

An Overview of Environmental Protection Law and Policy in the Philippines: From PSNR to the Implications of the Paris Agreement with the WTO

*Manuel Antonio J. Teehankee**

*Allan G. Revote***

*Angelo Francesco F. Herbosa****

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I. INTRODUCTION

The Philippines is a nation that is endowed with abundant natural resources.¹ These resources vary greatly, from those found on land to those

* '18 PhD in Trade and Environment Governance, Graduate Institute of International and Development Studies, Geneva (IHEID); '87 LL.M., London School of Economics and Political Science; '86 LL.M., Michigan Law School; '83, LL.B., *valedictorian*, Ateneo de Manila University School of Law. The Author is currently the Undersecretary for International Economic Relations of the Department of Foreign Affairs of the Philippines. He is a professional lecturer in public international law, World Trade Organization (WTO) Law, and international environmental law, a former Philippine Permanent Representative to the WTO in Geneva (2004-2011), and former Chair of the WTO's Committee on Trade and Environment (2007-2011). He was also the Executive Director of the Claudio Teehankee Foundation Center for the Rule of Law. The Author's previous works

found in water, whether terrestrial or oceanic.² Given such abundance, the necessary consequence is that said these resources are utilized for a myriad of purposes.

Economically, agriculture comprises a relatively significant percentage of the Philippine economy, with the sector seeing considerable growth, especially in recent years.³ The Philippines' fertile lands are conducive to the cultivation of crops, particularly rice, abaca, fruits, and vegetables.⁴ Agriculture, however, is not as lucrative compared to other industries, especially the more extractive ones, such as logging and mining.⁵ With

published in the *Journal* include *The South China Sea PCA Award and Economic Implications for Philippine EEZ Rights*, ATENEO L.J., March 2017; *Countertrade and the Law of GATT*, 31 ATENEO L.J. 81 (1988); *Court Arbitration Interface: Consolidation, Attachment, and Discovery*, 32 ATENEO L.J. 9 (1988); *The Silent Protest of Man's Inner Spirit*, 27 ATENEO L.J. 85 (1983); *Are Judgments with Provisions for Future accounting Final and Appealable?*, 26 ATENEO L.J. 152 (1982); & *Notes on P.D. 1508: The Barangay Justice System*, 26 ATENEO L.J. 68 (1981).

★★ '13 J.D., Ateneo de Manila University School of Law. He co-wrote *The South China Sea PCA Award and Economic Implications for Philippine EEZ Rights*, ATENEO L.J., March 2017.

★★★ '19 J.D. *and.*, Ateneo de Manila University School of Law. The Author is a Member of the Board of Editors of the *Ateneo Law Journal*. He previously co-authored *Testing Constitutional Waters VII: Coming Full Circle with the Application of Executive Power and Judicial Consistency as Applied to Marcos v. Manglapus and Ocampo v. Enriquez*, 61 ATENEO L.J. 1 (2017) with Dean Sedfrey M. Candelaria. He was the Associate Lead Editor of the third Issue of the *Journal's* 61st volume.

Cite as 62 ATENEO L.J. 798 (2018).

1. See Meliza A. Festejo-Abeleda, Philippine Development Plan 2017 to 2022 for Agriculture, Forestry and Fishery Sector: Sustaining Inclusive Economic Growth, available at http://ap.fftc.agnet.org/ap_db.php?id=773 (last accessed Jan. 26, 2018) (citing National Economic Development Authority, Philippine Development Plan 2017-2022, available at <http://pdp.neda.gov.ph/wp-content/uploads/2017/01/PDP-2017-2022-07-20-2017.pdf> (last accessed Jan. 26, 2018)).
2. *Id.*
3. *Id.*
4. See generally National Economic Development Authority, *supra* note 1.
5. *Id.*

regard to the latter two industries, the Philippines has had quite a mired history.

In colonial times, the exploitation of natural resources — particularly through logging and mining — was amplified during American rule.⁶ The country's forest cover is said to have decreased by a total of 40% of its entire land area during the Spanish period (20%), and American and Japanese (20%) colonial periods.⁷ What is significant is that the latter period only lasted less than half a century, while the Spanish conquered the Philippines for over 300 years.⁸ In terms of mining, the American colonial era saw the establishment of the Philippine Mining Bureau, as well as the Benguet Mine, the country's first modern gold mine.⁹ The Benguet Mine was followed by 17 other mining companies.¹⁰ This era is consequently seen as the birth of Philippine commercial mining.¹¹

In the post-colonial era, logging and mining have attained notoriety for aggravating the damage caused by calamities and natural disasters.¹²

Logging has been tagged as the cause of flooding, which has resulted in the loss of life and property throughout the archipelago.¹³ The Philippine

6. See Raul Kamantigue Suarez, *Philippine deforestation: A national Spoliarium*, PHIL. STAR, Dec. 3, 2009, available at <http://www.philstar.com/science-and-technology/528500/philippine-deforestation-national-spoliarium> (last accessed Jan. 26, 2018) (citing Greg Bankoff, *One Island Too Many: Reappraising the Extent of Deforestation in the Philippines Prior to 1946*, 33 J. HISTORICAL GEOGRAPHY 314, 314-34 (2007)).

7. *Id.*

8. *Id.*

9. Jasmin D. Quintans, *Mining industry in the Philippines*, MANILA TIMES, Sep. 4, 2017, available at <http://www.manilatimes.net/mining-industry-philippines/348610> (last accessed Jan. 26, 2018).

10. *Id.*

11. *Id.*

12. See Mynardo Macaraig, *Mining, logging contributed to Philippine disaster — experts*, PHIL. DAILY INQ., Dec. 9, 2012, available at <http://newsinfo.inquirer.net/321309/mining-logging-contributed-to-philippine-disaster-experts> (last accessed Jan. 26, 2018).

13. See, e.g., Paulo Alcazaren, *10 reasons why it floods in Manila*, PHIL. STAR, June 15, 2013, available at <http://www.philstar.com/modern-living/2013/06/15/953965/10-reasons-why-it-floods-manila> (last accessed Jan. 26, 2018); Jonah Fisher, *Logging blamed for Philippine flood deaths*, available at

Senate's statistics on the matter state that the country's forest cover has decreased from 57% of the entire land area in 1934 (during the American colonial period) to just 23% in 2010.¹⁴ This was largely due to commercial and illegal logging.¹⁵ Be that as it may, in 2013, Philippine forests contributed 0.12% to the country's gross domestic product (GDP).¹⁶

Mining disasters, on the other hand, have garnered more attention due to the scale of environmental destruction and loss of life. The Marcopper mining disaster in 1996¹⁷ and the Philex mining disaster in 2012¹⁸ are infamously considered as the worst mining disasters in Philippine history.¹⁹ Due to these disasters, stricter regulations were implemented, including a recent ban on open pit mining.²⁰

In view of this background, there is an increased clamor for regulations that balance the interest of environmental justice on one hand, and tap into

<http://www.bbc.com/news/world-asia-17071106> (last accessed Jan. 26, 2018); Andro C. Calonzo, *Illegal logging blamed for Cagayan de Oro flash floods*, available at <http://www.gmanetwork.com/news/news/regions/242069/illegal-logging-blamed-for-cagayan-de-oro-flash-floods/story> (last accessed Jan. 26, 2018); & John Aglionby, *Philippines bans logging after fatal floods*, *GUARDIAN*, Dec. 6, 2004, available at <https://www.theguardian.com/world/2004/dec/06/philippines> (last accessed Jan. 26, 2018).

