

**SECRETARIAT**

3F, Commerce and Industry Plaza  
1030 Campus Avenue cor. Park Avenue  
McKinley Town Center, Fort Bonifacio  
1634 Taguig City

Telefax: 822-4102  
Email: secretariat@pdrci.org  
Website: www.pdrci.org

**OFFICERS**

- Atty. Miguel B. Varela**  
*Chairman*
- Atty. Victor P. Lazatin**  
*Vice Chairman for Internal Affairs*
- Atty. Eduardo R. Ceniza**  
*Vice Chairman for External Affairs*
- Mr. Gregorio S. Navarro**  
*President*
- Atty. Beda G. Fajardo**  
*Vice-President for Internal Affairs*
- Atty. Salvador S. Panga, Jr.**  
*Vice-President for External Affairs*
- Atty. Roberto N. Dio**  
*Secretary General*
- Atty. Shirley F. Alinea**  
*Deputy Secretary General*
- Atty. Donemark Joseph L. Calimon**  
*Treasurer*
- Dr. Eduardo G. Ong**  
*Assistant Treasurer*
- Atty. Patricia-Ann T. Prodigalidad**  
*Corporate Secretary*
- Atty. Ricardo Ma. P.G. Ongkiko**  
*Assistant Corporate Secretary*
- CJ Artemio V. Panganiban**  
*Chairman Emeritus*
- Atty. Custodio O. Parlade**  
*President Emeritus*

**BOARD OF TRUSTEES**

- Atty. Shirley F. Alinea*
- Atty. Arthur P. Autea*
- Atty. Donemark Joseph L. Calimon*
- Engr. Salvador P. Castro, Jr.*
- Atty. Eduardo R. Ceniza*
- Atty. Gwen B. Grecia De Vera*
- Atty. Roberto N. Dio*
- Atty. Beda G. Fajardo*
- Atty. Simeon G. Hildawa*
- Atty. Charlie L. Ho*
- Atty. Victor P. Lazatin*
- Mr. Gregorio S. Navarro*
- Atty. Rogelio C. Nicandro*
- Dr. Eduardo G. Ong*
- Atty. Ricardo Ma. P. G. Ongkiko*
- Atty. Victoriano V. Orocio*
- Atty. Salvador P. Panga, Jr.*
- Atty. Patricia C. Prodigalidad*
- Atty. Edmund L. Tan*
- Prof. Mario E. Valderrama*
- Atty. Miguel B. Varela*

# THE PHILIPPINE ADR REVIEW

*Broadening its scope of arbitration advocacy*

DECEMBER 2015



PIArb President Teodoro Kalaw IV, PDRC President Gregorio Navarro and DRBF Phil. Rep. Salvador Castro sign the MOU. Witnessing the signing are incoming PIArb President Ricardo Ongkiko (left) and PDRC Sec. Gen. Roberto Dio (right).

## DRBF, PIArb, and PDRC sign MOU

The Dispute Resolution Board Foundation (DRBF), Philippine Institute of Arbitrators (PIArb), and the Philippine Dispute Resolution Center signed a Memorandum of Understanding (MOU) on November 11, 2015 formally establishing strategic partnership among them. The signing ceremony was led by to the Atty. Teodoro Kalaw IV, PIArb President, Mr. Gregorio S. Navarro, PDRC President, and Engr. Salvador Castro, Jr., DRBF Country Representative for Philippines and witnessed by members and officers of the three organizations.

In establishing strategic partnership, the MOU provides that the three organizations shall combine their efforts in developing ADR and ADR practitioners, real time avoidance and resolution of local and international disputes relating to construction, commercial and information technology.

Atty. Kalaw, PIArb President, acknowledge the important contribution of Atty. Sit Morallos in pushing the three organizations sign the MOU which symbolic of their commitment to work together to promote and accomplish the common goal of making ADR and the DB effective instruments for dispute resolution.

The MOU signing event, which was hosted by Mr. Navarro PDRC President, was held at the Rizal Boardroom, Navarro Amper and Co., 19/F Net Lima Plaza, 5th Avenue corner 26th Street, Bonifacio Global City, Taguig City.

