



**WE WILL HAVE PEACE ON EARTH,
WHEN WE HAVE PEACE WITH THE EARTH**

**I.
RE THE MINORS OPOSA VS. FACTORAN CASE**

- 1. How did you end up being the judge for this case? Did you choose it or was it assigned to you?**

ANSWER. This case was an *en banc* (full court of 15 members) case. The procedure in the assignment of *en banc* cases to the members is by raffle, which is done once a week. The case, which was filed in late 1991, was originally raffled off to a senior Justice. However, upon his request and with the concurrence of the rest, it was re-assigned to me, then the youngest member of the Court both as to time of appointment and as to age. I was then 55 years old when appointed on January 24, 1991 by then Philippine President Corazon C. Aquino from a list of nominees submitted to the President by the Judicial and Bar Council (JBC). The JBC is a constitutional body exclusively tasked to receive applicants for judicial posts in the Philippine Judiciary from the lowest to the highest (that of Chief Justice of the Supreme Court). It is tasked to screen all applicants and interview them. Then for every vacancy it submits to the President a list of at least three (3) nominees. The President can appoint only from those in the list.

The Senior Justice to whom the case was first assigned explained that it was best to assign the case to the Benjamin (meaning the youngest) in the Court as the latter's first major challenge. The Justices were perhaps trying to probe my worth. Anyway, I most welcomed the challenge and even considered it a blessing in disguise. My answers to your succeeding questions may reveal to you why I did consider it so.

- 2. Were you already sensitive to environmental issues and willing to make a change?**

ANSWER. Not only sensitive. I was deeply concerned. The environment has become part of me. I was born to poor parents in a remote hinterland village (barangay) of Colawin, in the town of Argao, south of the island-province of Cebu. It was named after a native tree that grew only in that place. Colawin is a village surrounded by hills filled with local forest trees and located 19 kilometers away from the poblacion (center of the town). My parents were public school teachers; but they were farmers as well. We grew up in a big farm surrounded by luxuriant fruit trees, forest trees with a beautiful ornamental garden maintained by my mother. We had other parcels of land planted to crops and vegetables and had work animals. At an early age until I was 14

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years old, I was assigned to take care of a carabao and to feed every morning the chickens. We also plowed the field and planted crops. Until 1951 we had to walk, barefoot, the 19 kilometers from the village to the poblacion to complete our elementary and high school education. Sundays were the days to walk to the poblacion; Fridays were the days to walk back to our village. We walked from four to five hours through valleys, hills and mountains thickly covered with forest and fruit trees and coconuts, and followed the meandering course of a river with clear and clean water. After World War II, most of these trees were cut and burned (kaingin style) by the increasing number of farmers to convert the land for corn, rice, and other food crops.

The rape of the forests had thus begun. Soil erosions became worse. The silting of rivers and lakes was a common sight. My father was devastated by what had happened. He gathered the farmers and taught them soil conservation and replanting of trees. Our family was the pioneer in soil conservation efforts and reforestation of denuded areas in our village. My father was very convincing with his favorite quote: "If in vain our toil, blame the culture, but not the soil."

All of us in the family were plant lovers and were men and women of the soil. Two of my brothers, after finishing high school in our town, pursued agriculture courses at the College of Agriculture of the University of the Philippines (a state university). Both finished their Bachelor of Science in Agriculture degrees. Both got scholarships for masteral degrees in Agriculture in the United States of America. Eventually, the first (Jorge) got a Doctoral degree in the field of Soil Science; the second in Plant Pathology. The first was among the 1962 Ten Outstanding Young Men (TOYM) awardee in the field of Agriculture. The second (Romulo) was conferred the 2012 Ramon Magsaysay Award in the field of Agricultural Science. This Ramon Magsaysay Award is Asia's Nobel Award. Our TONY OPOSA got this award in 2008.

When I was an elected assemblyman of the Interim Batasang Pambansa (the interim legislature) of the Philippines for a six-year term (1978-1984), I introduced a resolution to investigate the massive denudation of the virgin forests of the country done through the grant by the Government of Timber Licenses to selected people and asked for their cancellation. I also introduced a resolution that would require the planting of a number of forest trees or fruit trees as one of the conditions for graduation from high school. None was approved by the interim legislature which was overwhelmingly controlled by the Martial Law government of then President Ferdinand Marcos.



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I regularly visited our family farm in the village, enjoyed harvesting the fruits of fruit trees, and of planting new varieties.