14. Senate of the Philippines, *Philippine Forests at a Glance* (Publication by the Senate Economic Planning Office) at 1, available at https://senate.gov.ph/publications/SEPO/AAG%20on%20Philippine%20Forest_Final.pdf (last accessed Jan. 26, 2018).
15. *Id.*
16. *Id.*
17. See University of Michigan, *Environmental Justice Case Study: Marcopper in the Philippines*, available at <http://www.umich.edu/~snre492/Jones/marcopper.htm> (last accessed Jan. 26, 2018).
18. Rouchelle R. Dinglasan, *Philex spill 'biggest mining disaster' in PHL, surpassing Marcopper — DENR*, available at <http://www.gmanetwork.com/news/news/nation/281988/philex-spill-biggest-mining-disaster-in-phl-surpassing-marcopper-denr/story/> (last accessed Jan. 26, 2018).
19. *Id.*
20. Rommel W. Domingo, *Gina Lopez scraps 75 mine contracts*, *PHIL. DAILY INQ.*, Feb. 15, 2017, available at <http://newsinfo.inquirer.net/871556/gina-lopez-scraps-75-mine-contracts> (last accessed Jan. 26, 2018).

potentially billions of dollars of revenues²¹ under a sustainable mining regime on the other. Mining has steadily contributed around 0.6% to 0.7% of the country's GDP from 2013 to the third quarter of 2017, with analysts projecting the contribution to go over 1%.²²

The Philippine government has tried to keep a tight grip on the exploitation of natural resources belonging to the public domain. The 1987 Philippine Constitution provides that “[t]he exploration, development, and utilization of natural resources of the public domain shall be under the full control and supervision of the State.”²³ Consequently, several statutes have been enacted, a topic that will be discussed in greater depth later in this Article. Preliminarily, these statutes include the Mining Act of 1995²⁴ and the National Integrated Protected Areas System (NIPAS) Act.²⁵ These laws were put in place to ensure that the constitutional provision is truly given effect.²⁶

The aforementioned control and supervision that the government wields over the country's natural resources is an excellent example of the concept of the Permanent Sovereignty over Natural Resources (PSNR).

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21. See Arangkada Philippines, Recommendations (Mining), *available at* <http://www.investphilippines.info/arangkada/seven-winners/mining/recommendation/> (last accessed Jan. 26, 2018).
 22. Department of Environment & Natural Resources — Mines & Geosciences Bureau, Mining Industry Statistics, *available at* [http://mgb.gov.ph/attachments/article/162/MIS\(2015\)%20\(1\)%20\(1\).pdf](http://mgb.gov.ph/attachments/article/162/MIS(2015)%20(1)%20(1).pdf) (last accessed Jan. 26, 2018).
 23. PHIL. CONST. art. XII, § 2, para. 1.
 24. An Act Instituting a New System of Mineral Resources Exploration, Development, Utilization and Conservation [Philippine Mining Act of 1995], Republic Act No. 7942 (1995).
 25. An Act Providing for the Establishment and Management of National Integrated Protected Areas System, Defining its Scope and Coverage, and for Other Purposes [National Integrated Protected Areas System Act of 1992], Republic Act No. 7586 (1992).
 26. See Philippine Mining Act of 1995, §§ 2 & 4 (2) & National Integrated Protected Areas System Act of 1992, § 2.

II. PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

The concept of PSNR traces its beginnings from the Declaration adopted by the United Nations General Assembly (UNGA) on 14 December 1962.²⁷ From a historical standpoint, the Declaration was brought about largely due to the decolonization of developing countries and their resulting clamor against the one-sided concession agreements which their respective governments had entered into with foreign investors — both during the colonial period and afterwards — that explored and exploited the said countries' natural resources.²⁸

These protests are clearly addressed in the Declaration's provisions. It states, among other things, that:

- (1) The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned[; and,]
- (2) The exploration, development[,] and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction[,] or prohibition of such activities.²⁹

From the foregoing, it is readily seen that the Declaration does not only cover the right of nations over its natural resources, but the right of the nations' people as well. This results in a two-pronged approach to how the UNGA perceived the right, such that both public and private interests must be considered vis-à-vis national development and wellbeing.³⁰

The other facet of PSNR is that of State sovereignty, such that it grants States, through their governments, sovereignty over natural resources found

27. Permanent sovereignty over natural resources, G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., Supp. No. 17, U.N. Doc. A/5217, at 15-16 (Dec. 14, 1962).

28. See generally Ricardo Pereira & Orla Gough, *Permanent Sovereignty over Natural Resources in the 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples under International Law*, 14 MELB. J. INT'L L. 451, 455-56 (2013).

29. Permanent sovereignty over natural resources, *supra* note 27, part I, ¶¶ 1 & 2.

30. *Id.*

within the respective State's borders.³¹ Simply put, a government may make use of its natural resources to whatever extent, so long as it is in the interest of national development and for the wellbeing of its people.³² It also seeks to limit foreign capital through "rules and conditions" that, in the Philippine context, take the form of laws enacted by the legislative branch of government.³³ Thus, what the doctrine of PSNR grants can truly be made tangible through the promulgation of laws on the environment, which will be discussed in Part III of this Article.

III. ENVIRONMENTAL LAW: THE PHILIPPINE EXPERIENCE

A. Laws

As already mentioned, the Philippines does not lack in environmental statutes. The 1987 Philippine Constitution is explicit in providing for ownership, governmental control, and supervision of natural resources and lands of the public domain.³⁴ Article XII, Section 2 of the 1987 Constitution provides —

All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least [60%] of whose capital is owned by such citizens. Such agreements may be for a period not exceeding [25] years, renewable for not more than [25] years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

31. *Id.* part I, ¶ 1.

32. *Id.*

33. *Id.* part I, ¶¶ 2 & 3.

34. PHIL. CONST. art. XII.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within [30] days from its execution.³⁵

This provision expanded its predecessor provisions found in the 1973 Philippine Constitution.³⁶ In addition, the eminent constitutionalist and 1986 Constitutional Commission member Fr. Joaquin G. Bernas, S.J. (Bernas) pertaining to the Regalian doctrine³⁷ embodied in the provision, commented that —

One significant application of the [R]egalian doctrine is that, if a person is the owner of agricultural land in which minerals are discovered, the person's ownership of such land does not give him the right to extract or utilize the said minerals without the permission of the State. The minerals belong to the [S]tate. Thus, once minerals are discovered in the land, whatever the use to which it is being devoted at the time, *such use may be discontinued by the State to enable it to extract the minerals therein in the exercise of sovereign prerogative.*³⁸

Thus, the example provided for by Bernas clearly shows that the concept of PSNR, although not explicitly provided for, is something already embodied in the 1987 Philippine Constitution.

35. PHIL. CONST. art XII, § 2.

36. 1973 PHIL. CONST. art. XIV, §§ 8 & 9 (superseded 1987).

37. The Regalian doctrine, which is incorporated in the first sentence of Section 2, Article XII of the Constitution, is derived from early Spanish decrees that provide that all lands “were held from the Crown[.]” JOAQUIN G. BERNAS, S.J., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 1178 (2009 ed.). *See also* Jorge Bocobo, *The Regalian Doctrine*, 16 PHIL. L.J. 151, 151 (1936).

38. BERNAS, *supra* note 37, at 1179 (emphasis supplied).

Another constitutional provision, Article II, Section 16, provides that “[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”³⁹ As part of the Declaration of Principles and State Policies, it was intentionally kept broad so as to allow leeway in interpretation.⁴⁰

Laws furthering the constitutional provisions, as well as its precursor provisions, have likewise been enacted. Aside from the already mentioned Mining Act of 1995 and the NIPAS Act, the other Philippine environmental laws are, among others:

- (1) Philippine Environmental Code;⁴¹
- (2) Water Code;⁴²
- (3) Revised Forestry Code;⁴³
- (4) Fisheries Code;⁴⁴
- (5) Wildlife Resources Conservation and Protection Act;⁴⁵
- (6) Climate Change Act of 2009;⁴⁶

39. PHIL. CONST. art. II, § 16.

40. BERNAS, *supra* note 37, at 37.

41. Philippine Environmental Code [ENVIRON. CODE], Presidential Decree No. 1152 (1977).

42. A Decree Instituting a Water Code, Thereby Revising and Consolidating the Laws Governing the Ownership, Appropriation, Utilization, Exploitation, Development, Conservation and Protection of Water Resources [WATER CODE], Presidential Decree No. 1067 (1976).

43. Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines [REV. FORESTRY CODE], Presidential Decree No. 705 (1975) (as amended).

44. An Act Providing for the Development, Management and Conservation of the Fisheries and Aquatic Resources, Integrating All Laws Pertinent Thereto, and for Other Purposes [FISHERIES CODE], Republic Act No. 8550 (1998) (as amended).

45. An Act Providing for the Conservation and Protection of Wildlife Resources and Their Habitats, Appropriating Funds Therefor and for Other Purposes [Wildlife Resources Conservation and Protection Act], Republic Act No. 9147 (2001).

- (7) Renewable Energy Act of 2008;⁴⁷
- (8) Philippine Plant Variety Protection Act of 2002;⁴⁸
- (9) Ecological Solid Waste Management Act of 2000;⁴⁹
- (10) Philippine Clean Air Act of 1999;⁵⁰
- (11) Coconut Preservation Act of 1995;⁵¹
- (12) People's Small-scale Mining Act of 1991;⁵²
- (13) Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990;⁵³

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46. An Act Mainstreaming Climate Change Into Government Policy Formulations, Establishing the Framework Strategy and Program on Climate Change, Creating for this Purpose the Climate Change Commission, and for Other Purposes [Climate Change Act of 2009], Republic Act No. 9729 (2009) (as amended).
 47. An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes [Renewable Energy Act of 2008], Republic Act No. 9513 (2008).
 48. An Act to Provide Protection to New Plant Varieties, Establishing a National Plant Variety Protection Board and for Other Purposes [Philippine Plant Variety Protection Act of 2002], Republic Act No. 9168 (2002).
 49. An Act Providing for an Ecological Solid Waste Management Program, Creating the Necessary Institutional Mechanisms and Incentives, Declaring Certain Acts Prohibited and Providing Penalties, Appropriating Funds Therefor, and for Other Purposes [Ecological Solid Waste Management Act of 2000], Republic Act No. 9003 (2000).
 50. An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes [Philippine Clean Air Act of 1999], Republic Act No. 8749 (1999).
 51. An Act Providing for the Regulation of the Cutting of Coconut Trees, its Replenishment, Providing Penalties Therefor and for Other Purposes [Coconut Preservation Act of 1995], Republic Act No. 8048 (1995) (as amended).
 52. An Act Creating a People's Small-Scale Mining Program and for Other Purposes [People's Small-Scale Mining Act of 1991], Republic Act No. 7076 (1991).
 53. An Act to Control Toxic Substances and Hazardous and Nuclear Wastes, Providing Penalties for Violations Thereof, and for Other Purposes [Toxic

- (14) Republic Act No. 3931 (creating the National Water and Air Pollution Control Commission);⁵⁴
- (15) Coral Resources Development and Conservation Decree;⁵⁵ and
- (16) Republic Act No. 4850 (creating the Laguna Lake Development Authority).⁵⁶

This list does not include all the environmentally-related laws that have been enacted, nor does it include the executive issuances that concern the environment. However, through a perusal of the list, it can be readily seen just how exhaustive Philippine environmental laws are. Additionally, as early as 2009, the legislature had already enacted a law addressing climate change, adopting “the ultimate objective of the [United Nations Framework Convention on Climate Change (UNFCCC).]”⁵⁷ The Philippines’ ratification of the UNFCCC, as well as the more recent approval⁵⁸ and concurrence⁵⁹ by the Senate of the Paris Agreement⁶⁰ in 2017 will be discussed further in Part V of this Article.

The implication is that the legislature indeed values the natural resources found in the country and recognizes the need for legal regulation. This, in itself, is a continuing practice of PSNR.

Substances and Hazardous and Nuclear Wastes Control Act of 1990], Republic Act No. 6969 (1990).

- 54. An Act Creating the National Water and Air Pollution Control Commission, Republic Act No. 3931 (1964).
- 55. Providing for the Exploration, Exploitation, Utilization and Conservation of Coral Resources [The Coral Resources Development and Conservation Decree], Presidential Decree No. 1219 (1977) (as amended).
- 56. An Act Creating the Laguna Lake Development Authority, Prescribing its Powers, Functions and Duties, Providing Funds Therefor, and for Other Purposes, Republic Act No. 4850 (1966).
- 57. Climate Change Act of 2009, § 2.
- 58. Press Release — Legarda: Senate Approves Paris Agreement on 2nd Reading, Concurrence Soon, *available at* http://www.senate.gov.ph/press_release/2017/0309_legarda1.asp (last accessed Jan. 26, 2018).
- 59. Press Release — Legarda: Senate Unanimously Concurs in Accession to the Paris Agreement, *available at* http://www.senate.gov.ph/press_release/2017/0314_legarda2.asp (last accessed Jan. 26, 2018).
- 60. Paris Agreement under the United Nations Framework Convention on Climate Change, *opened for signature* Apr. 22, 2016.

B. Jurisprudence and Procedures

Taking the discussion one step further, the Civil Code of the Philippines⁶¹ provides that judicial decisions — particularly those of the Supreme Court (Court) — form part of the law of the land.⁶² Consequently, it is just as important to take a look at certain decisions and procedures put in place by the Court in order to get an overarching view of Philippine environmental laws.

Significantly, the Court as of late, particularly under the leadership of Chief Justice Reynato S. Puno (Puno Court) and the current Chief Justice Maria Lourdes P.A. Sereno (Sereno Court), has manifested an inclination towards environmental awareness and protection. This is seen not only in recent landmark cases, but also in procedural rules laid down. Both create significant precedent for prospective cases.

1. Jurisprudence

In terms of cases promulgated, the most significant case thus far is the landmark case of *Oposa v. Factoran, Jr.*⁶³ The case hinged on the doctrine of “inter-generational responsibility” with regard to generations yet unborn.⁶⁴

The case stemmed from a complaint filed by the petitioners — minors represented and joined by their respective parents — before the trial court as taxpayers who are “entitled to the full benefit, use[,] and enjoyment of the natural resource treasure that is the country’s virgin tropical rainforests”⁶⁵ and in representation of “their generation as well as generation[s] yet unborn.”⁶⁶ The petition was fueled by the widespread deforestation taking place in the country, and the petitioners’ prayer was that the respondent, then Secretary of the Department of Natural Resources (DENR) Fulgencio S. Factoran, Jr., be ordered to: “(1) [c]ancel all existing timber license agreements in the country; [and] (2) [c]ease and desist from receiving, accepting, processing, renewing[,] or approving new timber license

61. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

62. *Id.* art. 8.

63. *Oposa v. Factoran, Jr.*, 224 SCRA 792 (1993).

64. *Id.* at 796.

65. *Id.*

66. *Id.*

agreements.”⁶⁷ The trial court judge held that the petitioners had no cause of action and ordered the dismissal of the case.⁶⁸ Before the Court, the petitioners hinged their plea on Article II, Section 16 of the 1987 Philippine Constitution, which recognizes the right of the people to a balanced and healthful ecology.⁶⁹

The Court reversed the trial judge’s dismissal of the case.⁷⁰ In upholding the original complaint, the Court opined, to wit —

We do not agree with the trial court’s conclusion that the plaintiffs failed to allege with sufficient definiteness a specific legal right involved or a specific legal wrong committed, and that the complaint is replete with vague assumptions and conclusions based on unverified data. A reading of the complaint itself belies these conclusions.

