TRILA Philippines Conference via Zoom

Organised by
the NUS Centre for International Law,
the Philippine Society of International Law, and
the Philippine Association of Law Schools

Updates and other information are available at:

TRILA Philippines' official webpage: https://cil.nus.edu.sg/event/trila-philippines-2021/
TRILA Facebook group: https://www.facebook.com/groups/CIL.TRILA
TRILA Twitter: https://twitter.com/CIL_TRILA

Programme	
Day One (1 July 2021, Thursday)	
Time	**Sessions**
6:30 pm – 7:00 pm	**Opening Remarks** — **Dean Soledad Mawis**, Philippine Association of Law Schools **Professor Elizabeth E Aguiling-Pangalangan**, President, Philippine Society of International Law **Overview of the Conference** — **Professor Antony Anghie**, Head of TRILA Programme, NUS Centre for International Law
7:00 pm – 7:45 pm	**Keynote Address: Teaching International Law from a Filipino Perspective** Judge Raul C Pangalangan (Ret.) International Criminal Court Moderator: Judge Sheila Catacutan-Besario Regional Trial Court, Branch 31 Dumaguete City
7:45 pm – 8:00 pm	**Response** Professor Joan S Largo Assistant Vice President for Academic Affairs University of San Carlos
8:00 pm – 8:30 pm	**Open Forum**
8:30 pm – 8:35 pm	**Closing of Day 1 / Announcements**

Day Two (2 July 2021, Friday)	
Time	**Sessions**
6: 30 pm – 7:00 pm	**Lecture: Teaching the History of International Law from Asian Perspective** Professor Antony Anghie NUS Centre for International Law Moderator: Professor Romel R Bagares Lyceum of the Philippines University College of Law
7:00 pm – 7:15 pm	**Response** Professor Sedfrey M Candelaria Ateneo de Manila University School of Law
7:15 pm – 7:30 pm	**Open Forum**
7:30 pm – 7:40 pm	**Break**
7:40 pm – 8:20 pm	**Unpacking the 2020 TRILA Report and Formulating a Course Syllabus** Moderator: Atty JR Robert Real De La Salle University College of Law Panellists: Assoc Professor Rommel Casis University of the Philippines College of Law Dean Silvia Jo G Sabio Xavier University College of Law Commissioner Josefe C Sorrera-Ty Legal Education Board Asst Professor Andre Palacios National Director for International Law Integrated Bar of the Philippines Discussion points: • Developing a course outline with Filipino / Asian perspective • Teaching methods and materials, especially in this time of pandemic • Topics to be taught and skills that students should acquire • Challenges in research and publication

8:20 pm – 8:30 pm	**Open Forum**
8:30 pm – 9:10 pm	**Panel Discussion: Teaching Law of the Sea - Focus on the Philippines and Southeast Asia** Moderator: Dr Lowell Bautista University of Wollongong School of Law Panellists: Dean John Paolo Robert A Villasor National Adviser on Legal Education Integrated Bar of the Philippines Professor Romel R Bagares Lyceum of the Philippines University College of Law Dr Melissa Loja International Law Consultant
9:10 pm – 9:25 pm	**Open Forum**
9:25 pm – 9:30 pm	**Closing of Day 2 / Announcements**

Day Three (3 July 2021, Saturday)	
Time	**Sessions**
9:30 am – 10:20 am	**Lecture: Writing for Publication – an Introduction to Methodology and Scholarship** Professor Antony Anghie NUS Centre for International Law
10:20 am – 10:30 am	**Break**
10:30 am – 11:15 am	**Panel Discussion: Writing Philippine Topics Within the Framework of International Literature or Writing on International Law in General** Moderator: Atty Francis Tom Temprosa Ateneo de Manila University School of Law De La Salle University College of Law Panellists: Dr Jayson Lamchek University of New South Wales Dr Melissa Loja International Law Consultant Dr Lowell Bautista University of Wollongong School of Law Ms Adriana Uson Singapore International Arbitration Centre (Americas) Dr Tan Hsien-Li Asian Journal of International Law Discussion points: • Filipino legal scholars will share their experiences on writing and publication, and why there is a need to publish in reputable international law journals. • Editors of prominent international law journal will share their insights on how their journal evaluate manuscript submissions, peer review process, and give advice on how to respond to peer reviewers' comments.
11:15 am – 11:45 am	**Open Forum**
11:45 pm – 12:45 pm	**Lunch Break**