Parenthetically, I may point out that my decision in the *Minors Oposa vs. Factoran* case, was among the major reasons why the Ramon Magsaysay Foundation conferred on me the 2002 Ramon Magsaysay Award in the field of Government Service.

Then, as one of the Commissioners of the 1986 Constitutional Commission which was tasked to frame a new Constitution for the Philippines after the People Power revolution of February 1986 which toppled down Martial Law and the dictatorial regime of President Marcos, I was very active during the plenary deliberations and debates on the various resolutions which eventually became Articles or provisions of the proposed New Constitution known as the 1987 Constitution of the Philippines. This proposed Constitution was ratified by the people with the overwhelming majority votes of the electorate at the plebescite on February 2, 1987.

Among the major provisions of first impression which were approved was the State policy on the right of the people to a balanced and healthful ecology. This is Section 16 of Article II (DECLARATION OF PRINCIPLES AND STATE POLICIES) of this Constitution which reads in full, to wit:

SEC. 16. 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.

All told then, my previous personal exposures to, defense of, and work with the environment or Mother Earth, became blessings in disguise that inspired me and energized my mind, heart and soul to come up with a decision in the *Minors Oposa vs. Factoran* case.

3. **Would you say that the multiplication of environmental catastrophes from the 1970's (the Amaco Cadiz oil spill in 1978, the Bhopal industrial accident in 1984, the Chernobyl nuclear accident in 1986...) influenced you in your judgment?**

ANSWER. My decision was not based on those catastrophes. It was based more on what I had observed and seen; to which I was exposed or suffered from; and for which I tried to help prevent further damage, in respect of Mother Earth.



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4. **How did you feel during the proceeding? Did your final decision appeared (sic) obvious to you from the beginning? If not, what was your thought process?**

ANSWER. I felt greatly more challenged and tremendously inspired as I studied the records of the case. It opened my mind to the great and irreparable damage to the virgin forests of the Philippines and our ecology if nothing would be done by the Government. I saw seminal issues of valuable importance such as the judicial issues of some minors (only 43) suing on their own and on behalf of other children of this present generation and even of generations yet to come in a nature of class suit; the extent and expanse of the right of all people to a balanced and healthful ecology; and of the concept of intergenerational responsibility and justice in relation to this right as fomulated in Section 16 of Article II of the 1987 Constitution of the Philippines.

Thus, what would be my final decision became apparent and obvious. It was only a matter of putting formally in writing my thoughts and ideas, and even what were simply imagined.

5. **Did you experience fears and doubts for your career of personal safety?**

ANSWER. I did not experience any fear or doubt. I was sure that my decision was correct. This strengthened my faith in and fortified my hope for the success of what I was to finally write as decision for the Court *en banc*.

6. **Was Antonio Oposa the one to really convince you, or the children?**

ANSWER. Neither convinced me. Decisions are not made because of the parties involved. Their CAUSE or the ISSUES presented CONVINCED me to study and learn more deeply and to arrive at a decision of transcendental importance. Thy were, in a sense, the agents of change, the messengers who were inspired, perhaps by divine light, to bring to the fore for judicial determination a great cause. No doubt, without them at that stage the Court could not have acted and decided on the transcendental issues.

7. **How did the other judges, your colleagues, react when you gave them your judgment? Did they all agree with your decision? Were you supported by them?**

ANSWER. The Supreme Court *en banc* decides by a majority vote of those who participated in the deliberations. The Supreme Court is composed of 15 Members: the

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Chief Justice and the 14 Associate Justices. They are not addressed as Judges. Under the Constitution, only those of courts below the appellate courts (Supreme Court, Court of Appeals, Sandiganbayan or the Graft Court and the Court of Tax Appeals) are addressed as Judges.

As to how the Justices of the Supreme Court responded to my decision in expressing their concurrence or nonconcurrence, the records of the *Minors Oposa vs. Factoran* case (docketed as G.R. No. 101083) show that:

- a) **Ten** Associate Justices (JJ Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Romero, Nocon, Bellosillo, Melo and Quiazon) fully concurred;
- b) **One** (Associate Justice Feliciano) made a separate incisive concurring opinion;
- c) **One** (Chief Justice Narvasa) did not take part for being related to a party;
- d) **One** (Associate Justice Puno) took no part in the deliberation; and
- e) **One** (Associate Justice Vitug) took no part as he was not yet a member of the Court when the case was deliberated upon.



