

Law in the Service of Human Dignity

Essays in Honour of Florentino Feliciano

Edited by Steve Charnovitz,
Debra P. Steger and Peter Van den Bossche

CAMBRIDGE

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PREFACE

This volume of essays seeks to honour a remarkable, true renaissance man, Justice Florentino P. Feliciano. We are privileged to know him as a jurist, a teacher, a scholar, a lawyer, a loyal citizen of his beloved country, the Philippines, and a citizen of the world. He has had multiple careers of achievement and positive legacy in so many fields that it is hard to imagine how one individual could accomplish it all. He was a Justice of the Philippines Supreme Court from 1986 to 1995, thereafter, he was one of the first seven members of the World Trade Organization's Appellate Body from 1995 to 2001 and its Chairman in 2000 to 2001. For years he has been one of the world's most experienced international legal scholars and arbitrators. He is highly respected in the international law community having been, among many other distinctions, an associé de l'Institut de Droit International for almost forty years and a Member of the Curatorium of the Hague Academy of International Law. A short biographical note on Justice Feliciano and a bibliography of his publications is included in this volume.

Justice Feliciano ('Toy' to his many friends and colleagues around the world) is a very humble, kind and thoughtful gentleman. He is a principled and religious man, with a passion for justice, equality, and the rule of law, both in his own country and in the international community. He has an unparalleled intellect and curiosity about the world around him, but he is also an extremely meticulous and careful thinker – a person who must learn all that he can about a particular subject before taking any decision. In other words, he is the perfect judge. He can, at times, be fearsome, particularly when he is sitting on the bench and preparing to ask a penetrating question of an unsuspecting counsel. He likes to introduce his inquisition with the simple, humble words: 'I'm just a judge from a little country'. Many an experienced counsel has learned that this is just the beginning of a challenging, intellectual inquiry on the merits of a particular legal argument.

As befitting a volume about the progressive development of international law in a globalized world, our contributors hail from all over the world. We have divided this rich collection of essays into four parts.

The first part, entitled 'Reflections', presents essays about Justice Feliciano and his contributions to international law by some of his closest colleagues and friends. Included in this collection are essays by Professor Michael Reisman of Yale Law School, Justice Feliciano's alma mater, on his philosophy of judicial function, and an essay by Judge Rosalyn Higgins, who was a student at Yale with Justice Feliciano and is now a Judge of the International Court of Justice, in which she offers her personal reflections on her friendship with him going back forty-five years. The other essays in this section were written by two of Justice Feliciano's former colleagues on the WTO Appellate Body: Ambassador Julio A. Lacarte and the Honorable James Bacchus.

The second section of WTO 'Insights' contains several essays about international trade law and the current issues facing the WTO. Each of these essays provides new analysis and many offer innovative policy proposals. It is particularly fitting that Professor John Jackson chose to write about the environment-related jurisprudence of the WTO, as Justice Feliciano heard and decided important cases dealing with the environment, including the very first case, *US – Reformulated Gasoline*, and the much publicized *US – Shrimp* case.

The third section addresses the changing landscape of international investment arbitration and contains papers by well-known scholars and jurists. Included in this part is a contribution by Judge Stephen M. Schwebel, who served two decades on the International Court of Justice and was its President for three years before he retired.

The fourth section looks at new challenges in international arbitration and contains several essays by highly-regarded scholars and jurists on various topics of public international law and the practice of international tribunals.

A book project of this depth and scope takes years from start to finish, and we, the editors, have very much enjoyed this endeavour and especially our communication with each of the participants. As is almost inevitable in a multiyear project of this sort, some participants have passed away. One of them, Professor Robert E. Hudec, had intended to do a study of the negotiation of Part IV of the General Agreement on Tariffs and Trade based on the notes he kept as an American trade official at that time. Sadly, Bob passed away, and his paper was never written.

On the other hand, our volume does include an excellent essay by Professor Said El-Naggar, one of the original seven members of the Appellate Body and a close friend of Toy's, who had finished his essay on the WTO participation of developing countries shortly before he passed away in April 2004. Professors Hudec and El-Naggar were legends in international economics and law, and both shared a passion for interdisciplinary studies of international trade law, policy, and economics.

In addition to all of the contributors, we want to thank the individuals and organizations who have made this book possible. We wish to especially acknowledge the helpful advice and encouragement from Professor Maria Lourdes Sereno, who has been privileged to have Justice Feliciano as her special mentor ever since she went to work with his law firm as a young lawyer over twenty years ago. We received editing assistance from Natalia Bayurova, Jan Bohanes, Lisa Coen, Carol Ní Ghiollarnáth, Adéshola Odusanya, Iain Sandford, and Arun Venkataraman. The Global Environment and Trade Study and the Faculty of Law of Maastricht University provided financial assistance. We also wish to thank Finola O'Sullivan and the editors at Cambridge University Press for supporting this project and helping us see it through to fruition.

