

## INTERNATIONAL LAWYER

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# A Dialogue with Judicial Wisdom

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ICC Judge Raul C. Pangalangan

## INTRODUCTION

The Journal of East Asia and International Law invited Judge Raul C. Pangalangan of the International Criminal Court at The Hague for <International Lawyer: A Dialogue with Judicial Wisdom>.

Judge Pangalangan was born in Manila, The Philippines, the eldest in a family of six. He studied in his country's premiere national institution of learning, the University of the Philippines, where he finished both his political science and law degrees. Upon receiving his B.A., he taught in the Political Science faculty, then proceeded to law school, and likewise joined the law faculty immediately upon graduation. Then, he went to the Harvard Law School for his graduate studies. He was also awarded the Diploma in international law by The Hague Academy of International Law. He is the first Filipino to receive the S.J.D. from Harvard and likewise the first (and thus far the only) Filipino to be awarded the Diploma from The Hague Academy. As a Harvard Human Rights Fellow, he did an internship with Lawyers' Committee for Human Rights in New York. He has since taught as Visiting Professor at Harvard and as lecturer at The Hague Academy.

He returned to the Philippines immediately upon receiving his S.J.D. in 1990, and resumed teaching at the University of the Philippines. From 1999-2005, he served two terms as Dean of the Law School, during which he promoted research and writing through writing prizes; created public interest internships for students; organized career forums to help students plan their work and graduate studies; established the pioneering Internet and Society Program; recruited and supported young faculty who have now achieved wide recognition as legal experts and opinion leaders; and hosted international conferences to bring the law school into the mainstream of international legal debates and set up scholarship and exchange programs to support young alumni and faculty.

Before his election as ICC Judge, he chaired the *Bantay Katarungan*, a nation-wide group of lawyers organized by the late national statesman, Senator Jovito R. Salonga, to file test cases on human rights and anti-corruption issues. Dean Pangalangan has argued historic cases before the Supreme Court, among them, *David v. Arroyo* and *Francisco v. House of Representatives*.

As a scholar, then Professor Pangalangan published extensively in his two fields Public International Law and Constitutional Law. His academic essays have been published in collections by the leading academic publishers. He has contributed to

all the editions thus far of Otto Triffterer's COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT.

Recognizing the public role of intellectuals and the importance of historical context in legal debates, then Professor Pangalangan also wrote for a larger, non-academic and non-legal audience in *Passion for Reason*, his widely read opinion column for THE PHILIPPINE DAILY INQUIRER, the country's leading newspaper and of which he became Publisher in 2012. He was earlier awarded the Public Intellectual Fellowship by the Nippon Foundation and the Edgardo J. Angara Fellowship for the U.P.'s centennial year.

Judge Pangalangan was elected to the International Criminal Court in June 2015. He has sat in several trials and in interlocutory appeals, and was most recently Presiding Judge in the trial of *The Prosecutor v. Al Mahdi*, the very first case heard by the ICC on the crime of attacks against cultural property and which involved a plea of guilt by the accused. He has also lectured on the development of international criminal law, and currently chairs the International Criminal Law Interest Group of the Asian Society of International Law.

## QUESTIONS & ANSWERS

*1. Hello, sir! A very warm welcome to the <International Lawyer>! We are happy and honored to be given a chance to interview you, a top ranked and highly respected international lawyer in the contemporary world. I sincerely appreciate your acceptance of our request for interview from The Hague. We usually begin our interview with a few personal questions. Would you please tell us about your early years? Where were you born, and how did your parents educate you? What were you like as a child?*

I was born in Manila, Philippines. My father Ernesto, now ninety-one years old, practiced law with one of the leading lawyers of his time and also taught law as a Professorial Lecturer. My late mother Julieta studied Pharmacy in university and worked full-time as homemaker. I am the eldest of six children. My parents raised their family in Pasig, then a quiet suburb of Manila, where I grew up in a traditional home with very religious parents.

