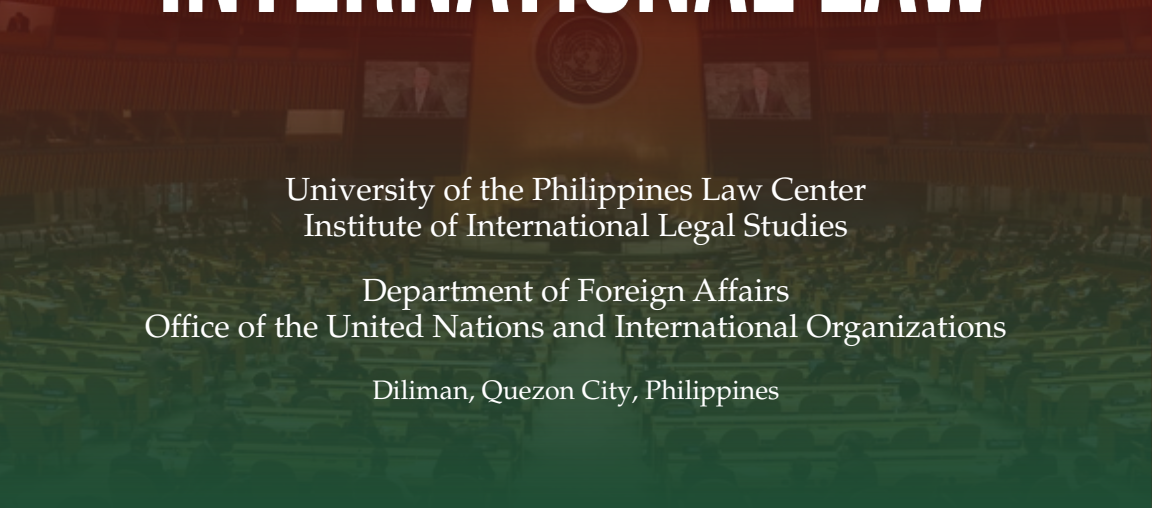
ROUNDTABLE DISCUSSION ON EXAMINING THE RULES-BASED INTERNATIONAL ORDER FROM PERSPECTIVES IN INTERNATIONAL LAW



University of the Philippines Law Center
Institute of International Legal Studies

Department of Foreign Affairs
Office of the United Nations and International Organizations

Diliman, Quezon City, Philippines

Roundtable Discussion on "Examining the Rules-based International Order (RBIO) from Perspectives in International Law"

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About the Roundtable Discussion

The Department of Foreign Affairs (DFA), through the Office of United Nations and International Organizations (UNIO), and the Institute of International Legal Studies (IILS) of the University of the Philippines, hosted a roundtable discussion (RTD) on "**Examining the Rules-Based International Order from Perspectives in International Law**" on 27 August 2024 from 3:00 to 6:00 pm at the Second Floor, Bocobo Hall, University of the Philippines Law Center.

The discussion was designed to offer a platform for international law experts and practitioners of international relations for a candid and nuanced exploration of the concept of a "rules-based international order" (RBIO), examining its implications for international law and relations. A rules-based international order is generally understood to envision a global framework where nations collectively uphold shared norms and legal principles to foster stability and cooperation.

One of the core assumptions of the RBIO is that anchoring international interactions on agreed regulations and institutions engenders a predictable and equitable environment for State interaction, which reinforces State sovereignty, security and stability in the community of nations. While the ideal of a rules-based system enjoys broad support, its credibility and effectiveness are often undermined by inconsistent application of rules, varying assertions of what the rules are, and the system's limitations in responding to evolving global challenges.

The RTD mainly tackled implications of the RBIO on various domains of international law, including: (1) the resolution of international conflicts and dispute settlement; (2) climate change law; (3) the progressive development and codification of international law; and (4) international trade and economic law.

Additionally, the RTD yielded insights on how domestic and regional political realities influenced the notion of the RBIO and how these, in turn, generate implications for multilateralism as a cornerstone of the international legal system.

Finally, the RTD sought to identify potential pathways for stakeholders to engage with the RBIO concept while maintaining the centrality of international law in guiding state conduct in the global arena.

The idea for this discussion originated from Secretary Enrique A. Manalo himself, who, in the course of numerous conversations and engagements as the Philippines' chief diplomat, consistently encountered the question of what the rules-based international order truly means in practice.

This recurring inquiry, raised not only in academic and legal circles but in high-level diplomatic exchanges, underscores that the RBIO is far from being a theoretical abstraction. Rather, it is a concrete and urgent concern that continues to shape the thinking and choices of today's global policymakers.

Program

2:00 – 3:00 p.m.	Registration
3:00 – 3:30 p.m.	Opening Remarks by UP President Angelo A. Jimenez Remarks by Hon. Enrique A. Manalo, Secretary for Foreign Affairs
3:30 – 4:30 p.m.	Panel Discussion from Perspectives in International Law 1. International Conflict Resolution 2. Progressive Development and Codification of International Law 3. Climate Negotiations 4. International Trade Law
4:30 – 5:30 p.m.	Moderated Discussion by Atty. Ruby Rosselle "Ross" Tugade. Ruby Rosselle "Ross" Tugade is a Senior Lecturer at the University of the Philippines College of Law, teaching Public International Law, and a Senior Legal Associate at the Institute of International Legal Studies at the UP Law Center. Atty. Tugade has published scholarly work for diverse audiences on international human rights, international humanitarian law, transitional justice, and general international law. Her work has appeared in international and local law journals, edited academic volumes, and peer-reviewed online platforms hosted by foreign academic institutions. Atty. Tugade's domestic legal practice includes public interest litigation of constitutional and human rights cases while her international legal work involves training justice actors in accountability projects concerning North Korea and

	Ukraine. She is also currently an Editor for the Integrated Bar of the Philippines Journal. Atty. Tugade has degrees from the University of the Philippines College of Law, the Ateneo de Manila University, and the United Nations Interregional Crime and Justice Research Institute in Turin, Italy. *All participants will be given the opportunity to speak.* *The RTD will be conducted under the Chatham House Rule. Ideas expressed may be documented in a post-event monograph without attribution.*
5:30 – 6:00 p.m.	Closing Remarks by Assistant Secretary Maria Teresa T. Almojuela

The RTD had two portions: a Panel Discussion and a Moderated Discussion. The Panel Discussion featured a panel of four experts who shared their insights on the implications of the RBIO on various domains of international law, including: (1) the resolution of international conflicts and dispute settlement; (2) climate change law; (3) the progressive development and codification of international law; and (4) international trade and economic law.

The Moderated Discussion was attended by international law experts and international relations practitioners, who provided a candid and nuanced exploration of the concept of RBIO. The participants also discussed how domestic and regional political realities influence the notion of the RBIO and its implications for multilateralism, as a cornerstone of the

international legal system. The discussion was moderated by Atty. Ruby Rosselle Tugade, Senior Legal Associate of UP IILS.

In adherence to the Chatham House Rule, portions of the transcripts have been redacted or edited to ensure confidentiality while preserving the intent of the participants' contributions.

Opening Remarks

President Angelo A. Jimenez
President, University of the Philippines

A very pleasant afternoon to all of you. It is our absolute honor at the University of the Philippines to welcome all of our esteemed guests. I know that we technically welcomed the esteemed panel of experts; I sit at the panel, but I don't think I can claim to be part of the experts that we are welcoming here this afternoon. But I derive my right to take that seat at the panel purely because I am the host of today's event. It will be conducted not only for the University of the Philippines, in the University, but my home college as well, the UP College of Law. So welcome all.

[…]

Our roundtable discussion this afternoon is truly a special one. It is a first. When we were approached by the Department of Foreign Affairs about organizing this event, our interest was immediately piqued. The concept of a rules-based international order is one we often hear referred to, but in ordinary discourse there is a tendency to overlook the deeper implications of the usage of terms, especially given the current sensitive and rather contentious state of the world today, especially in this particular region.

A rules-based international order has been defined as a system in which countries adhere to establish norms, treaties, and agreements, that govern their interactions, which seeks to establish a fair, just, open and predictable system of governance on the global stage. It is meant to reflect a shared commitment whereby countries act in accordance with agreed rules that develop over time.

International law is supposed to be included among these rules alongside regional security arrangements, trade agreements, immigration protocols, and cultural arrangements, among others.

It is safe to say that the Philippines is no stranger to the concept of a rules-based international order, as emphasized by no less than President

Ferdinand Marcos Jr. at the International Institute for Strategic Studies, Shangri-La dialogue, in Singapore back in May, an important ballast stabilizes the Philippines' common vessel; an open, inclusive, and rules-based international order governed by international law and informed by principles of equity and justice.

President Marcos recognized that this rules-based order has "allowed our region to flourish, as the stability and predictability that it has engendered have been crucial to the success of the stories of our region." He ended his speech by stating that we, the Philippines, are determined to be a force for good, a force for peace, a champion of regional and global unity, and a staunch defender of the rules-based international order, so here we are.

Indeed, I would agree that nominating the impetuses of the world today requires a body of rules that would ensure equity and justice, stability, and, as I mentioned earlier, predictability. And as the Philippines, we qualify the idea of a rules-based order by its being conceptually open, inclusive, and informed by principles of equity and justice. It is likewise meant to be governed by international law. Interestingly, however, despite allusions to international law in numerous references, the rules-based international order has been criticized by some to be contrary to or in a deep conflict with international law.

Some argue that the usage of the term is simply a way to shirk responsibilities under international law, that some meant for it to actually be a replacement for an international law-based order, challenging and threatening the latter's existence. I believe we shall be hearing more about this later from our esteemed speakers. Our roundtable discussion today is meant to help clarify concepts and misconceptions as to what a rules-based international order entails, providing a clear understanding of its principles and benefits, we hope, and hopefully dispelling misconceptions.

It seeks to offer a platform for international experts and practitioners of law and international relations, in order for them to have an opportunity to candidly discuss and explore the nuances of the concept of a rules-based international order, examining its implications on international law and relations. It will consider how domestic, regional, and global political realities influence the notion of a rules-based international order and how this affects multilateralism as a cornerstone of the international legal system. It is our hope that through these roundtable discussions, we in the Philippines, our country representatives in particular, are provided with the insights and ideas that can result in a further determination of what a rules-based international order truly means for us. This is particularly relevant as we straddle the fine line of global politics today.

Today, we are indeed fortunate to have you all with us, all brilliant minds in your respective fields. We strove to achieve as inclusive a participation as possible with our guests representing governments, international organizations, civil society, and the academe. We look forward to the discussion that is to come with great eagerness. Thank you once again and good afternoon to all.

Remarks

Hon. Enrique A. Manalo

Secretary, Department of Foreign Affairs

Thank you. Distinguished guests, [...] my colleagues in the government service, representatives of foreign diplomatic missions, esteemed experts in international law and international relations. Good afternoon to you all and thank you for joining us in today's discussion.

As you all know, today we are gathered here to reflect on the rules-based international order—a theme that has gripped the headlines and appeared in numerous speeches and think pieces alike, especially over the past couple of years. I have referred to it, in fact, very often in my speeches, and, most recently, the ASEAN Foreign Ministers held discussions about and around the idea of international law in its outcome document at its last ministerial meeting in Laos.

In fact, I have not witnessed a prior era where the notion or the concept of a rules-based international order has been affirmed so ardently or discussed in so many corners, but is also a subject of animated scrutiny in other areas. And perhaps this is a good thing, because it compels us to take a much closer or prismatic look at it, to look deeper into what we assume to be obvious. This isn't always easy. As someone once remarked, nothing is as invisible as the obvious.

So, imagine, if you will, a world where nations, regardless of their power or size interact according to a shared and decreed set of rules.

This is the essence of a rules-based international order, an order underpinned by a vision of a world where power is balanced by principle and where comity and justice bind our diverse global community in harmony and purpose.

The UN Charter, which emerged after the Second World War, offered this hope. The horrors of war forged a new international order that was grounded in respect for human rights, sovereignty of nations, and the peaceful settlement of disputes.

The Philippines' advocacy for a rules-based international order traces back to our nation's role as one of the 51 founding members of the United Nations, alongside our national ethos as the first Asian Republic.

It is important that we appreciate that this international order is a hard-won triumph for humanity, not only from the wars of the 20th century, or even this century, but generally from Thomas Hobbes' nasty, brutish state of nature, a world where every man is against every other, driven by self-interest and power, where force and deceit reign as virtues.

In this sense, investing in a rules-based local order means safeguarding humanity's greatest achievements.

Now, international law is a cornerstone of a rules-based international order upon which global peace, stability, and prosperity have been built.

It is the silent sentinel guarding interactions among States with a firm hand, upholding equality, justice and accountability. Through legal norms, nations, regardless of size find common ground to resolve differences and pursue shared goals.

Consider the domain of territorial integrity, where international law is crucial. The UN Charter's principles banning forceful annexation and honoring borders help prevent territorial disputes from turning into armed conflict.

In the debate on human rights, international law provides a moral and legal framework that transcends national borders. The rules-based order endures through legal norms that uphold human dignity through times of crisis and conflict. International humanitarian law maintains accountability, preserves order, reduces suffering, and reinforces global principles, especially in times of turmoil.

Trade relations also hinge upon the stability afforded by international legal norms. Agreements such as those within the ambit of the WTO, serve as gatekeepers against whimsical and arbitrary policies that undercut fair trade, through predictable tariffs and dispute resolution mechanisms that minimize risks of trade wars and also promotes mutual prosperity.

