cannot be mere surplus.
>
> Clearly, Senate concurrence should cover more than treaties. The President may enter into international agreements as chief architect of the Philippines' foreign policy. However, whether an international agreement is to be regarded as a treaty or as an executive agreement depends on the subject matter covered by and the temporal nature of the agreement.

Of course, I cited there, *Commissioner of Customs v. Eastern Sea Trading:*[27]

> Indeed, the distinction made in Commissioner of Customs in terms of international agreements must be clarified depending on

[26] G.R. No. 212426, G.R. No. 212444, Juy 26, 2016.
[27] G.R. No. L-14279, October 31, 1961.

> whether it is viewed from an international law or domestic law perspective.

Dean Merlin M. Magallona summarizes the differences between the two perspectives. And I would like to report to my former professor that I have quoted him at length in order to support the conclusion that if the executive agreement's authority is uncontained, and if what maybe the proper subject matter of a treaty may also be included within the scope of executive agreement power, the constitutional requirement of Senate concurrence could be rendered meaningless.

The difference between a mere executive agreement and an "international agreement" requiring concurrence other than a treaty came up again in the recent case of *Intellectual Property Association of the Philippines v. Ochoa*.[28] I concurred in the result only to dismiss the case because I believed, and the others also supported my concurrence, that the International Property Association of the Philippines was not a proper party like the IBP in *IBP v. Zamora*.[29] Yet, again I had the opportunity to point out:

> The *ponencia* proposes to declare the President's accession to the Madrid Protocol a valid executive agreement that does not need to be ratified by the Senate.
>
> Respectfully, I disagree.
>
> I am not prepared to grant that the President can delegate to the Secretary of the Department of Foreign Affairs the prerogative to determine whether an international agreement is a treaty or an executive agreement. Nor should this case be the venue to declare that all executive agreements need not undergo senate concurrence. Tracing the history of Article VII, Section 21 of the Constitution reveals, through the "[c]hanges or retention of language and syntax[,]" its congealed meaning. The pertinent constitutional provision has evolved into its current broad formulation to ensure that the power to enter into a binding international agreement is not concentrated on a single government department.

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[28] G.R. No. 204605, Juy 19, 2016.
[29] G.R. No. 141284, August 15, 2000.

And I went on to review the provisions in all our constitutions to show that the inclusion of international agreement indeed was deliberate in terms of the 1987 Constitution.

This is just one of some of the cases which interrogate the various instruments that are now in play to integrate our rules into the global economy. A few are still pending with the Court. Most of you will be familiar with the evolution of the 1947 General Agreement on Tariff and Trade (GATT) into the WTO. The rules-based regime for trade in goods evolved and included services and intellectual property among others.

Almost parallel to that evolution was the rise of international protection for foreign direct investments either through bilateral investment treaties or through the various guarantee systems within the World Bank Group. Post war, the world saw the rise of international organizations not only in the form of the United Nations but likewise with those involved in the world's economy like the International Monetary Fund, the World Bank group and regional formations like the Asian Development Bank. Today, I just learned the ratification of the AIIB, also in our Philippine Center.

The late nineties and the early twenty first century underscored the importance of regional trade agreements of various forms. Sooner or later free trade agreements which incorporated more restrictive WTO type disciplines as well as investment protection rose. The scope of these regional trade agreements expanded in scope. It is still expanding, notwithstanding the position of the United States with respect to the Trans-Pacific Partnership (TPP).

Our past experience in various types of arbitration with respect to foreign investments and trade regimes in the Appellate Body of the WTO underscore the importance of both knowledge and experience in this field by Filipino Practitioners. Again, I am sure that our foreign affairs department is in the thick of preparing our diplomats to engage in these forums. A more extended treatment of this area of international law, of course, requires another full colloquium.

V

Ambiguities in legal provisions, especially those found in the Constitution, are not necessarily signs of weaknesses.

The current formulation of any law is not a permanent fixture. I view the content of law at any given historical conjuncture are truce lines between

contending forces. Law is located in normative text. It is in a language that does not necessarily describe what is but proposes or mandates what should be. The language of the law as well as its current canonical interpretation, for me, marks the extent of accommodation between competing interests, identities, groups or classes, on the one hand, as well as states and government on the other.

Viewed in another way law, is the normative manifestation of temporary truce lines between competing or antagonistic interests in a given society. Thus, it can be viewed in two ways. On the one hand, it can be viewed as an instrument of the status quo to maintain its hold through the power of the law and the coercive processes that are behind it. On the other, it can be seen as the evidence of a beach head occupied by progressive forces: the incursion of identities, groups and classes and developing countries into the domain of the privilege evidencing the effectivity of organized movements given a point in history.

One view is pessimist. It entices a surrender to current power relations. Legal service to those at the margins of society, therefore, is mere palliative, a balm to provide temporary relieve against a social and economic structure that further rewards a class, encrusts patriarchy or ensures a development paradigm that is inequitable and ecologically unsustainable.

The other view, I think, is more optimistic. It sees the reality of current power relations but does not accept them as they are. It knows of the travails of the many: the hunger and undernourishment, the rape of daughters, the continued incarceration despite innocence, and the lack of public ownership of the means of production in critical industries. Yet, this view does not stop there. It studies the accommodations in law already won through political movements, political alliances and in the international stage, alliances by state actors especially in international organizations.

