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**ADR REVIEW**

*Broadening its scope of arbitration advocacy*

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JUNE 2016

## **IBP promotes alternative dispute resolution**

By: Atty. Camille Bianca M. Gatmaitan



The Integrated Bar of the Philippines (IBP) has taken a proactive role in promoting alternative dispute resolution (ADR) by creating a database of arbitrators and by launching a training workshop on arbitration.

At the last 22nd IBP House of Delegates Convention on January 29 to 31, 2016 in General Santos City, one of the modules in the convention workshop tackled how the IBP could take advantage of the ASEAN integration to make the Philippines a preferred venue for ADR. After the various modules, the convention delegates were tasked to apply what they learned and create proposed resolutions for consideration of the IBP Board of Governors.

On ADR, the proposed resolutions of the convention delegates included proposals for the IBP to support the improvement and possible amendment of the ADR Act of 2004 and other ADR laws based on the experience of ADR practitioners; hold training programs to develop the ADR expertise of lawyers and judicial officers; and conduct activities to establish and strengthen ADR in the Philippines, by taking into account experience of ADR practitioners who have developed expertise in the field.

As appointing authority in ad hoc arbitrations, the IBP National President received seven requests for appointment of arbitrators from 2015 up to March 2016. As such requests increase, the IBP has begun to standardize its procedure for appointment and created a pool of arbitrators, from which appointments will be made. In doing so, the IBP aims to strengthen the credibility of its appointments and encourage parties to avail of IBP's services.

Another concrete way in which the IBP supports and advocates ADR is to train more ADR practitioners, particularly in arbitration. This year, the IBP will hold an arbitration workshop to introduce its basic concepts to lawyers. Through this workshop, along with the other efforts of the IBP, it is hoped that more members of the bar would be encouraged to engage in ADR practice.

### **WHAT'S INSIDE**

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By Atty. Camille Bianca M. Gatmaitan



## PART ONE

To negotiate or not to negotiate:

# The West Philippine Sea dispute between the Philippines and China

By Atty. Julius Anthony R. Omila

### The various modes of resolving disputes

Disputes can be resolved in a variety of ways. For one, a dispute can be resolved by the use of force. Hence, parties can go to war, use threat or intimidation in getting what they want. On the other hand, parties in a dispute can also invoke and assert their rights over the subject of their dispute. They may avail of litigation, arbitration or adjudication as a mode of enforcing their rights.

Another way of resolving a dispute is for the parties to explore each other's interests, pursue, and then agree on matters to address those interests. The parties can pursue negotiation, mediation or conciliation as modes of resolving their disputes. Based on studies and experience, under the appropriate circumstances, negotiation is the safer and least costly among these modes of resolving disputes.

### Factual background

Much has been written and reported about the West Philippine Sea dispute between China, on the one hand, and the Philippines and other ASEAN countries on the other hand. Newspapers are rife with reports about military buildups not only between China and the Philippines but also among other ASEAN countries who have their respective stakes in the ongoing dispute.

China has conducted massive reclamation activities and built artificial islands on various reefs claimed by the Philippines and found within the latter's exclusive economic zone. China also built major military airstrips on some of the artificial islands that it built. The Philippines, for its part, is steadfast in its position over the specific areas and reefs within its territory. It is also gradually upgrading its military capability in response to China's aggressive buildup.

Analysts and experts have offered their views on how best to handle and manage the dispute. Some propose that the Philippines pursue bilateral negotiation with China because the former is in no position to get entangled in an escalation of the territorial conflict. Others, however, see an obvious power imbalance between the parties such that proposing a negotiation between the Philippines and China will ultimately favor the latter at the end of the day.

Most, if not all, agree that given China’s military might, the Philippines will be no match in a military confrontation. As matters stand, observers see an obvious dilemma on the part of the Philippines over this issue.

At present, the Philippines has pursued arbitration of its dispute with China before the Permanent Court of Arbitration in the Hague, where the arbitral tribunal has declared that it has jurisdiction over the Philippines’ claims of maritime entitlement over the disputed areas. The United States, among other states, is also asserting its freedom of navigation over the same disputed areas to the consternation of China. Many other states have expressed opposition to and condemnation over China’s reclamation activities in the disputed area.

At the same time when China is freely occupying many reefs within the disputed area, building artificial islands and constructing military airstrips and installations, it also insists on bilateral negotiation with the Philippines as the only way to resolve the dispute. That China is the much stronger party in this case is also a given fact and the existence of a power imbalance between the parties to the dispute is undeniable.