Thus, international law is more than a set of abstract principles. It is the bedrock of a system that maintains order, bolsters cooperation, and ensures that the interaction of States remains just and equitable.

We recognize that much of the criticism directed at the rules-based international order has been fueled by fears of hegemony, skepticism towards dominant legal doctrines, and tendencies of exceptionalism, which have also plagued international law throughout its history as a discipline.

While we acknowledge that some cynicism is warranted, we know that it often pertains to specific flaws and gaps within the international order, rather than to the order itself. And I wish to make clear that our vision of a rules-based international order is not written by the desire to impose the views of a few on the many or justify its perceived venues, but by a steadfast commitment to uphold the agreed norms and processes—and I stress, agreed norms and processes—that shape and enforce these standards.

It stems from the understanding that the international order must endure, but at the same time, it also should evolve. And for it to be meaningful, it must evolve in a way which promotes inclusivity among countries with different economic levels and also different political systems across all regions of the world.

Ladies and gentlemen, we speak of a rules-based order that must be maintained amidst both transformative and disruptive developments that affect our world.

I just want to highlight some particular issues in this regard:

1) In recent years, a disquieting trend has emerged: the rise of unilateralism, where nations pursue their own interests while disregarding international norms and mutually agreed standards for state conduct. This trend endangers the core principles of our rules-based order, which relies on equality, mutual respect, cooperation, and multilateralism. When states deliberately flout their obligations under

international law, the stability and integrity of the global system is jeopardized.

2) Economic inequality and instability, if not addressed, can spark unrest and conflicts that then lead to cross-border national security crises. The need for adaptive, equitable and inclusive economic policies forged through multilateral consensus and agreed rules must be maintained and is, in fact, more urgent than ever.

3) Climate change, with its relentless advance, has become an uninvited guest at our collective table, forcing nations to confront issues such as rising seas and shifting climates that test our resilience and adaptability. The impact of disasters and the resulting social and political disharmony in and amongst nations highlight the need for more commitment to cooperation and multilateralism within a rules-based framework, not less.

4) With environmental degradation and climate impacts on human living conditions, the specter of health crises looms large. The recent pandemic serves as a stark reminder of how interwoven our fates are. It underlined the importance of solidarity reflected through agreed rules and arrangements.

5) Finally, emerging technologies such as AI add further complexity to the landscape. AI has reshaped labor, privacy, governance, and national security, offering both benefits and vulnerabilities that have potential to upend established norms. Addressing these challenges requires a multidisciplinary approach, integrating science, law, economics, ethics, and the humanities.

Our solutions to navigating this age of change must strengthen the rules-based world order and put the human being at the center.

Ladies and gentlemen, in his remarks before the UN General Assembly, President Ferdinand Marcos Jr. said: "For amidst the challenging global tides, an important ballast stabilizes our common vessel—that is our open, inclusive, and rules-based international order that is governed by international law and informed by the principles of equity and of justice."

We view transformative developments as a powerful impetus to fortify, not abandon, the rules-based international order.

The task before us is not merely to react to these disruptions, but to bring future-proof solutions and to forge new pathways for reinforcing the sense of community and common purpose of its change.

An underlying question I believe in our conversation today is really about how the rules-based global order, through its many founts and pillars in the international system, answers to the highest public demands of accountability and advances our common humanity.

Thank you.

I. Panel Discussion

The panel discussion features international law experts on various domains of international law, including: (1) the resolution of international conflicts and dispute settlement; (2) climate change law; (3) the progressive development and codification of international law; and (4) international trade and economic law. The session was conducted under the Chatham House Rule, and transcripts are presented with minimal revisions to maintain compliance.

A. International Conflict Resolution

The first panelist shares insights on international disputes, the Permanent Court of Arbitration (PCA), and its role in fostering peace, stability, and prosperity through arbitration, especially in the ASEAN region.

Excellencies, honorable justices, distinguished participants, I would like to express my heartfelt gratitude to the Office of the United Nations and International Organizations of the Department of Foreign Affairs of the Philippines, and the Institute of International Legal Studies of the University of the Philippines for their gracious hospitality and for taking the initiative to host this event. [...] The PCA stands for Permanent Court of Arbitration, [an] intergovernmental organization happily celebrating its 125th anniversary. The organization is one of the oldest international courts in existence, and as a matter of principle the court takes no position, so I was very happy that I am invited to the round table because the round table means you don't take position, you only share perspectives.

[...]

So, I will be sharing a PCA perspective, and I'm not sure I'm able to give the answer to the question of structure or definition of international rule-based order but I'm the first speaker and I'm happy to take the liberty to

provide this room with the building blocks hoping that more capable people will use these blocks to provide us with the answers.

Now, it is also a very opportune moment for the PCA to underscore the pivotal role of international law in fostering peace, stability and prosperity across the ASEAN region. So, as you may already know, the PCA is present in this region with its rich tapestry of cultures and histories, the region which is also currently navigating a complex political landscape. This area is characterized by various territorial and maritime considerations, as illustrated by one of the very first PCA cases, the case of *Las Palmas* or *Miangas*, and one of the recent cases, the *South China Sea* arbitration. The approach to governance and security in the region is also evolving. In their recent joint statement on the escalation of conflicts in Myanmar, dated 18 April 2024, the ASEAN foreign ministers reaffirmed their commitment to assisting Myanmar in finding a solution by helping to create a conducive environment for the full and swift implementation of the Five-Point Consensus in its entirety.

I now understand from the Chairman's statement on the ASEAN leaders' meeting dated 24 April 2021 that the Five Point Consensus refers to the following: that there shall be immediate cessation of the violence, second: constructive dialogue among all parties concerned shall commence to seek a peaceful solution in the interest of the people, third: a special envoy of the ASEAN Chair should facilitate mediation of the dialogue process with the assistance of the Secretary General of ASEAN, fourth: ASEAN should provide humanitarian assistance, and fifth: that special envoy and delegation should visit Myanmar to meet with all parties concerned. The PCA expresses its readiness to support such peace initiatives alongside other ASEAN Member States. With its 125 years of expertise in the peaceful settlement of international disciplines, the PCA is well equipped to assist ASEAN nations in navigating these complex challenges. The PCA's close ties with the ASEAN region can be traced back to as early as the creation of the PCA.

So, Thailand, at the time called Kingdom of Siam, was actually among the founding states of the PCA, which was one of the signatories of [the] founding Convention on the Pacific Settlement of International Disputes during the first Hague Peace Conference in 1899. Thailand not only recognized arbitration as the most effective and, at the same time, the most equitable means of settling disputes which diplomacy was unable to settle, but also supported the inception of the PCA as an intergovernmental organization which is and should be accessible at all times to facilitate recourse to arbitration as well other peaceful means of dispute resolution like fact-finding, conciliation, mediation or expert procedures. At present, the PCA has almost 123, almost 124 contracting parties, including seven out of ten ASEAN Member States. These are Cambodia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam. The country who already deposited an instrument of accession is Timor-Leste, which I believe is also aspiring to become an ASEAN state. Furthermore, among the five international offices we have established so far, two of them are in ASEAN region, namely in Singapore and Vietnam. So, we have five, the other three are in Vienna, in Buenos Aires and in Mauritius. These international offices and host country agreements are instrumental in setting up a comprehensive legal and logistical infrastructure that facilitates the PCA's capability to fulfill its mandate to facilitate the peaceful resolution of international disputes, and it also underscores the reality that PCA is acting far beyond the Hague, actually more than half of the hearings which we organize is not in the Hague.

The trend of increasing engagement is likewise evident in the rising number of cases involving ASEAN parties before the PCA, reflecting growing confidence in international arbitration to handle complex disputes. For my presence today, I would like to highlight three notable precedents from the PCA case docket which are a testament to [its] ability to facilitate such complex disputes, including those that start out as very politically charged between two parties with seemingly diametrically opposed views.

I will start with *Abyei* arbitration. It's not the case from this region, but I found one link. The Secretary of PCA tribunal was Filipino, Louie Llamzon. He is not our colleague anymore; he is now with a large law firm in New York. The *Abyei* arbitration was a land and boundary dispute over territorial sovereignty. In this arbitration, the PCA supported the Tribunal constituted to address a land boundary dispute between the government of Sudan and the Sudanese People's Liberation Movement or Army. Important features: it was an intra-state dispute, one of the parties being a government and the other being a government-to-be, or a country-to-be. For obvious reasons, this dispute could not be handled by the International Court of Justice, who only can accept interstate proceedings. *Abyei* arbitration featured a special appointment procedure, with each side nominating two arbitrators from the list of past and present PCA Members of the Court. And parties also wanted full transparency to demonstrate their commitment to the peace process. So, all documents were published, hearings were open, and they were first of a kind to be webcast from the Great Hall of Justice at the Peace Palace. So, after the pandemic, I think we are all used to screening hearings, but at the time, I think PCA was the only one who was webcasting it live. And by the way you can still see these recordings, they are available on [the] website. I will leave aside the factual metrics on the case, but let me say that PCA was a very important element of the peace process in the region because without this arbitration the whole peace procedure would have stopped. And this is why also the parties decided that the tribunal needed to render a decision within a year, which happened. So, the *Abyei* arbitration proves that when parties want it, the procedure can be very time-effective, tailor-made and agreeable to parties having very, very opposing views on the substance of the case.

Now, case study number two is the *South China Sea* arbitration. I think you are very familiar with the factual matrix of the case, so I can only focus that, well, under the UNCLOS regime, the parties to a dispute are deemed to have accepted arbitration as the fourth dispute resolution mechanism, unless they both choose another forum. And to that date, the majority, which is around two-thirds of the States Parties to the UNCLOS, are deemed to have

accepted arbitration. And why did UNCLOS not designate an arbitration institution? The PCA, with its established experience and availability, was seen as the logical choice for the arbitration. So, to this day, the PCA has administrated 14 of the 15 interstate arbitrations under UNCLOS, including the South China Sea being one of them.

And case study number three is the *Timor Sea Conciliation*. Once more, we have the UNCLOS, which also established, apart from arbitration, other dispute settlement mechanisms—a compulsory conciliation. As we know, Timor-Leste and Australia face each other across the Timor Sea. We know that the seabed is rich in oil and gas. And after Timor-Leste gained independence, it sought to negotiate a maritime boundary with Australia. Both parties found it difficult, and this triggered the Timor-Leste request for compulsory conciliation—a first time in history. And success! And I would say, now we take it for granted, but if you talk to the people who were involved in the process from the outset, it was very, very unlikely; no one could have thought that it would be a successful conciliation. It proved to be one. So, this is a landmark achievement in international dispute resolution, highlighting the potential of conciliation as an effective tool of resolving complex and sensitive disputes.

Now, I understand that there is some controversy between the call for rules-based international order and the call for international law-based order. The essence or objective of both approaches may be the same. Ultimately, they both strive for peace and justice in the international stage. Disputes are inevitable in any society, making it critical to find mutually acceptable ways of managing and resolving them.

We recognize that the parties are increasingly seeking more diversified, non-adversarial means of dispute resolution, with the Asia-Pacific states, particularly ASEAN members, leading several successful initiatives. The PCA, with its 125 years of institutional experience, stands ready to contribute to this goal. Thank you.

B. Progressive Development and Codification of International Law

The second panelist explores the meaning of a rules-based international order, its use, and how the International Law Commission is able to contribute to its development.

Today, I will offer some reflections on the topic of the concept of the rules-based international order and the work of the International Law Commission (ILC). I was kindly provided with some guiding questions, and I will just touch on a few of these.

First, the notion of the "rules-based international order" is a concept that carries with it some controversy and raises questions. Is it a self-standing concept or is it simply another name for international law? If the former, what does it mean? What are its sources? How is it made? Why is "international law" not expressly part of it?

In 2023, Professor John Dugard wrote in the Leiden JIL a very thought-provoking analysis of the rules-based international order. According to Prof. Dugard, it appears to be more of a concept that expresses a set of rules developed by the US in particular to support its own practice of international law, being a non-party to many of the major international treaties, and is often used against the actions of non-western States (i.e., China and Russia). Professor Dugard describes the rules-based international order as an alternative regime outside the discipline of international law that, in his view, will inevitably challenge and even threaten international law.

I must agree that the rules-based international order is a rather ill-defined concept and seems more provocative of division among States rather than harmonizing relations under a common understanding—which international law provides. "International law" is based on core principles

such as the equality of States, territorial integrity, human rights and more. The process of law-making in international law is well defined and understood. Importantly, it is a process that is inclusive of States on an equal basis under the UN, with the exception of the Security Council.

But what are the core values and principles of the rules-based international order? Where are they derived from? It is not a concept we find in international law literature at all.

In relation to the ILC, the rules-based international order is a concept that can be found nowhere in our constituent documents and the records of the work we do, such as commentaries. The well-known mandate of the ILC, since 1947, is the progressive development of international law and its codification. There is no output of the Commission I could find that involves "rules" of the international order.

By contrast, the Commission does contribute to the "rule of law" within the international law context. As stated in the annual report to the General Assembly this year and in the past, "the rule of law is of the essence of the work of the Commission." The Commission also states in the annual report: "In fulfilling its mandate concerning the progressive development of international law and its codification, the Commission will continue to take into account the rule of law as a principle of governance and the human rights and sustainable development that are fundamental to the rule of law, as reflected in the preamble and Article 13 of the Charter of the United Nations." There is no mention at all of the "rules-based international order," which remains a rather ambiguous concept.