12:45 pm – 2:45 pm	**Junior Scholars Workshop** Selected junior to mid-level Filipino scholars will present their research projects, to be followed by comments from senior scholars. **(see Annex for streams and schedule of presentations)** Panel of Commentators • Dr Tara Davenport, NUS Faculty of Law • Dr Melissa Loja • Prof Romel Bagares, LPU College of Law • Prof Mohammad Shahabuddin, University of Birmingham Law School • Jose Duke Bagulaya, University of Hong Kong Faculty of Law • Dr Cheah Wui Ling, NUS Faculty of Law • Dean JP Villasor, IBP National Adviser on Legal Education • Atty Tom Temprosa, ADMU Law, DLSU Law • Prof Antony Anghie, NUS Centre for International Law • Mary Jude Cantorias-Marvel, Arellano University School of Law Academic Committee • Dean Domnina T Rances, Philippine Association of Law Schools • Prof Elizabeth Aguiling-Pangalangan, Philippine Society of International Law • Prof Antony Anghie, NUS Centre for International Law
2:45 pm – 3:15 pm	**Response: Writing for Publication – Developing Your Scholarly Voice** Professor Mohammad Shahabuddin University of Birmingham Law School
3:15 pm – 3:30 pm	**Break**
3.30 pm – 4.10 pm	**Book Lecture: 'Philippine Treaties in Force 2020'** Editor/Lecturer: Ambassador J Eduardo Malaya Philippine Ambassador to The Netherlands Moderator: Professor Elizabeth E Aguiling-Pangalangan Philippine Society of International Law The first such publication in decades, "Philippine Treaties in Force 2020" is a comprehensive index to the 3,367 subsisting bilateral, ASEAN and multilateral agreements entered into the country since 1946, with links to online treaty databases for most of the agreements. The 392-page book features a chapter on the observance and interpretation of treaties, which, together with the editor's practitioner's reflections on Philippine treaty practice, forms the core of the book lecture.

4:10 pm – 4:30 pm	**Open Forum**
4:30 pm – 5:10 pm	**Panel Discussion: Filling-in the Gaps in the Teaching of International Law in the Philippines through Graduate Education** Atty Joan A De Venecia-Fabul University of the Philippines College of Law Panellists: Dean Rodel A Taton Graduate School of Law San Sebastian College-Recoletos Manila Dean Edgardo Carlo L Vistan II University of the Philippines College of Law Professor Amparita S Sta Maria Graduate Legal Studies Institute Ateneo de Manila University School of Law Directors of existing LLM programmes in the Philippines will present the content and methodological approaches of their respective programmes.
5:10 pm – 5:30 pm	**Open Forum**
5:30 pm – 5:45 pm	**Closing of the Conference**

Annex

Junior Scholars' Workshop
TRILA Philippines Conference
3 July (Saturday), 12:45pm to 2:45pm Philippines / Singapore time

Streams	**(1)** Law of the Sea and General Public International Law	**(2)** Public International Law and Human Rights (A)	**(3)** Public International Law and Human Rights (B)	**(4)** Public International Law and International Economic Law
Commentators	Dr Tara Davenport	Prof Mohammad Shahabuddin	Dr Cheah Wui Ling	Prof Antony Anghie
	Dr Melissa Loja Prof Romel Bagares	Jose Duke Bagulaya	Dean JP Villasor Tom Temprosa	Mary Jude Cantorias-Marvel
Facilitator		Francis Acero	Gilbert Andres	Amiel Ian Valdez
Presenters	1) Alex Dela Cruz The Indo-Pacific Archipelago as Serviceable Imperial Geography: the Philippines, Mauritius, and Optional Military Exceptions to the Law of the Sea	1) Karen Aboud (CD) Failure of International Law to Address the Right to Return Fome of the Victims of Forcible Displacement	1) Maria Feona Imperial and Joshua Anthony Trinanes No One Left Behind: Upholding the Right of Persons with Disabilities to Safety and Protection in Natural Disasters under CRPD	1) Donna Nikki DL Vargas (CD) A Ticking Time Bomb: Establishing a Global Prohibition Regime Against Data Breach as a Corporate Crime
	2) Mara Angeli Villegas Legitimizing Territorial Take Over, a Chinese Playbook	2) Francis Maleon Returning Foreign Terrorist Fighters, Women and Children	2) Danizza Monique Fortuna Pregnant Inmates and Their Infants, and the obligations of the	2) Patrick Balisong (CD) Bridging the Accountability Gap Between the Universal Rights Regime and the

Streams	**(1)** Law of the Sea and General Public International Law	**(2)** Public International Law and Human Rights (A)	**(3)** Public International Law and Human Rights (B)	**(4)** Public International Law and International Economic Law
			Philippines under the Convention on the Rights of the Child	Regime of Multilateral Development Financing Institutions
	3) Ervin Jules Sape (CD) The Timor Sea Case and the South China Sea Case: a Comparative Analysis on Dispute Settlement Mechanisms	3) Anna Patricia Pichay Right of the *Lumads* to Education under the Convention Against Discrimination in Education	3) Kristi Angeli King Labor rights of food delivery riders (independent workers) under ILO Convention No. 100 vis-a-vis Philippine Labor Law	3) Pramela Menghrajani Social Media Ban as a Measure of Indirect Expropriation
	4) Michael Tiu Is the Rulebook just a Sleeve? Issues of Customary International Law in Philippine Court Decisions	4) JR Robert Real (CD) The Coming of the ASEAN Supreme Court(s): The Non-Supranational, Non-Judicial Alternative to a Regional Court	4) Joyce Diane Niu (CD) The right to succession of illegitimate children under the Philippine Civil Code and the Convention on the Rights of a Child	4) John Malcolm Aniag Filling-in the gaps in the Philippine Intellectual Property Code through the TRIPS Agreement on protection of commercial information
	5) Andre Palacios International Law Solutions to Philippine Law Problems: A 7-Step Analysis		5) Ruby Rosselle Tugade When 'Good Men' Go to War: Reflections on the Use of Violence in Non-International Armed Conflict	5) Irene Valones Belt and silk road initiative: a new game changer of transnational investment in Asia