It painstakingly examines the interstices that are available in these provisions. It deploys a professional attitude to the remedies invoked to win domestic and international cases not only for the client or community but to establish good precedents as well. It also clothes the diplomat with a positive and likewise professional attitude to engage in negotiations to craft new norms of international law.

We can read international law as it impacts on our domestic legal order, therefore, with a more encompassing lens. There are other provisions in the

Constitution which should likewise be deployed even under the rubric of Public International law and in our interpretation in various ways.

For example, Article II Sections 9, 10 and 11 of the same Constitution provide:

> Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.
>
> Sec. 10. The State shall promote social justice in all phases of national development.
>
> Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

Not my words, but the words of your Constitution. Section 9 sets a standard of freeing "the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

To me, this suggests that our Constitution regards economic, social and cultural rights as peremptory. But this is only me and that is only my opinion and I hope to be able to convince you.

As if to add to the emphasis, Section 10 enjoins that "the State promote social justice in all phases of national development." And in Section 11 it also requires that "the State values the dignity of every human person and guarantees full respect for human rights."

These statements, to me, are far from simply being hortatory. I have rejected the framework of executing, non self-executing, and self-executing provisions. It is a challenge to find ways and means through which we are able to discern the differential impact of various policies on the poor and, therefore, to render the poor as truly visible. For at times, even in our academic discussion, those who are poor are invisible. Thus, I call them invisible peoples.

This is an evolving field. No less than the UN Special Rapporteur on Extreme Poverty and Human Rights bewailed in his 2017 Report to the United

Nations the absence of conscious and systematic efforts to measure the differential impact of policies on the poor. Commenting even on other non-state organizations, he mentions, and let me quote:

> "It might be expected that the human rights community would adopt a different approach from that used by mainstream developmental actors. In some context it does, but for the most part the reality is that human rights experts and groups do not focus in any detail, either in their fact-finding or their assessments, specifically on the situation of persons living in poverty. As a result, neither the diagnosis of situations nor the resulting policy recommendations are tailored to address the distinctive ways in which people living in poverty are affected by police brutality and gender-based sexual violence, left unprotected and open to property theft, deprived of their liberty in pretrial detention, confined in their freedom of movement by the criminalization of the homeless, or subjected to electoral fraud and manipulation, to mention just a few of the major violations."

That was Philip Arson. His observations are familiar to many of us. Police actions in urban and rural poor settings are not the same as those conducted in gated communities or heeled subdivisions. Convictions for gender-based sexual violence that reach the Supreme Court are disproportionately coming only from poorer communities. Theft of property in poor communities are often under reported owing to their lack of resources. Legal assistance for those who are detained is provided by lawyers who are often overstretched and likewise lacking in resources. Vagrancy, which is a crime still defined in your statute books is defined as "loitering around in public without any visible means of support." That is us when we walk through our malls. Electoral manipulation and fraud, as all of us know, often involve short sighted politicians taking advantage of the vulnerability of the poor.

There are a few other cases which I would have wanted to discuss with you. *SPARK v. Quezon City*[30] was a decision on the curfew ordinances of three municipalities where there was spirited debate between the *ponencia* and those that throw separate opinions. *Republic v. Cantor*[31] looked at the doctrine of presumptive death as it applied to a poor OFW that was returning. *People v.*

[30] G.R. No. 225442, August 8, 2017.
[31] G.R. No. 184621, December 10, 2013.

Holgado[32] bewailed the fact that [the drug seized] is always below one gram. In *People v. Holgado* it was 0.06 grams of shabu for which he was caught. You know how much 0.06 grams is? In that decision, the Supreme Court weighed it vis-à-vis a one centavo coin. 0.06 grams is lighter than a one centavo coin.

Speaking on the marginalization of Economic and Social Rights, again the Special Rapporteur on Extreme Poverty and Human Rights during the 32nd Session of the Human Rights Council in 2016 argued:

> "Does this marginalization really matter? Absolutely. Inequality will not be tackled meaningfully without a sustained focus on ESR. Counter-terrorism programs require attention to the ESC rights of those who are excluded or marginalized in the societies in which they live. Right-wing populism is driven in part by appealing to those who have a sense of being excluded from the benefits of economic growth. The legitimacy of the human rights enterprise is threatened if a narrow and unbalanced set of priorities is reflected. And the bulk of the population who are expected to embrace and demand human rights will remain unmotivated and unmobilized by a conception of rights that fails to address the issues that are often of overriding concern to them."

I will try to stop here. But I have more about the West Philippine Sea, technology, inequality, net neutrality and privacy, and international organizations. All that I can say is, in the absence of a strong navy, in the absence of a strong external use of force that we can deploy, we have in the past deployed our lawyers and diplomats to win their important cases such as the West Philippines Sea in the ITLOS Arbitration. In order to further shape international law, our hope now, apart from the Israeli jets that have come, our real hope is with diplomats and lawyers that come together in order to be able to bring forth our national interest. Probably, before they are deployed, colloquiums such as this will be convened in order to inform them more strategically in order that they can provoke more alliances so that in our national interest, more beneficial international law norms can come into being.

Again, thank you and this is a journey worth it. Congratulations to the DFA and the UP College of Law for staging this conference. Maraming Salamat.

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[32] G.R. No. 207992, August 11, 2014.