So, in short, the work of the ILC contributes to the "Rule of Law" through its statutory mandate for the progressive development of international law and its codification- but it has no mandate to contribute to a "rules-based international order".

I also wish to make a brief reference to the 2021 UN *Our Common Agenda*, which includes *a* New Vision for the Rule of Law. It states that the "The vision of the United Nations is a peaceful, prosperous and just world, governed by the rule of law and human rights, with people at its center." There is no mention of the "rules-based international order."

So, in my view, the work of the Commission is not related to the "rules-based international order," which remains a controversial, politicized and an ambiguous concept. The notion of the "rules-based international order" is nowhere mentioned in the UN Charter, the ILC statute, in the work of the ILC, including its commentaries. Whereas, the progressive development of international law and its codification, which is the mandate of the ILC, is part of the promotion of the "rule of law."

I now would like to comment on the role the ILC has played in advancing international law through its adoption of various draft articles and conventions. The question asked: "How did I assess the impact of these to the rules-based international order?"

The ILC has played a very significant role in the advancement of the progressive development and codification of international law. However, I cannot speak of the "rules-based international order" for the reasons I just mentioned. Most importantly, it is not clear what this RBIO entails. This year the ILC celebrates its 75th anniversary.

For its 50th anniversary the former Secretary General Kofi Annan said, in part: "During its first half-century, the Commission made an immense contribution to the codification and progressive development of international law. Not only did it draft global conventions on major topics, ranging from diplomatic relations to the law of treaties, without which the conduct of international relations as we know it today would be unthinkable, but the Commission also left its mark on the evolution of contemporary

international law, contributing to its dissemination and its better understanding..."

The Commission has played an integral role in building the modern foundation of international law. It is hard to imagine State relations without some of the pillars of international law such as the Vienna Convention on the Law of Treaties, the Diplomatic Immunities, Consular Relations, the Rome Statute creating the International Criminal Court, Articles on State Responsibility and more. These are all the products of the work of the ILC. As Professor Laurence Boisson de Chazournes stated in her chapter commemorating the 70th anniversary of the ILC wrote, "Much of its output is considered to be the cornerstone of the contemporary international legal order."

However, over the past years, as is well-known the codification work of the Commission has decreased, although it has not disappeared. Today we have before the Sixth Committee the very serious possibility for the draft Articles on Crimes Against Humanity to be the latest codification undertaking by the General Assembly.

Moreover, the contribution of the ILC to the development of international law cannot simply be measured by the number of treaties it has laid the foundation for, but beyond that, the influence it carries as an authoritative body of legal experts under the General Assembly.

I refer to the most recent work of the Commission on sea level rise which is proving to be quite impactful. climate change-induced sea level raises many issues of international law which are not addressed by existing international law, whether codified, custom or existing jurisprudence.

The reason I say this in this context is the rules-based international work, if it is about creating a foundation, a system, a process where state relations can find stability and security, then in this sense, I like to think that

the Commission is really contributing, because sea level rise right now is challenging international law.

I'm not sure how the rules-based international order would address this, because it is challenging issues such as maritime boundaries, creating potential disputes, of course, depending on how international law decides to interpret or how states decide to interpret the existing rules under the Law of the Sea Convention, statehood as an issue, human rights, protection of persons, many, many gaps. And the International Law Commission was already considering taking up the topic and in 2018 did in fact place the topic on its long-term work program and in 2019 on its work program. I really can say that in the almost five years in studying it we can really see how through the process of the UN, the multilateral system, [and] the progressive development and codification process that the International Law Commission provides, we can see tremendous advancements on these issues, but ultimately it will be up to the States. The overarching concern that we hear from the states on this is to preserve legal stability, predictability, and certainty. That is clearly the foundation of international law, and I can think that that's the case for the rules-based international order.

I will not go into detail, other than to make the following observations in what this means for the future of the Commission taking up work that entails some of the most pressing issues facing the international community. [...] Thank you.

C. Climate Negotiations

Through a study of the evolution of the body of climate law over the years, the third panelist analyzes the shifts in politics in climate negotiations and how rules-based international law can address the issue of climate change.

Thank you, Professor Ross, and thank you colleagues for this chance to share my thoughts on how the concept and reality of rules-based international law can actually help us address one of our biggest global issues, that of climate change.

I want to start by acknowledging the school of thought in public international law that I belong to and it's the New Haven school, I always say that because many ideas come from that perspective like Professor Haydee Yorac and Owen Lynch who taught us here in UP Law, and Dr. Diane Desierto of University of Notre Dame and Louie Llamzon who used to work in the Permanent Court of Arbitration, a student of Professor Michael Reisman, himself recognized arbitration expert and public international expert. When I did my doctoral dissertation in 1992 in Yale Law School under the tutelage of Professor Reisman more than 30 years ago now, actually on climate change which was an emerging issue at the time, he reminded me to always distinguish between law, policy, and politics.

Since the international climate governance regime was just being formed in the 1990s and the negotiations were just beginning, literally I was doing the dissertation when the United Nations Framework Convention on Climate Change was being finalized in New York in the summer of 1992. The global discussions were mostly political, but it didn't mean that law was irrelevant even at that time, as there were very well settled legal, customary, and complete norms that were accepted at the time. For example, from the Stockholm Declaration, state responsibility for environmental impacts of its actions in other states as a settled legal principle, even at the time that we

adopted, we included in the United Nations Framework Convention on Climate Change. At the same time, new legal norms were being proposed during those negotiations, which were actually alongside other negotiations on the Convention on Biological Diversity, on Forests, on Desertification, such as common but differentiated responsibilities between states and the precautionary principle. Certainly, at the time there was a very big debate on the policies and measures that needed to be adopted to address the global threat, in particular on emissions, for example, which interestingly enough in the 1990s, we could not even utter the word fossil fuel. Fossil fuel was first uttered in the context of climate negotiations in any of its documents first in Egypt two years ago, in Sharm el-Sheikh, in what was called COP 27. So today the distinctions remain relevant.

In the climate world, there are legal norms that have been accepted. We know that. We can list all of that. When I teach this course, I have listed all those norms that have been accepted through the body of treaties and protocols and COP decisions over the last 30 years. COP decisions are also legal decisions, except that they can be changed because, like the Congress, you can change a decision that was made. Unlike if it were a treaty or a protocol, where you have to go through a ratification process to change it. Some are settled, but some are still evolving. The most challenging of which is agreeing on what commitments are legally binding and which are not. The United Framework Convention on Climate Change would have several articles. Overall, the Convention is of course legally binding, but within the Convention there would be debate on whether this provision is actually legally binding versus being mere guidance, still a legal norm but up to the parties on how to implement. The most obvious ones are reduction of emissions, promises to finance developing country adaptation and mitigation versus, for example, the clear commitment to report on what you're doing. That is clear when all the countries are supposed to report on a yearly or by annual expanding on the agreement for transparency and reporting. Are promises of climate finance legally binding or is what is legally binding just the commitment to report on these commitments? So that

debate continues and whenever parties negotiate an agreement, either it's a new protocol or a COP decision. They always have that; they always bear that in mind.

We go on to talk about how in the Paris Agreement, when we were negotiating, it was the last agreement that I helped negotiate for the Philippines. When that was being negotiated, we were very careful to negotiate an agreement that did not have—it was unwritten, but we knew it had to be done—that did not have to be ratified by the US Senate because it's unlikely to be ratified by the US Senate, it has to be legally binding to the United States. What's the point in an agreement that they were negotiating with us, but they would not be a party, like what happened in the Kyoto Protocol. We learned our lesson [...]. We thought we had a fairly good agreement [...], but the US apparently did not ratify it, the next administration, the Bush administration, in fact rejected it. So we had the Kyoto Protocol, yes, shaped actually largely by many ideas coming from the US negotiators, like the emissions trading, but the US was not part of it and it became a real problem when we had to restart and negotiate a new agreement in 2009, the Copenhagen Agreement, that lasted all the way to the Paris Agreement in 2015. So, by the time the Paris Agreement there were a lot of people in the negotiations that were very conscious of which agreements within an agreement is legally binding that needs to be ratified by the USA, for example, and which agreements are, in fact, something that everyone can be comfortable with it.

By the way that explains also why we moved in the Kyoto Protocol, and actually up to the 2013 Warsaw Conference of the Parties, two years before Paris. We always thought that legal binding commitments to reduce emissions for developing, for developed countries at least, and developed countries of course were pushing us also on the same agreement, so we've been pushing China and developing countries to have the same type of commitments. The push was—the idea was, when you accept an obligation to reduce emissions, that's a legally binding commitment to reduce your

emissions, as it is in Kyoto, 5 percent, 3 percent, 15 percent, 10 percent. So that's a legally binding commitment, that's why you have to distribute properly all the countries that have to reduce emissions will reduce it based on an overall target, everyone to reduce, everyone then has their own targets for that. But in 2013, that was abandoned. Instead of a target to reduce emissions, their placement was contributions to address the problem of climate change. Everyone now needs to contribute according to their ability. So, we abandoned the idea that every country will have its own targets that are imposed globally, but instead every country will have targets that they are comfortable with, that they adopt. And even that question of whether or not those targets that they freely chose are legally binding or not, that is still a question that remains even after the policy agreement was finally agreed upon.

And of course, there's still robust debate on policies and measures that has to be taken, for example, what to do with fossil fuels: phase down, phase out, the role of forests in addressing climate especially in developing countries because that raises a lot of human rights and governance issues involving indigenous peoples and local communities, which the regime, the climate regime was not ready to deal with for the first 20 years. How to support adaptation and enable technology transfers were not seen as legal issues within the climate process, but are actually seen as policy issues that have to be resolved as technologies develop and are experienced with us.

Politics is still a big elephant in the room. What happens in the US Elections in 2024 is probably the single most important factor for successful human beings responding to climate change in the next four, eight, ten years. I'm officially called a fossil in the climate negotiations because I've been in almost all the Conference of the Parties for the last thirty years. […] For those of us who are fossils in the negotiations, and also lawyers, the most challenging task well, it's not–this is Chatham Rules so I'm able to say all of this–is actually how to US proof the negotiations. To be quite honest, when you have a US administration that's not willing to engage, it doesn't actually

matter. The US in the climate change project is always conservative because they bring their interests, right? They bring, and even a Democratic, they would bring the natural gas lobby, for example. There's always that. We recognize that. But it's important to engage. When you don't engage then you can't even talk about law and policies in that context. So that's always the most challenging task for us to do, to US-proof the negotiations, which the Paris Agreement partially does.

Many of the US negotiators have retired and also have said this publicly, so I can say it also, which is that, for example, in the Paris Agreement, it's very unique that when you withdraw from an agreement, usually it's just one year, right? Most treaties would allow you to withdraw from an agreement after a one-year period. The Paris Agreement puts a four-year period. It actually applies to the four-year period. It follows an election pattern, right? Because we negotiated the Paris Agreement in December 2015. And it was signed by most countries, ratified by most countries in 2016, before the 2016 US elections and the US did not ratify; the Senate, actually, did not concur. The US ratified the signature because of the way we negotiated the Paris Agreement, which were, at least in the view of the US, their only obligation, the Paris Agreement, is to report what they are doing and not the actual accountability for what steps they were supposed to take. That's their view.

Since the time I was a student, I have moved back and forth in different roles in the global climate regime, I would be a climate justice activist in one year, the head of the Philippine delegation, the next, or its lead negotiator spokesman, I was in Paris, a technocrat assisting the Green Climate Fund in terms of transferring money to developing countries. And now, I [am involved in] proposing ideas for equitable climate finance, loss and damage, and how to implement just transition, those are the newest agenda in the climate process that we have to push. All of which are very important, but begs the real gap in the climate regime, from a rules-based point of view, which I've already alluded to and which is that we do not make states accountable under this regime now, for its failure to meet its treaty

commitments and, more importantly, for the impacts of such failures on other countries, especially the most affected countries.

And here I have one minute to finish. Here's where the UNFCCC (United Nations Framework Convention on Climate Change) process, the UNFCCC process didn't end, and politics would not bring us to the right place. And here's where law plays an important part, because we need to go outside of the Convention process to do this. This is where other legal norms such as international human rights, intersect with the international environmental law. This is the context of the request of the advisory opinion filed by many developing countries in the ICJ, including the Philippines, if you count also its input to that. This is the context there's many forums now, including in the Philippines, national, regional, international, environmental, human rights forums, and climate litigation is being tested.

Years ago, I've been working with Justice Leonen and senior associates in the early years of environmental litigation. The courts would not solve the problem for us, but the courts can, not only the international courts can help bring the politics to the right place. Of course, climate litigation needs preparatory work, and that's being done now I can say that [there is] a technical panel of experts all over the world working on attribution, approximate cost-share variability, loss and damage of indigenous knowledge, which is a very big area of loss we are already experiencing. And what we hope is that all of these efforts will eventually succeed and change the politics, because that's what we need.

Loss and damage is an example of that. In loss and damage, when we negotiated loss and damage in Paris, just as we were about to adopt the agreement, the developed countries insisted that there should be a provision that says loss and damage is not a question of liability and compensation. The advice of the lawyers of the developing countries that were part of the discussion said we cannot agree to that in the treaty, in the Paris Agreement, because that's like foreclosing in the future, right? But politically, since we

need this agreement, we can agree with it in the COP decision. So, in the COP decision it actually says, that adopts the Paris Agreement, because the idea is in COP decisions you can change in the future, and the politics of change. Thank you.