(see next page for full copy for abstracts)

The Indo-Pacific archipelago as serviceable imperial geography: The Philippines, Mauritius, and optional military exceptions to the law of the sea

Alex Dela Cruz
University of Melbourne

Work in Progress

Abstract

Three recent international judgments have declared certain Chinese and British acts to be inconsistent with the *Law of the Sea Convention*. In 2015, the *Chagos Marine Protected Area* Tribunal concluded that Britain's creation of a marine protected area around the Chagos Archipelago did not extinguish its obligation to return the archipelago to Mauritius when no longer needed for defence purposes. In 2016, the *South China Sea* Tribunal found that China's construction of artificial islands is not a military activity under the *Convention*'s optional military activities exception (MAE) clause, and thus within that Tribunal's jurisdiction to declare the activity unlawful. In 2019, the International Court of Justice declared in the *Chagos Advisory Opinion* that Britain's severing Mauritian territory to host a United States military base in the Chagos Archipelago prevented the completion of Mauritius' decolonisation and that Britain is obligated to cease administration of the archipelago immediately. China and Britain continue to defy these judgments. In 2016, Britain extended the lease for the US base until 2036. In February 2021 China reconstituted its Coast Guard as a military organ to ensure that its activities are covered by the MAE clause. In March 2021, Britain announced its 'Indo-Pacific tilt', placing its military at the forefront of British responses to geopolitical competition in the region. In this paper, I argue that Chinese and British attempts to shore up military supremacy over the South China Sea and the Indian Ocean in defiance of these judgments are partly enabled by the MAE clause, to which both states opted in. I describe how the *Convention*'s passage regime for archipelagos facilitate these attempts, using the Philippines and Mauritius as examples. I gesture towards the ways in which international law cloaks in technical language the preservation of the Indo-Pacific archipelago as serviceable geography for empires old and new.

The Timor Sea Case and the South China Sea Case:
A Comparative Analysis on Dispute Settlement Mechanisms

Ervin Jules Sape
St Louis University

Work in Progress

Abstract

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) as one of the most vital developments for strategic diplomacy adheres that a rules-based maritime order is a mighty concept of international law. In the *Timor Sea* case, conciliation, whether compulsory or voluntary, through the Conciliation Commission signified that jurisdiction *ratione materiae* of adjudication used by the Democratic Republic of Timor-Leste and the Commonwealth of Australia can be done for similar and developing maritime disputes between states, considering not only the legal aspects but also the political factors of the dispute reflecting the foreign policies of the parties. In the *South China Sea* case, arbitration by Annex VII Tribunal was utilized leading to the Award released by the Permanent Court of Arbitration; however, incursions by the People's Republic of China on the Exclusive Economic Zone of the Republic of the Philippines continued since 2016, where Article 298 becomes the core legal collision. In this qualitative study, juridical and behavioral analysis will be provided on the dispute settlement mechanisms invoked by the Democratic Republic of Timor-Leste and the Commonwealth of Australia towards conciliation and explore, based on UNCLOS and the Charter of the United Nations, possible legal and diplomatic recourse for the Republic of the Philippines and the consequences of each in the post-Tribunal Award.

Is the Rulebook just a Sleeve?
Issues of Customary International Law in Philippine Court Decisions

Michael Jr Tiu
University of the Philippines

Work in Progress

Abstract

Philippine cases that involve questions of customary international law ("CIL") are few and far between. In the few cases where issues of CIL are addressed, the Supreme Court predictably uses the two-pronged test of establishing both state practice and *opinion juris* to determine if certain obligations under CIL are extant. This approach in international law orthodoxy is what Monika Hakimi calls the "rulebook conception" of CIL. In her article entitled "Making Sense of Customary International Law", Hakimi argues that we should stop thinking of CIL as a rulebook and recognize that it fluctuates based on the context and the subject matter of the issue.

