

THE HISTORY OF TEACHING INTERNATIONAL LAW IN THE PHILIPPINES

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I. BRIEF HISTORY

On October 1, 1901, the Code of Civil Procedure, enacted by the Philippine Commission as Act 190, took effect. This law provided rules on admission to the practice of law in the Philippines: all residents of the Philippines, not subjects or citizens of a foreign country, at least 25 years of age, and possessing the necessary conditions of knowledge and aptitude, may be admitted to the practice of law in the courts of the islands (Art. 14, Act 190).

All aspirants to a license to practice law had to present before the Supreme Court satisfactory proof of good morals, and had to undergo examinations on the substantive and procedural law codes in force in the Philippines and of such other branches of law which the Supreme Court may determine by a general rule (Art. 15, Act 190).

The same law provided that examinations for admission to the Philippine bar should take place in Manila before the Justices of the Supreme Court or a commission of competent lawyers appointed by the Supreme Court, on such dates agreed upon by said Justices (Art. 16, Act 190).

Pursuant to this power, the Supreme Court has been giving bar examinations on eight subjects -- one of them being international law.

The earliest surviving records in the Philippine Supreme Court show that in 1933 the subject *international law*, was among those covered by the bar examinations, given a unit of one (the lowest), as compared to civil law, for example, which had a unit of 4 (the highest).

The present Rules of Court (in Rule 138) effective since January 1, 1964, provide much the same regulation:

“SEC. 5. Additional requirements for other applicants: All applicants for admission other than those referred to in the two preceding sections shall, before being admitted to the examination, satisfactorily show that they have regularly studied law for four years, and successfully completed all prescribed courses, in a law school or university, officially approved and recognized by the Secretary of Education. The affidavit of the candidate, accompanied by a certificate from the university or school of law, shall be filed as evidence of such facts, and further evidence may be required by the court.

No applicant shall be admitted to the bar examinations unless he has satisfactorily completed the following courses in a law school or university duly recog-

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nized by the government: civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation and legal ethics."

"SEC. 9. Examination; subjects: Applicants, not otherwise provided for in sections 3 and 4 of this rule, shall be subject to examinations in the following subjects: Civil Law; Labor and Social Legislation; Mercantile Law; Criminal Law; Political Law (Constitutional Law, Public Corporations, and Public Officers); International Law (Private and Public); Taxation; Remedial Law (Civil Procedure, Criminal Procedure, and Evidence); Legal Ethics and Practical Exercises (in Pleading and Conveyancing)."

International law, therefore, had to be taught in the colleges and universities of the Philippines, particularly in the law schools, to prepare applicants to the Philippine bar in the Supreme Court examinations. It was offered as part of the course leading to the degree of Bachelor of Laws (LL.B.).

Pre-war statistics are not available but from the Supreme Court records we have the following on bar applicants:

BAR EXAMINATIONS – THE NATIONAL PERCENTAGE

Year	Applicants	Passing Percentage	Average considered as passing (in percent)
1946 (August)	208	46.63	72
1946 (November)	478	56.69	69.45
1947	755	59.87	69
1948	901	62.26	70
1949	1,222	56.14	74
1950	1,325	31.92	75
1951	2,079	57.19	74
1952	2,749	62.02	74
1953	2,556	72.42	71.5
1954	3,206	75.17	72.5
1955	2,987	27.79	73.5
1956	3,647	62.60	73
1957	3,110	19.77	72
1958	3,951	21.97	72
1959	3,754	21.31	72
1960	4,178	39.9	72
1961	4,370	19.34	71
1962	4,635	19.4	72.5
1963	5,453	22.26	70
1964	3,567	25.09	71.5
1965	1,969	32.66	71.5
1966	1,947	36.72	74
1967	1,803	22.80	72
1968	1,643	21.11	73
1969	1,731	28.6	73
1970	1,761	27.9	73
1971	1,835	33.84	74
1972	1,907	28.66	70

1973	1,631	37.4	74
1974	1,956	35.02	70
1975	1,950	35.18	73
1976	1,979	49.77	74.5
1977	1,714	60.56	74
1978	1,890	56.93	73
1979	1,824	49.51	73.4
1980	1,800	33.61	73
1981	1,924	43.71	72.5
1982	2,112	20.5	75
1983	2,455	21.30	75

With some allowance for *repeater*, these figures show, more or less, the annual figures of graduates who had studied *international law*, as part of the law curriculum.