**Issue**

With the foregoing as backdrop, should the Philippines negotiate with China to settle their dispute? Corollarily, did the Philippines make the right decision not to negotiating with China and instead submit the dispute to arbitration? Does the Philippines’ approach in handling this dispute find support under sound dispute-resolution principles?

**When not to negotiate**

Robert Mnookin, a lawyer and the Chair of the Program on Negotiation of the Harvard Law School, studied the relationship between Great Britain and Germany before they fought each other in World War II. In Chapter 5 of his book, *Bargaining with the Devil: When to Negotiate, When to Fight*, he looked back to the time when Germany was then ruled by its expansionist Nazi government under Adolf Hitler

while, on the other hand, Great Britain’s government was headed by its then Prime Minister Neville Chamberlain.

At that time, Europe was being threatened by Hitler’s expansionist policy while all along Great Britain was actively pursuing a pre-war foreign policy of appeasement and avoiding war at all costs. Mr. Mnookin defined appeasement as “the policy of settling international quarrels by admitting and satisfying grievances through rational negotiation and compromise, thereby avoiding the resort to an armed conflict which would be expensive, bloody, and possibly dangerous.”

Based on historical records that he studied, Mr. Mnookin discussed how Chamberlain went to great lengths to avoid confrontation with Hitler’s Germany. Chamberlain even met with Hitler and signed a treaty that included Germany’s commitment not to invade territories in Europe. Germany, however, reneged on those commitments.

Winston Churchill then took over as prime minister of Great Britain at a time when Europe was helplessly facing the onslaught of Germany, which continued invading various countries in Europe to form part of its expanding empire. Great Britain was also faced with the threat of being drawn into a confrontation, or war, with Germany.

Great Britain’s government. Led by Winston Churchill, was faced with the most difficult issue at that time: whether or not to negotiate with Germany’s Adolf Hitler. Great Britain seriously considered negotiating with Germany since going to war against the latter would be a very costly option for the former. That posture was also consistent with sound dispute-resolution principles, that is, go for the safer and less costly approach to resolving disputes if the circumstances will permit.

**Next issue:** *Did Great Britain negotiate with Nazi Germany? Why?*



**About the Author**

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## MEMBER SPOTLIGHT



Atty. Roderick R.C. Salazar III is a founder and senior partner of Fortun Narvasa & Salazar. He is a trained arbitrator of the Philippine Dispute Resolution Center and an accredited mediator of the Conflict Resolution Group Foundation, Inc.

He also sits as a director and treasurer of the Makati City Chapter of the Integrated Bar of the Philippines and a fellow of the Institute of Corporate Directors.

Atty. Salazar lectures in the University of the Philippines College of Law, San Beda College Alabang School of Law, Lyceum of the Philippines University College of Law, and Pamantasan ng Lungsod ng Maynila.

He studied economics at the University of the Philippines, where he graduated in 1983. He received his law degree from the same university in 1987.

Atty. Salazar specializes in corporate and commercial law, securities, joint ventures and corporate reorganizations, mining, energy, mediation, arbitration, real estate, telecommunications, intellectual property law, taxation and immigration law. He has acted as arbitrator or counsel in several mining and construction arbitrations.

He has published articles in the International Comparative Legal Guide to Mining Law 2014, Mining Law Review (Philippine Chapter 2013) Law Business Research UK, Global Mining Guide (Philippine Chapter 2013), and Getting the Deal Through (Mining Philippine Chapter 2008). [P](#)



## PDRC announces training in commercial arbitration

The Philippine Dispute Resolution Center (PDRC) is inviting participants to its 11th Arbitration Training on July 25 to 28, 2016 at the IPOPHL Multipurpose Hall, G/F, Intellectual Property Center, World Finance Plaza, No. 28 Upper McKinley Road, Fort Bonifacio, Taguig City.

The training will equip participants with knowledge and skills in resolving commercial disputes through arbitration. Aside from the lectures by recognized experts in the field of commercial arbitration, the training will include practical exercises on the various aspects of commercial arbitration and mock arbitration.

A guest speaker will also introduce the participants to international commercial arbitration.

Those who will pass the written assessment to be given immediately after the training will be included in the roster of PDRC-trained arbitrators, after qualifying as members.

The fee is PhP 30,000.00 per participant, inclusive of meals and training materials. Those who will register and pay the training fee before June 30, 2016 will be entitled to an early bird discount. For details, please contact the PDRC Secretariat at (+63 2) 555-0798 or (+63 2) 822-4102 or email: [secretariat@pdrcl.org](mailto:secretariat@pdrcl.org). [P](#)

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