This work re-examines Supreme Court decisions on CIL issues to determine whether these decisions, with their apparent adherence to the "rulebook conception", latently and actually support Hakimi's proposition. As part of the small corpus of sources that express the Philippine position on CIL, Supreme Court decisions that resolve CIL issues actually vary in their analyses from issue to issue, *i.e.* from territory to citizenship to international human rights obligations. The work takes a closer look at these categories of issues to deconstruct the Court's use of the "rulebook" and reveal the norms that the Philippine state actually observe in understanding CIL – norms involving socio-political considerations and constitutional values that the Supreme Court quietly guards in what could look like run-of-the-mill analyses on CIL questions under the rulebook conception.

Legitimizing Territorial Take Over, A Chinese Playbook

Mara Angeli Villegas
University of the Philippines

Work in Progress

Abstract

The New Maritime Police Law (MPL) of China, made the news when it was passed on January 22, 2021. This along with the 2009 Note Verbale and the 9 Dash Line Map where China laid claim to "Adjacent Waters" and "Relevant Waters" on the basis "historical facts" extending its right beyond its territorial boundaries thereby implication, claiming the extensions as part of its Internal Territory. in the International Community, as waters in general are considered governed by the Regime of the United Nations Law of the Sea (UNCLOS), which allows for freedoms of navigation, right of innocent passage, economic rights in demarcated areas for countries filing disputed claims with recourse to an international tribunal. While China claims that it is not a signatory to the UNCLOS, it has recognized the basic tenets of it in its domestic laws in 1992, originally under the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone. After China has lost its legal battle to the Philippines in 2014 at the Hague, it is trying on a different narrative, from trying to bolster its claim of historical title with maps that do not seem to reflect their own position, to writing their own laws to declare that they are not in violation when they exercise their own claims in the disputed waters.

The area, being declared as China's internal territory now under the MPL is now subject to several domestic Chinese Laws such as the Law of the People's Republic of China on the Administration of the Use of Sea Areas of 2002 which under Article 7 allows the disputed waters to be under municipal supervision of the Department in charge of marine administration of the Chinese Government, where all entities and individuals shall now be subject to comply with China's laws. With MPL and the Administration of the Use of the Sea Areas law read in conjunction, China granted unto itself the right to determine who also gets to use and exploit the natural resources in the given area subject to the approval of China's State Council and in case of dispute, jurisdiction will only be at China's People's Court.

China passed the MPL to further its claim on the territories and use it as legal basis to allow illegal military installations being constructed on the reefs and islands in the territories therein, even on the clear cut area designated as part of the Exclusive Economic Zone (EEZ) of the Philippines. An attack on the military installations, instead of it being likened to the removal of an illegal occupant,

will now be considered as an intrusion on the national security interests of China, under the Law of the People's Republic of China on the Protection of Military Installations.

China, previously criticized for its awkward missteps in the world stage politics, is showing how adept it has become in soft power relations and legitimizing its actions. International law, governed by different nation states are slow to act on claimed infractions as countries in general do not wish to be tagged as infringing on another country's sovereignty. The international bodies composed of these countries, such as the UN Security for example, is cautious in issuing statements, unless what is committed is a glaring, totally undeniable violation of legal rights.

Given that there is now a semblance of legality, what seemed to before as an international incursion of China against smaller state's territories, is now being presented as a perfectly legal act which the other neighboring countries would have to justify against making it as if it's a domestic issue, rather than an international one where unaffected states need not be involved. Further, as nod to American style of soft power politics where aid is distributed towards countries it intended to befriend as a priority, the timely deployment of the Belt and Road initiative worth 750 BN USD have delivered softening stances on the contests of China's actions in the South China Sea / West Philippine Sea territory like Philippines, Vietnam and Thailand. From denouncing and taking it to court, the Philippines through Rodrigo Duterte has totally changed its tune, and even said that the installations are welcome they are a defense against US interference. If this continues, Philippines would be hard pressed to lay claim that its rights are being infringed and later seek help from the US and call into the application of the Mutual Defense Treaty of 1951, leading to China eventually winning the territories it had no legal right to have originally.

(tentative title) Failure of International Law to Address the Right to Return Home of the Victims of Forcible Displacement

Karen Aboud
University of the Philippines

Work in Progress

My research aims to summarize inequities in international law that failed to address right to return home of millions of civilians around the world who were victims of forcible displacement. An empirical legal research into Syrian legal framework. The recent property laws have created infringement to the right to housing, property restitution and right to retun of approximately 12 million Syrian internally displaced persons (IDPs) and refugees and its interference with core entitlements of human rights. The rights of the refugees and displaced persons to return to their original homes and lands were acknowledged in international law. The Pinheiro Principles adopted by the UN Sub-Commission on the Protection and Promotion of Human Rights in 2005, provide an understanding of the needs and rights of post-war communities. Pinheiro Principles, Human Rights Laws and Refugees Law will be used as underlying methodology of measuring Syrian Property laws, in particular, Law 10 of 2018 in their compliance with the need to take appropriate administrative, legislative and judicial measures to support and facilitate the housing, land and property restitution process. While there are far more issues on restitution rights than mentioned herein, the author will highlight several key points of contention in the promulgated laws on property rights.