The number of law schools grew from about 5 before World War II to about 50 today.

Since public international law is a one-unit bar examinations subject, there is less emphasis on it in the law school and the average is one or two professors teaching it per school over the years. The study and teaching of international law have been tied up to the pursuit of a law degree and eventual admission to the practice of law by passing the bar examinations.

There was a critical phase in 1964-65, when the Bar applicants dropped from 3,567 to 1,969. This was the time when the Supreme Court decided to be more strict in the admission requirements and those who were not fit for the law profession were encouraged to seek other courses.

Since then, the number of graduates and applicants have stabilized from 1,500 to 2,000 per year, with a sign of a slow growth in 1981 to 1983.

II. KEY EMPHASES IN TEACHING AND MAJOR TRENDS IN RESEARCH

A. Teaching

Records of syllabi used in international law are difficult to trace. The Section of Higher Education of the Ministry of Education referred us back to the Ateneo de Manila College of Law as having the most complete file.

The Ateneo de Manila College of Law records show the contents of the syllabi and changes therein over the years, as follows:

The school catalogue for 1941-42, the earliest extant catalogue on file, has this course description:

PUBLIC INTERNATIONAL LAW. -- The study of general principles of Public International Law, treating of the legal relation between states as developed by positive agreement, in the form of treaties or conventions, by common usage, and by diplomatic practice and the conduct of nations. (2 units)

The next available issue of the catalogue, which was for 1951-52, reads:

PUBLIC INTERNATIONAL LAW AND CONSULAR PRACTICE. -- The study of the general principles of Public International Law, treating of the legal relation

between states as developed by positive agreement in the form of treaties or laid on the treatment of diplomatic and consular practices.

From there until the present, except for 1952-53, 1962-63, for which the office does not have a copy of the catalogue, the changes in the wording of the course description are the following:

1959-60: PUBLIC INTERNATIONAL LAW. - - The study of the principles governing relations among state and other international persons as developed from natural and from positive law.

1965-67: INTERNATIONAL LAW AND WORLD ORGANIZATIONS. - - This is a study of the principles of governing the relations among states; International Organizations; treaty relations between the Philippines and the United States and other countries. (2 units)

The records of other schools, particularly those of San Beda College, likewise show the same changes, including the emphasis on world organizations starting 1966-67.

This shift of emphasis is a result of the growing perception of the importance of the United Nations and regional organizations to developing countries like the Philippines.

As to content or topics, therefore, there was a common syllabus used in all the law schools, as prescribed by the Ministry of Education and reflected in the syllabi above mentioned.

Sad to say, there is a lack of Graduate level programmes on international law in Philippine universities. The University of the Philippines (the State university) offers an LL.M. course on Comparative Asian Law. The Ateneo de Manila College of Law is planning to offer the 4th year of the LL.B. course elective subjects such as international economic law.

B. Research

1. Pre-War Years 1915-1939:

Prior to World War II, the researches on international appearing in the Philippines were mostly reprints of studies made abroad or, occasionally, speeches delivered locally by foreign experts.

The *Philippine Law Review*, whose pre-war issues are intact, shows the following:

In May 1915, the first article on international law appeared entitled "*Estudio Sobre la Destruccion de Presas Maritimas de los Neutrales*" (Study on the Destruction of Maritime Prize Belonging to Neutrals), which was taken from the *Illinois Law Review*.