This project, for us, has been a labour of love, affection, admiration, and respect for a man whom we hold in the highest esteem. We have enjoyed working together – this book is the result of a dedicated collaboration across continents and time zones. It is an example of international cooperation in honour of a truly international jurist and scholar.

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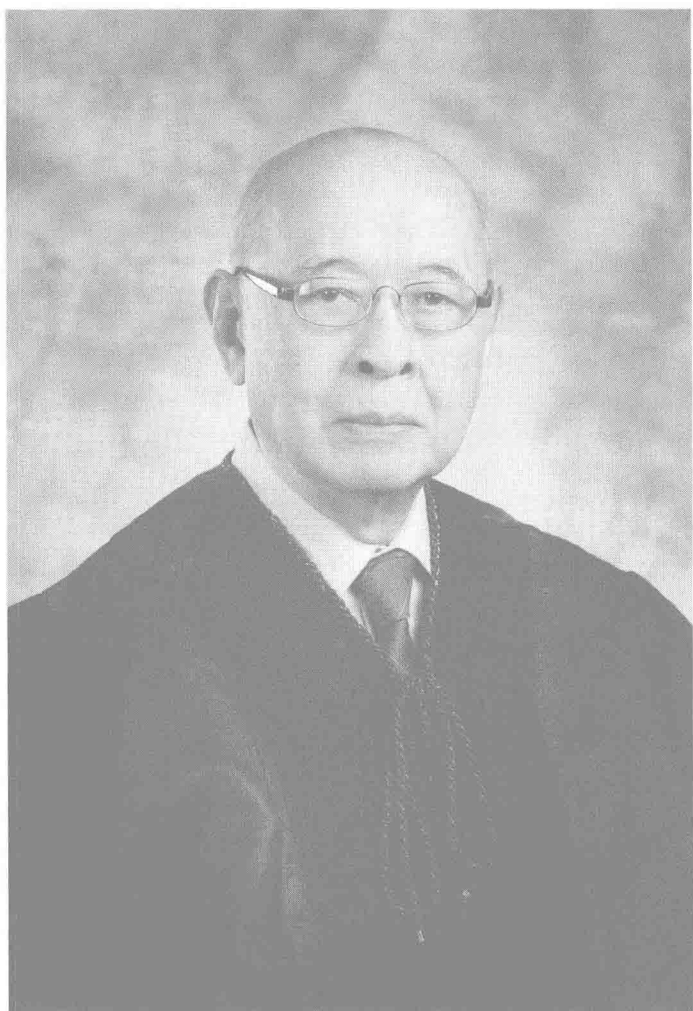
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September 2004



BIOGRAPHICAL NOTE

JUSTICE FLORENTINO P. FELICIANO

Justice Florentino P. Feliciano was born in Manila, the Philippines, in 1928. Following his undergraduate BA and LLB degrees at the University of the Philippines, Justice Feliciano obtained a Master of Laws (LLM) and a Doctor of Juridical Science (JSD) at Yale University. He was subsequently awarded a Doctor of Laws (LLD) by Misamis University in the Philippines. He won the prestigious Carolinda Waters Prize in International Law at Yale Law School in both 1953 and 1955.

Justice Feliciano, or 'Toy' as he unassumingly prefers to be addressed by peers and subordinates alike, was admitted to the Philippine Bar in 1953. After working with the Department of Justice in the Philippines, and after lecturing in law at (amongst others) the University of the Philippines and Yale, Justice Feliciano embarked upon a long and illustrious legal career during which he has advised upon, and adjudicated over, many different areas of law in many international jurisdictions.

He was a partner at SyCip Salazar Hernandez & Gatmaitan (formerly SyCip Salazar Feliciano & Hernandez) for nearly twenty years, and became the firm's Co-Managing Partner in 1981 and its Managing Partner in 1983. During his time as a partner at that firm, Justice Feliciano advised many national and international corporations on their activities on a wide spectrum of legal issues.

After many years in private practice, Justice Feliciano was appointed as an Associate Justice of the Supreme Court of the Philippines in 1986, following which he became a Senior Associate Justice in 1994. While at the Supreme Court, he decided a number of cases dealing with a broad range of legal issues, including commercial law, tax law, commercial arbitration, and the administration and recognition of domestic and foreign arbitral awards.

Following his outstanding work at the Supreme Court, Justice Feliciano became a member of the newly established Appellate Body of the World Trade Organization in 1995. The Appellate Body, the highest international tribunal for trade disputes, hears appeals from WTO panel cases. Justice Feliciano was Chairman of the Appellate Body in 2000–1. During this period, he contributed immensely to the burgeoning jurisprudence of international trade law.