The complaint focuses on one specific fundamental legal right [—] the right to a balanced and healthful ecology which, for the first time in our nation’s constitutional history, is solemnly incorporated in the fundamental law.

[...]

While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation [—] aptly and fittingly stressed by the petitioners [—] the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as State policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the [S]tate a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come [—] generations which stand to inherit nothing but parched earth incapable of sustaining life.

67. *Id.* at 797.

68. *Id.* at 800.

69. *Oposa*, 224 SCRA at 804 (citing PHIL. CONST. art. II, § 16).

70. *Oposa*, 224 SCRA at 804.

*The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.*⁷¹

From the foregoing, the Court clearly sided with the constitutional mandate to ensure the people's right to a balanced and healthful ecology.⁷² Furthermore, although jurisprudence has provided that the provisions under Article II of the 1987 Philippine Constitution are not self-executory, such that said provisions require enabling legislation before they can be enforced,⁷³ Section 16 thereof was found to be the exception and thus, self-executing.⁷⁴

Further, the Court's stance is bolstered by the fact that legal standing was granted not only to minors but also, by representation, to persons who have not even been conceived.⁷⁵ It is also interesting to note that the case was promulgated in 1993,⁷⁶ preceding many landmark decisions relating to the environment, both in this jurisdiction, as well as in others.

This doctrine in *Oposa* was followed by the case of *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,⁷⁷ which was penned by Justice Presbitero J. Velasco, Jr. under the Puno Court.⁷⁸ The case centered on the over-pollution of Manila Bay, which compelled the respondents to file a complaint against the petitioners to order the latter to abide by their statutory duties to undertake the cleanup, rehabilitation, and protection of Manila Bay.⁷⁹ The Court found for the respondents, citing the relevant environmental laws already enacted at the time.⁸⁰ The Court concluded, to wit —

71. *Id.* at 804-05 (emphasis supplied).

72. *See Oposa*, 224 SCRA at 804-05 & 814.

73. *See Tañada v. Angara*, 272 SCRA 18, 54-56 (1997).

74. *Oposa*, 224 SCRA at 804. *See also Oposa*, 224 SCRA at 816-17 (J. Feliciano, concurring opinion).

75. *See Oposa*, 224 SCRA at 802-03.

76. *Id.* at 792.

77. *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, 574 SCRA 661 (2008).

78. *Id.* at 697.

79. *Id.* at 665-67.

80. *See Metropolitan Manila Development Authority*, 574 SCRA at 686-92.

In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.

The importance of the Manila Bay as a sea resource, playground, and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the State, through petitioners, has to take the lead in the preservation and protection of the Manila Bay.

The era of delays, procrastination, and *ad hoc* measures is over. Petitioners must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. We are disturbed by petitioners' hiding behind two untenable claims: (1) that there ought to be a specific pollution incident before they are required to act; and[,] (2) that the cleanup of the bay is a discretionary duty.

[Republic Act No.] 9003 is a sweeping piece of legislation enacted to radically transform and improve waste management. It implements [Section] 16, [Article] II of the 1987 Constitution, which explicitly provides that the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

So it was that in *Oposa v. Factoran, Jr.* the Court stated that *the right to a balanced and healthful ecology need not even be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications.* Even assuming the absence of a categorical legal provision specifically prodding petitioners to clean up the bay, they and the men and women representing them cannot escape their obligation to future generations of Filipinos to keep the waters of the Manila Bay clean

and clear as humanly as possible. Anything less would be a betrayal of the trust reposed in them.⁸¹

Taking the precedents one step further is the more recent case of *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*.⁸² In this case, decided under the Sereno Court, although the Court did not grant *locus standi* to the marine mammals of the Tañon Strait,⁸³ the Court did allow said mammals' guardians and fellow petitioners, counseled by environmental lawyer Benjamin Cabrido, Jr. (Cabrido), to argue the case on its merits.⁸⁴

The point of contention in that case was Service Contract No. 46 (SC No. 46), which granted the Japan Petroleum Exploration Co. the right to explore, develop, and exploit petroleum resources in the Tañon Strait.⁸⁵ The Tañon Strait is a protected passage of water between the islands of Negros and Cebu.⁸⁶ It is renowned for harboring several varieties of marine life, including the cetacean species that were represented in the case.⁸⁷

The petitioners in this case sought to declare SC No. 46 illegal for violating the 1987 Philippine Constitution and other statutes, including the NIPAS Act, since the Tañon Strait is considered a protected area.⁸⁸ Despite the ridicule initially hurled at Cabrido, he eventually “had the last laugh.”⁸⁹

81. *Id.* at 691-92 (emphasis supplied) (citing *Oposa*, 224 SCRA at 805).

82. *Resident Marine Mammals of the Protected Seascape Tañon Strait v. Reyes*, 756 SCRA 513 (2015).

83. *Id.* at 545-48.

84. *Id.*

85. *Id.* at 527.

86. *Id.*

87. *Id.* at 527-28.

88. *Resident Marine Mammals of the Protected Seascape Tañon Strait*, 756 SCRA at 549-75. See also Office of the President, Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to RA 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, Proclamation No. 1234, s. 1998 [Proc. No. 1234, s. 1998] (May 27, 1998).

89. Ador Vincent S. Mayol, *Dolphins' lawyer has the last laugh*, PHIL. DAILY INQ., Apr. 23, 2015, available at <http://newsinfo.inquirer.net/687215/dolphins-lawyer-has-the-last-laugh> (last accessed Jan. 26, 2018).

Given the foregoing cases, it is clear that the Court is aware of the need for environmental protection. It is likewise clear that the Court can go to great lengths to protect the environment even from impending harm. However, the Authors acknowledge that there have been instances when the Court has also ruled against the environment and its protection.⁹⁰ This development is but a consequence of rulings rendered by the Court, a collegial body, where different opinions and interpretations of the law come into play.

Thus, in response to the increasing number of environmental cases, the Court drew up specific procedures, as discussed hereunder, and even instituted legal measures to provide for the protection of one's right to a healthful ecology as guaranteed by the 1987 Philippine Constitution.

2. Procedures

The 1987 Constitution grants the Court the power to —

- (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the [] Court.⁹¹

In the exercise of this power, the Puno Court, in 2010, promulgated the Rules of Procedure for Environmental Cases (Rules).⁹² These Rules cover cases filed under statutes that concern the environment and natural sources, as enumerated therein.⁹³ The Rules also provides for the issuance of a Temporary Environmental Protection Order, a provisional remedy for cases of “extreme urgency.”⁹⁴ It is to be used when there is a threat that the

90. See *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, 445 SCRA 1 (2004) & *Sea Lion Fishing Corporation v. People*, 646 SCRA 272 (2011).

91. PHIL. CONST. art. VIII, § 5 (5).

92. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC (Apr. 13, 2010).

93. See RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 2.

94. *Id.* rule 2, § 8.

applicant will suffer “grave injustice and irreparable injury,”⁹⁵ and can be made permanent upon judgment.⁹⁶

Among the several breakthroughs found in the Rules, perhaps the most significant is the creation of the Writ of *Kalikasan* described by the Rules as follows —

Section 1. *Nature of the writ.* [—] The writ is a remedy available to a natural or juridical person, entity authorized by law, people’s organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health[,] or property of inhabitants in two or more cities or provinces.⁹⁷

Since its institution, the said writ has been used by the Court against several entities that were charged with having either violated environmental laws or harmed the ecosystem in general.⁹⁸ The legal remedy has received praise as being “Philippine-made.”⁹⁹

Another notable measure is that pertaining to strategic lawsuits against public participation (SLAPP) suits. SLAPP suits

95. *Id.*

96. *Id.* rule 5, § 3.

97. *Id.* rule 7, § 1.