In June 1915, S. Bibb's "*Estado Actual de la Doctrina de Monroe*" (Current Status of the Monroe Doctrine), was reprinted, in its Spanish translation, from *Case and Comment*. Also in the issue was an article on "*Los Submarinos Alemanes Peuden Ser Considerados Piratas?*" (The German Submarines - Can

They Be Considered as Pirates?), from *Case and Comment*. Similar studies appearing in 1915 touched on Neutrality (H.B. Bowen); Belligerents taking refuge in neutral countries (R.P. Shephard); the Sale of Arms by of Belligerents, (Charles Noble Gregory); and the Rights of Belligerent vessels in Neutral ports (no author given) - - all taken from *Case and Comment*, except Gregory's work which came from *The Outlook*.

On February 17, 1918, Eugene A. Gilmore of the University of Wisconsin, addressed the Philippine Bar Association in Manila and his speech appeared in *The Philippine Law Review* in March-April 1918, entitled "*Judicial Settlement of International Disputes*." This was a departure, since it was at least locally given, the speech appeared in English, and it did not deal with War and Neutrality.

Next came Charles Evans Hughes' speech in New York on "*War Powers Under The Constitution*," published in May-June 1918. Then finally, one of our own is recorded: Feliciano Basa's "*Crisis y Progresos del Derecho Internacional*" (Crisis and Progress of International Law), in July of 1918. This was followed by Gaston de Level of Brussels on "*Prussian Law as Applied in Belgium*" in August of 1918; and an article on "*Law, War and the Future*" by Sir Fredrick Edwin Smith, Attorney General of Great Britain, appeared in September 1918.

The pre-war articles close with two materials from the 1930 and 1932 issues of *Philippine Law Journal* published by the University of the Philippines: John A. Eubank of the New York Bar "*Ownership of the Airspace*," incidentally, the first article dealing with international law in this law journal since its maiden issue in 1914; and, secondly, a book review on the World Court.

The pre-war years show a heavy dependence on foreign scholars and a pre-occupation with the laws of war and neutrality. This is due mainly to the dependent status then of the Philippines as a colony of the United States and to concerns of the times about the past and the then impending global hostilities.

2. *The Early Post War Years: 1940s:*

The Philippines suffered destruction from the 1941 to 1945 World War. It took some time for research on international law to resume. When it did, in 1948-49, it dealt mostly with the effects of the war or aspects thereof. Jose L. Castigador examined "*The Effects of War on Contracts of Lease Executed in the Philippines Prior to December 8, 1941*", Milagros C. Nartatez propounded on "*The Right of the Military Occupant to Establish Courts in the Occupied Territory*." A different vein was struck, however, by Vicente Abad Santos - - Professor and later Dean of the University of the Philippines, now a Justice of the Supreme Court - - who wrote in December of 1949 on "*A Study on the Proposed International Court of Human Rights*." This was a fairly rapid response to the 1948 U.N. Universal Declaration of Human Rights.

3. *Late Post War Era and Early Independence in the 1950s:*

The 1950s saw the biggest production of Philippine legal literature on international law. This may be attributed to the transition from the late post war years to the period following the declaration of independence in 1946.

One line of research continues to cover the war and its effects. The text of the "*Geneva Convention For The Amelioration of the Condition of Wound-*

ed, *Sick and Shipwrecked Members of the Armed Forces at Sea*”, of August 12, 1949 was printed in 1952. Francisco Ortigas, Jr., studied the “*Effect of the Japanese Occupation on Life Insurance Policies Issued in the Philippines by American and Canadian Companies.*” Alberto de Joya expounded on the “*Insurer’s Liability for Life Policy That Has Lapsed Due to Impossibility of Payment of Premium on Account of War.*”

Florentino P. Feliciano wrote on “*The Belligerent Occupant and the Returning Sovereign: Aspects of the Philippine Law of Belligerent Occupation.*” The text of the Convention on the Prevention and Punishment of the Crime of Genocide was published and the *Francisco Law Journal* of 1956 contained an article on “*Individual Responsibility for International Crimes.*”

Human rights commanded increasing attention.