Returning Foreign Terrorist Fighters, Women and Children

Francis Maleon
Department of Foreign Affairs

Work in Progress

Abstract

The Syrian crisis became the breeding ground for the rise of numerous extremist and terrorist groups in the last ten years. Chief among them is the Islamic State of Iraq and Syria or ISIS and with its promises of an Islamic caliphate stretching across the Levant, it attracted numerous terrorist fighters from all over the world. After significant losses and weakening of leadership, many of the fighters were captured and are now in Kurdish controlled camps in Northeast Syria. International organizations like the International Committee of the Red Cross and the Red Crescent have called for the nations from which the fighters belong to repatriate them including women and children who have been tied up somehow with these terrorist organizations either willingly, unwillingly or as a result of filiation. Many countries have balked at this idea for fear of bringing back people who have terrorist ties and thus will be a danger to their country in one form or another. The humanitarian sector believes, however, that it is the duty of the country to provide assistance to their nationals and undertake what is needed to rehabilitate them. So how do we reconcile these ideas? How do we treat Foreign Terrorist Fighters, women and children in a humane way and still ensure our country's security? This paper will aim to provide a deeper examination on this difficult situation and offer to provide a solution for those concerned.

Bridging the Accountability Gap Between the Universal Rights Regime and the Regime of Multilateral Development Financing Institutions

Patrick Edward Balisong
Ateneo De Manila University

Completed Draft

Abstract

MDFIs have refused to participate in the Human Rights agenda in at least three ways — first, they claim that they do not have hard law HR obligations. Second, they invoke the Prohibited Political Activity Clauses of their constituent instruments. Third, they plead their immunities. In resolving the tension between the existence, mandate, and undertakings of MDFIs in their operational activities and the liability and accountability of the international community for Human Rights obligations, the current Work addresses the primary legal questions: First, Do MDFIs have hard law Human Rights obligations? Second, Which should prevail between the Prohibited Political Activity Clauses and MDFIs' Human Rights obligations? Third, Can MDFIs plead their immunities when they are being held responsible for Human Rights violations that result from their transactions? It is submitted that MDFIs have hard law HR obligations because they are users of sovereign powers and are development-oriented bodies. The Prohibited Political Activity Clauses of MDFIs do not bar them from discharging their HR obligations because the purpose of and the protections afforded by the Prohibited Political Activity Clause accrue to the benefit of borrowing Member States and not to MDFIs. MDFIs are not immune for ultra vires acts, including HR violations, because of the functional nature of immunity grants. This Work proposes a HR Due Diligence framework for MDFIs. This Work also proposes a test in order to adjudicate at the onset the propriety of immunity claims.

A Ticking Time Bomb: Establishing a Global Prohibition Regime Against Data Breach as a Corporate Crime

Donna Nikki DL Vargas
Ateneo De Manila University

Completed Draft

Abstract

In an era where technology is considered as the fabric of the modern world, the right to privacy is at a constant threat as data breach becomes a ticking time bomb. If data breach has become the new norm, so must creating multiple levels of protection. A global prohibition regime against data breach is hereby established in a two-tiered level of prosecution: domestic and international. The proponent determined that data breach is a transnational crime similar to money laundering, drug trafficking, corruption, and cybercrime which allow for corporate criminal liability. Thus, it is argued that corporate criminal liability be similarly imposed on erring transnational corporations for the commission of data breach. Given the transboundary nature of data breach, domestic and regional prosecution have been found to be inadequate and ineffective. Transnational corporations and cross-border data transfers blur the line regarding jurisdictional issues. Contrary to the basic principle of territoriality in criminal law, cybercrimes operate in the cyberspace where there is a recognized absence of territorial borders. Recognizing the complexities of data privacy, prosecution of transnational corporations becomes rather difficult, albeit provided for in multiple regional and domestic instruments, arising from the very fact that data breach occurs in cyberspace beyond the jurisdiction of states. On a domestic level, the proponent established a global prohibition regime against data breach through a treaty provision which requires states to adopt measures against data breach. On an international level, it is proposed that an International Criminal Tribunal for Cybercrime be established for the prosecution of cases involving data breach with due regard to the primacy of national jurisdictions and sovereignty of states. In the said tribunal, corporate criminal liability may be imposed on erring transnational corporations as holders of massive amounts of data and must therefore be subject to a stricter form of liability.