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II.

Re the UN DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES

- 1. Can you walk us through the process of negotiations behind the scene? Were they hard to conduct? Which representatives were hardest to convince?**

ANSWER. This could be a very long walk. To me, the second, perhaps, to the 19-kilometer walk twice a week to reach the poblacion of our town from our village of Colawin for our education as narrated in my answer to the second question in your first set of questions. I will just try my very best to shorten the walk by limiting myself to the most relevant aspects.

I wish to clarify that I was not “also involved in the creation of the Declaration on the Rights of Indigenous Peoples, passed by the United Nations in 2007.” In a very real sense, it was conceived or rather “created” by the UN Human Rights Council. The Council “approved” it on 29 June 2006 with a roll-call vote of 30 in favor, two against and 12 abstentions.

This Declaration for approval by the UN General Assembly during its 61st session was first referred to the Third Committee and upon its approval it was calendared for regular deliberations and debates in the General Assembly. But, upon motion of the African Group the General Assembly passed and approved Resolution No. 61/178 on 20 December 2006. In this Resolution the General Assembly decided “to (a) defer consideration of and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon and (b) conclude its consideration, as contained to the annex to the present resolution, before the end of its sixty-first session.”

At that time I was not yet appointed by the President of the Philippines as the Philippines' Permanent Representative to the United Nations in New York with the rank and privileges of Ambassador Extraordinary and Plenipotentiary. I was appointed in February of 2007, and presented my credentials to the Secretary General at the United Nations on 2 or 3 of March 2007.



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Since the issues on the Declaration of the Rights of Indigenous People were widely discussed, I got more and more interested in them. I spent a lot of time studying them especially because in the Philippines we have our concerns on our indigenous peoples, mostly in the islands of Luzon and in Mindanao. At the 1986 Constitutional Commission I actively participated in the discussions relative to their rights. The 1987 Constitution it framed contains provisions which recognize their role as citizens and guarantees their protection. Thus, among others, (1) Sec. 22 of its Article II (Declaration of Principles and State Policies) provides that “The State shall recognize and promote the rights of indigenous cultural communities within the framework of national unity and development; (2) Sections 15 to 20 of its Article X (Local Government) provides for the creation of Autonomous Regions in Muslim Mindanao for the indigenous peoples in that region, and the Autonomous Region in the Cordilleras for the indigenous peoples in Luzon; (3) Section 17 of Article XIV (Education, Science and Technology, Arts, Culture and Sports) provides the State “shall recognize, respect, and protect the rights of the indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies; and (4) Section 6 of its Article XIII (Social Justice and Human Rights) provides for their rights to their ancestral lands.

I also meticulously read the several position papers presented to the General Assembly by some delegations and Regional Groups in the UN. After my serious study of the Human Rights Council-approved Draft of the UN Declaration on the Rights of Indigenous Peoples, my delegation sent on 29 May 2007, a *Note Verbale* to then President of the UN General Assembly, H.E. Haya Rashed Al-Khalifa, the Permanent Representative to the UN in New York of the State of Bahrain. This *Note* expressed my observations and views on the Draft UN Declaration on the Rights of Indigenous Peoples in light of the various positions or statements of delegations and/or Regional Groups in the UN. I informed the President that on the basis of these various positions my delegation has found a significant divergence in the approaches to address the conflicting concerns, with one group insisting on the re-opening of the text of the Draft Declaration, and the other group openly against the re-opening. I proposed a “middle-ground” approach which could break the impasse between the two contrasting positions. This middle-ground approach may result in the acceptance by the Delegations to keep intact the text of the Draft Declaration as close as possible to the text recommended by the Human Rights Council. The body/text of my *Note Verbale* reads in full, as follows:

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“29 May 2007

Dear Madame President,

I have the honor to refer to the draft Declaration on the Rights of Indigenous Peoples on which the General Assembly is expected to take action within its 61st session. The Philippines is sympathetic to the sentiment that the indigenous peoples of the world cannot anymore afford a protracted process leading to the adopting of the Declaration. An instrument that recognizes the need to address the special situation of indigenous peoples will be their beacon of hope that long-awaited changes and reforms will soon be within reach.

The Philippines is grateful to the delegations that have initiated efforts to increase understanding and constructive discussions to resolve the remaining issues on the draft Declaration. The proposals that have been presented certainly improve our understanding of the different positions. However, after a careful study, it occurs to my delegation that there still remains a significant divergence in the approaches to address the different concerns.