Minerva P. Gonzaga and Erlinda Q. Villatuya wrote on the “*Social and Economic Rights in the Universal Declaration of Human Rights.*” Alejo Labrador - - who also became a Justice of the Supreme Court - - wrote on “*The Universal Declaration of Human Rights.*” The text of this Universal Declaration was also printed in 1951 in the *Philippine Law Journal*. Priscilla Y. Santos wrote on “*The U.N. and the Status of Women.*” Ricardo Paras, Sr., Chief Justice of the Supreme Court, authored “*The Beginning and End of Human Rights,*” printed in the *Ateneo Law Journal* in 1957.

As the Philippines grappled with the tasks of independence, the legal aspects of the Philippine-U.S. Military Bases Agreement started to be closely investigated.

Roman D. Tanjuakio wrote “*On the US-PI Military Bases Agreement,*” in September 1955. Pablo B. Badong followed up with “*Philippine Jurisdiction over the George E. Roe Case,*” involving the RP-US Bases Agreement.

An excellent series of articles on the Japanese Peace Treaty, the Senate Resolution Terminating the State of War with Japan, the US-Philippine Mutual Defense Pact and the Power of the President to send troops to fight abroad without a declaration of war, appears in the July 1952 issue of the *Philippine Law Journal*, with prominent authors, Vicente G. Sinco, Claro M. Recto, Lorenzo Sumulong, and others.

Other topics showed the emerging concerns of shaping foreign policy: Sotero B. Balmaceda wrote on the Philippine recognition of South Vietnam; Arturo E. Balbastro treated the right of diplomatic asylum and Ricardo Jose Romulo dealt with the rights and duties of states. Teodoro Padilla and Manuel Escalar wrote on “*Some Legal Effects of Changes of Sovereignty Over The Philippines.*” Arturo M. Tolentino, in the *Philippine Lawyer’s Association Journal* of Sept.-Oct. 1959, discussed the law of the sea. Bienvenido C. Ambion touched on the organization of a World Court of international criminal jurisdiction, these last two dealing with matters *de lege ferenda*, not merely *de lege lata*, showing increasing confidence and ability of local authors in the field.

Foreign scholars were still welcome. Martin Arostequi, then the head of the U.N. Information Office in the Philippines, addressed the University of the Philippines College of Law on “*Victoria and the Right of Self-Determination.*” Dag

Hammaraskjold's paper on "*International Law and the U.N.*" was also published locally during this period.

Meanwhile, the Philippine Supreme Court ruled on cases involving issues of public international law, particularly the power of U.S. Base Provost Marshal to file complaints; the meaning of "termination of war" with reference to private contracts; the admission of aliens into the Philippines; the Trading with the Enemy Act; the effect of a suit against the U.S. Government. Scholars analyzed these decisions in the law journals of the period.

Finally, in 1956 the book of Jovito R. Salonga and Pedro L. Yap entitled *Public International Law* was first published. This well-researched and authoritative work was used as textbook in practically all the law schools in the Philippines.

4. *Development and Significant Events: The 1960s*

During the next decade, the 1960s, significant events took place with their deep impact on international law: The Vietnam war, the entry in 1967 of the People's Republic of China into the nuclear power club; the Arab-Israeli war and the rise in the price of oil. The bipolar world of the 1950s gave way to multipolar centers of powers.

In November of 1960, Professor Myres S. McDongal of Yale and Professor Florentino P. Feliciano of the University of the Philippines, released their epochal article, "*Community Prohibitions of International Coercion and Sanctioning Processes: The Technique of World Public Order,*" in 97 pages of the *Philippine Law Journal*. Jorge R. Coquia propounded on the role of law in the developing states of Southeast Asia. Similarly, Jeremias U. Montemayor examined the role of law in the socio-economic development of Southeast Asia. Nelson D. Lavina researched on Executive Agreements while Salvador S. Carlota delved on the applicability of the Act of State doctrine in Philippine courts. Roberto Regala, diplomat and later Justice of the Supreme Court, wrote on the impact of the new nations on international law. The same author wrote on world peace as the greatest task of international law. Edwin Brown Firmage wrote on "*Viet-Nam and International Law.*" The Declaration of Bangkok setting forth the conclusions and resolutions of the Southeast Asian and Pacific Conference of Jurists came out. Human rights continued to be discussed, with former U.N. Secretary General Carlos P. Romulo writing on the "*History of the Declaration of Human Rights in The Context of International Administration,*" in the *Ateneo Law Journal*.