D. International Trade Law

The last panelist of the panel discussion shares their expertise on international trade law. The panelist explores how international trade law has evolved and continues to evolve, discussing how the Philippines can navigate a legal landscape governed by plurilateral agreements.

Thank you, and a pleasant afternoon, everyone. I am indebted to the Institute of International Legal Studies of the University of the Philippines for this kind of invitation to speak here before an august panel and audience. I am in awe of my fellow panelists. I have very limited knowledge, mostly focused on international trade and competition law. But it is with this perspective that I hope I can contribute to this roundtable discussion.

In international law, it would seem to me that the rules-based international order, as has been discussed, cannot be in conflict with international law. As [...] Secretary Manalo has said, international law is foundational to any international order. And that is very true when it comes to international trade. For more than three decades, I have believed that rules-based on a multilaterally agreed trade system offer the best hope for fair competition among states, especially developing countries like the Philippines.

In a world of asymmetric economic strength and uneven bargaining power, developing countries are able to leverage their sheer number and collective force to negotiate rules in a multilateral trading system which they would not otherwise be able to secure if negotiating on their own. Coupled with rules which apply to all, regardless of size or political and economic power.

But with sufficient special and differential treatment for weaker developing countries, this international multilateral trade system held

intrinsic appeal and laid the foundation for a multilateral trading system as manifested through the World Trade Organization (WTO). A dispute settlement mechanism to boot, which offered real teeth in that it allowed states affected by another's rules' inconsistent measures to force compliance through an ability to take retaliatory actions which could genuinely hurt the violating state's key industries led further credibility to the multilateral trade system.

This order, however, has had a diminished impact on fostering fair competition in all states in the last decade for several reasons, including the following. First, while the WTO agreements were comprehensive, they are by no means complete. The most critical treaty for many developing countries, including the Philippines, the agreement on agriculture, had been understood by many developing countries as a work in progress upon its conclusion at the Uruguay round of negotiations which resulted in the establishment of the WTO. Gaps in this treaty as well as provisions which needed to be fleshed out to address developing country concerns, not the least of which is special and differential treatment in their favor, were intended to be negotiated and resolved in the Doha round of negotiations. Unfortunately, the latter has not moved in the last 15 years and is likely beyond resuscitation.

Second, the WTO Agreements were intended to provide rules for trade of goods and services made for the twentieth century. In a globalized economy as we have today where data has evolved into a currency of choice for transnational companies offering technology driven access to information and services, it is fair to ask whether the existing rules of international trade will remain fit for purpose.

Thirdly, order is maintained if key players uphold the rules rather than subvert these rules by finding workarounds and insist on protectionist policies and use the systems of dispute settlement mechanisms to delay or void implementation of the necessary rules consistent measures. I promised

one of the attendees here that I shall not mention where he or she is from but let me say that certain deep pocketed states for instance design and provide subsidy type measures which distort the playing field to the detriment of developing countries' ability to competitively export and supply their products to these countries and worldwide. An increasing unilateralism in a key state which has designed its domestic processes such that it can impose additional tariffs on products competing with its critical domestic industries and thereafter turn around and claim that these are justified on the basis of national security. These do the international order no good.

Obviously, the impasse on the composition of the WTO Appellate Body, the multilateral trade systems' final arbiter of disputes due to, among others, one key state's refusal to approve appointments thereto has mitigated the value of the WTO dispute settlement system, the one remaining pillar of the multilateral trade order that was still working effectively after its negotiated process broke down. So, we find ourselves gradually evolving toward bilateral and plurilateral free trade agreements, sometimes euphemistically called Economic Partnership Agreements to remove the stigma unfair free trade negotiated between unequal trading partners. Recent examples in the Philippines coinciding with increased relevance of multilateral trade systems include the Regional Comprehensive Economic Partnership Agreement or RCEP, the Philippine Korea Free Trade Agreement from last year, and the Philippine EFTA Free Trade Agreement from 2018. While these plurilateral orientated international order is still found in the trade rules of the WTO multilateral system, these have been augmented by new rules relating to new, modern issues such as competition law, consumer protection, and e-commerce. Of course, these plurilateral agreements expectedly afford broader and deeper market access for participating states.

It would seem that for all the merits of the multilateral trading system, the foreseeable future lends itself to an international order based on plurilateral agreements, founded on regional proximity and similarity of values in matters that go beyond trade. For instance, on issues like labor

standards, the environment, and human rights. One may argue that this is a new form of rules-based international order which goes beyond what is traditionally referred to as international law as reflected in the WTO agreements and various plurilateral trade agreements.

We finally mention the US for instance. The US will be less inclined toward offshored and rather prefer friend-shored where trade and investments are increasingly diverted in favor of states with similar values. The US dalliance with the notion that China will embrace Western-style democracy and values with the latter's integration into the rules-based international order or the WTO international system of laws have long turned bitter as China has not only continued to subsidize its state-owned or backed enterprises, thus distorting competition, but more critically, has allegedly used freer access to other states' markets as a means to gather sensitive information from its trading partners.

An international order based on plurilateral agreements bears the obvious downside of non-inclusivity. It unsettles the most favored nation principle, erstwhile the background of our international system of laws on trade. Indeed, only the states which are part of a particular free trade agreement benefit from its enhanced, more progressive rules, which seek to ensure in a more holistic manner fair competition in international trade, albeit with a more limited sphere of states.

For the Philippines, major trade partners such as the EU, the US, and the UK remain unbound by FTAs with us, and we must therefore rely on the default of multilateral trade rules to govern our trade relations. It is hoped that these FTAs, including soft rules being developed in APEC (Asia-Pacific Economic Cooperation), will in time build states' confidence and evolve common rules and principles. Whether or not these can harmonize the multilateral trade rules that apply across all states is uncertain, perhaps even unlikely in the next decade. What appears more plausible is that the international trading system will be governed by both plurilateral rules

developed in FTAs coexisting with WTO rules, particularly multilateral rules and even plurilateral rules developed within the WTO by like-minded states.

Now, the question I was asked is then how do developing countries like the Philippines navigate these sets of international trade laws now that we have a spaghetti bowl of all these FTAs that are evolving in the international sphere. For my time as a trade negotiator for the Philippines at the WTO and subsequently as a commissioner in the PCC, among the challenges that I have observed were first, the still relatively shallow bench of international trade law practitioners. And second, a lack of knowledge and appreciation for trade rules in both government and the private sector. My experience as a trade negotiator fighting for every inch of policy space was frustrated by realizing that colleagues in government left that policy space unused, or worse, gone in the opposite direction. Cases in point are the issue of TRIPS and Public Health and the Philippine Mission's statement of reservation and the issue of improved access for our exports to the EU consequent to the latter's enlargement.

A second critical challenge is the non-optimization by developing countries of the dispute settlement understanding to pursue legal rights. A rules-based international trade system is strengthened and upheld if states do not sleep on their rights and contribute to jurisprudence and case law. That is how you strengthen an international legal system. In the case of the Philippines, we failed to pursue a case against Australia for the phytosanitary measures the latter imposed on our exports of fresh fruits and vegetables in the early 2000s. Similarly, in the last few years, discriminatory fees imposed by Chinese and other shipping lines on shipments to the Philippines caused serious detriment to Philippine importers. The former fell through for lack of funding and political will, the latter due to political dynamics.

Not everything is a failure, however, as the Philippines remains the only country to have successfully used the WTO mediation process to address our dispute with the EU regarding canned tuna access. Now, the Philippines and

other developing countries need not navigate the international system on their own. The advisory center on WTO law in Geneva, for instance, exists to assist in those disputes.

We have to also help ourselves by investing in a stable roster of international trade law officials and experts in government, trained and exposed to international forums and conferences. The UP College of Law, under the current dean, has stated her commitment to funding faculty members to participate in international conferences. The Philippines and other developing countries should participate in WTO disputes as third parties. There's nothing more valuable than learning by doing, and that is an effective way of participating in the international legal system.

Now, the final question is how do trade agreements and competition laws interact in the context of the rules-based international order? The WTO failed to agree on negotiations that would have led to a multilateral set of agreements on trade and competition in 2001. The discussions undertaken in this context, however, led to developing countries to have a deeper appreciation of competition policy and law, and therefore undertook a unilateral enactment of domestic competition laws, the Philippines being one of them.

Now, as it has evolved in the last 20 years, rather than hard law through WTO rules of trade and competition having been implemented. What has evolved is a set of good practices developed through that international competition network, which some would say amounts to soft law, in that practically all countries seek to adhere to this. Is this a form of rules-based international order? Well, if you look at RBIO as one which is necessarily influenced by a particular state, by the United States for instance, then it fails that test. Because the ICN and all the good practices found therein were developed by other countries, not necessarily the US, not even from Western states. Or maybe, just maybe, it offers hope for the evolution of a rules-based international order, cutting off the foundation established in the WTO, but

with one which is serious, not only developed, but developing countries as well. Thank you.

II. Moderated Discussion

This section presents comments from participants in a moderated discussion. The discussion featured reactors who provided insights from the fields of international law and international relations. The session was conducted under the Chatham House Rule, and transcripts are presented with minimal revisions to maintain compliance. Comments are labeled with a numerical identifier for each reactor and contributions that are attributed are clearly marked as such.

Reactor No. 1

The first reactor analyzes the definition of the validity of norms and poses a challenge to the Philippines in its approach of the rule-based international order. The reactor emphasizes that there is a need to advocate for the rule of just law.

Maraming salamat. Your Excellencies, Your Honors, Colleagues in the Academe, fellow public servants, and fellow seekers of justice. *As-Salamu'Alaikum wa Rahmatullahi wa Barakatuhu*. Warmest greetings of just and lasting peace. I wish to extend the best regards from the Chief Justice and my other colleagues in the Supreme Court. For those of you that follow our jurisprudence, you know that I do not always represent their views, and I do not represent them now. Thank you for your invitation and the informative presentations this afternoon.

Because of the time given for all of us and with our indulgence, I will speak in broad strokes, but likewise in an academically skeptical way. Jurgen Habermas articulated two competing views on what is meant by the validity of norms. I project it now to the concept of the validity of rules, or law, to make a point. The first view is a liberal, positivistic one. One of the presenters cited an article that called it Western, and if I am correct, I think this is what

the author meant. Rules are valid based on what is referred to as its facticity. That is, for so long as emerging norms, substantive or procedural, come out through an agreed-upon process, also legal, then they are valid. Therefore, the validity of a norm is measured internally. I suspect that this is this view which makes the rule-based international order concept tempting for us. Therefore, though persuasive to other countries only as it is a product of arbitration but an articulation of various provisions in the UN Convention on the Law of the Sea, the *South China Sea* arbitral ruling is valid from this point of view. Diplomacy and perhaps even military cooperation can be organized around that ruling. How it is enforced is another matter altogether. The difficulty of enforcement of this arbitral ruling is what we are witnessing today, and I suppose this is what contrasts the DFA and our entire state. I am sure former Chief of Staff of the Armed Forces of the Philippines, General Emmanuel Bautista, who is still with us now, knows what we mean by the difficulty of enforcement and why difficulty of enforcement is a euphemism. I will go further. We have been invaded.

The second view is, to my mind, from Habermas, a more comprehensive and mature one. That is, the validity of a norm that we know should follow some idea not of facticity but legitimacy. This means that we need to accept that the status quo, even as articulated in existing international law and international relations, are not what is ideal. Legitimacy as validity, therefore, is measured through external standards of social justice among states and within states, only values that have not yet been articulated clearly in any source of international law.

For lack of time, I will just mention a few examples to clarify this point. Some of the speakers have already pointed to some of these. The structure of the UN Security Council, which gives veto power to post-World War II allies, diminishes the role, for example, of predominantly Muslim countries, Africa, and even developing countries such as ours. Yet, whatever the Security Council decides, despite its skewed representation of peoples on this planet, is what is needed. It is the norm that a rule-based international order with

due respect will acknowledge and respect. Anything outside it is considered not as legal or legitimate but mere advocacy.

By the way, the UN Charter also assures that no modification of it can happen without the veto of these post-World War II allies. Just check Article 108 and 109 of the UN Charter. I only need to mention Gaza, Ukraine, West Philippines as examples of major incursions into world peace. Then I need not call your attention to the limited scope of the International Tribunal Court, I guess my former professor Dean Raul can explain this more, which now provides, because of the absence of some major parties, near immunity to some countries whose military capabilities are extended beyond their own boundaries. Yet the UN system's response to when it is most needed painfully requires patience from more of the people that it affects.

Then, of course, there is the continuing challenge to multilateralism, and this was covered by [one of the panelists]. The system of voting in major international organizations, such as the World Health Organization, the World Bank, the International Monetary Fund, which by their charters are permissive for those with resources, but restrictive for those that have none. I suspect that this has been one of the reasons that globalization has assured marginalization, disempowerment, and of course now, disaffection. What is legal is not necessarily what is just. What is just is not necessarily what is now legal.

We should strive toward making what is just legal but of course the discourse that leaps to defining what is just is also fraught with the political economies of hegemony and the political economy of ignorance. So, when we subscribe to a rule-based international order, we should be careful to do so unqualifiedly and accept what currently exists. Reforms are slow at the international level, while the existential threats we face are very real and will come very fast. This includes genocide and civilian suffering despite the Geneva Convention and common Article 3 of both protocols to the Geneva Convention. The danger of annihilation due to nuclear war, climate change,

the emerging dangers of new digital technologies and others happen more quickly than how the current base international order in the context of real quality happens.

