

EDITOR'S NOTE

I assume the position of Editor-in-Chief of the Philippine Yearbook of International Law benefitting from the legacy of my predecessor, Dean Merlin M. Magallona, a pillar of International Law in the Philippines. This volume shows how deeply international law is embedded in Philippine legal discourse. This is the perspective that Dean Magallona, my mentor in this subject, pioneered in his teaching and writing.

This volume includes four papers that tackle the relevance of international law in dispute resolution, and its interaction with the many aspects of different disputes.

The first essay is Sedfrey M. Candelaria's Characterizing Peace Process Instruments and Agreements with Insurgent Groups in the Philippines. Former Ateneo Law Dean and veteran peace negotiator with both the communist and Islamic rebels, Dean Candelaria explores the state practice and legal doctrine in leading Philippine Supreme Court decisions on various peace agreements. He looks at the legal characterization of peace agreements with insurgent groups, under both domestic and international law, through the lens of Professor Christine Bell's concept of *lex pacificatoria* or the "law of the peacemakers." The reader will benefit likewise from Dean Candelaria's survey of the history and politics surrounding these peace agreements, as he tries to make sense of the strange twists and turns in Supreme Court decisions.

The second is by Louie T. Ogsimer, leading Filipino practitioner in international commercial arbitration and partner in one of the country's leading international law firms. He wrote International Construction Arbitration in the Philippines: The Curious Case of *China Chang*, which discusses a Supreme Court decision that detracts from legislative policy to make the Philippines an investor-friendly jurisdiction by providing both foreign and local investors with access to reliable dispute-settlement mechanisms. The Philippines has enacted the Alternative Dispute Resolution (ADR) Act of 2004, which incorporates into domestic law the best practices in international commercial arbitration, e.g., the New York Convention and the UNCITRAL Model Law. That law has since been implemented by the executive branch and applied by the Supreme Court. The author argues that *China Chang* undermines party autonomy in the choice of arbitration forum, and should be treated as having been superseded by the 2004 ADR Act and the Supreme Court's Special ADR Rules.

The third is written by Professor Rommel J. Casis, Director of the University of the Philippines' Institute of International Legal Studies, entitled *Moot But Academic: An Exegesis of Pangilinan v. Cayetano*. This is one of the most authoritative discussions of the Supreme Court decision validating President Rodrigo Duterte's withdrawal from the Rome Statute of the International Criminal Court (ICC), after the ICC Prosecutor sought permission to open an Investigation on the extra-judicial killings in his "War on Drugs." The Supreme Court declared the case moot, "barely five paragraphs into the decision", as Professor Casis notes, for having been filed after the President's withdrawal. (I must add here that the withdrawal wouldn't take effect until one year after notice. The case was filed with the Supreme Court one day before the President filed his notice of withdrawal and more than one year before the lapse of the one-year period.) Professor Casis' analysis deals with the full discussion by the Court for another ninety-pages, mootness notwithstanding, on the central issue raised by the case, namely, the extent of Senate control over the President's treaty powers considering that the constitution is silent on the matter. He properly looks at many curious, at times contradictory, statements by the Court implying that, in some cases, a mere Executive Agreement can be more binding than a full-fledged treaty ratified by the Senate; or that if the Congress has enacted a law to implement a treaty, the President may withdraw from the treaty only if Congress repeals that law.

The fourth is by Dr. Lowell Bautista, Associate Professor of Law, University of Wollongong, who analyzes the battle of notes verbales in the context of the South China Sea disputes. In *Diplomatic Notes and the South China Sea Disputes*, Dr. Bautista explains the nature and use of these notes verbales in the spectrum of forms of diplomatic action. The claimant states in the South China Sea dispute have deliberately these diplomatic notes that, in varying degrees, "recognize, support and celebrate" the Philippines' 2016 victory against China at the Permanent Court of Arbitration. He looks at the use of diplomatic notes before and after the 2016 Arbitral Award. He sees these developments as affirming that a rule-based international legal order does not support China's so-called "nine-dash line."

This volume also includes a report on the ICC Pre-Trial Chamber's decision to authorize the Prosecutor to proceed with the investigation of the Philippine situation, and the subsequent suspension of such investigation in light of the request of the Philippine state citing its ongoing efforts to investigate the killings. It also includes an entire section on Treaties and Agreements that offer

optimism for the Philippine engagement of international laws as it presents the treaties and agreements signed, ratified, or acceded to by the Philippines in 2021.

The next part of the volume presents the trend of the increasing relevance of International Law in the Supreme Court's resolution of legal controversies. It is notable that there is a healthy mix of Public International Law and Private International Law concepts, principles, conventions, and rules in the decision-making of the Supreme Court. Furthering illustrating the importance of conventions to the Philippine legal system, the volume also presents excerpts of the Supreme Court Administrative Matter No. 21-03-02-SC or the "Rules on Action for Support and Petition for Recognition and Enforcement of Foreign Decisions or Judgments on Support."

On the part of executive action, this volume presents key sections of the Department of Justice Opinion No. 23, Series of 2021 on the validity of marriages conducted via Zoom, and through the submission of documents which are valid in foreign jurisdictions.

Finally, the volume concludes with reports on notable events in 2021, such as the 8th Biennial Conference of the Asian Society of International Law and the election of this Yearbooks' Board Members to its Executive Council. It also includes write-ups on Professor Elizabeth H. Aguilin-Pangalangan's lecture, organized by the Permanent Bureau of The Hague Conference on Private International Law to mark the 25th Anniversary of the Child Protection Convention. It ends with a report on the new generation's affirmation of the Philippine engagement with International Law through their participation in moot court competitions in 2021.

RAUL C. PANGALANGAN
Editor-in-Chief