98. See, e.g., Keith A. Calayag, *SC issues Writ of Kalikasan vs 5 mining firms*, SUN STAR, June 21, 2016, available at <http://www.sunstar.com.ph/manila/local-news/2016/09/29/sc-issues-writ-kalikasan-vs-5-mining-firms-480726> (last accessed Jan. 26, 2018); Camille Diola, *SC issues writ of kalikasan vs DMCI mining*, PHIL. STAR, Jan. 14, 2014, available at <http://www.philstar.com/headlines/2014/01/14/1278767/sc-issues-writ-kalikasan-vs-dmci-mining> (last accessed Jan. 26, 2018); & Sophie Dedace, *First ever writ of kalikasan petition filed vs Meralco*, available at <http://www.gmanetwork.com/news/news/nation/205707/first-ever-writ-of-kalikasan-petition-filed-vs-meralco/story> (last accessed Jan. 26, 2018).

99. Philippine Daily Inquirer, *In the Know: Writ of kalikasan—Proudly Filipino*, PHIL. DAILY INQ., Sep. 17, 2014, available at <http://globalnation.inquirer.net/111233/in-the-know-writ-of-kalikasan-proudly-filipino> (last accessed Jan. 26, 2018).

refer[] to an action whether civil, criminal[,] or administrative, brought against any person, institution[,] or any government agency or local government unit or its officials and employees, with the intent to harass, vex, exert undue pressure[,] or stifle any legal recourse that such person, institution[,] or government agency has taken or may take in the enforcement of environmental laws, protection of the environment[,] or assertion of environmental rights.¹⁰⁰

The Rules provide that a defendant in a civil action may use the defense that the action is a SLAPP;¹⁰¹ if so, it may be tried in a summary hearing that could result in a dismissal.¹⁰² The defense may likewise be used as a ground in a motion to dismiss in criminal cases.¹⁰³ This institution is very significant, as it wrests advantage away from entities which use their substantial resources to intimidate current or would-be petitioners in environmental cases by strong-arming them through litigation. In the United States, SLAPP suits were used very commonly in environmental cases.¹⁰⁴ Since its institution, the measure has been successfully used in the Philippines.¹⁰⁵

Another significant measure is the writ of continuing *mandamus*. It “is a writ issued by a court in an environmental case directing any agency or instrumentality of the government or officer thereof to perform an act or series of acts decreed by final judgment which shall remain effective until judgment is fully satisfied.”¹⁰⁶ It is issued

[w]hen any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust[,] or station in connection with the enforcement or violation of an environmental law[,] rule[,] or regulation or a right therein, or unlawfully excludes another from the use

100. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (g).

101. *Id.* rule 6, § 2.

102. *Id.* rule 6, §§ 3-4.

103. *Id.* rule 19.

104. Dwight H. Merriam & Jeffrey A. Benson, *Identifying and Beating a Strategic Lawsuit Against Public Participation*, 3 DUKE ENVTL. L. & POL'Y F. 17, 17 (1993).

105. *See, e.g.*, Patricia Alvarez, Court dismisses case against Zambales fisherfolk leaders as SLAPP, *available at* <http://alternativelawgroups.ph/index.php/news/2-uncategorised/59-court-dismisses-case-against-zambales-fisherfolk-leaders-as-slapp> (last accessed Jan. 26, 2018).

106. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 1, § 4 (c).

or enjoyment of such right and there is no other plain, speedy[,] and adequate remedy in the ordinary course of law[.]¹⁰⁷

As a matter of fact, even before the promulgation of the Rules, the Court had already granted the relief in the *Metro Manila Development Authority* case,¹⁰⁸ where the propriety of granting the writ of continuing *mandamus* was actually the main issue.

Summing up all the foregoing, it is clear that there are several efforts — both legislative and judicial — that have been put in place with the goal of protecting and preserving the Philippine environment. This is only natural given the circumstances facing the country and its people. Stemming from this, the discussion will now look at the effects of this “environmental movement” on aspects of Philippine society.

IV. EFFECTS OF THE “ENVIRONMENTAL MOVEMENT”

Given the State’s treatment of the environment, it is only natural that its effects trickle into the everyday lives of Filipino citizens. This is especially true with regard to policy and decision-making in both the private and public sectors.

In terms of business, due to the negative connotation associated with the mining and logging industries, concerned companies and the government have sought alternative and environmentally-friendly sources of revenue. Three of the more significant alternatives are briefly discussed below.

First and most pertinent is investment in renewable energies. Since the passage of the Renewable Energy Act in 2008, the Philippines has seen a boom in the renewable energy sector.¹⁰⁹ In fact, renewable energy made up 26.44% of the country’s total power output in early 2017.¹¹⁰ The biggest solar farm in Southeast Asia was commissioned in Cadiz City, Negros

107. *Id.* rule 8, § 1.

108. *Metro Manila Development Authority*, 574 SCRA at 697.

109. Connie Tan Hui Ann, The Philippines’ renewable energy sector is booming (and it could get bigger), available at <https://www.cnbc.com/2016/08/09/the-philippines-renewable-energy-sector-is-booming-and-it-could-get-bigger.html> (last accessed Jan. 26, 2018).

110. Alex Magno, *Hydropower*, PHIL. STAR, Mar. 2, 2017, available at <http://www.philstar.com/opinion/2017/03/02/1677108/hydropower> (last accessed Jan. 26, 2018).

Occidental, in 2016.¹¹¹ Wind farms such as the Bangui Wind Farm in Ilocos Norte supplies the province with 40% of its energy needs.¹¹² Investments in hydropower are likewise picking up.¹¹³

Second is the service sector. Although not directly related to the environment, the industry is still noteworthy due to the fact that it employs over 50% of the country's labor force.¹¹⁴ The Philippines has since transitioned from an agriculture-based economy to one that is service-based.¹¹⁵ However, this poses a problem as it has been noted that national wealth, which is necessary to support a service-based economy, which the Philippines does not have, as a result of reliance on sectors such as "business process outsourcing, gambling[,] and tourism[,]” the funds of which originate from abroad.¹¹⁶ Be that as it may, the service sector still contributes about 60% of the country's GDP.¹¹⁷

Third is ecotourism. This industry is "often seen as a kind of sustainable tourism, and the difference between nature-based tourism and ecotourism is the element of conservation and education."¹¹⁸ It has also been tabbed as the

111. Marchel P. Espina, Southeast Asia's biggest solar farm opens in Negros Occidental, *available at* <https://www.rappler.com/nation/124552-biggest-solar-farm-southeast-asia-cadiz-negros-occidental> (last accessed Jan. 26, 2018).

112. Honor Blanco Cabie, *Ilocos Norte's windmills: Tourism and energy giants*, MANILA STAND., Nov. 2, 2016, *available at* <http://thestandard.com.ph/news/-provinces/220369/ilocos-norte-s-windmills-tourism-and-energy-giants.html> (last accessed Jan. 26, 2018).

113. Magno, *supra* note 110.

114. Mike Wootton, *Growth of service sectors inhibit real development*, MANILA TIMES, Aug. 24, 2016, *available at* <http://www.manilatimes.net/growth-of-service-sectors-inhibit-real-development/281643> (last accessed Jan. 26, 2018).

115. *See* Securing The Future of Philippine Industries (Report on the Services Sector in the Philippines), *available at* <http://industry.gov.ph/category/services> (last accessed Jan. 26, 2018).

116. Wootton, *supra* note 114.

117. *See* Securing The Future of Philippine Industries, *supra* note 115.