## WHAT'S INSIDE

1

**DRBF, PIArb, and PDRC sign MOU**



## PART 2

# The Philippine Arbitration Case and China's Dispute Resolution Culture

By: Chito Sta. Romana

*Last issue, the author discussed China's preference for negotiation instead of arbitration and the Confucian roots of such attitude. In this final part, he discusses a shift in this attitude.*

But with China's growing global role and increasing interaction with the international community, there has been a significant shift from its past attitude of shunning participation in international adjudication. The nomination in 1985 of the first Chinese judge to the International Court of Justice (ICJ) since 1949 symbolized the start of this policy shift, though China still entered a reservation regarding the submission of disputes to the ICJ when it ratified the Vienna Convention on the Law of Treaties in 1997. (Julian Ku, 2012)

In 1990 China joined the convention that created the International Center for the Settlement of Investment Disputes (ICSID) as an arbitration center for investor-state disputes. Though China initially limited its consent to ICSID jurisdiction to disputes over compensation for expropriation, it agreed in 2001 to more expansive arbitrations that included other kinds of unfair treatment by the host state.

China's ratification of the UNCLOS in 1996 was another key step away from its traditional avoidance of international tribunals, signifying Beijing's acceptance of consent-based dispute settlement mechanism similar to ICSID. China subsequently submitted a declaration excluding certain kinds of disputes, such as those involving sea boundary delimitation or historic bays and titles, from the jurisdiction of any UNCLOS dispute resolution method.

But it was China's entry in the World Trade Organization (WTO) in 2001 following a long process of negotiation that showed a distinct departure from its past attitude. Its WTO accession required the acceptance of compulsory jurisdiction by an independent tribunal, a sign of how important WTO was for China, considering that it expressed reservation on ICJ's compulsory jurisdiction just four years earlier. The WTO dispute settlement mechanism represented the most intrusive form of international dispute settlement to which China has ever agreed.

In the initial years, China behaved as a conciliatory defendant and reluctant complainant in WTO dispute settlement but

there was a turning point in its level of engagement with WTO in 2006 when the US, Canada and the EU jointly filed a complaint against its treatment of imported auto parts. Instead of resorting to conciliation and mediation to settle cases out of court as it has done previously, China decided to litigate the case to its conclusion, thus permitting an international court for the first time to determine the international legality of a domestic measure.

China lost the case, then it appealed but it lost again and eventually agreed to comply with the decision. As one scholar noted, "This episode was the first time China has lost a case in an international dispute proceeding and probably the first time it complied with a final judgment of an international tribunal." (Marcia Don Harpaz, 2015)

China's participation in WTO is by far its most extensive experience with international dispute settlement. Since 2002, according to a study, China has been the respondent in 21 proceedings during a period ending in 2013, but it has initiated 11 of its own complaints since lodging its first independent complaint in 2007. Thus, China has remained an active participant in the WTO dispute settlement proceedings. (Julian Ku, 2012)

China's WTO conduct indicates a major change in its attitude toward international adjudication. It shows that China now accepts WTO dispute settlement as a routine and legitimate means of resolving trade disputes and it no longer considers losing a case to be a sign of political defeat.

This marked shift from China's past rejection of international adjudication indicates that it has started to accept international norms, with its WTO experience helping to socialize China in other aspects of the international legal order.

But the key question is whether the paradigm shift that is emerging in China's attitude to international adjudication will carry over to its attitude toward other international tribunals, including the arbitral tribunal handling the Philippine arbitration case at The Hague.


At present, China seems to have adopted a split-level attitude: it draws a sharp distinction between trade and investment disputes on the one hand and boundary disputes (whether territorial or maritime) on the other. It is willing to accept WTO and ICSID dispute settlement rules for the former but



Photo release from the Permanent Court of Arbitration

still unwilling to submit boundary disputes to ICJ or ITLOS. Viewing territorial and maritime disputes as involving the sensitive issue of national sovereignty and territorial integrity, it still shuns international adjudication on these issues and insists on direct negotiations between the parties involved.

But in a profound sense China faces a crossroads as it awaits the decision of the arbitral tribunal: if the tribunal accepts jurisdiction over the arbitration case and proceeds to the merits of the case, how will it react to a possible unfavorable decision? Will it defy the ruling and risk being condemned by the international community as a rogue state or will it seek a way to comply and abide by international law as a way of demonstrating that it is a peaceful and responsible country?