We cannot wait one more lifetime. We cannot wait one more lifetime. I fear that the crisis will happen in the next few years. All these disruptions for me are just a reversal. Any one of these existential threats will fundamentally change our lives soon. Do not worry, my daughter calls me not a boomer, but a doomer. But I think we should embrace the possibility of crises within the next few years far worse than what COVID did to us.

Based on this, I propose that we should always qualify our adherents to a rule-based international order. We should find ways, in our diplomacy perhaps, to influence the mechanisms more, and under the current leadership of our Department of Foreign Affairs, or perhaps as members of the academe or civil society coalitions, perhaps even take the leadership for countries such as ours.

We are a country that has for several years ranked as number one in risks for natural disasters. We are one that has—daily—to meet a nuclear superpower who infringe upon our territorial rights. But we are a country with no force except the persuasiveness of our lawyers and the capacity of our diplomats.

For me, there is a difference between the rule of law and the rule of just law. The rule-based international order, and I capitalize this, does have its pragmatic uses, but it is also dangerous, and it can reify our continued marginalization as a state or our marginalization as a people. Law is a product, but it is also a process. More importantly, we need to recognize that the process of making law is not all that we should be doing, but making sure that our people understand their role and that we continue to use our powers for their own empowerment. Always, we put in context what we do in this specialized field called law, or in a specialized field called doing justice. In

the words of my professor in International Law, Dean Merlin Magallona: Law is power, but be careful that you understand it well so that it does not become a fetish.

Our people continue to suffer. While we hold our titles and enjoy our privilege, we have no choice. Within this lifetime in the next few years, we cannot fail them. Maraming salamat, thank you, *shukran*.

Reactor No. 2

Judge Raul Pangalangan

Former Judge, International Criminal Court

Professor, University of the Philippines

Judge Raul C. Pangalangan discusses the evolution of legal standing in international law cases and how it is used today to address contemporary issues.

Thank you so much. In the old days, only the injured state was entitled to have standing to file a case. And if you look at the drafting history of the Articles on State Responsibility drafted by the International Law Commission, in the earlier drafts under ILC Rapporteur Willem Riphagen (later ICJ Judge ad hoc), they actually tried to codify the notion of international crimes such that all states will have a stake and are deemed "injured states." Significantly today, Mr. Secretary, if you look at the biggest cases in international law, whether it's at the ICC (International Criminal Court) or the ICJ, there are many of what I call "solidarity filings." For

Ukraine, there are at least 37 referrals by ICC state-parties other than Ukraine, states that were not invaded by Russia, and yet who still made "state referrals" of the Ukraine situation to the ICC Prosecutor. The same thing with the ICJ, as in the case of Israel and Hamas, where the case was filed by South Africa. Or even more dramatically, in the case of the Rohingya in Myanmar. Put yourself in the shoes of Myanmar. The case was filed by The Gambia, and Myanmar says, like, "where did you guys come from? We haven't committed genocide against you." But basically, The Gambia says "well, we're fellow parties in the Genocide Convention, we have different interpretations of the convention." And voila, the Court says that met the requirement that there be a dispute existing between the parties, which also shows that the ICJ was quite expansive in interpreting its jurisdiction.

And for me, it is also my hope that when we speak of the hottest environmental issues for us, there are, of course, the artificial islands being built by China, which have a tremendous effect on the environment. But I'd rather not look at that in isolation. There are other international issues that should surface and highlight. There is the discrimination against the Muslims in Xinjiang. There is of course the right to self-determination of Taiwan, the right to self-determination of Tibet. Or since China supports the military regime in Myanmar, the genocide against the Rohingya. And strategically, we are using the old Third World slogans against its erstwhile stalwart, China, which will have to reconcile its current conduct of aggression in the South China Sea, with its own history as a champion of self-determination and the rights of the oppressed. Thank you.

Reactor No. 3

Assoc. Prof. Rommel Casis

Associate Professor, University of the Philippines

Through a review of the literature on the definition of the rules-based order, Assoc. Prof. Casis categorizes the differing views as either a set of rules or a network of institutions. There is a need to define the term properly due to the multiplicity of views.

To be brief, I think what is crucial (and I think [the first panelist] mentioned it as well) is the necessity of clarifying what is meant by the term "rules-based international order" in the first place.

If you review the literature, legal writings and also the statements of different diplomats on this topic, you will see, in my opinion, at least two ways of looking at the rules-based order. First, as a set of rules, and second, as a network of institutions. Now, as a set of rules, you could also take a look

at it from three points of view, and there are three different views as a set of rules.

One set of views from scholars would say that the rules-based international order is synonymous with international law. It's the same thing. It's referring to the same concept. The second way of looking at the rules-based order as a set of rules is to consider it as overlapping with international law, but broader than international law. Because the rules-based order would include what we in international law call "soft law" or instruments which are not considered binding or instruments which could not be enforced in courts. But these will be covered by the rules-based order. The third way of looking at the rules-based order as a set of rules is looking at it as an alternative to international law. Perhaps this is born out of frustration that international law cannot be enforced, that it seems to be held by the powerful and not by the weaker states. Perhaps there is this distinction between a sovereignty-based order, which is what international law is looked at, or a rules-based order. But I find that the distinction is actually not valid in many instances, but I do not have the time to get into the specifics of that.

The second way to look at the rules based international order, aside from a set of rules, is to see it as a network of institutions. And that seems to be a popular way that it is described in international forums. It is the current order that we have right now that emerged out of World War II. And it's just not a set of rules, but the institutions, the way things are done, the way things are governed. That's the current rules-based international order. Some professors would actually say that there's more than one rules-based international order. There are multiple rules-based orders that are applicable.

So there seems to be a multiplicity of views as to what this concept actually means, and I think this is where the danger lies. We need to be very exactly clear by what we mean by this concept. Otherwise, we might be misunderstood. And so, there are basically a few criticisms on the current

concept. If I may follow the track taken by Dr. Oral with being a bit more provocative. I think if we are not clear with the concept and if it's understood as an alternative to international law, it will bring instability. As Dr. Oral pointed out a while ago, where are the sources? How do we know what is contained in the rules-based order? Second, it's unenforceable because our courts, the International Court of Justice for instance, can only look at the legitimate sources of international law. How do we enforce it if we apply the rules-based order? Thirdly, it can become a mechanism to avoid international obligations. States can say, well, we just don't follow international law, we follow the rules-based international order. But what is that? It becomes an instrument of states who have more power.

Hence, I think the most important thing before we talk about the rules-based international order is to be very clear about what we mean by this, so that we are able to take advantage of it without suffering the consequences of such an amorphous concept. That ends my comment.

Reactor No. 4

Mr. Julio Amador III

Founder and Trustee, FACTS Asia

Mr. Julio Amador posed the question of who writes the rules in a rules-based order. In tackling this, he suggests what must be considered in relation to the discussions of a rules-based order and international law.

Thank you. Listening to a line of lawyers, some international relations, because it's fun to talk about international law, but the reality is that it has to be implemented in the order in which it currently exists. And one question that we have, among several questions, and those of us in this field are always asked, when we talk about a rules-based order, and this is fun, is whose rules made the order?

Nobody talks about a law-based international order, because it's about the rules. And the questions that exist are, who wrote the rules? What are these rules? And can these rules be changed if my country becomes powerful enough to do so? And these are fundamental questions that I think we need to think about when we talk about international rules, because there are current attempts to change these rules. You have the Global Security Initiative and the Global Development Initiative, both coming from a country that feels that the current rules have constrained it in the way that it has behaved for the past several decades. If you look at the contents of the GSI and the GDI, ultimately, they attempt to subvert the rules that we have, and that country has been effective in getting its neighbors and its partners, through creative organization of various international arrangements, to reshape the rules-based order.

So, I think there are three things that must be considered as we discuss international law and the rules-based international order. First is the need for strong diplomacy, because you need diplomats who will be the ones to negotiate and try to keep the states to adhere to international law and rules. The second is of course deterrence, which refers to material capabilities should diplomacy not work. Whether it's a trade or security, we need some sort of deterrence. And finally, when we talk about international law, people can refer to tomes and publications that nobody else can read because they were not clear or available before; nowadays in this age where we have an avalanche of information and disinformation, rules are not as clear as we'd like to think they are. Case in point Philippines beats China in an arbitration; what was the number one disinformation there that we've seen? And when

we analyze it, this comes from that country that's trying to change the rules. The disinformation that is prevalent are the following: One, the ruling is not legitimate because it is not from a UN body. It comes from the PCA. They don't care about the actual facts that the PCA was the secretariat. They care about the fact that it was supposed to delegitimize the ruling because it did not come from the UN.

So, these things I think have to be considered and I'd like to congratulate the DFA and UP for coming up with this discussion because it is much needed as the challenges will come in the next few years about what rules whose rules and who will be making those rules, and will face on the countries in this region.

Reactor No. 5

The fifth reactor shared how climate negotiations have evolved over the years and how the leadership of the Philippines paved the way for the current landscape of climate laws.

Thank you so much, Excellencies. On the part of [my organization], we just want to share a perspective how we participated in a productive manner. When we see some hopeful windows in the climate negotiations, cases in point, when the Philippine negotiators went overnight to help the entire negotiating bloc of the G7 in China to set the agenda for a loss and damage fund in Egypt in 2022. This was part of ensuring that the loss and damage fund would be operationalized by the Dubai COP last year.

Why did I say this? Because in the midst of this conversation or reflection or debate, we just made sure that as a worthwhile member of the global community to ensure that we scientifically adhere to the advice of science how we try to help achieve the goals of mitigation and adaptation. We try to be consistent in our stance to advocate for what's just and fair. It's not easy negotiating in order to make your voice louder. It takes a lot of good reason, it takes a lot of credible participation, and I just point out as a matter of fact, when the Philippines was awarded or elected to host the loss and damage fund as a result of this rigorous negotiations. It was observed that this is due to the consistent leadership and credibility of Filipino negotiators even before the worst of all in 2013. So in this conversation it pays to be present, it pays to be grounded on science as the very foundation of what makes a policy responsive and fit for purpose. Thank you.

Reactor No. 6

General Emmanuel Bautista (Ret.)

Head of Security & Crisis Management, Ayala Corporation

With his experience in the South China Sea dispute, General Emmanuel Bautista provides his insights on the use of international law and the need to strengthen diplomacy to tackle the issues in the region.

Thank you. A lot has been said already, so I'll just be short with some thoughts on what has been discussed already. Earlier, [one of the panelists] mentioned my name and talked about the enforcement of the rule of law and the difficulty of doing that.

I recall back in 2012, after the Scarborough Shoal incident, the then president asked my advice on what we can do. I talked about the instruments of national power. I said, military, no contest with China. And do we want to fight with China militarily. And I said, but there are other instruments of national power.

Our strength is the law is on our side, and we have very good diplomats. We have very good lawyers, in fact, in full display here today as we have seen. And so finally we went to the PCA for arbitration, and we won, showcasing the strength of the legal. The law is on our side; we have good lawyers. But now, after the decision has been made, we're back to resolving it militarily again? Should we allow that to happen? That's what we are trying to avoid in the first place. But we are back in full circle, where we may have to resolve that militarily. But as I said, militarily, there's no contest. And so, this is now an opportunity for our diplomats to play a bigger role, to assert the ruling of the PCA without having to resolve it militarily. For our diplomats to take a stronger position on this in the international community. In fact, we need to highlight the importance of the international community in avoiding a

military confrontation and in asserting the ruling. After all, the international community is part of UNCLOS. It's part of international organizations. But how many countries have expressed their support for the ruling of the PCA back in 2016? Even today, how many countries are really articulating, that the ruling must be recognized and accepted by all especially the parties involved. And so, we need more heavy lifting from our diplomats. The Secretary of Foreign Affairs is here and I'm sure he recognizes that as well. Otherwise, what choice do we have? These are just my thoughts and thank you for a very wonderful discussion in this round table.

Reactor No. 7

The reactor sheds light on participatory issues in the rules-based international order, particularly on the need to democratize the current order to amplify the voices from the global south.

Thank you. And this has been a very enriching discussion so far and many topics already been discussed.

So, I'll now address my comments to just a very general idea. In international law and in general discussions in rule-based international order, does it return to fairness? And I think this has been sort of a theme that has been repeated throughout this afternoon. What I want to sort of draw your attention to is this idea that when you speak of fairness, one important aspect of it is the participatory aspects.

Several questions come to mind in discussions involving important issues that might affect all of us. We asked who can participate, how meaningful is the participation, and what's the measure of meaningfulness in any case. If you look at it from a sort of global north, global south perspective, there have always been initiatives and efforts to bring developing countries into the conversation.

In the 1960s, 1950s, you had this move to have a sort of reestablished new international economic order that failed obviously for a variety of reasons. Throughout sort of, since then there have been efforts to sort of strengthen the voice of developing countries and have them have a greater say. The formation of blocs such as the G77 is very useful of course because it sorts of allowed sort of a more unified position. More voices mean louder, louder sayings allow other states to pay greater attention. But the question is, how does having a voice necessarily translate to impact or effect? So that is still something that this jury saw up in that.

Another question is, in which fora and for what issues is such participation happening? If you think about it, the voices of the global South tend to be more evident in issues such as human rights, the environment, oceans, so to speak. But in issues that have a very significant economic implication, there tends to be sort of a quieting, perhaps because of the current dynamic of the world, that the stakes are higher, so to speak, for the global north. So, there's a tendency to sort of undermine, subvert, at the very least sort of diminish the significance of that contribution.

