

A Culture of Respect for, and Understanding of, International Law

(Remarks at the Awarding of Law Scholarships, Foundation for Liberty and Prosperity, Ateneo de Manila Law School)

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Let me commend the Foundation for Liberty & Prosperity of Chief Justice Artemio Panganiban for awarding twenty-one (21) law scholarships, the most number of law scholarships in the country given by a single foundation. In his student days, Chief Justice Art Panganiban was a working student, and in need of scholarship to finish his studies. It is heartwarming that today, having achieved all his ambitions in life, Chief Justice Art is making available 21 scholarships for law students. Thank you, Chief Justice Art.

Let me likewise congratulate all the 21 recipients of the scholarship awards – you truly deserve your scholarships.

I am happy to address the Foundations' scholars who come from various law schools all over the country. You have either taken up, or are now taking up, or will soon take up public international law. So, I think I have the right audience this afternoon to give my observations on the role of public international law in the survival of our nation as a sovereign and independent state.

Just a few days ago, the Chief Presidential Legal Counsel released a Presidential Statement asserting: **“An international law cannot supplant, prevail or diminish a domestic law.”**

This assertion is, of course, contrary to our Constitution and the rulings of the Supreme Court. Our Constitution adopts as part of the law of the land, without further legislation, generally accepted principles of international law. The Supreme Court has repeatedly ruled that international law, or a ratified treaty, has the same status as a municipal or domestic law. This means, as the Supreme Court has repeatedly ruled, that a later international law or a later ratified treaty prevails over a prior and

inconsistent domestic or municipal law. The opposite is also true. A later domestic law prevails over a prior inconsistent international law or ratified treaty.

Several months ago, news reporters asked the Secretary of Foreign Affairs if the Philippines would protest China's seizure of Sandy Cay, a high-tide sandbar situated within the territorial sea of Pag-Asa, the largest island that the Philippines occupies in the Spratlys. The Secretary of Foreign Affairs replied: **"Let me assure you that everything is being done to protect our claims. Unlike land disputes where if you don't protest it the other claimants (claim) could mature, that's not the law of the seas. xxx If it's not theirs, it's not theirs. It will not mature into ownership."**

This statement is, of course, completely erroneous, and dangerously so. Firstly, a high-tide sandbar, which is above water at high tide, is land or territory subject to sovereign ownership. In short, China's seizure of Sandy Cay involves a land or territorial dispute not only because Sandy Cay is land or territory, but also because Sandy Cay is situated within the territorial sea of Pag-Asa as ruled by the arbitral tribunal in the Philippine-China arbitration at The Hague.

Secondly, the well-established principle of acquiescence applies to both territorial and maritime disputes. As the arbitral tribunal in the Philippine-China arbitration ruled, **"The extent of the rights asserted within the "nine-dash line' only became clear with China's Notes Verbales of 7 May 2009. Since that date, China's claims have been clearly objected to by other States. In the Tribunal's view, there is no acquiescence."**

Clearly, the international law principle of acquiescence applies to maritime disputes under the Law of the Sea. If the Foreign Secretary will insist in his own interpretation of international law, an arbitral tribunal may in the future rule that the Philippines has acquiesced to China's seizure of Sandy Cay.

Last 17 December 2016, upon arriving in Davao City after his state visits to Cambodia and Singapore, the President declared: **"In the play of politics now, I will set aside the arbitral ruling. I will not impose anything on China."** In law, to "set aside" a ruling means to annul, void or abandon the ruling. There is a well-recognized principle in international law that unilateral declarations of heads of state in inter-state disputes can bind the state if accepted by the other disputant states. I had to sound the alarm to the Department of Foreign Affairs to immediately clarify the President's statement before China accepted the unilateral statement. Thankfully, the DFA made the clarification that

the Philippines was not abandoning the ruling, a clarification made just a few hours before China announced its warm acceptance of the President's statement.

Let us now look at the big picture. China wants to grab 80 percent of our Exclusive Economic Zone in the West Philippine Sea. The maritime area China wants to grab, about 376,000 square kilometers, is larger than the total land area of the Philippines of 300,000 square kilometers. There are only two obstacles that stand in the way of the powerful and modern Chinese navy from grabbing the West Philippine Sea: one, our second-hand navy ships that do not have a single anti-ship missile, and two, international law, in particular UNCLOS.

It will take at least two decades, and tens of billions of pesos in appropriations, before we can build up our navy into a credible self-defense force. Even then, our navy can only hope to give a bloody nose to the Chinese navy, never to defeat it. In contrast, under UNCLOS we are on a level playing field with China from the very start since an UNCLOS tribunal will decide a dispute based on the Law of the Sea, without counting how many warships, warplanes, missiles or nuclear bombs each side can deploy.

Indeed, international law is the great equalizer between and among militarily weak and militarily strong states. When negotiations fail, international law is the only other recourse to peacefully resolve disputes between and among states since the United Nations Charter has outlawed war as a means of settling disputes between and among states. Under our own Constitution, we have even renounced war as an instrument of national policy.

That is why when China seized Scarborough Shoal in 2012, we did not send the Philippine marines to retake it, we sent legal warriors to The Hague to attack the validity of China's nine-dashed line under international law. And we won an overwhelming victory.

Our national strategy to survive as a sovereign and independent state, keeping intact our national territory and maritime zones from foreign encroachment, is four-fold: first, develop and maintain a credible self-defense force; second, strengthen our defense relations with our allies; third, maintain friendly relations with all countries; and fourth, utilize international law to the fullest.

When faced with aggression from a nuclear-armed power like China, one of our strongest defenses is international law. And to utilize international law to the fullest in the defense of our national territory and maritime zones, we must develop a culture of respect for, and understanding of, international law. That kind of legal culture starts in every College of Law in this country, with law scholars like you. You will be the future legal warriors of the Philippines who will defend our national territory and maritime zones, not in the mountains, skies or high seas, but in the courtrooms at The Hague and Hamburg.

So good luck to you law scholars of the Foundation for Liberty and Prosperity. Thank you and good day to everyone.