

FOREWORD*

*J. Eduardo Malaya***

In the relations between and among states, there are innate tensions between diplomacy and international law. A number of distinguished diplomatic practitioners and international relations experts contend that foreign policy has to be rescued from its moorings in international law, which—with its supposed legalistic-moralistic approach to international problems—is too abstract and inflexible to address and adjust to the demands of the unpredictable and the unexpected.

Mankind's experiences with wars and pandemics, among others, however, underscore the necessity for some order in an otherwise anarchic international environment.

Viewed holistically, it is perhaps not a choice between law and the requirements of policy, but is more about what within the broad constitutional or legal framework a country's national interest requires it to do *vis-à-vis* other countries and the larger international community.

It is in this light that the Department of Foreign Affairs, through its Office of Treaties and Legal Affairs (“OTLA”), or the “Office of the Legal Adviser” as so named in the Revised Administrative Code of 1987, views its functions and responsibilities. As the office mandated to provide legal assistance to the Secretary of Foreign Affairs on matters concerning the interpretation and application of Philippine laws and regulations, treaties, conventions and other international agreements, and assist in the negotiation of treaties and international agreements, the most important task of OTLA is to provide the relevant international legal framework to a particular issue, problem or situation in order to help ensure that the country's foreign policy does not conflict with international law.

* *Cite as* J. Eduardo Malaya, *Foreword*, 91 PHIL. L.J. v, (page cited) (2018).

** Assistant Secretary for Treaties and Legal Affairs/Legal Adviser, Department of Foreign Affairs (2017-present, 2009-2011); Philippine Ambassador to Malaysia (2011-2017); DFA Spokesman (2009-2011); Assistant Secretary for Policy Planning, DFA (2007-2009); LL.B., University of the Philippines College of Law (1982); B.A. Economics, UP School of Economics (*cum laude*).

Assistant Secretary Malaya is the Vice President of the Philippine Society of International Law (2018-present) and the author of six books, including: STEWARDS OF THE NATION: AGUINALDO TO DUTERTE AND THEIR INAUGURAL VISIONS (2018), FORGING PARTNERSHIPS: PHILIPPINE DEFENSE COOPERATION UNDER CONSTITUTIONAL AND INTERNATIONAL LAWS (2017), FRONTLINES OF DIPLOMACY: CONVERSATIONS WITH PHILIPPINE AMBASSADORS (2011), and PHILIPPINE TREATIES INDEX, 1946-2010 (2010).

In line with the constitutional mandate adopting the generally accepted principles of international law as part of the law of the land, OTLA led the way in the country's accession in 2010 to the Convention for the Pacific Settlement of International Disputes, which governs the Permanent Court of Arbitration, and its membership in The Hague Conference on Private International Law, which spearheads efforts toward the harmonization of rules in private international law.

OTLA has also reached out to the law academe and the legal profession in helping shape a national agenda in international law. It has partnered with the Philippine Society of International Law and the University of the Philippines Law Center in the revival and relaunch of the PHILIPPINE YEARBOOK OF INTERNATIONAL LAW, and in co-hosting with the latter entities the 7th Biennial Conference of the Asian Society of International Law in August 2019.

It is with this outlook that the OTLA welcomes the publication of this special themed issue of the PHILIPPINE LAW JOURNAL, Volume 91, which focuses on international law issues.

In the article *Potential Legal Challenges to President Rodrigo Duterte's Decision to Withdraw the Philippines From The Rome Statute*, Atty. Ryan Hartzel Balisacan discusses the pressing issue of the validity of the Philippines' withdrawal from the Rome Statute, the treaty that established the International Criminal Court. Though the official government position on the matter differs, Balisacan offers a legal contention against the merits behind the decision, and the manner on how the withdrawal was effected.

In *Revisiting the Concepts of Rights, Obligations, and Injury in the Invocation of State Responsibility in Inter-State Adjudication*, Atty. Gemmo B. Fernandez explores the two-tiered approach of inter-state adjudication to standing in Articles 42 and 48 of the Draft Articles on State Responsibility. By evaluating the current framework of state responsibility under which rights are treated as separate and distinct from legal interests, and proposing a bilaterization of obligations (including those *erga omnes*) in multilateral relationships, Fernandez closely examines this area of international law to bring more clarity to the issues surrounding it.

The analysis of the protections under international humanitarian law in *The Introduction of Transnational Armed Conflicts into International Humanitarian Law*, authored by Atty. Gabriel Stephen R. Calleja, identifies gaps in the recognition of certain types of armed conflicts that are excluded from the regulations placed by international law. The article advocates for an

international initiative to address such gaps to prevent damages, injuries, and losses arising from complex armed conflicts.

Placing emphasis on the tangible link between cultural identity and nationalism, Kathleen Tantuico in *The Return of Unregistered Moveable Cultural Property of the Colonial Philippines: Perspectives In International Law* examines the domestic and international laws that may provide for legal perspectives and methods that can facilitate the repatriation of cultural properties obtained from the Philippines during colonial times, and which remain in the possession of foreign museums and related entities.

Whether international law will triumph over power-based politics, or play second-fiddle to it, will probably not be resolved anytime soon. Even so, the cause of peace, equality, justice, freedom, cooperation and amity with all nations, which are all ordained in the 1987 Constitution, is better served if policy and politics at the international level are guided, if not tempered, by international law. For this, a deep understanding of and appreciation for the role of international law in foreign policy making is indispensable.

- o0o -