The Philippine-U.S. relations were subjected to further studies, including the Philippine-U.S. tax convention and problems of jurisdiction under the Philippine-U.S. military bases agreement. Pacifico A. Ortiz, S.J., considered the legal aspects of the North Borneo question.

5. *Restructuring The International Order: 1970s:*

The next decade saw the emergence of the developing countries of the Third World as a force in international relations, leading the way to the move to restructure the international order, particularly in economics. Merlin M. Magallona of the University of the Philippines wrote on the New International Economic Order and the politics of multinational corporations. Victor R. Sumulong

studied the U.N. Convention on the limitation period in international sales of goods. The idea of *jus cogens* in the Vienna Convention of the Law of Treaties, the problem of jurisdiction of the international court of justice, the emergent world federal system and its implications for international law and the legal status of mercenaries were analyzed. Developments on the Law of the Sea Conference, the proposed regimes for the seabed and the ocean floor were likewise touched upon, as was the development and significance of the 200-mile exclusive economic zone.

World peace through law was treated side by side with the law governing armed conflicts.

In 1979, the Philippine-U.S. Military Bases Agreement was amended and these amendments were studied. Separate works dealt with the grounds under international law for the abrogation of the Philippine-U.S. military bases agreement, the Military Bases and Mutual Security Agreements in the light of the doctrines of *jus cogens* and *rebus sic stantibus*, and the Philippine perspective of the Status of Forces Agreements. Purificacion Valera-Quisumbing wrote on the right of self-determination and the promotion of international legal protection of human rights, discussing problems and strategies.

In the 1970s, too, more textbooks came out on public international law, notably Vicente Abad Santos, "*Cases on International Law*," Edgardo Paras, "*International Law and World Organizations*."

Also, in 1974 the *Philippine Yearbook of International Law* published an excellent collection of articles on the law of the sea and the national territory.

Finally, it was during this period, specifically in 1978, that the *Philippine Treaty Series* first came out, providing a collection of the texts of treaties and other international agreements to which the Philippines is a party. Published by the University of the Philippines Law Center, it was edited by Haydee B. Yorac and Merlin M. Magallona. It now has six volumes.

6. *The Present Era: The 1980s:*

The present decade has ushered in an era of regional alliances and cooperation, as Asian countries realize the need for unity and mutual assistance especially in development.

Purificacion Valera-Quisumbing authored a thematic work entitled "*Can Asean Forge a Viable Legal Regime For Regional Cooperation?*" Ma. Luisa Ylagan and Arno V. Sanidad looked into the Philippine-Japan Treaty of Friendship, Trade and Navigation. Eduardo P. Lizares assessed the Philippine position on the New International Economic Order and the International Center for the Settlement of International Disputes.

The 1980s also show increasing sophistication in the expertise of Philippine scholars. Miriam Santiago Defensor worked with Jovica Patrongic on the pro-

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motion, dissemination and teaching of International Refugee Law, proposing a move towards a New International Social Order. Myrna S. Feliciano provided practical insights on human rights documentation. Jorge R. Coquia, an expert on the Law of the Sea Convention, traced the development of the archipelagic doctrine as a recognized principle of international law. Haydee B. Yorac did a study on the Philippine claim to the Spratly Islands Group. Raul Pangalangan and Elizabeth H. Aguilung scrutinized the privileged status of national liberation movements under international law. The present author delivered a paper for The 1984 LAWASIA Conference in Manila on the Vienna Convention on Contracts for the International Sale of Goods. Florentino P. Feliciano expounded on the principle of *non-refoulement*, discussing the timely topic of international legal protection of refugees and displaced persons.