118. Felino A. Palafox, Jr., *Ecotourism as an engine for development*, MANILA TIMES, Aug. 10, 2017, *available at* <http://www.manilatimes.net/ecotourism-engine-development/343469> (last accessed Jan. 26, 2018).

alternative to mining.¹¹⁹ The shift to ecotourism is only logical given the abundance of natural wealth in and around the different islands.¹²⁰ However, this sector is relatively new, so statistics regarding the same are not readily available. The potential for growth, though, is undeniable.¹²¹

The “environmental movement” has also affected very recent policy decisions that have caught national attention. This can be best exemplified by two particular developments. The first was the closure of several mines around the country by the Department of Environment and Natural Resources (DENR) as a result of a government crackdown on illegal mining practices.¹²² This was followed by another series of closures in Benguet province by the Mining and Geosciences Bureau of the DENR after a river turned blue.¹²³

Second, and more recently, the Department of Transportation commenced a planned modernization of the jeepney — a Philippine public transportation icon — due in large part to the subpar quality of the current jeepneys not just in terms of safety, but environmentally as well.¹²⁴ This decision was met with opposition by jeepney proprietors and operators who were concerned by the fact that they would have to shoulder the price of

119. Rhodina Villanueva, ‘Eco-tourism an alternative to mining’, PHIL. STAR, Feb. 22, 2017, available at <http://www.philstar.com/headlines/2017/02/22/1674651/eco-tourism-alternative-mining> (last accessed Jan. 26, 2018).

120. *Id.* See also Philippine Tarsier Foundation, Inc., The Philippine Environment and its Ecotourism Potential, available at <http://www.tarsierfoundation.org/news/the-philippine-environment-and-its-eco-tourism-potential> (last accessed Jan. 26, 2018).

121. Palafox, Jr., *supra* note 118.

122. Domingo, *supra* note 20.

123. Mae Cornes, MGB orders 8 mines closed after Benguet river turned blue, available at <http://news.abs-cbn.com/news/10/16/17/mgb-orders-8-mines-closed-after-benguet-river-turned-blue> (last accessed Jan. 26, 2018).

124. Bea Cupin, PUV modernization: Planning, readiness issues raised at House hearing, available at <https://www.rappler.com/nation/185809-house-transportation-committee-puv-modernization> (last accessed Jan. 26, 2018). See also Rambo Talabong, DOTr launches modernization program for jeepneys, buses, available at <https://www.rappler.com/nation/173390-dotr-launches-public-utility-vehicle-modernization-program> (last accessed Jan. 26, 2018).

acquiring a new unit.¹²⁵ Each unit would cost ₱1,600,000 — a price, they argued, would saddle them with debt.¹²⁶ The opposition reached a boiling point and led to nationwide strikes that prompted class and government work suspensions.¹²⁷ The clamor does not seem to faze the government, however, as it still plans to push through with the modernization plans.¹²⁸

All told, the Philippines is no stranger to environmental initiatives, controversial or otherwise. The interplay of legislative and judicial efforts, as implemented by the executive branch of government, as well as the private sector, illustrates just that. Admittedly, however, there is a lot that still needs to be done. The Philippines is plagued by illegal poaching, especially around its waters,¹²⁹ to the detriment of endangered species. The effects of the Marcopper mining disaster are still felt by the residents who live near the abandoned pit.¹³⁰ Mining *per se* is still causing problems for local townfolk, particularly in Manicani Island in Eastern Samar.¹³¹ Around 50 rivers in the

125. Jovic Yee, *Jeepney modernization program draws cheers, jeers*, PHIL. DAILY INQ., Dec. 3, 2017, available at <http://business.inquirer.net/241862/jeepney-modernization-program-draws-cheers-jeers> (last accessed Jan. 26, 2018).

126. *Id.*

127. Nestor Corrales, *Strike won't stop jeepney modernization plan — Malacañang*, PHIL. DAILY INQ., Oct. 16, 2017, available at <http://newsinfo.inquirer.net/938241/breaking-news-malacanang-jeepney-jeepney-modernization-public-utility-vehicle-modernization-program-puvmp-ernesto-abella-piston-puv> (last accessed Jan. 26, 2018).

128. Paolo Romero, *Jeepney modernization: Full speed ahead — DOTr*, PHIL. STAR, Dec. 4, 2017, available at <http://beta.philstar.com/headlines/2017/12/04/1765471/jeepney-modernization-full-speed-ahead-dotr> (last accessed Jan. 26, 2018).

129. See, e.g., Carmela Fonbuena, 10 Vietnamese poachers arrested off Palawan, available at <https://www.rappler.com/nation/178325-vietnamese-poachers-palawan> (last accessed Jan. 26, 2018) & Jonathan L. Mayuga, *Marine turtles poaching alarms DENR exec*, BUS. MIRROR, July 18, 2017, available at <https://businessmirror.com.ph/marine-turtles-poaching-alarms-denr-exec> (last accessed Jan. 26, 2018).

130. Tina G. Santos, *Marcopper dam leaks threaten townfolk*, PHIL. DAILY INQ., Mar. 27, 2017, available at <http://newsinfo.inquirer.net/884047/marcopper-dam-leaks-threaten-townfolk> (last accessed Jan. 26, 2018).

131. Joey A. Gabieta, *Samar folk oppose mining on Manicani Island*, PHIL. DAILY INQ., Oct. 25, 2017, available at <http://newsinfo.inquirer.net/940415/news-manicani-guan-eastern-samar-denr-mining-hmc> (last accessed Jan. 26, 2018).

Philippines are considered dead, with the Marilao River in Luzon being tagged as one of the world's 10 most polluted.¹³² These are only a few examples. Despite this, the foregoing discussion on the positive efforts should be seen as encouraging developments.

Moreover, as will be discussed in Part V of this Article, the Philippines has further propelled itself towards an environmentally sound direction, the Paris Agreement comes into full operation by 2020.¹³³

V. PARIS AGREEMENT

The Paris Agreement, which is under the UNFCCC legal regime,¹³⁴ was adopted on 12 December 2015.¹³⁵ Its purposes are provided for as such —

- (1) This Agreement, in enhancing the implementation of the [UNFCCC], including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
 - (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
 - (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; [and]

132. Rhonda Marrone, *Water Pollution in the Philippines: Causes and Solutions*, available at <http://www.borgenmagazine.com/water-pollution-in-the-philippines> (last accessed Jan. 26, 2018).

133. World Wide Fund For Nature, *Process to implement Paris Agreement by 2020 starts in Bonn next week*, available at http://wwf.panda.org/wwf_news/?315323/proces-implement-Paris-Agreement-starts-next-week (last accessed Jan. 26, 2018).

134. United Nations Framework Convention on Climate Change, *adopted* May 9, 1992, 1771 U.N.T.S. 107 [hereinafter *United Nations Framework Convention on Climate Change*].

135. Twenty-first Session of the Conference of the Parties, Nov. 30-Dec. 11, 2015, *Adoption of the Paris Agreement*, U.N. Doc. FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015).

- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.¹³⁶

The abovementioned provision thus provides for the three main goals of the Agreement, which are: limiting global temperatures from further increasing, adapting to the effects of climate change, and financing.¹³⁷

The Philippines is one of 170 State parties to the Paris Agreement, which was ratified on 23 March 2017 and entered into force on 22 April 2017.¹³⁸ Beginning its effectivity, the country is bound to comply with the provisions of the same.¹³⁹ However, some of the Paris Agreement's critics cite the lack of an enforcement mechanism in its clauses, since it only requires States to report their contributions.¹⁴⁰ Be that as it may, the Philippines still has to keep its commitments under it, regardless of the question of its enforceability. This is based on the doctrine of *pacta sunt servanda*, such that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”¹⁴¹ Hence, the situation of an overlapping set of international rules is a possibility, as will be tackled further in the subsequent discussion.