While the substantive issues are for delegations to debate and agree on, I would like to propose a procedural approach that, if delegations could so consider, be a positive wayforward for dialogue on the remaining issues. As I see it, some delegations would like to re-open the text of the Declaration in order to address concerns, while other delegations have maintained that they would not agree to any re-opening of the text.

My proposed approach is aimed at reaching a middle ground between those who want to revise the text of the draft Declaration and those who do not want to re-open the text. This possible middleground, however, can only be viable if delegations will be willing to show a degree of flexibility in their positions.

As a possible middleground, delegations could agree to keep the text of the Declaration as close as possible to the text recommended by the Human Rights Council except for the last paragraph (Article 46, para 3) which we could amend to read as follows:

'The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith, and in conjunction with the resolution adopting this Declaration.'

As can be seen, this approach keeps the Declaration as intact as possible, but also makes the resolution adopting the Declaration (which would be crafted to address outstanding concerns) an integral part of the Declaration, indispensable and necessary for the proper interpretation of the Declaration.

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Your excellency might wish to consider this proposed approach in the process of consultations facilitated by her good office. My delegation recognizes that the precious time remaining before the end of the current session should be utilized in discussions that hold promise of bringing positions closer together towards consensus.

Please accept, your Excellency, the renewed assurances of my highest consideration.

HILARIO G. DAVIDE, JR. (signed)
Permanent Representative

Her Excellency **Sheikha Haya Rashed Al-Khalifa**
President of the General Assembly
United Nations
New York”

To my great surprise, on 6 June 2007, General Assembly President Haya Rashed Al-Khalifa appointed me as Facilitator, ON HER BEHALF, to facilitate the undertaking of further consultations on the Declaration of the Rights of Indigenous Peoples. She then forthwith sent a letter to all Permanent Representatives informing them of such appointment. This letter reads in full as follows:

“6 June 2007

Excellency,

I have the honor to refer to General Assembly resolution 61/178 of 20 December 2006 in which the Assembly decided to: a) defer consideration of and action on the United Nations Declaration on the Rights of Indigenous Peoples to allow time for further consultations thereon; and b) conclude its consideration of the Declaration, as contained in the annex to the present resolution, before the end of its sixty-first session.

Since then, I have personally encouraged all interested parties to deal with this matter in constructive manner. Bearing in mind the timeframe set the General Assembly, I am pleased to inform you of my decision to appoint His Excellency Hilario G. Davide, Jr., the Permanent Representative of the Philippines to the United Nations, to undertake, on my behalf, further consultations on the Declaration on the Rights of Indigenous Peoples. I wish to thank Ambassador Davide, Jr. for accepting this responsibility. Ambassador Davide, Jr. will conduct open and inclusive consultations, in formats that he will deem appropriate, with a view to reflecting the views of all concerned parties in this process. I expect him to report back to me on the outcome of his consultations as soon as possible, but not later than mid-July 2007.

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In pursuing consideration of this important matter, I trust Member States will continue to be guided by the purposes and principles of the United Nations Charter and the Universal Declaration of Human Rights. Given the very limited time remaining, I encourage Member States to enter these consultations in a flexible manner and to provide Ambassador Davide, Jr. with all necessary support. I shall personally closely follow this process of consultations.

Please accept, Excellency, the assurances of my highest consideration.

(signed)
Haya Rashed Al Khalifa

All Permanent Representatives and
Permanent Observers to the United Nations
New York”

Forthwith, I entered into the most difficult task assigned to me, a neophyte in the UN General Assembly. Using my previous experiences in undertaking and handling consultations in the various positions I held in the Philippines, namely as: (1) Delegate to the Constitutional Convention of 1971; (2) Commissioner of the 1986 Constitutional Commission; (3) Chairman of the Commission of Elections; (4) Chairman of the Fact-Finding Commission to Investigate the causes of the various coup attempts against then President Corazon C. Aquino and to recommend measures to prevent the occurrences of future coups; (5) Assemblyman of the Interim Batasang Pambansa – the interim parliament – of the Republic of the Philippines; and (6) Chief Justice of the Supreme Court, my delegation prepared an elaborate program of activities for the consultations. We scheduled several daily meetings in the latter of June 2007, with various categories of attendees to follow a progressive route. I utilized all the officers of my Mission to maximize good results by dealing directly with the key officers of the different missions. This progressive route started with informal meeting or dialogues with, **first**, Permanent Representatives (or their designees) who were supporters of the draft Declaration. The **second**, of key Permanent Representatives who were not supporters of the Draft. **Third**, Representatives of the Regional Groups in the UN. To each group I presented the problems and the urgency of solving them through a middle-ground solution acceptable to all concerned. To these groups, I provided them, for ease of reference, all the position papers or statements of various delegations on their stand on the issues and their proposals to arrive at an acceptable Declaration.