III. RESPONSE TO NEW CHALLENGES TO INTERNATIONAL LAW

The principal vehicle of response to new challenges in international law in the Philippines is the law journal article. Academic writers as well as government officials put down their thinking on these problems and challenges in the form of legal articles which are then discussed, analyzed or replied to in other articles.

This is supplemented by speeches and addresses given in special convocations or seminars from time to time in which a prominent authority, sometimes from abroad, delivers a lecture or paper on a specific topic of interest. They are, further, usually published in the law journals, as are texts of important and new international conventions and treaties.

The school curriculum has likewise shown capacity to adjust to shifts in perceptions of relative importance in international law, as in the case of the emphasis given to World organizations starting in 1966-1967.

International organizations of lawyers, such as the World Peace Through Law, the International Lawyers Association, the International Bar Association, the LAWASIA, and the ASEAN Law Association, likewise provide effective media for dissemination, discussion and decision on matters of international law of interest to its members, by way of their periodic conferences or conventions, a number of which have recently been held in the Philippines.

IV. PROBLEMS OF THE PROFESSION

A professional association of experts in the field of international law exists in the Philippines. It is called the Philippine Society of International Law, and its members are academic writers, jurists and lawyers active in the field of international law. It publishes the Philippine Yearbook of International Law.

The Philippine Society of International Law has some links with comparable societies abroad, such as the American Society of International Law. Occasionally, professors of law of foreign international law societies come to the Philippines as guest lecturers of the Society.

The main problems of the profession are:

- (a) Lack of interest of lawyers on international law as it does not provide

- tunity for a lucrative practice;
- (b) There are very few lawyers who are really knowledgeable in international law;
 - (c) There is a dearth of books and materials on the subject due to high cost of imported books; and
 - (d) Most instructors of the subject teach international law more as history rather than its current development and practice. This is due to the fact that there is a dearth of literature and materials that contain the current practice in international law.

V. AGENDA FOR THE FUTURE

It is proposed that the law school syllabus should be updated to reflect new developments in international law.

It should cover the following topics:

- a. The international legal community:
States, private persons, international organizations.
- b. International legal acts:
The source of international law
Illegal acts — international responsibility and diplomatic protection.
- c. International co-operation:
Diplomatic and consular relations
Conventional co-operation and institutionalized co-operation (general theory of international organizations)
International protection of human rights
Communications: road, railroad
The law of the sea, air law, space law
International trade and economic law
The international law of development and the technical assistance institution.
- d. International peace:
Procedures for the peaceful settlement of disputes (good offices, conciliation, inquiry, mediation, arbitration, international courts of justice).

Neutrality during peace time

The role of international organizations in the maintenance and restoration of peace.

Furthermore, specialized areas of studies such as human rights, international business transactions, law of international institutions, should be offered as electives in the undergraduate course and, in more advance form, in the LL.M. programs.

Professional chairs in international law, with adequate funding, should be set up in the different universities, to encourage competent scholars to dedicate

their careers to the subject. A Center For International Legal Studies should be set up, perhaps in the University of the Philippines, or by a group of law schools as a joint project, in which international legal studies and research can be done, where experts from all over the world, but particularly from Asia, can be invited to teach or lecture and exchange ideas with local experts and students and where a library of materials on public international law can be assembled and augmented.

In the field of international organizations, there has been an increase in the number and importance of such world organizations. There is a need to open up new fields of research along these lines, covering basic documents with annotations and a descriptive directory.

Northworthy also is the fact that Justice Jorge R. Coquia and Miriam Defensor-Santiago have written a book on international law which is scheduled for release in the near future by the University of the Philippines. The final draft, which this author has reviewed as a Special Reader, indicated a well-researched and comprehensive volume that should fill the absence of an up-to-date textbook with sufficient excerpts of leading cases and materials. Other authors, including Professor Jovito R. Salonga, are also engaged in revising their books and are expected to publish these new materials in the near future.

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