So again, we sort of have to question whether, again, a term of fairness is necessary to reimagine the way this dynamic is playing out. RBIO is not a static one. It changes. The dynamics are interesting to observe because it really depends on what's going on in some part of the world. It has sort has a phenomenon effect elsewhere. So, there's always space for transformation, in my opinion. This is continuously being rewritten, but one important thing that makes that way of participation is that there is no compliance without buy-in. In buy-in tends to stem from your feeling of ownership in the world that you're crafting. And in leaving out developing countries to global south, there is a tendency to feel overlooked and therefore this sort of sense of being not heard and therefore can say so not have support to what is not, to what the world as it is right now.

So, there's a need to re-examine how we can democratize the current RBIO and international law in general. Thank you.

Reactor No. 8

Associate Dean Andre Palacios

University of the Philippines College of Law
Chair, International Law and International Affairs Committee, Integrated Bar of the Philippines

Associate Dean Andre Palacios raised the concern that the ultimate beneficiaries of the rules-based international order should be given a larger voice. Associate Dean Palacios forwards the alternative method of enforcing international rules through domestic courts.

Thank you very much to the speakers for sharing their insights on the rules-based international order. I approach the concept with my bias for international law, that being my background. I just want to make two (2) comments, very short ones.

First is that the Rules-Based International Order is really state-centric, where we rely on states to be the drivers for creating rules and also for

enforcing those rules. I think the ultimate beneficiaries of those rules should be given a larger voice, they being "people": people as a community or people as individuals.

The second point I would like to make is that the problem with international law, the international legal system, or, if you want to call it by another name, the rules-based international order, is the difficulty of enforcing the rules which people have labored long and hard to craft. If there is a difficulty in enforcing these international rules in the international legal system, maybe we should look at alternative methods of enforcing international rules: when these international rules are domesticated, they may be enforceable through the domestic courts.

Thank you.

Reactor No. 9

Prof. Romel Bagares

Professor, Polytechnic University of the Philippines

Prof. Romel Bagares discusses the problems in the enforcement of rules and norms in the current rules-based international order. He explores UNCLOS and the third world approach to international law, emphasizing sovereignty as an inseparable component of the right to self-determination.

Good afternoon. What a fascinating discussion. I think that even just from the questions, as well as the remarks made, there's a lot to process.

My comments would just be limited to the problem of enforcement. And I'm glad that Judge Pangalangan has actually referred to in his remarks the notion of locus standi and solidarity norms from the Article on State Responsibility Article 48, paragraph 1 (a) & (b). I think that's also relevant to our problem in the South China Sea, which has not been fully articulated.

I think one of the leading cases there would be the *Wall Opinion* (2004), and also, we had the recent advisory opinion which continues and expands on that one, on the question of the legality of the occupation of Israel. (*Occupied Palestinian Territories Opinion*, 2024) If you recall, in the *Wall Opinion*, there were a few things there that the Court discussed as to the obligation of states under the relevant international law in regard to the construction of the wall in Israel. And there are three important things that the court said, and they pertain to *erga omnes* obligations. And I think that these are also relevant to the question of the South China Sea. Are there *erga omnes* obligations to the part of other states who are parties to UNCLOS?

And there three things there. The court said states have, in regard to *erga omnes* obligations, an obligation not to recognize an illegal act. Number two, the obligation not to provide assistance to the illegality being committed. And number three, states have an obligation to help in the enforcement of international law. And I think these are the three things that have not been fully articulated upon.

We have the law of the sea, which of course has many members, but these three things have not been explored. On the question of *erga omnes* and responsibility, is the right to self-determination, because that was also the question in the *Wall Opinion*, is the right to self-determination inclusive also of the Philippines' right to natural resources to its exclusive economic zone? I have not seen a legal article that dealt with that. But of course, from the point of view of the Third World Approaches to International Law, there's been a long-winded question brought forward in the literature that

third world states have a (permanent) right to natural resources. They're sovereign—that would include sovereign rights over the exclusive economic zone. And so, I think that Article 48 (of the ARSIWA) has not been fully explored in this discussion: so, we have the *erga omnes partes*, which would mean the obligation of states who are parties to the UNCLOS and there's also erga omnes omnium which involves jus cogens and customary international law. And we'd like to imagine that the UNCLOS itself is an embodiment of the duality of norms of international law, because the UNCLOS also embodies customary international law.

So as a matter of enforcement, this is perhaps something that would need the collective work of academics, diplomats, and even people involved in international organizations. How do we bring these three points into complete action? How do we get other states not to recognize a continuing illegality? How do we bring other states not to provide help in the commission of such an illegality? And number three, how do we get all the other states to help enforce international law?

Reactor No. 10

Atty. Karen Jimeno

Director and Chief Legal Counsel, SofCap Partners

Atty. Karen Jimeno raises the need for a rules-based international order that addresses the asymmetry of power and asymmetry of resources among countries. She suggests the consideration of areas where there are interests in common for the rules-based international order.

Thank you. Good afternoon. My question is based on something that was mentioned by [one of the panelists] when he spoke about the rule of law versus the rule of just law. And fundamentally, I think this also goes to what was mentioned by [another panelist] when he talked about asymmetry of power among countries. And so that leads me to the question of when we talk about rules-based international order, there's always a question of who writes the rules and who changes the rules. With the embedded structure, for example, in the UN Charter, as mentioned by our acting Chief Justice, in Article 108 and 109, where you have certain countries that wield asymmetrically more power than the others and there are permissive voting rights and restrictive voting rights, all of these affect the legitimacy of RBIO.

So, I think that's something that needs to be addressed, whether we can design an RBIO that addresses this asymmetry of power and asymmetry of resources among countries. On that note, I'd like to point to a different sector where I see some legitimacy of an international order based on rules where the problem of enforcement is addressed by the voluntary cooperation of countries. And I think that's in the field of international finance. Mario Giovannoli said that international financial regulations have always developed as a child of crisis, and a lot of the rules that we have right now were formed as a response to crisis.

The Bank of International Settlements which fosters international financial cooperation was formed to oversee the settlement of World War I reparations. The Basel Committee on Banking Supervision (BCBS) was formed in response to the "Herstatt Affair" where several banks released payment to Herstatt Bank in Germany after which it became bankrupt, and by the time banks opened in New York that day, a lot of banks in New York were affected and were never paid because by then Herstatt Bank was already closed in Germany because of the time zone difference. But because of, I think, certain interests that are common, specifically in the field of finance, we see some very effective enforcement or voluntary compliance by countries and banks with Basel rules. So, we have the Basel Committee on Banking Supervision, they come up with rules or standards that even our banks here in the Philippines voluntarily comply with. So, I guess my question would be for us to think about perhaps certain areas where there are interests in common and therefore certain states would voluntarily comply with an RBI rule. That's something to think about because, as someone from a country without much resources or without much power, I think this whole asymmetry in power and resources is something that will continue to affect a legitimate rules-based international order.

Reactor No. 11

Mr. Richard Heydarian

Senior Lecturer, University of the Philippines

Mr. Richard Heydarian explores the influence of domestic politics and changing discourse in the rules-based international order. He provides the formation of coalitions of middle power countries as a proposed solution.

This is fantastic. Thank you very much again for the discussion. Very quickly, I want to also build on what Mr. Amador mentioned a while ago, I mean, I think there's more than 50 percent chance that we'll have an interesting administration in the United States soon. With that in mind, as much as I agree, there is a concern with how China is weaponizing this whole discourse of global south and multi-polarity, to present itself as a champion for much more pluralistic international order, I think we also have to be very concerned or potentially take into consideration the possibility that this whole rules-based order, free and open in the Pacific, could be much more

weaponized by a much more aggressive Trump 2.0 administration come next year. We should have clear ramifications for all sort of countries like the Philippines.

So, I think it's that kind of double weaponization that we have to keep in mind as we discuss these very important issues. And in connection to that, and I think our international legal friends would be very helpful in that, should we develop a kind of an internationalist coalition, you know, kind of a more middle-powered, rules-oriented countries and individuals and institutions work together. Because this is a sense I got from meeting leaders from a lot of middle-of-power countries, including from Germany earlier this year, this idea that we should not be bound by the wings of either of the two superpowers, although first or some more equivalents. You can have a long conversation over that. And that's just a very quick point. I mean, obviously our great lawyers and diplomats are doing a fantastic job to defend our country, but I think we have to give more credit to the Philippine Coast Guard (PCG) and AFP (Armed Forces of the Philippines) and more of our thought leaders who are also doing their part to ensure we preserve our interests in the West Philippines Sea.

Thank you very much.

Reactor No. 12

Asst. Prof. Edcel Ibarra

Assistant Professor, University of the Philippines

Asst. Prof. Edcel Ibarra shares his insights on an ideal world order, discussing the current world order led by the United States and exploring the alternative of a Chinese world order.

[…] I'd like to jump off on the point started by Mr. Julio Amador […]. What [I] got from him was rescuing the concept of a rules-based international order, away from international lawyers and from international law, back to the field of international relations. If we do that "rescuing," so to speak, [of] the concept of a rules-based international order away from international law toward international relations […], we can […] look into two theories in international relations: the liberalism school in international relations, which [one of the panelists] has also mentioned earlier, the view of a rules-based international order […] as a network of institutions; [and an]

English school perspective [...]. One way to do that is to begin by envisioning order—visions of order. What do we want when we visualize an ideal world order?

When we talk about the rules-based international law—and I thank [one of the panelists] for mentioning that the rules-based international law is often shrouded in the trappings of the West [...]—we imagine a liberal hegemonic version of a world order, the same world order that [...] the United States [...] led in constructing after the Second World War.

But let's try to imagine alternatives. And this is my way to point out how we may perhaps also define "rules-based international [order]," [because] it was said earlier that we need to define what "rules-based international [order]" is. One way to do that is to define what it is not. And let's start with alternative visions of international order.

One alternative vision of international order that has been proposed by a power—that perhaps also wants to lead that kind of order—is, of course, China. China's vision of an international order is very different from the liberal hegemonic order [that] the US has built. Recent research in English school theory suggests that China's vision of a world order rests on the principle[] of, first of all, transactionalism: the idea that we should transact on a case-by-case basis—not on general rules, but on what matters on particular transactions. We oppose this kind of order.

The second distinctive characteristic of a Chinese world order, according to emergent English school scholarship, is that it's based on state-centeredness. So, you have a vision of a world order in which states are paramount to the exclusion of civil society organizations [...], independent academics, and independent groups. Of course, we know that in China, the domestic environment is not particularly favorable for [...] fostering [an] independent civil society, so they try to project that in their ideal world order.

The third portion, which I think may [...] appeal to us, is China's insistence on economic development as a basis for relations with other countries.

So, you have three pillars of a Chinese world order [...]. One way we can perhaps define what we want a rules-based international order to be, is to ask ourselves: Is this [Chinese] alternative order something that we also want? I take note that, for instance, [one of our panelists] has said that the rules-based international order is not [based on] unilateralism. I take [another panelist] that the rules-based international order is also not [based on] bilateralism (although [his] argument is much more complex). But [...] there's a preference [in international relations theory for] multilateralism—[...] not bilateralism and [...] not plurilateralism.

So, we have to ask ourselves: Is the alternative better? If it's not, perhaps we can try to convince other states that this [the post-Second World War liberal order] is the best we have for now. And as mentioned by the Secretary, we have to frame it as something that is valuable for humanity as well.

Reactor No. 13

Mr. Deryk Matthew Baladjay

Lecturer 3, De La Salle University-Manila

Mr. Derek Matthew Baladjay provides his insights on a development-based international order and explores restrictions of the global south regarding the enforcement of an international legal order. He underscores the importance of decolonizing the concept of a rules-based international order.

Hi, good afternoon to everyone. So, I'll be coming off from the school of International Relations. I think I'm going to join our Professor Ibarra and

Professor Heydarian and even Professor Amador have echoed earlier. So, I actually agree that it's going to be a matter of identifying the spaces from the onset with regards to how we should understand the concept of rules-based international order. And I think one would be about a development-based international order. Because I think the global South has had restrictions with regards to the enforcement of the international legal order.

So, for me, at least, and I'm going to make this very quick, it's merely simply about reconciling the emerging debates on how we understand the concept of the Rules-Based International Order, and this seems to be anchored on whether or not we are able to insulate international law from the dynamics of major powers. And I echo here what [one of the panelists] said earlier about US proofing the climate change negotiations and I'm echoing here what Sir Amador said about his concerns with the Chinese vision for a different climate of global order. So, I think it's very important that we decolonize the concept of the rules-based international order in a manner that accommodates the broader concerns of the global South. And I think I would like to echo here Jürgen Habermas, which I'm actually surprised to hear, when [one of the panelists] said that the validity of the rules and the norms that we hope to enshrine is actually based on agreed upon processes. And I agree with that. It's based on the legitimacy that can only be found on the mutually reinforcing dynamics between the global North and global South.

Reactor No. 14

The reactor discusses the possibility of reforms of the current international order, which may be achieved through working within the system.