*2. You began to study law at the University of the Philippines. Could you tell us about your college life? What was the most interesting subject in your undergraduate program, and how did you start to study international law?*

In the Philippines, one must first receive a university degree before he can proceed to law studies. I went to the University of the Philippines (U.P.), the nation's leading institution of higher learning. Indeed the U.P. pioneered the academic teaching of law (and until recently, was the only Philippine law school taught by full-time legal scholars) as a social science, resisting the local tendency toward the trade school model of law teaching.

My university studies were shaped principally by the then nascent anti-dictatorship movement. Marcos had just declared martial law when I entered U.P., after he had jailed or intimidated most opposition, and the U.P. campus was one of the few pockets of resistance. I joined the radical campus newspaper, the Philippine Collegian, as a lowly freshman sports writer, and then was elected to the new student groups that would eventually pave the way to more open opposition to the dictatorship. By the time I was elected President of the Law Student Government; we had combined street protests with organizing students for legal aid work for human rights victims.

This shaped my own academic and professional interests. For my undergraduate degree, I majored in Political Science and, upon graduation, taught the introductory course in Political Theory. I had the privilege to 'team teach' one such course with the then College Dean and future U.P. President, Francisco Nemenzo Jr. When I began my law studies, I focused in public law. My first academic publication in the Philippine Law Journal was in Constitutional Law, on how Marcos morphed his dictatorship from being an emergency measure to constitutional permanence. My second academic publication was on the "national liberation movement" clause in Protocol I to the Geneva Conventions, which grew from my work with the Philip Jessup Moot Court Competition in which I was an oralist for the Philippine Team.

My interest in Public International Law began at U.P., where I was introduced to the field by Professor Merlin M. Magallona, who would eventually become Law Dean (I succeed him later as Law Dean). The course led me to join the Philip Jessup moot court, which providentially featured a case problem dealing with non-international armed conflicts, which dovetailed with the Maoist rebellion raging against Marcos in the countryside at that time. I was fascinated by International Law because, in contrast to the usual law school courses, it showed a dynamic field that pierced the entrenched legal fictions that were smugly accepted in other areas of law.

*3. After graduating the UP Law School, you went to Harvard to study international law. You were awarded LL.M. and S.J.D. there. Would you tell us about your life in Cambridge, Massachusetts? Who were your supervisors for your LL.M. and S.J.D. research?*

Yes, after my first year as a lawyer and law teacher, I left for my LL.M. studies at the Harvard Law School. I wrote my LL.M. thesis on economic, social and cultural rights with Professor Philip Alston, now teaching at New York University where he co-chairs the school's Human Rights and Global Justice Program. My LL.M. paper won the Laylin Prize for best paper in international law.

I wrote my S.J.D. dissertation with Professor Henry Steiner, then Director of Harvard's Human Rights Program and author, with Prof. Alston, of the leading casebook *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS*, and indeed their approach of situating law in the context of "law, politics and morals" shaped my writing on the doctrinal and normative conflicts within human rights discourse in the global South. My S.J.D. dissertation won the university's Sumner Prize for best paper relating to international peace.

What I enjoyed most at Harvard was the way they taught law that, at the heart of every technical legal issue, was a moral question about what was the fair, just and right thing to do. This was a contrast to the way I was taught law in Manila where, with the exception of a few courses like Legal History or Public International Law taught by scholars like Dean Merlin M. Magallona, law students are made to memorize the text of the law or, sometimes, even of Supreme Court rulings. Stated plainly, at Harvard, we had none of the daily grilling ('recitations') of memorized laws ('codal provisions') and esoteric details in cases. Instead, we had the luxury to question, challenge and imagine how laws and judicial decisions ought to be.

*4. You were researching and teaching international and constitutional law, while also practicing law before the Supreme Court. How did you harmonize their different values and directions as a whole? Would you tell us about the most memorable case that you have argued?*

Again, I must explain that in the Philippines, all law professors are expected to be Members of the Philippine Bar and the mass of law teaching is done by practitioners as part-time lecturers. Although the University of the Philippines is the exception, at the same time, its full-time scholars still do engage in law practice.