VI. TRADE IMPLICATIONS OF THE PARIS AGREEMENT

Indeed, the Philippine environmental legal and policy landscape shows its continuous motivation to move towards a greener direction, aptly applying new norms in climate change mitigation and adaptation. However, the observation of Alexandre-Charles Kiss (Kiss), renowned environmental lawyer, must be remembered — “[t]he cost of anti-pollution measures taken in one country can lead to distortions in the conditions of international trade, so [] there is a need for the harmonization of national legislation in

136. Paris Agreement, art. 2 (1).

137. *Id.*

138. Paris Agreement — Status of Ratification, *available at* http://unfccc.int/paris_agreement/items/9444.php (last accessed Jan. 26, 2018).

139. *See* Vienna Convention on the Law of Treaties, art. 26, *opened for signature* May 23, 1969, 115 U.N.T.S. 331.

140. *See* Paris Agreement, art. 3.

141. Vienna Convention on the Law of Treaties, *supra* note 139, art. 26.

this field.”¹⁴² The fact that international trade rules are often characterized by their binding nature makes their possible conflict with environmental measures a contentious issue.

This need for harmonization can be seen through the recently concluded 2016 UNFCCC Conference of Parties, which saw the entry into force of the Paris Agreement, on 4 November 2016,¹⁴³ and during which “each party had committed to emission reduction targets based on their national capabilities and responsibilities,” also known as Nationally Determined Contributions (NDCs).¹⁴⁴ It is through the Paris Agreement that the countries “[establish] a long term temperature goal aiming to limit global temperature increase to well below 2°C above pre-industrial levels, while pursuing all efforts to limit this increase to 1.5°C.”¹⁴⁵ Thus, in order to comply with their NDCs, countries are effectively pushed to enact laws and policies that will help the world meet the said targets.

Nevertheless, Article 3 (5) of the UNFCCC,¹⁴⁶ which is the basis for Article 4 (15) of the Paris Agreement,¹⁴⁷ makes reference to and therefore

142. Alexandre-Charles Kiss, *The International Protection of The Environment*, in *THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW: ESSAYS IN LEGAL PHILOSOPHY, DOCTRINE AND THEORY* 1069 (Ronald St.J. Macdonald & Douglas M. Johnston eds., 1983).

143. First Session of the Conference of the Parties serving as the meeting of the Paris Agreement, Marrakech, Morocco, Nov. 15-18, 2016, *Matters relating to the implementation of the Paris Agreement*, ¶ 1.1, FCCC/PA/CMA/2016/L.3 (Nov. 18, 2016).

144. WTO Secretariat, *Report of the Meeting Held on 30 June 2016*, ¶ 2.2, WT/CTE/M/61 (June 30, 2016).

145. *Id.* ¶ 2.1.

146. United Nations Framework Convention on Climate Change, *supra* note 134, art. 3 (5). Article 3 (5) of the United Nations Framework Convention on Climate Change provides that

[t]he Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

Id.

recognizes the relationship of environmental measures to trade.¹⁴⁸ This is further supported by the Paris Agreement's reinforcement of its rules on Response Measures.¹⁴⁹ Also, during the 16th Session of the Conference of the Parties to the Paris Agreement, the connection between trade and climate change mitigation and adaptation was reaffirmed when the parties declared that they "should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties [...] thus enabling them better to address the problems of climate change[.]"¹⁵⁰

The economic and social consequences of response measures were acknowledged and the parties were reminded that "measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade[.]"¹⁵¹ This is a clear indication of the UNFCCC Parties' recognition of the inherent cross-cutting relationship between trade and environment.

VII. WTO AND THE ENVIRONMENT

The World Trade Organization (WTO), as the primary international organization dealing with trade, settles trade disputes arising from violations of its rules.¹⁵² Despite being an economic subject of international law, it is

147. Paris Agreement, *supra* note 135, art. 4 (15). Article 4 (15) of the Paris Agreement states, "Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties." *Id.*

148. *Report of the Meeting Held on 30 June 2016*, *supra* note 144, ¶ 1 (citing World Trade Organization, WT/MIN(01)/DEC/1 (2001)).

149. *Report of the Meeting Held on 30 June 2016*, *supra* note 144, ¶ 2.8.

150. Sixteenth Session of the Conference of the Parties, Cancún, Mex., Nov. 29-Dec. 10, 2010, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010*, ¶ 90, FCCC/CP/2010/7/Add.1 (Mar. 15, 2011).

151. *Id.*

152. World Trade Organization, Understanding the WTO: Who we are, *available at* https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm (last accessed Jan. 26, 2018).

still rooted “the objective of sustainable development[.]”¹⁵³ This can be seen in the Preamble to the WTO Agreement,¹⁵⁴ which states that —

Recognizing that their relations in the field of trade and economic [endeavor] should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing *for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development[.]*¹⁵⁵

The Appellate Body in *United States — Import Prohibition of Certain Shrimp and Shrimp Products*¹⁵⁶ declared that the language of the cited provision “demonstrates a recognition by WTO negotiators that optimal use of the world’s resources should be made in accordance with the objective of sustainable development.”¹⁵⁷ The Ministerial Decision on Trade and Environment¹⁵⁸ cites this crossover “of sustainable development and environmental preservation objectives”¹⁵⁹ as the motivation for directing the WTO General Council to form the WTO Committee on Trade and Environment (CTE).

153. Marrakesh Agreement Establishing the World Trade Organization pmb., *opened for signature* Apr. 15, 1994, 1867 U.N.T.S. 154.

154. *Id.*

155. *Id.* (emphasis supplied).

156. Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 129, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter *United States — Shrimp*].

157. *Id.* ¶ 153.

158. World Trade Organization, Ministerial Decision on Trade and Environment, MTN.TNC/MIN(94)/1/Rev.1 (1994) [hereinafter Ministerial Decision on Trade and Environment].

159. Manuel Antonio J. Teehankee, et al., Multilateral Negotiations at the Intersection of Trade and Climate Change: An overview of Developing Countries’ Priorities in UNCSO, UNFCCC and WTO Processes (International Centre for Trade and Sustainable Development Global Platform on Climate Change, Trade and Sustainable Energy, Issue Paper No. 2, May 2012), available at <https://www.ictsd.org/downloads/2012/06/multilateral-negotiations-at-the-intersection-of-trade-and-climate-change.pdf> (last accessed Jan. 26, 2018).

The creation of the CTE ensured that the WTO has a committee that coordinates policies in the field of trade and environment.¹⁶⁰ This includes the responsibility to examine the relationship between the two and consequently make recommendations on how the multilateral trading system could be modified to suit such developments in cross-cutting issues of trade and environment.¹⁶¹

In the meeting of the CTE last 30 June 2016, “the [UNFCCC] briefed delegations on the main features of the Paris Agreement[.]”¹⁶² One of the issues raised was the concern on Response Measures wherein “there was recognition that some [WTO] Members could be negatively impacted by climate actions and policies adopted by other Members to meet their obligations.”¹⁶³ This meeting also provided the WTO with the opportunity to express its interest in sending a representative to fill one of the two open positions for observer organizations in the UNFCCC.¹⁶⁴

Clearly, with the entry into force of the Paris Agreement, more discussions on climate change will be expected from the CTE, including how the WTO could possibly adapt with the new possibilities in trade to be brought about by the new developments in climate change mitigation and adaptation. The next discussion will delve into the current environmental exceptions under the WTO which could apply to response measures.

VIII. ENVIRONMENTAL EXCEPTIONS TO THE WTO

With the entry into force of the Paris Agreement, Response Measures can be expected from State parties, like those discussed earlier on the recent environmental movements in the Philippines. However, an environmentally-sound measure could be trade restrictive. As can be seen in the WTO Dispute Settlement Body case docket, some environmental measures in the past have led to a WTO dispute.¹⁶⁵ Nevertheless, recourse

160. Ministerial Decision on Trade and Environment, *supra* note 158.

161. *Id.*

162. WTO Committee on Trade and Environment, *Report (2016) of the Committee on Trade and Environment*, ¶ 15, WT/CTE/23 (Dec. 6, 2016).