Thank you. [...] There's so many issues, and it's not really because it's quite complex. Just two points. I think in my statement, what I said is basically what I'm referring to, and take note of all the points on rules-based order, is the existing order that we have been living under since the end of World War II, the liberal order where basically you have all the institutions established and they have provided despite many drawbacks the basis for economic growth and also in certain areas of our world especially in the Southeast Asia and ASEAN, except for the US intervention in Vietnam, we basically been at peace. And you have the ASEAN, and you know all these all of these have thrived under a certain order now.

I think I also made it clear that it doesn't mean that we have to be stuck with this order, I mean, as it is in the sense that reform and evolution is important, but we're not questioning the base of order. And so, for example, I use the UN Charter. I've been involved in UN reform for 30 years. There's been no change, really, on the UN Charter, because you cannot effect change in the UN Charter unless the five permanent members agree. But then you have to think, would the UN have been formed if the big powers at the end of the war had not inserted these provisions to keep them at least to have the final say? But despite that, countries still rely on the UN. The UN has done quite a lot. But of course, there are some imperfections. And, for example the veto and etcetera, these other provisions, but basically, countries can live with it. But it doesn't mean that they're not trying to make those reforms or adjustments. There have been some, but in many cases, they've not been codified.

So, I just wanted to say that. And even on China's GSI and GDI, not that we necessarily agree. In fact, we have problems with the GSI. But they're being done within the context of the UN. Most of the work is being done there, so they're trying to get states to follow. So, what I'm saying is if there's going to be reform, it's within the institution. I don't think China, I'm not defending China, not at all, I'm just saying they're not calling for reforming or doing away with UN, they're working within. So, I think, what I was trying for that while there are lots of imperfections, there are ways that we could try and evolve in a way that gives countries more, let's say, more say for developing countries, for example. And I think this has been part of the issue under global governance. And I think that this forthcoming meeting in New York on the Summit of the Future, I think that's the idea to get new ideas on how we can make improvements, reform or adjust the present order. I think that's the problem.

Now in the South China Sea I won't say anything even though this is Chatham House, because I might still be pulled in anyway after. Maybe in a different session.

Reactor No. 15

The reactor discussed the importance of science in decision-making, and the emerging trend of utilizing this in the field of international relations.

Thank you very much Atty. Tugade, I was just going to comment briefly on the presentation of [one of our panelists] when he said that you have to wait for politics to settle principles, and I think he asked and illustrated how this works in the climate change negotiations and I would like to take particular note of the role of science and knowledge and evidence. I think this was mentioned by our colleague [in the panel]. We've seen how this works, you always need scientific knowledge to, and it helps precipitate the decision, the consensus on many issues. And this did not happen only in the context of climate change. In fact, in the Human Rights Council, the Philippines was an initiator of discussions linking human rights and climate change. When we initiated this more than 10 years ago, it was very unpopular. There was a pushback from it from developing countries, but eventually we pressed on. And just two years ago, the Human Rights Council itself created a special rapporteur on the impact of climate change on human rights because by this time in the IPCC report its fifth iteration already established the vulnerabilities of that arise from climate change the impact of climate change on populations.

I'd also like to mention for example that one particular instrument that we discussed in Geneva is the Minamata Convention on Mercury. It took a lot of work to compel states to negotiate an instrument. And what was critical about this is scientific discourse, you know, information from the medical fields, including from one expert in the Philippines about poising of people from the mines in the north. And it's often this scientific knowledge that's first decision by states to go ahead. I would also like to highlight that the memorial presented by the Philippines with respect to our arbitral case had a lot of science in it. We contracted scientists and technical experts to make sure that we provided the tribunal the right information to allow them

to make a decision. And that's the same case pretty much elsewhere in the UN system. When you, for example, in the Commission on the Limits of Continental Shelf, you need science for this. And I think we should look more toward that. I know there are many IR practitioners in the room, but in reality, science is taking more role, as it should be, especially in discussions on regulating emerging technologies as in space, responsible behavior in space, or ICT (Information and Communication Technology). And I think this is going to be an important trend. Our colleagues have talked about the need for us to develop our capability to engage in diplomatic conversations. I think we should also, in parallel, develop scientists and experts from the medical field or any other scientific ideas that will help us engage to shape these conversations and support decisions that are much needed to strengthen this rules-based international order. Thank you.

Reactor No. 16

The reactor, who is one of the panelists in the main panel discussion, provides comments on the suggested reform of the United Nations.

I would like to thank for mentioning Bank of International Settlements because PCA, it serves also as a registry for the convention and disputes under the convention establishing Bank of International Settlements. So, I believe that in this discussion we are wrestling with a very, very broad and complex issue and we try to make distinguishing between procedural legitimacy and legitimacy based on values between law and enforcement between what is good in principle and is still needs to be accomplished.

[One of the panelists] mentioned the reform of the UN. Maybe I can humbly remind that some of the UN bodies still work on provisional rules and procedures. And then we try to apply different languages. So, I noted that we speak law, justice, order, fairness, policy, enforcement, development, codification, and probably I've missed something. And how to generalize it. I wanted to bring something optimistic to this discussion at the table and I thought that maybe this kind of very humble and simple remark that we are one more generation doing it 125 years ago some other people were doing it in the Hauge and just to give you a short outcome of what we did is I would like to quote two passages from the preamble of the Convention for the Pacific Settlement of International Disputes: "Animated by a strong desire to work for the maintenance of general peace, indisputable value, desirous of extending the empire of law and strengthening the appreciation of international justice. The permanent institution of tribunal arbitration accessible to all will contribute effectively to this result and sharing the opinion of the obvious initiator of the International Peace Conference that it is expedient to record in an international agreement the principles of equity and right on which are based the security of states and the welfare of peoples."

The oldest initiator was Tsar Nicholas VII. So very aspirational language, broad and I think we could find lots of our concepts which have been discussed, just discussed like law, order, fairness in this language as well and then we all know here, and it was also important. Yes, language is important because at the end we need to deliver, how they try to deliver.

Article 27, "the signatory powers consider it's their duty if a serious dispute threatens to break out between two or more of them to remind these latter that the permanent court is open to them, consequently they declare that the fact of reminding the conflicting parties of the provisions of the prison convention and the advice given to them in the highest interest of peace to have recourse to the permanent court can only be regarded as friendly action." So sometimes if I quote this provision to current representatives of state, they are already scared that it's so far reaching, even if it's only based on advice. So, I think we are one more generation wrestling with this task and I think it's right to do it. So, we are not the first one and I think this is something which gives me. Personally, consolation that we just continue to do it so thank you.

Reactor No. 1

In an additional comment, the first reactor provides more context on comments relating to the reform of the United Nations. The reactor emphasizes the need to be strategic but pragmatic in approach.

Thank God I'm not the DFA because I am sure that as the foreign affairs department is using all of this they are maybe thinking back of their minds. We are replaying their daily discussions in terms of what to do. But since I cannot give an advisory opinion outside, I will take advantage of this opportunity to say we don't need a comprehensive theory. We need a strategic direction and that strategic direction needs to be pragmatic and that pragmatic direction needs to be at home. Meaning to say, in climate change, you remove the US. But in the West Philippine Sea, you might be the US. In terms of reforming the UN, you might not need the US, but you must listen to what China is saying in terms of global security, actually. So strategic but pragmatic. And where did I learn this? I learned this in my life as a negotiator. And you know when I started as a negotiator, Dean of [a university] because I needed to negotiate among all the faculties [...] and that was my training to be able to deal with certain groups in the country, 18,000 regulars, not counting 20,000, the Moro Islamic Liberation Front, and got them to agree to a framework agreement. And then later on, we got to this.

With this it means, and here is where I will share the conversation that I've had with lots of intelligence agents. When I was with the administration at that time, I sat down with some ISA people and of course General Bautista. And they told me, you know, we do not even have a single unit in our ISA or in the NICA or NSA focusing on just understanding China. In fact, they are saying we are approaching it on an ad hoc level. And I think this is where the academic institutions can come in. Because I know that in DFA there are rotations of their personnel. They become ambassadors and later on, the China desk, the US desk, etc. But we cannot listen because we do not have

full-time people just figuring out what is China doing, what is Israel doing, what is the Middle East doing. And when we negotiate, we need to listen. And of course, with the law, the law is understood only as a platform. Then comes diplomacy, as General Bautista said, but then at the end of it, will China listen to words? Or do you need the aircraft carrier of the United States, Australia and Japan passing through and docking in Subic Bay just for them to listen? Or do we need to continue with the missiles that are about to be put in our country? Or with the United States? Very easy. Just tell them, look what you gave to Israel. You gave them an iron load. And they were not yet invaded. They are invading. But look at the Philippines. Look at what's happening to the West Philippine Sea. What do we have? Black Hawk? Huey? Hamilton class destroyers? And Hamilton class destroyers are 1960s decommissioned. Perhaps that's the language.

So, my point here is, we need to look at the world, not in the point of view of a comprehensive agenda, but a strategic, diplomatic, legal perspective, then we are pragmatic and stick with everybody. And I think a lot of administrations did say, national interest first and then later just talking to everybody. And we have to understand that in many disciplines, it's multi-polar. For example, on privacy issues, we're talking to three approaches. Europe, China, the United States. In terms of AI almost similar. In terms of cybercrime, there's the European Council and the Cybercrime Convention created under the EU, which we are a member. Then there is the Russian counterpart being developed under the UN system.

In climate change, I think we have to cut through all the acronyms because maybe part of the agenda is to divert all of us into all of these things that the ordinary person cannot understand pertaining to climate change. There's so many committees, so many conference of parties, so many agenda words being "we." Perhaps that's the agenda and perhaps it's time that we create our own coalition. But as I say this, I know it's easier said than done. [...]

Reactor No. 17

Ambassador J. Eduardo Malaya

Philippine Ambassador to the Netherlands and President of the Administrative Council of the Permanent Court of Arbitration (2023–2024)

Ambassador Malaya details the role and participation of the Philippines in recent international law developments. He considers the importance of inclusiveness in the concepts of rules-based international order and international law.

Thank you UP Law Center for these enriching discussions. These can lead to many research topics for students and hopefully also concrete agenda for action by government and other people. Thank you also for the opportunity given to the Permanent Court of Arbitration (PCA) to participate at this roundtable. My colleagues and I at the Philippine Embassy in The Hague thought that it was important to put a face to the name "PCA," thus, we made arrangements for PCA Secretary General Czepelak to visit the

country, and he is here with us today. Filipinos know well the PCA as the registry for the South China Sea arbitration case, but in fact PCA services go beyond inter-state disputes. It also administers a lot of investor-state disputes and contract-based disputes.

From our vantage point at the Embassy in The Hauge, I can say that the Philippines is doing quite well in the field of international law. Why do I say this? First, the Philippines is currently participating in the ICJ advisory opinion proceedings on the obligations of States in respect of climate change. Our country has not participated in advisory proceedings or any proceedings before the ICJ in decades. This move by the Philippine government to finally participate is an excellent development. We are glad to see this happen and are facilitating the participation.

Secondly, for those keen on remedial law, the Philippines, through the Embassy, is active vis-à-vis the Hague Conference on Private International Law. The Embassy facilitated accessions to the Apostille Convention, Service Convention and the Child Support Convention. We're looking at accession to the Evidence Convention and the Judgment Convention. These Conventions are important as they facilitate cross-border legal cooperation. Our accessions also serve as prompts for reforms and updating of the Rules of Court and so many related matters.

Thirdly, we're active at the PCA. I am currently serving as President of the PCA Administrative Council, its policy making board. Also, an important contribution of the Philippines to the PCA, in my view, is our initiation of UN General Assembly resolution 77/322 of August 1, 2023, welcoming the 125th anniversary of the PCA, which acknowledged the "important contribution of the PCA to peaceful settlement of disputes." It is the first time that the UN recognized the important role of the PCA —and this is our country's initiative and indeed an important Philippine contribution to the PCA and peaceful settlement of disputes.

Having listened to the discussions on the distinction between international law and the rules-based international order, it makes me wonder whether we're talking about the same thing. It seems that lawyers formally call it as international law, while diplomats and international relations practitioners loosely refer to it as rules-based international order. At the end of the day, I think what is crucial is that it is true to the pursuit of justice and fairness, and there is inclusiveness in the crafting and evolution of these intertwined concepts.

Reactor No. 18

The last reactor, who was one of the panelists in the panel discussion, discusses climate litigation and how the Permanent Court of Arbitration may be utilized to drive this strategy forward.

I agree with [one of the panelists] that what we need is a strategic direction and for climate, after 30 years in this field, it's very clear to me the future is a climate litigation. We have to force the issue in disputes because we cannot keep on negotiating and negotiating and incrementally succeeding, having business as usual, while the world is burning, right? And people are actually suffering.

So, what I can say is a lot of preparation and a lot of foundational work is being done in that field. And this is where the PCA comes in. In the assembly of members of the Permanent Court of Arbitration last June, I actually intervened and said that the thing about the PCA is that, as Ambassador Malaya has pointed out, it's a forum that allows for non-state actors to engage in. And we're not talking about corporations, they can also engage everywhere, I'm talking about indigenous peoples, local communities, farmers, workers, that are affected by climate change and affected by climate change policies and climate change-related decisions and that's why when Ambassador Ed and Secretary Manalo and the Philippine government asked me if I was interested in joining as a member, I said right away, and that's my own agenda, we can use this forum, not just for the Philippines which is highly impacted by climate change, but especially for people and for peoples that are all over the world that are in fact already suffering because of climate change. Thank you.

Closing Remarks

Asst. Sec. Maria Teresa T. Almojuela

Assistant Secretary, Office of United Nations and International Organizations, Department of Foreign Affairs

Thank you.