Belt and Silk Road Initiative:
A New Game-Changer of Transnational Investment in Asia

Irene D Valones
Arellano University

Work in Progress

Abstract

The advent of globalization in this modern age and highly diversified world paves the way for a new era of an economic alliance of states in Asia through the establishment of China's Belt and Silk Roads Initiative (BRI), comprising the Silk Road Economic Belt (SREB) and the 21st Century Maritime Silk Road (MSR), which connects the East and the West to promote and sustain leverage in the transition of the world from western hegemony to a policy of peace, mutual respect, and coordination under China's helm. In this pursuit, China continues to use BRI as an economic and geopolitical strategy to broaden its sphere of land and maritime control against the opposing hegemony among its neighboring countries, the East and the West. This paper delves into the theories and praxis of investor-state arbitration as well as issues on transparency of the Bilateral Investment Treaties (BIT) and international investment agreements (IIAs) as tools for governance of investor-state dispute settlement (ISDS) in the light of the accelerating transnational investments under the BRI in Asia and the member-economies within the APEC belt. This new economic alliance is also problematic as it reflects on the legitimacy of the arbitral institutions spearheaded by China. It reflects the Global South-South power asymmetry, the developed and developing State parties within the periphery, primarily Asian developing countries like the Philippines. It is theorized in this paper that the complexities in ISDS mechanisms can be remedied by establishing a multilateral investment court to foster legitimacy and transparency on arbitral tribunals and, therefore, address the issues on the malleable and amorphous nature of public policy to promote not only the economic interest of the State parties and foreign investors but also the sustainable development of the people.

Social Media Ban as a Measure of Indirect Expropriation

Pramela Menghrajani

Ateneo De Manila University

Work in Progress

Abstract

Social media platforms have created immense value from intangible assets. In 2017, the top 6 social media platforms in the world had a combined market capitalization of US$592 billion and a combined number of users of more than 3 billion all over the world. This ability to generate enormous value from intangible assets like algorithms, user data and websites from users worldwide has contributed to the exponential growth of cross-border investments in the last decade. Yet, some States have blocked social media platforms from operating within their territory. There is a burgeoning debate among scholars on the characterization of social media platforms as investments within the scope of bilateral investment treaties (BITs) considering territoriality requirements. The expansionist view of ICSID tribunals in *SGS v. Philippines* and *SGS v. Pakistan* is often used to consider social media platforms as investments even without a physical presence in the host state. The Author attempts to settle this debate and opines that only intangible assets within the prescriptive and enforcement jurisdiction of the Host State are qualified as investments worthy of treaty protection.

Additionally, the Author posits that blocking social media platforms amounts to indirect expropriation. ICSID tribunals in recent years have recognized indirect expropriation where an investment's value is neutralized without the government taking actual control. When social media platforms have headquarters that service operations in multiple States, it is argued that their continued operations of social media platforms in the blocking State does not amount to indirect expropriation. However, in harmonizing investment agreements with rulings on indirect expropriation, the Author argues for the recognition of partial indirect expropriation.

No One Left Behind: Upholding the Right of Persons with Disabilities to Safety and Protection in Natural Disasters under CRPD

Maria Feona Imperial and Joshua Anthony B. Triñanes
Bicol University College of Law

Work in Progress

Abstract

The study explores how the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) fills the gap in Philippine domestic law as to the right to protection and safety during disasters of persons with disabilities. While the Philippines has existing legislation on disability rights (Republic Act No. 7277 or the Magna Carta for PWDs) and disaster management (Republic Act No. 10121 or the Philippine Disaster Risk Reduction and Management Act), both are mum on the rights of PWDs in the context of natural disasters, despite studies that show PWDs, who are often left behind in rehabilitation and relief processes, face doubled risks compared to their regular counterparts when disasters strike.

Furthermore, R.A. No. 10121 mandates the National Disaster Risk Reduction and Management Council, the Philippines' disaster management policy-making body, to develop a "comprehensive framework" to serve as the "principal guide to the country's disaster risk reduction and management efforts." However, nowhere does the existing framework crafted by the NDRRMC mention how the government endeavors to protect PWDs and cater to their needs.

Such void in Philippine laws on disability rights and disaster management is addressed by Article 11 of the CRPD, which provides that "States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters."

Through its domestication into the Philippine legal system, the CRPD has created the right of Filipino PWDs to safety and protection in the occurrence of natural disasters and imposed on the government the duty to uphold and protect the same.

(tentative title) Pregnant Inmates and Their Infants, and the obligations of the Philippines under the Convention on the Rights of the Child

Danizza Monique Fortuna
University of the Philippines

Work in Progress

Abstract

The interest of an infant born to a detained mother is often overlooked in the State's pursuit of justice and retribution against women who are in conflict with the law, resulting in harm and injuries to the newborn child. Considering the growing number of pregnant detainees in the Philippines vis-à-vis the reported death of infants because of the State's policy of separating the newborn child from its mother one month after it is born, there rises a need to assess the condition of a newborn child born to a detained mother, the failure of Philippine law to accord full protection to the child, and the international law solution to the inefficacy of the current Philippine law. This research paper argues that the current State policy governing Pregnant Inmates and their Infants, *i.e.*, Memorandum Circular No. 2010-02, contravenes the obligations of the Philippines under the Convention on the Rights of the Child ("CRC"), a treaty which is binding on the Philippine State due to the Philippines' express consent to its provisions. This paper holds that the CRC advocates for the non-separation between the mother and the newborn child and provides for the "best interests of the child" as the primary consideration in all decisions with respect to the child; thus, separation of the newborn child from its mother leads to the defeat of the CRC's object and purpose to ensure the survival and the development of the child. Due to the apparent conflict between the Circular and the CRC, rules of interpretation were employed. Using the "sequential analysis," and following the principle of *lex superior derogat legi inferiori*, this paper holds that the CRC prevails since it has the force and effect of a statute, putting it in a higher hierarchy than the Circular, which is merely an executive issuance.