163. *Report of the Meeting Held on 30 June 2016*, *supra* note 144, ¶ 2.8.

164. *Id.*

165. *See generally* World Trade Organization, *Environmental Disputes in the WTO/GATT*, *available at*

to the General Exceptions under Article XX of the General Agreement on Tariffs and Trade (GATT XX),¹⁶⁶ particularly paragraphs (b) and (g) were made. The provision states —

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

[...]

(b) necessary to protect human, animal[,] or plant life or health;

[...]

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption[.]¹⁶⁷

A remedy sought under the GATT XX would need to pass a two-tier test: “first, provisional justification by reason of characterization of the measure under [any sub-paragraph of the article]; second, further appraisal of the same measure under the introductory clauses of Article XX.”¹⁶⁸ Thus, *firstly*, an environmental measure must satisfy the requirements under any of the sub-paragraphs of GATT XX, particularly paragraphs (b) and (g).¹⁶⁹

Under GATT XX (b), the measure should be “necessary to protect human, animal[,] or plant life or health.”¹⁷⁰ The Appellate Body in *Brazil — Measures Affecting Imports of Retreaded Tyres*¹⁷¹ recognized that the sub-

https://www.wto.org/english/tratop_e/envir_e/edisoo_e.htm (last accessed Jan. 26, 2018).

166. General Agreement on Tariffs and Trade 1994 art. XX, *opened for signature* Apr. 15, 1994, 1867 U.N.T.S. 187 [hereinafter GATT 1994].

167. *Id.* art. XX (b) & (g).

168. Appellate Body Report and Panel Report, *US — Standards for Reformulated and Conventional Gasoline*, at 22, WT/DS2/9 (May 20, 1996) [hereinafter *United States — Gasoline*].

169. *Id.* at 22–23.

170. GATT 1994, *supra* note 166, art. XX (b).

171. Appellate Body Report, *Brazil — Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R (Dec. 3, 2007).

paragraph was developed to illustrate “the tensions that may exist between, on the one hand, international trade and, on the other hand, public health and environmental concerns[.]”¹⁷² Thus, “a genuine relationship of ends and means between the objective pursued and the measure at issue [must exist].”¹⁷³ The same decision also cited the importance of evaluating whether the measure “is apt to produce a material contribution to the achievement of its objective[.]”¹⁷⁴ which is the protection of human, animal, or plant life.

GATT XX (g), on the other hand, deals with measures “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”¹⁷⁵ The Appellate Body in *United States — Shrimp* declared that the conservation of exhaustible natural resources extends to both living and non-living resources.¹⁷⁶ The same case also discussed that in order to consider a measure to be “relating to” a measure falling under GATT XX, it must likewise be “primarily aimed at” the conservation of such resource.¹⁷⁷ Thus, the measure should be found to have a reasonable “means and ends relationship” between the measure and the environmental policy sought to be enforced.¹⁷⁸

Secondly, the measure should be amenable with the first paragraph of GATT XX, otherwise known as the “*Chapeau*.”¹⁷⁹ The general wording of the *Chapeau* is attributed to the intention of making the standards “necessarily broad in scope and reach[.]”¹⁸⁰ therefore allowing its application to “vary as the kind of measure under examination varies.”¹⁸¹ The Appellate Body Report in *United States — Gasoline* explains the purpose of the *Chapeau* —

172. *Id.* ¶ 210.

173. *Id.*

174. *Id.* ¶ 151.

175. GATT 1994, *supra* note 166, art. XX (g).

176. *United States — Shrimp*, *supra* note 156, ¶ 131.

177. *Id.* ¶¶ 136 & 142.

178. *Id.* ¶ 141.

179. *Id.* ¶¶ 10 & 20.

180. *Id.* ¶ 120.

181. *Id.*

The [*Chapeau*] is animated by the principle that while the exceptions of Article XX may be invoked as a matter of legal right, they should not be so applied as to frustrate or defeat the legal obligations of the holder of the right under the substantive rules of the *General Agreement*. If those exceptions are not to be abused or misused, in other words, the measures falling within the particular exceptions must be applied reasonably, with due regard both to the legal duties of the party claiming the exception and the legal rights of the other parties concerned.¹⁸²

Hence, the *Chapeau* essentially requires a balancing of the right of a WTO member to invoke such exception and at the same time its obligation to respect the treaty rights of the other WTO members,¹⁸³ thereby ensuring that the environmental measure does not arbitrarily or unjustifiably discriminate between countries similarly applying a non-environmentally sound policy affecting trade, while protecting the multilateral trading environment from trade restrictive practices disguised as an environmental measure.¹⁸⁴

At present, the Philippines, as a developing country situated in the tropical zone of the world, is faced with the reality that it is one of the most vulnerable to climate change.¹⁸⁵ This is best exemplified by the extensive damage brought about by typhoons such as *Ondoy*¹⁸⁶ and *Yolanda*¹⁸⁷ and the extreme, record-breaking temperatures recently endured by certain locations all over the archipelago.¹⁸⁸ Thus, the inevitable effects of climate change

182. *United States — Gasoline*, *supra* note 168, at 22.

183. *United States — Shrimp*, *supra* note 156, ¶ 157.

184. See GATT 1994, *supra* note 166, art. XX.

185. Renee Juliene Karunungan, PH one of 10 most vulnerable countries to climate change, *available at* <https://www.rappler.com/move-ph/issues/disasters/152554-philippines-vulnerable-climate-change-20-years> (last accessed Jan. 26, 2018).

186. David Fogarty & Thin Lei Win, ‘Ondoy damage shows need to act on climate change,’ *available at* <http://news.abs-cbn.com/nation/09/30/09/ondoy-damage-shows-need-act-climate-change> (last accessed Jan. 26, 2018).

187. John Vidal & Damian Carrington, *Is climate change to blame for Typhoon Haiyan?*, *GUARDIAN*, Nov. 13, 2013, *available at* <https://www.theguardian.com/world/2013/nov/12/typhoon-haiyan-climate-change-blame-philippines> (last accessed Jan. 26, 2018).

188. Philippine Daily Inquirer, *Record-breaking heat*, *PHIL. DAILY INQ.*, May 22, 2016, *available at* <http://opinion.inquirer.net/94860/record-breaking-heat> (last accessed Jan. 26, 2018).

increased the country's sentiment towards climate change mitigation and adaption, especially with the recent entry into force of the Paris Agreement. Nevertheless, the country's treaty obligations under the WTO remain effective and the odds of a future balancing act between the two fields of multilateral trade and climate change response measures is a possibility that cannot be ignored.

IX. CONCLUSION

The Philippines has come a long way since the early days of its once thriving extractive industries. The shift from an extractive exercise of PSNR to one that denotes preservation by the country can be seen through the increasing exercise of control and supervision towards the responsible and sustainable utilization of the country's natural resources. This has been achieved through the development of national laws and policies that gradually help the environment recover from the past atrocities committed against Mother Nature.

Seen in parallel with international law's latest development — the entry into force of the Paris Agreement, and the continuous recognition of the cross-cutting issue of trade and environment — this holds true what Kiss said in 1983 on how the international protection of the environment is developed. He posited that “[t]he tools for such development should be not only international treaties, whether general or regional, but also principles, guidelines[,] and other non-binding texts which could be transformed at a later stage of the evolution into binding ones, at the level where this is the most appropriate.”¹⁸⁹

Given this, Philippine environmental law and policy-making has matured and come of age through greater vigilance by the citizenry, all concerned sectors, and government implementing agencies. Greater strides are indeed being made towards a more integrated environmental regulatory framework in the international and domestic context.

¹⁸⁹Kiss, *supra* note 142, at 1070.