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Open discussions were had. After these meetings, we scheduled the **fourth** round. This time it was Cross-Regional Consultations. To all Permanent Representatives (or their designees) who attended this round, I briefed them on the results of the prior meetings and on the consensus obtained. From them the several options presented to break the impasse or to arrive at the middle-ground were further discussed. The results were amazing. **A hybrid middle-ground was approved.**

Then, we proceeded to hold dialogues with the various NGOs devoted and dedicated to the protection and promotion of the rights, culture, traditions, institutions, etc. of indigenous peoples in various parts of the world, such as the NGO Committee on the United Nations International Decade of the World's Indigenous Peoples, and the Indigenous People's Caucus. To these groups I took time to fully explain what transpired during the meetings aforementioned. Their leaders fully supported what had so far been achieved toward reconciling the contrasting positions of Member States.

Finally, an open-ended meeting/final consultation with all delegations/Permanent Representatives was held. Permanent Representatives or their duly authorized Mission officers attended this consultation. To them I presented what had been favorably agreed on during the Cross-Regional consultations and provided them with text of the Declaration with the proposed changes agreed upon at the Cross-Regional consultations. Open, animated and enlightening discussions followed. Several delegations participated in the discussions. It became clear to me that the vast majority was in favor of the text as presented. Delegations from the **United States, Canada, Australia, New Zealand reiterated their firm opposition even to the new draft.** As Facilitator, my delegation was indescribably happy of the results. It was a major victory.

On the side, I wish to confide a little secret. In addition to the consultations, I spent time, talent, patience and humility to pay courtesy calls on several Permanent Representatives, even to the Permanent Observers to obtain their support to all my efforts as Facilitator.

Thereafter, I submitted to the President of the General Assembly, Her Excellency Haya Rashed Al-Khalifa, my final report on the outcome of my facilitations on her behalf together with the new text of the Declaration that embodied the hybrid middle-ground approach which broke the impasse earlier stated. This final new text was thereafter debated on and discussed by the General Assembly during its 61st session.

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At its session on 13 September 2007, the General Assembly approved the text of the UN Declaration on the Rights of Indigenous Peoples with: a) 143 Member States voting in favor; b) 4 Member states voting against it; and c) 11 Member States abstaining.

2. **Were you adamant about one point particularly? Did you have to let go of one in order to keep the negotiations running?**

ANSWER. As a Facilitator, one must be as flexible as possible. He should guide the proceedings with all candor, sincerity, humility, patience and understanding. If a group wanted to walk one mile in its insistence, I was always prepared to walk with the group even for two more miles. (Matthew 5:41). I was simply obsessed with a conviction that all contrasting views will be resolved. Hence, I started with options to be pursued to reach the elusive middle-ground. Finally, the hybrid middle-ground was accomplished. I never tried to convince the oppositors that they were wrong. I merely tried to show that all Member States are interested in coming out with the Declaration and hindrances can be resolved with the greatest good for the greatest member.

3. **Did you manage to convince someone unsure about the Declaration at first, but who finally signed it?**

ANSWER. In dealing with the Permanent Representatives, the Facilitator must never forget that he was dealing with Member States and the Permanent Representatives merely echoed the decision of the State and Government they represent. I was not the best convincer. The final text drawn after the series of serious progressive consultations was the best argument for convincing, or the best convincer.



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THANK YOU, MS. LAURA PAQUEMAR AND THE NORMANDY CHAIR FOR PEACE.

MAY GOD, THE SOURCE AND SUMMIT OF LIFE, THE GOD OF JUSTICE, TRUTH, LOVE AND PEACE, GRANT MORE BLESSINGS TO THOSE WHO WORK FOR THESE.

Very sincerely,

HILARIO G. DAVIDE, JR.

Retired Chief Justice
of the Republic of the Philippines
(30 November 1998 – 20 December 2005)

and

Former Philippines'
Permanent Representative
to the United Nations
in New York
(February 2007 – 31 March 2010)

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