(tentative title) Labor Rights of Food Delivery Riders (independent workers) under ILO Convention No. 100 vis-a-vis Philippine Labor Law

Kristi Angeli King
University of the Philippines

Work in Progress

Abstract

Food delivery riders have already become a very vital part of the Philippines' workforce, especially during the pandemic. Despite this, it is a known fact that their working conditions are not as ideal as one may hope, mostly because the power to determine their working conditions remains with the companies that employ their services. Because they are considered independent contractors, they are not able to collectively bargain for better wages and working conditions as provided for in the Philippine Labor Code. Instead, companies who employ them unilaterally impose earning schemes and working conditions without their consent, which usually leaves some riders earning less despite equal hours of work.

This case study aims to illustrate that despite the lack of coverage for these independent workers in Philippine Labor Law, several international conventions ratified by the Philippines actually allow for the workers to compel food delivery companies to enter into collective bargaining negotiations and agreements with the former, without being contradictory to our current labor laws.

Specifically, ILO Convention No. 100 or the Equal Remuneration Convention fills an evident gap in our current laws in this respect. This convention establishes the right of workers to equal remuneration for work of equal value, which may be achieved through several mechanisms, including voluntary bargaining negotiations and agreements with private companies or employers. Such mechanism is recognized under the said convention as a separate manner of enforcement from national laws and regulations.

The enforcement of such right through voluntary bargaining is further emphasized when interpreted from the lens of another equally binding convention in the Philippines, ILO Convention No. 98 or the Right to Organise and Collective Bargaining Convention. The convention specifically provides for a wider scope for voluntary bargaining in that it affords the said right to all classes of workers.

(tentative title) The Right to Succession of Illegitimate Children under the Philippine Civil Code and the Convention on the Rights of a Child

Joyce Diane Niu
University of the Philippines

Work in Progress

Abstract

Considering that the Philippines is a State Party to the UN Convention on the Rights of the Child ("UNCRC"), the Philippines is bound to eliminate all forms of discrimination on all rights of the children, including discrimination based on the legitimacy or illegitimacy of the child. Despite this obligation, the Philippine Civil Code provisions on succession continue to discriminate against the illegitimate child by giving them only one half of a share of a legitimate child. It is submitted that the Philippine courts must interpret the Civil Code provisions on succession in light of UNCRC and rule that the difference in shares inherited by legitimate and illegitimate children cannot be upheld under the UNCRC and courts must distribute shares equally between legitimate and illegitimate children.

(tentative title) Filling-in the gaps in the Philippine Intellectual Property Code through the TRIPS Agreement on protection of commercial information

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Work in Progress

Abstract

If one seeks to prevent others from disclosing one's secret commercial information to anyone, the Protection of Undisclosed Information in Article 39.2. of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") fills the gap of the Intellectual Property Code ("I.P. Code"); finally providing the scope and manner of preventing disclosure to, acquisition by, and use by others of one's secret commercial information.
Building investor confidence is essential to growing the Philippine economy. Crucial in investor confidence is the protection of secret commercial information. Never has any existing jurisprudence looked upon the TRIPS Agreement to fill the gaps of "protection of undisclosed information" in the I.P. Code.

To invoke the relief, the remedy is for the Plaintiff to file a civil action for injunction against disclosing secret commercial information acquired by the Defendant from its engagement with Plaintiff.

The rule from the TRIPS Agreement is that natural or legal persons exercising lawful control of secret commercial information are entitled, using judicial authorities of the Philippines, to prevent it from being disclosed to, acquired by, or used by others without their consent.

The Philippine State, bound under international law by its compliance with the Marrakesh Agreement, and also bound under its own laws by its ratification and Senate concurrence, has given force to the TRIPS Agreement's Protection of Undisclosed Information in the same level of statutes in the hierarchy of Philippine rules.

(tentative title) Right of Lumads (indigenous peoples) to education under the Convention Against Discrimination in Education

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Work in Progress

Abstract

The right of indigenous peoples to education in their own language and culture is a right recognized and protected under the 1987 Constitution and the Indigenous Peoples Rights Act (IPRA) of 1997. With these domestic laws in place, however, it is clear that children from cultural minority groups are still suffering disproportionately in education, with indigenous schools getting minimal support, being denied permits to operate, and being ordered shut down.