As a full-time scholar, I taught Constitutional Law and Public International

Law. At the same time, I had the privilege of chairing the *Bantay Katarungan* (or Sentinels of Justice), a nation-wide group of lawyers organized by the national statesman, Senator Jovito R. Salonga (now deceased), to file test cases on human rights and anti-corruption issues. I argued historic cases before the Supreme Court, among them, *David v. Arroyo* (where I challenged the arrest of one of the nation's leading intellectuals under an emergency decree of then President Gloria Arroyo) and *Francisco v. House of Representatives* (on the impeachment of the Supreme Court's Chief Justice). The Supreme Court has also further designated me as amicus counsel in two cases involving international law, e.g., one, involving an economic partnership treaty with Japan and, two, involving the country's continental shelf.

5. You were elected as a Judge of ICC on June 24, 2015 representing the Asian Group of States, and on List B (those who "have established competence in relevant areas of international law"). What was your first-year's impression of the Court that you have actually set up? Would the ICC become more promising in the future in realizing the ideal of the human society?

The ICC is a relatively new court, barely fourteen years into its existence and roughly ten years since the first case was filed. International Criminal Law is also a very new field, erstwhile split into two domains that hitherto had little to do with the other, criminal law being rooted in national jurisdictions and human rights and humanitarian law having originated in international law. This is reflected in the election of its judges, who are grouped in either List A, consisting of specialists in "criminal law and procedure ..., whether as judge, prosecutor, [or] advocate ... in criminal proceedings," and List B, comprising those in "relevant areas of international law ... and extensive practice in a professional legal capacity which is of relevance to the judicial work of the Court."

Next, there is the dynamic among different legal systems and practices and, principally, among judges from the civil law tradition and those from the common law tradition, which have fundamentally different notions about criminal justice and criminal procedure.

Fortunately for me as a Filipino lawyer, by necessity I had to study all fields of law in order to take the bar examination, in contrast to students elsewhere who, if they were doing international law, wouldn't have anything to do with, say, evidence or criminal procedure. Moreover, given the colonial history of the Philippines, we are exposed to both legal traditions. Indeed, our substantive criminal law traces its roots, and in many parts its language, from the Spanish Penal Code, while our

criminal procedure and laws of evidence are derived from the United States.

6. *You are now seating at three Chambers in the ICC. Would you please generally introduce the cases that you are reviewing?*

That is correct. In the ICC, a new chamber is constituted for each case and, after one year, I have participated in three cases.

I presided over *The Prosecutor v. Al Mahdi*, the very first case heard by the ICC on the crime of attacks against cultural property and which involved a plea of guilt by the accused. I took part in *The Prosecutor v. Bemba et al.*, the very first case on “offenses against the administration of justice” involving *inter alia* inducing witnesses to give false testimony. Finally, I am just about to start work in *The Prosecutor v. Ongwen*, with more than 4,000 recognized victims’ claims for crimes against humanity and war crimes, including sexual and gender-based crimes and crimes against children. I have also joined the Appeals Chambers as *ad hoc* member in what we call ‘interlocutory appeals’ arising from rulings by the Pre-Trial and Trial Chambers.

7. *Today, there are many disputes between and among the States in East Asia. A noticeable example is a recent Award of the PCA regarding the South China Sea disputes (Philippines vs. China) because it is one of the few cases of disputes among Asian countries that was resolved through law. In your opinion, in what ways would we be able to build up a more rule-based society in East Asia?*

The best way to strengthen respect for law *internationally*, is to strengthen respect for law *domestically*. The real problem is the tendency look at local flaws and to ‘project’ them globally. Thus, the tendency to think that “if local judges and prosecutors are political pawns, then likewise international judges and prosecutors as well.” In other words, the national situation constrains the national imagination, and there are those who are unable to imagine that the ideal of “decision according to law” is actually attainable. While of course we cannot deny the element of power and the question of enforcement, as a scholar, I prefer to look at institutions, *e.g.*, law and courts, and the way of thinking needed to ensure that the “least dangerous branch” can wield the power of the pen to ensure that “might is not right.” In the words of Justice Robert Jackson, chief American prosecutor at the Nuremberg Trials, we must ensure that international criminal law forms “one of the most significant tributes that Power has ever paid to Reason.”