Justice Feliciano is also well-known in the field of international arbitration. He has acted as both an arbitrator and as counsel for parties in numerous international commercial and investment arbitration disputes. In addition to his work for (amongst others) the International Chamber of Commerce (ICC) and the International Centre for the Settlement of Investment Disputes (ICSID), Justice Feliciano has served as the President in a Stockholm Arbitration Institute case and as a Member of the Arbitration Tribunal under Chapter XV of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). He served on the Asian Development Bank Administrative Tribunal from 1991 to 1995.

Justice Feliciano is currently Senior Counsel at SyCip Salazar Hernandez & Gatmaitan. He is a member of the World Bank Administrative Tribunal and a member of the Senior Advisory Council on the South East Asian Programme on Ocean Law and Policy. In addition, he is a member of the ICC Panel of Arbitrators, the ICSID Roster of Arbitrators and Conciliators, the Panel of Accredited Arbitrators of the China International Economic Trade Law Arbitration Committee (Beijing); the Japan Commercial Arbitration Association (Tokyo); the World Trade Law Association's Governing Council (London); the International Development Law Institute (Rome); and the International Institute of Humanitarian Law (San Remo).

He was elected to the Institut de Droit International and the Curatorium of the Hague Academy of International Law.

In addition to his international service, Justice Feliciano has held a number of positions of honour in the Philippines. These include the Philippine Society of International Law (President from 1975 to 1983), the House of Representatives' Electoral Tribunal (1988 to 1993, Chairman from 1993 to 1995), the Senate Electoral Tribunal (1995), and the Philippine Council for Foreign Relations. He is currently a member of the editorial board of the *Philippine Yearbook of International Law* and a member of the editorial advisory board of the *Journal of International Economic Law*. In July 2003, Justice Feliciano was appointed by President Arroyo of the Philippines as the Chairman of a special fact-finding commission to look into the causes of the 2003 mutiny in Makati, the Philippines.

ABBREVIATIONS

AAA	American Arbitration Association
ACWL	Advisory Centre on WTO Law
ADA	WTO Anti-dumping Agreement
AoA	WTO Agreement on Agriculture
ATC	WTO Agreement on Textiles and Clothing
BIT	bilateral investment treaty
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources 1980
CFI	Court of First Instance
CIETAC	China International Economic and Trade Arbitration Centre
DS	dispute settlement
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EEZ	exclusive economic zone
EFTA	European Free Trade Association
EU	European Union
FDI	foreign direct investment
FTA	free trade area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GMO	genetically modified organism
GSP	Generalized System of Preferences
ICC	International Chamber of Commerce
IC Ct	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty

ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
ILA	WTO Agreement on Import Licencing Procedures
ILO	International Labor Organization
IMF	International Monetary Fund
ITLOS	International Tribunal for the Law of the Sea
ITO	International Trade Organization
IUUF	illegal, uncontrolled, undeclared fishing
MAI	Multilateral Agreement on Investment
MFA	Multifibre Arrangement
MFN	most-favoured nation
NAMA	non-agricultural market access
NGO	non-government organization
NTB	non-tariff barrier
PCIJ	Permanent Court of International Justice
SA	WTO Agreement on Safeguards
SCM Agreement	WTO Subsidies and Countervailing Measures Agreement
SIAC	Singapore International Arbitration Centre
SPS Agreement	WTO Sanitary and Phytosanitary Measures Agreement
TBT	technical barriers to trade
TBT Agreement	WTO Technical Barriers to Trade Agreement
TRIMS Agreement	WTO Agreement on Trade-Related Investment Measures
TRIPS Agreement	WTO Agreement on Trade-Related Intellectual Property Rights
TS	territorial sea
UN	United Nations
UNCED	UN Conference on Environment and Development
UNCITRAL	UN Commission for International Trade Law
UNCLOS	UN Convention on the Law of the Sea
UNCTAD	UN Conference on Trade and Development
WTO	World Trade Organization

CONTENTS

<i>List of contributors</i>	page <i>x</i>
<i>Preface</i>	<i>xv</i>
<i>Biographical note</i>	<i>xix</i>
<i>List of abbreviations</i>	<i>xxi</i>

PART I Reflections on the contributions of Florentino Feliciano to international law 1

- 1 A judge's judge: Justice Florentino P. Feliciano's philosophy
of the judicial function 3

W. MICHAEL REISMAN

- 2 The benign first mate 11

ROSALYN HIGGINS

- 3 The Aristotelian 14

JAMES BACCHUS

- 4 Trade and economic justice according to law 22

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