Distinguished guests, esteemed colleagues in government service, ladies and gentlemen, good afternoon. Thank you all for contributing to such a meaningful conversation today.

When the Secretary tasked the Office of the United Nations and International Organizations of the DFA with organizing this inaugural closed-group roundtable under the Chatham House Rule, we embraced this

challenge with a sense of urgency and purpose. The subject at hand is both timely and vital.

The rules-based international order most associated with the UN system, though maybe not identical to it, as Dr. Oral mentioned, is the subject du jour in different contexts. The concept is so enduring and so fundamental to the global order that it operates, according to Secretary Manalo, with the invisibility of the obvious.

This afternoon, this colloquium took on the challenge of looking at the relationship between the rules-based order and international law, drawing from the rich perspectives of our distinguished panel of discussants and participants.

We learned that international law is foundational to rules-based global order, and while this is so, this relationship is not established in the letter of the mandate of the International Law Commission (ILC) and that the work of ILC is more about the rule of law in the language of the mandate. But the work of the ILC itself, with the progressive development of law and its codification, is recognized very well for providing certainty, stability, and predictability in the international system.

Our discussions dealt with the realities that should qualify our understanding and advocacy of the rules-based global order, including the following:

1. We should not take for granted that 'rule of law' always entails rule of justice or rule of equity. We should strive to make the 'legal' just and making law and processes in the international system more inclusive.
2. Law and the rules-based order seek the same thing, justice, fairness, and peace.

3. The evolving politics of issues are key factors for the evolution of binding agreements and the nature of arrangements in multilateralism, and as mentioned by Dr. La Vina, we should be able to distinguish policy, politics, and law.
4. The utility of dispute settlement mechanisms to States, the strength of these mechanisms and the enforcement of their decisions are barometers of the vitality and credibility of the rules-based international order.
5. We also discussed how the Philippines must position itself as an advocate of the rules-based order, independent of Western ideas of it, and an advocacy that should be rooted in our context, in our own interests as a middle power, is important.
6. We also talked about how exceptionalism and unilateralism have risked fragmentation in the international order, but has also, as we see in the case of WTO, led to pathways for plurilateral approaches and the development of soft law and networks, such as that mentioned by Commissioner Bernabe.
7. We also saw examples cited in the context of climate change and WTO offer hope in the sense that the urgency of the climate emergency and compelling economic interests have pushed the envelope in diplomacy and law, including through what [Judge] Pangalangan has cited as "solidarity filings" in international tribunals and the rise of "communities of practice" and similar networks.
8. It was also pointed out that the Philippines needs to engage in these processes, whether in trade negotiations and these conversations on the rules-based order by developing expertise.

We acknowledge that while the criticisms of the rules-based international order are driven by global actors that reject constraints on their expansionist agenda, some calls to revisit and update these rules spring from well-intentioned desires to enhance our current multilateral order and ensure that it remains relevant and effective in addressing today's challenges.

Today's activity offered us an opportunity to explore these issues and reflect on possible approaches to preserve the international order that is based on a system of rules shaped and crafted through a process where all States participate, while at the same time engaging in an honest conversation about its limitations and the aspects which need improvement.

At the global level, foreign ministries, international institutions, and regional bodies like ASEAN are deeply engaged in examining these same issues.

At the United Nations, I can tell you that the engagements of Filipino diplomats on a daily basis entail debates not only on substance but on the interpretation, review, and shaping of rules and procedures that animate the work in the U.N. system.

As a middle power with interests spanning diverse areas of foreign policy, the Philippines has staunchly supported this order. It enables us to navigate the global stage with greater efficacy, safeguard our interests, and contribute to a more stable and just international environment.

We have a stake in all conversations to clarify the meaning and expressions of the rules-based international order in today's world, with the interest in preserving it as an instrument of stability and a predictable and peaceful global order.

Today's conversation hopefully does not end today.

With the support of the University of the Philippines Law Center, particularly the Institute for International Legal Studies, under Professor Rommel Casis, we anticipate the release of a monograph that will preserve our discussions today, for future reference.

The publication will capture the essence of our discussions, but also in keeping with the Chatham House Rule, there will be no attributions unless individual participants grant explicit written consent.

At this juncture, I extend my gratitude, on behalf of the Department, to the University of the Philippines, with particular thanks to President Angelo Jimenez, Dean Darlene Marie Beberabe of the UP College of Law, and our co-host at the UP Institute of International Legal Studies, led by Professor Rommel Casis and his team for their exemplary arrangements for today's meeting.

I also commend our emcee and moderator, Professor Ross Tugade of the UP Law Faculty for the exceptional facilitation of the discussions.

Our sincere appreciation goes to our panelists [...] for their insightful leadership in today's discussion.

And of course, from the side of the Department of Foreign Affairs – Office of the United Nations and International Organizations, we thank Secretary Manalo for leading us in setting the pathway for this convergence and meaningful discussion.

I offer my deepest thanks also to other roundtable participants, [for their] wise contributions. Thank you.

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Annex

The Role of International Tribunals and Their Advisory Opinions in Global Climate Action: *A Lecture by Dr. Nilufer Oral*

By Ms. Christine Marie L. Magpile

A discussion with Dr. Nilufer Oral entitled "**The Role of International Tribunals and their Advisory Opinions in Global Climate Action: A Lecture by Dr. Nilufer Oral**" was held on the same day as the RTD, 27 August 2024, from 9:00 a.m. to 12:00 p.m. at the Malcolm Theater, Malcolm Hall, University of the Philippines. Dr. Nilufer Oral, Director of the Center for International Law of the National University of Singapore (NUS) and a member of the UN International Law Commission (ILC) was the event speaker. The discussion was hosted by the UP IILS, Institute for Maritime Affairs and Law of the Sea of the University of the Philippines (UP IMLOS), and DFA UNIO.

Key stakeholders in global climate action, including officials from the Climate Change Commission, the International Maritime Organization, and civil society organizations like Greenpeace, representatives from various government offices, such as the Supreme Court, Congress, the Office of the Solicitor General, the Foreign Service Institute of the DFA, and the Philippine Space Agency, also participated. Additionally, members of the academic community, including officers from the Philippine Association of Law Schools and faculty from the UP College of Law and the Manuel L. Quezon University College of Law, were present.

Dean Berberabe's Welcome Remarks

Dean Darlene Marie Berberabe emphasized the urgency of addressing climate change, a pressing issue that poses significant threats to the

Philippines and the world. "Climate change is no longer an abstract threat, but a present reality that demands urgent and coordinated action," Dean Berberabe stated, highlighting the crucial role of international law in combating climate change. Dean Berberabe's speech noted that climate change threatens fundamental rights such as life, health, and access to necessities.

The discussion was hosted by Atty. Maria Isabel R. Cañaveral, Legal Officer of UP IMLOS. It was followed by a moderated discussion with reactions from Assoc. Prof. Rommel J. Casis, Director of UP IILS, and Asst. Prof. Jacqueline Joyce F. Espenilla, Chairperson, International and Maritime Law Department of the Philippine Judicial Academy and Senior Fellow at UP IMLOS. The discussion was moderated by Atty. C. Therese Guiao, Senior Legal Associate of UP IILS.

Dr. Nilufer Oral's Insightful Lecture

Bridging the Gap Between Climate and Ocean Law

One of the most significant aspects of the International Tribunal for the Law of the Sea (ITLOS) *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (ITLOS Advisory Opinion) is its recognition of anthropogenic greenhouse gas emissions as a form of pollution of the marine environment under the United Nations Convention on the Laws of the Seas (UNCLOS). Dr. Oral emphasized that the tribunal said it is "an obligation of due diligence, meaning that… you don't have to guarantee the result, but it's an obligation of conduct, [and] the States have to take [measures,] and it has to be informed by the best available science."

The ITLOS Advisory Opinion emphasizes the importance of international cooperation in addressing the challenges posed by climate change and its impact on the ocean. Recognizing anthropogenic greenhouse gas emissions as pollution of the marine environment and clarifying the

obligations of states under the UNCLOS provides a strong legal foundation for enhanced climate action that prioritizes the protection of the ocean. Dr. Oral highlighted the tribunal's emphasis on "harmonizing their policies and cooperation."

As Dr. Oral aptly stated, "The truth of the matter is when you have had international disputes before, whether it be ITLOS, the ICJ (International Court of Justice), or International Arbitration Tribunals, those outcomes, as you know, in international law, are only binding on the parties. So, the advisory opinion in that sense is not different. However... it is by far much more inclusive, [these] advisory opinions. When we think about international law and the international system as being one where all states have an equal voice, ...the advisory opinion is an opportunity for states to really participate and contribute to the interpretation of international law."

UNCLOS and Paris Agreement

Dr. Oral emphasized, "It is very important that it be clear that Part XII (Protection and Preservation of the Marine Environment) of the Law of the Sea Convention stands alone. [The] Paris [Agreement] does not dilute the obligations under the Convention." This explanation reiterates the ITLOS Advisory Opinion, which held that UNCLOS and the Paris Agreement are separate agreements with separate sets of obligations. The Paris Agreement does not supersede the UNCLOS; rather, it complements the latter. The Advisory Opinion stated that the UNFCCC and the Paris Agreement, as the primary legal instruments addressing climate change, are relevant in interpreting and applying UNCLOS with respect to marine pollution from anthropogenic greenhouse gas emissions.

Beyond Mitigation and Adaptation: Obligation of Restoration

The ITLOS Advisory Opinion goes beyond simply recognizing the obligations of states to mitigate and adapt to climate change. It clarified the inclusion of the obligation of restoration as part of the general obligation of states to protect and preserve the marine environment. Dr. Oral highlighted this crucial aspect, stating, "The tribunal made clear that this obligation to preserve the marine environment also includes restoration… it is not just that you are adopting those laws. You must go out and restore those ecosystems that have been degraded." This emphasis on initiative-taking measures to address the impacts of climate change, such as sea-level rise and ocean acidification, significantly strengthens the legal framework for ocean protection.

Reactions from Academic Experts

Following Dr. Oral's lecture, Associate Professor Rommel J. Casis, UP IILS Director, and Assistant Professor Jacqueline Joyce F. Espenilla, Chair of

the International and Maritime Law Department of the Philippine Judicial Academy, gave their valuable insights as reactors.

Assoc. Prof. Casis highlighted the crucial role of advisory opinions issued by international courts like the ITLOS and the ICJ in shaping global environmental law. "I think the very first thing that advisory opinions do for the world and not just the legal community is that it clarifies international law," Professor Casis emphasized. He cited the ITLOS Advisory Opinion, which clarified complex legal questions such as the definition of pollution within the context of international law.

Assoc. Prof. Casis also highlighted the unique role of advisory opinions in the development of customary international law. "The beauty of an advisory opinion is that… States, and in this case, even international organizations or even NGOs, who normally do not have a voice in the creation of international law... can contribute to the creation of customs," he pointed out. By considering the views expressed by states during the advisory opinion process, international courts can identify emerging norms and contribute to the gradual evolution of customary international law.

Assoc. Prof. Casis emphasized the practical value of advisory opinions in international negotiations. "I think negotiators would welcome the advisory opinion because it would give them further ammunition... when they negotiate in the various COPs," he suggested. These opinions provide valuable legal and political leverage for states engaged in climate change negotiations, strengthening their positions and facilitating consensus-building.

Asst. Prof. Espenilla emphasized the importance of procedural equity, recognizing the need for inclusive decision-making processes. Asst. Prof. Espenilla pointed out that while ITLOS rules may not explicitly provide for the participation of non-state actors, the tribunal demonstrated a commendable level of inclusivity by considering *amicus curiae* briefs submitted by various entities, including NGOs and scientists. "So many parties, non-state actors, submitted their amicus curiae briefs to be considered by the tribunal. Although the rules of ITLOS do not necessarily allow this to be part of the formal process, those nonetheless included on the website and transmitted to all the parties so that you may also see the positions taken by these entities," Asst. Prof. Espenilla states.

Asst. Prof. Espenilla suggests that ITLOS should consider formalizing a mechanism for incorporating the voices of those directly affected by climate change. Prof. Espenilla highlights that the success of these efforts depends on genuine commitment from developed countries and a collaborative approach, rooted in the obligation to cooperate, that prioritizes the needs and capacities of developing nations. “Dr. Oral correctly pointed out that CBDR [common but differentiated responsibilities] does not appear in UNCLOS due to the fact that it came before, and how it eventually evolved in the climate change legal regime. However, UNCLOS, if you read it

carefully, is a document of equity. It simply is all about recognizing these different positions, and in particular, how it is important to give preferential treatment to developing countries," Asst. Prof. Espenilla explains.

Engaging Open Forum

The lecture concluded with an open forum where attendees engaged in vibrant discussions, posing questions to Dr. Oral and the responding professors. Atty. Cecilia Therese Guiao, Senior Legal Associate of UP IILS, served as the moderator.

Questions raised during the Q&A session included enforcement of due diligence obligations against powerful states, the role of science in international tribunals, the evolution of state obligations under international treaties, differentiated responsibilities between developed and

developing countries, state responsibility for actions of non-state actors, ensuring compliance with advisory opinions, the strategic value of seeking advisory opinions, and future of advisory opinions and challenges for an international tribunal.

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ROUNDTABLE DISCUSSION ON EXAMINING THE RULES-BASED INTERNATIONAL ORDER FROM PERSPECTIVES IN INTERNATIONAL LAW