*8. Twentieth century was the time of anguish and humiliation for many Asians. However, Asia is expected to become the center of global politics, economy and culture in the twenty-first century. What would become the main functions of international law in the future, considering the aforementioned change? How should we prepare for the future as international lawyers?*

When countries turn to law and the courts to resolve their disputes, when they avoid recourse to war, that in itself is already a ‘win’ so to speak. In other words, regardless of who wins the case, thousands of lives would have been spared, and human agony has been averted. The “rule of law” has proved its value to both economic freedom and political democracy in many places, and we must now apply it in international relations as well. As to preparing young Asian to become highly skilled and professional international lawyers, yes indeed we must help them grow and flourish. Otherwise Asian states will continue to rely on mainly European and North American counsel as advocates in their homegrown causes, an irony given what you recalled as the anguish of the colonial experience.

*9. Have you ever gone through serious challenges or difficulties in your career, despite your successful course of life? If so, how did you overcome those difficulties and frustration?*

The most difficult challenge for a Filipino legal scholar is that the Philippines is inhospitable to the life of the mind. The culture is anti-intellectual. It thrives in the personal, popular and practical. It celebrates episodic triumphs while ignoring the broad sweep of history. Justice Benjamin Cardozo would’ve been lost seeking a haven “against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles.”

Our national hero Dr. Jose Rizal, writing at the end of the nineteenth century, captured it best in a character in his novels, *Filosofo Tasio*, the village learned man, who wrote in an illegible script and kept his records secret, saying he wrote it for the next generation because anyway he wouldn’t be understood by his own. And in a letter, Rizal lamented that the trouble with Filipinos is that we are such a pragmatic people.

That is why I earlier combined my academic writing, on one hand, with popular writing in the Philippine Daily Inquirer, on the other. This was also my own rebellion against old pedagogies, and my adapting to the new information technologies by



which today's students receive and understand ideas. Along the way, I have happily found that many Filipinos are parched for new ideas and ache for fresh insights, and always it is a joy to find kindred souls.

**Interview by Eric Y. J. Lee**

## A SELECTED LIST OF RECENT PUBLICATIONS

*Article 24, Non-Retroactivity Ratione Personae, in ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY* (Triffterer and Ambos, eds., (Verlag C.H. Beck & Hart Publishing, 3d ed., 2015).

*Philippine Constitutional Law 2001-2010: Majoritarian Courts and Elite Politics, in MAJOR CONSTITUTIONAL DEVELOPMENTS IN ASIA IN THE FIRST DECADE OF THE 21<sup>ST</sup> CENTURY* (Albert Chen ed., Cambridge University Press, 2014).

*The Domestic Implementation of the International Right to Health: The Philippine Experience, in ADVANCING THE HUMAN RIGHT TO HEALTH* (Zuniga JM, Marks SP, Gostin LO, eds., Oxford University Press, 2013).

*Human rights discourse in post-Marcos Philippines: from substance to procedure, in Human Rights in Asia* (Brian Galligan & Thomas Davis, eds., Edward Elgar Publishing, Melbourne, 2011).

*International Humanitarian Law and the International Criminal Court: Cases and Materials from Asia, in XXXII THESAURUS ACROASIMUM: THE NEW INTERNATIONAL CRIMINAL LAW 587-632* (Athens, 2003).

*Pushing Back the Limitations of Territorial Boundaries* (co-author, with R. MacCorquodale), 12:5 *EUROPEAN JOURNAL OF INTERNATIONAL LAW* 867-888 (2001).

*Territorial Sovereignty: Command, Title and the Expanding Claims of the Commons, in BOUNDARIES AND JUSTICE: DIVERSE ETHICAL PERSPECTIVES* (D. Miller and S. Hashmi, eds., Princeton University Press, 2001).

*The Asian Development Bank Administrative Tribunal: Constitutive Instruments and Case-Law, 7 ASIAN YEAR BOOK OF INTERNATIONAL LAW 209-228* (2001).