Only time will tell which path China will choose to take. 

**About the Author**



*Chito Sta. Romana is the President of the Philippine Association for Chinese Studies and a professorial lecturer on Chinese governance and politics at the Asian Center, University of the Philippines. He lived and worked in China for more than three decades and was the former Beijing bureau chief for ABC News.*





Participants during the mock arbitration.

## PDRC holds 10th commercial arbitration training seminar

PDRC successfully trained 30 new arbitrators during its four-day training seminar held on November 23 to 26, 2015, the second for the year. The speakers were (a) Atty. Shirley F. Alinea, who gave the introduction to arbitration; (b) Atty. Patricia-Ann T. Prodigalidad, who spoke on pre-arbitration issues; (c) Dean Gwen B. Grecia-De Vera, who talked on commencing the arbitration; (d) Atty. Mario E. Valderrama, who lectured on organizing the proceedings; (e) Atty. Ricardo Ma. P.G. Ongkiko, who handled arbitration hearings; and (f) Atty. Donemark L. Calimon, who discussed the issuance and enforcement of arbitral awards.

Atty. Jay Santiago, a Philippine lawyer who works as counsel at the Hong Kong International Arbitration Centre, was a guest speaker on HKIAC arbitration and trends in international arbitration. The participants watched a training video and took part in a mock arbitration facilitated by Attys. Calimon and Alinea. On the last day of the training, the participants took an accreditation examination. Those who will pass this examination will be included in the roster of PDRC-trained arbitrators. 📌



### MEMBER SPOTLIGHT

**Atty. Camille Khristine I. Aromas** studied economics, cum laude, minor in accountancy, and law at the University of the Philippines, Diliman.

She was part of the law school's national finalist team for the Philip C. Jessup international moot court competition in 2008 and an oralist at the Willem C. Vis international commercial arbitration moot court competition the following year.

After passing the bar examinations in 2010, she became a junior associate at Martinez Vergara Gonzales & Serrano, where she represented various clients in civil and criminal cases, before consulting for the Asian Development Bank as lead coordinator for its Justice Sector Coordinating Council.

She returned to law firm practice as a junior associate and, thereafter, as a mid-level associate at Quisumbing Torres, where she assisted a multinational logistics company in an international arbitration before the Philippine Dispute Resolution Center. She also assisted a semiconductor manufacturer in a construction dispute arbitrated by the Construction Industry Arbitration Commission, and represented chemical manufacturers and airline companies in several mass tort actions in the Philippines.

While in Quisumbing Torres, she also co-authored Baker & McKenzie International's Arbitration Yearbook, Philippine Chapter for the years 2011-2012 and 2013-2014 and participated in the drafting of PDRC's Mediation Rules, which became effective in November 2012.

At present, she is a senior associate at the corporate and special projects group of Divina Law. 📌

*The Philippine ADR Review is a publication of the Philippine Dispute Resolution Center, Inc. All rights reserved. No part of the newsletter may be reproduced in any form without the written permission of the authors.*

**ROBERTO N. DIO**  
*Editor*

**SHIRLEY ALINEA**  
**DONEMARK CALIMON**  
*Contributors*

**ARVEEN N. AGUNDAY**  
**LEONID C. NOLASCO**  
**ERIC D. LAVADIA**  
**RICKY A. SABORNAY**  
*Staff Writers*



THE PHILIPPINE ADR REVIEW PUBLISHES MATTERS OF LEGAL INTEREST TO PDRC'S MEMBERS AND READERS. THE ARTICLES PRINTED IN THE REVIEW CONTAIN INDIVIDUAL VIEWS OF THE AUTHORS AND DO NOT STATE PDRC'S POLICY. CONTRIBUTIONS MAY BE SENT TO THE PDRC SECRETARIAT. ALL MATERIALS SUBMITTED FOR PUBLICATION BECOME PROPERTY OF PDRC AND ARE SUBJECT TO EDITORIAL REVIEW AND REVISIONS. TEXTS OF ORIGINAL LEGAL MATERIALS DIGESTED ARE AVAILABLE UPON REQUEST.