For this research paper, the proponent shall focus on the attacks on Lumad schools by and during the Duterte administration and discuss the need to resort to International Law, specifically, the Convention against Discrimination in Education (Convention), to address and put an end to the problem of discrimination against Lumad schools and indigenous education in general. The following are the questions that the proponent seeks to answer:

1. Why is the Philippines legally bound by the Convention as rules of international law?
2. How does the Convention fill the gap in the existing Philippine law on indigenous education?
3. What concrete solutions does the Convention prescribe to address discrimination against indigenous education?

When 'Good Men' Go to War:
Reflections on the Use of Violencein Non-International Armed Conflicts

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Work in Progress

Abstract

Non-international armed conflicts (NIACs) pose a peculiar difficulty from a moral philosophical standpoint. The material reality of NIACs presents a situation of asymmetry in the parties' conduct of fighting. This asymmetry in terms of the material capacity to conduct hostilities could very well translate to an asymmetry in terms of moral positionality and moral claims. The control of the State Apparatus is a key element in legitimizing claims to violence, while the absence of it virtually renders the use of violence morally questionable. This project presents reflections on the law of armed conflict that seek to assess its core substantial aim of regulating war and violence in war. It takes as an emblematic snapshot the long-running conflict between the Government of the Republic of the Philippines and the Communist Party of the Philippines-New People's Army-National Democratic Front (CPP-NPA-NDF). The project considers the historical, material, and ideological elements surrounding the conduct of hostilities in this NIAC to assess compliance of parties to the law of armed conflict. The moral weight assigned to the scripts on the use of violence by each party to the combat does not emerge from a legal vacuum. Among its central questions are: how does law create 'good men', and how do these 'good men' shape the law?

International Law Solutions to Philippine Law Problems:
A 7-Step Analysis

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Work in Progress

Abstract

Most Philippine lawyers consider International Law to be irrelevant to Philippine dispute resolution and law practice. To address this problem, I have developed a ***seven-step process of analysis*** to determine how international law can be applied in Philippine cases.

Step 1. Identify the rule of public international law.
Step 2. Identify the formal source of the rule of international law (i.e., whether a treaty rule, a customary rule, or a general principle of law) and its material sources.
Step 3. Determine whether the rule of international law is binding upon the Philippine State under the international legal system.
Step 4. Determine whether the rule of international law has been domesticated into a Philippine legal rule in the Philippine legal system (i.e., whether through incorporation or transformation).
Step 5. Identify the place of the domesticated rule of international law in the hierarchy of rules in the Philippine legal system (i.e., whether in the same place as statutory rules or executive regulation rules).
Step 6. Identify the relevant Philippine legal rules from domestic sources (i.e., the relevant constitutional rules, statutory rules, executive regulation rules, judicial regulation rules, and local ordinance rules) and determine how these Philippine rules have been affected by the domesticated rule of international law (i.e., whether the international rule filled a gap in the Philippine rules, or modified the Philippine rules, or served as aid in the interpretation of the Philippine rules).
Step 7. Determine how the domesticated rule of international law can be applied in a Philippine case to obtain the desired relief under the Philippine legal system (i.e., whether the international rule can provide legal basis to authorize, compel, or prohibit certain acts, or to declare the legal status of certain acts).

The Coming of the ASEAN Supreme Court(s):
The Non-Supranational, Non-Judicial Alternative to a Regional Court

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Completed Draft

Abstract

The annual meetings of the Chief Justices from the Association of Southeast Asian Nations ("ASEAN") member states reveal their eagerness to play a crucial role in the development of laws in the region. At first blush it may appear that these apex court magistrates had merely intended to engage in simple knowledge sharing and judicial cooperation. However, their meetings' progress reports through the years indicate that their regular encounters have turned into a steady platform for a group interpretation of legal principles. Based on their statements and their meetings' outcome documents, this band of judges has been gradually harmonizing their approach to the adjudication of legal issues important to the region, such as those involving the environment, cross-border child disputes, intellectual property, enforcement of arbitral awards, and others. All of these are markedly unusual given the general sensitivity of ASEAN member states against any perceived notion of international and foreign laws intruding into their disparate domestic legal systems. What is odder is the judges' seeming openness to look to their neighbors in spite of their respective government's failure to ratify key regional agreements.

The paper argues that this assembly of Chief Justices – formally called the Council of ASEAN Chief Justices (CACJ) – has emerged into a non-judicial corporation of judges that collectively develops "soft law" in the region. To establish such claim, the paper will delve into how the nature, extent, and effect of the Chief Justices' interaction during their roundtable discussions have gone beyond mere sharing of best practices in adjudication and cross- fertilization of national judicial decisions. The outcome documents reveal that the magistrates have been engaging in patient consensus building, ASEAN Way-style, in order to create a regional norm. The paper will then consider whether this intergovernmental corporation of judges could serve as a model institution – and an alternative to the establishment of a regional court – amidst the framework of an association of states that consciously avoids supranational organizations and highly values national independence of action.